

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 02 2018 10:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IVONNE CABRERA,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No. 74341

APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME VII

**Appeal from Judgment of Conviction
Eighth Judicial District Court**

Patricia M. Erickson, Esq.
Nevada Bar No. 3506
601 South Tenth St., Suite 108
Las Vegas, Nevada 89101
(702) 388-1055
pme@pmericksonlaw.com

Attorney for Appellant

Steven B. Wolfson
Nevada Bar No. 1565
Clark County District Attorney
200 Lewis Avenue, Third Floor
Las Vegas, Nevada 89155
(702) 671-2500

Attorney for Respondent

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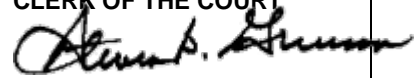
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7/11/2017 7:01 PM

Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,)
)
 Plaintiff,)
)
 vs.)
)
 IVONNE CABRERA, #1617623, aka Ivonne)
 CABRERA,)
)
 Defendant.)

Case No. C283700-1
Dept. No. XXV

Before the Honorable KATHLEEN E. DELANEY
Monday, July 10, 2017, 3:00 P.M.
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State: MARC DIGIACOMO, ESQ.
HETTY WONG, ESQ.
Deputies District Attorney

For the Defendant: BRET WHIPPLE, ESQ.
PATRICIA ERICKSON, ESQ.
Attorneys at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

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I N D E X

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1 Las Vegas, Clark County, Nevada

2 Monday, July 10, 2017, 3:00 P.M.

3 P R O C E E D I N G S

4 * * * * *

5 PAUL EHLERS

6 called as a witness on behalf of the State,

7 having been previously duly sworn,

8 was examined and testified as follows:

9 (The following proceedings were had in open

03:07PM 10 Court outside the presence of the jury panel:)

11 THE COURT: Mr. Digiacomo indicated there might
12 be something we should make a record before. Should we have
13 Mr. Ehlers step out or can he stay.

14 MR. DIGIACOMO: I think he can stay.

03:07PM 15 MR. WHIPPLE: That's fine.

16 THE COURT: All right. What's the issue?

17 MR. DIGIACOMO: Judge, I'm limited from the
18 phone conversations between Loka and the defendant -- Loka's
19 phone and the defendant's phone, as well as Melissa and/or Erik
03:07PM 20 and the defendant's phone.

21 The defense is marking everything that happened
22 with that phone from 1969 all the way through 2012.

23 I have no problem if they want to, for the
24 purposes of identification, have Detective Ehlers identify it.
03:07PM 25 I haven't gone through it to see. And I'm not sure that he's

1 going to be able to authenticate it looking at it, but we have
2 it on a disc and I don't have a problem with that.

3 But I do have a problem if they're going to
4 offer conversations that Chinola is having with any other
03:08PM 5 person -- clearly hearsay, clearly inadmissible, and with no
6 exception to it.

7 And, thus, if they want to offer it, they need
8 to establish a hearsay exception for the statements of
9 Ms. Chinola within those text messages.

03:08PM 10 I also would note that if you read those,
11 there's a number of crimes that are uncharged that Ms. Cabrera
12 talks about throughout those -- that timeline throughout the
13 years involving drugs and threatening people.

14 She held some within her house saying: If she
03:08PM 15 doesn't give me money, I'm not going to release her. I mean,
16 there is a number of very bad acts within the timeline. I'm
17 not sure the defense has read all through those. And so that
18 would be another basis, I would think, it would be very
19 dangerous to admit those.

03:08PM 20 THE COURT: So, Ms. Erickson, what is the --
21 help us understand the intention. Only because, first of all,
22 if it's going to implicate another Tavares Instruction, I left
23 it in my office. I don't have it handy. So I'd have to locate
24 it.

03:09PM 25 MS. ERICKSON: No, Judge. I'm not moving to

1 admit anything.

2 THE COURT: Okay.

3 MS. ERICKSON: I'm marking for identification
4 purposes that can then later be used with the appropriate
03:09PM 5 person to authenticate the phone or text message.

6 I do not have to establish hearsay at this
7 point. I'm just marking for identification for use later. And
8 if it comes up later, then I will rule it as hearsay.

9 THE COURT: But not necessarily an issue with
03:09PM 10 this witness?

11 MS. ERICKSON: No, of course not.

12 MR. DIGIACOMO: Okay. If they told me that, I
13 wouldn't have had gone through that whole thing.

14 MR. WHIPPLE: Yeah.

03:09PM 15 MS. ERICKSON: Well, yeah, I think you would.

16 THE COURT: Like I said, we're spending all that
17 time marking and getting it ready.

18 Now I think my presumption and Mr. Digiacomo's
19 fair assumption is that it related to this witness. If it does
03:09PM 20 not, then we are fine and --

21 MS. ERICKSON: I'm just trying to get
22 information that this witness knows.

23 THE COURT: Okay. So are we ready now for the
24 jurors?

03:09PM 25 Is that a yes?

1 MS. ERICKSON: Yeah. Yes.

2 THE MARSHAL: All rise for the jury.

3 (The following proceedings were had in open

4 Court in the presence of the jury panel:)

03:10PM 5 THE COURT: Take your seats as you reach them.

6 I invite everyone else to have a seat as well.

7 Please make sure your cell phones are off or
8 silenced, if you used them on the break.

9 We appreciate that break. It was a little

03:10PM 10 longer than we expected. We thank you for your patience while
11 we got everything organized to continue with this witness.

12 Mr. Ehlers, you may have a seat, please.

13 And may I just ask you, before we continue with
14 your examination, that you would please acknowledge for the
03:10PM 15 record that you understand you're still under oath.

16 THE WITNESS: I do.

17 THE COURT: All right. Thank you so much.

18 Ms. Erickson, whenever you are ready.

19 MS. ERICKSON: Yes, Judge. Just a moment. I'm
03:11PM 20 sorry.

21 CROSS-EXAMINATION

22 BY MS. ERICKSON:

23 Q. Mr. Ehlers, or Detective, I'm so sorry.

24 Detective Ehlers, were you nice enough to come to my
03:11PM 25 office yesterday afternoon and explain this massive amount of

1 paperwork and how it's organized?

2 A. I did.

3 Q. Thank you.

4 MS. ERICKSON: May I approach, Judge?

03:11PM 5 THE COURT: You may.

6 BY MS. ERICKSON:

7 Q. I'm showing you what's been marked for identification
8 as Defendant's Exhibit 8A. Now, in the report that you did
9 there's a section for each phone that's a timeline; is that
03:12PM 10 correct?

11 A. That is correct.

12 Q. And when you click on the timeline, it pulls up
13 everything in chronological order that it is able to accept;
14 correct?

03:12PM 15 A. That is correct.

16 Q. Okay. So it would include SMS messages, it would
17 include MMS messages, it would include e-mails, it would
18 include all those different kinds of things; correct?

19 A. It could, yes.

03:12PM 20 Q. Okay. And -- but it doesn't include the contacts --
21 the contacts -- you know, the contacts in order. That's not in
22 there?

23 A. No.

24 Q. But the web history is?

03:12PM 25 A. So it's going to show the activity of the phone, what

1 it was accessing by date and time stamps, which are for each
2 file that are done. And, depending what that object was, if it
3 can be decoded and they reverse engineered it and they were
4 able to parse that information, then that would be contained in
03:13PM 5 the timeline, and then it does go -- and I believe it -- in --
6 in this version at least, it was by sections of dates.

7 Q. Okay.

8 A. So --

9 Q. And in that marked exhibit, is there -- you have the
03:13PM 10 ability to determine which phone that timeline goes from.

11 Or would you say that is the timeline from one of
12 these phones?

13 A. I -- I don't know. I mean, if I were to go through
14 this large stack, I could --

03:13PM 15 Q. Well, let me make it easier.

16 A. -- I could probably go through it all.

17 Q. If I show you --

18 MS. ERICKSON: Oh, I'm sorry, Judge. May I
19 approach?

03:13PM 20 THE COURT: You may.

21 MS. ERICKSON: I'm already there.

22 THE COURT: You are fine.

23 BY MS. ERICKSON:

24 Q. Okay. You previously testified regarding the -- the
03:13PM 25 SSM -- SMS messages of "let's roll," "where are you,"

1 "apartment," "who," "white boys;" correct (indicating)?

2 A. Yes, from the contact identified as Loka.

3 Q. Okay.

4 A. Yes.

03:14PM 5 Q. And so would that tell you which phone this was?

6 A. Well, that would tell me that -- that excerpt, I'm
7 believing, it was from --

8 Q. At the bottom (indicating)?

9 A. -- this would be -- it looks an excerpt, at least
03:14PM 10 what we've covered earlier from the Samsung cellular phone, and
11 up at the top, if it does state the timeline information --

12 Q. Okay. Look here --

13 A. That would probably be it.

14 And we could confirm that through the amount of
03:14PM 15 number of items taken and actually confirm it by looking at the
16 digital copy. But, yes, that's what it would appear to be.

17 Q. Okay. Well, and at the bottom of this document, it
18 has a file name, which includes Samsung, records, Samsung CDMA.
19 Do you recognize that file name?

03:14PM 20 A. Yeah. I would probably have to go further to give
21 all that information. But, yes, it appears to be. Yes.

22 Q. So would you say that this, in all likelihood -- and
23 it does start at number one (indicating); correct?

24 A. Yes.

03:15PM 25 Q. Okay. And this does include some information from

1 1969 and '70 that just comes up with dates -- but these are
2 birth dates; correct?

3 A. So some of the earlier ones are going to be,
4 depending on what it is, through the calendar systems, is what
03:15PM 5 these are showing as. So they might have been significant
6 events that the operating system had chartered.

7 And usually you will see that in some of the older
8 phones in the reference of the timeline of -- of just the
9 leases or the information that had gone, and then it will start
03:15PM 10 populating with the most recent. Now, you know, it won't be
11 everything that ever was in the phone because it has a size
12 limitation additionally, but it will contain quite a lot of
13 information.

14 To show you a few more things, it kind of puts it in
03:16PM 15 an order of the date. And that's why the -- it had been placed
16 into this program. So instead of having to go to the text
17 messages section, the incoming calls and everything, you could
18 look at a specific date range and see the activity that had
19 gone on that phone.

03:16PM 20 Q. Okay. And this exhibit starts at number 1 and goes
21 chronologically through to 3960?

22 A. And that does show the amount of entries in reference
23 to that timeline from that extraction report, yes.

24 Q. So the extraction report says 3,960, and then the
03:16PM 25 ending item on the exhibit is 3960?

1 A. Correct.

2 Q. Okay. I'm also showing you what's been marked for
3 admission as Defendant's BB. And is BB a section from the AA
4 that starts at 3760 (indicating)?

03:17PM 5 A. Yes. It does appear to be, yes.

6 Q. Okay. So -- and it goes from April 5th, 2012 at
7 10:37 P.M. to 3927 calendar 7/8/12 -- 2012?

8 A. Correct. So taking out that calendar, I would more
9 than likely look at it to say probably closer to the

03:18PM 10 April 1st -- excuse me --

11 Q. May 26th.

12 A. -- May 26th of 2012.

13 Q. Okay. And then looking at that excerpt, if you go to
14 page 241, and we have an SMS message (indicating) that is --

03:19PM 15 okay, 4/26, 12:04 -- 12:04:14; is that correct?

16 A. Correct.

17 Q. And in this exhibit, it is blank?

18 A. Correct.

19 Q. Okay. Does that coincide with State's Exhibit 169;

03:19PM 20 State's Exhibit having the language in it that's not in this
21 MMS message?

22 A. So just to clarify, the question being asked?

23 Q. The question is that the State's Exhibit 169, which
24 contains the language, comes from an MMS message, 3778, at

03:19PM 25 4/26, 12:04:14 A.M., and in Exhibit BB, that's been marked,

1 that's the same 3378 MMS message, 4/26/12; 12:04:14?

2 A. Correct.

3 Q. Same number, but in -- in this timeline, it's just
4 blank because that's what happens sometimes?

03:20PM 5 A. Well, this is, as in MMS, it's -- it's not going to
6 render all of the material from the timeline view.

7 Q. Uh-huh.

8 A. So all of the graphics or the video are not going to
9 come, but it's going to show that, yes, it was an MMS message
03:20PM 10 that came through in reference to that.

11 So if you were to go back then to the MMS section of
12 the extraction report and to try to correlate that by the time,
13 then you might be able to find -- and I believe that that's
14 what was done here.

03:20PM 15 Q. Right. So that's the language of the text -- that's
16 the text from this MMS in the -- in the timeline; right?

17 A. I -- I'm not positive. But they're assuming that due
18 to the date and times and reviewing that, yes.

19 Q. Okay. And --

03:21PM 20 MS. ERICKSON: May I approach, Judge?

21 THE COURT: You may.

22 BY MS. ERICKSON:

23 Q. So the phone 158A, which is the black Samsung
24 Cricket, is the phone that goes with this timeline AA; is that
03:21PM 25 correct?

1 A. I believe it is.

2 MS. ERICKSON: Okay. May I approach again,
3 Judge?

4 THE COURT: You may.

03:22PM 5 BY MS. ERICKSON:

6 Q. I'm now showing you what's been marked as Defense
7 Exhibit DD. Does that look to be part of your overall report
8 that you prepared after the extraction from both of the cell
9 phones that are relevant in this case?

03:22PM 10 A. It does.

11 Q. Okay. Now, on page --

12 MS. ERICKSON: Move for its admission.

13 MR. DIGIACOMO: The report?

14 MS. ERICKSON: Correct.

03:22PM 15 MR. DIGIACOMO: I have no objection.

16 MS. ERICKSON: I'm sorry?

17 THE COURT: Defense DD, just to be clear?

18 MS. ERICKSON: Yes.

19 THE COURT: Because that's been marked --

03:22PM 20 because I don't think we have a --

21 MS. ERICKSON: Yes, that's been marked.

22 THE COURT: -- final CC; right?

23 MS. ERICKSON: No.

24 THE COURT: So we have AA, BB, but this is DD?

03:22PM 25 MS. ERICKSON: Correct.

1 THE COURT: That objection from the State that
2 the report will be admitted.

3 (Defense Exhibit Numbers AA, BB and DD, respectively,
4 were admitted into evidence.)

03:22PM

5 BY MS. ERICKSON:

6 Q. And if you turn to page 2, what is item 11 in that
7 report?

8 And would it help to refresh your recollection if you
9 looked at the State's Exhibit 165?

03:23PM

10 A. Yes.

11 Q. The pictures that are -- is that item one of your
12 report?

13 A. Yes. This is the first item in the report identified
14 by me as item 11 as it was marked on the packaging from the
15 North Las Vegas packaging on it, and I also -- which is common
16 when we receive the material and -- or the items and we open
17 it, we will photograph that and include that into our reports.

03:23PM

18 Q. Okay. And if you look at the envelope of 165, does
19 it have your information -- does that have your information on
20 there showing that you did have it into your custody while you
21 were running the Celebrite -- Celebrite reports?

03:24PM

22 A. That is correct. And we'll usually put the date and
23 time that we received it and place it back in, which I had
24 done.

03:24PM

25 Q. Okay. And then, so those were photographs of 165 --

1 165 -- the bag, 165A, the phone, and 165B, are contained within
2 the first page -- the second page of your report?

3 A. Correct.

4 Q. Okay. And then you took -- you had another phone,
03:24PM 5 which is 158A. Did you also include photographs of this phone?

6 A. I did.

7 Q. And how would we know on that report that -- that
8 158A is the phone that's being -- that is shown in this report?

9 A. From this -- this -- the picture of this phone is the
03:25PM 10 same as this phone (indicating)?

11 Q. Uh-huh.

12 A. Well, I take a picture after the battery is
13 removed --

14 Q. Okay. All right. So it does --

03:25PM 15 A. -- in the information additionally.

16 Q. It is 158A, second set of phones; correct?

17 A. Appears to be, yes.

18 Q. Okay. And you also took a picture of the evidence
19 bag that has been marked and admitted as Exhibit 158?

03:25PM 20 A. I did, and then resealed the package again with that
21 item in it.

22 Q. Okay. Now, turning to page -- the bottom of your --
23 is there a portion of the -- the report that starts with the
24 letter -- Roman Numeral VI, and what does that mean?

03:25PM 25 A. Yes. And VI we titled in our report, this is exam

1 finding and analysis.

2 Q. And that would be for the 165A phone?

3 A. Well, it would be for both phones.

4 Q. Okay.

03:25PM

5 A. So it's kind of chronologically the reports that we
6 created to assist the investigators, the prosecutors, the
7 defense and everyone for the material that we were doing. It's
8 a brief overview of what we've done as far as obtaining the
9 phone, having a search warrant or search authority in reference

03:26PM

10 to going through it, who it was coming from, what it was
11 expected to -- or what it was asking for for the examination
12 for us to do.

13 And then we will include, additionally then, the
14 extractions, or alluding to them, often hyperlinking into it
03:26PM 15 too, as an example, the Celebrite reports, which are alluded to
16 in this report also.

17 And the reason it's not all included in this report,
18 it's because we see the large volume of stacks, it's why we
19 have to digitize it.

03:26PM

20 So additionally we place a glossary of terms to help
21 maybe the reader, as well as maybe a CD of the investigator or
22 the examiner.

23 Q. Okay. Now, at the very bottom of page 3 it says: A
24 Celebrite report was generated; includes the following.

03:27PM

25 So that is with reference to which phone?

1 A. This is in reference to the first one here, is item
2 11 LG. And that was just what I titled it to -- so that would
3 have been as the LG phone.

4 Q. So that's regarding Exhibit 165A?

03:27PM 5 A. That is correct.

6 Q. Okay. And then the next pages, 4 through -- keep
7 going -- 4 through 9. Now, that is the -- basically the file
8 tree that you obtained from your Cele -- from your Celebrite
9 report. And then you go into and under each different block.

03:27PM 10 You can access other information, but that's
11 basically the file tree that you got?

12 A. It -- it -- it's the contents of what was extracted
13 and recovered using the forensic tool.

14 So we include that in the report just to give an
03:28PM 15 overview to the reader, whether it be the examiner, whoever is
16 going to look at it, to say this amount of material was able to
17 be extracted or recovered from that device.

18 So it's kind of an overview on it. It doesn't have
19 the specific hyperlinks directly to those fields in it, but it
03:28PM 20 just gives a general overview of the type of items that were
21 able to be extracted from that phone's data area.

22 Q. Okay.

23 A. And then we usually will, as in the case of this here
24 also, then I would link the actual entire Celebrite extraction
03:28PM 25 report, hyperlink it in here, so if you clicked on it, you then

1 would you have the entire report.

2 Q. And within that would be a timeline like this one for
3 that -- for this phone, 165A (indicating)?

4 A. That would be a portion of it possibly, yes.

03:28PM 5 Q. Okay. Now, looking at those pages, 4 through 9, do
6 you see that there are a number of those -- what would you like
7 to call those divisions?

8 A. The contents, the types of --

9 Q. Right.

03:29PM 10 A. -- extracted material?

11 Q. Okay. The extracted material.

12 Do you see that there is also -- of -- very many of
13 those from 165A, which were also deleted?

14 A. That show as being deleted?

03:29PM 15 Q. Correct.

16 A. Yes.

17 Q. And if they show as being deleted, what does that
18 mean?

19 A. So in the contents here, not only will it show you
03:29PM 20 the number as it's been pulled out, it will show you what from
21 the report. So it may be I refined the report.

22 You were asking only for data or material from this
23 two days. So I may include -- there may be overall in the
24 extraction 5,000 text messages; however, only 100 are pertinent
03:29PM 25 to the information that's being requested. That would be

1 annotated in the contents here.

2 Additionally, it also includes and states what has or
3 what is showing has been deleted from those files.

4 Q. Okay.

03:30PM 5 A. So it may show 5,000 text messages, 4,022 were
6 deleted that were able to be recovered.

7 Q. Okay. And so between the two phones, they both have
8 deleted items from them?

9 A. Yes. I was able to obtain a physical extraction,
03:30PM 10 which gave us the ability then to look and recover the deleted
11 material if it was able to be parsed and done.

12 Q. Okay. And that's what you did with 165A and that's
13 what you did with 158A?

14 A. That is correct.

03:30PM 15 MS. ERICKSON: Okay. Just a moment, Your Honor.

16 THE COURT: That's okay.

17 (Sotto voce at this time.)

18 BY MS. ERICKSON:

19 Q. Just to clarify, there were two phones that were
03:31PM 20 recovered in this case, and only two phones?

21 A. This I do not know. I only know that I was --

22 Q. We'll put it a different way.

23 A. -- requested to examine these two items.

24 Q. You were -- those -- these two phones were submitted
03:31PM 25 to you for examination?

1 A. That is correct.

2 Q. And that's the limitation of what you know --

3 A. That is correct.

4 Q. -- regarding any other cell phones?

03:31PM 5 A. That is correct.

6 Q. And I think you testified that one of the phones had
7 no information in it from April 22nd of 2012?

8 A. There did appear to be a -- a call placed on, I
9 believe, the 26th. But it looked as the majority, as I believe

03:32PM 10 I stated, ended at the 22nd of April --

11 Q. Okay.

12 A. -- 2012.

13 Q. So --

14 MS. ERICKSON: May I approach again? Last time.

03:32PM 15 THE COURT: You may.

16 BY MS. ERICKSON:

17 Q. Showing you State's Exhibit 170. Are you referencing
18 the outgoing uncategorized number one section? Is that what
19 you're talking about?

03:32PM 20 A. This first one (indicating)?

21 Q. Yes.

22 A. Yes. From there (indicating)?

23 Q. Yes.

24 A. So the question again is?

03:32PM 25 Q. What is that referencing?

1 A. I --

2 Q. Well, is it -- it's an outgoing?

3 A. It's an outgoing call.

4 Q. Call from?

03:32PM 5 A. It's attempted to be made. Its duration was 24
6 seconds, on 4/26/2012 at 7:40 A.M. local Las Vegas, to
7 Chinolo -- or Chinola, and the number, yes.

8 Q. Okay. And -- and that's a call from the phone 165A?

9 A. That would be correct.

03:33PM 10 Q. Okay. Let me just make sure I've got everything.
11 And finally, I'm showing you what's been marked as
12 Defense Exhibit CC.

13 A. Okay.

14 Q. Does that look like a section that's taken from the
03:34PM 15 phone calls that would be part of Exhibit AA?

16 A. Just roughly looking at it, it does appear that, yes,
17 it could have come from there.

18 Q. Okay. And if you look at AA, what time is in --
19 we're looking at the phone call at 5:58 A.M. on 4/26.

03:34PM 20 Do you find that in Exhibit AA?

21 A. It does appear that this was taken from a separate
22 database. So it wasn't the timeline database.

23 Q. Correct.

24 A. It appears to possibly be the call log database --
03:35PM 25 one of the call log databases. And it does show that date and

1 time stamp of matching that to Loka and the phone number, which
2 appear to be the same.

3 Q. Okay. And that would be on the timeline entry 3795?

4 A. That would be correct.

03:35PM 5 Q. Okay. Now, the timeline doesn't put how long of the
6 duration the -- the phone calls are; right?

7 A. That is correct. The timeline does not.

8 Q. Okay. But call logs do, if it's available, put the
9 amount of time that the phone call lasted?

03:35PM 10 A. Yes, it does.

11 Q. Okay. And the phone call, if this is from the same
12 phone, how long did that last?

13 A. A duration of 11 seconds.

14 MS. ERICKSON: All right. Just double check and
03:35PM 15 I think I'm done.

16 (Sotto voce at this time.)

17 MS. ERICKSON: Thank you very much.

18 THE COURT: Mr. Digiacomo, any further questions
19 for this witness?

03:36PM 20 MR. DIGIACOMO: No, Your Honor.

21 THE COURT: May I see by a show of hands if any
22 jurors have questions of this witness?

23 (Negative response from the jury panel.)

24 THE COURT: Seeing none at this time, you are
03:36PM 25 excused. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: I'm going to ask counsel, though, if
3 they can, to please make sure we clean up the witness area for
4 the next witness. So the witness is also putting some things
03:36PM 5 away.

6 (Whereupon, at this time the Witness was excused.)

7 MR. DIGIACOMO: Nobody needs that phone again,
8 Judge.

9 THE COURT: All right. Is the State prepared to
03:37PM 10 call their next witness, please?

11 MR. DIGIACOMO: Dr. Alane Olson.

12 THE COURT: Dr. Olson, please.

13 Dr. Olson, if you will just come right through
14 the courtroom to the right of the podium there and come over to
03:37PM 15 the witness stand. Stand behind the chair. And you can put
16 your belonging down, but then I will have you turn your
17 attention to the Clerk to be sworn.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Thank you.

03:37PM 20 THE WITNESS: Please raise your right hand.

21 ALANE OLSON

22 called as a witness on behalf of the State,

23 having been first duly sworn,

24 was examined and testified as follows:

03:37PM 25 THE WITNESS: I do.

1 THE CLERK: Please take a seat.

2 Can you please state and spell your first and
3 last name for the record.

4 THE WITNESS: Yes. My name is Alane Olson. My
03:37PM 5 first name is spelled A-L-A-N-E. My last name is spelled
6 O-L-S-O-N.

7 THE COURT: Thank you. You may proceed,
8 Mr. Digiacomo.

9 MR. DIGIACOMO: Thank you.

03:37PM 10 DIRECT EXAMINATION

11 BY MR. DIGIACOMO:

12 Q. Doctor, how are you employed?

13 A. I'm employed as a medical examiner at the
14 Clark County Coroner's Office.

03:38PM 15 Q. What does that mean your responsibilities are?

16 A. That means I'm responsible for performing autopsies
17 and other types of examinations with the goal of determining
18 cause and manner of death.

19 Q. In order to hold the position that you do with the
03:38PM 20 Clark County Coroner's Office, do you have certain training,
21 education and licensure?

22 A. Yes.

23 Q. Can you explain that to the ladies and gentlemen of
24 the jury?

03:38PM 25 A. Sure. I have a bachelor's degree in microbiology

1 from the University of Idaho.

2 I went to medical school at the University of Nevada
3 School of Medicine, which is based in Reno, which is where I
4 got my MD degree.

03:38PM

5 Once I finished medical school, I moved to Portland,
6 Oregon, and spent five years at Oregon Health & Science
7 University in a pathology residency program. So that's
8 training for doctors who look at -- if you've ever had surgery
9 and had your tonsils out or any other kind of surgery, a

03:38PM

10 pathologist is the one who looks at that under the microscope
11 and makes a diagnosis so that your doctor knows how to treat
12 you.

13 Likewise, if you've ever had blood drawn, a
14 pathologist is ultimately responsible for the lab that analyzes
15 that blood and turns out results so that your doctor can treat
16 you.

03:39PM

17 We also perform autopsies.

18 So once I finished my residency in Oregon, I moved to
19 Milwaukee, Wisconsin and spent one year at the Milwaukee County
20 Medical Examiner's Office in a forensic pathology fellowship
21 program. And that's where I was doing exclusively autopsies
22 and other exams, again with the goal of determining cause and
23 manner of death.

03:39PM

24 Once I finished my fellowship, I moved to Reno and
25 worked at the coroner's office there for just over five years,

03:39PM

1 which means that I'm licensed to practice medicine in the State
2 of Nevada.

3 I've been in Las Vegas since September of 2005. And
4 in addition to being licensed to practice medicine, I also am
03:39PM 5 certified by the American Board of Pathology in anatomic,
6 clinical and forensic pathology.

7 Q. If I haven't asked you -- maybe I did ask you. Have
8 you been at the Clark County Coroner's Office since 2005?

9 A. Yes.

03:40PM 10 Q. Okay. Now, in April of 2012, while you were working
11 at the coroner's office, were you the one -- the medical
12 examiner that was responsible for the autopsies of two
13 individuals, one named James Headrick and the other one Erik
14 Quezada Morales?

03:40PM 15 A. No, I was not.

16 Q. Do you know what doctor was responsible for that?

17 A. Yes. Dr. Gary Telgenhoff.

18 Q. Now, since the ensuing five years or so, has
19 Dr. Telgenhoff retired and moved on?

03:40PM 20 A. Yes.

21 Q. Were you asked to review the autopsy report and the
22 photographs in order to render an opinion as to the cause and
23 manner of death of Mr. Headrick and Mr. Quezada Morales?

24 A. Yes.

03:41PM 25 Q. Now, at the Clark County Coroner's Office -- well,

1 maybe we should just start it this way.

2 Are autopsies generally conducted in a similar manner
3 each and every time?

4 A. Yes, generally.

03:41PM 5 Q. Okay. Can you explain that to us?

6 A. Sure. Autopsies typically start with examination of
7 X-rays. We do X-rays at our office. And we do them to see if
8 there's anything in the body that shouldn't be, like bullets.

9 Once we look at the X-rays, then we start looking at
03:41PM 10 the body itself.

11 We look at everything from how much someone weighs
12 and how long they are, to hair color, eye color, whether
13 they've had medical intervention to try and save their life, if
14 they have marked scars or tattoos, if they have injuries. And
03:41PM 15 we document all of those things.

16 So that's the first part, called the external
17 examination.

18 And then we do an internal examination that typically
19 starts with a Y-shaped incision on the front of the body, goes
03:41PM 20 from shoulder to shoulder onto the chest and then down to the
21 bottom of the abdomen.

22 We move the skin aside. We use a saw to cut off the
23 front of the ribs. And during this whole part of the exam,
24 again, we're looking for evidence of natural disease as well as
03:42PM 25 evidence of injuries.

1 So once we have all of the organs exposed, we take
2 them out one by one. And I weigh them, and I look at them, and
3 I'm documenting evidence of injury and natural disease.

03:42PM

4 We take specimens for toxicology testing and other
5 kinds of testing depending on the case that is before us.

03:42PM

6 We also look at the brain. We do that by making a
7 cut in the scalp across the stop of the head. We move the
8 front part of the scalp over the face; the back of it down
9 towards the neck. Then we use a saw to take off the top of the
10 skull (indicating). And again, we're looking at all of those
11 things to document natural disease as well as injury.

12 So the brain is then removed from the head and
13 weighed, and I again look at it in detail.

03:42PM

14 You look at the neck to see if there is any evidence
15 of injury and natural disease.

16 We prepare a report based on our findings at autopsy.
17 And once we have all of the testing back, then we finalize that
18 report and sign it and it's done.

03:43PM

19 Q. During the course of the autopsy, do personnel from
20 the coroner's office photograph the body with a unique number
21 assigned to that particular autopsy?

22 A. Yes.

03:43PM

23 Q. And then as you're going through, you said you're
24 documenting your findings in autopsy. How does that
25 documentation occur?

1 Are you recording something at the time that you are
2 doing it? Are you taking notes? How does the recordation
3 happen?

4 A. It -- that varies a little bit from doctor to doctor.

03:43PM

5 Some doctors like to draw diagrams, but I'm not an
6 artist, so I don't do that.

7 We all use Dictaphones, so it's a -- a spoken
8 description of what we are seeing.

9 We have transcriptionists who then turn that

03:43PM

10 dictation into a paper report, and we have the opportunity then
11 to edit that report as needed.

12 Q. In this case, did you have an opportunity to pull the
13 autopsy report as well as look at the photographs under
14 Clark County Coroner number 12-3896, the autopsy of James
15 Headrick?

03:44PM

16 A. Yes.

17 Q. And were you able to review both Dr. Telgenhoff's
18 report and then also look at the photographs, and do you feel
19 comfortable forming an opinion and issuing an opinion as to the
20 cause and manner of death of Mr. Headrick?

03:44PM

21 A. Yes, I do.

22 MR. DIGIACOMO: May I approach, Judge?

23 THE COURT: You may.

24 BY MR. DIGIACOMO:

03:44PM

25 Q. I'm going to show you what's been marked as State's

1 Proposed Exhibits 127 to 138, and ask you to flip through those
2 and tell me if those -- if you recognize those photographs?

3 A. Yes, I recognize the photographs.

03:45PM

4 Q. Do those all appear to be photographs taken by the
5 coroner's office of Mr. Headrick as well as items removed from
6 his body during the course of his autopsy?

7 A. Yes.

8 MR. DIGIACOMO: I move to admit 127 to 138.

9 MS. ERICKSON: No objection.

03:45PM

10 THE COURT: State's 127 through 138 will be
11 admitted. You may publish if as you need.

12 (State's Exhibit Numbers 127 through 138, respectively,
13 were admitted into evidence.)

14 BY MR. DIGIACOMO:

03:45PM

15 Q. If I could take those back from you, Doctor.

16 What I'd like to do is sort of go through some of the
17 photographs and ask you about certain injuries we see
18 externally before we talk about necessarily the internal
19 injuries.

03:45PM

20 And I'd like to start with 127. And I may have to
21 orient this when it come up. So let me -- and I guess the
22 question is -- maybe that's the best orientation for it.

23 In this photograph, there appears to be numerous
24 injuries to the right side of Mr. Headrick's face. Do you --
03:46PM 25 or looking at this, do you have any idea how those injuries

1 were caused?

2 A. Um, they are injuries that are -- basically, they're
3 scrapes or abrasions on the skin surface. Some of them are
4 also lacerations, meaning the skin surface has torn.

03:46PM

5 These may have been produced by him falling on a
6 rough surface, or if, for example, a gun was shot and the
7 bullet went through a target before hitting Mr. Headrick, if
8 that target shattered and those pieces hit him in the face, it
9 could have produced those kinds of injuries.

03:47PM

10 Q. What we're talking about is intermediate -- how --
11 what's that term -- intermediate gunshot -- you tell me.

12 A. It's called injuries from an intermediate target.

03:47PM

13 Q. And when you initially reviewed Dr. Telgenhoff's
14 report, before seeing the photographs, were -- are these
15 photographs consistent with the intermediate target stippling?

16 A. Yes.

17 Q. Now, normally when you have a bullet that goes
18 through something in the room -- and maybe we should give a
19 description for the ladies and gentlemen of the Jury.

03:47PM

20 If I'm holding a glass in my hand and the bullet goes
21 through the glass and then the glass shatters and so you get
22 particles of whatever the glass -- or whatever shattered as
23 well as the bullet may separate and you get all these marks all
24 over the face. Is that what we're talking about in an
03:47PM 25 intermediate target stippling?

1 A. Yes.

2 Q. Normally when you see that type of injury, if you
3 look at the crime scene you should see whatever it is that the
4 target went through; would that be correct?

03:48PM 5 A. I would think that there would be evidence of
6 whatever the bullet went through.

7 Q. And if it's something that was in the room it should
8 remain in the room; would that be correct?

9 A. Assuming that it hasn't been removed.

03:48PM 10 MS. ERICKSON: Objection. Speculation.

11 THE COURT: Sustained.

12 BY MR. DIGIACOMO:

13 Q. Well, let me ask this: When you looked at the --
14 when you initially looked at the photographs, did the
03:48PM 15 Clark County Coroner's Office take photographs of the crime
16 scene?

17 A. Our investigators do, yes.

18 Q. When you initially looked at the photographs, did you
19 see anything in the photographs that immediately told you, hey,
03:48PM 20 the bullet went through this before it caused all that damage
21 to Mr. Headrick's face?

22 A. I didn't see anything in the photographs that said
23 that to me.

24 Q. Okay. Eventually, did you look at some of the
03:49PM 25 close-ups of the crime scene photographs?

1 A. Yes, I did.

2 Q. And within those photographs, were there a number of
3 white particles throughout the room and on Mr. Headrick's sort
4 of hair, his face, his body, his shoulder, those type of
03:49PM 5 things?

6 A. Yes.

7 Q. I'm going to move on to his gunshot wounds, and I'm
8 going to start actually with his hand. So I'm going to put up
9 for you State's Proposed Exhibit number -- or, sorry, State's
03:49PM 10 Exhibit Number 132. And I think maybe it's better to orient
11 this to the right.

12 So I'm going to -- can you describe the injury to the
13 right hand?

14 A. Sure. In this particular photograph, what you're
03:49PM 15 looking at is the back of his right hand. You can see where
16 his thumb is and his fingers are, and basically over his thumb,
17 the base of his thumb, there's a pink or red bruise. And then
18 there are two areas in the skin where the skin has been torn.

19 So those are lacerations. And beneath one of those
03:50PM 20 lacerations was recovered a fragment of a bullet.

21 Q. There was a fragment recovered from his hands. In
22 your review of the X-rays, was there -- if there was a fragment
23 recovered, was there any evidence on Mr. Headrick's body where
24 the rest of that bullet is?

03:50PM 25 A. No, there isn't.

1 Q. Okay. So now I want to move to an injury to his
2 left -- I'll call it flank. You will probably have a more
3 medical term for me. Showing you what's been admitted as
4 Exhibit 134.

03:50PM

5 Can you tell me what we're looking at?

6 A. Sure. In 134, basically on his abdomen, on the left
7 side, there's a gunshot entrance wound. And that's -- oh, I
8 can't draw on this one. Okay. So it's basically in the center
9 of the photograph.

03:51PM

10 MR. DIGIACOMO: Did we lose our ability to draw
11 on this one? We were having some problems last week.

12 THE COURT: It should still be working. Are you
13 attempting to illustrate? Circle it?

14 THE WITNESS: Yeah.

03:51PM

15 BY MR. DIGIACOMO:

16 Q. Let me jump into 135 for you. From just looking at
17 the photograph itself, can you tell if that injury is an
18 entrance wound or an exit wound?

03:51PM

19 A. Sure. Based on the appearance of this injury, it is
20 an entrance wound. It's basically a round punched out area in
21 the skin. And if you were to try and put the edges back
22 together, the skin would pucker because there's actually tissue
23 missing. And that's what typically occurs in entrance wounds.

03:51PM

24 Q. And then showing you 136, was the path of the bullet
25 that entered in his left flank, did the bullet wind up exiting

1 his body?

2 A. Yes, it did, and that's depicted in this particular
3 photograph. It's of his lower back, as you can see. And the
4 injury that's shown is a typical exit wound.

03:52PM

5 So when bullets exit, they actually tear their way
6 out. And if you put the skin back together, you can close
7 those wounds (indicating).

8 Q. Can you tell me the path of that bullet through
9 the -- through his body?

03:52PM

10 A. Sure. We describe paths of missiles in the person
11 that they hit. So it went from his left towards his right, and
12 it went from his front towards his back. And I believe it was
13 either pretty much level or maybe slightly downward.

14 Q. And did it strike any vital organs?

03:52PM

15 A. It hit his bowel in a few places. It also hit -- I'm
16 going to refer to the report. I'm not sure exactly what else
17 this particular one hit. So I'm tell you where I am in the
18 report so you can follow along.

19 It's on page 5 of the report. So it hit his bowel,
03:53PM 20 both the small and large bowel, and also the large muscle in
21 back -- in his back, called the psoas before it exited.

22 Q. Based upon the nature of his injuries, would this
23 injury have been immediately fatal?

24 A. No.

03:53PM

25 Q. Could somebody have survived this for some period of

1 time or maybe forever?

2 A. Possibly, yes.

3 Q. Now I want to move to an injury to the head. And I'm
4 going to start with 129.

03:53PM 5 What are we looking at?

6 A. In this particular photograph, you're essentially
7 looking at the photo -- at a photo of the top of his head. And
8 within his -- within his hair, there's a gunshot entrance
9 wound.

03:54PM 10 Q. Are we looking in generally that area right there
11 (indicating)?

12 A. Yes.

13 Q. And that's after the hair has been cleaned up with
14 blood and those type of things; is that correct?

03:54PM 15 A. Yes.

16 Q. And then State's Exhibit Number 130, what are we
17 looking at?

18 A. In State's 130, that area of his head has been shaved
19 so you can better see the entrance wound.

03:54PM 20 Q. Can you tell me the path of that bullet?

21 A. Sure. It went from basically slightly the back of
22 his body towards the front, from his right towards his left,
23 and downward.

24 Q. Did it hit anything vital?

03:54PM 25 A. Yes. It went through his brain.

1 Q. Would you describe that injury as immediately fatal?

2 A. I would say it would be immediately incapacitating
3 and rapidly fatal.

4 Q. Finally, I'll put up 138. What are we looking at?

03:55PM

5 A. State's 138 is a photograph which shows the bullets
6 or fragments of bullets that were recovered during the course
7 of the autopsy. And they're labeled so the head is a portion
8 of the bullet that broke off and was recovered from within his
9 brain.

03:55PM

10 The one that's labeled neck, slash, throat is the
11 rest -- the majority of the rest of the bullet. You can see
12 it's -- it's deformed. It's gone through bone a couple of
13 times.

03:55PM

14 And then on the right side of the photograph, there
15 is the label of right-hand. And that's the small fragment that
16 was recovered from the back of his right hand (indicating).

17 Q. And because the one to the body was a through and
18 through, there's no bullet associated with that at autopsy?

19 A. That's correct.

03:56PM

20 Q. Now did Dr. Telgenhoff and the other staff at the
21 coroner's office collect the usual samples and send them off
22 for testing?

23 A. Yes, they did.

03:56PM

24 Q. And did you -- did the office receive back a report
25 as to the toxicology associated with Mr. Headrick?

1 A. They did.

2 Q. Can you tell the ladies and gentlemen of the Jury
3 what if -- what -- what were, if any, the significant findings
4 from autopsy?

03:56PM 5 A. Sure. The toxicology lab found in its testing that
6 Mr. Headrick had methamphetamine present at a level of 300
7 nanograms per milliliter of blood. And he had amphetamine, 130
8 nanograms per milliliter of blood.

9 Q. And what is the significance of methamphetamine
03:56PM 10 versus amphetamine?

11 A. Amph- -- methamphetamine is the parent compound, and
12 the body breaks that down to amphetamine.

13 Q. Now you are not a forensic toxicologist; is that
14 correct?

03:57PM 15 A. That's correct. I am not.

16 Q. Okay. So do you have any ability to tell us when the
17 last time he ingested the methamphetamine?

18 A. I don't.

19 Q. After looking at all the information you've looked at
03:57PM 20 in this case, did you form an opinion as to the cause of death
21 of Mr. Headrick?

22 A. I did.

23 Q. And what is that?

24 A. My opinion is that he died of multiple gunshot
03:57PM 25 wounds.

1 Q. And do you have an opinion as to the manner of death?

2 A. I do.

3 Q. What is that?

4 A. My opinion is that the manner of death is homicide.

03:57PM 5 Q. As a medical examiner, when you use the term

6 "homicide," what does that mean?

7 A. That means that the actions of one person have caused
8 the death of another person.

9 Q. Now, on the same date that Dr. Telgenhoff conducted
03:57PM 10 the autopsy on James, did he also conduct the autopsy on Erik?

11 A. Yes.

12 Q. And that would have been on April 27th of 2012?

13 A. That's correct.

14 Q. And was that one documented under 12-3895?

03:57PM 15 A. It was.

16 Q. And all the same predicate questions. Did you have
17 an opportunity to review the autopsy report, the photographs
18 and the toxicology in order to form your opinion?

19 A. Yes.

03:58PM 20 Q. I'm going to approach and show you what's been marked
21 as State's Proposed Exhibits 120 to 126, and ask you if those
22 appear to be photographs taken by the coroner's office at the
23 time of Mr. Quezada Morales's autopsy?

24 A. Yes. These are the photographs that were taken
03:58PM 25 during his autopsy.

1 MR. DIGIACOMO: Move to admit 120 to 126.

2 MS. ERICKSON: No objection.

3 THE COURT: State's 120 through 126 may be
4 admitted. And you may publish as needed.

03:58PM 5 (State's Exhibit Numbers 120 through 126, respectively,
6 were admitted into evidence.)

7 BY MR. DIGIACOMO:

8 Q. I'm actually going to start with -- well, as a
9 predicate question, I'm assuming this autopsy was conducted in
03:58PM 10 a similar fashion as Mr. Headrick's autopsy in the sense that
11 there's an internal examination -- or an external examination
12 and an internal examination and ultimately toxicology reports?

13 A. Yes. That's how we do things.

14 Q. Okay. So I'm going to go through the various
03:59PM 15 injuries to Mr. Quezada Morales and start with 121.

16 What are we looking at?

17 A. State's 121 is a photograph taken from the right side
18 of his body. It's concentrated about his head and face.

19 And in this particular photograph, if you look just
03:59PM 20 below the right corner of his mouth, you will see a gunshot
21 entrance wound.

22 Q. So I put that up in 122, the entrance wound. Did
23 you -- are you able to tell us the path of that bullet?

24 A. Sure. That particular bullet, obviously, entered on
03:59PM 25 the right side of his face. It went through his jaw on the

1 right side, and then went through the other side of his jaw on
2 the left side. And it lodged in near -- near the jaw, where it
3 was recovered.

04:00PM

4 Q. And -- well, let me -- would that injury have been
5 fatal in and of itself?

6 A. Probably not, no.

7 Q. Putting up 123. Obviously this is a photograph of
8 the torso area of Mr. Quezada.

9 Are there in fact two bullet wounds in this picture?

04:00PM

10 A. Yes, there are.

11 Q. So I'm going to start with the -- the one that is
12 near his right nipple and put up for you 124. What are we
13 looking at?

04:00PM

14 I guess maybe if I turn this considering -- no. I
15 guess I can leave it that way.

16 A. So this particular photograph is a close-up. Again,
17 you can see his nipple in the photograph. And in the way the
18 photograph is oriented, just above and to the right of his
19 nipple is a gunshot entrance wound.

04:01PM

20 And again, it's a nice round hole in his skin.
21 There's actually tissue missing, so you can't put the edges
22 neatly together.

23 Q. And was the path of this wound determined?

24 A. It was.

04:01PM

25 Q. Can you tell us what that is?

1 A. Sure. This particular bullet went from his right
2 towards his left (indicating), essentially from his front
3 towards his back and upward.

04:01PM 4 And during the course of its passage through his
5 body, it hit his right lung, his esophagus, and the front of
6 his third thoracic vertebra before coming to rest near the --
7 the outer portion of his left collarbone (indicating).

8 Q. So somewhat of an upward trajectory on -- on his
9 body?

04:01PM 10 A. Yes.

11 Q. And then that second one that's lower on his left
12 side, 125, what is that?

13 A. So 125 is a close-up of the second gunshot wound on
14 his torso. Again, this one was a bit lower and it was towards
04:02PM 15 the side of his body. And again, you can see it's a nice, in
16 this case, oval hole. Again, you can't put the edges together
17 because there's tissue missing (indicating).

18 Q. Mr. Quezada had -- well, let me ask you this: Did
19 you do the path of the would -- this wound yet?

04:02PM 20 A. Sure. This particular bullet went through his liver,
21 his right lung, and then it went through his seventh thoracic
22 vertebrae, also hitting his spinal cord, and that's where it
23 was recovered.

24 Q. And so from Mr. Quezada, at least from this incident,
04:02PM 25 there were three bullets recovered?

1 A. Yes.

2 Q. And now I'm going to put up 126. Now, in addition to
3 the three bullets you've just discussed, the chest, the cheek
4 and the shoulder, was there a bullet found in his knee?

04:02PM 5 A. Yes. It was near his left knee.

6 Q. And did there appear to be any recent injury
7 associated with that bullet -- gunshot wound?

8 A. Not based on the description, no.

9 Q. Was there a scar somewhere near there?

04:03PM 10 A. Yes.

11 Q. And where was that?

12 A. It was described as being near his patella or his
13 kneecap.

14 Q. And then is there something about this bullet, the
04:03PM 15 one on the right side, that says "knee" that is different than
16 the three bullets that were removed at autopsy?

17 A. The color is darker and duller, and that is the kind
18 of change that we look for to tell us that it's an old bullet
19 and it's not one that's recently been shot into the body.

04:03PM 20 Q. So when a bullet sits in the body for long enough it
21 oxidizes?

22 A. Yes. That's the term for it.

23 Q. And thus it appears Mr. Quezada on some distant
24 occasion had been shot and didn't go and have the bullet

04:03PM 25 removed from his knee?

1 A. Correct.

2 Q. Did you get an autopsy report for -- or, sorry, a
3 toxicology report for Mr. Quezada?

4 A. Yes.

04:04PM 5 Q. And can you tell us what the significant findings
6 were from that?

7 A. Sure. The lab reported that he had alcohol present
8 in his blood at a level of 0.015. And just for reference, the
9 legal limit for driving in Nevada is 0.08.

04:04PM 10 He also had methamphetamine present at a level of 380
11 nanograms per milliliter of blood, and amphetamine present at a
12 level of 70 nanograms per milliliter of blood.

13 Q. Once again, you can't tell us when the last time he
14 ingested the methamphetamine?

04:04PM 15 A. Correct.

16 Q. Did you form an opinion as to the cause of death of
17 Erik Quezada Morales?

18 A. I did.

19 Q. And what is that?

04:04PM 20 A. My opinion is that he died as a result of multiple
21 gunshot wounds.

22 Q. Do you have an opinion as to method of death?

23 A. Yes.

24 Q. And what is that?

04:04PM 25 A. My opinion is that he died -- his manner of death is

1 homicide.

2 MR. DIGIACOMO: Thank you, Doctor.

3 I pass the witness.

4 THE COURT: Ms. Erickson.

04:04PM 5 MS. ERICKSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. ERICKSON:

8 Q. I'm just going to add a little bit of information.

9 On Mr. Headrick, the gunshot wound to the head was --
04:05PM 10 there was no soot burned or unburned gunpowder particles on the
11 skin surrounding the wound; correct?

12 A. That's correct.

13 Q. And on the wound to his face, where it was located on
14 the right side of the forehead, hairline to lower neck level on
04:05PM 15 the right side, those were a collection of abrasions and
16 lacerations of various size; correct?

17 A. Yes, that's correct.

18 Q. And it was indicated that they -- the shapes -- sizes
19 and shapes were consistent with an intermediate target fragment
04:05PM 20 strike; correct?

21 A. That's how it's described in the report, yes.

22 Q. Okay. If a gun was shot through a pillow, would the
23 bullet have exploded in such a manner to make those kind of
24 strikes?

04:06PM 25 A. Um, not as far as I'm aware.

1 Q. Okay. And were those injuries on the side of his
2 face consistent with the age of the injuries that -- from
3 bullet wounds?

4 A. They appeared to be, yes.

04:06PM 5 Q. Okay. Is there any other manner in which they could
6 have been inflicted than by the bullet strike?

7 A. Well, as I've mentioned previously, those types of
8 injuries are what we call blunt force injuries. So if he had
9 fallen and struck his face against a rough surface, it's
04:06PM 10 possible that he might have had a similar type of injury.

11 Q. Could they be caused by fingernails?

12 A. They don't have the appearance of fingernails, no.

13 Q. Okay. The gunshot wound to Mr. Headrick's abdomen
14 had no soot burned or unburned gunpowder particles on the skin
04:07PM 15 surrounding the wound; correct?

16 A. That's correct.

17 Q. And the gunshot wound to his hand also did not have
18 any soot, burned or unburned, with gunpowder?

19 A. That's correct.

04:07PM 20 Q. Now, you took -- well, Doctor --

21 A. Telgenhoff.

22 Q. He took peripheral blood from Mr. Headrick for
23 toxicology purposes?

24 A. Right. Peripheral blood.

04:07PM 25 Q. Peripheral, thank you.

1 And why do you take peripheral blood?

2 A. We take peripheral blood because there is a
3 phenomenon called postmortem redistribution. And for certain
4 kind of drugs or chemicals substances, if you test heart blood
04:07PM 5 and compare it, for example, with peripheral blood, you'll see
6 differences in the drug levels for those two samples.

7 And some drugs preferentially go into certain kinds
8 of tissue. Some drugs like fat, some like muscle. And when
9 someone dies, they can start to leak out of those tissues.

04:08PM 10 So the -- the current thinking in the forensic
11 pathology and forensic toxicology community is that the best
12 sample to get as accurate as possible drug levels is peripheral
13 blood.

14 Q. And although you are not a toxicologist, you are a
04:08PM 15 forensic pathologist; correct?

16 A. Yes.

17 Q. And you received a medical degree?

18 A. Yes, I did.

19 Q. Okay. And you're aware that some of the properties
04:08PM 20 of methamphetamine in the bloodstream?

21 A. Generally, yes.

22 Q. Okay. So are you aware that methamphetamine is
23 detectable in the blood; 50 percent of the drug is removed from
24 the body in 12 hours?

04:09PM 25 A. Yes.

1 Q. Okay. And methamphetamine will remain in plasma
2 between four to six hours?

3 A. Sounds about right.

4 Q. And when we say "plasma," what does that mean?

04:09PM 5 A. Plasma is the -- the -- basically the liquid part of
6 the blood.

7 What we collect is whole blood. And so it's all of
8 the fluids and the proteins and the cells -- the red blood
9 cells and the white blood cells. But if you allow blood to
04:09PM 10 separate, then you can get this clear yellow fluid called
11 plasma (indicating).

12 Q. Okay. And it will be detected in urine from one hour
13 after you use substance to 72 hours later?

14 A. Assuming that they don't keep taking it, yes.

04:09PM 15 Q. Okay. Yes, it must dissipate at some time.

16 And methamphetamine metabolites can be detected in
17 the body for two to four days?

18 A. Approximately.

19 Q. All right. And methamphetamine is metabolized into
04:10PM 20 amphetamine?

21 A. Yes.

22 Q. Okay. So when you said that you found -- well, the
23 toxicology report came back and it had 320 nanograms per
24 milligram of methamphetamine?

04:10PM 25 A. Actually, it's 320 nanograms per milliliter of blood.

1 Q. Okay, sorry. Mistake.

2 That would indicate that the drug had been used --
3 well, strike that.

04:10PM

4 If that amount was found and -- it would mean that
5 50 percent had been -- would have been 50 percent more at the
6 time -- earlier in the day because we know that 50 percent of
7 the drug is removed in 12 hours?

04:11PM

8 A. Well, that's going on the assumption that he hadn't
9 just recently taken it, and that's part of the problem. You --
10 you don't know if someone -- unless you're told, if someone
11 just took one dose or if they had taken it a while ago, or if
12 had been taking it for a few days and they had, you know, this
13 particular drug level.

04:11PM

14 Q. Well, when we talk about 320 nanograms per
15 milliliter, what is that -- what does that mean, when we're
16 talking about the blood in the body?

17 A. Um, I -- I don't --

18 Q. They're different -- it's nanograms and milliliters.
19 So can you explain how those correlate to each other?

04:11PM

20 A. Sure. If you take 1 milliliter of blood, in his
21 case, if you test that 1 milliliter of blood, you would find
22 320 nanograms of methamphetamine in that blood.

23 Q. Okay. And you would also find 130 nanograms in that
24 1 milliliter of amphetamine?

04:11PM

25 A. Correct.

1 Q. And that's a metabolite of methamphetamine?

2 A. Correct.

3 Q. Okay. Turning to Mr. Quezada. The gunshot wound to
4 his chest, the -- the upper one, (indicating), there was no
04:12PM 5 soot or unburned gunpowder particles associated with that
6 injury?

7 A. That's correct.

8 Q. Okay. And the same as -- the same can be said for
9 the second gun- -- gunshot wound to the chest -- no soot,
04:12PM 10 unburned gunpowder particles on the chest?

11 A. That's correct.

12 Q. And the peripheral blood was taken from Mr. Quezada
13 also?

14 A. Yes, it was.

04:12PM 15 Q. Okay. And so the same information that applied to
16 Mr. Headrick applied to Mr. Quezada with regard to finding
17 methamphetamine in his system?

18 A. Yes. They have both had methamphetamine present.

19 Q. And Mr. Quezada's was a little higher. His was 380
04:13PM 20 nanograms per milliliter?

21 A. That's correct.

22 Q. And he had less amphetamine; correct?

23 A. Yes, that's correct.

24 Q. He had 70 nanograms per milliliter?

04:13PM 25 A. Correct.

1 MS. ERICKSON: Just a moment, let me check my
2 notes.

3 I think that's all. Thank you very much,
4 Doctor.

04:13PM 5 THE WITNESS: Thank you, ma'am.

6 THE COURT: Mr. Digiacomo, any further questions
7 for this witness?

8 MR. DIGIACOMO: Very briefly.

9 REDIRECT EXAMINATION

04:13PM 10 BY MR. DIGIACOMO:

11 Q. Are drug levels highly dependant on the -- whether
12 they're a chronic user or a one-time user, the relevancy of the
13 levels?

14 Do you understand my question?

04:13PM 15 A. Um, I guess not totally.

16 Q. Let me ask it this way: If someone is a chronic
17 methamphetamine user, do you expect them to have
18 methamphetamine in their system -- do you necessarily expect
19 them to process methamphetamine at the same rate as somebody
04:14PM 20 who uses it for the very first time?

21 A. Oh, that's a good question.

22 As far as I'm aware, there isn't a mechanism where
23 people can develop tolerance, meaning that they metabolize a
24 drug -- well, they metabolize methamphetamine faster than
04:14PM 25 someone who doesn't use it all the time.

1 I'm -- that mechanism exists for people who
2 chronically use opiates, like morphine and hydrocodone or
3 oxycodone, that definitely occurs, where people become tolerant
4 to it and they can -- their body turns it over faster.

04:14PM

5 I'm not aware that that happens with methamphetamine.

6 Q. What about the ability of a chronic methamphetamine
7 user to consume more methamphetamine and survive than somebody
8 who takes methamphetamine for the first time?

9 A. Um, and again, I'm not sure that that holds true.

04:15PM

10 Opiates, like I just mentioned, are different than
11 the stimulant drugs, like methamphetamine and cocaine.

12 Typically if someone chronically uses opiates, they
13 develop a tolerance, and they can take more and more without
14 killing themselves usually.

04:15PM

15 The same isn't necessarily true with stimulant drugs.
16 You -- as far as I'm aware, you don't develop a tolerance to
17 them, and it is possible that someone may take their usual dose
18 of methamphetamine one day, take the same dose the next day and
19 die from it. We don't completely understand why that happens.

04:15PM

20 But, as I said, I'm not aware that tolerance
21 develops, nor am I aware that there's scientific evidence that
22 people who chronically use it are better able to withstand the
23 effects.

24 Q. Ms. Erickson also asked you questions about a pillow.

04:16PM

25 And you said: I don't think a pillow is going to cause that

1 sort of intermediate target stippling that we saw; correct?

2 A. Correct.

3 Q. What if someone were to put some sort of hard item,
4 like, a Gatorade bottle or a bleach bottle or something on the
04:16PM 5 end of a weapon, call it a ghetto silencer, for lack of a
6 better term, could that have caused the sort of intermediate
7 stippling that we see?

8 A. Possibly.

9 Q. And if somebody were pointing a gun with the ghetto
04:16PM 10 silencer on it that had -- the hard side hadn't been broken
11 through on the first shot, as the gun came up, they put their
12 hand on, the bullet could have separated coming out through
13 that hard plastic and then put that small bit of -- of a bullet
14 in the right hand and left the rest of those marks that we saw
04:17PM 15 on the side of the face of James (demonstrating)?

16 A. It's possible.

17 Q. And then the next shot and the next shot and the next
18 shot you wouldn't have that barrier to cause that sort of
19 stippling that we see with the one to the face of Mr. Headrick?

04:17PM 20 A. Assuming that the Gatorade bottle or whatever is
21 still attached to the gun; correct.

22 If you've already shot through it, then you won't
23 have any more of those particles coming out of it.

24 (Sotto voce at this time.)

04:17PM 25 MR. DIGIACOMO: Thank you, Doctor.

1 THE COURT: Ms. Erickson, did you have some
2 follow-up inquiry?

3 MS. ERICKSON: Just a few, Judge.

4 RECROSS-EXAMINATION

04:17PM

5 BY MS. ERICKSON:

6 Q. Everything you just said now about a Gatorade bottle
7 or a Clorox bottle is all possible, but there is no evidence
8 that you have seen that -- that that is how those injuries were
9 inflicted?

04:17PM

10 A. Aside from some small fragments in the -- the
11 photographs from the scene; that's correct.

12 Q. So it may have happened that way or it may not have
13 happened that way?

14 A. Correct.

04:18PM

15 Q. Okay. And putting the hand up in front of the face
16 may have done that -- may have caused -- broken the skin and
17 stippled the face, but it may not have?

18 A. That's correct.

04:18PM

19 Q. We have no way of knowing anything about how those
20 stippling marks were made?

21 A. There isn't anything distinctive about them to tell
22 me exactly how they occurred.

23 Q. And you did look at all the crime scene photographs?

04:18PM

24 A. Yes. I looked at the photographs that were present
25 in our computer system that were taken by the coroner

1 investigator, who went to the scene.

2 Q. And would the coroner investigator gather evidence
3 from the crime scene?

4 A. No. That's not their job.

04:18PM

5 Q. Okay. Would the coroner investigator point out
6 something that might be of help in the autopsy if he saw -- if
7 he or she saw it?

8 A. They might, yes.

04:19PM

9 Q. Yes. So there was a coroner investigator on the
10 scene in this case?

11 A. Yes.

12 Q. And to your knowledge that person took photographs?

13 A. Yes.

04:19PM

14 Q. Okay. And nothing else from the scene came to you
15 but photographs?

16 A. Correct. Aside from the bodies.

17 Q. Looking at the -- the amount of nanograms per
18 milliliter in the blood of both Mr. Headrick and Mr. Quezada,
19 can you say that they were under the influence when they died?

04:19PM

20 A. Well, certainly if you look at the Nevada revised
21 statute they, I believe, qualify as -- as legally under the
22 influence.

23 MS. ERICKSON: Thank you.

24 THE COURT: Do you have anything further,

04:19PM

25 Mr. Digiacomo?

1 MR. DIGIACOMO: Not from the State.

2 THE COURT: All right.

3 May I see by a show of hands if any jurors have
4 questions for this witness?

04:19PM

5 (Negative response from the jury panel.)

6 THE COURT: Seeing no questions, Dr. Olson, you
7 are excused. Thank you. Please make sure you take your
8 belongings with you.

9 THE WITNESS: Thank you, Your Honor.

04:19PM

10 THE COURT: Thank you.

11 (Whereupon, at this time the Witness was excused.)

12 THE COURT: State, do you have any additional
13 witnesses to call?

04:20PM

14 MR. DIGIACOMO: No, Your Honor. Reserving the
15 right to confirm with your Clerk that everything we've offered
16 and the Court has admitted is shown as admitted, the State at
17 this time would rest.

18 THE COURT: Subject to confirming the exhibits,
19 I understand the State has now rested.

04:20PM

20 Based on the late hour and probably the
21 unlikelihood of completing any additional witnesses today
22 should they have been called by the defense, I'm going to go
23 ahead and we're going to retire for the evening.

04:20PM

24 This will be our evening recess. We will ask
25 you to please report tomorrow at 1:30 for the resuming this

1 trial.

2 During this overnight recess, please be reminded
3 once again:

4 (The jury was admonished by the Court.)

04:21PM 5 THE COURT: We'll see you tomorrow at 1:30.
6 Have a good evening.

7 THE MARSHAL: All rise.

8 (The following proceedings were had in open
9 Court outside the presence of the jury panel:)

04:21PM 10 THE COURT: Just a few more things on the
11 record.

12 We discussed we were not going to have any
13 discussion today or take any argument today with regard to
14 Ms. Cabrera's statement, so we'll do that tomorrow, give or
04:22PM 15 take a few minutes, right around 1:00 o'clock; resume with the
16 jury at 1:30. That's tomorrow.

17 Anything else we need to address?

18 I could take this time right now to canvass
19 Ms. Cabrera now that the State has rested, but given that we're
04:22PM 20 not going to have her testimony tomorrow, maybe we could do
21 that at the end of the day tomorrow.

22 I'd like to do it as contemporaneous to the
23 testimony as possible without having to artificially excuse the
24 jurors. So --

04:22PM 25 MS. ERICKSON: Yes, Judge. That will be fine

1 with us.

2 THE COURT: All right. Anything else before we
3 rest for the day?

4 MS. ERICKSON: No, Judge.

04:23PM 5 MR. DIGIACOMO: No. Just that we show that 159,
6 160 and 166 is the -- oh, and -- and 155 are the only things
7 that we marked that are not in evidence. So if the Clerk
8 agrees with that, then we're in agreement.

9 THE COURT: It sound like she agrees.

04:23PM 10 MR. DIGIACOMO: Perfect.

11 THE COURT: All right. Everybody have a good
12 night. And if you can, if somewhere in there fold in the times
13 for the jury instructions, although I did indicate having them
14 by Thursday, it would be helpful.

04:23PM 15 I know Mr. Digiacomo indicated they'd be in
16 before that.

17 I sort of wasn't thinking in terms of when would
18 our opportunity take place to settle them. So we really need
19 to settle them by Thursday, which presumably we could do even
04:23PM 20 if we have to let Mr. Whipple go, but I'd like you to have
21 exchanged them.

22 And I understand and I'm going to assume that
23 the State's set is going to be sort of the stock plus, and
24 then, as you said, Ms. Erickson, you might have a couple that
04:23PM 25 you are going to propose and then you may have some perhaps

1 that you dispute of theirs.

2 If we can just get your input as far as that
3 goes so we have an opportunity to settle them on Thursday, that
4 would be fantastic.

04:23PM

5 MS. ERICKSON: Okay. So if we could -- put the
6 time aside to settle after Mr. Whipple leaves and I can do that
7 or did you want to do that before --

04:24PM

8 THE COURT: No. My thought was we'll see how
9 the day goes, but since I'm going to be coming from a calendar
10 and going straight in to our examination, if, at whatever point
11 you rest, we can settle after that.

12 MS. ERICKSON: Okay. Thank you.

04:24PM

13 MR. DIGIACOMO: The only issue is that I moved a
14 hearing until 2 o'clock on Thursday with Judge Johnson on a pro
15 per capital defendant. I don't know how long it would take,
16 but I don't know if we're going to take a break afterwards.

17 THE COURT: Let's see how things go. It will
18 really depend on what you all decide, talk amongst each other
19 and what you get to me, but we can make it work.

04:24PM

20 MR. DIGIACOMO: It's just the State has an
21 argument over one issue.

04:24PM

22 THE COURT: Well, in the worse case scenario, we
23 could spend a little bit of time going over it on Friday if
24 need be. I mean, I'm -- we're not going to be in trial. But
25 if we could get it done Thursday, that would be great.

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MS. ERICKSON: Thank you, Your Honor.

THE COURT: Okay.

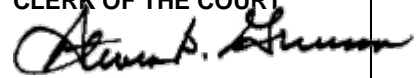
(Proceedings concluded.)

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

/S/Renee Silvaggio
RENEE SILVAGGIO, C.C.R. 122

Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,
Plaintiff,

vs.

IVONNE CABRERA, #1617623, aka Ivonne
CABRERA,

Defendant.

Case No. C283700-1
Dept. No. XXV

Before the Honorable KATHLEEN E. DELANEY
Tuesday, July 11, 2017, 3:30 P.M.
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State: MARC DIGIACOMO, ESQ.
HETTY WONG, ESQ.
Deputies District Attorney

For the Defendant: BRET WHIPPLE, ESQ.
PATRICIA ERICKSON, ESQ.
Attorneys at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

I N D E X

Witnesses called by the Defense

JAN PIERCE

Direct Examination by Ms. Erickson:	7
Cross-Examination by Mr. Digiacomio:	25
Redirect Examination by Ms. Erickson:	32

1 Las Vegas, Clark County, Nevada

2 Tuesday, July 11, 2017, 3:30 P.M.

3 P R O C E E D I N G S

4 * * * * *

03:25PM

5 (The following proceedings were had in open

6 Court outside the presence of the jury panel:)

7 THE COURT: Do you have something to address
8 before we bring the jury back? I just want to make sure
9 everything was ready.

03:25PM

10 MR. DIGIACOMO: We're ready.

11 THE COURT: Okay. I reviewed the statement of
12 Ms. Cabrera and the highlights that were proposed by
13 Ms. Erickson, back when the argument was had on the 20th, the
14 highlights that were proposed by Mr. Digiacomo more recently in
03:26PM 15 an effort to carry out, I think, fairly, what the State thought
16 the Court's order was, and then the further argument and
17 clarification today.

18 What I've done is I have prepared a copy to give
19 to the State, and a copy to give to the defense, that will show
03:26PM 20 what the Court is mandating as the redactions. For the most
21 part it is the ones that were highlighted in the exhibit from
22 the argument back in August that were in purple.

23 There were some additional proposals by
24 Mr. Digiacomo that I thought were appropriate. So what I've
03:26PM 25 done is I've taken the copy that Mr. Digiacomo provided. I

1 have highlighted, in green, anything that needs to be redacted.
2 To the extent that it was overlapping something he had already
3 highlighted in yellow, I kind of underlined the yellow in green
4 so that you could see what I audited.

03:27PM

5 So not everything that was proposed by
6 Mr. Digiacomo is being redacted, and maybe a little bit more
7 than what Ms. Erickson had originally proposed being redacted
8 just given the context.

03:27PM

9 But I think what we have as the final set here
10 meets the needs of the parties. It is consistent with the
11 Court's prior ruling, and is the version we should use.

12 So, Mr. Digiacomo, just because the copy,
13 unfortunately, didn't carry out the green all that well, I'm
14 going to give you the one I actually wrote on.

03:27PM

15 MR. DIGIACOMO: Okay.

16 THE COURT: And that's for you, because you're
17 going to actually prepare that version. And then if you could
18 just get a copy to Ms. Erickson.

03:27PM

19 You can still see which ones are green and which
20 ones are yellow -- green underlined. It's just not as clear.
21 But I wanted Mr. Digiacomo to have a clearer copy because he's
22 got to make the preparation.

23 MS. ERICKSON: Okay. Thank you very much,
24 Judge.

25 THE COURT: Okay. I just wanted to clear that

1 up.

2 And if there's any record -- after you've had a
3 chance to review it, if you want to make any final record as to
4 what was redacted and what wasn't, like I said, I'm not aware
03:28PM 5 of any situation, Ms. Erickson, where you wanted something
6 redacted that I did not do.

7 What is included here might be more inclusive
8 just based on some of the additional proposals that
9 Mr. Digiacoimo had made and more inclusive. But not all the
03:28PM 10 proposals that Mr. Digiacoimo made has the Court included. So
11 that's sort of how the dust settled on that.

12 But if anybody wants to make a further record on
13 that, let's go ahead and do that. And make that
14 contemporaneous with what the State had used. Okay?

03:28PM 15 Anything else before we have the defense call
16 their next witness?

17 MR. DIGIACOMO: Not by the State.

18 MS. ERICKSON: Not by the defense.

19 THE COURT: All right.

03:28PM 20 MR. DIGIACOMO: Just the green basically.

21 THE COURT: The green and yellow underlined with
22 green.

23 MR. DIGIACOMO: Yes. So as long as there's
24 green, take it out.

03:28PM 25 THE COURT: As long as they're green, out.

1 MR. DIGIACOMO: Perfect.

2 THE COURT: Nothing that's not green.

3 THE MARSHAL: All rise for the jury.

4 (The following proceedings were had in open

03:29PM 5 Court in the presence of the jury panel:)

6 THE COURT: All right. Everybody please have a
7 seat. I invite the jurors to take their seats as they reach
8 them. Please, make sure your cell phones, if they're used on
9 the break, that you have them off again or silenced.

03:29PM 10 Ms. Cabrera -- Ms. Erickson, on behalf of
11 Ms. Cabrera, are you ready to call the next witness?

12 MS. ERICKSON: Yes, Judge. We'd like to call
13 Jan Pierce.

14 THE COURT: Jan Pierce, if you could come over.
03:30PM 15 When you reach the other chair, if you will just remain
16 standing. My Clerk to my right will swear you in.

17 THE CLERK: Please raise your right hand.

18 JAN PIERCE

19 called as a witness on behalf of the Defense,

03:30PM 20 having been first duly sworn,

21 was examined and testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Please take a seat.

24 Can you please state and spell your first and

03:30PM 25 last name for the record.

1 THE WITNESS: Jan Pierce, J-A-N, P-I-E-R-C-E.

2 THE COURT: Thank you.

3 Ms. Erickson, whenever you are ready.

4 MS. ERICKSON: Thank you, Judge.

03:30PM

5 DIRECT EXAMINATION

6 BY MS. ERICKSON:

7 Q. Ms. Pierce, do you live in Las Vegas?

8 A. Yes, I do.

9 Q. How long have you lived here?

03:30PM

10 A. 30-something years.

11 Q. A long time, hasn't it been?

12 A. Uh-huh.

13 Q. Do you know Ivonne Cabrera?

14 A. I do.

03:31PM

15 Q. Do you see her in Court?

16 A. I do.

17 Q. Is she sitting in the rose-colored shirt?

18 A. Yes.

19 MS. ERICKSON: I ask that the identification of

03:31PM

20 Ms. Cabrera be acknowledged on the record.

21 THE COURT: The record will reflect the
22 identification of Ms. Cabrera.

23 BY MS. ERICKSON:

24 Q. How long have you known Ms. Cabrera?

03:31PM

25 A. I knew her -- well, if I count these year, a couple

1 years.

2 Q. Okay. Well, let's look in April of 2012, how long
3 had you known her at that time?

4 A. About a year, eight months to a year.

03:31PM 5 Q. And how did you meet?

6 A. I met her through a friend named Sheila Russell.

7 Q. And so you met her through Sheila. Where were you
8 when you met her?

9 A. At Sheila's house.

03:31PM 10 Q. And where is Sheila's house?

11 A. It's at 1927 Bassler, North Las Vegas, Nevada, 89030.

12 Q. Okay. And you were introduced to her at -- is that
13 near -- does she own that house?

14 A. Yes. Her and her mother, yes.

03:32PM 15 Q. I'm sorry?

16 A. Her and her mother own that house.

17 Q. Okay. Can you describe that house?

18 A. It's a three bedroom, one bath. It's got a living
19 room, a big front yard, huge back yard, kitchen.

03:32PM 20 Q. Anything distinctive about the outside?

21 A. She has a little added-on patio side that was
22 conformed into a room.

23 Q. Okay. Was Sheila living at the Bassler house in
24 April of 2012?

03:32PM 25 A. Actually, she was in rehab.

1 Q. Okay. So she wasn't living there during that time?

2 A. Correct.

3 Q. Okay. And did there come a time that Ivonne moved
4 into the Bassler house?

03:32PM 5 A. Yes.

6 Q. And when did that occur?

7 A. I believe it was around March.

8 Q. Of 2012?

9 A. Yes.

03:33PM 10 Q. Okay. So she had been -- how long had she been
11 living there if we look at April of 2012, April 26th?

12 A. I believe it was about -- about -- around two months.

13 Q. Okay. And did she have her own room?

14 A. Yes. She lived in a little add-on room that was
03:33PM 15 outside.

16 Q. Okay.

17 A. It was outside but inside.

18 Q. So that's the one you just said that was added on?

19 A. Yes.

03:33PM 20 Q. Okay. And which room was yours?

21 A. I had the first room on your right-hand side. If you
22 walk into the front door, and you go down the hall, it's the
23 first room right here (indicating).

24 Q. Okay. Now, in April of 2012, did you know a person
03:33PM 25 by the name of Trigger?

1 A. Yes.

2 Q. Do you know what his true name is?

3 A. Freddie.

4 Q. I'm sorry?

03:33PM 5 A. Freddie.

6 Q. Okay. Do you also know Alfredo Hernandez?

7 A. Yes.

8 Q. Okay. How long had you -- in April of 2012, how long
9 had you known Trigger?

03:34PM 10 A. A couple years. About two years.

11 Q. How did you meet him?

12 A. I met him at Sheila's house.

13 Q. Okay. And did you also know a person by the name --
14 in April of 2012, did you know a person by the name of Ashley
03:34PM 15 Wantland?

16 A. Ashley, yes.

17 Q. I will show you what has been admitted by the State
18 as State's Exhibit 116.

19 Is that the Ashley Wantland that you knew?

03:34PM 20 A. Yes.

21 Q. How did you meet her?

22 A. I met her through Ivonne.

23 Q. Okay. Where did you meet her?

24 A. At the house on Bassler, at Sheila's house.

03:34PM 25 Q. Why was she at the house on Bassler?

1 A. I'm not sure why she was there. But she came with
2 Ivonne just briefly. The first time and then the next time I
3 seen her was -- she stayed at my house the whole night.

4 Q. Okay. When you say the first time that you met her,
03:35PM 5 if we're looking at April 26th of 2012, how much before that
6 did you meet her the first time?

7 A. I want to say maybe a week or two.

8 Q. Okay. You also stated that at one point she stayed
9 at your house -- at the Bassler house?

03:35PM 10 A. Yes.

11 Q. If you look at April 26th, 2012, when would that have
12 occurred?

13 A. It was probably a few days, maybe a week at the most
14 before this happened.

03:35PM 15 Q. When she stayed at your house, was she by herself?

16 A. No. James was with her.

17 Q. Okay. I'm showing you what's been admitted as
18 State's Exhibit 115. Do you know who's in that picture?

19 A. That would be James.

03:35PM 20 Q. Is that the person that you -- that you just
21 testified was with Ashley on the evening that they spent the
22 night?

23 A. Yes.

24 Q. Did he also spend the night?

03:35PM 25 A. Yes.

1 Q. Okay. Do you know why they spent the night?

2 A. They didn't really have a place to stay, I believe.
3 And I said that they could stay the night, and they did.

4 Q. Okay. How did Ivonne interact with that couple?

03:36PM 5 A. Good. She seemed really protective over Ashley.
6 They all got along. Everybody got along fine.

7 Q. Okay. Did you also meet a person by the name of
8 Melissa Marin?

9 A. Yes.

03:36PM 10 Q. Where did you meet her?

11 A. Through Ivonne, at the Bassler house.

12 Q. Okay. Do you remember if you look at the April 26th,
13 2012, date, when would you have met her the first time?

14 A. I think in March.

03:36PM 15 Q. Of 2012?

16 A. Yes.

17 Q. Okay. I'm showing you what's been admitted as
18 State's Exhibit 119. Who is that person?

19 A. Melissa.

03:36PM 20 Q. And that the person that you met in March of 2012?

21 A. Yes.

22 Q. Okay. You met her through Ivonne?

23 A. Uh-huh.

24 Q. You have to say yes.

03:37PM 25 A. Yes.

1 Q. She's taking it down.

2 A. Sorry.

3 Q. Why did you -- I mean, what was the interaction, why
4 did you end up meeting her?

03:37PM 5 A. She would just come over. They were friends. And
6 there was one incident where I think she was either having a
7 severe asthma attack or she was in a car accident and Ivonne
8 brought her in to take care of her.

9 Q. Okay. And did you ever meet -- was she single or did
03:37PM 10 she have a boyfriend?

11 A. I believe she had a boyfriend.

12 Q. Did you ever meet him?

13 A. I think his name was Smiley. And, yes, I did meet
14 him.

03:37PM 15 Q. Okay. And then I'm showing you what's been admitted
16 as State's Exhibit 115 -- 118.

17 Do you recognize that person?

18 A. Yes.

19 Q. And who is it?

03:37PM 20 A. I know him by Smiley.

21 Q. And how did you meet him?

22 A. He was with Melissa one day.

23 Q. Okay. So how many times do you think Melissa was
24 over at the Bassler house that you saw her?

03:37PM 25 A. A couple of times. A few times.

1 Q. Between March and April of 2005 -- April 26th.

2 A. Yeah.

3 Q. Do you also know a person by name of Old Man Jim?

4 A. Yes, I do.

03:38PM 5 Q. Why do you know him?

6 A. He was a really good friend to me and my fiancée.

7 Q. Is he still in this area?

8 A. No. He passed away last year.

9 Q. Okay. How -- where did he live?

03:38PM 10 A. He lived on the L Street right behind Jerry's Nugget.

11 Q. How far was that from your -- the Bassler house?

12 A. Maybe 20 minutes, walking.

13 Q. Okay. Now, you have testified that you met all these
14 people. They were in and out of the house.

03:38PM 15 Can you tell the jury primarily what you were doing
16 with all these people on different dates between March and
17 April of 2012?

18 A. We were all doing drugs.

19 Q. Which drug?

03:38PM 20 A. Methamphetamine.

21 Q. Okay. Were you working, at the time?

22 A. No, I was not.

23 Q. How were you paying for your rent?

24 A. I took care of the house while Sheila was in rehab.

03:39PM 25 Q. So you had your rent free?

1 A. Yes.

2 Q. And how did you obtain drugs?

3 A. My fiancée would go out and do people's yards and he
4 had certain people that he worked for doing odd jobs.

03:39PM 5 Q. Okay. And who would he purchase drugs from?

6 A. Um, we had different people.

7 Q. And when we talk about your drug usage, how much
8 would you -- how much would your -- your fiancée be buying at a
9 time?

03:39PM 10 A. Mostly would be, like, a 40, which is compared to a
11 teenager.

12 Q. So --

13 A. Or a half a teenager.

14 Q. A 40 is known as -- as how much?

03:39PM 15 A. A couple gram- -- a gram. I don't even remember.
16 It's been so long.

17 A half of teenager, which is a .4 -- around .4 grams.

18 Q. Okay. So he would be buying .4 grams of
19 methamphetamine at a time?

03:40PM 20 A. Yeah. Not very much.

21 Q. No.

22 And so then when you guys were all hanging out at the
23 house, who was providing the drugs?

24 A. Well, we were -- all would.

03:40PM 25 If somebody didn't have something and somebody else

1 did, you know, we all learned to share with each other. There
2 was times when one person would be up and another person would
3 be down, and we just learned to kind of coexist and take care
4 of each other.

03:40PM 5 Q. So -- do you remember a time in April of 2012, going
6 over to Old Man Jim's house and seeing Ashley Wantland?

7 A. Yes.

8 Q. Why do you remember that?

9 A. That day Ivonne was -- she took me and Trigger out to
03:40PM 10 sell some comic books that I had, and then we stopped over
11 there -- probably to get some drugs from him, to see if he had
12 anything to smoke.

13 Q. Okay. So you were trying to sell some comic books?

14 A. Yes. To a couple places, antique book stores on
03:41PM 15 Charleston.

16 Q. Okay.

17 A. And then we went over there.

18 Q. And why were you trying to sell those?

19 A. My fiancée was in jail, and he's my provider. And I
03:41PM 20 had no money. So I was just trying to come up with some -- a
21 couple of dollars in my pocket.

22 Q. Okay. And were you successful at selling the comic
23 books?

24 A. Absolutely not.

03:41PM 25 Q. So after that unsuccessful trip to different stores,

1 you said you went over to Old Man Jim's?

2 A. Yes.

3 Q. And how did you get there?

4 A. In the car that Ivonne had.

03:41PM 5 Q. Okay. So did Ivonne have a car?

6 A. Yeah. I think -- I think it was borrowed from
7 Melissa.

8 Q. Okay. Do you remember what it looked like?

9 A. I couldn't tell you the make or model on it. I think
03:42PM 10 it was, like, a goldish color, maybe bronze color. It was a
11 long time ago.

12 Q. All right. And so who was in the car with you?

13 A. It was me, Ivonne and Trigger.

14 Q. Okay. And who was at Old Man Jim's house when you
03:42PM 15 got there?

16 A. Old Man Jim and Ashley was there. Because she was
17 helping him with some paperwork that he was trying to file for
18 his girlfriend.

19 Q. I'm sorry?

03:42PM 20 A. He was trying to get her to type up some paperwork
21 for his girlfriend who was in Nevada mental health at the time.

22 Q. Okay. How long were you at Old Man Jim's?

23 A. Less than 20 minutes.

24 Q. Did you see Ivonne interact with Ashley?

03:42PM 25 A. Yeah.

1 Q. And what did you observe their interactions to look
2 like?

3 A. Friendly.

03:43PM

4 Q. Would you have described Ivonne's behavior as ranting
5 and raving?

6 A. Absolutely not.

7 Q. When Ashley and Ivonne were interacting with each
8 other, did you observe Ashley's face and demeanor?

9 A. Yes.

03:43PM

10 Q. And what was she -- what did she look like?

11 A. Friendly, calm, talking.

12 Q. Did she look scared?

13 A. Absolutely not.

14 Q. Threatened?

03:43PM

15 A. No.

16 Q. And how long was Ashley at Old Man Jim's?

17 A. She was getting ready to leave when we got there, so
18 I don't know prior to us arriving there.

19 Q. So how much time would you say that you and Ivonne
20 and Trigger were there in the house with her?

03:43PM

21 A. About the 20 minutes.

22 Q. Okay. And so you ended up leaving Old Man Jim's
23 around 20 minutes?

24 A. Uh-huh.

03:43PM

25 Q. You have to say yes?

1 A. Yes.

2 Q. Okay. And where did you go?

3 A. We were headed back to the house on Bassler.

4 Q. Okay. Now, on the evening of April 25th, 2012, do
03:44PM 5 you remember that night?

6 A. Yes.

7 Q. Why do you remember that night?

8 A. That's the night we were just all partying at the
9 house.

03:44PM 10 Q. Do you also correlate it to some other -- other thing
11 that occurred the next day?

12 A. The murder or the shooting.

13 Q. And Ivonne's arrest?

14 A. Yes.

03:44PM 15 Q. Where were you that evening?

16 A. Of -- the night --

17 Q. April 25th.

18 A. We were at the Bassler house, me, Trigger, Ivonne and
19 Francisco.

03:44PM 20 Q. And Francisco?

21 A. Uh-huh.

22 Q. Who was Francisco?

23 A. It was a friend of Ivonne's.

24 Q. And what time -- was -- did Ivonne come from

03:44PM 25 somewhere or was she there with you all day?

1 A. Honestly, I don't -- I don't remember. I know she
2 must have come from the store because I know she brought soda
3 and she brought Francisco with her.

4 Q. And what time did that occur about?

03:45PM 5 A. Sometime after dark.

6 Q. Okay. And did there come a time when Ivonne left
7 that night?

8 A. Not during the night, no. She didn't leave until the
9 following morning.

03:45PM 10 Q. And how do you know she didn't leave that night?

11 A. Because we were all up partying together.

12 Q. And when you say "partying," what does that mean?

13 A. We were up smoking meth all night with each other,
14 hanging out, listening to music.

03:45PM 15 Q. Okay. So you basically saw her the entire evening of
16 April 25th?

17 A. Yes.

18 Q. And I think you testified that it was you and Trigger
19 and Ivonne and her boyfriend Francisco?

03:45PM 20 A. I don't know if he was her boyfriend.

21 Q. Her friend?

22 A. Her friend, Francisco, yes.

23 Q. And you were all together the whole night?

24 A. Yes.

03:46PM 25 Q. Did Smokey come over that night?

1 A. No.

2 Q. Do you know a person by the name of Smokey?

3 A. I met him once.

4 Q. Okay. I'm showing you what has been admitted as

03:46PM 5 Defense Exhibit B as in boy. Do you know that person?

6 A. Yes. That's Smokey.

7 Q. Okay. And you said you met him once?

8 A. Yes.

9 Q. Why only once?

03:46PM 10 A. Because I told Ivonne I didn't really care for him

11 and I didn't feel comfortable with him coming to the house.

12 And she understood and never brought him back.

13 Q. And about how much time before April 26th did you

14 meet him?

03:46PM 15 A. I want to say maybe a week, two weeks before.

16 Q. Did I ask if Smokey was at the house the night of

17 April 25th?

18 A. Yes. He wasn't.

19 Q. Okay. Now, did there come a time -- in the -- where

03:47PM 20 were you in the late afternoon, early evening of April 25th?

21 A. I was at home.

22 Q. Was there anybody with you?

23 A. My friend Heather and her daughter Lisa came over.

24 Q. And why were they there?

03:49PM 25 A. Because my dog ran away and I was really upset and

1 couldn't find him. So they came over and we actually found
2 him, so --

3 Q. While they were there with this dog and with Ivonne,
4 did Heather and Lisa do anything?

03:49PM 5 A. Yes. I asked if they could go pick her up and she
6 was staying over at UNLV.

7 Q. And did they leave?

8 A. Yes.

9 Q. Does there come a point in time after they left that
03:49PM 10 you see Ivonne?

11 A. Yes, a little while later.

12 Q. Did Ivonne come into the house?

13 A. Yes.

14 Q. Was she with anybody?

03:49PM 15 A. Yes, she was.

16 Q. Do you know who she was with?

17 A. She was with Felicia, I think her name was.

18 Q. Had you seen Felicia before?

19 A. I think I seen her one time before Smokey came over.

03:49PM 20 Q. Did Felicia and Smokey seem to know each other?

21 A. Yes.

22 Q. When -- did you -- what did you observe her to be?
23 What did she look like?

24 A. She looked like she had been crying. Her mascara and
03:49PM 25 her eyeliner was all running down her face. She looked really

1 shaken up. I asked her if she was okay, and she just --

2 Q. Did she talk much?

3 A. No. She kind of whispered. She just wasn't herself.

4 Q. Okay. Did she -- what did she do after she came in
03:49PM 5 the house?

6 A. She -- she tried to go to the bathroom and that girl
7 Felicia blocked her to the bathroom, and it just kind of seemed
8 like she went in her room, and then I kind of just left with my
9 stepdad, who had come over.

03:49PM 10 Q. So how long did you see Ivonne, and about what time
11 in the evening was this?

12 A. Oh, maybe between 8:00 and 9:00. I'm -- I'm
13 guessing.

14 Q. Have you ever been contacted by any police officer
03:49PM 15 regarding this case?

16 A. No.

17 Q. Have you ever been contacted by anyone with the
18 District Attorney's Office?

19 A. Not that I'm aware of, no.

03:50PM 20 Q. Obviously we contacted you; is that correct?

21 A. Yes.

22 Q. And who did you have contact with mainly?

23 A. Mr. Gruber.

24 Q. Gruber?

03:50PM 25 A. Gruber.

1 Q. Okay. How many times did you meet with him over the
2 years?

3 A. Two or three.

4 Q. Okay. And what time frame would you say that those
03:50PM 5 two or three meetings occurred?

6 A. The first meeting was just over a year ago.

7 Q. Okay. Are you still using drugs?

8 A. No, I'm not.

9 Q. When did you stop?

03:50PM 10 A. About -- I -- eight months after all this happened.

11 Q. Clean and sober the whole time?

12 A. I messed up once, about two years ago.

13 Q. Since then?

14 A. No.

03:50PM 15 Q. Now, have you had any contact with Ivonne since she
16 was arrested on April 26th, 2012?

17 A. We wrote, I think, two or three letters to each
18 other.

19 Q. And when did that occur?

03:51PM 20 A. In the very beginning.

21 Q. And when you say "the very beginning," what date and
22 time frame would that be?

23 A. I think it was within the first six months of her
24 arrest. Nothing since then.

03:51PM 25 Q. Have you talked to her on the phone?

1 A. No.

2 Q. Visited her anywhere?

3 A. No.

4 MS. ERICKSON: That's all, Judge.

03:51PM 5 THE COURT: All right.

6 (Sotto voce at this time.)

7 MS. ERICKSON: Thank you very much.

8 THE COURT: Mr. Digiacomo?

9 MR. DIGIACOMO: Thank you.

03:51PM 10 CROSS-EXAMINATION

11 BY MR. DIGIACOMO:

12 Q. Ma'am, let me see if I get this straight.

13 The first time that you provided information to
14 anybody was Mr. Gruber, the gentleman that is here today
03:51PM 15 outside; is that correct?

16 A. I was -- yeah.

17 Q. That was about a year ago?

18 A. Yes.

19 Q. So we're talking 2016?

03:51PM 20 A. Yes.

21 Q. And they're asking you to recall events that occurred
22 four years before that, being 2012; is that fair?

23 A. Yes.

24 Q. Okay. Now back in 2012, you were using
03:52PM 25 methamphetamine, what, on a daily basis?

1 A. I was a daily user, yes.

2 Q. Would you agree with me that methamphetamine has the
3 ability to sort of affect your perception?

4 A. Yes.

03:52PM 5 Q. It affects your knowledge of time, would you agree
6 with that?

7 A. Yes.

8 Q. Have you ever heard the term "tweaker time" before?

9 A. Absolutely.

03:52PM 10 Q. And tweaker time, it's hard to figure out what day it
11 is, what time it is, anything like that; correct?

12 A. Correct.

13 Q. You seem to be pretty confident on some dates that
14 things occurred?

03:52PM 15 A. Uh-huh.

16 Q. Do you recall that?

17 A. Yes.

18 Q. Okay. The first one I want to talk about is the time
19 that James and Ashley and -- do you call her -- did you call
03:52PM 20 her Chinola back then?

21 A. Yes, I did.

22 Q. Okay. And Chinola were at your apartment; correct?

23 A. They were at my house.

24 Q. Or your house, sorry.

03:52PM 25 A. The house I was living in, which is Sheila Russell's

1 house.

2 Q. On that occasion wasn't there a girl named Loka
3 present with Smokey?

4 A. I believe that's the same person, Felicia.

03:53PM 5 Q. So you think the woman that was at your house the day
6 that Smokey was there is the same women that was at your house
7 on April 26th?

8 A. Yes.

9 Q. And you believe that to be Felicia?

03:53PM 10 A. Yes.

11 Q. And you believe that her nickname is Loka?

12 A. I don't know what her nickname his. I just know her
13 by Felicia.

14 Q. Felicia?

03:53PM 15 A. Yes.

16 Q. When Smokey was at your house, did you learn what his
17 relationship was to this Felicia?

18 A. I think that they were brother and sister.

19 Q. Okay. So it was Smokey's sister that was there with
03:53PM 20 Ivonne at the house?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. And then the woman that came over to your house with
03:53PM 25 Ivonne after the homicide you believe to be the same person

1 that was in the house with James?

2 A. Yes.

3 Q. Let me back up.

4 When they were at your house, did James and Ashley

03:54PM 5 have to stay there for a period of time after Ivonne left?

6 A. No.

7 What -- what -- what do you mean?

8 Q. At the time that Smokey was at the house, is that the
9 time that James and Ashley slept at the house?

03:54PM 10 A. No.

11 Q. It's a different night.

12 A. Different -- different night.

13 Q. Why is it that James and Ashley had to sleep at your
14 house one night?

03:54PM 15 A. Because they didn't have a place to stay.

16 Q. Had they lost a key to their apartment?

17 A. I didn't even know if they had an apartment.

18 Q. Okay. Was it before or after the incident or the day
19 that Smokey was there?

03:54PM 20 A. I think it was after.

21 Q. Okay. So it was sometime after Smokey was there,
22 there's some period of time where they have a problem for just
23 one day?

24 A. Yeah.

03:54PM 25 Q. Now, you said that there was a time when you were

1 over to Old Man Bill's (sic) with Trigger.

2 Trigger is not your boyfriend; correct?

3 A. No, he's not.

4 Q. It's somebody different, and that's who?

03:55PM 5 A. Trigger is just a friend.

6 Q. He's a short, bald, Hispanic male?

7 A. Yes.

8 Q. And he's the person that you're with when you go to
9 sell comic books with Chinola?

03:55PM 10 A. Yes.

11 Q. And you wind up over at Old Man Bill's house --

12 A. Old Man Jim's, yeah.

13 Q. Sorry. I'm going to do that.

14 A. Uh-huh.

03:55PM 15 Q. And while you are there, there's a conversation
16 between Ivonne, Chinola and Ashley; correct?

17 A. Yeah, they were talking. We were all talking.

18 Q. Okay. Do you remember what the subject matter of
19 that conversation was?

03:55PM 20 A. I couldn't tell you.

21 Q. You don't recall there being a discussion about a
22 debit card?

23 A. Not to my knowledge there was no -- there wasn't
24 anything like that.

03:55PM 25 Q. A conversation about tools; do you remember anything

1 like that?

2 A. No.

3 Q. Okay. Approximately what time did that conversation
4 occur at?

03:55PM 5 A. It was the afternoon.

6 Q. So it was daylight out?

7 A. Yes.

8 Q. And you are sure that that's -- is that the only time
9 you've ever been to Old Man Jim's house?

03:55PM 10 A. No. Old Man Jim and me and my fiancée, we're very
11 close.

12 Q. So you've been there a lot?

13 A. Yes.

14 Q. Was it the only time you've been there with Chinola?

03:56PM 15 A. Yes.

16 Q. Is it the only time you've seen Ashley there?

17 A. Yes.

18 Q. You talked about that, while you were there, after
19 that you go back to your house --

03:56PM 20 A. Uh-huh.

21 Q. -- and you were with Chinola?

22 A. Yes.

23 Q. And then Chinola remains at your house all night
24 until the early morning hours?

03:56PM 25 A. I think she must have left in the afternoon because

1 she came -- she came back with Francisco and did some
2 (inaudible) --

3 Q. So when --

4 A. On the 25th.

03:56PM 5 Q. -- did she leave you on that day? Was it light out
6 or dark out?

7 A. It was light.

8 Q. Okay. When she gets back, was it dark or light?

9 A. It was dark.

03:56PM 10 Q. Okay. And then, what time did she get back; do you
11 know?

12 A. Early evening.

13 Q. So early evening?

14 A. Uh-huh.

03:57PM 15 Q. So she's with you from early evening all the way to
16 the early morning hours when she -- did you see her leave?

17 A. In the morning, yes.

18 Q. And how did she leave?

03:57PM 19 A. She was going to go pick up a friend and take him to
20 work.

21 Q. And do you know what friend it was that she was
22 picking up?

23 A. I don't know.

03:57PM 24 Q. And she had the car that entire night, that car you
25 talked about --

1 A. It was parked in the backyard.

2 Q. And during that entire night, Smokey never came over
3 to the house?

4 A. Nobody did.

03:57PM 5 Q. What about Chinola's kids, were they there at all?

6 A. Not that night.

7 Q. Do you know if she has kids?

8 A. Absolutely, I do.

9 Q. And you've seen them and they weren't there that
03:57PM 10 night?

11 A. No. They were not there that night.

12 MR. DIGIACOMO: Thank you, Your Honor.

13 I have no more questions.

14 THE COURT: Okay. Ms. Erickson, any redirect
03:57PM 15 for this witness?

16 MS. ERICKSON: Just briefly, Judge.

17 REDIRECT EXAMINATION

18 BY MS. ERICKSON:

19 Q. Showing you what's been admitted as State's
03:58PM 20 Exhibit 150. Do you know that person?

21 A. I believe that's Felicia.

22 Q. So you think that's Felicia, okay.

23 And you stated that Ivonne has children?

24 A. Yes. She has two boys.

03:58PM 25 Q. Two boys, okay.

1 And she would -- they would come over and see her?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

03:58PM 5 Q. Was she ever using drugs when the children were with
6 her?

7 A. Absolutely not.

8 Q. Now, you were asked about tweaker time.

9 A. Uh-huh.

03:59PM 10 Q. Is that correct?

11 A. Yes.

12 Q. And you testified to some dates and times that you
13 specifically remember.

14 A. Uh-huh, yes.

03:59PM 15 Q. Okay. And would that be during tweaker time or did
16 you clean up right after that?

17 A. I remember certain dates because of certain things
18 that happened on those dates, you know.

19 Q. Nobody's told you what to say?

03:59PM 20 A. No.

21 Q. Talking to Mr. Gruber three times, he didn't tell you
22 what to say?

23 A. Absolute- -- no, he did not.

03:59PM 24 Q. Would you be here and lie to the jury about what you
25 know?

1 A. No.

2 Q. Why not?

3 A. What's right is wrong. What's wrong is wrong.

4 I have no reason to sit here and lie.

04:00PM 5 MS. ERICKSON: Thank you.

6 THE COURT: Thank you.

7 Anything from Mr. Digiacomo?

8 MR. DIGIACOMO: Not for the State.

9 THE COURT: All right.

04:00PM 10 May I see by a show of hands if any jurors have
11 questions for the witness?

12 (Negative response from the prospective jury panel.)

13 THE COURT: Seeing none, you're excused.

14 Thank you. Mind your step as you exit the

04:00PM 15 Courtroom.

16 (Whereupon, at this time the Witness was excused.)

17 MS. ERICKSON: May we approach, Judge?

18 THE COURT: Sorry?

19 MS. ERICKSON: May we approach?

04:00PM 20 THE COURT: Yes, please.

21 (Sidebar conference at bench, not reported.)

22 THE COURT: All right. Ladies and gentlemen of
23 the jury, I had a scheduling discussion with counsel. We are
24 still on track to complete, as expected, the trial, and do not
04:02PM 25 have any additional witnesses that we could call and complete

1 today. So rather than get started and then be in the middle
2 and break, we're going to go ahead and let you go a little bit
3 early today.

4 So once again, we remind you in your
04:03PM 5 admonishment during this overnight recess, we will resume
6 tomorrow at 1:30, please.

7 (The jury was duly admonished by the Court.)

8 THE COURT: We'll see you tomorrow at 1:30.
9 Have a good night.

04:03PM 10 THE MARSHAL: All rise.

11 (The following proceedings were had in open
12 Court outside the presence of the jury panel:)

13 THE COURT: All right. We're going to adjourn.
14 I just wanted to mention briefly, the bench conference was
04:04PM 15 primarily scheduling, but there was some discussion about how
16 we might handle some evidence.

17 The parties believe that they can -- and
18 Mr. Whipple and Mr. Digiacomo agree -- we'll have some e-mail
19 exchanges to determine if the Defendant's Proposed BB, which is
04:04PM 20 the -- inclusive of some texts that were previously admitted
21 but also inclusive of some texts that go beyond the time frame
22 previously admitted but were told for all intents and purposes
23 authenticated by Detective Ehlers that Mr. Digiacomo believes
24 he may have a Spanish language translation for those texts in
04:05PM 25 Spanish.

1 He's indicated he would share that with
2 Mr. Whipple, does not believe that there is necessarily going
3 to be a problem with the use and the admission of
4 Defendant's BB, but wants to still review it tonight to be
04:05PM 5 certain. So rather than book in additional time tomorrow, we
6 think it's probably better to be resolved amongst the counsel.

7 We'll just start at 1:30 and hope that we're
8 good to go. If not, you can always let the Court know, and we
9 can probably start a few minutes early. Otherwise, we'll start
04:05PM 10 it at 1:30 time, and bring the jurors in when we can.

11 The indication from Ms. Erickson was two more
12 witnesses to go, potentially completion tomorrow. If not, over
13 to Thursday.

14 I do want to be prepared as much as possible for
04:05PM 15 the jury instructions. I would note that the State did provide
16 the stock inclusive of their's -- their proposed. And I know,
17 Ms. Erickson, you indicated you had a couple.

18 Are you in any position possibly to provide them
19 to the Court tonight, or when might we get those?

04:06PM 20 MS. ERICKSON: I'll get them to you first thing
21 in the morning, Judge. I just had all the witnesses today.

22 THE COURT: I just was curious only because --
23 obviously, I won't be able to look at them before tomorrow
24 because I'll be in Court all day tomorrow, potentially the
04:06PM 25 lunch hour. But at some point I can look at them. If we have

1 time later in the day tomorrow we might be able to settle them.

2 MS. ERICKSON: Sure.

3 THE COURT: So at least I have some opportunity
4 during the Court to try and see --

04:06PM 5 MS. ERICKSON: I'll make sure to get these to
6 the prosecution and to the JDA --

7 THE COURT: Even if it's not first thing in the
8 morning because I'll be busy, but somewhere prior to the start
9 of trial tomorrow, that would be great.

04:06PM 10 MS. ERICKSON: I've been getting up at 4:30,
11 so --

12 THE COURT: Sometime prior to the start of trial
13 would be fantastic. And just go ahead and send those over.

14 And, of course, I'm expecting the communication
04:06PM 15 to be inclusive of any proposed you have and any disputes you
16 have with the State and identify those, please.

17 MS. ERICKSON: That would be my job, too, Judge.

18 THE COURT: One thing I didn't check on the
19 State's, and I think the State has gotten into a bad habit of
04:07PM 20 this, but I believe I only one have one without cites.

21 MR. DIGIACOMO: If she objects to any of those,
22 which I doubt she will -- we gave cites to the duress
23 instruction because I think that's what that would be about. I
24 didn't provide the other ones in there.

04:07PM 25 THE COURT: All right. Not a problem.

1 MR. DIGIACOMO: I didn't provide the other ones
2 in there.

3 THE COURT: I don't need the bulk of them
4 either, but I just noted that there is one without cites and
04:07PM 5 also without page numbers. So it's just a little difficult to
6 have that dialogue. But we can do it and we will do it.

7 But to the extent that you can do the best of
8 your ability because there's obviously a document with page
9 numbering, although not on the document, but as you are looking
04:07PM 10 at it in the computer view. So that reference will help or it
11 just -- it begins -- the instruction begins with X, you know,
12 so it has some reference.

13 But if you could, please, let us know, again,
14 not only what you are proposing, but also what you are
04:07PM 15 disputing of what they have, if any.

16 MS. ERICKSON: Yes, Judge.

17 THE COURT: And that will help us and then we
18 might be able to actually settle tomorrow.

19 I'm not going to assume we're going to be
04:07PM 20 expecting closing on Thursday, but it's possible that we could
21 do that. So I just -- you know, I just want to be prepared.

22 MR. DIGIACOMO: We have at least one short
23 rebuttal.

24 MS. ERICKSON: I can't see closing until
04:08PM 25 Thursday. Mr. Whipple is leaving.

1 THE COURT: You know --

2 MR. DIGIACOMO: It would be great to instruct
3 them and they just walk in on Monday.

4 THE COURT: Yeah. I just don't -- you know, I'm
04:08PM 5 not going to -- I'm not going to feel comfortable instructing
6 them and then have a whole weekend go by before the closings.
7 But at the end of the day, we'll figure it out. We'll see how
8 it goes.

9 Now, if we cut them loose for two full days and
04:08PM 10 then we complete on Monday, you know, so be it. We're still
11 ahead of schedule in terms of where we qualified them to. We
12 just didn't cut ourselves shorter in that potential week in
13 terms of if we need that.

14 MS. ERICKSON: I -- the only reason I say that,
04:08PM 15 I mean, Mr. Whipple is an excellent attorney and he can do two
16 jobs at the same time; but, you know, he's going to wait for
17 the 9th Circuit argument, which this Court knows is
18 significantly difficult and, you know, I just don't think that
19 closing would be in the best interest of my client in that --

04:09PM 20 THE COURT: We will -- we'll figure it out.
21 We'll see where we are. Okay. All right.

22 MS. ERICKSON: All right. Thank you, judge.

23 THE COURT: All right. Everybody have a good
24 night. We'll see you.

04:09PM 25 MR. WHIPPLE: Your Honor, is it okay to leave

1 some of our stuff here?

2 THE COURT: No. I have a full blown criminal
3 calendar tomorrow morning.

4 MS. ERICKSON: Oh, fun.

04:09PM

5 THE COURT: Yeah.

6 (Recess in proceedings.)

7 (Proceedings concluded.)

8 * * * * *

9

10 ATTEST: Full, true and accurate transcript of proceedings.

11

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13 /S/Renee Silvaggio
14 RENEE SILVAGGIO, C.C.R. 122

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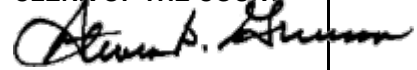
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TRAN
CASE NO. C-12-283700-1
DEPT. NO. 25

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	REPORTER'S TRANSCRIPT
)	OF
vs.)	JURY TRIAL
)	
IVONNE CABRERA,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED TUESDAY, JULY 11, 2017

REPORTED BY: Sharon Howard, C.C.R. #745

01504

1 APPEARANCES:

2 For the State:

MARC DIGIACOMO, ESQ.

3 HETTY WONG, ESQ.

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5
6
7 For the Defendant:

PATRICIA ERICKSON, ESQ.

8 BRET WHIPPLE, ESQ.

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I N D E X
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W I T N E S S E S

NAME: JESUS PRIETO	PAGE
Direct Examination By Ms. Erickson	33

* * * * *

1 LAS VEGAS, NEVADA; TUESDAY, JULY 11, 2017

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Resuming in the trial of State of
6 Nevada vs Ivonne Cabrera. It's just after 1:30. We
7 anticipated having argument with regard to the statement of
8 Ms. Cabrera and what matters might be redacted in event of
9 her testimony. It was anticipated she would not be
10 providing testimony today for a couple of reasons. One
11 being that we would need time to obviously resolve the
12 issue of her statement, but also the court had not yet
13 canvassed her. Even though it has been identified for the
14 court that Ms. Cabrera does intend to testify, we still
15 have not fully canvassed her for that purpose.

16 I don't know what that circumstance is but I do also
17 know that in addressing -- in addition to needing to
18 address the issue of her statement, that the order to
19 transport that was executed by the court, filed and
20 entered by the court, has been executed by Nevada
21 Department of Corrections for Mr. Jose Gonzales, the
22 Co-Defendant in this case, present and able to be brought
23 forward as a witness to be able to be called by defense.

24 I would note the presence of in the courtroom of
25 Ms. Alzora Jackson, who has represented Mr. Gonzales

1 pending his trial and during his entry of the guilty plea
2 and sentencing. She's here today, and she wishes to
3 address the issue of Mr. Gonzales' testimony.

4 I would note that I have all of counsel present. Ms.
5 Cabrera is present. The jurors are not present. And I
6 think we need to proceed.

7 Let me start with -- do we still need to have
8 argument on the issue of Ms. Cabrera's statement or by
9 some miracle there has been some resolution between the
10 parties.

11 MS. ERICKSON: There has been no resolution,
12 Judge. So we do need argument and the court will need to
13 make a decision. I don't see how Ms. Cabrera can testify
14 today. That was my understanding of our case. I may have
15 somehow not been aware. I don't think she has to testify
16 today. We have Mr. Gonzales. We have Detective Prieto. I
17 have another witness coming. I have 3 witnesses. I don't
18 know how long they will take. It's 1:35. The argument is
19 not going to be lengthy.

20 THE COURT: In light of the fact we still need
21 to have that argument then let me jump over that issue for
22 now. We'll get back to it. Let's discuss the matter of
23 the intent of the defense to call Mr. Gonzales, as a
24 witness.

25 Before we went on the record, while parties were

1 getting set up and ready to proceed today, Ms. Jackson
2 indicated she would like to raise the issue with regard to
3 Mr. Gonzales being called as a witness.

4 Ms. Jackson, let me invite you at this time to make
5 whatever remarks you want for the record you would like to
6 make. Then I will find out from the parties how we should
7 proceed.

8 MS. JACKSON: Mindful that Mr. Gonzales' matter
9 is resolved and he is actually an inmate at the Department
10 of Corrections. He has retained my services pro bono this
11 afternoon to represent him with regards to this subpoena.
12 He has no desire to be here. He has no desire to hit the
13 witness stand at all. He has no desire to even make a
14 record of what his name is. He has no desire whatsoever
15 to be here.

16 As a matter of fact, he didn't say this, I know this.
17 Just him being transported up here for these proceedings,
18 actually given where he will very likely spend the rest of
19 his life, puts him in peril. And may the record reflect I
20 had advised defense counsel he wanted nothing to do with
21 these proceedings and asked that he not be brought into
22 this for those very reasons.

23 Therefore, it's his request and desire that he be
24 transported back to the Department of Corrections.

25 THE COURT: I think you've answered the question

1 by the remarks you have just said, but just out of
2 curiosity for the court, is Mr. Gonzales aware it's
3 defense that has sought his appearance here today not the
4 State.

5 MS. JACKSON: He is.

6 He advised me representatives of defense or lawyers
7 himself came to the prison to speak with him and he
8 advised them he would not speak with them. I already
9 informed them of his wishes. I was not contacted.
10 Yesterday I got an email saying he would be here this
11 afternoon.

12 THE COURT: For the record the court in signing
13 the order, just to be clear, the court was mindful of the
14 time frames that have elapsed since the plea was entered
15 and since the sentencing had taken place, seeing no
16 pending matters, no appeal, no other matters pending, I'm
17 not anticipating there being the types of concerns you
18 have identified, the court not being aware of them, the
19 court did sign the order to transport because there was a
20 request to do so and an intent to call him as a witness.

21 I appreciate the opportunity to clarify Mr. Gonzales'
22 position. I do need to hear from the proponent, Ms.
23 Erickson. Why don't we do that.

24 MS. ERICKSON: He has to get on the stand. He
25 has to refuse to answer. He can't, through his attorney.

1 I don't know if she was retained.

2 THE COURT: She did indicate she was retained,
3 pro bono.

4 MS. ERICKSON: He has to get on the stand. He
5 can't just have her say he's not going to say anything.
6 To make him unavailable he has to refuse on the record to
7 do anything. And that's what I want. I'm asking the
8 court to do that.

9 MR. DIGIACOMO: Outside the presence of the
10 jury.

11 MS. ERICKSON: Of course outside the presence of
12 the jury.

13 MR. DIGIACOMO: He can say on the record he is
14 refusing to answer all questions. I believe that's true.
15 He has to come to the court room and say, no, for the
16 record.

17 THE COURT: What is the position then of the
18 parties in the event he indicates he is not going to
19 answer any questions. Are you going to consider him
20 unavailable and not call and allow him to be transported
21 back to jail.

22 MS. ERICKSON: If he is unavailable and refuses
23 to testify, I will allow him to be transported back. But
24 according to the rule, if he is unavailable, based on this
25 answers on record under oath.

1 THE COURT: We need to bring him in the
2 courtroom for that purpose. Let's have Mr. Gonzales in
3 the courtroom.

4 Mr. Gonzales, we do need you to be sworn by the
5 court. We are going to attempt to administer the oath and
6 you can respond as you see fit.

7 THE CLERK: You do solemnly swear the testimony
8 you are about to give in this action shall be the truth,
9 the whole truth, and nothing but the truth, so help you
10 God.

11 THE WITNESS: I ain't got nothing to say.

12 THE COURT: If you don't want to say anything,
13 sir, you want that statement to be truthful, don't you.

14 THE WITNESS: It is irrelevant really.

15 MS. ERICKSON: I can't hear him, Judge. Please
16 ask him to speak up.

17 THE WITNESS: I said it's irrelevant. It
18 doesn't matter to me. I don't even know why you brought
19 me down here.

20 THE COURT: What we're going to do is get those
21 statements from you. If you would like them to be
22 considered to be truthful statements, we'll ask you to
23 swear under oath so the things you say, like that, are
24 truthful.

25 THE WITNESS: No. I just want to go back.

1 THE COURT: Have a seat, Mr. Gonzales.

2 I will note that Mr. Gonzales is present. He has
3 refused to take the oath that whatever statements he makes
4 are to be truthful. He is represented by counsel here
5 today.

6 Ms. Erickson, do you have questions you wish to pose
7 to Mr. Gonzales at this time, in light of his
8 statements.

9 MS. ERICKSON: Yes, Judge.

10 Is your name Jose Gonzales?

11 THE COURT: Can you please state for the
12 record your response. You can state that for the
13 record.

14 The witness is refusing to respond.

15 MS. ERICKSON: Mr. Gonzales, you were sentenced
16 in this case May of 2017, correct.

17 THE COURT: Are you refusing to answer.

18 I'll note the silence of Mr. Gonzales in this case.
19 For the record he refuses to answer.

20 MS. ERICKSON: Mr. Gonzales, you have not filed
21 a notice of appeal of your conviction that was finalized
22 in May of 2017, have you.

23 THE COURT: The court will note again for the
24 record Mr. Gonzales refuses to answer.

25 MS. ERICKSON: Mr. Gonzales, you are the person

1 that actually shot and killed James Headrick and Erik
2 Quezada.

3 THE COURT: The court will note again for the
4 record that Mr. Gonzales is refusing t answer.

5 MS. ERICKSON: You are also the person that shot
6 several times, both Ashley Wantland and Melissa Marin at
7 Webster, Apartment C, on April 26, 2012.

8 THE COURT: Mr. Gonzales, again, for the record
9 is refusing to answer.

10 Any further questions, Ms. Erickson.

11 MS. ERICKSON: That will be sufficient.
12 Although he has no Fifth Amendment right to not answer.
13 He has been sentenced and has no appeal.

14 THE COURT: There is no issue being raised, as I
15 understand it, of a Fifth Amendment right. The Defendant
16 is here and he is refusing to answer.

17 MS. ERICKSON: I will go through all the
18 questions unless the court is going to deem him
19 unavailable on his refusal to answer.

20 THE COURT: Does the State have any questions
21 for this witness.

22 MR. DIGIACOMO: No.

23 THE COURT: It does not appear that Mr. Gonzales
24 is going to be responsive verbally to any of the questions
25 asked of him today. The court will consider Mr. Gonzales

1 an unavailable witness in that regard and excuse him at
2 this time.

3 MS. JACKSON: Thank you, your Honor.

4 THE COURT: Thank you, Ms. Jackson.

5 MS. JACKSON: You're welcome.

6 THE COURT: Let's address the issue of
7 Ms. Cabrera's statement. The court has reviewed, for
8 purposes of today's argument, the email sent by
9 Mr. DiGiacomo dated July 10th, which includes the
10 attachment of a yellow highlighted copy of -- I'm sorry.
11 I'm misstating them.

12 I have an email from Mr. DiGiacomo dated Sunday, July
13 9th, with reference to Ms. Cabrera's statement which was
14 attached, color coded in yellow, with those statements
15 that Mr. DiGiacomo felt may be in dispute as far as what
16 needed to be redacted from the statement and asking that
17 there be some discussion on that matter.

18 Ms. Erickson made the following discussion on the
19 record yesterday, Monday July 10th, then forwarded what
20 she identified as a color-coded copy of Ms. Cabrera's
21 statement, which had color coding in blue, purple, and
22 then underlined -- there's some orange as well
23 underlining.

24 There is not necessarily a legend or an explanation
25 of the various color coding. The court has reviewed it

1 and ultimately can take again the argument on what should
2 be included a what should not be included in terms of Ms.
3 Cabrera's statement when she takes the stand in the event
4 there is some reference to this statement in addition to
5 whatever testimony is elicited by the officer involved.

6 I would note in preparing for today I did have and
7 reviewed the transcript of the hearing in which this issue
8 of the identified lines of indication where the detective
9 said that Ms. Cabrera was untruthful, as well as
10 surrounding what were alleged to be hearsay statements.

11 I did go back and review the court's ruling on that
12 matter, and I can tell you as sort of a preliminary
13 discussion point that the court's review of its ruling
14 does at the time -- although I don't have an independent
15 recollection -- does appear to be that it was this court's
16 intention to exclude any references made by the officer as
17 to his opinion of whether Defendant was or was not being
18 truthful. Not just those to we she continued to be
19 non-responsive, but in all of those occurrences.

20 The court also further ruled, however, that it did
21 not deem the information otherwise contained in the
22 questions or in any of the responses of Ms. Cabrera in
23 those regards to be hearsay or to be able to be excluded
24 on that basis.

25 I just wanted to give you that set up for where I

1 think we're going here today. I obviously want to give
2 you the opportunity for argument.

3 I'm not sure which version of the color-coded
4 statements we should be referring to, because there is a
5 lot more included in the version provided by Mr. Erickson
6 then there is in the version provided by Mr. DiGiacomo.

7 MR. DIGIACOMO: To clarify something the court
8 said. The things highlighted in yellow, we agreed to
9 redact it. So there is no dispute in removing those.

10 My concern, as I raised with the court, the ruling
11 was if the opinion of the officer was she is lying, that's
12 not admissible. So in those cases where he accuses her of
13 lying and then she does not acknowledge that she was lying
14 and changes her story, then that's just the opinion of the
15 officer. I wasn't sure if I was supposed to get into what
16 caused her to change her story.

17 Originally she says, a wasn't there that day. I was
18 never there. I don't know what happened. He accuses her
19 of lying, and she says, okay, well, I was taken there at
20 gun point, but I don't know this guy. She knows this guy
21 from talking to Melissa.

22 So I have a hard time going through Ms. Erickson's
23 highlighted version taking out a word here and a word
24 there and it changes all the content. So what I tried to
25 do is the points where Detective Prieto accuses her of

1 lying and she says no I'm not, that's the truth, that's
2 what I removed. But when he says that's not true because
3 I talked to Melissa. And she goes, okay, fine.

4 The story has change and I didn't perceive that as
5 the opinion of the officer. That's just a fact. An
6 admission by the Defendant that she wasn't telling the
7 truth.

8 MS. ERICKSON: Your Honor, you ruled. And it was
9 the colors that the officer is saying that Ms. Cabrera was
10 lying are the purple/pinkish color. You ruled that none
11 of those statements that Officer Prieto said, which I can
12 read through the record, it's not one word here and there.
13 It's consistent statements that she is not telling the
14 truth. And that is going -- in this case particularly,
15 would be extraordinary prejudicial because Detective
16 Prieto was the investigating officer and investigating
17 homicide detective at the time.

18 Those statements can be redacted. If Mr. DiGiacomo
19 wants to ask ms. Cabrera how she got there, that would be
20 fine. My first argument on this issue is I'm going to ask
21 the court to preclude the State from having any redaction
22 in the manner they wanted.

23 We filed our motion on August 8th of 2015. The court
24 ruled on August 26, 2015. I mentioned, getting ready for
25 this trial, on June 5th I sent an email to Mr. DiGiacomo

1 and Ms. Wong. In the middle if it I state also on August
2 26, 2012 Judge Delaney granted in part the motion to
3 preclude introduction of numerous statements that
4 Detective Prieto made throughout the interview that
5 Ms. Cabrera was being untruthful. See page 27 of the
6 transcript.

7 I previously provided Mr. Staudaher a color annotated
8 copy of the interview. The untruthful statements were
9 highlighted in pink and purple color. Judge Delaney's
10 ruling clearly precludes introduction of Ms. Cabrera
11 statements during case and chief or whether
12 cross-examination of Ms. Cabrera, should she testify.
13 Have you redacted the audio, video and the statement,
14 please provide a copy of the redacted audio should it be
15 available for review.

16 June 9th Mr. DiGiacomo wrote back. We have not done
17 redaction. I have to check on the video. There is no
18 video of the statement.

19 Then at calendar call I raised the issue again. I
20 informed the court of this scenario. I asked that it be
21 taken care of before trial and here we are, when I'm
22 preparing for my defense, I received a document that they
23 say should be ruled on because they provided it on Sunday
24 at 6:00 p.m., the day before they rest.

25 There was an extraordinary amount of time between

1 June 5th, when I asked about it, and Sunday, this week, to
2 have this done. It's prejudicial. The court ruled. The
3 court should maintain the ruling the way it is.

4 Mr. DiGiacomo's context discussion, as far as I
5 can tell it's not based on any case law. He hasn't cited
6 any.

7 The case I cite to, August 20th, which the court said
8 she was taking into consideration, was State vs. Elnicki,
9 279 Kansas 47, which is the Kansas Supreme Court in 2005.
10 It's still good law. I would ask the court to maintain
11 the ruling you gave because it shouldn't be reviewed at
12 this last minute.

13 THE COURT: Before I hear from the State and to
14 the extent this comes out that I'm frustrated, forgive me,
15 but that is accurate to say. I'm frustrated.

16 In that same ruling in that same transcript I have
17 made it clear when I made these rulings that they're still
18 could potentially be subject to being addressed at the
19 appropriate time of trial. I very much appreciate that
20 you made an effort to reach out and say can I get the
21 statement and do you have the redactions.

22 But you also have a color-coded copy of the statement
23 in which you've made redactions. But there's also a ton
24 of other things on here that are not just the Detective's
25 statements challenging Ms. Cabrera's truthfulness that are

1 highlighted and ultimately -- I guess my question is, Ms.
2 Erickson, if you wanted the statement to read a certain
3 way and you weren't hearing back from Mr. DiGiacomo why
4 did he not have a version from you that would be the one
5 that could be accepted. I can't say that this is the one
6 because it's got orange and blue and gold and everything
7 else on it.

8 I gravitated towards the version Mr. DiGiacomo put
9 forward because he acknowledged that he was redacting
10 certain things. I had not gone back to the color-coded
11 copied until you provided it. I appreciate having it now.
12 But we have the one copy. We had some proposed
13 redactions. So your solution is to say, well, let's not
14 consider his at all. Let's consider mine. Well,
15 technically, where is yours, because this one doesn't cut
16 it in terms of something I can actually use or we can
17 actually use in trial.

18 MS. ERICKSON: Judge, it was not my intention to
19 admit the statement. Mr. DiGiacomo -- I can't admit the
20 statement.

21 THE COURT: I'm not asking you to admit the
22 statement, Ms. Erickson. I'm asking where is your version
23 that you want me to use leu of his.

24 MS. ERICKSON: I can get one in a little bit.

25 THE COURT: I'm not saying you have to do it

1 now, but we might need it just to wrap this up.

2 Let me hear from Mr. DiGiacomo.

3 MR. DIGIACOMO: Thank you.

4 We didn't offer it in our case chief until it was
5 announced yesterday that Ms. Cabrera was going to testify.
6 Probably wasn't even going to be admissible and out of an
7 abundance of caution I went through it.

8 I take the court's ruling to be the opinion of the
9 officer is not relevant. The Nevada statute 51035, it's an
10 adoptive admission. Someone says you're lying and they
11 say, yeah, I'm lying, here's a different version of
12 events, then that's the adopted admission of the party
13 opponent.

14 So I took the court's ruling as what I legally took
15 you to mean, which is the statements of the officer is not
16 relevant to anything. If she has an opinion she's lying
17 about her being scared and not knowing about the gun and
18 she maintains it's the truth, it should be redacted.

19 At the times he says to her, you're lying. And she
20 goes, you're right and gives a different version of
21 events, I believe that's admissible under 51035. And not
22 the subject of what the court was discussing when it was
23 discussing the opinion of an officer not being relevant to
24 the proceedings. I would agree his opinion was to whether
25 or not she's telling the truth is irrelevant, but adoptive

1 admissions are admissible.

2 THE COURT: Mr. DiGiacomo, I did my best to go
3 through these two versions, but I also had a calendar this
4 morning unrelated to this trial that lasted until well
5 into the noon hour to complete and to complete preparation
6 of it last night was quite lengthy so I did my best.

7 Let me ask a pointed question. Are there places in
8 your proposed version where the detective says you are
9 lying that you are not proposing to redact, even if the
10 response from Ms. Cabrera is you're right and here's what
11 I'm saying.

12 MR. DIGIACOMO: The word lying, no, but almost
13 everything that comes out of his mouth -- she responds,
14 well, that's not true because -- the reason is she changes
15 the story.

16 THE COURT: Can you point me to an example.

17 MR. DIGIACOMO: I'm looking for it.

18 THE COURT: I have a line 299. I hope that this
19 isn't something to be concerned about, but I noticed the
20 line numbers in Ms. Erickson's version and your version
21 are off by at least one line.

22 MR. DIGIACOMO: It was obvious just when I used
23 Ms. Erickson's version I was trying to figure out how do
24 you redact this, because there is going be a problem.

25 THE COURT: What I was looking at was at line

1 299. So in Ms. Erickson's version it would be --

2 MS. ERICKSON: It would still be line 299.

3 THE COURT: No, it's not. It's line 300, Ms.
4 Erickson. That's my point.

5 Where I wanted to start on line 299,
6 Mr. DiGiacomo's version, you'd got mad -- now you got to
7 tell me the truth now, otherwise I'm not going believe
8 nothing you tell me.

9 I'm telling you the truth, sir. Not highlighted.
10 I'm going to think, hey, you know what -- (a) it wasn't
11 random.

12 You off by one line. Those are the same and his line
13 is at 300 and runs through 305.

14 MR. DIGIACOMO: 299 -- I'm way before 299.

15 THE COURT: You pick up any sample you want to
16 pick up.

17 MR. DIGIACOMO: I think that should be
18 removed.

19 THE COURT: When I went back to do the review I
20 thought that those were the redactions in dispute not the
21 ones you were agreeing to.

22 MR. DIGIACOMO: If we go back to 156 on Ms.
23 Erickson's.

24 THE COURT: 156.

25 MR. DIGIACOMO: Correct.

1 About 6 pages in.

2 THE COURT: Hang on.

3 Here the lines do match. Yours is 156 and hers is
4 156. I have the same, you know, when I first told you a
5 lot of things. Are going to depend on what you tell me.

6 MR. DIGIACOMO: She goes right, sir, being
7 truthful. They requested that that be redacted. I
8 couldn't figure out why that would be redacted.

9 Then the next she has highlighted. You know you were
10 on Webster because people identified you already, right.

11 Now, he's accusing her of not being truthful and she
12 acknowledges it, but those are the type of redactions I'm
13 seeing in the defense's statement.

14 THE COURT: Ms. Erickson, if you want to address
15 it. When you mention that the ones you are seeking to
16 have redacted were the ones in purple/pink, that would
17 only be the one on line 159, being truthful.

18 MS. ERICKSON: That has nothing to do with it,
19 your Honor. We keep talking about my version and their
20 version. My version comes from them. I did not do a
21 transcript differently than anybody. This is one of the
22 copies they provided me.

23 THE COURT: Just talking about your highlighting
24 your version. Your version is the one that has your
25 highlighting on it for the record.

1 MS. ERICKSON: If you look at line 156, you know
2 when I picked -- you know when I first told you a lot of
3 things are going to depend on what you tell me.

4 Right, sir.

5 Being truthful, okay.

6 So why do we have to have him discussing being
7 truthful. The content of that is I told you and I know
8 you are on Webster. I didn't remove anything other than
9 the word being truthful, because later on if we go to
10 lines 214 and 215, on the copy I provided the court, I
11 asked, so that we make sure we're telling the truth now.

12 MR. DIGIACOMO: Because she changed her story.

13 MS. ERICKSON: I'm only removing the lines that
14 say -- he is implying that he does not believe her. That
15 she's not telling the truth.

16 When you take those things out, you still have the
17 rest of the content and the change in the story. You are
18 just removing the lines where the officer says, you need
19 to do now is start telling me the truth about you. So
20 please, don't start making yourself get under. Don't
21 start getting underneath here.

22 It doesn't change the content of the statement. It
23 takes out all of the times that the officer uses the words
24 that's she's telling lies.

25 THE COURT: So to be clear, the only redaction

1 you are seeking from the statement in relation to the
2 order the court entered back in August of 2015, are those
3 that are highlighted in purple.

4 MS. ERICKSON: Correct, Judge.

5 You ruled the others were admissible. All I'm asking
6 is those that are in pink/purple are the ones that are
7 redacted because those are the ones that are specifically
8 aimed at what the officer is saying she is doing in his
9 opinion and should not be there.

10 MR. DIGIACOMO: Lines 214 and 215, the detective
11 is telling her to be truthful now. Referencing the fact
12 she admitted that she was lying and changed her story.

13 Then the next line the is 222 -- listen, listen,
14 listen. This is where she says I don't know who the
15 perpetrator is. Listen, this si where you start messing
16 up. I don't know who the perpetrator is. You need to
17 started telling the truth. What is the guy you went
18 with.

19 Then she says, okay, it is Smokie.

20 His statements aren't that you are lying to me. It's
21 her acknowledging she was just lying to him. I don't
22 understand how that's the opinion of the officer As
23 opposed to being an admission.

24 THE COURT: At this point now I have something
25 to work with that I can be clear on that I can refer to.

1 So I can look at what is in purple and I can look at what
2 is in Mr. DiGiacomo's yellow. And I can let you know, by
3 the end of the day, where we go with this.

4 MR. DIGIACOMO: I don't think that precludes her
5 from testifying. My proffer is we'd be offering the same
6 thing. I can still cross her without the redactions. In
7 just need the redactions by the end of the day.

8 THE COURT: I assume.

9 MR. DIGIACOMO: They just lost one witness. We
10 may be out of witnesses.

11 THE COURT: I don't anticipate it will be
12 lengthy with the other witnesses. We have the detective
13 and who is the other.

14 MS. ERICKSON: Jan Pierce.

15 THE COURT: Is there a possibility of
16 Ms. Cabrera testifying today.

17 MR. WHIPPLE: In preparation for Ms. Cabrera's
18 testimony, yesterday if you recall we had Mr. Ehlers to
19 come in and talk about the text messages, the cellular
20 phones. Ms. Erickson prepared a chronological list which
21 is what he approved and acknowledged. What he did is he
22 took everything from page 240 to the end as this is what
23 occurred at 10:00 o'clock. I've got that BB in defense
24 exhibits. I provided that to Mr. DiGiacomo and Ms.
25 Wong.

1 There are -- I have given them the actual copy, 240,
2 to the end. I have given the redacted copy of it to the
3 end. The reason I did that is the majority of testimony
4 has already been admitted through Mr. DiGiacomo, but there
5 are some miscellaneous other items.

6 THE COURT: What is the ask.

7 MR. WHIPPLE: BB has not been admitted. I'd
8 like to admit it in open form. My position is that
9 documentation is not hearsay. It's not offered for the
10 truth of the matter asserted. If you don't agree with
11 that then I have a redacted fall back I would provide to
12 the State to review.

13 THE COURT: What's the State's position on BB.

14 MR. DIGIACOMO: When I asked Mr. Whipple can you
15 tell me what all these Spanish text messages are. I don't
16 read Spanish. He's unable to tell me and without telling
17 me specifically what is there as of right now concerning
18 the testimony, we'll be checking that out tonight. If you
19 can give me today to look at it and see if there is
20 something there that shouldn't be there. My concern is
21 what if there are bad acts contained within those text
22 messages.

23 MR. WHIPPLE: I'll represent there are no bad
24 acts. We'll leave it to the court to determine.

25 There are a number of communications in Spanish, so

1 at some point we may need to address that. I have
2 reviewed this with my client and I do speak limited
3 Spanish. It's all miscellaneous and couldn't be used in
4 context. I understand we need for somebody who does speak
5 Spanish to confirm what my client interprets it comes
6 up.

7 THE COURT: Based on the foundation we had with
8 Mr. Ehlers I don't know why we would be able to admit
9 additional pages of texts, if you will, in theory. But I
10 think to be fair to Mr. DiGiacomo to have an opportunity
11 to see what is in there, since again, as you said, the
12 interpretation is not available. And to the extent you
13 want to inquire of your witness to testify to some of
14 that, so be it, but I'm not -- right now, I'm not opposed
15 to the consideration for it's admission. I think we need
16 to make sure -- I think it's well founded, although you
17 reviewed it and you indicated some understanding of
18 Spanish, the separate review by counsel to make sure there
19 are no bad acts so we're not stepping into a mine field
20 and putting something in front of the jury that we
21 shouldn't.

22 MR. WHIPPLE: I'm handing them to Mr. DiGiacomo,
23 proposed BB.

24 THE COURT: What I would like to do at this
25 time, just out of an abundance of caution to make sure

1 that we can proceed if that is how we end up proceeding.
2 I know a minute ago I indicated we'd start with the
3 witnesses we do have, but I would like to canvass
4 Ms. Cabrera at this time regarding her intent to testify.

5 I think we are there. I think there's been enough
6 discussion about it, along with indication by counsel.

7 Ms. Cabrera, if you do intend to testify, I want to
8 make sure you are fully aware of your rights and the
9 circumstance upon which you may choose to elect to
10 testify.

11 Are you ready for me to proceed at this time.

12 THE WITNESS: Yes.

13 THE COURT: Mr. Whipple and Ms. Erickson, can
14 you acknowledge for the record, have there been any
15 discussions, not the substance of them, but have you had
16 discussions with your client about her right to testify.

17 MR. WHIPPLE: She's aware she's not required to
18 testify. If she does not testify, we'd offer an
19 instruction understanding she doesn't have to testify.

20 THE COURT: Let me go through the canvass at
21 this time, please.

22 I'm going to read this to make sure we cover
23 everything.

24 So Ms. Cabrera, you have the right under the
25 constitution of the United States and the constitution of

1 the State of Nevada not to be compelled to testify in this
2 case.

3 You understand that right.

4 THE WITNESS: Yes.

5 THE COURT: That means that no one can make you
6 take the witness stand and answer any questions.

7 Is that your understanding.

8 THE WITNESS: Correct.

9 THE COURT: You may, if you wish, give up this
10 right and you may take the witness stand and testify. If
11 you do, you will be the subject of cross-examination by
12 the district attorney as well -- or you may be subject to
13 cross-examination by the district attorney as well as your
14 own attorney, and anything you say, whether it's in answer
15 to the question posed to you by your attorney or by the
16 district attorney, will be the subject of fair comment
17 when the district attorney speaks to the jury in final
18 argument.

19 Do you understand that.

20 THE WITNESS: Yes.

21 THE COURT: If you choose not to testify, the
22 court will not permit the district attorney to make any
23 comments to the jury concerning the fact you have not
24 testified.

25 Are you clear on that.

1 THE WITNESS: Yes.

2 THE COURT: Again, if you elect not to testify,
3 the court will actually instruct the jury, if your
4 attorney so requests, an instruction. That instruction
5 reads this way.

6 It is a constitutional right of a defendant in a
7 criminal trial that he or she may not be compelled to
8 testify, thus the decision as to whether he or she should
9 testify is left to the defendant on the advice and counsel
10 of his or her attorney.

11 You must not draw any inference of guilt from the
12 fact that he or she does not testify, nor should this fact
13 be discussed by you or enter into your deliberations in
14 any way.

15 I typically try to read it with that inflection. Do
16 you understand that instruction. That's if you chose not
17 to testify. So the jurors will be told they cannot
18 consider it.

19 At this point, do you have any questions for your
20 counsel or for me.

21 THE WITNESS: No.

22 THE COURT: That's if you choose not to
23 testify.

24 If you choose to testify and you have been convicted
25 of a felony within the past 10 years or have been on

1 parole or probation, the district attorney will be
2 permitted to ask you three things. If you've been
3 convicted of a felony. What was the felony and when it
4 happened. No details can be gone into on the prior felony
5 convictions, unless you denied the felony convictions and
6 they existed, then the State could seek to impeach you
7 with certified copies of any convictions, which may
8 contain more information than simply the felony and when
9 it occurred.

10 You understand how that works.

11 THE WITNESS: Yes.

12 THE COURT: That is all I have to cover in terms
13 of how it works if you chose to testify or not to testify.
14 At this time can you tell me what is your intention with
15 regard to providing testimony in this case.

16 THE WITNESS: To prove my innocence.

17 THE COURT: Are you going to testify in this
18 case or not. That's all I'm trying to ask you. Sorry if
19 that was confusing.

20 Are you going to waive that right of
21 self-incrimination and testify. Is that correct.

22 THE WITNESS: Yes.

23 MR. WHIPPLE: There is one felony conviction
24 within 10 years. I am going to ask question about that
25 myself.

1 THE COURT: However, that goes, we'll address it
2 at the time.

3 You may have a seat Ms. Cabrera. Do we have anything
4 else to cover before I bring the jurors in and proceed
5 with the two witness we have so far available today.

6 MS. ERICKSON: No, Judge.

7 MR. DIGIACOMO: Nothing from the State.

8 THE COURT: Please make sure your cell phones
9 are off if you used them prior to coming into the court
10 room. I believe we are ready to proceed. As of yesterday
11 the State rested their case in chief. We now turn to
12 Ms. Cabrera's counsel to call their first witness,
13 please.

14 MS. ERICKSON: We call Jesus Prieto.

15 THE COURT: Come to the witness stand and stand
16 by the chair and raise your right hand. My clerk will
17 swear you in.

18 THE CLERK: You do solemnly swear the testimony
19 you are about to give in this action shall be the truth,
20 the whole truth, and nothing but the truth, so help you
21 God.

22 THE WITNESS: I do.

23 THE CLERK: Be seated. State and spell your
24 name for the record.

25 THE WITNESS: Jesus Prieto, J-e-s-u-s --

1 P-r-i-e-t-o.

2 THE COURT: When you are ready ?

3 THE CLERK: Thank you.

4 THE COURT: Because we've done this with most,
5 not all the witnesses, that bring in documentation.
6 Obviously the witnesses are asked to testify from their
7 own recollection, but for whatever reason you need to
8 testify from the paperwork you brought, we just want to
9 make sure that's noted in the record.

10 DIRECT EXAMINATION

11 BY MS. ERICKSON:

12 Q. Good afternoon.

13 A. Hi.

14 Q. Are you presently employed?

15 A. No.

16 Q. When did you stop being employed?

17 A. In January 14, 2016.

18 Q. So you are retired?

19 A. Yes.

20 Q. Where did you retire from?

21 A. North Las Vegas Police Department.

22 Q. Were you, prior to retirement, in any specific
23 division or unit with the North Las Vegas Police
24 Department?

25 A. I worked the crimes against persons in the

1 detective bureau.

2 Q. Crimes against persons. What kinds of cases
3 did that involve?

4 A. Everything from kids fighting at school to
5 murders.

6 Q. Attempt murder.

7 A. Officer involved shootings, everything.

8 Q. When you retired in 2015, how long had you
9 been with that division of the North Las Vegas Police
10 Department?

11 A. Since 1999.

12 Q. Prior to 199 were you also working with the
13 North Las Vegas Police Department?

14 A. Yes, I was.

15 Q. What were you doing then?

16 A. I was a patrol officer.

17 Q. How long were you a patrol officer?

18 A. Since '89 -- to make this easy, before that I
19 worked 3 years in the jail from '86.

20 Q. You started as a patrol officer in 1989 and 3
21 years before that you were a corrections officer?

22 A. Yes, in North Las Vegas as well.

23 Q. In 1999 when you began working with the crimes
24 against people unit, did you have to take any training, go
25 to classes? Did you learn different aspects then you did

1 you as a patrol officer?

2 A. Yes.

3 Q. What kinds of things did you have to learn to
4 do that was different?

5 A. You know, we did a lot of classes. You know
6 for me to look back we did homicide investigation classes.
7 We did some forensic classes. There was -- it would be
8 off and on. Classes would come up -- we didn't
9 necessarily need it to be assigned, and as we went on we
10 would, you know, volunteer to take classes that came up.
11 That's the way it worked.

12 Q. So you went to classes. You learned different
13 aspects of the different crimes you were investigating.
14 And those were helpful, correct?

15 A. (Shrugging response.)

16 Q. Did there come a time in the early morning
17 hours of April 26th of 2012, were you assigned to
18 investigate the killing of 2 men and the shooting of 2
19 women at 2039 Webster, No, C, Las Vegas?

20 A. Yes.

21 Q. Showing you what's been admitted as Defense
22 Exhibit H. Does this represent the complex of the crime
23 scene that you were assigned to?

24 A. Yes.

25 Q. And I'm showing you Defendant's Exhibit G.

1 Does that show the front door and the two windows that are
2 in the southeast side of Apartment C?

3 A. Looking at it it looks like it.

4 Q. Okay. Who was your partner on April 26,
5 2012?

6 A. Detective Mel Gorego.

7 Q. Is he still with North Las Vegas Police
8 Department?

9 A. No.

10 Q. Is he retired also?

11 A. Yes, he is.

12 Q. When you go to a homicide or crime scene like
13 this, is there a division of labor between the two
14 detectives from the department?

15 A. It works like this. We have several cases and
16 like I said they vary from kids fighting at school,
17 domestic battery, everything. We divide the call-outs.
18 That was my call-out. He'll assist me with what I need.
19 He'll work the scene, but primarily it's on me.

20 Q. Fair to call you the lead homicide detective
21 on that case?

22 A. Yeah.

23 Q. On this crime scene?

24 A. Yes.

25 Q. Okay. What are the duties of a lead detective

1 at a crime scene like this?

2 A. Make sure that we get all the evidence.

3 Q. Okay. When you arrive on the scene, all you
4 have is limited information, correct?

5 A. That's correct.

6 Q. When you arrive on the scene, do you remember
7 if there were other officers at the scene?

8 A. Yes.

9 Q. Would it be fair to say that Officers Booker,
10 Santos, Waite, and Sergeant Woods were there before you
11 got there?

12 A. In reflection from some reports you furnished
13 me, yes.

14 Q. Were you present when Dana Marks, a crime
15 scene investigator arrived?

16 A. I believe I was there when she was there. I
17 don't know if she arrived before me or she was after.

18 Q. She was the primary crime scene investigator,
19 correct?

20 A. I believe so. You would say there is a lot of
21 crime scene investigators. She might have been assigned
22 as a primary.

23 Q. What are your duties -- well, you said as a
24 homicide detective, it's to get the evidence collected,
25 correct?

1 A. No. I work with the officers. You know, the
2 officers, they supply me with the information when I get
3 there. It's not like I go there and I'm some genie. They
4 tell me what happened, everything is furnished to me. It's
5 my job to put it altogether at the end. So everything I
6 get is basically from officers.

7 Q. Okay. So you look at the crime scene
8 yourself?

9 A. I did.

10 Q. It's important, as I said, you have not that
11 much information when you are on the scene like that,
12 correct?

13 A. Correct.

14 Q. So would it be fair to say that you and the
15 crime scene investigator would take more evidence in or
16 pictures of what could be evidence that may or may not
17 relate to the crimes themselves?

18 A. On occasion.

19 Q. Because you don't know all the facts then?

20 A. Correct.

21 Q. So would it be fair to say that in your
22 collaboration with the different officers and the
23 different crime scene analysts on the scene that you would
24 have wanted as much evidence collected as was possible
25 that may or may not help down the road?

1 A. I kind of stick -- for me, we all know what
2 the crime is when we get there. Whether it's a homicide
3 or something else. I'm not going to be looking for a
4 reverberator when I go in there. I'm looking for items
5 that relate to the crime.

6 If it's gunshots, I'll say, let's collect guns or
7 shell casings. If we have victims, I'll say let's collect
8 things that relate to them.

9 If its a break-in, then find evidence that related
10 to the break in. That's the way it goes. I'm not going
11 to say, we don't know what happened here, collect
12 everything. It's not going to happen that way.

13 Q. I'm sorry. I made my question so broad. I
14 didn't mean it in that manner.

15 So did there come a time that an officer informed
16 you that there was a Hispanic speaking witness that might
17 have information about the crime?

18 A. I read over a report where there was somebody
19 contacted. They didn't have information for him and
20 depending on the case and what it was I may or may not go
21 back and contact that witness.

22 Q. Well, would it be fair to say that it was
23 Victor Santilla?

24 A. If you have it in a report, it would be fair
25 to say it.

1 Q. If you look at the report of Officer Booker
2 that I provided this morning, which would be No. 8, that
3 would have been -- I believe it's the third report, which
4 is listed as -- in North Las Vegas you put a little dot
5 and then the number of the report right after it.

6 A. Okay.

7 Q. So if it was report No. 3 -- would it be
8 easier if I brought up a copy for you?

9 A. Maybe.

10 Q. Would it refresh your recollection to review
11 this report?

12 A. Booker report, I think I have it.

13 Q. Booker, No. 3, at 6:15.

14 Two pages -- does that refresh your recollection as
15 to who the Hispanic male adult might have been?

16 A. Nope. Nope.

17 It's here. If you ask me questions about it, I
18 never contacted anybody. I read it at the time. If it
19 wasn't something I needed to address, because this case
20 moved very quick. So if I was told by him, hey, I
21 contacted a Hispanic guy. He said this or whatever. If I
22 didn't think I needed it at that time, I didn't recontact
23 him.

24 So if he is in here, I have no doubt he was
25 contacted by Booker.

1 Q. He was contacted by Jay Simpson. Is Jay
2 Simpson a Spanish speaking police officer?

3 A. Yes.

4 Q. Would it be fair to say that Officer Simpson
5 would be interested in collecting any information that
6 Victor Santilla had at the time that this was being
7 investigated?

8 A. I'm sure he would have noted in his report.
9 That would be it. Then I would review it. I'd decide if
10 it was valuable to me or is something I need to follow up
11 on. If it wasn't, then I didn't do it.

12 Q. If there was no follow up, it wasn't valuable?

13 A. I didn't think it was something I needed to
14 follow up with.

15 Q. Okay.

16 Would a witness who said he heard two shots, then
17 went to his window. Didn't see anything. Heard 4 shots.
18 Came back and saw people running away. Would that be of
19 interest to you?

20 MR. DIGIACOMO: Object as to form of the
21 question.

22 THE COURT: Sustained. Rephrase.

23 BY MS. ERICKSON:

24 Q. You would have done something more with a
25 witness who had information that was important to your

1 investigation, correct?

2 A. If I reviewed these reports or I get
3 information that morning, it would -- what the case was
4 would determine which way I would go. On this case I had
5 names. I had people I could identify. The people that
6 did it. So I'm not running out after two people that ran
7 out of that complex. I know who they were, so I'm not
8 chasing -- you know, people that looked out their window
9 and saw somebody running, I'm not chasing that. That's
10 not the way I investigate.

11 Q. Okay. So you said that you knew who was
12 involved and that would be a person with the moniker of
13 Smokie, correct?

14 A. Correct.

15 Q. What did you learn Smokie's real name to be?

16 A. I know his last name is Gonzales.

17 Q. If you look at index number 6, the tab.

18 A. Okay. Yes Jose Gonzales.

19 Q. You said there were also two suspects. The
20 other suspect was my client, Ivonne Cabrera, correct?

21 A. Correct.

22 Q. Because you knew that Smokie -- showing you
23 what's been marked --

24 MR. DIGIACOMO: It's not admitted, so don't put
25 it on the overhead.

1 MS. ERICKSON: May I approach, Judge.

2 THE COURT: You may.

3 BY MS. ERICKSON:

4 Q. I'm showing you a photograph of a person.
5 Does that appear to be anyone you recognize as being
6 important to this case?

7 A. When you show it to me, I haven't seen this
8 since 2012.

9 Q. I understand.

10 A. I know the name.

11 Q. In your records did there come a time -- well,
12 Mr. Gonzales, you know -- let's call him Smokie. So Smokie
13 was not arrested at the time. Wasn't arrested in April
14 2012?

15 A. I don't think so. I have the paperwork here.
16 I know it was sometime later, because I applied for a
17 warrant.

18 If you turn to Tab No. 14.

19 A. Okay.

20 Q. So would that refresh your recollection that
21 you prepared the arrest warrant for Mr. Smokie on May 2,
22 2012?

23 A. That's correct.

24 Q. If you turn to Tab 15. On June 11th, did you
25 receive information from the US Boarder and Customs Patrol

1 that Smokie had been apprehend crossing the boarder from
2 Mexico to the United States?

3 A. I can't recall the date, but I remember
4 getting the information.

5 Q. If you look at Tab 20, will that refresh your
6 recollection as to the date?

7 A. Yes.

8 Q. Was that June 11th, 2012?

9 A. Yes.

10 Q. As a result of that information, do you
11 remember it was he hiding in a car?

12 A. Yes. I believe he was coming over from
13 Mexico. And I think he was in the trunk, but I'm not a
14 hundred percent sure.

15 Q. As a result of obtaining that information --
16 what did you do?

17 A. I waited until he was in jail.

18 Q. Which jail?

19 A. San Diego. I went and interviewed him.

20 Q. Did Detective Mel Grego accompany you?

21 A. Yes, he did.

22 Q. Now Smokie was in jail. How did you know that
23 this was the Smokie you were interested in?

24 A. Because by that time they had all of the
25 information. I had pictures at the time. And when I

1 contacted him I know it was him.

2 Q. You had received that information from the
3 Knickerbocker email, correct. Where it identified Smokie
4 as Jose Gonzales?

5 A. Initially.

6 Q. And it gave you some information about how to
7 physically identify him?

8 A. I believe so. I just go by name. If they
9 were to give me any other information -- I don't recall.

10 Q. Let's stick right here. So you went to the
11 jail in San Diego. You and Detective Mel Grego?

12 A. Correct.

13 Q. You asked to see who?

14 A. Gonzales.

15 Q. Gonzales, correct?

16 A. Yes.

17 Q. Did Mr. Gonzales -- was Mr. Gonzales brought
18 down or brought to the interview room?

19 A. Yes, he was.

20 Q. Did you speak with Mr. Gonzales?

21 A. Briefly.

22 Q. Did you tell him why you were there?

23 A. I don't remember getting too many words out.
24 Just a few words and terminated. Were you supplied with
25 the interview.

1 Q. Sorry. I can't hear.

2 A. Did you get a copy of the interview.

3 Q. Identified who were you?

4 A. Yes.

5 Q. What was Mr. Gonzales' demeanor when you met
6 with him?

7 A. There wasn't much. He sat down. I couldn't
8 judge too much. It didn't seem like anything I would have
9 noted. He just sat. I started to talk to him. He didn't
10 want to answer any questions. That was it.

11 Q. Okay. So would you call him belligerent.
12 Would you call him uninterested?

13 A. Uninterested. As soon as we merandized him, or
14 tried to, he didn't want to talk.

15 Q. So he was uninterested?

16 A. Yeah.

17 Q. Okay. So in the record system for the Las
18 Vegas Police Department, people are assigned
19 identification numbers, are they not?

20 A. Correct.

21 Q. That number gets put into a scope?

22 A. ACS number.

23 Q. Do you remember what Smokie's identification
24 number was?

25 A. No, I don't.

1 Q. Would looking at the Knickerbocker email at
2 Tab 6. Would that refresh your recollection?

3 A. Yes.

4 Q. What was Smokie's identification number?

5 A. 2636822.

6 Q. That number stays with a person every time
7 they're admitted into the Las Vegas Metropolitan Police
8 Department, Clark County Detention Center, correct?

9 A. Just the number they assign in Nevada.

10 Q. It goes out on other places so we know who
11 that person would be?

12 A. Yeah, if you are looking for them.

13 MS. ERICKSON: May I approach.

14 MR. DIGIACOMO: Can I see the exhibit, please.

15 MS. ERICKSON: May I approach.

16 THE COURT: You may.

17 BY MS. ERICKSON:

18 Q. Again, showing you what has been marked for
19 identification as Defendant's Exhibit B. Does that
20 contain a identification number?

21 A. Yes.

22 Q. Is the identification number the exact same
23 number you received from Officer Knickerbocker?

24 A. Yes.

25 Q. Is that a photograph of Mr. Gonzales from this

1 case?

2 A. It should be.

3 Q. Okay. Well, have you ever been in a situation
4 where the identification number is wrong?

5 A. A lot of things have happened. I have seen a
6 lot of different things in my career. It could happen.

7 Q. If you came to court and the State had called
8 you to testify, would you have had any problem identifying
9 this person because of the information in the Las Vegas
10 Metropolitan Police Department to say that this was the
11 Jose Gonzales --

12 A. No.

13 Q. You'd not have a problem?

14 A. I wouldn't have a problem.

15 Q. Because that would be for the State.

16 MS. ERICKSON: Move for it's admission.

17 MR. DIGIACOMO: No.

18 THE COURT: What -- is it marked.

19 MR. DIGIACOMO: Detective, do you have an
20 independent recollection this is the way Jose Gonzales'
21 looked like when you talked to him, as opposed to a
22 photograph that we've had admitted that you used during
23 your investigation.

24 A. I'd have to look. I think I have a picture
25 here in the paperwork the attorney sent me. There was a

1 picture that I showed immediately after I identified
2 him.

3 THE COURT: For the record the witness is
4 looking through the report.

5 MS. ERICKSON: If you look at index number 9 B
6 would that be a picture you're referring to.

7 THE WITNESS: Yeah. This is the picture.

8 THE COURT: Hold on before you begin with the
9 witness.

10 THE COURT: Look in your report for reference.

11 THE WITNESS: She gave me number 9, but nothing
12 was in there.

13 THE COURT: So you couldn't find in your report
14 what Ms. Erickson was looking for.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Mr. DiGiacomo.

17 MR. DIGIACOMO: State's Exhibit 147, do you
18 recognize that photograph.

19 A. Yes.

20 THE COURT: Mr. DiGiacomo, Defense B.

21 MR. DIGIACOMO: Is that the way he looked to you
22 when you saw is him.

23 THE WITNESS: Yeah. He looked like this.

24 THE COURT: Do you want to inquire of defense
25 B.

1 BY MS. ERICKSON:

2 Q. I think you just testified that this person,
3 Jose Alejandro Gonzales, same name as the one you were
4 looking for, correct?

5 A. It's the same name, yes.

6 Q. And you received scope regarding this person
7 from Officer Knickerbocker?

8 A. Correct.

9 Q. And in that scope there are -- there is an
10 identification number that is exactly the same as the
11 identification number in this photograph?

12 A. Yes.

13 Q. And you know that the Mr. Gonzales that were
14 you meeting with was in San Diego on June of 2012,
15 correct?

16 A. Yes.

17 Q. And that he was brought back to Las Vegas?

18 A. Correct.

19 Q. When did he arrive?

20 A. I didn't pay any attention to it.

21 Q. Okay. Well, would it be July of 2012?

22 A. May have. You have the record.

23 Q. Did you meet with Mr. DiGiacomo or Ms. Wong
24 this morning?

25 A. No. When I got here I said hi to him.

1 Q. Talk to him over the weekends?

2 A. No.

3 Q. Did there come a time when you received
4 information about an automobile that might have been of
5 interest to you in this case?

6 A. Yes.

7 Q. Do you remember when that was?

8 A. Not exactly.

9 Q. While I look for a picture, did there come a
10 time on May 1st when you received some information from
11 another officer regarding an automobile that was of
12 interest?

13 A. Yes.

14 Q. Having received that information, what did you
15 do in response?

16 A. I went and spoke -- they found information
17 from a girl servicing a search warrant. She had
18 information on the murder. She didn't have information on
19 the murder, she had received text from people about the
20 murder or homicide that was under investigation.

21 Q. Okay. And the person that -- the officer that
22 received the information during the search warrant was
23 Officer Sak, remember that?

24 A. Possibly. I read the report. It might have
25 been him.

1 Q. If you turn to Tab 10, would that refresh your
2 recollection?

3 A. Yes, if I take a look.

4 Q. First paragraph of that report, does that
5 refresh your recollection?

6 A. Yes.

7 Q. So it was Officer Saks?

8 A. Yes.

9 Q. And the search warrant was being served at
10 3113 Plump Wood?

11 A. Yes.

12 Q. You testified there were some texts related to
13 the murder, but it didn't mean the person actually knew
14 anything about the murder?

15 A. This was the lady that had the car that was
16 loaned to the people involved.

17 Q. You learned there was a woman by the name
18 Christina San Juan. She was in the apartment during the
19 search warrant?

20 A. Correct.

21 Q. She was the woman who had the text
22 information?

23 A. Correct.

24 Q. Did the information you received result in you
25 speaking to a person by the name of Lawrence Vierra?

1 A. Is that the owner of the vehicle. The whole
2 thing is I may have spoke to him on the phone, but I
3 didn't need him because the car had already been located.
4 The car was my focus. I didn't need him or Christina. I
5 was looking for the vehicle.

6 Q. If you look at the fourth paragraph of the
7 same report at Tab 10, does that refresh your recollection
8 that you spoke to Lawrence Vierra.

9 A. Yes, I did. I believe I talked to him on the
10 phone.

11 Q. Okay. But you spoke with him?

12 A. Yes.

13 Q. And he released the automobile?

14 MR. DIGIACOMO: Objection, hearsay. It's not in
15 evidence and the form of the question.

16 THE COURT: Sustained.

17 MS. ERICKSON: What did you learn from him that you then
18 responded to somewhere else?

19 MR. DIGIACOMO: Objection, calls for hearsay.
20 Foundation.

21 THE WITNESS: He's the investigating officer.

22 THE COURT: The form of the question is faulty.
23 To the extent this witness did something in response, ask
24 what he did. The questions is faulty. I'll sustain the
25 objection.

1 BY MS. ERICKSON:

2 Q. In response to information you received May
3 1st and 2nd, did you contact anyone with regard to the
4 call?

5 A. Did I contact a company that had the car that
6 had the car.

7 Q. Was the car present at that company?

8 A. Yes.

9 Q. What car was it?

10 A. It was a gray 2000 Ford Taurus.

11 Q. Showing you State's Exhibit 106. Does that
12 look like the car you saw on May 2nd?

13 A. Yes. It could be. It's got evidence tape on
14 it. Looks like it is the car.

15 Q. But you would agree with me it was a 2000 Ford
16 and you had it towed, didn't you?

17 A. I did.

18 Q. So you have no doubt that these pictures
19 State's 106, 107 is the car you learned was at the company
20 where Mr. Vierra had --

21 MR. DIGIACOMO: Objection. Assumes facts not in
22 evidence.

23 THE COURT: Sustained.

24 BY MS. ERICKSON:

25 Q. Do you have any question that this is the car

1 you had towed that came from the information you received
2 on May 1st and May 23nd about a car that was of interest
3 to you?

4 A. Yes, this is it.

5 Q. Okay. Did you also learn where the car had
6 been located before it was at the company that you saw it
7 at?

8 MR. DIGIACOMO: Objection foundation.

9 MS. ERICKSON: He's the investigating detective.
10 Did he go farther then that. The foundation is did you
11 receive information.

12 THE COURT: I'll overrule on that.

13 THE WITNESS: Yes.

14 BY MS. ERICKSON:

15 Q. You received information?

16 A. I asked where the car was located.

17 MR. DIGIACOMO: Objection hearsay.

18 THE COURT: Sustained. Rephrase.

19 BY MS. ERICKSON:

20 Q. What you learned from a person with regard to
21 the location of the car, did you do anything based upon
22 the information that you received about where the car was
23 located?

24 A. I'm confused. Am I talking about where the
25 car was initially located or where it was located by the

1 business.

2 Q. I'll clarify. You went to the place where the
3 car was located at the business?

4 A. Yes.

5 Q. You had the car towed from that business to
6 North Las Vegas Police Department?

7 A. Correct.

8 Q. While you are getting information about that
9 car, did you learn where it was located by the company?

10 A. Yes.

11 Q. Did you do anything in response to that
12 information?

13 A. Like what.

14 Q. Did you go over to the place it had been
15 located?

16 A. I don't recall even doing that.

17 Q. I'm sorry?

18 A. I don't recall doing that. I know the general
19 area.

20 Q. As the lead detective you also obtained a
21 document from the company where the car was located?

22 A. He gave me some paperwork, and I kept it.

23 Q. Did you also based on the information you
24 received May 1st and May 2nd, interview someone?

25 A. Christina San Juan.

1 Q. If you did?

2 A. That's the only person --

3 Q. Would it refresh your recollection if you
4 actually interview Ms. San Juan, looking at Tab 10 B.

5 A. I interviewed her. There is no doubt.

6 Q. You did interview her?

7 A. Yes.

8 Q. Okay. During your initial investigation did
9 you receive information about where Smokie would be living
10 at?

11 A. Not exactly. Just an area.

12 Q. Do you remember what area?

13 A. Maryland Parkway and Spencer, in that area.

14 Q. So you don't remember Melissa Marin giving you
15 directions to that place?

16 A. She gave me directions, but never directions.
17 There's a store here or there, and I tried to find it, but
18 I don't believe we ever located the right place.

19 Q. You also learned during your investigation
20 that Ms. Cabrera was living at a house -- did you learn
21 where she was living?

22 A. Yes.

23 Q. How did you learn that?

24 A. During the interview with one of the
25 victims.

1 Q. She gave you specific information on how she
2 knows what that house was?

3 A. Just like all her directions -- street, turn
4 and we were able to locate a house that fit that
5 description.

6 Q. In fact, you had surveillance set up there?

7 A. I did.

8 Q. In your -- during your duties as the lead
9 homicide detective, you would request that evidence be
10 examined for forensics and fingerprints?

11 A. Yes.

12 Q. You would submit written requests?

13 A. Yes.

14 Q. Did you request a buccal swab from Ms. Cabrera
15 and Mr. Gonzales?

16 A. Yes.

17 Q. Was that later submitted today for DNA at Las
18 Vegas Metropolitan Police Department?

19 A. Yes.

20 Q. Did there come a time when you also received
21 information about what Ms. Cabrera may have been wearing
22 on April 26?

23 A. Yes.

24 Q. What did you learn she might be wearing?

25 A. I'd have to refresh my recollection. I can

1 recall Dickies. I would have to look at the report that
2 would say.

3 Q. The report by Teresa Mersh?

4 A. Okay. Yes. You want me to read it.

5 Q. As long as it refreshes your recollection.
6 And what was she wearing that morning.

7 A. This is what Officer Mersh, the gray Dickie,
8 black shirt, white tennis shoes. To me it means nothing.
9 At the time, I mean, they could say that she was wearing
10 any clothing. I would -- when I have a name or a person,
11 I don't focus on the clothing. I focus on the idea --
12 because clothing can be discarded, someone says black
13 suite, and somebody else say it was a running suit. Means
14 nothing to me.

15 Q. If it meant nothing to you, why did you ask
16 that those be taken into custody and analyzed?

17 A. Because if I think it applies at the time and
18 I haven't got everything I need to further my case I'll
19 ask for things like that.

20 Q. Okay. Do you remember --

21 THE COURT: For the record, what are you
22 displaying on the Elmo.

23 MS. ERICKSON: Defense Exhibit S, that has been
24 admitted, Judge. Sorry judge.

25 BY MS. ERICKSON:

1 Q. Do you remember asking a CSI to come to North
2 Las Vegas Detention to obtain these shoes and socks?

3 A. No, but if she put it in the report, I did.

4 Q. Okay.

5 THE COURT: May I have counsel at the bench
6 briefly, please. Thank you. When you are ready, you may
7 proceed, Ms. Erickson.

8 BY MS. ERICKSON:

9 Q. In closing did you also obtain information
10 about Smokie's sister?

11 A. I recall something about his sister, but there
12 wasn't a lot that I was interested in.

13 Q. If you look at the email from Officer
14 Knickerbocker, No. 6, would that refresh your recollection
15 about obtaining information?

16 A. That's supposed to be Faveoila. It's on the
17 e-mail and I couldn't tell you -- at the time it wasn't
18 important to me.

19 Q. Okay. But you would agree with me that
20 apparently the name Smokie and Loka appear on there?

21 A. Yes, they do.

22 Q. That was the e-mail regarding Jose Gonzales
23 and Faviola Gonzales?

24 A. I didn't bother. The only thing I focused on
25 was this. I might have asked them what that was at the

1 time or what -- I didn't care. I was looking for him.

2 MS. ERICKSON: Judge, I believe I'm finished. I
3 still need to move for the admission of Defense Exhibit B.

4 THE COURT: When you complete with this witness
5 and Mr. DiGiacomo has reviewed the other picture he
6 continues objection you didn't represent the picture to
7 the witness, you asked questions about it, do you have
8 inquiry with regard to that item.

9 MS. ERICKSON: Based on the information --

10 THE COURT: I assumed you were going to follow
11 up later and make your record as to why you believe I
12 should admit it at this time.

13 MS. ERICKSON: Same exact identification number
14 of Mr. Jose Gonzales. It has a date of the photograph
15 being July 6, 2012. This court has seen Mr. Gonzales. We
16 know this is what he looks like.

17 THE COURT: State have further objection to
18 Defendant's --

19 MR. DIGIACOMO: There is a significant
20 difference between the way Detective Prieto saw Mr.
21 Gonzales and the way he looks in the photograph. It's not
22 relevant for any purpose.

23 THE COURT: May I see it, please.

24 MS. ERICKSON: Yes, judge.

25 THE COURT: Defendant's Proposed BB will be

1 admitted.

2 MS. ERICKSON: Thank you, Judge.

3 THE COURT: You have anymore questions.

4 MR. DIGIACOMO: I have no questions for the
5 witness. I want to get him back to retirement.

6 THE COURT: Hold on. May I see by a show of
7 hands if the jurors have any questions for this witness.
8 Seeing none, Detective, you are excused. There are none
9 of our documents or exhibits --

10 MR. DIGIACOMO: 147.

11 THE COURT: Let's make sure you don't have
12 147.

13 MR. DIGIACOMO: 147 is on top.

14 THE COURT: Please take your documents.

15 JURY ADMONITION

16 During the recess, ladies and gentlemen, you are
17 admonished not to converse among yourselves or with anyone
18 else, including, without limitation, the lawyers, parties
19 and witnesses, on any subject connected with this trial,
20 or any other case referred to during it, or read, watch,
21 or listen to any report of or commentary on the trial, or
22 any person connected with this trial, or any such other
23 case by any medium of information including, without
24 limitation, newspapers, television, internet or radio.

25 * * * * *

CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

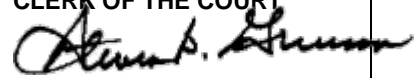
I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, appearing to read "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,)
)
 Plaintiff,)
)
 vs.)
)
 IVONNE CABRERA, #1617623, aka Ivonne)
 CABRERA,)
)
 Defendant.)

Case No. C283700-1
Dept. No. XXV

Before the Honorable KATHLEEN E. DELANEY
Wednesday, July 12, 2017, 2:50 P.M.
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State: MARC DIGIACOMO, ESQ.
HETTY WONG, ESQ.
Deputies District Attorney

For the Defendant: BRET WHIPPLE, ESQ.
PATRICIA ERICKSON, ESQ.
Attorneys at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

I N D E X

Witnesses called by the Defense:

IVONNE CABRERA

Direct Examination by Mr. Whipple:

4

1 Las Vegas, Clark County, Nevada

2 Wednesday, July 12, 2017, 2:50 P.M.

3 P R O C E E D I N G S

4 * * * * *

02:50PM

5 THE MARSHAL: All rise for the jury.

6 (The following proceedings were had in open

7 Court in the presence of the jury panel:)

8 THE COURT: Thank you, ladies and gentlemen.

9 Please take your seats as you reach them. I'll invite everyone

02:51PM

10 else to have a seat as well.

11 Please make sure your phones are off or silenced

12 if you used them over the break.

13 We appreciate your patience with this later than
14 usual start time. It was necessary. And at this time,

02:51PM

15 however, I believe we are ready to proceed.

16 I'll ask the defense to please call their next

17 witness.

18 MR. WHIPPLE: Your Honor, with the Court's
19 permission, we'd like to call Ms. Ivonne Cabrera as our next

02:51PM

20 witness.

21 THE COURT: Ms. Cabrera, please, as you go up to
22 the podium and reach the witness stand, if you'll just remain
23 standing at the chair, then the Clerk will swear you in.

24 Remain standing, please.

02:51PM

25 THE CLERK: Raise your right hand.

1 IVONNE CABRERA

2 called as a witness on behalf of the Defense,

3 having been first duly sworn,

4 was examined and testified as follows:

02:51PM 5 THE WITNESS: I do.

6 THE CLERK: Please take a seat.

7 Can you please state and spell your first and
8 last name for the record.

9 THE WITNESS: Ivonne Cabrera, I-V-O-N-N-E,
02:51PM 10 Cabrera, C-A-B-R-E-R-A.

11 THE CLERK: Thank you.

12 THE COURT: Mr. Whipple, whenever you are ready.

13 MR. WHIPPLE: Thank you, Your Honor.

14 DIRECT EXAMINATION

02:52PM 15 BY MR. WHIPPLE:

16 Q. Ms. Cabrera, is it okay if I call you Ivonne?

17 A. Of course, yes.

18 Q. Ivonne, where were you born and raised?

19 A. I was born in California, Los Angeles.

02:52PM 20 Q. And did there come a time when you moved here to Las
21 Vegas?

22 A. Yes.

23 Q. How old were you at that time?

24 A. 17.

02:52PM 25 Q. Do you recall what year that was approximately?

1 A. '97.

2 Q. Did you go to one of our local high schools?

3 A. Yes, I did.

4 Q. And which one was that?

02:52PM 5 A. Eldorado High School.

6 Q. Did you graduate?

7 A. Yes.

8 Q. What year was that?

9 A. Class of '98.

02:52PM 10 Q. If you don't mind me asking, how old are you today?

11 A. I'm 36.

12 Q. When do you turn 37?

13 A. Monday.

14 Q. Okay. Now, I want to ask you about a series of jobs
02:52PM 15 that you had between -- when you graduated and -- just kind of
16 a list from when you graduated until 2012.

17 A. I did management for McDonalds, Taco Bell, worked at
18 the Orleans Hotel and Casino as a cashier, I was a patient
19 service rep for Mountain View Hospital, as well as Southern
02:53PM 20 Hills Hospital. I also worked at a ranch with my husband.

21 And the most recent one was at the law firm. I was
22 the legal assistant for --

23 Q. I'm going to ask you just a couple questions on the
24 last two. You are a mother you said?

02:53PM 25 A. Yes.

1 Q. And how many children?

2 A. I have two boys.

3 Q. Can you give me their names and ages?

4 A. Andres is 15 and Erik is 14.

02:53PM 5 Q. And when were -- when were you married?

6 A. Got married in 2000.

7 Q. And what job -- where were you working after you got
8 married?

9 A. We lived at a ranch.

02:53PM 10 Q. When you say "a ranch," what do you mean by "a
11 ranch"?

12 A. It's a horse property, five-acre property. My
13 husband knew how to train horses. It was a good environment
14 for us. So we lived there on the premises with the people.
02:54PM 15 They had a little guesthouse for us.

16 Q. Did you work at the time?

17 A. That was part of our job. We got paid.

18 Q. Was that here in Las Vegas?

19 A. Yes, it was.

02:54PM 20 Q. Okay. And then at some point you moved on to a law
21 office?

22 A. Yes, I did.

23 Q. What was the name of the firm?

24 A. Ladah law building.

02:54PM 25 Q. And where is that office located?

1 A. It's on 517 South Third Street, between Bonneville
2 and Third Street.

3 Q. So that's just walking distance from here?

4 A. Right.

02:54PM 5 Q. And how many years were you with the Ladah law
6 office?

7 A. Close to three years.

8 Q. What were your job duties?

9 A. We handled personal injury cases, some criminal. It
02:55PM 10 was filing, answering phones, talking -- I used to translate
11 for Spanish-speaking clients. I would get clients myself for
12 my boss.

13 I was learning as I kept working there. I was
14 learning a lot. They were teaching me. They were training me
02:55PM 15 because I was willing to learn.

16 Q. Are you still together with your husband?

17 A. No, I'm not.

18 Q. When did that relationship terminate?

19 A. I was with him for five years. Around 2005 we split.

02:55PM 20 Q. Is this on the ranch?

21 A. We had to leave the ranch about two months before we
22 split.

23 Q. And what was the basis of your split?

24 MR. DIGIACOMO: Judge, I apologize, but could we
02:55PM 25 object on relevance?

1 THE COURT: You can object, and I will -- Mr.
2 Digiacomo; but I appreciate there are some background and some
3 foundation here that would be appropriate, Mr. Whipple, but if
4 you want to just make a response for the record.

02:55PM

5 MR. WHIPPLE: You know, I think it's going to be
6 more relevant after we get a little further into the direct,
7 and so I'll come back to this point.

02:56PM

8 THE COURT: All right. And, again, I have no
9 problem with some foundational information with regard to this
10 witness; however, once we get a little further afield, I think
11 we do need to bring it back to a relevant point.

12 MR. WHIPPLE: Sure.

13 THE COURT: Okay. I'll sustain the objection
14 officially and you can proceed.

02:56PM

15 MR. WHIPPLE: Thank you.

16 BY MR. WHIPPLE:

17 Q. Ivonne, let's go to 2012. Was there -- did there
18 come a time when you left your employ at the law firm?

19 A. Yes, I did.

02:56PM

20 Q. And when was that?

21 A. I ended up leaving approximately in March. That was,
22 like, my last day of work.

23 Q. And --

24 A. March 3rd, I believe.

02:56PM

25 Q. And what was the basis or why did you end up leaving

1 the law firm?

2 A. Back in September of 2011 I got into a car accident.
3 I was hurt. I was going through therapy through the
4 chiropractor. I was in pain.

02:57PM 5 Q. Did you at some point find yourself involved with a
6 drug environment?

7 A. I did.

8 Q. And when was that?

9 A. Right after the car accident.

02:57PM 10 Q. And is that why you decided -- is that why you left
11 the law office in March of 2012?

12 A. Yes, I did.

13 Q. Now, obviously you've had an opportunity to sit
14 through a couple -- a couple weeks of trial here. You know
02:57PM 15 why -- obviously, we all know why we're here.

16 MR. WHIPPLE: What I'd like to do right now,
17 Your Honor, with the Court's permission, I'd like to bring out
18 the -- the -- what do you call it?

19 THE COURT: Ease1.

02:57PM 20 MR. WHIPPLE: -- ease1.

21 And if I could, with the Court's permission,
22 just go through a list of names of the folks that we've heard
23 from and discussed in this case.

24 THE COURT: I have no problem with that, but go
02:57PM 25 ahead and put the ease1 where we discussed in the line of

1 sight, please, hopefully appropriate for everyone.

2 MR. WHIPPLE: Thank you, Your Honor.

3 THE COURT: And to the extent that, because it
4 may be difficult to be seen from the witness stand while it's
02:57PM 5 still -- it won't be seen by the jurors and the State, if
6 Ms. Cabrera needs to come down and illustrate, you can do that
7 as well.

8 MR. WHIPPLE: I really appreciate that,
9 Your Honor.

02:58PM 10 And also I'm going to show the picture to these
11 names as well to kind of clarify some issues.

12 BY MR. WHIPPLE:

13 Q. If you don't mind, Ivonne, why don't you come down
14 here and we can go through these. Go ahead and just stand
02:58PM 15 right there.

16 And I'm going to start with Mr. Villegas. Okay? And
17 I'm going to show you a picture, if I can.

18 MR. WHIPPLE: Your Honor, this is State's
19 Exhibit 151.

02:58PM 20 BY MR. WHIPPLE:

21 Q. Do you recognize that gentleman?

22 A. Yes.

23 Q. And who is that?

24 A. That's Miguel.

02:58PM 25 Q. Okay. And --

1 THE COURT: So one thing I'm going to have to
2 say, because I can already tell this potentially as being a
3 problem, I have no problem if Ms. Cabrera stands there, but she
4 now has her back to the court reporter and I could barely hear
02:58PM 5 what she said and don't know that the court reporter would be
6 able to hear.

7 So she either needs to maybe stand on the other
8 side -- no, I mean, if you need her to illustrate, then she can
9 be near the board, but I'm just saying if she's on the other
02:59PM 10 side perhaps speaking where the reporter can see her --

11 MR. WHIPPLE: Okay. Sure.

12 THE COURT: -- that might facilitate, or she
13 needs to speak up, either way.

14 MR. WHIPPLE: Let's do both.

02:59PM 15 BY MR. WHIPPLE:

16 Q. Why don't you come over here, Ivonne. Make sure you
17 speak up. Okay?

18 Okay. This is, again, State's Exhibit 151. Who is
19 this gentleman?

02:59PM 20 A. Miguel.

21 Q. Okay. And I see his disfigurement. What is -- why
22 did that -- how did that disfigurement come about?

23 A. I believe it was a car accident he had.

24 Q. Okay. Now, tell the ladies and gentlemen your
02:59PM 25 contact or how you knew Mr. -- Mr. Miguel Villegas back in

1 March, April, 2012.

2 A. We used to do drugs together.

3 Q. Now, did you -- we know his residence is on Webster?

4 A. Correct.

02:59PM

5 Q. Okay. And did there come a time when you actually
6 moved to the Webster residence?

7 A. I did. After he seen my living conditions, where I
8 was living at, we had no A/C, it was hot, it was hot. It was
9 kind of outside the house so we didn't have an air conditioner.

03:00PM

10 Q. Let me stop you right there.

11 We're talking Jan's house; right?

12 A. At Jan's house.

13 Q. Do you remember Jan? She talked about this bedroom
14 out in the back?

03:00PM

15 A. Yes.

16 Q. It was an add-on to the house?

17 A. Right.

18 Q. And is that where you considered home?

19 A. Yes.

03:00PM

20 Q. Did they have air conditioning in that room?

21 A. No.

22 Q. Were you looking for some place that's cooler?

23 A. Yes.

24 Q. Did Mr. Miguel Villegas invite you into his

03:00PM

25 residence?

1 A. He did.

2 Q. Tell these ladies and gentlemen when that occurred
3 and the circumstances.

4 A. It happened, like, two months before this incident.

03:00PM 5 He offered me a place to stay. He did mention he had a
6 roommate, but he didn't mind if I stayed with him.

7 Q. Let me stop you there.

8 Did you take your belongings?

9 A. Yes, I did. I took some of my belongings, personal
03:00PM 10 stuff, my kids' pictures, paperwork.

11 Q. What room were the belongings in, your belongings?

12 A. In the first bedroom, which would be the northeast
13 bedroom.

14 Q. You mean the first one as you come in?

03:00PM 15 A. The first one, yes.

16 Q. So that would actually be in the south bedroom.

17 A. Okay.

18 Q. Okay?

19 A. Okay.

03:01PM 20 Q. And so did there come a time when you actually
21 decided to move out?

22 A. I did.

23 Q. And how long were you there?

24 A. Not even a week.

03:01PM 25 Q. Okay. Tell the ladies and gentlemen what caused the

1 move out.

2 A. There was one occasion when we were using drugs and
3 he wanted to go -- and he was excited, he started wanting to
4 sleep with me, and I wasn't going to have it. He actually
03:01PM 5 grabbed me by the hands and pushed me against the bed, tried to
6 kiss me. And I pushed him off and I left. I walked out. I
7 had to leave my stuff. I didn't want to stay there. He told
8 me that I wasn't going to get back.

9 Q. All right. Now, did you learn later that he was
03:01PM 10 actually taken -- was actually picked up on warrants?

11 A. Yes.

12 Q. And how -- how long after you moved out was your
13 understanding that he was taken -- taken to jail because of
14 warrants?

03:02PM 15 A. Not that long, two or three weeks.

16 Q. Okay. Now, I want to ask you a quick question,
17 Ivonne.

18 Do you see all these folks that we've talked about
19 here? We just started with Miguel and I've got all this list
03:02PM 20 (indicating).

21 A. Yes.

22 Q. I've had an opportunity to talk to you about that
23 list; right?

24 A. Yeah.

03:02PM 25 Q. What is your connection with each and every person on

1 that list?

2 A. I was the only one with a car, transportation with
3 driver's license, no warrants.

4 Q. So you could drive them around?

03:02PM 5 A. Yes.

6 Q. Now, did you know Erik or Smiley had a vehicle as
7 well?

8 A. Erik had a vehicle towards the end, which was offered
9 to me.

03:02PM 10 Q. Now, did you also have using drugs as a -- as a
11 relationship?

12 A. Yes, there was drug activity. We all got high.

13 Q. Now, let me just ask you about your finances during
14 that time period. Okay?

03:03PM 15 A. Okay.

16 Q. Were you in a situation where you needed money?

17 A. Not really.

18 Q. Why is that?

19 A. I was collecting unemployment myself, and my mother
03:03PM 20 was always -- has always been there for me. I had a couple
21 statements with her.

22 Q. Now, did you ever have to pay --

23 THE COURT: Excuse me.

24 BY MR. WHIPPLE:

03:03PM 25 Q. Now, when you talked about drugs, what was the drug

1 of choice for all of you folks in that group?

2 A. Meth.

3 Q. And did you ever -- and normally in this situation,
4 were you in a position where you paid for the meth?

03:03PM 5 A. Pretty much not.

6 Q. And why is that?

7 A. Either I took them places in my car and I was always
8 given drugs. I always knew the drugs connects. It was always
9 given to me.

03:03PM 10 Q. All right. Let's go now down to James Headrick.
11 Okay?

12 A. Okay.

13 Q. Let me just swap out the picture.

14 MR. WHIPPLE: This is State's Exhibit 115,
03:04PM 15 Your Honor.

16 BY MR. WHIPPLE:

17 Q. Can you see that, Ivonne?

18 A. Yes.

19 Q. Do you recognize that man?

03:04PM 20 A. Yes. That's James.

21 Q. How would you -- what was your relationship to that
22 gentleman?

23 A. He was my friend.

24 Q. And how long had you -- well, let me -- let me ask
03:04PM 25 you: How long -- in April of 2012, how long had you known

1 Mr. James Headrick?

2 A. About two months.

3 Q. And how is it that you met him?

4 A. Through Miguel.

03:04PM 5 Q. Okay. And tell -- do you recall where that was?

6 A. At his -- he had a -- a room at the Barcelona, now, I
7 guess, it's the Siegel Suites. We were getting high, and he
8 also was telling me that he did the WalMart scheme.

9 Q. Now, we're going to -- I want to ask you about that
03:04PM 10 in a minute.

11 But right now I just want to know how long the
12 relationship with Mr. Headrick was back in April and your
13 relationship -- what you considered your relationship with him.
14 Okay?

03:04PM 15 All right. Let's go down to Ashley Wantland. We get
16 that exhibit. Do you remember Ashley testifying here today --
17 or yesterday? Do you remember her testifying in this trial?

18 A. Yes, I do.

19 Q. Okay. Do you recognize her?

03:05PM 20 MR. WHIPPLE: This, again, Your Honor, is
21 State's Exhibit 116.

22 BY MR. WHIPPLE:

23 Q. Do you recognize her there?

24 A. Yes.

03:05PM 25 Q. Okay. Back in April of 2012 tell us your

1 relationship with Ms. Ashley Wantland.

2 A. We were friends.

3 Q. How long had you known her as of this time of the
4 shooting?

03:05PM 5 A. The same as James, two months.

6 Q. How did you meet her?

7 A. The same, smoking drugs at their place.

8 Q. And when you say "their place," who's that?

9 A. James and her.

03:05PM 10 Q. Isn't that -- is that on Webster Street, Apartment C,
11 or would that be in a different location?

12 A. No. A different location.

13 Q. Where at?

14 A. At the Siegel Suites.

03:05PM 15 Q. Okay. All right.

16 Now, let's talk about Erik Morales, also known as
17 Smiley, do you recognize Erik?

18 A. Yes.

19 Q. Okay. Tell me the same form of questions.

03:06PM 20 How long had you known Erik back in April 2012 at the
21 time of the shooting?

22 MR. WHIPPLE: Your Honor, for the record -- my
23 apologies -- that's State's Exhibit 118.

24 THE COURT: Thank you.

03:06PM 25 THE WITNESS: I had seen him a couple times with

1 Melissa. I've never interacted with him until he came looking
2 for me.

3 BY MR. WHIPPLE:

4 Q. Okay.

03:06PM 5 A. I would say about three weeks.

6 Q. Do you remember Melissa testifying about how you had
7 taken Erik to -- back to Robles's house and they reconnected?

8 A. Yes.

03:06PM 9 Q. Is that what you're talking about? Is that where you
10 kind of first met her?

11 A. Yes.

12 Q. Okay. Now, let's talk about Melissa. Do you
13 remember Melissa testifying?

03:06PM 14 MR. WHIPPLE: Your Honor, this is Exhibit 119,
15 State's Exhibit again.

16 BY MR. WHIPPLE:

17 Q. Do you recognize Melissa?

18 A. Yes, I do.

19 Q. Okay. When did you meet Melissa?

03:06PM 20 A. Four months before -- like four months before that.

21 Q. And how was it -- how did that come about?

22 A. We became very, very good friends.

23 Q. Okay. She talked -- or testified about her actually
24 using your cell phone when you were in the shower one time?

03:07PM 25 A. She actually used the phone a lot of times.

1 Q. Was her --

2 A. I didn't have a problem with it.

3 Q. Did you get Facebook?

4 A. Yes.

03:07PM 5 Q. Was her Facebook on your phone, in other words?

6 A. Yes.

7 Q. And so just tell me, how much time -- well, tell me
8 how was it that you met her; do you recall?

9 A. I met her, that I actually got to sit down and got to
03:07PM 10 know her, she was taken to my -- to Jan's house on Bassler.

11 She was having -- she had just got in a car accident and she
12 wasn't feeling good. I don't know what was wrong with her.

13 Her friend said it was an asthma attack. I don't know.

14 I offered her my room. I didn't really know her.

03:07PM 15 And we helped her out until she got better.

16 Q. When you say "we," who would that be?

17 A. That would be Jan, the girl that was driving her,
18 Caroline --

19 Q. Okay.

03:08PM 20 A. -- and myself.

21 Q. Okay. How was Caroline just connected to this, just
22 so --

23 A. Caroline is a very good friend of mine. Her mom is
24 the one that got me the job at the law firm.

03:08PM 25 Q. And did Melissa kind of come to you because of your

1 contacts through the law firm and the personal injury --
2 potential personal injury case?

3 A. Right. Caroline said: Would you please call Ramsey?
4 She knew who Ramsey was. And there's another attorney there
03:08PM 5 too, Ted Williams, which he represented her a couple times.

6 So I did call my boss and I told him the situation
7 and he wanted to see them -- had an appointment with them.

8 Q. Okay. Because of the potential accident?

9 A. Yes.

03:08PM 10 Q. Okay. And then after that point is when -- how --
11 let me just ask you if you could: How long -- and during that
12 four-month time period, how would you consider Melissa? Was
13 she, like, just kind of, like, a regular friend or was she a
14 close friend? How often would you see her?

03:08PM 15 A. We were together a lot, often.

16 Q. Okay.

17 A. I mean, for her to have access to stay at my house, I
18 pretty much trusted her.

19 Q. Okay. Okay.

03:09PM 20 Now, let's go to this name, Loka. What's Loka's
21 name, real name, do you know or did you know?

22 A. Fabiola Gonzales.

23 Q. Yes.

24 MR. WHIPPLE: Your Honor, this is Exhibit 150.

03:09PM 25 BY MR. WHIPPLE:

1 Q. Who is that?

2 A. That would be Loka.

3 Q. Is that what she went by?

4 A. Yes.

03:09PM 5 Q. Now, we're going to see some text messages in a -- in
6 a -- during your Direct where the name Loka is used?

7 A. Yes.

8 Q. Now, what -- did you -- there's been -- I know that
9 there's been different nicknames, like Loka and Smiley. Did
03:09PM 10 you have a nickname that they knew you by as well?

11 A. Yes, I did.

12 Q. And what was that?

13 A. Chinola.

14 Q. Okay. So anything in those text messages that would
03:09PM 15 refer to Chinola would be yourself; right?

16 A. Right.

17 Q. And then when you are talking to Loka, that would be
18 Fabiola Gonzales?

19 A. Correct.

03:10PM 20 Q. Okay. Tell us how you met Loka?

21 A. The first time I ever met her I went to buy drugs.
22 Her baby daddy was the drug connect. I was introduced to her
23 as Loka.

24 Then after that, a couple more -- a couple years went
03:10PM 25 by, and we just crossed paths with the drug use and ended up

1 going to some friend's lodge, pretty much it.

2 Q. How close a friend was she?

3 A. Not really a close friend.

4 Q. She was just somebody you -- you associated with?

03:10PM 5 A. Yes.

6 Q. Okay. All right.

7 Now, let's talk about her brother, Jose Gonzales.

8 A. Yes.

9 Q. Let me ask you a few questions about this gentleman
03:10PM 10 as well. Do you recognize this gentleman?

11 A. Yes, I do.

12 Q. Let me go back to April 2012. How -- how well did
13 you know Smokey at that time period?

14 A. Last time I had -- the first time I seen him was in
03:11PM 15 2007. It was the first time I got arrested -- a Wednesday.

16 THE COURT: She's going to have to speak up.

17 THE WITNESS: Sorry, sorry.

18 THE COURT: That's okay.

19 THE WITNESS: The first time I met him was 2007,
03:11PM 20 a Wednesday.

21 BY MR. WHIPPLE:

22 Q. Okay.

23 A. And it was just a: Hi, I'm Smokey. Hi, I'm Chinola.
24 That's it.

03:11PM 25 Q. Did there come a time when he was gone for a period

1 of time?

2 A. Yes.

3 Q. What happened?

03:11PM

4 A. I heard he was in jail. He was in prison, serving a
5 five-year term, something like that.

6 Q. Okay. Now, in April of 2012 did there come a time
7 when he reappeared just before that?

03:11PM

8 A. He did. I -- at first I didn't recognize him because
9 he didn't look half of what he looked like when I first met
10 him. He was sober. He was clean. He had just gotten out of
11 prison.

12 And the friend that I was with said: That's Smokey.
13 Do you remember Smokey, Loka's brother?

14 I said: Oh. And I just said: Hi, Smokey.

03:12PM

15 And I told him that he looked good. His face opened,
16 and that was it.

17 Q. Okay. Now, I don't know -- I've got one more picture
18 I want to show you.

03:12PM

19 MR. WHIPPLE: And if I can, Your Honor, with the
20 Court's permission, this is State's Proposed Exhibit 171.

21 BY MR. WHIPPLE:

22 Q. Do you recognize this?

23 A. Yes.

03:12PM

24 Q. Okay. And is that a fair and accurate description of
25 a person that you know back at that same time period?

1 A. Yes.

2 MR. WHIPPLE: Okay. And with the Court's
3 permission, I'll move to admit.

03:12PM

4 MR. DIGIACOMO: It's my exhibit, so I certainly
5 have no objection.

6 MR. WHIPPLE: Yes.

7 THE COURT: And I'm sorry. State's number
8 again?

9 MR. WHIPPLE: 171.

03:12PM

10 THE COURT: 171 will be admitted and you may
11 publish.

12 MR. WHIPPLE: Thank you, Your Honor.

13 (State's Exhibit Number 171
14 was admitted into evidence.)

03:12PM

15 BY MR. WHIPPLE:

16 Q. And who is this young lady?

17 A. That would be Felicia.

18 Q. Okay. Let me just put this name down here so that we
19 kind of get all -- okay. Forgive my writing, folks. I'm not
20 very good to begin with, let alone standing up.

03:13PM

21 So there's apparently some confusion. Do you
22 remember when Jan testified yesterday?

23 A. Yes, I do.

24 Q. And so I want to make sure we have the difference
25 between Loka and Felicia. Do you -- who's who?

03:13PM

1 A. This would be Felicia (indicating).

2 Q. Okay. And how well did you know her?

3 A. The same, four months.

4 Q. Okay. All right.

03:13PM 5 Now we had Jan testify yesterday. That's the next
6 one on the list. We obviously know that she was your roommate;
7 correct?

8 A. Right.

9 Q. And how long had you been roommates with Jan back in
03:13PM 10 2014?

11 A. I had known her for a couple years.

12 Q. How long had you lived in that house?

13 A. It was on and off. Before I got arrested the first
14 time, I lived there for, like, eight months.

03:14PM 15 Q. Okay. All right.

16 Now, again, you've mentioned that all these folks,
17 one thing you had in common is you were, like, the driver and
18 there was methamphetamine use; correct?

19 A. Correct.

03:14PM 20 Q. Okay. Now, I put a couple other names down here of
21 folks that have come up. I don't have pictures for them. Old
22 Man Jim and Patrick Robles, what was their relationship to the
23 rest of these folks?

24 A. Um, they were drug dealers and sold dope.

03:14PM 25 Q. They did what?

1 A. They sold drugs.

2 Q. Okay. And that's where, in other words, you went to
3 get your methamphetamine?

4 A. Yes.

03:14PM 5 Q. Okay. All right.

6 MR. WHIPPLE: Your Honor, with the Court's
7 permission, I think I'll just push that back, and I can now
8 continue to ask questions to Ms. Ivonne Cabrera from the stand.

9 THE COURT: All right. Ms. Cabrera, why don't
03:14PM 10 you retake the stand first.

11 And then, Mr. Whipple, go ahead, wherever it's
12 easiest to move the easel, you can do that. If you need it
13 again for later, that's fine.

14 MR. WHIPPLE: Okay. I'm going to push it back
03:15PM 15 because I may point at it a couple times if that's all right.

16 THE COURT: That's fine. Right where you have
17 it is just fine.

18 MR. WHIPPLE: Okay.

19 BY MR. WHIPPLE:

03:15PM 20 Q. Now, Ivonne, I want to ask you a couple -- there are
21 a couple of factual situations that came up.

22 The first one is about the tools. Do you recall -- I
23 guess it was -- actually, what I'm talking about, the issue of
24 some tools. Do you -- do you remember that?

03:15PM 25 A. Yes.

1 Q. Okay. So would you tell these ladies and gentlemen
2 your understanding, what happened with the tools?

3 Now, these are tools that were in Miguel Villegas's
4 house; correct?

03:15PM

5 A. Correct.

6 Q. Okay. And if you recall, Ashley testified that she
7 was over at Jan's house with you and that you disappeared
8 early, and then she went home and the tools were -- or some
9 things were missing.

03:15PM

10 A. Right.

11 Q. Do you recall that?

12 A. Yes.

13 Q. All right. Tell the ladies and gentlemen what
14 happened.

03:15PM

15 A. James and Ashley showed up at my house, at Jan's
16 house.

17 James knew that my stuff was -- were -- was in the
18 apartment. He pulled me to the side, didn't want Ashley to
19 know that he was telling me that it was messed up, that Miguel
20 didn't give me my stuff back. If I wanted to go get my stuff,
21 that the back door was open, to just go in there and grab my
22 stuff.

03:16PM

23 And that they needed to come up with some money to
24 keep the apartment. He said there's some tools already in the
03:16PM 25 living room, grab them. If you can sell them, sell them.

1 That's how it happened.

2 Q. Okay. Now, was this kept secret from Ashley?

3 A. Yes, it did.

4 Q. And why?

03:16PM 5 A. Because according -- my understanding, Miguel didn't
6 want me to know that he was locked up.

7 Q. In other words, they didn't -- you weren't supposed
8 to be back in the apartment?

9 A. Right, right, right, right.

03:16PM 10 Q. And you had a friendship with James and so he was --

11 A. Yes.

12 Q. Now, let me ask you another question. The issue of
13 rent, who was supposed to pay the rent while Miguel was out?

14 A. Ashley and James.

03:17PM 15 Q. And was that a concern in your communications with
16 Ashley -- or with James, was that a concern regarding that
17 apartment?

18 A. Yes.

19 Q. And what were the sources of income that they were
03:17PM 20 utilizing or supposed to utilize in order to pay that apartment
21 rent?

22 A. The tools being sold. Bring some money in to -- they
23 had half of the money. They needed to come up with half of
24 the -- half of the other rent.

03:17PM 25 Q. And where did they get half of the money?

1 A. I believe he had an unemployment card with Miguel's
2 pin, and he was supposed to withdraw that and give it to his
3 landlord.

4 Q. Let me show you, if I can --

03:17PM 5 MR. WHIPPLE: Your Honor, this is Exhibit 107.

6 BY MR. WHIPPLE:

7 Q. I'm not sure if you've even seen this, Ivonne. Have
8 you ever seen this?

9 A. I never saw this.

03:17PM 10 Q. Okay. You just knew that James was responsible for
11 paying the rent and that he --

12 THE COURT: And you just said that. She didn't
13 identify it.

14 MR. WHIPPLE: Your Honor, that was 117.

03:17PM 15 THE COURT: Thank you. Or maybe you did
16 identify it. But State's 117 was displayed and not recognized.

17 Go ahead, Mr. Whipple.

18 BY MR. WHIPPLE:

19 Q. You just knew that they had to pay the rent and they
03:18PM 20 could only get a portion of it out of the debit card?

21 A. Right.

22 Q. And so was that a source of concern for those folks
23 that were over there living at Webster, Apartment C?

24 A. Yes.

03:18PM 25 Q. All right. Now, let me now move to the issue of the

1 WalMart. Do you remember Ashley talking about this WalMart
2 trip?

3 A. Yes.

4 Q. Okay. Were you driving them in that WalMart --

03:18PM 5 A. I was.

6 Q. -- that Walmart -- all right.

7 When did that happen in -- in correlation to the
8 shooting? Was it -- do you remember how many days or how much
9 time period before the shooting?

03:18PM 10 A. Probably, like, not even two weeks before.

11 Q. And --

12 A. In between that.

13 Q. I'm sorry?

14 A. In between two weeks and the day of the shooting.

03:18PM 15 Q. Okay. Tell these ladies and gentlemen about that
16 particular event.

17 A. I was driving around with Loka at the time.

18 Q. Let me -- let me stop you because I want to make sure
19 we get it right. All right?

03:19PM 20 A. Okay.

21 Q. So it was James was in the car with you; right?

22 A. Yeah.

23 Q. And his girlfriend, Ashley?

24 A. Yes.

03:19PM 25 Q. Okay. And then also Loka?

1 A. Correct.

2 Q. Okay. And tell -- okay. Keep going. I'm sorry to
3 interrupt you.

03:19PM

4 A. James mentioned that he can come up with some money,
5 easy money, just to drive him around. I didn't have to get out
6 of the car.

7 I said: Okay. I didn't have anything else to do.

03:19PM

8 We drove around and one of the WalMarts he walked in,
9 it was taking forever, and he came out with a couple of -- I
10 don't know if they were computer games or video games. I don't
11 know. Then we go to another WalMart, which Ashley walked in
12 and returned it.

13 Q. So let me stop you there.

03:20PM

14 So -- so James would go into one WalMart, steal some
15 video games, some video something --

16 A. Yes.

17 Q. -- he'd get in the car and drive to another WalMart,
18 and then Ashley would take it in and try to get -- what
19 happened?

03:20PM

20 A. She -- I guess she would go and try to return it, try
21 to get cash at first, but if she didn't, they would give her
22 a -- a gift card, I believe.

23 Q. Okay.

24 A. And --

03:20PM

25 Q. And then once you got the gift card, what happened?

1 A. James suggested that we went to another WalMart, so
2 he could try to switch that credit for cash when people were
3 paying for their stuff.

03:20PM

4 So he would actually, like, wait for a person that
5 had a lot of stuff so he could just trade it for cash.

6 Q. In other words -- in other words, I may have a \$200
7 gift card, give me \$180 in cash --

8 A. Right.

03:20PM

9 Q. Make sure it works. Everybody -- and that's how you
10 converted those games to cash?

11 A. Yes.

12 Q. Okay. Now, how long did that take on that particular
13 day that this occurred?

14 A. All day.

03:20PM

15 Q. Do you recall what time of day it was when you
16 started?

17 A. It was a little bit before noon.

18 Q. And then what time did you actually finish or get the
19 \$180?

03:21PM

20 A. Like, 9:00 or 10:00 o'clock at night.

21 Q. Now, did James show you this money?

22 A. No. I didn't see the money.

23 Q. When he came back to the car, what happened?

03:21PM

24 A. He just said, I was able to get 180. And I believe
25 he still had credit on his card, a couple dollars.

1 He said -- let's get some drugs. Loka, without
2 hesitation, asked how much.

3 Q. Now, when you say "how much," what do you mean?

4 A. How much drugs was he wanting to buy.

03:21PM 5 Q. Okay. Now, this, again, is -- this is the Loka that
6 we discussed earlier; correct (indicating)?

7 A. Correct.

8 Q. Okay. So then what happened next?

9 A. I had -- I was under the impression at first that it
03:22PM 10 was for the rent, but I just went ahead and went along with it.

11 Q. So did you -- were you directed by Loka to a certain
12 residence?

13 A. Yes. She made a phone call, I believe, to her drug
14 dealer, and we ended up going to a shopping center. I believe,
03:22PM 15 the guy worked there. I was parked towards the back of the
16 building where the back doors open for the people that worked
17 there come out.

18 I seen a guy with crutches, a bald-headed guy.
19 That's all I was able to see. And she got the dope from him.

03:22PM 20 Q. Where did you go after that?

21 A. Loka suggested that we went to her house, where
22 Smokey and Smokey's wife was there.

23 Q. Okay. Now, where was that house located? What
24 proximity?

03:22PM 25 A. Around UNLV.

1 Q. Is that the one location when they talk about over
2 there on Tropicana or over by UNLV?

3 A. Yes.

4 Q. Is that where Smokey lived?

03:23PM 5 A. Yes.

6 Q. And who lived in the house with him?

7 A. It was -- that I know of, it was his wife, Smokey,
8 and Loka.

9 Q. His sister?

03:23PM 10 A. His sister.

11 Q. Okay. So what happens when you get there?

12 A. Um, we get there, he starts giving people --

13 Q. No. Don't tell me he. Just give me a name, because
14 we've got a couple guys.

03:23PM 15 A. James.

16 Q. If you don't mind, kind of sit up and speak up
17 because I want to make sure everybody can hear. Okay?

18 A. James starts distributing drugs to everyone.

19 Q. Now, were you -- were you paid at all or -- or --

03:23PM 20 A. I wasn't expecting anything.

21 Q. Why is that?

22 A. Because it was for the rent, according to my --

23 Q. Did you take -- did you take some methamphetamine?

24 A. No.

03:23PM 25 Q. Did you just smoke -- did you just smoke?

1 A. I smoked. I sure did.

2 Q. Okay. How many people smoked that particular evening
3 in that house?

4 A. There was six of us.

03:24PM 5 Q. Okay. And included in that was Smokey?

6 A. Yes.

7 Q. All right. And James was in that?

8 A. Yes.

9 Q. How long were you smoke- -- how long was the smoking
03:24PM 10 of methamphetamine taking place over by UNLV? How long did
11 that take place?

12 A. Like half an hour.

13 Q. Now, was James talking when this happened?

14 A. Very much.

03:24PM 15 Q. And what did he say?

16 A. He -- as soon as he started feeling the high, I
17 noticed that he started talking about how he'd come up -- how
18 he makes money, the scheme. And that -- and he's talking to
19 Smokey at the time, and Smokey's just listening to him.

03:24PM 20 And he's talking about the unemployment card that
21 he's got, that he can do things with cards, gift cards, make
22 money, how he used to scan the receipts and actually get money,
23 cash from them.

24 Q. And --

03:25PM 25 A. Basically how he made money.

1 Q. Okay. And this was to -- open to everybody that was
2 there?

3 A. Yes.

4 Q. And Smokey was one of the folks that was listening to
03:25PM 5 it?

6 A. Yes.

7 Q. All right. Now, where did you go -- or did you go --
8 where did you -- I guess the question is is what happened now
9 after that 30 minutes? What happened next?

03:25PM 10 A. I suggested that we leave. Loka said: Can you drop
11 us off, me and Smokey, drop us off at Patrick's house?

12 Q. That would be this Mr. Robles. I didn't have a
13 picture, but it's the one and the same gentleman right here
14 (indicating); right?

03:25PM 15 A. Yes.

16 Q. Okay. And did you know why they were going there or
17 just tell us what happened?

18 A. They were very, very good friends with him.

19 Q. Who is that?

03:25PM 20 A. Loka and Smokey, with Patrick.

21 Q. Okay.

22 A. He's the -- he's another dope man.

23 Q. Okay. And tell me, where was this house of Patrick's
24 located?

03:25PM 25 A. It was in some apartments, but he owned a trailer

1 right behind it. And the entrance to that, we had access to
2 that trailer through the alley on Bonanza and 19th Street.

3 Q. So was that very far from where you lived with Jan?

4 A. No.

03:26PM 5 Q. And was it very far from the Webster apartment?

6 A. No.

7 Q. Now, what happened when you got over to -- now, is it
8 the same folks in the car you're driving?

9 A. Yes.

03:26PM 10 Q. You've got Loka in the car with you?

11 A. Yes.

12 Q. Where was she sitting?

13 A. I believe in the front with me.

14 Q. Okay. And then so who was in the back seat?

03:26PM 15 A. Smokey was behind me, James in the middle and Ashley
16 on the other side.

17 Q. Okay. And what happened when you got to Mr. Robles's
18 residence?

19 A. I wasn't going to get out the car or anything. I was
03:26PM 20 just going to drop them off and take off with James and Ashley.
21 But Loka suggested that -- she said: Hey, White Boy, can you
22 get my friend high and let him taste the dope and try the dope
23 from my connect, you know.

24 Q. So -- so was it basically that the -- the drugs
03:27PM 25 that -- that James had purchased is now going to compare and

1 share with Mr. Robles?

2 A. Correct.

3 Q. So what happened when you got there?

03:27PM

4 A. I noticed Ashley wasn't comfortable, but James was
5 leading the way. He was high, he was happy, excited.

6 We walk in there. I really don't want -- I didn't
7 want to stay long. There was too many people in -- in the
8 trailer.

03:27PM

9 And they start getting high and Smokey told James:
10 Hey, let them know -- let my homie know how you make that
11 money.

12 And James was actually looking for people -- if
13 Patrick knew people that would go in WalMart and get stuff and
14 he would take care of all the rest to get money.

03:27PM

15 Q. So was James telling not only Smokey but now the
16 folks over at Mr. Robles's residence about the fact that he had
17 made cash and that he had access to cash?

18 A. Yes.

03:28PM

19 Q. As the night wore on, did you see a difference in
20 Smokey on that particular evening?

21 A. Excuse me, say that again.

22 Q. As the night wore on, did you see a difference in
23 Smokey on that particular evening?

24 A. Yes.

03:28PM

25 Q. Could you tell the ladies and gentlemen what you saw?

1 A. He was up to something. I -- I don't -- he was
2 paranoid with James because James -- he had ADD, and when he
3 got high it was all bad. He was jumping around all the time,
4 being loud, laughing. And Smokey was being very paranoid,
03:28PM 5 asking me: What's up with this white boy?

6 Q. You used the term "mad dog"?

7 A. Oh, yeah, yes, yes, yes. He was mad dogging him.

8 Q. What do you mean by that?

9 A. Giving him mean looks.

03:29PM 10 Q. Now, what -- what happened to finish off that
11 evening; do you recall? What were -- when you all went your
12 separate ways; if at all?

13 A. We ended up going to Jan's.

14 Q. Who is "we"?

03:29PM 15 A. James, Ashley, um, Loka and Smokey.

16 Q. Now, did there come a time when you were at Jan's
17 residence -- do you remember when Ashley testified about this
18 alleged threat that you made?

19 A. Yes.

03:29PM 20 Q. Okay. What -- what did you tell her?

21 A. It -- it wasn't a threat. I said: Loka isn't happy
22 with -- with what James and her agreed upon -- the payment,
23 about her cut, which --

24 Q. Let me stop you there.

03:30PM 25 So Loka had an issue with James; correct?

1 A. Correct.

2 Q. Not because they're in the car?

3 A. Huh-uh.

4 Q. Not because -- you've got to say yes for the record.

03:30PM 5 A. Yes.

6 Q. Not because they drove around spending the day trying
7 to get \$180?

8 A. No.

9 Q. What was her -- what was Loka's concern with James?

03:30PM 10 Why was she having an issue with James?

11 A. When somebody gets drugs for you they -- for example,
12 her connect, and the customer's happy with it, whether he's
13 happy or not, it's common courtesy to break a percentage to
14 that person because they made that connection, and if he's
03:30PM 15 happy then --

16 Q. Almost -- almost like a referral fee?

17 A. Right, right.

18 Q. And is that part of the reason they were -- I
19 guess -- I guess Loka was happy with the quality of her drugs
03:31PM 20 and so that's what she's showing off to Mr. Robles?

21 A. Right.

22 Q. And do you know if that referral fee ever occurred
23 with regard to James Headrick -- or James in his communications
24 with Loka?

03:31PM 25 A. I never saw anything -- any payment or anything.

1 Q. And so what -- what did Loka tell you?

2 A. Like: Hey, what's up with White Boy? If you see
3 him, tell him that I want to get my -- my cut. She was pretty
4 upset.

03:31PM 5 Q. Is that what you told James and Ashley?

6 A. I did. Ashley.

7 Q. Who did you talk to?

8 A. I talked to Ashley.

9 Q. And, again, what -- what did you tell her?

03:31PM 10 A. I said it in a friendly way. I was, like: Hey,
11 Loka's not too happy about it -- about James. She was
12 expecting a cut from that drugs.

13 Q. When you were talking to Ashley about that, were you
14 trying to threaten her or scare her or were you trying to help
03:32PM 15 her?

16 A. I was trying to help her.

17 Q. Why?

18 A. Because of what Loka had said.

19 Q. Now, do you remember Old Man Jim? There's a comment
03:32PM 20 of being at Old Man Jim's.

21 A. Yes.

22 Q. Was that where this conversation occurred?

23 A. It did.

24 Q. Old Man Jim -- and what was his -- what was his
03:32PM 25 position in all of this? This gentleman right here

1 (indicating).

2 A. He also sold drugs.

3 Q. And that's -- do you recall Ashley testifying about
4 being at Old Man Jim's? Is that where this communication
03:32PM 5 happened?

6 A. Yes, it did.

7 Q. Now, let's -- let's talk about the issue of the car,
8 if we can.

9 You -- well, let's just go back to the time you were
03:33PM 10 at the law office in, say, February.

11 A. Okay.

12 Q. How did you get to work every day?

13 A. Um, I don't remember. I think -- my mom would take
14 me.

03:33PM 15 Q. At some point?

16 A. I would find rides.

17 Q. At some point, did you get a car?

18 A. Yes, I did.

19 Q. And whose car was it?

03:33PM 20 A. It was registered to my parents.

21 Q. And how long had you driven that in April 2012?

22 A. Not that long.

23 Q. Now, did you loan out your car?

24 A. Yes, I did.

03:33PM 25 Q. Okay.

1 A. My mom would always -- my dad would lend me his truck
2 a lot. He had a truck too. So he would let me borrow it most
3 of the time.

03:33PM

4 Q. So back in April 2012, did the car that you were
5 driving in get -- something happen to it?

6 A. Yes, it did.

7 Q. Well, tell these ladies and gentlemen, first of all,
8 who was in that car when you had this accident?

03:34PM

9 A. I was at the Webster apartment. We were cleaning up
10 and separating some of the furniture that was going to be sold.
11 And we had --

12 Q. Let me stop -- who -- who -- who was there?

13 A. Melissa, Trigger, Smiley, Erik and me.

14 Q. And --

03:34PM

15 A. And -- and James, I believe.

16 Q. And what were you doing?

17 A. We were cleaning the apartment. There was a fish
18 tank where it needed -- the water needed to come out. So we
19 were kind of helping each other out.

03:34PM

20 Q. Why -- why were you -- what was -- what was the idea
21 behind the furniture, getting the furniture ready?

22 A. To sell it.

23 Q. And for what purpose?

24 A. For the rent.

03:34PM

25 Q. And so who would you let use your car?

1 A. Smiley said he needed to go and get some drugs. Also
2 he had dropped off a set of tools -- I'm not sure what it was.
3 Some guy -- that they were going to pay him at a certain time
4 when he got paid. So I guess he was going to go and collect
03:35PM 5 that money.

6 Q. What happened?

7 A. Like, five minutes after they left I noticed that
8 Erik came in, running, holding his back. He was in pain.

9 Q. Now, this is -- this is Smiley, right?

03:35PM 10 A. Right.

11 Q. Okay. And you'd -- you'd let Erik borrow your car?

12 A. Yes.

13 Q. And he and a person named Trigger?

14 A. And Trigger as well.

03:35PM 15 Q. Okay. And so he comes running back and what do you
16 learn?

17 A. The first thing he mentioned to me -- well, I said:
18 What's wrong?

19 And he said: Trigger -- the ambulance took Trigger.

03:35PM 20 He got in a car accident. And we left your car at the scene.

21 And I was, like: Don't worry about the car. How is
22 Trigger? Is he okay? Are you okay?

23 Like: Yeah, yeah, we're okay.

24 So he gave me the location where it was at. I

03:36PM 25 believe it's by -- I don't know the streets, but it's by Poker

1 Palace Casino on the intersection.

2 So I called one of my friends that had a car and I
3 said: Can you please take me to this place?

4 I get there. The cops are there. And I told the
03:36PM 5 officer: Here's my driver's license. This is my car. Can you
6 please -- can I get it? The registration and insurance is in
7 the car.

8 He's, like: Well, I can't take it off the tow truck
9 because it's already towed.

03:36PM 10 And I was, like: Okay.

11 He handed me the Police Report with both Trigger's
12 name and Erik's name on it. I took it with me. I called my
13 mom instantly and I told her what happened. And she was
14 really, really upset. And I knew why she was upset. I wasn't
03:36PM 15 supposed to let anybody drive the car.

16 I asked the guy that -- the tow truck guy said: Do
17 you need a lift?

18 The guy that took me there, he had left because he
19 thought he was going to give me the car.

03:37PM 20 I said: Yes. Can you --

21 Q. I was confused. Say that again.

22 A. The tow truck guy offered me a ride back to the
23 apartment.

24 Q. Okay. Back to Webster?

03:37PM 25 A. Yes.

1 Q. Okay.

2 A. He said he would drop me off.

3 I said: Okay. That's fine.

4 And on our way over there, I asked him: Do you know
03:37PM 5 what, there's some tools in the back, in the trunk?

6 I was, like: I don't know when I'll be able to take
7 my car out.

8 And he's, like: I don't usually do this, but if you
9 hurry up and get the tools out as fast as you can, then just do
03:37PM 10 it.

11 Q. Were those the tools that originally came from --

12 A. Some of them, yes.

13 Q. And you were trying to sell those?

14 A. Yes.

03:37PM 15 Q. Okay. Keep going.

16 A. And we get to the -- to the apartment on Webster, and
17 I seen Erik standing outside and I said: Come here.

18 And he's, like -- and he's: Take the tools out.

19 Hurry up before he gets in trouble.

03:37PM 20 And he did, he got them out, and the tow truck left.

21 Q. Do you remember Melissa testifying about that?

22 A. Yes.

23 Q. And that's how you remember it as well?

24 A. Yes.

03:38PM 25 Q. Let me ask you a quick question before I go on, and

1 that is, you know, I never followed up with the issue of the
2 back door being opened.

3 Do you remember when you were -- when you were at
4 Jan's residence --

03:38PM

5 A. Yes.

6 Q. -- and James took you aside and said go get your
7 stuff?

8 A. Right.

9 Q. What -- what did you do?

03:38PM

10 A. I went. He said the door -- you don't need keys.

11 I actually asked for keys. And he said: You don't
12 need the keys; like, the back door's open.

13 Q. So what did you do when you got there?

14 A. I went through the back door.

03:38PM

15 Q. And what did you do once you got in?

16 A. I went, grabbed my clothes. I was actually looking
17 for everything that belonged to me because I noticed some stuff
18 was misplaced. I knew I had more stuff, more pictures than
19 that. So I did go through his stuff to see if my other stuff
20 was there -- and the tools that James told me to grab.

03:38PM

21 Q. Did you take any belongings, personal belongings that
22 belonged to any of these folks?

23 A. No.

24 Q. What -- what did you take?

03:39PM

25 A. I took my stuff.

1 Q. Okay. And some tools?

2 A. And some tools.

3 Q. That James had asked you to sell?

4 A. Right.

03:39PM 5 Q. Now you don't know what James's communications with
6 Miguel, but your understanding is that you are authorized by
7 Miguel to sell the tools to make rent?

8 A. Right.

9 Q. Okay. Now, let's go back to the car. Okay?

03:39PM 10 So we're at the Webster, Apartment C address. Your
11 car is now on the lift. Erik goes out and gets some of the
12 tools out of the back, which you are trying to sell. Did they
13 take your car off?

14 A. Yeah, they took it.

03:39PM 15 Q. And what happened at that point?

16 A. Erik felt bad, like: I'm sorry.

17 I was more worried about where Trigger was at. I
18 really didn't care about the car --

19 Q. Whatever happened to Trigger?

03:39PM 20 A. -- at that point.

21 Later I found out had he had ran from the hospital in
22 a night gown -- in the hospital gown.

23 Q. In other words, he was transported but then left?

24 A. He took off. He ran to Jan's house.

03:40PM 25 Q. Okay. And so Erik's -- you know, he feels bad that

1 he wrecked your car. So tell me -- tell me what happened. How
2 did you resolve that?

3 A. He had a car parked right in front of the Webster
4 apartment, which the brake pads were completely gone. You
03:40PM 5 couldn't really drive it. It was making so much noise.

6 And I offered him if I paid for the brake pads would
7 you get them fixed so I can move around until I get my car out.

8 He said: Sure, no problem.

9 I gave him 40 -- \$40, around there, and he was able
03:40PM 10 to get the brake pads.

11 One of the neighbors helped him fix the brake pads.
12 They didn't take that long. And then he said: Here you go.

13 Q. How -- how long -- or what's the timeline between the
14 shooting and the issue of the car accident that Erik was in?
03:41PM 15 How many days was that? Was that a day or two days?

16 A. Yeah, two or three days.

17 Q. Just before the shooting?

18 A. Yes.

19 Q. Okay. Now, when you took the car, when you borrowed
03:41PM 20 his car because he wrecked yours, how long was your
21 understanding that you're going to borrow the car for?

22 A. We did -- we had a little agreement --

23 Q. When you say "we"?

24 A. Erik and me.

03:41PM 25 Q. Okay. Now, let me ask you a quick question because

1 it's going to come up at some point.

2 What was Erik's primary language?

3 A. Spanish.

4 Q. Okay. And you are obviously bilingual?

03:41PM

5 A. Yes.

6 Q. And were your communications with him then in

7 Spanish?

8 A. Yeah.

9 Q. Okay. Do you feel as comfortable in English as you

03:41PM

10 do in Spanish or Spanish as you do in English?

11 A. It's the same.

12 Q. Okay. And so you are talking to Erik, at this point,

13 in Spanish regarding how long you are going to use the car?

14 A. Yes.

03:41PM

15 Q. Do you know if his -- if Ashley can understand

16 Spanish?

17 A. I don't think so.

18 Q. Okay. All right.

19 So keep going. I'm sorry to interrupt you.

03:42PM

20 A. I took off. I went to Jan's. That's when I seen

21 Trigger. And Jan's, like: What happened?

22 And I told her what had happened. And she felt kind

23 of bad. She was a little upset.

24 Q. Why would Jan be upset?

03:42PM

25 A. Because, like: You're doing -- you're going around

1 doing all this for everybody and look what happens, giving
2 people rides left and right.

3 Q. Okay. Now, I want to talk next about April -- you
4 know, April -- the shooting. Okay?

03:42PM

5 A. Okay.

6 Q. But before I get there, I want to ask you a question.
7 I think there's a suggestion that somehow you wanted to
8 personally cause harm because of that car to, I guess, Erik
9 or -- with regards to money and drugs, with regard to James.

03:43PM

10 A. There was -- no.

11 Q. How would you consider those folks?

12 A. They were my friends.

13 Q. Did you ever want to cause them harm?

14 A. Not at all. Not at all.

03:43PM

15 Q. Let's talk now, if we can -- now I have the benefit
16 of your text messages. I'm not going to use those right now,
17 other than for myself to get oriented. I want to ask you
18 questions about the evening of the 25th.

19 A. Okay.

03:43PM

20 Q. Do you recall where you were that evening?

21 A. Yes, sir.

22 Q. Where were you?

23 A. I had my kids. I was at Jan's, until my mom picked
24 them up.

03:43PM

25 Q. Let me ask you a question. I know obviously you have

1 a methamphetamine addiction?

2 A. Yes.

3 Q. Did you ever use methamphetamine around your
4 children?

03:44PM 5 A. Never.

6 Q. Why not?

7 A. It's one of my personal rules to myself, like, I
8 would not -- it was bad enough me being a drug addict, but not
9 bringing my kids around that. I could -- I couldn't -- I knew
03:44PM 10 I had a problem, but the kids didn't have to pay for it either.

11 Q. Now, who was at Jan's house that evening?

12 A. When I had my kids, it was just Jan and me. I never
13 had anybody over when my kids were over.

14 Q. Did -- was there a contact made to you by either Erik
03:44PM 15 or Melissa to -- to bring back the car?

16 A. Yes.

17 Q. And what forms were those communications made?

18 A. I believe that she needed the car. She wasn't
19 feeling well. She needed to go to the hospital.

03:44PM 20 Q. What -- what -- did you run the car back to her?

21 A. No.

22 Q. Why not?

23 A. I had just gotten the car. I was, like: Give me a
24 break. Let me get my car out. The -- the agreement wasn't
03:45PM 25 until the 28th.

1 Q. Did you -- what about the issue of going to the
2 hospital. What was your --

3 A. I -- I already knew it was a lie. The hospital's two
4 blocks away from the apartment -- walking distance, the same
03:45PM 5 distance from Jan's house. The hospital was right there.

6 Q. Where did you put -- when you went over to Jan's
7 house, where did you put the car?

8 A. Jan suggested we put it behind the house so they
9 won't see it.

03:45PM 10 Q. What happened after that?

11 A. They kept showing up at the house, Erik and Melissa.
12 I was in the house, but Jan would go outside and talk
13 to them and say: She's not here, but when she gets here, I'll
14 let her know that you guys want her.

03:46PM 15 It was, like, about three times they showed up. But
16 I was in the -- in the house with Jan. Trigger was there too
17 and a friend of mine, Francisco.

18 Q. Tell me -- I'm going to go through some of the text
19 messages in a minute. We've already -- some of them we've
03:46PM 20 already seen. But just so we know, who is Trigger?

21 A. It's Freddie.

22 Q. What's that?

23 A. A friend of mine.

24 Q. Okay. And what was the other person's name?

03:46PM 25 A. Francisco.

1 Q. And who is Francisco?

2 A. He's a gay friend of mine.

3 Q. And were they just friends, just hung out with you?

4 A. Yes.

03:46PM 5 Q. And were they also involved with smoking
6 methamphetamine?

7 A. Yes. Absolutely.

8 Q. Were you smoking that evening?

9 A. Yes.

03:46PM 10 Q. Now, at some point, and I'm going to get into the
11 text messages, but did you send texts back to them?

12 A. Yes, I did.

13 Q. And what did you -- who -- what did you do?

14 A. I think it's one of my biggest mistakes ever. I
03:47PM 15 pretended to be Smokey. I sent that message myself.

16 Q. Why?

17 A. I knew that if they knew that Smokey was there, they
18 would stop coming. They would just stop asking for the car.

19 Q. Why?

03:47PM 20 A. He's got that bad boy look. He -- he just got out of
21 prison and they weren't comfortable with him.

22 Q. You just wanted them to leave you alone that evening?

23 A. Yes.

24 Q. At some point did you text -- were you involved in
03:47PM 25 texting his sister?

1 A. Yes.

2 Q. And why is that?

3 A. She wanted to come over.

4 Q. Okay. Now I'm going to go through the text messages
03:47PM 5 in a minute.

6 Before we do that, though, I just want to -- I just
7 want you to explain what happened that entire evening without
8 being interrupted from the top of your head. Okay?

9 So let's -- tell these ladies and gentlemen what
03:47PM 10 happened.

11 MR. DIGIACOMO: Judge, I apologize. If I may
12 object as to the form of a narrative.

13 THE COURT: Yes. You are going to have to pose
14 questions, Mr. Whipple.

03:48PM 15 MR. WHIPPLE: Sure.

16 THE COURT: We cannot have a narrative from any
17 witness.

18 MR. WHIPPLE: Thank you, Your Honor.

19 BY MR. WHIPPLE:

20 Q. Ivonne, I need to ask you some questions.

21 After you got the text messages what happened next?

22 A. The plan was to pick her up, and I told her I was
23 going to take a shower. I told her about 30 minutes I'll be
24 there.

25 First, she mentioned that Smokey was with her, and

1 her -- her sister-in-law, which is Smokey's wife, and that his
2 wife was going to leave -- Smokey's wife was going to leave at
3 some point, that she wasn't going to be there long.

4 So I -- I said: So don't pick you up then? And I
5 said: I wanted to chill with you.

6 Then I believe she said: Okay. I'm down.

7 So I -- that was the plan, to go pick her up.

8 Q. Now, when you went to pick her up where were you
9 going to pick her up at?

10 A. She said she was at Pat's, Patrick's house.

11 Q. Okay. So that would be down here (indicating)?

12 A. Yes, at the trailer.

13 Q. Okay.

14 A. When I get there --

15 Q. Now, let me just -- and I apologize.

16 MR. WHIPPLE: Your Honor -- I apologize, Your
17 Honor.

18 BY MR. WHIPPLE:

19 Q. What -- what's the timeline from Jan's house -- if
20 you get in the car and drive over, how long does it take to
21 drive to Patrick's house?

22 A. Ten, ten minutes; 12, 13 minutes.

23 Q. It was pretty close?

24 A. Pretty close.

25 Q. Depending on traffic that day?

1 A. Depending on traffic, yes.

2 Q. Okay. All right.

3 So what happens -- what happens next?

4 A. When I finally get there, I parked in the alley. I
5 text Loka and said: Let's roll. I didn't want to get out the
6 car, because my point was just to pick her up and go right
7 back. Jan was aware of that. I told him I'll be right back,
8 I'm just going to go pick Loka up, or -- yeah.

9 And when she comes out it's not just her, it's more
10 people, Patrick was in the middle. I noticed Smokey towards
11 the end. He -- he looked really drunk, high.

12 There's a car parked right next to mine, and then
13 another car parked right next to -- well, I'm between two cars.
14 Then I had already opened my doors, thinking that she's going
15 to get in the car.

16 I noticed that she got on the -- the left car, she
17 got inside, and I pulled my window down and I said: Loka,
18 what's going on? I thought we were going to go chill at my
19 house.

20 She said: There's been a change of plans.

21 And that's when Smokey jumped in the car --

22 Q. I want to stop you there.

23 A. Okay.

24 Q. When you got in the car -- first of all, tell me what
25 you recall him wearing.

1 A. I just remembered from here up, (indicating) he had a
2 black sweater with a hoodie.

3 Q. Now, I want to ask you what he looked like
4 personally, the disposition, if you could tell?

5 A. He was completely out of it, drunk. I don't think
6 I've ever seen him like that before. I don't think I've ever
7 seen anybody like that.

8 Q. What happened -- did he say anything to you?

9 A. He said: Let's roll.

10 Q. And what was your thought when you saw him in your
11 car?

12 A. Before -- when, after he said: Let's roll, he
13 mentioned he had a gun. He showed it to me. He pointed it at
14 me.

15 Q. Did you ever see him handle a gun before?

16 A. I seen pictures of him with guns and other people in
17 the picture, but him personally, no.

18 Q. What were your -- what went through your mind when
19 you saw the gun?

20 A. Just shut down. I -- I didn't know what to think. I
21 was scared.

22 Q. Did you say anything to him?

23 A. I told him -- the first thing that popped in my mind
24 was trying to get him out of the car, and I said: I can't,
25 chill. I got to return the car.

1 That's how I -- that's the only thing that could --
2 came to my mind. I said: I got to return the car.

3 He said: Okay. Let's go. Drive there.

4 Q. How was he acting towards you?

5 A. Very aggressive. Like, I was scared to do something
6 wrong because he's got this gun pointed at me.

7 Being in that situation, you just go with the
8 punches. I mean, he -- I don't know what his intentions were.
9 I've never been in a situation like that around at gunpoint
10 myself.

11 Q. Did he tell you where to go?

12 A. He told me to go to the Webster apartment.

13 Q. Were you getting text messages from his sister at the
14 same time?

15 A. Right before we get there, I'm at the red light and
16 she texted me, and he's, like: Who is it?

17 I said: It's your sister.

18 And he -- and I showed it to him (indicating). Like,
19 she wants to know where I'm at.

20 He's, like, tell her I'm at the apartment.

21 So I text back: Apartment.

22 And then she said: Whose?

23 And I showed it to him and he said: Tell him White
24 Boy's, and that's what I typed in.

25 Q. And did you know if Smokey, Jose Gonzales, actually

1 knew how to use a cell phone, or a smart phone, I guess, we
2 should say?

3 A. No. He -- the phone that I noticed on him was, I
4 think, was an in the bottom -- a flip phone. He was having
5 problems texting (indicating). He didn't know how to do it.
6 He didn't know how to work a phone.

7 Q. Why was that?

8 A. He had just done five years in prison. He had just
9 gotten out. He didn't have access to the new technology with
10 the phones.

11 Q. Now, I'm going to show you some pictures. These are
12 some that we've already seen.

13 MR. WHIPPLE: Your Honor, I've also -- Your Honor,
14 with the Court's permission, I brought into the courtroom, this
15 morning, a toy gun, simply because, with the Court's
16 permission, I'd like to be able to hold that myself and use
17 that in a manner in which Ivonne explained will happen next.

18 I think it will become apparent as we go forward why
19 that's relevant to this case.

20 THE COURT: My understanding is it's what we
21 would call a pneumatic gun, so it is, in fact, BBs, but it is
22 for demonstrative purposes only. It's not the same weapon type
23 used as alleged here; is that correct?

24 You may proceed with the demonstrative.

25 MR. WHIPPLE: Thank you, Your Honor.

1 MR. DIGIACOMO: Bret.

2 (Sotto voce at this time.)

3 THE COURT: Renee, I have counsel approaching
4 the bench.

5 (Sidebar conference at bench, not reported.)

6 THE COURT: Ladies and gentlemen, we're going to
7 have a brief recess, about ten minutes. We'll return you here
8 shortly after 4:00.

9 During this brief recess, I will remind you,
10 please, that you are admonished --

11 (The jury was admonished by the Court.)

12 THE COURT: We'll see you back in about ten
13 minutes.

14 THE MARSHAL: All rise.

15 (The following proceedings were had in open
16 Court outside the presence of the prospective jury
17 panel:)

18 THE COURT: Go ahead and return to counsel table
19 just for now, Ms. Cabrera, okay, for brief recess. See you
20 shortly.

21 MR. DIGIACOMO: Thank you, Judge.

22 (Recess in proceedings.)

23 THE MARSHAL: All rise for the jury.

24 (The following proceedings were had in open
25 Court in the presence of the prospective jury panel:)

1 THE COURT: Let's please take your seats as you
2 reach them. I'll invite everyone else to have a seat as well.

3 Please make sure your cell phones are off or
4 silenced.

5 Mr. Whipple, whenever you're ready.

6 MR. WHIPPLE: Thank you, Your Honor.

7 BY MR. WHIPPLE:

8 Q. Ivonne, let's just go back just a tiny bit, and that
9 would be to, again, just before you -- when you left Jan's
10 house, where were you headed, again?

11 A. To Pat's house.

12 Q. Okay. That's Patrick Robles; right?

13 A. Right.

14 Q. And you got there and it was a change of plans?

15 A. Yes.

16 Q. And can you tell me about how Smokey got into your
17 car. Why don't we pick up when he got into your car.

18 A. Okay.

19 Q. What were you thinking -- again, you kind of
20 described what happened. Why don't you just tell us, again,
21 what happened once he got in the car.

22 A. I was scared, never had a gun pointed at me before.
23 He didn't look like he had any sense in him at all. I noticed
24 the smell of alcohol on him, and I was just scared.

25 Q. Now, you mentioned how you were trying to figure out

1 a reason to get him out of the car; right?

2 A. Right.

3 Q. Now, just go ahead and lean up, if you would, and
4 speak up because it's hard for us to hear.

5 Why didn't you tell him: I got to return the car?

6 A. It's the first thing that popped in my head. Maybe
7 he would just get out the car and leave me alone. That's the
8 only reason I said that.

9 Q. Where did you actually go?

10 A. We ended up going there.

11 Q. What happened when you got there?

12 A. I parked right in front of the Webster apartment. I
13 got out, and I noticed that he got out, too. And he followed
14 me, and I was just simply going to return the key. It was a
15 single key, return the key and walk to Jan's. It's -- it's
16 walking distance, a couple minutes. I remember knocking on the
17 door first. No one answered.

18 Q. So this was the outside door?

19 A. Yes, the outside door.

20 Q. Okay.

21 A. Then I knocked on the window, no one answered. I
22 turned around and I looked at Smokey and I said: They're
23 probably asleep, let's just go.

24 Mind you, I'm in front, he's right bind me, and he's
25 still -- he still has the gun. I want -- I want to leave at

1 that point. He, excuse my language, he said: Fuck that.

2 Q. I'm sorry?

3 A. Excuse my language, he said: Fuck that. And he's
4 like: Walk to the back. We walked to the back, and he tried
5 to open the glass door. It was shut.

6 I thought he was going to knock on the bedroom doors
7 to wake them up so they could open the door, but he noticed the
8 window of the bathroom, like, this much open (indicating). He
9 used some board that was against -- it was already there. He
10 propped himself up and jumped in.

11 And I -- I heard him fall. It was -- it was a strong
12 fall. I heard him, he hit the bathroom hard. As soon as that
13 happened, I'm thinking what -- why is he -- why is he doing
14 this? What's -- what's -- something ain't right.

15 I turned around, walked back to where I came from --
16 from the -- from the front. Half way back, I thought to
17 myself, I -- I should run, but by the time I was about to run
18 he had already opened the door.

19 Q. What did you see then?

20 A. Then I saw the gun pointing at me, and he waved it at
21 me, told me to come in. I had no choice. I had --

22 Q. So I want to, if I can, just for demonstrative
23 purposes, was this -- did you ever see the color of the gun?

24 A. Yes, I did.

25 Q. And what color was it?

1 A. Black.

2 Q. And do you know there's different types of guns.
3 There's those that Mr. Digiacomo talked about that have the
4 barrel on them like the cowboy guns --

5 A. Correct.

6 Q. -- and then there's the guns that don't, that are
7 more square.

8 A. Right.

9 Q. What did that gun look like?

10 A. Just like that (indicating).

11 Q. Okay.

12 A. Square.

13 Q. And when you are walking away to go back to the
14 car --

15 A. Yes.

16 Q. -- what -- where did he point that?

17 A. He pointed at me.

18 Q. Pointed right at you (demonstrating)?

19 A. Yes.

20 Q. And what -- what did he do next?

21 A. He signalled with the gun (demonstrating) and he's
22 coming: Get inside the house.

23 Q. He was pointing it right at you --

24 A. Yes.

25 Q. -- and he's using this gun?

1 A. Yes. He's pointing like this, (demonstrating), okay,
2 get -- get inside.

3 Q. What did you do?

4 A. I did. I did what I was told. Like I said, I was --
5 I was scared. I was scared. I thought he was going to shoot
6 me right there, to be honest with you.

7 Then he came -- when I walked in, he walked behind
8 me. He shut the door. So now he's behind me all this time.
9 And I'm right between the hallway and the -- and the kitchen,
10 and he's right here (indicating).

11 And he kicks the first door, just kicks it, with the
12 -- but the door shuts back down. Like, it didn't open. Just
13 the bottom part kind of, like, (demonstrating) moved. And I
14 heard somebody said: Who is it?

15 I didn't want to say anything. I was thinking he was
16 going to say: Open the door, or something, right? And with
17 the gun, he's, like -- like, basically telling me to tell them
18 that it's me, or to say, open the door, and that's what I did.
19 I said: It's me, Chinola, open the door.

20 Q. How close were you when -- when this happened?

21 A. Very close to the door.

22 Q. And was the gun -- where was the gun pointed?

23 A. (Demonstrating), at me.

24 Q. Could you have reached out and touched the gun? Was
25 it that --

1 A. Yes.

2 Q. And when -- when somebody said: Who is it, what --
3 what did he do again?

4 A. Just told me to -- to tell them.

5 Q. When did you --

6 A. He signalled with his gun, like, basically telling
7 me: Say something. I'm not going to say anything, say
8 something, and that's what I said.

9 Q. What happened after that?

10 A. I noticed James had opened his door. I'm still in
11 front of him, so he's basically kind of pushing me as he got
12 closer to James's bedroom. And I'm close to the bathroom now,
13 and -- close to the entrance but not too close because he was
14 right -- it's -- it's very, very small. That area is very,
15 very small.

16 So I didn't -- I was, like, this all the time
17 (demonstrating), like, I didn't want him to think that I was
18 going to try to do anything. I just had my hands up
19 (demonstrating).

20 James opens -- well, James had already opened the
21 door, and I had seen him. That's the only person I seen
22 actually, right there in that room. I never saw Ashley.

23 James -- I don't know if he said anything, but I
24 remember his last words were: If you're going to use it, use
25 it. I remember that clear- -- clearly.

1 Q. Did you hear Smokey say anything?

2 A. He asked for the unemployment card. And that's when
3 James said: If you're going to use it, use it. And that's
4 when I heard the first gunshot.

5 Q. How did you feel when you heard that?

6 A. I'll tell you what, I saw -- I saw him get shot, you
7 know, I did. I saw him fall. I knew right away that I could
8 have been, too. Like, I thought he was going to shoot me as
9 well.

10 I ran, I ran, and I kept hearing -- well, when I ran,
11 I noticed the other bedroom was open, and all I could see was a
12 shadow, like, a body, but it was dark. I didn't know if it was
13 James or -- or Ashley -- I mean, Erik or Melissa.

14 As I'm running out, I still hear gunshots. I still
15 hear gunshots. And I'm thinking he's going to shoot me, too.

16 At this point, I start running to the car. I
17 remember fumbling with my keys. I was shaking. I saw him
18 coming right behind me. I didn't know if he still had bullets
19 in his gun.

20 All I kept -- my -- my ear was ringing because of
21 that first gunshot that I heard. It was so close to me. And I
22 get in the car, and he comes out and he's got the hoodie on.
23 And he jumps in the car, too, and he's like: Drive, drive,
24 just drive.

25 I'm feeling sick to my stomach. I'm crying. I want

1 to throw up. He -- he made a phone call, I believe, to his
2 mom, because he said: Momma, he said, forgive me, Mother. I
3 just sent four people up to heaven. I remember him saying
4 that.

5 Q. Do you know where he went?

6 A. And he told me to drive back to Pat's house, but not
7 to park at Pat's, to park two streets down.

8 When we get there, he takes the key from me. He's
9 like: Walk in front of me. Don't try anything, to -- to walk
10 in front of him. I'm shaking. I've been crying.

11 I go in through the alley, and I go into the trailer,
12 and I notice right away, Patrick had a towel ready for him to
13 put the gun on the towel.

14 And I'm telling Patrick: He just shot everybody,
15 Pat. He just shot your girlfriend. He just shot Melissa, too.

16 And Pat was, like: Oh, man. So he saw that I was
17 crying a lot and he -- he just said: On the apartments, the
18 last apartment was empty.

19 And that's where a lot of people just, like, took a
20 shower. And he took me out of the trailer because there was a
21 lot of people. He took me to the apartment, to the last
22 apartment, and he's, like, what happened?

23 I was, like, he just shot everybody. Pat, he just
24 shot everybody. Why?

25 And he -- he was scratching his head, like he didn't

1 know what to do either (demonstrating).

2 And then I -- I noticed Smokey coming in. He said:
3 I got to go -- I got to take her, Pat. I can't leave her here.

4 And I said: Pat, please don't, I don't want to go
5 with him. I don't. Because I was scared.

6 Q. What were you thinking?

7 A. I -- I knew right then and there it was going to be
8 all bad. I knew he was going to kill me or -- or -- this whole
9 process, I already knew -- I already knew this whole process.

10 Q. What do you mean?

11 A. About, like, if -- like somebody had to pay for that,
12 how it looked. It wasn't -- I was there.

13 Q. What were you thinking?

14 A. I was in shock. I was scared. Then I heard his
15 sister come in.

16 Q. Is that Loka?

17 A. Loka, and she told Pat: We got to go. We can't
18 stay. We can't stay.

19 And I kept begging Patrick not to let me go, to let
20 me stay there with him.

21 And then Felicia wakes up, and she's like: What's
22 going on?

23 And I told her: He just shot everybody, and they
24 want to take me with them.

25 And Felicia, she had her pajamas on, she didn't care.

1 She grabbed her bags, she's, like, I'm going with her, I'm not
2 leaving Chica alone by herself.

3 So Pat said: Okay. Fine.

4 MR. DIGIACOMO: I apologize, I didn't hear that
5 last answer. Who did she say?

6 THE WITNESS: Felicia woke up, she was sleeping,
7 because she heard all the commotion. And I don't know if it
8 made me feel better, but I was -- I felt good that she was
9 going with me at least. I remember Loka told me to sit in the
10 front with her.

11 BY MR. WHIPPLE:

12 Q. Who -- who was -- first of all, what -- do you recall
13 what car it was?

14 A. It was, like, a sports, little small SUV, like, a --
15 I don't know the name of it.

16 Q. Did you feel like you had a choice as to whether you
17 could go or not?

18 A. Apparently not.

19 Q. What do you mean: Apparently not?

20 A. Because I had said: Pat, I don't want to go with
21 him.

22 He said: You got to go.

23 What if I resist or try to run, what if they would
24 have shot me?

25 Q. Who was in the car?

1 A. Loka was driving. I was in the passenger side.
2 Smokey was right behind me and Felicia.

3 Q. Were you -- do you recall getting calls from your
4 phone when this was happening?

5 A. Yes.

6 Q. Who do you remember calling you?

7 A. I heard my dad calling me, and he was -- he was going
8 to go to the DMV and report the car, get the plates off of
9 them, I guess, that's what it's called, the blue car, the
10 Taurus. And he wanted me to tell him exactly what had happened
11 so he could go to the insurance, too.

12 Q. We're -- we're talking about the car accident now;
13 right?

14 A. Yes.

15 Q. What -- what were you thinking when you got these
16 phone calls? What -- what was --

17 A. My first -- Smokey's, like: Who is it? Don't --
18 don't answer any phone calls unless you show them to me.

19 I said: Okay. I tried to play it off like nothing
20 happened, don't try anything stupid or you'll regret it.

21 So I did talk to my dad. I told him: I got to talk
22 to him. It's about my car. Like, that's my parents. I got to
23 talk to them. And I did talk to him. He was writing stuff
24 down, what I was telling him.

25 I believe we hung up, and then he called again to get

1 more information, and --

2 Q. Did you feel like telling your father what had --
3 what had just happened to you?

4 A. I did, but I couldn't.

5 Q. Why couldn't you?

6 A. I was --

7 Q. Where were you at when this happened?

8 A. I was in the car.

9 Q. Where was Smokey sitting?

10 A. Right behind me, and he kept telling me: Stop
11 crying, stop crying.

12 And I kept apologizing to him because I didn't want
13 to tick him off, do you know. And then --

14 Q. Where did you -- where did you go?

15 A. They took me to Loka's place.

16 Q. That would be -- again, you went back to where Loka
17 and Smokey lived?

18 A. Yes.

19 Q. Who was there when you got there?

20 A. Smokey's wife.

21 Q. What did they -- what did they -- what did they do
22 with you? What -- what -- what -- what interactions do you
23 have with these folks when you arrive at Smokey's place?

24 A. As soon as I get there, he tells me to sit there and
25 not move.

1 Q. When you say, "he"?

2 A. Smokey. I do what -- as I was told. I sat down in
3 the living room, and I'm crying and crying, and he's, like:
4 You better stop crying.

5 I said: I'm sorry, I'm sorry.

6 Felicia sat next to me. She's worried. She's
7 scared. I could tell she's scared, too. I don't think she was
8 scared for herself. She was scared for me.

9 Q. Did you feel like there's still a threat to yourself?

10 A. Very much.

11 Q. Why?

12 A. Taking the stand today.

13 Q. What's that?

14 A. Taking the stand today --

15 Q. Yes.

16 A. -- puts me in a lot of risk and my -- my family as
17 well.

18 Q. Why do you say that?

19 A. Because his wife's still out there in the street, and
20 I've had threats from Loka.

21 Q. Were you getting threats when you were in their
22 house?

23 A. Yes.

24 Q. What -- what were they saying to you?

25 A. If I try anything dumb or -- or say things different

1 from what they were telling me to say, I would regret it, that
2 they knew where my family was at and they knew my kids.

3 Q. How long were you at Smokey's residence?

4 A. Until nighttime, a lot of hours. We were there for a
5 long time.

6 Q. Did -- did -- what -- whatever happened to the gun?

7 A. Like I said, when we got to the trailer, I noticed
8 that he handed Pat -- that Smokey handed Pat the gun. Pat had
9 a towel in his hand (demonstrating) and covered it. And I
10 don't know what he did to it.

11 Q. When you got to Smokey's, was there ever another
12 firearm?

13 A. Yeah. Right away -- these condos have a back
14 entrance through the kitchen, under the parking lot there's an
15 entrance. They never used the front entrance. Why? I don't
16 know. But everybody seemed to come in through the parking lot
17 where they parked the cars, which is right to the kitchen.

18 I was -- I could see them. I didn't see the guy, but
19 I know it was the same guy that sold Loka the dope, because it
20 was the same guy with crutches, bald headed.

21 He came in, and I saw him hand Smokey another gun,
22 and gave him a big thing of -- of drugs. I don't know what it
23 was. Could have been meth, it could have been coke, I don't
24 know, then he left right away.

25 And then Smokey comes back to the room, he sits down,

1 puts his gun in his lap and he's, like: Now, I got another
2 one, like he wants me to know that he's got a gun now.

3 Q. Did he say anything to you?

4 A. At first he's, like, later on he -- he -- he started
5 talking, all of a sudden he started making little statements
6 here and there.

7 Q. Do you recall some of the things that he was saying
8 to you?

9 A. Yes. He -- I don't know where he said: I'm tired of
10 people taking advantage of people. And another occasion, he --
11 he said: I was just going to scare them.

12 I couldn't really have a conversation with him
13 because I really didn't have nothing to say to him.

14 At one point he started telling me in Spanish:
15 Despinka (phonetic) which means, I'm sorry. He said: I'm
16 sorry, Chinola, my bad. If anything, I'm going to man-up and
17 be a man about it and take responsibilities for my actions.

18 And I said: Okay, Smokey, you do that.

19 And he just kept apologizing all the time when he saw
20 me crying. He goes: I'm sorry, I know you're not used to
21 this. You are not about that life, Ivonne, Chinola, you're
22 not.

23 Q. Did you notice a change in the way Smokey was
24 treating you over time?

25 A. Yes.

1 Q. Did you also notice the way that he was actually --
2 his disposition? Did his disposition change?

3 A. Yes.

4 Q. Can you tell the ladies and gentlemen what you saw?

5 A. Like I said, he started apologizing. At one point,
6 his sister came in and told him: You got to get rid of all the
7 witnesses. After she had already told him that two people had
8 died and two of them were living.

9 Q. How did she know?

10 A. She had used my phone to get into the Fox News. Her
11 phone and -- and his -- and Smokey's phone didn't have access
12 to any of that. I had apps on mine, and they were able to log
13 into the Fox News and see updates of any -- any stories.

14 And they wouldn't let me see, but they were seeing
15 themselves, and he was showing -- Loka was showing Smokey what
16 was going on, what was being said.

17 As soon as I heard that there was two living, I said:
18 Thank God, thank God that they're -- there's two people that
19 are left.

20 When she said: Get rid of the -- we've got to get
21 rid of the witnesses, I didn't realize right there he was
22 referring to me.

23 I thought that he was -- I said, two -- two the --
24 two of the victims are alive. I thought he was going to send
25 somebody to finish them off, but then I realized it was me.

1 All I could think about was my kids and my mom. Then
2 Loka hugs me and tells me: It was nice knowing you, and she
3 takes off.

4 Q. It was nice what?

5 A. It was nice knowing you, and she takes off.

6 Q. What did you think at that point?

7 A. I said: That's it. I said: This is it. I said:
8 He's going to shoot me.

9 When the wife left -- when the wife left, too, she
10 didn't say anything to me but she left. And I said: Okay,
11 everybody's leaving, that's it, he's going to shoot me.

12 And later on, I -- I kind of noticed that he was
13 struggling with it, like he didn't know what to do.

14 Q. What did you say?

15 A. He said: If you can find a ride, but don't bring
16 them here, just tell them at 7-Eleven or somewhere else, do so.

17 Felicia started making phone calls as well on my
18 phone. She called Pat a couple times. I was trying to get
19 ahold of people that actually had a car that would go and pick
20 us up.

21 It got late. And once I had already arrived, Smokey
22 just got up and said: You know what, get out of here, get out
23 of here, Chinola, before I change my mind. Just leave.

24 I didn't even think twice. I got up. Felicia
25 grabbed her stuff, too, and we started walking out. It's a --

1 it's a dark alley.

2 Felicia kept looking back, and I was, like: Don't
3 look back, Felicia, just keep looking forward, just walk with
4 me, walk, let's just get out of here.

5 We take off through the shopping centers. We ended
6 up at 7-Eleven, which I went in there. I bought some cheese
7 Danish's for us to eat, we haven't ate all day, some Slurpee's,
8 and I waited for Heather, Heather, I think that's her name,
9 Felicia's mom. She picked us up. I had pumped gas for her.
10 She needed gas. Her light wasn't working. I was trying to fix
11 it, kind of did, but then we took off.

12 When we took off, I put my window down, and I let the
13 air hit me. And I started crying, and Felicia turned around
14 and she's, like: It's going to be okay, Chinola.

15 I said: No, it's not, it's not. It's, like, what if
16 they're following us? What -- what if they go to my family's
17 right now, or -- or where -- where did Loka go? Where did his
18 wife go? Like, what's going on? Like, I felt threatened from
19 every angle.

20 I didn't want to take -- I didn't want to go even
21 back to Jan's, but I -- I had nowhere else to go.

22 Our plans were to go to Jan's. At first I didn't
23 have any intentions of taking anything with me. The two- --
24 the person that started packing everything was Felicia.

25 Once I seen that she had some stuff -- at that moment

1 I'm -- I'm not even paying attention to what's going on around
2 me. I noticed --

3 Q. Let me ask you: Why didn't you go to the police
4 station? Why didn't you?

5 A. I couldn't. I didn't know if they were after me,
6 that they were going to follow me, follow us. I -- I was
7 scared. They already had threatened me that if I went to the
8 police, contact anybody, gave any information on them, I was a
9 done -- I was done.

10 Q. Were you worried about your family and the kids?

11 A. Very much, yes.

12 Q. Did they know who your family was and --

13 A. Yes.

14 Q. -- and that you had children?

15 A. Yes.

16 Q. You eventually -- we've heard from Detective Priato,
17 do you remember, he talked about having -- I guess, you -- you
18 actually gave him a statement; correct?

19 A. Yes, I did.

20 Q. Did you -- did you initially right-up front, try to
21 help him, or -- or how were you -- what was your thoughts when
22 you originally met with him?

23 A. A lot of things were going through my mind. Like I
24 said, Loka had told me to say a few things. Smokey had told
25 me, no, if -- if anything, just say this, say that. You'll be