

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Aug 02 2018 10:32 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 V**

---

**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

## **INDEX TO APPENDIX VOLUMES I THROUGH XIV**

<b>Document</b>	<b>Volume and Pages</b>
Amended Information filed on 07.05.2017	IV 880 - 883
Corrected Notice of Intent to Seek Death Penalty filed 10.31.2012	I 108 - 115
Court Exhibit List	XI 2299
Court Exhibit 11 - Objections to Jury Instructions	XI 2300 - 2318
Criminal Complaint filed 05.02.2012	I 1 - 4
Defendant Cabrera's Motion for Severance filed 09.21.2012	I 35 - 47
Defendant Jose Gonzales' Motion to Sever Defendants filed 03.02.2015	II 256 - 316
Defense Exhibit B	XI 2319 - 2320
Defense Exhibit I	XI 2321 - 2322
Defense Exhibit T1	XI 2323
Defense Exhibit JJJ	XII 2324 - 2334
Defense Exhibit Marked KKK	XII 2335 - 2337
Defense Exhibit Marked LLL	XII 2338 - 2348
Defense Exhibit Marked MMM	XII 2349 - 2365
Defense Exhibit Marked NNN	XII 2366 - 2367
District Court Trial Minutes	XIV 2379 - 2395

Guilt Phase Verdict filed on 07.18.2017	IX 2008 - 2012
Information filed 08.27.2012	I 17 - 21
Jose Gonzales' Guilty Plea Agreement filed on 04.12.2017	IV 803 - 812
Jose Gonzales' Judgment of Conviction filed on 05.31.2017	IV 878 - 879
Judgment of Conviction filed on 09.22.2017	X 2294 - 2296
Jury Instructions filed on 07.18.2017	IX 1953 - 2007
Jury Trial Transcript on 07.05.2017 (1 <sup>st</sup> )	IV 884 - 936
Jury Trial Transcript on 07.05.2017 (2 <sup>nd</sup> )	V 937 - 1006
Jury Trial Transcript on 07.06.2017 (1 <sup>st</sup> )	V 1007 - 1069
Jury Trial Transcript on 07.06.2017 (2 <sup>nd</sup> )	V 1070 - 1154
Jury Trial Transcript on 07.07.2017 (1 <sup>st</sup> )	VI 1158- 1288
Jury Trial Transcript on 07.07.2017 (2 <sup>nd</sup> )	VI 1289 - 1358
Jury Trial Transcript on 07.10.2017 (1 <sup>st</sup> )	VI 1359 - 1403
Jury Trial Transcript on 07.10.2017 (2 <sup>nd</sup> )	VI 1404 - 1463
Jury Trial Transcript on 07.11.2017 (1 <sup>st</sup> )	VII 1464 - 1503
Jury Trial Transcript on 07.11.2017 (2 <sup>nd</sup> )	VII 1504 - 1566
Jury Trial Transcript on 07.12.2017 (1 <sup>st</sup> )	VII 1567 - VIII 1673
Jury Trial Transcript on 07.12.2017 (2 <sup>nd</sup> )	VIII 1674 - 1694
Jury Trial Transcript on 07.13.2017	VIII 1695 - 1837

Jury Trial Transcript on 07.17.2017 (1 <sup>st</sup> )	VIII 1838 - IX 1952
Jury Trial Penalty Transcript on 07.19.2017 (1 <sup>st</sup> )	IX 2013 - 2077
Jury Trial Penalty Transcript on 07.19.2017 (2 <sup>nd</sup> )	IX 2078 - 2112
Jury Trial Penalty Transcript on 07.20.2017 (1 <sup>st</sup> )	X 2113 - 2170
Jury Trial Penalty Transcript on 07.20.2017 (2 <sup>nd</sup> )	X 2171 - 2262
Minute Order on 06.22.2016	IV 752 - 753
Motion to Continue Trial Date filed on behalf of co-defendant Jose Gonzales filed 07.03.2013	I 141 - 146
Motion to Continue Trial Date filed on behalf of co-defendant Jose Gonzales filed 04.09.2014	I 200 - 206
Notice of Appeal filed on 10.23.2017	X 2297 - 2298
Notice of Entry of Findings of Fact, Conclusions of Law and Order filed 12.03.2012	I 137 - 140
Notice of Evidence in Support of Aggravating Circumstances filed 09.25.2012	I 48 - 55
Notice of Motion and Motion for the Jury to be Taken to the Scene of the Crimes Alleged in the Information filed on 06.12.2016	III 715 - 720
Notice of Motion and Motion in Limine to Preclude Duress as a Defense to All the Charges in the Information filed on 07.13.2016	IV 754 - 758
Notice of Motion and Motion to Admit Evidence of Other Crimes, Wrongs or Acts filed on 09.04.2015	III 535 - 546

Notice of Motion and Motion to File Corrected Notice of Intent to Seek the Death Penalty filed 10.04.2012	I 80 - 85
Notice of Motion and Motion to Preclude Introduction of Statement, or in the Alternative, to Redact Statement filed on 08.10.2018	II 398 - 442
Notice of Motion and Motion Requesting an Order Requiring the State Update the Addresses of the Witnesses That Will Be Called to Testify During Their Case in Chief filed on 08.10.2015	II 453 - 456
Notice of Motion and Motion to Continue Trial filed on 09.07.2015	III 547 - 564
Notice of Motion and Motion to Strike Aggravating Circumstances filed 08.10.2015	II 443 - 452
Opposition to State's Motion in Limine to Preclude Duress as a Defense to Murder filed on 06.21.2016	III 726 - 733
Opposition to State's Motion in Limine to Preclude Duress as a Defense to All the Charges in the Information filed on 07.27.2016	IV 759 - 767
Opposition to State's Motion to Admit Evidence of Other Crimes, Wrongs or Acts filed on 09.12.2015	III 588 - 591
Opposition to State's Motion to File Corrected Notice of Intent so Seek the Death Penalty filed 10.25.2012	I 97 - 103
Order for Production of Inmate Jose Alejandro Gonzales, BAC #1016762	V 1155 - 1157

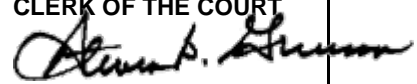
Order Granting Motion to Sever Trials filed on 03.16.2015	II 335
Order Granting State's Motion in Limine to Preclude Duress as a Defense to all the Charges in the Information filed on 12.01.2016	IV 785 - 786
Order Granting State's Motion to Admit Evidence of Other Crimes, Wrongs or Acts filed on 01.31.2015	III 713 - 714
Penalty Phase Verdict filed on 07.20.2017	X 2263 - 2274
Receipt of Copy of Discovery filed 10.29.2012	I 104 - 107
Renewed Motion to Continue Trial Date and Motion to File Declaration in Support Under Seal filed on behalf of co-defendant Jose Gonzales filed 07.31.2013	I 157 - 184
Reply to State's Opposition to Motion to Continue Trial filed on 09.11.2015	III 575 - 587
Reply to State Response to Defendant's Motion for an Order Requiring the State Update the Addresses of the Witnesses That Will Be Called to Testify During Their Case in Chief filed on 08.16.2015	II 460 - 464
Reply to State/Response to Motion to Strike Aggravating Circumstances filed on 08.21.2015	III 492 - 524
Second Amended Notice of Intent to Seek Death Penalty filed on 12.10.2015	III 673 - 678
Sentencing Memorandum filed on 09.08.2017	X 2275 - 2293
State Exhibit 19	XIII 2368 - 2369
State Exhibit 47	XIII 2370 - 2371

State Exhibit 153	XIII 2372
State Exhibit 154	XIII 2373 - 2375
State Exhibit 169	XIII 2376
State Exhibit 170	XIII 2377 - 2378
State's Opposition to Cabrera Motion to Sever filed 09.25.2012	I 56 - 71
State's Opposition to Defendant's Motion to Continue Trial filed on 09.10.2015	III 571 - 574
State's Response to Defendant's Motion for a Jury View and Motion in Limine to Preclude Duress as a Defense to Murder filed on 06.14.2016	III 721 - 725
State's Response to Defendant's Motion for an Order Requiring the State Update the Addresses of the Witnesses That Will Be Called to Testify During Their Case in Chief filed on 08.14.2015	II 457 - 459
State's Response to Defendant's Motion to Preclude Introduction of Statement, or in the Alternative, to Redact Statement filed 08.18.2015	II 474 - 481
State's Response to Defendant's Motion to Strike Aggravating Circumstances filed on 08.18.2015	II 465 - 473
State's Opposition to Defendant [Gonzales] Motion to Continue Trial Date filed on 04.14.2014	I 207 - 215
Transcript Hearing on 09.06.2012	I 22 - 25
Transcript Hearing on 09.12.2012	I 26 - 34
Transcript Hearing on 10.01.2012	I 72 - 79

Transcript Hearing on 10.17.2012	I 86 - 96
Transcript Hearing on 10.31.2012	I 116 - 136
Transcript Hearing on 07.24.2013	I 147 - 156
Transcript Hearing on 08.19.2013	I 185 - 191
Transcript Hearing on 08.21.2013	I 192 - 199
Transcript Hearing on 04.21.2014	I 216 - 222
Transcript Hearing on 04.28.2014	I 223 - 242
Transcript Hearing on 05.14.2014	II 243 - 255
Transcript Hearing on 03.04.2015	II 317 - 334
Transcript Hearing on 03.16.2015	II 336 - 377
Transcript Hearing on 04.06.2015	II 378 - 386
Transcript Hearing on 07.22.2015	II 387 - 397
Transcript Hearing on 08.19.2015	III 482 - 491
Transcript Hearing on 08.26.2015	III 525 - 534
Transcript Hearing on 09.09.2015	III 565 - 570
Transcript Hearing on 09.14.2015	III 592 - 621
Transcript Hearing on 11.20.2015	III 622 - 657
Transcript Hearing on 12.09.2015	III 658 - 672
Transcript Hearing on 12.16.2015	III 679 - 701
Transcript Hearing on 12.21.2015	III 702 - 712



Transcript Hearing on 06.22.2016	IV 734 - 751
Transcript Hearing on 08.08.2016	IV 768 - 784
Transcript Hearing for Jose Gonzales on 04.12.2017	IV 787 - 802
Transcript Hearing for Jose Gonzales on 05.22.2017	IV 813 - 877
Transcript Preliminary Hearing on 08.21.2012	I 5 - 16



TRAN  
CASE NO. C-12-283700-1  
DEPT. NO. 25

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
IVONNE CABRERA, )  
)  
)  
Defendants. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT  
OF  
JURY TRIAL  
250 RULE

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED: WEDNESDAY, JULY 5, 2017

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

00937

1 APPEARANCES:

2 For the State: MARC DIGIACOMO, ESQ.

3 HETTY WONG, ESQ.

4  
5 For the Defendant: PATRICIA ERICKSON, ESQ.

6 BRET WHIPPLE, ESQ.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16 \* \* \* \* \*

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

I N D E X  
O F  
W I T N E S S E S

NAME: VINCENT BOOKER PAGE

Direct Examination By Ms. Wong 5  
Cross-Examination By Ms. Erickson 21

NAME: ANDREW SANTOS PAGE

Direct Examination By Mr. DiGiacomo 27  
Cross-Examination By Ms. Erickson 34

NAME: VICTOR SANTILLA PAGE

Direct Examination By Ms. Wong 45  
Cross-Examination By Ms. Erickson 57

\* \* \* \* \*

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 5, 2017

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

3 \* \* \* \* \*

4

5 THE COURT: Can we get your name.

6 THE INTERPRETER: Noel Patton.

7 THE COURT: From the opening statements earlier  
8 to now, I've asked that the screen you were viewing be  
9 adjusted because we will be utilized during testimony, but  
10 we also need you to be able to see the witness stand. So  
11 knowing the witness stand is here where that water jug is,  
12 can I see by a show of hands if any jurors cannot see the  
13 witness stand.

14 All right. Seeing no hands, it looks like we're  
15 ready to proceed.

16 I'll ask the State to call their first witness.

17 MS. WONG: Thank you. We call Officer Vincent  
18 Booker.

19 THE COURT: Officer Booker.

20 Officer Booker, if you'll walk all the way through  
21 the court here and reach the witness stand. When you  
22 reach the chair, just remain standing and my clerk to my  
23 right will swear you in.

24 THE CLERK: You do solemnly swear the testimony  
25 you are about to give in this action shall be the truth,

1 the whole truth, and nothing but the truth so help you  
2 God.

3 THE WITNESS: I do.

4 THE CLERK: State and spell your first and last  
5 name.

6 THE CLERK: My first name is Vincent. My last  
7 name is Booker. Booker is spelled -- B-o-o-k-e-r. First  
8 name is spelled, V-i-n-c-e-n-t.

9 THE COURT: Ms. Wong, when you are ready.

10 MS. WONG: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MS. WONG:

13 Q. How are you employed?

14 A. I'm currently employed with the City of North  
15 Las Vegas as a police officer.

16 Q. What position do you hold with North las  
17 Vegas?

18 A. I'm currently at that rank of a police  
19 officer, assigned to the SWAT team.

20 Q. What was your assignment back in April 2012?

21 A. Back in April 2012 I was assigned to patrol.  
22 And I was on the grave-yard shift.

23 Q. So you were working at approximately 5:58 in  
24 the morning?

25 A. That's correct.

1           Q.       On April 26, 2012 at approximately 5:58 were  
2 you dispatched to 2039 Webster, Apartment C, with regard  
3 to a female that had been shot?

4           A.       That is correct.

5           Q.       You responded to that location?

6           A.       I did.

7           Q.       Were you riding by yourself at the time or did  
8 you have a partner with you?

9           A.       I had a partner at the time.

10          Q.       Who was that?

11          A.       That was officer Santos.

12          Q.       Is that Andrew Santos?

13          A.       Correct.

14          Q.       How long did it take for you to arrive at the  
15 location?

16          A.       I don't have the exact time. I would say it  
17 was either in 5 to 8 minutes.

18               THE COURT:   Maybe this is what you were going do  
19 also, Ms. Erickson. I know that you came in with some  
20 papers, Officer Booker, and that's not necessarily  
21 problematic at all if, in fact, we need to use it to  
22 refresh your recollection or otherwise. We can't do it  
23 during the course of the testimony.

24               You need to answer the questions to the best of your  
25 recollection and if you cannot answer a question, then,

1 Ms. Wong can ask if you need to be refreshed on  
2 something.

3 But I can't have you testifying from documentation  
4 that may or may not be to evidence in the case.

5 So if you can set a side is your papers just so we  
6 don't have to be concerned about that. Then to the extent  
7 you can answer, answer and to the extent you cannot, you  
8 can indicate that and we'll go from there.

9 THE COURT: You may proceed, Ms. Wong.

10 Is that what you wanted to inquire about, Ms.  
11 Erickson.

12 MS. ERICKSON: Yes, Judge.

13 THE COURT: All right. Thank you.

14 And to the extent it appears you were, just a  
15 moment ago, giving testimony and refreshing your  
16 recollection from something, can you identify what it was  
17 you were looking at.

18 THE WITNESS: This is actually my case report.  
19 What I was referring to was the exact time.

20 THE COURT: Okay. Thank you.

21 Ms. Wong.

22 BY MS. WONG:

23 Q. When you arrived at the Webster apartment,  
24 were there other officers who were already on site?

25 A. My sergeant at the time, Sergeant Wood, he



1 arrived prior to myself arriving.

2 Q. So once you arrived, what did you do?

3 A. As I exited the vehicle I approached the  
4 common area which led to where the entrance is to the  
5 4-plex the apartments were at.

6 That is when I saw a couple of individuals  
7 attending to an Hispanic female that was injured.

8 Q. When you say a couple of individuals, identify  
9 their gender?

10 A. There was a male subject and a female subject  
11 attending to another female subject.

12 Q. Can you describe the female they were  
13 attending to?

14 A. She was slipping in and out of consciousness.  
15 She appeared to be injured; however, initially it was  
16 difficult to determine the state of her injuries.

17 Q. Why is that?

18 A. Just because -- I didn't see any blood or any  
19 bruising or anything of the sort initially. As I tried to  
20 speak with her and find out what was going on, what  
21 happened, it was then that I saw some blood on the left  
22 side of her body.

23 Q. Could you tell what was causing the  
24 bleeding?

25 A. Leader on it was determined it was a gunshot

1 wound.

2 Q. Did you actually see that wound?

3 A. I saw a lot of blood coming off the one from  
4 the left side of the body. But I believe there was -- I  
5 believe there was another wound on her arm. I would have  
6 to refresh my memory.

7 Q. If it would refresh your recollection, go  
8 ahead and refer to your report.

9 A. Yes. Thank you.

10 So as I stated, she had a wound to the left side of  
11 her body. And her upper left arm is where the gunshot  
12 wound was at.

13 MS. WONG: May I approach.

14 THE COURT: You may.

15 BY MS. WONG:

16 Q. Officer, I'm going to show you State's  
17 Proposed Exhibit 2. Do you recognize this?

18 A. Yes.

19 Q. What is it?

20 A. It's a photograph of the female I found  
21 initially.

22 Q. How do you recognize this photograph?

23 A. I believe I took this photograph.

24 Q. So while you were on the scene you had a  
25 camera with you?

1           A.       Yeah. My department issue camera. I snap  
2 photographs before transport to the hospital. I wanted to  
3 quickly snap a photograph, as I saw it.

4           Q.       Aside from taking a photograph of the female  
5 you first made contact with, you took a photograph of the  
6 scene in general?

7           A.       I did snap initial photographs.

8           Q.       You also snapped some photos of people you  
9 might have encountered, as well?

10          A.       Correct.

11          Q.       Showing what's been marked as State's Proposed  
12 Exhibits 50, 52, 53, 54, 55, 63, 65, 66, 91 and 156. Will  
13 you please take a look at them and let me know if you  
14 recognize them.

15          A.       Yes, I do.

16          Q.       These are all photographs you took at the  
17 scene?

18          A.       Correct.

19          Q.       These are all fair and accurate depictions of  
20 the way the scene appeared to you on April 26, 2012?

21          A.       Correct. At the time.

22                 MS. WONG: State moves for the admission of  
23 State's Proposed Exhibits 50, 52, 53, 54, 55, 63, 65, 66,  
24 91 and 156 into evidence.

25                 MS. ERICKSON: No objection, your Honor.

1           THE COURT: Those exhibits will be admitted.  
2       I'll repeat them one more time for the record to make sure  
3       my clerk has these as well and then once they are admitted  
4       you may publish them as needed, Ms. Wong.

5           The court has now admitted Exhibits, 50, 52, 53, 54,  
6       55, 63, 65, 66, 91 and 156.

7           MS. WONG: I apologize, your Honor. There  
8       should also be 102.

9           THE COURT: And 102.

10          MS. ERICKSON: No objection.

11          THE COURT: Thank you.

12          You may proceed and publish as needed, Ms. Wong.

13          MS. WONG: Thank you, your Honor.

14       BY MS. WONG:

15           Q.       Showing you what's marked as State's Exhibit  
16       No. 102, Officer, is this the female you first  
17       encountered?

18           A.       That's correct.

19           Q.       Describe for us what her demeanor was like  
20       when you first made contact with her?

21           A.       If you notice in the photograph her eyes  
22       appear to be, for the majority, closed. They were like  
23       that as I was trying to gather information from her  
24       initially.

25           She would open them a little bit wider very briefly

1 and then they would close for a short amount of time.  
2 That happened repeatedly as I was trying to figure out a  
3 -- what was the state of her injuries, as well as, any  
4 initial information I can get as to what just recently  
5 occurred.

6 Q. What sort of information were you trying to  
7 elicit from her?

8 A. If she could, maybe, blurt out a name. If she  
9 recognized anybody that may have done this. Then as she  
10 was slipping, if she could quickly give that information  
11 out as to who, whereabouts, where they may live. Any  
12 information she can quickly provide that can help assist  
13 what was going on.

14 Q. Was she able to actually give you that  
15 information?

16 A. She did. Having recall, she stated --

17 MS. ERICKSON: Objection.

18 THE COURT: Hold on a second. There's been a  
19 objection.

20 MS. ERICKSON: They haven't laid a basis for the  
21 admission of Ms. Marin's statements.

22 THE COURT: MS. Wong.

23 MS. WONG: Excited utterance.

24 THE COURT: I will overrule the objection and  
25 will allow the exception to the hearsay. And it is

1 anticipated there will be that testimony. And it is  
2 anticipate there will be that testimony. But I'll allow  
3 it on the hearsay exception.

4 You may proceed and answer.

5 THE WITNESS: She did state that -- I asked her,  
6 I said, who did this. And she said Smokie.

7 BY MS. WONG:

8 Q. Did you ask her for a description of Smokie?

9 A. I don't recall if that was the next thing I  
10 asked. If I could refer to my report to check for that.

11 Q. You may.

12 A. I do recall asking the whereabouts of Smokie,  
13 in terms of where he or she lived.

14 Q. Why don't you refresh your recollection in  
15 your report as to whether or not she gave you a  
16 description of Smokie?

17 A. Okay.

18 She described Smokie as a Hispanic male, about 21  
19 years of age. And said he lived in the area of Maryland  
20 and Harmon.

21 Q. Were you able to gather any additional  
22 information from her?

23 A. Nothing else from her.

24 Q. How did the conversation actually end?

25 A. She was no longer responsive to respond to my

1 questions.

2 Q. Are you saying she slipped in and out of  
3 consciousness?

4 A. She slipped in and out of consciousness.

5 Q. So after attending to her, what did do you  
6 next?

7 A. Next is I then wanted to check the area near  
8 the front door, as to her path and where she was located  
9 at.

10 Q. I apologize. We keep referring to her as her.  
11 Did you ever identify who she was?

12 A. At the immediate time, no.

13 Q. Did you subsequently identify who --

14 A. Yes.

15 Q. -- this female was?

16 A. Yes.

17 Q. What's her name?

18 A. Melissa Marin.

19 Q. Go ahead. I'm sorry. Continue.

20 A. Again, as I stated, Melissa Marin, there is  
21 not an overview shot, but she's approximately 30 yards  
22 from the actual front door of the apartment.

23 So as I finished with Melissa Marin then I went  
24 towards the front door of the actual apartment. That's  
25 when I also saw another female laying down, who also

1 appeared to be suffering from a gunshot wound.

2 Q. I'm going to show you what's now been admitted  
3 as State's Exhibit No. 91.

4 Is this the female that you encounter at the  
5 doorway?

6 A. Correct. Yes.

7 Q. Did you identify who she was?

8 A. Yes.

9 Q. Who is she?

10 A. That is Ashley.

11 Q. Ashley Wantland?

12 A. Correct.

13 Q. Describe for us her condition when you made  
14 contact with her?

15 A. This picture pretty much depicts her  
16 condition. She was not able to speak at all. She was  
17 shaking. She was crying. And, again, not able to speak  
18 at all. She did not move much from that position.

19 Q. Were you able to communicate with her at  
20 all?

21 A. I was not.

22 Q. That is because of her condition?

23 A. Correct.

24 Q. What did you do after making contact with  
25 Ashley?



1           A.       After I made contact with Ashley I wanted to  
2 check inside the apartment just to see the condition, if  
3 there are any other subjects inside, any other victims.

4           Q.       Which bedroom did you go into first?

5           A.       The front door faces south. So I went into  
6 the first bedroom, which is on the south side of the  
7 room.

8           Q.       So the southeast bedroom?

9           A.       Correct, southeast bedroom.

10          Q.       What, if anything, did you find in there?

11          A.       I found the subject lying on his bed,  
12 unresponsive. He also appeared to be suffering from a  
13 gunshot wound. He was completely unresponsive.

14          Q.       I'm going to show you State's Exhibit 156. Is  
15 this the subject that you saw in the southeast bedroom?

16          A.       That's correct.

17          Q.       Did you touch this victim at all?

18          A.       I did.

19          Q.       What was his condition?

20          A.       He was cold to the touch. Lifeless.

21          Q.       Did you identify who this subject was?

22          A.       Yes. He was later identified as Eric  
23 Quezada.

24          Q.       Quezada Morales?

25          A.       Correct.

1           Q.       So what did you do upon finding Eric in this  
2 room?

3           A.       Once I found him, again, I wanted to check the  
4 rest of the apartment to see if there's anybody else  
5 inside. That's what I did. I went to the northeast  
6 bedroom.

7           Q.       What did you find in there?

8           A.       I found another subject on the floor in  
9 somewhat of a fetal position with a gunshot wound.

10          Q.       Do you recall where the gunshot wound was?

11          A.       I don't. If I could refer to the report.

12          Q.       Absolutely.

13          A.       He appeared to be suffering from a gunshot to  
14 his head.

15          Q.       Showing you State's Exhibit 63. Is this the  
16 individual you saw inside of the northeast bedroom?

17          A.       That's correct.

18          Q.       Were you able to identify who this individual  
19 was?

20          A.       Yes, I was. I'll have to check the report.  
21 I'll apologize. I have to check the report for his  
22 name.

23          Q.       Sure.

24          A.       His name was James Headrick.

25          Q.       Was this person alive or deceased?

1           A.       He appeared to be deceased.

2           Q.       Did you touch him?

3           A.       I did.

4           Q.       Was he, in fact, deceased?

5           A.       He had no signs of life.

6           Q.       So what happened after you made your rounds to  
7 each of the bedrooms. What do you do next?

8           A.       Again, additional officers were responding at  
9 this point. I quickly wanted to get photographs of the  
10 crime scene to assist the investigation. As additional  
11 officers were responding as well as medical was responding  
12 to the scene.

13          Q.       Aside from medical, did any detectives arrive  
14 on scene while you were there?

15          A.       Yes.

16          Q.       Did you relay any of the information you  
17 received to the detectives?

18          A.       Yes.

19          Q.       Were you able to tell these detectives who the  
20 potential subjects were in the case?

21          A.       I repeated the information that Melissa  
22 provided.

23          Q.       Which was that Smokie was one of the  
24 individuals?

25          A.       Correct.

1           Q.       Did you provide the detectives with just one  
2       name?

3           A.       No.    There was another name that one of the  
4       other officers on scene who responded to the hospital.  
5       She relayed information to me as well.

6           MS. ERICKSON:   Objection as to what she relayed.  
7       Hearsay.

8           MS. WONG:   I didn't ask him for that  
9       information.   I'm just asking if he was provided with the  
10      information.

11          THE COURT:   The question should not have elicited the  
12      actual statements someone else may have made, so to avoid  
13      any concerns with hearsay, I'll sustain the objection that  
14      any testimony you may have given as to what anybody may  
15      have said, I'll sustain that.

16          I'll let counsel rephrase the question.   Keep in mind  
17      to answer the question as asked, please.

18          THE WITNESS:   Okay.

19      BY MS. WONG:

20          Q.       You were provided some information by another  
21      responding officer?

22          A.       Correct.

23          Q.       Do you recall the name of that responding  
24      officer?

25          A.       Yes.

1 Q. Who was that?

2 A. Officer Demers.

3 Q. Based on the information that Officer Demers  
4 provided to you, what name did you give to the detectives  
5 who arrived on scene to advise who the suspects were in  
6 this case?

7 A. So I don't misspeak, I would like to look at  
8 my report to provide that name.

9 THE COURT: What we're using the report for is  
10 to refresh your recollection. So far that has been done  
11 appropriately, but it's not a open the report read from  
12 it. It's a look at it. Refresh your recollection, put it  
13 aside and testify.

14 THE WITNESS: Okay.

15 BY MS. WONG:

16 Q. Is your memory refreshed?

17 A. Yes.

18 Q. What names did you provide to the detectives  
19 at the scene?

20 A. Ivonne Cabrera.

21 Q. What was the second name?

22 A. Smokie.

23 Q. Did you then turn the investigation over to  
24 the detectives?

25 A. Correct. Yes.

1 MS. WONG: I'll pass the witness.

2 THE COURT: Thank you.

3 Ms. Erickson, whenever you are ready.

4 CROSS-EXAMINATION

5 BY MS. ERICKSON:

6 Q. You began your testimony by discussing you'd  
7 arrived on the scene and that Sergeant Wood was there  
8 before you, correct?

9 A. Correct.

10 Q. There was also an Officer Waite, and an  
11 Officer Michael --

12 A. Mikolojyczk.

13 Q. That's spelled M-i-k-o-l-o-j-y-c-z-k.

14 They were there too when you arrived?

15 A. I don't recall.

16 Q. Officer Booker, you prepared two reports in  
17 this case, didn't you?

18 A. I know I prepared the front sheet, yes.

19 Q. So I'm looking at a report. In North Las  
20 Vegas police reports they have a report number. Then at  
21 the end of that there's a period and there's a number  
22 after the period?

23 A. Correct.

24 Q. That number after the period indicates what  
25 order this report goes in. So it's like doc 1, doc 2,

1 doc, 3 doc 4, correct?

2 A. Correct.

3 Q. So I'm showing you a report that looks like  
4 the first report that's given a number with the 1 after  
5 it, right?

6 A. Yes.

7 Q. Does it say you're the reporting officer?

8 A. It does.

9 Q. Okay.

10 Then you have the other report, which is doc 4. So  
11 that would be like the fourth report that came in on this  
12 case?

13 A. Correct.

14 Q. Does that indicate that you're a reporting  
15 officer?

16 A. That does not necessarily indicate that I  
17 entered a subsequent report. So, for example, if see here  
18 it says entered by. That's entered by the officer.

19 Q. Santos. Okay.

20 Well, you and Offfier Santos arrived together?

21 A. Correct.

22 Q. So if you reviewed his report, his information  
23 would be the same as what you observed also because you  
24 both arrived at the same time?

25 A. We did arrive at the same time.

1 Q. Okay.

2 So I'm showing you the report that you've indicated  
3 has been written by Officer Santos, who you arrived with  
4 at the same time?

5 A. Correct.

6 Q. And I would draw your attention to the second  
7 paragraph. Does that refresh your recollection as to who  
8 was present when you arrived?

9 A. Yes, it does.

10 Q. Okay. Thank you.

11 So that was the sergeants who you testified about  
12 and Officer Waite and Officer Mikolojczyk?

13 A. Mike.

14 Q. Thank you.

15 A. No problem.

16 MS. ERICKSON: There is a problem with my  
17 exhibits.

18 THE COURT: Do you have what you need for this  
19 witness now, or -- if you do not then --

20 THE CLERK: We do have those.

21 MS. ERICKSON: Fine. That's all I need.

22 BY MS. ERICKSON:

23 Q. Officer Booker, showing you what's marked for  
24 identification as Defendant's Proposed Exhibit H. Do you  
25 recognize what that picture shows?



1 A. I do.

2 Q. What does it show?

3 A. That depicts the four-plex building at 2039.

4 Q. Across the street?

5 A. Yes.

6 Q. That accurately reflects what you saw on the  
7 date of April 26, 2012 of the buildings and the way the  
8 area looked?

9 A. Correct.

10 MS. ERICKSON: Move for its admission.

11 MR. DIGIACOMO: No objection.

12 THE COURT: Exhibit H is admitted. You may  
13 publish.

14 MS. ERICKSON: Thank you.

15 BY MS. ERICKSON:

16 Q. Showing you Exhibit H. Describe for the jury  
17 where you saw the first woman you encountered, Melissa  
18 Marin?

19 THE COURT: If you touch the screen you should  
20 be able to illustrate, like Monday night football. You  
21 may be able to illustrate on the screen.

22 THE WITNESS: Perfect. Thank you.

23 So Melissa was --

24 BY MS. ERICKSON:

25 Q. There's a fence there, isn't there?

1           A.       There is a fence there now, correct.

2           Q.       And there was a fence there when you were  
3 there?

4           A.       I don't recall. It was 5 years ago.  
5 Honestly, these buildings have changed substantially.

6           Q.       I understand. It's been a long time, hasn't  
7 it.

8                   I'm going to ask you to look at Officer Santos'  
9 report again to see if that refreshes your recollection  
10 about whether there was a fence or gate there.

11                   I'm referring you to the second page of Officer  
12 Santos' report.

13          A.       Correct.

14          Q.       Okay. So there was a fence there at the  
15 time?

16          A.       Correct.

17          Q.       The gate -- it had a gate in it, correct?

18          A.       Correct.

19          Q.       You can see that just beyond the structure  
20 that's parked there, correct?

21          A.       Correct.

22          Q.       So you've indicating that Melissa Marin was  
23 located in the entrance gate area of that complex?

24          A.       To the best of my knowledge. I don't recall  
25 whether she was on the other side of the gate on the west

1 side or east side. I know she was in that general area.

2 Q. Okay. Circle the general area that Ms. Marin  
3 was found at. Thank you.

4 Now, I think you said that Ms. Marin told you that  
5 Smokie had shot her; is that correct?

6 A. I asked her who did this. She said Smokie.

7 Q. Okay. She also relayed to that he was 21  
8 years old -- about?

9 A. Correct.

10 Q. That he lived in the area of Maryland Parkway  
11 and Harmon?

12 A. Correct.

13 Q. Subsequent to going through the scene, did you  
14 also contact other witnesses, other potential witnesses?

15 A. I would have to refer to my report.

16 Q. Just a second. I'm sorry. That's Officer  
17 Santos' again, so thank you.

18 MS. ERICKSON: I believe that's all I have.

19 THE COURT: Can I ask counsel to assist in  
20 clearing the screen.

21 THE COURT: Ms. Wong, any follow-up questions  
22 for Officer Booker.

23 MS. WONG: No.

24 THE COURT: May I see by a show of hands of the  
25 jurors have any questions for Officer Booker.

1 THE COURT: It appears there are no questions,  
2 so you are excused. Mind your step as you are exiting.

3 THE WITNESS: Thank you.

4 THE COURT: State may call their next witness.

5 MR. DIGIACOMO: Officer Santos.

6 THE CLERK: You do solemnly swear the testimony  
7 you are about to give in this action shall be the truth,  
8 the whole truth, and nothing but the truth, so help you  
9 God.

10 THE WITNESS: I do.

11 THE CLERK: State and spell your name for the  
12 record, please.

13 THE WITNESS: Andrew Santos --  
14 A-n-d-r-e-w -- S-a-n-t-o-s.

15 DIRECT EXAMINATION

16 MR. DIGIACOMO:

17 Q. Sir, how are you employed?

18 A. I'm a detective with the North Las Vegas  
19 Police Department.

20 Q. How long have you been a detective?

21 A. Since January.

22 Q. I'll direct your attention back to April 26,  
23 2012. What was your assignment back then?

24 A. As a police officer.

25 Q. When you say police officer, does that mean

1       you wear a uniform and ride around in a marked patrol  
2       vehicle?

3             A.       That's correct.

4             Q.       On the early morning hours of April 26, were  
5       you riding alone or with somebody else?

6             A.       I was partnered with Officer Booker.

7             Q.       Did you get dispatched about 6 o'clock in the  
8       morning -- it would be 5:58 in the morning to a location  
9       at 2039 Webster, here in North Las Vegas, Clark County,  
10      Nevada?

11            A.       Correct.

12                   MR. DIGIACOMO: May I approach.

13                   THE COURT: You may.

14                   BY MR. DIGIACOMO:

15             Q.       Detective, I'm going to show you what's been  
16       marked as State's Proposed Exhibit No. 144.

17                   It's a -- I'll represent to you it's a Google map  
18       of an area.

19                   Do you recognize that area as being generally  
20       consistent with the 2039 Webster address?

21             A.       Yes, sir.

22             Q.       It's a fair and accurate depiction of the  
23       location?

24             A.       Yes, sir.

25                   MR. DIGIACOMO: Move to admit 144.

1 MS. ERICKSON: No objection.

2 THE COURT: Exhibit 144 is admitted. You may  
3 publish.

4 BY MR. DIGIACOMO:

5 Q. Detective, once you arrived on scene, describe  
6 for the Ladies and Gentlemen, what you first see.

7 A. A few other officers and the sergeant arrived  
8 before us. They were administering first aide to a female  
9 who was just inside of the courtyard area. She was shot  
10 inside Apartment C, and we immediately went into that  
11 apartment to look for other victims or the suspect.

12 Q. Is that called clearing the residence?

13 A. Exactly.

14 Q. What does clearing the residence mean?

15 A. To ensure the scene is safe. So we all go in  
16 with our guns drawn, looking for victims to bring out to  
17 medics or to take the suspect into custody and put him  
18 down.

19 Q. Did you find any other suspects?

20 A. No, sir.

21 Q. Did you find any other victims?

22 A. Yes.

23 Q. What did you find?

24 A. There was another female right in the entrance  
25 of Apartment C and two males.

1           Q.       After you determine that the scene was secured  
2       you make efforts to contact either one of the two  
3       females?

4           A.       Yes, sir. We immediately came back outside.  
5       I contacted Ashley Wantland. She was the female nearest  
6       the door of the apartment.

7           Q.       I'll put up what was previously admitted as  
8       Exhibit 91. Do you recognize that person?

9           A.       Yes.

10          Q.       Who is that?

11          A.       Ashley Wantland.

12          Q.       Describe her demeanor for me.

13          A.       She was really in distress, having trouble  
14       staying awake or speaking. She was in and out of  
15       consciousness.

16          Q.       Could you see any injuries about her?

17          A.       Yes. I believe she had a wound in her arm.  
18       Some around her throat area and her chest. I couldn't  
19       tell where her injuries were. It was apparent she'd been  
20       shot.

21          Q.       How long after your initial dispatch would you  
22       say you came into contact with Ms. Wantland?

23          A.       From receiving the call on the radio?

24          Q.       Yeah.

25          A.       Maybe within a minute. Not really certain.

1           Q.       When you had contact with Ms. Wantland, were  
2 you able to get any information from her?

3           A.       Yes. I tried to ask her what happened. Who  
4 did this. She explained a short Hispanic male. I asked  
5 her more questions. How do you know him. Just trying to  
6 elicit any information. She said it was Chinola's friend.  
7 I didn't understand what the word meant.

8           Q.       She says the word Chinola, or Chinola's  
9 friend. At that time you didn't know what Chinola was.

10          A.       Never heard that before.

11          Q.       Never heard that word before?

12          A.       Correct.

13          Q.       Was that about all the information you were  
14 able to get out of Ashley?

15          A.       Yes.

16          Q.       Did you then contact anybody else?

17          A.       I went back to Melissa Marin at the front  
18 gate.

19          Q.       I'll put up first 102. Do you recognize  
20 what's depicted on 102?

21          A.       Yes.

22          Q.       Were you able to get any information from  
23 her?

24          A.       Again, I started asking her the same  
25 questions, then I realized Ms. Wantland was pretty much



1 incoherent. I thought they both were going to die, so my  
2 immediate response was to try to elicit from her who did  
3 this. She gave the name Smokie. She described him also a  
4 short Hispanic male. I kept trying to ask her how do you  
5 know Smokie. Just trying to get any information I could  
6 about Chinola's friends.

7 Q. Chinola's friend?

8 A. Yes. Again, I didn't understand what that  
9 meant. I didn't know if it was a name or not.

10 Q. Do either one of them tell you Smokie is there  
11 with anybody else during the time of the crime?

12 A. Yes, Ms. Marin did.

13 Q. What did she tell you?

14 A. Ms. Chinola was there, along with Chinola.

15 Q. Were you able to figure out what -- what  
16 gender Chinola would be?

17 A. I still didn't even know it was a name of a  
18 person. I thought it might be, like a, like a reference  
19 to my uncle's niece or some type of a -- I don't speak  
20 Spanish, so I'm unfamiliar with the word.

21 Q. Melissa seemed to be indicating that Smokie  
22 was there with somebody else?

23 A. Yes.

24 Q. In the course of your report were you able to  
25 identify that other person as being female?

1           A.       She referred to her as she, so I thought it  
2 was the gender assignment. So I gathered it was female.

3           Q.       So you had two suspects, a male and a female.  
4 One named Smokie. One named Chinola.

5           A.       I didn't know that Chinola was a name at that  
6 time.

7           Q.       Did you -- once you have your conversation  
8 with both Ashley and Melissa, what are your  
9 responsibilities at that point?

10          A.       To do whatever we could as far as first aide  
11 until medics arrived. We really don't receive much first  
12 aide training. So much as possible we secured the scene.  
13 Officer Booker became primary investigator on the scene,  
14 so I did what I could to help him. Put up tape to keep  
15 the scene secure and start interviewing and looking for  
16 witnesses.

17          Q.       And the others talked to some neighbors?

18          A.       Yes.

19          Q.       After they talked to those neighbors, did you  
20 have any additional, relevant information about the  
21 crime?

22          A.       Not that I realized. I put everything in my  
23 report. They had just said they'd seen a vehicle  
24 associated with the -- they'd been to the apartment before  
25 and spoke to one of the residents about buying some

1 furniture. They didn't have names or identifying  
2 information.

3 Q. Nothing about the facts of the morning on  
4 April 26th?

5 A. Not that I was able to gather.

6 MR. DIGIACOMO: Thank you very much, sir.

7 THE COURT: Ms. Erickson.

8 CROSS-EXAMINATION

9 BY MS. ERICKSON:

10 Q. Officer Santos, how long had you been an  
11 officer in 2012 on April 26th?

12 A. About 6, 7 years.

13 Q. So you've investigated numerous incidents from  
14 trespassing, to robbery, to attempt murder, burglary?

15 A. Yes, ma'am.

16 Q. You write a report?

17 A. Yes.

18 Q. You include all of important facts?

19 A. Yes, ma'am.

20 Q. Because in cases like this, it's been 5  
21 years -- more than 5 years since you were on the scene at  
22 2039 Webster?

23 A. Yes, ma'am.

24 Q. You would think -- finding out the name or the  
25 identification of a suspect is very important, isn't it?

1           A.       Yes, ma'am.

2           Q.       That's something you would write down in your  
3 report?

4           A.       If I had that information, absolutely.

5           Q.       You just testified that one of the girl's told  
6 you that it was a Hispanic male, correct?

7           A.       Yes.

8           Q.       I don't know that you testified -- the second  
9 female was Ashley Wantland, correct?

10          A.       As I came out of the -- when I initially  
11 arrived, I passed Ms. Marin going in. Coming back out it  
12 was Ashley Wantland. Then back to Ms. Marin.

13          Q.       So the first female was Melissa Marin?

14          A.       Correct.

15          Q.       The second female was Ashley Wantland?

16          A.       Yes.

17          Q.       You testified you spoke to Ashley?

18          A.       Yes, ma'am.

19          Q.       The one that was close to the door?

20          A.       Yes.

21          Q.       You testified she said she had been shot by a  
22 Hispanic male with a bald head, correct?

23          A.       I believe so.

24          Q.       She didn't tell you the name was Smokie, did  
25 she?

1           A.       No.

2           Q.       She also told you that she was awoke by the  
3       subject -- meaning the Hispanic male -- in her bedroom  
4       when she was suddenly shot, correct?

5           A.       That sounds familiar. I don't know that I  
6       testified to that. Now that you've said that to me, it  
7       sounds familiar and if it's in my report.

8           MS. ERICKSON: May I approach, Judge.

9           THE COURT: Sounds like he's testifying that  
10       that is in his report.

11       BY MS. ERICKSON:

12          Q.       So you remember she told you she was awoke by  
13       the subject. She probably didn't say subject, but the  
14       bald Hispanic guy?

15          A.       Yes, ma'am.

16          Q.       Came into her bedroom when she was suddenly  
17       shot.

18          A.       Sounds like what I put in my report.

19          Q.       She didn't say anything about a female being  
20       there, did she?

21          A.       She said a name Chinola, and I don't think she  
22       said and a female accomplice, anything like that. I don't  
23       know that Ms. Wantland specified there was also a female  
24       there. She said the name Chinola being there and I didn't  
25       recognize what that meant.

1 Q. Chinola was an odd word to you, correct?

2 A. Correct.

3 Q. You didn't know what it meant?

4 A. Correct.

5 Q. This was a victim who was shot, who was in a  
6 bad state, and Chinola would be an important part of what  
7 you should have put in your report, correct?

8 A. Yes. However, I didn't even know the meaning  
9 or how to pronounce it correctly. I'd never heard the  
10 word, so I was very unfamiliar with it. I didn't know if  
11 it was a reference like, mijo, in reference to a niece or  
12 nephew.

13 Q. You'll agree with me that there is not a  
14 single mention in your report about the woman saying a  
15 name of any -- the words, like phonetically put them out.  
16 There's nothing on this report about Chinola or Ashley  
17 Wantland saying anything about anybody else but the bald  
18 Hispanic guy who shot her.

19 Q. Correct. I did not put that in my report?

20 A. How many investigations have you been involved  
21 in in the last 5 years.

22 A. I couldn't tell you.

23 Q. Hundreds?

24 A. Possibly.

25 Q. Thousands -- 5 years?

1           A.       I don't think that many are possible -- small  
2 cases too.

3           Q.       You have independent recollection --

4           A.       Yes.

5           Q.       -- that a woman who you didn't even put in  
6 your report said the word Chinola?

7           A.       Yes.

8           Q.       When did you remember that?

9           A.       The following evening we worked graveyard, so  
10 we were coming off of our shift. At 7:00 in the morning  
11 we should have been off and clocking out about 6:00. So I  
12 was one of the first people done, so my partner took the  
13 report.

14                    When I came back into work, I reviewed everyone  
15 else's reports to see if they'd gone anywhere, and several  
16 people had identified a subject, and it was Ivonne Chinola  
17 Cabrera. Then I said, oh, that's what it means.

18           Q.       You could have written a newer report,  
19 correct?

20           A.       Could I -- I'm sorry.

21           Q.       You could have written another report?

22           A.       Yes, I could have.

23           Q.       You could have said in there, oh, I realize  
24 that the woman, Ashley Wantland, said the word Chinola to  
25 me?

1           A.       Yes, ma'am.

2           Q.       You didn't do that?

3           A.       No, I did not.

4           Q.       You didn't tell anyone, between the time you  
5 wrote your report, which would have been April 26, 2012,  
6 correct?

7           A.       Correct.

8           Q.       You didn't talk to anybody and tell them that,  
9 oh, by the way, Ashley Wantland mentioned the name  
10 Chinola?

11          A.       No. I read in one of the other officer's  
12 reports who was actually at the hospital with him. She  
13 talked him into going there.

14          Q.       When did you start reviewing the different  
15 reports for this trial?

16          A.       I don't remember when I received my subpoenas.  
17 Possibility a month ago.

18          Q.       Which request did you review?

19          A.       Mine, Officer Booker, I think Oscar Clanton's  
20 and -- I'm trying to think who was on scene with us.

21          Q.       Officer Teresa Marsh?

22          A.       Yes.

23          Q.       So all of the different people who were  
24 involved and on the scene at the hospital, you reviewed  
25 all of their reports?



1           A.       Yes, ma'am.

2           Q.       You don't have Chinola in here in your  
3 report?

4           A.       I didn't --

5           Q.       Nothing about the woman said something else  
6 also was involved?

7           A.       I did not put that in my report.

8           THE COURT: Anything else, Ms. Erickson.

9           MS. ERICKSON: Just a minute. I think I'm  
10 done.

11          THE COURT: Okay. Just checking.

12          MS. ERICKSON: Almost.

13 BY MS. ERICKSON:

14          Q.       With regard to Melissa Marin, she was the  
15 woman that was closer to the gate?

16          A.       Yes, ma'am.

17          Q.       The first one you had to go by to make sure  
18 the house was empty?

19          A.       Yes.

20          Q.       I think you testified you were unable to speak  
21 with her?

22          A.       Initially. I think I came in past her because  
23 the other officers were attending to her, because of  
24 everything that happened inside. As we came back out I'd  
25 spoken to Ms. Wantland and she spoke with me.

1 Q. And you did speak to Ms. Marin, didn't you?

2 A. Yes.

3 Q. She -- although bleeding, having first aide  
4 being administered to her -- told you she'd been shot by  
5 Smokie?

6 A. Yes.

7 Q. She described him as a short Hispanic male  
8 with a bald head?

9 A. Correct.

10 Q. She also said to you that she had only known  
11 him 3 days?

12 A. That's about right.

13 Q. She indicated there was a female there?

14 A. Yes, I believe she did. That was the other  
15 concern was trying to understand how she knew this guy,  
16 what the relationship was with him. It's not like she was  
17 in a conversational mode, it was kind of, who is this, how  
18 do you know them. Where did they come from. Trying to  
19 get anything I could.

20 A. She didn't give me the name of the female.

21 A. She mentioned the name Chinola, and I didn't  
22 grasp what that meant.

23 Q. Again, in your report, did you put anything in  
24 there about the fact she mentioned the name or the  
25 statement Chinola?

1           A.       No.

2           Q.       Okay. Because all you said in your report  
3 was, she'd only known him 3 days. And there was a female  
4 there. Correct?

5           A.       Yes. And the female is the one that brought  
6 him there.

7           Q.       How did she -- strike that.

8                 What words did she actually use?

9           A.       Bringing him there or --

10          Q.       That she, being a woman, brought him there?

11          A.       I guess one thing I wanted to get them to  
12 explain who Chinola was, but was it a relationship to a  
13 person, an actual person. I'd never heard the word, so it  
14 was very -- it was out of context when she said she  
15 brought him there.

16          Q.       You didn't say she, Chinola, correct?

17          A.       I don't remember how she -- verbatim. I didn't  
18 use the word Chinola. I never heard it before.

19          Q.       What you write in your report is a female. No  
20 Chinola. No name. No indication that when Ms. Marin said  
21 a female that she also identified this person as  
22 Chinola?

23          A.       It's not in my report.

24          Q.       You read all the other officer's reports in  
25 preparation for being here today. And that's where you

1 know where the word Chinola comes from?

2 A. I learned it the day after, when I got back to  
3 work on my next shift, I wanted to see if there was any  
4 progress in the case that they identified. The same  
5 important date, the 26th, if they completed their  
6 investigations after mine in the morning.

7 Q. You write a report and you include the  
8 important parts of what -- you were there, what you saw  
9 and what you heard, correct?

10 A. Yes, ma'am.

11 Q. The next morning, when you read other people's  
12 or heard other people's reports saying Chinola, you didn't  
13 decide you write another report saying, oh, by the way,  
14 both of the females at the property, both said Chinola was  
15 there.

16 A. No, ma'am. It didn't dawn on me, oh, great,  
17 you got it. You've identified her. They got it figured  
18 out.

19 Q. You don't think it would be an important thing  
20 to include in your report?

21 A. This moment I do. Now I do.

22 Q. But not then?

23 A. It didn't dawn -- it seemed like they  
24 progressed in the investigation and somebody documented  
25 it.

1           Q.       But this was a case of 2 attempt murders and  
2 two dead men.

3           A.       It's very serious.

4           Q.       No names. No Chinola.

5           A.       Correct.

6           Q.       Okay. Melissa told you she'd only known  
7 Smokie 3 days?

8           A.       Yes. That's what I put in my report.

9           MS. ERICKSON: Thank you.

10          THE COURT: Mr. DiGiacomo, any questions for  
11 Officer Santos.

12          MR. DIGIACOMO: No, your Honor.

13          THE COURT: May I see by a show of hands if the  
14 jurors have questions for this officer. Seeing none,  
15 Officer Santos, you are excused. Thank you.

16          Mind your step as you exit the courtroom.

17          THE WITNESS: Thank you.

18          THE COURT: Does the State have any additional  
19 witnesses to call.

20          MS. WONG: Victor Santilla.

21          THE COURT: Remain standing and turn your  
22 attention to the right and I have a clerk that is going to  
23 swear you in.

24          THE CLERK: You do solemnly swear you will  
25 interpret from Spanish to English and English to Spanish

1 every question propounded by counsel to the witness to the  
2 best of your ability, so help you God.

3 THE INTERPRETER: I do.

4 THE CLERK: Thank you.

5 Do you solemnly swear the testimony you are about to  
6 give in this action shall be the truth, the whole truth,  
7 and nothing but the truth, so help you God.

8 THE WITNESS: Yes.

9 THE CLERK: Take a seat. Can you spell your  
10 name for the record.

11 THE WITNESS: V-i-c-t-o-r -- last name  
12 S-a-n-t-i-l-l-a-n.

13 THE COURT: Thank you.

14 You may proceed.

15 DIRECT EXAMINATION

16 BY MS. WONG:

17 Q. Mr. Santilla, I want to direct your attention  
18 to April 26, 2012. Where were you residing at that  
19 time?

20 A. At 2027 Western Street.

21 Q. Is that Webster Street?

22 A. Webster.

23 Q. Unit No. 9?

24 A. Yes.

25 Q. Showing you State's Exhibit 144. And are you

1 familiar with this area depicted on the map?

2 A. Yes.

3 Q. Do you see where the thumbtack is that says  
4 2039 Webster, Apartment C?

5 A. Uh-huh.

6 Q. Is that yes?

7 A. Yes.

8 Q. Where would your apartment be in relation to  
9 Apartment C?

10 And go ahead and draw on the screen. Tell us where  
11 your apartment is.

12 A. That's not marking where it's supposed to.

13 THE COURT: Clear it off and try again.

14 MS. WONG: Can you get up and go over to that  
15 screen and point out for the jury where your apartment  
16 would be.

17 I can't see that far either.

18 BY MS. WONG:

19 Q. So this, right here, is your apartment?

20 A. Yes.

21 THE COURT: In relation --

22 MS. WONG: In relation to the thumbtack, 2039,  
23 is below that and to the right.

24 THE COURT: Thank you. Retake your seat.

25 MS. ERICKSON: The interpreter was talking, and

1 I didn't hear what Ms. Wrong said. In relation to --

2 THE COURT: Below it and to the right.

3 MS. ERICKSON: Thank you.

4 THE COURT: We'll have some technicians reset if  
5 so it's marking the correct area.

6 BY MS. WONG:

7 Q. What were you doing April 26, 2012 at  
8 approximately 6 o'clock in the morning?

9 A. I was in my bedroom, lying down with my bed.

10 Q. Did something occur at that time?

11 A. We heard two shots.

12 Q. Gunshots?

13 A. Yes.

14 Q. Were you already awake when you heard the two  
15 shots?

16 A. Yes because a little bit before that we had  
17 been brought two children to the baby sitter.

18 Q. You brought the children somewhere to baby  
19 sit?

20 A. No. A lady, another lady brought them to my  
21 wife so she could take care of them.

22 Q. So there was another child at your house at  
23 the time?

24 A. Yes. Two children that were not mine and then  
25 my other two children.



1           Q.       When you said you heard gunshots, you heard  
2 two of them?

3           A.       Yes.

4           Q.       How far apart were the shots. Were they bam,  
5 bam or was there time that elapsed before the first shot  
6 to the second shot?

7           A.       Just a few seconds.

8           Q.       What happened when you heard those two  
9 gunshots?

10          A.       I went over to the window and looked out.

11          Q.       Which window do you look out?

12          A.       Our bedroom widow. In the rear of our bedroom  
13 at the window you can see to the front window of that  
14 apartment.

15          Q.       You looked out your bedroom window?

16          A.       Yes.

17          Q.       And your bedroom window faces the front door  
18 of 2039 Webster, Apartment C?

19          A.       A little to the left.

20          Q.       But you can see the front door?

21          A.       Yes.

22          Q.       So when you looked out your bedroom window  
23 what did you see?

24          A.       Nothing.

25          Q.       When you looked out the window and you didn't

1       see anything, what did you do?

2           A.       I went to lay down on my bed again.

3           Q.       Did something occur later on?

4           A.       Yes. After that we heard 4 different  
5       gunshots.

6           Q.       How long after the first set of gunshots did  
7       you then hear this set of gunshots?

8           A.       About 2 minutes.

9           Q.       You say you heard 4 gunshots?

10          A.       Yes. But they sounded different then two  
11       first ones that we heard.

12          Q.       How so?

13          A.       The first two sounded like they had been  
14       muffled, like with a pillow. It sounded different then the  
15       others.

16          Q.       The second set that came later, were they  
17       louder?

18          A.       Yes.

19          Q.       Again, did they come one right after the other  
20       or spread apart?

21          A.       They came right after one another.

22          Q.       So what did you do when you heard these 4  
23       gunshots?

24          A.       Well, I told my wife something is going on  
25       back there.

1 Q. What did you do?

2 A. Well, I looked out the window again. All I  
3 saw was two people running out to the parking area.

4 Q. When you say you saw two people running to the  
5 parking area, do you know where these two people came  
6 from?

7 A. No.

8 Q. So when you saw these two individuals, where  
9 were they, if you can illustrate on the map?

10 A. They were running right here.

11 Q. I'll have you step down again.

12 A. Right there.

13 Q. So it's on Webster Street?

14 A. Yes.

15 Q. Parallel to Webster is 2039?

16 A. Yes.

17 Q. Thank you.

18 These two individuals that you saw running, could  
19 you determine their gender?

20 A. Yes. It was a man and woman.

21 Q. Could you see their faces?

22 A. No.

23 Q. Could you determine their ethnicity?

24 A. No. It just happened to quick.

25 Q. All right.

1                   So did you ever get a look at their front?

2                   A.       No.

3                   Q.       What exactly did you see and how did you  
4 determine they are a male and a female?

5                   A.       Because as I was watching them run to the  
6 street the woman was running first then there was the man  
7 behind her. But the man had on like a sweatshirt with a  
8 hood.

9                   Q.       Could you tell what the female was wearing?

10                  A.       No.

11                  Q.       Did the female have long hair?

12                  A.       Yes.

13                  Q.       Which direction were they running towards?

14                  A.       Over to the street.

15                  Q.       North or south, east or west?

16                  A.       Toward Lemming.

17                         THE COURT: Maybe you can illustrate, even  
18 though it's not in the right location, just with an arrow  
19 one way or the other so we know what you're talking about.

20                         THE WITNESS: It's not marking again.

21                         THE COURT: Put your finger and draw one way or  
22 the other. Okay. On the illustrator, south on the  
23 illustrator. I don't know what direction. You'll have to  
24 fill in the direction.

25                         THE WITNESS: Here is Lemming.

1 MS. WONG: All right. South on Webster.

2 THE WITNESS: Yes.

3 BY MS. WONG:

4 Q. At some point do you lose sight of them?

5 A. Yes.

6 Q. When you lost sight of them, were they still  
7 running?

8 A. I think so. I'm not sure.

9 Q. So what happens after you see the male and  
10 female running?

11 A. Just a few seconds later a person came out of  
12 the apartment.

13 Q. A person came out of Apartment C?

14 A. Uh-huh.

15 Q. That's yes?

16 A. Yes.

17 Q. A female or a male?

18 A. A woman.

19 Q. What ethnicity was the female?

20 A. She was asking for help.

21 Q. You see this from the bedroom window, right?

22 A. Yes.

23 Q. How is the female asking for help?

24 A. Because she had gunshots.

25 Q. What was her tone of voice?

1           A.       She was desperate.

2           Q.       Yelling?

3           A.       Yes.

4           Q.       What do you do upon seeing this?

5           A.       I called 911. Then I went out to help her.

6           Q.       I'm going to show you what has been admitted  
7 as State's Exhibit 102. Is this the female you  
8 encountered?

9           A.       Yes.

10          Q.       When you first encountered this female, where  
11 was she?

12          A.       She was right there.

13          Q.       In relation to the apartment door to Apartment  
14 C, where was she?

15          A.       Almost at the exit of the apartment building,  
16 there is a gate there.

17          Q.       How was she dressed?

18          A.       Semi-naked.

19          Q.       What do you mean by that?

20          A.       She just had a rob on. She didn't have  
21 anything on under it.

22          Q.       What was her demeanor like?

23          A.       Well, she was asking us for help and she told  
24 us that she knew the person who had shot her boyfriend  
25 because her boyfriend was dead.

1           Q.       You said she told us. Is there somebody else  
2 with you?

3           A.       Yes. The person in the white robe there,  
4 that's my wife.

5           Q.       You mentioned earlier, you said she had gun  
6 shot wounds?

7           A.       Yes.

8           Q.       Did you see where those wounds were?

9           A.       Yes. Here, one.

10          Q.       Left shoulder?

11          A.       And a little bit lower. Then the other one.

12          Q.       Below the left breast?

13                 THE INTERPRETER: Clarification.

14                 BY MS. WONG:

15          Q.       Below or up from the left breast?

16          A.       Yes, the left.

17          Q.       Left breast?

18          A.       Left.

19          Q.       You indicate she then was trying to tell you  
20 that her boyfriend was shot?

21          A.       Yes.

22                 MS. ERICKSON: Objection, hearsay.

23                 MS. WONG: Excited utterance.

24                 THE COURT: The hearsay exception rule, I will  
25 allow the testimony of excited utterance.

1 BY MS. WONG:

2 Q. Did you ask her if anybody else was shot or  
3 did she volunteer this information to you?

4 A. No, she just offered this on her own  
5 information to us both. We just asked her. We didn't ask  
6 her anything. We just asked her only how she was or what  
7 happened.

8 Q. What did she tell you in response?

9 A. She said that her boyfriend and another person  
10 had been shot.

11 Q. Did she tell you who shot them?

12 A. No.

13 Q. What does she tell you?

14 A. She said she knew who had shot them.

15 Q. Did you speak to this female in English or  
16 Spanish?

17 A. Both.

18 Q. Aside from this female, did you see anybody  
19 else at that apartment?

20 A. Afterwards someone else came out. They had  
21 two gunshots in their stomach.

22 Q. Was that a male or female?

23 A. Woman.

24 Q. Where was the female when you saw her?

25 A. She was coming out of the apartment and as she



1       was coming out of the apartment she fell down right  
2       there.

3           Q.       But you were able to see that she was shot in  
4       the stomach?

5           A.       Yes.   Because she was grabbing her stomach.

6           Q.       Did you actually go up to her?

7           A.       No.

8           Q.       Did you talk to her?

9           A.       No.

10          Q.       You stayed with this Hispanic female?

11          A.       Yes.

12          Q.       Did you stay with the Hispanic female until  
13       the police arrived?

14          A.       Yes.   The police arrived immediately.

15          Q.       Did you then give a statement to police?

16          A.       Yes.   Well, yeah, but just because of the time  
17       limits I wasn't able to tell them everything that  
18       happened.

19          Q.       But you did provide them a verbal statement?

20          A.       Yes.

21          Q.       You also gave them a written statement?

22          A.       Yes.

23          Q.       That is pretty much your involvement in this  
24       case?

25          A.       Yes.

1 Q. Did you personally know either of these  
2 females?

3 A. No.

4 MS. WONG: No further questions.

5 THE COURT: Mr. Erickson.

6 MS. ERICKSON: Yes.

7 MR. DIGIACOMO: We may have them at our table.

8 THE COURT: I have already indicated that and  
9 she indicates she will find them in the stack.

10 Mr. DiGiacomo -- maybe the actual exhibits were  
11 retained at their table.

12 MS. ERICKSON: That would be the problem.

13 THE COURT: He's approaching with the  
14 exhibits.

15 CROSS-EXAMINATION

16 BY MS. ERICKSON:

17 Q. Mr. Santilla, am I saying your name correctly?

18 A. Santilla.

19 Q. Thank you.

20 I think you ended by the district attorney asking  
21 you if you had been contacted by the police and you spoke  
22 to them?

23 A. Yes.

24 Q. You testified that because of the time, you  
25 weren't able to give them all of the information?

1           A.       Yes. They had me outside, and I was talking  
2 to two police officers.

3           Q.       Okay. What is it about that you didn't have  
4 the time to tell them all the facts of what you knew.

5           A.       I was scared.

6           Q.       Scared of the police?

7           A.       Yeah. Not the police, but because of what  
8 happened.

9           Q.       But you went out and you helped the person  
10 that was on the ground, correct?

11          A.       Yes.

12          Q.       And I think -- I don't know -- the person you  
13 helped, was she next to the fence in the gated area or  
14 closer to the door of Apartment C?

15          A.       She was about half way between them.

16          Q.       Okay. You said that the police got there  
17 basically immediately, correct?

18          A.       Yes.

19          Q.       And there wasn't anyone else around but the  
20 police and the two people on the ground?

21          A.       No. No my wife was there and another neighbor  
22 who lives next door to me as well.

23          Q.       But there was no one there that was  
24 threatening -- police, neighbors, wife?

25          A.       No.

1           Q.       Okay. You had been -- you were a witness to  
2 the shooting, correct?

3           A.       Yes.

4           Q.       And did you call 911?

5           A.       Yes.

6           Q.       And you did write a report, correct?

7           A.       Yes.

8           Q.       Do you remember what you said in your report.

9           A.       Yes. I put that I had heard some gunshots and  
10 a person came out of the apartment asking for help.

11          Q.       Do you remember indicating in your written  
12 report -- does this look like your report.

13          A.       Yes. Yes, I wrote that.

14          Q.       It says in Spanish, details.

15          A.       Yes.

16          Q.       What you wrote was we heard some gunshots,  
17 correct?

18          A.       Yes.

19          Q.       And we saw -- we say a person of the female  
20 sex bleeding?

21          A.       Yes.

22          Q.       Asking for help with the gunshot, correct?

23          A.       Yes.

24          Q.       And I called 911 emergency?

25          A.       Yes.

1 Q. And we went to help the person?

2 A. Yes.

3 Q. This was provided to the police.

4 A. Yes.

5 Q. Who were investigating these two people that  
6 were laying in the yard across from your apartment, your  
7 back window?

8 A. Yes.

9 Q. Did they ask you if you'd seen anything before  
10 the people were shot on the ground?

11 A. Well, yes, they did but since they didn't  
12 bring an interpreter, I couldn't tell you everything that  
13 happened.

14 Q. They didn't have you speak with Officer  
15 Simpson who is a Spanish speaking officer?

16 A. No. So a female officer came back later and  
17 told me what happened, that there were two people shot in  
18 the apartment.

19 Q. Did you tell her that you had seen what  
20 happened?

21 A. She didn't say anything to me. She didn't say  
22 I need you to fill out another document or another paper.  
23 She didn't say too much to me.

24 Q. Why did she come back to talk to you?

25 A. She was kind of watching me.

1 Q. What do you mean by watching you?

2 A. I was out giving a statement to the police and  
3 I couldn't believe I had to go to work. They wouldn't let  
4 me go to work. I had to stand there until the  
5 investigator arrived.

6 But since she spoke Spanish, that's what she told  
7 me.

8 Q. She spoke Spanish?

9 A. Yes.

10 Q. You couldn't leave?

11 A. No.

12 Q. And she didn't ask you what you saw?

13 A. No. She didn't ask me anything.

14 Q. She was a police officer?

15 A. Yes.

16 Q. She spoke Spanish?

17 A. Yes.

18 Q. You understood what she was saying. There was  
19 not a problem with the dialect or anything like that?

20 A. No.

21 Q. So we looked at the statement and you agreed  
22 this is the one you wrote?

23 A. Yes.

24 Q. Did you provide this to the Spanish speaking  
25 officer or not?

1           A.       No, no, no. I'd already given it to the other  
2 officer before.

3           Q.       Can you describe any officers you had contact  
4 with -- race of one -- ethnicity?

5           A.       Well, you know, the two officers that were  
6 kind of keeping me there, well, they were from here. You  
7 can say they were blondish, light skin.

8           Q.       I'm not sure I understand. There was a  
9 Spanish speaking female officer?

10          A.       There was a lot of police.

11          Q.       I'm just trying to find out who you had  
12 contact with?

13          A.       I don't remember their names. You wrote this  
14 statement, correct.

15          A.       Yes.

16          Q.       You said you gave it to police?

17          A.       Yes, I did that, but that was like right away.  
18 The other officer who spoke Spanish had not arrived yet.

19          Q.       But you wrote your statement in Spanish?

20          A.       Am I supposed to write it in English. I don't  
21 know how to speak English.

22          Q.       I'm not asking if you're supposed to write it  
23 in English, I'm saying you wrote it in Spanish, sir?

24          A.       Yes, I wrote it in Spanish.

25          Q.       I'm just trying to get the timing here. You

1 heard shots. You looked out your window. You saw a  
2 female running first.

3 A. I saw them after the last gunshots.

4 Q. Correct. I said you heard shots first. You  
5 heard two?

6 A. Yes, two shots.

7 Q. Then you said two minutes later -- were you  
8 wearing a watch when you saw that. Could have been one  
9 minute, two minutes?

10 A. No. It's just more or less.

11 Q. Then you went four?

12 A. Yes.

13 Q. Then you testified you saw a woman. You  
14 looked out your window, correct?

15 A. First I saw a woman, but far away, then I saw  
16 a man behind her.

17 A. But he was away from her. She was first.

18 Q. Yes. He was behind her?

19 A. You testified she was running.

20 A. Yes. She ran first and the man was running  
21 behind her.

22 Q. They weren't just like in front of each  
23 other?

24 A. They weren't real close together.

25 Q. There was distance between them?



1           A.       Not too much.

2           Q.       Where was the woman when you saw her the first  
3 time when you are looking at your window?

4           A.       She was almost out to the street by then.

5           Q.       And the man who was behind her?

6           A.       He was behind her.

7           Q.       Correct. Had he gotten to the gate yet?

8           A.       No he was past the gate. They were almost to  
9 the street.

10          Q.       You said the man was behind her. Had the  
11 woman gotten to the street first.

12          A.       You know, there's a big parking lot, a parking  
13 lot where the cars are. Then after that there's the  
14 street.

15          Q.       Let's talk about the police you had contact  
16 with. You called 911. Was it after you went out and were  
17 helping the person on the ground -- the woman?

18          A.       We saw the woman coming out of the apartment  
19 asking for help and that's when I called police.

20          Q.       You called 911 before you left your apartment  
21 to help?

22          A.       Yes.

23          Q.       Then you got outside and you were helping?

24          A.       Correct.

25          Q.       The police arrived almost immediately?

1 A. Yes.

2 Q. There were a lot of them?

3 A. First just one patrol car and after that more  
4 started arriving.

5 Q. In the first patrol car was there a male --  
6 African-American officer?

7 A. No. He was American.

8 Q. What was the -- there were two officers in the  
9 car?

10 A. Just one officer.

11 Q. One officer arrived, then more came?

12 A. Yes. And the fireman arrived as well.

13 Q. Paramedics?

14 A. Medi Quest.

15 Q. When, in this time line, did you write this  
16 report and who did you give it to?

17 A. Well, after several police arrived I don't  
18 know what was going on with my phone. I guess it was  
19 locked. I couldn't make any phone calls from it.

20 The police officer said you have to stay here,  
21 outside of my apartment. Then two other police officers  
22 arrived and they were the ones that were kind of like  
23 watching me, but they didn't say anything to me. That is  
24 when they gave me that piece of paper to fill out.

25 Q. So there were two officers that were with

1       you?

2           A.       Yeah. You could say they were with me. They  
3       were with me outside.

4           Q.       How long before you could leave your  
5       residential area?

6           A.       It happened around 6:30 -- about 4 hours, 3 to  
7       4 hours more or less.

8           Q.       During that time there was a Spanish speaking  
9       officer there?

10          A.       No. Nobody came close until way toward the  
11       end. That is when this other officer came over.

12          Q.       You said you wrote this police report and gave  
13       it to the two officers who were stand around you, correct.

14          A.       Yes. They didn't tell me anything. They  
15       didn't tell me anything. I just -- they didn't tell me if  
16       the investigator was on the way or what was happening.  
17       That's when I gave them that information.

18          Q.       So he didn't really seem interesting in what  
19       you might have known?

20          A.       Possibly.

21          Q.       When was the first time you discussed all of  
22       these facts you testified to today.

23          A.       Well, I had spoken to them over there during  
24       the first trial, the male's trial. I don't know what the  
25       guy's name is.

1           Q.       There wasn't a trial. You weren't called too  
2 testify.

3           A.       They told me they'd let me know if I would be  
4 needed that day.

5           Q.       So you weren't brought to court and sat in the  
6 chair and testified before a jury?

7           A.       No.

8           Q.       That would have been about March of 2017?

9           A.       I think so. I'm not sure though.

10          Q.       That's all right. You pointed over to the two  
11 prosecutors?

12          A.       Yes.

13          Q.       Which did you meet with?

14          A.       With both of them.

15          Q.       Were they together?

16          A.       Yes.

17          Q.       Did you have an interpreter?

18          A.       Yes.

19          Q.       How long did you spend with them?

20          A.       Around a half hour.

21               THE COURT: Ms. Wong, any further questions for  
22 Mr. Santilla.

23               MS. WONG: No further questions.

24               THE COURT: May I see by a show of hands if any  
25 jurors have questions for this witness.

1           It appears we have no questions from the jurors. You  
2 are excused. Thank you.

3           THE WITNESS: Thank you.

4           THE COURT: Thank you.

5           Ladies and gentlemen, it's just after 5 o'clock so we  
6 are going to recess for the evening. I mentioned last  
7 week in terms of timing of the trial. It seems like to me  
8 it's early in the week, but it's actually Wednesday.  
9 Tomorrow is Thursday. Because of the holiday our schedule  
10 is a little off.

11           We are going to return you at 1:30. It will be a  
12 half day even though it's a Thursday.

13           On Friday we'll start at 9:30. Before you leave --

14                           JURY ADMONITION

15           During the recess, ladies and gentlemen, you are  
16 admonished not to converse among yourselves or with anyone  
17 else, including, without limitation, the lawyers, parties  
18 and witnesses, on any subject connected with this trial,  
19 or any other case referred to during it, or read, watch,  
20 or listen to any report of or commentary on the trial, or  
21 any person connected with this trial, or any such other  
22 case by any medium of information including, without  
23 limitation, newspapers, television, internet or radio.

24           You are further admonished not to form or express any  
25 opinion on any subject connected with this trial until the

1 case is finally submitted to you.

2 Do not engage in social media communications. Do not  
3 do any independent research of any kind, including  
4 internet searches. Do not form or express opinions.

5 Thank you.

6  
7  
8  
9 \* \* \* \* \*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 CERTIFICATE

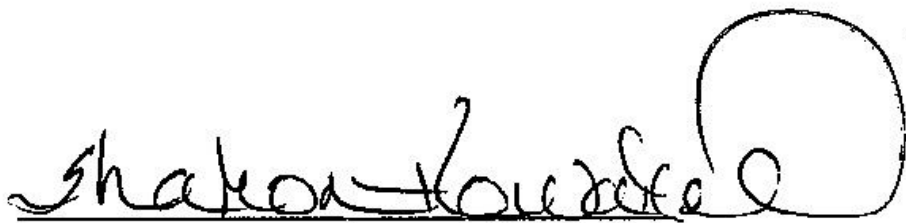
25 OF

## 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, reading "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

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

The State of Nevada,	)	
	)	
Plaintiff,	)	
	)	Case No. C283700-1
vs.	)	Dept. No. XXV
	)	
IVONNE CABRERA, #1617623, aka Ivonne	)	
CABRERA,	)	
	)	
<u>Defendant.</u>	)	

Before the Honorable KATHLEEN E. DELANEY  
Thursday, July 6, 2017, 1:30 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:           BRETT WHIPPLE, ESQ.  
                                  PATRICIA ERICKSON, ESQ.  
                                  Attorneys at Law

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



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

# I N D E X

Witnesses called by the State:

## DANA MARKS

Direct Examination by Mr. Digiacomo:	4
Cross-Examination by Ms. Erickson:	47
Voir Dire Examination by Mr. Digiacomo:	54
Cross-Examination Resumed by Ms. Erickson:	55

1 Las Vegas, Clark County, Nevada

2 Thursday, July 6, 2017, 1:30 P.M.

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

4 \* \* \* \* \*

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: I'll invite everyone to take their  
9 seats. I'll ask the jurors to please make sure that their cell  
01:45PM 10 phones are off or silent as we resume the trial of the State of  
11 Nevada versus Ivonne Cabrera.

12 We have present counsel for the State, counsel  
13 for the Defense, and Ms. Cabrera. All the jurors are now  
14 present.

01:45PM 15 And I will ask the State at this time if they're  
16 prepared to call their next witness?

17 MR. DIGIACOMO: The State calls Crime Scene  
18 Analyst Dana Marks.

19 THE COURT: All right. Elvis, we're calling  
01:45PM 20 Crime Scene Analyst Dana Marks when you are ready.

21 Ms. Marks, if you will just come right straight  
22 through the courtroom up to the witness stand. As you reach  
23 the chair, just remain standing there and my clerk to the right  
24 will swear you in.

01:46PM 25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Please raise your right hand.

2 DANA MARKS

3 called as a witness on behalf of the State,

4 having been first duly sworn,

01:46PM 5 was examined and testified as follows:

6 THE WITNESS: I do.

7 THE CLERK: Please take a seat.

8 Can you please state and spell your first and  
9 last name for the record.

01:46PM 10 THE WITNESS: Dana Marks, M-A-R-K-S.

11 THE COURT: Whenever you are ready,  
12 Mr. Digiacomo.

13 DIRECT EXAMINATION

14 BY MR. DIGIACOMO:

01:46PM 15 Q. Ma'am, how are you employed?

16 A. With the City of North Las Vegas Police Department.

17 Q. And what's your assignment?

18 A. Crime Scene Investigation Supervisor.

19 Q. How long have you been with North Las Vegas?

01:46PM 20 A. Just coming up on 13 years.

21 Q. And how long have you been a supervisor?

22 A. Since January of this year.

23 Q. What sort of training and experience do you have to  
24 have to be a Crime Scene Investigator and/or Supervisor with  
01:46PM 25 the North Las Vegas Police Department?

1           A.    I have an associates degree with forensic science.  
2   And I have continuing education, approximately 40 hours a year,  
3   on different disciplines, such as fingerprints, photography,  
4   collecting evidence.

01:47PM

5           Q.    And what essentially are your job responsibilities in  
6   the job that you hold?

7           A.    Respond to calls, crime scenes. It could be  
8   something as simple as a traffic accident, a burglary; arrive  
9   there, speak with the first responding officers; locate  
10   evidence; preserve evidence; photograph it and collect it.

01:47PM

11          Q.    Do you also as a Crime Scene Investigator at times do  
12   comparisons of evidence that you have collected?

13          A.    Correct.

14          Q.    And what kind of comparisons do you do?

01:47PM

15          A.    I can do fingerprint comparisons, evidence -- some  
16   evidence comparisons.

17          Q.    Let's talk about fingerprint comparisons. What kind  
18   of training do you have to have to do fingerprint comparisons?

19          A.    Minimum of 80 hours of fingerprint knowledge,  
20   learning about terminology, then another 80 hours of actual  
21   comparisons.

01:47PM

22          Q.    When we talk about a latent fingerprint, it's  
23   probably somewhat self-explanatory, but can you, for the  
24   record, sort of explain to the ladies and gentlemen of the  
25   jury, what is a latent fingerprint?

01:48PM

1           A.    A latent fingerprint is a fingerprint that you can't  
2 readily see with your naked eye. You would have to apply a  
3 powder, a chemical, some lighting to it to make it visible.

4           Q.    And then what is a -- either a known or a latent  
01:48PM 5 print or something of that term?

6                   When you're using those type of terms, what are we  
7 talking about?

8           A.    A known print is going to be something as if you are  
9 applying for a work card and they take your fingerprints with  
01:48PM 10 ink or with a light scan machine.

11                   When you get your concealed weapons permit, they'll  
12 take your fingerprints. Those are known prints because they're  
13 known from you.

14           Q.    And then what is sort of the science behind comparing  
01:48PM 15 a latent print to a known print? How do you go about doing  
16 that?

17           A.    A latent print we obtain from a crime scene. It's  
18 unknown. We don't know who it belongs to. So then either a  
19 detective or someone investigating the scene or the crime will  
01:48PM 20 say: Hey, can you compare this print to this known individual?

21                   And then we will compare it and see if they have  
22 characteristics that are similar. And if there's enough  
23 characteristics that coincide, we can say that it is a match.

24           Q.    In sort of the scientific literature, are  
01:49PM 25 fingerprints unique to individuals?

1 A. Yes, they are.

2 Q. So if you have a latent print and you have a known  
3 print and you have enough areas to compare, you can make an  
4 identification of a print, meaning that some person must have  
01:49PM 5 touched some surface (demonstrating)?

6 A. Correct.

7 Q. I'll talk to you about April 26th of 2012. Were you  
8 on duty and did you respond to 2039 Webster, and specifically  
9 Apartment Number C?

01:49PM 10 A. I did.

11 Q. Approximately what time did you arrive on scene?

12 A. I believe it was a little after 6:00 A.M.

13 Q. By the time you had gotten there, was the scene  
14 already secure?

01:49PM 15 A. Yes.

16 Q. What does it mean when I use that term "secure"?

17 A. Secured means that first responding officers have  
18 already responded and are on the scene. Any victims have  
19 already been transported, if needed, for medical. Any of the  
01:50PM 20 decedents are still on scene. They will use crime scene tape  
21 to rope off the scene so nobody could enter the scene.

22 Q. So it's static by the time you get there?

23 A. Correct.

24 Q. And how do you go about the process of documenting  
01:50PM 25 and collecting evidence at a scene?

1 Do you have a standard sort of procedure you go  
2 through?

3 A. I do.

4 Whoever is the first responding officers, I'll meet  
01:50PM 5 with them and the detectives, and they will kind of point out  
6 some key areas that they want photographed or evidence  
7 collected from.

8 Then I'll start at the very front of the residence,  
9 in this case, and take photographs of the address, showing my  
01:50PM 10 location of where I'm at. And then kind of work around the  
11 residence to show my path of leading to that residence.

12 Q. During the course of your documenting the scene do  
13 you also identify physical pieces of evidence?

14 A. I do.

01:50PM 15 Q. And when it's a homicide scene do you also do  
16 something else to document that scene?

17 A. I do.

18 Q. What is that?

19 A. Besides the photographs, we'll also create -- we'll  
01:51PM 20 sketch the scene and complete a diagram.

21 Q. Now, do you work by yourself or do you have partners  
22 that help you?

23 A. If it's a homicide, there's usually two of us on a  
24 scene. If it's a more simpler case, than it will usually be  
01:51PM 25 one.

1 Q. In this particular case of April 26th, did you work  
2 alone or did you work with somebody else?

3 A. I had a co-worker with me.

4 Q. And who is that?

01:51PM 5 A. Wendy Radke.

6 Q. When you were done -- you and Ms. Radke were done  
7 processing the scene, eventually were there diagrams that were  
8 generated just sort of giving an overall impression of what the  
9 scene looked like and where the physical pieces of evidence  
10 were located?

11 A. Yes.

12 MR. DIGIACOMO: May I approach, Judge?

13 THE COURT: You may.

14 BY MR. DIGIACOMO:

01:51PM 15 Q. Crime Scene Investigator Marks, I'm going to show you  
16 what's been marked as State's Proposed Exhibits 1 through 7,  
17 and ask you do those items look familiar to you?

18 A. Yes, they do.

19 Q. What are they?

01:52PM 20 A. This would be the computer-generated diagram of the  
21 scene, the legend, and the items of evidence listed.

22 Q. And are they a true, fair and accurate representation  
23 of the scene as you documented it?

24 A. They are.

01:52PM 25 MR. DIGIACOMO: I move to admit State's 1



1 through 7.

2 MS. ERICKSON: No objection.

3 THE COURT: State's 1 through 7 will be  
4 admitted. And you may publish as needed.

01:52PM 5 MR. DIGIACOMO: Thank you.

6 (State's Exhibit Numbers 1 through 7, respectively,  
7 were admitted into evidence.)

8 BY MR. DIGIACOMO:

9 Q. Now, you also said that you started on the outside  
01:52PM 10 and worked your way in with some photographs; is that correct?

11 A. That's correct.

12 Q. I am going to approach and show you State's Proposed  
13 Exhibits 8 through 90, with the exception of the ones we  
14 admitted yesterday, which for the record are 50, 52, 53, 54,  
01:52PM 15 55, 63, 65, 66.

16 I'm going to ask you to flip through those briefly  
17 and just look to see if they appear to be the photographs that  
18 were taken by you and Ms. Radke at the scene?

19 A. Yes, they are.

01:54PM 20 Q. And are they true, fair and accurate representations  
21 of depictions of the way you saw the scene on April 26th?

22 A. They are.

23 MR. DIGIACOMO: I move to admit, and I -- the  
24 numbers of 8 through -- what's that back number?

01:55PM 25 THE COURT: 90.

1 MR. DIGIACOMO: -- 8 through 90 with the  
2 exceptions I had listed previously.

3 THE COURT: Any objection?

4 MS. ERICKSON: No objection.

01:55PM

5 THE COURT: State's 8 through 90 are admitted  
6 with the exceptions noted as previously being admitted.

7 (State's Exhibit Numbers 8 through 90, respectively,  
8 were admitted into evidence, with State's 50, 52, 53, 54, 55,  
9 63, 65, 66 excepted.)

01:55PM

10 THE COURT: And you may publish those as well,  
11 as needed.

12 MR. DIGIACOMO: Thank you.

13 BY MR. DIGIACOMO:

01:55PM

14 Q. I'm going to start with -- I'm not going to go  
15 through every one of those exhibits, but I'm going to go  
16 through some of them and I'm going to ask you to describe to  
17 the ladies and gentlemen of the jury basically what we're  
18 looking at so that they know how to read it when they wind up  
19 in the back room. Okay?

01:55PM

20 A. Okay.

21 Q. So I'm going to start with State's Exhibit 1. What  
22 are we looking at?

23 A. This is kind of a birds-eye view of the interior of  
24 the house. You can see the northeast bedroom, southeast  
01:55PM 25 bedroom, the little hallway, the bathroom back there next to

1 the northeast bedroom.

2 Q. So if you were to walk in the front door -- and if  
3 you touch the screen, it will make a mark for you -- can you  
4 show us where the walking in the front door would be?

01:56PM 5 A. This would be -- oops, it's a little off.

6 Q. Is it a little off on it's calibration?

7 THE COURT: Oh, I'm so annoyed. We had IT in  
8 before we started the trial. We had it all fixed. I swear I  
9 saw it myself, so I apologize.

01:56PM 10 THE WITNESS: I'll try to get as close -- right  
11 there is the front door (indicating).

12 BY MR. DIGIACOMO:

13 Q. Let's see, if I put my mouse --

14 A. Yes.

01:56PM 15 Q. Can you see my mouse down there?

16 A. That's the front door.

17 Q. Front door.

18 MS. ERICKSON: You have to clear it off first.

19 BY MR. DIGIACOMO:

01:56PM 20 Q. And then if you were to walk straight back from the  
21 front door, just to the left would be the living room and  
22 dining room area over here (indicating)?

23 A. Correct.

24 Q. And as you continue to walk back, there's a bedroom  
01:56PM 25 on the right side, and then you wind up in a hallway back

1 there?

2 A. Correct.

3 Q. And there's a bathroom back here?

4 A. Correct.

01:56PM 5 Q. And then there's another bedroom off to the right  
6 (indicating)?

7 A. Yes.

8 Q. Okay. So now I'm going to start -- and we'll get  
9 back to the rest of the crime scene diagrams a little bit and  
01:57PM 10 go through some of the photographs here.

11 So State's Exhibit Number 8, what are we looking at?

12 A. This is going to be one of those first photographs  
13 that I take documenting the address, where I'm at.

14 Q. And one of the things you documented, State's Exhibit  
01:57PM 15 Number 9, were the mailboxes; is that correct?

16 A. Correct.

17 Q. And in particular, did you document the name that's  
18 on mailbox Number C, and that's in Exhibit Number 10?

19 A. I did.

01:57PM 20 Q. And I know it's really hard to see, so if I zoom in  
21 here, can you read that name?

22 A. M. Villegas -- Villegas.

23 Q. And as you walk back towards the courtyard, State's  
24 Exhibit Number 11, orient for us which direction you're facing.

01:57PM 25 A. I am facing west. The mailboxes and the address are

1 to the far right of the photograph. And then you're looking  
2 west towards the different apartments.

3 Q. And where my mouse is -- I'll do it this way: Where  
4 this mouse is, this door over here, is that Apartment Number C?

01:58PM

5 A. It is.

6 Q. And so in order to get access to that area, State's  
7 Exhibit Number 12, there's sort of a gate area?

01:58PM

8 A. There is. The mailboxes would, again, be to your  
9 right. This would just be coming a little bit to the left, and  
10 there's the entry and the walkway up to those apartments.

11 Q. I just put up there the far left apartment, Exhibit  
12 Number 13?

13 A. That is now --

14 Q. What --

01:58PM

15 A. Sorry. That is now stepping inside the gate,  
16 approaching Apartment C.

17 Q. Did you also go all the way around the building?

18 A. I did.

01:58PM

19 Q. When you got to the back area of State's Exhibit  
20 Number 15, what are we looking at?

21 A. This is all the way to the north, looking west behind  
22 the apartments.

01:59PM

23 Q. As you zoom in closer sort of to the -- what's in the  
24 distance in this photograph, State's Exhibit Number 17, what  
25 are we looking at?

1           A.    This is just behind Apartment C. The slider is just  
2 beyond the debris on the middle of the photo. The bed --  
3 footboard to the bed, I believe it is, is against the wall  
4 right below the bathroom window.

01:59PM

5           Q.    And that window that we see right here is the window  
6 that goes to the bathroom that's inside Apartment Number C?

7           A.    Correct.

8           Q.    Now, when you arrive on scene, is that window open or  
9 closed?

01:59PM

10          A.    It's open.

11          Q.    Exhibit Number 19, and it's -- I'll flip that over a  
12 little bit. In looking at that photograph, you could see that  
13 the window is open and there are some wires that are going  
14 inside the window?

02:00PM

15          A.    Correct.

16          Q.    And then this item appears to be laid up against the  
17 wall as if someone could boost themselves through that window?

18          A.    This is a footboard against the wall, yes.

19          Q.    So I'm going to go back out to the front, Exhibit  
20 Number 22, what are we looking at?

02:00PM

21          A.    In front of Apartment C.

22          Q.    And essentially I'm just going to start walking us  
23 through as you come through the door, so Number 25.

24          A.    This is standing just outside the front door. You  
25 can kind of see the threshold of the door, looking inside the

02:00PM

1 living room.

2 Q. Now, as you're walking both the pathway and then all  
3 the way up to this apartment, do you see anything that  
4 suggested to you that someone may have been bleeding in this  
02:00PM 5 location?

6 A. I do.

7 Q. And what is that?

8 A. There is apparent blood on the walkway from just  
9 inside where the gate is into the apartment.

02:01PM 10 Q. And then as you travel into the apartment, the spots  
11 we can see in the photographs down here (indicating), what are  
12 those?

13 A. It appears to be blood.

14 Q. 27, what are we looking at?

02:01PM 15 A. Just now inside the front door, the living room is  
16 right there in front and to the left. Kitchen area is towards  
17 the back (indicating).

18 Q. I'm going to show you 28, too -- oops. I'm going to  
19 have to rotate that for you -- what are we looking at?

02:01PM 20 A. Taking a little bit of a further step inside of the  
21 living room. Now starting to kind of pan around the living  
22 room.

23 Q. And I'm assuming you pan around that entire living  
24 room as well as the whole kitchen area as well?

02:01PM 25 A. Correct.

1 Q. Let's -- other than those spots of blood, is there  
2 any items of evidentiary value that are out there and sort of  
3 in the living room area?

02:02PM

4 A. Between the living room and the hallway, I think, is  
5 my first item that I locate.

6 Q. So now Exhibit Number 36 -- oops, let me rotate that  
7 as well -- what are we looking at?

02:02PM

8 A. This is standing inside the living room, looking  
9 towards the southeast bedroom. And that's the hallway that's  
10 leading down to the bathroom and the northeast bedroom.

11 Q. So when you say the "southeast bedroom," when we go  
12 back to the diagram we're talking this bedroom down here  
13 (indicating)?

14 A. Correct.

02:02PM

15 Q. Oops. So then you said there was an item of evidence  
16 near that area.

17 Go back to now Exhibit Number 37, that basket that we  
18 see in the top right-hand corner, is that that basket we saw  
19 with the plant in the previous picture?

02:03PM

20 A. It is.

21 Q. Okay. What are we looking at?

22 A. Cartridge case.

23 Q. And when you use the term "cartridge case," what does  
24 that mean?

02:03PM

25 A. A cartridge which would be -- would be a live bullet.



1 It has the projectile and the cartridge case with it. Once  
2 it's fired and expended, the cartridge case is what's ejected  
3 from the firearm and left behind.

02:03PM

4 Q. When you find the cartridge cases scattered about a  
5 scene, is that usually an indication of the type of firearm  
6 that was used?

7 A. It is.

8 Q. And what is that?

02:03PM

9 A. This, I believe, was a Winchester -- the head stamp  
10 is a Winchester 9 millimeter.

11 Q. Is that suggestive of a semi-automatic firearm?

12 A. It could be, yes.

13 Q. Can you tell the ladies and gentlemen of the jury  
14 what a semi-automatic firearm is?

02:03PM

15 A. I'm not an firearms expert, but a semi-automatic  
16 would be, once you pull the trigger, you have to pull the  
17 trigger every time for it to fire a projectile.

18 Q. As opposed to a revolver, what happens when a  
19 revolver, the old cowboy style gun, just generally explain  
20 that.

02:04PM

21 A. When you shoot a revolver, the cylinder retains the  
22 cartridge case and is kept in there, compared to a  
23 semi-automatic, where it's ejected.

02:04PM

24 Q. So unless someone actually empties the revolver at  
25 the scene you don't normally find casings at a scene that

1 involves a revolver?

2 A. Correct.

3 Q. I'm going to start heading down that hallway, Exhibit  
4 Number 38, and I'm going to rotate that for you as well.

02:04PM 5 Needless to say, there's a fairly good blood trail that leads  
6 out of both those bedrooms towards the front door?

7 A. There is.

8 Q. And in this shot, which direction is it looking?

9 A. You are looking north.

02:04PM 10 Q. And --

11 A. Down the hall.

12 Q. In the back area, back here, which room is this?

13 A. That's the bathroom.

14 Q. And so that would be the opening to the northeast  
02:05PM 15 bedroom?

16 A. Correct.

17 Q. As you walk, and you can sort of see it in this  
18 picture, but let me put you up a better picture for you,  
19 Exhibit Number 39.

02:05PM 20 As you start to walk back to that back bedroom did  
21 you find another piece of evidence?

22 A. I did.

23 Q. And what is that?

24 A. Another cartridge case.

02:05PM 25 Q. And instead of playing with another photograph, I

1 just zoomed in here towards the bottom of this chair. That's  
2 an expended cartridge case?

3 A. It is.

4 Q. I'm sort of walking back towards that bathroom,

02:05PM 5 Exhibit Number 42. For the record, what are we looking at?

6 A. The door's open to the bathroom. You can see the tub  
7 back there. To the right is going to be your northeast  
8 bedroom.

9 Q. And on the floor to that bathroom, Exhibit Number 43,  
02:05PM 10 did you find something of interest to you?

11 A. I did.

12 Q. What is that?

13 A. The crowbar on the floor.

14 Q. And what is that brown material that's laying on top  
02:06PM 15 of the tub?

16 A. The shower curtain.

17 Q. And then we've already talked about this, but Exhibit  
18 Number 44, you documented that window from the inside as well?

19 A. I did.

02:06PM 20 Q. And then you also documented the shower curtain,  
21 State's Exhibit Number 46?

22 A. Interior of the tub, you can see the shower curtain,  
23 what appears to be a wet towel, and the curtain rod.

24 Q. Now, that curtain rod is the type of rod that uses  
02:06PM 25 pressure on both sides to hold up on the wall (demonstrating)?

1 A. It is.

2 Q. And when you arrived on scene, that rod is in the  
3 position it is now inside the tub?

4 A. That's correct.

02:06PM 5 Q. Based upon what you saw with the window, the crowbar,  
6 the way that the -- the rod was in the tub, did you think that  
7 there might be a reason to process this particular area for  
8 fingerprints?

9 A. I did.

02:07PM 10 Q. And why is that?

11 A. The totality of the evidence, the open window, the  
12 shower curtain laying inside the tub, I wanted to see if I  
13 could develop any fingerprints of maybe someone coming through  
14 the window or going out the window.

02:07PM 15 Q. And I'm going to put up for you Exhibit Number 48.  
16 Were you able to develop any?

17 A. I did.

18 Q. When you are developing fingerprints, what does that  
19 mean you're doing?

02:07PM 20 A. The tub was white. I needed to apply a powder to  
21 make any latent fingerprints visible. So I applied black  
22 fingerprint powder to the tub, to the walls, to the window,  
23 just below the window.

24 Q. And in this photograph, on the left-hand side there's  
02:07PM 25 a -- it looks like a note that wasn't there previous -- I'm

1 assuming that 42612 bathtub note was not there when you first  
2 arrived on the scene?

3 A. It was not.

4 Q. How does it get there?

02:07PM 5 A. That is a gel lift that I had placed. When I was  
6 processing the bathtub, I developed a partial footwear  
7 impression, so, like, a tread from the footwear. And so that  
8 was the gel lift to collect or obtain that footwear impression.

9 Q. And then next to that footwear, I'm going to put up  
02:08PM 10 Exhibit Number 49. Were you able to develop a fingerprint?

11 A. I was.

12 Q. And now on this one, there looks like there's a piece  
13 of scotch tape with a little white end that has an 11 on it.

14 A. It is.

02:08PM 15 Q. Okay. What is that?

16 A. It's a fingerprint lifting tape that I applied. Once  
17 I developed the fingerprints, I needed to collect them or  
18 remove them from the tub. So we apply fingerprint tape on  
19 there. We will mark what number it is on my fingerprints and  
02:08PM 20 the direction the fingerprints are going.

21 Q. And so you have the fingerprint going down on the tub  
22 as if grabbed on the tub on this side (demonstrating)?

23 A. Correct, away from the open window.

24 Q. So away from the window like this (demonstrating)?

02:08PM 25 A. Correct.

1 Q. Okay. What do you do once you lift that off, that  
2 piece of tape off, what do you do with it?

3 A. It is then applied to a fingerprint lift card, so  
4 then it can be removed from the scene, documented, and compared  
5 later.

02:09PM

6 Q. And what do you put on that lift card so we know that  
7 the fingerprint you are looking at later on is that particular  
8 fingerprint?

9 A. The Number 11 with the arrow will be on there still.  
10 My name, my employee number, the date, the time, case number,  
11 location where I got it from is all on the back of that lift  
12 card.

02:09PM

13 Q. So now I'm going to back up and grab some of these  
14 exhibits that were admitted yesterday. We're going to start in  
15 the northeast bedroom and start with Exhibit Number 51, which,  
16 I guess, is going to have to be turned. What are we looking  
17 at?

02:09PM

18 A. I believe this is the entryway into the northeast  
19 bedroom. It appears to be some of the blood that was on the  
20 floor.

02:10PM

21 Q. Does it appear to you that there was a major  
22 bloodletting event that occurred in both of these bedrooms?

23 A. Yes.

24 Q. And then Exhibit Number 56, that's got to be rotated  
25 again, what are we looking at?

02:10PM

1           A.    This is the bed against the west wall in the  
2 northeast bedroom.

3           Q.    And this substance that we see sort of in this area  
4 (indicating), what does that appear to be?

02:10PM 5           A.    Blood.

6           Q.    For orientation purposes, I'm just going to sort of  
7 walk to the right around the room. So Exhibit Number 59 --  
8 and, of course, I have to rotate it again.

9           A.    This is going to the right. Again, I'm going to pan  
02:11PM 10 through the bedroom so you can see all the items in the  
11 bedroom.

12           Q.    And then Exhibit Number 60. Apparently, I'm going to  
13 have to rotate all of them.

14           A.    Moving to the right, again, you can see the mirror  
02:11PM 15 toward the left panning to the right of the room.

16           Q.    Now, it's hard from a photograph to sort of see the  
17 size that we're talking about. Would you describe this room as  
18 large or small?

19           A.    Smaller room.

02:11PM 20           Q.    And the items of all this clutter that's in there,  
21 does that sort of help or hinder your ability to kind of get a  
22 full view of what's everything going on in the room?

23           A.    It kind of hinders me being able to get to the  
24 opposite side to photograph back showing you the door. So I  
02:11PM 25 kind of am limited to one area of that room for photographs.

1 Q. And then we get into State's Exhibit Number 62.

2 Going to the right, what are we looking at?

3 A. Still in the northeast bedroom, panning over to the  
4 right a little bit, was kind of standing at the door, you can  
02:12PM 5 see the decedent in front of the bed.

6 Q. And then I know between yourself and -- are you aware  
7 that initial officers on the scene took some photographs as  
8 well of the victim?

9 A. Yes.

02:12PM 10 Q. So some of those -- some of these may have been taken  
11 by him, but I'm going to put up a couple of these for you.  
12 Specifically, I'm going to go to Exhibit Number 64, if I can  
13 find it, and I'm going to rotate this a little bit.

14 So at the time that you get there, the scene has been  
02:12PM 15 secured and now you're processing the scene; is that correct?

16 A. Correct.

17 Q. Now, it's hard to see in this photograph so I'm going  
18 to zoom in on just the head area here, but sort of throughout  
19 this room and particularly on the decedent's body was there  
02:13PM 20 some sort of substance?

21 A. There was.

22 Q. And how would you describe that substance?

23 A. Small and white in color.

24 Q. So small, white particles?

02:13PM 25 A. Yes.



1 Q. And in this photograph, on his shoulder, in the area  
2 near the gunshot wound sort of around his body, there's all  
3 those little small white particles?

4 A. Yes.

02:13PM

5 Q. And was it on other areas of his body as well as in  
6 that room?

7 A. It was.

02:13PM

8 Q. I'm going to back out and go back towards the  
9 southeast bedroom, State's 68 for orientation purposes. So  
10 going back towards the southeast bedroom, we've got our plant  
11 here from before; is that correct?

12 A. Yes.

02:14PM

13 Q. And then walking down towards that bedroom as we go  
14 into the southeast, State's Exhibit Number 69, what are we  
15 looking at?

16 A. Standing in the hallway, photographing inside the  
17 southeast bedroom.

02:14PM

18 Q. And I know you can see it a little bit in this  
19 photograph down here in the bottom left, but I'm going to put  
20 up a closer picture of that, State's Exhibit Number 71, what  
21 are we looking at?

22 A. A cartridge case.

02:14PM

23 Q. And I guess before I left the other room I should  
24 have shown you, were there cartridge cases found in the  
25 northeast bedroom as well?

1 A. Yes.

2 Q. How many?

3 A. I believe two.

4 Q. And the pictures we have of those we admitted

02:14PM 5 yesterday. So let me put those up for you. State's Exhibit  
6 Number 52, that's one of the -- obviously, you didn't take this  
7 photograph because there's a firefighter's foot in the -- in  
8 the picture, but that's one of the casings found in that  
9 bedroom?

02:15PM 10 A. In the northeast bedroom, yes.

11 Q. And then Exhibit Number 53, that's the second  
12 cartridge case?

13 A. Yes.

14 Q. So you have two in the northeast bedroom, one outside  
02:15PM 15 the northeast bedroom sort of door area, and then you have one  
16 outside the southeast bedroom door, and then you have some  
17 inside the southeast bedroom?

18 A. Correct.

19 Q. So let me go back to that southeast bedroom,  
02:15PM 20 Exhibit 72, what is that?

21 A. Looking inside the southeast bedroom, you can see  
22 there's a couch. If this was flipped, there's a couch to the  
23 left. The bed is in the center of the room, decedent on the  
24 bed, and there's blood on the floor.

02:15PM 25 Q. In fact, those appear to be bloody footprints as if

1 someone bleeding had walked out of that room?

2 A. Yes.

3 Q. Just for orientation purposes, Exhibit Number 73,  
4 what are we looking at?

02:16PM 5 A. Standing inside the southeast bedroom starting to  
6 look back you can see the couch against that north wall.

7 Q. Once again, the fact that these rooms are fairly  
8 small and there's a couch right up against the bed, does that  
9 sort of constrain your ability to shoot all the photographs?

02:16PM 10 A. It did.

11 Q. State's Exhibit Number 75, what are we looking at?

12 A. I am towards the south of the room, looking towards  
13 the east wall.

14 Q. Now, by the time this photograph was taken -- well,  
02:16PM 15 maybe, maybe not.

16 At some point was there an item of evidence on the  
17 ground near that charger or plugged into that charger?

18 A. There was.

19 Q. What was that?

02:16PM 20 A. A cell phone.

21 Q. And did you collect that cell phone?

22 A. I did.

23 Q. 76, what are we looking at?

24 A. Southeast bedroom, decedent on the bed.

02:17PM 25 Q. 77, as we work our way around the room is just the

1 left side of the decedent and the left side of that bed?

2 A. Correct.

3 Q. 79, just as you pan right; would that be correct?

4 A. Correct.

02:17PM 5 Q. And eventually when you get to the far wall, State's  
6 Exhibit Number 82, what are we looking at?

7 A. This is a small dresser or cabinet against the west  
8 wall in that southeast bedroom.

9 Q. And on that dresser, State's Exhibit 82 --

02:18PM 10 MR. WHIPPLE: Mr. Digiacomo, what number is that  
11 one?

12 MR. DIGIACOMO: This one? That was 81.

13 MR. WHIPPLE: Thank you.

14 BY MR. DIGIACOMO:

02:18PM 15 Q. 82, and I guess maybe this picture should be arranged  
16 to the right or to the left, what are we looking at?

17 A. On top of that cabinet, one of the cartridge cases.

18 Q. And then 83, maybe we orient this the other way, what  
19 is that?

02:18PM 20 A. The second cartridge case located on top of that  
21 cabinet.

22 Q. So one by the door, two on this cabinet, would make  
23 three within the room, and then the one by that basket outside  
24 the room, for four casings there?

02:19PM 25 A. Correct.

1 Q. In total, there was seven cartridge cases collected?

2 A. Yes.

3 Q. Is it unusual to go to a scene and not necessarily  
4 find all the cartridge cases associated with the -- a  
02:19PM 5 particular scene?

6 A. It's not unusual.

7 Q. People can track those out in their clothing, various  
8 things can happen to them?

9 A. Yes.

02:19PM 10 Q. Likewise, with bullets. Bullets travel a long way.  
11 Can you always find the bullets associated with -- if the  
12 body's not holding them?

13 A. Not every time.

14 Q. So within this room did you find any of that weird  
02:19PM 15 sort of white particle substance that was in the northeast  
16 bedroom on the victim?

17 A. I don't recall in this bedroom.

18 Q. You don't recall seeing any in this bedroom?

19 A. I don't.

02:19PM 20 Q. 87, what are we looking at?

21 A. This would be the -- the decedent located in the  
22 southeast bedroom.

23 Q. And that's a pillow below his head, and he's sort of  
24 hanging over the side of that bed?

02:20PM 25 A. Correct.

1 Q. Sort of at the head side of the bed, this is State's  
2 Exhibit Number 88, did you find a defect in the wall?

3 A. I did.

02:20PM

4 Q. And did you make some effort to see if you could  
5 trace the trajectory of that defect?

6 A. I did.

7 Q. State's Exhibit Number 89, what are we looking at?

02:20PM

8 A. This is on the interior of the south wall of the  
9 southeast bedroom with a trajectory rod showing the bullet  
10 travel.

11 I also took a photograph of the exterior side showing  
12 the trajectory rod coming out on the exterior side.

02:20PM

13 Q. So this bullet hole, this wall right here, you can  
14 kind of see the bed right here, is this the head of the bed,  
15 the foot of the bed? What area of the bed are we talking  
16 about?

17 A. This would be the head of the bed.

02:21PM

18 Q. So if we were to go left, if the camera showed us  
19 more left, you could see the victim sort of lying over the bed  
20 with the blood coming out of his head --

21 A. Correct.

22 Q. -- on that pillow; correct?

23 A. Correct.

24 Q. And then State's Exhibit 90, what are we looking at?

02:21PM

25 A. The exterior side of that defect to the wall.

1 Q. So we talked about a little bit of the evidence that  
2 you collected from inside that scene. Once you collect all  
3 that evidence, what do you do with it?

4 A. Once it's collected, then I'm going to package it  
02:21PM 5 back at the station, secure it with evidence tape, mark it with  
6 my employee number, my name, case number, item of evidence  
7 description, and then it's booked into the evidence vault.

8 (Sotto voce at this time.)

9 MR. DIGIACOMO: May I approach, Judge?

02:21PM 10 THE COURT: You may.

11 BY MR. DIGIACOMO:

12 Q. Now I'm going to show you some physical items from  
13 the evidence. And I'm going to start with State's Proposed  
14 Exhibit 165, and do you recognize what that is?

02:22PM 15 A. I do.

16 Q. And what is it?

17 A. Item Number 11 is one silver LG Cricket cell phone  
18 located in the southeast bedroom.

19 Q. So that would have been the cell phone that was  
02:22PM 20 plugged into that charger we saw on the wall?

21 A. Correct.

22 Q. Okay. And when you collect an item -- and I'm going  
23 to do this once for all the packages. So can you just  
24 generally describe to the ladies and gentlemen of the jury what  
02:22PM 25 you do to document that it was collected by you at this scene

1 so later on if any item of evidence is pulled out of the vault  
2 we know where it came from?

3 A. Yes. On the evidence item is the date, the case  
4 number, the charge of what this case is. It's booked by  
02:22PM 5 myself, my signature, my employee number, the date and time  
6 that I actually book it, the address and location, a  
7 description of the item that should be inside, and then chain  
8 of custody is located below that.

9 The first signature on here would be the evidence  
02:22PM 10 vault obtaining it. And then every time someone checks it out  
11 or looks at it they have to sign chain of custody.

12 Once booked back in, the evidence vault has to sign  
13 it, that it goes back in. So there's a record of who has had  
14 presence of this item.

02:23PM 15 Q. Now, when you seal this item up do you put any seals  
16 on it to determine whether or not later on somebody else opened  
17 this item?

18 A. I do.

19 Q. And describe that for the ladies and gentlemen of the  
02:23PM 20 jury.

21 A. On the back side of the envelope, when the flap is  
22 closed, I place a piece of evidence tape, put my initials and  
23 my employee number. That should be the only one initially on  
24 here.

02:23PM 25 Q. And then if someone later on opens it what are they



1 supposed to do?

2 A. The same thing. They'll cut from a different area,  
3 obtain the item out of here, do what they're -- whatever  
4 they're going to do with it. Once they place it back in the  
02:23PM 5 envelope, place the item evidence tape, and also initial and  
6 sign it.

7 Q. Now, obviously this has multiple evidence tapes  
8 placed on it; is that correct?

9 A. Yes.

02:23PM 10 Q. Okay. Other than the tape that you didn't put on  
11 there, is it in substantially the same or similar condition as  
12 when you impounded it?

13 A. Yes.

14 Q. And based upon the fact that the procedure was  
02:23PM 15 followed and that whoever opening it, replacing the seals and  
16 marking it, does that -- would you believe if you were to open  
17 this you'd find that Cricket cell phone in there?

18 A. I do.

19 MR. DIGIACOMO: I move to admit 165.

02:24PM 20 THE COURT: Any objection?

21 MR. WHIPPLE: No objection.

22 THE COURT: Exhibit 165 will be admitted.

23 (State's Exhibit Number 165

24 was admitted into evidence.)

02:24PM 25 BY MR. DIGIACOMO:

1 Q. So let's start with then 164, what are we looking at?

2 A. Evidence items 8, 9 and 10, three spent 9 millimeter  
3 casings located in the southeast bedroom.

4 Q. And looking at that package and other than that blue  
02:24PM 5 seal that's on there, does that appear to be in substantially  
6 the same or similar condition?

7 A. It does.

8 Q. And does that blue seal indicate that a forensic  
9 analyst has opened that and looked at that item?

02:24PM 10 A. It does.

11 Q. If you were to open that, would you believe to find  
12 the items that you have marked on the outside of that package?

13 A. I do.

14 MR. DIGIACOMO: Move to admit 164.

02:24PM 15 MS. ERICKSON: No objection.

16 THE COURT: State's 164 is admitted.

17 (State's Exhibit Number 164

18 was admitted into evidence.)

19 BY MR. DIGIACOMO:

02:24PM 20 Q. 162, what are we looking at?

21 A. Evidence items 5 and 6, two spent 9 millimeter  
22 casings located in the northeast bedroom.

23 Q. Once again, all of my standard questions: That's in  
24 substantially the same or similar condition, other than that  
02:25PM 25 blue seal?

1 A. It is.

2 Q. And so if you opened that you'd expect to find the  
3 two spent casings that you'd collected?

4 A. Correct.

02:25PM 5 MR. DIGIACOMO: Move to admit 162.

6 MR. WHIPPLE: No objection.

7 THE COURT: State's 162 is admitted.

8 (State's Exhibit Number 162  
9 was admitted into evidence.)

02:25PM 10 BY MR. DIGIACOMO:

11 Q. 163, what are we looking at?

12 A. Items 4 and 7, two spent 9 millimeter casings located  
13 in the hallway.

14 Q. And once again, other than that blue seal, does that  
02:25PM 15 appear to be in substantially the same or similar condition?

16 A. It does.

17 Q. And so you would expect to find your casings in  
18 there?

19 A. I do.

02:25PM 20 MR. DIGIACOMO: Move to admit 163.

21 MS. ERICKSON: No objection.

22 THE COURT: 163 will be admitted.

23 (State's Exhibit Number 163  
24 was admitted into evidence.)

02:25PM 25 BY MR. DIGIACOMO:

1 Q. 167, what's that?

2 A. Evidence item number 15, it's one chair lift from the  
3 bathtub containing a partial footwear impression.

02:25PM

4 Q. Okay. Looking at that, is that in substantially the  
5 same or similar condition as when you impounded it?

6 A. It is.

7 Q. Okay. And, thus, you'd expect to find your gel print  
8 in there?

9 A. Yes.

02:26PM

10 MR. DIGIACOMO: Move to admit 167.

11 MR. WHIPPLE: No objection.

12 THE COURT: State's 167 will be admitted.

13 (State's Exhibit Number 176  
14 was admitted into evidence.)

02:26PM

15 BY MR. DIGIACOMO:

16 Q. And then lastly, 157, what are we looking at?

17 A. Item number 1, copies of a latent lift card Number 11  
18 and copies of Jose Gonzales's ten prints.

19 Q. What is Jose Gonzales's ten prints?

02:26PM

20 A. The known fingerprints of Jose Gonzales.

21 Q. Where did you get that from?

22 A. The fingerprint database.

23 Q. So you went into a database, found a guy named Jose  
24 Gonzales that matched the information that was provided to you,  
02:26PM 25 and then you did a comparison between that fingerprint and that

1 latent print number 11?

2 A. Yes.

3 MR. DIGIACOMO: Judge, may I have scissors for  
4 the witness?

02:26PM

5 THE COURT: Yes. My Clerk will provide them.  
6 Is this still 157?

7 MR. DIGIACOMO: It is. I'm going to move to  
8 admit 157 and its contents.

9 THE COURT: Okay.

02:26PM

10 MS. ERICKSON: No objection.

11 THE COURT: Each of the prior admissions have  
12 been for the envelopes and the contents. I know we hadn't  
13 specified that and my Clerk had an inquiry, so we won't do  
14 that. But this one you're going to actually open?

02:27PM

15 MR. DIGIACOMO: Correct. We're going to open  
16 only 157.

17 THE COURT: Okay.

18 BY MR. DIGIACOMO:

02:27PM

19 Q. So I'm going to ask you to open this, cut it down  
20 along the seal, and pull the two items out.

21 Are both items stapled together? Nope. No. There's  
22 actually one, two, three -- let me ask you this -- maybe we can  
23 make this -- I told her there was only going to be an A and  
24 a B.

02:27PM

25 Are these two pages copies of that Number 11?

1 A. It is.

2 Q. Okay. Is that one a copy of the Number 11 or is it a  
3 copy of one of ten prints?

4 A. This is a copy of the ten print.

02:28PM 5 Q. And that's a copy of Number 11?

6 A. Correct.

7 Q. And then what are these three pages -- four pages --  
8 oops, three pages? What are these three pages (indicating)?

9 A. This is the -- the first page is the front of a ten  
02:28PM 10 print card. The second page is the back of the ten print card  
11 showing the palms, and then a second ten print card.

12 Q. And so you had access to all of those visual  
13 comparisons?

14 A. I did.

02:28PM 15 Q. So maybe we can make this easier for the clerk. And  
16 so you have two copies of Number 11 and one copy of the ten  
17 print for comparison purposes?

18 A. I do.

19 Q. And is this ultimately what you use to do the  
02:28PM 20 comparison, these three pages?

21 A. These are copies of the actual lift I collected from  
22 the bathtub and copies of the actual ten print that I used.

23 Q. Okay. So the originals aren't here. These are the  
24 copies?

02:29PM 25 A. Correct.

1 MR. DIGIACOMO: Okay. Let me see if I can make  
2 this easier for the Clerk and mark these so that we can keep  
3 some sort of record of what we're doing here.

02:29PM

4 THE COURT: What we'll do is just -- the  
5 envelope will be 157. And then the individual pieces, if you'd  
6 like, we can mark them A through whatever.

7 MR. DIGIACOMO: Yeah. I was going to staple the  
8 first three pages together as the ten print card to make it A,  
9 B, C and D.

02:29PM

10 THE COURT: Okay. So we'll have A, B, C and D.  
11 Then you will just notify us for the record after you have done  
12 that, Mr. Digiacomo, with what's what.

13 (Sotto voce at this time.)

02:29PM

14 (State's Exhibits A, B, C and D, respectively,  
15 were marked for identification.)

16 MR. DIGIACOMO: So, Judge, for the record, the  
17 three-page ten print card is 157-A. The one-page zoomed-in  
18 copy of the ten print card is 157-B. The zoomed in copy of  
19 print 11 is 157-C. And the full copy of print 11 is 157-D.

02:30PM

20 THE COURT: Okay.

21 BY MR. DIGIACOMO:

22 Q. Maybe if you just pick the two best that you can and  
23 just hold them up and generally describe what is it you're able  
24 to do and what conclusions you are able to draw.

02:30PM

25 A. This is kind of an enlarged copy of the actual lift I

1 obtained from the bathtub. You can see there's some  
2 fingerprints. My initials are on here and Number 11, with the  
3 direction (indicating).

4 Q. Okay.

02:31PM 5 A. The second page is going to be a closer enlarged copy  
6 of that fingerprint, lift card number 11.

7 Then I have an enlarged copy of actual Jose  
8 Gonzales's ten prints. So there's two fingerprints there that  
9 I've enlarged to do the comparison.

02:31PM 10 The comparison would be completed by the latent print  
11 to the known, comparing to see if there's individual  
12 characteristics that match (indicating).

13 Q. How do you know when you have sufficient information  
14 to ultimately reach your conclusion? I mean, what is that  
02:31PM 15 based on?

16 A. Clarity of the fingerprint, if there's enough  
17 details, if can you see a pattern. The -- if there's a  
18 pattern, enough details, clarity, then you can start your  
19 comparison.

02:32PM 20 You start with: Do the patterns match? If those  
21 match, then you move to the next level of detail.

22 Are there different individual characteristics of the  
23 fingerprints that match? Then you go -- start counting up the  
24 characteristics.

02:32PM 25 The ridge flow, do they match? Is it similar?



1           There's the sweat pores. You start looking at level  
2 4 details. If you can see sweat pore details in the latent  
3 print, compare them to the known print.

02:32PM

4           Q. And eventually if you get enough areas of comparison  
5 that match you're able to draw a conclusion?

6           A. Yes.

7           Q. Were you able to draw a conclusion in this case?

8           A. I was.

9           Q. And what conclusion did you draw?

02:32PM

10          A. That one of the fingers on the latent lift from the  
11 back from number 11 matched Jose Gonzales's ten print.

12          Q. Thus, Mr. Gonzales must have touched that tub?

13          A. Correct.

02:33PM

14          Q. Now, once you were done processing the crime scene at  
15 Webster, later on that evening did you get called out to  
16 process or photograph a vehicle and collect some items?

17          A. I did.

18          Q. Before I get there, maybe I should back up.

02:33PM

19                 During the course of you processing the crime scene  
20 were you able to collect identifications as well as a wallet of  
21 the victim's?

22          A. I did.

02:33PM

23          Q. I'm going to show you what's been marked as State's  
24 Proposed Exhibits 115 through 119, and ask you are those  
25 photographs of four identifications and a debit card that you

1 located at the crime scene?

2 A. It is.

3 Q. And are they true, fair and accurate depictions?

4 A. Yes.

02:33PM 5 MR. DIGIACOMO: I move to admit 115 to -- what's  
6 that last number? I forgot.

7 THE WITNESS: 119.

8 MR. DIGIACOMO: -- 119.

9 MS. ERICKSON: No objection.

02:34PM 10 THE COURT: State's 115 and 119 will be  
11 admitted.

12 And I don't know if we technically admitted 157.  
13 I know we discussed it, but I don't know that there was --

14 (Sotto voce at this time.)

02:34PM 15 THE COURT: I indicated that we would. I just  
16 didn't know if we had technically admitted 157.

17 So 157, just to be clear, and its subparts are  
18 admitted and now 115 through 119 are admitted for the State.

19 (State's Exhibit Numbers 115 through 119 and 157-A, B, C and D,  
02:34PM 20 respectively, were admitted into evidence.)

21 MR. DIGIACOMO: Did I bring the pieces of paper  
22 back here? I did.

23 BY MR. DIGIACOMO:

24 Q. Specifically, did you find 117 in James Hendrik's  
02:34PM 25 wallet?

1 A. I did.

2 Q. And for the record, that's what appears to be a  
3 Nevada debit Visa card in the name of Miguel Villegas?

4 A. Yes.

02:34PM 5 Q. Now, let's talk about later on that night.

6 Later on that night, did you get called back out to  
7 process or photograph a vehicle, collect some items of evidence  
8 that was taken out of that vehicle?

9 A. Yes, I did.

02:35PM 10 Q. I'm going to start with State's Proposed Exhibits 111  
11 through 114. Were you asked to photograph that vehicle?

12 A. I was.

13 Q. And are those true, fair and accurate depictions of a  
14 blue Hyundai?

02:35PM 15 A. Yes.

16 MR. DIGIACOMO: Move to admit 111 to 114.

17 MS. ERICKSON: No objection.

18 THE COURT: State's 111 through 114 will be  
19 admitted.

02:35PM 20 (State's Exhibit Numbers 111 through 114, respectively,  
21 were admitted into evidence.)

22 BY MR. DIGIACOMO:

23 Q. Were there other officers on scene that had pulled  
24 some items out of this vehicle that they asked you to  
02:35PM 25 photograph and collect?

1 A. There were.

2 Q. Showing you what's been marked as State's Proposed  
3 Exhibits 139 through 143. Are those true, fair and accurate  
4 depictions of the items that you were asked to photograph on  
02:36PM 5 the hood of a North Las Vegas Police vehicle?

6 A. It is.

7 MR. DIGIACOMO: Move to admit 139 through 143.

8 MS. ERICKSON: No objection.

9 THE COURT: 139 through 143 will be admitted.

02:36PM 10 (State's Exhibit Numbers 139 through 143, respectively,  
11 were admitted into evidence.)

12 BY MR. DIGIACOMO:

13 Q. And within 143, was there a cell phone?

14 A. There was.

02:36PM 15 Q. Did you, in fact, collect that cell phone as well?

16 A. I did.

17 Q. Showing you what's been marked as State's Proposed  
18 Exhibit Number 158, do you recognize that?

19 A. I do.

02:36PM 20 Q. What is it?

21 A. It is item number 1, one black Samsung Cricket cell  
22 phone number -- model SCHR915.

23 Q. And where was it collected at?

24 A. I obtained custody of this from the officer on scene.

02:36PM 25 Q. Okay. At what location were you at?

1 A. Civic Center and Flower.

2 Q. Okay. And that's on the 26th into the early morning  
3 hours of the 27th?

4 A. It is.

02:37PM 5 Q. Okay. And obviously there's some additional seals on  
6 there. But other than those additional seals, is that in  
7 substantially the same or similar condition as when you  
8 impounded it?

9 A. It is.

02:37PM 10 Q. And, thus, if you opened that would you expect to  
11 find that black Samsung that you impounded out at Civic Center  
12 late that night?

13 A. It is, yes.

14 MR. DIGIACOMO: Move to admit 158.

02:37PM 15 MS. ERICKSON: No objection.

16 THE COURT: State's 158 will be admitted.

17 (State's Exhibit Number 158

18 was admitted into evidence.)

19 MR. DIGIACOMO: May I have the Court's

02:37PM 20 indulgence for just a moment?

21 THE COURT: Yes.

22 (Sotto voce at this time.)

23 MR. DIGIACOMO: Thank you, Judge. I pass the  
24 witness.

02:37PM 25 THE COURT: All right. Thank you.

1 Ms. Erickson, are you inquiring?

2 (Sotto voce at this time.)

3 MS. ERICKSON: Did you put them back?

4 THE COURT: It looks like it's all right there.

02:39PM 5 MS. ERICKSON: Just a minute, Judge. I'm sorry.

6 THE COURT: You're fine. Take your time.

7 CROSS-EXAMINATION

8 BY MS. ERICKSON:

9 Q. Good afternoon. How are you today?

02:39PM 10 A. I'm good. Thank you.

11 Q. You were asked to review some of the State's exhibits  
12 of the Webster apartment. And I may have some that I repeat,  
13 but I'd like to have you go through them and make sure that  
14 they're accurate and reflect that the Apartment Number C --

02:39PM 15 MS. ERICKSON: May I approach, Judge?

16 THE COURT: You may.

17 MS. ERICKSON: Thank you.

18 BY MS. ERICKSON:

19 Q. I'm handing you what's been marked for admission as  
02:40PM 20 Defendant's G, I, J, K, L, M, N, O, P, Q. Can you look through  
21 those -- and I'm -- we'll do this one last. Could you look  
22 through those and determine whether those are accurate  
23 depictions of the apartment at Webster, Number C, and some of  
24 the exterior windows and latents?

02:40PM 25 THE COURT: And while the witness is doing that,

1 Ms. Erickson, if you could just tell me again what letter you  
2 started with. I heard you ended with Q, but I didn't see where  
3 you started.

02:40PM

4 And if you don't know, that's fine. When the  
5 witness is done, remind me for the record.

6 MS. ERICKSON: G --

7 THE COURT: Because we had H admitted yesterday,  
8 that's why.

02:41PM

9 MS. ERICKSON: Well, we changed H. I'm sorry,  
10 Judge, we didn't make a record -- oh, no. G -- yes, we have H  
11 was admitted. I didn't say that. So it's G, I, J, K, L, M, N,  
12 O, P.

13 THE COURT: You offered P, but did you not also  
14 offer --

02:41PM

15 MS. ERICKSON: Q.

16 THE COURT: -- Q, okay. Thank you.

17 MS. ERICKSON: Thank you.

18 BY MS. ERICKSON:

19 Q. You've reviewed the exhibits?

02:41PM

20 A. Yes, ma'am.

21 Q. Do they accurately depict the Apartment C at Webster  
22 that you saw on April 26th?

23 A. It does.

02:41PM

24 Q. Okay. And I'm also showing you what's already been  
25 admitted as Defense Exhibit H --

1 MS. ERICKSON: Move for admission.

2 MR. DIGIACOMO: No objection.

3 THE COURT: Exhibits G through Q, with the

4 exception of H, which was previously admitted, are now

02:42PM 5 admitted. And you may publish as needed, Ms. Erickson.

6 (Defense Exhibit Numbers G through Q, with the exception of H,

7 respectively, were admitted into evidence.)

8 BY MS. ERICKSON:

9 Q. And does Exhibit H appear to you to be the front view

02:42PM 10 of the complex of two -- of 2039 Webster --

11 A. It does.

12 Q. -- taken from the far side of the street?

13 A. It does.

14 Q. And what street -- this is Webster; right?

02:42PM 15 A. Yes, ma'am.

16 Q. Okay. And you prepared a couple of reports in this  
17 case?

18 A. I did.

19 Q. Okay. And you're also familiar with Ms. Radke and  
02:42PM 20 the work that she did at the apartment; correct?

21 A. Yes.

22 Q. Some of the photographs you reviewed during the  
23 State's questioning were taken by her?

24 A. The diagram was completed by her.

02:43PM 25 Q. Okay. That's what I thought, but I just wanted to



1 clarify. I thought I heard that it was part of the pictures.

2 Okay.

3 So -- oh, where did they go? I have lost my -- you  
4 are aware that Ms. Radke took measurements of the entire  
02:43PM 5 apartment; correct?

6 A. Yes.

7 Q. And she drew handwritten --

8 THE COURT: Pardon me.

9 MS. ERICKSON: Bless you, Judge.

02:43PM 10 THE COURT: Thank you. Excuse me.

11 BY MS. ERICKSON:

12 Q. She did several handwritten ones at the scene. And  
13 then she had a computer generated more -- more -- particularly  
14 nicer diagrams of inside the rooms of the apartment; correct?

02:44PM 15 A. Yes.

16 Q. Okay.

17 MS. ERICKSON: May I approach?

18 THE COURT: You may.

19 BY MS. ERICKSON:

02:44PM 20 Q. I'm showing you what has been marked as Defense  
21 Exhibits T, U and V. Do you know what those exhibits are?

22 A. Yes, I do.

23 Q. And what are they?

24 A. The last page is the hand-sketched diagram of the  
02:44PM 25 bird's-eye view; and the first one is the bird's-eye view --

1 excuse me, computer generated; and then the measurements of the  
2 entire apartment.

3 Q. And do those accurately reflect what you saw and what  
4 you know that Ms. Radke did on that day of April 26th?

02:44PM

5 A. Yes.

6 MS. ERICKSON: Move for admission.

7 THE COURT: I need you to restate the items  
8 again.

9 MS. ERICKSON: Okay. It's T, U, V.

02:45PM

10 THE COURT: Defense Proposed T, U and V are  
11 admitted.

12 (Defense Exhibit Numbers T, U and V, respectively,  
13 were admitted into evidence.)

14 MS. ERICKSON: May I publish?

02:45PM

15 THE COURT: You may.

16 BY MS. ERICKSON:

17 Q. Can you switch?

18 I'm going to leave Exhibit U with you so if you need  
19 to refresh your recollection you'll have that.

02:45PM

20 A. Okay.

21 THE COURT: It should be working now,  
22 Ms. Erickson.

23 BY MS. ERICKSON:

24 Q. So I'm showing you what is marked -- or admitted as  
25 Defense Exhibit T, as in Tom. And that's the same as the

02:45PM

1 interior that the State's Exhibit was earlier, that we referred  
2 to; is that correct?

3 A. Yes.

02:46PM

4 Q. Okay. Now, if you look at the -- what is Exhibit U,  
5 with the measurements?

6 A. Yes.

7 Q. Okay. Can we tell how long -- how far it is from the  
8 back of the kitchen to the front of the living room wall?

9 A. It appears to be approximately 25 feet.

02:46PM

10 Q. Okay. And then can we tell how far from the corner  
11 of the apartment to the wall of the bathroom?

12 A. Appears to be approximately 13 feet.

13 Q. Okay. And with the diagram this way, how far would  
14 it be from the bathroom wall, exterior wall, to the front door?

02:46PM

15 A. Should be approximately 25 feet.

16 Q. Okay. So the dimensions that are written on Defense  
17 Exhibit T are accurate?

18 A. Should be, yes.

02:47PM

19 Q. Well, let me just see. Can you see that? Is it up  
20 on yours?

21 A. Yes.

22 Q. Okay. So the Exhibit indicates that the side wall is  
23 25 feet, and that was what you testified to; correct?

24 A. Yes, ma'am.

02:47PM

25 Q. And then the length of the wall between the bathroom

1 and the side door -- or the side wall is 13 feet?

2 A. Yes.

3 Q. Okay. Now, the Exhibit that -- Exhibit T does not  
4 show where windows are or in the apartment; is that correct?

02:47PM 5 Not -- sort of there but not really?

6 A. They are by the thicker black line.

7 Q. Okay. If I provide you with a colored line -- a -- a  
8 colored pen, would you be able to just --

9 THE COURT: You might be able to do it on the  
02:48PM 10 demonstrator. I know it was off a little bit earlier, but --  
11 or did you want to mark your Exhibit? That's fine, because  
12 then you can republish. That's fine.

13 MS. ERICKSON: Thanks, Judge.

14 I'm sorry. Let's try it that way.

02:48PM 15 THE COURT: It wasn't working terribly well  
16 earlier. So actually it might be better to do what you are  
17 suggesting. I'm sorry for interrupting you.

18 MR. DIGIACOMO: I apologize. You didn't ask me.  
19 Could I Voir Dire the witness on this particular Exhibit you  
02:48PM 20 admitted without checking with the State?

21 THE COURT: I apologize, Mr. Digiacomo. Since  
22 it was referred to as being the same exhibit as State's  
23 Exhibit 1, although without reference to State's Exhibit --

24 MR. DIGIACOMO: There's writing on this that is  
02:48PM 25 not on -- I just want to check with the witness if she knows

1 who did that writing, and then if she could compare the other  
2 defense exhibit to these writings to check those measurements.

3 THE COURT: That's fine.

4 She has testified that she thought that the  
02:48PM 5 measurements were accurate, but I have no problem if you wish  
6 to Voir Dire her as to the writing.

7 VOIR DIRE EXAMINATION.

8 BY MR. DIGIACOMO:

9 Q. I'm showing you Defense Exhibit T, that handwritten  
02:49PM 10 is not computer generated; correct?

11 A. Correct.

12 Q. Do you know who did that handwriting on there?

13 A. I do not.

14 Q. Okay. You just testified that that whole distance is  
02:49PM 15 25 feet. Looking at State's -- or Defense Exhibit U, and  
16 looking at those calculations, does that seem to match up as  
17 25 feet?

18 A. The written measurements reference the living room,  
19 say 25 feet. That's not including the kitchen and dining room,  
02:49PM 20 which is an additional 13 feet.

21 Q. So that distance is -- should be 25 plus 13, so 38?

22 A. Correct. The measurement to the left of this diagram  
23 has written 25 feet.

24 Q. Okay. But this -- the one that was generated by you  
02:50PM 25 or you and Wendy Radke does not have that 25 feet written in

1 there. So do we know if that -- is it 25 feet or is it  
2 38 feet?

3 A. According to CSI Radke's measurements, it should be  
4 the 38 feet.

02:50PM 5 Q. It should be 38 based upon the measurements you did?

6 A. From the south wall to the north wall of the  
7 apartment.

8 MR. DIGIACOMO: Thank you.

9 Based upon that, I object to this.

02:50PM 10 Now, we'll have Ms. Radke here on Monday and she  
11 can answer whether or not she wrote that in there, but --

12 MS. ERICKSON: I'll clarify.

13 THE COURT: All right. Ms. Erickson, if you  
14 can. And when we republish that exhibit it might assist the  
02:50PM 15 jurors.

16 CROSS-EXAMINATION RESUMED

17 BY MR. DIGIACOMO:

18 Q. Now, when you are looking at Defense Exhibit U, these  
19 measurements are also contained within Defense Exhibit V, which  
02:50PM 20 is the handwritten document prepared by Ms. Radke at the time  
21 that the -- that she was there on April 26th of 2012; correct?

22 A. Yes.

23 Q. All right. And if you look at Exhibit V you can see  
24 that there is -- I'm going to put this up on the wall. You can  
02:51PM 25 keep that one.

1 A. Okay.

2 Q. Okay. When you're looking at the handwritten  
3 depiction, this was done by Ms. Radke on April -- on or about  
4 April 26th of 2012; correct?

02:51PM 5 A. Yes.

6 Q. Okay. And when you see this mark (indicating)  
7 alongside of that, does that indicate to you that she is  
8 including the entire length of the side wall in her  
9 calculation?

02:51PM 10 A. I would assume she was.

11 Q. And we can see -- it's not a great copy, but we can  
12 see a part number and a five next to that entire wall; is that  
13 correct (indicating)?

14 A. Yes.

02:52PM 15 Q. And then Ms. Radke also, as you testified, put  
16 together the exact dimensions on the Exhibit that's U -- on  
17 Exhibit U; correct?

18 A. Yes.

19 Q. And it indicates that the living room, which  
02:52PM 20 Ms. Radke measures from the entirety -- from the front wall to  
21 the back wall of the apartment, is 25 feet; correct?

22 A. On Defense Exhibit U has the living room at 25 feet  
23 and the kitchen/dining room at 13 feet.

24 Q. And if you look at the handwritten document you can  
02:52PM 25 see where that 13 feet is for the living room. It's from the

1 back wall to the end of the room that is considered the  
2 kitchen; correct?

3 A. Yes.

02:53PM

4 Q. Therefore, the 25 feet is the dimension of the  
5 outside wall of the liv- -- of the entirety of the living room  
6 and excluded in the kitchen?

7 A. I didn't write the measurements. I'm -- I'm not  
8 sure.

02:53PM

9 Q. Well, you do see on Exhibit V, which is showing on  
10 the Elmo, that we see a five and feet and that's area that's  
11 got the included, and we have the living room saying 25 feet in  
12 Exhibit U; correct?

13 A. Yes, ma'am.

02:53PM

14 Q. Okay. And you do see a 13 feet (indicating);  
15 correct?

16 A. Yes, ma'am.

17 Q. That would be the corner of the wall where the living  
18 room -- where the kitchen begins; correct?

19 A. Yes, ma'am. Yes, ma'am.

02:54PM

20 Q. Okay. And that line is drawn -- it has an arrow at  
21 the end and it was drawn all the way to where the wall is --  
22 would be if it came out, but it's just past the refrigerator;  
23 correct?

24 A. Yes.

02:54PM

25 Q. So that's the 13 feet that is the interior area of



1 the kitchen?

2 A. Correct.

3 Q. Okay. So if that's the interior area of the kitchen,  
4 the living room and kitchen, the south wall -- the far wall of  
02:54PM 5 the apartment is 25 feet?

6 A. According to the measurements, yes.

7 MS. ERICKSON: Okay. Move for the admission of  
8 whichever was objected to.

9 THE COURT: May I have counsel at the bench  
02:54PM 10 briefly?

11 (Sidebar conference at bench, not reported.)

12 THE COURT: Thank you.

13 Following additional discussion with counsel,  
14 Defendant's Exhibit T will not be admitted at this time. It  
02:57PM 15 will be possible to reintroduce that exhibit with Crime Scene  
16 Analyst Radke.

17 U and V, I believe --

18 MR. DIGIACOMO: Are not objected to.

19 THE COURT: -- are not objected to and have a  
02:57PM 20 properly laid foundation. So Defendant's U and V are admitted.

21 MS. ERICKSON: You are calling Ms. Radke on  
22 Monday; is that correct?

23 MR. DIGIACOMO: Are you talking about the  
24 witness or talking to me?

02:57PM 25 BY MS. ERICKSON:

1 Q. Okay. We talked a little bit about where the  
2 cartridge casings were found. And there was one 9 millimeter  
3 cartridge found in the hallway across from the northeast  
4 bedroom; correct?

02:58PM

5 A. Yes.

6 Q. And that's about two, three feet from -- about three  
7 feet from the bedroom door?

8 A. Two to three feet, yes.

02:58PM

9 Q. Okay. There were two cartridge -- Luger -- 9  
10 millimeter Luger cartridges found inside the northeast bedroom?

11 A. There was two cartridges located inside the northeast  
12 bedroom, yes.

13 Q. And they were found just inside of the room; correct?

14 A. Yes.

02:58PM

15 Q. Just inside the doorway of the room?

16 A. Yes.

17 Q. Okay. And there was one 9 millimeter Luger cartridge  
18 found about 2.9 to 3 feet -- the one by the -- maybe a picture  
19 with the plant, which was outside of the southeast bedroom?

02:58PM

20 A. It was located to the west of the southeast bedroom  
21 by the planter, yes.

22 Q. So about -- same width --

23 A. Two to three -- approximately two to three feet, yes.

24 Q. Okay. And that was outside the bedroom?

02:59PM

25 A. Yes.

1 Q. Okay. And then there was a 9 millimeter Luger found  
2 just inside the doorway at the southeast bedroom?

3 A. Correct.

4 Q. And then there were the two that were on the dresser,  
02:59PM 5 which was equal with about the bottom of the bed in that  
6 southeast bedroom; correct?

7 A. Correct.

8 Q. Now, a lot of this house is tiled?

9 A. Yes, ma'am.

02:59PM 10 Q. Okay. And I know you said you were going to -- you  
11 weren't an expert in firearms, but you've been doing a lot  
12 of crime -- you've done a lot of crime scene investigations;  
13 correct?

14 A. I have.

02:59PM 15 Q. And you've seen a lot of cases where there's --  
16 firearms are used?

17 A. Yes, ma'am.

18 Q. Okay. And to your knowledge the firearm in this case  
19 has not been found?

02:59PM 20 A. Not that I know of.

21 Q. Okay. And -- but you've testified you thought this  
22 was a semi-automatic?

23 A. Yes, ma'am.

24 Q. Okay. And those primarily eject to the right?

03:00PM 25 A. Primarily, yes.

1 Q. And there are some that eject to the left?

2 A. Correct.

3 Q. So without having the gun that was used in this crime  
4 you can't really get any kind of estimate as to where a person  
03:00PM 5 may or may not have been standing when firing?

6 A. Um, without being the first person on the scene and  
7 actually seeing the location of where they were I can't give an  
8 estimate, no.

9 Q. Well, you can't give an estimate also because they  
03:00PM 10 could eject right or they could eject left. We don't know  
11 because we don't have the gun?

12 A. Correct.

13 Q. Okay. And typically cartridges bounce on tile?

14 A. They can.

03:00PM 15 Q. Okay. So, again, you know, it's not -- where the  
16 cartridges are found doesn't really tell us anything about  
17 where the person was standing when firing?

18 A. It can and cannot. It depends.

19 If they ejected to the right or left I can give you  
03:01PM 20 an approximate area kind of where someone was, but then not  
21 being the first person on the scene they could have been  
22 kicked, they could have been manipulated in some fashion.

23 Q. Sure.

24 And they also could have bounced?

03:01PM 25 A. Yes.

1 Q. Okay. Now, you testified on Direct, and I understand  
2 that these rooms were small and difficult to get full pictures  
3 of, but you testified that there was a cell phone found in the  
4 southeast bedroom; correct?

03:01PM

5 A. Yes.

6 Q. Okay. And there was a picture that showed the  
7 charger, and I believe it was Exhibit 143. We'll have to come  
8 back. I can't find them in that file.

9 So I think your testimony was --

03:02PM

10 THE COURT: Actually, Ms. Erickson, let me ask  
11 you this: Do you have some significant additional inquiry time  
12 because this would be a good place for us to take a brief  
13 recess?

14 MS. ERICKSON: That would be wonderful, Judge.  
15 Thank you so much.

03:02PM

16 THE COURT: All right. We're going to take a  
17 brief recess, and then we might also locate the document that  
18 Ms. Erickson was searching for.

19 During this restroom recess, which will be a  
20 little over ten minutes, we'll return at 3:15, you are reminded  
21 again --

03:03PM

22 (The jury was admonished by the Court.)

23 THE COURT: We'll see you back in about  
24 12 minutes.

03:03PM

25 THE MARSHAL: All rise.

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

3 THE COURT: It's the time to let my reporters  
4 switch out. So thank you for the opportunity to take that  
5 break.

03:04PM

6 MS. ERICKSON: Thank you, Judge.

7 THE COURT: Okay.

8

9 (Recess in proceedings.)

10

11

\* \* \* \* \*

12 ATTEST: Full, true and accurate transcript of proceedings.

13

14

15

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

16

17

18

19

20

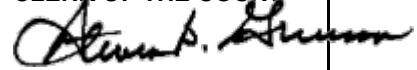
21

22

23

24

25



TRAN  
CASE NO. C-12-283700-1  
DEPT. NO. 25

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	REPORTER'S TRANSCRIPT
	)	OF
	)	JURY TRIAL
vs.	)	
	)	
IVONNE CABRERA,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED THURSDAY, JULY 6, 2017

REPORTED BY: Sharon Howard, C.C.R. #745

01070

1 APPEARANCES:

2 For the State: MARC DIGIACOMO, ESQ.

3 HETTY WONG, ESQ.

4  
5  
6  
7 For the Defendant: PATRICIA ERICKSON, ESQ.

8 BRET WHIPPLE, ESQ.

9  
10  
11 \* \* \* \* \*



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

I N D E X  
O F  
W I T N E S S E S

NAME: DANA MARKS PAGE

Cross-Examination By Ms. Erickson 4  
Redirect Examination By Mr. DiGiacomo 22

NAME: PATRICK FISCHER PAGE

Direct Examination By Mr. DiGiacomo 25

NAME: ASHLEY WANTLAND PAGE

Direct Examination By Mr. DiGiacomo 30  
Cross-Examination By Ms. Erickson 57

\* \* \* \* \*

1 LAS VEGAS, NEVADA; WEDNESDAY, JULY 6, 2017

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

3 \* \* \* \* \*

4

5 THE COURT: We'll have the witness retake her  
6 seat. Thank you for your patience.

7 We had someone from IT back in here. I couldn't  
8 stand it that the illustrator wasn't working. I also  
9 changed the color of the illustration because I had  
10 changed it earlier to that strange highlighter green  
11 yesterday. So I changed it to white and the first exhibit  
12 was a white piece of paper, so I didn't like that. So it  
13 should be working.

14 Before we resume the questioning Ms. Marks, can I  
15 please ask you to acknowledge, for the record, you  
16 understand you are still under oath.

17 THE WITNESS: Yes, I do.

18 THE COURT: When you are ready, Ms. Erickson.

19 MS. ERICKSON: Thank you, Judge.

20 CON'T CROSS-EXAMINATION

21 BY MS. ERICKSON:

22 Q. Ms. Marks, let's move forward to the  
23 fingerprint issue. You testified you lifted 7 latents from  
24 the northeast bedroom; is that correct -- of the  
25 apartment?

1           A.       I don't recall how many latents I actually  
2           lifted from the scene.

3           Q.       Would you like the report so you can decide  
4           that, or if I show you a picture will that refresh your  
5           recollection?

6           A.       A picture may refresh my recollection.

7           Q.       Showing you what is Exhibit M.

8           MS. ERICKSON: May I approach.

9           THE COURT: That's fine.

10          BY MS. ERICKSON:

11          Q.       You put tape on the exterior northeast bedroom  
12          window that are latents number 1 through 7, which are  
13          shown in Defense M; is that correct?

14          A.       I'm not sure if that's the southeast bedroom  
15          or if that's the exterior of the sliding door.

16          MS. ERICKSON: May I approach.

17          THE COURT: You may.

18          BY MS. ERICKSON:

19          Q.       I'm showing you what looks like a report that  
20          you prepared April 26, 2012, report number 9. Would you  
21          like to review that.

22          A.       Yes, please. Thank you.

23          Q.       Does that refresh your recollection?

24          A.       Yes, ma'am.

25          Q.       What window is that that we're showing in

1 Exhibit M?

2 A. The northeast bedroom.

3 Q. Yes. So that depicts the tapes you testified  
4 about earlier with regard to how you get latents lifted  
5 and on to the fingerprint cards.

6 A. Yes, ma'am.

7 Q. And that window is depicted in Defense Exhibit  
8 J. It would be the window after the trash cans; is that  
9 correct?

10 A. This photo is not taken from my scene or is  
11 not the northeast bedroom window.

12 Q. The northeast bedroom is on the backside of  
13 the apartment, correct?

14 A. Yes, ma'am.

15 Q. Southeast bedroom is on the front side?

16 A. Correct.

17 Q. The sliding glass door is on the back side of  
18 the house -- of the apartment?

19 A. Northwest corner, yes.

20 Q. We see a sliding glass door in this picture?

21 A. Yes, ma'am.

22 Q. You see a smaller bathroom window?

23 A. Yes, ma'am.

24 Q. And the window that's right there behind the  
25 trash cans would be the bedroom window to the northeast

1 door?

2 A. Yes.

3 Q. So latents 1 through 7, were taken from the  
4 northeast bedroom?

5 A. Exterior window, yes.

6 Q. That is depicted in Defense Exhibit J, right  
7 behind the trash cans?

8 A. Yes. That's not my photo.

9 Q. But you recognize it as being depicted of --

10 A. Yes. It's -- the scene outside the window  
11 looks different then what I recall, that's all.

12 Q. It does depict the appropriate windows that  
13 are on the backside of the apartment, as you remember them  
14 to be, from April 26, 2012, correct?

15 A. Yes.

16 Q. You testified you obtained lifts from the  
17 bathroom of the apartment. Are those depicted in Exhibit  
18 N?

19 A. Exterior window of the bathroom, yes.

20 Q. In Defense Exhibit J, that is the little  
21 window between the sliding glass door and the northeast  
22 exterior bedroom window, correct?

23 A. Yes, ma'am.

24 Q. And then you testified that you obtained 3  
25 latent prints-- 4 latent prints, number 12, 13, 14, and 15

1 from the exterior living room window. Is that depicted in  
2 Defense Exhibit P.

3 A. Yes.

4 Q. Is this the living room -- which is the living  
5 room window that you got those prints, 12 through 15,  
6 from?

7 A. The living room window would be consistent  
8 with this window.

9 Q. All right.

10 And you testified with regard to a gel lift from  
11 the bathtub?

12 A. Yes, ma'am.

13 Q. You didn't analyze it, right.

14 A. No.

15 Q. Okay. It would really mean anything unless  
16 you had a pair of shoes -- unless you could compare them  
17 to a pair of shoes that was known to be at the crime scene  
18 at the time?

19 A. You couldn't match it unless you had a pair of  
20 shoes to match it to.

21 Q. If someone is arrested months later, it's  
22 highly unlikely -- whoever committed the crime, it's  
23 highly unlikely you'd find shoes that go along with your  
24 shoe print?

25 A. It depends.

1           Q.       It could or couldn't. Depending if the person  
2       was wearing the same shoes when they were arrested. They  
3       were taken into custody and compared to a shoe print  
4       lift?

5           A.       Correct.

6           Q.       Now, you testified about a cell phone.

7                   MS. ERICKSON: May I approach, Judge.

8                   THE COURT: You may.

9       BY MS. ERICKSON:

10          Q.       I'm showing you what was marked -- I don't  
11       know if it has been admitted -- as State's 165.

12                   Can you review that and tell the jury what it is?

13          A.       Item No. 11, one silver LG Cricket cell phone  
14       we located in the southeast bedroom.

15          Q.       So the southeast bedroom is -- showing you  
16       State's Exhibit 76. Is that the southeast bedroom?

17          A.       Yes, ma'am.

18          Q.       I think your testimony was that the cell phone  
19       in that bag -- and what kind of cell phone is it?

20          A.       Silver LG Cricket.

21          Q.       You took that into custody?

22          A.       Yes, ma'am.

23          Q.       In this picture, State's Exhibit 76, you  
24       testified there was a charger that had the cell phone in  
25       it and then it didn't. Could you explain that.

1           A.       The cell phone was collected from the east  
2 wall of the southeast bedroom. There's a charger plugged  
3 into the electrical outlet there. The cell phone, I  
4 believe, was collected from against this wall area.

5           Q.       Is it shown where you would have located the  
6 cell phone in that picture that's on the screen.

7           A.       Not on that photo.

8           Q.       How about this photo?

9           A.       The charger is plugged into the wall right  
10 here. I believe the cell phone was down next to the bed,  
11 in this area.

12          Q.       So it would have been, not shown, but there is  
13 the same chair and there's the same wire, so somewhere in  
14 the area of the floor?

15          A.       That wire, ma'am, is going to the clock on top  
16 of that dresser.

17          Q.       I'm talking about -- never mind.

18                 It is the same area that's depicted in this  
19 photograph, No. 76?

20          A.       Same area, yes, ma'am.

21          Q.       Could you -- and would you please open up that  
22 envelope on the side that has not been opened before with  
23 the tape.

24                 THE COURT: Which exhibit is this.

25                 MS. ERICKSON: Number 165.



1 THE COURT: Thank you.

2 BY MS. ERICKSON:

3 Q. Have you opened 165?

4 A. Yes, ma'am.

5 Q. What do you see inside?

6 A. There is a silver cell phone and a black  
7 charger.

8 Q. Could you take them out.

9 A. Can I have gloves. Thank you.

10 Q. Could you exhibit that so that the jury can  
11 see.

12 So in your left hand you have what?

13 A. The silver LG Cricket cell phone.

14 Q. In your right hand you have what?

15 A. A black charger.

16 Q. Do those look like the items you obtained from  
17 the southeast bedroom on April 26, 2012?

18 A. They are.

19 MS. ERICKSON: Move for their admission.

20 MR. DIGIACOMO: No objection.

21 THE COURT: I'll admit the items. I'll work out  
22 with the clerk how we'll mark them. But we'll admit the  
23 cell phone as Exhibit 165 A, and the charger and cord as  
24 165 B.

25 BY MS. ERICKSON:

1           Q.       You testified the charger was plugged into the  
2 wall and the phone was attached to the charger?

3           A.       The cell phone was on the floor next to the  
4 charger. I don't remember if it was actually plugged into  
5 it.

6           Q.       Do you notice if the cell phone was working?

7           A.       I don't recall.

8           Q.       You can put those back in the bag.

9                   Now, you went to another scene on the evening of  
10 April 26, 2012 at about 11:43 p.m., correct?

11          A.       Yes, ma'am.

12          Q.       That's when you looked at the car and you  
13 identified those photographs for the State in your direct  
14 testimony?

15          A.       Yes, ma'am.

16          Q.       When you got there, how -- where did you find  
17 the items that you looked at, took pictures of. The ones  
18 you took into your custody.

19          A.       When I got there, officers had some items out  
20 on the patrol vehicle on the hood. I photographed the  
21 vehicle itself, and then items that were on top of the  
22 hood of the patrol vehicle.

23          Q.       So they weren't inside the car when you  
24 arrived?

25          A.       No, ma'am.

1           Q.       You testified you obtained a black Samsung  
2 Cricket cell phone?

3           A.       Yes, ma'am.

4           Q.       Showing you what's been marked for  
5 identification as State's 158. Does this look like the  
6 package of the cell phone you found?

7           A.       Yes.

8           Q.       Does it have your P number and identification  
9 and everything else that makes you believe that that's the  
10 same evidence that you found then?

11          A.       Yes.

12          Q.       Could we please open it. What do you see  
13 inside?

14          A.       A black Cricket Samsung cell phone.

15          Q.       Is that the evidence you believe you obtained  
16 on April 26, 2012?

17          A.       Yes.

18               MS. ERICKSON: Move for its admission.

19               MR. DIGIACOMO: I thought they were admitted.

20               MS. ERICKSON: The phone itself wasn't.

21               THE COURT: As just the contents within what the  
22 DA has now, we'll admit separately 158 A. They will be  
23 marked separately.

24               BY MS. ERICKSON:

25               Q.       I'm showing you what is marked for

1 identification as Defendant's Exhibit R -- proposed  
2 exhibit. Do you recognize that photograph?

3 A. Yes, ma'am.

4 Q. What is that?

5 A. The cell phone.

6 Q. Was that a photograph that you took?

7 A. Yes, ma'am.

8 Q. Does that depict where you found the cell  
9 phone we just looked at?

10 A. Yes.

11 Q. The Samsung?

12 A. Yes, ma'am.

13 Q. Where was that located?

14 A. On some items of clothing. I believe on top  
15 of the patrol vehicle hood.

16 MS. ERICKSON: Move for its admission.

17 MR. DIGIACOMO: we have no objection other than  
18 it's duplicative of the cell phone that we've already  
19 admitted in evidence. If she wants to admit her own,  
20 that's fine.

21 THE COURT: Defendant's R will be admitted. She  
22 may use her own.

23 BY MS. ERICKSON:

24 Q. When you were at the scene at 11:43 p.m., you  
25 obtained -- besides the cell phone, you obtained

1 additional items, did you not?

2 A. Yes, ma'am.

3 Q. You obtained a pair of K Swiss silver and red  
4 and black tennis shoes, size 9, inside a grocery bag?

5 A. Yes.

6 Q. You took into evidence a pair of gray Dickie  
7 pants, 38 waist by 30 length?

8 A. Yes, ma'am.

9 Q. You also took another 2 pairs of shoes into  
10 your custody?

11 A. Yes.

12 Q. One was a maroon and white Nike tennis shoe,  
13 size 9?

14 A. Yes.

15 Q. And one was a black/gray/white/orange Nike  
16 tennis shoe, size 7?

17 A. Yes.

18 Q. To your knowledge did any of those shoes or  
19 items ever get tested?

20 A. I don't know.

21 Q. That's why I asked, to your knowledge.

22 MS. ERICKSON: May I approach.

23 THE COURT: You may.

24 BY MS. ERICKSON:

25 Q. Showing you what's marked as Defense Exhibit

1 Proposed S. Do you recognize that photograph?

2 A. I do.

3 Q. What does it depict?

4 A. A pair of white socks and a pair of white with  
5 black tennis shoes.

6 Q. Did you take those shoes and socks into your  
7 custody?

8 A. I did.

9 Q. When did you do that?

10 A. I believe on April 27th.

11 Q. Where did you get those shoes and socks?

12 A. I believe this was at the jail.

13 Q. The North Las Vegas Detention Center?

14 A. Yes, ma'am.

15 Q. Why did you go there?

16 A. Detective Prieto requested my presence.

17 MS. ERICKSON: I move for the admission of  
18 Defense Proposed Exhibit S.

19 MR. DIGIACOMO: No objection.

20 THE COURT: S is admitted.

21 BY MS. ERICKSON:

22 Q. Detective Prieto was one of the lead  
23 detectives on this case?

24 A. Yes, ma'am.

25 Q. As -- lead homicide detective, correct?

1           A.       I don't know if he was lead. He was one of  
2 the detectives.

3           Q.       The homicide detective is usually on scene  
4 when you are gathering evidence?

5           A.       Yes, ma'am.

6           Q.       Does the homicide detective, sort of, direct  
7 you as to what kinds of things he thinks are important to  
8 the case he's investigating?

9           A.       Besides some of the things we or myself would  
10 locate, yes.

11          Q.       So in this case -- the other detective from  
12 homicide was Detective Melgarejo, correct?

13          A.       Yes, ma'am.

14          Q.       Were either Detective Prieto or Detective  
15 Melgarejo on the scene when you arrived at the car on the  
16 evening of April 26th?

17          A.       I don't recall.

18          Q.       Now, in your report of May 5, 2012, you  
19 processed and compared the prints that you obtained from  
20 the crime scene and the vehicle, correct?

21          A.       I obtained the prints from the scene, and I  
22 believe Radke obtained fingerprints from the vehicle.

23          Q.       But you did examine the fingerprints from the  
24 vehicle that were lifted by Ms. Radke?

25          A.       Yes.

1           Q.       I don't know if you testified to this.  There  
2       were only a few that were determined to of AFIS quality?

3           A.       Yes, ma'am.

4           Q.       What does that mean?

5           A.       AFIS is Automated Fingerprint Identification  
6       System.  They have to be of a certain quality -- clarity to  
7       be able to be put into the fingerprint data base to see if  
8       there's a match that they might hit too.

9           Q.       So were there only 3 of the latents that we  
10       looked at on all of the evidence today that were of AFIS  
11       and comparable quality?

12          A.       I believe so, yes.

13          Q.       Would that have been one from the exterior  
14       northeast bedroom?

15          A.       I don't recall the locations.  I apologize.

16          Q.       Would your memory be refreshed by looking at a  
17       report you prepared?

18          A.       Yes, ma'am.

19                 MS. ERICKSON:  May I approach, Judge.

20                 THE COURT:  You may.

21       BY MS. ERICKSON:

22           Q.       Showing you a 3-page report.  Does that appear  
23       to be the report you prepared on or about May 2nd or 3rd  
24       2012?

25          A.       Yes, it does.



1           Q.       Does that report refresh your recollection as  
2 to how many of the latents that you compared where of AFIS  
3 comparable quality?

4           A.       Yes, ma'am.

5           Q.       How many were there?

6           A.       There were 4.

7           Q.       Where were they located?

8           A.       I'm sorry.

9           Q.       If you don't know, if you don't remember,  
10 would you be able to refresh your recollection by  
11 reviewing your report?

12          A.       Yes, ma'am.

13          Q.       All right.

14                Do you recall that there was one latent, No. 5,  
15 which was on the exterior northeast bedroom window was of  
16 AFIS comparable quality?

17          A.       Yes, ma'am.

18          Q.       Then No. 11, which was on the bathtub edge?

19          A.       Yes, ma'am.

20          Q.       Numbers 12 and 14 were located on the living  
21 room window?

22          A.       Yes, ma'am.

23          Q.       Now, you compared all of the latents that you  
24 could that were of the appropriate quality to everyone  
25 that was involved in this case -- Melissa Marin, Ashley

1 Wantland, James Headrick, Ivonne Cabrera, Jose Gonzales  
2 and Erik Quezada?

3 A. Yes, ma'am.

4 Q. Did you find Ivonne Cabrera's fingerprints on  
5 any of these items?

6 A. No, ma'am.

7 Q. Did you find Jose Gonzales' fingerprints?

8 A. I did.

9 Q. That was on the edge of the bathroom tub,  
10 correct?

11 A. Yes, ma'am.

12 Q. And you had somebody else verify these  
13 items?

14 A. I did.

15 Q. Okay. Who was that?

16 A. Renee Wonta (ph).

17 Q. She agreed with everything you've testified to  
18 about today as to the identification of those few  
19 latents?

20 A. Yes, ma'am.

21 Q. I have a few more questions.

22 On the sliding glass door of Apartment No. C, did  
23 you do any dusting for prints on that?

24 A. I believe I did.

25 Q. Did you find any?

1 A. Not that I recall.

2 Q. Did you do them inside and out?

3 A. Yes, ma'am.

4 Q. On the front door, did you dust those to try  
5 to lift latents from the inside and exterior of the  
6 door?

7 A. I believe I processed the front door for  
8 prints.

9 Q. Did you find any?

10 A. No, ma'am.

11 Q. You certainly didn't find Ivonne Cabrera's  
12 prints?

13 A. No, ma'am.

14 Q. Mr. DiGiacomo brought to your attention some  
15 weird white particular matter in Exhibit --

16 MS. ERICKSON: May I approach.

17 THE COURT: You may.

18 BY MS. ERICKSON:

19 Q. State's Exhibit 64, do you see that matter in  
20 that photo?

21 A. Yes, ma'am.

22 Q. Where is it located?

23 A. It is located on the blue jean shorts, the  
24 right shoulder in front of the decedent's face.

25 Q. Do you have any idea what that white

1 particular matter is?

2 A. I don't.

3 Q. Did you collect any of it for analysis?

4 A. No, ma'am.

5 MS. ERICKSON: That's all I have right now.

6 Thank you, Judge.

7 THE COURT: Thank you, Ms. Erickson.

8 Mr. DiGiacomo, any redirect.

9 MR. DIGIACOMO: Very briefly.

10 REDIRECT EXAMINATION

11 BY MR. DIGIACOMO:

12 Q. Ma'am, you lifted over 14 fingerprints at the  
13 crime scene; is that correct?

14 A. Yes.

15 Q. Merely because you lifted 14 doesn't mean you  
16 had 14 comparable prints?

17 A. Correct.

18 Q. So you did an analysis and of those 14 prints  
19 you were able to lift, you found 4 that were comparable,  
20 correct?

21 A. Yes, sir.

22 Q. Ms. Erickson asked you, did you find any  
23 latent fingerprints of Ivonne Cabrera. You didn't,  
24 right?

25 A. No, I did not.

1           Q.       You also didn't find any latent fingerprints  
2 for Melissa Marin, correct?

3           A.       Correct.

4           Q.       You didn't find any fingerprints for Erik  
5 Quezada, correct?

6           A.       Correct.

7           Q.       And you didn't find any fingerprints for  
8 Ashley Wantland either?

9           A.       Correct.

10          Q.       Despite them being occupants of the home?

11          A.       Correct.

12          Q.       Merely because somebody touches an object  
13 doesn't necessarily mean they are going to leave a  
14 fingerprint. Is that fair?

15          A.       That is true.

16          Q.       Ms. Erickson showed you a couple of  
17 photographs of some clothing and shoes. Would you agree  
18 with me there was a whole lot of clothes and shoes that  
19 you collected the evening of the 26th and early morning  
20 hours of the 27th?

21          A.       There were.

22          Q.       Just a lot of it?

23          A.       Yes.

24          Q.       You don't know if anyone ever compared those  
25 or what the results of those are and what the comparison

1 would be?

2 A. I don't know.

3 MR. DIGIACOMO: Thank you.

4 THE COURT: Ms. Erickson, any follow up to  
5 Mr. DiGiacomo's questions.

6 MS. ERICKSON: One moment, Judge.

7 BY MS. ERICKSON:

8 Q. The tennis shoes and socks you took from the  
9 North Las Vegas Detention Center, did you take any other  
10 clothing?

11 A. No, ma'am.

12 Q. You weren't asked by the detective to take  
13 anything else into custody?

14 A. Not of that night.

15 MS. ERICKSON: Thank you.

16 THE COURT: Mr. DiGiacomo, any questions.

17 MR. DIGIACOMO: No.

18 THE COURT: Can I see by a show of hands if any  
19 jurors have questions for this witness. Seeing no hands,  
20 you are excused. Don't forget to take that with you.  
21 There is a copy of the report. It may be your -- the  
22 document you used to refresh recollection.

23 Thank you.

24 State may call their next witness, please.

25 MR. DIGIACOMO: Patrick Fischer.

1 THE COURT: Come in and take the witness stand.

2 THE CLERK: You do solemnly swear the testimony  
3 you are about to give in this action shall be the truth,  
4 the whole truth, and nothing but the truth so help you  
5 God.

6 THE WITNESS: I do.

7 THE CLERK: State and spell your name for the  
8 record.

9 THE WITNESS: Patrick Fischer, P-a-t-r-i-c-k,  
10 F-i-s-c-h-e-r.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. DIGIACOMO:

14 Q. Where are you employed?

15 A. I am a certified senior crime scene analyst  
16 for the North Las Vegas Police Department.

17 Q. How long have you been with North Las Vegas?

18 A. 14 years.

19 Q. I'll direct your attention to April 26, 2012.

20 Were you asked to go to the hospital and have contact with  
21 a couple of victims of gun shot wounds?

22 A. Yes.

23 Q. While you were at the hospital, eventually did  
24 you end up collecting an item of evidence from one of the  
25 victims. Or removed from one of the victims?

1           A.       Yes, I did.

2           Q.       First I want to talk to you about Ashley  
3 Wantland.

4                   MR. DIGIACOMO: May I approach.

5                   THE COURT: You may.

6 BY MR. DIGIACOMO:

7           Q.       I'm showing you what's marked as State's  
8 Proposed Exhibit numbers 92 through 99.

9                   Do you recognize the woman depicted in this  
10 photograph -- in those photographs, I should say.

11          A.       I do.

12          Q.       Does -- do those appear to be photographs of  
13 how she appeared that day?

14          A.       They are.

15                   MR. DIGIACOMO: I move to admit 92 to 99.

16                   MR. WHIPPLE: No objection.

17                   THE COURT: State's Exhibit 92 to 99 is admitted.  
18 You can publish.

19 BY MR. DIGIACOMO:

20          Q.       As I talked to you about recovering an item of  
21 evidence, I'm going to show you State's Proposed Exhibits  
22 100 and 101.

23                   Do you recognize what's depicted in 100 and 101?

24          A.       I do.

25          Q.       What is that?



1           A.       100 is a plastic jar containing a bullet that  
2 was recovered from the left arm of Ashley Wantland.

3           Q.       101 is what, the bullet itself?

4           A.       101 is a close up of the bullet itself.

5           Q.       Are those true, fair, and accurate depictions  
6 of the container and the bullet?

7           A.       They are.

8           MR. DIGIACOMO: Move to admit 100 and 101.

9           MR. WHIPPLE: No objection.

10          THE COURT: State's Exhibits 100 and 101 are  
11 admitted.

12          BY MR. DIGIACOMO:

13          Q.       Showing you what's been marked as State's  
14 Proposed Exhibit No. 161.

15                 Do you recognize that?

16          A.       I do.

17          Q.       What is it?

18          A.       It's the evidence package containing the  
19 plastic jar and the one projectile or bullet I picked up  
20 that day.

21          Q.       Other than any future seals that may have been  
22 placed on it, is it in substantially the same or similar  
23 condition as when you impounded it?

24          A.       It is.

25          MR. DIGIACOMO: Move to admit 161.

1 MR. WHIPPLE: No objection.

2 THE COURT: State's 161 and its contents are  
3 admitted.

4 BY MR. DIGIACOMO:

5 Q. You also indicated you saw Melissa Marin that  
6 day.

7 I'll show you what's been marked as State's  
8 Proposed Exhibits 103 to 105, and ask you if those appear  
9 to be photographs of Ms. Marin on that day?

10 A. They do.

11 Q. Are they true, fair, and accurate  
12 depictions?

13 A. Yes.

14 MR. DIGIACOMO: Move to admit 103 to 105.

15 MR. WHIPPLE: No objection.

16 THE COURT: State's 103 and 105 are admitted.  
17 You may publish.

18 BY MR. DIGIACOMO:

19 Q. Sometime later were you asked to recover then  
20 have transported to the lab a gray Taurus?

21 A. I was, yes, sir.

22 Q. Showing you what's been marked as State's  
23 Proposed Exhibits 106 to 110.

24 Do those appear to be true, fair, and accurate  
25 depictions of that gray Taurus that you were asked to be

1 brought to lab?

2 A. Yes.

3 MR. DIGIACOMO: Move to admit 106 through 110.

4 MR. WHIPPLE: No objection.

5 THE COURT: State's 106 through 110 are  
6 admitted. You may publish.

7 BY MR. DIGIACOMO:

8 Q. Before taking it to the lab, did you seal the  
9 gray Taurus?

10 A. I did.

11 Q. Then when you left it at the lab, was it still  
12 sealed?

13 A. Yes.

14 Q. Did you later learn from some other CSA, a  
15 crime scene investigator processed the vehicle itself?

16 A. Yes, sir.

17 MR. DIGIACOMO: Thank you, very much. I have no  
18 more questions for this witness.

19 THE COURT: Any questions, Mr. Whipple for Mr.  
20 Fischer.

21 MR. WHIPPLE: No questions.

22 THE COURT: May I see by a show of hands if the  
23 jurors have questions for Mr. Fischer.

24 Seeing no hands, Mr. Fischer you are excused.

25 State's next witness.

1 MR. DIGIACOMO: Ashley Wantland. She's coming  
2 from victim witness, so it may take a moment.

3 THE COURT: Okay.

4 Please step forward and take the witness stand.

5 THE CLERK: You do solemnly swear the testimony  
6 you are about to give in this action shall be the truth,  
7 the whole truth, and nothing but the truth so help you  
8 God.

9 THE WITNESS: I do.

10 THE CLERK: State and spell your name for the  
11 record.

12 THE WITNESS: Ashley Wantland, A-s-h-l-e-y  
13 W-a-n-t-l-a-n-d.

14 THE COURT: When you are ready.

15 DIRECT EXAMINATION

16 BY MR. DIGIACOMO:

17 Q. Ma'am, back in 2012 where were you living?

18 A. I was staying at my friend Miguel's  
19 apartment.

20 Q. Is that the apartment on 2039 Webster?

21 A. Yes.

22 Q. You said your friend Miguel, who is Miguel?

23 A. Miguel is a friend that me and James met back  
24 in 2012. He was not the owner, that is who had the  
25 apartment.

1 Q. He was renting that apartment?

2 A. Yes.

3 Q. How long had you known Miguel before you moved  
4 in?

5 A. Probably just a couple of months.

6 Q. At some point -- let me ask you this. When  
7 you lived there with James, was anybody else living there  
8 initially other than Miguel?

9 A. No.

10 Q. At some point is there something that happened  
11 to Miguel?

12 A. He went to jail.

13 Q. When he went to jail, did he do something in  
14 order for you guys to keep paying the rent?

15 A. Yeah. He released his property to me, which I  
16 had his unemployment card that he filed for.

17 Q. What did you do with that unemployment card?

18 A. We were supposed to take the money off the  
19 unemployment card to keep his house going. That way when  
20 he was in jail he could keep the rent paid -- whatever.

21 Q. By the time the incident we are here to talk  
22 about happened, had you ever had to use the debit card?

23 A. Yeah. We had to withdraw money once to try to  
24 get the rent to the landlord. I can't remember if he took  
25 it or didn't. I can't remember.

1 Q. Did you know an individual by the name of  
2 Ivonne Cabrera?

3 A. I didn't know her first name at the time,  
4 no -- or real name.

5 Q. Did you know somebody by the name of  
6 Chinola?

7 A. Yes.

8 Q. You see Chinola here in court today?

9 A. Yes.

10 Q. Could you point her out and describe something  
11 she's wearing?

12 A. She's in the pink shirt.

13 MR. DIGIACOMO: Record reflect identification of  
14 Defendant.

15 THE COURT: Record will so reflect.

16 BY MR. DIGIACOMO:

17 Q. How do you know Chinola?

18 A. I met her through Miguel.

19 Q. During the time period you were living at the  
20 apartment did Chinola ever live there?

21 A. After Miguel went to jail, yes. But before,  
22 no.

23 Q. After he went to jail Chinola moved into the  
24 apartment?

25 A. After Miguel went to jail that's when she

1 moved in. Before Miguel, she didn't live there.

2 Q. When she came to the apartment when Miguel  
3 learned she was in the apartment, what happened?

4 A. Honestly, Miguel was in jail still when she  
5 came to the apartment and did all that. I don't know if I  
6 talked to Miguel on the phone at that point for him to  
7 know or for his reaction or not.

8 Q. Were you aware of whether or not Chinola was  
9 supposed to be at the apartment?

10 A. She wasn't supposed to be.

11 MS. ERICKSON: Objection, hearsay.

12 THE COURT: Mr. DiGiacomo.

13 MR. DIGIACOMO: Let me lay a foundation.

14 BY MR. DIGIACOMO:

15 Q. Before Miguel went to jail, were you aware of  
16 whether or not Chinola was allowed to be at that apartment  
17 or not?

18 MS. ERICKSON: Objection, hearsay.

19 THE COURT: At this point I'm going to ask the  
20 witness to answer the questions. We are laying found.  
21 Whether it's admitted with a yes or no -- you may proceed  
22 Mr. DiGiacomo.

23 BY MR. DIGIACOMO:

24 Q. Were you aware of whether or not Chinola was  
25 supposed to be at the apartment -- yes or no?

1 MS. ERICKSON: May we approach.

2 THE COURT: You may approach.

3 (Discussion held at the bench.)

4 THE COURT: The objection is overruled. Proceed  
5 with your questions, Mr. DiGiacomo.

6 BY MR. DIGIACOMO:

7 Q. So you were aware Chinola wasn't supposed to  
8 be at the apartment?

9 A. Correct.

10 Q. Who did you learn that information from?

11 A. Well, I learned it from Miguel.

12 Q. Before he went to jail?

13 A. Before he went to jail, yes.

14 Q. After he went to jail you and James were  
15 living in this apartment?

16 A. Yes.

17 Q. Did there come a point in time when anybody  
18 else moved into the apartment?

19 A. Yes, there was. After he went to jail, yeah,  
20 there was.

21 Q. Who else moved into the apartment?

22 A. Chinola and Smiley.

23 Q. Smiley -- is he the other victim that died in  
24 this case?

25 A. Yes.



1           Q.       Did you really know Melissa and Erik or  
2       Smiley?

3           A.       No.

4           Q.       How long were they in the apartment before the  
5       incident occurred?

6           A.       Just a couple of days. A few days maybe.

7           Q.       When you say Chinola moved in, what does that  
8       mean. Did she sleep in the apartment?

9           A.       She did sleep in the apartment for a couple of  
10       days I believe.

11          Q.       By the time the homicide occurred was she  
12       sleeping at the apartment any longer?

13          A.       No.

14          Q.       You said you met Chinola through Miguel. How  
15       long had you known Chinola?

16          A.       At the time of --

17          Q.       At the time of the shooting?

18          A.       Maybe a couple of months, if that. I don't  
19       know if it was that long.

20          Q.       Did there come a point in time when you and  
21       James and Chinola and maybe someone else went to  
22       Wal-Mart?

23          A.       Yes.

24          Q.       How long before the homicide did that  
25       happen?

1           A.       Just a few days -- or 2 or 3 days.

2           Q.       Who else was present when is that happened?

3           A.       Loka.

4           Q.       Do you know Loka's real name?

5           A.       I don't know her.

6           Q.       Describe for us -- well, who was driving the  
7 car when you went to Wal-Mart?

8           A.       Chinola.

9           Q.       Who was in the front passenger sheet?

10          A.       Loka.

11          Q.       What's the purpose of going to Wal-Mart?

12          A.       That was our -- that was my and James income  
13 pretty much. We were supposed to go -- do you want me to  
14 explain the process.

15          Q.       Yeah. The whole thing?

16          A.       We were supposed to go to Wal-Mart, and he  
17 would pretty much go in and steal these, like, computer  
18 games that are like \$70.00 a piece and walk out with them  
19 and return them for store credit.

20                 Then he would buy something online, and we would  
21 end up getting cash back for it. That was the whole  
22 point, was to go for money.

23          Q.       So it was a scam to steal from Wal-Mart?

24          A.       Pretty much.

25          Q.       You and James were both doing the stealing and

1       returning?

2           A.       I would -- usually I would return. He would  
3       steal it, for the most part.

4           Q.       James would go and he would steal and you'd  
5       return it?

6           A.       Yes.

7           Q.       Was Chinola or Loka aware of why she was  
8       driving you to Wal-Mart?

9           A.       Yes.

10          Q.       Did they have some part in this plan?

11          A.       Yes.

12          Q.       What was their part?

13          A.       To give us a ride.

14          Q.       So they are driving you to Wal-Mart?

15          A.       Yes.

16          Q.       How many Wal-Marts do you go to?

17          A.       Like 3.

18          Q.       How much money are we talking about?

19          A.       We only got like \$180.00.

20          Q.       How do you get cash out of this. If you steal  
21       an item, return it for store credit, how do you wind up  
22       getting cash in your hand?

23          A.       When you buy something with the card they give  
24       you for store credit online, it doesn't say the form of  
25       payment that was used. It would have to be by credit card

1 or something. I would go in and argue with the manager  
2 and tell him I didn't have the card that I originally  
3 purchased it with online, so they would just give me cash  
4 back.

5 Q. So it was a way to cheat cash out of  
6 Wal-Mart?

7 A. Pretty much.

8 Q. Let me ask you, were you involved back in  
9 those days in drugs?

10 A. Yes.

11 Q. Were you using this money to feed your  
12 habit?

13 A. Yes.

14 Q. What was your drug of choice?

15 A. Meth.

16 MR. DIGIACOMO: May I approach.

17 THE COURT: You may.

18 BY MR. DIGIACOMO:

19 Q. First one is going to be easy. Showing you  
20 what's been marked as State's Proposed Exhibit 152.

21 Do you recognize that person?

22 A. Yes.

23 Q. Who is that?

24 A. Chinola.

25 Q. Showing you what's been marked as State's

1 Proposed Exhibit 150. Do you recognize that person?

2 A. Yes.

3 Q. Who is that?

4 A. Loka.

5 Q. Showing you what's been marked as State's  
6 Proposed Exhibit 151, recognize that person?

7 A. Yes.

8 Q. Who is that?

9 A. Miguel.

10 MR. DIGIACOMO: Move to admit 150, 152, and  
11 151.

12 MS. ERICKSON: May look at them.

13 THE COURT: Any objection.

14 MS. ERICKSON: No, Judge.

15 THE COURT: All right. State's Exhibits 150,  
16 152 and 151 will be admitted. Mr. DiGiacomo, you may  
17 publish as needed.

18 BY MR. DIGIACOMO:

19 Q. After you got your \$180.00, did you wind up  
20 paying Loka and Chinola for the ride they were giving  
21 you?

22 A. James, as far as I know, was the one to pay  
23 for the ride.

24 Q. James was supposed to pay for the ride?

25 A. Yeah.

1 Q. Were you present when he paid?

2 A. No.

3 Q. Without talking about conversation you had  
4 with Chinola later on, do you have any idea of your own  
5 personal knowledge how he wound of paying for this ride?

6 A. Yeah. He paid with meth, obviously.

7 Q. Why is that obvious. Maybe to some of u,  
8 that's not obvious.

9 A. I feel ya. I feel retarded talking this way.  
10 Yeah, he used drugs to pay for the ride.

11 Q. He used drugs to pay for the ride?

12 A. Yeah.

13 Q. The day you do the Wal-Mart kind of scam --  
14 for lack of a better term -- do you wind up at some point  
15 going back to somebody's house with Loka and Chinola?

16 A. Yeah, it was Jan's house.

17 Q. Who is Jan?

18 A. It was somebody I met through Chinola. It was  
19 one of her friends where she was staying. Where we were  
20 supposed to be staying after the whole incident, after she  
21 left the apartment I should say.

22 Q. After she left Miguel's she started staying at  
23 Jan's place?

24 A. Right.

25 Q. How far is Jan's place from the Webster

1 address?

2 A. Right up the street. Maybe a 5 minute walk.

3 Q. Other than Jan, who else lives there?

4 A. I don't think anybody else lives there.

5 Q. Do you know a woman named Sheila?

6 A. Oh, yeah. She did live there I think.

7 Q. While you were at Jan's house, did you meet  
8 anybody that you believed to be related to Loka?

9 A. Smokie.

10 Q. Describe that for us?

11 A. Well, I met Smokie when we were at Jan's  
12 house. She brought him over to -- I don't know what it  
13 was for. I don't know Smokie or whatever. I only seen  
14 them for about 15, 20 minutes, then he and Chinola left.

15 Q. So Smokie and Chinola left?

16 A. Yes.

17 Q. And Loka stayed or did Loka go to?

18 A. She went too.

19 Q. So you, James, Jan, Loka, Chinola and Smokie  
20 are over at the house for a short period of time after the  
21 Wal-Mart trip?

22 A. Yes.

23 Q. Then Loka and Smokie and Chinola leave, and  
24 it's you James and Jan still there?

25 A. Yes.

1           Q.       Did you have any interaction with this guy,  
2       Smokie?

3           A.       Not really. They just introduced us and that  
4       was pretty much it. They just told me who he was, that he  
5       was Smokie. I said my name and that was all that was said  
6       between us.

7           Q.       Did you ever learn the relationship, how they  
8       knew Smokie?

9           A.       Not right then.

10          Q.       Is that the only time, prior to the homicide,  
11       you met Smokie?

12          A.       Yes.

13          Q.       I want to sort of move forward a little.

14                 Does there come a point in time when you -- do you  
15       know anything about the car that is sort of the subject of  
16       this case.

17                 Do you know anything about that car?

18          A.       No.

19          Q.       Do you know anything about Erik and Smiley  
20       borrowing the car?

21          A.       No.

22          Q.       Let me move to the day before the homicide.

23                 The day before the homicide -- well, let me back  
24       up.

25                 When Chinola and Loka and Smiley leave, are you



1 missing something to the apartment?

2 A. My keys.

3 Q. From Jan's house?

4 A. Yes.

5 Q. You were at Jan's house. You are missing your  
6 keys to the Webster address?

7 A. Yes.

8 Q. When you go home that day, when you get to the  
9 Webster address, what do you see?

10 A. The whole apartment is turned upside down and  
11 there's a bunch of stuff gone. It was almost cleaned  
12 out.

13 Q. The apartment was cleaned out?

14 A. Pretty much.

15 Q. Like what was missing?

16 A. All Miguel's belongings in the house. All his  
17 tools that were in the hallway closet. Everything -- I  
18 couldn't tell you exactly. It's such a long time ago. All  
19 of his belongings, pretty much.

20 Q. At the point that the house is cleaned out,  
21 are Melissa and Smiley living there yet?

22 A. I don't believe so.

23 Q. Okay. So the house is cleaned out. What do  
24 you do when you see the house is all --

25 A. I -- honestly, I called the cops.

1           Q.       You called the police and you reported a  
2 burglary at that Webster address?

3           A.       I wasn't able to -- see, my phone was acting  
4 weird. Every time I called, it like hung up on me. I  
5 tried a couple of times and I was stupid. I should have  
6 called back.

7           Q.       You didn't ends up reporting that?

8           A.       No.

9           Q.       Did there come a time when you see Chinola  
10 after that?

11          A.       The next day I believe.

12          Q.       The next day you see her?

13          A.       Yes.

14          Q.       Do you talk to her about what happened at the  
15 apartment?

16          A.       Yes. I told her -- well, I told her that I  
17 called the cops about the apartment being broken into, and  
18 she -- well, not broken into, but cleaned out. And she  
19 asked me why I did that. She seemed irritated. She told  
20 me it was because she was the one who did it.

21          Q.       She was the one who cleaned out the  
22 apartment?

23          A.       Yes.

24          Q.       Did you ever get your keys back?

25          A.       No.

1           Q.       Did you wind up getting another set of keys to  
2 the apartment?

3           A.       I don't believe I did.

4           Q.       So how long are we talking before the homicide  
5 is this conversation with Chinola about cleaning out the  
6 apartment?

7           A.       Just a few days, because all of this happened  
8 so fast.

9           Q.       Fast forward to a day before the homicide.  
10 Did you wind up taking your bike somewhere?

11          A.       I did.

12          Q.       Where did you go?

13          A.       I rode to a guy named old man Jim's house.

14          Q.       Old man Jim?

15          A.       Yes.

16          Q.       That's a colorful name. Was there anybody else  
17 present?

18          A.       Yes, there was.

19          Q.       Who was there?

20          A.       Chinola, Trigger, and Jan.

21          Q.       Trigger, describe him for me?

22          A.       Honestly, he was just one of their friends.  
23 Again, I don't know who he was any further then that.

24          Q.       Hispanic male -- did he have hair or no  
25 hair?

1           A.       If he did, he had very little.    I don't know  
2 if he had any hair.

3           Q.       That's Trigger?

4           A.       Yes.

5           Q.       While you were there did you wind up having a  
6 conversation with Chinola?

7           A.       Briefly, yes, I did.

8           Q.       Describe the conversation for us.

9           A.       When I got there she was like ranting and  
10 raving ore pissed off about something about Smiley and  
11 Melissa. Then she seen me and she said that she feels she  
12 got ripped off for driving us around to the different  
13 Wal-Marts because she only got half a gram or .6 out of  
14 what we got for it. And she said that she was -- she  
15 wants the unemployment card, pretty much.

16          Q.       As payment?

17          A.       Uh-huh.

18          Q.       Is that a yes?

19          A.       Yes. Sorry.

20          Q.       You'll have to break this down for me.

21                When you first show up she's ranting about  
22 something related to Smiley and Melissa?

23          A.       Yes.

24          Q.       Were you aware of what the problem was?

25          A.       The only thing I was aware of from what I can

1 tell from what she was saying was tools. Apparently she  
2 gave him tools and didn't -- and he didn't pay her for  
3 them. I think it was.

4 Q. So she gave him tools, and he hadn't paid for  
5 them?

6 A. Right. Correct.

7 Q. They were tools that were missing from the day  
8 your keys got taken?

9 A. Yes.

10 Q. Did you draw a conclusion as to whose tools  
11 she had given Smiley?

12 MS. ERICKSON: Objection, speculation.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, I did.

15 BY MR. DIGIACOMO:

16 Q. What conclusion did you draw?

17 A. They were probably Miguel's tools.

18 Q. And she was upset that Smiley hadn't paid for  
19 them?

20 A. Correct.

21 Q. Anything else you can gather about what her  
22 problem was with Melissa and Smiley were?

23 A. No. I don't believe -- I think that was the  
24 only problem that I can remember.

25 Q. Then she said you showed up, she was mad at

1       you and James. You said something about .6 grams. For  
2       those of us who are not in the drug culture. I'm not sure  
3       what that meant.

4               Can you break that down for me.

5           A.       James paid her in drugs for the ride, and he  
6       gave her .6 out of an 8 ball that he received.

7           Q.       How much is an 8 ball?

8           A.       3.5 grams.

9           Q.       So he gave her .6 grams of 3.5 grams of  
10       drugs?

11          A.       Yes.

12          Q.       She felt like that wasn't sufficient payment  
13       for having to drive you guys to 3 stores and stealing all  
14       of that property?

15          A.       Correct.

16          Q.       Then you said something about the unemployment  
17       card for payment?

18          A.       I remember her saying that Loka was going to  
19       get James if they didn't get the unemployment card.

20          Q.       So Loka was going to get James?

21          A.       That's exactly what she said.

22          Q.       Loka is going to get James if you don't give  
23       us the unemployment card?

24          A.       Yes.

25          Q.       How did you take that?

1           A.       As a threat.

2           Q.       How did you feel when you were leaving the  
3 house?

4           A.       Scared, kind of.

5           Q.       Where did you go from there?

6           A.       I went back to the apartment.

7           Q.       You got back to the apartment, did you talk to  
8 James about what you just over heard?

9           A.       Yes.

10          Q.       Did you talk to Melissa?

11          A.       Yes.

12          Q.       Did Erik -- did Smiley speak English?

13          A.       Yes, he did.

14          Q.       Did you talk to him?

15          A.       No, I didn't talk to him directly. Just  
16 through Melissa.

17          Q.       So you explained to Melissa the situation with  
18 Chinola?

19          A.       Correct.

20          Q.       I want to fast forward some time that night of  
21 the 25th, did you go to bed?

22          A.       Yes.

23          Q.       What room were you sleeping in?

24          A.       I was in the far room, farthest from the door  
25 closest to the bathroom.

1           Q.       You're in what we've been calling the  
2 northeast bedroom. The one right next to the bathroom?

3           A.       Correct.

4           Q.       Who else was in that room with you?

5           A.       James.

6           Q.       When you went to bed, as far as you knew, was  
7 the house locked up?

8           A.       As far as I know it was.

9           Q.       How about your bedroom door itself, was that  
10 locked?

11          A.       I believe so.

12          Q.       When you wake up what's the first thing you  
13 wake up to?

14          A.       I woke up to James saying, the car must be  
15 back.

16          Q.       The car must be back?

17          A.       Yes.

18          Q.       Did you know what he was referring to?

19          A.       No.

20          Q.       What does James do. Is he still in bed or  
21 what happens?

22          A.       He gets up and goes to the bedroom door.

23          Q.       Does he open the door?

24          A.       Yes, he does.

25          Q.       When he opens the door, what do you see?



1           A.       Smokie walks in and asked him if he had the  
2       unemployment card. And then I see like half of Chinola's  
3       face coming in the doorway and back out.

4           Q.       You see Smokie come in and say to James  
5       something about the debit card. What did he say?

6           A.       You got that unemployment card.

7           Q.       You got that unemployment card?

8           A.       That's all.

9           Q.       You say you saw Chinola's face poke in the  
10      room and that's all you saw?

11          A.       Correct. She backed out.

12          Q.       Describe -- was she acting -- how she was  
13      acting?

14          A.       I couldn't tell. She walked in, not even all  
15      the way, just half way, and walked back out. I couldn't  
16      tell.

17          Q.       Just a quick glance?

18          A.       Yeah.

19          Q.       Did you hear her or anything?

20          A.       No.

21          Q.       So then he says, Smokie says to James what?

22          A.       You got that unemployment card.

23          Q.       You got that unemployment card?

24          A.       Correct.

25          Q.       What is James' response?

1           A.       He wasn't able to finish, but he said that --  
2       he started to say, no, I don't have it. And that was it.  
3       Then he stopped because --

4           Q.       Why?

5           A.       He got shot.

6           Q.       When Smokie first walked in the room, did you  
7       see a gun?

8           A.       Not when he first walked in.

9           Q.       So he walks in the room and says to James,  
10       what about that debit card. And before James can respond,  
11       what does Smokie do?

12          A.       He shoots him.

13          Q.       So where did Smokie get the gun from?

14          A.       I don't know. He had to have it on him, but I  
15       don't know.

16          Q.       Did he walk in with the gun in his hand or did  
17       he pull the gun --

18          A.       He must have pulled it out of his pocket or  
19       something.

20          Q.       Did you see the gun at all?

21          A.       Yes.

22          Q.       What did it look like?

23          A.       It was black. It looked like a -- I don't  
24       know guns at all, so it was black and sort of big. But it  
25       wasn't like a revolver type gun. I don't know. I don't

1 know how to explain it.

2 Q. Well, was it a hand gun, rifle?

3 A. It was a hand gun.

4 Q. Was it sort of square, not like the old cowboy  
5 with the round wheel?

6 A. Yes.

7 Q. You said he shoots James. What happened after  
8 he shoots James?

9 A. He shoots me.

10 Q. So he shoots James and then turns and shoots  
11 you?

12 A. Yes.

13 Q. Where were you shot?

14 A. I was shot in my chest and on my side. In my  
15 arm, also up through my -- bottom of my chin.

16 Q. Let me break that down.

17 You have one shot that goes in your neck and is  
18 lodged somewhere in your --

19 A. It's caught in my tongue.

20 Q. Then you have a shot through your right arm?

21 A. Right. It broke my arm.

22 Q. A broken right arm.

23 A. Yes.

24 Q. Then you have a shot that enters your right  
25 breast?

1           A.       Yes.

2           Q.       Then you have some exit wounds up on the top  
3 left side?

4           A.       3 of them in my chest area here. Two more  
5 here, one of them went into my lung and collapsed my  
6 lung.

7           Q.       Despite being shot like that, you were able  
8 to -- what do you remember after you were shot?

9           A.       I just remember waking up to Melissa screaming  
10 in the other room.

11          Q.       You hear Melissa screaming in the other  
12 room?

13          A.       Yeah. She was screaming in Spanish. I don't  
14 know what she was saying.

15          Q.       Where were you both shot?

16          A.       I was in our room. I was in bed.

17          Q.       You are still in bed?

18          A.       Yes.

19          Q.       You hear Melissa screaming, what do you  
20 remember next?

21          A.       She came in the room and she asked me -- or  
22 she told me she needed help. I couldn't give her -- do  
23 anything for her. I didn't say anything at that point  
24 because I was still trying to gather what I was going  
25 through.

1           Q.       Eventually do you make it out of the front  
2 door?

3           A.       Yeah. I got off the bed shortly after and I  
4 actually fall back out and wake up -- I don't know how  
5 long later, maybe a minute or two -- I stumble outside.  
6 That's where I fell and stayed.

7           Q.       I assume you get transported to the  
8 hospital?

9           A.       Yes.

10          Q.       Some of the bullets were removed from your  
11 body, correct?

12          A.       I think one of them was.

13          Q.       Have you had some lasting effects from the  
14 ones that remain?

15          A.       Yes. I just had one come out 2 weeks ago.

16          Q.       What do you mean?

17          A.       It pushed its way out of my body. It wasn't a  
18 full one. It was just a fragment, because it exploded  
19 against my bone and pushed its way out.

20          Q.       Were you able to tell the police who it is  
21 that did this to you?

22          A.       I was able to tell the police, like the  
23 nicknames of them, that I knew.

24          Q.       So Chinola and Smokie?

25          A.       Exactly.

1           Q.       Do you eventually sign some pictures  
2 identifying the people that had done this to you?

3           A.       Yes.

4           MR. DIGIACOMO:   May I approach, Judge.

5           THE COURT:   You may.

6 BY MR. DIGIACOMO:

7           Q.       Showing you what's been marked as State's  
8 Proposed Exhibit 146. Do you recognize that?

9           A.       Yes.

10          Q.       What is that?

11          A.       That's Chinola's identification.

12          Q.       Chinola's identification with your signature.  
13 That's your signature?

14          A.       Yes.

15          Q.       Then 147, do you recognize that?

16          A.       Yes.

17          Q.       What is that?

18          A.       A picture of Smokie with a signature.

19          MR. DIGIACOMO:   Move to admit 146 and 147.

20          MS. ERICKSON:   No objection.

21          THE COURT:   State's 146 and 147 are admitted.  
22 You may publish.

23 BY MR. DIGIACOMO:

24          Q.       Ma'am, other than that brief encounter that  
25 you had with Smokie at Jan's house, do you know of any

1 other motive for him to be shooting you?

2 A. No.

3 Q. Did anything happen at Jan's house to cause  
4 him to want to shoot you?

5 A. No.

6 Q. That's the only time you ever met him?

7 A. Correct.

8 MR. DIGIACOMO: Thank you, ma'am. I'll pass the  
9 witness.

10 THE COURT: All right. Who will be inquiring of  
11 Ms. Wantland -- Ms. Erickson.

12 MS. ERICKSON: Yes.

13 CROSS-EXAMINATION

14 BY MS. ERICKSON:

15 Q. Good afternoon, Ms. Wantland?

16 A. Good afternoon.

17 Q. I take it from your testimony that on the  
18 morning of April 26, you remember being shot?

19 A. Correct.

20 Q. You remember James being shot?

21 A. Yes.

22 Q. And you remember waking up back and forth in  
23 and out of consciousness?

24 A. Correct.

25 Q. You got yourself outside, correct?

1           A.       Correct.

2           Q.       Do you remember speaking to any police  
3 officers?

4           A.       Yes.   When I spoke to one of them, because  
5 they were running by me with guns out, I remember they  
6 were just telling me to hang tight pretty much because  
7 they couldn't touch me because they were not medically --

8           Q.       Could you speak up just a little.   I'm hard of  
9 hearing.

10                  Do you remember telling one of them you had been  
11 shot by a Hispanic male with a bald head?

12           A.       Yes.

13           Q.       Do you remember speaking to a female police  
14 officer at the hospital?

15           A.       I don't know if she was a police officer.   I  
16 don't know.   I was in a lot of pain. I'm not sure.

17           Q.       So you're not sure if you gave her any  
18 information?

19           A.       I know there was a male detective I spoke to.  
20 I don't know about a female.

21           Q.       You have no memory of talking to a female  
22 police person from North Las Vegas Police Department?

23           A.       Not that I remember.

24           Q.       You spoke to a male, you said?

25           A.       Yes.



1           Q.       Do you remember if his name was Detective  
2       Prieto?

3           A.       Yes.

4           Q.       So it's fair to say that any interaction you  
5       may have had with a female police officer, you have no  
6       memory of it?

7           A.       No.

8           Q.       Okay. Let's go back a little.

9                You said that you met Miguel a couple of months  
10       before the homicide?

11          A.       Correct.

12          Q.       Did you meet him at a casino?

13          A.       Yes.

14          Q.       Did you meet him at the -- just a second.

15               Do remember which casino you met at?

16          A.       The Barcelona. It was the Barcelona. It's  
17       now the Siegel Suites.

18          Q.       You testified that Miguel released some things  
19       to you after he was in jail?

20          A.       Correct.

21          Q.       You don't remember him calling you on the  
22       phone because he'd been stopped in his truck by a police  
23       officer?

24          A.       I do remember that.

25          Q.       When he was stopped by the police officer in

- 1 his truck he was getting on the freeway?
- 2 A. Correct.
- 3 Q. What kind of car was he driving?
- 4 A. His truck.
- 5 Q. What color?
- 6 A. Black.
- 7 Q. And he called you?
- 8 A. Correct.
- 9 Q. To come and get his truck, correct?
- 10 A. Correct.
- 11 Q. He called you to pick up his personal items,
- 12 correct?
- 13 A. He -- yeah, he called me to come pick up his
- 14 truck.
- 15 Q. In his truck was his wallet?
- 16 A. No. He told me to come get his truck and once
- 17 he was already in jail, he released his property to me.
- 18 His wallet and everything.
- 19 Q. So your memory is not that keys to the truck
- 20 and the wallet and everything else was not in the truck
- 21 that you took away?
- 22 A. No, it was not. He had the wallet and
- 23 everything with him in jail. He took it with him to
- 24 jail.
- 25 Q. So you never had his wallet on the day you

1       picked up his truck?

2           A.       No.

3           Q.       Did you release that truck to his parents  
4       about 6 days later?

5           A.       Yes.

6           Q.       Now, I didn't really catch your testimony.  
7       You were testifying about a Wal-Mart scam?

8           A.       Correct.

9           Q.       That was James' plan?

10          A.       Correct.

11          Q.       He came up with it?

12          A.       Correct.

13          Q.       He figured out how to do it?

14          A.       Correct.

15          Q.       He asked other people to be involved?

16          A.       Correct.

17          Q.       So he would go in and steal items, like video  
18       games?

19          A.       Correct.

20          Q.       Because those were expensive?

21          A.       Correct.

22          Q.       And he would -- someone would take it in and  
23       return it?

24          A.       Yes.

25          Q.       And because you didn't have a receipt you got

1 a card?

2 A. Yes.

3 Q. Then you particularly would then go back in  
4 and talk to the manager?

5 A. Yes.

6 Q. And say, you bought an item online. That you  
7 didn't. You didn't buy it, correct?

8 A. No. When I would go and talk to the  
9 managers -- wait. The whole thing was messed up.

10 When I would go in to return the item to get the  
11 card, I'd then take the store credit card and we'd buy  
12 something online with the card. And we'd return that item  
13 to the store.

14 Q. So you get money from a stolen item. You get  
15 a card and you buy something. You come back, give them  
16 the item, then return it and get money back?

17 A. Yes.

18 Q. You said you did that 3 times in one day?

19 A. Yes.

20 Q. No other times?

21 A. Not with Chinola, no.

22 Q. That's my question. So it was 3 times one day  
23 when Chinola was with you?

24 A. That day, yes.

25 Q. Prior to that day, how many times had you gone

1 to Wal-Mart and done this?

2 A. I don't know. Probably a hand full of times,  
3 maybe.

4 Q. You were doing this to feed your drug habit?

5 A. Correct.

6 Q. Methamphetamine, drug of choice?

7 A. Correct.

8 Q. How long had you been with James?

9 A. Seven, eight months. Close to a year.

10 Q. When did he come up with this scam?

11 A. Shortly after I met him. He was -- I don't  
12 know if he was already doing it himself. I found out  
13 about it shortly after I started dating him.

14 Q. About a year you'd met him -- you learned  
15 shortly after you met him. So you had been doing this for  
16 months before the homicide?

17 A. Yes.

18 Q. You were involved?

19 A. Yes.

20 Q. So when you told the jury you got \$180.00 that  
21 day, would that be typical of the money you'd get each  
22 time you went?

23 A. We normally didn't get that much.

24 Q. Let's say you went once week -- well, how much  
25 drugs were you using in a weeks time?

1           A.       I have no idea. Like I could guesstimate.  
2       Maybe 3 -- a ball maybe. I don't remember.

3           Q.       So let's go backwards.

4                When you first met James, he was using  
5       methamphetamine?

6           A.       Yes.

7           Q.       Doing the scam?

8           A.       Correct.

9           Q.       Then you became involved with James and did  
10       you start using meth or did you start before you met?

11          A.       I had been using before I met James.

12          Q.       So then you guys are together and you are both  
13       using meth?

14          A.       Correct.

15          Q.       How did you use it?

16          A.       We smoked it.

17          Q.       You smoked it. And that was during the entire  
18       time you knew him?

19          A.       Correct.

20          Q.       Can you tell me on a weekly basis how many  
21       time did you use drugs in a week?

22          A.       Probably like -- I probably used 200 times.  
23       So I would probably, honestly, go through a quarter  
24       ounce.

25          Q.       Quarter ounce is how many grams?

1 A. 7.

2 Q. So you yourself could do 7 grams a week?

3 A. Probably.

4 Q. How about James?

5 A. Probably about the same.

6 Q. Were either of you employed?

7 A. No.

8 Q. So basically you are using 14 grams a week?

9 A. 7.

10 Q. 7 together?

11 A. We would go through a quarter ounce, between  
12 the two of us.

13 Q. Together you go through that once a week?

14 A. Yes.

15 Q. So who was purchasing the drugs, you or  
16 James?

17 A. James.

18 Q. So did he always go to the same dealer?

19 A. No.

20 Q. Did you ever meet the dealers?

21 A. No.

22 MR. DIGIACOMO: Could I object on relevance at  
23 this point.

24 THE COURT: Ms. Erickson.

25 MS. ERICKSON: Her testimony was she had no idea

1       why Smokie would kill her -- shoot her. Was there any  
2       other reason why this homicide occurred.

3               THE COURT: If you have a basis to tie that  
4       together, it would be appropriate to tie that together  
5       now. These general questions don't seem to be going  
6       anywhere relevant. I'll take your representations, but  
7       you proceed with that line of questioning.

8       BY MS. ERICKSON:

9               Q.       During the 7 months that James was purchasing  
10       drugs from other dealers, were there any issues with  
11       that?

12              A.       No.

13              Q.       That you know?

14              A.       No.

15              Q.       Always paid?

16              A.       Yes.

17              Q.       No problems?

18              A.       No problems.

19              Q.       Today you testified that you woke up because  
20       James said something about the car must be back; is that  
21       correct?

22              A.       Correct.

23              Q.       So you don't remember telling -- do you  
24       remember telling the police officer you remember waking up  
25       to a couple of voices in the house?



1           A.       Um, no -- well, very vaguely. I remember  
2 saying something like that. It's too blurry.

3           Q.       So today you testified, I believe, that  
4 Chinola stepped into your bedroom; is that correct?

5           A.       Correct.

6           Q.       So she physically -- so James opened the  
7 door?

8           A.       Correct.

9           Q.       How far open was it?

10          A.       All the way.

11          Q.       So it went all the way back?

12          A.       Yes.

13          Q.       You were in bed?

14          A.       Yes.

15          Q.       You just woke up?

16          A.       Yes.

17          Q.       Had you -- what time did you go to bed?

18          A.       I don't know. It was probably around 12:00,  
19 midnight.

20          Q.       When was the last time you used drugs that  
21 day?

22          A.       Earlier in the day before.

23          Q.       And you saw Smokie walk into your bedroom?

24          A.       Yes.

25          Q.       What was he wearing?

1           A.       I don't remember. A pair of jeans and a  
2 T-shirt.

3           Q.       A hoodie?

4           A.       I don't remember.

5           Q.       Was James standing between you and Smokie at  
6 the time he came into the bedroom?

7           A.       He was standing to the side, between me and  
8 Smokie.

9           Q.       That is how far?

10          A.       2 or 3 steps.

11          Q.       2 or 3 steps. Okay.

12                 And so you say you saw that Chinola stuck her head  
13 in and out. I don't understand?

14          A.       Like she stepped from the doorway itself. I  
15 seen like this of her face from the front.

16          Q.       Which way does the door open?

17          A.       Left to right.

18          Q.       If you are sitting in bed looking at the  
19 door?

20          A.       Yes.

21          Q.       So the door opens -- when you are looking at  
22 it, which way does the door come?

23          A.       Like if I'm in bed, this way. The door opened  
24 like to where the opening was on my side of the room.

25          Q.       So when you say that you saw Chinola's face,

1 was it by the door jam?

2 A. Correct.

3 Q. Okay. And you said you didn't see a gun?

4 A. Not right away, no.

5 Q. And you don't know where it came from?

6 A. Correct.

7 Q. Do you have any doubt that Smokie had a gun on  
8 him?

9 A. Any doubt.

10 Q. Yes.

11 A. No.

12 Q. Because of course you got shot?

13 A. Yes.

14 Q. He shot you?

15 A. Yes.

16 Q. All by himself?

17 A. Yes.

18 Q. So today you said that Chinola stepped into  
19 the bedroom, so you saw her face?

20 A. Correct.

21 Q. You don't remember telling Detective Vail  
22 (ph), you saw like a half of an inch of Chinola's face in  
23 our doorway?

24 A. That is exactly what I said.

25 Q. Did she completely come into the doorway?

1           THE COURT: If there is something you are  
2 referring to, if you can read the entire statement.

3           MS. ERICKSON: Do you remember telling the  
4 detective, my boyfriend got up out of bed and went to  
5 check to see who it was.

6           THE WITNESS: Yes.

7 BY MS. ERICKSON:

8           Q. Do you remember telling the detective, he --  
9 meaning James -- opened the door. I saw like a half an  
10 inch of Chinola's face come into our doorway?

11          A. Yes.

12          Q. Half of an inch of a face?

13          A. Well, I wasn't being literal. He just asked  
14 me so that's what I told him. I wasn't meaning literally  
15 half an inch. I only saw half of her face in the doorway  
16 when I looked. I didn't see nothing else. Then she  
17 backed out.

18          Q. You don't know where she went?

19          A. No.

20          Q. Okay.

21                Do you remember what Chinola's face looked like?  
22 What was her expression?

23          A. She didn't look at me. I didn't see her  
24 expression.

25          Q. How quickly did this all occur?

1           A.       The shooting.

2           Q.       The door opening and Smokie walking in and  
3 shooting?

4           A.       From the time I woke up and James opened the  
5 door, before I got shot, 30 seconds, if that.

6           Q.       How much?

7           A.       30 seconds, if that.

8           Q.       You never saw the gun?

9           A.       Yes, I did.

10          Q.       You saw the gun when he pointed it at you and  
11 fired?

12          A.       When he pointed it at James was the first time  
13 I saw the gun.

14          Q.       In that scenario, when was it you saw  
15 Chinola's face?

16          A.       Right after Smokie walked in the doorway. And  
17 while he was asking where the unemployment card was, was  
18 when I seen Chinola walk in and walk out.

19          Q.       You keep saying she walked in and walked out,  
20 she didn't enter the room?

21          A.       Technically no.

22          Q.       Technically is important in a trial?

23               MR. DIGIACOMO: I object to the commentary.

24               THE COURT: Sustained.

25               BY MS. ERICKSON:

1 Q. She didn't walk in the room, correct?

2 A. No, I guess -- I don't know what you mean by  
3 that.

4 Q. If a person walks into a room, they enter it.  
5 Their body comes in.

6 A. I only seen this much of her face. I didn't  
7 see anything else. I didn't see her legs. I didn't see  
8 her arms. That's all I seen. If that means she walked  
9 in, I don't know.

10 Q. You didn't see her body. You didn't see her  
11 legs. You didn't see any part of her, but a portion of  
12 her face.

13 Was it a full face or side face?

14 A. Side.

15 MS. ERICKSON: Just a moment, Judge.

16 THE COURT: Yes.

17 MS. ERICKSON: Nothing further.

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

20 MR. DIGIACOMO: Nothing further.

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

23 I see no hands. At this time, you are excused.

24 Watch your step as you exit the court.

25 I would like to have counsel at the bench just

1       briefly.

2                   (Discussion held at the bench.)

3               THE COURT: Before I excuse you for the day, I  
4       wish to advise you of an instruction. This instruction  
5       will also be also provided at the end of trial, but as  
6       there has been testimony from the most recent witness that  
7       would implicate this instruction I'll give it to you  
8       now.

9               Evidence which tends to show that the Defendant  
10      committed offenses other than that for which she is on  
11      trial, if believed, was not received and may not be  
12      considered by you to prove that she is a person of bad  
13      character or to prove she has a disposition to commit  
14      crimes.

15              Such evidence was received and may we considered by  
16      you only for the limited purpose of proving the  
17      Defendant's motive, intent, or absence of mistake or  
18      accident. You must weigh this evidence in the same manner  
19      as you do all the other evidence in the case.

20              We are going to excuse you for today's trial. We are  
21      going to return tomorrow at 9:30. Tomorrow I'll give you  
22      the next week's time frame, but, again keeping in mind  
23      afternoon starts. There may be adjustments. In the  
24      meantime, return tomorrow at 9:30. We'll prepared to  
25      start promptly then.

1           During the overnight recess --

2                           JURY ADMONITION

3           During the recess, ladies and gentlemen, you are  
4           admonished not to converse among yourselves or with anyone  
5           else, including, without limitation, the lawyers, parties  
6           and witnesses, on any subject connected with this trial,  
7           or any other case referred to during it, or read, watch,  
8           or listen to any report of or commentary on the trial, or  
9           any person connected with this trial, or any such other  
10          case by any medium of information including, without  
11          limitation, newspapers, television, internet or radio.

12          You are further admonished not to form or express any  
13          opinion on any subject connected with this trial until the  
14          case is finally submitted to you.

15          See you tomorrow at 9:30. Have a good night.

16                           (Jury dismissed.)

17           THE COURT: I neglected to make note of the  
18           bench conference after testimony of CSA Marks. There was  
19           a bench conference. At that time it involved Defense  
20           Proposed Exhibit T, the court's determination not to allow  
21           that exhibit in. It was discussed at the bench conference  
22           that although there had been testimony that had explained  
23           the markings on Defendant's Proposed T, which was to some  
24           degree a duplicate of State's admitted Exhibit 1, but with  
25           handwritten measurements.



1           Ms. Erickson did indicate those measurements had  
2       been fixed by herself and although the testimony and  
3       clarification that had been given that shows perhaps the  
4       length of the apartment was between 25 feet, the court  
5       noted that it appeared that the length running along the  
6       top part of the illustration that would encompass the  
7       kitchen area and adjacent area depicted at 13 feet did not  
8       appear to match the handwritten diagram by the other CSA  
9       who has not yet testified to be 9.7 feet instead of the 13  
10      feet described.

11           For that purpose the court declined to admit -- or  
12      unadmitted Defense Exhibit T, with the understanding that  
13      to extent it could be entered or those measurements  
14      clarified and/or agreed to by the other potential witness  
15      that it may be admitted at that point.

16           Anybody want to add anything as far as the bench  
17      conference on the Defendant's Proposed T that was not  
18      admitted.

19           MR. DIGIACOMO: Not from the state.

20           MS. ERICKSON: I will be able to establish that  
21      length by another witness, should the state not call her  
22      we'll call her ourselves.

23           With regard to the fact that some of my photographs  
24      are duplicates, I asked the State for a copy of exhibits  
25      last week. I have asked several more times since then.

1           I have not been provided those, therefore, I have had  
2           to put in pictures so I can rely on them. I have no idea  
3           which ones they are using or not using.

4           If the State would provide me with a copy, then I  
5           would not need to make duplicates and fumble around. The  
6           description on their exhibit list doesn't say anything  
7           more then picture northeast room.

8           I'd ask the court to have the State disclose their  
9           exhibits, as they should. I provided them with copies of  
10          everything I have provided to be exhibits in this case. I  
11          have done it contemporaneously with the time I made them.  
12          I don't think it's appropriate for the State not to  
13          provide me with that evidence.

14          If it is going to be their evidence, I should have  
15          access to it before it's being admitted in court.

16                 THE COURT: Mr. DiGiacomo, want to respond to  
17          Ms. Erickson's discussion with regard to State's copies of  
18          photos and other exhibits.

19                 MR. DIGIACOMO: Other then to say she has been  
20          in possession of those exhibits for the better part of 5  
21          years at this point. They have been marked for that  
22          period of time. And as a courtesy I might provide it for  
23          her, but to ask the court to order me to provide her  
24          something I previously provided her. All due respect, the  
25          discovery rules are the discovery rules. She'a now free

1 to go look through those exhibits and decide how to use  
2 them. It's ridiculous.

3 MS. ERICKSON: For the record.

4 THE COURT: Ms. Erickson.

5 MS. ERICKSON: The State has provided over 800  
6 photographs in 3 separate provisions, with duplicates,  
7 multiple duplicates and multiple duplicates.

8 I probably have 1,500 available. So to say that I  
9 have had these -- they haven't been marked for over a  
10 year. They were marked here. They've been marked here.

11 It's not accurate.

12 THE COURT: The court respectfully declines to  
13 make the order you requested. This is the court's take on  
14 circumstances.

15 The evidence is what the evidence is. It's up to  
16 each counsel. Whether they collaborate together to  
17 stipulate to exhibits, which clearly didn't occur in this  
18 case, or whether they each bring in their own and we end  
19 up with some duplicates, so be it. That's up to counsel.

20 To the intent that there's any additional time needed  
21 at the desk to go through the exhibits or not go through  
22 the exhibits, that's understandable. This is the trial,  
23 and to the extent that's necessary, then so be it.

24 You are welcome to provide your exhibits. When  
25 Mr. DiGiacomo objected as to one being a duplicate, you

1       responded to that objection and I disallowed it and I  
2       allowed you put in the duplicate. I don't have issue with  
3       that. But I'm not going to make an order at this time  
4       that requires anything different then what we have already  
5       been doing in this trial. It's up to each counsel to mark  
6       and prepare their exhibits. If you all had coordinated it  
7       in advance, this would not be an issue. That did not  
8       occur. That's the case.

9               MS. ERICKSON: I just ask that Mr. DiGiacomo not  
10       announce to the jury there is a duplicate one on file.

11              THE COURT: I doubt he'll do it again. He made  
12       the point the first time. I would ask, as you have asked,  
13       there not be editorializing.

14              MR. DIGIACOMO: I just objected to cumulative.

15              THE COURT: I'm not sure it's cumulative at this  
16       point.

17              If the defense and the State have not collaborated --  
18       it goes both ways -- and have not identified and  
19       stipulated to exhibits and each side is duplicating them,  
20       then so be it.

21              The objection to cumulative is denied. The two  
22       exhibits that are the same I don't think arise to being  
23       cumulative.

24              It would be helpful, and I have no problem with it  
25       being identified that it is the same or similar to a

1 previously marked and admitted exhibit. That's fine.

2 But the reference to it as being, you know, the way  
3 it was objected to, we can dispense with that.

4 The second bench conference I want to make was during  
5 testimony of Ms. Wantland. That was a bench conference  
6 that took place surrounding the hearsay objection that was  
7 made and the further discussion.

8 The discussion at the bench was that the testimony of  
9 Ms. Wantland was being objected to as what Miguel had  
10 told her about Chinola's ability to be present in the  
11 apartment. It was objected to as hearsay. Mr.  
12 DiGiacomo's argument was that it was not being offered for  
13 the truth of the matter asserted, but rather for what Ms.  
14 Wantland would have done related to Ms. Cabrera being able  
15 to be present in the apartment and what she did next in  
16 sequence of events. Ultimately it had significance beyond  
17 that circumstance and was not, again, going to the matter  
18 asserted.

19 The court agreed with the State's explanation and  
20 determined it was not hearsay. Therefore, did allow the  
21 testimony to proceed.

22 Would either counsel like to make further record on  
23 that second bench conference.

24 MR. DIGIACOMO: No.

25 MS. ERICKSON: No, Judge.

1 I did have one other issue that I wanted to raise  
2 that wasn't related to those two.

3 THE COURT: All right, please.

4 MS. ERICKSON: Judge just after Ms. Wantland  
5 testified you read the jury the Tavares instruction. I  
6 think it was the Con case that the Supreme Court announced  
7 it was the prosecutors duty to provide the court with an  
8 instruction. The instruction should have been read to the  
9 jury prior to Ms. Wantland's testimony.

10 Putting that at the end, after she's finished her  
11 testimony, does not give the jury the understanding of  
12 what the Tavares instruction means. They went through all  
13 of the testimony, listening to all these other bad acts,  
14 which the court previously admitted without instruction.  
15 So while I appreciate the court doing it, it was the  
16 prosecutor's duty to request the court to do that prior to  
17 Ms. Wantland's testimony or in the middle when she got to  
18 other bad acts.

19 THE COURT: Mr. DiGiacomo, you want to respond  
20 to that.

21 MR. DIGIACOMO: I would just ask Ms. Erickson  
22 what remedy she's requesting of the court. What are you  
23 asking for.

24 THE COURT: Are you asking for a remedy or  
25 making a record.

1 MS. ERICKSON: A mistrial.

2 THE COURT: Mr. DiGiacomo.

3 MR. DIGIACOMO: Obviously I'm not sure if it  
4 says before or after or whether it says the court has to  
5 do it or not do it. The jury was read Tavares  
6 instruction. Any tiny issue is clearly harmless. It  
7 certainly does not rise to the level of mistrial.

8 THE COURT: Anything else you want to add Ms.  
9 Erickson before I proceed.

10 MS. ERICKSON: Other than Ms. Wantland is one of  
11 two most important witnesses to the State. If it would be  
12 harmless is a legal question. But she is a sole surviving  
13 victim and witness of the events.

14 THE COURT: All right.

15 The court denies the request for mistrial. The  
16 Defendant's request for mistrial may only be granted where  
17 there are circumstances where the prejudice occurs to a  
18 degree that prevents the Defendant from receiving a fair  
19 trial. I don't perceive that there has been any such  
20 circumstance.

21 It's not my reading of prevailing case law that's  
22 only the purview of the prosecution to request the  
23 instruction and/or to provide it to the court in advance  
24 for the instruction to be given. It's the testimony and  
25 it's been the court's practice in keeping with what it

1 understands to be the case law that it's read  
2 contemporaneous. I would assert that that instruction was  
3 read at the conclusion of the testimony and was  
4 contemporaneous with the testimony. It should suffice to  
5 the extent the court is in error in it's understanding of  
6 the requirement or timing of the reading of the  
7 instruction, I agree that it would not be harmless error  
8 and not rise to the level of any sort of prejudice that  
9 would again prevent the Defendant from receiving a fair  
10 trial.

11 So the motion for mistrial is denied. The  
12 instruction will be included in the final instructions.

13 MR. DIGIACOMO: One more issue.

14 THE COURT: Yes.

15 MR. DIGIACOMO: Only because Ms. Marin may touch  
16 on the same subject matter. Based on defense's request  
17 maybe we should read that instruction again in the  
18 morning, before as defense requests.

19 I would like to put on the record Ms. Erickson told  
20 me she intentionally does not ask for a Tavares  
21 instruction because she believes it's the prosecutor's  
22 duty and she does it as a strategic choice. She did it in  
23 the last trial and told me that until now I just realized  
24 she must have intentionally done this as a strategic  
25 choice. I want the record to reflect she intentionally



1        didn't ask for it in case it ever becomes an issue.

2                MS. ERICKSON: That is absolutely not the law of  
3        the cases. I have absolutely no duty to request the court  
4        to instruct the jury with regard to Tavares. It's the  
5        prosecutor's duty. That is the word of the State. I have  
6        no burden to do so, and whether I intentionally do so or  
7        not is irrelevant. It's the prosecutor's duty, not the  
8        defense. I don't waive it unless I specifically say so.

9                THE COURT: It's the court's responsibility and  
10       perceives the situation that the instruction should be  
11       given or not. It had not yet been discussed to give it.  
12       The court gave it. And I believe that has resolved the  
13       issue.

14               The court will consider at what point tomorrow it  
15       should give the instruction related to Ms. Marin's  
16       testimony.

17               Anything else we need to address for the record.

18               MS. ERICKSON: No, Judge.

19               MR. DIGIACOMO: We intend to call the DNA  
20       analyst before Ms. Radke. It's technically out of order.  
21       I'd assume they want Ms. Radke so badly I doubt they're  
22       going to object to calling the DNA analyst before we get  
23       Ms. Radke. She's on vacation Monday.

24               MS. ERICKSON: Of course not.

25               MR. DIGIACOMO: Perfect.

1 MR. WHIPPLE: 9:30, your Honor.

2 THE COURT: 9:30 start.

3 MR. WHIPPLE: Thank you.

4

5

6

7

\* \* \* \* \*

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE  
OF  
CERTIFIED COURT REPORTER

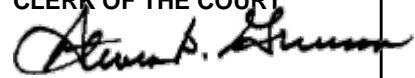
\* \* \* \* \*

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



OPI

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

IVONNE CABRERA, aka  
Yvonne Cabrera, #1617623,

Defendant.

Case No.: C-12-283700-1  
Dept. No.: XXV

**ORDER FOR PRODUCTION OF INMATE  
JOSE ALEJANDRO GONZALES, BAC# 1016762**

TO: BRIAN E. WILLIAMS, SR., Warden of the High Desert State Prison;

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada.

IT IS HEREBY ORDERED that BRIAN E. WILLIAMS, SR., Warden of the High Desert State Prison shall be, and is hereby directed to produce JOSE ALEJANDRO GONZALES, Witness in Case No. C-12-283700-1, wherein THE STATE OF NEVADA is the Plaintiff, inasamuch as the said JOSE ALEJANDRO GONZALES is currently incarcerated in the High Desert State Prison located in Indian Springs, Nevada and his presence will be required in Las Vegas, Nevada commencing on **Tuesday, July 11, 2017** at the hour of **1:00 p.m.**

IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County, Nevada, shall accept and retain custody of the JOSE ALEJANDRO GONZALES in the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until further Order of this Court; or in the alternative shall make all arrangements for the transportation of said JOSE ALEJANDRO GONZALES to and from

KATHLEEN E. DELANEY  
DISTRICT JUDGE  
DEPARTMENT XXV

1 the Nevada State Prison facility, High Desert State Prison, which are necessary to insure  
2 that JOSE ALEJANDRO GONZALES' availability and appearance in Clark County  
3 pending completion of his testimony in said matter, or until further Order of this Court.

4 Dated this 7<sup>th</sup> day of July, 2017.

5  
6  
7  
8 KATHLEEN E. DELANEY  
District Court Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

KATHLEEN E. DELANEY  
DISTRICT JUDGE  
DEPARTMENT XXV

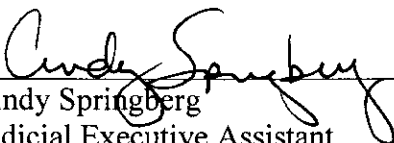
**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date filed, this **ORDER FOR PRODUCTION OF INMATE** was E-Served, mailed, or a copy placed in the attorney folders in the Clerk's

Office to:

Brian E. Williams, Sr.  
Warden, High Desert State Prison  
P.O. Box 680  
Indian Springs, Nevada 89070  
Fax (775) 887-3280 and (702) 879-6613

Marc DiGiacomo, Esq. and Hetty Wong, Esq. – Chief Deputy District Attorneys  
Patricia Erickson, Esq.  
Brett Whipple, Esq. – Justice Law Center

  
Cindy Springberg  
Judicial Executive Assistant

KATHLEEN E. DELANEY  
DISTRICT JUDGE  
DEPARTMENT XXV