

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	REPORTER'S TRANSCRIPT
	)	OF
vs.	)	JURY TRIAL
	)	
IVONNE CABRERA,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED MONDAY, JULY 10, 2017

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State: MARC DIGIACOMO, ESQ.

3 HETTY WONG, ESQ.

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6  
7 For the Defendant: PATRICIA ERICKSON, ESQ.

8 BRET WHIPPLE, ESQ.

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1 LAS VEGAS, NEVADA; MONDAY, JULY 10, 2017

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

3 \* \* \* \* \*

4  
5 THE COURT: Reassuming trial in State of Nevada  
6 vs. Ivonne Cabrera. I understand there's something we  
7 need to address before the jurors are present.

8 MR. WHIPPLE: Briefly. Is the air-conditioning  
9 out.

10 THE COURT: Not on the end of the building. A's  
11 and B's, at the other end, but we're not having any  
12 difficulties in here that I'm aware of.

13 MS. ERICKSON: It's not very cool.

14 THE COURT: It's cooler then the rest of the  
15 departments. The communication that we received was that  
16 the departments on the south side of the building are  
17 having some difficulties. We're not one of the  
18 departments that appear to be affected. I haven't walked  
19 through the building otherwise, but I think the  
20 temperatures will adjust but this is the best we can do at  
21 this time.

22 MS. ERICKSON: Better then deadly.

23 MR. WHIPPLE: Just -- the court has already  
24 given me an opportunity not to wear a jacket.

25 My other issue is in speaking with the State today, I

1 don't want to put words in their mouth, but it seems a v  
2 very high likelihood the State will rest today. It's my  
3 understanding they have a detective regarding the cell  
4 phone records, a detective regarding measurements, and a  
5 medical examiner then they can rest.

6 They may end up finishing before 5:00. I would like  
7 to start our case in chief tomorrow. We don't have any  
8 witnesses prepared for this afternoon. I'm not going to  
9 sand bag the court or my client. She is going to testify,  
10 but I'd rather start -- I'd rather start tomorrow, so  
11 she'll have the entire day.

12 THE COURT: I know it's difficult to estimate  
13 but each time we thought we might be done early, we kind  
14 of got closer to the close anyway, of the day.

15 Mr. DiGiacomo, any ideas on when we might finish  
16 today.

17 MR. DIGIACOMO: I have the medical examiner  
18 scheduled for 3:00. I can't imagine she takes that long,  
19 since it's not a forensics case. I will say that if  
20 they're going to put their clients on, we probably need to  
21 address what portions of the statements are coming in  
22 because they're going to be processed. I think we  
23 probably have things to do afternoon, other than the  
24 Defendant's case.

25 THE COURT: I'll go ahead and allow you to start

1 tomorrow.

2 Let me ask at this time, though, early on there was  
3 some estimation you thought your case in chief might take  
4 2 or 3 days. Now that we're resting the State's case, are  
5 you still at that estimation.

6 MS. ERICKSON: Yes.

7 THE COURT: Does that it aa reasonable possibility of  
8 instructing on Thursday. Now matter what, we understand  
9 we would not be instructing and closing till Monday. I'm  
10 not going to hold your feet to the fire.

11 MR. WHIPPLE: If I could confer with  
12 Ms. Erickson.

13 THE COURT: Sure.

14 MS. ERICKSON: We'll be done Thursday -- I  
15 believe. We may go over, but at this point I think --  
16 with 1:30 to 5:00 tomorrow, and Tuesday, Wednesday, and  
17 then 10:00 to 2:00 on Thursday, give or take.

18 THE COURT: Keep in mind -- my real question is  
19 should I be prepared to possibly instruct and do closings  
20 on Monday. It sounds like that's the case. Which always  
21 begs the question, at some point here, when are we going  
22 to get to jury instructions.

23 MS. ERICKSON: We just asked Mr. DiGiacomo about  
24 his. We have two. I'm working on them now.

25 THE COURT: As long as I have them before

1 Thursday -- before you all are gone.

2 MR. DIGIACOMO: You'll have them long before  
3 that.

4 THE COURT: They're getting ready to do their  
5 case in chief. They still have to look at yours, and they  
6 have to propose theirs.

7 MS. ERICKSON: Also on Sunday evening at 6:00  
8 p.m. Mr. DiGiacomo sent an e-mail with his version of what  
9 he thinks should be redacted from Ms. Cabrera's statement.  
10 He doesn't agree with what I had, given to you. So I only  
11 looked at it. I'm not ready to argue it. I'll be ready  
12 tomorrow, if you'd like to start at 11:30, or whenever the  
13 court would like to do it. I'm just not ready today.

14 THE COURT: I have a monster calendar tomorrow,  
15 but I can start at 1:00. Then bring the jurors back at  
16 1:30, if that works with your schedule.

17 If we think need that time to argue, or whatever. I  
18 mean, I'm assuming that you all -- I know he sent it on  
19 Sunday. My JEA printed it out. Mine was. I was in  
20 calendar until a little after 1:00, so I haven't had a  
21 chance to look at it. I have it. I can prepare it for  
22 tomorrow. I kind of assumed you all would work it out.

23 MS. ERICKSON: Does the court have the colored  
24 coordinated one that I made as an exhibit. I don'ts know  
25 if you do, but I can e-mail it to your JEA.

1                   MR. DIGIACOMO: She don't have a colored one. I  
2                   tried to get it for the court, knowing the one you had  
3                   wasn't colored.

4                   MS. ERICKSON: I'll e-mail it now.

5                   THE COURT: I'll give Cindy an e-mail letting  
6                   her know that's coming. I'll take a look at that.

7                   Why don't we plan on meeting -- my hope was if it  
8                   doesn't comport, I don't know that it's just a straight  
9                   argument and me making a decision, but maybe at the end at  
10                  this point there's no chance of you all getting together  
11                  on this.

12                  MR. DIGIACOMO: It's a broader issue, which is  
13                  this.

14                  The ruling, as I read it, was, hey, it's not relevant  
15                  if the detective says you're a liar, and he believes she's  
16                  lying. That's true. But if the statement starts off with  
17                  I don't know anything about anything. Well, that's not  
18                  true. You're lying because you talked to Melissa.

19                  Okay. Yeah, I've been to that apartment before. No.

20                  You were there this morning. No, I wasn't.

21                  We talked to Melissa. No, you're lying.

22                  So to the extent he makes a statement to her and it  
23                  changes her mind, that is, I believe, not what the subject  
24                  of the court ruling is.

25                  In the end when she says, I'm scared. You're a liar.

1       That's not the reason you went over there. And if she  
2       maintains that story, then it needs to be redacted.

3               THE COURT: We'll make a final call on how this  
4       will play out. The court needs to review it, and will  
5       have reviewed it by tomorrow. Let's plan on meeting at  
6       1 o'clock -- ish -- just to give ourselves the time.

7               MS. ERICKSON: He was not here at the hearing. I  
8       was here.

9               THE COURT: I'll review --

10              MS. ERICKSON: I don't remember it that way.

11              THE COURT: I'll read through everything. I'll  
12      go back through the minutes. I'll listen to the JAVZ.  
13      I'll be fully prepared to discuss it tomorrow prior to  
14      bringing the jurors back at 1:30.

15              I'm assuming Ms. Cabrera is not necessarily on the  
16      agenda to testify tomorrow, so that wouldn't necessarily  
17      be a problem if we needed to think it over and have some  
18      final thoughts on that.

19              Is that it for us for the record.

20              MS. ERICKSON: As far as -- we are.

21              THE COURT: I just have one quick thing. It's  
22      minor but -- if I can get counsel's attention, only  
23      because if you have a comment -- I don't think you will --  
24      but, as I said, we didn't finish our morning calendar  
25      until a little after 1 o'clock. I needed to stretch my

1 legs, so I decided to walk out the back door. Out of an  
2 abundance of caution, I didn't go out the front because I  
3 didn't want to encounter any jurors on the late hour. But  
4 of course as one would have it when I stepped back, at the  
5 base of the stairs, walking from north to south was one of  
6 our jurors -- Juror 14. I made eye contact as I was  
7 looking up to see who was walking. He made eye contact.  
8 He proceeded to walk. Once he finished walking by, I  
9 left. We had no verbal encounter, but we made eye  
10 contact.

11 I wanted to put that in the record.

12 MS. ERICKSON: Can't go anywhere, can you.

13 MR. DIGIACOMO: Nothing from the State.

14 THE COURT: All right. Then let's have the  
15 jurors in. Let's go ahead and I'll ask the State to call  
16 their next witness.

17 MR. DIGIACOMO: Wendy Radke.

18 THE COURT: All right. Come on up to the  
19 witness stand. My clerk will swear you in.

20 THE CLERK: You do solemnly swear the testimony  
21 you are about to give in this action shall be the truth,  
22 the whole truth, and nothing but the truth so help you  
23 God.

24 THE WITNESS: I do.

25 THE CLERK: Be seated. State and spell your

1 name for the record.

2 THE WITNESS: Wendy Radke -- W-e-n-d-y  
3 R-a-d-k-e.

4 THE COURT: Mr. DiGiacomo whenever you are  
5 ready.

6 DIRECT EXAMINATION

7 BY MR. DIGIACOMO:

8 Q. Ma'am, how are you employed?

9 A. I'm employed by the City of North Las Vegas,  
10 crime scene investigation.

11 Q. How long have you been with CSI?

12 A. 8 years.

13 Q. I'll direct your attention back to April 26,  
14 2012. Did you assist another crime scene investigator by  
15 the name of Dana Marks in processing the address at 2039  
16 Webster, Apartment No. C?

17 A. Yes, sir.

18 Q. Were you responsible for creating the hand  
19 written diagram measurements?

20 A. Yes, sir.

21 Q. I believe Ms. Erickson is going to ask you  
22 some questions about that, so I'm just going to move to  
23 the next subject matter?

24 At some point after April 26th, were you asked to  
25 process this vehicle that is depicted in State's Exhibit

1 No. 106.

2 Were you asked to process that particular  
3 vehicle?

4 A. Yes, sir.

5 Q. When you say process a vehicle, what does that  
6 mean to you?

7 A. Usually it is I document the vehicle or any  
8 piece of evidence by photograph, note taking, evidence  
9 collection, and eventually maintaining the chain of  
10 custody with the evidence collected.

11 Q. When you were done processing this vehicle, do  
12 you then package and impound anything you found inside the  
13 vehicle?

14 A. Yes, sir.

15 Q. There's only two items I want to talk to about  
16 within this vehicle. The ashtray area of the vehicle, did  
17 you find a cigarette butt, as well as some, what appeared  
18 to be, chewed sunflower seeds?

19 A. Yes, I did.

20 Q. Did you package those and submit them to the  
21 lab under the event number?

22 A. I did package them and submit them as  
23 evidence, yes.

24 MR. DIGIACOMO: Thank you very much. Pass the  
25 witness.

1 THE COURT: Thank you.

2 Ms. Erickson.

3 MS. ERICKSON: Good afternoon, Ms. Radke.

4 THE WITNESS: Good afternoon.

5 MS. ERICKSON: How are you.

6 THE WITNESS: Good. Thank you.

7 CROSS-EXAMINATION

8 BY MS. ERICKSON:

9 Q. Mr. DiGiacomo asked you about -- he went on  
10 from a different time, because I'm going to ask  
11 questions?

12 Did you, on the morning of April 26, 2012, go to  
13 the address of 2039 Webster, Apartment C?

14 A. Yes, I did.

15 Q. Showing you what's been admitted as  
16 Defendant's Exhibit H.

17 Does that look to you to be the same apartment  
18 complex you went to on that morning?

19 A. Yes, it does.

20 Q. Now showing you what has been marked and  
21 admitted as Defendant's Exhibit I.

22 Does that portray the front door and one of the  
23 windows of the living room and the side wall of 2039,  
24 Apartment C -- Webster?

25 A. Looks similar, yes. I just don't know if

1       that's exactly Apartment C. A lot of the houses on that  
2       block look exactly the same, so --

3             Q.       Okay.

4             Well, would it help -- we don't seem to have a  
5       crime scene photo of the side wall.

6             Does that look like what the apartment looked like  
7       on that date?

8             A.       Yes.

9             Q.       And I'm also showing you what's been admitted  
10       as Defense Exhibit J.

11            Does that look like the backside of that same  
12       apartment? If I compare it with Exhibit L, if I asked you  
13       to look at both of them, does that help you.

14            A.       Yes. There have been changes, but the  
15       building itself looks the same, yes.

16            Q.       And Defense Exhibit L is a picture that was  
17       taken on April 26, because it shows the bed post. Do you  
18       remember that?

19            A.       Yes.

20            Q.       The other one is J. It's just one that shows  
21       more of the back wall than this one -- then L does,  
22       correct?

23            A.       Yes. Also there is a brick wall that wasn't  
24       there before.

25            Q.       Other than the brick wall, this shows the back

1 bedroom window and the bathroom window?

2 A. Yes.

3 Q. I'll show you what's now been marked as  
4 Defense Proposed Exhibit T 1.

5 Does that orient you to what that picture shows?

6 A. Yes.

7 Q. If we're looking at Defense Exhibit J, this  
8 window here is the back bedroom window of the northeast  
9 bedroom?

10 A. Yes, ma'am.

11 Q. The small window would be the bathroom window  
12 on the northeast side?

13 A. Yes.

14 Q. And also a sliding glass door.

15 A. Yes.

16 Q. We've also admitted Defendant's Exhibit V.

17 This was your original handwritten map or outline  
18 or diagram where you wrote down the measurements that you  
19 took while inside and outside the house.

20 THE COURT: Ms. Erickson, before the witness  
21 answers, can I have you orient that. When we looked at it  
22 previously it was turned -- rotated slightly. There, that  
23 is the way we had it previously.

24 MS. ERICKSON: This is the front door.

25 Thank you, Judge.

1 THE COURT: Sorry. You may answer, if you  
2 remember the question.

3 THE WITNESS: Yes. Rough sketch, yes.

4 BY MS. ERICKSON:

5 Q. Okay.

6 Now, I'll give you a ruler and a red pen. Could  
7 you go back to T.

8 Does this T 1, look like the computer diagram that  
9 you made at a later date from the handwritten diagram that  
10 you made that is Exhibit V?

11 A. Yes.

12 MS. ERICKSON: Move for its admission.

13 MR. DIGIACOMO: Admission of.

14 MS. ERICKSON: T 1.

15 MR. DIGIACOMO: T 1 is the same as State's 1.

16 THE COURT: Appears to be. Just to avoid any  
17 confusion, there was of course a proposed T previously.  
18 It has now been sub-marked as 1 or 2. Is there going to be  
19 a T 2.

20 MS. ERICKSON: No, just T 1.

21 THE COURT: Just T, since we did not admit T. I  
22 just don't want there to be confusion there's not  
23 sub-number.

24 MS. ERICKSON: The other one was marked for  
25 admission of T. It is not going to come in.

1 THE COURT: So you want this to be T 1, so that  
2 it's clear which one came in, separate and apart from the  
3 one that had a reflection of some hand measurements.

4 MS. ERICKSON: Yes.

5 THE COURT: We'll admit Defendant's T 1. If you  
6 wanted to inquire of the witness to have her add something  
7 to that.

8 MS. ERICKSON: Yes, Judge. May I approach.

9 THE COURT: You may.

10 BY MS. ERICKSON:

11 Q. Ms. Radke, showing you Defense Exhibit V.

12 If you need to refresh your recollection, could  
13 you, please -- there are windows on the backside. We just  
14 went through those. Can you mark them outside with a line  
15 with a ruler and a red pen. It's a marker so it should  
16 work. On the outside of the wall?

17 A. Where the windows are.

18 Q. Yes, please.

19 A. Sure.

20 MR. DIGIACOMO: Do you mind if I approach and  
21 watch.

22 THE COURT: I do not.

23 MR. DIGIACOMO: Thank you.

24 BY MS. ERICKSON:

25 Q. Okay.

1           A.       Is that dark enough.

2           Q.       Maybe thicker. Thank you.

3                    I'm now providing you a pen. Do you have an  
4 independent recollection of the length of the side wall  
5 between the living room and the back of the kitchen?

6           A.       The length of this wall to which.

7           Q.       To the living room?

8           A.       Well, just by this.

9           Q.       You have an independent recollection?

10          A.       No.

11          Q.       Okay. Would it refresh your recollection to  
12 look at Exhibit V.

13          A.       Yes.

14          Q.       Could you just make a line across there. I'll  
15 get you a different pen they don't look like windows.

16          A.       Okay.

17          Q.       With a blue marker could you go along the side  
18 wall and then include also on the outside how many feet it  
19 is?

20          A.       Okay. Everything is approximately.

21          Q.       Of course.

22                    Do you have an independent recollection of how far  
23 -- or the length from the corner of the kitchen to the  
24 corner of the bathroom, including that area that looks  
25 like it would be where -- the dishwasher and things like

1       that would be.

2           A.       I don't have independent --

3           Q.       Would it refresh your recollection if you  
4       looked at Exhibit V, as in Victor?

5           A.       Yes.

6           Q.       How many feet?

7           A.       9 feet 7 inch.

8           Q.       And that's approximate, of course.

9               Then the bathroom, wall to wall, is how many  
10       feet?

11          A.       According to my rough sketch, it's 5 feet,  
12       width.

13          Q.       Could we put that on there. Well, no. Let's  
14       not.

15               Does the window, does it appear to you to be in the  
16       middle of the bathroom wall?

17          A.       Approximately.

18          Q.       If the bathroom is 5 feet, then from that  
19       window to where the kitchen is, it's probably 2.5 feet?

20          A.       The center of the window, maybe.

21          Q.       So let's put that underneath here, over to  
22       that wall. From the middle of the bathroom window to a  
23       little bit above, so we don't get confused.

24          A.       Like this.

25          Q.       Sure. Great. That would be about 2.5 feet.

1 Approximate, of course?

2 A. All right.

3 Q. I think that's all the drawing I'm going to  
4 have you do?

5 A. All right.

6 MS. ERICKSON: May I publish.

7 THE COURT: You may.

8 BY MS. ERICKSON:

9 Q. So, now that T 1 has been admitted, could you  
10 tell the jury where the windows are in this diagram on the  
11 backside of the apartment?

12 A. The windows I documented on this particular  
13 piece of evidence with the red marker.

14 Q. Then the side wall, from the front of the  
15 living room to the back end of the kitchen, how did you  
16 document that on the length of this exhibit?

17 A. With a thick blue line.

18 Q. How many feet did you say it was?

19 A. 25 feet, approximately.

20 Q. You also documented the interior, wall to  
21 wall, of the kitchen area?

22 A. Yes.

23 Q. How far was that?

24 A. Approximately 9 feet 7 inches.

25 Q. You put that in a blue line also?

1           A.       Yes.

2           Q.       Did you also document approximate middle of  
3 the bathroom window to the bathroom wall?

4           A.       Yes.

5           Q.       How did you document that?

6           A.       Another blue line.

7           Q.       How much was that estimate from the middle of  
8 the window to that wall?

9           A.       Approximately 2-and-a-half feet, zero  
10 inches.

11          Q.       So if you took the length -- width of the  
12 kitchen and you added 2.5. How far would it be from the  
13 middle of the window to the wall on the side of the  
14 kitchen?

15          A.       A little over 12 feet -- 12, 13 -- 12 point  
16 something.

17          Q.       About 13 feet?

18          A.       Yes.

19          Q.       And, of course, turning your attention back to  
20 J.

21                 If a person were standing in the area of -- this is  
22 like a slab that goes into the sliding glass door?

23          A.       Yes.

24          Q.       We don't know how big that is. It would  
25 certainly be somewhere in between the kitchen wall and the

1 bathroom wall?

2 A. Yes. If that was still there back then. That  
3 photo, like we said, might be newer because that brick  
4 wall wasn't there.

5 Q. If I show you Exhibit L -- can you see it in  
6 that photograph?

7 A. Yes.

8 Q. So it was there during the time frame?

9 A. Yes.

10 Q. It looks almost like the bed posts are close  
11 to where they end by the slab outside the sliding glass  
12 door, correct?

13 A. Yes.

14 Q. It appears to be.

15 A. Hard to tell, but close. Close to each other.

16 Q. Showing you State's Exhibit 17.

17 Does that sort of show it's not exactly equal with  
18 the slab, but it's close. Say 12 inches away from the  
19 slab?

20 A. Yes.

21 Q. There's a little bit of room, but definitely  
22 below the bathroom window?

23 A. Yes.

24 Q. Okay.

25 MS. ERICKSON: That's all I have. Thank you so

1 much.

2 THE COURT: Any further questions,  
3 Mr. DiGiacomo.

4 MR. DIGIACOMO: No.

5 THE COURT: May I see by a show of hands if any  
6 jurors have questions for this witness. Seeing none, you  
7 are excused. Don't forget to take the items with you you  
8 brought.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. DiGiacomo, State's next witness,  
11 please.

12 MR. DIGIACOMO: Detective Paul Ehlers.

13 THE COURT: Come forward and take the witness  
14 stand. My clerk will swear you in.

15 THE CLERK: You do solemnly swear the testimony  
16 you are about to give in this action shall be the truth,  
17 the whole truth, and nothing but the truth so help you  
18 God.

19 THE WITNESS: I do.

20 THE CLERK: Be seated. State and spell your  
21 name for the record.

22 THE WITNESS: Paul Ehlers, P-a-u-l --  
23 E-h-l-e-r-s.

24 DIRECT EXAMINATION

25 BY MR. DIGIACOMO:

1 Q. How are you employed?

2 A. I'm a detective with Las Vegas Metropolitan  
3 Police Department.

4 Q. How long have you been with Metro?

5 A. Almost 26 years now.

6 Q. How long have you been a detective?

7 A. About 18 of those.

8 Q. Do you have a current assignment at the Las  
9 Vegas Metropolitan Police Department?

10 A. I work as a computer forensic examiner in our  
11 computer forensic's lab.

12 Q. What does that mean you do?

13 A. Basically my job is to look at all digital  
14 evidence related to any incoming cases of requested  
15 detectives, which mostly consist of cell phone reference  
16 to looking at this evidence and assisting them in their  
17 investigation.

18 Q. In order to do the job that you do, do you  
19 have certain education, training, and background that you  
20 get in order to process electronic items of evidence?

21 A. Yes.

22 Q. Describe that for the Ladies and Gentlemen of  
23 jury.

24 A. Most of it will deal with -- depending on the  
25 computers or phones or what we do, in our shop now we have

1       certifications on both the tools and general  
2       certifications in forensics work that we do. I have  
3       approximate 1400, 1500 hours of training in reference to  
4       this.

5               Specifically, in a case like this, cell phone  
6       trained and certified twice using a software program  
7       Cellebrite, as well as other tools we use also.

8               Q.       I imagine over the course of your career there  
9       have been times you have come into court and testified  
10      about the forensic analysis that has been conducted on  
11      various pieces of electronic evidence?

12              A.       Yes, I have.

13              Q.       I'm going to direct your attention to December  
14      2015. Were you requested to work some -- two cell phones  
15      that were impounded under a North Las Vegas event number  
16      that occurred in 2012?

17              A.       Yes, I was.

18              Q.       Specifically, were you given two cell phones  
19      and asked to see if you can get into those cell phones and  
20      download any data that was contained therein?

21              A.       Yes.

22              Q.       Can you explain to the Ladies and Gentlemen of  
23      the jury when you get a cell phone what do you do in order  
24      to get into that phone and download the data?

25              A.       Cell phone as a mini computer, but it holds

1 storage area like -- these are solid state drives, much  
2 like a plate spin drive on a computer. This holds  
3 information that the item -- mini computer, cell phone  
4 actually has retained on it.

5 In reference to normal examinations, and in this  
6 case, we used a tool called Cellebrite, which is a  
7 forensic's tools that had been developed in reference to  
8 obtaining some of that information from that storage  
9 medium drive inside that cell phone.

10 In this case I download both phones. I'm able to  
11 connect them through the computer system utilizing the  
12 software/hardware program, which then maintains a logical  
13 file system or physical memory of that entire data storage  
14 in that phone. I did do that on both of these phones in  
15 this case.

16 Q. Since they're like computers, when somebody  
17 deletes an item from a computer, it doesn't necessarily  
18 mean it's not going to be recoverable any longer?

19 A. No, it does not.

20 Q. Explain that to the Ladies and Gentlemen of  
21 the jury.

22 A. In reference the file systems and operating  
23 systems, for efficiency on these items instead of zeroing  
24 out, deleting, or erasing all of that material in that  
25 storage medium drive, the computer for efficiency says,

1 I'm going to go to the file allocation table which  
2 contains that file and put some type of designation in  
3 there that's going to say, this is now available to write  
4 over, new material, the user no longer wants or needs it.

5 This deleted material is not viewable to the user,  
6 accessible, as when you took your phone out. Once it's  
7 deleted, it's gone. However, it's still retained in the  
8 memory until it's over-written with new data material  
9 coming into the phone.

10 Q. Because of the way electronics work, that  
11 available space is not necessarily chronological. If I  
12 delete something next week versus today, it's not  
13 necessarily that today's is going get written over that  
14 second. It may just be the nature of where the computer  
15 is going to, is that fair?

16 A. That is correct.

17 Q. Once it's written over, that information is  
18 lost?

19 A. That is correct.

20 Q. But if it hasn't been written over, you can  
21 still recover information from the phone?

22 A. Correct.

23 MR. DIGIACOMO: May I approach.

24 THE COURT: You may.

25 BY MR. DIGIACOMO:

1           Q.       I'm going to start with a silver LG Cricket  
2 phone. I'm showing you what's been admitted as State's  
3 Proposed Exhibit 165. Now it's open so 165 A and B, and  
4 ask you to take a look at that package.

5           A.       Okay.

6           Q.       Does that appear to be the LG cell phone you  
7 down loaded for this case?

8           A.       It does.

9           Q.       Now, when you download a cell phone or  
10 computer or anything else like that, how much information  
11 are we talking about that you can download from that  
12 phone?

13          A.       Well, it's going to depend on the size of the  
14 storage medium within that device. As an example, phones  
15 now are coming out on 16 gigs, 32 gigs, 128 gigs --  
16 gigabytes -- that storage volume varies and depends on the  
17 device.

18               As an example, 100, 120 gigabytes of data would be  
19 enough paper material to go over the Washington  
20 Monument.

21          Q.       So if we were to print out all of that data  
22 contained in storage, we'd have a giant stack of paper  
23 we'd have to flip through to figure out if it's anything  
24 relevant to the investigation?

25          A.       That is correct.

1           Q.       What do you do once you download the phone,  
2       how do you make it so the end user -- for example,  
3       lawyers, or detectives can get into it and see if there's  
4       anything relevant to their investigation?

5           A.       Well, by using as an example here, Cellebrite,  
6       using a forensic tool which is going to parse out the  
7       material it's recovering. Most of this material is going  
8       to be, as an android devices or cellular phone operating  
9       system, they're placed into file systems and also into  
10      databases -- ESC, SQL -- databases -- that the computer  
11      queries and pulls that information from.

12                The proprietary of each every operating system, as  
13      well as the phone providers have some input into it, but  
14      they all key or code in how these operating systems  
15      actually work and write.

16                The forensic software program and the hardware  
17      developers have reversed engineered portions or a lot of  
18      this material knowing that this is how that material is  
19      stored in hex on a computer which reads it binary -- in  
20      zeros -- and it puts it out into this format.

21                These forensic tools then are able to query knowing  
22      some of the format for certain phones and the operating  
23      systems and the file systems. They have it and can then  
24      place that into a visual reporting area for you to see and  
25      pull those out, such as, maybe, text messages or picture,

1 and it will categorize these into these types of fields.

2 Q. That is put on a disc and people can click  
3 through the various items on the disc or the report into  
4 text messages versus MMS messages, those variety of  
5 things?

6 A. That is correct.

7 Because our reports often will contain a very large  
8 amount of data, it's almost impossible to print all of  
9 that out and give that to the detectives, investigators,  
10 anyone looking at the case, so with that we have to put  
11 that on digital format media also, whether it's external  
12 hard drives, thumb drives, CDs, DVD drives. Because of  
13 the large volume of data contained within it, we're going  
14 to put that on some type of optical media to facilitate  
15 easier use of storage with that.

16 Q. Did you come by my office this morning and did  
17 you and I sort of go through -- both phones -- but for  
18 purposes of my questioning here, the report as related to  
19 the silver phone to pull out certain information as an  
20 exhibit to the jury?

21 A. Yes, we did.

22 MR. DIGIACOMO: May I approach.

23 THE COURT: You may.

24 BY MR. DIGIACOMO:

25 Q. Showing you what's been marked as State's

1 Proposed Exhibit 170, and ask you if those are artifacts  
2 of information from the silver LG cell phone that we  
3 pulled out, sort of as an example for the Ladies and  
4 Gentlemen of the jury, to explain your testimony?

5 A. Yes, it is.

6 Q. That is a true, fair, and accurate copy of  
7 information that's contained within this giant report you  
8 gave us?

9 A. Yes, it is.

10 MS. ERICKSON: I move to admit 170.

11 THE COURT: Any objection.

12 MS. ERICKSON: No, Judge.

13 THE COURT: State's 170 is admitted. You may  
14 publish.

15 BY MR. DIGIACOMO:

16 Q. When we went through the LG cell phone, did it  
17 appear that the majority of the information that is  
18 contained in this phone pretty much stops on April 22 of  
19 2012?

20 A. Yes.

21 Q. I'm going to put up the first page of 170, and  
22 I'm going to jump into the top area. There is --

23 MR. DIGIACOMO: May I have the court's  
24 indulgence. I forgot to plug in my mouse.

25 THE COURT: Okay.

1 BY MR. DIGIACOMO:

2 Q. I'll start with the very stop one.

3 Is this the last incoming call that shows on that  
4 LG phone when you were able to drop it down?

5 A. Yes, it is.

6 Q. So the last incoming phone call was from some  
7 contact identified as Chinola and occurred on April 22,  
8 2012 at 11:48 a.m.

9 Then it says UTC minus 7. What does that mean?

10 A. UT minus 7 is universal time. Computers, for  
11 efficiency again, have to use a common based denominator  
12 type time zone. So it will base everything on a UTC time,  
13 to make it operative with everything, especially for  
14 purposes of the Internet. More that it's easy.

15 So normally, if you set your computer to Pacific  
16 daylight -- excuse me Pacific Standard time with daylight  
17 savings, it will render this type of UTC minus 7, will  
18 match that date and time with what the universal time is,  
19 which is Greenwich mean time.

20 Q. So UTC never changes the time when the local  
21 zone may change. So this time of year, in April anyway,  
22 of 2012 you're minus 7. Earlier before the (inaudible),  
23 we'd be UTC 8 local time?

24 A. Correct. This date and time stamp shows  
25 that's what came in at local time of Vegas when that

1 message was received.

2 Q. Going back to the last missed call that shows  
3 up on this phone was also from a person named Chinola and  
4 was also on 4/22 of 2012, correct?

5 A. That's correct.

6 Q. Then if we go to the outgoing calls, there is  
7 an outgoing call that looks like to a Chinola on 4/26/2012  
8 at 7:40:14 a.m., which I'm going to represent to you is  
9 about 2 hours after police secured the scene where this  
10 phone was located. Other than that, the star 99, the last  
11 time there was an attempt on an outgoing call was on  
12 4/25/2014 at 4:52 a.m. Is that correct?

13 A. That is correct.

14 Q. Inbox as relates to MMS -- maybe I should have  
15 you explain. What's the difference between SMS text  
16 messages and MMS?

17 A. So SMS means it's going to be simple text  
18 messages, which are limited in character lengths. MMS  
19 is if they're going to be text messages or messages that  
20 were sent, which are going to contain an attachment.  
21 Whether that be a graphic or video or type of text file,  
22 an attachment that's exceeding that smaller text limited  
23 file allowed on SMS's.

24 Q. On the inbox of the SMS on this phone in the  
25 uncategorized section the last text message is 4/22/2012,

1 correct?

2 A. That is correct.

3 Q. I'm going to go to page 2 of this.

4 When you pulled up the contacts in that phone, was  
5 there a contact for Chinola?

6 A. Yes, there was.

7 Q. As you saw on some of those previous entries  
8 the phone number that's coming in, the phone will  
9 automatically populate the contacts of that phone number  
10 if it's in the phone?

11 A. Yes.

12 Q. Did you, along with me, search this phone to  
13 see if there was a contact for someone named Smokie?

14 A. Yes.

15 Q. Were we able to locate a contact for Smokie on  
16 that phone?

17 A. No, we weren't.

18 Q. There is a thing called GO SMS private box.  
19 Do you know what GO SMS is?

20 A. I believe it's used by the Cricket provider,  
21 but it is a messaging type app. So while most phones have  
22 a default messaging app within, via Android system or the  
23 Apple system, whatever it is or what type of phone there  
24 is. But there's an additional third-party app, such as  
25 OneSap -- there's hundreds of these -- that you could

1 download an additional use to make contact with someone  
2 else in reference to texting. I'm not positive, but I  
3 believe GO SMS is one from the carrier provider, Cricket,  
4 that was installed as a layer base onto that operating  
5 system.

6 Q. So if you get SMS, that's the normal SMS for  
7 the phone. You can also get the carrier SMS, and thus we  
8 could have a variety of different places where there are  
9 text messages being sent. If you had a Text Me Now app,  
10 we might get that information?

11 A. That is correct.

12 Q. Once again the last SMS in there is now  
13 4/19/2012, so a week prior to the homicide in this case?

14 A. Yes.

15 Q. On the last sent one it also shows this 4/22  
16 to some contact by the name of Chinola?

17 A. Yes.

18 Q. There didn't appear to be anything at or near  
19 any text messages that were sent sometime in the late  
20 night of April 25th into the early morning hours of the  
21 26th?

22 A. No.

23 Q. Put that phone aside. I'm going to show you  
24 now what has been marked as 158. This is the black Samsung  
25 phone that you were asked to download.

1           A.       Yes, it is.

2           Q.       Then once again did you go through this  
3 particular phone and provide this phone to my office and  
4 have you since been provided some exhibits and you and I  
5 went through a few of these exhibits this morning?

6           A.       Yes.

7           MR. DIGIACOMO: May I approach.

8           THE COURT: You may.

9 BY MR. DIGIACOMO:

10          Q.       Showing you 153. Is that text messages  
11 between -- well, to that phone and from that phone from a  
12 particular number?

13          A.       Yes.

14          Q.       Then 169 at the end of these text messages did  
15 it show that this number also had an MMS contact that was  
16 within the phone?

17          A.       Yes.

18          Q.       Is that now demonstrated on 169?

19          A.       It is.

20          Q.       And finally is there a conversation between a  
21 phone with the -- between that phone and some contact  
22 named Loka that occurred on April 25th into the early  
23 morning hours of April 26th that is contained within  
24 154?

25          A.       It is.

1 MR. DIGIACOMO: Move to admitted 169 and 154.

2 MS. ERICKSON: No objection.

3 THE COURT: State's 154 and 169, will be  
4 admitted. You may publish.

5 BY MR. DIGIACOMO:

6 Q. Let me start with 153 that we went over the  
7 other day with another witness.

8 These are in reverse chronological order so I'll  
9 start at the bottom. Well, actually maybe I can zoom in  
10 this whole thing for just a second and have you explain.

11 If you look on the left hand side the numbering is  
12 27, 28. It jumps down 19, 20. Then it jumps down to 29.

13 Do you know what those number represent?

14 A. Those numbers are going to represent the  
15 number of items in that field that were recovered by the  
16 forensic program.

17 Q. So on this particular one 27 and 28, are two  
18 items that were recovered by the -- by the program in the  
19 SMS red section. So messages received by this phone that  
20 are relevant to this particular case?

21 A. Correct.

22 Q. So message number 26 and 29, maybe to whole  
23 different people on a whole different subject matter and  
24 may not be relevant to this case, that's why there are  
25 only portions of that?

1           A.       That is correct. Even a chat program may not  
2 be in exact sequential order as the software program pulls  
3 it out. There could be other ones intermingled in between  
4 those. Yes.

5           Q.       Let me back out and start at the bottom. This  
6 shows that this number 702 712-8291, sent a text message  
7 at 11:46 p.m. on the 25th in Spanish to that black Samsung  
8 phone?

9           A.       Correct. And that it was read.

10          Q.       On the right hand side it says deleted. What  
11 does that mean?

12          A.       So again the user deleted this message and the  
13 forensic program was able to recover it as it was still  
14 whole enough on the actual drive. Again, only that file  
15 allocation item had been changed to show it as being  
16 available to overwrite it, but we were still able to  
17 recover that message.

18                So the forensic program will identify, if you're  
19 able to get a physical extraction from phone -- which I  
20 was on both of these -- whether it was deleted or  
21 active.

22          Q.       This was something that the user deleted but  
23 you were able to recover?

24          A.       Correct.

25          Q.       The response to that text is here in 19 and 20

1 from the sent section of the SMS on the phone showing the  
2 same phone number at 11:48 p.m.

3 The bottom one say Chinola is sleeping. I'm  
4 Smokie. Do you have a problem -- which was deleted. The  
5 above it looks similar, but it's got some weird symbols?

6 Can you tell us what we are looking at?

7 A. As I explained earlier, the operating systems  
8 use database processing. This is for speed processing,  
9 easy of efficiency and access. So it may store your last  
10 290 text messages, and again, just bearing by the carrier  
11 and the phone and it may say first in first out. So it's  
12 going to hold all of those in there and it's also going to  
13 place that information on the hard drive, that data  
14 storage area.

15 Well, what you are seeing here is actually the data  
16 storage area and 19 have been partially overwritten, but  
17 the entire message was able to be recovered from the  
18 actual database of that text messages. These characters  
19 and what information you see are indicative of what would  
20 be overwritten or other data material that didn't contain  
21 that exact text messages, had they placed in a portion of  
22 that computers, phones, systems use the required space  
23 only sectors, logical blocks, information on how these are  
24 partitioned, these drives and storage areas.

25 So it may not write over the entire area. In other

1 words, you may have a large file written out and you  
2 delete it. It's marked for deletion. And a new file that  
3 you saved is smaller, and it's written into here. It's  
4 going to cover this smaller portion, however, the prior  
5 file you had and deleted portions of that are still going  
6 to be recoverable. But the material above that when you  
7 pull that file is usually going to be some other type of  
8 scripting, which shows that it had been overwritten.

9 Q. So this phone only sent one message, it was  
10 just kept in two separate places on this phone and it was  
11 overwritten in one of those sections?

12 A. Yes.

13 Q. Then on 153, at the very top. Back to the  
14 red. So this is a message that is received, similar  
15 thing. The same message, but one portion had been  
16 overwritten because they were deleted?

17 A. That is correct.

18 The reason you are seeing that is when the forensic  
19 program pulls this information it's pulling it from the  
20 logical file and physical all that it can naturally  
21 obtain. So that is why you are seeing it from two  
22 separate locations additionally.

23 But that is only one message in there. The other  
24 one has been partially overwritten.

25 Q. Notice this response by some woman named

1 Melissa on April 26, 12:01:41 a.m. is from a phone number  
2 that ends in 8291, correct?

3 A. That's correct.

4 Q. Now, I'll go to 169 -- State's 169. I'll zoom  
5 to the top. About 3 minutes later it appears that there  
6 is an MMS message sent to 8291, correct?

7 A. That is correct.

8 Q. Pulling up that text message -- MMS message, I  
9 should say. Response is, she sleeping. That's all I have  
10 to say. She did mention the other night she has until the  
11 28th. I took the car keys without her knowing. She'll  
12 take it back when she gets up in the morning.

13 It appears to be repeated again, and there's also  
14 some overwriting and it looks like there's some emojis or  
15 smilies at the end?

16 A. Correct. That was again from the database  
17 system showing both of those. And the reason this  
18 probably came in as an MMS as opposed to a simple SMS is  
19 due to the character length limit of 128, simple text  
20 message. Newer systems will break it down sometimes and  
21 send it as a portion of text, second portion of a text cut  
22 them off. Others will automatically convert it to an MMS,  
23 which then holds a larger amount of data.

24 Q. Then lastly I'm going show you 154.

25 Now is there -- this program, does it also create

1 sort of a time line of events that occurs with the  
2 phone?

3 A. It does.

4 Q. So the text message conversation between this  
5 phone and someone named Loka looks slightly different but  
6 contains generally the same information?

7 A. Correct.

8 Q. Let me start with just the top of this. It  
9 looks like someone named Loka texted this phone at about  
10 9:21 p.m. saying, what's up. Then there's a Daddy Loka at  
11 the end. Then there's a conversation that starts on  
12 9:21:28 and finishes -- if I put up the other page because  
13 I'm not going to make you read the whole thing -- at 5:58  
14 a.m.

15 Well, there's a call log at 5:50. So 5:53 is the  
16 last text message; is that correct?

17 A. That is correct.

18 Q. If I back up, I'll leave it here. It appears  
19 that Loka sends a text to this phone saying, where you at.

20 She sends a second text, both at 5:40 in the  
21 morning. Where -- who is it -- what it is.

22 There's a response. Let's roll.

23 Then 12 minutes later from Loka, where you at.

24 Response, apartment.

25 From Loka -- who's --

1                   Response being, white boys -- at 5:53 a.m.

2                   Is that correct?

3                   A.           That is correct.

4                   MR. DIGIACOMO:   Thank you, sir.   I pass the  
5                   witness, Judge.

6                   THE COURT:   Ms. Erickson.

7                   MS. ERICKSON:   Mr. Whipple wants to speak with  
8                   me.

9                   MR. WHIPPLE:   Can we take a break.

10                  THE COURT:   We can take a brief recess. It's  
11                  been a little over an hour.   I don't have a problem taking  
12                  a recess at this time before we complete this questioning.

13                                 JURY ADMONITION

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

23                  You are further admonished not to form or express any  
24                  opinion on any subject connected with this trial until the  
25                  case is finally submitted to you.

1 We'll see you back at 10 to 3:00.

2 (Brief recess taken.)

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5 \* \* \* \* \*

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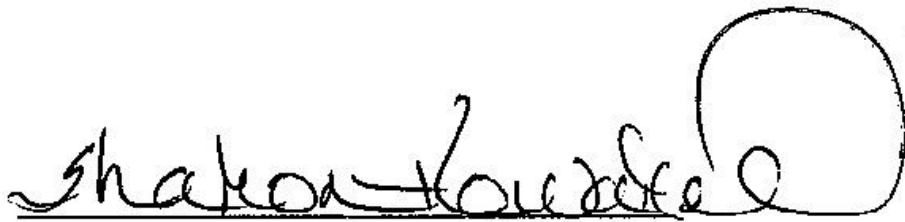
24 OF

25 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

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

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**APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME VI**

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

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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  
Friday, July 7, 2017, 9:30 A.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

## I N D E X

Witnesses called by the State:

## MELISSA MARIN

Direct Examination by Ms. Wong: 9

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Direct Examination Resumed by Ms. Wong: 24

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## ALISE ESFANDIAN

Direct Examination by Ms. Wong: 106

Cross-Examination by Ms. Erickson: 118

1 Las Vegas, Clark County, Nevada

2 Friday, July 7, 2017, 9:30 A.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 outside the presence of the jury panel:)

8 THE COURT: I am sorry for the late start. Did  
9 we have anything for the record first, or are we good to go?

09:48AM 10 MS. ERICKSON: I'm sorry, Judge.

11 THE COURT: Do we have anything for the record  
12 or are we good to go?

13 MS. ERICKSON: Yes. At this time, I just wanted  
14 to make a record about two things. I was coming in through the  
09:48AM 15 security and an attorney saw my box and stopped and asked me  
16 what was going on.

17 I said: I was in a capital trial.

18 And she says: How is it going?

19 And I said: Well, I make faces. I'm not sure  
09:49AM 20 Judge Delaney likes that. And then --

21 THE COURT: For the record, I have no problems.  
22 I did not notice that and I don't have any problems with it.

23 MS. ERICKSON: Yes, you have. You noticed it.

24 And then as I was gathering my boxes, a juror  
09:49AM 25 went through. So I don't know how close she was or if she

1 heard that, and I don't know exactly which one. I mean, I know  
2 I can pick her out in here, but I can't tell you right now  
3 which one it was.

4 THE COURT: Sure.

09:49AM

5 MS. ERICKSON: So and then the other thing, I  
6 just wanted to complete the record on the other crimes  
7 instruction. I just -- I don't know that the record reflects  
8 that when you called this up you had the instructions so that  
9 you sui sponte gave that at the end of the -- at the -- of the  
10 testimony; am I correct in that?

09:49AM

11 THE COURT: I don't think we made a specific  
12 record of that. I think the discussion sort of implied that  
13 certainly because you were arguing that it wasn't given by the  
14 State, it needed to be given by the State, and it needed to be  
15 given at the beginning.

09:49AM

16 And I indicated that I felt it was the Court's  
17 obligation to give it, but I don't think we made a clear record  
18 that it is true that during the course of the examination as  
19 the testimony was being elicited the Court obtained and I was  
20 prepared to then give the instruction on it's own volition.

09:50AM

21 MS. ERICKSON: Okay. And the only other thing  
22 is Mr. Digiacomo said that we talked about a case we had last  
23 year, State versus Bobby Richards. And I agree we did discuss  
24 that case; however, what was not put into the record is as we  
25 were discussing it I told Mr. Digiacomo that, you know, it was

09:50AM

1 the State's duty to ask the Court for that instruction and I  
2 had no duty.

3 And I went so far as to say that, because in the  
4 Richards' case no instruction was given, that I believe that  
09:50AM 5 that was the basis for this case was going to be deferred and  
6 we even bet a hundred dollars on it. So I just wanted the  
7 record to reflect that two hours later when there was no  
8 instruction and didn't -- didn't request it and you gave it  
9 yourself. That's all.

09:51AM 10 THE COURT: I lost the part about the two hours  
11 later.

12 MR. DIGIACOMO: I'm not sure about the two hours  
13 later either. I don't recall that conversation happening  
14 before the testimony.

09:51AM 15 MS. ERICKSON: As we were walking down the  
16 hallway --

17 MR. DIGIACOMO: It was in the courtroom after  
18 the testimony and after the Court was leaving, I believe --

19 MS. ERICKSON: No.

09:51AM 20 MR. DIGIACOMO: But either way --

21 MS. ERICKSON: No. It was before.

22 MR. DIGIACOMO: Either way, I have no issue also  
23 with the juror. We don't need to canvass the juror. Let's  
24 just get started.

09:51AM 25 THE COURT: Yes. And for the record, there has

1 been no communication to the Marshal from any of the jurors  
2 about any contact. And it's -- you know, from what you.

3 Described, perhaps unlikely that anything was  
4 overheard.

09:51AM

5 But now that we've had a couple of instances of juror  
6 interactions, let's just be sure that we keep any  
7 communications about the case in the courtroom; however, I  
8 would like to say just to -- out of an abundance of caution,  
9 because it seems somehow that we're going to keep running into

09:51AM

10 these folks. I don't know why.

11 And as far as the situation with the Devaris  
12 (phonetic) instruction yesterday, again, the testimony being  
13 given and the Court's determination at what point to give the  
14 instruction was based on the fact that this witness was not  
15 anticipated to giving lengthy testimony.

09:52AM

16 But the Court felt that it made the appropriate sense  
17 to give the instruction once the testimony was completed as  
18 there was, obviously, in the process of cross-examination  
19 testimony being elicited with regard to drug use and drug  
20 possession, et cetera, and wanting to insure that the jurors  
21 heard the instruction when the testimony was complete, as  
22 opposed to giving it multiple times during the course of the  
23 testimony, which I don't think is, in fact, required by the  
24 case law.

09:52AM

09:52AM

25 So that's why the Court made the determination just

1 to give it when it gave it.

2 So I think that completes that record. Anything  
3 else?

09:52AM

4 The board's a little turned toward me and not the  
5 jurors, so I don't know if we want to adjust that a little bit.  
6 I think it can be brought forward a little bit too and still  
7 have them see the witnesses, but I just noticed the different  
8 angle than it was previously.

9 MR. DIGIACOMO: Very good.

09:53AM

10 THE COURT: Usually -- I'll always ask since  
11 we've moved it.

12 Anything else before we proceed?

13 I do intend to take a lunch break, you know,  
14 somewhere in the typical lunch hour.

09:53AM

15 What witnesses do we -- I mean, how many witnesses do  
16 we think we'll get to this morning?

17 MR. DIGIACOMO: We have two for sure lined up.  
18 We're trying to get an officer in here at 11:00 just in case we  
19 run out of people. And then we have three in the afternoon,  
20 all of which should be short. So I think it will be a short  
21 day.

09:53AM

22 THE COURT: It might be a short day.

23 MR. DIGIACOMO: And then we have three left for  
24 Monday.

09:53AM

25 THE COURT: All right. Fair enough.

1 All right. Let's go ahead and have the jurors.

2 THE MARSHAL: Okay.

3 (The following proceedings were had in open

4 Court in the presence of the jury panel:)

09:54AM 5 THE COURT: Good morning, folks. Please go  
6 ahead and take your seats as you reach them. I'll invite  
7 everyone else to have their seat as well.

8 Please make sure your cell phones are off or silenced  
9 if you've been using them.

09:54AM 10 Once you have your seats, I have a quick question as  
11 far as that line of sight for the witness stand again. We had  
12 to move the monitor earlier, so -- around a little bit, and so  
13 we've tried to put it back in place. I just want to make sure.

14 Can I see by a show of hands if there are any jurors  
09:54AM 15 who cannot see the witness stand?

16 (Negative response from the jury panel.)

17 THE COURT: Seeing no hands, I think we're good  
18 to go.

19 The State's next witness, please. Mr. Digiacomo.

09:55AM 20 MS. WONG: Melissa Marin.

21 THE COURT: I'm sorry, Ms. Wong.

22 All right. Melissa Marin, please.

23 Ms. Marin, if you'll just come straight through the  
24 courtroom, around to the right of the podium there, and come  
09:55AM 25 all the way through to the witness stand -- the witness stand

1 here.

2 And when you get to the chair, if you will just  
3 remain standing behind the chair. Go ahead and put your things  
4 down if you'd like.

09:55AM 5 This is my Clerk, and she's going to swear you in.

6 THE CLERK: Please raise your right hand.

7 MELISSA MARIN

8 called as a witness on behalf of the State,

9 having been first duly sworn,

09:55AM 10 was examined and testified as follows:

11 THE WITNESS: Yes, I do.

12 THE COURT: Please have a seat.

13 THE CLERK: Can you please state and spell your  
14 first and last name for the record.

09:55AM 15 THE WITNESS: Melissa, M-E-L-I-S-S-A, Marin,  
16 M-A-R-I-N.

17 THE COURT: All right. Thank you.

18 You may proceed.

19 MS. WONG: Yes, Your Honor.

09:55AM 20 DIRECT EXAMINATION

21 BY MS. WONG:

22 Q. Good morning, Melissa.

23 A. Good morning.

24 Q. Do you know someone by the name of Ivonne Cabrera?

09:56AM 25 A. Yes, I do.

1 Q. Do you see her in the courtroom today?

2 A. Yes.

3 Q. Could you please point to her and describe an article  
4 of clothing that she's wearing?

09:56AM 5 A. A purple dress shirt.

6 MS. WONG: May the record reflect the  
7 identification of the defendant?

8 THE COURT: The record will so reflect.

9 BY MS. WONG:

09:56AM 10 Q. How is it that you know Ivonne Cabrera?

11 A. She was a friend of mine.

12 Q. Do you recall when you met her?

13 A. Not the exact date.

14 Q. I'm going to give you April 26th of 2012, as a point  
09:56AM 15 of reference. And that date is significant to you; is that  
16 fair to say?

17 A. Yes.

18 Q. And why is that?

19 A. I was shot.

09:56AM 20 Q. Okay. So using April 26th as a point of reference,  
21 when did you actually meet the defendant?

22 A. A couple months -- I don't know the exact date, but a  
23 couple months before.

24 Q. Now, other than knowing her by Ivonne Cabrera, does  
09:56AM 25 she go by any other name?

1 A. Yes, Chinola.

2 Q. And that is what you normally refer to her as?

3 A. Yes.

4 Q. Now I want to ask you, do you know someone by the  
09:56AM 5 name of Erik Quezada Morales?

6 A. Yes.

7 Q. And who is he?

8 A. He was my boyfriend.

9 Q. When did you guys start dating?

09:57AM 10 A. About a year and a half before April 26th.

11 Q. All right. Did there come a time when you and Erik  
12 actually broke up?

13 A. Yes.

14 Q. And then did there come a time when you actually got  
09:57AM 15 back together?

16 A. Yes.

17 Q. When did you actually get back together?

18 A. Maybe a week before April 26th.

19 Q. And how is it that you guys actually got back  
09:57AM 20 together?

21 A. Ivonne took him to where I was.

22 Q. And where were you?

23 A. I was at a -- at a trailer. They pulled up in a car  
24 and she went in the trailer to ask me to go outside. And I  
09:57AM 25 went, and I went inside the car and he was there.

1 Q. So you were not expecting to see Erik at that time?

2 A. No.

3 Q. Okay. What happened when the three of you were in  
4 the car?

09:57AM

5 A. We drove off into a 7-Eleven, and me and -- I wanted  
6 get off. I wanted to leave. I didn't want nothing to do with  
7 him. And she told me I needed to talk to him. And that was  
8 it.

09:58AM

9 Q. Okay. And after that, that's how you and Erik  
10 actually reconciled?

11 A. Yes.

12 Q. Let me ask you: Do you know someone by the name of  
13 Smokey?

14 A. I don't know him, but, yes, I've met him.

09:58AM

15 Q. Okay. When did you meet him?

16 A. A couple of days before the shooting, April 26th.

17 Q. And how was it that you actually met Smokey?

18 A. He was in the back seat of a car.

19 Q. What kind? What car?

09:58AM

20 A. I don't recall what type of car it was.

21 Q. Okay. Who was driving that car?

22 A. Chinola was, Ivonne.

23 Q. So other than the defendant and Smokey, was there  
24 anybody else in the car?

09:58AM

25 A. Yes. Smokey's sister.

1 Q. And what's his sister's name?

2 A. I don't know her name.

3 Q. Okay. I'm going to show you was has already been  
4 admitted as State's Exhibit Number 150. Do you recognize that  
09:59AM 5 person?

6 A. Yes.

7 Q. Okay. Is that the person that was in the car?

8 A. Yes.

9 Q. All right. And where was she seated?

09:59AM 10 A. In the passenger side.

11 Q. Front side, front seat?

12 A. Yes, yes.

13 Q. And where was Smokey seated?

14 A. In the back sheet.

09:59AM 15 Q. And how do you know his name was Smokey?

16 A. Because I was introduced.

17 Q. Who introduced you to Smokey?

18 A. Ivonne.

19 Q. And what did she say when she introduced you to

09:59AM 20 Smokey?

21 A. That that -- the passenger was Loka and then that was  
22 her brother in the back seat.

23 Q. Okay. So the person that's depicted here in 150, you  
24 know her as Loka?

09:59AM 25 A. Yes.

1 Q. And you knew Smokey as Loka's brother?

2 A. Yes.

3 Q. Now, did there come a time when you moved into an  
4 apartment at 2039 Webster, Apartment C?

09:59AM 5 A. Yes, a couple of days before April 26th.

6 Q. And how is it that you moved in there?

7 A. I was looking for -- well, me and Erik were looking  
8 for a place to stay together and Ivonne took us there.

9 Q. Okay. And who else was living there at that time?

10:00AM 10 A. Ashley and her boyfriend James.

11 Q. Okay. And so when you moved in, did the defendant  
12 move in as well?

13 A. No.

14 Q. She didn't. Okay.

10:00AM 15 A. No.

16 Q. Were you provided with the keys to the apartment?

17 A. No.

18 Q. And did you know Ashley prior to moving into the  
19 Webster apartment?

10:00AM 20 A. I had spoken to her a couple times before moving in  
21 there.

22 Q. Okay. But did you know her prior to moving into the  
23 Webster apartment?

24 A. No.

10:00AM 25 Q. And do you know whose apartment that actually was?

1           A.    Um, yes.  I -- I knew that they had a roommate and  
2 the roommate was in jail.

3                   I met the guy once.  I think, hi and a bye, and that  
4 was it.  I don't remember his name right now.

10:01AM 5           Q.    Okay.  That's okay.

6                   Now I want to ask you, did there come a time when the  
7 defendant came and borrowed the car?

8           A.    Yes.

9           Q.    Okay.  When was that?

10:01AM 10          A.    The day before April 26th.

11          Q.    So the day before April 26th?

12          A.    Yes.

13          Q.    So April 25th?

14          A.    Yes.

10:01AM 15          Q.    Do you recall what time of day?

16          A.    It was early in the morning.

17          Q.    Okay.  And did she -- the defendant came over to the  
18 house?

19          A.    Yes.

10:01AM 20          Q.    Can you tell us about that?

21          A.    I -- I think it was early in the morning.  She  
22 knocked on the window of my bedroom and asked for Erik to go  
23 outside.

24          Q.    Okay.

10:01AM 25          A.    Erik got up and he went outside.

1 Q. Okay. Did you actually see Chinola when she was at  
2 the window?

3 A. No. I heard her knocking on the window.

4 Q. All right. And how is it that you heard her?

10:01AM 5 A. She was knocking and we were laying down on the bed.  
6 And I told him there's somebody at the window. And then he  
7 said: Who is it? And she said -- he said -- or she said:  
8 Chinola.

9 Q. All right. So then Erik got up, and when he got up,  
10:02AM 10 did he do anything before leaving the room?

11 A. No.

12 Q. Okay. And then what happens?

13 A. He walks out, and then he walks back in the room,  
14 grabs the keys, and then goes back outside.

10:02AM 15 Q. All right. And then does Erik return?

16 A. Yes.

17 Q. When he returned, did he still have the keys?

18 A. No.

19 Q. The keys, do you know what the keys went to?

10:02AM 20 A. A car that was parked outside -- an Intiperis  
21 (phonetic).

22 Q. And do you know where that car came from?

23 A. It was Christina's. He had told me -- Erik had told  
24 me that it was Christina's car.

10:02AM 25 Q. Okay. And have you seen that car before?

1 A. No.

2 Q. You never saw the car that was parked outside before?

3 A. No.

4 Q. All right. Do you recall what color -- oh, no, you

10:02AM 5 never saw it. So you don't even know what color Christina's  
6 car is?

7 A. No. I seen it because he had it for, I think, two  
8 days before April 26th. So, yeah, I was in the car before  
9 April 26th, before Chinola borrowed it.

10:03AM 10 Q. So you have seen the car before?

11 A. Yes.

12 Q. So if you saw it again, would you recognize it?

13 A. Yes.

14 (Sotto voce at this time.)

10:03AM 15 MR. DIGIACOMO: I've got it.

16 MS. WONG: You've got it?

17 BY MS. WONG:

18 Q. And I'm showing you what's been already marked as

19 State's Exhibit 108. And is this the vehicle that Erik was

10:04AM 20 driving?

21 A. Yes.

22 Q. After Erik came back into the apartment -- came back  
23 into the bedroom, and he didn't been have the keys anymore, did  
24 you know what was going on?

10:04AM 25 A. He had told me he had let her borrow the car.

1 Q. All right. And based upon your understanding, when  
2 was the car supposed to be returned?

3 A. I didn't -- he didn't tell me nothing about a return.

4 Q. Okay. And now does the defendant herself have a car?

10:04AM 5 A. Yes. She did.

6 Q. What do you mean by "she did"?

7 A. She did, because a couple days before April 26th, it  
8 was in an accident.

9 Q. The vehicle was in an accident?

10:04AM 10 A. Yes.

11 Q. Did she cause the accident?

12 A. No.

13 Q. Do you know what happened?

14 A. I just know that Erik and some guy named Trigger had  
10:04AM 15 got in an accident. I seen the -- a tow truck pull up with the  
16 car in the back. And that's all I know.

17 Q. Okay. So the defendant's car was in an accident and  
18 now Erik is lending her this vehicle?

19 A. Yes.

10:05AM 20 Q. Okay. Did there come a time that day when you  
21 actually wanted the car back?

22 A. Yes, not me, but Erik did.

23 Q. Okay. And why did Erik want the car back?

24 A. I had got sick and he was trying to take me to the  
10:05AM 25 hospital.

1 Q. Okay. So how was it that Erik was trying to get his  
2 car back?

3 A. Calling to Ivonne's phone --

4 Q. Okay. Did she ever reply?

10:05AM 5 A. -- and texting.

6 Never answered, but he text-messaged her and we did  
7 get a -- a text message back.

8 Q. Okay. What time did Erik start calling and texting  
9 the defendant to get the car back?

10:05AM 10 A. I don't know the exact time, but it was almost all  
11 day on April 25th.

12 Q. Basically all day?

13 A. Yeah.

14 Q. All right. And when did you finally get a response  
10:05AM 15 from Chinola?

16 A. Late in the afternoon.

17 Q. Okay. And do you know what the conversation was  
18 about?

19 A. It wasn't Ivonne answering the text message. It was  
10:06AM 20 Smokey.

21 Q. Okay. And was it by a text or actually on the  
22 telephone?

23 A. By a text.

24 Q. Okay. And did you actually see these text messages?

10:06AM 25 A. Yes.

1 Q. Did you yourself respond to some of these text  
2 messages?

3 A. Yes, I did. Erik asked me to send a text back in  
4 English because he didn't really know a lot of English. So,  
10:06AM 5 yeah, I did respond back.

6 MS. WONG: May I approach, Your Honor?

7 THE COURT: Yes, you may.

8 (Sotto voce at this time.)

9 THE COURT: All right, Ms. Wong.

10:08AM 10 MS. WONG: Thank you, Your Honor.

11 BY MS WONG:

12 Q. Can you take a look at this for me, and let me know  
13 if you recognize what's here.

14 I'm showing you State's Proposed Exhibit Number 153.

10:08AM 15 MR. WHIPPLE: What is the marked exhibit again?

16 MS. WONG: 153.

17 THE WITNESS: Yes.

18 By MS. WONG:

19 Q. Okay. Now, are these the text message exchanges  
10:08AM 20 between you and Erik with the defendant?

21 A. No. To her phone, yes.

22 Q. Yes. That's what I meant, to her phone; yes?

23 A. Okay. Yes.

24 Q. And are there any missing text messages in between  
10:09AM 25 here or is this basically the full and accurate account of the

1 conversation between you and Erik and Smokey, the defendant's,  
2 phone?

3 A. Can you repeat that?

4 Q. Okay. So can you read these text messages for me.

10:09AM

5 A. Okay.

6 Q. And are there any missing conversations in here or is  
7 this the extent of the conversation between you and the  
8 defendant's phone, whoever is responding on the defendant's  
9 phone?

10:09AM

10 A. Yeah. This is the conversation we had.

11 Q. Okay. And you actually had the conversation, not  
12 with the defendant herself, but with someone who claimed to be  
13 Smokey?

14 A. Yes.

10:09AM

15 Q. All right. And there's no missing conversations in  
16 here?

17 A. No.

18 Q. Okay. And this is a fair and accurate, like, account  
19 of the conversation on April 25th between you and Smokey?

10:09AM

20 A. I take that back.

21 There is one that says that he was going to take the  
22 car back the next morning.

23 Q. Okay. Now, do you recall if that conversation  
24 actually happened over text messaging or over the phone itself?

10:10AM

25 A. It was over text messaging.

1 Q. And you are sure about that?

2 A. Yes.

3 Q. Okay. So other than that missing conversation -- and  
4 that would have been the last conversation?

10:10AM 5 A. Yes.

6 Q. Okay. So everything leading up to this point is  
7 accurate?

8 A. Yes.

9 Q. And there's just one additional text message in there  
10:10AM 10 where Smokey says he's going to bring the car back in the  
11 morning?

12 A. Yes.

13 MS. WONG: All right. The State moves for the  
14 admission of State's Proposed Exhibit 153 into evidence.

10:10AM 15 MR. WHIPPLE: Can I voir dire her briefly,  
16 Your Honor?

17 THE COURT: You may.

18 VOIR DIRE EXAMINATION.

19 BY MR. WHIPPLE:

10:10AM 20 Q. Good morning, Ms. Marin. How are you?

21 A. Good morning.

22 Q. Is it okay if I refer to you as Melissa?

23 A. Yes.

24 Q. Melissa, you -- back on April 26th, 2012, you did not  
10:10AM 25 own a phone yourself; is that correct?

1 A. That's correct.

2 Q. And so it was not unusual for you to use other folk's  
3 phones?

10:11AM

4 A. I wasn't using his phone. He asked me to text  
5 message back.

6 Q. Okay. So when you say "he," that would be Erik;  
7 right?

8 A. Erik.

10:11AM

9 Q. So did Erik have a -- obviously, Erik had a phone  
10 with him at that time?

11 A. Yes.

12 Q. And it was in the room with him?

13 A. Yes.

10:11AM

14 Q. And that was something that you had -- did you ever  
15 share with him? In other words, did you --

16 A. No.

17 Q. So this is strictly to Erik and then you were, like,  
18 checking Erik's phone out to -- to see what came in?

10:11AM

19 A. No. He asked me to write it in English for him, to  
20 respond back to Smokey's message.

21 Q. I see. So you were basically --

22 A. That's all I got it for -- I got the phone for.

23 Q. So you were basically translating then?

24 A. Yeah.

10:11AM

25 MR. WHIPPLE: Okay. All right. No objection to

1 the exhibit.

2 THE COURT: All right. State's Exhibit 153 will  
3 be admitted. You may publish.

4 MS. WONG: Thank you, Your Honor.

10:11AM 5 (State's Exhibit Number 153  
6 was admitted into evidence.)

7 DIRECT EXAMINATION RESUMED

8 BY MS. WONG:

9 Q. Now, Melissa, I want to just basically focus on the  
10:12AM 10 last -- the -- the -- the conversation on the bottom line of  
11 the page, so that's titled number 29. I'm focusing on that.

12 A. Yes. Okay.

13 Q. Now, it's in Spanish. The text message was in  
14 Spanish?

10:12AM 15 A. Yes.

16 Q. And who actually sent that?

17 A. Erik.

18 Q. And can you tell us what that says?

19 A. Asking Chinola for the car -- or telling Chinola he  
10:12AM 20 needs the car because I had got sick and he was trying to take  
21 me to the -- to the hospital; that there was no problem; that  
22 please answer.

23 Q. Okay. And what time was that text message?

24 A. At 11:46 at night on the 25th.

10:13AM 25 Q. And now what's the next conversation that you had,

1 and I want to direct it to the 20th item?

2 A. We get a response back saying that she was sleeping  
3 and it was Smokey.

4 Q. You can just read it verbatim for me. What does that  
10:13AM 5 actually say?

6 A. Chinola is sleeping. I'm Smokey. Do you have a  
7 problem?

8 Q. And what time was that text message sent?

9 A. At 11:48.

10:13AM 10 Q. And let's go to the next one, item number 119, and  
11 what does that text message say?

12 A. It's Melissa, I need the car. I have to be in the  
13 hospital tomorrow in the morning. Chinola knows that.

14 Q. I'm sorry. I meant to put up number 19.

10:13AM 15 THE COURT: For the record, the one that was  
16 being referred to there was number 27, I believe. So I think  
17 now what's displaying for the witness is number 19 and number  
18 20, which was previously shown.

19 MS. WONG: Now we're on number 19.

10:14AM 20 (Sotto voce at this time.)

21 BY MS. WONG:

22 Q. Number 19, what does that say?

23 A. Chinola is sleeping. I'm Smokey. Do you have -- and  
24 then --

10:14AM 25 Q. Just a bunch of weird symbols?

1 A. Yeah.

2 Q. Now let's move on to number 28. What does that say?

3 A. It's Melissa, I need the car. I have a -- I have to  
4 be in the hospital.

10:14AM 5 And then 28 you said?

6 Q. Yes. Read the whole thing.

7 A. I have to be in the hospital tomorrow in the morning.  
8 Chinola knows that.

9 Q. What time was that text message sent?

10:14AM 10 A. At 12:01 A.M.

11 Q. And then number 20 -- item number 27 is just again a  
12 duplicate of item number 28 with weird symbols?

13 A. Yes.

14 Q. Now this -- and then you're saying there was one more  
10:14AM 15 conversation after this where Smokey says he'll bring the car  
16 back in the morning?

17 A. Yes.

18 Q. Now, other than meeting Smokey in the car a few days  
19 before when he was there with Loka and the defendant, is this  
10:15AM 20 the first actual conversation you've ever had with Smokey?

21 A. Yes.

22 Q. In fact, did you even talk with Smokey at all when  
23 you saw him in the car?

24 A. Said hi.

10:15AM 25 Q. And that was it?

1 A. Yeah.

2 Q. So this is the first time you're actually  
3 communicating with Smokey?

4 A. Yes.

10:15AM 5 Q. And when you ended this conversation with Smokey, did  
6 you believe there was a problem?

7 A. I felt like he was trying to be aggressive about the  
8 car.

9 Q. Okay.

10:15AM 10 A. The way he asked if there was a problem. Um --

11 Q. But what happened when he said that he'll bring the  
12 car back in the morning?

13 A. That was -- we left it at that.

14 Q. You didn't fight with him about it?

10:15AM 15 A. No.

16 Q. You didn't demand the car right then and there?

17 A. No.

18 Q. Okay. So basically that was the end of the  
19 conversation?

10:15AM 20 A. Yeah.

21 Q. So this conversation occurs about midnight?

22 A. Yes.

23 Q. On midnight of April 26th.

24 A. Yes.

10:16AM 25 Q. Did you then also on that night have a conversation

1 with Ashley and James?

2 A. Yes, we did.

3 Q. Okay. And what was that about?

4 A. Ashley had --

10:16AM 5 MR. WHIPPLE: Judge, I object. I would object  
6 at this point as to any comment. It's obviously hearsay at  
7 this point.

8 THE COURT: I'm not sure it would be clear that  
9 what you're trying to elicit was the general topic as opposed  
10:16AM 10 to something someone else would have said. So if you can be  
11 more specific with the witness, Ms. Wong.

12 MS. WONG: I will.

13 BY MS. WONG:

14 Q. When Ashley -- did Ashley approach you to inform you  
10:16AM 15 of something?

16 A. Yes, she did.

17 Q. And who was present during this conversation?

18 A. Erik, James, Ashley and myself.

19 Q. Okay. After this conversation, how did you feel?

10:16AM 20 A. Scared.

21 Q. Okay. And scared of who?

22 A. Ivonne.

23 Q. Okay. And were you at that point concerned about  
24 Smokey?

10:16AM 25 A. No.

1 Q. Okay. Your sole concern was Ivonne?

2 A. Yes.

3 Q. All right. And then what happened after your  
4 conversation with Ashley and Erik? Did you go to bed after  
10:17AM 5 that?

6 A. We went to bed.

7 Q. Okay. And did something happen while you were  
8 sleeping?

9 A. Yeah. I got -- I woke -- was woken up to shots.

10:17AM 10 Q. Okay. Do you recall what time it was?

11 A. I don't remember seeing -- ever seeing a time.

12 Q. Okay. What's the first thing that you hear?

13 A. Um, somebody trying to open the door in the room.

14 Q. Okay. And that's your bedroom?

10:17AM 15 A. My bedroom.

16 Q. And who was actually with you in your bedroom?

17 A. Erik.

18 Q. You and Erik?

19 A. Yes.

10:17AM 20 Q. And where was Ashley and James?

21 A. In their bedroom.

22 Q. In their bedroom?

23 A. Yes.

24 Q. So you wake up to the door jiggling?

10:17AM 25 A. Yes.

1 Q. And what do you do when you hear the door jiggle?

2 A. I woke up Erik and I told him somebody was at the  
3 door.

4 Q. Okay. And what did Erik do in response?

10:17AM 5 A. He asked who it was. And he said it's -- it's -- I  
6 just heard: It's Chinola. Open the door.

7 Q. And what did Erik do?

8 A. He got up and he opened -- he just unlocked it.

9 Q. And what did he do after he unlocked the door?

10:18AM 10 A. He opened.

11 Q. Okay. Did you hear anything before Erik opened the  
12 door?

13 A. No.

14 Q. Did you hear anything after Erik opened the door?

10:18AM 15 A. No.

16 Q. Okay. Do you recall hearing gunshots?

17 A. I don't recall --

18 Q. Okay.

19 A. -- hearing anything.

10:18AM 20 Q. When -- after you were shot you were taken to the  
21 hospital?

22 And -- is that a yes?

23 A. Yes.

24 Q. Do you recall giving a statement to the detective?

10:18AM 25 A. Yes.

1 Q. Okay. I know it's been about five years. So would  
2 it refresh your recollection as to whether or not you heard  
3 gunshots if I showed you a copy of that interview?

4 A. Okay.

10:18AM 5 Q. That would?

6 A. Yes.

7 MS. WONG: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. WONG:

10:19AM 10 Q. I'm going to direct your attention to page 2 of the  
11 transcript of this interview, and just start on the first line,  
12 32, and then let me know when you're done.

13 A. Okay.

14 Q. And does that refresh your recollection?

10:19AM 15 A. Yes.

16 Q. Okay. So when Erik opens the door -- or prior to  
17 Erik opening the door, do you actually hear anything?

18 A. No.

19 Q. Now, you read in your statement what had happened --

10:19AM 20 A. Yes.

21 Q. -- right?

22 And so you do not recall saying that before Erik had  
23 answered the door you heard gunshots?

24 A. I --

10:19AM 25 Q. I'm sorry. When I asked you to restart on line 32,

1 did you actually go past line 32 --

2 A. Yeah.

3 Q. -- or did you stop at 32?

4 A. No. I stopped at line 32.

10:20AM 5 Q. Okay. I'm sorry. I wasn't clear.

6 MS. WONG: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MS. WONG:

9 Q. I'm sorry. I meant start at line 32 but keep  
10:20AM 10 reading. And then let me know when you're done. I'm sorry.

11 A. Okay.

12 I'm done.

13 Q. Okay. Now do you recall whether or not you heard  
14 gunshots before Erik opened the door?

10:20AM 15 A. At that time -- at that time that I did that  
16 statement, I was -- it was confusing. It was -- there was a  
17 lot of things going through my mind.

18 I -- I don't know if I heard the gunshots.

19 Q. Okay.

10:21AM 20 A. I heard gunshots when they shot him because they shot  
21 him first.

22 Q. Okay. Now, when you gave the statement, you were in  
23 the hospital, but it was very close in time to when you were  
24 actually shot; is that correct?

10:21AM 25 A. Yes.

1 Q. And so would it be fair to say that your memory would  
2 have been better the date of the shooting as opposed to now,  
3 five years later?

4 A. Yes.

10:21AM

5 Q. Okay. So if you had recalled at the time that you  
6 had heard four gunshots before Erik opened the door, would that  
7 be a fair account of what happened?

8 A. Yes.

10:21AM

9 Q. Okay. So now what happens after you -- you hear the  
10 gunshots and Erik opens the door?

11 A. He's made out -- Erik -- I remember him being -- no.  
12 I wake up, I see Smokey at the -- at the end of the bed holding  
13 a gun --

14 Q. Do you recall what the gun looked like?

10:22AM

15 A. I -- no. I don't remember.

16 Q. Do you know what color it was?

17 A. Black.

18 Q. Okay. And so he was holding a gun. Was he pointing  
19 it at anything?

10:22AM

20 A. Yes.

21 Q. Who was he pointing it at?

22 A. At Erik.

23 Q. And where was Erik?

24 A. He was laying -- well, he had came from the door to

10:22AM

25 lay back down because he only had boxers on. So he was trying

1 to get under the covers again. He didn't even make it to --  
2 back to sit down on the bed when he was shot.

3 Q. And who was it that shot him?

4 A. Smokey.

10:22AM 5 Q. Okay. And where was Smokey standing when he shot  
6 Erik?

7 A. At the end of the bed.

8 Q. Other than Smokey being in the room, was there  
9 anybody else that was with him?

10:22AM 10 A. Chinola was standing by the door.

11 Q. Okay. Was she inside the bedroom?

12 A. Not all the way inside.

13 Q. She was not all the way inside?

14 A. No.

10:23AM 15 Q. Okay. So how far was she from Smokey?

16 A. Just a couple steps.

17 Q. Just a couple steps.

18 And what was Chinola's reaction when Erik got shot?

10:23AM 19 A. I did not focus on what -- what she was doing at that  
20 time. I was just watching my boyfriend get hit.

21 Q. Did Smokey say anything before he shot Erik?

22 A. I don't remember. I -- I know he was pointing the  
23 gun at us, and I had my hands up, and I don't remember.

10:23AM 24 Q. Okay. And how many times was Erik shot; do you  
25 recall?

1 A. I think I heard three or four.

2 Q. Okay. And what did you do after hearing those shots?

3 A. Chatted, telling him, please, you know -- like,  
4 trying to beg for my life.

10:24AM 5 Q. And what did he do?

6 A. He didn't care. He shot me.

7 Q. How many times did he shoot you?

8 A. He shot me two times.

9 Q. Where did he shoot you?

10:24AM 10 A. Right here (indicating).

11 Q. So your -- above your left breast?

12 A. Yes.

13 Q. And where is the second shot?

14 A. To my -- to my arm, my left side (indicating).

10:24AM 15 Q. In your arm?

16 A. It came out the back.

17 Q. Okay. And this whole time did Chinola ever say  
18 anything?

19 A. I -- no. I didn't -- I don't think I heard her say  
10:24AM 20 anything.

21 Q. And other than seeing her standing by the door when  
22 Erik was shot, did you see her at any other point?

23 A. After that I fell back on the bed. I don't remember  
24 seeing them after that.

10:24AM 25 Q. All right. So what do you do after you've been shot?

1 A. I think I laid there for a little bit. How I got up,  
2 I don't know.

3 Q. All right. But eventually you do get up?

4 A. Yes.

10:25AM 5 Q. And where do you go?

6 A. I go to the door and I pull it, because they closed  
7 it, the bedroom, and I walk out to the hallway.

8 Q. That's okay, Melissa, take your time.

9 A. I walked out to the hallway and I go to the next  
10:25AM 10 bedroom.

11 Q. And what do you find when you go to the next bedroom?

12 A. I pushed the door open and James was laying in the  
13 back of the door.

14 Q. And where was Ashley?

10:26AM 15 A. Face down on her bed.

16 Q. Was James -- was James moving?

17 A. No. He was twitching.

18 Q. Now, you said you had to open the door. Was that  
19 door closed also?

10:26AM 20 A. It wasn't closed all the way, no. I just pushed it.

21 Q. And how was Ashley's condition?

22 A. I grabbed on to her foot and she turned around and  
23 she's gushing blood everywhere.

24 Q. Do you know where her blood was coming from?

10:26AM 25 A. Her mouth, her chest.

1 Q. And what did you do?

2 A. She was trying to tell me something. I don't  
3 remember what. I couldn't really understand what she was  
4 saying. And I grabbed her by her arm and I tried to help her  
10:26AM 5 to the front.

6 Q. Did you actually help her to the front door?

7 A. She held on to me.

8 Q. Okay.

9 A. And I took her as far as I could.

10:27AM 10 Q. And so the two of you walked to the front door?

11 A. Yes.

12 Q. And what do you mean by you took her as far as you  
13 could?

14 A. Because she held on to me and my shorts were so full  
10:27AM 15 of blood they were falling -- I don't know. She just held on  
16 to me, and I tried to hold her and walk her to the front door.

17 Q. Was the front door opened or closed?

18 A. It was closed.

19 Q. So did you have to open that door, too, to get out?

10:27AM 20 A. Yes. Yes.

21 Q. And, ultimately, did you exit the residence?

22 A. We both did, but she falls right in front of the  
23 door.

24 Q. And where do you go?

10:27AM 25 A. I keep walking towards the neighbor's door, to try to

1 get help.

2 Q. Did you ever make it to the neighbor's door?

3 A. I don't remember if I did.

4 Q. Okay. Did you come into contact with anybody?

10:27AM 5 A. I remember hearing as I went -- everything went dark.  
6 And I remember just hearing a lot of people talking. A blanket  
7 over me.

8 Q. Do you recall police officers responding at some  
9 point?

10:27AM 10 A. I don't remember hearing anybody, just the people  
11 around me, that I felt like somebody was holding me and put  
12 something really warm around me and that's all I remember.

13 Q. Okay. And what's the next thing that you remember?

14 A. Waking up in the hospital.

10:28AM 15 Q. And do you recall a detective coming to see you at  
16 that time?

17 A. Yes.

18 Q. And that was Detective Prieto?

19 A. Yes.

10:28AM 20 Q. And do you recall why he was there?

21 A. Asking me questions about what had happened.

22 Q. Okay. Now, do you actually know where Smokey lives?

23 A. I didn't know that that was his house, but I've been  
24 there with Chinola.

10:28AM 25 Q. Okay. And where is that house at?

1 A. Behind -- somewhere close to UNLV.

2 Q. Okay. So if I told you that you had said Smokey  
3 lived on Harmon -- Maryland and Harmon; would that be accurate?

10:29AM

4 A. The detective was giving me the names of the streets  
5 because I didn't know the names, and I told him Harmon sounded  
6 like the right street.

7 Q. Okay. And why did you give that location as to where  
8 Smokey lived?

10:29AM

9 A. Because we -- me, Chinola and Erik had gone to that  
10 place. There was another girl there, and Erik had told me that  
11 he thought that that was --

12 MR. WHIPPLE: Judge, I'm going to object as  
13 hearsay at this point in time.

14 THE COURT: We will have you rephrase.

10:29AM

15 Again, if you answer the counsel's questions,  
16 we're trying to have you answer the questions, but not provide  
17 testimony from someone else who is not here to testify for  
18 themselves.

19 THE WITNESS: Okay.

10:29AM

20 THE COURT: Go ahead, Ms. Wong.

21 BY MS. WONG:

22 Q. When you went to that location by UNLV was Smokey  
23 there?

24 A. Yes.

10:30AM

25 Q. Okay. So you had met Smokey before?

1           A.    I didn't -- I've seen him there. I didn't talk to  
2 him. Didn't -- he moved in and out. It wasn't -- I didn't  
3 speak to him or --

4           Q.    Was this --

10:30AM

5           A.    The only time that I ever exchanged words with him  
6 was a hi and a bye and that was it.

7           Q.    And so seeing him at this -- was it a house or an  
8 apartment?

9           A.    I think it was a condominium.

10:30AM

10          Q.    Okay. So seeing him at this condo, did this occur  
11 prior to you actually meeting him in the car?

12          A.    Yeah. That was way before that.

13          Q.    About how long before that?

14          A.    Maybe two, three weeks.

10:30AM

15          Q.    Before the shooting?

16          A.    Yeah.

17          Q.    And was Smokey with Chinola at that time?

18          A.    No. They were not together, no.

19          Q.    Okay. So why were you over there at that condo?

10:30AM

20          A.    We drove over there with Chinola. She -- Chinola  
21 took us there.

22          Q.    Oh, Chinola took you there?

23          A.    Yeah.

24          Q.    So you were already with Chinola and then you went  
25 to --

10:31AM

1 A. She asked for a ride and we took her there.

2 Q. And Smokey was inside?

3 A. Yes.

4 Q. Okay.

10:31AM 5 A. Well, he walked out the back door and I seen him  
6 standing outside.

7 Q. All right. Now, at that time, were you also asked to  
8 identify Smokey and Chinola -- by the defendant?

9 A. Yes.

10:31AM 10 Q. Okay. And you were basically shown photographs of  
11 them?

12 A. Yes.

13 Q. And asked to see -- and asked if that was Chinola and  
14 if that was Smokey?

10:31AM 15 A. Yes.

16 MS. WONG: May I approach the witness,  
17 Your Honor?

18 THE COURT: You may.

19 BY MS. WONG:

10:31AM 20 Q. Showing you what's been marked as State's Proposed  
21 Exhibit Number 149, can you tell me if you recognize this?

22 A. Yes.

23 Q. And what is that?

24 A. A statement that I did at the hospital.

10:31AM 25 Q. Okay. And is that your identification of Smokey?

1 A. Yes.

2 Q. Okay. And I'm going to show you what's been marked  
3 as State's Proposed Exhibit Number 148.

4 Do you recognize that?

10:32AM 5 A. Yes.

6 Q. And what is that?

7 A. Chinola.

8 Q. Okay.

9 A. And that's a written statement that I did.

10:32AM 10 Q. Okay. And these are a fair and accurate depictions  
11 of the -- fair and accurate copies of the identifications of  
12 Chinola and Smokey?

13 A. Yes.

14 Q. Okay.

10:32AM 15 MS. WONG: The State moves for the admission of  
16 State's Proposed Exhibits 148 and 149 into evidence.

17 MR. WHIPPLE: No objection.

18 THE COURT: State's 148 and 149 will be  
19 admitted.

10:32AM 20 (State's Exhibit Numbers 148 and 149, respectively,  
21 were admitted into evidence.)

22 BY MS. WONG:

23 Q. I will show you what has now been admitted as State's  
24 Exhibit Number 149 --

10:32AM 25 THE COURT: And you may publish. Sorry.

1 MS. WONG: I'm sorry.

2 THE COURT: I should have said that on the  
3 record.

4 BY MS. WONG:

10:32AM 5 Q. Now, can you read for us what you actually wrote on  
6 this piece of paper?

7 A. I was sleeping. I heard five gunshots. Then I  
8 opened my eyes, and the guy Smokey was pointing the gun at me.  
9 Chinola was standing behind him when he shot -- shot at me.

10:32AM 10 Q. And then you signed it Melissa Marin?

11 A. Yes.

12 Q. And again in this statement you indicated that you  
13 actually heard gunshots --

14 A. Yes.

10:33AM 15 Q. -- before the door opened basically?

16 A. Yeah. It was -- it was confusing. I -- that's --  
17 it's just too confusing for me. It was at the time, yeah,  
18 that's what I had heard. It was when -- when Erik had got  
19 shot, that's the shots that I had heard.

10:33AM 20 Q. I'm sorry. Can you say that again?

21 A. The shots that I heard were the ones that had hit  
22 Erik.

23 Q. Okay. So the ones that you were referring to in this  
24 statement, the five gunshots, you meant that was Erik?

10:33AM 25 A. Yeah. Those were the ones that I had heard.

1 Q. Okay.

2 A. Around -- it was a lot of gunshots. And --

3 Q. Okay. I want to show you State's Exhibit Number 148.

4 And this is your identification of Ivonne Cabrera as Chinola?

10:33AM 5 A. Yes.

6 Q. And can you read for us the statement that you wrote  
7 out?

8 A. Sure. Chinola, she knocked on the door -- of the  
9 room door to let her in.

10:34AM 10 Q. Now, Melissa, is there any reason that you can think  
11 of, any issues you had with Smokey that would lead him to shoot  
12 you?

13 A. No.

14 MS. WONG: And I'm finished.

10:34AM 15 THE COURT: All right. Mr. Whipple?

16 MR. WHIPPLE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. WHIPPLE:

19 Q. Melissa, are you okay?

10:34AM 20 A. I'm fine.

21 Q. Would you like a drink of water? Good.

22 Melissa, I'm going to ask you similar type of  
23 questions. Okay?

24 A. Okay.

10:34AM 25 Q. Just testify to the best of your ability.

1 I want to take you back to spring of 2012. Now,  
2 beforehand, you lived here in Las Vegas; right?

3 A. Yes.

4 Q. And you are Spanish speaker?

10:35AM 5 A. Yes.

6 Q. In fact, Spanish is your first language?

7 A. Yeah -- no, English.

8 Q. English?

9 A. Yes.

10:35AM 10 Q. So you are better in English than you are in Spanish?

11 A. I know more English than Spanish.

12 Q. Pretty well?

13 A. Yeah.

14 Q. Okay. Now, back in the spring of 2012, you had had  
10:35AM 15 an on-again/off-again relationship with Erik?

16 A. Yes.

17 Q. And Erik had a nickname?

18 A. Smiley.

19 Q. Okay. He went by the name of Smiley?

10:35AM 20 A. Yes.

21 Q. And did you call him Erik or did you call him Smiley?

22 A. Erik.

23 Q. You had an on-again/off-again relationship about a  
24 year and a half?

10:35AM 25 A. Yes.

1 Q. It was during that springtime period that you first  
2 met Ms. Cabrera and you and Ms. Cabrera became friends?

3 A. Yes.

4 Q. And you guys used to hang out together?

10:35AM 5 A. Yes.

6 Q. Now I want to talk a minute about phones.

7 Were you employed in April or -- in spring of 2012?

8 A. No.

9 Q. So it would be fair to say you were always kind of  
10 short on cash?

11 A. Yes.

12 Q. And you never really had your own phone during that  
13 time period?

14 A. No.

10:36AM 15 Q. And so it wasn't unusual for you, like you did with  
16 Erik, to use other folk's phones?

17 A. I really didn't have any contacts. I really didn't  
18 talk to anybody.

19 Q. Did you -- you certainly spent time with Ivonne?

10:36AM 20 A. Yes.

21 Q. And it would be fair to say that you used her phone  
22 from time to time?

23 A. No.

24 Q. You don't recall ever using her phone?

10:36AM 25 A. No.

1 Q. Let me, if I can --

2 (Sotto voce at this time.)

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

4 THE COURT: You may.

10:37AM 5 BY MR. WHIPPLE:

6 Q. Okay. So I'm going to show you just to refresh your  
7 recollection, okay? If it refreshes your recollection, great,  
8 if it doesn't, that's okay, too.

9 A. Okay.

10:37AM 10 Q. So I'm just showing you will a series of text  
11 messages. Now, it would be fair to say that you went by the  
12 name Melissa; correct?

13 A. Yes.

14 Q. And that's what you referred to yourself with it --  
10:37AM 15 in other words, you didn't have a nickname; right?

16 A. No.

17 Q. You always went by Mel or Melissa?

18 A. Melissa.

19 Q. Okay. So take a look at that -- do you recognize  
10:37AM 20 this text message? Just take another look and see if that  
21 refreshes your recollection?

22 A. Yes.

23 Q. Okay. So you would acknowledge that you, in fact,  
24 had used a cell phone to text people back in the spring of  
10:37AM 25 2012?

1 A. I did use her -- I -- if that -- a couple times that  
2 I did use her phone, she was in the shower.

3 Q. Okay.

4 A. She asked me to check if Pat was home.

10:37AM 5 Q. Sure. Now, Pat is a mutual friend of yours?

6 A. I met her -- met him through her.

7 Q. Okay. And he was the person that you talked about,  
8 the person that was at the trailer. He was the person that  
9 lived at the trailer?

10:38AM 10 A. Yes.

11 Q. Now let's just kind of step back, if we can, for a  
12 little bit.

13 So you -- would it be fair to say that in, like, the  
14 springtime period of 2012 after you met Ivonne that you were  
10:38AM 15 kind of with her almost on a daily basis from time to time?

16 A. Yes.

17 Q. So you guys were, like, buddies, and you hung out and  
18 did things together?

19 A. Yeah.

10:38AM 20 Q. So it wasn't unusual for you to be in her car?

21 A. No.

22 Q. It wasn't unusual for you to use her phone if she --  
23 if she approved it or gave you permission or asked you?

24 A. Yes.

10:38AM 25 Q. It was clear that she was -- cared about you?

1 A. Yeah.

2 Q. Okay. Now, there was an issue with regard to a car;  
3 right?

10:38AM

4 A. I didn't know there was an issue -- I never heard of  
5 an issue about a car.

6 Q. Now, and I'm not even sure there was. That's what  
7 I'm trying to get at from yourself.

8 You knew Ivonne had a car?

9 A. Yes, I knew she had a car.

10:39AM

10 Q. And it was a car that you always used to ride around  
11 with her in?

12 A. No. It -- that -- the car that was wrecked was  
13 not -- that car I only seen it two or three days before  
14 April 26th.

10:39AM

15 Q. Okay. So what we're referring to as Ivonne's car was  
16 involved in an accident; right?

17 A. Correct.

18 Q. And your boyfriend, or your on-again/off-again  
19 boyfriend Erik was driving the car when it happened?

10:39AM

20 A. Yes.

21 Q. And he was with a person named Trigger?

22 A. Yes.

23 Q. And the reason you know that is because they actually  
24 brought the car behind the tow truck over to your Webster  
10:39AM 25 address when you were there?

1 A. Yes.

2 Q. So you saw Ivonne's car -- now, she had only driven  
3 it for a couple days, but you knew it was Ivonne's car and it  
4 was up on the tow truck. And the reason they brought it over  
10:39AM 5 was so Erik could get things out of the car?

6 A. Yes.

7 Q. Now, let's just step back a few -- like, a week or  
8 two before this. You know a person by the name of Patrick, as  
9 you mentioned. He lived in the trailer; right?

10:40AM 10 A. Yes.

11 Q. And you -- now, we have an off-again --  
12 off-again/on-again relationship with Erik or Smiley?

13 A. Yes.

14 Q. Now, Erik's primary language was Spanish?

10:40AM 15 A. Yes.

16 Q. He spoke some English?

17 A. Yes.

18 Q. But he felt more comfortable speaking Spanish?

19 A. Yes.

10:40AM 20 Q. That's why it wasn't unusual for you to be called in  
21 to the position of being an interpreter from time to time?

22 A. He never really did -- we never had to -- did this.  
23 Because they were -- they replied back in English, that's when  
24 he asked me to reply in English.

10:40AM 25 Q. Sure, sure.

1                   So during this -- let's go into this  
2 on-again/off-again relationship, okay, because Ivonne assisted  
3 you in getting back together with Erik. You just testified  
4 about that; right?

10:40AM

5           A.    Yes.

6           Q.    Okay. In other words, you were at that point  
7 having -- involved in another relationship?

8           A.    That I was involved in another relationship?

10:40AM

9           Q.    Well, let me ask you about Patrick Robles. You know  
10 Patrick; right?

11          A.    Yes.

12          Q.    And Patrick was somebody that you knew?

13          A.    Somebody that I knew, yes.

10:41AM

14          Q.    And you were involved in a romantic relationship with  
15 him?

16                   MS. WONG: Objection, Your Honor. Relevance.

17                   THE WITNESS: No, I wasn't.

18                   THE COURT: Hold on one second, Ms. Marin.

19                   I think the answer has already been given, Ms. Wong.

10:41AM

20 But occasionally there may be objections from counsel as to a  
21 question that's asked. So if you can just pause a second to  
22 make sure that the Court hears and can rule on the objection  
23 before you answer.

24                   THE WITNESS: Okay.

10:41AM

25                   THE COURT: Where -- I don't know where -- how

1 much further we're going in this line of questioning,  
2 Mr. Whipple, but there was an objection as to relevance.

3 MR. WHIPPLE: Sure. Your Honor, we're going to  
4 bias and motive.

10:41AM 5 THE COURT: I'll give you a little bit of  
6 leeway, but I do believe that the question was answered.

7 BY MR. WHIPPLE:

8 Q. So you'll agree with me that this on-again/off-again  
9 relationship with Erik, it would be fair to say that you  
10:41AM 10 considered him as your boyfriend?

11 A. Yes.

12 Q. And you had an emotional -- you cared for him?

13 A. I did.

14 Q. Now, there was a time period about two weeks before  
10:41AM 15 this shooting where you wanted nothing to do with Erik?

16 A. Yes.

17 Q. You wanted him to stay away?

18 A. I wanted to stay away from him, yes.

19 Q. Okay. And so it was only at Ivonne's request, that  
10:42AM 20 she went over and got you and physically took you over to  
21 Erik's place -- over to Erik; correct?

22 A. In the car, yes.

23 Q. Okay. Now, so I wanted to ask you a series of text  
24 messages, okay? So let's start with -- this is -- this is --  
10:42AM 25 the first one I just showed you is April 3rd. Let me --

1 MR. WHIPPLE: If I may I approach, Your Honor?

2 THE COURT: You may.

3 MR. DIGIACOMO: May he approach counsel first,  
4 because we have no idea what he's --

10:42AM

5 MR. WHIPPLE: The same one. The same one that I  
6 just showed you.

7 (Sotto voce at this time.)

8 MS. WONG: Your Honor, may we approach?

9 THE COURT: You may.

10:45AM

10 (Sidebar conference at bench, not reported.)

11 THE COURT: Ladies and gentlemen of the Jury,  
12 we're going to need a few minutes to resolve questions that  
13 counsel has.

14 And so since we've been at it here a little over an  
10:45AM 15 hour anyway, I'm going to go ahead and give us a brief recess.

16 Use the restrooms, please do not leave the building, no feeding  
17 of the meters -- I don't think you have to worry about it  
18 yet -- but any of that stuff.

19 Just stay close by because I don't think it will be a lengthy  
10:45AM 20 recess. Maybe five minutes at the most. During this recess,  
21 however, you are admonished and reminded:

22 (The jury was admonished by the Court.)

23 THE COURT: We'll see you back in about five  
24 minutes.

10:46AM

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: And, Ms. Marin, if I can have you  
4 please go back to the room where you were waiting before while  
10:47AM 5 we have this discussion, okay? Thank you.

6 (Sotto voce at this time.)

7 THE COURT: All right. Let's go back on the  
8 record. The bench conference was raised -- Mr. Whipple had  
9 asked for the opportunity to approach to show some text  
10:47AM 10 messages to the witness. Once those text messages were shown  
11 to the State, Ms. Wong asked for everyone to approach and  
12 objected on the grounds of relevancy initially as to what was  
13 being offered.

14 I asked, because I was unaware of what was in the  
10:48AM 15 text messages, to have some additional information.

16 Mr. Whipple advised that there is information from  
17 the text messages that may indicate some form of a  
18 relationship, even though that relationship had been previously  
19 denied by the witness, between her and Pat. And that that  
10:48AM 20 could provide some motive for and related to the shooting  
21 because of Pat and Smokey having some relationship.

22 Mr. Whipple, why don't you go ahead, and for the record now,  
23 make your proffer as to what you believe is the not only  
24 relevancy of this evidence but the appropriate use of this  
10:48AM 25 evidence, if any, for this witness.

1 MR. WHIPPLE: Sure. Your Honor, can I have just  
2 a one-second break. Ms. Erickson has been trying to  
3 communicate with me, and we were unable because of the --

4 THE COURT: That's fine.

10:48AM

5 (Sotto voce at this time.)

6 MR. WHIPPLE: Okay. So, Your Honor, let me, if  
7 I can, Patrick Robles is an individual that we obviously -- the  
8 parties are all aware of. It was his trailer that, in fact --  
9 that Melissa went to in order to regain this -- this

10:49AM

10 relationship with Erik, to get him back.

11 I have text messages that show, in fact, that the  
12 relationship -- there was a relationship between Melissa and  
13 Patrick. Those -- that it was potentially physical but that  
14 doesn't matter. They certainly had -- Patrick certainly  
15 appeared to have an emotional relationship with her. And  
16 also --

10:49AM

17 THE COURT: First of all, help me out. I didn't  
18 see the text messages.

19 MR. WHIPPLE: Sure.

10:49AM

20 THE COURT: I'm not asking to see the text  
21 messages, but can you be more specific what's in the text  
22 messages.

23 MR. WHIPPLE: Sure. Absolutely.

24 THE COURT: I know what you're trying -- I get  
25 the idea that you're trying to --

10:49AM

1 MR. WHIPPLE: Sure.

2 THE COURT: -- question this witness to see if  
3 there's any evidence of or --

4 MR. WHIPPLE: Sure.

10:49AM

5 THE COURT: -- if, you know, there is a  
6 relationship. But, you know, first of all, proffer what is in  
7 the text messages. Does it actually show a relationship?

8 MR. WHIPPLE: Yes. Okay. April 10th, 2012,  
9 this is text message number 612, to Patrick: Hey, I'm not mad.

10:50AM

10 I'm disappointed. I see no appreciation, not even a lousy  
11 kiss. Then to show up with some fool and go sit on his lap.  
12 Miss me.

13 MR. DIGIACOMO: We don't even know who that's to  
14 and that's Patrick's statement, not Melissa's.

10:50AM

15 MR. WHIPPLE: No. That's to Patrick from my  
16 client's cell phone, that the testimony will be -- look, I'm  
17 just going to refresh -- either refresh her recollection, if  
18 anything, I'm going to simply ask her to recall, you know, this  
19 coming to you from -- through Patrick through my client's

10:50AM

20 phone. It's that simple.

21 MR. DIGIACOMO: I --

22 MS. ERICKSON: Well, just for a moment, Judge,  
23 there is another very important point of -- she testified she  
24 only used Chinola's phone when Chinola was in the -- in the  
10:50AM 25 shower and she was told to contact Pat by Chinola.

1 Any other contacts that show that are to Pat,  
2 that show that they're from her because of the relationship she  
3 has with pat impeaches that statement.

10:51AM

4 THE COURT: How do we know that those are from  
5 her?

6 MR. WHIPPLE: Because she just admitted, this is  
7 April 3rd, 2012, text number 809: Hey, Pat. It's Melissa.  
8 Are you at your pad?

10:51AM

9 That's the one that she acknowledged by saying that's  
10 the one I sent.

11 MR. DIGIACOMO: Right.

12 THE COURT: But she said that she did it because  
13 she was asked by Ivonne to do it.

14 MR. WHIPPLE: Right. She was in the shower.

10:51AM

15 THE COURT: How do we know --

16 MR. DIGIACOMO: And now they're saying the text  
17 messages that come afterwards must be Melissa's --

18 THE COURT: How do we know the remaining text  
19 messages are from --

10:51AM

20 MR. DIGIACOMO: And, two, it's collateral.

21 THE COURT: Hold on, Mr. Digiacomo. Let me make  
22 my record with Mr. Whipple first.

10:51AM

23 MR. WHIPPLE: If I could respond, here's the  
24 thing: It's -- it's the reason she's on the stand is I can  
25 specifically ask her. She's already authenticated this one on

1 on April 3rd. I was going to the next one on April 5th. There  
2 was a series of these. This is all Melissa.

3 It says: Hey, it's Melissa. There's only one  
4 Melissa that's using that cell phone. And it's Melissa  
10:52AM 5 that's -- that's -- the next one was April 5th: Hey, what up.  
6 It's Mel.

7 Okay. That one. I mean, maybe it's not, but I  
8 certainly believe I have the right to ask her.

9 MR. DIGIACOMO: You can ask her did you say:

10:52AM 10 Hey. What up? It's Mel. But --

11 MR. WHIPPLE: No, no. Slow down. I'm not  
12 finished.

13 Here's the other thing that's going to come out as  
14 well, is that Patrick Robles was also a drug dealer. And you  
10:52AM 15 are going to see that -- that this is, again, on April 16th --  
16 this is ten days before the shooting. To Patrick: Hey, can  
17 you front me a sack. It's Melissa. Please.

18 So I'm going to ask her do you recognize -- does this  
19 refresh your recollection? If it doesn't, it doesn't. But I  
10:52AM 20 certainly have the right to ask her.

21 THE COURT: Well, I mean, but let's talk about  
22 how you are going to do that, because one of the things that's  
23 been talked about a few times but we haven't allowed the State  
24 to really make their full record on this is you are on  
10:52AM 25 cross-examination now, and you are trying to get at some

1 information. She's already testified.

2 Mr. Digiacomo is entirely correct. You cannot  
3 impeach her with extrinsic evidence. You can ask her the  
4 questions. If she answers, she answers; if she denies, she  
10:53AM 5 denies.

6 MR. WHIPPLE: Right.

7 THE COURT: These are decidedly collateral  
8 matters. You are simply trying to get into some information  
9 history that may have existed between her and this Pat.

10:53AM 10 But how are you going to ask it?

11 Because if you ask the question and it has all the  
12 information in it and then she denies it, and then you say,  
13 well, here does this refresh your recollection, then we're  
14 already there. And then you are basically using the extrinsic  
10:53AM 15 evidence to impeach.

16 So we have to figure out how we're going to do this.

17 MR. WHIPPLE: Okay. So here's how we're going  
18 to do it. With the Court's permission, may I approach, and I  
19 will mark next in order these photographs, the Defense order.

10:53AM 20 These are the pictures where Pat resided, Your Honor.

21 THE COURT: That's okay. You can keep them. I  
22 don't need them. I don't have to have any extra copies here.  
23 I can use the Court's.

24 MR. WHIPPLE: Sure. So next in order will be  
10:54AM 25 the residence of Mr. Pat or Patrick Robles. This is the

1 location that she was at. I will then confirm that this was  
2 the location, move these into evidence.

3 I will then ask: Did you -- did you have any -- did  
4 you have any additional -- do you recall any additional text  
10:54AM 5 messages with Patrick Robles, yes or no?

6 And then I'll ask her -- I won't say what's in them.  
7 I will say: May I approach and may I refresh your  
8 recollection? Does this -- do you recall this?

9 Because she's going to say no. She's already said she doesn't  
10:54AM 10 recall. So I'll refresh her recollection.

11 If it refreshes her recollection, great. If it doesn't, then I  
12 don't say anything.

13 THE COURT: If she's had these communications  
14 with Patrick, then I will send it back to the relevancy issue.  
10:54AM 15 She's denied a relationship and these comport to show a  
16 relationship.

17 MR. WHIPPLE: Well, I certainly think so. He  
18 talks about, like, I mentioned on the record -- I mean, modern  
19 day romances aside, if I were to take a text and say: Hey, I'm  
10:54AM 20 not mad. I'm disappointed. I see no appreciation, not even a  
21 lousy kiss. Then to show up with some fool and go sit on his  
22 lap.

23 MR. DIGIACOMO: What does that -- I -- I --

24 THE COURT: And you're thinking --

10:55AM 25 MR. DIGIACOMO: How do you know that's Melissa?

1 THE COURT: And you're thinking this is her  
2 texting him?

3 MR. WHIPPLE: Yes.

4 MR. DIGIACOMO: No.

10:55AM 5 MR. WHIPPLE: I'm going to ask her if it  
6 refreshes her recollection. If it's not, then it's not.

7 MR. DIGIACOMO: Okay. Then what would be the  
8 relevance of that?

9 MR. WHIPPLE: Because I think that --

10:55AM 10 MR. DIGIACOMO: To impeach her with extrinsic  
11 evidence?

12 MR. WHIPPLE: No. Look, it goes right to the  
13 motive of why she did --

14 MR. DIGIACOMO: Yes.

10:55AM 15 MR. WHIPPLE: First of all, she's -- whenever  
16 the witness takes the stand, she's subject to bias and motive;  
17 okay?

18 THE COURT: Mr. Whipple, I get it. You don't  
19 have to tell me --

10:55AM 20 MR. WHIPPLE: I'm sorry.

21 THE COURT: -- how the law works. I'm trying to  
22 get to the heart of what we have here.

23 A second ago you read a text that you are saying you  
24 purport to believe was from Melissa showing that she's seeking  
10:55AM 25 somehow a kiss from Pat, but talking about Pat sitting on some

1 man's lap. I don't understand what you are trying to say.

2 MR. WHIPPLE: Oh, no. No. No. I'm sorry. I'm  
3 sorry. That was from Pat back to Melissa.

4 MR. DIGIACOMO: It's to Melissa? How do you  
10:55AM 5 know it's to Melissa?

6 MR. WHIPPLE: Well, I'm going to ask her. I was  
7 going to --

8 MR. DIGIACOMO: That's the point. The  
9 conversations before it are text messages from Mike Taxes, who  
10:56AM 10 I don't even know who Mike Taxes is.

11 This is from Patrick to Chinola's phone, and  
12 they're going to attribute that to Melissa and try to impeach  
13 her with extrinsic evidence stating Mike Taxes.

14 THE COURT: I mean that's the question is --  
10:56AM 15 that's the question is into what context does that particular  
16 text exists, because if it doesn't exist and otherwise in  
17 exchange attributable to Melissa, then how in any stretch of  
18 the imagination do we think that this is from Patrick to  
19 Melissa?

10:56AM 20 Do you have Patrick's testimony in that regard? Do  
21 you have anything else other than the speculation that this is  
22 Melissa?

23 MR. WHIPPLE: Well, other than she authenticated  
24 it in her previous text.

10:56AM 25 THE COURT: No. She authenticated it sounds

1 like an April 3rd text, that was already testified to, that was  
2 initiated at Ivonne's request to find out where he was.

3 What other leading up to that April 5th text do you  
4 have that would show that this could be communication with  
10:56AM 5 Melissa?

6 MR. WHIPPLE: Okay. Let me -- I'll keep it in  
7 sequence.

8 April 3rd is: Hey, Pat. It's Melissa. Are you at  
9 your pad?

10:57AM 10 April 5th: Hey, what you up to? It's Melissa, again  
11 to Patrick.

12 THE COURT: And Melissa -- we know it's Melissa?

13 MR. WHIPPLE: Well, it says it's Mel.

14 THE COURT: Okay.

10:57AM 15 MR. WHIPPLE: It's Meli?

16 MR. DIGIACOMO: That may be.

17 MR. WHIPPLE: Okay. April -- let's see.

18 April 16th, to Patrick: Hey, can you front me a sack? It's  
19 Melissa. Please.

10:57AM 20 THE COURT: Okay.

21 MR. WHIPPLE: April -- April 17th, 2012: I'm  
22 still over here at Chinola's house -- or Sheila's house.  
23 Chinola knocked out. I've been trying to wake her up, but she  
24 won't.

10:57AM 25 Again to Patrick, this is on April 17th.

1 MR. DIGIACOMO: How do you know it's Melissa.

2 MR. WHIPPLE: The one below it says to Patrick:  
3 Hey, what's up? It's Melissa. Text me back.

4 MR. DIGIACOMO: Okay.

10:57AM 5 MR. WHIPPLE: So, I mean --

6 THE COURT: So I have --

7 MR. DIGIACOMO: And you have a text on the 10th  
8 that's random that has nothing to do with any of the texts from  
9 Melissa around it. And it's Patrick's statement, it's not  
10 Melissa's.

10:58AM 11 MR. WHIPPLE: There's an ongoing communication.  
12 She can either say she did it or she didn't.

13 THE COURT: So, Mr. Whipple, I'm going to give  
14 you the opportunity to inquire Ms. Marin further beyond whether  
10:58AM 15 or not there were texts just related to that day when she  
16 testified that -- that Ms. Cabrera was in the shower and it was  
17 Ms. Cabrera's request she texted.

18 You are able to inquire whether other exchanges with  
19 Pat, and refresh her recollection as to whether there were  
10:58AM 20 other exchanges with Pat, and you are going to be able to  
21 inquire the questions that you have about that relationship.  
22 But we're not going to spend time with this extrinsic evidence  
23 depending on her answers --

24 MR. WHIPPLE: Sure.

10:58AM 25 THE COURT: -- because, again, it is collateral,

1 and we cannot -- you know, the statute is clear as to how that  
2 can be utilized. So --

3 MR. WHIPPLE: If she doesn't recognize it, she  
4 doesn't recognize it. The question --

10:58AM

5 THE COURT: Well, but again, what I'm trying to  
6 be clear about to you is, you know, in terms of getting into  
7 this line of questioning again with did she remember, you know,  
8 other communications with Pat and what those were, and if you  
9 need to refresh her recollection on that, but as you ask her  
10 questions about what relationship, if any, there was and the  
11 tie-in of that to her, again, relationship, those people, et  
12 cetera. If she denies that relationship, she denies the  
13 circumstances, you are not impeaching her with that extrinsic  
14 evidence. I just want to be clear.

10:59AM

15 MR. WHIPPLE: Your Honor, I'm not even going to  
16 ask that again. I'm just going to ask -- I'm going to ask did  
17 you have this communication? I'll start with the ones you  
18 acknowledge. Is this one yours? Is this one yours? Is this  
19 one yours?

10:59AM

20 MR. DIGIACOMO: That is extrinsic evidence.

21 MR. WHIPPLE: It's not --

22 THE COURT: Yes, it is, Mr. Whipple. I'm trying  
23 to explain the way that this works from the Court's perspective  
24 and how it's going to be allowed.

10:59AM

25 And you going one by one with text messages --

1 Is this one yours? Is this one yours? Is this one yours -- is  
2 not what we're going to do. That is utilizing extrinsic  
3 evidence.

10:59AM

4 It's one thing to refresh her recollection. It's  
5 another thing entirely to try to impeach with the extrinsic  
6 evidence.

7 MR. WHIPPLE: Okay.

11:00AM

8 THE COURT: So again, you can get back into this  
9 line of questioning. Whether you ask those questions again or  
10 not, that's up to you.

11 MR. WHIPPLE: Sure.

11:00AM

12 THE COURT: Because there was an answer. But at  
13 this point in time, you've got information that indicates that  
14 there may have been more communications beyond the ones that  
15 you testified to. That makes sense.

16 You go into that line of questioning and you ask  
17 those questions. And then you ask the questions that you want  
18 to ask of her about whatever that relationship was or wasn't.

19 MR. WHIPPLE: Sure.

11:00AM

20 THE COURT: But after that, if she -- if she  
21 denies it, then you don't impeach with that extrinsic evidence.

22 MR. WHIPPLE: I --

23 THE COURT: So we're not going one by one  
24 through those. Okay?

11:00AM

25 MR. WHIPPLE: Because the last thing I want to

1 do is violate the Court order.

2 I'm going to ask her about -- I mean, I don't -- I  
3 have the four that I've read to you. I've had the one that  
4 she's already acknowledged. I'm going to ask her: Do you  
11:00AM 5 recall additional text messages on such and such a date?

6 If she says no, then I'll refresh her recollection.  
7 And I'm not going to read that. I'm going to say: Now to  
8 refresh your recollection, do you acknowledge that you did  
9 have, in fact, communications with text messages? These are  
11:00AM 10 the ones that are from Melissa or Mel.

11 At the end, I do want to go into the drug usage. And  
12 this is obvious, and I do think that that, and the fact that  
13 they were buying it from Mr. Robles, is also significant. And  
14 I think that's fair game with regard to the one -- I'll ask her  
11:01AM 15 did you -- was Mr. Robles the person who provided drugs to you.

16 THE COURT: Mr. Whipple, you're -- it's  
17 cross-examination.

18 MR. WHIPPLE: Sure.

19 THE COURT: You are free to ask her whatever  
11:01AM 20 questions you want --

21 MR. WHIPPLE: Okay.

22 THE COURT: -- that you reasonably believe have  
23 some evidentiary basis to support.

24 MR. WHIPPLE: Okay.

11:01AM 25 THE COURT: You cannot go one by one through a

1 text exchange list, which is extrinsic evidence --

2 MR. WHIPPLE: No.

3 THE COURT: -- in an effort to try to impeach  
4 her on a collateral issue.

11:01AM 5 MR. WHIPPLE: Okay.

6 THE COURT: So you can question away.

7 MR. WHIPPLE: Yep.

8 THE COURT: But when she answers and she  
9 denies --

11:01AM 10 MR. WHIPPLE: Yes.

11 THE COURT: We move on.

12 MR. WHIPPLE: Okay. Done.

13 THE COURT: All right. That's not how --

14 MR. DIGIACOMO: Refreshing the use of extrinsic  
11:01AM 15 evidence as well. You can't be refreshing with the -- he gets  
16 the answer that he gets.

17 THE COURT: Well, and that's it. I mean you are  
18 going to talk about the text exchanges -- you know, whether  
19 others -- you've testified to what you testified to. Were  
11:01AM 20 there others? Was there a relationship? However you want to  
21 go about that.

22 But once you refresh her recollection that there  
23 might have been others, we're not going one by one with what  
24 they are. You ask her about the -- you know, ask her about  
11:02AM 25 that -- the circumstances that you really want to get into,

1 but -- but, again, no impeaching with collateral evidence -- or  
2 impeaching with extrinsic evidence for a collateral matter.

3 MS. ERICKSON: Judge, could we have a moment  
4 before we call back the jury so we can speak?

11:02AM 5 MS. WONG: Yeah.

6 THE COURT: Let me let the staff use the  
7 restroom or do whatever they need to do. Go ahead. Five more  
8 minutes.

9 (Recess in proceedings.)

11:12AM 10 (The following proceedings were had in open  
11 Court outside the presence of the jury panel:)

12 THE COURT: Are we ready to proceed?

13 MR. DIGIACOMO: Yep.

14 MR. WHIPPLE: Please.

11:12AM 15 THE COURT: Ms. Marin, I will have you come back  
16 in to the stand before we bring the jury back in. Okay?

17 Mr. Whipple, I just asked you and I was going to  
18 tell you Thursday, yesterday, when you have things on the  
19 podium like that and it's on top of the microphone, it causes  
11:12AM 20 some interference.

21 MR. WHIPPLE: Okay.

22 THE COURT: It wasn't terrible yesterday. But I  
23 think it was happening because the mic got hotter from  
24 Ms. Erickson and I think it was because it was covered. So it  
11:12AM 25 couldn't pick up the voice as well.

1 MS. ERICKSON: I'm sorry.

2 THE COURT: So if you could just not lay  
3 anything on the mic.

4 I think it's okay. It's wasn't that bad. There was  
11:13AM 5 just a little resonance and that's why -- I think that's what  
6 was happening there. But I just meant to mention that  
7 yesterday. I forgot.

8 Are you ready for the jurors?

9 MR. WHIPPLE: Yes, Your Honor.

11:13AM 10 THE COURT: Okay. Elvis.

11 THE MARSHAL: All rise for the Jury.

12 (The following proceedings were had in open

13 Court in the presence of the jury panel:)

14 THE COURT: Please take your seats, everyone.

11:13AM 15 Please, jury take your seats as you reach them.  
16 Please make sure your cell phones are off or silenced if you  
17 used them on the recess.

18 Mr. Whipple, you may resume your questioning,  
19 with the understanding of the objection that was posed as to  
11:14AM 20 the relevancy of the inquiry, which is at this time overruled,  
21 if you are able to proceed?

22 MR. WHIPPLE: Your Honor, I appreciate it.

23 May I approach at this time, Your Honor?

24 THE COURT: You may.

11:14AM 25 BY MR. WHIPPLE:

1 Q. All right. It's Exhibits W, X, and Y.

2 Melissa, would you take a minute to take a look at  
3 those pictures, please?

4 Don't show them to the folks. Just take a look at  
11:14AM 5 them yourself. And when you're done, you can look up.

6 Do you recognize the location of those photos?

7 A. I -- yeah. I think it's Patrick's, where the trailer  
8 was in the back.

9 Q. Okay. If I could get those back from you.

11:15AM 10 Now, before I move to admit, I just want to make sure  
11 that we're talking about the same thing.

12 Do you remember earlier when you testified that  
13 Ivonne had brought Erik over to a local trailer?

14 A. Yes.

11:15AM 15 Q. And I showed you some pictures; correct?

16 A. Yes.

17 Q. And is that the location where that trailer was  
18 located?

19 A. Yes.

11:15AM 20 MR. WHIPPLE: Your Honor, with that, I move to  
21 admit W, X, and Y.

22 MS. WONG: No objection.

23 THE COURT: I'm sorry. Defendant's W, X and Y  
24 are admitted into evidence.

11:16AM 25 MR. WHIPPLE: Thank you, Your Honor.

1 (Defense Exhibit Numbers W, X and Y  
2 were admitted into evidence.)

3 MR. WHIPPLE: With the -- how do I put this on?  
4 Is this already on?

11:16AM 5 THE COURT: We just need to change it over on  
6 the display. Dot cam, Renee.

7 THE REPORTER: Yes, Your Honor.

8 BY MR. WHIPPLE:

9 Q. Okay. Is that the location that Ivonne took you to?

11:16AM 10 A. Yes.

11 Q. And it was a trailer that was parked behind that  
12 residence?

13 A. Yes.

14 Q. And now, on April 26th, you were residing at the  
11:16AM 15 Webster residence; correct?

16 A. Yes.

17 Q. What's the distance between those two residences?

18 A. I would say about five minutes.

19 Q. Okay. And these are just some additional pictures.

11:17AM 20 There's a close-up there.

21 Do you recognize that as well?

22 A. Yes.

23 Q. And the trailer was -- there was a single-wide  
24 trailer parked behind that; correct?

11:17AM 25 A. Yes.

1 Q. Okay. This is a picture of the courtyard; correct?

2 A. Yes.

3 Q. Now, who was living in that trailer -- oops. Who was  
4 residing at that trailer when Ivonne took Erik over -- took  
11:17AM 5 Erik over to see you?

6 A. Patrick.

7 Q. Now Patrick's the one that you talked about using  
8 your phone to text -- strike that.

9 Patrick -- just a last name that you know of?

11:17AM 10 A. No.

11 Q. What if I say Patrick Robles, would that refresh your  
12 recollection at all or did you ever know his last name?

13 A. No. I never knew his last name.

14 Q. And how long had you known Patrick as of April 26th,  
11:18AM 15 at the time of the shooting?

16 A. I want to say about a couple weeks.

17 Q. Okay. Now, was he a person that would provide drugs  
18 to you and other folks?

19 A. Yes.

11:18AM 20 Q. Would it be fair so say that he was your drug dealer?

21 A. No. He wasn't my drug dealer, no.

22 Q. Okay. Would it be fair to say that you did get drugs  
23 from him?

24 A. Yes, I did.

11:18AM 25 Q. And what type of drugs did get from Mr. Patrick -- or

1 Patrick.

2 MS. WONG: Objection, relevance?

3 MR. WHIPPLE: Let me just ask --

4 THE COURT: Overruled. You may proceed.

11:18AM 5 You may answer the question.

6 THE WITNESS: Marijuana and crystal meth.

7 BY MR. WHIPPLE:

8 Q. Now, on April 26th, the day of the shooting, were  
9 you -- had you been using crystal meth or marijuana within say  
11:18AM 10 the 12 hours before that time?

11 A. No.

12 Q. Okay. So what about had Erik? Do you know if he --

13 A. We were asleep.

14 Q. What about the evening before the --

11:19AM 15 A. I wasn't feeling good a couple days before that. So,  
16 no, we weren't.

17 Q. Okay. And he wasn't under the influence at all?

18 A. No.

19 Q. There could have been no way that he'd used  
11:19AM 20 methamphetamine?

21 A. No.

22 Q. So if blood the blood -- if the blood content turned  
23 up to have methamphetamine in it, you would be surprised?

24 A. From when I was there, no, he was not. Not in front  
11:19AM 25 of me, not that I could see him using it, no.

1 Q. Okay. Now, previously, do you remember when I asked  
2 you if you had used Ivonne Cabrera's cell phone with her  
3 permission?

4 A. Yes.

11:19AM 5 Q. Did there come a time when you used her cell phone  
6 without her permission?

7 A. No.

8 Q. Let me just show you, if I can --

9 MS. WONG: Objection, Your Honor.

11:19AM 10 THE COURT: Are you intending to refresh her  
11 recollection, Mr. Whipple?

12 MR. WHIPPLE: Yes, Your Honor.

13 THE COURT: And do you have any further  
14 questions for foundation before you go to the refreshing of the  
11:20AM 15 recollection or is that the only question?

16 Do you want to orient in time?

17 MR. WHIPPLE: Sure.

18 THE COURT: Do you want to orient in terms of  
19 which communications? Maybe the question was vague.

11:20AM 20 MR. WHIPPLE: Sure. Of course, Your Honor.

21 BY MR. WHIPPLE:

22 Q. Okay. So we've already refreshed your recollection  
23 on this one that took place on April 3rd. Do you recall I  
24 asked you this particular one?

11:20AM 25 MR. WHIPPLE: If I can approach again to show

1 her?

2 THE COURT: Why don't you ask the question  
3 orienting time?

4 I believe, for the record, you are talking about the  
11:20AM 5 text exchange that you showed that was when Ms. Cabrera was in  
6 the shower.

7 MR. WHIPPLE: Yes.

8 THE COURT: And this witness testified that  
9 Ms. Cabrera asked her to follow up with Pat.

11:20AM 10 MR. WHIPPLE: Yes, that was on --

11 THE COURT: So proceed from there.

12 BY MR. WHIPPLE:

13 Q. Okay. That was on April 3rd. Will you accept that?

14 A. Yes.

11:20AM 15 Q. Okay. So that would be -- you know, that was -- the  
16 shooting was April 26th. So April 3rd, that would be  
17 23 days -- so about three weeks prior to the shooting?

18 A. Yes.

19 Q. So the questions that I'm asking you have to do with  
11:21AM 20 the time period between April 3rd and April 26th. Okay?

21 A. Okay.

22 Q. Now think back between April 23rd and April 26th. I  
23 know it's not easy. It's been a while.

24 But the three weeks prior to the shooting, would it  
11:21AM 25 be fair to say you were with Ms. Cabrera pretty much on a daily

1 basis?

2 A. Not on a daily basis, no.

3 Q. And then so let's just talk about on a weekly basis.

4 So the three weeks leading up to the shooting, how many times,

11:21AM

5 approximately, during the week would you spend with Ivonne?

6 A. Out of the three weeks, I want to say maybe a week

7 and a couple days --

8 Q. So I don't want to put words --

9 A. -- in total. Like I see her today and then I don't

11:21AM

10 see her for two, three days and then I see her again.

11 Q. All right. And then when you were together, how much

12 time would you spend together?

13 A. The whole day or around the whole day.

14 Q. Okay. And so leading up to that shooting on

11:22AM

15 April 26th, what did you do, if you can recall, during those

16 times when you were with her for a full day?

17 A. Well, what would we do?

18 Q. Yes.

19 A. Stay at her house where she was living.

11:22AM

20 Q. Okay. Where was that?

21 A. I don't know the street name. It's on -- the main

22 street is Lake Mead.

23 Q. It was Jan's home. Is that where you were?

24 A. Yes.

11:22AM

25 Q. So you'd go over and hang at Jan's house with Ivonne?

1 A. Yes.

2 Q. Okay. And so what else?

3 A. That's pretty much it.

4 Q. Okay. So would you also go out in her car, drive, do  
11:22AM 5 errands, things like that?

6 A. She never had a car when we used to stay there with  
7 her at the lady's house.

8 Q. She obviously had a car at some point prior to this  
9 incident?

11:22AM 10 A. She -- a couple days before.

11 Q. Okay. So prior to the shooting, she had a car for a  
12 couple days?

13 A. Uh-huh.

14 Q. And during -- you have to say yes, for the record.

11:23AM 15 A. Sorry. Yes.

16 Q. And then during that time period, were you with her  
17 on a daily basis when she had the car or, again, was it just a  
18 couple times?

19 A. I -- I only got in that car maybe once.

11:23AM 20 Q. That was the same car that came back on the tow  
21 truck?

22 A. Yes.

23 Q. Now when did she take you over to this location where  
24 Pat resided? How many days was that before the shooting?

11:23AM 25 A. It was a couple weeks before that.

1 Q. Just --

2 A. That I -- that she first took me there? Yeah. It  
3 was a couple weeks before April 26th.

11:23AM

4 Q. So how many times did you go to Pat's residence in  
5 April 2012?

6 A. Four to five times.

7 Q. So it was common for you to go over there, it seems?

11:23AM

8 A. Four to five times, I don't think, is common, as  
9 in -- you know, it was, like, go over and don't go over for  
10 two, three, four days, and then go over for a couple of hours,  
11 and --

12 Q. And would you over -- were you ever there without  
13 Ivonne being there?

14 A. She -- yeah. She left me there.

11:24AM

15 Q. Okay. So how long -- so if I can, we're just talking  
16 the month of April, when you were left there, what time of the  
17 day would she leave you there?

18 A. She left me there, and I was only there for a  
19 couple -- a couple of hours before she came back with Erik.

11:24AM

20 Q. Was it during the -- well, I want to talk -- you -- I  
21 know that you were over there four or five times. So let's  
22 just take the first time you were over there of the four or  
23 five times.

24 When -- did she take you over on that occasion?

11:24AM

25 A. Yeah. She took me over there.

1 Q. Okay.

2 A. She took me there because I was trying to get away  
3 from Erik.

4 Q. Okay.

11:24AM 5 A. Trying to -- trying to stay away from him.

6 Q. All right. So you were having -- you were having a  
7 hard time with Erik?

8 A. Yes, we were.

9 Q. You were going through a breakup?

11:24AM 10 A. Yes.

11 Q. In fact, he -- he e-mailed you comments about why  
12 don't you send somebody over to kill me at some point; do you  
13 recall that?

14 A. No.

11:25AM 15 MS. WONG: Objection, Your Honor. Hearsay and  
16 relevance.

17 (Sotto voce at this time.)

18 MR. WHIPPLE: Your Honor, the relevance is -- so  
19 I'm sorry. I'll just stand back for a second.

11:25AM 20 THE COURT: The Court has sustained the  
21 objection, but would you like to make a record?

22 MR. WHIPPLE: Sure. I don't think it would be  
23 appropriate in the presence of the jury. So --

24 THE COURT: Understood.

11:25AM 25 MR. WHIPPLE: -- I'll just wait.

1 THE COURT: You may proceed.

2 MR. WHIPPLE: Okay.

3 THE COURT: Go ahead.

4 BY MR. WHIPPLE:

11:25AM 5 Q. So describe this breakup with -- with you and Erik,  
6 if you would, please. It's obviously an emotional time; is  
7 that fair to say?

8 A. Yes.

9 Q. Erik was very emotional?

11:26AM 10 A. Because I had left him, yes.

11 Q. Okay. You -- you had been together for a year and a  
12 half?

13 A. Yes.

14 Q. And is he saying things that he normally wouldn't  
11:26AM 15 say?

16 A. He was just trying to beg me to get -- get back with  
17 him, but it was just too much drama for me and his wife. That  
18 was the main reason why I got away from him; because he had a  
19 wife, and she was just too much. She was too much drama.

11:26AM 20 I couldn't deal with it. I didn't want to be in a  
21 relationship where I had to put up with that drama. That's why  
22 I got away from him.

23 Q. Well, you had been together for a year and a half  
24 leading up to that; right?

11:26AM 25 A. Yeah. I didn't find -- I didn't know about the wife

1 the whole time. I knew he had kids, but I didn't know he had a  
2 wife.

3 Q. Okay. When -- when did you find out about the wife?

4 A. Maybe --

11:27AM 5 MS. WONG: Objection, Your Honor. Relevance.

6 THE WITNESS: A year.

7 THE COURT: Overruled.

8 But, Mr. Whipple, I am giving you a little bit of  
9 leeway here to complete this line of questions. But we need to  
10 move on.

11 MR. WHIPPLE: Sure. I understand that,  
12 Your Honor.

13 THE COURT: You need to get back to the point.

14 BY MR. WHIPPLE:

11:27AM 15 Q. So when did you find out about the wife?

16 A. A year into our relationship.

17 Q. So this was -- this wasn't something that just  
18 happened in April. This is something that had been building  
19 up?

11:27AM 20 A. Yeah. We were together for a whole year, and then  
21 I -- I found out about the wife.

22 Q. Okay.

23 A. So it's on and off after the -- the year is on and  
24 off because of -- of the wife.

11:27AM 25 Q. Now, had you ever completely removed yourself from

1 his life before?

2 A. No.

3 Q. Okay. That's what happened in April, though?

4 A. Yes.

11:27AM 5 Q. In fact, you completely removed yourself from his  
6 life?

7 A. Yes. I tried to, yes.

8 Q. What was the breaking point?

9 A. The drama with the wife. Just having to run into her  
11:28AM 10 and -- and just -- I don't know, disrespect me out in public.  
11 Everywhere she seen me, she was just disrespectful. It was  
12 just too much for me.

13 Q. And Ivonne was trying to assist you during this time  
14 knowing it was difficult for you as well?

11:28AM 15 A. Yes.

16 Q. Okay. And so at this time, would it be fair to say  
17 that you considered yourself single after you left Erik?

18 A. Consider myself single after I left Erik? I wasn't  
19 even thinking of that. I was trying to close that --

11:28AM 20 Q. Okay.

21 A. -- chapter with him and his wife. Put that behind me  
22 and just move on.

23 I wasn't trying to deal with the wife and his -- and  
24 his drama and all of that. I couldn't.

11:28AM 25 Q. Now, when you went over to Patrick's house, let me

1 ask you: Did you ever spend the night there?

2 A. I did spend the night there.

3 Q. And so when you went over to that -- now, let me ask  
4 you another thing. Was -- did Patrick have a wife?

11:29AM

5 A. No -- well, he was there by himself in the -- the  
6 trailer.

7 Q. Okay. So you're breaking -- you broke up with Erik,  
8 a very emotional situation. You went over to Patrick's house  
9 and you would spend the night there?

11:29AM

10 A. No, no, no. It was -- I did not stay at Patrick's  
11 house right after I broke up with Erik.

12 Q. Okay. When were you spending the night at Patrick's  
13 house?

14 A. Maybe a week before -- or -- Chinola took Erik to see  
15 me right there at Patrick's house.

16 And how many times did you spend the night at Patrick's house?

17 A. Once.

18 Q. Was it -- did it appear that Patrick had affections  
19 towards you?

20 MS. WONG: Objection. Speculation, Your Honor.

21 THE COURT: Overruled.

22 BY MR. WHIPPLE:

23 Q. Did it appear that Patrick had affections for you?

24 A. He did. Yeah, he did like me.

25 Q. And he made it clear to you?

1 A. Yes, he did.

2 Q. And he wanted you for his own?

3 A. I --

4 Q. He wanted you all alone?

5 A. He wanted me all alone?

6 Q. He didn't want to share you with anybody.

7 A. He just told me that he really liked me and why  
8 didn't I give him a chance, and that was it.

9 Q. Okay.

10 A. He didn't tell me if he wanted to share me or not.

11 Q. Was he -- so -- so then you -- you -- you left  
12 Patrick.

13 And, by the way, he was the drug dealer; right?

14 I mean, you're telling me he's the one who sold drugs  
15 to make a living; right?

16 A. Yes.

17 Q. Okay. So then you leave Patrick and you go back to  
18 Erik's.

19 A. I didn't leave Patrick because I was never with  
20 Patrick.

21 Q. I apologize.

22 You left Patrick's residence and you went back to  
23 Erik's.

24 A. Chinola went. She had told me wait for her, she  
25 would be right back. She did come back. She told me to go

1 outside. We went outside. Erik was outside.

2 If I ever left Patrick -- I was never with Patrick.

3 Q. Okay. Now, obviously you can't read his mind; right?

4 A. Whose?

5 Q. Patrick's.

6 A. No.

7 Q. You just know what he told you with regard to how he  
8 felt about you.

9 A. Yes.

10 Q. Okay.

11 A. In a very respectful way he -- he told me he liked  
12 me.

13 Q. Okay. And would it be fair to say that he was  
14 disappointed?

15 A. Because I left?

16 Q. Yes.

17 A. I don't know.

18 MR. WHIPPLE: If I can -- Your Honor, if I can  
19 approach.

20 (Sotto voce at this time.)

21 MR. DIGIACOMO: Objection.

22 MR. WHIPPLE: Your Honor, I can approach if the  
23 Court likes, or --

24 THE COURT: May I have counsel at the bench.

25 (Sidebar conference at bench, not reported.)

1 THE COURT: All right. With that clarification,  
2 Mr. Whipple, you may ask further questions.

3 MR. WHIPPLE: Thank you, Your Honor.

4 BY MR. WHIPPLE:

5 Q. So, Melissa, I want to go back to April 2012. This  
6 is, you know, a short period before the shooting on April 26th.

7 We've already -- you've already testified how  
8 you had left Erik. You had gone over you spent at least one  
9 night at Patrick's. And I'd asked you about his seemingly  
10 emotions towards you.

11 Correct me if I'm wrong, he expressed the fact  
12 that he wanted to be with you and, in fact, you had turned and  
13 gone back to Erik's?

14 THE COURT: Before the witness answers, can I  
15 have counsel back at the bench?

16 (Sidebar conference at bench, not reported.)

17 THE COURT: I'm going to ask counsel to rephrase  
18 the question.

19 MR. WHIPPLE: Thank you, Your Honor.

20 BY MR. WHIPPLE:

21 Q. Melissa, did you get text messages from Patrick  
22 expressing how he felt about you returning to Erik?

23 A. No.

24 MR. WHIPPLE: With the Court's permission, may I  
25 attempt to refresh her recollection?

1 THE COURT: You may approach and show her a text  
2 and see if it refreshes her recollection.

3 MS. WONG: Your Honor, objection. The witness  
4 didn't say she didn't remember, she said no.

5 THE COURT: Overruled.

6 BY MR. WHIPPLE:

7 Q. So, Melissa, I'm only asking you to look at the area  
8 that's in yellow, that's highlighted. There's no time  
9 constraints. You take as long as you want. Go ahead and  
10 review it and think back.

11 And when you're done, you can look up and I'll remove  
12 that and see if it refreshes your recollection.

13 A. The first time I ever see this text message.

14 Q. Okay. Now, just during this time period, Melissa,  
15 did you use different modes of communications?

16 Obviously there's text messages. How about e-mail,  
17 do you use e-mail to communicate?

18 A. No, never used it.

19 Q. Do you have -- did you have an e-mail address, a  
20 Gmail account back in that time period, spring of 2012?

21 A. Yes, I did.

22 Q. Can you tell us what your e-mail account was?

23 A. I don't remember.

24 Q. Okay.

25 (Sotto voce at this time.)

1 BY MR. WHIPPLE:

2 Q. Do you remember you had a Facebook account?

3 A. Yes.

4 Q. Okay.

5 MR. WHIPPLE: If I may approach, Your Honor, at  
6 this point, just to refresh her recollection?

7 THE COURT: You may.

8 MR. WHIPPLE: Thank you.

9 BY MR. WHIPPLE:

10 Q. Okay. This one is not highlighted, but if you will  
11 look at the lower half of that, take your time, and then look  
12 up when you're done.

13 A. The last one right here (indicating)?

14 Q. The one that's in your name.

15 A. Yes.

16 Q. Okay. Does that refresh your recollection as to your  
17 e-mail account at that time period?

18 A. No.

19 Q. That was not your e-mail account?

20 A. No.

21 Q. Okay. Let me just ask you --

22 MS. WONG: Objection, Your Honor.

23 THE WITNESS: No, never seen it.

24 BY MR. WHIPPLE:

25 Q. Okay. Is your middle initial K?

1 A. Yes.

2 Q. What's the K for?

3 A. Yes.

4 THE COURT: The answer -- the question's been  
5 asked and answered. The objection for further inquiry document  
6 of the document is sustained.

7 MR. WHIPPLE: Thank you, Your Honor.

8 BY MR. WHIPPLE:

9 Q. Now, did you know -- now, obviously you'd only met  
10 Smokey a couple of times.

11 A. Seen him a couple times. Met him only once.

12 Q. Now, just so we understand this, Smokey was the  
13 person that -- that shot you?

14 A. Yes.

15 Q. Okay. And you described, I think, two different  
16 times. One was a location over by UNLV. I think you said you  
17 had saw him at a distance.

18 A. Yes.

19 Q. And then there was another time when you were driving  
20 with Loka and with Ivonne, and you met him on the street?

21 A. That I was driving? No. I --

22 Q. No, no, no. Ivonne was driving, Loka was in the  
23 passenger seat, Smokey was in the backseat, and you were  
24 walking.

25 A. Yes.

1 Q. In fact, I think you were walking on Bonanza towards  
2 Eastern.

3 A. Yes.

4 Q. And at that point Ivonne pulled over and introduced  
5 you to Loka?

6 A. She was parked, like, in front of the house in the --  
7 they were still in the car.

8 Q. Which house is this?

9 A. Patrick's.

10 Q. Okay. So you're walking past the house?

11 A. Yes.

12 Q. And you -- it was -- the car was parked?

13 A. Yes.

14 Q. Okay. And you came over and started talking?

15 A. Passing by, and they were sitting in the car. And  
16 Chinola seen me coming and she -- because I don't go just  
17 looking at everybody's car to see who's sitting in it, right?

18 She wasn't -- she said Meli.

19 And that's when I turned around, hey. You know, said  
20 hi and whatever, and that's it.

21 Q. So what was the term she used, again?

22 A. Meli.

23 Q. Meli. How do you spell that?

24 A. M-E-L-I.

25 Q. Oh, Meli, or Meli?

1 A. Just take off the S-S-A in my name.

2 Q. Okay. So is it fair to say that people call you  
3 Meli?

4 A. People don't call me Meli. They call me Melissa.  
5 She was the one that called me -- said my name like that.

6 Q. Okay. And you recognize that as the way Ivonne  
7 referred to you?

8 A. Yes.

9 Q. And so you came over to the car?

10 A. Passing by, turned around, the car was right there.

11 Q. So just explain again how you -- who -- what happened  
12 at that encounter.

13 A. She introduced me to Loka, that's her brother, and  
14 that was it.

15 Q. So you know Loka and Smokey, the person who shot you,  
16 are brother and sister?

17 A. Yes, I knew because of that.

18 Q. Okay.

19 A. That day.

20 Q. Now, did you know of Mr. -- Pat, we'll call him  
21 Patrick. Did you know his relationship with Smokey and Loka?

22 A. No.

23 Q. You don't know -- have you ever seen them together?

24 A. Yes. I seen Loka inside the trailer.

25 Q. Okay. And have you ever seen Patrick communicating

1 with Smokey?

2 A. No.

3 Q. Okay. But you saw them over there together?

4 A. I seen Loka inside the trailer talking to Patrick,  
5 yes. Smokey, I never seen him.

6 Q. When -- let me ask you: When you were at Patrick's  
7 house, when you were there -- and I don't want to put words in  
8 your mouth, but if my memory is correct, you said you were  
9 there four or five times.

10 A. Yes.

11 Q. And that would have been in the month of April?

12 A. No.

13 Q. When -- when was that?

14 A. Maybe the month before. I -- it's -- four or five  
15 times with them. I don't know the -- I can't give you exact  
16 time before.

17 Q. Well, let me ask you: Before the shooting happened  
18 how long had you been with Erik? How long -- how many days had  
19 you been back together after -- after Ivonne brought her --

20 A. Just --

21 Q. -- into you?

22 A. -- two days.

23 Q. And how long -- how long a break did you take when  
24 you left Erik? How long were you -- how long was that time  
25 period?

1 A. Maybe a month.

2 Q. Okay.

3 A. That I had been away from him.

4 Q. Okay.

5 A. Yeah.

6 Q. So you -- it was during that the month that you spent  
7 four or five days --

8 A. No, before that.

9 Q. So you spent time with Patrick before you broke up?

10 A. I spent time with Patrick -- me and him by ourselves,  
11 no. I went there with Chinola.

12 Q. Again -- I'm sorry, say it again.

13 A. I went there with Chinola. I never spent time with  
14 him like that.

15 Q. Okay. When did you start spending time with him like  
16 that? When did that occur?

17 A. Stay there at his -- at his trailer? The day that I  
18 had spent the night there?

19 Q. Yes.

20 A. Maybe the whole day.

21 Q. When was that?

22 A. I can't give you exact date.

23 Q. Would it have been within a month of the -- of the  
24 shooting?

25 A. Yes.

1 Q. Three weeks of the shooting?

2 A. Within the month.

3 Q. Okay. You're not sure exactly when?

4 A. No. When I spent the night at Patrick's house, it  
5 was within the April month.

6 Q. Okay. And as you sit here today, you don't know of  
7 the relationship, if any, between Patrick and Smokey?

8 A. I don't know if they --

9 Q. Okay. Now, I want to take you to the time of  
10 April 26th, okay. And I know it was horrific, and I'm sorry I  
11 even have to ask you questions about it, but if you want to  
12 stop at any time we'll stop. Okay?

13 You were obviously asleep that morning, the early  
14 morning hours?

15 A. Yes.

16 Q. Did you ever remember anybody knocking on the outside  
17 window at any time?

18 A. No.

19 Q. You -- you had a bedroom that had a window to the  
20 courtyard, which would be to the south; right?

21 A. To where the front door was?

22 Q. Yes.

23 A. My window was right next to the door, yes.

24 Q. So the first thing you recall is -- well, what is the  
25 first thing you recall that morning?

1 A. Hearing the doorknob.

2 Q. Your -- the doorknob to your bedroom?

3 A. Yes.

4 Q. And so do you remember thinking to yourself, that's  
5 kind of weird, someone's trying to get in; or you remember that  
6 first instance when you heard that?

7 A. The first thing I did was, Erik, somebody's at the  
8 door. That was it.

9 Q. Okay. And then -- and now -- now, when you testified  
10 today, it seems as though you've really kind of put all that  
11 behind you and really kind of --

12 A. I'm trying to, yes.

13 Q. Okay. So, today, you didn't even recognize that  
14 there was shooting that took place in the bedroom next door --  
15 or you didn't hear the shooting that took place in the bedroom  
16 next door?

17 A. That I -- I don't remember hearing the -- I -- I  
18 remember hearing the gun go off when it hit Erik.

19 Q. Okay. So what I want to ask you is the sequence of  
20 once that -- once they --

21 A. Everything just happened so fast. I don't know if I  
22 re -- I don't know if I remember hearing Erik -- I mean Ashley  
23 and James getting shot first or us. Everything happened so  
24 fast. I --

25 Q. So here's the thing, the last thing I want to do is

1 cause you more consternation, okay. I just have a couple more  
2 questions about the actual shooting of yourself.

3 Can you -- can you -- can you do that or do you want  
4 to just take a minute and relax?

5 A. What was the question again?

6 Q. Why don't you just grab a drink of water. And I've  
7 just got a couple more to finish up, okay. I'm just wanting to  
8 know the sequence.

9 When Smokey came in and shot you and Erik, do you  
10 recall who he shot first?

11 A. Erik.

12 Q. Okay. Now, let me ask you: Do you remember talking  
13 to a detective the day after the shooting?

14 A. I talked to the detective. I don't know how long  
15 after the shooting.

16 Q. Do you remember -- there was questions already asked  
17 of you -- remember Ms. Wong came up and showed you a statement?

18 A. Yes. I did talk to a detective, but I don't know if  
19 it was right after the shooting or the next day. I don't know.

20 Q. Okay. Let me -- let me help you with that. Okay?

21 A. When you're in the hospital, you just don't even know  
22 the time that goes by.

23 Q. I think we all understand that.

24 MR. WHIPPLE: With the Court's permission, may I  
25 approach? This is a statement from April 25th.

1 THE COURT: You may.

2 BY MR. WHIPPLE:

3 Q. So, Melissa, I'm going to represent to you that this  
4 is the statement the day after the shooting.

5 A. Okay.

6 Q. April 27th. It's the same one that Ms. Wong asked to  
7 you look at. Okay?

8 A. Okay.

9 Q. All right. So there's the first page and then  
10 there's the second page. And I want you, if you would, to read  
11 this paragraph at the bottom. And you can -- when you're done,  
12 look up. Do you see that?

13 A. Yes.

14 Q. So in that early morning hours, you said you heard  
15 somebody trying to get in your door; is that correct?

16 A. Yes.

17 Q. And then you -- were you able to refresh your  
18 recollection that you heard shots after that?

19 A. Open the door. I wake him, he gets up, goes to the  
20 door. Just unlocks it, doesn't open it, but he just unlocks  
21 (demonstrating).

22 Q. Correct.

23 A. And when he's getting back to the bed, he couldn't  
24 make it up to sit down, they come in.

25 Q. Did the shots happen before they came into your

1 bedroom?

2 A. I don't remember hearing shots before.

3 Q. Okay. All right. And I think that's what Ms. Wong  
4 was asking you. And I'm trying --

5 MR. WHIPPLE: With the Court's permission --

6 BY MR. WHIPPLE:

7 Q. And we're going to go as slow as you want. There's  
8 no rush. I'm just trying to get out some sequences. Okay?

9 This is the same page. If you would, this is where  
10 Ms. Wong asked you to read, okay. And see if that -- see if  
11 you recognize any of that. Okay?

12 Do you remember giving the -- this detective this  
13 statement?

14 A. Yes, I do.

15 Q. Do you remember the detective asking you what  
16 happened, and you said --

17 MR. DIGIACOMO: Sorry, Counsel, could you tell  
18 us what page you're on?

19 MR. WHIPPLE: Yeah. This is page -- this is the  
20 second page, still the second page.

21 MR. DIGIACOMO: Page 2. What line?

22 MR. WHIPPLE: It's Page 2, lines 37 and 38.

23 BY MR. WHIPPLE:

24 Q. And this is -- and then you say: And then my  
25 boyfriend got up, but before -- before he made it to the door,

1 we heard, like, four gunshots.

2 A. I don't think anybody understands what it's like to  
3 be in a hospital bed right after something like this. I might  
4 have said things that --

5 Q. What was that?

6 A. -- were just in the wrong order. But I did not hear  
7 any shots except what I heard were coming to him. They hit  
8 him. He fell next to me.

9 Q. And there's no right or wrong answer, okay. I'm just  
10 trying to -- trying to get at the sequence of what happened  
11 there, okay.

12 If you want me to stop again, I'll stop again. You  
13 just let me know, Okay.

14 And now -- because what I want to talk about is what  
15 happened in your bedroom, okay.

16 And then this is what you -- the detective asked you  
17 what happened. And you said: Then he laid down -- that's  
18 Erik, your boyfriend -- then he -- then that guy, Smokey,  
19 kicked the door, he pointed the gun at me. I was telling him,  
20 please don't, please don't -- then shot one time. Do you  
21 recall that?

22 A. Yeah, he was shooting Erik.

23 Q. Did that -- was he shooting -- did that -- was that  
24 the time when you were shot?

25 A. No. He shot Erik first.

1           Q.   And then you said: Then he turned around, looked at  
2 my boyfriend and shot him.

3           A.   Yeah. Erik was still standing. He was still  
4 standing when he first got -- first shot went in. He was still  
5 standing. And he turned around and he looked at me and -- and  
6 a bunch of blood was coming out of his mouth. And then he fell  
7 on -- on his -- on his face, on the bed.

8           Q.   And then --

9           A.   And that's when I'm saying, please, please don't  
10 shoot me. And he just shot me.

11          Q.   So here's -- here's what I'm asking you, Melissa, and  
12 I apologize for having you relive this.

13                There's a suggestion that Ivonne Cabrera had a motive  
14 to cause harm -- could -- to some folks. Could the motive  
15 actually have been directed towards you? The reason -- the  
16 reason Smokey was there was to get even with you for things  
17 that happened with Mr. Robles?

18          A.   I -- there was nothing happened with Patrick.  
19 Nothing happened with Patrick. He never disrespected me.  
20 Never came at me. He came at me like a normal person and told  
21 me that he liked me.

22          Q.   And let me ask you: Did you know Loka? How long did  
23 you know Loka?

24          A.   I didn't know her. I met her through Chinola.

25          Q.   You just knew that she was Smokey's sister?

1           A.    Yes.

2                   MR. WHIPPLE:  Okay.  Court's indulgence,  
3 Your Honor.

4                           (Sotto voce at this time.)

5 BY MR. WHIPPLE:

6           Q.    Melissa, I know it's been very difficult for you.  I  
7 apologize for having to ask you these tough questions.  Thank  
8 you.

9                   THE COURT:  Ms. Wong, any further questions for  
10 Ms. Marin?

11                   MS. WONG:  No, Your Honor.

12                   THE COURT:  Let me see, by a show of hands, if  
13 any jurors have any questions for this witness.

14                           (Affirmative response from the jury panel.)

15                   THE COURT:  It looks like we may have a jury  
16 question.

17                           What's going to happen, Ms. Marin, so that  
18 you're aware, jurors have an opportunity, through a written  
19 question, to ask questions of witnesses, as long as it's in the  
20 proper form and appropriate, and the Court will make that  
21 determination with counsel.

22                           If the Court asks the question of the juror, I  
23 will read it to you as written, but you'll remember that it's  
24 the juror asking the question.  Okay?

25                   THE WITNESS:  Okay.

1 THE COURT: Counsel.

2 (Sidebar conference at bench, not reported.)

3 THE COURT: All right. Ms. Marin, I'm going to  
4 ask the question as it's written here. There's an orientation  
5 to the question and then the question itself.

6 Answer the question, please, to the best of your  
7 ability. And you'll remember some of the discussion earlier  
8 about able to explain your understanding of things, but not  
9 necessarily speak for anyone else. Okay?

10 THE WITNESS: Okay.

11 THE COURT: This is the question: During the  
12 State's questioning Melissa she stated she was afraid of  
13 Chinola, and that "afraid of Chinola" is in quotes. Why was  
14 she afraid?

15 THE WITNESS: The night before April 26th -- but  
16 it's going to be a -- Ashley said --

17 THE COURT: Is there a way that you can describe  
18 what you understood to be without discussing what anyone else  
19 told you?

20 THE WITNESS: That she was act -- acting  
21 aggressive, trying to get an unemployment card. And had  
22 already threatened.

23 THE COURT: This is -- who are you speaking had  
24 threatened?

25 THE WITNESS: Chinola had threatened because the

1 unemployment card wasn't handed to her.

2 THE COURT: Ms. Wong, do you have any further  
3 questions for this witness related to this answer?

4 MS. WONG: No, Your Honor.

5 THE COURT: Mr. Whipple, do you have any  
6 questions related -- do you have any questions of this witness  
7 related to this answer?

8 MR. WHIPPLE: Just briefly.

9 RE CROSS EXAMINATION

10 BY MR. WHIPPLE:

11 Q. Melissa, you -- you know Loka; right? You know of  
12 Loka, she's Smokey's sister?

13 A. Yes.

14 Q. Wasn't she the one that was the threat? That she was  
15 going to do something if she didn't get the card?

16 A. Not from what I understood.

17 Q. Your memory was it was Ivonne and not Loka?

18 A. Yes, that she was the one asking for the unemployment  
19 card.

20 Q. Okay. Not -- did the word "Loka" come into it?

21 A. No.

22 MR. WHIPPLE: Okay. All right.

23 THE COURT: All right. Thank you.

24 At this time, Ms. Marin, you are excused. Make  
25 sure you take all your belongings.

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

2 THE COURT: I'll ask that the juror's question  
3 be marked as next in order in Court's exhibits.

4 (Court's Exhibit Number admitted into evidence.)

5 THE COURT: I'll just ask the jurors to not only  
6 include the juror number, but your name as well.

7 And the State has indicated that there is one  
8 additional witness, that it will be relatively -- expected to  
9 be testimony relatively short. So we will complete that  
10 witness before we break for lunch.

11 Who is the State's next witness, please?

12 MS. WONG: Alise Esfandiar.

13 THE COURT: Okay. Ms. Esfandiar.

14 Ms. Esfandiar, if you could just come right  
15 through the courtroom and right up to the witness stand here,  
16 there's a chair, remain standing behind the chair, and the  
17 Clerk here to my right will swear you in. Okay?

18 THE CLERK: Please raise your right hand.

19 ALISE ESFANDIAR

20 called as a witness on behalf of the State,

21 having been first duly sworn,

22 was examined and testified as follows:

23 THE WITNESS: Yes, I do.

24 THE CLERK: Please take a seat.

25 Could you please state and spell your first and

1 last name for the record.

2 THE WITNESS: My name is Alise Esfandiar.

3 A-L-I-S-E, E-S-F-A-N-D-I-A-R.

4 THE COURT: Ms. Wong.

5 MS. WONG: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. WONG:

8 Q. Alise, I want to direct your attention to April 26th,  
9 2012, at approximately 6:00 P.M.

10 Do you recall where you were at on that night?

11 A. Yes, home.

12 Q. Okay. And where is home?

13 A. Lake Mead and Hollywood.

14 Q. Did there come a time where you went to an address  
15 located at 1927 Bassler?

16 A. Yes.

17 Q. Okay. Whose residence is that?

18 A. Sheila.

19 Q. Okay. And did you have occasion to actually go over  
20 to that residence on that day?

21 A. Just to go visit her.

22 Q. Okay. And do you know someone by the name of Jan?

23 A. Yes.

24 Q. Okay. And how do you know Jan?

25 A. She just lived there. She was a friend of Sheila's.

1 Q. So when you went over to the Bassler residence, were  
2 you there to see Jan or Sheila?

3 A. Jan.

4 Q. Was somebody else with you when you left?

5 A. Yes. My mom and my ex-boyfriend.

6 Q. And your mother is Heather Redland?

7 A. Yes.

8 Q. And your boyfriend is -- what's his name?

9 A. Salvador Jimenez.

10 Q. So you guys went over there about 6:00 o'clock. And  
11 you just went over there to visit Jan?

12 A. Yes.

13 Q. Did there come a time you actually left the  
14 residence?

15 A. We were about to leave.

16 Q. Okay.

17 A. And Jan got a phone call saying that --

18 MR. WHIPPLE: Objection. Hearsay.

19 MS. WONG: I just want her to say why she does  
20 what she does next.

21 THE COURT: I'm going to overrule it and allow  
22 the exception. It's not for hearsay -- it's not offered for  
23 the truth of the matter certain, but for her actions.

24 You may answer.

25 BY MS. WONG:

1 Q. So Jan gets a phone call?

2 A. Yes.

3 Q. Do you know from who?

4 A. Yes, Ivonne Cabrera, saying that she needed a ride  
5 from the 7-Eleven by the UNLV.

6 Q. So you mentioned that Ivonne Cabrera called. Do you  
7 know Ivonne Cabrera?

8 A. Yeah, a little bit.

9 Q. You've met her before?

10 A. Yes.

11 Q. Do you see her in the courtroom today?

12 A. Yes.

13 Q. Will you please point to her and describe an article  
14 of clothing that she's wearing.

15 A. Purple shirt (indicating).

16 MS. WONG: May the record reflect the  
17 identification of the defendant?

18 THE COURT: The record will so reflect.

19 BY MS. WONG:

20 Q. So the defendant calls Jan on Jan's phone?

21 A. Uh-huh, it was Sheila's house phone, but yeah.

22 Q. Sheila's house phone.

23 Do you overhear the conversation?

24 A. No.

25 Q. Okay. So does Jan tell you what was said during that

1 conversation?

2 A. Yes. She just said that --

3 MR. WHIPPLE: Judge, I'm sorry.

4 THE COURT: Again, Ms. Wong, maybe we -- I hate  
5 to bring counsel back up to the bench, but if you can direct  
6 the question. Do we need the actual statements or do we need  
7 to understand the conversation that she did something else?

8 MS. WONG: I can move on.

9 THE COURT: Let me let Ms. Wong rephrase the  
10 question.

11 Again, witnesses cannot testify for other people who  
12 are not present to testify.

13 Go ahead.

14 BY MS. WONG:

15 Q. When Jan gets off the phone with the defendant, what  
16 did you do?

17 A. She -- she asked me if I could give Ivonne Cabrera a  
18 ride, and I said yeah.

19 Q. Okay.

20 A. My mom -- I told my mom that she wanted a ride. She  
21 said she would give us gas money. And we agreed to it.

22 Q. When you say she said she would give you gas money,  
23 who is she?

24 A. Ivonne.

25 Q. So the defendant said she would give you gas money --

1           A.    Uh-huh.

2           Q.    -- if --

3           A.    Yes.

4           Q.    -- if you gave her a ride?

5           A.    Yes.

6           Q.    Is it you who drove, or your mom?

7           A.    My mom.

8           Q.    Okay. And she's the one with the car?

9           A.    Yes.

10          Q.    Okay. Where were you supposed to pick the defendant

11 up from?

12          A.    The 7-Eleven by UNLV on, I think, Maryland and -- I

13 don't know the other street, but --

14          Q.    But by UNLV?

15          A.    Uh-huh, the 7-Eleven by UNLV.

16          Q.    And were you supposed to pick just the defendant up,

17 or someone else as well?

18          A.    She said that she had a girlfriend with her.

19          Q.    Did you know who the girlfriend was?

20          A.    No. At the time, no.

21          Q.    So then do you and your mom, in fact, go and pick the

22 defendant up from 7-Eleven?

23          A.    Yeah. She was -- she wasn't there yet. We pulled up

24 and she came walking after.

25          Q.    Okay.

1 A. Like, after we pulled in.

2 Q. What kind of a car did your mother drive at the time?

3 A. It was a green Hyundai Sonata, like a bluey-green  
4 Hyundai Sonata.

5 Q. I'm going to show you State's Exhibit Number 112.

6 MR. DIGIACOMO: I believe it's back on Left Law.

7 THE COURT: Left Law, all right.

8 MR. DIGIACOMO: There you go.

9 BY MS. WONG:

10 Q. Do you recognize this -- this vehicle?

11 A. Yeah.

12 Q. Is that your mom's vehicle?

13 A. Yeah, it was. She doesn't have it any more, but  
14 yeah, that's it.

15 Q. So when you arrived at the 7-Eleven, you say Ivonne  
16 comes later?

17 A. Like -- only, like, two minutes.

18 Q. Okay.

19 A. Like, after we pulled up.

20 Q. And does she come with another person?

21 A. Yes.

22 Q. And that's a female?

23 A. Uh-huh.

24 Q. All right. Where were you seated?

25 A. I was in the back left-hand side behind my mom.

1 Q. Okay. And where was this other girl?

2 A. Next to me, in the middle.

3 Q. And where was the defendant sitting?

4 A. All the way in the right on the back.

5 Q. So where was your understanding of where you were  
6 supposed to take the defendant?

7 A. Back to Jan's house.

8 Q. Did you, in fact, then go back to Jan's house?

9 A. Yes.

10 Q. When you arrive at Jan's house, do you go back inside  
11 Jan's residence?

12 A. Well, she said she needed to get some stuff and --

13 Q. Who is she?

14 A. Ivonne said she needed to get some stuff.

15 We said -- well, we were going to leave.

16 And then Ivonne asked her if she could give us -- if  
17 we could give her a ride again.

18 And we were okay with that because it was on the way.

19 Q. It was on the way.

20 So your intention was for you and your mom to drop  
21 the defendant --

22 MS. ERICKSON: Objection. Leading.

23 THE COURT: What's the basis of the objection?

24 MS. ERICKSON: Leading.

25 THE COURT: Sustained.

1 BY MS. WONG:

2 Q. All right. What was your intention when you went to  
3 Jan's house with the defendant in the car?

4 A. To drop her off and leave.

5 Q. Okay. And when you say "leave," you and your mom?

6 A. Yeah, me and my mom and Salvador were just going to  
7 go straight home.

8 Q. But once you got there, what happened?

9 A. Ivonne asked if we could give her a ride to some  
10 other street on the way to our house, and we said yeah because  
11 it was on the way.

12 Q. Okay. And did you leave Jan's house immediately?

13 A. No.

14 Q. Why?

15 A. Ivonne was packing some stuff, I guess.

16 Q. Okay.

17 A. Clothes and things like that.

18 Q. Does Ivonne actually go inside the residence?

19 A. Yeah. She went inside and just packed a couple  
20 things.

21 And I went inside and I said, hey, are you ready?

22 And then she said, yeah, just give me a sec.

23 And I said okay.

24 And then I went back outside and I told my mom,  
25 she'll be done in a second, she's just getting some stuff.

1           And that took like five minutes, ten minutes, maybe.

2   And then she came out and then we got back in the car.

3           Q.   Now, when you say the defendant said she needed to  
4   pack some stuff.

5           A.   Yeah.

6           Q.   What kind of stuff are you talking about?

7           A.   Just basically, like, her clothes, shoes, toiletries,  
8   things like that.

9           Q.   Let me show you State's Exhibit Number 139.

10                   MR. DIGIACOMO: 139?

11                   MS. WONG: Yes.

12   BY MS. WONG:

13           Q.   Do you recognize these items?

14           A.   Yeah.

15           Q.   When had you seen these items?

16           A.   Coming from the house to my trunk -- well, to my  
17   mom's trunk.

18           Q.   Are any of those items yours?

19           A.   No.

20           Q.   Are any of those items your mom's?

21           A.   No.

22           Q.   And that includes a big green duffel bag, a card, a  
23   patch, clothes. None of that is yours?

24           A.   No.

25           Q.   And who -- you say you saw them in the trunk?

1           A.    Yeah.  They -- she put them from the house to the  
2 trunk.

3           Q.    The defendant did?

4           A.    Yes, Ivonne.

5                               (Sotto voce at this time.)

6 BY MS. WONG:

7           Q.    And so what happens after she -- Ivonne packs all of  
8 the stuff into the car?

9           A.    Then we all got back in the car, and she said she  
10 needed to go to Eastern and Bonanza.

11                       We said, yeah.

12                       We were driving down where the house is, and we took  
13 a right going onto Lake Mead.  And as we took a left, they  
14 pulled us over.

15           Q.    And who is they?

16           A.    The cops, North -- North Las Vegas pulled us over.  
17 And my mom stopped and they came to my mom's window and said:  
18 What's your name?

19                       She said her name.

20                       And then they came to my window and they said:  
21 What's your name?

22                       I said my name.

23                       They went to my ex-boyfriend's window and said:  
24 What's your name, and he told them.

25                       And then they went to the girl that was in the

1 middle, asked her her name, and she told them.

2 And they went straight to Ivonne Cabrera's door,  
3 opened the door and said Ivonne Cabrera, step outside, you're  
4 under arrest, and all that.

5 Q. Okay. And what did the defendant do?

6 A. Stepped out and complied with everything.

7 Q. Now, this whole night, from the time you picked the  
8 defendant up from 7-Eleven to the time the police made contact  
9 with her, what was her demeanor like?

10 A. To me, normal.

11 Q. Okay. So she wasn't panicking or frightened to  
12 you -- she didn't seem frightened to you?

13 A. Not to me.

14 Q. Okay. Do you recall the police actually searched  
15 your mom's vehicle?

16 A. They searched the hood of the car, the trunk of the  
17 car, all inside, and everything.

18 Q. All right. Let me show you State's Exhibit  
19 Number 142.

20 Now, do you see -- in the middle of all these items  
21 here, do you see a black cell phone?

22 A. Yes.

23 Q. Okay. And I want to give you a closer up of  
24 State's 143, of that cell phone.

25 Did you own a cell phone at that time?

1 A. Yeah, but it wasn't that.

2 Q. It's not --

3 A. Mine was, like, an old one.

4 Q. Did your mom own a cell phone?

5 A. No.

6 Q. Okay. So this cell phone, does that belong to you or  
7 your mom?

8 A. No.

9 Q. And did your boyfriend, Salvador, did he own a cell  
10 phone?

11 A. No, not at the time.

12 Q. Okay. And after the police searched your car, did  
13 they then release you and your mother?

14 A. Yes. After asking us a bunch of questions for hours,  
15 and did we know anything, and who is this guy and this one and  
16 that one. And then after that, yeah, they let us go.

17 (Sotto voce at this time.)

18 BY MS. WONG:

19 Q. When the defendant was putting all of this stuff in  
20 your trunk, did you ever ask her what she was doing?

21 A. Yeah, she said she was going on vacation.

22 MS. WONG: No further questions.

23 THE COURT: Thank you.

24 Ms. Erickson, any questions for this witness?

25 MS. ERICKSON: Yes. Just one moment, Judge.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MS. ERICKSON:

4 Q. Good afternoon. Just checking to see if it's  
5 afternoon or morning.

6 May I call you Alisa? Alise?

7 A. No. It's Alise.

8 Q. Alise. May I call you that? I'm sorry.

9 A. Yeah.

10 Q. I know that I could not get your last name out  
11 correctly.

12 A. Yeah. It's Alise Esfandiar.

13 Q. I think you testified that you were at your home at  
14 6:00 P.M. on the evening of April 26th; is that correct?

15 A. Yes.

16 Q. And where were you living? Like, what area?

17 A. Lake Mead and Hollywood.

18 Q. Okay. And so around 6:00 P.M. you decide that you  
19 would be going over to the Bassler house; correct?

20 A. Yes.

21 Q. You testified that's Sheila's house?

22 A. Yes.

23 Q. Sheila what wasn't there, was she?

24 A. No.

25 Q. Okay. Jan lived there also?

1 A. Yes.

2 Q. Jan Pierce?

3 A. Yes.

4 Q. How long have you been friends with Jan?

5 A. Maybe, like, a year.

6 Q. Okay. And you went over there because Jan was upset  
7 about losing her dog?

8 A. Yeah. She was upset that her dog ran away and that  
9 her boyfriend was in jail and that Sheila was in a, like,  
10 rehab, like, institution type thing. And she said that she  
11 felt alone and that she wanted us to go and keep her company.

12 Q. Okay. So how long -- what time did you leave your  
13 house, do you think?

14 A. Around 6:00 P.M.

15 Q. Okay. And how long did it take to drive to Jan's  
16 house?

17 A. Maybe, like, 20 minutes or 30 minutes.

18 Q. Okay. So maybe around 6:30 you got there?

19 A. Yeah.

20 Q. How long were you at Jan's, at the residence at  
21 Bassler, before Jan got a call?

22 A. About maybe an hour and a half to two hours. We were  
23 just hanging out.

24 Q. Okay. So 8:30, somewhere in that area?

25 A. Yeah. Maybe, like, 8:00, 8:30.

1 Q. Okay. And then Jan got a call and you drove over to  
2 pick up Ivonne?

3 A. Uh-huh.

4 Q. Is that correct? You have to say --

5 A. Yes. Sorry. Yes.

6 Q. That's okay.

7 You drove over to pick her up. What time do you  
8 think you left, about?

9 A. From the 7-Eleven?

10 Q. No. From Jan's house.

11 A. Oh, probably around -- maybe 8:50. I'm not sure.

12 Q. 9:00 o'clock?

13 A. Yeah, maybe 9:00 o'clock. I'm not too sure.

14 Q. How long does it take to drive to where you picked  
15 her up -- picked Ivonne up at the 7-Eleven?

16 A. Maybe -- maybe 20, 25 minutes.

17 Q. Okay. And when you got to the 7-Eleven, you saw  
18 Ivonne?

19 A. Yeah. She wasn't there yet, but she came after.

20 Q. And was Ivonne alone?

21 A. No. She was with her girlfriend, I guess, at the  
22 time.

23 Q. Okay. And did you know the girl? And they came  
24 together; right? They didn't --

25 A. Yeah.

1 Q. One didn't come before the other?

2 A. No.

3 Q. They just -- they both came out?

4 A. Yeah, they both came together.

5 Q. And when you say "came out," where were they coming  
6 from?

7 A. I'm not sure, because we were parked at 7-Eleven and  
8 they came, like, from the behind the corner.

9 Q. Okay. And so we're probably around 9:00 o'clock,  
10 give or take some time; correct?

11 A. Yes.

12 Q. Drove back to the Bassler house?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes. Oh, yes. Sorry.

16 Q. And --

17 A. After she checked the hood and all that stuff.

18 Q. I'm sorry?

19 A. After she checked the hood and all that stuff,  
20 because my mom's light wasn't working and she said that she  
21 could probably fix it.

22 Q. So Ivonne -- your mom's light -- her headlights  
23 weren't working?

24 A. One wasn't.

25 Q. One wasn't working?

1 A. One was, like, dim, and Ivonne said she could fix it.

2 Q. Okay. Did she fix it?

3 A. Kind of.

4 Q. Kind of, okay.

5 And then you drove straight back to Jan's house.

6 A. Yes.

7 Q. Okay. And you were at her house, Ivonne got out.

8 And the girl named Felicia, that you picked up, got out of the  
9 car too?

10 A. Yeah.

11 Q. And Ivonne brought some items out from the house?

12 A. Yeah.

13 Q. And Felicia brought some of the items out from the  
14 house?

15 A. Yes.

16 Q. Okay. And after the -- after Felicia and Ivonne put  
17 the things that you saw pictures of in the trunk of your car,  
18 you guys got ready to drive somewhere else.

19 A. Yes.

20 Q. And you didn't get very far.

21 A. No.

22 Q. Okay. So you were pulled over by the police.

23 A. Yes.

24 Q. And they asked who everyone was.

25 A. Uh-huh -- I mean yes.

1 Q. Okay. And you said that Ivonne got out of the car.

2 A. Yes.

3 Q. And she cooperated with the police?

4 A. Yes.

5 Q. She didn't try to escape?

6 A. She didn't try to escape or run or anything like  
7 that.

8 Q. Okay. And you gave a statement.

9 Do you remember what time your statement was from?

10 A. Um, maybe, like, 9:30, 10:00. I'm not too sure.

11 Q. If I show you your report, would that refresh your  
12 recollection or not about what time it was? Can I show you  
13 this?

14 A. Yeah.

15 MS. ERICKSON: May I approach, Judge?

16 THE COURT: You may.

17 BY MS. ERICKSON:

18 Q. I'm showing you a report. Does that look your  
19 handwriting?

20 A. Yeah, that's my -- I did that, yeah.

21 Q. Okay. And I'm showing you -- there's writing at  
22 2330. Does that -- that's military time.

23 A. Oh, yeah.

24 Q. It's, like, 11:30.

25 A. Oh, yeah. That was after we had already talked and

1 they were, like, asking us all kind of questions. After  
2 everything, then they asked us to write the statement. Like,  
3 in the end.

4 Q. Okay. All right. And so you were -- it -- the  
5 police report says that they stopped you around 9:35.

6 A. Yeah. And then at 9:35, that's when they got all of  
7 us out of the car. They were, like, pulled everybody to the  
8 side asking a bunch of questions, basically interrogating us.

9 And then at the end of everything, they asked us if  
10 we wanted -- if we needed to sign -- do those statements.

11 And I said: No.

12 And then they said: You need to, just tell us what  
13 happened.

14 And I said: I don't want to.

15 And they said: Just tell us what happened. It's  
16 nothing bad.

17 And so I did.

18 But it was a while. That's the right time because it  
19 was already, like, prolonged.

20 Q. Okay. So you were pulled over probably around 9:35.  
21 And then you were at the scene and didn't -- and did your  
22 statement later that evening?

23 A. Yeah, it was a lot of stuff before he even said  
24 anything about statements.

25 Q. Okay.

1           A.    They were asking us if we knew some other people, and  
2 stuff like that.

3                   MS. ERICKSON:   Okay.   Thank you very much.

4                   THE COURT:   Anything further, Ms. Wong?

5                   MS. WONG:   No, Your Honor.

6                   THE COURT:   May I see, by a show of hands, do  
7 the jurors have questions for this witness?

8                   (Negative response from the prospective jury panel.)

9                   THE COURT:   Seeing that there's none,  
10 Ms. Esfandiar, you are excused.   Thank you.   Please collect  
11 your stuff as you exit the courtroom.

12                   THE WITNESS:   Thank you.

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

14                   THE COURT:   Ladies and gentlemen of the jury,  
15 it's 12:15, we're going to take a lunch recess.   I'm going to  
16 bring us back at 1:30.   It gives everybody a little bit of time  
17 to find their way around downtown.

18                   I think this is, possibly, your first actual day  
19 seeking out lunch around here, but I could be wrong.

20                   But we'll come back at 1:30 and we'll be prepared,  
21 hopefully, to start promptly at that time, but please do be  
22 back at 1:30.

23                   (The jury was admonished by the Court.)

24                   THE COURT:   We'll see you back at 1:30.

25                   THE MARSHAL:   All rise.

1           (The following proceedings were had in open  
2           Court outside the presence of the prospective jury  
3           panel:)

4           THE COURT: Do you need to make a brief record  
5           from the testimony from this morning during Mr. Whipple's  
6           questioning of Ms. Marin?

7           I sustained an objection with regard to a discussion  
8           of a particular record he wished to show her. He then asked to  
9           make a further record regarding the proffer and identify the  
10          something that couldn't be done with one quick statement, and  
11          otherwise might be inappropriate to be made in front of the  
12          jury, so we indicated we would allow that record to be made.  
13          Mr. Whipple?

14          MR. WHIPPLE: Your Honor, it was the question --  
15          the juror question, and my objection was hearsay.

16          THE COURT: No. I haven't gotten to the juror  
17          question part yet.

18          This was during the questioning of Ms. Marin and you  
19          wanted to present her with some documentation to show her.

20          MR. WHIPPLE: Yep.

21          THE COURT: The State objected on relevancy  
22          grounds.

23          MR. WHIPPLE: Yes.

24          THE COURT: I sustained that objection. You  
25          then indicated that you wanted to make a further argument or

1 make a further record, but you did not think it would be  
2 appropriate to do so in front of the jurors, so we proceeded.  
3 But I wanted to give you the opportunity to flesh that out that  
4 record now.

5 MR. DIGIACOMO: I believe he eventually did show  
6 her, and she denied ever receiving that text message.

7 THE COURT: So it was the same document. I  
8 thought it was something --

9 MR. DIGIACOMO: I believe it was the same  
10 document.

11 THE COURT: I thought it was something else.

12 MR. DIGIACOMO: So we resolved it later on.

13 THE COURT: It was the text --

14 MR. WHIPPLE: There were a series of text  
15 messages that we discussed at the bench, and the Court was  
16 concerned that they were extrinsic.

17 And eventually, through the cross-examination, I did  
18 utilize at least one, or maybe two -- at least one with regard  
19 to refresh the recollection of the witness. And she said that  
20 she didn't recognize it, so that was the extent of it.

21 THE COURT: Well, there was an objection imposed  
22 by Ms. Wong at that point -- at one point, as well, as to the  
23 answer was no, not that she didn't recall.

24 But actually, the form of the question, what -- do  
25 you recall something, and, no, I believe total circumstance did

1 warrant the allowing of the refreshing of the recollection, and  
2 we proceeded.

3           Okay. I just wanted to maybe sure we completed our  
4 record and there wasn't anything else that the defense needed  
5 to state at that time.

6           We did have the juror question. The Court did  
7 admonish with regard to the avoiding of any hearsay discussion.  
8 The defense had objected on the basis of hearsay. And for the  
9 same basis that we allowed that testimony, there was testimony  
10 with regard from Ms. Wantland.

11           And this was allowed, not as a hearsay, but as a --  
12 her state of mind. And as an exception, therefore, to hearsay  
13 to allow for her state of mind and what her perceptions were of  
14 those circumstances.

15           Does the State or the defense want to make any  
16 further record with regard to the juror question and the  
17 response from the witness?

18           MR. DIGIACOMO: Not from the State.

19           MR. WHIPPLE: No, Your Honor.

20           THE COURT: Okay. My last question before we  
21 break, and this may be something to think about for the  
22 defense, and then we can follow-up after lunch, but I have that  
23 order drafted that would allow for Mr. Gonzales to be brought  
24 present for the trial.

25           There was some discussion, very briefly, earlier,

1 that it's possible the State could rest on Monday.

2 I need to be able to get a date certain by which this  
3 order would be completed to have him produced. Would that be  
4 Tuesday or Wednesday?

5 I just want you to think about that so we can  
6 complete this.

7 MR. DIGIACOMO: Judge, may I suggest to you that  
8 you do the order for Tuesday? If he is still at High Desert,  
9 we routinely will call and say, hey, just move the day, and the  
10 prison has no problem in doing that.

11 I can get him on the bus if he's in High Desert. If  
12 he's in Ely, he ain't being here for weeks. I assume he's  
13 still in High Desert.

14 THE COURT: I just need my JDA to determine what  
15 needs to be placed in the order and where he was. It's under  
16 the understanding that he is at High Desert, and under the  
17 understanding that he could be made available as quickly as  
18 24 hours, but their preference would be 48.

19 And so if we do make it for Tuesday, the order does  
20 contain language that he would be retained here and not sent  
21 back in the event that he didn't get called the day that he was  
22 here, but -- is that -- Tuesday work?

23 MS. ERICKSON: I don't -- you know, depending on  
24 what they do, I have no idea. If they're going to be done  
25 Monday, then Tuesday is fine.

1                   MR. DIGIACOMO: I assume we're going to be done  
2 on Monday, so --

3                   THE COURT: All right.

4                   MR. DIGIACOMO: Another issue is, and it's  
5 because I came in late, I'm assuming at some point we did have  
6 one, but Ms. Wong didn't, and I couldn't find it in  
7 Mr. Staudaher's file.

8                   When the Court made a ruling on the defendant's  
9 statements about what the Court believed needed to be redacted  
10 or not redacted, the defense had given a color copy to the  
11 Court.

12                   I know the Court has the exhibit in color. I was  
13 wondering if I could have permission to take that exhibit, scan  
14 it so I have it in color, and then I can return it to the Court  
15 either, if I have it, now, or I can return it on Monday, or  
16 Ms. Erickson can resend me her color copy of it. I just do not  
17 see it anywhere in Staudaher's file.

18                   MS. ERICKSON: He was provided one, but let me  
19 see if mine is in color.

20                   THE COURT: If we can re-provide it, that  
21 would -- I would appreciate that.

22                   MS. ERICKSON: I'll look for it in color. And  
23 if it's not, I'll scan it. Well, I won't -- how long are we  
24 taking for lunch? I'm sorry.

25                   THE COURT: Until 1:30.

1 MR. DIGIACOMO: I can scan the one that the  
2 Court has right now if the defense doesn't have an objection.  
3 There's an exhibit in the exhibit package.

4 Are they still here? They are still here. I can  
5 just scan it at lunch, no problem.

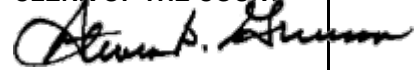
6 THE COURT: We'll be back at 1:30. See you  
7 then.

8 (Recess in proceedings.)

9  
10 \* \* \* \* \*

11  
12 ATTEST: Full, true and accurate transcript of proceedings.

13  
14 /S/Renee Silvaggio  
15 RENEE SILVAGGIO, C.C.R. 122  
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TRAN  
CASE NO. C-12-283700-1  
DEPT. NO. 25

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	REPORTER'S TRANSCRIPT
	)	OF
	)	JURY TRIAL
vs.	)	
	)	
IVONNE CABRERA,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED FRIDAY, JULY 7, 2017

REPORTED BY: Sharon Howard, C.C.R. #745

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.

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

NAME: ROBERT KNICKERBOCKER PAGE

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NAME: ENRIQUE RODRIGUEZ PAGE

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NAME: VICTOR DUMON PAGE

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NAME: CRYSTAL MAY PAGE

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\* \* \* \* \*

1 LAS VEGAS, NEVADA; FRIDAY, JULY 7, 2017

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

3 \* \* \* \* \*

4  
5 THE COURT: Good afternoon. Anything before we  
6 bring in the jury.

7 MS. ERICKSON: Nothing from defense.

8 THE COURT: Thank you for your patience this  
9 week.

10 Let me ask the State if they're prepared to call  
11 their next witness.

12 MR. DIGIACOMO: We are. Officer  
13 Knickerbocker.

14 THE COURT: Come take the witness stand. My  
15 clerk will swear you in.

16 THE CLERK: You do solemnly swear the testimony  
17 you are about to give in this action shall be the truth,  
18 the whole truth, and nothing but the truth, so help you  
19 God.

20 THE WITNESS: Yes, I do.

21 THE CLERK: State and spell your name for the  
22 record.

23 THE WITNESS: Robert Knickerbocker, R-O-B-E-R T,  
24 K-N-I-C-K-E-R-B-O-C-K-E-R.

25 THE COURT: When you're ready.

1 MR. DIGIACOMO: Thank you.

2 DIRECT EXAMINATION

3 BY MR. DIGIACOMO:

4 Q. Officer, how are you employed?

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

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

8 A. 14 years and 10 months.

9 Q. I'll direct your attention back to April 26,  
10 2012. What was your assignment back then?

11 A. I was assigned to the problem solving unit.

12 Q. Describe to the Ladies and Gentlemen of the  
13 jury what the problem solving unit is?

14 A. The problem solving unit is the extra part of  
15 the patrol division. But instead of answering calls for  
16 service, the radio calls that come in, we work our street  
17 level narcotics. We work gangs. Then we also work  
18 hand-in-hand with our detective bureau on any assignments  
19 they need us to complete.

20 Q. Are you plain clothes in the problem solving  
21 unit?

22 A. It's a mixture of uniform and plain clothes.

23 Q. What about your vehicles. Are they marked or  
24 unmarked?

25 A. They're unmarked Crown Vics -- Crown Victoria.

1           Q.       I'll direct your attention to the early  
2 evening hours of April 26th of 2012. Were you requested by  
3 detectives to conduct surveillance of an address at 1927  
4 Bassler?

5           A.       Yes, we were.

6           Q.       Did you do this alone or did you have people  
7 with you?

8           A.       Our entire team did this.

9           Q.       Name the other people who are part of the  
10 team.

11          A.       On this case it was Officer Denise Aguilar,  
12 Officer Josh Leavitt, and myself.

13          Q.       Were you in a vehicle by yourself or with  
14 somebody else?

15          A.       I was in a vehicle with Officer Leavitt.

16          Q.       What about Officer Aguilar?

17          A.       She was in plain clothes conducting  
18 surveillance on that address.

19          Q.       What was her responsibility at that  
20 address?

21          A.       Her responsibility was to identify the  
22 suspect, either at the house or coming and going from that  
23 house.

24          Q.       Who was the suspect you were looking for?

25          A.       Ivonne Cabrera.

1           Q.       At some point that evening do you come in  
2       contact with Ivonne Cabrera?

3           A.       Yes.

4           Q.       Do you see Ms. Cabrera in court today?

5           A.       I can't remember from her picture from 5 years  
6       ago.

7           Q.       Okay. Describe for us -- you said Officer  
8       Aguilar had a responsibility of identifying the suspect.  
9       Does the term being the eye mean something to you?

10          A.       Yes. The eye is the person who is responsible  
11       for conducting the surveillance.

12          Q.       Did you actually see the front of Bassler?

13          A.       No, I did not.

14          Q.       Where were you and Officer Leavitt  
15       stationed?

16          A.       1900 block of Bassler. I believe we were off  
17       of Tonopah and McCarran.

18                 MR. DIGIACOMO: May I approach.

19                 THE COURT: You may.

20       BY MR. DIGIACOMO:

21          Q.       Showing you what's been marked as State's  
22       Proposed Exhibit 145. I'll represent to you it's a Google  
23       image aerial of both Bassler and Webster area.

24                 Does that area look familiar to you?

25          A.       Yes, it does.

1 Q. Does it appear to be a true, fair, and  
2 accurate depiction of that general area?

3 A. Yes.

4 MR. DIGIACOMO: Move to admit 145.

5 MS. ERICKSON: No objection.

6 THE COURT: State's 145 will be admitted.

7 BY MR. DIGIACOMO:

8 Q. I'll put this on the overhead for you,  
9 Officer. We're going to try this again. It will be the  
10 first time it works. Can you identify -- can you circle  
11 on your screen the Bassler address?

12 A. Right there.

13 Q. Where were you and Officer Leavitt located?

14 A. Based on where the house was, I would -- I  
15 can't remember exactly where we were that night, but based  
16 on how we conduct surveillance we would have been off  
17 Bassler and Flower. In this area.

18 Q. Okay.

19 Eventually do you receive information from --  
20 without telling us what it is -- from Officer Aguilar that  
21 there may be a vehicle that you may want to have contact  
22 with?

23 A. Yes.

24 Q. Eventually do you and Officer Leavitt pull  
25 over a particular vehicle?

1           A.       Yes, we do.

2           Q.       I'll put up for you State's Exhibit 111.

3               Does that appear to be a photograph of the vehicle  
4 you and Officer Leavitt pulled over?

5           A.       Yes, it is.

6           Q.       Why did you pull this particular vehicle  
7 over?

8           A.       It was based on the information that  
9 Ms. Cabrera was in that vehicle.

10          Q.       When you pulled that vehicle over how many  
11 times was it occupied?

12          A.       It was either 4 or 5 times.

13          Q.       Did you locate Ms. Cabrera in that vehicle?

14          A.       Yes.

15          Q.       Where was she positioned?

16          A.       She was sitting in the back, right-hand side,  
17 which is the back passenger side of the vehicle.

18          Q.       Did you remove her from that vehicle?

19          A.       Yes, I did.

20          Q.       Did you take her into custody for the charges  
21 we are here for?

22          A.       Yes.

23          Q.       During the course of the investigation that  
24 was going on with that vehicle, were there some items  
25 removed from the trunk of the vehicle and placed on the

1 hood of one of the North Las Vegas vehicles that were  
2 there?

3 A. Yes.

4 Q. Showing you State's Exhibit 139.

5 Were those the items taken out of that blue vehicle  
6 and placed on the hood of the North Las Vegas vehicle?

7 A. Yes, they are.

8 MR. DIGIACOMO: Thank you. I'll pass the  
9 witness.

10 THE COURT: Ms. Erickson.

11 CROSS-EXAMINATION

12 BY MS. ERICKSON:

13 Q. Officer Knickerbocker, what time did the  
14 surveillance begin?

15 A. If I remember correctly, we were out there  
16 less than an hour.

17 Q. Would you agree that it began around 21:15?

18 A. Correct.

19 Q. What's 21:15 for those of us that use regular  
20 time?

21 A. That time would be 9:15.

22 Q. You got -- did you receive information about  
23 10 minutes after that that was of interest to you?

24 A. After the surveillance began?

25 Q. Correct.

1           A.       Yes. I want to say yes. If it's leading  
2 toward the traffic stop, yes.

3           Q.       I'm sorry.

4           A.       I don't understand the question.

5           Q.       Did you receive information from Officer  
6 Aguilar 10 minutes later?

7           A.       Yes.

8           Q.       That information -- that would have been what  
9 time?

10          A.       If we started right around 21:15 it would have  
11 been between 21:25 and 21:30.

12          Q.       Okay. You stopped the car at around what  
13 time?

14          A.       I would have to review the report on what time  
15 we did the car stop.

16                   MS. ERICKSON: May I approach.

17                   THE COURT: You may.

18                   BY MS. ERICKSON:

19          Q.       Handing you a report. Does that look like the  
20 report that you authored?

21          A.       It's Officer Leavitt's report.

22          Q.       Okay. But you were his partner on that day?

23          A.       Correct.

24          Q.       You would have observed anything contained in  
25 that report?

1           A.       He was driving and I was the passenger that  
2 day.

3           Q.       You might have seen more than him.

4           A.       Yes.

5           Q.       Do you know what time the car you were  
6 testifying about was stopped?

7           A.       It's going to be right around 22:51 hours.

8           Q.       That would be?

9           A.       10:51.

10          Q.       You had, there were 5 people in the car. You  
11 took them all out. And you talked to each one of them?

12          A.       No. I didn't talk to -- I can't remember who  
13 I spoke with. I didn't talk to everybody.

14          Q.       You were there and other officers came and you  
15 took Ivonne out of the car, correct?

16          A.       Yes.

17          Q.       And she was cooperative?

18          A.       Yes.

19          Q.       She didn't resist. She didn't try to run?

20          A.       No, she didn't.

21          Q.       After you took her out of the car, where did  
22 you take her?

23          A.       I placed her in handcuffs, and where we did  
24 the traffic stop, there was a retaining wall. I had her  
25 sit on the retaining wall. I told her detectives would be

1       there shortly. I just watched her.

2               Q.       And she did nothing other then sit there?

3               A.       Yes.

4               Q.       What was her demeanor?

5               A.       I just watched her. She didn't ask me any  
6       questions or anything like that.

7               Q.       That wasn't the end of your investigation, was  
8       it?

9               A.       My --

10              Q.       Your involvement in the investigation?

11              A.       No, it was not.

12              Q.       You knew that Jose Gonzales was a suspect in  
13       the case?

14              A.       I can't remember the other suspect's name.

15              Q.       If I showed you an e-mail that you may have  
16       sent, would that refresh your recollection?

17              A.       Yes.

18                      MS. ERICKSON: May I approach.

19                      THE COURT: You may.

20       BY MS. ERICKSON:

21              Q.       Showing you an e-mail. Could you look at it  
22       and let me know if that is an email you sent?

23              A.       Yes.

24              Q.       Who was it sent to?

25              A.       Detective Prieto.

1           Q.       Detective Prieto was the lead detective from  
2 North Las Vegas on the case?

3           A.       Correct.

4           Q.       You informed Detective Prieto regarding  
5 what?

6           A.       He was asking for information regarding two  
7 monikers or nicknames.

8           Q.       Which two monikers or nickname?

9           A.       Smokie and Loka.

10          Q.       In your email were you responding with a  
11 nickname?

12          A.       Yes, I did.

13          Q.       What was the -- what real name was the moniker  
14 Smokie go to?

15          A.       A possible name of Jose Gonzales.

16          Q.       Who did the nick name Loka go to?

17          A.       It came back to a possible Faviola Gonzales.

18          Q.       To your knowledge is Jose Gonzales and Faviola  
19 Gonzales brother and sister?

20          A.       I have no idea.

21          Q.       Okay.

22                You would agree with me that what you sent did have  
23 information that was consistent as to place of birth for  
24 both of those people?

25          A.       Yes.

1 Q. Mission Viejo, California?

2 A. Yes.

3 Q. Okay. I'm sorry.

4 This was what date?

5 A. I can't --

6 Q. Refresh your recollection?

7 A. Yes. It looks like it was on April 27th.

8 Q. 2012?

9 A. Yes.

10 Q. At what time?

11 A. 6:22 p.m.

12 Q. Okay.

13 MS. ERICKSON: Thank you. That's all I have.

14 THE COURT: Mr. DiGiacomo, anything further.

15 MR. DIGIACOMO: Nothing.

16 THE COURT: Let me see by a show of hands if the  
17 jury has any questions for this witness. I see no hands.

18 Officer you are excused. Thank you.

19 State may call their next witness.

20 MS. WONG: State calls in rod.

21 THE COURT: Come and take the witness stand. My  
22 clerk will swear you in.

23 THE CLERK: You do solemnly swear the testimony  
24 you are about to give in this action shall be the truth,  
25 the whole truth, and nothing but the truth so help you

1 God.

2 THE WITNESS: I do.

3 THE CLERK: State and spell your name for the  
4 record.

5 THE WITNESS: Enrique Rodriguez, E-n-r-i-q-u-e  
6 R-o-d-r-i-g-u-e-z.

7 THE COURT: Whenever you are ready.

8 MS. WONG: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MS. WONG:

11 Q. Mr. Rodriguez, how are you employed?

12 A. I work for the customs boarder protection,  
13 Department of Homeland Security.

14 Q. Is what position do you hold with customs and  
15 boarder patrol?

16 A. Officer -- federal officer.

17 Q. What are some of your duties and  
18 responsibilities?

19 A. Some of my duties is we work at -- we work at  
20 the port of entry in San Ysidro, California, which  
21 separates Dan Diego, Tijuana, Mexico. So as a primary  
22 officer we are in charge of facilitating trade and travel  
23 for individuals crossing the board, walking or in a  
24 vehicle.

25 Q. Were you working there back in 2009?

1           A.       Yes.   That's when I got hired -- 2009.

2           Q.       Were you stationed at the San Ysidro port at  
3           that time?

4           A.       No.   I was working at the Otta (ph) Mesa port  
5           of entry from the time I started.

6           Q.       What is it -- Otta (ph) Mesa -- does that also  
7           boarder Mexico and San Diego?

8           A.       Correct. It's 10 minutes east from San Ysidro  
9           port of entry.

10          Q.       Are you familiar with the standard procedure  
11          when vehicles seek entry into the United States from  
12          Mexico?

13          A.       Yes, ma'am.

14          Q.       You've been working there now for about 8  
15          years?

16          A.       Yes.

17          Q.       Tell me -- explain to the jury what the  
18          standard procedure is?

19          A.       Yes, of course.

20                 When a vehicle seeks entry into the United States,  
21          they go ahead -- Otta (ph) Mesa, there's 12 lanes -- they  
22          wait in line.   When they approach a primary booth, there  
23          is a customs and boarder protection officer, and the --  
24          protective of the officer is to verify that the documents  
25          being presented are genuine and that they belong to the

1 occupants of the vehicle, so they are enforcing  
2 immigration laws, to see if they have proper entry  
3 documents.

4 They also seek for merchandise to see if the  
5 merchandise they have is allowed. If there's any  
6 contraband in the vehicle.

7 Q. What happens if something unusual is located  
8 or suspected?

9 A. If something is suspected or located, if it's  
10 suspected it gets referred to a vehicle secondary. That's  
11 where another CP officer -- protection officer -- they'll  
12 go ahead and look at their computer and they'll see the  
13 notes or the referral -- the car is being referred -- and  
14 they're going to see what it is they need to check. They  
15 do a follow-up inspection.

16 Q. So back in 2012, on June 11th, at  
17 approximately 1:33 a.m., where were you assigned?

18 A. I was a Z port operator, which is an x-ray  
19 image operator. That is for vehicles that are referred to  
20 vehicle secondary.

21 Q. At that time was there a vehicle that was  
22 referred to you?

23 A. Correct. Yes.

24 Q. That was a gray Chevy Impala?

25 A. Yes.

1 Q. How is the vehicle referred to you?

2 A. So the primary officer will go ahead and put a  
3 orange slip on the windshield of the vehicle, and they get  
4 escorted or told where to go for secondary.

5 Once they get to vehicle secondary, there's an  
6 officer that is waiting to write down their license plates  
7 for records and they give they instructions how the  
8 proceed through the x-ray system. Afterwards, the vehicle  
9 goes through the x-ray imaging system. I am in a small  
10 building or small area that's enclosed, and I have screens  
11 that I'm monitoring or observing for any anomalies or  
12 anything that seems out of place.

13 Q. When a vehicle is referred over to x-ray, does  
14 the passenger or passengers in the vehicle stay inside?

15 A. Yes, they do.

16 Q. On this occasion do you recall how many  
17 passengers were inside this Impala?

18 A. There was two.

19 Q. Two. Do you recall their genders?

20 A. Female.

21 Q. Were they seated in the front -- passenger and  
22 the driver's seat?

23 A. Yes.

24 Q. Did that vehicle go through your x-ray?

25 A. Yes.

1 Q. What, if anything, did you observe?

2 A. I noticed an anomaly in the trunk of the  
3 vehicle once it went through the x-ray system.

4 Q. What do you mean you saw an anomaly?

5 A. Anomalies are referred to as something that is  
6 not typically found on a factory vehicle. It could be for  
7 example of there's a black box in the truck or if there's  
8 a black box by the gas tank, we do further examination to  
9 see if there is contraband or if it's indeed a factor  
10 piece of steel that's protecting the gas tank. In this  
11 case I saw an anomaly in the shape of a body.

12 Q. You notice the anomaly was the shape of a  
13 human body?

14 A. Yes.

15 Q. What did you do upon seeing that?

16 A. I requested for assistance from the other  
17 officers in the secondary lot, and they responded to the  
18 vehicle. And that's when they were removed from the  
19 vehicle.

20 Q. Did you see the person being removed from the  
21 vehicle?

22 A. Yes. I was in the area. I was looking at  
23 everything that was happening because nothing stops until  
24 everything gets taken care of with that suspect vehicle.

25 Q. This person was removed from the truck of the

1 vehicle?

2 A. Yes.

3 Q. Do you recall the gender of the person from  
4 the truck?

5 A. A male.

6 Q. What do you do at that point?

7 A. At that point, once the vehicle is secured, I  
8 went back to my station to proceed with the other vehicles  
9 that were waiting to be x-rayed.

10 Q. Do you identify the driver and the passenger  
11 and the person hiding in the trunk of the vehicle?

12 A. No.

13 Q. Would that be your responsibility?

14 A. No.

15 Q. So your responsibility would be to stay at  
16 the --

17 A. At the exit -- imaging station, correct.

18 Q. What happens to the people who are removed  
19 from that vehicle?

20 A. They get taken to a secured area within the  
21 vehicle secondary lot and they get processed.

22 Q. They are processed by somebody else from a  
23 different unit?

24 A. Yes or a different station. Same federal  
25 officer in customs boarder protection.

1 MS. WONG: No further questions.

2 THE COURT: Mr. Whipple or Ms. Erickson,  
3 anything for this witness.

4 CROSS-EXAMINATION

5 BY WHIPPLE:

6 Q. Did you get the name of the person in the  
7 trunk.

8 A. No.

9 Q. To this day you don't know who was in the  
10 trunk?

11 A. No.

12 MR. WHIPPLE: That's all.

13 THE COURT: Ms. Wong.

14 MS. WONG: Nothing.

15 THE COURT: Let me see by a show of hands if  
16 there's anything from the jurors. No.

17 Officer, you are excused.

18 THE WITNESS: Thank you, your Honor.

19 THE COURT: State may call their next witness.

20 MS. WONG: State calls Victor Dumon.

21 THE COURT: Come forward and take the witness  
22 stand. My clerk will swear you in.

23 THE CLERK: You do solemnly swear the testimony  
24 you are about to give in this action shall be the truth,  
25 the whole truth, and nothing but the truth so help you

1 God.

2 THE WITNESS: I do.

3 THE CLERK: State and spell your name for the  
4 record.

5 THE WITNESS: Victor Dumon, D-u-m-o-n.

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

7 MS. WONG: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MS. WONG:

10 Q. How are you employed?

11 A. I'm with Department of Homeland Security,  
12 customs and broader protection.

13 Q. What is your position?

14 A. I'm with criminal enforcement unit.

15 Q. Were you working in that capacity back in  
16 2012?

17 A. No. I was with admissibility enforcement.

18 Q. Tell us your responsibilities for the  
19 admissibility enforcement team?

20 A. Yes. Well, we do admissibility enforcement,  
21 which is to verify individuals if they are admissible into  
22 the United States or not through fingerprinting and  
23 quires.

24 Q. I want to direct your attention to June 11 of  
25 2012, at approximately 1:50 in the morning that day. Did

1       you make contact with 3 individuals removed from a Chevy  
2       Impala?

3           A.       Yes.   There were two females, a driver and a  
4       passenger, and it was -- we were notified through radio  
5       communications that there was body in the trunk and the  
6       body in the trunk was a live body.

7           The driver and the female passenger were secured  
8       and escorted to the security office for officer safety for  
9       pat-down procedures, which yielded negative results.

10          Q.       Did you ultimately identify who these females  
11       were?

12          A.       It was a Marsha --

13          Q.       Was that Marsha Miller?

14          A.       Yes.   She was the driver.

15          Q.       Okay.

16               Who was the passenger?

17          A.       And a Darlene --

18          Q.       Hoag --   is that Crystal Hoag?

19          A.       H-o-a-g.

20          Q.       That first name, do you know what the first  
21       name is?

22          A.       Darlene.

23          Q.       All right.

24               Now, let's talk about the male.   Did you make  
25       physical contacted with this male?

1           A.       Yes. After he was extracted from the trunk of  
2 the vehicle he was escorted to my area of operation. My  
3 duties are to fingerprint them for identification purposes  
4 and filling out the Appendix D, which is a biography  
5 information sheet.

6           He claimed to the escorting officer that his name  
7 was Ben Viroy -- something.

8           Q.       Okay.

9           A.       Not the Jose Gonzales that popped up on his  
10 rap sheet.

11          Q.       When you first made contact with the male  
12 removed from the trunk, your understanding was you thought  
13 his name was Benjamin Viroy?

14          A.       Yes, because I was filling out the appendix.

15          Q.       You did fingerprint this individual?

16          A.       Yes.

17          Q.       What did you learn as a result?

18          A.       The rap sheet popped up as Jose Gonzales.

19          Q.       What else did you learn about Jose Gonzales?

20          A.       He was born in the State of Cali --  
21 California.

22          Q.       You confirmed his US citizenship?

23          A.       That really doesn't give us anything. A lot  
24 of people claim that.

25          Q.       You said the fingerprint told you that he was

1       born in California.

2           A.       On his -- what he claimed to me was that he  
3       was born in the State of Texas, Corpus Cristi. I had to  
4       question him on that. He did say he was born in the state  
5       of California.

6           Q.       What other information did you learn about  
7       him?

8           A.       An NCIC alert popped up on the fingerprint  
9       record.

10          Q.       As a result what was generated?

11          A.       That he was a wanted person in the United  
12       States.

13          Q.       Wanted for what?

14          A.       For homicide.

15          Q.       In what state?

16          A.       In Nevada.

17               MS. WONG: No further questions.

18               THE COURT: Thank you, Ms. Wong.

19               Mr. Whipple or Ms. Erickson.

20                       CROSS-EXAMINATION

21       BY MS. ERICKSON:

22           Q.       Are you -- is the proper word Officer Dumon or  
23       is there another title you have?

24           A.       Officer is fine.

25           Q.       You testified there were 2 females, a driver

1 and a passenger in the fronts seat -- in the front of the  
2 car?

3 A. Yes.

4 Q. You identified them by their driver's license  
5 or other information?

6 A. Yes. Both of them had State of Nevada  
7 identification cards. One of them -- one of them had a  
8 rap sheet also.

9 Q. You wrote a report with regard to information  
10 of who those people were?

11 A. Yes.

12 Q. Does this look like the fifth page of your  
13 report -- 5 or 6 pages of a report you would have made?

14 A. Yes.

15 Q. You said the other person was Marsha. Who is  
16 the second -- Crystal Hoag?

17 A. Yes.

18 Q. Okay. So those were the two woman in the  
19 car?

20 A. Yes.

21 Q. Because you went through the x-ray, it was  
22 noticed there was something in the trunk that wasn't  
23 supposed to be there.

24 Did they declare there was something in the  
25 trunk?

1           A.       As far as -- that would be the primary  
2 officers.

3           Q.       You don't know. But they got sent to you?

4           A.       Yes.

5           Q.       You said that Mr. Gonzales was extracted from  
6 the car. What does that mean?

7           A.       Instructed to get out of where he was  
8 stationed out.

9           Q.       Did he want to get out?

10          A.       Yes.

11          Q.       He got out?

12          A.       He got out on his own.

13          Q.       Then you said that he told you his name was  
14 Benjamin what?

15          A.       Benjamin Virov.

16          Q.       Do you know how it is spelled?

17          A.       V-i-r-o-y.

18          Q.       He also told you he was born in Corpus  
19 Christi, Texas?

20          A.       Yes.

21          Q.       The name he gave you was a lie, because he was  
22 Jose Gonzales?

23          A.       I wouldn't know.

24          Q.       He told you his name was Benjamin. You did  
25 his fingerprints and he came up as Jose Gonzales.

1           A.       Yes.

2           Q.       From his fingerprints he told you he was born  
3 in Corpus Christi, Texas and from his fingerprints you  
4 know he was born in California?

5           A.       Yes.

6           Q.       So that was a lie.

7           A.       It's a conflict of information. Some get  
8 apprehended by local police and claim to be Jose Gonzales.  
9 At our time of apprehension, he claimed to be Benjamin  
10 Viroy.

11          Q.       Which you learned was not his true name, based  
12 upon the fingerprints you took?

13          A.       Yes.

14                So our protocol -- I'm sorry. Our protocol is to  
15 go by what was on his rap sheet, which was Jose  
16 Gonzales.

17          Q.       What is a rap sheet?

18          A.       FBI records -- criminal records.

19          Q.       Arrests and conclusions of cases?

20          A.       Yes. So the rest of the names they would  
21 claim -- I would ask somebody again, what is your real  
22 name. And they give Miguel Dumon, then that would become  
23 their alias.

24          Q.       Do you remember how many aliases Jose Gonzales  
25 had?

1           A.       According to the FBI records, I believe there  
2       were 4 or 5 different names.

3           Q.       Sorry -- 4 or 5?

4           A.       4 or 5.

5           Q.       Were there multiple birth places?

6           A.       No, just one.

7           Q.       Just California?

8           A.       Yes.

9           Q.       Anything else on his rap sheet that was of  
10       interest to you as an officer?

11           MS. WONG:  Objection, relevance.

12           THE COURT:  Hold on.  There is an objection  
13       pending.

14           MS. ERICKSON:  It goes to the identification of  
15       Mr. Gonzales and what he was doing.

16           THE COURT:  Overruled.  You may proceed.

17       BY MS. ERICKSON:

18           Q.       Anything else in the records that was of  
19       interest to you as an officer at board patrol?

20           A.       Officer safety.  Due to his FBI records and  
21       what he was arrested for.

22           Q.       Okay.  So what he was arrested for made you  
23       concerned about officer safety?

24           A.       Yes.

25           MS. ERICKSON:  Thank you.

1 THE COURT: All right. Anything further, Ms.  
2 Wong.

3 MS. WONG: No.

4 THE COURT: Let me see by a show of hands if  
5 there are any questions for this witness.

6 Officer, seeing no additional questions for you at  
7 this time, you are excused. Thank you.

8 THE COURT: Thank you, ma'am.

9 THE COURT: Mr. DiGiacomo, your next witness.

10 MR. DIGIACOMO: Crystal May.

11 THE CLERK: You do solemnly swear the testimony  
12 you are about to give in this action shall be the truth,  
13 the whole truth, and nothing but the truth so help you  
14 God.

15 THE WITNESS: I do.

16 THE CLERK: State and spell your name for the  
17 record.

18 THE WITNESS: Crystal May -- C-r-y-s-t-a-l --  
19 M-a-y.

20 THE COURT: Thank you.

21 Mr. DiGiacomo.

22 DIRECT EXAMINATION

23 BY MR. DIGIACOMO:

24 Q. How are you employed?

25 A. I'm a forensic scientist with the biology DNA

1 detail for Las Vegas Metropolitan Police Department  
2 forensic laboratory.

3 Q. What do you do for a living?

4 A. I analyze evidence for the presence or absence  
5 of biological fluid and then develop a DNA profile from  
6 that evidence and compare those profiles back to the  
7 profile developed from our reference standards.

8 Q. You said you're an employee of Las Vegas  
9 Metropolitan Police Department?

10 A. Correct.

11 Q. Do you sometimes process evidence handled by  
12 other agencies within Clark County?

13 A. I do.

14 Q. In order to hold the position you do, do you  
15 have certain training and experience and background?

16 A. I do.

17 Q. Describe that for the ladies and gentlemen.

18 A. I currently hold a bachelor's degree --  
19 bachelor of science -- in biology from St. Mary of the  
20 Wood College in Indiana. I also hold a master of science  
21 in forensic science from the University of New Haven,  
22 Connecticut.

23 Upon being hired on as an analyst with the LVNPD  
24 forensic lab, I was put through a very intense, rigorous  
25 18 month training program where I was provided reading

1 materials, practical samples, written tests, all different  
2 steps in the training program to assess how well I was  
3 able to do my job, until I can progress to a scientist.  
4 Once I passed a final competency test to show I could do  
5 the job, I was then moved up to case work.

6 Q. How long have you been working case work  
7 now?

8 A. 5 years.

9 Q. Have you testified before and offered opinions  
10 in the area of DNA analysis and comparison?

11 A. I have.

12 Q. Let me ask you to generally describe the  
13 science behind DNA and DNA comparison?

14 A. DNA we know is inherited from your parents.  
15 You get half from your mother, half from your father. The  
16 other thing we like about DNA is it doesn't change from  
17 birth to death. It's also the same in your hair as it is  
18 in your toes, so any biological sample left behind at a  
19 crime scene, we can attribute back to an individual based  
20 on the DNA profile we get.

21 We take a look at the evidence and determine  
22 whether or not there are possible DNA samples there. We  
23 can actually isolate the DNA and get rid of all the other  
24 junk that we don't need.

25 Once we do that we can put it through a genetic

1 xeroxing machine to make millions upon millions of copies  
2 of it, so we can put it on to our fancy instrumentation to  
3 develop that profile so we can make the comparisons and  
4 write the reports.

5 Q. In this case was there a particular type of  
6 DNA analysis you did?

7 A. Meaning.

8 Q. TCRS versus RFLP --

9 A. Our lab currently performs PCR -- preliminary  
10 chain reaction -- STR short tandem repeat.

11 Q. What does that mean you do?

12 A. Preliminary chain reaction is what I mentioned  
13 before. It's the genetic xeroxing machine. We just put it  
14 into the instrument to be able to make millions upon  
15 millions of copies.

16 The short tandem repeats are the sections of the  
17 DNA chromosome that we're actually looking at. We're  
18 looking for how many times a certain section repeats on  
19 that molecule and that's how I determine your DNA  
20 profile.

21 Q. As a forensic analyst working case work of  
22 criminal cases, the genetic material you are looking at,  
23 does it have any indication of the individual  
24 characteristics of a person or is it just something that  
25 can just be used to make identifications of who that

1 person is?

2 A. Correct.

3 We look at our -- at the time this case is reported  
4 we looked at 15 areas. We currently look at more, up to  
5 22 areas. But it's just junk. I can't tell what eye color  
6 is, what medical conditions you have. It's just junk areas  
7 of the DNA molecule that have been agreed upon throughout  
8 the world be able to share DNA profiles and make  
9 comparisons.

10 Q. Were you asked to conduct -- well, actually,  
11 more than one, but two separate requests for analysis of  
12 DNA from a North Las Vegas event that occurred April 26,  
13 2012?

14 A. I was.

15 Q. Were your items of evidence that you were  
16 looking at for comparison, some of which were from a  
17 particular residence and some of which were from a  
18 vehicle?

19 A. Correct.

20 Q. I want to start with generally the items that  
21 were inside the residence.

22 What did you have to test from the residence?

23 A. From the residence I only had two swabs of  
24 what the officer called apparent blood from the bedroom.

25 Q. Did you also get requested to process a

1 crowbar and a knife?

2 A. I was asked that, yes.

3 Q. Did you get the processing on those items as  
4 well?

5 A. I did.

6 Q. What is a known standard?

7 A. A known standard is something we use to be  
8 able to make the comparison. If we know there is a victim  
9 or a suspect in the case we develop a profile from those  
10 samples to compare back to the evidence.

11 So it's simply, in most cases, just a cheek swab  
12 from the inside of your cheek. We can then have a profile  
13 to match back to the DNA.

14 Q. Whose known samples did you have when you were  
15 conducting your case work?

16 A. I have 6 different known profiles for this  
17 case.

18 Q. Do your recall off the top of your head, or do  
19 you need to refer to a report?

20 A. Can I refer to a report.

21 Q. Do you have that in front of you?

22 A. I do.

23 Q. Can you tell us the date of the report so we  
24 know which report you are looking at.

25 A. I'm looking at September 11, 2015.

1           Q.       I'm assuming that will refresh your  
2 recollection of those 6 names?

3           A.       I it will indeed.

4           MS. ERICKSON:   What date was that.

5           THE WITNESS:   Distributed September 11, 2015.

6           THE COURT:   This is a lot of names here and what  
7 we try to do with any kind of documentation by refresh  
8 recollection, we don't what you testifying from the  
9 document if we can avoid it.   What we would like you to do  
10 is look at it and see if it refreshes your recollection,  
11 set it aside and testify.

12           I realize this is quite a few names so if you have to  
13 continue to refer back for this purpose, that's fine.   For  
14 future reference if you need to refresh your recollection,  
15 you can look at it.   Read it to yourself.   Set it aside  
16 and testify.   So you're not just reading directly from a  
17 document that's not in evidence.

18           THE WITNESS:   I can do that.

19           THE COURT:   Thank you.

20   BY MR. DIGIACOMO:

21           Q.       Can you tell us what those 6 names are?

22           A.       I have Ivonne Cabrera, Jose Gonzales, Ashley  
23 Wantland, Melissa Marin, James Headrick, and Erik Quezada  
24 Morales.

25           Q.       I'm assuming you do a lot of case work?

1           A.       Yes.

2           Q.       The results that you get, I'm assuming are  
3 similar in the sense that, you know, sometimes inclusive,  
4 sometimes there's a really big number associated, those  
5 types of things?

6           A.       Correct.

7           Q.       I imagine you can't remember every result that  
8 you ever got?

9           A.       No.

10          Q.       And even when you read your report, I'm  
11 assuming it doesn't independently refresh in your mind,  
12 oh, yeah, I remember this number or that number?

13          A.       That is correct.

14          Q.       Do you do something to permanently record it  
15 at the time you're doing the testing so you can  
16 permanently record it so later on you know this is, in  
17 fact, the right information?

18          A.       The report.

19          Q.       You generate those reports with back-up  
20 material that gets distributed to the parties so we can  
21 check your work?

22          A.       Correct.

23          Q.       If I were to ask you an individual result,  
24 even if you look at the page and look back up, would you  
25 remember everything about that result?

1           A.       I would not.

2           Q.       So I'm going to do this by way of past  
3 recollection recorded, in which I'm going to ask you to  
4 read from the individual results for each one of those  
5 things you tested.

6           A.       Okay.

7           Q.       So let me start with the items in the house.  
8 You had two blood swabs?

9           A.       Correct.

10          Q.       Where was the first blood swab you were given,  
11 where was that identified to?

12          A.       The southeast bedroom door.

13          Q.       Did you conduct testing on that blood swab to  
14 see if it was even presumptively positive for blood?

15          A.       I did.

16          Q.       What was the result?

17          A.       I have positive indication it was blood.

18          Q.       Once you get a positive indication it's blood,  
19 do you then conduct PCR testing to determine if it's human  
20 DNA there?

21          A.       I do.

22          Q.       Did you get a result?

23          A.       I did.

24          Q.       Ultimately that result -- were you able to  
25 draw any conclusions about the result?

1           A.       I was. I was able to determine the DNA  
2 profile was consistent with Melissa Marin.

3           Q.       The term consistent with Melissa Marin, what  
4 does that mean?

5           A.       We have a statistic to provide a weight to how  
6 rare that DNA profile is.

7           Q.       In this case can you tell me what the rarity  
8 of that profile is?

9           A.       The estimated frequency of the DNA profile  
10 among unrelated individuals in the general population is  
11 rarer than 1 in 700 billion -- identity assumed.

12          Q.       So that profile should be only found once in  
13 every 700 billion people?

14          A.       Correct.

15          Q.       At the time this report was generated the  
16 population of the world was around 7 billion?

17          A.       Right.

18          Q.       Thus, when you say identity assumed, you're  
19 making an assumption that that is Melissa Marin's DNA?

20          A.       Yes.

21          Q.       As it relates to the second swab of blood,  
22 where was that located at?

23          A.       From the northeast bedroom door.

24          Q.       Once again, did you get a result?

25          A.       I did.

1 Q. What was that result?

2 A. It's found to be consistent with Melissa  
3 Marin.

4 Q. Are you able to give a rarity statement as  
5 relates to the second result as well?

6 A. It's the same one. It's rarer than 1 in a 100  
7 billion -- identity assumed.

8 Q. Other than those two swabs -- you may have to  
9 flip to the other report -- you also tested a crowbar and  
10 a knife, correct?

11 A. Correct.

12 Q. Can you flip to that report and tell me the  
13 date of that report?

14 A. That was distribution date April 26, 2016.

15 Q. Let's start with -- which one do you have  
16 first, the knife or crowbar?

17 A. The knife.

18 Q. Okay.

19 Can you tell me whether or not you were able to do  
20 any testing for blood?

21 A. On the knife, no. There was no indication  
22 there was any biological fluid present.

23 Q. Did you test it anyways?

24 A. Yes.

25 Q. What part of it did you test?

1           A.       I took a swabbing, so we moisten a large  
2       Q-Tip -- exactly what you'd find in the super market, just  
3       a longer handle. We moisten it was damp water -- damp  
4       water -- and I swabbed the entire item. I was able to cut  
5       that swab and perform the DNA process on it.

6           Q.       Once you performed the DNA process, did you  
7       get a result?

8           A.       I did.

9           Q.       Were you able to draw any conclusions from  
10      that result?

11          A.       Very few.

12          Q.       What conclusions are you able to draw?

13          A.       The DNA profile obtained from the knife handle  
14      is consistent with a mixture of 4 individuals with at  
15      least one being a male. But due to the limited data  
16      available no additional conclusions can be made about this  
17      mixture profile.

18          Q.       When you start getting a lot of people  
19      touching items you start getting a lot of numbers?

20          A.       Correct.

21          Q.       Does that make life a little difficult in  
22      being able to draw any conclusions?

23          A.       Indeed it does.

24          Q.       So you are able to tell us there was at least  
25      4 different people on this particular night, and at least

1       one of them was male but nothing more?

2           A.       Correct.

3           Q.       Were you able to test the crowbar?

4           A.       I was.

5           Q.       Did you test to see if there was blood on the  
6       crowbar?

7           A.       I did. There was a negative indication of  
8       blood.

9           Q.       How do you go about testing the crowbar. Is  
10       it through the swab?

11          A.       In the same manner I did the knife. I swabbed  
12       the entire item with a moistened swab.

13          Q.       Did you get a result?

14          A.       I got a -- the DNA profile obtained from  
15       swabbing the crowbar is consistent with a mixture of two  
16       individuals, but due to the limited data there were no  
17       additional conclusions made.

18          Q.       So unlike the knife where you had a lot of  
19       numbers, did you have very few numbers as related to that  
20       crowbar?

21          A.       Correct.

22          Q.       You are not able to make any conclusions from  
23       that?

24          A.       Correct.

25          Q.       So now I want to jump to the vehicle. Did you

1 have items removed from a gray Taurus vehicle?

2 A. I don't have any indication of what the  
3 vehicle was, just the items from the vehicle.

4 Q. They are from a vehicle -- do you have a  
5 cigarette butts and sunflower seeds test?

6 A. I have a cigarette butt and multiple sunflower  
7 seeds.

8 MR. DIGIACOMO: May I approach.

9 THE COURT: Please.

10 BY MR. DIGIACOMO:

11 Q. Showing you State's Proposed Exhibit 168. Do  
12 you recognize that?

13 A. I do.

14 Q. What is that?

15 A. These are what we refer to as allele tables.  
16 We take the graphic representation of the DNA profile to  
17 put it in a table format to make our comparisons easier.

18 Q. Your allele tables here, you have the known  
19 profiles of Ivonne Cabrera and Erik Quezada on 168?

20 A. I do.

21 Q. You also have the generated profiles you got  
22 from processing the cigarette butt and sunflower seeds?

23 A. Correct.

24 Q. Is that a true, fair and accurate listing of  
25 those particular numbers you used?

1           A.       It is.

2                   MR. DIGIACOMO:   Move to admit 168.

3                   MS. ERICKSON:   No objection.

4                   THE COURT:   168 will be admitted.   You may  
5 publish.

6 BY MR. DIGIACOMO:

7           Q.       I'll put 168 up here for you.

8                   Let me ask you one question.   You said you knew it  
9 was removed from a vehicle, do you know the North Las  
10 Vegas person that impounded the items?

11           A.       I would have to refer to my case file for that  
12 information.

13           Q.       Do you have it with you?

14           A.       I do.

15           Q.       Flip through that and see if there is  
16 information on who impounded that item?

17           A.       I believe for the cigarette butt and sunflower  
18 seeds was Radke.

19           Q.       So a North Las Vegas officer impounded these  
20 items?

21           A.       Correct.

22           Q.       Why don't I start with the -- well, looking at  
23 168, can you explain to the ladies and gentlemen of the  
24 jury basically what are all the color coded stuff on the  
25 left-hand side?

1           A.       The very first column on the left-hand side,  
2       those are just the individual locations on the DNA  
3       chromosomes we look at. Those are the exact specific  
4       areas of the DNA profile that we isolate.

5           Q.       Then underneath Mr. Quezada, who is the first  
6       one there, that is his known profile?

7           A.       Correct.

8           Q.       So in the first box, instead of having two  
9       numbers, he only has one. Why is that?

10          A.       You get half of your DNA from your mother and  
11       half from your father. We are simply looking at the  
12       number of repeats that appear at any of those different  
13       locations. I would expect two separate numbers. Mom has  
14       a different set of repeats than dad. If there's only one  
15       number it means both mom and dad have the same number of  
16       repeats at that particular location.

17          Q.       So Erik's mom and dad both have a 14 at that  
18       location?

19          A.       Mom and dad both donated 14 at that  
20       location.

21          Q.       The next list is the -- to the right there --  
22       is the cigarette butt. That's the profile from the  
23       cigarette butt?

24          A.       Correct.

25          Q.       Looking at those two profiles, do they appear

1 to match?

2 A. Yes.

3 Q. Thus, were you able to draw the conclusion  
4 Mr. Quezada's DNA profile is consistent with the DNA on  
5 the cigarette?

6 A. Correct.

7 Q. Do you have any statistical rarities as  
8 relates to that?

9 A. I do.

10 Q. What was that?

11 A. Rarer than 1 in 700 billion -- identity  
12 assumed.

13 Q. Once again a hundred times the earth's  
14 population -- back in those days?

15 A. Yes.

16 Q. Let's move on to the sunflower seeds. Did you  
17 process the sunflower seeds?

18 A. I did.

19 Q. How do you process sunflower seeds?

20 A. Very carefully. This was a new one for me.

21 Q. How do you do it?

22 A. Just as it would have been a handle of a knife  
23 or a crowbar, I held down each of the individual seeds.  
24 They looked like they were chewed. They were broken in  
25 half and the inside nut portion was missing. I held them

1 down with tweezers, moistened the swab with water and  
2 swabbed the heck out of all the individual seeds.

3 Q. Once you did that, did you run that swab  
4 through your DNA process?

5 A. I did.

6 Q. Did you get a result?

7 A. I did.

8 Q. Is that result the result that's on the right  
9 side of 168?

10 A. Yes.

11 Q. What conclusion were you able to draw as  
12 relates to the results from the sunflower seeds?

13 A. I determined it was a mixture of two  
14 individuals, with at least one being a male. The major  
15 DNA profile is consistent with Ivonne Cabrera.

16 The statistic, estimated frequency of the major DNA  
17 profile among unrelated individuals in the general  
18 population is rarer than 1 in 700 billion -- identity  
19 assumed.

20 Q. What about the minor component. Any  
21 conclusions?

22 A. I was also able to say that Erik Quezada  
23 Morales cannot be excluded as a contributor to the mixture  
24 DNA profile obtained. That too has a different statistic  
25 applied to it. Approximately 1 in 337,000 individuals in

1 the general population can be included as a possible DNA  
2 contributor to the DNA profile obtained.

3 Q. So in other words, the major profile is  
4 consistent with hundred times the population of the world,  
5 but the minor profile, 300,000 is a big number, but not  
6 unique to Mr. Quezada?

7 A. Correct. There's less information on the minor  
8 profile.

9 MR. DIGIACOMO: Thank you, ma'am. Pass the  
10 witness.

11 THE COURT: Ms. Erickson.

12 CROSS-EXAMINATION

13 BY MS. ERICKSON:

14 Q. Good afternoon?

15 A. Good afternoon.

16 Q. Besides what you testified to, you also  
17 reviewed and tested DNA swabs that were collected by  
18 Officer Radke, did you not?

19 A. I did.

20 Q. Do you remember where those were taken from?

21 A. Multiple places in the car.

22 Q. Would you remember there was a swab from the  
23 steering wheel?

24 A. Yes.

25 Q. Did you test that for DNA?

1           A.       I did.

2           Q.       What was the result?

3           A.       I found those results inconclusive.

4           Q.       What do you mean by that?

5           A.       It means there's either too much information  
6 for me to make a conclusion. In this particular case I  
7 don't think there was enough information.

8           Q.       When you say enough information, there is a  
9 level of information that is used in your forensic  
10 department that is -- there's a number to it. You don't go  
11 below that number because that means it's not -- not  
12 good?

13          A.       We use -- correct. We use what we called a  
14 threshold. We set this threshold and anything below that  
15 number when it comes to a DNA profile, we cannot prove the  
16 DNA related. There actually are artifacts from our  
17 instrumentation, from the genetic xeroxing process. So  
18 below that threshold those peaks cannot be attributed to a  
19 DNA profile so we don't make conclusions on that.

20          Q.       Do you have your printout that shows the peaks  
21 of the DNA testing you did on these items taken from the  
22 car?

23          A.       I do.

24          Q.       Could you pull one out and I could look at it.

25          A.       Which one do we want. I have a profile for

1 everything I tested.

2 Q. Let's look at the steering wheel, so we can  
3 talk about what it is.

4 MS. ERICKSON: Can we take this. I can make it  
5 an exhibit and replace it or --

6 THE WITNESS: That would need to stay with my  
7 case file.

8 THE COURT: Why don't we take a brief recess.  
9 We are about an hour anyway and let everybody stretch and  
10 use the restroom. We'll come back and proceed with the  
11 testimony.

12 JURY ADMONITION

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

22 You are further admonished not to form or express any  
23 opinion on any subject connected with this trial until the  
24 case is finally submitted to you.

25 See you back in about 10 minutes.

1           MR. DIGIACOMO: For the record, I know the lab  
2 would lose their mind if they knew that these were going  
3 to be disseminated by way of a photocopy of this file as  
4 opposed to what was perviously provided. But I entertain  
5 the issues.

6           MS. ERICKSON: I never received that. I never  
7 received any of this.

8           THE COURT: When we come back with copies, we'll  
9 make a record of what we do and do not have.

10           (Brief recess taken.)

11           THE COURT: This is the last witness today.

12           MS. WONG: Yes.

13           THE COURT: So we'll break early. Let me  
14 clarify our schedule. When we come back Monday, Tuesday,  
15 and Wednesday at 1:30, my intent on Thursday is start at  
16 10:00 and go through until we break for the day, to allow  
17 you to go to the airport, Mr. Whipple. Is that going to  
18 work.

19           MR. WHIPPLE: Of course.

20           MS. ERICKSON: What time.

21           MR. WHIPPLE: -- 3:55.

22           THE COURT: He said 3:55 so I went off of 3:55.  
23 We can start at 10, break at 2:00ish. Can you be prepared  
24 for that.

25           MR. WHIPPLE: I'll make sure I am.

1           THE COURT: I'm not trying to order you to do  
2 something that's uncomfortable. I don't know what your  
3 plan was but if you are prepared to go and can go from  
4 here to a plane we'll go later. If you have to go home  
5 and pack -- I can't give the whole morning because I still  
6 have my foreclosure mediation calendar. 10:00 is the  
7 earliest I can start.

8           I don't want to come in for an hour. I want a little  
9 bit of time.

10          MR. WHIPPLE: I am taking my family with me. I  
11 will make sure my family meets me at the airport. If it's  
12 a 3:55 flight, I should be there by 2:55.

13          THE COURT: I suggest he can be there by 2:20.  
14 It's not a half hour drive to the airport.

15          MR. WHIPPLE: I'll make sure I'm ready to go.

16          THE COURT: We'll start Tuesday with your  
17 case.

18          MR. WHIPPLE: Yes.

19          THE COURT: Okay. Anything else.

20          MS. ERICKSON: Yes, Judge.

21          Mr. DiGiacomo insisted that I have received the  
22 DNA of the underlying document at some point in this  
23 discovery process and called me a liar when I said I  
24 didn't.

25          I keep extensive information I receive on discovery.

1 I did not receive the April 26, 2015 DNA report, regarding  
2 the knife and crowbar. The only documentation I received  
3 after -- in April was on April 29, 2015, custodian of  
4 records North Las Vegas request forensic form and  
5 photographs inside that. And the -- he may be right.

6 THE COURT: For the record.

7 The two pages which the court did receive from the  
8 witness, I walked down the hall to the color copy. We  
9 have 4 copy sets. One can be utilized to be marked as an  
10 exhibit. The other three for counsel and a spare, just in  
11 case.

12 That was the DNA related to the steering wheel.

13 MR. DIGIACOMO: That was the original DNA report  
14 that Mr. Staudaher shows in his records was discovered to  
15 defense years ago. I didn't call her a liar. I told her  
16 I could rely on Mr. Staudaher's records, considering how  
17 meticulous he was, and I would be, for representation, and  
18 I stand by that.

19 She's talking about a wholly different report. I'm  
20 talking about this record here. It's been provided to her  
21 previously. It is what it is. She now has it. I don't  
22 know what the issue is.

23 THE COURT: I'll let Ms. Erickson make a record  
24 at the end of the day.

25 MS. ERICKSON: Sorry.

1           THE COURT: You requested what I'll call a  
2 sample to discuss, which was the steering wheel DNA. You  
3 were provided two pages out of a report. Mr. DiGiacomo  
4 made commentary, and I believe the jurors were present, but  
5 the later discussion is what was --

6           MR. DIGIACOMO: None of them were present.

7           THE COURT: I thought the objection to the  
8 documentation having been provided -- okay. So the jurors  
9 were completely not present as this discussion ensued.

10           I was going to make copies and Mr. DiGiacomo point  
11 out this was previously provided and the defense should be  
12 using the images previously provided, rather than us  
13 making a copy of a file of the witness. In the interest  
14 of time to ensure we were inquiring of the correct  
15 document, I went ahead and made copies and we adjourned  
16 the jurors -- or we had previously adjourned the jurors  
17 and would bring them back once we had this available.

18           Ms. Erickson, you then wanted to make a record and  
19 began to make the record that that particular DNA -- you  
20 started to make a record of what DNA you did and did not  
21 receive. I think a more appropriate record would be if  
22 you have been able to determine that you were aware of and  
23 had received these particular items.

24           MS. ERICKSON: Judge, while I can stand  
25 corrected. I received them, but they are not openable. I

1       didn't know -- whatever.

2               THE COURT:   So at this point we have -- I want  
3       there to be no lack of clarity in the record on this point  
4       in the event there's a subsequent review.

5               According to the DA's records the prior counsel on  
6       this case, Mr. Staudaher, did provide a number of  
7       records.

8               On or about when, Mr. DiGiacomo.

9               MR. DIGIACOMO:   I can't determine that, but  
10       we're talking about the back-ups to the report.

11              THE COURT:   Raw data -- the raw data to the  
12       records that previous counsel indicates were previously  
13       provided at the early stage of discovery in this case to  
14       defense.

15              Ms. Erickson is indicating as she prepared for trial  
16       and went through what she had and she had reviewed the  
17       documents thinking she was either unable to access that  
18       file or was not aware she had received it.   But there  
19       doesn't appear to be a specific dispute at this time that  
20       it was not provided to the defense, just simply the  
21       defense was not aware that it had it.   And I want to make  
22       sure we have that.

23              MR. DIGIACOMO:   One last thing for the record.

24              It's not the report, which is required under the  
25       discovery section, it's the supporting documentation only

1 needs to be provided upon request. We normally as a habit  
2 and custom provide it. But Ms. Erickson says she doesn't  
3 have it, we have records from Mr. Staudaher he provided  
4 it. It is what it is. They now have the underlying data  
5 of the expert for testimony.

6 THE COURT: I think Ms. Erickson is indicating  
7 much have been provided, but they were provided in a file  
8 she cannot access. At this time, we'll proceed.

9 MS. ERICKSON: I received it April 29, 2015,  
10 which is not years ago. I can't access it.

11 THE COURT: We have a record. There doesn't  
12 appear to be any failure to provide it. What's provided  
13 was probably provided in excess of what's required by  
14 statute and was not provided on request but was provided  
15 as a standard practice of the DA's office.

16 The defense has whatever it receive. Did not access  
17 it. Could have made inquires. Could have and should have  
18 proceeded from their to access it.

19 Regardless we have the information available to us  
20 now. We're prepared to inquire of the witness. We now  
21 have the supporting documentation to allow inquiry.

22 Anything else.

23 MS. ERICKSON: One more thing. The lab will not  
24 provide the underlying data to us. It has to be requested  
25 by the district attorney's office. That's all.

1           THE COURT:   Okay. But I'll finish up this  
2     record.

3           In any case, because this court deals with this on a  
4     regular basis, if the defense wants something the State  
5     has not otherwise provided, just because we know that the  
6     lab may not provide it does not preclude the defense  
7     asking for it. I'm not saying I think there's anything  
8     inappropriate with how this has proceeded, other than when  
9     a disc is received and it cannot be opened, perhaps that  
10    prompts follow up inquiry at that point in time. But  
11    inquiry didn't occur at that time.

12          I'm not casting aspersions on anybody here, however,  
13    to the extent that the defense can and should request  
14    something, if the entity it's being requested from did not  
15    provide it and would have said to defense you've got to go  
16    to the State to get it, then the defense can go to the  
17    State and make the request. The State can agree or refuse.  
18    Then we have issues with need to request protective orders  
19    or other things that cannot be provided.

20          I don't want to go down the road of that discussion  
21    because I don't think it's applicable in this case. I  
22    think what happened was the DA had it, inclusive of the  
23    report and the underlying raw data. They provided or  
24    attempted to provide it to the defense. It was not  
25    effectively received by the defense. We have it now for

1 purposes of trial inquiry. That's the end of discussion.  
2 That makes a clear record. I don't want to discuss it any  
3 further.

4 Anything further before the jurors come back in to  
5 proceed with this witness.

6 MS. ERICKSON: No, Judge.

7 THE COURT: Thank you. Let's have the jurors.

8 As we resume the questioning of this witness, for the  
9 record, the court is now returning, to the witness, the  
10 originals from the file of what are pages 1 and 2, of 49  
11 of what is titled Project CDM-070813-RAO. More discussion  
12 can be had if need be to identify what this is.

13 I believe the prior testimony was this is DNA from  
14 the steering wheel and underlying raw data in the report  
15 on the DNA from the steering wheel. I'll hand this back to  
16 the witness to put back into her file.

17 Those two pages of document have been marked as  
18 Defendant's Proposed Exhibit Z.

19 Are you seeking admission of them, Ms. Erickson.

20 MS. ERICKSON: Yes, Judge.

21 THE COURT: Any objection from the State.

22 MR. DIGIACOMO: No.

23 THE COURT: Exhibit Z will be admitted You may  
24 further inquire and/or publish as you wish, Ms.  
25 Erickson.

1 BY MS. ERICKSON:

2 Q. Ms. May, you see the first page of 149 on your  
3 screen now?

4 A. I can.

5 Q. This is a -- this is your back-up  
6 documentation you use when determining DNA identity,  
7 correct?

8 A. Correct.

9 Q. You testified that there is a level that the  
10 Metro lab does not go under?

11 A. Correct.

12 Q. Is that shown in this page of Exhibit Z?

13 A. It is.

14 Q. Where is that shown?

15 A. According to the procedures, at the time I  
16 believe that threshold was what we call 200 RFU --  
17 relative florescence unit. That number is depicted at the  
18 very bottom of each one of those boxes.

19 Q. So in this exhibit --

20 THE COURT: Right now there's a arrow showing.  
21 I'm not sure why. Can we clear that.

22 BY MS. ERICKSON:

23 Q. So are you saying that each of the lower boxes  
24 in this diagram or this back-up that shows the level cut  
25 off?

1           A.       The level which we were not making conclusions  
2       was 200 RFU I believe. This has been awhile ago so I'd  
3       have to verify with procedures at the time, but we decided  
4       internally and our procedures dictated that anything below  
5       that 200 RFU level that it was inclusive.

6           So each one of these individual peaks has its own  
7       height.

8           Q.       You are talking about the peaks?

9           A.       Yes.

10          Q.       Peaks that are low down here across this are  
11       not of sufficient level for you to reach a conclusion?

12          A.       Correct.

13          Q.       Then there is a lot of other red lines. Is  
14       that what you are calling junk -- like noise to DNA  
15       professionals?

16          A.       In this case, I can't answer that question.  
17       If it's that level, I'm just looking at this, there's a  
18       lot more happening in the DNA profile. This is an  
19       indication of what we call degradation. So those peaks  
20       could potentially be attributed to actual DNA, but that  
21       DNA molecule has been broken up so it wasn't able to be  
22       copied in the genetic xeroxing machine and isn't  
23       subsequently able to be depicted in this graph.

24          Q.       Okay.

25               When you say inconclusive, that means that this DNA

1 cannot be used to identify anybody because it is too low  
2 of threshold for you to rely upon -- accurately rely  
3 upon?

4 A. Any time we say inconclusive, no conclusion  
5 can ever be made about this profile.

6 Q. Now, looking back on State's Exhibit 168. In  
7 each of the -- you explained that the color coded are  
8 different portions of a DNA sequence?

9 A. Correct.

10 Q. A DNA sequence has how many strands that you  
11 look at?

12 A. Millions.

13 Q. When you xerox them, in one strand there's  
14 usually how many different alleles in that strand?

15 A. Millions.

16 Q. These are the ones the scientists have decided  
17 are the most important that you are looking at?

18 A. These are the ones that scientist worldwide  
19 have agreed upon as the particular locations where we're  
20 going to look at.

21 Q. So if we look at line CSF 1 PO --

22 The two numbers in there are the genetic make up  
23 that comes from the father and mother, which are 9 and  
24 13?

25 A. Correct.

1 Q. What does that mean to a jury?

2 A. What I said before, you get half of your DNA  
3 from your mother and half from your father. We look at  
4 the number of repeats of a segment at that location. In  
5 this case either mom or dad had 9 repeats. So that means  
6 the other one had 13 repeats at that location.

7 Q. If we look at line D13 S-317, we find that  
8 Mr. Quezada has an 11 and 12?

9 A. Correct.

10 Q. If you look at Ivonne Cabrera she has an 11  
11 and 12, correct.

12 I mean, 9 and 11 -- sorry. An 11 and 12 and Ms.  
13 Cabrera has a 10 and a 14?

14 A. Correct.

15 Q. If Ms. Cabrera had an 11 and a 14, that  
16 doesn't mean that that's your DNA. You have to have both  
17 be identical to each other from her DNA spot to the DNA  
18 you are testing for?

19 A. It depends on the profile, but if I used that  
20 location to develop the static associated with the  
21 profile, yes, it would have to be present.

22 Q. The fact she has a 10 and a 14 makes a  
23 significant difference and is different in identifying it  
24 to you from that section of the DNA?

25 A. Correct.

1           Q.       So you can't randomly say, okay, well, you  
2 know, there is an 11 and an 11 or 12 and an 11 and combine  
3 those numbers together. They have to be the exact same  
4 number for you to make an identification?

5           A.       Correct.

6           Q.       So you tested DNA that you received from  
7 Officer Radke on the car, right?

8           A.       Yes.

9           Q.       There were steering wheel, gear shift knob,  
10 side door handle, side door handle, and ignition switch?

11          A.       Yes.

12          Q.       All of those were inconclusive?

13          A.       Yes.

14          Q.       Were you given a swab of apparent blood from a  
15 passenger seat of that same car?

16          A.       I was.

17          Q.       The rear seat -- rear passenger?

18          A.       Yes.

19          Q.       Did you test that for blood?

20          A.       That one I did.

21          Q.       What was the result?

22          A.       There was a negative indication that there was  
23 blood present.

24          Q.       What is a presumptive test?

25          A.       A presumptive test is just an indication that

1 the stain we are visualizing may or may not be biological  
2 in nature. It's just a quick way to guide our analyses  
3 when we open something up and we've -- there was blood  
4 involved. If we look at a white T-shirt, we can quickly  
5 find the red/brown stains that may or may not be  
6 indicative of blood and do this quick chemical test to  
7 say, well, it's not blood. It's catsup. So don't take the  
8 catsup one we want the blood one.

9 Q. You went farther then, even though it was a  
10 negative presumptive test, you did do DNA testing on it  
11 from the swab?

12 A. I did.

13 Q. What was the result?

14 A. The result for that particular one was also  
15 inconclusive.

16 Q. Okay. Now when you testified about the  
17 sunflower seeds, did you hold each one in the same water  
18 or did you use different solution for each separate  
19 seed?

20 A. It's all one swab. So I literally held the  
21 sunflower seeds with a pair of tweezers -- very sharp  
22 tweezers -- so I held it down in place. Took one swab,  
23 swabbed the front and back. Moved that one to the side.  
24 Grabbed the next one. Held it in place with tweezers.  
25 Used that same swab. Swabbed the front. Swabbed the

1 back. Until I was through all of the sunflower seeds.

2 Q. We found a mixture that was identified as both  
3 Ivonne Cabrera and Erik Quezada?

4 A. Correct.

5 Q. Did you do any testing of any tennis shoes for  
6 DNA or blood?

7 A. I did not.

8 Q. No tennis shoes that were size 9. No white  
9 tennis shoes?

10 A. They were not requested.

11 Q. Who makes these requests for you to do  
12 testing?

13 A. The investigating agency.

14 Q. Metro or North Las Vegas in this case?

15 A. In this case it was North Las Vegas.

16 Q. Is there a particular detective that requests  
17 these?

18 A. The investigating detective assigned to the  
19 case.

20 Q. Do you know who that was in this case?

21 A. The one that was on the request that I  
22 received was a Detective Prieto.

23 Q. Did you do any DNA testing on a pair of gray  
24 Dickie pants, size 38 width by 30 length?

25 A. I did not.

1 Q. Did you do any testing on any kind of clothes  
2 at all?

3 A. I did not.

4 MS. ERICKSON: Thank you, very much.

5 Oh, wait a minute.

6 BY MS. ERICKSON:

7 Q. Just because you found DNA, you don't know how  
8 long it's been there?

9 A. No. DNA cannot tell time.

10 MS. ERICKSON: That's it.

11 MR. DIGIACOMO: Nothing, your Honor.

12 THE COURT: By a show of hands, do the jurors  
13 have any questions for this witness. Seeing none, you are  
14 excused. Make sure you take your file.

15 THE WITNESS: Thank you.

16 THE COURT: I had previously discussed with  
17 counsel the remaining witnesses and availability, and the  
18 State was not able to call them today. We will be ending  
19 early today. We are still on track to proceed with trial.

20 There are a couple of changes to the schedule next  
21 week. I'll plant the seed now and we'll confirm with you  
22 when we return on Monday.

23 As I think you know we are expecting to have half  
24 days Monday, Tuesday, and Wednesday. Right now I  
25 anticipate a start for those half days as 1:30. On Monday

1 we'll bring you back at 1:30 so you have that time frame.  
2 We may adjust it Tuesday and Wednesday.

3 Thursday we are going to begin in the morning. We'll  
4 start at 10:00 a.m., Thursday morning and run through and  
5 including the lunch hour to completion sometime in the  
6 early afternoon, mid-afternoon to accommodate a schedule  
7 of counsel. Then we'll not be in trial on Friday, because  
8 of scheduling needs for either counsel or court.

9 So that's just to give you a ballpark idea of what we  
10 have there. While you are going to be excused, and I know  
11 I just read you this admonishment, again, the Supreme  
12 Court requires I read it -- and it is the weekend, so keep  
13 this in mind.

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 Have a nice weekend.

3 MR. DIGIACOMO: Thank you.

4 MS. ERICKSON: Thank you. Have a good  
5 weekend.

6 THE COURT: Thank you.

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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, looping flourish at the end.

Sharon Howard  
C.C.R. #745