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IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
 )

No. 74468

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Aug 08 2018 03:04 p.m.  
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Clerk of Supreme Court

**APPELLANT'S APPENDIX VOLUME VIII PAGES 1626-1799**

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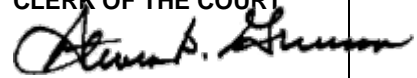
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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
KEANDRE VALENTINE,  
Defendant.

CASE NO. C-16-316081-1  
DEPT. NO. II

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE

THURSDAY, JULY 27, 2017

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL - DAY 4**

\*\*\*\*\*

APPEARANCES:

For the Plaintiff:

AGNES M. LEXIS, ESQ.  
Chief Deputy District Attorney  
MICHAEL DICKERSON, ESQ.  
Deputy District Attorney

For the Defendant:

TEGAN C. MACHNICH, ESQ.  
Deputy Public Defender  
TYLER GASTON, ESQ.  
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER



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1 **LAS VEGAS, NEVADA, WEDNESDAY, JULY 27, 2017**

2 [Case called at 1:14 p.m.]

3 [Outside the presence of the jury.]

4 THE COURT: All right. So back on the record in *State vs. Valentine*  
5 C-316081.

6 What do we have this afternoon, folks?

7 MS. MACHNICH: Just briefly, Your Honor, I wanted to give formal  
8 oral notice pursuant to Supreme Court Rule 4 on audio-visual testimony that our  
9 expert will be testifying remotely from Texas. We provided all the contact  
10 information to the State previously. I did just look at the rule, and it is three court  
11 days before testimony. We are three court days before testimony.

12 Although there's also a catchall in there, if -- if the judge deems it  
13 expedient, and there is, obviously, a presumption in favor of witnesses for judicial  
14 economy and economy in general, testifying remotely when they are somewhere  
15 else and expensive. We had calculated it would be approximately an  
16 extra \$12-\$15,000 to fly him here, instead of just the normal fee of the time he  
17 was testifying. And then his flights, because it's College Station, were up  
18 towards \$1,300.

19 So after looking into all of that, and we still can -- and that's why we  
20 are specifically bringing it up on the record now -- we can still bring him in if we  
21 need to, but I believe that we have satisfied notice. We have certainly satisfied  
22 the spirit behind the notice and -- and would ask that he be allowed to testify that  
23 way. We would also like a firm ruling on it now, because if not, we will fly him in.  
24 It will just cost the county an extra 12 to 15 grand.

25 THE COURT: Question.

1 MS. MACHNICH: Yes.

2 THE COURT: What kind of equipment are you using to accomplish  
3 this?

4 MS. MACHNICH: It's called BlueJeans. It's what the court uses. I've  
5 gone through all the paperwork before on a prior case, and, basically, we will be  
6 contacting -- contacting tech here at the courthouse to set up a test ahead of time.  
7 I've spoken with your court recorder, and then they come into the courtroom and  
8 help get set up. But it's something that gets tested ahead of time to make sure  
9 that everything goes smoothly, but it's -- it's a downloadable -- I don't want to call  
10 it an app, because it's going on a screen. But it's, basically, an application that  
11 goes onto the desktop of your computer. You click on it and it goes into video  
12 conferencing. I accidentally downloaded it while trying to figure things out during  
13 my last trial, and that's exactly how it functioned for me. So it is technologically  
14 possible in the courthouse. It's technologically possible in the courtroom. And it  
15 should not be a problem on his end. He just needs a webcam.

16 THE COURT: Mr. Dickerson.

17 MR. DICKERSON: We're lodging our objection to that, Your Honor.  
18 Under Rule 4, it is absolutely discretionary on the court. But Rule 4, Subsection 2  
19 of the Supreme Court rule says:

20 Except as provided by NRS 5015.330, the personal appearance of a  
21 party or a party's witness is required at trial unless --

22 To subsection B:

23 The court makes an individualized determination based on clear and  
24 convincing evidence that the use of simultaneous audio-visual transmission  
25 equipment for a particular witness is necessary and that all of the other

1 elements of the right of confrontation are preserved.

2 We want the ability to confront that witness here and have his  
3 demeanor shown to the jury. We also want to ability to impeach that witness with  
4 articles. Currently, the equipment that we have for doing audio-visual testimony  
5 doesn't allow us to show that witness articles or confront him with those articles  
6 through the use of that audio-visual testimony.

7 Also, more than anything, I would submit to Your Honor that it's not  
8 necessary. And that would be a fine --

9 THE COURT: Who would pay for it?

10 MR. DICKERSON: That's -- it would be paid for by the County  
11 coffers, the same people that pay all counsel's salary here.

12 This is -- it's an expert witness, Your Honor. That's the thing.

13 THE COURT: So is it necessary? I mean, I think Drew Christensen,  
14 is he the one who would approve the travel expense?

15 MS. MACHNICH: No. It's through our --

16 THE COURT: Or do I approve it?

17 MS. MACHNICH: It's through our office, Darren Richards. He --  
18 we're calling this witness. It's necessary for our defense. We got the initial  
19 approval on it when --

20 THE COURT: Yeah. But is it -- the question is it necessary for him  
21 to testify audio-visual? I suppose necessity would be shown if, say, he just  
22 recently was in a car accident and he broke his legs and he can't move or, you  
23 know, he's got to watch his two little kids and he's going to do a call from his  
24 house, or --

25 MS. MACHNICH: Well, Your Honor --

1 THE COURT: -- or he's in a cancer bed going through  
2 chemotherapy, or he's got, like, some major surgery he's got to do the next day  
3 and can't travel. And those -- that would be necessity.

4 You -- you -- you sounded like you wanted -- it's admirable you  
5 wanted to save some money by -- so let's don't get to the prejudice issue until we  
6 resolve necessity.

7 MS. MACHNICH: Okay.

8 THE COURT: Why would it be necessary? Why -- what am I  
9 missing here?

10 MS. MACHNICH: Your Honor, first, going back to the intent on the  
11 audio-visual transmission, I spoke with Mr. Cohen this morning. He was actually  
12 on the committee --

13 THE COURT: Who?

14 MS. MACHNICH: Phil Cohen.

15 THE COURT: Oh, yeah.

16 MS. MACHNICH: Who was on the commission that was  
17 determining -- I don't know if it was a committee or commission that was working  
18 on this rule when it was being promulgated. And what was --

19 THE COURT: Go get my rule back.

20 MS. MACHNICH: What was --

21 THE COURT: It's on my desk. Do you see what it looks like? It's  
22 the -- you know, it looks like one of those. It's either on top of my desk, my rule  
23 book.

24 MS. MACHNICH: And the theory behind this -- and it was -- it was  
25 mostly promulgated by the civil bar, it was specifically favored by the civil bar to

1 avoid situations where you'd have to spend many thousands of dollars, and in that  
2 it's a private party's thousands of dollars -- not even a public thousands of dollars,  
3 but private party's thousands of dollars to fly in experts, when the idea behind it is  
4 simultaneous audio-visual transmission of their testimony is sufficient.

5 How it typically works and how we've set it up in the past, and what  
6 the rule requires, to my knowledge, is that we provide the expert with all of the  
7 documents that he would be confronted with, and then we -- as -- as exists in the  
8 record as of the time when he's going to testify, anything he would be presented  
9 with, and then he would be referencing them -- referencing them on his end and  
10 we would be referencing them on our end with the ability to show them to the jury.

11 THE COURT: Yeah.

12 MS. MACHNICH: So it's --

13 THE COURT: I've done lots of --

14 MS. MACHNICH: So it's totally -- it's -- it's feasible to do. But the  
15 necessity -- the spirit behind it was this is a necessary situation to save -- I mean,  
16 thousands of dollars in savings is a necessity.

17 I -- we can physically get him here, Your Honor. But when we saw  
18 how much it was going to cost both in expert -- expert fees and in travel costs,  
19 given that my client is indigent and he has the right to a full defense in this case,  
20 we prefer to have him here, theoretically. We'd love to have him on the stand,  
21 because having someone who is a professor at a college testify in person is  
22 considerably more moving to the jury. I'd love it if he could be here.

23 But when we were looking through the costs to our office, which is  
24 ultimately the County, it -- they became so great that we looked into finding a  
25 solution to those costs, and it's favored to avoid those costs.

1 THE COURT: What's the rule?  
2 MS. MACHNICH: Rule 4 --  
3 MR. DICKERSON: It's Rule 4.  
4 MS. MACHNICH: -- audio-visual transmission. Supreme Court  
5 Rule 4 on audio-visual transmission.  
6 THE COURT: I'm looking at Rule of Civil Procedure 4. That's not the  
7 right rule.  
8 MS. LEXIS: It's 9. I'm sorry.  
9 MS. MACHNICH: It's a Supreme Court rule.  
10 MR. DICKERSON: It's Supreme Court rule.  
11 MS. MACHNICH: Supreme Court rule.  
12 THE COURT: Supreme Court rule.  
13 MS. LEXIS: I think it's Supreme Court.  
14 MR. DICKERSON: It's Part 10 of the rules, Rule 4.  
15 THE COURT: Okay. Administration of the courts.  
16 MS. MACHNICH: And -- and Your Honor, I'm actually 100 percent  
17 willing to bring over Darren Richards to testify. I -- I can --  
18 THE COURT: Wait, can -- can you -- do you mind just catching your  
19 breath for a second, so I could read the rule?  
20 MS. MACHNICH: Sure.  
21 THE COURT: Okay. So rule -- I'm looking at 10 -- it's -- oh, wait,  
22 that's the wrong rule. I don't see a rule for --  
23 MR. DICKERSON: Part 10, yeah.  
24 THE COURT: Rule 4 talks about nonjudicial days.  
25 MS. LEXIS: Are you sure it's part -- I show 9 -- part 9.

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MR. DICKERSON: I'm sorry. Part 9.

MS. LEXIS: It's part 9, Your Honor. I'm sorry.

MR. DICKERSON: It is Part 9.

MS. LEXIS: It's Part 9.

THE COURT: Oh.

MR. DICKERSON: It's Part 9. Rule 4, under Part 9, under the Rules of the Supreme Court.

THE COURT: All right. Hold on. Part -- oh, I see how it'd divided. Right after judicial ethics. Right, right, right. Okay. It's way up there. That's why I couldn't find it. It's Part 9.

So Rule 4:

Appearances by parties or witnesses through the use of simultaneous audio-visual transmission may be made as follows:

A. Trials, hearings, at which witnesses are expected to testify or hearings on preliminary injunction motions, provided there is good cause as determined by the court in accordance with Rule 1.6.

So it's just a good cause.

Where is -- where is all this other stuff you guys are getting?

MR. DICKERSON: Yeah. Is -- what year is your -- your book, Your Honor? Because this is a 2013 amendment.

THE COURT: 2017.

MS. MACHNICH: Yeah.

MS. LEXIS: I can --

THE COURT: Are you on page 283? No?

MR. DICKERSON: I'm not.



1 MS. MACHNICH: I'm on the legislative website.

2 MS. LEXIS: Yeah. My version has Section 1 -- or part 9, Rule 1 is

3 definitions. Rule 2, policy favoring audio-visual transmission.

4 THE COURT: Will -- will you guys help me, please?

5 MS. LEXIS: Yes, Your Honor.

6 THE COURT: Will you look at this? Tell me if this is where I'm

7 supposed to be looking.

8 MS. LEXIS: Yes, Your Honor.

9 THE COURT: I don't know why --

10 Someone give me a -- I mean, it seems like a really easy standard.

11 It's just, basically, if they want it, you could get it. Right there.

12 MS. MACHNICH: That was my understanding, Your Honor.

13 THE COURT: I mean, unless there's a different rule that you guys

14 are reading from. It's Rule 4. I don't see -- I don't see a necessity as a

15 requirement.

16 MS. MACHNICH: No. I -- I mean, my understanding of the rule,

17 Your Honor, was that good cause and it was favored by the courts for expediency

18 and physical purposes.

19 THE COURT: Well, you read necessity -- necessity, and now you're

20 backtracking off of what you said.

21 MS. MACHNICH: No. He read necessity, and I was saying there is

22 necessity here.

23 I read that there's -- it -- the rule favors audio-visual transmission, so

24 it should actually be in favor of the simultaneous transmission.

25 THE COURT: We just -- the very first thing, you know, before I can

1 even address the merits of your request is to know what the appropriate legal  
2 standard is. You know, I'd like to know what the legal standard is. Is it -- is it  
3 good faith?

4 MS. LEXIS: What's --

5 THE COURT: Reasonableness? Or necessity? Or clear and  
6 convincing?

7 MS. LEXIS: What is -- what is your law clerk's e-mail? Is it  
8 D-E-P-T -- is it 02 or 2?

9 THE CLERK: 02.

10 MS. LEXIS: 02. Thank you.

11 MS. MACHNICH: Your Honor, honestly, I thought it was just did we  
12 give notice? We are giving notice. And it was otherwise judicially favored.  
13 That's -- that's -- I didn't think that there was a separate and above standard.

14 THE COURT: Is that something I need to decide today --

15 MS. MACHNICH: Yes.

16 THE COURT: -- or can the State make a -- do some research and  
17 see what the standard is?

18 MS. MACHNICH: Your Honor, I need to know --

19 MR. GASTON: We -- we --

20 THE COURT: You guys keep coming up with these issues and you  
21 guys disagree on the legal standard, and -- but don't give me authority. So I --  
22 well, you gave me the rule here, so --

23 MS. MACHNICH: Yeah.

24 MS. LEXIS: Well, in all --

25 MS. MACHNICH: And Your Honor, I didn't think that it would be a

1 problem. Like, it's a notice standard, and it's favored.

2 THE COURT: Well, but it is a problem. So since it's a contested  
3 issue, I need to make a decision. And I don't want to make a decision until I  
4 know, number one, what is the legal standard. And then cite -- cite to the rule. I  
5 was hoping --

6 MS. LEXIS: Well, and that's the thing, Your Honor, particularly with  
7 this witness. Already I moved to strike it as -- strike -- to strike the expert as  
8 untimely. We just received the documentation or the reports on --

9 THE COURT: Well, can you hold on a sec?

10 MS. LEXIS: Yes.

11 THE COURT: So are you now making an oral Motion to Strike a  
12 witness as untimely? Is that what --

13 MS. LEXIS: No, no.

14 THE COURT: Those are the words you just used.

15 MS. LEXIS: Right. But I'm just -- I'm giving you the --

16 THE COURT: Why -- why do you guys confuse me like this? Either  
17 you make a motion or your don't make a motion.

18 MS. LEXIS: I'm not --

19 THE COURT: Don't make a half motion.

20 MS. LEXIS: Your Honor, I just was trying to address the comment  
21 concerning, you know, us being -- these issues being brought up. They're being  
22 brought up last minute, is the point. They're always being brought up last minute,  
23 particularly with this expert.

24 THE COURT: Well, but doesn't the rule allow last minute? I thought  
25 the rule allows three days' notice.

1 MS. LEXIS: No.

2 THE COURT: No?

3 MS. LEXIS: I mean these issues being brought up this way. Every  
4 issue that they've brought up has been last minute. I mean -- and so I don't think  
5 it's -- it's -- it's on the State. We're not doing anything last minute. We've  
6 disclosed everything. We're -- this is an emergency to them --

7 THE COURT: Okay.

8 MS. LEXIS: -- because they haven't planned ahead.

9 MS. MACHNICH: We didn't not plan ahead.

10 MS. LEXIS: And so --

11 MS. MACHNICH: We're trying to save the county \$12-\$15,000. We  
12 didn't know when this witness was going to testify.

13 THE COURT: Yeah.

14 MS. MACHNICH: And it's been moving. And that's been, you know,  
15 the State's 19 witnesses, like --

16 THE COURT: I --

17 MS. MACHNICH: -- there's no --

18 THE COURT: I mean, when you want to -- you know, I don't want  
19 last-minute stuff, either, but -- but let's just find the answer.

20 MS. MACHNICH: Okay.

21 THE COURT: I mean, there's -- you know --

22 MS. MACHNICH: I think they -- the rule says shall.

23 THE COURT: One, two, three, four bright attorneys here in the  
24 courtroom. We ought to figure out what the legal standard is pretty quickly.

25 MR. DICKERSON: It's -- it's supreme --

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MS. MACHNICH: Your Honor, it says:

Except as provided in a different subsection, parties shall be allowed to appear before a court or master using audio-visual transmission equipment in the following matters, including.

THE COURT: And I don't see that language.

MS. MACHNICH: Rule 4.

THE COURT: My language -- I told you guys and I highlighted it here. I don't know where you're looking.

MR. GASTON: May I approach, Your Honor, to see --

THE COURT: Yeah.

MR. GASTON: -- to see your book, if that's okay.

THE COURT: Yeah. That's what I asked you guys to do last time. There's no word shall in here. I read it to you. There's no word shall. If you find a word shall, circle it four times with my red pen.

[Pause in proceedings.]

THE COURT: Let me ask, Mr. Dickerson, did you see the word shall as a mandatory in the statute?

MS. LEXIS: No.

MR. DICKERSON: No.

MS. LEXIS: I e-mailed what we have to your law clerk.

THE COURT: Maybe that's an older version.

MR. DICKERSON: Oh, your law clerk is not here. Okay. Let me try a different -- JEA? Okay.

MR. GASTON: I -- I just went through.

THE COURT: It must be an older version, Mr. Gaston.

1 MR. GASTON: I -- well, I don't know what everyone is looking at on  
2 their phone. My understanding of this is that the standard is, is there good  
3 cause? And then it's the other way around. When parties are judging --

4 THE COURT: And then -- and then why did we think the word  
5 necessary was in there, too? Was that --

6 MR. GASTON: I saw the rule that Dickerson -- Mr. Dickerson cited  
7 regarding the court can order personal appearance of a witness, regardless of --

8 THE COURT: Yeah.

9 MR. GASTON: -- the other one. But it's -- my understanding was the  
10 standard there was good cause. So, basically, if they can show good cause on  
11 their end as to why the personal thing should be required, then a court can do  
12 that.

13 And I think one of the sections is even -- is even titled court's  
14 discretion to modify rule.

15 I'll return your -- I didn't circle anything. Here's your pen.

16 THE COURT: Oh, thank you.

17 MR. GASTON: Yep.

18 THE COURT: I appreciate it.

19 MR. GASTON: Yes, sir.

20 THE COURT: Well, I think the desire to save money is admirable.  
21 I -- I don't know that that's good cause, where you have the State wants -- thinks  
22 that its rights to confrontation are being impaired.

23 If it was the other way around, I, of course, would find for you guys  
24 that, you know, you can't -- money isn't a good reason to deprive a party of their --  
25 of their -- of confrontation rights.

1 MR. GASTON: I guess there's two -- so two different responses  
2 would be -- I mean, seems like --

3 THE COURT: Well, I appreciate it. It's noble. You are trying to save  
4 money, but --

5 MR. GASTON: Well, I mean, I guess two points. One, if the situation  
6 was reversed, it's a little different, because the State doesn't have a Constitutional  
7 right to confront its accusers, whereas we do, so it's a little different there.

8 With respect to necessary, yeah, obviously, we can come up with the  
9 money to fly him out here. But the fact is -- I mean, the reality of it is the Clark  
10 County Public Defender's Office has an annual budget, and if we spend \$15,000  
11 on an expert witness here, there's less money available in the expert budget for  
12 other cases.

13 Similarly on a murder case, if they want to spend \$50,000,  
14 that's \$50,000 less available, so encompassed right before the budget review next  
15 year, I have a PSV case going to trial, I don't have \$3,000 for a witness. So I  
16 think that the -- I mean --

17 THE COURT: So it's a --

18 MR. GASTON: It's a reality.

19 THE COURT: -- significant drain on your budget, is what you're  
20 saying. So.

21 MR. GASTON: Yeah. I mean, Mr. Dickerson said it himself, the  
22 County pays our salaries, too. The cost of flying this guy here is probably, what,  
23 about a third of my salary -- annual salary here, a fourth of my annual salary.  
24 He's expensive, I mean.

25 MR. DICKERSON: And Your Honor, just for the record --

1 THE COURT: Yeah, I see that.

2 MR. DICKERSON: -- the notice is still deficient. We were planning  
3 on this trial going on to Monday. Counting tomorrow and Monday, that's only two  
4 days' notice.

5 Also, we've just been provided this --

6 THE COURT: Where does it say three days' notice is required?  
7 That's something that they said.

8 MR. DICKERSON: Do you have that?

9 THE COURT: I need -- I need that rule, too.

10 MS. LEXIS: E-mail -- let me just e-mail it to the right person.

11 MR. GASTON: In fact, I think he'll testify Wednesday, and not  
12 Tuesday. Because we have two defense witnesses to come before them,  
13 anyways. This is --

14 MR. DICKERSON: Ms. Lexis is getting that.

15 MR. GASTON: -- taking a lot longer than expected.

16 MR. DICKERSON: And also, we -- we've just been provided the  
17 articles that the -- that the expert's going to be relying on today. Anything that we  
18 would want to impeach him with, he's not going to be able to see. We're not  
19 going to be able to impeach him with that.

20 THE COURT: How much notice were they required to give you?  
21 What rule did they violate?

22 MR. DICKERSON: Well, that was ordered by the court, and it was  
23 ordered on Monday. And now we are here today, getting it.

24 THE COURT: Judge Herndon --

25 MR. DICKERSON: Yes, Your Honor.



1 THE COURT: -- issued an order.

2 MS. MACHNICH: Ordered as soon as possible to provide it. We  
3 received it and forwarded it the same day.

4 MR. GASTON: Not the same day as the order. The same day --

5 MS. MACHNICH: No.

6 MR. GASTON: -- as we received it.

7 MS. MACHNICH: The same day that we received it from our expert,  
8 we were requesting it. I forwarded his e-mail to the State this morning, when I  
9 received it.

10 And Judge --

11 THE COURT: With your supplemental report?

12 MS. MACHNICH: No, there is no -- the -- the -- he did not author a  
13 report.

14 THE COURT: I don't understand.

15 MS. MACHNICH: So there's no report in this case.

16 THE COURT: Wait, I --

17 MS. MACHNICH: The judge requested -- Judge Herndon requested  
18 that we provide articles that the expert is going to rely upon, which is not required  
19 by any rule or statute. But he ordered us to provide those to the State. And he  
20 said as soon as possible. And we've now provided them.

21 THE COURT: I'm looking to see. That was one of his orders. I have  
22 an e-mail from him.

23 MS. MACHNICH: Okay. So it may -- Mr. Gaston has -- I'll be -- to be  
24 candid with the court, he has just corrected me that those articles -- those are  
25 required to be provided and that we have provided them.

1 THE COURT: All right. So -- I want to -- so I'm trying to address  
2 Mr. Dickerson's -- sounds like it's an oral --

3 MR. DICKERSON: Right.

4 THE COURT: -- Motion to Strike your expert, because it's a late  
5 notice.

6 MR. GASTON: It's another half motion. Judge Herndon -- Judge  
7 Herndon considered this issue. They made the arguments. Judge Herndon  
8 denied it and said, State, as soon as you get these -- or Defense, as soon as you  
9 get these articles, send them to him. They did that.

10 THE COURT: I don't see that in here. Mr. Dickerson, will you show  
11 me where -- where -- where you see they're violating the disclosure rule?

12 MR. DICKERSON: Yes. It was -- it was during the hearing that --  
13 that Judge Herndon --

14 THE COURT: That's his e-mail.

15 MR. DICKERSON: -- had ordered that. So he's --

16 THE COURT: Is there a written order --

17 MR. DICKERSON: -- he ordered it --

18 THE COURT: -- was there a written order you want me to rule on?

19 MR. DICKERSON: He made an oral ruling that they had to turn that  
20 stuff over.

21 MR. GASTON: We agree. That is what he said.

22 MS. MACHNICH: Yes.

23 THE COURT: I don't see that.

24 MS. MACHNICH: That is what happened.

25 THE COURT: All right. Did -- did they comply?

1 MR. DICKERSON: They turned it over today. But that being said,  
2 we would have materials that -- likely have materials that we would want to  
3 impeach this expert with, if this expert does testify.

4 MR. GASTON: We could have them -- we could have them have  
5 those articles in front of them, and they say, turn to page 3 --

6 THE COURT: It's not the same for him to get it all in advance. Then  
7 he gets a heads on what he's going to be impeached on.

8 MS. LEXIS: Exactly.

9 MR. GASTON: Well, he -- he knows.

10 MS. LEXIS: Exactly.

11 MR. GASTON: He knows -- I mean, he knows.

12 THE COURT: I -- as a civil lawyer, I never liked to do that.

13 MS. LEXIS: Exactly.

14 MR. GASTON: Well, I guess -- I guess there's two points.

15 THE COURT: It gives an unfair advantage over their experts.

16 MR. GASTON: Well, he's the one who sent us articles that he relied  
17 on. So he knows that those will probably be the subject of the majority of  
18 cross-examination.

19 MS. LEXIS: No. Actually, let me speak from my point of view,  
20 because I'm the one that's going to be cross-examining him.

21 THE COURT: Yeah. You haven't had a chance to speak much.

22 MS. LEXIS: Thank you.

23 THE COURT: Why don't you tell me your point of view.

24 MS. LEXIS: Your Honor, we don't have to disclose impeachment  
25 evidence in advance of a particular witness, particularly a defense witness. So

1 we would not necessarily, as the court has correctly indicated, give him a heads  
2 up concerning what we would be impeaching him on.

3 I think that really takes away from our opportunity to cross-examine  
4 him. As he sits in court and he gives this direct examination about how you  
5 should not believe eyewitness testimony because of X, Y, or Z factors,  
6 Mr. Dickerson and I, now that we have the articles that he relied on, we got that  
7 this morning, we intend to do research on this particular individual and everything  
8 that he's going to testify to. And I will probably put -- if I -- if I was a betting girl, I  
9 would put money on the fact that Mr. Dickerson and I could find a litany of articles,  
10 prior testimony that this particular individual has given, whether in this state or in  
11 Texas, that we intend to confront him with, in court, in front of the jury, where we  
12 are able to hand him a piece of paper, for instance, as an example, Mr. Smith, so  
13 and so, you testified in State of Texas vs. So-and-so. Right? And in that  
14 particular case, you actually said this, didn't you?

15 How we can do that through audio-visual, I don't know, because what  
16 would we do? We would hold up the piece of paper onto the -- the little webcam  
17 and have him look at it and then the jury couldn't see it overhead? Or -- I mean --

18 THE COURT: So how much --

19 MS. LEXIS: -- I don't know how that would work.

20 THE COURT: How much time do you need to cross-examine him?

21 MS. LEXIS: I imagine -- the last time I did an ID expert, Your Honor,  
22 it took two hours.

23 THE COURT: How much time do you need on direct for this expert?

24 MS. MACHNICH: We're not sure, an hour to two hours.

25 THE COURT: So at most two hours, and for them approximately two

1 hours, so roughly four hours.

2 MS. MACHNICH: Yes.

3 THE COURT: What did you want to say? Anything else?

4 MS. MACHNICH: Only -- only that that's not the amount we'd be  
5 paying him. We have to pay while he travels.

6 THE COURT: Yeah.

7 MS. MACHNICH: And while he sits around waiting. So it's not just  
8 any other witness sitting. So, I mean, we calculated -- he'd have to be in -- if he  
9 was in for -- depending on -- we don't even know when he's going to testify, 24  
10 hours, 48 hours, this is many thousands of dollars.

11 THE COURT: Yeah.

12 MS. MACHNICH: And this is done all the time. Like, and the State  
13 makes this out to be a big problem and like this never happens. This happens all  
14 the time. This was set up to accommodate out-of-state witnesses and experts.

15 THE COURT: Well, I know. But you kind of waited to the last  
16 minute.

17 MS. MACHNICH: We didn't. We gave appropriate notice. It's three  
18 days. Three judicial days' notice until his testimony. It's Thursday. He's not  
19 testifying until Tuesday.

20 THE COURT: I don't know why you keep talking about three. Why  
21 couldn't you give 20 days?

22 MS. MACHNICH: Because we were --

23 THE COURT: That's what I would have done.

24 MS. MACHNICH: Because we were still -- it's not required by  
25 statute.

1 THE COURT: How do you know?

2 MS. MACHNICH: Or the rule. Because I --

3 THE COURT: You -- you keep saying that, but you're not citing  
4 anything to me.

5 MS. MACHNICH: Your Honor, I don't know why --

6 THE COURT: So I don't --

7 MS. MACHNICH: -- this is not --

8 THE COURT: So I don't necessarily think you got the right statute.

9 MS. MACHNICH: I'm looking at the rules as are currently posted on  
10 the Nevada legislative website. And it's the one that I've been referring to. And it  
11 specifically states under --

12 THE COURT: But you haven't given me a cite. You just keep  
13 looking at your phone, saying there's this rule. I don't believe you.

14 MS. MACHNICH: I have --

15 MR. GASTON: While she -- while she looks up the rule real quick on  
16 the notice deadline, can I go ahead and respond briefly to the prejudice problem  
17 that Ms. Lexis just --

18 THE COURT: Yeah. Sure.

19 MR. GASTON: I think she makes a pretty powerful argument. I  
20 mean, the fact is, she has the right to confront our witness with articles that he's  
21 relied on --

22 THE COURT: Yeah.

23 MR. GASTON: -- or, adversely, I mean, articles that he's not aware  
24 of to impeach his competence. I think that's pretty powerful. And I also get now  
25 what you guys were saying earlier, that it's not fair to force them to give our expert

1 a heads up to review these articles before his testimony so he can have them  
2 printed out and ready to go.

3 On the other hand, it seems a little silly to think that this rule --  
4 because that argument would apply to every expert, essentially. So it seems a  
5 little silly to think that it's impossible for any expert witness to really testify through  
6 audio-visual.

7 The solution, I suspect, is something along the lines of I get that it  
8 slows things down a little -- a little bit. But he has access to a fax machine. He  
9 has access to an e-mail. So if the State does want to impeach him with an article,  
10 they could -- we could fax it to him; we could e-mail it to him; we could reference  
11 it. And, in fact, that would arguably be even more relevant, right?

12 THE COURT: Yeah.

13 MR. GASTON: Are you familiar with so-and-so's work on suggestive  
14 memory?

15 THE COURT: Look, I've done --

16 MR. GASTON: No, I'm not.

17 THE COURT: I -- I've probably done a thousand depositions in my  
18 days.

19 MR. GASTON: Okay.

20 THE COURT: And -- and I've done a lot of them by audio-video.  
21 There's some drawbacks and there's some benefits.

22 MR. GASTON: Well, I guess I submit it on the prejudice problem.

23 THE COURT: Well, let me hear -- what do you want to say?

24 MS. LEXIS: Your Honor, may I approach --

25 THE COURT: Well, show her which --

1 MS. LEXIS: -- with a laptop with --  
2 THE COURT: Well, show her which one --  
3 MS. LEXIS: -- Rule 4, legislative state [indiscernible]?  
4 MS. MACHNICH: Because this is what I'm looking at. Let me see.  
5 MS. LEXIS: Rule 4.  
6 THE COURT: Rule 4 of the Nevada Supreme Court rules?  
7 MS. MACHNICH: I just want to see if it's the same one I'm looking at.  
8 Yeah. Court -- three court days.  
9 MS. LEXIS: Uh-huh.  
10 MS. MACHNICH: And I believe that we are now looking at the same  
11 thing.  
12 THE COURT: Why don't you just tell me -- you don't need to  
13 approach. Why don't you tell me what you wanted to --  
14 MS. MACHNICH: It's -- it's.  
15 THE COURT: I have Rule 4 here.  
16 MS. LEXIS: I thought you wanted to look at the -- the actual rule.  
17 THE COURT: Okay.  
18 MS. LEXIS: Since we haven't been -- no one's been able to really  
19 steer you in that direction.  
20 THE COURT: Okay. Thank you.  
21 MS. LEXIS: Your Honor, that's Rule 4. And it's touchscreen, so you  
22 can actually, like, scroll using your screen -- or your finger. That's the section. It's  
23 under the legislative website. That's at -- that's the rule as it stands right now.  
24 THE COURT: Yeah.  
25 MS. LEXIS: Rule 4.



1 THE COURT: That's the one I see, now.

2 MS. LEXIS: Okay.

3 THE COURT: Okay. All right. So here's -- so I don't need to hear  
4 anymore argument on this.

5 MS. MACHNICH: Your Honor, I actually have Darren Richards from  
6 my office coming to --

7 THE COURT: You have what?

8 MS. MACHNICH: Darren Richards from our office. We'd like to call  
9 him just briefly to testify as to why we are doing this and why there should be  
10 good cause. He's coming over.

11 MS. LEXIS: I don't know how --

12 THE COURT: Why there's good cause?

13 MS. MACHNICH: Why -- it -- it sounds like we're partially stuck on  
14 good cause and then we have other --

15 THE COURT: Well, that is the standard.

16 MS. MACHNICH: Right. And so I have --

17 THE COURT: Did he talk to the expert?

18 MS. MACHNICH: No. But he is in charge of our finances and  
19 approving expert travel expenses and how that works with our entire office. He's  
20 the person I go to when I need travel expenses approved.

21 THE COURT: So I'm not going entertain that. All right. So tell him  
22 thank you anyway, but go back to the office. I'm going to deny your motion -- I'm  
23 going to deny your request to allow testimony by audio-visual. Rule 4 is pretty  
24 clear. It says:

25 Appearances by parties or witnesses through use of simultaneous

26

1 audio-visual transmission may be made as follows:

2 Trials, provided there's good cause as determined by the court in  
3 accordance with Rule 1(6).

4 Rule 1(6) defines good cause -- and I do note that -- that one of the  
5 factors is cost and time savings, all right.

6 MS. MACHNICH: Your -- Your Honor, I don't think --

7 THE COURT: But --

8 MS. MACHNICH: -- we're looking at the same edition of the rule. I  
9 think that the version that Ms. Lexis had and that I have is not the same version  
10 Your Honor is looking at it, because the quote that you're reading from is not the  
11 same quote that I'm looking at. And I'm on the same website she was.

12 THE COURT: Okay. Well, then if it's the wrong rule, you can do a  
13 Motion for Reconsideration orally tomorrow. But let me -- let me finish my ruling.

14 So one of the factors is cost and time savings, but other factors  
15 include whether there was a timely objection to the request for audio-visual. Here  
16 it was -- it was simultaneous with your request.

17 The next is whether any undue surprise or prejudice would result.  
18 Here there was a complete surprise by the State, because the defense -- it wasn't  
19 until just moments ago when they indicated for the first time that they wanted to  
20 do audio-visual.

21 Subpart C, the convenience of the parties, counsel, and the court; it  
22 would be a little bit inconvenience to do the deposition by equipment, rather than  
23 having a live person. In -- on the other hand, the defense hasn't shown any  
24 inconvenience at all to the witness in -- in having to miss some time and fly out  
25 here. There's no indication that he's missing a crucial appointment or some --

1 some work. And -- and there's no indication of any inconvenience.

2 Cost in time where certainly some money would be saved, but the  
3 Clark County is -- has the funds and -- and can pay for it.

4 Importance and complexity of the proceedings; here, the parties  
5 indicated that this testimony will take approximately four hours. And given --  
6 given the need for the State to actually use some documents in  
7 cross-examination, it would be much more effective to do that with a live witness.

8 And then whether the proponent has been unable, after due  
9 diligence, to procure the physical presence of the witness; here the physical  
10 presence of this expert witness is procurable and -- and can -- can be procured  
11 and the witness apparently is -- is cooperating and not -- not refusing to come out  
12 here.

13 So looking at all of those reasons, I -- you know, when I -- generally, I  
14 have to balance, you know, the little bit of extra money with the harm to the State  
15 if they don't get their person here. It's a close call, but there's no reason why the  
16 money can't be spent. If that's all we're all we're talking about is money, let's --  
17 let's give -- you know, trials favor live persons. I want a live person. So that's my  
18 ruling. Okay.

19 MS. MACHNICH: Thank you.

20 MR. GASTON: Thank you, Your Honor.

21 [Pause in proceedings.]

22 THE COURT: Mr. Gaston, if something changes, raise the issue  
23 again.

24 MR. GASTON: Yes, sir.

25 THE COURT: All right.

1 [Pause in proceedings.]

2 THE COURT: So there -- there was some slight modifications to the  
3 rules. The rules basically begin with a presumption -- with -- with the -- with the  
4 use of the language shall, that audio-video shall be used, but then it has a  
5 carveout. And the carveout where personal appearances is required is for trials.  
6 But then it goes on after that to say, basically, the court has discretion under a  
7 good cause standard to modify the rule for good cause. So at the end of the day,  
8 it really -- it's still a good cause standard.

9 And -- and on balance, I just find that, you know, money -- a little bit  
10 of money, looking at all the factors, is not good cause to deviate from the rule that,  
11 you know, in a trial you generally want the live people here.

12 I'm going to stick with that, unless something new -- new comes  
13 about.

14 MS. MACHNICH: Can we --

15 MR. GASTON: Thank you, Your Honor.

16 MS. MACHNICH: Your Honor, can we at least -- to clarify the  
17 record --

18 THE COURT: Yes.

19 MS. MACHNICH: -- that we did give appropriate notice under what  
20 you're reading right now. Under the rules, it's three judicial days' notice. I just -- I  
21 just want it clear for the record that we gave appropriate notice.

22 THE COURT: I'm not going to make a finding on -- on whether notice  
23 was sufficient -- you gave notice today.

24 MS. MACHNICH: I did.

25 THE COURT: Okay.

1 MS. MACHNICH: Okay.

2 MR. GASTON: Thank you.

3 THE COURT: All right. I mean, it is what it is. I -- personally, I think,  
4 you know, one of the factors is the amount of notice. And more notice would have  
5 been helpful, because then the State would have had more chance to consider it.

6 MS. MACHNICH: And just also to clarify, we told them this morning,  
7 so it has been a couple hours. They made it sound like it was right now. I told  
8 them when we came into court this morning, so around 11:15, 11:30.

9 MS. LEXIS: Okay.

10 MS. MACHNICH: So she made it sound like I ambushed right here.  
11 I actually did speak with them before the lunch break.

12 MR. DICKERSON: And it's one --

13 THE COURT: And that -- and that's good to know. Thank you.

14 MR. DICKERSON: 1:45 right now, Your Honor.

15 MS. MACHNICH: Uh-huh.

16 THE COURT: All right. So I think we should get the live person,  
17 unless --

18 MS. MACHNICH: We -- I spoke --

19 THE COURT: -- he breaks a leg.

20 MS. MACHNICH: I spoke with Darren Richards and we have already  
21 started procuring his attendance by flight. But we will need to have him firmly set  
22 to testify Tuesday afternoon. He cannot be here before then and he will not be  
23 here after then.

24 So we'll need to take him out of order then, because that's when he's  
25 going to be [indiscernible].

1 THE COURT: Can you discuss that with the State and -- and see  
2 how it's going to fit in with the schedule? All right.

3 MS. MACHNICH: I did previously --

4 THE COURT: Marshal --

5 MS. MACHNICH: -- and they said it was fine.

6 THE COURT: I -- no more.

7 MS. MACHNICH: Okay.

8 THE COURT: Let's bring the jury in. We're going to bring the jury in.

9 MR. GASTON: Are you talking about Jordan Alexander?

10 MS. LEXIS: Santiago.

11 MS. MACHNICH: Can we just do -- can we finish up with Jordan?

12 MS. LEXIS: Santiago Garcia has vacation. He's leaving for  
13 California in a few hours.

14 MS. MACHNICH: But Jordan Alexander --

15 MS. LEXIS: So we need to put him on, otherwise we're not going to  
16 be able to put him on.

17 MS. MACHNICH: Well, we would disfavor breaking up the direct and  
18 cross-examine of Jordan -- Jordan Alexander. We're going to get to both of them  
19 afternoon. And his firm setting at 1:30 has come and passed. He should testify  
20 next so we can finish with a complete witness and not separate and do two directs  
21 and then two crosses.

22 MR. GASTON: To be fair, my cross is eight minutes, so, like, they --  
23 if we're going to argue longer than eight minutes over which to do, it would be  
24 faster just to do it.

25 THE COURT: I'm --

1 MR. GASTON: Whichever way you want to do it.

2 THE COURT: You know what, I'm worried about the inconvenience  
3 of the witnesses. We've been inconveniencing them. I -- I just took 20 minutes to  
4 entertain a motion that you guys had out of the blue. So I'm going to let the State  
5 put on whoever they want. All right.

6 Your objection's noted.

7 [Jury reconvened at 1:47 p.m.]

8 THE COURT: Thank you. All right.

9 The State may call its next witness or recall the existing witness  
10 who's on the stand.

11 MR. DICKERSON: Santiago Garcia.

12 MS. LEXIS: Your Honor, we will be needing the aid of an interpreter,  
13 and maybe we don't -- I don't believe we have an interpreter here.

14 THE COURT: Well --

15 MS. LEXIS: So we'll just --

16 THE COURT: -- then we'll go with the next -- with the other witness.

17 MS. LEXIS: Yes.

18 THE COURT: All right. Make arrangements to get an interpreter  
19 here, then.

20 MS. LEXIS: We recall Jordan Alexander.

21 THE COURT: All right. Jordan Alexander.

22 And is my marshal going to get an interpreter?

23 MS. LEXIS: I believe so.

24 MR. DICKERSON: He is, Your Honor.

25 THE COURT: All right. Thank you. All right.

1 Mr. Alexander, it's a new day, but you are still under oath and still  
2 required to testify truthfully; do you understand that, sir?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Thank you. You may take your seat and get  
5 comfortable.

6 And then we will allow Mr. Gaston to conduct cross-examination.

7 THE WITNESS: Okay.

8 MR. GASTON: Thank you, Your Honor.

9 THE COURT: Make sure you speak into the microphone, too.

10 THE WITNESS: Okay.

11 THE COURT: Thank you, sir.

12 THE WITNESS: No problem.

13 **JORDAN ALEXANDER**

14 [having been previously called as a witness and sworn, testified as follows:]

15 **CROSS-EXAMINATION**

16 BY MR. GASTON:

17 Q Good afternoon, sir. Yesterday you went into the description of --  
18 well, you talked about many things, but yesterday you talked about the Mazda  
19 that was --

20 A Yes.

21 Q Okay. And you remember we went into detail about the -- the Mazda  
22 sign on the one side of the car?

23 A Yes.

24 Q And the SKYACTIV sign on the other side?

25 A Yes, on the opposite side.



1 Q Okay. And that -- you testified that you're remembering those things  
2 about the car?

3 A Yes, I did.

4 Q Okay. Now, you made a conscious choice, you were observing -- you  
5 were trying to remember everything you could about the car --

6 A Yes.

7 Q -- originally, right?

8 A Yes, sir.

9 Q Okay. Because you wanted to be able to identify it to police later?

10 A Yes, sir.

11 Q Okay. And you got a chance to speak to the police, right?

12 A Yes. Within five minutes, so yeah.

13 Q Yeah. Almost -- almost immediately after?

14 A Yes, sir.

15 Q And you told them as many details as you could about the guy who  
16 robbed you, about the car?

17 A Yes, I did.

18 Q Okay. And you described the car as a white car?

19 A [No audible response.]

20 Q You've got to say yes or no because they write it down.

21 A Yes, sir.

22 Q A four-door car?

23 A I didn't necessarily label it as a four-door car, but yes.

24 Q Okay. And you said it was a Mazda 3?

25 A Yes, I did.

1 Q You said it had tinted windows?  
2 A Yes.  
3 Q And you also told them that it had a black license plate, like it was just  
4 off the dealership?  
5 A Yes.  
6 Q Okay. However, when you were first talking, you never told them  
7 about the SKYACTIV symbol, right?  
8 A Yes, I did.  
9 Q When you were first talking to them?  
10 A Yes.  
11 Q Okay. When you got a chance to write down your statement --  
12 A Yes.  
13 Q -- did you ever write down that it had the SKYACTIV symbol?  
14 A I never mentioned, I don't believe, the symbol.  
15 Q And do you remember giving a recorded statement to police?  
16 A Yes, I do.  
17 Q And it was, basically, you talking to them and them recording it?  
18 A Yes.  
19 Q With a cell phone or?  
20 A I believe so, yes.  
21 Q Okay. And in that, you gave them as many details about the car as  
22 you could remember, right?  
23 A Yes.  
24 Q And that happened almost immediately after the robbery, as well? Or  
25 was it a couple hours later?

1 A No. I -- I'm trying to think. I'm not sure if it happened after they had  
2 me go point him out.

3 Q But it was relatively soon, right?

4 A Yes.

5 Q Okay. And now, you -- you -- I think I might have said this already, but  
6 just in case I didn't ask, you went through all the descriptions about the car, as  
7 well?

8 A Yes.

9 Q Did you tell them that it had a SKYACTIV symbol at that time?

10 A I told them that they had another symbol on the opposite side. They  
11 didn't read exactly what it said, but I remember it was a symbol over there. And  
12 then I looked the car -- the car up on my phone, and it popped up, and I was, like,  
13 yep, that's the car right there.

14 MR. GASTON: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 BY MR. GASTON:

17 Q I'm showing you a copy of -- this is your name?

18 A Yes, it is.

19 Q And this is the recorded statement that you gave, it says voluntary  
20 statement at the top --

21 A Okay.

22 Q -- is that correct?

23 A Yes, it is.

24 Q And it says the date, June 28, 2016?

25 A Yes, it does.

1 Q 8:09 a.m.?

2 A [No audible response.]

3 Q Okay. Will you take a minute and -- you can read through it, take as  
4 long as you need, and tell me if you find the part where you told them about the  
5 symbol on the car.

6 A [Witness complies.]

7 Q Have you finished reading it?

8 A Yes, I did.

9 Q Having now read through your recorded statement, would you agree  
10 with me when I say that you never mentioned the SKYACTIV symbol --

11 A Yes.

12 Q -- in your report?

13 A I could agree with you on that.

14 Q Do you remember testifying at the grand jury?

15 A Yes.

16 Q And you were under oath then?

17 A Yes.

18 Q And you were telling the truth?

19 A Yes.

20 Q And you were answering questions from the -- the State?

21 A Yes.

22 Q And, again, you were trying to be as detailed and as helpful as  
23 possible?

24 A Yes.

25 Q And you were testifying about the things that you remember?

1 A Yes.

2 Q Would it surprise you that you never mentioned the SKYACTIV  
3 symbol in your grand jury testimony, either?

4 A No.

5 Q Okay. Would it surprise you if I said that the first time in any recorded  
6 statement that you ever mentioned the SKYACTIV symbol was today at trial?  
7 Yesterday at trial, I'm sorry.

8 A Repeat that one more time, please.

9 Q Would it -- would it surprise you if I told you that the first time that  
10 you've ever given -- mentioned the SKYACTIV symbol in a recorded statement  
11 was at trial yesterday?

12 A I don't believe that. Because I remember telling the cop that, that I  
13 pulled over -- that I honked at to get his attention -- I remember letting him know.

14 Q Okay. Okay. Now, during the robbery, you had a gun pointed at you?

15 A Yes, I did.

16 Q And it was held low, you said?

17 A Around his stomach area.

18 Q Right. Okay. Around the -- and now, you could describe the gun,  
19 right?

20 A Yes. It was an all-black gun.

21 Q You -- you described it as a black gun?

22 A Yes.

23 Q A small-frame gun?

24 A Yes. From -- that's -- that's because the detective asked me what  
25 type of gun it was. And I'm not familiar with guns. So he said, was it a big gun, a

1 small gun? And I told him it was more small. It wasn't really too large.

2 Q And you said it was a handgun?

3 A Yes.

4 Q And, in fact, he went one further, right; he asked you, is it a revolver or  
5 a semi?

6 A Yeah.

7 Q And then explained to you the difference?

8 A Yes.

9 Q Okay. Now, you described him as a young black male?

10 A Yes.

11 Q And you said he had kind of a messy afro?

12 A Yes.

13 Q Like he was starting to grow dreads?

14 A Yes.

15 Q Okay. Now, when the officers asked you whether he was wearing  
16 pants or shorts, you weren't able to answer that, correct?

17 A Yes.

18 Q That's correct?

19 A Yes.

20 Q You weren't sure at that time whether he had pants on or shorts on?

21 A Yes.

22 Q Now, you -- you told the police that you felt like you got a good view of  
23 his face?

24 A Yes.

25 Q And that you would be able to know him again if you saw him again?

1 A Yes.

2 Q But when they asked you for -- to describe the face, you said you're  
3 not really sure if you could describe the face?

4 A Yeah. Because I'm good with faces visually. I can't really describe  
5 how somebody looks from seeing them for no longer than a minute.

6 Q All right. Because faces are a little more complicated to describe?

7 A To describe and have -- yes.

8 Q Sure. Okay. Now, you did talk about height -- or you talked about  
9 weight, right? You said he was about 200 pounds?

10 A I don't -- yes, sure.

11 Q You don't have to guess with me.

12 A Okay.

13 Q I -- you -- you don't have to do a guess. I can show you. It doesn't  
14 count if you guess.

15 A Did I say no more than 200 pounds? Or over 200 pounds?

16 Q I'll -- I'll show you real quick.

17 A Okay.

18 MR. GASTON: May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 MS. LEXIS: Page?

21 MR. GASTON: 2.

22 BY MR. GASTON:

23 Q I'm showing you your recorded statement, correct?

24 A Yeah.

25 Q Here you say, because -- or skip that line for a second. And then:

1                   \*\*\*about 200 pounds?

2           A     That's -- that's a -- that's an estimate.

3           Q     Yeah. A guess.

4           A     Yeah, sure.

5           Q     Okay. So you viewing him, you thought he might have been around

6 about 200 pounds?

7           A     Yes.

8           Q     Okay.

9           A     Because me, myself, I'm 150. So he's taller than me, so I figured he

10 weighed more.

11          Q     Okay. Fair. Now, you just mentioned height. I want to talk about

12 height.

13          A     Uh-huh.

14          Q     You describe -- how tall are you, did you say?

15          A     I'm 5-8.

16          Q     5-8?

17          A     Yes.

18          Q     Okay. And you described him originally as being about 5-8 --

19          A     To 5-10.

20          Q     -- and then 5-10, actually?

21          A     Yes.

22          Q     Okay. Between that height range?

23          A     Yes.

24          Q     And then you go on one sentence later, say:

25                Because he's a little bit taller than me.



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Right?

A Yes.

Q Okay. Prior to testifying today, have you -- did you ever actually see the Mazda 3 in person again? Not just a photo of it, but the actual car?

A No.

Q Okay. Now, the State went through the body cam footage of the officer who drove you to do the showup yesterday; do you remember that?

A Yes.

Q Okay.

MR. GASTON: May I approach the witness, Your Honor?

THE COURT: Yes.

MR. GASTON: May -- I -- I don't remember if I asked to approach.

THE COURT: You may.

MR. GASTON: Thank you.

MS. LEXIS: Your Honor, I think it should -- it needs to be marked prior to him approaching the witness, because how are we going to refer to it?

THE COURT: Are --

MS. LEXIS: It needs to be marked for identification.

THE COURT: Are you -- are you using this document to --

MR. GASTON: I'm going to try to admit it into evidence.

THE COURT: -- to refresh the witness's recollection or lay foundation for admission --

MR. GASTON: Lay -- lay foundation for admission.

THE COURT: -- or to impeach? All right.

MR. GASTON: I can have it marked.

1 THE COURT: Well, then why don't you mark it first --  
2 MR. GASTON: Yes, sir.  
3 THE COURT: -- for identification purposes.  
4 MS. LEXIS: Thank you.  
5 MR. GASTON: Yes, sir.  
6 May I approach the witness again?  
7 THE COURT: Yes, you may.  
8 BY MR. GASTON:  
9 Q I'm showing you what's been marked as Defense Proposed Exhibit A.  
10 A Uh-huh.  
11 Q This is the -- this is a still from the body cam footage, right?  
12 A Uh-huh.  
13 Q And that's a yes?  
14 A Yes. Yes.  
15 Q This is the kind of the front of the cop car?  
16 A Yes.  
17 Q You're in the back seat, so a little behind this?  
18 A Yes. No. I'm actually on the right side. So -- well, yes.  
19 Q On the right side of the back seat?  
20 A Yes.  
21 Q And this is kind of the alleyway where the robbery --  
22 A They peeked around the corner, yes.  
23 Q Okay. And this is where you were when you made your identification,  
24 correct?  
25 A Yes.

1 Q Okay. And this is a fair and accurate depiction of where -- of the  
2 scene as you saw it?

3 A No. Because I was in the back seat and there's a screen on the  
4 window. So you can't really see -- I guess this right here. You -- I only looked  
5 through a little crease in the -- in the window.

6 Q Okay.

7 A So that's how I was able to see him.

8 Q Okay. So -- so -- this -- this is where you were, but your view was  
9 through --

10 A Was different than that.

11 Q Okay.

12 A It wasn't clear like that.

13 Q Okay. Fair enough.

14 MR. GASTON: Your Honor, may I mark -- may I admit this as  
15 Defense Exhibit A?

16 THE COURT: Any objection?

17 MR. DICKERSON: No objection.

18 THE COURT: All right. It's admitted.

19 [Defendant's Exhibit No. A admitted.]

20 MR. GASTON: Permission to publish it to the jury?

21 THE COURT: Yes.

22 BY MR. GASTON:

23 Q So just to clarify again, this is where you were when you identified  
24 Keandre?

25 A Yes.

1 Q And as you mentioned before, you were actually in the back seat  
2 looking through kind of the bars when you did this?

3 A Yes.

4 Q Thank you.

5 MR. GASTON: Court's indulgence.

6 No further questions, Your Honor.

7 THE COURT: All right. Redirect.

8 MR. DICKERSON: Yes, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MR. DICKERSON:

11 Q Jordan, I think -- you were pretty clear at that SKYACTIV symbol; but  
12 who was it that you first told about that?

13 A The cop that I stopped in the middle of the street.

14 Q That was the -- the officer that was leaving his shift; is that right?

15 A Yes.

16 Q And the next officer that came up is the -- the female?

17 A Yes, it was the lady.

18 Q Okay. So that guy wasn't out there for the report or --

19 A No. He was just there to get somebody to me.

20 Q And then when we had met at the grand jury about a month later --

21 A Yes.

22 Q -- you testified briefly about the car?

23 A Yeah.

24 Q Is that right?

25 A Yes, sir.

1 Q I'm going to put it up on the screen, exactly what we talked about; so  
2 the A is you, right? The A?

3 A Probably left -- yes.

4 Q And the Q is me?

5 A Yes.

6 Q Why don't you go ahead and read the A?

7 A So it says:

8 When I put the car seat. No. The purse is inside of the car. A white  
9 Mazda pulled up behind my car, which is on the side of the street, and I was  
10 on the outside of the -- on the driver's side of my car, which is closest to the  
11 street. And then the car pulled up behind it.

12 When it pulled up behind it, I walked around my car, which was in front  
13 of the Mazda, and I walked to the passenger side of my car to put the car  
14 seat.

15 Q Then I asked:

16 The Mazda, how close did it pull up to you?

17 And then you said?

18 A It probably left about three or four feet.

19 Q I said:

20 Was it white in color?

21 A Yes, sir.

22 Q Newer model?

23 A Yes, sir.

24 Q Around 2013 to 2014?

25 Or:

1 Newer model?  
2 You said:  
3 Yes, sir, I -- around 2013, 2014, I believe.  
4 A Yes, sir.  
5 Q I said:  
6 Four-door?  
7 A Yes, sir.  
8 Q I'm showing you what's been marked as Grand Jury Exhibit 8; do you  
9 recognize this?  
10 A Yes, sir.  
11 Q What is it?  
12 A It's -- that's the Mazda 3.  
13 Q Is that the vehicle you saw that day?  
14 A Yes, sir.  
15 Q Is that -- you said:  
16 Yes, sir, for sure, dark tinted windows.  
17 That's the extent that you testified about the vehicle; isn't that right?  
18 A Yes, sir.  
19 Q So I didn't ask you about the badges that day?  
20 A No.  
21 Q Is it -- I apologize.  
22 A No. It's -- it's okay. That was something in my memory --  
23 Q Okay.  
24 A -- honestly.  
25 Q Now, the -- the handgun, you -- defense counsel pointed out that

1 Detective Majors had told you what the difference between a revolver and a --  
2 A And a --  
3 Q -- semi?  
4 A Yes. Yes.  
5 Q The revolver had the wheel, I think he told you?  
6 A Yes.  
7 Q And which one did you say it was?  
8 A I said it was a semiautomatic.  
9 Q Black in color?  
10 A Yes.  
11 Q And defense counsel touched on something about it's hard to  
12 describe faces.  
13 A Yes.  
14 Q But easier, maybe, to describe height or something?  
15 A No. Easier to describe weight, I would say.  
16 Q Okay. Not height?  
17 A No.  
18 Q And faces, in particular, harder or easier to recognize then they are to  
19 describe?  
20 A What do you mean by that?  
21 Q Is it easier to recognize a face than it is to describe a face?  
22 A Yes, sir, completely.  
23 Q And when you saw that exhibit right here, Defense Exhibit A, it  
24 appears that we have two tiny, tiny individuals, far in the back of this picture; is  
25 that right?

1 A Yes, sir.

2 Q Is that how it looked to you when you saw it?

3 A No, sir.

4 Q How did it look to you?

5 A I had a clear view. Now, you can't see their body or nothing on there.

6 Q Okay. So that isn't what you were seeing?

7 A No, sir. Not at all.

8 MR. DICKERSON: With the court's permission, could the witness

9 step off the stand?

10 MR. GASTON: Your Honor, can -- can we approach?

11 THE COURT: Okay. Let's hold up on -- yeah. The witness can step

12 off the stand.

13 MR. DICKERSON: Thank you.

14 THE COURT: But let's see what everybody wants first.

15 [Bench conference transcribed as follows.]

16 MR. GASTON: This is [indiscernible] creativity, but I'm not sure what

17 exactly was about to happen. In the -- in the event that it was supposed to be a

18 demonstration --

19 THE COURT: I think it's going to be something distance related, I bet.

20 MR. GASTON: So is -- was that what it was?

21 MR. DICKERSON: It's -- I'm just going to have him walk over and ID

22 the defendant.

23 MR. GASTON: No. They've already done it.

24 MS. MACHNICH: Are you kidding me?

25 MR. GASTON: Asked and answered. They did it during the direct.



1 MS. MACHNICH: That's absolutely not appropriate.  
2 MR. GASTON: And no, he can't get off the witness stand --  
3 MR. DICKERSON: Oh, no.  
4 MR. GASTON: -- and go point your --  
5 MR. DICKERSON: It's absolutely --  
6 MR. GASTON: --point your finger in our --  
7 MR. DICKERSON: -- appropriate of him trying to say that --  
8 MR. GASTON: I'm not trying to talk over you, but my -- my basic --  
9 THE COURT: One person at a time, please.  
10 MR. DICKERSON: Yes, I apologize, Your Honor.  
11 MR. GASTON: Just -- just the grounds for my objection is, A, asked  
12 and answered. We did this literally on the direct. They had him identify him. How  
13 is that more probative or somehow automatic [indiscernible] off the stand and  
14 walk over there and identify him.  
15 MS. MACHNICH: It's theater.  
16 THE COURT: I --  
17 MR. GASTON: It's theater.  
18 THE COURT: It would be -- he didn't need to cumulatively identify the  
19 defendant, but I would be appropriate for you to have him move to a distance he  
20 was when he identified the defendant the first time.  
21 MR. DICKERSON: Okay.  
22 THE COURT: I'm not -- I'm not -- because that reflects distance. But  
23 don't re-identify him.  
24 MR. DICKERSON: Okay.  
25 THE COURT: That's cumulative. All right?

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MR. DICKERSON: Okay.

THE COURT: All right.

MR. GASTON: Thank you, Your Honor.

[End of bench conference.]

THE COURT: All right. So that's sustained in part.  
Go ahead.

BY MR. DICKERSON:

Q Jordan, if you could step off the stand, please.

A Okay.

Q Now, you previously indicated that the defendant, Keandre Valentine,  
is the man who robbed you; isn't that right?

MR. GASTON: Objection. Literally what we just talked about.

THE COURT: Well --

MR. GASTON: Literally just --

MR. DICKERSON: It's foundational, Your Honor.

THE COURT: -- it's --

MR. GASTON: It's literally the exact thing I objected to and the  
judge -- and the court ordered them not to do.

MR. DICKERSON: No, not at all. That's not even close.

THE COURT: Okay. We'll --

MR. DICKERSON: May we approach, Your Honor?

THE COURT: No, no, no. We don't need to approach. Let's just  
eliminate the prefatory statement and just get to the underlying issue.

MR. DICKERSON: Okay.

THE COURT: Okay?

1 BY MR. DICKERSON:

2 Q Keandre Valentine, you see him here in the courtroom?

3 A Yes.

4 Q How close to --

5 MR. GASTON: Objection. Again, he just did the exact same thing  
6 that the court has ordered him now three times not to do.

7 MR. DICKERSON: That's not correct. You haven't ordered me to do  
8 that, Your Honor.

9 THE COURT: You guys, let's just --

10 MR. DICKERSON: He's -- he's just making this up in front of the jury.

11 THE COURT: Let's just move on. There is -- there's just a simple  
12 question.

13 You know what -- I'm -- you know what, I'm going to ask it.

14 MR. DICKERSON: Okay.

15 THE COURT: Go ahead and sit down.

16 How far were you from -- I want you to move towards Mr. Williams,  
17 until you're the distance that you --

18 MR. DICKERSON: Valentine.

19 THE COURT: -- that -- until -- until you're the distance that you were  
20 when you first identified him.

21 THE WITNESS: Williams, who is that?

22 THE COURT: I'm sorry. I meant -- so Mr. Valentine. All right. Just  
23 move towards him until you're the distance away from him that you were when  
24 you first identified him after the -- after the event. Okay.

25 THE WITNESS: Uh-huh. I think this is far enough.

1 THE COURT: All right. So the record will reflect that the witness is  
2 standing right in front of the -- the court's side doorway that's next to the jury box.  
3 He's about two feet towards the court's -- the court's bench from the door. All  
4 right.

5 And the witness is looking towards Mr. Valentine, who is seated in  
6 the -- in the -- at Defendant's table. If you're at the table, facing the bench, it is  
7 the far left seat. All right.

8 MR. DICKERSON: Thank you, Your Honor.

9 THE COURT: So I think we just wanted the layout. That's all we  
10 needed at this time.

11 MR. DICKERSON: Thank you, Your Honor.

12 THE COURT: All right?

13 THE WITNESS: Okay.

14 THE COURT: You may retake your seat.

15 MR. DICKERSON: One more thing, Your Honor.

16 THE COURT: Okay.

17 MR. DICKERSON: If the witness could show the distance he was  
18 from Mr. Valentine when the crime was committed.

19 MS. MACHNICH: This was asked --

20 MR. GASTON: Objection. Asked and answered. Again, what we  
21 talked about at the bench. They went over this on direct.

22 THE COURT: No. It's not what we talked about at the bench.  
23 What -- now, let me see if it was asked and answered.

24 MR. GASTON: They asked this yesterday. They went over all this on  
25 the direct.

1 THE COURT: Might have been, but I'm going to let him do it again,  
2 because I don't see any prejudice --

3 MR. DICKERSON: Thank you, Your Honor.

4 THE COURT: -- in just what was the distance. I don't remember  
5 what the distance.

6 MR. DICKERSON: Feel free to step off, sir.

7 MS. MACHNICH: Okay. This is not appropriate.

8 MS. LEXIS: I would ask the court --

9 MS. MACHNICH: He can't approach our client.

10 MS. LEXIS: The court has ruled. I ask that they stop making these  
11 speaking objections and respect the court's ruling.

12 THE COURT: Yeah, I think they will.

13 Go ahead and just approach.

14 THE WITNESS: Am I going over there?

15 MR. DICKERSON: Yes, sir.

16 THE COURT: You're just going to -- just going to approach towards --

17 MR. GASTON: Your Honor, may we approach? I'm sorry. Can we  
18 approach briefly? It's just a --

19 THE COURT: All right. No, no, no. We're not going to approach. All  
20 right.

21 So here's the thing. I -- I guess they -- there's some --

22 Look, I don't like confrontation in my court.

23 Let's pretend that that podium is Mr. Valentine. All right. You don't  
24 need to approach Mr. Valentine now. That podium is Mr. Valentine. How close  
25 were you during the alleged incident?

1 THE WITNESS: About this far.

2 THE COURT: All right. And -- and I'll ask the defense, what would  
3 you say is that approximate distance?

4 MR. GASTON: It's -- it's about what he said yesterday, two and a half  
5 feet. About the same thing.

6 THE COURT: Okay. You know what, I remember that now.

7 MS. MACHNICH: Yeah.

8 THE COURT: You did say two and a half feet. Yes. Thank you. All  
9 right.

10 So go ahead -- so that was asked and answered yesterday.  
11 Go ahead and take your seat.

12 MR. DICKERSON: But as far as the demonstration, that's the first  
13 he's been able to demonstrate. I appreciate it, Your Honor.

14 BY MR. DICKERSON:

15 Q Now --

16 MR. DICKERSON: We'll pass the witness.

17 THE COURT: All right. You guys. It's your turn.

18 MR. GASTON: No more questions, Your Honor.

19 THE COURT: Okay. Then you're excused, sir. Thank you very  
20 much for your time and your patience.

21 THE WITNESS: No problem.

22 THE COURT: All right. The State may call its next witness.

23 MR. DICKERSON: The State's next witness is Santiago Garcia.

24 THE COURT: Are you the court interpreter?

25 THE COURT INTERPRETER: Yes, I am, Your Honor.

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THE COURT: Your name, please.

THE COURT INTERPRETER: Noel Tatton, T-A-T-T-O-N.

THE COURT: All right. Thank you, Ms. Tatton.

THE COURT INTERPRETER: The interpreter is also requesting another seat for the witness stand, please.

THE COURT: Yes. We can do that.

Marshal, will you --

Sir, step up over here on the witness stand. Remain standing. The court clerk will administer your oath.

**SANTIAGO GARCIA**

[having been called as a witness and being first duly sworn, testified through the interpreter as follows.]

THE CLERK: You may be seated. Please spell your -- state your name and spell your first and last name for the record.

THE WITNESS: My name is Santiago. My last name is Garcia.

**DIRECT EXAMINATION**

BY MR. DICKERSON:

Q And what do you do for a living, sir?

A I work in landscaping.

Q Is that for businesses or private people or what?

A For just private people.

Q Primarily homes?

A Uh-huh, yes.

THE COURT: Hold up one sec.

THE COURT INTERPRETER: Yes.

1 THE COURT: Your last name is spelled G-A-R-C-I-A; is that correct?

2 THE WITNESS: Yes.

3 THE COURT: First name, S-A-N-T-I-A-G-O?

4 THE WITNESS: Yes.

5 THE COURT: All right. Thank you.

6 Go ahead.

7 BY MR. DICKERSON:

8 Q Do you speak English, sir?

9 A I understand a little bit.

10 Q And do you speak it, as well?

11 A A little bit.

12 Q Have you and I had several conversations?

13 A Well, yes, I understand. It's easier for me to understand. It's more  
14 difficult for me to express myself.

15 Q So today you're -- you're speaking through an interpreter?

16 A Yes.

17 Q Is that because you're more comfortable?

18 A Yes.

19 Q So I want to turn your attention to May 28, 2016.

20 THE COURT INTERPRETER: Interpreter requests a repetition of the  
21 date.

22 BY MR. DICKERSON:

23 Q May 28, 2016.

24 A Yes.

25 Q Specifically, around 7:08 in the morning.



1 A Yes.

2 Q Were you working as a landscaper?

3 A Yes.

4 Q And were you working with anybody else?

5 A Yes.

6 Q Who were you working with?

7 A With Juan Carlos.

8 Q Is that Juan Carlos Campos Torres?

9 A Yes.

10 Q Was he working for you?

11 A Yes.

12 Q Specifically, that day, were you guys working at a woman's house

13 at 1312 Nye Street?

14 A Yes.

15 Q And that's a location that's here in Las Vegas, Clark County, Nevada?

16 A Yes.

17 Q What were you guys doing there that day?

18 A We were cutting down a tree.

19 Q Okay. In the front yard?

20 A Yes.

21 Q I'm going to show you here what's been admitted as State's Exhibit 7;

22 does that appear to be 1312 Nye Street, right here?

23 A Yes.

24 Q Is that the -- the house that you were cutting that tree down in?

25 A Yes.

1 Q And did anything happen when you were there in that front yard,  
2 working to cut down that tree?

3 A Well, yes, a man arrived. I saw him park, like, three houses down.  
4 And we just continued on working. It never occurred to us that it was going to be  
5 someone who wanted to rob us.

6 Q What did that man arrive in?

7 A In a white car.

8 Q And what did that car look like?

9 A Well, it just looked normal. I didn't really pay too much attention to it.  
10 I saw him drive by and park about three houses down.

11 Q Okay. So he drove by you first?

12 A Yes. He passed in front down the street.

13 Q Nye Street?

14 A Yes.

15 Q If you could just show me, so the -- the screen in front of you, you can  
16 actually draw on it. Do you see that -- the house you were working at, Nye Street,  
17 you've identified it; can you just show me which direction that vehicle was  
18 traveling in?

19 A He was going like this.

20 Q Okay. And where did that vehicle park in relation to 1312 Nye Street?

21 A Three houses down.

22 Q Would you point that out on the map, sir, generally?

23 A Right here.

24 Q At the end of that green line?

25 A Yes.

1 Q Did he pay -- park on the same street or opposite side of the street  
2 as 1312 Nye Street?

3 A On the same side of the street.

4 Q And what was it -- what was the description of this vehicle?

5 A Well, it was the same color of the person who I was working for. I  
6 thought it might be one of her relatives.

7 Q Do you mean African-American?

8 A Yes.

9 Q So are you speaking about the driver of the vehicle?

10 A Yes.

11 Q So you're saying that the -- the owner of the home at 1312 Nye Street  
12 was African-American?

13 A Yes.

14 Q Okay. But, specifically, the vehicle itself, what color was the vehicle?

15 A White.

16 Q And did you notice anything else about that vehicle?

17 A Well, yeah, where the license plate goes, there was a black piece of  
18 paper.

19 Q Okay. So no license plate?

20 A No.

21 Q And you said the driver, he got out?

22 A Yes. He came toward us, but I never thought it was somebody like --

23 Q And what do you mean that he came towards you?

24 A Well, he just kind of came walking up. And as soon as he passed  
25 through the gate where we were working, he pulled a gun and he pointed it at us.

60

1 Q Okay. So before he pulled that gun, that's what you were indicating  
2 about, about him looking like he might know the homeowner?

3 A Yeah. He didn't look like he was suspect of anything. He didn't  
4 even -- I didn't -- he never looked like he'd have a gun on him.

5 Q And so then he comes through the gate of 1312 Nye Street?

6 A Yes.

7 Q And where are you at that time?

8 A Well, I was on a 12-foot ladder and my helper was on top of the roof.

9 Q Okay. Your helper being Juan Carlos Campos Torres?

10 A Yes.

11 Q Were you actively working on that tree you were cutting down?

12 A Yes.

13 Q And then what happened?

14 A First he told Juan Carlos to come down, and Juan Carlos got scared.

15 MS. MACHNICH: I'm going to object to speculation. He can't speak  
16 for someone who is not here in court. We should leave that to that victim  
17 testifying.

18 THE COURT: Do you have any foundation that -- so he won't  
19 speculate as to that point?

20 MR. DICKERSON: It's not speculation, Your Honor. It's merely a lay  
21 opinion. I think any person could testify as to seeing somebody get scared.

22 THE COURT: Well --

23 MR. DICKERSON: And that's perfectly admissible.

24 THE COURT: Well, let's -- let's have -- let's have the -- what he  
25 physically observed before --

1 MR. DICKERSON: Absolutely.

2 THE COURT: -- he gets to this conclusion about what he observed.

3 MR. DICKERSON: Absolutely.

4 THE COURT: Okay. So sustained. More foundation is needed.

5 BY MR. DICKERSON:

6 Q So you indicated this individual, he directed his attention at Juan  
7 Carlos Campos Torres?

8 A Well, he kind of went backwards and so he couldn't see him anymore.  
9 And then he looked at me and he told me to get off the ladder.

10 MS. MACHNICH: Objection. Yet again, we have a statement out of  
11 court by another person. So hearsay.

12 THE COURT: Well, we're getting into --

13 MR. DICKERSON: The defendant's statements, Your Honor. It's  
14 perfectly admissible.

15 MS. MACHNICH: I -- it appeared to me to be Juan Carlos.

16 THE COURT: -- what he said. Who's the he that -- who's the he?

17 MR. DICKERSON: Right. Yeah. There's nothing objectionable here.  
18 I'll continue with laying the foundation for who is the he, Your Honor.

19 THE COURT: Okay.

20 MR. DICKERSON: Thank you.

21 THE COURT: Fine. I need to know who the he is first. All right.  
22 Go ahead.

23 BY MR. DICKERSON:

24 Q Who is the he that you're talking about saying something to you?

25 A The guy who had the gun.

1 Q And do you see that guy here in the courtroom today?

2 A Yes.

3 Q Could you please point to that individual and identify a piece of  
4 clothing that they're wearing here today.

5 A Yes.

6 Q And the clothing worn today, sir?

7 A Yes. I can recognize him very clearly.

8 Q Okay. You're pointing over there, but what is that guy that you're  
9 pointing to wearing?

10 A He is the guy that mugged me, robbed me.

11 Q Okay. Clothing, though, what is he wearing here in court, so we can  
12 identify him?

13 A A white shirt.

14 Q Okay. And where exactly is he sitting at the table that you're pointing  
15 to?

16 A He is on the right.

17 Q Okay. On your right?

18 A Yes.

19 MR. DICKERSON: If the record could reflect that the witness has  
20 identified the defendant, Keandre Valentine.

21 THE COURT: It does.

22 All right. Right now that you've clarified, there's sufficient foundation  
23 to ask the -- the other question.

24 MR. DICKERSON: Thank you very much, Your Honor.

25 BY MR. DICKERSON:

1 Q So did the defendant have his gun out at that point in time?

2 MS. MACHNICH: And I'm going to object to leading. Now he's  
3 starting to suggest testimony.

4 MR. DICKERSON: I'm asking whether he had it out or not.

5 THE COURT: Overruled.

6 You know what, this is a good point -- you know what, I've got -- oh,  
7 I -- you know, I don't have it with me. We'll move on. Never -- never mind.

8 MR. DICKERSON: Thank you.

9 THE COURT: I'll get it to you guys later.

10 BY MR. DICKERSON:

11 Q Did the defendant, Keandre Valentine, have his gun out at this point in  
12 time?

13 A Yes.

14 Q When was it that you saw him pull that gun out?

15 A At the first time he spoke to us in a loud voice.

16 Q Okay. What was the first thing he said?

17 A He told us to get down from what we were doing.

18 Q And what was he doing as he said that?

19 A He was pointing the gun at us.

20 Q At who?

21 A He was pointing it at me, because like I said, Carlos has -- had kind of  
22 backed up.

23 Q At what point did Carlos back up?

24 A It was, like, two seconds.

25 Q Okay. Did you notice whether the gun was out at the point in time that

1 Carlos backed up?

2 MS. MACHNICH: And I'm going to object as to speculation. He  
3 doesn't know what Juan Carlos saw or didn't see.

4 MR. DICKERSON: I'm not asking --

5 THE COURT: Well, he -- that's not what he asked. He asked if he  
6 noticed if the gun was out at the time the other individual backed up. So I think  
7 that's --

8 MS. LEXIS: That's fair.

9 THE COURT: I think that's a fair question within his realm of possible  
10 perception.

11 Go ahead.

12 BY MR. DICKERSON:

13 Q Did you notice whether that gun was out at the time that Juan Carlos  
14 Campos Torres backed up?

15 A Yes.

16 Q And was it?

17 THE COURT INTERPRETER: Interpreter clarification, was the gun  
18 out?

19 MR. DICKERSON: Yes.

20 THE WITNESS: Yes.

21 BY MR. DICKERSON:

22 Q And where was the gun pointed?

23 A To me, pointed at me.

24 Q And what did the defendant say next?

25 A He told me to shut off the fucking hedge trimmer and put it on the



1 ground.

2 Q And what did you do?

3 A I turned it off.

4 Q And then what happened?

5 A And then he said give me the fucking money and whatever you have.

6 Q And for the record, you were speaking in English there?

7 A Because that's what he said to me, and I kind of have it -- you know,  
8 just etched in my mind.

9 Q That the defendant said that to you in English?

10 A Yes.

11 Q And then what happened?

12 A I told him I didn't have anything on me. And then he told me, give me  
13 whatever you have.

14 Q So what'd you do?

15 A Well, I took my truck keys out and my telephone, and I pulled out  
16 whatever money I had in my rear pocket.

17 Q And what did you do with those items?

18 A He didn't want the keys to the truck. But he did take -- he did want the  
19 telephone and the money I had.

20 Q What kind of telephone was it?

21 A It was an iPhone 6.

22 Q What color?

23 A Black.

24 Q And how much money did you have?

25 A Well, I -- I thought I had -- I -- I said that I had only about \$20. But I

1 had more -- I had -- I had to have enough money to pay my workers. It was a  
2 Saturday, and I had to pay them.

3 Q Okay. How much do you think you had on you?

4 A About \$500.

5 Q And so when you said that you said you only had \$20, what do you  
6 mean by that?

7 A Well, I said that I had \$20, because earlier that morning, I had stopped  
8 to get breakfast, and I had no idea that -- that I would put that money that my wife  
9 gave me in another pocket.

10 Q What money that your wife gave you?

11 A The money that I used to pay my workers with.

12 Q Okay. And did the defendant take all that money?

13 A Yes.

14 Q Where's Juan Campos Carlos Torres [sic] at this point in time?

15 A He -- Juan Carlos did not come down from the roof until the robber  
16 left, thief left.

17 Q And so you hand over that money?

18 A Yeah. Because he had the gun pointed right at my chest.

19 Q And what did that gun look like?

20 A It looked like a 9mm.

21 Q What color?

22 A Black.

23 Q And when you say 9mm, what are you referring to?

24 A Well, I've seen them before, usually officers have one like the one he  
25 pulled out.

1 Q Okay. Didn't you, in fact, point to the police officer's gun and said it  
2 looked like that?

3 A Yes.

4 Q Like a semiautomatic?

5 A Yes.

6 Q And then what happened?

7 A Well, I knocked on my client's door, because I needed to call the  
8 police, and I didn't have my phone.

9 Q So had the robber left?

10 A Yes. When he left, he -- he kind of backed out, but he still had the  
11 gun pointing at me.

12 Q So the defendant was backing away with the gun in his hand?

13 A Yes.

14 Q And how was it that he was holding the gun?

15 A Like normal, like this.

16 Q Backing up?

17 A Yes.

18 Q And where did he go?

19 A He went towards his car.

20 Q Do you happen to know which hand he was holding that gun in?

21 A In his right hand.

22 Q Are you sure about that?

23 A Yes. At that time I noticed that he had it in his right hand.

24 Q Okay. And that white car, did you ever see that white car again?

25 A No. That was the first time I had seen it.

1 Q And which direction did the car go?

2 A It went toward Las Vegas Drive.

3 Q And what did you do at that point in time?

4 A Well, I -- we called the police. I mean, my client called the police, and  
5 it didn't take the cops more than five minutes to get there.

6 Q The -- your client, you said, called the police. Why was it that she  
7 called the police?

8 A She called first. And then she gave the phone to me.

9 Q So you actually spoke to the 911 operator, as well?

10 A Yes. I spoke to her a little bit.

11 Q And have you had an opportunity to listen to that 911 call?

12 A Yes.

13 Q I have here in my hand what's been marked as State's Proposed  
14 Exhibit 171.

15 MR. DICKERSON: May I approach, Your Honor?

16 Q Do you recognize this, sir?

17 A Yes.

18 Q What do you recognize it to be?

19 A That's the call we made to the police.

20 Q And is it a -- a fair and accurate copy of that call, except for the -- the  
21 portion where your client was talking to the police?

22 A Yes.

23 MR. DICKERSON: The State moves for the admission of State's  
24 Proposed 171.

25 MS. MACHNICH: No objection, pursuant to having heard that copy

1 from the State previously.

2 THE COURT: All right. Very good. Thank you.

3 It's -- it's admitted.

4 MR. DICKERSON: Permission to publish, Your Honor.

5 THE COURT: Just --

6 THE CLERK: Your Honor, counsel, for the record, it's Exhibit 174.

7 MR. DICKERSON: Oh, I'm sorry, 174. 174.

8 THE COURT: 174 is admitted. You may publish.

9 [State's Exhibit No. 174 admitted.]

10 MR. DICKERSON: Thank you very much, Madam Clerk.

11 MS. LEXIS: Are we switched over? Thank you very much.

12 [Audio played.]

13 MS. LEXIS: Is that as loud as it can go? I think we're connected to  
14 the -- the court speakers. Is there a way to get that louder? We fixed our issue  
15 from yesterday, this morning. Try it?

16 [Audio played.]

17 MS. LEXIS: Can we stop it. Let me try the microphone -- the  
18 microphone way. This will work better.

19 [Pause in proceedings.]

20 MR. DICKERSON: Publishing again, State's Exhibit 174.

21 [Audio played.]

22 BY MR. DICKERSON:

23 Q That was you, sir?

24 A Yes.

25 Q Speaking English in that call?

1 A Yes. And I was -- I wasn't understanding what she was asking me. I  
2 do understand a few things, but I didn't understand what she was saying.

3 Q Okay. You described the -- the vehicle?

4 A Yes. Because I -- it looked like a Nissan.

5 Q Okay. And when you say it looked like a Nissan, what do you mean?

6 A Well, I've seen other cars that looked very much like this white car.

7 Q Okay. And you had testified that the police made contact with you  
8 after that call?

9 A Yes.

10 Q And when the police showed up, what did they do?

11 A Well, they asked me what had happened and we told them everything  
12 that had happened to us.

13 Q Okay. Did you -- were you asked to fill out a voluntary statement?

14 A Well, first, I -- I need to say that I -- I didn't write it -- I didn't write it out,  
15 because I don't know how to write in English.

16 Q Okay. Who wrote it out?

17 A My client who was in the house, the lady I was telling you about.

18 Q The same one that called 911?

19 A Yes.

20 Q How did she know what to write?

21 A Well, because I was telling her -- I was explaining to her what had  
22 happened to me.

23 Q Okay. And after filling out that statement, what did you do? Did you  
24 leave work?

25 A No. I continued to finish the job I was on.

1 Q Right there on Nye Street?

2 A Yes.

3 Q And how long were you there at Nye Street?

4 A Well, I lost a lot of time that day. I was supposed to finish the job in  
5 about two hours. And it -- and I was there for about four hours.

6 Q Okay. Is that because the police came back?

7 A Yes. They told me they were going to take me to see if I could identify  
8 a car.

9 Q And did they, in fact, do that?

10 A Yes.

11 Q Did they have you ride in their car? Or did you drive yourself?

12 A They took me in their car.

13 Q And did you go to an apartment complex?

14 THE COURT INTERPRETER: The interpreter needs to clarify.

15 THE WITNESS: Oh, no. First they took me to Las Vegas Drive and  
16 Jeff Street.

17 BY MR. DICKERSON:

18 Q Okay. What did you see there?

19 A They asked me if that was the car of the suspect that I had seen.

20 Q Did they take you anywhere before showing you this car?

21 A No.

22 Q Did they take you to identify anybody else?

23 A Yeah. Then they took me over to look at a car that was at some  
24 apartments where they had taken me the first time.

25 Q Okay. So maybe this will clear it up a little bit. Was this interaction on

1 a body cam?

2 THE COURT INTERPRETER: The interpreter requests a repetition.

3 Was this on body cam?

4 MR. DICKERSON: Right.

5 THE COURT INTERPRETER: Are you asking was there body cam  
6 video shot that day?

7 MR. DICKERSON: Right.

8 THE COURT INTERPRETER: Thank you. Okay.

9 THE WITNESS: They didn't show me anything like that. They just  
10 took me to this place.

11 BY MR. DICKERSON:

12 Q Well, we're talking about you being taken; have you seen a video of  
13 that?

14 A Yes.

15 Q And did you initial on the disc of that video?

16 A Yes.

17 MR. DICKERSON: If I may approach, Your Honor.

18 Q I have in my hand State's Proposed 173; do you recognize this to be  
19 that disc containing the video of your interaction with the police on May 28, 2016?

20 A Yes.

21 Q And how is it that you recognize it?

22 A Because I've seen it before and there are my initials.

23 Q Okay. S.G.?

24 A Yes.

25 Q Did you also date it?



1 A Yes.

2 Q 7/26/17?

3 A Yes.

4 Q And this video, does this include the -- your identification of the  
5 vehicle?

6 A Yes.

7 MR. DICKERSON: The State moves for the admission of State  
8 Proposed 173.

9 MS. MACHNICH: No objection.

10 THE COURT: All right. 173 is admitted.

11 [State's Exhibit No. 173 admitted.]

12 MR. DICKERSON: Permission to publish, Your Honor.

13 THE COURT: Granted.

14 [Video played.]

15 BY MR. DICKERSON:

16 Q I'm going to stop it right there, 19 seconds into the video. Where are  
17 we right here? What's happening?

18 A That's the first place they took me to look at the car. And a man. The  
19 man was there, but he was off to the side.

20 Q Okay. And was that the man that robbed you?

21 A No. That was the first one they showed me. That's all.

22 Q Okay. And we're going to start the video back up from 19 seconds in.

23 [Video played.]

24 Q Is that you speaking, sir?

25 A Yes.

1 Q Is that you identifying that vehicle?

2 A Well, that -- that was where he took me to see if I could identify the  
3 car. And I did. And I do remember that I paid a lot of attention to the black  
4 license plate or paper over the license -- over the license plate.

5 Q Okay. And just at that, specifically, how was it that you recognized  
6 that vehicle or where did you recognize that vehicle from?

7 A I recognized it because on that black license -- piece of paper on the  
8 license plate, it had some numbers. I don't know which numbers they were, but I  
9 recognize that and the car.

10 Q Okay. So was that the vehicle that the defendant was driving when he  
11 robbed you?

12 A Yes.

13 Q And in the video here, you -- when you pull around the front, it sounds  
14 like you say 90 percent sure.

15 A Yes.

16 Q How --

17 A When I saw the rear of it, yes, I was.

18 Q When you saw the rear of it, how sure were you?

19 A 90 percent that it was his and it was his car.

20 Q Okay. Because what you remembered about it was that black  
21 placard?

22 A Yes.

23 Q I'm going to show you here what's been admitted as State's  
24 Exhibit 32; Mr. Garcia, is that that vehicle?

25 A Yes.

1 Q Is this the vehicle that you remember being used to rob you?  
2 A Yes.  
3 Q And you were talking about how you recognized the vehicle and that  
4 black placard. I'm showing you here what's been admitted as State's Exhibit 48;  
5 are you able to see that? What's the --  
6 A Yes.  
7 Q -- that screen, you can touch it. Please just circle what you  
8 remember.  
9 A Right here.  
10 Q Okay. That?  
11 A Yes.  
12 Q After identifying this vehicle as being the one used to rob you, where'd  
13 you go?  
14 A They took me back to the job I was working on.  
15 Q Back on Nye Street?  
16 A Yes.  
17 Q Working on that tree?  
18 A Yes.  
19 Q And still there, were you then again contacted by the police at Nye  
20 Street?  
21 A Yeah. Yeah, about 10 minutes after I had finished, the police dialed  
22 me and they told me that they had a -- a guy who was a suspect in the case.  
23 Q And so what did they want you to do?  
24 A Well, they took me back to the same place that they -- of where the  
25 car was, and I was there to identify the person.

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1 Q Do you remember is it this showup form that they went over with you?

2 MR. DICKERSON: May I approach, Your Honor?

3 THE WITNESS: What do you mean, what kind of form?

4 THE COURT: Show him.

5 BY MR. DICKERSON:

6 Q I have in my hand what's been marked as State's Proposed

7 Exhibit 12; do you recognize this, sir?

8 A Yes.

9 Q And what do you recognize it to be?

10 A Well, there's my signature. That's what the officer told me it was.

11 That's what he explained to me it was.

12 Q Okay. What do you mean he explained it to you?

13 A He told me he was going to show me a form and that I had to fill it out.

14 So then I told him that I can't write in English. And he said, Okay, I'll write it for  
15 you.

16 Q Okay. So, ultimately, the statement on here was filled out by the  
17 police officer?

18 A Yes.

19 Q Did you discuss with him what to write?

20 A Yes, I did. Because the officer also brought someone along who  
21 spoke Spanish, as well.

22 Q Okay. And you signed acknowledging that you understood what they  
23 told you about the showup?

24 A Yes.

25 Q And did you also sign after you and the officer went over that

1 statement?

2 A Yes.

3 Q And is this a fair and accurate depiction of that showup witness  
4 instruction form that you went over there on May 28, 2016?

5 A Yes.

6 MR. DICKERSON: State moves for the admission of State Exhibit --  
7 Proposed Exhibit 12.

8 THE COURT: 12?

9 MS. MACHNICH: No objection.

10 MR. DICKERSON: Yes, Your Honor.

11 THE COURT: Admitted.

12 [State's Exhibit No. 12 admitted.]

13 MR. DICKERSON: May -- publishing for the jury, Your Honor, with  
14 your permission.

15 BY MR. DICKERSON:

16 Q State's Exhibit 12, here, sir, this is the showup witness instruction form  
17 I was just showing you at the bench?

18 A Yes.

19 Q At the top it has your name?

20 A Yes.

21 Q And then under that, it appears there's some instructions here?

22 A Yes.

23 Q You -- do you recall being instructed how this was going to happen?

24 A Yes. The officer explained it to me and the person he brought along  
25 with it -- with him was also explaining it to me.

1 Q The person that he brought -- brought along with him, was he  
2 speaking Spanish?

3 A Yes.

4 Q And then after that was explained to you, did you sign that,  
5 acknowledging it?

6 A Yes. Because I understood it then.

7 Q Okay. And the basic understanding, was it that it might or might not  
8 be the person?

9 A Well, when I signed it, I -- I understood what the officer was explaining  
10 to me, and I understand that a police officer is not going to lie to me.

11 Q Okay. And you understand that -- you understood the instructions, is  
12 what I'm asking?

13 A Yes.

14 Q Okay. And did you understand that you didn't have to identify  
15 anybody?

16 A What?

17 Q Unless you recognized them, I should say.

18 A Yes.

19 Q Okay. And then after that was read to you, did you go back to that  
20 same apartment complex on J Street?

21 A Well, this was before I went home for the day. They got in contact  
22 with me and requested that I go with them back to that same place, the apartment  
23 complex.

24 Q And did you do that?

25 A Yes.

1 Q And did you drive in your own car or go in a police car?  
2 A I went in my own truck, but they asked me to park in front of a store so  
3 that whoever it was was -- would not recognize me.  
4 Q Okay. And did you get in a police car?  
5 A Yes.  
6 Q And did you then drive in that police car back to that J Street  
7 apartment where you saw the vehicle?  
8 A Yes.  
9 Q And upon getting there, into that same back alley, what did you see?  
10 A Well, they had two possible subjects there. And the first one, well,  
11 that was him, I recognized him right away.  
12 Q When you say that was him, what are you talking about? Describe  
13 these two suspects for me first.  
14 A When the police first took me to the apartment complex, they had two  
15 suspects there. And then they asked me if I was sure that the -- that I -- that I was  
16 sure that this was the guy who had robbed me.  
17 Q Okay. So there's two of them?  
18 A There were two men. They had two men there, yes.  
19 Q Okay. And what did the one that you identified look like?  
20 A It was the same person who had robbed me.  
21 Q Okay. And the person you identified here in court today?  
22 A Yes.  
23 Q I'm going to show you here what's been marked as State's Exhibit 53;  
24 do you recognize this individual?  
25 A Yes. Because when they took me to see him, he didn't have his shirt

1 or his jeans.

2 Q Is that how he looked?

3 A Yes.

4 Q And the other individual that was out there, did you know him?

5 A No.

6 Q Do you even remember what he looks like?

7 A No.

8 Q How close were they standing to each other, the defendant and the  
9 other individual?

10 A They had -- they were about two feet apart.

11 Q Okay. And when you saw the defendant standing there, what did you  
12 think?

13 A I knew right away that that was the guy who robbed me.

14 Q How sure are you?

15 A Well, because I looked at the shape of his head, his beard, and, you  
16 know, he was standing -- when he had the gun pointed at me, he was only, like,  
17 two feet away from me.

18 Q Okay. And from there, after you identified him, did you go back and fill  
19 out the rest of this form with the police officer?

20 A Yes.

21 Q That's State's Exhibit 12; in that portion down there, the statement,  
22 that's the statement that you testified the police officer filled out for you?

23 A Yes.

24 Q It says:

25 I believe that the guy that the officers had in custody is the guy that



1 robbed me, 100 percent; I recognize his facial features.

2 A Yes.

3 Q Is that what you told the police officer to write?

4 A Yes.

5 Q And were you later called to testify at the grand jury in this case?

6 A Yes.

7 Q Were you shown a picture of a cell phone?

8 A Yes. They showed me a picture of my phone.

9 Q So you recognize the phone?

10 A Yes.

11 Q I'm going to show you here what's been marked as State's Exhibit --

12 and admitted as State's Exhibit 123; do you recognize that, sir?

13 A Yes. Because at this point right here, my telephone is a little broken.

14 Q Oh, so you've indicated in the -- the top right-hand corner of the cell

15 phone, it's broken?

16 A Yes.

17 Q That's how you recognized it?

18 A Yes.

19 Q Specifically, this portion right here?

20 A Yes. I had just dropped it the day before, and I know that's my phone.

21 Q Okay. And State's Exhibit 122; does that appear to be your same

22 phone?

23 A I can't really see it that well. But yes -- yeah. But that's --

24 Q Is that because --

25 A -- that's my phone.

1 Q -- is that because looking at State's 123, it's really --  
2 A Yes.  
3 Q -- it's really that break that lets you know it's definitely yours?  
4 A Yes.  
5 Q I'm going to show you here what's been marked as State's 37A; do  
6 you recognize this?

7 A Yes.

8 Q What is that?

9 A That's my phone.

10 Q This is your phone?

11 A Yes.

12 Q Thank you.

13 MS. MACHNICH: Oh, can we just see what you're referring to?

14 BY MR. DICKERSON:

15 Q Did your phone have a case on it?

16 A Excuse me. I -- I thought that you had taken the case off so that I  
17 could recognize it, but it did have a case on it. Yes, mine had a black case on it.

18 Q Do you still recognize it?

19 A Yes.

20 Q Is State's 37A your phone?

21 A If you can show it to me with the case, I can make sure.

22 Q Okay. And then that same time that you were shown this, you had  
23 testified there at the grand jury in this building. That was about a month after this  
24 incident?

25 THE COURT INTERPRETER: Interpreter requests a repetition.

1 Sorry.

2 BY MR. DICKERSON:

3 Q At the same time you had identified that cell phone, the one there in  
4 the picture I just showed you, you had testified here in this building?

5 A Yeah. They showed me the very same picture of my phone.

6 Q Okay. And that was approximately a month after you were robbed?

7 A Yes.

8 MR. DICKERSON: May I approach, Your Honor?

9 Q I'm going to show you here -- what I don't have marked yet, but I will --  
10 a transcript of your testimony from that hearing. I'm going to ask you if you're --  
11 you're going to be able to recognize that transcript as being a fair and accurate  
12 copy.

13 A Okay.

14 MS. MACHNICH: Your Honor, may we approach just briefly?

15 THE COURT: Yeah.

16 MS. MACHNICH: Thank you.

17 [Bench conference transcribed as follows.]

18 THE COURT: So this one grand jury testimony of the witness.

19 MS. MACHNICH: Right. That is what it is.

20 THE COURT: Okay.

21 MS. MACHNICH: It's -- I'm actually going back one step to the phone.  
22 I don't know if it was actually -- was the phone admitted?

23 MS. LEXIS: Not yet.

24 MR. DICKERSON: No.

25 MS. LEXIS: Not yet.

1 THE COURT: He didn't move to admit it.  
2 MS. LEXIS: Because we -- we need to figure out chain of custody.  
3 MS. MACHNICH: Okay. Yeah. Because there's -- it's a different  
4 phone than in the picture, which is a little strange.  
5 MS. LEXIS: Wait. No.  
6 MS. MACHNICH: It appears to be a different phone than in the  
7 picture.  
8 MS. LEXIS: It doesn't have the case that the picture showed, but it's  
9 the phone.  
10 MS. MACHNICH: Actually, I think the picture -- the phone in the  
11 picture appears to be an iPhone 5. It's a different body style of phone.  
12 MS. LEXIS: He identified it based on the --  
13 THE COURT: He did say that.  
14 MS. MACHNICH: I understand.  
15 MS. LEXIS: -- based on the -- based on the --  
16 MS. MACHNICH: I understand.  
17 THE COURT: Isn't this cross-exam?  
18 MS. MACHNICH: Well, I just want to try to --  
19 THE COURT: They didn't move to admit it.  
20 MS. MACHNICH: -- figure this out. Like, this is just weird. Like, the --  
21 MR. DICKERSON: Okay. We'll have to do it outside the presence.  
22 MS. MACHNICH: That's why I'm doing it up here. That's why I'm  
23 not --  
24 MR. DICKERSON: I -- I don't think it's necessary right at this  
25 moment. I think that we can go through cross.

1 MS. MACHNICH: No. I mean, I just --

2 THE COURT: Well, let's just move on right now.

3 MS. MACHNICH: I didn't want to not --

4 MR. DICKERSON: Thank you, Your Honor.

5 MS. MACHNICH: I didn't want to not bring it up contemporaneously.

6 So.

7 THE COURT: Okay.

8 [End of bench conference.]

9 BY MR. DICKERSON:

10 Q I have in my hand what's been marked as State's proposed 175.  
11 Take a look at that very quickly, Mr. Garcia. Feel free to flip through the pages.  
12 And tell me if you recognize that to be a fair and accurate copy of your testimony  
13 as transcribed from the grand jury about this case.

14 A I don't see, but I do have, I think, a copy here where I said something  
15 about the \$500.

16 Q Okay. And that being -- we have pages 35, 36, 37, 38, 39, 40, 41, 42,  
17 43, and 44; is that all the pages of your grand jury transcript? Please don't --  
18 please don't refer to anything unless I give you permission to. All right?

19 A Yes.

20 Q And do you recognize it as being a fair and accurate copy of your  
21 transcript?

22 A Yes.

23 Q And is the portion that you were concerned about here on page 39?

24 A Is that where -- is that the part about the \$500 that I had added on  
25 afterwards?

1 Q We can talk about it.

2 A Okay.

3 Q And this is a fair and accurate copy?

4 A Yes.

5 MR. DICKERSON: Okay. State moves for the admission of 175.

6 MS. MACHNICH: No objection beyond our previous conversations.

7 THE COURT: All right. Admitted, subject to prior discussions at the  
8 bench.

9 [State's Exhibit No. 175 admitted.]

10 MR. DICKERSON: Thank you.

11 BY MR. DICKERSON:

12 Q I think what you're concerned about --

13 MR. DICKERSON: May I publish, Your Honor?

14 THE COURT: Yes.

15 BY MR. DICKERSON:

16 Q State's 175. I think the part you're concerned about is as follows. It  
17 said:

18 The cash that you had, that was U.S. currency?

19 Yes. It was dollars.

20 How much was it?

21 I thought that I had 20, but I pay my workers on the same day, so I  
22 had a bundle of about 500. And I realized then afterwards that when I gave  
23 him -- thinking it was 20, I gave him everything.

24 A Well, that part I remember, because usually when I have money, I  
25 always put it in this pocket of my pants.

1 Q Okay. And, specifically, when you were asking if that part's in here, is  
2 that the -- the part you were looking for to make sure it was, in fact, your  
3 statement?

4 A Yes.

5 Q Okay. Thank you. How close were you to the defendant when he  
6 robbed you?

7 A When he came toward us, he was really close to us, right below the  
8 ladder.

9 Q Did he ever touch you?

10 A No. He just pointed the gun.

11 Q Did his gun touch you?

12 A No.

13 Q Do you remember saying that he pressed it against your chest?

14 A Yes.

15 Q Did he?

16 A Yes, he did. He didn't touch me with it, but he pointed it right at me.

17 Q Okay. I -- I'm just having a little trouble understanding. I said, at the  
18 grand jury -- we're looking here at State's Exhibit 175:

19 The gun was pressed against your chest?

20 A Well, it was very close to my chest.

21 Q Okay. If you could, with the court's permission, step off the stand and  
22 just show me how close.

23 A He was like this.

24 Q Okay. And that's where the hand was?

25 A He had the gun right here.

1 Q Where would the end of the gun be?

2 MS. MACHNICH: Your Honor, objection. May we approach? Or I  
3 can stay here.

4 MR. GASTON: Just say it, then.

5 THE COURT: What's the basis of the objection?

6 MS. MACHNICH: This is improper for them to be acting out with the  
7 witness what happened, especially with leading testimony by the prosecutor.

8 THE COURT: Overruled. I'll allow it.

9 Go ahead, please.

10 BY MR. DICKERSON:

11 Q Yes, sir. Will you hold that.

12 MS. MACHNICH: All right. I'm going to object again. Now we're  
13 using props.

14 THE COURT: Does the pen -- intended to signify the gun?

15 BY MR. DICKERSON:

16 Q If you could --

17 MR. DICKERSON: Yes.

18 THE COURT: All right.

19 MR. DICKERSON: If -- if --

20 THE COURT: There's nothing wrong with that. Just relax. All right.

21 Let's keep going.

22 BY MR. DICKERSON:

23 Q Sir, if you could please indicate with the end of that pen, how close it  
24 was to your chest?

25 A Like this.



1 Q Okay. And do you have an estimate as to how many inches that is?

2 A Like, three inches, close.

3 Q Thank you, sir.

4 THE COURT: All right. The -- the jury will take notice that this case is  
5 not about a pen being pointed at somebody. All right. And it is alleged, but only  
6 alleged, that there was a gun. So for dramatic acting purposes, we will assume  
7 that the pen in place of the gun. All right. But it's not proven. It's just -- it's just an  
8 allegation. All right.

9 BY MR. DICKERSON:

10 Q Mr. Garcia, I'm just going to ask you if you know a couple people.  
11 Okay?

12 A Fine.

13 Q Do you know a man named Marvin Bass?

14 A I don't remember the name of the officer. And I don't remember the  
15 name of the interpreter that interpreted that day --

16 Q Okay.

17 A -- in this building.

18 Q Other than those folks, have you ever met someone named Marvin  
19 Bass?

20 A No.

21 Q What about a -- a man by the name of Darrell Faulkner?

22 A No.

23 Q What about a woman by the name of Deborah Faulkner?

24 A Deborah?

25 Q Faulkner.

1 A No.  
2 Q Do you know Rosa Vazkuez?  
3 A No.  
4 Q Do you know Lazaro Bravo-Torres?  
5 A Well, let me tell you, they are the people that I just saw in the building.  
6 Q Okay. Before May 28, 2016, did you know who they were?  
7 A No.

8 MR. DICKERSON: The State will pass the witness.

9 THE COURT: All right. Do you guys want a break before you start?  
10 How long will you be going?

11 MR. GASTON: We'll submit to Your Honor.

12 MS. MACHNICH: Yeah.

13 MR. GASTON: Whatever you prefer.

14 THE COURT: All right. Let's take a break.

15 Ladies and gentlemen, don't communicate among yourselves or with  
16 anybody else about this trial or the subject matter of the trial; do not communicate  
17 at all with any of the parties, attorneys, or witnesses involved in the trial; do not  
18 seek or obtain any information or comments about the case from any source,  
19 including newspapers, television, radio, Internet, e-mail, cell phones, or other  
20 electronic device; do not read, watch, or listen to any report of or commentary  
21 about the case; do not perform any research; do not perform any investigation; do  
22 not form or express any opinion on any subject connected with the trial until the  
23 case is finally submitted to you.

24 Please return to the hallway outside this courtroom in 15 minutes,  
25 which would be approximately 3:40. All right. Thank you very much.

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Leave your notepads here.

[Jury recessed at 3:24 p.m.]

THE COURT: All right. See you guys in 15 minutes.

MS. LEXIS: Okay. Thank you, Your Honor.

THE COURT: How are we doing on witnesses?

MS. LEXIS: We have two after this.

THE WITNESS: May I go to the restroom?

THE COURT: You may -- you may step down. And you're directed not to talk to anybody about your testimony. All right. But you have to come back in 15 minutes.

MS. MACHNICH: And may that also specifically include the district attorneys?

THE COURT: Everybody. Can't talk to anybody about his testimony.

MS. MACHNICH: Perfect.

THE COURT: On the stand.

THE WITNESS: Okay.

[Court recessed at 3:25 p.m., until 3:41 p.m.]

[Outside the presence of the jury.]

MS. MACHNICH: Your Honor, before the witness reenters the courtroom, I just want to make a little bit more of a record on my objection during direct examination with regard to the demonstration that was going on.

Our objection --

MR. GASTON: And the witness. They did it twice, to be honest with it.

MS. MACHNICH: Well, through all of the enactments and standing up

1 and a lot of moving around and the doing a little demonstration with the firearm,  
2 we're objecting to that as patently improper and extremely prejudicial without the  
3 probative value. It's not a place at trial, having him describe a distance is not a  
4 problem. We understand, and that's more information for the whole court and for  
5 the jury.

6 But the only purpose of doing those demonstrations is to inflame the  
7 passions of the jury. And that is what we are concerned about and why we  
8 objected each time it was happening with the witnesses.

9 THE COURT: Well, there was some confusion, as indicated by the  
10 witness saying at the grand jury that the gun was pressed against the chest and  
11 then -- and then it turned out it wasn't pressed against the chest. And so they  
12 were trying to -- I think what Mr. Dickerson was doing was trying to get an  
13 actual -- rather than using words, because using an interpreter, there was some  
14 problem with the words. To -- to -- he wanted actually to reenact what happened  
15 to the gun, so we could actually have a visual depiction. And so that's what he  
16 was trying to do.

17 I don't view it as -- the way in which he handled it, I don't think it was  
18 unduly prejudicial at all. And I thought it was helpful to the jury to illustrate the  
19 testimony and to helpfully -- to resolve some of the perceived ambiguity between  
20 the statement on the stand and the statement in the grand jury testimony.

21 That's why I allowed it. I didn't think it was a big deal. But go ahead.

22 MR. GASTON: To supplement the record a little bit --

23 THE COURT: Yeah, go ahead.

24 MR. GASTON: -- I'm sure the State wants to respond, but --

25 MS. LEXIS: Okay. If we could respond, or are you supplementing

1 Tegan's record?

2 MS. MACHNICH: Supplementing and then --

3 MS. LEXIS: Okay.

4 MR. GASTON: Yeah. And then I'll be done and you can -- so with  
5 this one and then going back a second. With this one, this --

6 THE COURT: It wasn't that big a deal. It was pretty short and he  
7 didn't make, like, a big flamboyant thing out of it.

8 MR. GASTON: The State could have had him show with his hands  
9 how far away it was. Could have shown from the hands from the chest. Instead  
10 they had him -- and -- because the record doesn't pick this up -- to have -- they  
11 had him approach and stand directly in front of the jury, sideways, with  
12 Mr. Dickerson playing the victim --

13 THE COURT: All right.

14 MR. GASTON: -- and the witness playing the defendant or the  
15 robber. It had to --

16 THE COURT: Reenactments happen all the time.

17 MR. GASTON: Right. I'm just --

18 THE COURT: It's nothing unusual.

19 MR. GASTON: I'm -- I'm just trying to describe the reenactment for a  
20 minute for the record.

21 THE COURT: Go ahead.

22 MR. GASTON: Because it doesn't show up on the record.

23 THE COURT: Okay.

24 MR. GASTON: The witness held out his hand originally to indicate  
25 distance -- in -- in the shape of a gun, with the index finger pointed out and the

1 thumb pointing up, to Mr. Dickerson's chest, in representation of a gun to show  
2 the distance away from Mr. Dickerson's chest.

3 At that point, we objected, essentially thought that was a very  
4 prejudicial way to show this. The court overruled our objection.

5 Mr. Dickerson then -- or the State then handed him a marker to  
6 exhibit, instead of just the index finger of a gun, now handed a marker to exhibit,  
7 kind of making a -- a little bit more of an reenactment. That -- that -- I just wanted  
8 to supplement that record, describe the scene a little bit.

9 Contrast this --

10 THE COURT: Yeah, that's basically true.

11 MR. GASTON: -- our -- our fear is that this is -- the State is going to  
12 use this with many witnesses. Because the witness before that, with Jordan  
13 Alexander, the record didn't pick up on the -- we objected, and the court didn't  
14 really overrule it or sustain it, but the court took over the questioning with the  
15 distance from --

16 THE COURT: You didn't want him to approach your guy, and I didn't  
17 let him.

18 MR. GASTON: And Mr. -- because the record -- what the record's not  
19 showing is that Mr. Dickerson was reenacting the distance from the witness to the  
20 defendant. Mr. Dickerson walked across the courtroom to where the defendant  
21 was sitting, stood next to him, and tried to get the witness to approach him, to  
22 come within feet away from the distance of the defendant.

23 I don't know whether that is just --

24 THE COURT: There's where I stepped in and didn't allow that.

25 MR. GASTON: I just wanted to describe that for the record.

1 THE COURT: Oh. Okay.

2 MR. GASTON: Because I think the record didn't pick -- the record  
3 doesn't pick up what was going on, obviously, the reactions.

4 THE COURT: Okay.

5 MR. GASTON: That was my --

6 THE COURT: Yeah, no. Your -- your descriptions are perfectly fine.  
7 Thank you.

8 MR. GASTON: Thank you.

9 MS. LEXIS: Your Honor, just those --

10 THE COURT: What -- what else do we need to say?

11 MS. LEXIS: Just so this issue doesn't keep going on, because we do  
12 intend for the jury's edification, I mean, let me just point out that the main defense  
13 here as proffered during jury -- during jury selection, as well as opening  
14 statements, is that this is an identification case. And these victims, their ability to  
15 perceive, their ability to identify the defendant as the robber, is directly at issue.

16 So first I would ask, if they are going to try to prevent us from doing  
17 reenactments, I would like case law that says that, because there is none.

18 But I guess the correct analysis here is whether there is -- whether it's  
19 probative, or whether its probative value is outweighed by the danger of unfair  
20 prejudice.

21 THE COURT: I -- I know all of this.

22 MS. LEXIS: Right. And so just -- just so we can make a record,  
23 Your Honor.

24 THE COURT: Okay.

25 MS. LEXIS: I don't believe that the reenactments are like that at all. I

1 don't think they prejudice the defendant at all. As a matter of fact, the probative  
2 value's up at a hundred, and the danger of unfair prejudice is at maybe 5 percent.  
3 Okay. Because the jury should get to see why it is that these victims are so clear  
4 and certain concerning the identifications. And it's demonstrative. As -- as the  
5 court has noted, reenactments happen all the time. We are allowed to use  
6 demonstrative aids when we're proving our -- our case beyond a reasonable  
7 doubt. This is our case. This is our burden. And we should be able to convey  
8 what happened to these victims to the jury.

9 THE COURT: Okay. What do you want to say?

10 MR. GASTON: Why can't -- if the -- if the goal is to show opportunity  
11 to observe, why can't they do that the way they did with the first witness, by  
12 Mr. Dickerson approaching and saying, show me about how far away he was?  
13 This close?

14 THE COURT: Because trial isn't supposed to be just a sterile, we all  
15 sit, you know, strapped with our feet and arms to our sides, just talking words  
16 back and forth.

17 MR. GASTON: He shouldn't be able to reenact the crime.

18 THE COURT: It's just an exchange of creative information.

19 MR. GASTON: Well, they're --

20 THE COURT: All right. So --

21 MS. MACHNICH: So -- so we can all be creative.

22 THE COURT: It's -- we can all be creative. Look --

23 MS. MACHNICH: Okay.

24 THE COURT: Look, last word on this. I want to bring the jury in. All  
25 right.



1 MS. MACHNICH: Okay.

2 THE COURT: We can't keep -- you guys can't keep wasting my time  
3 by all this talk. All right. We got to get -- keep moving. All right. You guys got to  
4 be a lot more succinct. Because this isn't going to happen after today. All right.

5 I'm going to allow reenactments, provided they're -- they're closely  
6 supervised, for the purpose of showing the distance that the victim was from the  
7 defendant. All right. Without any excess flair or drama. All right.

8 MR. DICKERSON: And if I could --

9 THE COURT: Without getting close to the defendant. All right.

10 MR. DICKERSON: Absolutely. And -- and -- the --

11 THE COURT: I don't -- I don't -- no. There's nothing more we need to  
12 say about it.

13 MR. DICKERSON: Okay.

14 THE COURT: All right. Bring in the jury.

15 MR. GASTON: Thank you, Your Honor.

16 [Jury reconvened at 3:47 p.m.]

17 THE COURT: All right. Please be seated, everybody.

18 The State is directed to locate and present their witness back to the  
19 stand.

20 [Pause in proceedings.]

21 THE COURT: Please take a seat. You are still under oath.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Continue.

24 MS. MACHNICH: I -- I believe it's time for cross; is that correct?

25 THE COURT: Were you -- you finished?

1 MR. DICKERSON: Yeah, I did, Your Honor.

2 THE COURT: Ms. Machnich, you have the floor for  
3 cross-examination.

4 MS. MACHNICH: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MS. MACHNICH:

7 Q Okay. Sir, welcome back. All right. So I have all of these up here.

8 MS. MACHNICH: May I grab those? Thank you. I have those  
9 premarked.

10 Q Okay. Mr. Garcia, right before the break, Mr. Dickerson was talking to  
11 you about some of your testimony at grand jury, correct?

12 A Yes.

13 Q Okay. And you also recall in conjunction with that, we were talking  
14 about the cell phone, which has been proposed as Exhibit 37A.

15 A Yes.

16 Q All right. Thank you. So you recall testifying at grand jury about the  
17 cell phone, correct?

18 A Yes.

19 Q And you were shown three grand jury exhibits by Mr. Dickerson?

20 A Yes.

21 Q Okay.

22 MS. MACHNICH: I'm going to show these to the State. These are  
23 grand jury exhibits, so they're marked as proposed defense exhibits.

24 MS. LEXIS: Can we see?

25 [Pause in proceedings.]

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MS. MACHNICH: May I approach the witness?

THE COURT: Uh-huh.

MS. MACHNICH: Thank you.

THE COURT: Yes.

BY MS. MACHNICH:

Q Sir, I am showing you what has been marked as Defense Exhibits B, C, and D; you recognize these as photographs that you were shown at the grand jury, correct?

A Just the one in the middle.

Q It's your testimony here today that you were only shown the one in the middle?

A Yes.

Q Okay. And so let's -- let's go through this. We'll start with that one. Your testimony here today is that you were only shown Exhibit C?

A Yes. I recognize that as my phone.

Q Okay. And is this a fair and accurate depiction of the picture that you were shown, including the front of the picture and exhibit markings on the back?

A I never saw the back part of the page; I just saw the picture of the phone where it's broken.

Q Okay. So we'll just use the front. This is a fair and accurate depiction of that picture?

A Yes.

MS. MACHNICH: Your Honor, at this time, we would move to admit Defense Proposed Exhibit C.

THE COURT: Anything from the State?

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MR. DICKERSON: No objection.

THE COURT: All right. Defense C is admitted. It's a photo.

[Defendant's Exhibit No. C admitted.]

MS. MACHNICH: Okay. Thank you.

BY MS. MACHNICH:

Q All right. So you recall testifying at grand jury. You were asked the following question and gave the following answer:

Sir, at this time, I'm showing you Grand Jury Exhibits 19, 16, and 15; do you recognize any of the items located in these exhibits?

Do you recall being asked that question?

A Yes. I remember everything that was told to me.

Q Oh. Okay. Well, then I'm going to show you what has been marked and admitted as State's Exhibit 175. And it's fair to say that's that Defense Exhibit C that we were just looking at was marked as Exhibit 15 at grand jury. You've had a chance to look at that at this point?

A Yes.

Q Okay. And that's -- I am now publishing to the jury what was marked and admitted as Defense Exhibit C at trial.

You identified that phone as your phone?

A Yes.

Q And if I'm understanding here today, it is your testimony that Grand Jury Exhibits 19 and 16 were never shown to you?

A I have a question. Why are you asking me in English and you're not explaining to me what's there?

Q Sir, we can have the interpreter reread this entire page.

1 A Okay.

2 Q All right. Well, we'll let her do that up at this -- then.

3 THE COURT: Thank you, Madam Interpreter.

4 THE COURT INTERPRETER: You're very welcome, Your Honor.

5 MS. MACHNICH: Madam interpreter, please start with the question

6 I've already read and he's acknowledged.

7 [The court interpreter reads to the witness in Spanish.]

8 THE COURT INTERPRETER: How far would you like me to go? I'm

9 here: This is my phone.

10 MS. MACHNICH: Go down a little bit further, just so we're -- go down

11 to line 18.

12 And just for the record -- -

13 THE COURT INTERPRETER: Including line 18?

14 MS. MACHNICH: -- I've instructed that she go down to line 18 of that

15 grand jury [indiscernible] --

16 THE COURT INTERPRETER: Okay.

17 MS. MACHNICH: -- covers the entire section.

18 [The court interpreter reads to the witness in Spanish.]

19 THE COURT INTERPRETER: Yes.

20 MS. MACHNICH: Thank you, Madam Interpreter.

21 BY MS. MACHNICH:

22 Q So, sir, I will ask you again, showing you what has been proposed at

23 Defense Exhibits B and D; you recognize these as photographs you were shown

24 as Grand Jury Exhibits 19 and 16 at the grand jury, don't you?

25 A I don't recognize those.

1 Q So it's your testimony here today that you were never shown these at  
2 grand jury?

3 A No.

4 Q All right.

5 MS. MACHNICH: Your Honor, may we approach just briefly?

6 [Bench conference transcribed as follows.]

7 THE COURT: What's up?

8 MS. MACHNICH: Wait for them.

9 Well, he's already acknowledged seeing them. I can't authenticate  
10 them without calling Mr. Dickerson to say he showed it to him. I've already gone  
11 over the transcript with him. He still won't acknowledge having ever seen these --

12 THE COURT: How do you know those were the ones that were  
13 shown to him?

14 MR. GASTON: They're marked.

15 THE COURT: He seems to be saying those weren't shown.

16 MS. MACHNICH: Well, they're specifically marked as grand jury  
17 exhibits that we subpoenaed from the court in that manner. I can ask the court  
18 clerk to come down later.

19 MR. GASTON: I mean, they're -- they're marked.

20 THE COURT: Are they part of the --

21 MS. MACHNICH: Grand jury record.

22 THE COURT: -- is it -- let me ask, is the transcript already admitted?

23 MS. MACHNICH: It is.

24 THE COURT: Well, if the transcript comes in, then the exhibits come  
25 in.

1 MS. MACHNICH: Oh, thank you.  
2 MR. GASTON: Thank you.  
3 THE COURT: So you don't need to separate --  
4 MS. MACHNICH: Okay.  
5 THE COURT: -- you don't need to separately authenticate them.  
6 MS. LEXIS: We had -- we had no objection, anyway.  
7 MR. DICKERSON: Yeah. We stipulate to it.  
8 MS. MACHNICH: Okay.  
9 MS. LEXIS: But it's just -- with -- I think the confusion is, if I were to  
10 speculate, is he doesn't quite understand what you're asking.  
11 MS. MACHNICH: I think he's trying to be difficult. So I think we just  
12 misinterpret what he's trying to do.  
13 THE COURT: Let's not speculate as to motive.  
14 MS. MACHNICH: Yeah.  
15 THE COURT: But I'll admit the exhibits.  
16 MS. MACHNICH: Thank you, Your Honor.  
17 MR. GASTON: Thank you.  
18 MS. MACHNICH: Okay.  
19 [End of bench conference.]  
20 MS. MACHNICH: All right. All right. So, Your Honor, at this time we  
21 would admit Defense Proposed Exhibits B and D as Defense Exhibits B and D.  
22 THE COURT: So admitted.  
23 [Defense Exhibit Nos. B and D admitted.]  
24 MS. MACHNICH: Thank you, Your Honor.  
25 THE COURT: But without objection?

1 MS. LEXIS: No objection.

2 THE COURT: Thank you.

3 MR. DICKERSON: No objection.

4 BY MS. MACHNICH:

5 Q Okay. So both at grand jury and here in court, referencing State's  
6 Exhibit 123 and Defense Exhibit C, you identified this phone as your cell phone,  
7 correct?

8 A Yes. The telephone that has a black case on it, yes.

9 Q Okay. Now, earlier, while you were on the stand, you were handed  
10 State's Proposed Exhibit 37A, a cell phone, correct?

11 MR. DICKERSON: May we approach, Your Honor?

12 THE COURT: Sure. Come on -- come on down.

13 [Bench conference transcribed as follows.]

14 MR. DICKERSON: See the proper question --

15 THE COURT: For her --

16 MR. DICKERSON: -- is she -- they can probably -- defense counsel  
17 publish the exhibit as she's doing right now, even if it's not admitted. So she  
18 wants to show it to him, that's fine. But she just can't publish it.

19 MR. GASTON: Well, can't -- can't we just admit it? Is anyone  
20 objecting to it being admitted?

21 THE COURT: Well, you showed him the phone.

22 MS. LEXIS: We haven't properly identified it.

23 MS. MACHNICH: You did show him the phone.

24 MR. DICKERSON: But we have not admitted it.

25 MR. GASTON: But if we're not --



1 THE COURT: But if -- go ahead, you can talk.  
2 MR. GASTON: I didn't mean to interrupt you. I'm sorry.  
3 THE COURT: My question is if you show him the phone, why can't  
4 she show him the phone?  
5 MR. DICKERSON: She absolutely can. But she -- she can't publish it  
6 to the jury. I -- I took care of it.  
7 THE COURT: You mean show him?  
8 MR. DICKERSON: Show him.  
9 THE COURT: Yeah.  
10 MS. MACHNICH: Okay.  
11 THE COURT: It can't be published to the jury.  
12 MS. MACHNICH: That's fine.  
13 THE COURT: Which is -- which is true.  
14 MS. MACHNICH: That's fine.  
15 THE COURT: But you can certainly ask him to identify it. If he  
16 doesn't recognize it, you can't go any further than that.  
17 MS. MACHNICH: Well, he just talked about it, but yeah.  
18 MR. GASTON: But if the -- if the State -- if we're not objecting, the  
19 State didn't admit it because they didn't lay proper foundation. If we're not  
20 objecting, then is it admitted? Are we going to admit this phone?  
21 MS. LEXIS: We're not proffering it yet.  
22 MR. GASTON: So you don't want to admit the phone anymore?  
23 MS. LEXIS: Not yet. We're going to authenticate it first.  
24 MR. GASTON: Okay. So if we're not objecting to its authentication,  
25 then can we go ahead and admit it now --

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MS. LEXIS: No.

MR. GASTON: -- so we can use it?

MS. MACHNICH: Okay.

THE COURT: It's your burden.

MS. LEXIS: Things get admitted as we proffer it.

THE COURT: It's your burden to lay foundation, if you want to admit it.

MS. MACHNICH: That's fine.

MR. GASTON: What they're saying is they're going to do that later with another witness.

THE COURT: I don't --

MS. MACHNICH: All right.

THE COURT: They're not doing it now, so it's your burden.

MS. MACHNICH: That's fine. We can do it.

MR. DICKERSON: Thank you, Your Honor.

[End of bench conference.]

BY MS. MACHNICH:

Q All right. Sir, I'm going to approach you with what has previously been marked but not admitted as State's Exhibit 37A; sir, you recognize this cell phone?

A My phone has a case.

Q So you testified on direct examination that 37A -- well, let's try this first.

Do you recognize 37A as your cell phone?

A My phone has a case on it.

1 Q So 37A is not your cell phone?

2 A Well, you could show me one that's very similar, but mine had a case  
3 on it.

4 Q Well, okay. Okay. Well, referencing the phone that you've now seen  
5 in court, do you recognize it as being similar to the phone depicted in State's  
6 Exhibit D?

7 A That's the picture you just showed me.

8 Q That's true, sir. It is. Do you recognize that as being the phone that  
9 you were shown in 37A?

10 A Why are you showing me proof of a phone that's not my phone? First,  
11 that's not my phone.

12 Q Okay. And you did testify that the iPhone that was taken from you  
13 was an iPhone 6, correct?

14 A Yes.

15 Q Let's move on to some other evidence. Okay. So let's move on. All  
16 right.

17 Now, you didn't write your statement in this case, correct?

18 A No.

19 Q It was, in fact, written by your employer?

20 A I don't have an employer.

21 Q The woman at whose house you were working at the time?

22 A She's my client.

23 Q All right. At your client's home, that woman wrote your statement,  
24 correct?

25 A Yes.

1 Q Okay. Now, the statement in question, would it surprise you to learn  
2 that nowhere on the statement is it noted that her -- that she actually physically  
3 wrote it out?

4 A She was telling me what -- as she was writing it, what she was writing  
5 down, and she was writing down what I was telling her.

6 Q I understand that that's your testimony, sir. But my question is as  
7 follows: Did she indicate on the actual statement whether she was the one writing  
8 it?

9 A She was the one that wrote it for me.

10 Q Yes, sir. But my question is not whether she was the one who wrote it  
11 for you. My question is did she write anywhere that she wrote it?

12 A Okay. So are you asking me if I know what she wrote down? Or if I  
13 know that she was the one that wrote it for me? What are you asking me?

14 Q I'm asking you if she wrote on your statement that someone other than  
15 the person signing the bottom, which was yourself, actually physically wrote this  
16 statement.

17 A She was the one that wrote the statement for me, and I signed it,  
18 based on what I understood about the statement. Not for any other reason.

19 Q I understand, sir. Still not -- still not my question.

20 THE COURT: Here, let me -- let me do this.

21 Does -- does -- what was her name who wrote the statement?

22 THE WITNESS: Betty.

23 THE COURT: All right. Did Betty sign her name on the statement?

24 THE WITNESS: No.

25 THE COURT: Does her name appear on the statement?

1 THE WITNESS: [Speaking in Spanish.]

2 THE COURT: No, her name.

3 THE WITNESS: My name does, but her name -- Betty's does not.

4 THE COURT: Okay. If -- if I were to read the statement, could I tell  
5 that Betty wrote it?

6 THE WITNESS: Yes.

7 THE COURT: How so?

8 THE WITNESS: Because I asked as a favor to her to please write it  
9 for me.

10 THE COURT: But her name is not on the statement, correct?

11 THE WITNESS: That's right.

12 THE COURT: Okay. So if I just look at the statement now, without  
13 anybody telling me anything, I would not know that Betty wrote the statement,  
14 correct?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 BY MS. MACHNICH:

18 Q So his -- okay.

19 MS. MACHNICH: Thank you, Your Honor.

20 THE COURT: I think this -- all right.

21 MS. MACHNICH: I appreciate the clarification.

22 THE COURT: I mean, you could ask follow-up.

23 MS. MACHNICH: Oh, I will. Thank you.

24 BY MS. MACHNICH:

25 Q So you are aware that your statement has two paragraphs?

1 A Yes.

2 Q The first paragraph was originally written shortly after police arrived?

3 A After?

4 Q After police arrived, yes.

5 A I'm going to clarify this so that we don't go too far. Betty wrote for me  
6 the -- my first statement about what happened. And then the officer wrote some  
7 things down there and he explained to me what he had written down.

8 Q On your -- so the -- your testimony is the officer wrote on your  
9 statement?

10 A I need to -- we're -- we're going back to this again.

11 Q Yes, we are, sir. Would it refresh your recollection as to what is  
12 contained in your written statement in this case, if you had the opportunity to  
13 review your written statement in this case?

14 A I don't want to read it again, because I know what I've already  
15 repeated to you.

16 Q Okay. So -- so there are two paragraphs, correct?

17 A Yes.

18 Q The first one contains the entirety of your description of the robber?

19 A Yes.

20 Q All right. Then there is a second paragraph.

21 A Yes.

22 Q That paragraph was written after you returned from viewing the  
23 vehicle?

24 A Yes.

25 Q Okay. And it's your testimony that you told your client what to write for

1 both of these paragraphs?

2 A On the first paragraph.

3 Q Okay. Now, the second paragraph, isn't it true that the officer actually  
4 dictated that to her?

5 A No. The officer asked me.

6 Q Okay. All right. I am going to --

7 [Pause in proceedings.]

8 Q All right. Sir, you testified on direct that you were at some point shown  
9 a copy of a body cam video that was worn by the officer, correct?

10 A Yes.

11 Q Okay. But the section that the State played for you in court was not  
12 the entire video, was it?

13 A The only video that I know or the true video that is the true video is the  
14 one that I was shown.

15 MS. MACHNICH: Okay. Your Honor, we need to voir dire the  
16 witness outside the presence of the jury on a continuation of the video.

17 THE COURT: Voir dire the witness. Why? Because -- because you  
18 want to introduce more of the video?

19 MS. MACHNICH: Uh-huh. Yes, Your Honor.

20 THE COURT: Is there -- is there any stipulation to the admissibility of  
21 the video?

22 MS. MACHNICH: Evidently not.

23 THE COURT: Okay. Well --

24 MS. LEXIS: I -- I ---

25 MS. MACHNICH: We'll have to do that.

1 MS. LEXIS: I just have never seen -- I don't know what's on this video  
2 that she's purporting.

3 THE COURT: The one -- well, you showed part of it, right?

4 MS. LEXIS: Right. And the -- but the -- the problem is the witness  
5 hasn't seen it.

6 MS. MACHNICH: Evidently, he has not, Your Honor.

7 THE COURT: Okay.

8 MS. MACHNICH: And I guess even though I've given them the  
9 markings --

10 THE COURT: So there's some issue as to the genuineness or  
11 authenticity of the video; is that what the State's position is?

12 MS. MACHNICH: It appears so.

13 THE COURT: Okay.

14 MS. LEXIS: No, not necessarily the genuineness.

15 THE COURT: No?

16 MS. LEXIS: But --

17 THE COURT: But it's all relevant. No one's contesting that the  
18 video --

19 MS. LEXIS: Right, absolutely.

20 THE COURT: -- of what happened --

21 MS. LEXIS: Absolutely.

22 THE COURT: -- is not relevant?

23 MS. LEXIS: Right.

24 THE COURT: So it's relevant?

25 MS. LEXIS: Right.



1 THE COURT: Is it -- is it what it's supposed to be? You showed part  
2 of it.

3 MS. LEXIS: Yes.

4 THE COURT: But you don't want to show the rest of it, apparently.

5 MS. LEXIS: No. It's not that we're not wanting to show it. This  
6 witness just hasn't seen that part.

7 THE COURT: It doesn't matter if he saw it or not.

8 MR. DICKERSON: Because it's going to be material as to whether he  
9 can authenticate it and whether he's --

10 THE COURT: He doesn't need to -- why does he need to  
11 authenticate it? I thought part of --

12 MS. LEXIS: Because it would have to be authenticated to be moved  
13 in.

14 THE COURT: I guess we've got to discuss this outside the presence.  
15 I don't know why there's an authenticity issue. Someone say someone made up  
16 an -- a police officer video? I -- I don't know.

17 MR. DICKERSON: I -- I think the main point is --

18 THE COURT: I think that's what it's suggesting. Anyway. All right.

19 Ladies and gentlemen of the jury, I'm going to have to excuse you.  
20 Don't communicate among yourselves or with anybody else about this trial or the  
21 subject matter of the trial; do not communicate at all with any of the parties,  
22 attorneys, or witnesses involved in the trial; do not seek or obtain any information  
23 or comments about the case from any source, including newspapers, television,  
24 radio, Internet, e-mail, cell phones, or any other electronic device; do not read,  
25 watch, or listen to any report of or commentary about the case; do not perform

1 any research or investigation; don't form or express any opinion on any subject  
2 connected with the trial until the case is finally submitted to you. All right.

3 Be back here in 15 minutes, 4:30. Thank you.

4 [Jury recessed at 4:14 p.m.]

5 THE COURT: We're outside the presence. All right.

6 Ms. Machnich, voir dire away.

7 **VOIR DIRE EXAMINATION**

8 BY MS. MACHNICH:

9 Q Okay. So, sir, I'm going to show you a section of a video now at this  
10 time that I am going to have marked -- I'll mark this little sheet right now -- as a  
11 Defense Exhibit E. Yes. Okay.

12 MS. MACHNICH: And this is the Proposed Defense Exhibit E.

13 THE COURT: Proposed E.

14 MS. MACHNICH: File name 1315 to end of the body cam.

15 THE COURT: Is there audio or just video on this?

16 MS. MACHNICH: It's video. It's a body cam video. I can have it  
17 played.

18 MS. LEXIS: There's audio and video.

19 THE COURT: This is audio on it?

20 MS. LEXIS: The State will play it for defense counsel.

21 MS. MACHNICH: I -- I'm more than happy to have the court clerk  
22 play it.

23 MS. LEXIS: Whatever you want.

24 THE COURT: Just let them do it.

25 MS. LEXIS: Yeah.

1 THE COURT: It was working real fine when they did it.  
2 MS. LEXIS: Right.  
3 MS. MACHNICH: She ejected it and tried to give it back to me, so --  
4 I'm sorry.  
5 MS. LEXIS: I thought you wanted it. Okay.  
6 Can we switch over, Ms. Clerk? Thank you.  
7 There were two clips. For the record, Ms. Machnich asked me to play  
8 the second.  
9 MS. MACHNICH: The first is entirely encompassed on the copy that  
10 the State --  
11 [Video played.]  
12 THE COURT: Does he need any of this trans -- interpreted?  
13 MS. MACHNICH: Well, this was his actual experience --  
14 THE COURT: Okay.  
15 MS. MACHNICH: -- in English, so --  
16 THE COURT: Okay. All right. All right.  
17 MS. MACHNICH: -- I would hope it does not need to be translated to  
18 him.  
19 [Video played.]  
20 THE COURT: He's in the back of the car?  
21 MS. MACHNICH: Yes, Your Honor. This is, again, an exact  
22 continuation of video the State played during direct to this witness.  
23 THE COURT: Yeah. Well, what part does he get new?  
24 MS. MACHNICH: This is actually --  
25 THE WITNESS: He's taking me to the same place.

1 MS. MACHNICH: This is actually new. This is when they arrived  
2 back where his client lived.

3 THE COURT: Okay.

4 MS. MACHNICH: Yeah. This is actually new.

5 THE COURT: So this part wasn't shown on direct? Okay.

6 MS. MACHNICH: It was not. No.

7 [Video played.]

8 THE WITNESS: Can I ask you something?

9 THE COURT: Not now.

10 [Video played.]

11 THE COURT: That's it?

12 MS. MACHNICH: That's it, Your Honor.

13 THE COURT: So what's the issue? What do you need to voir dire  
14 him about?

15 MS. MACHNICH: I just need to be able to admit it. And the State  
16 would not stipulate to its authenticity to allow it to be entered.

17 THE COURT: Well, they just wanted to see it.

18 MS. LEXIS: Exactly. I wanted to see what it purports to be, because  
19 a portion of the -- of the actual body camera, he couldn't authenticate, because he  
20 was walking away, back and forth. So --

21 THE COURT: Yeah. So that looks like that -- all we needed to tell  
22 him is just that the portion you want to use is all the portion that -- that he  
23 personally participated in. Right? So -- so --

24 MS. MACHNICH: Well, I mean, it's -- at this point --

25 THE COURT: Can we stipulate to have it admitted? Or is there -- is

1 there an issue?

2 MR. DICKERSON: So we -- it appears there's --

3 THE COURT: I didn't hear any, like, statements that would be

4 troublesome.

5 MR. DICKERSON: Right. And it appears there's another video on

6 here, as well.

7 THE COURT: There's another one?

8 MR. DICKERSON: Yeah.

9 MS. MACHNICH: The other part -- the part that [indiscernible].

10 THE COURT: Do you want to see what that is, since we're here?

11 MR. DICKERSON: Yeah. Absolutely.

12 THE COURT: Why don't we take a look at it?

13 MS. MACHNICH: Okay. It -- it --

14 THE COURT: Let's just look at it and see what it is. Maybe we can

15 just admit that one, too, we can get all of them in.

16 MS. MACHNICH: That's fine. That one's already in. That's a State's

17 Exhibit already. That's why we weren't going to do it separately. It's the idea of

18 the video.

19 MR. GASTON: They -- they used the same time stamps. They're the

20 same time stamps for this video. This is the same video as the first one.

21 THE COURT: Oh.

22 MS. MACHNICH: It just is -- I chunked it out. I had my tech people

23 chunk it out into two, and they took one chunk and cut off the end.

24 THE COURT: Okay. All right. So everything is in already?

25 MS. MACHNICH: Now, with the admittance of this, and I would move

1 at this time to admit Defense Exhibit E into evidence, it would -- that body cam  
2 would be in.

3 [Video played.]

4 MS. LEXIS: Yeah, that's fine.

5 THE COURT: All right. Then they're all in.

6 [Defendant's Exhibit No. E admitted.]

7 MS. MACHNICH: Thank you.

8 THE COURT: All right. We don't need to voir dire. Let's bring the  
9 jury back in.

10 MS. MACHNICH: That's fine. Yeah. We're good.

11 THE COURT: What -- what -- wait. You had a question. What was  
12 your question, sir?

13 THE WITNESS: Why do you want to see these videos if they're not  
14 important?

15 THE COURT: Well, they are -- they are important. All right?

16 THE WITNESS: Okay.

17 THE COURT: So it helps -- helps explain --

18 THE WITNESS: No, that was -- that was my only question.

19 THE COURT: All right. No problem. Bring them in.

20 Don't worry about what's important or not important. Just answer the  
21 questions and tell the truth, okay. All right.

22 [Pause in proceedings.]

23 THE COURT: Can you guys plan to stay until 5:20 tonight?

24 MS. MACHNICH: Of course.

25 THE COURT: Can you stay until 5:20?

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MS. LEXIS: Yes.

MR. GASTON: Your -- Your Honor, I know the jury is about to come in. There is one -- one thing with this witness, because he's about to go on vacation, so we can't ever recall this guy. The --

MS. MACHNICH: That's -- the questions about the phone, they're intending to admit it later, which is great, but we can't recall him because he's going out of state.

MR. GASTON: The State is laying the foundation for that phone to come into evidence with another witness. So it's going to come into evidence. We're not objecting to its authenticity of coming in. We want to show the jury, through this witness, the cell phone that he identified today in court is his cell phone.

Because the fact is, he's identified two different cell phones. He -- as his cell phones.

MR. DICKERSON: No. It --

THE COURT: I didn't get what was going on.

MR. DICKERSON: We're objecting to -- and there's no chain of custody laid and there's no authenticity for it. He'd actually identified that last one, 37A, as not his. He says that I have a -- black [indiscernible].

MS. MACHNICH: That was not what he testified to on direct before.

MS. LEXIS: He -- he kept saying my phone has a cover.

MS. MACHNICH: But before that --

MR. DICKERSON: It's not, and they asked him --

MS. MACHNICH: -- when they handed it to him.

THE COURT: Well --

1 MR. DICKERSON: -- three times.

2 MS. MACHNICH: And said, this is my phone, but my phone has a  
3 cover. There's actually an entire thing where he doesn't even mention the cover  
4 until we objected to it, because this is the first time we're seeing it, and it's not the  
5 same phone as the picture.

6 MR. DICKERSON: The -- the whole thing is I think it just didn't go the  
7 way that Ms. Machnich thought it would go.

8 MS. MACHNICH: Okay. But I --

9 MR. DICKERSON: She thought he would identify it. He didn't, so --

10 MR. GASTON: You're objecting --

11 MS. MACHNICH: But I can't -- I can't recall this witness.

12 THE COURT: So hold on, guys. I -- well, can I -- sure you -- can't  
13 you get a --

14 MS. MACHNICH: No.

15 MR. GASTON: He's going on vacation.

16 THE COURT: -- get a witness -- get a material witness warrant on  
17 him, right?

18 MS. MACHNICH: So I could have my investigator come down and  
19 serve him and he must be available during the defense case in chief?

20 MR. GASTON: The State's going to introduce this evidence later. I  
21 don't understand why they're objecting to the authenticity of their own evidence.

22 THE COURT: I don't know, either. But that's not an issue before me.

23 MS. MACHNICH: I will have my investigator --

24 MR. GASTON: Well, the question is, by a --

25 MS. MACHNICH: -- serve him today.



1 MR. GASTON: By a -- no, we're not -- we're not doing a material  
2 witness warrant.

3 MS. MACHNICH: No, no, no. But a sub, so he can't leave.

4 MR. GASTON: No. We're not doing that.

5 THE COURT: What?

6 MR. GASTON: We're not going a warrant on this guy. The -- the  
7 question, Your Honor, is by a preponderance of the evidence, is the cell phone  
8 what it purports to be; a recovered cell phone from the scene of the crime? It's  
9 their evidence. I don't understand how they're objecting.

10 THE COURT: No. No. I'm saying no to him. I'm not saying no to  
11 you.

12 MR. GASTON: Oh, I thought you were saying no to me. I didn't know  
13 where to go from there.

14 THE COURT: No, because I -- don't you want --

15 MR. GASTON: Chain of custody stuff? No.

16 THE COURT: No. Don't you want the jury to not come in right at this  
17 moment?

18 MS. MACHNICH: Yes. That's correct.

19 MR. GASTON: Yeah.

20 THE COURT: All right.

21 MS. MACHNICH: He thought you were just saying --

22 MR. GASTON: I thought you were saying no to me.

23 MS. MACHNICH: -- no to him.

24 THE COURT: Will you guys just stop talking for a second. All right.

25 Marshal, we have another issue. Do not let the jury come in yet.

1 THE MARSHAL: You got it, Judge. We were waiting on one juror,  
2 anyway.

3 THE COURT: All right. All right. Let me try to understand this.

4 There's some cell phone issue. I don't know what it is, but -- go  
5 ahead. You talk. You barely think you can convince me without my mind asking  
6 you the questions I need to know. But go ahead.

7 MR. GASTON: I didn't mean to interrupt you. I thought you were  
8 asking --

9 THE COURT: No, go ahead.

10 MR. GASTON: -- to clarify the cell phone issues.

11 THE COURT: Try it.

12 MR. GASTON: Okay.

13 THE COURT: You -- you only get -- you're only getting 90 seconds --

14 MR. GASTON: Fine.

15 THE COURT: -- and then we'll bring the jury in.

16 MR. GASTON: Fine. At grand jury he identified one cell phone as  
17 being his. Today, before we objected, he identified a different cell phone as being  
18 his. He has now identified two cell phones as being his. We want both cell  
19 phones, both pictures, and the cell phone that the State is -- is their evidence, a  
20 cell phone that was recovered from the scene as stolen property, we want that  
21 admitted as evidence.

22 The State is now objecting to its authenticity and chain of custody  
23 issues. The State has, at the bench, said they're going to lay that foundation with  
24 a different witness later.

25 The problem is we can't recall him then at that point to show him the

1 cell phone and -- and -- when he's here --

2 THE COURT: Yeah, but do you know how many times I've had  
3 attorneys say they're going to lay foundation and have been unable to lay  
4 foundation? I can't -- I can't let evidence in on the promise that someone in the  
5 future is going to lay foundation.

6 MR. GASTON: But we're not objecting to the lack of foundation. It's  
7 evidence that they have in their evidence vault, that they recovered from the  
8 scene of the crime. We're not objecting to the foundation. We're not objecting to  
9 the chain of custody. And it seems silly that they would object to their own lack of  
10 ability -- their own chain of custody, their own lack of foundation. It's evidence in  
11 their evidence vault that was recovered from the scene of the crime, that he  
12 identified today as his cell phone. It seems -- I guess -- I have no idea how it  
13 would not be admitted into evidence.

14 THE COURT: All right. So you have some cell phone. Do you just  
15 want to show it to him and ask him if it's his phone?

16 MR. GASTON: The State has the cell phone that was recovered from  
17 the scene of the crime. They showed him on direct, and he identified it as his cell  
18 phone. We want it admitted into evidence.

19 THE COURT: Right now?

20 MR. GASTON: Yes.

21 MS. MACHNICH: Yes.

22 MR. GASTON: Because it is a different cell phone than what he  
23 admitted --

24 THE COURT: But he already admit -- acknowledged that it's his  
25 phone.

1 MS. MACHNICH: Yes, Your Honor, he has --  
2 THE COURT: And there is foundation.  
3 MS. LEXIS: No. That's the problem. He did not identify that phone  
4 as his phone.  
5 THE COURT: That's what --  
6 MS. LEXIS: If you'll recall --  
7 THE COURT: -- that's what he just said he did.  
8 MS. LEXIS: That's not -- that's not true.  
9 MS. MACHNICH: He did.  
10 MS. LEXIS: If you -- excuse me.  
11 If you would -- if you can ask the witness right now, Your Honor, on --  
12 outside the presence of the jury, he identified the phone in the picture with the  
13 cover as his phone. He said, my phone has a cover. When Ms. -- Ms. Machnich  
14 showed him this particular phone, without publishing it, do you remember during  
15 her cross --  
16 THE COURT: Yeah.  
17 MS. LEXIS: -- she showed it? She goes -- he kept telling her, my  
18 phone has a cover. I don't know if that's my phone. My phone has a cover.  
19 THE COURT: I know that.  
20 MS. LEXIS: So --  
21 MS. MACHNICH: But -- but Your Honor --  
22 MS. LEXIS: Okay.  
23 MS. MACHNICH: -- on direct, Mr. Dickerson showed him the same  
24 phone, and he said that's my phone.  
25 THE COURT: No.

1 MR. GASTON: Yes, he did.

2 MS. MACHNICH: He did.

3 MR. GASTON: He said --

4 MS. MACHNICH: He said that.

5 MR. GASTON: He said that prior to making his objection.

6 MS. MACHNICH: And then, when we were, like, wait, that looks  
7 different, he was like, well, mine did have a cover, but that's my phone.

8 THE COURT: If that's what he -- if he -- if he identified the phone,  
9 then that's authentication.

10 MS. MACHNICH: Your Honor --

11 THE COURT: All right. And we'll admit it. But we just got to look at  
12 JAVS. So we don't --

13 MS. MACHNICH: Correct.

14 THE COURT: We don't need to -- we don't need to look at this issue  
15 now.

16 MR. GASTON: We can't recall him as a witness.

17 MS. MACHNICH: Okay. I'll just --

18 THE COURT: Will you listen to yourself? If he identified the phone  
19 on the record, why do you need to recall him?

20 MR. GASTON: Because we are going to use the photos and the cell  
21 phone to show to the jury through this guy as witness that he's identified two  
22 separate cell phones, here today at trial --

23 MS. MACHNICH: No. Let's just -- we can look at the JAVS.

24 THE COURT: What's that got to do with whether he's here or not?  
25 You don't need him to identify the phone, if he's already identified the phone.

1 Your co-counsel is saying he identified the phone.

2 MR. GASTON: That's true.

3 THE COURT: And that's on JAVS --

4 MR. GASTON: Yes, sir.

5 THE COURT: -- right? Let's look at JAVS two days from now and  
6 figure it out.

7 MR. GASTON: Okay.

8 THE COURT: I don't want to hold up the jury.

9 MR. GASTON: Okay.

10 THE COURT: I mean, I -- are you confident that he identified the  
11 phone and that's on JAVS?

12 MR. GASTON: Prior to her objection, he did say it was his phone,  
13 yes.

14 MS. MACHNICH: Yes.

15 THE COURT: If he said it's his phone, then that's proper  
16 authentication.

17 MR. DICKERSON: He backed off, Your Honor. He said no --

18 MS. LEXIS: He absolutely did.

19 MR. DICKERSON: -- that my phone has a -- has a case on it.

20 MR. GASTON: Backed off, though.

21 MR. DICKERSON: And so he -- he's not saying that that is his phone.

22 MS. LEXIS: Why don't we ask him right now?

23 MR. GASTON: No.

24 MS. MACHNICH: Because he's changed his story. He's changed his  
25 story since I was asking the questions to when you were asking the questions.

1 THE COURT: Okay.

2 MR. DICKERSON: No. Even when I asked the questions, he backed  
3 off and he said no, I --

4 MR. GASTON: He backed off after Tegan objected. The first  
5 question, is this your cell phone? His answer is yes. Tegan objects or starts  
6 making an issue about the case --

7 THE COURT: Is this that big of an issue in this case?

8 MR. GASTON: Yes. Because he's -- yes, because it shows how --

9 THE COURT: Seems like this is, like, the linchpin of the whole case.

10 MR. GASTON: No. It shows how memory is --

11 MR. DICKERSON: It's not, Your Honor. It's really not.

12 MS. LEXIS: It really isn't.

13 MR. GASTON: Can I --

14 THE COURT: The way you guys are fighting over it, this is a huge  
15 issue.

16 MR. GASTON: It is a huge issue, because he -- the whole case is  
17 how accurate is his identification of Keandre Valentine.

18 THE COURT: Wow.

19 MR. GASTON: He's identified his own cell --

20 THE COURT: Slow down, slow down, slow down.

21 MR. GASTON: Sorry.

22 THE COURT: You know what, I'm going to excuse you, because I  
23 don't want the court interpreter to have to interpret all of this.

24 THE COURT INTERPRETER: Thank you, Your Honor.

25 THE COURT: All right. Go outside, please.

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[Witness exits courtroom at 4:29 p.m.]

THE COURT: It seems like this is a very huge issue.

MR. GASTON: It is a huge issue to the defense.

THE COURT: So let's get it right.

MR. GASTON: Do you want -- do you want me to finish my thought?

THE COURT: So he misidentified -- he -- he said a phone is his,  
which wasn't his?

MS. MACHNICH: Correct.

MR. GASTON: He said two separate phones, and he's identified both  
of them at two different points as being his. And we want to argue to the jury at  
closing --

THE COURT: So that still goes to his overall credibility?

MS. MACHNICH: Yes.

MR. GASTON: We're not -- we're not necessarily saying he's lying  
about the phone, just, yeah, it goes to his credibility with his memory. I mean, if  
he's mistaken about his own cell phone, then how real -- how reliable is his  
identification of another human.

THE COURT: And the State -- you don't want -- it sounds like you  
want to have your cake and eat it, too. You want to be able to introduce the  
phone and use it somehow in your case, but you don't want to introduce it until  
after the witness is gone, so then the defense can't cross-examine this witness  
about it.

MS. LEXIS: Absolutely not.

THE COURT: That seems like an unfair tactical advantage.

MS. LEXIS: No. That's absolutely not what we're doing. That's not



1 what we're doing.

2 He cannot authenticate -- Your Honor, if you -- I wish we could play  
3 back JAVS right now. During direct examination, Mr. Dickerson showed him the  
4 phone. And he said, oh, yes, this looks like my phone. It has the crack, which it  
5 does -- it has the same crack that mine does. And then at some point there  
6 was -- yes, there was an objection, because Ms. Machnich, while Mr. Dickerson  
7 was examining the witness, came to me and said, that phone has a cover. The  
8 one that he identified has a cover. This one doesn't have a cover.

9 So we approached the bench.

10 THE COURT: Right.

11 MS. LEXIS: We worked that out. Then Mr. Dickerson continued to --  
12 to question this particular witness, Mr. Garcia, and Mr. Garcia said -- he looks at  
13 the phone and he says, no, mine has a cover. If you show me the cover, I'll know  
14 for sure. Okay? That's what he says.

15 THE COURT: Well, what I keep hearing is -- is he kept saying my  
16 phone has a cover.

17 MS. LEXIS: Right.

18 THE COURT: My phone has a cover. I never heard him say  
19 unequivocally that this is not my phone. He -- I never heard him say that.

20 MR. GASTON: That's -- that's also true.

21 MS. MACHNICH: He did -- he did on cross. He just wouldn't answer  
22 the question. But for a while --

23 THE COURT: He kept saying it's not -- my -- my phone has a cover.

24 MR. DICKERSON: Right. And --

25 THE COURT: So I don't know at this point if it's his phone or it's not

1 his phone.

2 MR. DICKERSON: And still, I think that defense counsel can do  
3 exactly what we did is show him the phone and ask -- she already has -- and as  
4 the chain of custody gets laid and the foundation gets laid to bring the evidence  
5 in, it will end upcoming in.

6 THE COURT: So why -- why can't you just show him the phone  
7 again? Do what you -- because you never got a clear answer. All right.

8 MS. MACHNICH: That's correct.

9 THE COURT: Get a clear answer from him, Ms. Machnich. Say, is  
10 this your phone without the case?

11 MS. LEXIS: Right.

12 MR. GASTON: The problem is he's changed -- I mean, if he says  
13 yes, that's great. The problem is he's sort of fighting Tegan on that issue.

14 THE COURT: How --

15 MR. GASTON: Prior to the objection and the case being raised by --  
16 the case or lack of case being raised by Tegan, and Mr. Dickerson's very first  
17 question -- Agnes or Ms. Lexis' recitation of what happened is exactly correct.

18 When Mr. Dickerson originally showed him the phone, he said, yes,  
19 that's my phone. That's the crack. Tegan raised an --

20 THE COURT: I know all this.

21 MR. GASTON: Right. So he identified --

22 THE COURT: You're stating stuff I don't know. What I don't -- what I  
23 don't understand is how you want to use this phone in a manner that you're  
24 precluded from using it now?

25 MR. GASTON: Because right now it hasn't been admitted into

1 evidence. We can't show the jury the back of the phone. That's what we want to  
2 do.

3 THE COURT: You want to show the back of the phone?

4 MR. GASTON: Yes.

5 MS. MACHNICH: The phone in general.

6 MR. GASTON: We want to show the jury the phone.

7 MS. MACHNICH: We want to show the phone. And we can't show  
8 the phone, because it's not admitted into evidence.

9 MR. GASTON: The State keeps objecting to the admission of their  
10 own evidence.

11 MS. MACHNICH: Still --

12 THE COURT: So how do you think it's going to get the -- the  
13 foundation is going to get laid?

14 MR. GASTON: We're not objecting to lack of foundation. So there's  
15 no foundational objection, unless they're objecting to their own lack of foundation  
16 to their own evidence that was in their own evidence vault, that was recovered by  
17 their own officers.

18 THE COURT: But hold on. Evidence cannot be shown until proper  
19 foundation is laid. The party proffering the evidence has the burden of -- of laying  
20 the foundation. All right. They have not moved to introduce a phone.

21 You want to introduce the phone. You have the burden of laying the  
22 foundation.

23 MR. GASTON: We can do it through the officers, later.

24 MS. MACHNICH: But here's the issue, Your Honor. This witness,  
25 we've been told now, is going on vacation. I am having my investigator --

1 THE COURT: All right.

2 MS. MACHNICH: -- come down and subpoena him for Tuesday or  
3 Wednesday. We can recall him in our case in chief. And that's absolutely fine,  
4 but he's not here.

5 THE COURT: There's ways -- look, look, why doesn't somebody say,  
6 Judge, can you conditionally admit it, subject to the foundation being laid later?

7 MR. GASTON: That is what --

8 MS. MACHNICH: Okay.

9 MR. GASTON: That is what we would ask for.

10 THE COURT: That's what I've always done in situations like this.

11 MS. MACHNICH: Okay.

12 THE COURT: And in the event that the proper foundation is not laid,  
13 then the court strikes all testimony related to that piece of evidence.

14 MR. GASTON: Given the high likelihood we would be able to lay a  
15 foundation through the officers that searched the scene and the chain of custody  
16 at the evidence vault, we would be asking the court to conditionally admit it at this  
17 time.

18 THE COURT: Well, that's -- all right. Why didn't you just do that?

19 MR. GASTON: I thought that's kind of what -- I think it was a  
20 misunderstanding. I never said those words. But I thought that's what I was  
21 asking for that. I apologize.

22 MR. DICKERSON: We would still object to publication at this time,  
23 since it has not --

24 MR. GASTON: That's the whole point.

25 MR. DICKERSON: -- been -- the foundation has not been laid. Other

1 than Mr. Gaston saying where it came from, we have -- there's nothing on the  
2 record to say where it came from. There's nothing to tell these jurors where it  
3 came from.

4 MR. GASTON: How is this not obstructionist as can be? It is their  
5 own evidence.

6 THE COURT: Well, but the whole purpose behind --

7 MS. MACHNICH: It came out of their opening stack.

8 THE COURT: I'm really having trouble understanding why -- why you  
9 guys don't want the jury to see this phone. I don't understand --

10 MR. DICKERSON: Because --

11 THE COURT: -- what the prejudice is.

12 MR. DICKERSON: Because we play by the rules of evidence. We  
13 submit -- we only admit evidence that has had proper foundation laid.

14 THE COURT: But doesn't conditional admission -- admission of -- of  
15 evidence conditionally come in all the time?

16 MR. DICKERSON: I -- I don't believe so at this point, since we have  
17 no foundation laid as to where it even came from.

18 MR. GASTON: You brought it from your evidence vault.

19 MS. MACHNICH: They did. They actually laid foundation of the  
20 package that it came out of with the CSA.

21 THE COURT: It came right through your evidence.

22 MR. GASTON: This is --

23 MR. DICKERSON: Mr. Dickerson, come on, man.

24 MR. GASTON: This is obstructionist.

25 MR. DICKERSON: Okay. You did --

1 MS. LEXIS: Okay. I take issue with the -- or with calling --  
2 MR. GASTON: That's what you're doing, you're being obstructionist.  
3 MS. LEXIS: -- us obstructionists. Okay.  
4 THE COURT: Hold on.  
5 MR. DICKERSON: Yeah.  
6 MS. LEXIS: I -- I really take issue with that.  
7 THE COURT: Did -- did this come from your own evidence vault?  
8 MR. DICKERSON: Yes, Your Honor. It came from our evidence  
9 vault.  
10 MS. LEXIS: Your Honor --  
11 THE COURT: All right. So --  
12 MS. LEXIS: -- the point of the matter is we are the State. We  
13 determine when we proffer evidence.  
14 MR. GASTON: Unless you don't like the evidence.  
15 MS. LEXIS: We lay the proper foundation.  
16 MR. GASTON: Right.  
17 THE COURT: Yeah.  
18 MS. LEXIS: So it's not being misconstrued.  
19 THE COURT: But I get to determine whether it's admissible. I'm  
20 admitting the phone.  
21 MR. GASTON: Thank you, Your Honor.  
22 THE COURT: For all purposes. All right. Unconditionally, because it  
23 is from the State's evidence vault.  
24 MR. GASTON: Thank you.  
25 THE COURT: This is ridiculous, guys. I can't believe you waste all

1 this time fighting over -- over a piece of evidence that you know is going to come  
2 in.

3 MR. DICKERSON: Right. But we have to lay the proper foundation  
4 to bring this evidence in, Your Honor. So they just get to pick and choose the  
5 pieces that they want, when they want them, because it's most beneficial.

6 THE COURT: No.

7 MR. DICKERSON: I mean --

8 THE COURT: But you did say on the bench --

9 MR. DICKERSON: -- it's going to end up --

10 THE COURT: But Mr. -- Mr. Dickerson, you did say on the bench, sir,  
11 that -- that you were -- you were going to lay the foundation later on in the case.

12 MR. DICKERSON: Absolutely. We --

13 THE COURT: And now I hear it actually came from your evidence  
14 vault?

15 MR. DICKERSON: It -- absolutely. But still, the foundation is not laid  
16 at this time. So we do object to it being admitted.

17 THE COURT: All right.

18 MR. DICKERSON: I think it's -- it's proper, nonetheless. There's  
19 nothing different that's going to happen, except the fact the jury's going to see it  
20 right now, instead of maybe on the next witness.

21 MR. GASTON: We're going to see it through the witness that  
22 identified it.

23 THE COURT: Well, it's probably better so see it through this witness  
24 who is a little bit uncertain as to whether it's his or not before he leaves the  
25 country. I mean, that's only fair.

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MR. DICKERSON: I submit it to Your Honor. We --

THE COURT: I'm not saying you're doing anything --

MR. DICKERSON: --- our objection is lodged.

THE COURT: -- unfair.

MR. DICKERSON: I -- I appreciate it, Your Honor.

THE COURT: I'm not saying you're doing anything unfair. I'm just saying I -- I think it's -- overall fairness is better achieved if -- if the jury can see it with -- with this witness.

MS. LEXIS: We respect the court's decision.

MR. DICKERSON: We respect the court's decision.

MS. LEXIS: Let's bring the witness in.

THE COURT: All right.

MS. LEXIS: Thank you.

MR. DICKERSON: Thank you, Your Honor.

THE COURT: All right. Marshal, the jury, please.

MR. GASTON: [Indiscernible] in all you want. You guys are object -- that --

MS. LEXIS: Okay.

MR. GASTON: -- Mr. Dickerson said on the record that he doesn't know where it's coming from.

THE COURT: Guys, guys, guys. Please no incivility to each other, please. Thank you.

[Jury reconvened at 4:36 p.m.]

THE COURT: Mr. Dickerson, would you mind please getting the witness?



1 MR. DICKERSON: Absolutely, Your Honor.

2 [Pause in proceedings.]

3 THE COURT: Mr. Garcia, you are still under oath and required to  
4 testify truthfully; do you understand?

5 THE WITNESS: Yes.

6 THE COURT: All right. Please give your attention to Ms. Machnich,  
7 she has more questions for you.

8 THE WITNESS: Yes.

9 MS. MACHNICH: Thank you, Your Honor.

10 **CROSS-EXAMINATION (CONT.)**

11 BY MS. MACHNICH:

12 Q Where we left off, sir, is we had been talking about the second  
13 paragraph of your statement; do you recall that?

14 A Yes. The second paragraph, yes.

15 Q Okay. And I believe that you had testified that this was something that  
16 you had asked Ms. -- you -- you had asked your client to write?

17 A Yes.

18 Q Okay. So and now I would like to publish to the jury what has just  
19 been admitted as Defense Exhibit E.

20 THE COURT: You may.

21 MS. MACHNICH: Thank you. All right.

22 And Your Honor, for the record, we are playing --

23 BY MS. MACHNICH:

24 Q And you'll recognize this, sir, as additional body camera footage.

25 [Video played.]

1 BY MS. MACHNICH:

2 Q Okay. And -- and I actually -- just to clarify, you told the officer what to  
3 write, and the officer wrote it; correct? I mean, and the -- and the officer had Betty  
4 write it? Is that what you -- I'll strike that question. That was confusing. Let's  
5 just --

6 MS. LEXIS: Okay. Play it from here?

7 MS. MACHNICH: Yes.

8 [Video played.]

9 BY MS. MACHNICH:

10 Q Sir that is, in fact, what happened that day, correct?

11 A Yes.

12 Q Thank you. All right. Now, turning our attention just briefly back to the  
13 phone. All right.

14 I am approaching you with what has now been marked and admitted  
15 as State's Exhibit 37A; you will recognize this cell phone as the same 37A that  
16 was shown to you on direct examination.

17 A I will answer the same way. I'll answer the same way. My -- my  
18 telephone had a case on it, and I would recognize it if it had a case on it, that it  
19 would be mine.

20 Q Okay. Sir, on direct examination, you specifically were asked if this  
21 was your phone. Yes. And you said it was your phone.

22 A Yes. I said it was my phone that had a case on it.

23 Q Okay. This is a yes-or-no question. Just so we're very clear; on direct  
24 examination, you identified 37A as your cell phone, taking not into account  
25 whether there was a case or not?

1 MR. DICKERSON: Asked and answered.

2 THE COURT: Well, I think you -- it -- it was. But I'd like to hear the  
3 answer again, because I'm not sure -- I'm not sure that -- that we're all clear on  
4 the testimony with some of the interpretation here -- the interpreter. So.

5 So let me ask a couple questions, if you don't --

6 MS. MACHNICH: Just have him answer my question, Your Honor.

7 THE COURT: Well, all right. Go ahead.

8 MS. MACHNICH: Just -- and then, obviously, all -- you can ask all of  
9 them. I just would love an answer.

10 THE COURT: It's pretty simple. Go ahead.

11 BY MS. MACHNICH:

12 Q Okay. Thank you, sir.

13 THE COURT: Well, hold on. You can't cut him off in the middle of a  
14 sentence.

15 BY MS. MACHNICH:

16 Q May I ask -- okay.

17 MS. MACHNICH: Your Honor, I would ask you to instruct the witness  
18 to answer my question yes or no, as it is a yes-or-no question on this one specific  
19 fact.

20 THE COURT: I don't think it is. There's some ambiguity here. All  
21 right. I'll let him answer however he wants to answer.

22 BY MS. MACHNICH:

23 Q Okay. Sir, I'll -- let me restate my question.

24 MS. MACHNICH: Is that okay, Your Honor?

25 THE COURT: I -- I don't know why we're all making -- this is a pretty

1 simple issue.

2 MS. MACHNICH: Your Honor --

3 THE COURT: All right.

4 MS. MACHNICH: Your Honor, I'm not getting --

5 THE COURT: No. Let me just ask.

6 Sir? Sir, look at me. Thank you. All right. During direct examination,  
7 Mr. Dickerson showed you that phone; do you remember?

8 THE WITNESS: Yes.

9 THE COURT: Okay. We understand that your phone that you used  
10 to have had that kind of case on it, correct?

11 THE WITNESS: Yes.

12 THE COURT: Okay. You have a phone in front of you now that does  
13 not have a case. All right. Your phone was an Apple I6? Is that an Apple I6 in  
14 front of you?

15 THE WITNESS: I don't know if it's an Apple 6. It could be.

16 THE COURT: Okay. All right. If that phone in front of you had a case  
17 on it, would that be your phone?

18 THE WITNESS: Could be.

19 THE COURT: All right. Can you tell if that's your phone without the  
20 case?

21 THE WITNESS: Not without the case.

22 THE COURT: All right. You can't tell without the case? Does -- all  
23 right. But didn't you say that -- when Mr. Dickerson was asking questions, didn't  
24 you say to Mr. Dickerson that you thought that was your phone? Did you say  
25 that?

1 THE WITNESS: Yes. I thought it was my phone.

2 THE COURT: Okay. And then -- and -- and then -- and what -- what  
3 do you think now?

4 THE WITNESS: Well, she's confusing me. She keeps asking me, is  
5 this your phone? Is this your phone? Is this your phone?

6 THE COURT: Well, I don't want you to be confused.

7 So sir, just tell us what you think; is that your phone or not your  
8 phone? I just want the truth to come out to the jury.

9 THE WITNESS: May I touch it?

10 THE COURT: Yes. You may touch and look at it. Look at the back.  
11 It's my job to help make sure that my jurors understand the facts of this case.

12 THE WITNESS: No. No, it's not my phone.

13 THE COURT: Okay.

14 MS. MACHNICH: Thank you.

15 THE COURT: Then you can now continue asking questions.

16 MS. MACHNICH: Thank you, Your Honor.

17 BY MS. MACHNICH:

18 Q But -- but you recall on direct when you told Mr. Dickerson it was your  
19 phone, correct?

20 A The first question he asked me was, was that my phone? And then  
21 after a while, I told him that my phone had a case on it.

22 Q But that first one, if it was your phone, was the same phone, right?

23 A Yes. That's what he asked me. But it's not my phone.

24 Q Okay. So since that time, you've determined it's not your phone?

25 A That's not my phone.

1 Q Sir, when you were speaking with Mr. Dickerson, you actually  
2 identified some of the --

3 MS. LEXIS: Asked and --

4 BY MS. MACHNICH:

5 Q -- damage on this phone as being damage --

6 THE COURT: Defense --

7 MS. LEXIS: Asked and answered.

8 THE COURT: It's asked and answered.

9 Why don't we do this, Ms. Machnich. Why don't, between now and  
10 closing argument, you can ask the court recorder to transcribe that one section of  
11 the testimony, and -- and whatever he said, you can read it to the jury. All right.

12 MS. MACHNICH: That sounds perfect, Your Honor. I can move on,  
13 then.

14 THE COURT: All right. Thank you.

15 MS. MACHNICH: And I'm just going to retrieve the exhibit.

16 THE COURT: Okay.

17 MS. MACHNICH: Thank you.

18 THE COURT: And just for the -- so the jurors know, the -- the court  
19 does have the prerogative of asking questions, provided it does so in a neutral  
20 manner, and it reminds the jurors that the judge is not an advocate for either side.  
21 It is simply my job to make sure that when there's a complex issue or confusing  
22 issue where I believe that you need some assistance in getting to the information,  
23 I can ask questions in a neutral manner to try to obtain the facts.

24 That's all I was trying to do. You're not to assume that my questioning  
25 was designed to obtain facts to favor any particular side here. All right. Because

143

1 I -- frankly, I don't know how this phone issue is going to work into anything. I am  
2 just helping to get the information for you. All right.

3 MS. MACHNICH: Thank you, Your Honor.

4 BY MS. MACHNICH:

5 Q So moving forward, sir, fast forward on the 28th. The officer who took  
6 you to go see the car later took you to go see a man.

7 A Yes.

8 Q And this was the same officer in his same police car?

9 A Yes.

10 Q Okay. And you went back to the same apartment complex?

11 A Yes.

12 Q Okay. And he -- you -- you -- he drove you there and you stayed in  
13 the car the whole time?

14 A Yes.

15 Q And he took you to go ID the person who robbed you?

16 A Yes.

17 Q All right. Let me see. And the -- you went -- you actually went to see  
18 two people -- there were -- there were two people standing there by the police  
19 cars?

20 A Yes.

21 Q Okay. And one was taller and one was shorter?

22 A Yes.

23 Q The shorter one was heavier?

24 A I don't know. But -- yeah, he was shorter.

25 Q Okay. Now, have you ever been shown any video of body cam of

1 when you went to go do the viewing of these men?

2 A I had never seen the camera, but now that you're showing me the  
3 video, I understand that it's on the officer's body.

4 Q Okay. So you've never seen any video of yourself doing this  
5 identification that we've been discussing?

6 A Well, yes, I have seen a video, but I don't know if it's from their body  
7 cam.

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

9 THE COURT: Okay.

10 [Bench conference transcribed as follows.]

11 MS. MACHNICH: We don't have any video of his ID.

12 MS. LEXIS: Video of the actual ID of the defendant does not exist.

13 THE COURT: Okay. It's -- he saw something, it might be what he  
14 already saw?

15 MS. LEXIS: That is -- that is true.

16 MS. MACHNICH: Okay.

17 THE COURT: It's probably what -- okay.

18 MS. MACHNICH: That's fair.

19 THE COURT: Okay.

20 MS. MACHNICH: And it's what we believed did not exist, as well.

21 THE COURT: Okay. Thank you.

22 [End of bench conference.]

23 BY MS. MACHNICH:

24 Q Now, after you viewed the men, you went back to a different location  
25 to finish filling out a statement, correct?



1 A Yes.

2 Q Okay. But you, yourself, did not write the statement?

3 A That's correct.

4 Q And we are referring to now State's Exhibit 12, which has already  
5 been marked and admitted. This is the statement, correct?

6 A Yes.

7 Q Okay. And the officers wrote the three lines of text in the statement  
8 section?

9 A Yes.

10 Q Okay. And that was just like he dictated to Betty what to write in the  
11 prior statement?

12 A Yes.

13 Q Okay. When you are describing the man who did this, you described  
14 a man wearing all black?

15 A Yes.

16 Q You described him as medium build?

17 A Yes.

18 Q And you described him as 6 feet tall?

19 A Yes.

20 Q When you were doing the identification of Mr. Valentine, you never got  
21 out of the car to go stand next to him, did you?

22 A No.

23 MS. MACHNICH: Court's indulgence.

24 [Pause in proceedings.]

25 MS. MACHNICH: Thank you, sir.

1 I'll pass the witness.

2 THE COURT: Mr. Dickerson, any redirect?

3 **REDIRECT EXAMINATION**

4 BY MR. DICKERSON:

5 Q Mr. Garcia, as you sit here today, how sure are you that the defendant  
6 is the person who robbed you?

7 MR. GASTON: Objection. Asked and answered.

8 THE COURT: Overruled.

9 MS. MACHNICH: Excuse me, Your Honor, I would ask that  
10 Mr. Dickerson not hover directly behind counsel table or behind the defendant on  
11 the other side of the courtroom right now. This is very uncomfortable.

12 THE COURT: Mr. Dickerson, you made you point. Why don't you --  
13 you can go back to your seat. But you can -- you can ask the question.

14 MR. DICKERSON: May -- can I ask in the well, Your Honor?

15 THE COURT: Yes, you may.

16 BY MR. DICKERSON:

17 Q Go ahead and answer, sir.

18 A Could you please repeat the question?

19 Q As you sit here today, how sure are you that the defendant, Keandre  
20 Valentine, is the person who robbed you on May 28, 2016?

21 A Because I recognize him.

22 Q Are you saying that you're positive?

23 MS. MACHNICH: Objection. Leading, Your Honor.

24 THE WITNESS: Yes.

25 MR. DICKERSON: Thank you.

1 THE COURT: It's a question. Overruled.

2 MR. DICKERSON: No further questions, Your Honor.

3 THE COURT: Recross?

4 **RECROSS-EXAMINATION**

5 BY MS. MACHNICH:

6 Q Your Honor -- or Mr. Garcia, you've been shown pictures of  
7 Mr. Valentine several times now, haven't you?

8 A Yes.

9 Q You were shown a picture before your grand jury testimony?

10 A They showed me pictures of him the first time I came to this building.

11 Q Okay. And then you actually testified before the grand jury and were  
12 shown a photo of him during your grand jury testimony?

13 A Yes.

14 Q And you met with the district attorneys prior to your testimony during  
15 trial?

16 A Yes.

17 Q And did they show you a picture of him then, too?

18 A They didn't show me pictures of him, but they did show me pictures of  
19 his -- of the car and the phone.

20 Q Okay. And then additionally, you've seen photographs of him here  
21 today?

22 A Yes.

23 Q And you're absolutely certain that Mr. Valentine is depicted in those  
24 photos?

25 A Well, there's a picture is the same picture that I was shown the first

1 time and the picture I was shown today, it's the same picture.

2 Q Okay. And that picture is of Mr. Valentine?

3 A Yes.

4 Q Thank you.

5 MS. MACHNICH: Pass the witness.

6 THE COURT: All right. Anything from the jurors? Any questions? I  
7 don't see any hands. Give you another couple seconds. Oh, there is a hand.

8 All right, sir.

9 Marshal?

10 Is your name and badge number on there? Thank you.

11 I'll just take a look and see what --

12 [Bench conference transcribed as follows.]

13 MR. GASTON: I think that's a fine question.

14 MS. MACHNICH: That's fine.

15 MS. LEXIS: I think it's dead.

16 MR. GASTON: That's fine.

17 MS. LEXIS: The phone is dead. You can ask it.

18 THE COURT: It's dead? Well, we can try, right?

19 MR. GASTON: Didn't -- didn't one of the -- [indiscernible]. Okay.

20 MS. MACHNICH: Yeah. Okay. Let's do.

21 THE COURT: All right.

22 [End of bench conference.]

23 THE COURT: So a question -- and where is the phone?

24 Well, first provide the phone to the witness.

25 Thank you, Mr. Dickerson. All right.

1 MR. DICKERSON: In my hand is 37A.  
2 THE COURT: Great. The question is, can -- can he -- meaning you,  
3 turn it on to confirm it's your phone? Please try, sir. Don't know if it has power.  
4 But I want you to try.  
5 THE WITNESS: I don't know that either.  
6 THE COURT: Try it.  
7 THE WITNESS: No.  
8 THE COURT: It's -- the phone appears dead? All right.  
9 Hand it back to Mr. Dickerson.  
10 MR. DICKERSON: Thank you very much.  
11 THE COURT: Thank you. All right.  
12 Anything else from the jurors? All right.  
13 Sir, you are excused. Thank you -- Mr. Garcia, right?  
14 THE WITNESS: Yes.  
15 THE COURT: You are excused.  
16 THE WITNESS: So can I ask anything? Or is everything over for me  
17 now?  
18 THE COURT: Everything is over, as far as I'm concerned. So --  
19 but -- but no, you can't ask any questions, because we still need to conduct our  
20 trial. All right. You -- you may step down and go outside.  
21 THE WITNESS: Thank you.  
22 THE COURT: The State may -- I -- I just want to get more witness in  
23 if we can.  
24 MS. LEXIS: Yes.  
25 THE COURT: And we're going to stay a little bit past 5:00, guys.

1 THE COURT INTERPRETER: Is this next witness, the second  
2 witness, for the interpreter?

3 MS. LEXIS: No.

4 THE COURT: I don't know.

5 MS. LEXIS: No.

6 The State calls Andrew Ubbens.

7 THE COURT: All right. Please bring that person in, marshal.

8 THE MARSHAL: Andrew who was the name?

9 THE COURT: We fell a little bit behind, so we've got to pick up some  
10 time. I'm sorry, folks. It'll be a little bit longer.

11 Thank you, sir. Please remain standing and the court clerk will  
12 administer your oath.

13 **ANDREW UBBENS**

14 [having been called as a witness and being first duly sworn, testified as follows.]

15 THE CLERK: And you may be seated. Can you please state and  
16 spell your first and last name for the record.

17 THE WITNESS: Andrew Ubbens, A-N-D-R-E-W U-B-B-E-N-S.

18 **DIRECT EXAMINATION**

19 BY MS. LEXIS:

20 Q Sir, how are you employed?

21 A The Las Vegas Metropolitan Police Department.

22 Q How long have you been so employed?

23 A About nine years.

24 Q Where are you currently assigned with Metro?

25 A Bolden Area Command, the investigation section.

1 Q Are you a detective?  
2 A Yes.  
3 Q All right. How long have you been a detective?  
4 A About two and a half years.  
5 Q Prior to that, what did you do with Metro?  
6 A I was assigned to the Northeast Problem Solving Unit and patrol.  
7 Q Okay. But 10 years total?  
8 A Nine.  
9 Q Nine, okay. As part of your employment with Metro, did you assist  
10 your squad -- you work in squads as a police officer; is that right?  
11 A Correct.  
12 Q Particularly as detectives?  
13 A Yes.  
14 Q Okay. About how many people in your squad?  
15 A Right now, there's about four in my squad.  
16 Q Okay. And so whenever there's a particular event and Metro is  
17 dispatched or detectives are dispatched, are you assigned by -- by squads?  
18 A Correct.  
19 Q Okay. And as a squad, do you all kind of delegate tasks once you  
20 arrive at a scene?  
21 A Yes.  
22 Q Teamwork, right?  
23 A Correct.  
24 Q Okay. Were you employed with Metro as a patrol detective back on  
25 May 28, 2016?

1 A Yes.

2 Q Okay. Were you working with a squad of other detectives?

3 A Yes.

4 Q Okay. How many people were in your squad?

5 A I think we had four on the squad, plus a sergeant at that time.

6 Q Okay. Would Detective Majors have been on your squad?

7 A Yes.

8 Q Okay. And also Detective Ludwig?

9 A Yes.

10 Q How about Detective Endelman?

11 A Yes.

12 Q Okay. So at some point during the early morning hours of

13 May 28th, 2016, were you and your squad assigned to handle a robbery series

14 that had been occurring in a certain area of town?

15 A Yes.

16 Q Okay. And prior to being dispatched on May 28th, 2016, did you or

17 your squad participate in another robbery investigation that occurred at the

18 Rancho Discount Mall?

19 A Yes.

20 Q About two days prior?

21 A Correct.

22 Q Okay. So it just so happened that your squad was assigned that

23 particular event on May 26, 2016?

24 A Correct.

25 Q Okay. And so you're dispatched to -- and I'm going to show you



1 what's been marked and admitted as State's Exhibit No. -- excuse me -- No. 7.  
2 By the time the call went out on May 28th, 2016, and by the time detectives were  
3 dispatched, several robberies had already occurred in this area, correct?

4 A Correct.

5 Q Okay. As part of your investigation, did you and other detectives  
6 respond to a location located at 1701 J Street?

7 A Yes.

8 Q Okay. Who arrived at that particular location?

9 A Initially, one of the patrol sergeants.

10 Q Did you obtain information from a patrol sergeant which led you and  
11 your squad to respond to that location?

12 A Yes.

13 Q Okay. And State's Exhibit No. 8, do you see 1701 J Street right  
14 there?

15 A Yes.

16 Q Okay. Does this fairly and accurately depict that apartment complex?

17 A Yes.

18 Q Okay. At some point was your attention turned to a potential suspect  
19 vehicle?

20 A Yes.

21 Q Okay. And at some point was your attention and your squad's  
22 attention turned to a particular apartment, Apartment No. 218 located at 1701 J  
23 Street?

24 A Yes.

25 Q Okay. As part of your squad, did you all start delegating certain

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tasks?

A Yes.

Q Okay. At some point was a search conduct -- a search warrant obtained for Apartment No. 218 on 1701 south -- or 1701 J Street?

A Yes.

Q Okay. That was done by another detective, correct?

A Correct.

Q Once that search warrant was obtained, did you, Detective Majors, and Detective Ludwig search Apartment No. 218?

A Yes.

Q Okay. And as -- in terms of searching, were you all searching at once? Or were you looking at different areas? How was that conducted?

A We were all looking at different areas throughout the apartment.

Q Okay. And what were you looking for?

A We were looking for cell phones, a firearm, any evidence of the crime.

Q Okay. Why were you looking for cell phones in particular?

A That's one of the items reported stolen.

Q Okay. From the now -- from the five robberies that you were investigating?

A Correct.

Q Okay. Why were you looking for a firearm?

A It was described as the weapon used in the robbery.

Q Okay. In all five robberies?

A Correct.

Q Okay. A firearm was used in the five robberies that you were

1 investigating, right?

2 A Yes.

3 Q Okay. So as you're searching, did you, in fact, locate a firearm?

4 A Yes.

5 Q Okay. Was that a Glock Model 27, .40-caliber firearm?

6 A Yes.

7 Q Yes?

8 A Yes.

9 Q Okay. There was a crime scene analyst who also responded to the  
10 scene after you and other detectives searched Apartment 218; is that right?

11 A Correct.

12 Q And that's -- crime scene analyst took photographs of the items that  
13 you and the other detectives located?

14 A Correct.

15 Q Okay.

16 MS. LEXIS: May I approach with what's already been admitted as  
17 State's Exhibit 41 and 41A?

18 THE COURT: Yes.

19 MS. LEXIS: Thank you.

20 BY MS. LEXIS:

21 Q Sir, showing you 41 and 41A; do you recognize 41A?

22 A Yes.

23 Q What do you recognize it to be?

24 A That's a Glock handgun.

25 Q Okay. Does this -- fair to say that the firearm that was recovered in

1 Apartment 218 was found in two different pieces?

2 A Yes.

3 Q In two separate rooms?

4 A Correct.

5 Q Okay. Does this fairly and accurately depict the two pieces of the  
6 firearm you or your other -- other detectives located at this apartment?

7 A Yes.

8 Q Thank you. Several telephones were also found; is that right?

9 A Correct.

10 Q And, sir, we already had a crime scene analyst testify, and he  
11 explained what impounding is. Okay.

12 Is it your recollection that it was the crime scene analyst, Jeff Smith,  
13 who actually impounded the firearm?

14 A Yes.

15 Q Okay. Were you then tasked to impound the other items that was  
16 located -- that were located at 1701 Apartment No. 218?

17 A Yes.

18 Q Okay. And you prepared a property report to kind of outline all of the  
19 items that Metro decided to seize and impound; is that right?

20 A Yes.

21 Q Okay. Fair to say that sometimes items are photographed but not  
22 necessarily impounded?

23 A Yes.

24 Q Okay. So do you -- do you recall impounding --

25 MS. LEXIS: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MS. LEXIS:

3 Q I am approaching with State's Exhibit -- Proposed Exhibit 37, 38, 38A,  
4 38B, 36, 40, 39, and 39A. Okay.

5 Okay. Sir, I am going to have you take a look at what's been marked  
6 as State's Proposed Exhibit 38, and now also contain 38A and B. Okay.

7 Sir, do you, first of all, recognize what's depicted in State's Exhibit --  
8 Proposed Exhibit 38?

9 A Yes.

10 Q Okay. Is this the envelope or the evidence envelope that you filled out  
11 when you were impounding certain items found in Apartment 218?

12 A Yes.

13 Q Okay. And so this particular evidence envelope, what type of  
14 information is located on that?

15 A You have the event number, the date, my P number and initials, my  
16 signature, suspect information, the charge, where it was recovered from, and then  
17 a list of what is in the package.

18 Q What was located in the package?

19 A Yes.

20 Q Okay. So if you were to open that particular evidence bag labeled 38,  
21 State proposed Exhibit 38, what should you find?

22 A A Nevada ID card for Jordan Alexander and a Visa debit card. Do you  
23 want me to read all the numbers?

24 Q Nope, that's fine.

25 MS. MACHNICH: Your Honor, may I just move so I can watch what

1 they're doing?

2 THE COURT: Yes.

3 MS. MACHNICH: Thank you. I'm sorry. I didn't mean to interrupt.

4 MS. LEXIS: Okay.

5 THE COURT: Will you please hold it up and show the jurors what  
6 you're taking out of the bags, too.

7 MS. LEXIS: Sure.

8 MS. MACHNICH: And we would have no objection to all of it being  
9 admitted and published.

10 THE COURT: Thank you.

11 MS. LEXIS: Perfect.

12 THE COURT: Thank you.

13 BY MS. LEXIS:

14 Q And so the evidence bag shows that you should have a Nevada ID for  
15 Jordan Alexander and a Visa debit card; is that right?

16 A Correct.

17 Q And it also says the -- the actual --

18 MS. LEXIS: Do you have -- not have an objection to any of it?

19 Because then I can just admit it and publish it.

20 MS. MACHNICH: Yeah. I mean -- but the contents?

21 MS. LEXIS: I won't [indiscernible] that one.

22 MS. MACHNICH: Okay. But, yeah. I don't have any objection.

23 THE COURT: All right. So we're stipulating to --

24 MS. MACHNICH: Yeah, that's fine.

25 THE COURT: -- 36, 38A and B, 39, 39A, and 40? Is there -- was

1 there a couple more?

2 MS. MACHNICH: 37.

3 MS. LEXIS: 37. Ms. Machnich, also 37.

4 MS. MACHNICH: Was there -- it's the -- it's just --

5 MS. LEXIS: It's all there [indiscernible].

6 MS. MACHNICH: It's fine.

7 THE COURT: All right. You may go ahead and publish it. Just  
8 mention the -- the number by which they're admitted at the time you're publishing  
9 them.

10 [State's Exhibit Nos. 36, 37, 38A, 38B, 39, 39A, and 40 admitted.]

11 MS. LEXIS: Yes, Your Honor.

12 THE COURT: Thank you.

13 MS. LEXIS: I'm not going to publish the envelope for 38. But I will  
14 publish State's Proposed -- or State's admitted evidence now, which is 38A.

15 THE COURT: Okay. And it is admitted. Thank you.

16 BY MS. LEXIS:

17 Q Okay. Do you recall finding this at the apartment?

18 A Yes.

19 Q Okay. And is an ID card with the name Jordan Alexander, correct?

20 A That's a debit card.

21 Q I'm sorry. Debit card, a Wells Fargo debit card in the name of Jordan  
22 Alexander?

23 A Yes.

24 Q Okay. And again, labeled 38A.

25 38B, publishing to the jury; do you recall finding this ID card in the

1 name of Jordan Alexander with his photograph?

2 A Yes.

3 Q Okay. And for the record, marked as 38B.

4 Do you also recall -- this is now State's Exhibit 36, locating and

5 impounding two .40-caliber bullets with the brand Smith & Wesson?

6 A Yes.

7 Q Okay. Are those the bullets that you recovered and impounded from

8 Apartment 218 located at 1701 J Street?

9 A Yes.

10 Q Did you also locate a Visa debit card belonging to -- or in the name of

11 Rosa Vazkuez Ramirez?

12 A Yes.

13 Q Okay. State's Exhibit 40A; do you remember finding that?

14 A Yes.

15 Q And, Detective, as you all were -- as you and the other detectives

16 were finding these items, fair to say you leave them in the -- in the place that it

17 was recovered so that the crime scene analyst can photograph as it -- as these

18 items existed in the apartment?

19 A Yes.

20 Q Okay. Did you also impound three phones in the same envelope?

21 A Yes.

22 Q We're now talking about State's Exhibit 37.

23 A Yes.

24 Q Yes? Okay. Was one of those phones an HTC cell phone?

25 A Yes.



1 Q Okay. Do you recall the serial number of that particular HTC cell  
2 phone?

3 A I don't. I would have to look at the report.

4 MS. LEXIS: Permission to approach with the property report,  
5 Your Honor.

6 THE COURT: Yes.

7 MS. LEXIS: And permission for the detective to read out the serial  
8 number, rather -- he doesn't have it memorized, as a past recorded recollection?

9 THE COURT: Yes.

10 MR. GASTON: Is there a question -- no objection.

11 THE COURT: Okay. He's going to read the serial number as a  
12 past --

13 MS. MACHNICH: Of course.

14 MR. GASTON: Oh, no objection.

15 THE COURT: -- recorded recollection.

16 MR. GASTON: Sorry, we were talking. My bad.

17 MS. MACHNICH: Yeah. Please -- please do.

18 BY MS. LEXIS:

19 Q So can you -- the HTC cell phone, as it's logged in your property  
20 report, can you please note the description and also the serial number?

21 A It's HTC unknown model, white cell phone, with  
22 serial No. JSP150928B.

23 Q Okay. Did you also recover a Samsung cell phone?

24 A Yes.

25 Q Okay. Did you log that in your property report?

1 A Yes.

2 Q Okay. What is the serial number or description of the Samsung cell  
3 phone that you noted in your property report?

4 A A3LSPHN820.

5 Q Okay. And did you also log an iPhone, Item No. 9, on your property  
6 report?

7 A Yes.

8 Q Okay. What is the serial number of Item No. 9, the iPhone, listed on  
9 your property report?

10 A 35837206416671.

11 Q Okay. So just to clarify, in this particular evidence bag, State's  
12 Exhibit 37 -- or envelope -- there were three cell phones, correct?

13 A Correct.

14 Q And you just read the serial numbers?

15 A Yes.

16 MS. LEXIS: Permission to approach your clerk, Your Honor.

17 THE COURT: Yes.

18 MS. LEXIS: Okay. Madam Clerk, if you could please remove the  
19 sticker, it's covering up the serial number; can that be moved up? Thank you.

20 BY MS. LEXIS:

21 Q All right. I'm going to show you 37C. Sir, is this the HTC cell phone  
22 that you recovered at the scene?

23 A Yes.

24 Q Okay. And would you have taken the serial number from somewhere  
25 on this phone?

1 A Yes.

2 Q Okay.

3 MS. MACHNICH: Your Honor, we would stipulate that the serial  
4 numbers of those three phones match up with those -- I -- perhaps with the  
5 exception of the iPhone that we've been contesting this whole time. But we would  
6 stipulate that. We don't --

7 MS. LEXIS: I need to --

8 MS. MACHNICH: I'll submit.

9 MS. LEXIS: -- make my record, Your Honor.

10 MS. MACHNICH: Okay.

11 MS. LEXIS: We are going to be proffering it and it is -- it's important --  
12 it's an important detail.

13 THE COURT: Okay.

14 MS. LEXIS: Okay.

15 THE COURT: All right.

16 BY MS. LEXIS:

17 Q And so this is the H -- State's Exhibit 37C, this is the HTC cell phone  
18 with the serial number that you just read off for the jury?

19 A Correct.

20 Q State's Exhibit 37B, is this the Samsung cell phone with the serial  
21 number that you just read off to the jury?

22 A Yes.

23 MS. LEXIS: Yes. Thank you so much.

24 Q So 37A -- okay. 37A. Can you see that at all? Can you see the serial  
25 number on that, Detective?

1 A No, it's blurry.

2 MS. LEXIS: Okay. May I approach, Your Honor?

3 THE COURT: Yes.

4 BY MS. LEXIS:

5 Q Can you please look at the serial number on 37A and compare it with  
6 the serial number to the iPhone that you logged in your property report.

7 A It matches.

8 Q Okay. So this 37A is the iPhone you noted in your property report and  
9 impounded?

10 A Yes.

11 Q Okay. Turning to 39 and 39A, did you also impound another iPhone  
12 with a blue OtterBox?

13 A Yes.

14 MS. LEXIS: Publishing 39A, first the cover, and now the phone.

15 Q Okay. Will you please take a look at --

16 MS. LEXIS: Permission to approach, Your Honor? Your Honor,  
17 permission to approach?

18 THE COURT: Oh, yes, sorry.

19 BY MS. LEXIS:

20 Q Will you please check the serial number in State's Exhibit 39A and  
21 compare it to Item No. 10 on your property report.

22 A Serial number matches.

23 Q Okay. So this is the other iPhone that you impounded pursuant to  
24 your property report?

25 A Correct.

1 Q State's Exhibit 132, is this a photo --  
2 THE COURT: So that was 39?  
3 MS. LEXIS: That was -- yes, Your Honor.  
4 THE COURT: A? 39A.  
5 MS. LEXIS: 39 and 39A.  
6 THE COURT: Okay. Thank you.  
7 MS. LEXIS: Thank you.  
8 BY MS. LEXIS:  
9 Q State's Exhibit No. 132; does this show a photograph of 39A?  
10 A Yes.  
11 Q Being found in the apartment?  
12 A Yes.  
13 Q Yes? Okay. All right. So it was found in the master bedroom or on a  
14 bed -- in a bedroom, right?  
15 A Correct.  
16 Q Okay. Showing you State's Exhibit No. 121; does that show the  
17 placement of State's Exhibit 37B in the apartment?  
18 A Yes.  
19 Q Okay. On a little, like, headboard?  
20 A Correct.  
21 Q In the master bedroom?  
22 A Correct.  
23 Q Specifically, State's Exhibit No. -- I believe this is 81; the location of  
24 that Samsung?  
25 A Yes.

1 Q State's Exhibit No. 125; was there an iPhone -- like, a silver iPhone  
2 found in some clothes?

3 A Yes.

4 Q And does that show the placement of State's Exhibit 37A?

5 A Yes.

6 Q Okay. And a closer-up photo -- State's Exhibit 126 -- of that iPhone,  
7 as depicted in 37A?

8 A Yes.

9 Q Correct?

10 A Correct.

11 Q So, Detective, we've gone over four phones, correct? The HTC  
12 phone, a Samsung phone, the iPhone on top of the laundry, and an iPhone with a  
13 blue OtterBox cover, correct?

14 A Yes.

15 Q Showing you State's Exhibit 123; was there another iPhone found at  
16 this particular apartment?

17 A Yes.

18 Q Okay. Let me just back up a little.

19 State's Exhibit 122, does that depict the location of the other iPhone  
20 that was located in the apartment?

21 A Yes.

22 Q Okay. And for the record, State's Exhibit 123; that's the iPhone found  
23 on, like, the window ledge?

24 A Yes.

25 Q In the master bedroom, correct?

1 A Yes.

2 Q Okay. Was this particular phone impounded?

3 A No.

4 Q Okay.

5 THE COURT: So that one's different than 37B?

6 MS. LEXIS: Correct.

7 THE COURT: Okay.

8 BY MS. LEXIS:

9 Q Okay. So this is a different iPhone. This iPhone, as shown in State's  
10 Exhibit No. 123, is different from the iPhone impounded as 37A, correct?

11 A Correct.

12 Q 37A does not have a cover, right?

13 A Yes.

14 Q Okay. The iPhone shown in State's Exhibit 123 does have a cover,  
15 correct?

16 A Yes. A black one.

17 Q All right. There's a screen protector, as well?

18 A Yes.

19 Q Okay. And do you know why this particular phone was not  
20 impounded?

21 A If it didn't match the description of what exactly we were looking for,  
22 then -- or if we didn't have reason to believe it was a victim phone at the time,  
23 then we wouldn't have impounded it. We would have just documented it, just in  
24 case something came up later.

25 Q Okay. Fair to say that victims were not transported inside the

1 apartment to identify their cell phones right then and there?

2 A Right.

3 Q Okay. So at the time, you didn't have positive identifications of the  
4 phones as being victim phones?

5 A Right.

6 Q Okay. So some phones were impounded. Is it fair to say that a -- a  
7 considerable number of phones were located in this apartment?

8 A Yes.

9 Q And if it somehow or another matched the description, that particular  
10 phone was either photographed or impounded; is that right?

11 A Correct.

12 Q Again, State's Exhibit 122. That's the iPhone that was not impounded,  
13 but photographed for later use; is that right? On the window ledge?

14 A Yes.

15 MS. LEXIS: Court's brief indulgence.

16 No more questions. Thank you.

17 THE COURT: Cross?

18 MS. MACHNICH: Very briefly, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MS. MACHNICH:

21 Q Good afternoon.

22 A Good afternoon.

23 Q So we were referring to the black iPhone on the ledge just a few  
24 minutes ago, and I'm going to refer you to Defense Exhibit C. But it's a picture  
25 that you'll recall.



1           You recognize this as the phone on the ledge that you were just  
2 discussing?

3           A     Yes.

4           Q     Okay. Now, you were asked about some of the differences between  
5 that phone and the phone that has been marked and admitted as 37A, correct?

6           A     Uh-huh. Yes.

7           Q     Okay. Might it have been another reason you did not -- so you were --  
8 strike that.

9           You were tasked with impounding phones that matched the  
10 description of phones that were taken?

11          A     Yes.

12          Q     Okay. And you received information that an iPhone 6 was taken?  
13 Yes?

14          A     Yes.

15          Q     Okay. You impounded an iPhone 6?

16          A     Yes.

17          Q     And that iPhone 6 is Exhibit 37A?

18          A     Yes.

19          Q     Okay. And the picture depicted -- the phone depicted in Exhibit --  
20 Defense Exhibit C, but you'll recognize it as the phone from the ledge, is actually  
21 apparently a different model of cell phone.

22          A     I'm not an iPhone expert, so I --

23          Q     It's -- you don't recognize that as being an earlier body style than the  
24 iPhone 6?

25          A     I don't work for Apple, so --

1 Q You -- you don't have an iPhone?  
2 A I do. But I'm not a techie, so --  
3 Q What model iPhone do you have?  
4 A I don't know. Sorry.  
5 Q That's fine. Well, then.  
6 So, sir, you've been a police officer for you said nine years?  
7 A Yes.  
8 Q Okay. And so you've investigated thousands of cases?  
9 A I wouldn't say thousands.  
10 Q Hundreds?  
11 A As far as I've investigated as a detective, hundreds.  
12 Q Hundreds. And you worked many cases as a patrol officer before  
13 that?  
14 A Yes.  
15 Q Okay. So you would be -- you would err overly on the side of  
16 impounding things than leaving things, correct?  
17 A Typically.  
18 Q That would be important to preserve the evidence in an investigation?  
19 A Yes.  
20 Q So if this iPhone, the iPhone on the ledge, as we've been referring to  
21 it, matched the description of one that was stolen, you would have impounded it?  
22 A Yes.  
23 Q Also, were you in charge of deciding what items were fingerprinted or  
24 not fingerprinted?  
25 A That would be a discussion between all of us and the case agent.

171

1 Q Okay. Were you the primary -- you were not the primary detective on  
2 this case?

3 A No.

4 Q Okay. And fair to say the same answer applies to what items were  
5 swabbed for DNA?

6 A Correct.

7 Q Okay.

8 MS. MACHNICH: Court's indulgence.

9 THE COURT: Okay.

10 MS. MACHNICH: All right. Thank you. Pass the witness.

11 THE COURT: Redirect?

12 MS. LEXIS: No redirect. Thank you very much.

13 THE COURT: Anything from the jurors? Doesn't look like it. All right.  
14 Then, Detective, you are excused. Thank you very much for your  
15 time, sir.

16 THE WITNESS: Thank you.

17 THE COURT: Watch your step. All right.

18 I think this is going to wrap it up for today. All right. Tomorrow is  
19 Friday. Can we start at 9:00 tomorrow?

20 How about 9:00 tomorrow, guys?

21 MS. LEXIS: Sounds great.

22 MR. DICKERSON: Works for the State.

23 MR. GASTON: Yes. Yes, sir.

24 MS. MACHNICH: Yes, of course.

25 THE COURT: All right. Marshal? All right. All right.

1 Ladies and gentlemen, I'm going to excuse you for the evening;  
2 tomorrow at 9:00.

3 You are admonished not to communicate among yourselves or with  
4 anybody else about this trial or the subject matter of the trial; do not communicate  
5 at all with any of the parties, attorneys, or witnesses involved in the trial; do not  
6 seek or obtain any information or comments about the case from any source,  
7 including newspapers, television, radio, Internet, e-mail, cell phones, or any other  
8 electronic device; do not read, watch, or listen to any report of or commentary  
9 about the case; and do not perform any research or investigation; and do not form  
10 or express any opinion on any subject connected with this trial until the case is  
11 finally submitted to you for deliberations.

12 You are directed to return to the hallway outside this courtroom for  
13 further proceedings tomorrow at 9:00.

14 Do you guys want -- want some bagels tomorrow? I'll be in bagels  
15 and orange juice, if you want some. Yeah? Tell you what, I do that sometimes.

16 Marshal, whoever wants --

17 You know what, if you guys, whoever's here at, like, 8:40, my marshal  
18 will bring you back to the deliberation room and we'll have bagels and orange  
19 juice for you. All right. Whoever wants to have that. All right.

20 But remember, while you're back there, you're not deliberating. The  
21 case isn't submitted to you. You can't talk about the case. You can't form any  
22 opinions. You can't do any research. And just chitchat about non-case stuff.  
23 Okay.

24 Very good. Marshal, so 8:40 for whoever wants to get bagels and  
25 orange juice back there.

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[Jury recessed at 5:32 p.m.]

MR. DICKERSON: Thank you very much, Your Honor.

THE COURT: All right. Guys, see you tomorrow at 9:00.

MR. DICKERSON: Thank you.

MS. LEXIS: Okay. Thank you, Your Honor.

THE COURT: Thank you.

[Court recessed at 5:33 p.m., until July 28, 2017, at 9:19 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET\*562

