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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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PHILIP J. KOHN
Clark County Public Defender
309 South Third Street
Las Vegas, Nevada 89155-2610
Attorney for Appellant

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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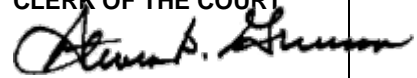
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

FRIDAY, JULY 28, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 5**

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, FRIDAY, JULY 28, 2017**

2 [Case called at 9:19 a.m.]

3 [Outside the presence of the jury.]

4 THE COURT: All right. Are we ready for another day?

5 MS. LEXIS: Yes, we are.

6 THE COURT: All right. Very good. Marshal's lining up the jurors,
7 everybody's here and accounted for, apparently. Waiting for him to signal he's
8 ready.

9 Where are we? We just --

10 MS. LEXIS: We concluded with --

11 THE COURT: We have another witness to come on?

12 MS. LEXIS: We do.

13 THE COURT: All right. This is your witness number six, I think.

14 MS. LEXIS: Yes, Your Honor.

15 THE COURT: Is that what you have?

16 MS. LEXIS: Yes, Your Honor.

17 THE COURT: All right. We've had, what, 26 witnesses that were --

18 MR. GASTON: 15 to go.

19 MS. MACHNICH: You said 19-ish?

20 THE COURT: Yeah.

21 MS. MACHNICH: They said 19-ish and we'll see.

22 THE COURT: Yeah. Hopefully we'll make a lot of progress today.

23 MS. LEXIS: We're hoping. We have witnesses stacked.

24 MR. DICKERSON: Nice full day.

25 THE COURT: Good. We read the whole evidence code, so I'm ready

1 for whatever you have.

2 [Pause in proceedings.]

3 [Jury reconvened at 9:22 a.m.]

4 THE COURT: All right. Very good. Be seated, everybody.

5 And, Ms. Lexis, it looks like the State may call its next witness.

6 MS. LEXIS: Thank you. The State calls Dean Ludwig.

7 THE COURT: Marshal.

8 THE MARSHAL: Yes, sir.

9 THE COURT: Get --

10 THE MARSHAL: He's right here, Judge.

11 THE COURT: Oh, that's you. How are you doing? Okay. All right.

12 Remain standing. The court clerk will administer your oath.

13 **DEAN LUDWIG**

14 [having been called as a witness and being first duly sworn, testified as follows:]

15 THE CLERK: Please be seated and please state and spell your first
16 and last name for the record.

17 THE WITNESS: My name is Dean Ludwig, D-E-A-N L-U-D-W-I-G.

18 MS. LEXIS: May I, Your Honor?

19 THE COURT: You may.

20 MS. LEXIS: Thank you.

21 **DIRECT EXAMINATION**

22 BY MS. LEXIS:

23 Q Sir, how are you employed?

24 A Currently employed with the Las Vegas Metropolitan Police
25 Department, and I'm a detective.

1 Q A detective? Okay.

2 A Yes.

3 Q How long have you been a detective?

4 A A year and a half.

5 Q And prior to that where were you assigned?

6 A I was assigned to patrol, and I was there for about eight years.

7 Q Okay. Is there a particular area command that you work for?

8 A I work Bolden Area Command.

9 Q Okay. Fair to say that you've met -- the Metropolitan Police
10 Department kind of divides the Valley into areas --

11 A Yes.

12 Q -- known as area commands?

13 A Yes.

14 Q All right. As a patrol detective with the Bolden Area Command, do you
15 work in a squad?

16 A Yes, I do.

17 Q Okay. Can you just briefly tell the ladies and gentlemen of the jury how
18 it is and what circumstances warrant having detectives come out?

19 A So anytime patrol responds to a major event, which we would
20 categorize as multiple crime scenes, areas where they may need to get a search
21 warrant, anything that's going to be beyond their scope, they call for the patrol
22 division investigators. They call us up directly to our phones. We get together as
23 a squad, put together our plan as to how we're going to respond, who's going to go
24 where, and communicate everything with our sergeant, and then we head out to
25 the various scenes.

1 Q Okay. How many people in your squad?
2 A Currently four.
3 Q Detective Majors?
4 A Yes.
5 Q Detective Ubbens?
6 A Yes.
7 Q Yourself?
8 A Yes.
9 Q Detective Endelman?
10 A Yes.
11 Q Okay. Did I miss anyone?
12 A Nobody.
13 Q Okay. Were you employed as -- as a patrol detective with Metro on
14 May 28th, 2016?
15 A Yes.
16 Q Okay. Were you working with your squad?
17 A I was.
18 Q Did you and your squad get a call or dispatch to a location after
19 receiving information about a robbery series that was occurring in a neighborhood?
20 A Yes, we did.
21 Q Okay. Prior to that -- I'm going to back up about two days -- did you
22 and your squad become aware of a single-event robbery that occurred on
23 May 26th, 2016, at the Rancho Discount Mall?
24 A Yes, we did.
25 Q Okay. Were you all aware of that particular crime when you received

1 the call on May 28th, 2016?

2 A Yes.

3 Q Okay. Fair to say you were dispatched somewhat early that morning?

4 A Yes, we were.

5 Q Do you recall about what time?

6 A I want to say somewhere around 7:00 -- between 7:00 and 7:30 a.m.

7 Q Okay.

8 A And that's -- and we start at 6:30, so it was right after we started.

9 Q Okay. And I'm going to publish what's already been admitted as

10 State's Exhibit No. 7; can you see that, Detective?

11 A Yes.

12 Q I know it's kind of a yellow font; can you see that?

13 A Uh-huh.

14 Q All right. So by the time you were dispatched, were you and your unit

15 aware of the robbery that occurred at 2605 Rising Legend Way?

16 A We were.

17 Q Okay. And were you and your squad aware of a robbery that occurred

18 at 1508 Robin Street?

19 A Yes, we were.

20 Q And 1312 Nye Street?

21 A Yes.

22 Q Okay. Subsequent -- or after that, did you get a call concerning a

23 robbery that occurred within that same neighborhood at 1104 Leonard Street?

24 A We had -- yes, we did.

25 Q Okay. By the time you and your squad responded, had you already

1 become aware of a -- of a primary suspect location at 1701 J Street?

2 A Yes, we were.

3 Q Okay. So does patrol share information with you and your squad when
4 you all -- prior to you responding or upon arrival to a scene?

5 A Absolutely.

6 Q Okay.

7 A We --

8 Q So there was --

9 A We get together and they give us a brief of everything that they have at
10 that point.

11 Q Okay. When you all arrived, was your attention called or turned to a
12 suspect vehicle or a vehicle matching the description located by a patrol sergeant
13 and some other officers at 1701 J Street?

14 A Yes.

15 Q Okay. Sir, I'm going to show you what's been admitted as State's
16 Exhibit No. 8; are you familiar with this location?

17 A Yes.

18 Q Okay. Is this in fact 1701 J Street?

19 A Yes, it is.

20 Q Okay. It's a -- it's an apartment complex here in Las Vegas, Clark
21 County, Nevada; is that right?

22 A Correct.

23 Q In this particular photo, are you able to tell the ladies and gentlemen of
24 the jury where it is the suspect location -- or the suspect's vehicle -- suspected
25 vehicle was located?

1 A Yes. It's --

2 Q Do you want me to zoom in?

3 A Yeah. It's going to be towards the bottom of the complex, south. And

4 it was actually parked where this vehicle is on the bottom right.

5 Q Okay. It's like Monday Night Football, where you can --

6 A Sorry.

7 Q -- circle, put X's --

8 A Oh, it is. All right.

9 Q -- O's, and things like that.

10 A So --

11 Q So if you could just circle.

12 A -- it was right there.

13 Q Okay. So the bottom row?

14 A Uh-huh.

15 Q The very last stall?

16 A Uh-huh.

17 Q Around that area? Is that a yes?

18 A That's correct.

19 Q Okay. And so -- so do you and your squad arrive in separate vehicles?

20 A Yes, we did.

21 Q And at some point do you delegate or does the case agent -- was

22 Detective Majors assigned to be the lead agent?

23 A He was.

24 Q Okay. And at some point are tasks kind of divvied up?

25 A Yes.

1 Q Okay. What was your task?
2 A My task was to apply for the search warrant.
3 Q Okay.
4 A Because we had located both the vehicle and then an apartment.
5 Q Okay.
6 A And so I applied for the search warrant, and then also I assisted with
7 doing showups with our various victims.

8 Q Okay. So while you were on scene, initially you -- your attention was
9 called to a suspect vehicle; is that right?

10 A Correct.

11 Q All right. We'll talk about the search warrant in a minute.

12 I was going to show you what's been marked and admitted by way of
13 stipulation State's Exhibit 32; do you recognize what's depicted in this photo?

14 A Yes. That's the vehicle that we identified as a possible suspect vehicle
15 at the -- in the initial stages.

16 Q Okay. And State's Exhibit No. 33; does this photograph fairly and
17 accurately show the location of the vehicle when you arrived?

18 A That's correct.

19 Q State's Exhibit No. 34; does that show the vehicle also, just from a
20 different vantage point?

21 A Yes.

22 Q All right. So in this particular photo, there are already patrol officers
23 kind of in the photograph. Were there other -- were there patrol officers at this
24 scene, securing this particular vehicle?

25 A That's correct.

1 Q Okay. And can you tell the ladies and gentlemen of the jury what it is
2 to secure a vehicle?

3 A So as soon as the patrol officers located the vehicle, then they
4 essentially freeze the area, which -- which means somebody always has eyes on
5 the car. It's not permitted to move. Nobody's out of sight of that vehicle.

6 There was at least two officers there at the time. And that's -- we were
7 on our way there, because that's when they located the vehicle and they said, Hey,
8 now we need you guys here because it's more than a report, because we've got a
9 couple of scenes and now we've located a possible suspect vehicle and we want
10 you guys to come out. So that's where we were on our way to.

11 Q Okay. At some point was there contact meet with an individual by the
12 name of Omara McBride [phonetic]?

13 A Yes.

14 Q Okay. Did she claim some sort of ownership to the vehicle?

15 A She did.

16 Q Okay. And at some point was there contact made with an individual by
17 the name of Chanise Williams?

18 A Yes.

19 Q After contact with Ms. Williams, did that turn you and your squad's
20 attention to Apartment No. 218?

21 A Yes, it did.

22 Q In this particular apartment complex?

23 A That's correct.

24 Q To your knowledge, were you and your squad given consent to
25 enter 2 -- Apartment 218?

1 A That's correct.

2 Q Okay. And once you all obtained consent, can you just explain to the
3 jury what it -- what consent is?

4 A Consent in this instance is we ask permission from someone who has
5 standing in the apartment, meaning the main renter or owner of the home or -- or
6 whatever the case is. In this case, it was an apartment. We ask if they will give us
7 consent, their permission to enter into their residence, and we tell them exactly
8 why we want to enter and what we are looking for. And in -- in this case she
9 granted us consent to enter the apartment.

10 Q Okay. And was the purpose of -- what was the purpose of entering the
11 apartment or asking for consent to search?

12 A We were looking for an individual who matched the suspect -- the
13 description of the robbery.

14 Q Okay. So once consent was obtained, what -- from Chanise Williams,
15 what did you and your squad of detectives do?

16 A We entered the apartment, and we just use our standard procedure for
17 what we call clearing a -- clearing a residence, where we go room by room, step by
18 step, just to make sure that essentially each area gets checked.

19 As we entered a bedroom, we saw a subject lying on the bed.

20 Q Okay.

21 A And this is after we were told no one was inside.

22 Q Okay. In what bedroom did you say that was?

23 A The -- as you come down the hallway, would be the bedroom on the
24 left or the north -- northeast corner.

25 Q Okay. Fair to say there were -- how many bedrooms were in this

1 particular apartment?

2 A There were two.

3 Q Okay. And would -- would you characterize one of the bedrooms as
4 being a child's room?

5 A Yes.

6 Q Okay. And so was the suspect located in the child's room or the other
7 room?

8 A In the other room.

9 Q Okay. I'm going to publish State's Exhibit 74; do you recognize what's
10 depicted in this photograph?

11 A Yes. That's the -- that's the bedroom.

12 Q Okay.

13 A The adult bedroom.

14 Q And was this where you located -- you and your squad located a -- a
15 suspect?

16 A Yes.

17 Q Matching the description of the robberies that occurred within that
18 neighborhood?

19 A Yes.

20 Q Around the same timeframe?

21 A Yes.

22 Q Okay. Could you tell the jury where exactly the suspect was located in
23 this particular effort?

24 A The suspect was lying on the bed, partially covered with covers, still
25 had sandals on.

1 Q Okay. All right. The person that you located in this bedroom --

2 A Uh-huh.

3 Q -- when you cleared the residence, do you see him here in court
4 today?

5 A Yes, I do.

6 Q Could you please point to him and describe something he's wearing?

7 A He's wearing a gray button-down shirt.

8 MS. LEXIS: Your Honor, please let the report reflect identification of
9 the defendant.

10 THE COURT: It does.

11 MS. LEXIS: Thank you.

12 BY MS. LEXIS:

13 Q And what was he doing on this -- on this bed?

14 A He was feigning sleep.

15 Q So once you all made contact with him, was he detained?

16 A Yes.

17 Q Was he brought outside of the apartment?

18 A He was.

19 Q Let me show you State's Exhibit 52; do you recognize the individual
20 depicted in this photograph?

21 A Yes, I do.

22 Q All right. Is this the defendant, the same individual you located in that
23 bedroom of the Apartment No. 218?

24 A Yes, it is.

25 Q I'm going to show you State's Exhibit 50 -- what was that? 53. Do you

1 recognize what's depicted here?

2 A Yes, I do.

3 Q Okay. Is this -- I notice he's not wearing a T-shirt; is that right?

4 A Yes, that's correct.

5 Q Okay. He has on some basketball shorts, it looks like?

6 A Yes.

7 Q And white socks and some sandals?

8 A Yes.

9 Q Okay. Is this how he was dressed or is this how he appeared when
10 you and your squad located him feigning sleep on -- on the bed in that room?

11 A Yes. If I can add one thing? The reason I say feigning sleep is
12 because part of our procedure when we go into a residence, we announce
13 ourselves quite loudly that we're coming in so as to not surprise someone inside
14 and not be surprised ourselves.

15 Q Okay.

16 A So --

17 Q And so as you and your squad announced yourselves in the
18 apartment, did you receive a response?

19 A No, we did not.

20 Q Okay. So were you, at that point, somewhat surprised when you
21 encountered someone in the room?

22 A Yes.

23 Q All right. Once this particular individual was detained, the defendant
24 was detained, what, if anything, did you or your squad do next?

25 A As we were getting him out of the room, we could see cell phones in

1 plain sight. And so we put a premise freeze on the apartment for potential
2 evidence that would be inside.

3 Q Okay.

4 A And so that's when I applied for a search warrant.

5 Q Okay. So let me get this right. Initially you received consent to go into
6 the apartment and search for this individual or to clear the residence; is that right?

7 A Correct.

8 Q Okay. But once you pulled the defendant out, you noticed items which
9 could be potentially pieces of evidence in your investigation?

10 A Correct.

11 Q All right. Now, as police officers you don't just -- because you got
12 consent to enter and look for an individual, that doesn't mean you can just do
13 whatever you want in that apartment, right?

14 A Correct.

15 Q Okay. So you obtained what's called a search warrant?

16 A Yes, I did.

17 Q Okay. Is that -- how do you obtain a search warrant? Who do you
18 call?

19 A I call a judge who is on call and let them know that I am calling them to
20 apply for a search warrant and then we record our conversation. And I had a -- a
21 paper template where I've written everything out and I go through the -- the search
22 warrant step by step and --

23 Q Okay. Sort of as a justification, you let the judge know some
24 justification for why you want to go in there and why you should be allowed to go in
25 there and search; is that right?

1 A Correct.

2 Q Okay. In this particular case did you ask the judge to grant permission
3 to search two different -- two different items or areas?

4 A Yes.

5 Q Okay. Did you ask to search the white Mazda 3, which had been
6 located in the parking lot of 1701 J Street?

7 A Yes.

8 Q And did you also ask the judge to approve searching
9 Apartment No. 218?

10 A Yes, I did.

11 Q In that same complex?

12 A That's correct.

13 Q Okay. And what were you searching for?

14 A We were searching for any of the property that was taken from the
15 victims. And a firearm was used in the course of the robbery, so we were also
16 searching for the firearm.

17 Q Okay. And were you also looking for other proceeds or other items
18 which could have been taken from the robbery?

19 A Correct.

20 Q Okay. Did you obtain consent or permission from the judge to go
21 ahead and search?

22 A Yes, we did.

23 Q Okay. Prior to that -- let me back up a little bit -- you said that you
24 froze the premises.

25 A Yes.

1 Q Okay. While you were applying for a search warrant. What does that
2 mean, freezing the premises?

3 A That means patrol officer stands at the front door, outside of the
4 residence, nobody's inside, no officers, no residents, no one. And so -- and they
5 stay there until I've had time to fill out the paperwork for the search warrant,
6 contact the judge, and either receive permission or not.

7 Q Okay.

8 A In this case we received permission from the judge.

9 Q Okay. So no one's allowed to go in that apartment?

10 A Correct.

11 Q Okay. And once you all got clearness or permission from the court or
12 from the judge to search the car and the apartment, did a crime scene analyst
13 arrive eventually?

14 A Yes, they did.

15 Q Okay. Maybe prior to receiving permission?

16 A Yes.

17 Q Okay. Did you and the other patrol detectives decide to do the actual
18 search of Apartment 218?

19 A Yes, we did.

20 Q Okay. And can you just explain to the ladies and gentlemen of the jury
21 how it is that you systematically searched this apartment?

22 A Right. So we get together and we get together in the main room of the
23 apartment or house -- in this case the apartment. And we decide who's going to
24 search which areas of the house. And you go through top to bottom, left to right,
25 and just like a -- just like you're writing a report. And you search the entire room,

1 and then your partner will come behind you and he will search the exact same
2 area again. And that way you can be thorough and make sure that nothing is
3 missed. And so that way, you know, you go through a systematic approach, room
4 by room by room. And in this case, in a smaller apartment, then we divide it up
5 and two of us went to one area, two of us went to the other, and then we switched.

6 Q Okay. So State's Exhibit No. 60, would this have been kind of the main
7 room of the apartment?

8 A Yes.

9 Q Okay. Where would the front door be from this point of view?

10 A I believe it's right over here.

11 Q Okay. Off to the left?

12 A Yes.

13 Q Okay. Thank you. Actually going to show you State's Exhibit 61; do
14 you recognize this particular area?

15 A Yes, I do.

16 Q Does this show the front door or the hallway to the bedrooms?

17 A This is the hallway to the bedrooms.

18 Q Okay. So upon searching the apartment or once an item -- obviously
19 items were found?

20 A Correct.

21 Q Okay. Items of evidentiary value?

22 A Yes.

23 Q Okay. Once -- since you all are searching different rooms, once items
24 are found that you all thought could be potentially evidence in this -- in your
25 investigation, do you alert the other detectives as to what you found?

1 A That's correct. We let them know, hey, I've located this in this room, in
2 this area of the room.

3 Q Okay. Now, when you --

4 A Because we document where everything is located.

5 Q Okay. When you find a particular piece of evidence, do you, like, pick
6 it up and look at it or do you leave it as is? Or what -- what's the protocol?

7 A We leave it as is and we wait for the crime scene analyst to arrive so
8 they can photograph the positions of everything.

9 Q Okay. Fair to say that prior to you and the detectives searching this
10 particular apartment, a crime scene analyst walked in and -- and did, like, overview
11 shots of the -- of the apartment?

12 A That's correct.

13 Q Okay. Kind of to document before and after?

14 A That's correct.

15 Q Okay. And so during your search, you're aware of all of the items
16 found in the apartment?

17 A Yes.

18 Q Okay. Also, items that were found and impounded?

19 A Yes.

20 Q And items that were found, but not impounded?

21 A That's correct.

22 Q Okay. And who makes the decision as to what's impounded and
23 what's not?

24 A The case agent.

25 Q Okay. And so I'm going to show you State's Exhibit No. 74. You just

1 told the ladies and gentlemen of the jury that you found the defendant in this
2 bedroom; is that right?

3 A That's correct.

4 Q And you also indicated that you asked for a search warrant, because
5 upon looking at the apartment, there were certain items that caught your attention
6 or you and your other fellow detectives attention.

7 A Yes.

8 Q In this particular room, are you aware of certain items that caught your
9 attention?

10 A Cell phone right here.

11 Q That's on the window ledge on the right-hand side of the photo?

12 A That's correct.

13 Q Okay.

14 A And then also there was a -- a cell phone right there --

15 Q Okay. So the second --

16 A -- on the headboard.

17 Q -- second shelf on that headboard towards the left of the photo, if
18 you're looking at the photo, right?

19 A Correct.

20 Q Okay. State's Exhibit No. 81, this is kind of a closer up of that
21 particular headboard, and you indicated there was a phone there, right, on the
22 second shelf?

23 A That's correct.

24 Q You indicated that you were looking for firearms or a firearm --

25 A Yes.

1 Q -- fair?
2 Okay. Was a firearm or pieces of a firearm located in this home?
3 A Yes, there was.
4 Q Or in this apartment?
5 A Uh-huh.
6 Q Okay. Is that a yes?
7 A That's correct.
8 Q State's Exhibit No. 117, sir, where is this particular photo? Is this in the
9 child's room or in the adult room?
10 A I -- this is in the adult room.
11 Q Okay. Kind of like by the closet area; is that fair to say?
12 A Yeah. I believe over here on the right is the headboard, here's the
13 night table, and then -- on the left side of the bed.
14 Q Okay. So headboard, night table, and then it's to the left of that, if
15 you're looking at the photo?
16 A Correct.
17 Q All right. And there are clothes hanging on -- on this particular photo;
18 is that right?
19 A Yes.
20 Q Okay. Was the firearm located in this gray bin?
21 A Yes. Part of it was located in the gray bin.
22 Q Okay. Towards the middle of this photo?
23 A Yes.
24 Q I'm going to show you a closer photo.
25 A Okay.

1 Q State's Exhibit 118, do you see the piece of the firearm located in this
2 gray bin?

3 A Yes. It's located right here.

4 Q Detective, was this the -- like, the slide or the bottom portion?

5 A That's the slide.

6 Q Okay.

7 A And so the slide is the upper portion of the firearm. It's a
8 semiautomatic handgun, so that's where all the action goes back and forth in the --
9 and it contains the barrel, the firing pin, all of those parts of the upper part of the --
10 of the handgun.

11 Q Okay. Just show you State's Exhibit 119.

12 A Uh-huh.

13 Q Right?

14 A Yep.

15 Q Was that just a closer photo?

16 A That's just a closer photo of the same thing.

17 Q Okay.

18 MS. LEXIS: Permission to approach with admitted State's Exhibit 41
19 and 41A.

20 THE COURT: You may.

21 BY MS. LEXIS:

22 Q Prior to that, actually, let me show you -- where was the other part of
23 the firearm located?

24 A It's located in the next bedroom, in the child's bedroom.

25 Q Which what?

1 A Excuse me?

2 Q Where was it?

3 A It was located in the child's bedroom.

4 Q Okay. I'm going to show you State's 136; do you recognize this
5 particular photo?

6 A Yes, I do.

7 Q Okay. Could you tell the ladies and gentlemen of the jury where it is in
8 this particular photo, if it is in fact in this photo, that the piece of the firearm was
9 located?

10 A It was located in this box.

11 Q Okay. And for the record, that's the middle box? It's opened towards
12 the middle of the photo?

13 A Correct.

14 Q Thank you. Showing you State's Exhibit 137. Is that a closer photo of
15 the firearm, the bottom portion of the firearm on -- located in the box?

16 A That's correct.

17 Q Okay. Were cartridges located in this particular apartment as well?

18 A Yes, there were.

19 Q And cartridges are bullets; is that right?

20 A That's correct.

21 Q State's Exhibit 158 and State's Exhibit 139, does this photo show
22 where the cartridges were located?

23 A Yes. They were located inside this box on the table.

24 Q Okay. And for the record, it's like a box wrapped in Mini-Me paper?

25 A Yeah.

1 Q Sir, showing you State's Exhibit 140; what does that show?

2 A That's a view inside the box.

3 Q Okay.

4 A And so you can see that there's one bullet right there.

5 Q Okay. And then another one right there?

6 A Yes.

7 Q Okay. This firearm, was it in fact a .40-caliber Glock, Model 27?

8 A Yes, it was.

9 MS. LEXIS: Your Honor, now may I approach with admitted 41
10 and 41A?

11 THE COURT: Yes.

12 BY MS. LEXIS:

13 Q Showing you State's Exhibit -- admitted State's Exhibit 41A, do you
14 recognize what's depicted here, Detective?

15 A Yes, I do.

16 Q What is it, sir?

17 A This is the two separate pieces of the firearm we located in the
18 apartment.

19 Q Okay. Fairly and accurately depict the firearm as it was found and
20 pulled out of the two separate locations in Apartment 218?

21 A That's correct.

22 Q Okay. You, yourself, did not impound this particular piece of evidence,
23 did you?

24 A I did not.

25 Q Typically with firearms is it fair to say that the crime scene analysts will

1 typically impound such items?

2 A Yes, they will.

3 Q Okay. Fair to say that that's because further analysis, forensic
4 analysis, may be required on an item like that?

5 A That's correct.

6 Q Thank you. So we already talked about the phone found on the
7 headboard, and I've located better pictures, so -- State's Exhibit 121, that's the one
8 on the headboard; is that right?

9 A That's correct.

10 Q State's Exhibit 123, do you recognize what's depicted there, sir?

11 A Yes. That's the phone on the -- on the windowsill.

12 Q Okay. In the -- which bedroom?

13 A That's the adult bedroom.

14 Q Okay. Sir, State's Exhibit No. 125 and also 126, okay, do you
15 recognize the phone that's in this pile of clothing?

16 A Yes.

17 Q Okay. Was that photographed as well?

18 A That was.

19 Q Okay. And was this in the child's bedroom or was this in the adult
20 bedroom?

21 A I'm not a hundred percent sure on that one.

22 Q Okay. Showing you -- okay. Okay. -- State's Exhibit 127, do you
23 recognize this?

24 A Yes. That's the adult bedroom.

25 Q Okay. Does --

1 A The night table off to the right.

2 Q Okay. And the drawer located in the middle of the photograph is open,
3 correct?

4 A Correct.

5 Q Okay. State's Exhibit 128, this is still in that adult bedroom, correct?

6 A Yes.

7 Q Okay. What items of evidentiary value did you find in this -- did you or
8 your squad find in this particular drawer?

9 A I found a driver's license belonging to one of our victims.

10 Q Okay. State's Exhibit No. 129, was that the ID?

11 A That's the ID, yes.

12 Q Okay. In the name of Jordan Alexander?

13 A Correct.

14 Q Thank you. Publishing, again, State's Exhibit 128, turning your
15 attention to the top of the drawer, do you see what appears to be a debit card
16 there?

17 A Yes.

18 Q Okay. Did that draw you and your squad's attention?

19 A Absolutely.

20 Q Okay. At the time did you know that certain debit cards or credit cards
21 may have been taken during one or more of the robberies?

22 A That's correct.

23 Q State's Exhibit 134, is this a photograph of the debit card -- both debit
24 cards found in that same drawer with the ID card belonging to Jordan Alexander?

25 A Yes, that's correct.

1 Q Okay. For the record, the top is a Wells Fargo visa debit card in the
2 name of Rosa Vazkuez Ramirez; is that right?

3 A That's correct.

4 Q And the bottom is a Wells Fargo debit card in the name of Jordan T.
5 Alexander; is that right?

6 A That's correct.

7 Q Detective, I'm going to turn your attention to State's 143; was another
8 phone located on this couch?

9 A Yes.

10 Q Okay. I'm going to get you a better photo, State's Exhibit 144; do you
11 recognize what's depicted there?

12 A Yes.

13 Q Okay. And could you just circle the phone?

14 A Here's the phone.

15 Q Okay. And can you tell from looking at the photo what brand it is?

16 A An HTC.

17 Q Okay. Fair to say various phones were located in this particular
18 apartment?

19 A That's correct.

20 Q Okay. Were all of the phones seized and impounded?

21 A Yes.

22 Q To your knowledge?

23 A To my knowledge, they were.

24 Q Okay. Were there certain phones to your knowledge claimed by one
25 or more of the occupants in this apartment?

1 A That's correct.

2 Q Okay. And if they were claimed, were they not impounded?

3 A That's correct.

4 Q Okay. Were there certain items where you and your officers or other
5 detectives were not quite sure concerning the ownership of the items?

6 A Yes.

7 Q Okay. And were -- were decisions made based on what you knew of
8 the case at that time?

9 A That's correct.

10 Q Concerning whether to impound or not?

11 A That's correct.

12 Q At the time of the search, were you aware of at least four different
13 robbery scenes which had occurred in that area?

14 A Yes.

15 Q Detective, do you speak Spanish?

16 A I do.

17 Q Okay. Fluently?

18 A Really fluently.

19 Q Okay. How do you -- how do you know Spanish?

20 A I lived in Chile for two years, where I learned to speak Spanish.
21 Subsequently, I -- I was a student at B -- Brigham Young University, where I
22 received a minor in Latin American studies. And then I also lived in El Salvador for
23 a summer, building homes and then kind of further honed my Spanish skills there.
24 And then I've continued with it ever since.

25 Q Okay. Prior to or, I guess, at some point before or after the search of

1 the apartment, did you take part in some showups?

2 A I did.

3 Q Okay. What was your role?

4 A So my role was -- several of the victims weren't comfortable doing
5 everything in English, and so through our showup process where we take a victim
6 to the scene of where we have a potential suspect, we give them the opportunity to
7 whether or not they can identify the person. And so I read through the instructions
8 in English to them and then explained to them each step of what a showup is, and
9 each sentence, essentially, from the instructions I translated over to Spanish for
10 them.

11 Q Okay. And does Metro -- I mean, does patrol have routine access to
12 Spanish-speaking officers or is that somewhat of a difficulty?

13 A It kind of depends who's working most of the time.

14 Q Okay.

15 A We do have Spanish interpreters that are on, but they could be -- they
16 could be 45 minutes away because they're on another scene on the complete
17 opposite of the valley.

18 Q So it's a --

19 A So --

20 Q -- it's a sought-after skill, what you have?

21 A Yes.

22 Q Okay. Do you recall -- so during the showup, where were you staged?

23 A I was out -- so during the showup -- if you want to -- if you could put up
24 that photo again --

25 Q Oh, yeah. I'll put up the map.

1 A -- I can show you.

2 Q State's Exhibit No. 8, and let me zoom back in. Is that enough?

3 A Yeah.

4 Q Okay.

5 A If you'll slide it up just slightly --

6 Q Sure.

7 A -- to there, so I could see more to the right. There we go.

8 So the patrol officer would have the victim in the car, and they would
9 come around and stop at approximately right here. My van was parked here.
10 There was a patrol car, and they had -- the subjects would stand here. So I would
11 walk over to the patrol car from my van, which is where I was. I would walk over to
12 the patrol car, discuss the instructions with the victim, and then get them the
13 opportunity as to whether or not they could make an identification or not.

14 Q Okay. Why is it that the patrol cars are stationed -- I mean, at least
15 from this map, and correct me if I'm wrong, from a considerable distance? How
16 would you estimate -- let me ask you this: What would be the distance between
17 where the patrol cars stop and where the suspect or suspects were staged?

18 A It just depends on how clearly the person can see.

19 Q Uh-huh.

20 A Usually when I'm doing it and I pull up, I'm like, Can you see from
21 here? We try to keep some distance so as to give them -- a lot of them are very
22 nervous in that moment. They don't want to be seen. And so we try to give
23 enough distance that you cannot -- that the suspects wouldn't be able to see into
24 the patrol car and see who is there.

25 Q Okay. And so what would -- if you could estimate, knowing that you

1 were at the scene, the point that you showed here was the -- where the patrol cars
2 would stop up to where your van and where the suspects were staged here, what
3 would be the distance if you could estimate?

4 A I would say 20 to 25 feet.

5 Q Okay. And the witnesses or the victims are given the opportunity of --
6 say, if they can't see, the patrol car certainly has the option of moving forward; is
7 that right?

8 A Correct. Yeah, absolutely.

9 Q Or if they feel uncomfortable?

10 A Move it back.

11 Q Move it back. Okay. And so you indicated that, you know, it was a
12 showup, right, and the defendant had already been -- had already matched the
13 descriptions; is that right?

14 A That's correct.

15 Q When you were out there assisting with the showups, was the
16 defendant the only person staged or shown?

17 A There was the defendant and there was a secondary person next to
18 him as well.

19 Q Okay. And so how were they -- how was the defendant and this other
20 individual staged? How were they made to stand?

21 A Do you mean, like, which position left or right or do you mean --

22 Q Were they sitting or standing side by side?

23 A Standing side by side, yes. And they --

24 Q Okay. About how far apart?

25 A Two to three feet.

1 Q Okay. And there are patrol officers, you know, around, correct?
2 A That's correct.
3 Q And you were also there?
4 A Yes.
5 Q Okay. And -- and, okay. State's Exhibit No. 53 was the defendant,
6 Keandre Valentine, one of the individuals made available for potential identification
7 to each of the victims who showed up?
8 A Yes, he was.
9 Q I'm going to show you what's been marked for identification as State's
10 Exhibit 179; sir, do you recognize this individual?
11 A Yes, I do.
12 Q Okay. Do you recognize him as being one of the victims you
13 translated for?
14 A Yes.
15 Q Okay. The showup instructions from English to Spanish?
16 A Yes.
17 Q Okay. Lazaro Bravo-Torres?
18 A Yes.
19 Q Did this individual have a spouse who was also transported to the
20 scene after Mr. Bravo-Torres was at the scene?
21 A Yes, he was.
22 Q Okay. Because -- I'm sorry. I got ahead of myself. When a showup is
23 conducted, Detective, it's one victim -- each victim is taken separately; is that
24 right?
25 A That's correct.

1 Q So even though, let's say, Mr. Torres -- or Bravo-Torres and his wife
2 were victims of the same event, they're not transported to the scene together, are
3 they?

4 A That's correct.

5 Q Okay. And so do you recall after Mr. Bravo-Torres was taken to the
6 scene, do you recall his wife Rosa Vazkuez Ramirez then being transported to the
7 scene separately?

8 A Yes, I do.

9 Q And do you recall translating the same showup witness instructions for
10 that --

11 A I did.

12 Q -- for her?

13 A I did for her.

14 MS. LEXIS: Okay. Your Honor, I move to admit State's Proposed
15 Exhibit 179 into evidence.

16 MR. GASTON: No objection.

17 THE COURT: Admitted without objection.

18 [State's Exhibit No. 179 admitted.]

19 MS. LEXIS: Thank you. And I'll publish.

20 BY MS. LEXIS:

21 Q Okay. This is Lazaro Bravo-Torres?

22 A Yes.

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

24 THE COURT: Yes.

25 MS. LEXIS: -- with what's been previously marked as State's

1 Proposed Exhibit 11 and State's Proposed Exhibit No. 10?

2 BY MS. LEXIS:

3 Q Sir, State's Proposed Exhibit No. 11 is a two-page document, correct?

4 A Yes, it is.

5 Q Okay. The first page, what is that?

6 A These are the instructions given for the showup.

7 Q Okay. And you indicated to the ladies and gentlemen of the jury that
8 you read certain instructions, right?

9 A Yes.

10 Q You read it in English and then translated each sentence in Spanish,
11 correct?

12 A Correct.

13 Q Okay. Let me -- I'm getting ahead of myself. At the top does it say,
14 Showup witness instruction?

15 A It does.

16 Q And does it then have the name of the individual who is being shown
17 the potential suspects at the top?

18 A Yes.

19 Q And then after that does it then have the instruction?

20 A It does.

21 Q Okay. And then a signature page -- or a signature line, date, and
22 time?

23 A Yes.

24 Q And then an opportunity for the person to indicate -- or write out a
25 statement?

1 A That's correct.

2 Q And then another signature line with the time and date?

3 A Yes.

4 Q And then an officer's signature with a date and time area as well?

5 A Yes.

6 Q All right. You indicated that you read the instruction in English; could
7 you read the instruction in English?

8 A It says:

9 In a moment I'm going to show you a person who is being detained.
10 This person may or may not be a person who committed the crime now being
11 investigated. The fact that this person is detained should not cause you to
12 believe or guess that he or she is guilty. You do not have to identify anyone.
13 It is just as important to free innocent persons from suspicion as it is to
14 identify those who are guilty. Please keep in mind that clothing can be easily
15 changed. Please do not talk to anyone other than police officers while
16 viewing this person. You must make up your own mind and not be
17 influenced by other witnesses, if any.

18 When you have viewed the person, please tell me whether or not you
19 can make an identification. If you can, tell me in your own words how sure
20 you are of your identification. Please do not indicate in any way to other
21 witnesses that you have or have not made an identification. Thank you.

22 Q Okay. And so State's Proposed Exhibit No. 11, it has the name Lazaro
23 Bravo; is that right?

24 A That's correct.

25 Q State's Exhibit -- Proposed Exhibit No. 10, is it the same showup

1 witness instruction?
2 A Yes.
3 Q Except the name at the top is now Rosa Vazkuez?
4 A That's correct.
5 Q Okay. And it is your testimony that you also went over the instruction
6 with Ms. Vazkuez?
7 A Yes.
8 Q Okay. And translated in Spanish?
9 A That's correct.
10 Q Did you read over what was written or did you not have an opportunity
11 to do that? Did someone else do that?
12 A You mean read what -- what their statement was after the showup?
13 Q Yes.
14 A No. I read those.
15 Q You read those?
16 A Yes.
17 Q Okay. And you read Spanish, right?
18 A Yes.
19 Q Actually, we'll go over it with a different witness. Excuse me.
20 MS. LEXIS: Court's brief indulgence.
21 Okay. I have no more questions for Detective Ludwig.
22 Thank you very much.
23 THE COURT: Mr. Gaston, you're on the floor.

24 **CROSS-EXAMINATION**

25 BY MR. GASTON:

1 Q Good morning, sir.

2 A Good morning.

3 Q You just read the instructions for the showup identifications?

4 A Yes.

5 Q As part of your training on being a detective, you get training on
6 identifications, correct?

7 A Yes.

8 Q On -- on how to conduct them?

9 A Correct.

10 Q On different kinds of ways you can do identifications?

11 A Yes.

12 Q I mean, showups, photo arrays, et cetera?

13 A Correct.

14 Q Okay. And you learn pros and cons and both of those?

15 A Uh-huh.

16 Q Yes? They [indiscernible].

17 A Yes. Sorry.

18 Q Okay. And one of the reasons that those instructions exist, that you
19 just read, is to decrease the chances of false positives, right?

20 A That's correct.

21 Q Can you tell the jury what a false positive would be?

22 A A false positive would be where someone sees an individual, either in
23 a showup or on a -- what we would call a photo lineup, and they recognize
24 somebody, but it's not the suspect.

25 Q So they get it wrong, basically?

1 A Correct.

2 Q All right. And so by having instructions first, the -- the idea is that you
3 decrease the likelihood of that happening, right?

4 A That's correct.

5 Q Okay. And essentially, I mean, you read it -- summarize it, basically --
6 I mean, you're very clear in those instructions to make it -- you don't have to
7 choose anybody. This isn't necessarily the person who robbed you, right? You're
8 trying to decrease [indiscernible]?

9 A That's correct.

10 Q Okay. Now, do you have -- like, you -- not you personally, like, with
11 you, but Metro, do you have forms in -- with those instructions in Spanish?

12 A We do.

13 Q Okay.

14 A It depends on if they're immediately available or not.

15 Q Okay. So it could have been in the patrol car, one of the detectives
16 could have had it, they might not have?

17 A Correct.

18 Q Okay. And in this case, obviously no -- no form in Spanish was
19 handed to them?

20 A That's correct.

21 Q You translated it instead?

22 A Yes.

23 Q Okay. I'm not doubting your translation skills or anything, just when
24 you actually made the translation, you did it at the scene, correct?

25 A That's correct.

1 Q And by at the scene, at the scene where the defendant was being
2 arrested or in handcuffs?

3 A That's correct.

4 Q So you described it on the photo as the cop car came around the
5 corner and would stop, Keandre, the defendant, is down here and then you would
6 walk up to the patrol car and then you would read the instructions at that point?

7 A That's correct.

8 Q Now, for the people who could speak English or read English, those --
9 those witnesses were able to either have the instructions read to them or read
10 through them prior to actually arriving at the scene, correct?

11 A I -- that I don't know how -- it depends on how the officer did it.

12 Q Okay. Fair.

13 A So I don't know.

14 Q Fair enough. Yeah, but -- but in this case for the witnesses that spoke
15 Spanish, they didn't get the instructions read to them until they had already parked
16 there and they could presumably see everything as well, right?

17 A That's correct.

18 Q Now, you also mentioned that there were two people who were in
19 handcuffs, right?

20 A Correct.

21 Q And they were standing next to each other?

22 A They were.

23 Q Keandre and then this other guy, right?

24 A That's correct.

25 Q Do you know what the other guy's name was?

1 A I don't.

2 Q All right.

3 A I don't remember.

4 Q I'll call him the other guy for now. There was a big height difference
5 between them, correct?

6 A That's correct.

7 Q Keandre is a lot taller than the other guy?

8 A Yes.

9 Q Do you know if the other guy was 5-2, 5-3, 5-4?

10 A I don't even remember how tall he was.

11 Q But you do remember there was a big height difference?

12 A But there was a definite height difference.

13 Q Okay. And it was easy to tell because they were standing next to each
14 other?

15 A That's correct.

16 Q Now, I know that we went through photos that were taken of Keandre
17 as he was sitting there in handcuffs, et cetera; were any photos taken of the other
18 guy?

19 A I don't know.

20 Q Would it surprise you if the answer were no?

21 A A little bit.

22 Q And that might surprise you because part of what you're talking about a
23 thorough investigation would be to photograph everything?

24 A That's correct.

25 Q And it might be relevant later if, for example, the identifications were

1 being contested to show those two individuals that were standing next to each
2 other?

3 A Correct.

4 Q And to allow the jury to see how closely they looked alike or how
5 different they looked alike?

6 A Yes.

7 Q Now, let's go -- now, switch back topics. You talked about when you
8 went into the apartment initially to clear the area to see who was in there and
9 who's not in there, et cetera?

10 A Yes.

11 Q Part of what Ms. Lexis asked you was you announced yourself as
12 police officers, but nobody responded or anything like that, right?

13 A That's correct.

14 Q You found Keandre laying in the bed?

15 A Yes.

16 Q He wasn't hiding under the bed?

17 A No.

18 Q He wasn't hiding in a closet or anything like that?

19 A No.

20 Q He wasn't trying to conceal himself from you guys; fair to say?

21 A Yes.

22 Q In fact, he was -- and he was pretending to be asleep?

23 A Yes.

24 Q And in your opinion he was pretending?

25 A Yes.

1 Q Okay. So part of pretending to be asleep is probably not going to be
2 jump out of bed and say, hey, officers come into the bedroom?

3 A Correct.

4 Q Okay. Now, you also talked about something -- I mean, this -- it's not a
5 trick question. I mean this as a compliment. With respect to the search, fair to say
6 you guys did a pretty thorough job?

7 A Yes.

8 Q You recovered many stolen items, correct?

9 A That's correct.

10 Q You also recovered pieces of a gun that were hidden in kind of obscure
11 areas of the house on opposite end -- or of the apartment, opposite edges of the
12 apartment?

13 A Correct.

14 Q Okay. Now, you -- at no point during the search, though, was any cash
15 recovered, correct?

16 A Correct.

17 Q And at no point during any of this was any of the jewelry recovered,
18 correct?

19 A Correct.

20 Q And also, coincidentally, a Bobby McCoy was never found in the
21 apartment either, right?

22 A No, he was not.

23 Q Okay. Now, are you the one -- we talked -- she talked about
24 impounding as well. I want to talk about that briefly. She said that if any of the
25 occupants said that that item was there, she would release it back to them?

1 A Correct.

2 Q It's not that simple, right? I mean, if it matches a description of stolen
3 property, you're not going to give it back to somebody just because they super
4 promise it's theirs, right?

5 A That's correct.

6 Q So Marvin Bass claimed gold jewelry was taken -- or gold necklaces
7 were taken from him. Keandre super promises he bought that from Wal-Mart
8 yesterday. You're not going to give it back to Keandre, right?

9 A Correct.

10 Q Okay. And, in fact, when you're impounding property that could
11 possibly be stolen property or evidence, you're probably going to err on the side of
12 impounding it as opposed to releasing it back to people?

13 A Correct.

14 Q Okay. And this is just kind of common sense. People lie, right?

15 A Yes.

16 Q Okay. And if it turns out that it actually see the occupant's stuff later,
17 they can always get it back later, right?

18 A That's correct.

19 Q Once everyone's kind of done their investigation?

20 A Right.

21 Q Okay. I want to show you State's Exhibit 123; would it surprise you if I
22 told you that this phone was not impounded?

23 A Not necessarily.

24 Q Okay. But if it were not impounded, it would almost certainly be
25 because it doesn't match the description of a -- that was given of a phone that was

1 stolen?

2 A Correct.

3 Q And an occupant would have claimed it was theirs?

4 A Correct.

5 Q Okay. I think the last point here -- are you -- are you the one who
6 was -- would be in charge of deciding what was fingerprinted or tested for DNA,
7 et cetera?

8 A No.

9 Q Okay. Who would that have been?

10 A That would be the case agent.

11 Q And in this case, was that Detective Majors?

12 A That's correct.

13 Q Okay.

14 MR. GASTON: No more questions. Thank you.

15 THE COURT: Thank you, sir. All right.

16 Ms. Lexis, redirect?

17 MS. LEXIS: Yes, please. Thank you.

18 **REDIRECT EXAMINATION**

19 BY MS. LEXIS:

20 Q Defense counsel asked you about how the defendant was standing,
21 saying presumably the Spanish-speaking victims who you translated for when they
22 pulled up to that particular showup location; do you remember his question?

23 A Yes.

24 Q Okay. There were multiple victims being transported to this particular
25 location by different patrol officers; is that right?

1 A That's correct.

2 Q Okay. Was there time in between the time the patrol officers arrived
3 where the defendant would not have been made to stand up?

4 A Yes.

5 Q Okay. Were there times where he was told to sit on a curb?

6 A Yes.

7 Q Okay. Awaiting the arrival of a patrol officer or patrol unit with the
8 victim?

9 A That's correct.

10 Q Okay. So when the Spanish-speaking or Spanish-translation victims
11 arrived at this particular scene, what -- do you recall whether Mr. Valentine would
12 have been, you know, standing there rather than be visible or whether he would
13 have been sitting down in a nearby area?

14 A I don't recall exactly.

15 Q Okay. But he was not made to stand the entire time?

16 A He was not.

17 Q Okay. And neither was the other individual he was with?

18 A No.

19 Q Okay. Mr. Gaston asked you whether photos were taken of the other
20 individual, whether it would surprise you that no photos had been taken; do you
21 remember that question?

22 A Yes, I do.

23 Q Okay. To your knowledge, as the squad -- part of the squad that
24 investigated this robbery series, no one identified that other individual, correct?

25 A Correct.

1 Q All right. As a matter of fact, to your knowledge, isn't it fair that there
2 were five separate victims who identified the defendant as the individual who
3 robbed them?

4 A Yes.

5 Q No one identified the other guy?

6 A Correct.

7 Q What was the defendant's demeanor while you were out there out at
8 the parking lot while he was being staged for the showup?

9 A As far as attitude, like, he was saying things or --

10 Q Correct.

11 A I recall he was kind of nonchalant, you know, claiming this is -- why
12 you guys bothering me, you know, I --

13 Q Let me ask you this --

14 A Uh-huh.

15 Q -- when the defendants were being transported and he was made to
16 stand up, did he stay still?

17 A No.

18 Q Okay.

19 A He was --

20 Q Tell us about that.

21 A We call it happy feet, essentially, because they're continually shuffling
22 in place, moving their feet around, not standing, turning this way, turning that way,
23 not facing directly towards the victim who is trying to do the showup, and
24 oftentimes having to be told numerous times by a patrol officer, Stand still, stop
25 moving.

1 Q Was that the case with the defendant, Keandre Valentine, during some
2 or more of the -- of the showups?

3 A Yes, it was.

4 Q You were asked about, you know, which phones were impounded and
5 what phones were not and things like that, whether it would surprise you that some
6 were not; do you recall those questions?

7 A I do.

8 Q All right. At the exact time, would you characterize this particular
9 investigation as dynamic?

10 A Yes.

11 Q And you were in a dynamic scene?

12 A Yes.

13 Q Tell the ladies and gentlemen of the jury what that -- what that means
14 to a patrol officer and to a detective like yourself.

15 A So when we categorize something as being a dynamic scene, we're
16 still getting information. It's not -- it's not like we showed up and everything's
17 wrapped up on a bow and we get to start our investigation and have a complete
18 briefing. It's we're still getting information because victims are remembering things
19 or they're -- we had multiple scenes, so we're getting more information from
20 different scenes that, hey, this is a possibility you need to look for.

21 And since we're all in different locations, we haven't had a chance to
22 come together yet, you know, with patrol officers and their sergeant, all the
23 detectives and our sergeant, and do -- you know, a complete write-out, essentially,
24 of what we have. And so, you know, we -- we found a person, and we found
25 another person, and then -- you know, so we're working through it as we're doing

1 the investigation.

2 Q Did you and other detectives in your squad have serial numbers to
3 phones that had been reported stolen by any or one or more of the victims at the
4 time of the search?

5 A Not at that time.

6 Q Okay. So we're -- fair to say you were going off kind of vague
7 descriptions?

8 A That's correct.

9 Q Okay. And the items that were not impounded, fair to say that they
10 were documented by way of photography?

11 A Correct.

12 Q You were asked by Mr. Gaston whether cash was found or gold was
13 found in this apartment?

14 A Correct.

15 Q Do you recall that?

16 A Yes.

17 Q Okay. Detective, there were at least two women that were linked to
18 that particular apartment; is that right?

19 A That's correct.

20 Q The person who claimed ownership to the white Mazda --

21 A Yes.

22 Q -- that was related as -- or identified as the suspect vehicle, correct?

23 A Correct.

24 Q Okay. And another visible by the name of Chanise Williams; is that
25 right?

1 A That's correct.

2 Q To your knowledge, were these two individuals searched?

3 A I don't know.

4 Q Did you search them?

5 A I did not.

6 Q And they actually exited the apartment and made contact with yourself
7 and other Metro officers in the parking lot, correct?

8 A Correct.

9 Q So [indiscernible] that they've been in the apartment, they've made
10 their way down to the parking lot --

11 MR. GASTON: Objection, speculation.

12 THE COURT: Sustained. More foundation, please.

13 BY MS. LEXIS:

14 Q Do you know -- did you receive information that they had just exited the
15 apartment?

16 A Yes.

17 Q Okay. And that's what directed you to that particular Apartment 218;
18 that is right?

19 A That's correct.

20 Q Okay. And they made contact with you after leaving the apartment in
21 the parking lot; is that right?

22 A That's correct.

23 MS. LEXIS: I have no more questions. Thank you.

24 THE COURT: All right.

25 And recross.

1 MR. GASTON: Yeah, a couple questions.

2 **RE-CROSS-EXAMINATION**

3 BY MR. GASTON:

4 Q All right. One of the things she talked about was kind of to see if you
5 remember whether Keandre was sitting down or standing up during the
6 identification process?

7 A Correct.

8 Q Can I -- could -- basically could the witnesses have told [indiscernible].
9 Fair to say, it's easier to make an identification when you can see the
10 guy's whole body, right?

11 A That's correct.

12 Q So it would make more sense to -- logically it would make more sense
13 when you're doing that showup to have the guy stand up, right?

14 A Yes.

15 Q Now, during this entire time, the actually showup identifications
16 themselves, when the witnesses were there, were only a few minutes
17 [indiscernible], right?

18 A Correct.

19 Q But Keandre and this other guy are out here for several hours, right?

20 A Probably, at least a couple hours.

21 Q Close. So when you're saying that at certain points he might have sat
22 down, you're not necessarily saying you guys kept him sitting down during the
23 identification part of the couple hours, right?

24 A Correct.

25 Q Okay. And you're familiar with that some officers wear body camera

1 footage?

2 A Yes.

3 Q Okay. And one of the advantages of body camera footage is it literally
4 is a camera showing what's going on?

5 A Yes.

6 Q So in court, later at a trial, we don't have to just argue back and forth
7 about what happened; we can actually just play the video and watch, correct?

8 A Correct.

9 Q Okay. So at one point -- at one point you identified the cop car coming
10 around the apartment building?

11 A Yes.

12 Q We also don't just have to kind of guess on how far the cop car came
13 around, how far he was from the identification? If there's body camera footage, we
14 can actually just watch it?

15 A Correct.

16 Q Okay. And with respect to talking about maybe where this missing
17 cash went -- she asked you -- there were two other individuals, Omara and
18 Chanise, correct?

19 A Yes.

20 Q And you don't personally know whether Omara or Chanise were ever
21 searched?

22 A Correct.

23 Q The fact is one of the missing -- there were items that were reported
24 stolen from a series of robberies. About 20 minutes later you guys are there, and
25 you guys are unable to recover the cash and the jewelry, correct?

1 A That's correct.

2 Q Would it have surprised you, as your training as an officer, if nobody
3 ever decides to search Omara and Chanise?

4 A No.

5 Q That would not have surprised you?

6 A No.

7 Q So you think it is possible that you guys would never have thought to
8 search Omara or Chanise for the rest of the missing property? I guess --

9 A Say that --

10 Q -- I can restate the question.

11 A Yeah, rephrase it.

12 Q Would it -- would a good thorough investigation have searched
13 Chanise and Omara for the other missing property?

14 A Yes and no.

15 Q Well, how -- okay. You can explain it. You don't just have to answer
16 yes or no. You can just explain it.

17 A The answer yes, because ideally you want to search everybody, and
18 no, because we have rules that we have to follow when and we can and cannot
19 search people.

20 Q Right.

21 A And so at that point, you know, if they're not a suspect, I can't just
22 snatch them up and start going through people's stuff.

23 Q Would it surprise you if either Chanise or Omara was -- was actually
24 detained and placed in the back of a police car at some point during this
25 investigation?

1 A No.

2 Q Okay. And if that happened, they almost certainly would have been
3 searched, right?

4 A Not necessarily.

5 Q Not necessarily. Okay. You did get a search warrant, correct?

6 A I did.

7 Q To -- so you froze the premises, backed up, got permission from a
8 judge to then search the apartment, right?

9 A Correct.

10 Q So as to comply with all the rules?

11 A That's correct.

12 Q If you guys think that you had cause to maybe search the other two
13 people who had access to the apartment and the stolen property is not found, you
14 could have gotten permission that way to search them as well, correct?

15 A I could have, yes.

16 Q Or anyone could've, right?

17 A Yes.

18 Q As far as police officers?

19 A That's correct.

20 Q And fair to say in almost every respect, this investigation was
21 conducted pretty well in your opinion, right?

22 A Yes.

23 Q Not many mistakes, if any, right?

24 A Correct.

25 Q And I already complimented you earlier on the search, so if we're kind

1 of assuming on the spectrum of good investigation where a lot of stuff was done,
2 or a bad investigation where a lot of stuff was missed, you would probably put this
3 closer to the pretty good investigation, right?

4 A Correct.

5 MR. GASTON: Court's indulgence one second.

6 No more questions.

7 MS. LEXIS: Just one brief -- just one question.

8 THE COURT: I'll allow it. But then the defense gets the last word.

9 MS. LEXIS: Thank you.

10 THE COURT: Go ahead. It has to be related to his --

11 MS. LEXIS: Absolutely.

12 THE COURT: -- recross.

13 **FURTHER REDIRECT EXAMINATION**

14 BY MS. LEXIS:

15 Q Just to clarify, during the actual showups, the defendant and the other
16 individual were standing, correct?

17 A That's correct.

18 MS. LEXIS: Thank you.

19 THE COURT: Anything?

20 MR. GASTON: No, Your Honor.

21 THE COURT: All right. Anything from the jurors?

22 A couple, marshal, please.

23 Thank you, sir.

24 [Bench conference transcribed as follows.]

25 MR. GASTON: I'm fine with all of those questions.

1 MS. MACHNICH: Okay. That's fine.
2 MS. LEXIS: Okay. I think it's proper.
3 THE COURT: And you guys are all okay with the questions from Juror
4 No. --
5 MS. LEXIS: 40.
6 THE COURT: -- 45?
7 MR. GASTON: Yes, Your Honor.
8 MS. LEXIS: Yes. Badge 45, it's seat 13.
9 THE COURT: And there's Juror No. 20. Three questions, the first one
10 is crossed out. The second one I think is fine. The third one not.
11 MS. LEXIS: Okay.
12 THE COURT: Well, the third one is not a question.
13 MR. GASTON: I don't think the third's a question.
14 THE COURT: Yeah. It's not a question. You guys are okay with
15 question marked No. 2?
16 MS. LEXIS: Yes.
17 THE COURT: Thank you.
18 MS. MACHNICH: Yes. Because 3 isn't a question.
19 [End bench conference.]
20 THE COURT: All right. Detective, right?
21 THE WITNESS: Yes, sir.
22 THE COURT: Questions from the jury. I'll go ahead and just ask you
23 questions as written, and please direct your answers to the jury, and then I'll allow
24 the attorneys to have brief follow-up on this subject matter.
25 All right. So one of the questions from the jury is who was the renter of

1 the apartment and how many people lived there?

2 THE WITNESS: Chanise -- last name -- I can't remember her last
3 name. She was the person who purported to be the renter of the apartment. And
4 there was approximately -- she said three people staying there at the time.

5 THE COURT: All right. Next question: In questions of cell on
6 windowsill, it appears it was originally charging with blinds drawn closed. Later it
7 appears isolated without charger attached with blinds open. Do you recall
8 anybody -- or I'm sorry -- do you recall anyone removing the charger or disturbing
9 the ledge? Is this the same photo/window? Was it claimed by occupants?

10 THE WITNESS: Right.

11 THE COURT: Those three questions.

12 THE WITNESS: Right.

13 THE COURT: I can reread this for you if you want.

14 THE WITNESS: I think I got it.

15 As far as the phone's concerned on the ledge, sometimes we get
16 ahead of ourselves in the search because the photographer is in one place and
17 we're moving through the room. So it could have been easily manipulated by a
18 detective. I don't know who did. I don't recall. I know it was not me.

19 The blinds being drawn back, they -- more than likely was probably
20 opened by the photographer so that he could have more -- better lighting for his
21 photographers in the room.

22 And then the last part, was it claimed by someone?

23 THE COURT: Is this -- was it claimed by occupants?

24 THE WITNESS: That I don't remember. So I don't know if -- if that
25 particular phone was claimed by somebody.

1 THE COURT: Follow-up with the State first.

2 MS. LEXIS: Yes, Your Honor.

3 **ADDITIONAL REDIRECT EXAMINATION**

4 BY MS. LEXIS:

5 Q Just want to illustrate [indiscernible] with the State's Exhibit 74. Okay.
6 I believe this is what this particular juror was asking about. It shows the phone on
7 the ledge, correct?

8 A Correct. If you could slide it to your -- yes, that --

9 Q Okay. That shows it charging on the ledge with the blinds closed, but
10 located in the adult bedroom; is that right?

11 A That's correct.

12 Q And this was the photo taken initially when the crime scene analyst
13 was doing the overall photos of the apartment?

14 A Correct.

15 Q State's Exhibit 122. Okay. Does that, in fact -- can I turn your attention
16 to the bottom right there on the floor?

17 A Yes.

18 Q Okay. Does that appear to be a phone charger?

19 A It does.

20 Q All right. And the phone on the ledge?

21 A Correct.

22 Q But this time the particular window is open halfway; is that right?

23 A That's correct.

24 Q Sun shining in?

25 A Yes.

1 THE COURT: The blinds are drawn halfway.

2 MS. LEXIS: Halfway, correct.

3 BY MS. LEXIS:

4 Q And State's Exhibit 123, does that appear to have the window halfway
5 open?

6 A Yes.

7 Q With the closer-up photo of the phone?

8 A That's correct. And that would have been during the search.

9 Q Okay. Nothing further. Thank you.

10 MR. GASTON: No, Your Honor.

11 THE COURT: All right. Is there anything else from the jurors? I didn't
12 see any more hands.

13 Thank you, Detective. You're excused. You may step down.

14 THE WITNESS: Okay. Thank you, Your Honor.

15 THE COURT: All right. We've been going not quite an hour and a
16 half, but is it a good time for a break?

17 MS. LEXIS: Sure.

18 MS. MACHNICH: Okay.

19 THE COURT: All right. All right. Ladies and Gentlemen, we're going
20 to take a recess, the prior admonishment applies. Let me reread it.

21 Do not communicate among yourselves or with anybody else about
22 this trial or the subject matter of the trial; do not communicate at all with any of the
23 parties, attorneys, or witnesses involved in this trial; do not seek or obtain any
24 information or comments about the case from any source; do not read, watch, or
25 listen to any report or common tear about the case; do not perform any research or

1 investigation; do not form or express any opinion on any subject connected with
2 this trial until the case is finally submitted to you for deliberations.

3 You are instructed to return to the hallway outside this courtroom for
4 further proceedings in 15 minutes. Let's say 10:45 be ready to go, please. All
5 right.

6 [Jury recessed at 10:28 a.m.]

7 THE COURT: All right. We're outside the presence. Anything to put
8 on the record?

9 MS. LEXIS: Not by the State.

10 THE COURT: What about -- all right. So we'll have one or two
11 witnesses before lunch and -- probably, right?

12 MS. LEXIS: We have two waiting.

13 THE COURT: Two waiting?

14 MS. LEXIS: Yes, Your Honor.

15 THE COURT: We'll get -- try to get them before lunch.

16 MS. LEXIS: Thank you.

17 THE COURT: All right.

18 [Court recessed at 10:29 a.m., until 10:49 a.m.]

19 [Outside the presence of the jury.]

20 THE COURT: Number 2 thinks she knows one of the witnesses.

21 MS. LEXIS: Uh-oh.

22 MS. MACHNICH: Uh-oh.

23 THE COURT: Well, how did that happen? Who's the next witness?

24 MS. LEXIS: Rosa Ramirez, and we also have our fingerprint examiner
25 out there, Gayle Johnson.

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[Juror No. 2 entered courtroom.]

THE COURT: Hi there.

JUROR NO. 2: Hi.

THE COURT: Why don't you come sit up here? You're special.

All right. Go ahead and have a seat. You're Juror No. --

JUROR NO. 2: 2.

THE COURT: -- No. 2, Mirna Hermosillo?

JUROR NO. 2: Yes.

THE COURT: All right. Very good. And I understand my marshal said you told him that you might know one of the witnesses.

JUROR NO. 2: Yes.

THE COURT: So let me swear you in. Please raise your right hand.

JUROR NO. 2: Oh, sure.

THE COURT: All right.

MIRNA HERMOSILLO

[having been called as a juror and being first duly sworn, testified as follows:]

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

JUROR NO. 2: Mirna Hermosillo, M-I-R-N-A H-E-R-M-O-S-I-L-L-O.

THE COURT: All right. Tell us who you think you -- who you know.

JUROR NO. 2: I don't know her by name, but I see her a lot of times at the swim where my son and her daughters go to.

THE COURT: You recognize her by looks?

JUROR NO. 2: Yes, and then --

THE COURT: Do you -- do you know her name?

1 JUROR NO. 2: No. I don't know her name, but I -- I've met her before
2 and I've said hello several times. And we've chatted and our kids go swimming
3 every day at UNLV and I see her at swim meets.

4 THE COURT: So let me -- let me have the State ask you some
5 questions. She -- she knows who's out there and who it might be.

6 JUROR NO. 2: Oh, yes. I don't know her by name. Sorry.

7 THE COURT: Is there a woman witness ready to come in who is out
8 there?

9 MS. LEXIS: Yes, ma'am. There were three individuals, three females
10 that were sitting right outside of the courtroom. Was it one of those individuals?

11 JUROR NO. 2: Yes.

12 MS. LEXIS: Okay.

13 JUROR NO. 2: The one in gray and --

14 MS. LEXIS: Okay.

15 JUROR NO. 2: -- when I -- I --

16 MS. LEXIS: Okay.

17 JUROR NO. 2: -- when I left, I seen her by passing.

18 MS. LEXIS: Okay.

19 JUROR NO. 2: And she recognized me.

20 MS. LEXIS: Okay. Once -- may I, Your Honor, just retrieve the three
21 women who are out there?

22 THE COURT: You can just go -- have them come on in and stand
23 back there by -- by the doors. Don't -- without saying anything.

24 MS. LEXIS: Thank you. We'll do a little bit of a lineup.

25 [Pause in proceedings.]

1 JUROR NO. 2: She's the one that's coming in now, the first one in
2 gray.

3 [Pause in proceedings.]

4 MS. LEXIS: Just stay right there.

5 THE COURT: All right. Who do you recognize?

6 JUROR NO. 2: She -- blond hair, gray suit.

7 THE COURT: Blond hair, gray suit. The lady on the far -- on the far
8 right?

9 JUROR NO. 2: Right, yes.

10 THE COURT: Okay. All right. Well, thank you.

11 So tell us -- well, go ahead. Let's find out how close the relationship
12 is --

13 MS. LEXIS: Oh, okay.

14 THE COURT: -- and what impact it might have.

15 MS. LEXIS: Yes, Your Honor. She is actually -- the person she
16 identified is the latent print examiner in this case, Gayle Johnson. The two other
17 individuals with her are just trainees from the lab who are here to observe.

18 Ms. Hermosillo?

19 JUROR NO. 2: Yes.

20 MS. LEXIS: Okay. You indicated that you had spoken with
21 Ms. Johnson?

22 JUROR NO. 2: Uh-huh. Yes.

23 MS. LEXIS: Yes? Okay. And at UNLV for swim meets?

24 JUROR NO. 2: No. They swim every day, the kids there. That's
25 where they practice. And then also they go to swim meets around town and -- as

1 well as they travel.

2 MS. LEXIS: How many conversations would you say you've had with
3 her?

4 JUROR NO. 2: I would say more than five.

5 MS. LEXIS: Okay. Very lengthy conversations? Do you know about
6 each other's family, your kids, things like that?

7 JUROR NO. 2: No. I just know the kids and a little bit about -- you
8 know, I don't know, you know, what type of work she does or anything like that.

9 MS. LEXIS: Okay. Would you characterize your relationship in such a
10 way that you've already formed an opinion about her, whether it's good or bad,
11 such that you could not set your knowledge of her and what she does aside?

12 JUROR NO. 2: I just know she's a very nice lady. You know, the girls
13 are really good girls, and she just seems very -- like a very nice person.

14 MS. LEXIS: Okay. Would that opinion of her cause you to, let's say,
15 weigh her credibility as a witness differently from others because you have this
16 firsthand knowledge of her?

17 JUROR NO. 2: No. I just -- I just don't want to be in that position
18 where if I -- if I -- if this whole outcome becomes, you know -- I don't know. I don't
19 know. I just don't want to be -- I just -- I want to be civil friends in the -- in the area
20 that is we are --

21 MS. LEXIS: Okay.

22 JUROR NO. 2: I -- I don't know -- I just don't want to be.

23 MS. LEXIS: Okay. So you would feel -- let me -- let me just get to the
24 point. Would you feel like because you see her a lot and you kind of have contact
25 with her, you would feel not as inclined to -- let's say -- do you think that she's

1 affiliated with Mr. Dickerson and myself as the State?

2 JUROR NO. 2: No.

3 MS. LEXIS: Okay.

4 JUROR NO. 2: I don't -- no.

5 MS. LEXIS: Okay. Do you think that, like, she's on our side, you
6 know, for using -- like, kind of a lay witness word? Like, she's on our side. She's
7 not on their side. That kind of stuff?

8 JUROR NO. 2: No. I know that she's here to testify on her behalf of
9 what she has done in her job.

10 MS. LEXIS: Okay.

11 JUROR NO. 2: I understand.

12 MS. LEXIS: Okay. So it's not like -- would you feel bad if you say -- if
13 you, let's say, after deliberating, after you hear all of the evidence and she gets in
14 that -- you vote not guilty, would that -- do you think that would be weird going up
15 to her afterwards and saying hey?

16 JUROR NO. 2: I would feel uncomfortable, yes.

17 MS. LEXIS: Okay. All right. How about if you were to find the person
18 guilty, would you feel -- how would you -- would that change how you feel when
19 you go up to her?

20 JUROR NO. 2: I would feel uncomfortable, yes.

21 MS. LEXIS: Okay. So regardless of the outcome, you would feel
22 uncomfortable?

23 JUROR NO. 2: Very uncomfortable.

24 MS. LEXIS: Okay. But do you think that while you are listening to her
25 testimony you would have an automatic good opinion of her and you wouldn't

1 necessarily weigh her credibility the same way that you would other witnesses?
2 Do you know what I'm saying?

3 JUROR NO. 2: I would -- I would think I would weigh her credibility
4 because I know her a little bit more and I know she's a very good person and she's
5 been honest. You know, I just don't know -- I mean, she's never done anything
6 wrong or, you know, I -- I don't know. I just --

7 MS. LEXIS: Okay. I guess this is -- you know, it's kind of like we're
8 back at jury selection.

9 JUROR NO. 2: Yes.

10 MS. LEXIS: You know, what -- do you think that your personal
11 knowledge or your outside knowledge of Ms. Johnson would cause you to not be
12 fair to Mr. Valentine?

13 JUROR NO. 2: I don't know. I -- I don't want to put myself in that
14 position where I have to see her still after this court date, after this day. I still have
15 to see her.

16 MS. LEXIS: Okay.

17 JUROR NO. 2: And I don't want it to become, you know, an issue or --
18 or anything.

19 MS. LEXIS: You understand she's not --

20 JUROR NO. 2: Uncomfortable. I don't want -- I don't want to be
21 uncomfortable.

22 MS. LEXIS: Okay. You understand she's not a party to this case,
23 right?

24 JUROR NO. 2: Yes, I didn't understand, but I just -- I just don't want to
25 be -- I don't want to feel uncomfortable because my life goes on after this case.

1 MS. LEXIS: Right. Right. Court's brief indulgence.

2 Your Honor, I have no more questions. Thank you.

3 MR. GASTON: No questions, Your Honor.

4 THE COURT: All right. Why don't you step down, go outside, and
5 we'll let you know what we're going to do. Thank you.

6 JUROR NO. 2: Thank you.

7 THE COURT: You did the right thing coming forth. Thank you very
8 much for being honest.

9 MS. LEXIS: Thank you.

10 MR. GASTON: Thank you.

11 [Juror No. 2 exited courtroom.]

12 MR. GASTON: Defense moves to strike, moves to excuse the juror.

13 MS. LEXIS: Submit.

14 MR. GASTON: Thank you.

15 THE COURT: Well, she's formed an opinion as to the credibility and
16 character of -- of the witness. I -- I don't know what this witness is going to say, if
17 it's anything contested. It might just be that she just took fingerprints from -- from
18 the house, in which case it's nothing confrontational or material. I mean, it's
19 material, but --

20 MS. LEXIS: I can make an offer of proof. She --

21 THE COURT: I don't know -- I don't know what the witness is going to
22 testify to, so --

23 MR. GASTON: Well, that not the only --

24 MS. LEXIS: She's an examiner with Metro.

25 THE COURT: Yeah.

1 MS. LEXIS: There were fingerprints lifted from the two -- the Mazda,
2 the white Mazda vehicle, suspect vehicle. She linked it to the defendant, the
3 inside -- driver's side interior window to the defendant's fingerprints, as well as
4 others -- other people's fingerprints on the outside of the passenger side.

5 THE COURT: But does -- now that I think about it, but it's already than
6 just that, even if the testimony was not expected to be confrontational or disputed,
7 she still, you know, associates -- she's going to associate the -- the -- she's going
8 to associate it with the State, right?

9 MS. LEXIS: We'll submit, Your Honor.

10 MR. DICKERSON: Yeah, we'll submit.

11 THE COURT: All right. Yeah. No, I just -- I don't want to -- after a
12 juror has so much time invested, I don't like to easily just go some -- I'm just
13 worried. I think there's enough concerns she might taint the deliberations. I'm
14 going to have to excuse her. We got two alternates.

15 MR. DICKERSON: We understand.

16 THE COURT: I'm going to -- I'm going to ask my marshal to please let
17 Mirna Hermosillo go, that she's been excused. Don't say anything more than that.
18 Don't let any other jurors hear you say anything more than that. All right. Just let
19 her know that she's excused, and I'm going to bring the jurors back to court.

20 MR. GASTON: And, Your Honor, just -- just for purposes of the -- I
21 understand how we -- if I'm misunderstanding, we just move on down the line,
22 essentially. So Juror 13, we now -- it's the first 12, and now Juror 14 is now
23 being --

24 THE COURT: The first alternate now becomes a sitting juror,
25 so No. 13 is now a -- -

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MR. GASTON: And 14 is now the first alternate.

THE COURT: -- deliberative juror.

MR. GASTON: Okay. Thank you.

THE COURT: All right. Thank you. All right. Thank you. Sorry guys.

MS. LEXIS: Thank you. No, thank you, Your Honor. She did the right thing.

MR. DICKERSON: Yeah. Yeah. It's good we got that --

MS. LEXIS: I preferred she do that.

MR. DICKERSON: -- before she even got on the stand. That's good.

MS. LEXIS: Prefer that. She was listening to your instructions.

THE COURT: Huh?

MS. LEXIS: She listened to your instructions.

THE COURT: Yeah. Thank you, marshal.

THE MARSHAL: You're welcome. I just need to time stamp her parking before we let her go.

[Pause in proceedings.]

[Jury reconvened at 11:02 a.m.]

THE COURT: All right. Please be seated everybody.

Welcome back, ladies and gentlemen of the jury. We had to excuse the juror in Seat No. 2. Please don't concern yourself as to why. Nobody did anything wrong. We just needed to excuse that -- that particular juror, which is fine because we have two alternates among you.

We are ready to proceed, and the State may call its next witness.

MS. LEXIS: Your Honor, the State calls Rosa Vazquez Ramirez.

THE COURT: All right.

1 MS. LEXIS: She will be needing the aid of a Spanish interpreter,
2 Your Honor, who is present in court.

3 THE COURT: Very good.

4 Welcome, ma'am. What is your name for the record?

5 THE COURT INTERPRETER: My name is Tania King, T-A-N-I-A,
6 K-I-N-G, for Spanish.

7 THE COURT: Thank you. You can -- you can come step up here
8 now, if you would. And you can set -- we'll get a chair for you. You can have a
9 chair sat right next to the witness chair, if you don't mind. You can get that or the
10 marshal can get it for you.

11 THE COURT INTERPRETER: No. I don't feel really, like, Your Honor,
12 is there a preference in regards to where I am?

13 THE COURT: I prefer that you're on the left of the witness, so when
14 the witness is looking towards the jury.

15 THE COURT INTERPRETER: So I'm -- I'm here and --

16 THE COURT: Yeah.

17 THE COURT INTERPRETER: -- the witness is here?

18 THE COURT: Yeah.

19 THE COURT INTERPRETER: Okay.

20 THE COURT: Very good.

21 THE COURT INTERPRETER: Okay. Thank you. Perfect.

22 THE COURT: Thank you.

23 [Pause in proceedings.]

24 THE COURT: Hello, ma'am. I'm the judge. And the court reporter
25 over here will administer your oath -- or the court clerk.

1 **ROSA ELENA VAZKUEZ RAMIREZ**

2 [having been called as a witness and being first duly sworn, testified through an
3 interpreter as follows:]

4 THE CLERK: Please state and spell your first and last name for the
5 record.

6 THE COURT: Can you spell Vazkuez, please?

7 THE WITNESS: My name is Rosa Elena Vazkuez Ramirez. Okay.
8 It's V-A-Z-K-U-E-Z.

9 THE COURT: Did you say Vazkuez Ramirez?

10 THE WITNESS: Yes.

11 THE COURT: All right. Spell Ramirez then.

12 THE WITNESS: R-A-M-I-R-E-Z.

13 THE COURT: You may proceed.

14 **DIRECT EXAMINATION**

15 BY MS. LEXIS:

16 Q Good morning, ma'am.

17 A Good morning.

18 Q Okay. Ma'am, can you please move the microphone closer to you? If
19 you can. Thank you. You're a little bit soft spoken so I need you to speak up
20 because this is being recorded, your testimony. Okay?

21 A Okay.

22 Q Okay. Okay. Ma'am, do you speak a little bit of English?

23 A Yes.

24 Q Okay. But do you feel more comfortable using a Spanish interpreter?

25 A Yes.

1 Q Okay. I would like to turn your attention to May 28th, 2016; were you
2 living at 1104 Leonard in Las Vegas, Clark County, Nevada?

3 A Yes.

4 Q Who were you living -- is that a home?

5 A Yes.

6 Q Who were you living at that home with?

7 A With my husband.

8 Q What's your husband's name?

9 A Lazaro Bravo-Torres.

10 Q Okay. I want to turn your attention specifically to early in the morning,
11 about 7:00 a.m. What were you doing at that time?

12 A I was about to leave for work.

13 Q What was your husband doing?

14 A He does landscaping.

15 Q When you were about to leave for work, were you going to leave by
16 yourself or with your husband?

17 A With my husband, because around that time I was helping him.

18 Q Okay. So when you said you were about to leave the house, were you
19 still inside the house or outside the house?

20 A I was coming out of the house and locking the gate.

21 Q Where was your husband?

22 A Parked outside in the street.

23 Q Okay.

24 A Waiting for me.

25 Q Okay.

1 MS. LEXIS: Your Honor, I move to -- or excuse me. May I publish
2 what's already been admitted by way of stipulation, State's Exhibit 152
3 through 170?

4 THE COURT: Yes, you may.

5 MS. LEXIS: Thank you.

6 BY MS. LEXIS:

7 Q Ms. Vazquez Ramirez, I'm showing you what has been previously
8 admitted at State's Exhibit 152; do you recognize what's shown in this photo?

9 A Yes. That's my house, the pickup truck, and the trailer.

10 Q Okay. So when you were telling the jury that you were closing the
11 gate, is that gate shown in this photo?

12 A Yes.

13 Q Okay. Can you touch the screen and make a mark, a circle, showing
14 where the gate is?

15 A [Witness complies.]

16 Q Okay. And you said to the jury that your husband was in the truck. Is
17 that the truck the truck that we see in this photo?

18 A Yes.

19 Q Was your husband in the driver's seat or in the passenger's seat?

20 A He was on the driver's seat.

21 Q Okay. Did something happen on that day that's causing you to have to
22 testify today?

23 A Can you repeat the question?

24 Q Did something happen to you while your husband was in the truck
25 waiting that particular day?

1 A Yes.

2 Q Can you tell the jury what happened?

3 A When I was locking the gate, I saw a young man walking towards me
4 from the corner, towards me to where I was -- towards where I was, because the
5 house, that's the second house from the corner.

6 So then when I was walking towards the pickup truck, I saw the young
7 man coming closer. I stared at him, and I believe I -- I left with him, because I -- I
8 think I saw that he was sad.

9 Q Oh, this person that walked up to you or in your direction, what race
10 was he?

11 A He was a dark-skinned person.

12 Q Okay.

13 A And he had his hands underneath his shirt.

14 Q Okay. And so when you say he was walking towards you and he got
15 closer, was -- where -- can you show in State's Exhibit 152 where it was that he
16 ended up or where he stopped?

17 A In the picture, the situation, the pickup truck is backwards --

18 Q Okay.

19 A -- because when my husband took it out of the house, it was --

20 Q Okay.

21 A -- facing the other way, the truck.

22 Q Okay. Maybe this isn't the best picture. I'll take this apart, okay?

23 When the young, black man approached you and your husband, did he eventually
24 stop at the driver's side of the truck or the passenger's side of the truck?

25 A The -- to the driver's seat.

1 Q Okay. Where -- near where your husband was sitting?
2 A Yes.
3 Q So once he gets to that side of the truck, what do you see happen?
4 A I opened the door.
5 Q To the passenger's side or the driver's side?
6 A The passenger's side.
7 Q Okay. What happened?
8 A I opened the door, and I got in the truck. I heard the young man asking
9 my husband where was the street or avenue Martin Luther King.
10 Q Did your husband say anything back to -- to this man?
11 A So when he was explaining the young man where -- where it was, the
12 young man put the gun on my husband's shoulder.
13 Q Okay. And you saw this?
14 A Yes, because my husband said a bad word.
15 Q Okay. So your husband said something that caused you to look over
16 at him?
17 A Yes. My husband said, Oh, shit.
18 Q Okay.
19 A Then I turned around and saw the gun.
20 Q Were you already seated on the passenger's side of the truck?
21 A Yes.
22 Q Had you already --
23 A I was placing my bag in the floor.
24 Q Okay. Right in front of the -- the front passenger seat?
25 A No. Right in front of where the middle thing is.

1 Q Okay. Had you already shut your passenger's side door?

2 A Yes.

3 Q Okay. So after your husband says, Oh, shit, and you see the gun
4 pointed at your husband's chest, what's the next thing that happens?

5 A So I -- I did an expression of being scared.

6 Q What expression was that?

7 A I said, Oh, my God. And very slowly I grabbed the handle. So when
8 the young man had my husband get out of the truck -- so then I opened the -- the
9 door and tried and get out and run.

10 Q Were you able to get out and run?

11 A I just got to get out of the truck. He yelled at me, Don't move.

12 Q What was he -- when he said, Don't move, was the gun pointed at
13 anyone?

14 A So he said, Don't move, and turn around. I turned around and the gun
15 was trade -- pointing at me.

16 Q Okay. When you turned around, were you still near the passenger's
17 side of your truck?

18 A Yes.

19 Q Okay. And at this point you said the young man had asked your
20 husband to get out of the vehicle; is that right?

21 A Yes.

22 Q So I'm going to show you State's Exhibit 164. Okay. Is this the
23 passenger's -- the front passenger's side of your truck?

24 A Yes.

25 Q Does --

1 A It's where I was.

2 Q It's where you were standing?

3 A Yes.

4 Q Okay. So you were -- correct me if I'm wrong. You had opened the
5 door, tried to come out, he yelled at you, and you told the jury that you then turned
6 around. Were you turning back towards the inside of the truck?

7 A Yes. I turned around towards the inside of the truck.

8 Q Okay. And so once you turned around -- I'm going to show you State's
9 Exhibit 162 -- were you looking through the truck towards where your husband
10 was?

11 A Yes.

12 Q Does this photo show where your husband was?

13 A Yes.

14 Q Okay. Can you tell us where? Actually, excuse me, let me show you
15 State's Exhibit 166; can you see where your husband was when you were facing
16 that -- that part of the truck?

17 A Yes. In front of me, close to the [indiscernible] also.

18 Q Okay. Can you circle the area, same thing on the screen?

19 A [Witness complies.]

20 Q Okay. And so it -- that's where your husband was?

21 A Yes.

22 Q Where was the young man with the gun?

23 A Here.

24 Q Okay. So towards the -- if you're looking at the photo, the right-hand
25 side of the circle, where your husband is. Okay. So now that you're turned

1 around, your husband is out of the vehicle, what happens next?

2 A The -- the young man was in front of -- in front of my husband.

3 Q Where was the gun?

4 A After -- when he tell -- he told me to not move because he was going to

5 shoot me, he turned the gun to my husband's chest.

6 Q Okay. And what happened after the husband was -- after the gun was

7 pointed at your husband's chest?

8 A He started to search in his pants, because my husband was telling him

9 that he won't carry his wallet with him.

10 Q Did the young man with the gun ask you or your husband for a wallet

11 or anything else?

12 A Yes. From the beginning he was asking for money.

13 Q Okay. Was he speaking in English?

14 A Yes.

15 Q Okay. And when you were speaking back, did you speak back in

16 English?

17 A Yes.

18 Q And so -- okay. So your husband said, I don't have a wallet. The man

19 is searching your husband. What happens next?

20 A Then he climbs a little bit in the truck, and opening the -- that middle

21 thing, and he moved everything there to verify if it was there or not.

22 Q If what was there?

23 A The wallet or something that he could find.

24 Q Okay. And did he take anything from that -- from that area of the

25 truck?

1 A Yes. He took my purse.

2 Q Okay. What kind of purse did you have?

3 A A small one.

4 Q Okay. What was in your purse?

5 A My cell phone.

6 Q What brand is your cell phone?

7 A Samsung.

8 Q Okay. About how big?

9 THE COURT INTERPRETER: She said, I don't remember exactly.

10 There's a lot of time.

11 BY MS. LEXIS:

12 Q Okay.

13 A It was almost like this one, the size.

14 Q Okay.

15 A All black.

16 Q Okay. Okay. So you had a Samsung phone. What else in your
17 purse?

18 A So makeup.

19 Q Okay.

20 A My cards, bank cards. My bank cards, my ID card, some money.

21 Q Do you recall approximately how much money was in your purse?

22 A \$40 or \$50 with change.

23 Q Okay. Can you see in State's Exhibit 166 where your purse was
24 located?

25 A In front of here.

1 Q Okay. So, like, the floor portion in front of, like, the center console?
2 A Yes.
3 Q So when the -- the man with the gun reached inside of the truck, you
4 said he kind of climbed on, how close did his face get to you?
5 A Like, only the seat in between.
6 Q Okay. Okay. At that time did you have an opportunity to look at his
7 face?
8 A Yes. All the time.
9 Q Okay. So the whole time you -- you looked at his face?
10 A Yes.
11 Q Okay. After he took your purse, what happens next?
12 A He tells my husband, Get in the truck, take off, and don't try to -- to turn
13 and -- turn around and look. And that's what -- with it.
14 Q Okay.
15 A And when we were turning around the corner --
16 Q What happens next?
17 A -- I called 911.
18 Q Okay.
19 MS. LEXIS: Court's brief indulgence.
20 Your Honor, may I approach the witness with what's been previously
21 marked as State's Proposed Exhibit 176?
22 THE COURT: Yes.
23 BY MS. LEXIS:
24 Q Ma'am, I'm showing you what has been previously marked as State's
25 Proposed Exhibit 176. Okay. It's a CD, correct?

1 A Yes.

2 Q Okay. Have you seen this CD before?

3 A Yes.

4 Q How do you know?

5 A Because I have heard the recording -- my recording of when I called
6 the police.

7 Q Okay. And after listening to the recording, did you sign your name and
8 put the date?

9 A Yes.

10 Q When you listened to it earlier, was it your voice on the call?

11 A Yes.

12 Q And it recorded your 911 call, as you remember it?

13 A Yes. It's my voice, and I remember it perfectly.

14 MS. LEXIS: Your Honor, I move to admit State's Exhibit 176 into
15 evidence.

16 MS. MACHNICH: No objection, Your Honor.

17 THE COURT: It's admitted.

18 [State's Exhibit No. 176 admitted.]

19 MS. LEXIS: Permission to publish?

20 THE COURT: Yes.

21 MS. LEXIS: May I retrieve the phone?

22 THE COURT: Yes.

23 [Audio played.]

24 BY MS. LEXIS:

25 Q Was that the 911 call you made after you and your husband were

1 robbed at gunpoint?

2 A Yes.

3 Q Did the police show up?

4 A Yes.

5 Q Did they have you write out a statement?

6 A Yes.

7 Q Did they ask your husband to write a statement as well?

8 A Yes.

9 Q Ma'am, and I don't mean any disrespect with this question, does your
10 husband Lazaro read or write?

11 A He -- he can't read nor write.

12 Q Okay. So did you help him with writing out a statement for the police?

13 A Yes. I asked police officer for permission to do that. I explained to him
14 that he was unable to read or write, and he told me to write down whatever he
15 would say.

16 Q Okay. And so did you husband your husband or did your husband tell
17 you what to write?

18 A Yes. He was telling me what he wanted me to write down.

19 Q Okay. Okay. And -- but you wrote your own statement for yourself?

20 A Yes. I wrote my own according to what I saw.

21 Q Okay. After the police showed up, were you asked -- were you and
22 your husband asked to go to a separate location to see if you could identify
23 someone they had in custody?

24 A Yes.

25 Q Okay. Who went first or did you and your husband go together or

1 separately?

2 A No.

3 Q Separately?

4 A Yes.

5 Q Who went first?

6 A My husband.

7 Q Okay. And you waited at your house?

8 A Yes.

9 Q Okay. Did you leave after your husband returned?

10 A Yes.

11 Q Okay. Did you ride in the police car?

12 A Yes.

13 Q Okay. Did you ride in the front seat or the back seat?

14 A The back seat.

15 Q Okay. Did they ask you to do that or did you ask to sit there?

16 A They told me to sit -- and to sit in the back.

17 Q Okay. Did they take you to an apartment complex?

18 A Yes.

19 Q Was it close or far from your home?

20 A Close.

21 Q Okay. About how many minutes did it take to drive to the apartment?

22 A Two to three minutes.

23 Q Okay. Once you were at the apartment, do you remember -- I'm going

24 to be approaching with what's been marked -- page 1 of what's been previously

25 marked as State's Proposed Exhibit 10.

1 Do you recall being given this form?

2 A Yes.

3 Q Okay. Do you recall a Spanish-speaking detective talking to you about
4 the instructions?

5 A Yes.

6 Q Translating from English to Spanish?

7 A Yes.

8 Q Do you remember being read the instructions before you were asked
9 to identify?

10 A Yes.

11 Q Okay. Did you understand the instructions?

12 A Yes.

13 Q Did you remain in the car, ma'am?

14 A Yes.

15 Q And at some point were you asked to look out of the patrol car?

16 A Yes.

17 Q Did the police have two individuals standing there for you to look at?

18 A Yes.

19 Q Okay. When you looked out the window or out of the -- through the
20 patrol car, did you recognize the individual who robbed you?

21 A Yes.

22 Q Did you tell the police that you identified the person?

23 A Yes.

24 Q I'm going to show you what's been previously marked and admitted as
25 State's Exhibit 52; do you recognize this photo?

1 A Yes.

2 Q State's Exhibit No. 53; do you recognize this?

3 A Yes.

4 Q What is this a photo of?

5 A The face is that of the young man who robbed us, but he wasn't like
6 that.

7 Q Okay. What do you mean?

8 A That -- it means that he's got his hair shorter.

9 Q Okay.

10 A And he's shirtless. Oh, he's got shorts.

11 Q Okay.

12 A Short pants.

13 Q So his clothing changed?

14 A Yes.

15 Q Okay. And you indicated that his hair seems a little shorter in this
16 photo?

17 A Yes. Like he's had a haircut.

18 Q Okay. But you also said that the face is the man who robbed you?

19 A Yes.

20 Q Okay. When you told the police this, did they then ask you to write out
21 a statement on the form? State's Exhibit No. 10, page 1; towards the middle,
22 under Statement, did you write that statement?

23 A Can I see? Yes. It says the same.

24 Q Okay. Can you please read what you wrote and we'll have the
25 Spanish interpreter interpret what you wrote?

1 A I went over there to see the man that robbed us -- who robbed us and
2 put the gun. I believe he is the one, but he is -- sorry. Because of his height --
3 because of his hair, his face, only that he didn't -- he wasn't wearing the same
4 clothes, I would say I'm 95 percent that he is the one.

5 Q Okay. After you wrote out that statement, did you sign underneath?

6 A Yes.

7 MS. LEXIS: Your Honor, at this point I move to admit page 1 of State's
8 Proposed Exhibit No. 11 -- or excuse me, No. 10.

9 THE COURT: Is that a statement?

10 MS. LEXIS: Yes. It's a showup witness instructions.

11 THE COURT: Anything from the defense?

12 MS. MACHNICH: Nothing, Your Honor.

13 THE COURT: All right. Then it will be admitted.

14 [State's Exhibit No. 10 admitted.]

15 BY MS. LEXIS:

16 Q Ms. Vazquez Ramirez, did you also help your husband write out a
17 statement on his witness form?

18 A Yes.

19 Q Okay.

20 MS. LEXIS: Excuse me, I apologize, Your Honor. What I moved to
21 admit initially should have been Rosa Vazquez's showup witness instructions,
22 which was State's Proposed Exhibit 11.

23 THE COURT: All right. The admission of 10 is withdrawn, and it's 11
24 that's admitted.

25 MS. LEXIS: Correct.

1 [State's Exhibit No. 10 withdrawn, State's Exhibit No. 11 admitted.]

2 MS. LEXIS: And now may I approach with what's been previously
3 marked as State's Proposed Exhibit No. 10.

4 THE COURT: You may.

5 MS. LEXIS: Just page 1.

6 BY MS. LEXIS:

7 Q I'm showing you, ma'am, State's Proposed Exhibit No. 10, and I'm
8 drawing your attention to the statement portion; did you write this for your
9 husband?

10 A Yes.

11 Q When did you write that for your husband?

12 A After I filled out my own.

13 Q Okay. And can you please, the same way that you read your
14 instructions or statement, could you please read what you wrote for your husband?

15 A I went there to see the man. I saw his face. It's him. The height, the
16 skinny, the hair -- I don't see it's the same as if he had combed his hair or he cut it.
17 The shorts. And the man would have all his clothing black. T-shirt and pants. I
18 say there is a 90 percent chance that he is.

19 Q Okay. And so the hair was different?

20 A Only that.

21 Q And also the clothing was different?

22 A Yes, also.

23 Q So you're telling the jury that you wrote what your husband told you to
24 write?

25 A Yes.

1 Q Ma'am, can you see me from where you're sitting?

2 A Yes.

3 Q Okay. Could you please stand up, with the court's permission?

4 Ma'am, I'm going to ask you to take a look around the courtroom, and let us know
5 if you see the man who robbed you here in court today?

6 A No. I don't see him like it was.

7 Q Okay. Do you need to come closer?

8 A A little bit.

9 MS. LEXIS: Permission, Your Honor?

10 THE COURT: Yes. You can walk up to the lectern.

11 That's good. Will the defendant please stand? Thank you, sir.

12 BY MS. LEXIS:

13 Q Do you recognize anyone?

14 A It's not him. It's way taller. This gentleman is way taller than the other
15 young man.

16 Q Okay. All right. Please take a seat.

17 MS. LEXIS: I have no more questions. Thank you.

18 THE COURT: Cross-examine.

19 MS. MACHNICH: Your Honor, we have no questions for this witness.

20 Thank you.

21 THE COURT: All right. Anything from the jurors? I don't see any
22 hands from the jurors, so I'm going to go ahead and excuse the witness, then.

23 All right. Thank you very much for your time. You are excused.

24 THE WITNESS: I just wanted to say one thing.

25 THE COURT: Well, one moment.

1 MS. LEXIS: No. There needs to be a question posed, so.

2 THE COURT: Yeah. There's no question pending, so I can't -- I can't
3 allow you to say anything. All right.

4 Do you want -- do you want to find out --

5 THE COURT INTERPRETER: It's something important.

6 THE COURT: -- what she has to say outside the presence of the --

7 MR. GASTON: Yes, Your Honor. That would be fine.

8 MS. LEXIS: She can tell us outside the presence.

9 THE COURT: All right. Well, so should I excuse the jurors temporarily
10 and then -- or should I just let them go to lunch?

11 MR. GASTON: Yeah. I was going to suggest a lunch break.

12 MS. MACHNICH: Yeah.

13 THE COURT: All right. Tell you what, ladies and gentlemen, why
14 don't I --

15 Ma'am, stay right here. You stay here.

16 Jurors, I'm going to excuse you, but I want you to just wait right outside
17 the courtroom in case I need to have you come back, depending on what this
18 witness is going to say. But I'm probably going to excuse you for your lunch break.
19 Let me -- let me go ahead and inform and excuse you for lunch break, but wait out
20 there in case the marshal needs to bring you back in. All right.

21 All right. You're admonished during this lunch break, don't
22 communicate among yourself or with anyone else about the trial or the subject
23 matter of the trial; do not communicate at all with any of the parties, attorneys, or
24 witnesses; do not seek or obtain information or comments about the case from any
25 source; do not read, watch, or listen to any report or commentary about the case;

1 do not perform any research or investigation; don't form or express any opinions.
2 And be back here at 1:10, lined up ready to go at 1:10. But please
3 don't depart. Wait, like, two or three minutes. Wait a few minutes until my marshal
4 comes and tells you what to do.
5 All right. You're excused.
6 Marshal, keep them close right now.
7 You wait here, ma'am. Thank you.
8 [Jury recessed at 12:02 p.m.]
9 THE COURT: We're outside the presence of the jury.
10 All right. Ma'am, you said you needed to -- to say something, but what
11 is it you needed to tell the court?
12 THE WITNESS: It's been so long.
13 THE COURT: Right.
14 THE WITNESS: And now I don't remember -- right now -- his face, his
15 own face. I'm -- I'm in doubt. I feel that it is him, but I might be wrong. I might be
16 wrong.
17 THE COURT: I understand for sure. It's okay. Thank you for --
18 anything else you want to say?
19 THE WITNESS: That it is him.
20 THE COURT: That what is him?
21 THE WITNESS: I believe he's the one.
22 THE COURT: The gentleman here -- somebody here in court or
23 somebody who saw it or what are you talking about?
24 THE WITNESS: The dark-skinned gentleman.
25 THE COURT: Which dark-skinned gentleman?

1 THE WITNESS: The young man, the one you showed me.

2 THE COURT: In the picture?

3 THE WITNESS: Yes.

4 THE COURT: All right. Do you guys want to voir dire her?

5 MS. MACHNICH: Yes.

6 MR. GASTON: What -- what exactly is the question here? I mean, is
7 the State potentially going to recall her --

8 MS. LEXIS: Yeah, we are.

9 MR. GASTON: -- to -- to bring this --

10 THE COURT: Well --

11 MR. GASTON: Let's not, Yeah, we are, and say we request it. I'm
12 just -- is that the intention here?

13 THE COURT: I don't have any intention other than I'm just trying to
14 find out what she wanted to tell the court.

15 MR. GASTON: Okay. I was just clarifying. I'm not objecting to
16 anything or have a position. I was just clarifying on what we're doing exactly.

17 THE COURT: All we're doing is finding out what she wanted to say,
18 and I'm not understanding her statement.

19 MR. GASTON: Okay.

20 THE COURT: She said he is the one, and I don't know what that
21 means.

22 MR. GASTON: Okay.

23 THE COURT: Let me ask -- you guys both can voir dire to find out
24 what she's trying to say.

25

VOIR DIRE EXAMINATION

1 BY MS. LEXIS:

2 Q Ma'am, are you saying now that you do recognize the person the judge
3 showed you, the one who stood up as the man who robbed you?

4 A Yes.

5 Q Okay.

6 THE COURT: Are you done with your voir dire?

7 MS. LEXIS: I am done.

8 THE COURT: Did the defense want to say anything?

9 MR. GASTON: Briefly.

10 **VOIR DIRE EXAMINATION**

11 BY MR. GASTON:

12 Q A few -- a few seconds ago you said you have a doubt?

13 A Yes, because the picture I saw here, in seeing him in person, it
14 confused me a little. But now I remember exactly his face. Also remember that
15 when the detectives told me that they had found my cell phone on him and my
16 bank card. It's impossible that there was another person who could have those
17 things.

18 Q And so is that why you're confident that it's him?

19 A Yes. I remembered that.

20 MR. GASTON: Thank you, ma'am.

21 THE WITNESS: Also -- also because I now fully remember his face.

22 MR. GASTON: Okay. Thank you, ma'am.

23 THE COURT: Okay. So what do you guys want to do?

24 MR. GASTON: Your Honor, if we can ask the witness to step outside
25 while we address an issue about recalling her. The State's intention is to recall

1 her. I want to object and explain why, but I don't want to in front of the witness.

2 THE COURT: Okay. Marshal, have her step outside that door right
3 there.

4 [Witness exited courtroom.]

5 THE COURT: Marshal, tell the jurors to stay. Go -- go tell them to
6 stay. Go tell the jurors to stay.

7 All right. Go ahead. Who -- who's talking next?

8 MR. GASTON: Well, I guess it's my objection. I'm -- just --

9 THE COURT: Well, but what are you objecting to? Because the State
10 didn't make any requests yet.

11 MR. GASTON: I'm assuming the State is going to recall her to have --

12 MS. LEXIS: We will.

13 MR. GASTON: -- to have the identification do again.

14 MS. LEXIS: We will be asking.

15 THE COURT: So you are requesting that she be recalled?

16 MS. LEXIS: Correct.

17 THE COURT: Because she hasn't actually sat down yet, so it's not
18 recalling her.

19 MS. LEXIS: Correct.

20 MR. GASTON: Or more -- more questions.

21 THE COURT: All right. Go ahead.

22 MR. GASTON: Right. So I'm objecting to doing the in-court
23 identification again. In-court identifications are not allowed as blanket things.
24 They're only allowed certain situations. I don't have the case off the top of my
25 head, the name, but I will get it by the time we come back after lunch. And

1 essentially, the analysis is it violates due process if the in-court identification is
2 unnecessarily suggestive and there wasn't the sufficient identification one out of
3 court.

4 THE COURT: Who is suggesting anything?

5 MR. GASTON: Well, first, I mean, we had literally had the defendant
6 stand up. So he's the only black guy here, standing up --

7 THE COURT: Yeah.

8 MR. GASTON: -- essentially saying, Is this the man? We didn't just
9 say, Pick him. We said, Is this the guy? And she said, No. She said, He's much
10 taller than the person who did this. Literally our defense. The person who did this
11 is five inches shorter than --

12 THE COURT: Well, before she even got off the stand, she said she
13 needed to clarify. So --

14 MR. GASTON: Well, she had a question.

15 THE COURT: -- I'm bringing the jury in. We're going to hear --

16 Marshal, bring the jury back in. We're wasting too much time.

17 She -- literally, before she even finished saying it's not him, she wanted
18 to clarify, and everyone -- and cut her off. So it's --

19 MR. GASTON: She --

20 THE COURT: -- not really fair to cut her off in the middle of her
21 testimony.

22 MR. GASTON: She just said that the reason she --

23 THE COURT: You can explore that on cross. All right. Or take it up
24 on appeal. I mean, she wanted to clarify. She wanted to clarify. She's not even
25 off the stand yet, and she wants to clarify something she said. You -- you can't just

1 take bits and pieces of her testimony to spin a tale. All right.

2 MR. GASTON: Well, she -- okay.

3 THE COURT: So we're going to hear from her. You can make more
4 of a record if you want, but the jury's coming back in.

5 [Jury reconvened at 12:10 p.m.]

6 THE COURT: All right. Jurors are back. Bring the witness back in,
7 marshal.

8 [Witness reenters courtroom.]

9 THE COURT: Please retake the stand. You understand you're still
10 under oath. Do you understand that, ma'am?

11 THE WITNESS: Yes.

12 THE COURT: All right. And that means you are required to tell the
13 truth; do you understand that?

14 THE WITNESS: Yes.

15 THE COURT: All right. Before we excuse the jury, you said you
16 needed to say something more. All right. I'll let the -- you can't just volunteer a
17 statement. It has to be subject to questions. So continue with the questioning.
18 The State gets to go, and then the defense.

19 MS. LEXIS: Ma'am --

20 THE COURT: And anything that she said during the break is fair game
21 for discussion or questioning.

22 Go ahead.

23 **FURTHER DIRECT EXAMINATION**

24 BY MS. LEXIS:

25 Q Can you please tell the jury what it is that you told the judge about

1 identifying the person who robbed you in court?

2 A That I remembered that when I came here the other time to a hearing, I
3 was shown some pictures where they had my -- my cell phone and my bank card.

4 Q Okay. Do you remember testifying at is it grand jury in this building?
5 About a year ago, do you remember testifying at the grand jury, the time you were
6 shown these pictures?

7 A Yes. Yes. They -- they asked me questions. Also, the attorney -- they
8 asked me if I -- if I could recognize my cell phone and my card.

9 Q Okay. We'll go -- we'll go through that in just a minute, okay? What
10 else did you tell the judge about whether you recognize the person who stood up
11 as being the person who robbed you? What did you tell Judge Scotti?

12 A Well, that he is, in fact, the person that robbed me.

13 Q Okay. What causes you to change your mind and now say that he was
14 the person?

15 A Because in the pictures I do recognize him as him, and right now,
16 since he's got a mustache and some beard, he looked sort of different.

17 Q Okay.

18 A But my -- I thought it was him. I know it is him.

19 Q Okay. I'm going to show you State's Exhibit 134. I want to turn your
20 attention to the top card; do you recognize that -- that card, the red one?

21 A Yes. That's my card.

22 Q Okay. I'm going to show you State's Exhibit 121; do you recognize
23 what's in that photo?

24 A Yes. It's my cell phone.

25 Q I'm going to approach with what's been previously marked and

1 admitted at 37B.

2 THE COURT: 37 what?

3 MS. LEXIS: B.

4 THE COURT: B as in boy, okay.

5 BY MS. LEXIS:

6 Q Do you recognize that?

7 A Yes.

8 Q What do you recognize it to be?

9 A Because I remember it was black, Samsung.

10 Q Okay. Does it look like your phone?

11 A Yes. Because this one is also a Samsung. That one is older.

12 Q Okay. Ma'am, obviously, he did not have permission to have your
13 debit card, shown in State's Exhibit No. 134. No one had permission to have your
14 card.

15 A No.

16 Q And where was this card? Was this in your purse, in your wallet?

17 Where was it?

18 A Inside my purse.

19 Q The purse that was taken during the robbery?

20 A Yes.

21 MS. LEXIS: Nothing further. Thank you.

22 THE COURT: Mr. Gaston.

23 MR. GASTON: Ms. Machnich's got it.

24 MS. MACHNICH: Thank you.

25

CROSS-EXAMINATION

98

1 BY MS. MACHNICH:

2 Q All right. Very briefly. Just a few minutes ago, you stood within 10 feet
3 of Mr. Valentine and said that he was way taller than the robber, correct?

4 A Yes.

5 Q Okay. After the jury departed and we had a chance to speak, with His
6 Honor present, you described that you were confused a little, seeing him in court
7 today.

8 A Yes.

9 Q And that you had a doubt?

10 A Yes.

11 Q Specifically you stated that you remember when the detectives came
12 and told you they found your cell phone and cards on Mr. Valentine. They told you
13 that, didn't they, ma'am?

14 A Yes. Yes, they told me that they had found among his belongings in
15 his apartment.

16 Q Okay. And you thought it was impossible another person could've had
17 those things?

18 A Yes.

19 Q Okay.

20 MS. MACHNICH: Court's indulgence.

21 We'll pass the witness.

22 Thank you, ma'am.

23 MS. LEXIS: Briefly, Your Honor. At this time I move to have marked
24 for identification and admission as --

25 MR. GASTON: That's beyond the scope.

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MS. MACHNICH: Your Honor, may we approach, please?

THE COURT: Yeah, sure.

[Bench conference transcribed as follows:]

THE COURT: What's up?

MS. MACHNICH: That's beyond the scope of my cross. It's gone back and forth several times. She's said several times she's speak -- this witness. This is beyond the scope of my cross.

MS. LEXIS: I would like to go into and ask her, because she indicated during cross-examination that the detectives told her that the card and the phone had been found.

THE COURT: Oh, yeah.

MS. LEXIS: I have reason to believe that that was not at the scene and want to clarify the timeline. That was during her grand jury testimony. And so that's what she --

THE COURT: Yeah, I thought she -- I thought she was saying that -- that the time of the first identification that the detectives told her that -- that the defendant was the one found with her cards.

MS. LEXIS: Correct.

MS. MACHNICH: And that's --

THE COURT: But she didn't say that at the --

MS. LEXIS: She did not say that.

THE COURT: Okay. Well, it's -- it's part of the scope of your direct -- or your cross still.

MR. GASTON: Okay. Thanks.

[End bench conference.]

1 **REDIRECT EXAMINATION**

2 BY MS. LEXIS:

3 Q Ma'am, you just told the jury that the detectives told you that your
4 phone was -- your phone and card were found in the defendant's apartment; do
5 you remember that? Do you remember saying that?

6 A Yes.

7 Q Okay. When were you told that?

8 A Also, you showed me the pictures. The first time I was here you also
9 showed me the pictures.

10 Q Okay.

11 A And also you showed me his picture. And also you asked me if it was
12 him and I said yes. And right now I got confused because I'm a little bit nervous.

13 Q Okay. So do you remember testifying at the grand jury? I was -- I
14 questioned you. It was in this building. Is that when -- is that the same time that
15 you were shown State's Exhibit 53? I showed you this picture. Yes?

16 A Yes.

17 Q I also showed you 121, this picture?

18 A Yeah.

19 Q And I showed you 134, this picture?

20 A Yes.

21 Q Okay. Did you find out about your phone and your card being found in
22 the apartment during that time, the day that I showed you these photos?

23 A Yes.

24 MS. LEXIS: I move to admit State's Exhibit 182, grand jury transcripts.

25 THE COURT: Is that the transcript of her testimony?

1 MS. LEXIS: Yes, sir.

2 MS. MACHNICH: And pursuant to previous conversations, it's
3 admitted.

4 [State's Exhibit No. 182 admitted.]

5 THE COURT: All right. Then it's subject to prior discussions on the
6 record. Anything else?

7 MS. LEXIS: Nothing further.

8 THE COURT: All right. Then recross.

9 **RECROSS-EXAMINATION**

10 BY MS. MACHNICH:

11 Q Ma'am, just to be perfectly clear, detectives also told you the items had
12 been found in the apartment, correct?

13 A Yes. Also, they told me that.

14 Q The detectives?

15 A Yes.

16 Q Okay. I just wanted to be clear.

17 THE COURT: Thank you.

18 MS. MACHNICH: Thank you.

19 THE COURT: Anything from the jurors? This is your chance to ask
20 any questions. I don't see any hands.

21 All right. You're excused, ma'am. Thank you.

22 All right. Ladies and gentlemen of the jury, the admonishment that I
23 just read to you right before the last break still applies. So remember that entire
24 admonishment. You know what to do and not to do. Please conduct yourselves
25 appropriately. Don't do any research, investigation; don't talk about the case; and

1 don't talk to any of the witnesses or attorneys or the parties at all. All right.

2 We'll see you back here in one hour, let's say 1 -- 1:30. All right? All
3 right. We'll see you back here at 1:30, folks.

4 [Jury recessed at 12:24 p.m.]

5 THE COURT: Please be seated everybody. Okay. We're outside the
6 presence of the jury.

7 Mr. Gaston, I didn't want to keep the jury waiting too long, because I
8 knew what I was going to do and my mind wasn't going to be changed, but I did
9 curtail your ability to make the complete record. If there's anything more you want
10 to put on the record about the suggestiveness of the identification in court and this
11 witness's conduct in regards thereto, you have the floor, sir.

12 MR. GASTON: Sure. I mean, the arguments that I was going to
13 make -- I summed up the general argument I was going to make. Essentially,
14 doing a two in-court identification after the first one resulted in her saying it wasn't
15 him, even with the overly suggestive he's standing up, she's six feet away from the
16 guy saying it wasn't her, doing a second one --

17 THE COURT: I thought that having him stand up would actually be a
18 more neutral and fair way of her trying to identify him, than having him just sit and
19 she can't --

20 MR. GASTON: Fair enough. We did --

21 THE COURT: -- the height and everything.

22 MR. GASTON: Fair enough. We didn't object. And it works in our
23 favor. She said he was much taller than the -- I mean, it worked out for us. I'm
24 not -- I'm not -- the point was more doing -- it's not that the first one was
25 unnecessarily suggested. That's not the point I'm making.

1 THE COURT: Right.

2 MR. GASTON: It's that doing a second one after her saying that it's
3 not him, when the basis for her now thinking it's him -- it went with it's not him to
4 I'm just not sure, I have a doubt, but I just believe it's him, to I'm now confident it's
5 him, all in the space of 30 seconds. And on my voir dire, it became apparent that a
6 large portion of the reason as to why she believed it was him was because she just
7 can't think of why he would have her stuff if it wasn't him.

8 THE COURT: Well, you can certainly argue that to the jury.

9 MR. GASTON: And that -- that was my position.

10 THE COURT: I won't preclude you from doing that. But all right,
11 anything else you wanted to put on the record regarding that?

12 MR. GASTON: No, sir.

13 THE COURT: Did the State want to put anything on the record
14 regarding that?

15 MS. LEXIS: No, Your Honor.

16 THE COURT: All right. Then we'll have our break, and I'll see you all
17 back here at 1:30.

18 MR. GASTON: Just, is the witness admonished --

19 MS. LEXIS: Oh, Your Honor, could you please admonish Ms. Rosa --

20 THE COURT: Oh, yes, she is.

21 MS. LEXIS: -- Vazquez Ramirez on the record not to discuss her
22 testimony or this case with her husband --

23 MR. DICKERSON: Who will be called in this case.

24 MS. LEXIS: -- who will be testifying later this afternoon.

25 THE COURT: Oh, ma'am, you are directed not to discuss your

1 testimony or the subject matter of this trial with your husband until this trial is over;
2 do you understand that, ma'am?

3 THE WITNESS: Yes.

4 THE COURT: We will -- I will allow the parties to ask the husband
5 whether you have spoken to him. All right. And it will be a violation of my order if
6 you talk to him about the case. All right. All you can tell him is -- is that you
7 testified and you're -- you're done but you can't talk about what you said on the
8 stand, you can't talk about the issues, you cannot talk about the event; do you
9 understand that, ma'am?

10 THE WITNESS: Yes.

11 THE COURT: All right. Thank you. Is that all right?

12 MR. GASTON: Yes, sir.

13 MR. DICKERSON: That's great. Thank you, Your Honor.

14 MS. LEXIS: Thank you.

15 THE COURT: All right. Thank you. See you guys back at 1:30.

16 MR. DICKERSON: Thank you.

17 [Court recessed at 12:28 p.m., until 1:37 p.m.]

18 [Outside the presence of the jury.]

19 THE COURT: All right. Anything off the record -- or on the record?

20 MS. LEXIS: Not from the State.

21 MS. MACHNICH: Not from the defense.

22 THE COURT: All right. Let's go get them in.

23 THE COURT RECORDER: Counsel, you spoke about the transcripts
24 for Santiago --

25 MS. LEXIS: Yes.

1 THE COURT RECORDER: -- the witness -- yeah. It's almost a
2 three-hour recording. It's going to take several hours to transcribe that. The lady
3 that's in charge of that is out of town until Tuesday.

4 MS. LEXIS: Can we do a JAVS instead?

5 MS. MACHNICH: Yeah, JAVS would be fine.

6 THE COURT RECORDER: That will be fine. I'll have that ready for
7 you Monday morning.

8 MS. LEXIS: Thank you.

9 THE COURT RECORDER: You're welcome.

10 MR. GASTON: I mean, do we want the entire testimony or just the
11 relevant part?

12 MS. LEXIS: Yes, entire thing.

13 MS. MACHNICH: Yes, the entire thing. She requested it and I'm fine
14 with that, too.

15 MR. GASTON: We're not -- okay.

16 MS. MACHNICH: I mean, it's not admissible. We're not going to put it
17 in as a separate exhibit. It's not. But it's unduly highlight. Okay.

18 Sorry, Your Honor. Go ahead.

19 [Jury reconvened at 1:38 p.m.]

20 THE COURT: All right. Please be seated everybody. All right.

21 One of -- I think one of the jurors brought some donuts in this morning.
22 I'm not sure who that was, but there was some -- oh, great, that was so nice of you
23 to do that for everybody.

24 UNIDENTIFIED JUROR: Well, thank you for the bagels.

25 THE COURT: Oh, you're welcome. I think there might be a couple

1 more donuts back there and a couple bagels left and certainly a lot of orange juice.
2 And when we break again at, like, 3:00, if you guys want to go back there and get
3 some more orange juice or fresh coffee back there, you guys are welcome to,
4 okay?

5 UNIDENTIFIED JUROR: Okay.

6 THE COURT: All right. Great. Let's -- let's continue. The State can
7 call its next witness, please.

8 MS. LEXIS: The State calls Deborah Faulkner.

9 THE COURT: Deborah Faulkner. Okay. Okay.

10 All right. Please remain standing, ma'am, and the court clerk will give
11 you your oath.

12 **DEBORAH FAULKNER**

13 [having been called as a witness and being first duly sworn, testified as follows:]

14 THE CLERK: Please be seated and please state and spell your first
15 and last name for the record.

16 THE WITNESS: Deborah Faulkner, D-E-B-O-R-A-H,
17 F-A-U-L-K-N-E-R.

18 THE COURT: All right. Go ahead and have a seat and you may
19 proceed.

20 MS. LEXIS: Okay.

21 **DIRECT EXAMINATION**

22 BY MS. LEXIS:

23 Q Ma'am, I want to turn your attention to May 28th of 2016; were you
24 living here in Las Vegas, Clark County, Nevada?

25 A Yes.

1 Q Do you recall where you were living?
2 A 2605 Rising Legend Way.
3 Q Okay. Who did you live -- is that a house?
4 A Yes, ma'am.
5 Q Who did you live at that house with?
6 A My mom and my husband.
7 Q Okay. What's your husband's name?
8 A Darrell Faulkner.
9 Q Okay. I want to turn your attention specifically to May 28th of 2016; did
10 something happen to you and your husband that's causing you to have to testify
11 before this jury today?
12 A Yeah, yes. It was approximately 7:00 in the morning. My husband
13 worked -- my husband and I, we were in the garage talking, and this black guy
14 came up on the side of -- on my mom's car and by the tree. And he approached.
15 And I turned to my husband, whose back was over by another area, and I told him
16 that someone's here for you. And by the time --
17 Q Did you recognize the individual?
18 A Yes. Yes, I do.
19 Q Okay. Did you -- did you know this person who was --
20 A No.
21 Q -- approaching the garage?
22 A No, I did not.
23 Q Okay.
24 A I thought it was one of my husband's friends, because he knows a lot
25 of people --

1 Q Okay.

2 A -- and everything. And by the time I -- I turned for the split second to
3 tell him, and by the time we turn around, he already had a gun on us.

4 Q Okay.

5 A And he told us, Don't move, to get down on the ground.

6 Q Okay. The person who walked into your garage on May 28th, 2008
7 [sic], and brandished this firearm, do you see him here in court today?

8 A Yes, I do.

9 Q Could you please point to this individual and describe something he's
10 wearing?

11 A He's sitting right there, and he's got a green shirt on with the
12 dreadlocks.

13 MS. LEXIS: Your Honor, please let the record reflect identification of
14 the defendant.

15 THE COURT: It will.

16 MS. LEXIS: Thank you.

17 BY MS. LEXIS:

18 Q When this particular -- when the defendant brandished the firearm,
19 who was it pointed at, if it was pointed at anyone at all?

20 A It was pointed at me the whole time, and it was pointed to my
21 forehead.

22 Q Okay.

23 A He was a few feet away, though.

24 Q Okay. About how many feet away was the defendant from you?

25 A It was maybe about five, six feet.

1 Q Okay. And when this individual, the defendant, told you and your
2 husband to get down on the ground, what did you do?

3 A When he told us to get down on the ground, we sat -- I sat here and
4 my husband sat here and he sat right there.

5 Q I'm going to show you what's been already admitted at State's
6 Exhibit No. 20; do you recognize what's wrong in this photograph?

7 A Yes.

8 Q Okay. What do you recognize it to be?

9 A That's my mom's garage.

10 Q Okay.

11 A Or our garage.

12 Q Does this photo show where you were standing and where your
13 husband, Darrell, and the defendant were standing?

14 A Okay.

15 Q How about -- or let me try State's Exhibit No. 21. Does that --

16 A That's better.

17 Q Is that better?

18 A That's better.

19 Q Okay. Okay. Can you draw an X for where your husband was
20 standing initially as this man approached?

21 A When we approached?

22 Q Yes.

23 A He was somewhere over here.

24 Q Okay. For the record, it was close to, like, the wheel of the car located
25 on the right-hand side of the photo; and where were you?

1 A I'd be somewhere like right here.

2 Q Okay. And sort of towards that little walkway area in between the
3 boxes; is that right?

4 A Yes.

5 Q Okay. And when the individual walked up with the gun, when the
6 defendant walked in with the gun, where was -- where was he? Where was the
7 defendant?

8 A I think somewhere -- somewhere about right there.

9 Q Okay.

10 A Because he never moved from that area.

11 Q Okay. So the X kind of towards the edge of this particular photo; is
12 that right?

13 A Yeah, because the garage is a little bit bigger.

14 Q Okay. Okay. So actually, let me show back -- well, we'll find a
15 different picture in a moment. Okay?

16 So when you said you sat down, when the person ordered you to get
17 down on the ground --

18 A I sat right there.

19 Q -- you sat where you were. Okay. By sitting, I mean are you squatting
20 or do you completely -- is your --

21 A I completely sat down.

22 Q Okay.

23 A Indian style.

24 Q Okay. Indian style? Okay. On the ground?

25 A Yes.

1 Q What does Darrell do, does he sit down as well?
2 A Yes, he sat -- I sat right here and Darrell sat right there.
3 Q Okay. And for the record, you sat down kind of in front of the box
4 towards the middle and Darrell sat a little bit behind you?
5 A On the side.
6 Q On the side. Okay. And so once you're down on the ground, sitting
7 Indian style, what happens to the gun?
8 A He still has -- he still has it pointing at me.
9 Q Okay.
10 A And then he turns his attention to Darrell and he -- he asks Darrell
11 where the valuables are.
12 Q Okay.
13 A Where's the valuables? And Darrell says to him, All I have is a
14 hundred dollars in my wallet.
15 Q Right.
16 A And then the defendant says, Well, give it to me. So Darrell stands up,
17 because the wallet's in his back pocket. And he -- Darrell stands up. When Darrell
18 stood up, because at that time he was husky, the defendant backed up a couple
19 feet.
20 Q Okay.
21 A Okay.
22 Q And then what did you see next?
23 A And Darrell took -- when he had his wallet out, the defendant tried to
24 take his wallet, and Darrell was like, Oh, no motherf'er, you're not getting my
25 wallet. It's got my CDL in it.

1 Q Okay. What's a CDL?
2 A His -- something classified driver's license.
3 Q Okay. Okay. And how did the defendant react when your husband
4 said, No, you're not getting my wallet?
5 A The best of my acknowledge, I would say, like, intimidated.
6 Q Okay.
7 A Because my husband is husky, you know. He doesn't take no crap.
8 Q Okay. Okay. Did he continue to point the firearm at you and your
9 husband?
10 A The whole time that he was there.
11 Q Okay.
12 A It was on me the whole time I was there.
13 Q Okay.
14 A And so Darrell gave him the hundred dollars and then he -- he's, like,
15 Where's the valuables? Where's the valuables? And Darrell tried to get him over
16 on -- where the other side is here. Do you see where the wheel is? There's a
17 whole bunch of tools over on that side.
18 Q Okay.
19 A We were trying to get him over there, so we could grab something and
20 hit him.
21 Q I'm going to show State's Exhibit 24. Does this show the area that
22 Darrell was trying to get at or --
23 A Yes.
24 Q -- do you need a different one?
25 Okay. Can you circle the area that Darrell was trying to direct the

1 defendant to?

2 A Right in here.

3 Q Okay. So kind of would it have been behind this chair?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes, ma'am.

7 Q Okay. So Darrell tried to direct his attention to that area?

8 A Right.

9 Q Did that work?

10 A No.

11 Q Okay. What did the defendant do?

12 A He just stayed in that one area the whole time, and then Darrell gave
13 him the hundred dollars, and then he -- he was like, Okay. Get up. Go -- go in the
14 house and shut the garage. And don't look at me.

15 Q Okay. Were you looking at him?

16 A Yes.

17 Q Okay. Were you looking at the gun, too?

18 A Yes.

19 Q Okay. What, if anything, did you hear the defendant say besides
20 where the valuables at? Did he say anything else?

21 A He said a -- he said a lot. I was just shaking, very shaking. I was -- I
22 was scared.

23 Q Okay.

24 A I was really scared.

25 Q Okay. At any -- did you have a purse with you at that time?

1 A Oh, yes. Thank you. After with -- with Darrell with the wallet, he
2 turned to me with -- with my purse.

3 Q Okay.

4 A And he asked --

5 Q Who turned to you with the --

6 A The defendant did.

7 Q Okay. And what did he say or do?

8 A He told me to open up my purse and dump it out. And Darrell kept
9 telling him, I don't have anything in there. All I have in there is my ID, and he
10 made me dump everything out.

11 Q Who made you dump everything out?

12 A The -- the defendant.

13 Q Okay. And did you dump everything out?

14 A I dumped everything out, and I have one of those -- I don't have it to
15 show -- the -- like, what you put credit cards in. I have one of those in there. It's
16 got the cards for the casinos that I had in there. Then he wanted me to open it.
17 So I opened it and showed him.

18 Q Okay. How did you know he wanted you to open it? Did he tell you?

19 A Yes.

20 Q Okay.

21 A He said, Open it. Open everything. Open everything.

22 Q And so did he take anything from -- from your purse?

23 A No. No.

24 Q Okay. You didn't have anything really of value in there?

25 A No.

1 Q Okay. Did you have any cash?

2 A No.

3 Q Okay. So to your knowledge, the defendant made out with the
4 hundred bucks that Darrell gave him?

5 A Yes.

6 Q Okay. When he ordered you both to go into the -- back into the house,
7 stop looking at him, did you guys do that?

8 A Yes.

9 Q Okay.

10 A And as the garage was going down, I seen exactly which way he went.

11 Q Which way did he go?

12 A He went down Rising Legend towards Robin.

13 Q Rising Legend towards Robin. So let me show you State's
14 Exhibit No. 23. Okay. Can you see the street?

15 A Yes.

16 Q Kind of behind your -- behind two vehicles parked in your driveway?

17 A No. He went the same way that he came -- came out there. He went
18 that -- he went this way --

19 Q Can you draw a line on there?

20 A -- and that way.

21 Q Okay. So if you're looking at this particular photo taken from inside
22 your garage, the defendant went to the right upon leaving your garage?

23 A Yes.

24 Q Okay. All right. Did you get a -- get a look at the gun, Ms. Faulkner?
25 Like, can you tell what color it was?

1 A Black. I'm not good with guns.

2 Q Okay.

3 A All I know is it -- it was black.

4 Q Okay. After -- the garage door closed eventually, right, did you and
5 Darrell go into the house?

6 A Oh, I ran into the house, screaming. My mom was sleeping on the
7 couch.

8 Q Okay.

9 A And I -- I woke my mom up because I was screaming and I was
10 shaking and crying.

11 Q Okay. Did you call the police?

12 A No.

13 Q Who called?

14 A Darrell called the police.

15 Q Okay. Were you nearby when -- when he called the police?

16 A I was on the couch the whole time by my mom. My mom was -- was
17 holding me and hugging me, trying to calm me down.

18 Q Okay. Did the police show up?

19 A Yes.

20 Q Okay. Did you ever hear the defendant threaten to shoot you and
21 Darrell?

22 A To the best of my knowledge, I don't remember.

23 Q Okay. Okay. When the police showed up, did you talk to them?

24 A No. Because after the fact, I already took two Lorazepams because I
25 was so shaken up after the whole incident.

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1 Q Okay. You -- what's elzarpram?
2 A A Lorazepam?
3 Q Oh.
4 A They're for anxiety.
5 Q Okay. So you took two of those?
6 A Yes.
7 Q Okay. Did you tell the police that you had taken those --
8 A Yes.
9 Q -- two pills? Okay.
10 A And the one detective said that he was going to come back and
11 question me later.
12 Q Okay.
13 A But he never came back.
14 Q Okay. So you weren't taken anywhere to identify anyone or anything
15 like that?
16 A No, ma'am.
17 Q Okay. Did Darrell have to leave to go somewhere?
18 A Yes. He left -- in the afternoon, I think it was between 12:00 and 1:00
19 or between 12:00 and 2:00 that afternoon.
20 Q Okay. But you remember him leaving?
21 A Yes.
22 Q Okay. All right. Did you do a, like, a -- did you ever write out a
23 statement?
24 A No.
25 Q Okay. Did you do a, like, a taped interview?

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1 A No.
2 Q Okay. That was, like, recorded by a detective, no?
3 A No.
4 Q Okay. Is there anything else that you remember about what happened
5 that I've forgotten to ask you?
6 A To the best of my knowledge, that's what I remember.
7 Q Okay.
8 A I don't remember anything else.
9 Q Okay.
10 MS. LEXIS: I have no more questions for Ms. Faulkner. Thank you.
11 THE COURT: All right. Very good.
12 Any questions for Ms. Faulkner from the defense?
13 MR. GASTON: Yes, sir.
14 THE COURT: All right.

15 **CROSS-EXAMINATION**

16 BY MR. GASTON:
17 Q Good afternoon, ma'am.
18 A Good afternoon.
19 Q You mentioned that you had taken Lorazepam?
20 A After the fact, yes.
21 Q After the incident. So you were on Lorazepam when Detective Majors
22 came to talk to you?
23 A Yes.
24 Q And that's why Detective Majors felt like -- is that why Detective Majors
25 told you he couldn't do the interview with you at that time?

1 A Yes.

2 Q Because you were on Lorazepam?

3 A Yes. It is considered a narcotic.

4 Q Okay. So he was -- he would come back when you were sober or --

5 A Yes.

6 Q -- not on Lorazepam? Okay. You said yes?

7 A Yes.

8 Q And was this Lorazepam prescribed to you by the doctor?

9 A Yes.

10 Q And did the doctor tell you about some side effects of Lorazepam?

11 No?

12 A No.

13 Q So are you -- on the side of the bottle, when it lists possible side

14 effects, are you aware that side effects of Lorazepam can include confusion?

15 MS. LEXIS: Objection, Your Honor. Counsel's testifying.

16 MR. GASTON: I'm just asking her if she's aware one way or the other.

17 MS. LEXIS: She indicated she wasn't aware of the side effects.

18 THE COURT: I'll allow the question.

19 MR. GASTON: Thank you.

20 THE COURT: Overruled. Let's just find out if she knows.

21 MR. GASTON: Thank you.

22 BY MR. GASTON:

23 Q Are you aware that one of the side effects of Lorazepam can be

24 confusion about identity, place, and time?

25 A No. I wasn't aware of that.

1 Q Are you aware that it can cause blurred vision?
2 A I wasn't aware of that, either.
3 Q Slurred speech?
4 A No.
5 Q It can cause being forgetful? Not aware?
6 A No. It's not -- it's not on my bottle where it says any of that.
7 Q But all of this could possibly be why Detective Majors wanted to wait to
8 do the interview?
9 MS. LEXIS: Objection, speculation.
10 THE COURT: Sustained.
11 MR. GASTON: Okay.
12 THE COURT: She doesn't know -- his state of mind, so --
13 MR. GASTON: Okay.
14 THE COURT: Stick to what she might have been told.
15 BY MR. GASTON:
16 Q I think I asked this, but just Detective Majors did tell you the reason he
17 would do it later was because you were on Lorazepam?
18 A Correct.
19 Q Okay. And you also said he never actually came back to get that
20 statement from you?
21 A Right.
22 Q So you -- no officers ever came to get that recorded statement from
23 you?
24 A Right.
25 Q Okay. So at that time you testified today, you've never actually written

1 out a description of the defendant or the person who did this, correct?

2 A Right.

3 Q At the time -- you've never actually given a recorded statement --

4 A Right.

5 Q -- prior to today, correct?

6 A Right.

7 Q Are you aware that there was a grand jury proceeding?

8 A Yes.

9 Q And your husband testified at the grand jury, correct?

10 A Yes.

11 Q You did not?

12 A No.

13 Q The State didn't call you as a witness, correct?

14 A No.

15 Q So at the grand jury proceeding, you never identified the person who

16 did this to you?

17 A No.

18 Q And during the immediate investigation that happened right after the

19 robbery, you were never taken to do an identification, correct?

20 A Because I was on the Lorazepam. My husband said because of what

21 happened with the incident, how shaken up I was, he was worried about my

22 well-being --

23 Q Absolutely.

24 A -- my mental health --

25 Q Yeah. And I'm not trying to say --

1 A -- he said he was going to go and identify the defendant.

2 Q Absolutely. And I'm -- and I'm not trying to say anything -- anybody

3 that was wrong. I'm just saying fact is you were never taken to do an identification,

4 correct?

5 A Correct.

6 Q Okay. Now, your husband was taken to do an identification, correct?

7 A Yes.

8 Q And he told you that he identified the man who did this to you?

9 A Yes.

10 Q Okay. So you're aware as you testify today that your husband has

11 already identified him as being the person who robbed you?

12 A That I don't know if that -- if he actually identified that man.

13 Q Okay. But you're aware that he identified the man that was in

14 handcuffs?

15 A Yes.

16 Q Correct?

17 A I -- I wasn't there. All I know is he said he identified the person that

18 was in our garage that had the gun on us.

19 Q As the man that he was taken to see?

20 A Yes.

21 Q Okay.

22 A And that man who was -- that he identified is right there in the

23 courtroom.

24 Q Right. That's exactly my point. Thank you. That is the point I was

25 trying to make.

1 And prior to today, you've spoken to the district attorney about your
2 testimony? Have you spoken to these guys, any of these guys?

3 A About my testimony?

4 Q Or have you -- have you spoken to these guys, period? The district
5 attorneys, Mr. Dickerson and Ms. Lexis, have you ever spoken to them before
6 today?

7 A Before today?

8 Q Yes.

9 A Not really. The only thing we talked about is with our hotel.

10 Q Okay. Just like scheduling arrangements, stuff like that?

11 A Yes.

12 Q Okay. Have you ever seen any of the photos of the defendant prior to
13 today?

14 A Nope.

15 Q Okay. So the first time that you've actually seen anybody that could
16 have possibly been the man who robbed you is today in court?

17 A Yes.

18 Q Okay. And not to make too obvious a point, but other than the
19 marshal, who's clearly a marshal, he's the only black man in the entire courtroom
20 at this moment, right?

21 A No. There's a couple others back there.

22 Q Oh, but, you're right. That is true. There -- there is a black man -- for
23 the record, there's a black man in the back wearing a green shirt and gold chains,
24 correct?

25 A Yes.

1 Q And we can agree he's larger in size than the defendant by a
2 considerable [indiscernible], correct? You got to say -- they record everything.

3 A Yes. I'm sorry. Yes.

4 Q Okay. Basically, the defendant and the black man in the back don't
5 look anything alike, right?

6 A Yes. I -- I understand what you're doing, but when you go through
7 something like that --

8 Q Uh-huh.

9 A -- I don't care how long it is, 14 months, 14 years later, you don't forget.

10 Q Right. It's etched in --

11 A You don't forget. You don't forget something like that. His eyes alone
12 is what I know, just like the way he's looking at me now. He -- he knows. He
13 knows.

14 Q He knows what?

15 A He knows he did it.

16 Q And how -- how can you tell that?

17 A By his eyes. His eyes.

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

19 THE WITNESS: That -- that's scary.

20 THE COURT: All right. So --

21 MR. GASTON: I understand, ma'am. No more questions.

22 THE COURT: There's no question pending. So don't volunteer
23 anything unless there's a question pending.

24 THE WITNESS: Okay. I'm sorry.

25 THE COURT: All right that was back to redirect.

1 MS. LEXIS: Thank you.

2 **REDIRECT EXAMINATION**

3 BY MS. LEXIS:

4 Q Ma'am, you didn't go with your husband when he went to identify
5 someone, correct?

6 A Correct.

7 Q Okay. So you don't know who he identified, correct?

8 A Correct, yes.

9 Q Because up until this day, you had not seen the person who robbed
10 you again, correct? You were not shown a photo of him? You were not told by
11 your husband that he had -- who he identified, correct?

12 MR. GASTON: Object.

13 THE WITNESS: Yes, correct.

14 BY MS. LEXIS:

15 Q Fair to say that he just told you he identified someone, and the person
16 he identified was the person who robbed you?

17 A Yes.

18 Q Okay. Your identification of the defendant today, you seem pretty
19 sure. Are you sure?

20 A I'm 1,000 percent positive that's him.

21 MS. LEXIS: Nothing further. Thank you.

22 THE COURT: Recross.

23 **RECROSS-EXAMINATION**

24 BY MR. GASTON:

25 Q I guess not to make too simple a point, I suppose, but we can agree

1 that as a general matter your memory does not get better with time, correct? So
2 your memory is probably better right after something occurs than a long time later,
3 right?

4 A I guess.

5 Q As a general matter, yes?

6 A I guess.

7 Q Okay. But it's your testimony that 14 months later, 14 years later, it
8 wouldn't have made a difference because forever his face is etched in your
9 memory?

10 A Yes, it is.

11 MR. GASTON: Okay. Thank you.

12 THE COURT: Anything -- anything from the jurors? Any questions
13 from the jurors?

14 All right. You may step down, ma'am. Thank you for your time.

15 THE WITNESS: Thank you.

16 THE COURT: Please note there's a step.

17 The State can call its next witness, please.

18 MS. LEXIS: We'll just --

19 MR. DICKERSON: Court's brief indulgence.

20 MS. LEXIS: Just one minute, Your Honor. We'll make sure
21 someone's out there.

22 [Pause in proceedings.]

23 MS. LEXIS: Your Honor, the State calls Lazaro Bravo-Torres.

24 THE COURT: All right.

25 MS. MACHNICH: Your Honor, we are not -- briefly, if her husband is

1 a -- if the woman whose husband here -- Deborah Faulkner, her husband isn't
2 going to testify right now, we'd like her admonished formally by the court that she's
3 not to speak with him.

4 THE COURT: Yeah.

5 MS. MACHNICH: I thought he was coming in next, so --

6 THE COURT: Would you bring her back in, please, Mr. Dickerson?

7 MR. DICKERSON: Absolutely, Your Honor.

8 MS. MACHNICH: Not to waste time, Your Honor. I just, you know --

9 THE COURT: No. This is very helpful. I should have done that.

10 [Ms. Faulkner reenters the courtroom.]

11 THE COURT: Hello, ma'am.

12 THE WITNESS: Yes.

13 THE COURT: So state your name again so we know who we're
14 talking to.

15 THE WITNESS: Deborah Faulkner.

16 THE COURT: Yes. I understand that your husband's going to be
17 testifying later on -- might be later this afternoon or -- or Monday. For that reason,
18 I have to admonish you not to discuss your testimony with him and not to discuss
19 anything you said on the stand, not to discuss any of the facts of the case, not to
20 discuss anything that either you or he observed or believed that you observed in
21 connection with the events that comprised the subject matter of this trial; do you
22 understand that?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. You agreed not to do that?

25 THE WITNESS: I agree not to do that.

1 THE COURT: Because the -- because the attorneys will be allowed to
2 ask him if they've had any conversations with you between now and when -- when
3 he testifies, and I don't want him to -- to -- to be in a position of having to say that
4 he did talk to you about something about it.

5 THE WITNESS: Okay.

6 THE COURT: All right. Thank you, ma'am.

7 THE WITNESS: Thank you.

8 THE COURT: All right. That's a court order, so please comply with
9 that.

10 THE WITNESS: I will.

11 THE COURT: Okay.

12 THE WITNESS: I'm going back to my room.

13 THE COURT: All right. Thank you. Have a nice day. Thank you for
14 your time.

15 THE WITNESS: You too. Thank you.

16 [Ms. Faulkner exits courtroom.]

17 MS. LEXIS: Your Honor, we're waiting for an interpreter for Mr. Lazaro
18 Bravo-Torres.

19 THE COURT: No problem.

20 MS. LEXIS: So I may have to call someone else.

21 THE COURT: We'll just sit and wait for a moment.

22 MS. LEXIS: Thank you.

23 [Pause in the proceedings.]

24 MS. LEXIS: Can we be released for, like, two minutes, Your Honor?

25 THE COURT: Yeah, why don't I let the jurors -- why don't I just let you

1 guys stretch and stand. If you want to step outside, since we're formally going off
2 the record, I have to just direct you that prior admonishment applies. Don't do any
3 research; don't form any opinions; don't do any investigation; don't talk about the
4 case. All right. But I'll let you step outside and just stretch. Don't go far. We'll be
5 at recess. All right. We're waiting for an interpreter. Don't go far.

6 MS. MACHNICH: Thank you.

7 [Jury recessed at 2:06 p.m.]

8 THE COURT: All right. We'll just all be at ease. I'm not -- I'm not
9 going anywhere.

10 MS. LEXIS: Okay. Thank you.

11 [Pause in proceedings.]

12 [Court recessed at 2:08 p.m., until 2:18 p.m.]

13 [In the presence of the jury.]

14 THE COURT: All right. Thank you. All right. Let's -- we have the
15 interpreter. We're ready to -- to go back on the record. We are.

16 And the State may call its next witness.

17 MS. LEXIS: Thank you for the indulgence. The State calls Lazaro
18 Bravo-Torres.

19 THE COURT: Lazaro Bravo-Torres, marshal.

20 Hello, sir.

21 MR. BRAVO-TORRES: Hi.

22 THE COURT: The court clerk will administer your oath.

23 MR. BRAVO-TORRES: Okay.

24 THE CLERK: Please raise your right hand.

25 **LAZARO BRAVO-TORRES**

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

3 THE CLERK: Please be seated. And please state and spell your first
4 and last name for the record.

5 THE WITNESS: My name is Lazaro Bravo-Torres.

6 MS. LEXIS: Your Honor, may I make an offer of proof concerning
7 spelling his name?

8 THE COURT: Yes.

9 MS. LEXIS: There's been prior testimony that Mr. Torres -- or
10 Bravo-Torres does not read or write. May I just spell it for him?

11 THE COURT: Yes. Why don't you spell it for the record and then --
12 and then have him -- does he have ID? Or does he need to show ID maybe to
13 identify himself? All right. You can -- you can do that.

14 THE WITNESS: Yes. Yes, I do.

15 THE COURT: All right. Why don't you spell his name for the record,
16 and then confirm that the spelling of his ID is consistent with your understanding of
17 who he is.

18 MS. LEXIS: First name L-A-Z-A-R-O, Bravo, B-R-A-V-O, Torres,
19 T-O-R-R-E-S. And it is consistent with my understanding of his identity and also
20 the spelling of his name.

21 THE COURT: Very well. You may proceed with the questioning.

22 MS. LEXIS: Your Honor, may we approach?

23 THE COURT: Yes.

24 MS. LEXIS: Sorry.

25 [Bench conference transcribed as follows:]

1 MR. DICKERSON: The juror that's hard of hearing -- the gentleman
2 that's hard of hearing, I heard him talking to the woman next to him saying that he
3 can't hear when the interpreter's talking and then we're talking. So I just wanted to
4 bring it to the court's attention.

5 MS. LEXIS: Talk one at a time.

6 THE COURT: Talk one at a time.

7 MS. LEXIS: But it's a -- but it's simultaneous interpretation, so -- you
8 know what I mean? As I'm asking the question, she's already starting to interpret.
9 So we'll just admonish her to wait.

10 THE COURT: Yep, yep.

11 MS. LEXIS: Okay.

12 THE COURT: Okay.

13 MS. MACHNICH: Okay.

14 [End of bench conference.]

15 THE COURT: Okay. I want to make sure that all the jurors can here.
16 Sometimes it gets difficult with the interpreter speaking.

17 MR. GASTON: It looks like we have --

18 THE COURT: So what I want to do, Madam Interpreter, is I do not
19 want you to talk when other people are talking.

20 THE COURT INTERPRETER: Okay.

21 THE COURT: So we'll have to talk in fragments.

22 THE COURT INTERPRETER: Okay.

23 THE COURT: So there will be part of a question, part of the
24 interpretation, part of the question, part of the interpretation.

25 THE COURT INTERPRETER: Okay.

1 THE COURT: So there's only one person talking --
2 THE COURT INTERPRETER: Okay. No problem.
3 THE COURT: -- at one point.
4 THE COURT INTERPRETER: Okay.
5 THE COURT: Does that work?
6 THE COURT INTERPRETER: Absolutely, Your Honor.
7 THE COURT: Thank you.
8 THE COURT INTERPRETER: Whatever you want.
9 MR. GASTON: The juror had a question. He was raising his hand,
10 Your Honor.
11 THE COURT: Oh, someone raised their hand?
12 JUROR NO. 6: That was the statement I was going to make.
13 THE COURT: Oh, thank you, sir.
14 JUROR NO. 6: It's hard for me to understand when they're both
15 talking at the same time, like she's interpreting while she's talking.
16 THE COURT: I understand.
17 JUROR NO. 6: And the other interpreter last -- the other day, she
18 would talk, then the interpreter would talk. She would talk, then the --
19 THE COURT: Let's alternate.
20 JUROR NO. 6: Yeah.
21 THE COURT: If it doesn't work, raise your hand and let us know.
22 JUROR NO. 6: Yeah.
23 THE COURT: Let's proceed.
24 MR. GASTON: Thank you, Your Honor.
25 MS. LEXIS: If we could just inquire as to whether he could hear and

1 understand the prior testimony in that regard.

2 THE COURT: Okay. I guess we need to know if you were -- Juror --
3 you're Juror No. -- let's see. What's your name?

4 JUROR NO. 6: Louie.

5 THE COURT: Louie Grusinski.

6 JUROR NO. 6: Yes.

7 THE COURT: All right. So since you raised this issue, we need to
8 know if you were able to hear the prior testimony in this case or -- or if not we need
9 to start all over again.

10 JUROR NO. 6: No. Most of it I did.

11 THE COURT: Okay. You heard yesterday okay?

12 JUROR NO. 6: Most of it I did, yes.

13 THE COURT: Most of it?

14 JUROR NO. 6: 99 percent.

15 THE COURT: All right. All right. If you -- if you thought that you
16 missed anything crucial, would you have let us know?

17 JUROR NO. 6: I will.

18 THE COURT: All right. Well, what about the 1 percent that you might
19 have missed yesterday, is it -- was there --

20 JUROR NO. 6: No. I -- I'm fine.

21 THE COURT: -- if it was -- let -- let me ask you, if it was anything
22 important, would you have let us know?

23 JUROR NO. 6: Yes.

24 THE COURT: Okay. Are you comfortable with the procedure we
25 outlined going forward?

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JUROR NO. 6: Yes.

THE COURT: Okay. Let's give it a try.

MS. LEXIS: Thank you.

THE COURT INTERPRETER: Your Honor, would people be more comfortable with a different interpreter? We have another interpreter.

THE COURT: No. You're fine.

THE COURT INTERPRETER: Okay.

THE COURT: Yeah, you're fine.

THE COURT INTERPRETER: Okay.

THE COURT: Let's just do it in bits --

THE COURT INTERPRETER: Okay.

THE COURT: -- rather than all talking at the same time.

THE COURT INTERPRETER: Okay.

THE COURT: Okay. Let's try it.

MS. LEXIS: Thank you.

DIRECT EXAMINATION

BY MS. LEXIS:

- Q Sir, I'd like to turn your attention to May 28th of 2016.
- Did you live in Las Vegas, Clark County, Nevada at that time?
- A Yes.
- Q Did you live at 1104 Leonard?
- A Yes.
- Q Is that a house?
- A Yes.
- Q Okay. I'm going to show you State's Exhibit 152; do you recognize

1 what's shown in this photograph?

2 A Yes. It's my truck.

3 Q Okay. It appears from this exhibit that the truck is parked in front of a
4 home; is that your home?

5 A Yes.

6 Q Okay. At about 7:00 in the morning that day, did something happen
7 that's causing you to have to testify before the jury today?

8 A Yes.

9 Q Can you tell us what happened, sir?

10 A I was coming out of the house -- I'm -- I get nervous.

11 Q It's okay. Take your time.

12 A A dark-skinned young man was coming -- walking towards me. His
13 hands were tucked in his shirt like this. He asked me with Luther King -- the Luther
14 King street was. I told him you go straight ahead and then you turn and then you
15 turn and there's Luther King.

16 Q I don't mean to interrupt, but can I ask you a question?

17 A Yes.

18 Q Where were you when this black male approached you?

19 A I was on the truck, waiting for my wife.

20 Q Okay. Were you -- which seat were you in?

21 A Behind the wheel. I was driving.

22 Q Okay. So was your -- was the driver's side door shut?

23 A Yes.

24 Q Okay. Were your windows rolled up or down?

25 A Mine, on my side. The other one, the other side, that one was up.

1 Q Okay. So the -- the window on the driver's side was down?

2 A Yes, it was down.

3 Q Okay. And so after you gave this person directions to Martin Luther
4 King, what happened?

5 A He walks towards me, tells me, Wait up. He was walking with a
6 handgun like this. He tells me, Don't move. So I turn around. I was looking for my
7 wife.

8 Q Did you find her?

9 A I didn't see her. I thought it was in the back.

10 Q Okay. What happened next?

11 A So he gets there. He kinds of lean towards the door, and he does this
12 with the handgun.

13 Q Okay. Can you show us what he did with the handgun?

14 A Like this.

15 Q Okay. For the record --

16 A When my wife arrived, she opened her door. So he said, Don't move.
17 And my wife wanted to climb into the truck, but she went back. So he said, Don't
18 move or I'll shoot you.

19 Q And at that point when the person said, Don't move, I'll shoot you.
20 Was the gun pointed at you or your wife?

21 THE COURT INTERPRETER: Your Honor -- Your Honor, is it
22 possible that you instruct the witness to allow the interpreter to finish interpreting
23 the question, please.

24 THE COURT: Yes. Sir, please wait until the interpreter is finished
25 speaking before you start speaking. Understood?

1 THE WITNESS: Okay.

2 THE COURT: That is very important because we have a person
3 transcribing and recording everything. Only one person can talk at one time.
4 Thank you.

5 Let's continue.

6 MS. LEXIS: Thank you.

7 BY MS. LEXIS:

8 Q Before that, sir, you made a gesture with your hand, kind of making
9 your thumb and your index finger or your pointer finger in the shape of a gun. And
10 you moved your hand back and forth. Was that a demonstration of what the
11 individual with the gun was doing, pointing the gun back and forth between you
12 and your wife?

13 A Yes.

14 Q Okay.

15 MS. MACHNICH: I'm sorry. Very briefly. I'm not objecting. I just
16 couldn't see what he did there because of the placement of the monitor. Perhaps I
17 could relocate myself in the courtroom just briefly so I could see what he's doing.

18 THE COURT: Sit wherever you want.

19 MS. MACHNICH: Thank you. I apologize for the interruption.

20 BY MS. LEXIS:

21 Q Okay. And so, Don't move or I'll shoot. The gun is moving back and
22 forth between your wife; what happens next?

23 A He demanded money.

24 Q What did you do?

25 A I told him that I didn't have my wallet with me. I told him that it was at

1 the store, and we can -- we could drive there and drive to the store, and the money
2 was there.

3 Q Why did you offer to take him where your money was?

4 A Because I had the handgun here.

5 Q For the record, when you said here, you were pointing towards, like,
6 the top chest, shoulder area of your left chest. When you told the robber that, what
7 did -- what, if anything, did the robber say to you?

8 A And he told me, No, you have the money. And then he told me to go
9 out of the vehicle.

10 Q Did you do that?

11 A Yes. I got out of the vehicle.

12 Q When you got out of the vehicle, were you still close -- did you stay
13 close to the driver's side of the vehicle?

14 A No. He only -- yes, he only told me to go out of the vehicle, and he
15 was still leaning on the door.

16 Q I'm going to show you State's Exhibit 161; do you recognize this
17 picture?

18 A Yes.

19 Q Does this picture show where you went after you were ordered to
20 come out of your vehicle?

21 A I just leaned in the corner here.

22 Q Okay. Can you draw a circle where it is that you leaned? So towards,
23 like, the frame?

24 A There.

25 Q Towards the frame, like, where the -- the end of the door would be if --

1 if it were shut?

2 A Yes. I was leaning on to there. He had me leaning there.

3 Q I'm going to show 166; does this show a better point of view of where
4 you would have been standing or pushed up against?

5 A Here, here. Do I put a mark.

6 Q Yes, please put a circle. Okay.

7 MS. LEXIS: And for the record, it's the same frame area, but on the
8 outside of the vehicle, taken from a different vantage point, Your Honor.

9 Q Could you make a -- an X on where the man with the gun, the robber,
10 was standing?

11 A Around here, like this.

12 Q So for the record, also on the outside of the vehicle, but close and
13 not -- close to where you were standing?

14 A Yes.

15 Q Sir, how far away were you when you were where you're showing the
16 jury -- how far away were you in distance from the man with the gun?

17 A Around one and a half feet.

18 Q Okay. When you indicated that the gun was pointed at your chest and
19 shoulder area, did the end of that gun ever touch your chest?

20 A Yes.

21 Q Did that cause you to be fearful?

22 A Oh, yes. Yes.

23 Q Do you remember what Rosa, your wife, was doing at this time?

24 A She was waiting. She wouldn't move from where she was.

25 Q Was Rosa in the car or outside of the car, do you remember?

1 A I'm not quite sure if she was with her feet inside the truck or outside of
2 the truck. I couldn't pay much attention of if her feet were inside or outside of the
3 truck. But I know that she was also leaning to the -- the frame.

4 Q Okay. When the robber with the gun was pointing the gun, touching
5 your chest, were you face to face with this person?

6 A He was around six inches from where I was, because he was in the
7 middle, looking for money or other things.

8 Q Okay. The middle area that you're talking about, can you see it in
9 State's Exhibit 161?

10 A Here, in this area.

11 Q Okay. And for the record, it's kind of in the floor area, in front of the
12 center console.

13 So the man with the robber, did part of his body actually make it inside
14 the truck so that --

15 A Up to here with his head. Up to here.

16 Q Okay. And you gestured towards your shoulder area, below your neck,
17 towards your chest?

18 What, if anything -- oh, sorry.

19 A Yes.

20 Q What happened next, sir?

21 A He grabbed the -- the bag, and I told them you can take the -- the
22 truck, because I don't have the money.

23 Q And did -- the bag that you're talking about, do you know who it
24 belonged to?

25 A My wife.

1 Q What did -- what, if anything, did you see the robber do with the bag?

2 A He just grabbed it and put it here.

3 Q And for the record, you gestured towards your, like, left forearm.

4 A Yes.

5 Q Did this bag have straps?

6 A One strap only.

7 Q Okay. Is that how the robber was able to hang the purse on his
8 forearm?

9 A Yes.

10 Q Okay. What happened next, sir?

11 A He told me to get in the truck and never turn back.

12 Q Then did you do that?

13 A And I told my wife, Get in and let's go.

14 Q Did you see where the robber went?

15 A He just went to the sidewalk with the -- the gun, like this, and I started
16 walking.

17 Q You said with the gun like this. When the robber was walking away
18 from you, did he turn his back on you or did he stay facing you?

19 A He had the gun like this. He was facing me, but walking backwards.

20 Q I see. And for the record, you have your hand up with the pistol
21 presumably -- presumably pointing still. Did you get in the vehicle?

22 A Yes.

23 Q Did your wife Rosa get in the vehicle?

24 A Yes.

25 Q What happened once you were both inside the car?

1 A We turn around the corner, and I told her my phone was there. It's a
2 very small phone.

3 Q Where was your phone?

4 THE COURT INTERPRETER: I'm sorry. Say it again.

5 BY MS. LEXIS:

6 Q Where was your phone?

7 A In the middle, inside.

8 Q Okay. Like, inside the center console?

9 A Yes.

10 Q So your phone was not taken?

11 A Not mine.

12 Q So once that was done or once -- did -- did your wife grab your phone
13 and call the police?

14 A Yes. Yes. That's what I told her, that -- there's my phone. Grab it and
15 call the police, and let's see if they can catch him.

16 Q Okay. Do you remember what the gun looked like?

17 A Yes.

18 Q Can you describe it for the jury?

19 A Short.

20 Q And for the record, he's gesturing.

21 A Black.

22 Q About how -- how -- what's the length of the gun?

23 A About -- about four feet -- I'm sorry. Four centimeters.

24 Q Okay. And you gestured -- what would -- how many inches, for the
25 record, would that be?

1 MR. DICKERSON: Four to five inches.

2 BY MS. LEXIS:

3 Q Four to five inches, agreed?

4 MS. MACHNICH: I would say it looked more like five or six from what
5 he was demonstrating, but that was just for the record.

6 THE COURT: Well, four to six inches is a lot different distance than
7 four centimeters.

8 MS. LEXIS: Right.

9 BY MS. LEXIS:

10 Q Sir, can you gesture again about how big the gun was and hold your
11 hands up, okay?

12 A Something like this.

13 Q For the record --

14 MS. MACHNICH: That looks like six to seven to me.

15 THE COURT: All right. It looked like he was showing about
16 four inches.

17 MS. MACHNICH: Your Honor, I --

18 THE COURT: Three and a half inches.

19 MS. MACHNICH: I would respectfully say that looked more like
20 six inches to me, but --

21 THE COURT: Oh, okay. I'm coming from a different angle.

22 MS. MACHNICH: I mean, I could be --

23 THE COURT: All right.

24 MS. MACHNICH: I'm not trying to contradict. I just -- it looked like it
25 was probably that big. So.

1 MR. DICKERSON: Three and a half.
2 MS. LEXIS: If we could just ask the jury to just -- they've seen it, take
3 notice of it, and give it the weight that they --
4 THE COURT: All right. Let's just move on.
5 THE CLERK: I have a ruler, if you need it.
6 THE COURT: Do you have one with you?
7 THE CLERK: Yeah.
8 THE COURT: Could you pull it out?
9 THE CLERK: [Indiscernible] one, too. I think I do. Wait a second. Let
10 me check. Oh, I'm sorry. I think --
11 THE COURT: Marshal, can you go grab one from Melanie.
12 THE CLERK: Sorry. Never mind.
13 MS. LEXIS: And I'll move on maybe. We'll come --
14 THE COURT: I still want the ruler. Marshal's getting it.
15 MS. LEXIS: Yes, Your Honor.
16 THE COURT: Let's keep going.
17 MS. LEXIS: Yes, Your Honor.
18 BY MS. LEXIS:
19 Q Okay. Sir, so you said it was black?
20 A Yes.
21 Q Are you familiar with guns?
22 A No.
23 THE COURT: Oh, perfect. Ms. Machnich has a tape measure.
24 All right. Sir, can you show us how big you think the gun was again?
25 THE WITNESS: [Witness complies.]

1 THE COURT: All right. Just so he's showing with his fingers, and I'm
2 measuring it now. And it looks like it's five inches from the inside of his left finger
3 to the inside of his right finger.

4 MS. LEXIS: Thank you.

5 THE COURT: All right. Thank you.

6 MS. MACHNICH: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 BY MS. LEXIS:

9 Q Okay. Sir, did the police show up after your wife called the police?

10 A Yes. Around six minutes or five minutes later.

11 Q Okay. And at some point did the police ask you if you would go with
12 them to a different location to look at --

13 A No. They just asked me where did he went, and it's -- I told them. And
14 that was it.

15 Q Okay. Did the police ever take you to an apartment complex?

16 A Later on, when they told me that he was caught.

17 Q Okay. When -- did you go in a police car?

18 A Yes.

19 Q And about how far away was this apartment complex that you were
20 taken to?

21 A A block away.

22 Q Okay. And were you -- did you go to that place by yourself or with --
23 did your wife go with you to that place? Did you go together?

24 A No.

25 Q When -- when you went to that location, where did your wife -- did your

1 wife stay at your house?

2 A Yes.

3 Q Okay. When you were at this apartment and you were driven by the
4 patrol or by a police officer, where did you sit in the car?

5 A In the back seat.

6 Q Okay. Once you were at the location, once the police car stopped
7 driving, did you see individuals standing in front of your vehicle -- in front of the
8 police car where you were?

9 A Yes.

10 Q How many individuals were standing in front of the patrol car?

11 A Two.

12 Q Did you take a look at both individuals?

13 A Yes.

14 Q Okay. Did you recognize any of those -- either one of those individuals
15 as being the person responsible for robbing you and your wife?

16 A I -- I did recognize them a bit, because he had a different outfit. He
17 has taken off his pants and shirt, and now he was wearing a T-shirt and short
18 pants.

19 Q Okay. When was he wearing a T-shirt and short pants?

20 A Where the police took me to to see them.

21 Q Okay. The two people that you were asked to look at, was one taller
22 than the other?

23 A Yes. The one who did that to me was the taller one.

24 Q Okay. Did you let the police know that you recognized one of the
25 individuals as the robber with -- with the changes that you just told the jury about?

1 A Yes. I told them it -- that it was the tallest one.

2 Q Okay. Before you were shown the two people in front of the patrol car,
3 were you read instructions concerning, you know, what was going to be
4 happening, the showup?

5 A I just asked him, well, because he was moving and laughing and just
6 gazing downwards, so I just ask the police officers to tell them to not move or -- or
7 laugh and just look straight ahead.

8 Q Okay. And did the police officers make those individuals stop moving?

9 A He spoke to the radio to the other officer that had the individuals on --
10 on custody -- in custody.

11 Q Okay. At some point -- but you told the police officers that you
12 identified one of them as the person who robbed you, is that right, the taller one?

13 A The taller one, yes.

14 Q I'm going to show you State's Exhibit 53; do you recognize the person
15 in this photo?

16 A Yes. That's him.

17 Q Okay. Who -- him who? What did he do?

18 A The one who robbed me.

19 Q Okay. And you told the police that this was the person who robbed
20 you?

21 A Yes.

22 Q State's Exhibit 52; do you recognize the person here?

23 A Yes.

24 Q And who do you recognize this person to be?

25 A The one who robbed me.

1 Q Before the police officer showed you this person, State's Exhibit 53,
2 and the other man, do you remember a detective translating in Spanish some
3 instructions?

4 A I don't remember exactly, but there was a detective who spoke
5 Spanish.

6 Q And what did that detective who spoke Spanish tell you?

7 A About what was the certainty or how much of a certainty I have
8 about -- of -- regarding if this person was the person to have robbed me. And I
9 said 90 percent.

10 Q Okay. I'm going to approach with what's now been marked State's
11 Exhibit No. 10.

12 MS. LEXIS: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 BY MS. LEXIS:

15 Q Sir, do you recognize this form?

16 A Yes. We filled it out at the house.

17 Q Okay. When you say we, who filled it out? Who helped you fill it out?

18 A My wife.

19 Q Okay. What portion of this showup or this sheet did your wife fill out?

20 A I don't understand. What is it?

21 Q Which part of this form -- did your wife fill out the middle portion? Did
22 she write that area?

23 A The whole thing she filled out.

24 Q Okay. Did you tell her what to write for you?

25 A Yes.

1 Q Okay. Okay.

2 A Yes. She was writing and I was telling her.

3 Q After she wrote it and after you told her what to write, did you sign the
4 form?

5 A I -- I asked the police officer -- actually, my wife asked the police officer
6 if she could -- she could fill out the form, because I -- I don't -- I can't read.

7 Q Okay.

8 A So we asked if we would sign.

9 Q So who signed it?

10 A I did.

11 Q Okay. So that's your signature?

12 A Yes.

13 MS. LEXIS: Your Honor, I move to admit State's Exhibit 10.

14 THE COURT: 10?

15 MS. MACHNICH: No objection.

16 THE COURT: All right. 10's admitted.

17 [State's Exhibit No. 10 admitted.]

18 MS. LEXIS: Court's brief indulgence. Okay. I have no more questions
19 for this witness. Thank you.

20 THE COURT: Cross?

21 MS. MACHNICH: We do have questions. Just one moment,
22 Your Honor.

23 **CROSS-EXAMINATION**

24 BY MS. MACHNICH:

25 Q Good afternoon, sir.

1 A Good afternoon.

2 Q Can you identify anyone in this courtroom as being involved in the

3 robbery?

4 A Here, inside here?

5 Q Inside the courtroom. You can look around.

6 A That's him.

7 Q Okay.

8 MS. MACHNICH: Your Honor, let the record reflect identification of the

9 defendant.

10 THE COURT: He -- he did point in the direction of the defendant.

11 BY MS. MACHNICH:

12 Q So you're about 90 percent sure?

13 A Yes.

14 Q Okay. So let's go back to the robbery itself for a second and how you

15 described the robber. The man who robbed you was wearing dark clothes?

16 A Yes.

17 Q Saggy black pants?

18 A Yes.

19 Q Black shirt?

20 A Yes.

21 Q Okay. And you described him as a black man?

22 A Yes.

23 Q And he was thin?

24 A Yes.

25 Q During the robbery you described as some point that you were

1 standing right next to the man?

2 A Yes.

3 Q And this is after you had a chance to step down out of the truck?

4 A No. It was before, when he pulled me out.

5 Q So you were standing next to him on the ground with him on the
6 ground, the same level?

7 A I have -- I had one foot, this foot, on the truck, and the other truck, this
8 foot, on the floor.

9 Q All right. And you described the man as being a little bit taller than
10 you?

11 A Yes.

12 Q And just to be clear, when you're saying one foot on the truck and
13 one foot on the floor, your weight was on your bottom leg on the floor, and you had
14 one foot still in the truck?

15 A I was leaning toward the frame of the door, and he had -- and I had a
16 foot on the -- the truck has fins and I had the -- my foot on that fins, and he was
17 touching me.

18 Q That's fine. All right. And you also said the man had a gun?

19 A Yes.

20 Q You describe it as a small gun, as we covered?

21 A Yes.

22 Q And you originally told police that it was gray and looked like a .380?

23 A Yes. I've seen -- yes. I've seen guns that have, like, a .380, I told
24 them.

25 Q Okay. And this appeared to be the gun that the robber had?

1 A Yeah. It would look like that one.

2 Q Okay. And you got a really good look at this gun, didn't you?

3 A Well, I couldn't see it quite well because I had -- I had his here so you
4 could only see it with the corner of my eye.

5 Q Okay. Sorry. Needless to say, you were very afraid of the gun?

6 A Who wouldn't be scared to have a gun here if a gun could just, like, go
7 off at any second.

8 Q And, sir, that's what I'm trying to say. You were very scared of the
9 gun?

10 A Yes.

11 Q All right. Moving forward, you -- the police -- you testified earlier, came
12 back to see you later that morning?

13 A Yes.

14 Q Okay. And as you testified on direct examination, you were told the
15 robber was caught?

16 A Yes.

17 Q Okay. At that point, the officer who came to see you wanted to take
18 you and your wife separately to go view this man?

19 A Yes.

20 Q They drove you personally down to the apartment complex?

21 A Yes, in person.

22 Q And they drove you there in a police vehicle, sitting in the back?

23 A Yes.

24 Q You never got out of the police vehicle during the identification
25 process?

1 A No.

2 Q No. And during the process, you saw when you arrived, two people
3 standing by the police cars?

4 A Yes.

5 Q Okay. One man was shorter?

6 A Yes.

7 Q And one man was taller?

8 A Yes.

9 Q Okay. And ultimately you chose the taller man?

10 A The taller man, yes.

11 Q And the State was just asking you about instructions on a form. You
12 testified on direct that the officer didn't read you directions. He just asked you
13 what percentage sure you were that the man was there.

14 A I -- all I said was that he was, like, giggling and looking -- gazing
15 downwards, and all I wanted was that he stop, like, laughing and just look
16 straightforward.

17 Q Okay. Sir, that wasn't my question. I'm talking about your interactions
18 with the police officer. He told you to tell him how sure you were that one of those
19 men were the men you are identifying.

20 A Yes. He asked me and I said 90 percent.

21 Q Okay. 90 percent. And you said 90 percent because you pointed out
22 that his clothing was different?

23 THE COURT INTERPRETER: I'm sorry. His what was different?

24 BY MS. MACHNICH:

25 Q You pointed out his clothing was different?

1 A Yes, but I recognize his -- his -- because I had a really, really close to
2 me. And even now that that's not happening anymore, I'm shaking all over. I'm
3 really scared.

4 Q Okay. Sir. I realize that testifying is very scary, and I'm not trying to
5 make you uncomfortable. What my question was, you gave a 90 percent chance
6 this is the man. And one of the reasons you said was because he changed
7 clothes, correct?

8 A Yes, because he changed, because that wasn't the same clothing that
9 he was wearing before.

10 Q Okay. But you also pointed out that his hair looked like it had been cut
11 and styled differently?

12 A Yes. A little bit different, a little bit different. When that took place, he
13 looked like he hasn't -- he hadn't combed his hair that day, and later on the second
14 time I saw him -- saw him, his hair was as if he had combed it.

15 Q And cut it?

16 A Yeah. I don't know what he did. He might have cut his hair or
17 something, but I was sure he was -- he was the one.

18 Q Okay. So you were 90 percent sure?

19 A Yes.

20 Q And sir, you are approximately 5-foot-7 inches tall?

21 A No. No. I'm shorter than that.

22 Q Oh, okay. Yes. May I ask how tall you are?

23 A 5-even. 5-foot even.

24 Q Oh, 5-foot even. I apologize, sir. I misunderstood some of the police
25 reports.

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MS. MACHNICH: I'll pass the witness. Thank you.

MS. LEXIS: No redirect. Thank you.

THE COURT: All right. How about the jurors, anything guys?

All right. Thank you.

UNIDENTIFIED JUROR: You need my name also, is that correct?

THE COURT: Yes. Name and badge number.

Let's see what we've got, guys.

[Bench conference transcribed as follows.]

MS. MACHNICH: Okay. Sure.

[End of bench conference.]

THE COURT: Question for you, sir; do you remember what hand the suspect held the gun in?

THE WITNESS: The right hand.

THE COURT: The right hand. Okay. Simple question. No redirect is needed on that -- or no follow-up.

Thank you, sir.

Any other questions from the jurors?

All right. Sir, you are excused. Thank you for your time. Okay. You're excused. Thank you. Watch your step.

Let's take a break.

MS. LEXIS: Okay.

THE COURT: Ladies and gentlemen of the jury, you're admonished during this 15-minute recess not to communicate among yourselves or with anybody else about this trial, the subject matter of the trial; do not communicated at all with any of the parties, attorneys, or witnesses involved in the trial; do noted

1 seek or obtain any information or comments about the case from any source,
2 including newspapers, television, radio, Internet, e-mail, or cell phones or any
3 other electronic device; do not read, watch, or listen to any report of or
4 commentary about the case; do not perform any research or investigation; do not
5 form or express any opinion on any subject connected with the trial until the case
6 is finally submitted to you.

7 15-minute recess takes us to 3:35.

8 Marshal, you can let the jurors go back there. I told -- or I asked my
9 JEA to make some coffee. Hopefully there's coffee and she'll bring the orange
10 juice back out if you want some orange juice or whatever's left over.

11 THE MARSHAL: Okay.

12 THE COURT: All right. So they can go that or they can go that way
13 and then just let them know what -- just keep an eye on them.

14 THE MARSHAL: Okay.

15 THE COURT: All right. All right. 15 minutes. Thank you.

16 [Court recessed at 3:18 p.m., until 3:37 p.m.]

17 [In the presence of the jury.]

18 THE COURT: All right. Is the State ready to call its next witness?

19 MS. LEXIS: We are, Your Honor. The State calls Darrell Faulkner.

20 THE COURT: Darrell Faulkner.

21 MS. LEXIS: Yes.

22 THE COURT: Okay. Thank you.

23 How are you, sir?

24 MR. FAULKNER: I'm good. How about you.

25 THE COURT: All right. Very good. Step on up, and the court clerk

1 will give you an oath.

2 MR. FAULKNER: Okay.

3 **DARRELL FAULKNER**

4 [having been called as a witness and being first duly sworn, testified as follows:]

5 THE CLERK: Please be seated, and please state and spell your first
6 and last name for the record.

7 THE WITNESS: My name is Darrell Faulkner, D-A-R-R-E-L-L,
8 F-A-U-L-K-N-E-R.

9 MS. LEXIS: May I, Your Honor?

10 THE COURT: Yes, you may.

11 **DIRECT EXAMINATION**

12 BY MS. LEXIS:

13 Q Sir, I'd like to turn your attention to May 28th, 2016, at
14 approximately 7 -- or 6:53, 7:00 a.m.; where were you?

15 A In my garage.

16 Q Okay. Were you there with anyone else?

17 A Not at first. I was in there packing. Then my wife came up.

18 Q Okay. When she came home did she join you in the garage?

19 A Yes, she did.

20 Q Okay. I'm going to show you what's been previously marked and
21 admitted as State's Exhibit No. 20; do you recognize this?

22 A Yeah.

23 Q Okay. Is this the garage that you were telling the jury about?

24 A Yes, ma'am.

25 Q Was this particular home located at 2605 Rising Legend here in

1 Las Vegas, Clark County, Nevada?

2 A That is correct.

3 Q Okay. You no longer live at this residence?

4 A No.

5 Q Okay. In fact, you were -- were you packing to move away?

6 A Yes.

7 Q And so you indicated that your wife came home?

8 A Yes.

9 Q Okay. Did she -- and she joined you in the garage?

10 A Yes.

11 Q What, if anything, happened in that particular garage on
12 May 28th, 2016, which causes you to have to testify in court today?

13 A Being robbed at gunpoint.

14 Q Okay. How did you first become aware? How did this incident start?

15 A My wife was talking to me, so I turned to face her, which left my back
16 to the driveway. She -- all of a sudden she says, somebody's here to talk to you --
17 or somebody's here to see you. When I turned, I had a gun in my face.

18 Q About how close or -- how close or far away was the gun to your face
19 when you turned around?

20 A I would say maybe a little bit behind you, because when I turned he
21 had it drawn up.

22 Q Okay. Do you recall which hand?

23 A It was in his left hand.

24 Q All right. Do you recall the color of the firearm?

25 A Yes, I do.

1 Q What color?
2 A Black.
3 Q Familiar with firearms?
4 A Yes, I am.
5 Q Okay. Can you tell me anything about what your -- what you
6 remember about this firearm?
7 A It was a Glock, and I'm pretty positive it was a .40.
8 Q .40 caliber?
9 A Yes.
10 Q Okay. So you see this gun pointed at you, sir; what's the next thing
11 that happens?
12 A He demanded money, told us to get on the ground, asked us where
13 the money was, and he asked us where the valuables were. And I said to him,
14 Look around. We're packing.
15 Q Okay.
16 A So I went to hand him a hundred dollars, and at that time he tried to
17 grab my wallet.
18 Q Okay. Let me stop you right there. Right when this person came, you
19 know, and pointed the gun, at some point did you have an opportunity to observe
20 and see his face?
21 A Yes.
22 Q Okay. The person who came into your garage on May 28th, 2016, do
23 you see him here in court?
24 A Yes.
25 Q Okay. Could you please point to him and describe something he's

1 wearing?

2 A He's sitting right over there with his hand on his left cheek.

3 MS. LEXIS: Your Honor, please let the record reflect this identification
4 of the defendant.

5 THE COURT: It does.

6 MS. LEXIS: Okay. Thank you.

7 BY MS. LEXIS:

8 Q So when the defendant first approached you, did he actually make it
9 inside your garage?

10 A When he was walking up, yes, he did. He came inside the garage.

11 Q Okay. And at any point in time did he tell you to get down on the
12 ground or --

13 A Yes, he did.

14 Q Okay. How did he say it?

15 A He said, Get on the ground or I'll shoot you.

16 Q Okay. Did -- was your wife still in the garage with you?

17 A Yes, she was.

18 Q Okay. So what -- did you see what your wife did?

19 A She dropped down real quick, and then I went down with her. And
20 that's when he demanded the money.

21 Q Okay. I'm going to show you State's Exhibit 21; does this particular
22 photograph show where you were standing, where the defendant was standing
23 when he was holding the gun, and where your wife would have been?

24 A Yes, it does.

25 Q Okay. Can you please put an X where you were? You can draw -- I'm

1 sorry. You can touch the screen like Monday Night Football, and it will show up on
2 the screen.

3 A It was right -- it was right about here, and my wife was right here.

4 Q Okay. And so you were -- you're facing the photograph, or if you're
5 facing the garage, you're kind of towards the end of the photograph on that
6 walkway area?

7 A Right.

8 Q All right. And then your wife, her name is Debby, correct, or Deborah?

9 A That is correct.

10 Q She would have been to the left of you?

11 A No she was to my right.

12 Q To your right, okay.

13 A Yes.

14 Q Because were you facing the garage at this time?

15 A Yes.

16 Q Okay. And where would -- where was the defendant?

17 A I would say -- I would say maybe, like, right in this area here.

18 Q Okay.

19 A It's not -- yeah, where you saw the yellow mark at.

20 Q Okay. And so I'm going to show you State's Exhibit No. 25. Okay.
21 Does that show where the defendant was standing?

22 A Yes, it does. You see the -- the grease spot right here, it was around
23 where we were. He was, like, right here.

24 Q Okay. Okay. For the record, there's a large grease spot towards the
25 bottom of the photograph. That's what he's indicated. When the defendant said,

1 Get down on the ground or I'll shoot, did you see Debby go -- Deborah go down to
2 the ground?

3 A I caught her out of the corner of my eye.

4 Q Okay.

5 A I was trying to keep my eyes on him.

6 Q Okay. What were you looking at?

7 A Descriptions, because, you know, what he was wearing, what he had
8 on, the way he was holding the gun.

9 Q Okay. Did you have an opportunity to look at his face at that time?

10 A Yes, I did.

11 Q Okay. Did you also go down to the ground?

12 A Yes, I did.

13 Q Okay. Did you, like, sit on the ground?

14 A I squatted at first.

15 Q Okay. By squatting, what do you mean? Can you --

16 A I didn't drop all the way down at first. I kind of just, like -- I don't know.
17 I can show you if you like.

18 MS. LEXIS: Okay. Permission to exit the witness stand.

19 THE COURT: Yeah, sure.

20 BY MS. LEXIS:

21 Q Stand right here, sir. A little further so everyone can see.

22 A How about right here.

23 Q All right.

24 A When he told us to get down, she dropped all the way down on her
25 rear end, down like this at first.

1 Q Okay. So for the record, you're squatting?

2 A Right.

3 Q All right. And where was the defendant?

4 A Basically, like, [indiscernible] --

5 THE COURT: We can't hear the witness. Just -- just so you know that
6 his testimony won't be recorded.

7 MS. LEXIS: Okay. We'll grab a microphone.

8 THE COURT: Uh-huh.

9 BY MS. LEXIS:

10 Q If you could just stay put right there. Are you able to do that, sir?

11 A Yeah, I can do it.

12 Q How far away was the defendant from you? Where I was?

13 A He was, like, over here a little bit more to my left, right about there.

14 Q All right. About how many feet would you estimate that to be?

15 A Maybe a foot and a half to two.

16 Q Okay. All right. You can stand up, sir. At some point --

17 And you can go back to the witness stand. Thank you.

18 -- you indicated he asked for money?

19 A Yes.

20 Q How did he ask for money?

21 A He's, like, Give me all the money you've got. Then he asked for
22 valuables.

23 Q Okay. And while you're squatting on the ground, did -- did that cause
24 you to kind of stand back up?

25 A I told him I had a hundred dollars in my wallet.

1 Q What, if anything, did the defendant say to you?

2 A He said, Give me the money. So I stood up, and when I stood up, he

3 backed up.

4 Q Okay.

5 A And I opened my wallet. Hand -- went to hand him the hundred

6 dollars. He grabbed it and he tried to grab my wallet.

7 Q Okay.

8 A And I pulled it back.

9 Q Okay. So --

10 A I was like, No, you're not getting my wallet. It's got my CDL in it.

11 Q Your -- I'm sorry, CDL?

12 A My CDL, yes.

13 Q Is that, like -- what is that?

14 A It's a Class A driver's license.

15 Q Okay. You needed that for work?

16 A Yes.

17 Q Okay. And so he -- what did he say back to you when you said no, he

18 couldn't have your wallet?

19 A He didn't really say anything at that time. He just kind of, like, stepped

20 back. Then he asked us where the valuables were -- was, and I said, Look

21 around, we're packing. And I said, Over in the corner.

22 Q Okay. I'm going to show you State's Exhibit 24. Okay. Did you point

23 him in any particular part of your garage?

24 A I tried to tell him to go over to the corner over there where you see that

25 red lunchbox at. Right here.

1 Q Where, sir? Oh, the lunchbox?
2 A Yes.
3 Q Okay.
4 A Yes.
5 Q So it's like a cooler-type thing?
6 A It is a cooler.
7 Q Okay. You tried to direct him there?
8 A Yes.
9 Q Did he go there?
10 A No.
11 Q Why did you try to direct him there?
12 A Because I was looking for an opportunity to attack him.
13 Q Okay.
14 A I was more worried about my wife than anything.
15 Q Okay.
16 A Because of the way he was standing, he had the gun, basically, like, all
17 he had to do was lift it, and it would have went right into her.
18 Q Okay.
19 A So I was more worried about her.
20 Q Okay. So you wanted to, like, divert his attention?
21 A That's correct.
22 Q Okay. But he didn't fall for that?
23 A No.
24 Q All right. So what happened next?
25 A He told my wife to dump out her purse, and she dumped out her purse

1 on the floor. And I told him he wasn't getting her purse either.

2 Q Okay.

3 A That she had no money.

4 Q And what did he say back?

5 A At that time he told us to go in the house and shut the garage down.

6 And he kept repeating himself, Stop staring at me or I'm going to shoot you.

7 Q Who was he saying that to?

8 A Me.

9 Q Okay. Why, were you looking at him?

10 A Yes, I was.

11 Q Were -- were you staring at him?

12 A Pretty much, yes.

13 Q Okay. And why were you doing that?

14 A Like I said, I was waiting for him to lose his concentration for a second.

15 Q Okay. What did he do -- I mean, did you and your wife start making
16 your way towards State's Exhibit No. 21. Where's the garage door? Or where's
17 the door leading to the garage?

18 A The door to the garage is right here. This is the inside of the house.

19 Q Okay. All right. So did you and Debby walk towards, like, going back
20 into the house?

21 A Yes.

22 Q Okay. What did the defendant do?

23 A Took off down the driveway.

24 Q Okay. Did you and Debby go inside the house?

25 A Yes.

1 Q Was there someone in the house?
2 A Her mother.
3 Q Okay. Did you call the police?
4 A Yes, I did.
5 Q Okay. After you shut the garage door?
6 A I think I already had the phone in my hand.
7 Q Okay. All right. Where was the phone?
8 A There's one right there on the wall in the garage.
9 Q Okay.
10 A And then the other one was in the house on the table.
11 Q Okay. Do you have any firearms?
12 A Yes, I do.
13 Q Did you have one out in the garage at that time?
14 A I wish I did, but I didn't.
15 Q So you called the police immediately after this incident?
16 A Yes, I did.
17 Q All right.
18 MS. LEXIS: May I approach with what's been previously marked as
19 State's Proposed Exhibit No. 5?
20 THE COURT: Yes.
21 MS. LEXIS: Thank you.
22 BY MS. LEXIS:
23 Q Sir, I'm showing you what has been marked as State's Proposed
24 Exhibit No. 5; is that a CD?
25 A Yes, it is.

1 Q Did you meet with myself and Mr. Dickerson prior to your testimony
2 today?

3 A Yes, I did.

4 Q Okay. Back on July 25th, 2017?

5 A That is correct.

6 Q Okay. Did you have an opportunity to listen to your 911 call at that
7 time?

8 A Yes, I did.

9 Q Okay. And once we popped the CD out with the 911 call, did you
10 initial?

11 A Yes.

12 Q Okay. And do you, in fact, see your initial on this CD?

13 A Yes, I do.

14 Q Fairly and accurately show the CD as you remember it when you
15 signed it?

16 A That is correct.

17 Q Thank you.

18 MS. LEXIS: Your Honor, I move to admit State's Proposed
19 Exhibit No. 5.

20 MR. GASTON: No objection.

21 THE COURT: All right. Admitted.

22 [State's Exhibit No. 5 admitted.]

23 MS. LEXIS: Permission to publish?

24 THE COURT: Yes.

25 [Audio played.]

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BY MS. LEXIS:

Q Was that the 911 call you placed, sir?

A Yes, it was.

Q The woman's voice who sounded excited and appeared to be wailing or crying, who was that?

A That was my wife.

Q Okay. So she was right next to you when you were calling the police?

A She was on the couch, yes.

Q Okay. After this call was placed, did the police respond to your residence?

A Yes, they did.

Q Did you tell the detectives about what happened to you or the --

A Yes.

Q -- police officers?

A Yes, I did.

Q Okay. At some point did you tell them that the robber, the defendant, had attempted to grab your wallet?

A Yes, I did.

Q At some point did they ask you for that wallet?

A Yes, they did.

Q Okay. And where had you put -- placed the wallet?

A On the hood of the car.

Q Okay. Prior to placing it on the hood of the car, you know, after the defendant went to snatch -- snatch for it, where did you put it?

A Back in my back pocket.

1 Q Okay. When the defendants asked to see it, you placed it on the hood
2 of the car?

3 A That's correct.

4 Q Okay. State's Exhibit No. 26. Okay. Did you -- were you at the
5 residence when a crime scene analyst showed up?

6 A Yes, I was is.

7 Q Okay. And did you hear them discussing potentially processing your
8 wallet for evidence?

9 A Yes.

10 Q Okay. But when they asked for it, was it in your back pocket?

11 A Yes, it was.

12 Q Okay. And at that point they didn't process it; is that right?

13 A I don't believe so, no.

14 Q Okay. All right. While the defendant was in your residence, you know,
15 did you or on his way out of your residence, did you ever see him touch any part of
16 either your house or the car?

17 A I can't say I did, no.

18 Q Okay. After the police arrived, did you and your wife or did you fill out
19 a voluntary statement?

20 A Yes, I did.

21 Q Okay. Kind of just briefly telling the police what happened?

22 A That's correct.

23 Q Okay. Did Debby fill out a voluntary statement?

24 A No. She was -- she had to take some medication to calm herself
25 down.

1 Q Okay. All right. At some point did a detective come to your location
2 and ask you to go with him to another location, a secondary location?

3 A Yes, he did.

4 Q Okay. To potentially identify a suspect?

5 A That is correct.

6 Q Okay. Do you remember that being Detective Majors or do you
7 remember the name?

8 A No. I don't know. No.

9 Q Okay. That's fine. Prior to your going to the secondary location, did
10 the detective or another officer read you some -- some instructions?

11 A I really don't remember. I was so freaking mad, I really don't
12 remember, I mean.

13 Q Okay. Do you remember going to a secondary location?

14 A That I do remember, yes.

15 Q Okay. Was that location an apartment complex?

16 A Yes, it was.

17 Q Okay. When you were transported to that particular location, were you
18 in a marked police car?

19 A No. We were in a detective car.

20 Q Okay. So if -- it wasn't the black and white?

21 A No.

22 Q Okay. Where were you seated?

23 A In the passenger's seat.

24 Q Front?

25 A Yes.

1 Q Okay. And once you were brought to this particular apartment
2 complex, were individuals presented to you for potential showup?

3 A Yes, they were.

4 Q Okay. How many individuals were placed in -- were individuals placed
5 in the front of the patrol car?

6 A They were a little bit -- like, maybe six feet in front of it.

7 Q Okay. How many individuals?

8 A There was two.

9 Q Okay. Were you able to observe these two individuals?

10 A Yes, I was.

11 Q And upon presentation, were you able to identify one or more of the
12 individuals?

13 A Yes, I did.

14 Q Okay. And -- the individual that you identified, what did you identify
15 him as?

16 A The one that pulled the gun as the robber.

17 Q Okay. I am going to show you -- was one of them taller than the other?

18 A Yes, they was.

19 Q Okay. The individual that you identified as the robber, was he the taller
20 or the shorter one?

21 A He was the taller one.

22 Q State's Exhibit No. 53; do you recognize what's shown here?

23 A Yes, I do.

24 Q Okay. Is this the individual that you identified as robbing you and your
25 wife?

1 A Yes.

2 Q The same individual you identified in court today?

3 A Yes.

4 Q Okay. Sir, when you made this particular identification, how certain
5 were you that the person as shown in this picture was the individual who pulled the
6 gun out and robbed you and your wife?

7 A I was pretty positive.

8 Q Okay. Did you tell the police a certain percentage?

9 A Yes.

10 Q What percentage?

11 A I think I told them it was like 99.

12 Q Okay.

13 A I'm almost certain I was 100 percent positive is what I said.

14 Q Okay. And has you sit here today, how certain are you that the person
15 you identified, the defendant, is the one who robbed you and your wife?

16 A I'm 100 percent positive, just longer hair.

17 Q Okay.

18 MS. LEXIS: Court's brief indulgence.

19 Q Sir, in the 911 call, you said to the police that you believed the firearm
20 to be a 9mm Glock. Do you --

21 A I corrected myself.

22 Q You corrected yourself?

23 A Yes, I did.

24 Q Okay. As you sit here today, inspect of -- we've never shown you a
25 picture of a firearm, have we?

1 A No.

2 Q Okay. And did the police ever show you a picture of a firearm?

3 A No.

4 Q Okay. As you sit here today, what is your recollection concerning the
5 caliber of the firearm used?

6 A It was a Glock .40.

7 MS. LEXIS: Okay. I have no more questions for Mr. Faulkner. Thank
8 you.

9 THE COURT: All right. Mr. Gaston.

10 **CROSS-EXAMINATION**

11 BY MR. GASTON:

12 Q [Indiscernible], sir?

13 A How are you doing?

14 Q All this was going on. Fair to say you were concerned about your
15 safety?

16 A I wasn't concerned about mine. I was concerned about my wife's.

17 Q Okay. You literally had a gun in your face, right?

18 A Yes.

19 Q Okay. Obviously I wasn't there, but it's not hard to imagine you were
20 probably very aware of exactly how that gun was pointed, right?

21 A Absolutely.

22 Q Whether it was pointed at you, whether it was pointed up, whether it
23 was pointed down?

24 A That is correct.

25 Q Okay. And you testified before on direct that you were watching him

1 very closely, right?

2 A That is correct.

3 Q Worried about your wife and probably just generally not happy with the
4 situation, right?

5 A Yeah, I was not happy.

6 Q All right. So if his attention slipped, he turned his head to look around,
7 the gun wasn't pointed, you were going to jump him, right?

8 A That is correct.

9 Q Okay. Now, when you talked to us before, you did get a look -- a good
10 look at the gun, right?

11 A That is correct.

12 Q Okay. State just said herself, your statement originally that was
13 a 9mm, that was a mistake?

14 A I corrected it.

15 Q Right. So the statement that it was a 9mm was a mistake?

16 A Yes, it was a mistake.

17 Q And you corrected it and said it was a .40 caliber?

18 A That's correct.

19 Q And you described it as a black Glock?

20 A Right.

21 Q Okay. Didn't you also tell the police that it had night sights on it?

22 A No, I don't -- I never said that.

23 Q Do you remember giving a recorded statement to the police?

24 A Say that one more time.

25 Q Do you remember giving a recorded statement to the police?

1 A Yes, I do.

2 Q Okay. Do you not remember ever saying that or are you saying you
3 didn't say that?

4 A I don't remember. Back in January, I had heart failure, and I really
5 don't remember if I said that or not.

6 Q Okay. So this happened about 14 months ago?

7 A That is correct.

8 Q Okay. So fair to say some of the details might not be as fresh in your
9 mind?

10 A That is correct.

11 Q All right. Would it refresh your recollection, help you remember, if I
12 show you a copy of the recorded statement?

13 A Yes.

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

15 THE COURT: Yes.

16 BY MR. GASTON:

17 Q Go ahead --

18 A Wait a minute. I got to get my cheaters on. I lost my vision. Okay.

19 Q Go ahead and just -- I'll help focus you a little bit. Go ahead and read
20 as much as you want. Let me know if you remember -- let me know when you're
21 done reading.

22 A Oh, yeah, now, I -- yes, I do remember saying that.

23 Q So you -- so you did --

24 A Yes, I remember, because the night sights, they have two little spots
25 that kind of stick out.

1 Q So you do remember now?

2 A Yes, I do.

3 Q And you remember testifying at grand jury?

4 A Yes, I do.

5 Q Now, the defense attorneys, us, me and Tegan, we weren't present at
6 the grand jury, right?

7 A I don't think so, no.

8 Q All right. Yeah. You weren't asked any questions by anybody but the
9 State, right?

10 A That's correct.

11 Q All right. And you remember being asked to describe the gun?

12 A Yes, I do.

13 Q Okay. And you described, in your grand jury testimony, that it is a
14 Glock, black, and .40 caliber, correct?

15 A That's correct.

16 Q But isn't it also true that in the grand jury testimony you don't mention
17 the night sights?

18 A No, I don't believe I did.

19 Q You agree that you probably didn't mention the night sights?

20 A I really -- like I said, I really don't remember --

21 Q Okay.

22 A -- saying that or not.

23 Q Would reviewing a copy of the relevant section of your grand jury
24 transcript refresh your recollection about what you said?

25 A Say that again?

1 Q That was a long question. Sorry.
2 Would taking a look at your grand jury transcript --

3 A Okay.

4 Q I'm sorry. I'm not supposed to put this on the TV.

5 MS. LEXIS: Yeah. Thank you.

6 BY MR. GASTON:

7 Q Would taking a look at your grand jury transcript help you remember?

8 A Yeah, probably.

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

10 THE COURT: Yes.

11 BY MR. GASTON:

12 Q And let me know wherever you're done reading.

13 A All right. No, I guess I didn't mention that about the night sights.

14 Q Okay. And I'm going to go ahead and ask you one more question.

15 You keep that for a second.

16 A No. Go ahead.

17 Q Isn't it also true that you do not describe as a big -- as a large-framed
18 gun in your grand jury transcript?

19 A I don't think that conversation ever came up, if it was a long-framed
20 gun. All he asked me was is what kind of gun it was. I told him it was a Glock.

21 Q Right. Well, exactly. They asked you what kind of gun it was --

22 A Yeah, but it --

23 Q -- to describe it.

24 A No. They didn't describe it. They just said -- well, here it says, Can
25 you describe that? Yeah, it was a Glock, a Glock .40.

1 Q Thank you. And yet when you're trying to -- when you're trying to
2 testify, when you're trying to tell the police information, you're trying to tell them as
3 much as information as you can to help them catch the guy who did this, right?

4 A That is correct.

5 Q And during your grand jury transcript, you do not mention that it has
6 night sights or that it is a big-framed gun, correct?

7 A No.

8 Q In your recorded statement you did mention it was a large-framed gun,
9 correct?

10 A That I believe I did say it, yes.

11 Q Okay. Now, one of the things you mentioned earlier to the district
12 attorney was that you were studying him try to -- one of the things is trying to
13 remember descriptions to give later, right?

14 A Yeah, pretty much.

15 Q You want the guy to get caught, basically, right?

16 A Yes.

17 Q All right. You described him in your recorded statement as a young
18 black man?

19 A Uh-huh.

20 Q You got to yes or no because they write down the answers?

21 A Yes, I did.

22 Q Short-cut Jheri curls?

23 A Yes.

24 Q Describing his hair, right? Short-cut Jheri curls is a style of hair?

25 A That's correct, yes.

1 Q You said he was wearing a short-sleeved black or navy T-shirt?
2 A Yes. I can tell you exactly what I said, if you want me to tell you.
3 Q Well, I -- I'm almost done here.
4 A Okay.
5 Q And you said he had a white T-shirt underneath, right?
6 A That's correct.
7 Q It's also true on the 911 call you said that he was wearing blue jeans,
8 right?
9 A That's correct.
10 Q In your recorded statement, you said he was wearing light blue jeans,
11 right?
12 A I believe so. Blue jeans are blue jeans to me, so --
13 Q Yep. And a blue belt, as well, right?
14 A Yeah, that's correct.
15 Q Okay. Isn't it true, though, that when you testified at grand jury, you
16 said he was wearing black pants?
17 A No. I -- I believe I said he was wearing jeans. I might have said light
18 blue jeans, yes.
19 Q Would it surprise you if you said he wore black -- black pants?
20 A No.
21 MR. GASTON: May I approach the witness, Your Honor?
22 THE COURT: You may, yes.
23 BY MR. GASTON:
24 Q I'm showing you page 20 of your testimony in front of the grand jury.
25 Question -- is this correct that the question says, Can you describe the

1 person who came to your garage to rob you?

2 A Yes.

3 Q And then your answer is he was a slender black male --

4 A Right.

5 Q -- had a little goatee here --

6 A Uh-huh.

7 Q -- and he was wearing, like, black pants with a belt hanging down?

8 A Right. I described it different at grand jury. Yes, I did.

9 Q And you also, as you just said, also said he had a little goatee, correct?

10 A Yes.

11 Q Now, originally, right after the robbery, we've already established

12 you're trying to give the police as many details as you can.

13 A Right.

14 Q Okay. In your recorded statement, when you're talking to the police,

15 giving these details, isn't it true that you never mentioned the little goatee?

16 A No. I didn't believe I did, because I was so worried about my wife. But

17 I know he had a goatee.

18 Q Fair enough. But you didn't mention it in your recorded statement?

19 A No, I did not.

20 Q Okay. You mentioned some of the descriptions you were trying to

21 remember. In your recorded statement, you didn't describe his face in any way,

22 correct?

23 A I don't believe I -- I don't remember if I did or didn't, to be honest with

24 you.

25 Q Would it surprise you if I told you he didn't?

1 A No.

2 Q Okay.

3 A Like I said, I -- when I got sick in January, I lost a lot of my thoughts
4 about certain things. I try to block certain things out.

5 Q Right. And this is a traumatic event, fair to say, right?

6 A Right. Well, you know --

7 Q One that scared you and made you angry?

8 A I wasn't -- like I said, I was not scared. I was pissed, if you really want
9 to know the truth.

10 Q I get it. I get it. You mentioned in January -- what happened exactly,
11 the medical issues that --

12 A I had congestive heart failure.

13 Q Okay. And that caused some memory loss?

14 A I'm not sure if it did or didn't. I think it did, but I have to wait until I get
15 my results back from my doctors.

16 Q Okay. So some of your memory -- so you're having trouble
17 remembering some of the details back then, right?

18 A I don't think so, not with that. I mean, I may not have said certain
19 things when I called 911 or set it down, but I know what he had on. I know exactly
20 what he was wearing. I know what he looked like. I know how the gun was
21 positioned in his hand. I mean, that I do remember.

22 Q No. I definitely -- definitely believe you remember how the gun was
23 positioned. Not talking about that, but with respect to clothing, we can agree that
24 both -- no one's accusing you of lying.

25 A Right.

1 Q No one's saying that. But both times when you gave the police the
2 initial information and when you testified under oath to tell the grand jury, you gave
3 two different descriptions about the pants, right?

4 A I think I believe I said that I gave one to the police like that, and then
5 grand jury I think I said he had dark jeans on, yes.

6 Q You said black pants, right?

7 A Black pants.

8 Q Right. Okay. And so some of the details have changed depending on
9 the time you testified, right?

10 A Yes.

11 Q Okay. And some details have been added or left off given the time that
12 have changed, correct?

13 A Right. There's not a -- a lot of the stuff that I said has not all been on
14 that paper either.

15 Q Right. Well, it was recorded.

16 A That's true.

17 Q It wasn't stuff you wrote down, right?

18 A Yeah.

19 Q So everything you said when he was recording would have been
20 recorded, right?

21 A Yes.

22 Q Okay. And so going back to the recorded statement, it's true -- isn't it
23 true that you didn't actually give any specific descriptions about the suspect's face?

24 A No. I don't think I did. I believe that the only thing I said was he had a
25 goatee -- if I'm not mistaken, I said he had a goatee.

1 Q Would it surprise you if I told you you didn't say that?
2 A No, probably not.
3 Q Do you want to review your statement?
4 A No. I'm good.
5 Q Okay. You also didn't give a description about his weight, correct?
6 A About his what?
7 Q Weight. Like, slender, large --
8 A I don't know. I did -- I believe I did say he was a slender black male.
9 Yes, I did. Are you going to tell me I didn't say that either?
10 Q I don't think you said. I'm going to double check real quick.
11 MR. GASTON: May I approach the witness, Your Honor?
12 Q You can -- and I'm going to keep referencing this for a couple more
13 questions, so --
14 A Fine.
15 Q -- feel free to take a look through it. Let me know when you're done
16 reading about what you said and didn't say. And, specifically, my question is, Isn't
17 it true that you didn't mention the little goatee in this statement?
18 A I believe I did not.
19 Q And you didn't mention anything about weight either, correct?
20 A No.
21 Q And you didn't mention anything about height either, correct?
22 A No.
23 Q So other than what I've previously stated in your recorded statement,
24 you actually didn't give any other specific descriptions to identify the man, correct?
25 A No.

1 Q Okay. Now -- just to clarify, you did originally describe it as a
2 large-frame gun, correct?

3 A For the last time, yes.

4 MR. GASTON: Your Honor, may I retrieve this? May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, you may.

7 BY MR. GASTON:

8 Q I'm showing you what is State's Exhibit 41A. You are quite familiar
9 with guns, correct?

10 A Yes.

11 Q Would you agree with me that this is a -- a small-frame gun?

12 A Yes, I would.

13 Q Is this the gun that was used to rob you?

14 A No. I believe the gun that robbed us was a little bit bigger than that,
15 but that may have been, yes.

16 Q So it's -- it's possible this could have been, but it also possibly could
17 have been a different gun?

18 A That is correct.

19 Q Okay.

20 THE COURT: Sir, when you use the term a small frame, are you
21 referring to a compact or a subcompact?

22 THE WITNESS: Honestly, I just say small frame, big frame. I mean --

23 THE COURT: Okay.

24 THE WITNESS: -- it depends. That could be a medium-sized gun, a
25 small gun. I mean, I myself I have two medium small guns and I have a compact

1 gun, so I mean, it was a Glock. I know that. I know it was a .40.

2 THE COURT: Well, yeah. I -- I didn't mean to open up a lot of
3 dialogue.

4 THE WITNESS: That's fine.

5 THE COURT: I just wanted to know what you meant by a small frame,
6 and I think you explained that. Thank you.

7 THE WITNESS: All right. No problem.

8 BY MR. GASTON:

9 Q And just to -- I think we did say this [indiscernible] in terms of
10 descriptions, the gun I just showed you, you would describe as a small-frame gun,
11 right?

12 A Yes.

13 Q Okay. Now I want to move on to talk about the showup that was done,
14 the actual identification. Now, the police took you to the location where they had --
15 a man in handcuffs, correct?

16 A They had two men in handcuffs.

17 Q Two men. One did not have a shirt, one did? If you don't remember,
18 it's okay. You don't have to guess.

19 A Okay. Well, I don't remember. I know they had two men standing
20 there. One was taller than the other one.

21 Q Okay. And you identified the tall one?

22 A Yes, I did.

23 Q Okay. Now, the State asked you this, but just [indiscernible] do you
24 remember whether the officer read you instructions before taking you there on how
25 the identification was going to work?

1 A I believe the only thing he said to me was is that it may be or it may not
2 be, is how he stated it. Like I said, at that time I was more pissed than anything.
3 So I do listen closely, but I was concerned about my wife and I believe he did say it
4 may be or it may not be. We need you to identify him.

5 Q Okay. But they said we need you to identify him?

6 A That's correct.

7 Q Okay. Do you remember filling out a form after you identified him?

8 A That I cannot tell you. I mean, I don't -- I filled out a lot of forms.

9 Q Sure. The State asked you to talk about how percent sure you were,
10 essentially?

11 A Uh-huh.

12 Q Yes?

13 A Yes. Sorry.

14 Q Oh, they just write it down there.

15 A That's fine.

16 Q And you said almost certain?

17 A Yes.

18 Q Now, you're -- you said you're 100 percent now, correct?

19 A No. I believe I said I was almost certain 100 percent, is how I said it.

20 Q Okay. But almost certain we can agree is not the same thing as
21 certain, correct?

22 A 100 percent certain.

23 Q Okay. You're saying now that you're 100 percent certain?

24 A I -- when he asked me, I said I'm 100 percent that that was the man,
25 yes.

1 Q Okay. But earlier when the State asked you first, you said almost
2 certain, right?

3 A I believe I did say that, yes.

4 Q Do you remember writing out on a piece of paper that you
5 were 100 percent certain?

6 A I don't think they ever asked me.

7 Q That was going to be my next question. Do you remember writing out
8 on a piece of paper why you thought he was the man who robbed you?

9 A No. I didn't have to think. I knew.

10 Q Okay. Okay. But the police didn't ask you to write that out on a form,
11 correct?

12 MS. LEXIS: Asked and answered. He said he doesn't remember.

13 THE WITNESS: I don't remember that --

14 THE COURT: Well, let's -- let's -- there's a little ambiguity there. Let's
15 clarify it.

16 MR. GASTON: Yes.

17 THE WITNESS: If you're asking me if they asked me to sign
18 something, no, they did not.

19 BY MR. GASTON:

20 Q All right. Okay. That is what I was asking you.

21 A Okay.

22 Q Right.

23 MR. GASTON: No more questions. Thank you.

24 THE COURT: State, redirect.

25 MS. LEXIS: Thank you.

1 **REDIRECT EXAMINATION**

2 BY MS. LEXIS:

3 Q Sir, Mr. Gaston asked you, during his cross-examination, about certain
4 details that may have changed or been left out from the different conversations
5 and the different testimonies that you gave; fair to say? Do you remember that?

6 A Yes.

7 Q How many times did that defendant, Keandre Valentine, demand that
8 you stop looking at his face?

9 A Quite a bit.

10 Q How many times would you estimate?

11 A I would say maybe, like, 10 to 15.

12 Q Okay.

13 A Because -- go ahead.

14 Q I'm sorry. Please finish.

15 A Because I was getting pissed off.

16 Q Okay. And when he was telling you, during the 10 or 15 times that -- to
17 stop looking at his face --

18 A Correct.

19 Q -- were you, in fact, looking at his face?

20 A I was looking at his whole demeanor, his whole body.

21 Q Okay. But you observed his face, correct?

22 A Yes, I did.

23 Q Okay. And while you may not be able to tell the ladies and gentlemen
24 of the jury exactly what color pants he wore, are you telling them that that person
25 sitting right there is, in fact, the man who held you and your wife -- robbed you at

1 gunpoint?

2 A I'm 100 percent positive.

3 Q Okay. And you were 100 percent positive when you identified him
4 during the showup, correct?

5 A That is correct.

6 Q Okay. The gun, it may or may not have been the gun used, correct?

7 A That is correct.

8 Q Okay. But you're sure it was a Glock .40 caliber?

9 A I'm positive.

10 Q Concerning the instructions that you were read or told by the detective,
11 you remember him saying something to the effect of it may or may not be the
12 person that he presented; is that right?

13 A That is correct.

14 Q And they presented you with two individuals in handcuffs; is that right?

15 A That is correct.

16 Q Okay. And Mr. Gaston asked you -- or you -- you may have testified
17 that -- he said, it may or may not have been the person, but we need you to
18 identify, okay --

19 A Yes. I believe --

20 Q Did you take that to me we're going to need you to identify one of these
21 two individuals or did you take it to mean --

22 MR. GASTON: Objection, leading.

23 BY MS. LEXIS:

24 Q What did you take it to mean?

25 THE COURT: Well -- thank you. Go ahead.

1 MS. LEXIS: Thank you.
2 THE WITNESS: Well --
3 THE COURT: Go ahead.
4 THE WITNESS: When somebody tells you to identify somebody,
5 they're going to take you around. They're not going to have more than just one
6 person there, unless it's a one-person crime.
7 BY MS. LEXIS:
8 Q Okay.
9 A So when he came around that corner and asked me to identify him, I
10 knew right off the bat when I seen him --
11 Q Okay.
12 A -- that he was the person that was in my garage.
13 Q Okay. Let me ask you this way: Would you have identified Keandre
14 Valentine as the robber had he not been the robber?
15 MR. GASTON: Objection. Speculation and kind of it's irrelevant.
16 MS. LEXIS: I would disagree.
17 MR. GASTON: Is he -- she's asking him if he would have identified an
18 innocent man as -- I mean, intentionally.
19 THE WITNESS: No.
20 THE COURT: It's -- it's -- I don't think that question --
21 MR. GASTON: No one's arguing intentionally.
22 THE COURT: -- is capable of being answered.
23 MS. LEXIS: Okay. Let me -- let me ask it a different way. Maybe it
24 was vague.
25 THE COURT: Yeah. I mean, you're saying -- you're saying would

1 he -- would you have identified him if he --

2 MS. LEXIS: Let me ask.

3 THE COURT: -- what if he wasn't in the initial [indiscernible].

4 MS. LEXIS: No. Let me clarify.

5 THE COURT: Okay. Okay.

6 BY MS. LEXIS:

7 Q State's Exhibit 53, this is the person you identified, right?

8 A That is correct.

9 Q Would you have identified -- would you have falsely accused this man?

10 A No.

11 Q Okay. So you identified him because you recognized him as the
12 person who robbed you and your wife?

13 A That is correct.

14 Q Okay. The same reason you're identifying him here today?

15 A That is correct.

16 MS. LEXIS: Nothing further. Thank you.

17 THE COURT: Okay. Do you guys have anything more?

18 MR. GASTON: Yeah, I want -- one -- one point.

19 THE COURT: Okay.

20 **RECROSS-EXAMINATION**

21 BY MR. GASTON:

22 Q All right. So you talked to the detectives right after the incident, right?

23 A Yes.

24 Q They took you, you made the identification, right?

25 A That's correct.

1 Q So you saw Keandre then, correct?
2 A Right.
3 Q Since then detectives have showed you photos, right?
4 A Since then?
5 Q Or have they? Have they not?
6 A No.
7 Q Okay. Have you ever talked to the State since then?
8 A Yeah, one --
9 Q Like, State as in the district attorneys.
10 A We talked, but they didn't show me no photos.
11 Q Okay. You testified at grand jury, right?
12 A Yes.
13 Q And at that point, you again made an identification by looking at the
14 photos?
15 A That is correct.
16 Q Okay. And then today you see him in court?
17 A That is correct.
18 Q Literal at the table with the name defendant on it, right?
19 A Well, yes.
20 Q And you know this is the trial for the man who is accused of robbing
21 you, correct?
22 A That is correct.
23 MR. GASTON: Okay. Thank you.
24 No -- no further questions.
25 THE COURT: All right. Anything from the jurors? All right.

1 Sir, you're excused. Thank you. Appreciate it. You may step down.
2 Watch your step there.

3 All right. State will call its next witness.

4 MS. LEXIS: Your Honor, Mr. Faulkner was our final witness for the
5 day.

6 THE COURT: Okay. All right. Then let's see. Today's Friday.
7 Monday, could we start at 9:00 on Monday?

8 MS. LEXIS: Sure.

9 MS. MACHNICH: Of course, Your Honor.

10 THE COURT: All right. So you guys get to go home a little bit early.
11 All right. All right. Leave your notepads here. I'm going to read you the full
12 admonishment.

13 During the overnight -- during this weekend recess, you're admonished
14 to not communicate among yourselves or with anybody else about this trial or the
15 subject matter of this trial; do not communicate at all with any of the parties,
16 attorneys, or witnesses involved in this trial; do not seek or obtain any information
17 or comments about this case from any source, including newspapers, television,
18 radio, Internet, e-mails, cell phones, or any other electronic device; do not read,
19 watch, or listen to any report of or commentary about the case; do not perform any
20 research or investigation; do not form or express any opinion on any subject
21 connected with this trial until the case is finally submitted to you for deliberation.

22 You are directed to return to the hallway outside this courtroom for
23 further proceedings at 9:00 a.m. on Monday morning. Leave your notepads here.

24 I think we're -- we're anticipating that evidence may be concluded in
25 this case Tuesday. Right? That's what we're hoping.

1 MR. DICKERSON: That's generally --

2 MR. GASTON: I was -- yes, sir.

3 THE COURT: Okay. In which case, I would -- if I were you, I would
4 anticipate that you may have deliberations going into Wednesday. All right? All
5 right. Just give you a rough estimate before going out.

6 All right. Thank you very much. Leave your notepads here. Have a
7 good evening.

8 [Jury recessed at 4:24 p.m.]

9 THE COURT: All right. We're outside the presence. Did you guys
10 want to address or begin to address -- you said jailhouse phone calls -- with me?

11 MS. MACHNICH: I think that would be a good idea to get started on,
12 because my guess would be they intend to introduce them on Monday, if they're
13 going to be --

14 THE COURT: I see.

15 MS. MACHNICH: -- allowed in. And we are going to be opposing their
16 admission.

17 THE COURT: Is that --

18 MS. MACHNICH: Generally in their entirety --

19 THE COURT: Yeah.

20 MS. MACHNICH: -- but also individually. We have sort of --

21 THE COURT: Is that kind of like related to what we discussed earlier
22 where you wanted them all transcribed or that was a different issue?

23 MS. MACHNICH: I don't -- I don't believe so. I they -- I guess we did
24 mention -- so there are -- as far as we know they are interested in introducing eight
25 jail calls.

1 THE COURT: Eight?

2 MS. MACHNICH: Which are ones that are transcribed and were
3 provided to us in transcription form.

4 THE COURT: Okay. So you got the transcripts.

5 MS. MACHNICH: Right. We are going to -- we would prefer having
6 the -- if we're going to admit anything, we think that it should be the transcripts,
7 because it's the least prejudicial, and you're not hearing the background of the jail
8 noise. You're not hearing the beep, CCDC. Like, there's, like -- there's just a lot
9 going on. I mean, yeah, they know he's in custody. Oh, yeah, and -- and there's
10 also a lot of inaudible parts, and we don't want the jury guessing. There's a
11 certain -- there are -- what I assume the State's going to hold on to certified
12 transcriptions.

13 These are made by, I guess, the Las Vegas Metropolitan Police
14 Department. And there are a lot of areas that are notified -- that are noticed as
15 inaudible. And I don't want any of us guessing. If the transcriber didn't know what
16 they were saying, I don't particularly want the jury guessing what was said or what
17 wasn't said. We've been trying to listen to them. They're ridiculously hard to listen
18 to because --

19 MS. LEXIS: I can't listen to Tegan and have you talk to me. So.

20 MS. MACHNICH: -- so there's just -- it's sort of both sides, two
21 headphones or two speakers, you can't really hear what both parties are saying at
22 all times.

23 So what we would be saying is if Your Honor is going to be inclined to
24 let in any of these, we would request that they be let in in the transcribed form that
25 they were provided to us in. If Your Honor is inclined to let them in in audio form,

1 we would ask that they just be let in in audio form. We think that having them
2 dually admitted in audio and transportations would overly prejudice the defendant
3 in so much as it would put undue emphasis on these jail calls. And that's
4 improper.

5 We are also going to be opposing several of them in their -- in their
6 entirety, because of irrelevance, completely. And I do have a case on point about
7 that that discusses admitting jail calls, because a lot of this is going to be hearsay.
8 It's with people who are unidentified. We have an idea of some of the people who
9 are on there. I believe the only one of them that may testify is Chanise. There's
10 also additional females and males. Those -- what they say is all going to be
11 hearsay.

12 Now, the Nevada Supreme Court has noticed a -- noticed a cutout for
13 when there's -- there are admissions that are to questions that are said. But there
14 actually have to be admissions. There can't be, you know, nonanswers or, you
15 know, it can't -- there's a lot of inflammatory stuff said by other people that there's
16 not, like, a you're right, I did it, right after it. Like, it's not -- it's not that cut and dry.

17 So I think that we're going to come to the point where -- there are
18 some of these we believe are just wholly irrelevant. The only thing in there is
19 discussion about, you know, how the kids are doing, talking about he's gotten
20 arrested for 11 counts of robbery. Well, yeah, that's the truth, and let's not discuss
21 it more than is necessary. Yes, he realizes he's been arrested for this. There's
22 talking about, like, plea negotiations. I'm going to have to go -- I might go away for
23 some time on this one.

24 The dual-edged sword on this is he also knows he had another case
25 that's out there. So any sort of talking about pleading takes that into account, as

1 well, and the fact that there's another case. So I mean, it's hard to talk about them
2 out of context. And we could just generally -- maybe -- the State said they had a
3 clean copy --

4 THE COURT: Would you have -- it would be helpful for me, like, over
5 the weekend --

6 MS. MACHNICH: Yes.

7 THE COURT: -- if you had, like, the transcripts and you could, like,
8 circle a part and say this part's inflammatory. This part is, you know, inaudible.
9 This part's inflammatory -- or this part's all irrelevant. Because then I know, like,
10 your specific objection to each section --

11 MS. MACHNICH: Well, Your Honor, we're objecting to them in their
12 entirety.

13 THE COURT: -- rather than me trying to read it and guess.

14 MS. MACHNICH: They're proffering them in their entirety. We are
15 objecting in their entirety. And --

16 THE COURT: Okay.

17 MS. MACHNICH: Beyond that I believe the State had said that she
18 had extra copies --

19 THE COURT: Okay. That kind of puts a big burden on me to try to
20 guess at what you --

21 MS. MACHNICH: I have some --

22 THE COURT: -- are objecting to.

23 MS. MACHNICH: -- that are -- I have more specific objections in
24 sections. I think that there are sections that if -- that theoretically could be
25 admissible and the State could argue that they're admissible. I think that there are

1 large sections that are completely inadmissible.

2 THE COURT: I mean --

3 MS. MACHNICH: We can go through those now.

4 THE COURT: -- I guess the -- hold on a second. I guess the initial
5 burden is always on the party, or the proponent of the evidence to show that it's
6 relevant, and then I have to balance the relevance with the unfair prejudice.

7 MS. MACHNICH: Yes.

8 THE COURT: Okay. So I think I understand your position. So the
9 argument -- the basic objections, some sounds are inaudible, so I think what you're
10 saying is you don't want the jury to, like, hear some sound and then guess as to
11 what it meant.

12 MS. MACHNICH: Yeah.

13 THE COURT: And come to some conclusion from a sound that has
14 cast some kind of negative light on your client, I guess.

15 MR. GASTON: A huge -- a huge portion of the calls have been
16 transcribed as inaudible. So in the -- in the transcripts of these jail calls, there's
17 numerous sections --

18 THE COURT: Yeah.

19 MR. GASTON: -- where it's reported as inaudible.

20 THE COURT: And so you don't want the jury to hear the part that's
21 possibly inaudible and then kind of like --

22 MS. MACHNICH: Yes.

23 THE COURT: -- concluding wrongly on what it was they heard.

24 MR. GASTON: Correct.

25 MS. MACHNICH: Yeah, because the --

1 THE COURT: So that's -- so hold on.
2 MS. MACHNICH: Okay. Sorry.
3 THE COURT: That's A.
4 MS. MACHNICH: Okay.
5 THE COURT: Then B is you think some of it's irrelevant.
6 MS. MACHNICH: Uh-huh.
7 THE COURT: C, you say some people are unidentified and you don't
8 think, I guess, the transcripts that identify people should be admissible?
9 MS. MACHNICH: No, Your Honor. As -- I would say that --
10 THE COURT: No. Okay.
11 MS. MACHNICH: -- a large part of them are going to end up being
12 hearsay, because unless something has changed and they can find Omara -- and
13 you had asked --
14 THE COURT: Hearsay.
15 MS. MACHNICH: -- for updated contact information on her, I don't
16 believe the State has noticed anyone but Chanise who is on these calls.
17 THE COURT: Okay.
18 MS. MACHNICH: And we know which ones are Chanise --
19 THE COURT: So some might --
20 MS. MACHNICH: -- but it's not a lot.
21 THE COURT: Some might be inflammatory and some might be
22 hearsay. Of course it's only hearsay if it's an unknown person who is making a
23 statement and it's being offered for the proof of the matter being asserted --
24 MS. MACHNICH: Yes.
25 THE COURT: -- rather than merely implied context to the admissions

1 of the defendant.

2 MS. MACHNICH: If there are admissions. And we would put to you,
3 Your Honor, that it's -- there's not the -- I mean, there's not a blatant -- they're not
4 blatant admissions.

5 THE COURT: Okay.

6 MS. LEXIS: It's not --

7 THE COURT: So I have your position. Let me get their position now.
8 Okay.

9 MS. MACHNICH: Okay.

10 MS. LEXIS: That's why I wish we would -- since we're proffering the
11 evidence, I wish we would have been able to go first, because it would have been
12 a lot more clear.

13 THE COURT: Okay.

14 MS. LEXIS: Back in --

15 THE COURT: I'll try to follow anyway.

16 MS. LEXIS: Thank you, Your Honor. Back when -- earlier this week I
17 e-mailed Ms. Machnich and Mr. Gaston and indicated to them that I would like
18 them to look over the transcripts of the jail calls, listen to the jail calls, and send me
19 their proposed redactions, okay?

20 THE COURT: Okay.

21 MS. LEXIS: They have not done so. Okay.

22 Last night I did prepare the proposed redactions for the State, because
23 I think -- right now we're talking in generalities and Your Honor doesn't even know
24 what -- what's contained in the calls that we actually want to present, nor does it --
25 I mean, there's no context to our argument at this point.

1 THE COURT: Right. But I know enough about the case now if I read
2 the transcripts --

3 MS. LEXIS: Yes.

4 THE COURT: -- I can decide for myself if it's relevant.

5 MS. LEXIS: Yes.

6 THE COURT: And then I know what hearsay is, and I know --

7 MS. LEXIS: Yes, Your Honor.

8 THE COURT: -- if it's too inflammatory. And then --

9 MS. LEXIS: So --

10 THE COURT: Now, the transcripts is not going to help me on this
11 inaudible issue.

12 MS. LEXIS: Correct. Concerning the -- first of all, I would like them --
13 if they are of the position that we can't introduce both transcripts and the audio, I'd
14 like them to cite some authority prohibiting us from doing that. Because, as
15 Your Honor, you've been a sitting judge for a while now, any -- sometimes we play
16 the defendant's taped statement and there are transcripts. And the transcripts are
17 actually -- I just did this in my last trial -- handed out to the -- each -- an individual
18 jury member for them to read and follow along, along with the audio and with the
19 admonition that they are, for the inaudible portions, they are to hear what they
20 believe they hear.

21 As a matter of fact, I think it's more probative to have the actual audio
22 admitted into evidence than a transcript, because then they can decide what the
23 inaudible portions say. And I think that's a lot more probative and it's not as
24 prejudicial, because then it's not someone saying, hey, this is what I think I heard.
25 Okay.

1 Concerning the admissibility, I won't address that yet, because you
2 haven't had an opportunity to look at it and assess for yourself, but I would like to
3 hand you the transcripts of four different jail calls.

4 THE COURT: Uh-huh.

5 MS. LEXIS: I have highlighted --

6 THE COURT: Four? I thought there were eight.

7 MS. LEXIS: I'm only proffering four.

8 THE COURT: Okay.

9 MS. MACHNICH: Okay. So that's news to us, as well. I asked which
10 ones she was proffering so we could discuss them, and the State did not tell us
11 they were only doing four. She specifically told me eight. So --

12 THE COURT: So this is a good thing.

13 MS. MACHNICH: This is a good thing. Let's --

14 THE COURT: Okay.

15 MS. MACHNICH: May I know -- may I be informed of what four she's
16 handing, Your Honor?

17 THE COURT: Of course.

18 MS. LEXIS: Yes. Jail Call No. 52229515.

19 MS. MACHNICH: Where are you? Why don't -- why don't you tell me
20 your Bates stamps?

21 MS. LEXIS: 53 --

22 MS. MACHNICH: Okay.

23 MS. LEXIS: -- to 58.

24 MS. MACHNICH: Okay. Well, that jail call. Okay. Next one.

25 MS. LEXIS: I don't know. These other ones I don't have Bates

1 stamps, but --

2 MS. MACHNICH: Okay. Which -- all right.

3 MS. LEXIS: Here. Besides that one that I read, here's your copy.

4 Okay?

5 MS. MACHNICH: Okay. So these are --

6 MS. LEXIS: Proposed redact, because the --

7 MS. MACHNICH: Okay.

8 MS. LEXIS: -- the first one that I read to you, 52229515, I'm not --
9 there are no redactions in that one.

10 MS. MACHNICH: So -- so you're saying that the Bates stamp 53 is --
11 you're saying you're offering that in its entirety.

12 MS. LEXIS: Correct. And then the other three calls, just for the
13 record, Call No. 52215429, and another call made on 5/28 -- May 28th, 2016,
14 at 11:24 p.m.

15 MS. MACHNICH: I think we have different copies than you do on
16 these, like --

17 MS. LEXIS: And then Call No. 52231998.

18 And Your Honor, the proposed redactions by the State are highlighted
19 in dark, so that would be removed.

20 MS. MACHNICH: It -- and Your Honor, just for the record, I'm
21 receiving different versions of the calls that I've never seen before.

22 THE COURT: Tell -- tell you what -- tell you what. Very simple. When
23 we finish court today, I'm going to hand these to my court clerk and you're
24 welcome to go up there and look at what it is that the State just gave me.

25 MS. MACHNICH: She's now given me a copy of that. It's just -- it's a

1 surprise to me right now, but I do have it. So I -- we don't even have to do that.

2 She has now provided them --

3 THE COURT: Okay.

4 MS. MACHNICH: -- with the redactions, so.

5 MR. GASTON: Have we received these before? Are these calls
6 that --

7 MS. MACHNICH: We received the calls, not this copy. That's why I
8 was giving a blank look when she was saying the call number --

9 THE COURT: Okay.

10 MS. MACHNICH: -- because I don't have ones with the call number,
11 so.

12 THE COURT: Okay. So sounds like the main issue is -- is -- the main
13 issue, the number one issue is whether they get the transcript and the audio. And
14 kind of a similar issue as to whether if someone who is testifying by -- remotely by
15 audio, you know, is the jury going to get to hear just the -- you know, is the
16 audiotape going to go back to the jury room or is there going to be a transcript.
17 You don't want to -- I guess you don't -- I guess I can see the defense point, that I
18 don't want to put undue emphasis on any particular testimony, but then again, this
19 isn't really testimony. This is -- this is substantive evidence that existed before trial
20 started.

21 So I'm not really sure what the answer is on whether the audiotape
22 and the transcript both come in. I need to do some research, see if I can find
23 some authority on that.

24 And -- and then I guess I also need to know, was it the State's plan to
25 play the audio here in court?

1 MS. LEXIS: Yes, Your Honor.

2 THE COURT: Okay. So -- and the transcript was prepared by
3 someone who listened to the audio?

4 MS. LEXIS: Correct, Your Honor.

5 THE COURT: But you would prefer that the transcript be played -- the
6 audio -- I'm sorry, the audio be played in court and then the transcript be provided
7 to the jury so they could see it during deliberations as -- as evidence; is that your --
8 is that your plan?

9 MS. LEXIS: In addition to the audio, which would be admitted into
10 evidence.

11 MR. GASTON: A compromise position from the defense, Your Honor.

12 THE COURT: Yeah.

13 MR. GASTON: A compromise position. Because of all the objections
14 we just made, some -- some of them are varying degrees in importance, but the
15 one that is a big issue is the inaudible parts. It -- just because I don't think it's fair
16 that someone's guilt or not guilty -- not guilty verdict might rest upon how a
17 particular juror interprets a section that a paid transcriber has deemed inaudible.
18 So the one --

19 THE COURT: So is there -- yeah. I understand what you're -- is -- are
20 there inaudible parts of this reduced subset of --

21 MS. MACHNICH: Yes.

22 THE COURT: -- proposed jail calls?

23 MR. GASTON: Yes.

24 MS. MACHNICH: Yes.

25 THE COURT: And is it anything potentially significant or --

1 MR. GASTON: Well, that's the -- it's hard to -- it's hard to hear. It's
2 hard to hear exactly what's being said. I mean, sometimes you kind of hear it. So
3 my suggestion would be if -- if the court ultimately determines -- that's kind of our
4 fall-back position. If the court ultimately determines that the audio comes in and
5 the transcripts come in and all that, I would ask that part of the redactions are
6 everything that the -- the actual paid transcriber has determined inaudible. So the
7 transcript comes in, the audio comes in with the transcript, they get the advantage
8 of hearing the live voices, which, of course, is more beneficial than just reading
9 words on a page. We get that. But --

10 THE COURT: You want them to see that it says inaudible?

11 MR. GASTON: Well, we could take off the inaudible portion of the
12 transcript, but more important --

13 THE COURT: Oh.

14 MR. GASTON: -- in the actual audiotape, just redact all the portions
15 that are inaudible, that have been deemed inaudible. So we're not submitting
16 anything --

17 THE COURT: Well, that's --

18 MR. GASTON: -- anything to the jury that hasn't been transcribed.

19 THE COURT: That's a lot of work, isn't it, to go --

20 MS. LEXIS: And it's -- and it's --

21 MR. GASTON: It's a lot of work, but it prevents an unfair prejudice.

22 MS. LEXIS: -- the State's position that the audio should speak for
23 itself. I mean, if anything --

24 THE COURT: The what?

25 MS. LEXIS: -- the audio is the best evidence of the actual call.

1 THE COURT: Actually, I'm looking at this first one, you know, and
2 there's only two places where it says inaudible. Like, Valentine, okay, it says, You
3 say what?

4 And then Valentine, I said, I should went in Mad Dog's house
5 inaudible.

6 Female: That was blank or what I wanted you to know they were
7 coming and you -- and what you would call [indiscernible].

8 But I don't even know what they're discussing there.

9 MR. GASTON: Well, that's the exact -- that's the problem is they could
10 be discussing where he should have gone after he committed a robbery. They
11 could have been discussing actions in another case. They could have been
12 discussing he -- when he -- when -- where did he decide to the friend -- he should
13 have stayed at this friend's house instead of Chanise's house, just because he
14 wanted to stay the night.

15 THE COURT: There's --

16 MR. GASTON: We don't know. And with the inaudible portions, the
17 jury might form the wrong conclusions.

18 MS. MACHNICH: Additionally --

19 MS. LEXIS: It's the State's position that --

20 THE COURT: No. No. You guys don't get this. When he talks and
21 then he's done, then they get to talk. It has --

22 MS. LEXIS: Thank you.

23 THE COURT: You don't get to talk and then you get to talk too,
24 because then you're doubling up on them. You can go -- it goes back and forth
25 like ping-pong. All right. So your partner spoke. Now they get to speak, then you

1 can speak. All right. It has to be ping-pong.

2 Your turn.

3 MS. LEXIS: It's that -- this -- this particular call that you're talking
4 about, Your Honor, is relevant in that just during Mr. Gaston's opening statement
5 he indicated that the defendant knew that the police were out there. He looked
6 outside the window. This particular call discusses the caller telling him that he
7 should have been out of there already. That they -- they noticed the police
8 presence. And he -- he should have --

9 THE COURT: I see.

10 MS. LEXIS: -- he wouldn't have gotten caught had he gone to Mad
11 Dog's house as opposed to this -- as opposed to this apartment.

12 THE COURT: I understand. Now back to Ms. Machnich.

13 MS. MACHNICH: Obviously, she's interpreting them how she wants to
14 interpret them. We will interpret them how we want to interpret them. It's on the
15 State to establish their admissibility. I think what we're going to have time and time
16 again in these is things can be read different ways, and it puts us in a very
17 compromising permission -- or position, because our client has a Constitutional
18 right not to testify, and when something's completely ambiguous, they're now
19 putting up something without context. This is --

20 MS. LEXIS: It's probably better to just let the jury hear it for
21 themselves and reach their own conclusion rather than us all trying -- like, isn't it
22 better for the jury to hear it rather than for the jury just to -- to accept what some
23 third-party transcription says it meant?

24 MS. MACHNICH: Well, Your Honor, if we're going to say that this
25 transcription is not appropriate, then we should not have the transcriptions in. We

1 should only have the audio in.

2 THE COURT: Well, the purpose for transcripts is to help -- because
3 sometimes things are hard to hear.

4 MS. MACHNICH: But they can't have that both ways. They can't have
5 it hard to hear --

6 THE COURT: Why not?

7 MS. MACHNICH: -- but also in. And also we don't know what the
8 inaudibles say. Like, we've been trying to listen to it --

9 THE COURT: But you haven't.

10 MS. MACHNICH: -- and they're hard to tell. Yeah, we've been trying.
11 And it's not easy to tell. And I -- frankly, I get different versions of things all the
12 time. I'm getting new versions of these transcripts. I don't know if I have the latest
13 versions of the calls, if they're -- I have no idea.

14 THE COURT: So I guess I need authority, I guess -- I guess --
15 because you want to keep out something that -- that you are interpreting as difficult
16 to understand. So I need to see some authority on whether I can exclude some
17 evidence from going to the jury on the grounds that one -- one attorney thinks it's
18 inaudible.

19 MS. MACHNICH: Well, Your Honor, that's actually putting us in even a
20 greater position. It's on the State as the moving party to get these in to establish
21 that they're admissible. And if they can't establish something's admissible by
22 saying, This states this and it's relevant and it's not hearsay, they have to be able
23 to tell you, Your Honor, why it's admissible.

24 THE COURT: Well, I understand it -- I understand that view, too. It's a
25 difficult issue, because -- because I -- I mean, I understand if -- as a propounding

1 party, if you can't tell me what is the evidence that you want the jury to hear, then
2 maybe the jury shouldn't hear it.

3 And if part of the transcript is indeed inaudible, maybe we don't want
4 the jury hearing what's inaudible, because I can't make a reasoned determination
5 on whether it's relevant if I don't know what it is that the witnesses are saying.

6 MS. LEXIS: Would the court like maybe a copy of the jail calls to hear
7 for himself?

8 THE COURT: I'm probably not going --

9 MS. LEXIS: Have an opportunity.

10 THE COURT: -- make much out of the -- no. I have time to listen to it.
11 But I mean, if the transcriptionist says it's inaudible, it probably is inaudible. And
12 do we want the jury hearing something that -- that's kind of inaudible, and then --
13 because I'm, like, letting it in. I'm the gatekeeper. Should I let something go to the
14 jury if no one really knows exactly what it is that they're listening to?

15 MS. LEXIS: What would prevent a jury from having the opportunity to
16 listen to the best evidence of the actual call than the actual call? If you can't hear
17 it, then they can't hear it. They won't -- they won't hear it. They won't know. I
18 mean, if we can't make out what it is, it's fair to say the jury can't, either.

19 What's clear in the transcripts and what's going to be clear in the jail
20 calls are the portions that are audible --

21 THE COURT: Yeah.

22 MS. LEXIS: -- meaning all of the defendant's inculpatory statements.

23 THE COURT: Well, I guess we're all -- we're all just -- I'm just raising
24 the questions and you guys are both being great advocates. The problem is we
25 don't have any authority on this one way or another. I'm not -- I'm not sure -- look,

1 you understand -- let's start with the fundamental principles of -- of evidence. All
2 right. All right.

3 It's your burden as the propounding party to prove that what you want
4 to go to the jury is relevant.

5 MS. LEXIS: Correct.

6 THE COURT: All right. Thank you for agreeing with that. All right.
7 Now, for me to determine whether evidence A, B, C, is relevant, I have to know
8 what A, B, C, is.

9 MS. LEXIS: Yes.

10 THE COURT: All right. If I have a transcript where there's something
11 that is inaudible, how can I make a determination on what that inaudible statement
12 is? If -- if this is some blah, blah, blah, blah, blah is the statement, and I've got to
13 listen to that and think, is that something relevant, how can I determine if blah,
14 blah, blah, blah, blah is relevant, if I don't know what it is? All right.

15 MS. LEXIS: Your Honor --

16 THE COURT: And isn't that your burden to prove to me that evidence
17 is what it purports to be so I can make a reasoned decision on whether it's relevant
18 and whether the prejudicial impact of that is outweighed by the relevance?

19 MS. LEXIS: Absolutely, Your Honor.

20 THE COURT: Right.

21 MS. LEXIS: If it -- if the question --

22 THE COURT: So that's -- that's the issue. I want to frame the issue.

23 MS. LEXIS: Okay. If the court would be more comfortable, I will
24 redact all the inaudible portions.

25 MS. MACHNICH: Okay.

1 MR. GASTON: That was -- that was the compromised position that I
2 posed, if what happened --

3 THE COURT: Do you have time to do that?

4 MS. LEXIS: I will make time.

5 THE COURT: Okay. All right. And I wasn't -- I wasn't taking a
6 position. I'm just outlining the issue.

7 MS. LEXIS: Right. I mean, if that will --

8 THE COURT: I think that will be a reasonable solution. If you could --
9 if you could, yeah, edit it, I wouldn't know how to do that.

10 MS. LEXIS: Because what -- what the State is truly proffering,
11 Your Honor, are the statements that you can actually hear, you know. I mean,
12 that's what we claim as relevance.

13 THE COURT: Yeah. The defense seems to be --

14 MS. LEXIS: As relevant.

15 THE COURT: -- seems to have a very strong objection to inaudible
16 parts going to the jury.

17 MS. LEXIS: That's fine. I will redact it.

18 THE COURT: Then -- then you solve all the problems. Thank you.

19 MS. MACHNICH: Perfect.

20 THE COURT: You saved me a lot of research. I really, really, really
21 appreciate it.

22 MR. GASTON: We still -- we still have the general objections about
23 the actual comments on that particular --

24 MS. MACHNICH: Well, we'll do that on Monday after everybody's
25 reviewed -- although I do have authority to pass on to Your Honor now. This is --

1 THE COURT: Okay.

2 MS. MACHNICH: And I'll let you write down the cite.

3 MR. GASTON: What we told you about, arguing over the whether the
4 actual statements are relevant, et cetera, what we already mentioned.

5 THE COURT: Yeah.

6 MR. GASTON: That -- that is what. But the inaudible -- whole -- that
7 whole argument.

8 THE COURT: I understand that.

9 MS. MACHNICH: On admissibility of jail calls.

10 MR. DICKERSON: 2014 can't be considered. We would object to it
11 being submitted to Your Honor.

12 MS. MACHNICH: Wait. What?

13 THE COURT: I apologize. I -- I didn't hear this latest issue.

14 MR. DICKERSON: It's a 2014 unpublished decision, it --

15 MS. MACHNICH: It gives.

16 MR. DICKERSON: -- the former superior court rule. It can't be
17 considered by Your Honor.

18 THE COURT: Oh, it can't --

19 MS. MACHNICH: Your Honor.

20 THE COURT: Unpublished opinions -- I'm not supposed to consider
21 unpublished opinions. They starting -- was it --

22 MR. DICKERSON: 2016, January.

23 THE COURT: -- January 1, 2016, the supreme court has allowed us to
24 consider unpublished opinions.

25 MS. MACHNICH: Well, Your Honor, our -- my impression of it was

1 that they are by no means binding authority, but I think it can still be used as
2 guidance to --

3 THE COURT: No.

4 MS. MACHNICH: -- legal guidance. So -- because there's nothing
5 else in Nevada. I mean, we were looking and maybe we'll be --

6 THE COURT: On what -- what is the issue?

7 MS. MACHNICH: -- find something else, but this is what was on
8 Nevada. This -- this case --

9 THE COURT: Well, tell me what it says. Just what is the issue?

10 MS. MACHNICH: This case -- it directly talks about admitting
11 evidence of jail phone calls between in this case a defendant and his wife.

12 THE COURT: Oh.

13 MS. MACHNICH: It specifically talks about the relevance versus
14 prejudicial probative standard and adopting of statements she's saying versus not
15 adopting them, but then just being out there and inflammatory. And that --

16 THE COURT: See, the problem is a lot of times the supreme court,
17 when it issues unpublished opinions, it's because they recognize it doesn't have
18 the full guidance of all the court. It doesn't -- it's just very case-specific. It's not
19 intended to be of precedential value of the supreme court. When they don't
20 publish it, they don't want the courts to feel that they're constrained to follow it.
21 So -- so --

22 MS. MACHNICH: And I wasn't --

23 THE COURT: -- that was the mentality before 2016, when they wrote
24 unpublished opinions.

25 MS. MACHNICH: And Your Honor, I wasn't proffering it as precedent.

1 I mean, straightforward, I -- it is -- it's unpublished. I was proffering it as an
2 unpublished disposition that lends guidance, because when we're asking for
3 authority and what might be out there on a matter, I did look. I did not spend three
4 hours looking. I spent an hour looking and reading through cases. I couldn't find
5 any others.

6 THE COURT: I mean, I read unpublished opinions all the time. I -- I
7 can --

8 MR. DICKERSON: Right. But it's still improper to have them even as
9 guidance. In the former Supreme Court Rule 123, they can't be considered at all.

10 THE COURT: Yeah.

11 MS. LEXIS: And so the State's position concerning -- Your Honor's
12 aware that the defendant's statement under 51.10353(a) is a statement offered
13 against a party, and is the party's own statement and either the party's individual
14 representative capacity, that's not considered hearsay. Here we're offering the
15 defendant's own words against him. So it's not hearsay. That's the first part.
16 Some of it is also an adoptive admission.

17 Concerning the statements --

18 THE COURT: Well --

19 MS. MACHNICH: Are we arguing this now? I mean, if we're going to
20 go through all of this right now, that's fine. I was just offering this as something to
21 be considered over the weekend with the calls. If we're going to go through them
22 and argue -- because I have specific arguments for each section. So if they're
23 going to go ahead and say this, obviously, we disagree with their generalized
24 statement of what's being said.

25 THE COURT: Okay.

1 MS. MACHNICH: So.
2 THE COURT: Well, I'm going to do my own research.
3 MS. MACHNICH: Okay.
4 THE COURT: But I -- if they're objecting to me looking at an
5 unpublished opinion, pre-2016, I'm going to sustain an objection and not look at it.
6 MS. MACHNICH: Okay.
7 THE COURT: All right. Because -- because I don't want to be
8 influenced by it. But I'm going to do my own research and apply case authority
9 that I should be guided by.
10 MS. MACHNICH: Okay.
11 THE COURT: All right. Let's -- let's -- we don't need to argue this
12 anymore, because then --
13 MS. MACHNICH: That's fair.
14 THE COURT: -- we'll all, like, be frustrated over the week. Let's just
15 all be happy.
16 MR. DICKERSON: It's 4:50.
17 THE COURT: And think -- I think I know what the issues are. When
18 do you plan on introducing the jail calls? Just so we know. So I will give you guys
19 each maybe 10 minutes to -- to argue whatever remaining points there are.
20 MS. MACHNICH: Well, Your Honor, if -- I mean, not only are we
21 arguing to keep out entire calls, but it will come down to different degrees of
22 objection. And I believe that some of the things that have been left in by the State
23 are not admissible and shouldn't be admitted in this case, either for relevance
24 purposes or otherwise.
25 THE COURT: Yeah.

1 MS. MACHNICH: So we need to do it in advance of them wanting to
2 proffer it so that we can --

3 THE COURT: Tell you what, why don't I do, like, a tentative ruling on
4 Tuesday, so you guys know where I'm leaning. And I'll, like --

5 MR. DICKERSON: On Monday, Your Honor?

6 THE COURT: I'm sorry. I'm sorry. Sunday.

7 MS. MACHNICH: Okay.

8 THE COURT: On Sunday I'll just send an e-mail to both of you. Can
9 you make sure you leave your e-mail addresses with my clerk, I'll give you my
10 tentative. There will be some -- some issues where I'm going to be -- have a firm
11 opinion, some where I just have a tentative. And -- and some of the tentatives you
12 might just want to accept, others you might want to argue.

13 MS. MACHNICH: Okay.

14 THE COURT: I'll give you guys each 10 minutes. Should we argue --
15 do you guys want to get here at 830, then, Monday?

16 MS. MACHNICH: That's fine.

17 THE COURT: So I have time to argue?

18 MR. DICKERSON: Sounds great, Your Honor.

19 MS. MACHNICH: Yep. That sounds good.

20 THE COURT: So 8:30 Monday then? Does that --

21 MR. DICKERSON: Sounds great.

22 THE COURT: -- does that work for the staff?

23 MR. GASTON: Your Honor, I have a question for scheduling --

24 THE COURT: Yes, sir.

25 MR. GASTON: -- on Tuesday.

1 THE COURT: Yes, sir.

2 MR. GASTON: I -- just curious -- when -- I guess, step 1, when are

3 you planning on us starting on Tuesday?

4 THE COURT: 11:15.

5 MR. GASTON: Okay. I have a child -- I have a child abuse prelim to

6 do in North Las Vegas, which has been continued now for about four months. I

7 don't think Judge Lee is going to allow me to continue it again, but I can start the

8 prelim at 9:00, so 11:15, I'll be -- that works. Perfect. That's why I was asking.

9 MS. MACHNICH: And our expert has to testify that afternoon,

10 because that's the one afternoon he's going to be here.

11 THE COURT: Okay.

12 MS. MACHNICH: But hopefully the State will be done on Monday.

13 THE COURT: Anything else, guys?

14 MS. LEXIS: Your Honor, would the court be amenable to us e-mailing

15 authority to the court over the weekend, so long as we CC the other party?

16 THE COURT: Yeah. If you want to submit anything to me, I'll treat it

17 as a -- as, like, a brief.

18 MS. LEXIS: Okay.

19 THE COURT: All right?

20 MS. LEXIS: Okay.

21 THE COURT: Just submit it as, like, points and authorities or trial brief

22 or bench brief.

23 MS. LEXIS: Yes, Your Honor.

24 THE COURT: Whatever you want to call it, I don't care.

25 MS. LEXIS: Yes, Your Honor.

1 THE COURT: On -- on any of these points we discussed, sure.
2 MS. MACHNICH: Okay. So you are going to consider that, because
3 now we can't go home to our families this weekend. We need to submit this
4 because we have to be equal.
5 MS. LEXIS: You know, Your Honor, this should have really been
6 raised --
7 MS. MACHNICH: So --
8 MS. LEXIS: -- had they had objections to these transcripts and
9 these -- these calls that they've had for over a year. This should have been raised
10 in a Motion in Limine .
11 MS. MACHNICH: Well, they didn't raise --
12 MS. LEXIS: However, they failed to do that.
13 MS. MACHNICH: -- a Motion in Limine to bring them in. So we didn't
14 know if they were going to use them.
15 THE COURT: Well, but you know what? It's discretionary. You don't
16 have to do it. Just keep it -- whatever you submit to me, can you keep it under
17 three pages, please?
18 MS. LEXIS: Yes.
19 MS. MACHNICH: Yes.
20 THE COURT: I -- I insist, under three pages.
21 MS. LEXIS: Yes, Your Honor.
22 THE COURT: All right. And that means a double-spaced three pages.
23 MS. LEXIS: Yes, Your Honor.
24 THE COURT: All right. And -- and you don't have to do anything to
25 get it to me by -- whenever you want to get it to me, get it to me by 10:00 a.m.

1 Sunday.

2 MS. LEXIS: Will do.

3 MS. MACHNICH: I'm the only one with young children, right? Yep.

4 Okay.

5 MS. LEXIS: Actually, Mr. Dickerson has a baby, so --

6 MR. DICKERSON: Yeah, that's correct.

7 MS. MACHNICH: Yeah?

8 MR. DICKERSON: Absolutely.

9 MS. LEXIS: Absolutely.

10 MS. MACHNICH: Okay. Well, I'm sure you gave birth, too.

11 THE COURT: All right. Thank you, guys.

12 MS. LEXIS: Wow.

13 THE COURT: Have a nice weekend.

14 [Court recessed at 4:52 p.m., until July 31, 2017, at 8:39 a.m.]

15

16

17

18

19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio/video proceedings in the above-entitled case to the best of my ability.

21

22



23

24 Shawna Ortega, CET*562

25

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 _____
3 KEANDRE VALENTINE,) No. 74468
4)
5 Appellant,)
6)
7 vi.)
8)
9 THE STATE OF NEVADA,)
10)
11 Respondent.)
12 _____)

13 **APPELLANT’S APPENDIX VOLUME IX PAGES 1800-2021**

14 PHILIP J. KOHN STEVE WOLFSON
15 Clark County Public Defender Clark County District Attorney
16 309 South Third Street 200 Lewis Avenue, 3rd Floor
17 Las Vegas, Nevada 89155-2610 Las Vegas, Nevada 89155
18 Attorney for Appellant
19 ADAM LAXALT
20 Attorney General
21 100 North Carson Street
22 Carson City, Nevada 89701-4717
23 (702) 687-3538
24 Counsel for Respondent

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that this document was filed electronically with the Nevada
27 Supreme Court on the 2 day of August , 2018. Electronic Service of the foregoing
28 document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT SHARON G. DICKINSON
STEVEN S. OWENS HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and
correct copy thereof, postage pre-paid, addressed to:

KEANDRE VALENTINE, #1187170
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender’s Office