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APPELLANT'S APPENDIX VOLUME X PAGES 2022-2269

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KEANDRE VALENTINE
Case No. 74468

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RTRAN

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

MONDAY, JULY 31, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 6**

APPEARANCES:

For the Plaintiff:

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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, MONDAY, JULY 31, 2017**

2 [Proceedings commenced at 8:39 a.m.]

3 [Outside the presence of the jury.]

4 THE COURT: All right. Good morning everybody. I hope everyone
5 had a good weekend.

6 MS. LEXIS: Thank you, your Honor.

7 MS. MACHNICH: Thank you, your Honor. Hope you did, as well.

8 THE COURT: Yeah. I did. Caught up on my Netflix. All right.

9 *State vs. Valentine*, C-316081. This is time set for further discussion
10 regarding jail calls. I said the defense goes first. So you saw my tentative, so
11 why don't argue about what -- what you want to change on it.

12 MS. MACHNICH: Okay. Well, Your Honor, I believe, based on
13 conversations this morning, that the State will be withdrawing the 5/28 call
14 at 11:23 p.m. So I just -- I want to make sure that's clear before we start.

15 THE COURT: 5/28 call, 11:23. Okay.

16 MS. MACHNICH: Yes.

17 THE COURT: Oh, they're withdrawing that one?

18 MS. MACHNICH: Yes.

19 MS. LEXIS: We are, your Honor.

20 MS. MACHNICH: So that would be --

21 THE COURT: 5/28, 11:23. Okay.

22 MS. MACHNICH: So B is -- was what I'm reading it as in your -- in
23 your ruling subsection.

24 THE COURT: Yeah. Well, that was the one that I thought there might
25 be some -- something about the phone they wanted in. I wasn't sure. But okay.

1 MS. MACHNICH: Okay. So with that, Your Honor, we're actually
2 going to submit. Obviously, our overruling position is that jail calls generally are
3 not particularly relevant and way over -- overly prejudicial. But that's just
4 generally our position on it. As to your specific rulings, we're going to submit
5 entirely as to the 18:26 of the 6/16, 5/28 at 18:16, and the 12:02 --

6 THE COURT: Uh-huh.

7 MS. MACHNICH: -- call. And we only actually have one more thing
8 to say and this specifically pertains to 5/29/16 at 8:27 a.m.

9 THE COURT: Okay. What's your concern?

10 MS. MACHNICH: I'm referencing page 6. The bottom of page 6,
11 which was part -- which -- so your tentative ruling --

12 THE COURT: Valentine: That's my car now, I paid cash. My -- my --
13 Dame, that's my car.

14 So why are you letting her drive it?

15 Valentine: You said what? Why is she driving your car?

16 Ain't nobody driving my car.

17 MS. MACHNICH: I believe -- and we'd actually be requesting under
18 Doctrine of Completeness and -- because I believe it gives it additional context,
19 that the part at the bottom of that page to the end of page 6, we'd be requesting
20 that that comes in. It gives context about people driving cars and when. That
21 entire line of questioning regards to -- they're speaking about:

22 I seen her in the car.

23 Oh, were you already in jail?

24 Yeah, I've been in jail for two days. What are you talking about?

25 And that's his perception that he's been in jail two days.

1 THE COURT: And you want it to go through what part?
2 MS. MACHNICH: Just the end of that page.
3 THE COURT: Oh. Just the end of that page? Does State have any
4 objection to that?
5 MS. LEXIS: We do, your Honor.
6 THE COURT: Oh.
7 MS. LEXIS: First of all, the actual statement that --
8 THE COURT: Well, let's --
9 MS. LEXIS: Oh.
10 THE COURT: You know what, let -- let Tegan finish.
11 MS. LEXIS: Okay.
12 THE COURT: And then I -- I'm sorry, I gave you the wrong
13 impression --
14 MS. LEXIS: Okay. Sorry.
15 THE COURT: -- that was your turn. Sorry.
16 MS. MACHNICH: So Your Honor, we would request to bring it in that
17 under Doctrine of Completeness. I understand that that section immediately
18 preceding that is coming in. It's specifically addressing that someone else is
19 driving the car at that point. So that specific section --
20 THE COURT: It's after he's arrested. What does it matter who's
21 driving the car after he's arrested?
22 MS. MACHNICH: Other people having access to the vehicle, it's
23 argument, Your Honor. And it goes to our theory of defense. Additionally, when
24 he's talking about, Man, I've been in jail for about two days, what are you talking
25 about? I understand, and I know this is part of the State's position, that he has

1 not been in jail two days at that point. That is his perception that he's been in jail
2 two days at that point.

3 And when he's talking about when people were around, it puts into
4 context when different people were around and left that's discussed prior in that
5 phone call. So because it --

6 THE COURT: Well, but if he says --

7 MS. MACHNICH: -- puts into context --

8 THE COURT: -- I've been in jail two days, is going to give the jury the
9 wrong impression that he was locked up at the time of the crime.

10 MS. MACHNICH: I -- I don't believe so.

11 MR. GASTON: They have the timestamp of the call. They'll -- they'll
12 know --

13 MS. MACHNICH: Yeah.

14 MR. GASTON: They'll know exactly when this call was made. They'll
15 know that, in fact, he's only been in jail for one day. It'll just allow us to argue from
16 the statement that he believes he's been in jail for two days. So when he makes
17 his earlier statement, Bobby's --

18 THE COURT: Well, why -- why does it matter what he believes as to
19 how long he's been in jail?

20 MR. GASTON: Because earlier in this call he says Bobby's been
21 gone for two days.

22 THE COURT: Bobby's been gone for two days.

23 MR. GASTON: And we want to argue that that doesn't mean Bobby
24 left on the 27th. It means that he believes he's been in jail for two days. So from
25 his perspective, Bobby left the morning he got arrested.

1 THE COURT: Was Bobby at the house at the time of the arrest?

2 MR. GASTON: Well, we don't --

3 MS. MACHNICH: Our position is he just had left. I mean, he's the
4 ultimate suspect.

5 THE COURT: Is that coming in, the thing about Bobby? Is that --

6 MS. MACHNICH: Yes.

7 THE COURT: -- part of what I indicated is coming in?

8 MS. MACHNICH: Yes, yes. You did indicate that section was coming
9 in.

10 THE COURT: All right. What else -- what else did you want to
11 argue?

12 MS. MACHNICH: That's it.

13 THE COURT: Okay. Let's hear from the State, then.

14 MS. LEXIS: Your Honor, a court -- the Rule of Completeness is cited
15 by the defense. It's actually quite limited according to *United States vs. Valasco*,
16 which is 953 F2d 1467. Basically that Ninth -- that Seventh Circuit case indicates
17 that the State can pare down the defendant's statement to what is relevant to the
18 State's case, not to what's relevant to the defendant. Because if -- if the
19 defendant is allowed to admit self-serving hearsay statements or self-serving
20 statements by the defendant, that would be hearsay. And in order for a
21 defendant's statement to come in, it has to be an admission by a party opponent,
22 meaning a statement that we are introducing against the defendant.

23 In this particular case concerning these two statements, the actual
24 statement that leads --

25 THE COURT: Where's the -- where's the statement you wanted to

1 come in about Bobby?

2 MS. LEXIS: Your Honor, it is --

3 THE COURT: Because my -- my view -- I understand the Seventh
4 Circuit view of the Rule of Completeness, I mean, my view is a little bit broader
5 than that, that if -- if I'm letting something in that would be misleading to the jury
6 without an additional statement that helps to explain, then -- then the additional
7 statement should come in.

8 MS. LEXIS: Well, the --

9 THE COURT: So -- so my only concern is are you trying to get in
10 some Bobby statement that confuses the jury?

11 MS. LEXIS: No. Here's the -- the statement concerning Bobby is
12 actually on page, I believe, well --

13 MS. MACHNICH: Page 4 --

14 MS. LEXIS: Page --

15 MS. MACHNICH: -- two-thirds of the way down the page.

16 MS. LEXIS: Excuse me, can I -- can I speak?

17 MS. MACHNICH: I was trying --

18 MS. LEXIS: Thank you.

19 MS. MACHNICH: -- to be helpful.

20 MS. LEXIS: Thank you.

21 THE COURT: Okay. Hold on guys.

22 So Dame and Bobby were in the house, too, but they just put it all on
23 you.

24 Valentine: Dame, Dame they let -- they let Dame alone because
25 that -- he didn't fit the description. Bobby's been left two days ago.

1 Is that --

2 MS. LEXIS: That is coming in. I mean, that's absolutely relevant --

3 THE COURT: Yeah.

4 MS. LEXIS: -- because that is the defendant. You've heard opening
5 statements. They have an alternate suspect and they plan to get in all this
6 evidence about Bobby.

7 However, the problem with and the reason I was going towards the
8 self-serving statement on Page 6:

9 Man I've been in jail about two days. What are you talking about?

10 This is actually quite misleading. He has not been in jail two days and
11 we can't cross-examine him on this particular self-serving statement.

12 And secondly, it doesn't add context to anything. And that's the only
13 way that they could potentially --

14 THE COURT: Well --

15 MS. LEXIS: -- get it in under the Rule of Completeness.

16 THE COURT: Here's the thing. He says Bobby's been gone two
17 days.

18 MS. LEXIS: Uh-huh.

19 THE COURT: What's his view of two days? His view of two days is
20 just the time that he's been in jail. So because you want the
21 Bobby's-been-left-two-days to suggest Bobby wasn't around at the time of the
22 crime, right?

23 MS. LEXIS: Correct.

24 THE COURT: All right. And -- but then his view of two days is just
25 the time that he's been in jail. Because he says later on, you know, he's been in

1 jail two days. And so -- so when he says Bobby's been gone two days, what he
2 really means is, you know, based on his later statement, what he really means is
3 Bobby's been gone since he's been in jail, not that Bobby's been gone -- that
4 Bobby wasn't around at the time of the crime.

5 MS. LEXIS: Well, that's argument. And that would be the argument.
6 However, that -- that would be completely misleading. That's not, in fact, true.

7 THE COURT: How do you know?

8 MS. LEXIS: He has not been in jail two days and I think he makes
9 that statement --

10 THE COURT: How do you know not --

11 MS. LEXIS: -- when you read it --

12 THE COURT: Wait. How do you know when -- how long Bobby's
13 been gone; how do you know?

14 MS. LEXIS: Based on his -- his statement in the front. And, actually,
15 Your Honor, it's the State's contention that this whole story about Bobby is -- is
16 nothing but a lie. So I mean, he -- our opinion is that on page six, he is actually
17 trying to set up confusion about how long he's been in jail, such that he can start
18 forming an alibi.

19 THE COURT: Yeah.

20 MS. LEXIS: And that's self-serving. We don't get to -- we don't get to
21 cross-examine him on that. It doesn't come in under context. If he wants to
22 proffer this particular piece of evidence, he needs to take the stand and proffer it,
23 so I can cross-examine him on his misconceptions, misinterpretations, or
24 whatever it is that he meant when he made this particular statement.

25 As the State, we have the authority to enter into evidence statements

1 by -- admissions by a party opponent. They're not proffering -- I'm not proffering
2 this particular statement. And unless they can overcome the fact that it is
3 extremely misleading, I can't cross-examine, it's not particularly -- it doesn't add
4 context, and I -- I ask that it be excluded on those grounds.

5 MS. MACHNICH: Your Honor, may I respond?

6 THE COURT: Just give me one more minute to look at the statement.
7 I mean, the statements are separated by two pages of other dialogue, so they're
8 not really connected.

9 Yeah, go ahead and respond.

10 MS. MACHNICH: Your Honor, our position is that they are correct,
11 that they are absolutely connected because of the fact that we're talking about his
12 perceptions at the time. I -- we're not going to argue at any point that he was in
13 jail during the commission of this offense. We are not arguing that.

14 THE COURT: Right.

15 MS. MACHNICH: I think -- I mean, that's what the State was alluding
16 to. That's not part of our case.

17 But what we would argue is exactly what Your Honor put forth, which
18 was his perception is -- it's all about perception of time. If he perceives Bobby
19 having been gone two days and he perceives him being in jail two days, that puts
20 us at the same timeframe. We're not saying he was at jail -- we're not saying he's
21 been in jail two days. We're not saying -- we're not saying it's for the truth of the
22 matter asserted. We're saying that it's for his perception of time at the time.

23 And I also think that there's additional context if that entire -- the entire
24 rest of the page comes in, it also talks about why he's been talking -- why he's
25 specifically saying that and why, again, goes to his perception of time and not

1 creating something as he's talking about --

2 THE COURT: So --

3 MS. MACHNICH: -- someone else driving the car while he's been in
4 jail.

5 THE COURT: But, so if -- can't he just take the stand and explain his
6 whole -- I mean, if he's -- if he has a misperception of time, shouldn't he have to
7 take the stand to explain that?

8 MR. GASTON: And then introduce his prior felonies to the jury? The
9 State has -- the State is essentially cherry-picking which part of the call they want
10 to come in.

11 THE COURT: Well, but --

12 MR. GASTON: -- that's -- that --

13 THE COURT: But aren't they allowed to do that, under the rules?

14 MR. GASTON: Absolutely. The first statement they want to
15 introduce, they want to argue to the jury that essentially this is a -- clear, that he's
16 made up this story about Bobby, because he's saying Bobby's been gone for two
17 days. This is this 29th; therefore Bobby's been gone since the 27th. Therefore
18 Bobby didn't do the robbery the mornings of the 28th. Keandre knows this, now
19 you know it, jury, case done.

20 But just a couple pages in the call we know for sure that Keandre's
21 perception of time is not accurate. We should be able to address to the jury by
22 introducing another part of the call.

23 THE COURT: Unless he's trying to use the jail call to fabricate an
24 alibi.

25 MR. GASTON: Then why bring up Bobby's been gone two in the first

1 place? And -- and then the context -- the idea, how weak an argument -- I
2 guarantee you, Judge --

3 THE COURT: Why -- why bring up Bobby? I just -- why bring up
4 Bobby's been gone two days in the first place? Why did he say that if he was
5 trying to fabricate, you know --

6 MS. LEXIS: Your Honor, because if you look at the entire context of
7 that call, they're asking -- he's being asked why it is that he's the only one that
8 went to jail. Okay. It starts on page -- why -- and I redacted that portion.

9 THE COURT: Yes.

10 MS. LEXIS: They say I fit the description, blah, blah, blah.

11 And then you go into page -- page -- where would it be now? Oh --
12 oh, page four, where he starts talking about the gun.

13 They're putting it on me --

14 THE COURT: Oh, you know what?

15 MS. LEXIS: -- because they --

16 THE COURT: Yeah.

17 MS. LEXIS: Right? And then he says --

18 THE COURT: What he's saying here, Mr. Gaston, is he's -- he's
19 telling his guy truthfully at this point why Bobby didn't get --

20 MR. GASTON: Because he'd been gone for two days.

21 THE COURT: -- picked up, because he hasn't been around.

22 MR. GASTON: Yeah. That could -- that that's [indiscernible].

23 THE COURT: I mean, that's -- that -- no, I mean, that's the context.
24 He's -- he's clearly suggesting that Bobby was gone, that's why he wasn't
25 arrested.

1 MR. GASTON: But this is all -- my point is --

2 THE COURT: So it's got nothing -- there's no -- there's no time
3 misconception issue on that statement.

4 MR. GASTON: Well, my point is, this is the entire argument, is that's
5 the State's argument. Our counter argument to that statement is his perception of
6 time is not accurate. And we know this by a statement he makes later in the call.
7 The idea --

8 THE COURT: But --

9 MR. GASTON: -- the idea that he somehow -- the bottom line is the
10 State's resting heavily on the fact of Keandre's estimate of two days. There's a
11 statement later in the call where we know Keandre's estimate of two days is not
12 accurate in real life. I don't understand how that's not possibly Doctrine of
13 Completeness. The State is resting heavily on a statement, there's a statement
14 later in the same phone call that explains the earlier statement. The idea that
15 this --

16 THE COURT: Well, whether it's two days or three days or four days,
17 the -- the perception of time seems -- now that I read it in context, seems
18 irrelevant, because the only point that Valentine is making is Bobby's been gone.

19 MR. GASTON: So --

20 THE COURT: Bobby's been gone. That's -- and that -- those are his
21 own words. There's nothing confusing about Bobby's been gone. That's why he
22 wasn't arrested.

23 MR. GASTON: So be it. If that's -- if that's the argument, if that's --

24 THE COURT: That's not an argument. That's just -- those are his
25 own words.

1 MR. GASTON: Well, and what we're saying is he's not saying
2 Bobby's been gone at the time of the incident. He's saying Bobby's been gone for
3 two days, and he's not clear on how long two days is.

4 THE COURT: So you're saying your argument is that he's been gone
5 only the time that he's been in jail?

6 MR. GASTON: That could be an argument we make to the jury. If it's
7 not --

8 THE COURT: I think that's -- I'm not going to allow it. It's irrational
9 argument, it's inconsistent with the language, it doesn't -- it's not supported by the
10 Doctrine of Completeness. I'm sorry, I'm sticking to my tendered ruling. All right.

11 MS. LEXIS: Your Honor, they're --

12 THE COURT: You can put him on the stand to explain it if you think
13 you need to, but I don't think -- I don't think that there's -- there's any need,
14 because I don't think there's any confusion or misunderstanding here. All right.

15 MS. LEXIS: Your Honor, there -- there is another issue.

16 THE COURT: What's the last issue?

17 MS. LEXIS: This morning --

18 THE COURT: I respect your -- I respect your argument.

19 MR. GASTON: Thank you.

20 THE COURT: Or respectfully, I respect your argument. I'm not
21 saying it's -- I'm just disagreeing with it. I didn't mean to suggest that it's --

22 MR. GASTON: It's fine.

23 MS. MACHNICH: Yeah, it's fine.

24 MR. GASTON: Thank you.

25 THE COURT: -- it's an irrational argument. I'm just disagreeing. I

1 think that it -- it's not supported by the law. But --

2 MR. GASTON: Yes, sir.

3 THE COURT: -- I just -- I do respect it. Okay.

4 MS. LEXIS: Your Honor, this morning, my secretary is on its way.
5 The State is filing a written Motion in Limine to limit the testimony of Dr. Steven
6 Smith. I have served Ms. Machnich this morning --

7 THE COURT: A Motion in Limine?

8 MS. LEXIS: Yes, your Honor.

9 THE COURT: Why so late, guys?

10 MR. GASTON: What's the motion?

11 MS. LEXIS: Well, your Honor --

12 THE COURT: Where's my stuff?

13 MS. MACHNICH: What -- what is the motion?

14 MS. LEXIS: Your Honor, if you -- excuse me. If you could --

15 THE COURT: Ms. Machnich -- Ms. Machnich --

16 MS. MACHNICH: Sorry, go ahead.

17 THE COURT: You know I give everybody a chance to speak.

18 MS. MACHNICH: I'm not speaking.

19 THE COURT: Don't interrupt, though.

20 MS. MACHNICH: I'm not speaking.

21 THE COURT: Okay. You were gesturing like you were getting ready
22 to --

23 MS. MACHNICH: I just -- Your Honor, she's saying we've been
24 served. I've not seen it. That's it.

25 THE COURT: Okay. Just let her -- let me understand what the issue

1 is. Thank you.

2 MS. LEXIS: Okay. Your Honor, I guess I would have to go into the
3 procedural history of this case to show this is not untimely by -- by the procedural
4 history of this particular case.

5 THE COURT: Okay.

6 MS. LEXIS: Your Honor, on July 7th, 2017, the State filed a Motion to
7 Exclude the defendant's identification expert. At that time, the person noticed was
8 an individual by the name of Daniel Reisburg [phonetic]. On July 19th, 2017, the
9 defendant filed their opposition to that particular -- to that particular motion.

10 However, on July 14th, a few days before that, the defendant filed a
11 Notice of Supplemental -- Supplemental Notice of Expert Witnesses endorsing
12 three additional experts, Steven Smith, Elizabeth Loftis, and Deborah Davis. And
13 I filed, the next business day or the next judicial day, July 17th, 2017, the State
14 filed a motion to strike that Supplemental Notice of Expert Witness as untimely.
15 Okay.

16 THE COURT: Okay.

17 MS. LEXIS: Because that was given to me --

18 THE COURT: Motion to Strike, right?

19 MS. LEXIS: Correct.

20 THE COURT: That went to Herndon?

21 MS. LEXIS: Correct. That went to Judge Herndon.

22 THE COURT: Yeah.

23 MS. LEXIS: So on July 24th, 2017, the Honorable Judge Herndon
24 denied the State's Motion to Exclude the ID expert. Judge Herndon did order the
25 defendant to provide the State with literature, articles, and research authored by

1 Dr. Steven Smith and/or relied on by Dr. Steven Smith as soon as possible to the
2 State.

3 And so defense counsel provided the State with three articles,
4 Exhibits 4, 5, and 6 of our motion. If we could approach with a copy.

5 THE COURT: So was -- was Judge Herndon's -- he denied the
6 Motion to Strike based on the need for the defense simply to provide the
7 information? Or was there -- was there some reconsideration you had right that
8 you had to strike in the event that this literature didn't comport to some standard?

9 MS. LEXIS: That -- that's a little bit vague.

10 THE COURT: Okay.

11 MS. LEXIS: Because all Judge Herndon indicated was please
12 provide this requested information, and I addressed it specifically during the
13 hearing. I said, Your Honor, in the event of you allowing this particular
14 late-noticed expert, we have not been provided any of the documentation. I ask
15 that that be provided.

16 THE COURT: All right. So now you've got it. And you got it -- did
17 you get it timely?

18 MS. LEXIS: No, your Honor. We got it Thursday.

19 THE COURT: Thursday.

20 MS. LEXIS: Last week, Thursday.

21 THE COURT: Okay.

22 MS. LEXIS: Three articles concerning --

23 THE COURT: And when were you supposed to -- because the
24 hearing with Judge Herndon was the 21st, which was --

25 MS. LEXIS: Monday.

1 THE COURT: -- Monday?
2 MS. LEXIS: Correct.
3 THE COURT: So Monday, you got it Thursday, and you're supposed
4 to have it --
5 MS. LEXIS: Well, that was --
6 THE COURT: What was the deadline he gave?
7 MS. LEXIS: -- left rather open.
8 THE COURT: Okay.
9 MS. LEXIS: I mean, as soon as possible.
10 THE COURT: Okay. So --
11 MS. LEXIS: However --
12 THE COURT: -- Monday, Tuesday, you got it three days after the
13 order?
14 MS. LEXIS: Correct.
15 THE COURT: All right. And what's the prejudice, then?
16 MS. LEXIS: Okay. So Your Honor, we're moving to preclude --
17 THE COURT: I just want to know the issue. We're not arguing or
18 deciding it now. And I see your -- your guy come in with the -- with the briefs,
19 right?
20 MS. LEXIS: Yes.
21 THE COURT: Okay.
22 MS. LEXIS: I have three reasons for wanting to exclude just the
23 particular portion of his -- of his testimony. He was noticed as expected to testify
24 regarding identification procedures, eyewitness identification, and factors that can
25 affect reliability and unreliability of those --

1 THE COURT: Those seem to be all the matters that would be helpful
2 to the jury, right?

3 MS. LEXIS: Correct. Correct.

4 THE COURT: Okay. And probably within the expertise of the
5 particular individual?

6 MS. LEXIS: And the that's actually one of the -- one of the bases for
7 the State asking to limit or prevent this particular expert from testifying concerning
8 showups. Here's the reason --

9 THE COURT: All right. So you don't think he's qualified on showups?

10 MS. LEXIS: Correct.

11 THE COURT: All right.

12 MS. LEXIS: Number one, I think that's beyond the scope of his
13 expertise. As I've looked through his CV, which was provided to the State on
14 the 17th, I believe, does not demonstrate an expertise in that area --

15 THE COURT: Maybe we need to voir dire him a little bit?

16 MS. LEXIS: Yes.

17 THE COURT: Okay.

18 MS. LEXIS: In that area of showup.

19 THE COURT: Uh-huh.

20 MS. LEXIS: Secondly, testimony concerning showups is not routinely
21 included in the testimony of defense identification experts. And I don't believe
22 their notice sufficiently placed us on notice concerning the anticipated testimony
23 concerning showups. The broad language, the --

24 THE COURT: Because you say witness -- witness identification?

25 MS. LEXIS: Right.

1 THE COURT: I mean of suspect identification?

2 MS. LEXIS: Correct. And in all of my conversations with
3 Ms. Machnich and Mr. Gaston concerning this expert and giving me materials,
4 they've always told me and represented to me that this would be standard expert
5 witness testimony, you know, things like --

6 THE COURT: Yeah, but four out of the five IDs here were showups.
7 So, I mean --

8 MS. LEXIS: Right, right.

9 THE COURT: -- you should -- must have expected he's going to talk
10 about showups.

11 MS. LEXIS: Actually, none of the notice ever mentioned that. And
12 they always told me this --

13 THE COURT: Yeah.

14 MS. LEXIS: -- their expert testimony was going to be concerning, like,
15 weapons focus, the ability to recall.

16 THE COURT: I'll -- I'll look at the -- the scope of the disclosure.

17 MS. LEXIS: Okay.

18 THE COURT: But that's -- that argument seems kind of weak. But --

19 MS. LEXIS: Okay.

20 THE COURT: -- let's hear what else you've got.

21 MS. LEXIS: Third, the literature, articles, and research authored by
22 Dr. Steven Smith and/or relied by Dr. Steven Smith have not been provided to the
23 State in a timely fashion. And the three articles provided are not the complete
24 disclosure ordered by Judge Herndon. That is unless the defense expects us to
25 believe that he is going to be relying solely on those three articles. And if that's

1 the case and you allow it in, I -- I ask that he be limited. Because they were
2 ordered to give us all of the literature, articles --

3 THE COURT: That he's relied upon?

4 MS. LEXIS: -- research that relied upon forming an opinion. All
5 they've given us are these three articles. So I would ask that you limit his
6 testimony to just what's contained therein. Otherwise, how is that fair, all of this
7 late notice?

8 MS. MACHNICH: I would like to be heard whenever.

9 THE COURT: Yeah, yes. I'm not going to decide it right now. But --

10 MS. MACHNICH: That's fine.

11 THE COURT: -- I -- I just want to frame the issue and let me know --

12 MS. MACHNICH: Okay.

13 THE COURT: -- procedurally how you want to resolve it.

14 MS. MACHNICH: I got it. No, I got it.

15 THE COURT: Frame the issue and let me know procedurally how
16 you want me to go about resolving this.

17 MS. MACHNICH: Okay. Your Honor, I do believe that this is
18 extremely late. First, her timeline is a little bit off. When we disclosed -- so the
19 spirit behind disclosing additional identification experts with almost identical
20 qualifications, having authored papers on the issue, having testified before on the
21 issue, we disclosed that because we didn't want to delay the trial again and we
22 found out our expert was out of town.

23 So when this was all put before Judge Herndon and he heard this,
24 they're trying to paint us in a bad light, having disclosed things late, we blew the
25 disclosure deadline. No. We were trying to get the case to actually go forward

1 this setting. We could have just said our expert is not available, continuance.
2 And we actually did put that in our opposition to their Motion to Strike saying, you
3 know what, to cure this, if you need more time, we can continue the case. We
4 have no opposition to that.

5 However, Judge Herndon ruled that there was no prejudice to the
6 State and that we could go forward with the supplemental expert that we noticed,
7 given that it's the identical area of expertise, eyewitness ID expert. This is not
8 something new. This happens all the time in ID cases. And that's, obviously, as
9 you know at this point, how the defense perceives this case.

10 So Judge Herndon did take care of that issue. He did ask us to
11 provide or rule that we must provide copies of articles that the expert is relying
12 upon to the State.

13 I will tell you that same day I went to the -- I went to our expert, I
14 e-mailed him and I said hey, what kind of articles are you relying on? Now, this is
15 in addition to the fact that he has published a list -- I mean, there are page -- like
16 all of his publications are listed on his CV.

17 THE COURT: You listed his publications --

18 MS. MACHNICH: Yes.

19 THE COURT: -- in his CV. And when did you give the CV to the --

20 MS. MACHNICH: The 14th. It was filed with our -- with our
21 supplemental disclosure.

22 THE COURT: Well, he obviously is relying on all of his own work,
23 right?

24 MS. MACHNICH: Right. And so in addition to that, I was like what
25 is -- other than that, what are you relying upon?

1 He's, like, well, generally the field of work.

2 He's a professor. He's been a professor for 31 years in this area.

3 THE COURT: Okay.

4 MS. MACHNICH: So he generally has institutional knowledge on it
5 and he's authored papers on it. But in addition to that, he did provide on
6 Thursday the three articles that I sent. And literally the -- he sent them to me with
7 one sentence that was, in addition to just general -- the general knowledge on this
8 subject in the field, that he's accumulated as an expert in this field, which we will
9 establish, here are some articles that I will rely upon. So I forwarded those the
10 day I got them to the State of Nevada. So I forward them immediately.

11 They're not untimely. There was no deadline given by Judge
12 Herndon. It wasn't unclear. It was just -- there was no deadline. It was as soon
13 as possible. And this was literally as soon as I received them. I didn't have them
14 before that.

15 And so now they're filing this Motion to Strike. This is, basically, the
16 same as their motion -- or it sounds like -- again, I haven't seen it.

17 THE COURT: So why don't --

18 MS. MACHNICH: I haven't been served with anything.

19 THE COURT: Yeah. Sounds like she's got it now. And she's -- why
20 don't you serve it on her right now. And then --

21 MS. MACHNICH: I mean, this is completely unfair.

22 THE COURT: It sounds like I would be benefitted by seeing your
23 opposition to their initial motion.

24 MS. LEXIS: It's included --

25 THE COURT: I'll read it if you want.

1 MS. LEXIS: It's included as an exhibit, your Honor.

2 THE COURT: I'll read that tonight.

3 MS. MACHNICH: But, I mean, again, Your Honor, this has been
4 litigated. They've tried to strike our expert. They're tried to strike our expert
5 based on subject area, which was their first motion. They tried to subject our
6 supplemental expert --

7 THE COURT: Yeah, I mean, I don't want to -- you know, if -- if Judge
8 Herndon ruled on it, I'm going stick with it.

9 MS. MACHNICH: He did.

10 THE COURT: But if -- but if there's still an open issue --

11 MS. MACHNICH: I don't believe there is an open issue. I think that
12 they're grasping at straws to try to get rid of an expert --

13 THE COURT: So tell you what --

14 MS. MACHNICH: -- that we've now flying in from Texas, like --

15 THE COURT: Tell you what, why don't I study it.

16 MS. MACHNICH: Okay.

17 THE COURT: You don't have to provide me anything in writing, but
18 you can if you want.

19 MS. MACHNICH: When?

20 THE COURT: Tomorrow morning. Well, I have my criminal calendar
21 at 9:00. We could let you argue this tomorrow morning. I'll let you just put your
22 reply if you're -- or just oppose their motion, if you want, tomorrow.

23 MS. MACHNICH: Your Honor, they're creating more busy work
24 during trial in order to distract from the focus of the trial. This puts us in a position
25 where we have to respond to it in some manner, which requires doing research

1 and writing on it --

2 THE COURT: Well, I can't --

3 MS. MACHNICH: -- during trial --

4 THE COURT: I know, I can't decide --

5 MS. MACHNICH: -- because it's untimely.

6 THE COURT: Okay. Take a breath. I can't -- I can't decide if I need
7 an opposition from you until I read it. All right. I should at least read it. And I
8 don't think I'm going to have time to read it until tonight. I mean, I could -- one
9 thing I could do is -- is read it tonight after trial and then send an e-mail. I could
10 send you an e-mail copying everybody indicating whether I need anything in
11 writing or whether just oral argument tomorrow would be fine. But I've got to read
12 it, right. I mean, it is a Motion in Limine. And it has plausible merit based on their
13 argument, you know.

14 MS. MACHNICH: Your Honor, it cites no law.

15 THE COURT: Okay.

16 MS. MACHNICH: None. I mean, it literally cites no law.

17 THE COURT: Well, I mean, look, I've handled tons of *Hallmark*
18 motions in my -- in my days. Okay. So I know -- I'm very, very familiar with all the
19 *Hallmark* standards. All right. So --

20 MS. LEXIS: And all of the exhibits, Your Honor, I did include the
21 State's Motion to Exclude. That's Exhibit No. 1. And I did include Ms. Machnich's
22 opposition as State's Exhibit No. 2, just to give a complete picture of what was
23 going on.

24 THE COURT: Yeah. And I do see a lot of page -- pages 4, 5, and 6,
25 by the way. So.

1 MS. LEXIS: And -- and then --

2 THE COURT: Oh, wait. That's Exhibit 1. That's -- their Notice of
3 Motion to Exclude.

4 MS. LEXIS: Right. It's incorporated therein and then --

5 THE COURT: It's incorporated. All right.

6 MS. LEXIS: So.

7 THE COURT: So there is law in there. So let's -- tell you what guys, I
8 need to look at the scope of the notice and see. Because, you know, Herndon
9 did, sounds like -- sounds like he might have left some issues up the air.

10 MS. MACHNICH: He did not, Your Honor. He did not about this.
11 He -- he requested that we provide those articles to the State of Nevada, but at
12 least our recollection of that argument --

13 THE COURT: Is he going to express opinions that go outside the
14 opinions stated in the articles that he relied upon?

15 MS. MACHNICH: Not beyond those and the opinions in his own -- as
16 far as I know, in the opinions in his legal work, which is extensive. I mean, he --

17 THE COURT: Yeah, but --

18 MS. MACHNICH: -- which has been provided.

19 THE COURT: -- if Herndon ordered that everything be turned over,
20 I'm assuming that what Herndon is -- is thinking is maybe because of the late --
21 the late notice, the State doesn't have time to look up --

22 MS. LEXIS: Yes.

23 THE COURT: -- all those articles. And so he was --

24 MS. LEXIS: Yes.

25 THE COURT: -- putting the burden on the defense to provide them

1 with the documents that he relied upon so they would be able to get up to speed
2 faster.

3 MR. GASTON: And then we -- we don't -- we definitely undoubtedly
4 have to turn over to the State all the articles he's relying on for his testimony or
5 whatever.

6 THE COURT: That's what Herndon said.

7 MR. GASTON: But we don't have to turn over -- I mean, look, just
8 common sense, guy's been an expert for 31 years, we don't have to turn over
9 everything he's ever read in the history of his life that forms his opinion as an
10 expert. We have to turn over the articles that he's consulting --

11 THE COURT: What was the purpose of the turning over the material,
12 did -- I mean, did you guys --

13 MR. GASTON: I think you always --

14 THE COURT: -- get into that more?

15 MR. GASTON: Yeah. My understanding is you always have to. If
16 they're relying on articles for the testimony, you got to turn it over. Anything they
17 relied on forming the basis of their testimony, you got to turn it over. So if -- if he
18 reviewed these articles that we turned over to the State specifically in furtherance
19 of getting ready to testify, we have to turn it over. It seems from his e-mail that --

20 THE COURT: All right. Well.

21 MR. GASTON: -- these are just kind of a good representative of the
22 consensus of the field, but --

23 THE COURT: So you make a valid -- a valid point there. You can't
24 always turn it -- turn everything over. I'm just -- I'm trying to understand, trying to
25 get into Herndon's mind to figure out exactly what he was --

1 MS. MACHNICH: I mean, Your Honor --

2 THE COURT: -- trying to do here.

3 MS. MACHNICH: I mean, they specifically -- in his CV, which is
4 attached to the State's motion, it lists the papers that he's authored. And -- and,
5 see, that's the thing, like, there's books --

6 THE COURT: Tell you what.

7 MS. MACHNICH: -- there's book chapters, papers --

8 THE COURT: No, I'll tell you what, I'm going to look it over. I -- I'll
9 look it over. I can't -- I know that you want me to do now is just rule now that it's
10 late and shouldn't be considered. I'm not going to do it. I'm going to read it.

11 MS. MACHNICH: Okay.

12 THE COURT: All right. I'm going to read it. And then I'm going to
13 decide. But, so do you want to just argue it orally tomorrow? Do you want to wait
14 until I read it and then send you guys an e-mail on -- on what points I want
15 addressed tomorrow? What do you want me to do? Because I -- you know, I
16 work hard, too.

17 MS. MACHNICH: I know.

18 MS. LEXIS: You do. You really do.

19 MS. MACHNICH: I -- I know. It's -- I mean, obviously, and we were
20 all in the midst of trial and they've created another issue to do. I mean, it's --
21 again, this -- this is just --

22 THE COURT: It's --

23 MS. MACHNICH: -- as far as our position is, not only untimely, but
24 repetitive of exactly --

25 THE COURT: You said that. You said that.

1 MS. MACHNICH: -- what this judge has said. So I mean, yes --

2 THE COURT: So tell you what.

3 MS. MACHNICH: -- I guess we'd like Your Honor's tentative ruling on
4 it and if there's something more that we need to address, we'd like to be able to
5 address it.

6 THE COURT: Well, I don't know that I'm going to do a tentative
7 ruling, because I -- you know, I feel uncomfortable doing a tentative without
8 having -- I guess I have your position now.

9 MS. MACHNICH: That -- that the -- yeah. That -- that we've complied
10 with any court orders and that our expert --

11 THE COURT: Let me look at -- I mean, I want to look again at --
12 Herndon sent me the minutes. I want to look at the minutes.

13 MS. MACHNICH: Okay.

14 THE COURT: Is there a written order from Herndon's decision yet?

15 MS. LEXIS: I don't believe so.

16 MS. MACHNICH: I don't believe he did that.

17 THE COURT: Okay. Well, I'm going to get the minutes. Maybe I'll
18 listen to the JAVS.

19 Can you see if you can find the JAVS for me? I'll look at -- listen to it
20 at lunch.

21 THE COURT RECORDER: Okay.

22 THE COURT: All right. JAVS of -- it's -- it's this hearing here.

23 MS. LEXIS: It would be July 24th, yes, Your Honor.

24 MS. MACHNICH: Yes.

25 THE COURT: July 21, right?

1 MS. LEXIS: The 24th, I believe, the Monday that we started trial.
2 That's when Judge Herndon made this ruling.

3 THE COURT: Oh, yeah, yeah. This is the one -- you're right.
4 The 24th.

5 MS. LEXIS: Yes, your Honor.

6 THE COURT: All right.

7 MS. MACHNICH: It's in his 9:00 a.m. calendar.

8 THE COURT: All right. The 24th. All right. So I'll try to listen to it at
9 lunch.

10 MS. MACHNICH: Okay. Thank you, Your Honor.

11 THE COURT: All right. Anything else, guys?

12 MS. LEXIS: No.

13 THE COURT: All right. What I did is -- let me talk to Ms. Lexis.

14 MS. LEXIS: Yes, Your Honor.

15 THE COURT: So the three portions of the transcripts, I -- what I did is
16 I -- I highlighted in green the portions I think consistent with my ruling.

17 MS. LEXIS: Yes.

18 THE COURT: Do you want -- did you already do that to yours?

19 MS. LEXIS: I -- I did. May I --

20 THE COURT: Do you want to have -- Mr. Dickerson, why don't you
21 compare what I highlighted in green to what she was planning to introduce to
22 make sure that we're on the same page.

23 MS. MACHNICH: Your Honor, might we be involved in the process
24 instead of two members of the State? Because that's more concerning to me,
25 that it's those two and --

1 THE COURT: Oh, well, I was going to have you double check, yeah.

2 MS. MACHNICH: Okay, yeah.

3 THE COURT: You guys, so --

4 MS. LEXIS: I've already --

5 THE COURT: I have -- I have, like, kind of notes and scribbles and
6 stuff. Can I -- I mean, I don't care if you guys look at it, but just, you know, don't
7 use it for any purposes.

8 MS. MACHNICH: Of course.

9 THE COURT: All right.

10 MR. GASTON: What if it's a really good point?

11 THE COURT: I don't mind -- I don't mind if you read my notes. These
12 are, like, preliminary thoughts I had when I was going through it and just some
13 marks and -- all right. You can both look at it. But what I marked in green is what
14 I think should -- should come in.

15 MS. MACHNICH: Okay.

16 THE COURT: All right. If there's any differences, you -- Ms. Tegan --
17 or you're -- Ms. Machnich, you're allowed to look at that, too.

18 MS. LEXIS: Okay.

19 MS. MACHNICH: Thank you.

20 MR. GASTON: Just to clear -- i missed the point. When are we --
21 we're figuring out the expert stuff tomorrow?

22 THE COURT: Yeah. Can you guys --

23 MR. GASTON: Is that what it was? I get Tegan's point. We don't
24 really have a new argument to make. We kind of made our argument right now, I
25 mean --

1 THE COURT: What time are we supposed to start trial tomorrow in
2 this case? What was our -- how -- how big does the criminal calendar look
3 tomorrow? Only 13? Oh, so I'll be done by -- I'll be done by 10:00. Do you guys
4 want to -- we can start trial at 11:00.

5 MR. GASTON: Yeah, 11:00 is what I was asking.

6 THE COURT: Let's start trial at 11:00. Why don't we -- why don't we
7 argue from 11:00 to 11:15, have the jury start -- be here at 11:15 tomorrow.

8 MS. LEXIS: Okay. Sounds good.

9 THE COURT: Can you guys argue at 11:00?

10 MS. LEXIS: Yes.

11 THE COURT: And then I'll indicate in an e-mail tonight the points that
12 I want. All right.

13 MS. LEXIS: Sounds good.

14 MS. MACHNICH: Wait, so are these -- I guess I have a question --

15 THE COURT: Green is I thought it should come in.

16 MS. MACHNICH: Right. No, I'm noticing that the State isn't
17 redacting, they're removing. So it sounds like the conversation -- I mean, it's not
18 like --

19 THE COURT: Yeah.

20 MS. MACHNICH: -- there are sections redacted, they're just, like,
21 even from the transcript, they're just gone.

22 MS. LEXIS: Well, that's the whole point of redacting.

23 THE COURT: Well, yeah. I don't want the jury to -- I don't want the
24 jury to read the parts that are irrelevant.

25 MS. LEXIS: Yeah. And we don't --

1 MS. MACHNICH: Right.

2 MS. LEXIS: -- and we don't want it to show blocked-out portions,
3 because that's actually error, because they're going to try to figure out -- they're
4 going to try to speculate as to what's missing.

5 MS. MACHNICH: Yeah. But this looks like this is the extent of the
6 conversation, which it's not.

7 MS. LEXIS: That is the extent of the conversation that's being
8 admitted.

9 MS. MACHNICH: That's being --

10 MS. LEXIS: I don't understand what's missing.

11 MS. MACHNICH: That's being admitted. That's not in existence. We
12 understand the context --

13 THE COURT: I've give them -- I'll give an instruction that -- that it's
14 been redacted.

15 MS. LEXIS: Right.

16 THE COURT: There are missing portions.

17 MS. LEXIS: Thank you.

18 THE COURT: All right. I'll let them know that.

19 MR. GASTON: We --

20 THE COURT: But I'm not going to have the State go back and redo
21 the redacting.

22 MR. GASTON: And we are going to propose an instruction that said
23 something along the lines of, like, that portions have been redacted due to
24 whatever reason.

25 THE COURT: Good idea. I -- I would appreciate that.

1 MR. GASTON: Something that says other than, because we don't
2 want you to hear.

3 THE COURT: If you want me to give that to them right before they
4 read the transcripts, I can do that, as well.

5 MR. GASTON: Yes, please. I don't know what the exact wording in
6 the instruction will be, but something.

7 THE COURT: All right. All right. Let's -- let's bring the jury in then,
8 guys.

9 Oh, you want another minute to look at that?

10 MR. DICKERSON: Please, your Honor. Thank you very much.

11 MS. MACHNICH: So the 18:16 should only go on to the second
12 page? I don't have the matching calls, so I'm looking at these two and nothing
13 else.

14 THE COURT: Oh, your -- your printout is different format.

15 MS. MACHNICH: No, no, no. I literally --

16 MS. LEXIS: No, what --

17 MS. MACHNICH: -- he doesn't -- he didn't give me your copies for the
18 one that I have, so I don't have this.

19 MS. LEXIS: What the State had to do, Your Honor, pursuant to the
20 court's ruling last night, was I went through and actually physically redacted all of
21 the inaudibles --

22 THE COURT: Perfect.

23 MS. LEXIS: -- all of the portions that Your Honor excluded.

24 THE COURT: Yep.

25 MS. LEXIS: And so now we have what I am proposing to be given to

1 the jury with everything that's being said and allowed in the court.

2 THE COURT: When are we going to get to that?

3 MS. LEXIS: Probably this afternoon.

4 THE COURT: Tell you what, you want me to --

5 MS. LEXIS: Yes.

6 THE COURT: Why don't -- why don't I do this.

7 MR. DICKERSON: That would be great.

8 THE COURT: Why don't I look at your proposal and make sure it's
9 consistent with my ruling. I'll do that at -- at lunch, too.

10 MS. LEXIS: Okay.

11 MR. DICKERSON: Sounds good.

12 MS. LEXIS: Sounds good. These three, there should be three, Mike,
13 yeah, right here. Three.

14 THE COURT: Oh.

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

16 THE COURT: Give me one second.

17 MR. DICKERSON: Absolutely.

18 THE COURT: All right. Yes, sir, thank you. Okay. Thanks guys. So
19 I'll look it over at lunch.

20 MR. DICKERSON: Thank you very much.

21 THE COURT: Also, I'm make sure it's consistent. And then I'll let
22 Defense know, too.

23 MS. LEXIS: Okay. Thank you, your Honor.

24 THE COURT: Okay. Let's bring the jury in. Where's my marshal?
25 All right. He's out there organizing. Set them up.

1 MS. MACHNICH: We have no idea how many witnesses they have
2 left or how long it's going to take. I can't get our witnesses lined up until we know
3 how much longer they're going to take. So at some point, Your Honor, we would
4 request that you request from the State that they let the court know if they're going
5 to be done today, so that we can get our witnesses ready.

6 THE COURT: Yeah. I just -- you've seen, I do that. You've been in
7 trial with me before. I don't that periodically. I'll let --

8 MS. LEXIS: We should be done this afternoon, so they should start
9 lining up witnesses.

10 MS. MACHNICH: But, like, when? Like, how many witnesses --

11 MS. LEXIS: I'm not -- you're asking me for something that I don't
12 know. I mean, we anticipate being done today, this afternoon.

13 MS. MACHNICH: Do -- do we know how many witnesses are left?

14 THE COURT: About how -- about how many people you think we're
15 going to have, roughly?

16 MS. LEXIS: Six.

17 THE COURT: Okay. Oh, wow. Okay.

18 MS. LEXIS: Six left.

19 THE COURT: We're going to go all day with six.

20 MS. MACHNICH: Yeah.

21 THE COURT: I mean, if you have someone available, it would be
22 great to have at least one person on standby. But six seems pretty -- yeah, you
23 know what, I've never gotten through more than six witnesses. I think we --

24 MS. LEXIS: They're the shorter ones.

25 THE COURT: Okay.

1 MS. LEXIS: No more victims, no more Spanish interpretation, thank
2 goodness.

3 MR. GASTON: We've made such good progress so far, I feel
4 hopefully, we'll beat your record.

5 [Jury reconvened at 9:15 a.m.]

6 THE COURT: All right. Very good. Good morning. Welcome back
7 everybody. All right. Are we ready to get started? All right. You've all got your
8 notepads and pens. All right. I think we -- we finished the last witness and we're
9 ready to start the State's next witness; is that correct?

10 MS. LEXIS: Yes, we are, Your Honor.

11 THE COURT: All right. You may call your next witness.

12 MS. LEXIS: The State calls Beata Vida.

13 THE COURT: Beata Vida?

14 MS. LEXIS: Beata Vida.

15 THE COURT: All right. All right.

16 [Pause in proceedings.]

17 THE COURT: The court clerk over here will administer your oath so
18 please remain standing.

19 **BEATA VIDA,**

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

21 THE CLERK: Please be seated and please state your full name for
22 us and last name for the record.

23 THE WITNESS: My name is Beata Vida. And it's spelled B-E-A-T-A
24 V-I-D-A.

25 THE COURT: You may proceed.

1 MR. DICKERSON: Thank you, your Honor.

2 **DIRECT EXAMINATION**

3 BY MR. DICKERSON:

4 Q How are you employed, ma'am?

5 A I'm employed by the Las Vegas Metropolitan Police Department as a
6 Forensic Scientist II in the Biology DNA section.

7 Q What are your duties there at the forensic lab for Metro?

8 A I examine various items of evidence that comes into the laboratory for
9 biological materials. Most often I look for blood, semen, and saliva. And once a
10 stain is identified as such, I perform DNA analysis on it to either include or
11 exclude specific individuals. And furthermore, in some cases I also look for touch
12 DNA, which is DNA that is left when a person touches or comes into contact with
13 an item.

14 Q How long have you been with Metro in this capacity?

15 A I have been with them since June of 2010.

16 Q And what sort of training and experience do you have to hold this
17 position as a forensic scientist DNA analyst?

18 A I have a bachelor's of arts degree in biology and a minor in chemistry
19 and also an associate's of science degree in crime scene technology.

20 Q So the work that you do over there at the -- the lab, is this work
21 reviewed?

22 A Yes. Before a report is released, it goes through what we call a
23 technical and administrative review. And what that means is two additional
24 analysts look over my file. The first analyst makes sure that my data and
25 interpretations are correct. And the second person looks over the file to make

1 sure that I filled out my worksheets correctly, that everything is spelled correctly,
2 and they go over the entire thing to make sure everything is complete and correct.

3 Q So you specifically deal with DNA; is that right?

4 A Yes.

5 Q And what is DNA?

6 A DNA stands for deoxyribonucleic acid. And it's the blueprint or set of
7 instructions that codes for everything in the body. It's found in cells and its
8 purpose is to pass down genetic information from one generation to the next. And
9 half of it comes from your dad, half of it from your mom. It's determined at
10 conception and stays the same throughout your lifetime. And everybody has their
11 own unique DNA, except identical twins.

12 Q Could you describe for the members of the jury how a DNA analysis is
13 performed?

14 A Yes. So evidence can come to me either as the actual item of
15 evidence. So it can be a knife, a piece of clothing, or straw, for example, or it can
16 come as a swab. And sometimes the crime scene analyst will actually take a
17 swabbing of what they want me to look at at the crime scene. So if there is a
18 puddle of blood and it's on a carpet, they're not going to bring me the entire
19 carpet. They're just going to take a swabbing of that blood and then bring it to me
20 so I can examine it.

21 But any other case, the first step is to actually look at the item and see
22 if there is any discoloration or anything that I can see. We do have specific
23 chemical tests to test for certain body fluids. And if I see anything that resembles
24 a type of body fluid, I can do a chemical test to see if it may be that.

25 The next step is either take a cutting or a swabbing of that sample.

1 So if I get a actual swabbing, I will take a cutting of that and it goes into a tube.
2 And so that sample is taken on through a four-step process that results in the
3 DNA profile being -- it comes out as a bunch of peaks on a graph. And then it's
4 these peaks that I interpret and make my determinations on.

5 Q So I think you kind of briefly touched on it with the swab. What is a
6 reference standard?

7 A A reference sample is a type of evidence. It comes in usually in the
8 form of a buccal swab or blood and it's from a known individual. A buccal swab is
9 basically a swabbing of a person's interior cheek and it's from a known individual,
10 so there's a name attached to it. And then we use that sample to compare to
11 unknown stains or evidence found at the scene.

12 Q Okay. So that would be, in a case like this, the buccal swab?

13 A Yes.

14 Q And what is a buccal swab?

15 A A buccal swab is taken from the inside cheek of a person and it looks
16 like a Q-tip and they just put it in the person's mouth and swab the inside of their
17 cheek to collect skin cells.

18 Q Those skin cells hold the DNA?

19 A Yes.

20 Q And then that's tested against whatever's found on the scene?

21 A Yes.

22 Q So, specifically, are there some samples that are mixed or partial
23 samples?

24 A Yes. We have what's called a single-source DNA profile of a mixture
25 DNA profile. A single source would be anything where it comes from -- the DNA

1 profile comes from an individual. So again, if we went back to the blood stain at
2 the crime scene, I would expect that DNA profile to be from one person.

3 Now, there is also what we call mixture DNA profiles where it's a DNA
4 profile from multiple individuals. So if I went and swabbed the handle to the
5 courtroom door, I would probably expect to see a mixture, because lot of people
6 have handled that handle.

7 Q Okay. So mixture would be multiple people?

8 A Yes.

9 Q Single source would be one?

10 A Yes.

11 Q And then are there different profiles, like a full profile versus a partial
12 profile?

13 A Yes.

14 Q What is that?

15 A So through -- through our testing we actually look at 15 separate
16 locations on the DNA molecule. And any -- a DNA profile is, basically, a set of
17 numbers that represents the genetic makeup of a person at those 15 locations. In
18 addition to those 15 locations, we also look at an additional location that's called
19 amelogenin that tells me the gender of the individual. So I can tell whether that
20 DNA profile came from a male or a female. And so a full DNA profile is one
21 where all of those 15 locations are complete. And a partial would be anything
22 where there is information obtained at anything less than 15.

23 Q And what sort of standards do you have to get results or inconclusive
24 results from a sample?

25 A I don't understand the question.

1 Q So can results for DNA analysis be inconclusive?

2 A Yes.

3 Q And how does that occur?

4 A So we can either get a useable DNA profile where we can make

5 conclusions. In some cases, we get no DNA profile at all. And in some cases, we

6 do obtain DNA information, but it's not good enough for us to make any

7 determinations on. So in that case we call it inconclusive.

8 Q Okay. Specifically, firearms; you test firearms often for DNA?

9 A Yes.

10 Q And in testing firearms, are they a good source of DNA?

11 A Usually not, no.

12 Q And why is that?

13 A Usually, with firearms, two things happen. One, either a lot of people

14 handle the firearm. It's passed around and so there's too much DNA and I -- we

15 call that a complex mixture, where I can't make any determinations because

16 there's so many people that have handled it. And then we also have the opposite

17 of that, when there is not enough DNA on an -- on item, for example, the firearm.

18 And in that way, that would be another inconclusive, because there's just not

19 enough DNA for me to make any conclusions on it.

20 Q So you could get a mixture, maybe, if a lot of people handle the gun?

21 A Yes.

22 Q And then you might not get a profile on the gun, though?

23 A Correct.

24 Q And what would be some reasons for there being no DNA on the gun?

25 A So as I mentioned before, touch DNA comes from DNA that's found in

1 skin cells. So anything that would prevent the skin cells from transferring onto an
2 item would prevent DNA to be on it. So that could be if that firearm is not
3 handled, if there is some sort of a barrier, so, for example, if a person wears a
4 gun -- I'm sorry, gloves and then touch the gun, obviously, the DNA is not going to
5 get transferred. Another example would be if a person cleans off or wipes off the
6 firearm, that would be another way to prevent the DNA from transferring.
7 Environmental factors, such as heat, humidity, sunlight will break down DNA. So
8 if an item has DNA on it, but then it's left out outside in the sun, in the heat, the
9 DNA will break down and then I won't be able to get a -- a profile.

10 Q So DNA can be wiped off?

11 A Yes.

12 Q And in this case, did you do an analysis of a -- a swab of a gun?

13 A I did.

14 Q Specifically, that was a swab of the trigger, grip, and slide of a
15 Glock 40?

16 A Yes.

17 Q And you compared that to a known reference; is that right?

18 A I was supposed to compare it, but I did not obtain a useable profile, so
19 there was no comparison made.

20 Q Okay. Did you develop or try to develop, at least, a profile for both the
21 swab of the gun and the swab of the reference standard?

22 A Yes.

23 Q And the reference standard being that of Keandre Valentine?

24 A Correct.

25 Q In doing so, you said that you were unable to develop a -- a full profile

1 for the gun; is that right?

2 A Correct. It was a partial DNA profile.

3 Q You -- you touched on that before; what does that mean here?

4 A It just means that information wasn't obtained at all of the locations that
5 we usually look at. So I didn't get information at all of those 14 locations on the
6 DNA molecule.

7 Q And is there a standard threshold that you look at to determine
8 whether you're going to use that information or not?

9 A Yes. So in the laboratory, we actually validate and look at data to
10 make sure that when we say that there is a good, useable DNA profile, that it's
11 actually a good, useable DNA profile. So we have set limits. And in this case,
12 those limits were not met and that's why the profile was inconclusive.

13 Q So, ultimately, what were the results that you found here in this case?

14 A May I look at my report?

15 Q If that would refresh your recollection?

16 A Yes. So in this case, a partial DNA profile was obtained from the swab
17 from the trigger, grips, and slide of the Glock 40. And it was consistent with a
18 mixture of at least two individuals. And I could tell that at least one of them was a
19 male. But then because of the limited data, I was not able to make any other
20 conclusions about the profile.

21 Q In doing this examination, did you graph your results on both the profile
22 or partial profile for the gun and the profile for Keandre Valentine?

23 A Yes. So the end result of the whole DNA process is those peaks on
24 the graph. And then it's those peaks that I look at. And that if there is -- even if
25 there's no DNA profile, we will have the graph, it just won't having anything on it.

1 Q And did you also do a -- a chart comparison of what you found based
2 on your threshold standards and the -- the DNA profile of Keandre Valentine side
3 by side?

4 A Yes. So once we have the graph and we look at it, we summarize that
5 information on to a table, because it's easier to look at and review.

6 MR. DICKERSON: My approach, your Honor?

7 THE COURT: Yes.

8 BY MR. DICKERSON:

9 Q I have in my hand what's been marked as State's Proposed
10 Exhibits 183 through 185. Please take a look at these three items and tell me if
11 you recognize them.

12 A I do.

13 Q What do you recognize them to be?

14 A It's my electropherograms or those graphs, the peaks, and also the
15 summary table, which we call the identifier allelic table.

16 Q Okay. And are these specific to the DNA analysis here in this case?

17 A Yes.

18 Q Okay. And these three items, State's Proposed Exhibits 183 through
19 185, are fair and accurate copies of those?

20 A Yes.

21 MR. DICKERSON: State moves for the admission of 183 and 185.

22 MR. GASTON: May we approach?

23 THE COURT: Yes.

24 [Bench conference transcribed as follows:]

25 THE COURT: Take a look at what's proposed.

1 MR. GASTON: I think -- I think what her conclusion. And I haven't
2 seen these other -- they produced just the charts. These are charts; right?

3 MR. DICKERSON: [Indiscernible.]

4 MR. GASTON: I think -- I think the conclusion, the result is fine to go
5 in, et cetera. But -- but the actual graph itself, like this right here, for example, I
6 don't understand how that can be anything but confusing. None of the jurors
7 are -- none of the jurors are scientists. They're not supposed to look at this and
8 make any conclusions themselves by the graph. They've not heard testimony.
9 They can have their conclusions, but I don't understand what the actual graph
10 itself -- I don't want them to look at it and make the wrong conclusion, thinking that
11 they know something from this chart that this DNA expert didn't know.

12 THE COURT: It's -- it's reflective of her methodology and it helps --
13 it's relevant to the issue of reliability, of her conclusions. So I'm going to let it
14 come in.

15 MR. GASTON: Okay. Thank you.

16 THE COURT: You'll just have to go slowly.

17 [End of bench conference.]

18 MR. DICKERSON: Thank you, Your Honor.

19 Permission to publish, Your Honor?

20 THE COURT: You may. It's admitted. 183 through?

21 MR. DICKERSON: 183 through 185.

22 THE COURT: Admitted. Go ahead.

23 [State's Exhibit Nos. 183 through 185 admitted.]

24 BY MR. DICKERSON:

25 Q First, ma'am, I'm going to show you 183; do you recognize this? I

1 know you said you did at the stand.

2 A I do.

3 Q So what exactly is this that we're looking at here?

4 A This is the summary of the graph. And we call this an allele table. And
5 the boxes on the left, the green, the blue, yellow, and the red, those are the
6 locations on the actual DNA molecule. So each box is a location. The -- right
7 here, amelogenin is the sex-determining marker and that tells me whether the
8 DNA profile is from a male or a female. And the top box, those are the item
9 numbers, and then what it came from, and my results.

10 Q Okay. So looking at your result of the swab on the left, marked
11 handgun, looks like the only thing that you were able to put and determine is X
12 and Y under the amelogenin?

13 A Correct.

14 Q Meaning what?

15 A That there was at least one male in the DNA profile that I obtained.

16 Q Okay. How do you know that there's one male?

17 A Based on the graph, I was able to tell that it was a mixture. And
18 because it was so low level and it's not very good data, I could tell that there was
19 at least one male, because X and Y equals a male. I don't know if there's any
20 more males or if it's just one male, but I can tell there is at least one.

21 Q Okay. So if there's an -- if there's an X and Y, it's a male?

22 A Yes.

23 Q What would it be if it's female?

24 A Just an X.

25 Q Just an X?

1 A Correct.

2 Q And so just the -- the presence of a Y under there means that a male

3 had put their DNA on that gun?

4 A Correct.

5 Q Okay. As far as the other 15 loci on there -- and I have that right,

6 correct, loci?

7 A It's --

8 Q Locus?

9 A -- well, one is locus and the multiple ones are loci.

10 Q Okay. Loci being the multiple of what we're looking at here on the left.

11 So could you tell the members of the jury what a locus is?

12 A A locus is a -- just a location on the DNA molecule that we look at.

13 Q And so is that what we're seeing here on the left, that D8S1179?

14 A Yes. It's just the name of it.

15 Q That's the name of that particular locus?

16 A Yes. That's the name of that particular location.

17 Q Okay. And below that being another location on the DNA?

18 A Correct.

19 Q And below that, another?

20 A Yes.

21 Q For a total of 15?

22 A Yes.

23 Q And, specifically, then, we look over at the buccal of Keandre

24 Valentine. So we'll look at -- we'll look at the top, the D8S1179 locus; what are

25 those two numbers there under Keandre Valentine's buccal?

1 A So that's the buccal swab, that's the reference. We know where that
2 sample came from. And this is an example of a full DNA profile that's not a
3 mixture. So it's a single source, and full DNA profile, and the numbers just
4 represent the DNA coming from mom and dad. So the 12 came from mom or
5 dad, and the 13 came from mom and dad. So it's -- each individual number is
6 from a parent, but I don't know which came from which parent. I just know that
7 they're from his parents.

8 Q And what are those things called?

9 A They're called alleles.

10 Q Alleles. So the locus has a -- an allele or multiple alleles under it --

11 A Yes.

12 Q -- that signify what?

13 A To signify the person's DNA profile. That's basically what we're
14 comparing. So if there would have been information that was actually useable
15 from the swab, there could have been another possible profile just like this with
16 numbers. And then I compare the numbers to see if they're the same or they're
17 different. And if they're the same, it's called a match, and if they are not the same,
18 then it's an exclusion.

19 Q Okay. So do I understand you correctly that everybody would have the
20 locus, but not everybody would have the same allele?

21 A Correct.

22 Q Okay.

23 A So that's what the difference would be, is people would have different
24 numbers. So for you, the D8S1179 could be an 11 and a 16.

25 Q Okay. But I would have that and you would have that?

1 A Yes. And it would be unique to all of us, except identical twins, who
2 have the exact same genetic profile.

3 Q Okay. I see. And here, you're able to get the full profile from
4 Mr. Valentine by way of that buccal swab on the right?

5 A Yes.

6 Q Now, I see that there's -- under several of these under the swab for the
7 handgun, it looks like we have stars and NRs?

8 A Yes.

9 Q What are the stars?

10 A The stars means there was information, but again, it was so low that
11 we're not even going to do any comparisons or say anything. So that just shows
12 me that there was data there, but it's not useable. And then NR means no result,
13 so that means no DNA profile was obtained from that location.

14 Q At the top, it looks like you have some sort of standard for the stars
15 and the NRs. Could you explain the standard for the stars?

16 A Yes. So that's threshold. And for us to call something a good profile
17 and have an actual number in that table, we have a threshold that's -- our number
18 is 200. So anything above that threshold of 200, if it's above it, we use it, if it's
19 below it, we -- we don't use it, because it's usually not reproducible date. So if I
20 ran that sample again, it's so low that I might get that same information, I might
21 not. So we don't even deal with it because we don't want to -- we want to be
22 conservative.

23 Q And where that does threshold standard come from?

24 A It was validated. We did validations in our laboratory. So that means
25 that we run a lot of samples and then we see where that threshold is. They're

1 known samples, we know what the results are supposed to be. And we tweak
2 them, we make them -- so we, like, leave the sample outside, we do things with
3 them and then see where that threshold is, where we're confident that what the
4 results we're getting is -- they're good.

5 Q Okay. So anything below 200 you can't call?

6 A Correct.

7 Q And the NRs, what's that? What's the threshold there we're looking
8 at?

9 A That means no results. So there was nothing. There was no
10 information. So it was below our threshold completely, so there was nothing.
11 There was no peak whatsoever.

12 Q Okay. And I see that there's a threshold of 40?

13 A Yes.

14 Q What is that?

15 A So that's the -- that's the threshold from the results. And because of
16 our instruments and the process that we use, sometimes there is what we call
17 background noise. So we can actually get, like, little peaks under 40, but it's
18 brought on by the instruments, so it's not actually a DNA profile. So we have a
19 cutoff where we say if it's under 40, we're not -- we don't have anything at all. So
20 we basically have two thresholds.

21 Q Okay. You talked about create -- having a chart or --

22 A A graph, yes.

23 Q -- a graph for both of these, the -- the firearm swab and the Keandre
24 Valentine buccal; is that right?

25 A Yes. We have them for every sample that we run.

1 Q Look first to that of the buccal of Mr. Valentine, showing you here
2 what's been marked and admitted as State's Exhibit 85 -- 185; is this that chart
3 related to Mr. Valentine's buccal?

4 A Yes.

5 Q So -- so we know what we're talking about here, on the right we had
6 published in 183, D8S1179. That's the locus location where you were able to
7 determine that there's an allele of 12 and 13 for Mr. Valentine?

8 A Correct.

9 Q And looking to 185, the graph, is that something we're able to see here
10 in this graph?

11 A Yes.

12 Q Here under the graph, is this the locus up here?

13 A Yes.

14 Q The graph, does that mean that the alleles for this locus fall under that
15 area?

16 A Yes. So each box at the top is the location and all we're doing for
17 the -- the summary table is transcribing those numbers. And they go in order just
18 like on the table. So the first one, I can't read it, but I'm assuming it's D -- D8, so
19 the -- the numbers for those are 12 and 13, just like in the table.

20 Q All right. And then to the next one where that was D21S11, is that
21 right? Where for Mr. Valentine you found a 28?

22 A Yes.

23 Q Looking to that locus here, the second locus, we see that on the table
24 of 28?

25 A Yes. And the reason we only have one number there is because that

1 means that he got a 28 from his mom and his dad.

2 Q Okay. And under the next one, D7S820, we're seeing an 8 and an 11?

3 A Yes.

4 Q Is that right?

5 A Correct.

6 Q And we see that here under the graph, an 8 and an 11?

7 A Correct.

8 Q And so that would be the similar situation as we saw at two locus ago,
9 that being that one would be from the mom and one would be from the dad, the 8
10 or the 11?

11 A Yes.

12 Q Okay. And onto the next one, C -- CSF1PO, we're seeing no results,
13 right, on -- or, I'm sorry, we're seeing an eight -- we're seeing a 10 for
14 Mr. Valentine, a single number, and we see that here again on your chart; is that
15 right?

16 A Yes. That's correct.

17 Q The next one being D381358, where you have a 15 and 16 for
18 Mr. Valentine; is that correct?

19 A Yes.

20 Q And again, we see that here on the graph?

21 A Correct.

22 Q And so on and so forth, all the way through each one, that being the
23 next one, at TH01 you found a seven for Mr. Valentine?

24 A Yes. It's basically just the summary of the electropherogram or the
25 graph.

1 Q Okay. And the -- the height of the peaks here, does that signify
2 anything?

3 A Yes. So those numbers on the left from 0 to 900, that's our actual --
4 measures our threshold. So anything, like we talked about, under 200 we would
5 call that poor data and not look at it, and anything under 40 would be no results.
6 So these are, obviously, really -- it's a nice profile, as I would expect, because it's
7 a known DNA profile. There was a lot of skin cells collected from the inside of the
8 cheek, and so this -- this is a nice profile.

9 Q So, specifically, for example, we look at locus D21S11, and it looks like
10 the -- the size of it is above 1400; is that right?

11 A Yes.

12 Q And so that's a fairly large profile?

13 A Correct.

14 Q So underneath each one of these locus, so we have that 28 right there
15 under D21S11, there's -- obviously, has to be multiple alleles, then, that could be
16 possible; is that right?

17 A I don't understand.

18 Q So other than 28, would -- would there be other numbers possible as
19 alleles under that locus?

20 A No, not in this case, because it's good data.

21 Q Okay. But in general, in the general terms of DNA?

22 A [No audible response.]

23 Q Do you see what I'm saying?

24 A No.

25 Q Under a locus, how many various alleles could there be?

1 A Oh, there could be quite a few. It depends on the actual location. But
2 for D21, there could be a number from 25 all the way to, I don't know, 32. So
3 each of these -- thank you.

4 Q There we go.

5 A Yeah. Each of these areas here, there could be multiple. So there
6 could be peaks here, here, here, here, here if it was a mixture.

7 Q And so does the -- the length of that locus on the chart, on the graph,
8 show the possibility or the range of how many various alleles there could be?

9 A On this one it doesn't, but we do have a chart that we can compare
10 things to that the instrument actually does, where it can tell me, like, where is this
11 particular peak fall into.

12 Q Okay. And so it depends on the particular locus, how many different
13 alleles there could be?

14 A Yes. Some locations could have a lot of peaks as a possibility, if we're
15 talking about mixtures, and some not as many. So there is one, I can't think at the
16 top of my head which particular one, but there is 15 peaks that could fit in there.
17 And then there's some where there's only seven.

18 Q Okay. Show you now, back to 183; so that graph, it adds up to show
19 all the numbers that you found for the robust profile for Mr. Valentine under the
20 buccal swab?

21 A Yes.

22 Q Now, showing you here what's been marked and admitted as
23 State's 184, it's the -- the graphing for the swab of the handgun?

24 A Correct.

25 Q Where certain locus were below the threshold, so they couldn't be

1 counted, and certain locus were so far below the threshold that they couldn't be
2 measured?

3 A Correct, or they weren't there.

4 Q They weren't there?

5 A Yes.

6 Q First, we take a look at D8S1179, where you found an allele
7 below 200. So there is data there, you just can't call it; is that right?

8 A Yeah. I think it's the top one we talked about, yes.

9 Q This one right here?

10 A Yeah.

11 Q So that would be a 12 and a 13, but the data being below 200?

12 A Correct.

13 Q Okay. And the next one, D21S11, finding below 200 for the swab of
14 the handgun, 28 for Mr. Valentine's robust profile. Looking at the swab of the
15 handgun under 184, there is data seen as a spike; is that right?

16 A There is DNA information there, yes.

17 Q Okay. A 28, but it's below the 200 threshold?

18 A It's below our threshold, yes. So to me that's inconclusive.

19 Q Okay. And then for the next two, D7S820 and CSF1PO, you showed
20 NR, no results, and so we have no data found at all under here?

21 A Correct.

22 Q Minor spikes, but they can't even raise to the level of -- of being called
23 at all?

24 A Right.

25 Q Okay. To the next one of D381358, again, allele below 200?

1 A Correct.

2 Q So you can't compare with it; is that right?

3 A Yes.

4 Q 184 for the jury, looking at that locus right here; is that correct?

5 A Yes.

6 Q That's a -- a finding -- is that a 15 and a 16, but below the 200?

7 A Yes.

8 Q And for locus TH01, you have, again, below 200, so you can't compare

9 seven for Mr. Valentine, looking at 184 -- or 184, the swab of the gun, that locus

10 TH01, is that right here?

11 A Yes.

12 Q Showing a seven, but below the 200?

13 A It was below 200, yes.

14 Q Locus D13S317, same thing, data, but under 200 for this swab of the

15 handgun, a 12 and a 13 for Mr. Valentine. Showing you 184 again, is that what

16 we're seeing right here is this locus D13S317?

17 A Yes, that's the location.

18 Q We're seeing what appear to be multiple peaks, no data that can be

19 compared, but a 12 and a 13?

20 A Yes.

21 Q Under the 200 threshold?

22 A Correct.

23 Q The third spike that we see, since we don't see any other numbers

24 there, does that mean that that would be below the 40?

25 A Yes, that's correct. If you look at those two, they're already almost

1 there. They're 45, so --

2 Q Very low?

3 A -- very low.

4 Q Okay. D168539, we see that here, same thing, you have data under
5 the 200 threshold for the swab and the handgun, data at 11 for Mr. Valentine; is
6 that right?

7 A Yes.

8 Q Looking to the gun, once again, 184, two spikes. The farther spike
9 appears to be below the 40 threshold; is that right?

10 A Yes.

11 Q No data available?

12 A Correct.

13 Q The higher one being under the 200 threshold, registering at 11; is that
14 right?

15 A Yes. It's at 72.

16 Q Okay. D2S1338, no results; is that right?

17 A Yes.

18 Q And showing that here, is that that locus right here?

19 A Yes, it is.

20 Q Showing very little blips, but nothing registrable under the 40?

21 A Correct.

22 Q And D19S433, again, data under 200 for the swab of the handgun; is
23 that right?

24 A Yes.

25 Q And 13 and a 13.2 for Mr. Valentine's robust buccal profile?

1 A Yes.

2 Q Looking to State's Exhibit 184; is that that particular locus right here?

3 A Yes.

4 Q And it appears as though there's three spikes on this graph?

5 A Correct.

6 Q All below the 200 profile?

7 A Yes.

8 Q Or 200 threshold, being 13, 13.2 and 14?

9 A Yes. That's why this profile was called a mixture, is because as I

10 explained before, usually a person has a set of numbers from mom and dad. And

11 there's three numbers here, so it stands to figure that there's probably another

12 person in this sample.

13 Q Because one person wouldn't have three numbers?

14 A Correct.

15 Q Okay.

16 A Under special occasion, that's possibility, there is a mutation where it

17 could happen. But there is other evidence in this sample where that's not what

18 happened here.

19 Q Okay. So it -- it would be a mutation to have more than two?

20 A Yes.

21 Q All right.

22 A And it's rare.

23 Q Okay. Locus VWA, we have below 200 for the swab of the gun,

24 and 13 and 17 for the buccal of Mr. Valentine; is that right?

25 A Yes.

1 Q Looking here at the graph, multiple spikes on the graph under this
2 locus VWA; is that right?

3 A Correct.

4 Q All below the 200 threshold?

5 A Yes.

6 Q It appears there was one that's under the 40 threshold?

7 A Correct.

8 Q And the two that are above 40, but below the 200 threshold, are 13
9 and 17?

10 A Yes.

11 Q Looking here at allele TPOX, again, under the 200 threshold for the
12 swab of the gun, and a 6 and 9 for the buccal of Mr. Valentine; is that right?

13 A Yes.

14 Q Showing you here State's 184. That locus is right here; is that correct?

15 A Yes, it is.

16 Q Showing two spikes on the graph under the 200 threshold; is that
17 right?

18 A Yes.

19 Q That being a 6 and a 9?

20 A Correct.

21 Q And locus D18S59, no registrable activity?

22 A 51, yes, no results.

23 Q 51, I'm sorry, yeah. And we look at that locus here on the graph; is
24 that correct?

25 A Yes, and there are no results.

1 Q No results. Any blips on the graph are below 40?
2 A Correct.
3 Q And that's when we get to the sex determination; is that correct?
4 A Yes, amelogenin.
5 Q Amelogenin. So both swab of the gun XY, Mr. Valentine XY, showing
6 you 184; is that correct? Same -- that's what this shows here?
7 A Yes.
8 Q After the amelogenin, you have two other loci, locus that you look at?
9 A Two loci, yes.
10 Q Two loci. And so that being D6S818 be the next one?
11 A It's D5.
12 Q D.5, this is D5S?
13 A Yes.
14 Q 818?
15 A Yes.
16 Q That you look at -- we're seeing that here at the bottom, under 200 for
17 the swab of the handgun, and a 12 for the buccal of Mr. Valentine; is that correct?
18 A Yes.
19 Q Looking at the swab of the handgun on the graph, State's Exhibit 184;
20 that's the locus that we're looking at here?
21 A Correct.
22 Q There's a first spike on the graph that appears to be below the 40
23 threshold?
24 A Yes.
25 Q Another spike that's above the 40, but below the 200, registering at 12;

1 is that correct?

2 A Yes.

3 Q And a final locus being FGA; is that correct?

4 A Yes.

5 Q Same thing, under 200 for the swab of the handgun, but a buccal for
6 Mr. Valentine showing a 24 and a 25?

7 A Correct.

8 Q FGA on the graph being here?

9 A That's right.

10 Q Is -- I kind of asked this before, is this -- the size of this, does that
11 mean it's a larger locus?

12 A Yes.

13 Q Okay. So there's more possible alleles?

14 A Correct.

15 Q And it looks like we have two spikes on the graph, one, the farthest
16 one down, being below 40?

17 A Yes.

18 Q And the closer one being 24, but below 200?

19 A Yes.

20 Q So, ultimately, looking at the thresholds here, what you can definitively
21 tell this jury is that there was male DNA on that gun?

22 A Yes, a partial profile, inconclusive, but there was one -- at least one
23 male.

24 Q Okay.

25 MR. DICKERSON: State will pass the witness.

1 THE COURT: All right. Cross?

2 **CROSS-EXAMINATION**

3 BY MR. GASTON:

4 Q Good morning, ma'am.

5 A Good morning.

6 Q Is it fair to say that you would consider yourself more to be in line as,
7 like, a scientist, correct?

8 A Correct.

9 Q Not necessarily just an extension of the investigation, correct?

10 A Correct.

11 Q So you're not trying to get one result over another result, right?

12 A That's right.

13 Q Your goal is to just come up with the answer that is scientifically
14 correct?

15 A Yes. So I get the evidence presented to me and then I run the DNA,
16 and whatever comes up, comes up.

17 Q Right. And you have no stake, no skin in the game at one or the --

18 A I do not.

19 Q Okay. So in this case, your role in the -- in the investigation, your role
20 here and why you're sitting here today, is you were -- you had a DNA sample
21 recovered from a gun and a DNA sample that the officers took from Keandre
22 Valentine and you were supposed to compare them to see if they were a match,
23 right, or not a match?

24 A Yes, correct.

25 Q Okay. And, ultimately, you decided that they're inconclusive, correct?

1 A Yes.

2 Q Okay. And we established this before, but you also -- at least one is a

3 male?

4 A Yes.

5 Q And there was more than one profile?

6 A Yes. There was a DNA profile from at least two people.

7 Q So at least -- at least two people?

8 A Yes.

9 Q Okay. So both of those people could have been male?

10 A Yes.

11 Q You don't -- don't know which is?

12 A I do not.

13 Q Okay. And you can't tell the jury sitting here today under oath that the

14 DNA recovered matches Keandre's DNA profile?

15 A No. Because the DNA profile was inconclusive.

16 Q Okay. So I want to go through what the State just did, when they kind

17 of had you look at one side, compare it to the other, make it sound close enough.

18 You looked like you had something you wanted to say. I guess, you understand

19 the science a lot better than I do, so I'm just going to submit the question to you.

20 When Mr. Dickerson was going through and saying here's what we

21 got for Keandre on the alleles, let's look at the loci, is there anything that you

22 would have wanted to say in response to that?

23 A I would say that the profile to us was inconclusive, and we call it

24 inconclusive because there wasn't enough DNA. And the reason -- and we call

25 that inconclusive is because if I re-ran that exact same sample, I don't know what

1 kind of results I would come up with. It may be the same, it may be different. So
2 that's why we're not saying that that DNA profile definitely came from the
3 defendant, because it's inconclusive to me.

4 Q So the analysis that Mr. Dickerson just did with you, comparing back
5 and forth, is that the analysis that you would do as a scientist to make the match
6 or not match?

7 A Normally, yes, we would compare the two. But again, those -- if we do
8 that comparison, it has to meet those thresholds that I discussed before.

9 Q Now, are those kind of arbitrary thresholds that you guys made up
10 over coffee one day or do they exist for a reason?

11 A They exist for a reason.

12 Q What -- do you know the reason, do you know why those thresholds
13 might exist?

14 A Because we don't want to present information that may not be correct
15 or overemphasize something, you know, saying yes, this person is there, when it
16 may not be true because our data is not supporting that it's a strong DNA profile.
17 So we want to be sure when we say there's a match, that it is, in fact, a match.

18 Q So are you guys just kind of being sticklers or is there a danger of
19 doing that kind of analysis when it's not a full profile or it's not at the scientific
20 standard you would wish?

21 A Yes, there's a danger. We don't want to make the wrong conclusions
22 on the item that we're looking at.

23 Q Okay. So you don't look at the profile and be, like, 200 is the cutoff,
24 but this is 150, I mean, that's close enough, it's probably this guy, I can't say it in
25 court, but --

1 A Yeah, no, we don't do that.

2 Q Okay. Because that could be incorrect?

3 A Correct.

4 Q Okay. Okay. Moving on a little bit, your role in this case, were you
5 ever told to test DNA -- were you ever told to compare Keandre's DNA to any
6 DNA on a -- any of the cell phones that were recovered from the property?

7 A No.

8 Q Were you ever told to test DNA from Keandre to any of the credit cards
9 that were recovered from the property?

10 A No. I have no knowledge of the case. So I didn't even have a
11 background or anything. I was just asked to compare these two things and that's
12 what I did. So there was nothing else compared.

13 Q Right. And you don't just go on a comparison, like, here's Keandre's
14 sample, here's some random items in my lap, I'm going to compare them, right?
15 You do it at the direction of the detectives?

16 A Yes.

17 Q Okay. And the detectives did not direct you to test Keandre's DNA
18 against anything else?

19 A No, they did not.

20 Q Okay. Did the detectives ever give you a sample of Bobby McCoy's
21 DNA to test against anything else?

22 A They did not.

23 Q Okay. So your involvement in this case specifically was to test
24 Keandre's DNA against the firearms DNA?

25 A Compared to what, I'm sorry? I didn't hear the last part.

1 Q To the DNA recovered from the firearm?

2 A Yes.

3 Q And I -- and I think I might have asked this, but just make sure, and
4 you didn't compare a sample of Bobby McCoy's DNA to the sample recovered
5 from the firearm?

6 MR. DICKERSON: Asked and answered.

7 MR. GASTON: I was trying -- I was just trying to make sure I covered
8 it, specifically the firearm, as well, not just the other stolen property, but.

9 THE COURT: All right. Go ahead. I'll overrule.

10 MR. GASTON: Thanks.

11 BY MR. GASTON:

12 Q Did you -- did you ever test a sample of Bobby McCoy's DNA against
13 the sample recovered from the firearm?

14 A I did not.

15 Q Okay.

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

17 THE COURT: Uh-huh.

18 MR. GASTON: No more questions.

19 THE COURT: All right. Redirect.

20 MR. DICKERSON: Nothing from the State, Your Honor.

21 THE COURT: All right. Anything further from the jurors? All right.
22 Thank you very much for your time. You're excused.

23 THE WITNESS: Thank you.

24 THE COURT: The State may call its next witness.

25 MS. LEXIS: The State calls Gayle Johnson.

1 THE COURT: Gayle Johnson. Watch your step, ma'am.

2 [Pause in proceedings]

3 THE COURT: Hello.

4 MS. JOHNSON: Hello.

5 THE COURT: The court clerk will administer your oath. Please
6 remain standing.

7 **GAYLE JOHNSON**

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

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

11 THE WITNESS: Gayle Johnson. G-A-Y-L-E J-O-H-N-S-O-N.

12 MS. LEXIS: May I, Your Honor?

13 THE COURT: Yes.

14 **DIRECT EXAMINATION**

15 BY MS. LEXIS:

16 Q Ma'am, how are you employed?

17 A I am a forensic scientist with the Las Vegas Metropolitan Police
18 Department in the Latent Print Detail.

19 Q How long have you been employed with Metro in the Latent Print
20 Detail?

21 A I have been there a little over six years.

22 Q Can you briefly tell the ladies and gentlemen of the jury your
23 educational background, such that you would be qualified to be a latent print
24 examiner with Metro?

25 A Yes. I have a bachelor of science degree in natural sciences with an

70

1 emphasis in chemistry. I worked as a chemist for over 20 years. And once that I
2 was employed with Metro, I learned of -- that they had positions with forensic
3 science. I had the qualifications, so I applied to the training program, and I was
4 accepted in 2011. And I went through a very rigorous training program where I --
5 we're presented with exercises with -- starting out with not such difficulty up to
6 more advanced difficulty. So it was about a two-year program before I was
7 released to do independent case work on my own.

8 Q Okay. And do you -- do you receive additional training along the way?
9 Like, on-the-job training?

10 A Yes. We do go to certain classes. In May, I attended a palm training
11 class. I also do teach a class to the candidates that -- or to the employees that
12 are in -- that will become a crime scene analyst.

13 Q Okay. So on-the-job training also?

14 A Correct. Yes, we go to conferences and -- and classes.

15 Q Okay. Can you tell the ladies and gentlemen of the jury what it is that
16 you do as a latent print examiner? Kind of on a general scale.

17 A Yes. So what I do is I am assigned cases where, with some of the
18 cases, I will determine if the prints that are in that case -- if they are suitable to be
19 compared to make any reliable conclusions. I also process evidence which would
20 involve items of evidence that are related to the case that I will work in the lab and
21 try to recover latent prints. I also will -- we have a rotation where I will work with
22 AFIS, which is the Automated Fingerprint Identification System. I will also create
23 reports and I will testify in court.

24 Q Okay. So mostly comparison?

25 A Correct.

1 Q Okay. Were you employed in that capacity on -- about -- on or about
2 May 28th of 2016?

3 A Yes, I was.

4 Q How about August 11th of 2016?

5 A Yes, I was.

6 Q Okay. You were a latent print examiner with Metro?

7 A Correct.

8 Q Okay. At some point, were you assigned to process or do fingerprint
9 analysis under Event No. 160528-1147?

10 A Yes, I was.

11 Q And when you're assigned a case, what does that mean?

12 A Well, in this particular assignment, it was a comparison case, which
13 means that all the cards need to be examined to see if there are any latent prints
14 that are left that are of comparison quality, which means that they would -- I would
15 be able to compare them to a known record and try to make some sort of
16 conclusion about what I see. So, this case was a comparison case.

17 Q Okay. And you indicated that there were cards, right?

18 A Correct.

19 Q What -- tell us more about these cards.

20 A In this particular case, there were five lift cards. A lift card is -- if you
21 will, it's like a four-by-six little photograph card that the crime scene analyst, when
22 they're at the scene, if they see any evidence of what might be some ridge detail
23 on an item, they will put powder on the card -- or they will powder that area, and
24 then they will put a piece of tape over it, they will lift it up, and then they will tape it
25 onto the card. So in this particular case, I had five cards that did have some ridge

1 detail that -- that was present on these cards.

2 Q First -- when you are first looking at the lift cards for potential
3 comparison, do you check the suitability of the --

4 A Yes, that is part of -- that is the very first thing I do. Well, actually the
5 first thing I do when I take the cards out, is I mark each card, so that I know that it
6 has my unique marking and that I was the examiner that looked at these cards.
7 Then my next step is, is I will look at them closer to see if they meet the criteria
8 that's clearly defined in our technical manual, and then I will determine in they are
9 suitable to be compared.

10 Q Okay. And in this particular case, within the five lift cards that you
11 were given, or that you had for comparison -- fair to say that four out of the five
12 actually had suitable prints?

13 A That is correct.

14 Q Okay. You also told the jury about a database known as AFIS?

15 A That's correct.

16 Q Could you briefly explain this particular database and how it plays into
17 your comparison and analysis?

18 A Yes. Well, with the particular case that I had -- that I -- what I
19 completed, I didn't really use AFIS. But there was, with this same event, a prior
20 case to mine where, again, the examiner will look at the cards. Now, for the
21 administrative AFIS, the criteria is a little more strict. You need to know the
22 orientation, you need to know did it come from a finger or was it a palm. So
23 there's more information that you need, because when we put it into the database,
24 we want to be able to give that database or the system the most information that
25 we can to be able to get the best results out.

1 So with this particular case, there were two of the latent prints on the
2 lift cards that did meet that criteria. I myself did not do that, but I do do that on
3 several occasions. And when this happened, they were put into the database and
4 the database did respond and gave positive results. And with those two latent
5 prints, they were identified.

6 But with my -- with my assignment, I wasn't -- I don't necessarily -- I
7 didn't use the database at all with what I did. What I did was I went behind that
8 examiner, I looked at those particular latent prints, I already knew the information
9 of what they had completed earlier, and I also made the comparison. And I came
10 to the same conclusion that they had with those particular lifts.

11 Q Okay. So just so we're clear, what sort of information -- or where does
12 this AFIS database obtain its information?

13 A Well, we have a local database here that, well, includes records that
14 could be civilian records. My records are in that database. There are also
15 criminal records in that database. And so it's like a repository that holds all these
16 records that are available, so that when I do submit any kind of search, there's
17 available records that might be a possible match that will -- it will produce a report
18 that lets me know what that database is telling me about what I put in.

19 Q Okay. So going back to the five different lift cards, when you are
20 performing your examination, do you know where those lift cards or the -- or the
21 prints located within the lift cards -- where those were obtained --

22 A Yes, I do.

23 Q -- or lifted from?

24 A Correct. The crime scene analyst will put that information. It's on all of
25 the cards. They will also have their own unique marking with how they, you know,

1 kept track and how they -- when they made their records. So it will say where this
2 is from. It will have the date. It will have the event number. And it will -- you
3 know, that's all on the card so that I know that information when I am also
4 conducting my examination.

5 Q Okay. And in this particular case, for the analysis that you did, did you
6 know where the lift cards -- could you tell the ladies and gentlemen of the jury
7 where the lift cards were obtained from?

8 A Is it all right if I look at my report to refresh my memory?

9 THE COURT: Yes, you may.

10 THE WITNESS: Thank you.

11 What I have on my report is that all of the lift cards were recovered
12 from a 2016 Mazda. Is that what you were referring to?

13 BY MS. LEXIS:

14 Q Yes, ma'am.

15 A Yes.

16 Q So a 2016 Mazda 3 --

17 A Yes.

18 Q -- with California temporary tag 32691555?

19 A That is correct.

20 Q With a VIN No. of JM1BM1T77G1344926?

21 A That is correct.

22 Q And you recorded that information in your report?

23 A I did.

24 Q And your report is, basically, memorializing the work that you did and
25 also the conclusions that -- which could be drawn from your examination?

1 A That is correct.

2 Q Okay. So it's a comparison, right? So these five lift cards were taken
3 from a 2016 Mazda 3. Do you -- did you have exemplar cards to compare those
4 lift cards against?

5 A Yes, I did. What I had was I had three named individuals that I was
6 asked, when this case was assigned to me, if I would take the latent prints, or if I
7 did find prints that were suitable for comparison, would I compare it to these three
8 people.

9 Q And who were the three individuals?

10 A There's a Bobby McCoy, a Latasha Allen [phonetic], and a Keandre
11 Valentine.

12 Q Okay. So let's work on -- so those are the exemplar prints that you
13 actually did the comparison against the five lift cards?

14 A That's correct.

15 Q Okay. So let's kind of work our way back. Okay.

16 Miss Johnson, concerning Q5, which is Lift Card No. 5, do you -- can
17 you tell from your report where that particular lift card, or the fingerprint in that lift
18 card, was taken from; what part of the car?

19 A Yes. It was from the right rear exterior door, along the back edge.

20 Q So the right rear exterior door on the back edge?

21 A Yes.

22 Q Okay. And would that have been on the exterior?

23 A Yes. I said the exterior door, so yes.

24 Q Okay. Okay. And in looking at the actual lift card labeled Q5, was
25 there a suitable print?

1 A Yes, there was.

2 Q Okay. And based on your comparison and examination, was that
3 particular print identified to a particular individual?

4 A Yes.

5 Q And who was that identified to?

6 A I identified that latent print to the right thumb of Latasha Allen.

7 Q Thank you. Concerning the lift card from Q4, where was that -- where
8 were the -- where was the print shown on Lift Card 4 taken from?

9 A This card also was from the right rear -- sorry, excuse me -- exterior
10 door along the back edge.

11 Q Okay. And when you were considering or beginning your comparison,
12 what, if any, conclusions would you draw from the lift card labeled Q4?

13 A What I was able to determine there is that it had ridge detail, but it was
14 insufficient. Which means maybe I saw one or two ridges, but definitely there was
15 not enough data there for me to make any kind of comparisons or any kind of
16 conclusions.

17 Q Okay. Concerning Q3 -- lift card labeled Q3 -- where was the print --
18 or where were the prints recovered from on the 2016 Mazda 3?

19 A Again, this one was from the rear -- the right rear exterior door handle.

20 Q And upon examination, were you able to make any kind of conclusions
21 concerning the one suitable print obtained?

22 A Yes. I was able to exclude all three individuals from that latent print.

23 Q Okay. So you were able to exclude Keandre Valentine, Bobby McCoy,
24 and Latasha Allen?

25 A That's correct.

1 Q Okay. Concerning Lift Card No. 2, where was that particular print lifted
2 from the vehicle?

3 A This particular card was from the exterior right front door, below
4 handle.

5 Q Okay. So the exterior right front door. Okay. Below the handle. Was
6 that particular print suitable?

7 A Yes, it was.

8 Q And was it identified to any particular individual?

9 A Yes. I was able to identify that latent print to the right middle finger of
10 Bobby McCoy.

11 Q Okay. So exterior front door below the handle. Okay. Q1 -- where
12 was that particular lift card obtained or the fingerprint obtained from in the 2006
13 Mazda 3.

14 A This particular card was from the interior glass of the left front-door
15 window.

16 Q Okay. So this was the only interior -- this was the only print obtained
17 from the interior, correct?

18 A That is correct.

19 Q Okay. Concerning this particular lift card, did it, in fact, contain suitable
20 prints?

21 A It did.

22 Q And concerning -- were the two suitable prints marked as A and B?

23 A They were.

24 Q Okay. Concerning the print marked Q1A, was that identified to a
25 particular individual?

1 A Yes.

2 Q And who was that identified to?

3 A That was identified to the right index finger of Keandre Valentine.

4 Q How about concerning the print marked B -- Q1B; was that identified to

5 a particular individual?

6 A Yes. I was able to identify that latent print to the right middle finger of

7 Keandre Valentine.

8 Q Thank you.

9 MS. LEXIS: I'd like to publish what's been marked and admitted by

10 way of stipulation as State's Exhibit No. 15.

11 THE COURT: You may.

12 BY MS. LEXIS:

13 Q Ma'am, can you tell the ladies and gentlemen of the jury what they're

14 looking at here?

15 A Yes, this is a chart of my analysis of the particular latent that I marked

16 Q1B. As you can see --

17 Q Would stepping off the witness stand and --

18 A Yes.

19 Q -- actually using the big TV assist you in testifying --

20 A Yes, it would.

21 Q -- and explaining this?

22 A Yes.

23 MS. LEXIS: Permission, Your Honor?

24 THE COURT: She may.

25 MS. LEXIS: Thank you.

1 THE COURT: You may get up. Watch your step.

2 MS. LEXIS: Would you like a pen?

3 THE WITNESS: Sure.

4 All right. So this is my charted analysis. So on -- on this side here,
5 this is the latent print that I marked Q1B. Over here this is the known record,
6 which is a deliberate record that is taken so that when the prints are recorded, we
7 know who the person is. We usually have their name and the date of birth -- date
8 of birth of that individual. So when I start my analysis, what I will do --

9 BY MS. LEXIS:

10 Q Oops. Sorry.

11 A That's okay.

12 Q There's kind of a glare. Are you able to testify even with that glare
13 there?

14 A Yeah.

15 Q Okay.

16 A I mean, can you all see what -- what --

17 So, basically, when I conduct my analysis, before I even look at the
18 known records, I will go ahead and look at the features that are present in the
19 latent print. And as you can see, I marked them with, like, a pink dot. So I'll go
20 ahead and I'll start in this area and I just work up the whole entire surface area of
21 the print and I will go ahead and mark the features that I am confident that if I
22 would see a known record, I would mostly likely see those same features.

23 So then I will go ahead and I will do the same analysis with the known
24 print. And as you can see I'll start with this group here and there's a ridge ending.
25 And if I come over to the known record, there's also ridge ending. Now, if I count

1 up one ridge, I marked another ridge ending here that again is in the latent print.

2 So the whole process -- the way I do it is I will start with that target
3 group and I will move a little bit away from that area and look for another detail
4 that is in the same area on the known print. And as I do that, I would continue to
5 work my way up to the top of the print, covering the whole surface area that I have
6 available to work with.

7 So as you can see, I have 15 areas of detail that are matching,
8 which -- which to me was -- gives me high confidence that this indeed is -- that
9 this latent print does belong to the right middle finger of Keandre Valentine.

10 Q And it was pretty much the same kind of examination that you utilized
11 for Q1, Print Label A; is that right?

12 A That is correct.

13 Q Okay.

14 A Is it all right if I -- do I need to stay here?

15 Q No. If you could -- if you could please return to your seat. Thank you.

16 A The only thing that was different with the Q1A is that I was able to -- a
17 lot of times when we do comparisons, we use what's a loupe, it's like a little
18 magnifying glass. And so I was able to -- the detail that was present there, I was
19 able to look and -- at the detail to the known record, and I did not -- it did not
20 require me to make a chart.

21 Q Okay.

22 MS. LEXIS: Court's brief indulgence.

23 I have no more questions. Thank you?

24 THE COURT: Thank you. Any cross-examination?

25 MR. GASTON: Yes, Your Honor.

1 **CROSS EXAMINATION**

2 BY MR. GASTON:

3 Q Now, with respect to fingerprints, I mean it sounds kind of basic, but
4 I'm just trying to make sure that I've made the point and it's clear. What a
5 fingerprint tells you is that person it belongs to touched that object at some point?

6 A Correct.

7 Q It doesn't tell you what time they touched it?

8 A That is correct.

9 Q It doesn't tell you what else they might have touched?

10 A Yes.

11 Q Right. So, for example, I think you said Bobby McCoy's print was
12 found on the outside of the car?

13 A Uh-huh.

14 Q On the side? That doesn't necessary mean he didn't touch inside the
15 car, right?

16 A Right.

17 Q Right. And it doesn't -- it -- and same -- same with the other print.
18 Keandre's print was found on the rear window. That doesn't mean that's the only
19 place he touched, right?

20 A Right. That's correct.

21 Q Okay. So, essentially, what it tells you specifically -- I think I just asked
22 this, but at some point this individual touched that object?

23 A That is right.

24 Q Okay. What are good surfaces from which prints can be recovered?
25 Kind of open-ended, just however you want to answer the question; what -- what

1 are some good surfaces from which prints can be recovered?

2 A Well, smooth, flat surfaces, like glass. Actually -- I mean the outside of
3 the car, any kind of car window, mirrors. I mean, it -- there's a whole -- there's a
4 lot of different items. I mean, I don't know what kind of areas you want me to
5 cover. I mean, this would be a good surface. Textured surfaces, like leather,
6 things like that are not good surfaces.

7 Q I'll -- I'll direct you a little. So, for example, it'd be a lot easier to
8 recover a print from a window or the outside of a car than, like, on a steering
9 wheel, for example?

10 A Correct.

11 Q Okay.

12 A Also, the size of a surface plays a role.

13 Q So, like, a big window --

14 A Uh-huh.

15 Q -- is a lot easier than like a -- the back of my watch, for example?

16 A Correct. I mean it's not impossible. But, I mean you can still, like,
17 there's, you know, other conditions that need to be present, which would include --
18 there needs to be residue on that person's skin that's -- that's actually down inside
19 the ridges, so that when they touch that surface, that residue will leave behind an
20 impression of that pattern.

21 So, I mean, what you're saying, there are a lot of circumstances that
22 have to be in place for an imagine to be left behind.

23 Q So not every time I touch something I'm going to leave a fingerprint?

24 A Exactly.

25 Q Even if it happens to be glass?

1 A Exactly.

2 Q Okay. Would, for example, like the -- a cell phone screen -- a big,
3 large cell phone screen be a good surface from which you can recover prints?

4 A It can be, yes.

5 Q Okay. In this case, were you -- again, super obvious question -- you
6 don't just randomly take samples and test them to objects in your lap, right? You
7 do what you're told. Kind of, you are directed as to what to test and what to look
8 for by the detectives in the case, right?

9 A That is correct.

10 Q So did the detectives in this case ever tell you to compare any prints
11 recovered from cell phones?

12 A No. I didn't -- I didn't -- so in this particular case, I didn't actually
13 process any evidence. So everything that was given to me, that was assigned to
14 me to compare, were lift cards that had been recovered by the crime scene
15 analyst and not any prints that I had recovered.

16 Q Right. Right. Right. Yeah. Right. And there -- there were no prints
17 that were given to you to be tested that had been recovered from a cell phone or
18 anything like that?

19 A No.

20 Q Or from a Visa credit card?

21 A No.

22 Q From a driver's license?

23 A No.

24 Q Okay. So, the only thing -- or, I guess actually, shell casings, for
25 example?

1 A No.

2 Q Or, like, shell cartridges, like bullets; were you ever directed to test any
3 fingerprints recovered from shell casings?

4 A No.

5 Q Okay. So the extent of the fingerprint testing that happened, as far as
6 your knowledge in this case, was specifically with the prints recovered from the
7 car?

8 A Correct.

9 Q Okay. Now, I don't think the State did this, so I'm going to do ahead
10 and do it real quick.

11 You mentioned that you compared prints recovered from Bobby
12 McCoy to a set print card from that was Bobby McCoy's prints, right?

13 A Right. He was one of the individuals listed on the request when I was
14 assigned the case to compare. Any latent prints that were recovered or any latent
15 prints that I determined suitable for comparison, those were the individuals I was
16 asked to look at.

17 Q Okay.

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

19 May I approach the witness, Your Honor?

20 THE COURT: Yes. Let the State know what you're showing.

21 MR. GASTON: I marked this as a proposed defense exhibit, and I'm
22 not sure where we're at right now.

23 [Pause in proceedings.]

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

25 THE COURT: Yes. These are proposed exhibits?

1 MR. GASTON: Yes.

2 THE COURT: All right.

3 BY MR. GASTON:

4 Q So I'm showing you Defense Proposed Exhibit F; these are the set
5 prints that you had for Bobby McCoy, correct?

6 A Uh-huh.

7 Q Okay. That's a yes? They -- right now --

8 A I'm sorry. Yes, it is.

9 Q This Defense Proposed Exhibit G, are these -- is this the -- these are
10 the set prints and the recovered prints? [Indiscernible] of them? Or are these all
11 the set prints?

12 A Well, I don't really understand what you mean. This is the record
13 that -- so once I am given, like, an FBI ID number or the ID number associated
14 with the person that they're asking me to compare, then I will get the record from
15 that database.

16 Q Right.

17 A So this is a record that I did retrieve from that database.

18 Q And -- and this print here is the print that was recovered from the
19 actual car?

20 A Correct.

21 THE COURT: Wait. When you say this, will you -- so that the
22 record --

23 MR. GASTON: Oh, sorry. Proposed -- Proposed Defense Exhibit H.
24 Sorry, Judge.

25 THE COURT: Okay.

1 BY MR. GASTON:

2 Q This is the print that you were asked to compare?

3 A Correct.

4 Q And these kind of green markings and -- markings are your analysis?

5 A That is correct.

6 Q Okay. And this is a print that you ultimately decided belonged to
7 Bobby McCoy?

8 A No, it is not. That is the print that was -- I was able to exclude from all
9 three of the people. And that is why I completed the charting on it, so that when I
10 did go a look at each of the individual records of those people, I was able to look
11 at what I did have that I considered was reliable data and be able to look at the
12 data that would be presented to me in their known records to be able to make the
13 exclusion.

14 Q So just -- so just for the record, Defense Proposed Exhibit H is the print
15 that was actually excluded?

16 A Correct.

17 Q Okay. From the three subjects that you were doing?

18 A Correct.

19 Q Which print came back as the match to Bobby McCoy?

20 A The one to Bobby McCoy was Q2A.

21 Q Okay.

22 MR. GASTON: At this point, the defense moves to admit Proposed
23 Exhibits F, G, and H.

24 MS. LEXIS: And, Your Honor, I did indicate to Mr. Gaston my
25 objections. He indicated that he would comply with my objections. And subject to

1 that, I have no objection. But, he's not to --

2 THE COURT: Okay. Very good.

3 MS. LEXIS: -- He's not to publish it at this point.

4 THE COURT: Okay. Very good. Then it's subject to the stipulation
5 of the parties not to publish it at this point.

6 [Defendant's Exhibit Nos. F, G, and H admitted.]

7 MR. GASTON: I'm going to publish this one, which is okay.

8 THE COURT: All right. No objection to publishing which -- which
9 one?

10 MR. GASTON: Defense Exhibit H.

11 THE COURT: Is that correct?

12 MS. LEXIS: Correct.

13 THE COURT: All right. H may be published now. Thank you.

14 BY MR. GASTON:

15 Q This is the print that we were just talking about, correct?

16 A That is correct.

17 Q And this is the print that you ultimately excluded?

18 A It is. That is correct.

19 Q And so when -- same thing -- I mean, I'm not going to go in super
20 detail, but when you're doing analysis, these are you comparing kind of the whorls
21 and the ridges, et cetera?

22 A Correct.

23 Q Okay.

24 A So the little -- if I can explain a little further, the --

25 Q Yeah. No, absolutely.

1 A -- the pink circles are where I would mark ridge endings, bifurcations,
2 maybe where a ridge would stop and then start again. And then what I -- as far
3 as the green markings, I went ahead and outlined --

4 THE COURT: Can you maybe point out the -- I don't know if the
5 monitor shows up the color right for the jury. Can you --

6 THE WITNESS: Is it all right if I go out of the box again?

7 THE COURT: Why don't you point out the pink circles that you
8 referred to. Yeah.

9 THE WITNESS: Is that all right?

10 THE COURT: Yeah. Sure. I just want to -- you know, when you say
11 something, I want to make sure the jury is following.

12 THE WITNESS: So, here you can see the -- the pink dot. This is the
13 ridge coming down where it stops. You can see it is one, two, three as we
14 continue down, then you only see two. So I know this ridge end stopped at that
15 point.

16 Then as far as -- so, again, just to go over those areas, again, all
17 where these pink dots are are where I marked where I saw different details of
18 ridge ending or bifurcations that were present.

19 Then the green lines -- I know it's not showing up very well -- but the
20 green lines are where I outlined the ridge flow, so that when I am looking at the
21 known records, I can see do these ridges flows compare? Are they showing the
22 similar qualities? It makes it a lot easier what I get ready to make that exclusion
23 decision or if it is an inclusion decision, it does belong to that person, makes it a
24 lot easier to see that detail. So, that is why I completed this analysis on
25 [indiscernible].

1 Q Thank you.

2 [Pause in proceedings.]

3 MR. GASTON: Your Honor, may we approach [indiscernible]?

4 THE COURT: Yes.

5 [Bench conference transcribed as follows.]

6 MR. GASTON: So I approached the State. Essentially my goal here
7 is to try to introduce, not just Keandre's, but the State [indiscernible] introduce
8 Keandre's print and the match. I'm trying to do the same thing for Bobby McCoy.
9 I thought that was it. It wasn't. I have don't have a big blowup of the one that was
10 matched to Bobby McCoy. This is the best thing I have.

11 THE COURT: It's the best thing. Okay.

12 MR. GASTON: That's the best thing that's been provided to me in
13 discovery by the State. The State indicates it's going to object to this admission. I
14 want to admit something just like they did with Keandre for Bobby's print. This is
15 the best thing that's been provided to me in discovery.

16 MS. LEXIS: This is a lot of hearsay information.

17 THE COURT: What is -- where is this from, though?

18 MS. LEXIS: If he wants to go at it and [indiscernible], that's fine.

19 THE COURT: Let's take a look.

20 MS. LEXIS: I object to everything else.

21 MR. GASTON: Why can't the stuff on the left, the conclusion?

22 THE COURT: So Keandre's. Is there --

23 MR. GASTON: It's an identifier for the prints.

24 THE COURT: Identified to know B, right middle finger of Bobby
25 McCoy. Is that the hearsay?

1 MS. LEXIS: Well, it's all this other stuff, too. I think they need to
2 [indiscernible.] And it's [indiscernible].

3 MR. GASTON: I don't understand the hearsay.

4 THE COURT: You can -- tell you what, why don't -- why don't you,
5 you know -- you can -- maybe you only publish this part. You can show the
6 witness the whole thing. See if she -- can recognize this, you know.

7 MR. GASTON: Which -- which print needs to be redacted? Because
8 I don't think any of this is hearsay. I mean, it's just identifiers as to the print.

9 THE COURT: What's -- what your purpose?

10 MR. GASTON: So that the jury can see that this is the print that was
11 recovered from this investigation and that is was identified to belonging to Bobby
12 McCoy.

13 MS. MACHNICH: But the print is relevant. Okay.

14 THE COURT: Well, does she know that?

15 MS. LEXIS: Yes.

16 THE COURT: Have you asked her that?

17 MR. GASTON: Yes, sir.

18 THE COURT: All right. Then ask her that.

19 MS. MACHNICH: That's what she reviewed.

20 THE COURT: If -- if that's her conclusion, then this is -- is this her
21 conclusion on this document?

22 MR. GASTON: My understanding was yes and it's --

23 THE COURT: This is her statement?

24 MR. GASTON: -- going to be on adopted admission when she --
25 when she -- when she [indiscernible].

1 THE COURT: Is she -- if -- if --
2 MS. MACHNICH: How is it hearsay?
3 THE COURT: All right. But she's here on the stand testifying. If
4 she -- if she can authenticate that that's her statement and lay a foundation --
5 MR. GASTON: Then it can come in.
6 THE COURT: -- then it can come in.
7 MR. GASTON: Okay.
8 THE COURT: All right. If that's someone else's statement, then it's --
9 MR. GASTON: Then it can't.
10 THE COURT: -- hearsay and can't come in.
11 MR. GASTON: Thank you.
12 MS. LEXIS: Okay.
13 THE COURT: All right.
14 MS. LEXIS: Thank you.
15 THE COURT: Okay.
16 [End of bench conference]
17 THE COURT: All right. So you can mark it for identification purposes
18 and then see if the witness can lay a proper foundation.
19 MR. GASTON: Thank you.
20 THE COURT: We'll go from there.
21 And then we -- we gotta take a break soon. Are we -- how much
22 longer are we gonna be? Because it's been an hour and a half.
23 MR. GASTON: This is all -- this is all I'm doing.
24 THE COURT: All right.
25 MR. GASTON: As soon as I get this admitted, I'm done.

1 THE COURT: The jury deserves a break.

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

3 THE COURT: Yes.

4 BY MR. GASTON:

5 Q I'm showing you what's been marked as Defense Proposed Exhibit I;
6 this is the print that was recovered that you were asked to identify from --

7 A I was asked to compare.

8 Q Compare. Sorry. And, ultimately, did you identify this belonging to the
9 right middle finger of Bobby McCoy?

10 A Yes, I did.

11 Q And is that your results right there?

12 A Uh-huh.

13 Q That's a yes?

14 A Yes. That's a yes. Yes.

15 Q Okay.

16 MR. GASTON: I move to admit Defense Proposed Exhibit I.

17 THE COURT: All right. So I'll go ahead and admit it now subject to
18 the comments at the bench.

19 MS. LEXIS: Thank you.

20 THE COURT: All right.

21 [Defendant's Exhibit No. I admitted.]

22 MR. GASTON: May I publish this to the jury?

23 THE COURT: You may.

24 BY MR. GASTON:

25 Q Okay. Okay. We'll go in one more zoom thing. Okay.

1 So this is the print that was recovered, correct?

2 A Correct.

3 Q Now, when you did the comparison, presumably you had a big blow-up
4 version of this?

5 A Correct.

6 Q Okay. And that's how you were able --

7 A I mean I didn't -- actually, I mean, I need to go back. Because it was
8 one that I did not chart. Again, when I do not chart, the detail that is present --
9 and also, this print was suitable to go into AFIS. It had a much better clarity. It
10 had more information available. So it was one that was put into the database
11 system, so that when I did my comparisons, I was able to look at it with the loops
12 and look at the detail from this latent print and also the known record to be able to
13 look at the information to find what was in agreement. And that is how I made my
14 conclusion.

15 Q So it -- because it was of such a high quality print, it was able -- it was
16 able to also have the assistance of the computer program AFIS?

17 A Correct. It was -- it was one of the -- I did not put it into AFIS, but the
18 examiner before me who did complete the AFIS work, did put this into AFIS and
19 that is how they determined the name of Bobby McCoy.

20 Q Okay. And then when you did your -- when you did the comparison
21 later, you can say now under oath with scientific certainty that this print belongs to
22 Bobby McCoy?

23 A Correct.

24 Q Okay. And over here on the right side of the page, that is your
25 conclusions about this fingerprint, correct?

1 A Right. Uh-huh.

2 Q Okay. Thank you.

3 MR. GASTON: And, just in case I didn't say it earlier, Your Honor, I'm
4 moving to admit Defense Proposed Exhibit F, G, and H.

5 THE COURT: Oh, we got those already.

6 MR. GASTON: I did -- I did that already?

7 THE COURT: F, G, and H I believe are previously admitted; is that
8 correct?

9 THE CLERK: Yes.

10 THE COURT: Okay.

11 MR. GASTON: Okay. Court's indulgence one second.

12 THE COURT: All right.

13 MR. GASTON: No more questions.

14 THE COURT: Redirect?

15 MS. LEXIS: Briefly.

16 THE COURT: Yes, ma'am.

17 **REDIRECT EXAMINATION**

18 BY MS. LEXIS:

19 Q Ma'am, concerning AFIS, what -- it is fair to say that agencies --
20 various different agencies provide information to make up this database known as
21 AFIS?

22 A That is correct.

23 Q Okay.

24 A Are you talking about local level or are you talking --

25 Q How about on both? How about on a local level and also on a national

1 level?

2 A Well, on a local level -- a local level, excuse me -- that would be all the
3 different records like I had mentioned early. There are civilian records in there, for
4 example, like I said before, my prints are in the database. Other work cards for,
5 perhaps, at the casinos or wherever, those prints would make up that -- also that
6 civilian section. Then there's also criminal records.

7 Now, as far as, like, the national level, all of us small agencies, we will
8 submit all of our records to the national level. So most likely my records are also
9 in the FBI database.

10 Q Okay.

11 A Because they've been submitted by the local agency. So all of the
12 records are submitted to them, as well, and that is how those records that -- those
13 databases are maintained and created.

14 Q And so concerning the FBI database, is it your testimony that that is
15 made up of all of the various different agencies -- local agencies nationwide,
16 providing information to the FBI, and then disseminating it through AFIS?

17 A Correct.

18 Q And that includes civilian agencies?

19 A That is correct.

20 MS. LEXIS: Nothing further. Thank you.

21 THE COURT: Thank you, Ms. Lexis.

22 Any -- any recross.

23 MR. GASTON: No, Your Honor.

24 THE COURT: All right. Thank you very much for your time.

25 Unless -- unless the jurors have any questions? I don't see any

1 hands. No? All right. Very good.

2 You are excuse -- you are excused. Thank you. All right. You may
3 step down.

4 And I'm gonna read the admonishment. We're going to take a break
5 now, jurors. You're going to get 15 minutes during this recess, do not
6 communicate among yourselves or with anybody else about this trial or the
7 subject matter of the trial; do not communicate at all with any of the parties,
8 attorneys, or witnesses involved in the trial; do not seek or obtain any information
9 or comments about the case from any source, including newspapers, television,
10 radio, Internet, e-mail, cell phones, or any other electronic device; do not read,
11 watch, or listen to any report of or commentary about the case; don't perform any
12 research or investigation; do not form or express any opinion on any subject
13 connected with the trial until the case is finally submitted to you.

14 Please be prepared to come back inside in 15 minutes. Thank you
15 very much.

16 [Jury recessed at 10:37 a.m.]

17 THE COURT: All right. We're outside the presence of the jury. I've
18 reviewed the State's redacted transcripts, they're consistent, entirely consistent
19 with what I planned, so I don't have any changes, as long as the audio matches
20 the transcripts.

21 MS. LEXIS: Yes.

22 THE COURT: And vice versa, I'm happy.

23 MS. LEXIS: Thank you, Your Honor.

24 THE COURT: All right?

25 MS. MACHNICH: And -- and may we have a copy?

1 THE COURT: And State's -- yeah, of -- you're entitled to a copy.
2 Could you please see if your office could get them a copy before lunch?

3 MS. LEXIS: Absolutely.

4 THE COURT: So that would be --

5 MS. LEXIS: Actually, I can e-mail it to her.

6 THE COURT: That would be great. And yeah, if you could e-mail us
7 a copy, I'd like to print out a -- a couple of sets here.

8 MS. LEXIS: I'll cc everyone.

9 THE COURT: Thank you very much. All right. Let's have a
10 15-minute recess.

11 MR. DICKERSON: Thank you, Your Honor.

12 MS. LEXIS: Thank you.

13 THE COURT: Thank you.

14 [Court recessed at 10:38 a.m., until 10:57 a.m.]

15 [In the presence of the jury.]

16 THE COURT: All right. Be seated.

17 State may call its next witness.

18 MS. LEXIS: Yes, Your Honor. The State calls Ebony McGee.

19 **EBONY STEPHENS**

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

21 THE CLERK: Please be seated and please state and spell your full
22 name and last name for the record.

23 THE WITNESS: Ebony Stephens, E-B-O-N-Y, S-T-E-P-H-E-N-S.

24 **DIRECT EXAMINATION**

25 BY MS. LEXIS:

1 Q Ms. Stephens, how are you employed?

2 A I'm a Senior Crime Scene Investigator with the Las Vegas Metropolitan
3 Police Department.

4 Q How long have you been so employed?

5 A 16 and a half years, approximately.

6 Q Have you been a crime scene analyst anywhere else?

7 A No.

8 Q Can you tell the ladies and gentlemen of the jury your educational
9 background, training, and experience that would make you qualified as a senior
10 crime scene analyst with the Las Vegas Metropolitan Police Department?

11 A I have an associates degree in criminal justice with law enforcement
12 emphasis. After we are hired, we go through an academic academy and then a
13 field training program.

14 Q And, of course, your on-the-job training from 16 years of processing
15 crime scenes?

16 A Correct.

17 Q Okay. Where you employed as a crime scene analyst back on
18 May 28th, 2016?

19 A Yes.

20 Q Were you -- can you just tell the ladies and gentlemen of the jury
21 briefly how it is that a crime scene analyst becomes involved with a scene? It's
22 not like the movies where you all investigate and process scenes, is it?

23 A It's not like you see on TV. We are requested by an officer that is on
24 the scene. And then we go to the scene, get a briefing, determine what course of
25 action we need to take, and go forth with that.

1 Q Okay. What's your primary duty or goal as a crime scene analyst with
2 any particular scene, or what's your task?

3 A To investigate the crime and gather any evidence that may be there.

4 Q Document and preserve?

5 A Correct.

6 Q Okay. Were you called out to a location, 1104 Leonard Street, under
7 Event No. 160528-1147?

8 A Yes.

9 Q Okay. And you were a crime scene analyst working that particular
10 day?

11 A Yes.

12 Q Do you recall arriving at that particular location and around 9:39 a.m.?

13 A Yes.

14 Q Okay. And was this like a -- were you asked to respond to the scene
15 by detectives?

16 A There was a patrol officer there. There weren't any detectives there.

17 Q Okay. Was that patrol Officer C. Dowler?

18 A Yes.

19 Q Okay. And that's noted in your report which memorializes your work
20 on this particular case; is that right?

21 A Correct.

22 Q Okay. Upon arrival to 1104 Leonard Avenue and after a briefing, what
23 was your direction -- or what was your attention turned to?

24 A The victims were in a vehicle. One was, according to the briefing, one
25 was sitting in the vehicle, and the male victim was getting ready to get into the

1 vehicle when he was approached and told to open the door.

2 MR. GASTON: Your Honor, at this point, I'm objecting. Seems like
3 the entire thing she's saying right now is hearsay.

4 MS. LEXIS: It's providing context to why she processed certain parts
5 of the vehicle, it's the briefing.

6 MR. GASTON: It also -- it also, I think, is factually inaccurate.

7 THE COURT: Well, I'll let you deal with if it's inaccurate on
8 cross-examination. It's -- it's not offered for the truth of the matter asserted, it's
9 offered probably for context in explaining why she did, so --

10 MR. GASTON: Yes, sir.

11 THE COURT: So I'll go ahead and allow it at this time.

12 MS. LEXIS: Thank you.

13 BY MS. LEXIS:

14 Q So Ms. Stephens --

15 THE COURT: But object if it strays too far. All right.

16 MR. GASTON: Thank you.

17 BY MS. LEXIS:

18 Q Ms. Stephens, you indicated to the ladies and gentlemen of the jury
19 that you receive a briefing; is that correct?

20 A Correct.

21 Q Usually from officers who are on scene?

22 A Correct.

23 Q And in this particular case, Officer Dowler was, in fact, the requesting
24 officer; is that right?

25 A Yes.

1 Q What is the purpose of the briefing?

2 A To inform me of the information that they have at the time so that I can
3 proceed accordingly with my documenting and processing of the crime scene.

4 Q Okay. So what information did you have, and how did that particular
5 information cause you to behave or process the scene in a particular way?

6 A The officer told me the briefing --

7 THE COURT: Well, let's -- you know what, I am going to sustain the
8 objection now, at this point. I don't think she needs to iterate what the officer told
9 her. Let's just -- let's find out what she did next and you can, you know --

10 MS. LEXIS: Okay.

11 THE COURT: -- have her explain that it was based upon what she
12 was told.

13 MS. LEXIS: Okay.

14 THE COURT: We don't need the details of what she was told.

15 MS. LEXIS: Okay.

16 BY MS. LEXIS:

17 Q Was your direction turned to, or your attention turned to 2008 Ford
18 F-150, a pickup, black in color, with Nevada license plate LVKL73?

19 A Yes.

20 Q And did you put that particular VIN number your report, as well?

21 A Correct.

22 Q Okay. I'm going to turn your attention to State's Exhibit 152.

23 MS. LEXIS: May I approach with the State's admitted evidence 152
24 to 170?

25 THE COURT: Yes, you may. 152 to 170 --

1 MS. LEXIS: Thank you.

2 THE COURT: -- is being presented to the witness.

3 BY MS. LEXIS:

4 Q I'd like you to take a look at these particular photos, ma'am, and just let
5 me know if you -- when you're done and I'll have some additional questions for
6 you.

7 A [Witness complies.]

8 Q Ma'am, do you recognize the photographs or the items depicted in the
9 photographs marked as State's Exhibits 152 to 170?

10 A Yes.

11 Q What do you recognize them to be?

12 A My crime scene photos.

13 Q Okay. From 1104 Leonard Avenue?

14 A Yes.

15 Q On May 28th, 2016?

16 A Yes.

17 Q Do they fairly and accurately depict the photographs taken by you on
18 that date?

19 A Yes.

20 Q Thank you.

21 MS. LEXIS: Permission to publish?

22 MR. GASTON: No --

23 THE COURT: Yes --

24 MR. GASTON: I was just saying no objection.

25 THE COURT: Right. Right. They're already admitted, right? All

1 right. Go ahead. You may publish.

2 BY MS. LEXIS:

3 Q Ma'am, State's Exhibit No. 152; what does this show?

4 A A truck in front of the house.

5 Q Was this the truck you processed on that day?

6 A Yes.

7 Q Okay. Was this the truck whose attention you were directed to?

8 A Yes.

9 Q By the patrol officer?

10 A Yes.

11 Q Okay. Upon receiving information the officer and after you've
12 responded to the scene, what sort of processing or analysis did you conduct,
13 besides taking photographs?

14 A After the truck was photographed, the center console was processed
15 for latent prints, and the document holder inside the center console was
16 processed for latent prints.

17 Q And your -- you turning your attention to that center console and the
18 document holder, was that based on information given to you by the patrol
19 officer?

20 A Yes.

21 Q And after that, obtaining that information, did you identify that as a
22 potential area where you should focus trying to obtain evidentiary items?

23 A Yes.

24 Q Processing?

25 A Yes.

1 Q State's Exhibit No. 162; do you see the center console area that you
2 directed your attention to in this photo?

3 A Yes.

4 Q Okay. Could you please circle it for the jury?

5 MS. LEXIS: For the record, Your Honor, it's towards the middle,
6 upper part of the photograph, in between the driver's and passenger's side front
7 seat.

8 BY MS. LEXIS:

9 Q State's Exhibit No. 165, does that also show it?

10 A Yes.

11 Q Okay. Towards the top left --

12 A Yes.

13 Q -- of the photo? What did you process this area for?

14 A For latent prints.

15 Q Okay. And so what type of analysis, or how did you try to obtain --
16 what methods did you use to try to obtain latent prints?

17 A Powder, latent print processing powder.

18 Q Okay. Do you recall which specific areas you dusted with the powder?

19 A The top of the center console and the document holder inside.

20 Q Okay. I'm going to show you State's Exhibit No. 169; what does this
21 show?

22 A The inside of the center console.

23 Q Okay. And you indicated that you processed the top; is that right?

24 A Correct.

25 Q Of the center console? And also a document holder?

1 A Correct.

2 Q State's Exhibit No. 170; does that show the top of the center console,
3 right here towards the middle of the photo?

4 A Yes.

5 Q And also the document hold?

6 A Yes.

7 Q Okay. After processing it for prints or dusting it with powder, did you
8 obtain negative results?

9 A Yes.

10 Q Okay. So no fingerprints could be developed from this particular area?

11 A No.

12 Q From the center -- the top of the center console, nor the document
13 holder?

14 A Correct.

15 Q Okay. After you processed that particular area, were you -- was your
16 attention directed to any other part of the vehicle to be processed?

17 A No.

18 Q Okay. Did you receive any additional information, such that you would
19 have focused your attention to any other parts of the vehicle?

20 A No.

21 MS. LEXIS: Nothing further, thank you.

22 THE COURT: Any cross exam?

23 MR. GASTON: No questions, Your Honor.

24 THE COURT: Any questions from the jurors? No. All right. Thank
25 you.

You are excused, ma'am.

THE WITNESS: Thank you.

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

MR. DICKERSON: State would call David Wise.

THE COURT: David Wise.

Hello, Mr. Wise. Please remain standing up here and the court clerk will administer your oath.

DAVID WISE

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

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

THE WITNESS: My name is David Wise, D-A-V-I-D, W-I-S-E.

DIRECT EXAMINATION

BY MR. DICKERSON:

Q How are you employed, sir?

A Work for the Las Vegas Metropolitan Police Department.

Q How long have you worked for Metro?

A About 10 years.

Q And what do you do for Metro?

A I'm a patrol officer, currently an FTO.

Q Okay. And FTO is what?

A Field Training Officer.

Q Have you worked for any other law enforcement agencies?

A Yes.

Q Where?

1 A Arapaho County Sheriff's in Colorado.
2 Q What did you do there?
3 A I was a deputy.
4 Q How long were you a deputy there?
5 A Year and a half.
6 Q Year and a half? So about 11 and a half years of law enforcement
7 experience total?
8 A Yeah. Give or take, yeah.
9 Q Okay. Here in Las Vegas, where are you assigned?
10 A Bolden Area Command.
11 Q And where is that?
12 A Lake Mead and Martin Luther King.
13 Q That's where the actual station is?
14 A It's -- that's a major intersection right by our station.
15 Q Okay. The events that bring us here for this case, did these all occur
16 in the Bolden Area Command?
17 A Correct.
18 Q So is that how you became involved in them?
19 A Yes.
20 Q Particularly your involvement was as a patrol officer?
21 A Yes.
22 Q So what does that mean? What does a patrol officer do in a case like
23 this when robberies occur?
24 A Someone calls police, 911, we respond to help them out.
25 Q All right. So you're the first responder?

1 A We were, yes.

2 Q Did detectives come after you?

3 A Yes.

4 Q How does that wok?

5 A If we respond to a crime and we feel it's a significant crime, we will call

6 the detectives and respond after us.

7 Q And particularly in this case, were you the first responder on at least

8 one of the robbery calls?

9 A At least one of them, yes.

10 Q Drawing your attention to that date, May 28th, 2016, you were working

11 that day?

12 A Yes.

13 Q What shift were you working?

14 A Day shift.

15 Q What is day shift?

16 A What time do we start, 6:00 to 4:00.

17 Q So you start your shift at 6:00 in the morning?

18 A Yes.

19 Q Then do you go right out onto the street?

20 A We start and we do a briefing and then hit the street after that.

21 Q What is the briefing?

22 A Where you talk about crimes that happened the night prior or what to

23 look for that's coming up or outstanding suspects.

24 Q Is that all the officers that are going onto duty at that time?

25 A Yes.

1 Q And so after briefing, which starts at 6:00?
2 A I believe so.
3 Q You guys hit the street?
4 A Yes.
5 Q May 28th, 2016, you do that, you go through briefing and you hit the
6 street?
7 A Yes.
8 Q Did you get a call shortly getting out on shift referenced this case?
9 A Pretty much immediately after getting in our car, we hear the call go
10 out.
11 Q In fact, that was approximately 6:54 a.m.; is that right?
12 A Yes.
13 Q That's when you were assigned to a robbery at Rising Legend Way?
14 A Correct.
15 Q And when you arrived there, what did you find?
16 A We weren't -- we weren't assigned. We assigned ourselves to it, but
17 we were proactive car that day, so we don't get assigned to calls.
18 Q When you say we, who are you talking about?
19 A My partner, Michael Foster.
20 Q And that means you're riding two officers in a car?
21 A Correct.
22 Q You guys wear uniforms?
23 A Yes.
24 Q Drive a black-and-white patrol vehicle?
25 A Yes.

1 Q And so you hear this robbery call come out and you assign yourself?
2 A Correct. It was right down the street from where we were.
3 Q From the --
4 A The station.
5 Q Okay. And you arrived there, you make contact with?
6 A The two victims.
7 Q Okay. Is that Darrell and Deborah Faulkner?
8 A I believe so.
9 Q You arrived there approximately two minutes after you assigned
10 yourself?
11 A Yes.
12 Q So it sounds like you must have been pretty close?
13 A Yes.
14 Q Once you're there, what happens?
15 A We get a story about what -- what took place. We do a short walk
16 around the area to see if we see anything, if they -- maybe somebody dropped
17 something, evidence-wise. While we're there, we call a detective to respond out.
18 And I believe my partner was talking to the detective while I was in the car still.
19 Q What makes you guys determine whether to call a detective out or
20 not?
21 A Usually, if a gun was involved, or violent in nature, victims were hurt.
22 But as far as -- pretty much all robberies we're going to call a detective out.
23 Q Okay. So you, in fact, do that here?
24 A Yes.
25 Q Just so we have a frame of reference for everything, I'm going to show

1 you a map, what's been admitted here as State's Exhibit 7; we have Rising
2 Legend Lane -- Rising Legend Way, I'm sorry.

3 A Right.

4 Q 2605, right here; is that correct?

5 A Yes.

6 Q Is that where you responded to?

7 A Yes, sir.

8 Q As you're on that scene, does another radio call come out referenced a
9 robbery?

10 A Yes.

11 Q Is that at approximately 7:08 a.m.?

12 A Yeah. It's shortly thereafter.

13 Q Okay. Did you notice anything in particular about the details of that
14 call?

15 A I believe the car description matched the description that we were on.

16 Q Okay. So the description of the calls was similar to what you were on
17 right there?

18 A Correct.

19 Q What did, if anything, did that cause you to do?

20 A At that time, our detective was already there and then the primary
21 officer that was going to be taking the report was there. So I notified my partner,
22 who was talking to the detective, that we should go check it out, see if we can
23 catch the guy.

24 Q Okay. And, specifically, was that the robbery that was occurring over
25 on Nye Street?

1 A I believe so.

2 Q You end up going to check that out?

3 A Yes, just south of here.

4 Q Just south of here?

5 A Yeah, Nye, right there.

6 Q In the process, do you -- what do you do as far as your work as a

7 patrol officer in being assigned to these calls?

8 A Well, our role was just to ATL, or to attempt to locate the suspect or

9 somebody matching the description of that car. So that's what we do, we drove

10 around the area looking for that car.

11 Q So did you hear multiple robberies come out during this time?

12 A Yes.

13 Q Showing you the map here, you see this? We have 2605 Rising

14 Legend Lane -- Rising Legend Way where you originally were?

15 A Correct.

16 Q Subsequently, Robin Street?

17 A Yes.

18 Q Nye Street?

19 A Yep.

20 Q And then Leonard Avenue?

21 A Correct.

22 Q All those calls come out?

23 A Yes.

24 Q And your job is to now look into -- patrol the area and looking for this

25 vehicle?

1 A That was what we assigned ourself to do, yeah.

2 Q Okay. In particular, this was a white vehicle you were looking for?

3 A Yes.

4 Q And what did you do in your duty as ATLing for this vehicle?

5 A Just drove around the area. We noticed that he was working

6 eastbound, going east, so we went east, trying to look for it. And then, I believe,

7 we ended up coming to sit down at Vegas and H Street, and just waited to see if

8 we could -- wait to see if we could find the car passing us.

9 Q Did you find the car passing you?

10 A No.

11 Q And what happens from there?

12 A Shortly thereafter, Sergeant Bilyeu calls out and says they're going

13 into 1701 J Street, and that he thinks he found car. So we -- it's literally right

14 around the corner from where we were sitting, so we follow him inside.

15 Q So go ahead and zoom in here. You say that you were on H Street?

16 A Yes.

17 Q And in the process, you are going to go with Sergeant Bilyeu over to --

18 A Correct. H Street is just a little bit to the -- to the right.

19 Q Okay. Down here?

20 A So if you're driving up J Street --

21 Q You can indicate on the map by drawing, if you need.

22 A Oh, okay. So we're sitting over here on H Street. He -- he's driving

23 up -- Bilyeu is driving up this way. There's a gate where you could see into the

24 parking lot, and so that's where he sees the car. So we --

25 MS. MACHNICH: I'm going to object to hearsay, and move to strike

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1 any statement made by a different officer.

2 THE COURT: I think we need -- we need context in how the
3 investigation proceeded, so I'm going to overrule the objection. The statement
4 regarding if he sees the car is coming in, not for the proof of the matter asserted,
5 but only to explain what the officer did next. Okay. Whether the car that's being
6 referenced was a car involved in any robbery is -- is something you'll have to
7 decide, but not based upon this hearsay statement. Okay.

8 Go ahead.

9 THE WITNESS: He sees the car, what he thinks he sees to be the
10 car, so we follow him into the complex, which goes in a big round-about way back
11 into the parking lot.

12 BY MR. DICKERSON:

13 Q Okay. And then you end up in that back parking lot where that white
14 vehicle is?

15 A Yes, sir.

16 Q Show you here what's been admitted as State's Exhibit 8; is that 1701
17 J Street, right there?

18 A Uh-huh.

19 Q And this is the --

20 A That's 1701 right there.

21 Q Okay. This area right here?

22 A Yes.

23 Q That's on the map right now?

24 A The northern one is 1801.

25 Q And is that the parking lot that you indicated you drove to with

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1 Sergeant Bilyeu?

2 A Correct.

3 Q If you could indicate for the members of the jury where the gate is that
4 you talked about, that you can see into the back parking lot?

5 A Right here.

6 Q Okay. So there's actually a gate on that side blocking ingress and
7 egress?

8 A Correct. You can't get through.

9 Q Okay. And so where would the entrance for 1701 be?

10 A Right here.

11 Q Okay. Upon coming through the entrance of 1701 J Street, where do
12 you go and what do you find?

13 A Come around this way, and then we park right there. See the car right
14 in front of us.

15 Q What do you see?

16 A A white sedan matching the description.

17 Q And what do you do at that point in time?

18 A We get out of our car and we feel the engine -- it wasn't necessarily --
19 it wasn't warm yet early in the morning, it wasn't summertime yet. So we feel the
20 engine of the car and it was still warm.

21 Q Okay. Is that a common practice as a police officer?

22 A It is for me.

23 Q How does that work, what do you do?

24 A If I'm going to a call where -- if any situation is dynamic and we're
25 walking up to a house, I'll feel the hood of a car as I'm approaching the door to

1 see if somebody had just got there or vice versa.

2 Q So you arrive here at 1701, showing you State's Exhibit 55; is that the
3 vehicle you saw?

4 A Yes.

5 Q And that's the same vehicle that you felt the hood of?

6 A Correct.

7 Q So you said it wasn't warm outside?

8 A No. It was still -- wasn't warm. I mean, because I felt the other cars,
9 too, and they were still cool to the touch.

10 Q Okay. But this white car was warm?

11 A Yes.

12 Q On the hood where the engine is?

13 A Correct.

14 Q And as a result of that, what do you do?

15 A I believe we just called out saying, hey, we found the car. It doesn't
16 have plates on it, so I remember the sergeant getting on the radio and saying --

17 MS. MACHNICH: Objection, hearsay.

18 MR. DICKERSON: Not offered for the truth of the matter asserted,
19 only to show what their next steps were in the investigation.

20 MS. MACHNICH: Sorry, Your Honor, whenever I hear, I heard him
21 say --

22 THE COURT: I know. I understand the objection. I'm going to
23 overrule the objection. The jury is instructed that the witness' testimony about
24 the -- about the radio, the call he received over the radio mentioning a car without
25 plates, that comes in just to explain what he did next and explain the course of his

1 subsequent conduct. It doesn't go to the matter of truth -- doesn't go to the truth
2 of the matter asserted.

3 In other words, the statement over the radio cannot be considered by
4 you in determining whether the alleged car used in the alleged robbery actually
5 had plates on it or not. All right.

6 Go ahead.

7 BY MR. DICKERSON:

8 Q The way you were indicating about the plates, is State's Exhibit 48, is
9 that what you saw of that white Mazda 3 in the back parking lot of 1701 J Street?

10 A Yes.

11 Q And so as a result, were you indicating that the sergeant had read the
12 VIN number?

13 A Correct.

14 Q To check that? Show you here State's Exhibit 50; does that appear to
15 be the VIN number?

16 A I believe so, yeah.

17 Q And that was just because it didn't have plates?

18 A Yes.

19 Q So trying to look --

20 A Trying to see if it was stolen.

21 Q Okay. As you're sitting there on scene with this vehicle, does anything
22 in particular happen?

23 A As we're figuring out what we're going to do, I believe a young lady
24 comes out and has particular interest in what we're doing. We ask her what she's
25 doing out there. She says that's her car.

1 MS. MACHNICH: Again, I'm going to object as to hearsay. I don't
2 know if they're bringing this witness. This sounds like just hearsay.

3 THE COURT: Well --

4 MR. DICKERSON: Seems to be a present-sense impression, Your
5 Honor.

6 MR. GASTON: Can we approach, Your Honor, real quick on this?

7 THE COURT: Well, okay. Let me go ahead and see what you guys
8 have to say at this point.

9 [Bench conference transcribed as follows.]

10 MS. MACHNICH: Your Honor, they're attempting to elicit statements
11 made by a woman named Omara, to my knowledge at this point, who --

12 THE COURT: What's her name?

13 MS. MACHNICH: Omara McBride.

14 THE COURT: Okay.

15 MS. MACHNICH: Who is listed on the witness list. We've not been
16 provided with updated contact information on her. I don't believe they have her
17 under service for this case. Maybe they do and maybe they can ignore it. We
18 don't know -- we don't even know that because we can't find her, either. So if
19 they're trying to elicit all of her statements out of him, that's inappropriate.

20 THE COURT: Hold on. What -- what led the police to the apartment
21 where they arrested their defendant?

22 MS. LEXIS: Omara and Chanise.

23 THE COURT: Is she -- was it her residence?

24 MS. LEXIS: No. She's the car owner.

25 MR. DICKERSON: No, no. She was standing --

1 MS. LEXIS: With the defendant.

2 THE COURT: She's the car owner. How did she -- how did she get
3 from the car to the residence?

4 MS. LEXIS: She was in the residence, comes out to the car, tells the
5 police, This is my car, ain't nobody driving this car, blah, blah, blah, blah.
6 And that leads them -- they say where are you staying? She goes,
7 Apartment No. 118. She tries to get them to a different location. They start
8 looking at 118 based on --

9 THE COURT: We've got -- we've got to know how they got to the
10 apartment where they arrested him.

11 MS. LEXIS: Right.

12 MR. DICKERSON: Chanise [indiscernible].

13 MS. LEXIS: And then Chanise -- okay, can I finish? After Omara --
14 after Omara gets to the apartment, tries to direct them to the wrong apartment,
15 Chanise, the defendant's cousin, comes out and says, hey, actually, you don't
16 need to detain her. I live in Apartment 218. There's no one there, just some
17 females. Go ahead and search.

18 THE COURT: I don't see how this is prejudicial to the defendant.

19 MR. GASTON: It is, Your Honor.

20 MS. MACHNICH: It is --

21 MR. GASTON: [Indiscernible] witness and they're not going to call
22 and we can't cross examine or confront [indiscernible] statements where it
23 appears she's trying to guide the police and misdirect them.

24 THE COURT: She's trying to misdirect them?

25 MS. MACHNICH: Yeah. And they're -- I'm sure they're going to say

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1 it's at the direction of the defendant.

2 MS. LEXIS: We're not --

3 MS. MACHNICH: Or in order to support the defendant.

4 MS. LEXIS: We're not saying that at all.

5 THE COURT: Well, let's don't get in the -- how can we -- how do we
6 get to the apartment without the --

7 MS. MACHNICH: They can bring Chanise --

8 THE COURT: Hold on. Guys.

9 MS. MACHNICH: Sorry.

10 THE COURT: Tell you what, I'll talk when you guys are done both
11 talking. Okay. You need to find a way to connect looking at the car to getting to
12 the apartment without hearsay testimony about misdirection. That's what you got
13 to do. I don't -- I'll let hearsay come in as long as it doesn't involve misdirection.

14 MR. DICKERSON: Okay.

15 THE COURT: All right. You can connect -- I think of ways to connect,
16 but just don't -- I don't want this coming in as a hearsay statement about, you
17 know, taking -- trying to take them to the wrong place.

18 MR. DICKERSON: Right. I'll try to be --

19 THE COURT: I'll let you lead appropriately to make sure that what
20 the defense is concerned about, prejudice and stuff, doesn't come in. All right?

21 MR. DICKERSON: Great.

22 MS. LEXIS: Can I just say something on the record, as well?

23 THE COURT: Yeah.

24 MS. LEXIS: You guys know that you your client has been talking to
25 Omara McBride pretty regularly, right? So to say -- to say that you don't have her

1 information is disingenuous.

2 THE COURT: All right. Well, let's --

3 MS. MACHNICH: We don't have --

4 MR. GASTON: What are you talking about?

5 MS. MACHNICH: We -- we don't have it.

6 THE COURT: We'll deal with that later.

7 MS. MACHNICH: But that's not true.

8 THE COURT: I don't care about that.

9 MR. DICKERSON: Thank you, Your Honor.

10 [End bench conference.]

11 THE COURT: I -- that's an issue we can deal with later, okay?

12 BY MR. DICKERSON:

13 Q This woman you made contact with out there, Omara McBride; is that
14 right?

15 A I don't remember her name, sorry.

16 Q Okay. Ultimately, you have some discussion with her; is that right?

17 A I don't remember having a discussion.

18 Q The officers on scene --

19 A Officers on scene, yeah.

20 Q This ultimately leads you to an apartment here at 1701 J Street?

21 A Correct.

22 Q Apartment 218?

23 A Yes.

24 Q As a result of this interaction that you have, you end up making contact
25 with occupants of that apartment?

1 A Other officers do, yes.

2 Q Okay. Those of those occupants being males?

3 A Yes.

4 Q You then take some steps in the investigation as a result of locating

5 those two males; isn't that correct?

6 A Correct.

7 Q What do you do?

8 A I believe we detained both of them.

9 Q And what's the next step after detaining those two males?

10 A Usually conducting a showup or a one-on-one.

11 Q Okay. And what would your role as patrol officer here on scene be in

12 those showups?

13 A Identify them and -- all the other officers that are out in the field with

14 the victims, they're eventually going to bring the victims to the scene.

15 Q So do you, in fact, set up showups here at 1701 J Street?

16 A Yes.

17 Q Of those two males?

18 A Yes.

19 Q And how is it that you set up these showups?

20 A Like, are you asking how in the alleyway or --

21 Q Yeah, I mean, just how it works, how you -- I'll show you here --

22 A They're --

23 Q State's Exhibit A.

24 A Their -- our car is right here, sorry, not --

25 Q It's a little off.

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1 A Yeah. Our car is right there along the fence line and we have the two
2 males right here in the alleyway. And the victim's car will -- the victim will be in a
3 police car and they'll come down here and stop right here and then they'll look
4 through the window.

5 Q Okay. During this time, did you help set up approximately five different
6 showups?

7 A Approximately.

8 Q And let me show you here, did you have a body camera on at this
9 time?

10 A I did.

11 Q How does a body cam work?

12 A It's on my right lapel and it gets activated when I turn it on.

13 Q Okay. It records everything that's going on around you?

14 A Correct.

15 Q I'm going to --

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

17 THE COURT: Yes.

18 BY MR. DICKERSON:

19 Q Show you here what's been marked as State's Proposed Exhibits 186
20 through 188. Please take a look at those and tell me if you recognize them.

21 A Yes, I recognize them.

22 Q All three?

23 A I'm sorry, yes.

24 Q What do you recognize them to be?

25 A Subjects we had in custody.

1 Q And in particular, do those -- are these still images from your body
2 cam?

3 A Yes.

4 Q Do these fairly and accurately depict the body cam images as they
5 were captured that day on May 28th, 2016?

6 A Yes.

7 Q There at 1701 J Street during these showups?

8 A Correct.

9 MR. DICKERSON: State moves for the admission of State's
10 Proposed 186 through 188.

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

12 THE COURT: Sure.

13 [Bench conference transcribed as follows.]

14 THE COURT: Hi.

15 MS. MACHNICH: Hi. We have no objection to the first one. We think
16 it's absolutely proper. The other two are overly prejudicial and not probative of
17 anything.

18 THE COURT: Which is the first one? Are they in the order?

19 MS. MACHNICH: This one --

20 THE COURT: Is that -- are they in order? Put them in what order --

21 MS. MACHNICH: Okay. We have no objection to 186.

22 THE COURT: Okay.

23 MS. MACHNICH: And I'd like to establish what the probative value
24 was of these. They appear to be overly prejudicial and duplicative.

25 MR. DICKERSON: The probative value is to simply give the --

1 [indiscernible] these two individuals next to each other, being able to get a clear
2 view of what they look like.

3 THE COURT: Just gives different angles --

4 MS. MACHNICH: But those weren't the views of the showups. Those
5 were the views from his body cam inside of his car.

6 MR. DICKERSON: Right. But --

7 MS. MACHNICH: There's no probative value, the first one is fine.

8 THE COURT: It's facts. I'm going to overrule.

9 MR. DICKERSON: Thank you, Your Honor.

10 THE COURT: Thanks.

11 [End bench conference.]

12 MR. DICKERSON: Admitted, Your Honor?

13 THE COURT: Yeah, admitted.

14 MR. DICKERSON: Thank you very much.

15 THE COURT: 186, 187, 188 are admitted.

16 [State's Exhibit Nos. 186 through 188 admitted.]

17 BY MR. DICKERSON:

18 Q State's 186 through 188, do those depict those two males that you had
19 out of the apartment for the showup?

20 A Yes, sir.

21 Q Is that a yes?

22 A Yes, sir.

23 Q And show you first State's Proposed 187; does that appear to be those
24 two males in front of your patrol car?

25 A Yes, sir.

1 Q And 188, same thing from the side?

2 A Yes.

3 Q Now, during this process, do you just have them stand right there in

4 front of your patrol car during showups or --

5 A It's a waiting game.

6 Q When you say it's a waiting game, what do you mean?

7 A You're just waiting for other officers to complete their showup

8 paperwork and then to drive over there.

9 Q Okay. So they're coming from different scenes?

10 A Yes.

11 Q And what do you have to do in the meantime?

12 A I believe at that time, the detectives were there, so we were just sitting,

13 hanging out.

14 Q Okay. Just keeping an eye on these guys?

15 A Yeah, yeah.

16 Q And so ultimately, when the officers come around the corner, do you

17 put these two individuals out in the middle of the alleyway?

18 A Yeah. So they could see everything, the clothes, the whole

19 description.

20 Q Showing you here what's been marked and admitted as State's 186;

21 do you recognize that?

22 A Yes.

23 Q Is that how those two individuals appeared?

24 A As far as when we got them out of the apartment?

25 Q Yeah. And you did the showup?

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1 A Yes.

2 Q This right here, does this appear to be a showup?

3 A Yes.

4 Q And during this time, what's going on?

5 A There's a car on the other side, down the alley, with one of the victims.

6 And they're talking to that officer about if it is or isn't the suspect.

7 Q Okay. And so what's your job here?

8 A Just to make sure they don't run.

9 Q And do you maintain contact with these two guys?

10 A Yes.

11 Q So then what happens during the showup?

12 A Couple minutes goes by and you hear on the radio from the officer that

13 has one of the victims if it is or isn't the suspects.

14 Q Okay. And what happened here in this case?

15 A The gentleman in the camo shorts and the white tank top was not one

16 of the suspects.

17 Q Okay.

18 A And the gentleman without a t-shirt was a positive -- I can't even talk.

19 MS. MACHNICH: Your Honor, I'm going to object as to hearsay.

20 THE COURT: Well, this -- ordinarily witness identification is not

21 hearsay, but wouldn't this be hearsay --

22 MR. DICKERSON: These would be --

23 THE COURT: -- within hearsay?

24 MR. DICKERSON: These would be --

25 MS. MACHNICH: Yes.

1 MR. DICKERSON: -- present-sense impressions, Your Honor, from
2 both ends of the -- the hearsay.

3 THE COURT: I mean, we can hear from the victim --

4 MR. DICKERSON: We have.

5 THE COURT: -- alleged victim, if there's an identification, and we can
6 hear from who the victim reported it to, but this goes to the next level. I'm going to
7 sustain the objection.

8 MR. DICKERSON: Okay, Your Honor.

9 THE COURT: And so the jury will strike the last statement of the
10 witness -- disregard the last statement of the witness.

11 BY MR. DICKERSON:

12 Q Ultimately, is one of these males arrested?

13 A Yes.

14 Q And one of them is let go?

15 A Yes.

16 Q Who is let go?

17 A The gentleman in the white t-shirt.

18 Q Okay. From that point in time, is that your general involvement in this
19 investigation?

20 A Yes.

21 Q That individual, without the shirt on in this photo, do you see him here
22 in the courtroom today?

23 A I do, sir.

24 Q If you could please identify a piece of clothing that he's wearing and
25 point to him?

1 A The gentleman sitting over there in a button-up shirt, tannish color.
2 MR. DICKERSON: Your Honor, if the record will reflect, the witness
3 has identified the defendant, Keandre Valentine.
4 THE COURT: It does.
5 BY MR. DICKERSON:
6 Q Showing you here what's been admitted as State's Exhibit 53.
7 THE COURT: Uh-huh. All right.
8 BY MR. DICKERSON:
9 Q Is that the defendant as he appeared during those showups?
10 A Correct.
11 Q And 52?
12 A Yes.
13 Q Fairly and accurately depicts the defendant as he appeared that day,
14 May 28th?
15 A Yes.
16 Q And 54?
17 A Yes.
18 MR. DICKERSON: State will pass the witness.
19 THE COURT: All right. Cross-exam?
20 MS. MACHNICH: Thank you, Your Honor. Wait until he sits down.
21 [Pause in proceedings.]
22 MS. MACHNICH: Your Honor, may I proceed?
23 THE COURT: You may.
24 MS. MACHNICH: Thank you.

25 **CROSS-EXAMINATION**

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1 BY MS. MACHNICH:

2 Q Officer, what you described seems to have happened rather quickly;
3 would that be fair?

4 A Yes, yeah.

5 Q So we're not talking a long period of time elapsing between these
6 robbery calls and Sergeant Bilyeu, you said, thinking that he found the car?

7 A Correct.

8 Q Now, let me see here, you originally said that you responded to the
9 residence associated with the Faulkners?

10 A Yes, I believe so. I don't remember the -- without the map, I don't
11 remember the street name.

12 MS. MACHNICH: Court's indulgence.

13 Q Okay. So I am showing you what has previously been marked and
14 admitted as State's Exhibit 7. So here is a map that you were shown before. Let
15 me zoom in a little bit, so we can read it. So directing your attention up towards
16 the top --

17 A Rising Legend.

18 Q -- it says 2605 Rising Legend Way?

19 A Correct.

20 Q And that is the first place you responded?

21 A Yes.

22 Q Okay. And you said that you were hearing -- you ultimately went and
23 tried to locate a white car?

24 A Uh-huh.

25 Q Okay. And that -- the car description matched what the people at 2605

1 Rising Legend Way reported?

2 A Correct. It's a long time ago, yeah.

3 Q Okay. But that -- okay. Would it surprise you to learn that they didn't
4 report a car?

5 A No.

6 Q All right. So we get to the white car that Sergeant Bilyeu has located.
7 And you said that officers ran VIN to find out if it was stolen?

8 A Correct.

9 Q It was not stolen?

10 A Correct.

11 Q It returned to Omara McBride?

12 A Okay.

13 Q Is that true?

14 A I don't remember.

15 Q I'm trying to get the full story, so if you don't remember, you can just
16 tell me that.

17 A Okay.

18 Q All right. So you don't remember who it returned to, but it was not
19 stolen?

20 A Correct.

21 Q Okay. Now, this woman, you do recall interacting with a woman
22 named Omara McBride?

23 A Briefly.

24 Q All right. Was she detained as part of this investigation at any point?

25 A I know we detained a female. I don't know if it was that same female.

1 Q When she -- when the female was detained, was the female searched,
2 patted down for officer safety?

3 A I -- I would hope so.

4 Q But you don't have any personal knowledge?

5 A I don't.

6 Q All right. Now, let me see here, you said that you were wearing a body
7 cam?

8 A Yes.

9 Q All right. And the body cam is something that you wear hooked on
10 your uniform?

11 A Yes.

12 Q Okay. And it's something that you operate?

13 A Yes.

14 Q So you turn it on, and you turn it off?

15 A Yes.

16 Q All right. And as discussed, you had it on for these interactions,
17 because we've seen --

18 MS. MACHNICH: Court's indulgence.

19 THE COURT: 186, 187, and 188?

20 MS. MACHNICH: That's what I'm looking for, Your Honor.

21 MS. LEXIS: Right here.

22 MS. MACHNICH: Oh.

23 BY MS. MACHNICH:

24 Q All right. So you had on -- and I'm showing you what has been marked
25 and admitted as State's Exhibit 186, a photo of these two gentlemen here.

1 A Correct.

2 Q All right. And now, what are we looking at? Is this one of the -- this is
3 one of the buildings?

4 A Yes.

5 Q All right. And fair to say, that the edge of the building is fairly close to
6 where this curb is starting to turn right here?

7 A That curb where your finger is, that's where a trash dumpster is.

8 Q Okay. So that's -- the dumpsters are sort of over to -- forward, and
9 then to, if you're looking at the gentlemen, to the right?

10 A Yes.

11 Q All right. And let me just get another photo. Showing you what has
12 been marked and admitted as State's Exhibit 8. So here is -- do you recognize
13 this as the apartment complex we've been discussing --

14 A Yes.

15 Q -- at J Street? Okay. And you would agree with me that the
16 dumpsters are here?

17 A Correct.

18 Q Okay. Can we -- oh, yes, right here. And the corner of the building
19 we're looking at is actually, like, right here?

20 A Yeah.

21 Q Okay. Just want to make sure that we're clear for the record.

22 MS. MACHNICH: Court's indulgence.

23 THE COURT: Yes.

24 MS. MACHNICH: All right. Thank you, Officer.

25 THE COURT: All right. Any redirect?

1 MR. DICKERSON: Yeah, just briefly. Thank you, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MR. DICKERSON:

4 Q Officer Wise, you said you -- you wouldn't be surprised if there wasn't a
5 vehicle description given out on the first robbery call?

6 A Yeah. I just remember recalling hearing it over the radio, broadcast
7 over the radio.

8 Q So you would have already been at the scene of the first call?

9 A Yeah. We were -- we were there within a couple minutes of the initial
10 call going out.

11 Q Would looking at CAD help refresh your recollection as to exactly when
12 that description came out?

13 A Sure.

14 Q And what is CAD?

15 A CAD is the system in our car that dispatch updates, I guess -- it's what
16 we learn about calls, you know, if somebody calls 911 and says, hey, somebody
17 is hitting me, then we were able to read that on the computer screen. I don't know
18 the acronym for CAD.

19 Q Right. Computer Aided Dispatch?

20 A There you go.

21 Q Is that something where like 911 operators and dispatchers are --

22 A They're updating.

23 Q -- they're updating the stuff. And the first event you were on, was
24 that 1605281116, does that sound right?

25 A As far as event number?

1 Q Yeah.

2 A I'd have to look at the CAD to remind -- refresh.

3 Q Okay. I'll show you the CAD first for that event.

4 MR. DICKERSON: If I may approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: Okay.

7 BY MR. DICKERSON:

8 Q Does in appear to be the CAD report for the first call that you were on?

9 A Yes.

10 Q And the second call that came out, was that 1605281129?

11 A The event number?

12 Q Yeah. Would looking at the CAD for that event help refresh your

13 recollection?

14 A Yes.

15 Q Showing you that here.

16 A Okay.

17 Q Does that appear to be the event, the second robbery event, that being

18 the one at 1508 Robin Street?

19 A Yes.

20 Q Okay. And the first one that I read off, the one ending in 1116, was

21 that 2605 Rising Legends Way; is that right?

22 A Yes.

23 Q Now, seeing the CAD for 2605 Rising Legends Way, are you able to

24 tell that that wasn't the event where you got the description of the vehicle from?

25 A Correct.

1 Q Now, looking to the event, the second event from Robin Street, ending
2 in 1129 here, are you able to tell when and if you got a description of a vehicle?

3 A Yeah, a couple minutes into it.

4 Q What time?

5 A 7:03.

6 Q 7:03 a.m.?

7 A Uh-huh.

8 THE COURT: Is that a yes, sir?

9 THE WITNESS: Yes, sir, I apologize.

10 THE COURT: We need just verbal responses. Thank you.

11 BY MR. DICKERSON:

12 Q And in fact, you had already arrived at the Faulkners' address at Rising
13 Legend Way at that time?

14 A Correct, yes.

15 Q The vehicle, Mazda 3, newer model, no license plate, that's what you
16 were looking for?

17 A Yes.

18 Q And it was from the Faulkners' address at Rising Legend Way that you
19 went to go ATL for that?

20 A Yes.

21 Q And ATL being attempt to locate?

22 A Attempt to locate.

23 Q Thank you, sir.

24 MR. DICKERSON: Pass the witness.

25 THE COURT: Recross?

1 MS. MACHNICH: Nothing, Your Honor. Thank you.

2 THE COURT: Anything from the jurors?

3 We've got a couple of hands up, marshal.

4 MR. GASTON: May we approach, Your Honor?

5 THE COURT: Yes.

6 [Bench conference transcribed as follows.]

7 THE COURT: Are we going to do one more after this before lunch?

8 MS. LEXIS: No. We have the next one coming after lunch.

9 THE COURT: Okay.

10 MS. LEXIS: You guys may want to try to get one witness in --

11 MS. MACHNICH: Yeah, yeah.

12 MS. LEXIS: -- this afternoon.

13 MS. MACHNICH: That's what I was trying to figure out. I can get --
14 we'll work it out.

15 THE COURT: Okay. I'll give that to you. Okay. There's that one.

16 MR. GASTON: I think both of those are fine.

17 MS. MACHNICH: Yeah, they're fine.

18 THE COURT: Okay.

19 MR. GASTON: Pretty much the same. I think it's fine.

20 THE COURT: Yeah. We'll -- I'll ask one and see if it answers the
21 other --

22 MR. DICKERSON: Oh, wait, there's two.

23 THE COURT: -- with no objections.

24 MR. DICKERSON: We would just ask that they all be asked.

25 MS. MACHNICH: That's fine.

1 THE COURT: Okay.

2 MR. GASTON: And two of the questions are the exact same. One is
3 a little different.

4 MS. MACHNICH: It's fine. Ask them.

5 THE COURT: Okay. Thank you.

6 [End of bench conference.]

7 THE COURT: All right. So here's -- these are in no particular order.
8 These are from the jurors so I'm going to ask the questions and provide your
9 answers to the jurors, if you can.

10 THE WITNESS: Okay.

11 THE COURT: All right. So for clarification, what is the name of the
12 second male in Picture No. 187; is that Bobby McCoy?

13 THE WITNESS: I do not recall the name.

14 THE COURT: Okay. Next question, where did the second shorter
15 person come from?

16 THE WITNESS: The same apartment.

17 THE COURT: What did you say? The second --

18 THE WITNESS: The same apartment.

19 THE COURT: The same apartment. All right. Besides Mr. Valentine,
20 was Bobby McCoy (white shirt) the other individual in the showup photo?

21 THE WITNESS: I don't recall the name of the second subject in the
22 photo.

23 THE COURT: All right. Very good. Any follow-up by any of the
24 attorneys? The State can go first if you have any follow-up.

25 MR. DICKERSON: Nothing from the State, Your Honor.

1 THE COURT: Defense counsel?

2 MS. MACHNICH: Court's indulgence.

3 **FURTHER RECROSS-EXAMINATION**

4 BY MS. MACHNICH:

5 Q So you said that you did not recall the name of the second subject. If I
6 said that the second person was Damian Traylor, would that surprise you?

7 A No.

8 Q Okay. Does that name sound familiar?

9 A No.

10 Q Okay. So you --

11 A Not outside of today, no.

12 Q Okay. So you don't have any specific knowledge of this at all? It's
13 not --

14 A Of names, no.

15 Q -- that you've just forgotten?

16 A Yeah. It's a long time ago.

17 Q Okay.

18 THE COURT: Anything from the State?

19 MR. DICKERSON: Nothing from the State, Your Honor.

20 THE COURT: Anything more from the jurors? All right.

21 Thank you, sir. You are excused. You can step down. All right.

22 Are we going to do our next witness after lunch?

23 MS. LEXIS: If we could.

24 THE COURT: All right. How about 1:15?

25 MS. LEXIS: Sure.

1 THE COURT: Does that work for everyone?

2 MS. MACHNICH: Sure.

3 THE COURT: All right. Ladies and gentlemen, let you have a break,
4 lunch break. During this lunch break do not communicate among yourselves or
5 anyone else about this trial and the subject matter of this trial; do not
6 communicate at all with any of the parties, attorneys or witnesses involved in the
7 trial; do not seek or obtain any information or comments about this case from any
8 source including newspapers, television, radio, Internet, e-mail, cell phones or any
9 other electronic device; do not read, watch, or listen to any report or commentary
10 about the case; do not perform any research or investigation; do not form or
11 express any opinion on any subject connected with the trial until the case is finally
12 submitted to you for deliberations.

13 Please return to the hall outside this courtroom for further continuance
14 at 1:15. Thank you very much.

15 [Jury recessed at 11:50.]

16 THE COURT: All right. We're outside the presence of the jury. So I
17 just wanted you to know I did read your State's Motion in Limine to limit the
18 testimony of Steven Smith. I studied it, I looked at the minutes, I looked at the
19 e-mail I received from Judge Herndon. I, you know, studied all the papers. I'm
20 going to respectfully deny your motion, and -- and here's the reasons why:

21 You know, I think that there is sufficient expertise for Steven Smith to
22 render opinions on what he -- what he expects to render opinions on, the human
23 brain processing of information, and how those processes could lead to errors in
24 eyewitness identification.

25 I think the State was placed on sufficient notice that Smith may testify

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1 regarding showups. Judge Herndon already heard and denied the Motion to
2 Strike, finding that sufficient notice was given for Smith to testify regarding the
3 fallibility of eyewitness identifications. And I believe that eyewitness
4 identifications, as a general matter, is not limited to simply lineups, but the
5 description used by the defense in their -- in their notice is broad enough to cover
6 showups, as well.

7 In fact, the briefs that were provided by the defense to Judge Herndon
8 did mention the showups. They -- you know, they mentioned in their brief that
9 Judge Herndon already considered, it said their -- their expert is going to be
10 contesting the eyewitness identification by all the alleged victims. And since they
11 used the word, all, that obviously included some of the showups. That was on
12 page 3.

13 Page 7 of the brief they say there's no doubt that the eyewitness
14 identifications, plural, in this case, are integral to the State's prosecution.

15 On Page 11 of their brief they say, all but one of the alleged
16 identifications was conducted at showups and took place in front of marked police
17 vehicles while Mr. Valentine was handcuffed, the single six-pack lineup was
18 similarly and properly conducted.

19 Using that language, they're saying that the showups were improper.
20 And then they say:

21 As the arresting detective knew the identity of the alleged suspect
22 conducted lineup.

23 On Page 12 they say:

24 In this case, the police orchestrated, in violation of recommendations
25 promulgated by both the Department of Justice and National Academy of

1 Science, unnecessarily suggestive environments for the identifications,
2 plural. Defendant Valentine's defense is largely based upon questionable
3 nature of the alleged identifications.

4 So I think, you know, that the -- the description in defendant's notice
5 of expert witnesses -- or I want to say eyewitness identifications is broad enough
6 to include showups.

7 And so then your next issue was, you know, was did they comply
8 sufficiently with Judge Herndon's order of disclosure. There's not enough detail
9 of -- for me to -- to rule other than I believe they substantially complied. They
10 provided articles that were not -- apparently not authored by Mr. Smith that he's
11 relying upon. I don't interpret Judge Herndon's order as requiring the defendant
12 to turn over every writing by Steve Smith. It was simply those additional
13 documents in addition to his writings that he relied upon. That's how I interpret --
14 that's how I interpret the order. Because I -- I think otherwise it would have been
15 unduly burdensome for them in the short amount of time to have to get every --
16 he's -- I read -- he's got a lot of writings here. I'm positive that's not what Judge
17 Herndon intended.

18 So when the expert testifies, and by the way, the -- that -- that -- I've
19 done a lot of *Hallmark* motions and a lot of, you know, motions dealing with
20 sufficiency of disclosures by experts. And they have to provide documents that
21 they relied upon generally. In construction cases, it's generally, you know, all the
22 change orders and payment applications and -- and design document and all
23 those kinds of things that they reviewed to form their opinions.

24 What I don't want Steven Smith to do is to come up here and say --
25 and give opinions and say he relied upon documents, either relating to this

1 particular event, or -- or other specific documents that -- that he hasn't turned
2 over. All right. Other than his own writings or other than documents and
3 information he obtained in his education. All right.

4 MR. GASTON: To clarify, if we haven't made this -- if we haven't
5 made this very clear about documents, specifically with this case, he also got a
6 copy -- I mean, we obviously sent him a copy of the police report, the showups,
7 and the witness statements.

8 THE COURT: If it's -- well, okay. If it's documents that were already
9 produced by the State, the State has.

10 MS. MACHNICH: They were actually produced by the State.

11 THE COURT: But I think -- I think what -- the disclosure requirement
12 is intended to provide sufficient notice to the opposing party of the documents that
13 the expert is primarily relying upon, so -- so that the opposing party can have the
14 ammunition to cross-examine, all right. The State here, obviously, has the police
15 report. They obviously -- I mean, the things that they didn't have were these
16 showup articles that your expert reviewed and relied upon.

17 MR. GASTON: Yes, sir.

18 THE COURT: All right. If it comes out that he relied upon some other
19 document, I don't know what other document would be out there, that's something
20 I'm going to have to deal with. All right.

21 MS. LEXIS: And that would be the clarification that I'm seeking.

22 THE COURT: Yeah.

23 MS. LEXIS: Because in all of the expert --

24 THE COURT: I don't know what other documents there could be.

25 MS. LEXIS: Right. In all of the identification experts that I've had the

1 opportunity to cross-examine in my eight years as the deputy district attorney --

2 THE COURT: Yes, ma'am.

3 MS. LEXIS: -- they have always turned over articles, research
4 concerning -- for instance, one expert could say, oh, 80 percent of the -- of the
5 studies -- of the individuals subjected to this particular study, showed an
6 association to weapon focus, as opposed to being able to identify the face. That
7 has not been disclosed to the State at all.

8 THE COURT: Right. If he starts --

9 MS. LEXIS: At all.

10 THE COURT: -- talking about some statistics --

11 MS. LEXIS: Right.

12 THE COURT: -- or some calculations, or some other, I mean, you
13 know, concrete detail information that he's deriving from some other undisclosed
14 document, you know, there -- there's going to be -- there's going to be a problem
15 and I may have to strike his testimony, but --

16 MS. MACHNICH: What I was just --

17 THE COURT: All right. So I'm trying to -- we're kind of speaking in
18 hypotheticals here, because I don't know what -- you have to produce documents
19 that he relied upon. If there's some study that he relied upon to get statistics and
20 he's going to quote those statistics on the stand, you had a duty to produce that.

21 MS. MACHNICH: And I absolutely understand --

22 THE COURT: I don't know if that's where you're going.

23 MS. MACHNICH: And -- and I don't believe that we intend to do that
24 at this point. We -- we have not sat down and fully pretried him. We will be
25 doing that tomorrow morning before we start court, but we will -- he will -- he's on

1 the stand tomorrow, absolutely.

2 But we don't intend to do any of that. However, if the State starts
3 asking him about statistics, it's another --

4 THE COURT: Well, I don't think they're going to do it.

5 MS. MACHNICH: Okay.

6 THE COURT: But -- but what this --

7 MS. MACHNICH: As long as it's on a cross.

8 THE COURT: -- what I'm giving -- what I'm inviting the State to do is if
9 he starts offering opinions based on data or statistics -- well, it's data -- data in
10 documents that you didn't produce, then they will bring a Motion to Strike, and I'm
11 going to entertain that.

12 MR. GASTON: Yeah. We're just --

13 THE COURT: Okay?

14 MR. GASTON: -- just trying to clarify the court's order. Yeah. I
15 mean, if he -- yeah, quoting stats or quoting studies that weren't provided to the
16 State is one thing. But we're also not -- I'm assuming the court is not construing
17 this order or structuring this order to try to say that this expert witness of 31 years
18 in the field, his scope of knowledge must be contained directly in three --

19 THE COURT: No.

20 MR. GASTON: -- those three studies.

21 THE COURT: No, no, no, no. I mean, your -- your knowledge can be
22 derived -- look, if in forming his -- let me make this crystal clear. If in forming his
23 opinions in this particular case, he reviewed and relied upon a particular
24 document in the course of his engagement by you, all right, you had a -- other
25 than his own work product, you had a duty to produce that.

1 MR. GASTON: Yes, sir.

2 THE COURT: All right. If you didn't, there's going to be a problem.

3 MR. GASTON: Yes, sir.

4 MS. MACHNICH: That's fair.

5 MS. LEXIS: And by other than his own work product, meaning items
6 that he wrote --

7 THE COURT: His writings.

8 MS. LEXIS: Okay. And I -- I would --

9 THE COURT: His writings prior to the engagement. If he -- okay. If
10 there's work --

11 MS. LEXIS: But I -- I would also respectfully ask for yet another
12 clarification. Because Your Honor indicated that we were not entitled to his
13 writings pertaining to his testimony on certain issues. I -- I beg to differ. I think
14 Judge Herndon's rulings, or his order, was a little bit more broad. If he is relying
15 on -- if he is relying on research and other items, data in -- in the writings, and
16 he's using that data in his writings and he's using that to form an opinion here and
17 render an opinion, we have not been provided that information, either.

18 What we have been provided, Your Honor, are those three articles
19 concerning showup identification. And so I -- I have not been provided with
20 anything else, particularly concerning the main focus of his -- of his testimony.

21 THE COURT: So let me ask the defense.

22 Did he rely upon any of his writings for purposes other than acquiring
23 general knowledge of the subject matter that he's going to testify to?

24 MR. GASTON: I don't even actually think he relied on the three
25 articles we provided. We -- we talked to him on the phone and told him, look,

1 we've got to turn over articles that you're relying on, anything you're going to
2 review in preparation of your testimony, we've got to give it to the State, so you've
3 got to get it to us.

4 THE COURT: Oh.

5 MR. GASTON: He sent us back an e-mail Thursday morning saying, I
6 think it was a one-sentence -- they have a copy of this e-mail. The e-mail said --

7 THE COURT: Okay.

8 MR. GASTON: -- in addition to the general consensus in the scientific
9 community, here are some articles that summarize kind of the positions.

10 THE COURT: I looked at all of his articles and I didn't see any that
11 referenced -- I didn't see the term showup in any of the names of any of the
12 articles.

13 MS. LEXIS: Correct.

14 THE COURT: So I would -- I would imagine that anything that he's
15 relying upon is only those three new things. The showup articles.

16 MS. LEXIS: I would hope so.

17 MS. MACHNICH: Yeah.

18 MR. GASTON: Yeah, I mean that's a -- a couple of them were, like, a
19 chapter from a book about different identification procedures, pros and cons of
20 showups. I mean, I've read through some of them. I'm just saying, whether he
21 relied on these specifically or whether he just gave them to us --

22 THE COURT: Yeah.

23 MR. GASTON: -- as, like, a representative kind of the subjects he's
24 talking about, I don't know. I told the expert everything you're looking at to refresh
25 your memory or to know in order to get ready for testimony, you've got to give us.

1 He sent us that one line that they have about he's relying on the general
2 consensus in the scientific community --

3 THE COURT: Yeah.

4 MR. GASTON: -- and here's some articles.

5 MS. LEXIS: What's the consensus?

6 THE COURT: Yeah. What's the consensus?

7 MR. GASTON: An expert of 31 years --

8 MS. LEXIS: What's the consensus in the scientific community?

9 MR. GASTON: -- he probably just knows stuff.

10 MS. LEXIS: We don't have anything.

11 MR. GASTON: In my vast three --

12 THE COURT: Yeah, I know. But that's the purpose of a trial, right, to
13 find out? You know, the expert doesn't have to reveal --

14 MS. LEXIS: Actually, he does.

15 THE COURT: -- how he arrived at every single opinion. I don't --

16 MS. LEXIS: Actually, he does. If he is going to render an opinion and
17 the court's already ordered --

18 THE COURT: State's never done that. I've done a lot of trials and the
19 State -- usually the State doesn't even tell me what the opinions are going to be.
20 They just say what the subject matter is going to be.

21 MR. GASTON: Exactly.

22 MS. LEXIS: That's true. However --

23 THE COURT: You can't have a double standard.

24 MS. LEXIS: However, Your Honor, there was an order by Judge
25 Herndon that these items be -- be turned over due to the late nature of the

1 supplemental notice of experts.

2 THE COURT: No. The only --

3 MS. LEXIS: I'm entitled to these items that he relied upon.

4 THE COURT: No, Herndon -- Herndon -- only -- only if he relied upon
5 them, not if it's -- not if it's just something that he wrote in the past which formed
6 his general knowledge. I thought I was clear. Let me -- let me be clear again. All
7 right. Because I think I understand where Ms. Lexis is going with this.

8 And look, if he -- after his engagement, you guys all listening to
9 this? All right. After his engagement, if he relied upon some document, all right,
10 in forming his opinions, relied on it for getting -- for data, statistics, analysis, some
11 particular document after he was engaged to form his opinions, you have to
12 produce it.

13 MR. GASTON: Yes, sir.

14 THE COURT: All right. You don't just have -- I don't interpret Judge
15 Herndon's order requiring him to produce all of his writings that formed the basis
16 of his general knowledge.

17 But, Ms. Lexis, I think this is where you get the protection you need.
18 If, after he was engaged, if he went back to one of his writings to refer to it and
19 rely upon it in forming his opinions, then they had a duty to produce it.

20 MS. LEXIS: Okay.

21 THE COURT: And I'm sorry if I wasn't clear initially on that.

22 MS. LEXIS: I understand now. Thank you.

23 MR. GASTON: That's our understanding.

24 THE COURT: But if it's just his general knowledge and it's just in his
25 general scope of knowledge at the time he was retained and something he wrote,

1 he didn't have to produce it. If he turned to it after he was engaged, all right, and
2 decided he's relying on it, using it, right, then you had a duty to produce it.

3 MR. GASTON: And that was my --

4 THE COURT: I think that's -- I think that's consistent with how
5 everybody handles in the civil world and the criminal world handles their experts.
6 And I don't think Judge Herndon meant anything different than that.

7 MR. GASTON: And for the record, that was my understanding of the
8 order. That's what I told him. I received the documents on Thursday and sent
9 them to the State.

10 I will, when we talk to this witness again when he gets here in pretrial,
11 I will double check one more time that he didn't rely -- that he didn't turn on
12 Monday night and look at a new article. If he did, I will disclose them and they
13 can take as much time as --

14 THE COURT: Might be too late then, but we'll see.

15 MS. MACHNICH: Right. And that might be something where he
16 might not be able to testify to the contents thereof.

17 MR. GASTON: But either way, we can make a record and I will
18 double check again, just so we can make this record, again, before he testifies
19 that --

20 THE COURT: Yeah.

21 MR. GASTON: -- to my understanding, we have complied fully with
22 our obligations.

23 THE COURT: I don't want him to come in and say, you know, as I
24 said clearly in my article back in, you know, 2006 --

25 MR. GASTON: I don't think he's going to.

1 THE COURT: -- you know, A, B, C and D and, you know, and -- and I
2 reviewed this, you know, to prepare for my testimony, then that would be -- that
3 would be unfair to the State.

4 MS. MACHNICH: That's fair.

5 MR. GASTON: And I'll double check. I don't think he is, but I'll double
6 check again before we actually call him, so the first time we hear about it isn't
7 when he testifies.

8 THE COURT: Are we all on the same page, then?

9 MS. LEXIS: Just one more thing. I guess --

10 THE COURT: Of course.

11 MS. LEXIS: -- what I'm asking for --

12 THE COURT: Yeah.

13 MS. LEXIS: -- I mean, what's the remedy? Let's say this plays out in
14 such a way where I say -- where he gives -- he renders an opinion on direct
15 examination. The jury's heard it. Okay. At this point, it's really difficult to un-ring.
16 Now, I come up on cross-examination and I say, Sir, what did you rely on to get
17 this particular opinion as you're rendering in this particular case? And he says
18 something to the effect of, Well, I actually relied on this study from 2010 labeled
19 such-and-such, and it says here that 80 percent of people focus on the weapon
20 as opposed to the face, and so there's a fallibility of whatever rate. Okay. Now,
21 I'm without a remedy.

22 THE COURT: Suppose that happens? What -- what should we do if
23 that happens?

24 MS. LEXIS: I would move to -- to exclude his entire testimony as not
25 having complied with my -- with discovery.

1 THE COURT: Okay.

2 MR. GASTON: I would say the remedy would be move to strike the
3 statement. And besides, I'm going to double -- I'm going to tell the witness, the
4 same way they do with their witness, and the witness says something that they're
5 admonished not to. I'm telling this guy, do not testify about anything that you
6 would have relied on other than the stuff that you disclosed to us. If he does
7 something different, I mean, I can't say his words for him.

8 THE COURT: If he -- so if he violates the court order, I probably
9 should strike everything as a sanction --

10 MR. GASTON: Probably not.

11 THE COURT: -- right?

12 MR. GASTON: I think that's draconian. I think you would strike the
13 erroneous statement, or we take the statement and see how prejudicial it is.

14 THE COURT: How does the jury -- it's difficult for the jury to parse
15 out, you know --

16 MS. LEXIS: I agree.

17 THE COURT: -- the permissible scope from the impermissible.

18 MR. GASTON: It depends -- it depends what kind of statement it is. I
19 mean, if it's something that's not super critical, then --

20 THE COURT: Yeah.

21 MR. GASTON: -- it's not a big deal.

22 THE COURT: Tell you what -- tell you what you should do, because
23 we're speaking in, like, hypotheticals, just admonish him not to testify about
24 anything that -- I mean, if he relied upon something that wasn't produced, he
25 better not testify to it.

1 MR. GASTON: I agree. What I'm afraid the -- what I'm afraid State is
2 trying to do, okay, and if they're not trying to do this, then I'm sorry for impugning
3 their honor --

4 THE COURT: Okay.

5 MR. GASTON: -- but what I'm afraid they're trying to do by this order,
6 is they're going to very narrowly construe it and we're going to have 19 objections
7 during his testimony, because they're going to try to source every single
8 statement --

9 MS. LEXIS: That's right.

10 MR. GASTON: -- that he says. And they're basically taking his 31
11 years of expertise and narrowing it down to the three or four articles that he gave
12 and sent over. The answer that they suggested that he gives is, I reviewed this
13 study which said 80 percent of X. That's clearly not okay.

14 THE COURT: It's very --

15 MR. GASTON: But what if --

16 THE COURT: This is -- Mr. Gaston, it's very -- it's very simple. First
17 of all, we don't even get into this issue unless he looked at, reviewed the
18 document.

19 MR. GASTON: That's my point.

20 THE COURT: If he didn't review it, it's not going to be an issue.

21 MR. GASTON: That's my --

22 THE COURT: Now, sometimes experts review it and then I get the
23 issue whether he relied upon it. Generally, I have a presumption that if he
24 reviewed it, he relied upon it and I put the burden on the expert to prove he didn't
25 rely upon it. But if he didn't even review it, all right, then you don't got a problem.

1 MR. GASTON: That's my entire position.

2 THE COURT: All right. If he reviewed something, then we could
3 have a problem.

4 MR. GASTON: That's my -- I've -- that's my position.

5 THE COURT: So make sure -- so I think as an initial matter, you
6 should find out what he looked at to prepare for his testimony.

7 MR. GASTON: And I'll double check.

8 THE COURT: If he looked at --

9 MS. LEXIS: And I would ask that that be the question posed to their
10 expert. What did you look at? Because I don't want them necessarily giving him
11 a heads up that he can't testify to certain things, thus causing him to say well, I
12 didn't look at anything. I think it needs -- the inquiry needs to be, what did you
13 look at, what documents, what articles, what publications, what this. It should be
14 an opened-ended question.

15 THE COURT: Can you ask him that on cross?

16 MS. LEXIS: I -- I absolutely will. I do plan --

17 THE COURT: Why don't you ask him that on cross and then if he -- if
18 he says he looked at something that he didn't mention on direct, then we're going
19 to have a problem. So.

20 MS. LEXIS: Okay.

21 THE COURT: All right?

22 MS. LEXIS: Understood.

23 MS. MACHNICH: I mean, is it -- is it the court's order that we can't
24 ask our -- I mean, because our intention is to fully ask him all of these questions
25 and to make sure that --

1 THE COURT: Yeah, you can ask him all these questions.

2 MS. MACHNICH: -- nothing improper is going on. But it also sounds
3 like the State wants to bait him on the stand of, like, well, what did you review in
4 preparation for this? Our understanding is that a lot of his knowledge is the
5 knowledge that he's obtained over 31 years.

6 MR. GASTON: I don't think he reviewed anything prior to testifying, is
7 what I'm saying.

8 MS. MACHNICH: Yeah.

9 MR. GASTON: It's like asking me to testify as an expert on *Petrocelli*.
10 I don't think he reviewed anything other than what we sent him. I think he just
11 knows stuff in the 31 years.

12 THE COURT: Yeah, so we're kind of --

13 MR. GASTON: That's what I'm saying.

14 THE COURT: -- we're kind of trying to -- we're kind of like creating an
15 issue that doesn't exist, right?

16 MS. MACHNICH: Right. It just -- it just sounds like what the State
17 wants to do is, well, what exactly did you --

18 THE COURT: Well, let's --

19 MS. MACHNICH: -- rely upon --

20 THE COURT: Let's -- let's done impugn --

21 MS. MACHNICH: -- so he quotes something he knows.

22 THE COURT: Well, but you're allowed to, you know -- I've dealt with
23 a lot of experts that -- that have questionable tactics. And so that's the whole
24 purpose of cross-examination. I -- I don't want to -- I don't want to put any
25 limitations on cross at this point.

1 MS. LEXIS: Thank you.

2 MS. MACHNICH: And that's fine, as long as, you know --

3 THE COURT: Okay.

4 MS. MACHNICH: -- yes, we understand your order. That's fine.

5 MR. GASTON: Just --

6 MS. MACHNICH: We're good. No, we're good.

7 THE COURT: Okay.

8 MS. MACHNICH: He's been very clear.

9 MS. LEXIS: Thank you.

10 MR. GASTON: It's just a different position to get up -- let's say he

11 says something about weapons bias; how do you know that weapon bias even

12 exists? Well, okay, in 31 years he's been talking about weapon focus. So if

13 they're questions like that, then he's going to reference stuff that he's known

14 for 31 years. Like -- and there's a difference between --

15 THE COURT: That's not -- Mr. Gaston, that's not a problem. But if he

16 says, I know about weapons bias because I looked at this article just two weeks

17 ago preparing for my testimony, and you didn't produce that article that -- that he

18 wrote, there is a problem.

19 MR. GASTON: I'd agree with that. Okay. Thank you.

20 THE COURT: I think I'm clear, right, guys?

21 MS. MACHNICH: Yes. You're clear.

22 THE COURT: Clear?

23 MS. MACHNICH: Yes.

24 THE COURT: Okay. All right. So let's go have lunch and then 1:15?

25 MS. LEXIS: Sounds good.

1 MS. MACHNICH: Sounds good. Thank you, Your Honor.

2 THE COURT: All right. Thank you guys.

3 [Court recessed for lunch at 12:09 p.m., until 1:34 p.m.]

4 [Outside the presence of the jury.]

5 THE COURT: All right. *State vs. Valentine*, we're ready to go?

6 MS. LEXIS: We are, Your Honor. Thank you for the indulgence. We
7 are testing our equipment.

8 THE COURT: It's okay.

9 MS. LEXIS: To make sure it was going.

10 MS. MACHNICH: And yes, we just received copies of the redacted
11 calls. Just for the record though, we haven't had a chance to go through and
12 listen to them and make sure that it comports. But if --

13 THE COURT: Well, let's hope they match. Okay.

14 MS. MACHNICH: Okay. We just received them as we walked back
15 from lunch, so.

16 THE COURT: All right. Thank you.

17 All right. Marshal, let's bring the --

18 Are we ready for the jurors, then --

19 MS. LEXIS: We are.

20 THE COURT: -- Ms. Lexis?

21 Okay. Yeah, hold on. The -- yeah. Just because my memo that I did
22 on what I was redacting and what I'm letting in, I want that to be part of the record.
23 Which I was having it marked, the e-mail I sent you guys as a court exhibit, so it's
24 reflective of any analysis in case this ever goes up on appeal. All right.

25 MS. MACHNICH: Thank you.

1 MS. LEXIS: And for the record, we did e-mail the court and defense
2 counsels the three calls, the transcripts, after the redactions, 52231998,
3 transcripts for 52215429, and transcript 52229515, before the break so everyone
4 would have an opportunity to double-, triple-check --

5 THE COURT: Yes.

6 MS. LEXIS: -- whether that comported with the court's order. And we
7 have not received any word that it did not.

8 THE COURT: And the court did check and the court is satisfied that
9 complies with my order. So -- and it's -- and both sides made various -- various
10 positions and your positions are of record, not waived. All right. Thank you.

11 Let's go ahead and bring the jurors in.

12 [Jury reconvened at 1:36 p.m.]

13 THE COURT: Thank you. All right. Everyone may be seated and the
14 State may call its next witness.

15 MS. LEXIS: The State calls William Majors.

16 THE COURT: Detective?

17 MR. MAJORS: Yes, sir.

18 THE COURT: Okay. The court clerk here will administer the oath.

19 **WILLIAM MAJORS**

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

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

23 THE WITNESS: My name is William Majors, W-I-L-L-I-A-M,
24 M-A-J-O-R-S.

25 **DIRECT EXAMINATION**

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1 BY MS. LEXIS:

2 Q Good afternoon, sir.

3 A Good afternoon.

4 Q Sir, how are you employed?

5 A I am employed with the Las Vegas Metropolitan Police Department as
6 a detective.

7 Q How long have you been a detective?

8 A I've been a detective approximately 10 years.

9 Q Are you assigned to a particular area command or a particular division
10 with Metro?

11 A Yes, ma'am. I'm assigned to Bolden Area Command.

12 Q So have you been a detective -- for all the times that you were a
13 detective, were you with Bolden Area Command?

14 A No, I was not.

15 Q Okay. Where were you prior to that?

16 A Prior to that I was in the Gang Unit, and after that I spent five years in
17 the Violent Crimes.

18 Q Okay. And then prior to that, were you with patrol?

19 A I was.

20 Q Okay. So how many years total with Metro?

21 A Sixteen years.

22 Q Okay. But three as a detective? How many as a detective.

23 A No. Been employed 16 years, as a detective for 10, six with patrol.

24 Q Okay. Perfect. Where you employed as a detective with Metro during
25 the month of May, 2016?

1 A I was, yes, ma'am.

2 Q Were you a detective with the Bolden Area Command?

3 A I was.

4 Q Detective, as a detective with the Bolden Area Command, do you work
5 in squads?

6 A We do.

7 Q Okay. How many were in your squad during that particular month and
8 year?

9 A We had approximately five people in our squad that day.

10 Q Okay. Would that include Detective Edelman?

11 A Yes, it was.

12 Q Detective Ludwig?

13 A Yes.

14 Q Detective Ubbens?

15 A Yes.

16 Q Yourself?

17 A Yes.

18 Q Did I forget someone else?

19 A I want to say there was one more person from graveyard, but I'm not
20 quite sure.

21 Q Okay.

22 A Don't remember the name.

23 Q All right. And as detectives, do you work with patrol officers?

24 A We do, ma'am.

25 Q As the particular -- is the valley divided into different units or different

1 area commands?

2 A It is. After decentralization, yes. It's -- detectives were sent out to
3 different area commands.

4 Q So the Bolden Area Command, there are officers and patrol officers
5 assigned to that area command, correct?

6 A Yes, ma'am.

7 Q And there are also detectives and squads assigned to that area
8 command, correct?

9 A Yes.

10 Q Okay. Along with numerous other Metro personnel?

11 A Yes, ma'am.

12 Q Okay. So you were employed with Bolden as a detective
13 May 26th, 2016?

14 A Yes.

15 Q Okay. During that time, did you become aware of a robbery with a
16 victim by the name of Marvin Bass?

17 A I was.

18 Q Okay. I am going to approach with what has been previously marked
19 as State's 180.

20 MS. LEXIS: May I approach?

21 THE COURT: Yes.

22 BY MS. LEXIS:

23 Q Sir, do you recognize what's depicted in this photograph?

24 A That's Marvin Bass.

25 Q Okay.

1 MS. LEXIS: Permission to approach State's Exhibit 180 -- or admit
2 State's Exhibit 180?

3 MS. MACHNICH: No objection, Your Honor.

4 THE COURT: You mean, publish? You may, yes.

5 MS. LEXIS: Thank you.

6 BY MS. LEXIS:

7 Q So May 26th, 2016 you become aware of a robbery involving Mr. Bass,
8 correct?

9 A I do.

10 Q And ultimately, I guess, let me back up. You become the lead
11 detective in a series of robberies, one which occurs May 26th, 2016, and four
12 additional robberies which occur May 28th, 2016, correct?

13 A Yes, ma'am.

14 Q And as the lead agent, you are pretty much leading your squad
15 concerning this investigation, correct?

16 A I am responsible for what happens on scenes. I am responsible for
17 who is assigned to do what.

18 Q Okay. And also you're responsible for kind of keeping track of what
19 patrol is doing, what detectives are doing; is that fair to say?

20 A Yes. And be able to put it together and present it.

21 Q Okay. And so was the detective unit, your squad, called to assist in
22 the May 26th, 2016 robbery involving Marvin Bass?

23 A Yes, I was.

24 Q Where did that particular incident occur?

25 A That happened at the Discount Mall right off of Rancho and

1 Washington.

2 Q Okay. Do you recall approximately what time the 911 call came in?

3 A About 12:49, 12:40-ish.

4 Q Okay. Were you aware of a suspect description being given by
5 Mr. Bass?

6 A Yes, I was.

7 Q Okay. And all of this -- I'll lay the foundation now. All of the
8 information you obtained from each of the victims in each of the robberies in this
9 particular series that you are investigating, you're using that information to
10 determine what you are going to do with your investigation; is that fair to say?

11 A That is correct.

12 Q Okay. So Mr. Bass gave you a suspect description?

13 A Yes, he did.

14 Q Okay. And he also gave -- we indicated that he called 911, correct?

15 A Yes.

16 MS. LEXIS: Court's indulgence.

17 Q Was Mr. Bass's robbery given a particular event number?

18 A Yes, it was. It was separate.

19 Q Okay. Do you recall the event number for Mr. Bass's robbery incident?

20 A I know it happened on the 26th. I don't have the exact the event
21 number.

22 Q Okay. Would looking at the CAD log refresh your memory?

23 A Yes, ma'am.

24 Q It's page 1 of the CAD log.

25 MS. LEXIS: May I approach?

1 THE COURT: Yes.

2 MS. LEXIS: Thank you.

3 THE WITNESS: Yes.

4 BY MS. LEXIS:

5 Q Okay. What was the event number for Mr. Bass?

6 A 160526002159.

7 Q Okay. And we've had previous testimony concerning this, but an event
8 number is basically the year, the month, the date and the number of the call,
9 correct?

10 A Yes.

11 Q So in this case, May 26th, 2016, the call number or event number
12 being 2109?

13 A Yes, ma'am.

14 Q It was 2109th call Metro took that day?

15 A That day, yes.

16 Q Okay. And so my initial question was: Did Mr. Bass give 911, when
17 he called 911, a description of the suspect?

18 A Yes, he did.

19 Q And also the suspect vehicle?

20 A Yes.

21 Q Off the top of your head, do you recall specifically the description given
22 by Mr. Bass in the 911 call?

23 A Tall black male adult, a vehicle was a white unregistered four-door.

24 Q Okay. Do you recall whether Mr. Bass was able to give, like, an
25 approximate year description in terms of how old the suspect was?

1 A I don't recall. I don't remember. I'd have to look at that.

2 Q Okay. Would looking at your CAD refresh your memory as to the
3 exact description given by Mr. Bass in the 911 call?

4 A Yes, ma'am.

5 Q Thank you.

6 MS. LEXIS: Permission to approach, page 1 and page 2.

7 THE COURT: Yes.

8 BY MS. LEXIS:

9 Q Sir, I'm handing you the CAD with the event number we've been
10 speaking. Does the first page of CAD indicate the description of an individual, the
11 individual who robbed Mr. Bass?

12 A Yes.

13 Q What does it say?

14 A It says BMA, which stands for black male adult, 20 years, six foot, 150
15 pounds, short afro, unknown clothing.

16 Q Okay. And does this particular CAD also give a further description
17 concerning the vehicle and all -- also the clothing of the suspect?

18 A Yes. Model is a small white, two-door, negative plate, subject, black
19 male adult, 25 years, medium cut afro, dark clothing.

20 Q Okay. And on the second page, were you given a specific description
21 by Mr. Bass of the suspect, and did you subsequently log it into the CAD log?

22 A I did. And that's my call sign, Paul David 57.

23 Q Okay. What was the description given to you that you outlined in
24 CAD?

25 A Suspect, black male adult, 24 to 25 years, 5-foot-11 to 6-foot-1, thin

1 build, gray shirt, short sleeve, dark pants, armed with a Glock, possible .9mm,
2 was left-handed, white Ford Fiat or Kia.

3 Q Okay. And so after you make contact with -- you make contact with
4 Mr. Bass; is that right?

5 A Yes, ma'am.

6 Q Do you actually do a taped interview with him on May 26th, 2016, at
7 approximately 1:24 p.m.?

8 A Yes, I did a taped interview.

9 Q Thank you. And so after the 911 call and after the taped interview, you
10 had an idea of a suspect description and also a vehicle description?

11 A Yes.

12 Q From that initial robbery; is that right?

13 A Yes, ma'am.

14 Q Okay. Still while working as a detective with Bolden Area Command
15 on May 28th, 2000, and -- let me back up. Concerning Mr. Bass's event
16 May 26th, 2016, what items were taken?

17 A Gold jewelry, like a gold necklace that was around his neck.

18 Q Two gold necklaces?

19 A Yes.

20 Q And they also had chains?

21 A Yes.

22 Q Okay. So that was an outstanding -- those were some outstanding
23 items?

24 A We never recovered it.

25 Q Okay. So then fast forward two days. May 28th, 2016, did you get

1 indication or notification of a robbery that occurred at 2605 Rising Legend here in
2 Las Vegas, Clark County, Nevada?

3 A Yes, I did.

4 Q And were the victims in that particular case listed as Deborah and
5 Darrell Faulkner?

6 A Yes, they were.

7 MS. LEXIS: Court's indulgence. Mr. Dickerson is going to help me
8 out here finding some exhibits. Okay.

9 Q So 2605 Rising Legend, Las Vegas, Clark County, Nevada, do you
10 recall the 911 call coming out at 6:53 a.m.?

11 A Yes, ma'am.

12 Q Pursuant to CAD?

13 A Yes.

14 Q Sir, what is CAD?

15 A CAD is, basically, a log of our audio radio frequencies, talking
16 interception back and forth between officers, between dispatch. We get notified of
17 events or things that are pending and we respond to it, and they -- they record it
18 and you can also get written recordings of such items.

19 Q Okay. So if someone were to call 911, the dispatcher would kind of list
20 out in shorthand what's being told to them by the 911 caller?

21 A Yes.

22 Q And similarly, what's being told to the dispatch by officers and/or
23 detectives?

24 A Yes.

25 Q It's kind of a memorialization of everything that's occurred?

1 A Yes.

2 Q That is brought to dispatch's attention?

3 A Yes, ma'am.

4 Q Okay. So it's kind of a record keeping?

5 A Yes.

6 Q Okay. Going to show you State's Exhibit No. 7. Drawing your
7 attention to right here, sir; do you see that?

8 A Yes. That is 2605 Rising Legend.

9 Q Okay. And this is in the Bolden Area Command; is that right?

10 A It is.

11 Q Okay. So at about 6:53 a.m., a 911 call comes out to this particular
12 location; is that right?

13 A That is correct.

14 Q Okay. And were detectives made aware of this particular incident?

15 A They were.

16 Q Okay. Were detectives and/or patrol -- or was a 911 call placed?

17 A Yes. At that location, patrol officers responded and I responded.

18 Q Okay. During the 911 call, was a description given of the individual
19 described as the robber by Mr. Darrell Faulkner?

20 A Yes.

21 Q As you sit here today, do you recall specifically what Mr. Faulkner
22 told 911?

23 A I would have to look at CAD, but it was a black male adult.

24 Q Okay.

25 A Thin build.

1 MS. LEXIS: Permission to approach, Your Honor. Page one of CAD
2 ending in 116, Bates stamp 70.

3 MS. MACHNICH: And Your Honor, may we approach now?

4 THE COURT: Sure.

5 MS. MACHNICH: Thank you.

6 [Bench conference transcribed as follows.]

7 THE COURT: Yeah?

8 MS. MACHNICH: I'll wait till everybody gets here.

9 This is improper. She -- it seems like she's going through and having
10 him read the CAD logs from each and every one. I don't know what she thinks
11 she's getting it in under. But, I mean, generally speaking, the general -- a general
12 description, yes, going forward. But if she thinks that she's going to get into all the
13 details in all these CAD logs, there has to be an actual exception for the hearsay
14 and, you know, I don't --

15 THE COURT: You didn't object under Bass. Why now you're
16 objecting?

17 MS. MACHNICH: Well, we were discussing it --

18 MR. GASTON: [Indiscernible] the motions every single case.

19 MS. MACHNICH: Yeah. This is --

20 THE COURT: Okay.

21 MR. GASTON: -- special [indiscernible].

22 MS. MACHNICH: Right.

23 THE COURT: So does this implicate hearsay? You're introducing
24 out-of-court statements, right? For what purpose?

25 MS. LEXIS: Your Honor, it's prior consistent statements stain and

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1 also to prove the knowledge, not being offered to prove the truth of the matter
2 asserted, but to prove the knowledge that this detective had going into the
3 investigation. He is the case agent going from beginning to end. The
4 descriptions given, the descriptions that he was aware of, play directly into what
5 he does, why he does it, and why he ultimately arrests this person.

6 THE COURT: The descriptions are already into evidence from the
7 victims, right?

8 MS. MACHNICH: So -- also relevance.

9 MR. GASTON: The descriptions through the CAD call -- CAD logs,
10 first of all. Second of all --

11 THE COURT: Do these descriptions come from the victims, the ones
12 in the CAD calls?

13 MR. GASTON: Allegedly in the CAD calls.

14 MS. LEXIS: And in the 911 call.

15 THE COURT: So --

16 MS. MACHNICH: If they're going to stop after the 911, it's a little bit
17 different.

18 THE COURT: I thought they came from the victims?

19 MR. GASTON: The victims?

20 THE COURT: Yeah.

21 MR. GASTON: The -- the descriptions?

22 THE COURT: Yeah.

23 MR. GASTON: Yes. But those descriptions came from the CAD logs
24 that were not brought out during testimony. That is hearsay. And then with
25 respect to the --

1 THE COURT: Well, you'd have to give me -- if there's a specific
2 example --

3 MS. MACHNICH: We'll see if we get there.

4 THE COURT: -- that might be prejudicial, because it's something that
5 we haven't heard already and it hasn't been subject to cross-examination.

6 MS. MACHNICH: Right.

7 MR. GASTON: My understanding is that is exactly what's about to
8 come out the next sentence.

9 MS. LEXIS: Actually, may I make an offer of proof?

10 THE COURT: Why don't you show -- why don't you make an offer of
11 proof.

12 MS. LEXIS: This is exactly what's said by Mr. Faulkner, during
13 his 911 call, which is, by the way, admitted as evidence.

14 MR. GASTON: That fine, but that's not [indiscernible]. I still think it's
15 hearsay. I just don't think it's anything different [indiscernible].

16 THE COURT: Well, but it's not being offered to prove the truth of the
17 matter asserted. The testimony has already come in from Mr. Faulkner -- or is it
18 Mr. Faulkner?

19 MS. LEXIS: Mr. Faulkner. Uh-huh.

20 THE COURT: To prove the truth of the matter asserted. So this is
21 coming in for a different purpose, just to prove that he got that information.

22 MR. GASTON: I don't see any prejudice related to that. That's not --
23 what we're worried about is using the CAD logs, introducing the description to
24 them --

25 THE COURT: Yeah, I don't want new descriptions coming in.

1 MS. LEXIS: This is all --

2 THE COURT: If it's going to be a new description, give them a heads
3 up and see --

4 MS. LEXIS: Absolutely.

5 THE COURT: Okay.

6 MS. LEXIS: Thank you.

7 THE COURT: Thank you guys.

8 [End of bench conference.]

9 BY MS. LEXIS:

10 Q Was the Faulkner robbery at 2605 Rising Legend giving -- given an
11 event number?

12 A Yes, it was.

13 Q Do you recall, specifically, what that event number is, off the top of
14 your head?

15 A No, I do not.

16 Q Okay. So now --

17 MS. LEXIS: Permission to approach with page 1 of the CAD log --

18 THE COURT: Yes.

19 MS. LEXIS: -- Bates stamp 70.

20 THE COURT: Okay.

21 BY MS. LEXIS:

22 Q Sir, first, I'd like you to take a look at this CAD log and indicate to me
23 whether it refreshes -- whether looking at it would refresh your memory
24 concerning the event number for the Faulkner robbery?

25 A Yes, it does.

1 Q What is it?

2 A 160528001116.

3 Q Okay. And, previously, before we approached the bench, I asked you

4 if a description was given by Mr. Faulkner during the 911 call placed of the

5 robber?

6 A Yes, there was.

7 Q And whether you recalled it off the top of your head, and you indicated

8 you would need to look at the CAD log --

9 A Yes.

10 Q -- to refresh your memory?

11 A For exact description per CAD, I'd have to look at it.

12 Q Okay. Showing you State's -- excuse, page one of the CAD log Bates

13 stamped 70, could you please tell us what descriptions was given by

14 Mr. Faulkner?

15 A BMA, stands for black male adult, 18 to 19 years of age, small build,

16 black shorts, blue jeans -- excuse me, black shirt, blue jeans, blue tennis shoes.

17 Q Okay. And you indicated that you actually went to this particular

18 location, correct?

19 A I did.

20 Q And you interviewed Mr. Faulkner, correct?

21 A I did.

22 Q While you were interview Mr. Faulkner, did you obtain additional

23 information considering -- concerning the -- whether the individual was left- or

24 right-handed?

25 A I did.

1 Q What was he?

2 A Left-handed.

3 Q Okay. And you noted that in the CAD log, as well?

4 A I did.

5 Q Did you take a recorded statement from Mr. Faulkner?

6 A I did.

7 Q And do you recall that being done at approximately 7:22 a.m.?

8 A Whatever I put in my report, yes, that's what I did. I don't remember
9 exactly.

10 MS. LEXIS: Permission to approach with Bates stamp 293, the first
11 page of Mr. Faulkner's voluntary statement, to refresh his memory as to the time
12 of the interview.

13 THE COURT: Very well.

14 MS. LEXIS: Thank you.

15 BY MS. LEXIS:

16 Q Sir, following page one, does that refresh your memory concerning the
17 date and time of the interview with Mr. Faulkner?

18 A Yes.

19 Q What is it?

20 A 0722 hour.

21 Q Okay. So 7:22 a.m.?

22 A Yes, ma'am.

23 Q On May 28th, 2016?

24 A That is correct.

25 Q At some point, did you become aware that Mr. Faulkner's wife,

1 Deborah, was also present during the robbery?

2 A She was present.

3 Q Was a voluntary statement taken, a written voluntary statement, taken
4 from Deborah Faulkner?

5 A I don't recall the voluntary statement, but I did not do a taped
6 statement for a reason.

7 Q Okay. But okay, so let me ask you this: Did you do a taped statement
8 or recorded statement with victim, Deborah Faulkner?

9 A No, I did not.

10 Q Okay. And we'll get to the why in a minute. Did you also take Deborah
11 Faulkner up to do a showup once a certain suspect or suspects were taken into
12 custody?

13 A Did not.

14 Q Okay. Why?

15 A Reason being, she indicated to me that she had recently taken some
16 narcotics, which was prescribed to her, and I didn't want that to taint the
17 identification.

18 Q Okay. Did you at some point tell her or make a decision -- did you tell
19 her that you would come back and get a statement from her at a later time?

20 A I did.

21 Q Okay. Did you, in fact, do that?

22 A I did not, and there's a reason for that.

23 Q Okay. Why is that?

24 A When I talked to her, and when I talked to her husband, Darrell, made
25 it very clear that she was afraid.

1 MS. MACHNICH: I'm going to object as to hearsay and ask that that
2 be stricken from the record.

3 THE COURT: Want to proffer why that's --

4 MS. LEXIS: It's not being offered to prove the truth of the matter
5 asserted, but rather to explain why this detective didn't go back and obtain a
6 taped voluntary statement from this victim. This has been brought up as an issue
7 in this case and I think he's entitled to explain his reasoning. It's not being offered
8 to prove the truth, but rather why he did not do the follow-up interview with Ms.
9 Faulkner.

10 THE COURT: Response?

11 MS. MACHNICH: Your Honor, she was too scared to do a follow-up
12 interview days later? It just doesn't make any sense. It sounds like this is just the
13 way to get out of every hearsay exemption.

14 THE COURT: Well, I think it's a valid exception here and you can
15 cross-examine the victim or the -- I'm sorry, the detective about it. Overruled the
16 objection.

17 MS. LEXIS: Thank you.

18 BY MS. LEXIS:

19 Q What were you saying, Detective?

20 THE COURT: Whether she was too scared or not is not something
21 for you to determine based upon the detective's statements. All right. This
22 testimony is only being offered to explain what he did next. All right.

23 Go ahead.

24 THE WITNESS: So in these type of incidences, and especially if
25 there's a gun involved, a lot of people aren't used to this type of behavior and

1 don't know how to respond to it. And she was afraid to talk to me and I wasn't
2 going to pressure her.

3 BY MS. LEXIS:

4 Q And so that's why you didn't go back and do a follow-up interview with
5 her after this incident?

6 A Yes, ma'am.

7 Q Okay. Did you become aware that a certain -- that \$100 had been
8 taken from Mr. Faulkner?

9 A Yes.

10 Q Okay.

11 A Mr. Faulkner indicated that.

12 Q Okay. And so, first -- the first incident, State's Exhibit No. 7, over here
13 at 2605 Rising Legend, right?

14 A Yes.

15 Q At some point while you're working on the robbery at 2605 Rising
16 Legend, did you become aware of yet another robbery that occurred nearby?

17 A Yes.

18 Q Okay. Was that robbery now at 1508 Robin Street?

19 A It was.

20 Q Okay. Detective, approximately how far is 1508 Robin Street
21 from 2605 Rising Legend Way?

22 A Approximately three blocks -- excuse me, three or four blocks.

23 Q Okay. And in that particular incident, did we have the victim's name as
24 Jordan Alexander?

25 A Yes, it was.

1 Q And was a 911 call or an -- or an event number associated with Jordan
2 Alexander's incident generated?

3 A Yes.

4 Q That event number, do you recall it off the top of your head?

5 A No, I do not.

6 Q Okay.

7 MS. LEXIS: Permission to approach with Bates stamp 67, page one
8 of the CAD log?

9 THE COURT: Yes.

10 BY MS. LEXIS:

11 Q Sir, showing you page one, asking if it refreshes your memory?

12 A It does.

13 Q What is the event number associated with Jordan Alexander's
14 robbery?

15 A 160528001129.

16 Q Okay. And Mr. Alexander, to your knowledge, flagged down an officer,
17 correct?

18 A Yes, he did.

19 Q And gave an officer certain information?

20 A He did.

21 Q Okay. And this information was then placed into the CAD log, correct?

22 A It was.

23 Q And this was dispatched to all of Metro who was investigating this
24 particular incident?

25 A Yes.

1 Q And you became aware of it?

2 A I did.

3 Q And you remembered and took note of this information and it,
4 ultimately, affected the rest of your investigation?

5 A Yes.

6 Q Okay. So during the Jordan Alexander robbery, were you aware that a
7 handgun was also used?

8 A Yes.

9 Q Okay. This 911 call or, actually, the contact with Jordan Alexander, do
10 you have it dated at or timed at approximately 7:01 a.m.?

11 A Whatever it says on CAD.

12 Q Okay. Would it surprise you that it says 7:01?

13 A No.

14 Q Actually I want to make sure.

15 MS. LEXIS: May I approach?

16 THE COURT: Yes.

17 MS. LEXIS: Bates stamp 67.

18 BY MS. LEXIS:

19 Q What was the time of the calls initiations?

20 A 070116.

21 Q Okay. So 7:01 a.m.?

22 A Yes, ma'am.

23 Q Was there a description that you became aware of of a suspect
24 vehicle?

25 A There was.

1 Q Okay. Concerning Jordan Alexander, what did you know that suspect
2 vehicle to be described as?

3 A It was a white vehicle.

4 Q Okay. Do you remember any other specifics besides that?

5 A I would have to look at CAD.

6 Q Okay. Page one, Bates stamp 67, does looking at this page refresh
7 your memory?

8 A It does.

9 Q Okay. And what is it?

10 A Mazda 3, newer model, negative plates, time lapse is less than two
11 minutes.

12 Q Okay. And was there also broadcast a description of a firearm used?

13 A Yes, there was.

14 Q Okay. Would looking at it refresh your memory as to what, specifically,
15 it was broadcast as?

16 A Yes, ma'am.

17 Q Thank you. Same page.

18 A Small-frame handgun, unknown type.

19 Q Okay. Concerning Jordan Alexander, his wallet was taken, correct?

20 A Yes.

21 Q And did you know that as the details of the call came out?

22 A Yes.

23 Q Okay. Were you aware of an identification card being in that wallet?

24 A I did.

25 Q And certain other credit cards and other identity items?

1 A Yes, ma'am.

2 Q All right. Like to turn your attention to State's Exhibit No. 7. Going
3 down to the third address, 1312 Nye Street. While you were investigating 2605
4 Rising Legend Way, 1508 Robin Street, did there come yet another call, a robbery
5 call, now directing officers' attention to 1312 Nye Street?

6 A Yes, ma'am.

7 Q Okay.

8 THE COURT: Ms. Lexis?

9 MS. LEXIS: Yes, Your Honor?

10 THE COURT: Just want to interrupt you for a second. So I'm
11 allowing you to get in a lot of what would otherwise be hearsay that's in the CAD
12 logs, because you say that it's relevant to show what the -- how the detective
13 used that information and what he did next.

14 MS. LEXIS: Yes.

15 THE COURT: I'm trusting that you're going to connect this eventually
16 and explain how he used this information.

17 MS. LEXIS: Absolutely.

18 THE COURT: Otherwise, there would be an issue.

19 MS. LEXIS: Okay. Absolutely.

20 THE COURT: All right. Very good.

21 MS. LEXIS: Yes.

22 THE COURT: Thank you.

23 MS. LEXIS: Thank you, Your Honor.

24 BY MS. LEXIS:

25 Q Okay. So you get another call yet from 1312 Nye Street; is that right?

1 A Yes, ma'am.

2 Q And at some point, do you become aware of a victim by the name of
3 Santiago Garcia?

4 A Yes.

5 MS. LEXIS: May I approach with what's been previously marked as
6 State's Proposed Exhibit 181?

7 THE COURT: Yes.

8 MS. LEXIS: And actually also 178.

9 THE COURT: 181 and 178.

10 BY MS. LEXIS:

11 Q Showing you first State's Proposed Exhibit 178; do you recognize the
12 individual depicted here?

13 A Yes.

14 Q Who is this?

15 A That's Mr. Alexander.

16 Q Okay. Thank you. And State's Exhibit No. 181; do you recognize the
17 individual here?

18 A Yes, victim, Mr. Santiago?

19 Q Garcia?

20 A Excuse me, Garcia.

21 Q Okay.

22 A Apologize.

23 MS. LEXIS: Your Honor --

24 THE COURT: Who?

25 MS. LEXIS: I move to admit --

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1 THE COURT: Santiago Garcia, is that what he said?

2 MS. LEXIS: Yes, Your Honor.

3 THE COURT: Which one is that, 181 or 178?

4 MS. LEXIS: 181.

5 THE COURT: All right. Thank you.

6 MS. LEXIS: And 178, I move to admit 181 and 178 into evidence.

7 MS. MACHNICH: No objection, Your Honor.

8 THE COURT: All right. Admitted.

9 [State's Exhibit Nos. 178 and 181 admitted.]

10 MS. LEXIS: Okay. So just to publish briefly.

11 BY MS. LEXIS:

12 Q We were just talking about the robbery involving Jordan Alexander; is
13 that right?

14 A Yes.

15 Q And the robbery involving Santiago Garcia at 1312 Nye Street is
16 depicted in State's Exhibit 181; is that Mr. Santiago Garcia?

17 A Yes, ma'am.

18 Q Thank you. At the time of this particular call involving Santiago Garcia,
19 how many victims were you aware of?

20 A That day?

21 Q Yes.

22 A At least had three.

23 Q Okay. But just concerning the robbery at 1312 Nye Street, how many
24 victims were reported?

25 A When this was happening, it was one after the another.

1 Q Okay.

2 A You go to one scene and somebody else report another one.

3 Q Okay.

4 A So as it was happening, we had two, and then it turned to three and
5 then it turned to four.

6 Q Right. But we just talked about 2605 Rising Legend, right, with the
7 Faulkners?

8 A Yes.

9 Q We're talking about -- it was Debbie and Darrel. 1508 Robin Street,
10 that was Jordan Alexander?

11 A Yes.

12 Q 1312 Nye Street, a call was placed, and a victim identified as Jordan --
13 I'm sorry, Santiago Garcia, correct?

14 A Yes.

15 Q Was he the only victim identified in that particular incident?

16 A Was he the only victim in that incident?

17 Q Correct.

18 A Yes.

19 Q Okay. To your knowledge, was a CAD log or an event number
20 generated for the event concerning Santiago Garcia?

21 A There was.

22 Q Okay. Do you recall approximately what time the 911 call, if one was
23 made, came out?

24 A I don't remember the exact time. I'd have to look at CAD.

25 MS. LEXIS: Permission to approach with the CAD, just for the date

1 and the event number.

2 Q Does looking at this refresh your memory, Detective?

3 A Yes, ma'am.

4 Q What is the CAD number?

5 A CAD is going to be 160528001133.

6 Q Okay. And what is the date -- excuse me, the time that this call was
7 initiated?

8 A 070846 hours.

9 Q Thank you. So 7:08 a.m.?

10 A Yes.

11 Q So there are different event numbers being associated with each
12 robbery?

13 A Yes.

14 Q But are detectives, or are you, and patrol officers at this point, now
15 seeing some similarities between either the suspect description or a suspect
16 vehicle description, such that you're beginning to think this might be involving the
17 same perpetrator?

18 A Yes, ma'am.

19 Q Okay. Utilizing the same vehicle?

20 A Yes. Same vehicle and similar suspect description.

21 Q Okay. And so concerning the Santiago Garcia robbery, did you
22 become aware of a description concerning a suspect vehicle?

23 A I did.

24 Q Okay. Do you recall off the top of your head exactly what suspect
25 vehicle description was broadcast through CAD as reported by Mr. Santiago

1 Garcia?

2 A I would like to look at CAD to refresh my memory, please.

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

4 THE COURT: Yes, you may.

5 MS. MACHNICH: Thank you.

6 [Bench conference transcribed as follows.]

7 MS. MACHNICH: I don't want to draw a mistrial this far into a case.
8 The sentence that he's looking at runs right into some description that was not
9 given at trial. The police did not mention -- the police did not mention --

10 THE COURT: Can you highlight the part that was on, so I can take a
11 look at it? Let me see that. Yeah, that was given. I don't want that mentioned.

12 MS. LEXIS: I'm not mentioning that. I'm asking about the suspect
13 car, just --

14 MS. MACHNICH: It's in the same --

15 THE COURT: I see what it says about the car.

16 MS. MACHNICH: It's in the same sentence. I just want to be real
17 careful.

18 MS. LEXIS: As you can tell, Your Honor, I don't --

19 THE COURT: Just lead him so he doesn't mention that.

20 MS. LEXIS: Okay.

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

22 MS. MACHNICH: Thank you.

23 [End bench conference.]

24 BY MS. LEXIS:

25 Q Sir, were you given the description that the suspect vehicle concerning

1 the Santiago Garcia robbery was, in fact, a white Nissan four-door with unknown
2 plates?

3 A It was a white vehicle, yes.

4 Q Okay. With unknown plates?

5 A Unregistered.

6 Q Okay. Four doors?

7 A Right. Whatever it says on CAD. I don't remember verbatim.

8 Q Okay. You have no reason to disbelieve that?

9 A No.

10 Q Okay. Was a firearm mentioned being used as well?

11 A Yes, there was.

12 Q And did that description of the firearm match the description from the
13 other prior two robberies?

14 A Yes. Small-frame black firearm.

15 Q Okay. How about the clothing description; did that match as well?

16 A The clothing -- I don't remember the clothing description given to me,
17 that one.

18 Q Okay. Do you have reason to dispute Mr. Garcia reporting it as just all
19 black clothing?

20 A No, no.

21 Q To your knowledge was a cell phone and money taken from Santiago
22 Garcia?

23 A There was.

24 Q Okay. So now you're becoming aware of all of these that are -- that
25 have been taken from these various victims; is that right?

1 A Yes. From a short amount of time.

2 Q Okay. While you are working the robbery involving Santiago Garcia,
3 do you become aware of yet another robbery that occurred over at 1104 Leonard
4 Street?

5 A Yes.

6 Q Do you see that right here?

7 A Yes.

8 Q Okay. Approximately how far away is 1312 Nye Street to the 1104
9 Leonard Street?

10 A Give or take about two miles.

11 Q Okay. Did you become aware of Lazaro Bravo-Torres and his wife
12 Rosa Vazkuez Ramirez being victims in that particular robbery?

13 A I did.

14 Q Okay.

15 MS. LEXIS: Permission to approach with what's -- actually
16 permission to publish what's been marked and admitted as State's Exhibit 179?

17 THE COURT: Yes.

18 BY MS. LEXIS:

19 Q Do you recognize the person depicted in this photograph, sir?

20 A Yes.

21 Q Who is this?

22 A Mr. Torres.

23 Q Lazaro Bravo-Torres?

24 A Yes.

25 Q Okay. Are you aware of the exact time the call came for 911?

1 A I don't remember the exact time.

2 Q Would looking at the CAD log refresh your memory as to the time
3 the 911 call through?

4 A Yes, ma'am.

5 Q And also the event number, specifically associated with this robbery?

6 A Yes, ma'am.

7 MS. LEXIS: Permission to approach, Bates stamp 79, page 1.

8 THE COURT: Yes.

9 BY MS. LEXIS:

10 Q First, the event number, does that refresh your memory concerning the
11 event number?

12 A Yes, ma'am.

13 Q What is it, sir?

14 A 160528001147.

15 Q The time of the 911 call?

16 A 0715.

17 Q Thank you. Was a description of a firearm used given by Mr. Lazaro
18 Bravo-Torres?

19 A Yes.

20 Q Or his wife?

21 A Yes.

22 Q And you became aware of that?

23 A I did.

24 Q Did that description match the description of the firearm given by the
25 other victims previously?

1 A Yes, it did.

2 Q Okay. How about the -- a description of the suspect, was that given by

3 Mr. Lazaro Bravo-Torres or his wife?

4 A There was.

5 Q Okay. Did that match the description of the individual given for the

6 robberies involving the other three?

7 A Yes.

8 Q You -- now, we previously talked, and when you first talking about the

9 robbery involving Marvin Bass --

10 A Yes.

11 Q -- which happened two days prior, correct?

12 A Yes.

13 Q As you're getting descriptions from each of these robbery victims for

14 the incidents that occurred May 28th, 2016 do you at any point observe a

15 similarity between the descriptions given by the victims on May 28th, 2016, to the

16 descriptions being given by Mr. Marvin Bass on May 26th, 2016?

17 A I did.

18 Q Concerning the suspect vehicle, are you also drawing a similarity

19 between what's described May 28th, 2016, to what's described by Mr. Bass on

20 May 26th, 2016?

21 A Yes, ma'am.

22 Q Similarly with the firearm?

23 A Yes.

24 Q It's all pretty consistent?

25 A Black male adult, thin build, unregistered white vehicle.

1 Q Firearm?

2 A And a black firearm, yes, ma'am.

3 Q Concerning Rosa Vazkuez Ramirez and Lazaro Bravo-Torres, did you

4 become aware of a purse with a phone, some ID and some credit cards being

5 taken from Ms. Torres's purse?

6 A I did.

7 Q So now, we're talking about four separate incidents May 28th, 2016;

8 correct?

9 A Yes. And one on the 26th.

10 Q Okay. At some point, do you receive information from either Sergeant

11 Bilyeu or an officer with him, Officer Wise, concerning locating a possible suspect

12 vehicle?

13 A I did.

14 Q Okay. And what information did you receive?

15 A They found a white, unregistered vehicle at 1701 J Street and the hood

16 was still warm as if it had just been driven.

17 Q Okay. I'll actually -- State's Exhibit No. 7; do you see 1701 J Street

18 here?

19 A Yes, ma'am.

20 Q Okay. Towards the top right-hand portion of this exhibit?

21 A Yes.

22 Q Okay. What is the distance from 1104 Leonard Street to 1701 J

23 Street?

24 A About two to three blocks away.

25 Q Okay. Do you respond to 1701 J Street?

1 A I did.

2 Q Okay. And without telling us exactly what was said, did you make
3 contact with an individual by the name of Omara McBride?

4 A I did.

5 Q Did she approach you and other officers while you were in the
6 proximity of, what you believe to have been, the suspect vehicle?

7 A Yes, ma'am.

8 Q At 1701 J Street?

9 A Yes, ma'am.

10 MS. LEXIS: Permission to publish admitted State's 33?

11 THE COURT: Yes.

12 BY MS. LEXIS:

13 Q So were you near this vehicle when you were approached by
14 Ms. McBride?

15 A I was.

16 Q Okay. Did she claim some sort of connection or ownership to the
17 vehicle depicted in this exhibit?

18 A She said that was her vehicle.

19 Q Did she indicate whether anyone else --

20 MS. MACHNICH: I'm going to object as to hearsay at this point.

21 THE COURT: Sounds like it's leading to hearsay, so what do you --
22 what's the exception upon?

23 MS. LEXIS: I'm going -- I'm going to just tailor it.

24 THE COURT: Okay.

25 MS. LEXIS: I did start off --

1 THE COURT: Tailor it.

2 MS. LEXIS: -- without telling us -- without telling us exactly she said,

3 I'm going to give the detective the same admonishment.

4 THE COURT: Very good. Thank you.

5 MS. LEXIS: Thank you.

6 BY MS. LEXIS:

7 Q Detective, at some point, did you obtain information from Omara

8 McBride which caused you to turn your attention to a particular apartment?

9 A I did.

10 Q What apartment did it turn your attention to?

11 A Ms. McBride basically said this was --

12 MS. MACHNICH: I'm going to object again.

13 THE COURT: I got it.

14 MS. MACHNICH: I'm sorry.

15 THE COURT: Don't tell us what someone else told you.

16 THE WITNESS: Okay. I understand.

17 THE COURT: Unless it's a specific part of the question.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you. Can you rephrase the question, or restate

20 the questions?

21 BY MS. LEXIS:

22 Q After speaking with Omara McBride, did your attention become turned

23 to a particular apartment located at 1701 J Street?

24 A Yes, Apartment 118.

25 Q Okay. At some point, would you describe Ms. Omara McBride

1 detained?

2 A She was.

3 Q Okay. And when she was detained, was she placed in handcuffs?

4 A She was.

5 Q Okay. To your knowledge, Detective, was Ms. Omara McBride
6 searched?

7 A She was not searched.

8 Q Okay. Would she have been -- would a pat-down search have been
9 conducted as to Omara McBride?

10 A It would, just for easy access to weapons, anything that could hurt us.
11 But she was wearing very tight clothing and she was placed in handcuffs to keep
12 her from leaving the scene.

13 Q So fair to say no firearms were found, which is the purpose of a
14 pat-down?

15 A No. She was wearing very tight clothing.

16 Q Okay. At some point did you make contact or did an individual by the
17 name of Chanise Williams make contact with you?

18 A Yes, I did make contact with her.

19 MS. LEXIS: Permission to approach with State's 177?

20 THE COURT: Yes.

21 MS. LEXIS: Thank you.

22 BY MS. LEXIS:

23 Q Sir, I'm showing you States Proposed Exhibit 177; do you recognize
24 what's depicted here?

25 A This is Chanise Williams.

1 Q Okay. Does this fairly and accurately depict how she looks, as you
2 remember?

3 A Yes.

4 MS. LEXIS: Permission to admit State's Exhibit 177.

5 MS. MACHNICH: No objection.

6 THE COURT: Any opposition?

7 MS. MACHNICH: No.

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

9 [State's Exhibit No. 177 admitted.]

10 BY MS. LEXIS:

11 Q After conversing with Ms. Williams, State's Exhibit No. 177 being
12 published, did your conversation with her cause you to divert your attention to a
13 different apartment?

14 A Yes.

15 Q Which apartment was that?

16 A 218.

17 Q Upon speaking with Ms. Chanise Williams, were you expecting to find
18 anyone in that apartment?

19 A No.

20 Q Did she give you consent to go into the apartment and check?

21 A Yes. She told me --

22 Q For suspects?

23 A Yes. She --

24 Q Don't tell us what she said.

25 A Got it. Yes.

1 Q It's a fine line. Okay.

2 A Got it.

3 Q So did you expect after speaking with Ms. Williams to find anyone in
4 that particular apartment?

5 A None.

6 Q Did you expect to find, in particular, a male in that apartment?

7 MS. MACHNICH: Your Honor, I'm going to ask to approach at this
8 point.

9 THE COURT: As for what?

10 MS. MACHNICH: I'm going to object as to hearsay. That is exactly
11 what she's eliciting from him through circuitous -- I can't speak.

12 THE COURT: Well, yeah. Asking him what he expects, he can
13 only -- his state of mind could only be developed based upon conversations.
14 Right? So --

15 MS. LEXIS: But it's also -- it's not being offered to prove the truth of
16 the matter asserted. It's to why he was led in that particular apartment.

17 MR. GASTON: It's a way to backdoor hearsay, Your Honor.

18 MS. MACHNICH: Yeah.

19 THE COURT: You know, let's move on. I don't think it matters what
20 he -- what he believed about --

21 MS. LEXIS: Okay.

22 THE COURT: -- whether someone else might be in there.

23 MS. LEXIS: Okay.

24 THE COURT: What matters is did he encounter somebody and what
25 happened.

1 MS. LEXIS: Okay.

2 BY MS. LEXIS:

3 Q Detective Majors, did you, in fact, after getting consent to search this
4 apartment, go into Apartment 218?

5 A We did.

6 Q Okay. Were you by yourself or with other detectives?

7 A I was with other detectives.

8 Q What, if any -- or did you encounter an individual in this apartment?

9 A Yes, Mr. Valentine.

10 Q Do you see Mr. Valentine here in court today?

11 A Yes.

12 Q Can you please point to him and describe something he's wearing?

13 A Gentleman over wearing a white shirt and black slacks.

14 Q Where was he specifically found in the apartment?

15 A He was in a bedroom under the covers wearing his flip-flops.

16 Q Okay. And what, if anything, could you see him doing?

17 A Sleeping. He said he was sleeping.

18 Q Now, prior to making entry into Apartment 218, did you and the other
19 officers announce your presence?

20 A We did.

21 Q Okay. And how was that done?

22 A Knock on -- first, we get consent from the owner, knock on the door,
23 announce ourself and we clear the house.

24 Q When you announce yourself, are you like, you know, like a visitor
25 saying, hey, hello, I mean --

1 A No. Las Vegas Metropolitan Police Department, if you're here, sound
2 off. And we cleared the rooms to make sure nobody was hiding.

3 Q Okay. And you indicated that you found him in a bedroom, correct?

4 A I did, yes.

5 Q Was this a two-bedroom apartment?

6 A Yeah, I believe it was.

7 Q One was a child's room?

8 A One was a child's room, one was a main bedroom.

9 Q Was he found in the main room?

10 A He was found in the main bedroom.

11 Q State's Exhibit 74, was Mr. Valentine found in this particular room?

12 A Yes, ma'am.

13 Q Thank you. And you said under the covers?

14 A Under the covers with his flip-flops on.

15 Q Okay. State's Exhibit 52, do you recognize the person depicted here?

16 A That's Mr. Valentine.

17 Q Okay. And State's Exhibit No. 53; do you recognize who's depicted
18 here?

19 A Again, that's Mr. Valentine.

20 Q Okay. Does this fairly and accurately show how he was dressed you
21 observed him on the bedroom?

22 A That's exactly how he was dressed and that's exactly how we brought
23 him outside.

24 Q Was Mr. Valentine the only individual recovered in that apartment?

25 A Yes.

1 Q After finding him in that particular apartment, was he detained and
2 brought outside?

3 A He was.

4 Q At some point, did you and other detectives freeze the premises?

5 A We did.

6 Q What does that mean, to freeze the premises?

7 A Basically, when we have PC, probably cause, for a search warrant, we
8 freeze the premises until a search warrant can be obtained.

9 Q And did one of the other detectives request a search warrant?

10 A Yes.

11 Q Okay. At some point, after Mr. Valentine is taken outside and
12 detained, did you and other officers with Metropolitan Police Department stage for
13 some showups?

14 A We did.

15 Q Okay. And what exactly is a showup?

16 A A showup is where we have a suspect present and victims to come by
17 to identify, or not identify, if that was the person involved in their crime against
18 them.

19 Q Okay. And in this particular case, were each of the victims from each
20 of the four robberies which occurred on May 28th, 2016, at some point taken
21 to 1701 J Street for showups?

22 A They were and they were taken by different officers.

23 Q Okay. So let's talk about Darrell and Deborah Faulkner first.

24 A Yes.

25 Q Okay. You already testified that you didn't take Deborah Faulkner?

1 A No.

2 Q Okay. What about Darrell Faulkner?

3 A Darrell, I did. I did it myself.

4 Q Okay. And do you recall actually driving him to 1701 J Street?

5 A I did. I picked him up and I drove him to the location.

6 Q Do you know what's known as a showup form?

7 A Yes.

8 Q Okay. What is that?

9 A It's a form that basically documents who was there and what the victim

10 said, what the victim could or could not make an identification.

11 Q Okay. Does it contain instructions and a place for --

12 A It does.

13 Q -- the person to wrote out a statement?

14 A Yes, it does.

15 Q Was one filled out concerning Darrell Faulkner?

16 A There was.

17 Q Okay. But at some point, were you able to locate that particular

18 showup?

19 A To this day, I have not been able to locate it.

20 Q Okay.

21 A When I did the showup, I actually announced it over CAD, whether it

22 was positive or negative. That's one of the things we do just to document it.

23 Q Okay.

24 MS. MACHNICH: Your Honor, may we approach on this?

25 THE COURT: The showup with Faulkner?

1 MS. MACHNICH: Yeah.

2 [Bench conference transcribed as follows.]

3 THE COURT: So is there a showup --

4 MS. MACHNICH: Now there's a missing showup form. We were not
5 aware that one was even done with him. And this is the first time we have heard
6 that one was actually completed and signed by him. The witness couldn't say it,
7 but this detective has now stated -- and it's not listed in the police report as one
8 having been done.

9 THE COURT: Are you contending that there was some discovery not
10 produced or what's the issue?

11 MS. MACHNICH: Or gross negligence, misleading, and I think we're
12 going to be requesting a *Sanborn* instruction with regard to the showup form that
13 seems to have been taken and fortuitously disposed of.

14 THE COURT: Not too loud. Let's hear from the State. Come a little
15 closer.

16 MS. LEXIS: To go from he wasn't able to find it, and I was just about
17 to go into the explanation as to why he couldn't find it, to now gross negligence
18 when he specifically logged it --

19 THE COURT: Let's find out -- he logged it --

20 MS. LEXIS: -- in the CAD log --

21 MS. MACHNICH: That's going to be -- now that's going to be a best
22 evidence rule violation. If he's going to try to get in something through a CAD log
23 that he said was specifically logged in, what was on the form, we don't know
24 because we don't see the form, and now he's lost the form.

25 MR. GASTON: There's more levels of hearsay.

1 THE COURT: You guys were never told of this before?
2 MS. MACHNICH: No.
3 THE COURT: So it's kind of like --
4 MS. LEXIS: You've had access to this discovery for a year.
5 THE COURT: What discovery? The missing form? How can they
6 have --
7 MS. LEXIS: No, to all of discovery. We -- they've asked me whether
8 or not --
9 THE COURT: So you've had the CAD forms and the CAD forms
10 mention --
11 MS. LEXIS: Absolutely.
12 THE COURT: The CAD forms mention --
13 MS. MACHNICH: But this was -- sorry.
14 THE COURT: That's okay. The CAD forms apparently mention this
15 missing form. So you've had --
16 MS. MACHNICH: No, they don't mention the missing form. They
17 mention the showup having to --
18 THE COURT: Or they mention the showup --
19 MS. MACHNICH: Yes.
20 THE COURT: So they mention the showup. So you -- you -- if you
21 didn't -- so you would have known, because you have the other showup forms.
22 You don't have one for this -- for the Faulkners. So you should have known
23 before today that there was a missing piece of evidence. It's kind of late to bring
24 the *Sanborn* motion.
25 MS. MACHNICH: No. Actually, Your Honor, in the actual police

1 report, if you look at it, it says a showup form was done with this witness, this
2 witness, this witness. And with regard to Darrell Faulkner, it does not say a
3 showup form was done. This is the --

4 MR. GASTON: To know whether it wasn't done, it wasn't
5 [indiscernible] --

6 THE COURT: But that's a discovery issue. It's not -- you don't bring
7 up discovery issues at trial. I'm not going to --

8 MR. GASTON: The first time we learned about the discovery issue --

9 MS. MACHNICH: Is right now.

10 MS. LEXIS: Okay, wait a minute.

11 MS. MACHNICH: This is the thing --

12 MS. LEXIS: They knew the showup was done. They've had the CAD
13 log where it says --

14 MR. GASTON: We didn't know a showup form was done.

15 THE COURT: Watch the papers.

16 MS. LEXIS: Here's the showup. It says Majors did it.

17 THE COURT: Let me see.

18 MS. MACHNICH: But it doesn't say the form was completed. We
19 didn't know there was a missing form until today.

20 MS. LEXIS: There wasn't --

21 THE COURT: But you had one for all the others?

22 MS. LEXIS: Correct.

23 THE COURT: Okay.

24 MS. LEXIS: And they've had --

25 MS. MACHNICH: No.

1 MS. LEXIS: -- access to this detective to ask him.
2 MS. MACHNICH: Oh, yeah, they don't return phone calls.
3 MR. GASTON: Give me a break. They don't return calls.
4 MS. LEXIS: He's a noticed witness.
5 MS. MACHNICH: Oh, come on.
6 THE COURT: Hold on, hold on. All right. We -- I need to hear more
7 from you guys on this.
8 MS. MACHNICH: Okay.
9 THE COURT: And I'm worried that we're being too loud and the jury
10 is going to hear.
11 MS. MACHNICH: Okay.
12 THE COURT: All right. So I'm going to have to let them go on their
13 break.
14 MS. MACHNICH: Okay. Thank you.
15 [End bench conference.]
16 THE COURT: So I can -- I can understand your positions. All right.
17 So I'm going to have to let you guys go on a break because we have
18 an issue here. So first I'm going to excuse the detective.
19 You're going to still be under oath.
20 THE WITNESS: Yes, sir.
21 THE COURT: And please don't discuss your testimony with anybody
22 and you can please go step down.
23 THE WITNESS: Absolutely.
24 THE COURT: We'll -- we'll be seeing you back shortly. Sorry for the
25 delay, sir.

1 THE WITNESS: No worries.

2 THE COURT: And ladies and gentlemen of the jury, we're going to
3 take a -- let's take a -- let's go ahead and take a 15-minute break.

4 Do not communicate among yourselves or with anybody else about
5 this trial or the subject matter of this trial; do not communicate at all with any of
6 the parties, attorneys or witnesses involved in the trial; do not seek or obtain any
7 information or comments about the case from any source including newspapers,
8 television, radio, Internet, e-mail, cell phones or any other electronic device; do
9 not read, watch, or listen to any report or commentary about the case; do not
10 perform any research or investigation; and do not form or express any opinion on
11 any subject connected with the trial until the case is finally submitted to you for
12 deliberations. All right.

13 See you back here in -- well, you know what, because I'm going to
14 give my staff -- we can have another break after this. Why don't we give you
15 a 10-minute break, we need 10 minutes to discuss. So 20 minutes for you guys.
16 Okay? Thank you.

17 [Jury recessed at 2:30 p.m.]

18 THE COURT: Okay. We're outside the presence. Please be seated,
19 everybody. I'm going to have questions. So please answer my questions and
20 then I'll let you speak.

21 MS. MACHNICH: Okay.

22 THE COURT: All right. So I think what the defense issue is here is
23 there's reference now to a showup form with respect to the showup that was
24 presented -- or conducted by the Faulkners.

25 MS. MACHNICH: By --

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1 THE COURT: Is that correct so far?

2 MS. MACHNICH: -- Darrell Faulkner.

3 THE COURT: Darrell Faulkner. There was a -- you knew there was a
4 showup, but you didn't know -- you're saying you didn't know there was a showup
5 form, because one was never produced to you?

6 MS. MACHNICH: Also -- yes. And also because the police report is
7 very misleading on the topic and I'm happy to approach with that to show you why
8 we didn't believe there was a form to be searching for.

9 THE COURT: All right. So you have showup forms for the other
10 showups. What information is in the -- so we've got a couple issues. One issue is
11 going to be, was something withheld? Was there, you know, negligence, gross
12 negligence, or intent, you know. And then next issue would be, well, does it --
13 does it matter, was it material? So let me get -- let's kind of get to the materiality.
14 What's in the showup form that you believe is so important that you didn't -- that
15 you needed to know about it?

16 MS. MACHNICH: Well, all right, so for --

17 THE COURT: Only one of you.

18 MR. GASTON: That's all Tegan. I'm just sitting here.

19 MS. MACHNICH: Okay. We don't know what's in the form, because
20 we've never seen it. However --

21 THE COURT: No, but you know what's in the other forms.

22 MS. MACHNICH: -- we know what's in the other forms.

23 THE COURT: What's the topic -- what's the general gist of what you
24 wanted to see in this form?

25 MS. MACHNICH: Why? Because the instructions that we were

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1 read --

2 THE COURT: What's in these forms? Just tell -- if you can't answer,
3 I'm going to go back to them.

4 MS. MACHNICH: No, I can.

5 THE COURT: What's the general components of this form?

6 MS. MACHNICH: The form has, specifically, the instructions that are
7 read and then there's a section where the witness describes how certain they are,
8 if it's -- if it's the person, how certain they are, and why they believe it's the
9 person.

10 THE COURT: Okay. That's right. We saw one of those.

11 MS. MACHNICH: Yeah. We've had several.

12 THE COURT: It's the description of why they believe it's the person.

13 MS. MACHNICH: Exactly.

14 THE COURT: Okay. So that's the form you don't have?

15 MS. MACHNICH: That is the form we don't have.

16 THE COURT: Now I know which form you're talking about.

17 MS. MACHNICH: Yes.

18 THE COURT: Okay. So then I guess my question would be: Why
19 did you not pursue this before trial?

20 MS. MACHNICH: Because, if I may approach specifically with the --

21 THE COURT: No, just tell me from there. You don't need to
22 approach.

23 MS. MACHNICH: Okay. In this, I'm referencing for Ms. Lexis, Bates
24 stamp 170, which is the arrest report in this case. It reads:

25 At 0855 Jordan Alexander signed the LVMPD --

1 THE COURT: Slow down a little bit.

2 MS. MACHNICH: -- showup witness form instructions.

3 So it's -- it goes into there and goes into his ID.

4 THE COURT: Wait, it says -- slow down, re-read that. It says

5 showup form.

6 MS. MACHNICH: Okay. Yes.

7 THE COURT: Okay.

8 MS. MACHNICH: So it goes -- so it goes:

9 0855, Alexander Jordan signed the LVMPD showup witness

10 instructions and positively identified Valentine.

11 Et cetera.

12 The next paragraph is at 910:

13 Lazaro Bravo-Torres signed the LVMPD showup witness instructions

14 at 90 percent positively identified Valentine.

15 All right. At 910 hours, Rosa Vazkuez, the same time, signed the

16 LVMPD showup witness form instructions. She positively identified Valentine

17 at 95 percent.

18 THE COURT: Okay.

19 MS. MACHNICH: At 0917 hours, I conducted a showup with Darrell

20 Faulkner which was updated in CAD. Faulkner was a hundred percent positive

21 that Valentine was the subject, no mention of a form. And then at 0950 hours,

22 Santiago Garcia signed the LVMPD showup witness instructions and positively

23 identified Valentine.

24 THE COURT: Okay.

25 MS. MACHNICH: So it -- it's very misleading.

1 THE COURT: So there's no -- well, it's not misleading. There's just
2 no mention of -- I think you're taking liberties. It's just no mention of a form being
3 completed or signed.

4 MS. MACHNICH: It's only misleading insofar as why we did not
5 pursue this in discovery, because we didn't know there was anything to pursue.
6 Because in here it does not sound like there is a form.

7 THE COURT: Okay. So I understand your position. I understand
8 why you would want the form if it existed. I understand that you think it's material.
9 I understand -- I guess, I understand your position, why you didn't pursue it for
10 now -- until now. Let's -- let me talk to the State, then.

11 Why -- seems like you really don't need this form, because you
12 already got the Faulkners explaining the whole showup. Is this a big to-do about
13 nothing?

14 MS. LEXIS: No, Your Honor.

15 THE COURT: Do you -- can we move on? Or do you really need this
16 form? Is it so crucial that you need it? And if it is crucial, then aren't you kind of
17 acknowledging that they're being deprived of material evidence?

18 MS. LEXIS: Your Honor, I was just, in an overabundance of caution
19 and in total candor, discussing with the detective, because the truth of the matter
20 is, he remembers -- Darrell Faulkner does not remember doing a showup form,
21 and Detective -- Detective Majors does.

22 THE COURT: Majors.

23 MS. LEXIS: But what he was going to -- what he was going to
24 testify -- because this is a -- this is a search for the truth, right?

25 THE COURT: Of course. Yeah.

1 MS. LEXIS: A trial is a search for the truth.

2 THE COURT: Of course.

3 MS. LEXIS: The truth of the matter is, he remembers doing a showup
4 instruction. I'm not -- I have nothing to admit. I have nothing to proffer, because it
5 doesn't exist. He would have testified, absent the objection, that he looked for it.
6 He can't find it. He can't find this particular showup witness instruction. The
7 reason that he knows that he did a showup is because he updated in CAD, which
8 is what he also puts in the report.

9 THE COURT: Okay. So there's an updated -- because you were
10 reading -- Ms. Tegan -- Ms. Machnich was reading from the original CAD?

11 MS. MACHNICH: I was reading from the arrest report, Your Honor.

12 THE COURT: Oh, the arrest report.

13 MS. MACHNICH: Yes.

14 THE COURT: And then, but CAD shows that there was a showup
15 form?

16 MS. LEXIS: Correct. At 92344, he -- he -- not that there was a
17 showup form, but just that he did a showup with Darrell Faulkner and it was a
18 hundred percent.

19 THE COURT: All right. So that would be, I mean, an exception to
20 hearsay because it's past recollection recorded, right?

21 MS. LEXIS: And a statement of identification.

22 THE COURT: Is there a business -- business record conduct --
23 prepared in the ordinary course of business at or about the time of the -- of the
24 activity?

25 MR. GASTON: I guess, two answers. First --

1 MS. LEXIS: Can I finish, though?
2 THE COURT: Yeah. Let him -- okay --
3 MR. GASTON: I thought he asked a question.
4 MS. MACHNICH: I didn't know if she was done.
5 THE COURT: Well, I did direct a question to him, so that's my fault.
6 MS. LEXIS: Okay. Sorry.
7 THE COURT: But I'll let you finish.
8 MS. LEXIS: Okay. So there are kind of two issues. As the court like
9 to do, you like to frame the issue. There is this showup form, which we don't
10 have, so we could not have provided it in discovery. It was certainly not withheld.
11 There was nothing exculpatory concerning this particular form that does not exist.
12 There was no discovery violation, because I can't disclose what doesn't exists.
13 THE COURT: Yeah.
14 MS. LEXIS: All I can do is let the court know that this detective
15 believes it existed, he just can't find it. This is -- this is just about the truth. Okay.
16 THE COURT: Yeah. Isn't it -- doesn't it trouble you a little bit that --
17 that an important document like this just disappeared?
18 MS. LEXIS: Well, that's -- he was just about to explain it. And, Your
19 Honor --
20 THE COURT: Okay.
21 MS. LEXIS: -- I think it was great that we disclosed it, because it does
22 go towards the credibility of this detective. You know, it's not like we're hiding
23 from it. We're not shying away from it. They can cross-examine him concerning
24 this particular -- concerning this showup that wasn't recovered.
25 The truth of the matter is we're not introducing the showup because

1 there's not one to -- to introduce. So I'm not sure what the issue is here. It's not a
2 discovery violation. It wasn't withheld. It's not material, as the court has
3 indicated, because the actual showup is documented in the CAD log, which
4 indicates --

5 THE COURT: Well, can I stop you for a second?

6 MS. LEXIS: Yes.

7 THE COURT: You're saying it's not a discovery violation, but aren't
8 you kind of like jumping the gun there? Because you said we want to -- this is a
9 search for the truth, we want to hear from the detective what happened. Sounds
10 like you don't even know what happened as to why this form disappeared. How
11 can you be so sure that there's not a discovery violation?

12 MS. LEXIS: Your Honor, the detective is going to tell you he looked
13 for this form. He can't find it.

14 THE COURT: Do you know what the detective is going to say
15 regarding this?

16 MS. LEXIS: Absolutely. Absolutely. He said he's not going to be
17 able to find it. It might have been misfiled under a different event number in the
18 OnBase system.

19 THE COURT: Yeah.

20 MS. LEXIS: I mean, he's going to offer an explanation. But there's
21 certainly no gross negligence. There isn't bad faith. We're bringing this out.

22 THE COURT: I don't know yet, because I haven't heard the evidence.
23 Right? I mean --

24 MS. LEXIS: Right.

25 THE COURT: -- sounds like there is a document that's material that

1 should have produced that was destroyed. That's probably enough to do an
2 evidentiary hearing, right?

3 MS. LEXIS: I think destroyed is a strong word.

4 THE COURT: Disappeared.

5 MS. LEXIS: Okay. Not able to locate.

6 THE COURT: Disappeared, misplaced. I didn't mean to like,
7 intentionally. I mean, it did -- I'm assuming there was due diligence to locate the
8 document?

9 MS. LEXIS: Absolutely.

10 THE COURT: And so the document is not where it should be?

11 MS. LEXIS: Correct.

12 THE COURT: Somewhere in the files?

13 MS. LEXIS: Correct.

14 THE COURT: So someone either misfiled it or threw it away. I mean,
15 I don't know what other options there are.

16 MS. LEXIS: Right.

17 THE COURT: But, I mean, what if the document says, you know,
18 something in there that they could have used to cross-examine the whole
19 showup?

20 MS. LEXIS: Okay. We know that that doesn't exist, because they
21 were able to cross-examine Darrell Faulkner concerning his statements of
22 identification. And we know, as corroborated by the CAD log, that the detective
23 who -- who conducted this particular showup indicated as a past-recorded
24 recollection, statement of prior identification, on CAD, 100 percent positive,
25 subject with the black shorts, 923 hours by Detective Majors.

1 And so I mean, there's not -- it was a one -- Mr. Faulkner testified he
2 positively 100 percent identified this person during the showup --

3 THE COURT: So let me --

4 MS. LEXIS: -- as Keandre Valentine.

5 THE COURT: So let me go back to Ms. Machnich or Mr. -- so I
6 guess, two questions.

7 Number one, what evidence is there, or do you believe you can
8 cross-examine the detective and try to elicit some evidence, what evidence is
9 there that there's negligence or gross negligence here?

10 And number two, isn't this really harmless, because you have the
11 Faulkner identification already? And -- and there's no reason to believe that the
12 showup form would have anything different than what Faulkner already testified
13 to?

14 MR. GASTON: Faulkner.

15 THE COURT: Could you answer those two questions?

16 MR. GASTON: Yes, I can. Yes, I can. And as a brief -- there's three
17 issues we're making. But to answer your question specifically --

18 THE COURT: Okay.

19 MR. GASTON: -- with the first one: What -- with respect to
20 cross-examination on negligence or gross negligence, accepting the State's
21 proffer, his testimony is going to be, I remember doing a showup form. And it
22 sounds like a showup form was done with every other single witness that was
23 not -- that -- that was -- did a showup. I remember it, I looked for it and can't find
24 it. How is that not just blatant negligence? This guy is facing decades in prison
25 and the case is an identification case.

1 THE COURT: Yeah. You don't get a presumption unless there's
2 gross negligence.

3 MR. GASTON: Right. So negligence, he gets a pass.

4 THE COURT: Well, that's --

5 MR. GASTON: -- I don't understand how you miss --

6 THE COURT: That's the law.

7 MR. GASTON: Right, no. No, I mean -- yeah. Okay. I don't
8 understand how there's any good cause, and it is not -- beggars the imagination
9 as how a showup identification form, the form where you literally say how certain
10 you are and why you're certain, goes missing in an identification case where the
11 guy is facing decades in prison. And his -- his explanation is, well, I looked for it,
12 just can't find it.

13 THE COURT: Let's hear what he has to say. The -- the second
14 prong of *Sanborn* is -- is materiality. Right?

15 MR. GASTON: Yes, sir. I think we agree --

16 THE COURT: There has to be a reasonable probability, I'm trying to
17 remember without having -- I haven't looked at it.

18 MS. LEXIS: I have it.

19 THE COURT: Reasonable probability that the evidence would have
20 been, what, exculpatory?

21 MS. LEXIS: I can find it for you, Your Honor.

22 MR. GASTON: The -- the -- obviously, we don't know what's in the
23 showup form and neither do they. And so with respect to their argument -- first, I'll
24 explain how it can easily be exculpatory. But before I get there, we heard from
25 Darrell Faulkner, therefore we know it doesn't matter. Darrell Faulkner doesn't

1 remember even doing a showup form. He doesn't remember a lot of things prior
2 to his January medical issue. And he just remembers being almost certain, was
3 the first thing he said, and then later he said he was a hundred percent. That's
4 one aspect of it.

5 What about why you made this identification? Do you
6 recognize his face or are you just going off what another witness --

7 THE COURT: Well, he told us why he --

8 MS. LEXIS: Exactly.

9 THE COURT: Didn't he tell us?

10 MS. LEXIS: Yes, he did.

11 MR. GASTON: He's --

12 MS. LEXIS: Ad nauseam.

13 MR. GASTON: Can I talk? He's guessing -- to you. He's guessing --

14 THE COURT: No, I have a question.

15 MR. GASTON: He's guessing today about what his form said back
16 then. Fact is, we don't know what the form said. It could have been I recognize
17 his hair --

18 THE COURT: No. Faulkner's not guessing as to what's in the form.
19 Faulkner is relating his present memory of why he actually made the identification,
20 not what he wrote down.

21 MR. GASTON: Right. And we can see why 16 months later saying
22 why you were sure 16 months ago is not the same thing as writing down on a
23 piece of paper. What if -- we have, like, several showup forms and theres's
24 exculpatory evidence in almost every one of them, not every one, but almost
25 every one. I -- he has different hair, looked like he had a haircut. He's wearing

1 different clothes. He looks -- I'm only 90 percent. I recognized him by his hair
2 and his build, or whatever. There could be exculpatory evidence on the showup
3 form we don't ever get to see.

4 And there's actually -- the *Sanborn* -- there's three overarching
5 issues here. The first is a discovery violation. Whether the showup form -- the
6 showup form being produced isn't the only aspect of a discovery violation.
7 Because it sounds like they looked for it, it doesn't exist, they didn't find it, so
8 there's nothing to turn over.

9 How about telling us in advance of Day 19 of trial, it's an
10 exaggeration, Day 7 of trial, that the showup form, the detective thinks the
11 showup forms exists and can't find it? That would be an issue that should be
12 disclosed to us in advance and not as a discovery violation, the failure to tell us
13 about it.

14 THE COURT: Well, but again, you -- you had the police report and
15 you had the CAD log. So you knew that --

16 MR. GASTON: A showup was done.

17 THE COURT: -- a showup was done and the CAD log mentioned that
18 there was a showup form.

19 MR. GASTON: No, it does not.

20 THE COURT: That's what -- I thought that --

21 MR. GASTON: The CAD log only says a showup was done and
22 Darrell says he was a hundred percent certain.

23 THE COURT: There was -- let me -- can I just ping-pong back here.

24 MS. LEXIS: Yes.

25 THE COURT: Does the CAD log mention that there was a showup

1 form? I know you said he updated the CAD log.

2 MS. LEXIS: He updated the CAD log to show, Your Honor, that there
3 was a showup conducted. And all it says is a hundred percent positive, subject
4 black shorts, 923 hours.

5 THE COURT: So we don't know for sure that there's a form.

6 MS. LEXIS: We don't know.

7 THE COURT: Why don't we just --

8 MS. LEXIS: We don't know.

9 THE COURT: Why don't we just move on, then?

10 MS. LEXIS: We can move on.

11 MS. MACHNICH: The detective said there's a form.

12 MS. LEXIS: We can move on.

13 MR. GASTON: No. They want to move on.

14 MS. LEXIS: I don't understand.

15 MR. GASTON: We can't. That's the whole issue here. Three issues:
16 Discovery violation. Detective telling the State that there should have been -- that
17 there might -- that he remembers a form and can't find it, is --

18 THE COURT: So I'll let you -- I'll let you question him as to whether
19 there was a form, let you question him as to where the form should have been
20 found, where they -- what the process normally is to file these forms, who has
21 custody and possession and control of these forms, why would it disappear,
22 what -- what happened to this form, if -- did he ever see this form, you know,
23 where were the other forms found? We need that information.

24 MR. GASTON: Yes, sir.

25 THE COURT: From -- this is the person who would have personal

1 knowledge of that, I believe.

2 MR. GASTON: Yes, sir.

3 THE COURT: Let's find out. I'll let you cross-examine him. And if I
4 believe that there was anything other than just mere negligence, I'm not even
5 saying there's negligence here, but --

6 MR. GASTON: Yes, sir.

7 THE COURT: -- it's -- it seems that there's some negligence,
8 because it seems like there should have been a form and it disappeared. Things
9 happen. Evidence -- things happen. All right. There's -- we're all busy and
10 people make mistakes. We're humans.

11 MS. MACHNICH: And Your Honor --

12 THE COURT: What if I don't -- if I don't believe that there's gross
13 negligence, then we're not even going to the next issue of materiality.

14 MS. MACHNICH: And Your Honor, just because we're not going to
15 want to bring him -- I'm guessing it's -- are we doing this outside the presence?

16 THE COURT: Nope.

17 MS. MACHNICH: Okay. So I have one more thing to address with
18 regard to materiality.

19 THE COURT: Okay.

20 MS. MACHNICH: And to illustrate the point exactly, and I --

21 THE COURT: Yes.

22 MS. MACHNICH: -- am specifically referencing State's Exhibit 9,
23 which is Jordan Alexander's showup form.

24 THE COURT: Yes.

25 MS. MACHNICH: And it begins:

220

1 I am 100 percent sure this was the man.

2 And then it goes on to say, because the build of his body and his hair
3 for sure. And then it goes on further than that. And that's what becomes trouble,
4 is we're memorializing in CAD that he was 100 percent, and we don't know or
5 have any way of knowing what else was written in that paragraph that we could
6 cross-examine about.

7 THE COURT: Look, I don't want any of -- CAD is not going to be the
8 evidence of the identification. The evidence of identification came from Faulkner
9 himself. All right. So CAD is not even going to come in unless it's identical to
10 what Faulkner said. All right. So -- so that's not a problem.

11 MR. GASTON: Your Honor, I have to make a -- I don't think I
12 specifically made a request for each of our issues that's memorialized.

13 THE COURT: Go ahead. And then I'm going to let my staff have a
14 break.

15 MR. GASTON: No arguments, just request.

16 THE COURT: I think at this point, I'm -- I don't know what -- I don't
17 think you've made any kind of motion or objection.

18 MR. GASTON: That's what I'm trying to do. I'm trying to make my --
19 no arguments, just --

20 THE COURT: So I got nothing to rule on at this point.

21 MR. GASTON: That's what I'm saying. So just -- there will be no
22 more arguments. You've got our arguments, I'm just making the motion and
23 request.

24 First issue, because of the discovery violation of them not telling us
25 about the detective remembering the police report and not being able to find it in

1 advance of Day 7 of trial, I am asking as a -- as a remedy for a jury instruction,
2 which is identical to what we're requesting under my *Sanborn* motion separately,
3 telling the jury that they should presume that this evidence would have been
4 favorable to the defense.

5 With respect to my second motion, I am making a *Sanborn* motion.
6 We will propose -- we will submit a proposed defense instruction identical to the
7 instruction I'm proposing as a remedy for the violation -- the discovery violation,
8 and that goes to the *Sanborn* analysis, which we just talked about, about gross
9 negligence and et cetera, which will read in identical form, the jury is to presume
10 that this evidence would have been favorable to the defense.

11 With respect to the --

12 THE COURT: What else? Yes.

13 MR. GASTON: -- with the third issue, is the CAD log itself, we just
14 kind of glossed over that. The CAD log is full of levels of hearsay with this
15 specific prong. It's not just hearsay within hearsay. It's hearsay with hearsay
16 within hearsay within hearsay.

17 First of all, the CAD log, on base level, is his out-of-court statement.
18 That's hearsay. It's his out-of-court statement, okay, that he can't possibly adopt
19 here. Second, it's what he was told by somebody else, which is the third -- which
20 is the next level. And on top of that, it is -- if there's a showup form, it's what he
21 got from a showup form memorializing what someone else said. So it is
22 anywhere from three to five levels of hearsay about what happened.

23 And the State can't use a business records exception to introduce
24 documents prepared in their investigation against the accused. That would be a
25 basic extrapolation from why police reports can't be used against him. Business

1 records exception and public records exception -- because the police report would
2 fit within those requirements, of which [indiscernible] requirements it fits within.
3 But there's a special little prong that says police reports can't be used under this
4 exception against the defendant in an -- against the accused in a criminal case.

5 CAD logs would be the same thing. Officer notes would be the same
6 thing. All of these little documents that get created in an investigation cannot be
7 used against the defendant in a -- in a criminal case for -- under those kinds of
8 exceptions to the hearsay. So I'm objecting to the CAD log, the statements
9 contained about what Darrell Faulkner said or didn't say in the CAD log from
10 being admitted into evidence for any purpose. Those are my requests.

11 THE COURT: All right. Do you want to -- I'll let you -- do you want to
12 respond? I'm not --

13 MS. LEXIS: I could.

14 THE COURT: -- going to rule upon the *Sanborn* issues until after
15 the -- as indicated. We'll let the detectives talk and hear the cross-examination.

16 MS. LEXIS: If I could.

17 THE COURT: Do you want to respond to whether there's any
18 hearsay exemption --

19 MS. LEXIS: Yes.

20 THE COURT: -- or non hearsay in the CAD log?

21 MS. LEXIS: Yes, Your Honor. The actual statement that's logged in
22 here in the CAD log, 100 percent positive, the subject in the black shorts, that is a
23 statement of prior identification by Darrell Faulkner. Okay. The actual document
24 that memorialized that statement is a past-recorded recollection.

25 In addition, Mr. Gaston or Ms. Machnich, I'm not sure which one,

1 cross-examined Mr. Faulkner ad nauseam concerning his identification. So
2 there's absolutely no prejudice. Okay. They -- they cross-examined him and all
3 of our victims from beginning to end.

4 I will also just say --

5 THE COURT: Ms. Machnich said it's hearsay, because it is -- it's
6 identification, which is an exception to hearsay, past recollection recorded, plus
7 it's his own statement of him -- right? Of -- of him -- what he put into the CAD log.
8 There's -- I don't see any problem. It's substantively hearsay or -- or I don't see
9 any prejudice, because it's what Faulkner said anyway and we already heard him.

10 MR. GASTON: Yes, sir.

11 THE COURT: So I really don't see -- your objections are noted. I'm
12 going to overrule your objections --

13 MR. GASTON: Yes, sir.

14 THE COURT: -- as to hearsay. I'll let the CAD log come in to the
15 extent that -- that the descriptions, the identifications are consistent with the
16 evidence we already heard Faulkner said. All right. *Sanborn*, we'll deal with that
17 later. Okay?

18 MR. GASTON: And then same thing, the discovery violation, both
19 arguments asking for the same remedy.

20 MS. LEXIS: If I could address that --

21 MR. GASTON: But just --

22 MS. LEXIS: If I could address that.

23 MR. GASTON: I think Tegan made this request, not an argument, but
24 I think Tegan made this request, but just so it's formalized. The defense is
25 requesting an evidentiary hearing outside the presence of the jury to probe the

1 issue about the -- about the paper being lost or whatnot. We think it's for a
2 different purpose than just trial. We may do different crosses during trial that
3 could be prejudicial otherwise.

4 THE COURT: I'm ruling that by bringing up this issue late, where I
5 think you should have had notice, that you waived your right to an evidentiary
6 hearing and I'm going to let you do examination at trial.

7 MR. GASTON: Yes, sir.

8 THE COURT: All right. And your *Sanborn* motion is preserved to the
9 time when we do jury instructions.

10 MR. GASTON: Yes, sir.

11 MS. MACHNICH: Your Honor, may I note where -- where we had
12 notice?

13 THE COURT: Yes. Because it's -- because you already knew that
14 there were showup forms for the other victims, and you didn't receive one for
15 Faulkner, so you should have assumed that one was missing, and you should
16 have addressed it before trial.

17 MR. GASTON: Thank you.

18 MS. MACHNICH: Your Honor, may I --

19 THE COURT: I know you disagree, but it's --

20 MS. MACHNICH: Oh, I understand. I'd like to have page 6 of the
21 police report marked --

22 THE COURT: Yes.

23 MS. MACHNICH: -- as a court's exhibit, because it's literally, as I
24 read earlier, it's phrased completely differently and --

25 THE COURT: I know.

1 MS. MACHNICH: -- does not mention a form. So there's no way to
2 know the form existed. But I would like to have that marked.

3 THE COURT: Please give it to the clerk.

4 MS. LEXIS: Your Honor, just so the record is complete, may I also
5 lodge as exhibits the State's Notice of Motion and Motion Outlying State's
6 Discovery Compliance? This has an outline of everything that the State provided
7 as of February 8th, 2017. And also, a list of receipt of copy for a list of discovery
8 items provided to the defense, filed on June 6th, 2017.

9 MS. MACHNICH: Your Honor, I move to --

10 MS. LEXIS: This goes along with the notice. This goes along with the
11 notice.

12 THE COURT: It's not coming in for anything the jury is going to see.
13 It just comes in to make a record, so the supreme court can see. Give it to her.

14 MS. MACHNICH: Just -- it just --

15 THE COURT: It's a court exhibit. Your objection's noted.

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

17 THE COURT: Too many people talking, guys. Mr. Dickerson, you've
18 been quiet, so I'll let you have the floor.

19 MR. DICKERSON: I appreciate it. Last week during the testimony of
20 Darrell Faulkner, Mr. Gaston come over to me and said, Do we have a showup
21 form for him? I told him at that point in time no, we don't have one. We believe
22 there was one, but we don't have one.

23 MR. GASTON: And for the record, that is correct.

24 THE COURT: Okay.

25 MR. GASTON: That was -- that was -- and just so we can both ratify,

1 that was the first time that the State has mentioned to us that there possibly might
2 be a form that is not in existence. But that conversation did happen, I believe, on
3 Friday.

4 THE COURT: Okay. Anything else -- Ms. Machnich, what did you
5 want to put on the record?

6 MS. MACHNICH: Oh. Just that Mr. Faulkner himself wasn't sure if
7 there was a form, so we wouldn't have -- weren't even able to get that out through
8 cross. And additionally, the items that the State just filed with the court are
9 completely irrelevant to this insofar as we're talking about -- we acknowledge
10 there was no showup form produced.

11 THE COURT: Isn't that for the supreme court to decide, not me?

12 MS. MACHNICH: But there was -- I mean, there literally --

13 THE COURT: On whether these forms are going to be considered by
14 them?

15 MS. MACHNICH: Right. I understand. But they just handed over a
16 list of all of the things that they produced in this case, and we are not contesting
17 any of that. We're saying it wasn't produced, because we didn't know it existed,
18 and supposedly the witness lost it. So, I mean, I just -- what she handed over
19 was not relevant to this conversation --

20 THE COURT: Okay.

21 MS. MACHNICH: -- of this form that's not here. So I will
22 acknowledge it's not in those documents.

23 THE COURT: Okay.

24 MS. MACHNICH: So that's it.

25 THE COURT: Okay. I understand. Do you guys want to take a short

1 break?

2 MR. GASTON: Please, Your Honor.

3 THE COURT: Would you like six minutes?

4 MS. LEXIS: Yes.

5 THE COURT: All right. I mean, well, you guys -- do you need longer?
6 What do you want? I'll give you guys another break later. Okay. Let's go take a
7 six-minute break.

8 MS. LEXIS: All right.

9 MR. DICKERSON: Thank you.

10 [Court recessed at 2:53 p.m., until 3:05 p.m.]

11 [Outside the presence of the jury.]

12 THE COURT: Sanborn, Daniels, there's all kinds of project in there.
13 There's all kinds of issues implicated by your guys' arguments.

14 MS. MACHNICH: Yes.

15 THE COURT: No, you'll -- a lot of -- a lot of good stuff to research. I
16 love it, so. You've got preservation issues, you've got instruction issues. Let's
17 hear from the guy.

18 MS. MACHNICH: That works.

19 THE COURT: How are we doing? You think -- this is witness number
20 five today -- for today?

21 MS. MACHNICH: They said -- they said that this was their last
22 witness.

23 THE COURT: Oh, this is your last witness?

24 MS. LEXIS: For today, yes.

25 THE COURT: And then you have one more for tomorrow?

1 MS. LEXIS: Subject the admission of certain pieces of evidence, we
2 have to double check that, before we rest.

3 THE COURT: Be nice if we could finish today.

4 MS. LEXIS: It would be.

5 MS. MACHNICH: We --

6 THE COURT: On the State's part.

7 MS. MACHNICH: They told us that they were resting today and to
8 have witnesses available, and then they told us this was their last witness. So it
9 will be news to us if there's someone else coming at this point --

10 MS. LEXIS: Okay. Well.

11 MS. MACHNICH: -- because we have someone lined up to come.

12 THE COURT: Trials are fluid. They're allowed to change their mind.
13 Right?

14 MS. MACHNICH: Okay.

15 MS. LEXIS: Thank you.

16 MS. MACHNICH: Or just, you know, let me know.

17 MS. LEXIS: Right now we only have one more witness. However,
18 depending on whether all of our items of evidence come in, we may or may not
19 call other evidence.

20 MS. MACHNICH: Okay.

21 MS. LEXIS: Or other someone else. Okay?

22 MS. MACHNICH: Okay.

23 MS. LEXIS: That's -- that's the official answer.

24 THE COURT: When are we going to do jury instructions, guys?

25 MS. LEXIS: When would you like, Your Honor?

1 MS. MACHNICH: Tomorrow morning?

2 THE COURT: Well, I have calendar from 9:00 to 10:00. I think your
3 partner said that he was planning on not being ready to get going until I think he
4 said 11:15 tomorrow. But if we could -- huh?

5 MS. LEXIS: He had prelim.

6 THE COURT: If we could -- oh, do you want to settle jury instructions
7 without Gaston?

8 MS. MACHNICH: I actually need him to pretrial our expert, as well.
9 So I can do that, yes. We will -- we will make it work with the court's schedule.

10 THE COURT: 10:15 -- shoot, I get a --

11 MR. DICKERSON: What's your schedule like Wednesday morning,
12 Your Honor?

13 THE COURT: 10:30.

14 MS. MACHNICH: I don't feel comfortable waiting until Wednesday
15 morning. We'll be closing. I mean, won't we --

16 MS. LEXIS: Provided we don't have a rebuttal case.

17 THE COURT: Wednesday morning. Yes, sir. I think I only have
18 about 45 minutest to an hour, probably an hour of -- so 9:00 to 10:00 -- we could
19 do jury instructions at 10:30, but, you know, I -- sometimes if that is the day that
20 you guys are going to do closings --

21 MR. DICKERSON: Right.

22 THE COURT: -- then it could -- the jury could end up waiting too long
23 while we're, like, cut and pasting and finalizing and copying and all that stuff.

24 MS. LEXIS: Agreed.

25 MR. DICKERSON: Yeah.

1 MS. LEXIS: Plus, it's too hard to the person closing because you're
2 not sure what the -- what the instructions --

3 THE COURT: If we can find some time tomorrow, either -- either
4 tomorrow at 10:30 or -- or at the end of the day --

5 MS. LEXIS: Okay.

6 MS. MACHNICH: Maybe the end of the day tomorrow, so we'll know
7 exactly how far we've gone and what's come in and what hasn't.

8 THE COURT: Yeah, I got time tomorrow. I mean, we -- we can, like,
9 end at, well, whenever we end, and then --

10 MR. DICKERSON: Okay.

11 THE COURT: -- do it right and end at 4:00?

12 MR. DICKERSON: Sounds great.

13 MS. MACHNICH: That's fine.

14 THE COURT: Why don't we plan on ending at 4:00 or something --

15 MS. MACHNICH: Okay.

16 THE COURT: -- and then do jury instructions tomorrow.

17 MS. LEXIS: Okay.

18 MS. MACHNICH: Sounds good.

19 MS. LEXIS: Okay. We'll send those over.

20 THE COURT: All right. Marshal, you can send the jurors in. Oh,
21 wait, no, we're waiting on Gaston.

22 MS. MACHNICH: I don't know where he is.

23 THE COURT: Where is he?

24 MS. LEXIS: He went to Capriotti's.

25 MS. MACHNICH: What?

1 THE COURT: Oh, we don't want to wait for that.
2 MS. MACHNICH: Yeah, no.
3 THE COURT: All right. Unless he's getting food for all of us.
4 MS. MACHNICH: What?
5 MS. LEXIS: He's getting me a soda, but it was a payback from
6 yesterday.
7 THE COURT: Okay.
8 MS. MACHNICH: Oh yeah, he did text, Start without me. Okay. That
9 will work.
10 THE COURT: All right.
11 [Jury reconvened at 3:09]
12 THE COURT: Thanks for your patience, everybody. Thanks for your
13 patience, jurors. Come on back in. Marshal, looks like all the jurors are
14 accounted for, if you could bring the detective back to the stand, please. All right.
15 Detective, thank you very much for your patience. You can come take
16 a seat. You're still under oath and still required to testify truthfully.
17 THE WITNESS: Yes, sir.
18 THE COURT: I mean, we handled all of our objections in discussions
19 on the record outside the presence, so we can proceed now.
20 MS. LEXIS: Thank you.

21 **DIRECT EXAMINATION (CONT.)**

22 BY MS. LEXIS:

23 Q Detective, we left off concerning the showup form involving Darrell
24 Faulkner.

25 A Yes.

1 Q And you were just on the cusp of explaining why it is or how it came to
2 be that you were not able to produce this particular showup.

3 A Yes.

4 Q Okay. Tell us about that.

5 A So when we do the showup, we fill it out, victim signs it. After it's said
6 and done, we put it into a system called OnBase. What OnBase is, it basically
7 scans all of our paperwork. The department had problems keeping track of all
8 these miscellaneous documents, so it's better to put it on computerized format so
9 they can actually pull it up easier and they don't take up all the space. So when
10 we put it into OnBase, from the time it put in OnBase to the time it actually gets
11 scanned, I was unable to retrieve it, so I do not have that.

12 Q Okay. Prior to -- but you do recall a showup -- you actually filling --

13 A I did.

14 Q -- out a showup --

15 A Yes, ma'am.

16 Q -- form. Okay. And going over that with Mr. Faulkner?

17 A Yes.

18 THE COURT: You personally filled it out?

19 THE WITNESS: I personally filled it out. I personally picked him up
20 and took him there.

21 BY MS. LEXIS:

22 Q And concerning searching, is OnBase a searchable database?

23 A Yes, it is.

24 Q Now, you've previously testified that there were multiple different event
25 numbers for each of the robberies in this case?

1 A Yes.

2 Q What measures have you taken to ascertain perhaps if it was misfiled,
3 the location of this showup?

4 A I went through every single event number, pulled up picture, I pulled up
5 any of the documents related to that, and I still couldn't find it.

6 Q So you did a search of all of the event numbers in this particular case?

7 A Yes.

8 Q Did you, however, in a different format, not necessarily the form, input
9 or put this information onto the CAD log?

10 A Yes. I announce over the air per my radio, positive -- it was a -- the
11 showup was a positive.

12 Q Okay. Then that was a showup with Mr. Darrell Faulkner, you
13 indicated 100 percent positive, subject with the black shorts --

14 MS. MACHNICH: Objection, leading.

15 THE COURT: Sustained. Please rephrase.

16 MS. LEXIS: Thank you.

17 BY MS. LEXIS:

18 Q Did you -- do you recall exactly what you put in the CAD log?

19 A Yes. It was a hundred percent positive, the suspect -- excuse me, the
20 victim was right next to me when I put it over the air.

21 Q And when he identified, did he identify, like, an item of clothing on the
22 person he was doing the showup with?

23 A I don't remember.

24 Q Okay. Would looking at page 2 of the CAD log refresh your memory?

25 A Yes.

1 Q Okay. Also the time of that particular entry?
2 A Okay. So the time is 0923. My call sign is Paul David 57, 100 percent
3 positive, subject in black shorts.
4 Q Okay. And this was the identification of Darrell Faulkner?
5 A Yes, it was.
6 Q That is what you inputted on CAD to make a record of this particular
7 identification?
8 A Yes, ma'am.
9 Q Okay. Concerning Jordan Alexander, are you aware of whether or not
10 Mr. Alexander was taken for a showup?
11 A He was, but I don't remember who took him.
12 Q Okay.
13 A I was not present for that.
14 Q Okay. As the case agent in this particular case, are you aware of him
15 being --
16 A Yes, I am.
17 Q -- given a showup?
18 A Yes. He did do one, yes.
19 Q Okay. And are you aware specifically of the time?
20 A I am not.
21 Q Okay. Would looking at the CAD log refresh your memory?
22 A Yes, ma'am.
23 Q Thank you. Page three, Bates stamp --
24 MS. MACHNICH: Your Honor, may I see what she's showing him?
25 There's markings and writing on it.

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1 THE COURT: Yes, you may.

2 MS. MACHNICH: Thank you. It's not the copy of the CAD. It's your
3 notes.

4 MS. LEXIS: I can show it to him.

5 MS. MACHNICH: We should let the record reflect that her notes are
6 on the form she's showing.

7 THE COURT: All right. She's showing him something to refresh his
8 recollection?

9 MS. MACHNICH: A CAD log with her personal notes on it, yes.

10 MS. LEXIS: It's to refresh his memory.

11 THE COURT: I mean, you can -- the law requires -- I mean, you can
12 show a person a Sharpie pen to refresh their memory if you want. The law allows
13 you to show anything.

14 MS. MACHNICH: I just didn't want it to be said that it was just the
15 CAD log. It's not.

16 THE COURT: Very good, thank you.

17 MS. LEXIS: Thank you.

18 BY MS. LEXIS:

19 Q Page -- Bates stamp 81, calling your attention to the first highlighted
20 portion, does it indicate the officer who conducted the photo lineup -- or excuse
21 me, the showup with Jordan Alexander?

22 A It has the call sign, and that would be Officer Spronk.

23 Q Okay. And does it indicate the time that Jordan Alexander's showup
24 would have been conducted?

25 A 0904 hours.

1 Q Okay.

2 THE COURT: Is that from the attorney's notes or is that from the
3 CAD log document itself?

4 THE WITNESS: This is -- these CAD logs can be up to 10 pages
5 long.

6 THE COURT: Okay.

7 THE WITNESS: And they don't put the officer's names out for
8 everybody to know about it. So each officer sometimes has different call signs
9 each day.

10 THE COURT: Okay.

11 THE WITNESS: So in her notes, she does have Spronk, but her call
12 sign was different that day.

13 THE COURT: Okay. But looking at whatever document, this CAD log
14 document with the notes on it, that refreshes your recollection as to the -- the
15 time?

16 THE WITNESS: Yes.

17 THE COURT: And the date.

18 THE WITNESS: Yes. 0904 hours.

19 THE COURT: Okay. Very good. Thank you.

20 MS. LEXIS: Thank you.

21 BY MS. LEXIS:

22 Q So Jordan Alexander at 9:04. Are you aware of a -- a showup being
23 done with another victim by the name of Santiago Garcia?

24 A I do.

25 Q Do you recall, as you sit here today, exactly when it was that he was --

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1 that the showup was conducted with Santiago Garcia?

2 A I don't. I'd have to look at CAD.

3 Q Would looking at page -- or Bates-stamped 81 of CAD refresh your
4 memory?

5 A Yes, ma'am.

6 MS. MACHNICH: And Your Honor, same issue as before, this is the
7 one with the writing on it.

8 THE COURT: All right. I just want him to, you know, the jury should
9 be entitled to know that it's the CAD log with attorney notes on it.

10 THE WITNESS: 0943 hours. It's going to be Officer Sims. He's 203.
11 BY MS. LEXIS:

12 Q Okay. And does that indicate when that particular lineup was
13 conducted with Santiago Garcia?

14 A Yes.

15 Q Showup, with Santiago Garcia?

16 A It does.

17 Q 9:43?

18 A Yes, ma'am.

19 Q Thank you. Just putting together a little timeline. Okay. Are you
20 aware of a showup being conducted with Lazaro Bravo-Torres and Rosa Vazkuez
21 Ramirez?

22 A Yes.

23 Q Okay. Are you aware of the outcome of those particular showups?

24 A Yes.

25 Q As you sit here today, do you recall the exact time that the showup

1 was conducted with Lazaro Bravo-Torres and Rosa Vazkuez?

2 A I don't remember the exact time.

3 Q Okay. Would looking at the CAD refresh your memory?

4 A Yes, ma'am.

5 MS. MACHNICH: Same situation, Your Honor.

6 THE COURT: All right. Again, another CAD log with attorney notes
7 on it.

8 MS. LEXIS: Yes, Your Honor.

9 THE COURT: Very good. Thank you.

10 BY MS. LEXIS:

11 Q Drawing your attention to the second highlighted portion, does that
12 indicate to you when it was that Lazaro Bravo-Torres was taken for a showup?

13 A He was taken at 0911 hours by Officer Dowler, 2 Union 13.

14 Q And how about concerning Rosa Vazkuez, turning your attention to the
15 third highlighted portion?

16 A For Rosa Vazkuez, 0925 hours, again, by Officer Dowler.

17 Q Call sign?

18 A That call sign is the same, 2 Union 13.

19 MS. MACHNICH: And let the record reflect that he is reading from the
20 sheet of paper with the attorney notes.

21 THE WITNESS: You can do it -- I can read it without her writing, if
22 that makes it easier for the court. I know how to read CAD.

23 THE COURT: They can ask you on cross-examination.

24 THE WITNESS: Okay.

25 THE COURT: Thank you, sir.

1 BY MS. LEXIS:

2 Q Okay. So we've already discussed the showups with Darrell Faulkner,
3 with Jordan Alexander, with Santiago Garcia and also Lazaro Bravo-Torres, and
4 Rosa Vazkuez Ramirez; is that right?

5 A Yes, ma'am.

6 Q After all of these showups were conducted, what did you do next?

7 A After the showups were conducted, we went to the scene.

8 Q Okay. And do you recall exactly when it was? Because you
9 previously testified that the premises, Apartment No. 218, was frozen?

10 A Yes.

11 Q Pending a search warrant?

12 A Yes.

13 Q Do you recall the exact time that the search began?

14 A I do not recall the exact time.

15 Q Would looking at Bates stamp 81 of CAD refresh your memory?

16 A Yes, ma'am.

17 Q Thank you.

18 A Okay. Per our sergeant, which is 767, search warrant started
19 at 0951 hours, Apartment 218.

20 Q Okay. So the search of the apartment was conducted after all of the
21 showups had been completed?

22 A Yes, ma'am.

23 Q All right. Certain items were recovered and impounded at the scene,
24 correct?

25 A Yes.

1 Q Okay. And I'm not going to reiterate, because the jurors have heard
2 from multiple witnesses concerning what was recovered, but I would like to
3 discuss a specific -- Detective, approximately four phones were impounded from
4 Apartment 218; is that correct?

5 A That is correct.

6 Q And there were five phones photographed, correct?

7 A There were.

8 Q There was one phone that was not impounded by yourself or other
9 detectives, correct?

10 A Yes.

11 Q I'm going to show you actually State's Exhibit No. 122. Do you see a
12 phone in this particular exhibit?

13 A I do. I see a phone on the window sill.

14 Q Okay. And State's Exhibit No. 123, is that a close-up of the phone?

15 A It is.

16 Q Now, this is a phone that was not impounded by yourself or other
17 officers; correct?

18 A Yes.

19 Q Okay. But it was photographed?

20 A It was photographed.

21 Q Okay. Why was it not impounded?

22 A There were a lot of evidence there and we only took evidence we
23 believed that was related to this incident.

24 Q Okay.

25 A And the exact reason why we didn't take that phone, I don't believe it

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1 was described.

2 Q Okay. But State's Exhibit No. 123 was photographed?

3 A It was. Yes, ma'am.

4 Q Why was it photographed?

5 A We do overalls and we do close-ups just to document the scene.

6 Q Okay. So this particular phone was documented?

7 A Yes.

8 Q And photographed in that manner?

9 A Yes.

10 Q However, it was not impounded?

11 A It was not.

12 Q Okay. At the time of the search, which you stated began at 9:51, had
13 you allowed victims or other witnesses to come to the scene to identify items that
14 you and your other detectives had located?

15 A No, ma'am.

16 Q Okay.

17 A We don't do that. It's against policy.

18 Q Okay. So at the time were you just going off kind of generic
19 descriptions of items that had been taken?

20 A Yes.

21 Q Okay. And certainly, there were items which definitively belonged to
22 some of your victims, for instance, correct?

23 A That is correct.

24 Q Such as like the identification card?

25 A Yes.

1 Q Okay. Belonging to Jordan Alexander?

2 A Credit card.

3 Q And a credit card belonging to Jordan Alexander?

4 A Yes.

5 Q And another card belonging to Rosa Vazquez Ramirez?

6 A Yes.

7 Q Okay. So fair to say that at the time that you and other detectives

8 were photographing and determining what was being impounded, you were not

9 certain, and no identifications had been made concerning the items found in

10 Apartment 218?

11 A Yes.

12 Q Okay. We mentioned several phones being recovered from this scene

13 just now; do you recall that, sir?

14 A Yes.

15 Q Okay. And also some identification cards and all that stuff, right?

16 A Yes, ma'am.

17 Q Okay. Did you ask crime scene analysts to process the identification

18 cards, the identification card and credit cards found in Apartment 218 for

19 fingerprints?

20 A Yes. As related to the crime, yes.

21 Q Okay. Wait, hold on, State's Exhibit No. 128, let's be specific. Did you

22 have a crime scene analyst process this identification card --

23 A Okay, no.

24 Q -- for prints?

25 A We had them process the scene and the cards were obtained and

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1 booked as evidence. So that particular card, no, it was not processed.

2 Q Was this processed or swabbed for DNA?

3 A Not as I recall, no.

4 Q Okay. But it was impounded?

5 A It was.

6 Q State's Exhibit No. 134, were either of these items, they show a debit
7 card in the name of Rosa Vazkuez Ramirez and a debit card in the name of
8 Jordan T. Alexander; was this processed for fingerprints?

9 A No, they were not.

10 Q Was this processed for DNA?

11 A No, they were not.

12 Q Okay. Certain phones, not just the one that was not recovered as
13 State's Exhibit No. 123, was this State's Exhibit No. 123 processed for prints?

14 A That was the one that wasn't obtained, correct.

15 Q Correct.

16 A No, it wasn't.

17 Q Was it swabbed for DNA?

18 A It was not.

19 Q The phone shown in State's 133, this phone was impounded, correct?

20 A I believe it was.

21 Q Okay. Was this processed for prints or DNA?

22 A No, ma'am.

23 Q Okay. Were any of the phones taken from the scene processed for
24 prints or DNA?

25 A No, they weren't.

1 Q Just so we're clear, State's Exhibit 121, this was one of the phones
2 taken and impounded from the scene, correct?

3 A Yes, ma'am.

4 Q Okay. And also State's Exhibit 144, this was also taken from the
5 scene, correct?

6 A Yes.

7 Q Okay. And that was not processed?

8 A Correct.

9 Q State's Exhibit No. 126, this is another phone impounded from that
10 scene?

11 A Yes.

12 Q Was this processed for prints?

13 A No.

14 Q Was this processed for DNA?

15 A No.

16 Q Okay. Could you tell the ladies and gentlemen of the jury why it is that
17 you did not submit these items for fingerprint or DNA processing?

18 A So the way that our department handles DNA and fingerprinting and
19 actually processing items for evidence, they singly -- they pull up the items that
20 are most -- the seriousness of crimes, such as murder, sexual assault, and they
21 focus on that. We are so backlogged, we don't have the manpower to actually
22 process every one of these items. And by that time, we already had enough
23 evidence leading us to a suspect --

24 MS. MACHNICH: Objection.

25 THE COURT: Yeah.

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1 THE WITNESS: That's what happened though.

2 THE COURT: The jury will disregard the witness's last statement that
3 there was already enough evidence. It's the jury's purview to determine whether
4 sufficient evidence to find the defendant guilty on each of the elements beyond a
5 reasonable doubt. Whether there was enough evidence to arrest or not, or
6 enough evidence for any other part of the proceedings before what you're
7 charged with today is completely irrelevant to your determination. So please
8 disregard the detective's last remarks. Okay.

9 MS. LEXIS: We'll move on.

10 THE COURT: Thank you.

11 BY MS. LEXIS:

12 Q So fair to say you have to prioritize your requests?

13 A Yes, ma'am.

14 Q Okay. In this particular case, did you submit the DNA comparison for
15 the gun recovered at the scene?

16 A We did.

17 Q Okay. So I am going to show you State's Exhibit No. 137. The gun,
18 the jurors have already heard testimony, was recovered in two separate pieces,
19 correct?

20 A Yes.

21 Q Okay. Does this particular State's Exhibit No. 137 show the bottom
22 portion?

23 A It does.

24 Q Okay. And State's Exhibit No. 140, does this show the upper slide
25 portion?

1 A It does.

2 Q And these were located at different parts in the apartment; is that

3 right?

4 A Yes, they were.

5 Q So with prioritizing in mind, did you submit or ask for DNA -- a DNA

6 sample for this particular piece of evidence to be swabbed for DNA?

7 A Yes.

8 Q And did you subsequently obtain a buccal swab from the defendant,

9 Keandre Valentine?

10 A Yes, pursuant to a search warrant.

11 Q Okay. And a buccal swab, what is that?

12 A It's -- basically recovers the -- the subject's DNA to be compared with

13 what items that are found on property.

14 Q Okay. And so you take a little cotton swab?

15 A Yes.

16 Q And you actually take a swab?

17 A Yes. You swab both sides. You have two separate swabs. You put in

18 one from each cheek, you sign it, you seal it and it goes into evidence.

19 Q Okay. Did you subsequently put in a request with the Las Vegas

20 Metropolitan Police Forensic Lab to analyze the DNA recovered from the swabs

21 of the gun shown in State's 137 against the DNA belonging to the defendant?

22 A I did.

23 Q Okay. And to your knowledge, did that come back as inconclusive?

24 A There wasn't enough DNA.

25 Q There wasn't enough DNA taken from the gun?

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1 A Yes.

2 Q Okay. Did you submit any latent prints for comparison?

3 A I did.

4 Q Okay. Do you know where the prints were obtained?

5 A The prints were obtained on the vehicle that was found at the scene.

6 Q Okay. The vehicle you suspected to be involved in the robberies; is
7 that right?

8 A Yes, ma'am.

9 Q Okay. And you submitted that for latent print analysis?

10 A I did.

11 Q Okay. Directed the crime scene analyst to lift for prints?

12 A Process the vehicle, inside and outside.

13 Q Okay. And that did come back with results; is that right?

14 A It did.

15 Q As the case agent, you're aware of a fingerprint, or actually two prints,
16 belonging to the defendant being found in the interior window on the front driver's
17 side of the vehicle, correct?

18 A That is correct.

19 Q The interior?

20 A Interior.

21 Q Okay. So Detective, tell the ladies and gentlemen of the jury why you
22 focused on the DNA analysis on the gun.

23 A We focus on the DNA analysis on the gun, because if you've got more
24 than one person handling it, you'd like to know where it's been, who's had it, if it
25 was actually used in the -- or even if this is the right gun.

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KEANDRE VALENTINE,) No. 74468
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 Appellant,)
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 vi.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2 day of August, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office