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Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME XII PAGES 2520-2769

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KEANDRE VALENTINE
Case No. 74468

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1 MS. LEXIS: Thank you.

2 MR. GASTON: Your Honor, can you --

3 THE COURT: Yep?

4 MR. GASTON: We talked about this before.

5 THE COURT: What?

6 MR. GASTON: Just --

7 THE COURT: Oh, stay on the record.

8 MR. GASTON: Sorry. It's just with respect to our affidavit for the

9 custodian of records from California.

10 THE COURT: Yeah.

11 MR. GASTON: We think it's sufficient. If it's not sufficient and we just

12 have to arrange travel or audio/visual setup for tomorrow, so we just wanted to

13 propose our affidavit. If the State's going to object, I want it -- I want it figured out

14 now if the court's --

15 THE COURT: Object to the form of the affidavit?

16 MR. GASTON: Correct. If the affidavit is not sufficient.

17 THE COURT: Well, is it -- is it original signed and dated and --

18 MR. GASTON: I can't imagine it's not sufficient. But I just wanted to

19 get it done now --

20 THE COURT: All right.

21 MR. GASTON: -- in case there is an issue, we are not scrambling to

22 get our witness here tomorrow.

23 THE COURT: All right. Let see. Do you have one for me to look at?

24 MS. LEXIS: I was just handed the affidavit now, so I am going to need

25 a moment to look at it.

1 THE COURT: Yeah. Of course, let's take a look. All right.

2 [Pause in proceedings.]

3 THE COURT: Okay. Anything I need to know about this?

4 MS. LEXIS: The State does object and here's the reason. This
5 particular affidavit doesn't just authenticate the record that's provided, it actually
6 provides testimony upon which we will not be able to cross-examine.

7 Number 3 -- or, excuse me, number 4:

8 The subject Mazda described in paragraph 2 was purchased by Omara
9 McBride on May 25th, 2016.

10 Where in this registered owner information does it show a purchase
11 date and a purchaser's name? What this shows is the registered owner, it doesn't
12 say who actually purchased this vehicle, doesn't say when this vehicle was
13 purchased. So I believe this affidavit is actually testifying.

14 THE COURT: Well, what we need is just -- all we're trying to do is get
15 authentication of the record, right? See, we can redact that part, right?

16 MR. GASTON: Well, it's critical.

17 MS. MACHNICH: Yes.

18 MR. GASTON: The State indicated to us that a big issue that they had
19 with this registration form being admitted is the relevance of this form, as it shows
20 the date of purchase.

21 THE COURT: Where is that?

22 MR. GASTON: Well, the answer is the registration dates back to date
23 of purchase. I told them that we'll try to get this in the affidavit, that way we can go
24 ahead and answer their question about registration is not different than date of
25 purchase. Registration is dated back to date of purchase. So the date showed for

1 registration on the form corroborates the date of purchase.

2 I added -- we -- we asked the witness to put that in the affidavit,
3 because we -- we needed to show to satisfy the State's curiosity.

4 THE COURT: How do you -- are you going to have a witness on this
5 stand that -- that you use to get this in? Or how are you going to get this before
6 the jury? What was your plan?

7 MR. GASTON: We can have the witness come from California, if we
8 need to. We're hoping that since there's no real question.

9 THE COURT: No. My simple question is, what was the mechanism by
10 which you were going to present this to the jury?

11 MS. MACHNICH: Most likely, our investigator --

12 THE COURT: You just going to say, Hey, I have an affidavit here, let
13 me read it? Or we just give it to them when they go back to deliberate? What's
14 your mechanism?

15 MS. MACHNICH: My investigator.

16 THE COURT: You've got an investigator take the stand?

17 MS. MACHNICH: Yes. This was -- there's other things she's testifying
18 to, but this would be one thing and it would be a mechanism to bring it in.

19 THE COURT: All right.

20 MS. MACHNICH: Because she's the one who communicated.

21 THE COURT: An affidavit can't have more than just authentication.
22 This seems hearsay. I think -- think what we need to do is just let you -- because
23 the court's satisfied that this -- this affidavit properly authenticates this -- this
24 registration as a public record. And that was the whole issue. The public record --

25 MS. MACHNICH: Okay.

1 THE COURT: -- comes in. All right. That's --

2 MR. GASTON: The only remaining issue, then, is we can't argue to
3 the jury without that extra sentence.

4 MS. MACHNICH: We can argue whatever we want. It's our witness.

5 MR. GASTON: Okay. But we shouldn't have to argue.

6 THE COURT: Well, the affidavit doesn't go to the jury, the affidavit's
7 hearsay.

8 MS. LEXIS: But then they'll be assuming facts not in evidence,
9 because the purchaser and the purchase date --

10 THE COURT: What do you want?

11 MS. LEXIS: -- isn't on here.

12 THE COURT: What do you want?

13 MS. LEXIS: I agree with the court, Your Honor, that this, as it stands
14 or as it sits -- but if you redact portions of the affidavit would be properly
15 authenticated. But I don't think that they then get to argue based, on the
16 admission of this registration card, a purchaser, a purchase date. Because not --
17 nothing is included in this --

18 THE COURT: Well, it has registration date. You -- you're not going to
19 register it before you purchase it.

20 MS. MACHNICH: And it, actually, Your Honor --

21 MS. LEXIS: Okay.

22 MS. MACHNICH: -- if you'll notice, it dates back to the purchase date,
23 which is -- it dates back to --

24 THE COURT: What do you mean?

25 MS. MACHNICH: It's registration card valid from 5/25/2016.

1 THE COURT: Yeah, that's the purchase date, 5/25.
2 MS. MACHNICH: Yeah. That's the purchase date.
3 MR. GASTON: That's the entire purpose --
4 MS. LEXIS: Well, yes, but that's --
5 MR. GASTON: -- of this card.
6 MS. LEXIS: But that's an assumption being made. And we can't
7 cross-examine --
8 MR. DICKERSON: Right.
9 MS. LEXIS: -- concerning the statement of who purchased it and when
10 it was purchased.
11 MR. GASTON: Is the State --
12 MS. LEXIS: That's not the purpose of an affidavit.
13 MR. GASTON: Is the State even contesting this?
14 MS. LEXIS: Excuse me.
15 MR. GASTON: I guess -- I think this is just a way to force us to pay the
16 money to get somebody out here from California.
17 MS. LEXIS: No.
18 MR. DICKERSON: That's not it at all.
19 MR. GASTON: Are they even contesting the fact --
20 MS. LEXIS: No.
21 MR. GASTON: -- that the registration date doesn't date back to the
22 purchase date?
23 MR. DICKERSON: It's for jury finding.
24 MR. GASTON: Are they contesting that Omara McBride didn't -- like --
25 THE COURT: Well, hold on. The whole purpose -- so I am going to

1 address these one question at a time.

2 Under 52.265, it's a procedure to bring in a public record. The public
3 record can come in, if you properly authenticate it, by custodian affidavit. It doesn't
4 say the affidavit goes into the jury. The -- so I will allow this record to come in. It's
5 properly authenticated.

6 I'm making a ruling that your registration card is properly
7 authenticated --

8 MR. GASTON: Thank you.

9 THE COURT: -- pursuant to 52.265. All right.

10 I think the affidavit doesn't come in, unless you guys can stipulate, you
11 know, and I don't think you guys will stipulate to it. But my reading of the rule is
12 the affidavit doesn't come in unless you guys stipulate to it. Because it's -- it's
13 generally hearsay. All right.

14 MR. GASTON: So with respect to the State's objection --

15 THE COURT: Now -- now, the next issue is, can -- can the defense
16 argue that from -- based upon this registration card, that the car was purchased by
17 Omara McBride on 5/25/2016? I find that's a reasonable inference that can be
18 derived from the document, and so it's not in violation of *Lioce* to make that
19 argument.

20 MR. GASTON: Thank you.

21 THE COURT: All right. This is simple, this is not complicated stuff.

22 MS. MACHNICH: Your Honor, can we mark --

23 THE COURT: And the State -- and the State can obviously rebut that,
24 if there's any evidence they have to rebut when it was purchased.

25 MS. MACHNICH: Absolutely. And Your Honor may we mark --

1 THE COURT: And -- and one of the ways they can rebut it if they want
2 to, from looking at the affidavit, the affidavit doesn't rebut it, it supports it. But -- I
3 mean, I don't know how you'd rebut the date that it was purchased, unless you call
4 Omara McBride and she disagrees or the defendant disagrees.

5 MS. MACHNICH: Or if they have --

6 THE COURT: I mean, that's the best record of the date that it was
7 purchased?

8 MS. MACHNICH: This is what was provided by the car dealership
9 when we subpoenaed records relating to its purchase.

10 THE COURT: Yeah.

11 MS. MACHNICH: I think they probably consider the rest of it --

12 MS. LEXIS: I sign a sale -- I sign a bill of sale, typically. I've bought
13 many cars, but --

14 THE COURT: Yeah. Do they -- is there is bill of sale?

15 MS. LEXIS: No, there is not.

16 MR. GASTON: This is what they gave us.

17 MR. DICKERSON: A contract.

18 MS. MACHNICH: This is all we --

19 MS. LEXIS: So there is no contract, there's no bill of sale, there's no
20 signature, dated.

21 MR. DICKERSON: We see there is a lienholder, but there's no
22 lienholder contract.

23 MS. LEXIS: So that -- that was the bases of our objection. I think it's
24 totally outside the scope of the purpose of the affidavit and it -- I don't think that's a
25 fair inference at all. And we don't get to cross-examine anyone about, you know,

1 the validity.

2 THE COURT: You don't think it's a fair inference that the date of first
3 registration is the date of purchase?

4 MS. LEXIS: No. I don't believe so.

5 MR. GASTON: What possible cross-examination could there be if
6 we --

7 THE COURT: Well, I've got to allow to draw a reasonable inferences, I
8 think it's a reasonable inference. I'm going to stick with that. I -- I really -- I think,
9 you know --

10 MR. GASTON: Thank you.

11 THE COURT: -- I think it's -- there's probably alternate inferences you
12 can draw. I can't -- the question in front of me, it's a pretty broad one -- can any
13 reasonable juror draw an inference that the car was purchased on 5/25 based on
14 this registration card, you know? I can only exclude this -- or I can only prohibit
15 them from arguing it if no reasonable juror could draw that inference reasonably.
16 And I -- I don't think I can make that finding, so.

17 MS. MACHNICH: And, Your Honor, we are happy to provide them with
18 the contact information for the person who --

19 THE COURT: That's not going to be any good now.

20 MS. MACHNICH: -- if they -- if they want to call her, I mean, if they
21 have any reasonable grounds to -- I mean, we're not trying to keep anything
22 secret.

23 THE COURT: Do you want to call them tonight or tomorrow? I could
24 order them to give you the contact information.

25 MS. LEXIS: No. Because you know what? If -- I mean, what's going

1 to -- there's -- what are we going to do, get a bill of sale? Get a contract? Which is
2 what they should have done if they wanted to argue that.

3 THE COURT: I mean, these crimes took place on the 28th. It's after
4 the date of purchase, anyway, so I don't know how this is prejudice to the State's,
5 anyway.

6 MS. LEXIS: I'm not saying that, Your Honor.

7 THE COURT: Okay.

8 MS. LEXIS: I mean, I -- I think we've made an appropriate record so.

9 THE COURT: Okay.

10 MR. GASTON: Thank you.

11 MS. MACHNICH: Well, I -- now that I --

12 THE COURT: Anything else, guys?

13 MS. MACHNICH: I now have the actual registration card that's
14 attached as Exhibit A marked, as Your Honor's ruled that the affidavit doesn't go
15 back, it's not been marked. Could we have a copy of the affidavit? Either the one
16 you have or the remainder of the one I have from that copy?

17 THE COURT: Court exhibit.

18 MS. MACHNICH: Court exhibit.

19 THE COURT: It's marked as a court exhibit, doesn't go to the jury. All
20 right.

21 Now -- now, you know, it's up to the State. If the State wants you to
22 introduce the affidavit because they believe it has some impeachment value, it's up
23 to them.

24 MS. MACHNICH: That's fine, I mean --

25 THE COURT: All right.

1 MS. MACHNICH: -- we obviously would have no problem with that.

2 THE COURT: All right, guys. See you tomorrow.

3 MS. MACHNICH: See you tomorrow.

4 MR. DICKERSON: Thank you, Your Honor.

5 [Court recessed at 5:36 p.m., until August 2, 2017, at 10:14 a.m.]

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14 ATTEST: I do hereby certify that I have truly and correctly transcribed the
15 audio/video proceedings in the above-entitled case to the best of my ability.
16

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18 

19 Shawna Ortega, CET*562
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25



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

WEDNESDAY, AUGUST 2, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 8**

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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10 EXHIBITS

11 DESCRIPTION

ADMITTED

12 State's Exhibit No. 196 73

13 State's Exhibit Nos. 197 through 200 219

14 Defendant's Exhibit No. R 60

15 Defendant's Exhibit No. S 145

1 **LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 2, 2017**

2 [Case called at 10:14 a.m.]

3 [Outside the presence of the jury.]

4 MS. MACHNICH: Your Honor, would you like to address our
5 evidentiary issues now or wait for Mr. Dickerson to return? Ms. Lexis is deferring
6 to the court.

7 THE COURT: Ms. Lexis what?

8 MS. MACHNICH: I -- I have a couple evidentiary issues that are
9 going to come up with the first -- within the first 10 minutes this morning.

10 THE COURT: Okay.

11 MS. MACHNICH: And I -- instead of bringing the jury in and trying to
12 approach then, I was going to bring them up ahead of time. I would like to do that
13 now.

14 THE COURT: Okay. Sure.

15 MS. MACHNICH: Okay. Mr. Dickerson is back. Okay.

16 So, Your Honor, here are two things. It's two pieces of evidence --
17 well, there's three pieces of evidence. One, I don't have any anticipation that
18 there should be issues with, and that is the valet ticket and it has been provided to
19 the State -- or the valet printout form that's kept by the valet location.

20 I have two other witnesses who are coming. They're both Metro
21 employees. They're sitting outside. One is in relation to Bobby McCoy's booking
22 photos. And one is in relation to Bobby McCoy's SCOPE.

23 First, with the booking photo, I believe it is obviously relevant, as it is
24 our theory of defense. I will be proposing the copy that is provided to us by Metro.
25 I see that it's clearly relevant, and I don't believe that it's overly prejudicial,

1 because Bobby McCoy is not a -- he -- he's not a party to this case. Nothing
2 about why he was booked is coming into evidence, but it is a booking photo, and,
3 specifically, it also has the date on it, which is important given that appearances
4 change over time. And I will proffer to the court that the picture specifically states
5 that it was from December 2016. And that's the actual version that was provided
6 to us by Metro. I have a person here from Metro to testify to its authenticity and
7 how it's kept in business records. So I will be proffering that into evidence. I
8 anticipate the State will object to the fact that it is a booking photo and that there
9 are multiple shots. Because we've -- we've discussed this. There are multiple --
10 there's this front and a side, and that it be referred to as a booking photo.

11 I don't believe that they even have standing to say that it's overly
12 prejudicial, as this is a nonparty to this case. It is within their purview to bring in
13 what he was arrested for if that comes up. He does not have the same rights in
14 this courtroom as this defendant, as he is not on trial here, and I do not intend to
15 elicit any testimony about whether he is -- what he was arrested for or anything
16 relating to that.

17 So I will be offering that into evidence. I do have the custodian of
18 records here, and I do have them marked as proposed exhibits, and it's
19 something that I know that the State is going to oppose, so I wanted to bring it up
20 before the jury.

21 I have another piece of evidence, but I'd like to turn it over to the State
22 on this piece of evidence right now.

23 THE COURT: All right.

24 MS. LEXIS: Your Honor --

25 THE COURT: What would the State like to say about the Bobby

1 McCoy booking photo?

2 MS. LEXIS: We did speak about this yesterday. And if I may
3 approach your clerk.

4 THE COURT: You may.

5 MS. LEXIS: I offered a stipulation to Ms. Machnich --

6 MS. MACHNICH: It's over on the other side.

7 MS. LEXIS: -- concerning this particular piece of evidence. She
8 wants to get in this -- well, actually she wants to get in this photo --

9 MS. MACHNICH: Actually not.

10 MS. LEXIS: -- [indiscernible.]

11 MS. MACHNICH: I'm actually just going to get in his actual booking
12 photos that were turned over by Metro. They're not the same.

13 THE COURT: Let's make sure we all know what you're talking about,
14 Ms. Machnich.

15 MS. MACHNICH: This, yes.

16 THE COURT: Which -- which photo?

17 MS. MACHNICH: I am proffering these. It's one of --

18 THE COURT: I can't see that far. Sorry. Okay.

19 MS. MACHNICH: Which is what we recovered both in color and then
20 we printed a black and white copy and a red market.

21 THE COURT: All right. Go sit down and let the State speak now.

22 MS. MACHNICH: Okay.

23 THE COURT: Thank you.

24 MS. LEXIS: I offered Ms. Machnich, when she told me of her intent to
25 bring in this particular photo, I said I had no objection to getting in this photo, just

1 a head shot, front-facing, of Mr. McCoy with -- I would stipulate that this is, in fact,
2 Mr. McCoy, and that this photograph was taken December of 2016. Whatever
3 date it was.

4 I indicated to her that I would not stipulate to a photograph which
5 would give the inference of it being a booking photo, thus inferring or putting a
6 false impression out that this particular individual has been a -- has been booked
7 before, has an arrest history, has -- I -- I -- that's just -- that's not relevant to this
8 particular case.

9 So I think they're trying to get out the -- I -- I also objected to the ID
10 number coming in, because that does give an inference of -- of a criminal history.
11 This is an individual that they claim is an alternate suspect. And so I don't think
12 so they get to get in otherwise inadmissible pieces of evidence on the guise of,
13 well, we need to just, you know, get in this photo and all of this information
14 concerning.

15 What I think is relevant is the actual photo. It's an identification case.
16 He is an alternate suspect. I have no objection to getting in this photo.

17 THE COURT: Okay.

18 MS. LEXIS: I think the side photo is also prejudicial. We don't take
19 side photos for DMV, let's say. You know, I mean, on TV you know for sure that
20 the various shots of the inmates as they're booked is taken. So I think it leaves
21 that false inference of a criminal history, unnecessarily so. It's improper. It's
22 inadmissible. And I think, with a stipulation, they get in what they -- what they
23 need to.

24 THE COURT: Thank you.

25 Ms. Machnich, do you want to say anything more on this issue, before

1 I decide what to do?

2 MS. MACHNICH: Your Honor, yes, just briefly.

3 Again, it is our case in chief and it is our purview what we would like to
4 introduce into evidence. We had to subpoena this person to come, because there
5 were a lot of conditions placed on the stipulation. The person is now sitting
6 outside because of these conditions. And we believe that it is relevant. It is --
7 they don't even have standing to raise the prejudicial effect, because the person is
8 not here.

9 If the main issue is the ID number, one, it ties it into other pieces of
10 evidence saying this is, in fact, the same person that's being mentioned, so it
11 does provide identification in that manner. But additionally, it -- it's the true and
12 accurate copy of the booking photo that was received.

13 I don't even know what would -- I mean, if I brought in the custodian of
14 records and provided it without, I guess we could redact it, and that's fine. But it
15 does link together pieces of evidence showing that the ID number is, in fact,
16 carried through.

17 So I think all of it is relevant. We'd be willing to give up the booking
18 number, if you believe that's inappropriate identifiers on something. But it is a
19 booking photo. And it's actually not in -- in -- an inference that's incorrect. It's an
20 inference that is correct. And it is what it is, because this photo was taken, and
21 that's how we were able to obtain it.

22 It was taken through Metro records, it was taking the booking.

23 They are free to get into if they want to, what he was booked for, if
24 that's what they want to do. But he was, in fact, booked, and that's why we're
25 seeking to introduce it.

1 There's actually another booking photo that I just saw that the witness
2 had today from an earlier -- we had just requested the most recent. She did bring
3 both of them from December. The other one, to my viewing, is more prejudicial to
4 him, because he looks kind of drugged out and his head's tipped sideways, and
5 all of that. And I'm not seeking to get in duplicative copies. But just this one. And
6 I think it is appropriate in this case. Thank you.

7 THE COURT: All right. I -- I'm not going to allow the State to
8 introduce the booking photo. It's -- it's completely irrelevant. The jury cannot
9 draw inference that just because this guy, Bobby McCoy, has been a bad person
10 in the past that he might have been booked, that he might have been arrested,
11 that he might have been in jail, that he might have a criminal history. None of that
12 is relevant to the issue on whether defendant Valentine committed the crimes in
13 question.

14 So it's completely irrelevant. It'll be completely misleading to the jury,
15 confusing to the jury, and unfairly prejudicial to the State. There's absolutely no
16 way that this booking photo thing is coming in or these photos are coming in. All
17 right.

18 No -- no more --

19 MS. MACHNICH: So I will be proffering --

20 THE COURT: No more questions, no more discussion about it. All
21 right.

22 MS. MACHNICH: I -- I wanted to clarify. So then I will be bringing in
23 the picture without the booking and the instruction from the court would be --

24 THE COURT: The picture that Ms. Lexis says that can -- that can
25 come in, the picture can come in. All right. The name has been mentioned.

1 People are entitled to know what this guy who has been mentioned looks like.

2 MS. MACHNICH: Okay.

3 THE COURT: But you're not allowed to argue to this jury that -- that
4 we know that this crime was committed by Mr. McCoy, because Mr. McCoy has
5 been a bad guy in the past. Just --

6 MS. MACHNICH: That's not what I was planning to argue about.

7 THE COURT: Well, it's kind of what you are trying to do, which --
8 which -- there's no reason why someone's criminal history in the past is relevant in
9 this case. All right.

10 MR. GASTON: So we don't need the custodian of record --

11 THE COURT: No, no more argument. Didn't I say no more
12 argument?

13 MR. GASTON: I'm not arguing --

14 MS. MACHNICH: No --

15 MR. GASTON: We don't -- we don't need the custodian of records
16 anymore, then, right? If -- if we're -- if this is coming in through stipulation, we
17 don't need to call the custodian of records as a witness then, right?

18 MS. LEXIS: That's correct. That's what I indicated --

19 MR. GASTON: That's all I was talking about.

20 THE COURT: All right. Thank you.

21 MS. MACHNICH: Okay. So that -- so it's coming in through
22 stipulation, this picture, and the fact that the picture was taken in December 2016.

23 THE COURT: That's fine.

24 MS. LEXIS: Correct. Not a booking photo.

25 MS. MACHNICH: Okay.

1 MS. LEXIS: Just a -- just a photo.
2 MS. MACHNICH: Okay. Yeah.
3 THE COURT: So let the officer go back to do his job.
4 MS. MACHNICH: And it's -- it's a staff worker. It's not an officer.
5 THE COURT: All right.
6 MS. MACHNICH: But, of course.
7 You can go release the custodian from Metro for the photograph.
8 Yeah. Okay.
9 We'll release that witness.
10 THE COURT: All right.
11 MS. MACHNICH: Our next piece of evidence that we intend to
12 introduce is a --
13 THE COURT: You say the SCOPE. It's the -- the prior convictions of
14 McCoy.
15 MS. MACHNICH: No. Actually not.
16 THE COURT: No. Then what do you want?
17 MS. MACHNICH: I want the identifiers, because as --
18 THE COURT: The what? What's identifiers?
19 MS. MACHNICH: His height and weight.
20 THE COURT: Oh.
21 MS. MACHNICH: It's -- it is a part of the SCOPE. That's the only way
22 we can get into it. But it -- it specifically does not go into --
23 THE COURT: Was there any witness that testified that saw McCoy
24 who can testify to his characteristics?
25 MS. MACHNICH: Not specifically his height. They're not going to

1 know, specifically, his height. That's why we're concerned. It's -- the height is
2 specifically listed on there. We have no other way of getting into his particular
3 height. I mean, they can say he's about this tall or he's relative to --

4 THE COURT: What evidence is there that's put McCoy at the scene
5 of the crime?

6 MS. MACHNICH: His fingerprint on the car.

7 THE COURT: Yeah.

8 MS. MACHNICH: And the description that was given of someone
9 who was 5-10. He is 5-10. He is not 6-3, like my client.

10 THE COURT: But is there any other evidence that has put him at the
11 scene? There's some fingerprints, right?

12 MS. MACHNICH: Right. And then --

13 THE COURT: Anything else?

14 MS. MACHNICH: -- the testimony from additional witnesses that will
15 have him at the apartment within the last 24 hours. So he was around at that
16 time. It is our argument that he was the person in that -- in fact, every eyewitness
17 put him at the scene, because the person they describe is Bobby McCoy. And
18 this is the only way we can get into his height and his weight, his identifiers.
19 That's it. We don't want to bring in his criminal history.

20 THE COURT: So your theory of the perpetrator was McCoy, and his
21 fingerprints on the car.

22 MS. MACHNICH: Yes.

23 THE COURT: And you want to introduce his characteristics to be
24 able to argue to the jury that -- that his physical characteristics are consistent with
25 the -- the -- some of the descriptions that some of the victims have made?

1 MS. MACHNICH: Yes.

2 MS. LEXIS: I -- I understand it.

3 Let me hear the State's view on this.

4 MR. DICKERSON: The -- the State opposes that, Your Honor.

5 Here's the -- the basis of all of this. So first of all, addressing the evidence that
6 Bobby McCoy is at the scene, the evidence is really to the contrary, as we stand
7 right now.

8 The evidence shows that the defendant himself is saying that Bobby's
9 been gone two days ago. His mere fingerprint on the outside of the car doesn't
10 show he was at the scene.

11 So that's that. SCOPE, in and of itself, is a law enforcement database
12 that's just used to keep track of information, to try to identify people in the field.
13 But in no way is it an exact thing or is it reliable.

14 This document itself, and SCOPE itself, relies on several layers of
15 hearsay to even get this information into the system.

16 So while at the first level we might have some sort of business record,
17 then beyond that, the information coming in is put into there through a data entry
18 person who possibly gets the information from somebody who collects information
19 for maybe a work card, or a CCW, or an arrest, that comes from an officer or a
20 staff worker at a building, or an officer on the street, which ultimately comes from
21 the person themselves, either by word of mouth, by maybe through ID. But we
22 have no assurances on any of that.

23 And so looking at this, this could very well just be, first of all, Keandre
24 Valentine just telling the officer, I'm 6-3. That's the defendant's statement that's
25 trying to be admitted by defense counsel themselves, and for Bobby McCoy, him

1 just telling him I'm 5-10.

2 Now, how many people have on their driver's license the wrong
3 height, the wrong weight, and maybe an inch taller? How many people can we
4 trust to say, yeah, information that they give to police officers is always reliable?
5 Because off that, we -- we know that's not true. We know that's not true based on
6 the facts of this case alone. So just inherently, information given to police officers
7 is not in and of itself reliable.

8 Because of that, Your Honor, they also are not bound to have this as
9 their only way to bring this information in, by no means. You heard from defense
10 counsel about their witness that's going to testify about putting Bobby in the area
11 or -- or in the city around this time. That same witness is, obviously, going to be
12 able to testify to what Bobby looks like. So there's no need for this, especially
13 to -- there's no way for them to overcome the multiple layers of hearsay that
14 create these documents.

15 THE COURT: Is this a business record? Or --

16 MS. MACHNICH: Yes.

17 THE COURT: Well, I'm asking Mr. Dickerson.

18 And -- or a public record?

19 MR. DICKERSON: It's not a public record, no. It's a proprietary
20 system.

21 THE COURT: Oh. Is this from --

22 MS. MACHNICH: Metro.

23 THE COURT: Metro, okay.

24 MR. DICKERSON: So, basically, back in, like, the 1970s this system
25 started when they were trying to -- to really start regulating the gaming industry.

1 And so it started by that, by entering the work cards for people --

2 THE COURT: Okay.

3 MR. DICKERSON: -- and ultimately Metro keeping that information.

4 THE COURT: Just for the record, you're not objecting on grounds of
5 timeliness here? Because it doesn't sound like you are.

6 MS. LEXIS: No. Because, technically, we also have access to
7 SCOPE, and so we -- that would not be a valid objection on our part, Your Honor.

8 THE COURT: All right. Well, so back to you, Ms. Machnich.

9 MS. MACHNICH: Yes. We believe it is a valid business record --

10 THE COURT: So he -- he raises hearsay, and he says it's -- it's
11 completely unreliable. And he says it's not necessary, because you have a
12 witness.

13 MS. MACHNICH: Okay. Well, to address the necessary, I -- I don't
14 believe she'll be able to testify to the exact height of Bobby McCoy. Even if she
15 was, which I don't believe she is, I haven't asked her -- she -- I -- my
16 understanding is they're going to try to poke holes in her story and make her
17 seem unreliable. So they're saying we can get it in through a witness that they're
18 going to try to make seem unreliable just generally.

19 This is the only way we can get it in any sort of reliable fashion. So
20 let's address reliability. The SCOPE system is what law enforcement uses for
21 identifiers when they go -- and my understanding is when they go and pull
22 someone over, and they run someone -- my understanding is they run SCOPE.
23 I'm not sure if it's SCOPE or NCIC; I'm not a police officer. My understanding is
24 they run SCOPE. They specifically run SCOPE. They use this in the everyday
25 course of their business, which is law enforcement, in order to identify people and

1 they use it because it's based on reliable information.

2 And then we go to hearsay, we're talking about -- and the hearsay
3 exception, which is the business records exception. I brought the custodian of
4 records from Metro who is the custodian of records for SCOPE, and they're here
5 to testify and authenticate that this was pulled from -- directly from the SCOPE
6 system. It was not altered. And -- I mean, to be honest, we would never have a
7 way to alter it. I don't know who can alter it. They can certainly ask the witness
8 that.

9 But it is a custodian of records for a law enforcement that is actually
10 part of the State. And all the time police officers and others associated with the
11 State rely upon SCOPE literally every day, multiple times a day, with both the
12 identifiers and, if it is relevant in the situation, the criminal history.

13 We are not seeking to introduce the criminal history. In fact, we would
14 be willing to stipulate that SCOPE is a database kept by the State of Nevada that
15 draws its sources from, they said, with driver's licenses, gaming cards. I mean,
16 we'd be willing to stipulate to that if they're worried about that aspect of it.
17 Because I don't believe that that's incorrect. And that's not our intent to bring this
18 in.

19 Our intent to bring this in is to establish his identifiers. They're
20 seeking to preclude us from doing that and preclude us from putting on our
21 defense. And just because they say we can bring it in through another witness,
22 again, I'm not even sure if we could. I think at best we're going to get relative
23 heights.

24 And that's not the point. They're going to try to poke holes in that
25 witness testimony. And -- yeah, yeah. This is one of the most important pieces of

1 evidence in our case, and that's why we've handled it appropriately and brought
2 the custodian of records.

3 I mean, this is our defense. And it shows his height. I -- I mean, I --
4 they can -- are free to cross-examine the custodian of records if they want, or to
5 bring in someone to establish that their own criminal investigation database that
6 includes, I guess, work cards and driver's license, that it's inherently unreliable
7 and it doesn't have the amount in there. But I -- I don't believe that's true. And I
8 believe that almost every district attorney would say that SCOPE is reliable,
9 because it is, in fact, relied upon every single day by officers. In every single
10 investigation, they run SCOPE, to my knowledge. I mean, they -- again, all the
11 time.

12 So we're not trying to bring in the criminal part at all. As you've
13 noticed, the only thing on there are his identifiers, and it is integral for our case
14 and it is our defense.

15 MR. DICKERSON: And if I may, on one thing.

16 THE COURT: Are you arguing? Yes?

17 MR. DICKERSON: Even this custodian of records would tell
18 Your Honor that none -- though SCOPE is reliable for bookings into the Clark
19 County Detention Center, because it shows when they're booked in and what
20 they're booked in for, none of the identifiers, which they're trying to admit here,
21 offering these statements for the truth of the matter asserted, are verified.

22 This custodian of records here has worked at the Clark County
23 Detention Center previously for two years. She'll testify that none of them are
24 major. They aren't weighed. That this is simply information that comes, you
25 know, from somewhere. We don't know where. Especially, in this case, we don't

1 know where.

2 MS. MACHNICH: We do know where. He was booked in at Clark
3 County Detention Center several times. I don't think they want that out,
4 Your Honor. So we'd be willing to testify that it came -- or willing to stipulate that it
5 came from other sources, but if they're going to say that it's unreliable because it
6 came from other sources, the truth is he was booked in at Clark County Detention
7 Center two different times in December. And that's where this information came
8 from.

9 I -- I didn't intend to elicit that, and I didn't intend -- I didn't think that
10 there would be an issue about business records section for a piece of evidence
11 that is kept in the ordinary course of the State's business.

12 THE COURT: Are we all done talking?

13 MS. MACHNICH: Yes.

14 MR. DICKERSON: Yes, Your Honor. Submit.

15 THE COURT: Okay. So it sounds like the State is arguing that this is
16 a business record under NRS 51.135, which says that a compilation of data made
17 at or near the time or from information transmitted by a person with knowledge in
18 the course of a regularly conducted activity as shown by testimony or affidavit of
19 the custodian is not inadmissible unless the source of the information or method
20 or circumstance of preparation indicate lack of trustworthiness.

21 There's several different variables here that present this court with the
22 need to explore the circumstances under which this document was created,
23 who -- from whom, and what was the source of the information, is the process of
24 collecting the information trustworthy. I need to know that information. We have
25 a custodian here. We need to voir dire this custodian outside the presence of the

1 jury --

2 MS. MACHNICH: Okay.

3 THE COURT: -- so we can answer these questions. Whether this
4 custodian knows, you know, the -- the source of the information, from whom the --
5 the persons that provided this information, the method by which the information
6 on characteristics of the -- of the individual were acquired, and the methods and
7 circumstances of the preparation of this form, and the indicia of trustworthiness. I
8 need to know those things --

9 MS. MACHNICH: Okay.

10 THE COURT: -- to make a proper determination whether 51.135
11 applies.

12 Right now, as it stands now, if I had to rule now, I would find that the
13 defense has not met its burden to prove that 51.135 applies. So the burden is on
14 you to establish the prerequisites to -- to admit this as a business record.

15 Do you understand?

16 MS. MACHNICH: I -- I understand, Your Honor. It puts us -- I mean,
17 I'm more than happy to have the witness come up and voir dire her. I -- my -- I
18 guess my major issue is our hands are somewhat tied, because we're getting
19 information that's held by the State. We don't know who the arresting officer on
20 the other case is. That's held by the State. So we can't call that officer to say
21 certain things. We can't, you know, we don't know who at the detention center did
22 the booking on this day. That would be information that the State had.

23 THE COURT: All right. But there's no -- there's no -- I-don't-know
24 exception to the hearsay rule. Right?

25 MS. MACHNICH: I -- I guess the --

1 THE COURT: Okay.

2 MS. MACHNICH: -- SCOPE is regularly referred to and used in court
3 by police officers regarding identifiers, all the time. Because they say that it's
4 reliable. I've had district attorneys request that judges take judicial notice of
5 SCOPE.

6 THE COURT: You know what, all the PSIs are based on SCOPE for
7 identification of the defendants.

8 MS. MACHNICH: Yeah.

9 THE COURT: They come in all the time. And I see huge differences
10 every single day between what it says in SCOPE and -- and what it said -- and
11 what the person looks like in front of me. Usually, there's the differences in
12 weight. Occasionally, there's some heights differences. I've seen some -- I've
13 seen a lot of differences. All right.

14 MS. MACHNICH: Your Honor, I've never had a client contest a
15 height, ever.

16 THE COURT: And so I've seen height differences. It could say 5-10,
17 I can see someone 6-foot tall. You know, I mean, there's differences. I -- if I had
18 to just guess right now, I would say SCOPE's not that reliable, because I have
19 personal knowledge that there's great deviations between what's written in the
20 PSIs, which is based on SCOPE, and these people that look -- come in front of
21 me.

22 So -- so I think it's unreliable. Maybe you can convince me it's reliable
23 and it's a business record. I'm going to give you that opportunity.

24 MS. MACHNICH: Okay. We'll call --

25 THE COURT: Do you -- do you want to voir dire --

1 MS. MACHNICH: Of course. Let's voir dire the witness.
2 Will you go get her?

3 THE COURT: Okay. Marshal, bring in the custodian.

4 [Pause in proceedings.]

5 THE COURT: All right. The court clerk will administer an oath for
6 you.

7 **LISA KENNEDY**

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

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

11 THE WITNESS: My name is Lisa Kennedy, L-I-S-A K-E-N-N-E-D-Y.

12 THE COURT: Marshal, will you please let the jurors know that
13 we're -- we're still conducting some -- some business related to trial, and it's going
14 to be another -- just tell them another 15 minutes or so.

15 All right. Ma'am, we needed to obtain some information from you, so
16 this is done outside the presence of the jury. This is to help us resolve an
17 evidence issue here.

18 THE WITNESS: Yes, sir.

19 THE COURT: You've been sworn and you are required to testify
20 truthfully.

21 THE WITNESS: Yes, sir.

22 THE COURT: And both the attorneys are going to ask you a few
23 questions. All right?

24 THE WITNESS: Okay.

25 THE COURT: Okay. So please give them your kind attention.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Thank you very much.

3 MS. MACHNICH: All right. Your Honor, if you'll let me fast forward
4 through some of the foundational issues at this point.

5 THE COURT: Uh-huh.

6 **VOIR DIRE EXAMINATION**

7 BY MS. MACHNICH:

8 Q Ma'am, how are you employed?

9 A I work for the Las Vegas Metropolitan Police Department. I am a law
10 enforcement support technician supervisor with the records section.

11 Q Okay. And do you know why you've been subpoenaed down to court
12 today?

13 A In regards to the SCOPE.

14 Q Yes. Let's discuss SCOPE. What is SCOPE?

15 A SCOPE is a shared computer operations for support enforcement --
16 protection enforcement. It's the criminal history system that we use at Metro, as
17 far as accessing criminal history information or just information on individuals.

18 Q Okay. Where is the information on individuals -- well, what -- what
19 type of information on individuals does it contain beyond the criminal histories?

20 A SCOPE can be created many different ways. It can be created
21 through CCW, work cards --

22 THE COURT: Can you slow down a little bit?

23 THE WITNESS: Sure.

24 THE COURT: This is important.

25 THE WITNESS: I'm sorry.

1 THE COURT: All right. Thank you. And you said something work
2 cards -- what were your words before that?

3 THE WITNESS: Okay. SCOPE can be created many different ways.
4 Every ID is individual to a person and it can be for work cards, CCWs, missing
5 person reports, victim of crimes, dead body reports, and criminal history -- just a
6 creation of criminal history.

7 BY MS. MACHNICH:

8 Q Among all of these things that are included in SCOPE, are someone's
9 personal identifiers included?

10 A Yes.

11 Q Okay. And when I refer to personal identifiers, what do you take that
12 to mean?

13 A It would be height, weight. Their height, weight -- height, weight,
14 name, date of birth, social security numbers, whatever you -- if they're black,
15 white, Caucasian, whatever, yeah.

16 Q Okay. Where is this information obtained from, the identifiers,
17 specifically?

18 A The identifiers? If -- it depends on how. So if it's criminal history, it's
19 obtained from booking vouchers that were received from city and county jail. If it's
20 anything to do with the work card, it's an application. CCW would be an
21 application. Missing persons could be taken over the phone by whoever is
22 reporting the -- the individual.

23 Q So let's turn our attention specifically to creations from booking in one
24 of the detention centers.

25 A Yeah.

1 Q How is that adaptation -- how is that information obtained at booking?

2 A What it is, is if the officer -- when the officer makes an arrest and he
3 brings them into booking -- whichever, city or county -- they fill out a form called
4 TCR, temporary custody report. And the information -- whatever the information
5 the officer gets from the suspect is what is filled out onto that. That is transmitted
6 over to the SCOPE section. And we enter exactly what the officer has given us.

7 Q Okay. So it's obtained from an officer.

8 In your -- if you know, do officers try to be as exact as possible in it?
9 Or do they not care what they're writing in their identifier forms?

10 MR. DICKERSON: Lacks foundation, and calls for speculation.

11 MS. MACHNICH: I -- I actually asked if -- if she knew.

12 THE COURT: Let's find out first.

13 Do you know -- do you have any basis to know the answer to that
14 question?

15 THE WITNESS: I have a little bit of basis. And --

16 THE COURT: Can you tell us how you would know?

17 THE WITNESS: If it's the first time that someone has a SCOPE
18 record created, of course, we take the information about the individual and we
19 enter it.

20 But if we have a -- a second incidence where we get new information
21 on that person or maybe information that is more accurate and if it's within five
22 inches or 20 pounds, then we will change the information, because it has to fall
23 within a certain -- it -- five inches and 20 pounds is, basically, our rule.

24 BY MS. MACHNICH:

25 Q Okay. And that's if it's a duplicative record?

1 A Uh-huh.

2 Q Okay. But on the original record?

3 A On an initial record we just take, basically, what the officer has.

4 Q Okay. And this is a police officer whose job -- is this a police officer --

5 officer whose job it is to be as exact as possible on the identifier?

6 A Yes, ma'am.

7 Q Okay. And do you know for each and every case what the officer uses

8 to obtain the identifiers? Or does that vary by officer and by department?

9 A It varies. It can be done by identification. It could be done by the

10 suspect himself, giving a date of birth or a social or whatever he is giving as his

11 identifiers.

12 Q Okay. And with regard to height and weight, would officers -- to your

13 knowledge, are officers trying to be as exact as possible?

14 A My understanding, yes.

15 Q Okay. And is that because police officers use the identifiers in their

16 everyday interactions with people on the street?

17 A I would say yes. I would say if they get used to a certain suspect, you

18 know, basically -- based -- and this is speculation. Basing it off their height, their

19 own weight, when they fill out their TCRs, as far as what they think a suspect's

20 height and weight is.

21 Q Okay. And is SCOPE something that's used by officers every day?

22 A Yes.

23 Q And in what situations is SCOPE used by officers?

24 A They have it in their MDTs in their vehicles.

25 Q Okay.

1 A And that's their primary access of criminal history information.

2 Q So when an officer comes upon someone on the streets, and runs
3 someone, is this what they're running?

4 A They're running -- they have a very limited access in which they can
5 run. They can run name. They can run social.

6 Q Okay.

7 A Most of the time, they'll run it that way, or they'll have dispatch run it for
8 them and get back to them, depending on the call and how busy they are.

9 Q Okay. And would they have access, then, to the person who they've
10 run identifying information to be able to identify them on the street?

11 A Yes. If they have a record.

12 Q Right.

13 A Yeah.

14 Q If -- and if they don't have -- if this information wasn't obtained --

15 A Uh-huh.

16 Q -- previously, the person would not come back in SCOPE?

17 A Right.

18 Q Okay. But if they had, it would come up when they'd run them?

19 A Yes.

20 Q Okay. I just wanted to make sure that we're clear on that.

21 And is this something to your knowledge that is used in ordinary law
22 enforcement in order to further their duties as law enforcement officers?

23 A I would say yes, if -- if -- it would be their identifiers to know what
24 suspect they have in front of me -- front of them and to determine if this is the right
25 person, if it fits -- if there is a SCOPE record, that it fits the identifiers, then I would

1 say yeah.

2 Q Okay. So is -- is it important to them to be able to have access to this
3 in their vehicles?

4 A Yes. They all have access to it. And if they don't, they can always call
5 in. We have a 24-hour line they can call -- an officer line.

6 Q Okay.

7 MS. MACHNICH: Court's indulgence.

8 All right. Well, we'll pass the witness.

9 Thank you, ma'am.

10 THE WITNESS: Thank you.

11 THE COURT: State.

12 **VOIR DIRE EXAMINATION**

13 BY MR. DICKERSON:

14 Q Good morning, ma'am.

15 A Good morning.

16 Q Your a LEST supervisor?

17 A Yes, sir.

18 Q And how long have your been a LEST -- an -- working as a LEST?

19 A As a LEST is where I started with Metro, for 13 years.

20 Q Okay. You -- you said you worked in the jail at some point in time?

21 A Yes, ma'am -- yes, sir.

22 Q And at your time working at the jail, does that have some relevance to
23 the process of taking information into SCOPE?

24 A Uh-huh. I'm familiar with the booking processes.

25 Q How is the booking process involved in this whole SCOPE thing?

1 A When the officer brings the suspect in, and they fill out their TCRs,
2 then the LEST is behind the counter. And the booking section will run the
3 information in the SCOPE and find the matches, and then that's when they add on
4 the arrest information into it.

5 Q And where does that arrest information come from?

6 A The TCR.

7 Q And the TCR is what?

8 A Temporary custody record that the officer -- it's basically the booking
9 sheet.

10 Q Okay. Who fills that out?

11 A The officers.

12 Q And whose information is on that?

13 A The suspect information.

14 Q And where does that information come from?

15 A The officers -- it has the -- all the identifiers on it. It has the charges in
16 which -- if it's going to be a -- like a PC charge, or if it's -- their picking someone
17 up on a warrant. Anything that they have brought this person in to be booked on
18 will be -- the information will be on the TCR.

19 Q This is like a handwritten form that's filled out in the field?

20 A Yes, sir.

21 Q And so you said that whatever they think the height and weight is, the
22 officer, they might just put that on there?

23 A Yes, sir.

24 Q So it's not necessarily that they've verified this by looking at someone's
25 ID?

1 A They can. They can get the information off of the ID.
2 Q They could?
3 A If the person has one, yes.
4 Q If they have one?
5 A Uh-huh.
6 Q But we don't know that always happens?
7 A Yeah.
8 Q In fact, we know that it doesn't always happen?
9 A It doesn't. Right.
10 Q And so at that point in time, the officer is left with either, what, taking
11 their word for it? Taking the suspect's word for it?
12 A Yes. Because that's where SCOPE comes into play, when we have
13 Jane and John Doe bookings.
14 Q Okay.
15 A And we don't have exact -- we don't really know who that person is.
16 Q We'll get to that in a second.
17 A Okay.
18 Q So either the officer taking the person's word for it that, hey, yeah, me,
19 Mike Dickerson, I'm 6-foot. That might raise an alarm bell? If I told you I'm 5-8,
20 would that raise an alarm bell?
21 A You look close to that.
22 Q Okay. I'm 5-5.
23 A Okay.
24 Q All right. So it wouldn't raise an alarm bell?
25 A I would say in your situation that you explained is if the person you see

1 is telling them they're 6-1, and they're obviously not, then it would be the
2 officer's --

3 Q Right.

4 A -- determination to decide the height.

5 Q And so then at that point in time, maybe -- or maybe the officer is going
6 to skip right to it, and just guessing the height and weight; is that right?

7 A Uh-huh. Yeah.

8 Q And I mean, that's not exact either, right?

9 A It's not exact. They don't -- they don't measure them or weigh them or
10 anything like that in booking.

11 Q At no point in the time in the process are they measured?

12 A I believe when they do booking photos, there's -- there used to be a --
13 a what do you call it? They used to be able to tell what the height was on booking
14 photos. But I don't think we -- we don't have that anymore, but --

15 Q Okay.

16 A It's been a while since I worked at the jail. So --

17 Q So they don't measure them at the jail. No?

18 A Not that I'm aware of.

19 Q And they don't weigh them?

20 A Not that I'm aware of.

21 Q So any information that's put on that TCR is not confirmed?

22 A It -- we confirm by identification, but --

23 Q If they have an ID?

24 A -- not if they have an ID.

25 Q And then if they don't have an ID, they're booked in either under the

1 name they give the police officer?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Sorry. I hate to do that.

6 A Sorry.

7 Q I hate to do that.

8 A That's okay.

9 Q And if they don't give a name to the police officer, then just John Doe?

10 A Yes, sir.

11 Q And if they don't give any information to the police officer, then just I

12 think that he's 150 pounds and looks about 6-foot?

13 A Yes, sir.

14 Q Okay. And the only time that any real alarm bells come up for your

15 guys as far as processing SCOPE is when you have a five-inch difference that

16 subsequently gets brought into the system?

17 A Yes.

18 Q And so that would be like a -- a subsequent TCR that comes in; is that

19 all right -- is that right?

20 A Yes, sir.

21 Q And so the first TCR could say 5-10?

22 A Yes, sir.

23 Q And then the next TCR could say 6-3?

24 A Yes, sir.

25 Q And that might raise some bells?

1 A Yes, it would, yes.

2 Q Okay. And so then at that point in time, what would you do?

3 A At that point in time we have modules within SCOPE. There's different
4 modules which are like layers within SCOPE that we will put in, like, aka
5 information if they use other names, or we'll put in the other identifiers. So we
6 won't mark it as a primary. If we know for sure that person is, say, 5-8, then we'll
7 mark it as primary. But if he comes in, and it says he's 5-3, then we can put it in
8 as a height that's -- was given to us.

9 Q Okay. And if the new SCOPE -- or the new TCR that comes in is only
10 a two-inch difference, so we have 5-10 to 6-foot?

11 A We don't do any -- we -- we'll make a notation of it within the record,
12 but --

13 Q That's it?

14 A Yeah.

15 Q You won't change it?

16 A No, sir.

17 Q And then at that point in time, it's not verified by anybody making
18 contact with the actual suspect, because it's already in the back office?

19 A Uh-huh. Yes, sir.

20 Q And how often do you see -- I mean, I'm sure -- have you seen
21 SCOPEs that are fictitious people?

22 A Absolutely, yeah. I've seen John Does and Jane Does.

23 Q And wrong names or people giving other people's information?

24 A Yes. Absolutely.

25 Q And that tends to screw up the information that's in SCOPE?

1 A Yes.

2 Q And, specifically, the information -- bear with me one second --
3 additionally it's a 20-pound difference in weight that would cause you any
4 concern?

5 A Yes. Yes, sir.

6 Q Okay. At that point in time, same thing for height, you guys might
7 make a note of it if it's less than 20. If it's more than 20, then you guys are going
8 to add another line and -- and put some other stuff in there?

9 A Uh-huh. Yes.

10 Q Okay. But again, nobody goes back to verify that the person that got
11 booked in is the same person or measured?

12 A No. The part of the identification process also in booking would be
13 fingerprints, so if it's a subsequent arrest, we could verify it by fingerprints. But --

14 Q Okay. So officers have access to SCOPE in their vehicles?

15 A Yes, sir.

16 Q And working with the department, you know that in their patrol
17 vehicles, that's where officers conduct their business; right?

18 A Right.

19 Q So if an officer has a suspect in front of him, they don't have the
20 license, but they do have the SCOPE up, that SCOPE would have their height
21 and weight in it, right?

22 A Yeah. It would have their identifiers in it. Uh-huh.

23 Q So the officer might just put their identifiers in from their previous
24 SCOPE entry?

25 A They don't enter. They just access.

1 Q Right. Into the TCR, I mean.

2 A Oh, into the -- yes.

3 Q So they could look at the old SCOPE and enter that information right
4 into the TCR that they're completing for the new arrest?

5 A I would say that that has probably happened, yes. Yeah.

6 Q Okay. It's probably --

7 THE COURT: And can you tell from the SCOPE document we're
8 looking at when his height and weight --

9 MR. DICKERSON: May I, Your Honor?

10 THE COURT: -- was very first entered?

11 MR. DICKERSON: Yeah.

12 BY MR. DICKERSON:

13 Q Just look in here, ma'am.

14 A Uh-huh.

15 Q This is the Defense Proposed Exhibit N. So this looks like you pointed
16 here to 8/1/7 --

17 A That's when -- yeah, I printed it.

18 Q That's when you printed it?

19 A Uh-huh.

20 Q And then we're able to tell here when information was entered, aren't
21 we?

22 A Yes.

23 Q And how do you tell that?

24 A We can tell by the creation of the record. So if we go in here -- sorry.
25 Can I grab my glasses?

1 Q Yeah. Absolutely. Necessary for that little print.
2 A Yes. Entry date is right here.
3 Q Okay.
4 A So the new entry date would be 12/9/16.
5 Q 12/9 -- so December 9, 2016?
6 A Yes.
7 Q At 1202?
8 A Uh-huh.
9 Q Under that, that's the date that you printed it?
10 A Uh-huh. Yeah.
11 Q Okay.
12 A That's the date that I printed it.
13 Q Do you see any further information about where it came from?
14 A This information would have been generated from whatever we
15 received to create the record.
16 Q Okay. And again, that would either be probably here, a TCR?
17 A Yes.
18 Q Could be a couple different ways?
19 A Could be quite a bit of different ways.
20 Q The other ways would be a person sitting at a counter in
21 recordkeeping?
22 A Uh-huh. Coming in, police records, exactly.
23 Q That's -- then they give their application for either a work card or a
24 CCW to the LEST at the counter?
25 A Yeah. With their identification.

1 Q With their identification. And again, that information that's on the
2 application would be information that they self-submitted?

3 A Uh-huh. Yeah.

4 Q Okay.

5 A And the LEST job is to verify it to whatever the identification is.

6 Q On the driver's license?

7 A Yes.

8 Q You have a Nevada driver's license?

9 A I do.

10 Q Have you ever been weighed or had your height measured at the
11 Nevada DMV?

12 A No.

13 Q Okay. And in the process at records, has -- did the LEST weigh or
14 measure the people sitting in front of them?

15 A No, sir. No.

16 Q Okay. All right.

17 MR. DICKERSON: And just to point it out for Your Honor, it's this
18 section right here that she said she was able to tell the entry date.

19 THE COURT: Thank you. All right.

20 MR. DICKERSON: Nothing else from the State, Your Honor. We'll
21 pass the witness.

22 THE COURT: Anything else from the defense?

23 MR. GASTON: No, Your Honor.

24 THE COURT: No?

25 MR. GASTON: Court's indulgence. One second. Redirect.

1 **VOIR DIRE EXAMINATION**

2 BY MR. GASTON:

3 Q In this case --

4 MR. GASTON: Oh, sorry, it was her witness, but we just have one
5 question.

6 Q In this case the information on the SCOPE that's issued, that would
7 have been entered when Bobby was booked into the jail, correct?

8 A Within 24 hours.

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

10 THE COURT: All right. Thank you. Why don't you --

11 THE WITNESS: Thanks.

12 THE COURT: Please step down and you can go and wait outside for
13 us.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: All right. Let's have further argument based on the
16 testimony. Just try not to be too -- too long.

17 MR. GASTON: Our point's pretty simple. Do you want me to go first
18 or them to go first?

19 THE COURT: Yeah. Well, it's -- you're offering the exhibit, you have
20 the burden. So you go first.

21 MR. GASTON: Of course. Pretty simple. The fact is in this case
22 there's literally nothing more important than shows Bobby's height as opposed to
23 Keandre. I get that doesn't wrap up in whether it's admissible or not. Okay. But
24 just the fact is, we can -- we have to show their heights, one way or the other,
25 period, or we might as well have quit before we got started. Full stop.

1 In this case, the most reliable information that we had -- and the most
2 reliable information I think it's even practical to obtain in terms of the height is the
3 SCOPE information.

4 The reason, let's assume -- let's just assume we could get their
5 driver's license from California in time for trial. So let's just assume that we could
6 get it, that they wouldn't ignore our -- legally insufficient subpoena, and they sent
7 us the driver's license.

8 Well, then we would have the argument from the State, well, that --
9 that's unreliable. And to be fair, we couldn't really -- I mean, it's DMV stuff. We all
10 think that's pretty reliable. There's no reason to lie. You're giving your exact
11 information. There's no motive whatsoever. If -- if anything, it would fall -- if it's
12 not public record, if it's not a business record's exception, at the minimum, it would
13 fall within the residual hearsay exception.

14 But at the end of the day, the State would make a very similar
15 argument to what they're making today, is that that information comes from the
16 person giving it. It's not verified in any way. It's not measured in any way. It's
17 just -- it's self-reported, and therefore unreliable. And we would be making very
18 similar arguments as to, well, it is reliable, because there's no reason to lie,
19 et cetera, blah, blah, blah, blah, blah. Okay.

20 If we -- we cannot have a human, Chanise, for example, come in and
21 testify about absolute value of height, because the fact is, I've been in this
22 courtroom several times, Judge. I've stood next to you. I can't tell you exactly
23 how tall you are. I can give a guess.

24 I've been against Mr. Dickerson several times. I couldn't have told
25 you he was 5-5. I could tell you he's not 5-10. I could tell you he's not 6-foot. But

1 I could -- I could tell you he's not 4-3. But I can't give you an exact height.

2 And the fact is, that is inherently unreliable. We're going to put up that
3 evidence as our linchpin in our case. I think a child could poke holes in that. And
4 we're in the same position we are in the first place, much less competent district
5 attorneys. And we're in the same position.

6 So we're back -- we're back to this original question that we were
7 presented with. To even be in the running of this case, we must show the
8 heights. We have SCOPE information. We know, day in, day out, district
9 attorneys rely on SCOPE information to rebut pretty much every single time I ever
10 make an OR motion in arraignment calendar. Apparently I don't know about
11 the 37 murders this guy had when I'm making my OR pitch. And it's all in
12 SCOPE. We hear about it all the time. Okay.

13 So we relied on SCOPE. What we've learned through this information
14 is SCOPE is probably -- fits within business record exception at least to an extent.
15 We'll come back to the circumstances of unreliability in a second. But it fits within
16 the business record exception.

17 The information in this case came from furthermore a TCR. Also
18 probably fits within the business record exception.

19 That information is self-reported, mostly through -- and in this case, it
20 would have been self-reported. I suppose certainly it could come from other
21 things like CCW, license, et cetera. But ultimately it's all self-reported.

22 I think what we've learned here --

23 THE COURT: Does Mr. McCoy -- do we know what was happening
24 on December 16th that led Mr. McCoy to have this encounter with the officer?

25 MR. GASTON: I believe he was arrested for possession of a stolen

1 vehicle, if I'm not mistaken.

2 MS. MACHNICH: A PCS with intent and some traffic offenses.

3 MR. GASTON: What, Tegan?

4 MS. MACHNICH: One is -- there's two dates in December. One is
5 traffic -- one I believe to be traffic offenses, and one I believe to be PCS with
6 intent.

7 THE COURT: All right. So the information --

8 MR. GASTON: Well, with one for --

9 THE COURT: -- that the officer wrote on the temporary custody
10 record would have come from either the suspect self-reporting or the officer's
11 observations?

12 THE WITNESS: Or the driver's license, if he had it on him.

13 THE COURT: Or driver's license.

14 MR. GASTON: Correct. And if -- if it was a traffic one -- one, it almost
15 certainly probably came from a driver's license.

16 THE COURT: All right. We know that there wasn't a preexisting
17 SCOPE on him?

18 MR. GASTON: Correct.

19 THE COURT: Because --

20 MR. GASTON: So we don't have that kind of issue.

21 THE COURT: -- because of the date that we have at the bottom of
22 the proposed exhibit you gave?

23 MR. GASTON: Yes, sir.

24 THE COURT: All right.

25 MR. GASTON: So we don't -- we don't have that issue.

1 Based on the traffic aspect of it, I -- I would propose, it almost
2 certainly came from a driver's license.

3 But regardless, we still have the basic point of to an extent it's
4 self-reported.

5 But what we learned from testimony is that there's actually somewhat
6 of a verification process to make SCOPE more reliable than just the DMV,
7 because when I go to the DMV, if I wanted to be 5-3, I probably can't same I'm a
8 girl -- but if I want to be 5-3, blue-eyed, and 142 pounds, I probably could and no
9 one's going to bat an eye. I report whatever I want. They're not going to take my
10 out back and be, like, sir, I'm not giving you a driver's license unless you submit to
11 this measuring test and step on a scale.

12 I don't know a woman who is not 10 pounds lighter on her driver's
13 license than what she is in real life.

14 The SCOPE actually --

15 MS. LEXIS: I object. We object.

16 MR. GASTON: Like I said, Agnes, actually --

17 MS. LEXIS: As women.

18 MR. GASTON: -- who is exactly completely honest.

19 The --

20 THE COURT: Let's -- yeah, let's keep going. Come on.

21 MR. GASTON: With respect to the SCOPE, there's actually a
22 verification process inherent in it. The officers do their own check to an extent of
23 what's being reported back to them, and if the person's reporting something
24 inaccurate, they do verify it and they correct it.

25 Yes, if the officer happened to be 5-2, and Bobby McCoy said

1 he's 5-10 or 6-foot or 5-8, that officer is probably not going to be able to make a
2 good estimate.

3 THE COURT: Well, the witness said that the verification process
4 leads to the conclusion that Mr. McCoy is 5-10, plus or minus five inches.

5 MR. GASTON: Not plus or minus -- not plus or minus five inches.
6 What the -- what -- I think that part got mistaken.

7 What she's saying is if on subsequent bookings she gets new
8 information, they will update it if it meets within that guidelines, they will change it.
9 If not, they will just indicate a kind of a secondary information that was given.
10 Which means further, verification of the accuracy of SCOPE, is they have process
11 to delineate different information they've gotten at different times.

12 They -- they don't -- they don't have a -- I admit it if it's within five
13 inches of what I think is probably right. It's if, on day one, guy says he's booked in
14 and he says he's 5-8 or 5-10, and on day 3, he says he's 6-4, six inches above,
15 then -- then we correct it. That's what they're saying. We will correct it if it's over
16 that margin of error on the primary information. If not, it's delineated into a
17 secondary information.

18 In this case, there was nothing delineated in secondary information.
19 This is the first booking. It was almost certainly from a driver's license, if it was
20 traffic. Not guaranteed, but almost certainly.

21 And we come back to the final point. The State cannot object and
22 prevent us from introducing -- the only evidence that I think would pass this test --
23 because I feel like the State has just kind of pressed the easy button and make
24 the same argument no matter what we're introducing, except for medical records.

25 So let's fast forward seven months, and I've got a crystal ball and I

1 know what's going to happen, the only way I could really get in this height would
2 be to subpoena Bobby McCoy's and Keandre Valentine's criminal records -- or
3 medical records, because they're actually literally measured when they go to the
4 doctor's office. And I can't even begin to imagine the storm of argument that I
5 would get in response from the State and the doctors about trying to get them to
6 respond to the subpoena.

7 Which brings us back to the final point. How on Earth am I supposed
8 to introduce height of Bobby McCoy and Keandre Valentine? SCOPE is reliable.
9 We don't -- we don't have to play intellectual games and -- and parse things.
10 SCOPE is reliable for purposes of admissibility.

11 The State is not precluded from making this argument, but most of the
12 arguments go to weight, not admissibility. It is a question for the jury. And the
13 standard for admissibility is simply preponderance of the evidence. It is what I'm
14 purporting it.

15 THE COURT: Right. I need to hear from the other side now.

16 Mr. Dickerson.

17 MR. DICKERSON: Thank you, Your Honor.

18 The basis of this whole thing is that they are offering straight-up
19 unreliable hearsay for the truth of the matter asserted.

20 Mr. Gaston said it himself, that he can guess height, you know,
21 whatever that's worth, that Chanise, who is going to testify as their witness today
22 and who apparently knows Bobby McCoy, can guess as to his height, as well.
23 And as a matter of fact, so can any officer that's out at the scene of the crime
24 arresting an individual and -- and writing their TCR.

25 So this is far less reliable given the multiple layers of hearsay, and the

1 fact that we've heard that none of the biographical information is checked against
2 anything more than, you know, maybe an officer's guess, maybe a suspect's
3 word. And that's about it.

4 What we have here is absolutely unreliable information. There is a
5 difference too that must be drawn, a distinction in this SCOPE report. The fact
6 that the District Attorney's Office is -- the public defender has said, use this
7 information in bail arguments, sure, that's reliable, because it reliably shows what
8 charges they were booked in on. And that's just a matter of fact, that, okay,
9 you're booked in on this charge at this date. But that doesn't mean that they were
10 convicted of those charges. That's not how it's used. It's a preliminary thing that
11 says the guy came in and was booked on this date.

12 But what we've heard is that the biographical information is exactly
13 opposite of that. It's not anything that is checked. It's not anything that has a
14 certainty to it. It doesn't have a [indiscernible]. It doesn't have a statute. It's just
15 information that's either a guess from the officer or self-reported by the suspect
16 themselves. For that reason, it is inherently unreliable.

17 Moreover, that information, after being guessed or self-reported by the
18 person who is being arrested for a crime, is then sent to the back office, where a
19 secretary within a day inputs that information. Never checks it. If there's any
20 issue, they never know. And the only thing that raises a red flag is if they're within
21 five inches. So here, 5-10 to 6-3? Or 20 pounds? I mean, that's -- it really just
22 goes to show that it's just general biographical information. By no means is it
23 meant to be an accurate or dead science. And it's not reliable for that purpose.

24 Moreover, what we have is inadmissible hearsay. Simply because the
25 public defender decided that this is how they wanted to present their case in chief

1 doesn't mean that Your Honor and the State have to bend over backwards to
2 allow them to admit inadmissible evidence.

3 Obviously, as you've heard, Chanise McCoy is going to be testifying
4 today. And she knows Bobby McCoy -- or Chanise Williams -- and she knows
5 Bobby McCoy. That's really your best source of information for getting any of this
6 stuff admitted.

7 Also, I would, as an offer of proof, submit to Your Honor that I have
8 read Bobby McCoy's information about this arrest, and it was self-reported
9 information. In the report itself it says that he verbally identified himself.

10 So once again, first level of hearsay, next level of hearsay to the
11 officer. Then to the data entry person, and that --

12 THE COURT: Well, why would -- why would self-reporting of McCoy
13 to the officer at the time of his arrest lack trustworthiness? What -- what
14 motivation would Mr. McCoy have to indicate that his height was something
15 different than what it actually was?

16 MR. DICKERSON: Well, we just know that from the mere fact that
17 suspects aren't always honest with the officers. And especially -- I mean, we
18 could get into, you know, the facts of his arrest, but I don't think that's necessary.

19 THE COURT: Yeah.

20 MR. DICKERSON: The fact of the matter is that do we know that he
21 even self-reported that information? Or do we know that the officer didn't just
22 guess at that information?

23 THE COURT: Well, but the officer -- even if the officer -- the officer
24 guesses, he's going to use -- it's going to be his best estimate, based on the fact
25 that this is what he does all the time.

1 MR. DICKERSON: Still, I mean, the -- the only -- there is carnival
2 games that are made for that, Your Honor. I mean, this is -- this is not accurate.
3 This is -- but saying that every single police officer in the street could go be a
4 carny and guess people's height and weight and give out prizes, I mean, that's
5 crazy. This is -- it's --

6 THE COURT: Could this be something that you bring out on -- on
7 cross of the custodian and really, does it go to the weight as to -- because it
8 sounds like, you know, she's -- she's going to say that, you know, this could be
9 within plus or minus five inches, or the weight, plus or minus within 20 pounds.
10 And -- and the jury is going to be left with the impression that it's just a very, very
11 rough estimate.

12 Isn't -- shouldn't I err more on letting it come in, given that -- that the
13 height and weight of the McCoy is so critical to the defense's case? That this is
14 an issue the supreme court's going to give a lot of attention to on appeal.

15 MR. DICKERSON: Well, the fact that it's critical to their case doesn't
16 mean that the unreliable evidence should just automatically be admitted.

17 THE COURT: Well, no. No. But what I -- I guess what I'm saying
18 is -- is there -- this is such a critical piece of evidence, it's -- it heightens their need
19 to have it, because there is no other evidence. And -- and given that heightened
20 need, you know, this isn't a situation where there would be harmless error if I kept
21 it out.

22 MR. DICKERSON: Well, but -- that really -- I mean, that shouldn't be
23 the analysis. The analysis should be --

24 THE COURT: Okay.

25 MR. DICKERSON: -- whether that this is admissible evidence, and

1 it's just plain not.

2 And furthermore, for us to adequately cross-examine this custodian of
3 records, as we just talked to her in court here today during her voir dire, it's going
4 to require exactly what we talked about during the photo, is the fact that, hey,
5 Bobby McCoy, yeah, he was arrested. That's how it came in. When it goes in
6 and you go to jail, they don't check anything. It's simply what's reported.

7 So do we believe Bobby McCoy? Why -- why would we believe him?
8 He got arrested. I mean, it -- once again, that substantially prejudices the State,
9 because now we're fighting an uphill battle against Bobby McCoy being arrested.

10 THE COURT: Well, is -- is there a way I could avoid prejudice to the
11 State but still allow the height to come in? For -- for instance, we could do a
12 stipulation to the jury that, you know, the parties stipulate -- or the court instructs
13 the jury that Bobby McCoy's height is known to be approximately 5-10.

14 MR. DICKERSON: Give or take five inches?

15 MS. LEXIS: This -- if the court is going that way, may I be heard?

16 THE COURT: Well, I'm not sure. Yeah.

17 MS. LEXIS: If the court is leans towards that way, the admission of
18 this particular piece of evidence, the stipulation that we would enter to would be
19 the testimony we would have elicited on cross-examination, which is that his
20 height was once reported at whatever, 5-10, his weight at 145 or 1 -- 140. But
21 that the --

22 THE COURT: 145. Yeah.

23 MS. LEXIS: Right. But that's plus or minus, in terms of accuracy,
24 plus or minus five -- five inches or 20 pounds.

25 MR. GASTON: That's not what she actually testified to --

1 MS. LEXIS: So.

2 MR. GASTON: -- for what it's worth. She said that's when they
3 correct their system.

4 THE COURT: Well, she said that if it -- if there's a deviation of more
5 than five inches or 20 pounds.

6 MR. GASTON: On a second entry.

7 THE COURT: -- that would be obvious, and that would be fixed.

8 MR. GASTON: Not -- not on the first entry. Not as a -- a deviation
9 from what the officer notices from what's real. It's on a second entry, if the second
10 entry deviates from the first entry more than that --

11 THE COURT: Yeah.

12 MR. GASTON: -- that's when they go and fix it. There is no second
13 entry here that we're talking about.

14 THE COURT: I -- I think he's right on that. She was talking about
15 that, that if it's in SCOPE and they catch a -- a big difference later, they would fix
16 it.

17 MR. DICKERSON: Right. And so for us --

18 THE COURT: So what's the plus or minus that I would use? Five
19 inches, it -- I think on the officer first taking the defendant into custody, if he says
20 he's 5-10 and he's reporting at 6-3, officer is going to notice that now, right?
21 That's -- that's not reasonable to assume the officer is going to allow that much of
22 a deviation --

23 MR. DICKERSON: What about if he's 5-8? What about if he's 5-7?
24 And he's closer in height to -- to Damian Traylor [phonetic] who we see in that
25 photo lineup? I mean --

1 THE COURT: Yeah.

2 MR. DICKERSON: -- that's -- that's a serious issue. And this is
3 inherently unreliable. So we can't -- it's not right to pass this information to the
4 jury and have them rely on it.

5 THE COURT: Well, and -- and I understand your argument,
6 Mr. Dickerson, but I'm -- I'm having trouble because -- because it's a -- the TCR is
7 actually used, you know, by the -- the prison system. And it's used in preparing
8 SCOPE.

9 SCOPE is used for various purposes. It's used -- it's used by officers
10 in the field. It's used by the prison. It's used by Parole and Probation, in filling out
11 PSIs. It's used by the judges who rely upon the PSIs. It's -- it has -- certainly has
12 a lot of risk of being unreliable.

13 But is it so unreliable -- does it have such a lack of trustworthiness
14 that I need to exclude it as a -- as a business record, given that so many different
15 people in law enforcement rely on it or use it? I don't know about rely on it, but --
16 but use it.

17 MR. DICKERSON: But I think the key of all that is is that what it's
18 relied on and used for is criminal history. And it's not relied on or used for to say,
19 hey --

20 THE COURT: But I -- what about the PSIs? I get the PSIs, it has
21 height and weight and -- and sex and ethnicity. And it -- and it says right there,
22 from SCOPE.

23 MR. DICKERSON: Right. And I mean, they've also met and
24 interviewed with that person, so --

25 THE COURT: Why would they give me that information if they don't

1 intent for me to use it and rely upon it?

2 MR. DICKERSON: Right. I mean, but I -- how much of that goes into
3 your sentencing determination, Your Honor? How much -- when you see a guy
4 who is 145 pounds versus a guy who is 300 pounds, are you really going to
5 change your mind in how you're going to sentence them? Not at all.

6 And also --

7 THE COURT: And I didn't say that it matters. In fact, I -- I like redact
8 the -- you know, the ethnicity information before it comes to me, so I try to avoid
9 seeing that part.

10 MR. DICKERSON: Right. So, I mean, in all these circumstances it
11 doesn't really matter. Here it matters. And what we're seeing is that these -- this
12 information, it could just be a guess. And also to go to the PSI, the PSI writer
13 actually sits down with that person. So at that point in time, if the PSI writer sees
14 a guy who is, you know, outside the range of what he actually weighs, if he
15 gained 50 pounds in jail, I -- I would expect that's something that they're going to
16 ask him, right? I mean, and -- but as you said by your -- your own -- what you've
17 seen here in this courtroom --

18 THE COURT: There's differences.

19 MR. DICKERSON: -- that doesn't even happen.

20 THE COURT: Yeah.

21 MR. DICKERSON: I mean, so even then -- even then when you have
22 a PSI writer sit down and talk to them, it's not even checked. Never is this
23 information verified, from the time it goes -- it's handwritten on a TCR out on the
24 field, which gets submitted when a guy gets booked or it's put on a citation, boom,
25 that's it. Never is it verified.

1 MR. GASTON: And Your Honor, not to interrupt his argument --

2 THE COURT: All right. Last -- last word. And then I've got to decide.

3 MR. GASTON: I didn't mean to interrupt his argument. I'm sorry.

4 THE COURT: I think he was done.

5 MR. DICKERSON: I'm done, Your Honor. I submit.

6 THE COURT: Thank you.

7 MR. GASTON: My proposal for a stipulation, because I do think that
8 the most compelling argument the State makes is that they should be able to
9 probe that it's self-reported and argue that to the jury. But they shouldn't be
10 forced to be in a position of explaining the self-reported and how it's self-reported.
11 People can be -- they estimate the best they can, without having to get into Bobby
12 McCoy's criminal history, which the Court obviously already said can't come in.

13 My proposed stipulation would be that Bobby McCoy self-reports his
14 height to be 5-10. They can argue self-reported, the unreliability. We can argue it
15 is an approximate, 5-10 is what's important. You don't approximate your height to
16 be 5-10 when you're really 6-3. You don't approximate your height to be 5-10
17 when you're really 5-4.

18 Mr. Dickerson just approximated his height a second ago. He could
19 be 5-6. It doesn't matter. But he's about 5-5 is now what I know forever. And so I
20 do think -- to get something into evidence, we don't have to meet a standard that it
21 is unassailable -- unassailable, that it is as reliable -- the president's going to
22 make a nuclear decision on it. That standard is simply does it meet the standard
23 of trustworthiness, applied to whatever rules we're looking at, to -- to go before a
24 jury. I submit that we have met that burden with the SCOPE, with the additional
25 verification of the officer actually verifying it. I would say that the SCOPE

1 information is more verifiable than a DMV information.

2 And so --

3 THE COURT: Right.

4 MR. GASTON: -- I would say the stipulation would be as I suggested.

5 THE COURT: You're still standing, Mr. Dickerson. Did you have
6 something else you wanted me to hear, sir?

7 MR. DICKERSON: If -- if there is any consideration for a stipulation, it
8 should be that the -- that that information is unverified.

9 MS. LEXIS: Unverified, yeah.

10 MR. GASTON: But -- okay. I mean, so Bobby McCoy self-reported
11 his height to be 5-10. And --

12 MS. MACHNICH: But that was not --

13 MR. GASTON: -- and police officers didn't -- I mean, who's -- who's
14 not verifying that, I guess is what I'm asking.

15 THE COURT: Well, no one's -- no one measured him.

16 MR. GASTON: So it's -- it's unverified.

17 THE COURT: Nobody weighed him.

18 MS. MACHNICH: Right.

19 MR. GASTON: So it's unverified.

20 THE COURT: I mean, that -- that -- she said that.

21 MR. GASTON: I think that's fine. So Bobby McCoy self-reports his
22 height to be 5-foot-10-inches, and that is unverified.

23 THE COURT: Here's what I'm thinking of doing, folks. I'm thinking of
24 either -- I'm going to give the State the option here. All right. I -- I think we need
25 to do one of two things, because I can -- I can see that there's inherent

1 unreliability, so I'm on the cusp of whether -- on the fence as to whether the
2 SCOPE information comes in. I am concerned about potential prejudice to the
3 State in the event that the jury were to find out that Mr. McCoy was arrested for
4 alleged criminal activity in December 2016.

5 But I -- I think that the defense has made a compelling case that --
6 that this is so crucial to their case that any concerns about trustworthiness of the
7 data should go to weight, rather than admissibility, and they should allow some
8 mechanism to get it in evidence of Mr. McCoy's height.

9 So I think we either need to let in the -- the SCOPE information,
10 subject to the State cross-examining the custodian as to the inherent reliability or
11 unreliability of the data. Or we need a stipulation that says, for purposes of the
12 public record, Mr. McCoy has once self-reported his height to be 5-10 and his
13 weight to be 145. This information, however, was unverified.

14 I think we need to do one or the other.

15 MS. LEXIS: I -- I think to be --

16 THE COURT: And -- and I understand your position, you object to
17 that, and your record is noted. But I think this is going to have heightened review
18 on appeal later, and I want to -- I want to make sure that the State has at least
19 some mechanism of -- of presenting its defense in this case.

20 MS. LEXIS: I wholeheartedly understand the court's ruling. I was the
21 one who proposed the stipulation. We will take option two to minimize any kind of
22 potential for prejudice that would come before the jury.

23 MR. GASTON: And Your Honor, can I now let the SCOPE person
24 go?

25 THE COURT: Yes. So the stipulation will read as follows:

1 For purposes of a public record, Mr. McCoy has once self-reported --
2 I guess do -- do -- do we need to put in the date?
3 -- has self-reported back in December of 2016.

4 MS. LEXIS: I don't think --

5 MR. GASTON: Doesn't that -- I'm --

6 MS. LEXIS: I don't think the date was --

7 MR. GASTON: The State can make their argument if they want --

8 THE COURT: All right.

9 MR. GASTON: -- but I think that's ties the photo and the date
10 together.

11 THE COURT: All right. So for purposes of a public record,
12 Mr. McCoy has recently self-reported or has once self-reported?

13 MS. LEXIS: Once.

14 MR. GASTON: Has self-reported. We don't have to date it.

15 MS. LEXIS: Oh, yeah. Self-reported.

16 THE COURT: Both agree that for purposes of a public record,
17 Mr. McCoy has once self-reported his height to be 5-10, and his weight to
18 be 145. This information was unverified.

19 MS. LEXIS: That's fine with the State.

20 THE COURT: All right. That's the stipulation we'll read.

21 MR. GASTON: May I let her go?

22 THE COURT: Yes, you may let her go.

23 And does anybody need a -- oops. Yes?

24 MS. MACHNICH: We just need, like, a minute to discuss, like --

25 THE COURT: Let's take a couple -- a five-minute recess, because I

1 think the defendant needs to use the restroom.

2 MS. MACHNICH: Okay.

3 THE COURT: And -- and then we'll come back. Is that all right, Ms. --

4 Marshal, will you please let the jurors know we're going to be coming
5 back -- and bring them in in about five or six minutes, so if they need to use the
6 restroom to do it now.

7 And we're going to go until about 12:30 today, guys, is that all right?

8 MS. MACHNICH: That's fine.

9 MR. DICKERSON: Sounds great.

10 MS. MACHNICH: I'm going to go get another witness, then. So --

11 THE COURT: Okay. Very good. All right. Thank you.

12 [Court recessed from 11:21 a.m., until 11:35 a.m.]

13 [Outside the presence of the jury.]

14 THE COURT: All right. *State vs. Valentine*, C-316081.

15 We ready to proceed?

16 MS. LEXIS: Yes, Your Honor. I don't know if your law clerk was able
17 to tell you. We did agree that the stipulation should be typed up and placed as an
18 exhibit.

19 THE COURT: Okay. Very good. Thank you. Let's bring the jury in.

20 MS. MACHNICH: Oh --

21 THE COURT: Oh. Okay.

22 MS. MACHNICH: And also one final ruling. I remember during your
23 testimony -- oh, the testimony of Santiago Garcia, where we had the issue with
24 the phones. I believe Your Honor ruled that we could read back that specific
25 section of testimony during evidence, because we just were trying to keep things

1 moving. I -- I think the State said that we could do that during argument. And I
2 thought that we could actually read it back as -- in front of the jury, because we
3 didn't want to have to do it in court at the time.

4 I don't know what Your Honor's recollection is. I have provided -- I
5 typed up a statement. I understand this is not evidence, and it's not -- I'm not
6 offering it as such. But this is what I had intended to read from the audio JAVS
7 that were provided.

8 MR. DICKERSON: Yeah, and our -- our understanding was that the
9 court's ruling was that, yeah, you guys can pull the JAVS, look at that, and then
10 tell the jury, yeah, remember this, what's what he said, in argument.

11 THE COURT: That's what I said.

12 MR. DICKERSON: But --

13 THE COURT: I said I -- I -- he's right. I said argument.

14 MS. MACHNICH: Okay. I didn't realize that it was argument. I -- I
15 had --

16 THE COURT: Unless you guys are reading something else, that's
17 what I said.

18 MS. MACHNICH: Okay. No. I -- I had thought that it was something
19 that we could read back, because we had wanted to do that and at that time we
20 weren't getting it.

21 THE COURT: Let's -- let's just -- I mean undue emphasis on -- I
22 mean, if you want to let the victims, the State, you know, have the victim IDs
23 reread, we could do that, too.

24 MS. MACHNICH: Well, I -- Your Honor, I was -- I meant to --

25 THE COURT: I'm being facetious. I --

1 MS. MACHNICH: I -- I know. But I -- what I'm saying is -- I -- I have
2 actually thought that was your ruling.

3 THE COURT: No, it wasn't.

4 MS. MACHNICH: So I -- we had misunderstood. I did type this out.
5 So, okay, we won't be doing that.

6 MR. GASTON: Sir, she -- so the paragraph that she quoted off she
7 can read to the jury and --

8 THE COURT: In closing arguments. Yeah, yeah.

9 MR. GASTON: So she indicate that she -- this is a --

10 THE COURT: That was my -- that was my recollection of what I said
11 she could do.

12 MS. MACHNICH: Okay. That's fine.

13 THE COURT: If she went ahead and transcribed, this is what he said.

14 MR. GASTON: Does the court -- we might finish before we take our
15 next break, fingers crossed. I doubt it. But fingers crossed.

16 MS. MACHNICH: No, we won't.

17 MR. GASTON: No?

18 THE COURT: No?

19 MR. GASTON: Does the court want to canvass the defendant real
20 quick or no?

21 THE COURT: It sounds like she said no, we'll do it right -- right before
22 lunch break, then.

23 MR. GASTON: Never mind, then.

24 MS. MACHNICH: Yeah. We -- we won't, because we have a witness
25 who is coming in immediately after lunch.

1 THE COURT: Let's -- let's go.
2 MS. MACHNICH: Okay.
3 THE COURT: Bring them in, marshal.
4 Here's the -- here's the SCOPE. Do you want this part of the record
5 on what was not allowed?
6 MS. MACHNICH: Yes.
7 [Jury reconvened at 11:38 a.m.]
8 THE COURT: Thank you. All right. Please be seated, everybody.
9 Everyone accounted for, marshal?
10 THE MARSHAL: Yes, sir.
11 THE COURT: All right. The State may call its next -- or the defense
12 may call its next witness.
13 MS. MACHNICH: Thank you, Your Honor.
14 THE COURT: Oh, wait. Are we still dealing with Dr. Smith?
15 MS. MACHNICH: No. Dr. Smith was done yesterday.
16 THE COURT: No. We finished?
17 MS. MACHNICH: Yes.
18 THE COURT: Your next witness.
19 MS. MACHNICH: Our next witness, Your Honor, is Matt
20 Gambardella, who is the custodian of records at the Downtown Grand.
21 THE COURT: All right. Madam Clerk, you may administer the oath.
22 **MATTHEW GAMBARDELLA**
23 [having been called as a witness and being first duly sworn, testified as follows.]
24 THE CLERK: Will you be seated. And please state and spell your
25 first and last name.

1 THE WITNESS: It's Matthew Gambardella, M-A-T-T-H-E-W,
2 G-A-M-B-A-R-D-E-L-L-A.

3 **DIRECT EXAMINATION**

4 BY MS. MACHNICH:

5 Q Good morning, sir.

6 A Good morning.

7 Q Just a few questions for you this morning. How are you so employed?

8 A With LAS Parking.

9 Q All right. And is that associated with any of the properties downtown?

10 A It is. We are -- we manage the parking for the Downtown Grand Hotel.

11 Q All right. I am going to show you what has previously been admitted
12 as State's Exhibit 98; do you recognize, after the --

13 MS. MACHNICH: Can you turn that on? Thank you. That was my
14 phone. I apologize.

15 BY MS. MACHNICH:

16 Q Do you recognize State's Exhibit -- did I just say 98 -- 98?

17 A I do.

18 Q Okay. And what are we looking at here?

19 A That's that parking ticket. When a valet -- when a vehicle pulls into
20 valet with us, the ticket is broken into three sections. One goes with the guest;
21 one is attached to the keys; another stays in the vehicle on the dash board to
22 connect all three.

23 Q Okay. Now, do you serve as a custodian of records for the parking
24 company that you work for?

25 A We do. We use software that tracks all of our vehicle movements --

1 their arrivals, departures, and stores that information.

2 Q And is that information stored in the regular course of business?

3 A Yes.

4 Q All right. Now, at some point were you asked to look to find what
5 information was related to this ticket number depicted in State's 98?

6 A I was.

7 Q Okay. I am showing you what has previously been marked for
8 identification as Defense Exhibit R; do you recognize what I've just handed you?

9 A I did. I used our -- used our program to look up the vehicle ticket. And
10 this was the printout which supplies just the basics as the arrival time, departure
11 time, vehicle information, as well as where it was parked.

12 Q And was this kept in the ordinary course of business of the downtown
13 grand's parking services?

14 A Yes.

15 Q Okay. And is this a true and accurate copy of the information as kept
16 by the parking services company that you work for?

17 A Yes, it is.

18 MS. MACHNICH: Okay. Your Honor, at this time, we would request
19 to move into evidence Defense Exhibit R.

20 MR. DICKERSON: No objection.

21 THE COURT: R is admitted.

22 [Defendant's Exhibit No. R admitted.]

23 MS. MACHNICH: Thank you. May I publish?

24 THE COURT: Yes.

25 BY MS. MACHNICH:

1 Q Okay. Now, we're looking at this valet ticket here, Defense Exhibit R.
2 What are we looking at? What different areas? And we'll do this very briefly.
3 What are the -- on here, is there an identifying information about what day and
4 time the car was valeted there?

5 A Yes. The issue date is when the vehicle arrived. It probably arrived
6 just a minute or two before the issue date, as the guest is greeted typically, and
7 then a minute or two goes by before we check it into the system. You can see
8 May 27th, 2016, at 11:26 p.m. It was parked on the curb, which we have a series
9 of convenient location top spots, if you will, where the car was parked. It was
10 requested and departed at 1:29 a.m. on May 28th.

11 Q And can you circle -- and you can actually write on the screen -- can
12 you circle where you've just noticed these times and days?

13 A Sure. This is the arrival time issued. Requested would be when the
14 guest came and handed their ticket in, we requested the vehicle. This is the
15 parking spot here, the curb.

16 Q Okay. And you -- were you the person who personally got this car?

17 A Not to my recollection.

18 Q Okay. So on here does it indicate who the person who checked in the
19 car was?

20 A It does. However it -- Bobby or Stephanie Barajas [phonetic] -- that
21 doesn't mean that she was the person who checked it in. She was signed into her
22 user name at the time.

23 Q Okay. And are there --

24 A Yeah.

25 Q There are other names located on here, as well. Specifically, there's a

1 last name towards the top, Williams. Is that a person who would have been
2 associated with the vehicle at the time?

3 A That's the name that the guest gave when they arrived. The first part
4 of the greeting is that we ask the nature of the guest's stay to see if they're staying
5 at the hotel or if they are visiting. And then ask a name at that point.

6 Q Okay. And that -- if I'm understanding correctly, that would have been
7 the name that was given to associate with this vehicle?

8 A Correct.

9 Q All right. Thank you for your testimony. I have no further questions.

10 MS. MACHNICH: I'll pass to the State.

11 MR. DICKERSON: Thank you.

12 **CROSS-EXAMINATION**

13 BY MR. DICKERSON:

14 Q Morning, sir.

15 A Morning.

16 Q Thanks for coming down.

17 This particular document is referencing the ticket you saw, correct?

18 A Correct.

19 Q Okay. And when we see the date and time here, that shows the date
20 he came in?

21 A The date that we issued the ticket into our system.

22 Q Okay. Is that around the same time that the car actually comes into
23 your valet?

24 A It's typically a minute or two after. As mentioned, once the vehicle is
25 parked, as it was parked on the curb, which is right on our top drive, I -- I would

1 estimate it was a minute or two before that.

2 Q Okay. And so that was at 11:26 p.m., correct?

3 A Correct.

4 Q On the 27th of May. Car is then retrieved or checked out at 1:30 a.m.
5 on May 28th of '16; is that right?

6 A Correct.

7 Q Duration of stay, two hours and four minutes; is that right?

8 A Yes.

9 Q This document in your system doesn't give you the ability to tell what
10 this individual that checked this car in was doing, though, does it?

11 A No. It just states that they were not a hotel guest. They would have
12 been given a different ticket if that were the case.

13 Q Okay. So we know this person was not staying at the hotel?

14 A Correct. Well, assumedly.

15 Q Okay. What -- they had a different ticket for hotel guests?

16 A Correct.

17 Q And the name Williams, is that generally just a -- a last name that you
18 guys get?

19 A We'll ask for the guest's name, yeah, when they arrive, yeah.

20 Q Okay. How does that work?

21 A Can you elaborate?

22 Q You -- tell me how it works on your end when you guys get -- go greet
23 a guest.

24 A Sure. Welcome to the Downtown Grand. At that point, we'll ask if you
25 are checking in or if you're visiting the property. Hotel guests, we're going to ask

1 for their first and last name that's on the reservation. If they're not staying at the
2 property, we just ask for a name, first or last, whatever they give.

3 Q And here the name given was Williams?

4 A Correct.

5 Q Is that always the person driving the vehicle or could it be somebody
6 that just walked up to you?

7 A In this case it would be the person driving the vehicle. If it were a hotel
8 guest and they were in the passenger seat, but the name was in their room, we
9 would take their name -- the room number -- the room name.

10 Q Okay. Okay. And then we know that ultimately this was Stephanie
11 Barajas that handled the whole transaction; is that right?

12 A Again, Stephanie Barajas is the user name, was signed into our device
13 where we scan and issue tickets. I can't be sure that Stephanie Barajas was the
14 person who actually scanned the ticket on arrival and departure.

15 Q Okay. We don't know who actually did any of it?

16 A Correct.

17 Q And this doesn't tell us the -- the gender of the person checking it in,
18 does it?

19 A Correct. It does not.

20 Q You know, it ends up getting parked at the curb. And then I see the
21 retrieval time in minutes. That's 46 seconds?

22 A Correct.

23 Q Okay. In no way does this tell us where this white Mazda was
24 at 6:53 a.m. on May 28, 2016, does it?

25 A It does not.

1 MR. DICKERSON: The State will pass the witness.
2 THE COURT: All right.
3 MS. MACHNICH: We have no -- no further questions.
4 THE COURT: All right. Anything from the jurors? Seeing no hands.
5 Thank you very much for coming up.
6 THE WITNESS: Thank you.
7 THE COURT: We appreciate your -- your help in this case.
8 THE WITNESS: Great. Thank you.
9 THE COURT: And you may -- you may go.
10 THE WITNESS: Thank you.
11 THE COURT: All right. The defense may call its next witness.
12 MS. MACHNICH: The defense would call Chanise Williams.
13 THE COURT: Chanise Williams.
14 Hello, ma'am. You can set your purse down, but why don't you
15 remain standing, and the court clerk here needs to administer your oath.
16 **CHANISE WILLIAMS**
17 [having been called as a witness and being first duly sworn, testified as follows.]
18 THE CLERK: Please be seated and please state and spell your first
19 and last name for the record.
20 THE WITNESS: Chanise Williams.
21 THE CLERK: Please state and spell -- well, please spell your first and
22 last name for the record.
23 THE WITNESS: C-H-A-N-I-S-E W-I-L-L-I-A-M-S.
24 THE COURT: All right. Ms. Machnich, you may proceed.
25 MS. MACHNICH: Thank you, Your Honor.

65

1 **DIRECT EXAMINATION**

2 BY MS. MACHNICH:

3 Q Good morning, Ms. Williams.

4 A Good morning.

5 Q All right. So the court just asked you your name?

6 A Yes.

7 Q Where do you live?

8 A I moved. I live on the east side now.

9 Q Okay. And is that the east side of Las Vegas?

10 A Yes.

11 Q Okay. And you said that you moved?

12 A Yes.

13 Q Did you live someone -- somewhere else previously?

14 A Yes. I lived on J and Owens.

15 Q All right. And I'm going to show you -- this is the one I have here --
16 what's been marked and admitted as State's Exhibit 42. Specifically, at this point,
17 directing your attention to the building behind the vehicle. But we'll talk about the
18 vehicle in a second.

19 Do you recognize this building?

20 A Yes.

21 Q Okay. And what is it?

22 A My old apartment complex.

23 Q All right. What was your apartment number at that time?

24 A 218.

25 Q And -- and did you ever live in any other apartments in that apartment

1 complex?

2 A No.

3 Q Okay. Now, you said you had moved; when approximately did you
4 move?

5 A I didn't move until November of this year -- last year.

6 Q Last year. So November 2016?

7 A Yes.

8 Q Okay. And would it be -- and correct me if I'm wrong -- would that
9 mean that you lived in the building that you just identified --

10 A Uh-huh.

11 Q -- in May of 2016?

12 A Yes.

13 Q All right. Now, I'm specifically going to draw your attention to the end
14 of May 2016; around that time period, did you have any visitors to your
15 apartment?

16 A Yes.

17 Q Around what time of the month and why were they there?

18 A It was Memorial weekend.

19 Q Okay. So Memorial Day weekend. Do you know when people started
20 arriving?

21 A Everybody started arriving, maybe Thursday night, Friday.

22 Q All right. So they arrived at your apartment. We're referring to
23 everybody; who is everybody?

24 A There were maybe about six or seven people at my house. It was
25 Keandre, Bobby, Damian, my little sister. I had my niece there, my nephew, my

1 son. I had a lot of people at my house at that time. It was Memorial weekend.

2 Q Was the plan for all of the people to come stay at your apartment?

3 A Well, everybody was supposed to disperse. We all -- they all came to
4 come so me and the girls can go out and go have fun. Everybody was supposed
5 to go and have their own destinations to go to. And then --

6 Q Okay. All right. So let's specifically speak of the night of the 27th; do
7 you know what day of the week that would be?

8 A No, not right now, no.

9 Q Okay. Would -- would it surprise you if I said that the 27th was Friday?

10 A Well, we went out on Friday, me and the girls.

11 Q Okay. Okay. So on Friday night, you just stated that you went out; do
12 you know about what time you went out?

13 A I'm not sure. We probably went out probably like 10:00, 11:00, 12:00,
14 I'm not sure.

15 Q Okay. And where did you go?

16 A We went to the Gold Spike.

17 Q Okay.

18 A Downtown.

19 Q Did you -- did you guys drive there?

20 A Yes.

21 Q Okay. And sorry -- sorry, you girls. Who -- do you remember the
22 names of all the girls who went?

23 A It was me, Omara. It was another friend -- I don't know her name. I
24 met her at the time.

25 Q Okay. Were there any men who went with you?

1 A No.

2 Q Okay. Now, I'm showing you again what has previously been admitted
3 as State's Exhibit 42. This time I'd like to direct your attention to the white car; do
4 you recognize the white car?

5 A Yes.

6 Q And in what way do you recognize the white car?

7 A That's Omara's car.

8 Q Okay. And why do you say it's Omara's car?

9 A Because she went and purchased a car before Memorial weekend and
10 came to Vegas with her new car.

11 Q Okay. All right. So this car, have you ever ridden or driven this car?

12 A I have rode in the car.

13 Q Okay. Do you know where you rode in the car?

14 A I could have been in the passenger seat. I rode in the backseat. I
15 rode -- I didn't drive, but I rode in the passenger seat and I rode in the backseat.

16 Q Okay. Now, you said that you went to the Gold Spike.

17 A Yes.

18 Q And -- and did you also say, was this the car that you guys took to the
19 Gold Spike?

20 A Yes.

21 Q All right. Did you guys -- do you know where you parked when you
22 went to the Gold Spike?

23 A When we went to the Gold Spike, I'm not sure. I don't know if we
24 parked in the Gold Spike parking lot. I don't know if we parked somewhere,
25 because we went to go walk down on Fremont. They were coming to -- from

1 California to Vegas, so we were walking down on Fremont.

2 Q Okay. Would it refresh your recollection as to where you might have
3 parked that night by viewing a copy of a valet ticket and times?

4 A Yes.

5 Q Okay.

6 MS. MACHNICH: I'm going to -- Your Honor, may I approach the
7 witness with what's been admitted as Defense Exhibit R, and State's Exhibit 98?

8 THE COURT: Yes.

9 MS. MACHNICH: Thank you.

10 THE WITNESS: It's kind of cold.

11 BY MS. MACHNICH:

12 Q Feel free to look at both of those.

13 A Yeah.

14 Q Okay. So does -- do the exhibits I've just shown you refresh your
15 recollection as to where the car was parked that night?

16 A Yes.

17 Q Okay. And where was it parked?

18 A At the D.

19 Q All right. And was it self-parked or valet?

20 A I think we used the little ticket.

21 Q Okay.

22 A So it could have been valet.

23 Q Also, does the exhibit that I've shown you refresh your recollection as
24 to about when you went downtown?

25 A Yeah.

1 Q Okay. And what time was that?

2 A Around 11:00, 11:30.

3 Q Okay. Now, at some point did you leave downtown and go back
4 home?

5 A No.

6 Q Okay. You -- I mean, did you go home that night?

7 A Well, yeah, I went home that night, yeah.

8 Q Oh, okay. Okay. And does -- do you remember exactly what time you
9 went home that night?

10 A I know we got home pretty late. It was probably like 3:00 or 4:00. We
11 got home pretty late.

12 Q Okay. And do you remember if you went straight home from the valet?
13 Or did you go somewhere else?

14 A I don't believe we went straight home from the valet. We went and had
15 a little bit more fun and then we went home.

16 Q Do you know where you went?

17 A No, I don't know. We probably just walked down Fremont.

18 Q Do you -- I mean -- I'm asking you about some details. Why don't you
19 remember them?

20 A It's been, like, a year ago.

21 Q Okay.

22 A It's been a while.

23 Q That's fair. All right. I'm going to come retrieve those exhibits.

24 Now, but I -- I did just hear you testify that at some point you drove --
25 or you went back home?

1 A Uh-huh.

2 Q Did you guys drive back home?

3 A Yes.

4 Q All right. And what vehicle did you drive back home in?

5 A In Omara's car.

6 Q Okay. So that night before you went out with the girls, were you at
7 your apartment for some time?

8 A Yeah. Uh-huh.

9 Q All right. And who else was at the apartment, other than the girls
10 you've already mentioned?

11 A Damian was there and Bobby was there. And there was -- and my
12 sister and them, but --

13 Q Okay. And was Keandre there?

14 A Yes.

15 Q Okay. So and do you know when you got home that morning of the -- I
16 guess early morning hours of the 28th now --

17 A Uh-huh.

18 Q -- do you know who was still at your house?

19 A Well, everybody was pretty much laid out. Keandre was asleep on the
20 couch. Damian, he was using the restroom, and he went to sleep in my son's
21 room. Everybody else, I don't -- I don't know. They were asleep. They was
22 laying down. I went in. I was drinking that night, so I just went and passed out --
23 put my pajamas on and went to sleep.

24 Q Okay. So as you're sitting here, do you remember exactly who was at
25 the apartment when you got home that night or the early morning hours?

1 A The boys were there.

2 Q The boys were there?

3 A Yes.

4 Q Would that include Bobby, or no?

5 A Yes.

6 Q Okay. Now, we've been discussing a couple different people. And I
7 am going to put up a picture that has previously been admitted as -- by
8 stipulation --

9 MS. MACHNICH: I guess I would move to admit by stipulation State's
10 Exhibit 196 at this time.

11 MS. LEXIS: No objection.

12 THE COURT: Yes, admitted.

13 [State's Exhibit No. 196 admitted.]

14 BY MS. MACHNICH:

15 Q Okay. I'm going to show you, ma'am, what has previously by been
16 admitted as State's Exhibit 196.

17 MS. MACHNICH: If I said 169, I apologize. I think I just flipped
18 numbers.

19 THE COURT: All right. All right.

20 BY MS. MACHNICH:

21 Q 196. Do you recognize the man in the photo?

22 A Yes.

23 Q Who is this?

24 A That's Bobby.

25 Q Okay. Now, I'm also going to show you what has previously been

1 marked and admitted as State's Exhibit 186; do you recognize the two men in this
2 picture?

3 A Yes.

4 Q Who are they?

5 A Keandre and Damian.

6 Q Okay. Context for who we're talking about.

7 Okay. Let me see here. All right. So now we're to the morning of
8 the 28th. When did you wake up the morning of the 28th?

9 A I don't recall around what time it was. I just woke up. I heard
10 neighbors knocking on the door saying that the police were downstairs messing
11 with Omara car. I got up because, you know, she was my guest. I got up to go
12 downstairs to figure out what was going on with her and her car.

13 Q Okay. When you got up, did you look around the apartment to see
14 who else was there right then?

15 MS. LEXIS: Objection, leading.

16 MS. MACHNICH: I --

17 THE COURT: Yeah, what'd you do next? Ask her that way.

18 THE WITNESS: I just went out the door. I was still asleep. I just
19 went out the door.

20 BY MS. MACHNICH:

21 Q Okay. Do you know who was in the apartment?

22 A At the time, no.

23 Q Okay. Now, you went downstairs, you said that you spoke with police?

24 A Yes.

25 Q Okay. Let me see. Do you remember if anyone went in and out that

1 morning?

2 A I -- I can't really say, because the way my apartment is set up, I really
3 don't know.

4 Q Okay.

5 A And, you know, people was knocking on the door, so I don't know --

6 Q Okay. So if I'm understanding correctly, and please correct me if I'm
7 wrong --

8 A Uh-huh.

9 Q -- the first time that you woke up that morning was when your
10 neighbors came to tell you the police were there?

11 A Right.

12 Q Okay. So before that, do you have any personal knowledge of who
13 went in and out of the apartment?

14 A No.

15 Q Okay. And do you know if anyone went in and out of the apartment?

16 A No, I'm not sure.

17 Q Okay. That's fair.

18 Let me see here. And would you consider yourself a heavy sleeper or
19 a light sleeper?

20 A I sleep pretty hard.

21 Q All right.

22 A Yeah.

23 Q And I think you mentioned this earlier, but had you been drinking the
24 night before?

25 A Yes.

1 Q Okay. Do you remember giving permission to the police to search
2 your apartment?

3 A No, I -- no.

4 Q Okay. Would it surprise you to learn that police said you did give
5 permission?

6 A Yes, it would. They basically told me that I -- they had a search
7 warrant and they had to block off my house so they can come search my house.

8 Q Okay. Now, back to referencing the white car -- and this is again from
9 State's Exhibit 42, that morning, you went down to the police officers, was the
10 white car there?

11 A Uh-huh.

12 Q Okay. Yeah. Is that yes?

13 A Yes.

14 Q Sorry. They're recording it, I --

15 And do you know who had the keys for the car at that point?

16 A No.

17 Q Okay.

18 THE COURT: Was the car parked in the same place where you left it
19 the night before?

20 THE WITNESS: Yes. We parked it behind, yes.

21 THE COURT: All right.

22 BY MS. MACHNICH:

23 Q Do you remember if it was the exact same parking spot, or do you not
24 know?

25 A I'm not exactly sure. But it was in the same area. There's different

1 parking lots around there, so it was in the same area that we parked it.

2 Q Okay.

3 THE COURT: Question. Who is -- who is taller? Bobby or -- or -- or
4 Damian? Do you know who is taller?

5 THE WITNESS: Bobby or Damian?

6 THE COURT: Yeah. Do you -- have you seen them both enough to
7 know --

8 THE WITNESS: Bobby is definitely --

9 THE COURT: -- to answer that question?

10 THE WITNESS: Bobby is definitely taller than Damian.

11 THE COURT: Bobby is taller than Damian?

12 THE WITNESS: Yes.

13 THE COURT: By -- do you know by how much?

14 THE WITNESS: Well, Damian is really short.

15 THE COURT: Okay.

16 THE WITNESS: I know Bobby is probably, like, 5-9, 5-10, maybe.
17 He's, like, a little -- me and him are maybe like --

18 THE COURT: How -- how much taller than Damian is he?

19 THE WITNESS: Than Damian? He's much taller --

20 MS. MACHNICH: I --

21 THE WITNESS: -- than Damian.

22 THE COURT: All right. All right. Anyways, go ahead. I'll let you
23 handle that.

24 MS. MACHNICH: Okay. No. I -- I just -- and just --

25 THE COURT: I just thought of that because I saw the picture. So go

1 ahead.

2 MS. MACHNICH: Of course.

3 BY MS. MACHNICH:

4 Q And so when we're referencing, and I've -- I've just put up and shown
5 you again, State's Exhibit 186, when you're talking about Damian, we're talking
6 about -- who are we talking about?

7 A The one with the fatigue shirts.

8 Q Okay. Can you point to him? You can actually touch the screen and
9 it'll mark.

10 Okay. So that's Damian?

11 A Yes.

12 Q Okay. So the questions you just answered with regard to Damian, you
13 were referring to him?

14 A Yes.

15 Q Okay. All right. Let me see here. When you went down to speak with
16 police, did you know that there was any stolen property in your apartment?

17 A No.

18 Q Okay. Did you know that there was a gun in your apartment?

19 A No.

20 Q Do you know if Bobby was in your apartment?

21 A He was there, but I don't -- I can't say that he was -- I -- I really can't
22 say. I know he was there, but I can't say that -- I really can't say.

23 Q At that --

24 A When I woke up, I really didn't -- it was a blur. I was asleep. I got
25 everybody -- I'm -- I'm walking over people, and they're telling me police is at my

1 house because of a guest is -- you know, a guest's car. So I have to make sure
2 that my guest was okay. I really can't recall who was all in there when I woke up.

3 Q Okay. And yeah, we're just -- whatever you remember, that's all --

4 A Okay.

5 Q -- we need you to say. Let me see. All right. Have you spoken with
6 Keandre since he's been in jail?

7 A Yes.

8 Q Okay. Now, I'm going to reference back to some exhibits. Okay. I am
9 going to start with what has previously been marked and admitted as State's
10 Exhibit 194.

11 Before you testified today, did I show you some transcripts of jail
12 calls?

13 A Before today? No.

14 Q Uh-huh.

15 A I have -- this is my first time seeing you.

16 Q Right. No. But before -- oh, I mean, before you came and sat on the
17 stand today?

18 A Oh, yes.

19 Q Yes. And I -- so you had a chance to look at those transcripts?

20 A Uh-huh.

21 Q Okay. Is that a yes?

22 A Yes.

23 Q Okay.

24 A I'm sorry.

25 Q And were you able to determine whether you were the female

1 referenced in those?

2 A Yeah. It was a couple of them that it's not even my number. It's not
3 me. I don't know why they have my number or my name --

4 Q Okay.

5 A -- or whatever, because --

6 Q So I -- I just want to -- would it refresh your recollection as to what calls
7 might have been involving you and what calls might have been involving someone
8 else, if I showed you copies of the --

9 A Yes.

10 Q -- three transcripts I showed you earlier?

11 A Uh-huh. Uh-huh.

12 Q Yes?

13 A Yes.

14 Q Okay.

15 A I'm sorry.

16 Q All right. So let's take a look at them. And then we will start with one
17 and -- and just go through to make sure it's clear.

18 So, if it's okay, I'm going to reference State's Exhibit 194 first.

19 This phone call is -- all right. I'm going to put up on the screen -- can
20 you see in this transcript what phone call -- what phone number it is placed to?

21 THE COURT: Tell us the date and time of the --

22 BY MS. MACHNICH:

23 Q Oh, and this -- for reference, this is a call at 1202 hours on May 29th.

24 A It says 366-1640.

25 Q Okay. Is that your phone number?

1 A No.

2 Q Okay. And so having looked through this jail call previously and
3 having looked through it now on the stand, was this jail call placed to you?

4 A No.

5 Q Okay. And were you the female on this jail call?

6 A No.

7 Q Okay. Now, let's go to the next jail call.

8 A Sorry. I'm kind of cold. I'm anemic.

9 Q Yes. It's cold in here.

10 Okay. So let's look at the next jail call. And this, for reference is
11 State's Exhibit 195, and it's a jail call dated 5/29, so the 29th of May 2016,
12 at 8:27 a.m. I'm again going to show you the first page. Is this one of the -- one
13 of the calls that you were looked at -- you looked at as well?

14 A Yes.

15 Q Okay. And is this call to you?

16 A No.

17 Q Okay. And how do you know?

18 A That's not my phone number.

19 Q All right. And you had a chance to look through the transcript briefly?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Okay. And was the conversation -- are you the female in that
24 conversation?

25 A No, ma'am.

1 Q Okay. All right. And then finally, we are going to reference State's
2 Exhibit 193, which, for reference, is from 1816 hours on 5/28/16. So 6:16 on
3 May 28th.

4 A Yes.

5 Q Did you have a chance -- oh, did I say the number, yeah, 193. Did you
6 have a chance to look at this jail call transcript?

7 A Yes.

8 Q And was this jail call placed to you?

9 A Yes.

10 Q Okay. Let me see here. Wait.

11 Oh, I'm sorry. He's just corrected me. That's a different number
12 associated with it. We were looking at a different number up here. I very much
13 apologize.

14 I want to clarify the record because this is -- I -- I've messed it up, so I
15 want to make sure that I clarify it.

16 So, obviously, the 366-1640 is not your number.

17 Looking more closely, that's actually a -- a hotline number that's not
18 anyone's number.

19 So going back to Exhibit 195, do you see another phone number on
20 the page associated with this phone number?

21 A Yes.

22 Q Okay. And can you tell me where you're reading this from at this
23 point?

24 A Where it says phone number Pacific Crimes.

25 Q Okay. Is that your phone number?

1 A No.

2 Q Okay. So does your testimony with regard to 195, which is the 5/29

3 call at 8:27 a.m., change, based on my mistake of misreading the transcript?

4 A No.

5 Q Okay. So that one's still not you?

6 A That's not me.

7 Q Right. Let me see here. So -- but I do want to clarify, you had a

8 chance to review the transcript with -- let me make sure -- the transcript with

9 State's 194. And this phone number at the top, do you see another phone

10 number associated with this?

11 A That's my phone number.

12 Q Okay. But you did have a chance to review this call?

13 A Yes.

14 Q Was anyone else using the phone at the house at that time?

15 A Yes.

16 Q Okay. Who?

17 A Omara.

18 Q All right. I'm going to ask you to take a chance, because I've made this

19 confusing, and I do apologize.

20 I'm going to ask you to take a chance and read through this again and

21 see if it is actually you. I believe you already testified, but --

22 A Okay.

23 Q -- I want to make sure that my confusion didn't confuse you.

24 A Oh, no, that's not me.

25 Q Okay. So specifically referencing this call, you've now had a chance to

1 read the text --

2 A No.

3 Q -- associated with it. Is the female referenced in this transcript you?

4 A No.

5 Q Okay. And how do you know it?

6 A Because I don't remember any type of conversation like that at all.

7 Q Okay. And do you know why Omara was using your phone at that
8 time to speak to Keandre?

9 A It could be a local call and I don't know if her phone was off at that time
10 or not. But it -- I have a 702 number.

11 Q Okay. And finally, now we're going to reference 193 for real. And this
12 time directing your attention to the top, do you see a phone number associated
13 with this call?

14 A Yes.

15 Q Okay. And what is that?

16 A That's my phone number.

17 Q Okay. Now, you also had a chance to review this transcript?

18 A Uh-huh. Yes.

19 Q Okay. Yes? Is this transcript -- is the female in this you?

20 A Yes.

21 Q Okay. So the transcript it references Mad Dog; who is Mad Dog?

22 A One of their friends. They were supposed to stay at somebody's
23 house.

24 Q Okay. Were -- you had referenced earlier in your testimony the fact
25 that many people came in --

1 A Uh-huh.

2 Q -- and they were supposed to go different places. And please correct
3 me if -- if this is not correct.

4 A Right.

5 Q But was Mad Dog's house one of the places they were supposed to
6 stay?

7 A Yes.

8 Q Okay. And I'm going to further show you page 2. And I will direct your
9 attention to the female lines regarding that was -- or:

10 When I wanted, you know, they were coming, and you -- and what
11 you were suppose -- you would have called -- it's supposed to be gone. You
12 all supposed to leave before they even came upstairs.

13 A Right. The boys were supposed to be gone. Nobody was supposed to
14 be there. The boys, the girls -- it was just supposed to be me and my son.
15 Everybody was supposed to disperse. Everybody was supposed to be gone.
16 Nobody was supposed to be there.

17 Q And were -- what was your emotion at this time?

18 A I didn't know what was going on. I have a son, a small son. They
19 found the gun in my son's room. I had a lot of emotions that was going on,
20 because I'm not even supposed to have too many people at my house. And I did
21 have a lot of people that was at my house. And it was going on. So at -- at this
22 time, I don't know what's going on. I know that they -- they were talking about
23 CPS and every -- other -- it was a lot going on. I had -- it was overwhelming for
24 me.

25 Q Okay. Let me see here.

1 MS. MACHNICH: Court's indulgence.

2 Q Ma'am, going briefly back to the calls where you were discussing you
3 had a local number; why is it relevant that you had a 702, a local number?

4 A Because I don't -- I don't know if they give free calls or it might be
5 cheaper when you put the money on the phone. It's just different when you use
6 a 702 number than any other area code, with the -- when you're dealing with the
7 jail system.

8 Q Okay. And, finally, I'm showing you what has previously been admitted
9 as State's Exhibit 196; you previously identified this person as Bobby.

10 A Uh-huh.

11 Q Do you know his full name?

12 A I don't know his full name.

13 Q Okay.

14 A I just know --

15 Q Have you met Bobby on multiple occasions or just one?

16 A I've kind of met him on multiple occasions, but this was really like the
17 first time --

18 Q That --

19 A -- like, you know, with them being all together, coming at my house.

20 Q Okay. Now, this photo was not taken in May. It was taken in
21 December 2016.

22 MS. MACHNICH: And that will be a stipulation that will be read to the
23 jury.

24 Q Is this exactly what Bobby looked like in May 2016?

25 A He had a little, like, more hair.

1 Q Okay.

2 A Like on his head.

3 Q What kind -- by more hair what do you mean?

4 A Like a little afro.

5 Q Okay.

6 A But they use these little things, and they make their hair like curly,

7 twirly, sometimes they come in -- it's like a little -- probably, I don't know, maybe

8 like an afro.

9 Q Okay. And you've obviously seen a picture where we've shown you

10 State's Exhibit 186, which was -- you had previously said that this was Keandre?

11 A Yes.

12 Q Was Bobby's hair similar to Keandre's or not similar to Keandre's?

13 A It was more similar to Keandre's.

14 Q Okay. Would you say it's identical or similar?

15 A Probably similar. I'm not sure.

16 Q Okay.

17 MS. MACHNICH: Court's indulgence.

18 I'll pass the witness. Thank you, ma'am.

19 THE COURT: Cross-exam.

20 MS. LEXIS: Yes, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MS. LEXIS:

23 Q Good morning, ma'am.

24 A Good morning.

25 Q Ma'am, how are you related to Keandre Valentine, the defendant?

1 A He is my cousin.
2 Q Okay. Like, first cousins?
3 A I don't know how that really goes.
4 Q Okay.
5 A I don't know.
6 Q Okay. Did you grow up with him?
7 A We grew up in a -- somewhat together.
8 Q Okay. How old are you?
9 A I'm 24.
10 Q Okay. You've lived in Las Vegas for a while?
11 A Yeah. For a while.
12 Q Okay. Damian Traylor, who is he to you?
13 A He's a friend.
14 Q A friend?
15 A Yes.
16 Q Okay. Omara McBride?
17 A Yes.
18 Q How do you know her?
19 A She's a friend, as well.
20 Q Was she, like, a separate friend to you, or do you know her through --
21 A I just know through them -- through every -- through everybody.
22 Q Okay. How'd you meet her?
23 A I met her in California a while ago. And then I met them when they
24 came to -- came to Vegas. So that was her invitation, really, to come to Vegas.
25 Q Okay. You said when they came to Vegas. What timeframe are we

1 talking about? Like, when did Omara come to visit?

2 A Oh, they came to visit in May.

3 Q Okay.

4 A For Memorial weekend.

5 Q The May that we're talking about now?

6 A Right.

7 Q When you say they, who are you referring to?

8 A I was just referring to everybody. Everybody -- a lot of people come to

9 my house. They don't just come at one at a time. They come three, four, five at a

10 time. So when I say they, it's -- it's a they.

11 Q Okay.

12 A Like, it's a whole bunch of people that just -- yeah.

13 Q Okay. And you said how many people were you expecting at your

14 home for this weekend?

15 A Well, nobody was supposed to be staying at my home. But I was

16 expected to have visitors coming in, like, five or six people, maybe.

17 Q Okay. So I have Keandre?

18 A Uh-huh.

19 Q Okay. Bobby?

20 A Uh-huh.

21 Q Yeah, yes? Yes?

22 A Yes. I'm sorry.

23 Q Damian?

24 A Yes.

25 Q Okay. Do you know -- did they all come together?

1 A I don't know if they drove separate cars. It was, like four, maybe three
2 cars, so I'm not sure if they drove together.

3 Q Four or three cars?

4 A Yes.

5 Q That everyone came in?

6 A When everyone came in, yes.

7 Q Okay. What kind of car -- what were the other cars? We know that
8 one of the cars linked to Omara was the car states -- in State's Exhibit 42?

9 A Yes.

10 Q Okay. Can you describe the other -- the other two -- two or three
11 vehicles that everyone else came in?

12 A Well, I know Damian, he came in a BMW. He had a black BMW. I
13 don't know what car everyone else came in.

14 Q But you said that there were three or four separate cars?

15 A Yes.

16 Q So you're just not aware of what they were?

17 A What they were, no.

18 Q Okay. Then how do you -- how do you know they all came in separate
19 cars?

20 A Because when I went outside, Damian had came in. Damian and I are
21 pretty close. So Damian came, I came outside. I seen his BMW that he had.
22 When Omara and them came, I came and I saw -- and I seen them. We went in
23 my house. More people came when we were upstairs.

24 Q Okay.

25 A So --

1 Q You said when Omara and them came, who did --

2 A Right.

3 Q -- Omara come with?

4 A Omara came with Keandre, and I believe Bobby was in the car, and it
5 was another female I don't know.

6 Q Okay. Keandre, Bobby, and Omara, and someone else?

7 A Yes.

8 Q Male or female?

9 A Female.

10 Q Okay. And you testified on direct examination that this was perhaps
11 the first time that you had met Bobby; is that right?

12 A No. It's not the first time that I met Bobby. But it was the first of me,
13 you know, them staying at my house.

14 Q Okay.

15 A It's not my first time meeting Bobby.

16 Q Okay. So what was the plan? People were coming to your -- people
17 come into your apartment. Is it your testimony -- well, what was the plan? Where
18 was everybody supposed to stay?

19 A Well, everybody was coming in. We were going to come to my house.
20 We were going to chill for a little bit. Me and the girls were going out. Everybody
21 was supposed to have their -- everybody had their own set of friends. Everybody
22 had their own places to go. Me and the girls, we decided to go out that night.

23 It was Memorial weekend. So I think Memorial is on Monday or
24 something, so on Monday we were all going to go out, go onto the Strip. They
25 have everything down here in Vegas for Memorial weekend. So we just intended

1 on, you know, enjoying the Memorial weekend.

2 Q Okay. Where was Keandre and -- and Omara supposed to stay?

3 A They -- they had their own place to stay.

4 Q Okay. To your knowledge?

5 A To my knowledge.

6 Q They had their own place?

7 A Yes.

8 Q Okay. And your testimony was that you went out -- or they -- you went
9 out with Omara and another girl whose name you don't remember. You all went
10 out the night that they got in?

11 A Uh-huh.

12 Q Okay. Is that a yes?

13 A Yes.

14 Q Okay. And your understanding is the night that they got into
15 Las Vegas?

16 A Right.

17 Q But they arrive to Vegas?

18 A Yes.

19 Q Because they were coming from a different place, correct?

20 A Yes.

21 Q From California?

22 A Yes.

23 Q Okay. So it's your testimony that they went out -- you all went out --

24 A Uh-huh.

25 Q -- you three girls, the night that Bobby, Keandre, and Omara got there?

1 A Yes.

2 Q Okay. And it's your testimony that when they got there to this
3 apartment complex, your apartment complex --

4 A Uh-huh.

5 Q -- okay -- in the vehicle, you noted Omara, Keandre, and Bobby?

6 A Uh-huh.

7 Q And some other girl?

8 A Yes.

9 Q Is that a yes?

10 A Yes.

11 Q Okay. So those four people?

12 A Yes.

13 Q Who was driving, do you know?

14 A I believe Omara was driving.

15 Q Okay. Where was Bobby sitting?

16 A I really don't know at that time. I don't know. He -- I don't know.

17 Q Okay. You indicated on direct examination that the car depicted in
18 State's Exhibit No. 42, that that was Omara's?

19 A Yes.

20 Q How do you know that?

21 A Because she just bought the car. She was happy about buying a new
22 car. They were coming out for Memorial weekend. She told me it was her car, so
23 it's her car.

24 Q What was the relationship, to your knowledge, between the defendant,
25 your cousin, and Omara?

1 A I believe they were -- I don't know if they were boyfriend/girlfriend, but I
2 believe they were just, you know, having fun -- talking.

3 Q Having fun and talking?

4 A Yeah.

5 Q A certain type of relationship?

6 A Right.

7 Q Not necessarily boyfriend and girlfriend?

8 A Right.

9 Q Okay. They were hanging out, though?

10 A They were hanging out.

11 Q And they came to Las Vegas together?

12 A Right.

13 Q Okay. At any point during the weekend, did you ever hear the
14 defendant say that he gave money to Omara to buy this vehicle?

15 A I'm not sure.

16 Q Okay. You -- you just don't remember?

17 A I'm not -- yeah, I don't remember. It's been a while.

18 Q Okay. Did Keandre say anything to you during the time that you were
19 with him or saw him that weekend, concerning this car?

20 A No. They -- she -- she was just happy that she got a new car. And we
21 was just chilling at my house. We just got -- they just got to my house, so we was
22 just really -- didn't have too much conversation about the car.

23 Q Okay. Did Keandre -- do you know if the defendant was working at the
24 time?

25 A I'm not sure.

1 Q Okay.

2 A But I know he --

3 Q You just never had a conversation about that?

4 A We don't really talk about working and stuff like that. But I know that --

5 I'm not sure.

6 Q Okay. At any point in time, during that weekend, did -- you didn't have

7 contact with them, right?

8 A What --

9 Q Aside from that day that they got in and you all went out?

10 A Uh-huh.

11 Q Okay. Is that a yes?

12 A Yes.

13 Q Okay. So did you ever hear them talk about getting the car tinted?

14 A About getting the car tinted?

15 Q Yeah.

16 A It wasn't tinted when I got it. No, I was -- I have my own keys. I have

17 my own life. So when everybody come to my house, I wasn't -- no, I didn't -- no.

18 Q Okay. But just understand. My question was, did you ever hear them

19 talk about getting the car tinted?

20 A Oh, no.

21 Q Okay. And in this particular photo, though, does it appear to be tinted?

22 A Yeah.

23 Q All right. But this is how it appeared when they came -- was it tinted

24 when you first saw it, when they came to your apartment complex?

25 A I don't believe so.

1 Q You don't believe it was tinted?

2 A No.

3 Q Okay. When you and Omara and this other girl whose name you don't

4 remember went out, did Omara have cash?

5 A She did. She did have cash. She had money.

6 Q Okay. Was she buying drinks?

7 A She bought us a couple drinks, yeah.

8 Q Okay. Okay. I mean, you got little babies, right?

9 A Right.

10 Q So -- okay. Do you know if Omara works?

11 A Yeah. She does work.

12 Q Okay. Did you see her out with cash? Did she pay with cash?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q Okay. Were you able to see approximately how much she had?

17 A Probably like over a thousand dollars.

18 Q Okay. Now, so Keandre, Bobby, Omara, some female you don't know

19 the name of, they arrive, you go to your apartment and you chill, right?

20 A Right.

21 Q Okay. And then the girls decide you're going to go out, girls' night?

22 A Uh-huh.

23 Q Right?

24 A Uh-huh.

25 Q Okay. Is that a yes?

1 A Yes.

2 Q Okay. Did Bobby or Keandre or Damian tell you what they -- what they

3 had planned to do?

4 A No. We just -- to my knowledge they were going to stay at the house

5 and just chill and wait for us to come back so everybody can go to their

6 destinations.

7 Q Okay. But you and Omara and this other girl planned to be out -- I

8 mean, if you're starting your night at 10:00 or 11:00 --

9 A Right. We planned --

10 Q -- you were going to be home much later.

11 A Right.

12 Q Is that right?

13 A Right.

14 Q Okay. So at least to your knowledge they all -- the boys --

15 A Uh-huh.

16 Q -- we'll call them the boys --

17 A Right.

18 Q -- decided they were going to stay at your house and chill?

19 A Right. Well, I -- yeah.

20 Q Okay. I mean, that was your understanding?

21 A Right.

22 Q All right. And when you all arrived, who was back at the house? Or

23 who was back at your apartment?

24 A Everybody was still at my apartment.

25 Q Okay. So Keandre, Bobby, Damian?

1 A Uh-huh.

2 Q Is that a yes?

3 A Yes.

4 Q Okay. So now that's, what, four adults -- well, it's the three girls, plus
5 three -- six adults?

6 A When we came back, it was another female. I think my little sister was
7 there. It was a baby they found that -- my nephew was three months old. There
8 was so many people there I really can't recall. You guys are asking me who was
9 all there. It was multiple people at my house. So when I walked out, I'm walking
10 over people. I don't know who is there.

11 Q Okay. When you got back, did you notice who was on the couch?

12 A Well, actually, I laid on the couch.

13 Q You laid on the couch?

14 A Yes.

15 Q Okay. Why the couch?

16 A Because my -- my bed was taken over. When I looked and peeked
17 my head, somebody was sleeping in my bed.

18 Q Could you tell --

19 A So I just grabbed my pajamas and put my pajamas on.

20 Q Okay. Could you tell who was sleeping in your bed?

21 A I believe it was Keandre.

22 Q Okay. Okay. And you said that you all -- the girls drove over to, what,
23 the Gold Spike?

24 A Yes.

25 Q In Omara's new car?

1 A Yes.

2 Q And Omara drove?

3 A Yes.

4 Q How tall is Omara?

5 A Omara is a little shorter than -- Omara is shorter than me.

6 Q Okay. How tall are you?

7 A Like 5-8, 5-9.

8 Q 5-8, 5-9?

9 A Yes.

10 Q Okay. And she's a little shorter than you?

11 A Uh-huh.

12 Q So if you were to guess?

13 A Like, maybe 5-6 -- I don't know, maybe -- she's short.

14 Q She's short?

15 A Yeah. She's shorter than me. So maybe --

16 Q 5-6?

17 A Maybe 5-6, 5-7.

18 Q 5-6, 5-7? Okay. Kind of hard to estimate height, huh?

19 A Yeah.

20 Q State's Exhibit Number -- or I guess this is Defense Exhibit R. You

21 were shown this particular valet parking ticket by Ms. Machnich; do you remember

22 that?

23 A Yes.

24 Q Okay. And there was a name at the top, it says Williams?

25 A Yes.

1 Q Right? But you weren't driving that -- the car that --
2 A No.
3 Q -- that you all went out in?
4 A No.
5 Q Okay. And, really, the other car -- or the car description given here is
6 a -- is a Mazda, right?
7 A Uh-huh.
8 Q A white one, right?
9 A Yes.
10 Q But you weren't driving a white Mazda on May 2000 -- May 27th, 2016,
11 at 11:26 p.m., were you?
12 A No.
13 Q Okay. Okay. Omara was driving?
14 A Yes.
15 Q Okay. You've never driven Omara's car?
16 A No. It was a brand new car. I don't -- I didn't even know how to start
17 the car up. You've got to press start car, so no.
18 Q Okay. So when Ms. Machnich showed you this parking ticket, are
19 you -- are you saying that this was a parking ticket that shows what you all did?
20 A That's a parking ticket showing that we was parked at the D.
21 Q That you all were parked at the D?
22 A Yes.
23 Q Okay. How do you know that this is the parking ticket that -- of
24 showing that you guys were parked at the D? Does it say Omara on here?
25 A No. I'm not sure. But I know that anytime anybody come out of town,

1 my mom or anybody, I give them my name, because I'm a local. So I don't have
2 anybody else. It's just, like, if I come -- you come, I'm going to say, hey, Chanise,
3 I'm going to put -- give you my name, instead of the person that was there. I just
4 feel like -- I don't know.

5 Q Okay. So it's -- is it your testimony then that you gave your name?

6 A Yes.

7 Q And that caused this parking?

8 A Yes.

9 Q Okay. That clarifies that. Thank you.

10 Did you see Keandre with money that weekend?

11 A I'm not sure.

12 Q You're not sure if you saw him with money?

13 A No.

14 Q You don't remember?

15 A I'm not sure, no.

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

17 A Yes.

18 Q Okay. Who is that?

19 A That's Keandre.

20 Q Okay. At some point did you see Keandre come out of -- come out of
21 your apartment, the morning that the police was there?

22 A Yes.

23 Q Okay. Is that how he came out of the apartment?

24 A Yes.

25 Q And where was Damian -- or do you know where Keandre was

1 sleeping when you arrived?

2 A I believe he was in my bed.

3 Q On your bed?

4 A Yes.

5 Q Okay. But when you woke up to the police or knowing that there was
6 some kind of police activity in that particular apartment complex or --

7 A Uh-huh.

8 Q -- you know, you -- do you know where Keandre was at that time?

9 A I -- no, I just got up and went straight outside.

10 Q Okay. And so did you see Bobby still in the house?

11 A I just woke up and went straight outside.

12 Q Okay. And so you didn't have any idea --

13 A No, I was --

14 Q -- who all was in your house?

15 A Yeah. No.

16 Q Okay. You went straight outside; what did you do?

17 A I went down to where Omara was, because she was talking to the
18 police. She was trying to figure out -- we were trying to figure out what was going
19 on. And then I was downstairs talking with Omara --

20 Q Okay.

21 A -- on the curb.

22 Q Okay. So you had no idea at all whether or not Bobby was still in the
23 apartment, whether Keandre was still in the apartment, whether Damian was still
24 in the apartment?

25 A Right.

1 Q Okay. But did you know Omara was there?

2 A Omara -- I knew Omara was there, because they said -- somebody
3 knocked on the door and said that somebody was messing with the white car.

4 Q Okay.

5 A So, you know, I knew Omara went out there.

6 Q Okay. Do you have any reason to disbelieve -- I mean, an officer
7 came in and testified --

8 A Uh-huh.

9 Q -- that you -- that you told them, okay, that there were only girls in the
10 apartment?

11 A No.

12 Q Okay. You never said that?

13 A No, I did not.

14 Q Okay. You didn't know who was in the apartment?

15 A I didn't know who was in the apartment.

16 Q Okay. And you also dispute the police -- giving the police consent to
17 search?

18 A Yes.

19 Q Okay.

20 A They made us come out. They had a police officer come, made us all
21 come out, and made us -- it was like six or seven of us, made us all leave out, and
22 they made a search warrant outside. And then they came -- I didn't see the
23 search warrant until after they left it on my table, after they finished.

24 Q Okay. And you couldn't tell, once you fell asleep on the couch,
25 whether people were coming in and out?

1 A In and out, no.

2 Q Okay. You are a deep sleeper?

3 A Yeah.

4 Q Okay. Where was Bobby when you arrived with the girls?

5 A I'm not sure. I don't know where he was asleep at. I'm not sure.

6 Q Okay. Where were people sleeping, like, on the couch, the floor?

7 A I have couches. I have floors. I have air mattresses, I --

8 Q Okay.

9 A It's everywhere. It's just wherever you come and you fall, you lay.

10 That's --

11 Q Okay. When you left to go out with Omara and this other girl you don't

12 know, did you get ready in your bedroom?

13 A Yeah. I got ready in my bedroom.

14 Q State's Exhibit No. 74; is this a picture of your bedroom?

15 A Yes.

16 Q And to your knowledge when you arrived with the girls, Keandre was

17 sleeping on your bed?

18 A Uh-huh.

19 Q All right. But prior to you all leaving --

20 A Uh-huh.

21 Q -- okay, you got ready in your bedroom?

22 A Uh-huh.

23 Q Okay. And it's your testimony that the gun, right --

24 A Uh-huh.

25 Q -- that was found in your apartment, the pieces --

1 A Right.

2 Q -- of the gun, you didn't know that was there?

3 A No, I did not.

4 Q So the other room in that apartment, that's your son's room, right?

5 A Yes.

6 Q What's his name?

7 A His name is Titus.

8 Q Titus. Okay. So you have no idea how pieces of that gun got to be

9 scattered throughout your apartment?

10 A No.

11 Q Did you -- you had a phone at the time, correct?

12 A Yes.

13 Q Did the police confiscate your phone at some point?

14 A Yes, they did. And they confiscated my son's phone, as well. They

15 confiscated everybody's phone.

16 Q Okay.

17 A They still have my -- my son's phone. They actually gave us our

18 phones back after they was getting ready to leave. They said they had a change

19 of heart and gave us our phones back. But they still have my son's phone.

20 Q Okay. At any given point in time during the brief time that you had

21 contact with Keandre, Bobby, and Damian at your apartment, did any of them

22 have a firearm?

23 A No.

24 Q Okay. So no reason to believe that there should be a firearm in your

25 apartment?

1 A Yes, correct.

2 Q Okay. I mean, that's dangerous. You have a kid now, right?

3 A Right. I have a kid and -- yeah.

4 Q Okay. So one part of the gun -- it would surprise you, then, that in

5 State's Exhibit No. 118, one part of the gun was found in -- in this gray bin; right?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q Surprises you?

10 A Yeah.

11 Q That -- that's not there because of you?

12 A No.

13 Q All right. Whose clothes are these?

14 A Those look like a mixture of me and the -- my baby clothes.

15 Q Okay. State's Exhibit No. 119; it's your testimony you've never seen

16 this part of the gun?

17 A No.

18 Q State's Exhibit 121; is that your phone?

19 A That could be a -- I believe so, like, an Obama phone.

20 Q Oh, okay.

21 A Yeah. I'm not sure.

22 Q That could be your phone?

23 A Yes.

24 Q Okay. Did you have a lot of different phones?

25 A Yes.

1 Q For yourself?

2 A For me and my son, I have a -- a small child. So I break phones.

3 When I break my phone, I give it to him. I get a new phone, I give it to him.

4 Q Okay.

5 A When my phone is out of commission, I go get an Obama phone.

6 Q Okay.

7 A And, you know.

8 Q And just for everyone's edification, when you say Obama phone, what

9 do you mean?

10 A A free phone.

11 Q What do you mean?

12 A The free phones that they give you, I mean --

13 Q Okay. So how many phones would you say, on this particular day

14 when the police searched your apartment, how many phones do you think you

15 had?

16 A Myself, I could have had at least three or four phones.

17 Q And my son?

18 A My son, including him.

19 Q Okay. Three or four?

20 A Yes.

21 Q Did Keandre have a phone that weekend? Did you see?

22 A I believe so.

23 Q Okay. State's Exhibit No. 123; do you recognize that?

24 A I believe that's Keandre's phone. I'm not sure.

25 Q You think that's Keandre's phone?

1 A Well, everybody have iPhones.

2 Q Okay.

3 A We all had iPhones. If you -- if you all take pictures of the phones,
4 you'll see everybody pretty much had an iPhone.

5 Q Okay.

6 A So I can't --

7 Q Well, the last one that we have, that I showed you --

8 A Yeah. That's an Obama phone. That's not a working phone.
9 Everybody phone that we're using are iPhones.

10 Q Okay. Like --

11 A And the HTC, that's my son's phone. That all-white HTC phone, that's
12 my five-year-old's phone.

13 Q State's 126, there is another iPhone.

14 A I don't -- no. I have a black small phone. So I don't really know.
15 That's not my phone, either.

16 Q That's not your phone?

17 A No.

18 Q Okay. Did that look like Omara's phone? Did you see Omara's
19 phone?

20 A I'm not sure.

21 Q Okay. But at some point Omara had to start using your phone, right,
22 after Keandre was arrested?

23 A We all got our phones back, pretty much.

24 Q Okay. So why was Omara using your phone?

25 A Because I have a 702 number.

1 Q Okay. State's Exhibit No. 127, okay, any reason for this drawer to
2 have an identification card not belonging to you or your son?

3 A No.

4 Q That's the drawer to -- next to your bed, right?

5 A Uh-huh.

6 Q Yes?

7 A Yes.

8 Q State's Exhibit 129. Okay. Do you know this person?

9 A Never seen him before.

10 Q Okay. So no reason for this particular ID card to be found in the
11 dresser or in the nightstand next to your bed?

12 A No.

13 Q State's 132, there's a phone here; is that Titus's phone?

14 A No.

15 Q Whose phone is that?

16 A I don't know. I'm not sure. It's not my son's phone.

17 Q Okay. Not your phone?

18 A No.

19 Q Not one of your three or four phones?

20 A No.

21 Q Okay. State's 133, that's a close-up. I want to give you an opportunity
22 to look at it. Not your phone, not Titus's phone?

23 A No.

24 Q State's 134, in that same drawer, nightstand, where the ID was that I
25 just showed you --

1 A Uh-huh.

2 Q -- any reason for a debit card belonging to Rosa Vazquez Ramirez and
3 Jordan T. Alexander to be in that particular room?

4 A No.

5 Q Okay. You didn't put those there?

6 A No.

7 Q All right. And to your knowledge, prior to the police coming to get -- or
8 knocking on the door and prior to you going into the -- or into the parking lot to
9 see what was up with the police, Keandre was sleeping in -- in your bedroom?

10 A Yes.

11 THE COURT: And you were sleeping on the couch at that time; is
12 that your --

13 THE WITNESS: Yes.

14 THE COURT: -- your testimony?

15 THE WITNESS: Yes.

16 THE COURT: How -- and where was the couch located? In what
17 room?

18 THE WITNESS: In the living room.

19 THE COURT: Living room?

20 THE WITNESS: Yeah.

21 THE COURT: All right. And -- and how close was the couch to the --
22 well, how many entrances were there to the inside of your apartment?

23 THE WITNESS: There's only one entrance.

24 THE COURT: And that's -- that's through the front door?

25 THE WITNESS: Front door, yes.

110

1 THE COURT: How close was the couch to the front door?

2 THE WITNESS: Well, I have two couches. I have one that's kind of
3 sort of by the front door. And then I have one at last closer towards my kitchen
4 area.

5 THE COURT: All right. And which one of those couches was -- was
6 you in?

7 THE WITNESS: I was on the one -- the long couch, which is the one
8 that's by my kitchen area.

9 THE COURT: Okay. And how many steps to the -- to the front door
10 was that?

11 THE WITNESS: Maybe a couple steps, like 10, 15, 20, maybe.

12 THE COURT: 10, 15 steps? All right. And -- and does that door
13 enter -- does that door enter into the living room area of your apartment?

14 THE WITNESS: Uh-huh. Yes.

15 THE COURT: Okay. Thank you.

16 You can keep going.

17 MS. LEXIS: Thank you.

18 BY MS. LEXIS:

19 Q State's Exhibit No. 136; is this a photo of items in Titus's room?

20 A Yes.

21 Q Okay. Drawing your attention to this box. I'm going to show you a
22 closer photo. Okay. State's 137, okay, do you see this black thing in the middle?

23 A Yes.

24 Q All right. Have you ever seen that before?

25 A No.

1 Q Okay. Is there any reason why that would be in that particular box in
2 Titus's room, your son?

3 A No.

4 Q State's Exhibit 138; also Titus's room?

5 A Yes.

6 Q Okay. Drawing your attention to that box, okay, that's wrapped.
7 State's Exhibit 139. Okay. The bigger picture of the box, I think it's a Mini Me
8 wrapping?

9 A Yeah. The -- it's the -- the Minions.

10 Q Uh-huh yeah?

11 A The little Minions, yeah.

12 Q Yeah.

13 A For Christmas, he did a little box.

14 Q Okay. Would it surprise you, as shown in State's Exhibit No. 140, that
15 two .40-caliber bullets were found in that particular box?

16 A Yes.

17 Q It surprises you?

18 A Yeah.

19 Q That's not yours?

20 A No, huh-uh.

21 Q And that wasn't there when you left --

22 A No, not to my knowledge, no.

23 Q When you left to go out with the girls?

24 A Not to my knowledge.

25 Q Neither was that gun?

1 A No.

2 Q Okay.

3 A I don't own a gun.

4 Q State's Exhibit No. 144; is this the HTC phone that you said belonged
5 to Titus?

6 A Yes, along with his tablet, yes.

7 Q Okay. And did he -- did you say that he got that back or the --

8 A No. He did not. You guys still have that.

9 Q Okay. Hopefully we can get that back to you soon.

10 A Yeah. Because phones are kind of expensive.

11 Q Right. I agree. All right, ma'am, did you ever see Keandre with some
12 gold chains?

13 A I'm not sure, no.

14 Q Did you see Omara with some gold chains?

15 A Omara, she has gold, yes.

16 Q Okay. Any of them have like a dragon-like pendant on it?

17 A I'm not sure.

18 Q Okay.

19 A I don't know.

20 Q Okay. But you saw Omara with some gold?

21 A Yeah. She have gold jewelry.

22 Q Gold jewelry. Okay. And she -- you remember seeing that the night
23 that you went out with her?

24 A Uh-huh. Yeah.

25 Q Is that a yes?

1 A Yeah.

2 Q Okay. But you don't remember if Keandre had that?

3 A No, I don't.

4 Q Okay. I -- I'm -- I'm sorry. Again, just to clarify, because I -- I -- this
5 just is unclear to me. When you got home, Keandre was sleeping in your
6 bedroom?

7 A Yes.

8 Q And you went to bed on the couch?

9 A Yes.

10 Q Have you spoken to Keandre recently?

11 A Yes.

12 Q Okay. As a matter of fact you spoke to him July 31st of 2016, correct?
13 Or 2017, correct?

14 A Could have been, yes.

15 Q Earlier this week?

16 A Yeah. I could have talked to him, yes.

17 Q Okay. Is jail calls are recorded, right?

18 A Right.

19 Q Okay. Did you talk to the defendant about your testimony today?

20 A I don't recall what we talked about.

21 Q Okay. You don't recall the defendant telling you or you telling the
22 defendant that you were scheduled to be a witness in this case?

23 A Yes.

24 Q You don't remember that?

25 A Yes.

1 Q You remember him saying that?

2 A Him saying it?

3 Q Yeah.

4 A I don't think that he told me I was a witness.

5 Q Do you remember telling him that you were going to be called as a
6 witness?

7 A I believe saying that they subpoenaed me.

8 Q Okay. And do you recall him making certain statements to you about
9 your testimony?

10 A Not really.

11 Q About whether you should or shouldn't testify?

12 A Oh, he told me if I feel comfortable with going. If I don't feel
13 comfortable, then don't -- don't go.

14 Q Okay. Okay. You didn't discuss the subject of your testimony, like
15 what you were supposed to testify to?

16 A No.

17 Q Okay. How many times have you spoken to Keandre since this --
18 since he was arrested for this case?

19 A Multiple times.

20 Q Okay. Did you speak to him daily or on -- on the regular?

21 A Not daily. But we spoke multiple times.

22 Q Okay. At any point in time did you discuss this case with him?

23 A I'm not sure.

24 Q Okay. Did you discuss -- do you recall discussing particularly certain
25 facts and circumstances such as where he would have been sleeping, where you

1 were before the police arrived?

2 A Oh, no.

3 Q Okay. So you didn't try to, like, match up your stories?

4 A No.

5 Q Okay. At least that's your testimony?

6 A Yes.

7 Q Okay. Can you tell the ladies and gentlemen of the jury what you
8 remember talking to him about, just this past Monday, specifically?

9 A I don't know specifically what you were talking about. But I told him
10 that they were trying to subpoena me. He told me if I feel comfortable, then I
11 should go, because honestly, I don't like being in front of people, period. I got
12 kidnapped. So this, right here, I don't like doing. So he told me, if I feel
13 comfortable, I can -- I should come. If I don't feel comfortable, then don't come.

14 Q And so you -- you -- at least your understanding of what a -- of your
15 conversation was just, you know, if you felt like physically comfortable to come
16 and testify?

17 A Right. Then come -- right.

18 Q Okay. Do you recall telling him or warning you that perhaps you
19 shouldn't come and testify, because you're going to be subjected to
20 cross-examination; do you remember that?

21 A No, I don't recall that.

22 Q Do you remember him telling you to be careful what you testified to?

23 A No, I do not.

24 Q When did Omara leave?

25 A Maybe months after.

1 Q Months after?

2 A Yeah. Maybe, like, a month or two after.

3 Q Okay. She left Las Vegas a month after?

4 A Uh-huh.

5 Q So did she stay with you that entire month?

6 A Yeah.

7 Q And so did her car?

8 A Yes.

9 Q Okay. So that car stayed in -- in your apartment?

10 A Yes.

11 Q I thought you weren't supposed to have people stay with you?

12 A No. I'm not supposed to have people stay with me. But that's a

13 person. I'm not supposed to have multiple people at my house at a time.

14 Q Okay.

15 A And I had her there and my son.

16 Q Okay.

17 A I can have anybody stay with me. Nobody's supposed to stay with me

18 more than a month or two, without me letting my office know, pretty much.

19 Q Okay. Okay. And it's absolutely your testimony here --

20 A Yes.

21 Q -- that Keandre, to your understanding --

22 A Uh-huh.

23 Q -- came to town the night you went out?

24 A Yes.

25 Q Friday night?

1 A Yes.

2 Q And it's definitely your testimony before this jury that Bobby was there?

3 A Yes.

4 Q Would it surprise you that your cousin, Keandre, was recorded on a jail
5 call saying Bobby left two days ago? Would it surprise you?

6 A Yes, it would.

7 Q Okay. But he wasn't talking to you then, right? I mean, in -- in two of
8 those calls he was talking to someone else?

9 A In -- oh, I didn't fully read once I figured out it wasn't my phone
10 number, it wasn't on me. That's not my phone call, so.

11 Q Okay. And Omara stayed with you for about a month after?

12 A Yes, if not longer.

13 Q Did you continue to let her use your phone to talk to Keandre?

14 A Yes.

15 Q Did you and Omara -- and/or Omara -- to your knowledge, ever go and
16 visit the defendant?

17 A I never visited Keandre, no.

18 Q Were you ever present in the apartment when Omara was talking to
19 Keandre?

20 A Like, on the phone or something?

21 Q Like on the phone.

22 A Oh, sometimes I would be. Sometimes I wouldn't. I would just hand
23 over my phone and finish doing what I'm doing. You know, sometimes I don't --

24 Q Uh-huh. You said Omara's phone might have been off. Is that why
25 also?

1 A Yeah. Her phone could have been off and she had a different number.
2 She had an out-of-state area code.

3 MS. LEXIS: Court's brief indulgence.

4 THE COURT: Okay. Let me jump in here. When did Bobby leave?

5 THE WITNESS: I don't know when Bobby left.

6 THE COURT: All right. All right.

7 BY MS. LEXIS:

8 Q But to your knowledge, Bobby -- you didn't know if Bobby was in your
9 apartment when -- before the police, you know, made -- made the ruckus?

10 A Right.

11 Q Okay. What time exactly did you all arrive back at your apartment?

12 A Maybe, like, 3:00, 4:00.

13 Q 3:00 a.m.?

14 A Yes.

15 Q And the police, what, approximately came to your apartment
16 about 7:30?

17 A About -- I can't recall what time. But I know it was super early.

18 Q Okay. Any reason to dispute about that time, 7:30ish, almost 8:00?

19 A No. Because it was pretty early.

20 Q Okay. So Omara had the keys to that car when you were --
21 presumably, when you all came back, because she was the one driving it when
22 you all were going out, right?

23 A Yes.

24 THE COURT: Did you see what she did with the keys?

25 THE WITNESS: No, I don't know.

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1 THE COURT: Okay. When you got home, no?
2 THE WITNESS: No. When I got home, we just pretty much passed
3 out.
4 MS. LEXIS: Court's brief indulgence.
5 BY MS. LEXIS:
6 Q All right. Does Keandre go by a nickname of Dre?
7 A Well, Keandre is short for Dre.
8 Q Okay. Or Dre is short for Keandre?
9 A Yeah. Yes.
10 Q Okay. And did Damian go by the nickname of Dame?
11 A Yes.
12 Q Okay. Bobby went by the name of Bobby?
13 A Yes. I didn't even know that was his real name.
14 Q I'm sorry. What'd you say?
15 A Nothing, ma'am.
16 MS. LEXIS: Mr. Dickerson?
17 I have no more questions for this witness. Thank you.
18 THE COURT: Thank you.
19 Redirect.
20 MS. MACHNICH: Yes, Your Honor. May we approach quickly?
21 THE COURT: Sure.
22 MS. MACHNICH: Okay.
23 [Bench conference transcribed as follows.]
24 MS. MACHNICH: She can't go anywhere.
25 THE COURT: Oh, you've got to stay.

1 MS. MACHNICH: Oh, yeah. You can't leave left. Sorry.
2 The call that she was referencing, we don't have a copy of it. So we
3 still don't know what the full transcript says, or we don't have a copy of the audio.
4 THE COURT: Oh, I thought she gave you all the transcripts.
5 MS. MACHNICH: No. No. This is new.
6 THE COURT: Okay. Can you give them a copy?
7 MS. LEXIS: Uh-huh.
8 THE COURT: All right. So you'll be copied.
9 MS. LEXIS: Yeah. We'll probably be playing it in our rebuttal case.
10 But I'll give them when I have time.
11 MR. GASTON: Can we take a break -- can we take -- you want to
12 take a break for lunch, then, before redirect, so we have time to review the
13 transcript?
14 THE COURT: Sure.
15 MR. GASTON: Or do you want to do it now? Never mind. Tegan
16 doesn't like that idea.
17 MS. MACHNICH: I mean, I -- she needs to --
18 MR. GASTON: We can always recall her, if we need to ask her any
19 questions.
20 MS. LEXIS: We don't have the answers.
21 MS. MACHNICH: But we have the call -- I mean --
22 MR. GASTON: We can always recall her, if we need to.
23 MS. LEXIS: I don't have it right now. I'd have to go grab the phone.
24 MS. MACHNICH: Okay. All right. We'll recall her if we need to.
25 THE COURT: What do you guys want to do?

1 MR. GASTON: Let's just keep -- let's just finish. And then we can
2 recall her if we need to.

3 MS. MACHNICH: She has two young kids outside who are probably
4 getting really restless. So I don't want to keep her over the lunch break.

5 THE COURT: So what do you guys want to do?

6 MR. GASTON: Could we push for another 10 minutes and --

7 MS. MACHNICH: I'll just do the redirect.

8 MR. GASTON: Could we push for another 10 minutes and just finish
9 the witness?

10 THE COURT: Does your co-counsel agree?

11 MS. MACHNICH: Yes.

12 THE COURT: Okay. All right.

13 MS. MACHNICH: Yes, I do.

14 THE COURT: Let's do that.

15 [End of bench conference.]

16 THE COURT: Are we going to keep going right now. All right.

17 **REDIRECT EXAMINATION**

18 BY MS. MACHNICH:

19 Q Ms. Williams.

20 A Yes.

21 Q Okay. The State just asked you about a call with Keandre on
22 the 31st?

23 A Yes.

24 Q And that's pretty recent, in the last couple days?

25 A Right.

1 Q Okay. Did he tell you what you had to testify to?

2 A No.

3 Q Okay. And did he tell you you had to testify?

4 A No.

5 Q All right. Does he know that you have this -- what you mentioned to
6 the State --

7 A Yes. My family, they know the situation that I was in. This makes
8 medical uncomfortable. I'm doing it because you guys subpoenaed me to, but I
9 don't want to be here, period.

10 Q All right. And we're talking about Keandre, Bobby, Omara, and a
11 female arriving in a car.

12 A Uh-huh.

13 Q Do you remember speaking about that with the State?

14 A Yes.

15 Q And you said you -- you don't remember her name?

16 A No.

17 Q Do you know the name of Latasha Allen [phonetic]?

18 A I don't know.

19 Q Okay. Does that -- does that name sound familiar to you at all?

20 A No.

21 Q Okay. So you -- you -- do you know if Latasha was in that car, or do
22 you just not know?

23 A I just don't -- I don't know.

24 Q That's fair. All right. So do you know exactly what day -- when the
25 white car made it to your house?

1 A Whatever -- the day that we went to the Gold Spike, it made it to my
2 house that morning.

3 Q Okay.

4 A Or that afternoon, maybe-ish. So whatever day we went to the Gold
5 Spike. I can't tell you what day. I can't give you -- I think I just read on the paper,
6 the 27th. That's the date.

7 Q Okay. Do you know when -- I mean, do you have any personal
8 knowledge of when that car came from California?

9 A I believe it was that Friday.

10 Q Okay. Do you know for sure?

11 A I'm pretty sure it was Friday.

12 Q Okay. And why are you pretty sure it's Friday?

13 A Because we went out Friday.

14 Q Okay. Do you know -- I mean, you don't -- were you -- find a good way
15 to ask this.

16 It's fair to say, you weren't in the car at any --

17 A No.

18 Q Okay. So do you know when those people got in that car?

19 A No.

20 Q Okay. And do you know when they left California?

21 A No.

22 Q Okay. You just know when they arrived to your house?

23 A Right.

24 Q Okay. To clarify that. Thank you.

25 You had spoken with the State about the tinting on the windows. So

1 do I have it right that when the car arrived, it did not have tint on the windows?

2 A I don't believe it did. I'm not sure.

3 Q Okay. And to your memory -- so your memory is it did not have tint?

4 A I'm not sure if it had tint or not.

5 Q Okay.

6 A You know, I don't -- I'm not -- I really don't know.

7 Q Okay. And you acknowledged in the picture that you saw of State's
8 Exhibit 42 that the car -- in it --

9 A Yeah, it was not dark like that when it first came.

10 Q Okay. That's fair. And do you know how the windows got that way?

11 A No. I'm sure they got tinted.

12 Q Right.

13 A But I wasn't --

14 Q But you don't have any personal knowledge?

15 A Yeah. No. I wasn't there.

16 Q Okay. Now, you had mentioned that Omara had quite a bit of cash on
17 her?

18 A Uh-huh.

19 Q When did you see her with the cash?

20 A When we went out. When we got there, we went to the store. We
21 bought a couple of things. You know, they just came from California, so they
22 wanted to get, you know, hygienes, and little stuff. So.

23 Q All right. And do you know if she has credit cards or debit cards that
24 she usually uses? Or does she use cash?

25 A She normally just pretty much used cash, you know.

1 Q Okay. I guess I -- I should ask, more specifically, did you ever see her
2 use credit cards or debit cards when you've been around her?

3 A No.

4 Q Okay. But you did see her use cash?

5 A Yes.

6 Q Okay. Now, you also mentioned that Omara has a job; why did she
7 stay in Las Vegas that extra month?

8 A I'm not sure why she stayed. She wanted to stay, just to, you know,
9 figure out what was going on. We didn't understand what the whole case was
10 about. We were trying to figure out what was going on. She stayed. Me and her
11 we just ended up having our fun.

12 Q Okay. So from what I just heard you said, are you saying that she
13 stayed because Keandre got arrested?

14 A Pretty much, yes.

15 Q Okay. Do you know what the original plan was? How long they were
16 supposed to stay or not?

17 A For Memorial weekend. I don't know how long they were going to stay.
18 But I know they -- everybody came for Memorial weekend.

19 Q Okay. You said that you -- to the State that you hadn't seen Keandre
20 with a lot of cash. Why don't you know if Keandre had cash or not?

21 A Because the majority of time I was with Omara. So I really wasn't --
22 guys and girls, yeah, you my cousin, but I'm chilling with the girls. I'm not with the
23 guys.

24 Q Okay. Let me see. Now, you had talked about a height estimate with
25 the State about how tall Omara was, right?

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1 A Yes.

2 Q Okay. And you said that you didn't know for sure?

3 A Yeah. I know she's just shorter than me.

4 Q Okay. But so you're sure she's shorter than you?

5 A Right.

6 Q Okay. Let me see. Did you personally see Bobby leave your

7 apartment at any time?

8 A I never seen him leave.

9 Q Okay.

10 A No.

11 Q So as of when you got home, that early morning hours on the 28th, do

12 you know if Bobby was in the apartment?

13 A I can't say for sure, but I know I seen multiple people there, the same

14 numbers that amounted before I left. I can't put a face to it. I can't state for sure.

15 I know that he was in the apartment before I left. When I got back, I went to

16 sleep. So I'm not sure.

17 Q Okay. So the last time -- and again, correct me if this is wrong -- the

18 last time you can definitely say you saw Bobby around the apartment was the

19 night before you went out to Gold Spike?

20 A Yes.

21 Q Okay. How many phones do you have with you today?

22 A Two.

23 Q Okay. You looked at your purse. Where are your phones?

24 A My kids have them outside.

25 Q Okay. And you also mentioned that Omara does wear gold jewelry?

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1 A Yes.

2 Q What type of gold jewelry?

3 A She wear rings, bracelets, necklaces.

4 Q Okay.

5 A Just --

6 Q Are they feminine looking or masculine looking?

7 A It just depends on what -- what it -- you know, what she want to wear.

8 It -- I don't know what feminine, masculine is, because our age and group now, we

9 wear anything. It -- we can have -- I don't -- I don't know what's feminine or

10 masculine to you guys.

11 Q Okay. That's fair. And did she have gold jewelry on when you saw

12 her, like, for example, when you went tout to the gold star -- Gold Spike?

13 A Yes.

14 Q Okay. Let me see. All right. And you said that you've spoken with

15 Keandre multiple times since he's been arrested?

16 A Yes.

17 Q Okay. And you mentioned you can't have people stay with you for any

18 length of time. Who -- and you mentioned that you had to notify someone. Who

19 do you have to notify?

20 A My housing complex.

21 Q Okay. Is that part of your lease?

22 A Yes.

23 Q Okay.

24 MS. MACHNICH: Court's brief indulgence.

25 Q Let me just make sure that I've covered everything.

1 And just to be perfectly clear, because I want the jury to have a clear
2 picture of this, was Keandre sleeping on the couch or in the bed?

3 A He was in the bed.

4 Q Okay. How -- was he ever asleep on the couch?

5 A I don't know when they first fell asleep, where they fell asleep.

6 Q Okay.

7 A You know, when we came in the house, I just went and laid on the
8 couch because it was -- my house was full, in fact. But I have two different
9 couches, so it's -- it could be possible.

10 Q Okay. Was someone sleeping on the other couch, to your knowledge?

11 A Somebody was sleeping on the couch.

12 Q Okay. Okay.

13 MS. MACHNICH: Pass the witness. Thank you.

14 THE COURT: Recross?

15 **RECROSS-EXAMINATION**

16 BY MS. LEXIS:

17 Q Ma'am, I'm confused. On cross-examination, when I first asked you
18 questions, didn't you tell this jury that when the defendant, Omara, Bobby, and
19 some girl you don't know, when they showed up to your apartment and got -- got
20 out of this vehicle, it was your understanding that they had just gotten to
21 Las Vegas?

22 A Say it one more time?

23 Q Was it your understanding, when you testified, right?

24 A Uh-huh.

25 Q Was it your understanding that when you first saw Bobby, Omara,

1 Keandre, and the girl whose name you didn't know, when you first saw them,
2 when they showed up at your apartment complex --

3 A Uh-huh.

4 Q -- it was your understanding that they had just gotten to Las Vegas;
5 that was your testimony, right?

6 A Yeah. They -- they just got to my house. I don't know how long they
7 had been in Las Vegas, but they just got to my house.

8 Q Okay. You don't remember saying, during my previous cross, that they
9 had just gotten there --

10 A I don't --

11 Q -- to Las Vegas?

12 A To Las Vegas? I don't -- I'm not understanding what you're saying.

13 Q Did -- do you remember me asking you, when I first cross-examined
14 you, okay, when -- when you first made contact with this car, Omara, Keandre,
15 Bobby, this -- this other girl you didn't know --

16 A Yeah.

17 Q -- okay, I asked you, had they just gotten to Las Vegas, was that your
18 understanding?

19 A Yeah. To my understanding, they just made it to Vegas. I don't
20 know --

21 Q Okay. Nothing.

22 A Okay.

23 THE COURT: All right. Were you done?

24 MS. LEXIS: Yes, thank you.

25 THE COURT: Jurors, anything?

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All right. Marshal?

MR. GASTON: Your Honor, may we approach for the question?

THE COURT: Sure.

[Bench conference transcribed as follows.]

MR. GASTON: That's a fine question.

MS. LEXIS: That's fine.

THE COURT: All right.

[End of bench conference.]

THE COURT: All right. Ma'am, this is a question from the jury.

Was Bobby there the day after the police searched your apartment?

THE WITNESS: The day after?

THE COURT: The day after.

THE WITNESS: No.

THE COURT: Okay. Thank you.

Anything else from the jurors? All right.

Ma'am, Ms. Williams, you are excused. Thank you very much for
your time.

THE WITNESS: Thank you.

THE COURT: Have a good day. Watch your step there.

All right. At this point, we need to take a lunch recess. And there's a
couple things we -- we might need to do during the lunch recess. I'm going to --
we're going to come back -- let's see, it's 1:05, 2:05, 2:00 -- 2:30. All right.

Ladies and gentlemen of the jury, during this lunch recess, do not
communicate among yourselves or with anybody else about this trial or the
subject matter of this trial; do not communicate at all with any of the parties,

1 attorneys, or witnesses involved in this trial; do not seek or obtain any information
2 or comments about the case from any source, including newspapers, television,
3 radio, Internet, e-mail, cell phones, or any other electronic device; do not read,
4 watch, or listen to any report of or commentary about the case; do not perform
5 any research or investigation; do not form or express any opinion on any subject
6 connected with the trial until the case is finally submitted to you for deliberations.

7 Be back here, ready to -- to go right at 2:30, please. Thank you.

8 [Jury recessed at 1:03 p.m.]

9 THE COURT: All right. We're outside the presence. So please be at
10 ease, everybody. But we're on the record.

11 So how do you guys want to proceed? Is there anything -- any -- what
12 business can we get done during the lunch hour?

13 MS. MACHNICH: Sorry. I missed that entirely, Your Honor. I'm so
14 sorry.

15 MR. GASTON: What do you want to do during lunch?

16 MS. MACHNICH: Oh, what do we want to do? We're prepared to
17 argue jury instructions if the State has theirs with them.

18 MS. LEXIS: I sent it to the court.

19 THE COURT: Well, we'll do lunch and then we'll come back, maybe a
20 little bit before the jury is going to be here.

21 MS. MACHNICH: Okay.

22 THE COURT: And spend some time. I need to get my staff and
23 defendant needs to eat lunch. So do you want the defendant's presence during
24 settling of jury instructions?

25 MR. GASTON: He doesn't have to be.

1 MS. MACHNICH: It's -- yeah.
2 THE COURT: So you're going to waive the defendant's presence?
3 MS. MACHNICH: We waive, yes.
4 MR. GASTON: Yes, sir.
5 THE COURT: All right. The court will do that, too. That'll give him
6 more time for lunch. Then we will talk about jury instructions. Why don't we come
7 back at -- it's 1:05. 2:10?
8 MS. MACHNICH: Sure.
9 THE COURT: Can we be back here at 2:10.
10 MR. DICKERSON: Great. Yeah. Sounds great.
11 MS. LEXIS: And Your Honor, just for scheduling purposes, because
12 we're trying to figure out rebuttal -- our rebuttal case and witnesses --
13 THE COURT: Okay. What do you guys got left?
14 MS. MACHNICH: Two witnesses.
15 THE COURT: Two witnesses. All right.
16 MS. MACHNICH: And they should be relatively short.
17 MR. GASTON: And could we get the audio tape that you were talking
18 about for the jail call?
19 MS. LEXIS: Yeah. I have to go -- have to go get it. I don't have it
20 with me.
21 MS. MACHNICH: Could you e-mail it to me?
22 MS. LEXIS: Yeah. Uh-huh.
23 MS. MACHNICH: Okay.
24 THE COURT: All right. Very good.
25 So the State should probably plan on having at least one rebuttal

1 witness ready for the end of the day.

2 MS. LEXIS: Okay.

3 THE COURT: Because they're going to have two quick witnesses.

4 MR. DICKERSON: Great.

5 MS. LEXIS: That sounds good. Thank you for -- thank you for letting
6 us know.

7 MR. DICKERSON: Fantastic.

8 THE COURT: All right. Thank you guys. I'll see you back here at --
9 at 2:10, please.

10 MS. LEXIS: Thank you.

11 MR. GASTON: Are we just going to read the stipulation to the jury
12 before we close? Is that how it's going to work?

13 THE COURT: Why don't you guys work out how you want it done and
14 let me know.

15 MS. LEXIS: It's an exhibit.

16 MS. MACHNICH: It's an exhibit, so --

17 MS. LEXIS: We already talked -- Tegan and I talked.

18 MR. GASTON: You guys already good?

19 MS. LEXIS: Yeah.

20 MS. MACHNICH: Yeah.

21 MR. GASTON: Ignore me, then. I'm --

22 THE COURT: All right. Thank you, guys. See you back leer at 2:10.
23 Off the record.

24 [Court recessed from 1:05 p.m., until 2:29 p.m.]

25 [Outside the presence of the jury.]

1 THE COURT: *State vs. Valentine*, C-361081. The defense has
2 indicated that they want to make a record of their objection and perhaps a motion
3 relating to an allegation that the State put on evidence of a jail call which the -- I
4 don't know the exact issue, but defense has some issue about that. And they
5 want to make a record. I don't want to take any more time, since the jury is
6 waiting.

7 I'm going to allow them to -- for the record, they can make their record
8 at the next break.

9 MS. MACHNICH: Okay.

10 THE COURT: Okay. Since I understand --

11 MS. MACHNICH: Sounds good.

12 THE COURT: -- that the record they need to make and any relief
13 they're seeking from this court doesn't affect what the testimony is going to be of
14 the upcoming witnesses.

15 MS. MACHNICH: That is correct.

16 THE COURT: So we can proceed with these witnesses.

17 MS. MACHNICH: We can. Yes, we can.

18 THE COURT: All right. All right.

19 Let's bring in the jury, marshal.

20 And we're going to have to work on jury instructions at some future
21 time.

22 MR. DICKERSON: Okay. Thank you, Your Honor.

23 THE COURT: Because I don't want to the jury to wait anymore.

24 MS. MACHNICH: Your Honor, has the stipulation been prepared at
25 this point? Because we'll bringing -- going through it with --

1 THE COURT: I don't draft stipulations. So that's not a question for
2 me.

3 MS. MACHNICH: Okay. Then I will have one drafted. I asked, and I
4 thought that was the situation. So I will have it done.

5 THE COURT: I have the language we discussed, if you guys didn't
6 write it down.

7 MR. DICKERSON: I wrote it down.

8 MS. MACHNICH: Yeah, I did too.

9 THE COURT: Okay.

10 MS. MACHNICH: So would you like to do it or would you like me to
11 do it?

12 MS. LEXIS: I think you guys should. That's your --

13 MS. MACHNICH: That's fine.

14 MS. LEXIS: It's your evidence.

15 MS. MACHNICH: We can do that.

16 [Jury reconvened at 2:31 p.m.]

17 THE COURT: Please be seated. *State vs. Valentine*, C-361081.

18 Defense may call its next witness.

19 MS. MACHNICH: Thank you, Your Honor.

20 The defense calls Steven Denton.

21 THE COURT: Mr. Denton, will court clerk over here to my right will
22 administer your oath.

23 **STEVE DENTON**

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

25 THE CLERK: Please be seated and please state and spell your first

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1 and last name for the record.

2 THE WITNESS: First name Steve -- or Steve, S-T-E-V-E last name,
3 Denton, D-E-N-T-O-N.

4 THE COURT: You may proceed.

5 MS. MACHNICH: May I proceed?

6 Thank you.

7 **DIRECT EXAMINATION**

8 BY MS. MACHNICH:

9 Q Hi, Mr. Denton.

10 A Hello.

11 Q Where are you employed?

12 A EZPAWN, 821 North Rancho.

13 Q Okay. Let's -- actually, let me get a map and point out where that is.

14 Now, I'm going to show you what has previously been marked and
15 State's Exhibit 6; do you recognize the area depicted in this map?

16 A Yes, ma'am.

17 Q Okay. Can you point out some of the landmarks in the area?

18 A You have EZPAWN located towards the center. It's got a blue awning.
19 Checkers to the north. To the south is Wells Fargo.

20 Q Okay. And will you circle the EZPAWN? You can actually just write on
21 the screen.

22 A Sure.

23 Q Okay. Now, you said that you work at EZPAWN; what is your duty
24 there?

25 A Store manager, daily operations, any and everything customer-service

1 related, just everyday transactions.

2 Q And would you be considered the custodian of records for any videos
3 that were taken by your surveillance system?

4 A Yes, ma'am.

5 Q Okay. And let's address the surveillance system for a moment. Do
6 you have a surveillance system at the EZPAWN and -- and what is it, if you do?

7 A We do. It's approximately three DVR systems, each with capability
8 of 10 different cameras. We have the majority of them internal, and external as
9 well.

10 Q All right. And do you know where the external cameras face in such a
11 way that you could point out where they face on this map?

12 A Sure. They cover the south side of the building, pointing out towards
13 Rancho. They cover the back half of the building and the north side of the
14 building, and they also cover the parking lot towards the front, facing Rancho.

15 Q Okay. So I'm going to direct your attention to May 26th, 2016, so
16 about 14 months ago. Okay. Were -- were you employed in the same capacity at
17 EZPAWN at that time?

18 A Yes, ma'am.

19 Q All right. And in the ordinary course of your duties, would you be
20 keeping copies of videos and retaining those, if requested by law enforcement?

21 A Yes.

22 Q Okay. Now, do you have any independent recollection of a detective
23 coming to your store on the 26th?

24 A No, ma'am.

25 Q Okay. Would read -- would reading a copy -- or reading reference to

1 your store in a -- let me see here.

2 MS. MACHNICH: Court's indulgence.

3 I thought I had the right page. I apologize.

4 Q All right. So you have no independent recollection of there being
5 anyone there -- at the time on May 26th, 2016; do you know if your surveillance
6 cameras were functional?

7 A They were.

8 Q Okay. And how do you know they were functional that day?

9 A It is part of our daily duties to make sure that the security system is
10 functional.

11 Q Okay. So what happens if you determine it's not functional?

12 A If we determine it's not -- not working, we immediately put in a service
13 ticket. It's fixed within an hour to two hours.

14 Q Great. Do you recall any service ticket from the time period around
15 May 26th of last year?

16 A No, ma'am.

17 Q Okay. So if a -- well, what is the retention policy for the length of time
18 that you keep video at the EZPAWN?

19 A Depending on the DVR capacity, it can range anywhere from 45 days
20 to 60.

21 Q Okay. So if someone came from the Las Vegas Metropolitan Police
22 Department, for instance, that same day, would the video still be there from that
23 day?

24 A Absolutely.

25 Q Okay. Now, if a detective went down to collect video from your store

1 that day, what is the process that would be used to get that video to that
2 detective?

3 A We put them in front of the monitors, so they can select what they want
4 coverage of. And simply burn it to either one of two options. They have -- they
5 can bring in a flash drive or a disc. Once we get a confirmation that it's recorded,
6 we place it right back in the machine to verify that the recording did actually burn
7 on the -- to that disk or drive.

8 Q All right. So if a detective comes in and asks for an area of video, and
9 goes so far as to indicate a section that he wants, did I understand you correctly
10 that you make sure that it works before he leaves?

11 A Correct.

12 Q Okay. And, specifically, would you still have retained anything from
13 that time period, say, now, for any reason?

14 A No, ma'am.

15 Q Okay. So you would not have it if we requested it at this time?

16 A No, ma'am.

17 Q All right. And is it common for detectives to come in and retrieve
18 pieces of video that are not relevant to anything? Do they do this for fun?

19 A No.

20 Q Okay. So when something is burned onto a CD or drive, what is your
21 understanding of what they are doing?

22 A They are using it for evidence. They are looking always for a specific
23 something on the video.

24 Q Okay. And what they take with them, is that that something?

25 A Yes.

1 Q And I think you already said this, but I want to make clear, when they
2 walk out that door, whatever they have with them functions?

3 A Correct.

4 Q Okay.

5 MS. MACHNICH: Court's indulgence.

6 All right. I'll pass the witness. Thank you, sir.

7 THE COURT: Cross?

8 **CROSS-EXAMINATION**

9 BY MR. DICKERSON:

10 Q Good afternoon, sir. Thanks for coming down.

11 A Thank you.

12 Q So I'm right that that's EZPAWN right there?

13 A Yes, sir.

14 Q Okay. You don't remember any officer coming in on May 26, 2016?

15 A No, sir.

16 Q Okay. So you don't remember dealing with a robbery investigation that
17 day?

18 A No, sir.

19 Q Okay. Your cameras, you said that they cover the front parking lot on
20 Rancho?

21 A Uh-huh.

22 Q And then the sides of the building?

23 A Correct.

24 Q Does EZPAWN have any particular interest in covering this parking lot
25 over here?

1 A The cameras on the entrance, no. The cameras on the north side of
2 the building do catch some activity in that parking lot.

3 Q And so what does it catch over in that parking lot?

4 A Traffic, mostly.

5 Q Okay. Are you able to make out faces of people, let's say, over here?

6 A No, sir.

7 Q Okay. Are you able to get license plates of, say, cars right over here in
8 the second row?

9 A No, sir.

10 Q Okay. What -- what do you generally see?

11 A Generally, I -- it's the front area of the drive where you pull into that
12 mall area. That's --

13 Q If you could please indicate by showing on the map.

14 A Sure. About right there.

15 Q Oh, okay. So that's about what you cover of that parking lot?

16 A Correct.

17 Q All right. I'm going to make a record that what's covered -- what you've
18 indicated is covered by the parking lot is really the -- across the road, which -- is
19 that -- what street is that, sir?

20 A Belrose.

21 Q Belrose. So across Belrose into the front part of the parking lot of the
22 next shopping center to the west, that would be, right?

23 A Correct.

24 Q Okay. Which would be the front of the shopping center at 2901 West
25 Washington; is that correct?

1 A Yes, sir.

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

3 THE COURT: All right. Redirect.

4 MS. MACHNICH: Just very briefly.

5 **REDIRECT EXAMINATION**

6 BY MS. MACHNICH:

7 Q The State spoke to you about not remembering the specific date. How
8 many times, say, a week, do you retrieve video for police officers?

9 A Three to five.

10 Q Okay. And we already discussed that this was about 14 months ago?

11 A Uh-huh.

12 Q Okay. So you don't have any specific recollection of a particular
13 detective coming in, do you?

14 A No, ma'am.

15 Q Okay. But if he said he came in and retrieved a video, you would have
16 no reason to dispute that?

17 A Correct.

18 Q And you -- would you have assisted him if he came in?

19 A Absolutely.

20 Q And would you have made sure that the video he left with was
21 functional when he left?

22 A Yes, ma'am.

23 MS. MACHNICH: All right. Thank you.

24 Pass the witness.

25 THE COURT: Anything else, State?

1 MR. DICKERSON: Yes, Your Honor, briefly.

2 **RECROSS-EXAMINATION**

3 BY MR. DICKERSON:

4 Q The video that you're pulling for these officers, that's generally for what
5 are pawns for burglaries; is that right?

6 A Correct.

7 Q That means people coming into your pawnshop and pawning stolen
8 items?

9 A Correct.

10 Q Okay. So a robbery investigation of the -- the area around isn't your
11 typical cause for pulling these videos?

12 A Correct.

13 Q Okay.

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

15 THE COURT: Anything from the jurors?

16 All right. Then, Mr. Denton, you are excused. Thank you for your
17 time.

18 THE WITNESS: Thank you, sir.

19 THE COURT: All right. The defense may call its next witness.

20 MS. MACHNICH: Yes, Your Honor. The defense would call Gayland
21 Seaberry.

22 **GAYLAND SEABERRY**

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

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

1 THE WITNESS: First name is Gayland Seaberry. It's
2 G-A-Y-L-A-N-D, last name is S-E-A-B-E-R-R-Y.

3 **DIRECT EXAMINATION**

4 BY MS. MACHNICH:

5 Q Good afternoon.

6 A Good afternoon.

7 Q Ms. Seaberry, how are you employed?

8 A Clark County Public Defender's Office as an investigator.

9 Q All right. What are some of your duties as an investigator?

10 A I go out and interview witnesses, go to crime scenes, take photos, do
11 whatever is needed for the defense on a case.

12 Q Okay. Now, you said that you are employed by the Public Defender's
13 Office?

14 A Correct.

15 Q Is that also of Clark County?

16 A Yes, it is Clark County.

17 Q Okay.

18 MS. MACHNICH: I'm going to approach with what has previously
19 been marked and I would request at this time be moved into evidence as Defense
20 Exhibit S, pursuant to prior discussion.

21 THE COURT: Exhibit S is the registration?

22 MS. MACHNICH: Yes.

23 THE COURT: All right. Well, yes, S is admitted, subject to -- without
24 waiving the objections that have been put on the record.

25 [Defendant's Exhibit No. S admitted.]

1 MS. MACHNICH: Thank you, Your Honor.

2 THE COURT: All right.

3 BY MS. MACHNICH:

4 Q All right. Ms. Seaberry, I've handed you an item; what is that?

5 A This is the registration card.

6 Q Okay. Did you get a copy of this registration card in preparation for
7 this trial?

8 A Yes.

9 Q Okay. And was that done by way of a subpoena?

10 A Yes, it was.

11 Q All right. And this is actually the -- a copy of the registration card that
12 you, yourself, received in reference to that subpoena?

13 A Correct. This is what I received.

14 Q Okay. Thank you.

15 MS. MACHNICH: Your Honor, may I publish it to the court?

16 THE COURT: You may publish.

17 MS. MACHNICH: Okay.

18 BY MS. MACHNICH:

19 Q And without talking further about the process at this time, looking at the
20 card itself, what relevance --

21 THE COURT: Can you blow it up some more? All right. That -- that
22 might be good.

23 BY MS. MACHNICH:

24 Q Why did you obtain this registration card?

25 A I was asked to obtain the registration card on a vehicle with a particular

1 VIN number. I contacted the dealership.

2 Q Okay. And you recognize this because it has the VIN number and
3 you've actually hold -- held this copy before?

4 A I've actually seen that copy of it. I've actually seen that document, so
5 yes, that's why I recognize it.

6 Q Okay. We'll let that document speak for itself.

7 All right. Now, Ms. Seaberry, I saw that you walked in with something
8 in your hand, other than a cell phone; what was that?

9 A Well, cell phone -- reader glasses.

10 Q Right.

11 A And a hundred-foot tape measure.

12 MS. MACHNICH: Okay. At this time, Your Honor, I would ask that
13 the witness step down. I would like to have her measure the defendant.

14 THE COURT: Fine.

15 MS. MACHNICH: All right. So I think the best place to do this would
16 be -- Keandre, do you want to stand up.

17 THE COURT: Do you want to measure his height?

18 MS. MACHNICH: What?

19 THE COURT: Do you want to measure his height?

20 MS. MACHNICH: I do.

21 THE COURT: All right. Why don't you have him stand against -- do
22 you see the -- the wall there, next to the geyser, my picture, the geyser? Just
23 have him --

24 MS. MACHNICH: Yes.

25 THE COURT: -- someone get a book. Put it on the top of his head.

1 MS. MACHNICH: All right.

2 THE COURT: Put -- put a finger down that -- that's the bottom of the
3 book, after its level on top of his head, and then the defendant can come back
4 and sit down, and the investigator can measure from the bottom of the floor to
5 the -- to that mark.

6 MS. MACHNICH: Okay.

7 THE COURT: All right?

8 MS. MACHNICH: And that sounds like a perfect procedure,
9 Your Honor.

10 THE WITNESS: I might need assistance. I'm only 5-2, so -- so my
11 vertical height may not be able to reach that, so.

12 MR. GASTON: I -- I will.

13 THE COURT: Mr. Gaston will assist you.

14 THE WITNESS: Thank you.

15 THE COURT: And the -- the district attorney is welcome to come
16 watch.

17 MS. MACHNICH: You're welcome to come over.

18 Okay. So and -- can I stand on something?

19 THE COURT: Use -- right.

20 MS. MACHNICH: This is a little bit flimsy. Can I use your clipboard,
21 sir?

22 THE COURT: Go ahead.

23 MS. MACHNICH: All right. So I am actually using a clipboard from --
24 that clipboard will work better, so that it's not flimsy.

25 THE COURT: And marshal, you observe to make sure that the

1 clipboard is horizontal to the -- to the best of your ability.

2 MS. MACHNICH: Okay. Okay. Okay.

3 THE COURT: All right. Why don't you -- do you have a piece of tape
4 you could put at the bottom of that clipboard against the wall?

5 MS. MACHNICH: Oh, demonstrations. Sorry. Here we go. And I will
6 let -- so I will put this --

7 THE COURT: Well, put it at the bottom of the clipboard. And then
8 you're going to measure to the top of the tape.

9 MS. MACHNICH: Okay. Yes. I -- yeah. Let me pull this down it's --
10 We also have a vertically-challenged person here doing this.

11 MR. GASTON: It's the middle part of the --

12 MS. MACHNICH: Okay. So the wrinkle tip is the top. Okay. Do you
13 see that? The wrinkle tip.

14 MR. GASTON: May I take this clipboard away now?

15 THE COURT: Yep.

16 MS. MACHNICH: Okay. And you can go sit down.

17 All right. Ms. Seaberry -- all right. With the Court's permission, I'll ask
18 Ms. Seaberry to come over and measure -- perhaps with Mr. Gaston's assistance
19 again. She might have the same issue that I did. I can do the floor.

20 THE WITNESS: Yeah. So, like, 6-3.

21 MR. GASTON: At -- at the 3 mark exactly. Do you guys want to see
22 this?

23 MS. MACHNICH: Does the State want to come over?

24 THE WITNESS: It's that --

25 MS. MACHNICH: The top of the wrinkle, yeah. Okay.

1 MR. GASTON: Make sure we're not cheating.

2 MS. MACHNICH: It's pressed against the wall, yes.

3 Please -- please announce to the court what you read it to be.

4 THE WITNESS: It's about 6-2 and, what, 3/4, because we're right up

5 between 3/4.

6 MS. MACHNICH: Okay.

7 THE COURT: 6-2 and 3/4 is what the investigator reports; is that

8 correct?

9 MS. MACHNICH: Yes. And it has been witnessed by the district

10 attorneys.

11 THE COURT: All right. Ma'am, you may retake your seat. Okay.

12 BY MS. MACHNICH:

13 Q Now, Ms. Seaberry, I will just -- as stated again, you just measured the

14 wall. What was the measure of the defendant as you measured at the wall?

15 A It was six feet and we'll say three inches, close to three inches.

16 Q Okay. I will now direct your attention to other investigations you may

17 have done in this case, particularly traveling down to 1701 J Street; did you go

18 there at any point?

19 A I did.

20 Q Okay. And why did you go there?

21 A I went there to take measurements --

22 Q Okay.

23 A -- of an area. I was requested to take measurements of an area.

24 Q Okay.

25 A Myself and another investigator went.

150

1 Q Okay. And who was the other investigator who went with you?
2 A Robert Maddox [phonetic].
3 Q Okay. And why --
4 A From our office.
5 Q And why did you bring someone else?
6 A To do measurements. I needed two people, so.
7 Q Okay. Did you do measurements specifically with the tape measure or
8 did you use another mechanism?
9 A We used a roller.
10 Q Okay.
11 A A wheel that also does feet, inches, because we didn't have a tape
12 measure at the time.
13 Q All right. And is it fair to say since that time you've obtained a tape
14 measure?
15 A Correct.
16 Q Okay.
17 A It's easier to carry than a wheel.
18 Q That's true. Okay. I am showing you what has previously been
19 marked and admitted as State's Exhibit 8; what are we looking at here?
20 A This would be the apartment complex at 1701 J Street.
21 Q Okay.
22 A That would be the area -- I -- I did some measurements down there.
23 Q All right. Can you just generally circle the area in which you did
24 measurements, and then I can zoom into that area for the jury.
25 A So where I started my measurements?

1 Q Well, just general -- the general area.

2 A Oh.

3 Q And then I'm going to move it and zoom it in.

4 A That area. I'm sorry. I went too far. Right to there.

5 Q Okay. So --

6 MS. MACHNICH: Tyler, will you clear the screen?

7 Q Okay. So now I'm going to zoom in more to the area you just
8 indicated, which for the record, all the actual complex at 1701 J Street was at the
9 bottom right corner area.

10 A Correct.

11 Q So now -- so now I've zoomed in to that area. Now, are you aware
12 why you were sent to this particular area?

13 A I was told it was in regards to an ID.

14 Q Okay. Now, did you happen to look at any pictures to understand
15 where it would be important to measure?

16 A Yes. I had looked at some -- some photographs.

17 Q All right. And I'm showing you what has previously been marked and
18 admitted as Defense Exhibit A. Now I just did this -- okay. We'll do it back in.

19 Is this one of the photographs that you looked at?

20 A Yes. I had seen that photograph before, yes.

21 Q Okay. And what is the significance of this photograph?

22 A That would be a still photo from a body cam. And it's of two
23 individuals. It was an ID that was taking place. And there's two individuals at the
24 other end, and I was asked to get measurements, approximate measurement.

25 Q And approximate measurements of what?

1 A Of where they were standing and where the vehicle possibly was
2 located.

3 Q Okay. And is that based upon walk -- looking at the still photograph
4 and the body cam?

5 A Correct.

6 Q Okay. And was its also based on watching the body cam photo --

7 A The body cam video, yeah.

8 Q Okay. So now I will zoom back in on our other exhibit, which is State's
9 Exhibit 8. Can you indicate on this picture, now that we've zoomed in, where you
10 were asked to measure or where you determined was appropriate to measure
11 given the photographs in evidence you reviewed?

12 A The measurements I used were the fixed structures, so the building
13 itself. I -- do you want me to mark on here?

14 Q Yes, please.

15 A Okay. So I went from the corner of this building, knowing that there
16 was -- this was the driveway and you would drive into that. So I used the corner
17 of that building to the sidewalk, which was right about there, the end of that
18 sidewalk. That was the measurements, because I wasn't quite sure exactly
19 where. And then I also did an additional measurement to the end of this building.
20 Again, these are all just fixed structures, things that can't be moved, so I used the
21 end of this building and did a measurement there.

22 Q Okay. And what is the significance -- what is -- you already described
23 the significance of the right-most dash, which for the record at this point is at the
24 bottom right corner of the bottom right building, horizontal in the parking lot area,
25 for the record.

1 You've explained the significance of that location. What is the
2 significance of the other two locations you measured?

3 A The other two locations -- since in the photographs and in the video
4 itself, you can't really tell exactly where they are, but they're in between this
5 building and this sidewalk area. So I wanted to do a complete measurement and
6 then I did the additional measurement for what that space is in between, from
7 the -- this sidewalk right there to the beginning of that one, all the way to the
8 building.

9 So then I got that measurement, because I wasn't quite sure exactly
10 where they were standing. They weren't fixed. Those objects are. So that's why
11 I used them.

12 Q Okay.

13 MS. MACHNICH: Court's brief indulgence. Let me grab one more
14 photo.

15 [Pause in proceedings.]

16 MS. MACHNICH: Is there any possibility you have any of the
17 exhibits?

18 MS. LEXIS: No.

19 [Pause in proceedings.]

20 MS. MACHNICH: Your Honor, I just -- I can't look for the exact exhibit
21 I'm looking for. I will find it in a timely manner. I apologize.

22 [Pause in proceedings.]

23 MS. MACHNICH: Thank you so much. The clerk has saved the day.
24 BY MS. MACHNICH:

25 Q Okay. I'm going to just show you this so that we don't have to zoom in

1 and zoom out again. I'm going to reference what has previously been marked
2 and admitted as State's Exhibit 186. And to your knowledge, what is depicted in
3 this photograph, just generally, geographically?

4 A Two individuals standing in a driveway area.

5 Q That's fair.

6 A That's what I have. By a building and --

7 Q And can you tell from that photograph in what area in this apartment
8 complex these two individuals were standing?

9 A From this photo, I -- yes, I can tell what building they're by.

10 Q Okay.

11 A But again --

12 Q Well, which -- which building are they by? Can you mark it on the
13 photograph?

14 A It would be this building.

15 Q Okay.

16 A Is the one that they're -- they're by.

17 Q All right. So -- and correct me if I'm wrong, would it be fair to say that
18 they were after -- it would be after this edge of the building that you've marked,
19 they're somewhere between there, going this direction, which is -- I'm going left on
20 the picture?

21 A From this photograph, I cannot tell exactly where they're standing. But
22 I -- they're -- they're either at the edge or in between the sidewalk. I can't tell
23 from -- from this photograph exactly where. It's just how the photo was taken.

24 Q Okay. I'll --

25 A It's the angle of the photo. I can tell you what building they're by, but

1 where they're standing, I can't tell you, but I can tell you it's not going to be behind
2 the building. It's not in the middle of the building. It's closer to the front-er part of
3 the building.

4 Q Okay. And would you indicate where around those markings we can
5 audit -- we can definitively say that it was past? Do you know like -- do you know
6 what I'm asking? Where on that photograph can we see --

7 A From this -- where I can -- just based -- I see a -- I believe it's an
8 officer's foot. So there's, like, some curbing, which I would -- from this photo, I
9 would say it's closer to the edge. So they're within this 13 feet.

10 Q Okay.

11 A They're in that section. I just don't know where they are in that section.
12 They could be closer to the back of the section. I can't tell from this photograph.

13 Q Okay. And from the marking that you just made, for the record, it's a
14 horizontal line between your two vertical lines?

15 A Correct.

16 Q Is that why you measured both of those distances?

17 A Yes.

18 Q Okay. So let's talk about those measurements.

19 MS. MACHNICH: First, Your Honor, I'd like to ask her to step down
20 and stand in this back corner by the monitor to measure the distance to counsel
21 table.

22 THE COURT: Sure.

23 MS. MACHNICH: Thank you.

24 BY MS. MACHNICH:

25 Q And Ms. Seaberry, will you please step back over here towards those

1 black chairs.

2 A You want me to do the measurement? Or do you --

3 Q I'll let you do the measurement, and I'll just -- I'll walk to where --

4 A You want both?

5 Q Yes. Okay.

6 A Let me know when you stop and then I can --

7 MS. MACHNICH: For the record, and we're going to try to make this
8 as direct as possible, I'm measuring the distance between the back corner --

9 THE WITNESS: So let me ask you this, do you want me at this
10 corner or at these chairs?

11 BY MS. MACHNICH:

12 Q Closer to the chair -- in the middle. Perfect. Thank you.

13 A Here?

14 Q Okay.

15 A I'll use the monitor.

16 Q Okay. And the courtroom monitor, and this is about maybe two feet
17 back from the jury box.

18 A Okay. We are at 31 feet, 5 inches. I'm using the edge of this, because
19 this is fixed.

20 Q Okay. Thank you, Ms. Seaberry. Let's -- let's not roll it all up. Let's
21 just lift it over here.

22 And if you can retake the jury stand -- or the witness stand.

23 A Yes.

24 Q Okay. All right. Now, what measurement was to that first conservative
25 estimate hashmark on the measurement on the photo that we were just viewing?

1 The conservative measurement, it was between hashmark A and hashmark B, in
2 that --

3 A Those two middle, that was 13 feet.

4 Q Okay. What was the --

5 A The full measurement from the beginning --

6 Q From the beginning to the one closest to it. So let me --

7 A From the end of the building -- I'm --

8 Q So we're -- I'm looking for the very closest --

9 A So from this building?

10 Q Yes.

11 A The end of this building to this first hashmark I made --

12 Q Yes.

13 A -- so I'll do my horizontal line this way, it was a total of 77 feet.

14 Q Okay.

15 A From this hash line to the end of that building, it was 13 feet.

16 Q Okay.

17 A So you would have a total of 90, if --

18 Q All right.

19 MS. MACHNICH: Your Honor, at this time, I would like to
20 demonstrate the distance of 77 feet, which was the shorter of the two distances.

21 THE COURT: All right. That's fine. Well, any objection?

22 MS. MACHNICH: No?

23 THE COURT: All right. Go ahead.

24 MS. MACHNICH: All right. Will you help me with the door?

25 BY MS. MACHNICH:

1 Q Please let me know when I get to --
2 THE COURT: Just don't hit counsel in the head with that, please.
3 MR. GASTON: Make sure this doesn't hit the --
4 MS. MACHNICH: I'll try not to.
5 MS. LEXIS: I have no sense of, like, preservation. I'm just sitting
6 here.

7 BY MS. MACHNICH:

8 Q Please let me know when I get there.

9 A I will. I apologize.

10 MS. LEXIS: I'm good. I can help hold it steady.

11 BY MS. MACHNICH:

12 Q Am I close yet?

13 A You're at 60 feet right now.

14 MR. GASTON: There's no more room.

15 THE WITNESS: Oh. Yeah, you're at -- you're at 60 feet and 5 inches
16 currently right now.

17 BY MS. MACHNICH:

18 Q Okay. I'm going to go all the way to the window and then I'll --

19 A Is she at the window? She is at 65-foot, 4 inches.

20 MS. MACHNICH: And for the record, and the State can correct me if
21 I'm misstating this, I was all the way to the window on the opposite -- the window
22 opposite the courtroom.

23 MS. LEXIS: I have no reason to dispute that. I didn't see her, but the
24 door was shut.

25 MS. MACHNICH: I'm happy to do it again, if you didn't watch.

1 MS. LEXIS: No, that's okay.

2 MS. MACHNICH: Okay.

3 BY MS. MACHNICH:

4 Q And -- and what was that, Ms. Seaberry?

5 A 65-foot, 4 inches.

6 Q Okay. So the distance that we're talking about, the most conservative
7 of the distances would have been --

8 A Was 77 feet.

9 Q -- about 12 feet farther than that. All right. Thank you.

10 All right. Thank you, Ms. Seaberry.

11 MS. MACHNICH: I will pass the witness.

12 THE COURT: All right. Cross-examine.

13 MS. LEXIS: We have no cross-questions.

14 Thank you, ma'am.

15 THE COURT: All right. Anything from the jurors? No? All right.

16 Well, then, thank you very much for coming here today. You are
17 excused.

18 THE WITNESS: Thank you. Here's your photo.

19 THE COURT: Does the State have any more witnesses?

20 MS. LEXIS: The defense.

21 THE COURT: At this time, or do you want --

22 MS. MACHNICH: Defense.

23 THE COURT: Or, I'm sorry, the defense.

24 MR. GASTON: May we -- may we approach, Your Honor?

25 THE COURT: Yeah.

1 [Bench conference transcribed as follows.]

2 MR. GASTON: We need to read the stipulation, discuss the jail call,
3 and canvass the defendant. But we -- we suspect we have no more witnesses.

4 THE COURT: Okay.

5 MR. GASTON: So we don't want to rest.

6 THE COURT: The stipulation I could read to the jury.

7 MS. MACHNICH: Uh-huh. Okay.

8 THE COURT: Hold on. I might as well read it, and then you -- you
9 could get some -- is that the one on -- on the height?

10 MR. GASTON: Yes, sir.

11 MS. MACHNICH: Yes. And then also the -- we got the photograph
12 in? I think we have, right?

13 MR. GASTON: Yeah. The photograph came in on the stipulation on
14 the first witness.

15 MS. MACHNICH: Okay. And the -- and the when it was -- and also
16 the stipulation of when the photograph was taken.

17 MR. GASTON: I guess we -- yeah, we do still have to read the
18 stipulation on when the photograph was taken.

19 THE COURT: When the photograph was taken?

20 MR. GASTON: It was December.

21 MS. MACHNICH: December 2016.

22 THE COURT: I don't have anything to tell the jury on the photograph.
23 Can you guys --

24 MR. GASTON: It was just taken --

25 THE COURT: -- one of you guys put that on the record.

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1 MR. GASTON: It was just taken.
2 MS. MACHNICH: Yes.
3 MR. GASTON: Sure.
4 MS. MACHNICH: I can do that.
5 THE COURT: All right.
6 MS. MACHNICH: It'll just be the photograph was taken
7 December 2016.
8 THE COURT: All right. Well, let's just take a 10-minute break.
9 MS. LEXIS: Just for scheduling, though --
10 THE COURT: Uh-huh.
11 MS. LEXIS: -- I know it's a 10-minute recess, and he's going to be
12 canvassed. But do you think -- we have three witnesses waiting that we would
13 like to --
14 THE COURT: Let's do them.
15 MS. MACHNICH: Let's do them, yeah.
16 THE COURT: I want to try to do them. Let's try to do it.
17 MS. LEXIS: Okay. Okay. We stacked them.
18 THE COURT: Yeah. Anything I can do to help accommodate you,
19 let's do it.
20 MS. MACHNICH: All right. Thanks, Judge.
21 MS. LEXIS: Sounds good.
22 MR. DICKERSON: Thank you, Judge.
23 MS. MACHNICH: Thank you.
24 [End of bench conference.]
25 THE COURT: All right. We're going to have to take a 10-minute

1 recess. All right. 10-minute recess.

2 During this recess you are admonished as follows: Do not
3 communicate among yourselves or with anybody else about this trial or the
4 subject matter of this trial; do not communicate at all with any of the parties,
5 attorneys, or witnesses involved in the trial; do not seek or obtain any information
6 or comments about this case from any source, including newspapers, television,
7 radio, Internet, e-mail, cell phones, or any other electronic device; do not read,
8 watch, or listen to any report of or commentary about the case; do not perform
9 any research or investigation; do not form or express any opinion on any subject
10 connected with the trial until the case is finally submitted to you.

11 See you back here in about 10 minutes. All right.

12 Marshal, please help us.

13 [Jury recessed at 3:08 p.m.]

14 THE COURT: All right. We're outside the presence of the jury.
15 Please be seated, everybody.

16 What are you doing, Ms. Machnich?

17 MS. MACHNICH: I was just planning for the next stage and finding
18 the picture.

19 THE COURT: All right.

20 MS. MACHNICH: For the stipulation --

21 THE COURT: Would you mind temporarily sitting down at counsel
22 table?

23 MS. MACHNICH: Of course. I can do that. Just put that there.

24 THE COURT: All right. So have you had a chance to confer with
25 your client about whether he wants to waive or exercise his Constitutional rights to

1 testify?

2 MS. MACHNICH: Yes. We have previously discussed it, and I just
3 checked with him now.

4 THE COURT: All right. So Mr. Valentine, would you please stand,
5 sir. I need to ask you some questions and tell you some information. All right.

6 THE DEFENDANT: Okay.

7 THE COURT: So listen carefully. All right. Mr. Valentine, under the
8 Constitution of the United States and under the Constitution of the State of
9 Nevada, you cannot be compelled or forced to testify in this case; do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. You may, at your own request, give up this
13 right and take the witness stand and -- and testify. If you do that, you will be
14 subject to cross-examination by the deputy district attorneys and anything that
15 you may say, whether it be on direct or cross-examination, will be the subject of
16 fair comment when the deputy district attorneys speak to the jury in their final
17 argument; do you understand that also?

18 THE DEFENDANT: Yeah.

19 THE COURT: But if you take the stand, you know, and testify,
20 anything that you say, the -- the State can mention that to the jury and discuss
21 that with the jury; do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And if you choose not to testify, I will not
24 permit the deputy district attorney to make any comments to the jury about the
25 fact that you have not testified; do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Now, if you elect not to testify, then the court
3 will instruct the jury substantially as follows: The law does not compel a
4 defendant in a criminal case to take the stand and testify, and no presumption
5 may be raised and no inference of any kind may be drawn from the failure of a
6 defendant to testify.

7 So that's what I'll tell the jury if you decide not to testify; do you
8 understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Let's go on to the next step. You are further
11 advised that if you have a felony conviction and more than 10 years has not
12 passed from the date that you either have been convicted or discharged from
13 prison, parole, or probation, whichever is later, and the defense has not sought to
14 prohibit that from coming before the jury, then if you take the stand and -- and
15 testify, then the deputy district attorneys, in front of the jury, can ask you these
16 questions. So I'm going to tell you what they can ask.

17 1. Have you been convicted of a felony?

18 2. What was the felony?

19 And 3. When did it happen?

20 Do you understand if you take the stand and -- and those things can
21 be asked of you in front of the jury?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. However, no details may be gone into about
24 the felonies; do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: All right. So having been informed of your rights, your
2 Constitutional right not to testify, do you wish to exercise your Constitutional right
3 not to testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And have you had a chance to speak to your
6 counsel about what to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. So counsel, your client is exercising his
9 Constitutional right not to testify. Is there anything you want to put on the record
10 regarding that?

11 MS. MACHNICH: Regarding that, only that we will be requesting that
12 jury instruction.

13 THE COURT: All right.

14 MS. MACHNICH: And we have a copy of it in our proposed
15 instructions.

16 THE COURT: Very good. Now, when the jurors come back --

17 Sir, you can go ahead and have a seat now. Thank you.

18 -- we need to instruct them --

19 MS. MACHNICH: Right.

20 THE COURT: -- regarding Mr. McCoy, right? And what I have on
21 Mr. McCoy is this. I will instruct the jury as follows as to Mr. McCoy:

22 For purposes of the public record, Mr. McCoy has once self-reported
23 his height to be 5 foot 10 inches and his weight to be 145 pounds. This
24 information was unverified.

25 When do you want me to read that to the jury?

1 MS. MACHNICH: We would like that to be read to the jury when the
2 jury returns before the defense rests. Additionally, we would like -- and I'm happy
3 to do this or if Your Honor wants to, since you're reading the other -- the other
4 stipulation with regard to the photograph of Mr. McCoy is:

5 The photograph of Bobby -- Bobby McCoy depicted in State's
6 Exhibit 196 was taken in December 2016.

7 THE COURT: The photograph of Bobby McCoy depicted in
8 Exhibit 196 was taken on when?

9 MS. MACHNICH: It was taken in December 2016.

10 THE COURT: December 2016. So I'll read those two stipulations.

11 MS. MACHNICH: Thank you.

12 THE COURT: All right. Now, one other thing, I think before we bring
13 the jury in, you wanted to make some kind of objection or motion regarding jail
14 calls. Is this a good time to do that?

15 MS. MACHNICH: Yes, it is. Thank you.

16 THE COURT: All right. What -- let me get my notepad.

17 What is your objection regarding that?

18 MS. MACHNICH: Well, my primary objection is that these -- this is
19 reference to the jail call that Ms. Lexis was referencing on cross-examination of
20 Chanise Williams. Specifically, she was asking her questions about a
21 conversation that occurred between Keandre Valentine and Ms. Williams on
22 July 31st, which was --

23 THE COURT: Is that the one where she was asked what he told her
24 about whether to testify, and she said that he told her that she could testify if she
25 felt okay doing that, but if she didn't feel okay doing that, she shouldn't -- she

1 shouldn't testify --

2 MS. MACHNICH: Right.

3 THE COURT: -- that part?

4 MS. MACHNICH: That part.

5 THE COURT: All right. So what did -- what's your -- what did the
6 State do wrong?

7 MS. MACHNICH: First, we believe that their failure to turn over the
8 jail call to the defense was a violation -- in violation of the court's ongoing
9 discovery rule to provide statements of the defendant. I understand the argument
10 that it is rebuttal evidence and that they did not have to provide it. However, there
11 is an ongoing order from the court that they provide statements of the defendant if
12 they're intending to use them. And they did not do that or -- and at least for in
13 camera review.

14 We had no knowledge of that jail call before -- counsel had no
15 knowledge of that jail call or the contents thereof before the cross-examination
16 happened. We did not know that it was out there. We did not know that any
17 statements of our client had been made or not made, and we didn't know the
18 content. That put us in a very difficult position, because all of a sudden we're
19 hearing some statements that were supposedly made --

20 THE COURT: Was it anything -- was it anything prejudicial? It didn't
21 sound like to me that it was anything derogatory. Just like, you know, if you feel
22 comfortable, testify. If you don't, don't testify. Is that --

23 MS. MACHNICH: The way that --

24 THE COURT: Is that prejudicial?

25 MS. MACHNICH: The way that Ms. Lexis tried to frame it was that

1 the defendant talked to you about your testimony, about --

2 THE COURT: She said they didn't talk about the substance.

3 MS. MACHNICH: You're right -- Ms. Williams did tell the truth. We've
4 had a chance to review the call at this point.

5 THE COURT: Okay.

6 MS. MACHNICH: You're right. Ms. Williams did tell the truth, and
7 that was not contained in the call. But the way that it was framed by the State,
8 who knew the contents of the call at that time -- we did not -- made it sound like
9 there was not only more to the call about her testimony, but that, well, she might
10 be denying it here, and I have a hunch that they're going to get up and argue in
11 closing or rebuttal closing that the statements -- that they spoke about her
12 testimony. And that's not a -- a statement of what happened. Not only did she
13 not say that, but that's not an accurate statement of the call.

14 Your -- so we have that. This was actually specifically something we
15 were concerned about back about the beginning of the trial. We brought this up
16 to Your Honor. And we brought up the fact that we believed and -- and I think
17 [indiscernible].

18 THE COURT: Well, no. I -- I remember discussing the jail calls.

19 MS. MACHNICH: Yeah.

20 THE COURT: And I did direct the State to turn over any jail calls that
21 they intended to use. And I did -- I did tell them that.

22 MS. MACHNICH: And -- and Your Honor, I -- I -- I understand why
23 they didn't turn them over in advance, because this didn't exist then. But they
24 knew in advance of her testimony. They -- they -- they had -- they knew she was
25 coming to testify. They knew in advance of her testimony.

1 THE COURT: Well, let's find out.
2 MS. MACHNICH: And they didn't turn it over.
3 THE COURT: Okay.
4 MS. LEXIS: I learned of this jail call this morning, fully anticipating
5 that Ms. Williams was going to be testifying. I planned to use this jail call to
6 impeach her credibility.
7 In this particular jail call --
8 THE COURT: You just learned about it this morning, though?
9 MS. LEXIS: Absolutely. There's actually --
10 THE COURT: Well how can you -- what kind of foundation for that
11 statement can you provide the court? And --
12 MS. LEXIS: Well, I can tell you what the contents -- and actually,
13 Your Honor, we plan to play a portion of it in rebuttal.
14 THE COURT: Okay.
15 MS. LEXIS: So it can't be taken out of context, this particular -- also --
16 THE COURT: Do you have a transcript you could give the defense?
17 MS. LEXIS: I don't have a transcript yet, because I just got it this
18 morning.
19 THE COURT: Can you give them the -- the -- a copy of the audio?
20 MS. LEXIS: I did give that -- I e-mailed them the audio.
21 THE COURT: Okay. When'd you e-mail that?
22 MS. LEXIS: This -- this after -- before lunch or during lunch.
23 MS. MACHNICH: 2:01.
24 THE COURT: Okay. Okay. And what --
25 MS. MACHNICH: Sorry. They -- it wasn't --

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1 THE COURT: What was the -- what -- so how did you just learn about
2 it this morning? I thought you had all the jail calls.

3 MS. LEXIS: No. We didn't have all the jail calls. This is from
4 July 31st of 2017.

5 THE COURT: Oh, July -- of 20 -- this -- this July, oh, just two days --

6 MS. LEXIS: Just this Monday.

7 THE COURT: -- or just yesterday.

8 MS. LEXIS: Yes, Your Honor.

9 THE COURT: Or --

10 MS. LEXIS: And so fully anticipating that Chanise Williams might be
11 called, you know, I asked to look into it, what was the most recent jail call by
12 Ms. Williams and the defendant. And up comes this call.

13 And what it says is, Hey, did -- did you talk to her?

14 Meaning Ms. Machnich.

15 Yes. She needs you to -- she'd like you to testify.

16 The girl, Chanise says:

17 Yes, she wants me to testify for you.

18 He says:

19 Look, you know, you may not be comfortable doing that. I don't want
20 to put you --

21 THE COURT: Well, I know -- I know what was said.

22 MS. LEXIS: Okay.

23 THE COURT: But it sounds like -- so you -- you were made aware of
24 the call in the morning.

25 MS. LEXIS: Yes.

1 THE COURT: You didn't give it to the defense until the afternoon.
2 But you knew the court had ordered you to turn over any jail calls that had
3 admissions or statements of the defendant that you plan to use. The court --
4 that's an ongoing order that the court had issued. So -- so you knew that -- that
5 order was out there, and yet you kind of sandbagged the defense by holding it
6 back and not giving them timely notice. Does that seem fair to you?

7 MS. LEXIS: Your Honor, I completely disagree with that. For them to
8 say that they had no knowledge of this particular call, when Chanise Williams was
9 their witness and they have the defendant, who is sitting right there, who can tell
10 them whether or not he had a conversation with her --

11 THE COURT: No. You're -- you're distorting the -- the relevant point
12 here. All right. It's not when they -- whether they have notice of the call, it's
13 whether they have notice that you intend to use the call. Right?

14 MS. LEXIS: I'm not --

15 THE COURT: That's why I had ordered -- that's why I had ordered
16 at -- at the beginning of this case --

17 MS. LEXIS: I wasn't -- I did not -- look, when you made this
18 particular --

19 THE COURT: No. You are -- you are saying that you disagree with --
20 with what I ordered?

21 MS. LEXIS: Yes. You --

22 THE COURT: All right. But I did -- but I did order it.

23 MS. LEXIS: Here's what I have in --

24 THE COURT: Do you think you can just take my order and disagree
25 with it --

1 MS. LEXIS: No, that's not --
2 THE COURT: -- because you don't like it?
3 MS. LEXIS: That's not what's happening.
4 THE COURT: Tell me --
5 MS. LEXIS: Okay.
6 THE COURT: -- why -- what's your view of what's happening.
7 MS. LEXIS: My understanding of the court's order was they were
8 concerned that the defendant was plotting to put together an alibi. And they
9 asked us to disclose, after we talked to the court, any statements where he's
10 plotting an alibi with the witness. Okay.
11 In this particular case, it's not the defendant's statement that I want to
12 introduce or that I used it for. It is to impeach Chanise Williams' credibility.
13 THE COURT: I understand.
14 MS. LEXIS: Okay.
15 THE COURT: It wasn't part of your case -- planned case in chief.
16 You wanted to use it to impeach.
17 MS. LEXIS: Correct.
18 THE COURT: Well, why didn't you give it to them in the morning,
19 rather than, like, holding back and then trying to do a gotcha on them?
20 MS. LEXIS: Your Honor, if you see the date -- the time of the call,
21 it's -- that I got it, it's, like, 9:47, on my way in. And honestly, I don't think -- I don't
22 think I needed to have given it to them. I was not going to introduce it in my case
23 in chief --
24 THE COURT: You didn't think that you needed to comply with my
25 order?

1 MS. LEXIS: It wasn't that at all. I'm -- I'm not -- I wasn't going to
2 introduce it in my case in chief. It wasn't the defendant's statements that I was
3 after. It was actually her -- impeaching her credibility.

4 THE COURT: Right.

5 MS. LEXIS: And her lying on the stand about whether or not she
6 had -- she had a conversation with the defendant.

7 THE COURT: So you -- are you saying, then, that you didn't plan to
8 use it until she was actually testifying, then?

9 MS. LEXIS: Correct. It depends on what she would have said.

10 THE COURT: And so what -- what was the -- and remind me then,
11 what was the -- the point that she made that you believe you were impeaching?
12 What did she say that was inconsistent with the testimony on the audio tape that
13 you used?

14 MS. LEXIS: She said he said, well, only if you're comfortable,
15 because she's not comfortable in a court setting.

16 THE COURT: Yeah.

17 MS. LEXIS: When really, that's not it. The defendant actually tells
18 her, you know you're going to be subject to cross-examination. Pretty much, don't
19 open yourself up to any liability -- this is what I'm getting from the call -- by lying.
20 So only if you feel comfortable doing that. Okay.

21 THE COURT: Okay.

22 MS. LEXIS: That's -- that's -- that's what the call said. So I don't see
23 how it's fair if I plan to use it to impeach a witness who is now lying --

24 THE COURT: Right.

25 MS. LEXIS: -- or dissuading or talking, you know, a certain way.

1 THE COURT: So you believe it's going to show a clear
2 inconsistency?

3 MS. LEXIS: Yes.

4 THE COURT: And your -- your position is that -- I guess whether you
5 had produced it in the morning or right before she testified or right now, it -- it -- it
6 shouldn't have any bearing on the truthful testimony that she's required to give in
7 court.

8 MS. LEXIS: Correct. And, really, I -- I don't -- I didn't know the -- the
9 relevance of that particular call until she --

10 THE COURT: I understand that.

11 MS. LEXIS: You know, that's when I wanted to introduce it.

12 THE COURT: And I guess the point is if you had produced it at 9:47,
13 would it have made any difference if you had produced it that early. So --

14 MR. GASTON: May I respond, Your Honor?

15 THE COURT: All right. Thank you for explaining. You answered all
16 my questions.

17 Let me hear from Mr. Gaston.

18 MR. GASTON: I want to respond to a couple points that were made.

19 First, prejudice aside, intent aside, every -- all of that aside --

20 THE COURT: Set intent aside.

21 MR. GASTON: -- prior to opening, I brought up a fear that the State --
22 because the way they were being very specific in response to the court's
23 questions about whether jail calls had been produced or not, I was afraid that
24 exactly what just happened was going to happen, that the State -- they were
25 aware we possibly will call Chanise and Damian. Okay. So they waited -- I was

1 afraid that they were going to wait until the morning the person testified or the
2 night before the person testified, then go get all the jail calls, and then sandbag
3 and wait. And that they had intentionally not gone and researched jail calls or
4 were holding back jail calls, and they were going to give over the last second.

5 She made it very clear that she did not have any jail calls in her
6 possession that she had intended to use.

7 THE COURT: And that was truthful. Well, at the time she did have
8 this call yet.

9 MR. GASTON: And that is true. That is true.

10 THE COURT: I'm -- I'm accepting her representation on that.

11 MR. GASTON: Well, she can't -- she can't have had --

12 MS. LEXIS: It couldn't have. It was July 30th.

13 THE COURT: Couldn't have happened.

14 MS. LEXIS: The 31st.

15 MR. GASTON: The call was July 31st --

16 THE COURT: It couldn't have happened.

17 MR. GASTON: No. I'm not -- not position that part. But I was afraid
18 of what could have happened later, that they would receive --

19 THE COURT: Well --

20 MR. GASTON: -- that they would later get these calls in their
21 possession at a later date than what we were addressing preopening, and then
22 they would sandbag those calls.

23 The court made it abundantly clear, I -- I mean, it was an order to
24 attorneys, to them specifically --

25 THE COURT: If you come in contact --

1 MR. GASTON: -- if they are come -- if they come across a jail call of
2 the defendant, they must either disclose it -- because it's the defendant
3 statement -- they must disclose it to the defense, or if they don't feel that they
4 have to disclose it, disclose it to the court in camera. Period. Didn't matter if they
5 intend to use it --

6 THE COURT: Well, they have disclosed it now. It was just four hours
7 after they got it.

8 MR. GASTON: They didn't disclose it.

9 THE COURT: Four and a half hours.

10 MR. GASTON: They didn't disclose it. They used it as impeachment
11 evidence during cross-examination, in the middle of trial, in front of the jury.
12 That -- that's what happened. They literally used it in trial. That was the
13 disclosure.

14 They did not give a -- they did not comply with the court's order. They
15 used the call. They -- literally the classic thing. They're asking for forgiveness,
16 instead of permission. That's what it was. The court told them to do something.
17 They did the opposite. And that's what happened.

18 And the court is talking about prejudice? I just want to -- before we
19 get -- I want to talk about prejudice and then proper mode of impeachment.

20 THE COURT: Okay.

21 MR. GASTON: Those are the other two things I wanted to address.

22 THE COURT: Okay.

23 MR. GASTON: But before I even get there, I want to establish basic
24 point. Court ordered State to do something, they 100 percent did not comply.
25 There's no argument that they didn't comply. They literally did not.

1 Moving on to prejudice; there is a prejudice, because if that call was
2 going to come in, we -- first, we should, period, have a right to defendant's
3 statements. But we should have at least had the argument over it, when the court
4 had seen the call in camera, previously, as if they still feel like they didn't have to
5 comply. Not just they asked for forgiveness later.

6 With respect to the actual use, we would have actually played the
7 phone call, which I'm going to talk about in a second -- the drastic way that the
8 questions mischaracterized that phone call to the jury -- I'm going to get to that in
9 a second.

10 But we could have played the phone call in the entirety. We could
11 have brought the sting out, if it was bad --

12 THE COURT: Well, you could still do that.

13 MR. GASTON: -- if it was bad or wasn't bad, we could have done it
14 ourselves in direct, instead of letting the jury hear for it from the first time in the
15 cross-examination, when it sounds different, looks different, and it looks like we
16 didn't bring about it -- we look like buffoons, period.

17 We don't know about the call. We were either concealing it or we
18 don't know about it. So we're either corrupt or incompetent. One or the other. It's
19 very different if we know about it in advance and can bring it up --

20 THE COURT: How would we mitigate that?

21 MR. GASTON: Well --

22 THE COURT: Supposing your right for the sake of argument, how do
23 we mitigate it?

24 MR. GASTON: I want to get -- I -- I do have a remedy. I'm trying to
25 draft a remedy. But it leads into my second point.

1 And this is a direct response to what she was talking about
2 impeachment. The court asked what question -- first, she says two things that are
3 incorrect.

4 First, she says, I'm not using the defendant's statements. I was using
5 the other part of the call to impeach her. How does that even make sense? Her
6 questions were, the defendant told you X, Y, Z. The defendant told you, A, B, C.
7 The defendant told you, D, E, F. She literally used the defendant's statements in
8 her cross-examination. Used defendant's statements that hadn't been disclosed.

9 Second, what is she impeaches? The court asked her, what point are
10 you impeaching? Her first answer was the fact that she had phone calls with the
11 defendant but prior to testifying. She didn't deny that, at any point, ever.

12 Tegan asked her on -- or Ms. Machnich asked her in direct
13 examination, did you have -- have you been talking to the defendant in custody?
14 She said yeah, multiple times. She never denied talking to the defendant. So you
15 can't possibly be impeaching that. Right. So the fact that the call happened
16 doesn't impeach anything, because she never denied talking to the defendant.

17 Then, on a further question by the court -- no, Ms. -- Ms. Lexis, what
18 point are you -- were you impeaching? She then said the defendant was talking --
19 or the witness was talking about being uncomfortable in court. And Ms. Lexis's
20 interpretation of the call is that she was uncomfortable in court because the
21 defendant told her beware of the crazy lady and her questioning. And that's
22 quotes from the -- the call, now that we've actually heard them.

23 The -- how is that impeachment? What -- what exactly are -- that
24 she's nervous in court? So she's -- so the idea is you elicit that the witness is
25 nervous in court, and then you impeach her with your interpretation of what a

1 phone call means? I don't think that's proper impeachment. But if -- even if it is,
2 the fact is she elicited the phone call herself, and that wasn't the point.

3 The point that was conveyed to the jury through the questioning was
4 not that this witness is nervous, and blah, blah, blah. The point is, is that the
5 defendant told her do not either -- either A, coached her on her testimony; B, told
6 her -- made it clear that she didn't have to come to court, but if she did, beware of
7 cross-examination.

8 And what's the insinuation of beware of cross-examination? Is it the
9 general when you're pretrialing a witness, we're going to ask you questions, the
10 State's going to get to cross you, you know, keep your answers short. Just
11 answer -- answer the question being asked.

12 Or is the insinuation to the jury that --

13 THE COURT: So --

14 MR. GASTON: -- that he's specifically saying that because she's
15 afraid of what Chanise might say.

16 THE COURT: So -- so a possible remedy would be just an instruction
17 to the jury at the end that, you know, you've heard discussion about -- you've
18 heard a jail call discussion wherein the defendant advised the witness not to
19 testify if she didn't feel -- didn't feel comfortable doing that. The jury is not to draw
20 any inference that -- that defendant did anything wrong in making that statement.

21 MR. GASTON: At a minimum, I think that's an appropriate limiting
22 instruction, at a minimum. But I think it should be --

23 THE COURT: Well, I don't know that we need to go beyond that for --
24 because I don't see prejudice here. Because -- because it's the defendant's own
25 statement that he just made a -- a -- two days ago. You know, it's going to be

1 fresh in his mind. He's going to know what he said. And we can play the whole
2 statement, too, for the jury so you can give the context that -- that you think that
3 the -- the jury is entitled to hear. And you can make an argument at the close of
4 the case that -- that he wasn't trying to, you know, create perjury or -- or convince
5 the witness to lie. I mean, I'm assuming there's nothing on the -- the taped call
6 that shows he's trying to convince the defendant -- or the witness to lie.

7 MS. LEXIS: That -- wow.

8 THE COURT: So I think -- I think on balance, there's really no
9 prejudice. I -- I think in a perfect world, and I -- and in strict compliance with my
10 order, I think the State should have provided it to you before they mentioned it
11 during trial. I think that would have been consistent with my order.

12 But that being said, I -- I mean, do you disagree with that? State
13 disagrees with that? Because I thought I was pretty clear if you planned to use
14 it --

15 MS. LEXIS: We didn't plan to use it, Your Honor, until --

16 THE COURT: Until today.

17 MS. LEXIS: Until -- it depends on what she was going to say.

18 THE COURT: Okay. Well --

19 MR. GASTON: What could she possibly have --

20 THE COURT: -- I'll give you the benefit of the doubt on that. But I
21 just still --

22 MS. LEXIS: It depends on what she was going to say.

23 THE COURT: So you had it in your pocket thinking you might use it.
24 You know, perhaps best practice, civility, professionalism, and -- and just in
25 avoiding any issue might have militated in favor of producing it.

1 But -- but more -- the more important part is I just don't see the
2 prejudice here, Mr. Gaston.

3 MR. GASTON: I think what I'm worried about is that -- and I do
4 appreciate the limiting instruction. At a minimum, that is what I was going to ask.
5 But what I'm afraid of is, first, the jury hasn't heard the call. And the State cherry
6 picked which parts of -- they even left out half of a sentence.

7 THE COURT: You can correct that by playing the whole thing.

8 MR. GASTON: But do you see the position we're forced in now, by
9 the discovery violation, the asking forgiveness? What we're doing is essentially
10 saying it's a lot better to ask for forgiveness than permission, because you can
11 kind of --

12 THE COURT: Well --

13 MR. GASTON: -- get it in front of the jury and then be, hey, don't pay
14 attention to what you just heard.

15 THE COURT: Ms. Lexis says that it was her good faith belief, all
16 right, not to actually use that call unless the need arose based upon the testimony
17 of Ms. Williams.

18 MR. GASTON: What need arose? I -- I can't even imagine a possible
19 scenario that she could have testified to. What is one possible thing that she
20 could have testified to that the State wouldn't have used the call? The State used
21 the call to basically say the defendant told -- told you to be afraid of
22 cross-examination. That's it. That -- that was the whole point of the call that they
23 used.

24 And what should -- could she possibly have said as a witness that the
25 State wouldn't have used that call?

1 MS. LEXIS: It is --

2 THE COURT: Well, she introduced the topic by asking Ms. Williams if
3 she's had any recent calls with the defendant.

4 MR. GASTON: And she said yes.

5 THE COURT: And what were they about? And --

6 MR. GASTON: She said yes.

7 THE COURT: I'm trying to remember.

8 Ms. -- Ms. Lexis, is there -- what was it -- could you help us here?
9 What was it that specifically opened the door in your mind, that, a-ha, I need to
10 use this transcript?

11 MS. LEXIS: It wasn't a -- I didn't use the transcript.

12 THE COURT: Well, not the transcript, but --

13 MS. LEXIS: I asked her --

14 THE COURT: -- used the -- the subject matter for impeachment?

15 MS. LEXIS: Uh-huh. I asked her, I believe it was, if she had prior
16 contact with the defendant? Had she talked to him in jail callings? Approximately
17 how many times? She said it was, you know, on and off for -- for the last year
18 and a half. She didn't visit him in the jail. Omara did. Omara used her phone.

19 I asked her what kind of contact she'd had with the defendant. And
20 she said -- I asked her if she talked to the defendant about her testimony. And
21 she indicated no. I asked her if she called -- yeah, if she recalled -- she said no,
22 right?

23 MR. DICKERSON: Yeah, I think so.

24 MS. LEXIS: She hadn't talked to him about that. She said all she
25 talked about with the defendant prior to her testimony on July 31st, 2017, was that

1 she was nervous. And she doesn't need to testify.

2 MR. GASTON: Well, I -- I think the exact statement was, come if you
3 want -- if -- if you feel okay, come. If you don't, then don't. And that statement
4 was elicited. And then that -- Ms. Lexis continued asking questions about the call
5 and said, in fact, you talked to him on Monday. You -- in fact, he told you to be
6 afraid of cross-examination or to be -- to -- to talk to you about the possibility of
7 being cross-examined.

8 And essentially put the very strong -- if it wasn't that he coached her
9 on her testimony, the inference is he was afraid of what she might say under
10 cross-examination and he -- and he has something to be afraid of. That call
11 probably wouldn't even come in as relevant if we had heard about it in advance.
12 But instead, it's out there with the insinuation.

13 So I think the limiting instruction proposed is insufficient to cure the
14 deficiency here.

15 MS. LEXIS: I think it absolutely impeaches her credibility. The fact
16 that she testified for the court that Bobby McCoy was there, when we know from
17 the defendant's own words that Bobby left two days ago --

18 THE COURT: Yeah.

19 MS. LEXIS: -- I think the fact that she -- I mean, she really tried to
20 help the defendant out during this particular statement.

21 MR. GASTON: She's our witness. What else is she going to do?

22 MS. LEXIS: So she was --

23 MR. GASTON: Is she going to hurt us?

24 MS. LEXIS: She was also our witness. She was also our witness.

25 MR. GASTON: You didn't call her.

1 MS. LEXIS: She was scheduled to come tomorrow for a rebuttal.

2 THE COURT: Yeah. No, I get it. So here's what I'm going to do. We
3 might -- we could maybe tinker with this a little. But I am -- I do feel that, under
4 the circumstances, an instruction to the jury is warranted. All right. I -- I don't
5 know if this -- the rest of this transcript is going to be played.

6 But here's what I think we need to do. Tell the jury,

7 "You have heard reference to a recent jail call that Ms. Williams had
8 with the defendant. Absent evidence proving otherwise, you are not to
9 assume that anything said by the defendant was wrong or that he tried to
10 convince the defendant -- or the witness to lie."

11 All right?

12 MS. MACHNICH: Will you read that again? I can't type --

13 MR. GASTON: Absent -- absent evidence otherwise --

14 THE COURT: And then -- and then I will -- all right.

15 You -- you have heard reference --

16 And this is -- this is pretty straightforward and accurate.

17 You have heard reference to a recent jail call that Ms. Williams had
18 with the defendant. Absent evidence proving otherwise --

19 Which might be the -- the tape that someone's going to play, and then
20 we'll hear for ourselves, all right.

21 -- you are not to assume that anything said by the defendant during
22 this call was wrong or that he tried to convince the witness to lie.

23 MR. GASTON: May we -- okay. And thank you. We -- we like the
24 wording of that instruction.

25 With respect to the rest of the call, the absent evidence otherwise, I

1 think my understanding from Ms. Machnich, she's the one who heard it, not me --
2 but she indicates that a portion of it needs to be redacted. But we would like to
3 play the call, to give context to the jury that -- because, literally, the statement was
4 cherry picked. It wasn't be scared of cross-examination.

5 THE COURT: Well --

6 MR. GASTON: It was this lady is crazy. Be afraid of
7 cross-examination. That's very different than be afraid of cross-examination,
8 because I might have stuff to hide, which is the implication of the jury, and this DA
9 lady is crazy.

10 THE COURT: Well, I think the State's planning to play it anyway --

11 MS. LEXIS: We are.

12 THE COURT: -- but -- on the rebuttal.

13 MR. GASTON: Is it? Okay.

14 THE COURT: So we'll hear the whole thing on rebuttal.

15 MS. LEXIS: We are.

16 THE COURT: So do you want to object to the proposed instruction
17 or --

18 MS. LEXIS: No.

19 THE COURT: -- offer a suggestion?

20 MS. LEXIS: That's fine.

21 THE COURT: It'll probably get all -- rendered moot when you play the
22 tape.

23 MS. LEXIS: Absolutely. We do plan to play it.

24 THE COURT: All right. So I'm going to read this instruction.
25 Everybody's objections are noted for the record. All right. And do you think

1 anything needs to be redacted on it? Or can we play the whole thing?

2 MS. LEXIS: Yes. I think there's some redactions. I'll work on the
3 redactions. And we'll do a transcript.

4 THE COURT: Can we -- do you think -- how much of a -- a break
5 should -- or is the jury going to hear it when they first come back?

6 MS. LEXIS: Actually, Your Honor, we --

7 THE COURT: Or your rebuttal?

8 MS. LEXIS: We have three witnesses already this afternoon.

9 THE COURT: So let's get started on that.

10 MS. LEXIS: So maybe tomorrow -- I mean, it can be played early
11 tomorrow or -- I mean, we have an additional witness, as well, tomorrow, so.

12 THE COURT: All right. So let's -- can we -- can we -- I'll use the
13 restroom and then bring the jury in, please.

14 MR. GASTON: All right. I just -- I just consulted. I -- I have to make a
15 request that needs to be denied specifically, otherwise I don't really have --
16 because I think I just said maybe this isn't good, maybe I'd like something different
17 with the limiting instruction. At a minimum this is good. I don't think I actually
18 made a specific request that the court's denied.

19 The specific request for relief that I'm asking for is, given the State's
20 violation of the order and the way in which this manner was presented to the jury
21 in violation of that order, I think that warrants a mistrial with prejudice, and that's
22 what I'm asking for.

23 THE COURT: All right. I'll deny your motion. I respect your motion. I
24 deny it. I -- I think, under the circumstances, there's insufficient evidence for me
25 to conclude otherwise, then, that the State substantially complied with the court

1 order and there's no unfair prejudice to the defense, given the court's offering of
2 this proposed instruction that -- that tends to mitigate and -- any perceived
3 prejudice.

4 MR. GASTON: Thank you, Your Honor.

5 THE COURT: Okay. With that, your record is made. Let's just take a
6 few minute break, if we can, guys.

7 MR. DICKERSON: Thank you, Your Honor.

8 THE COURT: And -- and then we've got -- let's move on with these.

9 [Court recessed from 3:37 p.m., until 3:51 p.m.]

10 [In the presence of the jury.]

11 THE COURT: Thank you for your patience, everybody. Thank you.
12 Please be seated. All right.

13 All right, Machnich, you can look at exhibits if you need to.

14 MS. MACHNICH: I -- yeah, I believe we're --

15 THE COURT: We're just -- all right. We're just waiting for the State to
16 show back up. All right.

17 [Pause in proceedings.]

18 THE COURT: All right. Good. The State is here. Are we ready to
19 proceed?

20 MS. LEXIS: We are, Your Honor.

21 MR. DICKERSON: State's ready, Your Honor.

22 THE COURT: All right. So ladies and gentlemen of the jury, there's
23 three stipulations I have to read into the record.

24 The first -- these are stipulations of fact agreed upon by the parties
25 with some statements and context on the record outside of your presence, which

1 better outlines the parties' positions and any objections that the parties made are
2 reserved. All right.

3 But here are the stipulations. For your purposes, these are facts that
4 are being stipulated. Okay.

5 1. For purposes of a public record, Mr. McCoy has once self-reported
6 his height to be 5 foot 10 inches, and his weight to be 145 pounds. This
7 information was unverified.

8 The next stipulation:

9 The photograph of Bobby McCoy depicted in Exhibit 196 was taken in
10 December 2016.

11 The next stipulation of fact is as follows:

12 You have heard reference to a recent jail call that Ms. Chanise
13 Williams had with the defendant. Absent evidence proving otherwise, you
14 are not to assume that anything said by the defendant during this call was
15 wrong or that he tried to convince the witness to lie.

16 All right. Those are the three stipulations. They will be reduced to
17 writing for you and provided to you with the full pack of jury instructions that we
18 give to you at the close of the case. All right.

19 The State may now call its -- or the defense may now call its text
20 witness.

21 MS. MACHNICH: Your Honor, the defense rests.

22 THE COURT: All right. Very good. The defense rests.

23 At this point in time, the State is entitled to put on a rebuttal case.
24 And the defense has rested. And so now I'm calling upon the State to call its first
25 rebuttal witness, please.

1 MR. DICKERSON: The State's first rebuttal witness is Marvin Bass.

2 THE COURT: Marvin Bass is called back to the stand, marshal.

3 And Ms. Machnich, can I ask you to prepare those written
4 stipulations?

5 MS. MACHNICH: Yes, Your Honor. I've already typed them up. I will
6 make sure they're sent out to the parties.

7 THE COURT: Very good. Thank you.

8 MS. MACHNICH: Thank you.

9 THE COURT: Hello, Mr. Bass.

10 MR. BASS: Hi, how you doing?

11 THE COURT: Let's go ahead and re-administer an oath.

12 **MARVIN BASS**

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

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

16 THE WITNESS: Marvin Bass.

17 THE COURT: You may proceed, Mr. Dickerson.

18 **REBUTTAL DIRECT EXAMINATION**

19 BY MR. DICKERSON:

20 Q All right. Mr. Bass, welcome back.

21 A Okay.

22 Q The items that were stolen from you during your -- during the
23 robbery --

24 A Uh-huh.

25 Q -- what were they?

1 A Two gold chains with two charms on them.
2 Q What were the charms?
3 A One was of a dragon and the other one was a cross.
4 Q And what was particular about that cross?
5 A It had, like, nine diamonds in it.
6 Q And how were those diamonds arranged on the cross?
7 MS. MACHNICH: Objection. Relevance. And also asked and
8 answered from the State's portion of the case.
9 THE COURT: Overruled. Go ahead.
10 THE WITNESS: Two -- two at the top -- there was two on each end.
11 BY MR. DICKERSON:
12 Q Okay.
13 A And one in the middle.
14 Q Okay. And were those pendants, the cross and the dragon, also gold?
15 A Yeah.
16 Q And you said two gold chains as well?
17 A Yes.
18 Q Now, Mr. Bass, I'm going to show you here what's been admitted as
19 State's Exhibit 196; is that the guy who robbed you?
20 A No.
21 Q This guy, depicted here in State's 196?
22 A Uh-huh. No, that's -- that's not him.
23 Q Putting them up on the screen for you.
24 This guy isn't the guy who robbed you?
25 A No.

1 Q What's different about this guy then maybe you've identified as the guy
2 who robbed you, the defendant?

3 A Well, in this picture, his hair is -- is shorter. And look -- and this picture
4 it look like he got freckles.

5 Q Okay.

6 A And, well, that's not him.

7 Q This isn't the guy who robbed you?

8 A No.

9 Q Who is the man who robbed you?

10 A The guy that's sitting over -- sitting over here.

11 MR. DICKERSON: Let the record reflect the identification of the
12 defendant, Your Honor.

13 THE COURT: It does.

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

15 THE COURT: All right. Cross?

16 **REBUTTAL CROSS-EXAMINATION**

17 BY MS. MACHNICH:

18 Q Sir, the photograph that the State showed you, State's 196; is this the
19 first time you've seen this photograph?

20 A First time.

21 Q Okay. So a cop -- the police officers never showed it to you
22 previously?

23 A If they did, I don't remember.

24 Q Okay. And you specifically stated in the first thing you noticed is this
25 man's hair is shorter than the man who robbed you --

1 A Right.

2 Q -- is your testimony?

3 A Yes.

4 Q Also, with your crosses -- or your chain, those sound pretty distinctive,
5 are they?

6 A Pardon me.

7 Q The pendants on your chains, those are pretty distinctive, aren't they?

8 A Yes.

9 MS. MACHNICH: Okay. Pass the witness. Thank you, sir.

10 THE COURT: Anything else from the State? Anything else?

11 **REBUTTAL REDIRECT EXAMINATION**

12 BY MR. DICKERSON:

13 Q How does this gentleman's skin color compare --

14 MS. MACHNICH: Your Honor, this is beyond the scope --

15 MR. GASTON: Objection. Outside the scope.

16 MS. MACHNICH: Well --

17 MR. GASTON: Sorry, we both did the same objection. It's her
18 witness. She's got it. Sorry.

19 MS. MACHNICH: Yes. Beyond -- beyond the scope of cross and
20 also asked and answered. So.

21 MR. DICKERSON: It's not beyond the scope, since they asked
22 questions about him, specifically.

23 MR. GASTON: All we asked is had he -- had he ever been seen this
24 photo before.

25 MR. DICKERSON: And the -- the hair.

1 MS. MACHNICH: Yeah. Specifically.
2 MR. GASTON: It's a question --
3 THE COURT: I'll allow it.
4 MR. DICKERSON: Thank you.
5 THE COURT: It doesn't -- you guys -- you guys can get the recross.
6 MR. GASTON: Okay.
7 THE COURT: I mean, it goes to his likeness. So that was -- that's
8 fine.
9 BY MR. DICKERSON:
10 Q Mr. Bass, how does this gentleman's skin color compare to the man
11 who robbed you?
12 A Well, in this picture here, he's a little darker.
13 Q Okay. And that's the bottom line?
14 A That's -- that's it.
15 MR. DICKERSON: The State will pass the witness.
16 THE COURT: Okay. You guys get the last word.
17 MS. MACHNICH: So the court's brief indulgence.
18 May I borrow this for a second?
19 THE COURT: Anything on physical characteristics is fair game.
20 MS. MACHNICH: Absolutely, Your Honor. Okay. All right.
21 We'll pass the witness. Thank you.
22 THE COURT: All right. Anything from the jurors? Nothing from the
23 jurors.
24 All right, Mr. Bass, once again you are excused. Thank you, sir.
25 THE WITNESS: Okay. Thank you.

1 THE COURT: Have a -- have a nice day.

2 THE WITNESS: Okay. You, too.

3 THE COURT: The State would call its next rebuttal witness.

4 MR. DICKERSON: The State's next witness is Jordan Alexander.

5 THE COURT: Mr. Alexander, welcome back.

6 MR. ALEXANDER: Hello.

7 THE COURT: We'll administer a new oath to you.

8 MR. ALEXANDER: Okay.

9 **JORDAN ALEXANDER**

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

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

13 THE WITNESS: J-O-R-D-A-N A-L-E-X-A-N-D-E-R, Jordan
14 Alexander, my name.

15 THE COURT: You may proceed.

16 MR. DICKERSON: Thank you, Your Honor.

17 **REBUTTAL DIRECT EXAMINATION**

18 BY MR. DICKERSON:

19 Q Thanks for coming back, Mr. Alexander.

20 A No problem.

21 Q I'm going to show you here what's been marked as State's Exhibit 196;
22 is that the man who robbed you?

23 A No, sir.

24 Q Your testimony is that the man depicted in State's 196 is not the man
25 who robbed you?

1 A No, sir. It's not.

2 MS. MACHNICH: Objection. Leading.

3 THE COURT: Overruled.

4 BY MR. DICKERSON:

5 Q How does this man depicted in State's 196 look different from the man
6 who robbed you?

7 A His eyes kind of stick out and then his -- his facial -- he just doesn't
8 look like him at all -- at all.

9 Q At all?

10 A At all. Hair isn't the same at all. He has a goatee. When I got robbed,
11 the person who robbed me had a mustache. That was it. A little mustache.
12 That's what I seen.

13 Q And who is the man who robbed you?

14 A The person sitting at the end of the table over there.

15 MR. DICKERSON: The record will reflect the identification of the
16 defendant.

17 THE COURT: It does.

18 MR. DICKERSON: State will pass the witness.

19 THE COURT: Cross.

20 **REBUTTAL CROSS-EXAMINATION**

21 BY MS. MACHNICH:

22 Q Sir, the first time you ever saw the photograph that the State just
23 showed you was today in court?

24 A Yeah, yes.

25 MS. MACHNICH: Thank you. Pass the witness.

1 THE COURT: Redirect?
2 MR. DICKERSON: No.
3 THE COURT: Anything from the jurors? No?
4 Mr. Alexander, thank you very much for coming down again, sir.
5 THE WITNESS: Thank you.
6 THE COURT: All right. Have a good day.
7 THE WITNESS: Same to you guys.
8 THE COURT: You're excused.
9 THE WITNESS: Thank you.
10 THE COURT: The State may call its next rebuttal witness.
11 MS. LEXIS: Your Honor, the State calls Alma Luevanos. Alma
12 Luevanos.
13 MS. MACHNICH: Okay. I guess -- Your Honor, may we approach
14 while the witness is being retrieved?
15 THE COURT: Uh-huh.
16 [Bench conference transcribed as follows.]
17 MS. MACHNICH: We don't -- we understand this is a rebuttal
18 witness, but we have no idea who this person is, nor have we been provided any
19 discovery.
20 THE COURT: I don't, either.
21 MS. MACHNICH: But, like, if they have pictures, if they have -- I don't
22 know what they have on her or what they've done or if they --
23 MR. GASTON: I just don't want for there to be another situation
24 [indiscernible].
25 MS. MACHNICH: But, literally, we've never heard of this person and

1 we have nothing on them nor any statements on them. There was no discovery
2 provided. So we have no idea what this is.

3 THE COURT: What's the rule on when you have --

4 MS. LEXIS: We're not obligated to disclose the identity of a rebuttal
5 witness.

6 THE COURT: You're not?

7 MS. LEXIS: Nope.

8 THE COURT: Are they -- is your --

9 MS. LEXIS: And we're not required to give them our rebuttal
10 evidence.

11 THE COURT: -- your position that any law says they have to do that?

12 MR. GASTON: Our position is two things. Number one, I don't want
13 to be in the position of giving [indiscernible] where we have to unring a bell. So I
14 don't want a mistake to be made. But, in other words, we [indiscernible], so be it
15 [indiscernible].

16 THE COURT: Well, i don't want a mistake, either. Let's hope there's
17 no mistake. Okay.

18 MR. GASTON: Second -- second issue, it is under a case
19 [indiscernible] this witness is egregious enough against our case, they cannot
20 [indiscernible] and make us look stupid in our case in chief.

21 THE COURT: Yeah.

22 MR. GASTON: So after [indiscernible].

23 THE COURT: Aren't we kind of speculating right now on all of this?

24 MS. MACHNICH: I mean, this has to rebut our case.

25 MR. GASTON: Your Honor --

1 THE COURT: So let's -- let's just wait and see what happens and
2 then if you want to make a motion, make a motion.

3 MS. MACHNICH: Okay.

4 MR. GASTON: Okay.

5 THE COURT: Okay.

6 [End of bench conference.]

7 **ALMA LUEVANOS**

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: I'm Alma Luevanos.

12 THE COURT: Can you spell your last name?

13 THE WITNESS: L-U-E-V-A-N-O-S.

14 **REBUTTAL DIRECT EXAMINATION**

15 BY MS. LEXIS:

16 Q Ma'am, how are you employed?

17 A How am I -- I'm sorry.

18 Q How are you employed? Where do you work?

19 A Oh, SuperPawn.

20 Q Okay. How long have you worked at SuperPawn?

21 A 15 years.

22 Q Okay. What do you do there?

23 A I'm an assistant manager.

24 Q Okay. Can you briefly tell us what it is that SuperPawn -- what is it? Is
25 it a store? Tell us about it.

1 A It's a pawn store.

2 Q Okay. How does a pawn work?

3 A People bring in collateral and we take it in as a either pawn or a sale.

4 Q What kinds of things can people bring in as collateral?

5 A They could bring in jewelry, electronics, that's pretty much -- jewelry

6 or --

7 Q Okay. And so when someone pawns something, what does that

8 mean?

9 A When somebody pawns something, that means that there -- they get a

10 90-day for them to come and pick up their merchandise that we took in -- in pawn.

11 Q Okay. So it's kind of -- and what do they get in return for pawning?

12 A They get cash.

13 Q Okay. Is there an option to also sell items to the pawn store?

14 A Yes.

15 Q Okay. And is that called -- what is that called?

16 A When we purchase, that means that they -- they don't -- they can't --

17 they don't have to come back and pick up their merchandise. They just leave it

18 and we end up pricing and selling it. It just depends what the item is.

19 Q Okay. And what --

20 MS. MACHNICH: Your Honor, at this point, may we approach,

21 please?

22 THE COURT: Sure.

23 [Bench conference transcribed as follows.]

24 THE COURT: Yeah, what's she saying?

25 MR. GASTON: She's allowed to testify [indiscernible].

1 THE COURT: Oh, to testify? Well, we know that.
2 MS. MACHNICH: Right.
3 MR. GASTON: [Indiscernible.]
4 MS. MACHNICH: Pawn.
5 MR. GASTON: [Indiscernible] jury and ask about [indiscernible].
6 Because we made a Motion in Limine before the jury hears that. [Indiscernible.]
7 THE COURT: Why?
8 MS. MACHNICH: Also it -- okay.
9 THE COURT: What's this -- hold on --
10 MS. MACHNICH: We've never seen these. I just -- we just saw it up
11 there.
12 MR. DICKERSON: We just got them.
13 MS. MACHNICH: Oh, really?
14 MR. GASTON: [Indiscernible] unring the bell. I think we should
15 excuse the jury and deal with this.
16 THE COURT: Why?
17 MR. GASTON: Because we had a motion that they can't what they're
18 doing right now. And I want to explain it fully, and I don't want to do it in front of
19 the jury.
20 MS. MACHNICH: We still haven't seen what you're looking at,
21 though, Your Honor. I -- we just sort of saw it from a distance what was
22 happening.
23 THE COURT: All right. We'll do a quick -- let's take a quick break,
24 because I -- well, so I can hear your -- what your motion is. All right.
25 MS. MACHNICH: Okay. May I see it?

1 THE COURT: All right.

2 [End of bench conference.]

3 THE COURT: Ladies and gentlemen of the jury, I -- I need to hear the
4 defense attorney state a position outside of your presence.

5 First, I'm excusing the witness.

6 Why don't you step down and go outside.

7 THE WITNESS: Thank you.

8 THE COURT: And jurors, I'm excusing you. Leave your notepads.
9 The prior admonishment applies. Don't do any research; don't go on any
10 opinions; don't talk to anybody about the case; don't do any research about the
11 case; don't obtain or send any information about the case. All right. Everything
12 else in the prior admonishments all apply. Please step outside. All right. For a
13 few minutes. Thank you.

14 [Jury recessed at 4:11 p.m.]

15 THE COURT: All right. So we're outside the presence of the jury.

16 Ms. Lexis, why don't you first make an offer of proof of what it is that
17 you're getting ready to introduce, so Mr. Gaston will know what to respond to.

18 MR. GASTON: I also ask on timing. Because my motion deals with
19 timing of discovery -- timing of discovery also. So I would also just ask for an offer
20 of proof on when she became aware and how she became aware of this
21 information existing.

22 THE COURT: Go ahead.

23 MS. LEXIS: Your Honor, State's Exhibit No. 197 is a Cash America
24 SuperPawn receipt for a transaction by Omara McBride, on May 26, 2016,
25 at 2:46 p.m.

1 It is pawning a flat chain, 10-carat gold, approximately
2 19.9 grams, 23 inches, gender N/A, with a broken clasp. That's a chain.

3 THE COURT: And who was pawning it?

4 MS. LEXIS: Omara McBride.

5 THE COURT: All right. And when'd you find out about this?

6 MS. LEXIS: We found out -- we got these actual records, this -- just
7 literally five minutes ago. That's why we were late to court.

8 THE COURT: Okay. Oh --

9 MR. GASTON: That's not the question, though.

10 MS. LEXIS: And I -- let me finish.

11 THE COURT: Hold on. Let -- let them finish. You'll get a chance.
12 You got it five minutes ago.

13 MS. LEXIS: Okay.

14 THE COURT: Okay.

15 MS. LEXIS: When the defense indicated they would be starting their
16 case in chief Tuesday or whenever it was that they started, I asked the detective
17 in preparation for potential rebuttal evidence, to run a leads online check for
18 Omara McBride. Because during the course of trial it's been somewhat alleged
19 that these gold chains and the pendants had not been recovered.

20 And so we have always been of the assertion that Omara McBride
21 and perhaps Chanise Williams helped to get rid of these items or had the money.
22 Okay.

23 THE COURT: So two questions for you.

24 MS. LEXIS: Yes.

25 THE COURT: Do you believe this -- this violated any statutory

1 obligation to produce records?

2 MS. LEXIS: Absolutely not.

3 THE COURT: Is there anything that requires that evidence that you
4 had -- that you develop and intend during trial to use during your rebuttal case has
5 to be produced?

6 MS. LEXIS: It absolutely does not.

7 THE COURT: All right. Do you believe that this violated any *Brady*
8 obligation?

9 MS. LEXIS: Absolutely not. It's not exculpatory by any means.

10 THE COURT: Okay. And was there a mechanism for the defense to
11 obtain this information through its own due diligence?

12 MS. LEXIS: Absolutely.

13 THE COURT: How?

14 MS. LEXIS: They can subpoena records. They could have -- they
15 could have -- they can ask for a check on leads online.

16 THE COURT: All right. So do you believe the -- the State did
17 anything unethical, illegal, improper, or in violation of State statute or applicable
18 standards with respect to due process?

19 MS. LEXIS: Absolutely not.

20 THE COURT: All right. Then let me -- so I understand your
21 perspective. So I don't --

22 So let's find out what the issue is then, Mr. Gaston.

23 MR. GASTON: Plain and simply. Proudly says that information
24 developed in trial for a rebuttal case doesn't have to be disclosed, come back to
25 that in a second.

1 You cannot, as a just basic principle of fairness, law, and equity and
2 happiness, you cannot wait until trial --

3 THE COURT: Law of equity and happiness.

4 MR. GASTON: I was going to say sunshine, but I already had four.

5 That you cannot wait until trial to begin investigating your case on a
6 certain aspect of it in hopes that -- you cannot wait until trial has begun and then
7 put it under the guise of rebuttal. If they -- they cannot intentionally wait until we
8 have -- that -- until trial to do the lead search in hopes that they find something
9 that is no longer discoverable. Whereas, if they had done it two weeks ago, it
10 would have been discoverable.

11 THE COURT: Well, I think you -- you kind of -- if you -- if you intend --
12 so I guess what you're saying is you don't want the State -- the DA's office to have
13 a practice where they intentionally delay investigation so that the smoking gun will
14 be discovered after the case in chief, but -- but still in time to put it on in rebuttal.

15 MR. GASTON: Yeah. And -- and -- because you --

16 THE COURT: I don't think it really does that, because you're really
17 putting on a risk that you're going to miss out on getting critical evidence.

18 MR. GASTON: No, we don't --

19 THE COURT: And -- and aside from the -- aside from the -- aside
20 from the -- the practical risk of not being prepared to put on your case, you don't
21 have any evidence that Ms. Lexis intended to do that or engaged in some bad
22 faith resulting in that.

23 MR. GASTON: I don't even think it has to just be bad faith. The State
24 is required, under State statutes -- okay. Here -- let's -- let's start basic statute,
25 NRS 174 --

1 THE COURT: Well, they didn't -- we could agree, I think, they didn't
2 violate *Brady* or *Giglio*.

3 MR. GASTON: Because it's not -- it's not exculpatory.

4 THE COURT: Because it's not exculpatory.

5 MR. GASTON: Probably not. All right. I think it points more to what's
6 this guy than the other guy.

7 THE COURT: And the statute -- the statute requires -- you request
8 exhibits. They've got to produce their exhibits for trial 30 days before trial. And
9 that -- that includes -- that's case-in-chief documents. All right. So there is no rule
10 saying that there's a deadline for them to produce rebuttal exhibits.

11 MR. GASTON: The rule -- the rule is that the State must exercise due
12 diligence. Due diligence is running a lead search pretrial, not right before their
13 rebuttal case.

14 THE COURT: But case in chief.

15 MR. GASTON: The case in chief of what? This is -- this is
16 incriminating evidence that they intentionally don't go out and get until later. And
17 if -- look, if the lead search comes back negative, then no skin off their back,
18 right? They have the same case.

19 If it comes back positive, well, I would just like to know it's positive
20 right before I start my rebuttal case, as opposed to a week before trial. It's just not
21 fair.

22 We started our case. We did our case. We did our case in chief. It's
23 not fair to wait a week to -- for it now to not be discoverable and able to be
24 sandbagged.

25 At every aspect of this case, it has been sandbagging. And I get they

1 have the arguments that we did the same thing back. I get all the timing issues
2 on both sides back and forth. But the fact is we have the right to know what
3 evidence --

4 THE COURT: So --

5 MR. GASTON: -- is against the defendant when we're prepping our
6 case.

7 THE COURT: So I -- I don't make rulings just based on general
8 principles of fairness.

9 MR. GASTON: I cited the statute -- I cite -- I cited the NRS 174
10 statute, that's all of the discovery rules require -- it doesn't matter if it's *Brady*,
11 *Giglio*, basic statute, Constitution -- all the rules that deal with discovery, it is new
12 or reasonably known, in their possession or could -- or due -- could be obtained
13 through due diligence. This is a due diligence prong.

14 I'm not saying that this evidence was in the State's possession. I'm
15 saying it could have been had they exercised due diligence and they chose to
16 wait to run the lead search until after trial began, and that way it's rebuttal
17 evidence.

18 THE COURT: But --

19 MR. GASTON: They know we're doing a case in chief. We indicated
20 from --

21 THE COURT: But --

22 MR. GASTON: -- day one we're doing a case in chief.

23 THE COURT: Hold on. 174.235 says they have a duty to produce.
24 All right. It says books, papers, documents, tangible objects, or copies, which the
25 prosecuting attorney intends to introduce during the case in chief.

1 I have the district attorney sitting right here in front of me saying she
2 did not intend at any time before today to introduce into her case in chief this
3 evidence about the -- from the SuperPawn.

4 MR. GASTON: I'm not saying she's lying. It is quite possible and
5 understandable that she developed --

6 THE COURT: Well, that's the -- the intent is what the statute asks me
7 to focus on.

8 MR. GASTON: What I'm saying is that it's -- it could have been very
9 possible that after the detective testified or whatever, she thought it would be a
10 good idea to run leads just to see what pops up, ran it, sees it, and then uses it in
11 her rebuttal case.

12 I don't think that changes the standard. The standard is she has to
13 exercise due diligence, pretrial. She didn't.

14 And with respect to this, let's -- let's back away from the discovery
15 here.

16 THE COURT: I have no evidence she violated that.

17 MR. GASTON: Due -- it's not violated -- it's not an intent. It's due
18 diligence requires X, Y, and Z. You did it or you didn't. Due diligence requires --

19 THE COURT: Due diligence to find and produce documents that she
20 intends to use in her case in chief. Where's the evidence that -- for there to be
21 lack of due diligence, you would need to show or convince me that -- that she had
22 in her possession some document that she intended to use in her rebuttal case --
23 or in -- in her case in chief.

24 MS. LEXIS: Your Honor, I can show the court text -- a text message
25 that I sent the detective. It has a date and time --

1 MR. GASTON: I'm not saying you're lying.

2 MS. LEXIS: -- as to when I asked this, if the court would like to see it.

3 THE COURT: Okay. He's not -- but he's not --

4 MR. GASTON: I'm not saying she lied. I'm not -- I'm not -- I'm not

5 trying to say she lied.

6 THE COURT: Okay.

7 MR. GASTON: I'm saying, even if she's telling the truth, it doesn't

8 make a difference. Let's pivot away from the discovery aspect for another.

9 Because there's another issue.

10 THE COURT: All right.

11 MR. GASTON: There's actually admissibility issue.

12 So this, on base level, hearsay, they're going to lay -- they have this

13 person in here, they're going to lay -- I'm assuming -- they're going to lay a

14 business records exception to get this in. Right. That these are items recorded in

15 the regular course of business. They're not otherwise unreliable. Therefore, they

16 come in.

17 If we want to cross-examine that some other person could have

18 shown an ID and done this, well, it's kind of stupid, because Omara did it. Now,

19 she could have done it for him, she could have done it for Bobby. But whatever,

20 the point is Omara did it. So --

21 THE COURT: But you made it a -- you made it an issue in your -- in

22 your defense case --

23 MR. GASTON: About what?

24 THE COURT: -- that -- that -- that some of these items have not been

25 turned up yet.

1 MR. GASTON: Well, no, I get it. I get how it's rebuttal. Like, I'm not
2 arguing that. I get that. What I'm saying is on --

3 THE COURT: So it is valid scope of rebuttal, I think.

4 MR. GASTON: No, that's -- that's not what I'm saying. I'm saying
5 that --

6 THE COURT: I've got a lot of discretion there.

7 MR. GASTON: Right. That's not what I'm trying to say. I'm not trying
8 to say that it's outside the scope. It seems pretty relevant to who did the robbery,
9 right? What -- what I'm saying is on a base level, it's hearsay. They're going to
10 get past that, most likely through laying a valid business record exception. Okay.
11 That's good. Period. Full stop.

12 Then you pivot to the second issue where you're the defendant in a
13 criminal case, because you also have the right to confront your accusers. So if
14 something is hearsay, you then have to still meet through confrontation clause
15 issues.

16 We do not have the right to cross-examine. We are not going to have
17 the option to cross-examine Omara McBride.

18 THE COURT: Cross-examine the witness offering the exhibit.

19 MR. GASTON: That's not the -- that's not the -- that's not witness
20 one.

21 THE COURT: Oh.

22 MR. GASTON: It's, A, we have issue -- we have a couple issues.
23 Number one, there's the custodian of records who did this. I don't know if she's
24 the same custodian of records who -- maybe they could just ease it -- is she the
25 same custodian of records who actually entered this evidence? Entered this

1 information?

2 MS. LEXIS: Well, she's the manager.

3 MR. GASTON: Okay. So -- so --

4 THE COURT: Well, you have the right to call Omara on surrebuttal.
5 I'll give you that right.

6 MR. GASTON: That's not -- that's not how it works, though. We have
7 the right to confront the accuser. So there's two issues. Issue one is the person
8 who input this information isn't the witness they have available.

9 THE COURT: All right.

10 MR. GASTON: So we -- we do not have the right to -- we are not
11 going to have the option to cross-examine the person who actually input this
12 information.

13 Now, I'm not saying that's relevant to the business records exception.
14 But it is the confrontation clause.

15 THE COURT: You have the opportunity to cross-examine the person,
16 that's what this -- that's what the --

17 MR. GASTON: How do we have the opportunity to cross-examine the
18 person who actually input this information? They have -- they're not calling that
19 person.

20 THE COURT: Because you can subpoena that person.

21 MR. GASTON: That's not how the confrontation clause works,
22 though.

23 THE COURT: You know what?

24 MR. GASTON: It's not that the defense can call --

25 THE COURT: I disagree.

1 We're going to call the jury back in. You can make a full record after
2 trial. Okay. I disagree. All right. It's coming in.

3 Marshal.

4 If you can find some authority, find some case law --

5 MR. GASTON: It's a little late then, isn't it?

6 THE COURT: All right. Then, whatever. It's late, it's late.

7 MR. GASTON: No, I'm not saying I'm not -- I'm not saying I'm not
8 going to look. I didn't mean that to be disrespectful.

9 THE COURT: I -- I thought you had rights to file motions after trial.

10 MR. GASTON: I'm sorry, I --

11 THE COURT: If you think there was a Constitutional error.

12 MR. GASTON: I didn't mean that to be disrespectful.

13 THE COURT: I -- I don't think it's too late to do that. But if you want
14 to waive your right to do that. I -- I was going to say find evidence of a
15 Constitutional violation, confrontation clause violation. I will strongly consider your
16 motion after trial.

17 But right now, I don't have any authority on that.

18 MR. GASTON: I understand.

19 THE COURT: It's not a violation of the statute. I have no authority
20 that anything that the State did violates the confrontation clause. Find the
21 authority. I'll read it.

22 MR. GASTON: Could we -- could we reset --

23 THE COURT: Because we're not going to delay trial for that, though.
24 All right. The jury's been waiting a long time.

25 MR. GASTON: Well, that's part of the decision. It was obvious I don't

1 have the authority off the top of my head, because I just got surprised with this,
2 so.

3 THE COURT: I understand that. And that's why the supreme court
4 allows a lot of these motions after trial.

5 MR. GASTON: Thank you.

6 [Jury reconvened at 4:23 p.m.]

7 THE COURT: Bring the witness back in, please.

8 Please be seated, everybody. All right.

9 You're still under oath and still required to testify truthfully. Do you
10 understand?

11 THE WITNESS: Yes.

12 THE COURT: You may be seated.

13 Ms. Lexis, please continue.

14 MS. LEXIS: Thank you.

15 **REBUTTAL DIRECT EXAMINATION (CONT.)**

16 BY MS. LEXIS:

17 Q Ma'am, we were -- I think we left off with you explaining what a pawn
18 is. And then we moved onto a purchase. Do you recall?

19 A Yes.

20 Q Okay. Concerning a purchase, say I bring in, you know, a -- a gold -- a
21 bracelet. And are you saying that I have two options, whether it's a pawn, which
22 is kind of like a loan; is that right?

23 A Yes.

24 Q And then you have a -- a sell or a purchase?

25 A A purchase.

1 Q And with the purchase, you relinquish all rights to that particular piece
2 of jewelry; is that it?

3 A Correct.

4 Q Okay. And what would a person selling an item to the pawn receive in
5 exchange?

6 A Cash.

7 Q Okay. But if it's a pawn, it's a loan, but they also get --

8 A Cash back.

9 Q Cash back. Okay. These transactions, you're a manager; is that
10 right --

11 A Correct.

12 Q -- at SuperPawn. How long have you been a manager?

13 A 15 years. Well, as a manager, I've been six years.

14 Q Six years. But you've worked for SuperPawn for --

15 A 15 years.

16 Q -- 15 years. And is there a particular location you work at?

17 A Right now on I'm Lake Mead and Jones.

18 Q Okay. Is that 5910 West Lake Mead?

19 A Correct.

20 Q Okay. And that's here in Las Vegas, Clark County?

21 A Correct.

22 Q Okay. Are there people who work for you in that particular store?

23 A Yes.

24 Q Okay. Are they designated by employee numbers or some way to
25 distinguish which employee did what?

1 A Yes. Employee numbers.

2 Q Okay. As a manager, are you aware of the employee numbers for
3 people who work for you?

4 A Correct.

5 Q Okay. With each transaction, whether it's a pawn or a purchase, does
6 SuperPawn produce a record of it? Keep a record?

7 A Yes.

8 Q Okay. Is there something called a transaction ticket?

9 A Correct.

10 Q Okay. What sort of information is placed in that particular transaction
11 ticket?

12 A The customer's information of the time that they brought it in, the date
13 that it -- they're bringing it in. It states, like, the item description, and it also states
14 the policy of the transaction.

15 Q Okay. Is there a ticket number?

16 A Yes.

17 Q To track?

18 A A ticket number.

19 Q Okay.

20 A An expiration date, if -- in case their pawning it.

21 Q Okay. And is there also a -- you said there's a description of the item?

22 A Yes.

23 Q Okay. Concerning the -- the identity of the person pawning or selling,
24 what is the policy or what is the -- how is it that employees verify the identity of the
25 customer?

1 A We verify that the -- once they hand us their identification, driver's
2 license, we verify that the person's description matches the person that is
3 standing in front of us. We also verify, like, the -- that it matches, you know, the
4 height, and that's what we enter in the system.

5 Q Okay. And so is it information presented, say, in an identification --

6 A Correct.

7 Q -- and then visual verification and then it's inputted into the computer
8 system?

9 A Correct.

10 Q Okay. For each ticket or each transaction?

11 A For each transaction.

12 Q Okay. These records or that information, is that, let's say, the
13 customer's name, the description of the item being pawned or sold, is that entered
14 at or near the time of the actual transaction?

15 A It has to be entered in the actual transaction.

16 Q Okay. And it's -- is this particular record, this transaction ticket, or
17 pawn ticket, is it kept in the ordinary course of business for cash America
18 SuperPawn?

19 A Yes.

20 Q As a manager, do you have access to those records?

21 A Yes.

22 Q Okay. And were you, in fact, asked by our office this morning to
23 retrieve records?

24 A Yes.

25 Q Where were these records kept?

1 A We keep them in the back of our warehouse in banker boxes.
2 Q Okay. So you had to do an actual manual search?
3 A Yes.
4 Q Okay. And as a manager, you have access to that warehouse?
5 A Correct.
6 Q Okay. And even after pawns and transactions and purchases are
7 completed, that -- that record is kept?
8 A Correct.
9 Q Okay. In the ordinary course of business for SuperPawn?
10 A Yes.
11 Q Okay. Did you, in fact, produce four -- four records for the District
12 Attorney's Office this morning?
13 A Correct.
14 MS. LEXIS: May I approach with what's --
15 THE COURT: So first -- hold on. When were you first requested to
16 search for these records?
17 THE WITNESS: It was yesterday they told us to search for the
18 records.
19 THE COURT: And when did you find them?
20 THE WITNESS: Today, in the morning.
21 THE COURT: Approximately what time?
22 THE WITNESS: It was around 11:30.
23 THE COURT: 11:30 a.m.?
24 THE WITNESS: Uh-huh.
25 THE COURT: All right. Thank you.

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1 MS. LEXIS: May I approach?

2 THE COURT: You may approach.

3 BY MS. LEXIS:

4 Q Ma'am, I'm showing you what has been previously marked as State's
5 Proposed Exhibits 197, 198, 199, and 200. Can you please just briefly take a look
6 at each exhibit and let me know when you are done.

7 A Okay.

8 Q Okay. Do you recognize what's depicted in these exhibits?

9 A Yes.

10 Q Do these fairly and accurately represent the records that you produced
11 for us at 11:40-something today?

12 A Yes.

13 Q Okay. And these are the records that you produced pursuant to our
14 request yesterday?

15 A Correct.

16 Q Okay. And it fairly and accurately depicts that?

17 A Yes.

18 Q Okay.

19 MS. LEXIS: Your Honor, I move to admit State's Proposed
20 Exhibits 197 through 200.

21 MS. MACHNICH: Your Honor, may I take a look at them?

22 THE COURT: Yes, you may.

23 MS. MACHNICH: Thank you. Thank you.

24 [Pause in proceedings.]

25 MS. MACHNICH: Okay. Thank you.

1 MS. LEXIS: I move to admit.

2 MS. MACHNICH: We'll submit.

3 THE COURT: All right. Then the court admits the records pursuant to
4 NRS 51.135 and 48.035. Okay.

5 [State's Exhibit Nos. 197 through 200 admitted.]

6 THE COURT: You may continue.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Ma'am, I'm going to publish first State's Exhibit No. -- we'll go in order
10 here -- 197; can you see that, ma'am?

11 A Yes.

12 Q Okay. Is this a pawn ticket or a transaction ticket?

13 A Correct.

14 Q That you produced for us?

15 A Yes.

16 Q Okay. I'd like to turn your attention to where I'm pointing right here.

17 Does that -- you were talking about how a customer's name and identification
18 information is actually logged in the transaction ticket. In this particular case -- or
19 this particular exhibit, was that done?

20 A Yes.

21 Q Okay. So the name and address of the person, the borrower or seller
22 was actually on this, right?

23 A Correct.

24 Q And in this particular case, what was the name and -- just the name of
25 the individual?

1 A Omara.

2 Q Okay. What's the last name?

3 A McBride.

4 Q Can you see it? Okay.

5 And you indicated for the jury earlier that the person's identifiers -- or
6 you know, the -- the description from their ID -- is also logged onto the ticket. In
7 that case, was that done?

8 A Yes.

9 Q Okay. And then it says identification presented; does that -- is that
10 what clerks are trained to do and what you would do as a clerk, log the
11 identification number?

12 A Yes.

13 Q Okay. And in this case, it has a CA; what does that mean?

14 A California identification.

15 Q Okay. I'd like to turn your attention to this area right here; does that
16 state the --

17 Let me just zoom in. I'm sorry.

18 Does it state -- does this record show a transaction date and time?

19 A Yes, it does.

20 Q And what was the transaction date and time for this ticket?

21 A It's on May 26, 2016, at 1446.

22 Q Okay. That's military time?

23 A Yes.

24 Q Okay. And then beyond that -- or beneath that, it says the transaction
25 type; what is listed there?

1 A Purchase.

2 Q Okay. So in this particular case, it wasn't a loan; it was actually selling
3 an item?

4 A Correct.

5 Q Okay. Turning your attention now to the item description. In this
6 particular case, for this pawn ticket in this exhibit, what was it that was sold? Can
7 you read that? Sorry.

8 A Yes.

9 Q Okay. What was it that was sold?

10 A It's a flat chain, yellow gold, 10-carat gold, 19.0 grams, 23 inches long.
11 It's considered a Gucci link.

12 Q Is -- that's not a brand, is it?

13 A No.

14 Q What -- what --

15 A It's just a -- a link -- what we consider a link that looks like a G.

16 Q Okay. All right. And can you continue, please.

17 A And it says N/A as gender, just because it could be used as -- for a
18 female or a male.

19 Q Okay. And what is -- what's the next line?

20 A It's a -- it had a broken clasp.

21 Q And is the clasp -- what is the clasp? Is it how you actually get it on --

22 A It's how you lock the chain.

23 Q Okay. And so turning your attention to the bottom, was there a
24 signature, then, by the customer?

25 A Yes.

1 Q Okay. And as you indicated to the jury earlier, there's information here
2 concerning the pawn; is that right?

3 A Correct.

4 Q Okay. But the date due, it says N /A; why is that?

5 A Because we purchased the item from the customer. It's not a loan.

6 Q Okay. And there's a ticket number?

7 A Yes. That's what we keep it in -- in our records.

8 Q Okay. And so the ticket number here is 482202?

9 A Yes.

10 Q Okay. It says amount financed. The amount of cash given directly to
11 you. What was the amount given for this particular item?

12 A It's 240.

13 Q Okay. And I'll publish what's been admitted as State's Exhibit No. 198.
14 Okay. Is this another pawn slip?

15 A This is another purchase slip, yes.

16 Q A purchase slip, okay. And does it have again the name of the
17 individual?

18 A Yes.

19 Q Identifiers from the ID?

20 A Yes.

21 Q The transaction date and time?

22 A Yes.

23 Q Okay. Could you please read the transaction date and time?

24 A The transaction date is May 26, 2016, at 1448.

25 Q Okay. There's a SuperPawn employee number that I forgot to ask you

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1 about. What is that number? Or what does that mean to you?

2 A It's 33474. That was my employee Sylvia's number.

3 Q Okay. What's Sylvia's last name?

4 A Guzman.

5 Q Okay. And then does it also have a description of the property again?

6 A Yes, it does.

7 Q Let me zoom in. All right. What was the description for this particular
8 purchase ticket?

9 A It's a flat chain, yellow gold, 10-carat gold, 12.4 grams, 22 inches long.
10 It's a Figaro chain.

11 Q What does that mean?

12 A A Figaro is also a different link.

13 Q Okay.

14 A And in gender it has N /A because it could be used by a male or
15 female. And it has a broken clasp.

16 Q Okay. And then does it have a ticket number at the end again?

17 A Yes, it does.

18 Q And it's 482203?

19 A Yes.

20 Q Okay. Sorry about that. Okay. And then there's a signature by the
21 customer, right?

22 A Yes.

23 Q Concerning the amount received by the individual pawning, what was
24 the amount for this particular chain?

25 A It's 155.

1 Q And that was what was given to the customer?

2 A Yes.

3 Q State's Exhibit 199. Okay. Is this a -- yet another pawn ticket?

4 A Yes.

5 Q Was it a -- does it also have the name of the borrower or seller as

6 Omara McBride?

7 A Yes.

8 Q Okay. Same ID information?

9 A Yes.

10 Q What is the transaction date and time of this particular pawn?

11 A It's May 26, 2016, at 1450.

12 Q Okay. And then it was a purchase; is that right?

13 A Yes.

14 Q And what was the description of the property pawned? Let me zoom

15 in.

16 A This one is a pendant charm. It's 14-carat gold, yellow gold, 16.0

17 grams, square dragon. And it's a man's charm.

18 Q Okay. And did the customer then sign beneath that?

19 A Yes.

20 Q And is there a different ticket number being 482204?

21 A Yes.

22 Q And concerning the money received by the customer for this particular

23 pendant or charm, what was that?

24 A 265.

25 Q Thank you. State's Exhibit 200, is this yet another pawn ticket?

1 A Yes, it is.
2 Q Lists the name of the seller?
3 A Yes.
4 Q As Omara McBride? Same contact information that you've already
5 talked about?
6 A Yes.
7 Q Okay. Concerning the transaction time, what was it for this ticket?
8 A It's for May 26, 2016, at 1451.
9 Q Okay. And does it indicate the type as being a purchase again?
10 A Yes.
11 Q And, ma'am, could you just read us the description placed on this
12 particular ticket?
13 A This one is a pendant charm. It's yellow gold, 10-carat, 8.5 grams. It's
14 a cross. Gender it says N/A. One round diamond at five points and eight round
15 diamonds at -- I can't -- two points.
16 Q Two points. So nine diamonds total?
17 A Yes.
18 Q Okay. And did the person -- the customer sign?
19 A Yes.
20 Q Okay. And is there a ticket number, as well?
21 A Yes.
22 Q Is it ticket number 482205?
23 A Yes.
24 Q And in terms of the amount of cash received by the customer, what
25 was it for this item?

1 A It's 115.
2 Q Thank you.
3 MS. LEXIS: I have no more questions. Thank you.
4 THE COURT: Cross-examination?
5 MS. MACHNICH: Your Honor, we have no questions for this witness.
6 Thank you, ma'am.
7 THE WITNESS: Thank you.
8 THE COURT: All right. Thank you. All right.
9 Anything from the jurors? Nothing?
10 All right. You are excused, ma'am. Thank you very much.
11 THE WITNESS: Thank you.
12 THE COURT: The State may call its next rebuttal witness.
13 MS. LEXIS: We don't have another one today, Your Honor. We have
14 one scheduled for tomorrow morning.
15 THE COURT: Oh, you still have a witness?
16 MS. LEXIS: Yes.
17 THE COURT: For rebuttal case?
18 MS. LEXIS: Yes. One more.
19 THE COURT: Okay. I'm trying to think if we can do this at 8:30.
20 So I'm thinking of starting -- I have my criminal calendar at 9:00. I
21 can't -- even if your witness would only take 15 minutes, I can't do the witness and
22 then have the jury wait until 1:00. And then we're not going to be ready to be
23 deliberate, because we need to read jury instructions and do closing arguments.
24 So I think we need to come back at 1:00 tomorrow.
25 And then we'll do the one witness, going to be short?

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1 MS. LEXIS: Relatively -- yeah, short.

2 THE COURT: And then -- is there possibly a surrebuttal case by the
3 defense?

4 MR. GASTON: Possibly.

5 THE COURT: Possibly? Okay.

6 MS. MACHNICH: Yeah. We have no idea who they're calling, so --

7 THE COURT: Okay. And then we have -- what?

8 MS. MACHNICH: We have no idea who they're calling as a witness,
9 so we can't know for sure.

10 THE COURT: Okay. And then so we have the jury instructions,
11 closing arguments, and deliberations. All right.

12 All right. Well, we're going to stay a little bit longer and get jury
13 instructions done here. All right. Since we have that time.

14 Ladies and gentlemen of the jury, I need you back here tomorrow
15 at 1:00. So please leave your notepads.

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

25 Excuse me. I've got the hiccups. I'll -- I'll see you back here.

1 Yes, sir.

2 JUROR NO. 10: Your Honor, do you anticipate we may be here on
3 Friday, as well, perhaps?

4 THE COURT: I hope not. I -- you have one witness and if there's no
5 rebuttal witness, let's -- let's try to think this through. Come in at 1:00. State has
6 one -- one more rebuttal witness. Say we're done by 1:20. I read jury instructions
7 to you. I'll have all those read by 1:50 -- well, maybe 2:00 at the latest. We
8 start -- we take a 15-minute break, 2:15, we start closing arguments. The State
9 gets to go first, then the defense, and then the State gets the last word -- closing
10 arguments, the whole thing, shouldn't take more than about a -- an hour and
11 45 minutes?

12 We can't -- okay.

13 MR. DICKERSON: Approximately, Your Honor.

14 THE COURT: Okay. So figure, 2:15, 3:15, 4:00. Say, 4:00, you start
15 deliberating. All right.

16 I've seen deliberations go as fast as 12 minutes and some go as long
17 as four days. So I don't know what you guys will decide. But I will ask my staff --
18 we'll talk to them and check their availability to stay late Thursday. So if you
19 wanted to stay until 7:00, you know, so you don't have to come back Friday, I'm
20 going to talk to my staff and have an answer for you tomorrow whether that's
21 possible. All right.

22 And I wouldn't require you to do that. That would be up to you in your
23 discussions with your foreperson. All right. So I hope that answers your question.
24 Sorry if -- if -- if after all that, we still need to come back Friday, you can be here
25 at 8:30, 9:00, or 9:30 Friday, what you -- whatever you all decide to do. And start

1 deliberating on Friday morning. All right.

2 All right. Does that help on scheduling? All right.

3 Very good. We'll see you guys tomorrow at 1:00.

4 And -- and the marshal has your phone numbers. If any emergency
5 comes up, let the marshal know. We do have an alternate. But we don't want
6 to -- we don't want to have to use the alternate. So you are ordered to be back
7 here tomorrow.

8 [Jury recessed at 4:45 p.m.]

9 THE COURT: All right. Please be seated. Let's talk about jury
10 instructions, then.

11 MR. GASTON: Your Honor, am I able to make a more full record
12 about the -- my objection to what just happened, if that's okay. You said that I --
13 you would give me an opportunity to make a record.

14 THE COURT: Oh, just what happened, yeah.

15 THE WITNESS: Pawnshop stuff.

16 THE COURT: Yes.

17 THE WITNESS: So I -- I do -- I just want to the opportunity to make
18 the full record, state each of my objections and what I have the cites right now
19 and go through -- go through it.

20 First and foremost, before we get to anything, I believe that there was
21 an order by Judge Herndon, ordering the State to give us notice of their rebuttal
22 witnesses.

23 Now, it is possible that we could have construed that differently. I
24 suspect that we did not, though, because very soon after that order, we received
25 notice of some of the State's rebuttal witnesses. I believe they noticed Gang

1 Intelligence from Metro. They noticed Mazda -- Mazda custodian of -- Mazda
2 custodian of records. They noticed Downtown Grand valet. Those are the -- if I'm
3 not mistaken, those were the three rebuttal witnesses that they gave -- gave us.
4 They gave that notice after Judge Herndon's order. So I believe that they
5 interpreted Judge -- Judge Herndon's order the same way I did.

6 And then, so with respect to that first rebuttal witness, Marvin Bass
7 and Jordan Alexander, it doesn't really seem like an issue, because those are
8 witnesses previously noticed by all the parties, et cetera.

9 Their last rebuttal witness was never given any notice to us, which is
10 in violation of Judge Herndon's order, and given that they did notice some rebuttal
11 witnesses, I find it hard to imagine how they can argue why -- do you want me
12 to -- I find it hard to imagine that the State can simultaneously argue two
13 positions. A, that we're not required to disclose rebuttal witnesses, and yet they
14 did anyways. Or B, I don't get how they can make both positions. They'll either
15 have to argue, A, we were not required to disclose rebuttal witnesses by Judge
16 Herndon's order, in which case, why did they?

17 THE COURT: Yeah. I'm still listening.

18 MR. GASTON: And then -- yeah, and then -- and then the second
19 position that they would have to argue is this was not a rebuttal witness that
20 needed to have been disclosed. And I don't get what the difference between this
21 rebuttal witness and other rebuttal witnesses are, other than I guess they found
22 out earlier, but then they could have given us notice earlier when they found out.

23 So I don't really understand the distinction between those positions.

24 So the first objection I have is that I believe the State violated Judge
25 Herndon's order, and I believe they interpreted the order the exact same way I

1 did, which is why they disclosed rebuttal witnesses in the first place.

2 THE COURT: The problem with that is we don't have an order. We
3 have minutes. And -- and minutes are just the clerk's regurgitation of what the
4 judge says.

5 MR. GASTON: And it was not in there?

6 THE COURT: I don't see -- there's no written signed order.

7 MR. GASTON: Well, I guess my position -- my position is the State --
8 we can infer from the State's conduct that they interpreted it the same way,
9 because either, A, they -- they -- their position is they don't have to disclose any
10 rebuttal witnesses, which begs the question why did they disclose three after -- on
11 Monday? Or they -- they interpreted it the same way I did, and they disclosed the
12 rebuttal witnesses they had planned then, because they understood the order to
13 be the same thing I did, and then they didn't disclose this one.

14 So my first objection is Judge Herndon did make that order -- he did
15 make that request. They interpreted it the same way.

16 THE COURT: But --

17 MR. GASTON: We [indiscernible].

18 THE COURT: You're making the argument. I hear you. It sounds
19 good, but --

20 MR. GASTON: Go to the second point.

21 THE COURT: -- I don't have evidence to support that there was any
22 order. So I can't do anything about that.

23 MS. LEXIS: And may I clarify once he's done?

24 THE COURT: When he's done, yeah. But I don't have any evidence
25 that -- that any such order existed.

1 But -- because go to your next point.

2 MR. GASTON: Okay. So my second -- my second point would be, I
3 don't find that this is -- I don't think that this is appropriate rebuttal in the first
4 place.

5 So the rebuttal case is not an extension of the case in chief.

6 THE COURT: Of course.

7 MR. GASTON: It is not -- the State cannot argue that everything the
8 defense does in its case in chief is obviously geared towards showing the
9 defendant did not commit the crime. Therefore, rebuttal is as wide a scope as
10 showing he did commit the crime. It's not that broad, because then otherwise,
11 what's -- what's the point? It must rebut something that we did.

12 And what possible evidence did we put forth in our case in chief that
13 that just rebutted? We called an -- let's go through it, we called an ID expert who
14 testified nothing specifically about this case, other than how eyewitness
15 identification works, memory works, et cetera. He didn't say the witnesses were
16 right. He didn't say they were wrong. He just talked about how some factors can
17 cause you to deviate from the ideal, and those factors he found to be present
18 here.

19 The evidence -- the pawnshop evidence --

20 THE COURT: Well, you had -- your put -- you wanted the jury to
21 believe that there was no evidence of these pieces of jewelry being pawned. And
22 that's why it kind of -- kind of why you suggested there was some video that got
23 destroyed --

24 MS. MACHNICH: No.

25 THE COURT: And now we don't know what's on the video, so --

1 MR. GASTON: Hold on.

2 THE COURT: -- the State didn't meet its burden of proving that there
3 was any jewelry stolen, and if so, what happened to it.

4 MR. GASTON: That's conflating two or three different things.

5 THE COURT: Yeah.

6 MR. GASTON: First, in -- in --

7 THE COURT: Well, it really wasn't clear what you were trying to
8 prove there.

9 MR. GASTON: In the -- our cross-examination of the State's
10 witnesses, we were arguing that the pawnshop -- that the jewelry was never
11 recovered, Keandre was arrested, therefore the guy who has the jewelry is
12 probably Bobby.

13 We argued that in cross-examination of the State's witnesses. We
14 were going to argue that in closing. That's not rebuttal.

15 THE COURT: Okay.

16 MR. GASTON: Rebuttal can't rebut that.

17 Our eyewitness identification posited nothing that the pawnshop
18 rebutted. Nothing.

19 Our next piece of evidence was registration from Mazda. That didn't
20 rebut that.

21 Valet ticket from Downtown Grand, not rebutted.

22 A photo of Bobby, not rebutted.

23 And the height of Bobby, doesn't rebut that.

24 The EZPAWN video, which -- which was -- doesn't rebut that,
25 because the point of the video of EZPAWN wasn't that it was a video of

1 something that was disclosed or something -- someone pawning an item. It was
2 video that showed the car chase, essentially, the car of the robber, Marvin Bass,
3 after the robbery pursued the man who was robbing him and lost him at a light.
4 And some of that car, during that driving down the road, was picked up on the
5 pawnshop video. The detective indicated in his report that he went, he got the
6 video, and he impounded it. And then, sure enough, just like the missing showup
7 form, we don't have it. So that was designed to impeach the quality of the
8 investigation.

9 We actually have a stipulation among ourselves to not discuss the
10 content of the video.

11 THE COURT: Well, regardless of your intent, the effect of that
12 evidence is to suggest to the jury that the State has not come forward with
13 evidence that the jewelry was pawned -- that's the effect.

14 MR. GASTON: Well, the effect of what evidence? The pawnshop
15 evidence?

16 THE COURT: Yeah.

17 MR. GASTON: Well, okay. First, if that was --

18 THE COURT: So they're entitled to rebut that, saying, no, ha, ha,
19 you're wrong. It -- it was found. And here it is.

20 MR. GASTON: Well, first, that wasn't the point. They know that's not
21 the point of the evidence. And if they're worried about a possible effect that's
22 false being presented to the jury, we can do a limiting instruction, just like we did.
23 They could have requested it.

24 That video had nothing to do with anybody pawning anything. We
25 know that. The detective knows that. Everybody in this case knows that.

1 THE COURT: Well, that's not what went to the jury.

2 MR. GASTON: If it was -- if it was possible -- if the State was worried
3 that a different --

4 THE COURT: Why would you even bring it up?

5 MR. GASTON: Because we're impeaching the quality of the
6 investigation. This detective, who doesn't know anything, doesn't remember
7 anything --

8 THE COURT: And -- and their -- and their rebuttal is -- their -- their
9 rebuttal is -- is rebutting that point.

10 MR. GASTON: Their -- their rebuttal that they just now started
11 investigating their case somehow rebuts the point that they didn't investigate it
12 very well a year ago? That doesn't seem to make --

13 THE COURT: No. That's not exactly what I said. But go ahead, go
14 ahead. I -- I do -- I see facts different than you. You can make your argument.
15 But --

16 MR. GASTON: The point I'm making is with the -- if they were worried
17 that the wrong impression from the pawnshop cross got sent to the jury, they
18 could have requested a limiting instruction. Not rebutted it with something that
19 they know very well we were not intending to argue.

20 And with respect to us impeaching the quality of the investigation
21 through that witness, I guess in a roundabout way that -- I mean, that is what we
22 were setting up for closing.

23 They're finding the -- their deciding now, right now, to investigate the
24 pawnshop stuff, does not in any way rebut the quality of the investigation of --
25 under Detective Majors, which is what that evidence went to. So it wasn't rebuttal

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1 of that.

2 THE COURT: I understand it doesn't rebut your contest to the quality
3 of the investigation. I understand.

4 MR. GASTON: So -- so I don't -- and then -- then the final witness
5 was Chanise.

6 THE COURT: Chanise, right.

7 MR. GASTON: And there was nothing that Chanise testified to.
8 There was no questions asked of Chanise, indicating that she or Omara or to her
9 knowledge any one of them go pawn items for the one man who robbed this
10 item -- robbed this. In fact, the questions were specifically about what she
11 remembered, what she didn't remember, and did she testify -- did they coach the
12 testimony, et cetera, through the jail call.

13 No testimony, whatsoever, introduced by the defense, did that
14 evidence impeach, unless we are construing the -- the defense case in chief to all
15 be about, we are arguing that he didn't do it --

16 THE COURT: But didn't you say you -- you -- I asked you, and you
17 agreed with the court, all right, that this was proper -- this was within the proper
18 scope of rebuttal testimony. Before I let this witness go on, I asked you, you
19 stood right there, and said you don't take issue with the fact that this is within the
20 scope of proper rebuttal.

21 MR. GASTON: I'm sorry if that was the impression.

22 THE COURT: Right. You said that.

23 MR. GASTON: I'm --

24 THE COURT: And now -- and now you're making an argument that
25 maybe that was wrong in letting -- letting the State go on in the scope. You said

1 that wasn't your issue. You had an issue regarding the confrontation clause. It
2 wasn't the scope issue.

3 And now, everything you said the last 15 minutes sounds like it's
4 scope.

5 MR. GASTON: I'm sorry if that --

6 THE COURT: All right.

7 MR. GASTON: I'm sorry if earlier in our discussion I gave the wrong
8 impression of the scope of my objections. I had multiple objections to this. And at
9 the time, I was discussing -- I don't remember if I was discussing why I felt that it
10 violated discovery specifically or confrontation clause, because I pivoted from
11 discovery to confrontation clause without finishing. But I did request --

12 THE COURT: But I -- I let her go on in part on your assurance that
13 this wasn't a scope issue. Now, the bell has been rung, in part, based on me
14 letting the witness testify based on what you said.

15 MR. GASTON: I --

16 THE COURT: And now what do we do about it?

17 MR. GASTON: I do think --

18 THE COURT: What do we do about it?

19 MR. GASTON: Well, at this point, mistrial is my request, but --

20 THE COURT: Okay.

21 MR. GASTON: But I -- what my -- my --

22 THE COURT: What else do you want to say?

23 MR. GASTON: I want to make a full record here.

24 THE COURT: Okay.

25 MR. GASTON: What -- earlier, I in no way gave assurances to the

1 court. At the time I was discussing confrontation clause, so what I meant was at
2 this time I'm trying to discuss this, I had other objection -- I had many other
3 objections to continue making. I wasn't able to make them at the time. The court
4 indicated I could make a full record later.

5 I requested that we end today, knowing that the State has to call a
6 rebuttal witness anyways tomorrow -- that we end today to address this issue
7 before we have to deal with unringing the bell. Also, so there's no misconfusions,
8 I get to cite my cases in my record, they get to respond and the court can make a
9 full, thorough decision of what to go on.

10 We didn't do that. We ended up going ahead today. I didn't see the
11 prejudice of delaying the case tomorrow, given that we were going to have to go
12 into the State's rebuttal case tomorrow anyways.

13 THE COURT: All right. Well, I've already rejected all your other
14 arguments. There's nothing more I needed to say. And -- and there's nothing
15 more that you could have said that would change my mind --

16 MR. GASTON: Well, it does sound like the court --

17 THE COURT: -- especially after you had made the representation to
18 the court that there was no scope issue.

19 MR. GASTON: I don't think I --

20 THE COURT: You didn't reserve that issue. And we can -- we can
21 agree to disagree on that. We can look it up on JAVS on that.

22 MR. GASTON: Yeah. I get --

23 THE COURT: But we're not going to agree right now. What other --
24 what other points do you have?

25 MR. GASTON: I do want to respond to that point. Mainly -- not to try

1 to convince you, I think you've made your ruling, but to -- just so that it's not there
2 on appellate review to be misconstrued.

3 When I was answering the court's question, it was in the middle of a
4 very, very quick objection on this issue, trying to get out as much information as I
5 could no order of priority to the court, as I was thinking about it. Because
6 remember, we were sandbagged with this issue. We didn't get time to prepare
7 and organize my argument like I just have with the pawnshop. I was able to
8 organize my argument and objections in a more clear fashion.

9 So with my -- if I at all gave the impression to the court that I was
10 not -- that I was agreeing that this was within the proper scope of rebuttal, I
11 apologize. That was not my intention, because I don't think it was appropriate at
12 all.

13 THE COURT: All right.

14 MR. GASTON: And I -- if the misconstruction happened, I suspect it
15 was due to the quick time constraints of the argument and not anything on either
16 parties' side.

17 THE COURT: All right.

18 MR. GASTON: So I don't think it was appropriate rebuttal. It didn't --
19 also, further, speaking of notice issues, I think it should have been noticed. Under
20 *Grey v State*, it's a 12 -- 124 Nev 110, 119. It's a 2008 case. The -- it talks about
21 the State's duty to give notice of rebuttal expert witnesses.

22 And it talks about that if the State had advance notice that the defense
23 was going to call an expert, there is no good cause at all and no real reason as to
24 why the State shouldn't have to notice its rebuttal expert also.

25 THE COURT: Well, actually distinguishable from our case, but go on.

1 MR. GASTON: I'm going to make -- I'm going to make the analogy. I
2 was just trying to get out the facts in the holding.

3 And it talks about they have advance notice that we were going to call
4 an expert. They have to then give us a rebuttal notice -- or notice of their rebuttal
5 expert. There's no reason that they get to sandbag it, even though it's in their
6 rebuttal case in chief.

7 I would argue that that case is directly analogous to what happened
8 here. They had advance notice that we were going to call our -- call -- have a
9 case in chief. They had advance notice that, pretty much, I think we made it clear
10 abundantly, every -- every bit of what we were going to call in our rebuttal -- or our
11 case in chief, because we constantly talked back and forth about what we can
12 agree to, whether we have to call a custodian of records, whether we were going
13 to do this.

14 Nothing surprising came out of our case in chief that the State wasn't
15 aware of -- that the State wasn't already aware of.

16 So the same thing, there was no principles put forth by the State in
17 *Grey* that convinced the supreme court as to why it would be appropriate for the
18 State to sandbag its rebuttal witness instead of giving notice. And I would argue
19 that the same principles apply here.

20 There is no real policy argument. There's no real argument, as to why
21 the State should have been able to sandbag their lead search and their pawnshop
22 receipt until right before their rebuttal, in hopes -- in literally hopes -- I mean, there
23 is no real other argument -- in hopes of avoiding discovery rules.

24 THE COURT: Yes. Using the term sandbag makes it sound like the
25 State intentionally orchestrated this -- orchestrated the timing of this document --

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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:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office