

1 doesn't come timely, we'll make adjustment.

2 During this recess we are about to take, remember
3 the admonition I have given you at all the breaks. It is your
4 duty not to discuss the case among yourselves or with anyone
5 else including members of your family, friends, co-workers or
6 people involved in the trial, any matter having do with this
7 case. This includes discussing the case or anything about it
8 or any of the parties or the attorneys verbally, in person, or
9 in writing or through any internet features or electronic
10 means of communicating with others.

11 It is your further duty not to form or express any
12 opinion about the guilt or ~~inn~~innocence of the defendant until
13 the case has been finally submitted to you for decision.

14 You are not to read, look at, listen to any news
15 media account or any other account or commentary including any
16 online information about the trial or anyone associated with
17 it. You will be required to decide all questions of fact in
18 this case from the evidence received in this trial and not
19 from any other source.

20 Do not make any independent investigation into or
21 about the case or the subject matter of the case. That means
22 for example you must not do any research such as consulting
23 dictionaries, searching the Internet or using any other
24 reference materials. Should any person attempt to discuss the

1 case with you or in any manner attempt to influence you in
2 regards to it, you must advise the bailiff. Go ahead and go
3 into the jury room.

4 (Whereupon the jury left the courtroom.)

5 THE COURT: Please be seated. I was wondering who
6 you were going to call this afternoon so I can figure out
7 transcripts.

8 MS. KOSSOW: Yes, Your Honor. I had another matter
9 I wanted to bring up to the Court as well. I think we are
10 going to have to have a hearing.

11 THE COURT: Okay.

12 MS. KOSSOW: The ~~State~~ I believe at this point has
13 three witnesses left, Ms. Siewertsen, the DNA analyst,
14 detective Chavez who is concerning the interview of the
15 defendant, and then special agent Blaine Freestone. I know the
16 defense, we tried to talk and communicate about it, I know
17 they are going to object to -- We didn't have a discussion
18 about how the State's going to present the defendant's
19 interview. I want to have that discussion prior to me calling
20 the detective and stopping in the middle of it.

21 THE COURT: Right. How did you want to do the
22 testimony?

23 MS. KOSSOW: So the State has made four two minute
24 clips. Let me back tract. The interview in its entirety is

1 in Spanish. Detective Chavez speaks Spanish. He interviewed
2 him in Spanish. There is a verbatim transcript that has been
3 provided to the defense in English, obviously. So what the
4 State was going to do was to basically question detective
5 Chavez about the content of the interview focused obviously on
6 different points, and then I wanted to play four two minute
7 clips in order for the jury to see the defendant's demeanor
8 and attitude during the interview. But the State was limiting
9 it to those four two minute clips for that reason only and the
10 State was going to ask detective Chavez, again they're very
11 small clips, to translate just those clips for the jury after
12 they are played.

13 THE COURT: Will he be using the transcript?

14 MS. KOSSOW: No. I think he would be listening to
15 the interview, relaying -- Obviously, I talked to him, given
16 him the time of the clips. He's had a chance to review them.
17 He worked on -- the translation was originally done by an
18 outside interpreter. That was then sent to detective Chavez.
19 There were a lot of errors, so he looked over all of it,
20 corrected what he believed, and that is the final transcript I
21 sent to the defense.

22 THE COURT: Okay. So the defense, you would like to
23 do it some other way?

24 MS. NORDVIG: Your Honor, we would object to only

1 portions being played. I would advise the Court I think the
2 entire interview is approximately, eliminating the breaks when
3 detective Chavez left the interview room and left Mr. Cordero
4 sitting there by himself, eliminating those sections, one is
5 nine minutes in length. Another one is seven minutes long. We
6 would object to only parts of the interview being played. If
7 the interview is going to be played, we would like the entire
8 thing played minus those sections where nothing is being said.
9 In the alternative, we would agree to having the transcript
10 read into the record without the interview being played.

11 THE COURT: What is the basis for your request that
12 the entire, since you can't put it in as evidence, what is the
13 basis for your request for the entire transcript?

14 MS. NORDVIG: Your Honor, I think the two minute
15 portions that the State has selected don't reflect the entire
16 contents of the interview, and they're taken out of context so
17 that they would mean something different if only those
18 portions were shown to the jury. If the entire interview is
19 provided to them, they get a different, in my opinion, a
20 different meaning for some of those portions as well as a
21 better idea of the entire situation.

22 THE COURT: Do we have an un-redacted copy of the
23 interview?

24 MS. KOSSOW: Yes, Your Honor.

1 THE COURT: Has that been marked?
2 MS. KOSSOW: No.
3 THE COURT: Then do you have your redacted
4 interview?
5 MS. KOSSOW: Yes.
6 THE COURT: Has that been marked?
7 MS. KOSSOW: Yes.
8 THE COURT: What is that marked?
9 MS. KOSSOW: 123, Your Honor.
10 THE COURT: Okay.
11 MS. NORDVIG: Your Honor, could I also bring the
12 fact that I believe it is two of the members of the jury speak
13 Spanish.
14 THE COURT: That is why we have Instruction number
15 B.
16 MS. NORDVIG: I am, yes, I am aware of that, but they
17 would understand -- Well, strike that.
18 THE COURT: They may understand, may want to read
19 something into it, but I am going to instruct them that they
20 can't, so we do have that issue.
21 MS. KOSSOW: Just for the record, Judge, when
22 Ms. Nordvig first raised the objection to me, I did some
23 research. I did find the Dominguez case versus State 112
24 Nevada 683, a 1996 case. In that case, the same thing. It

1 was a murder case. The State put on certain excerpts from the
2 video. The defense -- the Court didn't allow the defense to
3 go into anything other than those excerpts, and the Supreme
4 Court said that's wrong, you can't do that. The same statute
5 Ms. Nordvig is asking for the entire thing to be played is
6 47.120. Why I think that case gives us some direction is the
7 State is not asking Ms. Nordvig be limited to these two minute
8 excerpts the State wants to play. Detective Chavez is going
9 to be, I plan on asking him a lot more questions what occurred
10 during the interview than just the clips. The clips were
11 really just to show the defendant's demeanor during the
12 interview.

13 THE COURT: So we need the un-redacted version
14 marked so then if Ms. Nordvig wants to go into that, she can
15 play it pursuant to the Dominguez case. Does that make sense?

16 MS. KOSSOW: Yes. What are we going to do about the
17 transcript? Are you saying she should ask detective Chavez to
18 translate it on the stand? That is the reason the State is
19 not playing the entire interview. What's the point? The
20 jurors won't understand it unless we give them a transcript,
21 then they will be reading a transcript they can't follow
22 along.

23 THE COURT: Which is improper to give them a
24 transcript anyway, although I would like the transcript marked

1 for the Court to use.

2 MS. KOSSOW: Okay.

3 THE COURT: And so if Ms. Nordvig wants to use the
4 tape, the part your detective is not ready to interpret, I
5 guess she's going to have to ask you to do that.

6 MS. KOSSOW: I'm sure he's reviewed it. He obviously
7 did the interview. He remembers it quite well.

8 THE COURT: I have no problem with him having the
9 transcript of his prior interpretation so that could assist
10 him on the fly.

11 MS. NORDVIG: You are referring to the corrected
12 interpretation?

13 THE COURT: Yes.

14 MS. NORDVIG: The interpretation he corrected?

15 THE COURT: I understand that is really the final
16 version he's approved, so that is the way he would say it
17 would be translated anyway. So once we have that transcript
18 marked, I would have no problem with him having that with him
19 on the stand to refresh his recollection of the interpretation
20 of what you are playing --

21 MS. NORDVIG: It is outside of two minutes.

22 THE COURT: -- and cause him some difficulty. Do
23 you think that would work?

24 MS. NORDVIG: I hope so.

1 THE COURT: We'll try it.

2 MS. NORDVIG: We'll try.

3 THE COURT: You want me to read Special Instruction
4 B before this witness?

5 MS. KOSSOW: Yes.

6 THE COURT: So you are going to come back after
7 lunch. You are going to give me the un-redacted version of
8 the interview so we can mark it, and we are going to mark the
9 transcript translation of the interview.

10 MS. KOSSOW: Yes.

11 THE COURT: And I think you all previously approved
12 Special Instruction B, correct, Ms. Nordvig?

13 MS. NORDVIG: I believe we have.

14 MS. KOSSOW: B was the one regarding --

15 THE COURT: You're about to hear. I can remind you.

16 MS. KOSSOW: One was specific to the recording, and
17 one --

18 MS. NORDVIG: This is I think specific to the
19 recording.

20 THE COURT: You are about to hear a recording in a
21 foreign language. You will receive a translation. I think it
22 is supposed to say you will receive a translation. You must
23 rely on the translation provided. Even if you understand the
24 language in the record, do not translate the recording for

1 other jurors. If you believe the translation is incorrect,
2 let me know immediately by writing me a note and give it to
3 the bailiff. I don't think we are going to give them a written
4 translation. So that sort of implies maybe we are. You are
5 about to hear a recording of a foreign language. Maybe it
6 will be transcribed for you is more appropriate. We are not
7 going to give them a copy of that transcript, correct?

8 MS. NORDVIG: I think the Court's correct, Your
9 Honor. We need to remove that written language so they don't
10 think they are getting a transcript of the entire thing to be
11 consistent with your ruling.

12 THE COURT: Okay. Second line of the previously
13 marked Exhibit B will read: It will be translated for you.
14 Is that okay?

15 MS. KOSSOW: Yes.

16 THE COURT: The second sentence will be removed and
17 we'll add that in. I will get that typed in over the lunch
18 hour and substitute it in as Exhibit B. The record should
19 reflect the source is Cal. Crim. 121 provided by the State.
20 The defense has it.

21 MS. NORDVIG: Yes.

22 THE COURT: We have another hearing we need to have;
23 is that correct, for Freestone?

24 MS. KOSSOW:: I don't believe so, Your Honor.

1 THE COURT: But are you going to want Exhibit C read
2 for some of Freestone, part of Freestone?

3 MS. KOSSOW: He will be introducing gang evidence
4 testimony specific to the tattoos as well.

5 MS. NORDVIG: Yes.

6 THE COURT: Would you like that read before he
7 begins testifying?

8 MS. NORDVIG: Yes. We know what he's going to
9 testify to.

10 THE COURT: All right. Okay. Does that satisfy all
11 the hearings we need to have before we continue with the next
12 witness?

13 MS. NORDVIG: There is just one more thing. It is
14 not about a hearing. It is a correction regarding Exhibit 130
15 that was marked but not admitted. That is from a pretrial
16 hearing that occurred on September 19th, 2017 not the 26th. I
17 was off by a week. My apologies.

18 THE COURT: Let's talk about transcripts. Are any
19 of the next three witnesses, are there transcripts you are
20 going to want to use?

21 MS. KOSSOW: Only for Mr. Freestone because he has
22 testified on two prior occasions. That is it.

23 MS. NORDVIG: And the one with detective Chavez
24 regarding the tape if he uses that, too.

1 THE COURT: The transcript?

2 MS. NORDVIG: I am sorry?

3 THE COURT: The translation?

4 MS. NORDVIG: Translation.

5 THE COURT: What I was talking about is the admitted
6 transcripts that are certified. I will have the clerk prepare
7 a certified transcript. It won't be certified, but a copy of
8 the certified transcript that was filed in for Mr. Freestone
9 and then we will prepare one for deputy Valenti is that who
10 you used?

11 MS. NORDVIG: Mr. Payne.

12 THE COURT: We'll also do, we have a partial one in
13 the record for Mr. Payne. That has been marked 130. We will
14 put the rest of the transcripts as we use them under 130.
15 None of those will go to the jury. They will just stay in the
16 record of what we used to provide to the witnesses. I am
17 becoming a little uncomfortable with all the refreshing the
18 recollection with documents, not just transcripts, but
19 documents and reports. I suspect with so much of that being
20 done, that we could get a question from the jury where is
21 report such and such that is not being admitted. So I think
22 you all need to think of a jury Instruction to give them with
23 regard to documents that have not been admitted or been
24 utilized to refresh recollection and will not be admitted for

1 them to review them. I tried to mention demonstrative things,
2 but it finally today hit me you're using a lot of documents
3 that have not been marked. I would like to have some
4 Instruction to the jury otherwise we are going to get a lot of
5 questions from the jury asking for those.

6 MS. NORDVIG: A separate issue to assist your clerk,
7 I believe detective Chavez also testified at the Grand Jury so
8 that may be another transcript that needs to be marked. I
9 don't know yet.

10 THE COURT: Yes. We'll do that.

11 MS. NORDVIG: That was in 2015.

12 THE COURT: Okay. Let's have lunch. I will see you
13 back here at 1:30.

14 (Whereupon the court adjourned for the noon recess.)

15 (Exhibits 131 and 132 marked for identification.)

16 THE COURT: Do you have anything for me, counsel.

17 MS. KOSSOW: No, Your Honor.

18 MS. NORDVIG: No, Your Honor.

19 THE COURT: Okay. Was there an Instruction that you
20 were supposed to be giving, consciousness of guilt
21 Instruction?

22 MS. NORDVIG: I thought you had that.

23 THE COURT: I probably do. I mean I do. Was there
24 anything else you wanted?

1 MS. KOSSOW: I don't know what that means, what
2 consciousness of guilt Instruction? Are you talking about
3 prior bad act?

4 THE COURT: No.

5 MS. NORDVIG: We talked about the advisory one, that
6 is one of the things we did at lunch one day.

7 THE COURT: I assume, was there an issue with regard
8 to flight in this case?

9 MS. KOSSOW: Yes.

10 THE COURT: Was that an issue you were going to
11 argue that wasn't a consciousness of guilt issue, that is what
12 made it relevant?

13 MS. KOSSOW: The State did a consciousness of guilt.
14 We based it on the threat the defendant made toward Elder
15 Rodriguez. The pretrial ruling on that was it was going to
16 come in.

17 THE COURT: The defense was supposed to give the
18 judge a cautionary Instruction. We do have a cautionary
19 Instruction which is why I wanted to know if you wanted to do
20 a special one with regard to the threats.

21 MS. NORDVIG: I think the one we submitted as a
22 cautionary one -- Court's indulgence.

23 THE COURT: You didn't feel well, you hadn't given
24 it to me.

1 MS. NORDVIG: We did at lunch. We brought it back.
2 I think that is Special Instruction C.

3 THE COURT: I do have Special Instruction C. You
4 all agreed to that. I wasn't sure. We have been using it.
5 We used it for the witnesses we have had. I didn't know if
6 you felt as comfortable using that Instruction for the threat
7 issue.

8 MS. NORDVIG: For the threat issue or for the flight
9 issue?

10 THE COURT: Either one.

11 MS. NORDVIG: Well, technically one happened during
12 the other.

13 THE COURT: Oh, well whatever. I just want to make
14 sure there isn't another Instruction you all wanted to give to
15 the jury that was something different.

16 MS. NORDVIG: Not during the trial. We'll probably
17 have a flight Instruction for the regular jury packet. I
18 can't remember if we submitted it or not. I haven't looked at
19 those for two days.

20 THE COURT: I think there is a flight Instruction.
21 So we are going to use Exhibit B slightly modified. I will
22 read it from the draft. Okay. Anything else? All right.
23 Thank you. Bring the jury in.

24 MS. KOSSOW: No, Your Honor. I am sorry.

1 MS. NORDVIG: No thank you, Your Honor.

2 THE COURT: Counsel will you stipulate to the
3 presence of the jury?

4 MS. KOSSOW: State would so stipulate.

5 MS. NORDVIG: Defense stipulates.

6 THE COURT: Thank you. Please be seated. State can
7 call the next witness.

8 MS. KOSSOW: State would call Monica Siewertsen.

9 THE COURT: You may proceed.

10

11 MONICA SIEWERTSEN

12 called as a witness, having been first duly sworn,
13 took the witness stand and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MS. KOSSOW:

17 Q Ma'am, could you please state your full name and
18 spell your last for the court reporter?

19 A Monica Siewertsen, S-I-E-W-E-R-T-S-E-N.

20 Q Thank you. Ma'am what is your current occupation?

21 A I am currently employed as criminalist with the
22 Washoe County Sheriff's Office Forensic Science Division in
23 the biology unit.

24 Q Could you briefly explain what a criminalist is?

1 A A criminalist is someone who takes items of evidence
2 and uses scientific techniques or procedures in order to
3 attempt to analyze evidence and provide information in
4 criminal investigations.

5 Q Exactly what area do you work in the biology
6 section?

7 A So the biology section is made of two sections, the
8 primary examination unit and the DNA unit. The primary
9 examination unit is looking at items of evidence when they
10 first come in, just providing a description, documenting what
11 the item is and then either swabbing that item for possible
12 residual DNA or identifying biological material and removing a
13 portion of that to send to the DNA unit. The DNA part of the
14 biology section performs DNA typing analysis.

15 Q Can you please summarize your relevant education,
16 training and experience that qualifies you to hold the
17 position as a criminalist in DNA?

18 A I have a Bachelor of Science from the University of
19 Waterloo in Waterloo, Canada. I have approximately six years
20 research experience in the area of molecular biology which
21 uses DNA analysis and different techniques to answer specific
22 research questions. Three years at the Hospital for Sick
23 Children in Toronto, Canada. And I have three years at the
24 King Faisal Specialist Hospital in Saudi Arabia. I have over

1 20 years experience performing DNA typing analysis. I worked
2 for the Royal Canadian Mounted Police in Edmonton, Alberta,
3 Canada. Mesa Police Department, Mesa, Arizona, the San
4 Bernardino County Sheriff's Office in San Bernardino,
5 California and the Washoe County Sheriff's Office.

6 Q How long have you worked at the Washoe County
7 Sheriff's Office?

8 A I have been employed there since January 2009.

9 Q Could you estimate for us, Ms. Siewertsen, the
10 number of pieces of evidence you have examined for the
11 presence of DNA while you have been employed as a criminalist
12 performing DNA analysis?

13 A I have not counted. I don't know, but it would be
14 several thousand for sure.

15 Q Have you previously testified as an expert witness
16 in state court and rendered an opinion as to the results of
17 your DNA analysis?

18 A Yes.

19 Q And how many times can you estimate that you
20 testified in the capacity as an expert involving DNA analysis?

21 A Again, I haven't counted, but definitely over 75
22 times.

23 Q Did you render the opinion as to the presence of DNA
24 in at least those 75 cases?

1 A Yes.

2 Q I want to ask you specifically about your
3 involvement in the November 2010 homicide, SPD case 10-11637.
4 Did you have a role in that investigation?

5 A I did.

6 Q Were you asked to review items for possible
7 biological evidence and analyze those items for the presence
8 of DNA?

9 A Yes.

10 Q Did you generate reports associated with that SPD
11 case number?

12 A I did.

13 Q How many reports did you generate?

14 A I believe there are three reports.

15 Q Was there a report that was actually under a
16 different SPD case number?

17 A Yes.

18 Q Were those cross referenced at some point?

19 A Yes.

20 Q I'd like to show you or I'd like to provide you --

21 THE INTERPRETER: The interpreter is having
22 difficulty hearing the witness.

23 THE COURT: Okay.

24 THE WITNESS: I will try to speak louder. Sorry.

1 THE COURT: Okay. Can you hear her now?

2 THE INTERPRETER: That was good. Thank you.

3 THE WITNESS: Okay.

4 BY MS. KOSSOW:

5 Q I would like to provide you with Exhibits 106, 107,
6 108 and 109. I will have you look at those and see if you
7 recognize what those are.

8 A These are the four reports that I authored for the
9 two cases that you mentioned previously.

10 Q Okay. What I would ask, if you need to refresh your
11 recollection as we go along, if you are going to refer to one
12 of those reports, could you give us the exhibit number and the
13 page you are looking at?

14 A Yes.

15 Q Subject to any objection by defense, all right?

16 A Okay.

17 Q So let's first of all tell me a little about what is
18 DNA?

19 A DNA is an acronym for deoxyribonucleic acid often
20 referred to as the blueprint of life because it does contain
21 all information that any living thing needs to perform its
22 daily functions to grow from a small being to a large being
23 and to pass on the traits from one generation to the next.

24 Q And how do you -- Can you explain to the jurors how

1 you go about testing for DNA on items of evidence?

2 A Yes. Approximately 99 percent of the DNA that
3 humans have is the same for all individuals. It is what makes
4 us human. It is what gives the characteristics of arms and
5 legs, allows us to have the same bodily type functions, grow
6 and pass on our traits. Approximately one percent of the DNA
7 molecule differs from person to person. Some of those
8 differences are obvious. An individual may have blond hair.
9 An individual may have brown hair. Someone may be short.
10 Someone may be taller. As a forensic criminalist, I am
11 actually interested in areas that currently have no known
12 function but differ from person to person. The idea is to
13 remove the DNA from any cells that are present, either cells
14 left behind when you touch something or from a biological
15 material that may have been identified to remove the DNA to
16 determine how much DNA I actually have for any particular
17 sample. To make copies of the particular areas that I am
18 interested in the DNA molecule and to basically produce a DNA
19 typing profile. I do that for every unknown or questioned
20 sample that I receive in any particular analysis that I
21 perform. Then I perform the exact same analysis with
22 reference samples. A reference sample is a sample taken from
23 an individual. So we know the source of that sample. I
24 produce a DNA profile for reference samples, then I compare

1 the DNA profile from a questioned sample to the DNA profile
2 from a reference sample. There are three basic conclusions.
3 An individual can be absolutely excluded being the possible
4 source of the sample. An individual can be included as being
5 the possible source or a result can be inconclusive in that I
6 cannot make any conclusions regarding the results that I have.

7 Q So you reached those either exclusion, inclusion or
8 inconclusive by interpreting the results that you get from
9 analyzing the DNA?

10 A That's correct. I would interpret the profile. A
11 profile, I guess I can explain the interpretation, too. I
12 would know or I know what a profile looks like if it is
13 contributed from one individual if the source of the
14 biological material is only a single individual. But I can
15 also tell if the source of the DNA profile is from more than
16 one individual. So if that is the case, then I need to be
17 able to look further and see can I distinguish the
18 contributors, can I determine if one person has contributed
19 more DNA than the other and, therefore, I am able to pull out
20 a profile of the person that contributed more DNA. Or is
21 there an equal contribution from a number of individuals, in
22 which case I cannot interpret that particular mixture and
23 there would be no conclusions as to that.

24 Q I wanted to ask you about some other possible

1 results that go along with what you just explained. Is it
2 possible to test an item and you get no DNA?

3 A Absolutely.

4 Q Can you explain how that happens?

5 A Yes. Every time you touch an item, you have the
6 potential to leave behind skin cells. Some skin cells will
7 still have DNA inside. If I am able to swab an item someone
8 has touched, I attempt to remove the cells. Then I determine
9 whether any DNA is there. The technique we utilize has a
10 certain sort of threshold associated with it. I need a
11 certain amount of DNA in order to be able to obtain reliable
12 results. So it is possible DNA was left behind, but it is
13 such a low amount that it doesn't meet the requirement for me
14 to be able to interpret it.

15 Another situation is someone can touch an item and
16 actually leave no cells that have DNA intact, so those are
17 some of the possibilities.

18 Q And is everyone on an equal level when we touch
19 something and leave the exact same amount of DNA?

20 A Not necessarily. A good example of that would be
21 fingerprints. Our fingerprints are along the same line. It
22 is not the same as DNA, but an example of one individual
23 touching an item and leaving a fingerprint and another
24 individual touching an item and not leaving a fingerprint. If

1 you were to go to a party and you were handed a glass at the
2 beginning, there was ten people and each of you were told to
3 use that glass only for the evening, then you were to hand it
4 in at the end of the evening, some glasses are going to be so
5 cloudy from someone touching them you're not going to be able
6 to see through the glass. But there will be other glasses
7 that appear clean, the person didn't actually even handle it.
8 Some individuals have more oily skin than others. They leave
9 fingerprints or shed more DNA than others.

10 Another example could be depending how cold or warm
11 an individual is. If you are sweating, you're potentially more
12 likely to leave cells behind. If you are cold, you are less
13 likely to leave cells behind. If you have just recently washed
14 your hands, you may not leave cells behind or as many cells
15 behind when you touch something. If it has been a while since
16 you washed your hands, there may be more cells ready to come
17 off when you touch something. So there is no absolute way to
18 know for sure cells will or will not be left behind.

19 Q Can things like the weather actually affect an item
20 let's say for example an item left outside, then you are asked
21 to process that item to find DNA? Could the weather actually
22 affect whether the DNA is still on the item?

23 A Yes. If an item is left outside uncovered and it
24 rained, then the cells that are left on an item may be washed

1 away. The sunlight is not very good for cells or for DNA. So
2 if it is exposed to the elements and wind, potentially
3 anything left on it could actually be removed or it may be
4 damaged enough it is no longer useful in the type of
5 techniques we utilize at the laboratory.

6 Q One last question in regards to possible results.
7 You talked a little about seeing some mixtures. Is it possible
8 the results could be a mixture of two, three, even four
9 people? How does that affect your analysis or your
10 interpretation?

11 A Yes, it is possible, depending on the amount of DNA
12 that individual leaves behind. I may see DNA from three or
13 four individuals. Whether I am able to make an interpretation
14 of the mixture depends on the difference and the amount of DNA
15 that each of the contributors leaves behind. If one person
16 leaves a large amount of DNA, then I most likely will be able
17 to interpret that individual's profile in the mixture because
18 I can easily pick out results from that individual.

19 If the individuals contribute equal amounts of DNA,
20 then it is difficult for me to distinguish what result came
21 from what individual, and then the results would generally be
22 no conclusion.

23 Q Thank you. Let me ask you beginning with this case,
24 were you asked to develop a DNA profile from reference

1 standards regarding individuals in this case?

2 A As part of the work, yes.

3 Q Let me ask you about some of those. Did you develop
4 a DNA profile for Moises Vasquez?

5 A Yes.

6 Q How did you develop that profile -- from what?

7 A I am going to refer to my report. That is going to
8 be court Exhibit 109 and page 13. It was a reference blood
9 sample from Moises Vasquez.

10 Q Do you recall the control number for that sample?

11 A That is Q 83604.

12 Q Thank you. Same question, did you develop a DNA
13 profile for Kevin Melendez?

14 A Yes, referring to court Exhibit 109.

15 Q Same question would be how did you develop that
16 profile, from what?

17 A Page 2 of 3, I am sorry, the name you said?

18 Q Kevin Melendez?

19 A It was a reference blood sample. The control number
20 is Q 86529.

21 Q Next did you develop a DNA profile for an individual
22 by name Luis Alejandro Menendez-Cordero?

23 A Yes.

24 Q What was the DNA developed from?

1 A Reference saliva control number of Q 06006.

2 Q Finally, did you develop a DNA profile for Elder
3 Rodriguez?

4 A Yes. That was a reference saliva sample. The
5 control number is W279289.

6 Q Thank you. Before I start asking you about the
7 individual pieces of evidence, how do you determine what you
8 are going to test in let's say a murder case with a lot of
9 evidence? How do you determine what you are going to focus in
10 on?

11 A That determination is made on the circumstances of
12 the particular event in conjunction with detectives or
13 individuals involved in the investigation as well as the
14 laboratory director and any D.A. that might be assigned to the
15 case at that time. Attempting to use the case synopsis, we
16 provide input what items might be most useful in providing DNA
17 typing results.

18 Q For instance, in this case, we saw an entire car
19 that was searched and items were seized from that. Would it
20 be unusual for yourself to test every item found in a car
21 which would be twenty, twenty-five items?

22 A It would be very unusual to test every item, yes.

23 Q Why is that?

24 A We are attempting to -- A lot of items that are

1 collected initially, there is only one opportunity to collect
2 items from for instance the vehicle. But the initial analysis
3 we are attempting to provide information with what would be
4 the best sample based on the circumstances of the particular
5 situation.

6 Q So I would like to start with your report
7 L5667-10-10. Within that report, I would like to ask you
8 about the Crystal Geyser water bottle?

9 A Yes.

10 Q Did you test that item?

11 A I swabbed that item, yes.

12 Q Thank you. Can you tell us how you swabbed it?

13 A Yes. That was a one gallon water bottle. I swabbed
14 the handle of that water bottle for possible residual DNA, so
15 DNA left behind by someone who may have handled the item. I
16 also swabbed the remaining portion of the water bottle again
17 for potential DNA left behind by someone who may have handled
18 it. Those were given the designation of A-1 and A-2.

19 Q Do you recall this particular water bottle? You
20 described it as a handle. Did it have sort of a white handle
21 on the top of the bottle?

22 A I would have to look at my note specifically.

23 Q If I show you a picture, would that refresh your
24 memory possibly?

1 A Yes.

2 Q Let me show you what has previously been admitted as
3 Exhibit 20. Again do you see an item in Exhibit 20 that
4 appears to be a similar item to the one that you tested?

5 A Yes. That would be the Crystal Geyser water bottle
6 that is in the sink.

7 Q And the handle you swabbed is A-1. You can touch
8 the screen if you need to point out. Do you see that in the
9 photograph?

10 A Yes. That's going to be the white strip here that
11 is over the top of the water bottle.

12 Q Thank you. Then the rest of bottle you swabbed as
13 A-2?

14 A Correct.

15 Q Let's talk about the results for the A-1 and A-2
16 swabs.

17 A Yes.

18 Q What were those results?

19 A Okay. Referring to the report Exhibit 109, the DNA
20 results from the A-1 and A-2 Crystal Geyser water bottle swabs
21 indicated contributions from at least three and at least four
22 individuals. Due to the number of contributors and the nature
23 of the mixture, no conclusion can be offered for the DNA
24 results.

1 Q So I am assuming that is what we talked about
2 earlier, especially let's say for instance the bottle just
3 came from a store, a 7-Eleven, is it possible multiple people
4 touched it even before the person purchased it?

5 A Absolutely. There is DNA present from at least
6 three on the A-1 swab and at least four individuals, and they
7 are not of differing amounts of DNA enough for me to be able
8 to pick out a DNA profile of any one contributor.

9 Q You can't include or exclude anyone. You just can't
10 make an interpretation of those results?

11 A Correct.

12 Q Let's ~~move on to the~~ Mitsubishi Eclipse. Did you
13 analyze some swabs that were taken from a Mitsubishi Eclipse?

14 A Yes.

15 Q I am sorry. Your report L5667-10-13, 15, 16 which
16 under is 109?

17 A Court Exhibit 109.

18 Q What, first of all, what control number did you
19 receive those swabs under?

20 A Q 86502.

21 Q Did you test everything under that Q number?

22 A I did not.

23 Q Let's talk about number 3 under that Q number. What
24 was that?

1 A They were swabs that were collected from a Canada
2 Dry tonic water bottle that was located in the center console.

3 Q And tell me, did you analyze that for the presence
4 of DNA?

5 A Yes.

6 Q What were the results of the Canada Dry tonic water?

7 A Referring to page 3 of 3 on that report, the DNA
8 results for the swabs collected from the Canada Dry tonic
9 water bottle indicate contribution from at least two
10 individuals. Due to the low level of DNA, no conclusions can
11 be offered.

12 Q So again, ~~Ms. Siewertsen~~, you can't include or
13 exclude. You just can't make a determination based on the
14 evidence that was presented to you?

15 A Based on the amount of information I obtained from
16 DNA, there is insufficient for me to make a conclusion of
17 inclusion or exclusion.

18 Q Under that same Q number number 11, is that a series
19 of swabs that you tested?

20 A It is one set of swabs that swabbed the interior
21 lock, the window control and the window swabs.

22 Q From the passenger door?

23 A Correct.

24 Q You did analyze those swabs for the presence of DNA?

1 A Yes.

2 Q What was the results for those swabs?

3 A The results indicated contribution from at least two
4 individuals. A male dominant partial DNA profile was
5 determined from this mixture, Moises Vasquez, Kevin Melendez,
6 Luis Alejandro Menendez-Cordero and Elder Rodriguez were all
7 excluded as being the source of that male dominant partial DNA
8 profile I obtained from the mixture of those swabs.

9 Q Was there a minor contributor or trace contributor?

10 A There was at least one other contributor. Due to
11 the low level of DNA, I could make no conclusion on the
12 contributor of that DNA.

13 Q Again, I know I sort of already touched on this, as
14 far as how long DNA stays on an item, do we know the answer to
15 that?

16 A No would be the short answer.

17 Q It depends on the conditions, again the type of
18 person, everything that you previously talked about?

19 A Depends on how long a person comes in contact, how
20 many cells they shed and then what conditions the DNA was
21 subjected to after it was deposited on the item.

22 Q Thank you. I want to move on to cigarette butts.
23 Were you asked to analyze three Marlboro cigarette butts
24 collected from the crime scene?

1 A Yes.

2 Q Do you recall what the control number was for those
3 cigarette butts?

4 A Yes. Referring to Exhibit 109 page 1, the control
5 number is Q 83582.

6 Q You did analyze those three cigarette butts for the
7 presence of DNA?

8 A Yes.

9 Q What were the results that you found?

10 A For one of the cigarette butts, I developed an
11 unknown female partial DNA profile. From two of the other or
12 the two other cigarette butts I obtained ~~a~~ DNA profile from a
13 second or a different unknown female individual. Moises
14 Vasquez, Kevin Melendez, Luis Alejandro Menendez-Cordero and
15 Elder Rodriguez, Jr., are all excluded as being the source of
16 the unknown, the two unknown female DNA profiles that I
17 obtained from those cigarette butts.

18 Q So in this case, you were able to determine that the
19 DNA you could locate was contributed by a female?

20 A Correct, two different females.

21 Q Two different females. You were not given any
22 reference standards from females to develop in this case were
23 you?

24 A Correct, I was not.

1 Q Finally, Ms. Siewertsen, I wanted to talk to you
2 about a gun. Were you asked to swab and analyze for the
3 presence of DNA a firearm in this case?

4 A This was -- I was originally given the item under
5 the second case number, yes.

6 Q Okay. It originally came in under a different case
7 number or lab number than the L5667-10?

8 A Correct.

9 Q Did you later associate it with that number?

10 A I did. I did a comparison between the reference
11 sample and the DNA result from the weapon, yes.

12 Q Can you describe for the jury how you swabbed that
13 item? First of all, tell us what Q number was or associated
14 evidence number the firearm was.

15 A The control number W255129, and that control number
16 contained a Woodsman Colt automatic long rifle and seven
17 bullets.

18 Q Tell us how you swabbed the gun and any associated
19 materials with the gun?

20 A The trigger and trigger guard of the gun were
21 swabbed for possible residual DNA as A-1. The grip was
22 swabbed as A-2. The magazine that was present was swabbed as
23 A-3 and the seven bullets were swabbed as A-4.

24 Q So those were, as far as your understanding, those

1 were, what am I trying to say, bullets that had not been fired
2 yet? They were intact bullets?

3 A Yes. As they were packaged with the item. The
4 magazine was also present. I don't have personal knowledge,
5 but based on the way they were packaged, I would say they were
6 present in the magazine.

7 Q How they were presented to you?

8 A Yes.

9 Q Tell us the result for the A-1 and A-2 trigger and
10 trigger guard and the grip?

11 A Yes. Due to the low level of DNA obtained from each
12 of those sets of swabs, I could make no conclusion as to the
13 possible source of the DNA present on A-1 or A-2.

14 Q What about A-3 and A-4, the magazine and the seven
15 bullets?

16 A I obtained no DNA result from the swabs A-3 or A-4
17 which were the magazine and the seven bullets.

18 Q And going back to what we talked about earlier, if
19 you were to find out that gun and the magazine and the bullets
20 had all been outside for at least three months, four months in
21 the conditions in winter, would you be surprised there was
22 either a low level or no DNA found on that weapon?

23 A No, that wouldn't be unexpected, yes.

24 Q Were you asked to analyze the cartridge casings that

1 were found at the scene in this case?

2 A No.

3 Q And is there a reason why you weren't asked to
4 analyze those particular items?

5 A They are generally items we do not analyze. It is
6 historically because the item has been subjected to high heat,
7 and because the item is generally not touched for very long.
8 Chances of obtaining useful DNA is very, very limited.

9 Q So the fact the cartridge cases part of the
10 explosion when the gun is shot, is that what you are referring
11 to?

12 A Yes.

13 Q So really the results in this case, Ms. Siewertsen
14 amounted to no matching DNA, is that fair?

15 A There are very limited number of samples that
16 actually provided DNA profile I could interpret, and the ones
17 that did were female individuals.

18 Q Is it unusual to get these types of results in
19 cases?

20 A To not match individuals whose reference sample I
21 have?

22 Q Sure, to get a low level of DNA or no DNA?

23 A That is absolutely not unusual. Depending. I often
24 am examining items that an individual may have touched or have

1 been left behind and individuals have touched them. The
2 amount of DNA is very variable for those types of samples. So
3 sometimes we obtain excellent results, but other times we
4 obtain no result. There is no way to predict that prior to
5 doing the testing, so we attempt the testing in certain
6 instances when it is possible. Biological material provides
7 much more than DNA. They generally provide more useful
8 results.

9 Q By biological, you're talking about blood or semen?

10 A Correct.

11 Q Which we didn't have in this case. We did not.

12 MS. KOSSOW: Thank you. I have no further questions.

13 THE COURT: Cross-examination.

14 MR. VILORIA: Thank you, Your Honor.

15
16 CROSS-EXAMINATION

17 BY MR. VILORIA:

18 Q Good afternoon, Ms. Siewertsen?

19 A Good afternoon.

20 Q We met before?

21 A We have.

22 Q I want to ask when you analyze DNA, what is the
23 specific process that a DNA analyzer uses to get that
24 particular result?

1 A As to the actual technology we are currently using
2 is called STR or short tandem repeat analysis. One of the
3 techniques that we use in that process is called polymerase
4 chain reaction.

5 Q Are there -- strike that. Is that particular STR
6 process used within the Washoe County Crime Lab?

7 A It is for the Washoe County Crime Lab and it is the
8 overwhelming technique that is currently accepted in the
9 forensic science community.

10 Q Nationally and internationally?

11 A Yes.

12 Q Are there other techniques available to identify the
13 presence of a DNA profile other than the STR?

14 A I guess. I am not quite sure of the question. To
15 develop an STR profile you need to use the STR technology.

16 Q Are there other ways to detect DNA other than using
17 the STR process?

18 A Yes.

19 Q Okay. I want to jump to Exhibit 109 which I believe
20 you have up there. That is your -- is that report
21 L5667-10-13, 15, 16?

22 A Yes.

23 Q Okay. The first control number in your report is
24 150429, correct?

1 A Yes.

2 Q Those encapsulate the swabbing you personally did of
3 the Crystal Geyser water bottle?

4 A The two sets of swabs, yes.

5 Q When you're swabbing an item, tell me about the
6 actual process you use, the steps you take in actually
7 swabbing the physical item?

8 A Yes. Before each item of evidence is removed from
9 the packaging, the bench top would be cleaned with a bleach
10 cleaner or bleach type cleaner. I would be wearing a lab
11 coat, gloves and a mask. And the item would be opened. I would
12 make a description of the item, the brand, the size, the
13 color. Then I would use a set of clean swabs. So generally a
14 item is swabbed with two swabs, one wet swab and one dry swab.
15 The reason for that is when removing dried-on material for
16 example, possible cells left behind, the moistened swab would
17 help to lift the swab, and the dry swab would help to collect
18 it. They are run over the top of the complete surface area.
19 That set of swabs would be air dried and then packaged in an
20 individual box to keep them separated from any other swabs. So
21 in this case, I have a set for the handle and a set for the
22 remainder of the water bottle.

23 Q What biological sample size does an examiner need to
24 actually perform a PCR test?

1 A I can perform a PCR test on no DNA. The presence of
2 DNA does not prevent me from actually performing the test. If
3 you are asking DNA typing analysis at some point, it is like
4 following a recipe. You have certain amounts of each component
5 that you want to add in order to obtain an optimum result. It
6 is possible to attempt the analysis with less than an optimum
7 amount of DNA in order to attempt to obtain some information.

8 Q Okay. How many cells does the human body have?

9 A Billions.

10 Q And in each cell of those billions there contains
11 DNA?

12 A Except for red blood cells, yes.

13 Q And DNA can be found on anything such as skin,
14 saliva, blood?

15 A For skin it has to be cells that still contain DNA.
16 Some cells we shed no longer have DNA in them. For saliva, it
17 is not actually the liquid part of saliva, but the cells
18 present in the saliva that contain DNA.

19 Q In this case were you ever asked to determine the
20 type of tissue from which the cells you examined came from?

21 A No.

22 Q All right. As to the water bottle, the Crystal
23 Geyser in your report Exhibit 109 page 1, actually page 2, you
24 exclude three or four individuals, Moises Vasquez, Kevin

1 Melendez, Luis Menendez-Cordero and Elder Rodriguez?

2 A I am sorry. Where are you reading that from?

3 Q Exhibit 109 page 2?

4 A Yes.

5 Q At your results and conclusions?

6 A It does not say that.

7 Q Didn't you say you were referring to report
8 L5667-10-13-15-16?

9 A Right and on page 3 is where the actual results for
10 those swabs are. I believe what you are reading is the item I
11 actually examined.

12 Q Okay. I am referring to --

13 MR. VILORIA: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. VILORIA:

16 Q I am actually referring, for the record, I still
17 have Exhibit 109, I am referring to page 2 under portion
18 dictated results conclusion?

19 A That is not an exclusion statement that is a
20 paragraph that indicates the item I actually examined.

21 Q Okay. But those reference samples and you utilized
22 all four of those when examining the Crystal Geyser bottle?

23 A So DNA typing profile is obtained or attempt to be
24 obtained from a question item. A DNA typing profile is

1 obtained from a reference sample. The determination of what I
2 am able to interpret from a questioned item is done before I
3 do any comparison with the reference sample. In this case,
4 both A-1 and A-2 referring to page e of three on this report
5 Exhibit 109 states that I have contribution from at least
6 three and at least four individuals. And I determined that I
7 could not make any conclusions as to whether I could include
8 or exclude individuals. So there is just not enough
9 information to make any conclusion. That determination is
10 made before I do any comparison of the reference sample to the
11 questioned item.

12 Q Thank you for clarifying. Also on page 3, I want to
13 guide you to subject 11 regarding the interior lock and the
14 passenger door?

15 A Yes.

16 Q Okay. On that particular portion page 3 of Exhibit
17 109, you do exclude the four individuals, the reference sample
18 you just mentioned?

19 A Yes.

20 Q What is the significance of excluding a particular
21 reference sample you have been provided?

22 A So in this instance, I have a DNA result that
23 indicates there are two individuals who have contributed DNA.
24 I was able to pull out a partial DNA profile, so I did that

1 before looking at the reference sample. Then I compared the
2 DNA profile from the reference sample to the DNA profile I was
3 partially able to pull out of that mixture. And by saying the
4 individuals are excluded, they did not contribute DNA of that
5 partial DNA profile. There is at least one other individual,
6 but the amount of DNA from that individual is too low, and I
7 can't make any conclusions or any comparison of the reference
8 sample to the second component of that sample.

9 Q That sample was what you referred to on direct
10 examination as the trace result?

11 A Yes.

12 Q Okay.

13 MR. VILORIA: Court's indulgence.

14 THE COURT: Yes.

15 BY MR. VILORIA:

16 Q On direct examination, the State asked you about
17 hypothetically if a gun had been sitting outside, whether or
18 not cells could, DNA could be extinguished so to speak. Do
19 you recall that line of inquiry?

20 A Yes.

21 Q Were you given any factual allegations with respect
22 to this case when you first were presented the Colt Woodsman?

23 A I don't have specific recollection. In general, I
24 believe the item was given to me to determine, to swab the

1 item and determine if any DNA could be found, and then a
2 comparison would be made if DNA was available.

3 Q Did you have any knowledge as to where that gun had
4 been recovered?

5 A I don't specifically recall. I would have to look
6 at my notes.

7 Q Along that line of inquiry, if a gun is outside and
8 the components of the gun are inside, would you agree they are
9 somewhat protected from the elements?

10 A If they are inside something, correct.

11 Q Like a magazine for example?

12 A Yes.

13 Q When we touch something, say for example I touch
14 this pen, is there any way you can determine how many cells
15 that I have left or the nature of those cells, whether they
16 contain DNA?

17 A The only way I can determine that is by swabbing the
18 item and then determining how much DNA is present. That
19 doesn't necessarily tell me how many cells were left behind,
20 but it tells me how much DNA is currently there.

21 Q If I told you that I use this very same pen every
22 day during the workday and I touch it without wearing gloves,
23 would you expect to see some type of cells on the pen
24 containing my DNA profile?

1 A So the first thing for DNA I try to not expect
2 anything. It is often a common sense type thing where, if an
3 individual handles an item on a regular basis as you have just
4 described, then it wouldn't be unusual to find that person's
5 DNA there or to find DNA there. Whether there is sufficient
6 to be analyzed by our technique or whether it is just that
7 individual's or whether it is a number of individuals, the
8 analysis has to be performed, and I get the results that I
9 get.

10 Q Okay. I appreciate that. Again, I hand you this
11 pen for processing. Would it be unusual not to find my
12 profile on there?

13 A So it would not be unexpected to find his profile on
14 his pen that he handles on a daily basis. There are too many
15 unexpected. I don't want to get confused.

16 Q More likely than not, based on your training and
17 experience, you would likely find my profile on this pen?

18 A I would not be surprised to find your profile. I
19 can't say I would expect to find it, because if you only
20 handle the pen for a half hour after you washed your hands
21 every day, then I would not expect to see your DNA profile.
22 So there is a lot of variables, so it would not be unusual to
23 find your DNA on an item that you handle on a regular basis.

24 Q Thank you very much. I want to kind of switch gears

1 to the concept of transfer DNA. Do you know what that is?

2 A Yes.

3 Q Can you explain to the jury what the concept, how
4 DNA could be transferred?

5 A Okay. So when you touch an item or if you have a
6 blood stain on an item, and an individual touches an area that
7 someone else has touched or touches a liquid bloodstain and
8 then goes ahead and touches a second object or a second
9 individual, it may be possible to transfer the DNA of the
10 first individual or for example the blood to the second
11 surface, even though the two did not come into direct contact.

12 Q Does that concept still apply to the concept of
13 touch DNA, if I touch something, could it then be transferred
14 to that item and subsequently that item touched by someone
15 else and my cells, my DNA ends up on that person?

16 A So anything is possible. It is how likely something
17 like that is. So there has to be, in order for something to
18 get transferred from place to place, especially touch DNA,
19 there needs to be a significant amount for that to happen.
20 Often a long period of contact not only in obtaining the DNA
21 from the first individual but also in the contact with the
22 second item. So it is possible, but I can't say how likely
23 that is. Can't say.

24 MR. VILORIA: Court's indulgence.

1 THE COURT: Yes.

2 BY MR. VILORIA:

3 Q Okay. In Exhibit 109 you identify numerous pieces
4 of evidence that were presented to you under a certain control
5 number, correct?

6 A Yes.

7 Q Specifically Q 86502. You were provided with swabs
8 collected from inside the Mitsubishi Eclipse?

9 A Correct.

10 Q Those swabs were taken from a myriad of items.
11 Could you identify which items were presented to you, which
12 swabs were presented to you from inside the vehicle?

13 A Do you want me to read what is present in a control
14 number?

15 Q Do you recall particularly which swabs were
16 presented to you and what items of evidence they are
17 associated with?

18 A So, based on, we talked about how it is determined
19 which items are examined. Based on conversation and a
20 staffing for this particular investigation of the items that
21 were present in this control number, the two that I discussed,
22 number three which was the Canada Dry tonic water bottle
23 swabs, then the swabs from the lock, window control and window
24 of the passenger side door, those were the two items present

1 in that package that I was requested to analyze. So the whole
2 item was -- I retrieved the whole item but selected those two
3 items to analyze based on the information provided by all the
4 individuals.

5 Q A part of that information provided to you was that
6 the cigarette butts that you examined were possibly smoked by
7 a suspect, correct?

8 A That's correct.

9 Q The information also provided to you was that the
10 suspect sat in the passenger vehicle of the Mitsubishi,
11 correct?

12 A The suspect may have sat in, yes.

13 Q Do you recall the individual who relayed that
14 information to you or individuals?

15 A That would be the individuals that were present. We
16 have a case scenario supplied by the investigators of the
17 investigation as well as a D.A. assigned to that particular
18 investigation. So without referring to my notes, I would have
19 no recollection of the actual individual.

20 Q That is fair. I appreciate that. So whether an item
21 is examined for or processed for DNA, a large part of that
22 decision goes into what the investigators and law enforcement
23 are looking for, correct?

24 A That's not correct. What goes into it, there has to

1 be some summary of the possible event. There has to be some
2 starting point in an investigation. So as I mentioned at the
3 beginning, the purpose of the forensic science part is to take
4 the items that are believed to somehow be involved or
5 associated with an investigation that may provide forensic
6 evidence, to analyze those items and produce the DNA typing
7 profile if they are present and provide the information.

8 So in a situation where there is one individual that
9 is bleeding at a location and they are believed to be there,
10 analyzing one item at that location that has blood on it will
11 help to answer whether the blood present there comes from an
12 individual involved in the investigation regardless of who
13 asked to have that item analyzed. So there would be no point
14 in analyzing a bedsheet that was present that had a semen
15 stain on it if that had nothing to do with the investigation.
16 So if I analyzed everything that was present at every scene,
17 there would be information that is potentially not useful. So
18 by having some starting point as to the possible scenario that
19 occurred, I am attempting to provide information which items
20 that hopefully will provide DNA analysis not specific to an
21 individual or specific questions that law enforcement is
22 asking, but in general what we are asking and what would be
23 the answer to the questions.

24 Q Do you recall why the Canada Dry tonic water bottle

1 was asked to be swabbed and examined by you?

2 A I believe the recollection is it may have been drank
3 from by an individual or individuals that were in the vehicle.

4 MS. NORDVIG: Court's indulgence.

5 THE COURT: Yes.

6 MR. VILORIA: Thank you, Your Honor.

7 BY MR. VILORIA:

8 Q I would like to direct your attention to your
9 report, the laboratory report L5667-10-11. Do you have that
10 up there?

11 A Yes, the Court Exhibit 108.

12 ~~Q~~ Q Thank you. In this report you examined and swabbed
13 the Colt Woodsman?

14 A That's actually not correct. Sorry. The weapon was
15 submitted under a second laboratory case number and cross
16 referenced in this report. For this particular report, only
17 a reference sample was submitted.

18 Q And you are talking about laboratory report
19 L1269-11?

20 A Court Exhibit 106.

21 Q Let's go to that Exhibit. I apologize. This is
22 where you examined the Colt Woodsman and the seven bullets
23 contained in the item?

24 A And a magazine.

1 Q Did you do the same process for swabbing those items
2 as you did for the Crystal bottle?

3 A Same process.

4 Q Swabbing and testing?

5 A Yes.

6 Q That includes each bullet individually?

7 A No. The seven bullets were swabbed together. So
8 each bullet was swabbed separately but using the same separate
9 swabs.

10 MR. VILORIA: I will pass the witness, Your Honor.

11 THE COURT: Redirect?

12 MS. KOSSOW: State has no further questions.

13 THE COURT: Okay. May this witness be excused?

14 MS. KOSSOW: Yes, Your Honor.

15 THE COURT: Did you offer the Exhibits you talked
16 about?

17 MS. KOSSOW: The exhibits that were up with the
18 witness, no, Your Honor.

19 THE COURT: Thank you. You may step down.

20 (Witness Excused.)

21 THE COURT: Call your next witness.

22 MS. KOSSOW: Your Honor, the State would request a
23 short recess with the Court outside the presence of the jury.

24 THE COURT: All right. Ladies and gentlemen of the

1 jury, it is a little early for your afternoon recess. We may
2 have you just do it anyway since we are at that time. It may
3 turn out to be a little longer. I have to give the lawyers a
4 break too after they present their argument.

5 Remember during this break do not discuss the case
6 among yourselves or with anyone else. Do not allow anyone to
7 speak about the case to you. Do not make any independent
8 investigation or inquiry into any facts and circumstances
9 surrounding this case, and do not make any experiments or
10 conduct any investigation into the location of the events.

11 You may go into the jury room. We'll call you back
12 out in a few minutes.

13 (Whereupon the jury left the courtroom.)

14 THE COURT: Please be seated. Ms. Kossow.

15 MS. KOSSOW: Your Honor, as you recall yesterday the
16 State late in the afternoon made an application for a material
17 witness order. It was granted by this Court. Mr. Rodriguez
18 has appeared. He's outside. I would ask for a brief break to
19 speak with him. I am assuming at some point he will have to
20 be brought before the Court regardless whether he's going to
21 testify or not. I would like a chance to speak with him
22 first.

23 THE COURT: He voluntarily came today?

24 MS. KOSSOW: He did.

1 THE COURT: We'll take a short recess for you to
2 inquire. Court's in recess.

3 (Short recess taken.)

4 MS. KOSSOW: Judge, Mr. Rodriguez is right outside.
5 I would like to bring him in to address the warrant prior to
6 him testifying. He's going to testify today.

7 THE COURT: Next?

8 MS. KOSSOW: Yes.

9 THE COURT: Can we do it all at one time?

10 MS. KOSSOW: Sure. Sure. You mean just keep him on
11 the stand? You didn't want to do it in front of the jury did
12 you?

13 THE COURT: No. Sir, why don't you come forward and
14 be sworn. We'll also swear him in front of the jury. You may
15 proceed.

16
17 ELDER RODRIGUEZ
18 called as a witness, having been first duly sworn,
19 took the witness stand and testified as follows:
20

21 EXAMINATION BY THE COURT

22
23 THE COURT: Good afternoon, Mr. Rodriguez.

24 THE WITNESS: Afternoon.

1 THE COURT: I am Judge Steinheimer. I was requested
2 to issue a material witness order that you be arrested on the
3 warrant last night.

4 THE WITNESS: Okay.

5 THE COURT: You have voluntarily appeared before us
6 pursuant to the subpoena now, correct?

7 THE WITNESS: Correct.

8 THE COURT: You are cooperating with everyone
9 involved in the trial?

10 THE WITNESS: Yes.

11 THE COURT: So at this time, if there is no
12 objection, I am going to quash the warrant.

13 MS. KOSSOW: No objection by the State.

14 MS. NORDVIG: None. Thank you.

15 THE COURT: I will quash the warrant and allow you
16 to go on about your business after you are through with your
17 testimony today.

18 THE WITNESS: Okay. Thank you.

19 THE COURT: Now what I would like do, I am going to
20 have you sit in the front row back there and just, you will be
21 sworn again in front of the jury so they can see that you are
22 sworn to tell the truth, then you will retake the stand.

23 THE WITNESS: Okay.

24 THE COURT: And that's when your testimony will

1 start.

2 THE WITNESS: Okay.

3 THE COURT: Counsel have you determined the witness
4 has no intention of invoking?

5 MS. KOSSOW: Yes, Your Honor.

6 THE COURT: You may step down. We'll call you in
7 just a moment.

8 THE WITNESS: Thank you.

9 THE COURT: Please bring the jury in. Counsel, will
10 you stipulate to the presence of the jury?

11 MS. KOSSOW: State so stipulates, Your Honor.

12 MS. NORDVIG: Defense stipulates.

13 THE COURT: Call your next witness.

14 MS. KOSSOW: State would call Elder Rodriguez.

15 THE COURT: You may proceed.

16

17 ELDER RODRIGUEZ

18 called as a witness, having been first duly sworn,
19 took the witness stand and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MS. KOSSOW:

23 Q Thank you. Sir, can you state your full name and
24 spell your last for the court reporter?

1 A Elder Rodriguez, R-O-D-R-I-G-U-E-Z.

2 Q Sir, how old are you?

3 A 35.

4 Q Do you currently -- Are you currently working? You

5 don't need to tell me where. Are you currently employed?

6 A Not at the moment. Our season is over.

7 Q And have you lived in the Reno-Sparks area for a

8 long time?

9 A Born and raised.

10 Q Throughout your lifetime or specifically in 2010,

11 were you known-- did you have any nicknames?

12 A People would call me Primo.

13 Q I want to go back to that time period of November

14 2010. Did you know a woman by the name of Kristine Yost?

15 A Yes, I did.

16 Q How did you know her?

17 A I think we just met through friends.

18 Q Had you ever gone to her apartment?

19 A On occasion. A few times.

20 Q Was that located at 1000 El Rancho Boulevard number

21 A-5?

22 A I believe so, yes.

23 Q I am going to show you, it is on that screen right

24 in front of you, what has been admitted as Exhibit 115. Do

1 you recognize who is shown in Exhibit 115?

2 A I believe that is Kristine.

3 Q This is, would it be fair to say, a more updated
4 picture. This is what she looked like when you knew her?

5 A I think so. She looks like Kristine. She looks
6 familiar.

7 Q And so did you know a lady by the time of Crystal
8 Moreno?

9 A I knew of her, yes.

10 Q How many times do you think you had been over to
11 Kristine's apartment at 1000 El Rancho Drive?

12 A No more than ~~just a~~ few.

13 Q Did you ever go there with an individual by the name
14 of Luis or Alex or Appo?

15 A Yes.

16 Q How many times do you think you went over to the
17 apartment with Appo?

18 A I don't remember that.

19 Q What did you call this individual? What do you
20 recall their name being?

21 A I knew him as Alex or Appo.

22 Q How many times had you met this individual, Alex or
23 Appo in around that November 2010?

24 A Only a few times. I recently had met him.

1 Q Had you hung out with him other places than Kristine
2 Yost's apartment?

3 A Possibly a few times. Not much.

4 Q I want to direct your attention to November 19th,
5 Friday, into November 20th of 2010. Do you remember having
6 contact with the person you knew as Alex or Appo on that
7 evening?

8 A Yes.

9 Q And did you have some type of plans to hang out?

10 A It wasn't planned. It just happened after my plans
11 had cancelled.

12 Q Okay. What did you end up doing with him?

13 A Going over to the party or the house party.

14 Q Whose house was it?

15 A Kristine's.

16 Q Any idea what time you arrived at Kristine's?

17 A I don't remember exactly what time.

18 Q Prior to going to Kristine Yost's apartment, did you
19 stop anywhere, a store anywhere along the way?

20 A Yes, stopped at a store.

21 Q Do you remember what store it was?

22 A 7-Eleven.

23 Q I want to show you, again it will be on that screen
24 in front of you.

1 MS. KOSSOW: May I publish Exhibit 110?

2 THE COURT: You may.

3 MS. KOSSOW:

4 Q 110 which has previously been admitted. I am going
5 to stop it right at the beginning. Do you recognize the
6 vehicle that is shown on camera 8? Oh, sorry. You can't.

7 THE COURT: Did it go to sleep on you?

8 BY MS. KOSSOW:

9 Q It was my fault. Now do you recognize what vehicle
10 is shown in that camera angle?

11 A That was my vehicle.

12 Q Back in November of 2010?

13 A Yes.

14 Q Let me play it. Do you recognize who is getting out
15 of the vehicle at this point?

16 A That would be me.

17 Q This is on the same evening you were going over to
18 Kristine Yost's apartment with Alex or as you knew him, Appo?

19 A Yes.

20 Q Do you know what you bought at the store before
21 going over to her apartment?

22 A Looks like beer.

23 Q Anything else?

24 A And water.

1 Q So the time on the video is about 1:40 a.m. in the
2 morning. Do you recall that being the time right before you
3 went over to Kristine Yost's?

4 A I can't remember that.

5 Q Did you go anywhere else after the 7-Eleven?

6 A I believe to the party.

7 Q You don't recall going anywhere in between after the
8 7-Eleven?

9 A I don't remember exactly, no.

10 Q And how far is this 7-Eleven away from where
11 Kristine Yost's apartment was?

12 A It's about maybe five, ~~six~~ blocks away. Four or
13 five blocks, something like that.

14 Q Pretty close?

15 A Not too far.

16 Q When you went into the store, now you are backing
17 out again, is there anyone in your vehicle in the parking lot?

18 A I don't remember that.

19 Q Well so you talked about taking somebody with you to
20 the party, right?

21 A Yes.

22 Q Who did you take with you?

23 A I took Alex with me.

24 Q And do you recall whether he was in the car with you

1 at the time you went to the 7-Eleven?

2 A I don't remember if he was before or afterwards.

3 Q Where did you pick him up?

4 A At a restaurant that is not far from the 7-Eleven
5 called Sticky Fingers. Used to be call Sticky Fingers.

6 Q When you picked him up, do you remember what he was
7 wearing?

8 A No, I do not.

9 Q You were interviewed by police in this case after
10 the shooting; is that fair to say?

11 A I am not sure how to answer that.

12 Q Did the police -- Did you ~~spea~~ speak with police in an
13 interview after the shooting happened, meaning the next day?

14 A Yes, I did.

15 Q You met with detectives. They asked you about what
16 happened?

17 A Yes.

18 Q And you answered their questions?

19 A Correct.

20 Q Do you recall telling detective Begbie during that
21 first interview -- Excuse me. You were interviewed on two
22 occasions?

23 A I believe I was interviewed multiple times.

24 Q So in the second interview by the same detective, is

1 that what you recall?

2 A Yes.

3 Q The second interview, did you tell detective Begbie
4 you picked up Alex prior to going to the 7-Eleven? Do you
5 recall that?

6 A I don't remember that, no.

7 Q Tell me what happens once you get to the apartment
8 complex where Kristine Yost lived?

9 A We just pulled up, and I believe we met with -- we
10 ran into Kristine, and she let us in the house.

11 Q When you say you ran into her, do you mean outside?

12 A Outside in the parking lot. ~~in the parking lot~~

13 Q When you entered, did you know the people or were
14 there any people inside the apartment?

15 A Yes, there was.

16 Q Do you recall who was in there?

17 A Most of them I didn't know personally.

18 Q Where did you go once you went inside the apartment?

19 A Inside I went around greeting people, sat down in
20 the living room.

21 Q Do you remember what type of furniture in the living
22 room or were you standing?

23 A I believe it was just like a love seat.

24 Q Let me show you Exhibit 44. Do you recognize one of

1 the vehicles shown in Exhibit 44?

2 A Yes, I do.

3 Q And that is a touch screen in front of you. You can
4 touch and circle or make a mark. Can you make a mark on the
5 vehicle that you recognize, and how do you recognize it?

6 A It is my vehicle.

7 Q Is this in the parking lot of Kristine Yost's
8 apartment?

9 A Yes, it is.

10 Q I'd like to show you Exhibit 11 which I believe has
11 previously been admitted.

12 THE COURT: Correct.

13 MS. KOSSOW: Thank you.

14 BY MS. KOSSOW

15 Q Just ask if you recognize what is shown in Exhibit
16 11?

17 A The love seat and a chair, table and a jacket.

18 Q Okay. I am sorry what did you say?

19 A Table and a jacket.

20 Q Do you recognize what room this is or where this is?

21 A Living room.

22 Q At Kristine Yost's?

23 A Correct.

24 Q Can you show us in this picture where you were

1 seated inside the apartment?

2 A Seated right here on that love seat.

3 Q You circled a jacket. Do you recognize that jacket?

4 A That was my jacket.

5 Q When you went into the apartment with Alex or Appo,
6 where did he go?

7 A I don't remember that.

8 Q What do you do while at Kristine Yost's apartment?

9 A Just hang out, kind of get the feel for the
10 environment. Trying to fit in.

11 Q Was there a group of other people inside the
12 apartment?

13 A Yes.

14 Q What were they doing?

15 A Playing cards I believe.

16 Q Was there anyone else seated with you in that living
17 room area?

18 A I believe at some point there might have been
19 somebody sitting around.

20 Q Anyone sitting in that sort of recliner chair, do
21 you recall?

22 A I don't remember too much if there was somebody
23 there, but I do remember somebody in the living room at one
24 point.

1 Q And how long do you think you were at Kristine
2 Yost's apartment overall that evening?

3 A I can't remember that.

4 Q At some point, do you decide to leave the apartment?

5 A We step out -- I stepped out to have a cigarette.

6 Q And do you stay there?

7 A No. Once I finished I wanted to go to the store and
8 get some beer.

9 Q What store were you going to go to?

10 A To another 7-Eleven.

11 Q Was there another 7-Eleven closer to the apartment?

12 ~~A~~ Yes.

13 Q Would that be the G Street 7-Eleven?

14 A I believe so, yes.

15 Q Do you make it all the way to the store?

16 A I made it just about to the store, to the parking
17 lot.

18 Q And what happened? Why do you not get to the store?

19 A I got a phone call.

20 Q From who?

21 A From Kristine.

22 Q Tell me what was her demeanor? What was she acting
23 like?

24 A I couldn't understand her. She was pretty at this

1 time much yelling. It was kind of hysterical, you know.

2 Q Could you make out any words she was saying?

3 A No, not at all.

4 Q What do you do based on this phone call?

5 A I start making my way back to the apartment.

6 Q What happens when you get back?

7 A There was police and everybody was being -- the road
8 was being belonged off by police.

9 Q Did you have any idea what happened at that point?

10 A At that point, no.

11 Q Do you end up leaving the area altogether?

12 A Yes.

13 Q But you didn't take your car, did you?

14 A No.

15 Q You didn't take your jacket?

16 A No. I wasn't allowed to take my car out of the
17 parking lot.

18 Q I think I might have already asked you, do you
19 recall what Alex or Appo was wearing the evening that you
20 picked him up?

21 A I don't remember that.

22 Q Do you remember the detective asking you about what
23 he was wearing when he interviewed you?

24 A I don't remember, no.

1 Q So if you told him he was wearing a sweatshirt,
2 brown, mostly brown with white in there with a zip up and a
3 hood, do you remember that description?

4 A I don't remember, no.

5 Q How many times had Alex or Appo been in your
6 vehicle?

7 A Maybe just a couple.

8 Q In the couple times, did he ride in the passenger
9 side?

10 A Yes.

11 Q After that evening, did you ever see or hear from
12 Al, Alex or Appo again?

13 A No.

14 Q Did you give a description of him to the police?

15 A I think I did, yes.

16 Q Do you recall how you would have described him to
17 the police? Do you remember?

18 A Just light skin with a goatee.

19 Q Let me show what has been admitted as Exhibit 82.
20 Do you recognize who is shown in that photograph?

21 A Yes.

22 Q Who is it?

23 A It is Alex.

24 Q Is that what he looked like when you knew him back

1 in November of 2010?

2 A That I can remember, yes.

3 Q Let me show you Exhibit 85. Do you recognize who is
4 shown there?

5 A Yes.

6 Q Who is that?

7 A Alex.

8 Q In fact, was this picture taken off your phone?

9 A I believe it was.

10 Q Is that what he looked like on the evening that he
11 went to, again his face, when he went to Kristine Yost's
12 apartment with you?

13 A I believe so.

14 Q Going back to exhibit -- strike that. Is your
15 current cellphone number (775) 379-2398?

16 A Yes.

17 Q Mr. Rodriguez, the person that you took to Kristine
18 Yost's apartment on November 19th into the 20th, early morning
19 hours, do you see that person in the courtroom today?

20 A Yes.

21 Q Can you describe an article he's wearing and where
22 he's seated in the courtroom?

23 A Light blue shirt. Off to my right.

24 Q Is he wearing anything other than the light blue

1 shirt, or can he be distinguished in any other way besides
2 that?

3 A His facial tattoos.

4 MS. KOSSOW: I ask the record reflect the witness
5 has identified the defendant.

6 THE COURT: The record will so reflect.

7 BY MS. KOSSOW:

8 Q When he accompanied you to that party that night,
9 did he have the tattoo we see on his head?

10 A No.

11 MS. KOSSOW: I have nothing further.

12 THE COURT: ~~Now~~ Cross-examination.

13 MS. NORDVIG: One moment, Your Honor.

14
15 CROSS-EXAMINATION

16 BY MS. NORDVIG:

17 Q Good afternoon, Mr. Rodriguez?

18 A Afternoon.

19 Q You are here because of a subpoena by the State,
20 correct?

21 A Correct.

22 Q You don't really want to be here, do you?

23 A Don't really want to answer that.

24 Q Okay. Fair enough. Do you remember what 7-Eleven you

1 stopped at first?

2 A The one on El Rancho, and I can't remember the cross
3 street. El Rancho and Greenbrae I think.

4 Q Is that what you told detective Begbie the first
5 time you interviewed with him?

6 A I did, yes.

7 Q You did your second interview with Sparks detectives
8 on November 29, 2010; is that correct?

9 A I do not remember that.

10 Q If I show you a copy of the transcript of that
11 interview, would that help with your recollection?

12 A Possibly.

13 MS. NORDVIG: Your Honor, do you want this marked or
14 just --

15 THE COURT: It is from a report?

16 MS. NORDVIG: It is not a transcript, a court
17 transcript.

18 THE COURT: You may just approach with it.

19 MS. NORDVIG: Thank you.

20 THE COURT: Counsel, you have that, Ms. Kossow?

21 MS. KOSSOW: I do, Your Honor.

22 MS. NORDVIG: I showed her the page..

23 BY MS. NORDVIG:

24 Q I am going to direct you to both the first page and

1 then page 14 and there are numbers on all the lines, okay? So
2 if you would look at line 23 and down on page 19, but the
3 first page should help you remember when your interview was.
4 Just read it to yourself and then when you're done, let me
5 know. Finished?

6 A Yeah.

7 Q Did that help you? Did that assist your
8 recollection?

9 A A bit.

10 Q Okay. Is it true that on page 19 you just reviewed
11 that the detective indicates that originally you said you went
12 to a different 7-Eleven? —

13 A This was prior before me even having plans of going
14 to the party. I went to the 7-Eleven. That is indicated on
15 that paper.

16 Q Right?

17 A Right.

18 Q You went over by --

19 A I was in that area in the beginning, yeah.

20 Q And you went with, had met Alex a few times before,
21 correct?

22 A Just a few.

23 Q Do you know over how long a period that you had
24 known him?

1 A Not much.

2 Q Approximately?

3 A Maybe a couple weeks. Few weeks.

4 Q When you had gone out socializing with him before,
5 where did you go?

6 A I don't remember exactly.

7 Q Okay. Had you ever been to Ms. Yost's apartment
8 before?

9 A A few times.

10 Q With Alex?

11 A Maybe once.

12 Q You said you went back to the apartment after you
13 left, and you went to get cigarettes, but you didn't get to
14 the 7-Eleven. You went back?

15 A Yes.

16 Q That was after the phone call you received from Ms.
17 Yost?

18 A Yes.

19 Q Were you worried?

20 A I didn't know what was going on, so --

21 Q How long did you stay in that area?

22 A Not much longer after that. The police was trying,
23 the officers were trying to get everybody cleared out.

24 Q Did you ask the police if you could get your car?

1 A Yes.

2 Q They said no?

3 A Yes, they said no.

4 Q Had you ever seen Alex with any kind of firearm?

5 A No, I did not.

6 Q How did you get home that night?

7 A I got picked up by my younger brother.

8 Q And the police contacted you the following day?

9 A Yes.

10 MS. NORDVIG: Nothing further. Thank you.

11 THE COURT: Anything further?

12 MS. KOSSOW: ~~No~~, Your Honor.

13 THE COURT: May this witness be excused?

14 MS. KOSSOW: Yes, Your Honor.

15 THE COURT: Sir, you may step down. You are excused.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MS. KOSSOW: Thank you, Your Honor. State would call

20 detective Chavez. Excuse me, Sgt. Chavez.

21 THE COURT: Counsel, how long is this going to be?

22 MS. NORDVIG: May we approach?

23 MS. KOSSOW: I don't know 30, 35 minutes.

24 THE COURT: Thank you for your patience, ladies and

1 gentlemen. I am going to try to recess by 4:30 today with you
2 to work out all the logistics, so I just was trying to find
3 out how long this witness might be on the stand. We'll go
4 ahead and start and stop at 4:30 one way or the other.

5 THE COURT: You may proceed.

6
7 ERICK CHAVEZ

8 called as a witness, having been first duly sworn,
9 took the witness stand and testified as follows:

10
11 DIRECT EXAMINATION

12 BY MS. KOSSOW:

13 Q Thank you, Your Honor. Sir, could you please state
14 your full name and spell your first and last for the Court
15 Reporter?

16 A My name is Erick Chavez.

17 Q Sir, what is your current occupation?

18 A I am a police officer with the City of Sparks Police
19 Department.

20 Q How long have you been employed with the City of
21 Sparks Police Department?

22 A This year will be 12 years.

23 Q What is your current assignment?

24 A Currently a patrol sergeant.

1 Q Prior to being a patrol sergeant, what was your
2 position?

3 A Before being a sergeant, I was a general detective
4 at the Sparks Police Department. Again detective in the
5 Regional Gang Unit, officer in the Regional Gang Unit and a
6 patrol offer.

7 Q That is your peace officer time with the Sparks
8 Police Department?

9 A Yes, ma'am.

10 Q I want to direct your attention to September 17th of
11 2015. Were you asked to participate in the interview of an
12 individual by the name of Luis-Alejandro Menendez-Cordero?

13 A I was.

14 Q And was it your understanding that he had been
15 arrested and brought to the Sparks Police Department?

16 A Yes, ma'am.

17 Q Regarding the November 20th, 2010 double homicide in
18 Sparks?

19 A Yes.

20 Q Were you involved in the original case?

21 A I assisted detective McNeely on the 21st in some
22 canvassing of the neighborhood. Very small part.

23 Q But you were aware of the case?

24 A Yes.

1 Q Who was going to conduct the interview of
2 Mr. Menendez-Cordero?

3 A I was.

4 Q Can you describe a little about the conditions?
5 When he's brought to the Sparks Police Department, what are
6 the conditions?

7 A He was handcuffed, brought over from the airport.
8 He was released from his handcuffs. He was given a meal and
9 then I spoke with him.

10 Q He was allowed to eat his meal before he talked to
11 you?

12 A Yes, ma'am.

13 Q What language were you going to use to conduct the
14 interview?

15 A Predominantly Spanish.

16 Q And do you speak Spanish?

17 A I do.

18 Q Can you describe for the jurors a little bit about
19 what is your history with speaking Spanish?

20 A Both my parents are from Central America. My first
21 language spoken in my home was Spanish.

22 Q And you conducted the interview in Spanish?

23 A I did.

24 Q Did you have problems during the interview

1 understanding Mr. Menendez-Cordero?

2 A No, ma'am.

3 Q Let's talk about prior to questioning him about the
4 events of November 20, 2010. Did you provide
5 Mr. Menendez-Cordero his Miranda rights?

6 A I did.

7 Q Was that done in English or Spanish?

8 A I read him his rights in Spanish.

9 Q And after providing him those rights, did he agree
10 to speak with you?

11 A He did.

12 Q What was -- Before we get to the content of the
13 interview, what was the overall time you spent with
14 Mr. Menendez-Cordero in the interview process?

15 A It was probably a total of an hour and ten minutes
16 or so including breaks.

17 Q Can you tell us, again before we get into the
18 specifics, what was his overall demeanor when you met with him
19 throughout the interview?

20 A Fairly relaxed, alternating between being bored,
21 somewhat dismissive.

22 Q So I am going to ask you some questions about
23 questions you asked Mr. Menendez-Cordero. Do you see
24 Mr. Menendez-Cordero the person you interviewed on September

1 17, 2015 in the courtroom today?

2 A I do.

3 Q Could you describe an an article of clothing,
4 several articles of clothing and where the individual is
5 seated?

6 A Right at the counsel table, my right in the blue
7 button up shirt and dark gray tie.

8 MS. KOSSOW: I ask the record reflect the witness has
9 identified the defendant.

10 THE COURT: The record will so reflect.

11 BY MS. KOSSOW:

12 Q Did you start off with asking Mr. Menéndez-Cordero
13 about if he knew why he was even at the Sparks Police
14 Department being interviewed?

15 A I did.

16 Q What was his response?

17 A He knew it was in relation to a double homicide.

18 Q He knew it was, is that what you said?

19 A Yes, ma'am.

20 Q Did you ask him why he was being charged with the
21 homicide?

22 A I did.

23 Q What was his response?

24 A He said he didn't know or had no idea.

1 Q As far as his presence in Reno, did you ask him
2 questions whether he had ever been to Reno before?

3 A I did.

4 Q What did he tell you?

5 A I believe he said he had been coming to Reno since
6 2008 or so.

7 Q Did he specifically mention the year 2013?

8 A Yes, ma'am.

9 Q But he told you he had been coming since 2008?

10 A He said he had last been in Reno in 2013.

11 Q Did he tell you why he came in 2013?

12 A To visit some family.

13 Q Did he --

14 MS. KOSSOW: Can I have one moment, Your Honor?

15 THE COURT: Yes.

16 MS. KOSSOW: Judge, may we approach briefly?

17 THE COURT: Yes.

18 (Discussion at the bench.)

19 THE COURT: Ladies and gentlemen, before we continue
20 with this evidence, I want to give another Instruction. That
21 is that evidence will be received or may be received tending
22 to show that the defendant committed acts other than that for
23 which he's on trial. Such evidence may not be received or
24 considered by you to prove he's a person of bad character or

1 he has a disposition to commit crimes. The evidence will be
2 received and may be considered by you only for the limited
3 purpose of showing motive regarding the charged crimes. For
4 the limited purpose for which you may consider such evidence,
5 you must weigh it the same that you do all other evidence in
6 the case. You are not permitted to consider such evidence for
7 any other purpose.

8 In addition, I want to inform you that you are about
9 to hear a recording in a foreign language. It will be
10 translated for you. You must rely on the translation provided
11 even if you understand the language in the recording. Do not
12 read or translate the recording to other jurors. If you
13 believe the translation is incorrect, let me know immediately
14 by writing a note and handing it to the bailiff. Thank you.

15 Counsel, you may proceed with your inquiry.

16 BY MS. KOSSOW:

17 Q Sergeant Chavez did you inquire of
18 Mr. Menendez-Cordero whether he had been in a gang?

19 A Yes.

20 Q Did he tell you -- What was his response to that?

21 A That he was in a gang.

22 Q Did he tell you how long he had been in gang?

23 A I believe he said since he was approximately 13
24 years old.

1 Q Did he tell you where he joined that?

2 A Yes, in El Salvador.

3 Q Did you, prior to conducting the interview, did you
4 believe that Mr. Menendez-Cordero had some type of nickname or
5 moniker associated to him?

6 A I did.

7 Q What did you believe that to be?

8 A Appo.

9 Q Did you inquire of Mr. Menendez-Cordero in regards
10 to that nickname?

11 A I did.

12 Q What was his response?

13 A He claimed to not have any nicknames.

14 Q Sergeant Chavez, I would like to show you a clip,
15 redacted, a small portion from your interview with
16 Mr. Menendez-Cordero. Let me back up. I got ahead of myself.
17 Hold on a second.

18 Prior to today's date, have you reviewed four clips
19 or redactions from the entirety of your interview with
20 Mr. Menendez-Cordero?

21 A I have.

22 Q You reviewed those four clips at the request of the
23 State?

24 A Yes, ma'am.

1 Q Did those four clips, were they accurately portrayed
2 as portions of your interview with Mr. Menendez-Cordero?

3 A Yes, ma'am.

4 MS. KOSSOW: What I will ask of you, Judge, is
5 publish Exhibit 123 in just a moment, so the sergeant can look
6 at it to make sure it is what he believes it to be before I
7 offer it for admission.

8 THE COURT: He hasn't heard it today?

9 MS. KOSSOW: He has not seen it today.

10 THE COURT: Counsel any objection?

11 MS. NORDVIG: May I question the sergeant briefly?

12 THE COURT: Yes.

13

14 VOIR DIRE EXAMINATION

15 BY MS. NORDVIG:

16 Q Have you seen this particular disk with the four
17 clips on it?

18 A I have seen the four clips. I can't say if it was
19 that particular disk.

20 MS. NORDVIG: Your Honor, I would object to showing
21 it for that purpose. If the State wants to take a brief
22 recess and the computer is outside.

23 THE COURT: Okay. Your objection is noted.

24 Ladies and gentlemen of the jury, we do have some

1 other kind of business that has to be done here, so I am going
2 to ask that you step outside into the jury room.

3 During this break, remember you may not discuss the
4 case among yourselves or with anyone else. You may not form
5 or express any opinion about the ultimate outcome of this
6 case.

7 You may not view any news media or any other account
8 regarding the case or the subject matter of the case or the
9 people involved in the case, and you must not allow anyone to
10 speak to you about the case or influence you in regards to the
11 case. Report it to the bailiff if anyone tries to do that.
12 Go ahead and step into the jury room at this time.

13 Please be seated. Ms. Kossow, you have Exhibit 123;
14 is that correct?

15 MS. KOSSOW: I do, Your Honor.

16 THE COURT: Go ahead.

17 MS. KOSSOW: Just so we are clear, are you asking me
18 to show it to the witness at this point?

19 THE COURT: You can. Just like he was hiding it
20 from the jury.

21 BY MS. KOSSOW:

22 Q So what I will do, Sgt. Chavez, there are four
23 different clips on here like we talked about. I will show you
24 a little bit of the first one and ask if you recognize it.

1 Hold on one second.

2 THE COURT: You might turn the volume down a bit.

3 MS. KOSSOW: Thank you, Your Honor.

4 BY MS. KOSSOW:

5 Q The very first clip on Exhibit 123 which ends in
6 67275. Can you hear that, Sgt. Chavez?

7 A Turn it up a bit. I can barely hear it.

8 Q First of all, do you recognize that as the portion
9 of your interview with Mr. Menendez-Cordero?

10 A Yes, ma'am.

11 Q Is that one of the clips that I previously asked or
12 sent to you to review in order for your testimony today?

13 A Yes, ma'am.

14 Q Does this short clip again fairly and accurately
15 depict a portion of your interview with Mr. Menendez-Cordero?

16 A Yes.

17 Q Let me go to the second clip which is marked 67275.
18 Let's start with the second one. Both of them have the same
19 number. Do you recognize that to be the second clip redacted
20 portion from his interview?

21 A Yes, ma'am.

22 Q Does that fairly and accurately depict that portion
23 of the interview with Mr. Menendez-Cordero?

24 A Yes.

1 Q Showing you the third clip on the disk on Exhibit
2 123, do you recognize that as the third clip you were asked to
3 review?

4 A Yes, ma'am.

5 Q Is this again a smaller redacted portion of the
6 interview with Mr. Menendez-Cordero from September 17, 2015?

7 A Yes.

8 Q The final clip on the video, do you recognize that
9 as a small portion again to be part of the fourth clip you
10 were asked to review in this case?

11 A Yes, ma'am.

12 Q Again, is that a fair and accurate depiction of a
13 portion of the interview you conducted with
14 Mr. Menendez-Cordero on September 17, 2015?

15 A Yes.

16 MS. KOSSOW: With that, Your Honor, the State would
17 offer Exhibit 123.

18 THE COURT: Any objection?

19 MS. NORDVIG: No, Your Honor.

20 THE COURT: The foundation has appropriately been
21 laid. I find this tape to be relevant. No objection. 123 is
22 admitted. Please bring the jury in.

23 MS. NORDVIG: I would just add to that, we had
24 objected to portions being played, but the Court already ruled

1 on that.

2 THE COURT: Correct. 123 is admitted. Bring the
3 jury in.

4 (Exhibit 123 admitted in evidence.)

5 THE COURT: Counsel, do you stipulate to the
6 presence of the jury?

7 MS. KOSSOW: State would so stipulate. Defense
8 stipulates, Your Honor.

9 THE COURT: You may be seated. Counsel may proceed.
10 Exhibit 123 is admitted.

11 MS. KOSSOW: Thank you, Your Honor.

12 BY MS. KOSSOW: . . .

13 Q Sgt. Chavez, I started to ask you about did you
14 review four smaller clips or redactions from the interview
15 that you had with Mr. Menendez-Cordero before testifying
16 today?

17 A I did.

18 Q What I would like to do is show you the first clip.
19 I will ask you questions about it afterwards, okay?

20 A Okay.

21 Q Before he goes on. Can you translate for us,
22 detective Chavez, what you and he were talking about in the
23 first portion of this video stamped at 59 seconds?

24 A I asked him if he had any involvement in this

1 incident.

2 Q What does he tell you?

3 A He starts saying: "Well look," then he says "no"
4 and starts laughing, kind of chuckling.

5 Q What did you ask him next, do you remember?

6 A I believe I asked him if it wasn't him, if he knew
7 who might be involved in incident.

8 Q Yes. What did he say?

9 A He said he had no idea.

10 Q And did you ask him specifically to tell you why he
11 believed that he wasn't involved in the murder?

12 A I asked him if he was in ~~my~~ position what could he
13 tell me that would kind of remove him as a suspect from this
14 case.

15 Q And what did he say? Did you want me to stop it?

16 A No. I am trying to think back to what he said. I
17 apologize.

18 Q I can rewind it a little?

19 A If you don't mind. I don't want to misspeak.

20 Q I will start it at 33 seconds. Tell me if you need
21 me to go back further. Should I stop it?

22 A Yeah.

23 Q What did he say?

24 A He said: "To be honest, I don't know. I have no

1 idea."

2 Q Did he actually say he didn't know or he couldn't
3 recall? I am sorry, let me ask that different. Did he say
4 that he didn't know what happened, basically?

5 A Yeah. Yes.

6 Q I will continue to play a little bit. Look up at me
7 if you want me to stop it if I am going too far, okay? What
8 did you ask him there?

9 A Can you go back? I might have missed a little piece
10 of that. I apologize.

11 Q Sure.

12 A So I asked him: "Can you tell me why it wasn't you
13 that did all these things? "And he says: "Well for starters,
14 I wasn't in this state."

15 Q I will stop it right there.

16 A So he continues on the previous question. He says:
17 "What they read to me about this, I don't remember exactly,
18 but I wasn't there.

19 Q Then did you ask him whether he was the type of
20 person who could commit this crime?

21 A I did.

22 Q What did he say?

23 A He says "no" then starts chuckling.

24 Q And you sort of laughed after he laughed?

1 A Yes.

2 Q You sort of laughed after he laughed?

3 A Yes.

4 Q What did you ask him next?

5 A "Have you ever thought about doing anything like

6 this before? "

7 Q What did he say?

8 A He said: "No, not at all."

9 Q What did you ask him last?

10 A "Do you think that these things actually happened,

11 like they actually took place?" And he just shrugs.

12 Q Sounds like you were finishing one and then started

13 the next question?

14 A I asked him if he spoke with anybody in regard to

15 what he should tell them when he speaks to them. He nods his

16 head no. I started asking him, "Right. What do you think

17 should happen to a person that did these things?" And he's

18 going to answer right now.

19 Q What did you ask him?

20 A I asked him: "Did you tell anybody that you did

21 these things?"

22 Q What did you say at the end?

23 A Oh, I didn't catch it. I am sorry.

24 Q Did he answer to you when you said did you tell

1 anybody?

2 A He said "no" and kind of shrugged.

3 Q Let me go back to the very end of the first clip?

4 A I am sorry. Can you go back? I couldn't quite make
5 out what it said.

6 Q Let me go back a little further so you can get it in
7 context. Did you hear what he said at the end?

8 A I can't quite make it out. I am sorry.

9 Q That's okay. We saw in that clip there were several
10 times you asked questions of Mr. Menendez-Cordero and it
11 appeared that he didn't answer, didn't provide any verbal
12 answer. Was that pretty common in the interview?

13 A Yeah. He would nod his head slightly or shrug it
14 off or smirk.

15 Q Were there times where there was just silence where
16 nothing was said by him or by you?

17 A Yes, ma'am.

18 Q I want to go back before we proceed and ask you
19 about coming back to the year 2010 in Reno. Did you ask him
20 if he had been in Reno, specifically in 2010?

21 A I did.

22 Q What was his response?

23 A I believe he said he couldn't remember.

24 Q And at one point during the interview, did you

1 actually confront him with some type of -- confront him with
2 surveillance video, meaning you had seen him on surveillance
3 video with somebody else again in 2010?

4 A Yes.

5 Q What did he tell you?

6 A He told me he was out of the State.

7 Q Did you say -- Did you bring up the name of Elder
8 Rodriguez?

9 A Yes.

10 Q Said he was with Elder Rodriguez at a store on
11 surveillance video?

12 A Yes.

13 Q Was it the same response?

14 A Yes.

15 Q Did you specifically ask him if he had any friends
16 in the Reno-Sparks area that he spoke to?

17 A Yes.

18 Q What did he tell you?

19 A That he didn't have any friends locally.

20 Q Did you ask him specifically if he talked to MS
21 members locally in Reno?

22 A Yes.

23 Q And what did he say?

24 A He didn't know any locally.

1 MS. NORDVIG: I'm sorry, could you --
2 THE COURT: Can you not hear?
3 MS. NORDVIG: I couldn't hear his answer.
4 THE COURT: Repeat your answer.
5 THE WITNESS: That he didn't speak to anybody
6 locally.
7 BY MS. KOSSOW:
8 Q Did you at one point ask him specifically about
9 being on a party or being at a party on November 20th of 2010?
10 A Yes.
11 Q And what did he say?
12 A That he never attended a party.
13 Q Did you sort of follow-up with that and say why
14 would people say you were there?
15 A Yes.
16 Q What did he say?
17 A I believe he kind of smirked, then told me he didn't
18 know.
19 Q I am going to ask a little about did you broach the
20 topic of tattoos?
21 A Yes.
22 Q Did you ask him specifically when he obtained the
23 tattoos on his body?
24 A Yes.

1 Q What did he tell you?

2 A I believe he said he had obtained them when he was
3 approximately 15 years old, 2007 specifically I believe he
4 stated.

5 Q Did you ask him any about specific tattoos, the ones
6 on his head, the horns?

7 A Yes.

8 Q Did he tell you how those came about?

9 A He said he did those himself.

10 MS. KOSSOW: Judge, I am was going to move on and
11 play another clip. Did you want to break at 4:30?

12 THE COURT: I do think it is a good idea to break at
13 4:30. There is something about this courthouse that makes
14 people sick. I promise it is just a cold. I am fine, but we
15 are going to take a recess. I think it is a good time for me
16 to let you leave for the evening.

17 So, sir, I am going to ask that you return tomorrow
18 at 9:15. Your testimony will continue at that time.

19 Ladies and gentlemen of the jury you will be back
20 here in the courtroom at 9:15 tomorrow morning. During this
21 recess, do not forget the admonition that it is your duty not
22 to discuss the case among yourselves or with anyone else. I
23 want to remind you that is verbally and also Internet sources
24 or Internet ways of communicating.

1 It is further your duty not to form or express any
2 opinion concerning the guilt or innocence of the defendant
3 until this matter is submitted to you for decision.

4 You are not to read, look at or listen to any news
5 media account or any other account or commentary including any
6 online information about the trial or anyone or thing
7 associated with it. You will be required to decide the facts
8 in this case based on the evidence that you receive in trial
9 and not from any other source.

10 Do not make any independent investigation, about the
11 case or about the subject matter or the parties. This means
12 for example that you may not do any research, consult
13 dictionaries, search the Internet or use any other reference
14 materials, visit the scene or conduct experiments. That
15 includes the other areas that have been discussed today.

16 Should any person attempt to discuss the case with
17 you or in any manner attempt to communicate with you or
18 influence you with regard to it, report them to the bailiff.

19 You may step out at this time. Sir, we have a
20 little work, so you can step out also.

21 (Whereupon the witness and the jury left the courtroom.)

22 THE COURT: Please be seated. Because our battery
23 died we need to make a record of the sidebars we had this
24 afternoon that were not recorded. The first one was about the

1 logistics of today. I asked about how many more witnesses
2 would be called and try and figure out if we are going to get
3 through today or tomorrow and talking about Jury Instructions.
4 So I think that is all we really talked about counsel.

5 Ms. Kassow?

6 MS. KOSSOW: Yes, Your Honor.

7 MS. NORDVIG: That's correct, Your Honor.

8 THE COURT: The second sidebar at that time we
9 discussed the tape that includes the Spanish language and was
10 in Spanish as well as the other act evidence with regard to
11 gang affiliation. It is my understanding Ms. Nordvig on
12 behalf of the defendant requested both B and C be read prior--
13 to the testimony.

14 MS. NORDVIG: That's correct, Your Honor. And we
15 requested them to be read at the same time.

16 THE COURT: Correct. At which point I did that and
17 you had no objection, right, Ms. Kossow?

18 MS. KOSSOW: Yes, Your Honor.

19 THE COURT: That was the content of the sidebars.
20 We'll try to make sure those batteries work. It is very
21 helpful to have that.

22 We have been trying to keep up with the exhibits.
23 As you know, a different court clerk was here at the beginning
24 of the trial. We are really trying to make sure we have a

1 complete record. We have had difficulty figuring out between
2 the rough trial transcript and the rough draft notes whether
3 or not 54 was actually admitted in this case. Finally, we
4 figured out it was offered, 54 through 61 was offered. I
5 admitted it but didn't say 54. I started with Exhibit 55. I
6 think that was either I said 55 and the court reporter, missed
7 it or I just missed 55. But we do believe 55 was intended to
8 be admitted. There was no objection to from the defense.

9 MS. NORDVIG: Your Honor, 55 was admitted.

10 THE COURT: My record showed that too but I just
11 want to make sure we make a record. So the clerk will note
12 that ~~54 through 61~~ the Court did find sufficient foundation
13 was presented for the continued admission of those exhibits..
14 we also have Exhibit 115. 115 is a picture of --

15 MR. BOGALE: Ms. Kristine Yost, I believe, Your
16 Honor.

17 THE COURT: I was thinking Kristine. So that we do
18 not show was admitted at the same time as that other group,
19 however, it was shown to a witness today so I don't know if
20 you remember whether or not Ms. Yost agreed to it. Certainly
21 the witness today probably established the foundation when you
22 showed it to him and asked him about it. I think there is very
23 little prejudice.

24 MS. KOSSOW: For the record, I think I specifically

1 didn't show Ms. Yost, because it was herself. I didn't have
2 her identify the picture. That is my fault. I showed it to
3 Mr. Rodriguez. He confirmed that was in fact a picture of Ms.
4 Yost so I would offer it at this time.

5 THE COURT: Any objection?

6 MS. NORDVIG: Your Honor if I remember the testimony
7 of Mr. Rodriguez he said something to the effect I think it is
8 her, it kind of looks like her and I believe that would
9 probably be referring to the fact it is not a picture that was
10 taken in 2010, it is subsequent to that and he hasn't seen
11 her. I would object.

12 THE COURT: ~~I~~ think your objection goes to the
13 weight to be given to it. I think he identified it as
14 Kristine Yost. It is a more modern picture. The relevance is
15 he was identifying who Kristine Yost was who testified
16 previously in the case, so I am going to overrule your
17 objection and find the basis was sufficiently laid for
18 admission to be continued as Judge Flanagan had done.

19 (Exhibit 115 admitted in evidence.)

20 THE COURT: So is there anything else that you think
21 we need to make a record today about?

22 MS. NORDVIG: No, Your Honor, not from the State.

23 THE COURT: Wasn't 121-d admitted?.

24 MR. BOGALE: I was just going to bring it up. The

1 121-d is the box that contains 121-a, b, and c.

2 MS. NORDVIG: I have that as admitted already.

3 MS. KOSSOW: I move for admission.

4 THE COURT: We actually marked it special.

5 MS. NORDVIG: That's correct.

6 THE COURT: I do believe it was admitted. I am
7 going to direct Ms. Clerk to note 121-d has in fact been
8 admitted.

9 MS. NORDVIG: I think that was admitted on Thursday,
10 October 5th.

11 THE COURT: Correct.

12 THE COURT: So ~~if~~ you see anything else on the
13 witness list over the evening hours, just let me know. We are
14 looking at the rough draft transcripts and trying to determine
15 everything we can find as we go.

16 Okay. Anything else for this afternoon? We are
17 going to have detective Chavez.

18 MS. KOSSOW: Yes. Back in the morning, then the
19 State would call Special Agent Blaine Freestone and that would
20 be our case, Your Honor.

21 THE COURT: Prior to Blaine Freestone, you want me
22 to read Exhibit C or do you want to wait until after he
23 testifies?

24 MS. NORDVIG: Oh, no we'll have you read it before

1 he testifies.

2 THE COURT: No problem. That will be read. I will
3 read it when you call his name, maybe before he's sworn. I
4 think that will be a little easier. Anything else? I have
5 received proposed Instruction from both of you, but they do
6 not look to me as though you two or four got together and
7 looked at them.

8 MR. VILORIA: I am working on some additional ones
9 to supplement. The State's case hadn't concluded. I know
10 Ms. Nordvig sent a subset from defense. I agree with you,
11 there are some things we could agree to take out. I am going
12 to work on that tonight.

13 THE COURT: It would be very helpful to the Court if
14 you could at least come up with a set you agree on, the
15 definition of murder the preliminary Instruction or I can just
16 use my set.

17 MS. NORDVIG: For the Court's information, I don't
18 know that I provided to you, Ms. Kossow did give us some
19 different instructions this morning we haven't had a chance to
20 talk about.

21 THE COURT: Okay. So tomorrow is Wednesday. I
22 anticipate we may finish in the morning with the State's case.
23 Have you discussed your client's testimony with him?

24 MS. NORDVIG: A few times, and we will be doing that

1 after court this afternoon.

2 THE COURT: Then I will -- We'll take a recess after
3 the State's case and interview him with regard to his
4 constitutional right not to testify. Is there anyone else
5 that you think you will be calling?

6 MS. NORDVIG: I may recall someone, but I will talk
7 to co-counsel tonight.

8 THE COURT: The reason I am asking is I want to be
9 able to notify the jury tomorrow what the schedule is as well
10 as the staff. It sounds to me like we are going to spend
11 tomorrow afternoon doing Jury Instructions, and then I think
12 at that point we have a choice. ~~We~~ either do closings and no
13 deliberation on Thursday or we just take Thursday off as I
14 originally told the jury we would do, and we would do closings
15 on Friday and begin deliberation at that time. That sounds
16 like that is the best schedule.

17 MS. NORDVIG: Your Honor, to be safe, I would ask,
18 because I haven't completed my discussion with my client
19 regarding his options at this point, that we assume we will
20 either do jury Instructions Wednesday afternoon or Thursday
21 morning, or that the jury have the day off and we do closings
22 on Friday. I think that gives us a window, a little bit of
23 flexibility.

24 THE COURT: Okay. We will plan on doing that. Then

1 I want to notify you that if the jury does not reach a verdict
2 on Friday by a reasonable hour in the early evening, we will
3 recess, be back on the record Saturday morning. They will
4 deliberate on Saturday. So I want to give you that heads up,
5 because you may well want to be here when I call the jury back
6 on Saturday morning.

7 MS. NORDVIG: Can I ask what time that might be?

8 THE COURT: I don't know. I haven't decided.

9 MS. KOSSOW: Just so I can tell the family members.
10 If for some reason they reach a verdict on Friday, are we
11 going to go do penalty Monday no matter what? No matter how
12 long or short?

13 THE COURT: Suppose it was at 10:00 o'clock at night
14 on Friday, are you ready to do penalty on Monday?

15 MS. KOSSOW: Yes. Yes, I was thinking the opposite
16 if it was shorter.

17 THE COURT: No, I think unless they reach a verdict
18 very, very quickly, depending on what time they get it, we are
19 still looking at penalty, not going to them until 5:00 or 6:00
20 o'clock at night if we started doing penalty hearing. It is
21 my understanding Judge Flanagan already told them he believed
22 there would be a break in the day. I think I would like to
23 stick with that and we would, if we get a verdict and penalty
24 hearing is necessary, then we would do that Monday. If we

1 don't get a verdict Friday night, we'll deliberate on
2 Saturday. Again we would do penalty hearing on Monday if it
3 was necessary. Does that kind of give you an idea of the
4 schedule?

5 MS. NORDVIG: It helps very much.

6 THE COURT: I will see you tomorrow morning.
7 Court's in recess.

8 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.

3 I, Judith Ann Schonlau, Official Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, DO HEREBY CERTIFY:

6 That as such reporter I was present in Department
7 No. 4 of the above-entitled court on Tuesday,
8 October 10, 2017, at the hour of 9:15 a.m. of said day and
9 that I then and there took verbatim stenotype notes of the
10 proceedings had in the matter of THE STATE OF NEVADA vs. LUIS
11 ALEJANDRO MENENDEZ-CORDERO, Case Number CR15-1674.

12 That the foregoing transcript, consisting of pages
13 numbered 1-203 inclusive, is a full, true and correct
14 transcription of my said stenotypy notes, so taken as
15 aforesaid, and is a full, true and correct statement of the
16 proceedings had and testimony given upon the trial of the
17 above-entitled action to the best of my knowledge, skill and
18 ability.

19 DATED: At Reno, Nevada this 15th day of February, 2018.

20
21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of August 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy
Washoe County District Attorney's Office

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Luis Alejandro Menendez-Cordero (#1190081
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John Reese Petty
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IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ALEJANDRO MENENDEZ-
CORDERO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR15-1674
The Second Judicial District Court of the State of Nevada
Honorable Connie J. Steinheimer, District Judge

JOINT APPENDIX VOLUME SEVEN

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TABLE OF CONTENTS

1. Defense Rejected Instruction-A <u>filed</u> on October 13, 2017	1JA 247
2. Indictment <u>filed</u> on October 28, 2015	1JA 1
3. Judgment <u>filed</u> on December 19, 2017	1JA 251
4. Jury Instructions (Guilt) (1-36) <u>filed</u> on October 13, 2017	1JA 198
5. Jury Instructions (Penalty) (1-10) <u>filed</u> on October 16, 2017	1JA 237
6. Notice of Appeal <u>filed</u> on January 11, 2018	1JA 253
7. Opposition to State's Motion to Introduce Evidence of Luis Alejandro Menendez-Cordero's Consciousness of Guilt <u>filed</u> on September 18, 2017	1JA 10
8. State's Motion to Introduce Evidence of Defendant's Consciousness of Guilt <u>filed</u> on September 9, 2017	1JA 4
9. State's Reply to Defendant's Opposition and Supplement to Defendant's Opposition to State's Motion to Introduce Evidence of Defendant's Consciousness of Guilt <u>filed</u> on September 28, 2017	1JA 130
10. Supplement to Defendant's Opposition to State's Motion to Introduce Evidence of Luis Alejandro Menendez- Cordero's Consciousness of Guilt <u>filed</u> on September 25, 2017	1JA 123
11. Transcript of Proceedings: Pretrial Motions <i>held</i> on September 19, 2017, <u>filed</u> on September 21, 2017	1JA 18

12.	Transcript of Proceedings: Pretrial Motions <i>held</i> on September 29, 2017, <u>filed</u> on October 9, 2017	1JA 138
13.	Transcript of Proceedings: Pretrial Motions <i>held</i> on October 2, 2017, <u>filed</u> on October 9, 2017	2JA 255
14.	Transcript of Proceedings: Trial <i>held</i> on October 2, 2017	2JA 304
15.	Transcript of Proceedings: Trial <i>held</i> on October 3, 2017	3JA 380
16.	Transcript of Proceedings: Trial <i>held</i> on October 4, 2017	3JA 496
17.	Transcript of Proceedings: Trial <i>held</i> on October 5, 2017	4JA 537
18.	Transcript of Proceedings: Trial <i>held</i> on October 6, 2017	5JA 811
19.	Transcript of Proceedings: Trial <i>held</i> on October 9, 2017	6JA 870
20.	Transcript of Proceedings: Trial <i>held</i> on October 10, 2017	7JA 1094
21.	Transcript of Proceedings: Trial <i>held</i> on October 11, 2017	8JA 1297
22.	Transcript of Proceedings: Trial <i>held</i> on October 12, 2017	9JA 1471
23.	Transcript of Proceedings: Trial <i>held</i> on October 13, 2017	9JA 1507
24.	Transcript of Proceedings: Penalty Phase <i>held</i> on October 16, 2017	10JA 1586

25. Verdicts (Guilt) filed on October 13, 2017 1JA 235, 236
26. Verdicts (Penalty) filed on October 16, 2017 1JA 249, 250

A P P E A R A N C E S

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RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

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I N D E X

WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

KERRI HEWARD

7

38

41

JOSE LUIS GARCIA

44

51

52

55

55

56

CHARLES PAYNE, JR.

62

71

79

80

WILLIAM SCOTT VALENTI

81

90

MICHAEL RAY IVERS

93

98

100

100

MONICA SIEWERTSEN

116

137

ELDER RODRIGUEZ

155

169

ERICK CHAVES

174

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<u>EXHIBITS:</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
65-74 and 76-78		97
75		69
88		64
89		46
115		197
123		186
130	75	97
131, 132	43	

1 RENO, NEVADA; TUESDAY, OCTOBER 10, 2017; 9:15. A.M.

2 -oOo-

3
4 THE COURT: Good morning. Please be seated. So do
5 you have anything for me outside the presence of the jury?

6 MS. KOSSOW: Nothing from the State, Your Honor.

7 MS. NORDVIG: Nothing from the defendant.

8 THE COURT: I am getting some questions about
9 whether or not we are going to hold court on Thursday morning.
10 It turns out just the afternoon the courthouse is closed. But
11 I had said originally we wouldn't have any court on Thursday
12 at all. So I wanted to talk to you about where we are at in
13 terms of witnesses, timelines. Are we not on schedule?

14 MS. KOSSOW: I can tell you, Judge, I believe we are
15 on schedule. It is possible that we could finish today. I
16 think that is unlikely. I think it will go into tomorrow
17 morning. I think we will be done definitely by tomorrow
18 midmorning sometime.

19 THE COURT: So it sounds to me like we could settle,
20 perhaps settle Instructions on Thursday and do closings on
21 Friday?

22 MS. KOSSOW: Yes. That would be the State's
23 preference.

24 MS. NORVIG: That is fine with the defense. That

1 would be a good estimation of where we are. We spoke a little
2 bit last night and this morning. Excuse me.

3 THE COURT: Okay. We may, I will just tell the
4 people that are assisting us that we may still not need to
5 have the defendant here on Thursday, because if we for some
6 reason quit early Wednesday, we could settle Instructions the
7 whole day Thursday and they we would not be here.

8 MS. NORDVIG: We'll know more after today I think
9 for sure.

10 THE COURT: I kind of keep getting asked. I want to
11 make sure I have gotten the latest from all of you. If there
12 is nothing else, is the jury here and ready?

13 THE DEPUTY: They are.

14 THE COURT: Please bring in the jury.

15 Counsel will you stipulate to the presence of the
16 jury?

17 MS. KOSSOW: State would so stipulate.

18 MS. NORVIG: Defense so stipulates, Your Honor.

19 THE COURT: Thank you. Please be seated. Ma'am, we
20 are going to continue with your testimony. You are still
21 under oath. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Good morning ladies and gentlemen of the
24 jury. We are going to, I think were at the stage of the

1 cross-examination. Is that you, Mr. Vilorio? So we'll have
2 cross-examination begin at this time.

3 MR. VILORIA: Thank you Your Honor.

4 THE COURT: You're welcome.

5
6 CROSS-EXAMINATION OF KERRI HEWARD

7 BY MR. VILORIA:

8 Q Good morning again, Ms. Heward.

9 A Yes it is. Good morning.

10 Q I think I called you Heward, sorry?

11 A That's okay.

12 Q I want to circle back a little about the nature of
13 your employment and your training, okay? I believe on direct
14 you testified you had been employed with the County as a
15 supervising criminalist from 2007 to 2015?

16 A That's correct.

17 Q And as a supervising criminalist, it is an
18 administrative role predominantly, correct?

19 A It is.

20 Q So you have to worry about things like budgets,
21 disciplinary procedures, managing those who you supervise?

22 A Correct.

23 Q You also testified that you had -- You also
24 testified about having a caseload during that time as a

1 supervising criminalist. What was the extent of your caseload
2 in November of 2010?

3 A In 2010 I was the only qualified firearms examiner
4 in the laboratory. Our previous examiner had left, and we had
5 a new examiner who was in training with the ATF.

6 Q So do you recall how many cases you were assigned to
7 in 2010?

8 A At that time, essentially I was only doing cases
9 that were going to court or were needed for further
10 investigation. The entire caseload of the firearms section at
11 that time was several hundred.

12 Q Of those several hundred, only a select few, as you
13 said, were going to court or needed further investigation?

14 A Those were the only ones that I was examining. Those
15 were the only ones that I had time to examine.

16 Q Okay. On direct yesterday you testified about being
17 a supervisor of the firearms tool marks unit, do you recall
18 that?

19 A Yes.

20 Q You also supervised the blood and alcohol content
21 unit as well as a drug analysis unit and trace analysis unit.

22 A I did.

23 Q How many people would you say you supervise in each
24 perspective unit?

1 A In each area there were only one or two people, so
2 total at that time of perhaps six or seven people.

3 Q Are you reviewing their work associated with their
4 own caseloads?

5 A Yes.

6 Q So if a criminalist say makes an identification of a
7 tool mark, you then review that?

8 A Yes, but I was the only one doing the firearms
9 examination. There were no other examiners in that section to
10 review.

11 Q Is it now the policy and procedure with the lab to
12 have a second review whenever any identification is made?

13 A It is and it was at that time. In the case of this
14 case here, we had a contract firearms examiner that was
15 involved in the training of the new examiner who also did some
16 casework. He is the one that reviewed my work. His name is
17 Matt Nodell. He's the one that reviewed my work.

18 Q Matt O'Dell?

19 A Nodell.

20 Q Did Mr. Nodell author any secondary report or make
21 any notes during his examination?

22 A He made a note on what we call the verification, and
23 those would be on the worksheet where the comparison is noted.

24 One of the reports, he did the tech review on one of

1 the reports. The two I authored the review was done by the
2 firearms supervisor in the Las Vegas lab.

3 Q So does that mean it had been reviewed three times?

4 A A verification is somebody looking at the item under
5 the microscope, and there is a second person that says it's an
6 I.D. The technical review is of all of the notes associated
7 with the case. So, yes, there are two. In addition to that,
8 there is an administrative review as well.

9 Q Okay. How many tools generally have you examined
10 over the course of your professional career?

11 A Are you counting firearms as a tool? I do.

12 Q I am counting any tools. It can be a hammer,
13 correct, or a nail? Anything that could make an impression on
14 a surface; is that accurate?

15 A Yes.

16 Q How many tools have you examined?

17 A In the course of my career, thousands. I couldn't
18 even tell you. I would say close to 10,000.

19 Q Countless numbers. That's a lot?

20 A Yes. Yes.

21 Q Of those, how many are firearms?

22 A Most. I would say probably 95 percent.

23 Q Of those firearms, how many were semi-automatics?

24 A Most of the firearms that are submitted are

1 semi-automatic. Of all of the firearms submitted, I would say
2 probably 85 to 90 percent are semi-automatic.

3 Q Do you keep written record of your past
4 examinations?

5 A I don't personally, but records are kept at the
6 laboratory. My cases I examined in San Bernardino are there
7 and in those in Washoe County are here.

8 Q So in Washoe County in cases where you found a match
9 or a non-match, you have a written record of that?

10 A The notes and the report are where the records
11 exist.

12 Q Have you been able to calculate your ~~own~~ error rate?

13 A Error rate is a term that doesn't mean much in the
14 world of a pattern matching discipline. An error would be
15 something where a known answer -- there was a known answer and
16 I got it wrong. I don't have any instances where there was a
17 known answer and I got a wrong answer.

18 Q We'll get to that. Okay. I believe you testified on
19 direct that you are -- you have been certified by AFTE,
20 correct?

21 A I am not AFTE certified. I am a member of AFTE.

22 Q Can you elaborate on the difference being a member
23 and being certified?

24 A Certification came about when I was already an

1 examiner in the firearms section in San Bernardino. I was
2 involved in formulating some of the questions on the
3 certification test and, therefore, I didn't take the
4 certification test at that time. A certification is something
5 that is offered through an organization, in this case, AFTE,
6 the Association of Firearm and Tool Mark Examiners. You can
7 pay for taking a test through them and get a certification.
8 In forensic science, it isn't a requirement. What is required
9 is accreditation.

10 Q It is required the lab be accredited?

11 A Correct. The laboratory must be accredited in order
12 to receive any sort of grant funding and to have CODIS, which
13 is the DNA data base or the software run by the FBI.

14 Q Would you agree at least in part someone certified
15 by AFTE, they have at least been tested with a defensible
16 basis like a written or practical exam, correct?

17 A That is true. There is a test given, yes.

18 Q And is it a test you have not yet completed?

19 A I have not taken that certification test and have no
20 intention to.

21 Q How about with the National Firearm Academy, have
22 you taken any courses through that association?

23 A No. The National Firearms Academy is something
24 relatively new. We have examiners at our laboratory who have

1 attended it. It is only open to individuals who are new to
2 the field. At the time that I trained that wasn't in
3 existence.

4 Q That is fair. But as you said already, those you
5 supervise have already attended that program?

6 A Yes. It is for new examiners only.

7 Q In 2010 was there any such academy where
8 criminalists could go and seek new skills or learn from other
9 disciplines within the field?

10 A Were there any trainings offered through anybody?

11 Q Yeah, through any identification associations or
12 even AFTE other than being just certified?

13 A Yes. AFTE has an annual seminar, and at that seminar
14 there is training offered there. And I have been to several
15 AFTE meetings. I have also been to training through the
16 California Department of Justice that has an organization
17 within their structure called the California Criminalistics
18 Institute known as CCI, and they offer classes specifically
19 for criminalists. I have taken several classes there as well.
20 Those are the two main opportunities for firearm examiners to
21 receive training. I also have had training at the FBI. I went
22 to Quantico and did a training class there as well.

23 Q When was that?

24 A That was early in my career. It would have been

1 perhaps in 1998.

2 MR. VILORIA: Court's indulgence.

3 THE COURT: Yes.

4 MR. VILORIA:

5 Q Okay. Ms. Heward I apologize if any of my questions
6 are repetitive, but I want to get a better understanding for
7 everyone about the actual process you use, and that is side by
8 side microscopic comparison of the cartridge case and
9 projectile?

10 A Yes. I prefer the term fired bullet than
11 projectiles.

12 Q Any particular reason why?

13 A Projectile can be something other than a fired
14 bullet.

15 Q Fair enough. How many hours would you say that you
16 spent reviewing side by side comparisons?

17 A There are thousand and thousands of hours spent
18 looking through a comparison microscope. The training program
19 for a firearms examiner to learn all of the aspects is up to
20 two years. Year and a half to two years, generally, and so
21 many, many hours every day in that period of time, and then
22 when doing case work after that. So thousands and thousands
23 of hours in front of a microscope.

24 Q Okay. And the goal of your process that you utilize

1 is to make a visual comparative analysis of the topographical
2 features of a tool or a mark?

3 A It is a visual examination, but there is also a
4 component of what is called CMS consecutive matching striae,
5 and there is work that has been done since the 1950's on this
6 idea of an objective criteria for pattern matching, and I
7 utilized that CMS criteria.

8 Q I would like to refer to two of your reports, okay?
9 They are Exhibits 103 and 104.

10 MR. VILORIA: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 MR. VILORIA: I have previously shown it to the
13 State.

14 BY MR. VILORIA:

15 Q If you could just keep that up there with you
16 Ms. Heward?

17 A Thank you.

18 Q I first want to talk about the report you authored
19 December 7, 2010. That is L5667-10-5. Are you familiar with
20 that report?

21 A Yes, I am.

22 Q In that report, you first notate receiving four
23 fired .22 L/LR cartridge cases. Do you recognize that?

24 A Yes.

1 Q Submitted under control number Q 83585. Can you
2 elaborate on what the phrase .22 L/LR means?

3 A L stands for long. LR stands for long rifle.
4 .22-caliber rim fire firearms, not the firearm, itself, but
5 ammunition. The cartridges come in three different sizes, a
6 short, a long, and a long rifle.

7 Q If a short and a long cartridge case is put into a
8 magazine would the way in which it locks up into the chamber
9 towards the rack, would that change? Would the dimensions
10 change when it goes up?

11 A Well a cartridge cases for a long and a long rifle
12 are the same. But the bullets are not. So a long rifle is
13 going to be longer, and it wouldn't fit into a firearm
14 designed to fire a .22 long.

15 Q So when you have a notation that says .22 L/LR, what
16 are you signifying?

17 A I am saying that cartridge case could be either a
18 long or a long rifle because they are the same size.

19 Q As to the four cartridges in control Q 83585, did
20 you conduct any investigation into their manufacturing
21 history?

22 A I did not.

23 Q So you don't know, at the time of your examination,
24 you didn't know how the cartridge cases were designed or

1 manufactured or processed?

2 A Oh, I misunderstood what you were saying.

3 Q Sure?

4 A I was thinking that you were asking me about the
5 significance of the manufacture of these particular in
6 general. I have knowledge through my training of .22
7 ammunition and firearms that fire that type of ammunition.

8 Q Did you examine the particular metal used for these
9 four fired cartridge cases?

10 A I made note of -- Traditionally when I make notes, I
11 make note of the composition, the physical description of the
12 bullet and of cartridge cases, so I would have noted whether
13 it was a copper or a nickel plated case.

14 Q Were each of the four the same metal?

15 A I would have to refer to my notes. I don't have
16 that in the report that is in front of me. Would that be okay
17 for me to refer to my notes?

18 THE COURT: Yes.

19 BY MR. VILORIA:

20 Q Do you have them in the black folder in front of
21 you?

22 MR. VILORIA: May I approach, Your Honor?

23 THE COURT: Did you want to look at something?

24 MR. VILORIA: I wanted to show the State.

1 THE COURT: Okay.

2 BY MR. VILORIA:

3 Q Would reviewing your handwritten notes refresh your
4 recollection as to the composition of the four fired cartridge
5 cases.

6 A It would.

7 Q Please do so.

8 A Thank you.

9 Q If you could refer to which page of your notes you
10 are reviewing from?

11 A I am referring to page 8 of 21, and these notes were
12 taken on 12-3 of 2010. Excuse me. Those were the bullets.

13 Q Those were the bullets recovered from the decedent?

14 A Yes. I am sorry. Let me find the cartridge cases.

15 Q That's okay. Take your time.

16 A On page 15 of 21 are my initial notes regarding the
17 items that were in Q 83585, and within those notes are
18 notations put on by the crime scene forensic investigator who
19 was at the crime scene, and their term of Y/M means yellow
20 metal which would be copper. And all four are listed as Y/M
21 on the notations. It doesn't appear that I have made any
22 additional notes about color.

23 Q Color of the cartridges?

24 A Correct. The notes that I have are the wording that

1 was on the packaging by the forensic investigator in this
2 case. Marci Margritier's initials appear on it, and she has
3 indicated yellow metal and she's also indicated the head stamp
4 which is the manufacturer's mark on each of them.

5 Q What is a head stamp?

6 A The head stamp is a character that the manufacturer
7 puts on the top of the area I said yesterday contains the
8 primer material. When the firing pin hits, it explodes and
9 her notations indicate three of the four had an "F" for
10 Federal and one has a "C". That is for CCI.

11 Q In a particular batch of manufactured cartridges,
12 would it be common to have a cartridge to have a different
13 head stamp than others in the lot or is this -- they all have
14 the same F and C?

15 A A manufacturer puts their specific designator on it,
16 so it would not be common for there to be a letter to
17 represent that manufacturer.

18 Q Okay. So the Colt Woodsman that has been received
19 in evidence, essentially your opinion is that is, along with
20 internal components, that is the tool that made an impression
21 on the four cartridge cases that were recovered and in
22 evidence?

23 A Yes.

24 Q Generally is that accurate?

1 A That is correct.

2 Q So about the Colt. Did you conduct any independent
3 research on this specific gun prior to testifying here today?

4 A I did look up just some information on the Colt
5 Woodsman, when it was manufactured, very basic information.

6 Q When was it manufactured?

7 A It was manufactured with that terminology of the
8 Woodsman starting in 1927. The literature indicates the last
9 was manufactured in 1977.

10 Q This specific gun, did you identify when exactly it
11 was manufactured?

12 A Well, ~~based on the literature~~, it said there is a
13 magazine, I can't remember the terminology, but the piece at
14 the bottom of the grip that holds the magazine in, that
15 indicates it is a first series, so it would have been early in
16 that time period.

17 Q Can we extrapolate from the serial number whether or
18 not -- how many firearms were produced in that particular
19 batch of Colt Woodsman?

20 A I can't. Perhaps the manufacturer has those
21 records. I don't know.

22 Q What is the serial number of the Colt Woodsman found
23 in this case?

24 A May I refer to the report?

1 Q Would that refresh your recollection?

2 A Yes, please.

3 Q Please do so. If you can state which report you are
4 referring to?

5 A The report L5667-10-12 on page one of two the serial
6 number listed is 90551.

7 Q So we couldn't extrapolate that 90551 does not
8 reflect or reflects 90,551 of that batch?

9 A You can't say that. That may be true, however some
10 manufacturers will change the way in which they do the serial
11 numbers. They may add letters previous to it. So I can't say
12 that. It would seem a logical answer, but I can't testify to
13 that.

14 Q Okay. Did you obtain any information from the
15 manufacturer about the specifications and components of this
16 particular Colt Woodsman?

17 A No, I did not contact the manufacturer.

18 Q Wouldn't it assist a tool mark examiner to know
19 specifically how and when the tool was produced and what batch
20 it was produced in?

21 A It has been my experience, especially with older
22 firearms, that that information is most often not available.

23 Q Separate and apart from your tool mark examination,
24 did you examine this particular weapon for any other forensic

1 purposes such as trace evidence or fingerprints?

2 A Those examinations happened prior to submission to
3 the firearms section.

4 Q Do you have independent knowledge that those
5 forensic examinations actually took place?

6 A I have knowledge of marks placed on there by
7 previous examiners, one being the individual who did the DNA
8 examination.

9 Q How about fingerprints?

10 A I did make some notations about residues being
11 present on the firearm that would indicate that they had been
12 processed, but the individuals at the ~~laboratory~~ who do that
13 processing are the same individuals who collect the evidence
14 from the crime scenes. So it may have been -- Excuse me. Let
15 me back up. This was submitted directly from the agency,
16 because it had a W number on it. So I'm not sure about latent
17 comparisons or latent processing on the firearm.

18 Q I am going back to tool marks. There are generally
19 two types of tool marks. There are impression marks and
20 striated marks; is that accurate?

21 A That is accurate.

22 Q And when we are talking about impressions, we are
23 really talking about finding features of the mark that are on
24 the tool? Let me say they a different way. When you're

1 identifying tool marks, you are looking for class
2 characteristics and individual characteristics; is that
3 accurate?

4 A That's correct.

5 Q Of the marks, themselves, not necessarily the tool?

6 A That's a little bit confusing to understand.

7 Q Sure?

8 A An impressed mark is a mark that has one dimension.
9 There is no movement to it. So it is an impression of whatever
10 the harder surface that is hitting the softer surface, the
11 harder surface will mark the softer surface. Does that answer
12 what you were asking?

13 Q Yes. If a manufacturer produces a thousand shotguns
14 in that lot, they are going to be the same class
15 characteristics as you talked about yesterday, like lands and
16 grooves, caliber, correct?

17 A Yes.

18 Q Those are uniform to the batch manufactured at that
19 particular time?

20 A It is uniform to the make and model of the firearm
21 under that particular design.

22 Q Okay. A class characteristic, it really tells the
23 tool mark examiner that you determined the type of tool that
24 created the impression and how that impression was made?

1 A I wouldn't necessarily say the type of tool. It
2 depends on the part of the firearm, how you would say that.

3 Q But class characteristics alone do not assist an
4 examiner in making an identification?

5 A It is the first component in making an examination.

6 Q So if you have a set of class characteristics, is
7 the examiner able to distinguish between which tool among a
8 series of tools made a particular mark?

9 A It depends on what you are talking about. Because if
10 you are referring to a tool, and we have been talking about
11 firearms being tools, but a firearm is a combination of many
12 pieces and each of those things can be a tool, and depending
13 on what item you are referring to depends on what my answer
14 would be.

15 Q So it is important then when you're examining a
16 firearm that you inspect each of those items or components
17 within the firearm that can be a tool?

18 A Each of the things that may mark a cartridge case or
19 bullet, yes.

20 Q It is very important to inspect those?

21 A Yes.

22 MR. VILORIA: Court's indulgence.

23 THE COURT: Yes.

24 ///

1 BY MR. VILORIA:

2 Q What is a subclass characteristic?

3 A A subclass characteristic is for example a part of a
4 firearm that, and I might use for just an example a extractor.
5 An extractor is a piece that is made separate and then placed
6 into the firearm. Often times they are made in a molding type
7 process. So a subclass characteristic is something that is
8 shared by more than one gun. It is not an individual mark.
9 It is shared by more than one gun. The subclass type marks
10 would indicate that it comes from a manufacturing process such
11 as a casting type process as opposed to a grinding process.
12 When an item is polished or a grinder is used in any way, a
13 milling machine, those types of processes produce
14 individualized marks.

15 Q Did you identify on the Colt Woodsman in this case
16 any subclass characteristics?

17 A I did not. Subclass didn't come into play in this
18 particular case.

19 Q Because you didn't identify it or you didn't notice
20 any?

21 A I didn't observe anything that appeared to be a
22 subclass characteristic.

23 Q On direct you talked about individual
24 characteristics. Again, we are talking about the individual

1 marks left upon a surface; is that right?

2 A When I use the word individualizing, it means it is
3 a microscopic mark that can be used to identify two items
4 together or having -- one having come from another.

5 Q And the individual mark according to the examiner is
6 unique to that particular tool?

7 A Yes.

8 Q What is the standard definition of what makes a tool
9 mark unique?

10 A The standard definition?

11 Q If you say a particular mark is unique to that
12 firearm, how do you define that?

13 A That it has sufficient matching individual
14 characters to identify for instance a cartridge case coming
15 from a firearm and no other, to the exclusion of others.

16 Q Okay. How do you distinguish between a subclass
17 characteristic and individual characteristic?

18 A It has a lot to do -- Most of the way I determine it
19 is how that part of the firearm is made. For instance in the
20 chamber marks, it doesn't matter. The gun type, that process
21 involves removing metal with a grinding process and that
22 process, that manufacturing process by definition could create
23 unique marks. When these marks are impressed on to the
24 chamber area of a cartridge case, and that is a striated mark.

1 That is not an impressed mark. That is a unique mark. That
2 is where I utilized the term I talked about a little while
3 earlier CMS, consecutive matching striae.

4 Q In other words, whether a tool mark is individual,
5 is that largely based on the subjective mindset of the
6 examiner?

7 A No. There are studies that have been done. Studies
8 have been done on processes consecutively, and we have been
9 able to show that unique marks exist and that no -- for
10 example a barrel produced in sequence, one right after the
11 other, number one and number two produce marks that are
12 individual. So bullets fired through those are different.
13 Barrel one and barrel two produce marks that can
14 microscopically be compared, and you can see the differences.
15 You can tell it is not fired from the same.

16 Q Is it possible for a cartridge case fired from one
17 firearm to have the same or similar laterally matching marks
18 on either the bullet or the cartridge fired from a different
19 weapon?

20 A There can be some similarities. It goes back to the
21 manufacturing of the different parts that make up a firearm.
22 So parts that are manufactured in a molding type, a cast type
23 of manufacturing process as opposed to a grinding type of
24 process, they may have subclass marks. Those with grinding

1 type marks where metal is removed, it is heated up, those have
2 been shown to be unique and produce unique marks on bullets
3 and cartridge cases.

4 Q How does the tool mark examiner-- Is there any
5 universal method to determine the reliability and quality of
6 an examiner's particular determination?

7 A I don't understand what you are asking.

8 Q Sure. You have made an identification the four
9 cartridge cases were fired from the same Colt Woodsman seized
10 in this case?

11 A Yes.

12 Q How do you determine the reliability of that
13 conclusion?

14 A Well, first of all, I did use the objective
15 criteria, CMS, which there have been to this point thousands
16 of firearms examiners who have participated in this study and
17 the theory has been upheld that you need to see in the two
18 dimensional mark, you need to see a series of two sets of
19 three or a set of four consecutive matching striae. My
20 personal criteria is higher than that. Or that a three
21 dimensional--or excuse me. That was for a three dimensional.
22 For a two dimensional, it is two sets of four or a set of
23 eight is what it would be, so the study and the articles
24 support that.

1 Q Based on your utilization of CMS on the four fired
2 cartridge cases, what individual characteristics did you find?

3 A On the chamber area I found sets of striae, and in
4 my report when I say sufficient matching individual marks to
5 make an identification, that is what I am referring to. It
6 has to exceed what that minimum criteria is. And so when I do
7 an examination, I look for that minimum. As I said, my
8 criteria is I need to see more than just two sets of three or
9 a single set of four marks. And so I would not call an
10 identification if I didn't see that, because that wouldn't be
11 sufficient matching individual marks.

12 Q Such as on the bullet, I had said that I did not see
13 sufficient matching individual marks and, therefore, I said it
14 was inconclusive.

15 Q When you -- I want to refer to your report Exhibit
16 103-- 104 I believe in that Exhibit. You indicated at least
17 two manufacturers may have fired the cartridges when you first
18 received them; is that accurate?

19 A Yes. I believe that is on page 2 of 2 of that
20 report, that Exhibit 104.

21 Q On direct you mentioned it could have been
22 discharged from either a Colt or a Hafdasa gun?

23 A No. That actually is part of the first report I
24 believe. Yes. So that is actually Exhibit 103, L5667-10-5 on

1 page 2 of 2. I did give the results of the GRS general
2 rifling characteristics search I did of the data base
3 measuring those class characteristics. I did see two
4 manufacturers on that list that came back just two.

5 Q When you identified your -- strike that. Did you
6 ever obtain a Hafdasa to perform a side by side comparison
7 similar to the Woodsman?

8 A No. I have never sign one of these firearms.

9 Q Did you consider testing any other firearms to
10 eliminate the Colt Woodsman as the source of the discharge?

11 A I only received one firearm to compare to this case
12 which was the Colt that I examined, test fired and compared
13 that identified having fired the four cartridges cases.

14 Q Isn't it true though you received a second firearm,
15 a Beretta? Isn't that accurate?

16 A I don't recall examining that.

17 MR. BOGALE: State object as to relevance, beyond
18 the scope of direct examination.

19 THE COURT: Sustained.

20 MR. VILORIA: The witness just testified she only
21 examined one. That is not true.

22 THE COURT: You can't testify to that. If it is
23 relevant, you can approach and explain that to me.

24 ///

1 BY MR. VILORIA:

2 Q Ms. Heward, do you recall authoring a report
3 entitled L5667-10-9?

4 A It is a report in this case, but I don't recall.
5 Would you like to have me look at it?

6 Q Would reviewing your report refresh your
7 recollection?

8 A Sure.

9 MR. BOGALE: State has the same objection.

10 THE COURT: The objection is relevance. Do you want
11 to approach?

12 MR. VILORIA: So the witness testified that she only
13 received one firearm in this case. It is true she did two.

14 THE COURT: Did she do a comparison?

15 MR. VILORIA: That is what I am going to ask her.

16 THE COURT: Is this before? What is the relevance?

17 MR. VILORIA: The relevance is she has in evidence
18 the capability of analyzing another weapon to eliminate the
19 Colt Woodsman but did not do it.

20 MR. BOGALE: I am having trouble following that.

21 THE COURT: If that is the relevance, I don't think
22 she is qualified.

23 MR. VILORIA: That is the point of the relevance.
24 She didn't.

1 THE COURT: You can argue that.

2 MR. VILORIA:: I am not allowed to ask?

3 THE COURT: I will sustain the objection.

4 MR. BOGALE: Thank you Your Honor.

5 MR. VILORIA: Thank you, Your Honor.

6 BY MR. VILORIA

7 Q Ms. Heward, when we are talking about, I want to go
8 back to your discussion of a sufficient agreement, okay? That
9 standard was set forth by AFTE, correct?

10 A What standard?

11 Q The sufficient agreement standard. Are you aware of
12 the AFTE theory of-tool ~~mark~~ comparison?

13 A Yes. There a statement that is made, it is a very
14 lengthy paragraph, that talks about the best known non-match,
15 and I don't use that terminology because the average person
16 doesn't understand it. It is very complicated.

17 Q Let's go through that. So correct me if I am wrong.
18 The standard is, an agreement is significant when it exceeds
19 the best agreement demonstrated between tool marks known to
20 have been produced by different tools and is consistent with
21 agreement demonstrated by tool marks known to have been used
22 by the same tool; is that a complete and accurate statement?

23 A Yes.

24 Q Okay. When we say that, that is really saying that a

1 conclusion of a sufficient agreement is based entirely upon
2 the examiner's recollection of its best non-match?

3 A That is the AFTE theory. I additionally use the
4 consecutive matching line theory. I use them together. That
5 has a lot of relevance in the training program for a firearms
6 examiner, because you do spend thousands of hours looking at
7 items under the comparison microscope, looking at these
8 microscopic marks, and you purposely compare things that you
9 know were fired from different firearms, sometimes
10 consecutively made firearms, so you can see there are
11 differences.

12 Q So your identification of the Colt Woodsman in this
13 case, is that to the exclusion of all other Colt Woodsmans?

14 A Yes.

15 Q So there is no other Colt Woodsman ever produced in
16 the history of its production that could make the same or
17 similar laterally matching tool marks?

18 A That is correct. The chambers marks I used for
19 identification are unique marks.

20 Q What is the standard for its reliability of that
21 determination>.

22 A I don't understand what it is you are asking me.

23 Q You testified about CMS talks about sets of marks.

24 A Yes.

1 Q So how is it, if there is a set of tool marks for
2 example on a cartridge, how are you then able to declare that
3 only one particular gun can make that mark?

4 A There are thousands of firearms -- excuse me --
5 there are thousands of firearms examiners who have
6 participated in the Biasotti study. He has passed away since,
7 but Murdock, another firearms examiner in my field continues
8 on with this study.

9 Q Which study, specifically?

10 A Consecutive matching striae study that involves a
11 set of Ruger fired components and fired bullets particularly,
12 and they are used in studies that have been done by AFTE. I
13 participated in the study in 1998 at the California
14 Criminalistics Institute. The study has been repeated over in
15 class after class. Thousands of people have participated and
16 it has upheld the theory of consecutive matching lines with
17 the minimum criteria set at those numbers I had stated earlier
18 for two dimensional and three dimensional marks.

19 Q Are you referring to the Ruger study conducted by
20 James Handy?

21 A No.

22 Q Okay. Let's talk a little more about your
23 conclusion regarding cartridge cases specifically, okay? How
24 are cartridge cases generally often identified in a particular

1 case? What do you look for?

2 A What do I look for as far as marks?

3 Q As far as marks?

4 A It depends on the type of cartridge case. In this
5 case we were dealing with rim fire cartridge cases, so we have
6 a firing pin impression. We have an andolin impression, the
7 underside of the firing pin impression and the chamber marks.
8 Those are mainly the marks available for use in identification
9 in .22 rim fire of any sort. For a center fire there are
10 additional marks.

11 Q Did you examine the breach face of the Colt?

12 A Yes, I did. ~~I made some notes~~ about some light rust
13 all over the gun.

14 Q How about the extractor and ejector?

15 A This is a simple blow back type, so it doesn't have
16 the same mechanism as a larger caliber pistol.

17 Q How about any, did you identify any magazine marks
18 on the gun when you test fired it?

19 A I didn't make note of any that I recall of magazine
20 marks. But magazine marks are placed as the cartridge cases
21 moving up from the magazine and chambered into the area prior
22 to firing. So the marks made during firing are made over the
23 top of these marks, so they are often times obscured.

24 Q You are not saying that you didn't find any. You

1 didn't notice it?

2 A I didn't make any notice of them in my notes. I
3 examined them for marks that are going to be usable for
4 comparison purposes, and I don't recall making any notation
5 about magazine marks.

6 Q Would you expect there to be any magazine marks if
7 the firearm for example locks up so to speak at the point of
8 getting to the chamber or into the chamber?

9 A Did I expect to find magazine marks? I don't know I
10 would expect it. They may be there, they may not.

11 Q Okay.

12 MR. VILORIA: Court's indulgence.

13 BY MR. VILORIA:

14 Q On direct the State had asked you about clicking.
15 How many -- Generally, if you can go back, how many firearms
16 have you tested, test fired?

17 A Thousands.

18 Q Of those times, is it common for a magazine to lock
19 up or intermittently fire?

20 A I would say generally with firearms it is a rare
21 thing. However, the firearms that are submitted to the
22 forensic laboratory often are not very nice firearms, and they
23 would have more problems than the average firearm.

24 Q So this happens to you during the course of your

1 examinations, this locking up?

2 A I wouldn't call it lockup. It was an intermittent
3 problem that I saw in fielding from the magazine into the
4 chamber. It wasn't -- Locked up isn't a term I would use to
5 describe that.

6 Q When you are test firing, okay, and you are firing
7 and it stops firing, what is going on in the magazine that
8 prevents it from discharging from the barrel?

9 A There are a number of things that it could be. It
10 could be you have a round that was not properly seated in the
11 chamber. It is not fully back against the breach, so if the
12 firing pin, if the trigger was pulled and the firing pin goes
13 forward, it may not reach the edge of that cartridge or it may
14 not have actually made it out of the magazine and into the
15 chamber. There are a number of things that could happen.

16 Q Is this what you experienced during your own test
17 fire?

18 A Yes. The eight that I attempted to test fire, I had
19 that issue with two.

20 Q How many consecutive shots were performed before you
21 encountered that problem?

22 A My notes indicate that I was able to fire one or two
23 and then I would have to reseal the magazine, so pull the
24 magazine out, push it back in and then pull the slide to the

1 rear and let it go forward picking up a round from the
2 magazine to chamber it prior to me pulling the trigger.

3 Q One or two shots you would run into issue, you do it
4 again and run into it again?

5 A Yes.

6 MR. VILORIA: Pass the witness, Your Honor.

7 THE COURT: Further inquiry?

8 MR. BOGALE: Yes, Your Honor.

9
10 REDIRECT EXAMINATION

11 BY MR. BOGALE:

12 Q Thanks for coming back, Ms. Heward?

13 A You're welcome.

14 Q Mr. Viloria asked you some questions about your
15 training and experience. Let's go over a few of those points.
16 Are you required to go through continuing competency
17 evaluations and continuing trainings to be a firearms
18 examiner?

19 A Yes. Through our accreditation, proficiency testing
20 is required. It is required annually in every discipline you
21 do work in and each category of testing. He talked about
22 firearms and tool marks. We actually look at those things
23 differently, so we take proficiency tests in both those areas.

24 Q Is that something you do every year?

1 A Every year.

2 Q That is something you have done every year since you
3 started in San Bernardino County?

4 A It is. I stopped doing casework about three years
5 ago, so I continued up until just before I became Director
6 doing casework.

7 Q Just to be clear, when you talk about individual
8 marks on a cartridge casing, those are unique marks, correct?

9 A Yes.

10 Q Unique to the firearm, correct?

11 A Yes.

12 Q Unique to a specific particular firearm, correct?

13 A Yes.

14 Q Not just a make and model?

15 A Correct.

16 Q And an actual physical object?

17 A Yes.

18 Q And here in this case, you testified earlier that
19 the individual marks on the cartridge cases found by Marci
20 Margritier on scene with the placards 7 through 10 I showed
21 you on Exhibit 120-b, those were fired from the firearm shown
22 in 119-a?

23 A Yes.

24 Q When you initially got the cartridges casings and

1 you did your examination on December 3rd, 2010, you didn't
2 have the gun, right?

3 A That's correct.

4 Q So the only thing you could do was look at the class
5 marks on the cartridge cases, themselves; is that fair to say?

6 A Not just the class marks, but the individual marks
7 on each of those, and I was able to find sufficient matching
8 individual marks and determine at that point all four were
9 fired from the same gun. I just didn't have a gun at that
10 time to compare it to.

11 Q Then you plugged in those marks into the data base
12 and it punched out two makes of gun, correct?

13 A For the bullets, yes.

14 Q So for those bullet, you got the Colt and the
15 Hafdasa?

16 A Yes.

17 Q You had never seen a Hafdasa in your entire life?

18 A I had never even seen the name.

19 Q You have shot over \$10,000 guns?

20 A Probably.

21 Q You never heard of it?

22 A Never heard of it.

23 Q Then you later got a gun, right?

24 A Correct.

1 Q That was submitted to you by Sgt. Ben Russell?

2 A Yes.

3 Q That was a Colt, correct?

4 A Yes.

5 Q Then you test fired and compared the casings from
6 the test firing to the casings you previously had and those
7 matched, correct?

8 A That's correct.

9 MR. BOGALE: I have no further questions, Your
10 Honor.

11 THE COURT: Recross?

12 MR. VILORIA: Very briefly.

13

14 RECROSS-EXAMINATION

15 BY MR. VILORIA:

16 Q Ms. Heward, you just testified on redirect that
17 Ben Russell submitted the firearm to you. Do you recall him
18 personally doing that?

19 A I have a copy in my notes of the submission request,
20 and it has his name on it.

21 Q Okay. I want to just go back to the Hafdasa. When
22 you saw that name, it did not strike a chord with you?

23 A I had not seen that name before. I recall maybe
24 somebody saying to me or maybe I tried to research it because

1 I feel like it was an Israeli made gun, and I had said that
2 earlier in my testimony.

3 Q Would you be surprised to know it is otherwise known
4 as Ballester-Molina?

5 A No, I haven't.

6 Q It is a Argentine gun. When you had -- When you were
7 submitted the gun, what was the condition of the gun
8 generally?

9 A The gun had a few light rust marks kind of all over.

10 Q Was it also on the stock of the gun and the trigger?

11 A I don't recall if it was on the stock or the
12 trigger, but I had made some notations on areas that I would
13 find important for comparison purposes. I did make some
14 notations there were some light rust marks on the barrel and
15 on the breach area.

16 Q The cartridge casings you were given, how were those
17 presented to you? How were they packaged?

18 A They were packaged in the manilla envelopes if I
19 recall correctly which is the normal packaging of the forensic
20 investigator.

21 Q Individually in a package or just kind of loose?

22 A They tend to always package individually, all of the
23 smaller packets into one outer envelope.

24 Q In this case, they were in that as you described

1 attending to?

2 A That is the practice of the forensic investigators.
3 I do believe that is the way I originally received them. We
4 saw them in court in Ziplock bags. Those were packaging I put
5 them in after transferring them to the bar code number where I
6 had them maintained at the laboratory.

7 MR. VILORIA: No further questions, Your Honor.

8 THE COURT: Anything further?

9 MR. BOGALE: No, Your Honor. Thank you.

10 THE COURT: May this witness step down and be
11 excused?

12 MR. BOGALE: Yes she may, and yes she may.

13 (Witness excused.)

14 THE COURT: Call your next witness

15 MS. KOSSOW: State would call Jose Garcia. It will
16 just be one second, Your Honor.

17 THE COURT: Okay. That is fine.

18 THE COURT: You may proceed.

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JOSE LUIS GARCIA

called as a witness, having been first duly sworn,
took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. KOSSOW:

Q Good morning. Sir?

A Good morning.

Q Could you please state your full name and spell your
last for the Court Reporter?

A Jose Luis Garcia, G-A-R-C-I-A.

Q Thank you, sir. How old are you?

A Thirty.

Q Do you live in Washoe County?

A Yes, ma'am.

Q How long have you lived here in Washoe County?

A Fifteen, twenty years maybe.

Q Did you live here in November of 2010?

A Yeah.

Q And I want to ask you about some people that maybe
you knew back in November of 2010. First of all let's start
about do you have any type of nickname people referred to you
as when you were growing up?

A Yeah. Everybody called me Pudgy.

1 Q In November of 2010, did you know an individual by
2 the name of Elder Rodriguez?

3 A No.

4 Q Did you know an individual by the name of Primo?

5 A No.

6 Q I am going to show you a photograph and ask if you
7 recognize who is shown in that photograph?

8 A I do not.

9 THE COURT: What exhibit number is that?

10 MS. KOSSOW: I apologize Exhibit 117.

11 THE COURT: Thank you.

12 BY MS. KOSSOW: ~~the~~

13 Q In November of 2010, did you know a person by the
14 name Carlos Vasquez?

15 A No.

16 Q Did you know a person by the nickname of Shadow?

17 A No, ma'am.

18 Q Let me show you Exhibit 88.

19 MS. KOSSOW: May I approach the witness?

20 THE COURT: You may.

21 BY MS. KOSSOW:

22 Q Let me show you Exhibit 88, do you recognize who is
23 shown in Exhibit 88?

24 A No.

1 Q I will show you Exhibit 89.

2 MS. KOSSOW: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MS. KOSSOW:

5 Q Do you recognize who is shown in Exhibit 89?

6 A That's me.

7 Q And do you know what time period this is from?

8 A It is a while back.

9 Q Okay. Around November 2010, little bit before?

10 A I don't recall.

11 Q But it is you?

12 A Yeah, it's me.

13 MS. KOSSOW: State would move for admission of
14 Exhibit 89.

15 THE COURT: Any objection?

16 MS. NORDVIG: No objection.

17 THE COURT: Exhibit 89 is admitted with the
18 foundation having been laid.

19 (Exhibit 89 admitted in evidence.)

20 MS. KOSSOW: Thank you.

21 BY MS. KOSSOW:

22 Q So that is the picture you identified as yourself,
23 correct?

24 A Yeah.

1 Q Do you know an individual by the name of Luis
2 Alejandro Menendez-Cordero?

3 A No.

4 Q Do you know an individual by the nickname of Appo?

5 A No.

6 Q Do you see the man seated over here with the blue
7 buttoned up shirt and the tie?

8 A Yeah, I see him.

9 Q Do you recognize him?

10 A No, ma'am.

11 Q You didn't know him around the time of November of
12 2010?

13 A Nah.

14 Q On January 4th of 2011, did Sparks Police Department
15 detective Valenti come and speak with you?

16 A I have had a lot of people speak to me, so --

17 Q Okay. Sir, on January 4, 2011, do you recall a
18 Sparks police detective coming to your work and speaking to
19 you in regards to a double homicide that occurred in November
20 of 2010?

21 A Yeah. I remember somebody showing up to work and
22 talked to me.

23 Q Were you aware that interview was recorded?

24 A It has been so long. It probably was, but --

1 Q You don't remember the name of the detective?

2 A No.

3 Q Do you recall the detective asking you: Can you
4 tell me how you know Appo? And it would be awesome if you
5 could tell us where he's at right now. Do you remember him
6 asking you about Appo?

7 A Maybe. It's been so long, you know, I don't recall
8 much.

9 Q So you don't recall what you told him?

10 A No.

11 Q Do you recall telling him: I mean, I seen him
12 around. I've seen him around, but I really don't know. I
13 don't know where he went or anything. Do you recall saying
14 that?

15 A No, ma'am.

16 Q Did you say that?

17 A If that is what the paperwork says, I must have said
18 it, yeah.

19 Q So as you're seated here right now, did you see the
20 defendant otherwise known as Appo at a party around Fall,
21 November of 2010?

22 A Like I said, it's been so long I really, I just, I
23 mean I don't recall. I don't remember seeing him.

24 Q Do you remember during that same interview that

1 detective Valenti asked you if you had picked Appo up from an
2 apartment near El Rancho approximately six weeks ago?

3 A No.

4 Q Do you remember him asking you that?

5 A No.

6 Q Do you recall telling him: No, I didn't do that?

7 A I didn't do that.

8 Q Okay. So you didn't do that?

9 A No.

10 Q And then do you remember or did detective Valenti
11 then ask you: What if it had been five or seven weeks?
12 Meaning he's asking you again when is the last time that you
13 saw Appo? Do you remember him asking you that?

14 A No.

15 Q Did you tell detective Valenti: Last time I seen
16 him was like probably like two or three months ago. Did you
17 tell detective Valenti that?

18 A I don't recall.

19 Q Did you -- or do you recall detective Valenti asking
20 you where you had seen Appo?

21 A No, I have not, ma'am.

22 Q You don't recall him asking you that?

23 A No.

24 Q Did you tell him: At a friend's house?

1 A I don't remember.

2 Q He asked you: Who was your friend. And do you
3 recall what you told him?

4 A No.

5 Q Christian. Do you remember using the name
6 Christian?

7 A I don't know a Christian.

8 Q And he asked you: Bullet, do you know a guy by the
9 name of Bullet?

10 A No.

11 Q The response you gave to detective Valenti was:
12 Yeah. Do you remember that?

13 A No.

14 Q Detective Valenti went on to ask you: All right.
15 So he's over at Bullet's, meaning Appo, what was he doing over
16 there? Do you remember him asking you that question?

17 A No.

18 Q And do you recall telling him: I don't know. I
19 just went over and had a couple beers then went right back
20 home. Did you tell detective Valenti that?

21 A I don't recall.

22 Q Sir, on November 20th of 2010, did you take this
23 defendant along with Carlos Cueva, aka Shadow, to a house in
24 Fernley to get a tattoo on the top of his head?

1 A No, I did not, ma'am.

2 MS. KOSSOW: Thank you. I have no further questions.

3 THE COURT: Cross-examination?

4

5 CROSS-EXAMINATION

6 BY MS. NORVIG:

7 Q Good morning, Mr. Garcia.

8 A Good morning.

9 Q You do recall a detective coming to see you at some
10 point several years ago?

11 A Yeah. Like I said, it has been-- it has been a
12 while, so --

13 Q I understand. Do you recall any of your conversation
14 from that meeting?

15 A No.

16 Q And do you recall at any time taking the person
17 sitting at the table here to Fernley?

18 A No.

19 Q Is your memory pretty good or average?

20 A I wouldn't be able to tell you.

21 Q Okay. Do you remember things that are important to
22 you?

23 A Yeah.

24 Q Okay. Did you meet with the District Attorney on

1 this case before coming here today?

2 A Yes, I did.

3 Q Did they go through your testimony with you?

4 A Yeah.

5 MS.NORDVIG: Nothing further. Thank you.

6 THE COURT: May this witness step down?

7 MS. KOSSOW: No, Your Honor. May I inquire?

8 THE COURT: Okay.

9

10 REDIRECT EXAMINATION

11 BY MS. KOSSOW:

12 Q And so what does that mean to you, Mr. Garcia, that
13 we met prior to trial, correct?

14 A Correct.

15 Q When she says we went through your testimony, what
16 do you take that to mean?

17 A Testimony I am guessing is the paperwork you have in
18 front of you.

19 Q Did we go over that paperwork line by line?

20 A Not that I know of, no.

21 Q So I asked you a few questions?

22 A Yeah.

23 Q And you came and you answered those questions; is
24 that fair?

1 A Yeah. Yeah.

2 Q But I didn't show you any paperwork, didn't go
3 anything line by line with you, did I?

4 A Not line by line.

5 Q I asked you originally if you knew Shadow. What was
6 your answer?

7 A No.

8 Q You don't know him?

9 A Nope.

10 Q That statement, interview with detective Valenti, he
11 asked you do you know Shadow?

12 MS. NORDVIG: Objection. Beyond the scope.

13 MS. KOSSOW: One more question, Judge.

14 THE COURT: Because she could recall him, I am going
15 to overrule the objection.

16 BY MS. KOSSOW:

17 Q Thank you. And you said: I've seen him around,
18 yes. Do you remember telling detective Valenti that?

19 A Huh-uh.

20 Q You have to answer out loud, sir?

21 A No.

22 Q You also said: I mean I go party with these guys.

23 MS. NORDVIG: Objection, Your Honor

24 THE COURT: Why are you going outside the

1 cross-examination? Are you doing new issues?

2 MS. KOSSOW: No. I asked if he knew Shadow. He
3 said no. I forgot to ask him one line from the interview.

4 THE COURT: All right. Now it is another line?

5 MS. KOSSOW: It is the same exact line as the first
6 one.

7 THE COURT: Okay. Because you can recall him as a
8 witness, I will overrule the objection.

9 MS. KOSSOW: Thank you.

10 BY MS. KOSSOW:

11 Q So you don't recall saying: I seen him around, yes?

12 A No, I don't recall.

13 Q And saying: I mean I go party with these guys, have
14 drinks. I am there for the girls and that's it, man. Did you
15 tell detective Valenti that?

16 A I don't remember.

17 MS. KOSSOW: Thank you, Your Honor. Nothing
18 further.

19 THE COURT: So we opened up the direct a little bit.
20 Ms. Nordvig, do you want to ask additional cross-examination?

21 MS. NORDVIG: Briefly.

22 THE COURT: Yes.

23 ///

24 ///

1 RECROSS-EXAMINATION

2 BY MS. NORDVIG:

3 Q So you went to places where some of these people may
4 have been partying; is that correct?

5 A Yeah, that's correct.

6 Q And it was just to drink and be around the girls,
7 right?

8 A Yeah, but I was with different friends and, you
9 know, if they happen to be there, you know, people show up and
10 stuff like that.

11 Q Okay. Do you feel uncomfortable being here today?

12 A Of course.

13 Q Are you here because you were subpoenaed?

14 A Yes, ma'am.

15 MS. NORDVIG: Nothing further.

16 MS. KOSSOW: Judge, may I briefly based on his
17 answer?

18 THE COURT: Okay. Go ahead.
19

20 REDIRECT-EXAMINATION

21 BY MS. KOSSOW:

22 Q What I thought I just heard you say, Mr. Garcia, you
23 do go to parties with people like Bullet and Shadow; is that
24 what you said?

1 A There was all sorts of people there. I don't recall
2 any of those names or what their faces look like or anything.

3 MS. NORDVIG: Objection.

4 THE COURT: You made the objection. I don't know
5 what it was for.

6 MS. NORVIG: That's fine, Your Honor.

7 THE COURT: Okay. Withdraw the objection. The
8 answer stays.

9 BY MS. KOSSOW:

10 Q You're uncomfortable to testify, be here today
11 because you are sitting in front of this defendant?

12 A I don't know him.

13 MS. KOSSOW: Thank you. I have nothing further.

14 THE COURT: Anything else Ms. Nordvig?

15

16 RE CROSS-EXAMINATION

17 BY MS. NORDVIG:

18 Q Are you uncomfortable-- strike that. Why are you
19 uncomfortable?

20 A I don't know why I am here. I am not involved in
21 anything, so --

22 Q And you are not here voluntarily, correct?

23 A No.

24 MS. KOSSOW: Thank you.

1 THE COURT: Anything further?

2 MS. NORDVIG:: No, Your Honor.

3 THE COURT: Do you want me to excuse this witness?

4 MS. KOSSOW: Actually, Your Honor, I ask he remain
5 under subpoena.

6 THE COURT: Sir, you can step down from the trial
7 now, but you are under subpoena. You must stay in touch with
8 the groups of people in the District Attorney's office who
9 arranged your testimony. They may call you back.

10 THE WITNESS: That's fine.

11 THE COURT: All right. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: You may step down.

14 (Witness excused.)

15 THE COURT: Ladies and gentlemen of the jury, I
16 think is a good time to take our morning recess. During this
17 break, you are reminded not to discuss the case among
18 yourselves or with anyone else verbally or on the Internet.

19 You are not to form or express any opinion about the
20 ultimate outcome of this matter until it is finally submitted
21 to you.

22 You may not read, look at, listen to any news media
23 or any other account or commentary about the case or anyone
24 involved in the case including on the Internet.

1 You may not make any independent investigation or
2 inquiries into the facts and circumstances regarding the case,
3 and visit the scene, etcetera.

4 You should not allow anyone to speak of the case to
5 you or about it in your presence. If anything like that
6 occurs, report such occurrence to the bailiff. Go ahead and
7 go into the jury room for our morning recess.

8 Court's in recess.

9 (Short recess taken.)

10 THE COURT: Please be seated. Counsel, what can I
11 do for you?

12 MS. NORDVIG: Thank you, Your Honor. As we were
13 standing up for the jury, I noticed Kevin Dach from Sparks
14 Police Department is present in the courtroom in full regalia
15 so to speak with his side arm and his stun gun. The pretrial
16 order specifically goes into security issues within the
17 courtroom and how we are trying to avoid any appearance of
18 additional or extra security measures in this trial to protect
19 my client's right to a fair and unbiased proceeding.

20 I would ask that either he remove himself from the
21 courtroom or remove his belt.

22 THE COURT: Is Mr. Dach here right now?

23 MS. KOSSOW: He is. Detective Dach.

24 THE COURT: Detective, please stand up and come in a

1 little so I can see how you're dressed. Okay. All right.

2 Thank you. Yes.

3 MS. KOSSOW: Judge, I am not sure what the pretrial
4 order has to do with people coming to an open courtroom and
5 watching a proceeding. Detective Dach is not involved in the
6 case. He's merely here to observe, and to ask him to take off
7 his firearm I think is quite frankly ridiculous. He doesn't
8 have any identifying information on him whatsoever.

9 THE COURT: I am not completely sure what all the
10 pretrial -- I haven't read that transcript about that
11 particular issue. I know I dealt with that issue with all of
12 you when we talked about the number of armed personnel versus
13 the unarmed personnel and the bright colored lanyards and the
14 numbers we would have in the courtroom. I had determined,
15 based on what the Washoe County Sheriffs told me, we would not
16 be overcrowded in the courtroom with weapons or be seeing too
17 much security.

18 My ruling is if an officer wants to come into the
19 courtroom and he's a detective, he has to have a jacket on and
20 he has to cover all his, the firearm and stuff. I don't let
21 people come in a dress shirt which is the way the detective is
22 dressed now, no tie, dress shirt and firearm in plain view. I
23 let you come in if you're dressed in uniform and there is a
24 purpose for you to be in the courtroom. Of course I don't ask

1 them to take off their weapon. I have never had a detective
2 take off their weapon. I told him go get a coat on because
3 that seems more appropriate to me than just having people with
4 side arms that are not part of the security detail. We all
5 know he's not part of security detail, but I am not sure the
6 jury would know the difference. He has been sitting in the
7 back of a large courtroom. I am not sure they saw him. I
8 didn't pay attention to him being here. I saw there was
9 someone there, but I didn't pay attention to what he was
10 wearing. I am not sure you could see it because he was
11 sitting in the third row, fourth row back. But I would ask
12 any detectives that come to the courthouse for this trial and
13 wear their weapons, they should have it under a suit coat. So
14 I guess, based on your objection, we should ask Mr. Dach to
15 come back when you're dressed in a jacket covering all your
16 stuff. Thank you.

17 Anything further?

18 MS. NORVIG: No thank you, Your Honor.

19 THE COURT: Bring the jury in. Will you stipulate to
20 the presence of the jury?

21 MS. KOSSOW: State will so stipulate.

22 MS. NORDVIG: Defense stipulates.

23 THE COURT: Thank you. Please be seated.

24 MS. KOSSOW: State would call Charles Payne.

1 THE COURT: You may proceed.

2 MS. KOSSOW: Judge, I'm sorry, may we approach
3 briefly?

4 THE COURT: Yes. Ladies and gentlemen of the jury,
5 excuse us. Remember you're allowed to turn to yourself.

6 MS. KOSSOW: The obtaining of the tattoo which is
7 what Mr. Payne is going to testify to is part of the prior bad
8 act motion. I didn't know if the defense is asking to read
9 any type of admonishment.

10 THE COURT: It is about the tattoo. Do you want the
11 special Instruction? Do you want that read before testimony?

12 MR. BOGALE: ~~Judy is~~ telling us we have to speak up.

13 MS NORDVIG: Yes. We would like the Instruction
14 read to the jury prior to testifying.

15 THE COURT: Right now?

16 MS. NORDVIG: Yes. Thank you.

17 THE COURT: Ladies and gentlemen of the jury,
18 evidence which you are about to receive may tend to show the
19 defendant committed acts other than which he's on trial for
20 today in the trial. Such evidence will not be received and
21 may not be considered by you to prove that he's a person of
22 bad character or that he has a disposition to commit crime.
23 This evidence is only received and may be considered by you
24 only for the limited purpose of showing motive regarding the

1 charged crime. The limited purpose for which you may consider
2 such evidence, you must weigh it in the same manner as you do
3 all the other evidence in the case. You are not permitted to
4 consider such evidence for any other purpose. You may
5 proceed.

6
7 CHARLES PAYNE, JR.

8 called as a witness, having been first duly sworn,
9 took the witness stand and testified as follows:

10
11 DIRECT EXAMINATION

12 BY MS. KOSSOW:

13 Q Will you state your full name and spell your last
14 for the Court Reporter?

15 A Charles Payne Jr. Payne, P-A-Y-N-E.

16 Q Mr. Payne, what is your current occupation?

17 A Tattoo artist.

18 Q How long have you been doing tattoo work?

19 A Twenty-three years.

20 Q I want to talk to you about November of 2010. Were
21 you performing tattoo work at or around that time?

22 A Yes, I was.

23 Q Were you in a relationship in November of 2010?

24 A Yes, I was.

1 Q And were you married?

2 A I was married.

3 Q Were you familiar with your wife's side of the
4 family?

5 A Yes.

6 Q Do you know a woman by the name of Francis
7 Fernandez?

8 A That is my ex-wife's sister.

9 Q Back in November of 2010, did you have contact with
10 Francis Fernandez?

11 A Yes.

12 Q Who was her ~~boyfriend~~ at the ~~the~~ time?

13 A Carlos.

14 Q I am sorry?

15 A Carlos.

16 Q Did you know him by any other name other than
17 Carlos?

18 A No. No, I did not.

19 Q I want to show you what has been marked as Exhibit
20 88.

21 MS. KOSSOW: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 BY MS. KOSSOW:

24 Q Do you recognize who is shown in Exhibit 88?

1 A That's Carlos.

2 Q Is this how he looked back in November 2010?

3 A Yes.

4 MS. KOSSOWW: Your Honor, move for Exhibit 88.

5 THE COURT: Counsel.

6 MS. NORDVIG: Your Honor, we would object for lack
7 of foundation. If it can be supplemented, I will be happy to.

8 THE COURT: Do you want to ask a question?

9 MS. NORDVIG: I would rather not, but I would object
10 to the foundation laid for that exhibit with this witness. It
11 is insufficient.

12 THE COURT: I am going to overrule that objection.
13 I think it was sufficient foundation having been laid. The
14 exhibit remains admitted.

15 (Exhibit 88 admitted in evidence.)

16 BY MS. KOSSOW:

17 Q I am going to show it up on the screen right in
18 front_of you. So this individual is a person you knew as
19 Carlos?

20 A Yes.

21 Q And he was in a relationship with Ms. Fernandez?

22 A Yes, for about a year, I believe.

23 Q Did he come to your house?

24 A Yes, on several occasions.

1 Q I want to talk to you again about November, around
2 November, November 20th of 2010. Were you asked to perform
3 tattoo work on a person either by the name of Francis
4 Fernandez or by Carlos?

5 A By Carlos.

6 Q How did that contact even take place?

7 A He just called me, asked me if I could do him a
8 favor, do some tattoo work for him, he would give me \$500 to
9 do the tattoo.

10 Q What was your answer to that?

11 A Yes.

12 Q And at that time, where were you doing your tattoo
13 work?

14 A I had a shop out of my house.

15 Q So after you speak with Carlos and you agreed to do
16 the tattoo, what happened?

17 A Three of them came over, actually four. Francis was
18 with them. Four of them came over.

19 Q I will stop you there.

20 A What's that?

21 Q I will stop you there. Four people. You said
22 Francis?

23 A Francis.

24 Q Carlos, the man we just saw?

1 A Uh-huh.

2 Q You have to answer out loud?

3 A Yes.

4 Q And then did you know the third person?

5 A The gentleman I just saw out in the room. He was a
6 witness.

7 Q The man who just walked out right before you?

8 A Yes. Yes.

9 Q I am going to show you previously admitted Exhibit
10 89. Is that who you are talking about?

11 A Yes.

12 Q Did you know his name at the time?

13 A No. I just met him that one time. That was the
14 only time I met him. He was the interpreter for this
15 gentleman here.

16 Q When you say this gentleman here, who are you
17 referring to?

18 A The defendant.

19 Q Could you describe an article of clothing the person
20 you are referring to is wearing today and where they are
21 seated?

22 A Wearing a blue jumpsuit -- blue shirt sitting on the
23 right-hand side.

24 Q Could you point?

1 A Over here. I am sorry.

2 Q Is there any identifying marks?

3 A The tattoos I did are on his forehead and the side,
4 too.

5 MS. KOSSOW: I ask the record reflect the witness
6 has identified the defendant.

7 THE COURT: The record will so reflect even though
8 Mr. Vilorio is wearing a blue shirt.

9 MS. KOSSOW: He does not have tattoos on his head.

10 BY MS. KOSSOW:

11 Q Let me go back up a little bit. Four people,
12 Francis Fernandez, Carlos, the man you just identified, then
13 the defendant seated over here?

14 A Yes.

15 Q Who were you asked to do the tattoo work on?

16 A The defendant.

17 Q So you said the man that was just here interpreted
18 for you?

19 A Uh-huh.

20 Q Did you -- What language did the defendant speak?

21 A Spanish.

22 Q Do you speak Spanish?

23 A No.

24 Q And so the man that just left, what did he need to

1 interpret for you?

2 A Just explaining what he wanted to have done and
3 through the procedure how it hurt, all that stuff.

4 Q What was your understanding of what he wanted done?

5 A Just the gang tattoo as far as I know.

6 Q Do you recall exactly what it was?

7 A MS-13. The letters in the center. I don't remember
8 what it was.

9 MS. KOSSOW: Your Honor, may I approach with Exhibit
10 75?

11 THE COURT: You may.

12 BY MS. KOSSOW:

13 Q I am going to show you a photograph. Do you
14 recognize what is shown in Exhibit 75?

15 A Yes.

16 Q First of all who is it?

17 A The defendant.

18 Q And do you recognize anything particular about his
19 face that you recognize?

20 A I did the two tattoos, the MS on the sides and the
21 CLCS in the center.

22 Q Is there anything that has been done over your work
23 since you have done it?

24 A The cross in the center. That is all I can see that

1 I know of.

2 Q Besides that cross in the center, is this how the
3 defendant looked back on November 20, 2010?

4 A Yes.

5 MS. KOSSOW: Your Honor, move for admission of
6 Exhibit 75.

7 THE COURT: Any objection?

8 MS. NORDVIG: No.

9 THE COURT: Exhibit 75 foundation has been laid. It
10 will remain admitted.

11 (Exhibit 75 admitted in evidence.)

12 BY MS. KOSSOW:

13 Q Will you show us, Mr. Payne, that is a touch screen,
14 you can touch it with your fingernail and circle, show me
15 exactly what you were talking about when you said MS?

16 A Here.

17 Q You have to push kind of hard with your finger?

18 A All right. I did that and then this right there.

19 Q Do you know what that center part says?

20 A No.

21 Q But you did some type of letters in the middle?

22 A Yeah.

23 Q What we see, I am going to circle this sort of large
24 cross, you described that you did not do?

1 A No.

2 Q At the time you met the defendant and did this
3 tattoo, did he have that cross there?

4 A No.

5 Q I want to clear that. I am going to ask you in this
6 photograph, on the, I am looking at the right side, it would
7 be your right side, we see the S. Can you tell what is on top
8 of the S?

9 A Looks like horns.

10 Q Horns? How long do you think the defendant was at
11 your residence that day?

12 A Probably around three hours.

13 Q Mr. Payne, do you have a prior conviction for a
14 felony offense?

15 A Yes.

16 Q When did that occur?

17 A 1995.

18 Q What was the prior conviction for?

19 A Attempted murder, great bodily jury and gun
20 enhancement.

21 THE INTERPRETER: The interpreter did not hear the
22 answer. The interpreter did not here the witness' answer.

23 THE COURT: Okay. The Court Reporter will read it
24 back.

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(Record read by the Court Reporter.)

BY MS. KOSSOW:

Q Where was that out of?

A Orange County, California.

Q You, like you said, continue to do tattoo work today?

A Uh-huh.

Q Is that yes?

A Yes.

Q In fact, do you have your own shop now?

A Yes.

Q That is what you do?

A Yes.

MS. KOSSOW: Thank you. I have nothing further.

THE COURT: Cross-examination.

MS. NORDVIG:: Thank you.

CROSS-EXAMINATION

BY MS. NORDVIG:

Q On direct you stated that you received a phone call from Carlos; is that correct?

A That was Carlos or Frankie.

Q I'm sorry?

A Carlos or Frankie or Francis Fernandez one of the

1 two. I believe it was Carlos.

2 Q Frankie is Francis. Is that a nickname for Francis?

3 A Yes. Yes.

4 Q They said they would -- One of them said they would
5 pay you \$500 for a tattoo; is that correct?

6 A Yes.

7 Q Do you recall making a statement to detectives from
8 the Sparks Police Department in January, excuse me, on January
9 4th of 2011?

10 A I believe it was at my work. They came to my work
11 and interviewed me.

12 Q Either right before you went to work or right when
13 you got there?

14 A I remember they came to my work, actually
15 interviewed me at my work.

16 Q Do you recall a conversation regarding payment at
17 that time?

18 A I don't remember everything. I am sorry.

19 Q Fair enough. If I show you a copy of the transcript
20 of that statement, would that help you remember?

21 A Yes.

22 MS. NORDVIG: Your Honor, I am presenting an
23 interview transcript January 4, 2011 with detective Scott
24 Valenti and this witness. May I approach?

1 THE COURT: State has a copy of that?

2 MS. NORDVIG: Yes.

3 THE COURT: You may.

4 MS. NORDVIG: Thank you.

5 BY MS. NORDVIG:

6 Q I am showing you page 4. I would direct you to line

7 22?

8 A Okay.

9 Q And down to 27?

10 A Thank you.

11 Q Thank you.

12 A Okay.

13 Q Does that help your recollection?

14 A Yeah, but I don't remember him giving me any

15 speakers.

16 Q Slow down, okay? Thank you. So reading this helps

17 you remember?

18 A Yeah.

19 Q Okay. And in this transcript you told detective

20 Valenti that you were going to be paid with speakers valued at

21 approximately \$500, correct?

22 A Correct.

23 Q Carlos was going to pay you?

24 A Yes.

1 Q The letters in the center of the forehead are CLCS?

2 A Yes.

3 Q Do you know what that means?

4 A No.

5 Q Were the horns you think you saw on the top of his
6 head, were those part of what you tattooed?

7 A Yes.

8 MS. NORDVIG: Court's indulgence.

9 THE COURT: Yes:

10 BY MS. NORDVIG:

11 Q And you testified at one of the pretrial hearings in
12 this case, correct? ~~Yes~~

13 A Yes.

14 Q Approximately three weeks ago?

15 A Yes.

16 MS. NORDVIG: Thank you, Your Honor. I have a
17 portion of his prior testimony I believe it was September
18 26th.

19 THE COURT: Okay, counsel, I need you to approach
20 please.

21 MS. NORDVIG: I have two copies. Would you like
22 one?

23 THE COURT: Do you have a copy?

24 MS. KOSSOW: I do.

1 THE COURT: Yes.

2 MS. NORDVIG: I will get a clean one.

3 THE COURT: We'll mark it to refresh his
4 recollection with his prior testimony. You can hand him the
5 court copy, okay?

6 MS. NORDVIG: Thank you. May I approach?

7 THE COURT: Yes. She'll mark it.

8 MS. NORDVIG: I am providing the Court a copy of the
9 prior testimony of Mr. Payne.

10 THE CLERK: Exhibit marked as Exhibit 130.

11 (Exhibit 130 marked for identification.)

12 MS. NORDVIG: Just ~~for~~ the record, it is numbered
13 pages 15 through 20.

14 THE COURT: On a transcript filed on what date?

15 MS. NORDVIG: I don't know what date it was filed.
16 It is from the proceedings from September 26th, 2017.

17 THE COURT: Ladies and gentlemen of the jury, the
18 reason we are doing all of this, the transcripts are now
19 electronically filed so you see all these computers around me.
20 I have it here. It is electronic and our record in the
21 courthouse is now all electronic, so when we have to refresh
22 the witness' recollection, we don't take the computer up on
23 the stand. We have a copy. That is why we marked this copy.

24 MS. NORDVIG: Thank you, Your Honor.

1 BY MS. NORDVIG:

2 Q Do you remember testifying at your prior hearing you
3 participated in regarding the tattoos in this case?

4 A Yes.

5 Q You were asked if there was anything attached to the
6 M or the S. Do you recall that?

7 A No, I don't remember that.

8 Q If I show you a copy of your prior testimony, would
9 that help you --

10 A Yeah.

11 Q -- recall?

12 A Yes.

13 MS. NORDVIG: May I approach, Your Honor?

14 THE COURT: Yes. Do you want to use the Court's
15 copy? Okay. Great. Thank you.

16 BY MS. NORDVIG:

17 Q So I am providing you with what has been marked as
18 Exhibit 130 page 19. I would direct you to lines 9 through
19 14?

20 A Okay. Just a --

21 Q No. Sorry. We have things we have to say first?

22 A I understand.

23 Q Thank you. Does that help you recall your prior
24 testimony?

1 A Yes.

2 Q Okay. And did you at that time testify to anything
3 about any horns?

4 A No.

5 Q And in fact, you testified about something
6 different, correct?

7 A Just the center part, I believe.

8 Q Did you testify that there was something attached?

9 A I don't believe so.

10 MS. NORDVIG: Your Honor, may I approach again?

11 THE COURT: You may.

12 MS. NORDVIG: Thank you.

13 BY MS. NORDVIG:

14 Q I am showing you again Exhibit 130. Direct you to
15 11 through 14.

16 A Okay.

17 Q Did that assist you in recalling your prior
18 testimony?

19 A Yes.

20 Q Did you think there was something attached at that
21 point?

22 A I didn't even think of it.

23 Q Okay. You testified on direct that the people were
24 at your house for approximately three hours?

1 A Yes.

2 Q That was not quite seven years ago?

3 A Yes.

4 Q How long has it been since you saw Carlos?

5 A It is been about that long. I know right after this

6 occurrence he went to jail. I never saw him again.

7 Q You testified on direct that you have a prior felony

8 conviction?

9 A Yes.

10 Q Did you serve time on that?

11 A Yes.

12 Q How many years?

13 A Thirteen.

14 MS. KOSSOW: Objection.

15 THE COURT: Sustained. That is improper

16 questioning. The witness does not have to answer.

17 MS. NORDVIG: Thank you. Nothing further.

18 MS. KOSSOW: Judge I don't know if it was recorded.

19 MS. NORDVIG: Move to strike.

20 MS. KOSSOW: Move to strike.

21 THE COURT: The clerk was talking to me. You all

22 can just wait a minute.

23 Now did you have more questions?

24 MS. KOSSOW: I just made a motion to strike. I am

1 unfamiliar if his answer was recorded.

2 MS. NORDVIG: We would stipulate to that.

3 THE COURT: The answer is stricken from the record.
4 The jury will take no consideration of it.

5 MS. KOSSOW: May I, Your Honor? Thank you.

6
7 REDIRECT EXAMINATION

8 BY MS. KOSSOW:

9 Q Mr. Payne, prior to being contacted in regards to
10 this case seven years later, did you remember exactly what you
11 tattooed on the defendant's head?

12 A No. I just remember the MS not the small letters
13 detail.

14 Q You remember the MS. Does the placement of the
15 tattoo stick out in your mind?

16 A Yeah. Yes. Sorry.

17 Q Why is that?

18 A Just because on the forehead, I never done a
19 forehead tattoo like that before.

20 MS. KOSSOW: Thank you. I have nothing further.

21 THE COURT: Anything further?

22 MS. NORDVIG: Briefly, Your Honor.

23 ///

24 ///

RECROSS-EXAMINATION

BY MS. NORDVIG:

Q This is the only time you have done a tattoo on a forehead?

A Yes.

MS. NORDVIG: May I approach with Exhibit 30.

THE COURT: Yes.

BY MS. NORDVIG:

Q Page 19. Sorry. That is 130 not 30.

Q Lines 17 through 20, please. Would that help you recall?

A Yup.

Q Had you done it at least one time prior?

A Possibly.

Q That tattooing on a forehead?

A Possibly.

MS. NORDVIG: Nothing further.

THE COURT: Anything else?

MS. NORDVIG: If I might. One more. I'm sorry, Your Honor.

BY MS. NORDVIG:

Q You were subpoenaed to appear here today?

A Yes.

MS. NORDVIG: Thank you.

1 THE COURT: Anything further?

2 MS. KOSSOW: No, Your Honor.

3 THE COURT: May this witness be excused?

4 MS. KOSSOW: Yes, Your Honor.

5 THE COURT: Sir, thank you. You may step down. You
6 are excused.

7 (Witness excused.)

8 THE COURT: Call your next witness.

9 MS. KOSSOW: State would call detective Valenti.

10 THE COURT: You may proceed.

11

12 WILLIAM SCOTT VALENTI

13 called as a witness, having been first duly sworn,

14 took the witness stand and testified as follows:

15

16 DIRECT EXAMINATION

17 BY MS. KOSSOW:

18 Q Sir, could you please state your full name and spell
19 your last for the record?

20 A William Scott Valenti, V-A-L-E-N-T-I.

21 Q What is your current occupation?

22 A Detective with the Sparks Police Department.

23 Q You're a peace officer?

24 A Yes.

1 Q How long have you been with the Sparks Police
2 Department overall?

3 A Fifteen years.

4 Q How long have you been a detective?

5 A Ten years.

6 Q Going back to November of 2010, were you --
7 obviously you were a detective you just told us, right?

8 A Yes.

9 Q Were you involved in the investigation in the double
10 homicide of Kevin Melendez and Moises Vasquez?

11 A Yes, I was.

12 Q What was your role in that investigation?

13 A I was to assist Forensic Investigative Services with
14 processing the crime scene. My role was to assist detective
15 Begbie who was the case agent in putting the case together and
16 conduct witnesses with witness interviews.

17 Q As you sit here today, do you have a good
18 understanding of the overall investigation into this case?

19 A Yes.

20 Q You have been working on it since 2010?

21 A Yes.

22 Q I want to first ask you about the interviews that
23 you just referenced. Was one of those interviews with a Jose
24 Garcia?

1 A It was.

2 Q And did he go by a nickname of Pudgy?

3 A Yes.

4 Q Where did you interview him?

5 A His place of employment, the Mylan Institute.

6 Q Was that on January 4 of 2011?

7 A That sounds correct, yes.

8 Q I am going to ask you about some of the things that

9 you spoke to him about. First of all, what was his demeanor

10 like when you interviewed him?

11 A Semi uncooperative. Kind of just, you know, not

12 really wanting to answer too many questions or wasn't real

13 open to talking with me.

14 Q Okay. You don't have to tell me what, but during the

15 investigation, did you receive some type of information that

16 led you to speak to Mr. Garcia?

17 A Yes.

18 Q Did you record that interview with him in some

19 fashion?

20 A Yes, it was audio recorded.

21 Q I am going to ask you some things about the

22 interview. Did you ask him specifically if he knew a person

23 by the name of Appo?

24 A Yes.

1 Q Do you recall what his response was?

2 A Well, he had different responses. Initially he

3 denied knowing him at all. Later in the interview he said he

4 had seen him around, but he didn't know where he went.

5 Q Did you sort of keep pressing him and questioning

6 him at some point if he had actually picked Appo up from an

7 apartment on El Rancho Drive?

8 A Yes.

9 Q And did you give him a time frame for that question?

10 A I believe I asked him six or seven weeks ago.

11 Q What was his response?

12 A Well, he answered my question with a question: What

13 do you mean six or seven weeks ago?

14 Q What did you say in response to that?

15 A I believe I again asked him if he had seen Appo and

16 he said he saw him two or three months ago.

17 Q Did you ask him where he had last seen Appo?

18 A Yes.

19 Q What did he say?

20 A He said he saw him at a friend's house, Christian.

21 Q Did you provide some type of nickname or moniker for

22 who you thought he was referring to?

23 A Yeah. I asked him if Christian was Bullet and he

24 said yes.

1 Q Did you ask him what Appo was doing at Bullet's
2 house?
3 A Yes.
4 Q What did he say?
5 A He said he didn't know what he was doing there. But
6 Mr. Garcia said he just went over there, had a couple beers
7 then went right back home.
8 Q Did you ask him specifically if he knew an
9 individual by the name of Shadow?
10 A Yes.
11 Q What did he say?
12 A He said he had seen him around, yes.
13 Q Do you Shadow's real name?
14 A I believe it is Gonsalo Guavas.
15 Q Does he sometimes go by Carlos as well?
16 A That is what Mr. Payne calls him is Carlos.
17 MS. NORDVIG: Objection. Speculative.
18 THE COURT: Sustained. You can rephrase your
19 question.
20 MS. NORDVIG: Move to strike the prior answer.
21 THE COURT: The prior answer before you objected?
22 MS. NORDVIG: Yes.
23 THE COURT: Well, no, I will strike his answer on
24 the one you objected to.

1 BY MS. KOSSOW:

2 Q I am going to show you what has been admitted as
3 Exhibit 88. Do you recognize who is depicted in Exhibit 88?

4 A Yes. I believe that is Mr. Guavas.

5 Q Are you familiar with the witness in the case by the
6 name of Elder Rodriguez?

7 A Yes, I am.

8 Q Have you had personal contact with Mr. Rodriguez
9 during the course of the investigation?

10 A Yes, I have.

11 Q I want to publish for you an exhibit which is going
12 to be ~~Exhibit-110~~ which has previously been admitted. I want
13 to know if you recognize the person shown in Exhibit 110? Let
14 me let it play for a little bit, stop it and ask you the
15 question. Detective Valenti, do you recognize who is shown on
16 this video from November 20,. 2010 as the customer in the
17 store?

18 A Yeah. That is Elder Rodriguez.

19 Q Did you meet with Mr. Rodriguez at some point in
20 order to obtain a buccal swab from him?

21 A I did, yes.

22 Q Where did you meet him to obtain that?

23 A At the Sparks Police Department.

24 Q Was he cooperative?

1 A Yes.

2 Q Who took the actual buccal swab?

3 A I did.

4 Q Could you explain briefly how you did that?

5 A Yeah. I put on latex gloves. I undid the swab
6 package. Basically there are two swabs with long sticks on
7 them. I explained to him I was going to take each swab and
8 swab the inside of both cheeks, which I did. I placed it
9 directly into the cardboard boxes that are made for those
10 samples, placed it in there, sealed it and booked it into
11 evidence.

12 Q And do you recall when Sparks Police Department
13 officers or detectives book items of evidence, do they give
14 them some type of identifier?

15 A Yes.

16 Q Do you recall what you booked that under?

17 A Yes. I usually use my initials so it was SV-10.

18 Q At some point either at your request, did those
19 buccal sample swabs get sent to the Crime Lab?

20 A Yes.

21 Q Does either someone in your evidence section or you
22 fill out some type of examination request form?

23 A Yes.

24 Q Is that necessary in order to get that piece of

1 evidence up to the Crime Lab?

2 A Yes.

3 Q On those examination request forms, are there
4 control numbers that are used by Sparks Police Department as
5 well as the Crime Lab in order to track that piece of
6 evidence?

7 A Yes.

8 Q Do you recall off the top of your head what the
9 control number was for the buccal swab for Mr. Rodriguez?

10 A No, ma'am, I don't.

11 Q If I show you a copy of that exam request form,
12 would that refresh your recollection to the control number for
13 the buccal swabs for Mr. Rodriguez?

14 A It should, yes.

15 MS. KOSSOW: Judge, may I approach the witness?

16 THE COURT: You may.

17 BY MS. KOSSOW:

18 Q First of all, do you recognize what that form is?

19 A Yes.

20 Q What is it?

21 A It is an examination request form that either the
22 detective or someone from our evidence staff needs to fill out
23 and send to the Crime Lab requesting that certain evidence be
24 tested for some nature, whether it is DNA or ballistics or

1 whatever it is that we are asking for. It is one of those
2 required forms that goes up with the evidence.

3 Q What does that specific form, what piece of evidence
4 is it pertaining to?

5 A The testing of two buccal swabs from Elder
6 Rodriguez.

7 Q Does that form contain the numbers you previously
8 told us, the SV-10 you booked the buckle swabs in under?

9 A Yes.

10 Q And does that form also contain the control number
11 we just discussed?

12 A Yes.

13 Q Does that refresh your recollection as to exactly
14 what that control number was?

15 A Yes.

16 Q What is it?

17 A It is the buccal swabs to be tested for DNA.

18 Q Is there a W number on that form in the top
19 right-hand corner that talks about the control number that
20 goes to the lab?

21 A Yes.

22 Q What is that number?

23 A 279189.

24 MS. NORDVIG: Could the record reflect he just read

1 it off the form?

2 THE COURT: Record will so reflect.

3 MS. KOSSOW: Thank you.

4 BY MS. KOSSOW:

5 Q I want to ask you about a specific cellphone in this
6 case. The number (775) 379-2398. Does that specific cellphone
7 ring any bell in your head?

8 A That is the cell number for Elder Rodriguez.

9 Q For Mr. Rodriguez?

10 A Yes.

11 Q Did you learn of that cellphone number during the
12 investigation of the case?

13 A Yes.

14 MS. KOSSOW: I have nothing further.

15 THE COURT: Cross-examination.

16 MS. NORDVIG: Yes. Thank you. Court's indulgence.

17 THE COURT: Yes.

18

19 CROSS-EXAMINATION

20 BY MS NORDVIG:

21 Q Thank you. Good morning detective?

22 A Good morning.

23 Q You testified on direct that you interviewed
24 Mr. Garcia, correct?

1 A Yes.

2 Q That was at his place of work?

3 A Yes.

4 Q And did he know that you were coming to his place of
5 work?

6 A No.

7 Q Was he comfortable?

8 A No.

9 MS. NORDVIG: Court's indulgence.

10 BY MS. NORDVIG:

11 Q Did he tell you that he was nervous?

12 A Yes.

13 Q He testified he had seen the people you were talking
14 about around; is that correct?

15 A Yes.

16 Q But no direct connection?

17 A Well, he said that he had seen Appo at a friend's
18 house, at Christian's house, so he had been there with him and
19 had a couple beers.

20 Q There were other people there?

21 A Christian and Appo.

22 Q And Carlos?

23 A I don't remember if he told me he was there or not.

24 Q Was Mr. Rodriguez there, Elder Rodriguez?

1 A He didn't say he was.

2 Q But you had a lot of contact with Mr. Rodriguez,
3 correct?

4 A I wouldn't say a lot, but, yeah, I had some during
5 the case.

6 Q And you took the buccal swab samples, correct?

7 A Yes.

8 Q And did Mr. Rodriguez give you that voluntarily?

9 A No. I wrote a Seizure Order.

10 Q I'm sorry?

11 A I wrote a Seizure Order.

12 Q So it was a court order?

13 A Yes.

14 Q Mandating he gave his saliva, correct?

15 A Yes.

16 MS. NORDVIG: Nothing further. Oh, Court's
17 indulgence.

18 BY MS. NORDVIG:

19 Q You participated in an interview with a person
20 involved in this case known as SA-1290?

21 A Yes, ma'am.

22 Q Do you recall when that interview took place?

23 A May 5, 2015.

24 Q Was there any interview prior to that date?

1 A No, ma'am.

2 MS. NORDVIG: Thank you.

3 THE COURT: Redirect?

4 MS. KOSSOW: I have no further questions, Your
5 Honor.

6 THE COURT: Okay. Thank you, sir. You may step
7 down. You are excused.

8 THE WITNESS: Thank you, Your Honor.

9 (Witness excused.)

10 THE COURT: Go ahead and call your next witness.

11 MS. KOSSOW: Thank you. The State would call Mike
12 Ivers.

13 THE COURT: You made proceed.

14

15 MICHAEL RAY IVERS

16 called as a witness, having been first duly sworn,

17 took the witness stand and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MS. KOSSOW:

21 Q Sir, could you please state your full name and spell
22 you last for the record?

23 A It is Michael Ray Ivers, I-V-E-R-S

24 Q Thank you. What is your current occupation?

1 A I am a forensic investigator with the Washoe County
2 Crime Lab.

3 Q How long have you worked for the Crime Lab?

4 A I have been in the Crime Lab for about eight years.

5 Q In that same position?

6 A Yes, ma'am.

7 Q Again, very briefly, can you tell us the duties
8 expected of one in your position?

9 A We assist agencies all throughout northern Nevada
10 with the examination of crime scenes. We'll assist the
11 Coroner's office by providing photographic documentation and
12 evidence collection at autopsy. We also provide latent print
13 processing and latent print comparison identification.

14 Q Could you briefly describe your training and
15 experience that allows to you hold that position?

16 A I have been doing crime scene investigation since
17 1999. From 1999 to 2009 I worked as a detention deputy with
18 the Sheriff's Office. I did crime scene investigation both in
19 our jail and at the patrol level. Then in 2009 I transferred
20 into the Crime Lab. I have completed two formal training
21 programs, both crime scene investigations and latent print
22 processing and latent print identification.

23 Q So, Mr. Ivers, I would like to direct your attention
24 to September 17, 2015. On that date, were you asked to be

1 present at the Sparks Police Department?

2 A Yes, I was.

3 Q Do you recall for what purpose you were called
4 there?

5 A I was requested to assist in a seizure order.

6 Q What did that mean to you? What were you going to
7 be doing?

8 A They requested that I take a DNA reference sample
9 from the defendant and complete some photographs. And that was
10 the extent.

11 Q Do you recall what time you arrived?

12 A I arrived about 7:00 p.m.

13 Q How long did it take, do you recall?

14 A I waited probably for an hour and a half and then
15 the actual photographs and reference sample collection only
16 took a half hour. I left about 9:00 p.m.

17 Q Let's start with the photographs. What was the
18 purpose of you taking photographs?

19 A The purpose was it was in the seizure order, overall
20 photographs of the defendant. That is something typically we
21 will do. We always complete photographs. Usually there is
22 not as much of a lag time between when the photographs are
23 completed and the actual incident, but just for documentation
24 purposes.

1 Q Were you asked to specifically document or within
2 the Seizure Order, tattoos on the individual's body?

3 A Yes. That was an interest of the Sparks Police
4 Department.

5 Q And do you see the person in the courtroom that you
6 were asked to do those photographs of?

7 A Yes, I do.

8 Q Could you describe an article of clothing the person
9 is wearing and where they are seated?

10 A Seated at the table to my right with the blue shirt
11 on and tie.

12 MS. KOSSOW: Again I ask the the record reflect the
13 witness has identified the defendant.

14 THE COURT: No.

15 BY MS. KOSSOW:

16 Q What color tie Mr. Ivers?

17 A I'm sorry. It's a green tie.

18 THE COURT: Okay, the record will so reflect.

19 BY MS. KOSSOW:

20 Q I want to approach you with Exhibits 65 through 78
21 and have you look at these to yourself first. Mr. Ivers, do
22 you recognize that series of photographs?

23 A Yes. These are photographs I took.

24 Q On September 17, 2015?

1 A Yes.

2 Q Of the defendant?

3 A Yes.

4 MS. KOSSOW: Your Honor, I move for admission of
5 Exhibits 65 through 78.

6 THE COURT: Counsel, any objection?

7 MR. VILORIA: No objection, Your Honor.

8 THE COURT: Exhibit 65 through 78 has had a proper
9 foundation laid, therefore the admission will remain.

10 (Exhibits 65-78 admitted in evidence.)

11 BY MS. KOSSOW:

12 Q Let me ask you about that buccal swab. Can you
13 describe to the jurors how you obtained that buccal swab from
14 the defendant?

15 A A buccal swab is just a swab similar to a Q-Tip. It
16 has a wooden dowel. You run the cotton end of the tip on the
17 inside of the cheek. Those two swabs will go into a box.
18 From there the box will go inside of an envelope then they are
19 submitted as evidence.

20 Q Did you assign any type of identifying information
21 to the collection of the buccal swab from the defendant?

22 A Yes. It was assigned a control number, a tracking
23 number.

24 Q Off the top of your head, do you remember what that

1 Q number was?

2 A Q 96006.

3 Q So I believe you already said, did you take that
4 particular item into the evidence section at the Washoe County
5 Crime Lab or Sheriff's Office?

6 A I did.

7 MS. KOSSOW: Thank you. I have no further questions.

8 THE COURT: Cross-examination.

9

10 CROSS-EXAMINATION

11 BY MR. VILORIA:

12 Q Thank you, Your Honor. Good morning Mr. Ivers. Is
13 it officer?

14 A Deputy investigator.

15 Q Just a couple questions for you. The buccal swabs
16 the State referenced on direct examination, how many samples
17 did you take?

18 A It is one sample but two swabs.

19 Q In the Seizure Order, the order indicated that the
20 swabs should be taken by medical personnel or duly qualified
21 personnel, correct?

22 A I don't recall.

23 Q Would showing you a copy of the Seizure Order
24 reflect -- remind you as to what the contents of the order

1 said?

2 A Yes, sir.

3 MR. VILORIA: Your Honor, may I approach deputy

4 Ivers with a copy of the Seizure Order? The State has a copy.

5 THE COURT: Yes.

6 BY MR. VILORIA:

7 Q Deputy Ivers, please just read this document to

8 yourself. When you are done with it, let me know.

9 MR. VILORIA: May I approach?

10 THE COURT: You may.

11 BY MR. VILORIA:

12 Q Deputy Ivers, as to the content of the Seizure

13 Order, do you recall if the order required swabs to be taken

14 by medical personnel or duly qualified personnel?

15 A Yes.

16 Q How many photographs did you take of

17 Mr. Menendez-Cordero, do you recall?

18 A I believe it was 35.

19 Q The entire process, photographs and the buccal swabs

20 took only about an hour?

21 A Probably less than that, sir.

22 Q Less than an hour?

23 A Yes.

24 Q Where did that take place?

1 A In the Sparls Police Department.

2 MS. NORDVIG: Pass the witness.

3 THE COURT: Redirect?

4 MS. KOSSOW: Thank you.

5

6 REDIRECT EXAMINATION

7 BY MS. KOSSOW:

8 Q Sir, how many swabs have you taken, buccal swabs
9 from individuals over the course of your career?

10 A It would be a large number I think.

11 Q Like what? Give me an estimation if you can?

12 A Couple hundred buccal swabs.

13 Q When you first either started or along the course of
14 your employment, did you receive training from the Crime Lab
15 how to appropriately take a buccal swab from an individual?

16 A Yes, ma'am.

17 MS. KOSSOW: Thank you. I have no further.

18 THE COURT: Anything further?

19 MR. VILORIA: Just one question.

20

21 RECROSS-EXAMINATION

22 BY MR. VILORIA:

23 Q Deputy, when you approached Mr. Menendez-Cordero,
24 did you touch him at all?

1 A No.

2 Q Did you -- Were you wearing latex gloves at the time
3 you took the buccal swabs?

4 A Yes.

5 Q This is from your independent recollection?

6 A Yes.

7 MR. VILORIA: Pass the witness.

8 MS. KOSSOW: One moment, Your Honor. I have no
9 further questions, Your Honor.

10 THE COURT: Okay, may this witness be excused?

11 MS. KOSSOW: Yes, Your Honor.

12 MR. VILORIA: ~~Yes~~, Your Honor.

13 THE COURT: You may step down. You are excused.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: I would like to try one more witness. I
17 don't have food coming to the jury until 12:15.

18 MS. KOSSOW: I don't have another witness. I thought
19 we would stop at 12:00. To be honest, the next witness would
20 take a pretty lengthy period of time.

21 THE COURT: Ladies and gentlemen, I guessed wrong.
22 Your food is coming at 12:15. Maybe you can take your little
23 walk before you get your lunch and then you can get your
24 lunch. We'll be in recess for an hour or so. If your food