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Elizabeth A. Brown  
Clerk of Supreme Court

V.

Respondent.

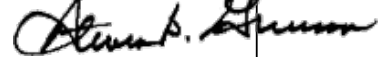
## AA0483 – AA0716

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1 **RTRAN**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6  
7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 vs. )

10 CEASAR SANCHAZ VALENCIA, )

11 Defendant. )

Case No. C-16-315580-1

DEPT. XVIII

12  
13 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE

14  
15 WEDNESDAY, NOVEMBER 29, 2017

16 **TRANSCRIPT OF PROCEEDINGS RE:**  
17 **JURY TRIAL - PHASE I - DAY 3**

18 **APPEARANCES:**

19 For the Plaintiff:

20 MICHAEL DICKERSON, ESQ.  
(Deputy District Attorney)  
21 CHAD N. LEXIS, ESQ.  
(Deputy District Attorney)

22 For the Defendant:

23 GREGORY E. COYER, ESQ.  
ALEXIS ANNE PLUNKETT, ESQ.

24 RECORDED BY: ROBIN PAGE, COURT RECORDER  
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1                   **LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 29, 2017**

2                   [Proceedings commenced at 11:41 a.m.]

3  
4                   [Outside the presence of the jury.]

5                   THE COURT: You may -- you may be seated. This is  
6 continuation of the trial in Case No. C-16-315580, *State vs. Valencia*.

7                   I want to advise counsel that this morning, my chambers were  
8 contacted by a juror advising that he was ill today. I think he spoke to  
9 the marshal. Do you recall the juror's name?

10                  THE MARSHAL: It's Xavier Antheaume.

11                  THE COURT: And he advised that he was vomiting and he  
12 was sick. Apparently -- I was in -- I was on -- in court at the time and  
13 apparently my marshal advised him that he still needed to come today.  
14 If he's present, I was going to bring him in and have you ask him some  
15 questions, make a determination if you want to continue the trial a day or  
16 so or do you want to use an alternate.

17                  MR. DICKERSON: I think that -- I think that just preliminarily,  
18 with where we're at in the trial and given the fact that we have a short  
19 day tomorrow, the State wouldn't be inclined to ask to continue the trial a  
20 day, but I think that it'd be worth bringing him in to talk to him to see  
21 where he's at.

22                  THE COURT: All right. Is he here?

23                  THE MARSHAL: Yes.

24                  [Juror No. 5 entered courtroom.]

25                  THE COURT: Sir, state your name and badge number.

1 JUROR NO. 5: Xavier Antheaume. I believe it's 993.  
2 THE COURT: Okay. And it's my understanding you  
3 contacted my chambers this morning and talked to my marshal and  
4 advised him that you were ill today, that you vomiting; is that correct?  
5 JUROR NO. 5: Yes, sir.  
6 THE COURT: And --  
7 JUROR NO. 5: I vomited four times, once getting here.  
8 THE COURT: Okay. And -- and what are your symptoms?  
9 Vomiting, fever?  
10 JUROR NO. 5: Just bad, like, a real bad headache and I was  
11 throwing up. I think I overexerted myself yesterday. I'm kind of -- like  
12 the hour that I spent out front, I'm starting to come back to life a little bit,  
13 so to speak.  
14 THE COURT: Okay. Do you feel like --  
15 JUROR NO. 5: I'd like to.  
16 THE COURT: -- you're too ill to serve as a juror today?  
17 JUROR NO. 5: I'm -- if it's possible, I'd like to try to fight  
18 through it to see if I can continue to serve my duty.  
19 THE COURT: Well, I don't want you to fight through it. I need  
20 you to advise me, do you -- are you too ill to serve as a juror today  
21 because of your illness?  
22 JUROR NO. 5: I want to do my best, sir, if possible.  
23 THE COURT: Okay. I'm going to let the attorneys ask you a  
24 couple of questions.  
25 JUROR NO. 5: Okay.

1 THE COURT: Does the State or defense wish to ask this juror  
2 any questions?

3 MR. DICKERSON: Would it be fair, sir, given what you've just  
4 said, that you'd be willing to sit through today and then if it continues to  
5 get worse, then you'll let us know?

6 JUROR NO. 5: Yes, sir. Like I said, I'm -- I'm starting to feel  
7 better, the -- the time, the hour I think I spent out here, was able to kind  
8 of breathe and the head is not pounding as much and I don't need a feel  
9 to -- about two hours ago, though, I was hurting.

10 MR. DICKERSON: When did it start?

11 JUROR NO. 5: Early this morning. I -- I just think I did too  
12 much yesterday. I had a late night at school and --

13 MR. DICKERSON: Yeah.

14 JUROR NO. 5: -- early -- I went back early this morning. And  
15 I just probably shouldn't have done all that.

16 MR. DICKERSON: Yeah. Have you felt like this before?

17 JUROR NO. 5: It's been a while a -- a long time ago. I just --  
18 when I overexert myself and --

19 MR. DICKERSON: And so that's what it was before --

20 JUROR NO. 5: Yeah.

21 MR. DICKERSON: -- just the same thing?

22 JUROR NO. 5: Yes, sir.

23 MR. DICKERSON: So do you think it's -- what do you think it  
24 is specifically?

25 JUROR NO. 5: I just, like I said, just overexertion, trying to do



1 too much in a short amount of time. I've got piles of things on my desk  
2 that have just kind of put some stress on me.

3 MR. DICKERSON: Okay.

4 JUROR NO. 5: And -- but I think, like I said, I think I can try to  
5 power through. I think that hour spending just eyes closed, just resting I  
6 think did me some good.

7 MR. LEXIS: Do you think you'll be able to pay attention as we  
8 start today?

9 JUROR NO. 5: I believe so.

10 MR. LEXIS: And then if something happens where you --  
11 you're not being able to pay attention, you'll let us know?

12 JUROR NO. 5: Absolutely.

13 MR. DICKERSON: Were you diagnosed with anything in the  
14 past?

15 JUROR NO. 5: No.

16 MR. DICKERSON: Okay. You don't have any -- any sort of  
17 reoccurring medical disorder or anything like that? Okay.

18 JUROR NO. 5: I think I'm generally pretty strong, except the  
19 cholesterol is a little high on occasion.

20 MR. DICKERSON: Okay.

21 THE COURT: Defense, do you have any questions of this  
22 juror?

23 MS. PLUNKETT: Do you believe that you might be  
24 contagious?

25 JUROR NO. 5: No.

1 MS. PLUNKETT: What time did you arrive here today?  
2 JUROR NO. 5: 10:25, 10:30.  
3 MS. PLUNKETT: Have you vomited since you arrived here at  
4 the --  
5 JUROR NO. 5: Not since I've been in this building.  
6 MS. PLUNKETT: And when is the last time you vomited  
7 today?  
8 JUROR NO. 5: About 10:15, when I parked my car. I was  
9 real happy getting that parking spot.  
10 MS. PLUNKETT: Where did you vomit?  
11 JUROR NO. 5: In the parking lot.  
12 MS. PLUNKETT: In the parking lot?  
13 JUROR NO. 5: Yes.  
14 MS. PLUNKETT: Anything?  
15 MR. COYER: I don't have any questions.  
16 THE COURT: And, sir, as you stand here today, you feel that  
17 you are competent and feeling well enough that you could listen to the  
18 testimony and be able to -- to understand everything that's going on?  
19 It's very important to us that --  
20 JUROR NO. 5: No. I'm not -- and I -- that's why I --  
21 THE COURT: -- you understand everything.  
22 JUROR NO. 5: -- I made that call. Like I said, about an  
23 hour -- when I -- when I made that call, I was, like, there's no way that I  
24 can -- I need to lay down.  
25 THE COURT: But as you stand here today, you said you're

1 feeling better and you feel that you could -- you're feeling well enough  
2 that you could understand everything that's going on? You're not going  
3 to drift off or anything like that?

4 JUROR NO. 5: I believe so. And I'll be the first one to raise  
5 my hand and speak with the marshal, let him know --

6 THE COURT: Ok.

7 JUROR NO. 5: -- like, hey, I need a time out or I can't do it.

8 THE COURT: Okay. All right. But there's nothing -- it's -- it's  
9 just that you overexerted yourself? Is that --

10 JUROR NO. 5: Absolutely.

11 THE COURT: -- what it is? It's not like you have the flu --

12 JUROR NO. 5: No. I --

13 THE COURT: -- or anything like that? You just --

14 JUROR NO. 5: Yeah.

15 THE COURT: -- overexerted yourself and you're starting to --

16 JUROR NO. 5: I'm going home after this --

17 THE COURT: Okay.

18 JUROR NO. 5: -- and go take a nice, quality nap.

19 THE COURT: Okay. All right. Thank you, sir. If you could  
20 just step outside --

21 JUROR NO. 5: All right. Sorry, everybody.

22 THE COURT: Thank you.

23 [Juror No. 5 exited courtroom.]

24 THE COURT: Counsel, what's your position?

25 MR. COYER: Judge, I will, you know, defer to the court's

1 decision as to Mr. Antheaume's answers. My strategic position is I  
2 wouldn't hate a -- a day of continuance, because I've been trying to see  
3 if it's possible to get some subpoenas served on some forensic scientists  
4 with Metro. My investigator, who I consulted with this morning, believed  
5 that one day was not enough time to get that done. There's an  
6 administrative process you have to go through when you're trying to  
7 subpoena somebody like a forensic scientist as opposed to an officer.

8 THE COURT: All right. But my bailiff told me there was some  
9 housekeeping matters. Is this one of the housekeeping matters?

10 MR. COYER: No. This -- this just popped into my head when  
11 you thought -- when you suggested maybe we should continue the trial a  
12 day.

13 THE COURT: Well, I wasn't suggesting. That's always an  
14 alternative if somebody is ill. If it's a short-term illness, you know, you  
15 can give them a day to recover rather than put an alternate in their  
16 place. Usually, I'll do what the -- the parties agree to.

17 MR. COYER: And that's why I want to be candid with the  
18 court.

19 THE COURT: I understand your -- your issues with the  
20 subpoena, but that's not my issue right now.

21 MR. COYER: I understand.

22 THE COURT: My issue right now is do you see a basis for  
23 excusing this juror and using an alternate based on what he's  
24 represented to me in open court? Are you --

25 MR. COYER: To be quite -- again, to be candid with the court,

1 I think what he described sounded like a hangover to me. I think he'll  
2 probably be fine in an hour or two.

3 THE COURT: Okay. I'm not going to make that assumption,  
4 but I will tell you his demeanor when he was addressing the court, he  
5 responded quickly, he responded to my questions. He -- he seemed to  
6 be understanding everything. I am going to indicate to him that if in any  
7 way he gets worse or anything of that nature, to immediately let me  
8 know, you know, and we'll stop.

9 What's the State's position; do you want to go forward with this  
10 juror or do you want me to --

11 MR. DICKERSON: State's position at this --

12 THE COURT: -- seat an alternate?

13 MR. DICKERSON: At this point in time, I think we can go  
14 forward with this juror. He's under the understanding that if this -- he  
15 has a flare-up of this illness later on today or it gets so bad he can't  
16 handle it, that he knows that he can alert the court.

17 THE COURT: Did you -- does counsel agree with my  
18 assessment of this juror --

19 MR. DICKERSON: I do.

20 THE COURT: -- based on his representations? Is that  
21 correct, counsel?

22 MR. DICKERSON: Yeah. He --

23 THE COURT: Mr. Coyer?

24 MR. COYER: Yes.

25 MR. DICKERSON: He seemed coherent.

1 THE COURT: Bring him back in for one second. And then  
2 we'll address the housekeeping. I literally just finished my law motion  
3 calendar --

4 MR. DICKERSON: That's what we understand.

5 THE COURT: -- to come over here. I have to give my staff a  
6 little bit of a break, so we're probably --

7 MR. DICKERSON: Absolutely.

8 THE COURT: -- going to take a lunch break about 1:00, 1:30,  
9 to be honest with you.

10 MR. DICKERSON: Okay.

11 [Juror No. 5 reentered the courtroom.]

12 THE COURT: Sir, if you could just come back where you  
13 were before.

14 JUROR NO. 5: Yes.

15 THE COURT: The parties feel that you can proceed forward  
16 as a juror. But I just want to make it clear to you, if you in any way feel  
17 that you are starting not to understand or hear things or lose your train of  
18 thought or anything like that, you need to notify me immediately.

19 JUROR NO. 5: Yes, sir.

20 THE COURT: Or if you are feeling ill in any way, lightheaded,  
21 nauseous, anything, please notify me immediately.

22 JUROR NO. 5: Yes, sir.

23 THE COURT: Raise your hand, I'll stop. It's very important  
24 that you remain attentive through these entire proceedings. If you  
25 cannot do that, I need to know immediately.

1 JUROR NO. 5: Yes, sir.

2 THE COURT: Okay. All right. So for right now, we'll seat you

3 as a juror and we'll go forward with the trial.

4 JUROR NO. 5: Yes, sir.

5 THE COURT: But please don't feel like this is something you

6 are required to do. If you are ill, I want you to take care of your illness.

7 Okay.

8 JUROR NO. 5: Like I said, two hours ago for sure, I --

9 THE COURT: Okay.

10 JUROR NO. 5: -- would have -- I would have told you --

11 THE COURT: All right. Well, based on your responses to

12 me --

13 JUROR NO. 5: -- I'm going to fight through it.

14 THE COURT: -- both myself and counsel agree you -- you

15 appear to be well enough and understand everything and that you could

16 be seated as a juror today.

17 JUROR NO. 5: Okay.

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

19 JUROR NO. 5: Thank you, sir.

20 THE COURT: If you could go just out in the hallway. Don't --

21 don't go too far.

22 JUROR NO. 5: Got it.

23 [Juror No. 5 exited courtroom.]

24 THE COURT: And what are the housekeeping matters?

25 MR. LEXIS: None from the State.

1 MR. DICKERSON: Well, the -- the parties have taken care of  
2 the redactions on the -- the audio that was introduced yesterday. So the  
3 State has redacted all the portions that we were generally discussing  
4 with defense counsel yesterday. Mainly things having to do with Ceasar  
5 Valencia having outstanding warrants, no-bail warrants, and specific  
6 references to the moped, in fact, being stolen, or possibly being stolen.  
7 Absent not redacting things about, like, a shaved VIN.

8 So it should be all what we talked about. There's several  
9 redactions. And we have that prepared for the court in disc format. I  
10 think that it would be the stipulation of the parties that we use that as the  
11 piece of evidence that's going to go back with the jury instead of the full  
12 audio, which is currently the disc --

13 THE COURT: What about the -- the paper document; did you  
14 redact that?

15 MR. DICKERSON: The paper document, we -- we did redact  
16 that. We provided that yesterday at the end -- at the close of the  
17 session.

18 THE COURT: Okay.

19 MR. DICKERSON: It's been redacted, the same portions that  
20 we had discussed with defense counsel, specifically having to do with  
21 references to stolen and warrants.

22 THE COURT: Okay.

23 MR. LEXIS: We did both of these at the benefit of the  
24 defense. So if they have any other issues with either one of them, then  
25 they need to bring that to everyone's attention.



1 MS. PLUNKETT: And can I ask if you introduced the full CAD  
2 or only the CAD regarding the assault with a deadly weapon?

3 MR. LEXIS: The full CAD.

4 MS. PLUNKETT: Both CADs. Okay.

5 MR. DICKERSON: Well, no. Not the -- not both CADs. Only  
6 for the event number that -- that the audio had been moved in for.

7 THE COURT: Okay. Have you had -- have you reviewed the  
8 redactions? Are they satisfactory to the defense?

9 MR. COYER: Yes. We -- with respect to the CAD and audio  
10 related to the May 19th event. What my co-counsel was asking about is  
11 the May 21st event. I think that's a different CAD.

12 MR. LEXIS: That wasn't proffered.

13 THE COURT: Okay. That's not --

14 MR. COYER: Just wanted to clarify that.

15 THE COURT: -- before the court. It was whatever one -- I  
16 don't have my notes in front of me.

17 MR. DICKERSON: The event number beginning in 160519.

18 THE COURT: I'm looking for the -- but in any event,  
19 yesterday was the CAD that you said -- I conditionally admitted it subject  
20 to the redactions. And it's my understanding counsel has provided with  
21 my clerk the redactions. I'm going to -- I'll look them over the next break  
22 and then if both parties have agreed to them, then it will just be admitted  
23 as an exhibit.

24 MR. DICKERSON: And we would -- I think that as we get  
25 moving forward here, especially with this next witness, we anticipate

1 using this. So we would just ask that --

2 THE COURT: All right. Let me -- do you have it? Did they  
3 provide you with the exhibit -- the redacted exhibit?

4 Counsel approach. All right. You know what, there's nobody  
5 here. You don't have to approach. I just wanted to mention -- all right.  
6 So this is State's Exhibit 53. And there's a small redaction on the  
7 second page.

8 Counsel -- defense counsel, you see that's the small redaction  
9 there.

10 MR. COYER: Right. That one was already there for the  
11 record, Judge.

12 THE COURT: There's the next small redaction on the next  
13 page. And that appears to be the only redactions. Is that correct?  
14 Here, counsel. Look at it.

15 MR. DICKERSON: I believe there were --

16 MR. COYER: Judge, there's a little --

17 MR. DICKERSON: I believe there were three total.

18 THE COURT: Well, show them to opposing counsel. Before I  
19 admit it, I want to make sure it's --

20 MR. DICKERSON: First was --

21 THE COURT: -- the parties agree to it.

22 MR. DICKERSON: -- at time stamp 19:51:06.

23 The next one is going to be on the second page at time  
24 stamp 19:58:17, after Ceasar Valencia, obviously about his criminal  
25 record and/or warrants.

1                   Next one is going to be at, same second page, 20:05:53,  
2 reference to the moped likely being stolen.  
3                   And that looks like the totality of the redactions.  
4                   THE COURT: Okay. And there's no reference to anything  
5 about his -- any prior convictions in here at all?  
6                   MS. PLUNKETT: No, Judge.  
7                   THE COURT: Okay.  
8                   MR. DICKERSON: Yeah. And the black marks were actually  
9 part of the original document, Your -- Your Honor. The redactions that  
10 we have are simply -- they're Wite-Out, and I -- we would just ask that  
11 we have -- we'll prepare an instruction for the jury that references this.  
12 It's that there may be some audio and documents that have been  
13 redacted. That's done at the request of the court and by agreement of  
14 the parties.  
15                  THE COURT: Okay. Does the defense have any objection to  
16 State's Exhibit 53 with redactions?  
17                  MR. COYER: No, Your Honor.  
18                  THE COURT: It will be admitted.  
19                               [State's Exhibit No. 53 admitted.]  
20                  THE COURT: Anything else, counsel?  
21                  MR. DICKERSON: So my thought is this, for the audio, is that  
22 we allow the audio disc that was moved in by defense counsel without  
23 redactions to be marked as a court's exhibit for reference. And I'll make  
24 a record of the redaction times that have -- have been redacted for the  
25 defense by the State. And then we use that audio going forward.

1           The State would have no objection, as discussed with defense  
2 counsel, with defense counsel playing a copy of the audio from their  
3 computer instead of using that disc just as a -- as a demonstrative, but it  
4 does match up, if that's --

5           THE COURT: I'm -- I just want a clarification. The defense  
6 played portions of an audio; is that correct? Yesterday, you didn't play  
7 the entire audio?

8           MR. COYER: Correct.

9           THE COURT: Is that correct? So we're going to give the jury  
10 the portions that he played during the examination of the officer; is that  
11 correct?

12           MR. DICKERSON: No. It's going to be the entire audio,  
13 absent the same type of references that were redacted from the CAD,  
14 that being references to stolen and references to criminal history and/or  
15 warrants.

16           THE COURT: And what's the defense position on that?

17           MR. COYER: We agree with that. The -- you're going to hear  
18 a lot more of the audio today with the next witness.

19           THE COURT: Okay.

20           MR. COYER: But what I think needs to be done specifically,  
21 and I think the State would agree, is that Defense Exhibit A, the physical  
22 disc exhibit should be replaced be the redacted disc that the State  
23 proffered. And I will take -- my co -- opposing counsel's representations  
24 that those were the portions that were redacted. I haven't reviewed it,  
25 but I'm fine with that.

1 THE COURT: Okay.

2 MR. COYER: And then I'm going to publish just the portions I

3 want to play with the witness.

4 THE COURT: So what you want me to do is take Exhibit A,

5 make it a court exhibit, and then substitute the redacted audio as

6 Exhibit A; is that correct?

7 MR. COYER: Correct.

8 MR. DICKERSON: Correct, Your Honor.

9 MS. PLUNKETT: Correct.

10 THE COURT: Mr. Clerk, do you understand what we're doing

11 here? Okay.

12 So the unredacted version will now become the court's exhibit,

13 and then Exhibit A will be the redacted version. Make sure my clerk has

14 the correct one.

15 MR. DICKERSON: Here's the redacted version.

16 THE COURT: And that's the version that will go back with the

17 jury.

18 MS. PLUNKETT: Correct.

19 THE COURT: As Exhibit A.

20 MS. PLUNKETT: Correct.

21 THE COURT: Defense Exhibit A, okay. Anything else

22 counsel?

23 MR. COYER: Not from the defense, Judge.

24 MR. DICKERSON: Nothing from the State at this time, Your

25 Honor.

1 THE COURT: Are you prepared to call your first witness this  
2 morning?

3 MR. DICKERSON: State is.

4 THE COURT: Who is it?

5 MR. DICKERSON: It's Officer Jacobitz.

6 THE COURT: Oh, you know what, I guess we should bring  
7 the jury in first.

8 [Jury reconvened at 12:01 p.m.]

9 THE COURT: And let the record reflect that counsel for the  
10 State, counsel for the defense, the defendant, and the jury are present.

11 I just want to remind the jurors that you do have the right to  
12 ask questions after the end of testimony of any witness. If you want to  
13 ask a question, again, write it on a full-length piece of paper, raise your  
14 hand, make sure my bailiff sees you before the witness is excused.  
15 Okay.

16 But in our state, jurors have the right to ask certain types of  
17 questions. And then I review them with counsel and make a  
18 determination whether it's an appropriate question or not. But a lot of  
19 jurors, when we first start the trial, they don't realize that. I know it was  
20 part of that lengthy preliminary admonishments I gave you. So again. If  
21 you -- and that, you know, if it's something you thought should have  
22 been asked or is relevant, you certainly may -- write it on a full-length  
23 piece of paper. And make sure my bailiff sees it before I excuse the  
24 witness. Okay? All right. Thank you.

25 State call your first witness, please.

1 MR. DICKERSON: State's next witness is going to be Jeremy  
2 Jacobitz.

3 THE COURT: Thank you.

4 **JEREMY JACOBITZ**

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

7 THE CLERK: Please be seated. Would you please state and  
8 spell your name for the record.

9 THE WITNESS: First name is J-E-R-E-M-Y. Last name is  
10 Jacobitz, J-A-C-O-B-I-T-Z.

11 MR. DICKERSON: May I approach the witness briefly, Your  
12 Honor?

13 THE COURT: Yes.

14 MR. DICKERSON: Thank you. If there's anything you need  
15 to reference, just let me know.

16 **DIRECT EXAMINATION**

17 BY MR. DICKERSON:

18 Q How are you employed, sir?

19 A With Las Vegas Metropolitan Police Department.

20 Q And judging by your uniform, it's probably obvious, you're a  
21 police officer?

22 A Yes, sir.

23 THE COURT: Counsel, can you approach, please?

24 [Bench conference transcribed as follows:]

25 THE COURT: You need to ask questioning from the podium. I don't

1 want you wandering around the courtroom.

2 MR. DICKERSON: Okay. So --

3 THE COURT: So if you could -- unless you have to approach  
4 the witness or publish something to the jury.

5 MR. DICKERSON: I have to stay at the podium?

6 THE COURT: Pretty close. I mean, I don't want you  
7 wandering all over the courtroom.

8 MR. DICKERSON: Okay.

9 THE COURT: All right.

10 MR. DICKERSON: All right.

11 THE COURT: Thank you.

12 [End of bench conference.]

13 BY MR. DICKERSON:

14 Q What is your current assignment, sir?

15 A With the Downtown Flex and PSU team.

16 Q And what is that?

17 A It's mainly gangs and violent crimes.

18 Q That's the specific mission of Flex and PSU?

19 A Yes, sir.

20 Q So that's not what you're here for though, right?

21 May 19th, 2016, you were with a different unit?

22 A Yes, sir.

23 Q What were you doing then?

24 A I was on patrol.

25 Q Patrol officer?



1           A     Yes, sir.

2           Q     How long have you been employed by the Las Vegas  
3 Metropolitan Police Department?

4           A     12 years.

5           Q     And how long were you on patrol for?

6           A     Approximately 10 of that.

7           Q     Where have your various assignments been?

8           A     Downtown. Everything's been downtown. Prior to that,  
9 training's been in northwest and southeast. And I was currently with  
10 PSU in DTAC prior to this as well.

11          Q     DTAC, is that Downtown Area Command?

12          A     Yes, sir.

13          Q     That's just, like, the abbreviation that's commonly used?

14          A     Yes, sir.

15          Q     So pretty much your whole career is spent downtown?

16          A     Yes, sir.

17          Q     You said there was two different parts in training that were  
18 spent at different area commands?

19          A     Yes, sir.

20          Q     How does that work?

21          A     That's typical of all new trainees. They usually start out in  
22 different commands until they're assigned to a specific one.

23          Q     Okay. Is that what's called field training?

24          A     Yes.

25          Q     And how -- what is field training like?

1           A     Field training is where you learn to be a patrol -- patrol officer  
2 out on the streets.

3           Q     And how does that work?

4           A     You ride around with a field training officer and they show you  
5 the ropes.

6           Q     Somebody obviously more senior?

7           A     Yes, sir.

8           Q     That comes after you go to the police academy?

9           A     Yes.

10          Q     And how long is the police academy?

11          A     I'd be guessing if I told you, but it's a little while.

12          Q     About five months, six months, something like that?

13          A     Approximately.

14          Q     And after you do that, then you go and you get assigned to an  
15 area command and you can work solo?

16          A     Yes.

17          Q     And you were assigned to Downtown Area Command?

18          A     Yes.

19          Q     Now, you can work solo, but do you always work solo?

20          A     No.

21          Q     Tell me about that; how does that work?

22          A     There are special assignments, as far as directed patrol  
23 activities, that the -- the higher-ups hand down to senior officers. And  
24 we typically go out and look for high-crime areas or -- or wanted  
25 subjects. There's -- there's many different assignments.

1 Q So if I understand you correctly, a directed patrol activity  
2 would be an assignment where you're with another officer?  
3 A Yes.  
4 Q So you're partnered up?  
5 A Yes.  
6 Q In the same vehicle?  
7 A Yes.  
8 Q And did -- throughout your career, have you often been  
9 partnered up with people?  
10 A Yes.  
11 Q Does it work where you're always partnered up with the same  
12 person?  
13 A No, it doesn't.  
14 Q How does it work?  
15 A Like I said, it's -- it's assigned by the higher-ups. Typically you  
16 got to get along with other people.  
17 Q Okay.  
18 A So it's one of those -- those type of assignments.  
19 Q Officer Houston, you were assigned with him on  
20 May 19th, 2016; isn't that right?  
21 A Yes, sir.  
22 Q And that would have been something that was done by the  
23 higher-ups?  
24 A Yes.  
25 Q Now, when we say higher-ups, how does that work? Is there

1 a command structure?

2 A There is.

3 Q What is that?

4 A You got your basic patrol officers, on up to sergeant,

5 lieutenant, captain, and even higher --

6 Q And that's actually --

7 A -- all the way up to the sheriff.

8 Q And that's actually the order up?

9 A That's the chain of command, yeah.

10 Q So the line supervisor would be the sergeant?

11 A Yes.

12 Q Above the sergeant would be the lieutenant?

13 A Yes.

14 Q Above the lieutenant would be the captain?

15 A Yes.

16 Q And your sergeant, is -- is that someone who's out in the field

17 with you?

18 A Yes.

19 Q Okay. So the higher-ups dictate that May 19th, 2016, you're

20 going to be working, partnered up, directed patrol, with Officer Houston?

21 A Yes.

22 Q And had you worked with Officer Houston before as a partner?

23 A A lot, yes.

24 Q Yeah. Pretty common?

25 A Yes.

1 Q So how does your shift get started on May 19th, 2016?

2 A So we were having a station-wide yearly barbecue put on by  
3 the -- the local chaplain from one of the churches. They -- they do it  
4 yearly to a -- it's cop appreciation thing. And we were eating steaks or  
5 whatever it was that day, I don't really recall. In either case, being as full  
6 as we were, we were just talking about we really don't want to get into  
7 anything before we -- as we left the station. And sure enough, the  
8 second we pull out of the station -- do you want me to go into the details  
9 of --

10 Q Sounds like you're kind of talking about --

11 A We got into something.

12 Q -- some sort of cop's Murphy's Law about eating a lot of food  
13 and then you're going to get in a foot chase?

14 A Yes, sir.

15 Q Okay. Well, it turns out, you guys finish up this meal?

16 A Yes.

17 Q Then you're leaving the station?

18 A Yes.

19 Q This is the Downtown Area Command?

20 A Yes.

21 Q Specifically, where is the Downtown Area Command located?

22 A At 621 North 9th Street. So it's 9th Street and Bonanza.

23 Q And I'm going to show you, just for reference here, what's  
24 been admitted as State's Exhibit 10, with permission of the court.

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

1 THE COURT: Yes.

2 MR. DICKERSON: May I have the continuing ability to  
3 publish?

4 THE COURT: Yes.

5 MR. DICKERSON: Thank you.

6 BY MR. DICKERSON:

7 Q Showing you here --

8 THE COURT: Any -- any exhibits that have been admitted,  
9 you have -- you may have continuing publish as to both the State and  
10 defense.

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

12 BY MR. DICKERSON:

13 Q This area right here, it's the lower left-hand corner of the  
14 exhibit as it's published on the screen; is that the Downtown Area  
15 Command?

16 A It is, sir.

17 Q And if we can zoom in there, is there a portion back here -- is  
18 this the parking lot?

19 A It is.

20 Q Is that secure for officers only?

21 A It is supposed to be for officers only, yes. And it is gated.

22 Q It is gated?

23 A Yes.

24 Q And so is this the gate to exit that?

25 A It is.

1 Q Is that where you were coming out of?

2 A Yes.

3 Q And what happened as you were exiting that exit gate,  
4 Downtown Area Command?

5 A While still sitting in that -- that outer driveway to turn onto 9th  
6 Street, I noticed straight in front of me, which is east, you could see  
7 this -- this dirt lot that's -- that's completely empty here. I could see right  
8 across into the dirt lot. I could see a moped traveling in the alleyway just  
9 east of there, northbound, at a high rate of speed towards Wilson, which  
10 is the street north of.

11 Q So what did you do as a result of that?

12 A Followed it.

13 Q You were driving?

14 A Yes.

15 Q So Officer Houston was passenger?

16 A Yes.

17 Q How does that work? Is there any sort of roles that you guys  
18 do?

19 A There are, which only tends to work when you work together  
20 for a little while.

21 Q As you and Officer Houston had?

22 A Yes.

23 Q So he's passenger; what's his job?

24 A His job is, typically, he'll make contact if we pull somebody  
25 over, with a subject. He'll -- he'll run them in the systems. He'll make

1 most of the contact in a lot of cases. It doesn't always work that way. It  
2 just depends on the situation.

3 Q When you're in the vehicle, does he work the radio?

4 A Yes.

5 Q And the computer?

6 A Yes.

7 Q There's a computer actually in the patrol vehicle?

8 A Yes.

9 Q So this day you guys are in a patrol vehicle?

10 A Yes.

11 Q That's marked?

12 A Yes.

13 Q Does it -- has the -- the big badges on the side?

14 A Yes.

15 Q Specifically, what kind of vehicle is it?

16 A I don't want to -- I can't remember if I was in a -- in a SUV or a  
17 sedan. I don't recall at this point, but it was one of the two.

18 Q Okay.

19 A It was a marked patrol vehicle.

20 Q Black and white?

21 A Yes.

22 Q With red and blue lights on top?

23 A Yes.

24 Q And says Metro Police on it?

25 A Yes.



1 Q Very distinctual?

2 A Yes.

3 Q Are you wearing a uniform?

4 A I am.

5 Q Is Officer Houston wearing a uniform?

6 A Yes.

7 Q What kind of uniform?

8 A Much like the -- the gentleman in the back, the tan uniform.

9 Q Okay. So not this green one that you're wearing here today?

10 A No.

11 Q A standard tan Metro Police uniform?

12 A Yes.

13 Q And that's what both you and Officer Houston are wearing?

14 A Yes.

15 Q And as you go after -- out of the Downtown Area Command to

16 follow this moped, where do you guys go?

17 A We end up northbound on 9th Street, eastbound on Wilson.

18 And we pass 10th Street. And as we start to light it up -- or actually

19 not --

20 Q When you say light it up, what do you mean?

21 A I'm not there yet. I'm -- I thought we were at 11th Street here

22 for some reason, even though I said 10th.

23 Q I can back it up a little bit.

24 A Yeah. It's hard to see here.

25 Q Is that a little better?

1       A     It is. So we head eastbound on Wilson. We pass 10th Street,  
2 still high rate of speed on him. We hit 11th Street where there's a stop  
3 sign. He rolls past the stop sign and turns southbound on 11th. And  
4 he -- and we lit him up. So we -- we turn on the lights and -- and sirens  
5 at 11th. He came to a -- he started to come to a stop as he pulled into  
6 that parking lot and right up against the -- the building there at 11th and  
7 Wilson.

8       Q     Talking about the southwest corner?

9       A     It is southwest corner, yes.

10      Q     Now, you can touch that screen. It's kind of like Monday night  
11 football.

12      A     Okay.

13      Q     You can circle and point to things.

14      A     This one here?

15      Q     This one that's right in front of you.

16      A     Okay.

17      Q     If you could just touch the parking lot?

18      A     It's a little bit off calibration.

19      Q     Okay.

20      A     However --

21      Q     So let me try that again.

22      A     It's -- it's a little bit -- there you go.

23      Q     Okay.

24      A     Let me go up here.

25      Q     There you go. Is that it?

1       A     Yeah. My finger's way off of that, but yeah, it works.

2       Q     Okay. Works now that you got an idea of the calibration?

3       A     Yeah.

4       Q     So where that red dot is on the screen, is that the parking lot

5       that you're talking about?

6       A     Yes.

7       Q     And that's where the moped pulls in?

8       A     Yeah.

9       Q     What happens at that point in time?

10      A     He pulls all the way up against the building there on the -- the

11      east side of the building and stops his wheel on the -- a gate in between

12      the two buildings there.

13      Q     And so you said that you had your lights and sirens on?

14      A     Yes.

15      Q     And what are you guys doing now?

16      A     A vehicle stop. A traffic stop, in reference to him blowing the

17      stop sign.

18      Q     And here we are zoomed in on 11th and Wilson on that

19      southwest corner; is that the parking lot we're talking about, right there in

20      the center of the screen?

21      A     Yes.

22      Q     And you indicated that the moped rider had pulled up to a gate

23      there?

24      A     Yeah. You want me to show you?

25      Q     Sure.

1           A     So it's right -- it's right there, in between the two buildings it's  
2 gated.  
3           Q     I see.  
4           A     So he pulled up, his front fire stopped on that. And that's  
5 where he stopped.  
6           Q     So you're indicating this area in between the two buildings is  
7 where that gate is?  
8           A     Yes.  
9           Q     And where do you pull up?  
10          A     Right behind him.  
11          Q     How close?  
12          A     I'm facing -- I'm within 10 -- 10 feet of him.  
13          Q     Okay. And what happens as you're there within 10 feet of this  
14 moped that's at the gate?  
15          A     He -- he stops, hesitates, looks back and quickly gets back on  
16 the bike and starts taking off.  
17          Q     So he looks at you? He looks at Officer Houston?  
18          A     Yes.  
19          Q     Do you see him?  
20          A     I do.  
21          Q     What's he look like?  
22          A     Like the guy sitting over here.  
23          Q     You pointed and you said -- you pointed over my left shoulder  
24 and said the guy sitting over here. Are you identifying somebody here in  
25 the courtroom today?

1 A Yes.

2 Q If you could, please indicate what that individual is wearing.

3 A A light green or whitish dress shirt.

4 Q Okay.

5 A Shaved head.

6 MR. DICKERSON: The record will reflect the witness has  
7 identified the defendant, Ceasar Valencia.

8 THE COURT: It will so reflect.

9 BY MR. DICKERSON:

10 Q So you see Ceasar Valencia right there?

11 A Yes.

12 Q At 11th and Wilson?

13 A Yes.

14 Q And you're how close to him?

15 A Within 10 feet approximately.

16 Q Okay. And what does Mr. Valencia do?

17 A At first he's on the bike. He bumps that tire up against the  
18 fence, looks over his shoulder, and mount -- he mounts it again and  
19 takes off on it. So he takes off back westbound on Wilson and down this  
20 nearest alleyway southbound behind the -- the same building. I was  
21 already approaching him at the time, so I was probably even closer  
22 than 10 feet --

23 Q Is that right?

24 A -- away from the vehicle.

25 Q You were out of your vehicle?

1           A     Yeah.

2           Q     And is this area right here depicting where Mr. Valencia fled

3     to?

4           A     It appears it would be a little bit further down if we're talking

5     about the final place, a little further down southbound. There you go.

6           Q     It's --

7           A     So right -- right where it says 610 North 10th Street --

8           Q     Right.

9           A     -- there's a little lot right under that.

10          Q     Okay. So I want you to talk to me about where he flees from,

11     from the southwest corner of Wilson and 11th Street.

12          A     Okay.

13          Q     Where do you follow him?

14          A     First of all, took me a -- I don't know how long. It took me

15     some time to get back to my vehicle and us get back in the vehicle so I

16     can actually drive off and follow him. But I came around -- I followed him

17     around this way through the alleyway, and stopped in -- stopped in here.

18     It's not doing anything now.

19          Q     Okay.

20          A     That's all right. There's the arrow.

21          Q     That back parking lot of 610 North 10th Street?

22          A     Yes.

23          Q     An Mr. Valencia, was he on the moped?

24          A     Yes.

25          Q     And you were in your vehicle?

1           A     Yes.

2           Q     Driving?

3           A     Yes.

4           Q     Officer Houston riding passenger?

5           A     Passenger.

6           Q     And what happens as you reach 610 North 10th Street?

7           A     He -- he dismounts the bike, dumps it in the general vicinity

8           here in the lot near the dumpster, which would be -- there's a little too

9           much there.

10          Q     I'm going to zoom in for you. Okay.

11          A     Thank you. It would be right in this general vicinity up here, in

12          the lot there.

13          Q     Okay.

14          A     So he dumps --

15          Q     I'm actually going to publish State's Exhibit 11. It's a little bit

16          closer for you. Do you see 610 North 10th Street depicted here?

17          A     Yes.

18          Q     And if you could indicate, generally, where it was that

19          Mr. Valencia hopped off that moped?

20          A     It's a little bit north of that. So it's behind that vehicle that's

21          sitting in the -- on the map.

22          Q     And you're talking about the vehicle that's depicted in this

23          actual --

24          A     Yeah.

25          Q     -- map here?

1           A     Yeah. It's -- well, where my red dot is, it's a little bit north of  
2 that where he actually dumped the -- the bike. So just out of alleyway.  
3           Q     Safe to say that this map is from another time, not that  
4 particular day?  
5           A     Yes.  
6           Q     But it does depict that area fairly and accurately?  
7           A     Yes.  
8           Q     That vehicle wasn't there that day?  
9           A     I don't believe so, no.  
10          Q     And where do you pull up in reference to the moped?  
11          A     I just catty-corner right out of the alleyway, so I'm coming this  
12 direction and I stop in this general vicinity up here.  
13          Q     Okay. And then what happens?  
14          A     I -- I start -- we both start foot pursuit. So Ceasar runs through  
15 this alleyway here and I start foot pursuit behind him.  
16          Q     What does this alleyway look like?  
17          A     It's tight, dirt that starts with some -- several stairs. There's a  
18 chain-link gate that was -- I believe it was open. It was open for me.  
19          Q     On the way down that alley, you guys had gotten on your  
20 radio; is that right?  
21          A     Yes.  
22          Q     And that was at approximately 7:48 p.m.?  
23          A     Yes.  
24          Q     7:48 p.m., May 19th, 2016, what's the lighting like?  
25          A     The light -- it's -- it's starting to get dark out. It's beginning of --



1 of it getting dark.

2 Q Okay.

3 A When this started, there was -- there was light.

4 Q Okay. And so at this point in time, when you're following him  
5 into the back alley, there's sunlight still out?

6 A Yes.

7 Q And what happens as you get towards that back alley?

8 A Well, he's -- he's still got a little ways in front of me, as I start  
9 foot pursuit. He makes it up through these -- the stairs, which start right  
10 about here. It's like three or four stairs. And then takes off westbound  
11 through the alleyway. As I get to the stairs --

12 Q I'm going to go ahead and pull that.

13 A Yeah.

14 Q So he's up the -- the small set of stairs before you are?

15 A Yes.

16 Q And he's made it somewhere to the midpoint of that alleyway?

17 A Yes.

18 Q Where are you at this point in time?

19 A I'm just hitting the stairs.

20 Q Okay. What do you see?

21 A I see Valencia, high rate of speed on foot. Basically, he's  
22 turning around -- I don't know how to tell you this without -- something I  
23 need to show you or --

24 Q Would it be easier to explain it if you showed me?

25 A I think so, yeah.

1 Q Okay.

2 MR. DICKERSON: Your Honor, with the court's permission,  
3 may the witness step off the stand to demonstrate?

4 THE COURT: That's fine.

5 MR. DICKERSON: Thank you.

6 Right here, sir. That's good.

7 THE WITNESS: All right. I'm chasing him down the alley.

8 There's a few steps here. As I'm hitting the -- the -- as I'm starting at the  
9 steps looking off seeing him in -- in between the alleyway and he's still at  
10 a high rate of speed moving, and he's turning around like this, as he's  
11 moving and stumbling. So he's --

12 BY MR. DICKERSON:

13 Q And he's turning around towards you?

14 A Yes.

15 Q What are you doing at that point in when you see him turning  
16 around?

17 A I'm -- I'm trying to stabilize myself, trying to get my hand on my  
18 weapon.

19 Q Do you pull your weapon out?

20 A I do.

21 Q How do you pull your weapon out?

22 A I pulled the weapon out and hold it in front of me, finger on the  
23 index and --

24 Q What do you see Ceasar Valencia doing as he's turning?

25 A I see him stumbling, still moving, hand at the hip, and that's

1 when I see a firearm.

2 Q You see a firearm in his hand?

3 A Yes.

4 Q And what's happening in your mind at this point in time?

5 A At this point I'm thinking I got to -- I got to defend myself, he's  
6 going to try to shoot me. It's all really, really quick.

7 Q And your gun is coming up?

8 A Yes.

9 Q Your finger --

10 A My gun is up. I'm still trying to stabilize myself on the stairs.

11 And I can't -- I -- moving up those stairs, I mean, it's one of these  
12 numbers. And it's -- I'm not stable yet.

13 Q Are you worried you're going to be shot?

14 A Yes. Absolutely.

15 Q So what -- what are you doing with your trigger finger?

16 A I'm starting to put it on the trigger and pull.

17 Q What happens as you're doing that?

18 A I don't know any other way to describe this other than the  
19 words I used in my mind was divine intervention. I've never seen  
20 anything like it. But as he's turning, there's -- there must have been a  
21 chain-link fence up prior to, up against the wall. And there were still  
22 several poles in the wall, four or five of them, I'm not really sure at this  
23 point. He turns, and just as he gets right here, the gun's pointed towards  
24 me. He hits his elbow on the pole and the gun flies out of his hand. So  
25 right as I was pulling this out.

1 Q You can go ahead --

2 THE COURT: Officer, you can return to your seat.

3 THE WITNESS: Yes, sir.

4 BY MR. DICKERSON:

5 Q When that gun drops out of his hand, what happens?

6 A It's still in forward momentum with him westbound in the dirt  
7 on the alleyway. He's still moving. He's turning around trying to grab it.  
8 He's reaching down for it. He's still moving. The gun is still moving. He  
9 just decides to leave without it.

10 Q So he takes off?

11 A Yes.

12 Q Gun's on the ground?

13 A Yes.

14 Q Where are you?

15 A I -- I stop on the firearm.

16 Q Do you say anything as this is happening?

17 A I do. I mention something about a firearm so my partner  
18 knows.

19 Q Is there something -- some way you're trained to do that?

20 A Yes. We want everybody to know that there's a firearm  
21 involved.

22 Q And so how do you do it? What do you say?

23 A Just depends on the situation. But I usually say that -- I try to  
24 call -- lot of them like us to use codes. I like everybody to know what  
25 we're talking about. So I say gun or firearm involved.

1 Q So what did you say on May 19th, 2016, as you see Ceasar  
2 Valencia down the alleyway pointing a gun at you?  
3 A What do I say on the radio?  
4 Q What do you say to your partner?  
5 A I don't recall exactly, but I mentioned a firearm.  
6 Q Okay. You tell him that there's a gun?  
7 A Yes.  
8 Q You said sometimes they like you to use codes?  
9 A Yes.  
10 Q But you don't use codes?  
11 A Rarely.  
12 Q Would that code have been 413?  
13 A Yes.  
14 Q So instead of using 413, you would have said gun?  
15 A Yes.  
16 Q And as that happens, do you see where Officer Houston is?  
17 A Officer Houston -- Houston is in the same alleyway as me.  
18 And I -- I signal to him to continue the foot pursuit while I will stay on the  
19 gun.  
20 Q Is this after the gun has already fallen on the ground?  
21 A Yes.  
22 Q Okay. So you yell gun, and then Officer Houston comes up  
23 into the alleyway with you?  
24 A Yes.  
25 Q You stop on the gun?

1           A     Yes.

2           Q     Do you have a conversation that, hey, I'm waiting here with  
3 the gun? Or does this just happen organically?

4           A     This -- it was dynamic. It was seconds. If there was  
5 conversation, it was just enough to let him know to continue the pursuit.  
6 He sees the firearm, just like I see it, so.

7           Q     On the ground?

8           A     Yes.

9           Q     What happens at this point in time?

10          A     I hold short on the firearm and I turn the radio over to Officer  
11 Houston so that he can continue in the foot pursuit.

12          Q     What's going on, on the radio?

13          A     Like everything else, we're calling for back up and perimeters  
14 and -- and direction of travel and descriptions.

15          Q     But the radio, it's at a Code Red at this time; is that right?

16          A     Yes.

17          Q     And would you describe for the ladies and gentlemen of the  
18 jury what a Code Red is?

19          A     A Code Red is just to notify everybody that -- to hurry, we  
20 need -- we need assistance over here, or to get to a violent call. It's  
21 the -- it's -- it's when you see us rolling with red lights and sirens, that's a  
22 Code Red.

23          Q     So does that mean that only traffic, emergency radio traffic,  
24 can be on that radio?

25          A     Specific to me at the time, or to our incident.

1 Q Specific to that Code Red?

2 A Yes.

3 Q That you guys had called out?

4 A Yes.

5 Q And when you say you gave Officer Houston the radio, what  
6 does that mean?

7 A I didn't want it -- because he is now after suspect, where there  
8 is one firearm, there's typically two. So I didn't want to put him in danger  
9 by taking up his radio time. So I completely gave him control of the radio  
10 and allowed him to do what he needed to do as he continued the foot  
11 pursuit and I was holding on the gun.

12 Q You said something right there, where there's one gun there's  
13 usually two; what is that? Where is that from?

14 A It's pretty typical just from not only training and experience, but  
15 you come into contact with somebody who has one firearm, it's fairly  
16 common that they're going to have two. Case in point, I've got one right  
17 here and one right here.

18 Q Okay.

19 A It's typically a backup or -- or whatever it is.

20 Q So this is something that you, as a long-time police officer, are  
21 thinking about when you see a gun?

22 A Yes.

23 Q When you saw that gun there on the ground after it had been  
24 left by Ceasar Valencia, you're thinking there's possibly another gun?

25 A Yes.

1 Q Now --

2 A Or that -- sorry. Or that he may go back to an area that --  
3 where he can have access to that type of stuff, is the thought.

4 Q Okay. And so at this point in time we have a dynamic  
5 situation. You're separated from your partner. Is that an ideal position  
6 to be in?

7 A No.

8 Q Why not?

9 A In all reality, I'd like to be with my partner to make sure -- two  
10 of us is better than one. I can watch his back, he can watch mine.

11 Q And --

12 MR. DICKERSON: If I may publish Defense Exhibit A?

13 THE COURT: And Defense Exhibit A has been admitted; is  
14 that correct?

15 MR. DICKERSON: It has, Your Honor.

16 THE COURT: Then you may publish.

17 MR. DICKERSON: Thank you very much.

18 BY MR. DICKERSON:

19 Q So this alleyway there, 610 North 10th Street, that's located  
20 here in Las Vegas, Clark County, Nevada?

21 A Yes.

22 Q Just blocks from Downtown Area Command?

23 A Not blocks. It's like half a block.

24 Q Half a block. Your neighbor?

25 A Yes.



1 Q So with that, are you pretty familiar with this area?  
2 A Extremely familiar with the area.  
3 Q And, generally, when this is happening, you guys are putting  
4 out this radio traffic which we're going to hear shortly. And I want -- I'm  
5 going to stop at certain points. I want you just to identify first Officer  
6 Houston, then yourself, or vice versa. Okay?  
7 A Yes, sir.  
8 [Audio played.]  
9 A Houston, Officer Houston.  
10 Q The one that just said, Control 3DP40, we got a guy on a  
11 moped running from us?  
12 A Yes.  
13 Q That's Officer Houston?  
14 A Yes.  
15 Q So I understand the part, we got a guy on a moped running  
16 from us. What's the other part, Control 3DP40?  
17 A DP40 is direct patrol 40. So that's just like I was telling you in  
18 the beginning about what type of a unit we were.  
19 Q So that day you're directed patrol?  
20 A Yes.  
21 Q Is that a call sign that you go by on the radio?  
22 A Yes.  
23 Q Okay. So 3DP40?  
24 A Yes.  
25 Q 3 directed patrol 40?

1 A Yes.

2 Q What is the 3 for?

3 A As far as shift.

4 Q Okay.

5 A So swing shift.

6 Q Swing shift. So that's -- the first number designates your

7 shift?

8 A Yes.

9 Q And then -- so all the shifts have a different number?

10 A Yes.

11 Q What's graveyard?

12 A 1.

13 Q And day shift?

14 A 2.

15 Q Then swing shift is 3?

16 A Yes.

17 Q And then you're directed patrol, so you're DP?

18 A Yes.

19 Q And then 40 is what?

20 A It's just a number indicator.

21 Q Okay.

22 A Each squad is -- is allowed a certain range of numbers and

23 that's just the one that we're in the -- we're in the 40s, so we're the

24 senior. So we start with 40.

25 Q Okay. Let's listen to this. I'm playing it now from 6 seconds.

1 [Audio played.]

2 Q Stopping right there at 20 seconds. We heard a beep and

3 then we heard someone say Code Red. What is that?

4 A That's dispatch getting back to us and -- and telling us that

5 they have us in Code Red.

6 Q So that's when dispatch is --

7 A Acknowledgment.

8 Q -- acknowledging a Code Red on the radio?

9 A Yes.

10 Q Like we talked about with the emergency radio traffic?

11 A Yes.

12 Q What was that beep we heard?

13 A The beep is just -- is -- is dispatches -- it comes from dispatch.

14 So it shows that we are in Code Red. That's just part of the -- the tone.

15 Q So that specific beep is done when there's a Code Red on the

16 channel?

17 A It keeps other people from jumping in on the radio that could

18 hear that beep.

19 Q Okay. And do you know how often those beeps come up?

20 A Seconds. I don't know, 10. I'm guessing, like, 10

21 seconds, 5 seconds in between, something like that.

22 Q Approximately 5 or 10 seconds those beeps come up --

23 MR. COYER: Objection. Speculation.

24 MR. DICKERSON: That was his testimony. I'm just

25 confirming.

1 THE COURT: Restate the question.  
2 BY MR. DICKERSON:  
3 Q How often do those beeps come out on the radio?  
4 A Within seconds of each other.  
5 Q Okay. Is there usually some dead time if there's no radio  
6 traffic between the beeps?  
7 A Yes.  
8 Q Okay. And those beeps are just an indicator to let everyone  
9 know, hey, there's a Code Red going on?  
10 A Yes.  
11 Q Start it back from there.  
12 [Audio played.]  
13 Q I'm stopping it right there at 32 seconds. Do we hear multiple  
14 officers there?  
15 A Officers are starting to arrive. There's at least two of us there  
16 at that point.  
17 Q Do we hear you on that last portion?  
18 A Yes.  
19 Q What did you say?  
20 A Subject dropped a firearm. I couldn't really understand it all  
21 that well.  
22 Q Okay. The -- the crime is he dropped a firearm; is that fair?  
23 A Yes.  
24 Q And so where are you at this point in time?  
25 A At that point in time, I'm still in the area of the firearm.

1 Q Okay. Firearm is on the ground?

2 A Yes.

3 Q You're standing over it?

4 A Yes.

5 Q Next thing we hear is Officer Houston; is that right?

6 A Yes.

7 Q Playing it there from 32 seconds.

8 [Audio played.]

9 Q Pausing it there at 34 seconds. That voice we just heard, is  
10 that Officer Houston?

11 A That's him in foot pursuit, running. Yes.

12 Q And with that, you say you're over this firearm. You've now  
13 notified everybody that he dropped a firearm?

14 A Yes.

15 Q The part where you said the crime is he dropped a firearm,  
16 is -- is there a crime for dropping a firearm?

17 A No. My intention was to tell -- to -- to tell other officers arriving  
18 on the scene that he did drop a firearm.

19 Q Okay. Does that go back to that, when there's one gun,  
20 there's two?

21 A Yes.

22 Q So you want to let everyone know there's a gun involved  
23 here?

24 A Yes.

25 Q Now, Officer Houston's separated from you at this point in the

1 radio traffic?

2 A Yes.

3 [Audio played.]

4 Q 38 seconds.

5 [Audio played.]

6 Q Right there, is that Officer Houston followed by the  
7 dispatcher?

8 A Yes.

9 Q Do you see Officer Houston at this point in time?

10 A No.

11 Q So what are you doing?

12 A Well, I'm -- I'm stuck watching the firearm. So we have -- not  
13 only is this a little alleyway, but it's always a multiunit complex with doors  
14 that face the alleyway. The reason I chose to stay on the firearm, we  
15 didn't know exactly what we were investigating at that point, whether it  
16 was a stolen moped or what. We didn't know. We didn't know why he  
17 was running. So first off, we got to preserve the scene.

18 Second off, we have -- people were coming out of their  
19 doorways to see what's going on. I leave that firearm, and it's not going  
20 to be there anymore when I come back. So that's the reason I stayed on  
21 the firearm.

22 Q Is that just your experience in the neighborhood?

23 A Yes.

24 Q So have you picked up the firearm or you're just standing  
25 there?

1 A I'm standing there over it.

2 Q Is there a reason for that?

3 A Yes. I may want to keep it for prints. So that's the reason I  
4 stood over it instead of just securing it and taking it with me.

5 Q Okay. And now, what happens in the following minutes as  
6 you're standing there?

7 A In the following minutes, several people are coming out to -- to  
8 look to see what's going on. Officer Houston is still in foot pursuit. He's  
9 trying to get a perimeter around a location just across the way where he  
10 believes suspect has gone. Arriving units are setting up perimeters.  
11 Arriving units are coming to help me.

12 Q I'm going to start the -- the audio right here from 50 seconds.

13 [Audio played.]

14 Q Stopping right there at one minute six seconds. We heard a  
15 description there. Was that given by Officer Houston?

16 A Yes.

17 Q And now, just to be clear, we have here State's Exhibit 53. If I  
18 may switch back to this, just briefly. So I'm going to show you here  
19 State's Exhibit 53. Are you able to see that? You can see that?

20 A Yes, sir.

21 Q Okay.

22 A Most of it.

23 Q What is this that we're looking at?

24 A It is the CAD report.

25 Q What is a CAD report?

1 A It's the -- the log of radio traffic.

2 Q How does this develop?

3 A There's a clerk or a law enforcement specialist that -- that

4 shorthands this stuff while -- while radio traffic is coming out.

5 Q Okay. And --

6 A It's a timeline of events.

7 Q Going on back at Metro dispatch?

8 A Yes.

9 Q Specifically, Metro works off of event number; is that right?

10 A Yes.

11 Q One traffic stop would be one event number?

12 A Yes.

13 Q This event number that this CAD is referenced to is an event

14 number LLV 160519003387; is that right?

15 A Yes.

16 Q That's the event number for this traffic stop, foot pursuit, gun,

17 everything, right?

18 A For the entire event, yes.

19 Q And just to have reference for the members of the jury, the

20 event has some significance as far as date and when the call came out?

21 A Yes.

22 Q Can you explain that to the members of the jury?

23 A Yes. LLV is nothing more than just a filler. 16 is the year. 05

24 is the month. 19 is the day. 00 is just a filler. 3387 is the number of

25 events in each day.



1 Q Okay. So, obviously, the call directly before you anywhere in  
2 valley would have been 3386?

3 A Yes. Yes.

4 Q That's why this is 3387 and the call after you would be 3389?

5 A Yes.

6 Q Or 3388, I'm sorry.

7 A Yes.

8 Q And you said that the LLV and those two 0s are just fillers?

9 A Yes.

10 Q So at times we might see that event number written with  
11 just 160519-3387?

12 A Yes.

13 Q Okay. So just for time reference of what we're -- what we're  
14 listening to, we're able to see when the initial call comes out here; is that  
15 right?

16 A Yes.

17 Q And that's at 19:46:08; is that correct?

18 A 19:46:08 is correct.

19 Q And then when we have that first description that comes out  
20 from Officer Houston, it looks like that's at 19:47:17; is that correct?

21 A Yes.

22 Q Okay. So this initial radio traffic is -- is going very quickly?

23 A Yes.

24 Q And what we have next is you still on the firearm, Officer  
25 Houston separated from you. You said there's a perimeter being set

1 up?

2 A Yes.

3 Q What is a perimeter?

4 A Perimeter is several arriving units taking nearby corners to  
5 block in whatever area it is that we needed, which was the area of where  
6 Valencia was alleged to -- to run towards or to.

7 Q Where Officer Houston saw him running towards?

8 A Yes. The -- the final area.

9 Q Okay. And setting up the perimeter, is that something that we  
10 hear on the radio?

11 A Yes.

12 Q Are we going to hear that?

13 A I don't recall.

14 Q Okay. I'm playing it here from 1:06.

15 MR. DICKERSON: Oh, I'm sorry, if I could switch back to this.  
16 I got to give you more notice. There we go.

17 Q Playing it from one minute six seconds.

18 [Audio played.]

19 Q Stopping it there at one minute 30 seconds. What was it that  
20 we just heard?

21 A Officer Houston called -- asked for a perimeter. The closest  
22 unit took initiative, which sounded like it was Officer Aaron Perez got on  
23 and he initiated locations for the perimeter. And dispatch got back and  
24 acknowledged perimeter.

25 Q Okay.

1 MR. DICKERSON: And Madam Recorder, if I could just  
2 switch back to the ELMO. Thank you, ma'am.

3 Q Now, just to illustrate what we're listening to in the time  
4 periods, we had just heard right before playing that, the description of  
5 the suspect; is that right?

6 A Yes.

7 Q So Officer Houston described Mr. Valencia as -- at 19:47:17,  
8 HMA, dark red hat, striped shirt, dark pants, 5'7", about 160; is that  
9 right?

10 A No. You said it backwards. HMA, dark hat, red striped shirt,  
11 dark pants.

12 Q Dark pants. There you go. And that's at 19:47:17?

13 A Yes.

14 Q That's --

15 A Yes.

16 Q That's 7:47 p.m.?

17 A Yes.

18 Q And then the traffic that we immediately heard proceeding  
19 that, or right after that, was that perimeter being called out; is that  
20 correct?

21 A Yes.

22 Q And we actually see that here in the CAD, don't we?

23 A Yeah.

24 Q At 19:48:42?

25 A Can you move that a little bit right, I think?

1 Q Yeah.

2 A Right. What did you say, 19:48:42? Which one is it -- yes.

3 Those are the locations that they started the perimeter.

4 Q And that's the radio traffic that we just heard?

5 A Yes.

6 Q So the time stamp for that is a minute and a half difference,  
7 right?

8 A Approximately, yes.

9 Q But -- but we don't have a minute and a half difference on this  
10 radio, correct? It's just traffic after traffic?

11 A Yes.

12 Q That's not how it sounded that day, obviously?

13 A Right.

14 Q That's just the audio as it exists in this form; is that correct?

15 A Yes.

16 Q So it's not in real time as we're hearing it today?

17 A Right.

18 Q Okay. And as you're there, perimeter is being set up. What  
19 happens when you're in that alleyway?

20 A As I look back towards the moped, two people are walking off  
21 with the moped.

22 Q Two people are walking off with the moped. What do you do?

23 A Secure the firearm in my waistband, disregarding any need for  
24 prints on it anymore, and heading back to secure that moped and take  
25 those two into custody.

1 Q So you have to pick up the gun off the ground?  
2 A Yes.  
3 Q And you do that -- you're not wearing gloves?  
4 A No.  
5 Q You just have to react?  
6 A Yes.  
7 Q Just putting it in your waistband?  
8 A Yes.  
9 Q And where do you go from there after putting the gun in your  
10 waistband?  
11 A I go straight over to the moped that's being pushed off  
12 southbound through the alleyway. Two separate people, one on each  
13 side, pushing it southbound. And I take them into custody and go from  
14 there.  
15 Q So you put that out over the radio?  
16 A I do believe so.  
17 Q I'm going to play it here, that radio audio, again, from 1 minute  
18 and 30 seconds.  
19 [Audio played.]  
20 Q Pausing it right there, two minutes 58 seconds.  
21 That audio portion started off with your traffic; is that correct?  
22 A Sounded like it, yes.  
23 Q You said 3DP40A?  
24 A Yes.  
25 Q What's the A?

1           A     So now we're trying to do time management, time  
2 management between the two incidents. And because I'm senior, I'm A  
3 and he's B.

4           Q     He being officer --

5           A     DP40A and DP40B.

6           Q     So Officer Houston, DP40B?

7           A     Since we are separated, yeah.

8           Q     When you're together, DP40 and -- 3DP40. Now that you're  
9 separated, 3DP40 A and B?

10          A     Yes.

11          Q     That's how it should work?

12          A     Yes.

13          Q     And that's why you're using A there?

14          A     Yes.

15          Q     And that's how we know it's you in that radio traffic?

16          A     Yes.

17          Q     And I want to just show you that State's Exhibit 53 here again.  
18 Looks like it would be 19:48:42 seconds; is that correct?

19          A     Yes.

20          Q     So that's immediately after we hear that radio traffic about the  
21 perimeter being called out; is that correct?

22          A     Yes.

23          Q     You get on the radio?

24          A     Yes.

25          Q     And what is it that we heard you say?

1       A     Something to the effect that I have two people taking off with  
2 the moped and I need somebody to come help me.

3       Q     Ultimately, that audio that we heard ends with your radio traffic  
4 as well --

5       A     Yes.

6       Q     -- is that correct?

7       A     Yes.

8       Q     Once again, 3DP40A?

9       A     Yes.

10      Q     What is it that you said there at the end?

11      A     I don't remember right now. If you could refresh me.

12      Q     Code 4?

13      A     Yes.

14      Q     Two in custody?

15      A     Yes.

16      Q     What is Code 4?

17      A     That means I'm okay, I'm good.

18      Q     Safe?

19      A     Yes.

20      Q     And we see that here on the CAD, State's Exhibit 53  
21 at 19:50:14; is that correct?

22      A     Yes.

23      Q     So, generally, less than two minutes between when you first  
24 called that out and then when you're calling out, hey, I'm okay --

25      A     Yes.

1 Q -- is that right?

2 A Yes.

3 Q So well -- we hear that here. What do you do now that you  
4 have these two individuals in custody?

5 A Now I have to worry about arrest paperworks on them, just  
6 handling that end of it. I'm still worried about Chris and the perimeter  
7 and what's going on over there. Really, that's all being handled so I  
8 don't need to get involved in it. But I'm -- I'm back at my car at this point  
9 dealing with a whole separate arrest, two other people.

10 Q And your car is back where it was, right in that back parking lot  
11 of 610 North 10th Street?

12 A The alleyway, yes.

13 Q Is that moped still close to where your vehicle is?

14 A It is. It's bushed a little further southbound, now in the  
15 alleyway, but it's -- its basic vicinity, yes.

16 Q What do you do with those two individuals who you now have  
17 in custody?

18 A Place them in cuffs and I try to finish the investigation.

19 Q On them?

20 A Well, now I'm dealing with them too. So it's completely  
21 separate. I don't know if it's involved or if it's completely separate. I -- I  
22 don't know at the -- that time.

23 Q Where is that firearm that Ceasar Valencia pulled on you?

24 A I secured it somewhere. I had it on --

25 Q It's --



1           A     -- on me, you know, I'm typically not going to leave it in here,  
2 because I don't want to go off. But usually I'll put it on the dashboard  
3 inside my car or on the -- the passenger seat. Just depends.

4           Q     You secured it?

5           A     I secured it myself.

6           Q     With yourself?

7           A     Right.

8           Q     So your focus shifted from the foot pursuit to the firearm to  
9 now these two guys stealing the moped?

10          A     Yes.

11          Q     And do you ultimately arrest those two guys?

12          A     I do.

13          Q     Is that an individual named Eric Gilbert and Anibal Rivera?

14          A     Yes.

15          Q     Later that night, end up booking them into city jail?

16          A     Yes.

17          Q     But for the time being, this event is still dynamic?

18          A     Yes.

19          Q     So as we continue on to it, sounds like at some point in time  
20 you're able to identify who the defendant is, specifically who he is?

21          A     Yes.

22          Q     And that starts to occur on the radio?

23          A     Yes.

24          Q     I'm going play it here from two minutes and 58 seconds.

25                               [Audio played.]

1 Q We heard that radio traffic come out, an HMA matching that  
2 description has a residence?  
3 A Yes.  
4 Q Who were they talking about?  
5 A About Ceasar Valencia.  
6 Q Are -- do you now know today that they were talking about that  
7 625 North 10th Street address?  
8 A Yes.  
9 Q And as that develops, do you -- are you contacted by other  
10 officers?  
11 A At one point or another, I was.  
12 Q I'm going to play the audio right here from six minutes and two  
13 seconds.  
14 [Audio played.]  
15 Q We just heard the name Ceasar Valencia come out on the  
16 radio; is that correct?  
17 A Yes.  
18 MR. DICKERSON: And if I could, ma'am? Thank you.  
19 Q I'm going to show you here again State's Exhibit 53. We first  
20 see --  
21 A Thank you.  
22 Q -- on first page at 19 minutes and 51 seconds, 3DP41. It says  
23 HMA matching that description, residence 10th Street?  
24 A Yes.  
25 Q That's what we listened to just before hearing Ceasar

1 Valencia's name?

2 A Yes.

3 Q And Ceasar Valencia's name that came out, the residence  
4 matching the HMA's description is at 1951, that's 7:51 p.m.?

5 A Yes.

6 Q Ultimately, when we hear his name on the radio, is that him  
7 being ID'd as the suspect?

8 A Yes.

9 MR. COYER: Objection. Foundation. Speculation.

10 THE COURT: Sustained.

11 BY MR. DICKERSON:

12 Q What is it that we hear in his name on the radio?

13 A I'm sorry, what are you asking?

14 Q We heard Ceasar Valencia's name stated over the radio?

15 A Right.

16 Q All right. I'm going to show you here State's Exhibit 53; is that  
17 occurring at 19:58:17?

18 A Yes.

19 Q So that's 7:58?

20 A Yes.

21 Q And that would be indicating what?

22 A That would be indicating that somebody has identified him and  
23 is giving out his actual description.

24 Q You're still there on scene?

25 A Yes.

1 Q 7:58 p.m., where are you?

2 A I'm now back with two suspects and the moped back at my  
3 vehicle in the alleyway between 10th and 11th, just north of Bonanza.

4 Q Okay. And, ultimately, we have radio traffic from you to your  
5 sergeant at approximately 8:02 p.m.; is that correct? Do you recall that?

6 A Yes.

7 Q I'm going to play the audio starting here at eight minutes and  
8 six seconds.

9 [Audio played.]

10 Q What was that that we just heard?

11 A Me getting back on and -- and updating the information, telling  
12 other officers in dispatch that he actually pointed the gun at me and  
13 dropped it as he ran from me.

14 Q And who was it that you were speaking to at that time?

15 A I don't -- I don't recall other than dispatch, but I'm -- I'm talking  
16 to everybody.

17 Q Let me play it for you from eight --

18 A I want everybody to know at that point.

19 Q Okay. Eight minutes and seven seconds.

20 [Audio played.]

21 A I can't understand that.

22 Q 705, is that what you said?

23 A I think so, yeah.

24 Q What would 705 be?

25 A 705 is my sergeant.

1 Q Okay. So you're telling your sergeant on the radio?  
2 A Yes.  
3 Q And for everyone else to hear?  
4 A For everyone else to hear is the main thing.  
5 Q From eight minutes and nine seconds, playing.  
6 [Audio played.]  
7 Q Okay. And again, looking at State's Exhibit 53, we actually  
8 see that here as well on CAD; is that right? At 8 -- at 20:02:05,  
9 that's 8:02 p.m.; is that correct?  
10 A Yes.  
11 Q Says:  
12 705, 3DP40, when Ceasar turned while running, pointed 413  
13 at unit, but dropped it?  
14 A Yes.  
15 Q That's your radio traffic now in this CAD?  
16 A Yes.  
17 Q And I want you to look up to 19:58:39; do you see that?  
18 A Yes.  
19 Q Says what there?  
20 A 618K, channel clear for now.  
21 Q What does that mean?  
22 A 618K, I think, is 618 K-9 on here.  
23 Q Okay.  
24 A So that's notifying several sergeants of what's going on.  
25 Q That would be K-9 sergeant?

1       A     I think so, yeah.

2       Q     And that'd be calling off the Code Red?

3       A     Yes.

4       Q     So at that point in time, just mere minute or so before you get  
5 back on the radio, the Code Red had ended?

6       A     Yes.

7       Q     So the emergency traffic had come to an end, and what does  
8 that mean?

9       A     That means radios are open for all units.

10      Q     And then that's when you get on and tell your sergeant?

11      A     Yes. The first chance I get to give actual details.

12      Q     As you're sitting there in the back alley, do you get any sort of  
13 pictures or anything?

14      A     I recall seeing a picture. I don't know where it came from or  
15 where it was. I -- I have no clue. I remember seeing something.

16      Q     I'm going to play this for you and you tell me what it is; eight  
17 minutes and 32 seconds.

18                               [Audio played.]

19      Q     Did that say copy a text of a picture?

20      A     I think so. I -- I -- hard -- can't hear all that well.

21                               [Audio played.]

22      A     Yes.

23                               [Audio played.]

24      Q     And was that radio traffic directed at who?

25      A     At me from -- from Officer Aaron Perez.

1 Q Is that 3DP41?  
2 A Yes.  
3 Q The other directed patrol unit?  
4 A Yes.  
5 Q Okay. And does that refresh your recollection about how you  
6 got a picture?  
7 A Yes.  
8 Q How is it that you got the picture?  
9 A By text message.  
10 Q Okay. I'm going to play this radio audio here from eight  
11 minutes and 51 seconds.  
12 [Audio played.]  
13 Q What was it that we just heard there?  
14 A Acknowledging that that's the person that ran from me.  
15 Q Is that you?  
16 A Yes.  
17 [Audio played.]  
18 Q One more time from eight minutes 47 seconds.  
19 [Audio played.]  
20 Q Again, that was your radio traffic to your sergeant?  
21 A Yes.  
22 Q You're identifying -- identifying -- excuse me, identifying  
23 Ceasar Valencia?  
24 A Yes.  
25 Q That was specifically at -- located here at CAD -- on the CAD

1 at -- I may show you State's Exhibit 53.

2 MR. DICKERSON: If I could, ma'am. Thank you.

3 Q Is that at 8:04 p.m.; is that correct?

4 A Yeah, it's marked as 2004. Yeah.

5 Q 2004, marked as 2004, 8:04 p.m. What does it say there?

6 A 705/3DP40 per picture texted will be Ceasar Valencia.

7 Q That individual that you saw in that picture that day, is that the  
8 same individual you see here in court today?

9 A Yes.

10 Q Same one you've identified?

11 A Yes.

12 Q The defendant?

13 A Yes.

14 Q Same individual who pointed the gun at you?

15 A Yes.

16 Q And as this process goes on, where does the rest of the night  
17 go for you on May 19th, 2016?

18 A The rest of the night is -- I have to book the -- the two that took  
19 off with the moped. This is all pretty much turned over to detectives at  
20 that point.

21 Q So detectives come down ?

22 A [No audible response.]

23 Q Is that a yes?

24 A Yes.

25 Q Does crime scene investigations come down?



1 A Yes.

2 Q And what do crime scene investigators or crime scene  
3 analysts do?

4 A They preserve the scene and collect things for court.

5 Q Do you have contact with the crime scene analyst that comes  
6 down to the scene?

7 A Yes.

8 Q What, if any, contact -- what contact is it that you have with the  
9 crime scene analyst?

10 A I give her a rundown of what the -- of what occurred and the --  
11 the area that it occurred in.

12 Q Was that Crime Scene Analyst Olivia Klosterman?

13 A Yes.

14 Q So you tell her your experience?

15 A Yes.

16 Q She take photos?

17 A Yes.

18 Q Photos of the scene?

19 A Yes.

20 Q Photos of you?

21 A Yes.

22 Q Photos of the gun?

23 A Yes.

24 Q I want to show you --

25 MR. DICKERSON: If I may approach, Your Honor?

1 THE COURT: Is this to lay the foundation for seeking  
2 admission of the photos?

3 MR. DICKERSON: It would be.

4 THE COURT: You may approach.

5 MR. DICKERSON: Thank you very much.

6 THE COURT: Have you shown the photos to opposing  
7 counsel?

8 MR. DICKERSON: I have shown these photos to opposing  
9 counsel previously when we first started the trial. Same photos that  
10 existed before. All right.

11 BY MR. DICKERSON:

12 Q Officer Jacobitz, I have here State's exhibits, several of them,  
13 that I want you to identify. Several of these have been admitted, but I  
14 just want to make sure that we have everything admitted through you  
15 and that you are verifying exactly what it was that you saw here.

16 THE COURT: And, counsel, why don't we have him lay the  
17 foundation for each exhibit and then move to admit as to each exhibit.

18 BY MR. DICKERSON:

19 Q So I have here State's Exhibits 18 through 26; will you please  
20 take a look through those?

21 A Yes, sir. [Witness complies.]

22 Q And also State's Exhibit 17. You had an opportunity look  
23 through each one of those exhibits?

24 A Yes.

25 Q Do you recognize what was depicted in those exhibits?

1           A     Yes.

2           Q     What was it?

3           A     That was the -- the alleyway and the -- the building where he

4 dropped the firearm.

5           Q     There at 610 North 10th?

6           A     Yes.

7           Q     And these all fairly and accurately depict that alleyway as it

8 appeared?

9           A     Yes, except for the time of day or the darkness.

10          Q     What do you mean by that?

11          A     I mean, it's -- the -- the analyst that came to take pictures, this

12 was much later, so it's quite a bit darker.

13          Q     Okay. So we'd probably be able to tell from CAD what time

14 she actually arrived; is that right?

15          A     Yes.

16          Q     Okay. Again, those have all been admitted. I want you to

17 take a look now at the State's Proposed Exhibit 16 -- 15 and 16; do you

18 recognize those two images, sir?

19          A     Yes.

20          Q     How is it that you recognize them?

21          A     It's the same location.

22          Q     The back alley or the side alley of 610 North 10th Street?

23          A     Yes.

24          Q     So those fairly and accurately, save for darkness time of day,

25 reflect 610 North 10th Street, that alleyway, as it appeared on

1 May 19th, 2016?

2 A Yes.

3 MR. DICKERSON: State's going to move for the admission of  
4 State's Exhibits 15 and 16. And also, for the record purposes to make  
5 sure that we are okay with all State's Exhibits 17 through 26, which have  
6 already been admitted, we're going to make sure that we move for  
7 admission of all of those exhibits at this time as well.

8 MR. COYER: No objection.

9 BY MR. DICKERSON:

10 Q Officer Jacobitz, I also want you to take a look at --

11 THE COURT: Counsel. So Exhibits 15 and 16, you're moving  
12 for admission; is that correct?

13 MR. DICKERSON: That's correct.

14 THE COURT: Okay.

15 MR. DICKERSON: And to clear up any confusion that we  
16 may have had as far as the other exhibits, 17 through 26, I just want to  
17 make sure that they are moved for admission at this point in time so the  
18 record is clear.

19 THE COURT: Okay. So 15 and 16 are admitted, hearing no  
20 objection from defense counsel. Exhibits 17 through 26 have previously  
21 been admitted, but to the extent they may not have been, hearing no  
22 objection from defense counsel, they are also admitted.

23 [State's Exhibit Nos. 15 through 26 admitted.]

24 BY MR. DICKERSON:

25 Q Then here, looking at State's Proposed Exhibits 27

1 through 30, take a look at those and tell me if you recognize those items  
2 here.

3 A [Witness complies.] Yes, sir.

4 Q How is it that you recognize State's Proposed Exhibits 27  
5 through 30?

6 A It's the same alleyway.

7 Q 610 North 10th Street?

8 A Yes, sir.

9 Q Except for the time of day, the lighting, does that fairly and  
10 accurately depict that alleyway at 610 North 10th Street as it appeared  
11 on May 19th, 2016?

12 A Yes, sir.

13 MR. DICKERSON: State moves for the admission of State's  
14 Proposed Exhibits 27 through 30.

15 THE COURT: Counsel, any objection?

16 MR. COYER: No. No objection.

17 THE COURT: Exhibits 27 through 30 are admitted.

18 [State's Exhibit Nos. 27 through 30 admitted.]

19 BY MR. DICKERSON:

20 Q Since we are talking about it, as far as being able to tell when  
21 the crime scene analyst arrived, do crime scene analysts have a  
22 distinctive call sign?

23 A They do.

24 Q It'd be a C followed by a number usually?

25 A I believe so, yes.

1 Q I want to show you, publishing again, State's Exhibit 53. Here  
2 at 23:36:44 hours, says USAR, is that arrived?  
3 A Yes.  
4 Q C23?  
5 A Yes.  
6 Q And that's there at 10th Street?  
7 A Yes.  
8 Q Which was the -- the place of the call?  
9 A Yes.  
10 Q 625 North 10th Street?  
11 A Yes.  
12 Q Which would have been the location for any arriving unit that  
13 said they were arriving at that time?  
14 A Yes.  
15 Q So that time period, 2336, that's 11:36?  
16 A Yes.  
17 Q So the crime scene analyst arrived several hours after this  
18 event that's occurred?  
19 A Yes.  
20 Q So those pictures that we just saw that you just looked at, for  
21 example, State's Exhibit 16, these depict the lighting as it appeared just  
22 before midnight?  
23 A Yes.  
24 Q Not at 7:48 p.m.?  
25 A Yes.

1 MR. DICKERSON: Permission to approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. DICKERSON:

4 Q Officer Jacobitz, if you could, please take a look at these  
5 exhibits, Proposed Exhibits 40 through 45, and tell me if you recognize  
6 those proposed exhibits.

7 A [Witness complies.] I look tired. Yes.

8 Q How it is that you recognize State's Proposed 40 through 45?

9 A That's me.

10 Q That's you?

11 A Yes, sir.

12 Q As you appear on May 19th, 2016?

13 A Yes.

14 Q Do those photos fairly and accurately depict you that evening?

15 A Yes.

16 MR. DICKERSON: State moves for the admission of State's  
17 Proposed 40 through 45.

18 THE COURT: Any objection?

19 MR. COYER: No, Your Honor.

20 THE COURT: So admitted.

21 [State's Exhibit Nos. 40 through 45 admitted.]

22 BY MR. DICKERSON:

23 Q Publishing State's Exhibit 40; this is you?

24 A Yes.

25 Q This was taken by the Crime Scene Analyst Olivia

1 Klosterman?

2 A Yes.

3 Q This is depicting your uniform that you're wearing that  
4 evening?

5 A Yes.

6 Q That's, in fact, what you were wearing when you got into this  
7 whole foot pursuit and everything started?

8 A Yes.

9 Q Throughout the night?

10 A Yes.

11 Q During the entire event?

12 A Yes.

13 Q Standard issue tan Las Vegas Metropolitan Police Department  
14 uniform?

15 A Yes.

16 Q And in addition to taking those pictures, she took those scene  
17 pictures, and were there some that have a cone in them?

18 A Yes.

19 Q Tell me about that.

20 A The cone is going to indicate where the weapon was dropped.

21 Q Okay.

22 A Or where it was found, or where I pointed it out to be at that  
23 time.

24 Q And so you showed that to the crime scene analyst?

25 A Yes.



1 Q Showing you State's Exhibit 27, now admitted; do you see that  
2 cone in here?

3 A Yes.

4 Q Is it right there at the center of the photograph?

5 A Yes.

6 Q State's Exhibit 28, does that also depict that same cone?

7 A Yes.

8 Q You indicated that this is where the firearm was?

9 A Yes. Keep in mind, that's an approximate area --

10 MR. COYER: Objection. It misstates the previous  
11 testimony --

12 THE WITNESS: -- of where I brought the analyst back to --

13 THE COURT: I'm sorry -- counsel.

14 An objection is being made --

15 THE WITNESS: Sorry.

16 THE COURT: -- so you have to hold your testimony.

17 What's the objection, counsel?

18 MR. COYER: It misstates the previous testimony where he  
19 gave three answers to what the cone represented.

20 THE COURT: Restate your -- before I rule --

21 MR. DICKERSON: I -- I'll restate, Your Honor.

22 THE COURT: Okay. Restate your question.

23 BY MR. DICKERSON:

24 Q What does that orange cone right there represent?

25 A Where the firearm was located.

1 Q Okay. Ceasar Valencia's firearm?  
2 A Yes.  
3 Q Where it ultimately landed?  
4 A Yes.  
5 Q Okay. And now, there was another cone, as well, laid out; is  
6 that correct?  
7 A I believe so.  
8 Q Showing you here State's Exhibit 22; do you see that cone?  
9 A Yes.  
10 Q The bottom of State's Exhibit 22; what is this location we're  
11 looking at?  
12 A Represents my location when I observed Ceasar Valencia  
13 with the firearm.  
14 Q So the cone at the bottom of the stairs represents your  
15 location?  
16 A Yes.  
17 Q And the other cone that we looked at in the alleyway or this  
18 walkway represents the area where the gun was?  
19 A Yes.  
20 Q Showing you State's Exhibit 29; does that appear to be that  
21 area where you indicated the gun was, looking backwards?  
22 A Yes.  
23 Q Again, these photos were taken just before midnight?  
24 A Yes.  
25 MR. DICKERSON: Permission to approach, Your Honor.

1 THE COURT: Yes.

2 BY MR. DICKERSON:

3 Q Officer Jacobitz, please have a look at State's Proposed  
4 Exhibits 31 through 39; tell me if you recognize what's depicted there.

5 A [Witness complies.] Yes.

6 Q You do recognize what's depicted in State's Proposed  
7 Exhibits 31 through 39?

8 A Yes.

9 Q How is it that you recognize what's depicted in these exhibits?

10 A That's the firearm I'm talking about.

11 Q The firearm that you recovered?

12 A Yes.

13 Q And these photos fairly and accurately depict that firearm that  
14 Ceasar Valencia pointed at you and dropped on May 19th, 2016?

15 A Yes.

16 MR. DICKERSON: State moves for the admission of State's  
17 Proposed Exhibits 31 through 39.

18 THE COURT: Any objection?

19 MR. COYER: No, Your Honor.

20 THE COURT: Exhibits 31 through 39 will be admitted.

21 [State's Exhibit Nos. 31 through 39 admitted.]

22 MR. DICKERSON: Thank you, Your Honor.

23 BY MR. DICKERSON:

24 Q Showing you State's Exhibit 31; that's the firearm?

25 A Yes.

1 Q It's a revolver?

2 A Yes.

3 Q State's Exhibit 33, what is that we're seeing there, sir?

4 A It's a .38 Special. That's the caliber of round, the serial  
5 number, where it's made, and the manufacturer.

6 Q Specifically --

7 A That's the front of the firearm.

8 Q The front of the firearm, indicating the caliber of the gun is  
9 a .38 Special?

10 A Yes.

11 Q And State's Exhibit 38, what is that, sir?

12 A That's a measurement of the firearm with the rounds that were  
13 inside.

14 Q So this gun was loaded?

15 A Yes.

16 Q With five live rounds?

17 A Yes.

18 Q Officer Jacobitz, did you bring any evidence with you to court?

19 A Yes.

20 Q Yesterday?

21 A Yesterday, yes.

22 Q I have here State's Proposed Exhibit 4 and State's Proposed  
23 Exhibit 1.

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

25 THE COURT: Yes.

1 BY MR. DICKERSON:

2 Q First, State's Proposed Exhibit 4, is this an item of evidence  
3 that you brought to court?

4 A This one is -- is an item that I brought, yes.

5 Q Okay. Specifically, an item that is in a Metropolitan Police  
6 Department evidence bag?

7 A Yes.

8 Q But you didn't impound this item?

9 A No.

10 Q You just checked it out from the evidence vault to bring it to  
11 court?

12 A Yes.

13 Q Okay. And this -- does this appear in the same fashion as it  
14 was when you picked it up from the evidence vault?

15 A Yes.

16 Q Okay. State's Proposed Exhibit 1, I want you to have a look at  
17 that and tell me if you recognize that.

18 A Yes.

19 Q What do you recognize that to be?

20 A It's my packaging of the firearm.

21 Q The firearm that we just saw the photos of?

22 A Yes.

23 Q Did you actually impound that firearm?

24 A Yes.

25 Q And how do you know that you impounded it, other than

1 maybe recalling?

2 A Because the -- the stamp on here is in my writing.

3 Q And do you have personal knowledge of you impounding this  
4 firearm?

5 A Yes.

6 Q You said the stamp on here; what is it that you're talking  
7 about, the stamp on here?

8 A There's a label indicating what's inside the package.

9 Q Okay. And what does it say?

10 A Las Vegas Metropolitan Police Department Evidence. And it's  
11 LVMPD 133. That it would be the document number.

12 Q Okay. And this particular package is, in fact, the packaging  
13 that you wrote up for impounding that Taurus revolver?

14 A Yes.

15 Q From May -- that you collected that was pointed at you from  
16 May 19th, 2016?

17 A Yes.

18 MR. DICKERSON: State moves for the admission of State's  
19 Proposed Exhibit 1 as packaged. And we'll move to open it and  
20 individually mark the items inside.

21 THE COURT: Any objection, counsel?

22 MR. COYER: No.

23 THE COURT: No objection. State's Exhibit 1 is admitted.

24 [State's Exhibit No. 1 admitted.]

25 BY MR. DICKERSON:

1           Q     Okay. Showing this to the ladies and gentlemen of the jury,  
2 can you explain to them what it is that you've labeled here and how you  
3 labeled it?

4           THE COURT: You know, counsel, how much longer do you  
5 have with this witness?

6           MR. DICKERSON: I'd say we can take a lunch break right  
7 now, Your Honor.

8           THE COURT: Okay. Why don't we do our afternoon lunch  
9 break right now. And this will be a one-hour lunch break.

10           During this recess you are admonished not to talk or converse  
11 among yourselves or with anyone else on any subject connected with  
12 this trial, or read, watch, or listen to any report or commentary on the trial  
13 or any person connected with this trial, by any medium of information,  
14 including, without limitation, the social media, text, newspapers,  
15 television, the Internet, and radio; do not visit the scene of any of the  
16 events mentioned during the trial, undertake any investigation; do not do  
17 any posting or communications on any social networking sites or do any  
18 independent research, including Internet searches, or form or express  
19 any opinion on any subject connected with the trial until the case is  
20 finally submitted to you.

21           We'll be in recess for one hour.

22                     [Jury recessed at 1:26 p.m.]

23           THE COURT: We'll be in recess for one hour.

24                     [Court recessed at 1:27 p.m. until 2:35 p.m.]

25                     [Outside the presence of the jury.]

1 THE COURT: Please be seated. Is there any housekeeping  
2 matters we need to take care of?

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

4 THE COURT: Defense?

5 MR. COYER: No, Your Honor.

6 THE COURT: All right.

7 MR. COYER: You're still going on direct, right?

8 MR. DICKERSON: Yeah.

9 MR. COYER: I'll just want a little time to set up the courtroom  
10 before our cross, Judge. Just to --

11 THE COURT: Before the cross?

12 MR. COYER: Just to get the exhibits in order --

13 THE COURT: Okay.

14 MR. COYER: -- and things like that.

15 THE COURT: All right. That's fine. How much longer do you  
16 think you have with this witness, Mr. --

17 MR. DICKERSON: 15 minutes probably.

18 THE COURT: That's fine. I'm going to bring the jury in. And  
19 can everybody hear me?

20 MR. DICKERSON: Yes.

21 THE COURT: I'm trying to speak into the microphone.

22 [Jury reconvened at 2:36 p.m.]

23 THE COURT: Sir, I remind you you're still under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.



1 MR. DICKERSON: May I continue, Your Honor?

2 THE COURT: Yes.

3 MR. DICKERSON: May I approach?

4 THE COURT: Yes.

5 **DIRECT EXAMINATION (CONT.)**

6 BY MR. DICKERSON:

7 Q Officer Jacobitz, I have in my hand what's now been admitted  
8 as State's Exhibit 1. You indicated that this was the Taurus .38-caliber  
9 revolver that you impounded on May 19th, 2016; is that correct?

10 A Yes.

11 Q And that's what's contained here in this bag?

12 A Yes.

13 Q If you could please explain to the ladies and gentlemen of the  
14 jury how it is this bag is marked and what we're seeing here?

15 A Yes, sir. Numerically ordered, No. 1 will be the revolver --  
16 actually, let's start up top there. We got the date, the time it was -- or the  
17 type -- time in possession, event number, evidence of a felony crime  
18 was marked, my initials and --

19 Q If you could turn this way so the people at the end can see you  
20 as well.

21 A Yes, sorry. My initials and Chris's initials, my signature.  
22 Suspect is listed as Ceasar Valencia, his ID number, charge is assault  
23 with a deadly weapon on a police/ex-felon in possession of firearm.

24 Q Can you sit down --

25 THE COURT: Counsel, you need to take a --

1 MR. DICKERSON: And can we --  
2 THE COURT: We need to take a five-minute recess.  
3 MR. DICKERSON: Can we have a brief bench conference,  
4 Your Honor?  
5 THE COURT: No. We're going to take a five-minute recess.  
6 Ladies [sic], we're going to take a short recess at this time.  
7 During this recess, you're admonished not to talk or converse among  
8 yourselves or with anyone else on any subject connected with this trial,  
9 or read, watch, or listen to any report or any commentary on the trial or  
10 any person connected with this trial by any medium of information,  
11 including without limitation through social media, text, newspapers,  
12 television, the Internet, and radio; do not visit the scene of any of the  
13 events mentioned during the trial or undertake any investigation; do not  
14 do any posting or communications on any social networking sites or do  
15 any independent research, including Internet searches, or form or  
16 express any opinion on any subject connected with the trial until the  
17 case is finally submitted to you.  
18 We'll be in a 10-minute recess, please.  
19 [Jury recessed at 2:40 p.m.]  
20 THE COURT: Officer, sir, could you please hand me that bag,  
21 please?  
22 THE WITNESS: Yes, sir.  
23 THE COURT: Thank you. I apologize.  
24 During this officer's testimony regarding the State's Exhibit 1, it  
25 was -- I heard him say that on the marking on the front of the package,

1 ex-felon in possession of firearm. Did I hear that correctly?  
2 MS. PLUNKETT: That's what I heard, Judge.  
3 MR. DICKERSON: I don't know, Your Honor. I -- that's what  
4 it says on the package. I assume that that's what he read.  
5 THE COURT: Okay. Did I hear that correctly, counsel?  
6 MR. DICKERSON: I assume so --  
7 THE COURT: Is that what he --  
8 MR. DICKERSON: -- Your Honor.  
9 THE COURT: -- just testified to, ex-felon in possession of a  
10 firearm?  
11 MR. DICKERSON: Your Honor, there's been no evidence that  
12 the defendant is an ex-felon, that he has any --  
13 THE COURT: Okay. Counsel --  
14 MR. DICKERSON: -- felonies.  
15 THE COURT: -- I'm asking a question.  
16 MR. DICKERSON: It is, yes.  
17 THE COURT: Was that his testimony before this jury ex-felon  
18 in possession of firearm?  
19 MR. DICKERSON: I believe so, Your Honor.  
20 THE COURT: Okay. What's the defense's position on this?  
21 MR. COYER: Judge, may I approach and take a glance at the  
22 label, please?  
23 THE COURT: Sure.  
24 MR. COYER: Thank you, Judge.  
25 MR. DICKERSON: I would note, Your Honor, that this is

1 already admitted into evidence, this bag, that label, what he read.  
2 There's no evidence that Ceasar Valencia is a felon. That's not what he  
3 said.

4 THE COURT: Okay. Counsel, you need to look at an appeal  
5 called *State vs. Courtney*. In that particular appeal, inadvertently on the  
6 jury instructions, I believe, that were sent back to the jury, somebody  
7 had written Mr. Courtney's two prior convictions. The supreme court  
8 reversed saying that was impermissible, was prejudicial to the  
9 defendant.

10 MR. DICKERSON: It's very different than what we're seeing  
11 here, Your Honor.

12 THE COURT: No. What we're seeing here is we just notified  
13 the jury that ex-felon in possession of a firearm. That's what we've just  
14 heard testimony from.

15 First of all, I'm -- I'm not understanding -- we've gone to great  
16 lengths to file a second amended information specifically so the jury  
17 doesn't know about this charge.

18 MR. DICKERSON: That piece of evidence is in evidence.

19 THE COURT: Okay.

20 MR. DICKERSON: It's been admitted, Your Honor, without  
21 objection. All right. So we're already there. So what was said is just  
22 what's on that label. Now, the question is, do we not give that bag back  
23 to the jury?

24 THE COURT: No. That's not the question, counsel. The  
25 question is do I declare a mistrial. That's the --

1 MR. DICKERSON: There's no grounds --  
2 THE COURT: -- question.  
3 MR. DICKERSON: -- for a mistrial at this time.  
4 THE COURT: Okay.  
5 MR. DICKERSON: That's an admitted piece of evidence  
6 without objection, Your Honor. And there's no evidence that's been  
7 introduced that Ceasar Valencia is a felon, okay. So we -- we haven't  
8 even come to --  
9 THE COURT: What were you reading from on this -- I  
10 apologize, sir. You did nothing wrong.  
11 THE WITNESS: Yes, sir.  
12 THE COURT: You're just -- was responding to a question.  
13 But I need to know on the front of this package where does it say --  
14 because I can't see it and I apologize.  
15 THE WITNESS: These are anticipated charges right here.  
16 THE COURT: Right.  
17 THE WITNESS: So this is just going to the evidence vault so  
18 they know what we're looking into, the -- the crimes that we're  
19 anticipating.  
20 THE COURT: So -- and this is what you were testifying to?  
21 THE WITNESS: Yes. I was just reading directly off of there.  
22 THE COURT: Counsel for defense.  
23 MR. COYER: Yes, Your Honor.  
24 THE COURT: You made no objection to this exhibit; is that  
25 correct?

1 MR. COYER: Judge, what I understood the exhibit to be was  
2 the gun.

3 THE COURT: Okay.

4 MR. COYER: Okay. That's why when I was asked by the  
5 State to approach and open the bags in my possession for chain of  
6 custody -- not my possession, by my presence for chain of custody  
7 purposes, I thought the exhibit was the gun. I don't know why a bag  
8 would be an exhibit. I don't -- that doesn't make any sense to me. So  
9 my understanding is the gun is the exhibit, not the bag.

10 MR. DICKERSON: They were never opened, Your Honor.  
11 And so the way that evidence is introduced is first the --

12 THE COURT: I know how evidence is introduced, counsel.

13 MR. DICKERSON: Yes, Your Honor. For the record --

14 THE COURT: Okay.

15 MR. DICKERSON: -- I mean, that's -- this is my mindset and  
16 this is why we're at the point we are. That evidence is introduced by  
17 introducing the entire package and then opening it and marking the  
18 pieces. And that's --

19 THE COURT: You're correct. But --

20 MR. DICKERSON: -- what we had here.

21 THE COURT: -- the -- the exhibit is the gun, not the bag.

22 MR. DICKERSON: And --

23 THE COURT: The bag is just to be used to demonstrate  
24 chain of custody, to show that this is the same gun that this officer  
25 secured at the scene. And sometimes forensics has to open the bag

1 and has to run tests and things of that nature. But the bag itself is not  
2 the exhibit. The exhibit is what's contained in the bag, the gun.

3 MR. DICKERSON: With all due respect, Your Honor, it's an  
4 exhibit. It is an exhibit in this case and it is an exhibit in basically every  
5 criminal case where you have evidence impounded.

6 THE COURT: Okay.

7 MR. LEXIS: Your Honor, if I --

8 THE COURT: Where -- what's the State's position?

9 MR. DICKERSON: State's position is that we proceed and if  
10 you feel the need to have a -- an instruction that they disregard that, I  
11 think that that could cure it. But at this point in time, there's been no  
12 evidence that Ceasar Valencia is, in fact, a felon. There's been no  
13 evidence of his bad character. And with that, Your Honor, I think that  
14 the -- the only other thing we could do is not send the bag back to the  
15 jury.

16 MR. LEXIS: Your Honor, that bag has been admitted in  
17 evidence. The only thing that has been done is a portion of the bag has  
18 been read that is in evidence. That's -- that -- nothing is -- that is a  
19 mistrial when something is in evidence -- it's already in evidence.  
20 There's no mistrial that can arise out of that. Again, though, if they want  
21 to cure it with instruction, no objection.

22 THE COURT: Okay. Defense, they make a -- a correct  
23 statement. Were you shown this bag prior to it being admitted?

24 MS. PLUNKETT: I was not seen the -- shown the bag.

25 THE COURT: Mr. Coyer?

1 MR. COYER: I was shown the bag. And like I previously  
2 stated, my understanding was the gun was in the bag, and that the gun  
3 was the exhibit.

4 THE COURT: Okay.

5 MR. COYER: I did not even read the label, quite frankly, Your  
6 Honor.

7 THE COURT: All right. What's your position? Their -- their  
8 position, mistrial is not necessary, a curative instruction would -- any  
9 prejudice incurred by your -- by your client would be cured by a limiting  
10 instruction.

11 MR. COYER: I don't believe that that's true. I believe that's  
12 why we bifurcated the case to begin with, to have the ex-felon in  
13 possession charge separate. And it -- if the State wants to take the  
14 position that I somehow made a mistake by, you know, agreeing to  
15 admit a bag when I thought I was admitting a gun, you know, that's the  
16 record that the State is left with. At this point, I took a moment while the  
17 jury was leaving to discuss it with my client. And we are of the same  
18 mindset, that at this point, we have to request a mistrial, Judge.

19 THE COURT: Okay.

20 MR. DICKERSON: And --

21 THE COURT: We'll be in -- I'm sorry, counsel, is there  
22 anything in addition you'd like to argue?

23 MR. DICKERSON: Yes, Your Honor. First of all, it's not the  
24 State's position that Mr. Coyer made a -- a mistake. It's the State's  
25 position that it was just strategic in that he was agreeing to -- or not



1 objecting to the gun coming into evidence.

2 Now, it has -- it hasn't come in with objection and it hasn't  
3 come in -- and all that's been read is what's already in evidence. At this  
4 point in time, we don't have any basis to have a mistrial, because there's  
5 nothing prejudicial as far as Ceasar Valencia himself saying that he's a  
6 felon.

7 Here -- here's what it is, Your Honor. The fact of the matter is  
8 that merely because that is written on the bag, that can be cured with a  
9 curative instruction, absolutely. There's no undue prejudice to him  
10 because the reason for bifurcation is so that his priors are not introduced  
11 into this proceeding.

12 THE COURT: No, counsel.

13 MR. DICKERSON: His priors have not been introduced. And  
14 just like the case that you had mentioned, Your Honor, that issue was  
15 the defendant's priors being given to the jury at -- with the jury  
16 instructions. That is not what we have here.

17 MR. LEXIS: Here we have an individual reading off an exhibit  
18 that has been admitted into evidence.

19 THE COURT: Okay. I'm going to take a brief recess.

20 [Court recessed at 2:48 p.m. until 2:59 p.m.]

21 [Outside the presence of the jury.]

22 THE COURT: Court's back in session. Let's get the  
23 defendant, please.

24 Let the -- shucks. Let the record reflect the presence of  
25 counsel for the State, counsel for the defense, and the defendant, and

1 the jury is not present at this time.

2 Mr. Dickerson, you're one of the attorneys that practice in front  
3 of me regularly; is that correct?

4 MR. DICKERSON: I am.

5 THE COURT: Mr. Coyer, is that also correct?

6 MR. COYER: That is also correct.

7 THE COURT: And have you heard me at pretrial conferences  
8 and calendar call say -- ask for counsel to get together and go over  
9 exhibits and see if there's any issues with the exhibits? Do I say that  
10 regularly in my courtroom?

11 MR. COYER: I -- I have heard that many times, Judge.

12 THE COURT: Mr. Dickerson?

13 MR. DICKERSON: Yes. And we provided defense counsel  
14 opportunity to view all of our exhibits in this case.

15 THE COURT: Okay. And Mr. Dickerson, were you aware that  
16 the front of this document says ex-felon -- or it's abbreviated, but  
17 ex-felon in possession of a firearm?

18 MR. DICKERSON: I was not aware of that, Your Honor.

19 THE COURT: Well, I'm not mad. I'm not blaming anybody. I  
20 just want to point this out to counsel.

21 Mr. Coyer, did you review the front of the exhibit prior to it  
22 being admitted?

23 MR. COYER: I laid eyes on it, but I did not read the label.

24 THE COURT: Okay. Well, here's the problem, Mr. Coyer,  
25 quite frankly. Where we are right now is the bag has been admitted

1 without objection. Once the bag is opened, then the gun is going to be  
2 admitted. Okay. I -- in -- in some jurisdictions it's Exhibit 1 and 1A.  
3 Okay. If you had had an objection to the bag, you needed to have made  
4 your objection. Or if you had wanted to redact it, you needed to have  
5 made your objection.

6 Now, my procedure, typically, is after the officer opens the  
7 bag, I'm going to have -- I have my bailiff secure the weapon and make  
8 sure it's cleared. And I -- I don't know, in this jurisdiction, do you put a --  
9 a lock on it?

10 MR. DICKERSON: I -- I would imagine that there, at this point  
11 in time, may already be a zip tie in it.

12 THE COURT: I would imagine, but I know in some  
13 jurisdictions they actually put a -- a trigger lock on it. But if there is a zip  
14 tie, that's fine too. But I -- once he opens the bag and pulls it out, I'm  
15 going to have my bailiff -- I'm sorry, I'm going to have my marshal secure  
16 it. And then you can have him identify the weapon and move for its  
17 admission.

18 The weapon will be -- if -- if it's admitted, the weapon itself will  
19 be Exhibit 1A.

20 I'm denying your Motion for a Mistrial, counsel. Okay. I'm not  
21 going to declare --

22 MR. COYER: Judge --

23 THE COURT: -- a mistrial. Here's your options. You're --

24 MR. COYER: May I be heard --

25 THE COURT: I'm going to give you --

1 MR. COYER: -- on that issue --

2 THE COURT: -- some options.

3 MR. COYER: -- additionally?

4 THE COURT: This was a passing comment by the officer. I  
5 didn't let him -- here's what I'm going to rule. I will give a curative  
6 instruction if you request one. I'm not going to let the officer expand on  
7 his testimony. It was a -- I'm not going to let the State comment on it  
8 during closing argument. And I -- if you request, I will not have the bag  
9 itself go back with the exhibits. Okay.

10 So I don't know if you need a few minutes. But I'm going to  
11 deny your Motion for Mistrial. So here's what you need to decide, do  
12 you want a curative instruction? I've give one right -- well, I'll give one  
13 right now. You need to draft a curative instruction that you want. You  
14 need to -- obviously, if you go -- if you open the door and you go into it  
15 over -- on cross-examination, then I'm going to let the State expand on  
16 their -- on the testimony. But right now, I am anticipating I'm not allowing  
17 the State to ask any additional questions regarding that or comment in  
18 closing argument.

19 And then number two, do you want the bag itself to go back to  
20 the jury? Now, typically, it's always my understanding as to the gun -- as  
21 to the weapon itself, if the jury wants to see the weapon itself, the  
22 marshal will take it back to the jury and be present while they inspect it.  
23 Okay. That's how it -- I've always understood it to be. We just don't  
24 send the weapon back with the exhibits.

25 So I'm going to give you a few minutes to discuss it with your

1 client and co-counsel. If you want a curative instruction, give me -- write  
2 up something, have the State review it, and I'll give a curative  
3 instruction. If not, we'll -- you know, I don't know if you want to highlight  
4 it or not. But I am willing to give a curative instruction. So I'm going to  
5 give a -- give you a few minutes to discuss it and then let me know. But  
6 at this point I'm going to deny your Motion for a Mistrial.

7 [Court recessed at 3:05 p.m. until 3:08 p.m.]

8 [Outside the presence of the jury.]

9 THE COURT: One more thing, counsel.

10 Mr. Dickerson --

11 MR. DICKERSON: Yes, Your Honor.

12 THE COURT: -- the bag's been admitted. You don't need to  
13 go over everything on the front of the bag. I don't want to highlight  
14 anything on the bag, because it's not going to go back to the jury room.  
15 So I don't want them to wonder about the bag.

16 MR. DICKERSON: There will be no more comment on the  
17 bag.

18 THE COURT: All right. Mr. Coyer.

19 MR. COYER: Judge, the court, when this originally happened,  
20 entertained some argument and then you left the bench pretty quickly. I  
21 would like to complete the record on my --

22 THE COURT: Absolutely, counsel.

23 MR. COYER: -- Motion for Mistrial.

24 First of all, I would note that today is the first day that we were  
25 handed this exhibit list that was created by the court. Between 11:30

1 and today, and now, whatever time it is now, 3:10, I have not looked at  
2 this, because I have -- was familiar with -- thought I was familiar with the  
3 exhibits. Okay.

4 This exhibit list states that Exhibit No. 1 is the bag containing  
5 Exhibits 2 and 3, and Exhibit 2 is the gun. Okay. In every trial I have  
6 done, it's been done just like Your Honor described, where an evidence  
7 bag will be 1 and the contents will be 1A, 1B, whatever. Okay. The  
8 contents are what's relevant. The contents is typically what comes into  
9 evidence.

10 I did not read that label. And I did not know that I was  
11 approving that that bag would be going into evidence. So to the extent  
12 that we proceed, I think we need to proceed under the -- the true, you  
13 know, fact that if you want to say that I agreed to the bag coming in,  
14 that's fine. But I just want the record to be clear --

15 THE COURT: Yeah. What I said is you made no objection to  
16 the bag coming in. I have asked -- on each exhibit, I've asked have you  
17 had an opportunity to review the exhibit before its admission. I'm -- and  
18 you said that you had, that you had reviewed this bag before its  
19 admission. You then made no objection to the admission of the bag.

20 As far as what the exhibit list said, until it's actually admitted,  
21 it's informative. So if the gun becomes Exhibit 1A, that will be reflected  
22 on the exhibit list. I don't know how it's -- how it's proposed right now, or  
23 the gun could be Exhibit 2. It can be either one.

24 But from what I can tell to the -- my recollection is what has  
25 been admitted at this point has been the bag itself. Once the bag is

1 opened -- and I'm assuming the reason the bag has been admitted by  
2 the State is to demonstrate chain of custody. Okay. Then once the bag  
3 is opened, the -- whatever content is in the bag, in this particular case a  
4 firearm, that the State is then going to move for the admission of the  
5 firearm. It can be Exhibit 1A, it can be Exhibit 2, it can be whatever  
6 State marks it as.

7 But the State is not going to open this bag until he moves for  
8 admission. In other words, until the bag itself has been admitted, then  
9 he can -- he'll -- typically the State opens it, so --

10 MR. COYER: Your Honor, you're -- Your Honor is -- is saying  
11 that the exhibit has been admitted.

12 THE COURT: No.

13 MR. COYER: It -- it has not.

14 THE COURT: No, I'm not. That is not what I said counsel. I  
15 said the bag has been admitted --

16 MR. COYER: Right. That's --

17 THE COURT: -- as an -- as Exhibit 1.

18 MR. COYER: Right. That's what I meant. But the -- the  
19 reality of our exhibit list says that that's not true. Okay. It says it has not  
20 been admitted. So, you know, what I'm trying to get the court to  
21 understand is we had talked about these --

22 THE COURT: Okay. Hold on.

23 MR. COYER: -- items up here at the --

24 THE COURT: Mr. --

25 MR. COYER: -- at the bench --

1 THE COURT: Mr. Castle, has Exhibit 1, State's Exhibit 1  
2 been admitted into evidence?  
3 THE CLERK: Yes, Your Honor.  
4 THE COURT: According to my clerk, State's Exhibit 1 has  
5 been admitted.  
6 MR. COYER: Okay. So --  
7 THE COURT: Which is the bag.  
8 MR. COYER: Right. And we'll --  
9 THE COURT: With no objection from you.  
10 MR. COYER: Okay. Then that's an error on my part, quite  
11 frankly. Let's be blunt about it.  
12 THE COURT: At this point I -- I don't -- I --  
13 MR. COYER: Okay.  
14 THE COURT: I'm just trying -- my -- you wanted to make a  
15 more complete record.  
16 MR. COYER: I do.  
17 THE COURT: And I -- I want you to make as complete a  
18 record as you deem necessary.  
19 MR. COYER: Thank you. So the second point that I want to  
20 make is when -- and Officer Jacobitz can verify this -- when he brought  
21 this evidence in off the record, the parties were at your clerk's bar there,  
22 he specifically asked, do you want me to open this now? And counsel  
23 said no, you know, we -- whoever decided not to do it at that point, that's  
24 why it wasn't done at that point.  
25 THE COURT: I actually said I did not want it opened at that



1 time.

2 MR. COYER: Okay.

3 THE COURT: Counsel, Mr. Dickerson asked -- I think all  
4 parties were present, Do you want us to open it now or when the witness  
5 testifies? Something along that line. And my preference was to do it  
6 when the witness testified.

7 MR. COYER: Okay. And so the -- the third point --

8 THE COURT: Is that correct, Mr. Dickerson?

9 MR. DICKERSON: Correct, Your Honor.

10 THE COURT: I have a recollection of conversation to that  
11 effect. I don't know if it was on the record or not.

12 MR. DICKERSON: That is correct. I -- I don't know if it was  
13 on the record. I believe it probably was. But that was the conversation  
14 yesterday when the evidence came in yesterday and -- and we viewed  
15 the evidence all together yesterday.

16 THE COURT: All right. And again --

17 MR. COYER: I just have one more point to make, Your  
18 Honor.

19 THE COURT: And you can make it.

20 MR. COYER: To bring it full circle, okay, the third point deals  
21 with the prejudice of -- of what's happened. Okay. I don't care about the  
22 bag. Okay. I don't want the bag to go back to the jury, right, obviously.

23 THE COURT: Uh-huh.

24 MR. COYER: But the prejudice is that this witness, whose  
25 credibility is, quite frankly, on trial here, has told the jury by reading this

1 label --

2 THE COURT: Right.

3 MR. COYER: -- that my client is an ex-felon. It's not the bag.  
4 I don't care about the bag. What I care about is the words ex-felon  
5 came out of Officer Jacobitz's mouth.

6 THE COURT: All right.

7 MR. COYER: That's the prejudice here.

8 THE COURT: And there's case law that talks about passing  
9 comment, that if it's a passing comment in -- in relationship to prejudice.  
10 And that's why I'm giving you the option of asking for a curative  
11 instruction or not. In other words, if I give the curative instruction, you  
12 know, it will -- may highlight that testimony. If I don't give the curative  
13 instruction, it's a passing comment to which I'm not going to allow either  
14 party to expound on either in examination of the witness or in closing  
15 arguments.

16 So that's why I gave you the option, counsel. Do you want a  
17 curative instruction? And if yes, what do you want me to tell the jury  
18 as -- as a limiting instruction?

19 MR. COYER: And I am prepared to answer that question,  
20 Judge. I believe that the prejudice is so great that if we're not given a  
21 mistrial, I do not want either a curative instruction or a jury instruction,  
22 because it will draw attention to what is already, I believe, unfair  
23 prejudice.

24 THE COURT: Okay.

25 MR. DICKERSON: For the record, Your Honor, the only thing

1 I proposed to defense counsel for them to consider is that there could be  
2 a curative instruction along the lines of police officers' charging decisions  
3 are legal conclusion that cannot be considered as evidence by the jury  
4 for any purposes whatsoever.

5 THE COURT: Right. I'm inclined to give a curative  
6 instruction, but not a specific -- something along the lines what  
7 Mr. Dickerson just suggested.

8 Do you have some language you're proposing, Mr. Dickerson?

9 MR. DICKERSON: We could draw something up, Your  
10 Honor.

11 THE COURT: Why don't you do that. Again, this was a  
12 passing comment. So I don't think the prejudice is so great -- I don't  
13 want reference to the ex-felon in possession of a firearm, though.

14 MS. PLUNKETT: And, Judge, can I just add one more thing?

15 THE COURT: Sure.

16 MS. PLUNKETT: I believe it is a passing comment if this is a  
17 chain of custody witness. This is the complaining witness, a police  
18 officer, and the alleged victim here in this case. His -- Ceasar's guilt or  
19 innocence hinges on what the jury believes that comes out of Officer  
20 Jacobitz's mouth.

21 THE COURT: Okay. But --

22 MS. PLUNKETT: And they've heard him state that Ceasar is  
23 an ex-felon.

24 THE COURT: But counsel, I don't want to be mean, but  
25 neither you or Mr. Coyer objected to the testimony. When he made that

1 statement, you did not object.

2 MS. PLUNKETT: I --

3 THE COURT: That's why I recessed.

4 MS. PLUNKETT: I went to --

5 THE COURT: That's why I stopped it.

6 MS. PLUNKETT: -- stand up, but I was not -- I'm not the one  
7 who's going to be doing the cross on Officer Jacobitz.

8 THE COURT: Okay. You know what, I have not -- there's an  
9 old saying, you know, a lot of judges don't like frick-and-frack type of  
10 objections. And I've allowed both counsel to argue. Both Mr. Lexis and  
11 Mr. Dickerson have both done what we used to call frick and frack. I  
12 haven't -- I would -- I haven't stopped them, because I want both parties  
13 to make as good a record as they can.

14 But I stopped -- I took an immediate recess because neither --  
15 neither -- nobody objected to the testimony. And I didn't want him to ask  
16 a follow-up question. So that's why I took the recess, so I could address  
17 this issue with counsel.

18 So is there anything additional that you want to put on the  
19 record, counsel?

20 MR. COYER: Just with respect to the court's last comment  
21 about not objecting. And that is, I've had this case since 2016 and I've  
22 known the entire time my client was charged with that. Okay. So for me  
23 to hear that doesn't trigger anything too exciting in my mind as the  
24 defense attorney who's been representing this man for over a year. But  
25 when the jury hears that, it has a different effect. And I didn't object

1 because I didn't think twice about it, quite frankly, because I've known  
2 that for so long. And so that's the reason I didn't object.

3 THE COURT: And I'm not picking on either of you. I -- I --  
4 you may have had a strategic reason for not objecting. I don't know.  
5 You -- you know, I don't know why. But when I didn't hear an objection,  
6 that's when I immediately stopped the trial and -- and took a recess,  
7 because I didn't want any follow-up questions. All right.

8 MS. PLUNKETT: And just -- just one more thing. As I went to  
9 stand, I let out a sigh and my eyes met yours. And before I could  
10 indicate to Mr. Coyer, you had kind of gone through the recess. I believe  
11 Mr. Dickerson realized what happened immediately. We all kind of -- I  
12 thought it was a collective understanding. And I believed that you were  
13 taking the recess to not draw -- to not have us draw further attention.

14 THE COURT: That's not why I took the recess, counsel. I  
15 appreciate your observation. When I did not hear an objection, I did not  
16 want Mr. Dickerson to ask a follow-up question. And so I took a recess.  
17 I wanted -- I wanted it to be -- I was trying to limit the testimony the best I  
18 could.

19 Mr. Dickerson?

20 MR. DICKERSON: If Your Honor would like language for the  
21 court's --

22 THE COURT: Just hand it to me. I'm going to be in recess for  
23 a minute.

24 [Court recessed at 3:20 p.m. until 3:28 p.m.]

25 [Outside the presence of the jury.]

1 THE COURT: Remain seated.  
2 Mr. Coyer.  
3 MR. COYER: Yes, Your Honor.  
4 THE COURT: The State has provided me with a curative  
5 instruction. What the State has proposed is as follows:  
6 A law enforcement officer's charging decision is a legal  
7 conclusion that shall not be considered as evidence.  
8 I actually believe this is a -- an -- a very favorable curative  
9 instruction, because it doesn't highlight the ex-felon in possession of a --  
10 in possession of a firearm. I believe it's a correct statement.  
11 However, if you -- I am inclined to give this curative instruction.  
12 But if you do not want it, I will not give it.  
13 MR. COYER: And, Your Honor, I -- I want to be as clear as I  
14 can for the record. Okay. And I had previously stated my position with  
15 respect to the curative instruction. Having heard the State's proposal, I  
16 don't believe it's sufficient to cure the prejudice. So I have to just submit  
17 it to the court whether or not you want to give that instruction.  
18 THE COURT: Do you have a curative instruction that you  
19 want to offer?  
20 MR. COYER: I don't believe it's possible to offer one that can  
21 cure the taint, Your Honor.  
22 THE COURT: Okay. So the answer to my question is, do you  
23 want me to give the proposed curative instruction proffered by the State?  
24 MR. COYER: And again, I will leave that to the court  
25 because --

1 THE COURT: No. That's not --

2 MR. COYER: -- I can't --

3 THE COURT: My -- if -- here -- it's -- it's a direct question,  
4 counsel. I will give this instruction if you request it. If you do not agree  
5 to this instruction, I am not going to give it. So do you want me to give  
6 the following curative instruction:

7 A law enforcement officer's charging decision is a legal  
8 conclusion and shall not be considered as evidence.

9 Do you want me to give that instruction or not?

10 MR. COYER: We are not requesting a curative instruction.

11 THE COURT: Thank you. Make this a court's exhibit, please.

12 Okay. So when we reconvene with the jury, the police officer  
13 will be on the stand. Mr. Dickerson, you'll continue your examination.  
14 No further highlighting the evidence bag. You're going to have him open  
15 the bag. I'm going to have my marshal be sure that the gun is -- the  
16 weapon is cleared. And then you can have him testify, lay the  
17 foundation as to the weapon, and move for the admission of the weapon  
18 itself.

19 MR. DICKERSON: Yes, Your Honor.

20 THE COURT: Now, you need to tell me if you are -- if you  
21 want to offer the State's Exhibit 1A or how you want to offer it, but we're  
22 going to have to tag it.

23 MR. DICKERSON: And it's State's position when I move in  
24 the bag, it's the bag and the contents, obviously, since they can't be  
25 separated at that point in time. So I would ask that, first of all, everything

1 in there be admitted into evidence, which I -- I would have asked that it  
2 already is. And then mark them A, B, C.

3 THE COURT: 1A, 1B? All right.

4 MR. DICKERSON: Yes.

5 THE COURT: But the contents have not been admitted yet.

6 The only thing that has been admitted at this point is the bag, because  
7 the bag has not been opened yet. Do you agree with that, counsel?

8 Well, whether you agree with it or not, that's my --

9 MR. DICKERSON: Correct.

10 THE COURT: -- that's how I perceive it. The only thing that's  
11 been admitted at this point is the bag. Once you open the bag, you have  
12 to lay the foundation based on the officer's personal knowledge and then  
13 move for the admission of the contents of the bag.

14 MR. DICKERSON: Yes, Your Honor.

15 THE COURT: Sir, do you understand what's going on, sir?

16 THE WITNESS: I'm learning.

17 THE COURT: Okay. So you're not going to testify any further  
18 or make any further comments regarding the evidence bag; is that  
19 understood?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. And -- or any reference regarding  
22 ex-felon in possession of a firearm.

23 THE WITNESS: Yes, sir.

24 THE COURT: Is that understood, sir?

25 THE WITNESS: Yes, sir.



1 THE COURT: Thank you. Let's call the jury. Bring the jury in,  
2 please.

3 [Jury reconvened at 3:33 p.m.]

4 THE COURT: Let the record reflect the presence of counsel  
5 for the State, counsel for the defense, the defendant, and the jurors.

6 Mr. Dickerson, you may proceed.

7 MR. DICKERSON: Thank you, Your Honor.

8 **DIRECT EXAMINATION (CONT.)**

9 BY MR. DICKERSON:

10 Q Officer Jacobitz, do you have a pair of scissors up there?

11 A Yes.

12 Q Using those scissors, will you go ahead and open up, on a  
13 fresh seam, State's Exhibit 1.

14 A Yes.

15 Q For the record, have you cut what appears to be the bottom of  
16 State's Exhibit 1?

17 A Yes. It's not all the way through either.

18 Q Will you please remove the contents of State's Exhibit 1?

19 A Yes.

20 THE COURT: Mr. Stevenson, can you make sure the weapon  
21 is cleared?

22 THE MARSHAL: Yes, sir. It's clear.

23 THE COURT: Thank you.

24 BY MR. DICKERSON:

25 Q And it appears that there is a firearm and a manila envelope;

1 is that correct?

2 A Yes.

3 Q Do you recognize these two items?

4 A Yes.

5 Q What do you recognize these two items to be?

6 A The firearm used in the crime, and there's -- there's rounds in  
7 the envelope.

8 Q That envelope contains live rounds?

9 A Yes.

10 Q And will you go ahead and open that envelope, the manila  
11 envelope; what is it that that manila envelope contained?

12 A Five rounds.

13 Q Now, are these the rounds and the firearm that you  
14 impounded on May 19th, 2016?

15 A Yes.

16 MR. DICKERSON: State moves for the admission of the  
17 contents of State's Exhibit 1, being the gun as State's Exhibit 1A, and  
18 the rounds individually as 1B, 1C, 1D, 1E, and 1F.

19 THE COURT: Any objection from defense?

20 MR. COYER: No objection to the contents of the bag.

21 THE COURT: Okay. So --

22 MR. DICKERSON: And I would also ask for just purposes of  
23 having it here, that we mark the -- and admit the manila envelope that  
24 the bullets were contained in as an exhibit of -- of this State's Exhibit 1,  
25 as well, Your Honor.

1 THE CLERK: Can we just do it collectively, the bullets back in  
2 the envelope and make that 1B?

3 THE COURT: Can we do -- does any -- does the defense or  
4 the State have any objection that the round -- that the five rounds of  
5 ammunition be -- be placed back in the small manila envelope and that  
6 be Exhibit 1B, and the weapon be Exhibit 1A?

7 MR. DICKERSON: I have no objection to that as long as we  
8 can secure the bag and the bullets in a separate evidence bag for the  
9 court, like a plastic bag.

10 THE COURT: Defense, do you have any objection to that?

11 MR. COYER: No, Your Honor.

12 THE COURT: That will -- that will be the order.

13 MR. DICKERSON: Thank you.

14 THE COURT: So the weapon will be Exhibit 1A and the five --  
15 and the envelope containing the five rounds of ammunition will be  
16 designated as 1B, recognizing that it's the five rounds of ammunition,  
17 which is the exhibit.

18 [State's Exhibit 1A and 1B admitted.]

19 MR. DICKERSON: Okay.

20 THE COURT: That's fine. Okay. Thank you, counsel.

21 MR. DICKERSON: Thank you, Your Honor.

22 BY MR. DICKERSON:

23 Q Show you this firearm. This is .38-caliber firearm?

24 A Yes.

25 Q Same one we saw in the pictures?

1           A     Yes.

2           Q     The same one that was pointed at you at 610 North 10th  
3 Street?

4           A     Yes.

5           Q     By Ceasar Valencia?

6           A     Yes.

7           Q     And those bullets were the bullets that were in that weapon?

8           A     Yes.

9           Q     Thank you.

10           THE COURT: Can you return the exhibit to my clerk, please?

11           MR. DICKERSON: Yes, Your Honor.

12           THE COURT: And -- and the rounds of ammunition.

13           MR. DICKERSON: Will you please pick those up and put  
14 those in the bag.

15           THE COURT: There are five rounds?

16           MR. DICKERSON: Thank you.

17           THE WITNESS: Yep.

18           MR. DICKERSON: State will pass the witness.

19           THE COURT: Cross-examination by the defense.

20           MR. COYER: Yes, Your Honor. May I just take a moment to  
21 acquire some exhibits?

22           THE COURT: Yes.

23                     [Pause in proceedings.]

24           MR. COYER: May I proceed, Your Honor?

25           THE COURT: Yes, please.

1 **CROSS-EXAMINATION**

2 BY MR. COYER:

3 Q Officer -- is it Jacobitz?

4 A Yes.

5 Q Good afternoon. I want to take you back to the barbecue,  
6 May 19th, 2016. Okay?

7 A [No audible response.]

8 Q You have to answer audibly.

9 A Yes.

10 Q Okay. So you and Officer Houston are leaving the barbecue  
11 with full bellies of food, correct?

12 A Yes.

13 Q And you hadn't even really gotten out of the parking lot and  
14 you look right in front of you, and you see through the houses a moped  
15 going down an alleyway; is that fair?

16 A Yes.

17 Q Is it going -- is it traveling south or north?

18 A North.

19 Q Can you see that, sir?

20 A It's a little small. Yeah.

21 Q I think this is the closest zoomed-in one we have.

22 A It's okay.

23 Q So was it the alley between 9th and 10th where you saw the  
24 moped?

25 A It is.

1 Q Is that where my -- the tip of my pen is there?  
2 A Yeah. If you back it up -- or if you bring it down south.  
3 Q Okay.  
4 A And move it up north just one. There you go.  
5 Q So that's about where you and --  
6 A Approximately, yes.  
7 Q Approximately where you and Officer Houston would have  
8 seen the moped traveling north?  
9 A Yes.  
10 Q Okay. Now, you testified on direct that it was traveling at a  
11 high rate of speed, correct?  
12 A Yes.  
13 Q Okay. Now, what, in your description, is a high rate of speed  
14 for a moped?  
15 A It was just based on -- just based on -- on looks. It looked like  
16 it was going pretty fast.  
17 Q Okay.  
18 A It's --  
19 Q You didn't have time to, you know, point a radar at it or clock it  
20 or anything, right?  
21 A No.  
22 Q Sorry?  
23 A No.  
24 Q Okay. And do alleyways have speed limits posted in them?  
25 A No.

1 Q Okay. So you and Officer Houston pulled out and came up  
2 and eventually turned onto Wilson; is that right?

3 A Yes.

4 Q Okay. And at that point, you see the moped again; is that  
5 right?

6 A Yes.

7 Q Okay. Where was it the second time you saw it?

8 A Somewhere in between 10th and 11th street on Wilson,  
9 heading eastbound.

10 Q Somewhere in this area here where my pen is?

11 A Yes.

12 Q Okay. Now, this area here, the corner -- the southwest corner  
13 of Wilson and 11th is the area where you and Officer Houston attempted  
14 to do a vehicle stop, correct?

15 A Yes.

16 Q Okay. And this building in here that we're talking about is the  
17 apartments where you testified that the driver of the moped pulled in and  
18 stopped at a gate, right?

19 A Yes. That general vicinity, yes.

20 Q Okay. At which point would you say -- now, you're driving the  
21 vehicle; let's start there, right?

22 A Yes.

23 Q Officer Houston is riding passenger and doing radio duties,  
24 correct?

25 A Yes.

1 Q Okay. So since you're driving, you obviously have to see  
2 where you're going, correct?

3 A Yes.

4 Q You have to watch where you're going, correct?

5 A Yes.

6 Q At what point from this right-hand turn into this parking lot here  
7 do you get your best look at the driver of the moped? And specifically,  
8 I'm talking about the driver's face.

9 A On the turn onto 11th, as well as the stop in front of the  
10 apartment.

11 Q Okay. So the moped stopped in front of the apartment?

12 A Yeah. Remember, this calibration is off here.

13 Q Yeah, I know.

14 A Okay.

15 Q But I -- I'm going to go by my -- the tip of my pen just so we  
16 can both agree on where -- where we're looking. Okay?

17 A Uh-huh.

18 Q So the moped stopped at some point and then went into this  
19 apartment?

20 A Yes. Pulled into the parking lot there.

21 Q Okay. And so where was your patrol vehicle at the time that  
22 that occurred?

23 A Right behind it. Also in the parking lot.

24 Q Okay. On 11th or in the parking lot here?

25 A Well, when we came to a complete stop and actually stopped



1 the vehicle, we were -- I was in the parking lot with -- with Ceasar.

2 Q Okay. Were you directly behind the driver of the moped?

3 A Excuse me?

4 Q I'm trying to figure out how you saw his face.

5 A Well, he's on a moped. He just turned around and looked

6 over his shoulder and I was directly behind him.

7 Q Okay. So is your testimony that the best view you got of the

8 driver's face in this area is --

9 A Yes.

10 Q -- when he looked over his shoulder?

11 A Yes.

12 Q Okay. And at that point, you could see the clothing the driver

13 was wearing, correct?

14 A Yes.

15 Q Okay. And you could see that the driver had a hat on,

16 correct?

17 A Yes.

18 Q Okay. Were you able to tell the height at that point when he

19 was still seated on the moped?

20 A Approximate height, yes.

21 Q Okay. Same thing with weight?

22 A Approximate.

23 Q Okay.

24 A Everything is a guess when it comes to that.

25 Q I'm sorry?

1           A     Everything is a guess based on your -- my training and  
2 experience.

3           Q     We talked a little bit about the lighting around this time of day.  
4 And you testified that it was get -- starting to get dark; is that right? But it  
5 was still light out?

6           A     It was approaching dark, right.

7           Q     Okay. Would you say it was dusk?

8           A     Sure.

9           Q     Okay. If you were driving a vehicle, would you have your  
10 headlights on?

11          A     Not necessarily.

12          Q     Okay. Would you pull someone over if they did not have their  
13 headlights on?

14          A     Only if it's actually dark out.

15          Q     Well, I know. I'm talking about based on the lightness that it  
16 was during the timeframe we're talking about.

17          A     No.

18          Q     Okay. And you got within 10 feet of the moped when it  
19 stopped at this apartment gate up here, right?

20          A     What was the first part of your question?

21          Q     You got within 10 feet of it, was your testimony?

22          A     Approximate, yeah.

23          Q     Okay. And did -- did you get out of the car at that point?

24          A     Yes.

25          Q     Okay. Did you, like, just step out of the door? Did you

1 actually leave the vehicle and --

2 A I remember being approximately halfway between the car

3 and -- and him.

4 Q Okay.

5 A I was approaching him to talk to him.

6 Q Okay. And then at that point, the moped went north, correct?

7 A Yes.

8 Q Up here to -- to Wilson, right?

9 A Yes. It had to go around that brick -- brick retainer wall and

10 then back onto the street or the sidewalk.

11 Q Is there a wall here where my pen is?

12 A No. That's not --

13 Q My pen is --

14 A That's not a wall. But you see where the apartment is? All

15 around the wall to the sidewalk is -- right where -- all around the

16 apartment to the sidewalk is a wall.

17 Q Is where my pen -- follow my --

18 A Yeah.

19 Q -- the head of my pen, is that a wall?

20 A Yes, sir. It's like a two, three-foot wall.

21 Q Okay. So it went around that onto Wilson and then came

22 down this alley between 10th and 11th; is --

23 A Yes.

24 Q Is that right?

25 A Yes.

1 Q And, obviously, at some point we get down to here, which is  
2 clearly marked on the map, which is 610 North 10th Street, right?

3 A Yes.

4 Q Okay. And so you're following -- you're -- you're following the  
5 head of my pen here. This is the area we're talking about here, right?

6 A Yes.

7 Q Okay. This is where the driver of the moped dumped the  
8 moped and got off the moped, correct?

9 A Approximate area, yes.

10 Q Okay. So where in this square -- and I know it's tricky  
11 because your screen is not calibrated right, but where in this square  
12 approximately was the moped dropped?

13 A Just east of the vehicle that's on the screen.

14 Q This vehicle here where my pen head is?

15 A Yes. Yes. Just off the alleyway and -- and behind the vehicle.

16 Q So about here?

17 A Somewhere in that vicinity, maybe a little north of, just barely.

18 Q Okay. So where did you pull the patrol vehicle in -- in?

19 A Back -- let me see here, if I can do this. It's -- so somewhere  
20 in between these two with the hood pulled into this -- this parking lot. So  
21 it was catty-corner in the alleyway, facing southbound.

22 Q Okay. So is -- is this about the right area where my pen head  
23 is?

24 A I would go a little more east -- more -- close -- right in there.  
25 That's -- that's probably better area right there.

1 Q Okay. And the vehicle's pointed south. So you'd be on the  
2 driver's side here and Houston would be over here, right?

3 A Yes.

4 Q Okay. Driver of the moped drops the moped, starts running  
5 toward this area here, right?

6 A Yeah. He drops the moped while it's rolling right -- right there.  
7 Yeah.

8 Q Okay. Now, you mention that he dropped it near dumpsters;  
9 are these dumpsters here?

10 A If -- if you follow the wall, the south wall, all the way towards  
11 the alleyway --

12 Q Uh-huh.

13 A -- you see the little square closest to the alleyway?

14 Q Right here --

15 A That's a -- that's an --

16 Q -- where I'm --

17 A -- indent for a --

18 Q Where I'm --

19 A -- dumpster.

20 Q -- where I'm circling?

21 A Yes.

22 Q Okay.

23 A Indent for a dumpster right there.

24 Q How far would you say the driver got away from you before  
25 you left the vehicle and engaged in the pursuit?

1           A     When I left the vehicle, he was approximately in the area of  
2 the stairs to the alleyway.

3           Q     Okay. Given that we can't really see the stairs on this picture,  
4 can you estimate for me the actual distance between where he was and  
5 when you got out of the vehicle?

6           A     That approximate distance is going to be somewhere  
7 around 20, 30 feet.

8           Q     Okay. You proceeded to engage in a foot pursuit, correct?

9           A     Yes.

10          Q     Did you call out over the radio traffic at that point that you  
11 were in a foot pursuit and give a description or anything like that?

12          A     I don't recall if it was me or Officer Houston, but yes.

13          Q     Okay. Somebody did?

14          A     Somebody did.

15          Q     Okay. I'll -- I'll represent to you we heard Officer Houston  
16 testify that he was a little bit behind you because he had to get out of the  
17 passenger side and go around. Does that --

18          A     Yes.

19          Q     -- comport with your recollection?

20          A     Yes.

21          Q     Okay.

22          A     I do believe there were also cars in there, but I -- I can't  
23 really -- I think there were cars parked in there also that he had to go  
24 around.

25          Q     Here -- in this area here?

1       A     Somewhere, yeah.

2       Q     This parking lot?

3       A     Yeah. Yes. North, right -- right up in the north corner there.

4       Q     Okay.

5       A     So he got stuck in there a little bit.

6       Q     All right. So now, this is what's been previously admitted as

7     State's 23, I believe; you recognize this, right?

8       A     Yes.

9       Q     Okay. And you testified a little bit about what that orange

10    cone represented. Do you recall that?

11      A     Yes.

12      Q     What does that represent?

13      A     The approximate distance when I encountered Ceasar with

14    the firearm.

15      Q     Okay. And I know you -- you -- you're making a special effort

16    to keep saying Ceasar, you know, and I'm saying the suspect. This is

17    when you first saw the gun?

18      A     It was somewhere in this vicinity. I -- I believe I was stepping

19    onto the steps, but that's where they put the cone.

20      Q     This is the approximate area --

21      A     Approximate.

22      Q     -- where you first saw the gun? Okay. Now, this cone wasn't

23    there when this incident occurred, right, obviously?

24      A     No.

25      Q     Okay. When -- were you present when these cones and

1 things were placed?

2 A I don't believe I was, no.

3 Q Okay. So how would the person who placed these cones  
4 know where to place them?

5 A They were given a run-through of -- of basically what  
6 happened, of the situation.

7 Q And is that the person you mentioned on direct who goes by  
8 the name of Olivia Klosterman?

9 A Yes.

10 Q Did you speak with her personally?

11 A About what?

12 Q About where to put cones and what to take pictures of?

13 A I don't recall if -- if we actually talked about that or if it was  
14 passed down to her. I don't recall.

15 Q Okay. Who would -- who would it have been passed down to  
16 her from?

17 A I don't know. I don't know if I directly talked to her about  
18 where to place cones or anything like that. I don't recall it at all.

19 Q You have no memory of talking with Ms. Klosterman about  
20 where to place cones?

21 A Not a whole lot of it. I didn't -- I don't think I had -- had that  
22 much interaction with her.

23 Q Okay. Would the CSI person normally be the person to place  
24 the cones when they're taking photographs?

25 A Yes.



1 Q Okay. As you sit here today, you don't recall talking to her at  
2 all?

3 A I -- I don't recall how in depth our conversation was or how -- I  
4 don't really recall --

5 Q Okay.

6 A -- the interaction at all.

7 Q Okay. Let's just do one step at a time. Do you recall speaking  
8 with her at all on May 19th, 2016?

9 A I -- I don't really recall it.

10 Q Okay.

11 A I don't really remember it.

12 Q Now, this is what's been previously entered as State's 17.  
13 This is, basically, the same area, but we're, like, up a little higher looking  
14 down the little breezeway or whatever you want to call that, right?

15 A Yes.

16 Q Okay. So that's from the bottom of the stairs. And that, at the  
17 very bottom of this picture here, is the top stair; is that right?

18 A Yes.

19 Q Okay. Now, there's obviously a fence here, correct?

20 A Yes.

21 Q Okay. And based on State's 23, there appears to even be,  
22 like, a little pony wall where the three steps go up, correct?

23 A Yes.

24 Q Okay. And then we see up here, in the upper right-hand mid  
25 corner, what appears to be a structure, a residence, right?

1 A Yes.

2 Q It's got the number 61 up at the top of it?

3 A Yes.

4 Q Okay. Now, you mentioned that it was perhaps divine  
5 intervention that you didn't get shot that night, correct?

6 A Yes.

7 Q Okay. If you were here in the approximate area of this orange  
8 cone and you saw a firearm, couldn't you have just moved over in this  
9 area behind this residence and protected yourself?

10 A If it wasn't for my forward momentum, maybe. I was in full foot  
11 pursuit. We try to -- it's hard to stop.

12 Q Okay. So you were, however, facing a set of stairs, right?

13 A Yes.

14 Q And you did proceed up those stairs, correct?

15 A Yes.

16 Q Okay. And you even testified on direct, you remember you  
17 had already drawn your -- your gun and it was kind of moving up and  
18 down, because you were going upstairs, right?

19 A Right.

20 Q Correct?

21 A That and running, yes.

22 Q Okay. Would you agree that from here, from this angle here  
23 that we're looking at in State's 23 and based on the lighting, we can't see  
24 those posts that, at one point, probably supported a chain-link fence like  
25 the one in the picture, correct?

1 A You talking about the ones on the south wall or?  
2 Q Yes. The south wall.  
3 A Right. Yeah. They're a little hard to see from here.  
4 Q Can you see them at all in this picture?  
5 A Can't see much in this picture.  
6 Q Okay.  
7 A It's a little blurry.  
8 Q I'll show you State's 17; can you see those posts in  
9 State's 17?  
10 A Still hard to see.  
11 Q But in fairness, it was a little lighter when you were actually  
12 there in that area, correct?  
13 A Yes.  
14 Q Okay. Do you recall how many posts there were going down  
15 that south wall?  
16 A I know there were at least three, but I'm guessing there were  
17 around five.  
18 Q Okay. I'm going to show you State's 29 for the record; can  
19 you see that okay?  
20 A I see it, yes.  
21 Q Okay. So in this -- in this picture here, State's 29, you can see  
22 at least three of those metal posts that you're talking about, right?  
23 A Yes.  
24 Q Okay. And there's an orange cone there situated next to the  
25 one that's toward the front of the picture, correct?

1 A Yes.

2 Q Now, this angle is looking down toward where you were --  
3 where you were standing, correct?

4 A This is looking back towards the alleyway.

5 Q Right.

6 A Yes.

7 Q Because you referred to this as the south wall, correct?

8 A Yes.

9 Q Okay. And on this picture, the wall is on the other side,  
10 correct?

11 A Yes.

12 Q Okay. So this is, obviously, looking back toward where you  
13 were standing, right?

14 A Yes.

15 Q All right. The firearm that you were shown and that you were  
16 asked about, that was a revolver, correct?

17 A Yes.

18 Q Okay. Was it a single action or double-action revolver?

19 A It's a double action.

20 Q Is that a guess or are you certain?

21 A I'm guessing. You -- you pull the -- the hammer back, double  
22 action.

23 Q What's the difference between single action and double  
24 action?

25 A I -- I wouldn't be able to explain it to you right now.

1 Q Okay. Did you hear the suspect pull the trigger back and cock  
2 the gun?

3 A No.

4 Q Okay. When you were demonstrating to the jury the physical  
5 maneuverings of the suspect, you kept your hand down at your hip to  
6 describe where the gun was when you saw it, correct?

7 A Yes.

8 Q Okay. So the suspect never raised his arm up high like he  
9 was pointing it intentionally out in front of his face, correct?

10 A No.

11 Q Okay. And you've been trained in firearms, correct?

12 A Yes.

13 Q Okay. At -- at any of your training, have you ever shot from  
14 the hip?

15 A Yes.

16 Q Okay. Are you a good shot from the hip?

17 A No.

18 Q Okay. It's harder to shoot from the hip than from pointed out  
19 in the front of you, correct?

20 A Yes.

21 Q Okay. And in addition to the gun being in the hip area, this  
22 person that you saw was running away from you, correct?

23 A Yes.

24 Q Okay. How fast were you running?

25 A I don't know. That -- I was in a sprint.

1 Q Okay. So --  
2 A As fast as I possibly could at the time.  
3 Q Close to full speed?  
4 A Yes.  
5 Q Okay. And were you gaining on the suspect or was he  
6 getting --  
7 A Yes. Yes.  
8 Q -- away from you?  
9 A Yes.  
10 Q You were gaining on him?  
11 A Yes.  
12 Q Okay. So he was at -- at a run as well, correct?  
13 A Yes.  
14 Q Okay. And you stated that this person turned around to their  
15 left, correct?  
16 A Yes.  
17 Q And the gun was in their right hand, correct?  
18 A Yes.  
19 Q So is it accurate -- if I can sort of recreate it, that his body  
20 position, as you saw the gun, would have been about like this, with the  
21 gun at this level?  
22 A Yes.  
23 Q Okay. Kind of the back -- kind of toward you and kind of his  
24 side toward you, correct?  
25 A Yes.

1 Q Okay. And the gun was about hip level, correct?  
2 A Yes.  
3 Q Okay. Obviously if the gun had been up high, he wouldn't  
4 have hit his arm on one of those low posts, right?  
5 A Possibly.  
6 Q Okay. So the elbow hits the post and the gun comes out,  
7 right?  
8 A Yes.  
9 Q Did you ever hear a shot go off?  
10 A No.  
11 Q Okay. Did you ever hear any threats like, I'm going to shoot  
12 you?  
13 A No.  
14 Q You testified that the gun continued moving after it left his  
15 hand?  
16 A Yes.  
17 Q And that it was continuing to move in the direction that he  
18 was --  
19 A Him and the gun.  
20 Q -- running; is that right?  
21 A Yes. Yes.  
22 Q Okay. So I want to take you back to State's 29. Okay. You  
23 didn't put that cone there, right?  
24 A No.  
25 Q That cone appears in that picture to be directly in front of or

1 beside the post, correct?

2 A Yes.

3 Q Okay. So fair to say that's not an accurate depiction of where  
4 the gun would have been located after it fell out of the suspect's hand?

5 A No. It's general vicinity.

6 Q Okay. And again, you don't know how the person who put  
7 that cone there, you don't know why they put it there, correct? Or who  
8 told them to put it there?

9 A No. That's -- no.

10 Q Okay. Because as you recall, you didn't have a conversation  
11 with Ms. Klosterman, right?

12 MR. DICKERSON: Misstates testimony.

13 THE COURT: Counsel, restate your question.

14 BY MR. COYER:

15 Q You don't recall having a conversation with Ms. Klosterman,  
16 correct?

17 A No.

18 Q Okay. And, specifically, I mean on May 19th, 2016?

19 A Right.

20 Q Okay. Now, we heard some of the audio dispatch when you  
21 were testifying on direct exam, correct?

22 A Yes.

23 Q Okay. And we heard somebody call out a description of this  
24 suspect who ran on the moped and dumped the moped and -- right?

25 A Yes.



1 Q And the first voice that we heard was Officer Houston,  
2 correct?  
3 A Yes.  
4 Q And the description was HMA, right, part of it -- the first part  
5 was HMA, right?  
6 A Yes.  
7 Q And you know what that means, right?  
8 A Yes.  
9 Q Hispanic male adult?  
10 A Yes.  
11 Q Dark hat or black hat, right?  
12 A Yes.  
13 Q Red striped shirt, correct?  
14 A Yes.  
15 Q Dark pants, correct?  
16 A Yes.  
17 Q 5'7" ?  
18 A Yes.  
19 Q 160 pounds approximately?  
20 A Yes.  
21 Q Okay. Was there any other details given of that description  
22 that you recall?  
23 A Not that I recall.  
24 Q No mention of facial hair or goatees, correct?  
25 A I don't recall.

1 Q Okay. Do you recall hearing the audio from about an hour and  
2 a half ago?

3 A What we just talked about, yeah, the description that you just  
4 gave.

5 Q Okay. And there was no mention of facial hair, correct?

6 A I don't remember.

7 Q Okay.

8 MR. COYER: Court's indulgence.

9 Q Did you have the ability to state something over the audio  
10 while it was in a Code Red situation?

11 A Did I have the ability? Yes. Was it the right thing to do --

12 Q That's not what I asked you.

13 A -- and get on with my partner -- I'm let -- I'm allowing my  
14 partner to -- to use the radio traffic, considering he's out -- he's now  
15 chasing the suspect. So I don't want to interrupt that. Did I have the  
16 ability physically? Yes.

17 Q Do you recall the question?

18 A Yes.

19 Q Did you have the ability to do it?

20 A Yes.

21 Q Okay. We'll get into why you chose not to.

22 A Right.

23 Q But you had the ability to, correct?

24 MR. DICKERSON: Asked and answered.

25 THE COURT: Counsel, move on.

1 BY MR. COYER:

2 Q You heard Officer Houston give that description, correct?

3 A I may have, may have not. I was involved in my own incident  
4 on the other end.

5 Q Okay. You didn't tell anybody over the air at that point in time  
6 that this suspect had pointed a gun at you, correct?

7 A I don't recall.

8 Q Do you think that's useful information that your fellow officers  
9 would have like to have heard?

10 A I know we've said over the air. I don't know at what point, but I  
11 do know that I told him that there was a gun involved. And that was out  
12 there, so.

13 Q Okay. Once you saw the firearm, you stopped to retrieve it,  
14 correct? I'm sorry -- bad --

15 A I didn't --

16 Q Bad question. Once you saw the firearm hit the ground, you  
17 stopped pursuing so that you could stay with the firearm; is that --

18 A Preserve evidence, yes.

19 Q Okay. But then at some point that changed, correct?

20 A Yes.

21 Q At some point you decided to pick up the firearm, correct?

22 A Yes.

23 Q And go intervene with what you described as two people  
24 appeared to be stealing or drive -- or pushing away the moped; right?

25 A Yes.

1 Q Okay. So you said that that was based on training, to  
2 preserve a crime scene?

3 A Correct.

4 Q Well, the gun would have been laying in a crime scene of  
5 assault on a police officer, correct?

6 A Yes.

7 Q Okay. So my question to you is, you chose not to continue the  
8 pursuit with Officer Houston, because you stayed back to preserve the  
9 crime scene, correct?

10 A Yes.

11 Q And Officer Houston is potentially chasing someone who has  
12 a firearm, according to you, right?

13 A Yes.

14 Q Maybe one, maybe two guns, right?

15 A Yes.

16 Q So your partner is pursuing a possibly armed subject and you  
17 decide not to disturb this crime scene?

18 A Yes.

19 Q But when you see two guys in an alley stealing a moped, you  
20 choose to disrupt the crime scene and go intervene on the moped?

21 A No. My job was to contain the entire crime scene and that's  
22 what I did. My -- I did the best job I could by returning and getting that  
23 moped back as well.

24 Q You didn't pick up the firearm to go help Officer Houston  
25 chase the guy, correct?

1 A No.

2 Q You did pick up the firearm to go stop the moped from being  
3 stolen, correct?

4 A Yes.

5 Q Now, at some point over this audio that we discussed 3DP41  
6 says that -- that he knows an HMA matching that description. You heard  
7 that --

8 A Yes.

9 Q -- this afternoon, correct?

10 A Yes.

11 Q Okay. And who is 3DP41?

12 A Officer Aaron Perez.

13 Q Okay. So Perez comes over the air and says he knows an  
14 HMA matching that description that actually -- that lives in the area,  
15 correct?

16 A Yes.

17 Q Okay. And the description at that point is HMA, 5'7", black  
18 hat, red white -- red-striped shirt, dark pants, 160 pounds, right?

19 A Yes.

20 Q You've been in DTAC your whole career, right?

21 A Most of it, yes.

22 Q Doesn't that description fit an awful lot of people in that area?

23 A Yes.

24 Q And is it from Officer Perez that you hear the name Ceasar  
25 Valencia come over the air?

1 A Yes.

2 Q And it's at that point that not only you, but your fellow officers  
3 begin referring to the suspect as Ceasar Valencia, correct?

4 A Yes.

5 Q And then a little further along, at some point, somebody texts  
6 you a picture, right?

7 A Yes.

8 Q And do you recall who texted you that picture?

9 A No.

10 Q Do you recall if it was Officer Perez?

11 A It may have been, but I'm not for sure. There were a lot of  
12 people involved at that point.

13 Q Did he just text you the one picture?

14 A I don't recall how many pictures he actually sent me. I just  
15 remember seeing a picture.

16 Q Okay. Did you know when he sent you the picture that he was  
17 sending you the picture of -- that the person that he knew as Ceasar  
18 Valencia?

19 A Say it again?

20 Q When you got the picture from Officer Perez --

21 A Uh-huh.

22 Q -- did you know that he was sending you a picture of the  
23 person that he, Officer Perez, knew as Ceasar Valencia?

24 A Yes.

25 Q Okay. And then at that point, you stated that the picture you

1 saw on your cell phone was, indeed, the person who had pulled the  
2 firearm and pointed it at you, correct?

3 A Yes.

4 Q Okay. Now, from that point on, the name that's used over the  
5 airwaves is Ceasar Valencia, correct?

6 A Yes.

7 Q People are just using his name at that point; all of the officers  
8 involved begin using the name Ceasar Valencia, right?

9 A Yes.

10 Q Okay. He becomes the suspect, right?

11 A Yes.

12 Q Okay. And, in fact, at some point shortly after you identify the  
13 picture as the person who pulled a gun on you, another officer comes on  
14 over the air and says, We've got somebody down the street that meets  
15 that description, right?

16 A I don't recall.

17 Q You don't recall that?

18 A No. Possibly.

19 Q Would you recall it if you saw the CAD or heard the audio?

20 A Yes.

21 Q Okay.

22 MR. COYER: Court's indulgence.

23 May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. COYER:

1 Q I'm approaching you, Officer, with State's 53, which is the  
2 CAD. I'll direct your attention to the top of the page there. Sorry, it's --

3 A That's okay. Which one? Okay.

4 Q Does that refresh your recollection?

5 A No.

6 Q Okay.

7 MR. COYER: Judge, I'm going to ask for the court's  
8 indulgence. I'm going to publish the audio that's been previously  
9 admitted at this time.

10 THE COURT: That's fine.

11 BY MR. COYER:

12 Q All right. I'm going to play some of audio from that evening.  
13 Okay?

14 A Yes.

15 [Audio played.]

16 MR. COYER: Hold on, back up.

17 [Audio played.]

18 Q All right. You heard that, right?

19 A Yes.

20 Q Okay. And that voice said, Be advised you have a BMA  
21 walking towards you. And he said, Red-striped shirt, dark hat, right?

22 A Yes.

23 Q Okay. Now, that fits at least part of the description that Officer  
24 Houston read out over the audio, correct?

25 A Yes.



1 Q I mean, dark hat, red-striped shirt, right?

2 A Yes.

3 Q But this person that was walking down the street in the area  
4 happened to be a BMA instead of an HMA, right?

5 A Yes.

6 Q And at that point, everybody already knew they were looking  
7 for Ceasar Valencia, right?

8 A Yes.

9 Q Have you ever had any difficulty distinguishing a light-skinned  
10 black male from a Hispanic male?

11 MR. DICKERSON: Relevance, Your Honor.

12 THE COURT: You can answer that question. Overruled.

13 THE WITNESS: No.

14 BY MR. COYER:

15 Q You recall my questions about being texted a photograph,  
16 right?

17 A Yes.

18 Q Okay. You were already referring to the suspect as Ceasar  
19 Valencia even before you got that photograph, right?

20 A I don't recall.

21 Q Because Officer Perez had said, I know a guy that lives in that  
22 area, and he gave you that name, right?

23 A Possibly.

24 Q Okay. Are you not sure or do you recall whether or not you  
25 were using the name -- not you, but the name Ceasar Valencia was

1 being bandied about before you saw the photograph?

2 A It could have been. I just don't recall.

3 Q Okay. Would looking at the CAD refresh your recollection?

4 A Possibly.

5 Q Okay.

6 MR. COYER: May I approach?

7 THE COURT: Yes.

8 THE WITNESS: Yes.

9 BY MR. COYER:

10 Q Does that refresh your recollection?

11 A Yes.

12 Q So the name Ceasar Valencia was being used on the

13 airwaves even before you were texted the photograph, correct?

14 A Yes.

15 Q In your training and experience, what's the most suggestive

16 kind of identification procedure?

17 A Procedure? I don't know what you're asking.

18 Q A show-up, right?

19 A Right.

20 Q You know what a show-up is, right?

21 A Yes.

22 Q What is it?

23 A It's when you -- you drive a suspect up in front of another

24 vehicle who has the victim inside of it and they identify.

25 Q Someone is trying to make an identification and they only

1 have one option, right? Is this the guy?

2 A Yes.

3 Q That's a show-up, right?

4 A Yes.

5 Q That's essentially what you did with the photograph that was

6 texted to you, right?

7 A Yes.

8 Q Eventually went back and you arrested the two individuals

9 who appeared to be stealing the moped, right?

10 A Yes.

11 Q And then you took them to the city jail, right?

12 A Yes.

13 Q And you were at the city jail booking them in when the crime

14 scene investigator arrived back at the original scene of 610 North 10th,

15 correct?

16 A Possibly, yeah.

17 Q And that's why you weren't there, because you were booking

18 two guys in at city jail, right?

19 A Could have been, yes.

20 Q Okay. Were you involved in the subsequent arrest of

21 Mr. Valencia that happened a couple of days after May 19th, 2016?

22 A I did show up at the final arrest spot.

23 Q I'm sorry, at the what?

24 A I showed up at the final arrest location.

25 Q Okay. And for what purpose?

1           A     At this point, it was a -- it was a big operation as far as  
2 detectives and -- and officers from Downtown Area Command.  
3 Everybody was looking for him in reference to the crime.

4           Q     Everybody was looking for Ceasar Valencia, right?

5           A     Yes.

6           MR. COYER: Court's indulgence.

7           Q     So you did state that at one point you did show up at the  
8 May 21st arrest of Mr. Valencia, correct?

9           A     If that's the day it was, I -- yeah. Yes. That's the second  
10 event, yes.

11          Q     I'm going to show you State's 8; can you see that?

12          A     Yes.

13          Q     And is that what Mr. Valencia looked like on the day he was  
14 arrested?

15          A     Yeah. I don't recall if he had facial hair that long or not, but he  
16 looks like that, yeah.

17          Q     Would you agree, based on your experience of being a male,  
18 that that's more than two days of facial hair growth?

19          A     Yes.

20          Q     Okay. So if this face had a goatee on May 21st, this face  
21 would have had a goatee on May 19th, right?

22          A     Likely.

23          Q     Okay.

24          MR. COYER: We'll pass, Judge.

25          MR. DICKERSON: May we --

1 THE COURT: State have any redirect?

2 MR. DICKERSON: May we approach very briefly, Your  
3 Honor?

4 [Bench conference transcribed as follows:]

5 MR. DICKERSON: Just on the subject of -- I believe the  
6 door's been opened to us at least asking two questions. Were you  
7 familiar with Ceasar Valencia before this event, and had you ever seen a  
8 picture of Ceasar Valencia before this event. Given the fact that his  
9 name is being used on the radio, that's what they elicited, prior to ID, I  
10 think it becomes absolutely relevant to show how he had any knowledge  
11 of Ceasar Valencia.

12 MS. PLUNKETT: There was other officers.

13 THE COURT: I don't believe he opened the door. So I'm not  
14 going to allow any questioning on how he knew about Ceasar Valencia  
15 prior to the arrest. So I do not believe he opened the door. I'm not  
16 going to allow the questions.

17 MR. DICKERSON: Okay. Thank you, Your Honor.

18 [End of bench conference.]

19 **REDIRECT EXAMINATION**

20 BY MR. DICKERSON:

21 Q Officer Jacobitz, there was some talk about a -- a BMA,  
22 red-striped shirt; do you remember that?

23 A I don't really recall it. But now with the --

24 Q The conversation that you just had with defense counsel?

25 A Yes. Yes.

1 Q Showing you -- I'm sorry.

2 MR. COYER: Sorry, which way is the exhibit? Yeah, I  
3 probably have all of them. Yeah.

4 MR. DICKERSON: Thanks.

5 BY MR. DICKERSON:

6 Q Showing you State's Exhibit 53. Publishing that. I want to  
7 draw your attention to 20:08:37; do you see that there?

8 A Yes.

9 Q And what does that say?

10 A 3DP41/3 Baker 2, BMA, red-striped shirt is negative, 20 --  
11 2008 hours.

12 Q What does that indicate to you?

13 A That means that he -- the BMA was not who -- who they --  
14 who we were looking for.

15 Q And so we know HMA is Hispanic male adult; what's BMA?

16 A Black male adult.

17 Q Is -- are there other codes that are used to abbreviate race?

18 A Yes.

19 Q What else?

20 A WMA, white male adult; AMA, Asian male adult.

21 Q Okay. So in this case, this would be talking about a black  
22 male adult wearing a striped shirt?

23 A Yes.

24 Q Who checked negative?

25 A Right.

1 Q In fact, the description of the person was actually an HMA,  
2 Hispanic male adult?

3 A Yes.

4 MR. COYER: Objection. Foundation. This isn't the witness  
5 that made that call.

6 MR. DICKERSON: It was testified to at length on  
7 cross-examination.

8 THE COURT: What's your question, counsel?

9 MR. DICKERSON: In fact, the description of the person was  
10 an HMA.

11 THE COURT: You can answer.

12 THE WITNESS: Yes.

13 BY MR. DICKERSON:

14 Q And the person that pointed a gun at you in that back alley  
15 of 610 North 10th Street was what race?

16 A Hispanic male adult.

17 Q In fact, who was the person that pointed the gun at you at 610  
18 North 10th Street?

19 A Ceasar Valencia.

20 Q How sure are you of that?

21 A 100 percent.

22 MR. DICKERSON: State will pass the witness.

23 THE COURT: Any recross?

24 MR. COYER: Court's brief indulgence.

25 Briefly recross, Judge.

1 **RECROSS EXAMINATION**

2 BY MR. COYER:

3 Q Again, on May 19th, 2016, the first time you heard the name  
4 Ceasar Valencia --

5 MR. DICKERSON: Outside the scope, Your Honor.

6 THE COURT: You can ask the question. Overruled.

7 MR. COYER: Just foundational.

8 BY MR. DICKERSON:

9 Q Was when -- was when Officer Perez said that name out over  
10 the air, right?

11 A I believe so.

12 Q Okay. At 2002, which is 8:02, you came on the air and stated  
13 that the suspect had pointed a gun at you, right?

14 A I think it was around there, yeah.

15 Q But you didn't use those words. You said, Ceasar turned  
16 around and pointed a gun at me, right?

17 A I don't remember what I said on the radio that -- in reference  
18 to that.

19 Q Would looking at the CAD --

20 A Possibly. Possibly.

21 Q Would looking at the CAD refresh your memory?

22 A Yes.

23 THE COURT: You may approach.

24 MR. COYER: Sorry?

25 THE COURT: You may approach.



1 MR. COYER: Thank you. And this is State's 53, for the  
2 record.

3 THE WITNESS: What time are we looking at? This is 705  
4 saying it to me, or -- no, wait. I guess that's just the way that they're  
5 saying it, dispatch. But yes.

6 BY MR. COYER:

7 Q Does that appear to be an accurate reflection of what you  
8 said?

9 A Yeah. It could have been, yes.

10 THE COURT: Sir, did that refresh your recollection?

11 THE WITNESS: Not --

12 THE COURT: Yes?

13 THE WITNESS: Not really, but -- no.

14 MR COYER: Okay. Judge, I'll publish the audio at this time,  
15 with the court's permission.

16 THE COURT: That's fine.

17 [Audio played.]

18 BY MR. COYER:

19 Q That's your voice, right, Officer?

20 A Yes. Yes.

21 Q And this was at 2002, as reflected in the CAD --

22 A Yes.

23 Q -- that I just showed you, correct?

24 A Yes.

25 Q And it's 8:02 p.m., correct?

1 A Yes.

2 Q And that was after your fellow Officer Perez had used the  
3 name Ceasar --

4 A Yeah.

5 Q -- Valencia?

6 A Yes.

7 MR. COYER: Pass.

8 THE COURT: Any additional questioning?

9 **FURTHER REDIRECT EXAMINATION**

10 BY MR. DICKERSON:

11 Q This occurred how close to Downtown Area Command?

12 A Less than half a block.

13 MR. DICKERSON: No further questions.

14 THE COURT: Can this witness be excused?

15 MR. DICKERSON: Yes.

16 THE COURT: Defense?

17 MR. COYER: Yes, Your Honor. Oh, actually, Judge, may we  
18 approach?

19 THE COURT: Yes, you can.

20 [Bench conference transcribed as follows:]

21 MR. COYER: Before we excuse the witness, I didn't see if the  
22 jury had any questions. I wanted to make sure --

23 THE COURT: Good point.

24 MR. COYER: -- to check.

25 THE COURT: Very good point.

1 MR. DICKERSON: I think that they -- they would need to  
2 raise their hand and indicate.  
3 THE COURT: Yeah. And --  
4 MR. DICKERSON: I don't think they need to be prompted.  
5 MR. COYER: Yeah. I'm just not sure if --  
6 THE COURT: Yeah. I don't see any hands.  
7 MR. COYER: I'm not sure if they were told to raise their  
8 hands.  
9 THE COURT: Let me -- okay.  
10 MR. DICKERSON: Yeah, he'd be gone.  
11 THE COURT: I don't see any hands.  
12 [End of bench conference.]  
13 THE COURT: Marshal -- oh, counsel approach. I'm sorry.  
14 [Bench conference transcribed as follows:]  
15 THE COURT: Okay. Just want to verify, you're watching the  
16 jurors and none of the jurors are raising their hands with any questions;  
17 is that correct?  
18 THE MARSHAL: Yeah, they have -- not one of them has  
19 raised their hand, no.  
20 THE COURT: Okay. I just want to put that on the record.  
21 None of the jurors have raised their hand indicating they want to ask a  
22 question. So I'm going to excuse the jury -- excuse the jury -- excuse  
23 the witness.  
24 MR. DICKERSON: Thank you, Your Honor.  
25 THE COURT: Thank you.

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[End of bench conference.]

THE COURT: Sir, thank you. And you are excused.

THE WITNESS: Thank you, sir.

MR. LEXIS: Judge, may we approach for a second?

THE COURT: Sure.

MR. LEXIS: Mr. Coyer.

MR. COYER: I'm sorry.

[Bench conference transcribed as follows.]

MR. LEXIS: Judge, my -- my next witness is going to be very quick and actually he needs to testify today. But I told Mr. Coyer too that I'm not going to go in depth in the second envelope. I'm basically going to lay the foundation that this belongs to this event and go straight to opening up. Because I'm assuming that Mr. Coyer doesn't want that second big manila envelope going back, like the first one's not going back, that way it can be paying attention on why the first one's --

THE COURT: What's in the second envelope?

MR. LEXIS: It's the drugs.

THE COURT: It's the what?

MR. LEXIS: It's the drugs. We're going to have the expert come in, obviously, to testify that it's meth, heroin, cocaine, but --

THE COURT: Is -- what's on the front of the envelope?

MR. COYER: And I -- again, I don't know the answer to that.

MR. LEXIS: It's just -- it's not -- there's nothing -- there's nothing bad on the front of the envelope, Judge. It's just the matter of the fact that if the first one is -- I'm -- I'm just saying for the defense --

1 THE COURT: No, no. I understand that.  
2 MR. LEXIS: -- if the first one's not going back, then the  
3 shouldn't -- the second one shouldn't be going back.  
4 THE COURT: And -- okay. So in other words, when we send  
5 the evidence back, we're not going to send either envelope back so as  
6 to not highlight --  
7 MS. PLUNKETT: Correct.  
8 THE COURT: -- that one of the envelopes --  
9 MS. PLUNKETT: No. Yes.  
10 MR. LEXIS: Yes.  
11 THE COURT: Is that agreeable, counsel?  
12 MR. COYER: Yes.  
13 THE COURT: Okay.  
14 MS. PLUNKETT: Yes.  
15 MR. DICKERSON: Absolutely.  
16 THE COURT: And what is this witness's testimony going to  
17 be? He's going to --  
18 MR. LEXIS: Basically, he was there when the drugs were  
19 found on the defendant. And I'm going to say that he saw them --  
20 THE COURT: Okay. Let me --  
21 MR. LEXIS: -- be [indiscernible] --  
22 THE COURT: Let me see the front of the envelope, just --  
23 okay. I'm going to conclude at 5:00 today. Can you get it -- are we  
24 going to be able to get him in by 5:00?  
25 MR. LEXIS: He -- I'm going to take 15 minutes. He just

1 needs to be done by today because he's --

2 THE COURT: Okay. Well, we'll -- we'll go a little beyond if --  
3 to try to get him in.

4 MR. LEXIS: Thank you very much.

5 MS. PLUNKETT: Who is it? Chad, who is it?

6 MR. LEXIS: What's that?

7 MS. PLUNKETT: Which officer?

8 MR. LEXIS: Milewski.

9 MS. PLUNKETT: Milewski.

10 [End of bench conference.]

11 THE COURT: State -- I'm sorry. State, call your next witness,  
12 please.

13 MR. LEXIS: Officer Milewski.

14 **DAVID MILEWSKI**

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

17 THE CLERK: Please be seated. Sir, will you please state and  
18 spell your name for the record?

19 THE WITNESS: David Milewski. D-A-V-I-D M-I-L-E-W-S-K-I.

20 **DIRECT EXAMINATION**

21 BY MR. LEXIS::

22 Q Sir, where do you work?

23 A I'm a sergeant with LVMPD's Gang Unit.

24 Q How long have you worked with Metro?

25 A 11 years.

1 Q Give us an overview of where you've been.

2 A I spent nine years of my career at Downtown Area Command  
3 working patrol, and spent two of those years in the Problem Solving Unit.

4 Q What's the Problem Solving Unit, sir?

5 A It's a plain-clothes squad that addresses crimes in each  
6 particular area command.

7 Q Where did you after that?

8 A After that, I promoted and was a patrol sergeant at Bolden  
9 Area Command.

10 Q And now you're in the Gang Unit?

11 A Yes, sir.

12 Q Back on May 21st, 2016, were you employed as a police  
13 officer and acting in the capacity as a police officer around 2:48 in the  
14 morning?

15 A Yes, sir.

16 Q And were you conducting some type of surveillance on  
17 someone known as a Ceasar Valencia around that time?

18 A I wasn't the one conducting the surveillance. But yes, I was --  
19 I was aware of the surveillance that was going on.

20 Q And did you eventually assist in the takedown of Ceasar  
21 Valencia?

22 A Yes, sir.

23 Q And did that ultimately conclude in a felony car stop at around  
24 Washington and Main Street?

25 A That's correct, sir.

1 Q And was he the passenger in that vehicle?

2 A Yes, sir.

3 Q Do you see Ceasar Valencia in court today?

4 A Yes, sir.

5 Q Can you please point to him and identify for me the color of  
6 the shirt he's wearing?

7 A Gentleman sitting right there at the table wearing a light-blue  
8 button-up shirt.

9 MR. LEXIS: Your Honor, let the record reflect the officer's  
10 identified the defendant.

11 THE COURT: The record will so reflect.

12 BY MR. LEXIS::

13 Q Were you then near another officer named Officer Lefebvre --

14 A Lefebvre.

15 Q -- however you -- how do you say it, sir?

16 A Lefebvre.

17 Q Lefebvre. Were you next to Officer Lefebvre at the time when  
18 he approached the defendant?

19 A Yes, sir.

20 Q And was a search incident to an arrest conducted on the  
21 defendant?

22 A Yes, sir.

23 Q And did you observe that search incident to an arrest?

24 A Yes, sir.

25 Q And what did you observe?



1           A     Officer Lefebvre retrieved purported methamphetamine,  
2 heroin, and cocaine from the subject's pocket, as well as a large sum of  
3 money.

4           Q     Okay. And did the narcotics come from the right jean pocket?

5           A     I believe the purported controlled -- at that time, purported  
6 control substance came from the right pants pocket, and the money was  
7 in the left pants pocket.

8           Q     And then -- did that money total around \$946?

9           A     I believe that's approximately how much it was.

10           MR. LEXIS: May I approach, Judge?

11           THE COURT: Yes.

12           BY MR. LEXIS::

13           Q     Sir, I'm showing you what has been marked as State's  
14 Proposed Exhibit 4; is that an evidence bag from Metro?

15           A     Yes, sir.

16           Q     And is there an event number on all these bags to identify,  
17 basically, that it's related to a particular event?

18           A     That's correct, sir.

19           Q     Sir, I'm showing you what has already been admitted into  
20 evidence as State's Exhibit 53 that's pertaining to this particular event;  
21 do you recognize this as a CAD?

22           A     Yes, sir.

23           Q     And can you state the event number on this CAD?

24           A     160519003387.

25           Q     And with regards to the evidence bag, as you stated, there's

1 also a place on the evidence bag for the event number?

2 A That's correct, sir.

3 Q As well as the contents of what's in the bag?

4 A Yes, sir.

5 Q Okay. After you take a look at that CAD event number, does it

6 match up with the event number on the proposed exhibit, the evidence

7 bag that you have in front of you?

8 A Yes, sir.

9 Q And is that indicated that it came from the same event?

10 A Yes, sir.

11 MR. LEXIS: Your Honor, may we get a scissors and some

12 gloves?

13 THE COURT: Mr. Lexis?

14 MR. LEXIS: Yes.

15 BY MR. LEXIS:

16 Q Officer, can you please open that bag using a area where it's

17 not already been resealed?

18 A [Witness complies.]

19 Q Can you open up that bag? Just dump and take out the

20 contents, sir.

21 A [Witness complies.]

22 Q Sir, does there appear to be baggies inside the main bag?

23 A Yes, sir.

24 Q And does one of the substance appear to be a powdery, white

25 substance?

1           A     Yes, sir.

2           Q     Does another substance appear to be a crystal-like  
3 substance?

4           A     Yes, sir.

5           Q     And does another substance appear to be a black tar-like  
6 substance?

7           A     Yes, sir.

8                 MR. LEXIS: Sir -- Your Honor, I would move to admit State's  
9 Proposed Exhibit 4 and its contents as A and B. I'll note for the record,  
10 C. There's -- is basically one big baggie, one folded-up baggie, and one  
11 smaller baggie.

12                THE COURT: All right. So --

13                THE CLERK: Which one is which?

14                THE COURT: Huh?

15                THE CLERK: I need an A, B, and C --

16                THE COURT: Right. I am. Thank you. All right.

17                So the bag itself will be Exhibit 4A. You said there's three  
18 baggies there?

19                MR. LEXIS: Yes, Your Honor.

20                THE COURT: There's one with -- can you --

21                MR. LEXIS: Black tar-like substance.

22                THE COURT: Okay. That will be Exhibit 4B. The next one?

23                MR. LEXIS: The white powdery-like substance.

24                THE COURT: That will be Exhibit 4C.

25                MR. LEXIS: White crystal-like substance.

1 THE COURT: And that will be Exhibit -- marked as  
2 Exhibit 4D.  
3 Mr. Clerk, did you -- Mr. Castle, did you hear that?  
4 THE CLERK: Yes, Your Honor.  
5 THE COURT: Okay. Anything else, counsel?  
6 MR. LEXIS: Yes, Your Honor.  
7 THE COURT: You've moved to admit.  
8 Defense, do you have any objection?  
9 MR. COYER: No objection to the contents, Your Honor.  
10 MR. LEXIS: Sergeant, can you please put those items --  
11 THE COURT: Let me --  
12 MR. LEXIS: -- back in the --  
13 THE COURT: Exhibits 4A, 4B -- hearing no objection,  
14 Exhibits 4A, 4B, 4C, and 4D are admitted into evidence.  
15 [State's Exhibit Nos. 4A, 4B, 4C, and 4D admitted.]  
16 BY MR. LEXIS::  
17 Q Okay. Sergeant, just to be thorough, Officer -- how do you  
18 pronounce his name again?  
19 A Lefebvre.  
20 Q Lefebvre -- did you see him then hand off those items to  
21 Officer Vallad [phonetic], who then impounded those items?  
22 A I believe it was Detective Vallad. Yes, sir.  
23 Q Detective Vallad.  
24 A Yes, sir.  
25 Q Thank you. And, sir, this event, as far as the initial event on

1 May 19th and then subsequent investigations, do those produce multiple  
2 event numbers?

3 A Yes, sir. If it's an event that occurred on two different dates,  
4 they'll be two different event numbers.

5 Q Okay. And then if May 19th event is the lead event leading up  
6 to it, is that when you're going to have a situation like this, where the  
7 contents, even though it was found on May 21st on the defendant, it's  
8 going to be related to the original CAD, matching up to the original  
9 evidence bag?

10 A I'm sorry, I'm --

11 Q Okay. So in this particular case where there's multiple event  
12 numbers --

13 A Right.

14 Q -- and the initial lead event number is the CAD, as previously  
15 shown to you, State's 53, and matching up with the event number on  
16 that baggie right there, is it not uncommon to correlate those with the  
17 lead event number?

18 A Yes, sir.

19 Q Okay.

20 MR. LEXIS: Court's indulgence.

21 Q Again, Officer, just to be thorough, again, were those items  
22 that were admitted into evidence are true and accurate representations  
23 of what you saw come out of the defendant's pocket?

24 A Yes, sir.

25 MR. LEXIS: No further questions, Your Honor.

1 THE COURT: Defense, any cross-examination?  
2 MS. PLUNKETT: No, Judge.  
3 THE COURT: Counsel, can this witness be excused?  
4 MR. LEXIS: Yes, Your Honor.  
5 THE COURT: Thank you.  
6 Sir, thank you. And you are excused.  
7 THE WITNESS: Thank you, Your Honor.  
8 THE COURT: Counsel approach.  
9 I'm sorry? Oh, we don't have the bag?  
10 Could you -- counsel, can you have the bag returned to the  
11 clerk, please?  
12 THE WITNESS: Thank you, sir.  
13 THE COURT: Thank you.  
14 Counsel approach.  
15 [Bench conference transcribed as follows:]  
16 THE COURT: Do you have any other witnesses for today?  
17 MR. DICKERSON: No. We got them all.  
18 THE COURT: Okay. Then we'll take our evening break. I  
19 can only go to 3:30 tomorrow.  
20 MR. DICKERSON: Okay.  
21 THE COURT: So I'm going to tell the jury that. Why don't we  
22 take one break. We'll take a lunch break. And we'll try to begin  
23 at 11:30. I don't know if you're -- I have my law motion calendar at 9:00.  
24 So I'm going to --  
25 MR. DICKERSON: Would it be more beneficial to start at

1 noon and -- would you be able to have your staff have a break before  
2 that time?

3 THE COURT: You know my calendar. We've been going  
4 to 12:00 --

5 MR. DICKERSON: That's criminal, yeah.

6 THE COURT: -- 12:15.

7 MR. DICKERSON: Yeah.

8 THE COURT: So there's a good chance we'll hopefully get  
9 through it by 11:30.

10 MR. DICKERSON: Okay. Great.

11 THE COURT: Assuming everybody shows up. Part of my  
12 issue is waiting for all the attorneys to come at the same time. So I'm  
13 going to tell them --

14 MR. LEXIS: We'll have witnesses ready to go.

15 THE COURT: I'm going to tell them 11:30. We'll go to 3:30,  
16 take a lunch break. Try to get as much as we can and then it's my intent  
17 we can go a full day Friday. Okay.

18 MR. DICKERSON: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. PLUNKETT: Thank you.

21 [End of bench conference.]

22 THE COURT: Ladies and gentlemen, at this time we're going  
23 to take our evening recess. Tomorrow we're only going to go to 3:30.  
24 So what I plan is we'll hopefully start by 11:30, if you can be back here  
25 tomorrow by 11:30, then we'll take some evidence. I intend to take our

1 lunch break about 1:30. It'll be an hour lunch break. And then we're  
2 going to conclude tomorrow at 3:30. And then on Friday, we're going to  
3 go a full day. So we'll try to start earlier in the morning, either -- I'll talk to  
4 counsel as far as availability, probably around 9:00-10:00 and go  
5 till 5:00.

6 So at this time we'll be in recess. We're going to take our  
7 evening recess. And during this recess you're admonished not to talk or  
8 converse among yourselves or with anyone else on any subject  
9 connected with this trial, or read, watch, or listen to any report of or any  
10 commentary on the trial or any person connected with this trial by any  
11 medium of information, including, without limitation, the social media,  
12 text, newspapers, television, the Internet, and radio; do not visit the  
13 scene of any of the events mentioned during the trial, undertake any  
14 investigation; do not do any posting or communications on any social  
15 networking sites or do any independent research, including Internet  
16 searches, or form or express any opinion on any subject connected with  
17 the trial until the case is finally submitted to you. Thank you. We'll be in  
18 recess.

19 [Jury recessed at 4:48 p.m.]

20 MR. DICKERSON: Thank you, Your Honor.

21 THE COURT: Anything further, counsel?

22 MR. DICKERSON: Nothing from the State at this time.

23 THE COURT: We'll be in recess.

24 MS. PLUNKETT: Thank you, Judge.

25 [Proceedings concluded at 4:49 p.m. until November 30, 2017,

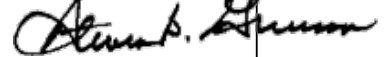


1 at 11:30 a.m.]  
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9 ATTEST: I do hereby certify that I have truly and correctly  
10 transcribed the audio/video proceedings in the above-entitled case to the  
11 best of my ability.  
12

13   
14

15 Shawna Ortega, CET\*562  
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1 **RTRAN**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6  
7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 vs. )

10 CEASAR SANCHAZ VALENCIA, )

11 Defendant. )

Case No. C-16-315580-1

DEPT. XVIII

12  
13 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE

14  
15 THURSDAY, NOVEMBER 30, 2017

16 **TRANSCRIPT OF PROCEEDINGS RE:**  
17 **JURY TRIAL - PHASE I - DAY 4**

18 **APPEARANCES:**

19 For the Plaintiff:

20 MICHAEL DICKERSON, ESQ.  
(Deputy District Attorney)  
21 CHAD N. LEXIS, ESQ.  
(Deputy District Attorney)

22 For the Defendant:

23 GREGORY E. COYER, ESQ.  
ALEXIS ANNE PLUNKETT, ESQ.

24 RECORDED BY: ROBIN PAGE, COURT RECORDER  
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1                   **LAS VEGAS NEVADA, THURSDAY, NOVEMBER 30, 2017**

2                   [Proceedings commenced at 11:33 a.m.]

3  
4                   [Outside the presence of the jury.]

5                   THE COURT: Good morning, ladies and gentlemen.

6                   MR. DICKERSON: Morning, Your Honor.

7                   THE COURT: This is the continuation of the trial in Case No.  
8                   C-16-315580, *State of Nevada vs. Ceasar Sanchaz Valencia*.

9                   Counsel, state your appearances, please.

10                  MR. DICKERSON: Michael Dickerson and Chad Lexis for the  
11                  State.

12                  MR. COYER: Gary Coyer and Alexis Plunkett on behalf of the  
13                  defense.

14                  THE COURT: And the defendant is present.

15                  Is there any housekeeping matters we have to take care of?

16                  MR. LEXIS: No, Your Honor.

17                  THE COURT: Okay. We're going to go to 1:30, take our  
18                  lunch break for an hour, and then we'll go to 3:30. So that's the plan for  
19                  today.

20                  If you could bring the jury in, please.

21                  [Jury reconvened at 11:34 a.m.]

22                  THE COURT: Let the record reflect the presence of the  
23                  jurors.

24                  State, are you prepared to call your next witness?

25                  MR. LEXIS: Yes, Your Honor. State calls Detective Vallad,

1 V-A-L-L-A-D.

2 **JASON VALLAD**

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

5 THE CLERK: Please be seated. Would you please state and  
6 spell your name for the record?

7 THE WITNESS: First name is Jason, J-A-S-O-N. Last is  
8 Vallad, V-A-L-L-A-D.

9 **DIRECT EXAMINATION**

10 BY MR. LEXIS:

11 Q Sir, where do you work?

12 A Currently, I'm working at Convention Center Area Command  
13 patrol investigations.

14 Q How long have you been with Metro?

15 A 10 years.

16 Q And can you take us through where you've been in Metro and  
17 your training and experience?

18 A I did patrol, Bolden Area Command, field training officer  
19 Bolden Area Command, field training officer at Downtown Area  
20 Command, and also a temporary transfer to Downtown Area Command,  
21 patrol investigations. And then now at a permanent position of patrol  
22 investigations at Convention Center.

23 Q As a detective?

24 A Correct.

25 Q Back on May 20th, 2016, at night rolling into May 21st, 2016,

1 in the morning, were you working in the capacity as a police officer?

2 A Yes.

3 Q And where -- where was this at?

4 A Downtown Area Command.

5 Q Okay. Was -- were you and other officers given information  
6 regarding an assault with a deadly weapon on an Officer Jacobitz that  
7 occurred on May 19th, 2016?

8 A Yes.

9 Q And was a team of Metro, including yourself, trying to conduct  
10 surveillance on one Ceasar Valencia?

11 A Yes.

12 Q And do you see that person in court today?

13 A Yes, I do.

14 Q Can you please point to him and identify for me the color shirt  
15 he's wearing?

16 A He's sitting over there wearing a blue shirt.

17 MR. LEXIS: Your Honor, let the record reflect the detective  
18 has identified the defendant.

19 THE COURT: The record will so reflect.

20 BY MR. LEXIS:

21 Q Detective, on May 20th, 2016, at nighttime, did this  
22 surveillance start at 625 North 10th Street?

23 A Yes.

24 Q And why that address?

25 A Through investigative means, we determined that that was

1 where the defendant was currently living.

2 Q So what did the team do?

3 A We set up kind of a surrounding area of any possible areas of  
4 exit. So at every corner that they possibly could leave if they got mobile,  
5 we would then do that. And then one person would have an eye on the  
6 house to see if anyone left the house or the residence.

7 Q Is this team in marked uniform, marked police cars? How is it  
8 operated?

9 A We'll operate in plain cars that blend in with the area, and also  
10 just plain clothes.

11 Q And is that for obvious reasons, so your cover is not blown?

12 A Correct.

13 Q What did you do next?

14 A I set up south of the residence on 10th Street near Bonanza  
15 and waited for radio traffic to hear if the subject -- or the defendant got  
16 into the vehicle or got -- got -- left the residence.

17 Q Regarding this radio traffic, is it recorded into CAD or is there  
18 a different means as far as traffic among other people?

19 A No. When we use -- doing surveillance amongst the team, it's  
20 easier to just use a channel that's devoted to that, that is just  
21 conversation between everyone involved in the operation so that it  
22 doesn't hold up air time with area units.

23 Q So CAD -- the surveillance team is not linked into CAD?

24 A No.

25 Q That's for marked patrol units?

1       A     Correct.

2       Q     Okay. So at that point, what do you guys do next?

3       A     I overheard over radio traffic that there was two subjects  
4 leaving the back of the residence, one of which matched the description  
5 of the defendant. They were walking towards a dark-colored Ford  
6 Mustang and were entering the vehicle. So that at that time we were  
7 getting ready to go mobile and conduct rolling surveillance.

8       Q     So what did the team decide to do next?

9       A     Once the subjects got in the vehicle, they relayed the direction  
10 of travel, at which time they went south on 10th Street towards Bonanza.  
11 And at that time, we conducted rolling surveillance.

12      Q     What is rolling surveillance?

13      A     Rolling surveillance is a tactic of unmarked cars and  
14 unmarked plain-clothes detectives that will covertly follow the vehicle,  
15 maintain eye contact to see where it goes without being detected, and  
16 relay information as to possibly if -- to identify subjects of the vehicle,  
17 where they're going, incidents like that.

18      Q     And what is bubbling?

19      A     Bubbling is tactics where you're not right next to the vehicle,  
20 but, like, on adjacent streets, so that if one turns, then someone in rolling  
21 surveillance can continue so they're not identified, and then someone on  
22 the next street over gets radio traffic and then that vehicle will pick it up.

23      Q     And was that all that done during this investigation?

24      A     Yes.

25      Q     What happened next?



1           A     We continued westbound on Bonanza, continuing rolling  
2 surveillance. As we did, we approached H Street. Once we're on H  
3 Street, we continued north on H Street, and at which time we determined  
4 that the defendant was in the passenger seat and a -- at the time, an  
5 unknown white male was driving the vehicle.

6                     As we continued, a tactic that subjects that we're conducted  
7 rolling surveillance on will sometimes do a tail check move, which is  
8 they'll make abrupt turns to see if, okay, is this person following me. At  
9 which time that -- if you're following, you continue on. That's when the  
10 bubble tactic comes in. Around Madison Street, I believe a tactic like  
11 that may have been used. He kind of abruptly turned left, parked in an  
12 alley in that area, and then got out of the vehicle.

13          Q     Okay. Did the team stay put on him?

14          A     Yeah. At that time we then conducted up a mobile  
15 surveillance tactic to bubble around there. So we started up kind of  
16 similar to how we did back on 625 10th Street.

17          Q     Did the team eventually make a visual?

18          A     Yes.

19          Q     And did the subject -- or the defendant then get back in the  
20 vehicle?

21          A     Yes.

22          Q     And what side of the vehicle?

23          A     The passenger seat again.

24          Q     And did the vehicle continue to move?

25          A     Yeah. At that point, we had already notified the air unit

1 because we had determined that we were going to take the vehicle  
2 down. So we notified the air unit, at which time while the vehicle was  
3 stationary, the air unit was set up a distance away, so it wasn't to be  
4 identified, and waited for radio traffic once the car got mobile again,  
5 which then proceeded back south on H Street. We notified the air unit.  
6 And the vehicle then continued south and east on Washington.

7 Q Okay. And what did the team decide to do next?

8 A We decided to identify a good spot to stop the vehicle, which  
9 was determined in a area of Washington and Main Street.

10 Q Why that location?

11 A Because just west of that location is an area where the --  
12 where the road dips down and there's walls on all side, which would  
13 eliminate an area of escape for anyone, occupants of the vehicle.

14 Q Was the felony car stop successful?

15 A Yes.

16 Q And explain to me what a felony car stop is.

17 A Felony car stop is conducted in high-risk situations, especially  
18 with anything involved with crimes that we're investigating the use of a  
19 weapon, where we -- the officers stay at a safe vantage point back at the  
20 vehicle and stop the vehicle and call the persons of the vehicle out one  
21 at a time and then draw them back to us with their hands up.

22 Q Does the surveillance team conduct the felony car stop or do  
23 marked patrol units?

24 A No. So the surveillance team will radio to marked patrol units  
25 and uniform officers that are in the area standing by for us to do it. We

1 advise them where we wanted it done. Then they came in, they got  
2 behind the vehicle and -- and the marked patrol units conduct the stop.

3 Q Okay. Is that what happened in this case?

4 A Yes.

5 Q And is that also for officer safety, why you would have a  
6 marked patrol unit stop that vehicle?

7 A Officer safety, suspect safety, any -- any -- everyone's safety  
8 in it, because you want to make sure they're not confused about who's,  
9 you know, stopping them.

10 Q And at the time this felony car stop, as well, you said the air  
11 was involved?

12 A Yes.

13 Q Was the defendant successfully taken into custody?

14 A Yes.

15 Q And your role that day, were you taking an active role that day  
16 or a light-duty role?

17 A I was an -- I was in light duty.

18 Q And why was that?

19 A I had broke my leg in February, so I was not able to have any  
20 suspect contact until they're taken into custody.

21 Q Okay. So you didn't take any physical-type activity during the  
22 takedown of the defendant?

23 A Correct.

24 Q Okay. Did you eventually make your way over to the  
25 defendant?

1 A Yes.

2 Q And who was there?

3 A Officer Lefebvre and Officer Milewski.

4 Q And what did you observe?

5 A At that point, they had the occupants of the vehicle back at the  
6 patrol car. Officer Lefebvre and Milewski were -- Officer Lefebvre was  
7 conducting a search after he was placed -- the defendant was placed in  
8 handcuffs, and Milewski was in a role of a contact.

9 Q Were the drugs out of the -- out already by the time you got  
10 there?

11 A Yes. There was -- the drugs were on the hood of the car, and  
12 some money.

13 Q Did you take custody at that point of the narcotics?

14 A Yes.

15 Q Why?

16 A Because in my capacity at that time, being light duty, I was  
17 tasked with doing the things that doesn't take an officer a full-duty thing,  
18 so the full-duty officers in capacity could get back on the streets or have  
19 suspect contact.

20 Q Was the money that was retrieved from the defendant also  
21 out?

22 A Yes.

23 Q And did you take custody of that as well?

24 A Yes.

25 Q Did you place the narcotics in a evidence bag?

1           A     Yes, I did.

2           MR. LEXIS: And may I approach, Your Honor?

3           THE COURT: Counsel approach. Mr. Coyer?

4                     [Bench conference transcribed as follows:]

5           THE COURT: Have you reviewed all the evidence bags and

6 make sure there's nothing on the front of any of the evidence bags

7 before they're --

8           MR. COYER: I've reviewed this one.

9           THE COURT: Okay. I just want to be sure.

10          MR. COYER: Yeah. And there's a reference to a warrants

11 on --

12          THE COURT: Huh?

13          MR. COYER: There's a reference to warrants on it. I think

14 we're going to leave the bag out --

15          MR. LEXIS: I'm going to lead him through this.

16          THE COURT: Okay. You're not going to do -- go through it --

17          MR. LEXIS: No, sir. No, sir.

18          THE COURT: Okay. Thank you. Okay. So --

19          MR. LEXIS: Just -- just solidifying the chain of custody,

20 Judge.

21          THE COURT: Okay. Thank you.

22                     [End of bench conference.]

23          MR. LEXIS: May I approach, Judge?

24          THE COURT: Yes.

25 BY MR. LEXIS:

1 Q Sir, I'm showing you what has already been admitted as  
2 State's Exhibit 4; do you recognize this bag?

3 A Yes, I do.

4 Q Is it the bag that you impounded on that night?

5 A Yes.

6 Q Do you see your initials on that bag?

7 A I do.

8 Q Can you please open this bag? I'll give you a scissors. Hold  
9 on. The bag's open? Okay.

10 Appears the bag's already been opened. So will you please  
11 take what's out of the bag. Appear to be three baggies inside that bag,  
12 sir?

13 A Yes.

14 Q Sir, I'm showing you State's Exhibit 4D; is that one of the bags  
15 that you saw on the hood standing next to Officer Lefebvre, Officer  
16 Milewski, and the defendant on the night in question?

17 A Yes.

18 Q And is that a crystal-like substance?

19 A Yes.

20 Q Showing you State's Exhibit 4C; do you recognize that, sir?

21 A Yes, I do.

22 Q Is that also one of the baggies that was found next to the  
23 defendant, Officer Lefebvre, and Officer Milewski on the night in  
24 question?

25 A Yes.

1 Q And is that a white, powdery substance?

2 A Yes, it is.

3 Q I'm showing you what has been marked as 4B; do you

4 recognize that, sir?

5 A Yes, I do.

6 Q Is that substance black tar-like substance that was found by

7 you on the hood next to Officer Lefebvre --

8 A Yes.

9 Q -- officer Milewski, and the defendant on the night in question?

10 A Correct.

11 Q And, sir, is that a large amount of heroin?

12 A It's a very large amount of heroin.

13 Q And explain to it, in your terms, as a detective for however

14 many years you've been working -- how many years?

15 A I've been in the department 10 years and capacity of detective

16 for two. In the street level of narcotics, when you come into heroin,

17 usually you see a heroin user with maybe .2 grams, a small amount, a

18 useable amount. Now, as a detective in the capacity that I have, this is

19 a large amount that I come across. You know, so I mean, that's -- in the

20 two years I've been a detective, that's the most amount I've ever

21 impounded.

22 Q Please put those baggies back in the bag.

23 Officer, you also state that next to the narcotics also, there

24 was also present nearby the defendant, Officer Milewski, and Officer --

25 excuse me, Lefebvre, was a pile of cash?

1           A     Yes.

2           Q     Do you remember how much?

3           A     The total amount was \$946.

4           Q     Do you remember the breakdown, sir?

5           A     It was multiple denominations. I don't remember the exact.

6           Q     Sir, as part of your duties as an officer in this case, did you

7     conduct a property report, since you were the impound officer?

8           A     Yes.

9           Q     Will it refresh your memory if I showed you your property

10    report?

11          A     Yes.

12                MR. LEXIS: Your Honor, may I approach?

13                THE COURT: Yes.

14    BY MR. LEXIS:

15          Q     Please read that to yourself, sir. Don't say anything. Let me

16    know when you're done.

17          A     [Witness complies.] All right.

18          Q     Did that refresh your memory, sir?

19          A     Yes.

20          Q     What was the breakdown?

21          A     There was 41 twenties, 19 fives --

22                MS. PLUNKETT: Object to relevance.

23                THE COURT: Restate the question, please.

24                MR. LEXIS: What was the breakdown?

25                THE COURT: Counsel, approach.



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[Bench conference transcribed as follows:]

THE COURT: A relevance instruction requires -- requires a speaking objection. That's why I've asked you to approach. Why isn't it relevant?

MS. PLUNKETT: Object to the relevance of the denomination of the money, because we've already established how much he had on him. And any breakdown is going to lead to a prejudicial insinuation that he's some type of drug dealer, that he had just done these cash transactions. And I believe that the relevance is the total amount of money as opposed to the breakdown.

THE COURT: State, response?

MR. LEXIS: We've got to prove that he had possession of it and that -- and one of the charges is trafficking. It's -- it's highly relevant with this type of --

MS. PLUNKETT: One of the charges is not --

THE COURT: Let -- let him finish.

MS. PLUNKETT: Sorry.

THE COURT: Go ahead.

MR. LEXIS: It's highly relevant, Judge, that someone who just is not going to have -- these drugs just miraculously appeared in my pocket. No. When you have drugs and that type of money and those denominations, that all absolutely is relevant to the fact that this man moved these drugs.

THE COURT: Okay. Response?

MS. PLUNKETT: And one of the charges is not any kind of

1 possession with intent to sell.

2 THE COURT: Okay.

3 MS. PLUNKETT: It's a simple trafficking charge.

4 THE COURT: Okay. Thank you.

5 [End of bench conference.]

6 THE COURT: The objection is overruled. You may answer.

7 THE WITNESS: Honestly, I'd have to refresh my memory  
8 again.

9 MR. LEXIS: May I approach?

10 THE WITNESS: Yes.

11 THE COURT: Yeah.

12 BY MR. LEXIS:

13 Q Please read this to yourself, sir. Don't say anything. Let me  
14 know when you're done.

15 A [Witness complies.] All right.

16 Q What denominations, sir?

17 A There's 31 one-dollar bills, 19 five-dollar bills, and 41  
18 twenty-dollar bills.

19 MR. LEXIS: Court's indulgence.

20 Nothing further, Your Honor.

21 THE COURT: Cross-examination by the defense?

22 MS. PLUNKETT: Yes, Judge.

23 **CROSS-EXAMINATION**

24 BY MS. PLUNKETT:

25 Q Good morning, Officer.

1           A     Good morning.

2           Q     Mr. Lexis refreshed your recollection of the property impound  
3 report right now, correct?

4           A     Correct.

5           Q     Do you -- you should be refreshed on the fact that you took a  
6 DNA buccal swab of Mr. Valencia's DNA, correct?

7           A     Yes.

8           Q     And for what purpose would that DNA swab be taken?

9           A     For comparison to any other evidence that may have been in  
10 contact with the defendant.

11          Q     And you, yourself, impounded that DNA?

12          A     I did.

13          Q     To be provided to another officer for DNA comparison?

14          A     To the forensic lab.

15          Q     Thank you.

16                MS. PLUNKETT: The court's indulgence.

17                That's all, Judge.

18                THE COURT: Any --

19                               **REDIRECT EXAMINATION**

20       BY MR. LEXIS:

21           Q     Detective, is that standard procedure when you have  
22 recovered a gun in this situation?

23           A     Yes.

24                MR. LEXIS: Thank you.

25                THE COURT: Any recross?

1 MS. PLUNKETT: No, Judge.  
2 THE COURT: Can this witness be excused?  
3 MR. LEXIS: Yes, Your Honor.  
4 THE COURT: Thank you, Detective.  
5 THE WITNESS: Thank you.  
6 THE COURT: You're excused.  
7 State, call your next witness.  
8 MR. DICKERSON: State's next witness is Crystal May.

9 **CRYSTAL MAY**

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

12 THE CLERK: Please be seated. Can you please state and  
13 spell your name for the record?

14 THE WITNESS: My name is Crystal May, C-R-Y-S-T-A-L  
15 M-A-Y.

16 MR. DICKERSON: May I proceed, Your Honor?

17 THE COURT: Yes.

18 MR. DICKERSON: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. DICKERSON:

21 Q What do you do for a living, ma'am?

22 A I am a forensic scientist within the Biology DNA Detail of the  
23 Las Vegas Metropolitan Police Department Forensic Laboratory.

24 Q What are your general duties in that capacity?

25 A As a forensic scientist in the DNA Detail, I examine evidence

1 for the absence or presence of DNA evidence. I take those samples on  
2 through a chemical laboratory process to isolate the DNA and develop a  
3 DNA profile. Once I develop a profile from the evidence, I can then  
4 develop a profile from reference standards also submitted in the same  
5 case for comparison. I write a report with my conclusions and  
6 comparisons, as well as statistics, issue the report, and help review  
7 other people's cases as well.

8 Q What sort of training and experience do you have that got you  
9 to this position that you hold today?

10 A I currently hold a Bachelor of Science in Biology from St. Mary  
11 of The Woods College in Terre Haute, Indiana. I also hold a Master a  
12 Science in Forensic Science from the University of New Haven in  
13 Connecticut.

14 Upon being hired on as a forensic scientist within the LVMPD  
15 Forensic Lab, I was put forth into an 18-month extensive training  
16 program that covered tons of topics, including written articles, practical  
17 samples, practical tests, and evidence sample -- or samples that closely  
18 mimicked those that we would find in evidence. I was also put through a  
19 moot court. We are regularly proficiency tested. Once I got out of the  
20 training program, I've been doing this for 16 -- or 16 -- 6 years.

21 Q And just enlighten us a little bit; what is DNA?

22 A DNA stands for deoxyribonucleic acid. And it's the basic  
23 building block of all living things. You get half of your DNA from your  
24 mother, half from your father. We like it in forensic testing, because the  
25 DNA in your hair is the same as the DNA in your toes. It doesn't change

1 from birth to death.

2 THE COURT: Counsel, approach please.

3 MR. DICKERSON: Yes, Your Honor.

4 [Bench conference transcribed as follows:]

5 THE COURT: Are you having this witness testify as an expert  
6 witness?

7 MR. DICKERSON: Yes.

8 THE COURT: Okay. So what -- do you want -- take a while  
9 and voir dire as to her qualifications?

10 MR. COYER: No. We'll stipulate to her expertise.

11 THE COURT: You're going to stipulate? In what area of  
12 expertise is she going to testify in?

13 MR. DICKERSON: It's noticed. We've noticed her as a --

14 THE COURT: Okay. So I'm going to accept her as an expert.  
15 I'm going to ask you if you have any opposition. You can say you  
16 stipulate.

17 MR. COYER: We'll stipulate to her qualifications, yes.

18 THE COURT: Okay. So do I have to notify the jury that she's  
19 testifying -- because you're going to have a jury instruction on expert  
20 witnesses. I --

21 MR. DICKERSON: No. I -- I don't think it's necessary, Your  
22 Honor.

23 THE COURT: I usually have the jury know that she's  
24 testifying as an expert.

25 MR. DICKERSON: We can --

1 MR. LEXIS: If something that's --  
2 MR. DICKERSON: Sure.  
3 MR. LEXIS: -- we don't care either way.  
4 MR. DICKERSON: Sure.  
5 THE COURT: Okay.  
6 MR. LEXIS: But if you want it, Judge --  
7 THE COURT: No, no. I'm just trying to make a clean record  
8 here.  
9 MR. LEXIS: Okay.  
10 MR. DICKERSON: Yeah.  
11 THE COURT: So I just -- so I -- I'll just announce I'm going to  
12 accept her as an expert.  
13 MR. DICKERSON: Okay.  
14 THE COURT: And what -- what is her area of expertise? Do  
15 you remember?  
16 MR. DICKERSON: It's DNA analysis.  
17 THE COURT: Huh?  
18 MR. DICKERSON: DNA analysis. I have the -- I would have  
19 to get the language from the notice.  
20 THE COURT: I'll just accept her as an expert --  
21 MR. DICKERSON: DNA testing.  
22 THE COURT: -- in DNA.  
23 MR. LEXIS: I -- I don't think we need to announce it.  
24 MR. DICKERSON: I --  
25 THE COURT: Just announce --

1 MR. DICKERSON: I don't think we need to announce that.  
2 THE COURT: Just accept her as an expert?  
3 MR. DICKERSON: I think that -- I think that we can just go  
4 forward and just let the qualifications --  
5 THE COURT: All right.  
6 MR. DICKERSON: -- stand with the jury.  
7 THE COURT: All right.  
8 MR. LEXIS: Yeah. And, quite frankly --  
9 THE COURT: So you don't want me to --  
10 MR. DICKERSON: Yeah. I don't want to risk any -- any  
11 prejudice that we may be borderline on by -- I mean, that's why in this  
12 jurisdiction we don't ask you to qualify --  
13 THE COURT: Because you've offered a jury instruction --  
14 MR. DICKERSON: Right.  
15 THE COURT: -- about expert --  
16 MR. DICKERSON: I think that --  
17 THE COURT: -- testimony. You're going to withdraw that jury  
18 instruction?  
19 MR. DICKERSON: And I think we can still -- no. We can still  
20 say, hey, she's testified as -- as an expert, obviously, by her giving that  
21 opinion. Because if you read the jury instruction, we'll say anybody who  
22 testifies in this capacity --  
23 THE COURT: Okay. So I am going to accept her -- based on  
24 the stipulation of the parties, I am going to accept her as an expert, as  
25 noticed.



1 MR. DICKERSON: Okay.

2 THE COURT: Okay?

3 MR. DICKERSON: Thank you, Your Honor.

4 THE COURT: Thank you.

5 [End of bench conference.]

6 BY MR. DICKERSON:

7 Q So, ma'am, you're a forensic scientist with the forensic lab?

8 A Correct.

9 Q And it -- your specific role is for DNA?

10 A Correct.

11 Q Are there other outlets in the forensic lab, other areas of  
12 study?

13 A There are. Our particular laboratory also does controlled  
14 substances, toxicology, firearms, and latent print examinations.

15 Q But your specialty is DNA?

16 A It is.

17 Q So we're getting there, tell me about DNA. Everybody has  
18 DNA; does everybody have different DNA?

19 A Yes. 99.9 percent of our DNA is identical. It's that .1 percent  
20 that actually makes you different than the person sitting next to you. It's  
21 what gives you your brown eyes versus your blue eyes. It's what gives  
22 you the blonde hair versus the red hair. We only look at a fraction of  
23 that .1 percent that makes you different. But in that .1 percent, using 21  
24 different markers, we can distinguish between two individuals.

25 Q So how is it that you look for DNA?

1           A     Again, through my extensive training, we've learned how to  
2 examine items of evidence. In particular, you know, if we're examining a  
3 case and we're asked to look for blood, blood is pretty easy to spot,  
4 right? You've seen blood. You've bled. If I have a white t-shirt and I'm  
5 looking for blood, that's going to be pretty easy to identify.

6                     We then have some follow-up chemical tests that we can use  
7 to help indicate whether or not it could be blood, or it could just be  
8 ketchup. In some cases, we just know that there is DNA going to be on  
9 that sample. If you have a water bottle, think about how you drink a  
10 water bottle. Your lips are going to be on the ridges of the water bottle,  
11 your tongue is going to be on it. We know that there's DNA inherent in  
12 your mouth so we can actually just take a swabbing of it.

13                    And by swabbing, I mean, just take a really long Q-tip, the  
14 same ones you use to clean out your ears, just a little bit longer, moisten  
15 the swab, and just get up there and swab the ridges.

16                    Once we identify those samples, like I said, we can take them  
17 through a laboratory procedure in which we develop a DNA profile that  
18 gives us a graphical representation of what your DNA looks like that we  
19 can use then for comparisons to those reference standards we obtain.

20           Q     So you mentioned, basically, saliva from the mouth; is that  
21 correct?

22           A     I did, yes.

23           Q     Blood on a t-shirt --

24           A     Yeah.

25           Q     -- or anywhere?

1 A Correct.

2 Q These are both bodily fluids; is that right?

3 A Yes.

4 Q So are bodily fluids the -- generally the best place to find  
5 DNA?

6 A There are lots of places to find DNA. But yes, those are going  
7 to be more rich in DNA.

8 Q More rich. So better chance of getting a good sample?

9 A Yes.

10 Q So is there another DNA that you can do just by not having  
11 bodily fluid?

12 A There -- there is one type of DNA that we call touch DNA. As  
13 far as touch DNA is concerned, it's just the DNA that's actually sloughed  
14 off from your hands, from your skin cells. The more you handle an item,  
15 the more you're prone to leaving behind skin cells that contain your DNA  
16 on that item.

17 Q Okay. So how is it that you do an analysis for DNA?

18 A As far as the laboratory procedure?

19 Q Yeah. As far as the laboratory procedure for a comparison  
20 from one item to known reference sample?

21 A Uh-huh. So let's start with, again, for a touch DNA sample,  
22 like I mentioned, the water bottle, I will swab the water bottle, I'll cut the  
23 little cotton tip off the end of it, I'll shove it down into a little tube, I'll add  
24 the chemicals to it that help to -- to isolate the DNA and get rid of the  
25 rest of the other junk. If you think back to your high school biology, you

1 don't need the mitochondria and the ribosomes and none of that  
2 matters. We're focusing on the DNA.

3           So once we get rid of the other junk, we can actually put it  
4 onto a genetic Xeroxing machine that makes millions upon millions of  
5 copies of it. Once we have those millions of copies, we can then put it  
6 onto an instrument that I mentioned makes a graphical representation of  
7 the DNA profile. It looks like just a bunch of peaks. But where those  
8 peaks lie tells us a -- a lot of information about your particular profile.

9           I will do the same with a reference standard. So you're asking  
10 what a reference standard is. I take that same swab, not the one I took  
11 from the water bottle, but we'll take a swab and swab the inside of your  
12 cheek. Okay. The inside of your cheek contains the same types of cells  
13 that you have on your hand. So I will then do the same thing. Cut the  
14 little cotton swab, put it in a tube, isolate the DNA, get rid of the rest of  
15 the junk, and make millions of copies of it.

16           Now, I have a profile that I can definitely say is your profile  
17 and compare it back to the one I got from the evidence. I can either  
18 make an inclusion or an exclusion.

19       Q     So an inclusion or an exclusion; is there any other result that  
20 you might get?

21       A     We do have an inconclusive, which means I can never make  
22 any conclusions on it, ever. We have internal thresholds that we have to  
23 meet. And if the profile doesn't meet those thresholds, it's just, basically,  
24 a bunch of information that's either too complex or too limited for us to  
25 be able to call.

1 Q So what might cause an inconclusive result?

2 A Like I said, there's either too much -- it's too complex or  
3 there's too much DNA. Even though your DNA is different than the  
4 person sitting next to you, we know that people -- there's only a certain  
5 amount of markers available each different location. So one of you may  
6 have a 14 and the other one may have a 14. I can't tell who donated  
7 that 14 marker at that location.

8 So if there's too much information, I can't distinguish between  
9 individuals. If there's too little information, sometimes there's just not  
10 enough DNA present in the sample for us to be able to get a profile  
11 that's useable and -- and we just don't end up with any peaks  
12 whatsoever.

13 Q Okay. So maybe too much DNA from too many people?

14 A Correct.

15 Q So if we passed a pen around this jury box, it would possibly  
16 get a lot of DNA on it?

17 A I wouldn't even want to process it.

18 Q Okay.

19 A Yeah.

20 Q And so specifically here, you did an analysis?

21 A I did.

22 Q On the gun that was found; is that right?

23 A On a revolver, correct.

24 Q A Taurus revolver?

25 A Yes.

1 Q And you swabbed that whole gun?

2 A I swabbed portions of the gun.

3 Q Which portions?

4 A So I swabbed the grips, the trigger, the hammer and the  
5 cylinder release. Those are all going to be areas that are a little bit more  
6 rigid that would be able to cling to the skin cells that were sloughed off  
7 the hand. And then those skin cells tend to get a little bit more stuck in  
8 those rough areas. And then those are going to be good sources for us  
9 to swab to be able to get the DNA out of there.

10 Q And then you did a comparison of that against the known  
11 profile of Ceasar Morales -- or Ceasar Valencia; is that right?

12 A I did.

13 Q That was a reference standard comparison, Ceasar Valencia  
14 to the swab from the revolver?

15 A Yes.

16 Q And what result did you come out with there?

17 A I obtained a mixture of -- sorry, a mixture of four individuals on  
18 that particular gun, with at least one being male. Because there is a lot  
19 of information on there, I was only able to conclude that there is a partial  
20 major DNA profile consistent with a single, unknown female.

21 Q Okay. So the major profile found was a female?

22 A Correct.

23 Q How do you determine that?

24 A When we take a look at a profile, again, I told you it's a bunch  
25 of peaks. There's a lot of information in those peaks that can tell us

1 about the DNA profile. So the higher the peak, the more DNA. If we've  
2 got three or four peaks, depending on how they're balanced, if this peak  
3 is really high and this peak is really low, the higher peak is going to be  
4 attributed to the one with more DNA. So more DNA equals major profile.  
5 But I wasn't able to obtain a DNA profile at all of the places that we look  
6 at, so it's partial. Partial major profile.

7 Q Okay. So major profile would be the one that you get the  
8 information on?

9 A The -- that was the one I was able to make conclusions on,  
10 yes.

11 Q Okay. The other three minor profiles -- is that fair?

12 A Yes.

13 Q Okay. The other three minor profiles, can you make any  
14 conclusions about those?

15 A No. That is what we call inconclusive, which means it doesn't  
16 meet our internal thresholds to be able to do anything with, so we just  
17 have to call it inconclusive and walk away from it.

18 Q Okay. So you -- only thing you can tell me is that there was --  
19 at least one of the individuals in the minor profile was male?

20 A Correct.

21 Q And the major profile was female?

22 A Correct.

23 Q Potentially with that major profile, if you had a reference  
24 standard, would you be able to identify that to a female?

25 A Yes.

1 Q Okay. But can you do anything with those three minor  
2 profiles?  
3 A Never.  
4 Q Okay. So can you tell me whether one of those minor profiles  
5 was Ceasar Valencia?  
6 A I cannot.  
7 Q You can't tell me whether it is?  
8 A I cannot.  
9 Q You can't tell me whether it isn't?  
10 A Correct.  
11 Q Can you tell me whether one of those minor profiles was  
12 Officer Jeremy Jacobitz?  
13 A I cannot.  
14 Q You can't tell me whether it is?  
15 A I cannot.  
16 Q You can't tell me --  
17 A Correct.  
18 Q -- whether it isn't? Can you tell me if one of those profiles is  
19 Donald Trump?  
20 A I cannot.  
21 Q You can't tell whether it is?  
22 A I cannot.  
23 Q You can't tell me whether it isn't?  
24 A Correct.  
25 Q Okay. I -- I get it. Is there something called the donor effect



1 with DNA?

2 A There is a lot of research around that, yes. And what that  
3 means is there's a theory that there are some people who are prone to  
4 shedding and leaving behind more DNA than others. The person sitting  
5 next to you may just be sloughing off cells at a greater rate than you are.  
6 There are a lot of things that come into effect when this happens though.

7 It depends on -- you know, things can change. The  
8 environment can have an effect on this. Right now, I'm a little warm,  
9 right. So I'm sweating a little bit more. So I'm going to tend to probably  
10 shed a few more cells, you -- you know, under the sweat. It depends on  
11 how much pressure is applied to an item. So if you're talking about  
12 touch DNA, if I handle it for a long time versus a short time, that's going  
13 to depend on how much DNA is left behind. Again, pressure, if I just  
14 push on this, depending on how humid it is, how dry it is, if I've just  
15 washed my hands, there are a lot of facts that can contribute to this. So  
16 one person may be sloughing off cells at a higher rate, but depending on  
17 the environment the other person is in, they may also have variability.

18 Q So at this point in time, you're the only female that we've  
19 heard about in this case.

20 A Correct.

21 Q Is that your DNA?

22 A It is not.

23 Q How do you know?

24 A Every time we obtain an unknown profile, we check. Every  
25 time we obtain an unknown profile in regards to evidence, we actually

1 maintain a staff database, which is just a database of the staff internally.  
2 Because we know it is possible to leave ours behind. We're all up in the  
3 samples and we're in -- we're in the evidence.

4 As a condition of employment for everyone in the criminalistics  
5 bureau, which includes our crime scene, our forensic scientists and the  
6 evidence vault, so the people that transport our evidence back and forth  
7 for us, they are required to give us a reference standard to populate the  
8 database so in the event that we find an unknown, we check against that  
9 database to ensure that those of us that handle it on a regular basis  
10 aren't actually contaminating it.

11 Q Isn't it true that you generally find this mixture issue with  
12 guns?

13 A It is true, yes.

14 Q Very common?

15 A It's common. We either see no DNA, because the -- just the  
16 nature of the beast. Maybe it's been cleaned, because you're supposed  
17 to clean it, right, for proper firearm handling. Or they get passed around  
18 a lot. So either don't have enough information or too much information.

19 Q So with what we have on this particular -- these results on this  
20 Taurus revolver, are you able to tell me whether only four people  
21 touched that gun or could it have been more than that?

22 A It could have potentially been more than that. The absence of  
23 DNA doesn't mean that they didn't handle it. It just means that there  
24 wasn't enough left behind for me to detect. A few of the peaks that I got  
25 in this profile were so low that there could potentially be some a little bit

1 lower that our instrumentation just can't detect. And again, a reason  
2 why those three smaller peaks are peaks associated with the three  
3 smaller people, we just don't make conclusions on.

4 Q Thank you.

5 MR. DICKERSON: State will pass the witness.

6 THE COURT: Defense, any cross-examination?

7 MS. PLUNKETT: Yes, Judge. May I approach your clerk?

8 THE COURT: Yes.

9 **CROSS-EXAMINATION**

10 BY MS. PLUNKETT:

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q You determined that there were at least -- there were four  
14 individual DNA profiles on that weapon, correct?

15 A Correct.

16 Q If there were more than four, you would also be able to  
17 determine that as well?

18 A No. We -- our -- our limit of validation is for four individuals.  
19 His question was potential. And like I said, there were lots of little peaks  
20 that I couldn't make any conclusion on, so there could be some that I  
21 can't even see.

22 Q So you have no ability to determine if there are more than four  
23 DNA profiles?

24 A I just -- I reported out that that is mixture of four individuals.

25 Q Is there a time when you cannot determine a partial major

1 DNA?

2 A Yes.

3 Q But --

4 A Quite often.

5 Q But here you did determine a partial DNA?

6 A Yes, I did.

7 Q And you excluded Ceasar Valencia as being the donor of that  
8 partial DNA?

9 A I did.

10 Q Did you compare the DNA profile to a sample from Officer  
11 Jeremy Jacobitz?

12 A I did not.

13 Q You mentioned touch DNA?

14 A I did.

15 Q Is touch DNA different than sweat DNA?

16 A No. The DNA is the same. It's just a different transport for the  
17 cells and how they got there.

18 Q And you mentioned that more sweat would lead to more DNA  
19 being left on an object?

20 A Could potentially, yes, depending on the individual. And  
21 again, if I've just washed my hands, there's going to be less cells for me  
22 to slough off, because I just washed them away. But if you haven't  
23 washed your hands in a couple hours and you're sweating, you could  
24 potentially leave more of those cells when the sweat drains off.

25 Q I'm going to reintroduce State's Exhibit Number 32; is this the

1 weapon that you swabbed for DNA?

2 A Yes, it is.

3 Q As you are looking at that weapon, particularly the handle  
4 appears to have a lot of various grooves on it; is that correct?

5 A Correct.

6 Q Would those grooves increase the probability of finding a  
7 useable DNA profile?

8 A Yes, they would. Which is why that was one of the areas that  
9 I chose to swab in order to get the DNA profile.

10 MS. PLUNKETT: Court's indulgence.

11 Q Is this weapon the only item that you swabbed for DNA?

12 A This was the only one requested, yes.

13 Q You were never provided with a moped to swab for DNA?

14 A I was not.

15 Q You were never provided with the moped handles to swab for  
16 DNA?

17 A I was not.

18 Q Would you agree that you could obtain DNA from the handles  
19 of a moped or bicycle?

20 A It's potential.

21 MS. PLUNKETT: Thank you.

22 THE COURT: Any redirect?

23 MR. DICKERSON: Just briefly, Your Honor.

24 **REDIRECT EXAMINATION**

25 BY MR. DICKERSON:

1 Q Would it have mattered if you had a reference sample that you  
2 compared to Officer Jeremy Jacobitz?

3 A It would not, because the partial major profile obtained in this  
4 case is a unknown female.

5 Q Okay. And the profile that you had for Ceasar Valencia shows  
6 he's a male?

7 A Correct.

8 MR. DICKERSON: Thank you.

9 THE COURT: Any recross?

10 MS. PLUNKETT: No, Judge.

11 THE COURT: May this witness be excused?

12 MR. DICKERSON: Yes, Your Honor.

13 THE COURT: Thank you, ma'am. You are excused.

14 THE WITNESS: Thank you, sir.

15 THE COURT: State's next witness, please?

16 MR. DICKERSON: Can I have a -- just a few minutes, Your  
17 Honor? I just need to see if they're out there.

18 THE COURT: We'll be in recess --

19 MR. DICKERSON: Thank you.

20 THE COURT: -- for five minutes. I'm going to request that the  
21 jury remain in the box. We're just going to take a real short recess.  
22 Thank you.

23 [Court recessed at 12:18 p.m. until 12:20 p.m.]

24 [In the presence of the jury.]

25 MR. DICKERSON: May we approach briefly, Your Honor.

1 THE COURT: Yes.

2 [Bench conference transcribed as follows:]

3 MR. DICKERSON: I apologize. The time that I had set up is I  
4 thought we were going to take a 12:30 break. So I -- when you  
5 announced at the start of the day that we are going to be going till 1:30, I  
6 called them in. The next witness left the forensic lab at -- at noon, so he  
7 should be here just shortly. We just ask for a short -- short recess.

8 THE COURT: How long, 10 minutes?

9 MR. DICKERSON: Yeah. 10, 15.

10 THE COURT: 15 --

11 MR. DICKERSON: 15 would be great.

12 THE COURT: Let's see -- I've still got to take -- my staff is  
13 going to have to have a lunch break --

14 MR. DICKERSON: Absolutely.

15 THE COURT: -- so I'm going to take it at 1:30.

16 MR. DICKERSON: And -- and we're fine with that. We plan  
17 on --

18 THE COURT: Okay.

19 MR. DICKERSON: -- only putting on one witness after that  
20 anyway.

21 THE COURT: All right. So a 15-minute break?

22 MR. COYER: Is that Sahota?

23 MR. DICKERSON: Yeah, Sahota.

24 THE COURT: All right.

25 MR. COYER: We can -- Judge, while we're here --

1 THE COURT: Huh?

2 MR. COYER: While we're here, we can probably short circuit  
3 and save some time. We're willing to stipulate to Mr. Sahota's  
4 credentials as well as an expert. The next witness that -- that  
5 Mr. Dickerson is talking about is Eric Sahota, who is a fingerprint expert.

6 THE COURT: Right.

7 MR. COYER: And we are willing to stipulate to his expertise  
8 as well.

9 THE COURT: So if they're willing to stipulate, you don't have  
10 to call that witness.

11 MR. DICKERSON: No. I think they're just trying to get past  
12 the -- the point where we're going to come and have a bench conference  
13 where we announce that he's an expert or not.

14 THE COURT: Oh, I see what you're saying --

15 MR. DICKERSON: Or challenge it --

16 THE COURT: So you're stipulating -- I'm sorry, I  
17 misunderstood.

18 MR. COYER: That's -- yeah. That's okay.

19 THE COURT: You're stipulating to his qualifications?

20 MR. COYER: Like we did with Ms. May.

21 THE COURT: Okay. No. I -- I --

22 MR. COYER: We're happy to stipulate --

23 THE COURT: -- appreciate that.

24 MR. COYER: Yeah.

25 MR. DICKERSON: And I'll still get into them for the edification



1 of the jury, but yeah.

2 THE COURT: Okay. So I'm going to -- what's the  
3 gentleman's name?

4 MR. DICKERSON: Eric Sahota, S-A-H-O-T-A.

5 THE COURT: Okay. I'm going to -- based on the stipulation  
6 of the parties, I'm going to accept Mr. Sahota as an expert, a fingerprint  
7 expert and let him testify, that is, to his opinion.

8 MR. DICKERSON: Thank you, Your Honor.

9 THE COURT: Case --

10 MR. LEXIS: We might as well take of the other guy too.

11 MR. DICKERSON: Jason Altnether?

12 MR. LEXIS: He's here, and you guys have the --

13 MR. DICKERSON: He's the chemist.

14 MR. LEXIS: [Indiscernible.]

15 MR. DICKERSON: Yeah.

16 MS. PLUNKETT: Oh, yeah.

17 MR. COYER: Yeah. We'll stipulate as well.

18 THE COURT: And what's his name?

19 MR. DICKERSON: Jason Altnether.

20 THE COURT: Say it again.

21 MR. DICKERSON: A-L-T-N-E-T-H-E-R, I believe.

22 THE COURT: Okay. And what's his expertise?

23 MR. DICKERSON: His expertise in controlled substance  
24 analysis.

25 THE COURT: Okay. Based on the stipulation of the parties,

1 I'll accept this officer --

2 MR. DICKERSON: Forensic Scientist Jason Altnether.

3 THE COURT: Forensic Scientist Jason Halnetter --

4 MR. DICKERSON: Yeah, I know.

5 MR. COYER: It's tough.

6 MR. DICKERSON: Mr. Lexis had a tough time with it too.

7 THE COURT: -- as a expert --

8 MR. COYER: It's not as hard as Lefebvre.

9 THE COURT: -- and let -- and allow him to give an opinion.

10 MR. DICKERSON: Thank you, Your Honor.

11 MR. COYER: Very good.

12 THE COURT: All right. Thank you.

13 MR. DICKERSON: Very much appreciate it.

14 MS. PLUNKETT: Thank you.

15 [End of bench conference.]

16 THE COURT: Ladies and gentlemen, we're going to take  
17 a 15-minute recess. During this recess you're admonished not to talk or  
18 converse among yourselves or with anyone else on any subject  
19 connected with this trial, or read, watch, or listen to any report or -- or  
20 commentary on the trial or any person connected with this trial by any  
21 medium of information, including without limitation, the social media,  
22 text, newspapers, television, the Internet, and radio; do not visit the  
23 scene of any of the events mentioned during the trial or undertake any  
24 investigation; do not do any posting or communications on any social  
25 networking sites or do any independent research, including Internet

1 searches, or form or express any opinion on any subject connected with  
2 the trial until the case is finally submitted to you.

3 We're in a 15-minute recess.

4 [Court recessed at 12:23 p.m. until 12:41 p.m.]

5 [Outside the presence of the jury.]

6 THE COURT: This is continuation of the trial of *State of*  
7 *Nevada vs. Ceasar Valencia*. Let the record reflect the presence of  
8 counsel for the State, counsel for the defense, and the defendant.

9 Bring the jury in, please.

10 [Jury reconvened at 12:42 p.m.]

11 THE COURT: Let the record reflect that the jury is present in  
12 the jury box.

13 State, call your next witness, please.

14 MR. DICKERSON: State's next witness will be Eric Sahota.

15 **ERIC SAHOTA**

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

18 THE CLERK: Please be seated.

19 THE WITNESS: Thank you.

20 THE CLERK: Will you please state and spell your name for  
21 the record?

22 THE WITNESS: Eric Sahota, E-R-I-C S-A-H-O-T-A.

23 MR. DICKERSON: May I proceed, Your Honor?

24 THE COURT: Yes.

25 **DIRECT EXAMINATION**

1 BY MR. DICKERSON:

2 Q How are you employed, sir?

3 A I'm a forensic scientist employed by the Las Vegas  
4 Metropolitan Police Department assigned to the Forensic Laboratory  
5 Section, Latent Print Detail.

6 Q And how long have you been employed in that capacity?

7 A Approximately 10 and a half years.

8 Q What training experience do you have that allows you to hold  
9 this position?

10 A I have bachelor of arts degrees -- excuse me, bachelor of arts  
11 degree in the natural sciences from the Johns Hopkins University.  
12 Following my degree, I worked for the Department of Neuroscience at  
13 the Kennedy Krieger Institute as a research assistant, where I did bench  
14 work in cell biology and biochemistry.

15 Following that, I spent 18 months with the Baltimore City  
16 Police Department in their crime laboratory as a crime lab technician.  
17 That's equivalent to a crime scene analyst or a CSI here in Las Vegas.  
18 My duties -- my training and duties included responding to crime scenes,  
19 documenting evidence, taking photographs. And that included the  
20 development and recovery of latent prints.

21 And then in 2007, I came to Las Vegas as a forensic scientist  
22 trainee where I started an 18-month intensive training program in latent  
23 print recovery analysis and comparison. And, basically, that -- that  
24 training program consisted of both academic and -- and practical  
25 exercises. There was book work and papers I had to write, tests I had to

1 take. And then practical -- practical training and practical tests in the  
2 development and recovery analysis of latent prints.

3           Following the -- the completion of my training program, I took  
4 a competency test and began doing case work. And then we're tested --  
5 we're proficiency tested on an ongoing basis in minimum once per year.

6           Q     And what is a latent print?

7           A     So the easiest way to understand what a latent print is, is to --  
8 is to look at the palm of your hand. And if you look at the skin on your  
9 hand, you'll notice that it's not smooth. There's some different features  
10 on there. You'll see some dark lines around the knuckles of your fingers  
11 and in various places on your palm. We call those flexion creases. And  
12 if we look a little bit more closely, and we look at the skin in between  
13 those flexion creases, we'll notice that skin isn't smooth either, but  
14 consists of a series of ridges.

15           And these ridges aren't straight, continuous lines. They  
16 exhibit different features, different -- different patterns. So if we take one  
17 ridge and we start tracing it, we'll notice that it might split into two ridges  
18 or it might -- might abruptly end, or you might have some very -- some  
19 small ridges where you can see both ends in different places.

20           These ridges then form what we call ridge arrangements. So  
21 we look at these ridges in sequence and we look at the -- we look at the  
22 shapes and the features in sequence, in a -- in a series of ridges. And  
23 we use that for what we call its -- its discriminating power, meaning that  
24 the variability in these ridge arrangements allow us to distinguish  
25 between skin impressions from two different people.

1 Q And does everyone have fingerprints?

2 A Everyone who's medically -- otherwise normal, and medically  
3 healthy has -- has fingerprints, yes.

4 Q Okay. And how is that people leave fingerprints?

5 A So, basically, the way a -- the way a fingerprint or a latent  
6 impression -- and we call it latent, because it's not visible to the naked  
7 eye. We have to use some sort of chemical or physical process to make  
8 it visible. But the way you make a latent impression is -- best way to  
9 think about that is to think of an ink stamp.

10 So basically, an ink stamp, you have the -- you have the  
11 template. You have that rubber template. You have the transfer  
12 medium, which is typically ink. And then you have the surface that  
13 you're -- that you're transferring that template onto. And so by taking  
14 the -- taking the stamp with the medium, with the ink or whatever it is,  
15 and then you place that on a sheet or paper or some other surface,  
16 when you take it away, you've now left behind an impression of -- of  
17 what -- whatever was on that stamp.

18 The friction ridge skin, or the ridge skin on your -- on your  
19 hands and your fingers behaves in much the same way. But in this  
20 case, the template are those ridge arrangements that are on your skin.  
21 The medium is typically going to be something like sweat or some other  
22 skin residue, but it can be other things. It can be oil from the, you know,  
23 greasy hamburger you had from lunch, or it could be blood or ink or  
24 paint, or -- or anything.

25 And then when you have those residues on your skin and you

1 touch a surface or you touch an item, you could potentially leave behind  
2 an impression of those ridge arrangements on your skin.

3 Q So what factors go into there being latent prints on an object?

4 A So again, if we think about that -- that analogy of the ink  
5 stamp, that when you're making an impression, it's the interaction of  
6 three materials; it's the template, it's the transfer medium, and it's -- it's  
7 the receiving surface. So if a have a problem in any -- any one or all  
8 three of those areas, that can affect the ability to leave -- leave an  
9 impression at all. It could also affect the ability to leave an impression  
10 that can be -- can be recovered.

11 So number one, the skin -- your skin can be damaged. One of  
12 the things we found, you know, certain -- certain individuals that do a lot  
13 of manual work, they don't leave -- they don't leave fingerprints as well  
14 as people that have normal, healthy skin. It depends on what kind of  
15 residue or that transfer medium that's on the skin.

16 So there's couple of different types of skin secretions that we  
17 can find in latent prints. One is what we call eccrine, eccrine secretions.  
18 But, basically, that just means that the eccrine secretions have a high  
19 water content. They're mostly water and they don't tend to be persistent  
20 over time. Basically, the water just evaporates and then that -- that  
21 impression is gone.

22 And then there's another type of skin residue that we call  
23 sebaceous, which is quite a bit more oily or more fats and oils. And  
24 those sebaceous secretions tend to be a little bit more persistent. Now,  
25 what -- what secretions you have on your skin and in what combination

1 can be highly variable between -- between different individuals.

2 And then, of course, there's the surface that we're trying to  
3 leave the impression on. So we have what we call ideal surfaces and  
4 nonideal surfaces. Ideal surfaces are going to be things that are going  
5 to be smooth and shiny. So clean, undamaged glass, clean -- clean  
6 painted surfaces, whether it be wood or metallic. And then the nonideal  
7 surfaces are going to be the -- the opposite things that are going to be  
8 rough and textured, not -- not smooth and shiny.

9 So maybe an easy example to -- to provide is something like  
10 sandpaper. Sandpaper would be highly undesirable or unproductive  
11 surface for us to try to recover latent prints off. And then, of course, you  
12 have the entire spectrum in between.

13 Q So is it safe to say by that, that not everybody leaves the  
14 same type of latent print --

15 A It --

16 Q -- or the same quality?

17 A It -- it would be. There's -- there's something that we -- we  
18 refer to as the -- as the donor effect. So they -- they discover this first in  
19 DNA. They found that some individuals are good DNA donors and some  
20 just aren't. And -- and our own internal study, we found, is that the same  
21 seems to be true for latent prints, is that some people are good  
22 fingerprint donors. Some people are good at leaving latent prints  
23 behind, and some aren't. Even under -- even under ideal conditions,  
24 there are some individuals that just either don't leave latent -- latent  
25 prints or they don't leave latent prints than we can -- we can recover and



1 then use for comparison purposes.

2 Q How does timing of the print factor into -- or multiple prints, I  
3 should say, possibly, factor into your analysis and your ability to recover  
4 prints?

5 A Can I clarify? Are you talking about -- are you just talking  
6 about the period of time or are you talking about the number of touches  
7 on a -- on a surface?

8 Q I'm talking about the number of touches on a surface over  
9 time.

10 A Yes. That can definitely have an impact. So if you think  
11 about -- if you just think about a muddy field, you're walking through a  
12 muddy field and you turn around and you look behind you, and you'll see  
13 perhaps an impression of your -- the sole of your shoe. Turn that around  
14 and now say, okay, now there's 150 people behind you that now walk  
15 through that same muddy field. And then what you end up with is a big  
16 jumbled mess of mostly unrecognizable shoe impressions.

17 So both the -- the length of time and the number of touches  
18 over that period of time can -- can have an impact. Where time can  
19 become a contributing factor, again, has to do with the persistency of the  
20 latent print residue. So depending on the composition of the -- of the  
21 sweat or the skin secretions, they may or may not be persistent over  
22 time. So if we're looking at a -- at an item or piece of evidence after  
23 significant period of time has elapsed, then that potentially could inhibit  
24 our ability to recover latent prints.

25 Q And so when you get a latent print from an object along those

1 same lines of what you just discussed, would you expect to find a latent  
2 print more likely of good quality from the person who last touched it as  
3 opposed to the people who touched it before that person?

4 A That would be my expectation. But that may or may not  
5 actually be what happens.

6 Q Okay. And how would contact -- outside contact -- with the  
7 surface that you're analyzing possibly affect those prints?

8 A So when we're -- we're talking about developing and  
9 recovering latent prints, again, we're talking about -- we're talking about  
10 some sort of residue that's on the -- on the surface of an item. I mean,  
11 it's -- three dimensionally, it's very, very small. I mean, it doesn't --  
12 doesn't look three dimensional, but you're actually talking about a  
13 physical residue on top of another -- on top of another surface. So  
14 anything that comes into contact with that -- with that residue, whether  
15 it's another individual, an animal, another -- another item or object, any  
16 kind of contact has the potential for disturbing -- disturbing those --  
17 disturbing or removing those residues from the surface.

18 Q Say shoving that item into the waistband, what expect would  
19 you -- what would you expect that to do to the prints?

20 A I would say that would -- that would qualify as that surface  
21 coming into contact with another -- another object or surface. And  
22 there's the potential that it could disturb any residues that are on there.

23 Q In this particular case, you were asked to do an analysis?

24 A I was -- yes, I was.

25 Q And the examination specifically had to do with a Taurus

1 Model 85 .38 Special revolver?

2 A That's correct.

3 Q And you were comparing that to the known fingerprints of  
4 Ceasar Valencia?

5 A That's correct.

6 Q And Jeremy Jacobitz?

7 A That's correct.

8 Q And let's take a look at that -- that gun.

9 Publishing for members of the jury State's Exhibit 32.

10 This revolver here, Taurus .38 Special revolver, where are the  
11 good surfaces, if at all, to find prints on this gun -- or latent prints on this  
12 gun?

13 A So this is -- this is a pretty small gun. And I can't tell you the  
14 exact -- I didn't measure the barrel length, but it's -- might be a -- might  
15 be an inch and a quarter or inch -- inch and a half. But what we have  
16 over -- well, I guess what we can do is we can talk about what's -- what  
17 are not good surfaces. So now if I touch this, will it --

18 Q It will.

19 A Okay. So this portion here, it's a -- it's a texture -- textured  
20 rubber grip. Generally from based on my experience in the -- and our  
21 own internal -- internal case reviews, we have found that textured  
22 rubber -- textured rubber surfaces, textured plastic surfaces typically  
23 aren't going to be -- aren't going to be very good.

24 The trigger area is just, again, it's a very small surface area.  
25 There's just not a lot of room to leave -- to leave an impression. So even

1 not in this case, but in other cases where we have developed  
2 fingerprints on -- on triggers, there's just simply not enough information  
3 for us to do anything. So our expectation of finding anything useful there  
4 is pretty low.

5 The hammer in the back, again, small area and it tends to  
6 be -- tends to be textured to improve grip.

7 And then now, if I tap this, will they go away or?

8 Q Let's go ahead and change the color.

9 A Okay.

10 Q So we'll change the color. And point out what, if anything, you  
11 might find a latent print on.

12 A Okay. So generally -- generally based directly on my  
13 experience processing firearms, and specifically revolvers, where I tend  
14 to recover latent prints are on the frame, the frame -- frame area over  
15 here, and on the -- on the cylinder. Those -- those tend to be the areas  
16 that, in most cases, they'll be enough space where it's -- you have a  
17 smooth, metal surface and you can -- you can leave a viable latent print.

18 Q This particular firearm, were you able recover any latent prints  
19 from it?

20 A I was able to recover one.

21 Q Just one?

22 A Just one.

23 Q And were you able to analyze that or compare that to the  
24 known prints that you were looking at?

25 A I was, yes.

1 Q And what were your results and conclusions?  
2 A If I recall correctly -- may I refer to my report to refresh my  
3 recollection?  
4 Q Yes, if that would refresh your recollection.  
5 A Thank you. So that impression, I identified, to the right thumb  
6 of Officer Jacobitz.  
7 Q Officer Jeremy Jacobitz?  
8 A Jacobitz, yes.  
9 Q And, specifically, where was it that you found that latent print?  
10 A That would be on the cylinder. That would be this area that I  
11 circled in blue on the monitor.  
12 Q Go ahead and just indicate again. The cylinder is --  
13 A Cylinder is that part there.  
14 Q Okay. No other latent prints on that firearm?  
15 A No. I didn't find any -- any other -- any other latent  
16 impressions, not even a little bit, any other part of the gun.  
17 Q Okay. And on this particular gun, is it surprising to you that  
18 you only found one?  
19 A No, I'm not surprised.  
20 Q The size of it and the texture of that grip isn't very conducive  
21 to prints?  
22 A No. Actually, I was surprised that I developed anything.  
23 Q Oh. So you're surprised that you even had one print?  
24 A Generally, the -- our experience is with firearms evidence in  
25 general, not even necessarily specifically handguns, is that we're

1 recovering latent prints less than 14 percent of the time.

2 Q Just so I'm clear, that's less than 14 percent of the time you  
3 look at handguns do you recover latent prints from them?

4 A Correct. Yeah. And from -- based on -- based on our  
5 cumulative experience as a laboratory, the -- processing firearms is  
6 generally so unproductive that we don't even -- we don't even routinely  
7 look at firearms anymore. We won't process firearms unless it's by  
8 special request. Have to be special circumstances for us to even look at  
9 those items anymore.

10 Q Okay. Sir, let's say 10 people walk into a room. They all  
11 touch something in that room. Is it possible to recover prints from all 10  
12 people?

13 A It's possible.

14 Q Say those same 10 people walk into same room another time,  
15 room is clean, they all touch something in that room; is it just as possible  
16 not to recover any prints?

17 A That's also possible.

18 Q Also possible?

19 MR. DICKERSON: State will pass the witness.

20 THE COURT: Any cross-examination by the defense?

21 MS. PLUNKETT: May I approach your clerk, Judge?

22 THE COURT: Yes.

23 **CROSS-EXAMINATION**

24 BY MS. PLUNKETT:

25 Q Good afternoon, sir.

1           A     Good afternoon.

2           Q     I just want to clear this up. When -- when we are describing  
3 prints, it's most common to think of fingerprints, correct?

4           A     Most commonly.

5           Q     But prints, like you said, can be obtained from the middle of  
6 the finger, the palm, the entire hand, basically?

7           A     They can.

8           Q     And you stated that anyone who is medically normal will have  
9 fingerprints?

10          A     Correct.

11          Q     And I just want to make it clear that Ceasar Valencia is  
12 medically normal --

13               MR. DICKERSON: Objection. Calls for speculation.

14               THE COURT: Overruled. You can answer the question.

15               MS. PLUNKETT: I -- I wasn't done yet, but --

16               THE COURT: Okay. State your question.

17 BY MS. PLUNKETT:

18          Q     He had fingerprints that you could compare to what you  
19 obtained from the weapon, correct?

20          A     Actually, I can't -- at the -- whatever -- I actually can't really  
21 say anything about the -- about the -- the skin of Mr. Valencia. I mean, I  
22 haven't examined his skin. I -- I couldn't tell you.

23          Q     When you performed this analysis, you had a sample from  
24 Mr. Valencia in which to compare what you obtained from the gun?

25          A     That's correct. I can give you the date on that, if you -- if that's

1 helpful.

2 THE COURT: No.

3 MS. PLUNKETT: No.

4 THE COURT: Just listen to the question --

5 THE WITNESS: Oh, sorry.

6 THE COURT: -- and answer the question. Thank you.

7 THE WITNESS: Apologies.

8 MS. PLUNKETT: Thank you.

9 BY MS. PLUNKETT:

10 Q You said that an ideal surface to obtain fingerprints from is  
11 one that is smooth and shiny, correct?

12 A That's correct.

13 Q I'm going to show and publish -- republish State's Exhibit 38.  
14 When looking at this photo, do you see anything else in the photo that  
15 you would describe as smooth and shiny?

16 A I would describe the cartridges as smooth, and they do reflect  
17 light, although they're -- they're not quite as -- there are degrees of  
18 shininess. So they have a degree of shininess to them, yes.

19 Q The cartridges are something from which you could obtain  
20 fingerprints?

21 A Possibly.

22 Q But those cartridges were not tested for fingerprints, correct?

23 A No. That's against our policy now actually.

24 Q At the -- when you say now, when did that policy go into  
25 effect?



1           A     Well, that was a few years ago. I don't recall the exact date,  
2 but it's -- it's been some time. So that, again, because we found that  
3 processing cartridges, that meaning the -- these bullets and bullet  
4 casings maybe you might be more familiar as referring to them, again,  
5 we just found it to be so unproductive that we just -- we stopped  
6 processing cartridges, again, except under special circumstances. And  
7 then later we expanded that to all firearms and -- completely.

8           Q     You stated that processing cartridges for fingerprints is  
9 unproductive, correct?

10          A     That's correct.

11          Q     How does that comport with the fact that an ideal surface is  
12 smooth and shiny?

13          A     Ideal surface, even -- even on ideal surfaces, that doesn't  
14 necessarily mean that you're always going to find prints on ideal  
15 surfaces. So the firearms are a little bit of a -- little bit of a different  
16 animal, partly because of the way -- partly because of they're handled,  
17 partly because of their -- they're stored. You know, you can put -- you  
18 can take cartridges out of a gun, but those cartridges could have been  
19 there for months, years, or -- or even longer. I can tell you that in, you  
20 know, my personal firearm, I don't think -- I don't think those cartridges  
21 have been touched in probably 18 to 24 months. I mean, there's just no  
22 reason to go in and handle -- handle those areas.

23                 So is that a potential explanation for why we're not finding very  
24 many prints on cartridges? It could be. I can't tell you why we don't find  
25 more latent prints on cartridges. I can just tell you that as we've studied

1 the actual output of processing hundreds and thousands of cartridges,  
2 we're recovering prints in a extremely small percentage of those cases.  
3 So those -- that's the real-world reality of how that works.

4 Q And you stated that placing a firearm into someone's  
5 waistband could possibly corrupt potential fingerprints, correct?

6 A Sure. Any -- any contact -- any contact with the surface can --  
7 could disrupt or remove residues that are on there.

8 Q Doing that same action would not corrupt the surface of the  
9 cartridges though, correct?

10 A Presumably not.

11 Q And in only 14 percent of cases you're able to obtain useable  
12 prints off of weapons?

13 A We were -- we were recovering latent prints in less than 14  
14 percent of the cases and -- but not all of those that we recovered were --  
15 were suitable for comparison. Meaning we recovered something and  
16 then when we got back to the lab bench and we did our more detail  
17 analysis and we determined that the latent print wasn't suitable for  
18 comparison, meaning I -- I couldn't render a conclusion using that  
19 information.

20 Q Can you give me a percentage of the times that you would find  
21 latent prints on cartridges in the same way that you gave the 14 percent  
22 on revolvers -- on firearms?

23 A Specifically -- specifically, no. I just know that the -- the stat I  
24 remember from that retrospective case study was that looking -- looking  
25 at all firearms evidence together, the overall recovery rate was less

1 than 14 percent. I can assure you that if the recovery rates were  
2 significantly higher for -- for cartridges, then we would still be doing  
3 them. I mean, we're a data-driven organization.

4 Q You -- as part of your job, you do still perform fingerprint  
5 testing on firearms, correct?

6 A Under special circumstances, yes.

7 Q In those cases, if it is requested, is the firearm along with the  
8 cartridges requested?

9 A So if I may -- if I may explain briefly the -- the way we actually  
10 get around to doing examinations is that some party, whether it's a  
11 detective or it's an attorney, they send us, basically, a -- basically, a  
12 work order. They gave a -- they send over some documentation that  
13 says we want you to perform these tests on these items of evidence.  
14 And so what happens is, sometimes the cartridges are packaged with  
15 the firearm. Sometimes they're packaged separately. Regardless,  
16 whatever -- whatever evidence we receive in the package, we test  
17 what's specified in the work order.

18 So there could be 10 items in a -- in an evidence package. If  
19 they only request testing on one item, we just test the one item. That's --  
20 that's how our laboratory system works. That's how our accreditation  
21 system works. That -- we do the scope of work that's put in by the  
22 requester.

23 Q And here, the requester did not ask for the cartridges to be  
24 tested for fingerprints?

25 A I don't specifically recall. So what would happen is with our

1 sample limits policy, if someone requested an examination of something  
2 that we normally wouldn't do, say for example, cartridges and cartridge  
3 cases, then my manager or someone higher up in my chain of command  
4 will have that conversation with the person that's requesting to  
5 determine whether it's needed or not. I don't see any of that part of the  
6 conversation. I just see the output, which is I'm either told to process  
7 cartridge cases or I'm -- or I'm not. And I don't know how those  
8 decisions get made.

9 Q And the only person that you can determine touched this  
10 weapon is Officer Jeremy Jacobitz?

11 A That's correct.

12 MS. PLUNKETT: Thank you. That's all.

13 THE COURT: Any redirect?

14 MR. DICKERSON: No, Your Honor.

15 THE COURT: Can this witness be excused?

16 MR. DICKERSON: Yes.

17 THE COURT: Thank you, sir. You're excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: State, call your next witness.

20 MR. LEXIS: Next one will be here at 2:15, Judge.

21 THE COURT: Okay. All right. Ladies and gentlemen, at this  
22 time we're going to take our lunch recess.

23 During this recess you -- you are admonished not to talk or  
24 converse among yourselves or with anyone else on any subject  
25 connected with this trial, or read, watch, or listen to any report of or

1 commentary on the trial or any person connected with this trial by any  
2 medium of information, including without limitation, to social media, text,  
3 newspapers, television, the Internet, and radio; do not visit the scene of  
4 any of the events mentioned during the trial or undertake any  
5 investigation; do not do any posting or communications or any social  
6 networking sites or do any independent research, including Internet  
7 searches, or form or express any opinion on any subject connected with  
8 the trial until the case is finally submitted to you.

9 We'll be in recess to 2:15?

10 MR. LEXIS: Yes.

11 MR. DICKERSON: That would be great, Your Honor.

12 THE COURT: We'll be in recess to 2:15. Thank you.

13 [Jury recessed at 1:09 p.m.]

14 THE COURT: Mr. Dickerson, when do you believe the State's  
15 going to rest?

16 MR. DICKERSON: I believe that we may request to rest  
17 tomorrow morning. And whether or not we -- we call somebody I think  
18 will be to be determined. But we would ask that we rest tomorrow  
19 morning, and ultimately expect to close tomorrow, absent a lengthy case  
20 by the defense.

21 THE COURT: I just wanted to notify defense counsel, be  
22 prepared to present witnesses sometime tomorrow.

23 MR. COYER: Certainly.

24 THE COURT: Okay.

25 MR. DICKERSON: Thank you, Your Honor.

1 THE COURT: Okay. Thank you, counsel.  
2 MS. PLUNKETT: Thank you, Judge.  
3 THE COURT: We'll be in recess.  
4 [Court recessed at 1:10 p.m. until 2:19 p.m.]  
5 [Outside the presence of the jury.]  
6 THE COURT: Thank you. Please be seated. This is  
7 continuation of the trial of *State of Nevada vs. Ceasar Valencia*. Let the  
8 record reflect counsel for the State, counsel for the defense, and the  
9 defendant are present.  
10 Are we ready to bring the jury in?  
11 MR. DICKERSON: We are, Your Honor.  
12 THE COURT: Okay. Please bring the jury in, please.  
13 [Jury reconvened at 2:20 p.m.]  
14 THE COURT: Let the record reflect the presence of the jury.  
15 State, are you prepared to call your next witness?  
16 MR. LEXIS: State calls Jason Altnether.  
17 **JASON ALTNETHER**  
18 [having been called as a witness and first duly sworn, testified as  
19 follows:]  
20 THE CLERK: Please be seated. Will you please state and  
21 spell your name for the record?  
22 THE WITNESS: Jason Altnether, J-A-S-O-N  
23 A-L-T-N-E-T-H-E-R.  
24 **DIRECT EXAMINATION**  
25 BY MR. LEXIS:

1 Q Where do you work, sir?

2 A I work for the Las Vegas Metropolitan Police Department  
3 Forensic Laboratory.

4 Q How long have you worked there?

5 A Approximately eight years now.

6 Q Talk about your education and training and experience.

7 A Well, I graduated from Arizona State University with a degree  
8 in chemistry. After I graduated, I was hired by the Mesa Police  
9 Department Forensic Laboratory in Mesa, Arizona, where I began  
10 training in the analysis of controlled and noncontrolled substances. I  
11 worked -- was in training for approximately six months there, working  
12 with senior members of the staff and receiving additional outside training  
13 from agencies like the FBI and the DEA in such analysis.

14 I worked for the Mesa Police Department for approximately  
15 five years. I've been in Las Vegas for approximately eight years where  
16 I've been doing pretty much the same job, analyzing evidence for the  
17 presence of controlled and noncontrolled substances.

18 Q So you pretty much analyze controlled substances?

19 A That's the short answer, yes.

20 Q Is heroin a controlled substance?

21 A Yes, it is.

22 Q Is methamphetamine a controlled substance?

23 A Yes, it is.

24 Q Is cocaine a controlled substance?

25 A Yes, it is.

1 Q How do you test such substances?

2 A Through our analytical scheme, what I use is a series of  
3 chemical color tests, just to sort of give me an idea of what I'm working  
4 with, usually followed up -- and in this case, I did so, instrumental  
5 analysis which gives me a confirmatory data as to the identity of what  
6 that substance is.

7 Q Talk about some of the general acceptable methods in testing  
8 controlled substances.

9 A The -- the methods of analysis that I mentioned, controlled --  
10 color test, instrumental analysis. In this particular instance, I used a gas  
11 chromatograph mass spectrometer. These are all analytical routes that  
12 are approved methods that are used across nations -- across the county.

13 Q They're generally accepted in the scientific community?

14 A Yes, they are.

15 Q Okay. What type of safeguards do you guys use to ensure the  
16 accuracy of these tests?

17 A Well, the -- the color test, what we do is we do -- once we  
18 prepare these reagents in the laboratory, they undergo an initial quality  
19 control check, which is with both a positive and negative control on it.  
20 They're then followed up if they are a -- every month thereafter they are  
21 checked. And then before they're disposed of, they are checked once  
22 more.

23 For the instrumental, I ensure that every week, at least every  
24 week, that the instrument that I'm using is what we call tuned, meaning it  
25 is testing itself against a known standard to make sure that it is in proper



1 working order.

2 I also run what is known as a column test check, which means  
3 it is a known concentration with known substances in the sample that I  
4 run on this instrument, and that they come out at the appropriate  
5 retention time and have the appropriate fragmentation that I'm looking  
6 for.

7 MR. LEXIS: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MR. LEXIS:

10 Q Sir, I'm showing you State's Exhibit 4; do you recognize this  
11 bag?

12 A Yes, I do.

13 Q Does it have your initials on it?

14 A It does have my initials. It has my signature, along with my  
15 employee number, or P number, along with the date I sealed it, the time  
16 I sealed it, and an additional seal where I cut into the bag, which is  
17 marked both again with my employee number, and the date on which I  
18 sealed it.

19 Q Is that essentially to preserve the evidence for chain of  
20 custody purposes?

21 A Yes, it is.

22 Q What is chain of custody?

23 A Chain of custody is, again, just to maintain the integrity of the  
24 evidence to show who it's been transferred along the way. Our official  
25 chain of custody is held within a software program known as WinAce or

1 Windows Active Control Evidence. This chain of custody on the front of  
2 the package --

3 THE COURT: Sir.

4 Has that been admitted yet? Has the bag been admitted into  
5 evidence?

6 MR. LEXIS: Yes, Your Honor.

7 THE COURT: Okay. That's fine.

8 THE WITNESS: This chain of custody is just to show who's  
9 actually been inside the package. And in this case, it's been me.

10 BY MR. LEXIS:

11 Q Can you open -- well, it's already been opened. Sir, can you  
12 pull out what's inside?

13 A Okay.

14 Q Do you see three purported controlled substances there?

15 A I see three packages that have what we call the event  
16 number, along with the lab -- lab-assigned case number, and a  
17 lab-assigned item numbered on each of these, and each of these appear  
18 to bear my initials and the date on which I prepared them.

19 Q Signifying that you tested each one of those baggies?

20 A Yes.

21 Q And what's inside of it?

22 A Yes.

23 Q I see what you have in front of you right there is a black  
24 tar-type substance?

25 A Yes. This one is marked as No. 4.

1 Q Will you please hold that up for the jury? Thank you.  
2 Will you pick up one of the other baggies?  
3 A Would you like me to take it outside this bag --  
4 Q And that baggie, for the record, is marked State's Proposed  
5 Exhibit 4C.  
6 Does that appear to be a white, powdery type substance?  
7 A Yes, it does.  
8 Q Will you please up hold that up for the jury? Thank you.  
9 Baggie 4D, can you please hold that up to the jury as well.  
10 Does that appear to be a white, crystal-like substance?  
11 A Yes, it does.  
12 Q You stated that you tested each one of those items, sir?  
13 A Yes, I did.  
14 Q Following the general accepted principles through your  
15 training and experience with Metro?  
16 A Yes, I did.  
17 Q And that are accepted in scientific community?  
18 A Yes, they are.  
19 Q Okay. What were your results?  
20 A For the item that is marked 4D, identified methamphetamine.  
21 If I remember -- if I may refer to my -- my report, Your Honor.  
22 THE COURT: Will that refresh your recollection?  
23 THE WITNESS: Yes, it would, Your Honor.  
24 THE COURT: That's fine.  
25 THE WITNESS: It was 2.67 grams. The next bag, which is

1 marked --

2 BY MR. LEXIS:

3 Q Let's go back -- hold on, sir, before you stick that --

4 A Sure.

5 Q You -- the bag that you say marked 4D --

6 A Correct.

7 Q -- can you hold that up again to the ladies and gentlemen of  
8 the jury. And you say that that came back as 2.67 grams?

9 A Correct.

10 Q Of methamphetamine?

11 A Identified methamphetamine in the sample, yes.

12 Q The crystal-like substance?

13 A Yes.

14 Q Okay. Next baggie?

15 A This one is marked 4C.

16 Q All right. And is that the white, powdery substance?

17 A Yes, it is.

18 Q All right. And what did that come back as?

19 A That was 2.400 grams, in which identified cocaine in this  
20 sample.

21 Q The last baggie, sir.

22 A This one is marked 4B. And again, if I may refer to my notes?

23 Q And is that the black tar-like substance --

24 A Yes, it is.

25 Q -- that you held up earlier?

1           A     This is it.

2           Q     All right.

3           A     And this sample identified heroin at 11.60 grams.

4           Q     As part of your conclusions, do you generate a business  
5 record with your findings?

6           A     We generate a report. Yes, we do.

7           Q     Okay. Does it also have on there the verified event number,  
8 the subject impound number, and the results?

9           A     It does contain those -- those things, yes.

10           MR. LEXIS: May I approach, Your Honor?

11           THE COURT: Yes.

12       BY MR. LEXIS:

13           Q     Sir, I'm showing you what has been marked State's Proposed  
14 Exhibit 54; do you recognize that?

15           A     I do.

16           Q     Does that event number match up with the event number that  
17 is on State's Exhibit 4?

18           A     Yes, it does.

19           Q     And does it comport with what you testified earlier with  
20 regards to each one of those baggies, the weight, and the result?

21           A     Yes, it does.

22           Q     True and accurate representation?

23           A     It appears so, yes.

24           MR. LEXIS: Your Honor, I'd move to admit State's Exhibit --  
25 Proposed Exhibit 54.