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IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN TURNER,)	No. 76465
)	
Appellant,)	Electronically Filed
)	Feb 04 2019 12:32 p.m.
v.)	Elizabeth A. Brown
)	Clerk of Supreme Court
THE STATE OF NEVADA,)	
)	
Respondent.)	
)	

APPELLANT’S APPENDIX VOLUME VII PAGES 1244-1492

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Case No. 76465

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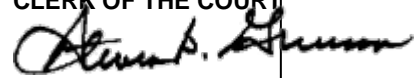
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1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6
7 THE STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 STEVEN TURNER AND CLEMON
HUDSON,)

11 Defendant(s).)
12

Case No. C-15-309578-1 and
Case No. C-15-309578-2

DEPT. XVIII

13
14 BEFORE THE HONORABLE MARK B. BAILUS,
15 DISTRICT COURT JUDGE
16

17 WEDNESDAY, APRIL 18, 2018

18 **TRANSCRIPT OF PROCEEDINGS RE:**
19 **JURY TRIAL - DAY 3**
20

21
22 (Appearances on page 2.)
23
24

25 RECORDED BY: ROBIN PAGE, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):

LEAH C. BEVERLY, ESQ.
(Deputy District Attorney)
JOHN L. GIORDANI III, ESQ.
(Deputy District Attorney)

For the Defendant
Steven Turner:

TEGAN C. MACHNICH, ESQ.
(Deputy Public Defender)
ASHLEY L. SISOLAK, ESQ.
(Deputy Public Defender)

For the Defendant
Clemon Hudson:

CLAY PLUMMER, ESQ.

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1 **LAS VEGAS, NEVADA, WEDNESDAY, APRIL 18, 2018**

2 [Proceedings commenced at 1:14 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Good morning -- or good afternoon, ladies and
6 gentlemen. Please be seated. This is the continuation of the trial in
7 Case Number C-15-309578-1 and -2, *Plaintiffs, State of Nevada vs.*
8 *Defendants, Steven Turner and Clemon Hudson.*

9 Counsel, state your appearances, please.

10 MS. BEVERLY: Leah Beverly and John Giordani for the
11 State.

12 MS. MACHNICH: Tegan Machnich and Ashley Sisolak for
13 Mr. Turner.

14 MR. PLUMMER: Clay Plummer for Mr. Hudson.

15 THE COURT: Let the record reflect the presence of the
16 defendants.

17 It's my understanding, counsel, that I will read the preliminary
18 instructions to the jury, at which time we'll proceed with opening
19 statements, and then we're going to take testimony after that.

20 MS. BEVERLY: Yes.

21 THE COURT: Is there any housekeeping matters we need to
22 take care of?

23 MR. GIORDANI: Yes. Briefly, Your Honor. There were some
24 statements made by both defendants. Your Honor made pretrial rulings
25 on some of them, redacted others. The -- the statements that have been

1 deemed admissible by Your Honor, we have not determined whether or
2 not we're going to play those in -- in our case in chief. For that reason
3 we're not going to reference them in any way in our opening statement,
4 and we'd ask that the defense not do so, because, obviously, they'd be
5 hearsay if they came in through them. And we haven't decided whether
6 we're going to play them or not.

7 THE COURT: Defense, what's your position?

8 MS. MACHNICH: We'll obviously respect that and understand
9 how the rules of evidence work, so we will not be going into them either.

10 THE COURT: Mr. Plummer?

11 MR. PLUMMER: Your Honor, I'm not going to mention
12 Mr. Hudson's statement in opening.

13 MS. MACHNICH: And we do have one more housekeeping
14 matter.

15 THE COURT: Yes.

16 MS. MACHNICH: Your Honor, we -- the parties have kind of
17 repeatedly discussed potentially doing a stipulation with regard to the
18 friendship between the homeowner and Mr. Turner. At this time, we're
19 not entering into a stipulation with specific language, but it's the
20 understanding of Mr. Turner that all parties will not be going into that
21 friendship, beyond the fact that there was a friendship, and that
22 Mr. Turner had been over to the house to smoke weed.

23 THE COURT: And that's fine. Apparently there's some text
24 messages that we're going to have a evidentiary hearing and I'm going
25 to make a ruling on whether they're admissible or not. Depending on my

1 ruling, I want a clarification of that stipulation. Because it appears that
2 that would be the underlying basis for the text, is some type of
3 relationship or friendship between the two -- two individuals.

4 MS. MACHNICH: Yes, Your Honor. And -- and Ms. Beverly
5 and I have discussed potentially redacting parts of the text messages, if
6 they are allowed in. But that will be something for after --

7 THE COURT: That's what I was going to inquire when we get
8 to that point. I was reviewing --

9 MS. BEVERLY: Right.

10 THE COURT: -- the text messages prior to court. And I
11 wanted to address those at the time we have the testimony regarding
12 the authentication of those messages.

13 MS. BEVERLY: And that's fine. And when we have the brief
14 hearing outside the presence of the jury, I do need to go into their
15 relationship a little bit for authentication purposes, but, obviously, not in
16 front of the jury. And whatever Your Honor rules on the text messages,
17 if they do come in, there will be things that need to come out of those.

18 MS. MACHNICH: Yeah. And that's our position as well.

19 THE COURT: And, quite frankly, counsel, I want you on one
20 of the breaks to confer and see if you can come to an agreement, if they
21 do come in, what is to be redacted.

22 MS. BEVERLY: Okay. I have it right here, so --

23 THE COURT: Sometimes since we now have the jury sworn,
24 I want to take shorter breaks, if possible.

25 MS. MACHNICH: Of course.

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MS. BEVERLY: Okay.

THE COURT: Thank you, counsel.

MS. MACHNICH: Thank you.

THE COURT: Can I bring the jury in?

MS. BEVERLY: Yes.

MR. GIORDANI: Yes Your Honor.

THE COURT: Thank you.

[Jury reconvened at 1:18 p.m.]

THE COURT: Please be seated. Will the parties stipulate to the presence of the jury?

MR. GIORDANI: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, you are now sworn members of this jury. Before we commence with opening statements, I need to make some introductory remarks.

You're admonished that no juror may declare to a fellow juror any fact relating to this case or his or her own knowledge. And if any juror discovers during the trial or after the jury has retired that he or she or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such situation to myself in the absence of the other jurors.

This means that if you learn during the course of this trial that you were acquainted with the facts of this case or the witnesses, and

1 you have not previously told me of this relationship, you must then
2 declare that fact to me.

3 You communicate to the court through my marshal. During
4 the course of this trial the attorneys for both sides, the parties, the
5 witnesses, and court personnel, other than the marshal, are not
6 permitted to converse with members of the jury. These individuals are
7 not being antisocial. They are bound by ethics and the law not to talk to
8 you. To do so might contaminate your verdict.

9 You are admonished additionally that you are not to visit the
10 scene of any of the acts or occurrences made mention of during this trial
11 unless specifically directed to do so by the court. Please don't
12 investigate this case or anyone who has anything to do with this case on
13 your own. Do not undertake any legal or factual research on your own.

14 What I now will say is intended to serve as an introduction to
15 the trial of this case. It is not a substitute for the detailed instructions on
16 the law which I will give to you at the close of the case and before you
17 retire to consider your verdict.

18 This is a criminal case commenced by the State of Nevada,
19 which I may sometimes refer to as the State, against Steven Turner and
20 Clemon Hudson. Defendants -- the case is based on an indictment.
21 The clerk will now read the indictment to the ladies and gentlemen of the
22 jury and state the plea of the defendants to the indictment.

23 Counsel is it an indictment or an amended indictment?

24 MS. BEVERLY: Amended.

25 MR. GIORDANI: Amended.

1 THE COURT: Okay. I'm going to restate that. Apparently it's
2 an amended indictment.

3 This case is based on amended indictment. The clerk will now
4 read the amended indictment to the ladies and gentlemen of the jury and
5 state the plea of the defendants to that amended indictment. Do you
6 have the amended? Thank you.

7 [Information read.]

8 THE COURT: Thank you.

9 This case is based on the amended indictment which has
10 been read to you by the clerk. You should distinctly understand that the
11 amended indictment is simply a charge and that it is not, in any sense,
12 evidence of the allegations it contains.

13 The defendants have pled not guilty to the amended
14 indictment. The State, therefore, has the burden of proving each of the
15 essential elements of the charges beyond a reasonable doubt. As the
16 defendants sit there now, they are not guilty. The purpose of this trial is
17 to determine whether the State will meet that burden.

18 It is your primary responsibility as jurors to find and determine
19 the facts. Under our system of criminal procedure, you are the sole
20 judge of the facts. You are to determine the facts from the testimony
21 you hear and the other evidence including exhibits introduced in court. It
22 is up to you to determine the inferences which you feel may properly be
23 drawn from the evidence.

24 At times, I may sustain objections or direct that you disregard
25 certain testimony or exhibits. You must not consider any evidence to

1 which an objection has been sustained or which I have instructed you to
2 disregard.

3 Anything you may have seen or heard outside the courtroom
4 is not evidence and must also be disregarded. You must not be
5 influenced in any degree by any personal feeling of sympathy for or
6 prejudice against the State or the defendant. Both sides are entitled to
7 the same fair and impartial consideration.

8 In considering the weight and value of the testimony of any
9 witness, you may take into consideration the appearance, attitude, and
10 behavior of the witness, the interest of the witness in the outcome of the
11 case, if any, the relation of the witness to the defendant or the State, the
12 inclination of the witness to speak truthfully or not, and the probability or
13 improbability of the witness's statement and all of the facts and
14 circumstances in evidence. Thus, you may give the testimony of any
15 witness just such weight and value as you believe the testimony of the
16 witness is entitled to receive.

17 There are two kinds of evidence: Direct evidence and
18 circumstantial. Direct evidence is testimony by a witness about what
19 that witness personally saw or heard or did. Circumstantial evidence is
20 testimony or exhibits which are proof of a particular fact from which, if
21 proven, you may infer the existence of a second fact. You may consider
22 both direct and circumstantial evidence in deciding this case. The law
23 permits you to give equal weight to both, but it is for you to decide how
24 much weight to give to any evidence.

25 Opening statements and closing arguments of the attorneys

1 are not intended to help you -- repeat.

2 Opening statements and closing arguments of the attorneys
3 are intended to help you in understanding the evidence and applying the
4 law, but they are not evidence. In arriving at a verdict in this case as to
5 whether the defendant is guilty or not guilty, the subject of the penalty or
6 punishment is not to be discussed or considered by you and should in
7 no way influence your verdict.

8 Until this case is submitted to you, you must not discuss it with
9 anyone, even with your fellow jurors. After it is submitted to you, you
10 must discuss it only in the jury room with your fellow jurors. It is
11 important that you keep an open mind and not decide any issue in the
12 case until the entire case has been submitted you under instructions
13 from me.

14 If you cannot hear a witness, please raise your hand as an
15 indication. Also, if you need to use the restroom or you -- or if you feel
16 ill, please also raise your hand as an indication.

17 We will take intermittent breaks as the Court sees fit, usually
18 about every 90 minutes or so. And for the most part, I have no objection
19 to jurors bringing drinks into the courtroom.

20 I may, during the trial, take notes of the witnesses' testimony
21 and -- and you will see me working on my computer. You are not to
22 make any inference from that action. I am required to prepare for legal
23 arguments of counsel during this trial. And for that reason, I may take
24 notes.

25 The jury will not have a transcript to consult at the close of the

1 case. However, the jury will be furnished with notepads and pencils and
2 will be allowed to take notes.

3 The trial will proceed in the following manner: The deputy
4 district attorney will make an opening statement, which is an outline to
5 help you understand what the State expects to prove. Next, the
6 defendant may, but does not have to, make an opening statement.
7 Opening statements are not evidence, but serve as an introduction to
8 the evidence which the party making the statement intends to prove.

9 The State will then present its evidence and counsel for the
10 defendants may cross-examine the witnesses. Following the State's
11 case, the defendants may present evidence and the deputy district
12 attorney may cross-examine the witnesses. However, as I have said,
13 the defendants are not obligated to present any evidence.

14 You will be given the opportunity to ask written questions of
15 any of the witnesses called to testify in this case. You are not
16 encourage to ask large numbers of questions, because that is the
17 primary responsibility of the parties.

18 Questions may be asked only if -- only in the following
19 manner: After both sides have finished questioning the witnesses, and
20 only at this time, if there are additional questions you would like to ask
21 the witnesses, you may then seek permission to ask that witness a
22 written question.

23 Should you desire to ask a question, write your question down
24 with your juror number on a full sheet of clean paper and raise your
25 hand. All questions from jurors must be factual in nature and designed

1 to clarify information already presented. In addition, jurors must not
2 place undue weight on the responses to their questions.

3 The marshal will pick up your questions and give it to me. All
4 questions must be directed to the witness and not to the lawyers or to
5 the judge. After consulting with the parties, I will determine if your
6 question is legally proper. If I determine that your question may properly
7 be asked, I will ask it. No adverse inference should be drawn if the
8 Court does not allow a particular question.

9 After all the evidence has been presented, I will instruct you
10 on the law. After the instructions on the law have been read to you,
11 each side has the opportunity to present oral argument. What is said in
12 closing arguments is not evidence. The arguments are designed to
13 summarize and interpret the evidence. Since the State has the burden
14 of proving the defendants' guilt beyond a reasonable doubt, the State
15 has the right to open and close the arguments.

16 After the arguments have been completed, you will retire to
17 deliberate on your verdict. Again, let me -- let me remind you that until
18 this case is submitted to you, one, do not talk to each other about it or
19 about anyone who has anything to do with it until the end of the case
20 when you go to the jury room to decide on your verdict; two, do not talk
21 with anyone else about this case or about anyone who has anything to
22 do with it until the trial has ended and you have been discharged as
23 jurors.

24 Anyone else includes members of your family and your
25 friends. You may tell them that you are a juror in a criminal case, but

1 don't tell them anything else about it until after I have discharged you.

2 Do not let anyone talk to you about the case or about anyone
3 who has anything to do with it. If someone should try to talk to you,
4 please report it to me immediately by contacting my marshal. Do not
5 read any news stories or articles or listen to any radio or television
6 reports about the case or about anyone who has anything to do with it.
7 Do not visit the scene of any of the events mentioned during the trial or
8 undertake any investigation or research on your own. Do not do any
9 posting or communications on any social networking sites or do any
10 independent research, including Internet searches.

11 Counsel, is there a request to exclude out -- exclude
12 witnesses?

13 MS. MACHNICH: Yes, Your Honor.

14 THE COURT: If there is anyone present who expects to be
15 called as a witness, please leave the courtroom. Please remain
16 available in the hallway and do not discuss your testimony or the
17 testimony of any other witness with anyone except the parties to this
18 case and their attorneys.

19 State, you may proceed with opening statement.

20 **OPENING STATEMENT BY THE STATE**

21 MS. BEVERLY: Thank you, Your Honor.

22 Thank you.

23 Can everybody see this okay? So we're here this week and
24 we'll be here next week for the *State of Nevada vs. Steven Turner and*
25 *Clemon Hudson.*

1 And this is the time of the trial where we're here for the
2 opening statements. And the purpose of an opening statement is to give
3 you, as the jury, a roadmap as to the testimony and the evidence that
4 you will hear over the next few days so you have a context to place it
5 into as we continue on.

6 And I ask that you pay close attention to all the evidence that
7 you'll hear in this case. There'll be lots of witnesses and lots of different
8 evidence. So I ask that you keep an open mind and hold onto that
9 evidence and take it back in the room with you to deliberate.

10 So in this trial we have Clemon Hudson, Defendant No. 2, and
11 Steven Turner, Defendant No. 1. And they are charged both with the
12 following crimes that you heard about: Conspiracy to commit burglary,
13 attempt burglary while in possession of a firearm, two counts of attempt
14 murder with use of a deadly weapon for both officers, and battery with
15 use of a deadly weapon resulting in substantial bodily harm for an
16 Officer Robertson that you'll hear from during this trial.

17 You're going to hear that this crime took place -- or these
18 crimes took place on September the 4th of 2015 in the very, very early
19 morning hours, approximately 3:30 in the morning. And it happened
20 over on -- at 6729 Oveja Circle. And just to familiarize you with the area,
21 Oveja Circle is in the area of Rainbow and Westcliff, and Rainbow and
22 Alta. You'll see various maps in this case showing you the overall
23 location of this particular crime. But it happened at this house, and this
24 house actually backs up to the major street of Rainbow.

25 During this trial, you'll meet the homeowners of this home, Eric

1 Clarkson and Willoughby Grimaldi. They'll actually be testifying today
2 and tomorrow. And they will tell you that they lived in this home.
3 They've been living there for a while. And that is their vehicle, this white
4 vehicle parked in front of the home. And that's how the vehicle was
5 parked there on September the 4th of 2015.

6 You'll hear from Mr. Eric Clarkson that he actually knew the
7 defendant, Steven Turner. He'd known him for a while. Mr. Turner had
8 been over to his house before. They had smoked weed together before.
9 So he had a friendly relationship with him prior to this incident
10 happening.

11 So you'll hear that on September the 4th of 2015, Eric and
12 Willoughby were in their home getting ready to go to sleep. They're kind
13 of night owls. So they stay up pretty late, but they were getting in their
14 bed to go to sleep, had just kind of fallen asleep when Eric heard
15 something on the back patio.

16 You're going to see a lot of photos in this trial of the layout of
17 this house, the backyard of the house, the inside of the house, and the
18 front of the house. And this area that we're looking at in this photo here
19 is the backyard of the house. So the backyard is kind of separated into
20 a small patio area, then a -- an open area, and then in further -- later on
21 pictures, you'll see there's a pool area as well at the house.

22 So Eric was woken up to this noise on the patio. And he
23 looked out of his window, which is actually on the side of the little patio,
24 looked into the patio and saw someone on the patio. And that's his
25 window. You'll hear about how he looked out that window and what he

1 saw when he looked out that window.

2 When he heard this noise, he woke up his roommate, Willow,
3 and said, Hey, Willow, there's somebody out there. We're not expecting
4 anybody. You know, what's going on? So Willow gets up out of his bed
5 and he looks outside the patio too and sees an African-American adult
6 male with a cap on cocking a shotgun in the backyard.

7 Obviously, this was of great concern to Willow and Eric, and
8 so they call 911 immediately. They're on the phone with 911 for quite a
9 period of time waiting for officers to arrive. And during this
10 approximately 10 to 15-minute time period, a lot of stuff is going on
11 surrounding their house.

12 You'll hear this 911 call and you'll hear that as they're waiting
13 for officers to arrive, they actually hear someone at the front door of their
14 house, banging on the door, a different male than who was in the
15 backyard, banging on the door, knocking on that door. And if you can
16 see, it's kind of a, like, a screen door, a metal screen door in front of the
17 actual wood door. So they look out the window and they see that.

18 While this is also going on, they see, Willow out of his
19 bedroom window, which is a different bedroom than where Eric was
20 staying, and he looks out of his window and sees another male crossing
21 over the back part of the house.

22 So again, this is all going on as this 911 call is being heard.
23 And you'll hear that whole call. They will also tell you that prior to
24 officers getting there, the male who was banging on the front door runs
25 away from the house, runs down the cul-de-sac and runs completely

1 away from the house. And a few minutes later, officers arrive.

2 And the officers who arrive are two officers, Officer Robertson
3 and Officer Grego-Smith. They are both graveyard officers. They've
4 been with Metro for a period of time. And they get assigned this prowler
5 call, as you'll hear it's described as, on the dispatch radio from Oveja
6 Circle.

7 So they arrive at the location. They kind of check out the
8 scene when they first get up there. This is kind of an older
9 neighborhood, so the numbers on the house are kind of hard to see. It's
10 very dark outside around this time, 3:30 in the morning.

11 And so when they get to the house, they kind of check out the
12 areas of the house, the side area, the front of the house. And they
13 realize they can't get into the backyard of the house because of the way
14 the house is situated and the way the gates on the house are. So they
15 tell dispatch, Hey, can you tell the homeowners to let us in through the
16 front of the house. So dispatch tells Eric and Willoughby the officers
17 have arrived, can you please let them in the front of your home.

18 At that point, Eric's 911 call cut off and he lets the officers into
19 the home. And you're going to see, again, photos of this layout of this
20 house, where the front door is, where the back door to the patio is,
21 where the living room is. But if you look at this photo, you can see that
22 there is a living room area that's right in front of the front door of the
23 house, and it heads straight back to the kitchen area of the house, and
24 then a back door that leads right onto the small patio area of the
25 backyard portion.

1 So officers go into the house. And Willow and Eric, they kind
2 of stand by the front door kind of watching what's happening with the
3 officers. And they tell the officers, Hey, there's still somebody in the
4 backyard. And they tell Officer Robertson, Hey, this is how you unlock
5 the back door, so he can know how to get in the backyard.

6 So Officer Robertson and Officer Grego-Smith make up a plan
7 to clear the backyard. And they'll explain to who you what clearing a
8 backyard means when they have a prowler-type call.

9 So they make this plan. Officer Grego-Smith is going to go
10 through the door first to start clearing the backyard, followed by his
11 backup officer, Robertson. Officer Robertson opens the back door to
12 that patio, and immediately gunshots -- gunshots start coming from the
13 patio into the home.

14 And you're going to hear from Eric and Willoughby, who are
15 watching this happen, that two different calibers of gunfire comes
16 through that house. One of those gunshots, in fact, strikes Officer
17 Robertson in the hip/leg area. And Officer Grego-Smith immediately
18 fires back onto the patio after being fired upon.

19 You'll hear what we call radio traffic in this case. Radio traffic
20 is when officers are communicating over a radio -- the radio from
21 between dispatch. They're getting information. They're telling dispatch
22 information so everybody can be on the same page. And you'll hear
23 radio traffic in this case, and you'll hear Officer Grego-Smith saying,
24 Shots fired shots fired, officer down.

25 And you'll hear that one suspect is still in the backyard. And

1 there's another suspect who jumped over the wall of the house onto
2 Rainbow. Again, the house faces -- the back of the house faces
3 Rainbow.

4 And you'll hear, actually, on the radio traffic, Officer Robertson
5 saying, Two suspects, two suspects, I've been shot with a high-powered
6 rifle.

7 Officer Grego-Smith gets on the radio saying, We need people
8 to come, we need more units to come, we've just been shot at, I can't
9 see the suspect in the backyard, I know he's out there, but I can't see
10 him.

11 And as it turns out, the suspect in the backyard is Mr. Hudson.
12 And he is lying behind kind of a -- like, an awning area that separates
13 the -- the back patio from the grassy part of the backyard.

14 And so as he's on the radio, other units begin to arrive,
15 including the K-9 unit. And Officer Grego-Smith is saying, I can't see
16 him, I can't see him, you know, stay still, don't move, don't move, but I
17 can't see him. It's pitch black out there.

18 So the K-9 unit arrives. They give Mr. Hudson instructions
19 and eventually he doesn't comply and they let the dog out to find him.
20 They immediately find him and he's found right in that area. And this is
21 who they find, Clemon Hudson back there.

22 And back there with him are multiple firearms, three different
23 guns. There was a handgun an SKS and an AK-47 -- excuse me, an
24 SKS and a shotgun. And these are weapons that you'll see. You'll
25 actually see various pictures of these weapons throughout the trial.

1 You'll get a chance to take all these photos back with you in the jury
2 deliberation room.

3 Now, lots and lots of -- of officers arrive on this scene. And
4 the reason for that, that you'll hear throughout this trial and what the
5 evidence will show, is that there's an outstanding suspect and they need
6 to find this outstanding suspect. And so they set up what is known as a
7 perimeter. You'll hear what a perimeter is, what that means in terms of
8 law enforcement. But it basically means the containment area, because
9 they need to search the area for this outstanding suspect. They know
10 there's two of them. They know one's in the backyard; the other one has
11 hopped over this wall, somewhere, hopefully in this neighborhood.

12 The perimeter they set up is very, very large. It goes all the
13 way from Buffalo, Westcliff, Alta, all the way almost over here to this high
14 school. So very, very large perimeter and there's multiple officers
15 searching all other this neighborhood for this second suspect.

16 And a few hours later, they find the second suspect. And that
17 is Steven Turner. And you'll hear from Officer Vance, who was the
18 officer who was on patrol, one of the officer -- hundreds of officers
19 looking in this area. And he'll tell you that he came in contact with
20 Mr. Turner in that neighborhood about a mile -- actually, about half a
21 mile from where Oveja Circle is, where these shots had come out. And
22 he'll tell you that as soon as he saw Mr. Hudson -- and he saw him, he
23 noticed that there was a gunshot wound to his left calf.

24 Detectives in this case get assigned to this particular
25 investigation and they begin their investigation into the shooting at Oveja

1 Circle and the burglary at Oveja Circle. And it's assigned to Detective
2 Joe Patton and Marc Colon. And they -- as they do their investigation,
3 along with crime scene analysts, who you'll hear from multiple crime
4 scene analysts in this case, they come to the conclusion that 16 shots
5 had been fired in this incident. Okay.

6 There was four from Mr. Hudson and Mr. Turner, and 12 from
7 Officer Grego-Smith. And you'll hear about the trajectories of those
8 shots. And you'll hear about how they were able to calculate that from
9 these various officers.

10 So in terms of the shots from Mr. Hudson and Mr. Turner,
11 you'll hear there was one shot from an SKS rifle. It went through Officer
12 Robertson's leg, through the security gate at the front door and out
13 through the front yard, very high powered.

14 The next shot was a shotgun blast. You'll hear that that went,
15 also, through the house to the front window of the house by where the
16 front door is. And you'll hear descriptions of those various shots also
17 from the homeowners who were right by that front door watching this all
18 happen.

19 The third shot you'll hear from crime -- crime scene analysts
20 hit the back of a chair on the patio, fragmented -- fragmented all over the
21 place. Some ended up in the cushions of the fabric. And one of those
22 pieces ended up in Mr. Turner's leg.

23 And the fourth shot from the SKS also, also went to -- towards
24 the TV on the patio, fragmented and kind of broke up after that -- after it
25 hit the TV and the console.

1 You'll hear about Officer Grego-Smith's rounds as well. All of
2 his rounds went through this screen-type mechanism that, again, we
3 talked about separates the patio from the grassy area of the backyard.

4 And they were able to account for all of Officer Grego-Smith's rounds.

5 And you'll see -- you'll hear from crime scene analysts as well
6 as other people in this case that they actually had to recreate this
7 screen, because the screen had fallen down during this incident. And so
8 when we go back and look at this back picture, that wasn't the way it
9 was. They had to put it back up there so they could count the bullet
10 holes that went through that screen.

11 And one of the bullets from Officer Grego-Smith that went
12 through that screen ended up hitting the shotgun, rendering it unable to
13 be fired anymore. So this is all happening very quickly.

14 And you'll hear from the detectives and the crime scene
15 analysts and the trajectory analysis that they knew it was Mr. Turner who
16 actually shot himself based on accounting for all of the -- the bullets in
17 this case and all the shots in this case.

18 You'll hear from a DNA analyst in this case. You'll hear from a
19 fingerprint analyst. And they will give you some additional information
20 about what items were found and what items were tested in this case.

21 You'll also hear about some surveillance video in this case
22 showing where Mr. Turner went after hopping that backyard of the fence.
23 And they were able to actually track his movements to where he was
24 eventually caught by Officer Vance.

25 At the end of this trial, the State's going to ask that you find

1 both Mr. Hudson and Mr. Turner guilty of all five charges in this case.
2 Thank you.

3 THE COURT: Defense?

4 MS. MACHNICH: Court's indulgence just one moment, Your
5 Honor.

6 THE COURT: You may proceed.

7 MS. SISOLAK: Thank you, Your Honor. We're looking for
8 one photo.

9 [Pause in proceedings.]

10 **OPENING STATEMENT BY DEFENDANT TURNER**

11 MS. SISOLAK: Good afternoon, ladies and gentlemen.
12 Mr. Turner was along for the ride, but he is not guilty of attempt murder.
13 We expect that the evidence is going to show you the following:
14 Mr. Hudson picked up my client in his mom's car and my client brings his
15 dogs along. You're going to hear they were going to steal some
16 marijuana.

17 One of the things that you're going to see, you take a look at
18 the photo on the TV, my client is dressed like a big dummy. Wouldn't be
19 my first choice considering it's so readily identifiable. Strangely enough,
20 nobody identifies that.

21 We know that the pair arrived at the house. We know that
22 they hopped the back wall. We know that Mr. Turner, somewhere near
23 the rear of the house -- well, we expect the evidence to show you that he
24 was somewhere near the rear of the yard. The evidence is going to
25 show you that Mr. Turner had a -- excuse me, Mr. Hudson had a gun,

1 one in his hand and one in his sock.

2 The evidence is also going to show you that while this pair
3 scoped out that -- scoped out that house where they were going to steal
4 the marijuana from, more people showed up, specifically two men, no
5 shirts, black basketball shorts.

6 We know that one of those men pounded on the door. We
7 know that a homeowner saw that person take off. We know that that
8 same homeowner saw another person cross that bedroom window that
9 Ms. Beverly talked about, entered into the backyard and joined
10 Mr. Hudson with a firearm.

11 By now, homeowners are on the phone with 911: We see
12 somebody in the backyard. We see somebody in the backyard. He's
13 got a shotgun. He's wearing a billed hat. He's got a shotgun. We see
14 him. He's in the backyard.

15 You're going to hear that the police arrive, no lights, no sirens.
16 They sneak up on the house, come through the front door. You're going
17 to hear the 911 call of the homeowners talking to dispatch. Police arrive,
18 they come in through the front door. And as quietly as possible, they
19 sneak through that house, because they know somebody's in the
20 backyard.

21 They approach that backdoor. The homeowner's telling them
22 how to unlock that metal screen you guys saw. As officers are opening
23 that door, shots ring out. Unfortunately, that is when an officer is shot in
24 the leg.

25 You're also going to hear that as soon as shots are fired, my

1 client, Mr. Turner, he takes off running scared. This is not what he
2 signed up for. He signed up to steal some weed. He didn't sign up for
3 anybody to get hurt.

4 We know Steven takes off. We know that Steven never had a
5 gun. There are no fingerprints on that gun that are his, no DNA on the
6 guns that are his. We know he didn't have a gun. We know he was
7 going to steal weed, and then as soon as things got crazy, he was out.

8 We know that Steven never changed clothes, because these
9 orange pants have a hole from the shrapnel in the back of them and his
10 blood all over them. We know that later he was stopped by police
11 wearing this outfit. And you're going to hear that nobody identifies my
12 client at all, which is surprising, given that he's wearing a purple shirt
13 and orange pants. No one identifies him at all, much less as the
14 shooter.

15 But people do identify the shooter, including one of those
16 arriving officers, the two that snuck through the house. They identify a
17 man, black basketball shorts, no shirt, as the shooter.

18 A few more things you're going to learn: You're going to learn
19 that Mr. Hudson's fingerprints are on those guns. You're going to learn
20 that those homeowners see that there were more than two people there,
21 specifically, three. We talked about the -- the one at the front door, the
22 no shirt and basketball shorts in the backyard, the guy with a shotgun
23 and the billed hat. That's at least three. None of those are identified as
24 my client.

25 You're going to see Mr. Turner was along for the ride. But as

1 soon as things got violent, he was literally and figuratively out of there,
2 over the back wall, following that map you guys just saw. He was gone.

3 At the end of this, I'm going ask you to do something I usually
4 wouldn't do. You guys know what my job is. I'm going to ask you to find
5 Mr. Turner guilty on Counts 1 and 2. That's the conspiracy burglary and
6 the attempt burglary. I'm going to ask you find him guilty on those two
7 counts. That's what he was there for. He was there to steal stuff from
8 that house.

9 But what he wasn't there for was anyone to get hurt or for any
10 violence. That's why when things turned south, he was gone. I'm going
11 to ask you to find him not guilty of the two counts of attempt murder. But
12 I am going to ask you to consider that Mr. Turner didn't make the
13 greatest choice in being there to take marijuana. But what happened
14 turned violent very quickly. And when it did, my client was over that
15 back wall and across the street. Thank you.

16 THE COURT: Counsel?

17 **OPENING STATEMENT BY DEFENDANT HUDSON**

18 MR. PLUMMER: Good afternoon. As the judge informed you
19 in the initial instructions, opening statements are not evidence. Nothing
20 that has been said so far is evidence in this trial. I'm asking you to wait
21 until your hear the evidence and see the evidence before you come to
22 any conclusions or think to believe anything that's been said by counsel.
23 I don't believe the evidence is going to show what either of them state.

24 I do agree with Mr. Turner's counsel. At the end, I'm also
25 going to concede to Counts 1 and 2. We're not here for those two.

1 We're here for the other three counts. That's why you're sitting here.

2 Mr. Hudson, you will hear, he did have a shotgun. You're --
3 you're going to hear it. His fingerprints were found on that shotgun.
4 You're going to hear how a bullet struck that shotgun. You're going hear
5 how the shotgun went off, why it went off. Mr. Hudson never shot
6 anyone, never intended on shooting anyone, never intended anyone to
7 be shot, let alone be shot at.

8 You're going to hear how the officers pulled up, how they
9 came in tactically quiet, how they heard someone in the backyard and
10 didn't shine a light down the side, didn't holler back saying, Hey, this is
11 the police out front, how they snuck through the house, whipped open
12 the door, how it's pitch black, they can't see out, nobody can see in, and
13 how gunfire started.

14 And but what you're not going to hear about is any intent. And
15 what you're not going hear about is Mr. Hudson shooting any officer.

16 Thank you and I'd ask you to keep an open mind through this
17 trial until the evidence is actually in.

18 THE COURT: Thank you.

19 State, are you prepared to present your first witness?

20 MS. BEVERLY: I think we need take a break, Your Honor.

21 THE COURT: We'll be in a 15-minute recess. During this
22 recess, it is your duty not to converse among yourselves or with anyone
23 else on any subject connected with the trial, to read, watch, or listen to
24 any report of or commentary on the trial by any person connected with
25 the trial by any medium of information, including without limitation,

1 newspaper, television, and radio. And you are not to form or express an
2 opinion on any subject connected with this case until it is finally
3 submitted to you.

4 We'll be in a 15-minute recess.

5 [Jury recessed at 2:08 p.m.]

6 THE COURT: We'll be in recess.

7 MS. BEVERLY: Thank you, Your Honor.

8 [Court recessed from 2:08 p.m., until 2:17 p.m.]

9 [Outside the presence of the jury.]

10 THE COURT: This is continuation of the trial of *State of*
11 *Nevada vs. Steven Turner and Clemon Hudson*, Case No. C-15-30957-1
12 and -2.

13 Counsel, this is on for Defendant Steven Turner's Motion in
14 Limine. You wanted to conduct an evidentiary hearing; is that correct?

15 MS. MACHNICH: That's correct, Your Honor.

16 MS. BEVERLY: Yes.

17 THE COURT: Do you have the --

18 MS. BEVERLY: Yes.

19 THE COURT: -- authenticating witness available?

20 MS. BEVERLY: His name is Eric Clarkson. He's right
21 outside.

22 [Evidentiary hearing commenced at 2:17 p.m.]

23 **ERIC CLARKSON,**

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

1 THE CLERK: Please be seated. Sir, could you please state
2 and spell your name for the record.

3 THE WITNESS: Eric Clarkson, E-R-I-C. Last name is
4 C-L-A-R-K-S-O-N.

5 **DIRECT EXAMINATION**

6 BY MS. BEVERLY:

7 Q Mr. Clarkson, do you know someone by the name of Steven
8 Turner?

9 A Yes, I do.

10 Q Do you see Mr. Turner in court today?

11 A Yes, I do. Yes, I do.

12 Q Can you please point to him and tell me an article of clothing
13 he's wearing today?

14 A He -- looks like a light blue shirt and glasses.

15 MS. BEVERLY: Let the record reflect identification of the
16 defendant.

17 THE COURT: The record will so reflect the identification of
18 the defendant, Steven Turner.

19 BY MS. BEVERLY:

20 Q Mr. Clarkson, I want to direct your attention back to 2014/2015
21 time period; did you know Mr. Turner during that time period?

22 A Yes, I did.

23 Q Okay. What was the nature of your relationship with
24 Mr. Turner during that time period?

25 A Sexual.

1 Q Okay. Can you describe that for us? And I don't mean to
2 embarrass you, but can you describe that for us?

3 A We initially met online and we started a -- a sexual relationship
4 where we would see each other once every couple of weeks.

5 Q And when did that relationship start?

6 A Several years, perhaps a total of five years before this
7 incident.

8 Q Okay. So was this an ongoing type situation?

9 A It was for several years, yes. Three years.

10 Q And had Mr. Turner been over to your house during this time
11 period over on Oveja Circle?

12 A Yes, he had. Many --

13 Q Had -- oh, go ahead. I'm sorry.

14 A He had many times.

15 Q Okay. Now, was there a time period where there was -- you --
16 the two of you stopped communicating?

17 A Yes, there was.

18 Q And when approximately was that?

19 A About three years after we met. He said he had met a girl
20 who was moving to California. I didn't really see him for at least six
21 months at that point. He contacted me once about six months later and
22 said he was in town and wanted to see me. I said yes. And that was the
23 last time I saw him.

24 Q Okay. Now, you're from -- you know that you're here and you
25 will be testifying in a few minutes regarding the incident on September

1 the 4th of 2015; is that correct?

2 A Yes, ma'am.

3 Q Okay. Prior to September the 4th, 2015, had you received
4 some text messages?

5 A Yes, I had.

6 Q And let me ask you this also: You know Mr. Turner's African-
7 American; is that correct?

8 A Yes, ma'am. I do.

9 Q Okay. Do you know anyone else of any race named Steve?

10 A Personally, a few friends.

11 Q Okay. Do you know any other black Steves?

12 A No, ma'am.

13 Q Okay.

14 MS. BEVERLY: Your Honor, if I can approach with what's
15 been marked for the purpose of this hearing only as State's 1, 2, 3,
16 and 4?

17 THE COURT: You may.

18 BY MS. BEVERLY:

19 Q After this incident on September 4th of 2015, you were
20 interviewed by a detective; is that correct?

21 A Yes, ma'am.

22 Q Okay. At the time, did you know who was involved in the
23 burglary of your home?

24 A No, ma'am, I did not.

25 Q Okay. Subsequent to your interview -- your initial interview

1 with the police, did you think about some text messages that had been
2 sent to you?

3 A Yes.

4 Q Okay. At that point, did you reach back out to detectives to
5 speak with them again?

6 A Yes. However, that wasn't the basis of my reaching back out
7 to them.

8 Q Okay. Tell me why you reached back out to them.

9 A Initially, I had not seen -- I was not able to verify anybody's
10 face.

11 Q Okay.

12 A I -- after we were allowed to leave the scene and actually
13 leave, we went to my best female friend's house. She was on her phone
14 watching what was going on at my house. And then the news came on.
15 We were at the top of the news. And the two pictures that came up, I
16 was aware immediately that I knew one of them.

17 Q Okay. And would that be Mr. Turner?

18 A Yes, ma'am.

19 Q Okay. And then what did you do next?

20 A I went outside and I -- I had to double verify for myself that it
21 was actually him. So I went on the Fox News web page and I pulled the
22 picture. I enlarged it and I snapped a shot. I enlarged it one more time,
23 just to verify that, indeed, I knew him.

24 Q Okay.

25 A At which time, I then contacted the detectives to let them know

1 that, indeed, I knew somebody --

2 Q Okay.

3 A -- that was involved.

4 Q And did you tell the detectives about some text messages that
5 you believe -- well, did you tell them about some -- some text messages
6 that you had received?

7 A Yes.

8 Q Okay. Why did you tell the detectives about these text
9 messages?

10 A Because it plainly states Steve, black Steve.

11 Q Okay. So I'm going to show you State's Proposed
12 Exhibit No. 1 for purposes of evidentiary hearing only. What about --
13 well, actually, can you go ahead and read what the content of this text
14 message is?

15 A Yes.

16 Q I'm so happy I remember your number. It's Steve. Just got to
17 a iPad to text you. No phone. Please text me back. Been in city the
18 last six months. I need you in my life, baby. I'm ready right now.
19 The black Steve you're always mad at.

20 Okay. What about those text messages caused you to believe
21 that they were from the defendant, Steven Turner?

22 A I -- I don't know any other black Steves.

23 Q Okay. Had you ever been in any kind of sexual relationship
24 with a black Steve, other than Mr. Turner?

25 A No, ma'am.

1 Q Okay. Okay. Now I'm going to show you State's Exhibit No. 2
2 for purposes of evidentiary hearing; can you read the content of those
3 messages?

4 A It's part of the bottom of this one. It says, again:

5 The black Steve you're always mad at it.

6 It then says, sent from Text Free. But after that:

7 Stay, I'm ready to get right. You been on my brain and that's
8 only for one reason. You're who I need in my life, per energy. Let's
9 do it.

10 And then it says at the bottom -- and, obviously, it's a
11 secondary or third text part of the message. And it says:

12 Oh, okay, I get it.

13 Q Okay. So what about the content of what we just read
14 indicates to you that it's the defendant, Mr. Turner, who sent those to
15 you?

16 A Again, it's black -- the black Steve. And the fact that he's now
17 thought about the fact -- we had been in a sexual relationship and I
18 believe that that's what he felt he then wanted.

19 Q Okay.

20 MS. BEVERLY: I will pass the witness.

21 THE COURT: You may proceed.

22 MS. MACHNICH: Thank you, Your Honor.

23 Court's brief indulgence.

24 MS. BEVERLY: I'm sorry, just one second before
25 Ms. Machnich. I have just one extra question.

1 THE COURT: That's fine.

2 BY MS. BEVERLY:

3 Q Can you actually -- can you actually read the contents of
4 State's Proposed Exhibit No. 3 too?

5 A Yes. Just as in the last paper, it's the continuation of a text.
6 And it says, as I read before:

7 Oh, okay, I get it. Sent from Text Free. Please respond. Sent
8 from Text Free. Hey, they gave me a bus pass. Imma just come
9 over. Been trying to vocal you for -- vocal you for you for six months.
10 Here I come. Sent from Text Free. Nvm --

11 I believe that stands for never mind.

12 -- I get it. You don't give a fuck. I'll leave.

13 Q Okay. And then Exhibit No. 4, the last part of that message?

14 A Never mind, I get it. You don't give a fuck. I'll leave it at that.

15 Q Okay. And you indicated earlier that the last time you had
16 seen, I'm sorry, Mr. Turner had been about six months prior to this,
17 getting these text messages?

18 A At -- at least.

19 Q At least? Okay.

20 MS. BEVERLY: Nothing further.

21 THE COURT: Thank you.

22 Defense.

23 MS. MACHNICH: Thank you.

24 **CROSS-EXAMINATION**

25 BY MS. MACHNICH:

1 Q Mr. Clarkson. All right. So just to be clear, referencing State's
2 Exhibits, I believe, 1 through 4 that we've been discussing, you received
3 them the Saturday before the incident at your house, correct?

4 A I believe it was either late Friday night, Saturday morning or
5 late Saturday, Sunday morning. I don't remember which.

6 Q Okay.

7 A It was over -- very late at night or early morning.

8 Q Okay. And then you did not respond until --

9 A Well into --

10 Q -- later?

11 A Well into the next day.

12 Q Okay. And this is approximately around
13 August 29th-ish, 2015?

14 A I believe so. I don't have the dates, I'm sorry.

15 Q That's fine. So you've referred to these text messages as out
16 of nowhere, unnamed text from someone from a Text Free app named
17 Steve, correct?

18 A Yes.

19 Q Okay. At that time, you thought you knew who it was, but you
20 also thought it was unusual and didn't think anything about it?

21 A I really -- I really didn't think much about it, other than the fact
22 that I never got a secondary response. When I sent the question mark,
23 nothing ever came back.

24 Q And not until seeing the news story after the incident did you
25 connect the text messages with Steven Turner?

1 A That's actually not true. I mean, I only knew one Steve. I just
2 never -- never really thought about further contacting him. He reached
3 out to me. I responded. And he never responded back.

4 Q Okay. And about a year before the incident, you blocked
5 Steven's number?

6 A I just removed him all from my phone.

7 Q Okay. And that was about a year before?

8 A Yes.

9 Q Okay. And you had had no contact with Steven for at least
10 that year?

11 A I would say those six months to a year. At one point he had
12 come back from California, I believe, for a weekend, contacted me, we
13 saw each other one final time, and that was when I removed his
14 information from my phone.

15 Q Okay. I just want to make sure we have that correct. Then let
16 me see, it's clear to say that the number that's associated with State's 1
17 through 4 was from a Text Free app?

18 A Yes.

19 Q Okay. You had never before received a message from Steven
20 from this 702-389-0558 number?

21 A No, I had not.

22 Q Okay. In fact, you didn't understand most of what the texter
23 was saying?

24 A I understood it, basically, but there was certainly part that
25 made no sense to me whatsoever.

1 Q Okay. And also, you would not describe yourself as being
2 always mad at Steven Turner?

3 A No.

4 Q All right. Now, nowhere in these messages -- and I'm again
5 referring to State's 1 through 4 -- does it mention your name, correct?

6 A No.

7 Q Okay. And do you remember what name Steven knew you
8 by?

9 A Tawdri.

10 Q Tawdri. And nowhere else in the -- does it mention where the
11 texter was for the last six months?

12 A No.

13 Q Or how long it had been since you last spoke?

14 A No.

15 Q And it doesn't mention anything further about what it meant as
16 city, whether that was a city or city jail or anything like that?

17 A No, it did not.

18 Q Okay. The texts don't mention continue on with prior booty
19 calls or sexual relationship?

20 A No, they do not.

21 Q And they don't mention specifics about what the texter
22 wanted?

23 A No, they do not.

24 Q There are some very specific abbreviations and -- and the
25 words aren't all, like, English language words; would you agree with me

1 on that?

2 A They are. They are not, excuse me.

3 Q They're not?

4 A They're not.

5 Q Okay. I -- I understand at this point it's been about four years
6 since you've exchanged messages with Steven, known messages with
7 Steven Turner, taking these aside. I'm not trying to trick you.

8 A More.

9 Q Over four years?

10 A Yes.

11 Q Is it fair to say that you haven't maintained any of those to
12 compare the certain syntax and spelling and unique word usage
13 between the two?

14 A When I removed his information from my phone, it says all
15 information will be removed, and I just said yeah. So everything was
16 gone, all texts, everything.

17 Q Okay. And so really, the only identifying factor in these is
18 black Steve?

19 A Yes. And the fact that he spoke about the fact that he -- if I
20 may, I know I -- I should only speak to what you've stated.

21 Q Oh, no, it's fine.

22 A But the fact that it says, I know that you're the one for me,
23 baby. And those are the things that made me actually know that it was
24 him. For those three years, we had been intimate for three years.

25 Q You had described that relationship as a booty call

1 relationship?

2 A A booty call, but intimate, sexual. In my mind, sex is intimacy.

3 Q Okay. You weren't -- you wouldn't -- it was not a dating
4 relationship?

5 A Absolutely not.

6 Q Okay. And yes, obviously, sexually intimate relationship, but
7 not a dating --

8 A Not dating --

9 Q -- intimate --

10 A -- in any way. No.

11 Q Okay.

12 MS. MACHNICH: Court's brief indulgence.

13 Q Okay. And have you received any communication from this
14 number in the past or -- before these were sent or after these were sent?

15 A I've never -- that I know, ever received a Text Free message
16 from anybody before, and not since.

17 Q Okay.

18 MS. MACHNICH: Pass the witness. Thank you.

19 THE COURT: Thank you, counsel.

20 State?

21 MS. BEVERLY: Court's indulgence.

22 THE COURT: Counsel, can I see the exhibits? Well, let's see
23 if State needs to use them in their rebuttal.

24 MS. BEVERLY: I have no further questions for this witness.

25 THE COURT: Thank you. Argument?

1 MS. BEVERLY: Yeah. Do you want to give Mr. Plummer a
2 chance to cross-examine if he wants to? I know he's not part of the
3 motion, but --

4 THE COURT: He --

5 MS. BEVERLY: -- if he has any questions.

6 THE COURT: He's not part of the motion.

7 MS. BEVERLY: Okay. I -- I had no further --

8 THE COURT: He didn't join in, so he's not part of the motion.

9 MS. MACHNICH: Okay.

10 MS. BEVERLY: Oh, okay. I guess --

11 THE COURT: That's my --

12 MS. BEVERLY: -- he can leave before we argue.

13 THE COURT: -- understanding.

14 MS. MACHNICH: Yeah. That's fine. He -- he step down.

15 MS. BEVERLY: You can step out, Mr. Clarkson.

16 THE COURT: Argument, please.

17 MS. BEVERLY: I'm just going to wait for him to step out.

18 MS. MACHNICH: And are you looking for -- who would you
19 like to hear from first? Because, obviously, I did the Motion in Limine,
20 but they're offering the -- the messages.

21 THE COURT: According to *Rodriguez*, the Nevada Supreme
22 Court concluded:

23 We thus conclude when -- when there has been an objection
24 to admissibility of a text message, see NRS 47.04 1(A) -- I'm sorry,
25 (1)(A), the proponent of the evidence must explain the purpose for

1 which the text message is being offered and provide sufficient direct
2 or circumstantial corroborating evidence of authorship in order to
3 authenticate the text message as a condition precedent to its
4 admission, see NRS 52.015(1). See also NR 47.060, NRS 47.070.

5 Counsel, argument?

6 MS. BEVERLY: I'll go first, Judge.

7 First of all, I guess talking about the purpose for which it's
8 being offered, I think it's being offered to show that not only did
9 Mr. Turner know Mr. Clarkson and know where he lived, he was actually
10 communicating with him a few days before he decides to go over to his
11 house and burglarize him.

12 It also shows also for the purpose of there being some
13 animosity, at least on the part of Mr. Turner when Mr. Clarkson is not
14 responding, again, adding motive to going over there with guns and
15 breaking into their house.

16 In terms of the authentication purpose, I think Mr. Clarkson
17 made very, very clear that he only knows one black Steve. He's only
18 been in one sexual relationship with anyone with a -- a black Steve.

19 I mean, I also want to note that in Mr. Turner's statement that
20 was, Your Honor eventually suppressed, he admits to texting the victim
21 and the victim texting him back. So I think that, in itself, goes to the fact
22 that these text messages are from him.

23 THE COURT: I -- I thought the gentleman said he did not text
24 him back?

25 MS. BEVERLY: He sent him back question marks. That's in

1 his statement. He didn't respond immediately, but he sent him question
2 marks back. And Mr. Turner, in fact, confirms that he text the victim.

3 He also confirms in that other statement, admits to going over
4 to the house prior to the day of the actual shooting. So I think that also
5 lends to the authentication of these text messages.

6 MS. MACHNICH: And, Your Honor, we would inquire as to
7 what statement of Mr. Turner she's referring to with regard to --

8 MS. BEVERLY: Sure.

9 MS. MACHNICH: And if she can just give me a location, I
10 can -- I certainly have them right in front of me to respond to that.

11 MS. BEVERLY: It's going to be on Transcript No. 5.

12 MS. MACHNICH: Okay.

13 MS. BEVERLY: On page 11.

14 MS. MACHNICH: Court's brief indulgence.

15 Your Honor, responding to -- well, first, responding to why the
16 State is offering the text messages. With regard to the fact that the two
17 knew each other, that there was a friendship, that Mr. Turner knew
18 where this house was and would not have somehow forgotten where it
19 was and he had been there numerous times, that's something that we
20 are willing to go so far as to stipulate to. We have no -- no problem
21 admitting that. We're not opposing that. So for that reason, we don't
22 believe that it's necessary to get into these highly prejudicial text
23 messages.

24 As to any animosity with regard to Mr. Clarkson, referring back
25 to Mr. Turner's statements as the State did, I actually don't believe that

1 the context -- it -- I don't read it as the context being the same:

2 Then I called the homey and shit. Then I'm like, all right, let's
3 go there. I had texted and he had texted back. I had texted Derek
4 that he had texted me back. And I'm, like, let's just go over there.

5 I don't think that text, texted back reference in the statement
6 refers to any such text messages with Mr. Clarkson. I think that those --
7 that statement section refers to text messages with other individuals. It
8 does not say he texted the homeowner. Does not say the homeowner
9 texted back.

10 So I think that's an aside for -- I -- I don't think that goes
11 towards the authentication purposes and that he admitted in any way,
12 shape, or form -- my client has never admitted in any way, shape, or
13 form that he sent these text messages or that these were sent from him
14 or alluded to in any way. I think -- I just disagree with the State in the
15 reading of that statement.

16 With regard to the text message authentication in general, as
17 Your Honor noted in *Rodriguez*, it is on the proponent of the text
18 messages to establish their authentication. In the *Rodriguez* case, these
19 were text messages that were sent from a known phone number to I
20 believe it was a domestic relationship. So the person had the
21 defendant's phone number. And they're still determined that most of the
22 messages did not come in, because they couldn't authenticate that the
23 phone was in the hands of the right person at the time.

24 So where *Rodriguez* talks about circumstantial evidence
25 surrounding what the context of the text messages, and how that can be

1 used to authenticate them, the *Rodriguez* case is specifically talking
2 about a situation, where not only did they have them authenticate the
3 number that the messages came from, but they went to look for further
4 information to authenticate that the phone was in the hands of the
5 defendant at the time. And that they were only able to do for a fraction
6 of the text messages in *Rodriguez*, if I recall the case correctly.

7 And so they only allowed those and thought that was
8 appropriate for those text messages to be in. So not only did they
9 authenticate a phone number they came from, but they then had to have
10 put that phone in a specific person's hands.

11 In this case, we're talking about text messages sent from a
12 Text Free number. While, obviously, now some -- some substantial time
13 has passed, there's not a lot of context in these messages with regard to
14 who they came from or who they were meant for. For all intents and
15 purposes, these could have been meant for another person.

16 This text message does not refer to Eric Clarkson by the name
17 which Steven Turner would have known him by. These text messages
18 don't refer to Eric by his given name. They just start talking.

19 Additionally -- yeah -- yeah. And -- what? Oh, yeah. Yeah.
20 And it's -- and they actually, as my co-counsel just pointed out, it says
21 something about I'm so glad I remember your number. Well, maybe
22 they didn't remember the number and may these messages were meant
23 for a totally different person. We don't know.

24 There's some very specific syntax and spelling and
25 abbreviations that are listed therein. There are no text messages to

1 compare, that we have known messages from Steven Turner. So we
2 have no way of authenticating them that way.

3 It seems like, when it gets down to it, the only thing that these
4 authenticate to is a black Steve, and he didn't know any other black
5 Steves that he was intimate with. However, we don't know if this was
6 meant for him. We don't -- we know that there are many, many Steves
7 out there. Steve is a very common name. We know that there are many
8 black Steves out there. I can tell you my client's father is a black Steve.
9 So there are many people out there that could have been referenced in
10 this text message.

11 It's sent from this Text Free number, and this number has
12 never before been used with communications between Steven Turner
13 and Eric Clarkson, so they can't even get past to *Rodriguez*, where we're
14 talking about the number being authenticated. They're not even to that
15 point, because, honestly, it cannot be authenticated in this manner.

16 He -- Mr. Clarkson had never received messages from this
17 number before or after. And there's no context in the messages
18 themselves that Mr. Clarkson did actually know who he was semi
19 speaking with when he sent back a question mark. In fact, the response
20 was a question mark, to suggest that maybe he didn't even know who
21 this was or what this was about.

22 And then, obviously, as the -- several days passed and then
23 this occurred, and then he sees Steven Turner's name and picture on
24 the television, then he's like, oh, yeah, that could be it. But that's
25 simply -- I -- I would request, not enough to authenticate text messages

1 that are so prejudicial, not probative of anything at issue in this case,
2 given what the -- what Mr. Turner is willing to stipulate to.

3 And I don't believe pursuant to *Rodriguez* and Nevada law,
4 the State has reached the level of authentication.

5 THE COURT: State?

6 MS. BEVERLY: Judge, I think that everything Ms. Machnich
7 just said can certainly be asked on cross-examination of Mr. Clarkson.
8 But I don't think it goes to authentication. He literally says, black Steve,
9 talking about sexual relationship. That's a very specific thing.

10 And *Rodriguez* talks about how messages can be
11 authenticated by the context, by the name, by specific things that one
12 person would know about another person. The one --

13 THE COURT: Where's the sexual references, counsel?

14 MS. BEVERLY: Your Honor, when he talks about I need you
15 in my life --

16 THE COURT: It says:

17 But after that stay, I'm ready to get you right then on my brain
18 and that's only for one reason, you -- who I need you my -- in my life
19 per energy.

20 And you interpret that as a sexual --

21 MS. BEVERLY: Well --

22 THE COURT: -- reference?

23 MS. BEVERLY: -- before that, Judge, when he's talking -- I
24 believe it's on State's Exhibit No. 1 or 2 where he's talking about Baby, I
25 miss you, I need you in my life, things of that nature, Mr. Clarkson

1 testified that he had no other relationship of sexual nature, which is the --
2 the State's position, that's the context, and Mr. Clarkson's position is
3 that's the context, from a black Steve.

4 So I think additional questions about, oh, well, you never got a
5 message from this number before and X, Y, and Z are
6 cross-examination. But it doesn't go to the heart of the authentication
7 issue, which is the context of these messages given to Mr. Clarkson
8 days before this incident from the black sleeve -- black Steve is enough
9 to authenticate it.

10 THE COURT: We'll be in recess for a few minutes.

11 [Court recessed from 2:44 p.m., until 2:48 p.m.]

12 [Outside the presence of the jury.]

13 THE COURT: You may be seated. We're back on the record.
14 Let the record reflect the presence of the State -- I'm sorry, the presence
15 of counsel for the State, counsel for the defendants, and the defendants.

16 I've reviewed the Proposed Exhibits 1, 2, 3, and 4, argument
17 by counsel. I also reviewed the appropriate statutes as well as
18 *State vs.* -- I'm sorry, *Rodriguez vs. State*, 273 P.3d 845. I also
19 reviewed two out-of-state decisions, *State vs. Koch*, 157 Idaho 89, and
20 *State of Arizona vs. Stanley*, 2016 WL 3950676.

21 At this point, I am not going to allow the text messages to be
22 introduced into evidence. The State has failed to establish authorship of
23 these text messages. Further, in reviewing the text messages, the only
24 response to any of these text messages, that it appears to be on the
25 Exhibit 4, which is a question mark at the bottom of Exhibit No. 4.

1 The text messages themselves are not so unique as to
2 demonstrate that they were sent by the defendant, Steven Turner. The
3 only reference is black Steve. There -- in response to that portion of the
4 text -- I'm sorry, there is no response to that portion of the text by the
5 person who received the text.

6 In any event, I'm not going to allow the text to be presented
7 into evidence.

8 MS. BEVERLY: Thank you.

9 MS. MACHNICH: Thank you, Your Honor.

10 THE COURT: I'm sorry, my decision is further based on the
11 fact that the defense is going to stipulate that there was a relationship
12 between the defendant Steven Turner, and -- and the witness. And
13 counsel, I want that on the record. I want that to be --

14 MS. BEVERLY: Well --

15 THE COURT: -- stipulated fact.

16 MS. BEVERLY: -- before we do a stipulation, I just want to be
17 able to ask the witness questions. And that should satisfy, I think, before
18 we do a stipulation.

19 MS. MACHNICH: We're happy to do it however the State
20 wants.

21 MS. BEVERLY: I want to ask him questions.

22 THE COURT: Well, again, part of my decision is based on the
23 fact that the defense is going to stipulate that there was a relationship
24 between Mr. Turner and Mr. -- and the witness.

25 MS. BEVERLY: I -- I understand that. But I want to -- I'm still

1 going to ask the witness questions about very --

2 THE COURT: That's fine.

3 MS. BEVERLY: -- specific questions I -- I told Ms. Machnich
4 about.

5 THE COURT: And there will be no objection by the defense;
6 is that correct?

7 MS. MACHNICH: No objection to the questions that
8 Ms. Beverly ran past in the back hallway before we started today. Those
9 are fine.

10 And again, we are more than willing to type up whatever
11 stipulation and stipulated language works for the parties with regard to
12 this. If we don't -- if the State or if any party feels like they don't feel like
13 a full picture of the extent of the interactions between the two, absent the
14 sexual basis, is -- is not evident by the testimony, we're happy to do a
15 stip.

16 THE COURT: That's fine. And that goes to the issue of
17 probative value versus prejudicial effect. Because there's references in
18 these texts that I was very concerned about on exhibit -- on Exhibit 3,
19 there's a reference:

20 Hey they gave me a bus pass. I-M-M-A just come over. Been
21 trying to vocal for you ups you for six months. Here I come.

22 I had an issue how that could be interpreted. So in any event,
23 I'm not going to allow them in.

24 MS. BEVERLY: Okay.

25 MS. MACHNICH: Thank you.

1 MR. GIORDANI: Just so -- just so the record's clear, Your
2 Honor, we both -- Ms. Machnich and Ms. Beverly have discussed this
3 extensively. The idea here is that we're not going to introduce any
4 evidence of a sexual relationship. But the relationship in and of itself
5 referred to vaguely is probative, and I don't think there's going to be any
6 objection to that, that he knew him, he had been to his house several
7 times. He knew the address, which is part of, you know, how he ended
8 up there in the first place. We're just -- we're going to instruct the victim
9 right now, no reference whatsoever to any sexual relationship with
10 Mr. Turner.

11 MS. MACHNICH: And -- and our understanding was there
12 was no -- it's not a relationship. It's a friendship, is how we would class
13 it.

14 MR. GIORDANI: Oh, yeah. Sure.

15 MS. MACHNICH: Yeah.

16 MS. BEVERLY: Yeah.

17 MS. MACHNICH: The interactions and the fact that they knew
18 each other, he had been over to the house numerous times is not
19 something we're contesting. It's just the --

20 THE COURT: And you're stipulating to that?

21 MS. MACHNICH: Yes.

22 THE COURT: That they had a friendship and they've been to
23 the house -- that your client has been to the witness's house several
24 times?

25 MS. MACHNICH: Well, I think it's actually a little more in

1 depth than that. And yes, we are stipulating to all of that. I had a
2 proposed stipulation that -- that went into it. But again, if -- if the State
3 doesn't want to go that way, I'm fine with that as well. This was what we
4 had.

5 THE COURT: All right.

6 MR. GIORDANI: Yeah. I saw it. I just --

7 THE COURT: In any event, I'm going to make -- I'm going to
8 take proposed Exhibits 1 through 4 and make them a court exhibit and
9 they'll be part of the record.

10 MR. GIORDANI: Understood. If we could just have one
11 minute? We're telling the witness that the texts aren't coming in.

12 MS. BEVERLY: I told him.

13 MR. GIORDANI: Okay.

14 MS. MACHNICH: All right.

15 [Evidentiary hearing concluded at 2:54 p.m.]

16 MS. SISOLAK: Your Honor, we do have -- we do have one
17 other housekeeping matter, and -- if I may address.

18 Your Honor, prior to --

19 THE COURT: Just so you know, this was going to be
20 a 15-minute recess.

21 MS. SISOLAK: I -- I understand, Your Honor. This will be
22 very brief.

23 THE COURT: So if -- if counsel thinks we're going to have an
24 extended recess, please approach the bench and let me know so I don't
25 have the jury just sitting out there. I'll give them more time.

1 MS. SISOLAK: I understand, Your Honor.
2 Your Honor, just to note, Ms. Machnich, prior to opening
3 statements, had invoked the exclusionary rule. Defense counsel,
4 Ms. Machnich, and I, had filed on behalf of Mr. Turner a Notice of
5 Witness, witness -- noticing any and all the State's witnesses, in addition
6 to several additional witnesses.
7 It's come to my attention that one of the witnesses we
8 potentially intend to call has remained in the courtroom. Her name is
9 Karen Hudson. She is co-defendant's mother. She is relevant because
10 she's the registered owner of the vehicle. Potentially, we intend to
11 address some other things with her. So I'd ask that she be excluded.
12 THE COURT: She will be.
13 MS. SISOLAK: Thank you.
14 THE COURT: Is she present now?
15 MS. MACHNICH: I believe she's outside with the rest of the
16 family members.
17 MR. PLUMMER: She's not, Your Honor.
18 THE COURT: Okay.
19 MR. PLUMMER: And I had told the State I'd stipulate to the
20 registration. It's not any concern --
21 MS. BEVERLY: It's not the State that has a problem with it.
22 It's --
23 THE COURT: All right.
24 MS. BEVERLY: -- Mr. Turner.
25 THE COURT: Counsel, you just -- you have an intention of

1 calling this witness in your case?

2 MS. SISOLAK: Your Honor, I'd be happy to make a proffer
3 with Your Honor --

4 THE COURT: No, no, no.

5 MS. SISOLAK: -- at the bench.

6 THE COURT: I just -- I want a good faith statement from you
7 that I'm excluding this person because it's a -- a potential witness in your
8 case.

9 MS. SISOLAK: Depending on if -- dependent upon if
10 Mr. Hudson chooses to testify or not, she could become pertinent to my
11 case, yes.

12 THE COURT: Okay. Then I'll exclude her.

13 MS. SISOLAK: Thank you.

14 THE COURT: Bring the jury in, please.

15 [Jury reconvened at 2:56 p.m.]

16 THE COURT: You may be seated. Will the parties stipulate
17 to the presence of the jury?

18 MS. MACHNICH: We would, Your Honor.

19 MR. PLUMMER: Yes, Your Honor.

20 THE COURT: State? State?

21 MS. BEVERLY: State calls Eric Clarkson.

22 THE COURT: No. State, do you stipulate to the presence of
23 the jury?

24 MS. BEVERLY: Oh, yes. I'm sorry.

25 THE COURT: Thank you. Call your first witness, please.

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MS. BEVERLY: The State calls Eric Clarkson.

ERIC CLARKSON,

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

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

THE WITNESS: Eric Clarkson, E-R-I-C C-L-A-R-K-S-O-N.

MS. BEVERLY: May I proceed, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Mr. Clarkson, do you know a person by the name of Steven Turner?

A Yes, I do.

Q Do you see Mr. Turner here in court today?

A Yes, I do.

Q Can you please point to that person and tell me an article of clothing that they're wearing today?

A He's right there. He's wearing glasses and a light blue shirt.

MS. BEVERLY: Let the record reflect identification of the defendant.

THE COURT: The record will so reflect.

BY MS. BEVERLY:

Q I want to direct your attention to prior to 2015, around 2013, 2014. At that time, did you have a friendship with

1 Mr. Turner?

2 A Yes.

3 Q Would Mr. Turner come over to your house?

4 A Yes.

5 Q How often would he come over to your house?

6 A Every other weekend or four times a month, every weekend.

7 Q And your house at the time, was that at 6729 Oveja Circle?

8 A Yes.

9 Q Okay. When Mr. Turner would come over to your house,
10 would the two of you occasionally smoke some marijuana?

11 A Yes.

12 Q Prior to September 4th of 2015, had you and Mr. Turner
13 stopped communicating?

14 A Yes.

15 Q Okay.

16 MS. BEVERLY: Your Honor, for purposes of the record,
17 defense counsel and I have stipulated to the admission of State's
18 Exhibit No. 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105,
19 and 24.

20 THE COURT: Can you say after 100 which ones? What were
21 the other ones? 100, and what was after that?

22 MS. BEVERLY: It's going to be 101 through 105, and then
23 Exhibit No. 24.

24 THE COURT: Is that correct, Defense; you're stipulating to
25 the admission of those exhibits?

1 MS. SISOLAK: As to Mr. Turner, we would, Your Honor.

2 MR. PLUMMER: Yes, Your Honor.

3 THE COURT: At this time, Exhibits -- State's
4 Exhibits 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105,
5 and 24 will be admitted.

6 [State's Exhibit Nos. 24, and 92 through 105 admitted.]

7 MS. BEVERLY: Thank you, Your Honor.

8 BY MS. BEVERLY:

9 Q Okay. Mr. Clarkson, since -- back in 2015, specifically
10 September the 4th of 2015, were you living at the location of 6729 Oveja
11 Circle?

12 A Yes, I was.

13 Q Is that here in Las Vegas, Clark County?

14 A Yes, it is.

15 Q I'm going to publish --

16 MS. BEVERLY: Permission to publish, Your Honor?

17 THE COURT: You may.

18 BY MS. BEVERLY:

19 Q I'm going to publish for the jury -- and I think you can actually
20 see it on your screen right, what has been now admitted as State's
21 Exhibit No. 92. I'll zoom in a little bit for you and the jury. Can you see
22 this map on your screen?

23 A Yes, I can.

24 Q Okay. And can you see the little red dot marking 67 -- I'm
25 sorry?

1 UNIDENTIFIED JUROR: Needs to be positioned over here
2 more, please. Can't see. It's too far to the left.

3 MS. BEVERLY: Is that better?

4 UNIDENTIFIED JUROR: Much better. Thank you.

5 MS. BEVERLY: And please do let us know if you can't see or
6 hear any of the witnesses.

7 BY MS. BEVERLY:

8 Q So Mr. Clarkson --

9 THE COURT: If I make an inquiry, can the jurors see the
10 witness since we've moved the screen? I need you to be able to see the
11 witness as he testifies.

12 UNIDENTIFIED JUROR: Not here. We can see half of him.

13 [Pause in proceedings.]

14 THE COURT: Can you now see the witness? Call all the
15 jurors see the witness?

16 UNIDENTIFIED JUROR: Yes.

17 UNIDENTIFIED JUROR: Yes.

18 THE COURT: Thank you.

19 MS. BEVERLY: Thank you, Your Honor.

20 BY MS. BEVERLY:

21 Q Okay. Mr. Clarkson, we were talking about do you see where
22 this red marking is, where my pen is?

23 A Yes.

24 Q Would that be marking your address at 6729?

25 A I believe so. It's a little blurry, but I believe so.

1 Q Okay. Can you tell us what the major cross-streets are of
2 where your home is?

3 A Rainbow, between Westcliff and Alta, or between Celeste and
4 Westcliff, depending on how you look at it. The major cross streets
5 would be Alta and Westcliff.

6 Q And how long prior to 2000 -- actually September 4th of 2015
7 had you lived at this address?

8 A 10 -- nine years. Eight, nine years.

9 Q How many bedrooms does your home have?

10 A It was four. It's now three, with a den.

11 Q Okay. And back on September the 4th, who were you living
12 with, if anyone, at the time?

13 A My best friend, Willoughby Potter de Grimaldi.

14 Q Okay. So I want to direct your attention to the late night -- or
15 actually, the early morning hours of September the 4th of 2015.

16 Around 3:30 in the morning, what were you doing?

17 A Playing on my phone and watching TV and getting ready for
18 bed.

19 Q Okay. Are you kind of a late night --

20 A Yes, I am.

21 Q -- like, night owl? What time do you typically go to bed?

22 A Any time after 2:00 or 3:00 in the morning. I do work a
23 graveyard shift.

24 Q Now, you have one of the bedrooms in the house; is that
25 correct?

1 A I do.

2 Q What -- is there a window in your bedroom?

3 A Yes, there is.

4 Q Where does the window in your bedroom face? Which part of
5 the house does it face?

6 A It faces north directly on to the outdoor patio.

7 Q And do you have a fan or anything in your actual window?

8 A Yes, I do.

9 Q Okay. I'm going to show you what has been --

10 MS. BEVERLY: Or permission to publish, Your Honor?

11 THE COURT: You may publish the ones that -- the exhibits
12 that have been admitted, counsel.

13 MS. BEVERLY: Thank you so much.

14 BY MS. BEVERLY:

15 Q Publishing Exhibit No. 101; can you see that on your screen
16 there?

17 A Yes.

18 Q Okay. What are we looking at here?

19 A You're looking at my bedroom window and the fan in my
20 window with the -- the blinds are drawn up to allow for the airflow.

21 Q Okay. And there's this fan on the right side of the window; is
22 that correct?

23 A That is correct.

24 Q And you indicated that this fan faces the back patio of your
25 home?

1 A That's correct.

2 Q Okay. Is it a covered patio or kind of an open patio?

3 A It is a covered patio.

4 Q Okay. So you're getting ready to go to bed around 3:30 in the
5 morning. And what, if anything, do you hear, do you see?

6 A I -- I told a friend that I was going to bed and sent a final text. I
7 rolled over and turned off the light. And within just a few minutes, I
8 heard a sound that I recognized as one of my steel outdoor patio chairs
9 being moved across the bricks.

10 Q Okay. I am going to show you, up on the screen, what has
11 been marked and admitted as State's Exhibit No. 96. Okay. We just
12 had a photo up here of your bedroom window and the fan in your
13 window; is that correct?

14 A Yes.

15 MS. BEVERLY: Your Honor, does the courtroom have the
16 ability to draw on the screen?

17 THE CLERK: Yes, it should have.

18 MS. SISOLAK: It should.

19 MS. BEVERLY: Okay.

20 BY MS. BEVERLY:

21 Q Mr. Clarkson, what you can actually do, is if you take your
22 finger, you can actually draw on your screen and it will show up for the
23 members of the jury to see.

24 A Okay.

25 Q So if can on here, let me know if you need me to zoom in, can

1 you circle where your bedroom window is?

2 A Right there, and the fan you can see to the left.

3 Q Okay. So you look out of -- or you hear something on this

4 back patio area; is that correct?

5 A Yes.

6 Q And you indicated that it was a sound of metal chairs moving?

7 A Those chairs that you can see there, those patio chairs, that's

8 solid steel tubing that they're made from.

9 Q Okay. How long have you had those for?

10 A Many years. I -- I no longer have them. But at that point, I'd

11 them for at least five years.

12 Q Okay. Now, what gave you the impression that it was chairs

13 being moved?

14 A The sound of the -- the steel against the brick.

15 Q Okay. Had you -- prior to going to bed, had you left your

16 chairs -- and I'll actually show you Exhibit No. 97. Is this the way that

17 your chairs looked when you went to sleep that night?

18 A Yes.

19 Q So you hear the chairs moving. And, obviously, this is a brick

20 patio; is that right?

21 A Correct.

22 Q And what do you do when you hear those chairs moving?

23 A If I may, I believe it was only one chair that was moved.

24 Q Okay.

25 A I -- at that point, I sat up in my bed and I looked through the

1 window, which faces directly north. And I saw a figure walk by my
2 window. At -- at first I thought I was seeing things so I got up and I went
3 to that fan and I put my sideways and looked outside. And there was,
4 indeed, a young black man on the patio.

5 Q Okay. When you actually looked through the fan, can you
6 kind of see through the holes in the particular fan on to the patio?

7 A Yes. Especially when a fan is going fast, it doesn't really block
8 your view at all.

9 Q Let me show you State's Exhibit No. 105. This is the fan that
10 we were talking about; is that correct?

11 A That is correct.

12 Q Okay. And when you looked through the fan, you can actually
13 see on the patio, is -- where my pen is?

14 A Yes, ma'am.

15 Q Okay. So you indicated that you see a shadowy figure. And
16 what do you do decide that you're going to do, if anything?

17 A I grabbed my phone and immediately went to my roommate's
18 bedroom, told him that I had seen and heard somebody on the patio and
19 that I was going to call 911. I asked him to get up.

20 Q Were you expecting anyone at your home that night?

21 A No.

22 Q Did anyone call you and say, Hey, I'm going over tonight?

23 A No.

24 Q Did you invite anybody over?

25 A No.

1 Q What do you do when you call 911? What's happening?

2 A I let them know that somebody was in my backyard. I verified
3 it and I had seen someone.

4 Q Okay. What happens next?

5 A I was on the phone with 911. And my roommate got up out of
6 bed. It took him a moment to put a little bit of clothes on. At that point, I
7 showed him that you could plainly see somebody through the glass of
8 the back door.

9 Q Okay. And I don't want you to tell me anything that Willow told
10 you, but did you go and look out the back door of your home as well?

11 A No, I did not. You're -- you're not able to look through the
12 glass. The glass has what's known as a -- a slicker on it. But you can
13 plainly see through if there's light on -- on either side. You can see
14 through if there's somebody on the other side.

15 Q Okay. And I'm going to publish Exhibit No. 97. At the time,
16 around 3:30 in the morning when this is happening, are there any lights
17 on -- on the patio?

18 A No.

19 Q Are there any lights on inside of your home?

20 A No.

21 Q Okay. Now, your house backs up to Rainbow; is that correct?

22 A Indeed.

23 Q Are there street lights on Rainbow?

24 A Now that I'm aware, there are 17 that cast light into my
25 backyard.

1 Q Okay. At the time when you're looking into your back patio
2 though, what are the lighting conditions like?

3 A Cast light from the three immediate street lights on Rainbow,
4 and then all the extra light for all the other lights coming onto the -- under
5 the patio. So you could -- dim, but -- but obvious.

6 Q But was it dark? Was it, like, daylight bright, or was it dark?

7 A No. It was dark.

8 Q Okay. And the inside of your house was dark as well; is that
9 correct?

10 A Absolutely dark, no lighting.

11 THE COURT: I'm sorry?

12 MS. BEVERLY: I thought you had a question for me, Your
13 Honor. I'm sorry.

14 THE COURT: No. He cleared his -- my law clerk cleared his
15 throat.

16 MS. BEVERLY: Oh, I'm sorry.

17 BY MS. BEVERLY:

18 Q Okay. So no lights on on the patio. Maybe some street lights
19 from Rainbow, but also dark inside the house; is that correct?

20 A Correct.

21 Q All right. What happens after you tell Willow that, Hey, there's
22 somebody on the back patio?

23 A Willow came -- as I said, he came out of his bedroom. And
24 when I told him, stop, look, you can see somebody up against the
25 outside, right outside of the back door, initially he walked to the back

1 door. And then he went to the window, which is directly to the right of
2 the -- when you're inside of the home, it's directly to the right of the back
3 door. He stood on the wall side of the window, looked outside, and
4 saw -- saw someone.

5 Q Okay. And I will show you, let's see, Exhibit No. 93. Where
6 my pen is, where this clock is, is this the window that you're talking
7 about?

8 A Yes, ma'am.

9 Q Okay. Are you still on the phone with 911 as all of this is
10 happening?

11 A Yes, ma'am.

12 Q Okay. Are you asking that police come to your house and
13 figure out what's going on?

14 A Yes, ma'am.

15 Q All right. As you're on the phone with 911, what's the next
16 thing that you personally see or hear?

17 A After Willow had walked to the window, and although I can't
18 speak to what he said, we both then heard somebody beating on the
19 front door, security door.

20 Q What kind of security door do you have on your front door?

21 A At the time, it was a 45-year-old metal black screen door,
22 locked.

23 Q So you hear someone knocking on the front door; is that
24 correct?

25 A If I may, it was much more beating than knocking.

1 Q Okay. What do you do when you hear this?

2 A I was slightly frozen in time with the 911 operator. But Willow
3 immediately went from the back window to the front window. And
4 because we have solar screens, if the lights are on outside and it's dark
5 inside, you can see nothing inside. So he went to the window and he
6 looked out and could see someone outside the front door.

7 Q Okay. And again, this whole time, are you still talking to 911?

8 A Yes, ma'am.

9 Q Are you relaying whatever information that you see as well as
10 things that Willow might be telling you?

11 A Yes, ma'am.

12 Q Okay. What happens after Willow goes to the front door and
13 looks out?

14 A I actually asked the 911 operator if that -- if whoever was
15 beating on the front door were the police. And she -- the operator said
16 no, she could not verify that the officers had yet arrived. And, yes, I was
17 on the phone. But at that point, Willow indicated something to me, that
18 he saw something on the other side of the house. And he went directly
19 to look at what it was.

20 Q Okay. At some point, do officers arrive to your home?

21 A Yes.

22 Q Okay.

23 MS. BEVERLY: At this time, Your Honor, based on the
24 conversation I just had with defense counsel, they're stipulating to
25 the 911 call, which is Part 1 of Exhibit No. 11.

1 THE COURT: Okay. Are you moving for admission of
2 Exhibit 11?

3 MS. BEVERLY: I -- Part 1 of Exhibit No. 11. There's two
4 things on there. The next one will come in through someone else.

5 THE COURT: Okay. Are they marked 11A and 11B?

6 MS. BEVERLY: They're actually on the CD, so I can have it
7 marked that way if need be. Okay. So yes, I'm moving for the
8 admission of 11A at this point.

9 THE COURT: Defense, any objection to the admission
10 of 11A?

11 MS. SISOLAK: Not on behalf of Mr. Turner, Your Honor.

12 MR. PLUMMER: No, Your Honor.

13 THE COURT: And counsel, what is 11 -- Exhibit 11A? It's
14 the 911 call?

15 MS. BEVERLY: Yes, of Mr. Clarkson. At this time, I'd ask
16 permission to publish that call.

17 THE COURT: There being no objection to the admission of
18 Exhibit 11A, it will be admitted and you may publish.

19 [State's Exhibit No. 11A admitted.]

20 MS. SISOLAK: Thank you, Your Honor.

21 [Audio played.]

22 BY MS. BEVERLY:

23 Q Mr. Clarkson, did you just hear that call?

24 A Yes.

25 Q And you seem to be kind of visibly upset. What's causing you

1 to be upset right now?

2 A It was a -- it was a very scary thing. And right after that phone
3 call ended, shots start coming into my home.

4 Q We're going to talk about that. Okay. And as we talked about
5 earlier though, you weren't expecting anyone to come over to your
6 house; is that correct?

7 A No, ma'am.

8 Q All right. So I want to pick up where the 911 call left off.
9 Okay. Do you need some water or anything?

10 A I'm good. Thank you.

11 Q Let's pick up where the 911 call left off. When the 911 call left
12 off, it appeared that officers had just arrived at your home; is that
13 correct?

14 A Yes, ma'am.

15 Q How many officers came to your home?

16 A Initially, two.

17 Q When they come, do you let them in the front door?

18 A Yes.

19 Q And what happens when those officers come in the front
20 door?

21 A Initially, I let them both -- made them both aware of the fact
22 that you could see through my back door and that you could plainly see
23 that there was somebody on my back patio. I explained to Officer
24 Robertson how to open the back door. My roommate explained to
25 Officer Grego how to turn the light on right by the back door. And that

1 was while I was still on the phone with the 911 operator.

2 And immediately after I hung up the phone, because for some
3 reason I had just kind of forgotten I was on the phone with the 911
4 operator, when I hung up and I looked back, Officer Robertson was
5 kneeling at my back door and Officer Grego was to the left from my eye
6 view. And Officer Robertson turned the key and opened the back door.

7 Q Let me stop you right there. I'm going to publish what's been
8 admitted as -- I'm sorry, State's Exhibit No. 100. There we go. Thank
9 you so much.

10 Actually, let's do exhibit number -- Exhibit No. 98 first. Okay.
11 The perspective of this photo, is this from the front door of your home?

12 A Yes. Direct -- looking directly toward the back door. In this
13 photo, the actual back door is open and you're looking in towards the
14 backyard.

15 Q Okay. So on the right hand, when you come in the front door,
16 we have your living room; is that correct?

17 A That is correct.

18 Q What do we have on the left side?

19 A We have a -- a -- I mean, there's a demi wall. And on the right
20 of the demi wall is a small curio cabinet. And on the left of the demi wall,
21 there are coats hanging and that is the hallway that leads to my
22 roommate's bedroom.

23 Q Okay. So on -- where my finger is pointed in the very, very far
24 left hand of the screen, that's kind of a hallway that leads to additional
25 bedrooms?

1 A Willow's bedroom, my roommate's bedroom.

2 Q And a little further up, kind of at the bottom of the screen
3 would be the area where the den would be?

4 A That is correct.

5 Q Okay. All right. So you let officers in and you indicated that
6 officer -- now on the --

7 MS. BEVERLY: Excuse me, for the record, Number 100 is
8 being published.

9 Q You let officers in and they go to the back door; is that
10 correct?

11 A Initially, Officer Grego went to the back door, to the left of the
12 back door on -- on the wall side. And Officer Robertson went to the
13 window that you can see there in the far right and looked out the back
14 and didn't say anything, because it was, again, dark and quiet. But he
15 indicated the -- the number two, and a gun.

16 Q Okay. Now, what do you see after that?

17 A From that point, the next thing that I actually saw were the
18 bullet -- the bullets coming in the house.

19 Q I believe you said something earlier about one of them was
20 kneeling, one of the officers was kneeling or something?

21 A Officer Robertson was kneeling right there by the back door.

22 Q Can you put a little circle where you saw Officer Robertson
23 kneeling?

24 A Right here.

25 Q And then where is Officer Grego-Smith?

1 A Here on the wall side. I couldn't get my finger quite there. But
2 if you go over to the wall where you can see the light switch, that's
3 where he was standing.

4 Q Okay. So but inside the house; is that correct?

5 A Correct. And if I may, this --

6 Q Sure.

7 A -- table was over here, so all the way over here. It had been
8 slid out of the way by the paramedics.

9 Q During -- okay. I'm going put back up Exhibit No. 98. You
10 indicated to us that you -- Officer Robertson opened the door; is that
11 right?

12 A Yes, ma'am.

13 Q Back door?

14 A Yes, ma'am.

15 Q Tell me where you're standing. I'm going to try to make this a
16 little less bright if I can.

17 A Willow -- Willow and I are both right here in this area.

18 Q Okay. So are you kind of, for lack of a better phrasing,
19 peeking around to see what's happening with the officers?

20 A I was still on the phone with the 911 operator and I really
21 wasn't looking at what was going on. I -- I knew the officers were in the
22 house and had gone that direction. But when I -- I heard the 911
23 officer -- the 911 operator say, Sir, are you there, it kind of woke me
24 back up. And I said, Oh, yes, they have arrived. I hung up. And when I
25 peeked back around the corner is when I saw him open the door.

1 Q Okay. And I want you to describe for the jury, okay, what you
2 saw when Officer Robertson opened this door, as depicted in State's
3 Exhibit No. 150 -- I mean, 100. I'm sorry.

4 A I saw two bullets fly through my living room.

5 Q Where did those bullets from your perspective come from?

6 A Right outside that back door, right there where you can see
7 the orange and the chair. Right there.

8 Q How did you know they were gunshots?

9 A I saw the bullets fly across my living room.

10 Q Describe for us what those, from your perspective, what those
11 bullets looked like coming through your house.

12 A Molten metal, red and blue. The other one was a -- like a
13 giant sparkler had gone off in my living room.

14 Q So from your perspective, was it two different types of bullets?

15 A Yes.

16 Q Do you --

17 A Yes.

18 Q These shots that came through your home, were they in quick
19 succession or shot, break, shot?

20 A They were quick succession.

21 Q Back to back?

22 A Yes, ma'am.

23 Q Okay. What's the next thing that you hear or see?

24 A I -- I hear, Officer down. I heard somebody scream, Officer
25 down, officer shot, I've been shot. And I hear gun play, guns going off.

1 Q So -- so after these first shots come through your house, you
2 hear additional shots?

3 A Yes, ma'am.

4 Q From outside or from inside the house?

5 A At that time, I have no -- I had no idea.

6 Q Would it be fair to say that after these first shots came through
7 your home, you kind of ducked back past the wall?

8 A Yes, ma'am.

9 Q And again, this is going to be Exhibit No. 98. When the bullets
10 originally that we were talking about came through your home, how
11 close were they to you, the bullets?

12 A Very.

13 Q Were you, in fact, standing very close to your front door and
14 your living room window?

15 A Yes, ma'am. No more than six inches.

16 Q After you hear other shots being fired, what's the next thing
17 that you do?

18 A Both Willow and I had retreated to his bedroom after those
19 first shots rang into the house. That's why I really couldn't tell what --
20 where the shots were coming from from that point. The next thing I
21 heard was a very loud booming black man's voice screaming to get the
22 fuck down or he -- that person was going to shoot whoever he had --
23 whoever it was.

24 Q At some point, do additional officers start arriving at your
25 home?

1 A Yes.

2 Q Does your house, in fact, get pretty crowded with other
3 officers?

4 A Yes, ma'am.

5 Q And did that include a K-9 dog officer?

6 A Yes.

7 Q Do those officers try to keep you and Willow out of the way of
8 what's going on?

9 A No.

10 Q Okay. You don't go, like, in the backyard or anything, though,
11 do you?

12 A Oh, no.

13 Q Okay. At some point after this has gone on, do you end up
14 meeting with some detectives and giving a statement about what
15 happened?

16 A Yes.

17 MS. BEVERLY: Court's indulgence.

18 Q The backyard of your house has a pool area; is that right?

19 A Yes.

20 MS. BEVERLY: I'm going to show what's been admitted as
21 Exhibit No. 21 -- 24, excuse me, Your Honor.

22 Q Do you remember whether this part of your pool area was
23 damaged prior to this night?

24 A It was not.

25 MS. BEVERLY: Court's indulgence.

1 I have no further questions. I'll pass the witness.

2 THE COURT: Thank you.

3 Any cross-examination by the defense?

4 MS. SISOLAK: Thank you, Your Honor.

5 THE COURT: You may proceed.

6 **CROSS-EXAMINATION**

7 BY MS. SISOLAK:

8 Q Good afternoon, Mr. Clarkson.

9 THE COURT: Counsel, question the witness from the lectern,
10 please.

11 MS. SISOLAK: Absolutely, Your Honor. I apologize.

12 BY MS. SISOLAK:

13 Q Mr. Clarkson, I'll be brief. I know this is tough. I'm sorry.

14 Other than what we heard on the 911 call, any other
15 descriptions of what was seen were given to you by your roommate,
16 correct?

17 A No. What was given to me were quiet, because it was
18 almost 4:00 in the morning. And what was going on was in the dark and
19 he indicated to me initially that he had seen some --

20 MR. PLUMMER: Objection. Hearsay.

21 BY MS. SISOLAK:

22 Q And I don't want you to tell me what he said.

23 A Okay.

24 Q Maybe I could rephrase my question.

25 A Thank you.

1 Q Mr. Clarkson, I understand this was going very quickly and
2 things were -- were sort of chaotic. You told officers everything you saw,
3 correct?

4 A Yes.

5 MS. SISOLAK: Nothing further. Thank you.

6 THE COURT: Mr. Plummer?

7 MR. PLUMMER: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. PLUMMER:

10 Q Good afternoon, Mr. Clarkson.

11 A Good afternoon.

12 Q The -- do you know Mr. Hudson?

13 A No.

14 Q Have you ever seen Mr. Hudson before?

15 A Only in the pictures.

16 Q Have you ever talked to him?

17 A No.

18 Q Do you know Mr. Turner?

19 A Yes.

20 Q You've known him for five, six years?

21 A Now almost eight, even though no contact for the last three
22 and a half.

23 Q Since this incident?

24 A Correct.

25 Q But prior to this incident, you had known him for five years?

1 A About five years.

2 Q And he had been to your house numerous times.

3 A Yes.

4 Q And the two of you had smoked marijuana together numerous
5 times?

6 A Yes.

7 Q And you provided the marijuana most of the time?

8 A 50/50.

9 Q And over those five or so years, there were time periods
10 where he was over your house once a week?

11 A Yes.

12 Q Times it was every other week?

13 A Yes.

14 Q So he had been to that house many, many times?

15 A Yes.

16 Q Mr. Hudson, though, had never been there?

17 A Not that I'm aware of.

18 Q Do you recall the first time you gave a recorded statement?

19 A I believe so, yes.

20 Q And in that recorded statement, though, that wasn't the first
21 time that you had talked to officers and told them what was going on? I
22 mean, you had talked to a police officer, letting them know what was
23 going on before actually sitting down with the detective that hit record?

24 A I -- I believe so. I really don't think that there was much talking
25 going on to anybody. And if there was any, as you said -- indicated, it

1 would have been to another officer.

2 Q And the -- do you recall on September 4th, 2015, giving a
3 statement, a recorded statement?

4 A Yes.

5 Q Prior to giving that statement, you had talked to police officers
6 concerning this?

7 A Again, in -- perhaps in the -- in the street on Oveja while we
8 were awaiting.

9 Q And do you remember which officer, as far as -- do you
10 remember an officer discussing with you as far as who fired the first
11 shot?

12 MS. BEVERLY: And can we approach, Judge?

13 THE COURT: Yes.

14 [Bench conference transcribed as follows:]

15 MS. BEVERLY: I don't know where this line of questioning is
16 going, but I don't know if he's trying to get him to say Turner fired the first
17 shot, but that would be completely -- I think that would be a proving
18 issue. So I don't know what path he's going down, but --

19 MR. GIORDANI: It's a concern with the proof.

20 MS. BEVERLY: -- I think that's a prudent issue. That's not
21 allowed at all. That's the whole purpose of the redaction of the
22 statement.

23 THE COURT: Okay. But what is your question? What is the
24 question you're asking?

25 MR. PLUMMER: Your -- Your Honor, we're --

1 THE COURT: I thought your question was, did the officer tell
2 you who filed -- fired the first shot.

3 MR. PLUMMER: That's where I'm going.

4 MS. BEVERLY: Well, that would be --

5 MR. PLUMMER: I'm going to discussions --

6 MR. GIORDANI: Oh --

7 THE COURT: Okay. But then you need to make an
8 objection, Ms. --

9 MS. BEVERLY: I'll make -- I -- I'll make an objection to that. I
10 didn't hear -- I thought he said -- I thought he asked him, did you tell the
11 officers who filed -- fired first. I was going to say, I was concerned about
12 proving issues. But I'll make an objection to hearsay.

13 THE COURT: Okay. I -- let me make sure I heard the
14 question correctly. Did you ask, Did the officer tell you who fired the first
15 shot?

16 MR. PLUMMER: That's where I was --

17 THE COURT: Okay. But was that --

18 MR. PLUMMER: I hadn't gotten there yet.

19 THE COURT: That's what I --

20 MR. PLUMMER: But that is where I was going.

21 THE COURT: -- thought the basis of your question --

22 MR. PLUMMER: That is where I was going, but I hadn't got
23 there --

24 MS. BEVERLY: And I think --

25 MR. PLUMMER: -- yet.

1 MS. BEVERLY: -- both parties are going to have a hearsay
2 objection. Or the State is going to have a hearsay objection to that.

3 MS. SISOLAK: Well, we will absolutely have one as well.

4 THE COURT: Okay. I'm going to sustain the objection.
5 Certainly, you can ask the officer. And if he makes a different statement,
6 you know, you can bring a prior witness's statement through the rules of
7 evidence. But I'm going to sustain the objection as to what the officer
8 said, if you are asserting it for the truth of the matter asserted.

9 MR. PLUMMER: Understood.

10 THE COURT: Thank you.

11 MS. SISOLAK: Thank you, Your Honor.

12 MS. MACHNICH: I was just --

13 THE COURT: Wait.

14 MS. MACHNICH: I just -- have a procedural question. Do we
15 get a chance to recross on his cross, since there's no -- we've been --
16 our client has been attacked by his cross? Or --

17 THE COURT: Okay.

18 MS. MACHNICH: -- how does that -- I don't know how that
19 works. I just wanted to ask.

20 THE COURT: I'm going to let the State do rebuttal. I will give
21 you an opportunity to ask some follow-up questions based -- now, would
22 you rather them ask their final questions before you ask your questions?

23 MS. BEVERLY: I think the State has to have redirect before
24 either of them can have --

25 THE COURT: Do recross.

1 MS. BEVERLY: -- a recross.
2 THE COURT: I agree.
3 MS. BEVERLY: Yeah.
4 MS. MACHNICH: But I thought we get -- we would get to
5 recross on that.
6 THE COURT: I will let you make --
7 MS. MACHNICH: Very briefly.
8 MS. SISOLAK: It will be brief.
9 THE COURT: But I'm just saying, it's going to be limited to
10 anything that he elicits.
11 MS. MACHNICH: Yes.
12 MS. SISOLAK: Yes.
13 MS. MACHNICH: Got it.
14 THE COURT: Not --
15 MS. MACHNICH: Nothing else.
16 MR. GIORDANI: Hold on, hold on.
17 THE COURT: I'm not going to keep going --
18 MS. MACHNICH: I don't --
19 MR. GIORDANI: I'm sorry. So if we don't redirect, you're
20 saying that they can --
21 THE COURT: I'm going to let them bring out some --
22 MS. MACHNICH: If he --
23 THE COURT: -- question him on --
24 MS. MACHNICH: Only on something he brought out.
25 THE COURT: They're not -- they're not --

1 MR. GIORDANI: That's not --
2 THE COURT: -- together, as far as defenses.
3 MR. GIORDANI: Right. Of course.
4 THE COURT: Okay. So I'm going to let Mr. Turner's -- let me
5 get it right. You represent Mr. Turner; is that correct?
6 MS. MACHNICH: Yes.
7 THE COURT: Would what you -- I -- I would let you have a
8 limited recross. I would allow you to reopen.
9 MR. GIORDANI: Okay. We're -- we're objecting to that.
10 MS. BEVERLY: Definitely object to that.
11 MR. GIORDANI: That -- that is completely inappropriate,
12 not -- that is not within the rules of evidence or procedure. That -- that
13 could potentially cause --
14 MS. SISOLAK: I --
15 MR. GIORDANI: -- this trial to go on forever.
16 THE COURT: Well, I'm not going to --
17 MS. SISOLAK: I think --
18 THE COURT: -- let it go on forever.
19 MS. SISOLAK: I think that --
20 MR. PLUMMER: That is proper procedure.
21 MS. SISOLAK: -- the record we're making is that because
22 Mr. Plummer is bringing up stuff that we didn't bring up, had I known he
23 was going to bring it out, I would have asked on cross. I'm basically
24 crossing on what --
25 THE COURT: All right. Here's how --

1 MS. SISOLAK: -- we're considering to be his direct.

2 THE COURT: -- it can go, counsel. We're -- we're going to do
3 that. I'm doing to let the State do -- yeah. I have a -- I will let either
4 defense counsel then ask some questions based strictly on what came
5 out after they asked their questions.

6 MS. SISOLAK: Okay.

7 MS. MACHNICH: Okay.

8 MS. SISOLAK: That's fine.

9 THE COURT: Not -- we're not going to get back into
10 everything. It's going to be very limited.

11 MR. GIORDANI: And I understand. We're -- we're objecting
12 if --

13 THE COURT: Okay. That's --

14 MR. GIORDANI: We respect the Court's decision.

15 THE COURT: But again, you're right. This is not going to go
16 on and on forever, counsel. And it better be very limited to something
17 that's -- strictly came out.

18 MS. MACHNICH: It will.

19 MS. SISOLAK: Understood, Your Honor.

20 MR. GIORDANI: And just for the record, the -- the State's
21 objection is re -- cross-examination is limited to the direct examination
22 and recross-examination is limited to the redirect examination. That's
23 the rules. That's why we're objecting. Because now you're giving cross
24 on a cross. It's not appropriate.

25 THE COURT: Okay. But what I can do counsel, what I can

1 do or -- is I can allow her to reopen her cross before you do your
2 redirect. Okay.

3 MS. MACHNICH: That's fair. That's fine.

4 MS. SISOLAK: I don't care when I get to ask --

5 THE COURT: Thank you. Okay. Do you have an objection
6 to that, where you will get redirect after I let her reopen her cross based
7 on something he brought out?

8 MR. GIORDANI: Respectfully, yes. I still object to that. The
9 State's position is that cross-examination should be limited to what the
10 State brought out in direct examination, not what some co-defendant
11 does. I've done several co-defendant cases and never heard of that
12 happening before, respectfully.

13 THE COURT: I understand.

14 MR. GIORDANI: You know, I -- and to -- that --

15 THE COURT: I agree in theory what the State is saying.
16 We're not going to get into this. If there's something -- whether --
17 making offer of proof as to what you want to bring out. But he --
18 because I didn't hear anything that was --

19 MS. MACHNICH: One of the of things that Mr. Plummer
20 elicited was that you hadn't seen Mr. Turner -- you never saw Mr. Turner
21 again after this night. But I believe Mr. Clarkson's -- is true about this, is
22 Mr. Clarkson didn't see Mr. Turner the night of this incident. And so we
23 have one question about that, which is you didn't see Mr. Turner the
24 night of this incident. Because he didn't see any -- I mean, I'm --

25 THE COURT: I'm going to ask you -- let you -- I do agree, one

1 question.

2 MS. MACHNICH: Okay.

3 MS. SISOLAK: Thank you, Your Honor.

4 MR. GIORDANI: Understood.

5 THE COURT: Okay.

6 MS. MACHNICH: After he's done.

7 THE COURT: After he finishes, and then they're going to
8 have the last words, last few words.

9 MS. MACHNICH: Thank you, Your Honor.

10 MR. PLUMMER: Thank you, Your Honor.

11 [End of bench conference.]

12 BY MR. PLUMMER:

13 Q Mr. Clarkson, I guess let me rephrase my question. You've
14 talked to a number of police officers involving this case?

15 A Yes.

16 Q And not -- in not one of those discussions or in any recorded
17 statement did you ever mention that you could see a molten-colored
18 bullet streaming past the hallway?

19 A Okay.

20 Q That -- that language has never been used before?

21 A Oh, no. It was used.

22 Q When?

23 A In -- in the last situation like this when we were in court. The
24 same question was asked of me, and I believe I answered the same
25 way.

1 Q When you spoke to the police officers you never mentioned
2 any of that.

3 A Perhaps.

4 Q Now, at some point you saw Officer Grego turn on the outside
5 light?

6 A He was there. I -- in my idea, with Officer Robertson on the
7 ground with his gun drawn, he wouldn't have been able to reach up and
8 flip the light on as well. So somebody had to have turned the light on.
9 You're right, I did not see Officer Grego's hand turn that light switch on.

10 Q But Officer Grego was standing right there by the light switch?

11 A Yes, sir.

12 Q Did you see him with his gun drawn?

13 A I did. Both officers had their guns drawn.

14 Q Both of them had their guns drawn?

15 A Yes, sir.

16 MR. PLUMMER: Your Honor, I don't have any further
17 questions.

18 THE COURT: Thank you.

19 Ms. Sisolak, I'll let you reopen cross-examination and ask one
20 additional question.

21 MS. SISOLAK: Thank you, Your Honor.

22 **RECROSS-EXAMINATION**

23 BY MS. SISOLAK:

24 Q Mr. Clarkson, you did not see Mr. Turner that night at your
25 house, that night of the incident, did you?

1 A I did not see anybody's face at all, no.

2 MS. SISOLAK: Thank you.

3	THE COURT: State?
---	-------------------

4 MS. BEVERLY: I have nothing further.

5 THE COURT: Thank you. Can this witness be excused?

6 MS. BEVERLY: Yes.

7 THE COURT: Sir, thank you for --

8 THE WITNESS: Thank you guys.

9 THE COURT: -- coming today. You may be excused.

10 State, do you have a -- another witness?

11 MS. BEVERLY: I do. The State's next witness is Willoughby
12 Grimaldi.

13 MS. SISOLAK: Your Honor, do you mind if we just stood back
14 here?

15 THE COURT: You're fine.

16 MS. SISOLAK: Thank you, Your Honor.

17 | **WILLOUGHBY POTTER DE GRIMALDI,**

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

20 THE CLERK: Would you please state and spell your name for
21 the record?

22 THE WITNESS: Willoughby Potter de Grimaldi.

23 | W-I-L-L-O-U-G-H-B-Y P-O-T-T-E-R space D-E space G-R-I-M-A-L-D-I.

24 THE COURT: Sir, would you mind if I had you back up a little
25 bit and so you could turn more towards the jurors so they can see your --

1 see you as you testify? Is that satisfactory?

2 [Pause in proceedings.]

3 MS. BEVERLY: Court's indulgence. Your Honor, by
4 stipulation of the parties, going to ask that you admit State's Proposed
5 Exhibits No. 106, 107, 108, 109, 62, 63, 64, 110, 111, 112, 113, 114
6 and 115.

7 THE COURT: Is -- is that correct, the defense has stipulated
8 to the admissions of the exhibits that the State just read off?

9 MS. MACHNICH: On behalf of Mr. Turner, yes.

10 MR. PLUMMER: Yes, Your Honor.

11 THE COURT: Exhibits 106, 107, 108, 109, 62, 63, 64, 110,
12 111, 112, 113, 114, and 115 will be admitted.

13 [State's Exhibit Nos. 62 through 64, 106 through 115 admitted.]

14 MS. BEVERLY: Thank you, Your Honor.

15 THE COURT: And you may publish those exhibits without
16 requesting to publish each one.

17 MS. BEVERLY: Thank you so much.

18 **DIRECT EXAMINATION**

19 BY MS. BEVERLY:

20 Q Sir, may I call you Willow?

21 A Yes.

22 Q Is that what you typically go by?

23 A Yes.

24 Q All right. I want to direct your attention to September the 4th
25 of 2015. On that day, were you living at 6729 Oveja Circle?

1 A I was, yes.

2 Q Who were you living with at the time?

3 A My best friend and roommate, Eric Clarkson.

4 Q And how long had you been living at that address?

5 A On and off, a few years.

6 Q Now, in that particular home, Eric has a bedroom and you

7 have a bedroom, I assume; is that correct?

8 A Correct.

9 Q And is your bedroom kind of off of a little hallway off the front

10 door?

11 A Yes. It's the main hallway.

12 Q And which area of the backyard or the front yard or which part

13 of the house does your bedroom face?

14 A Out my window?

15 Q Yes.

16 A It faces south, out to the pool area/backyard.

17 Q And is there a -- a fan or anything in your window?

18 A Yes. For -- a swamp cooler, yes.

19 Q I'm going to show you --

20 MS. BEVERLY: If I can approach the witness?

21 THE COURT: You may.

22 BY MS. BEVERLY:

23 Q State's Exhibit No., excuse me, 106. Can you see your

24 window depicted, your bedroom window, depicted in this photo?

25 A Yes.

1 Q Okay. And is it where my finger is pointed, kind of in the
2 middle of the page?

3 A Yes.

4 Q And it looks like next to the window, there's a little, like, half
5 wall? Or what do you describe that as?

6 A We call it a demi wall.

7 Q Is that a step down as well?

8 A Yes. It's a flower bed.

9 MS. BEVERLY: And I'm going to publish this for the record,
10 Grand Jury Exhibit No. 106 on the screen for the jury.

11 THE COURT: And, counsel, if it's easier for you, you may
12 have to do it the old-fashioned way and actually just show them the
13 picture.

14 MS. BEVERLY: Yeah. I might have to -- you know what, that
15 might be better, Your Honor. Thank you. Haven't had to do that in a
16 while.

17 BY MS. BEVERLY:

18 Q So you were describing -- maybe we can all see it. There's a
19 window here. That's your bedroom window, right?

20 A The one to the right.

21 Q This one right here?

22 A Yes.

23 Q Okay. So to the right of the page by this demi wall?

24 A Yes.

25 Q Okay. During the early morning hours of -- actually, one

1 second. Show you one more, Exhibit No. 107. Is this a closer up of
2 your bedroom window and then that demi wall we're talking about?

3 A Yes, it is.

4 Q And behind that demi wall, does this wall go to the front of
5 your house?

6 A Yes.

7 Q On September the 4th of 2015 at about 3:30 in the morning,
8 what were you doing?

9 A Trying to go to sleep.

10 Q Are you and Eric kind of late night owls?

11 A Yes.

12 Q What, if anything, happens as you're trying to go to sleep that
13 evening -- or that morning, actually?

14 A Just before falling asleep, I was quickly, harshly woken up by
15 my roommate in quite a panic.

16 Q And I don't want you to tell me what Eric told you, but did he
17 give you some information that was concerning to you?

18 A Yes. In fact, so concerning I was not really believing it was
19 actual facts. I just thought it was anything other than what it was.

20 Q When you get this information from Eric, what do you decide
21 to do?

22 A I decided to try to prove him wrong and go check on it myself,
23 to see if anything else was happening. I put pants on and proceeded to
24 go towards the back of the inside of the house to actually check on what
25 ruckus was happening in the backyard.

1 Q Okay. So in the backyard of your home, there's a patio area;
2 is that correct?

3 A Yes.

4 Q And then there's a further pool area; is that correct?

5 A Yes.

6 Q And then there's kind of a, like, an open area of the backyard
7 with furniture on it; is that fair?

8 A Correct.

9 Q I -- I'm going to show you Exhibit No. 99; where do you go in
10 your home to figure out what's going on?

11 A I first traveled the along this wall here on the left and I
12 approached the back door that was closed. And before reaching for the
13 handle, I thought let's check out the window. So I crossed over and
14 stood against this wall here, next to the clock. And I peered around the
15 corner, out the back window.

16 Q And what, if anything, can you tell the jury did you see when
17 you looked out that back window?

18 A Directly out the back window there is an archway that's
19 across -- it's -- it's the actually walk path out of the awning area. And I
20 saw the silhouette of -- of a black man that was with a billed cap on and
21 cocking what looked to be a shotgun.

22 Q Fair to -- would it be fair to say, please correct me if I'm wrong,
23 you couldn't detail any facial features or anything about this person; is
24 that correct?

25 A That is correct. All light was from the backside of him.

1 Q At some point after you see this -- well, actually, let me ask
2 you this: Before you go and check, has Eric called 911 already?

3 A Yes.

4 Q Do you relay the information that you just saw in the back to
5 Eric to tell 911?

6 A I did. It was a very -- I'm sorry, it was a role reversal for us.
7 Usually Eric is the leader and I'm more of the assistant or follower. But
8 tonight was not that at all. It totally swapped.

9 Q Had you been expecting anyone to come over to your home
10 that evening?

11 A Not at all.

12 Q Had you invited anyone over?

13 A No. And we communicate everything, so no.

14 Q You and Eric?

15 A Yes.

16 Q Okay. Sir, did you have any firearms at the house that
17 evening?

18 A Not at all.

19 Q I'm going to show you Exhibit No. 95. Do you see the guns
20 depicted in this photo?

21 A I do.

22 Q Are those your guns?

23 A No.

24 Q Are they Eric's guns?

25 A No.

1 Q I'm going to show you Exhibit No. 94. Do you see the
2 handgun depicted in this photo?

3 A I do.

4 Q Is that either you or Eric's handgun?

5 A No. We own no firearm.

6 Q Okay. All right. Now, what did you do after you see this
7 person on the back with what appeared to be a shotgun?

8 A Immediately freaked out. I backed up against the wall and cut
9 across the living room to relay the information to Eric, to let him tell
10 the 911 operator. And I then proceeded to stand in the living room,
11 trying to not only look out the back, but also continue -- I don't know.
12 Should I -- should I go on?

13 Q Let me ask you this: At some point, do you hear something at
14 your front door?

15 A Yes.

16 Q Tell us about that.

17 A After crossing back from the back window, within a few
18 moments, that's when I heard not just the doorbell ring, but then banging
19 continuous on the front door. We have a screen door. And it was
20 locked. But there was still continuous banging. I proceeded to go to the
21 corner of our living room where you can actually look out the front
22 window. Our front light was on, so I could see out front. But while
23 standing there, I could still see the shadow out back, as well as out of
24 the corner I could see directly through to my own bedroom, out that
25 window where I could see a third person, totally different from both the

1 one out front and the one out back. And that person ran from one side --
2 from the pool side to the demi wall side.

3 Q Okay. Let's talk -- let's break that down a little bit. Okay? So
4 you go to the front door when you hear banging on the front door; is that
5 right?

6 A Well, I was at the front door, basically, in that hallway. And --

7 Q So let me show you Exhibit No. 109 so you can describe this
8 for the jury. This is the front of your home; is that correct?

9 A Yes. The entry.

10 Q This would be the front door?

11 A Uh-huh.

12 Q Correct? And this is the screen door that you're referring to?

13 A Correct.

14 Q Okay. Is this a living room window?

15 A Yes.

16 Q And then over here on the right side of the page, would that
17 be -- what window is that?

18 A That's our den.

19 Q Okay. And behind the front door, that would be the hallway
20 that leads to your bedroom; is that correct?

21 A Along this path. It turns left.

22 Q When you look out the front door, what do you see?

23 A I could see through the four windows at the top of the door. I
24 could see the shadow of a figure of a afro of some sort. And that's when
25 I cut to the corner in the actual living room where I could hear through

1 the blinds. And I could see the entire description of a man out front that
2 was shirtless, and probably 6'1" or so. And he was in black shorts and
3 seemed very frantic, but continuously looking around as if there was
4 something more coming.

5 Q And then you indicated you saw another person run past your
6 bedroom window; is that correct?

7 A Yes.

8 Q And I want to go back to this photo. This is going to be
9 Exhibit No. 106, for the record. Can you actually just draw with your
10 finger for the jury to see where this person ran that you saw?

11 A He was from this section directly across. I saw him go across
12 this way and immediately hop up and up, as if he was communicating to
13 whoever was --

14 Q I -- I don't want you to speculate or anything. But just what
15 you saw. Okay? So you drew -- you drew the little path for us; is that
16 right?

17 A Yes. I saw him go from this direction to this direction.

18 Q In your backyard though, right?

19 A Yes.

20 Q So now we're talking about one person in the back, one
21 person at the front door, and one person kind of on the side by your
22 window; is that right?

23 A Yes.

24 Q All right.

25 MR. PLUMMER: Your Honor, can I ask that counsel, after

1 she has the witness point out on the piece of paper, put it up on the
2 screen and reconfirm it, so that we can all see what it is that he's
3 testifying to?

4 MS. BEVERLY: It's -- it's hard to reconfirm, because he can't
5 see the screen. So that's why I'm showing the jury --

6 THE COURT: Here is what I'll allow you to do, counsel.

7 THE WITNESS: Should I do it here?

8 MS. BEVERLY: If -- if you can do it here, that would be better.

9 THE COURT: Okay. Wait.

10 MS. BEVERLY: So.

11 THE COURT: I'll allow you --

12 THE WITNESS: From this side --

13 MS. BEVERLY: Hold on one second, sir.

14 THE COURT: Either -- sir, is that going to -- can you do it on
15 that screen? Otherwise, I'm going to allow counsel to stand at the end
16 of the jury box so you can actually see the exhibit that he's pointing to.

17 MS. BEVERLY: Okay.

18 MR. PLUMMER: Either way, Your Honor.

19 THE COURT: You tell me. What would you prefer?

20 MR. PLUMMER: I'd prefer to see it on the screen so that we
21 can all see what the witness is testifying to.

22 THE COURT: All right.

23 MS. BEVERLY: Okay. We'll do our best, Judge. Thank you.

24 THE COURT: Thank you. If you cannot, counsel, then you
25 can stand at the end of the jury box and actually witness the actual

1 exhibit that he's pointing to.

2 MR. PLUMMER: Thank you, Your Honor.

3 THE COURT: Thank you, counsel.

4 BY MS. BEVERLY:

5 Q And let's just go over a -- a couple of descriptions. Okay? So
6 we have the person at the back, and that's the person you indicated you
7 saw with a potential shotgun; is that right?

8 A Yes.

9 Q Did that person have anything on their head?

10 A Yes. They were wearing a billed cap of some sort.

11 Q Okay. And shirtless, is that what you said, I think?

12 A I don't recall.

13 Q You're -- you're not sure? Okay. Then we have the person at
14 the front door, correct?

15 A That person was shirtless.

16 Q Okay. And anything descriptive about that person?

17 A Besides in black basketball shorts and -- I could tell they had a
18 couple of an inch of -- of afro.

19 Q Okay.

20 A Other than that, I didn't recognize them or recognize anything
21 else.

22 Q Okay. And then we have the person running across your
23 window, correct?

24 A Yes.

25 Q Any description about that person?

1 A I could tell the hairline, more so than anything. It was very
2 fast. So I actually crossed from the living room down my hallway to look
3 out the window. That's when I could see more of a -- of a description.
4 But the first thing that popped in my mind was the hair. Because the hair
5 was unlike anyone that I knew, and it was very wild, spiky almost.

6 Q Okay. At some point, do you come back to the front of your
7 house, the front door?

8 A I did.

9 Q What do you see when you come back to the front door of
10 your house?

11 A Well, I went around the corner into the den and looked out that
12 window. And that's when the knocking and banging at the door stopped.
13 I saw that the guy had bolted away from our front door and had crossed
14 the cul-de-sac in front of our house.

15 Q So I'm going to show you over here Exhibit No. 64. Is this the
16 window of the den window you're talking about?

17 A Yes, it is.

18 Q Okay. Put that on the screen now. So you looked out this den
19 window and you see whoever was knocking at the front take off away
20 from your house; is that right?

21 A Correct.

22 Q All right. And you indicated they went down to, I believe, you
23 say Nutha Street?

24 A Nunca.

25 Q Nunca. Okay. This is going to be a little hard to see, so we're

1 going to put it -- actually, sorry.

2 MS. BEVERLY: For the record, parties stipulate to the
3 admission of Exhibit No. 117.

4 THE COURT: Is that correct, counsel?

5 MS. MACHNICH: Yes, Your Honor, for Mr. Turner.

6 MR. PLUMMER: Yes, Your Honor.

7 THE COURT: Exhibit 117 -- State's Exhibit 117 will be
8 admitted.

9 [State's Exhibit No. 117 admitted.]

10 MS. BEVERLY: Thank you, Judge.

11 BY MS. BEVERLY:

12 Q So I'm going to show you this first and then I'm going to put it
13 on the --

14 THE COURT: Counsel, approach. If you want to -- see if this
15 will assist the witness in pointing, if you want to put it up on the screen.

16 MS. BEVERLY: Oh, okay. My teacher had these. Let's try
17 this. Okay? Let's publish Exhibit No. 117.

18 BY MS. BEVERLY:

19 Q I'm going to zoom in on this. Do you see Oveja Circle --
20 actually, do you see Nunca on here?

21 A Yes.

22 Q And do you see Oveja Circle?

23 A Yes.

24 Q Do you see where my pen is, Oveja Circle?

25 A Yes.

1 Q So you see the person at the front leave your residence and
2 go down -- go down, excuse me, over to Nunca?

3 A I saw him cross across this path, run along, and then turn
4 sharp left.

5 Q Okay. Thank you so much. Keep that with you, just in case.
6 Okay? Now, any of these three people you did not recognize; is that
7 correct?

8 A Correct.

9 Q In fact, you weren't able to identify anybody as the people at
10 your house; is that correct?

11 A Yes. That's correct.

12 Q Now, at a later point -- we're just going to fast forward for a
13 few minutes -- at a later point, are you shown some photographs of
14 people who may or may not be involved in this investigation?

15 A I am --

16 Q Were --

17 A -- or was.

18 Q Okay. Were either of the people shown to you the person who
19 ran away from the house who was at the front door?

20 A I was able to recognize the hair identically to one.

21 Q Okay. But were either of the people the person who ran away
22 from your house?

23 A No.

24 Q Now, once this person runs away from your house, do officers
25 end up arriving?

1 A Yes. Almost at the same exact time. It was -- it was freakishly
2 perfect.

3 Q Okay. It seemed close in time?

4 A Yeah. I wasn't -- I just wasn't expecting it. And at that time, it
5 took so long, yet so fast for everything to happen. But yeah.

6 Q When the officers arrive, what if anything, do you tell them?

7 A Upon entering the house, I proceeded to point and explain
8 very quietly how to turn the back doorknob and switch the light on that is
9 right next to the doorknob.

10 Q Okay.

11 A I -- I believe there was more -- I think I also even told him how
12 to look out the back and which door to open. Because we have what
13 looks like just two glass windows, but one is a door and one is a window.

14 Q And is this the kind of door that you actually have to open from
15 the -- unlock from the inside?

16 A Yes. Both dead bolt and handle.

17 Q And does the door swing out or does it swing in?

18 A In. It opens in the center.

19 Q I'll show you Exhibit No. 100 up on the screen, if you can see
20 that. Oh, can you actually see up there?

21 A I can.

22 Q Oh, great. Solves our problem. This door where my figure is
23 pointed, that's the door we're talking about that leads to your patio,
24 correct?

25 A Yes.

1 Q And swings inward?

2 A Yes. It opens from this side and swings around this way.

3 Q Okay. All right. So the officers come in. And what do they do
4 that you observed?

5 A Immediately they had lights on beaming on the ground,
6 because the entire house was dark. They immediately popped them off
7 and proceeded to just react. They listened to what we said. They
8 walked along the same path along the wall. One officer went to the right
9 and actually looked out the window that I had looked out. And the other
10 officer stayed on the far left by the actual door entrance.

11 Q Okay. Where are you and Eric standing as you're watching
12 the officers?

13 This is going to be, for the record, Exhibit No. 98 on the
14 screen.

15 A We're standing right here by this wall. This is the actual
16 hallway. And Eric was actually leaning against this wall and I was
17 standing next to him peering around this corner.

18 Q Okay. So you're kind of in front of Eric, right?

19 A Yes.

20 Q A little bit?

21 A Yeah. I was part way on the tile and part way on the carpet.
22 Eric was completely back on the tile, but leaning forward. He has the
23 advantage of being tall. I do not.

24 Q Okay. What do you see once the officers get to that back
25 door?

1 A I see them nonverbally communicating to each other.

2 Q What's the next thing you see?

3 A Do you want me to say what I saw?

4 Q Sure. Go ahead.

5 A I saw the -- the officer that was standing at the window hold up
6 two fingers and what looked like a gun out of his fingers. And the officer
7 on the left nodded and was joined by the officer on the far right. And I
8 watched one officer stay standing, and the other officer kneel down onto
9 what looked like one -- one knee to prepare to open the door. I watched
10 them reach for the door handle and unlock it. And before they even --
11 before the light even came on, the door had been opened.

12 Q Okay. What do you see when that door to your back patio
13 opens?

14 A Immediately before the light came on at all, there was a gun --
15 gunfire. And it -- it happened so quickly that I watched the officer
16 immediately fall down. And then the door went flying open and shots
17 came into the house before either officer could even do anything.

18 Q Okay. Did you hear the shots or did you see the shots?

19 A Both. I pushed back, both Eric and myself, pulling back as
20 bullets literally went right past our face.

21 Q Okay.

22 A And I could tell the difference between the bullets, because I
23 could -- I knew the difference between what a shotgun looks like and
24 what an actual straight-shooting bullet looks like.

25 Q Okay.

1 A I saw the actual -- what looked like fireworks in our living room
2 as shrapnel went everywhere.

3 Q So the shots that you hear, are they coming from inside or
4 outside the -- the patio door?

5 A Outside coming into the house, right through the house. In
6 fact, one went right out the open screen door that was still ajar.

7 Q Okay. And let's talk about that shot; can you describe what
8 that shot visibly looked like?

9 A That shot was like a shooting star. It just went from one side
10 straight through the house. And it was extremely different than the
11 shotgun shot, which exploded like fireworks, leaving shrapnel not only
12 blowing out our front window, but shrapnel throughout the entire living
13 room.

14 Q So in your experience from what you saw, would you different
15 it as two different calibers of -- of gunfire?

16 A Absolutely. Two totally different guns.

17 Q And how quickly are these shots in relation to one another?

18 A Rapid fire. They're extremely quick, in fact, as if they were
19 happening at the same exact time.

20 Q Okay. What's the next thing that you hear or see after that?

21 A I could hear the -- I could hear someone saying repeatedly to
22 drop your weapon. I couldn't tell who. I didn't know who. I didn't know
23 the voices. So I actually crawled along the floor to look around the
24 corner to actually see if the officers were shot or not. And I could see
25 one was still laying on the ground, but there was another officer that was

1 standing trying to get out the back door.

2 Q Do you hear any shots coming from the inside of the house?

3 A I could hear shots from the officers. I could tell the difference
4 in their guns almost -- almost perfectly. And it sounded -- it sounded like
5 they unloaded two entire rounds.

6 Q Okay.

7 A And as if whoever was out there was not stopping.

8 Q Okay.

9 A Wouldn't --

10 Q Well, let me -- let me stop you right there. Okay. Do you hear
11 any other shots from the patio after these first shots you described?

12 A Coming from the outside, in?

13 Q Yes.

14 A No. I only heard that a few times in the very, very beginning.

15 Q Okay. So you hear shots in the very beginning. Then you can
16 hear later on some officer shots for different -- different caliber; is that
17 right?

18 A Correct. I could tell because of the echo. The echo of the
19 actual bullets exploding in the house, versus what I could hear, not only
20 hitting the back of the house but the actual outside area, like metal
21 things.

22 Q And you described that you actually saw one of the officers fall
23 to the ground; is that right?

24 A [No audible response.]

25 Q All right. Now, at some point, a little bit after this, do other

1 officers start arriving?

2 A Yes.

3 Q Do you and Eric kind of stay in the same area by the front
4 door where you had been throughout this incident?

5 A Yeah. We were almost curled up on the floor in the actual
6 corner of the hallway. And it took a few rounds of officers to come in
7 before they actually noticed us, because we were just trying to stay
8 hidden.

9 Q Fair to say your house filled up pretty quickly with officers?

10 A Yes.

11 Q How close -- you described the gunfire coming through your
12 house, out your living room, out your front door; how close were those
13 shots to you and Eric?

14 A They were close enough to where I could actually not only see
15 one of our Buddha statues within two feet of me, a bullet going right
16 through it, and feel shrapnel literally hit me in the chest. I was still
17 shirtless myself and it was way too close.

18 Q Okay. At some point after the other officers get there and your
19 house -- did your house kind of get cleared out eventually?

20 A No. We were cleared out of the house though.

21 Q Okay.

22 A The house was no longer ours.

23 Q And later on that morning do you end up talking to a detective
24 and telling him what you saw?

25 A Yes. Before even leaving the Oveja Circle street.

1 Q Okay. And just to be clear, I think you might have talked
2 about this, but on the patio before any of this started happening, was it
3 dark on the patio?

4 A We have -- we're right along Rainbow Boulevard. So
5 there's 15 or 20 giant lights out along the street that had just been
6 switched to LED lights. So there was no yellow hue. It was all white
7 coming from the street, but our actual patio light was off.

8 Q Okay.

9 A So there was nothing visible from under there. But all the
10 backlights just lit up everything like a silhouette, even out my window.

11 Q Okay. But was it -- what about the inside of the house? Was
12 that dark or light?

13 A Completely dark.

14 Q So it was light enough for you to see silhouettes, but not
15 distinctive features of someone; is that fair to say?

16 A Correct.

17 Q Okay.

18 MS. BEVERLY: At this point, I'll pass the witness.

19 THE COURT: Defense --

20 MS. MACHNICH: Thank you.

21 THE COURT: -- any cross-examination?

22 MS. MACHNICH: Yes. Thank you. Sorry.

23 Court's very brief indulgence.

24 [Pause in proceedings.]

25 MS. MACHNICH: Your Honor, before I proceed, pursuant to

1 stipulation of the parties, at this time I would like to move into evidence
2 State's Exhibit 28.

3 THE COURT: Exhibit -- it's Defense Exhibit 20?

4 MS. MACHNICH: It's -- it's State's Exhibit 28.

5 MS. BEVERLY: Obviously, no objection to that.

6 THE COURT: Mr. Plummer?

7 MR. PLUMMER: No objection, Your Honor.

8 THE COURT: State's Exhibit No. 28 will be admitted.

9 [State's Exhibit No. 28 admitted.]

10 THE COURT: State's -- it's State's Exhibit 28; is that correct?

11 [Pause in proceedings.]

12 MS. MACHNICH: Yes. Your Honor, I'm also going to
13 approach the clerk at this time and ask to mark Defense Exhibits A and
14 B, which we'll be requesting to move into evidence pursuant to
15 stipulation of the parties. And I can actually go on with my cross now
16 and come back to those in a minute if that's all right.

17 THE COURT: That's fine.

18 MS. MACHNICH: Thank you.

19 **CROSS-EXAMINATION**

20 BY MS. MACHNICH:

21 Q All right. Good afternoon.

22 A Hello.

23 Q All right. Just a few preliminary questions. Your testimony is
24 that you saw three shots come into the house, correct?

25 A Directly. That's the only ones that I visually saw and then

1 backed away from.

2 Q So the first was the shot that hit the officer?

3 A Yes.

4 Q The second was the shot that went straight through?

5 A Yes.

6 Q And --

7 A Out the front door.

8 Q And out the front door. And the third was the shot that
9 appeared to look like fireworks, like the shotgun?

10 A Yes. It looked more like the first shot, but it looked like it
11 actually just exploded in our living room instead of in someone.

12 Q Okay. Thank you. All right. Now, I would like to discuss with
13 you the descriptions of the different people you saw outside your house
14 that day. Okay?

15 A [No audible response.]

16 Q All right. First, it's fair to say you saw three men outside your
17 house before police arrived the night of the incident?

18 A Yes.

19 Q Okay. And these were three different people?

20 A Yes.

21 Q Okay. The first one you saw out of the dining room side
22 window?

23 A Correct.

24 Q And it was a shadow or silhouette of an adult male?

25 A Correct.

1 Q And he was shirtless?

2 A I don't recall.

3 Q Okay. Would it refresh your recollection to review your
4 testimony given to the grand jury in this case potentially with regard to
5 what this gentleman might have been wearing?

6 A Yes.

7 Q Okay.

8 THE COURT: You may approach the witness.

9 MS. MACHNICH: Thank you.

10 BY MS. MACHNICH:

11 Q Okay. Sir, will you please review the bottom part of this page?

12 MS. MACHNICH: And for counsel's information, it's Page 41
13 of the grand jury transcript.

14 Q And when you're done reading it, please look up.

15 A [Witness complies.]

16 Q Does that refresh your recollection?

17 A Yes.

18 Q Thank you, sir. So I would like to re-ask the question. That
19 man that we've been discussing that you saw out of the dining room side
20 window, he was shirtless?

21 A Yes.

22 Q Okay. And he appeared to be cocking a shotgun?

23 A It appeared that way.

24 Q Okay. But it could also have been a long gun of some kind?

25 A Perhaps. It -- I -- I can tell the difference of how you actually

1 cock a shotgun versus add ammunition to the bottom of another type of
2 gun, but yes.

3 Q Okay. You originally told police that it was either a shotgun
4 or -- or a long gun of some kind?

5 A Correct.

6 Q Okay. Thank you and this man that you saw was wearing a
7 billed cap of some type?

8 A Yes.

9 Q Okay. Now, immediately after you saw this first man, you
10 started hearing the knocking, banging noise on the front door, correct?

11 A Yes.

12 Q And you crossed to the corner of the main front window and
13 looked through the blinds?

14 A Yes.

15 Q And you saw a tall, black man?

16 A Yes.

17 Q Also shirtless?

18 A Correct.

19 Q With a round, two-inch afro?

20 A Yes.

21 Q This man was wearing black basketball shorts?

22 A Yes.

23 Q And, ultimately, before police arrived, you saw the man run
24 down your driveway, down the street, and turn on Nunca?

25 A Correct.

1 Q Now, after you had first seen this man at the front door, you
2 then saw a third person out of the corner of your eye?

3 A Correct.

4 Q At first you saw the man running past your bedroom window?

5 A That is right.

6 Q And you rushed over to see what was going on in the
7 backyard?

8 A Yes.

9 Q And that is when you saw the third man jump up into the demi
10 wall and wall?

11 A Correct.

12 Q All right. And this man was another African-American man,
13 correct?

14 A Yes.

15 Q And you would describe him as having an afro that was wild
16 and spiky?

17 A Of some sort. It looked like that.

18 Q And approximately one to two inches in length?

19 A Perhaps, yes.

20 Q Okay. All right. Now, ultimately, you were shown pictures of
21 several individuals that police asked you if you could identify?

22 A Correct.

23 Q Okay. Now, I'm going to show you what has previously been
24 marked as Defense Exhibit A and B and admitted into evidence at this
25 time.

1 THE COURT: Mr. Plummer, as to Defense Exhibits A and B,
2 do you have any objection?

3 MR. PLUMMER: No, Your Honor.

4 MS. BEVERLY: Can we approach quickly?

5 MS. MACHNICH: Sure.

6 [Bench conference transcribed as follows.]

7 MR. GIORDANI: We're not objecting to the admission of
8 these. What the concern is, is that we don't know if the witness has ever
9 seen these photos previously. And where I think Ms. Machnich is going,
10 is she's going to try to do a single photo, which is suggestive obviously,
11 and potentially try to eliminate her client. But the concern is that he may
12 not have seen these previously.

13 It's in the context of seeing photos before. We've tried to
14 figure out -- I think we've all tried to figure out what photos he ever saw.
15 Certainly wasn't booking photos. These are from arrest after the
16 incident, so --

17 THE COURT: Did -- the issue is do you have an objection to
18 the admission of the photos?

19 MR. GIORDANI: No. But we wanted to get up here before
20 the bell -- you can't un-ring the bell, you know. She's --

21 THE COURT: And your concern is that he's never seen these
22 photos before?

23 MR. GIORDANI: Well, we don't know. That's the concern.
24 He's seen some photos. We don't know if they're them.

25 THE COURT: Okay. And your concern is he's going to say

1 somehow these are booking photos?

2 MR. GIORDANI: Well, I don't think so.

3 THE COURT: Let me see the photos.

4 MS. MACHNICH: Your Honor, prior to -- prior to testimony
5 today, I spoke with Willow in the anteroom with -- with the DAs present.
6 I had intended to show him the photos at that time to ask if these were
7 the photos. They had an objection to that, because they believed that
8 would be tainting the witness. And so I did not show them to him. I had
9 attempted to do so and -- and then I did not.

10 THE COURT: Okay. Just in looking at the photos, they're just
11 head shots with a blank background, nothing indicating any type of --
12 that they're booking photos. So because you are not objecting to the
13 photos, I'm going to allow the photos --

14 MR. GIORDANI: Okay.

15 THE COURT: -- to come in. But you're not precluded from
16 making additional objections based on the questioning of the photos.

17 MR. GIORDANI: Understood.

18 THE COURT: Okay.

19 MS. MACHNICH: Thank you, Your Honor.

20 MS. SISOLAK: Thank you.

21 [End of bench conference.]

22 THE COURT: State, it's my understanding you have no
23 objection to the admission of the photos?

24 MR. GIORDANI: Correct.

25 MS. BEVERLY: Correct.

1 THE COURT: At this time, Defense Exhibits A and B will be
2 admitted.

3 [Defendant's Exhibit Nos. A and B admitted.]

4 MS. MACHNICH: Thank you, Your Honor.

5 BY MS. MACHNICH:

6 Q I'm going to show you what has previously been marked and
7 admitted as Defense Exhibit A. Do you recognize the hairline in this
8 photograph as one that you have seen previously?

9 A No.

10 Q Okay.

11 MS. MACHNICH: And we previously moved into evidence
12 Number 28, State's Exhibit 28?

13 THE COURT: State's Exhibit 28 has been admitted.

14 MS. MACHNICH: Okay.

15 BY MS. MACHNICH:

16 Q So we've counted the three men that you saw that night. The
17 first in a cap with a large gun, yes?

18 A Yes.

19 Q Shirtless?

20 A Yes.

21 Q The second, at the front door with an afro and basketball
22 shorts, also shirtless?

23 A Yes.

24 Q Okay. And the running man with wild, spiky hair?

25 A Yes.

1 Q Okay. Sir, I'm showing you what has previously been marked
2 and admitted as State's 28. You did not see this man?

3 A I did not recognize the man. And I don't know. I, again, saw
4 silhouettes. I don't recognize the person.

5 Q Okay.

6 MS. MACHNICH: And I'm going to publish State's 28. Thank
7 you.

8 Court brief indulgence.

9 Thank you, Your Honor. I'll pass the witness. Thank you.

10 THE COURT: Mr. Plummer?

11 MR. PLUMMER: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. PLUMMER:

14 Q Mr. Grimaldi, am I pronouncing that correctly?

15 A Yes.

16 Q This happened two and a half years ago?

17 A Almost, yes.

18 Q And when you gave a recorded statement to a detective two
19 and a half years ago, do you think your memory was a little better back
20 then?

21 A Probably, seeing how in the last three years I've had a lot of
22 health problems go downward. And now, unfortunately, have
23 medication daily that I have to take and I was not like that then.

24 Q Does that medication affect your memory?

25 A It affects almost every aspect of my life. I can't even work,

1 unfortunately.

2 Q It affects your memory?

3 A To some point, yes. Unfortunately, I cannot -- I can't let go of
4 certain memories that are just engrained in my mind. Like gunfire, it
5 never let -- I can't seem to let it go.

6 Q In the past two and a half years, you and Eric have talked
7 about that night and everything that took place?

8 A Very little. Unfortunately, I'm -- I'm very heated very easily,
9 and I don't like fighting with my -- my roommate/best friend. So most of
10 the times, we don't talk about it. We just try to move on.

11 Q Who -- who did you talk with to prepare for your testimony
12 today?

13 A I went over my own paperwork from both grand jury and from
14 the detective.

15 Q So you were re-reading the transcripts of your prior testimony?

16 A I re-read the grand jury testimony. It was very difficult for me
17 to get through my first initial interview with the detective. It was a lot of
18 information. And it was, in my viewpoint, not 100 percent accurate.

19 Q Your grand jury testimony came along after your initial
20 interview with the detective, which took place almost immediately after
21 this incident?

22 A Correct.

23 Q And during your interview with the detective, you told the
24 detective that the officer that went down, you thought that he actually
25 fired a round and a round went off from his gun before he was hit and

1 went down?

2 MS. BEVERLY: Judge, I'm going to object as to improper
3 impeachment at this time. He can ask the witness, do you recall what
4 happened in this situation. If he says something different, he can show
5 him but --

6 THE COURT: He can ask him if he previously testified to
7 something. I'm going to overrule the objection.

8 MR. PLUMMER: Thank you, Your Honor.

9 THE COURT: Was that your question? Have you previously
10 testified --

11 MR. PLUMMER: Yes, sir. My question was a previous
12 statement which was different than the one --

13 THE COURT: All right. Ask your question --

14 MR. PLUMMER: -- he testified to in court today.

15 THE COURT: -- counsel. Ask your question.

16 MR. PLUMMER: Thank you, Your Honor.

17 BY MR. PLUMMER:

18 Q In your statements with the detective in your first interview,
19 you indicated that the officer who was shot you thought fired a round
20 before he was shot?

21 MS. BEVERLY: Can I get a page number, please?

22 THE COURT: You need to ask if that's correct.

23 BY MR. PLUMMER:

24 Q Is that correct?

25 MR. PLUMMER: Page 14.

1 THE WITNESS: I may have said that, especially in the heat of
2 the moment.

3 BY MR. PLUMMER:

4 Q If I showed you a copy of what you said, would that refresh
5 your memory?

6 A Well, that would be exactly what I said then.

7 Q Would --

8 A Would you like to show me a copy?

9 Q -- you like -- yes. Would you like me to show you a copy to
10 refresh your memory?

11 MR. PLUMMER: May I approach, Your Honor?

12 THE COURT: You may.

13 MR. PLUMMER: It's page 14 of the statement. I'm showing
14 the witness. Mark that, Your Honor, or no?

15 THE COURT: You don't need to mark. All you're doing is
16 refreshing his recollection.

17 MR. PLUMMER: Correct.

18 THE COURT: Have him review it. Ask him if it refreshes his
19 recollection. And then if it does, you can restate your question.

20 THE WITNESS: It actually specifically says, the first
21 sentence, yeah, yeah, the first --

22 THE COURT: Sir, sir. I'm not going to --

23 THE WITNESS: Sorry.

24 THE COURT: I don't want you to read what it says. I want
25 you to read it and then advise counsel if it refreshes your recollection.

1 THE WITNESS: The --

2 BY MR. PLUMMER:

3 Q Does it refresh your recollection of what you said?

4 A Yes. It refreshes my recollection of what I said.

5 THE COURT: Okay. Now, restate your question.

6 MR. PLUMMER: May I retrieve the document?

7 THE COURT: You may.

8 BY MR. PLUMMER:

9 Q So when you spoke to the detective on the first time, isn't it
10 true that you stated:

11 Yeah, yeah, the first officer went down. I don't remember if he
12 got to return fire. I want to say he did feel like he shot once, and
13 then he was hit and was down. And then the second gentleman, the
14 tall, black guy, was the one standing there with his gun pointed at
15 the guy on the ground waiting.

16 Is that what you told the detective?

17 A Yes.

18 THE COURT: Counsel approach, please.

19 [Bench conference transcribed as follows.]

20 THE COURT: Okay. When you refresh recollection, you don't
21 then read the statement into the record. You ask him a question: Did
22 you tell the officer? But you don't read the statement into the record.
23 You're refreshing his recollection, and then you're asking him a question
24 based on his refreshed recollection.

25 MR. PLUMMER: Yes, Your Honor.

1 MS. BEVERLY: Thank you.

2 THE COURT: Okay. So you ask the question based on his
3 refreshed recollection.

4 MS. BEVERLY: Thank you.

5 MR. PLUMMER: Thank you, Your Honor.

6 THE COURT: Thank you.

7 [End of bench conference.]

8 BY MR. PLUMMER:

9 Q Now, is it your belief that the officers fired three or four times
10 that night; is that what you remember?

11 A It is my belief that numerous rounds were fired. And I do not
12 know for a fact exactly who shot who or what was going on, except for
13 the exchange of gunfire. I could tell the difference in the sounds. I could
14 tell the difference between what was in the house and what was
15 obviously not. Did I answer your question?

16 Q You did. You don't know how many shots were fired?

17 MS. BEVERLY: Objection. Asked and answered.

18 THE COURT: He can answer it one more time.

19 You can respond to his question.

20 THE WITNESS: Correct. I do not know the number of shots
21 that were fired.

22 MR. PLUMMER: Your Honor, I don't have any further
23 questions.

24 THE COURT: Thank you.

25 State, any redirect.

1 MS. BEVERLY: Court's indulgence.

2 **REDIRECT EXAMINATION**

3 BY MS. BEVERLY:

4 Q Willow, I just have a couple questions -- follow-up questions
5 for you. Okay. Do you remember testifying at the grand jury?

6 A I do.

7 Q Okay. Do you remember describing at the grand jury what
8 happened when the door burst opened?

9 A I do.

10 Q And what did you say?

11 A That one officer, still standing, flung the door the remained of
12 the way open and returned fire.

13 Q Okay. But I'm talking about when the door -- when the first
14 officer turned the door and began to open the door, what did you
15 describe the gunfire as coming through the house?

16 A Immediate, like a quick boom, boom, boom.

17 Q Okay. And then that gunfire was coming from the patio; is that
18 correct?

19 A Yes.

20 Q And then you saw the other officer standing, swing the other
21 door -- the rest of the door open; is that correct?

22 A Yes.

23 Q And then the officer returned fire; is that correct?

24 A Correct.

25 Q Okay. So just to be clear, the first shots that you hear are

1 coming from the patio?

2 A Correct.

3 MS. BEVERLY: I pass the witness.

4 THE COURT: Any recross by the defense?

5 MS. MACHNICH: Nothing further from Mr. Turner.

6 MR. PLUMMER: No, Your Honor.

7 THE COURT: Ladies and gentlemen, after the first witness, I
8 did not see any hands raised so I excused -- from the jurors, so I
9 excused the witness. As part of my preliminary instructions, you are
10 allowed to ask questions if you so desire before I excuse the witness.
11 So I'll always look over to see if I see any hands raised. If not, I just
12 excuse the witness. I don't know if you recall that. I know I go through
13 the preliminary instructions, and they're quite lengthy. So again, I'll
14 always look over before I excuse the witness. If I don't see any hands
15 raised, I'm going to excuse the witness.

16 At this time, I do not see any hands raised so I am going to
17 excuse the witness. Thank you.

18 Sir, thank you for --

19 THE WITNESS: Thank you.

20 THE COURT: You are excused.

21 I was going to take our evening recess at this time. We will
22 resume tomorrow at 11:00. And again, we're probably not going to take
23 our lunch break until about 12:30 and then resume after the lunch break
24 around 2:00. So if you could return to this courtroom tomorrow at 11:00.

25 At this time, ladies and gentlemen, we're going to take our

1 evening break, our evening recess. During this recess, it is your duty
2 not to converse among yourselves or with anyone else on any subject
3 connected with the trial, or to read, watch, or listen to any report of or
4 commentary on the trial by any person connected with the trial, or by any
5 medium of information, including without limitation, newspaper,
6 television, and radio. And you are not to form or express an opinion on
7 any subject connected with this case until it is finally submitted to you.

8 Thank you.

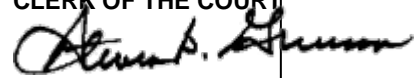
9 [Court recessed at 4:55 p.m., until April 19, 2018, at 11:00 a.m.]

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

22 

23 Shawna Ortega, CET*562
24
25



1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6
7 THE STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 STEVEN TURNER AND CLEMON
HUDSON,)

11 Defendant(s).)
12

Case No. C-15-309578-1 and
Case No. C-15-309578-2

DEPT. XVIII

13
14 BEFORE THE HONORABLE MARK B. BAILUS,
15 DISTRICT COURT JUDGE
16

17 THURSDAY, APRIL 19, 2018

18 **TRANSCRIPT OF PROCEEDINGS RE:**
19 **JURY TRIAL - DAY 4**
20

21
22 (Appearances on page 2.)
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25 RECORDED BY: ROBIN PAGE, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):

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(Deputy District Attorney)
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(Deputy District Attorney)

For the Defendant
Steven Turner:

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(Deputy Public Defender)

For the Defendant
Clemon Hudson:

CLAY PLUMMER, ESQ.

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For the Defendants

None offered.

1 **LAS VEGAS, NEVADA, THURSDAY, APRIL 19, 2018**

2 [Proceedings commenced at 11:27 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: This is the continuation of the trial of Case No.
6 C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon*
7 *Hudson*. Counsel, state your appearances, please.

8 MS. BEVERLY: Leah Beverly and John Giordani for the
9 State.

10 MS. MACHNICH: Tegan Machnich and Ashley Sisolak for
11 Mr. Turner.

12 MR. PLUMMER: Clay Plummer for Mr. Hudson.

13 THE COURT: Let the record reflect that the defendants are
14 not present.

15 Apparently, counsel, there was a miscommunication with the
16 Clark County Detention Center. They had them scheduled as coming
17 over at 1:00 even though I thought I put on the record several times we
18 were going to start at 11:00 today.

19 So my concern is the jury. We don't know how long it's going
20 to take for them to bring them over. If we had started at 11:00, I was
21 going to do a 12:30 lunch break. I've had this situation before. It takes
22 them usually a while to bring them over. So I don't know if you want me
23 to just have the jury come back at 1:00. We may not get started for
24 about another half hour.

25 MR. GIORDANI: Can I suggest that we just hold them for at

1 least, like, 15 minutes, and -- and then readdress it?

2 MS. BEVERLY: We can take a shorter lunch.

3 MR. GIORDANI: It looks like they're here.

4 THE COURT: Oh, very good.

5 MR. GIORDANI: There we go.

6 THE COURT: Let's bring them in.

7 MR. GIORDANI: We do have some stipulations to put on the
8 record.

9 THE COURT: Let's let -- let's bring them in and we'll do the
10 stips.

11 MS. BEVERLY: We can take maybe a little shorter lunch too,
12 like an hour and 15 maybe, instead of an hour and 30.

13 [Pause in proceedings.]

14 THE COURT: Let the -- let the record reflect the presence of
15 the defendants.

16 Counsel, there's some housekeeping matters that you wanted
17 to address?

18 MR. GIORDANI: Yes, Your Honor. It's going to take a
19 moment, but it's going to save time in the long run. The parties have
20 met conferred on several exhibits and have come to stipulations on a
21 couple hundred of them. I'm not going to list them individually, but I
22 have some numbers for the court and for Mr. Alan, the clerk.

23 The parties are going to stipulate to Exhibits 12 through 20.

24 There is an objection to 21.

25 The parties are going to stipulate to 22 through 25.

1 The parties are going to stipulate to 26 through 35.
2 The parties are going to stipulate to 36 through 46.
3 The parties are going to stipulate to 47 through 58.
4 The parties are going to stipulate to 59 through 91.
5 The parties are going to stipulate to 116.
6 THE COURT: 115 or 116?
7 MR. GIORDANI: 116.
8 THE COURT: 116.
9 MR. GIORDANI: 115 was previously admitted, and then 116
10 was inadvertently left out. So 116 is a stipulation.
11 The parties are going to stipulate to 118 through 138.
12 The parties are going to stipulate to 139 through 151.
13 There is an objection to 162.
14 So parties are stipulating to 152 through 161. There's an
15 objection to 162.
16 And then the parties are stipulating to 163 to 195.
17 The parties are stipulating to 218 through 235.
18 There's an objection to 236.
19 The parties are stipulating to 237 and 238.
20 There's an objection to 239 and 240.
21 The parties are stipulating to 241 through 246.
22 There's an objection to 196 through 217.
23 Are you with me, Alan?
24 THE CLERK: Yes, sir.
25 THE COURT: I believe so.

1 MR. GIORDANI: Okay. So there's an objection to these.

2 Sorry about that.

3 Parties are going to stipulate to 247 through 262.

4 The parties are going to stipulate to 263 through 281.

5 There are objections to 282 through 289.

6 The parties are stipulating to 290 through 306.

7 There are objections to 307 through 310.

8 The parties are stipulating to 311 through 318.

9 There are objections to 319 through 322.

10 The parties are stipulating to 323 and 324.

11 There are objections to 325 through 331.

12 The parties are stipulating to 332.

13 There are objections to 333 and 334.

14 The parties are stipulating to 335 through 349.

15 THE COURT: Was that 335 to 349, counsel?

16 MR. GIORDANI: Yes, Your Honor.

17 THE COURT: Thank you.

18 MR. GIORDANI: The parties are stipulating to 350

19 through 366.

20 The parties are stipulating to 367 through 379.

21 The parties are stipulating to 380 through 396.

22 That should cover everything we can cover up to this point.

23 THE COURT: Thank you, counsel.

24 MR. GIORDANI: Thank you.

25 THE COURT: Let me just make sure I got this.

1 Counsel for defense, it's my understanding that as to State's
2 Exhibits 12 through 20, 22 through 90 -- 22 through 91, 116, 118
3 through 161, 163 through 195, 218 through 235, 237 and 238, 241
4 and 242 -- I'm sorry, 241 through 281, 290 through 306, 311
5 through 318, 323 and 324, 332, and 335 through 396, that you're
6 stipulating as to the their admission; is that correct?

7 MS. SISOLAK: As to Mr. Turner, yes, Your Honor.

8 MR. PLUMMER: Yes, Your Honor.

9 THE COURT: At that time, those exhibits will be admitted.

10 [State's Exhibit Nos. 12 through 20, 22 through 91, 116, 118
11 through 161, 163 through 195, 218 through 235, 237, 238, 241
12 through 281, 290 through 306, 311 through 318, 323, 332, and 335
13 through 396 admitted.]

14 THE COURT: And counsel, there's one more housekeeping
15 matter.

16 In listening to opening statements, I just wanted to verify
17 something with the defendants. You understand the State has filed an
18 amended indictment in this case? Is that -- do you understand that?

19 DEFENDANT TURNER: Yes.

20 DEFENDANT HUDSON: Yes, sir.

21 THE COURT: Okay. And the State has dismissed Count 6 of
22 the original indictment; do you understand that?

23 DEFENDANT TURNER: Yes.

24 THE COURT: And so you're only going to trial on the
25 amended indictment, Counts 1 through 5, which are conspiracy to

1 commit burglary, attempt burglary while in possession of a firearm or
2 deadly weapon, two counts of attempt murder with use of a deadly
3 weapon, and battery with use of a deadly weapon resulting in substantial
4 bodily harm.

5 And you are -- and you understand the nature of those
6 charges; is that correct?

7 DEFENDANT TURNER: Yes.

8 DEFENDANT HUDSON: Yes.

9 DEFENDANT TURNER: Yes.

10 THE COURT: And you understand the nature of those
11 charges, sir?

12 DEFENDANT HUDSON: Yes, sir.

13 THE COURT: And you're pleading -- and you -- you are
14 pleading not guilty to those charges; is that correct?

15 DEFENDANT TURNER: Yes.

16 DEFENDANT HUDSON: Yes.

17 THE COURT: Is that correct, sir?

18 DEFENDANT HUDSON: Yes.

19 THE COURT: And you understand as a trial strategy, the
20 defense is going to -- if the State proves their case, presents sufficient
21 evidence to prove their case as to Counts 1 and 2, as a trial strategy,
22 your defense attorneys are going to concede, making concession as to
23 Counts 1 and 2, and argue as to the remaining counts; do you
24 understand is that?

25 DEFENDANT HUDSON: Yes.

1 DEFENDANT TURNER: Yes.
2 THE COURT: Okay. And are you in -- are you in agreement
3 with that trial strategy?

4 DEFENDANT TURNER: Yes.

5 DEFENDANT HUDSON: Yes.

6 THE COURT: Is that correct, sir?

7 DEFENDANT TURNER: Yes, sir.

8 THE COURT: Okay. And you consulted with your attorneys
9 regarding enacting that trial strategy; is that correct?

10 DEFENDANT TURNER: Yes, sir.

11 DEFENDANT HUDSON: Yes.

12 THE COURT: I just wanted to verify that. All right. Thank
13 you.

14 And I realize, like I said, under *Armenta-Carpio vs. State*, 129
15 Nevada 531, that it overruled *Hernandez vs. State*, 124 Nevada 978.
16 But I did want to make a record at this time.

17 Counsel, any other housekeeping matters?

18 MS. MACHNIC: No, Your Honor.

19 MR. PLUMMER: No, Your Honor.

20 THE COURT: Can I bring the jury in?

21 MR. GIORDANI: Yes, Your Honor.

22 THE COURT: Thank you.

23 [Jury reconvened at 11:43 a.m.]

24 THE COURT: You may be seated. Ladies and gentlemen,
25 we've gotten a little late start this morning, so we're probably not going to

1 take our lunch break until probably 12:45 to 1:00.

2 Will the parties stipulate to the presence of the jury?

3 MS. BEVERLY: Yes.

4 MR. GIORDANI: Yes, Your Honor.

5 MS. MACHNIC: Yes.

6 MR. PLUMMER: Yes, Your Honor.

7 THE COURT: Thank you. State?

8 MR. GIORDANI: State would call Officer Russo.

9 **LOUIS RUSSO,**

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

12 THE CLERK: Please be seated. Would you please state and
13 spell your name for the record?

14 THE WITNESS: Louis Russo, L-O-U-I-S R-U-S-S-O.

15 MR. GIORDANI: May I?

16 THE COURT: You may proceed.

17 **DIRECT EXAMINATION**

18 BY MR. GIORDANI:

19 Q What do you do for a living, sir?

20 A Police officer with LVMPD.

21 Q How long have you been with Metro?

22 A Five years.

23 Q In your capacity as a police officer, are you in a patrol unit?

24 A Yes, I am.

25 Q Can you describe for the ladies and gentlemen of the jury

1 what a patrol unit does?

2 A Respond to calls for service, proactive police work in the area,
3 whatever our sector beat that we're assigned to.

4 Q And what sector beat are you assigned to?

5 A I was working William 4 that night.

6 Q Okay. When you say that night, you know why you're here to
7 testify today?

8 A Yes.

9 Q What does that area that you just described encompass?

10 A It -- it's Bolden Area Command. It's Cheyenne south to the
11 freeway, to the 15. And then from -- at the time, it was the Rainbow
12 corridor all the way east to the -- to the 15, and then 95 south.

13 Q On September 4th, 2015, did you learn that there had been an
14 officer-involved shooting?

15 A Yes, I did.

16 Q When did you learn of that?

17 A It was about 3:00 in the morning. And I was at the intersection
18 of Decatur and Washington.

19 Q Okay. So were you at the intersection of Decatur and
20 Washington in your patrol car?

21 A Yes.

22 Q Were you alone or with someone else?

23 A I was alone in my car, was but I was parked next to my
24 partner.

25 Q Okay. Who was your partner?

1 A Thomas Keller.

2 Q Officer Keller, was he alone?

3 A Yes.

4 Q In his patrol vehicle?

5 A Uh-huh.

6 Q Okay. How is it that you first hear about this call?

7 A We got a broadcast on our radio from our sergeant who said
8 that there had just been a shooting in Northwest Area Command and
9 they were going to send officers over there to assist with calls for
10 service.

11 Q Okay. Were you advised over the initial dispatch where the
12 shooting had occurred?

13 A No.

14 Q Okay. Did you have a general idea of where it occurred?

15 A No.

16 Q All right. Describe for the ladies and gentlemen of the jury
17 how it is that the dispatch system works in general.

18 A The -- the call center receives a call and then they put it out to
19 all available cars that are clear in the area to be assigned to the call to
20 take based on your location.

21 Q And is that radio -- I guess radio traffic, for lack of a better
22 term --

23 A Uh-huh.

24 Q -- does that come to that device you have on your chest or is
25 that in your vehicle?

1 A It's both.

2 Q Okay. In a case such as this, or a situation such as this, are
3 you getting frequently updated from dispatch regarding details they're
4 learning?

5 A Yes.

6 Q Tell us how that proceeded after you hear the initial call.

7 A So we were -- the call originated in Northwest Area Command.
8 I -- I was in Bolden Area Command on our Bolden channel. The
9 sergeant that was working told us that there had been a shooting in
10 Northwest and we were to -- clear units were to head over to that area
11 for calls for service.

12 So I -- I told dispatch to assign me to whatever was pending. I
13 clicked over to Northwest Area Command and that's when I heard that
14 there had been shots fired and an officer was down.

15 Q When you heard that, what did you do?

16 A I immediately put on lights and sirens and I started heading
17 right to the scene.

18 Q How far away were you from the scene?

19 A Three to five miles.

20 Q Okay. What's between you and the scene?

21 A I was at Decatur and Washington. The -- the actual scene
22 was Rainbow -- Lorenzi and Oveja. So I just had to go south to get on
23 the freeway, freeway all the way to Rainbow, and then south to Westcliff,
24 and Westcliff to Lorenzi, and then --

25 Q Can you give an estimate as to how long it took for you to get

1 to that scene once you knew where the scene was?

2 A Two to four minutes.

3 Q Did your partner or Officer Keller also proceed to the scene?

4 A Yes. He was right behind me. And while we were en route,
5 two other patrol cars somehow followed -- fell -- fell in behind us.

6 Q Okay. Goes without saying an officer-involved shooting is a
7 serious thing, right?

8 A Yes.

9 Q Were there several units that ultimately responded to that
10 location?

11 A Yes. There was four from Bolden that originally arrived with
12 me.

13 Q Okay. So four separate units in addition to yourself?

14 A Three separate units in addition to myself.

15 Q Okay. What is it that you first observe when you get onto this
16 scene?

17 A So I arrived and I parked on Lorenzi at the very edge where
18 Lorenzi and Oveja intersect. I wasn't --

19 Q Let me stop you. I want to publish for the jury State's 117. Do
20 you see that on your little screen there, sir?

21 A Yes.

22 Q All the members of the jury see that okay? All right. So where
23 is it that you initially respond to, sir?

24 MR. GIORDANI: May I?

25 THE COURT: You may approach.

1 MR. GIORDANI: Thank you.

2 THE WITNESS: It's just off -- just offscreen right here, at the
3 very -- very corner.

4 BY MR. GIORDANI:

5 Q Okay. And, sir, you can write on that screen with your finger
6 and it will show up to the jury. Let me move this a little bit. Can you see
7 where -- where you were?

8 A Yeah. So I -- I parked right -- right there.

9 Q Okay. Where is this subject residence located?

10 A This house right here.

11 Q Okay. And we can clear that. It's -- sometimes it's a
12 millimeter or two off.

13 A Yeah. It's this house right here.

14 Q Are the arrows on the house?

15 A Either -- the arrows are on top of the house, yes.

16 Q The arrows are on the house. So when you first arrived, do
17 you have the exact address of the home?

18 A No, I do not.

19 Q What details do you have when you first arrive?

20 A We just -- we had heard that there was an officer down. He
21 had been shot with a rifle, and that suspects were in the backyard of a
22 residence. I knew the hundred block. I knew it was at the 6700 block.
23 And I wasn't sure the exact house number.

24 Q Okay. You said the suspects were in the back of the
25 residence; is that something that was updated over the radio?

1 A Yes. That was radio traffic from the original call for service,
2 and then as well as Officer Malik's original radio traffic.

3 Q Okay. So Officer Malik is one of the people involved in this
4 incident, correct?

5 A Yes.

6 Q Can you actually hear his voice over the radio?

7 A Yes.

8 Q So he's not going through dispatch; he's directly talking and
9 you can hear it?

10 A He's -- he's -- yeah. I'm on that channel. He's -- whatever
11 he's saying, he's talking to dispatch and responding officers.

12 Q Okay. So how many suspects were you looking for at that
13 point?

14 A We were -- we knew that there was two.

15 Q Okay.

16 A That's all that we had known.

17 Q And you didn't know the exact address; is that right?

18 A I did not.

19 Q So you said you parked off of this street in the bottom right of
20 the photograph, correct?

21 A Yes.

22 Q And to the left in that photograph and up a bit is where the
23 residence is?

24 A Yes.

25 Q So what do you do? How long is it that you're posted up in the

1 place where you initially parked?

2 A Just that -- just as long -- enough time for me to get out of the
3 car and grab my shotgun. And then I started running westbound down
4 the street looking for -- I was expecting to see a patrol car with lights on
5 parked by the house. There was no lights on. It was really -- it was very
6 dark. So I -- we just started running down the street until we did finally
7 see the patrol car.

8 Usually we are taught to park one to house houses away from
9 this -- the target residence. So we had -- we had assumed that one or
10 two houses to the west was going to be the -- the actual target house.
11 However, it ended up being more like four or five houses.

12 So we started running up to doors, realizing that these were
13 closed doors and people were home still. And then we continued to run
14 westbound until we saw at 6729, where the house -- the front door was
15 open.

16 Q Okay. So I'm going to show you grand jury -- I'm sorry, State's
17 Exhibit 247. I'm in grand jury mode. Do you recognize that?

18 A Yes.

19 Q What does that appear to be to you?

20 A That is the cul-de-sac. That is Oveja and Lorenzi.

21 Q Okay. Can you circle the target residence?

22 A [Witness complies.]

23 Q So you had -- you had described parking a little ways away,
24 and then you actually went on foot with your shotgun, correct?

25 A Yes.

1 Q Just show the ladies and gentlemen the path that you took on
2 foot.

3 A So I -- I parked here. I parked here and then I ran down the
4 street to the front door.

5 Q Okay. You indicated it was dark outside. Were you able to
6 see the little address labels on the homes?

7 A I was.

8 Q Okay. And then you proceeded to look for a particular
9 address, correct?

10 A Right.

11 Q Ultimately, you end up seeing an open door?

12 A An open front door, yes.

13 Q And is that at the residence you just circled?

14 A Yes.

15 Q Tell us what happened from there.

16 A Me and Officer Keller were side by side running up the front
17 driveway. We get to where the front door is open and I lean in and say,
18 Hey, Metro Police, is anybody inside. And then I hear Officer Malik say,
19 Hey, we're in the backyard -- or we're by the backyard, by the back -- by
20 the backyard.

21 We run into the house. I see Officer Roberts [sic] laying face
22 down on the ground. I see Malik standing with his back to us facing out
23 into the backyard which was completely dark. I stepped over Officer
24 Roberts as our down officer rescue tactic that we're trained is the first
25 guy in, you know, covers -- creates cover. So I was providing cover.

1 At that time, Officer Keller, who is a paramedic and two other
2 officers that were with him started to do -- to package him up and -- and
3 get tourniquets on him and get him outside, pulled out to the front of the
4 house where rescue was waiting.

5 Q All right. So let's break this down a little bit. You proceed up
6 the street on foot?

7 A Yes.

8 Q Are you with Keller and the others?

9 A I -- I am immediately with Keller, and then the other two are a
10 couple, you know, couple yards behind us still.

11 Q Okay. When you proceed up to the residence, the door was
12 already open?

13 A Yes.

14 Q Did you see any lay people in the home at that time?

15 A Immediately stepping through the threshold, there was -- there
16 was, who I assumed at the time, were the homeowners, or the residents
17 of the house. They were in a bedroom immediately to my left. So the
18 moment I stepped in, I saw them. And then I proceeded forward to
19 where Malik and Roberts were.

20 Q Okay. And you said you presumed they were the
21 homeowners. Is it -- you -- you leave them there and you don't put a
22 gun on them, obviously?

23 A Yes.

24 Q You don't suspect that they're involved in this?

25 A Yeah. They -- they -- as soon as I -- they saw me, they were

1 like, they're over there, they're over there. And they were pointing us
2 toward where the officers were.

3 Q So you leave them behind, you go straight to the back?

4 A Yes.

5 Q Okay. I'm going to show you now State's 60 -- State's 60;
6 does that look familiar to you?

7 A Yes.

8 Q What does that appear to be generally?

9 A I believe that that is the back door that Officer Malik was
10 standing in that faces out toward the back patio area.

11 Q Okay. And the perspective that this photo is being taken from,
12 is that the front door where you entered?

13 A Yes.

14 Q You described, if I remember correctly, you said Malik?

15 A Uh-huh.

16 Q Do you know his last name?

17 A Smith, Grego-Smith.

18 Q Okay. So Officer Grego-Smith is visibly standing in that area;
19 is that right?

20 A Yes. He bladed off using part of the threshold there as cover
21 and he's aiming out with his pistol out into the backyard.

22 Q Okay. For -- for some of the jurors who don't understand,
23 what does bladed off mean?

24 A He's just using part of the threshold there as some type of
25 cover and concealment.

1 Q Okay.

2 A So he's half -- half protected by the door and then half
3 standing out into the darkness.

4 Q Okay.

5 A Or into the actual opening of the door.

6 Q And is he saying anything that you're hearing?

7 A He was telling me that there was a suspect down in the
8 backyard. He could hear see him but he couldn't see him, and that
9 someone -- he had seen another who had taken off running.

10 Q Okay. What do you do at that point? When he's conveying
11 this, there's one suspect in the backyard, but he can't see him, and
12 another who ran off, what do you do in response to that tactically?

13 A We didn't know if the second suspect was in the backyard.
14 We didn't know -- we didn't know where the first suspect was in
15 correlation to the rest of the backyard. So we held in that threshold
16 waiting for other resources, the air unit, the K-9 officers to show up and
17 respond.

18 Q Okay. So you wait in the threshold and you have your
19 shotgun brandished?

20 A Yes.

21 Q And Officer Grego-Smith has his pistol?

22 A Yes.

23 Q I want to show you a different photograph here, State's 358;
24 does that look familiar to you?

25 A Yes.

1 Q State's 357, does that look familiar to you?

2 A Yes.

3 Q Okay. On the left side of this photo, is that that door that leads
4 from the house onto the patio?

5 A Yes.

6 Q So you're positioned here and you can see out into the patio?

7 A Yes.

8 Q Describe what you're seeing outside.

9 A There -- there was no lights on. So the only light that we had
10 was from our flashlights. There was no lights on inside the house either.
11 So whatever we could see, we were -- just had to illuminate ourselves.
12 So as -- up to this -- this barrier where these corrugated steel is and
13 this -- whatever this sheet is, this tarp that was hanging up, we couldn't
14 see past that at all. It was pitch black from then -- from there out.

15 Q Understood. You reference corrugated metal and whatever
16 this sheet is?

17 A Yeah.

18 Q I'm going to show you State's 359; is this the sheet that you're
19 referring to?

20 A Yes.

21 Q Fair to say that you couldn't see past this area?

22 A No, not at all.

23 Q Okay. So you could see generally -- State's 97 -- this patio
24 area?

25 A Yes.

1 Q So Officer Grego-Smith, is he issuing commands?

2 A He's -- yeah. Yes. Yes.

3 Q Who are those commands consisting of?

4 A He's -- he's basically yelling out into the darkness that if -- to
5 not move; if you move, you'll be shot. Just reaffirming to have whoever
6 was out there to stay still, to not move. Because at that point, we could
7 hear communication back and forth and then there was no -- there was
8 just darkness. We couldn't see or -- see him at all.

9 Q Okay. Based upon the fact that you couldn't see the suspect
10 who was in the backyard, did K-9 get involved?

11 A Yes.

12 Q Do you know that K-9 officer's name?

13 A It was -- there was a few. The one that I know that was
14 immediately with us was Sergeant Bitsko.

15 Q Okay. Sergeant Bitsko has a K-9?

16 A Yes.

17 Q Do you know the dog's name?

18 A Loki.

19 Q Okay. Sergeant Bitsko and Loki, do they respond inside the
20 home like you did?

21 A Yes. Sergeant Bitsko, his dog, and then two other K-9 officers
22 came with shields.

23 Q At that point in time, what did you do?

24 A I stepped out of the threshold and let one of the shield officers
25 take up -- take that -- that cover position and threshold. Sergeant Bitsko

1 devised the plan to -- after there was no more communication with the
2 suspect in the backyard, the air unit was overhead, watching, telling us
3 that he was laying out. There was a weapon in close proximity to his
4 hands. And that we were going to -- on his command, we were going to
5 take -- make entry into the backyard and take him into custody.

6 Q Okay. You referenced the air unit?

7 A Yes.

8 Q By the time this is all going on and K-9 is arriving, is there -- I
9 mean, is this a dynamic scene?

10 A Yes.

11 Q Air unit with lights or no lights?

12 A They -- they were spotlighting the backyard. Yes.

13 Q Okay. So they were also dispatching information to you that
14 you could hear verbally?

15 A Yes.

16 Q Based upon the information you're getting from the air unit and
17 the plan devised by Sergeant Bitsko, is Loki released into the backyard?

18 A Yes.

19 Q What -- what happened from there?

20 A Loki was released in the backyard. We heard the -- we heard
21 him get on the bite, which means that he was on the -- on a suspect,
22 biting a suspect. At that point, Sergeant Bitsko told us to go. So we
23 flooded the backyard, making sure that we had covered all the angles,
24 making sure there was nobody hiding in the backyard.

25 I immediately went to the right, because that's what my closest

1 unknown was. I ran the wall to the backyard, scanning the bushes for
2 that second suspect that we didn't know where he was. And then once I
3 ran my wall, I came back to where the suspect was being taken into
4 custody.

5 Q Okay. And there was single suspect taken into custody?

6 A Yes.

7 Q Do you recall anything about him, what he was wearing?

8 A I believe he was wearing a gray tank top.

9 Q Okay. After that subject's taken into custody --

10 A Uh-huh.

11 Q -- do you take part in any further searches or anything like
12 that?

13 A Yes. Once he was taken into custody, we -- we regrouped in
14 the front of that -- of that -- of 6729. And we -- more sergeants were
15 showing up, a lieutenant had shown up. And we had broken off into
16 groups with K-9. SWAT officers had arrived, so they just kind of paired
17 us up with SWAT officers, the K-9 officer, and then a couple patrol guys.
18 And then we spread out and started searching backyards systemically
19 looking for the second suspect.

20 Q And do you ever find -- you yourself ever find the second
21 subject?

22 A No.

23 Q Okay. I want to you show 117 again. You indicated that the
24 home is right around here on Nunca and Cabra?

25 A No.

1 Q Or I'm sorry, Nunca and Oveja?

2 A Yes. Right there.

3 Q Okay. Let me move this up. Are you familiar with this area,
4 sir?

5 A Yes.

6 Q Across the street, across Rainbow --

7 A Uh-huh.

8 Q -- are there several businesses in that area?

9 A Yes. This is a big shopping center. Now there's a Carl's Jr.
10 here. There's a bank. There's a two-storey pet clinic, a two-storey
11 strip -- strip center with business mall -- businesses in it. And then
12 there's the rear alley, and then another residential area behind it.

13 Q Okay. Without stating the obvious, the businesses are just
14 across from Rainbow a little catty-corner to that home, correct?

15 A Yes.

16 MR. GIORDANI: All right. Thank you very much, sir.

17 I'll pass the witness, Your Honor.

18 THE COURT: Defense, any questions?

19 MS. SISOLAK: Yes, Your Honor. Briefly.

20 Court's indulgence.

21 **CROSS-EXAMINATION**

22 BY MS. SISOLAK:

23 Q Good morning, Officer.

24 A Morning.

25 Q I'll be brief. So you talked about working with Sergeant Bitsko,

1 correct?

2 A Yes.

3 Q And his K-9 companion, Loki?

4 A Yes.

5 Q Do you work with K-9 often?

6 A Generally, yes. We come across them in patrol.

7 Q So -- but it's not -- you're not a K-9 officer?

8 A No.

9 Q Okay. That's exciting. In reading the information we have,
10 you talk -- a lot of officers talk about call signs.

11 A Uh-huh.

12 Q Are you familiar with call signs?

13 A Yes.

14 Q And is it my understanding every officer has a different call
15 sign?

16 A Yes.

17 Q Okay. Is your call sign the same every night?

18 A It can be. We try to keep them consistent, but they -- they
19 vary. They change.

20 Q Okay. And so just out of curiosity, like, when you talk about
21 your call sign, you would know your call sign immediately --

22 A Yes.

23 Q -- correct?

24 A Yes.

25 Q Okay. Perfect. Perfect. Now, after you came through the

1 house and I believe you'd -- the suspect had been detained, correct, by
2 the dog, by the officer?

3 A Yes.

4 Q Perfect. You were -- were you aware that there was a second
5 suspect?

6 A Yes.

7 Q Was that via the radio --

8 A Uh-huh.

9 Q -- traffic kind of thing?

10 A Yes.

11 Q Perfect. And in that traffic, did -- did they talk about what you
12 were searching for or who you were searching for?

13 A Just an outstanding second subject.

14 Q When -- when those kind of calls come over the radio, is there
15 often a description?

16 A Yes. Yes, there is.

17 Q Do you know what the description was?

18 A I was not assigned to the original call, so I did not get that
19 original radio traffic reference those -- those two officers' call for service.

20 Q Okay. So you received the call from the -- for service from the
21 two officers who had been in the home, correct?

22 A No. The -- the two officers that had originally responded to the
23 call received a call for service. I responded to a down officer -- just the
24 down officer radio traffic. That's what I was responding to.

25 Q Okay. So then after that, did you -- for lack of a better term,

1 you -- do you just tune out the radio or are they not actively saying
2 there's a second suspect and we're looking an XYZ?

3 A No. We were told there was a second suspect. I don't recall
4 them giving out a description. I just know there was talk of a second
5 suspect.

6 Q Perfect. And you talked about you worked as cover for K-9
7 clearing the yard, correct?

8 A Yes.

9 Q You went up one wall and across the back?

10 A Yes.

11 Q There was only one person in the backyard, correct?

12 A Yes.

13 Q And that was the person that the -- the dog and his handler
14 had detained, correct?

15 A Yes.

16 Q Did you see where the suspect was located in the backyard?

17 A Yes.

18 Q Did you see that he was laying next to the rifle?

19 A Yes.

20 Q Thank you.

21 MS. SISOLAK: Thank you. Nothing further.

22 THE WITNESS: Okay.

23 THE COURT: Counsel?

24 MR. PLUMMER: Thank you, Your Honor.

25

1 **CROSS-EXAMINATION**

2 BY MR. PLUMMER:

3 Q Good afternoon, Officer Russo.

4 A Good afternoon.

5 Q So you were one of the first responders to the call?

6 A Yes.

7 Q And when you arrived there, Officer Grego-Smith was
8 standing at the back door?

9 A Yes.

10 Q He had his gun out the door?

11 A Uh-huh.

12 Q And he was yelling commands?

13 A Yes.

14 Q And the person he was yelling commands to was complying
15 with those commands?

16 A From what I heard, yes.

17 Q And -- and while you were on scene, you indicated you were
18 waiting for air unit to come in?

19 A Yes.

20 Q And, now, at some point you could see the suspect in the
21 backyard?

22 A No.

23 Q Do you remember talking to Detective Jex on September 4th
24 or -- yeah, 2015?

25 A Yes.

1 Q At that time, you told Detective Jex, We could see him but we
2 didn't want him to move. Do you remember telling Detective Jex that?

3 MS. BEVERLY: What page?

4 MR. PLUMMER: Page 5.

5 THE WITNESS: I -- I could not see the suspect from where I
6 was in the doorway.

7 BY MR. PLUMMER:

8 Q Why would you tell Detective Jex that you could see him?

9 A I -- I don't know.

10 Q You told Detective Jex that suspect had his hands on his head
11 and he was lying in the prone position, and that there was a rifle at his
12 feet.

13 A That was what we were being told from the air unit. The air
14 unit could see him. I could not see him.

15 Q That was the information that you were receiving?

16 A Yes.

17 Q Was that he was lying face down with his hands on his head?

18 A Yes. Right -- right behind the rifle.

19 Q Now, when you eventually did go out in the backyard and took
20 the person into custody, you found a couple of weapons?

21 A Yes.

22 Q Found a shotgun?

23 A Yes.

24 Q You picked the shotgun up?

25 A No.

1 Q Did you move the shotgun?

2 A No.

3 Q Did you look at the shotgun?

4 A I looked at it, where it laid on the ground.

5 Q Did you notice anything about the shotgun?

6 A It had an impact in it from a bullet strike.

7 Q Thank you, Officer.

8 THE COURT: State, any redirect?

9 MR. GIORDANI: Just briefly, Your Honor. Thank you.

10 **REDIRECT EXAMINATION**

11 BY MR. GIORDANI:

12 Q Just want to clarify one thing, sir. Counsel just asked you
13 about whether you saw the suspect or not?

14 A Uh-huh.

15 Q As you stood at the door, Bitsko's coming up with a tactical
16 plan, do you see the person in the backyard?

17 A No.

18 Q Are you being relayed information that he's in the backyard in
19 the prone position by the air unit?

20 A Yes.

21 Q Thank you, sir.

22 MR. GIORDANI: Nothing further, Your Honor.

23 THE COURT: Thank you. Could this officer be excused?

24 MR. GIORDANI: Yes, Your Honor.

25 THE COURT: Oh, I'm sorry. Seeing no hands.

1 You can be excused. Thank you for coming in today.

2 MR. GIORDANI: State --

3 THE COURT: Call your next witness, please.

4 MR. GIORDANI: State would call Robbie Dahn.

5 **ROBBIE DAHN,**

6 [having been called as a witness and first duly sworn, testified as

7 follows:]

8 THE CLERK: Please be seated. Could you please state and
9 spell your name for the record?

10 THE WITNESS: My name is Robbie Dahn, spelled
11 R-O-B-B-I-E, last name, D-A-H-N.

12 MR. GIORDANI: May I?

13 MS. MACHNICH: Your Honor, just before we proceed, and
14 I'm -- I'm so sorry to interrupt, I notice the witness brought some papers
15 up to the stand with her and I was wondering if we could inquire as to
16 what she brought with her to the stand and potentially know if she's ever
17 referring to those papers.

18 THE COURT: Okay. Actually, counsel, that would be proper
19 in your cross-examination. You can ask her has she reviewed any
20 documents prior to testifying today, if those are the documents with her.
21 And then if she says she did, you can inspect the documents.

22 MR. GIORDANI: Thank you, Your Honor.

23 MS. MACHNICH: That's fine. Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 BY MR. GIORDANI:

1 Q What did you bring with you to court today, ma'am?

2 A I brought my crime scene report that I wrote. I also brought
3 two evidence impound reports that were written by a crime scene
4 analyst that worked with me at the scene. And then I also have a -- a
5 few other papers that are diagrams.

6 Q Thank you. Would you do me a favor and not refer to those
7 unless you need to have your memory refreshed, and if that's the case, I
8 will ask you to do so.

9 A Yes, sir.

10 Q What do you do for a living?

11 A I'm a senior crime scene analyst with the Las Vegas
12 Metropolitan Police Department.

13 Q How long have you been a crime scene analyst?

14 A July is going to be 20 years. I -- I was hired July 13th,
15 so 19 years and some months.

16 Q 19 years and some months. What does a crime scene analyst
17 do generally?

18 A What we do is we answer calls for service, either by detectives
19 or police officers. And our job is to go to a crime scene and collect
20 evidence, do photography, crime scene diagramming, just anything
21 that's needed to recreate this crime scene and to gather evidence,
22 things of evidentiary value.

23 Q Do you have specific education and training in order to do the
24 job that you do?

25 A Yes, sir. When I hired on, I had four-year degree from UNLV.

1 And then once you're hired, you go through a crime scene analyst
2 academy. It's not the police academy. And that lasts anywhere from,
3 like, 11 to 12 weeks. Then as a newbie, you -- you end up going
4 through a field training program focusing primary on property crimes
5 initially.

6 And then as you progress, you become a Crime Scene 2.
7 You start working crimes against persons. Then we go back to --
8 through personnel and we have to reapply for the position of a senior.

9 Additionally, we do testify in court a lot. So, obviously, we're --
10 we're sent to a lot of training classes in a variety of type -- different types
11 of bloodstain pattern analysis, you know, firearms training, photography,
12 nighttime photography, etcetera.

13 MS. MACHNICH: Your Honor, may we approach just briefly?

14 THE COURT: You may.

15 MS. MACHNICH: Thank you.

16 [Bench conference transcribed as follows.]

17 MS. MACHNICH: Your Honor, I just wanted to make sure that
18 they're not qualifying this witness as an expert. She wasn't disclosed
19 as -- as an expert in this case.

20 MR. GIORDANI: Just laying foundation.

21 MS. MACHNICH: I -- I just wanted to make sure.

22 THE COURT: Thank you.

23 MS. MACHNICH: Because I -- I'm not sure what they're going
24 ask next, but --

25 THE COURT: Thank you.

1 MS. MACHNICH: If that's all we're doing, that's fine. Thank
2 you.

3 THE COURT: Thank you.

4 [End of bench conference.]

5 BY MR. GIORDANI:

6 Q Ma'am, I want to bring you back to September 4th of 2015;
7 were you on duty that day?

8 A Yes, I was.

9 Q Did you respond to a particular location?

10 A Yes.

11 Q What was the nature of that call?

12 A We were told that it was a -- it came out as a 444, which is,
13 like, a officer in trouble. And later I was told, when I was requested by a
14 supervisor, that it was an officer-involved shooting.

15 Q Okay. Are officer-involved-shooting scenes, in general, in
16 your 19 and a half years, dynamic scenes?

17 A Yes, they are.

18 Q A lot going on when you arrive?

19 A When -- when -- generally, when we arrive, it's a static scene,
20 so it's not very dynamic. They've already got things taped off. And so
21 when we show up, everything's safe and clear.

22 Q Understood. So you're not walking into the residence while
23 there's still potentially an outstanding suspect or anything like that?

24 A True.

25 Q Okay. On this particular date that I just referenced, what

1 scene did you respond to?

2 A I responded to Oveja Circle. I believe the address is 6297. I
3 hope I have that correct, or otherwise I might have to refer to my --

4 Q Would it refresh your memory to look at your report?

5 A Yes. It's just right on the top here.

6 Q Go ahead and --

7 A Let me --

8 Q -- do that.

9 A Let me double check the -- the -- I'm sorry, I had it
10 inverted, 6729 Oveja Circle.

11 Q And is that a freestanding single-family home?

12 A Yes, it is.

13 Q Showing you 117 -- actually, I'm sorry, I'll show you a different
14 photograph. 247, can you see that on your screen, ma'am?

15 A Yes, sir.

16 Q Do you see Oveja in the bottom right of this photo?

17 A Yes. The -- the house that you pointed to is the home.

18 Q Okay. When you respond to this scene, do you stage
19 somewhere, or do you just go right up to the home?

20 A At the point that I arrived, we were requested, myself and CSA
21 Kristen Meckler, we were requested to bring out our big crime scene
22 unit. And that contains a lot of things that we need for evidence
23 collection and this type of thing. So yes, when we entered, there was
24 crime scene tape erected. But they did let us into the scene. And we
25 did -- were able to pull up. We didn't park right in front of the house, but

1 we were several hundred feet to the east of the house.

2 Q And when you say our specialized crime scene unit, are you
3 referring to a moving vehicle?

4 A Yes. And it's in this picture.

5 Q Where is that?

6 A It's this one right here.

7 Q It's off a little bit.

8 A That one.

9 Q So it's that --

10 A The big one --

11 Q -- big, van-looking thing?

12 A Yes.

13 Q When you respond to the scene, you indicated one other
14 crime scene analyst, Meckler. Were there any other crime scene
15 analysts processing this residence with you?

16 A Yes, there were.

17 Q Can you estimate how many?

18 A Two supervisors on scene when I arrived. There were two
19 other crime scene analysts that work on my squad, and then Kristen and
20 I.

21 Q Okay.

22 MR. GIORDANI: May I approach the witness?

23 THE COURT: You may.

24 BY MR. GIORDANI:

25 Q Showing you State's Proposed Exhibit 1. Sorry, I didn't show

1 counsel. State's Proposed Exhibit 1; do you recognize that?

2 A Yes, I do.

3 Q What is that?

4 A It's a crime scene diagram that was created by Kristen
5 Meckler of the basic overall above-view of the -- of the street, which is
6 very similar to this one, just at a different angle.

7 Q You didn't prepare this yourself. But in looking at it, is it a fair
8 and accurate depiction of the overhead aerial view of that cul-de-sac and
9 the homes on it as they appeared on the date that you responded?

10 A Yes.

11 MR. GIORDANI: I move for the admission of 1.

12 THE COURT: Any objection?

13 MS. MACHNICH: No objection from Mr. Turner.

14 THE COURT: Counsel?

15 MR. PLUMMER: No objection to the exhibit, Your Honor.

16 THE COURT: State's Exhibit 1 will be admitted.

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

18 MR. GIORDANI: Thank you. I'm going put that on the
19 overhead here.

20 BY MR. GIORDANI:

21 Q Okay. So this is a crime scene diagram, correct?

22 A Yes.

23 Q That's going to be what I'm going to refer to it as. In the crime
24 scene diagram here, where is the home that you processed?

25 A The home, 6729, is right here.

1 Q Okay. To the right of that, it says, officer-involved shooting,
2 and there's 10 numbers with a dash in there just below that; do you see
3 that?

4 A Yes, I do.

5 Q Is that an event number?

6 A Yes, it is.

7 Q What is an event number, so the jury understands?

8 A With LVMPD we create our event numbers. The first six digits
9 are the year, the month, and the day. That went off. Okay.

10 Q That's what happens when I zoom.

11 A The year, month, and the day. And then after that dash,
12 starting at -- each day, new day, starts at 12:01. They start creating
13 event numbers, 0001 and so forth, throughout the day, and then we start
14 the new next day.

15 Q Okay. So in this particular case, we're looking at
16 Event No. 150904-0516, correct?

17 A Yes, sir.

18 Q That would be -- first two digits, 2015, September 4th, and
19 then 516th call for service that day?

20 A Yes.

21 Q Okay. Any items of evidence that we're about to discuss, are
22 they ultimately impounded under this particular event number?

23 A Yes, they will be.

24 Q Okay. Describe for the ladies and gentlemen of the jury what
25 it means to take overall photos.

1 A When we're -- when we're trained, every photo that we take,
2 when we first enter a scene, we don't touch, move anything. If
3 somebody's left a purse on the scene, we don't touch it. And then we go
4 around and we take all overall photos. And then anything particularly
5 that may be of interest, then we're going to focus on that and go in and
6 take medium-range shots, as well as close-up shots. And then there's
7 also what we call identification shots that can be taken with a scale. So
8 overall would be taking just, you know, long-range shots of an area.

9 Q Okay. As is, meaning nothing's supposed to have been
10 moved prior to taking those shots?

11 A That's true.

12 Q Initial shots?

13 A Yes.

14 Q Then there's some shots that you take -- I didn't catch the
15 word, but you said that -- where you have markers?

16 A Yes. That's identification photography.

17 Q Okay. Okay. In this particular case, was it your
18 understanding that an officer had been saved from that residence?

19 A Yes.

20 Q Prior to your arrival?

21 A Right.

22 Q So there would have been Metro personnel there, but when
23 you respond, you take photos as it is then?

24 A Yes.

25 Q Okay. Want to start with the front area of the home. You

1 already described a single-family residence, correct?

2 A Yes.

3 Q Showing you 367; what are we looking at here?

4 A This is a Scion vehicle that was parked in the driveway of the
5 residence. And I understood it to belong to someone that lived at the
6 residence.

7 Q Okay. Showing you State's 368; is this the Scion in the left
8 portion of the photo?

9 A Yes.

10 Q So you're shooting a photo of a different car from the
11 driveway; is that right?

12 A Yes.

13 Q Did this eventually turn out to be a suspect vehicle?

14 A That's what I -- it was described to as me --

15 Q Okay.

16 A -- to -- to me as.

17 Q And I just want to be clear, if this is ultimately processed,
18 you're not the one that does that?

19 A I was -- I -- the vehicle, they had already gotten a search
20 warrant for that. And the vehicle was open, but I was present to do
21 some photography inside the vehicle prior to --

22 Q Okay.

23 A -- things taken out.

24 Q Understood. Showing you 370; is that the address we're
25 about to talk about?

1 A Yes.

2 Q 371. What are we looking at here?

3 A This is a view just across the front door, just heading south.
4 So from that driveway where I took the picture, kind of to the left or to the
5 north to show the driveway and the Scion, I just turned my camera off to
6 the right, or to the south. So this was just a little -- small, little courtyard
7 right outside the front door.

8 Q Showing you 374. Explain what you just did again.

9 A Yes. And -- and this the same, but just the other direction.
10 You can see I've entered into the courtyard, went to the south end, and
11 I'm -- I'm photographing towards the north. You can see the white Scion
12 in that opening there.

13 Q Okay. Now, there's a large clock in the middle of this
14 photograph, correct?

15 A Yes.

16 Q What's to the left of that clock?

17 A To the left of the clock, the front door --

18 Q Okay.

19 A -- area.

20 Q And then to the right is this little walkway that goes out to the
21 driveway?

22 A Yes.

23 Q Going back to 372, you see this wall here in the center?

24 A Yes.

25 Q Does this wall lead to the backyard?

1 A That wall is a wall that is in the backyard on the side of the
2 house.

3 Q Okay. And it's not a gate, it's an actual brick wall, correct?

4 A Brick wall.

5 Q Showing you 373; is that a close-up of that wall?

6 A Yes.

7 Q Fair to assume there's no gate on this side of the house?

8 A No gate.

9 Q That would lead to the backyard?

10 A Not on that side of the house.

11 Q Understood. Did you measure this wall, by chance?

12 A I did not measure it.

13 Q Do you recall it, as -- as you took photos of it, the approximate
14 height? Was it above your head?

15 A Yeah. It was slightly above my head, but I don't know the
16 exact height.

17 Q Understood. Showing you State's 376; what are we looking at
18 here?

19 A This is another angle of the front porch. You can see the
20 mailbox up on the wall, and the door is just to the left of that mailbox.

21 Q Okay. 377?

22 A This is on the north side, looking at the front of the house,
23 north side of the driveway and the home. And it's a gate that enters to
24 the backyard.

25 Q So on the other side of this gate should be the backyard,

1 correct?

2 A Yes. They have a covered patio area, but it does lead to the
3 backyard.

4 Q Thank you. 378, is that the covered patio area you're talking
5 about?

6 A Yes. That's with the gate open and picture of the side yard.

7 Q 379, is that inside that area you just described?

8 A I believe so. It's -- I believe it is.

9 Q Okay. I tried to change the brightness on that, but it's not
10 working, so hold on a second.

11 A Yes. It does look like that. North side yard, the opposite side,
12 does not have -- it's an open-air area.

13 Q Okay. So if you walk in through that black gate we just saw,
14 you would enter this area, and then there's a wall at the end for the
15 record, correct?

16 A Yes.

17 Q Is there a -- a gate into the backyard or just this wall?

18 A I'm not recalling any -- any gate there. I'm not recalling that.

19 Q Okay. No problem.

20 MR. GIORDANI: May I approach?

21 THE COURT: You may.

22 MR. GIORDANI: I might need to do this a couple times. May
23 I approach freely?

24 THE COURT: You may.

25 MR. GIORDANI: Thank you.

1 BY MR. GIORDANI:

2 Q Showing you State's Proposed Exhibit 21; do you recognize
3 that?

4 A Yes, I do.

5 Q What does that appear to be to you?

6 A It is cut clothing from Officer Robertson. I'm believing that this
7 is where the life-saving measures were being taken on the driveway.
8 And so it's just his uniform cut and --

9 Q Okay.

10 A -- I took photo of it.

11 Q Fair and accurate depiction of how that appeared when you
12 arrived on the scene on that date we've been discussing?

13 A Yes.

14 MR. GIORDANI: Move for the admission of State's 21.

15 THE COURT: Defense, any objection?

16 MS. MACHNICH: Your Honor, for Mr. Turner, we will submit.

17 MR. PLUMMER: Your Honor, I'm going to object to not the
18 photo, but to the witness's speculation on what that item is. She said
19 she believes, she's assuming, she doesn't know.

20 THE WITNESS: I know -- I know it's his. I know it's his
21 uniform.

22 MR. PLUMMER: I don't think --

23 THE COURT: Okay. So you're objecting to her testimony, but
24 you're not objecting to the admission of the exhibit?

25 MR. PLUMMER: Correct, Your Honor.

1 THE COURT: Okay. The --
2 MR. GIORDANI: I can -- I can clarify the testimony as to the
3 exhibit.
4 THE COURT: The exhibit will be admitted, seeing no
5 objection from the defense counsel as to the exhibit.
6 MR. GIORDANI: Thank you.
7 [State's Exhibit No. 21 admitted.]
8 BY MR. GIORDANI:
9 Q Ma'am, you were not present when Officer Robertson's life
10 was saved on that driveway, correct?
11 A No, I was --
12 MS. MACHNICH: Objection, Your Honor.
13 MR. PLUMMER: Objection, Your Honor.
14 THE COURT: Objection as to the form of the question?
15 MS. MACHNICH: As to the form of the question and as to
16 assumptions upon life-saving measures --
17 THE COURT: I -- I --
18 MS. MACHNICH: -- with regard to counsel's commentary.
19 THE COURT: The objection is sustained.
20 MR. GIORDANI: Okay.
21 MS. MACHNICH: Thank you. Move to strike.
22 THE COURT: Move to strike granted.
23 MS. MACHNICH: Thank you.
24 BY MR. GIORDANI:
25 Q Were you present when Officer Robertson was treated for his

1 gunshot wound?

2 A No, I wasn't.

3 Q Okay. When you did arrive, State's 21, is this what you saw?

4 A Yes, it is.

5 Q Okay. And you indicated you knew it was Officer Robertson's.

6 I'm showing State's 23; is that his name --

7 A Yes, it is.

8 Q -- on that same uniform?

9 A Yes.

10 Q All right. So I'm going to move now to the interior of this
11 residence.

12 MR. GIORDANI: These have already been admitted.

13 Q State's 60, what are we looking at here, ma'am?

14 A This is a view into the home from the entryway area. It's
15 looking towards the west.

16 Q State's 61?

17 A This is --

18 Q Sorry.

19 A This is, again, from basically the entryway area and just kind
20 of across the -- just angled just a little bit to the right. I moved my body
21 and then just shot a photograph across the living room area into the
22 dining room area.

23 Q State's 65; is that essentially the same area, you're just
24 walking further into the home?

25 A Yes. This is a overall view of the back door, and beyond that's

1 the back patio.

2 Q Okay. State's 67, what are we looking at here?

3 A Let me familiarize myself with this. Can you turn this -- can it
4 get a little lighter or --

5 Q Sure. Does that help, ma'am, or make it worse?

6 A No. The last -- yes, that's helping a little bit.

7 Q Okay.

8 A This is an angle -- I was in -- the home, when you walk in, has
9 two hallways. I was in the furthest west hallway. And I'm actually
10 looking to the north. And you can see off to the area here, this is the
11 dining room table. And it's just looking into the kitchen area.

12 Q Okay. I'm going to come back to photos in a minute.
13 Ultimately, do you walk through this entire house and take photos all
14 throughout?

15 A Yes, I do. I was assigned photos and report on this call. So
16 yes, I was present for all the photography.

17 Q Okay. Showing you State's Proposed Exhibit 2; do you
18 recognize that?

19 A Yes, I do.

20 Q What are we looking at there?

21 A This is another diagram that was created by Kristen Meckler.
22 And this is a bird's eye view above, like the interior of the house, also
23 showing the patio area.

24 Q Okay. This, fair to say, does not have evidence markers or
25 numbers or anything like that? This is just kind of a blueprint of the

1 home?

2 A Yes.

3 Q Okay. Does that appear to be a fair and accurate depiction of
4 the home after you walk through it yourself and processed it?

5 A Yes.

6 MR. GIORDANI: I'd move for the admission now of State's 2.

7 THE COURT: Any objection from the defense?

8 MS. MACHNICH: No objection from Mr. Turner.

9 MR. PLUMMER: No, Your Honor.

10 THE COURT: It will be admitted.

11 [State's Exhibit No. 2 admitted.]

12 MR. GIORDANI: Thank you.

13 BY MR. GIORDANI:

14 Q Showing you State's 2. Where is it -- the front door on this
15 diagram?

16 A The front door is located right there.

17 Q Okay. Zoom in a little bit. It goes black when we zoom, sorry.
18 There we go. Okay. Can you just briefly walk the jurors through this
19 residence for us?

20 A Yes. As you enter the front door, as we saw in the earlier
21 picture, you're -- you're walking in westward. As you come in, I
22 mentioned two hallways. The first hallway is right here. I'm sorry, this
23 thing is -- there. And that leads to two bedrooms. This area here is a
24 long bathroom that connects from one hallway to the other. The second
25 hallway is located -- I'm sorry, here. So, basically, the south side of the

1 residence consists of four bedrooms, one being the master with a
2 master bath, two hallways, and a bathroom.

3 But the -- where we focus most of our attention would be, we
4 walk in -- and this is the living room area here. And as you walk past
5 this couch, which this is a couch right here, the dining room area is
6 located next, dining room and the kitchen's just north of that.

7 Q Let me stop you.

8 A Sure.

9 Q Did you mark the dining room?

10 A This line is going into the dining room.

11 Q Okay.

12 A And then this is the dining room table. And then the kitchen is
13 a little further up.

14 Q All right. Then straight out?

15 A Yes. If you continue on, just past the dining -- dining room
16 into -- through this door, this area here is a covered patio.

17 Q Understood. Now, on that diagram, it appears that there is
18 some wording underneath the -- the table and it's blurred. What is that --
19 can you read that?

20 A What happened is when we got there, the table was
21 disheveled and kind of out of place. The floors were kind of a wood
22 floor, and it was, like, later during the investigation, we noticed there
23 was, like, a little floor pad and dust marks showing the original location.
24 So Kristen in her diagram measured that in, as well. So the -- the
25 dot-dot-dot marks are the -- what is believed to be the original location of

1 the table before it got moved over.

2 Q Understood. And based upon what you knew, obviously, you
3 didn't see Robertson there, but is that generally the area where he came
4 to rest, and so you -- you diagrammed where the table was originally
5 located?

6 A I'm not sure where he came to rest.

7 Q No problem.

8 A I wasn't told that.

9 Q I want to go back to the photographs now, ma'am. State's 72,
10 what are we looking at here?

11 A This is a picture of the front -- the -- the front door's exterior
12 security gate.

13 Q Showing you State's 73; what are we looking at here?

14 A We noticed during the course of the investigation, we noticed
15 that we saw something that appeared to look like a projectile strike to
16 the -- to the door. So I -- this is with a scale, this would be an example
17 of a close-up shot with a scale.

18 Q Okay. And the scale has inches on top and millimeters on
19 bottom?

20 A Millimeters on the -- yes, sir.

21 Q Going back into the home, State's 74; what are we looking at
22 here?

23 A This is a photograph after -- what -- what happens is that I go
24 in and take all the photos. Then we identify evidence. And then at some
25 point, we start laying out these tent markers to make it understandable

1 so you can see, like, especially small items. So these are a few tent
2 markers that were laid out. The location is on the interior side of that
3 door that leads to the patio. And it's looking towards the north. And this
4 area here, these are, like, the dining room legs right there, dining room
5 table legs. And this is the door out to the patio.

6 Q State's 118, what are we looking at here?

7 A This is a view from looking towards the east. I took the
8 picture, basically, in the dining room area, so it's looking towards the
9 east, the front door being here. That's the front door, and front living
10 room window, and a TV set in the living room.

11 Q Okay. So that last metal gate I showed you and you said
12 there was an apparent bullet strike, those would have been this front --
13 front door gate?

14 A Yes.

15 Q Okay. And State's 119, what are we looking at?

16 A This is the mini blinds that were over the top of the east living
17 room window. And it's an overall picture to show there was some
18 damage to that mini blind.

19 Q Okay. Showing you a little closer, State's 120; what are we
20 documenting here?

21 A We're -- I'm -- I was photographing small what we believe to
22 be pellet marks from a shotgun blast.

23 Q Okay. Are those in the blinds though, what you're referring
24 to?

25 A Yes. They're small little -- these little tic marks that you can

1 see. It's white kind of white, but there's all, like, little marks here. One's
2 there. They're little --

3 Q I don't need you --

4 A -- brown marks.

5 Q Thank you. I mean, there's dozens of them, right?

6 A Yes.

7 Q Okay. I'm going to go back, bear with me here. Just ask you
8 a couple questions based upon State's 2. Okay. For the record, you've
9 identified this door that I'm pointing at as the door to the backyard,
10 correct?

11 A Yes.

12 Q And then the door I'm pointing at now to the right is the door to
13 the front?

14 A Yes.

15 Q And the blinds are just above that, correct?

16 A Yes. They're just to the side of that front door.

17 Q Okay. The couch, if you recall, the couch in between that,
18 how tall is that couch?

19 A A standard size. I did -- I did not measure the height of it, but
20 it was a standard couch, nothing particularly tall or short about it.

21 Q Okay. From the backyard to the front door, backyard door to
22 the front door, is there anything obstructing a line of fire?

23 A Nothing -- nothing tall --

24 Q Okay.

25 A -- would be there.

1 Q Okay. So the -- the couch is regular height, correct?

2 A Yes.

3 Q Okay. And I want to jump back to the photographs.

4 State's 122, is that the same set of blinds?

5 A Yes.

6 Q There's something leaning on it there. What are we looking at
7 there?

8 A There was some damage to a few things there. Some kind of
9 a piece of metal railing keeled over into the blinds. I believe -- I see a
10 little bell on it. There was a Buddha statue there that was damaged. It
11 was something that was standing up that got knocked over.

12 Q State's 123, what are we looking at here?

13 A This was the window sill of that east window, and this was a
14 piece of a shotgun wad.

15 Q State's 124, what are we looking at here?

16 A And again, there was -- there were two pieces of a shotgun
17 wad in that window sill.

18 Q And that's the plastic item that looks like kind of an octopus
19 upside down?

20 A Yes.

21 Q Okay. That was a horrible description. State's 129, is that this
22 dining room area you've described?

23 A Yes. This is the dining room table.

24 Q Door to the right is to the backyard?

25 A Yes.

1 Q State's 131, what are we looking at here?

2 A This is a picture on top of the dining room table. It was
3 basically on the northeast end of the dining room table and there was --

4 Q It being what?

5 A I'm sorry, the firearm that's on the table was kind of on that
6 area of the table.

7 Q State's 125, what are we looking at here?

8 A This is a view inside the living room. We saw a flashlight on
9 the floor, so we deemed it a possible item of evidence, so I
10 photographed it.

11 Q Okay. State's 79, what are we looking at here?

12 A This is an overall picture of the dining room as we found it,
13 after the evidence that we located in that area was marked with tent
14 markers.

15 Q Okay. The tent markers are what are -- you're referring to as
16 the little yellow things with numbers on them, correct?

17 A Yes.

18 Q And is that -- each number, is that supposed to be an
19 individual piece of evidence?

20 A Yes.

21 Q Real quickly, showing you 77; are those other tent markers
22 and some of the ones included in that last photo?

23 A Yes.

24 Q Okay. Showing you now 69; what are we looking at here?

25 A This is a close-up view of the condition of the door and the

1 door lock, which was a set of keys hanging from the interior dead bolt.

2 Q And State's 75 again, this is the door to the backyard, correct?

3 A Yes.

4 Q And so the door to the backyard had a set of keys. And would
5 the keys have been on the inside of the door or the outside?

6 A Inside.

7 Q Okay. And that's a dead bolt, obviously, on the top there?

8 A Yes.

9 Q Do you recall what type of material that door was?

10 A I believe it was made of wood. I -- I don't know for sure, but I
11 believe that it was made of wood. And in this photo, you can see that
12 there's some brown wood that you can see through the paint.

13 Q Understood. All right. So that's the back door. Showing you
14 now 157; what are we looking at here?

15 A This is the view of the backyard. I'm out away from the -- to
16 the right is the covered patio, which is here, and I'm looking towards the
17 north, just photographing a grassy area in the backyard.

18 Q Okay. Fair to say there's various trees and shrubs and
19 greenery in that backyard?

20 A Yes.

21 Q Showing you 158; what are we looking at there?

22 A This is a view towards the south. There was a fenced area
23 south of the grassy area and the area outside the covered patio. And on
24 the south end, there was this fence and gate that led into an area where
25 there was an in-ground pool.

1 Q Okay. 152, what are we looking at here?

2 A This is a view -- I was standing in the backyard in the back
3 corner. The gate that was on the side -- north side that we talked about
4 earlier, if you were to come out into the backyard on that north side, I
5 was kind of angled and I was just showing some patio furniture. There's
6 a little bit of the corner of the covered patio area, as well as in the
7 background there's -- you can see the pool area a bit.

8 Q Okay.

9 MS. MACHNICH: Your Honor, I'm really sorry to be trouble,
10 but I -- I was wondering if we could take a restroom break? We've been
11 going for a while now and perhaps --

12 THE COURT: We'll -- we'll do our lunch recess at this time.

13 MS. MACHNICH: Thank you.

14 MR. GIORDANI: Okay.

15 MS. SISOLAK: Thank you, Your Honor.

16 THE COURT: Ladies and gentlemen, we're going to take our
17 lunch recess at this time.

18 During this recess, your duty not to converse among
19 yourselves or with anyone else on any subject connected with the trial or
20 to read, watch, or listen to any report of or commentary on the trial by
21 any person connected with that trial or by any medium of information,
22 including without limitation, newspaper, television, and radio. And you
23 are not to form or express an opinion on any subject connected with this
24 case until it is finally submitted to you.

25 We'll be in recess until 2:00.

1 [Court recessed at 12:48 p.m., until 1:58 p.m.]

2 [Outside the presence of the jury.]

3 THE COURT: Please be seated. This is the continuation of
4 the Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner*
5 *and Clemon Hudson*.

6 The record will reflect the presence of counsel for the State,
7 counsel for the defense, and the presence of the defendants. I'm going
8 to bring the jury in.

9 Is there anything we need to do before that?

10 MS. MACHNICH: No, Your Honor.

11 MR. GIORDANI: No.

12 MS. BEVERLY: No.

13 THE COURT: Bring them in, please.

14 MS. MACHNICH: Thank you, Your Honor.

15 [Jury reconvened at 1:59 p.m.]

16 THE COURT: Please be seated.

17 MR. GIORDANI: We have one more coming.

18 [Bench conference transcribed as follows.]

19 MS. BEVERLY: If it's okay with Your Honor, we actually need
20 to recall Mr. Clarkson for, like, five minutes. So, like, right now.

21 MR. GIORDANI: Hoping to just get him in --

22 MS. BEVERLY: Just get him in.

23 MR. GIORDANI: -- it's, like, a few questions instead of going
24 through --

25 THE COURT: You sure procedurally you don't have an issue

1 with calling a witness out of order?

2 MR. GIORDANI: Yes.

3 MS. BEVERLY: He's trying to be funny right now.

4 MR. GIORDANI: I got it.

5 THE COURT: Also, just so you know, in case we get in an
6 argument, and I issue again, I brought [indiscernible].

7 MR. GIORDANI: Okay. So can we call him out of order?

8 THE COURT: Do you have any issue calling him -- it's their
9 case in chief. They're just asking to call him out of order. Is he a law
10 enforcement officer?

11 MS. BEVERLY: No. He's --

12 MS. MACHNICH: He's one of the --

13 MS. BEVERLY: The victims who was here yesterday. I need
14 to recall him.

15 THE COURT: Okay.

16 MS. BEVERLY: Yeah.

17 THE COURT: Do you have any objection to recalling him?

18 MR. PLUMMER: What's the proffer?

19 MS. BEVERLY: I don't have to tell him -- him what I'm going
20 to ask.

21 THE COURT: I'm sorry? Mr. Plummer, do you --

22 MS. MACHNICH: We'll submit.

23 THE COURT: -- have any objection to calling him?

24 MS. BEVERLY: I said I don't have to tell him what I -- what
25 the proffer is. It's not a proffer. It's -- he's a witness on our witness list,

1 so we're allowed to --

2 THE COURT: Okay.

3 MS. MACHNICH: No. I --

4 MS. BEVERLY: He's under subpoena.

5 THE COURT: They're still in their case in chief.

6 MR. PLUMMER: Understood, Your Honor.

7 THE COURT: All right.

8 MR. GIORDANI: Thank you.

9 [End of bench conference.]

10 THE COURT: Counsel, will you stipulate to the presence of

11 the jury?

12 MR. GIORDANI: Yes, Your Honor.

13 MS. MACHNICH: Yes, Your Honor.

14 MS. SISOLAK: We will, Your Honor.

15 MR. PLUMMER: Yes, Your Honor.

16 THE COURT: And it's my understanding, counsel, that you

17 want to recall a witness at this time?

18 MS. BEVERLY: Yes. We just need to call -- recall

19 Mr. Clarkson out of order for a few minutes.

20 THE COURT: That's fine. Hearing no objection from the

21 defense, they can call Mr. Clarkson.

22 MR. GIORDANI: We'll be very brief, Your Honor. Thank you.

23 THE COURT: I'll have you -- since it's the second day, I'm

24 going to have you take the oath again.

25 MR. CLARKSON: Certainly.

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ERIC CLARKSON,

[having been recalled as a witness and first duly sworn, testified as follows:]

THE CLERK: Please be seated. Would you state your name for the record, please?

THE WITNESS: Eric Clarkson. Would you like me to spell it?

MS. BEVERLY: Yes, please.

THE WITNESS: E-R-I-C C-L-A-R-K-S-O-N.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Thank you, Mr. Clarkson. You were here yesterday testifying; is that correct?

A Correct.

Q Okay. So I just needed to ask you a couple of follow-up questions from yesterday.

A Okay.

Q Okay. We were talking about, yesterday in the beginning of your testimony, how you knew, prior to the incident on September the 4th, Mr. Turner; is that correct?

A I did.

Q Okay. Prior to September the 4th of 2015, you had been having, a few years before that, frequent contact with him; is that correct?

A Correct.

Q Okay. But prior to -- in the months prior to September the 4th

1 of 2015, you and Mr. Turner had stopped communicating; is that
2 correct?

3 A Yes. For almost a year.

4 Q Okay. And, in fact, you had deleted and blocked his phone
5 number; is that correct?

6 A I don't remember blocking it. I just deleted it during the --

7 Q Okay.

8 A During the time we knew --

9 Q Okay. That's okay. You deleted his number; is that correct?

10 A Correct.

11 Q All right. Now, I want to publish for the record grand jury -- I'm
12 sorry, State's Proposed Exhibit -- actually admitted Exhibit No. 359; can
13 you see that on your screen?

14 A Yes.

15 Q Would this be the screen patio area leaving onto -- leading out
16 into your backyard?

17 A Yes.

18 Q Okay. And this orange -- what would you call that?

19 A Corrugated plastic.

20 Q Okay.

21 A Fiberglass, excuse me.

22 Q Now, in this particular photo, we see that the screen is kind of
23 pulled down?

24 A Correct.

25 Q Was that screen pulled down prior to you going to sleep on --

1 on the early morning hours of September the 4th?

2 A No.

3 Q Okay. We can also kind of see in this photo the orange part
4 looks kind of bent in and off the hinges a little bit; do you see that?

5 A Yes.

6 Q Was that the condition it was in prior to you going to bed on
7 September the 4th of 2015?

8 A No.

9 Q Do you also see a couple of weapons in this photo?

10 A Yes, I do.

11 Q Are those your weapons?

12 A No.

13 Q Okay. There was -- do you recall there also being a handgun
14 on your patio?

15 A I do not recall that.

16 Q Do you have a handgun, though, at the time?

17 A I have no weapons.

18 Q Okay.

19 A And did I not at the time.

20 Q Just to be clear, during this incident, from the time you woke
21 up and heard things on your patio until the time the police eventually
22 talked to you, you could not identify any person involved by their face; is
23 that correct?

24 A That is correct.

25 Q In fact, to this day, you're not sure who was involved in the

1 attempt burglary of your house; is that correct? From your own personal
2 knowledge?

3 A Correct.

4 Q All right. Now, after this incident, a few hours after this
5 incident, did you have a chance to look at the news?

6 A Yes, I did.

7 Q Okay. On the news, did you see Steven Turner's face on the
8 news?

9 A Yes, I did.

10 Q Okay. At that point, did you realize, I know Steven Turner?

11 A Yes, I did.

12 Q When you realized that you knew Steven Turner, did you
13 contact detectives again?

14 A Immediately.

15 Q And did you tell detectives, yes or no, that you knew Steven
16 Turner?

17 A Yes, I did.

18 Q Okay. Even though you told detectives that you knew Steven
19 Turner, did you tell detectives that he was involved in this incident?

20 A No.

21 Q Is that because you're not sure if he's involved in this incident?

22 A I suppose so, yes.

23 Q From your own personal knowledge?

24 A From my own personal knowledge.

25 Q Okay.

1 MS. BEVERLY: I have nothing further.
2 THE COURT: Any cross-examination by the defense?
3 MS. MACHNICH: None from Mr. Turner. Thank you, sir.
4 THE COURT: Mr. Plummer?
5 MS. SISOLAK: None from Mr. Hudson.
6 THE COURT: Can this witness be excused?
7 MR. GIORDANI: Yes, Your Honor.
8 THE COURT: Sir, thank you.
9 THE WITNESS: Thank you very much.
10 THE COURT: You are excused.
11 MR. GIORDANI: The State would recall Robbie Dahn.
12 THE COURT: Ma'am, I would remind you you're still under
13 oath.
14 THE WITNESS: Yes, sir.
15 THE COURT: Thank you.
16 THE WITNESS: Thank you.
17 MR. GIORDANI: May I proceed?
18 THE COURT: You may.
19 MR. GIORDANI: Thank you, Your Honor.

20 **ROBBIE DAHN,**

21 [having been previously called as a witness and reaffirmed, testified as
22 follows:]

23 **DIRECT EXAMINATION (CONT.)**

24 BY MR. GIORDANI:

25 Q All right, ma'am. Have the break to organize some

1 photographs. So I want to start with, what is a scene walkthrough when
2 it comes to an officer-involved shooting case?

3 A As far as the crime scene analyst, we usually go through with
4 our supervisor and walk through looking for any evidence that had been
5 pointed out from a previous walkthrough that actually occurs with --
6 sometimes with the officers, sometimes not. And with we have a CIRT
7 team, which is the criminal -- the -- I'm blanking out right now, Critical
8 Incident Response Team. They're part of the -- part of the investigation.

9 And what they do is they investigate if any of our policies were
10 not followed. And then we have a FIT team, which is a Force
11 Investigation Team, and they're the ones that are actually doing the
12 investigation -- investigation for criminality.

13 Q Okay.

14 A So they go in and do a walkthrough first. Crime scene
15 analysts, we're not a part of that.

16 Q Understood. Now, the FIT detectives in this particular case,
17 are they Marc Colon and Joe Patton?

18 A Yes.

19 Q They would do a walkthrough of the scene on any case in
20 which an officer discharges his firearm; is that accurate?

21 A Yes.

22 Q Okay. You're not a part of that yourself?

23 A No.

24 Q But do you document the scene after they've done that
25 walkthrough?

1 A Yes. Sometimes our supervisor's allowed to be in that
2 walkthrough. And then they defer to us as to what was said during the
3 walkthrough, and things that were important.

4 Q Understood. I want to show you several photographs. I'm just
5 going to leaf through these. State's 88, 89, 90, 91; do you recognize
6 those first four?

7 A Yes.

8 Q Are those fair and accurate depictions of the scene as you
9 observed it at some point in the evening on September 4th, 2015?

10 A Yes. These are my photographs, so I do recognize those.

11 Q Okay. Now, I want to show you State's 162 through 217. Just
12 leaf through those to yourself, I'm going to ask you the same questions
13 for those.

14 A [Witness complies.] Just a few more.

15 Q Do you recognize all of those?

16 A Yes, I do.

17 Q Are those all your photographs?

18 A Yes.

19 Q Are those all fair and accurate depictions of the scene as it
20 appeared after that walkthrough was conducted?

21 A Yes, sir.

22 MR. GIORDANI: And I'd move for the admission of 162
23 through 217, and 88 through, what was it, 91.

24 THE COURT: Any objection from the defense?

25 MS. MACHNICH: Your Honor, might we see them and -- and

1 see which ones he's proffering at this time?

2 And, Your Honor, for Mr. Turner, we will submit to the
3 admission of those exhibits.

4 MR. PLUMMER: Your Honor, we're going to conditionally
5 submit to the exhibits on the condition that the -- an additional witness is
6 called to substantiate some markers that are in those photos.

7 THE COURT: Counsel approach.

8 [Bench conference transcribed as follows.]

9 THE COURT: Can they -- can this witness lay the
10 foundation --

11 MR. GIORDANI: Yes.

12 THE COURT: -- as to those markers?

13 MR. GIORDANI: Yes.

14 THE COURT: Why don't you have her lay the foundation?

15 MR. GIORDANI: I will, but that would cause me to do exactly
16 what they don't want me to do. All I'm doing is laying the foundation that
17 these are as they appeared --

18 THE COURT: True and accurate depictions --

19 MR. GIORDANI: Yes.

20 THE COURT: Okay. Fine.

21 MR. GIORDANI: And I've already done that. But what they're
22 concerned about, I think, is the markings on the cones. And the
23 detectives who did those are going to testify later. But I can't lay the
24 foundation with them, I have to do it with her.

25 THE COURT: Okay.

1 MR. GIORDANI: So what I intended on doing --

2 THE COURT: So what's your conditional objection, counsel?

3 MR. PLUMMER: My -- my -- is the people who put these bags

4 labeling individuals as the subject is here, you know, the person is here,

5 and they got cones with bags with writing on it, if that person is going to

6 come in and testify, I have no objection.

7 MR. GIORDANI: And they are, but that doesn't go to

8 foundation anyway. That's -- I'm just laying foundation.

9 THE COURT: Let me see -- let me see what he's talking

10 about.

11 MR. GIORDANI: He's concerned that the words --

12 THE COURT: All right. So I -- so your objection -- all right.

13 I'm not going to let you publish the ones that --

14 MR. GIORDANI: I'm not going to --

15 THE COURT: Okay. Until you lay -- oh, okay.

16 MR. PLUMMER: I don't --

17 THE COURT: So I want a clean record.

18 MR. PLUMMER: Yes, Your Honor.

19 THE COURT: So, actually, you have no objection except to

20 proposed Exhibit No. 91, and you have a conditional objection, subject

21 to them bringing in the person who actually did the writing on the bag?

22 MR. PLUMMER: Correct, Your Honor.

23 THE COURT: That is also true as to Exhibit -- Proposed

24 State's Exhibit 162 --

25 MR. GIORDANI: I believe it's going to be the rest of them.

1 THE COURT: It's all the rest of them?

2 MR. GIORDANI: I think so.

3 THE COURT: All right. So --

4 MR. PLUMMER: Which is my understanding, is what they're
5 going to do anyway.

6 MS. BEVERLY: We're not publishing them right now.

7 THE COURT: Okay. I understand. So hold on. So as to
8 Exhibits 89 -- proposed -- State's Proposed Exhibits 88 and 89, the
9 defense does not have any objection to those exhibits; is that correct?

10 MS. MACHNICH: Submit.

11 MR. PLUMMER: That is correct, Your Honor.

12 MS. SISOLAK: Not as to Mr. Turner.

13 THE COURT: Okay. As to, what would that be, counsel,
14 exhibits -- the remaining exhibits, you have a conditional objection as to
15 foundation as to the bags and writing as evidenced by the photographs;
16 is that correct?

17 MR. PLUMMER: Correct, Your Honor.

18 THE COURT: All right. So as to -- I'll put it on the record, but
19 as to Exhibits 88 and 89, those are admitted. As to the remainder
20 exhibits, I'm going to require you to make -- addition -- she can testify as
21 to the exhibits, but I'm not going to let you publish the exhibits to the jury
22 until you lay the additional foundation.

23 MR. GIORDANI: Understood.

24 THE COURT: Okay. So, again, she can testify from them
25 and -- but as far as the actual admission of the [indiscernible] until you

1 lay the additional foundation.

2 MR. GIORDANI: Understood.

3 THE COURT: Thank you.

4 MR. PLUMMER: Thank you, Your Honor.

5 MS. MACHNICH: Thank you, Your Honor.

6 [End of bench conference.]

7 BY MR. GIORDANI:

8 Q Okay. Ma'am, so again, you didn't -- you were not present for
9 the walkthrough?

10 THE COURT: Counsel, I need to put on the record for the
11 record.

12 MR. GIORDANI: Oh, I'm sorry.

13 THE COURT: So as to exhibits -- State's Proposed
14 Exhibits 88 and 89, those will be admitted. As to the remainder of the
15 exhibits, those are conditionally admitted until such time as you lay
16 additional foundation.

17 [State's Exhibit No. 88 and 89 admitted.]

18 MR. GIORDANI: Understood.

19 THE COURT: Thank you, counsel.

20 MR. GIORDANI: Thank you.

21 BY MR. GIORDANI:

22 Q Ms. Dahn, the walkthrough that was conducted, as is every
23 officer-involved shooting case, you were not present for that?

24 A No.

25 Q However, you documented the scene afterwards?

1 A Yes.

2 Q Those photos that I just showed you, the big stack, those are
3 all photographs depicting cones that were placed from perspectives of
4 witnesses, officers, etcetera; is that correct?

5 A Yes.

6 Q Those cones would have been placed during that walkthrough
7 that you weren't present for?

8 A Yes.

9 Q Okay. And you documented it afterwards?

10 A Yes.

11 Q All right. Let's get back to it very briefly. 126, that's the door
12 leading out to the backyard, correct?

13 A Yes.

14 Q 224, does that appear to be the same door?

15 A Yes.

16 Q You indicated earlier it looked like there was wood around the
17 frame of the door, correct?

18 A Yes.

19 Q Can you see in this photo that the door is actually glass?

20 A The -- I was not aware that that was glass.

21 Q Okay. Fair enough. 221, what are we looking at here?

22 A This is a view looking out towards the west, the back -- you
23 know, the backyard and the back wall. And this is a -- two pieces of
24 corrugated metal, in which some shade screen had been attached to it
25 to block the sun for the patio.

1 Q Showing you now State's 220; what are these yellow things
2 here?

3 A Yellow -- these are yellow -- the yellow tent markers. And
4 those are marking evidence.

5 Q Each number, does that correspond with a particular piece of
6 evidence?

7 A Yes.

8 Q So there's at least 35 of these markers that we know of so far?

9 A Yes.

10 Q 93, what are we looking at here?

11 A I took a picture just outside the door from -- from, like, the --
12 entryway into the patio, looking towards the north.

13 Q Okay. There's a disturbed chair or chair that's knocked over
14 there?

15 A Yes.

16 Q State's 152, what are we looking at here?

17 A This is a view from the -- the northwest corner. And again, I
18 think I looked at this earlier. It's depicting a little bit of the patio down
19 here in the corner.

20 Q Okay.

21 A The -- the trees and shrubs and patio furniture here, and then
22 the pool here.

23 Q Okay. So out and to the left is the pool, right?

24 A Yes.

25 Q 158, that's the pool?

1 A Yes.

2 Q 353, is that another shot of the pool area?

3 A Yes.

4 Q Or leading into the pool area?

5 A It's from the backyard area that was paved near where that
6 grassy area was, and it's on the north side of the fence that blocks the,
7 you know, fences in the pool area.

8 Q Okay. State's 350, is this within the pool area?

9 A Yes.

10 Q State's 14, what are we looking at there?

11 A Another view of the pool. It's -- I'm at the north end of the
12 pool, facing towards the south.

13 Q Okay. Down in the left here, you can see something that
14 appears to be one of those little pool caps in the concrete; is that right?

15 A Yes. The skimmer cover.

16 Q State's 24, is that the skimmer cover?

17 A Yes.

18 Q I want to go back real briefly to State's 14; what's off to the left
19 here?

20 A To the left is the side yard. It correlates to the earlier
21 photograph that we had where there was no gate --

22 Q Okay. State's --

23 A -- on that one side.

24 Q -- 107, is that that same wall that we have seen from the other
25 side?

1 A Yes. That's the one that you asked me if I'd measured the
2 height.

3 Q Understood.

4 A But that's the same wall, yes.

5 Q Okay. Bear with me. Now, I want to head back towards the
6 patio area and talk about some items of evidence that you ultimately
7 recovered. State's 157, is this walking back towards the patio?

8 A Yes.

9 Q State's 159, is that the patio?

10 A Yes. That's a view from the bricked-in area that's, you know,
11 near where the pool is and the fence there, looking over at that covered
12 patio.

13 Q Okay. Were there several items of evidence recovered from
14 this planter area just on the -- this side of the patio?

15 A Yes. There were a few items there.

16 Q State's 358, are we seeing a couple of those items in that
17 photo?

18 A Yes.

19 Q State's 95, what are we looking at in this photograph?

20 A It's a close-up picture, the -- the firearm laying down is an
21 SKS 7.39x32. It's a rifle. And then the other one is a 12-gauge shotgun.

22 Q Okay. And that --

23 A A Mossberg, I believe.

24 Q For the record, the 12-gauge shotgun is leaning up against the
25 corrugated metal or plastic?

1 A Yes. It's leaning against the corrugated metal.

2 Q State's 360, what is this in the top left of the photograph?

3 A That's a -- a cartridge case.

4 Q Okay. Now, you take these photographs, and then ultimately

5 those guns are taken from the scene to be processed, etcetera, correct?

6 A Yes.

7 Q So does another crime scene analyst come and actually

8 impound those guns?

9 A Yes. In -- in this particular case, when I arrived, they asked

10 me to go ahead and photograph these guns very quickly, because we

11 did have a crime scene analyst standing by that was going to rush those

12 to the forensic lab. And the girl I mentioned, Kristen Meckler, I worked

13 hand in hand with her on a lot of the other evidence. But yes, there was

14 a crime scene analyst named Jeff Smith that impounded these guns.

15 Q Okay. And those are rushed off to the crime lab, and then you

16 continue to process the scene?

17 A Yes.

18 Q Okay. Just need to lay a foundation for this. This is 180. So

19 we're looking at the same area here, correct?

20 A Yes.

21 Q There's Evidence Markers 1 and 2. Is that the SKS and the

22 shotgun?

23 A Yes.

24 Q They're, obviously, not depicted in that photo, but now we

25 have evidence markers in their place?

1 A Yes.

2 Q Okay. Out in that same area or nearby, State's 181, what are
3 we looking at here?

4 A This walkway here -- this walkway here goes from the patio on
5 this end, and towards the back wall. So this is a walkway from that
6 covered patio to the backyard. And this is a stocking cap or beanie that
7 was found on the -- on the walkway.

8 Q State's 194, is that that same stocking cap or beanie?

9 A Yes.

10 Q State's -- okay. In that same photograph, we have the 34
11 evidence marker; does that represent the beanie?

12 A Yes.

13 Q Okay. And then there's a little bit of blood here. Zoom in.
14 That has what appears to be a little pink flag next to it; what is that?

15 A Yes. On this scene we had three blood samples that were
16 taken. And I believe this was our AB3. This was the third of the three.
17 And that little marker would have probably indicated AB3 for the third
18 blood sample taken.

19 Q Okay. So if this jury's later looking at these photographs and
20 AB3 means the third of three blood samples taken?

21 A Yes, sir.

22 Q Okay. Were there any other items of evidence impounded
23 from that exterior portion of the corrugated metal?

24 A Yes.

25 Q What?

1 A There was a -- a -- I believe it was a Beretta 25 caliber that
2 was on the patio.

3 Q Okay. We'll get to the inside of the patio --

4 A Oh, okay. On the outside? No.

5 Q Okay. So that should limit -- I mean, that should cover the
6 outside of the patio, correct?

7 A Yes.

8 Q All right. Let's move back into the patio. State's 97, that's just
9 a general overall of the patio, correct?

10 A Yes.

11 Q State's 357, a little closer view?

12 A Yes.

13 Q And this is taken when the firearms are still present on the
14 other side of the corrugated metal?

15 A Yes.

16 Q Now, State's 362; is that the firearm you were describing
17 previously?

18 A Yes.

19 Q Small handgun?

20 A Yes.

21 Q What type of handgun was that?

22 A I believe it was a Beretta 25.

23 Q Showing you State's 366; is that a close up of that item?

24 A Yes.

25 Q Okay. Is that firearm treated the same way as the long guns,

1 and taken by someone else and you continue to process the scene?

2 A Yes. This firearm and the two long guns were all taken by Jeff
3 Smith.

4 Q Okay.

5 A He was waiting for this one as well.

6 Q Okay. And would they have been impounded under the event
7 that I've previously described, 150904-0516?

8 A Yes.

9 Q Now, State's 163, I want to draw your attention now to
10 Evidence Marker 3, and obviously the gun is now gone?

11 A Yes.

12 Q And that Evidence Marker 3 is in the place of the little
13 handgun, correct?

14 A Yes.

15 Q Okay. Several other evidence markers. 32, do you know
16 what that represents?

17 A I don't have the -- I don't have the numbers memorized. I
18 know there were some -- a bullet, some bullet fragments, cart cases out
19 there. I'd probably have to refer to Kristen's evidence impound to know
20 exactly what that is. If it was zoomed in a little closer, I might be able to
21 see. Like a frag --

22 Q Well, would it refresh your memory to look at the impound?

23 A Yes, it would.

24 Q Do you have that with you?

25 A Yes, I do.

1 Q Please do --

2 MR. PLUMMER: Objection, Your Honor.

3 THE COURT: What's the objection, counsel?

4 MR. PLUMMER: Objection is reviewing somebody else's
5 report to testify of what an item is that she personally did not construct --

6 THE COURT: Go ahead.

7 MR. GIORDANI: A witness is entitled -- I'm sorry.

8 THE COURT: That's -- ma'am, do you have an independent
9 recollection at this time of -- regarding the question and answer of the
10 question, or do you need to refresh your recollection?

11 THE WITNESS: Well, I didn't -- I didn't memorize all -- all of
12 the items of evidence. I worked hand in hand with Kristen, who took the
13 evidence, but I don't want to misspeak by just making a guess at it.

14 THE COURT: All right. Would reviewing the evidence log
15 refresh your recollection?

16 THE WITNESS: Yes.

17 THE COURT: Okay. You may review the evidence log, just
18 to refresh your recollection.

19 THE WITNESS: Okay. And I -- I probably had it in my --
20 within my report as well, because everything that was reported by her
21 was in the -- the final crime scene report.

22 MR. GIORDANI: Understood.

23 THE COURT: And counsel, I'm going to overrule your
24 objection. She's only going to review the evidence log to refresh her
25 recollection.

1 THE WITNESS: So Item 32 --

2 THE COURT: Ma'am --

3 THE WITNESS: Oh, I'm sorry, sir.

4 THE COURT: I want you -- did that -- did reviewing the
5 evidence log refresh your recollection?

6 THE WITNESS: Oh, yes, it did. And I was being asked about
7 to -- to check --

8 THE COURT: I don't want you to read from the evidence log.
9 I just want you to --

10 THE WITNESS: Okay.

11 THE COURT: -- testify from your refreshed recollection.

12 BY MR. GIORDANI:

13 Q Does that refresh your recollection?

14 A Can you repeat the question? Because I'm not
15 remembering -- remembering which item number. Was it 32?

16 Q Yes, ma'am.

17 A Okay. 32, it does refresh my recollection to have looked at
18 that. Thank you.

19 Q Thank you. What was Item 32?

20 A It was several pieces of black -- broken pieces of black plastic.

21 Q State's 176, what are we looking at here?

22 A We're looking at yellow tent markers.

23 Q Okay. State's 172, are those tent markers 28 and 26?

24 A Yes.

25 Q State's 173, 28, what is that?

1 A It looks to me as if it's a bullet fragment.

2 Q State's 26, what is that?

3 A That is a cartridge case.

4 Q Do you know the caliber?

5 A It was the 7.69x32.

6 Q And you indicated that that's the caliber of that SKS rifle,

7 correct?

8 A Yes. That's a rifle cartridge case.

9 Q State's 164, I'm going to zoom in on Tent Marker 25; what are

10 we looking at there, ma'am?

11 A And that's another one of the rifle cartridge cases.

12 Q Okay. So that's so far two rifle cartridge cases up on the

13 inside of the patio?

14 A Yes.

15 Q Okay. I wish I would have had this one earlier. 169, going

16 back to Tent Marker 32, is that the plastic that you were refreshed on?

17 A Yes.

18 Q Thank you. State's 167, what are we looking at there?

19 A This -- this is a bullet that was outside the door on the patio.

20 Q And that's Tent Marker 24?

21 A Yes.

22 Q State's 170, what are we looking at -- oops -- there?

23 A Item 30, and it's -- and it's a bullet fragment.

24 Q State's 165, what are we looking at here, ma'am?

25 A This is an entertainment unit that was down on the south end

1 of that patio and the -- as you can see in the photograph, the TV was
2 apparently hit with some kind of projectile here. So this was indicating
3 there -- there was a bullet fragment up on that shelf.

4 Q Okay. That was would the Tent Marker 29?

5 A Yes.

6 Q State's 230, is that that same television on the right hand, and
7 this is that door that we've been talking about?

8 A Yes.

9 Q Okay. State's 186, what are we looking at here?

10 A That was a piece of, like, stuffing or cotton that we thought
11 possibly came -- or did come from a chair that was one of the patio
12 chairs.

13 Q Was there a patio chair out there that -- I'm digging through
14 these. Was there a patio -- patio chair out there that had what appeared
15 to be a projectile inside of it?

16 A Yes.

17 Q Did you process that and attempt to extract anything from
18 within that chair?

19 A On this picture, in looking through that stuffing, there was a
20 small bullet fragment there.

21 Q Sure.

22 A As well, to answer the question, yes, we did check the --
23 the stuffing in the chair to make sure there was nothing inside.

24 Q State's 188, is that the fragment in the stuffing that we -- you
25 just talked about?

1 A Yes.

2 Q State's 192, that would be Tent Marker 35 associated with the
3 stuffing and the frag?

4 A Yes, sir.

5 Q Almost there. During the course of processing the exterior of
6 this scene, did you or other crime scene analysts put up several yellow
7 tape rulers throughout?

8 A Yes.

9 Q Little flags throughout?

10 A Yes.

11 Q And trajectory rods?

12 A Yes.

13 Q What are trajectory rods?

14 A The trajectory rods were placed by Crime Scene Analyst
15 Fletcher. And they're in -- they're put into certain types of holes where
16 you can get, like, a true angle of impact of some type of a projectile
17 strike. Often times we don't use those because the hole's too big or it's
18 a type of material that it wouldn't give an accurate depiction.

19 Q Okay.

20 A So it's used just for a visual, to be able to get an idea of which
21 direction an impact came from.

22 Q In your 19 and a half years as a crime scene analyst, have
23 you dealt with trajectory rods on several different occasions?

24 A Yes. I've -- I've done a few. We had Stephanie do it on this
25 scene because she's the really -- she teaches the class.

1 Q Okay.

2 A And she's really good at it, so.

3 Q Understood.

4 A Yeah.

5 Q Although you didn't do it yourself, did you document her
6 process and her trajectory rods?

7 A I did the final -- the final outcome, I did. I was the
8 photographer for this entire scene. So I was being pulled every which
9 way. So some of the work she did I wasn't present, and some it was, as
10 far as documenting her final tape that she put up or little markers that
11 she put up.

12 Q Understood. Showing you now State's 263 through 277.
13 Look through those briefly.

14 A [Witness complies.] Okay.

15 Q Do you recognize all of those?

16 A Yes, I do. They're all my photographs.

17 Q State's 236, do you recognize that?

18 A Yes.

19 Q Try to keep these in order here. 239, 240?

20 A Yes.

21 Q Go ahead and leaf through 282 through 289.

22 A [Witness complies.] Okay.

23 Q 307 through 310, 319 through 322, 325 through 331, and 333
24 and 334?

25 A Okay.

1 Q Do you recognize all those photographs?

2 A Yes, I do.

3 Q Are those all fair and accurate depictions of the scene as you
4 photographed it as it appeared on September 4th, 2015?

5 A Yes.

6 MR. GIORDANI: I move for the admission of all those I just
7 listed.

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

9 THE COURT: You may.

10 MS. MACHNICH: Thank you.

11 [Bench conference transcribed as follows.]

12 MS. MACHNICH: I'm assuming these are the trajectory rods
13 ones?

14 MR. GIORDANI: Trajectory rods, evidence stickers --

15 MS. MACHNICH: Okay.

16 MR. GIORDANI: -- markers.

17 MS. MACHNICH: So Your Honor, Tegan Machnich --

18 MR. PLUMMER: I have objections.

19 MS. MACHNICH: Tegan Machnich for Mr. Turner. With
20 regard to photographs of trajectory rods and trajectory analysis, we
21 would have the same objection that Mr. Plummer had to the last set with
22 regard to the paper bag and the placement of the writing on there, in that
23 the photos themselves are testimonial in nature and hearsay at this time.

24 We would ask that they be not admitted until further
25 foundation is laid, and that this foundation be to the photographs

1 themselves, but not the contents, and the State be required to bring the
2 additional witnesses to testify thereto.

3 THE COURT: Mr. Plummer?

4 MR. PLUMMER: I would say anything she testified to under
5 these photographs would be hearsay and speculation, because all she
6 did was take photos. She didn't do measurements. She didn't do the
7 rods. What's the purpose behind it, explaining it all? She's running
8 around taking photos. So any -- any testimony would be hearsay and/or
9 speculation on her part.

10 MR. GIORDANI: Okay. Can I respond?

11 THE COURT: You can.

12 MR. GIORDANI: Number one, they can't tell me who to call in
13 my case in chief. We don't have to call any witness they ask us to call.
14 We laid the foundation for the photographs as fair and accurate
15 depictions of the scene after it was processed on that day. That is the
16 question at hand. If I get up and ask her did she do the trajectory rods,
17 she would said no, and I -- I'm not going to ask her that.

18 But for foundational purposes, there's no further foundation
19 that needs to be laid.

20 THE COURT: Thank you. Let me see the photos. Okay.
21 What photographs are you specifically objecting to?

22 MR. PLUMMER: We'd -- we'd have to go through them, Your
23 Honor. There's a bunch.

24 THE COURT: Well, that's what you're supposed to do, quite
25 frankly. So what photo -- did you show these photographs --

1 MR. GIORDANI: Yes.

2 THE COURT: -- to them before --

3 MR. GIORDANI: Yes.

4 THE COURT: -- questioning this witness? All right.

5 MS. BEVERLY: We -- all of them.

6 MR. PLUMMER: And we objected --

7 MR. GIORDANI: All the ones that they --

8 THE COURT: Okay. But your objection doesn't go to all the

9 photographs. I need to know which photographs you are objecting to.

10 MS. MACHNICH: Your Honor, Mr. Turner is objecting to only

11 the photographs with the trajectory rods therein.

12 THE COURT: No, no. Give me their numbers. What

13 photographs are you objecting to?

14 MS. MACHNICH: Okay. So on these, Mr. Turner is objecting

15 to State's Proposed 236, 239, and 240, 282 through 289.

16 THE COURT: All right. Okay. The first thing you showed me

17 is a deal with the rods. Why are you objecting --

18 MS. MACHNICH: Those also have rods in them, Your Honor.

19 THE COURT: What? I'm sorry.

20 MS. MACHNICH: Those also have rods in them, Your Honor.

21 THE COURT: I see. Okay. So these also have rods in them?

22 MS. MACHNICH: Yes, they do. 307 through 310, 320

23 through 322, so 325 through 333.

24 THE COURT: Okay.

25 MS. MACHNICH: And 334.

1 THE COURT: All right. Now --

2 MR. PLUMMER: 319.

3 THE COURT: -- I apologize, she's put them out of order and
4 I'll have you put them back in order. And as to those exhibits, what is
5 your objection?

6 MS. MACHNICH: My objection is that they are testimonial in
7 nature as to the contents therein with regard to the trajectory rods that
8 included there that's the work of someone else, that is someone else's
9 trajectory analysis and these are depicting that trajectory analysis
10 without further explanation. This witness is not qualified to testify to the
11 contents therein, and because the photographs themselves are
12 testimonial, they're hearsay at this time. They would need further
13 foundation from the witness qualified to do this trajectory analysis in
14 order to admit these photographs in our opinion.

15 THE COURT: Okay. I'm not under -- you're making a
16 *Crawford* objection?

17 MS. MACHNICH: To some extent, yes. And also a hearsay
18 objection at this time.

19 THE COURT: Okay.

20 MS. MACHNICH: The photographs themselves contain
21 something that is offered for the truth of the matter asserted, which is the
22 trajectory rods being the trajectory of various projectiles in this case.
23 The actual photographs that she took of the scene --

24 THE COURT: So you're saying that the photographs
25 constitute a statement?

1 MS. MACHNICH: Yes. Based on the alterations.
2 THE COURT: I'm just trying to get your objection.
3 MS. MACHNICH: Of course.
4 THE COURT: So you're saying that first there appears to be a
5 *Crawford* objection?
6 MS. MACHNICH: Yes.
7 THE COURT: And then, second, you're arguing that the -- the
8 rods, the angle of the rods constitute a statement, and it's hearsay?
9 MS. MACHNICH: Yes. Because it's not just observation of
10 the scene by a crime scene analyst. It's an altered scene at this point.
11 THE COURT: Okay. And Mr. Plummer, what is your
12 objection?
13 MR. PLUMMER: I have very similar objection, Your Honor,
14 where Person A takes a rod, thinks they find a trajectory hole, thinks that
15 this is a bullet hole, so they put a rod in there. Then they tell this
16 witness, Hey, come over and take a picture of this. So that person
17 comes over and takes a picture, and based on somebody else's
18 analysis, that either they told her --
19 THE COURT: Okay. What's the analysis --
20 MR. PLUMMER: Well, the analysis --
21 THE COURT: -- though? That's what I'm not understanding.
22 They put a rod into the hole --
23 MR. PLUMMER: Somebody -- somebody else believes that
24 this is a bullet hole --
25 THE COURT: No. I'm sorry, I can't hear you.

1 MR. PLUMMER: Another person believes that this is a bullet
2 hole, so they put a rod in --

3 THE COURT: They're not --

4 MR. PLUMMER: -- and they had this person take a picture.

5 THE COURT: Who's testified it's a bullet hole?

6 MS. BEVERLY: Nobody.

7 THE COURT: It's a hole. Does anybody -- is there -- has she
8 testified -- I didn't --

9 MR. GIORDANI: No.

10 THE COURT: -- hear it.

11 MR. GIORDANI: You're exactly right. It's a stick in holes.

12 THE COURT: Okay. And it exemplifies the holes, the same
13 as the markers exemplify where the evidence --

14 MR. GIORDANI: Yes.

15 THE COURT: -- is located?

16 MR. PLUMMER: And we don't have the person -- we don't
17 have the person here to cross-examine that put the sticks in the holes.

18 THE COURT: To do -- but what would you cross-examine
19 on? That's what I'm not quite understanding.

20 MR. PLUMMER: On why they put -- well, what did -- what did
21 that hole look like? How was it -- what made you think it was a trajectory
22 hole? What made you think that it was the -- you know, where did they
23 get their analysis and their basis behind their --

24 THE COURT: Okay. But nobody's testified it's a bullet hole.

25 MR. PLUMMER: No. But it's --

1 THE COURT: Is that correct?
2 MR. PLUMMER: -- going to -- yet.
3 MS. BEVERLY: She's not going to testify to that. All we're
4 doing is laying the foundation for the actual photos.
5 THE COURT: Right.
6 MS. BEVERLY: We're not going --
7 THE COURT: This is an --
8 MS. BEVERLY: -- to have her testify about that.
9 THE COURT: -- authentication, correct?
10 MS. BEVERLY: Yes.
11 MS. MACHNICH: Yes.
12 THE COURT: Okay.
13 MR. GIORDANI: These are fair and accurate depictions of the
14 scene.
15 THE COURT: As -- as of right now.
16 MR. GIORDANI: Agreed?
17 MR. PLUMMER: After it was processed --
18 MR. GIORDANI: Okay.
19 MR. PLUMMER: -- by the police.
20 MR. GIORDANI: But agreed --
21 THE COURT: Okay.
22 MR. GIORDANI: -- it's a fair and accurate depiction --
23 THE COURT: Okay. Based on authentication, do you have
24 an objection?
25 MR. PLUMMER: Yes, Your Honor.

1 THE COURT: You do not think they are fair and accurate
2 depiction of the scene?

3 MR. PLUMMER: I think it's a fair and accurate depiction after
4 police --

5 THE COURT: Okay.

6 MR. PLUMMER: -- did things to the scene.

7 THE COURT: But if I have him -- I'm sorry, I apologize. If I
8 have the State reference that these are a fair -- to the jury, that these are
9 a fair and accurate picture of the scene after it has been processed,
10 that's all it would determine. Do you have an objection as to
11 authentication?

12 MR. PLUMMER: Not to the authentication, but to the
13 introduction. Because we don't have a chance to cross-examine the
14 people who processed the scene.

15 THE COURT: Okay. And if --

16 MR. PLUMMER: In which case --

17 THE COURT: -- as to authentication --

18 MR. PLUMMER: -- they're testimonial.

19 MS. MACHNICH: Not as to authentication, merely as to my
20 prior objections pursuant to *Crawford* and hearsay.

21 THE COURT: Okay. I'm going to allow them in as a fair and
22 accurate depiction of the scene after it was processed. And I'm not
23 going to allow this witness to make any kind of a statement or opinion as
24 to whether the holes or trajectory -- bullet holes or anything of that
25 nature, or as to the angles. They will have to bring in the person --

1 MS. MACHNICH: Okay.

2 THE COURT: Okay. So all they're coming in for is to show
3 that these are what the scene looked like after it was processed. And
4 this witness can testify that that's what it looked like. I'm not going to let
5 her give any type of opinion regarding whether they're bullet holes or not
6 or the angles or anything of that nature.

7 MR. GIORDANI: Okay.

8 MS. MACHNICH: Perfect.

9 MR. GIORDANI: But that -- my problem is though, how do I
10 say, why did you put this marker here? Why did you put this sticker
11 here? She's going to say --

12 THE COURT: She can say she believed it was a --

13 MR. GIORDANI: Exactly.

14 THE COURT: -- she believed --

15 MR. GIORDANI: Okay.

16 THE COURT: You know, may have something to do with
17 the -- but she can't testify what it is or the angles or things of that nature.
18 In other words, usually when I see this process, they mark everything.
19 They mark anything that they believe may be evidence.

20 MR. GIORDANI: Right.

21 THE COURT: So that's apparently, I assume, what was done
22 in this case. All those little markers --

23 MR. GIORDANI: Yes.

24 THE COURT: -- I think she's already testified as to potential --
25 nobody objected, by the way.

1 MS. BEVERLY: No.
2 THE COURT: That those were potential shotgun --
3 MR. GIORDANI: Shrapnel, pellets --
4 THE COURT: -- shrapnel --
5 MR. GIORDANI: Yeah.
6 THE COURT: Yeah. That was just -- so she marked it.
7 She -- so --
8 MR. GIORDANI: Right.
9 THE COURT: -- I'm going to let her testify that the trajectory --
10 these rods, you know, she doesn't know, you know, if -- they just marked
11 everything that is, you know, that could be evidence. And then they're
12 going to bring in the person to give some type of additional testimony
13 to --
14 MR. GIORDANI: Right. To get into the --
15 THE COURT: Or -- right.
16 MR. GIORDANI: -- trajectory analysis --
17 THE COURT: Trajectory and whether --
18 MS. BEVERLY: Right.
19 MR. GIORDANI: Correct.
20 THE COURT: -- they were made by bullets, consistent with
21 bullet holes.
22 MR. GIORDANI: Okay.
23 MS. MACHNICH: Okay.
24 THE COURT: Okay. So --
25 MR. GIORDANI: The trajectory analysis.

1 THE COURT: She's just laying the -- she's just laying the
2 foundation for what this scene looked like and what was done at the
3 scene.

4 MR. GIORDANI: Right. For example, this is a hole that
5 appeared to be a bullet hole, so a -- a rod is stuck in it and that's what
6 this is.

7 THE COURT: Right. But I'm not going to let her use the word
8 bullet hole. It's a hole that would be -- I don't know how you want to say
9 it. Yeah.

10 MR. GIORDANI: You can't.

11 MS. MACHNICH: That -- and that was our concern with it, is
12 that it necessarily requires her to testify, if she's to testify to the contents.
13 Again, I -- I would also clarify --

14 THE COURT: All right. It's coming in.

15 MS. MACHNICH: Right.

16 THE COURT: Okay.

17 MS. MACHNICH: Our -- our --

18 THE COURT: Here's the deal --

19 MS. MACHNICH: -- and our objection is only --

20 THE COURT: -- she's not going to --

21 MS. MACHNICH: -- to the rods.

22 THE COURT: -- testify as an expert --

23 MS. MACHNICH: Right.

24 THE COURT: -- as to whether it's a bullet hole or not.

25 MS. MACHNICH: Okay.

1 THE COURT: She can testify --
2 MR. GIORDANI: Based on her training and experience.
3 THE COURT: I'm not telling you -- based on her training and
4 experience that it would -- that she understood that shots were fired
5 inside the house. This was a hole and she put a trajectory in it. I'm not
6 going to let her use the word bullet.
7 MS. MACHNICH: Okay.
8 MR. GIORDANI: Well --
9 THE COURT: She can testify that --
10 MR. GIORDANI: There's going to be about 50 objections
11 then, because all I can ask is, what does this appear to be to you. And
12 then she's going to say --
13 MR. PLUMMER: Stick through a hole.
14 MS. MACHNICH: How about --
15 THE COURT: Okay.
16 MS. MACHNICH: -- how about it appears to be a projectile?
17 MR. GIORDANI: No. I'm not going to put words --
18 MS. BEVERLY: It's --
19 MR. GIORDANI: -- in her mouth.
20 MS. BEVERLY: It's the same thing --
21 MR. GIORDANI: If you want to object every time, go for it, but
22 I'm not going to --
23 THE COURT: All right. Well, here -- okay. Can we -- lay the
24 foundation --
25 MR. GIORDANI: Okay.

1 THE COURT: -- that she -- you know, this was a crime scene.
2 It was her understanding that shots were fired within the house, and
3 consistent with that information, she put -- rods were put in holes in
4 walls, and this and that, indicating, you know, that this may have been
5 evidence of shots fired in the house, something like that, you know. Just
6 not going let her give the opinion that it's a bullet. It's consistent with
7 shot -- with a hole, okay.

8 So again, I think she can testify that based on her years of
9 experience, it would be consistent with a bullet hole. She just can't say it
10 is a bullet hole.

11 MS. MACHNICH: As long as she's not discussing the
12 trajectory analysis, we're fine with that.

13 THE COURT: She's not going to be able to do the trajectory
14 analysis.

15 MS. MACHNICH: And that's --

16 THE COURT: It can be it's --

17 MS. MACHNICH: -- our objection.

18 THE COURT: -- consistent with a bullet hole and that's why
19 she marked it.

20 MS. MACHNICH: That's fine.

21 THE COURT: How's that?

22 MR. PLUMMER: Okay.

23 THE COURT: Okay. Based on her years of experience in
24 doing crime scenes analysis. She's not going to give what kind it is,
25 bullet is, from what type of weapon, trajectory analysis --

1 MR. GIORDANI: Sure. I wouldn't ask her that.
2 THE COURT: -- anything like that.
3 MS. MACHNICH: Perfect.
4 THE COURT: Okay. That's my ruling --
5 MR. GIORDANI: Hopefully Alan has these numbers, because
6 I --
7 THE COURT: Okay. So put them on the record. I -- just so
8 I'm going to admit them, and then you can ask questions.
9 MS. MACHNICH: Okay.
10 THE COURT: Okay.
11 [End of bench conference.]
12 MR. GIORDANI: For the record --
13 THE COURT: What numbers were those, counsel?
14 MR. GIORDANI: For the record, we proposed 282
15 through 289, 319 through 322, 325 through 331, and 333 and 334.
16 THE COURT: And counsel for defense, your objections are
17 noted at the bench conference.
18 MS. MACHNICH: Thank you, Your Honor.
19 MR. PLUMMER: Thank you, Your Honor.
20 THE COURT: At this time, I am going to admit the -- those
21 exhibits.
22 [State's Exhibit Nos. 282 through 289, 319 through 322, 325
23 through 331, and 333 and 334 admitted.]
24 MR. GIORDANI: Okay. Thank you, Your Honor.
25 Court's brief indulgence.

1 And I -- I apologize, I got it figured out. I believe what was
2 discussed is that 263 through 277 were not objected to.

3 MS. MACHNICH: As to Mr. Turner, no objection.

4 MR. PLUMMER: That is correct, no objection.

5 MR. GIORDANI: Okay. All right.

6 BY MR. GIORDANI:

7 Q So ma'am, you testified earlier you have 19 and a half years
8 experience as a crime scene analyst, correct?

9 A Yes.

10 Q How many shooting scenes have you been to, if you could
11 estimate?

12 A Estimated, couple hundred. 300, 500, I don't know.

13 Q Okay.

14 A I don't have that in my head.

15 Q Had there been several, potentially hundreds of opportunities,
16 for you to observe what appeared to be bullet holes?

17 A Yes.

18 Q Okay. In a scene where there's, obviously, a shooting that's
19 occurred, do you go through and attempt to identify and then mark
20 potential bullet holes?

21 A Yes. Yes, I do.

22 Q In addition to potential shrapnel and cartridges found at the
23 scene?

24 A Yes.

25 Q Do you also attempt to identify impacts to different surfaces

1 such as glass, walls, furniture, etcetera?

2 A Yes.

3 Q Okay. Showing you real quickly 263, is this that front window?

4 A Yes.

5 Q And now we have rulers up on top and to the sides of that,
6 correct?

7 A Yes.

8 Q What were you documenting there?

9 A Stephanie had placed those rulers there to just kind of show
10 the spread of the projectile strikes to that mini blind.

11 Q Okay. Showing you now 267; is that the back screen?

12 A Yes, it is.

13 Q Now, we're back in the backyard. And it appears the screen is
14 now up and it has tape connecting it back as it should have been; is that
15 right?

16 A Yes. I was part of that. I helped Stephanie put that back up.
17 Uh-huh.

18 Q Okay. And what are all these little green tags that we're
19 seeing on the screen?

20 A We located defects in the screen and just marked them with
21 arrow markers.

22 Q Okay. So each arrow marker would correspond with an
23 individual defect?

24 A Yes.

25 Q Just zoom in on a couple of them. 269, can you describe the

1 various defects using these as an example?

2 A Yes. There's one marked. I guess it's I, J, K. There's three in
3 the picture. And the arrow markers are just lettered as we started from,
4 like, the top of the corrugated metal going down at A. So these are, like,
5 towards the end of the ones that were found.

6 Q Okay. And the -- the holes that you're documenting, they're
7 apparently round, right?

8 A Yes. They appeared like a projectile defect. You know,
9 material defect in that mesh screen.

10 Q Understood. Now, in the backyard area, State's 271, did you
11 document several strikes to the far back area of that backyard?

12 A Yes. I was present when Stephanie and I -- we were
13 searching back here, and I did document several areas of defects that
14 we -- that were found.

15 Q Okay. I'm not going to go through each and every one of
16 those with you, but fair to say there are several out in the backyard
17 area?

18 A Yes.

19 Q Okay. Showing you now State's 331; what are we looking at
20 there?

21 A This is a trajectory rod put through the defect on the TV, which
22 it's believed that it went up through the shelf. I was actually the one that
23 found -- this white can is a -- is a can of tanning lotion. So there's also a
24 defect on the tanning lotion as well.

25 Q Okay. Now, you can't sit here and say that a bullet went

1 through there, correct?

2 A In my experience I would guess it possibly could be, but I
3 didn't see it, so I don't know.

4 THE COURT: I don't want you to speculate.

5 THE WITNESS: Okay. To me, in my experience, it looks like
6 a bullet went through there.

7 BY MR. GIORDANI:

8 Q But you're -- but you don't know, you weren't there and
9 witnessed a bullet go through it, correct?

10 A I did not witness it.

11 Q Okay. Now, just generally speaking, trajectory rods are
12 plastic, right?

13 A Made of -- this particular type is made of metal.

14 Q Oh, okay. And they're just stuck through -- when there's
15 apparent holes, they're just stuck through that in order to demonstrate
16 the holes that you can see in this photograph?

17 A Yes. Both of these surfaces, the type of material would give
18 maybe a semi-accurate reading, opposed to glass that might be a big
19 hole so you wouldn't be able to get a tight fit. So, yes, that was placed in
20 there to just a angular -- the angle of the impacts.

21 Q And without going through all of these, did Ms. Fletcher do
22 several trajectory rods throughout the course of the backyard area and
23 the patio?

24 A Yes.

25 Q Okay. Almost done. One really briefly. Were you present or

1 did you observe the processing of -- or the initial processing of that
2 vehicle out in front of the house?

3 A When I arrived, there was a CIRT detective and Jeff Smith,
4 who I mentioned earlier, that had taken the guns, he was actually out at
5 the car. And I was requested to come out there as well and photograph
6 a few items that they wanted to take per the search warrant.

7 Q Okay. So State's 50, that's the vehicle, correct?

8 A Yes. I -- it's a 1997 Toyota Camry.

9 Q Okay. State's 25, is that the keys hanging in the ignition?

10 A Yes.

11 Q Did you photograph the glove box, State's 54?

12 A Yes.

13 Q Was there an item of evidence or -- taken out of there?

14 A Yes. There was a gun magazine.

15 Q State's 55, is that the gun magazine sitting on top of these
16 papers?

17 A Yes.

18 Q Were there also two cell phones taken from the vehicle?

19 A Yes.

20 Q And then State's 58, is that that magazine you referenced
21 earlier?

22 A Jeff doesn't have it marked, so I'm not going to comment on it.
23 I'm not sure if it is or not.

24 Q Fair enough, ma'am. Was there also a loose round cartridge
25 found in the vehicle?

1 A Not that I'm aware of.

2 Q Okay. So are you saying you didn't find the round or you
3 didn't process the round?

4 A I never photographed a round.

5 Q Okay. Understood. Couple more questions for you, ma'am.
6 All right. Showing you now State's Proposed 3, 5, 6 and 7. Look at
7 those. Tell me if you recognize them.

8 A Yes, I do recognize these. And there are four diagrams
9 created by Senior Crime Scene Analyst Kristen Meckler.

10 Q Okay. Now you've seen a couple diagrams and those have
11 already been admitted. These are different from those, correct?

12 A Yes.

13 Q And they have all the numbers that correspond with evidence
14 markers that I just laid all the foundation for in the photographs, correct?

15 A Yes.

16 Q So this is the ultimate result of the crime scene diagram after
17 you've done all that processing?

18 A Yes. This is a diagram showing the location of the evidence.

19 Q Okay. And are these all fair and accurate depictions of the
20 evidence as it was located and documented by you in all those
21 photographs?

22 A Yes. I -- I've had -- I've studied these pictures, so I don't need
23 to look at it for a lot of minutes. And yes, it is.

24 MR. GIORDANI: Okay. And I'd move for the admission
25 of 3, 5, 6 and 7, Your Honor.

1 THE COURT: Any objection?

2 MR. PLUMMER: May we approach?

3 THE COURT: What?

4 MR. PLUMMER: May we -- may we approach, Your Honor?

5 THE COURT: Yes.

6 [Bench conference transcribed as follows.]

7 THE COURT: Counsel, what's your objection?

8 MS. MACHNICH: You want to go first?

9 MR. PLUMMER: Your Honor, this is hearsay. I mean, it's
10 all -- she didn't make these documents. They were created specifically
11 for the purpose of litigation. It's -- it's somebody else laying everything
12 out and then her saying, oh, yeah, I've studied this, this is fair and
13 accurate. The -- if the government wants to get a document in that has
14 all these markers in, they need a witness to lay the foundation that was
15 there, that saw it, that puts the marking on the paper. She did not create
16 these.

17 THE COURT: Okay. What's your objection?

18 MS. MACHNICH: Your Honor, I have no objection from
19 Mr. Turner on 3, 4, 5 or 7. The only objection we have is to Proposed 6,
20 and that is only because it appears to be more of the trajectory analysis.
21 And I would just incorporate to the prior --

22 THE COURT: I'm sorry, which one do you have an objection
23 to?

24 MS. MACHNICH: Only 6, which appears to have the
25 trajectory analysis. And I'll just incorporate my last objection with regard

1 to her being able to testify to that. We'll submit it.

2 THE COURT: You'll do what?

3 MS. MACHNICH: It's the trajectory --

4 THE COURT: What's the -- I'm not understanding your
5 objection as to 6.

6 MS. MACHNICH: 6 is the trajectory analysis again. And I
7 don't believe that she's qualified to testify thereto.

8 MR. GIORDANI: Can I respond?

9 MS. MACHNICH: But that's --

10 THE COURT: Yeah.

11 MS. MACHNICH: -- that's all I have.

12 MR. GIORDANI: This -- as to Mr. Plummer's objection, there's
13 nothing about these that are hearsay. These are diagrams depicting all
14 of the processing that she just testified to for the last hour and a half.

15 THE COURT: Uh-huh.

16 MR. GIORDANI: They're fair and accurate depictions of the
17 scene after she herself laid all the evidence markers. As to
18 Ms. Machnich's objection to the No. 6, those are not depicting trajectory
19 rods in any way. Those simply defect -- depict defects that were just
20 testified to her processing and what she marked.

21 Now, if they want to put that up in closing and argue those
22 aren't bullet holes, they can. But for foundational purposes, these are all
23 fair and accurate depictions of the evidence that she herself
24 documented.

25 THE COURT: Okay. What are these --

1 MR. GIORDANI: Holes.

2 THE COURT: No, no. What are the little lines?

3 MR. GIORDANI: No. Those are just pointing to the holes.

4 THE COURT: Okay.

5 MR. GIORDANI: Those aren't rods.

6 THE COURT: Okay. Counsel, do you understand that these

7 aren't rods? They're just identifying the holes?

8 MS. MACHNICH: I do, Your Honor.

9 THE COURT: Okay. So I'm not understanding your objection

10 then. Since they're not rods, they're just an extension to identify the

11 actual holes, I can have her state that, but that's all those are. Those

12 aren't the rods that she testified to. Those are just a way of identifying

13 the holes.

14 And I'm assuming these are the numbering; is that correct?

15 MR. GIORDANI: Yes.

16 MS. MACHNICH: Right. Your Honor, I understand those

17 aren't the rods. I know that they're not. But --

18 THE COURT: So what's the --

19 MS. MACHNICH: -- my objection --

20 THE COURT: -- trajectory objection? I'm not understanding.

21 MS. MACHNICH: With regard to when you look -- especially

22 at the seating area, you see M1, M2, M3, M4.

23 THE COURT: Where were you -- what are you looking at?

24 MS. MACHNICH: If you're look at the small numbers and

25 lettering by the small seating area farthest away from the patio, you can

1 see there's, like, an M1, M2, M3, and then the wall, an M4. That is part
2 of trajectory analysis. They're saying that a bullet ricocheted, made --
3 the same bullet or fragment made all of those. So that's actually part of
4 the analysis.

5 THE COURT: Okay. But I think all -- all these are going to
6 be -- if I let them in, all this is going to do is identify the location of the
7 holes. That's it.

8 MR. GIORDANI: Yes.

9 THE COURT: I'm not going to let her testify -- but I'm -- I'm --
10 again, all these are -- are being offered for, it's my understanding, is --
11 and the other thing is, I want you to establish these aren't to scale.

12 MR. GIORDANI: I think they are to scale.

13 THE COURT: You think they may be?

14 MR. GIORDANI: Yeah. I mean, I can lay the foundation for
15 that.

16 THE COURT: Well, so you think this is to scale, this house is
17 to scale?

18 MR. GIORDANI: Yes.

19 THE COURT: Okay.

20 MR. GIORDANI: And again, they're -- anything that's not
21 documented with a number is simply --

22 THE COURT: You need to lay a -- more foundation. I want
23 the jury to be -- understand that these little lines --

24 MR. GIORDANI: Okay.

25 THE COURT: -- are not to -- the trajectory --

1 MR. GIORDANI: Okay.

2 THE COURT: -- merely a way to identify the hole in the
3 walls --

4 MR. GIORDANI: Understood.

5 THE COURT: -- with the lettering. And then either these are
6 or not to scale. And if they -- I just want the jury to know whether they
7 are or are not to scale.

8 MR. GIORDANI: Understood.

9 THE COURT: So lay additional foundation.

10 MS. MACHNICH: Thank you.

11 THE COURT: Thank you, counsel.

12 [End of bench conference.]

13 BY MR. GIORDANI:

14 Q All right. Ma'am, I want to talk to you about a couple things in
15 these. I'm going to start with foundation for 6, State's 6. There are
16 several -- can you lay that flat?

17 A Oh, yes. I'm sorry.

18 Q There are several letters all throughout this diagram. And
19 then there's little arrows next to those letters. What do those arrows
20 represent?

21 A Those are indicating the location which -- of, like, say, Letter F
22 that would correlate with Letter F in the photographs.

23 Q Okay. So --

24 A So --

25 Q -- Letter F is a defect that you've observed on the scene; yes

1 or no?

2 A Yes.

3 Q You documented that with a photograph?

4 A Yes.

5 Q And then, ultimately, those documentations of any defect you
6 see that might be evidence, might not be, those are placed into the
7 diagrams, correct?

8 A Yes. Kristen created a diagram to show where our markers
9 were, so --

10 Q Right.

11 A -- so --

12 Q I understand that. This is a fair and accurate depiction of the
13 scene as you processed it on that day, correct?

14 A Yes.

15 MR. GIORDANI: I move, again, for the admission of 6.

16 THE COURT: Okay. Any -- any objection?

17 MR. PLUMMER: Same objection, Your Honor.

18 MS. MACHNICH: And we'll just submit to the Court's prior
19 ruling.

20 THE COURT: All right. It will be admitted.

21 [State's Exhibit No. 6 admitted.]

22 MR. GIORDANI: Thank you, Your Honor.

23 BY MR. GIORDANI:

24 Q To be clear I'm going publish this to the jury. This is 6 --

25 THE COURT: Oh, counsel. Also ask her if it's to scale.

1 MR. GIORDANI: That's what I'm about -- yes, Your Honor.

2 BY MR. GIORDANI:

3 Q I want to be very clear on a couple things. So I'm going to use
4 F as an example. Can you see that, ma'am?

5 A Yes.

6 Q F has a little arrow next to it, which appears to be pointing at
7 that screen that we've seen numerous photos of, correct?

8 A Yes.

9 Q That's not a -- that's not -- that arrow doesn't represent a
10 trajectory rod, does it?

11 A No, it does not.

12 Q Okay. You're just pointing at where the defect was?

13 A Yes.

14 Q These -- dimensions and measurements -- let me just ask this:
15 Are these diagrams all generally to scale with regard to what they're
16 showing?

17 A At the scene, we do a rough sketch diagram. And we use a
18 Hilti, which is an electronic thing. We use tape measures. And as close
19 that can be accurate, we try to do. But whenever we publish one of
20 these diagrams, we always put Not to Scale, because it could be off by a
21 small amount, an inch here or there. So --

22 Q Okay.

23 A -- so generally, it should be marked on this as well. It's in our
24 policy that we put Not to Scale, because we're not going to say
25 absolutely for sure. Because you have to account for, like, walls.

1 There's a thickness and --

2 Q I understand.

3 A -- this type of thing, which is hard to get to when you're
4 measuring a house.

5 Q Understanding it could be off a couple inches in any direction,
6 does this appear to be a fair and accurate depiction of the home as -- as
7 you walked it --

8 A Yes.

9 Q -- on that -- okay. That was 6. Now, I want to show you 3, 5
10 and 7. All of these three diagrams have numbers on them. And there's
11 also accompanying arrows like we discussed in the first -- that last
12 diagram, correct?

13 A Yes. Some of the items do have an arrow.

14 Q To be clear, those arrows are not trajectory rods; they're
15 actual arrows pointing to a defect?

16 A Yes.

17 MR. GIORDANI: I, again, would move for the admission
18 of 3, 5, and 7.

19 MS. MACHNICH: No objection, Your Honor.

20 THE COURT: Mr. Plummer?

21 MR. PLUMMER: Same objection, Your Honor.

22 THE COURT: They will be admitted.

23 [State's Exhibit Nos. 3, 5 and 7 admitted.]

24 MR. GIORDANI: Thank you, Your Honor.

25 BY MR. GIORDANI:

1 Q Showing you State's 3. Just for the jury's knowledge when
2 they have this later, the little numbers in the diagram correspond with
3 what you observed at that location up top; is that accurate?

4 A Yes.

5 THE COURT: Counsel approach, please, with the exhibits.

6 [Bench conference transcribed as follows.]

7 THE COURT: I just need to see something.

8 MR. GIORDANI: Sir, just the items of evidence.

9 THE COURT: Here's my concern. Let me see the other one,
10 counsel.

11 MR. GIORDANI: There's nothing about trajectory rods
12 anywhere in there.

13 THE COURT: I know. My concern is when you're -- I was --
14 when I was looking at these, I looked at the diagram itself. I didn't look
15 at your legend. My concern is the -- on, like, 28, it says bullet fragment.

16 MR. GIORDANI: Right.

17 THE COURT: So I may have you redact it, just the fragment
18 that -- was that -- I think that's the objection, is that that's the -- you
19 know --

20 MR. GIORDANI: Is that --

21 THE COURT: Have we had -- has she --

22 MS. MACHNICH: I don't have an objection to that.

23 THE COURT: -- established that they're bullets? That it's a
24 bullet?

25 MR. GIORDANI: Yeah. She already testified --

1 MS. BEVERLY: She already testified to that.
2 THE COURT: Okay.
3 MR. GIORDANI: With no objection. I believe your objection
4 was different.
5 THE COURT: All right. If there -- if that's been testified to -- is
6 that fair?
7 MS. BEVERLY: It's been -- all that's been testified to.
8 THE COURT: That they were bullet fragments?
9 MR. GIORDANI: Yes, Your Honor.
10 THE COURT: I think they're getting restless. All right. If
11 that's -- if --
12 MR. GIORDANI: I'm going to finish my question and I'm done.
13 THE COURT: If -- okay. If they've test -- is that correct,
14 counsel, they've testified they were bullet fragments?
15 MS. MACHNICH: Yes. That's accurate --
16 MR. PLUMMER: I --
17 MS. MACHNICH: We have no objection to that.
18 THE COURT: Is that correct? It's a yes or no.
19 MR. PLUMMER: I don't know, Your Honor. I know she
20 testified --
21 MS. BEVERLY: Yes, we did.
22 THE COURT: Is that correct?
23 MS. MACHNICH: Yes.
24 THE COURT: Okay. Then they're admitted.
25 MS. BEVERLY: Thank you.

1 THE COURT: All right.

2 [End of bench conference.]

3 MR. GIORDANI: Are those admitted, Your Honor?

4 THE COURT: They are admitted.

5 MR. GIORDANI: Thank you. And with that, I will pass the
6 witness.

7 THE COURT: Thank you. I was going to take a break
8 at 3:30. So is there anybody that cannot wait until 3:30 to take our
9 afternoon break? All right. Then I'm going to proceed forward with
10 testimony.

11 MS. MACHNICH: Okay. Court's brief indulgence. I'm just
12 going to make sure I have the right exhibits.

13 THE COURT: That's fine. And, counsel, you're going to have
14 whatever time you need to -- for your cross-examination. It's just that I
15 was going to take our break at 3:30.

16 MS. MACHNICH: And, Your Honor, I -- I won't be long.

17 THE COURT: Thank you.

18 **CROSS-EXAMINATION**

19 BY MS. MACHNICH:

20 Q Okay. Good afternoon, Ms. Dahn.

21 A Good afternoon.

22 Q All right. Just a few brief questions for you. All right?

23 A Yes.

24 Q First, all of the cartridge casings located outside the house
25 were located on or immediately adjacent to the patio area, correct?

1 A Yes.

2 Q And when we're referring to that, and I'm going to publish for
3 the jury for reference State's Exhibit 3, which has previously been
4 admitted. We're looking at all of the cartridge casings as listed in these
5 top evidence key and the numbers they correspond with in this patio
6 area down here; is that correct?

7 A Yes. There's cartridge cases that were found in the kitchen
8 that are depicted on the legend, as well as the ones that were on the
9 patio.

10 Q Is it fair to say that nothing outside of this patio area outside,
11 there was not found any cartridge casings?

12 A No.

13 Q Okay. It's -- it's not fair to say or there were not cartridge
14 casings? Sorry.

15 A No. No cartridge cases were found out in the lawn or the area
16 out there.

17 Q Perfect.

18 A In the backyard.

19 Q And is it also fair to say that the three firearms that were
20 recovered in this case are depicted with Evidence Nos. 1, 2 and 3?

21 A Yes.

22 Q Okay. And these are the three firearms located outside
23 specifically I'm drawing your attention to. Is that area of 1, 2, and 3 in
24 this general area on the far looks like west side of the patio?

25 A 1 and 2 were in a flower bed on the other side of the

1 corrugated metal, and 3 was next to the table in -- in the patio area.

2 Q Okay. And all of them were in the, sort of, bottom half of the
3 patio and western half of the patio?

4 A Yes.

5 Q Okay. Do you recall how far apart these weapons were
6 located?

7 A The one weapon was, like, leaning up next to the -- the SKS,
8 but I don't have the specific dimensions. I know when these were
9 measured in, Kristen created a reference point to measure however far
10 south of north and east of west. And her reference point she did all the
11 measurements from were right -- oh, this thing didn't work. I'm sorry. I'll
12 just draw -- drag a line. Right there where my line just ended. So that
13 was her reference point to measure the stuff in. But I don't have any of
14 that memorized, no.

15 Q And that's fine.

16 MS. MACHNICH: Would you clear the screen? Thank you.
17 All right.

18 Q Additionally, let me see, so when evidence was being
19 impounded, there were various bullet fragments that were located on
20 this patio area?

21 A Yes.

22 Q And in the yard area, type situation?

23 A I know there was bullet fragments. I'm not sure about the
24 yard, but I know we have four bullet fragments on the patio floor, and
25 that one that we saw up on the table.

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
3

4 STEVEN TURNER,) No. 76465
5)
6)
7 Appellant,)
8)
9 vi.)
10 THE STATE OF NEVADA,)
11)
12 Respondent.)
13)
14)
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 4 day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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STEVEN S. OWENS

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HOWARD S. BROOKS

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

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BY /s/ Carrie M. Connolly

Employee, Clark County Public Defender's Office