

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS CASH)
)
Appellant,)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

S.C. Case No. 77018

Electronically Filed
Mar 14 2019 03:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX Vol 4 of 6

(Appeal from a Judgment of Conviction Following a Jury Trial and Verdict)

ATTORNEY FOR APPELLANT

BRIAN RUTLEDGE, ESQ.

Attorney at Law

Nevada Bar No. 004739

Brian@BrianRutledgeLaw.com

10170 W. Tropicana #156-431

Las Vegas, Nevada 89147-2602

(702) 297-7200

ATTORNEY FOR RESPONDENT

STEVE OWENS, ESQ.

Chief Deputy District Attorney

Nevada Bar No. 004352

Office of the District Attorney

200 Lewis Avenue

Las Vegas, Nevada 89101

(702) 671-2750

AARON FORD, ESQ.

Nevada Attorney General

Nevada Bar No 007704

555 E. Washington Ave #3900

Las Vegas, NV 89101

(702) 486-3420

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1 weren't concerned with identifying who that blood was from. We were
2 fairly confident we knew who it was from. But when you have a trail
3 leading away from the body, obviously that's not coming from -- directly
4 from the body. So we're -- we're typically thinking of the mindset, perhaps
5 during the attack, the attacker got injured and was bleeding themselves,
6 so we're trying to identify that trail leading away from the body.

7 Q Okay. So it indicates --

8 THE COURT: The jury needs a break.

9 MS. DIGIACOMO: Okay.

10 THE COURT: Okay. Let's take a five minute recess.

11 During the recess you're not to talk or converse among
12 yourselves or with anyone else on any subject connected with this trial.
13 Or read or watch or listen to any report of or commentary on the trial or
14 any person connected with this trial by any medium of information,
15 including, without limitation, newspapers, television, radio, or the Internet.
16 Or form or express an opinion on any subject connected with the trial until
17 the case is finally submitted to you.

18 Remember, no social media or investigation on your own.

19 Take five minutes, please.

20 THE MARSHAL: All rise for the exit of the jury.

21 [Outside the presence of the jury]

22 THE COURT: All right. Jury's out; doors closed.

23 MR. LONG: Judge, could the State and I approach, not really
24 related to the case.

25 THE COURT: U'm-h'm.

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[Recess taken at 4:49 p.m.]

[Jury trial resumed at 4:56 p.m.]

[In the presence of the jury]

THE MARSHAL: All rise for the entry of the jury.

THE COURT: Stipulate to the presence of the jury.

MR. LONG: Yes, Your Honor.

MS. DIGIACOMO: Yes, Your Honor.

THE COURT: Ladies and gentlemen, we're going to take our evening recess.

MS. DIGIACOMO: Wait a minute, Your Honor, are we missing one?

MS. BLUTH: No, that they --

MS. DIGIACOMO: Oh, they have a seat, okay, sorry.

MS. BLUTH: -- they put a -- somebody not there.

THE COURT: You're not to talk or converse among yourselves or with anyone else on any subject connected with this trial. Or read or watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or the Internet. Or form or express an opinion on any subject connected with the trial until the case is finally submitted to you.

Remember, don't get on the computer, don't get on social media. See you in the morning at 9:30.

[Outside the presence of the jury]

THE COURT: All right. See you in the morning at 9:30, sir.

1 MR. LONG: Is there anything you need to talk to us about?

2 THE COURT: Nope, see you guys in the morning.

3 Oh, here was the question.

4 MS. BLUTH: Okay.

5 THE COURT: Blood on the top of the wall behind the house
6 looks like a fingerprint and blood, did they get a fingerprint? Did it match
7 the defendant?

8 MR. LONG: Oh, on cross I'm going to say it's all Thomas's
9 blood; right, and that will clear that up.

10 THE COURT: All right.

11 [Jury trial, Day 3, concluded at 4:59 p.m.]

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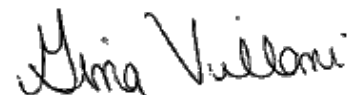
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22 audio/video proceedings in the above-entitled case to the best of my ability.

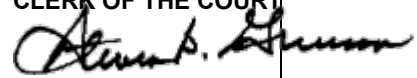
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Gina Villani
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
THOMAS CASH,
Defendant.

CASE#: C-18-329699-1
DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
THURSDAY, JUNE 21, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 4**

APPEARANCES:

For the State:

SANDRA K. DIGIACOMO, ESQ.
JACQUELINE M. BLUTH, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ASHLEY L. SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: GINA VILLANI, COURT RECORDER

AA748

1 Las Vegas, Nevada, Thursday, June 21, 2018

2
3 [Jury Trial began at 9:29 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: Mr. Cash, we've got a predicament here, your
6 attorney in the hospital.

7 This case is C329699, State versus Thomas Cash.

8 Now, he has sent a text to the State saying that he's going to
9 have surgery in about two hours. Obviously we can't go forward today.
10 Likely won't be able to go forward tomorrow. Monday maybe.

11 THE MARSHAL: Missing one juror yet.

12 THE COURT: All right. We don't have a defense attorney.

13 You understand what's happening, Mr. Cash?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Likely what we should do is wait until
16 Monday and see. At Monday if -- is unavailable, I guess, the next order
17 would be a mistrial because your attorneys not available and then reset
18 it when he's back healthy again.

19 Understand?

20 THE DEFENDANT: Yeah, I understand. I understand exactly
21 what you're saying. But --

22 THE COURT: What are you thinking? Just tell me what
23 you're thinking.

24 THE DEFENDANT: I'm thinking I'm still going to be sitting in
25 custody, you know, so I'm thinking about can I get a bail reduction or

1 something or?

2 THE COURT: No, I mean, it's no -- it's not the State's fault.
3 It's no one's fault, I mean.

4 THE DEFENDANT: I mean, I remember he was telling me he
5 was having --

6 THE COURT: I understand.

7 THE DEFENDANT: -- problems right there, you know.

8 THE COURT: All right. Well, I'm going to continue it until
9 Monday at 9:30 and we'll bring the jury in and explain to them what's
10 happened and go from there.

11 I called his law firm and their attorneys are all gone. So no
12 one is going to be here.

13 MS. BLUTH: So, Judge, do we want the Defendant in here
14 when we speak to the jury? Because if so, I just want to make sure that
15 his custody --

16 THE COURT: No, I -- if he's not here, I mean, if -- I wonder if I
17 can get Roy to come over.

18 Call Roy -- somebody -- Thomas, we want to call Roy.

19 THE MARSHAL: Yeah.

20 MS. DIGIACOMO: Your Honor, do you want me to get --
21 there's a PD to -- I can get to come here so that at least he's advised as
22 a friend of the court.

23 THE COURT: Yeah, I know. In 30 years of doing this this has
24 never happened, that I know of.

25 [Brief pause in proceeding]

1 [Colloquy between Deputy Public Defender and the
2 Defendant]

3 [Colloquy between District Attorney and Deputy Public
4 Defender]

5 MS. DIGIACOMO: Judge, do you want her to stay for this?

6 MS. SISOLAK: I'm happy to stand in, Your Honor, as a friend
7 of the court, if you'd like.

8 THE COURT: If you don't mind.

9 MS. SISOLAK: Yeah, of course.

10 [Brief pause in proceeding]

11 THE COURT: All right. We're back on the record, C329699,
12 State versus Thomas Cash.

13 Would you state your name for the record, please, Counsel.

14 MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak
15 present on behalf of the Public Defender's Office and representing as a
16 friend of the court. It is my --

17 THE COURT: Right.

18 MS. SISOLAK: -- understanding we're -- I've spoken with the
19 client that there will be a continuance until Monday pending some
20 medical emergency by the attorney.

21 THE COURT: Well, Mr. Long, his defense attorney, is in the
22 hospital. We just -- the State just got a text that he'll be in surgery about
23 11:30. I don't know if it's going to be orthoscopic or if he'll be available
24 on Monday.

25 My suggestion would be to continue it until Monday at 9:30

1 and then we can determine at that point if Mr. Long is available or not to
2 do -- to finish the trial.

3 MS. SISOLAK: I think that's probably best, Your Honor. And
4 I've spoken with the client.

5 THE COURT: And at that time I will determine whether I can
6 declare a mistrial and start all over.

7 MS. SISOLAK: I understand, Your Honor. And I've spoken
8 with him about --

9 THE COURT: All right.

10 MS. SISOLAK: -- a Monday status check so to speak.

11 THE COURT: All right. Thank you for standing in.

12 MS. SISOLAK: Thank you, Your Honor. It's always a
13 pleasure to appear in front of you.

14 THE COURT: All right.

15 MS. DIGIACOMO: Do you want her to wait when the jury
16 comes in or?

17 THE COURT: No, I'm not -- I'm going to have them take him
18 out just so that there's no -- they don't form an opinion that you're in
19 custody. They probably already know but. I don't want them to jump to
20 any conclusions. So I'm going to have them take you out.

21 We'll pass it until Monday at 9:30. We expect Mr. Long to be
22 here but we don't know.

23 THE DEFENDANT: All right.

24 THE COURT: Thank you.

25 All right. Bring the jury in, Tom.

1 Is everybody here?

2 THE MARSHAL: Yes, all my jurors are here.

3 THE COURT: All right. Bring them in.

4 [In the presence of the jury]

5 THE MARSHAL: All rise, please.

6 And be seated.

7 THE COURT: All right. Ladies and gentlemen, we've had a
8 situation arise that in 30 years I've never seen it and that the defense
9 attorney is going to have surgery in about two hours. He was admitted
10 last night.

11 THE JURY PANEL: Oh.

12 THE COURT: So what we're going to do, we don't know if it's
13 orthoscopic, we don't know anything about it. We're going to recess
14 until Monday, have you come back on Monday, we'll finish up the trial if
15 Mr. Long is available; all right.

16 I appreciate your attentiveness. And please during this long
17 recess you're admonish not to talk or converse among yourselves or with
18 anyone else on any subject connected with the trial. Or read or watch or
19 listen to any report of or commentary on the trial or any person connected
20 with this trial by any medium of information, including, without limitation,
21 newspapers, television, radio, or the Internet. Or form or express an
22 opinion on any subject connected with this case until it's finally submitted
23 to you.

24 Remember, please don't get on any social media sites, no
25 computer investigation on your own. And Monday morning at 9:30 we will

1 resume I hope.

2 Thank you for your understanding.

3 [Outside the presence of the jury]

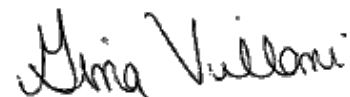
4 THE COURT: All right. Keep me apprised, please.

5 MS. BLUTH: Yeah, we will as soon as we hear.

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8 [Jury Trial, Day 4, concluded at 9:41 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
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24 Gina Villani
25 Court Recorder/Transcriber

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THE STATE OF NEVADA,
Plaintiff,
vs.
THOMAS CASH,
Defendant.

CASE#: C-18-329699-1
DEPT. VIII

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL- DAY 5**

For the State:

For the Defendant:

KENNETH W. LONG, ESQ.

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Las Vegas, Nevada, Monday, June 25, 2018

[Jury Trial began at 9:40 a.m.]

[Outside the presence of the jury]

THE COURT: All right. Again, sorry, it wasn't on, recording.

You are clear to go today?

MR. LONG: Yes, Your Honor.

THE COURT: Nothing is to impeding your ability to put this trial
on?

MR. LONG: No, Your Honor. I mean, I'm still in some pain, I'm
uncomfortable, but, you know, what -- we can go.

THE COURT: Ibuprofen, you've taken and?

MR. LONG: Yeah, two.

THE COURT: Okay.

All right. Anything else that needs to go on the record?

MS. DIGIACOMO: Not by the State.

THE COURT: Bring the jury in, Tom.

[In the presence of the prospective jury]

THE MARSHAL: All rise, please.

And be seated.

THE COURT: Stipulate to the presence of the jury.

MR. LONG: Yes, Your Honor.

THE COURT: All right. Thank you. Hope you had a good
break.

We're all ready to go.

1 Are we in the middle of a witness?

2 MR. LONG: Yes.

3 MS. DIGIACOMO: That's correct. The State is recalling Adam
4 Felabom.

5 THE COURT: I just remind you, Officer, you're under oath to
6 tell the truth.

7 MS. DIGIACOMO: Thank you, Your Honor.

8 **ADAM FELABOM**

9 **CONTINUE DIRECT EXAMINATION**

10 BY MS. DIGIACOMO:

11 Q All right. Sir, when we left off last week we were talking about
12 the evidence that was collected, so we're going to start there.

13 So you said after you walked through the scene and you
14 determined that you're going to collect a piece of evidence you put
15 markers down?

16 A Correct.

17 Q All right. And what do those markers look like?

18 A It depends on the type of evidence. We have a couple of
19 different types. The standard ones we use are little yellow tent markers
20 with numbers on them or else we'll use little adhesive stickers that have
21 an arrow pointing to it with -- as well as a scale.

22 Q Okay. What about orange cones?

23 A We will use those sometimes as well, yes.

24 Q All right. I'm going to show you State's Exhibit 148, if you could
25 explain to the jury what we're looking at in this photograph?

1 A In this photograph we're looking towards 3999 Pistachio Nut
2 and you can see these orange cones here in the street at the bottom right,
3 as well as up on the sidewalk here in front of the residence. Those are
4 just -- we typically will use orange cones to denote blood trail so that it's
5 more easy to see in the photograph because a lot of times the stains are
6 so small.

7 Q Okay. So when determining this blood trail, as you called it,
8 where would the body, where the pool of blood associated with the body,
9 be in relation to this photograph, we're looking at State's 148?

10 A In relation to this, the body would be below the photograph, so
11 basically behind where we're standing.

12 Q Okay. So there's a cone here in the bottom right and then the
13 next cone that I see is in the driveway of 3999 Pistachio Nut; is that
14 correct?

15 A Correct.

16 Q So does that mean that there wasn't any blood drops notated
17 between those two locations?

18 A Not that we could find; correct.

19 Q All right. Now, showing you State's Exhibit 149, what's depicted
20 here?

21 A This is where we've moved closer to 3999 Pistachio Nut and
22 we've used the orange cones to denote the trail of apparent blood. And
23 you can see it starting down here on the sidewalk and then moving up
24 towards the walkway of the residence.

25 Q All right. And showing you State's Exhibit 150, what are we

1 looking at here?

2 A Again, it's the same view. We've just gotten closer. We moved
3 further down, closer towards the front door of the residence.

4 Q Showing you 151, is this showing the blood drops marked
5 leading up to the front doorway?

6 A Correct. The front doorway would be -- would be right -- whoop.
7 Would be right up here.

8 Q At the top of -- in the middle of the portion of the photograph?

9 A Correct, the top middle.

10 Q All right. So, now, when you note these with the cones you then
11 go back and put a marker to show what you are taking a swab as
12 evidence?

13 A Correct.

14 Q All right. So I'm going to show you State's Exhibit 152, what are
15 we looking at here?

16 A Here is that bloodstain that was in the street that we saw
17 marked by the orange cone, there's also this little sticker on the ground,
18 which is -- to draw your attention to the area it has a scale on there. So
19 when we take a closer photograph you can have a reference to how big
20 the stain is.

21 Q All right. So 152, the cone with the marker that we're looking at
22 there, this is the same one from 148 that's in the bottom right-hand
23 corner?

24 A Correct. You can actually see a little -- the little yellow sticker
25 here next to the cone a little bit.

1 Q All right. And, now, showing you State's Exhibit 153, is this a
2 close-up of the yellow sticker and the blood drop that we saw in
3 State's Exhibit 152?

4 A Correct. That's a close-up view of the apparent bloodstain that
5 we saw. It's got the little yellow sticker with the arrow and the scale in
6 there. So you have a reference to how big it is and it's labeled so that we
7 can differentiate between the different areas. In this case it was labeled
8 AB-1.

9 Q Okay. And, now, when you say, it's labeled as AB-1, what
10 exactly is AB-1?

11 A For us, typically for bloodstains we'll label them AB and then a
12 sequential number. So AB just stands for apparent blood and then we'll
13 go -- we'll start with one and we'll just work our way up to however high
14 we need to go. It's just a way for us to -- when you're looking through the
15 photographs and when you're marking stuff on the diagram, for you to
16 differentiate between the different areas. So that when you refer to AB-1
17 you know where it's at specifically. Rather than just always saying, the
18 bloodstain in the street. If you have multiple bloodstains, you can
19 differentiate between the two if you have them labeled differently.

20 Q All right. So does AB-1 also correspond to something that you
21 impounded into evidence?

22 A Correct. Personally, when I'm collecting evidence if it's labeled
23 as something in the photographs, that's what I'll use as the item number
24 for when I'm impounding the evidence. So if I collect a swab from AB-1,
25 that swab will be item AB-1 so that it's clear where that swab came from.

1 Q All right. So did you take a swab AB-1 and impound it?

2 A I did.

3 Q And it would have been a swab of this stain that the arrows
4 pointing to?

5 A Correct.

6 Q All right. Showing you State's 154, what's depicted there?

7 A That is a apparent bloodstain on the ground with an orange
8 cone next to it.

9 Q Okay. And if there's not a marker, does that indicate a swab
10 was not taken?

11 A Correct.

12 Q Okay. So, now, we have another bloodstain in State's 155, or a
13 couple of bloodstains, with a marker. Again, no marker or yellow sticker,
14 so does that mean that nothing was swabbed here?

15 A Correct. We don't collect swabs from every stain that we find
16 and we don't put cones next to every stain that we find. If there's a
17 pattern or a trail, we'll do sporadic cones giving the general direction of
18 where we see it.

19 Q All right. So showing you State's Exhibit 158, is there a cone in
20 here where a swab was taken?

21 A Correct. It be at the bottom of the photo next to that yellow
22 sticker.

23 Q All right. And is 159 a close-up of that yellow sticker?

24 A It is.

25 Q And what was taken or impounded as evidence here? Was it a

1 swab that was impounded?

2 A Yes, it would be -- it would be a swab of the apparent
3 bloodstain.

4 Q And it was marked AB-2?

5 A Correct.

6 Q All right. Showing you what's been marked and admitted as
7 State's 161, what are we looking at here?

8 A This is another set of bloodstains -- apparent bloodstains on the
9 walkway to the front door. It's got the orange cone, as well as the sticker
10 next it to show that I collected some blood from that area.

11 Q All right. And showing you 162, is this just a close-up of that
12 sticker?

13 A It is.

14 Q And this is marked as AB-3?

15 A Correct.

16 Q Showing you State's Exhibit 163, what are we looking at here?

17 A In this photograph it's taken inside the living room of
18 3999 Pistachio Nut, the front door area would be up here in the top right,
19 and then you can see the apparent bloodstains on the floor here marked
20 with the arrow.

21 Q All right. Showing you State's Exhibit 165, is this a close-up of
22 one of those bloodstains that we saw in 163?

23 A Correct.

24 Q Okay. And was a swab of the stain where the arrow is pointing
25 to taken as AB-4 and impounded?

1 A Correct.

2 Q Showing you State's Exhibit 166, what are we looking at here?

3 A So if you recall, in the dining room, kitchen area there was a
4 sliding glass door in the south wall that led to the backyard, this is a
5 photograph from that dining room area looking at the sliding glass door.
6 You can see the arrow marked on there showing where some apparent
7 bloodstains were found.

8 Q All right. And showing you 168, is that a close-up of that
9 bloodstain?

10 A Correct.

11 Q And a swab of that was taken and impounded as AB-5?

12 A Correct.

13 Q All right. Showing you State's Exhibit 169, what's depicted in
14 this photograph?

15 A In this photograph we're in the backyard, there was a patio right
16 outside that sliding glass door that we just looked at, and we found some
17 apparent bloodstains on the concrete patio.

18 Q And did you take a swab of one of the apparent bloodstains?

19 A I did.

20 Q And that's marked with the yellow sticker?

21 A Correct.

22 Q Showing you State's Exhibit 171, is that a close-up of that
23 bloodstain that we saw in 169?

24 A Correct.

25 Q And was a swab taken and impounded as AB-6?

1 A Yes.

2 Q Now, showing you State's Exhibit 172, what's depicted here?

3 A So in this photograph, we're looking at the south wall of the
4 backyard, and you can see the arrow here in the center of the photograph
5 denoting where some apparent bloodstains were found.

6 Q All right. And showing you State's Exhibit 174, is that a
7 close-up of what we saw in 172?

8 A Correct.

9 Q All right. And is that the apparent bloodstain that you took a
10 swab from and impounded as AB-7?

11 A Correct.

12 Q Next, showing you State's Exhibit 175, what are we looking at
13 here?

14 A So now we've moved into the backyard of 3998 --

15 Q Spruce Fern?

16 A -- Spruce Fern; correct, looking at the east -- the exterior of the
17 east wall.

18 Q Okay. So this would be standing in the street looking at this
19 wall?

20 A Correct.

21 Q And did you take a blood sample from here?

22 A Correct.

23 Q Showing you State's Exhibit 176, is that a close-up of the
24 sample you took?

25 A It is.

1 Q And, further, 177, does that show the sample that you -- the
2 blood swab that you took and labeled AB-8?

3 A Correct.

4 Q And that was impounded?

5 A Correct.

6 Q Did you have any contact at the scene with any of the
7 witnesses? Did you see them photographed or documented?

8 A There were some subjects there that were photographed and I
9 did collect some buccal swabs from two individuals. I'm not sure what
10 their -- what their relationship to the scene was though.

11 Q Okay. So who did you take the buccal swabs from?

12 A I believe it was Kyriell Davis and Brittney Turner.

13 Q All right. And, now, let me show you 178, is this the individual,
14 Kyriell Davis, that you took a buccal swab from?

15 A Yes.

16 Q Now, at the scene of a homicide, you talked about that a
17 weapon was looked for, some sort of sharp object or knife in the kitchen,
18 and did you also look in the backyard for one?

19 A Yes.

20 Q Okay. Were any weapons impounded that were possibly
21 believed to be the weapon used?

22 A No.

23 Q If such a weapon was found at the scene by somebody else,
24 who would have been the one to actually impound it?

25 MR. LONG: Objection, speculation.

1 MS. DIGIACOMO: I don't think it's speculation, Your Honor.

2 THE COURT: Overrule the objection. I'll allow the testimony.

3 BY MS. DIGIACOMO:

4 Q So if at the scene somebody else had located what they
5 believed was a weapon, I guess, who would have been the one to
6 document it and impound it?

7 A As the person responsible for evidence, I would have been the
8 one to impound it. And Laura would have -- or Laura Cornell would have
9 been the one who would have photographed it first.

10 Q All right. And no weapons were impounded by you from the
11 scene?

12 A Correct.

13 MS. DIGIACOMO: I have nothing further.

14 THE COURT: Cross?

15 MR. LONG: Just briefly, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. LONG:

18 Q Officer Felabom, do you prefer to be addressed as detective, as
19 mister, as officer?

20 A Mister. I'm not a police officer actually. So I'm just a civilian
21 employee.

22 Q You're not a sworn officer?

23 A No.

24 Q Okay. Yet, you're carrying a firearm and wearing a badge?

25 A I work for the police department, and the police department

1 policy allows me to carry a firearm.

2 Q Okay. So you've never done an academy?

3 A I have.

4 Q Police academy?

5 A I have. I've actually started out as a police officer.

6 Q Oh, okay. All right.

7 Now --

8 [Colloquy between the District Attorney and Defense Counsel]

9 BY MR. LONG:

10 Q -- in reference to the pictures that we looked at last week before
11 our break, this is the scene of the crime; correct?

12 A Correct.

13 Q And here, where my finger is pointing, that's blood?

14 A That's apparent bloodstains, yes.

15 Q And the body was dragged to its resting spot?

16 A Correct.

17 Q Now, in reference to this picture of the decedent, when this
18 picture was taken you had not yet turned the body over; correct?

19 A It does not appear so.

20 Q It appears all you did was move down this portion of his
21 sweatshirt?

22 A It appears that's what the coroner investigator is doing.

23 Q Okay. Now, so this would be the right side of the decedent's
24 head, right near his right eye?

25 A Correct.

1 Q Do you notice any scrapes or abrasions there?

2 A Not that I can see from this photograph.

3 Q Okay. Now, did you notice scrapes and abrasions around the
4 decedent's left eye?

5 MS. DIGIACOMO: And, Your Honor, I'm sorry; I would just ask
6 for the record which photograph he's referring to.

7 THE COURT: Yeah, refer to it.

8 MS. DIGIACOMO: Thank you.

9 BY MR. LONG:

10 Q Referring to State's Exhibit 20, it's your testimony that there are
11 no scrapes or other marks around the decedent's right eye?

12 A Not that I recall seeing.

13 Q Okay. And referring to State's Exhibit 21, isn't this a photograph
14 of the decedent before he was turned over?

15 A It appears so.

16 Q Okay. And do you notice any scrapes or damage around the
17 decedent's right eye?

18 A There is some discoloration. I'm -- I can't say what that is.

19 Q Okay. Based on your training and experience though, it does
20 not appear that the decedent was punched in his eye, does it?

21 A I don't recall specifically seeing injuries to that.

22 Q Okay. And going -- in moving along, and referring to
23 State's Exhibit 29, this is a photograph of the car that the decedent arrived
24 in; correct, to the best of your knowledge?

25 A That is my understanding, yes.

1 Q Okay. Isn't it true that this car had a bullet hole in it?

2 A It did.

3 Q Okay. And you photographed that bullet hole?

4 A It was photographed, yes.

5 Q And yet no other investigation was done as to the source of that
6 bullet hole?

7 A I can't speak as to --

8 THE COURT: No one, by him?

9 MR. LONG: Yeah.

10 BY MR. LONG:

11 Q You didn't investigate the source of the bullet hole?

12 A The information that we had did not -- there was no indication
13 that any gunshots had been fired. Detectives would have followed up on
14 anything as to finding out when that had occurred, if it had occurred prior.

15 Q Isn't it true that one of the 9-1-1 tapes said that a young man
16 had been shot?

17 A I don't know. We don't listen to the 9-1-1 tapes.

18 Q Okay. And the bullet hole is right here; correct?

19 A Correct; above the right rear door.

20 Q And this bullet hole appeared to be fresh; correct?

21 A I can't speak to that.

22 Q But the bullet hole didn't have any rust, or anything like that
23 nature, that would indicate it was old?

24 A Correct. There was also no paint chips on the ground below.

25 Q Okay. And did you -- you didn't specifically look for paint chips

1 though, did you?

2 A That would be a part of the investigation.

3 Q Now, it's your job to preserve evidence, as well as collect it;
4 correct?

5 A Correct.

6 Q And isn't it true that you put bags over the decedent's hands?

7 A Correct.

8 Q And isn't it true that you marked bloodstains going into this
9 home, I'm referring to State's Exhibit 52, a trail of blood leading to the
10 home?

11 A Correct.

12 Q And isn't it true, that based on your investigation, the decedent
13 never entered this home?

14 A I don't recall any specific information about that.

15 Q Okay. You don't know whose blood that is on the trail leading
16 up to this home, do you?

17 A Correct.

18 Q And you can't tell if it's a venous blood from a vein or blood from
19 an artery, can you?

20 A Correct.

21 Q Okay. And referring to State's Exhibit 53, based on this
22 photograph and your investigation, don't you believe the decedent expired
23 approximately right here?

24 A In that general area, yes.

25 Q Okay. And there was no evidence to indicate that he had ever

1 been in the driveway or in the home on Pistachio Nut?

2 A There was no information that I recall given to us that he had
3 been inside.

4 Q Okay. Now, on the buccal swabs that you took from Kyriell, he
5 didn't have any -- any marks on his face to indicate that he had been in a
6 fight; correct?

7 A Not that I recall, no.

8 Q He didn't have any marks on his hands to indicate that he had
9 been in a fight?

10 A Correct.

11 Q He didn't have any clothed -- torn clothing or anything of that
12 nature?

13 A Not that we observed, no.

14 Q Okay. Did you -- and isn't it true that you didn't observe under
15 his clothes to see if he had any grab marks or bruises?

16 A I don't recall specifically.

17 Q Okay. You don't have any photographs of any injuries on Kyriell
18 Davis; is that not correct?

19 A Correct.

20 Q And isn't it your professional opinion, based on your
21 investigation, that the -- that these blood drops likely came from different
22 actors?

23 A No. I wouldn't -- we didn't know who they belonged to. If --
24 when there is bloodletting, it's common for the person -- if someone is
25 stabbed, it's common for the person who does the stabbing to get the

1 victim's blood on them and then it can drip off. So we weren't sure if it
2 was just passive blood dripping off as someone fled or if it was -- if the
3 suspect had cut themselves and was bleeding.

4 Q But your investigation revealed that this stabbing followed a
5 fight, did it not?

6 A I believe that was the initial information that we received was
7 that there was a fight and that led to the stabbing.

8 Q So as you sit here today, you can't tell me whose blood any of
9 that is on the street?

10 A I can't because I don't perform the DNA tests. If they'd been
11 performed, that would be done by the forensic lab.

12 MR. LONG: I don't have anything further, Your Honor.

13 MS. DIGIACOMO: Can I just have a brief indulgence.

14 [Brief pause in proceeding]

15 MS. DIGIACOMO: Thank you, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MS. DIGIACOMO:

18 Q Okay. So we talked about there was no weapon found and
19 when I was asking you before that was -- there was no, like, knives or
20 sharp instruments that were believed to be the murder weapon found that
21 night; correct?

22 A Correct.

23 Q Okay. What about firearms, were there any firearms located
24 and impounded that night?

25 A No.

1 Q So do you know whether or not the white Jetta was searched?

2 A It was.

3 Q All right. And you were not asked to impound anything?

4 A Correct.

5 MS. DIGIACOMO: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MS. DIGIACOMO:

8 Q Okay. I'm going to show you what's been marked for
9 identification as State's Proposed Exhibits 249 and 250, could you look at
10 both of those photographs and let me know if you recognize them?

11 THE COURT: Have you shown those to defense?

12 MS. DIGIACOMO: Oh, I'm sorry. Defense does have --

13 MR. LONG: I have them. I've seen them. By way of stipulation
14 we agreed that I wasn't going to argue about the admissibility of these.

15 THE COURT: They'll be admitted.

16 MS. DIGIACOMO: Thank you.

17 **[STATE'S EXHIBITS 249 AND 250 ADMITTED]**

18 BY MS. DIGIACOMO:

19 Q Okay. So that's State's Proposed Exhibits 249 and 250 --

20 THE COURT: Publish them.

21 MS. DIGIACOMO: Thank you.

22 BY MS. DIGIACOMO:

23 Q All right. Sir, so showing you State's Exhibit 249, is the
24 passenger side of that white Jetta?

25 A Correct.

1 Q Okay. And could you point where this bullet hole is?

2 A It's above the right rear door on the edge of the roof here.

3 Q Now, showing you State's Exhibit 250, what are we looking at

4 here?

5 A This is a closer view of that apparent bullet hole.

6 Q All right. And you've investigated bullet holes before?

7 A I have.

8 Q Okay. This kind of, I guess, bullet hole, would the bullet still be

9 lodged in the car?

10 A Typically, yes.

11 Q Okay. You didn't see anything inside where it went through?

12 A No.

13 Q Okay. So did you find a bullet actually lodged in there?

14 A No.

15 Q All right. But not that night?

16 A No.

17 Q Okay. And you said that if this had been like a gunshot or a

18 bullet hole that had occurred that night, you would expect like the white

19 paint chips to be on you ground or to come --

20 MR. LONG: Objection, Your Honor, leading and misstates his

21 testimony.

22 THE COURT: Overruled.

23 BY MS. DIGIACOMO:

24 Q I'm sorry, going back to what you said before, you saw no, I

25 think your quote was, no paint chips transfer or paint chips on the ground

1 below?

2 A Correct. I believe I said something like that.

3 Q Okay.

4 A Typically, when a bullet impacts something that is covered in
5 paint, the paint chips will be on the ground below where the bullet impact
6 is.

7 Q All right. And you didn't see any, I guess, paint chips on the
8 ground where the car was?

9 A No.

10 Q Or anywhere in the street there?

11 A No.

12 Q Did you have an opinion though whether or not this was a fresh
13 bullet hole that night or had been there?

14 A I don't recall any specifics about it. But based off of the way we
15 documented it, that's typically how we would document something that we
16 found on a scene that we didn't feel was related to the scene.

17 Q Okay. And you didn't, again, recover any bullet from inside --
18 expended bullet from inside this --

19 A Correct; we did not.

20 Q And when you're at a scene like this, you don't know, I guess,
21 whose blood that trail belonged to and that's why you collect swabs from
22 it?

23 A Correct.

24 MS. DIGIACOMO: Nothing further.

25 THE COURT: You don't -- your job is not to analyze what you

1 find, you're to find things and let somebody else analyze them; is that
2 correct?

3 THE WITNESS: That's a fair assessment; correct.

4 THE COURT: So blood or a bullet in a -- if you found it in a car,
5 you wouldn't have evaluated that anyway, you would have put that in an
6 evidence envelope and left somebody else deal with it, if they had to?

7 THE WITNESS: Correct. The examination of the evidence,
8 such as bullets or cartridge cases or bloodstains or DNA samples, are all
9 looked at by forensic scientists over at the forensic lab.

10 THE COURT: Cross?

11 MR. LONG: I just have two questions, Your Honor.

12 THE COURT: Okay.

13 **RECROSS-EXAMINATION**

14 BY MR. LONG:

15 Q Mr. Felabom, you didn't look to see if there was, in fact, a bullet
16 lodged in there, did you?

17 A What do you mean? We would look to the inside to see if it
18 passed through or anything like that, if it's not.

19 Q But you didn't shine a flashlight down the hole to see if there
20 was still a bullet there; right?

21 A I don't recall specifically.

22 Q Okay.

23 A We typically would.

24 Q And the Jetta that was searched, it was searched after it had
25 been moved by a party to this case; correct?

1 A I don't recall any specifics about that.

2 MR. LONG: Okay. I don't have anything further.

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

4 MS. DIGIACOMO: No, Your Honor.

5 THE COURT: Jury have any questions of this witness? Seeing
6 no hands. You're free to go, Officer. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness, State.

9 MS. DIGIACOMO: Thank you.

10 The State calls Samantha Bennick.

11 | **SAMANTHA BENNICK**

12 [Having been called as a witness and being first duly sworn, testified as
13 follows:]

14 THE COURT: Please be seated, state your name and spell it
15 for the record.

16 THE WITNESS: Samantha Bennick. S-a-m-a-n-t-h-a, Bennick,
17 B-e-n-n-i-c-k.

18 **DIRECT EXAMINATION**

19 BY MS. BLUTH:

20 Q Good morning, ma'am, how are you employed?

21 A I'm a crime scene analyst with Las Vegas Metropolitan Police
22 Department.

23	Q	How long have you been employed in that position?
----	---	---

24	A	Approximately three years.
----	---	----------------------------

25 Q Okay. And could you briefly describe your education and

1 training to the ladies and gentlemen of the jury that allowed you to have
2 that position?

3 A Yes. I have my bachelor's in criminal justice from UNLV. I
4 completed an internship with Metro before I was hired with the crime
5 scene analyst section. I attended field training evaluation program, upon
6 completion of the three month academy, where a senior crime scene
7 analyst would follow me to scenes. Upon completion of the field training
8 evaluation program, I was released to my own casework. And then we go
9 to ongoing training through online courses, conferences, and so forth, in
10 relation to crime scene work.

11 Q Thank you.

12 Now, today you are called in response to a subpoena to discuss
13 some crime scene photography -- well, you're a crime scene analyst, but
14 you did photography at an autopsy; is that correct?

15 A That's correct.

16 Q And could you give us the date of the day that you attended the
17 autopsy?

18 A December 12th, 2017.

19 Q And can you -- why is it that a crime scene analyst responds to
20 an autopsy? Could you give us an idea of what your job duties are in
21 regards to that specific calling?

22 A Absolutely. So the autopsy is an extension of the crime scene.
23 So it's an additional opportunity to collect evidence. So we document the
24 body, we collect evidence from the victim, and it's another chance to get
25 evidence.

1 Q Okay. And so we've already had a medical examiner from the
2 Clark County Coroner's Office who did the autopsy on the victim in this
3 case come in and testify. Do you take pictures before the doctor even
4 touches the body at all?

5 A Yes.

6 Q And then we also heard that at some point during the autopsy
7 the body is cleaned so that the doctor can better assess the wounds. Do
8 you take pictures after the body is cleaned as well?

9 A Correct, yes.

10 Q Okay. I would like to approach, if I could, with some photos.
11 I'm going to approach in a moment with some photographs that you took
12 on that day in regards to autopsy.

13 But could you walk us through the steps that you did while you
14 were there?

15 A Yeah. So when we go to autopsy the --

16 MR. LONG: Counsel, can you get back near your microphone
17 so he can hear.

18 MS. BLUTH: Yeah, just one -- I will, one second.

19 MR. LONG: Okay.

20 THE WITNESS: So the victim is in a body bag, which is sealed
21 with a plastic seal, which has an identifying number. So we initially take a
22 picture of that seal to maintain chain of custody of the body. Once we do
23 anything to the body, such as open the body bag, take his clothing off,
24 clean him, every time that we do something to the body we re-photo the
25 body in layers. And then the collection, so anything that's on the body,

1 clothing-wise, any evidence, DNA swabs, anything like that, we'll collect
2 and impound.

3 BY MS. BLUTH:

4 Q Okay. And you did -- you followed through all those steps when
5 you responded to the coroner's office in regards to this case; correct?

6 A Yes.

7 Q And I'm going to ask you, the jury has already seen
8 photographs of the decedent's injuries, but could you give us a brief
9 description of the injuries that you documented with photography?

10 A Yes. He had an injury to the upper left side of his chest, a linear
11 injury across the center of his chest, and then he had injuries around his
12 right eye.

13 Q And you documented with those -- those with photography;
14 correct?

15 A Correct.

16 Q And then as part of, you know, we talked about the
17 photography, but can you talk to us about any type of evidence collection
18 that you did while you were at the autopsy?

19 A Yes. So I took a buccal swab of the victim, that's a DNA swab,
20 standard sample, for his mouth.

21 Q And can you explain how you do that?

22 A Yes. It's basically a Q-tip and then we swab the interior cheek
23 cells to get his DNA on the swab and then we put it in a box and seal it.

24 Q Okay. And when you -- when you take, for example, like a DNA
25 swab, so you take it from the decedent's mouth, and then you've

1 discussed the fact that you put it into either a bag or a box and you seal it;
2 that's correct?

3 A Correct.

4 Q Could you explain when you seal it, do you also put markings
5 on it establishing who you are, the date, what case you're working?

6 A Yes.

7 Q Can you explain that process?

8 A So the buccal swabs they come in a box. So we glove up, we
9 use clean gloves every time, we do the swab, and then we put it back
10 inside the box. So we close up the box, the box is -- it has the event
11 number, it has the victim's name, and it has my initials and P number.
12 And we put that into a paper bag -- or, I'm sorry, a paper envelope and
13 then we seal it with evidence tape. On the paper envelope we have all
14 that information, what type of case it is, my initials and P number, and
15 then we put evidence tape across the seal, and then I initial that, and then
16 I date that as well.

17 Q Okay. So let's say from, after you're done, that buccal swab
18 goes to the DNA lab to have some type of forensic testing done. At that
19 point in time, if the seal has not been broken, it would still show it's
20 completely sealed and your name, or sorry, not your name, but your P
21 number would be attached on that; correct?

22 A Correct.

23 Q And we keep using the term, P number, could you explain to the
24 ladies and gentlemen of the jury what a P number is?

25 A When you're hired on with Metro you get a number assigned to

1 your person, that number changes throughout the -- your time on the
2 department. So that's my personal -- personal indicator number.

3 Q That's okay.

4 And so what is your personal indicator number?

5 A 15289.

6 Q And that -- but it would also have your first initial and your last
7 initial on each side of it; is that right?

8 A Correct. So it would be S15289B.

9 Q And that way we know who it is that was dealing with that piece
10 of evidence?

11 A Correct.

12 Q All right. So besides the buccal swab, did you do any other type
13 of evidence collection?

14 A Yes. I also collected and impounded the sheet. So with
15 homicides we lay the victim on the sheet at the scene, they wrapped him
16 in the sheet, and then they placed him in the body bag. So that sheets
17 meant to catch any trace evidence, anything that falls out that might be
18 captured trace-wise.

19 Q Okay.

20 A So I collected that. We also place hand bags on the body. So
21 one on the right; one on the left. Same thing, trace evidence, anything
22 that might fall into those bags. I did fingernail clippings, DNA hand swabs,
23 so any -- same thing with the cotton swab, I swabbed his hands. I
24 collected his clothing as well. I believe that was it.

25 Q Okay. Now, I'm approaching you with what's been marked for

1 purposes of identification as State's Proposed 261 through 263.

2 If you could just thumb through those and let me know if you
3 recognize them and then I'll have some questions for you.

4 A [Witness complies.]

5 Q All done?

6 A Yes.

7 Q Okay. And are those fair and accurate depictions of the
8 decedent and the items of clothing that he was wearing on the day that
9 you, the crime scene analyst, that responded to the autopsy?

10 A Yes.

11 MS. BLUTH: Okay. Your Honor, at this time I'd move into
12 evidence State's Proposed 251 through 263.

13 MR. LONG: I don't have any objection. We've stipulated to
14 these photographs.

15 THE COURT: They'll be admitted.

16 **[STATE'S EXHIBITS 251 THROUGH 263 ADMITTED]**

17 THE COURT: Before you publish them, just for the jury's
18 benefit, when you go to a crime scene, who's in charge of that crime
19 scene?

20 THE WITNESS: It's a -- Homicide detectives and crime scene
21 analysts, they work together.

22 THE COURT: They work together?

23 THE WITNESS: Yes.

24 THE COURT: You don't direct the detective though?

25 THE WITNESS: No.

1 THE COURT: Because that's a television show.

2 THE WITNESS: Yes, yes.

3 THE COURT: All right. They're in charge but you work
4 together and you work independently as well to -- through your training
5 and experience to find evidence; is that correct?

6 THE WITNESS: That's correct.

7 THE COURT: All right.

8 BY MS. BLUTH:

9 Q I'm going to go through some of these photos with you but I do
10 want to ask you one more question before we get into the photography.

11 You've talked about the collection of evidence, for instance, like
12 a buccal swab or fingernail clippings, you do not do any testing on those
13 things; correct?

14 A Correct. I just collect and impound them.

15 Q And if any further testing needs to be done, that goes to an
16 actual forensic analyst?

17 A Yes.

18 Q Okay.

19 A That's correct.

20 Q All right. So now I'd like to --

21 MS. BLUTH: Your Honor, I don't know if I asked for permission
22 to publish two-fifty --

23 THE COURT: Publish them.

24 MS. BLUTH: Thank you.

25

1 BY MS. BLUTH:

2 Q All right. So, and now in evidence is State's 252, now earlier
3 you had discussed the fact that when the decedent comes into the
4 autopsy room they are in what's referred to as a body bag; correct?

5 A Correct.

6 Q But you also talked about the white sheet that's collected, do
7 you see that white sheet here?

8 A Yes.

9 Q And then would you -- I know it seems pretty obvious, but would
10 you mark it on the TV in front of you, please.

11 A Sure.

12 Q And so that was -- you did collect and impound this item;
13 correct?

14 A Yes.

15 Q All right. Now, I'm showing you State's 254 -- and then if you
16 wouldn't mind just hitting the -- yeah, thank you very much -- what are we
17 looking at here?

18 A This is the hand bag on one of his hands.

19 Q And the hand bag that you're talking about, is that the same
20 thing as you were referencing before, just to make sure that there's any --
21 I think, you didn't use the term, "drop off", but what term did you use?

22 A Trace evidence.

23 Q Trace evidence. Thank you.

24 All right. Now, I want to ask you some questions, when I had
25 shown you the decedent's body before, I'm showing you 253, this is the

1 decedent before obviously his clothes are taken off; correct?

2 A Correct.

3 Q And so did you document his clothing once it was taken off of
4 his body?

5 A Yes, I did.

6 Q I'm going to show you State's 255, what are we looking at here?

7 A This is a long black -- long sleeve, black hooded sweatshirt that
8 the decedent was wearing.

9 Q Okay. And when you were looking at the sweatshirt, did you
10 see any defects in the clothing?

11 A Yes, I did.

12 Q And did you also document those defects with photography?

13 A Yes.

14 Q Showing you State's 257, can you explain to the ladies and
15 gentlemen of the jury what we're looking at here?

16 A This is the front left side of that same sweatshirt. I put a white
17 card behind the defect to allow it to be able to be seen better with my
18 scale.

19 Q Okay. And now showing you State's 251, is that just a close-up
20 of the defect we were just discussing?

21 A Yes.

22 Q And then also showing you State's 260, is this the same area,
23 but did you use like a flash, why is it the different color?

24 A Yes. I overexposed this intentionally to show it -- show it a little
25 better with the camera.

1 Q Okay. And underneath the black sweatshirt that the decedent
2 was wearing, did he also have a short sleeve shirt?

3 A Yes.

4 Q Did you also document that with photography?

5 A I did.

6 Q Showing you State's 261, is that what we're looking at there?

7 A Yes.

8 Q And then were there any clothing defects on this particular
9 shirt?

10 A Yes, to the --

11 Q Okay.

12 A -- sorry -- front left side.

13 Q And did you also document those with photography?

14 A I did.

15 Q Showing you State's 263, is that of the defect to the sweatshirt
16 that we were just -- oh, excuse me, to the undershirt that we were just
17 discussing?

18 A Yes, the T-shirt.

19 Q Now, when you look at clothing, can you tell if there are
20 substances, you know, on it, like, maybe, you used terminology, like,
21 apparent blood?

22 A Yes.

23 Q And did you see that either to the sweatshirt or to the shirt?

24 A To both.

25 Q And do you do any testing to see whether or not it is blood or

1 what do you do in that regard?

2 A We don't. We use apparent blood. If it needs to be tested at a
3 later date, it can. But, I mean, the decedent was bleeding, it's obviously
4 blood.

5 Q Okay. But in so in your report though you do document not only
6 the injuries and the defects, but also whether or not there was a
7 substance on the clothing that appears to be apparent blood?

8 A Correct.

9 MS. BLUTH: Okay. Court's indulgence, Your Honor.

10 BY MS. BLUTH:

11 Q Another thing that I wanted to ask you about is when you were
12 talking pictures of the decedent, after his clothes were taken off, did you
13 document any tattoos that he had on his body?

14 A I did.

15 Q And when I say, document, I mean with photography?

16 A Yes.

17 Q Okay. I'm approaching you with what's been marked for
18 purposes of identification as State's 264 through 266. Can you please
19 take a look at those and let me know if you recognize them.

20 A Yes.

21 Q Are those fair and accurate depictions of the tattoos on the
22 decedent's arms on the day you did the autopsy?

23 A Yes.

24 MS. BLUTH: Your Honor, at this time I move to admit into
25 evidence State's 264 through 266.

1 MR. LONG: No objection.

2 THE COURT: Be admitted.

3 **[STATE'S EXHIBITS 264 THROUGH 266 ADMITTED]**

4 MS. BLUTH: And permission to publish.

5 THE COURT: Yes.

6 BY MS. BLUTH:

7 Q Showing you 264, and I'm going to zoom in just because it's a
8 little light with the glare, but is that the tattoo you documented to the
9 decedent's right forearm?

10 A Yes.

11 Q Showing you 265, which would be the opposite side of the
12 decedent's right arm; is that correct?

13 A Yes.

14 Q And then 266, which would be the decedent's left forearm area
15 on the outside?

16 A Yes.

17 MS. BLUTH: Thank you so much.

18 Pass the witness, Your Honor.

19 THE COURT: Cross?

20 **CROSS-EXAMINATION**

21 BY MR. LONG:

22 Q Ms. Bennick, what do you like to be called, do you like to be
23 called officer, ma'am?

24 A Crime scene analyst is --

25 Q Okay.

1 A -- our title.

2 Q CSI Bennick, in reference to State's Exhibit 264, this
3 photograph was taken after the bags were removed from the decedent's
4 hands; correct?

5 A Correct.

6 Q And not going into analysis or anything of that nature, isn't it
7 true that it appeared that his hands were somewhat -- that his right hand
8 was somewhat deformed?

9 A Deformed in -- I'm sorry, I don't understand.

10 Q Like he'd thrown a punch?

11 A No, I can't say that.

12 Q You can't say that or you can't recall that?

13 A No, I cannot say that.

14 Q Okay. And isn't it true that there's a great deal of blood over on
15 his hands?

16 A Yes.

17 Q Okay. And you don't have any idea whose blood that is, do
18 you?

19 A No.

20 Q You just collected it.

21 Okay. Now, CSI Bennick, in referring to State's Exhibit 258, you
22 identified this, and I believe your testimony was that was a defect?

23 A Correct.

24 Q But you don't really know how this defect came to be on the
25 decedent's clothes, do you?

1 A I do not.

2 Q Okay. And even though we didn't show any pictures of that,
3 you said that the decedent had an injury to his eye?

4 A Yes.

5 Q You don't remember which eye, do you?

6 A I believe it was the right.

7 Q Okay. And you don't have any idea how that injury came to be?

8 A I do not.

9 Q Okay. And you didn't check that eye to see if there was any
10 asphalt in it, did you?

11 A I did not see any.

12 Q But you didn't look either?

13 A I would have examined the wound.

14 Q It's your testimony that you examined the wound?

15 A I look at the wounds, yes.

16 Q Okay. But is it your testimony that you examined the wound for
17 asphalt in and on the decedent's eye?

18 A I do not recall.

19 MR. LONG: I don't have anything further.

20 **REDIRECT EXAMINATION**

21 BY MS. BLUTH:

22 Q Ms. Bennick, I'm showing you what's already in evidence as
23 State's 208, would this be the injuries that you documented with
24 photography and in writing in regards to the decedent's right eye?

25 A Yes.

1 Q Now, if you go to an autopsy and there are things like asphalt or
2 dirt or any substance of importance, do you also document that with
3 photography?

4 A Yes.

5 Q And if you see things like that, do you also document that in
6 your crime scene analyst report?

7 A Yes.

8 Q Okay. Now I'm showing you what's in evidence as State's 209,
9 would this be the wound, the two wounds that you were discussing earlier
10 in your testimony on direct examination?

11 A Yes.

12 Q These wounds are to the left side of the decedent's body; is that
13 correct?

14 A Yes.

15 Q The defect in the clothes -- well, first of all, and I apologize, I
16 should have asked you, when we use the term, "defect in a clothing", can
17 you tell me what we're talking about, why do we say that term?

18 A To me it's a hole in the clothing that wasn't manufactured there.

19 Q Okay. And you weren't there when this crime took place;
20 correct?

21 A Correct.

22 Q And so you can't say how the defect in that clothing got there?

23 A Correct.

24 Q Or when it got there?

25 A Correct.

1 Q But was the defect in the sweatshirt on the same side of the
2 body as the wound that you documented with photography?

3 A Yes.

4 Q And that same question, was the defect in the shirt that was
5 underneath that sweatshirt on the same side of the body that the wound
6 was on the decedent?

7 A Yes.

8 MS. BLUTH: Okay. Thank you so much.

9 Nothing further, Your Honor.

10 **RECROSS-EXAMINATION**

11 BY MR. LONG:

12 Q CSI Bennick, this photograph was taken after the washing;
13 correct?

14 A I took photos before and after the washing. I'm not sure which
15 one this is.

16 Q Okay. And isn't it true that these wounds are not consistent with
17 a punch?

18 MS. BLUTH: Objection, speculation, outside the scope.

19 THE COURT: Sustained.

20 BY MR. LONG:

21 Q Isn't it true these wounds are consistent with uneven texture?

22 MS. BLUTH: Objection, vague.

23 THE COURT: If she can answer that. She's not an expert in
24 that. She just collects evidence.

25 THE WITNESS: I cannot say how those wounds came to be.

1 MR. LONG: I don't have anything further.
2 MS. BLUTH: Nothing based on that, Your Honor. Thank you.
3 THE COURT: Jury have any questions of this witness? All
4 right. You're free to go. Thank you.
5 THE WITNESS: Thank you.
6 THE COURT: Call your next witness.
7 MS. DIGIACOMO: Thank you.
8 The State calls Charles Smith.
9 Court's indulgence.

10 **CHARLES SMITH**

11 [Having been called as a witness and being first duly sworn, testified as
12 follows:]

13 THE CLERK: Please be seated and state and spell your name
14 for the record.

15 THE COURT: State and spell your name.

16 THE WITNESS: My name is Charles Smith, C-h-a-r-l-e-s,
17 Smith, S-m-i-t-h.

18 THE COURT: Go ahead.

19 MS. DIGIACOMO: Thank you.

20 **DIRECT EXAMINATION**

21 BY MS. DIGIACOMO:

22 Q Sir, how are you employed?

23 A I'm employed with Metropolitan Police officer, with Las Vegas
24 Police Department.

25 Q And how long have you been so employed?

1 A Approximately nine and a half years.

2 Q Directing your attention to December of 2017, what was your
3 assignment?

4 A I was assigned to road patrol, Northeast Area Command.

5 Q All right. So would you go to work and wear a uniform, such as
6 you're wearing in court here today?

7 A I would, yes.

8 Q Did you work in a black, marked black and white patrol vehicle?

9 A Yes, I was driving a marked police car with lights and siren.

10 Q All right. So on December 11th, 2017, a little bit before
11 7:00 p.m., did a call come out on Pistachio Nut?

12 A Yes, a call did come out.

13 Q Okay. Did you -- do you recall what the original call was?

14 A The original call was -- it was a battery that had occurred with
15 substantial bodily harm, a fight, and someone possibly had been shot.

16 Q All right. How far away were you from the location on Pistachio
17 Nut when you heard the call?

18 A I was approximately 30 seconds away, probably a mile, a little
19 less than a mile away.

20 MS. DIGIACOMO: Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MS. DIGIACOMO:

23 Q All right. Sir, I'm going to show you what's been marked for
24 identification as State's Proposed Exhibits 1 through 3. If you could just
25 flip through each of those and then let me know when you're done,

1 please.

2 A Okay.

3 Q Do you recognize what's depicted in these three aerial photos?

4 A Yes, I do.

5 Q All right. And what's depicted in all three?

6 A It's going to be the streets, the main streets, Walnut, Spruce
7 Fern, Pistachio Nut, Pistachio Nut being the location of the incident.

8 Q Okay. So all three fairly and accurately depict the way this
9 neighborhood looked on December 11th, 2017?

10 A Yes, ma'am.

11 MS. DIGIACOMO: Your Honor, I move for admission of State's
12 Proposed Exhibits 1 through 3.

13 MR. LONG: No objection.

14 THE COURT: Be admitted.

15 **[STATE'S EXHIBITS 1 THROUGH 3 ADMITTED]**

16 THE COURT: Publish.

17 MS. DIGIACOMO: Thank you.

18 BY MS. DIGIACOMO:

19 Q All right. I'm going to show you, first of all, State's Exhibit 1, if
20 you can explain to the jury exactly what we're looking at here? And you
21 can touch the screen --

22 A Okay.

23 Q -- and mark it, too.

24 A Say again? Your --

25 Q If -- oh, sorry.

1 A -- question.

2 Q If you could explain to the jury what we're looking at in
3 State's Exhibit 1.

4 A Okay.

5 Q And you can touch the screen and make marks as well so they
6 know what you're talking about, if you're talking about a certain residence,
7 et cetera.

8 A Okay. I responded down Walnut Avenue and I turned --

9 Q Where is Walnut?

10 A Walnut will be this major cross right here.

11 Q Can you touch the screen and make a mark?

12 A Walnut.

13 Q All right. So it's -- it's on the left side of the screen and it goes
14 from top to bottom?

15 A Yes, ma'am.

16 Q Okay.

17 A Top to bottom.

18 I approached Spruce Fern and I turned eastbound towards
19 Spruce Fern. And then I turned left -- I turned -- I turned westbound onto
20 Pistachio Nut, and I approached the target address of 3999 Pistachio Nut.

21 Q All right. Now, I'm going to show you State's Exhibit Number 2,
22 is that just a little bit closer-up view then we saw in State's Exhibit 1?

23 A Yes, it is.

24 Q And then, lastly, State's Exhibit Number 3, is this more zoomed
25 in from what we saw in 2, showing specifically Spruce Fern and Pistachio

1 Nut?

2 A Yes, ma'am, it is.

3 Q Okay. Now, where -- is 3999 Pistachio Nut actually marked on
4 this map?

5 A Yes, it is.

6 Q Okay. If you could circle that for the jury, please.

7 A [Witness complies.]

8 Q All right. So when you came from Spruce Fern you approached
9 Pistachio Nut from -- coming from the west?

10 A Yes, ma'am. I turned left on this Pistachio Nut.

11 Q And you said you were only 30 seconds away?

12 A Approximately, yes.

13 Q So you were in the adjacent neighborhood or the same
14 neighborhood?

15 A I was in the adjacent neighborhood on a loud music call.

16 Q All right. So were you the first officer to arrive on Pistachio Nut
17 at this scene?

18 A I was the first officer to arrive, yes.

19 Q Now, when you arrived, did you have a body cam capability?

20 A I did have a body cam; yes, ma'am.

21 Q So, I'm sorry, so you said you had a body cam, was it activated
22 when you pulled up on this street?

23 A Yes, ma'am, that camera was activated.

24 MS. DIGIACOMO: All right. Your Honor, may I approach?

25 THE COURT: Yes.

1 BY MS. DIGIACOMO:

2 Q All right. I'm going to show you what's been marked for
3 identification as State's Proposed Exhibits 6 and 7. Can you look at those
4 and tell me if you recognize what's depicted in those photographs?

5 A These would be images from my body camera of the crime
6 scene.

7 Q Okay. Did you review your camera before coming to court to
8 testify today?

9 A I did review my body camera, yes.

10 Q All right. And so State's Exhibits 6 and 7 fairly and accurately
11 depict the way that the body camera captured an image right as you
12 pulled up to the scene?

13 A Yes, ma'am.

14 MS. DIGIACOMO: Your Honor, I'd move for the admission of
15 State's 6 and 7.

16 MR. LONG: No objection.

17 THE COURT: Be admitted.

18 **[STATE'S EXHIBITS 6 AND 7 ADMITTED]**

19 BY MS. DIGIACOMO:

20 Q All right. So, now, showing you State's Exhibit Number 6, if you
21 can explain to the jury what we're looking at? Where are you? Are you in
22 your car as this -- as you pull up and this is the scene you see?

23 A No, ma'am. I'm outside of my car. I had just exited the vehicle.
24 I was approaching the suspects that are -- the subjects that are directly in
25 front of me.

1 Q Okay. So, I know it's hard to see, but how many people are in
2 front of you?

3 A Right now I see a total of four.

4 Q Okay. Can you see, I guess, there's an image here that's kind
5 of dark, can you tell if that's a person there?

6 A Yes, ma'am, that's a person.

7 Q Okay. And who else are you pointing to?

8 A There's going to a gentleman in red shorts, a gentleman in red
9 shoes, and then a gentleman to my right in blue shorts.

10 Q All right. And what about this person here on the ground?

11 A That would be the deceased person.

12 Q And that is how you came upon him the way he looked?

13 A Yes, ma'am, exactly.

14 Q All right. And showing you State's Exhibit 7, is this just a
15 close-up of the -- what we saw in State's Exhibit 6 of the decedent?

16 A Yes, ma'am, that's a close-up.

17 Q All right. So you're the first to arrive, there's several people
18 standing around, was anyone near the body when you pulled up?

19 A There was a gentleman, the gentleman in the blue shorts,
20 heavysset individual, he was -- he was standing over the body. And, I
21 believe, one more person was over the body, but had walked over to the
22 left, and was in that group of people to my -- when I exited the vehicle,
23 that was directly in front of my body camera.

24 Q Okay. So it's fair to say nobody was down on the ground
25 touching the body?

1 A I didn't observe anybody touching the body.

2 Q So when you arrive and you see this, what is the first thing that
3 you're trying to do?

4 A Quickly assess what had happened, is there witnesses and
5 suspects present at that location, what had happened, are we looking for
6 an active suspect that may have left the area or is still in the area, trying to
7 gain descriptions of possible suspect, and just the basically the synopsis
8 of quickly what happened so I can broadcast that information out on the
9 radio.

10 Q All right. So you're just trying to get quick snippets so that you
11 can broadcast it?

12 A Yes, ma'am.

13 Q All right. So when you saw the decedent on the ground, did you
14 see any blood around them?

15 A I did see blood; yes, ma'am.

16 Q Okay. How much?

17 A There was quite --

18 Q Like a lot of blood?

19 A -- there was quite a bit on the roadway.

20 Q All right. So before you even knew how this person was injured,
21 did you put over the radio what you thought had happened?

22 A I did put out over the radio that it appeared to have a gunshot
23 wound to the chest.

24 Q And when you got out of your car and you saw the decedent on
25 the ground, you called them the deceased, what did you notice about him

1 that lead you to believe he was not living?

2 A It was readily identifiable that the victim had deceased, that he
3 had died. He, not breathing, not moving, he was actually -- his eyes were
4 still open directly looking at me as if he had passed away.

5 Q Okay. So you're trying to quickly get information, what do you
6 do first? Who do you talk to first?

7 A I talk to an individual, the one that was wearing the red shoes,
8 he was coming forth. He was the first one speaking, once I exited the
9 vehicle. I believe his name was Davis.

10 Q Okay. And what did you learn, just quickly, that you broadcast
11 over the radio?

12 A That there was an altercation, that the deceased had actually
13 been stabbed.

14 Q Okay.

15 A And.

16 Q Did Davis tell, I guess, point out anyone who had done it or
17 point to a location?

18 A He was unable to give a name, but he pointed to the house that
19 the individual ran to.

20 Q All right. So he told you the guy who stabbed him went in that
21 house?

22 A Correct, yes.

23 Q And did you go over to that house to try to get an address?

24 A I did. I did go over to the front of the house to obtain the correct
25 address so I could dispatch that information out.

1 Q All right. Did you put that information over the radio?

2 A I did, yes.

3 Q What was the information that you put out?

4 A I gave -- I asked responding units to the scene to setup a
5 perimeter around the house at 3999 Pistachio Nut. And that the --

6 Q Okay. Go ahead.

7 A -- and that the possible suspect had ran into that house based
8 on witness statements.

9 Q Okay. So at this point you think there's possibly a suspect still
10 inside that residence?

11 A At the time I'm there calling out that information; yes, ma'am.

12 Q Okay. From the time you arrived, until you eventually move
13 away from that house, did you ever see anyone come out of
14 3999 Pistachio Nut?

15 A Repeat the question again one more time.

16 Q All right. From when you first arrived and you walked over and
17 got the address of that residence, did you ever see anyone come out of
18 3999 Pistachio Nut?

19 A No, ma'am.

20 Q So how quickly are other officers arriving?

21 A It was fairly quickly, probably 20 -- or 2 minutes, 90 minutes --
22 or 90 seconds to 2 minutes.

23 Q And so who takes charge of the scene, is it you since you're the
24 first arriving, or what happens?

25 A At that point I'm still gaining information. I'm directing officers to

1 setup the perimeter. So at that time I'm in charge of the scene until my
2 supervisor shows up on scene and he assumes the command of the
3 scene.

4 Q And who was that?

5 A That would be Sergeant Bland.

6 Q Okay. So when he arrives and assumes command, what do
7 you end up doing?

8 A I -- since I made original contact with Davis and I had learned
9 preliminary information, I stayed with Davis for the entire time I was on
10 scene.

11 Q All right. And are you trying to get any information from
12 Mr. Davis while you're there?

13 A I'm trying to get a little bit more detail information. He's opened
14 up about his conversation, he's talking about why he was there, and a little
15 bit more information about what had occurred.

16 Q Okay. Did you learn the name of possibly another witness from
17 Mr. Davis?

18 A I did, yes.

19 Q And who was that person?

20 A He stated that it was his girlfriend or and that the girlfriend was
21 the mother of their child.

22 Q And was she still at the scene when you arrive?

23 A She was not, no.

24 Q Were you asking Davis for information to be able to contact her
25 to come back to the scene?

1 A I was, yes.

2 Q Okay. Was he able to give you a phone number for her?

3 A Yes, he was.

4 Q Okay. Was there any issue with his cell phone when he was
5 trying to do that?

6 A Yes. His phone -- his phone said it was, it needed to be
7 charged and it was going dead.

8 Q All right. And so what happened then?

9 A He attempted to charge his phone inside of the vehicle that he
10 had arrived at the residence in.

11 Q Okay. What was that vehicle?

12 A It was a white car. I can't remember the make.

13 Q Is it shown in State's Exhibit Number 6?

14 A Yes, it is. And that's the vehicle that he attempted to charge his
15 phone in.

16 Q The white one on the left side of the photograph?

17 A Yes, ma'am.

18 Q Now, when you got there, when this call came out, was it
19 already dark outside?

20 A It was dark, yes.

21 Q And streetlights are on?

22 A Yes.

23 Q Cars all using their headlights?

24 A Yes, ma'am.

25 Q All right. Did you actually have to use your headlights to drive

1 over there?

2 A Yes, sir.

3 Q Was Mr. Davis eventually able to give you Brittney's phone
4 number from his phone?

5 A Yes, he was.

6 Q Okay. As you're talking to him, and you said more officers
7 arriving, do paramedics or fire arrive?

8 A Yes, ma'am.

9 Q What did they end up doing? Did they take the body?

10 A They did not take the body, they left the body on scene, and
11 saying the body had deceased.

12 Q Is the body covered?

13 A When they leave the area the body is covered, yes.

14 Q At some point does somebody call out Homicide?

15 A Yes, Homicide is notified.

16 Q All right. Do they eventually arrive?

17 A They do arrive; yes, ma'am.

18 Q Do patrol detectives arrive first or does Homicide arrive first?

19 A Patrol detectives were on scene first.

20 Q Okay. Eventually, the crime scene is it widened or the crime
21 scene tape pushed back?

22 A It is pushed back; yes, ma'am,

23 Q And is Davis moved farther down the street from where the
24 white car is?

25 A He is moved down further; yes, ma'am, towards Spruce Fern.

1 Q All right. So I'm going to show you State's Exhibit Number 3, if
2 you could just show us on here approximately -- do you know, I guess, on
3 here, approximately where your car would have been in the street?

4 A My car would be originally --

5 Q Let me zoom in; okay. Go ahead.

6 A Approximately at this area right here, I'm sorry, in the middle of
7 the street -- just prior to 3999 Pistachio Nut.

8 Q Okay. And then when Davis is moved away from the scene,
9 which way does he go?

10 A We moved Davis over to Spruce Fern and placed him in front of
11 a vehicle located right here, in this area.

12 Q Okay. So close to the intersection of Spruce Fern and Pistachio
13 Nut?

14 A Correct; right on the corner.

15 Q All right. Do you actually talk to Brittney on the phone?

16 A I did, yes.

17 Q Okay. And what did you -- did you ask her to come back to the
18 scene?

19 A I did, yes.

20 Q Did you -- do you know if she did come back to the scene?

21 A She did eventually come back; yes, ma'am.

22 Q Did you ever speak to her or did other detectives speak to her?

23 A Other detectives and officers; yes, ma'am.

24 Q Okay. So do you stay with Mr. Davis down at the end of
25 Pistachio Nut until Homicide detectives arrive?

1 A Yes, ma'am.

2 Q All right. Did other people start to arrive?

3 A Yes, ma'am; the deceased family started to arrive on scene.

4 Q All right. Where -- when you say, they arrived on scene, where
5 were they? And I'll show you State's Exhibit Number 3 again.

6 A They were on Spruce Fern and we had tape right here and they
7 were in front of the tape at Spruce Fern.

8 Q So you had tape going across from Pistachio Nut, across
9 Spruce Fern, so nobody could drive down Spruce Fern?

10 A Yes, ma'am.

11 Q And so how far away is Davis from the family when they start to
12 arrive?

13 A When they start to arrive, probably 25, 25 yards or so.

14 Q Okay. Is there any communication going on between the family
15 and Mr. Davis?

16 A Yes. Davis was yelling back at the family, they were in a
17 conversation.

18 MR. LONG: I'm going to object, hearsay.

19 MS. DIGIACOMO: I'm not asking what.

20 THE COURT: He didn't say what was said. I'll overrule the
21 objection.

22 MS. DIGIACOMO: Thank you.

23 THE COURT: Caution the witness not to say what was said.

24 MS. DIGIACOMO: Thank you.

25

1 BY MS. DIGIACOMO:

2 Q All right. So there's a conversation, yelling going back and
3 forth?

4 A Yes, ma'am.

5 Q Okay. What happens next, with the family?

6 A The family is just asking Davis is --

7 Q Well, don't tell me what they're asking, but what does the family
8 do?

9 A Okay. The family, they break the perimeter and they run
10 towards the body. I engage, I believe whom at the time was the mother
11 and a son. As I was attempting to stop them from moving to the body, the
12 twin brother passed all officers and went towards the deceased.

13 Q All right. So the twin brother of the decedent?

14 A Yes, ma'am.

15 Q All right. So no one was able to stop the brother who ran
16 through the scene?

17 A No, ma'am; no one was able to stop him.

18 Q Okay. So what happens, what do you do?

19 A He got to his brother, he grabbed the brother, and tightened,
20 like a bear hold, type of hold, officers ran over and immediately tried to
21 disengage the twin brother from his deceased brother.

22 Q What happened when officers tried to get the twin brother off of
23 the decedent?

24 A He was locked in a very strong bear hold. As we were pulling
25 him off the deceased, the brother was actually dragging the deceased

1 brother along with officers from the original location.

2 Q What happened to who you originally contacted, who you
3 believed was the mom and the other brother, did they come to the --
4 where the body was as well?

5 A They -- they never made it over to the body; no, ma'am.

6 Q Okay. Other officers stopped them?

7 A Yes, ma'am.

8 Q Okay. So how long does it take to get the brother off of the
9 decedent?

10 A It would be an approximately, probably 35 to 45 seconds.

11 Q All right. And you said that the body was dragged --

12 A Yes.

13 Q -- as officers were trying to get the brother off of him?

14 A Yes, ma'am.

15 Q How far did the body get dragged from where it originally was?

16 A Probably 10 to 12 feet. Maybe further.

17 Q All right. So when the brother's taken away and you step back
18 away from the scene, how is the body in relation to where it had originally
19 been covered by medical? Is it still covered with a sheet?

20 A No, ma'am; the sheet had -- the sheet had come off during the
21 incident and the body was back -- back on the ground.

22 Q Okay. Did anyone touch the body after it was moved?

23 A No, ma'am.

24 Q Everyone that had run into the scene, what happened with
25 them? Were they placed in handcuffs? Were they -- what happened?

1 A They were placed in handcuffs and they were detained.

2 Q After this happened, did you eventually take part in a briefing
3 with Homicide?

4 A I did, yes.

5 MS. DIGIACOMO: Nothing further.

6 **CROSS-EXAMINATION**

7 BY MR. LONG:

8 Q Officer Smith, when you arrived on the scene, you did not
9 search the body or even pat it down to see if there was a weapon in there,
10 did you?

11 A No, sir; I did not.

12 Q And when you went up to the doorway of 3999 Pistachio Nut,
13 you didn't secure the body; correct?

14 A I never made it to the doorway of the home; no, sir. I was in
15 close proximity of the body looking at the address.

16 Q But there were four people around the body; correct?

17 A Not at the time that I went to check the address. They were
18 over by the white car.

19 Q Okay. And you don't really have any idea who touched that
20 body before you got there; correct?

21 A Prior to me arriving, I have no idea who touched the body.

22 Q And you don't know who touched the body while you were
23 looking for an address?

24 A No one touched the body while I was looking for the address.

25 Q Okay. And isn't it true that as the decedent's brother was

1 dragging him and the police were dragging the decedent's brother, that
2 the decedent's head was actually scraping the asphalt?

3 A That's a possibility. There was seven officers trying to pull him
4 off the body.

5 Q Okay. And beyond holding Kyriell, until detectives, you didn't do
6 any other active investigation at this scene; correct?

7 A I'm sorry, repeat your question again.

8 Q Besides keeping custody of Kyriell Davis and what we've talked
9 about, you didn't do any other investigation; correct?

10 A No, sir.

11 Q You didn't do any interviews?

12 A No interviews.

13 MR. LONG: Okay. I don't have anything further.

14 **REDIRECT EXAMINATION**

15 BY MS. DIGIACOMO:

16 Q Sir, you said -- okay. So when you first arrive the decedent is
17 laying with his stomach down on the ground looking to his left; correct?

18 A Yes, ma'am.

19 Q So the right side of his face is down on the ground?

20 A Yes, ma'am.

21 Q Okay. Can you see the right side of his face?

22 A No, ma'am; it's on the pavement.

23 Q Okay. When the brother runs into the crime scene and gets to
24 the body, can you describe how the brother is holding him and what
25 position the brother is in with the body?

1 A Yes, ma'am; he's -- he lunges towards the body, he lands on
2 top of the back of the deceased brother, he quickly rolls his body over and
3 grabs the brother in a bear hug with his hands around the brother's front
4 of his stomach and chest, and the deceased brother's laying on top of the
5 twin brother's chest.

6 Q Would the decedent's back be to the twin brother or his
7 stomach?

8 A His stomach. The twin -- the deceased was laying on top of the
9 twin brother.

10 Q Okay. And the twin brother's holding him, is the twin brother
11 sitting up or laying down?

12 A He rolls and he's attempting to sit up as we're grabbing hold of
13 him.

14 Q Okay. So as the twin is sitting up, the -- he still has the, like,
15 bear hug around his brother in front of his chest?

16 A Yes, ma'am.

17 Q All right. Does he stay in that position as you're trying to get
18 him off of the body?

19 A Yes, ma'am. Because we're trying to pull him off and that's
20 when the body is actually being drug. When we're grabbing hold of the
21 twin brother, and we're pulling the twin brother, he's actually, with his
22 grip -- as we're pulling the twin brother, he's -- the twin brother is pulling
23 the deceased along with him.

24 Q How many officers did it take to try and get the twin brother off
25 of the decedent?

1 MR. LONG: Objection, relevance.

2 THE COURT: Overruled.

3 THE WITNESS: Go ahead?

4 BY MS. DIGIACOMO:

5 Q Yes. Go ahead, please.

6 A Without having to review body camera, it was -- it was quite a
7 bit. It was probably five to six, seven officers

8 MS. DIGIACOMO: Nothing further.

9 MR. LONG: I don't have anything further.

10 THE COURT: Does the jury have any questions of this
11 witness? Seeing no hands.

12 Officer, you're free to go.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: Thank you.

15 Call your next witness.

16 MS. DIGIACOMO: Thank you.

17 The State calls Charles Hearrell.

18 **CHARLES HEARRELL**

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

21 THE CLERK: Please be seated, state and spell your name for
22 the record.

23 THE WITNESS: Thank you.

24 My first name is Charles, C-h-a-r-l-e-s, and my last name is
25 Hearrell, H-e-a-r-r-e-l-l.

1 MS. DIGIACOMO: May I, Your Honor?

2 THE COURT: Yes.

3 MS. DIGIACOMO: Thank you.

4 **DIRECT EXAMINATION**

5 BY MS. DIGIACOMO:

6 Q Sir, how are you employed?

7 A I apologize, I'm [indicating]

8 Q How are you employed?

9 A I'm employed through the Las Vegas Metropolitan Police
10 Department, for 10 years, at Northeast Area Command as a field training
11 officer.

12 Q All right. So directing your attention to December of 2017, were
13 you so employed and working on December 11th at approximately 6:45 in
14 the evening?

15 A Yes, I was.

16 Q And were you a field training officer at that time?

17 A Yes, I was.

18 Q So were you working in a one-man car or a two-man car?

19 A It's a two-man car. As a field training officer, it's myself and
20 training officer that just got out of the academy.

21 Q And are you wearing a uniform such as you're wearing here
22 today?

23 A Yes.

24 Q And are you working in a marked patrol vehicle?

25 A Yes.

1 Q And on December 11th, 2017, who was your trainee?

2 A It was -- my trainer was Jackson.

3 Q All right. So did you hear a call go out about a male in the
4 street possibly shot?

5 A Yes, I did. It came out as an alert tone. Whenever there's a
6 really active event it comes out as an alert tone and it's one of those
7 events where most of the officers will show-up to when you're available.

8 Q All right. So did you -- where were you when you heard the
9 alert tone? Were you driving in your vehicle?

10 A Yes.

11 Q Were you driving it or was Officer Jackson driving?

12 A My trainee Officer Jackson was.

13 Q All right.

14 A I was in the passenger seat.

15 Q When the alert tone goes out, do you head towards
16 3999 Pistachio Nut?

17 A Yes, I do.

18 Q How long did it take you and your trainee to get there?

19 A From where we were, it was about a 10 minute drive roughly.

20 Q All right. So when you arrive and --

21 MS. DIGIACOMO: Court's indulgence.

22 BY MS. DIGIACOMO:

23 Q -- I'm going to show you State's Exhibit Number 3, an aerial
24 view of Pistachio Nut, do you recognize this?

25 A Yes, I do.

1 Q Okay. So if the top is north, the bottom is south, how did you
2 arrive on Pistachio Nut, from the west or from the east?

3 A I was coming in this direction, which would be west.

4 Q Okay. So show me, you can make a mark on there for the jury,
5 show which way you were coming?

6 A This way. There we go.

7 Q Okay. So you were going from the right side to the left side, so
8 you were heading east to west; correct?

9 A Correct.

10 Q All right. When you arrived, what did you do or where did you
11 go?

12 A When I arrived, there was the -- I was one of the last ones to
13 arrive at this area. And they had the streets and stuff all blocked off
14 already by the time I got there. So I kind of just tried to fill in where I could
15 to help out and assist where I was able to.

16 So I met up with one of my supervisors about -- maybe five or
17 six houses down from 3999 or so in the beginning.

18 Q Okay. And was that Sergeant Bland?

19 A Yes, it was.

20 Q All right. Now, what was Sergeant Bland doing at the scene?

21 A He -- when a -- during a scene, there's a lot of stuff that we just
22 don't know yet. So we start -- the first thing we start doing is containment.
23 So Sergeant Bland at this time is trying to get containment in areas so
24 someone can't get away or other people can't get in as well. So that's
25 what he's doing.

1 And I'm trying to fill in where I can. So I start putting up tape to
2 where people on the houses to the north, and stuff like that, can't come
3 out and walk around in our scene and things like that.

4 Q When you first arrive and -- so you're looking down, I guess,
5 you're looking west down Pistachio Nut, could you see the body at that
6 time when you first arrived?

7 A From a distance --

8 Q Okay.

9 A -- I was able to see it.

10 Q Could you see -- could you tell whether or not there was still,
11 like, an ambulance or fire department there?

12 A There was a fire truck. The fire truck was in the middle of the
13 road when I got there. And there was some concern, we had to get them
14 out because we weren't really sure exactly what was going on and, you
15 know, we have to think about their safety as well.

16 Q So was the fire truck right in front of the 3999 Pistachio Nut?

17 A Yes.

18 Q Okay. So does Sergeant Bland also form what's call an
19 Immediate Response Team?

20 A Yes.

21 Q All right. And so what -- what's going on with that? Please
22 explain that to the jury?

23 A It's, Immediate Response Team, sometimes people it
24 Immediate Action Team and stuff like that. What they do is we have to
25 plan for like any little thing that's about to happen. And so what we do is

1 we have people setup for lethal coverage, low lethal coverage, in case
2 someone comes out and they have a blunt object or something like that,
3 or we have to plan if someone comes out with, you know, guns or
4 grenades, because you never know. So we have to plan for each one.

5 We also have a person that's a designated talker. So there's
6 only one person that's giving commands so there's not confusion to where
7 one person is saying, hey, walk this way and then I'm in the background
8 saying, hey, walk this way. And then the person that we're talking to gets
9 confused.

10 So there's one person for commands, one person for hands on,
11 that has nothing, to where they just go and they grab the person and
12 hopefully just take them into custody without any incident.

13 And, like I said, you have the lethal coverage and low lethal
14 coverage, which could be sometimes a Taser, sometimes a beam bag
15 round, and stuff like that.

16 Q Okay. So was a team formed to try and get the residents out of
17 3999 Pistachio Nut?

18 A Yes.

19 Q Okay. At the time that you arrive, had anyone come out of
20 Pistachio Nut?

21 A No.

22 Q All right. So tell -- so what was your assignment on this
23 response team?

24 A I was -- on the response team I was lethal coverage. So I
25 ended up with a shotgun and I took a position behind a vehicle. I'm not

1 really sure exactly how many houses away. But I was sort of
2 catty-cornered across the street from the house, while the other guys
3 were by a patrol car who were giving commands.

4 Q All right. So once the team is setup, are commands directed
5 towards 3999 Pistachio Nut?

6 A Yes. When we do commands and ask people to come out of a
7 residence or a vehicle or anything like that, we use our PA system. Kind
8 of like the old school bullhorns that we used to use. But now it's a PA to
9 where you're inside of a vehicle and you cue up the mic and it goes
10 through the PA system.

11 Q Do you know approximately how long after you arrived that
12 somebody actually got on the PA and started addressing the residents of
13 3999 Pistachio Nut?

14 A It was about 30 minutes.

15 Q All right. So what happens? What's the announcement that is
16 made?

17 A Normally, it sort of depends on who is doing the PA'ing, but
18 what you do is you address the address. Because you don't want
19 confusion of -- you don't want to say the street and then you have
20 everyone coming out of the street. So you want to address the actual
21 specific address.

22 So you identify yourself as, this is Las Vegas Metropolitan
23 Police Department, residents inside, you know, 3999 Pistachio Nut
24 Avenue, please come out with your hands up, unarmed, things like that.

25 Q All right. How many times -- well, first of all, I guess, who was

1 the officer that was doing the announcements?

2 A It was one of our partners, Officer Propp.

3 Q All right. How many times did he make an announcement
4 before anyone came out of 3999 Pistachio Nut?

5 MR. LONG: I'm going to object as to relevance and for
6 hearsay.

7 THE COURT: Overruled.

8 BY MS. DIGIACOMO:

9 Q Go ahead, sir.

10 How many --

11 A It was announced about five times.

12 Q All right. How long does that take? Is it a few minutes or is it
13 ten minutes?

14 A It takes a few minutes.

15 Q All right. So after the announcement is made five times,
16 somebody comes out?

17 A Yes.

18 Q All right. And you can see this because you said that you're --
19 you have an eye to the door --

20 A Yes.

21 Q -- form where you are? Okay.

22 But you're not one of the ones that goes hands-on with the
23 person who comes out?

24 A No. I never made contact with anybody.

25 Q Okay. So you see one person come out, once they're taken

1 into, I guess, custody, for lack of a better word or taken away from the
2 house, does the bullhorn or the PA system start again?

3 A Yes, it continues.

4 Q All right. How many more times does Officer Propp do it before
5 somebody else comes out?

6 A About two times.

7 Q And does another person come out?

8 A Yes.

9 Q Okay. After that person comes out, does Officer Propp do the
10 PA system again?

11 A Yes. He does it a few more times. We always want to extra
12 bullhorn anything. Even if it's adamant that no one is inside the house or
13 no one is inside the car, we always continue a couple more times.

14 Q All right. Was information gained that there was only an older
15 lady and a small child left inside from the two people who came out?

16 A Yes.

17 Q All right. So, now, are you trying to get out the older lady and
18 the child or do you leave them in the residence?

19 A No, we -- based on the information that we had, that's someone
20 that we're not going to want to pull out. Especially if it's going to be a little
21 bit more difficult for someone. And even with a child, that's, you know, a
22 situation we don't want to put a child in to where they're coming out with
23 their hands up, of course.

24 So based on the information that we had, it was determined that
25 it was safe enough for us to go inside and leave them in there. And once

1 we go inside, we were just going to leave an officer with those -- the child
2 and the female.

3 Q All right. So what is the purpose now of going inside the
4 residence?

5 A It's called exited and circumstances. The reason why we went
6 in that residence is we, for one, we don't know if there's a suspect in
7 there, we don't know if there's a victim in there. And we had to check
8 those places because we don't want to just say, all right, we're good to go.
9 And then we leave and then someone's stabbed or hurt or shot and
10 they're bleeding out, we never made contact or find anyone inside that
11 place.

12 So that's why we end up going into houses and stuff like that,
13 just to see. And you never know sometimes there could be a possible
14 suspect in there that we could detain at that very moment.

15 Q All right. So when you're going in, you're just trying to make
16 sure there's nobody else inside the residence --

17 A Yes.

18 Q -- other than the older lady and the child you know of?

19 A Yes.

20 Q All right. So who goes inside the residence to clear it?

21 A Myself, my trainee Jackson, my sergeant, Sergeant Bland,
22 Officer Propp, another officer, Cole, and Cole's trainee, I believe his name
23 is Gillum.

24 Q All right. So when you go in and clear the residence, who stays
25 with the child and the older lady?

1 A It was Officer Propp.

2 Q And were they downstairs or --

3 A They were downstairs. Right when you -- right when you first
4 walked in, we saw the female inside, she was sitting there. And then the
5 kid was actually watching Sponge Bob.

6 Q Okay. So they're -- Propp stays with them, and then do the rest
7 of you go through and clear the residence?

8 A Yes.

9 Q And do you do it room by room?

10 A Room by room. You always want to check room by room. The
11 trick is, is you don't want to pass a door, just in case there's someone like
12 hiding in it and then they could get, you know, behind us. So every room,
13 every door you want to check. The rule of thumb is if you could hide a
14 basketball there, is where we check.

15 Q Okay. How long does it take to clear the residence?

16 A I would say about five minutes.

17 Q All right. And so do you know about how long the residence
18 was cleared and you exit after you arrived?

19 A The total I would say about 40 minutes, 45 minutes.

20 Q All right. When you go in the residence, did you ever go
21 upstairs?

22 A Yes, I did.

23 Q All right. So I'm going to show you State's Exhibit 95, is this one
24 of the bedrooms upstairs?

25 A Yes.

1 Q And 96, that's another view of that same bedroom?

2 A Yes.

3 Q Showing you State's Exhibit 99, is this another bedroom that's
4 upstairs?

5 A Yes.

6 Q I'll zoom out, sorry.

7 Okay. And 100, is that another view of that same bedroom that
8 we saw in 99?

9 A Yes.

10 Q And no one was found in either of these two bedrooms; correct?

11 A No.

12 Q No, there weren't people found in those bedrooms?

13 A No.

14 Q Okay. Showing you State's Exhibit 104, is this another
15 bedroom that's upstairs?

16 A Can you zoom out?

17 Q Oh, sorry.

18 A Yes.

19 Q No one was found in that bedroom?

20 A No.

21 Q And, lastly, showing you another bedroom, State's Exhibit 108,
22 was this the master?

23 A Yes.

24 Q No one was found in that bedroom?

25 A No.

1 Q So it's fair to say that there was no suspect found inside?

2 A No.

3 Q Okay. Did you later hear some commotion over the radio
4 regarding somebody coming through the police line?

5 A Yes, I did.

6 Q What happened with that, did you see anything?

7 A I was on the opposite side of where that section was, the police
8 line. And I was -- I was doing some paperwork, helping out where I could,
9 again.

10 And on the radio all you hear is, stop that person, stop that
11 subject, or something like that. Basically, stop them. And it just, like, you
12 just heard all this yelling and stuff like that.

13 So a whole bunch of the detectives that I was with, and myself,
14 they all go running down. And that's when they find a -- I believe it a
15 family member on top of the deceased.

16 Q All right. Were there officers trying to get him off?

17 A Yeah, yeah, there was.

18 Q Okay. Did they eventually do it?

19 A They did.

20 Q Did the body get moved from where it originally was?

21 A Yeah, unfortunately -- I -- I've been on ten years, I've never
22 seen anything like that before. And the body got --

23 MR. LONG: I'm going to object, non-responsive.

24 THE COURT: Overruled.

25

1 BY MS. DIGIACOMO:

2 Q Go ahead.

3 A The body got dragged, like, I don't know, 15 feet or so, maybe
4 even more.

5 Q All right. Now, when you -- let's go back, when you first come
6 out of the residence of 3999 Pistachio Nut after clearing it and you walk
7 out to the street, could you see the body from that vantage point?

8 A Yes.

9 Q All right. I'm going to show you --

10 MS. DIGIACOMO: Well, if I may approach, Your Honor?

11 THE COURT: Yes.

12 BY MS. DIGIACOMO:

13 Q -- I'm going to show you what's been marked as State's
14 Proposed Exhibit Number 8, do you recognize what's depicted in that
15 photograph?

16 A Yes. This is the police car here, there's the tape across, and
17 there's the deceased right here --

18 Q All right.

19 A -- that's covered up.

20 Q Does that appear to be from body cam --

21 A Yes.

22 Q -- from -- that you were wearing that night?

23 A Yeah.

24 MS. DIGIACOMO: Your Honor, I'd move for admission of
25 State's Proposed Exhibit Number 8.

1 MR. LONG: No objection.

2 THE COURT: It'll be admitted.

3 [STATE'S EXHIBIT NUMBER 8 ADMITTED]

4 MS. DIGIACOMO: Permission to publish?

5 THE COURT: You can publish.

6 MS. DIGIACOMO: Thank you.

7 BY MS. DIGIACOMO:

8 Q All right. Now, I'm going to put this up on the overhead, so if
9 you could just explain to the jury what we're looking at here?

10 A Well, right here -- can I touch the screen or?

11 Q Yes. You can touch the screen and circle it.

12 A Right here is the -- sorry.

13 Q Do I need to move it down?

14 A Over here is the police car and this is going to be the tape that's
15 across. Basically it's going to be the barrier to where no one can cross
16 that. But we have several barriers up. Sometimes you'll have your inner
17 perimeter and then you'll have your outer perimeter. And right here is
18 going to be our victim or deceased right here, that's going to be covered
19 up. Because a lot of times the fire department will take a blanket and
20 cover it up so people can't see and stuff like that.

21 Q Okay. So this is the way it looked before somebody came into
22 the scene and moved the body?

23 A Yes.

24 MS. DIGIACOMO: I have nothing further.

25

1 **CROSS-EXAMINATION**

2 BY MR. LONG:

3 Q Officer, this response team that you mentioned, it wasn't formed
4 just to get people out of 3999 Pistachio Nut; correct?

5 A Well, that's the main purpose of it.

6 Q Okay. And -- but you also testified that it was formed to collect
7 information from the entire scene; correct?

8 A The Immediate Action Team?

9 Q Yes.

10 A No.

11 Q Okay. And no one who exited 3999 gave you any trouble
12 whatsoever, did they?

13 A No.

14 Q No one brought out a weapon?

15 A No.

16 Q No one yelled?

17 A No.

18 Q No one told you to go away, leave them alone?

19 A No.

20 Q And when you entered the residence, the child was, I mean, a
21 child, like approximately three years old; correct?

22 A Yes.

23 Q Okay. And the female that was in there was crippled; correct?

24 A I believe so. I mean, she couldn't get out so.

25 Q Okay. There was a walker there?

1 A I think so, yeah.

2 Q Okay. She had ALS?

3 A Okay.

4 Q No, I mean, isn't it true that she had ALS?

5 A I don't know.

6 MS. DIGIACOMO: Objection.

7 THE COURT: Sustained.

8 MR. LONG: Okay.

9 BY MR. LONG:

10 Q And you didn't do any investigation as far as any interviews or --

11 A No.

12 Q -- collect any evidence; correct?

13 A No, I did not.

14 Q Okay. And everyone was cooperative?

15 A Yes.

16 MR. LONG: Nothing further.

17 MS. DIGIACOMO: Nothing.

18 THE COURT: Jury have any questions of this officer? Seeing
19 no hands. You're free to go.

20 Thank you.

21 THE WITNESS: Thank you, Judge.

22 THE COURT: Call your next witness, State.

23 MS. DIGIACOMO: Thank you.

24 The State calls Andrew Frechette.

25 THE COURT: Jury okay, do they need a break? No one needs

1 a break.

2 MS. DIGIACOMO: Court's indulgence.

3 **ANDREW FRECHETTE**

4 [Having been called as a witness and being first duly sworn, testified as
5 follows:]

6 THE CLERK: Please be seated, state and spell your name for
7 the record.

8 THE WITNESS: My name is Andrew Frechette. A-n-d-r-e-w,
9 last name, F-r-e-c-h-e-t-t-e.

10 THE COURT: Go ahead.

11 MS. DIGIACOMO: Thank you.

12 **DIRECT EXAMINATION**

13 BY MS. DIGIACOMO:

14 Q Sir, how are you employed?

15 A I'm sorry?

16 Q How are you employed?

17 A I'm employed with Las Vegas Metro Police as a police officer.

18 Q And how long have you been so employed?

19 A Four years.

20 Q Prior to working for Metro, did you have any other prior law
21 enforcement experience?

22 A No.

23 Q What did you do before?

24 A Before I was an EMT with MedicWest Ambulance.

25 Q And what's an EMT?

1 A Emergency medical technician.

2 Q All right. On December 11th, 2017, were you so employed and
3 working at about 6:45 p.m.?

4 A I was.

5 Q And at some point did you go to Pistachio Nut?

6 A I did.

7 Q What was the purpose of going there?

8 A We received a phone call that somebody was potentially
9 stabbed or shot. Initially the call came out as a shooting. As I -- we went
10 en route for that initially.

11 Q All right. Is it fair to say, everyone went en route that was
12 working in that area command?

13 A Yes.

14 Q At the time you went en route, was it dark outside?

15 A It was.

16 Q All right. When you got to the Pistachio Nut address, where did
17 you pull your car?

18 A I drove my car -- I was just west of where the body was located.
19 So I would have to -- I was -- I think I drove off Walnut and made a
20 eastbound turn onto the road --

21 Q All right.

22 A -- that connects to Pistachio Nut. I'm not familiar with the --
23 what road it's off of.

24 Q Okay. So I'm going to show you State's Exhibit Number 2, let
25 me zoom in, okay, do you see Pistachio Nut on there?

1 A Yep.

2 Q Okay. And so Spruce Fern is that the street you're talking
3 about?

4 A Yes.

5 Q Okay. So when you came you would have made a left onto
6 Pistachio Nut?

7 A Correct.

8 Q Did you park your car there or where did you do?

9 A I parked my car, if you look on the map where the avenue is, I
10 parked my car roughly right there, on the south side of the street facing
11 east.

12 Q So where it says, Pistachio Nut Ave, that's where you parked
13 your car about?

14 A Correct.

15 Q Okay. What was the scene, what was going on when you
16 arrived?

17 A When I arrived the fire department was already there and
18 MedicWest Ambulance was pulling up as I was. As I walked toward the
19 scene, another officer on scene was walking to tape off the area.

20 I asked him, is somebody down? He said, yes, over in front of
21 the car, which -- which one of cars was parked on the street. When I
22 walked up there I saw a body on the ground. He was on his back, in a
23 pool of blood.

24 Q Okay. And you said, medical was there?

25 A Correct.

1 Q All right. So did you see whether or not medical had rolled the
2 body over?

3 A I did not. But medical informed me they did.

4 Q Okay. So you didn't see it?

5 A Correct.

6 Q All right. Did you see medical try and check the decedent or the
7 victim for injury?

8 A Yes.

9 Q Okay. And where did they check?

10 A They rolled him over and they just checked the body. Initially,
11 when I was there, what I saw, they were just looking over the body. They
12 informed me that they've checked for vital signs to make sure he was
13 alive, they said he had injuries incompatible of life, and therefore didn't do
14 any further because they didn't want to destroy the crime scene.

15 Q Okay. So what did they do?

16 A They were just standing above the body, they had lifted the shirt
17 up just to inspect the injuries and to tell us what he had.

18 Q Did you see any injuries?

19 A I did.

20 Q Okay. What did you see?

21 A I saw a big hole to the left side of his chest just above his heart.
22 I saw a small hole in his neck and then there was a third hole, it was kind
23 of center of his chest, just in between the two.

24 Q Okay. And when you say, hole, that's where there was blood
25 on him?

1 A Yes.

2 Q Okay. You didn't physically check him yourself?

3 A Correct; I did not.

4 Q Okay. But he was deceased?

5 A Yes.

6 Q Did they cover the sheet with the body -- I mean, the body with
7 a sheet, excuse me?

8 A Yes, they did. They brought a sterile sheet from a sterile
9 package.

10 Q All right. Now, when you said that when you first got there,
11 there was another officer who was putting up crime scene tape, do you
12 know what officer that was?

13 A Officer Bridges.

14 Q After medical was there and you saw injuries, did you tell
15 anyone, I guess, what you had seen?

16 A Just the officers who were primarily part of the investigation,
17 taking in the information.

18 Q Okay. Did you -- what did you do after you arrived and saw
19 medical with the body?

20 A After I arrived, saw medical with the body, I tried to see if there
21 was any witnesses in the area. There was two people that I talked to.
22 One said that he didn't see anything and then the resident of -- I don't
23 recall the address, but one of the residents, the female was outside, she
24 said she only heard a fight. After that, I had another officer get her started
25 on a written statement and I stood by -- by the body.

1 Q Okay. And did the -- how long did you stand by the body?

2 A I'm not sure of the precise time.

3 Q For a while?

4 A For a while, yes.

5 Q Okay. Did you take part in clearing the residence of 3999
6 Pistachio Nut?

7 A I didn't actually clear the residence, but I was at the front door
8 when everyone else went inside to clear.

9 Q All right. After the house was cleared, did you go back to where
10 the body was?

11 A Yes.

12 Q At some point do you leave where the body is and then hear
13 some commotion?

14 A I do.

15 Q All right. Where are you when you hear that commotion?

16 A The female who was the witness, I utilized her restroom.

17 Q So you were inside the witness's house?

18 A Yes.

19 Q And then did you hear something over the radio?

20 A I did.

21 Q All right. When you got outside, what did you see?

22 A I saw that the body had been moved, he was now laying
23 facedown, kind of on his side in weird position. He was dragged east from
24 where he was. I assume he was dragged at the time when I walked out.
25 There was a male being taken into custody by several officers who were

1 also covered in blood, along with the Homicide detective that was there.

2 Q The person that was being taken into custody, did you see
3 where they went?

4 A They went back west where all the patrol cars were and taken
5 into custody. He was placed in the back of a police car.

6 Q Was anyone else placed in handcuffs?

7 A Yes. The mother of the decedent and one of -- I'm not sure.
8 Maybe one more but I'm not 100 percent sure.

9 Q Okay. And where was she placed?

10 A She was placed in the back of my patrol car.

11 Q Okay. Was they cuffed?

12 A Yes.

13 Q And what did you do?

14 A I just --

15 Q Did you stay with her?

16 A I just stayed with her.

17 Q Until Homicide spoke to her?

18 A Correct.

19 Q Okay. How many different officers would you say had arrived at
20 the scene?

21 A I couldn't even tell you an exact number, but there was a lot,
22 there was a lot of units on that call.

23 MS. DIGIACOMO: Nothing further.

24

25

1 **CROSS-EXAMINATION**

2 BY MR. LONG:

3 Q Officer Frechette, you didn't see the body being dragged, you
4 just saw it afterwards; correct?

5 A Yes.

6 Q Okay. And while the decedent's -- who you believed to be the
7 decedent's mother -- was in your car, you didn't ask her any questions?

8 A Correct.

9 MR. LONG: Okay. I don't have any questions for this witness.

10 MS. DIGIACOMO: No, Your Honor.

11 THE COURT: Jury have any questions of this officer? Thank
12 you, Officer, you're free to go.

13 THE WITNESS: Thank you.

14 THE COURT: Do you have another witness?

15 MS. DIGIACOMO: I do have one but we need the Spanish
16 interpreter.

17 THE MARSHAL: And they've been called, they just haven't
18 arrived yet.

19 MS. DIGIACOMO: She should be short if --

20 THE MARSHAL: I called as soon as I was notified.

21 MS. DIGIACOMO: Yes, yes. I -- when I checked, before this
22 witness, I saw she was out there and asked.

23 MR. LONG: She's probably out there now.

24 THE COURT: Tom, give me -- give me the -- never mind, Tom,
25 you do what you want to do.

1 THE MARSHAL: Not here yet.

2 THE COURT: Come up here and give me the extension.

3 [Brief pause in proceeding]

4 MR. LONG: Do you want me to see if any of the interpreters I
5 use are in the courthouse?

6 THE COURT: No, we have to wait until they -- they told me two
7 minutes.

8 [Brief pause in proceeding]

9 THE MARSHAL: Judge, the interpreter is here.

10 THE COURT: Okay. Get your witness in, please.

11 **ISIDRA CAROLINA ARAIZA FLORES**

12 [Having been called as a witness and being first duly sworn, testified
13 through the Spanish interpreter, Magdalena Becerra, as follows:]

14 THE CLERK: Please be seated, state and spell your name for
15 the record.

16 THE WITNESS: [In English] My name is Isidra Carolina Araiza
17 Flores. I-s-i-d-r-a, Isidra; C-a-r-o-l-i-n-a, Carolina; A-r-i-i-z-a, Ariiza;
18 (phonetic), F-l-o-r-e-s, Flores.

19 MS. BLUTH: May I proceed, Your Honor?

20 THE COURT: No, I need the interpreter to interpret what she
21 just said.

22 THE INTERPRETER: Okay.

23 THE COURT: Please.

24 THE WITNESS: My name is Isidra Carolina Araiza Flores.

25 THE COURT: And the spelling.

1 THE WITNESS: [In English] E-s-e-d --
2 [Colloquy between the Witness and the Court Interpreter]
3 THE COURT: Just spell it.
4 THE WITNESS: [In English] Yeah. E-s-e --
5 MS. BLUTH: In Spanish.
6 THE WITNESS: [In English] It's E. In Spanish it's E. I in
7 Spanish is E.
8 MS. BLUTH: Okay.
9 [Colloquy between the Witness and the Court Interpreter]
10 THE COURT: You can spell it in English, spell it in English.
11 THE WITNESS: [In English] I-s-i-d-r-a, Isidra;
12 C-a-r-o-l-i-n-a, Carolina; I-r-i -- no, it's incorrect. I-r --
13 [Colloquy between the Witness and the Court Interpreter]
14 THE WITNESS: [In English] A-r-a-i-z-a, Araiza;
15 F-l-o-r-e-s, Flores.
16 THE COURT: Go ahead.

17 **DIRECT EXAMINATION**

18 BY MS. BLUTH:

19 Q Ms. Flores -- should I call -- is it Ms. Flores or Ms. Araiza?

20 A [In English] Araiza.

21 Q Okay. Do you feel more comfortable speaking in English or
22 Spanish?

23 A Spanish.

24 Q Okay. So I'm going to ask questions and then the interpreter is
25 going to interpret. When you answer back, if you could please do so in

1 Spanish, and then she will interpret for you. And then one other thing is,
2 when you answer, just please make sure to answer out loud because
3 someone is going to be typing out everything that you and I say. And
4 when you nod your head, yes or no, they can't type it down.

5 Okay. So I would like to turn your attention to an event that
6 happened where you were a witness and talked to the police, during that
7 time period where were you living?

8 A I'm a neighbor of -- my address?

9 MS. BLUTH: Sorry, Interpreter, can you repeat, please.

10 THE INTERPRETER: I am a neighbor of -- my address?

11 MS. BLUTH: Okay.

12 BY MS. BLUTH:

13 Q And what is your address?

14 A 3981 Pistachio Nut Avenue.

15 Q Okay. And I know this sounds like a silly question, but if I
16 showed you a map of your neighborhood, would you be able to point out
17 your house?

18 A Yes.

19 Q Okay. This is State's Exhibit 3, now you'll look and you'll see on
20 the map there is an address here with a green flag, that state's 3999
21 Pistachio Nut Avenue --

22 MS. BLUTH: Go ahead.

23 BY MS. BLUTH:

24 Q -- can you please point to where your house is located?

25 A This is my house.

1 Q Okay. So your house is located in between that dirt field and
2 3999 Pistachio Nut?

3 A That dirt land is also my house.

4 Q Okay. But, I guess, what I'm saying is this is your home right
5 here where my finger is; right?

6 A Yes.

7 Q Okay. Thank you?

8 So turning your attention now to December of 2017, you were
9 living in that residence; correct?

10 A Yes.

11 Q Did you know the individuals that were living next door to you in
12 3999?

13 A I know the gentleman and the lady, their children, and I know
14 that some people come in and out, but I'm not sure if they're their relatives
15 or their friends, that I don't know.

16 Q Okay. And so when I mean, do you know them, I mean, would
17 you have conversations with them or did you only know them by sight?

18 A Only by sight and just greet them.

19 Q Okay. Like hi, bye?

20 A Yes.

21 Q All right. Now, you stated that one of the individuals lived there
22 was a gentleman, do -- if you could look around this courtroom, do you
23 see the gentleman that was your neighbor?

24 A Yes.

25 Q Okay. Could you describe -- could you point to him and

1 describe an article of clothing he's wearing?

2 A It's the gentleman that's in front of me --

3 MS. BLUTH: Your Honor, may the record --

4 THE WITNESS: -- with the white shirt.

5 MS. BLUTH: Your Honor, may the --

6 THE COURT: The record reflect she's identified the Defendant.

7 MS. BLUTH: Thank you.

8 BY MS. BLUTH:

9 Q Okay. So, now, I'd like to turn your attention to December 12 of
10 2017; okay.

11 A Yes.

12 Q So, I apologize, December 11th of 2017. Now, I'm going to ask
13 you some questions in regards to what you heard and what you saw. Can
14 you explain to me what first caught your attention to what was happening
15 outside?

16 A A lot of yelling and it seemed like there was a fight going on.

17 Q Okay. When you -- are you just hearing this or are you seeing it
18 at first?

19 A In the beginning I just heard it.

20 Q Okay. And where were you when you could hear it?

21 A In my house, in the bathroom, that's -- it's in the second floor in
22 front of the driveway.

23 Q Okay. And you stated that you heard some yelling going on
24 and what you thought was a fight?

25 A Correct.

1 Q When you say, you thought you were hearing a fight, do you
2 mean like a fist fight or a screaming match?

3 A I'm not sure. But the yelling was very strong. So it couldn't be
4 both. I don't know.

5 Q Okay. Did you ever make an attempt from your bathroom to
6 look outside?

7 A Yes.

8 Q What could you see, if anything?

9 A Okay. I only saw silhouettes. I couldn't see much because I
10 had just taken a bath or a shower and the windows were foggy.

11 Q Okay. Do you know how many silhouettes you could see in the
12 driveway?

13 A Now I know that there were four, but at that time I thought there
14 was a lot of people because of the scream, the yelling that I heard.

15 Q Okay. When you say, now you know that there are four, is that
16 because you just know more about the case?

17 A Correct.

18 Q So for purposes of your testimony, I just want to know what you
19 personally saw or heard; okay?

20 A Yes. I'm not sure if I saw three people or two.

21 Q Okay. Because you're just going off of the silhouettes?

22 A Yes.

23 Q All right. So after you look out of the bathroom window and it's
24 foggy, what do you do next?

25 A Okay. The yelling didn't stop, so I decided to go downstairs and

1 look out through the living room window, which is in front of the driveway.

2 Q And what did you see?

3 A Okay. First, I felt yelling very strong, but I couldn't see very well
4 because my car was parked in front. So I got scared and then I decided
5 to open the door.

6 Q Okay. When you opened the door tell me what you saw?

7 A Okay. I saw an injured person, like in fetal position, and then
8 two more people, a man and a woman.

9 Q Okay. So I want to break it down, if I can, into the timing; okay.
10 So before you go outside, when you're looking out your window from
11 downstairs, at that point you can still hear yelling; correct?

12 A Correct.

13 Q And when you look out your window, can you see who is yelling
14 at who?

15 A A man and a woman -- a man and a woman were fighting.

16 Q Okay. And when you say, fighting, do you mean yelling at one
17 another?

18 A Yes.

19 Q And what did the woman look like?

20 A Like 23 year's old, dark skin, 140 pounds.

21 Q Had you seen her before at that residence? Did she live there?

22 A Yes.

23 Q Okay. And then explain to me, you said that her -- she was
24 arguing with a male; correct?

25 A Yes.

1 Q And can you explain to me what he looked like?

2 A He was almost the same age she was, dark skin as well, thin.

3 Q Okay. And those two were arguing with one another?

4 A Yes.

5 Q At that point in time, when you looked outside, were there any
6 babies or car seats near them?

7 A Okay. There was -- between my house and then the house
8 next door, there was a car parked, a white car parked, and now on the
9 sidewalk there was baby car seat.

10 Q Okay. So if we are looking right here, and I'm going to zoom in,
11 so we can get a little bit better of a look; okay.

12 So the white car that you're talking about is it -- where is it
13 parked -- this would be the driveway; correct, can you circle where that
14 white car would be parked?

15 A Right here. In between the two houses.

16 Q Okay. And then where were the male and female arguing?

17 A Further up.

18 Can you move it?

19 Q Sure, yeah. Let me --

20 A A little bit more.

21 Q A little bit more; okay.

22 Let me zoom out for you to make it a little bit easier; okay.

23 A Exactly right here.

24 Q Okay. Now, when the individuals were arguing, could you hear
25 what they were arguing about when you were inside the house?

1 A No.

2 Q As you were still inside your home, did you hear a noise that
3 sounded like something had fallen?

4 A Yes.

5 Q Okay. And when we say, something had fallen, like explain to
6 me what you heard that made you think something had fallen?

7 A Okay. When I was inside that I opened the window from the
8 living room, I heard that, that stronger yelling, and then I opened the
9 door -- and a noise. And then I opened the door, and I saw somebody in
10 a fetal position with the head towards the ground. And I assumed that the
11 noise that I heard was his head.

12 Q Okay. All right. So when he -- when you see this person on the
13 ground; okay; is that right?

14 A Yes.

15 Q And you said that he was in a "fetal position", is that the word
16 you used?

17 A Yes.

18 Q When you first got out there, were any of his arms or legs like
19 still in the air as if he had just fallen?

20 A Correct.

21 Q Okay. And at that point in time, can you show me where that
22 individual was laying on the ground?

23 A Right here.

24 Q Okay. So I'm just going to point it out with my pen, just the red
25 dot; right there; correct?

1 A Yes.

2 Q And when you got outside and you saw the individual on the
3 ground, how many other people did you see outside?

4 A Two more people.

5 Q Okay. And are those the same people that you had seen in the
6 driveway arguing?

7 A Yes.

8 Q And what were those two doing by the time you got out and saw
9 the individual laying on the ground?

10 A She was very scared. She was blaming him and she was
11 telling him, look what you did.

12 Q Okay.

13 A And she was trying to calm her down and help the person who
14 was injured.

15 Q He was trying to help the person?

16 A Yes.

17 Q And did you say the male was trying to calm the female down?

18 A Yes.

19 Q Okay. Now, when you said that the female -- and we're talking
20 about the younger female who lives at that residence; correct?

21 A Yes.

22 Q You stated that she said, look what you did?

23 MR. LONG: I'm going to object, it's both leading and hearsay.

24 THE COURT: Well, she's -- she is trying to clarify, I think.

25 Overruled.

1 BY MS. BLUTH:

2 Q Did you answer it, I think you said, si?

3 A Yes.

4 Q Okay. Now, could you tell who it was that she was yelling at
5 that point?

6 A She was yell -- yell -- saying that to the person who was trying
7 to help the person who was -- not to the -- to the person who was trying to
8 help the injured person.

9 Q Okay. And previously the terminology that you had used that
10 she said was, what have you done; is that right?

11 A That's exactly what she said.

12 Q Was, what have you done?

13 A In the beginning I thought he had -- he had done something to
14 him. But I got confused because he was helping the victim.

15 Q So you thought that the younger male, the 25 year old, had
16 done something to the individual on the ground?

17 A Yes, because of what she had said.

18 Q Okay. Now, you stated that the younger male was attempting
19 to help the person on the ground, what was he doing?

20 A He wanted to call 9-1-1. He wanted help to -- trying to pick up
21 the victim. He was helping the -- he was asking for help to the neighbors,
22 of people that were passing by, but nobody was helping him.

23 Q Okay. Could you -- the individual that was in the middle of the
24 street, who was injured, could you see whether or not he was bleeding?

25 A Okay. In the beginning I thought it was like he got hit on the

1 head. But then when I saw a lot of blood, then I didn't think it was
2 something besides a hit on the head.

3 Q Okay. And then as you got closer, could you see whether there
4 was a little blood or a lot of blood?

5 A A lot of blood.

6 Q Okay. You said that the younger male who was helping the
7 injured person, he was asking for help from neighbors?

8 A Yes.

9 Q Were there any cars that were driving by at that time as well?

10 A Like three cars went by, right beside the victim, but nobody
11 stopped to help.

12 Q Now, a little bit ago you said that the younger female, who lives
13 at the residence, that she was very upset; correct?

14 A Not upset but like nervous, excited.

15 Q Was she speak --

16 A Scared.

17 Q -- was she speaking calmly like you and I are speaking or was
18 she very excited in her actions and talk?

19 A Scared.

20 Q Okay. And was she saying anything to the younger male who
21 was trying to render aid?

22 A She was asking for -- for him -- for them to leave and just leave
23 that person there so and avoid getting into trouble.

24 Q So she wanted to leave the injured person?

25 A She left.

1 Q Okay. And did she want the male, who was rendering aid, to go
2 with her?

3 MR. LONG: Object, leading and speculation.

4 THE WITNESS: Yes.

5 THE COURT: Sustained.

6 BY MS. BLUTH:

7 Q Oh, just one second, just one second. Did she say something
8 to that effect to the male?

9 MR. LONG: I'm going to object for hearsay. She's asking for
10 an out of court statement offered for the truth of the matter asserted.

11 MS. BLUTH: And I already laid the foundation for an excited
12 utterance.

13 THE COURT: I believe there was an excited utterance so.

14 BY MS. BLUTH:

15 Q So my question is, is what was she saying to the uninjured male
16 about leaving?

17 A She said, let's go. She went to her house, in and out, like two
18 or three times.

19 She said, do you care more about him than your daughter?

20 He always tried to calm her down but he couldn't. And she left.

21 Q Okay. After she left -- or excuse me, when she left, how did she
22 leave, on foot, in a car?

23 A In her car.

24 Q And where was the child?

25 A She took the girl.

1 Q At any point in time, did anyone else come out of the residence
2 at the 3999 Pistachio Nut residence?

3 A No.

4 Q When you got outside and at any point did you help the younger
5 male who was rendering aid?

6 A I asked him if I could help, what he needed, and he asked me to
7 bring a towel.

8 Q Did you bring a towel?

9 A Yes.

10 Q Can you explain to me, like, what size towel, what did it look
11 like?

12 A It was a brown towel, the one we use to dry yourself in
13 bathroom.

14 Q And what did he do with that towel?

15 A Okay. When I first came out, the injured person was facedown,
16 so he was trying to put him like face up, but -- a towel would not -- was not
17 stopping it.

18 Q Was not stopping the blood?

19 A No.

20 Q Could you see at that point where the blood was coming from?

21 A From the chest.

22 Q Okay. And does the younger man, who's rendering aid, does
23 he continue to stay and render aid even after the female leaves?

24 A Yes.

25 Q At any point in time did you move your vehicle?

1 A Okay. I moved my car. I put it across the street because
2 people were going through and at some point they could have destroyed
3 his head.

4 Q The person who was injured?

5 A Correct.

6 Q Did you position your car to protect anything else from
7 happening to the victim?

8 A Correct.

9 Q Now, even before you moved your car, did you ever see the
10 male who was rendering aid move his car?

11 A He moved his car, the car that was here, the one we had
12 mentioned, he moved it to here. But he made things worse because that
13 would leave a space that cars could go through. So that's when I noticed
14 that it almost crush his head, so I -- so I put my car there, like crossed it.

15 Q Okay. When the individual, the male who was rendering aid,
16 moved his car over there, did he attempt to take the victim to the hospital?

17 A I'm not sure of what he was trying to do. I don't know if he
18 wanted to take him to the hospital or just protect him. But he couldn't
19 move him by himself and he asked for help but nobody helped him.

20 Q Okay. Now, ultimately, did an ambulance arrive?

21 A Yes.

22 Q And did police also arrive?

23 A Yes.

24 Q Did you speak to police and give what's referred to as a
25 recorded statement?

1 A Yes.

2 Q Okay. Now, I just want to ask you some questions regarding
3 timing of things; okay.

4 A Yes.

5 Q So starting when you were upstairs in your bathroom, is that
6 the -- at the -- excuse me, is that the first point where you hear the
7 arguing?

8 A Yes.

9 Q And is it from that window that you can only see silhouettes?

10 A Yes.

11 Q And so is it at that point that you go downstairs to look through
12 the other window?

13 A Okay. I just went to put my clothes in the laundry, but since the
14 yelling doesn't stop, I got scared because I was alone with my children.

15 Q Okay. And so do you run downstairs?

16 A Yes.

17 Q And so is that within seconds, minutes, can you give me a time
18 frame?

19 A No more than three minutes.

20 Q Okay. And so then is -- at that point you look out your
21 downstairs window?

22 A Yes.

23 Q And when you look out your downstairs window, you, again, can
24 see that same male and female?

25 MR. LONG: Your Honor, objection, leading. They're all yes

1 and no questions.

2 MS. BLUTH: Well, it doesn't --

3 THE COURT: Overruled.

4 MS. BLUTH: -- leading is -- suggest an answer.

5 THE COURT: Overruled.

6 MS. BLUTH: Okay.

7 BY MS. BLUTH:

8 Q Do you need me to repeat the question?

9 A [Nods head.]

10 Q Okay. So when you look from your downstairs window, how
11 many people do you see at that point outside?

12 A Two.

13 Q And I want you to show me where those two people are at that
14 point in time on the map?

15 A Right here. No, a little bit more.

16 Q Right there where the red dot is?

17 A They moved side to side, like they moved a lot. Because she
18 was very scared and she only walked and he was trying to calm her down.

19 Q Okay. Is it at that point you hear the fall?

20 A Yes.

21 Q And then as soon as you hear the fall, what do you do?

22 A I went outside.

23 Q So at the point you hear the fall, can you see the boy and the
24 girl together?

25 A Yes.

1 MS. BLUTH: Court's indulgence.

2 BY MS. BLUTH:

3 Q Just a few more questions; okay.

4 A Yes.

5 Q Thank you.

6 When you were upstairs and you look out of your bathroom, is it
7 your testimony -- or that you could see the silhouettes in the driveway?

8 MR. LONG: Objection, leading.

9 THE COURT: Overruled.

10 BY MS. BLUTH:

11 Q Could you also -- could you hear it coming from that direction as
12 well?

13 A It looks like the noises is started in front of the neighbor's house
14 and they were like moving towards this side.

15 Q Okay. So started at 3999?

16 A Yes. I'm not sure if they were inside the house or in the
17 driveway.

18 Q Okay. And then when you said it moved, are you talking about
19 where your red dots are?

20 A The sound was progressing towards here. I'm not sure.

21 Q And when you say, here, you're talking about these red dots?

22 A More or less.

23 Q Now, I'm showing you what's already in evidence as State's
24 Exhibit 6, do you see your vehicle in this picture?

25 A No.

1 Q What color is your car?

2 A Blue.

3 Q Okay. And I'm -- in the top right-hand --

4 A Oh, yes, that's my car.

5 Q Now, is this where you moved your car to?

6 A Yes.

7 Q After the police arrived, do you move your car again?

8 A When the police came, I put it again on the driveway.

9 Q Okay. And I'm going to show you State's 7, which is just a little
10 bit closer view, do you see your vehicle in this picture?

11 A This is my car.

12 Q Okay. At the beginning of your direct examination I had asked
13 you some questions about individuals you knew who lived at that home,
14 do you remember those questions?

15 A You ask me if I knew them.

16 Q Yes.

17 And you said that there were -- there was a female and male that lived
18 there; correct?

19 A Yes.

20 Q Now, did you -- you pointed out the gentleman who lives there
21 in court, did you know if there was -- the female that lived there was like
22 his significant other or wife?

23 MR. LONG: Objection, speculation.

24 MS. BLUTH: If she knows.

25 THE COURT: If she knows.

1 THE WITNESS: I thought it was his daughter but his wife said
2 that it was his stepdaughter.

3 BY MS. BLUTH:

4 Q Okay. And so I'm asking you, is if you know this gentleman's
5 wife?

6 A Yes.

7 Q After this incident took place, at any point in time did she
8 approach you?

9 A She went to my house one time.

10 Q Okay. And how soon after this incident on December 11th did
11 she come over?

12 A I'm not sure. Like three or four months after that.

13 Q Okay. And she came to your home?

14 A Yes.

15 Q And what was her purpose of her visit?

16 A She just wanted to find out if I saw her husband commit the act.

17 Q Did she ask you any questions about what you would testify to?

18 A No.

19 MS. BLUTH: Court's indulgence, Your Honor.

20 BY MS. BLUTH:

21 Q Before the Defendant's wife came over, had you ever met her
22 before or spoken to her before, besides hi and bye?

23 A No, only greeting.

24 MS. BLUTH: Okay. Thank you so much, ma'am.

25 I'll pass the witness, Your Honor.

1 THE COURT: Cross?

2 **CROSS-EXAMINATION**

3 BY MR. LONG:

4 Q Ms. Flores, when you first heard a disturbance outside your
5 house, you were in your bathroom with the shower running; correct?

6 A No, I was already getting dressed.

7 Q Okay. And isn't it true that you could not see what was
8 happening in front of 3999 Pistachio Nut because the windows were
9 foggy?

10 A I saw that -- I said that I saw silhouettes and people fighting, just
11 only that.

12 Q Okay. And you don't know if this fighting involved there being
13 any hands on; correct?

14 A I'm not sure.

15 Q Okay. And isn't it true the light was on in your bathroom when
16 you took this shower or this bath?

17 A Yes, of course it was on.

18 Q And when the lights on in your bathroom, isn't it true you can't
19 see outside when it's dark outside?

20 A I saw silhouettes.

21 Q Despite the fact the light was on?

22 A Yes.

23 Q Okay. So you saw these silhouettes and isn't it true that after
24 you saw these silhouettes you just testified that you decided to pick up
25 your laundry and bring it in downstairs?

1 A My laundry room it's on the side -- it's upstairs.

2 Q Okay. And you were moving laundry from your bathroom to
3 your laundry room; correct?

4 A When I go to the laundry, my living rooms in front of my -- of the
5 living room of my neighbors. My neighbor's living room, their bathroom,
6 you can hear clearly.

7 Q Okay. But you don't have any idea what happened outside
8 while you were moving your laundry; correct?

9 A When I was upstairs I had no idea. That's why I went
10 downstairs because I got scared.

11 Q Okay. And you only heard, while you were going downstairs;
12 correct?

13 A Correct.

14 Q Okay. Now, at no time, in these voices that you heard that
15 scared you, at no time did you recognize Mr. Cash's voice; correct?

16 MS. BLUTH: Objection, calls for speculation, if she knows.
17 Excuse me, one second.

18 THE COURT: Overruled, I'll let her answer that.

19 THE WITNESS: I didn't hear the gentleman.

20 BY MR. LONG:

21 Q Okay. And you've heard his voice before; correct?

22 A Only hi.

23 Q Okay. And so you go home -- I mean, you go downstairs and
24 you're still hearing the commotion outside, and then it gets so bad you
25 decide to open the door; correct?

1 A Correct.

2 Q Okay. And when you open the door, you don't see Mr. Cash do
3 you?

4 A I didn't see him.

5 Q Okay. You see two young men and a young female?

6 A Three, with the victim.

7 Q Okay. Yeah.

8 And isn't it true that the young man who was administering aid
9 was asking people to drive him to a hospital?

10 A He was asking for help and to call the 9-1-1. He was asking the
11 woman that was with him to call 9-1-1 and she didn't do it.

12 Q Okay. And you don't know if she had a phone; correct?

13 A After she agreed and gave it to the man so he can make the
14 phone call.

15 Q Okay. And you didn't actually see the fight?

16 A No.

17 Q You only heard it?

18 A [Nods head.]

19 Q Isn't it true that you heard talks of, "get my gun, shoot him"?

20 A I never saw a weapon, never heard about a weapon. When
21 I'm -- came close, I didn't see any weapons.

22 Q Okay. And you never saw a punch exchanged?

23 A No.

24 Q And you didn't see what happened?

25 A No, I only heard as I already said.

1 Q Okay. And you can't articulate anything specific that you heard;
2 correct, just loud?

3 A I cannot -- I couldn't understand what they were saying. I
4 couldn't understand clearly.

5 Q So sitting here today, you saw silhouettes and you heard
6 arguing; correct?

7 A Yes.

8 Q And you saw that through a foggy bathroom window with the
9 light on?

10 A At the beginning, yes, and then it was downstairs.

11 Q Okay. And then you heard a lot of commotion and you went
12 outside and by then the fight was already over; correct?

13 A Correct.

14 Q Okay. So you don't have any idea who stabbed the person that
15 died in the street?

16 A No, I didn't know. At that point, I didn't know.

17 MR. LONG: Okay. I don't have any other questions.

18 MS. BLUTH: Just a few, Your Honor.

19 **REDIRECT EXAMINATION**

20 BY MS. BLUTH:

21 Q Mr. Long had just asked you a question about you weren't able
22 to hear anything specific about what the male and female were arguing
23 about. Do you remember that question?

24 A Yes.

25 Q However, when you spoke to the police, your statement was

1 recorded; is that correct?

2 A Yes.

3 Q And --

4 MS. BLUTH: Page three, Counsel.

5 BY MS. BLUTH:

6 Q -- in that statement isn't it true that you told the police, when you
7 looked out your downstairs window it looked as if they were arguing and
8 the male was trying to get the female to come with him?

9 A That's when I already was downstairs already, that's when the
10 young -- the man was trying to calm the woman down.

11 Q That was before you went outside though; correct, when you
12 were looking out --

13 A When I opened the window, the living room window.

14 Q Downstairs?

15 A Yes. I only saw a man that was doing something like so. But I
16 wasn't sure until I came out.

17 Q And he was trying to calm her down?

18 A Yes.

19 Q How long would you say from the point you first hear the
20 fighting, the arguing, to the point you go outside and you see the victim on
21 the ground, what kind of time are we talking about?

22 A Very little, three minutes, four minutes, or more.

23 Q From the time you get outside and the younger male is
24 rendering aid, does he stay with the victim the entire time and continue to
25 render aid until the police get there?

1 A Always. In fact, he told the woman, the one that he was with,
2 don't wait for me because I'm going to come late. I noticed that they were
3 a couple.

4 Q The young female and the young male were a couple?

5 A Yes.

6 Q But you never saw him leave the victim?

7 A Never.

8 Q Okay. Mr. Long had asked you some questions about whether
9 you ever heard the Defendant's voice. Do you know the Defendant's
10 voice well enough to know if his was one of the voices yelling?

11 A I only heard him talk once in my life.

12 Q Okay. So, no, you wouldn't know?

13 A No.

14 MS. BLUTH: Nothing further.

15 Thank you.

16 **RECROSS EXAMINATION**

17 BY MR. LONG:

18 Q On the night in question, you stated that the male that was not
19 hurt was trying to calm down the female?

20 A Correct.

21 Q This was after the stabbing; correct?

22 A Correct; after.

23 Q While you're in your bathroom, you never heard a male trying to
24 calm down a female, did you?

25 A No, I only heard fight.

1 Q Okay. And you testified to me that you don't believe that you
2 heard Thomas's voice; correct?

3 A I never said anything like that.

4 Q No, just a few minutes ago?

5 A Okay.

6 Q You did not recognize --

7 A I never heard that guy's -- the man's voice.

8 Q Okay. And do you believe that you could recognize Thomas's
9 voice?

10 A Where?

11 Q At the scene?

12 A If I heard the audio?

13 Q Isn't it true that you didn't hear what you believe to be Thomas's
14 voice on the night in question?

15 MS. BLUTH: Objection, calls for speculation. She already --
16 she --

17 THE COURT: Overruled.

18 MS. BLUTH: One second.

19 THE COURT: Overruled. I'll let her answer.

20 THE WITNESS: I never heard the man talk.

21 THE COURT: She answered it again.

22 BY MR. LONG:

23 Q Could you repeat the answer. I didn't hear.

24 A At that location I never heard the man's voice.

25 MR. LONG: I don't have anything further.

1 THE WITNESS: I didn't know that he had.

2 MR. LONG: Nothing further, Your Honor.

3 THE COURT: State.

4 MS. BLUTH: Yeah, Court's indulgence, Your Honor.

5 **FURTHER DIRECT EXAMINATION**

6 BY MS. BLUTH:

7 Q Okay. Just two questions.

8 Do you know anybody's voice involved in this?

9 A No.

10 Q Okay. So when you're in your house and you can't see
11 anybody, you just hear yelling -- wait, one second -- you just hear yelling;
12 right?

13 A Yes.

14 Q Do you know -- could you recognize any of those voices as
15 belonging to a specific individual?

16 A No.

17 Q Okay. My next question is going to be about when you are
18 downstairs looking out the window. When you were downstairs looking
19 out that window, you look outside and you see the young male and young
20 female; correct?

21 A Yes.

22 Q Tell me, with your two eyes, what you see at that moment in
23 regards to those two?

24 A They were only yelling and he would hold her, try to calm her
25 down. They started like pushing each other.

1 Q Okay. And when you spoke to the --

2 MS. BLUTH: Page three.

3 BY MS. BLUTH:

4 Q -- when you spoke to the police, you said it looked like he was
5 trying to get her to go somewhere and she didn't want to go?

6 A When I came out they were pushing each other. Then he would
7 grab her but try to calm him down and trying to say, help me, don't leave.

8 Q Okay. So my questions for you right now are just while you
9 were in the house; okay?

10 A Okay.

11 Q When you're looking at your window downstairs, at that point,
12 when you look out your window, you see the two of them; correct?

13 A Yes, I saw a man and a woman but I didn't know who they were
14 until I came out.

15 Q Okay. But what can you see the man and woman doing from
16 when you're inside your house?

17 A I didn't -- I didn't see anything. I just saw them like grabbing
18 each other. And if it was a few minutes since I heard a strong impact or
19 noise.

20 Q Okay.

21 A She yelled very strongly and that's when I decided to come out.

22 Q Okay. So you saw those two individuals together holding each
23 other and then you heard the impact?

24 MR. LONG: Your Honor, I'm going to object to --

25 THE WITNESS: I'm not sure of that.

1 MR. LONG: -- the witness's answered. We don't need --

2 THE COURT: Hold on, hold on.

3 MR. LONG: -- it's leading.

4 THE COURT: Well, I think she's trying to clarify. I'm going to
5 let it go.

6 THE WITNESS: I'm not sure if it was before or after they were
7 grabbing each other because it was happened. I just -- I had opened my
8 window and it just happened at the same time. It was fast.

9 BY MS. BLUTH:

10 Q Okay. My question is to you though, you can see those two
11 individuals; is that right?

12 A Yes. But it was only a matter of seconds. I cannot say
13 specifically.

14 Q But at some point before you go outside, you hear the impact?

15 A Yes, that's why I went out.

16 MS. BLUTH: Okay. Thank you so much.

17 MR. LONG: Nothing further, Your Honor.

18 THE COURT: Jury have any questions of this witness? Seeing
19 no hands, ma'am, you're free to go.

20 We're going to take our afternoon recess.

21 During this recess, ladies and gentlemen, you're admonished
22 not to talk or converse among yourselves or with anyone else on any
23 subject connected with this trial. Or read or watch or listen to any report
24 of or commentary on the trial or any person connected with this trial by
25 any medium of information, including, without limitation, newspapers,

1 television, radio, or the Internet. Or form or express an opinion on any
2 subject connected with the trial until the case is finally submitted to you.

3 Please, do not get any social media, do not get on a computer
4 and do any research.

5 See you at two o'clock.

6 [Outside the presence of the jury]

7 THE COURT: All right. You said two questions, you said, just
8 two questions, you asked 14.

9 MS. BLUTH: Judge, because it takes 14 to get one answer for
10 the interpreter.

11 THE COURT: Okay. See you guys back here at 2:00.

12 MS. BLUTH: Okay.

13 THE COURT: Do you got jury instructions?

14 MS. BLUTH: Yes, I do.

15 MR. LONG: I do not, Your Honor. I can have them to you after
16 court today.

17 THE COURT: Okay.

18 MR. LONG: I might agree with the State. We've talked about
19 them before.

20 [Recess taken at 12:49 p.m.]

21 [Jury Trial resumed at 2:02 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Is the jury ready, Thomas?

24 THE MARSHAL: Yes, they are.

25 THE COURT: Do we have anything we need to put on the

1 record, outside the presence?

2 MR. LONG: I don't believe so, Your Honor.

3 MS. DIGIACOMO: Yeah, just to reiterate, we're not going into
4 the domestic violence unless he approaches and --

5 THE COURT: All right.

6 MS. DIGIACOMO: -- proves it's relevant.

7 THE COURT: And you have three witnesses this afternoon?

8 MS. DIGIACOMO: Correct.

9 THE COURT: Then you've got about --

10 MS. DIGIACOMO: Three --

11 THE COURT: -- two or three witnesses in the morning.

12 MS. DIGIACOMO: -- quicker ones, yeah.

13 THE COURT: And then you'll be ready to go right into your
14 witnesses?

15 MR. LONG: Yeah.

16 THE COURT: How many you got?

17 MR. LONG: Three, four, three or four.

18 THE COURT: So you'll be done tomorrow?

19 MR. LONG: Yes.

20 THE COURT: We can argue on --

21 MS. DIGIACOMO: Whoa, whoa, ah, you forgot rebuttal.

22 THE COURT: Or rebuttal.

23 MS. DIGIACOMO: We might have some -- we might have
24 rebuttal Wednesday morning but we should be arguing Wednesday
25 afternoon.

1 THE COURT: Okay. All right.

2 MS. DIGIACOMO: And, oh, I know what we can do is the jury
3 instructions.

4 THE COURT: We can do jury instructions tomorrow.

5 MR. LONG: Yeah. The State sent me a copy and I haven't had
6 a chance to go over it with Thomas. I'll do that tonight.

7 THE COURT: All right.

8 MR. LONG: But there's a voluntary and there's a self-defense
9 and that's what I really wanted, so.

10 THE COURT: Has he decided whether or not he's taking the
11 stand?

12 MR. LONG: Not yet.

13 THE COURT: All right.

14 He's going to have to make that decision shortly.

15 MR. LONG: Yeah.

16 THE COURT: So make sure you talk to your attorney about it;
17 okay.

18 MR. LONG: I'll go down to the jail tonight and we'll visit.

19 THE COURT: All right. Bring the jury in, Thomas.

20 Are these long witnesses today?

21 MS. BLUTH: Yeah.

22 MS. DIGIACOMO: Well, one is. We might need to break to get
23 him on but --

24 THE COURT: All right.

25 MS. DIGIACOMO: -- the other two are long.

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THE COURT: Which one's the long witness?

MS. DIGIACOMO: Kyriell Davis.

THE COURT: Is that the first one you're bringing in?

MS. DIGIACOMO: Yes.

[In the presence of the jury]

THE MARSHAL: All rise, please.

And be seated.

THE COURT: Stipulate to the presence of the jury.

MS. DIGIACOMO: Yes, Your Honor.

MR. LONG: Yes, Your Honor.

THE COURT: All right.

Call you next witness, State.

MS. DIGIACOMO: Thank you.

The State calls Kyriell Davis.

Your Honor, while we're waiting, there are some photos that
inadvertently did not get admitted and so --

[Colloquy between the District Attorney and the Court Clerk]

THE COURT: Why don't you have your law clerk look at them?
She's sitting over there. She's not doing much.

MS. DIGIACOMO: I found them, Your Honor.

MS. BLUTH: Me? Clearly.

THE COURT: You got it? All right.

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KYRIELL DAVIS

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

THE CLERK: Please be seated, state and spell your name for the record.

THE WITNESS: Kyriell Davis. K-y-r-i-e-l-l, D-a-v-i-s.

MS. DIGIACOMO: And, Your Honor, before we begin, we have here what's been marked for identification as State's Proposed Exhibits 216 to 223. These were -- we were unable to find these this morning because they were located not with the rest of the evidence. And so at this time the State would move for admission of State's Proposed Exhibits 216 to 223 and I don't believe there's an objection.

MR. LONG: No objection.

THE COURT: They'll be admitted.

MS. DIGIACOMO: Thank you.

[STATE'S EXHIBITS 216 THROUGH 223 ADMITTED]

MR. LONG: And just Ms. DiGiacomo, Mr. Cash can't hear you unless you're at the microphone.

MS. DIGIACOMO: Okay, sorry.

Okay. Thank you, Your Honor, may I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MS. DIGIACOMO:

Q All right. Sir, do you know a person by the name of Brittney Turner?

1 A Yes.

2 Q And who is that?

3 A My baby's mom.

4 Q Okay. How many children do you have with her?

5 A Two.

6 Q Did you used to have a relationship with her?

7 A Yes.

8 Q Okay. And that was a romantic relationship?

9 A Yes.

10 Q How long did that go on for?

11 A About two and a half years.

12 Q Okay. Was it consistent two and a half years or was it

13 on-again-off-again?

14 A Yeah, it was -- about consistent probably the first, then

15 on-and-off.

16 Q Okay. So you said you have two kids with her, what is your

17 oldest child that you have with her, is it a girl or boy?

18 A It's a girl.

19 Q What's her name?

20 A Londyn.

21 Q And how old is she as we sit here today?

22 A 17 months.

23 Q And do you have a son as well with her --

24 A Yes.

25 Q -- with Brittney?

1 Okay. How old is your son?

2 A About a month, almost two.

3 Q All right. So directing your attention back to December of 2017,
4 was Brittney pregnant with your son at that time?

5 A Yes.

6 Q So in December of 2017, what -- how would you characterize
7 your relationship with Brittney, was -- were you together? Not together?

8 A It was rocky. We were trying to figure it out, if, yeah.

9 Q All right. Were you living together at that time?

10 A No.

11 Q All right. Do you know where Brittney was living on
12 December 11th of 2017?

13 A Not sure. It was back and forth to her mom's house so.

14 Q Okay. So she's back and forth to her mom's house and where?

15 A She stayed with her friends.

16 Q Where did her mom live?

17 A I don't know the house address but Pistachio Nut.

18 Q What is her mom's name?

19 A Antoinette.

20 Q Do you know who else lived in the Pistachio Nut house?

21 A Thomas and her two little sisters.

22 Q All right. Now, did -- the person that you're referring to as
23 Thomas, did you know his name in December of 2017?

24 A No, I thought it was Tommy as he was presented to me by that
25 name.

1 Q Okay. Did you know his last name in December of 2017?

2 A No.

3 Q Do you see the person that was presented to you as Tommy
4 and is, I guess, Brittney's stepdad?

5 A Yes.

6 Q Do you see him in the courtroom here today?

7 A Yes.

8 Q Would you point to the person that you're referring to and
9 describe an article of clothing that he's wearing?

10 A White button up, that's all I can see, headphones.

11 MS. DIGIACOMO: Your Honor, would the record reflect
12 identification of the Defendant?

13 THE COURT: It will.

14 MS. DIGIACOMO: Thank you.

15 BY MS. DIGIACOMO:

16 Q Who else did -- lived at the house with -- where Brittney's mom
17 lived?

18 A As far as I know, just them.

19 Q They didn't have any other siblings or kids?

20 A No, I didn't -- never really go in the house. So as far as I know
21 it's just the two little sisters, the mom, him, or Thomas, and Brittney from
22 time to time.

23 Q Okay. From time to time.

24 All right. So did you go over to Pistachio Nut on
25 December 11th, 2017?

1 A Yes.

2 Q And why did you go there?

3 A I was coming to get my daughter.

4 Q All right. And what was the arrangement that you were coming
5 to pick up your daughter?

6 A Like usually that would be -- the arrangement where I get her
7 certain days. But that day I was getting her because Brittney had
8 something to do.

9 Q Okay. So were you taking your daughter Londyn?

10 A Yes.

11 Q Were you taking her for just that night or for -- how long?

12 A No, I was taking her from -- a day and then the next three days.

13 Q Did you and Brittney have a formal agreement?

14 A Yes.

15 Q Okay. When I -- let me backup, when I say, formal agreement,
16 let me ask you, did you and Brittney have an agreement between
17 yourselves as to how you would exchange Londyn or who would get her
18 what days or did you have a court order?

19 A No, it was just between me and her.

20 Q Okay. So you were going over there to pick up your daughter
21 for a few days?

22 A Yes.

23 Q Do you remember when you went over there was it already dark
24 outside or was it light outside?

25 A It was dark.

1 Q How did you -- well, let me backup, did you -- where did you
2 normally exchange Londyn?

3 A Depending on where she's at, it would determine the location.
4 So it varies.

5 Q So on December 11th, 2017, how did you know where to pick
6 up Londyn?

7 A Because she told me she was at her mom's.

8 Q Brittney told you that?

9 A Yes.

10 Q All right. So you were to go to Brittney's mom's house to pick
11 up Londyn?

12 A Yes.

13 Q All right. How did you get to Brittney's mom's house?

14 A I borrowed my friend's car.

15 Q And who was the friend that you borrowed it from?

16 A Relly.

17 Q Okay. Is that R-e-l-l-y?

18 A Yes.

19 Q So were you at Relly's house when you -- Brittney got the call
20 or?

21 A No, I was at my own house.

22 Q All right. And so when Brittney asked you to come get Londyn,
23 how did you get Relly's car?

24 A Well, Relly and Ezekiel and all of them stay with me so. I just
25 asked him, like, can I borrow the car to go down the street to get my

1 daughter. He was just like, yeah.

2 Q Okay. So Relly's at your house because he stays with you?

3 A Yeah, Relly, yeah, he stayed with me at that time.

4 Q All right. And you also mentioned Ezekiel also stayed with you?

5 A Yes.

6 Q What's Ezekiel's full name?

7 A Ezekiel -- his middle name was kind of -- it's hard.

8 Q Well, what's his last name?

9 A Devine.

10 Q So you asked Relly, can I borrow your car? He says, yes?

11 A Yes.

12 Q What kind of a car is it that you borrowed from him?

13 A It was a Jetta Volkswagen. I'm not sure what year. White.

14 Q Okay. So as you're leaving to go pick up Brittney -- or excuse
15 me, pick up Londyn, do you just leave the house alone?

16 A No. When he gave me the keys, I had to change my clothes
17 because it was cold outside. I was in the house in shorts. And Ezekiel
18 was on the couch playing a game. And I asked him did he want to ride
19 with me. I was, like, I can use his help to get the car seat and the diaper
20 bags. And he was just, like, yeah.

21 Q Okay. So you knew going over there you were going to get
22 multiple diaper bags and a car seat?

23 A Yes, ma'am.

24 Q And that's because you were taking Londyn for a few days?

25 A Yes.

1 Q All right. So and Ezekiel agreed to come with you?

2 A Yes.

3 Q All right. Now, do you call Ezekiel, Ezekiel normally?

4 A No.

5 Q What do you normally call him?

6 A I call him Zek or Twin.

7 Q And why do you call him Twin?

8 A Because he has a twin.

9 Q All right. So you get the keys to Relly's car, you walk outside

10 with Ezekiel, and who drives?

11 A I drove.

12 Q And where did Zek sit?

13 A Passenger seat.

14 Q In the front passenger?

15 A Yes, ma'am.

16 Q Now, you said he was playing a game before you left your

17 apart -- well, your home --

18 A Yes.

19 Q -- what was he playing a game on?

20 A I have a PlayStation four.

21 Q So it wasn't on a phone?

22 A No, ma'am.

23 Q How long have you known Zek before this?

24 MR. LONG: Objection, relevance.

25 THE COURT: I'll sustain the objection.

1 MS. DIGIACOMO: May I be heard, Your Honor?

2 THE COURT: Sure.

3 MS. DIGIACOMO: The reason it's relevant is because it shows
4 how long they've known each other and the actions that come up later in
5 the night, you know, why he did what he did, as well as why Zek may
6 have done what he did.

7 MR. LONG: Your Honor, the actions speak for themselves. It
8 doesn't matter how long they've known each other. It doesn't matter if
9 they're best friends or if they met that night.

10 MS. DIGIACOMO: Well, it does matter.

11 THE COURT: I'll change my opinion. I'll allow that. A limited
12 amount of questioning for that.

13 MS. DIGIACOMO: Thank you.

14 BY MS. DIGIACOMO:

15 Q So how long have you and Zek -- had you been friends up until
16 December of 2017?

17 A About 18, about six years.

18 Q All right. So to get to the Pistachio Nut address, how long does
19 it take you to get from where you live?

20 A Honestly about, like, three minutes max, in a car.

21 Q So is it fairly close?

22 A Yes, it's literally two lights down.

23 Q All right. So you and Zek get to Pistachio Nut, I'm going to
24 show you what's been marked and admitted as State's Exhibit 33, do you
25 recognize this car?

1 A Yes, ma'am.

2 Q Okay. And showing you as well State's Exhibit 34, do you
3 recognize that car?

4 A Yes, ma'am.

5 Q Okay. And what is this car?

6 A That's Relly's car.

7 Q Is that the car that you came to Pistachio Nut in?

8 A Yes, ma'am.

9 Q All right. In this picture that we're looking at, State's Exhibit 34,
10 can you see Brittney's mom's house in the picture?

11 A If it's the one to the left, then yes. Or --

12 Q And I can show you --

13 A I think it's the next one.

14 MR. LONG: I'm going to object, non-responsive. If he doesn't
15 now, he doesn't now.

16 THE COURT: Well, he's trying to make it out.

17 MS. DIGIACOMO: Can I approach and show him the picture?

18 THE COURT: Sure.

19 MS. DIGIACOMO: Thank you.

20 BY MS. DIGIACOMO:

21 Q It might be easier to see it not on the overhead.

22 All right. So I'm going to show you State's Exhibit 34, and can
23 you see Brittney's mom's house in that photograph?

24 A This. That's, yeah, because the blue car, yeah, yes.

25 Q So now I'm going to show you on the equipment. So I'm putting

1 up 34, the house that you just pointed to for me, can you show the jury,
2 and you can actually touch the screen and make an X or make a circle in
3 front of you. So if you could show the jury which house was Brittney's
4 mom's house?

5 A Oh, okay.

6 Right here.

7 Q All right. So when you arrive, where do you, I guess, pull up?
8 Where do you park the car?

9 A I technically cutoff the driveway right behind Brittney car as her
10 car is parked passed the driveway. I parked right behind her. So I cutoff
11 the driveway so you couldn't get in or out the driveway.

12 Q All right. So let me show you State's Exhibit Number 3, and I'm
13 going to zoom in, okay. Now, there's a house that's marked
14 3999 Pistachio Nut, does that appear to be the house you just pointed out
15 in the other exhibit as being Brittney's mom's house?

16 A Yes, ma'am.

17 Q Okay. But you didn't know the address that night?

18 A No, I never knew, like, the house numbers.

19 Q Okay. Can you show the jury, and I know it's hard with the
20 shadows, in this picture can you draw a line where it was that you parked
21 your car? You said you were blocking the driveway?

22 A Yes.

23 About right here.

24 Q All right. So you would have been --

25 A Just a full -- it's a full driveway.

1 Q All right. So you pulled up so that your -- your car was along
2 the sidewalk?

3 A Yes, ma'am.

4 Q And you pulled up behind Brittney's car?

5 A Yes, ma'am.

6 Q How far did you pull up to Brittney's car?

7 A Probably like arm length away.

8 Q Okay. Now, when you arrived, did you get up and go to the
9 house?

10 A No, ma'am.

11 Q And why not?

12 A Because she already was expecting me.

13 Q All right. So you get there, do you just sit outside then?

14 A Yes, I sat on the hood of Relly's car.

15 Q How long did you wait out there?

16 A Before she came out the first time, I waited about like about 15
17 to 20 minutes.

18 Q Okay. Did you -- while you were sitting there waiting, did you
19 ever try and call her?

20 A Yes.

21 Q How many times did you try and call her?

22 A I don't remember the exact number of times, but I called her
23 numerous times.

24 Q So when you get there, you're sitting on the hood, where is
25 Zek?

1 A Still in the front passenger seat.

2 Q And what's he doing in the front passenger seat?

3 A He was video chatting someone.

4 Q All right. So when you -- was he video chatting on his phone or

5 your phone?

6 A My phone.

7 Q All right. So if you needed to call Brittney, what happened?

8 A Well, I called her numerous times, and then she sent a

9 message saying, hold on, I'm coming, I'm getting her ready. And I gave

10 him the phone. And then that's when I got out the car, I was sitting on the

11 hood, and he was video chatting whoever he was video chatting.

12 Q How do -- well, let me ask you this, if you're out on the hood,

13 how do you know he's video chatting?

14 A Because he started video chatting before I got out the car.

15 Q Was he on video chat the whole time you were waiting?

16 A I would think so, yes.

17 Q All right. So you said Brittney comes out the first time, tell me

18 what happens?

19 A She come out the first time, she was already ransoming. She

20 gave me --

21 Q She was already, I'm sorry?

22 A Ransoming, like, yelling, whatever.

23 Q Ranting?

24 A Yes, ranting, I'm sorry.

25 Q Okay.

1 A Wrong word.

2 So she gives me the diaper bag, the car seat. She goes back in
3 and gets Londyn. And then when she has Londyn, she's ranting even
4 louder and like more.

5 Q Okay. Well, let's backup, the first time she comes out with the
6 diaper bag and the car seat --

7 A Car seat.

8 Q -- you said she's yelling, what is she yelling?

9 A I don't want to use foul language but.

10 Q It's okay. You can use foul language in here.

11 A I mean, she was just, like, you know, bitch ass nigger, you
12 know, you lack of a father, you ain't got to worry about me seeing my kids
13 again, this is the last time you're going to get her, things like that, just.

14 Q All right. So what was your reaction when she was saying
15 those things?

16 A The first time I laughed honestly. She went back in the house
17 and then that's when she came back and she was saying even nastier
18 things and then I just kept laughing because I thought it was funny
19 honestly, like.

20 Q Okay. So -- okay. So you're laughing, she goes back in the
21 house, what do you do with the car seat and diaper bag?

22 A I put -- I opened -- behind the driver seat door, throw the diaper
23 bag in the car. I walk around the car, behind Zek, and put the car seat in
24 the car.

25 Q Okay. And by this -- by the time you get the car seat in the car,

1 is Brittney coming back out with Londyn?

2 A Yeah. About like 10, 15 seconds afterwards, yes.

3 Q All right. Did Brittney have to get any other bags for you?

4 A Yeah, she had another diaper bag in her car.

5 Q All right. Her car in front of you?

6 A Yes, ma'am.

7 Q All right. So she comes out and then -- with Londyn, you've got
8 the car seat in the backseat of the car, what happens at this point?

9 A At that point she comes down the driveway, I move back in front
10 of the car, she comes back down the driveway, she's ransoming, she's
11 yelling, she all in my face. And then --

12 Q What is she saying and yelling now?

13 A Oh, just, you know, bitch, you a bitch, bitch ass nigger, and you
14 ain't got to worry about my kids, and they don't need you, and, you know,
15 stuff like that. So she's -- as she's saying it, she's in my face with Londyn
16 in her hand. So she, likes, I like lean back on the car, I'm still laughing.
17 Like I'm smirking. Not say laughing, I'm smirking at her, like, okay, like,
18 whatever, like, I'm not going to do that with you.

19 First thing came out of my mouth was, I'm not even doing to do
20 this here with you in front of your mom's house.

21 So get in my face, I backup on Relly's car.

22 Q And for the record, you've got both of your hands up by your
23 shoulders, palms out.

24 A Yeah, my hands up like this, like, get out my face. I backed up
25 to the car to where I was literally laid on the car and then I took my hands

1 and I got her up off of me. Like, took her -- my hands on her shoulders
2 and backed her up. And then after that she was ransoming. I was, like,
3 just get my daughter.

4 She was like, no, you can leave and you don't have to worry
5 about getting them. I don't need you to watch them. I can have
6 somebody else watch them.

7 So she -- that time, she's back up the driveway, like the
8 driveway went up, so she's, like, more down by the butt of the car that was
9 in the driveway.

10 Q Okay. So there was a car in the driveway?

11 A Yes, ma'am.

12 Q Okay. What kind of a car was it?

13 A It's a white car. Hon -- Hyundai, is that how you say it?

14 Q All right. Is it -- was it a white car that belonged to that
15 residence?

16 A Yes.

17 Q Had you seen it there before?

18 A Yes.

19 Q Okay. So which -- if you're looking at the house and you've got
20 the driveway, if you're in the street looking at, can the driveway fit two
21 cars?

22 A Yes.

23 Q Where is that car parked in the driveway?

24 A On the right side of the driveway, furthest from the door.

25 Q Okay.

1 A On that side.

2 Q And so your car would have been blocking that car in?

3 A Yes, ma'am.

4 Q Okay. So she has Londyn in her arms when she's doing this?

5 A Yes.

6 Q So when you're laying back on the car and you use each of your
7 hands on both of her shoulders to --

8 A Push her up off of me, yes.

9 Q Okay. Was it a hard push or did you --

10 A No.

11 Q -- just kind of, slowly?

12 A It wasn't a hard push because she was pregnant. It was just,
13 like, a slowly, like, get out of my face type push.

14 Q Okay. And she's holding Londyn?

15 A Yes.

16 Q Okay. So what happens at this point?

17 A After that, she's ranting again, she's, you know, calling me
18 names.

19 Q When you say, that, you mean she's yelling?

20 A Ranting. Yeah, ranting again, calling me names, repeat --
21 basically repeating the same things over and over. So after that, about
22 like two minutes, somewhere that, Thomas runs down the driveway, he
23 stops next to Brittney, so Brittney looks back at him, and, you know what
24 I'm saying, he didn't say anything to me. He asked ask her, did I hurt her.
25 She told him no. She start going off on him. Like, why you in my

1 business, I'm grown, and, you know, whatever. So that's when I get
2 Londyn.

3 Q Get Londyn from where --

4 A Brittney.

5 Q -- her arms?

6 A Yes. She comes back down, like more towards the gutter and
7 the sidewalk. She gives me Londyn, so she's yelling at him, I laugh.

8 Q Okay, wait. She's yelling at him and you pointed, you mean the
9 Defendant or Thomas?

10 A Yeah, she's yelling at Thomas.

11 Q Okay.

12 A I laughed, honestly. And as I'm walking towards the car, like I
13 said, and then when I start trying to put her in the car, that's when he
14 swung on me.

15 Q You're trying to put Londyn in --

16 A Londyn in the car.

17 Q Wait. I'm so sorry, sir, but --

18 A I'm sorry.

19 Q -- because this is all being recorded, only one of us can talk at
20 the same -- at once.

21 A Okay. I apologize, go ahead.

22 Q Okay. So you're putting Londyn in the backseat of the Jetta?

23 A Yes, ma'am.

24 Q Into the car seat?

25 A Yes.

1 Q Okay. And you said somebody swung on you as you were
2 doing that?

3 A Thomas swung on me but he missed. I take -- so when I
4 turnaround I take my hands and go towards his face and we stumble from
5 the gutter into like the sidewalk. They have -- you can't see on the
6 picture -- little rocks. You can't see on the picture. It's like little area
7 where they have rocks on the side of the house, on the side of the white
8 car.

9 And after that there were no punches throwing, we -- he was
10 basically trying to slam me for like a good 60 -- good minute he was trying
11 to slam me but he couldn't. And we were interlocked on each other. So
12 there was no -- there was never any punches thrown after that.

13 Q Okay. So did you ever -- I guess, you said that it went from
14 your car, to the gutter, to the sidewalk, to their driveway; correct?

15 A Well, yeah, when --

16 Q Okay. I mean, that's the way the layout is?

17 A Yes, yes.

18 Q All right. So did you ever go into the sidewalk or their driveway
19 area?

20 A No. Like, I'm on the -- we were both on the side of the house at
21 that time when he stumbled back into the rocks because the rocks are on
22 the side of the house, not in front of the house.

23 Q Okay. So they would be between the neighbor's house?

24 A The two -- yes, between the two houses.

25 Q Okay. How do you know that it was Thomas that swung and

1 missed at you, if your backs to -- to whoever's behind you?

2 A It was only me, Thomas, and Brittney outside at that moment.
3 Ezekiel was still in the car.

4 Q Okay. So as you're leaning into the car, did the punch hit you?

5 A No.

6 Q Where did it hit or where did --

7 A He hit the side of the, like, the door of the car.

8 Q All right. And then you said you turned around?

9 A Yes.

10 Q Where is Thomas in relation to where you are in between the
11 door and the car?

12 A Okay. If the doors all the way open, he's like right there when
13 the door is all the way open when I turned around.

14 Q Okay. So when you say, right there, is he like inches away from
15 you?

16 A Yes, like, literally like we're arms distance.

17 Q Okay. Is he inside the doorjamb or the door area or is he --

18 A Well, if you was going to close the door, then he would have
19 been in the way. But as it was open, he was just right there.

20 Q Okay. So you're trying to put Londyn in, he swings, misses, you
21 turned around, you immediately --

22 A Yes.

23 Q -- push his face with your hand?

24 A Yes.

25 Q Did you punch him or did you just?

1 A No, I never brought out my fist.

2 Q Okay. When you push his face away from you, he -- you said
3 he falls in the rocks?

4 A He stumbled -- he niffed the curve, he stumbles back, and then
5 when I charge towards him, we grab each other.

6 Q All right. Now, how do you grab each other?

7 A Basically he was up top, I was on the bottom. Like, like,
8 grabbling, wrestling. I don't know.

9 Q Okay.

10 A The term you want to use.

11 Q All right. So you said he was on top, so he had --

12 A He had me like this.

13 Q Okay. And for the record, you're holding both of your arms out,
14 kind of curved in front of you?

15 A Yes.

16 Q And not quite touching?

17 A Yeah, not quite touching.

18 Q Okay. He's on top of you with his arms around you?

19 A Yes, ma'am.

20 Q Is it -- is he, is -- like, a bear hug holding you?

21 A If that's what you want to call it, like. He was literally -- not in
22 the bear hug position but he was over me like that.

23 Q Okay. So Thomas is over you, where are you?

24 A I'm underneath him with my head like this, like my head was
25 separating -- my head was the separation between me and him basically.

1 Q All right. So is it fair to say that the top of your head is in his
2 chest?

3 A Around -- yeah, around that area, yes.

4 Q All right. And you have your arms, you kind of had them like
5 tucked in the elbows, but bent at a 90 degree angle?

6 A Yes, just like that.

7 Q All right. So they're -- your fists are kind of up but your heads
8 down so your fists are by the -- almost the side of your head?

9 A Yes, ma'am.

10 Q He's holding you?

11 A Yes.

12 Q And so why are you in that position underneath him?

13 A Well, because, it's like, it's leverage. As if -- as long as I'm
14 lower to the ground, it be harder for you to pick me up, like using my body
15 weight.

16 Q So you felt he was trying to pick you up and slam you?

17 A He was.

18 Q And how do you know he was?

19 A Because when he first grabbed me, he tried to overpower me.
20 When we was -- before we was even swinging up the street.

21 Q Okay. So, let me zoom out a little bit, so showing you the
22 house again, where does it start between the two of you, at the back end
23 of your car?

24 A Yes. About -- if you look, the rocks will be about right here, so
25 we start here, there's the car. We start here. And when he first grabbed

1 me, he tried to swing me off the sidewalk, that's how I know he was trying
2 to slam me. And then after that, it was -- I was basically using my
3 leverage and my momentum for him not to slam me. And we ended up,
4 up the street.

5 Q All right. You kind of made like a --

6 A Yeah, like.

7 Q -- squig --

8 A Like, yeah, just, like, 'cause we -- where the first one is right
9 here, that's where he tried to swing me off the curve. That's how I knew
10 he was trying to slam me. So after that, we were just swinging up the
11 street.

12 Q Like turning circles?

13 A Yeah, like, basically Ring Around the Rosie.

14 Q Okay. And you're trying to -- you've got your head down trying
15 to keep your weight down so he can't pick you up?

16 A Yes, ma'am.

17 Q As you get down the street and you're doing circles, what
18 happens?

19 A So when we -- well, we do about like five, six circles, no
20 punches are being thrown. Like I said, we was just grabbing each other.
21 Like, we're not even saying words to each other. We're just grabbing
22 each other.

23 Ezekiel runs out of the car. And as me and Thomas are locked
24 on each other, like I said, Zek stick his arm through. I don't know, like, he
25 stick his arm through, I seen the tattoo, I seen the blue shirt, and I seen

1 the tattoo that he has on his arm.

2 Q And you're using -- you're using your right arm and kind of
3 sticking it through --

4 A Yes.

5 Q -- and coming up?

6 A Sticking through, coming up.

7 And my head was down. So when I see the tattoo I know that's
8 Ezekiel. So after that we, like, like, strong push off of each other.

9 Q You and Thomas?

10 A Thomas, take a strong push off of each other. And there's a
11 car, car come down the street, comes to an abrupt stop, like, skree. So
12 when the car comes, I nipped the car, I stumbled back, the car zooms
13 through. I'm telling Ezekiel to watch out because I seen the glare that he
14 has something in his hand.

15 Q Who's he?

16 A Thomas had something in his hand. I seen the glare through
17 the headlights of the car. I'm telling Ezekiel to watch out.

18 Now, Ezekiel is facing, before he fell and the other truck comes
19 through that was behind the white car, Ezekiel was facing up the street
20 and Thomas was behind Ezekiel. I'm on the opposite side of the car.

21 Now, after that, Ezekiel drops. Thomas tries to run, he falls
22 by -- a little bit -- a little bit before they driveway. He runs in the house.

23 I chase Thomas. You know, I tried to kick the door down, but
24 he had his weight on the door, you could feel someone behind the door.

25 So after that, I run -- Ezekiel was calling my name. And then

1 that was the last sight of him. Ezekiel was calling my name. And he was
2 on the ground. He never told me what was wrong. He kept saying he
3 was in pain.

4 I'm, like, where are you in pain at. So, you know, I get to, like,
5 panicking, you know what I'm saying? Tears coming out, like, like, oh,
6 what I'm going to do, you know. I was -- for at that point, I was like, oh,
7 sh --

8 So Ezekiel's on the ground, there's no blood yet, there's no
9 blood yet. He's on the ground. I'm like before anybody got on the phone
10 with the paramedics, I'm, like, yo, like, what's good, like, you okay, is it
11 your back, your chest, leg, neck, anything.

12 He's just like, I'm in pain. He, like, don't leave me. Like, I'm not
13 going to let you go. I'm going to stay here. I'm going to get the
14 paramedics.

15 So I turned him first on his -- let me see -- turned him on his left
16 side first. No blood came out. It wasn't his back, nothing wrong with his
17 back. So when I sat him up, the blood start coming out. So I laid him
18 back down.

19 Q Of his -- and you pointed to your --

20 A His chest.

21 Q -- chest?

22 A Yes.

23 I don't know exactly, because through the sweater, where the
24 wounds were, but I seen the blood come from his chest. So right then
25 and there I panicked. So I lay him down.

1 There was two Hispanic guys outside across the street, I'm like,
2 hey, you know, you guys give me some towels, can you call the
3 ambulance.

4 Because my phone was still, the car. Ezekiel had my phone.

5 So I'm, like, hey, you guys give me some ambulance. The guy
6 smiled at me, told me fuck no.

7 Turned off his porch light, closed the gate, and was still
8 watching through the gate.

9 There was a gentleman in a truck, black guy with glasses, big
10 black guy, he was, like, hey, you need help. I'm, like, yes. So he gets out
11 and he helps me put pressure on Ezekiel.

12 He, like, you called the ambulance?

13 So I run to the car and then I run -- to get my phone, run back
14 up the street. I'm on the phone to ambulance, the ladies, like, oh, I'm
15 going to send a unit out there, dispatch, cops should be there any
16 seconds.

17 I'm, like, I don't want the cops. I want, you know, paramedics,
18 paramedic. My friend is out here, you know, bleeding. I don't know
19 what's wrong with him. I don't know where it's coming from.

20 So she, like, do you feel that you can pick him up and drive him
21 here.

22 And I'm, like, I panicked, and was like, no.

23 First when she said that, I ran to the car, that's how there was
24 blood on the -- there was actually blood on the gas pedal.

25 So I turned the car around. I park a little bit by Ezekiel. So I

1 looked at -- me and the guy looked at each other, no, like, I was, no, I'm
2 not even going to touch him because I didn't want that responsibility, that
3 liability to already fall on me and he's already bleeding.

4 So the lady, in this house right here, she pulls her car --

5 Q And that's the one house to the left --

6 A Yes.

7 Q -- of the -- Brittney's mom's house on 3?

8 A Yes, ma'am.

9 Q Go ahead.

10 A It was Hispanic lady. And she backs out. She puts her car in
11 the street. She didn't speak too much English but she gave me towels,
12 me and the guy towels to put pressure on Ezekiel.

13 So Ezekiel's was still breathing. I'm telling him to calm down.
14 Like, yo, don't worry about nothing right now. I make sure you're safe.
15 Like, you know, talking to him -- talking to him to make sure he don't, like,
16 panic himself out or anything. So I was holding his hands, you know, I
17 was crying. And the guy next to me, like, calm down, he's going to be
18 good, like, so.

19 As he got on the phone with the paramedics, the lady, Hispanic
20 lady, is on the phone with paramedics.

21 So I don't speak Spanish.

22 So, you know, she's yelling. He's, like, no, we just need
23 someone here. And then that's when the first officer shows up. The first
24 officer shows up, like, oh, you know, guys backup, like, you know, want to
25 know what's going on.

1 So, you know, I'm still panicking. And then I was kind of being
2 rude to him, start talking to him, let him know what's going on.

3 He asked me what house Thomas went in. Then he went there.
4 I was still right there with Ezekiel.

5 Q Okay. So you pointed at Brittney's mom's house?

6 A Brittney's mom's house.

7 Asked me, where did he go? I said he went in the house.

8 Q Okay. Let's backup a little bit.

9 A Okay.

10 Q All right. So let me ask you, from the time that Brittney comes
11 out and then Thomas comes out and the two of you get into a fight or
12 scuffle, how long was it until Ezekiel drops, from the time Thomas comes
13 out until Ezekiel drops on the ground?

14 A I mean, I probably say, everything was so quick, like three
15 minutes. It couldn't be no more than three and a half minutes max of
16 the -- between the time he comes out and the time, yeah, yeah.

17 Q Okay. So it all happened really fast?

18 A Yes, ma'am.

19 Q Okay. What -- well, let me ask you this, so you said initially
20 Thomas tried to punch you, you turn, you hit his face, so he falls
21 backwards, did he try and throw any other punches at that point?

22 A No. Because when he stumbled back, I charged towards him
23 and that's when he grabbed me. It was never --

24 Q Why did you charge towards him?

25 A Because, I mean, I was defending myself.

1 Q Okay. So you charge towards him and that's when he grabs
2 you up top?

3 A Yes, we.

4 Q And then you put your weight down --

5 A Yes.

6 Q -- and then you --

7 A Yeah, we --

8 Q -- circle?

9 A -- swung up the street, yes. It was never another punch thrown
10 after that.

11 Q Okay. When you said -- you said -- well, let me ask you this,
12 are either you or Thomas saying anything during this fight?

13 A No.

14 Q When Ezekiel puts his arm in and the two of you break apart,
15 does Ezekiel say anything?

16 A Yes. Ezekiel says to me, as you know in my statement, he calls
17 me K2, he said, K2 you trippin', this is somebody else house, this is not
18 what you should be doing. Basically telling me, like, I was wrong. But I
19 don't even think he saw the first punch being thrown.

20 Q Okay.

21 A So.

22 Q But he's telling you, stop?

23 A Yeah, like stop it.

24 Q All right. Is Brittney still outside when you and Thomas are
25 fighting?

1 A I don't, honestly, I don't, like I said, if we want to go back a little
2 bit, when she gives me Londyn, after she was done ranting at him, she
3 gets in the car.

4 Q Okay. So you don't remember her out there screaming and
5 telling either of you to stop?

6 A Honestly, even reading my own statement, I -- don't -- I
7 probably say when the detective talked to us, it was like the moment type
8 thing. But I don't even remember her, honestly, like, 'cause my focus,
9 when he swung, was him. Being there until I told her to -- out of my
10 mouth, that she needed to just take Londyn and go and I'll stay for the
11 cops.

12 Q Okay. So if I'm understanding you, as you sit here today, you
13 don't remember Brittney being there or yelling or anything?

14 A No. As much as -- I remember her when she gave me my
15 daughter. She gets in her car.

16 Q Okay.

17 A And she, like, you, you can -- even though I couldn't see her, I
18 heard the car door shut, heard the car come on, and then that's when he
19 did what he did.

20 Q Okay. So as you and Thomas are fighting is when you think
21 Brittney leaves?

22 A Yes.

23 Q Okay. But in your statement to the police that night, you did
24 state that Brittney was there and things you heard from her?

25 A Yes. Like in my mind, I, it was just going through my mind, like,

1 everything. I'm thinking I heard her say Kyriell, no. That's what I said in
2 my statement but.

3 And -- with me reading my statement, and thinking back on my
4 statement, like, I don't even remember her even -- besides me calling her,
5 saying you need to come get your daughter and take her, I don't
6 remember her being there.

7 Q Okay. But it's not that she wasn't there, you just, as you sit here
8 today, you don't remember?

9 A Yeah, I don't -- I don't remember her being there.

10 MR. LONG: Objection, Your Honor, leading.

11 THE COURT: No, she's just clarifying.

12 MR. LONG: She's just stating exactly what the witness wants --

13 THE COURT: She's clarifying. Overruled.

14 BY MS. DIGIACOMO:

15 Q What were you wearing that night?

16 A I had a Nike jumpsuit on.

17 Q And what do you mean by jumpsuit?

18 A Track suit, jumpsuit, a top and bottom, sweater and sweats.

19 Q Okay. Did the police actually take photographs of you later that
20 night?

21 A Yes, ma'am.

22 Q All right. I'm going to show you State's Exhibit 178, all right, is
23 this you from that night?

24 A Yes, ma'am.

25 Q All right. And showing you, and it goes all the way, it shows

1 your feet as well?

2 A Yes, ma'am.

3 Q So you were wearing red tennis shoes?

4 A Yes, ma'am.

5 Q Showing you State's Exhibit 179, is that a close-up of your
6 face?

7 A Yes, ma'am.

8 Q And then 180, is that showing your right side?

9 A Yes, ma'am.

10 Q 181, is that depicting the backside of you?

11 A Yes, ma'am.

12 Q Showing you 182, is that showing your left side?

13 A Yes, ma'am.

14 Q And so that's how you were dressed that night?

15 A Yes, ma'am.

16 Q Do you remember if it was a warm night or a cold night?

17 A It was cold.

18 Q It was cold?

19 A Yes, ma'am.

20 Q All right. And the way that your hoodie is up, and showing you
21 State's 178, it's over your head, is this the way it was when you came into
22 contact with the Defendant?

23 A Yes. I just had the strings tied up under my neck.

24 Q Okay. At some point did you remove it or did you leave it?

25 A I removed it. It wasn't like it was tight. It was just to keep, like,

1 my ears and things warm. So it's, like, tied a little bit. So when he swung
2 and I turned around, I do this, I take my hood off.

3 Q Why did you take your hood off?

4 A Because the hood is low -- or -- I don't know the word to use.
5 But low key. It was big. Like, if you put the hood, without tying it, it
6 probably go like right here on me.

7 Q Would it affect your ability to see?

8 A Yes, ma'am.

9 Q All right. How far away -- when you finally broke apart, how far
10 away were you from Brittney's mom's house?

11 A It was the next house and then -- I was, like, we were, like, a
12 little bit up from the white gate that leads to that neighbor's house, like, a
13 little up.

14 Q Okay. So past the neighbor's house?

15 A Yeah, past the neighbor's house, a little bit past the white gate.

16 Q Neither of you were saying anything. Before Ezekiel breaks you
17 up, do you say anything to the Defendant or does he say anything to you
18 after you broke apart?

19 A No, ma'am.

20 Q And, now, at this point you said a car comes down the middle of
21 the street?

22 A Yes, ma'am.

23 Q And it separates -- separates you from who?

24 A Thomas and Ezekiel.

25 Q Okay. I'm putting 3 back on again, okay, so as the car comes

1 down the street, you said you got nipped by the car and fell down?

2 A Yes. We were about, I'm going to put an X where we were.

3 Q Sure. Thank you. On Exhibit 3.

4 A So, sorry, when we break apart, we're about right here. This is
5 where the white gate starts. So about right here. So we push off, I end
6 up here, which is the X -- oops, I'm sorry. And Thomas and Ezekiel,
7 here's the car, Thomas and Ezekiel are on this side. Ezekiel would be
8 here and Thomas was here.

9 Q Okay. So which way was the car going, was it starting from the
10 left and going right or the other way?

11 A It was coming down Pistachio Nut.

12 Q So coming from the left of this picture, that's in front of you,
13 coming from that -- the left?

14 A Yes.

15 Q Okay. You end up on the opposite side of the street from
16 Brittney's mom's house?

17 A Yes.

18 Q But Ezekiel ends up by the tail end of the car and the Defendant
19 ends up by the front headlights?

20 A Well, Thomas ended up by the headlights and Ezekiel was --
21 passenger side, like, little -- I want to say past the mirror, like, probably
22 even with the mirror but a little past it. I ended up, after I nipped by the
23 car, probably backseat, around the car in that area. And there was
24 another car behind that car.

25 Q Okay. And so when you break apart, and you said that you

1 push off of the Defendant and he pushes off of you, does -- is there any
2 physical contact between Ezekiel and the Defendant?

3 A No, ma'am.

4 Q So they -- he didn't push off with him as well as he was breaking
5 you up?

6 A No, ma'am.

7 Q Okay. Did the Defendant swing at the victim at all?

8 A The victim being Zek?

9 Q I'm sorry. Did the Defendant swing at Ezekiel at all or push
10 him?

11 A No, no, ma'am.

12 Q Okay. Do you remember testifying at a -- well, first of all, you
13 talked to the police that night?

14 A Yes, ma'am.

15 Q Do you recall telling the police that Ezekiel got in between and
16 that the Defendant swung at Ezekiel so Ezekiel pushed him?

17 A Well, I told them that by analyzing what I saw and him being on
18 the ground stabbed, yes.

19 Q Okay. So that's what you thought happened?

20 A Yes. Because when I nipped by the white car and, like I told
21 you, I fall back, they zoom through, the other car zoomed through, and
22 then as I'm getting up, Ezekiel's on the ground, but he didn't give me any
23 kind of facial expression that he was hurt. I walk over Ezekiel and chase
24 him.

25 Q So you stepped over Ezekiel?

1 A Yes, ma'am.

2 Q All right. How did you see that Ezekiel dropped to the ground,
3 was it when you fell?

4 A Yeah. When I fell, he fell. So if you look under the car, you see
5 Zek. But I'm thinking that, okay, if I just got nipped by this car, when we
6 break off, and I stumble back and I fall, then I was thinking in my mind,
7 like, he could have got, as he pushed, hit or nipped by the car and fell
8 also.

9 Q Okay. So you didn't understand at that point he might have
10 been hurt?

11 A I didn't. Yeah, I didn't see any -- anything.

12 Q All right. So before you fall backwards, is when you see the
13 Defendant with something shiny in his hand in the headlight of that car?

14 A Yes, ma'am.

15 Q What kind of a car was that first car?

16 A It was a white Kia.

17 Q And do you know what the second car was that came?

18 A It was a, like, SUV type. Like, I don't know if you want to stay a
19 Tahoe or a suburban or anything like that.

20 Q Okay. But an SUV?

21 A Yes.

22 Q And you said it was -- the car was coming down fast --

23 A Yes.

24 Q -- and came to a screeching halt?

25 A Yeah, it came like, not like loud, but like a little one, like, skree.

1 And that's when everything just, like, that's when everything happened so
2 quick. He pushed me.

3 Q Okay. And that's when you end up on the other side of the car?

4 A Yes, ma'am.

5 Q So you see the Defendant kind of towards the front of the car
6 with something shiny in his hand, did you see where he went when you
7 fell?

8 A No. When I fell, they zoomed through, they zoomed through,
9 and then when I get up, Ezekiel, but he didn't give me, like I say, any
10 facial expression, anything. So I stepped over him. And as he's running,
11 he falls, and he gets up, like, when he falls, I'm literally like not too far
12 behind him.

13 Q Okay. So --

14 A Because the car comes through.

15 Q Okay. So, I'm sorry.

16 So the cars come through, Zek's on the ground, where is the
17 Defendant or Thomas when the cars come through?

18 A About -- he falls about right here. That's where he falls, that's
19 where he was at.

20 Q No, but what I'm asking is, so you're on the ground, the cars
21 come through, you get up off the ground?

22 A Yes, I get up.

23 Q Okay. And you see Zek's on the ground?

24 A Yes, ma'am.

25 Q Where is the Defendant?

1 A There, where I marked.

2 Q So he's already almost to his house?

3 A Already running, yes.

4 Q But you see him fall?

5 A Yes, he falls.

6 Q He gets up?

7 A Yes.

8 Q And keeps running. And you said you got close to him at what
9 point?

10 A Yes, when he falls, I took, like, probably say, like, a quick, like,
11 Ezekiel, like, I looked down. And he didn't give me, like I say, any facial
12 expression, anything that he was hurt. So in my mind, I'm, like, okay, he
13 fell back. So I look up, Thomas falls, and I just started chasing him. So
14 by the time he hit the front door, I was literally, like, they have, like, a
15 sidewalk piece, by the time he close the door, I was literally already about
16 to kick the door.

17 Q Okay. And why were you going to kick the door in and try and
18 get inside?

19 A It was a fight.

20 Q Okay. So is it fair to say you're kind of mad about how this fight
21 started and you're in this fight?

22 A Yes, it was -- I didn't feel, like, I mean, I just wanted to fight
23 honestly, to be honest.

24 Q Okay. So he -- because he started it, you wanted to finish it?

25 A Yes, ma'am.

1 Q All right. If Thomas had not come out there and swung a punch
2 at you, would any of this happen?

3 MR. LONG: Objection, speculation.

4 THE WITNESS: No.

5 THE COURT: Sustained.

6 MS. DIGIACOMO: Well, Your Honor --

7 MR. LONG: Your Honor, could you admonish the jury to
8 disregard the witness's answer. He answered before my objection was
9 sustained.

10 THE COURT: Yeah. Go ahead and ask some other questions.

11 MS. DIGIACOMO: Okay.

12 BY MS. DIGIACOMO:

13 Q Well, let me -- let me ask you, did you go over there that night
14 planning to get into a fight?

15 A No, ma'am.

16 Q And you said before you just felt like you were defending
17 yourself when it started?

18 A Yes, ma'am.

19 Q All right. So you can't get into the house where the Defendant
20 ran?

21 A No, ma'am.

22 Q And you actually saw him go in that front door?

23 A Yes, ma'am. Shut it and heard him lock it.

24 Q Okay. So you at this point you said you heard Ezekiel?

25 A Ezekiel was saying, K2, K2, he said it about twice. And I was

1 like, oh, and I just start. And as I'm running up the street, he said it about
2 another time.

3 Q He started what?

4 A Saying, K2, K2. And as -- the second -- the first time he said it,
5 I was, like, I was still trying to get in the house honestly.

6 Q Okay.

7 A Second time he said it, I turned around and start running back
8 towards him. So by the time, the third time he said it, I was already down
9 there with him.

10 Q So when you're running back, do you see Ezekiel's in the same
11 spot that you had jumped over him?

12 A Yes.

13 Q Okay. And so you said you go up, you get down on the ground
14 with him?

15 A U'm-h'm.

16 Q And do you remember Brittney being there?

17 A No.

18 Q Okay.

19 A Because I had to, like I said, I had to call her, and be, like, you
20 need to come back and get your daughter because Thomas stabbed my
21 friend.

22 Q Okay. So you remember calling her and telling her that?

23 A Yes.

24 Q Okay. You don't recall her actually being there?

25 A No.

1 Q Okay.

2 A It didn't take her -- when I called her and said, come get your
3 daughter, Thomas stabbed my friend, it didn't take her that long to even
4 get back to us.

5 Q Okay. So did you see where she came from?

6 A She came from the opposite end down the street. Like, same
7 direction the other cars are going, she came from that way, so from
8 around the corner.

9 Q Okay. As you're on the ground with Ezekiel, you said you had
10 to call Brittney to come back, how did you, I guess, walk me through how
11 you got your phone that you said was still in the car?

12 A When -- when I first lift him up and the blood came out, I
13 panicked. I ran to get my phone to call the paramedics. So before I even
14 called the paramedics, I called her and told her to come and get Londyn.
15 And after that --

16 Q Was Londyn still in the car?

17 A Yes, Londyn was still in the car.

18 Q Okay.

19 Okay. Then what happens?

20 A Then, after that, I get on the phone with the paramedics. And
21 shortly, she arrives, and she, like, her exact words were, oh, shit, what
22 happened.

23 And I was, like, your dad stabbed him, and you need to take
24 Londyn and go and I'll wait for the cops for Ezekiel to get picked up and I'll
25 talk to the cops.

1 She was, like, I'm about to take my daughter and leave. I'm
2 about to go get my mom. And I said okay.

3 Q All right. Was that before or after you actually moved your car
4 around over to where Zek was?

5 A Before.

6 Q Okay. So does she leave again then?

7 A Yes.

8 Q And you said at some point the lady, the neighbor that didn't
9 really speak English, had moved her car into the street?

10 A Yes, so no car can come up the street.

11 Q Okay. Do you remember if that was before or after Brittney left
12 the second time?

13 A I think Brittney was gone at that time.

14 MR. LONG: Objection, non-responsive. If he doesn't know, he
15 needs to say as much. I don't want him speculating.

16 THE COURT: All right. I'll sustain that.

17 BY MS. DIGIACOMO:

18 Q Okay. So do you know whether or not Brittney left before or
19 after she moved her car in the street?

20 A Honestly, no, I don't know.

21 Q Okay. Did you actually get on the phone with paramedics?

22 A Yes.

23 Q Okay. And is -- are they walking you through what to do or
24 what's going on?

25 A Yes. First, it was a lady, she told me put pressure on where I

1 think the wound is at or where the blood is coming from. I told her I've
2 been doing that. She asked me do I have any towels, any water.

3 I said, I didn't have any water. I told her I towels.

4 She asked me was I able to pick him up.

5 And then this is why -- I'm on the phone with the paramedics
6 and the Hispanic lady. This is before she pulled her car out.

7 She asked me, can I pick him up.

8 I thought about it. I was, like, I don't know.

9 That's when I run down, get the car, bring it around, and then
10 she pulls her car, like that.

11 And when I --

12 Q When you say, she, the --

13 A The Hispanic lady.

14 Q Okay.

15 A I'm sorry, I didn't say the Hispanic lady.

16 So I grab, put my arm, my left arm, under Zek's head, and then I
17 was just like, nah, I didn't want to take on the responsibility. I told the
18 lady, no, I'm not going to touch him.

19 Q Okay. So you leave him there where he originally fell?

20 A Yes, ma'am.

21 Q And was she telling you to, who was on the phone, telling you to
22 put pressure on his chest?

23 A Yes. She said, wherever we feel. 'Cause she asked me, where
24 were the wounds.

25 And I told her I couldn't see through his jacket. But he's

1 bleeding from the front.

2 She said wherever we feel that the blood is coming from put
3 pressure on it.

4 Q And that's where the Hispanic lady gave you a towel that you
5 used?

6 A Yes, ma'am; two of them.

7 Q All right. Did he ever, while you were there, roll himself over or
8 change positions?

9 A No.

10 Q Okay. So did the blood stop as you were putting pressure on
11 him?

12 A Honestly, I -- I have no idea. I was just trying to, you know, do
13 what I can.

14 Q All right. Was --

15 A I know that when we was putting pressure on him, and I was
16 holding his hand and talking to him, he was -- his breathing was calming
17 down. He was controlling it. 'Cause at first he was, like, like, panicking,
18 yeah. And then I was, like, calm down. So he was actually talking to me
19 as he was calming down. Like, his exact words were, don't leave me
20 here, you know, make sure nothing happened to me. And I was, like,
21 talking to him, like, full sentence, like, I got you, don't trip.

22 Q Okay. When -- you said that when Brittney left with Londyn,
23 you told her, you go, I'm going to stay here and wait with him?

24 A Yes, ma'am.

25 Q Were you there when the police arrive, you were; right?

1 A Yes, ma'am.

2 Q Okay. As you're in the street with him trying to help him, before
3 the lady moved her car to block the street, were there still cars coming
4 by?

5 A [No audible response.]

6 Q If you remember.

7 A No. As I remember, is that when I looked up, the car in their
8 driveway was gone.

9 Q The car in whose driveway?

10 A Brittney's mom driveway.

11 Q Okay. Which car was gone?

12 A The Hyundai.

13 Q The white one that you talked about?

14 A Yes, ma'am.

15 Q Did you see anyone get into that car and leave with it?

16 A No, ma'am.

17 Q Okay. Do you remember telling the police that you saw
18 somebody get into that car and leave but it wasn't the Defendant?

19 A I told -- when I was sitting in the front seat, I don't know her
20 name, of her car, I actually told her that it was a white car in the driveway.
21 And she said, well, we're going to check on that. And then that's the last I
22 heard honestly.

23 Q Okay. So you don't recall seeing somebody actually leave in
24 the car --

25 A No.

1 Q -- you just noticed it was gone?

2 A The car hardly moves. And I know that for a fact.

3 Q And what do you mean, it hardly moves?

4 A Like it wasn't registered.

5 Q Okay. So when the police got there though that white car, that
6 Hyundai, should have been in the driveway of Brittney's mom's house,
7 was gone?

8 A Yes, ma'am.

9 Q But when you went to go get your car to move it around, it was
10 still there?

11 A Yes, because you couldn't go around it.

12 Q So when the police get there you -- do you end up calling
13 anyone else?

14 A Yes, I contacted Ezekiel's little brother Seth, and I asked Seth
15 how to get in contact with his twin brother Azariah and his mom. So Seth
16 was, like, what happened. I was, like, I don't really want to say too much
17 but you guys get in contact with -- with --

18 THE COURT: Hold on.

19 MR. LONG: Objection, relevance. What does all of this have to
20 do with anything? It's what happened afterwards who he contacted. The
21 paramedics have been called, the police have been called, the incidents
22 over.

23 MS. DIGIACOMO: Well, it is relevant --

24 THE COURT: It's the whole story.

25 MS. DIGIACOMO: -- to how they got there and --

1 THE COURT: It's the whole story. I'll let him answer.

2 MS. DIGIACOMO: Thank you.

3 BY MS. DIGIACOMO:

4 Q Go ahead. So you called --

5 A Contacted Seth. And I was, like, you know how to get in
6 contact with AZ, which is, I call Azariah, his brother. And he was, like,
7 what happened. I said, you know, something happened to Zek, I just
8 need you guys to call your mom, your dad, you know, and then.

9 Q Did you get -- tell them where to come?

10 A Yes. I got on the phone with Azariah, he said, K2, what's going
11 on, what happened, bro? And I was, like, I'm going to send you an
12 address. I said, I'm not going to say much over the phone. You just need
13 to get here because I didn't want a big commotion. I was, like, you know
14 how to get in contact with your mom's. I don't know how they actually got
15 in contact with their mom but. Seth was actually at my house also with
16 Ezekiel.

17 Q Okay. So he was at your house, that's where you called him?

18 A Yes, I called Seth -- from my phone to -- Seth had a phone. I
19 had Internet and called him on Facebook. So I got in contact with him.

20 Q Okay. Now, when you were at the scene and the first officer
21 contacted you, did you give him information regarding who else was there
22 when the fight started?

23 A Yes, ma'am.

24 Q And was that Brittney?

25 A Yes, ma'am.

1 Q Did he want Brittney's phone number from you?

2 A Yes, ma'am.

3 Q Were you able to give it to him?

4 A I didn't know it by heart, but I was able to give it to him. He
5 actually allowed me to charge my phone inside the Jetta Volkswagen until
6 it came on so I can give him the number.

7 Q Did you actually speak with her on the phone while the officer
8 was there?

9 A Yes.

10 Q So that night, I guess, when the officer got there, you pointed to
11 a house, what did you tell the officer about the house that you were
12 pointing at?

13 A I told them that the person who did it went inside that house.

14 Q Did you say who that person was even though you didn't know
15 their name?

16 A I don't think I ever said who the person was.

17 Q Do you remember telling the police that it was the mother's
18 boyfriend?

19 A Yes, yes, yes.

20 Q Okay. So Brittney's mom's boyfriend?

21 A Yes.

22 Q All right. Did you describe what he looked like?

23 A I described what he had on.

24 Q Okay. Now, how tall are you?

25 A Five-eight, five-nine.

1 Q How tall was Ezekiel?

2 A About six feet.

3 Q And how much did -- do you weigh, back in December?

4 A Probably like 150 at the max.

5 Q Okay. Is Ezekiel was he about the same as you or was he
6 more skinny?

7 A No, he was skinny, like super skinny.

8 Q So he was tall and skinny?

9 A Yes.

10 Q What about the Defendant, what about Thomas, what was --
11 how was he? Is he your height? Is he your same weight?

12 A He's probably -- probably like an inch taller. But he was -- he
13 was much bigger than both of us. Even if me and Ezekiel combined
14 bodies, he was still bigger than us.

15 Q Okay. So and you kind of held your arms out, was he more
16 stocky than you?

17 A Yes, he was -- he was built.

18 Q Okay. And about an inch taller than you at least?

19 A Yes.

20 Q All right. So after you were able to charge your phone, did you
21 eventually get moved down the street --

22 A Yes, ma'am.

23 Q -- by the police?

24 That night, when you went over to pick up Londyn, did you have
25 a weapon on your person, a knife, or a gun?

1 A No, ma'am.

2 Q Did you have a knife or a gun in the Jetta?

3 A No, ma'am.

4 Q What about Ezekiel, did he have a weapon on him, either a
5 knife or a gun?

6 A No, ma'am.

7 Q When you went over that night to pick up Londyn you waited
8 outside, do you normally just do the exchange outside of Brittney's mom's
9 house or do you go up inside it?

10 A She usually brings her out to me. Like I said, only about twice
11 ever I knocked on the door. And that's because the first time, my phone
12 was dead and Brittney told me to ring the doorbell. And the second time it
13 was something wrong with Brittney phone.

14 Q Okay. So she didn't know you were there?

15 A No.

16 Q Okay. Do you get along with Brittney's mom?

17 A I mean, we don't see eye to eye. But we never really, like, get
18 into it. But, yeah, from just my, just respecting.

19 Q Okay. What about with the Defendant or Thomas?

20 A Me and Thomas, since I've been dating Brittney, never got into
21 it. The only time we ever encountered anything it was my daughter's baby
22 shower and he told me he didn't like a certain word in his house because
23 he was from the other side.

24 Q All right. But that's the only real conversation --

25 A That's the only time -- yeah, we've never really -- anytime I ever

1 talked to him prior to that, we talked about sports and life things, like.

2 Q Okay. So, just to clarify, it was Thomas and you were the two
3 that were fighting that night?

4 A Yes, ma'am.

5 Q You never saw Ezekiel and Thomas fight?

6 A No, ma'am.

7 Q Other than Ezekiel did break you apart?

8 A Yes, ma'am.

9 Q And throughout this whole incident that you said lasted like
10 three, three and a half minutes, you never said anything to the
11 Defendant?

12 A No, ma'am.

13 Q Were you there when Ezekiel's mom and brother's showed up
14 later?

15 A Yes, ma'am.

16 Q And were you actually having a conversation with them, like,
17 yelling to where they were?

18 A Yes. Me and -- Azariah was, like, K2.

19 And I was, like, yeah, I'm right here, they won't let me come
20 over there.

21 He asked me, like, oh, is my brother okay?

22 And I told him, I said, well, before I came down the street, the
23 last time I seen him, he was responsive. He was breathing. He was
24 talking.

25 Q Okay. And that's all you -- that's all that was said?

1 A That's all that was said. And the officer told me, quit yelling
2 across the street.

3 And they weren't allowed -- 'cause I was actually telling them to
4 come to me, Azariah, his mom, and them. And he was actually telling
5 them that they're not allowed past the tape, across the tape.

6 Q Pass the police tape?

7 A Yes, ma'am.

8 MS. DIGIACOMO: Court's indulgence.

9 BY MS. DIGIACOMO:

10 Q All right. So as you see the Defendant in court here today, does
11 he look about the same as he did on December 11th, 2017, or does he
12 look different?

13 A He just look a little slimmer.

14 Q Okay. After this night, did you, I guess, have any injuries on
15 yourself?

16 A From the fight, no. I just had a scratch in back of my right leg
17 from the -- the -- the car. When I nipped the car and fell back.

18 Q And so where was that?

19 A It was probably maybe little side of my knee.

20 Q All right. Did it cut your sweatpants you were wearing?

21 A No.

22 Q After this fight started, and the Defendant ran inside and locked
23 the door, you were out front in the street the entire time until the police got
24 there?

25 A Yes, ma'am.

1 Q Did you ever see anybody from -- or any person come out of
2 Brittney's mom's house while you were there with the police?

3 A Well, when they were calling people outside -- excuse me --
4 before he take me down the street, all I saw was her little sister come
5 outside and then.

6 Q Okay. Well, I guess, I'm saying before the police were calling
7 them outside, are you talking about with the bullhorn?

8 A Yes.

9 Q Okay.

10 A But before that, no.

11 Q All right. So from the time that Zek was hurt in the street until
12 the police called out the occupants, no one from that residence ever came
13 outside?

14 A No, ma'am. I was -- when I was on my knee with him, my head
15 was facing her house.

16 Q Okay. So you're actually facing down towards the residence?

17 A Their house, yes.

18 Q And so that's how you noticed that the car that was in the
19 driveway was gone?

20 A Yes, it was gone.

21 Q So nobody from Brittney's mom's house ever came out with
22 towels or water and tried to help with Zek?

23 A No, ma'am.

24 Q And at the time, and now we're at Zek has broken you and the
25 Defendant apart and a car comes down between the three of you, from

1 the time that that break apart happened until you saw Zek drop on the
2 ground, did you ever see any fighting going on?

3 A No. As I was nipped by the car, as I was stumbling back, I was,
4 like, Zek, watch out. I was, like, Zek, watch out, 'cause he had what he
5 had in his hand. And when I fall back, it was so quick that when the two
6 cars pass, Ezekiel was already fell on the ground.

7 Q Okay. And when you said, he had what he had, you're talking
8 about the some --

9 A The -- whatever -- the object that he killed him with, if that's
10 what you want to say.

11 Q You're talking about a shiny object you saw in the Defendant's
12 hand?

13 A Yes, ma'am.

14 Q Okay. And other than when you got up to move your car and
15 get your phone, you stayed with Zek in the street?

16 A Zek, yes.

17 Q When the police ended up getting there, you gave a taped
18 statement to them?

19 A Yes, ma'am.

20 Q Did you also give them consent to search the Jetta for any
21 weapons?

22 A Yes, ma'am.

23 Q Now, after this night, did your relationship with Brittney become
24 more strained?

25 MR. LONG: Objection, relevance.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Overruled.

3 BY MS. DIGIACOMO:

4 Q Okay. And how so?

5 A Basically -- well, after everything happened and the cops let me
6 go, I had a conversation with her, in front of her mom, her mom was --
7 talked to me crazy, I never said anything to her either, I said, okay.

8 Q Are you talking about that night --

9 A That night, same night.

10 Q -- after everyone left?

11 A I didn't see Brittney or my daughter.

12 MR. LONG: I'm going to object to it being non-responsive. It's
13 not -- he's not answering any question.

14 MS. DIGIACOMO: I asked him how his relationship got
15 strained after this.

16 THE COURT: All right. Overruled.

17 THE WITNESS: Didn't see Brittney or Londyn for about three
18 days, then me and her met up, and basically her mom told her, come get
19 her stuff, and I gave her gas money to go get her and Londyn's stuff.

20 BY MS. DIGIACOMO:

21 Q Okay. So Brittney wasn't allowed to stay at her mom's house
22 anymore?

23 A No, ma'am. She actually lived with me and my family --

24 THE COURT: Okay. Don't -- there's no question in front of
25 you.

1 MS. DIGIACOMO: Okay.

2 MR. LONG: Thank you.

3 BY MS. DIGIACOMO:

4 Q Did -- so she stayed -- did Brittney stay with you when her mom
5 didn't let her stay at her house?

6 A Yes, her and Londyn.

7 Q Okay. And then eventually does Brittney go back and live with
8 her mom?

9 A No.

10 Q Is she still not living with her mom?

11 A Correct.

12 MS. DIGIACOMO: Court's indulgence.

13 Your Honor, I'll pass the witness.

14 THE COURT: Before we get to cross-examination, does the
15 jury need a break? Seeing nothing.

16 Cross?

17 MR. LONG: I would like a break.

18 THE COURT: Do you need a break?

19 MR. LONG: Yes.

20 THE COURT: All right. We'll take a five minute recess.

21 During the recess you're not to talk or converse among
22 yourselves or with anyone else on any subject connected with this trial.
23 Or read or watch or listen to any report of or commentary on the trial or
24 any person connected with this trial by any medium of information,
25 including, without limitation, newspapers, television, radio, or the Internet.

1 Or form or express an opinion on any subject connected with the trial until
2 the case is finally submitted to you.

3 Remember, no social media. No computer investigation.

4 Five minutes, please.

5 [Recess taken at 3:20 p.m.]

6 [Jury trial resumed at 3:31 p.m.]

7 [In the presence of the jury]

8 THE MARSHAL: All rise, please.

9 And be seated.

10 THE COURT: Stipulate to the presence of the jury.

11 MS. DIGIACOMO: Yes, Your Honor.

12 MR. LONG: Yes, Your Honor.

13 THE COURT: It's your cross-examination.

14 Sir, you're still under oath; you understand?

15 THE WITNESS: [No audible response.]

16 THE COURT: You understand you're still under oath?

17 THE WITNESS: Oh, yeah, yeah.

18 **CROSS-EXAMINATION**

19 BY MR. LONG:

20 Q Good afternoon, Kyriell.

21 Now, Kyriell, you lived two to three minutes away from Brittney;
22 correct?

23 A Correct.

24 Q So in the 15 minutes that you've alleged it took Brittney to bring
25 down your baby, you could have left; correct?

1 A Correct.

2 Q But instead you stayed there and you called her five or six
3 times?

4 A Correct.

5 Q And during that 15 minutes that you're outside Brittney's house,
6 you didn't have any problem with Thomas; correct?

7 A Correct.

8 Q Okay. And isn't it true you didn't go to the door --

9 A Correct.

10 Q -- because Brittney's family told you not to come over there
11 anymore?

12 A False.

13 Q Okay. Now --

14 MS. DIGIACOMO: Your Honor, can we approach?

15 [Bench conference begins]

16 MR. LONG: I haven't --

17 MS. DIGIACOMO: I'm going --

18 MR. LONG: -- gone into the domestic battery.

19 MS. DIGIACOMO: -- I'm going to object if he goes, u'm-h'm,
20 uh-uh, after every --

21 THE COURT: Yeah, you can't uh-huh.

22 MS. DIGIACOMO: -- you're commenting after every question.

23 THE COURT: It's kind of commenting.

24 MS. DIGIACOMO: Like you don't believe what he's saying,
25 yeah.

1 THE COURT: Okay. Shh, shh.
2 MS. DIGIACOMO: Sorry.
3 MR. LONG: All right.
4 MS. DIGIACOMO: Yeah.
5 THE COURT: And don't get into this --
6 MR. LONG: I'm saying correct.
7 THE COURT: -- if it's domestic.
8 MR. LONG: No, no, I'm not going to --
9 THE COURT: Yeah, but you don't -- that commenting, that's
10 attesting to something.
11 MR. LONG: I didn't even know I did. It must be subconscious.
12 MS. DIGIACOMO: Yeah, you did it -- you did it every question.
13 MR. LONG: Okay.
14 THE COURT: You can't make comments after he answers.
15 MR. LONG: I'm sorry.
16 THE COURT: You did. But it's more of a bad habit than he
17 was commenting, I think.
18 MS. DIGIACOMO: Well, they add up, the comments, though.
19 THE COURT: All right.
20 [Bench conference ends]
21 BY MR. LONG:
22 Q Now, Kyriell you have just testified that in the fight you were
23 with, and Thomas, nobody threw any punches; correct?
24 A False.
25 Q Is it your testimony today now that while you were fighting with

1 Thomas blows were being exchanged?

2 A False. I actually said that he threw the first punch and I threw
3 one, only punches that were ever thrown. After that, no punch was
4 thrown.

5 Q And that was the punch that you claim missed?

6 A Yes.

7 Q Okay. Now, after the -- after the incident, you gave a recorded
8 statement to the police; correct?

9 A Correct.

10 Q Okay. And during that statement, did you testify that you threw
11 a punch and that Thomas ducked?

12 A Correct.

13 Q And did you also testify that you threw another punch after that?

14 A False.

15 Q Okay. So if in your recorded statement --

16 MS. DIGIACOMO: And, Your Honor, I'd ask that he do the
17 proper impeachment.

18 THE COURT: Okay. What page?

19 MR. LONG: Your Honor, we're on page 7 -- or page 16, I'm
20 sorry, of the recorded statement of the witness.

21 THE COURT: Okay. Go ahead.

22 BY MR. LONG:

23 Q So isn't it true that you've testified that you threw two punches
24 and then Zek got out of the car and got in between Thomas, like swung at
25 Zek and Zek pushed him?

1 A I don't remember ever saying that.

2 Q Okay.

3 THE COURT: Show him the page.

4 MR. LONG: Your Honor, may I approach the witness?

5 THE COURT: Yes.

6 BY MR. LONG:

7 Q Okay. Mr. Davis --

8 A U'm-h'm.

9 Q -- do you recognize this document?

10 A Yes.

11 Q Okay. What does it say here in that right-hand corner?

12 A My name.

13 Q What does it say before your name?

14 A Statement of Kyriell Davis.

15 Q Okay. What does it state right here where I'm drawing an X?

16 THE COURT: Well, does it refresh your recollection now?

17 THE WITNESS: No, I still don't remember that.

18 THE COURT: Let him read it.

19 THE WITNESS: Read it out loud?

20 MR. LONG: Yes.

21 THE WITNESS: I threw a punch, he ducked, I throw another

22 punch.

23 MS. DIGIACOMO: Objection, Your Honor, that's improper.

24 THE COURT: Read it to yourself.

25 THE WITNESS: Oh.

1 THE COURT: Then ask him if that refreshes his recollection.

2 MR. LONG: Okay.

3 BY MR. LONG:

4 Q What I'm going to ask you to do is I'm going ask you to read
5 from this asterisks here down to this asterisks here and after you're done
6 reading it, let me know?

7 A [Witness complies.]

8 No.

9 Q This does not refresh your recollection?

10 A No, sir.

11 Q Is it your testimony that this is not what you told the officers on
12 the night in question?

13 A I don't even remember it.

14 Q Okay. Now, it's your testimony that you never landed a blow on
15 Thomas?

16 A My hands, my first -- when he swung and miss, what I did, my
17 first, if you want to call it punch or when I hit him, it went straight to his
18 face.

19 Q Okay. But you testified earlier that you never made a fist;
20 correct?

21 A I didn't make a fist. I open handedly.

22 Q So it was an open hand?

23 A Yes, sir.

24 Q Okay. And isn't it true that when Ezekiel got out of the car he hit
25 Thomas in the face with a closed fist?

1 A No.

2 Q Okay. Now, you've testified that Brittney brought out the baby;
3 correct?

4 A Correct.

5 Q And you put the baby into the back seat of the car; correct?

6 A I never put her in the car yet.

7 Q Okay. You put the car seat into the back of the car?

8 A Correct.

9 Q Okay. Did you buckle it?

10 A No.

11 Q Okay. And while you were putting the car seat in is when
12 Thomas swung and missed?

13 A False.

14 Q And when Thomas was standing in the back opened portion of
15 the car?

16 A He was standing there as I was trying to put Londyn in the car.
17 Londyn in the car, not the car seat.

18 Q Okay.

19 A So it was after that.

20 Q Okay. So the car seat was already in the car?

21 A Yes, she brought out the car seat and the diaper bag before she
22 brought Londyn out.

23 Q And then you were putting Londyn in the car?

24 A No, I didn't put Londyn in the car until after she was arguing with
25 him.

1 Q Okay. So you had not put the baby in the car seat when
2 Thomas swung on you; correct?

3 A No, I was going to put her in, like, it was all in the same motion.

4 Q So you were holding the baby when Thomas swung and
5 missed?

6 A Yes.

7 Q Okay. Now, you in testified that just recently that at no time
8 Brittney tried to break up this altercation you were involved in with
9 Thomas?

10 A Correct.

11 Q So Brittney brought out Londyn, you took Londyn, and Brittney
12 went back into the house?

13 A No.

14 Q So it is your testimony that Brittney came out and gave you the
15 baby and then went somewhere else?

16 A She got in her car. She didn't -- when she came out the house,
17 she didn't right then and there give me Londyn, she was still ranting at me.
18 She even had Londyn in her hand when he came running down the
19 driveway. Then she gave me him and started ranting at him. I didn't
20 immediately put her in the car.

21 Q And so at no time Brittney never had her arms around your
22 waist trying to hold you back?

23 A No.

24 Q At any time did you see Brittney trying to hold Mr. Cash around
25 his waist?

1 A No.

2 Q Okay. And it's your testimony that when you and Thomas were,
3 I guess, you called it grappling or holding onto each other, that Ezekiel got
4 out of the car and broke you all apart?

5 A He got out of the car, he ran up to the street, and was, yeah,
6 trying to get us to detach --

7 Q Okay.

8 A -- from each other.

9 Q And then a car drove by?

10 A Yes, sir.

11 Q And so for a moment all three of you were detached; correct?

12 A As the car stopped, it was, like, we weren't -- we weren't
13 detached from each other that long. Like, it was literally, like, seconds.

14 Q Okay. But for a moment, for a second, all of you were
15 detached?

16 A Correct.

17 Q So at this moment, it's two versus one; is it not?

18 A No.

19 Q It's not you and Ezekiel versus Mr. Cash?

20 A No.

21 Q Was Ezekiel on your side in this fight?

22 A He didn't pick either side. He stayed neutral.

23 Q So do you think he was trying to help Mr. Cash?

24 A No, he just broke up the fight.

25 Q And at that time Ezekiel was still standing; correct?

1 A Yes.

2 Q Okay. Now, the car goes by and then Ezekiel falls, you jump
3 over him, and you chase Thomas Cash to his front door?

4 A I didn't jump. I walked over him. And I looked down, he had no
5 facial expression of being hurt. And I chased him into the house.

6 Q Okay. So but you ran to the house; correct?

7 A Correct.

8 Q So you walked, you got past Ezekiel, and then you started
9 running?

10 A I walked over Ezekiel and I looked down at him, he had no
11 facial expression of being hurt, and then I chased Thomas into the house.

12 Q Okay. But you never entered the house; correct?

13 A Never entered the house.

14 Q And but you tried to kick the door?

15 A Once.

16 Q And while you were kicking the door isn't it true you were yelling
17 that you were going to kill him, you were going to hurt him?

18 A No. I didn't kick the door multiple times. I kicked the door once.

19 Q Okay. And isn't it true you used your shoulder to try and open
20 the door?

21 A True.

22 Q Okay. And you play football; correct?

23 A Correct.

24 Q And you played in high school?

25 A Correct.

1 Q And you're still playing today?

2 A Correct.

3 Q You're in good shape?

4 A Perfect shape.

5 Q Okay. The consent you gave to search the car that you drove
6 over there, you gave that consent after you had moved that car; correct?

7 A Correct.

8 Q Now, during this fight, Londyn was crying, wasn't she?

9 A Correct.

10 Q And you don't have any recollection of Brittney screaming?

11 A No.

12 Q And it's your testimony today that you didn't scream anything?

13 A I didn't scream anything at anybody. She left, my daughter was
14 crying, I called her to come back to get my daughter.

15 Q But while you were fighting with Thomas, is it your testimony
16 that you never yelled at him?

17 A I didn't say anything to him.

18 Q Okay. You never said, get my shit?

19 A No, no, sir.

20 Q Okay. You never said, you were going to kill him?

21 A No, sir.

22 Q Okay. You never said, you were going to beat his ass, anything
23 like that?

24 A I didn't say nothing to him.

25 Q So during the fight your lips were completely sealed?

1 A It was so quick, nobody said anything.

2 Q Okay. You're very upset at Thomas, aren't you?

3 A I got nothing to say to him.

4 Q It's a yes or no question?

5 A Sure.

6 Q Yes or no?

7 A Yeah.

8 MR. LONG: Nothing further at this juncture.

9 **REDIRECT EXAMINATION**

10 BY MS. DIGIACOMO:

11 Q All right. Defense counsel asked you if you're upset with the
12 Defendant, with Thomas, and you said, yes?

13 A Yes.

14 Q Why is that? Why are you upset?

15 A That -- honestly, in my opinion, personal opinion --

16 MR. LONG: Your Honor, I'm going to object to him voicing any
17 opinion.

18 MS. DIGIACOMO: Well, he --

19 THE COURT: You asked him what his opinion was.

20 MR. LONG: No, I asked if he was upset with Thomas.

21 THE WITNESS: That's an --

22 THE COURT: That's an opinion. And you opened the door.

23 THE WITNESS: Well, I'm upset because the results. Like,
24 Ezekiel, is, like, my best friend, like, my brother. I mean, what? Am I not
25 supposed to feel any way towards that.

1 BY MS. DIGIACOMO:

2 Q So you're upset Thomas killed your friend?

3 A Period, yes.

4 Q Are you upset enough to, I guess, come in here and lie with
5 about what happened?

6 A No.

7 Q All right. So everything you're telling us today is what happened
8 that night?

9 A Yes, ma'am.

10 Q When counsel showed you the passage from page 16, talking
11 about, I throw a punch, he duck, I throw another punch, Zek get out of the
12 car, and, like, in between Thomas, Thomas, I guess, swung at Zek and
13 Zek pushed him.

14 And you said, as you sit here today, you don't remember that.

15 A I didn't -- honestly, no.

16 Q Okay. But --

17 A He -- go ahead.

18 Q Go ahead. What were you going to say?

19 A No. I was going to say, as far as him ducking, he tried to, like,
20 duck and dodge when I came for his face but.

21 Q The Defendant?

22 A Yes, the Defendant did. And after that we were up the street
23 before Ezekiel even got out the car.

24 Q Okay. So do you remember Thomas trying to swing at Ezekiel?

25 A No. Because, like I said, when Ezekiel put his hand through us,

1 he had to disengage me and Thomas before he could even do anything.

2 Q But at the time that you gave your statement to the police,
3 would you agree that everything was more fresh in your mind at -- that
4 night it happened?

5 A Yes. I was honestly trying to summarize it and get out the car
6 honestly to check on Zek. More than just sit there and keep talking.

7 Q I mean, is it fair to say, that night you were pretty upset as well?

8 A Past upset, yes.

9 Q Defense counsel asked you about whether or not Zek hit
10 Thomas with a closed fist and you said no. You never saw that?

11 A I never saw that. But the way he got in between us and broke
12 us up, Ezekiel's right hand, and if he's using his right hand to break us up,
13 I don't think he ever hit Thomas.

14 Q But you don't know what happened before he broke you apart?

15 A No.

16 Q And that's because your head was down at --

17 A Yes.

18 Q -- looking at the ground?

19 And all you remember is having to call Brittney to come back
20 and get Londyn, you don't remember her being at the scene?

21 A Yes, ma'am.

22 Q So defense counsel asked you about when Zek broke you up
23 and the three of you are apart and that's when a car came down?

24 A Yes, ma'am.

25 Q Okay. Did you and Zek ever both go after the Defendant?

1 A No. I was on one side of the car; he was on the opposite side
2 of the car.

3 Q And is it true that where the Defendant ended up, the way you
4 put it on the map, he was on the side of the street or on the side of the car
5 that was closest to his house?

6 A [No audible response.]

7 Q Is that a yes?

8 A Yes.

9 Q And also no one was in his way because Ezekiel was farther
10 away from his own house than he was?

11 A Yeah, it was --

12 MR. LONG: Your Honor, I'm to object --

13 THE WITNESS: -- it was just them two.

14 MR. LONG: -- very leading.

15 THE COURT: No, overruled.

16 BY MS. DIGIACOMO:

17 Q Okay. And at the time that you ran after the Defendant and
18 tried to get in the house, I think you said you used your shoulder or tried
19 to --

20 A When I first got to the door, I used my shoulder, twist the knob,
21 the door was locked. I kicked the door once.

22 Q All right. Were you saying anything as you were doing that?

23 A No, it was quick. It was quick twist, a kick, and I was on my way
24 up the street.

25 Q Before the police got there, did you dispose of any weapons?

1 A No.

2 Q So no gun that you had in your car or on your person, you didn't
3 get rid of before the police got there?

4 A No. I didn't touch -- I never touched the vehicle until the
5 ambulance asked me was I able to pick him up and bring him to the
6 hospital.

7 Q And all you did was move the car around, you didn't dispose of
8 any sort of weapon?

9 A Just turned the car around.

10 Q And when -- I want to go back. When you were first outside
11 with Brittney, and you were talking about she was calling you names and
12 saying stuff, was she doing it in a very calm voice or was she very loud
13 yelling, what was it?

14 A She was loud. But she -- it was never in a voice to where she
15 was loud, like, oh, I need help or in danger, voice. She was just cussing.

16 Q In your face?

17 A Yes.

18 Q Did you ever say anything back to her? I know you said you
19 kind of smirked and --

20 A Yeah. Only thing I said back to her was, before she gave me
21 Londyn and Thomas was outside, I told her, well, when you give me my
22 kids, you ain't never got to come get them, period. Only words I ever said
23 to her.

24 MS. DIGIACOMO: I have nothing further.

25 THE COURT: Anything further, Mr. Long?

1 MR. LONG: Briefly.

2 THE WITNESS: Can -- can I say something?

3 THE COURT: No.

4 MR. LONG: No.

5 THE COURT: Just answer his questions.

6 **RECROSS-EXAMINATION**

7 BY MR. LONG:

8 Q Kyriell, you just testified that you don't remember exactly
9 everything that happened that night; correct?

10 A Correct.

11 Q It all happened fast, it happened quickly?

12 A Correct.

13 Q And isn't it true that when Brittney came out the second time
14 you put your hands on her to get her away from you?

15 A I backed her up off of me. Not put my hands on her to get her
16 away from me.

17 Q You put your hands on her?

18 A She -- had her hand on -- she had one hand holding Londyn
19 and one hand, as she's backing me up on the car, and I take my hands
20 softly and just scoot her away from me. It was never nothing like I pushed
21 her or anything. I just told her to get off of me.

22 Q Isn't it true that you banged her against the car?

23 A No.

24 Q So it's your testimony that after 15 minutes of waiting and her
25 coming out and yelling in your face the only thing you did to respond was

1 laugh and gently push her away?

2 A Yes. This wasn't the -- this wasn't even the first time it
3 happened.

4 MR. LONG: I don't have any further questions, Your Honor.

5 THE COURT: Thank you.

6 **FURTHER DIRECT EXAMINATION**

7 BY MS. DIGIACOMO:

8 Q Defense counsel asked you about you don't -- as you sit here,
9 you don't remember everything that happened that night. Do you
10 remember that question?

11 A Yes, ma'am.

12 As --

13 Q Go ahead.

14 A As far as he's saying remembering everything, as far as what I
15 said, from the fight and what happened with Ezekiel, I remember. But as
16 far as other people being outside, and things like that, no, I don't.

17 Q Is it fair to say that you were concentrated on the fight that night
18 when it happened?

19 A Yes.

20 MS. DIGIACOMO: Nothing further.

21 MR. LONG: One question.

22 [Colloquy between the District Attorney and Defense counsel]

23 MR. LONG: Your Honor, may we approach?

24 THE COURT: Sure.

25 [Bench conference begins]

1 MR. LONG: He says, it's not the first time it's happened, that
2 opened the door and I can talk about --

3 MS. DIGIACOMO: No, he --

4 MR. LONG: -- prior domestic violence.

5 THE COURT: No.

6 MS. DIGIACOMO: He was asking -- he was saying it's not the
7 first time he's ever got her off because she's in his face yelling at him.

8 MR. LONG: It's her interpretation. He says, it's not the first
9 time that happened.

10 THE COURT: No, you can't get into the domestic violence.

11 MR. LONG: Okay.

12 [Bench conference ends]

13 MR. LONG: Your Honor, based on the conversation at the
14 bench, I do not have any further questions.

15 THE COURT: All right. Jury have any questions of this
16 witness? Seeing no hands. Sir, you're free to go.

17 Call your next witness, State.

18 MS. DIGIACOMO: Court's indulgence.

19 [Brief pause in proceeding]

20 MS. DIGIACOMO: We're ready, Your Honor.

21 THE COURT: All right.

22 MS. BLUTH: The State calls Brittney Turner.

23 Just one second, Judge, we have to do a baby switch.

24 [Brief pause in proceeding]

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BRITTNEY TURNER

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

THE CLERK: Please be seated, state and spell your name for the record.

THE WITNESS: Brittney Turner, B-r-i-t-t-n-e-y, T-u-r-n-e-r.

THE COURT: Go ahead.

MS. BLUTH: May I proceed, Your Honor?

THE COURT: Yes.

MS. BLUTH: Thank you.

DIRECT EXAMINATION

BY MS. BLUTH:

Q Good afternoon, Ms. Turner. Do you know an individual by the name of Thomas Cash?

A Yes.

Q Do you see him in the courtroom today?

A Yes.

Q Can you please just describe an article of clothing that he's wearing and let me know the general area where he's sitting?

A He's sitting, he was a headset on.

THE COURT: Record reflect she's identified the Defendant.

MS. BLUTH: Thank you.

BY MS. BLUTH:

Q And can you explain to me how it is that you know him?

A He's my stepfather.

1 Q Okay. And, meaning, he's married to your mom; right?

2 A Yeah.

3 Q And what's your mom's name?

4 A Antoinette White.

5 Q And how long has Thomas been in your life, so how long has he
6 been with your mother?

7 A For, about, almost, like, four and a half years or so.

8 Q Okay. And then do you know an individual by the name of
9 Kyriell Davis?

10 A Yeah.

11 Q And he just left the courtroom; is that right?

12 A Yes.

13 Q And how long have you known Kyriell for?

14 A Three years.

15 Q And do you have --

16 THE COURT: You need to speak up and get closer to the mic.

17 BY MS. BLUTH:

18 Q Your -- you do speak -- you speak very quietly.

19 A Because this is very uncomfortable so, sorry, I'm trying.

20 Q No, that's okay. And I know it is.

21 So how many children do you have and Kyriell have together?

22 A Two.

23 Q Now, you and Kyriell, as you sit here today, are you two a
24 couple or no?

25 A No.

1 Q How long were you an actual couple together?

2 A Like, two years almost.

3 Q Do you or did you know an individual by the name of Ezekiel
4 Devine?

5 A Yeah.

6 Q And how many times, if you could approximate, would you say
7 you had been around Ezekiel?

8 A I've been around him a lot of times.

9 Q Okay. So, like, would you say, like, more than 20?

10 A Yeah.

11 Q Okay. So due to his friendship with Kyriell, would you be
12 around him quite frequently?

13 A When me and him were together, yeah.

14 Q Okay. Now, I want to ask you a few questions, obviously I'm
15 going to ask you some specific questions about the events that happened
16 on December 11th, but before we get there, I just want to ask you a few
17 background questions; okay.

18 As you saw Mr. Cash here today, does he look the same as
19 back in December? Does he look bigger? Smaller? What would you
20 say?

21 A I would say he looks smaller.

22 Q How tall would you say Kyriell is?

23 MR. LONG: I'm going to object, speculation.

24 MS. BLUTH: If she knows, Judge.

25 THE COURT: Overruled.

1 THE WITNESS: Like five-nine, five-ten, not that tall.

2 BY MS. BLUTH:

3 Q And then do you know, like, approximately how much he
4 weighed like in December?

5 A No, like, not too much. He's not that big.

6 Q Okay. And then what about Thomas, did you know -- do you
7 now tall he is, about?

8 A They're about the same height.

9 Q When you say, they, meaning he and Kyriell?

10 A Yeah.

11 Q Okay. And then what about Thomas's build, how would you
12 compare it in regards to Kyriell's build?

13 A I mean, he's obviously bigger than him.

14 Q Just like heavier, stockier?

15 A Yeah.

16 Q All right. And when what about Ezekiel, how would you say --
17 how tall was Ezekiel?

18 A Taller than them but not like super tall. Maybe, like five-eleven
19 or so.

20 Q Okay. Now, like I said a little bit ago, we are going to talk about
21 some events that happened on December 11th. But after all of that
22 happened, did you sit down with the police and give what's referred to as,
23 like, a recorded statement?

24 A Yeah.

25 Q And then you also came into court a previous time and testified

1 at -- what's referred to as a preliminary hearing; is that right?

2 A Yes.

3 Q Okay. So I want to ask you a question in regards to when you
4 were speaking to the police, do you remember what you told them in
5 regards to how big Thomas was in comparison to how big Ezekiel was, in
6 regards to height. Do you remember those questions?

7 A Honestly, no.

8 Q Okay. If I showed you a copy of your statement, would that
9 help refresh your recollection?

10 A Yeah.

11 MS. BLUTH: Okay.

12 And, Judge, just so I don't have to keep going back and forth, if
13 it's okay with defense counsel, I just planned on leaving a copy up there
14 with her. So we don't have to keep walking back and forth.

15 MR. LONG: Please, so you can stay by the microphone.

16 MS. BLUTH: Perfect.

17 One second, let me get everything straight for you; okay.

18 Okay. And, Counsel, I'm referencing page 12 of the voluntary
19 statement.

20 BY MS. BLUTH:

21 Q Okay. If you could read on page 12, about half way down, just
22 to yourself, and just let me know when you're done.

23 A Okay.

24 Q Does that help refresh your recollection in regards to what you
25 were telling the police about their size?

1 A Yeah.

2 Q And what is it that you told the police?

3 A That Tommy was a little taller than what I just said now but.
4 He's not.

5 Q Okay. So, I'm sorry, you're so quiet and I know it's so hard, I
6 apologize.

7 A I said that on this night, I said, Thomas was a little taller than I
8 thought he was but he is not.

9 Q Okay. And then you actually stated that Thomas and Ezekiel
10 might be -- they might be about the same height but Ezekiel is really
11 skinny?

12 A Yes.

13 Q Okay.

14 A But again --

15 Q Just one second, please.

16 So I'm going to ask you questions, and then if there's anything
17 that the defense thinks that they need to clarify, they'll go back with you on
18 it; okay.

19 And I -- this is a very -- is this a difficult position for you to be in?

20 A Yes.

21 Q And safe to say you don't really want to be here?

22 A No.

23 Q Okay. But you're under subpoena and you're doing what you
24 have to do under the law; is that fair?

25 A Yeah.

1 Q Okay. Now, on the day of the incident I want you to explain to
2 us who was living at the house, at the 3999 Pistachio Nut, at that time
3 period?

4 A Me, my mom, Thomas, my two sisters, Thomas aunt.

5 Q Okay. So you said your two sisters, could you tell me their
6 names, please.

7 A Payton and Angel.

8 Q And Angel --

9 A And Londyn, my daughter.

10 Q Angel is how old?

11 A 18.

12 Q And then Payton is how old?

13 A Three.

14 Q Now, is Payton the child of Thomas and your mom?

15 A Yeah.

16 Q And then you said, I apologize, did you say Thomas's sister or
17 Thomas's aunt? I didn't hear you.

18 A His sister.

19 Q And what's her name?

20 A Sharon.

21 Q And then obviously you said your daughter Londyn; is that
22 right?

23 A Yeah.

24 Q Okay. Now, in regards to that evening, right around the time
25 that Kyriell gets there, who's inside the house at that point in time?

1 A Thomas, my sisters, his sister, and that's it.

2 Q Okay. So your mom was not at the house at that time?

3 A No.

4 Q All right. Now, what were the arrangements between you and

5 Kyriell in regards to who was going to have Londyn that night?

6 A He was supposed to come get her that night.

7 Q Come get Londyn?

8 A Yeah.

9 Q All right. So about what time, if you remember, did Kyriell get to

10 your house to pick up Londyn?

11 A I honestly don't remember the time at this point.

12 Q Okay. Was it light outside, dark, or do you not remember?

13 A It was dark outside.

14 Q When Kyriell got there, do you remember what type of car he

15 was in?

16 A A Jetta, a white one.

17 Q And who was in the car when he first got there?

18 A Ezekiel.

19 Q And did you see where in the car Ezekiel was sitting?

20 A In the passenger seat.

21 Q So when Kyriell gets to your house, how is it you're made aware

22 that he's there ready to pick up Londyn?

23 A He text me and say he was outside.

24 Q Okay. And so after he text you, describe what, you know, you

25 get the text message saying, hey, I'm here to pick up Londyn or whatever

1 it said, tell me what happens from there?

2 A I took her and her car seat outside. And at the time I was
3 pregnant with our son and we were like arguing outside about relationship
4 stuff, stuff that didn't really matter. And he starting staying, like, I'm not
5 going to see Londyn anymore. He's going to take her. So then I wanted
6 to take her out the car. Because, obviously, if someone's threatening,
7 they're not going to see my daughter anymore, then I'm going to say you
8 can't take her no more.

9 Q Okay.

10 A We were arguing. It just escalated. And as I'm trying to grab
11 Londyn, he, like, grabs me by my arms, and at that point I'm just, like,
12 okay, just take her and go, just take her and go.

13 Q Okay.

14 A And my little sister was looking out the window and she saw him
15 grabbing me and she went and told Thomas and then he came outside.

16 Q Okay. So before Thomas comes outside, I want to ask you a
17 few questions; okay.

18 So I'm going to use a map of your house so I can kind of get an
19 understanding of where you were located.

20 So there's a TV in front of you, and I'm going to show you
21 State's Exhibit 3; okay. So the green flag would be your address at
22 3999 Pistachio Nut.

23 So when you and Kyriell are arguing, can you see right now on
24 that map where it was you were arguing or do I need to zoom out?

25 A I can see it.

1 Q Okay. And then the weird thing about this TV is you can
2 actually -- if you touch it, you can actually mark on it and we can see
3 where you're touching.

4 So would you mind touching to me exactly where it is that the
5 two of you were arguing?

6 A Right in front of the driveway.

7 It's not marking right so.

8 Q It's not marking right?

9 THE COURT: It's off about an inch.

10 BY MS. BLUTH:

11 Q Okay. Well, here, you know what, I'll do it with my pen, and you
12 just tell me; okay.

13 So I'm going to do it with my pen. I'm not going to write on the
14 actual document. But so if this is the end of the driveway, which way do I
15 need to move my pen, closer to the house?

16 A No, like to the right.

17 Q To my right?

18 A Yeah.

19 Q So about right here at the end of the driveway?

20 A Yeah.

21 Q Okay. And so when -- so you two are arguing you said just
22 about like relationship things; right?

23 A Yeah.

24 Q And when you are arguing are you, both of you using a tone like
25 you and I are using right now, or is it pretty heightened and heated?

1 A I would say it was heated.

2 Q Okay. And you said that at some point he said, like, I'm not
3 going -- you're not going to see Londyn anymore, or something to that
4 affect?

5 A Yeah.

6 Q And you then tried to take Londyn back?

7 A Yeah.

8 Q And you -- so is it at that point that you said he grabbed your
9 arm?

10 A Yes.

11 Q Can you show me how it was that he grabbed you?

12 A Like by my wrist.

13 Q Okay. So if I am Kyriell, and you are you, when he goes to grab
14 you, is it like -- would both of my wrists be on your wrists like this; is that
15 fair? Or like this?

16 A Yeah.

17 MS. BLUTH: Okay.

18 So, Judge, just for the record, both of our hands are up and
19 my -- each of my hands is on her wrists.

20 THE WITNESS: Okay.

21 BY MS. BLUTH:

22 Q Okay. And so at that point, like, is he holding onto them and
23 you guys are arguing, or he just kind of pushes on you? Explain to me
24 kind of what's going on?

25 A So he was holding onto them because I'm still yelling and trying

1 to, like, reach for her obviously.

2 Q Okay. Now, you said that your sister was looking out the
3 window, did you actually physically see your sister looking at the out the
4 window or you just know that because of what followed after?

5 A I physically saw her.

6 Q Okay. At any point in time -- well, actually, let me backup, when
7 Kyriell has his hands on your hands, are you just standing still or are you
8 kind of pushing back?

9 A Pushing back.

10 Q Okay. And at that point are you still yelling at him?

11 A Yes.

12 Q And is he yelling at you?

13 A You mean, he was telling me to calm down.

14 Q Okay. And I don't mean this in a funny way but would you say
15 you're pretty feisty?

16 A Yeah.

17 Q Okay. Because right -- you're very quiet and calm right now;
18 right, because we're in court. But I'm just trying to get an idea, when you
19 say, he's trying to calm you down, like, are you -- are you pretty animated,
20 like, you're angry, he just said you're not going to see your baby
21 anymore?

22 A Yeah, we were both the same way.

23 Q Okay. So he's feisty too?

24 A Correct.

25 Q But at that point in time --

1 MR. LONG: Your Honor, I'm going to object, leading.

2 THE COURT: No, she's not. She's just describing what she
3 sees. Thanks. Overruled.

4 BY MS. BLUTH:

5 Q So you stated that at that point in time he's trying to calm you
6 down; right?

7 A Yes.

8 Q Okay. At any point in time did you feel like you were in danger?

9 MR. LONG: I'm going to object, vague and calls for
10 speculation.

11 THE COURT: Overruled.

12 BY MS. BLUTH:

13 Q You can answer.

14 A I mean, I just don't know how to answer that. I mean, could he
15 hurt me? Yes. Did I feel like he was about to? Don't know.

16 Q Okay. So are you saying that you -- well, let me ask you, did
17 you feel scared at that point?

18 A Yeah.

19 Q Okay. You said at this point in time he was trying to calm you
20 down, so what was it that you were scared of?

21 A What happened before, like, you're grabbing my arms. I mean,
22 obviously he could hurt me if he wanted to.

23 Q Okay.

24 MS. BLUTH: Court's indulgence, Your Honor.
25

1 BY MS. BLUTH:

2 Q At any point in time did -- was Kyriell grabbing you and
3 slamming you against the car?

4 A He didn't slam me against the car.

5 THE COURT: Pardon?

6 THE WITNESS: No.

7 BY MS. BLUTH:

8 Q All right. So I want to go back to -- you stated that Thomas
9 started coming out of the house, that's where I kind of stopped you and
10 wanted to back up a little bit; okay.

11 So you stated that Thomas started coming out of the house,
12 were you still in this -- when Thomas came out of the house, were you still
13 in this area in front of the house that you showed us before?

14 A Yes.

15 Q Okay. Now, walk me through what happened once Thomas got
16 out of the house?

17 A Once he came out of the house he like went to -- I don't even
18 know how to explain it.

19 Q That's okay. Just go slow and if I get confused, I'll just ask
20 another question.

21 A It was sort of like a swing but he missed. But at the same time
22 him and Kyriell, like, grabbed onto each other and they were, like, in a
23 headlock type of thing.

24 Q Okay.

25 A And then I'm trying to stop that from escalating. And then

1 Ezekiel got out the car and then it got escalated.

2 Q Okay. All right. So when you say -- when Thomas came out of
3 the house at that point was -- was -- were Kyriell's hands still on you or at
4 that point you guys were not touching each other?

5 A At that point I'm still, like, trying to reach for her. But I don't
6 know. It's so long ago I -- I don't want to make nothing up so.

7 Q Okay, yeah. If at any point in time you don't remember, just tell
8 me you don't remember and we'll move on. Unless you've spoken about it
9 specifically; okay.

10 So you're not sure in regards to where Kyriell is, if his hands are
11 still on you when Thomas comes out?

12 A I mean, I know he was standing in front of the car and I'm
13 standing right here too. And that's where everything started as right in
14 front of the car.

15 Q Okay. And you stated that Thomas came out and swung at
16 Kyriell but missed?

17 A Correct.

18 Q And after that you said that the two of them locked onto each
19 other?

20 A Yeah.

21 Q And when you did that you kind of -- you put your arms in front
22 of you, almost like a hug or like a bear hug, but that they -- they had each
23 other in a lock; would that be fair?

24 A Yeah.

25 Q All right. And so during that time period, when they're in that

1 lock, are either of them throwing punches at each other or it just the lock?

2 A At that moment, it was just the lock.

3 Q Okay. Did Thomas say anything when he came out or did he
4 just throw that first punch that misses?

5 A He didn't say anything.

6 THE COURT: I didn't hear you.

7 THE WITNESS: He didn't say anything.

8 BY MS. BLUTH:

9 Q Now, do you ever attempt to get in the middle of Kyriell and
10 Thomas when they're locking each other to get them to break up?

11 A I know I was yelling at both of them to tell them to stop. But I
12 don't know.

13 Q Okay. That's all right.

14 So when Kyriell and Thomas have each other in that lock, are
15 either of them overpowering the other, like, does one person have, like, an
16 upper hand on the situation or is it just kind of equally they're locked up?

17 A They were equally locked up.

18 Q All right. Was there ever a point in time where you attempted to
19 push Thomas away from Kyriell?

20 A I just said I don't know.

21 Q Okay. I didn't -- okay, that's fair enough.

22 So in front of you, in that same statement you were looking at,
23 but the one -- so the one on your left, if you wouldn't mind turning to page
24 8 for me, and let me get you to the exact area so you don't have to read
25 the whole page.

1 A I found it.

2 Q You found it before I did.

3 A The first --

4 Q Okay. Yeah.

5 So actually just a little bit down, right here, so read that, to
6 about here, to yourself, and then I'll have a few questions for you; okay.

7 A [Witness complies.]

8 Q Okay. Does that help refresh your recollection?

9 A Yes.

10 Q Okay. So when Thomas and Kyriell are fighting, do you get
11 involved in anyway?

12 A I was trying to break it up.

13 Q Okay. And at some point you state Ezekiel gets involved;
14 correct?

15 A Correct.

16 Q And when Ezekiel gets involved what do you do with Kyriell?

17 A Like, pulling him away, trying to stop them from fighting, like,
18 stop him from getting into it too.

19 Q Okay. And then one second.

20 And then at the very top of that same page, on the second
21 answer, you're stating, I'm grabbing Kyriell and I'm trying to push Thomas
22 away. At the very top, is that what you said?

23 A Right.

24 Q Okay. So, now, I want to ask you some questions about when
25 Ezekiel gets involved; okay.

1 So you stated that Thomas and Kyriell are locked, you're trying
2 to kind of break it up, push Thomas away, walk me through what happens
3 when Ezekiel gets out of the car?

4 A He gets out the car -- I'm sorry, even like reading this I still
5 don't -- I mean, I don't even -- I really don't even remember like that. Like,
6 I just had a baby. I've been in and out the hospital. I really don't.

7 Q It's totally okay. If you don't remember --

8 A Even reading this, even though, okay, yeah, I said it, but I still
9 don't remember it.

10 Q No, that's okay. And I know that you have been through a lot
11 and that this isn't easy. So if you don't remember something, we'll just go
12 through your statements.

13 And -- so what you're telling me is even though it's in your
14 statement, you're still not remembering it --

15 A Correct.

16 Q -- because you've been through a lot; right?

17 A Yeah.

18 Q Okay. So as you sit here today, do you -- do you remember
19 what happened as Ezekiel came out of the car or do you need to go to
20 your statement?

21 A The only thing that I can remember is him getting out the car.
22 I'm not gonna say that -- I mean, I read in the statement I said that he hit
23 him but I don't really remember that. I just know he feels a push or a hit
24 whatever. The fight then became between Thomas and Ezekiel and it
25 moved all the way to the end of the block almost so.

1 Q Okay. So when Ezekiel gets involved, the fight then becomes
2 between Ezekiel and Thomas; is that what you just said?

3 A Correct.

4 Q Okay. And at that point in time, are you still holding Kyriell
5 back?

6 A Trying to, yeah.

7 Q Okay. At any point -- well, first of all, let me ask you this, from
8 the moment that Thomas comes out of the house to the moment that it's
9 over, that Ezekiel hits the ground, how long would you say this lasted,
10 seconds, minutes, if you had to approximate?

11 A I would say not more than like two or three minutes.

12 Q Okay. So very quick?

13 A Yeah.

14 Q All right. So at any point in time, was the fight ever two-on-one?
15 Meaning, at the exact same time was there ever a point in time where
16 Ezekiel and Kyriell were fighting Thomas simultaneously?

17 MR. LONG: And I'm going to object, Your Honor. It calls for a
18 legal conclusion. Two-on-one doesn't necessarily mean two people
19 fighting at exactly the same time. And that's what the question was
20 leading to.

21 THE COURT: Well --

22 MS. DIGIACOMO: And defense counsel asked --

23 THE COURT: I think you brought it up.

24 MS. DIGIACOMO: -- that same question.

25 THE COURT: I think you brought it up in your questioning. So

1 I'm going to allow that to go.

2 BY MS. BLUTH:

3 Q Do you want me to repeat my question, Brittney?

4 A Sure.

5 Q Sure.

6 At any point in time was there ever a time during this fight that
7 Ezekiel and Kyriell were fighting Thomas at the same time?

8 A At the very last few seconds he got a loose from me, so, I
9 mean, I guess.

10 Q Okay.

11 A But I can't give you specific details. I have horrible vision. I
12 didn't have glasses on. It was late at night. I was on one side of the
13 street. I can't say much about that.

14 Q Okay. So when you spoke to the police and when you testified
15 at the preliminary hearing, do you remember stating that you were holding
16 Kyriell pretty much the entire time?

17 A Right. Until literally the last few seconds he got a loose from
18 me.

19 Q And then he gets loose from you but -- and then it's over?

20 A Right.

21 Q And Ezekiel's already on the ground?

22 A Right.

23 Q Okay. I'm going to zoom out. So when this whole thing started,
24 you showed us that you were kind of in the middle of your driveway, in the
25 front of your house; right?

1 A Yeah.

2 Q When Ezekiel gets out of the car and breaks between Kyriell
3 and Mr. Cash, where does that happen? Could you mark on the screen
4 for me.

5 A Well, we were still like right next to the car.

6 Q Okay.

7 A So it was, like, right next to where we were already.

8 Q Okay.

9 A We didn't move too much at that point.

10 Q Okay. And so when you're holding Kyriell back, in what area
11 are you holding Kyriell back from?

12 A So we started off like right there in the car, then me and Kyriell
13 were like across the street --

14 Q Across the --

15 A -- where the neighbor's house and they were like over here.

16 Q Okay. And so when -- ultimately when Ezekiel hits the ground,
17 is he in this area where your arrow is?

18 A Yeah.

19 Q Okay.

20 A Near there. Probably a little bit farther down, but yeah.

21 Q A little bit further down, a bit little further down this way or a little
22 bit further down?

23 A No, no, no, it was there because this is the end of the
24 neighbor's house, and yeah.

25 Q Okay. So we're good where we're at?

1 A Yeah.

2 Q Okay. And so you're holding Kyriell back on this side of the
3 street where my pen is, and then you're holding him back the -- pretty
4 much the entire time and you said just until the very last second he let's
5 go and then Ezekiel hits the ground; is that fair?

6 A Yeah.

7 Q All right. Now, you just talked about it was dark and it was hard
8 for you to see what was going on on the opposite side of the street
9 between Ezekiel and Thomas; is that fair?

10 A Yeah.

11 Q Okay. After you see Ezekiel hit the ground, do you see where
12 Thomas goes?

13 A He ran somewhere. I mean, now I know where but at that time I
14 didn't know.

15 Q Okay. So you see him running, do you see him running in a
16 certain direction?

17 A Towards their house.

18 Q Okay. Did you see if Thomas had any weapons?

19 A No.

20 Q Did you see if Ezekiel had any weapons?

21 A No.

22 Q Did you see if Kyriell had any weapons?

23 A No.

24 Q When Ezekiel falls to the ground, do you see any blood
25 anywhere?

1 A Yeah, blood started to come out.

2 Q Could you see where it was coming from?

3 A No. I'm not really -- I didn't see where it was coming from but it
4 was a lot.

5 Q Just one second, I'm going through all my notes, Brittney.

6 The other thing I forgot to ask you, but I think you said it, is that
7 during this time period or during this incident, you did not have your
8 glasses on; is that right?

9 A Yeah.

10 Q Was -- I know you are -- you were saying that, you know, you
11 wouldn't see exactly what was going on between Thomas and Ezekiel, but
12 at some point did you see Ezekiel trying to get away from Thomas, like,
13 running away from him?

14 A I wouldn't say he was -- they were running after each other
15 fighting with each other. I mean, in the end it could have been. I'm not
16 going to, again, I don't know. I said it could have been.

17 Q Okay. And if you wouldn't mind, that same statement that we've
18 been referring to, if you could look at page 11 for me.

19 A Yeah, I remember this part. I don't need to read it.

20 Q Okay. So you know that you said that --

21 A Correct.

22 Q -- that Ezekiel was running away from Thomas?

23 A I said, it looked like he could have been.

24 Q Okay.

25 A Meaning, I mean, if he got stabbed, he could have been. He

1 could have saw the knife himself and been running. But I'm not sure
2 because I didn't see.

3 Q Okay.

4 A I was not close up.

5 MR. LONG: Your Honor, I'm going to object to this. There's no
6 question and she's sitting there hypo --

7 THE COURT: Okay.

8 MR. LONG: -- hypothesizing.

9 THE COURT: Just chill.

10 MR. LONG: Okay.

11 THE COURT: Don't answer questions or don't say anything
12 unless you're asked a question; okay.

13 Thank you.

14 BY MS. BLUTH:

15 Q Okay. So, Brittney, would you mind reading along with me on
16 page 11 and then if you go down --

17 A I'm sorry.

18 Q -- to your -- the second A, and the second sentence, but I think
19 he was running from him the way it was. Because they stopped swinging,
20 he, meaning Ezekiel, he's now running at this point and that's how they
21 get down the street. But I didn't see him with a knife. So that was my first
22 thought until everything was said and done.

23 And so the question is, so Ezekiel was trying to get away from
24 Thomas and your answer was, yeah, at that point.

25 Is that -- am I reading that correctly?

1 A I'm saying what it could have been. I'm saying -- he could have
2 saw the knife. They could have been. They were chasing after each
3 other. But now that I'm --

4 THE COURT: Okay. Just answer her question. Don't try to
5 explain it.

6 Is that what the statement says?

7 THE WITNESS: That's what the statement says.

8 THE COURT: Okay.

9 THE WITNESS: Do I remember that, no.

10 BY MS. BLUTH:

11 Q Okay. It's okay.

12 Okay. And then if you wouldn't mind turning to page 18 as well.

13 A Yeah, one second.

14 Q Okay. And let me know when you're there.

15 A [Witness complies.]

16 Q If you go down to the fifth Q, it starts out, it appears to you like
17 Thomas is running or, ah, Ezekiel is running?

18 And your answer is, Ezekiel at this point, now that I'm thinking
19 back to me, yes, it looks like at this point he was running.

20 And the question was, and what was Thomas doing, still
21 swinging?

22 And your answer was, yes.

23 QUESTION: Okay. And then Ezekiel falls to the ground?

24 And your answer is, yes.

25 Is that -- am I reading that correctly?

1 A Yeah.

2 Q Did you hear any conversations or yelling or talking between
3 either Ezekiel and Thomas, Thomas and Kyriell during that altercation?

4 A I don't remember.

5 Q Okay.

6 A I mean, I know I was yelling, but I don't -- if they were -- I don't
7 really remember what they were saying, if they were saying anything.

8 Q Okay. Besides the four of you, so you and the three men we've
9 been talking about, did you ever see anybody else from inside your house
10 come out, meaning, your sister Angel or any other family members?

11 A My sister came outside, and his niece, who was visiting, she
12 came outside too.

13 Q Now, do you remember stating that Angel, who was your sister
14 Angel, was not outside when this was going but that at some point you
15 thought maybe she had come -- came and got Londyn?

16 A Yes.

17 Q And fair to say before today, you never had mentioned to the
18 police or at the preliminary hearing that Tamisha was outside when this
19 happened?

20 A I mean, I know now after the fact. I wouldn't say I saw them.

21 Q Yeah. And I'm sorry --

22 A But I know Angel had to have come out because Londyn ended
23 up in the house.

24 Q Right. And that was a poorly worded question.

25 I guess what I meant was, with your own two eyes, did you ever

1 see Angel or Tamisha outside?

2 A No.

3 Q Okay. Now, from when this happened to now, obviously you
4 guys have been able to talk about it and have had conversations; right?

5 A Sure.

6 Q So what I'm saying is, so, now, you say, now that you know,
7 you, in speaking with them, you know that they were outside. Is that what
8 you were trying to say?

9 A Well, I know Angel was outside because she told me that she
10 got Londyn out the car. And, I mean, I guess, yeah, I heard that Tamisha
11 was outside too.

12 Q Okay. Has this situation, you know, you -- well, strike that.
13 Do you feel like you are kind of in the middle in this situation
14 between your family and Kyriell?

15 MR. LONG: Objection, vague.

16 MS. BLUTH: I don't think it's vague. If she feels like she's been
17 put in the middle.

18 THE COURT: Overruled. I'll let her answer that.

19 BY MS. BLUTH:

20 Q Do you want me to say the question again or did you hear me?

21 A I heard you. It's fine.

22 Yeah, I guess so.

23 Q It's not an easy position for you to be in; is that correct?

24 A Right.

25 I mean, I don't really feel like it's between Tommy and Kyriell

1 though, like. It's more so just -- I don't know. I feel like I'm in the middle
2 but it's not between them two.

3 Q Okay. So is it -- is it fair to say that Thomas is your stepfather,
4 you don't want to see anything bad happen to him?

5 MR. LONG: Objection, leading.

6 THE COURT: Overruled.

7 BY MS. BLUTH:

8 Q Would that be fair?

9 A To anybody.

10 Q What?

11 A I wouldn't want to see anything bad happen to anybody.

12 Q Yeah.

13 But, I mean, specifically in this situation, you care for your
14 stepfather; would that be fair?

15 A Yeah.

16 Q Okay. Has this situation caused issues or rife between you and
17 your mother at certain points?

18 A Yeah.

19 Q One thing that I wanted to go back to is I had asked you in the
20 beginning if at any point in time you felt threatened or you felt scared, and
21 when you spoke to the police do you remember being asked that question
22 a few times?

23 A Yeah.

24 Q And when you answered that question, do you remember what
25 your answer was?

1 A Yes. So when I spoke to the police, I really believe that even if I
2 said, like, because even though he didn't hit me, if I said I was scared, I
3 didn't want to see him go to jail and he didn't actually hit me.

4 Q Okay. So but when you did speak to the police they asked you
5 if you felt scared or if you felt threatened in anyway and you told the police
6 multiple times, no, you did not feel scared or threatened; is that right?

7 A Yeah.

8 Q Okay. And then a few months later, or I think it was, like, a little
9 bit more than a month later, you testified at a preliminary hearing; correct?

10 A Yeah.

11 Q And at that point in time you were asked those same questions
12 again several times and at each time when asked that same question
13 again you stated you did not feel like you were in danger or that you were
14 going to be hurt in anyway; is that true?

15 A Yeah.

16 MS. BLUTH: Court's indulgence.

17 BY MS. BLUTH:

18 Q I apologize, Brittney.

19 After -- let's go back to, you stated you saw Thomas -- after
20 Ezekiel hits the ground, you see Thomas run, you're not sure exactly
21 where he goes at that point in time.

22 A Yeah.

23 Q What do you do?

24 A Immediately I was like looking for my daughter. I didn't know
25 that she -- someone had took her. I thought the whole time she was still

1 in the car. So I run to the car, she's not there, then I run to the door, I'm
2 trying to get into the house to get her.

3 So once I got her, I come back outside, and he's still on the
4 floor, and then we called the police. I mean, yeah, we called the 9-1-1.
5 And they were, like, asking a whole bunch of questions. And me and
6 Londyn left.

7 Q Okay. How did you and Londyn leave?

8 A In my car.

9 Q Okay. And where did you drive? Like how far?

10 A Like right down the street to just -- to getaway.

11 Q Okay. Did you ever come back to that area? Were you ever
12 called back to that area?

13 A Yeah.

14 Q Explain to me how that happened?

15 A One of the police officers who were there, they called me on
16 Kyriell's phone and told me that they just wanted to talk to me, to come
17 back.

18 Q Okay. Why -- obviously, you have a young daughter at the
19 scene at that time, can you explain to me why is it that you grabbed
20 Londyn and decided to leave?

21 A Because I don't want her around that.

22 Q When you, you know, drive off or drive down the street or
23 around the corner, at some point do you have a conversation with your
24 mom on the phone?

25 A Yeah.

1 Q Who called who?

2 A My mom, she called me.

3 Q Okay. And at -- when you were having a conversation with your
4 mom, did you tell her what had happened or what you had just seen
5 happen?

6 A Not all the way, but yeah. We didn't get to talk about it so
7 much. It was like heat of the moment.

8 Q Sure.

9 And eventually does your mom come to the house -- to your
10 house?

11 A Yeah.

12 Q Okay. When you were on the phone with your mom, had she
13 already spoken to your little sister Angel?

14 A I think so. 'Cause, I mean, I didn't call her and tell her what
15 happened. She called me.

16 Q Okay. So when your mom calls you, she already knows a little
17 bit about what has gone on?

18 A Yeah.

19 MR. LONG: I'm going to object, speculation. She doesn't know
20 what her mom knows.

21 MS. BLUTH: Well, Judge, she just testified that --

22 THE COURT: Overruled.

23 BY MS. BLUTH:

24 Q So at that point in the conversation your mom is aware of some
25 of the facts that have just gone on; correct?

1 A She knew something happened, yeah.

2 Q Okay. During that conversation with your mother, do you
3 discuss whether or not Kyriell had been violent with you at all?

4 A I really don't remember. But, I mean, he didn't like hit me. He
5 grabbed me so. But I don't -- I don't remember exactly what me and my
6 mom's conversation was, no.

7 Q Okay. Do you at any point in that conversation with your mom
8 remember saying to your mom that Kyriell was not at any point slamming
9 you into a car multiple times?

10 A I don't remember but he didn't do that. So I don't see why I
11 would say that to her.

12 Q He did not do that?

13 A Right.

14 Q Okay. And then did you ever see Thomas come back to the
15 house that evening or in the early morning hours?

16 A Yeah.

17 Q How much longer after, you know, Ezekiel falls and you see
18 Thomas run, could you approximate when it is that he comes back to the
19 house? Is it hours? Minutes? What would you say?

20 A Hours.

21 Q And do you guys talk with him? And when I say, you guys, I
22 mean, your mom, and your sister, and Tamisha, do you guys talk with him
23 about what had gone on?

24 A No. We just -- I went with my mom to take him to turn himself
25 in.

1 Q Okay. Between the time he gets back to the house and the
2 time you guys -- well, let me ask you this, what time is it when he gets
3 back to the house?

4 A I'm not sure.

5 Q Okay. How much time goes on between the time Thomas gets
6 back to the house and the time he goes to turn himself in?

7 A As soon as he got there, we left within minutes.

8 MS. BLUTH: Okay. One second, Ms. Turner.

9 Court's indulgence, Your Honor.

10 BY MS. BLUTH:

11 Q And, I apologize, because I -- when we first started speaking
12 and you were talking about who was in the house that night, you said it
13 was you, Angel, Thomas, Thomas's aunt, and then, I didn't hear you say
14 Tamisha, but was Tamisha in the house that night?

15 A I guess, yeah.

16 Q Or do you not remember?

17 A I mean, I didn't see her. I didn't know she was there
18 beforehand. But afterwards, yeah.

19 Q Okay. So at the time this is going on, the only people that
20 you're aware that are at the house would be you, Thomas, Angel, and
21 Thomas's --

22 A Sister.

23 Q -- sister?

24 Besides like the little babies, like, Payton and Londyn, that are
25 there?

1 A Yeah.

2 MS. BLUTH: Okay. Court's indulgence, Your Honor.

3 BY MS. BLUTH:

4 Q When you got back into the house to go and get Londyn, at any
5 point when you were inside the house did you see Thomas inside the
6 house as well, after this whole thing had gone on?

7 A No, I didn't see him when I went in.

8 Q Okay. And then who is Sandy Cash?

9 A My auntie.

10 Q So I'm confused because she has the same last name. So
11 explain to me how it works out, if you can. So I know it's like a family tree
12 that confuses me so.

13 A That's also his niece. So my grandma and his brother are
14 married.

15 Q Okay. Hold on, let me do it. Okay. So your grandma and
16 Thomas's brother are married?

17 A Yeah.

18 Q Grandma and Thomas -- okay. So your grandma is Thomas's
19 mother-in-law and sister-in-law? Do I have that right?

20 A Yeah.

21 Q Okay. All right. So then who is Sandy?

22 A Sandy is my mom's sister.

23 Q Okay.

24 A And his brother's daughter.

25 Q Okay. Was she at the house that night?

1 A No.

2 Q Did you see her at all that night?

3 A After everything was over when she came home.

4 Q When Sandy came home?

5 A Well, yeah. We went to -- she was at school, we went to go get
6 her from her friend's house, wherever she was, after the police left and
7 everything was over with.

8 Q Okay. And was that before Thomas came home?

9 A Yeah.

10 Q Okay. And then were there any cars parked in the driveway
11 when this was going on?

12 A Yeah.

13 Q And what type of car is that? And whose car is that?

14 A The Hyundai. I don't know. It was my little sister's car.

15 Q Okay. And that was parked in the driveway when this incident
16 is happening?

17 A Yeah.

18 Q Do you know -- did that car leave shortly after Ezekiel fell to the
19 ground? Did that car leave the home?

20 A Yeah.

21 Q Do you know who was driving it when it left?

22 A No.

23 Q You just know that it wasn't there when you got back?

24 A Right.

25 Q So when you get back to the house, is there anybody missing

1 | | though that could have taken that car?

2 | A Thomas wasn't there.

3 Q But everybody else was still there?

4 A When I -- when we -- when I came back, everybody else was
5 there, yeah.

6 MS. BLUTH: Okay. Thank you so much, Ms. Turner.

7 I'll pass the witness, Your Honor.

8 MR. LONG: Your Honor, it's ten to 5:00. It's going to take me
9 longer than ten minutes to cross-examine Ms. Turner.

10 MS. BLUTH: Can we keep going, Your Honor, because she
11 has two young babies.

12 THE COURT: Yeah, we better go, for your cross-examination.

13 MR. LONG: Okay.

14 **CROSS-EXAMINATION**

15 BY MR. LONG:

16 Q Brittney, good afternoon.

17	A	Good afternoon.
----	---	-----------------

18	Q	Do you know how old Thomas is?
----	---	--------------------------------

19	A	53.
----	---	-----

20 Q Okay. How old was he when this happened?

21	A	53.
----	---	-----

22 Q Okay. And is that older than Kyriell and Ezekiel?

23 | A Yeah.

24	Q	How old are they?
----	---	-------------------

25 A He's 24. And, I think, Ezekiel's 21, 22.

1 Q Okay. And both these young men play football?

2 A Yeah.

3 THE COURT: Scoot closer to the mic, please.

4 THE WITNESS: Yeah.

5 BY MR. LONG:

6 Q And they both workout, exercise a lot?

7 THE WITNESS: Yeah.

8 MS. BLUTH: Objection, speculation, only if she knows, Your
9 Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I don't really know what Ezekiel does.

12 BY MR. LONG:

13 Q But you know --

14 A I mean, I know he plays football. But I can't tell you, like, oh,
15 yes, every day he's working out.

16 Q Okay.

17 A Or Kyriell, he doesn't work out every day. They play football on
18 the weekends.

19 Q Okay. And they are both in good shape; correct?

20 MS. BLUTH: Objection, speculation, only if she knows.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Yeah.

23 BY MR. LONG:

24 Q Okay. Now, isn't it true, Brittney, that you don't have any formal
25 arrangement as to the custody of Londyn?

1 A Yeah.

2 Q Okay. And so you asked Kyriell to come over?

3 A Yeah.

4 Q Okay.

5 MS. DIGIACOMO: And, Your Honor, could she be instructed to
6 say, yes or no, not yeah.

7 THE COURT: Yeah, because it is difficult to -- say, yes or no;
8 okay.

9 THE WITNESS: [Nods head.]

10 BY MR. LONG:

11 Q Now, you were in the front yard?

12 A Yes.

13 Q And Thomas came out; correct?

14 A Yes.

15 Q It's your testimony today that Thomas did not stop and ask you
16 if Kyriell had hurt you?

17 A Yes.

18 Q Okay. He went straight to Kyriell?

19 A Yes.

20 Q And isn't it true that Kyriell had his hands on you when Thomas
21 came towards Kyriell?

22 A Yes.

23 Q So don't you believe Thomas was trying to protect you?

24 MS. BLUTH: Objection, speculation, improper.

25 THE COURT: Sustained.

1 THE WITNESS: Yes, I --

2 THE COURT: Don't answer that.

3 BY MR. LONG:

4 Q Well -- don't answer it.

5 You stated that Kyriell is feisty like you?

6 A Yes.

7 Q And is it your testimony today that Kyriell didn't exchange any
8 words while any of this was going on?

9 MS. BLUTH: I apologize, I object as to vague. When you say,
10 this is going on, like, the, between them, or everybody?

11 MR. LONG: The incident, the fight between Thomas and
12 Kyriell.

13 THE COURT: The fight?

14 THE WITNESS: I don't -- I was yelling myself so I don't know.

15 BY MR. LONG:

16 Q And isn't it true that Kyriell was yelling too?

17 MS. BLUTH: Objection, asked and answered. She stated --

18 THE COURT: I'll let her answer that question.

19 THE WITNESS: I don't remember.

20 BY MR. LONG:

21 Q Do you remember testifying at the preliminary hearing on
22 February 5th?

23 A Yeah, yes.

24 Q At that time didn't you testify that Kyriell yelled that he was
25 going to get a gun or shoot somebody?

1 MS. BLUTH: Can I have page number, please, Counsel.

2 THE WITNESS: Yeah.

3 MS. DIGIACOMO: Page number?

4 MR. LONG: What's that?

5 MS. DIGIACOMO: Page number.

6 MS. BLUTH: Page number, please, so I can follow along.

7 MR. LONG: Oh, page number is 81.

8 MS. DIGIACOMO: Thank you.

9 MS. BLUTH: Thank you.

10 BY MR. LONG:

11 Q And you testified that he said he will shoot?

12 A Yes.

13 Q Okay. And was -- and at that time Kyriell was talking about
14 himself shooting, not Ezekiel; correct?

15 A Yes.

16 Q Okay. Now, you've testified that Kyriell did not slam you against
17 the car; correct?

18 A Yes.

19 Q But he did shake you; correct?

20 A Yeah.

21 Q So when Kyriell had you by the wrist, he was shaking you;
22 correct?

23 A He grabbed me with force. I wouldn't say he was like shaking
24 me, like, shaking baby syndrome or something. But he grabbed me with
25 force by my wrist, yes.

1 Q And when he grabbed you with force, it shook?

2 A Yeah, yes.

3 MS. BLUTH: Objection, asked and answered. She said three
4 times he didn't shake her.

5 THE COURT: Overruled. I'll let her answer. You can
6 cross-examine her.

7 MS. BLUTH: Okay.

8 BY MR. LONG:

9 Q Okay. Now, after this fight occurred, you didn't see Kyriell run
10 to the door?

11 A Like up the house?

12 Q Yes.

13 A No.

14 Q Okay. But you did see Thomas?

15 A No. I seen him run, but I'm not sure, like, I didn't see that night.
16 I didn't see him run to the house, no.

17 Q Okay. And it's your testimony this afternoon that you did not
18 see Kyriell run towards what was then your house?

19 A I didn't see him run towards the house.

20 Q All right. Did you see Kyriell run back from your house to attend
21 to Ezekiel?

22 A I don't remember him running towards the house. I mean, I
23 know we all, like, started to run in that direction, yes. But Ezekiel never
24 got up. So everybody -- like, me and Kyriell both turned back around at
25 that moment and we're next to Ezekiel at the same time so.

1 Q Then it's your testimony today that you ran back towards your
2 house or that you ran back to your car?

3 A Well, I was running towards the car that my daughter was in.

4 Q Okay. But isn't it true that your sister had your baby, your
5 daughter?

6 A Now that I know, yes. But I didn't know at that time that my
7 sister had got her out the car.

8 Q Okay. So your testimony is you ran to the car that Kyriell
9 arrived in, the Jetta?

10 A Right.

11 Q You saw Thomas running in some direction?

12 A Correct.

13 Q But you didn't see Kyriell running in any direction?

14 A We all ran the same direction. And we -- I wouldn't even say we
15 ran because literally we were running but Ezekiel didn't get up. So we
16 turned right back around.

17 Q You never heard Kyriell try to kick in your front door?

18 A No.

19 Q All right. Now, going to when Thomas came back later that
20 night, after the police had left and everything, Thomas has blood all over
21 his shirt; correct?

22 THE COURT: If she saw it.

23 BY MR. LONG:

24 Q If you saw it?

25 A I don't remember. I really don't.

1 Q Okay. And Thomas's nose, if you remember, appeared to have
2 been damaged?

3 A Yeah, yes.

4 Q Okay. And didn't you testify at the preliminary hearing that
5 Ezekiel hit Thomas with a closed fist?

6 MS. BLUTH: Can I have a page number, Counsel?

7 THE WITNESS: They were fighting, so yes.

8 MR. LONG: Court's indulgence. Let me get a page number.

9 MS. BLUTH: Thank you.

10 MR. LONG: I'll withdraw that question. I can't find it in there.

11 MS. BLUTH: Okay. Thank you.

12 BY MR. LONG:

13 Q Now, at the preliminary hearing you were asked on multiple
14 times who was chasing who, whether it was Thomas chasing Ezekiel or
15 Ezekiel chasing Thomas, and your answer was repeatedly, they were
16 chasing each other; is that correct?

17 A Yes.

18 Q And as you sit here today, do you know who was chasing who
19 on the night of December 11th, 2017?

20 A They were chasing each other.

21 Q Okay. So it's your testimony that Thomas was not chasing
22 Ezekiel?

23 A Yes.

24 Q And that Ezekiel was not chasing Thomas?

25 A Yes.

1 Q And that the two were chasing each other?

2 A Yes.

3 Q And by chasing each other, do you mean engaged in a mutual
4 combat of sort?

5 A Yes.

6 Q Okay. Isn't it true that Kyriell yelled for Ezekiel to get out of the
7 car to help him?

8 A No.

9 Q Okay. And isn't it true that at no time Kyriell said call 9-1-1 until
10 after the stabbing?

11 A Yeah.

12 Q Okay. So at no time no one suggested call 9-1-1 to bring the
13 cops here to break up this fight; correct?

14 A Correct.

15 Q And, Brittney, isn't it true that you still are on speaking terms
16 with your mother?

17 A I guess, I mean, we've talked.

18 Q Okay. And you stated that it was your mother that drove
19 Thomas down to turn himself in?

20 A Yes.

21 Q But you have no recollection of any blood on Thomas's shirt or
22 on his face?

23 A I mean, I know he had -- his nose was messed up. I just don't
24 remember if he had changed or if he had -- I don't remember.

25 Q Okay. And by, messed up, do you mean swollen?

1 A Yeah.

2 Q Okay. And you were six months pregnant at the time this
3 happened?

4 A Yes. I think.

5 Q Well, it was December?

6 A Yeah, around six months.

7 Q Okay. And it was your testimony that you possibly felt scared
8 that you or your unborn baby could be hurt?

9 MS. BLUTH: Objection, misstates testimony. She never said
10 anything about an unborn baby.

11 THE COURT: Sustained.

12 BY MR. LONG:

13 Q Was it your testimony that you were afraid that you could be
14 hurt?

15 A Could be, yes.

16 Q Okay. And you were afraid you could be hurt because you
17 were pregnant; correct?

18 A Yeah.

19 Q And isn't it true that you were concerned about the wellbeing of
20 your unborn child?

21 A Yes.

22 Q And at no time when you were interviewed by the police, did
23 you show them your wrist; correct?

24 A I don't remember showing them my wrist, no.

25 Q Okay. And at no time did you take off your jacket to show any