

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 Jurors, please.

2 (Jury reconvened at 1:38 p.m.)

3 THE MARSHAL: Thank you. Please be seated.

4 THE COURT: All right. State vs. Burns and Mason.
5 The record reflect the presence of the defendants, their
6 counsel, the district attorneys.

7 Ladies and gentlemen of the jury, as you're aware,
8 Ms. Paradis -- Paradis is not feeling well. I have excused
9 her. And we -- we're going to substitute Cindy Arnold as a
10 regular juror in place of Ms. Mason [sic].

11 Ms. Arnold, if you'd stand and raise your right hand,
12 please, the clerk will administer the oath to you.

13 (Juror sworn.)

14 THE CLERK: Please be seated.

15 THE COURT: All right. We're on direct examination
16 of Mr. Krylo.

17 MR. DiGIACOMO: Thank you.

18 BY MR. DiGIACOMO:

19 Q Mr. Krylo, I think I left off at the point where
20 we were talking about general or class characteristics versus
21 unique identifying characteristics of a firearm. And if you
22 could go back to the general characteristics, I think you
23 talked about lands and grooves, but I don't know that you got
24 any farther than that.

25 A Correct. So the -- the rifling impressions in a

1 barrel are made up of what are called lands and grooves. A
2 groove is just that, it's the cut-out area that makes up that
3 spiral. And the land is just the area between two grooves.

4 So the class characteristics of that rifling are the
5 number of lands and grooves, the direction they twist, and how
6 wide they are. So, you know, different manufacturers can use
7 different numbers of lands and grooves. They can use five
8 lands and grooves and have them twist to the right, they can
9 use six lands and grooves and have them twist to the left.
10 And then with -- when -- within those lands and grooves, they
11 can vary how wide they are. So those are the class
12 characteristics of the rifling inside the barrel that are then
13 imparted onto the bullet as it goes down that barrel.

14 Q And so, basically, that firearm fires .44 caliber
15 bullets with what type of rifling, lands and grooves?

16 A May I check my notes?

17 Q Yes, sir.

18 A For this Ruger revolver, it has six lands and
19 grooves that twist to the right.

20 Q Okay. You talked about the -- the class
21 characteristics. Now, is there -- on every -- on any given
22 firearm, are there some unique character -- characteristics
23 that can be imparted to a bullet as it's fired down the barrel
24 of a gun?

25 A Yes.

1 Q And what is that?

2 A Well, the unique or individual characteristics
3 are those that are marks that are inside that barrel that are
4 -- basically do not reproduce. They're not class
5 characteristics. They're -- they're unique just to that
6 barrel. And they start really early on in the manufacturing
7 process of a gun. If you think of a piece of steel, steel has
8 a crystalline structure. So when you get down to a
9 microscopic level, that crystalline structure isn't
10 necessarily uniform. So there's already -- already some
11 uniqueness in that steel.

12 And then as you drill that barrel, ream that barrel,
13 and then rifle that barrel, those are all machining processes.
14 And each time you machine a piece of steel like that, the tool
15 that makes it changes it a little bit as it does the
16 machining. There's what's called chip formation, which is
17 little tiny chips of metal that form as that -- the blade of
18 that machine tool goes down that steel. So these impart
19 unique or individual characteristics onto that barrel.

20 And then beyond that, there's the characteristics of
21 just where, you know, use or abuse of that firearm.

22 Q So let me go back now to the exhibits here. And
23 I think I was on 26-what?

24 A These are 263A, B, and C.

25 Q So 263A, that's the jacketing that might have

1 some class characteristics and unique markings from going down
2 the barrel of a gun?

3 A Correct.

4 Q Okay. What about B?

5 A B is just a lead fragment. With a bullet --
6 remember, if this is from the bullet, it's from the core,
7 which is inside the jacket. So the core doesn't touch the
8 rifling in the barrel. So there won't be any marks on the
9 core that I can use for a comparison.

10 Q So essentially 263 -- because you just said if
11 it's from a bullet, 253B is a hunk of lead?

12 A Correct.

13 Q It may be from a bullet or it may not be?

14 A Let me -- let me check real quick. The -- the
15 size of it looks consistent with a bullet core, but I didn't
16 see anything on it that I could conclusively say it's a bullet
17 core. Packaged with a bullet jacket, you know, may or may not
18 be.

19 Q Okay. And then how about 263C?

20 A 263C was a -- a small bullet jacket fragment,
21 and then three more small lead fragments.

22 Q Okay. So once again, there's three lead
23 fragments, but then there's a small jacket. Does that have
24 some characteristics on it that may have been imparted from
25 the -- the rifle of the gun?

1 A Yes.

2 Q Okay. Let's set those aside for a second and
3 move to 264, is that the next one on your list?

4 A 263 here.

5 Q What's the next one on your list?

6 A 264.

7 Q Okay. And pull those items out and let's talk
8 about what's in there. Start with 264A. Were you able to
9 draw any conclusions about 264A?

10 A 264A are -- is three small lead fragments.

11 Q So they may be part of a bullet or they may not?

12 A Correct.

13 Q Okay. And then 264B?

14 A 264B is a .44 caliber bullet.

15 Q .44 caliber bullet. So do you distinguish
16 between a fragment versus a bullet?

17 A Yes.

18 Q And how do you do that?

19 A Well, there's no set definition of what makes a
20 fragment or a bullet. But if -- if it's basically intact, I
21 can easily visually identify it, I can easily see all the
22 lands and grooves on the side of the -- the bullet, I can
23 measure its dimensions. Then I go ahead and call it, you
24 know, a bullet rather than a bullet fragment.

25 Q Let me ask you, when a bullet fires out of the

1 front of a gun and it hits something hard, what does it have a
2 tendency to do?

3 A Well, there's -- there's a lot of things that
4 can -- that can happen or it has a tendency to do. It depends
5 on what it hits. So if you think of the bullet, it's lead and
6 copper. Lead is -- is relatively soft. Copper is fairly
7 soft. Depending on what they hit, it may deform, it may
8 fragment, it may not -- if it hits something soft it may not
9 do too much of anything.

10 Q And when you hit something hard, if let's say a
11 bullet is fired out of a gun and it hits something hard and it
12 fragments, can those fragments kind of change directions or
13 deviate from the straight line of the -- what the shot was?

14 A I would expect them to, yes.

15 Q You would expect them to? So let's pull aside
16 -- I'm going to pull aside any one that has a jacket in it.
17 So pull aside 264B, and move onto the next one in your list.

18 A That's 315A.

19 Q And what is 315A?

20 A Two lead fragments.

21 Q Okay. Is there any rifling characteristics of
22 315A?

23 A No.

24 Q Okay. Put this over here in this file, or you
25 can put it back in the bag. Eventually we'll put it back in

1 that pile. Let's go to the next one on your list.

2 This is marked as?

3 A This is 312A.

4 Q 312A?

5 A Uh-huh.

6 Q And there's a container inside 312A, and then
7 there's something inside [indiscernible]?

8 A There's a little coin envelope.

9 Q And before we get to the -- what's inside there,
10 let's -- I want to talk about that container for a second.

11 Does that container have any identifying information
12 on it?

13 A Yes, it does.

14 Q What does it say?

15 A Well, it has several things on it. It has the
16 Metro event number, the 1008070732, and also has a name on it.
17 Last name is Newman.

18 Q Okay. And then is there another label looks
19 like from the hospital that has a doctor's name on it?

20 A Yes. Looks like Dr. Gosche and Dr. Filmore.

21 Q Okay. And then, setting that aside for just a
22 second, is there something inside the -- and what is that?

23 A This is a bullet jacket and a bullet core.

24 Q And obviously the core itself -- well, let me
25 ask you this. Does the core have any rifling characteristics

1 on it?

2 A It does not.

3 Q Okay. So just the jacket does?

4 A Correct. And -- and just so you know, when I
5 received this, it was all one piece. But during my
6 examination, when I go to look at the rifling impressions on
7 the side, I bend the bullet, this -- these petals out a little
8 bit, and that's when it separated.

9 Q Okay. So when you got it, it was intact, but
10 the core and the rifling or -- and the -- and the jacket. And
11 then during your examination, the core came out of the
12 jacketing?

13 A Correct. Because, remember, these aren't glued
14 or fused together.

15 Q Okay. So let's pull that one aside for just a
16 second. And then we'll slide it up here. And then move onto
17 the last package you have in front of you.

18 A And this is 311A.

19 Q And what is 311A?

20 A 311A is another lead fragment.

21 Q Okay. No rifling characteristics on it?

22 A Correct.

23 Q So let's stick that one aside, as well. Is -- I
24 don't know if I asked you this in front of the jury -- is
25 there one more bullet that you looked at that's not there in

1 front of you?

2 A Yes.

3 MR. DiGIACOMO: And, Judge, I have previously marked
4 and I believe both parties are going to stipulate to the
5 State's Proposed Exhibits 148 and 149, which is a photograph
6 of that bullet that should be here sometime this afternoon.

7 MR. SGRO: That's correct, Your Honor.

8 MR. LANGFORD: That's correct, Your Honor.

9 THE COURT: All right. It'll be received.

10 (State's Exhibit 148 and 149 admitted.)

11 BY MR. DiGIACOMO:

12 Q Mr. Krylo, I've showed you 148 and 149
13 previously. And did you compare it to the photographs you
14 take during your examination and does it appear to be the last
15 bullet that you looked at?

16 A Yes.

17 Q Okay. Can you tell us what that is?

18 A That is another .44 caliber bullet.

19 Q And does that have rifling characteristics on
20 it?

21 A Yes, it does.

22 Q So we wind up with firearms evidence that you
23 looked at, one, two, three, four, five separate pieces that
24 happen to have rifling characteristics on them?

25 A Correct.

1 Q Okay. I want to start with first 263C, and talk
2 about the small rifling characteristics -- or the small
3 fragment that has some rifling characteristics in 263C. Were
4 you able to draw any conclusions concerning that fragment?

5 MR. SGRO: Your -- Your Honor, and -- and I don't
6 mean to interrupt the presentation, but I -- I noticed Mr.
7 Krylo's looking at his report. He has it marked by JJK, his
8 initials. So if he could correlate when he's looking at 263
9 which part of his report he's looking at, whether it's JJK
10 234, that would be helpful.

11 THE COURT: Would that be helpful?

12 THE WITNESS: Oh, yeah. I can -- that's easy to do.

13 THE COURT: Okay. Let's do that.

14 MR. SGRO: Thank you.

15 BY MR. DiGIACOMO:

16 Q 263C, what's -- what's your item number?

17 A That is my item JJK2-6.

18 Q And what conclusions were you able to draw about
19 the one fragment in there that has rifling characteristics?

20 A That the rifling characteristics here that are
21 consistent with the -- both the revolver and the rest of the
22 fired bullets. But there -- it's too small, there's not
23 enough detail there for me to make a conclusive identification
24 or elimination of this item.

25 Q So it could have been fired from that weapon,

1 but you can't tell it was fired from -- from either that
2 weapon or from the same gun that fired the other bullets?

3 A Correct.

4 Q And that's due mainly to the size of the -- the
5 piece that you're looking at?

6 A Correct.

7 Q Want you to set that one aside for a second,
8 then. And I'm going to ask you questions about the remaining
9 three, which is --

10 THE COURT: There's four remaining.

11 THE WITNESS: Yes.

12 MR. DiGIACOMO: Is there four? Oh, there's four
13 remaining counting the one that -- thank you, Judge.

14 BY MR. DiGIACOMO:

15 Q The three that are here plus the picture. Of
16 the four remaining ones, are you able to draw any conclusion
17 as to whether or not they were fired from the same firearm?

18 A Yes.

19 Q Okay. And what conclusions are you able to draw
20 as to the four remaining bullets and/or bullet fragments that
21 you have?

22 A That all four were fired from the same firearm.

23 Q And how is it that you're able to make that
24 determination?

25 A Basically, could we back up just a little bit.

1 This examination starts, I do some kind of just general
2 observations, the size of these items, how many lands and
3 grooves, what direction they twist, those class
4 characteristics that they talked about.

5 Once I've done that, I've got a piece of equipment at
6 the lab called a comparison microscope. It's basically two
7 compound microscopes joined together with what's called an
8 optical bridge. What that allows me to do is look at two
9 objects side by side through my microscope. So I can actually
10 do a side-by-side comparison under my microscope of any item I
11 could actually fit under there.

12 So that's what I do with these bullets. I mount one
13 bullet on one stage, the other bullet on another stage. I do
14 a microscopic comparison of those rifling impressions that are
15 on those bullets. And by doing that comparison, then I can
16 make a determination as to whether or not two bullets were
17 fired from the same gun.

18 Q And as to all four of the items that you have
19 left in front of you, your conclusion was all four of them
20 were fired from the same firearm?

21 A Yes.

22 Q Okay. Did you do any comparison of those four
23 bullets that -- or four bullets and/or bullet fragments to the
24 Ruger, the .44 caliber Ruger that was submitted to you under
25 the case number?

1 A Yes, I did.

2 Q And were you able to draw any conclusions?

3 A I was able to draw some conclusions.

4 Q Okay. What conclusions were you able to draw?

5 A Well, the -- the class characteristics of the
6 rifling impressions on the evidence bullets are the same as
7 the rifling inside the Ruger revolver.

8 Q Was there something about the Ruger revolver
9 which hampered your ability to make a conclusive
10 identification between those bullets and the Ruger itself?

11 A Yes.

12 Q And what was that?

13 A Well, if you were to look into the muzzle end of
14 this barrel and -- and you could see the rifling impressions
15 in there -- or the rifling in there, you'll see that there's
16 some -- it's been gouged and scratched, kind of going around
17 in a circle just inside the muzzle. That's not from
18 manufacturing, it's not from normal wear or use. But those
19 gouges are so significant that when I test fired it, it -- I
20 didn't see the same marks on my tests that I saw on my
21 evidence. But since the barrel's been scored like that, I
22 can't eliminate or identify this barrel to these bullets.

23 Q You said that it was the gouging that's in there
24 -- I'm assuming you've worked with firearms for a very long
25 time?

1 A 20-plus years.

2 Q And I'm sure you've shot and cleaned firearms
3 over the course of that time period?

4 A Yes.

5 Q Is it the type of damage you would expect to see
6 from a normal cleaning and/or taking care of a weapon?

7 A No.

8 Q In order to gouge that type of material as a
9 firearms and tool marks examiner, what are we talking about
10 had to be put into the front end of that barrel?

11 A Well, it would have to be fairly -- you know,
12 something fairly hard. I mean, this is stainless steel.
13 Stainless steel is pretty hard. So it's going to have to be
14 something basically as hard as stainless steel, you know,
15 right in that, you know, a hard metal.

16 Q Were you able to make any determination as to
17 how recent the -- the damage was to the front end of the
18 barrel?

19 A No.

20 Q Okay. That's not something you -- or is that
21 something you can ever do or is it something that in this case
22 you weren't able to do?

23 A I'm not sure how you would go about that other
24 than if you had samples of the bullets that had been fired
25 through this gun over the years, and then you could look for

1 when it changed.

2 Q But once that damage is -- is in there, if that
3 damage is subsequent to, say, the firing of a bullet, that
4 would change the way the bullet would look the next time you
5 fired it?

6 A Correct. You can't identify or eliminate
7 bullets before damage to bullets after.

8 Q Thank you, sir.

9 MR. DiGIACOMO: Judge, I pass the witness.

10 CROSS-EXAMINATION

11 BY MR. SGRO:

12 Q Good afternoon, sir. I want to start with you
13 on your qualifications. Okay?

14 A Okay.

15 Q So we have a resume for you. And you keep your
16 resume up to date; would that be fair?

17 A Yes.

18 Q And when you -- the version of the resume I have
19 is dated August of 2010.

20 A That's an old version.

21 Q Right. And -- and you, in August of 2010, you
22 had put down that you were certified in firearm and tool mark
23 examination in May of 2003; does that ring a bell?

24 A That sounds right.

25 Q And this is AFTE?

1 A Correct.

2 Q That's --

3 A The Association of Firearm and Tool Mark
4 Examiners.

5 Q Right. So I got the acronym correct?

6 A Yes.

7 Q All right.

8 A We -- short -- we call it AFTE.

9 Q Right. Now, each certification is only for five
10 years; is that right?

11 A Each -- correct.

12 Q And -- and if you don't review your
13 certification, it expires after five years, right?

14 A Correct.

15 Q All right. And so can I assume then that in
16 2010, the resume that we got in conjunction with this case, at
17 the time you had conducted these exams on these bullets, your
18 certification had expired; would that be fair?

19 A No.

20 Q Okay.

21 A I recertified in 2008.

22 Q Okay. So it's a mistake on your resume?

23 A No. That's my initial certification is 2003.

24 Q Right. But you renew your certification every
25 five years.

1 A Correct.

2 Q You wouldn't have bothered to put your renewal
3 of your certification on your resume?

4 A As long as it was in effect, I don't know if I
5 thought it was necessary.

6 Q Well, I guess let me ask it a better way. A
7 certification obtained in 2003 would not be good in 2010
8 unless you renewed it, right?

9 A Correct. So it --

10 Q Okay.

11 A -- probably wouldn't be listed on there, then.

12 Q Okay. I want to go through with you couple
13 other things relative specifically to Rugers. I examined your
14 resume and the only thing specific to Rugers I could find was
15 something you did in November of 1993, which would have been
16 about 17 years or so prior to this examination. You have here
17 listed a Ruger revolver/pistol/rifle armorers course. Does
18 that ring a bell?

19 A Yes.

20 Q Now, an armorers course, just to be clear,
21 according to AFTE, if you go on their Web site it says those
22 are the classes where you learn how to use and maintain your
23 firearm, correct?

24 A Use, maintain, how the firearm works, yes.
25 Those are the -- the manufacturer's classes.

1 Q Right. So the classes that you spoke of with
2 the DA are more the how do the things work, as opposed to
3 let's see if Rugers make any specific tool mark impressions;
4 would that be fair?

5 A Well, the -- the armorers courses, yes.

6 Q Right. And you went to some that are -- were
7 sponsored by Colt Remington, right?

8 A Yes.

9 Q Okay. Would you agree with me, sir, that
10 relative specific to Rugers, there's nothing on your resume
11 where you were brought into a class or seminar specifically
12 dedicated to the ascertaining of tool mark evidence for
13 Rugers; would that be fair?

14 A A class -- so a class specifically on
15 microscopic marks related to Ruger, that would be -- that's
16 correct.

17 Q Okay. Now, you spoke -- oh -- oh, before I get
18 there, you spoke briefly to the jurors about your
19 qualifications, and this examination took place in 2012; is
20 that right?

21 A Right.

22 Q Now, in about 2005, 2006, you're a member of
23 AFTE, right?

24 A Yes.

25 Q And, in fact, you were actually the president of

1 AFTE, weren't you?

2 A Yes.

3 Q What years were that -- was that?

4 A That was 2010.

5 Q Okay. Just for one year?

6 A You're president for one year, yes.

7 Q All right. Now, up to the time that you were
8 president and the year prior to that, this kind of evidence --
9 and I'm using my fingers as quotes -- the -- the comparison
10 tool mark evidence had come under attack nationally as to its
11 quality; would you agree?

12 A I agree that it's been attacked, yes.

13 Q All right. Congress, our government,
14 commissioned a study to be done in 2009, just to give you some
15 context, right? And that study in part evaluated AFTE and the
16 mechanics through which -- the type of testimony the jury just
17 heard, how -- how does that come to be; would you agree that
18 that's fair?

19 A That -- if you're talking about the National
20 Academy of Sciences --

21 Q Yes, sir.

22 A -- report? That covered a lot of topics, not
23 just --

24 Q Absolutely. And I think my question was amongst
25 other things, one of the things that they evaluated was the

1 quality of testimony based in science of forensic comparison
2 testimony; would you agree?

3 A That sounds basically right. Without reviewing
4 the whole report right now, I'm not real well versed on it to
5 talk about it right now.

6 Q Well, the National Academy of Science was
7 extremely critical of AFTE right around the time you were
8 becoming president of that organization, correct?

9 A Your words, extremely critical.

10 Q Well, can we agree critical?

11 A Again, I would have to go back and review the --
12 the whole report before I would comment.

13 Q Okay. Well, let me ask it this way. You
14 remember the report?

15 A Again, yes. I remember it, yes.

16 Q And you know that judges in different parts of
17 our country received this report and began to modify how this
18 kind of evidence was going to be received, fair?

19 A I -- I don't know if they modified it. I -- I
20 only know my experiences here in Nevada.

21 Q Okay. Now, let's talk about -- let's talk about
22 the experiences here. First of all --

23 MR. SGRO: May I approach the witness, Your Honor,
24 just so we can get on the same page on this report?

25 THE COURT: Yeah, if he needs his -- to be refreshed,

1 is that what it is? Or --

2 MR. SGRO: Yes, sir.

3 THE COURT: Okay.

4 MR. SGRO: Just to put it into context --

5 THE COURT: Okay.

6 MR. SGRO: -- so we're on the same page.

7 BY MR. SGRO:

8 Q So what I'm showing you purports to be -- I
9 think it's 450, let me see. About 321 pages of a report done
10 by the National Academy of Science. Does this look familiar
11 to you at all?

12 A Okay. This is -- this is not the report I
13 thought we were talking about.

14 Q Okay.

15 A This is the ballistic imaging report.

16 Q Right.

17 A That had to do with databases.

18 Q Correct. There -- and -- and you mentioned in
19 your resume something called IBIS, I-B-I-S?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Okay. IBIS was a database that came to be
24 through a law enforcement agency, right?

25 A Well, right and wrong. IBIS is the name of

1 equipment that is manufactured by a private company that
2 Bureau of Alcohol, Tobacco, and Firearms has contracted with.

3 Q Right. There is a chapter in this report done
4 by the National Academy of Science that deals with firearms
5 identification and use of ballistics evidence, correct?

6 A I don't -- that's what tired -- titled here.

7 Q Okay. Well, sir, you have been offered as an
8 expert in your field. Do you consider yourself to be an
9 expert in the area of comparing bullets and fragments one to
10 another; do you think you're an expert?

11 A I do.

12 Q Okay. And do you think you're an expert in
13 being able to tell if bullets are consistent or not consistent
14 with a weapon; do you think you're an expert?

15 A I do.

16 Q And I think you told the jury that part of being
17 an expert is keeping up on literature, right?

18 A I don't know if I told them that.

19 Q Well, would you agree with me that you need to
20 read what's going on in your field --

21 A Correct.

22 Q -- right? And you do that?

23 A I do.

24 Q All right. Isn't it -- isn't the attack on
25 whether or not folks like you should be allowed to testify in

1 court based on -- based on the subjective nature of the
2 testimony? Does that make sense?

3 A The -- the premise makes sense.

4 Q Okay.

5 A I don't necessarily agree with it.

6 Q Well, let's talk about a couple of things that
7 you said. First of all, one of the things that the Academy of
8 Science report did was it distinguished DNA evidence; do you
9 remember that? They talked a lot about DNA.

10 A Right. I --

11 MR. DiGIACOMO: I apologize. Mr. Sgro is asserting
12 facts not in evidence. If he wants to ask a question like did
13 the report say this or did the report say that --

14 MR. SGRO: It's cross-examination.

15 THE COURT: If called to the attention of an expert
16 who agrees upon a particular document or treatise or study,
17 then he can -- you can use that. But if he hasn't agreed upon
18 it or --

19 MR. SGRO: Right.

20 THE COURT: -- he may not -- I don't know if he knows
21 this that well. So I'm not sure that you're going to get this
22 into evidence with him. I don't know what you're trying to
23 do, but I --

24 MR. SGRO: Okay.

25 BY MR. SGRO:

1 Q This report by the National Academy of Sciences,
2 as you indicated earlier to the jury, it looked at a bunch of
3 different disciplines of science, correct?

4 A I believe it did, yes.

5 Q One of those disciplines it reviewed was DNA; do
6 you remember that?

7 A Yes.

8 Q And -- and DNA was held in high regard by the
9 National Academy of Science as something that could be relied
10 upon, correct?

11 A Correct. Now -- now we're talking about a
12 different report than this one here, right?

13 Q Yes, sir. Right.

14 A Okay.

15 Q We're talking about the --

16 A Just want to make sure that we're -- because
17 you've -- we've mentioned a couple of different reports now.

18 Q Right now we're talking about the National
19 Academy of Sciences. They reported back to Congress, to our
20 government, because DNA -- as you know DNA has evolved over
21 years, correct?

22 A Yes.

23 Q It's gotten better and better?

24 A Well, it's gotten more, what, precise, I guess.

25 Q More precise. Okay. That was -- DNA was

1 referenced in marked contrast to the discipline that you're
2 involved in, which is tool mark examination; do you remember
3 that?

4 A Not specifically, you know, worded that way.
5 No, I don't.

6 Q Well, let's -- let's take a couple of examples.
7 If you have DNA evidence, you can be subjected to what are
8 called blind or double-blind examinations, right?

9 A I -- you can -- you can do that in any forensic
10 discipline.

11 Q Okay. Well, you do it in DNA, right?

12 A I -- I don't know if our DNA section does that.

13 Q Well, let me ask a different question. In DNA
14 you can say something is with -- something occurs in a
15 numerical -- it's a numerical or statistical probability; in
16 other words, it's one in a hundred or one in six billion,
17 right? You're aware that those numbers are out there?

18 A Correct.

19 Q In firearm and tool mark examination, you don't
20 say it's one in however many probabilities, do you? You don't
21 have a statistical formula you rely upon, correct?

22 A Correct.

23 Q And that absence of that statistical formula
24 that you can't say these bullets, for them to match another
25 gun is a one in a million chance, or one in ten, or one in a

1 billion; you cannot do that?

2 A Correct.

3 Q And that was one of the criticisms of the
4 National Academy of Science relative to this kind of
5 testimony, fair?

6 A Again, I don't remember if it's worded that way
7 in there. But -- so I can't comment.

8 Q Well, let me ask you this. You told the jury
9 about something called class characteristics, right?

10 A Yes.

11 Q Okay. Now, class characteristics are the things
12 -- if I'm the owner of Ruger and I'm going to design a new gun
13 and I'm going to put a design on the inside of the barrel,
14 that's going to be consistent with every Ruger that gets
15 produced in that batch, right?

16 A Yes. As long as they use that same tooling,
17 yes.

18 Q Right. Now, you then spoke to the jury about
19 something called identifying characteristics, right?

20 A Yes.

21 Q All right. And you said an identifying
22 characteristic could be something unusual or different than
23 the class characteristic, right?

24 A Well, it is, yes.

25 Q All right. Now, what I didn't hear you talk

1 about in direct is something called subclass characteristics;
2 do you know what those are?

3 A I do.

4 Q Subclass characteristics are when a gun is made,
5 if there's a defect or an imperfection in the next batch that
6 gets done, right?

7 A No, not -- not necessarily correct. Subclass is
8 usually associated with the tool that's doing the machining.
9 And that tool has a big enough defect that it would carry --
10 that that mark from that defect would carry over from one
11 part, one barrel to the next.

12 Q Exactly. Exactly. So in other words, and I'm
13 going to give you a hypothetical, it's not based on any --
14 anything in this case. I'm going to make a batch of 10,000
15 Rugers, they all have the same class characteristic, the
16 inside of the barrel looks the same. I sell them all. Now I
17 need 10,000 more. And unbeknownst to me as the manufacturer,
18 one of those machining devices has chipped, broken, some kind
19 of defect, right. The next 10,000 is all going to have
20 something a little bit different, because the machining of
21 that one tool is a little bit off from the first 10,000. Make
22 sense?

23 A Yeah. That -- if that defect occurred between
24 the two batches.

25 Q Exactly.

1 A Yes.

2 Q Exactly. And the point of it is this. You told
3 the jurors about something called unique or individual. And
4 now let's go back to the National Academy of Sciences and what
5 they said. Do you recall the National Academy of Science
6 report criticizing that sometimes testimony by people such as
7 yourself confuses the word unique, individual used today, that
8 they confuse that and it's really nothing more than a subclass
9 characteristic; does that ring a bell?

10 A Any -- yeah. And I would agree with that. But
11 that is not -- to me, that is not a criticism of the science.
12 That's more a practitioner type issue.

13 Q Okay. Now -- okay. Fair point. Now let's go
14 to the practitioner issue.

15 Some -- because this is subjective, some of what
16 you're doing -- and I think you said it in your testimony, if
17 you'll indulge me one second, Mr. DiGiacomo asked you, How do
18 you distinguish between a bullet and a fragment, right?

19 A Correct.

20 Q Now, in a lot of sciences, when you have to make
21 decisions on what something is, there's a numerical protocol,
22 there is -- there is something objective that categorizes a
23 piece of science into one thing or another, fair?

24 A Sure.

25 Q Well, you told the jury a few minutes ago was --

1 and tell me if I got this right -- there's no set definition;
2 basically, if the bullet's intact, I call it a bullet. If
3 it's not, I call it a fragment. Did I get the gist of that
4 correct?

5 A That's basically it.

6 Q So to be able to assess this, whether it's
7 subjective or objective, you gave us an example a few minutes
8 ago of something that is subjective. You personally are
9 looking at the bullet, right?

10 A Correct. But I think it's not necessarily an
11 apple and oranges things here. But calling something a bullet
12 or a bullet fragment, that's a different subjective
13 examination, if you want to call it, from the actual
14 microscopic comparisons. Because whether it's a bullet or a
15 bullet fragment, I can still do the comparisons and I can
16 still make a conclusion.

17 Q I get it. We're going to get to the macroscopic
18 [sic] comparison in just a second. My point is this. If you
19 personally are looking at something that you're going to call
20 a bullet, the only science involved is because you think it's
21 a bullet, right?

22 A No.

23 Q Your training and experience?

24 A Well, yeah. I mean, it's not just my looking at
25 this calling it a bullet. This is something -- it's an

1 objective item. It's not a subjective item. The bullet
2 actually exists. The measurements can be made. Microscopic
3 comparisons can be done.

4 Q Sir, I just want to -- I don't mean to quarrel
5 with you. I'm just asking you what you told the jury. You
6 said there's no set definition of a bullet; did you say that?

7 A I don't know -- I thought we were talking bullet
8 fragment.

9 Q When you were asked by Mr. DiGiacomo -- let me
10 get to my notes here -- you were talking about Exhibit 264,
11 okay, and you said 264A had three small fragments and 264B was
12 a .44 caliber bullet, right?

13 A Okay.

14 Q And in the context -- that context during that
15 examination you were then asked why is B a bullet? And you
16 said, Well, there's no set definition. Basically, if I think
17 it's intact, there's enough of it there, I call it a bullet.
18 Do you remember saying words to that effect?

19 A I do. But I thought we were talking about the
20 bullet fragment at that point.

21 Q Here's my point, sir. If the -- the criticism
22 -- one of the criticisms lodged against this kind of testimony
23 is the notion that we have to rely on your training and
24 experience, because if you see it and you say it's so, there's
25 no way to challenge it, fair?

1 A Oh, there absolutely is.

2 Q Okay. Let me ask you this. You said to the
3 jury a few minutes ago, I looked at it, I think it's large
4 enough to be considered a bullet, right?

5 A Right. If I said that...

6 Q Okay. Well, this was only a few minutes ago,
7 sir. Do you remember --

8 A Right.

9 Q -- the conversation that you just had with the
10 State?

11 A Yes.

12 Q Okay. Now, here's my question. In looking at
13 examinations, you talked about rifling -- is rifling the same
14 as striations?

15 A No.

16 Q Okay. You -- did you look at striations in this
17 case?

18 A I did.

19 Q Okay. Let's talk about rifling. You would
20 agree with me, sir, that people in your line of work that have
21 done this for a long time can look at the same pieces of
22 evidence and come to different conclusions, correct?

23 A I would -- I have to agree, yes.

24 Q Okay. Now, obviously, you come in as someone
25 who's pretty seasoned, been around a long time, and you're

1 going to stick to your guns and I expect the other person's
2 going to stick to his or her guns; would that be fair?

3 A Correct. The -- the one issue I think you're
4 missing is that if it's two qualified examiners, I expect they
5 come to the same conclusion.

6 Q You expect it, but it doesn't always happen,
7 right?

8 A If it doesn't happen, it's usually a shade of
9 inconclusive versus conclusive. It's not usually two opposite
10 ends of the spectrum.

11 Q The question, though, is does it happen? I
12 think the answer you're conceding is yes, right?

13 A Two opposite ends of the spectrum?

14 Q No, sir. Okay. Here's my question very simply.
15 Okay. And let me do it by analogy, hypothetical. Two doctors
16 are looking at a slide to determine what -- what treatment is
17 necessary. Two capable doctors both looking at the same
18 objective piece of evidence. They can each have a different
19 opinion how to best treat that -- that illness that they're
20 looking at. Do you understand my point?

21 A Sure.

22 Q Okay. And in your line of work, two equally
23 capable persons can look at the same things, because you're
24 using your vision and you're using a microscope, right?

25 A Correct.

1 Q You're looking through a microscope, correct?

2 A Correct.

3 Q And someone else can look through the same
4 microscope that you're looking at and come to a different
5 conclusion, fair?

6 A They could.

7 Q Okay. Now, one of the things that was
8 criticized by the National Academy of Science was the fact
9 that you are receiving pieces of evidence in a context of
10 knowing what these pieces are in the midst of an
11 investigation; does that make sense?

12 A I mean, knowing that a revolver is a revolver;
13 is that what you mean?

14 Q You know, that's a very poor question. You
15 received a report saying we have a suspect firearm, right?

16 A I didn't receive a report. I receive a --
17 there's a lab request.

18 Q Lab request that says, We have a suspect
19 firearm, right?

20 A I --

21 Q Do you need to look at it?

22 A Yeah. Let me look at it.

23 Q Okay. It's three pages from the back of your
24 package of material, sir.

25 MR. SGRO: And actually, Your Honor, may I approach?

1 I can point him right to it.

2 THE COURT: Sure.

3 BY MR. SGRO:

4 Q Those are your initials, right?

5 A Yes.

6 Q And am I showing you a forensic lab examination
7 request for comparative analysis?

8 A Yes.

9 Q Okay. You have found the right page. Okay.
10 You are told that there is a suspect firearm in the case?

11 A In this case, yes.

12 Q How many Rugers has Ruger produced in the last
13 25 years?

14 A Oh, I don't know.

15 Q Would you be surprised to say that they have
16 produced about 25 to 30 million guns in that period of time?

17 A Is -- all told, I'm not --

18 Q All --

19 A -- sure if that would be -- that would not be
20 all of one model.

21 Q All total. Do you remember when they had a
22 campaign, something having to do with NRA, they made 1.2
23 million guns in one year; does that ring a bell?

24 A No, it doesn't.

25 Q All right. How many Rugers are at the

1 Metropolitan Police Department right now that have been
2 impounded in evidence in other cases?

3 A I don't know.

4 Q A lot, though, right?

5 A Probably, yes.

6 Q All right. Did you test fire any of those other
7 Rugers that you have access to to see if those Rugers made the
8 same kind of marks as appear on the bullets in front of you?

9 A No, I did not.

10 Q And the fact that you don't do that, the fact
11 that you're told you have a suspect firearm, that's one of the
12 criticisms lodged against your industry when you come into
13 court and testify as an expert, agree?

14 A I agree it's a criticism. I don't necessarily
15 agree that it's valid. And I can explain if you'd like to
16 hear.

17 Q I understand you have a position, you were --
18 you've been doing this work for a long time. I understand
19 that. But you -- you can understand why, if it's going to be
20 science, we want to test fire a bunch of different Rugers.
21 Would you agree with that?

22 A No.

23 Q Okay. Would you think it would be more
24 compelling if you told the jury, I fired 10 Rugers that I had
25 in the evidence vault, I fired 2,500 Rugers that I had in the

1 evidence vault, and you know what, out of all those firings,
2 only the one that the police think is the suspect weapon looks
3 close to this; don't you think that'd be more compelling?

4 A It -- it would. But the problem that that
5 believes is that you can extrapolate that to all the guns. If
6 you say, Well, if I -- it would be more compelling if I
7 compared these 10, then you would -- then you would say it
8 would be more compelling if I compared all the guns in
9 Southern Nevada. And then if I agree to that, then you'd say,
10 Well, it would be more compelling if I compared all the guns
11 in the United States.

12 So, and scientifically --

13 Q So it's too -- too much work to do? You
14 understand we're in a capital murder trial, right?

15 A I understand that. Absolutely.

16 Q You came -- you came here as an expert -- you
17 came here as an expert and you just told the jury that in your
18 expert opinion, four bullets match, right?

19 A Correct.

20 Q Okay. So are you suggesting that you shouldn't
21 use other weapons because it takes too much time or it's too
22 much work?

23 A There were not other weapons presented to me --

24 Q Exactly.

25 A -- and --

1 Q Exactly.

2 A -- the weapon that was presented, going back to
3 your arguments, I didn't identify that revolver. So that's
4 where the science now works.

5 Q Here's the question. The marks you saw on the
6 bullets had certain imperfections that appeared to match one
7 with the other, correct?

8 A They didn't appear. They did.

9 Q Okay. In your opinion, right?

10 A Well, I can show you.

11 Q Sir, let's talk about -- do you have the
12 pictures in front of you?

13 A Which ones?

14 Q Well, did you take pictures in this case?

15 A Yes.

16 Q Okay. Did you take pictures, you know how you
17 lined up the bullets --

18 A Uh-huh. Yes.

19 Q -- with that macroscope?

20 MR. SGRO: Can I get this turned on?

21 Q May I see the photos, sir?

22 A You should have them, right?

23 Q Oh, I thought you had them up here.

24 A I have -- I have mine. These?

25 Q Yes. But did you mark -- can I show the

1 prosecutor, see if this is in evidence yet.

2 MR. DiGIACOMO: I didn't mark those. What I -- what
3 I think he's saying is that's his original file. So if you
4 have a nice copy, he'd prefer you to mark that.

5 MR. SGRO: Okay.

6 THE COURT: Don't take his original file.

7 MR. SGRO: I will not.

8 THE COURT: Good.

9 BY MR. SGRO:

10 Q You took some pictures of bullets at high
11 magnification underneath a macroscope.

12 A Using a comparison microscope, yes.

13 Q Comparison. And is it comparison microscope or
14 macroscope? Because I saw it used alternatively.

15 A It is used both ways, and from the manufacturer
16 of our microscope, called it both ways.

17 Q Okay. Now, I want to get to a point here of
18 another line of criticism, but I want to understand that
19 process that you employed to create the match. Okay?

20 A Okay.

21 Q You take a bullet -- you test fired some
22 bullets, correct?

23 A Correct.

24 Q And you compared the test fired bullet to the
25 ones in front of you?

1 A Well, I compared test-fired bullet to test-fired
2 bullet, and then test-fired bullet to evidence bullet.

3 Q Okay. And your testimony is test-fired bullet
4 matched the bullets that were given to you?

5 A No, that is not my testimony.

6 Q Your testimony is test-fired bullet doesn't
7 match the bullets that were given to you?

8 A It's -- my testimony was it was inconclusive.

9 Q Okay. That means you can't make a match?

10 A Correct.

11 Q Okay. So your testimony is that the four that
12 you have all match one another?

13 A Correct.

14 Q All right. Now, there was an explanation given,
15 and I'll give it to you by hypothetical situation so you can
16 understand where I'm going. This comparison microscope has
17 mechanisms by which you can turn things to continue to look to
18 see if they match, right?

19 A Correct.

20 Q So you can rotate -- you can rotate the bullets
21 that you're examining to see if there comes a time when they
22 line up?

23 A Correct.

24 Q All right. Now, let's go back to the Academy of
25 Science report. Do you remember an example they gave about

1 tearing off half a UPC code off a bag of Cheetos and then
2 tearing off a UPS code off a completely different bag of
3 Cheetos. And that at some point -- if you rotate them
4 correctly, at some point you're going to be able to get a
5 match such that someone would say, Yeah, they're from the same
6 bag. Does what I'm saying make sense?

7 A Well, it makes sense. I don't remember that at
8 all.

9 Q Okay. Well, let me ask it this way. You are
10 rotating the items underneath the microscope until you find a
11 match, right?

12 A Until you find an area where the striations that
13 you mentioned before, which are the fine lines, till those
14 line up.

15 Q Right. Now, have -- have you ever mislabeled,
16 switched, or misplaced any samples that you've ever analyzed?
17 You ever made a mistake?

18 A I've made lots of mistakes in life. But as far
19 as --

20 Q And I -- I understand the -- the answer. As
21 someone that does this stuff for a living, you've testified
22 you've done this hundreds and hundreds of times, right?

23 A I don't know if we -- I don't know if we went
24 into numbers, but I have, yes.

25 Q You have done this -- I think you've been doing

1 this kind of work for 25 years?

2 A About, yeah.

3 Q Okay. Do you think you've ever made a mistake?

4 A I don't think I have.

5 Q Okay.

6 A As far as an identification versus elimination.

7 Q Okay. There was a study done where examiners
8 were not told this is the suspect weapon or this is the weapon
9 that we have. And it was a blind study --

10 MR. DiGIACOMO: I apologize. Once again --

11 THE COURT: Sounds to me like you're testifying now.

12 MR. DiGIACOMO: Mr. Sgro's testifying.

13 MR. SGRO: Let me ask -- let me ask --

14 THE COURT: Okay.

15 BY MR. SGRO:

16 Q Are you aware of studies that have been
17 conducted -- studies that have been conducted where capable,
18 talented tool mark examiners are tested blindly as to matching
19 different bullets?

20 A Yes. I know there -- yes.

21 Q Okay.

22 A I've participated in some of those.

23 Q And you are aware, sir, that there are margins
24 of error that come as a result of those blind tests, correct?

25 A There are, yes.

1 Q Okay. And are you aware the margin of error has
2 been as high as 20 percent?

3 A You -- you would have to show me that particular
4 study and I could review it.

5 Q Let me --

6 A Do you have that -- do you have that -- can you
7 give me that -- that study?

8 Q Are you aware with a study conducted by Smith &
9 Wesson on a revolver, they were .38 revolve -- you know, .38
10 caliber revolvers, where there was a margin of error recorded
11 of 20 percent when the study was done blind?

12 A That doesn't ring a bell.

13 Q Okay. Are you aware whether Metro has a margin
14 of error in its department that does this kind of testing? Do
15 they -- in other words, does Metro say if our forensic tool
16 mark guy says it's so, it's so? Or like other science is
17 there a margin of error that's attributed to that entirety of
18 that science?

19 A I don't believe Metro has a margin of -- or a
20 margin of error in the firearms detail.

21 Q Okay. So it is expected that human beings that
22 work at the tool mark and firearm lab are always perfect,
23 right?

24 A No. And that's why we have a system of reviews
25 in our case work.

1 Q Let's talk about that review. That was another
2 area of criticism by the National Academy of Science; do you
3 recall that?

4 A Again, just in general, I -- if you want to go
5 through that report, we're going to have to go and take some
6 time to review it.

7 Q Okay. Let's talk about the review system. Have
8 you ever had a reviewer come and look at your work and
9 disagree with your findings?

10 A On an identification or --

11 Q Yes, sir. I'm sorry. Fair -- fair point. As
12 to an identification, I think this bullet and this bullet came
13 from the same weapon, right? You write the report, here comes
14 a reviewer. Have they ever disagreed with you?

15 A Yes.

16 Q Okay. Now, you belong to this organization,
17 AFTE, you're a distinguished member and you were its
18 president, correct?

19 A Correct.

20 Q They have ethical rules, right?

21 A Yes.

22 MR. SGRO: I'm sorry, Your Honor. I just need a
23 second.

24 Q One of the ethical rules of the organization
25 that you were the president of was if there's a disagreement

1 between the reviewer and the original examiner, "It is in the
2 interest of the profession that every effort be made by both
3 examiners to resolve their conflict before the case goes to
4 trial." Is that right?

5 A Oh, absolutely.

6 Q Right. Because you don't want jurors to know
7 about the conflict, you only want the jurors to have it
8 reviewed and agreed to, right? It's for the sake of the
9 profession, right?

10 A No.

11 Q Sir, in the -- in the credo of the ethics of the
12 American Firearms and Tool Mark Examination, in its credo it
13 doesn't say, It's in the best interests of justice to resolve
14 conflict, does it? It says, "It's in the best interests of
15 the profession," right?

16 A The profession, the science. And you have the
17 name wrong, too. It's the Association of Firearm and Tool
18 Mark Examiners.

19 Q I apologize. AFTE has in it -- its -- in its
20 ethical code, firearms and tool mark examiners, you all work
21 it out before the case goes to trial, right? Do you want me
22 to show it to you?

23 A No, I -- I know what you're talking about.
24 You're -- but the -- the slant there is that we're trying to
25 cover it, whereas the intent is that if you have a conflict,

1 you figure out why there's a conflict and -- and sort it out.

2 Q Right. And you'd want to do that in the
3 interest of the profession, right?

4 A In the interest of science.

5 Q Sir, does it say science or does it say
6 profession?

7 A Well, I think that's what the intent was.

8 Q Okay. The word, though, is in the interest of
9 the profession, correct? And that is a concept that you
10 propounded affirmatively while you were president of this
11 organization, right?

12 A Yes.

13 Q Now, are you aware of any of the findings that
14 were made by the Academy of Science in its report relative to
15 the validity of this kind of testimony? Let me ask it in a
16 different way.

17 I -- I think, if I understand correctly, I know the
18 report came out a few years ago, and this is not supposed to
19 be a memory test. I -- I want to ask you if you're familiar
20 with the following concepts, okay?

21 A Okay.

22 Q The validity of the fundamental assumption of
23 uniqueness and reproduceability of firearms-related tool marks
24 has not yet been fully demonstrated. Does that sound
25 familiar?

1 A That sounds familiar. I don't agree with it,
2 but it sounds familiar.

3 Q Okay. Let me ask you this. Forensic science
4 professionals have yet to establish either the validity of
5 their approach or the accuracy of their conclusions and the
6 courts have been utterly ineffective in addressing this
7 problem. Sound familiar?

8 A Again, sounds familiar. I don't agree.

9 Q Okay. There is no scientific methodology behind
10 how many things you have to find match before you come into
11 court and tell juries I found a match, fair?

12 A There's no numerical value, if that's what
13 you're looking for.

14 Q Correct. That's one of the things that's
15 criticized about the things that you testify about, fair?

16 A Yes.

17 Q There is no database that's used for a
18 statistical comparison, right?

19 A I'm not quite sure --

20 Q Let me -- okay. So let me -- let me make sure
21 we're on the same page. You can't go to a computer and type
22 in .44 caliber Ruger Redhawk, enter, and it gives you all the
23 different tool marks that are possible having been created by
24 that gun, right?

25 A I don't believe that's even possible no matter

1 what.

2 Q Okay. Firearms examiners can, if they wanted
3 to, record their own data as they do testing and input it into
4 a common computer, could they?

5 A No. I don't agree.

6 Q Isn't the fact that this sort of database, the
7 fact that it doesn't exist, that is a criticism of this kind
8 of testimony?

9 A It's a criticism, yes.

10 Q Okay. We covered the statistical likelihood,
11 that does not exist in this field, correct?

12 A Well, the -- there is a statistical likelihood.
13 But I believe it was an oversimplification of what we were
14 looking at. So I don't know if it was actually -- it was not
15 applicable in -- in a broad spectrum.

16 Q Do you remember the -- the finding by the
17 National Academy of Science where they stated, "Forensic
18 evidence is offered to support conclusions about
19 individualization with the exception of DNA analysis.
20 However, no forensic method has been rigorously shown to have
21 the capacity to consistently and with a high degree of
22 certainty demonstrate a connection between evidence and a
23 specific source." Do you remember that, sir?

24 A I remember. And again, I don't agree.

25 Q Okay. The National Academy of Science was

1 commissioned by Congress as an independent body to evaluate,
2 as you pointed out earlier, not only forensic science, but
3 DNA, fingerprints, other things, right?

4 A Right.

5 Q They didn't have a dog in the race necessarily,
6 right?

7 A I don't know.

8 Q Okay. Now, you compared those four bullets one
9 to another, and along the way you used a couple of different
10 tools, one being the microscope, which we discussed, right?

11 A Yes.

12 Q And there's another tool, and I'm not going to
13 be able to pronounce it, but the acronym it is XRF?

14 A Correct.

15 Q What does that stand for?

16 A It's a device that uses x-rays, causes -- it
17 basically excited electrons and it -- it basically is an
18 elemental analyzer. It'll tell you what elements are present
19 in a sample.

20 Q Right. So this -- this device shoots energy and
21 radiation into an element and then it spits out a printout
22 what the chemical compound of that element was?

23 A Correct.

24 Q All right. And -- and you did that in this
25 case?

1 A Correct.

2 Q I don't recall you being asked any questions
3 about that on direct; is that right?

4 A Well, I would have -- the only time we would
5 have talked about it, when we described something as being a
6 lead fragment.

7 Q Okay. Now, relative to the chemical
8 composition, one of a number of different ways to tell if
9 bullets are consistent, one with another, would be the
10 chemical composition; would that be fair?

11 A You -- you could do that, yes.

12 Q All right. Now, in this case, you made a
13 decision to do what's called XRF testing, right?

14 A Yes.

15 Q And you tested a bunch of fragments, correct?

16 A Correct.

17 Q You made a decision not to test the chemical
18 composition of the bullets, right?

19 A Correct. There was no need to.

20 Q In your opinion --

21 A Well --

22 Q -- right?

23 A -- if you can tell me another reason to do it.

24 Q Well, how about can we go -- can you and I go to
25 a book and -- and look at an objective list of criteria that

1 says here's when you need to test the bullets to see their
2 chemical compound and here's when you don't; can you and I go
3 do that right now?

4 A I don't know if we can.

5 Q Right. And we can't do that with a fragment,
6 either. We -- there's no -- there's no authoritative text
7 that governs all you guys and all you men and women that do
8 this work, there's no text where we can say, Okay, in this
9 situation we need to test the chemical compound of the
10 fragments but not the bullet, fair?

11 A Correct.

12 Q The AFTE that you belong to has attempted to
13 promote a standard for comparison prior to a forensic examiner
14 such as yourself comes into court and says these match or they
15 don't match, right?

16 A I'm not sure I --

17 Q Okay. Let me ask it this way. Have you ever
18 heard of the term sufficient agreement?

19 A Yes.

20 Q All right. Now, sufficient agreement -- well,
21 strike that.

22 Do you agree AFTE, the organization you were
23 president of, the one you promulgated its policies, they came
24 up with a theory of identification, right? It's called a
25 theory of identification?

1 A Yes.

2 Q The theory of identification, as it pertains to
3 tool marks, enables opinion of common origin to be made when
4 -- and this is the part I want you to focus on -- the unique
5 surface contours of two tool marks are in sufficient
6 agreement; does that sound right?

7 A Sounds right.

8 Q Okay. Sufficient agreement is only defined as
9 two or more things that match, right?

10 A I think -- he's talking -- that's how AFTE
11 defines it?

12 Q How does AFTE, in your opinion, define what
13 constitutes sufficient agreement?

14 A Again, it's -- it's based on if you read
15 through, it's the contours that are there.

16 Q Correct. And those contours have to be seen and
17 evaluated by a human being based on his or her own experience
18 and whatever brings them to the table that day, right?

19 A Right.

20 Q There's nothing independent, nothing objective.
21 I can go read right now to find out how to do it?

22 A Correct.

23 Q Okay. Do you recall the finding by the Academy
24 of Science where they said, "Forensic evidence used in
25 criminal trials is not immune from the risk of manipulation."

1 Does that sound familiar?

2 A Again, I'm -- I'd have to review the whole --
3 the whole report to say that I agree that it's in there.
4 But --

5 Q Well, let me --

6 A -- I mean --

7 Q Let me ask this question. Do you agree -- do
8 you agree that forensic evidence is not immune from the risk
9 of manipulation?

10 A Yes.

11 Q All right. And you agree that when we talk
12 about comparisons, one bullet to the next, that as human
13 beings we're only as good as whatever we can deliver on that
14 given day, right? I'm not -- do you -- do you follow what I'm
15 saying?

16 A No.

17 Q Let me rephrase it. You don't come into
18 courtrooms after having been here hundreds of times with a
19 specific motive to be dishonest, right? You're not -- you're
20 not coming in to be dishonest, correct?

21 A That's correct.

22 Q You're coming in to do the best job that you
23 can, correct?

24 A Correct.

25 Q And you agree that when you're told things in

1 the midst of a case, that could tend to affect you as a human
2 being regarding your bias and take away from your ability to
3 be a scientist; would you agree?

4 A No.

5 Q Okay. So you don't think it's of any
6 consequence to be told, We have the murder weapon, see if
7 these bullets come from it; you don't think that affects you?

8 A No.

9 Q Okay. You don't --

10 A And I'll tell you why. Because --

11 Q Sir --

12 A -- I've eliminated --

13 Q Sir --

14 A -- murder -- the murder weapon many times.

15 Q Sir, you'll have an opportunity with a very
16 capable prosecutor for you to explain. Okay.

17 You don't think it affects your bias to have these
18 four bullets in front of you or five bullets in front of you
19 and be told by police in your request for comparison, We got
20 all these from the scene; you don't think that affects you at
21 all?

22 A I don't.

23 Q Do you agree that the discipline that you're
24 involved in, this tool mark comparison, should not be housed
25 under this -- under the Rubric of law enforcement? In other

1 words, right now I think you work for -- you work for Metro,
2 right?

3 A Correct.

4 Q There is some debate as to whether or not you
5 can be an objective scientist and work for the police, right?

6 A There's debate, yes.

7 Q There is -- there are those that suggest that
8 you would have the ability to be more objective if you were a
9 self-standing lab, a science lab, as opposed to working under
10 Metro's roof, fair?

11 A Well -- well, there are those that -- that argue
12 that, yes.

13 Q Okay. And there are those along the same lines
14 that, because you work under the same roof as Metro, that
15 there are potential -- that there is the potential for
16 conflicts of interest to arise, correct?

17 A There's those that argue that, yes.

18 Q Do you agree with the following statement, okay:
19 After eyewitness testimony, forensic identification is the
20 most common type of testimony that jurors relied on in
21 returning erroneous verdicts; do you agree or disagree?

22 A I don't know.

23 Q Okay. There are classes that up-and-coming tool
24 mark examiners take as they -- as they become more and more
25 able to make comparisons, agree?

1 A Yes.

2 Q There are seminars that are done, correct?

3 A Yes.

4 Q It is proffered or advanced in these seminars
5 that the more an examiner has confidence, that the more the
6 examiner can ID tool marks; in other words, sometimes the
7 difference between yes, they match or no, they don't match is
8 simply the personal confidence level of the examiner. Do you
9 agree with that?

10 A No. Because I think you've -- to me, when you
11 say no, they don't match, that means that's an elimination.
12 And you're going from saying yes, they're an identification,
13 you're glossing over inconclusive --

14 Q Fair point.

15 A -- and going all the way to elimination. And
16 that's what I don't --

17 Q And you're --

18 A -- don't expect to see.

19 Q You're exactly right. And it's actually from
20 inconclusive to yes, they match. Okay.

21 A Or to yes, they don't -- or to no, they don't
22 match.

23 Q Let's -- let's stick with the syllabus -- strike
24 that.

25 Is there a theory advanced that the difference

1 sometimes between inconclusive and yes, they match, depends on
2 the individual confidence level of that examiner?

3 A Yes.

4 Q That, then, would be something subjective and
5 has nothing to do with science, right?

6 A Again, I don't want to say it doesn't have
7 anything to do with science, because I believe there are
8 strong elements of science in every comparison.

9 Q The reviewer that reviewed your report, I can't
10 make out the signature, do you recognize it?

11 A The -- there are two reviews. Which one are you
12 referring to?

13 Q I'm looking at the very first --

14 MR. SGRO: May I approach the witness, Your Honor?

15 THE COURT: Sure.

16 BY MR. SGRO:

17 Q The one on the very first page. Yes, that one.

18 A That's Randall Stone.

19 Q Okay. Randall Stone ostensibly reviewed your
20 work, right?

21 A Ostensibly? I mean --

22 Q Reviewed your --

23 A -- yes, he -- he reviewed my work.

24 Q How long have you known Randall Stone?

25 A I met him when I first went to work for the

1 forensic lab.

2 Q How many years ago?

3 A That was in 1998.

4 Q He trusts you?

5 A You'd have to ask, you know --

6 Q You don't have any opinion of whether or not he
7 trusts you?

8 A Well, I -- I would assume he does.

9 Q Okay.

10 A But --

11 Q He relies upon you and your work product?

12 A I would say yes.

13 Q Where are his notes that shows what he reviewed
14 of your work; do you have them?

15 A No.

16 Q Where -- do any exist?

17 A His review was an administrative review, which
18 is at -- that's the last review process we go through. So his
19 review is of the entire case packet.

20 Q The entire case packet, which is your report,
21 right?

22 A Yes.

23 Q So let's go through the entire case packet. So
24 this is what Randall Stone supposedly, for an independent
25 review, looks at. Your first page that says the four bullets

1 match, right?

2 A The report.

3 Q The report. There's a review sheet that makes
4 sure you did things and signed things, right?

5 A Yes.

6 Q Then there are two pages that talk about where
7 these bullets came from?

8 A The -- the packaging.

9 Q The packaging, yes. Right?

10 A Yes.

11 Q And there's something called Firearm Worksheet?

12 A Correct.

13 Q A picture of the revolver?

14 A Yep.

15 Q A picture of the barrel?

16 A Yes.

17 Q The target that shows you shot it three times
18 and that the firearm works?

19 A Well, that -- that's not the only test firing I
20 did. But yes, the target that I shot.

21 Q Well, you didn't -- you said he gets this case
22 file, right?

23 A Right.

24 Q So in terms of Mr. Stone, that's all he's going
25 to get, right? This piece of paper?

1 A Right. And then the previous -- the page --
2 the --

3 Q Correct.

4 A -- the firearm examination page --

5 Q We have something --

6 A -- that describes the test firing.

7 Q We have something called Bullet Worksheet,
8 right?

9 A Yes.

10 Q We have the photos of the fragments, right?

11 A And the bullets, yes.

12 Q That's your notes on comparisons, right?

13 A Yes.

14 Q Photos of the microscope, which we talked about
15 earlier?

16 A Yes.

17 Q Then this XRF testing that you did?

18 A Yes.

19 Q And then he gets an e-mail that talks about the
20 event, correct?

21 A It talks about the -- the bullet and the
22 revolver.

23 Q Right. Then he gets all the requests for
24 forensic lab comparison, correct?

25 A Correct.

1 Q And Randall Stone would also be told, as he's
2 doing this objective review, that you wanted to match the
3 suspect firearm and you had some bullets from the homicide
4 scene, right?

5 A Well, he'd see the request. I didn't ask him to
6 do the -- I didn't ask to do that.

7 Q Understood. But he would have that, right?

8 A Yes.

9 Q He makes no notes and simply signs off?

10 A Correct.

11 Q That's the review?

12 A That's the administrative review.

13 Q Did he call you and discuss the case with you
14 before he signed off?

15 A I don't remember.

16 Q Do you agree that if the only weapon you're
17 shown to work on is the suspect weapon, do you agree that
18 that's more akin to an evidentiary showup as opposed to a
19 blind test?

20 A What's -- what's an evidentiary showup?

21 Q Here's the evidence, as opposed to, Tell us
22 where these bullets came from blindly. In other words, let's
23 not look at -- and I apologize, I'm going to approach -- let's
24 not look at this. Okay?

25 A Okay.

1 Q All you have is those bullets. Tell us the
2 make, model, type of weapon, all the possibilities where those
3 bullets could have come from, right? That's not how this
4 happened, correct?

5 A Correct. But that can be done.

6 Q But you didn't do it in this case, right?

7 A In -- in a way sort of yes, sort of no.

8 Q Do you agree that markings change over time
9 inside the barrel of a gun?

10 A That, you have to qualify. Because it -- it
11 depends on a lot of factors.

12 Q Let me ask this. You described pin hits the
13 primer, ignites, creates gas pressure, and then ejects the
14 bullet, right?

15 A No. It propels the bullet.

16 Q Propels the bullet.

17 A Right.

18 Q That gas is like a gas explosion, for lack of a
19 better term. It creates the energy necessary such that the
20 bullet releases from the barrel?

21 A Correct.

22 Q And this revolver, a bullet traveling out of
23 this revolver, this barrel, is traveling about how many feet
24 per second?

25 A Typical .44 magnum load, probably in the

1 vicinity 1200 feet per second.

2 Q 1200 feet per second is going to require a lot
3 of energy from that gas to ignite it such that it can propel
4 out at that level, fair?

5 A Yes.

6 Q And it is that gas explosion inside the barrel
7 that occurs each time a weapon is fired that can create
8 differences amongst the bullets, even one after the other,
9 fair?

10 A Right. I mean, that's -- that's part of the
11 exam. When you look at test bullet to test bullet, you see
12 differences, if -- if -- you can't absolutely reproduce each
13 time.

14 Q Exactly. And it is up to you subjectively to
15 look at those differences and determine, hey, did the
16 differences in these bullets happen because they're not from
17 the same gun, or did the differences in these bullets happen
18 because of this gas explosion that changes what bullets look
19 like every time, fair?

20 A The gas -- the gas explosion, as you describe
21 it, that's not the major factor from -- I mean, it is a factor
22 from test to test. But that's the reason for looking test to
23 test, so you can see what marks are there. And if there is
24 some variation --

25 Q That would be an area, though, where opinions

1 could disagree, correct?

2 A In -- in test to test -- I'm not sure what you
3 -- what you mean there.

4 Q The difference between these bullets now look
5 different, is it because of the explosion that occurred in the
6 barrel or is it because they're from different guns? That's
7 an area where opinions can -- can differ, right?

8 A The explosion in the barrel, I'm not -- I'm not
9 getting that, that that's the -- if you're talking about the
10 pressures that are involved and the velocity down the barrel.
11 But the explosion itself, I'm not sure what I'm getting when
12 you use that term.

13 Q Do you know what a discrepant result log is?

14 A No.

15 Q Are there organizations in different cities
16 outside of Las Vegas that keep track of times when there are
17 disagreements amongst the examiners? Do you know that to be
18 the case?

19 A I -- there might be. I don't know that.

20 Q If I suggested to you that a log that is kept
21 when disagreements occur amongst examiners, if I suggested to
22 you that that's what a discrepant result log is, does that
23 mean anything to you?

24 A Well, that would -- that would be something you
25 could call it, sure.

1 Q Okay. Is there any such log of disagreements
2 that is kept at Metro?

3 A No.

4 Q So when you suggested to the jury a little while
5 ago that there have been times when you've disagreed with the
6 reviewer or a reviewer disagreed with you, there's no note of
7 that, there's no record of that?

8 A No, not -- that's not necessarily true. That
9 actually might --

10 Q How -- how would I find it?

11 A -- that actually might be recorded in the notes
12 for that particular case.

13 Q What are the quality control procedures at
14 Metro? How often do you guys get blind-tested by an outside
15 agency?

16 A We don't blind test. We take proficiency tests.
17 Every examiner takes a proficiency test every year.

18 Q But there's no other outside group like there is
19 in other forms of science that comes in to pull case files and
20 independently evaluate the testing that you've done, fair?

21 A The only pulling of case files, as you've
22 described, is when we go through our accreditation.

23 Q Who credits the lab?

24 A We're accredited by the -- by ASCLAB, the
25 American Society of Crime Laboratory Directors Laboratory

1 Accreditation Board.

2 Q You are not accredited by the National Academy
3 of Science, are you?

4 A No. I don't believe they're an accrediting, you
5 know, organization.

6 Q Would you -- do you know what a confocal
7 microscope is?

8 A I know the term. To -- I can't describe the
9 mechanics of how it works to you.

10 Q You told the jury that one of the things that
11 you do is you look at striations, right?

12 A Yes.

13 Q You look at rifling, right?

14 A Correct.

15 Q And these are the lines in the bullet, if I
16 understood correctly?

17 A Yeah. The -- the rifling is impressed onto the
18 bullet, and then within the rifling are the striations, which
19 are more finer lines.

20 Q Right. So for -- for someone lay, like me,
21 these are the lines on the bullet itself, right?

22 A Correct.

23 Q And you took pictures of, you know, in that
24 microscope that you rotate, of the lines matching other lines?

25 A Correct.

1 Q Okay. You said you're familiar with the term
2 confocal microscopy. Isn't that a technique that allows
3 someone like you to do a three-dimensional imaging to test for
4 the depth of the lines?

5 A That sounds right. Again, I would -- I'm not --
6 confocal microscopy is not my -- you know, I -- we don't have
7 a confocal microscope, I don't --

8 Q And -- and you just made my point. In Las Vegas
9 at Metro we don't even possess that kind of microscope,
10 correct?

11 A Correct. Most law -- most forensic labs don't
12 have a confocal microscope.

13 Q You would agree that aside from just looking at
14 these lines, that if you had 3D imaging, it would help you
15 better assess the depth of the line inside -- or, I'm sorry,
16 the depth of the line that appears on each bullet that you're
17 looking at?

18 A True. But we get a representation of that when
19 we look through the microscope, because we use what's called
20 oblique lighting. We bring the light in from an angle. And
21 so based on the height of the lines, even though they're --
22 they're different, you get a -- you can tell which lines are
23 higher than the others.

24 Q Oblique lighting is what they also call shading,
25 right? You ever heard that term?

1 A No, not -- not that way, no.

2 Q Isn't there a problem with the uses of oblique
3 lighting in that it can cause the examiner to see shadows such
4 that it can interfere with examination?

5 A I'm not really aware of that, no.

6 Q Relative to 3D imaging, would you not agree that
7 that would be more accurate to measure the lines of the
8 bullets as opposed to simply trying to match them up on the
9 microscope, would you agree?

10 A Well, are you trying -- if you're trying to
11 measure, that's -- I'm not trying to measure the lines when
12 I'm doing a comparison.

13 Q Did you measure the depth of the striations on
14 these bullets?

15 A No, I didn't.

16 Q Isn't measuring the depth of the striations
17 something that causes a bullet to have a more unique
18 characteristic? The depth of the striation would be
19 something --

20 A Well, measuring them doesn't cause it to be more
21 unique. You're saying the measurement -- if the measurement
22 does -- I don't -- there's not a lot of studies yet published
23 on that.

24 Q I guess let me -- let me put it this way. You
25 will agree with me that your field necessarily includes

1 subjective input by the examiner, correct?

2 A Correct.

3 Q You would agree with me that because of that
4 subjectivity, different people can look at the same pieces of
5 evidence and come to a different conclusion, fair?

6 A Again, as long as -- when you're talking a
7 difference of -- of conclusion, going from an identification
8 to maybe inconclusive, or inconclusive to elimination. But
9 not the broad spectrum. Not two qualified examiners.

10 MR. SGRO: Court's indulgence, Your Honor.

11 Pass the witness.

12 MR. LANGFORD: I have nothing, Your Honor.

13 THE COURT: All right. We've got a question over
14 here.

15 MR. DiGIACOMO: Are we approaching on the question?

16 THE COURT: Yes.

17 (Bench conference.)

18 THE COURT: I'll ask the question, but I think I know
19 the answer's no. It's possible for a bullet [indiscernible].
20 And I think the answer's yes.

21 (End of bench conference.)

22 THE COURT: All right. Back on the record. The --
23 the lawyers have agreed to my asking both questions.

24 First of all, based on the number of fragments, are
25 you able to tell how many bullets were fired?

1 THE WITNESS: No. I can tell you a minimum number,
2 that there was a minimum of four. But I can't tell you a
3 maximum number other than beyond the total number of
4 fragments, which is -- so a minimum of four. If each fragment
5 represented a -- a separate bullet, it would be 15.

6 THE COURT: That's only because --

7 MR. SGRO: I'm sorry, I didn't -- I'm sorry, Your
8 Honor. If each fragment represented a bullet?

9 THE WITNESS: If each bullet -- excuse me. If each
10 fragment represented a -- one specific bullet, there are 15
11 bullets and fragments total. So there's -- there could be 15,
12 if none of these go to the same. I didn't attempt to match
13 fragments together. But there's a minimum of four.

14 THE COURT: So you -- assuming for the sake of
15 argument that these all came from the same location and so on
16 and were part of the same scene, you think it's a minimum.
17 You just know what you've got here, you don't know where they
18 came from or what they were part of?

19 THE WITNESS: Correct.

20 THE COURT: Okay. And is it possible for a bullet to
21 hit something hard and break into several fragments?

22 THE WITNESS: Oh, absolutely. Yes.

23 THE COURT: That's not uncommon at all, is it?

24 THE WITNESS: No.

25 THE COURT: I've tried a lot of cases where that's

1 happened.

2 THE WITNESS: Right.

3 THE COURT: Okay. Redirect?

4 MR. DiGIACOMO: Briefly, I hope.

5 THE COURT: Briefly, I hope.

6 REDIRECT EXAMINATION

7 BY MR. DiGIACOMO:

8 Q You -- there was a lot of questions, a whole lot
9 of questions about a review, and you kept saying
10 administrative review. And I got the impression there might
11 be something other than an administrative review that happens?

12 A Correct.

13 Q What else happens?

14 A We have three types of review when we do case
15 work. The first is a verification. So if an examiner
16 identifies two bullets as having been fired from the same gun,
17 a second examiner actually looks at those two bullets under
18 their microscope and does a comparison to see if they come up
19 with the same conclusion. That's a verification. And that's
20 -- that's recorded in the notes.

21 The next review --

22 Q Before you get to that, did someone do a
23 verification on this one?

24 A Let me double check. Yes.

25 Q And who did the verification?

1 A Randall Stone.

2 Q So Randall Stone physically does a verification
3 of what your conclusion is by looking at the underlying
4 evidence?

5 A Correct.

6 Q Okay. What's the next type of review?

7 A The next review is a technical review. And
8 that's this -- the -- the second page here in my case file.
9 And this review is to look through the case file and make sure
10 that whatever -- basically, whatever conclusions are in the
11 report are supported within the case notes.

12 And then the last review is the administrative
13 review, and that's more of a review to make sure the -- the
14 case packet is put together correctly, there's no, you know,
15 glaring grammatical errors, everything is numbered correctly,
16 that sort of thing.

17 Q Okay. And then all of that paperwork is
18 maintained by the Las Vegas Metropolitan Police Department --

19 A Correct.

20 Q -- correct? And the if anybody asks, like
21 myself, or apparently Mr. Sgro has a copy of your file,
22 there's even pictures of the comparisons that you did; is that
23 fair?

24 A Yes.

25 Q And anybody on Earth can look to see if they

1 agree or disagree with you?

2 A Well, I don't know about anybody on Earth. But,
3 you know --

4 Q Sure.

5 A -- anybody who has access to the photos.

6 Q Anybody who looks at that can tell you if they
7 agree or disagree, correct?

8 A Correct.

9 Q Have you in this case learned that there's
10 anybody who disagrees with your conclusion? Has any firearms
11 examiner contacted you and had a conversation saying, Hey, I
12 disagree with your conclusion in this case?

13 A No.

14 Q The cross-examination started with have you ever
15 had a class specifically in Rugers as to unique
16 characteristics; do you remember the beginning of the
17 cross-examination?

18 A Yes.

19 Q And let me ask you this. Would it matter who
20 the manufacturer is to make the type of comparison between the
21 firearm and the bullet?

22 A The -- the theory is -- is that it doesn't
23 matter.

24 Q Why?

25 A Because the -- the marks and the -- the tooling

1 process is carryover from manufacturer to manufacturer.

2 Interestingly, I've done some -- I've participated in some
3 studies of consecutively manufactured Ruger parts.

4 Q And in those studies, were you able to, even as
5 a firearms examiner, determine when one firearm versus another
6 firearm fired a particular bullet?

7 A Correct. Yes.

8 Q There was a lot of questions about all the --
9 all the forensic scientists, I mean, with the exception of
10 DNA; do you remember those kind of questions?

11 A Yes.

12 Q And the -- what he called criticisms, I will
13 call discussions, there's been a discussions about the
14 difference between statistical things like DNA versus firearms
15 and fingerprints and all the other forensic sciences?

16 A Correct.

17 Q Okay. And the suggestion was that somehow
18 firearms evidence, or firearms examination is less credible
19 than DNA; do you remember those questions?

20 A Yes.

21 Q You'd agree with me there are good firearms
22 examiners out there and bad firearms examiners out there,
23 correct?

24 A Sadly, yes.

25 Q Okay. I mean, it's like any profession.

1 There's probably a range of qualifications of individuals,
2 correct?

3 A Yes.

4 Q Would you agree with that same statement as it
5 relates to DNA analysts, there are times when they get their
6 own DNA inside the sample and those type of things occur,
7 correct?

8 A Yes.

9 Q The difference in forensic -- or in DNA versus
10 firearms examination is that there is a statistical
11 calculation that is made in DNA that is not made in firearms,
12 fingerprints, and the other forensic sciences?

13 A The comparative disciplines, yes, correct.

14 Q There was a lot of questions as it relates to
15 you're biased in cases in the 20-some-odd years, in cases, has
16 there been occasions when you get told, Hey, we have a
17 suspected firearm, here's our bullets at the scene, and you've
18 said, Hey, that ain't the firearm?

19 A Yes.

20 Q Okay. And is that a routine or is that a unique
21 situation for you?

22 A It's not unique, it's not necessarily routine.
23 But it's definitely not uncommon.

24 Q Are there situations when you don't have a
25 firearm at all and they just give you all the firearms

1 evidence and you come back with conclusions as to caliber and
2 potential manufacturers of firearms?

3 A Yeah, now, that's a fairly routine exam that we
4 do.

5 Q How do you do that?

6 A Well, you would take a bullet, and it's the same
7 sort of exam that you start with every time. I look at the
8 bullet, what type of bullet is it? You know, in this
9 particular case it's a copper jacketed bullet. Weigh it,
10 measure it, look at the lands and grooves, look at what
11 direction they twist, how many, actually measure their widths.
12 And then I can take that data, take that to a database and
13 look and see, okay, what type of manufacturers use those same
14 type rifling characteristics in that caliber.

15 Q And you could come back with a list of -- of
16 manufacturers, correct?

17 A Correct. And you'll see some, you know, that
18 will come back with a list of many manufacturers, and
19 sometimes you can narrow it down to just, you know, a few or
20 even one manufacturer.

21 Q And the only other area I want to go through is
22 there was some discussion about why it is you x-rayed the
23 fragments, but you didn't x-ray the bullets. Why do you x-ray
24 the fragments and not x-ray the bullets?

25 A The bullets, I know they're bullets, I can see

1 physical characteristics that identify them as -- as fired
2 bullets. Basically, their shape, their size, what they look
3 like, and the rifling impressions on them. The lead fragments
4 don't have those. I know that typical bullet manufacturer,
5 copper jacket, lead core. So I just want to take a look at
6 these bullets and I just want to see, are they all lead? If
7 they're all lead, then they can -- I can't absolutely
8 conclusively associate them with a bullet, but they could be
9 part of the bullet.

10 Q So, for example, because it's in evidence, 148,
11 that is pretty clearly a bullet based upon its just physical
12 characteristics as you look at it?

13 A Correct.

14 Q 264A, that's just a hunk of metal, correct?

15 A Correct.

16 Q You use the x-rays to determine that's, in fact,
17 lead?

18 A Correct.

19 Q And then from there you can make a determination
20 that potentially it could have come from a bullet?

21 A It's a -- a common material used in bullets.

22 Q And that's the reason why you x-ray the hunk of
23 metal and not the bullet itself?

24 A Correct.

25 Q Any question in your mind that the four bullets,

1 or the four pieces or five pieces of evidence that you were
2 actually able to physically match up under a microscope came
3 from the same firearm? And I guess -- I think I said four and
4 I said five. So let me make sure --

5 A It's four.

6 Q Four, and there's a fifth one that's
7 inconclusive?

8 A Correct.

9 Q Yeah. Any question in your mind that those four
10 bullets or those four bullets and/or fragments came out of the
11 same gun?

12 A None at all.

13 Q And then ultimately you weren't able to
14 conclusively identify it to the .44 caliber Ruger?

15 A Correct.

16 MR. DiGIACOMO: Nothing further, Judge.

17 MR. SGRO: Very briefly, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. SGRO:

20 Q You were asked about the XRF and why didn't you
21 do it with the bullets. So you examine all the fragments,
22 would you agree you started on March 20th, 2012, at 9:57 and
23 you were done examining 10 items by 9:58?

24 A And -- and where are you looking at now?

25 Q Your page 16 of your case file.

1 A Oh, that's -- that would be the time that I
2 captured those images.

3 Q Right.

4 A That -- so the -- the XRF takes -- you can't --
5 it can't be done that fast. Each -- each exam takes a small
6 amount of time.

7 Q Right. How much -- so this is the result of
8 what you -- the materials that you put into the XRF, right?

9 A The -- I mean, well, not put into -- the --

10 Q Had each examined by?

11 A Right.

12 Q Okay. And it took a few minutes to assess each
13 of those fragments, would you -- would that be fair?

14 A Correct. Each -- how it actually works, I mean,
15 if you're interested, you take the fragment, the XRF, the best
16 way to describe it is it looks kind of like a hairdryer.

17 That's kind of its general shape. It's portable, but we have
18 it mounted in a stand. So it's sitting in a stand pointed up.

19 So you take your sample and we put it on a -- just,
20 like, a glassine, a little piece of mylar, put it on the
21 mylar. It sits on top of the examination window of the XRF,
22 close the lid because it's got x-rays, you have to protect
23 everything. And then you -- you just basically run that
24 sample. Typical sample times for us are 20 to 30 seconds.
25 Once you've run that sample, take it off, put it back in the

1 vial, go to the next one and, you know, repeat till you've
2 done all the samples.

3 Q All right. So if we have five bullets and it
4 takes 20 or 30 seconds for each bullet --

5 A That's for the -- that's for the -- the run time
6 for the machine. And then your time to put it in and out of
7 the vials, make your notes, that kind of stuff.

8 Q You could have done those bullets in 5, 10
9 minutes?

10 A Right.

11 Q Okay. Now, I asked you on the review that was
12 done, you said that there's three types of review. If I
13 understand correctly, Mr. Stone did your preliminary and your
14 third review, right? He did ones Nos. 1 and 3?

15 A He did the verification and the administrative,
16 yes.

17 Q Okay. So the same guy is reviewing who already
18 has verified?

19 A Correct.

20 Q Okay. And then your second review, that's more
21 did you dot the I's and cross the T's, right?

22 A No. That's -- the administrative review is more
23 the dot the I's, cross T's. The technical review should be
24 looking at the case file and saying, Okay, if I say that this
25 bullet is a .44 caliber bullet, where in my notes is something

1 recorded that supports that? And that's where you would then
2 go to the bullet worksheet, and you would see that, let's say
3 under one of the -- the -- let's go to a different one here --

4 Q Mr. -- Mr. Krylo, maybe I can clear up where I'm
5 going to.

6 A Okay.

7 Q When I -- when I hear the term review, and I
8 hear it discussed, I'm thinking someone has redone what you
9 have done to determine if the same result will occur. Okay.
10 When I look at page 2, what you just told the jury was the
11 secondary review, the first question is, "Is the source and
12 disposition of evidence recorded?" And you circled "yes." Or
13 it was circled?

14 A I didn't circle it, yeah.

15 Q I'm sorry, the reviewer circles "yes," right?

16 A Correct.

17 Q That has nothing to do with getting behind the
18 microscope to verify what you've just done?

19 A Correct. That's already been done.

20 Q Right. Is the evidence adequately described?
21 It's circled "yes." Right?

22 A Correct.

23 Q That still has nothing to do with getting behind
24 the microscope to -- to redo it, correct?

25 A Correct. That's already been done.

1 Q Okay. And then the next one talks about, you
2 know, are your initials in the right place? Right? Are the
3 notes numbered, right? Those are the things that are Review
4 No. 2, fair?

5 A Well, correct. Except, you know, does the
6 examination comply with the unit's technical procedures?
7 Don't leave that out. Has second opinion --

8 Q What -- what are the --

9 A Has second opinion --

10 Q Hold on.

11 A -- review been completed? Don't leave that out.

12 Q Sir, I wasn't done. What are the unit's
13 technical procedures? Is that in the book somewhere?

14 A Yes.

15 Q It's in a book at Metro?

16 A Yes.

17 Q Okay. And so the technical procedures are to
18 establish that you filled out the worksheet, right?

19 A No.

20 Q Taken notes?

21 A Technical procedures actually describe how we do
22 these examinations.

23 Q And the last question I have for you, Mr.
24 DiGiacomo asked you would you agree it's like anything else,
25 we have some good examiners and some bad ones, right?

1 A Yes.

2 Q You agree that that's exactly why we need
3 objective criteria, so that the ones that are bad never get to
4 a courtroom, right?

5 A Yes. But that assumes that objective criteria
6 will eliminate bad examiners. And if there are bad examiners
7 in DNA, then the objective criteria obviously fell short
8 there. So that's not the only criteria we can use to
9 eliminate bad examiners.

10 Q It's not the only criteria, but it would be
11 helpful, wouldn't it?

12 A No, I don't agree.

13 Q You don't agree that to have some objective
14 measuring systems in place would help us in a case like this?

15 A In this case, no.

16 Q Okay.

17 MR. SGRO: Pass the witness, Your Honor.

18 THE COURT: Mr. Langford?

19 MR. LANGFORD: No, Your Honor.

20 THE COURT: All right. Thank you, Mr. Krylo, for
21 being a witness. You'll be excused, sir.

22 And would any of the jurors like a recess? I believe
23 we have one more witness. They all want a recess. All right.

24 During the recess it's again your duty not to
25 converse among yourselves or with anyone else on any subject

1 connected with this trial, or to read, watch, or listen to any
2 report of or commentary on the trial from any medium of
3 information including newspapers, television, or radio. You
4 may not form or express an opinion on any subject connected
5 with this case until it's finally submitted to you.

6 Be in recess for about 10 minutes.

7 (Jury recessed at 3:20 p.m.)

8 MR. SGRO: Your Honor, we need to --

9 THE COURT: Okay. Off the record.

10 MR. SGRO: We need to place --

11 THE COURT: Oh, you want to go on the record?

12 MR. SGRO: Yes, sir. Very briefly.

13 THE COURT: Okay. We're on the record.

14 MR. SGRO: I need to make a motion at this time for a
15 mistrial, Your Honor. And my alternative is going to be for a
16 curative instruction, and this is why.

17 I didn't object to it at the time, but Mr. -- because
18 I didn't want to draw more attention to it. But Mr. DiGiacomo
19 in his questioning on redirect was all tantamount to burden
20 shifting. Mr. DiGiacomo asked, Are you aware if anyone has
21 disagreed with your opinions? And that leaves open the door
22 that we had the ability to, that -- whether or not we retained
23 a ballistic expert, etcetera, etcetera.

24 And the questioning that was asked about whether or
25 not we had -- or, I'm sorry, the implicit suggestion as to who

1 disagreed shifts the burden to us that we have to suggest that
2 someone else is out there that disagreed.

3 And we would suggest, Your Honor, that that is burden
4 shifting, that that line of questioning was completely
5 inappropriate.

6 THE COURT: I heard the questions. I got the
7 impression he was talking about somebody else reviewing his
8 work or -- or somebody else in the department. I had -- it
9 didn't even dawn on me that it had anything to do with you.

10 MR. SGRO: Well, my -- my impression hearing it was
11 that it was -- the question -- the predicate was anybody else.

12 THE COURT: Well, I'm not going to grant a mistrial,
13 because I don't think -- I really don't think it shifted the
14 burden, because it didn't talk about you. It was talking -- I
15 think the inference was it was talking about somebody else in
16 his department --

17 MR. SGRO: That -- that --

18 THE COURT: -- criticizing his work.

19 MR. SGRO: And, Your Honor, I know you were paying
20 attention during that testimony. I don't want to quarrel --

21 THE COURT: I was.

22 MR. SGRO: -- I don't want to quarrel with you. But
23 the --

24 THE COURT: If you want a curative instruction, well,
25 you prepare one --

1 MR. SGRO: Yes, sir.

2 THE COURT: -- we'll include it with the other ones.

3 MR. SGRO: I would like it to be given when we get
4 back from the break.

5 THE COURT: Okay.

6 MR. SGRO: Okay. Thank you, sir.

7 THE COURT: Remind them that the defense has no
8 obligation to call witnesses or produce evidence.

9 MR. SGRO: Yeah, and that's all we're looking for,
10 that the --

11 THE COURT: Okay.

12 MR. SGRO: -- the jury is not to be confused or to
13 assume that the defense has any burden in this case, or
14 call --

15 THE COURT: I can remind them of that, if that -- if
16 you'd like that.

17 MR. SGRO: Thank you, sir.

18 THE COURT: Can we go off the record now for five
19 minutes?

20 MR. SGRO: Yes, sir. I apologize.

21 (Court recessed at 3:23 p.m. until 3:31 p.m.)

22 (Outside the presence of the jury.)

23 THE COURT: All right. We are on the record.
24 Anything before we bring in the jury?

25 MS. WECKERLY: No, Your Honor.

1 MR. SGRO: Nothing from Mr. Burns.

2 THE COURT: Bring in the jury.

3 (Jury entering 3:35 p.m.)

4 THE COURT: All right. State of Nevada versus Burns
5 and Mason. The record will reflect the presence of the
6 defendants, their counsel, the district attorneys and all
7 members of the jury.

8 Ladies and gentlemen, I want you to keep in mind that
9 the defendant in a criminal case is never required to present
10 evidence or call witnesses. The burden of proof is always
11 upon the State to prove the defendant's guilt by evidence
12 beyond a reasonable doubt. The law never imposes upon the
13 defendant in a criminal case the burden of calling witnesses
14 or producing any evidence.

15 All right. We're still in the State's case in chief.
16 The State can call its next witness.

17 MS. WECKERLY: Thank you, Your Honor. Cornelius
18 Mayo.

19 CORNELIUS MAYO, STATE'S WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Please
21 state your name, and spell your first and last name for the
22 record.

23 THE WITNESS: Cornelius Mayo. C-o-r-n-e-l-i-u-s,
24 M-a-y-o.

25 MS. WECKERLY: May I proceed?

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MS. WECKERLY:

4 Q Mr. Mayo, in August of 2010, where were you
5 living?

6 A 5662 Meikle Lane, Apartment A.

7 Q And, sir -- Apartment A. And, sir, who were you
8 living with?

9 A With my girlfriend Derecia Newman and my four
10 kids, Devonia Newman, Cashmere Mayo, Cornelius Mayo Junior and
11 Cordazia Mayo.

12 Q And Cornelius is -- do people call him Junior?

13 A Yes, he's Junior.

14 Q Named after you?

15 A Yeah.

16 Q Now, you mentioned Devonia. Are you her
17 biological father?

18 A No.

19 Q How long have you been in Devonia's life, as of
20 2010, I guess?

21 A Well, I've known her since she was, like, 11
22 months, but we've been living together since 2001, July --
23 like, July 6, 2001.

24 Q Okay. So you had known her since or at least
25 lived with her at least since about two years onward as of

1 2010?

2 A Yes.

3 Q Okay. And your girlfriend is Derecia?

4 A Yes.

5 Q -- at that time -- during that time back in
6 2010, can you tell me what the ages of your three youngest
7 children were.

8 A 2010 --

9 Q So about five years ago.

10 A Okay. Cordazia -- Cordazia Mayo was probably --
11 Cordazia was, like, 4 I believe at the time, and Cornelius
12 Mayo Junior, he was, like -- he was 5. He was going to turn 6
13 in January. So he was 5, and cashmere Mayo, she was -- Cash
14 was, like, 7.

15 Q Okay. And then so Devonina would've been
16 about --

17 A 12.

18 Q 12. At that time, did you know an individual by
19 the name of Stephanie Cousins?

20 A Yes.

21 Q As of 2010, how long had you know her -- known
22 her?

23 A Probably since, like, 2003. That's when I met
24 her.

25 Q Okay. Had she ever met any of your children?

1 A Yes.

2 Q As of 2010 in August, had she been to your
3 residence on Meikle Lane?

4 A Yes.

5 Q Do you know approximately how many times?

6 A No, I can't just say offhand.

7 Q More than three times?

8 A Yeah, more than three.

9 Q Okay. And, sir, now I want to focus on the
10 events of August the 6th into August the 7th of 2010, okay.

11 A Okay.

12 THE MARSHAL: I'm sorry. The recorder is having
13 trouble hearing. If you could just speak up.

14 THE COURT: Can I get you to kind of speak up, sir.
15 The microphone there will pick up your voice a little bit
16 better if you speak up. Even though the jurors can hear you,
17 they're recording what you have to say, and you need to kind
18 of speak up.

19 THE WITNESS: Okay.

20 THE COURT: For the microphone, okay. Can you do
21 that?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 BY MS. WECKERLY:

25 Q On the night of the 6th, who was in the house?

1 A Me, Derecia Newman. Do I got to name all my
2 kids or --

3 Q No, you can just say the three little kids.

4 A My three little kids, Devonia, and Derecia's
5 sister Erica Newman.

6 Q And Erica was about how old back then?

7 A Erica at the time, she was 11.

8 Q Okay. And was Erica living there, or was she,
9 like, just visiting?

10 A Just visiting because they usually -- her and
11 her other sister usually spend a weekend with us -- well, with
12 they cousins, or with nieces I should say.

13 THE MARSHAL: I'm sorry, Counsel. You're just real
14 soft-spoken. She's having a tough time. We're just going to
15 raise that up a little.

16 THE WITNESS: All right.

17 THE COURT: You can move that box towards you if you
18 want.

19 MS. WECKERLY: Pretty high-tech, right?

20 BY MS. WECKERLY:

21 Q Sir, you said Erica was just over visiting
22 because she would sort of stay with her sisters?

23 A Well, she had come stay -- they had just come
24 spend the night. So we usually have Erica and Derecia's other
25 sister Jamiah. Well, Jamiah was out of town. That's probably

1 the only reason she wasn't there.

2 Q Okay.

3 A But, like, every weekend they usually come spend
4 the night.

5 Q And on the night of the 6th, do you remember
6 about what time the three youngest children would've gone to
7 bed?

8 A They probably went to bed, like, around 9.
9 Devonia went to sleep, too, like, around 9.

10 Q Okay. And did you go to sleep at 9?

11 A No, I wasn't.

12 Q Okay. Where -- where were you around 9 o'clock
13 in the apartment?

14 A Probably in the bedroom.

15 Q Okay. And I should've asked this earlier. How
16 many bedrooms is the apartment?

17 A It's two.

18 Q And are the bedrooms adjacent to each other or
19 across from each other?

20 A They're right across from each other.

21 Q Did -- you said you were probably in your
22 bedroom. The kids are asleep. Do you know where Derecia was?

23 A She was right in the bedroom with me. We wasn't
24 in the bedroom. We was in the living room.

25 Q In the living room. At some point, does Devonia

1 come back out to the living room?

2 A Yeah, Devonian woke back up, like, around -- I
3 think, like, around 1 and said she was hungry.

4 Q So what happened after that?

5 A Derecia made me, Devonian and her an omelette, an
6 egg omelette.

7 Q Okay. And that's, like, into the 7th, right,
8 because it's now 1 in the morning?

9 A Yes.

10 Q Okay. After that happened, did you all three
11 stay in the living room?

12 A Probably for, like, an hour probably. Then me
13 and Derecia went in the room, in the bedroom.

14 Q Okay. Was there a point in time when you -- the
15 house received a phone call?

16 A Yes.

17 Q Do you remember approximately what time that
18 was?

19 A Yeah, because I looked at the caller ID after
20 the fact. It was at 3:39 a.m.

21 Q Okay. And so you had a landline in that
22 apartment?

23 A Yes.

24 Q And from your landline, were you able to see
25 caller ID off your phone?

1 A Yes.

2 Q And what did it tell you?

3 A Stephanie Cousins.

4 Q Okay. Did you --

5 A Or it said Stephanie C actually.

6 Q Okay. Did you speak with Ms. Cousins, or did
7 someone else?

8 A No, I didn't. Derecia spoke to her.

9 Q And how long was that conversation do you think?

10 A Probably, like, a minute or two.

11 Q Okay. And you think that was at about -- did
12 you say 3:30?

13 A 3:39 a.m.

14 Q At the time that call came in, where were you?

15 A Oh, in the bedroom.

16 Q And where was Derecia?

17 A We were both on the bed. We were laying down on
18 the bed.

19 Q Okay. And I assume you couldn't see where
20 Devonia was at that point?

21 A No, she was in the living room, either watching
22 TV or playing the Xbox.

23 Q Okay. Could you actually hear sound from the
24 living room?

25 A Yeah, I can hear the TV.

1 Q Okay. Sometime after that, does Derecia leave
2 the room, or what happens after that phone call that you
3 remember?

4 A After the phone call, I probably got up, like, a
5 minute later and went to go use the bathroom, and then I was
6 in the bathroom, and then I heard the phone ring again, and I
7 know -- well, Derecia told me she was supposed to go get the
8 door.

9 Q Okay. Did you actually hear a knock at the
10 door, or you just knew because Derecia left?

11 A No, I did -- well, I know Stephanie called back
12 at 3 -- exactly 3:49, so 10 minutes later after she called the
13 first time.

14 Q Okay. And again, on the second call, are you
15 the one that talks to her?

16 A No, I was in the bathroom. So I assume Derecia
17 had answered the phone for her.

18 Q Okay. But you didn't see that one because
19 you're in the bathroom?

20 A Yeah.

21 Q Is that yes?

22 A Yes.

23 Q At the -- as you're in the bathroom, what's the
24 next thing that you become aware of?

25 A Well, you know, I hear -- like, I hear

1 commotion. I hear, like, a female scream or something like
2 that, but I can't really just say clearly because it was,
3 like, muffled. So -- but I heard, like -- I heard a female
4 scream. Like, she said something like, No, or something.

5 Q Could you -- let me interrupt you, if I could.
6 When you said you hear a commotion, what did it sound like?

7 A Like, a little scuffle I guess or something.

8 Q Okay. And then you said you heard a scream?

9 A Yeah, like -- it sounded to me like it was
10 Stephanie that said it. She said, No, or something like that.

11 Q Okay. It sounded like Stephanie's voice rather
12 than Derecia or Devonian's?

13 A Yeah. It wasn't -- it wasn't Derecia or
14 Devonian.

15 Q Okay. And it -- you think she said, No?

16 A Yes.

17 Q What did you hear after that?

18 A I heard a little pop noise because it didn't
19 sound loud where I was at, and then I heard, like, two --
20 well, two gunshots.

21 Q Okay.

22 A And then after that, probably, like, a second or
23 two later, I heard, like, two more, and that's when Devonian
24 came and ran in the bathroom where I was at.

25 Q Could you hear Devonian at all after those first

1 two gunshots till the time she arrived in the bathroom? Like,
2 was she yelling, or could you hear running or anything like
3 that?

4 A No, I guess she, like -- somebody was hitting
5 the wall because I heard a wall -- like, somebody bumped into
6 the wall. I don't know if it was Devonian or somebody else.

7 Q You could hear a sound on the walls?

8 A Yes.

9 Q And you said Devonian comes running into the
10 bathroom, which is where you are?

11 A Yes.

12 Q And we've seen actually a diagram of your
13 apartment. Can you just tell us which bathroom that you're
14 talking about.

15 A The bathroom in the bedroom.

16 Q In the master bedroom?

17 A Yes.

18 Q Okay. So Devonian comes in, and what happens,
19 you know, once she gets to that location?

20 A At, like -- when she come in the bathroom, she
21 looked scared. Well, at the same time she coming into the
22 bathroom, I'm pulling my -- I'm pulling up my pants trying to
23 whatever.

24 Q Okay.

25 A But she looked scared, and then I asked her,

1 What's going on? And then, like, right when I said that,
2 somebody shot through the door.

3 Q Through the bathroom door?

4 A Yeah, because the door was -- she closed the
5 door behind her when she came in.

6 Q Okay. When the shot comes through the bathroom
7 door, does it hit anything in the bathroom or yourself or
8 Devonia?

9 A No, but after the fact, like -- well, I know it
10 hit, like, my clippers that was on the sink.

11 Q Okay.

12 A And then the wall right there, right behind the
13 sink or somewhere right there. I'm not for sure. I don't
14 remember exactly.

15 Q After that shot comes through, what happens?

16 A Devonia, like -- Devonia jumped up, and I guess
17 she went to the door, and as she opened the door, she gets
18 shot.

19 Q Where did she get shot on her body?

20 A On, like, her stomach.

21 Q Okay.

22 A Her stomach area, like right --

23 Q And did you hear that shot and see the shot?

24 A No, I didn't actually see the shot. I heard it
25 though, and she fell.

1 Q You could see her fall?

2 A Yeah, like -- yeah, because she was laying down.
3 Like, I see -- like, where she was laying, I could see, like,
4 the top of her head.

5 Q Okay. What happens after that?

6 A Well, that's when I walked over there to her or
7 stepped over there to her, and I was, like -- I asked her was
8 she all right.

9 Q And when you're stepping to her, she's on the
10 ground?

11 A Yeah, she on the ground, like, holding her
12 stomach.

13 Q Okay. Did you, like, bend down to her, or were
14 you still standing up do you think?

15 A I was standing up, but I was bent over.

16 Q Okay.

17 A Because I lifted up her shirt to see where she
18 got shot at.

19 Q Could you see the wound on her -- on her body?

20 A Yes.

21 Q Okay. And was she holding it with her hands?

22 A Well, she was at first until I lifted up her
23 shirt, and then I guess she -- I don't know if she went back
24 to holding it or not, but --

25 Q Okay. What did you do?

1 A Well, I just told her -- I just told her that
2 she would be -- I think I told her she would be all right, and
3 I want -- well, I told her I'm already on the phone with
4 9-1-1. So I just told her to sit there, be still, and they
5 coming.

6 Q Okay. So did you have a phone with you in the
7 bathroom, or how did you get the phone for 9-1-1?

8 A Because the cordless phone was on the bathroom
9 sink because we got, like -- we had, like, three cordless
10 phones.

11 Q Okay. So you grabbed a phone, or it was in the
12 bathroom?

13 A It was in the bathroom already.

14 Q And you dialed 9-1-1. Do you know when you
15 actually started entering the digits?

16 A Like what time?

17 Q Well, no. Was it -- you know how you said you
18 checked and lifted up her shirt, was it kind of before that or
19 after that, or do you even know?

20 A It was probably, like, around the same time I
21 was, like, bending over to look at her.

22 Q Okay. And you actually speak to 9-1-1?

23 A Yes.

24 Q As you're speaking to the 9-1-1 operator, do you
25 stay there with Devonia?

1 A No, I was walking out of the room as I was on
2 the phone.

3 Q And where do you go?

4 A I went to go look at my other kids and make sure
5 they was -- they was all right. I went to go look at my other
6 kids, make sure they was all right.

7 Q Then where did you go?

8 A And then I went down the hallway back towards
9 the living room.

10 Q And what did you see?

11 A I saw Derecia sitting on the couch with half her
12 face gone.

13 Q Okay. Sir, I'm going to play just a little
14 portion of the 9-1-1 to see if you recognize your voice, and
15 then we'll play the whole thing if you do.

16 A Okay.

17 MS. WECKERLY: And for the record, this is 323.

18 (State's Proposed Exhibit No. 323 played.)

19 BY MS. WECKERLY:

20 Q Sir, do you recognize that as your voice calling
21 9-1-1?

22 A Uh-huh.

23 Q Do you need to hear more, or do you recognize
24 it?

25 A Yeah, it sounded like me. Yeah.

1 Q Okay. We're going to resume playing that.

2 THE CLERK: Are you admitting it?

3 MS. WECKERLY: I think it's admitted by -- Isn't this
4 admitted by stipulation?

5 THE COURT: Any objection?

6 MR. LANGFORD: None from Mr. Mason.

7 MR. SGRO: No, Your Honor.

8 THE COURT: It'll be received.

9 (State's Exhibit 323 admitted.)

10 MS. WECKERLY: Thank you.

11 (State's Exhibit No. 323 played.)

12 BY MS. WECKERLY:

13 Q Sir, are you okay?

14 A Uh-huh.

15 Q After you called 9-1-1, do you have any idea in
16 your head how long it was until police arrived?

17 A Probably, like, two minutes or something like
18 that.

19 Q Did you call any of your friends or family,
20 anybody like that before you called 9-1-1?

21 A No.

22 Q When the police got there, are you the one that
23 made contact with them?

24 A Yes.

25 Q What -- what was your -- what was your

1 interaction with them? What happened with -- did you say who
2 you were, or did you meet them outside? How did that work?

3 A Well, they was coming down the street, and I was
4 in the middle of the street, and I flagged them down.

5 Q Okay. And once you flagged them down, what
6 happened?

7 A Well, he got out the car -- well, I told him,
8 I'm the one that called y'all.

9 Q Okay.

10 A Then he got out the car because he was asking me
11 if -- was they in the house. I'm, like, No, ain't nobody in
12 the house but my kids.

13 Q And then did you take -- did he walk with you up
14 to the apartment?

15 A Well, he went in. I didn't go in.

16 Q Where did you wait?

17 A I was just, like, in the parking lot.

18 Q Okay. Once that officer goes in, do you have
19 any more contact with the police, or what happened next that
20 you saw?

21 A Well, probably like a couple more police cars
22 pulled up by then, and I know I end up going, like, back in
23 the house probably, like, 30 seconds after that.

24 Q And what did you do when you went back in the
25 house?

1 A Well, the police was bringing my other kids down
2 the hallway, and I stopped him from doing that because I'm,
3 like, I don't want them to see they mother like that.

4 Q So what did you do?

5 A I went and grabbed a blanket, and then once I
6 grabbed the blanket and lift the blanket up and we walked out
7 the living room and walked outside.

8 Q Okay. And just so I'm understanding, are you,
9 like, holding up the blanket so --

10 A Yes, I'm holding the blanket up like this.

11 Q So they can't see?

12 A Yes.

13 Q And so the kids all leave?

14 A Yes, everybody outside by now.

15 Q Did you see paramedics arrive for Devonian?

16 A Yes.

17 Q And did you -- were you -- did you talk to her
18 at all when the paramedics arrived, or were you kind of off in
19 another area?

20 A Well, I was outside by the -- by the police cars
21 by then.

22 Q And as you were waiting by the police cars, do
23 you remember if you called anybody?

24 A Well, before I got to the police -- like, before
25 I got to the police cars and when I went back outside, that's

1 the first thing I did was call Stephanie phone.

2 Q And did you call her on the landline, or was
3 this on a cell phone?

4 A I called her on my cell phone.

5 Q Do you remember the number?

6 A My cell phone number?

7 Q Uh-huh.

8 A (702)609-4483 I believe.

9 Q Okay. And tell me what you told Stephanie or
10 what you said.

11 A Well, when she first actually picked up the
12 phone, I'm, like, How could you do that? Like, How can you do
13 that to us? And she said -- I can't remember her exact words,
14 but she had basically denied it though. Like, she denies --
15 she denied that she had anything to do with it.

16 Q Okay. Did she give you a description of anyone
17 who was involved?

18 A She said when she came to knock on the door two
19 dudes came from around the corner, and by the time Derecia
20 opened the door, they was, like, at the door with her again,
21 and they pushed her in the house or something like that she
22 said.

23 Q Did she describe the two men?

24 A No.

25 Q At all?

1 A No, I think she just said, two black, but she
2 ain't describe them, like, in detail, nothing like that.

3 Q Okay. So based on your conversation with her,
4 did you know who she was talking about?

5 A No.

6 Q After you have that -- let me ask you this.
7 When you're talking to her at that time, did you threaten her?

8 A Yes.

9 Q And, I mean, was it a threat to kill her, a
10 serious threat?

11 A Yeah, I told her I'm going to kill her and her
12 whole family.

13 Q Okay. And was the conversation, like, 30
14 seconds, do you think, or longer?

15 A It was -- I don't think it was that long, but it
16 was -- because I called her, like, a couple times --

17 Q Okay.

18 A -- before the police took my phone actually.

19 Q Did a police officer at the scene hear you
20 calling her?

21 A Yeah, they heard our -- my conversation. So
22 that's why they took my phone.

23 Q Okay. And so at some point the officer takes
24 the phone away from you?

25 A Yes.

1 Q How long would you say you were at the scene
2 that morning?

3 A I think they let me leave, like, around 5 or 6
4 something.

5 Q In the -- and so this is in the morning, right?

6 A Yes.

7 Q Where did you go, if you remember?

8 A Well, because my brother and them was up the
9 street behind behind the yellow line, and I walked up there.
10 I walked up there and left with them.

11 Q You walked up there and what?

12 A Left with them. Left with my brothers and a
13 couple of my friends.

14 Q Where did you go?

15 A I went to my brother house.

16 Q Okay. And at your brother's house, what did you
17 do?

18 A I kept calling Stephanie.

19 Q Okay. Is it more of the same kind of threats
20 and, you know, I guess, like, saying that you're going to kill
21 her, that sort of thing?

22 A Yes.

23 Q At any point do you talk to anyone other than
24 Stephanie?

25 A I don't know who exact -- the name of the

1 person, but it was one of Stephanie daughter's boyfriend.

2 Q Now, during these calls that are I guess about 6
3 in the morning, this series of calls --

4 A Yes.

5 Q -- does -- do you get any information from
6 Stephanie or anyone else during that morning?

7 A Stephanie daughter boyfriend told me it was
8 somebody named --

9 MR. SGRO: Objection.

10 MR. LANGFORD: Objection. Hearsay.

11 THE COURT: Sustained.

12 BY MS. WECKERLY:

13 Q Okay. I don't want to know exactly what he
14 said, but you get some -- someone tells you about -- someone
15 gives you some information, correct?

16 A Yes.

17 Q Okay. And is this in that, like, series of
18 phone calls at about 6 in the morning?

19 A Yes.

20 Q Okay. After that, do you go anywhere?

21 A After I leave my brother house?

22 Q Yeah.

23 A Yeah, I went to Stephanie house.

24 Q Okay. And do you see Stephanie?

25 A No.

1 Q Did you see anybody?

2 A No, I know the police was up there though.

3 Q Okay. And where do you go after that?

4 A I went back to my brother house.

5 Q And do you spend the rest of the day with your
6 brother?

7 A Yeah, until, like -- probably, like, around 8
8 o'clock at night.

9 Q And where -- do you go somewhere at 8?

10 A I left with my other brother, and I -- because I
11 ain't gonna spend the night at my other brother house that
12 night.

13 Q Okay. Is there a point where you go and see
14 Devonia at the hospital?

15 A Oh, yeah. Yeah, I went -- I -- we went there.
16 I forgot about that. I went there. I went to the hospital,
17 like, around probably, like, 10 that morning I think.

18 Q Okay. That same morning, on the 7th?

19 A Yes, that Saturday morning.

20 Q Okay. So tell me about that. Where do you go?

21 A To UMC.

22 Q And did you know where she was, or how -- how
23 did you figure out where to go?

24 A Well, I just went to the -- whatever it is, I
25 think, the trauma, either the -- it wasn't the emergency room.

1 It was, like, the trauma part of the hospital I believe.

2 Q Okay.

3 A And then I know one of the doctors -- I heard
4 one, like -- one of the doctors says --

5 MR. SGRO: Objection to what the doctor said, Your
6 Honor.

7 THE COURT: Well, I don't know that it's
8 inadmissible, but --

9 BY MS. WECKERLY:

10 Q Based on what the doctor said, did you go to a
11 particular location?

12 A Yes.

13 Q And what did you find there?

14 A Well, Devonia, she was in the hospital bed.

15 Q She was in the hospital bed?

16 A Yeah.

17 Q Was she awake? Was she conscious?

18 A She asleep.

19 Q Okay. Did you tell her anything?

20 A Well, I just told her I love her.

21 Q Did you tell her, Look, this is what you need to
22 tell the police about who did it?

23 A No, she wasn't even woke.

24 Q Did you tell her what the people were wearing
25 who shot her and her mom?

1 A No, because I didn't even see them.

2 Q Okay. Did you tell her how to answer any
3 questions to the police at that time?

4 A No, I didn't even -- I ain't talk to Devonian
5 till, like, a month after this all happened.

6 Q Okay. When -- as you're there in her room, did
7 you say or were you allowed to say what happened?

8 A No, the security guard came up there and told me
9 that I wasn't supposed to be in there.

10 Q Did you leave?

11 A Yeah, I kissed Devonian on the forehead and just
12 told her I'll be back.

13 Q Okay. Was there, like, a big problem there, or
14 was it, once he told you to leave, you left?

15 A Yeah, I left right after he told me to leave.

16 Q Okay. And it's -- it's -- I guess during this
17 initial time period that I'm talking about, you -- do you
18 continue -- I don't want to know what they said, but do you
19 continue to make phone calls to Stephanie's number?

20 A Yes.

21 Q At some point, do you get a different phone
22 number that you call?

23 A Yes.

24 Q Do you remember what date that was?

25 A Oh, the date I got the number?

1 Q Yes?

2 A On the 7th.

3 Q Okay. And is there a date that you call the
4 number?

5 A On the 7th, the 7th of August.

6 Q Okay. For Stephanie or for a different number?

7 A Oh, for the different number.

8 Q Do you remember writing some notes for the
9 police?

10 A Yes.

11 MS. WECKERLY: Court's indulgence for one minute,
12 please.

13 Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 BY MS. WECKERLY:

16 Q Sir, I'm showing you what's been marked as
17 State's Exhibit No. 278. Do you recognize this piece of
18 paper?

19 A Yeah.

20 Q Is that your handwriting on it?

21 A Yes.

22 Q How did this -- how did this piece of paper come
23 into existence? What happened with that?

24 A Well, I remember -- I believe detective --

25 THE COURT: You're going to have to speak into the

1 microphone, sir.

2 THE WITNESS: Okay. I believe Detective Bonnie (sic)
3 -- or I'm not sure if I'm pronouncing his last name right, but
4 he told me to write that.

5 BY MS. WECKERLY:

6 Q Okay. And had you called him about something?

7 A Yeah.

8 Q What did you call him about?

9 A I called him and told him, like, I been --
10 whoever the number is that they gave me, that we've been
11 texting each other back and forth, and I've been calling the
12 number.

13 Q Okay. So you called a particular number, and
14 you wrote it on this piece of paper, right?

15 A Yes.

16 Q What's the number that you told them -- or that
17 you called?

18 A (909)233-0860.

19 Q Okay. And that number, you dialed yourself, off
20 your phone?

21 A Yes.

22 Q And when -- when you called that number, did
23 someone answer?

24 A Yes.

25 Q Who -- well, did you say who you were?

1 A Eventually. I don't think I said it just right
2 offhand.

3 Q What did you say at first?

4 A I told them, like -- I ain't tell them my real
5 name, but I told them, like, This is Cory, or something like
6 that, but --

7 Q Did the person identify themselves, or did you ask
8 who they were?

9 A Yeah, I believe I asked, like, Who is it, but I
10 don't think they ever, like, told me a name.

11 Q Okay. So no one ever told you a name. And what
12 happened when the person answered the phone? What did you
13 say, besides not using your name?

14 A Well, like, I know I told him, like, I know you
15 one of the persons that -- you just shot my girlfriend and my
16 daughter.

17 Q And what did the person answer?

18 A His exact words I can't remember, but, like,
19 it's been so long. So -- and then, like, all during -- that
20 whole day was, like, very stressful for me. So.

21 Q Okay. Can I -- can I ask you to take a minute
22 and just review what you wrote here for one second.

23 MS. WECKERLY: And for the record, this is 278, which
24 the State will move to admit.

25 MR. LANGFORD: No objection.

1 MR. SGRO: I mean, it's a hearsay document, Your
2 Honor. I'll submit it.

3 THE COURT: Well, it's hearsay. If you want to
4 object to it, I'll sustain the objection. He can use it to
5 refresh his recollection.

6 MR. SGRO: Of course. Yes, I object to its
7 admission.

8 THE COURT: All right. Sustained.

9 BY MS. WECKERLY:

10 Q After getting a chance to read that over, does
11 that refresh your recollection a little bit about the back and
12 forth in the conversation?

13 A Yeah.

14 Q Okay. So walk us through what was said in the
15 conversation.

16 A Like, from the phone call?

17 Q Yes.

18 A Well, like, I asked him to -- whoever he was on
19 the phone, I'm, like, They -- I'm, like, They keep giving me
20 your number saying you the person.

21 Q And what did the person answer?

22 A At first he was like, No, that's not me. I
23 ain't had nothing to do with that. They trying to -- they
24 trying to put the blame on him instead of them. Like, I guess
25 talking about Stephanie -- Stephanie -- Stephanie son-in-law I

1 guess.

2 Q Okay. And then what did you say?

3 A My exact words?

4 Q Yes.

5 A I said, That's bullshit. You one of them
6 niggers.

7 Q Okay. And then what did the other person say?

8 A I don't know if that time he said that or he
9 denied that -- he denied it some more, but I know eventually
10 in the conversation he told me he's a gangsta and do my
11 investigation.

12 Q Okay. Do your investigation and, like, see what
13 happens, or do your investigation and -- or is that all he
14 said?

15 A Like, that -- I believe he hung up the phone
16 after he said that.

17 Q And was there any other texts or conversations
18 with this 909 number that you recall?

19 A Yes.

20 Q And tell us about those.

21 A The text message -- I know I -- I can't remember
22 my exact text, what I sent, but I know I threatened him and
23 told him, If I find out who you is and all that, I'm going to
24 kill you on site, and then I know -- I don't know which text
25 message he responded back to, but he was, like -- he said, Ha

1 ha ha, fuck that bitch.

2 Q Did you -- I'm going to show you the back of
3 278. And it looks like there's -- is this also your writing,
4 sir?

5 A Yeah.

6 Q Okay. Looking at that, what do you have --
7 well, actually I should ask you, do you remember writing that?

8 A Yes.

9 Q Okay. Was that also something that you wrote
10 for Detective Bunting?

11 A Yes.

12 Q And was this also a number that you dialed?

13 A Yes, I think -- I dialed this number, but I
14 don't believe nobody ever answered the phone to this number.

15 Q Okay. And what's the -- what's the number you
16 dialed here?

17 A (512)629-0041.

18 Q Okay. And you think you dialed that one, but no
19 one ever answered it?

20 A No.

21 Q When -- after this incident, sir, you eventually
22 moved out of that apartment?

23 A Yes.

24 Q And did you take the TV you had with you?

25 A Yes.

1 Q Was -- did you eventually find something in the
2 TV or find something that you gave to the police?

3 A Yes.

4 Q Tell -- tell me about when that was, to your
5 recollection.

6 A It was probably, like, around December --
7 probably, like, December 2nd or 3rd, 2010.

8 Q Okay. So tell us what happened around that
9 date.

10 A Well, Derecia mother the one that brought it to
11 my attention.

12 Q What did you see?

13 A Because she showed me, like, the bullet fragment
14 because she said it fell out the TV.

15 MR. SGRO: Objection to what she said, Your Honor.
16 Move to strike.

17 BY MS. WECKERLY:

18 Q When you were with Derecia's mother --

19 THE COURT: Time out.

20 BY MS. WECKERLY:

21 Q -- did she have something with her, or, like,
22 how did you -- well, did you give something to the police on
23 that day?

24 A Yes.

25 Q Who did you get it from?

1 A I got it from Wanda Newman.

2 Q Okay. And when you got whatever that thing was
3 from Wanda Newman, did you get it from her hand or from, like,
4 her person, or how did you get it?

5 A No, she had it in a -- like, a sandwich bag.

6 Q In a sandwich bag. And then she gives it to
7 you?

8 A Yes, she gave it to me.

9 Q And then you called one of the detectives?

10 A Yes, I called Detective Bonnie or --

11 Q Bunting?

12 A Bunting.

13 Q Okay. And does the detective come and pick up
14 whatever it was?

15 A Yeah -- well, he ain't actually come. He sent
16 -- I guess he sent somebody from, I guess, like, the crime
17 scene unit because they came and took pictures, and they took
18 it.

19 Q Okay. And what was the thing in the bag?

20 A Like, a bullet fragment, the actual bullet.

21 Q Okay. And that's what you handed over?

22 A Yeah.

23 Q Do you remember them ever taking apart your TV?

24 A I know he said he did, but I didn't -- I
25 didn't --

1 MR. SGRO: Objection to what he --

2 BY MS. WECKERLY:

3 Q Okay. Were you present --

4 THE COURT: Well, that's not offered for the truth of
5 the -- obviously.

6 BY MS. WECKERLY:

7 Q Were you ever present when someone from crime
8 scene or Bunting took apart a TV -- your TV actually?

9 A No, I didn't see it.

10 Q Okay. Do you remember ever showing the
11 detectives messages on your actual cell phone?

12 A Yes.

13 Q And when did that occur, to the best of your
14 recollection?

15 A Like, when the text message was sent?

16 Q That's a good question. When were they sent,
17 first?

18 A I'd say that Sunday, on the 8th.

19 Q Okay. And when did you show the detectives?

20 A If it wasn't the following day, Monday, it was
21 Tuesday.

22 Q Okay.

23 A It was -- it was close though. I'm not for sure
24 though.

25 Q And did they take your phone, or how did they --

1 did they film it, or do you know how they looked at the
2 messages or documented it?

3 A I know he looked at it, and then he, like, wrote
4 them down, and he took a picture of it.

5 Q And I'm going to show you State's 294, what's
6 been admitted as 294.

7 MR. DIGIACOMO: They're going to stipulate, but we
8 didn't offer it.

9 MS. WECKERLY: Well, we need to put it up though.

10 MR. DIGIACOMO: I have it up.

11 MS. WECKERLY: 294, that was stipulated for the
12 admission. State moves to admit 294.

13 MR. SGRO: Yes, we've agreed, Your Honor.

14 THE COURT: Okay. So we're --

15 (State's Exhibit 294 admitted.)

16 MS. WECKERLY: Okay. Now, let me have that paused
17 for one second.

18 BY MS. WECKERLY:

19 Q Do you recognize that?

20 A Yes.

21 Q Do those look like the messages that were sent
22 to your phone?

23 A Yes.

24 Q And are you able to see the phone number that
25 sent those messages?

1 A Yes.

2 Q What's the number?

3 A (512)629-0041.

4 Q And was that one of the numbers that you wrote
5 down on your handwritten statement for Detective Bunting?

6 A Yes.

7 Q And what is the -- what is the message that was
8 sent?

9 A It was, K, bitch, fuck you, ha ha.

10 Q Okay. Did you answer that?

11 A Yeah, I probably replied to it.

12 Q Similarly or --

13 A I don't know my exact text, but I know I
14 threatened him.

15 Q Okay. And all of these messages came from --
16 came from your phone. You showed those to Detective Bunting?

17 A Yes.

18 Q Sir, during this time period of August the 6th
19 and 7th, did you have a gun in your apartment?

20 A No.

21 Q And did you shoot anyone on the 6th or the 7th?

22 A No.

23 Q Are you responsible at all for any of the
24 injuries to Devonia or Derecia?

25 A No.

1 Q In the search of the apartment, there -- the
2 police found narcotics, cocaine; you're aware of that?

3 A Yes.

4 Q What -- I guess what is your -- how was that in
5 the apartment?

6 A I don't know how they got there.

7 Q Okay. You don't know anything about that?

8 A No.

9 Q After these events took place, were you charged
10 with a crime associated with this incident?

11 A Yeah.

12 Q And do you know what the charge was?

13 A It was child -- child abuse or child neglect
14 with substantially bodily harm, then just child neglect and
15 trafficking.

16 Q Okay. And are -- is that case -- do you know
17 what the status of it is or what's happening with that case?

18 A I'm still going to court.

19 Q Okay. And is that case being continued till the
20 end of this trial?

21 A Yes.

22 Q Do you have any other cases that are pending?

23 A Yes.

24 Q Tell me about the other one, what -- the charges
25 I guess.

1 A Destruction of property or -- it's destruction
2 of -- I don't know the exact charge, but it's, like,
3 destruction of property or something like that.

4 Q And is that one similarly being continued until
5 the end of this case?

6 A Yes.

7 Q After these events took place in August, did you
8 have to appear in Family Court and go through proceedings
9 there as well?

10 A Yes.

11 MS. WECKERLY: Thank you, sir. I'll pass the
12 witness, Your Honor.

13 THE COURT: Mr. Sgro.

14 MR. SGRO: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. SGRO:

17 Q Good afternoon, sir.

18 A Good afternoon.

19 Q Mr. Mayo, I want to start with sort of where you
20 left off. You have some cases that are currently pending
21 against you, right, some charges against you?

22 A Yes.

23 Q One of them is for drug trafficking; is that
24 right?

25 A Yes.

1 Q And that's for crack cocaine?

2 A I don't know -- I don't know exactly what it's
3 for, but I know it's trafficking.

4 Q Well, would it refresh your memory if I showed
5 you the docket for your case?

6 MR. SGRO: May I approach, Your Honor?

7 THE COURT: Yes, if he's familiar with the docket.

8 THE WITNESS: Yeah, I've never seen it.

9 BY MR. SGRO:

10 Q Does it look like -- according to this document
11 -- the charge is trafficking in cocaine?

12 A Yes, that's what it -- yeah.

13 Q Now, you just told the jury that the cocaine
14 that was in your house, you don't know where it came from,
15 right?

16 A No, I don't.

17 Q Okay. Did you tell that to the DAs before they
18 charged you with trafficking?

19 A Like, we never had a conversation about that.

20 Q You know trafficking is a serious crime; it
21 carries prison time?

22 A Yes.

23 Q Okay. Despite you telling the DAs that you
24 don't know where the cocaine came from, they still are
25 charging you with trafficking, right?

1 A Yes, that's the charge.

2 Q Would you agree that it seems like they don't
3 believe your version?

4 MS. WECKERLY: Objection.

5 THE COURT: Sustained.

6 BY MR. SGRO:

7 Q You also got charged with child neglect with
8 substantial bodily harm; is that right?

9 A Yes.

10 Q And all of these charges, including allowing
11 children to be present where drug laws are being violated, all
12 those charges have been postponed now for several years,
13 right?

14 A Yes.

15 Q And it's all being postponed until after you --
16 until this trial is over, right?

17 A I guess. I'm not for sure. I don't know.

18 Q Well, do you believe that by testifying in this
19 case it helps you in the cases that you're facing right now?

20 A No.

21 Q You don't think it helps you?

22 A No.

23 Q Do you think that the DA indefinitely postpones
24 cases all the time, or do you think you're getting some --

25 A I don't know how the DA work.

1 Q Okay. Let me finish my question, okay. Do you
2 believe that the DA is just postponing these cases
3 coincidentally and that they're not giving you any sort of favor
4 because you're testifying in this case? Is that what you
5 think?

6 A I don't think they giving me no type of favor.

7 Q Okay. You also have I think you said some kind
8 of destruction of property, but it's actually tampering with a
9 vehicle, which is a felony, right?

10 A No, it was a misdemeanor.

11 MR. SGRO: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. SGRO:

14 Q I'm showing you a court document. Does it look
15 like that tampering with a vehicle charge you're charged with
16 is a felony?

17 A That's what it say, but my court papers say it's
18 a misdemeanor.

19 Q So this court document is a mistake?

20 A Or my court paper is a mistake, one of them, but
21 when I was charged with it, it was a misdemeanor.

22 Q Okay. In this particular felony, if I'm right,
23 this felony was charged in June of 2011, right?

24 A Yeah, that sounds about right.

25 Q About nine months after the events we're talking

1 about, right?

2 A Yes.

3 Q And you haven't faced anything in this case yet
4 either, right?

5 A No, we still going to court.

6 Q Okay. Do you think that the fact that the DA is
7 postponing this felony case as well that it is a favor to you
8 or a benefit to you or no?

9 A No.

10 Q Okay. You were asked some questions by the DA
11 today, right?

12 A Yes.

13 Q You have been interviewed by police in this
14 case, right?

15 A Yes.

16 Q You've written out a handwritten statement?

17 A Yes.

18 Q And you've also dealt with CPS, right?

19 A Yes.

20 Q And you dealt with police officers at the scene.
21 Remember when you were outside calling Stephanie Cousins,
22 there were police officers there?

23 A Yes.

24 Q And with each of these different people you've
25 dealt with, you've been asked questions sort of like the ones

1 you've been asked here today, right?

2 A Yes.

3 Q Do you remember being asked about Stephanie
4 Cousins?

5 A Being asked about her like what?

6 Q Okay. Good question. When you did your
7 voluntary statement, when you spoke to the police and it was
8 tape-recorded, okay -- so just to give you the right context,
9 you're sitting outside. At some point, your phone gets taken
10 away, and shortly after that, you'd be sitting with
11 detectives, and the tape recorder is on, remember that?

12 A Yes.

13 Q Okay. When the tape recorder is on, you were
14 asked about Stephanie Cousins, right?

15 A Yes.

16 Q And you told the police that she was coming over
17 probably to get some weed; do you remember that?

18 A Well, I told her she was coming to bring me some
19 weed.

20 Q Well, and I think that's sort of what I need to
21 clear up.

22 MR. SGRO: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 MR. SGRO: Page 6, Counsel.

25 BY MR. SGRO:

1 Q So I'm showing you your voluntary statement. Do
2 you see where it says here 6:21 a.m.?

3 A Yeah.

4 Q On August 7th, right?

5 A Yes.

6 Q Look at page 6. You see the question, But she
7 calls at 3 o'clock. What did she want?

8 A And you said, I know she wanted some -- probably some
9 weed, right?

10 A Yeah, that's what it say, but --

11 Q Do you disagree with that?

12 A She was coming to bring me some weed.

13 Q Now, you would later -- you would later have an
14 interview with CPS. Do you remember telling CPS that
15 Stephanie was going over to bring you some weed?

16 A Do I remember? Just not offhand. I don't
17 remember our conversation went down like that. So.

18 Q All right. You agree with me, at least on this
19 transcript, that is says Stephanie is coming over to buy some
20 weed, right?

21 A Yeah, but I didn't say -- I didn't say, Buy no
22 weed.

23 Q No, you said, She probably wanted some weed.
24 That's what the words on the paper say, right?

25 A That's what it say on the paper.

1 Q Okay. Do you remember my investigator coming to
2 see you, a guy named Eiffel?

3 A Yeah.

4 MR. SGRO: May I approach, Your Honor?

5 THE COURT: Yes.

6 MR. SGRO: Actually, I need to have it marked.

7 THE COURT: Right. You've got to have it marked.

8 MR. SGRO: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. SGRO:

11 Q I'm showing you what's been marked as Defense
12 Exhibit T, like Tony. That's Eiffel, isn't it?

13 A Yes, I believe so.

14 Q He's a tall African American, probably maybe --
15 maybe as tall as you, maybe a little taller, right?

16 A Yes.

17 Q And he asked you questions, too, right?

18 A Yeah.

19 Q And you told him that Stephanie came over to
20 give you -- sell you weed, not buy weed, right?

21 A Yes.

22 Q Now, you've been asked a lot of questions in
23 this case by a lot of people about drugs; would that be fair?

24 A Somewhat.

25 Q CPS asked you if you were selling drugs out of

1 your residence, right?

2 A Something like that but that ain't -- yeah, I
3 guess that you could say that.

4 Q Okay. Well, one of the charges that you face
5 right now is having kids in a place where drugs are being
6 sold?

7 A There was no drugs being sold.

8 Q Okay. We've got to do this one at a time. One
9 of the charges you have right now involves having drugs in a
10 place where kids are there, right? That's one of your
11 charges; is that right?

12 A Yeah, but I don't think -- I don't tie it to
13 that though.

14 Q Okay.

15 A AS far as my knowledge, it's for what happened
16 with Devonia.

17 Q Okay. I guess all I'm looking for is, do you
18 remember telling CPS you did not sell drugs out of the house?

19 A Yeah.

20 Q You've told the DA you didn't sell drugs out of
21 that house, right?

22 A Yeah.

23 Q And despite -- despite that, you're still being
24 charged with this crime of selling -- of allowing your kids to
25 be present where drugs are being sold, right?

1 A Yes, that's what you keep saying, but, yes.

2 Q Okay. And do you remember an officer named
3 Huffton(sic)?

4 A No.

5 Q Do you remember an officer named Shoemaker?

6 A The last name sound familiar.

7 Q You were being asked -- remember while you were
8 outside on your cell phone and you're having conversations
9 with Stephanie Cousins, you're also talking to various police
10 officers, right?

11 A Not when I was on the phone, but --

12 Q Did you admit to Officer Huffton that you were
13 selling drugs out of the house?

14 A No.

15 Q Are you aware that he's testified already in
16 this case about what you told him about that?

17 A No, I never said I was selling drugs.

18 Q Okay. How about officer -- or Detective, at
19 that time, Shoemaker, did you ever tell him you were selling
20 drugs?

21 A No.

22 Q You were asked questions about drugs in the
23 Grand Jury as well, right?

24 A Yes.

25 Q And in fact, the Grand Jury is where you to

1 swear to tell the truth as well, just like you did here,
2 right?

3 A Yes.

4 Q You told the Grand Jury --

5 MR. SGRO: It's page 28, Counsel.

6 BY MR. SGRO:

7 Q You told the Grand Jury, under oath, There was
8 no drugs in there. Do you remember saying that?

9 A Not drugs what they said. It was, I had
10 marijuana there.

11 MR. SGRO: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. SGRO:

14 Q Do you see the question there? Do you remember
15 Ms. Weckerly questioning you in the Grand Jury?

16 A Yes, I remember the Grand Jury, but I don't
17 remember it word for word, but --

18 Q No. Do you remember that prosecutor asking you
19 questions?

20 A Yeah.

21 Q And you remember swearing to tell the truth?

22 A Yeah.

23 Q And did she ask you, Were any drugs taken? And
24 you said, There's no drugs in there. Did I read that right?

25 A Yes, that's what it say.

1 Q Okay. And then later you said, Well, I did have
2 a sack of marijuana, right?

3 A Yeah, I did.

4 Q So you told the Grand Jury under oath that there
5 were no drugs in your residence?

6 A It's because that's -- okay. I don't consider
7 marijuana drugs. So that's not what we was talking about.

8 Q Let's set the marijuana aside for a second. How
9 do you feel about crack cocaine? Is that a drug?

10 A Yeah.

11 Q Did you have crack cocaine in your house?

12 A No.

13 Q You didn't?

14 A No.

15 Q So if there's pictures that show a bunch of
16 rocks of crack cocaine --

17 A I don't know how it got there.

18 Q Do you remember, you were outside, and at one
19 time -- at one point in time, you interacted with another
20 homicide detective named Barry Jensen, who has also testified
21 here; do you remember him?

22 A No.

23 Q White guy, kind of heavysset, wears one of those
24 hats?

25 A The only detective I remember is Bonnie.

1 Q Do you remember there came a time when you asked
2 for a pair of shoes because you were outside barefoot?

3 A Yeah, they brought my shoes outside.

4 Q Do you remember when rock cocaine fell out of
5 your shoes when you went to go put them on?

6 A I put my shoe on. Then I felt something in my
7 shoe, and I took my shoe back off, and I put it on the
8 sidewalk, whatever was in my shoe.

9 Q Do you remember that the stuff that you -- let's
10 say that that's right. The stuff that you felt in your shoe,
11 do you remember that that was rock cocaine?

12 A I don't know what it was.

13 Q You don't know?

14 A No, I don't know.

15 Q Do you have any reason to dispute it if Homicide
16 Detective Jensen told the jury that that was rock cocaine? Do
17 you have any reason to dispute it?

18 A Yes, I don't know where it came from. I didn't
19 go in there and get my shoes.

20 Q So perhaps the police did something that caused
21 that rock cocaine to be in your shoe?

22 A I don't know how it got in there.

23 Q Do you recall admitting to Detective Shoemaker
24 that you sold drugs?

25 A No, I didn't.

1 Q Do you know that CPS called Detective Shoemaker
2 to verify --

3 MS. WECKERLY: Objection. This is hearsay.

4 MR. SGRO: I'm not asking him what was said.

5 THE COURT: Well --

6 MS. WECKERLY: Well, okay.

7 THE COURT: -- how would he know --

8 MS. WECKERLY: Then it's calling for speculation.

9 THE COURT: -- if somebody else called somebody else?

10 MR. SGRO: I'll ask it differently.

11 THE COURT: Okay.

12 BY MR. SGRO:

13 Q Were you ever confronted -- I'll ask you a
14 different way. You gave CPS a version of events, right, not
15 only about drugs but what happened in the apartment, how the
16 shooting happened, all those things, right?

17 A Yes.

18 Q You knew that CPS was going to try to verify
19 what you told them, right?

20 A Yes.

21 Q Did you have a conversation with Detective
22 Shoemaker where you told him -- you admitted to selling drugs
23 out of the home? Do you remember that?

24 A No.

25 Q Now, one of the things that happened in this

1 case or as a result of this case is there's been some other
2 court proceedings in Family Court, right? The DA just asked
3 you some questions about that.

4 A Yes.

5 Q You said you remember Chris Bunting, right?

6 A Yes.

7 Q Chris Bunting actually testified against you in
8 the Family Court proceeding, right?

9 A He wasn't there when I was there, but I guess.

10 Q Are you aware that he testified in Family Court
11 relative to what you told him?

12 A I know he told me he had to go to Family Court
13 to testify.

14 Q Did you admit to Detective Bunting that you sold
15 drugs?

16 A No.

17 Q So if he had testified about that, he'd be
18 mistaken?

19 A He got to because I never said that.

20 Q Did you ever tell CPS that you sold nick bags?
21 What's a nick bag?

22 A Nick -- a nick bag, I don't know --

23 Q You don't know what that is?

24 A But a nick, I guess \$5.

25 Q Pardon me?

1 A A nick, a nickel, \$5 I guess.

2 Q Okay. So \$5 worth of marijuana?

3 A No, I don't know five -- no, I never told nobody
4 nothing like that.

5 Q Did you tell CPS when they interviewed you about
6 drugs that you use marijuana but kept extra in case your
7 friends wanted to buy a nick bag? Did you ever say that?

8 A No.

9 Q Now, you were also asked some questions about
10 Devonia, right, your stepdaughter?

11 A Devonia.

12 Q Devonia, sorry. You were also asked some
13 questions about Devonia and what if any participation she
14 might've had regarding drugs at your apartment. Do you
15 remember CPS asking you questions?

16 A I don't -- I can't recall the exact questions,
17 but I --

18 Q Did you use Devonia to go to the front door to
19 collect money from Derecia and bring the money back to you?

20 A No.

21 Q Did you ever tell -- do you remember Detective
22 Shoemaker?

23 A I just told you I didn't.

24 Q Okay. Did you ever tell Detective Shoemaker
25 that Devonia collected money --

1 A No.

2 Q Let me -- let me finish the whole statement,
3 okay -- that Devonian collected money from Derecia at the front
4 door of the apartment and took it back to the bedroom where
5 you would then give her drugs to bring back up front to
6 Derecia?

7 A No.

8 Q Did you tell Detective Shoemaker that that's why
9 Devonian was in the front room during the shooting?

10 A No.

11 Q Never happened?

12 A No.

13 Q So you're telling the jury today that Devonian
14 was there because she woke up at 1 in the morning, had an
15 omelette, and you guys went -- you and Derecia went back to
16 bed after you got done eating, and Devonian stayed out front to
17 play Xbox?

18 A Or she was watching TV.

19 Q Did you ever sell drugs to Stephanie?

20 A No, I bought weed from Stephanie.

21 Q You never sold any to her?

22 A No.

23 Q In --

24 MR. SGRO: May I approach the clerk, Your Honor?

25 THE COURT: Yes -- oh, yes.

1 BY MR. SGRO:

2 Q Showing you State's Exhibit 86, does this
3 picture look like your master bedroom?

4 A Yeah.

5 Q Do you see that plate there, kind of just off to
6 the left of the picture?

7 A Yes.

8 Q Did that plate have a bunch of rock cocaine on
9 it before the shooting happened?

10 A No.

11 Q Do you see the white rocks all around the floor
12 there?

13 A Yeah, I see it.

14 Q Do those white rocks, could they have been
15 disbursed as the plate hit the ground?

16 A They wasn't there. So I don't see how.

17 Q Have you ever accused anyone of planting crack
18 cocaine at your residence?

19 A Have I ever accused anybody?

20 Q Yes, sir.

21 A No.

22 Q State's Exhibit 87, another vantage point, does
23 this refresh your recollection of all -- what those white
24 rocks were?

25 A I don't know what that is.

1 Q Are you aware, sir, that the police went through
2 your residence and searched your place after the shooting
3 happened?

4 A That's what I assumed they was in there doing.

5 Q Did they ask you about a razor blade that had a
6 white powdery substance on it?

7 A If they did, I don't recall it.

8 Q Do you remember seeing a razor blade with a
9 white powdery substance?

10 A No.

11 Q Do you recall having a razor blade on top of the
12 shoe box, close to where that weight was located?

13 A No.

14 Q How about a scale, a digital scale with the
15 brand name of Blade Scale, does that ring a bell?

16 A No.

17 Q Do you know whether or not you owned a scale, a
18 Blade scale?

19 A I don't know, unless it was in one of my old
20 boxes in the closet or something.

21 Q Would you own a digital scale for the purpose of
22 selling drugs, to weigh it?

23 A No.

24 Q So you as you sit here right now have no
25 recollection of the scale, and you have no recollection of the

1 razor?

2 A Well, I have razor blades in my house, but not
3 as you described them.

4 Q Okay. I understand. You shave, right? But
5 this is a razor blade with a white powdery substance, not a
6 razor blade for shaving, ring a bell?

7 A No.

8 Q I want to talk to you about what was taken that
9 night. Do you have any recollection as to what was taken?

10 A What was taken -- the only thing that was in my
11 drawer that was in --

12 Q What was in the drawer?

13 A It was, like, a hundred dollar bill -- or a
14 hundred dollar bill, a pack of Newports and some weed.

15 Q Do you remember telling CPS that it was a
16 hundred and twenty dollars, cigarettes and a stick of
17 deodorant?

18 A A stick of deodorant?

19 Q Yes, sir.

20 A No, I don't remember saying nothing about no
21 stick of deodorant.

22 Q Okay. You told the Grand Jury -- do you
23 remember -- do you remember how much money you told the Grand
24 Jury had been taken?

25 A It was only, like, a hundred dollars in the

1 drawer. So.

2 Q I know. That's what you said today, right? Do
3 you remember what you told the Grand Jury?

4 A Not -- not exactly about that question.

5 MR. SGRO: Page 28, Counsel.

6 MS. WECKERLY: Thank you.

7 BY MR. SGRO:

8 Q Do you see on page 28 that you told the Grand
9 Jury that \$450 was taken?

10 A See, I told them I had some money in the house.

11 Q Right. So the question, Did you notice whether
12 anything was taken, anything was missing, right?

13 A Yeah.

14 Q The only thing they took was, like -- because my
15 drawer was right there by the bathroom in our room. It was
16 open already, and I have, like \$450. So you're answering what
17 was taken by saying \$450, right?

18 A Yeah, I don't remember saying \$450 though.

19 Q I read it right though, didn't I?

20 A Yeah, that's what the paper say.

21 Q And when you went to CPS, you told the CPS
22 people -- they asked you, they said, Why would people come
23 over to your place if you weren't selling drugs? Do you
24 remember those questions they asked you?

25 A Somewhat but not.

1 Q Do you remember telling CPS that you were
2 targeted because of a \$2500 basketball bet that you won?

3 A I don't think I said basketball. I think I
4 probably said I just put in a ticket.

5 Q Do you remember the Judge -- strike that. Do
6 you remember learning that after you'd said basketball bet
7 that there weren't enough basketball games on the day that you
8 said that you made the bet --

9 A I --

10 Q Let me finish -- let me finish. Do you remember
11 learning that there weren't enough basketball games on the day
12 you said you made the bet such that you could win \$2500?

13 A No, because I never said exactly what date I won
14 or put in my ticket. The date or the issue of when I won that
15 money was never brought up.

16 Q Do you remember saying that you bet \$5? Do you
17 remember that?

18 A Yeah, I bet 5. That's what I usually bet.

19 Q And you selected 10 teams, right?

20 A Yes.

21 Q Do you remember learning that parlay tickets
22 don't pay 500 to 1 on a \$5 bet for 10 teams? Do you remember
23 that?

24 A Yes, I do.

25 Q So your position is they do?

1 A I just put in a ticket yesterday for \$5.

2 Q On 10 teams and pays 500 to 1?

3 A It's paid \$3442.

4 Q Okay.

5 A I could've brought it if I knew I was going to
6 need it.

7 Q As you sit here today, do you have a specific
8 recollection of how much cash was taken at all?

9 A What was in the drawer, it was, like, a hundred
10 dollars.

11 Q Did you go to the drawer before you went into
12 the bathroom to grab money out of the drawer?

13 A No.

14 Q You didn't do that?

15 A No.

16 Q You didn't do that. Now, you were asked a bunch
17 of questions by the police during the tape recording, right?

18 A Yes.

19 Q The police never asked you if you owned a gun,
20 did they?

21 A I can't recall. I'm not for sure.

22 Q Do you remember my investigator, Eiffel, the one
23 whose photos are next to you?

24 A Yeah.

25 Q He asked you if you owned a gun, didn't he?

1 A Yeah, he asked me if I had one.

2 Q Do you remember telling him that you did own a
3 gun?

4 A No, I didn't.

5 Q You never said that?

6 A No. What I told him is if I had a gun I
7 wouldn't be talking to y'all right here, right now.

8 Q Do you remember saying to -- you know his name
9 is Eiffel, right? Did we cover that already?

10 A Yeah.

11 Q Do you remember telling Eiffel that Stephanie
12 had told you that they hadn't robbed someone else because they
13 had a gun, and it didn't make sense to you because Stephanie
14 knew you had a gun all the time?

15 A No.

16 Q You never said that?

17 A No, I didn't.

18 Q Do you remember telling Eiffel that by
19 coincidence you had loaned your gun to one of your friends
20 that day?

21 A No, that's not what I said.

22 Q Do you remember telling CPS that before you made
23 the 9-1-1 call you called friends and family -- let me finish
24 the question, okay. Do you remember telling CPS that before
25 you called 9-1-1 you called friends and family to come over to

1 your house?

2 A No, I didn't.

3 Q Now, you told the jury today that your brothers,
4 within minutes, happened to be across the street, right?

5 A Not within minutes. After all that happened, I
6 called my brothers and told them they need to get over here.

7 Q Before or after 9-1-1?

8 A It was after the police were already there.

9 Q Do you remember telling Eiffel when he
10 interviewed you that you had called your brothers to, quote,
11 Come take care of their business?

12 A No, I did not say nothing like that.

13 Q So that's just a fantasy?

14 A It must be if he -- if that's what he said.

15 Q Okay. Have you had a chance to read your
16 statement before testifying today?

17 A Which statement?

18 Q Any of them.

19 A Yeah, I read a couple of them.

20 Q In your statement, you said that you were in the
21 bathroom, right, and as Devonian came into the bathroom, you
22 pulled your pants up; is that right?

23 A Yes.

24 Q And then you said for no known reason Devonian
25 ran out of the bathroom?

1 A She ain't run out. She went to the door to open
2 the door.

3 Q Do you remember saying that she ran when you
4 spoke to CPS, that she ran out of the bathroom?

5 A I could've said she ran, but she never made it
6 out the bathroom.

7 Q Do you remember telling -- she never made it out
8 of the bathroom, right? We're going to come back to that in a
9 second. Do you remember telling the police that it looked
10 like Devonia lunged towards the person that was the shooter,
11 right?

12 A No, I know she -- when Devonia opened the door,
13 that's when she got shot.

14 Q Now, you didn't say anything to the police,
15 nothing to the Grand Jury, nothing to my investigator ever
16 about seeing who did this, right?

17 A No, I never saw.

18 Q You never saw a gun --

19 A No.

20 Q -- right? And when Devonia -- Devonia -- sorry.
21 When Devonia was sitting there after she'd been shot, you
22 didn't see anybody at that time either, right?

23 A No.

24 Q You didn't hear anything more at that point,
25 right?

1 A No, I heard somebody running.

2 Q Somebody running -- and I mean you didn't hear
3 any words, right?

4 A No.

5 Q So you didn't hear: Where's the money; where's
6 the dope, right, when Devonia -- Devonia was --

7 A Yeah, they said that to her when she was opening
8 the door. Somebody -- whoever was right there said it.

9 Q Now you heard it? You've never said it before,
10 sir. Now are you saying today that you did?

11 A Yes, somebody asked her, Where is that? Or,
12 Where the money at?

13 Q Is there a reason why in all the statements
14 you've given and all the police officers you've spoken to
15 you've never said that before?

16 A I told -- in the original -- when all this
17 happened, I know I told somebody that, but over the --

18 Q Give me a name so I can ask them.

19 A I don't know, one of the police officers. I
20 don't remember.

21 Q Can you -- can you give me -- can you give me
22 the name of somebody so we can ask them? Because I don't have
23 it here in front of me. Who did you say it to?

24 A I don't know. I don't -- I don't even remember
25 the detectives except the one I said, Bonnie.

1 Q All right. Well, you didn't say it to Bunting,
2 right? Right?

3 A I'm not too sure.

4 Q You didn't say it in the Grand Jury, right?

5 A Because of nobody never asked me that. So.

6 Q All right. So you weren't asked the right
7 question?

8 A You could say that.

9 Q Well, I'm asking if you are saying that.

10 A Yes, that's what I'm saying.

11 Q You didn't -- I don't know what you're going to
12 say today now, but have you ever said before today that you
13 saw someone rifling through Devonian's pockets, going through
14 her pockets? Have you ever said that before?

15 A No, because I don't even think she had on
16 nothing to have pockets that night.

17 Q So your recollection is she didn't even have
18 pockets?

19 A No, I think she had on, like, some slacks or,
20 like, some stretch pants or something. I'm not too sure, but
21 that's what I believe she had on.

22 Q Okay. Now, you were asked about going to the
23 hospital to see Devonian; do you remember that?

24 A Yes.

25 Q And the first time you told the jurors that you

1 had seen Devonia -- I'm sorry. The first time you relayed
2 what you did that day, you skipped over the part about going
3 to the hospital, right? And then you said, I did go to the
4 hospital, right?

5 A Yes.

6 Q Do you remember telling the Grand Jury that you
7 didn't see Devonia at the hospital?

8 A No.

9 MR. SGRO: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. SGRO: Page 25, Counsel.

12 BY MR. SGRO:

13 Q Do you see where it says, And to this day, where
14 is she, Devonia? Did I read that right?

15 A Yeah.

16 Q Answer, She's still in the hospital, right?

17 A Yes.

18 Q Question, I mean, you've seen her since back in
19 August I'm sure?

20 Answer --

21 A Yeah. No, I --

22 Q -- what did you say?

23 A No, I haven't seen Devonia since that first day
24 in the hospital.

25 Q So what you're saying is just the question

1 wasn't clear?

2 A Yes. I haven't seen -- I seen her the first
3 time I went to the hospital.

4 Q Now, in the hospital, do you remember speaking
5 to Devonian about an eye for an eye? Did you ever mention that
6 to her?

7 A I never told Devonian that because Devonian was
8 sleep. She wasn't woke when I seen her.

9 Q Okay. I understand that's what you said today.

10 A No, that's what happened.

11 Q I want you just to reflect back. Do you
12 remember the security guard you ran into who said you had to
13 leave?

14 A I don't remember him, but, yeah, there was a
15 security guard there.

16 Q Do you know that he took notes of things that
17 you said --

18 MS. WECKERLY: Objection --

19 THE WITNESS: He couldn't take notes.

20 MS. WECKERLY: -- facts not in evidence.

21 BY MR. SGRO:

22 Q Are you aware whether any notes were taken of
23 the conversation that you had with Devonian?

24 A It wasn't no -- it wasn't no conversation. I
25 literally came in the room, seen her, went over there, told

1 her I love her, gave her a kiss. The security guard was right
2 there by then telling me to come back this way.

3 Q Did you ever use the phrase when you are
4 speaking to Devonia, eye for an eye?

5 A No.

6 Q Did you ever use the phrase when you were
7 speaking to Devonia or use the word, revenge?

8 A No, but I probably after the fact -- after I
9 talked to her on the phone, I probably -- yeah, I probably
10 told her, yeah, if I find them, I'm going to kill them.

11 Q And while I appreciate that answer, I want you
12 to focus right now just on when you were in the hospital,
13 okay. You don't remember anything about telling her about
14 revenge?

15 A No, I didn't tell Devonia nothing like that when
16 she was in the hospital.

17 Q Do you remember telling Devonia anything about
18 shooters while you were in the hospital?

19 A What do you mean about shooters?

20 Q Anything at all about shooters relative to
21 coming in and what happened at your apartment?

22 A No.

23 Q When -- when you heard the shooting happened,
24 you were in the bathroom; is that right?

25 A Yes.

1 Q And did you tell the police that you stayed in
2 the bathroom, like, 20 seconds after you didn't hear any
3 noise, as the shooter was going down the hall?

4 A No.

5 Q You didn't say that?

6 A I didn't stay in the bathroom 20 seconds.

7 MR. SGRO: Page 3.

8 BY MR. SGRO:

9 Q I'm at page three of your statement. Do you see
10 where it says, And then, like, I just waited in the bathroom,
11 like, 20 seconds? Did I read that right?

12 A Yes, that's what it say.

13 Q Does that refresh your memory about what you
14 told police about waiting for 20 seconds?

15 A No, there was no way it was 20 seconds.

16 Q I understand that's what you're saying today.
17 I'm asking you if you remember now what you told the police.

18 A I don't recall telling them that.

19 Q Okay. But I read it right, didn't I?

20 A Yeah, you read what was on the paper.

21 Q Do you remember telling Eiffel that after you
22 saw her fall you went immediately to Devonia and told her,
23 Stay down?

24 A She was right there by the bathroom door.

25 Q And how much time went by from the time that you

1 saw Devonia fall to the time that you got to her side to help
2 her or to look after her?

3 A Probably a couple seconds.

4 Q Now, you had a cell phone at the time, right?

5 A Yes.

6 Q And your cell phone was in the name of somebody
7 named Amber Jones; is that right?

8 A I'm not for sure whose name it was in.

9 MR. SGRO: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. SGRO: Page 4, Counsel.

12 BY MR. SGRO:

13 Q Do you see here where you're being asked if the
14 phone is under your name?

15 You say, No. Whose name is that under? You answer,
16 My girl got it turned on. I think it's Amber Jones.

17 A Yeah, that's what I think. I'm not too sure. I
18 just paid --

19 MS. WECKERLY: Just a correction. Could you read the
20 whole sentence? I'm not for sure. I think it's Amber Jones.
21 I'm not sure though.

22 MR. SGRO: Okay.

23 BY MR. SGRO:

24 Q Do you see where it says, My girl got it turned
25 on. I'm not for sure. I think it's Amber Jones. I'm not for

1 sure though. Do you see that?

2 A No.

3 Q Who's Amber Jones?

4 MS. WECKERLY: Objection. Relevance.

5 BY MR. SGRO:

6 Q I don't know -- do you know a woman named Amber
7 Jones?

8 A Who, me?

9 Q Yes, sir.

10 A I know a couple of Ambers. I don't know if they
11 last name Jones.

12 Q Do you have any reason to hide the fact that you
13 own a cell phone?

14 A No.

15 Q Do you have any reason to hide the fact that you
16 have a cell phone in your own name?

17 A No.

18 Q Does the fact that your phone is not in your own
19 name have anything to do with anything related to drugs?

20 A No, I have plenty of phones. I ain't had not
21 one of them in my name.

22 Q How many phones do you have?

23 A Right now, one.

24 Q How many did you have in August of 2010?

25 A One.

1 Q Now, if I heard you correctly, you told the
2 State that when you dialed 9-1-1 you did it as you are getting
3 up from Devonia's side and walking down the hallway. Is that
4 what your testimony is today?

5 A Yeah, I don't know the exact time, but I know I
6 dialed 9-1-1 before I was out the bathroom.

7 Q Okay. Do you remember walking outside of the
8 house while you were on the phone with 9-1-1?

9 A I know I called them back when I was outside.

10 Q The tape that we heard today, do you remember
11 telling the 9-1-1 operator that you were calling from the
12 plant?

13 A I was calling from where?

14 Q The plant. You have some plants outside your
15 place, right, on Meikle?

16 A Well, no, there is nothing but dirt right there.
17 I was calling.

18 Q Were you aware at any time during this incident
19 that three men -- three men grabbed money and drugs and left
20 the house?

21 MS. WECKERLY: Objection. Assumes facts not in
22 evidence.

23 MR. SGRO: I'm asking --

24 THE COURT: No evidence.

25 BY MR. SGRO:

1 Q Does that -- do you agree or disagree with this
2 statement?

3 MS. WECKERLY: Objection. He says --

4 MR. SGRO: There will be.

5 MS. WECKERLY: -- he didn't see it.

6 MR. SGRO: There will be, Your Honor, evidence --

7 THE COURT: Well, there has to be before you can ask
8 the question.

9 MR. SGRO: Okay.

10 BY MR. SGRO:

11 Q Did you ever see three men?

12 A No.

13 Q Did you ever see three men in your residence
14 grabbing money and drugs?

15 A No.

16 Q Could you have been in the shower when you
17 called 9-1-1?

18 A No.

19 Q Now, your bathroom, the dimensions of it are
20 pretty small, right? It's a pretty small bathroom; would that
21 be fair?

22 A No, it ain't small.

23 Q Well, from sitting on the toilet, you can see
24 the bathroom door, right?

25 A No, not really, unless the door open.

1 Q As the door opens, you can see the door?

2 A Yeah.

3 Q As the door opens, you can see outside the door?

4 A No.

5 Q You can't?

6 A No. If you can see outside the door, it's the
7 space in the corner probably. That much you could see.

8 Q Did you have administered to you a
9 gunshot-residue kit?

10 A A gunshot residue, no.

11 Q Did they test your hands to see if you had any
12 gunshot residue on your hands?

13 A No.

14 Q It didn't happen?

15 A No, they didn't have to because I ain't shoot no
16 gun. If I shot a gun, they wouldn't be sitting at that table
17 right now.

18 Q Do you remember a crime scene analyst named J.
19 Smith?

20 A No.

21 Q Do you remember a crime scene analyst named
22 Speas, S-p-e-a-s?

23 A No.

24 Q Neither of those names ring a bell with respect
25 to you having a gunshot-residue kit done?

1 A No.

2 Q When you spoke to the police, you didn't mention
3 someone named Job-Loc, correct, when you gave them the
4 tape-recorded statement?

5 A When I gave them the tape-recorded statement?

6 Q Yes, sir.

7 A What tape-recorded statement?

8 Q Remember, the one I showed you? I've shown it
9 to you a couple times, the one at 6:21 in the morning?

10 A Oh, the one I did with the police?

11 Q Yes, sir. You didn't mention Job-Loc, right?

12 A I didn't -- I didn't have no knowledge of nobody
13 but Stephanie Cousins at that time.

14 Q All right. But you did have knowledge of
15 Job-Loc that we just saw. We just saw all those text
16 messages, you know, where he -- he sent you some pretty nasty
17 messages; would you agree?

18 A Yeah.

19 Q And when I say he, you understand you wrote a
20 telephone number on the back of that note that you wrote,
21 right?

22 A Yeah.

23 Q And it had the name Job-Loc next to it, right?

24 A Yes, that's his name. I was --

25 Q Right. And then that telephone number that has

1 Job-Loc, that's the telephone number that was sending you
2 nasty messages, right?

3 A Yes.

4 Q Now, that happened within a couple days of the
5 incident, right?

6 A I believe it was that Sunday.

7 Q Right.

8 A The 8th.

9 Q It happens on a Friday night, going into
10 Saturday morning, early?

11 A Yeah, so I believe it was Sunday, on the 8th.

12 Q Now, you testified in front of the Grand Jury on
13 September 28, 2010. So that's going to be about seven or
14 eight weeks after August 7th, right?

15 A I don't remember exactly when it was, but it --
16 yeah, it was.

17 Q I'll just show you. This is the cover sheet of
18 the Grand Jury transcript. Do you see where it says, Tuesday,
19 September 28th?

20 A Yeah.

21 Q All right. So can we agree that that's about
22 seven weeks after everything happens at the house, right?

23 A Yes.

24 Q Nobody asked you about Job-Loc at any time
25 during the Grand Jury, right?

1 A I don't recall. I'm not for sure.

2 Q Prior to trial today, have you ever been asked
3 by the DAs or by law enforcement if you called anyone before
4 dialing 9-1-1?

5 A Prior, before today?

6 Q Let me ask it a better way, okay. That wasn't a
7 good question. When is the first time anybody asked you from
8 the police or from the DA's office if you called anybody
9 before you called 9-1-1?

10 A I'm not for sure.

11 Q Was it -- was it once this case started?

12 A What you mean when once this case started?

13 Q Do you know we've been in trial here for a
14 couple weeks?

15 A Yeah.

16 Q Has the DA come and asked you about who you
17 called or whether you called anyone before 9-1-1 since the
18 case started?

19 A Have they asked me?

20 Q Yes, sir.

21 A I'm not for sure. I don't -- I don't think so.

22 Q You had been interacting with CPS for a lot of
23 different times as this case has been progressing, right?

24 A Yeah. Yes.

25 Q And you have had some disagreements with CPS

1 over how to handle certain things relative to this case; would
2 you agree?

3 A Yes.

4 Q Do you remember asking CPS for Devonian's Social
5 Security number?

6 MS. WECKERLY: Objection. Relevance.

7 MR. SGRO: Goes to bias, Your Honor.

8 THE COURT: Why?

9 MR. SGRO: For financial compensation.

10 MS. WECKERLY: Well --

11 BY MR. SGRO:

12 Q Did you --

13 THE COURT: Well, I'll let him ask it.

14 BY MR. SGRO:

15 Q Did you in an effort to make money ask for
16 Devonian's Social Security number?

17 A No, I had they Social Security numbers. I had
18 all that in my possession. So why will I ask somebody for
19 something like that?

20 Q Sir, do you know we get a lot of documents in
21 this case? Are you aware of that?

22 A Yes, I --

23 Q Do you realize in all of these things, people
24 say what you told them, right? Remember, we talked about --

25 MS. WECKERLY: Objection.

1 THE COURT: Sustained.

2 MR. SGRO: I'll rephrase.

3 BY MR. SGRO:

4 Q Do you remember we spoke about Officer Huffton
5 earlier? Do you remember that?

6 A Yeah.

7 Q Now, you don't remember having a conversation
8 with him, right?

9 A No.

10 Q Are you aware he testified here about what he
11 talked to you about?

12 A You told me that. So.

13 Q Do you remember on those -- the nasty text
14 messages between yourself and Job-Loc, do you remember meeting
15 with Detective Bunting to show him those text messages?

16 A Yes.

17 Q And you told Detective Bunting, did you not,
18 that Job-Loc had texted you that he was involved in the
19 shooting?

20 A I don't remember what I said, like, word for
21 word. It's been so long ago, and it's, like, I had a lot
22 going on. So.

23 Q I understand. This is a serious case, right?

24 A Yeah.

25 Q You've never been involved like this in anything

1 like this before this case, right?

2 A No.

3 Q Nothing since this case, right?

4 A No.

5 Q All right. So I understand you talked to a lot
6 of people, but what someone may have texted you about who the
7 shooter is, that's kind of a big deal, isn't it?

8 A Like, I heard names. That's all I was hearing
9 was names.

10 Q I understand. I don't want to talk about what
11 you heard, okay. I want to focus specifically on a meeting
12 you had with Detective Bunting, okay, and I want to ask you if
13 you told him that Job-Loc had sent you messages that he was
14 involved in the shooting?

15 A I know I told him, Whoever number this is,
16 that's what they sent me, but I don't recall saying names or
17 nothing because I don't even know who these people is.

18 Q You had a phone number. Remember that note you
19 took with the phone --

20 A Yeah.

21 Q Okay. You had a phone number that was
22 attributed to some person named Job-Loc, and I understand you
23 say you don't know who he is, but that number matches someone
24 named Job-Loc, right?

25 A Yes, I guess.

1 Q Okay. Now, forgetting about who Job-Loc is
2 specifically, do you remember telling Detective Bunting that
3 the number associated with Job-Loc was texting you, and he was
4 telling you that he was involved in the shooting?

5 A I don't remember. I just recall -- I can't say
6 I said that. So I don't remember.

7 MR. SGRO: May I approach, Your Honor?

8 THE COURT: Yes, if it refreshes his recollection --

9 MR. SGRO: Yes, sir.

10 THE COURT: -- but if it doesn't --

11 MR. SGRO: I'm just --

12 THE COURT: -- I mean, it's --

13 MR. SGRO: I totally understand.

14 BY MR. SGRO:

15 Q I want you to read -- read this to yourself,
16 okay.

17 MR. SGRO: Page 28 of the officer's report.

18 BY MR. SGRO:

19 Q See here where it says, Detective Bunting met
20 with Cornelius Mayo; do you see where I'm pointing?

21 A Yeah.

22 Q Can you please read this --

23 MS. WECKERLY: Objection. He's refreshing his
24 recollection --

25 MR. SGRO: I'm asking him to read it --

1 MS. WECKERLY: -- from an officer's report, which he,
2 I'm guessing, has never seen. So I don't know how it could
3 refresh his recollection.

4 MR. SGRO: I can use anything to refresh
5 recollection.

6 THE COURT: Ask him if it refreshes his recollection.
7 BY MR. SGRO:

8 Q Can you just read this paragraph to yourself,
9 okay, and tell me when you're done.

10 A I've read it, but --

11 Q Okay. We've got to do this a certain way, okay.
12 So the first question is: Did you read it?

13 A Yes, I read it.

14 Q All right. The second question is: Does that
15 refresh your memory now as to whether you told Detective
16 Bunting that Jerome Thomas had texted -- sorry -- Job-Loc had
17 texted you and said that he was involved in the shooting?

18 A No, it don't refresh my memory.

19 Q Are there text messages that you erased from
20 your phone that you got from Job-Loc?

21 A It's a couple text messages. They got booted
22 out of the phone before I can show the detective, but I don't
23 know who it came from. It came from that number though.

24 Q When you say booted out, I'm not sure I know
25 what that means. What's that mean?

1 A Well, the phone back then only hold a certain
2 amount of text messages.

3 Q So when you ran out of room, text messages would
4 start dropping off?

5 A Yeah.

6 Q So your testimony is you didn't erase anything.
7 They just fell off because there was no more room, right?

8 A Yeah.

9 Q Now, do you remember your testimony about a
10 bullet that was located in the TV about a year and a few
11 months after the shooting happened? Do you remember that?

12 A Yes, I remember it.

13 Q I don't remember, were you present when the
14 police took apart the big-screen TV or no? At the time the
15 shooting happened, did you know the police had taken apart
16 your TV?

17 A At that morning I did know.

18 Q At the time that all these events are going on,
19 are you -- so back in August of 2010, did you -- did you drink
20 alcohol?

21 A In August, yeah.

22 Q Did you drink alcohol once a week? once a month?
23 Every day? Do you remember?

24 A Uh-huh. Probably every other day.

25 Q And you smoked marijuana?

1 A Yes.

2 Q Every day?

3 A Every other day.

4 Q Did you use any other controlled substances back
5 in August of 2010?

6 MS. WECKERLY: Objection, unless he's going to narrow
7 this with the question as to time of the --

8 MR. SGRO: I said August of 2010, Your Honor.

9 THE COURT: Okay. Overruled.

10 MS. WECKERLY: -- to the dates of the incident.

11 THE COURT: That's all right.

12 BY MR. SGRO:

13 Q In the first part of August of 2010, did you use
14 any other drugs other than marijuana?

15 A No.

16 Q Okay. This -- this shooting happened in the
17 middle of the night, right?

18 A Well, in the early morning.

19 Q Early morning, 3:30, 4 o'clock in the morning,
20 fair?

21 A Yes.

22 Q Was it scary?

23 A Yes, it was.

24 Q And you -- you thought someone might be coming
25 after you too, right?

1 A What you mean I thought somebody would be coming
2 after me?

3 Q When these shots are ringing out, you are making
4 split-second decisions, right?

5 A Yes.

6 Q Do I stay in the bathroom? Do I get out of the
7 bathroom, right? Where are my kids? You've got a million
8 things going through your mind, right?

9 A Yeah, but after my daughter got shot -- after
10 Devonia got shot, it wasn't no question about staying in the
11 bathroom and none of that.

12 Q I'm not talking about after Devonia got shot,
13 okay. I'm talking in the moments -- the moments in time from
14 the time you hear the first gunshot till the time you were
15 face-to-face with Devonia, okay. That's only a few seconds,
16 right?

17 A Yeah.

18 Q So early morning hours, you hear gunshots.
19 You're a little scared, right?

20 A Yes.

21 Q You are trying to be extremely careful what
22 you're hearing, right? You want to see how many gunshots are
23 going on, right? You said you heard footsteps, right?

24 A Yes.

25 Q As people come running down the hallway, in that

1 few seconds of time, would it be fair to say that your heart
2 starts racing a little bit because you just heard gunshots?

3 A No, I mean -- it ain't racing until I saw my
4 daughter run in the bathroom.

5 Q You heard --

6 A Because from the bathroom it sound like flash
7 bang. It sounded like firecrackers. It wasn't even that loud
8 at first.

9 Q I thought you told the jurors that you heard
10 screams too?

11 A I did.

12 Q You heard screams. You heard commotion.
13 Someone's coming over potentially to either sell drugs or buy
14 drugs, right?

15 A Stephanie was coming to bring me some weed.

16 Q All right. That's how you're characterizing it,
17 but it's -- it's that some kind of drug deal is going to
18 happen, right? Right?

19 A Yeah, she was bringing me some weed. So, yes.

20 Q And sometimes things don't go as planned when
21 you do a drug deal, right?

22 A But it was no drug deal.

23 Q Would you agree that sometimes in these
24 transactions things don't go as planned?

25 A Yes, I guess. In life it don't.

1 Q And if you were held up -- if you were held up
2 in the bathroom, you're sitting in the bathroom waiting for
3 the thing, waiting for the event to finish, you might respond
4 instinctively if you saw a bathroom door fly open, right?

5 A What you mean?

6 Q Well, sir, you said to the jury you can't see,
7 unless it's that little corner, when the bathroom door flies
8 open --

9 A When the door came open, my daughter ran in the
10 bathroom right there where I was at.

11 Q Right. You said to the jury you couldn't see if
12 the door was open, other than that little corner, that little
13 section, right, that was open, that gave you a field of vision
14 into your bedroom, right?

15 A The door was shut because I pushed it up when I
16 went in the bathroom.

17 Q I understand. You're in the bathroom. The door
18 is shut, right?

19 A It ain't shut. It's pushed up against the door.

20 Q Was there towels or something hanging from the
21 door?

22 A No.

23 Q So it's closed?

24 A It's not closed. It's just pushed up.

25 Q Okay. So not all the way closed, kind of

1 touching where --

2 A Yes.

3 Q -- where it would almost be closed?

4 A Yes.

5 Q That door flew open after you had heard
6 gunshots, right?

7 A Yes.

8 Q That door flew open after you heard screams,
9 right?

10 A Yeah.

11 Q And that door flew open after you were scared
12 because you heard screams and a gunshot, right? Right?

13 A Yeah, it came open.

14 Q Sir, would you agree that in a situation like
15 that you might act on your instinct to protect yourself?

16 A No, because it wasn't about me. It was about my
17 daughter when she got shot.

18 Q I understand. I really want you to focus --

19 A Because --

20 Q Sir, just bear with me because we're almost
21 done, okay. We're doing a great job not talking over each
22 other. Just bear with me one more minute. I want you to
23 focus only, only on the moment in time that you're sitting in
24 the bathroom as you hear gunshots and you're scared. When
25 that door flies open, would you agree with me that you may

1 have acted instinctively to protect yourself before you see
2 Devonia walk in? You didn't know it was Devonia coming
3 through the door, did you?

4 A Well, yeah, because it happened so quick. She
5 ran in there. Then I seen her.

6 Q I thought you told the jury that you heard the
7 person that you thought was the shooter, like, bumping into
8 walls coming down the hallway; didn't you say that earlier?

9 A He coming down the hallway shooting at my
10 daughter.

11 Q Of course. And that's got you a little stressed
12 out, right? Right?

13 A I didn't know what was going on till after the
14 fact, but --

15 Q Exactly. Exactly. And at that moment in time,
16 when that door flew open, you could have acted just to protect
17 yourself, right?

18 A No, it was about my daughter.

19 MR. SGRO: Court's indulgence, Your Honor. Court's
20 indulgence, Your Honor. Last thing I think. This is --

21 THE CLERK: Is that 278?

22 MR. SGRO: 278, yes, ma'am.

23 THE COURT: That's not admitted.

24 MR. SGRO: Oh.

25 THE COURT: You objected to its admission.

1 MS. WECKERLY: You objected, but I'll agree to it.

2 MR. SGRO: Counsel is screwing me up. We both ask
3 for forgiveness.

4 May I approach, Your Honor? I just wanted --

5 THE COURT: I don't know. It was used to refresh his
6 recollection.

7 MR. SGRO: Yes, sir.

8 THE COURT: It barely did that, and --

9 MR. SGRO: I just -- I don't have it written down if
10 he said it or not.

11 BY MR. SGRO:

12 Q But did you -- did you on the same -- when you
13 wrote the statement about the conversation you had with
14 someone at this 909 number, did you also or do you recall
15 writing down the words Job-Loc and a phone number? Is that
16 your handwriting?

17 A Yeah, this is my handwriting.

18 MR. SGRO: Okay. Pass the witness, Your Honor.

19 MR. LANGFORD: May we approach?

20 THE COURT: Mr. Langford.

21 MR. LANGFORD: May we approach, Your Honor?

22 THE COURT: Certainly.

23 (Bench conference.)

24 MR. LANGFORD: (Inaudible) -- it's 5:25. I've got
25 quite a bit to do with this guy still. This jury is

1 exhausted. Perhaps -- (Inaudible).

2 THE COURT: I'm worried we are not going to get the
3 guy back. That's my problem.

4 MR. DIGIACOMO: There's other issues, too. Here are
5 the other issues, that there are witnesses who are --

6 (Inaudible) -- be here at the same time --
7 (Inaudible).

8 THE COURT: I worry we're not getting him back.
9 That's my problem.

10 MS. WECKERLY: I guess we can't just ask if the jury
11 wants a break or if they can stay a little longer?

12 MR. LANGFORD: I've got, like, 45 minutes to do with
13 this guy, and I really need to know -- (Inaudible) -- I'm just
14 being honest -- (Inaudible).

15 THE COURT: Can you get him back?

16 MR. DIGIACOMO: Oh, he's not going to be a problem
17 being here. It's just it's going to cause us significant
18 issues with witnesses tomorrow.

19 THE COURT: Can you get him back?

20 MS. WECKERLY: Yes, he'll be back.

21 MR. LANGFORD: Okay. Thank you.

22 (Bench conference ends.)

23 THE COURT: All right. Ladies and gentlemen, we're
24 going to take our evening recess now.

25 Oh, wait a minute. I've got to -- oh, this technical

1 stuff.

2 Ladies and gentlemen, we're going to take our evening
3 recess now.

4 During the recess, it's again your duty not to
5 converse among yourselves or with anyone else on any subject
6 connected with this trial or to read, watch or listen to any
7 report of or commentary on the trial from any medium of
8 information including newspapers, television and radio, and
9 you may not form or express an opinion on any subject
10 connected with this case until it is finally submitted to you.

11 We're going to be in recess until 9:30 tomorrow
12 morning. I'll see you then. Have a good evening.

13 (Jury recessed 5:28 p.m.)

14 THE COURT: The record will reflect that the jury has
15 exited the courtroom.

16 Mr. Mayo, I'm sorry about this, but we are going to
17 have to ask you to return. The attorneys need to ask you some
18 more questions, and while I was hoping we could finish it
19 today, the jurors need to get home, and we do too. So we're
20 going to have to recess tonight.

21 When do you want him to come back? Do want him to
22 come back right at 9:30?

23 MS. WECKERLY: 9:30, and I'll just -- if I may, I
24 just want to talk to him briefly about his transportation
25 tomorrow morning.

1 THE COURT: Okay. Well, you can do it either at
2 9:30, or if you have other witnesses, get him back later
3 because we'll accommodate your -- I know you've got some
4 out-of-town witnesses.

5 MS. WECKERLY: Yes, we'll work --

6 THE COURT: You work it out, when it's best for him
7 and best for you, okay?

8 MS. WECKERLY: Okay. Thank you.

9 THE COURT: We'll see you at 9:30 tomorrow morning.
10 Be here a few minutes early, please, everybody.

11 MR. DIGIACOMO: You have nothing else? So if we want
12 to leave something on the table, that's fine?

13 THE COURT: Yes, I have nothing. I have no calendar
14 tomorrow morning. I'd start at 8:30 if it was up to me.

15 (Court recessed for the evening 5:29 p.m.)

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CERTIFICATION

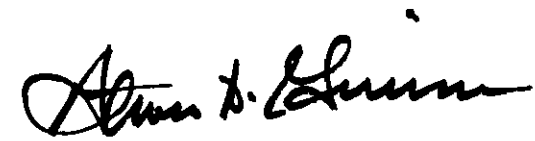
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 11

FRIDAY, FEBRUARY 6, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
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1 **LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 6, 2015, 9:26 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: We're on the record, State vs. Burns and
5 Mason. The record reflect the presence of the defendants,
6 their counsel, the district attorneys, and the absence of the
7 ladies and gentlemen of the jury.

8 Mr. Sgro.

9 MR. SGRO: Thank you, Your Honor. Your Honor, the
10 State and I have agreed by way of stipulation to the
11 admissibility of Proposed Exhibit U. And it is the crime
12 scene investigation report which reflect that Mr. Mayo did, in
13 fact, get administered a gunshot residue test.

14 So to save a little time, instead of calling the CSA,
15 the State's accommodated that request.

16 MS. WECKERLY: That's correct, Your Honor.

17 THE COURT: All right. That will be received.

18 MR. SGRO: May I approach the clerk, Your Honor?

19 THE COURT: Yes. Anything else on the record?

20 MR. ORAM: Yes, Your Honor. The other day you may
21 recall that we approached the bench and the State had all
22 these text messages, and I was asked to read them. That was
23 yesterday. There were text messages and I was asked to read
24 them.

25 One thing that I told the prosecution -- we agree

1 just to move things along will be fine. I understand text
2 messages from my client -- allegedly from my client to Tyler
3 Mitchell is fine, but they -- on those paperworks there's a
4 lot of text messages from Donovan Rowland to Tyler, which I
5 think is hearsay. I've asked the State to remove them. I
6 also recognize that they're busy today. Maybe on Monday we
7 could -- the State and I could at least see if we can come to
8 some agreement how we could remove them out.

9 Or, alternatively, if there was one or two they
10 wanted for some reason, maybe we could address why they want
11 them.

12 MR. DiGIACOMO: There's --

13 THE COURT: Are they hearsay?

14 MR. DiGIACOMO: It's been admitted. They're not
15 hearsay. They're not offered for the truth of the matter
16 asserted. They're just establishing communication.

17 They're like, Hey, how you doing? Fine. I'd like to
18 come by. Okay, come on by. There's no -- there's nothing
19 that is prejudicial in any manner.

20 THE COURT: Sounds pretty innocuous.

21 MR. ORAM: And, Judge, because we -- I wasn't given
22 much time, if the State can get me another copy, I'll go
23 through it this weekend to make sure that I have no difficulty
24 with that. I just wanted to put it on the record.

25 THE COURT: If you have a problem with them, bring it

1 to our attention --

2 MR. ORAM: I will.

3 THE COURT: -- and we'll resolve the issue.

4 (Pause in proceedings.)

5 (Jury reconvened at 9:41 a.m.)

6 THE COURT: State vs. Burns and Mason, the record
7 will reflect the presence of the defendants, their counsel,
8 the district attorneys, all members of the jury.

9 Good morning, ladies and gentlemen. We're ready to
10 proceed. As I understand it, we're going to continue the
11 cross-examination of Mr. Mayo; is that right?

12 MR. SGRO: Yes, sir. And, Your Honor, just for the
13 record, last night I had passed the witness, but the State and
14 I have agreed by way of stipulation to the admission of
15 Defense Exhibit U.

16 THE COURT: And that'll be received.

17 MR. SGRO: Thank you, sir.

18 (Defendant's Exhibit U admitted.)

19 THE COURT: Mr. Mayo.

20 MR. SGRO: And, Your Honor, Defense Exhibit U, for
21 the record, is the crime scene investigation report which
22 reflects the gunshot residue test that was administered to Mr.
23 Mayo. Thank you.

24 THE COURT: All right. Mr. Mayo, you may be seated,
25 you're still under oath, sir.

1 CORNELIUS MAYO, STATE'S WITNESS, PREVIOUSLY SWORN

2 THE WITNESS: Okay.

3 THE COURT: Mr. Langford.

4 MR. LANGFORD: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. LANGFORD:

7 Q Mr. Mayo, how long have you lived in Las Vegas?

8 A All of my life.

9 Q And do you go by the name C-Note?

10 A That's my nickname.

11 Q That's your nickname? How long have you had
12 that nickname?

13 A Since I was, like, 12.

14 Q And everybody calls you C-Note; is that right?

15 A Majority of the people.

16 Q In fact, your kids call you C-Note, don't they?

17 A Sometimes.

18 Q When they're not calling you Dad, I guess, but
19 they'll call you C-Note, right?

20 A That or call me Cornelius.

21 Q They never call you C-Note or they do call you
22 C-Note?

23 A Sometimes they do.

24 Q Okay. And, prior to this incident happening,
25 you were friends with Stephanie Cousins, weren't you?

1 THE COURT: Randy, I think the lady --

2 THE WITNESS: We was associates.

3 THE COURT: Excuse me, but I think the lady in the
4 back needs the --

5 Excuse me.

6 MR. LANGFORD: That's okay, Your Honor.

7 BY MR. LANGFORD:

8 Q Let -- let me ask you the question again, okay,
9 Mr. -- Mr. Mayo?

10 A Yes.

11 Q Prior to this happening, you were friends with
12 Stephanie Cousins, weren't you?

13 A Yes, we was associates.

14 Q Associates?

15 A Yeah.

16 Q Okay. And how long had you been associates of
17 Stephanie Cousins?

18 A Probably since, like, 2003.

19 Q Okay. So at the time of this incident -- I
20 think you told the police, didn't you, right after this
21 happened, that you'd been friends with her, associates with
22 her eight to nine years; is that right?

23 A It was something like seven, eight years,
24 probably.

25 Q Okay. You remember giving a statement to

1 Detective Jensen? You were shown that statement yesterday,
2 weren't you, by Mr. Sgro?

3 A Yeah. Part of it, I guess.

4 MR. LANGFORD: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MR. LANGFORD:

7 Q Sir, I'm showing you -- does that look like a
8 transcript of the statement that you made to Detective Jensen
9 and Detective Wildemann?

10 A Yes, I guess.

11 Q Okay. And do you recall when you gave that
12 statement?

13 A It was that morning, August 7th.

14 Q August the 7th, right?

15 A Oh, yeah.

16 Q And -- and that's what that statement says,
17 doesn't it, sir?

18 A Yeah, say August 7th.

19 Q Okay. And you were asked -- and you were asked
20 by them, "Okay, how long have you known Stephanie?" Right?

21 A Yes.

22 Q And what did you respond?

23 A Say for eight or nine years probably.

24 Q Okay. So back then you thought that you'd
25 actually known her for eight or nine years, right?

1 A Yeah.

2 Q And I think you told the police that she would
3 come to your house; is that right?

4 A She usually come over with her sister.

5 Q Okay.

6 A That's how I really knew her, through her
7 sister.

8 Q All right. How often would you say she came to
9 your house?

10 A I don't know. Probably seen Stephanie probably,
11 like, four times a year or something like that, if she came to
12 my house.

13 Q Okay. Was she also friends with Derecia?

14 A Yes. She knew her. We met her at the same
15 time.

16 Q Okay. Isn't it true also that -- that Derecia
17 would occasionally watch Stephanie's kids?

18 A No, it was her sister kids.

19 Q Her sister -- okay. She'd watch Stephanie's
20 sister's kids?

21 A Yes.

22 Q And how often would that happen?

23 A Well, when we stayed in the same apartments, we
24 usually watch her, like, every day when she went to work.

25 Q Now, you said earlier -- actually, I think

1 you've -- you've said a couple of things, and I want to clear
2 that up. Do you think that when Stephanie called at around
3 3:00 in the morning she was calling to buy weed or sell weed?

4 A She said she had some weed.

5 Q She had weed?

6 A Yeah.

7 Q Okay.

8 MR. LANGFORD: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. LANGFORD:

11 Q Again, this is the same transcript of the
12 statement that you gave police on August the 7th, 2010.
13 Direct your attention down to the bottom of the page.

14 Question was asked by the detective, "But she calls
15 at 3:00; what did she want?"

16 What did you answer?

17 A I say, "I know she wanted some -- some --
18 probably some weed, but she ain't never say on the phone."

19 Q Okay. So then August the 7th you thought she
20 was coming over to buy weed; is that right?

21 A No.

22 Q That's not what that says?

23 A That what it say, but I know what I told you.

24 Q So you're saying that this transcript is
25 incorrect?

1 A Yes, I am.

2 Q How many gunshots did you hear that night?

3 A I don't know. Probably, like, five or six.

4 Q And I need you -- I know it's difficult, but I
5 need you to recall the gunshots; were they in separate groups?

6 A Something like that. I heard two at first and
7 probably a couple seconds later I heard two more. And then,
8 like, two more when he shot my daughter in the bathroom.

9 Q Okay. You say when he shot your daughter in the
10 bathroom; is that right?

11 A Yes, that's what I said.

12 Q In fact, as you relate this event to police
13 officers on August the 7th, that's the same term that you used
14 to them, isn't it, that it was he that shot your daughter?

15 A Yeah. I said he.

16 Q And you never said they shot your daughter?

17 A No, I said he. Because I heard one person.

18 Q In fact, that's true, right, you only heard one
19 person other than Stephanie --

20 A Only heard one person that came into my room.

21 Q Okay. Do you know if Stephanie made it into
22 your house?

23 A I heard a voice, so I assume she came in
24 somewhat.

25 Q Isn't it true that you told the police that you

1 were actually 100 percent sure that Stephanie made it into
2 your house?

3 A Yes, because I heard her voice.

4 Q And you're positive of that, right?

5 A Yes, positive.

6 Q She was inside your house?

7 A Yes.

8 Q Later that same evening, the evening of the
9 shooting, you talked to Stephanie a couple of times, didn't
10 you?

11 A I really can't recall. But if I did talk to
12 her, I didn't give her a chance to say nothing. So I ain't
13 really talk to her.

14 Q Okay. Well, you did talk to her and she did say
15 something to you, right?

16 A I don't recall what day we actually had a
17 conversation. So I can't say what date it was.

18 Q Okay. Let's see if something might refresh your
19 recollection. Do you remember testifying in front of the
20 grand jury?

21 A Yes.

22 Q You were asked about that testimony yesterday,
23 weren't you?

24 A Yes.

25 Q Okay.

1 MR. LANGFORD: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. LANGFORD:

4 Q Showing you your grand jury testimony. Do you
5 recall testifying to the grand jury that, in fact, she had
6 told you a couple of things about the shooting?

7 A She, like, what she actually said, I can't
8 recall what she said.

9 Q Directing your attention, then, to page 28, line
10 1, "Answer: What did you say she said when you talked with
11 her on the phone?"

12 A Where -- you got a line where?

13 Q It's over here. Save money, they put four pages
14 on one sheet, so it gets confusing. But it's page 28,
15 correct?

16 A Yeah.

17 Q Okay. Line 1.

18 A Say, "She -- she was just trying to say, like, I
19 love you guys, you know I wouldn't do nothing like that to you
20 all."

21 Q And this was seven weeks, you testified in front
22 of the grand jury seven weeks after the shooting; is that
23 right?

24 A Yes, if that's what -- yeah, around that time.

25 Q So you would probably have a better recollection

1 of what Stephanie said to you then than you would now;
2 wouldn't you say that's true?

3 A Yeah, I should.

4 Q Then she's saying, "You know I wouldn't do
5 nothing like that to you all."

6 A Yeah.

7 Q In fact, when Stephanie comes into your house,
8 of which you're 100 percent sure, she also was screaming,
9 wasn't she?

10 A She wasn't screaming, but...

11 Q Do you recall testifying to the grand jury that,
12 in fact, she was screaming?

13 A For me to hear, she had to be screaming or
14 talking loud. But she wasn't talking.

15 Q Do you recall testifying to the grand jury that
16 she was screaming, too?

17 A It wasn't, like, screaming, like she was
18 screaming.

19 MR. LANGFORD: May I approach?

20 THE COURT: Yes.

21 THE WITNESS: Because my choice of words, I should
22 have used different words. But she wasn't screaming.

23 BY MR. LANGFORD:

24 Q Showing you now grand jury transcript page 20,
25 line 12. That's your answer to the grand jury, correct?

1 A And it say, "I guess she was kind of scream --
2 screaming, too."

3 Q That's what you said then, right?

4 A Said -- yes, "I guess."

5 Q You actually recognized her voice, as well,
6 didn't you?

7 A Yeah.

8 Q So when you first relate this incident to the
9 police, you only relate the fact that as far as you know there
10 was only one person that was shooting the gun, right?

11 A Yeah.

12 MR. LANGFORD: I have no further questions, Your
13 Honor.

14 THE COURT: Redirect?

15 MS. WECKERLY: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q Mr. Mayo, on the -- in the time before Stephanie
19 comes over you talked about how you heard a phone ring?

20 A Yes.

21 Q Were you the one that spoke to her that evening
22 or was that Derecia?

23 A That was Derecia.

24 Q And later, when you said that you heard her
25 voice and you heard screaming, or you said kind of like I

1 guess she was screaming, did she sound truly in fear to you?

2 A No.

3 Q Why is that? What did it sound like?

4 A Just sound like, I don't know -- I don't know
5 how to say it, but sounded like she was acting.

6 Q Okay. And after the police got there, did you
7 give them consent to search the apartment for evidence?

8 A Yeah.

9 Q Sir, do -- Mr. Sgro yesterday asked you about
10 whether or not you spoke to a Sergeant Shoemaker; do you
11 remember those questions?

12 A Yes.

13 Q Do you have any idea who he is or what he looks
14 like?

15 A No.

16 Q And you said the one detective that you remember
17 is Bunting?

18 A Yes.

19 Q What does he look like?

20 A Like a taller, slim, white dude.

21 Q After this happened, after this event happened,
22 you were able to -- well, after this happened you noticed some
23 items were actually missing from the apartment?

24 A Yes. That was in my drawer.

25 Q Okay. And some of it was cash?

1 A Yes.

2 Q Cigarettes and some marijuana?

3 A Yes.

4 Q Okay. Anything else to your knowledge that was
5 missing?

6 A No.

7 Q Yesterday Mr. Sgro asked you about the defense
8 investigator, Mr. Eiffel [phonetic] I think he said his name
9 was?

10 A Yes.

11 Q Do you recall when it was that you first spoke
12 to him?

13 A Think it was, like, in the -- either in, like,
14 September or October of last year.

15 Q Of 2014?

16 A Yes.

17 Q And where -- how did the meeting get set up?

18 A He showed up at my girlfriend apartment.

19 Q Okay. And did he tell you who he was or what
20 did he say?

21 A No, he just said, I'm a investigator for the
22 case. He never said if he was a -- for the DA or the defense.
23 He just said he was an investigator.

24 Q Did you -- did he show you a badge or anything?

25 A No.

1 Q You agreed to speak with him?

2 A Yes.

3 Q To your knowledge, did he record the interview
4 with you?

5 A No. They didn't have no recorder.

6 Q Who else was with him?

7 A It was a female. I don't know her name.

8 Q Okay. Was she -- do you remember her race,
9 white, black, Hispanic?

10 A She was white. White short lady.

11 Q Okay. And did the interview take place in your
12 -- your house?

13 A Yes.

14 Q Like in a kitchen or living room?

15 A Like, in the kitchen area.

16 Q Okay. And did -- well, I guess, let me ask you
17 this. How long did that interview take place? Or take in
18 time, I guess?

19 A Probably, like, 20 minutes.

20 Q Okay. Did he show you any pictures or anything?

21 A Any pictures? No.

22 Q Okay. What -- do you remember what he was
23 asking you?

24 A Not word for word, like, but he just asked me,
25 like, if I know -- how I know Stephanie and all this. And he

1 asked me something about a gun, too, though. I know that.

2 Q Okay. And was he asking you if you ever owned a
3 gun?

4 A Well, he asked me if I had a gun when this
5 happened.

6 Q Okay. And I -- and just let's go over it again.
7 Did you have a gun on the night of the 6th and to the 7th?

8 A No.

9 Q Did he ask you about whether or not you
10 contacted your family or your friends after this incident?

11 A I'm not for sure. Can't remember.

12 Q And I believe your recollection is you called
13 911 right after this happened?

14 A Yes.

15 Q Thank you very much, sir.

16 THE COURT: Anything further, Mr. Sgro?

17 MR. SGRO: I do, Your Honor. I just need one second,
18 please.

19 May I approach the clerk, Your Honor?

20 THE COURT: Yes.

21 RECROSS-EXAMINATION

22 BY MR. SGRO:

23 Q Good morning, sir.

24 A Good morning.

25 Q As you were walking in, I was telling the jury

1 we have a piece of evidence that was agreed to. The gunshot
2 residue test.

3 MR. SGRO: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 BY MR. SGRO:

6 Q Do you remember when I asked you yesterday about
7 gunshot residue test and you were pretty adamant that no
8 gunshot residue test was ever administered to you; do you
9 remember we talked about this for a minute yesterday?

10 A Yes.

11 Q Okay. Does looking at Defense Exhibit U refresh
12 your memory about whether or not a gunshot residue test was
13 administered to you?

14 A I don't remember, like, that whole night was
15 blurry for me. So.

16 Q So, no?

17 A If it did happen, I don't recall it.

18 Q Okay.

19 MR. SGRO: May I approach again?

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q Your taped interview with the police, we talked
23 about this for a minute yesterday, started at 6:21 a.m.,
24 right?

25 A Yes, I guess.

1 Q And then according to this statement, it was
2 over at 6:38, right?

3 A I guess.

4 Q Okay. Well, you just told Ms. Weckerly -- you
5 know the woman right here is -- her name's Ms. Weckerly,
6 right?

7 A Yes.

8 Q Okay. You just told Ms. Weckerly the timing of
9 the interview with our investigator, right, it was about 20 or
10 25 minutes; is that what you just said?

11 A Yeah, about 20 minutes.

12 Q Okay. The police asked you a bunch of questions
13 all about the same stuff we talked about today, right?

14 A Yes.

15 Q And -- and their interview was 17 minutes,
16 right?

17 A Yes.

18 Q If I understand correctly, you don't remember a
19 lot of questions that Eiffel, our investigator, asked you; is
20 that right?

21 A No, not all of them.

22 Q But you do remember speaking to him about a gun?

23 A Yes. He asked me about a gun.

24 Q Okay. Now, you were asked a question whether or
25 not Eiffel told you that he worked for the DA or for the

1 defense; remember that?

2 A Yes.

3 Q The answers to questions you're asked in this
4 case should always be true, right, regardless of who's asking?

5 A Yes.

6 Q Would you agree with that?

7 A Yes.

8 Q And in this case you've been interviewed by --
9 remember all the people we talked about yesterday, the police,
10 all the different officers, CPS, and our investigator, just to
11 name some, right?

12 A Yes.

13 Q Would you agree with me, sir, that regardless of
14 who's asking questions, you should tell the truth?

15 A Yes.

16 Q Can you -- strike that. You have spent a couple
17 visits with Detective Bunting. He's the one police officer
18 you remember, right?

19 A Yes.

20 Q And -- and how tall are you, sir?

21 A 6'4".

22 Q And -- and you described Detective Bunting as
23 tall; how tall is he? Is he your height?

24 A Yeah, like, close to it, I think.

25 Q Okay. And he's slim?

1 A Last time I seen him, he was.

2 Q Would you care -- would you describe yourself as
3 someone that's stocky?

4 A Yeah, little bit.

5 Q Okay. So he's about your height, but he's -- he
6 weighs less than you?

7 A Yes.

8 Q Does -- what -- what color hair does he have?

9 A Don't recall.

10 Q Does he wear glasses?

11 A Don't recall.

12 Q Does he have -- you have a goatee, right?

13 A Yes.

14 Q Does he have any kind of facial hair?

15 A Back then I don't think he did.

16 Q Okay. Do you remember anything remarkable about
17 him? For example, you have some tattoos, right?

18 A Yes.

19 Q Did he have tattoos?

20 A If he did, I ain't seen them.

21 Q Okay. So other than approximately your height,
22 approximately 6'4", and I get it, it was at the time -- at the
23 time he -- he was slim, he weighed a lot less than you. Can
24 -- are there any other descriptors you can give the jury about
25 the one police officer you -- you remember?

1 A No. Because I only seen him a couple of times
2 and --

3 Q Okay.

4 A -- I wasn't trying to be his friend or nothing.
5 So.

6 Q I understand. But this was someone who was
7 trying to help you, right?

8 A If that's what you want me to say.

9 Q Okay. And I take it from that answer you had
10 some -- you've had some issues with the police in this case,
11 right? Gotten into some arguments with them?

12 A Yeah.

13 Q You don't think they handled things correctly?

14 A No.

15 Q And you also have gotten into some arguments
16 with the CPS folks, right, because of the way they handle
17 certain things, right?

18 A Yep.

19 Q And you got into some arguments with people at
20 the hospital, right?

21 A No.

22 Q Now, the one thing I want -- that you just told
23 Ms. Weckerly, you were asked some questions about Stephanie's
24 scream. And -- and I want to just direct your attention to
25 the noise that Stephanie made. Okay. Did you just use the

1 phrase, It sounded like she was acting?

2 A Yes.

3 Q Did you ever tell Devonian that Stephanie
4 Cousins, in your opinion, "Sounded like she was acting"?

5 A No.

6 MR. SGRO: Nothing else, Your Honor.

7 THE COURT: Anything further, Mr. Langford?

8 MR. LANGFORD: Yes, Your Honor, please.

9 RECROSS-EXAMINATION

10 BY MR. LANGFORD:

11 Q I want to talk a little bit more about that
12 scream, as well. Okay. You testified in front of the grand
13 jury seven weeks after the incident occurred, correct?

14 A Yes.

15 Q You testified under oath, you promised to tell
16 the truth, correct?

17 A Yes.

18 Q You were telling the truth at the grand jury,
19 correct?

20 A Far as my knowledge, yes.

21 Q You were asked by the prosecutor about what was
22 taking place immediately prior to gunshots; do you remember
23 that?

24 A Yeah. I remember.

25 Q The prosecutor asked you what you heard. You

1 recall what your answer was?

2 I guess I shouldn't say that. I guess I should say
3 the prosecutor asked you the question, "So you hear kind of a
4 loud noise or said a commotion?" Question -- that's a
5 question.

6 Do you remember what your response was?

7 A No, not right offhand.

8 MR. LANGFORD: May I approach?

9 THE COURT: Yes.

10 BY MR. LANGFORD:

11 Q Does that refresh your recollection about what
12 your answer was?

13 A Yes.

14 Q Okay. So you hear a loud noise. And then he
15 asked you about your girlfriend and her scream. You hear her
16 scream; is that right?

17 A Yeah. She screamed right before she called my
18 name.

19 Q Okay. Well, prosecutor asked you, "Was she
20 saying words or just screaming?"

21 And what did you answer?

22 A You want me to read it?

23 Q Well, do you remember what you said?

24 A No.

25 Q All right.

1 A I could read it to you.

2 Q Then read it to me.

3 A "It was even like no scream like that, but like
4 a -- but it was a scream. That's the only way I could
5 describe it."

6 Q Okay. Then he asked you, "Did you hear two
7 gunshots after that?"

8 And what did you say?

9 A Say, "Yes."

10 Q Okay. "What did you hear after that?"

11 A It say, "That's when I hear Stephanie Cousins,
12 like, I guess was kind of screaming, too."

13 Q She was kind of screaming, too, correct?

14 A Yes, that's what I said.

15 Q That's what you said. You were -- she was
16 screaming, too, like Derecia was screaming, correct?

17 A Not the same thing, but yeah, something similar.

18 MR. LANGFORD: Nothing further, Your Honor.

19 THE COURT: All right. Mr. Mayo, thank you for being
20 a witness. You'll be excused, sir.

21 May he be permanently excused?

22 MR. DiGIACOMO: He may.

23 THE COURT: All right.

24 MR. DiGIACOMO: State calls Ray MacDonald. I doubt
25 Mr. MacDonald's going to be in the box.

1 THE COURT: No.

2 RAY MACDONALD, STATE'S WITNESS, SWORN

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

5 THE WITNESS: Raymond MacDonald, R-A-Y-M-O-N-D
6 M-A-C-D-O-N-A-L-D.

7 MR. DiGIACOMO: May I inquire, Judge?

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q Sir, how are you employed?

12 A I work for T-Mobile, the wireless phone company.

13 Q In what capacity?

14 A I'm a senior manager with a group called the Law
15 Enforcement Relationship Group. We're part of the legal
16 department. And our group is responsible for all subpoena and
17 court order complaints that comes into the company. We handle
18 the entire country out of our office. We -- we do all --
19 subpoenas come in, court orders come in, we review that
20 information, send it back out to the requesting parties.
21 Could be law enforcement, can be courts, could be attorneys,
22 can be individuals.

23 We do all the emergency work on behalf of the
24 company. 911 public safety answering points. We'll call, ask
25 who is the subscriber of the phone, a location of the phone,

1 an address for the subscriber. We -- we do all the technical
2 assistance for law enforcement, all the wire taps. And we
3 attend conferences and hold conferences and do presentations
4 and training for law enforcement. And we're also the
5 authorized custodian of records for T-Mobile, and as such
6 testify in court on their behalf.

7 Q Based upon your -- your job and your training
8 and experience, do you have an underlying knowledge of
9 essentially how the T-Mobile cell phone technology works and
10 what information gets [indiscernible] to various records of
11 T-Mobile you provide pursuant to court orders, subpoenas, or
12 search warrants?

13 A Yes.

14 Q Can you explain briefly to the ladies and
15 gentlemen of the jury how a T-Mobile cell phone works?

16 A Well, when you turn your -- your phone on, it
17 will start communicating with a network via cell towers, or
18 cell sites. And what happens when the signal goes to the cell
19 site from the phone, there's a -- an authentication process
20 that occurs, and the network is going to say does this signal
21 belong on our network? And if it's yes, it's allowed on the
22 network.

23 It's very similar to when you log onto your computer,
24 it'll ask for your password. Once you put your password in,
25 you're on the computer. Once it comes into the cell tower,

1 cell site, and goes into the -- it travels into a switch, and
2 then the switch decides what to do with that signal at the
3 time or the call at the time.

4 It will then push it out to the public telephone
5 network at which point it -- that decides, you know, what
6 company is this call going to and is it a landline call or is
7 it a cell phone call. If it's a landline call, it then pushes
8 it out to -- through the landline network and to whatever
9 company's switches is going to be on the receiving end. If
10 it's another cell phone company, it will go back out to their
11 switches, through their cell sites, and back out to the
12 receiving phone.

13 Q I'm going to limit my questions basically to --
14 to cell phones. Does a cell phone, is there some correlation
15 between the cell phone and the location at the tower that it
16 ultimately connects to?

17 A Well, the phone has to be within a certain area
18 of the cell site in order to be able to get onto the cell site
19 itself.

20 Q And is there certain variables associated with
21 whether or not a phone connects to a -- a particular tower?

22 A Yes. There are a lot of things that can affect
23 the -- the signal between the phone and the tower. A lot of
24 those variables are, to a lesser extent could be weather, it
25 can be how many towers are in the area, the proximity or the

1 distance between the towers and the phone. It can be how much
2 voice traffic or traffic is coming through the towers at any
3 one time. It can be the area, topography. You know, are you
4 down in a city, are you in a more open area?

5 If you're in a city, like, say, downtown New York
6 City, you're going to only be down to a few city blocks. The
7 reason for that, there's a lot more voice traffic going on.
8 Our engineering is going to put a lot more towers into that
9 area. The antennas are going to be tilted in between the
10 urban canyons, the buildings, in order to capture the traffic
11 coming in between the buildings. The power in those towers
12 are going to be turned down so they don't interfere with each
13 other, and so they're going to cover a smaller distance,
14 because you have a lot more antennas.

15 As you move out to a -- more of an average area,
16 residential, less crowded area, you could be a mile, two
17 miles, maybe three from the tower. If you're on some of the
18 highways, like down in Texas, there aren't as many towers, so
19 the signal could go out for a few more miles, five miles, six
20 miles. Same in a desert. If there's only a single tower in a
21 certain area, they're going to -- engineering's going to put
22 the power on the -- on the cell site up higher in order to
23 cover a larger area, because they don't need as many towers,
24 because there's not as many people out there, but they still
25 want a good area of the coverage. So on an average, one to

1 three miles coverage for a cell site.

2 Q And then a cell phone, when it goes to connect
3 to a tower or a tower to a cell phone, what is the cell phone
4 looking for? It is the closest tower, is it the tower with
5 most power? How is it that the phone winds up picking a
6 particular tower?

7 A Well, when your phone is on, it's constantly
8 communicating with the network. And it's -- communicates with
9 more than one tower at a time. So when a call is coming in or
10 you're going to make a call, the phone already knows what
11 tower is going to -- it's going to go to.

12 Typically, usually, normally it's going to go to the
13 closest tower. However, that may not always be the case.
14 It'll go to the tower that's sending the strongest signal at
15 the time, the -- the tower that can best handle the signal at
16 the time. For instance, if you're in the courtroom and
17 closest tower might be on the other side of this wall a short
18 distance away, you may or may not be able to reach that
19 because of the building, cement, metal or whatever. There may
20 be a tower on this side, if there was a big window on this
21 side a little further away, your chances are more likely
22 you're going to hit that tower, because there's less
23 resistance for the signal to travel through.

24 Q Now, you've said that a phone when it's turned
25 on that's on a -- it's a T-Mobile phone, it is always going to

1 be connected to the network. Does T-Mobile keep records of,
2 you know, every time a phone is on, or do you keep records
3 solely of calls to and from particular phones?

4 A Well, when the phone's on, it -- it registers,
5 you know, in the network on the switches. However, we don't
6 maintain those records. The company doesn't keep what they
7 call registration records. It would just be too cumbersome.
8 But it does keep the activity of -- of a particular phone,
9 calls coming into the phone, calls that are going out to the
10 phone, text messaging, data sessions, things like that.

11 Q And are there various ways at T-Mobile that the
12 records can actually be -- or that are -- are there different
13 ways that the records are stored at T-Mobile?

14 A Yeah. They're stored in a digital format
15 electronically until which time the company needs to access
16 those records for any particular reason. What happens when a
17 call travels through the network, on the switches there are
18 billing gateways, and those billing gateways capture the calls
19 for billing purposes and send -- sends that information to the
20 billing computers where it sits in those computers till which
21 time the company needs them.

22 There are other records that are captured and sent to
23 other servers so engineering can monitor the network, watch
24 the network, do trouble shooting, make sure everything is
25 working the way that it should be.

1 Q And have you been requested to come here to
2 authenticate some records that were collected back in 2010
3 from T-Mobile?

4 A Yes.

5 Q And have you had a chance to review those
6 records?

7 A Yes.

8 MR. DiGIACOMO: May I approach, Judge?

9 THE COURT: Yes.

10 BY MR. DiGIACOMO:

11 Q I'm going to first start with State's Proposed
12 Exhibit No. 305. Do you recognize that document?

13 A Yes, I do.

14 Q And what is it?

15 A These are what we refer to, I refer to as the
16 corresponding addresses to our T-Mobile cell towers. And
17 these would be for Nevada.

18 Q Okay. So these are the towers that are in
19 Nevada. And it is a business record kept in the ordinary
20 course of business of T-Mobile and it appears to be a true,
21 fair and accurate copy?

22 A Yes. Yes, these are business records, yes.

23 MR. DiGIACOMO: Move to admit 305.

24 MR. SGRO: No objection.

25 MR. ORAM: No objection, Your Honor.

1 THE COURT: They're received.

2 (State's Exhibit 305 admitted.)

3 BY MR. DiGIACOMO:

4 Q Now I want to show you what's been marked as
5 State's Proposed Exhibit No. 299.

6 A This is a -- what we refer to as a subscriber
7 page. This is from a system that was built in-house for us.
8 And when we get a request, this is the first system that we
9 would go to. We would put the information in, 10-digit phone
10 number, and it would bring up that information. We would
11 search for the period of time that's been requested, and then
12 we would print this information out. And it comes in a
13 templated format. That's how we -- we print it out. And it
14 has certain information as far as the phone number of the
15 subscriber, other information of the subscriber, name,
16 address, etcetera, the account number.

17 Q And obviously that's a -- well, I mean, not
18 obviously, but that is a business record kept in the ordinary
19 course of business?

20 A It is, yes.

21 Q And it's a true, fair and accurate copy of the
22 subscriber record for that particular phone?

23 A Yes.

24 MR. DiGIACOMO: Move to admit 299.

25 MR. ORAM: No objection.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 77424

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions