

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Supreme Court Case No. 77424

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**APPELLANT'S APPENDIX VOLUME 7 OF 12 PAGES 1352-1589**

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**INDEX Vol 7**  
**DAVID BURNS, CASE NO. 77424**

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
Burns Exhibits in Support of Supp. Petition: 11/27/17	12	2440-2441
<i>Supp 001-002</i> District Court Minutes on 2/9/15	12	2442-2443
<i>Supp 003-004</i> Stip/Order Waiving Sep. Penalty Hrg	12	2444-2445
<i>Supp 005-059</i> Cornelius Lee Mayo Justice Court case	12	2446-2500
<i>Supp 060-067</i> Cornelius Lee Mayo Guilty Plea Agr.	12	2501-2508
<i>Supp 068-070</i> Cornelius Lee Mayo Judg. Of Conviction	12	2509-2511
<i>Supp 071-072</i> Order: Rev. Probation/Amended Judg.	12	2512-2513
Burns Motion (Disclosure-Materials/Facts), Exhs: 10/9/14	1	0018-0221
Burns Petition for Writ of Habeas Corpus (PC): 10/13/15	11	2284-2306
Burns Reply to State Response to Supp. To Petition (HC)	12	2545-2555
Burns Request: Evidentiary Hrg (H.C.): 10/15/15	11	2306-2312
Burns Supp. Petition: Writ of Habeas Corpus: 11/27/17	11	2394-2439
Findings of Fact, Conclusions of Law, Order: 3/21/16	11	2380-2388
Findings of Fact, Conclusions of Law, Order: 10/25/18	12	2623-2650
Indictment (Superceding): 10/13/10	1	0001-0008
Instructions to the Jury: 2/17/15	10	2199-2256
Judgment of Conviction (Jury Trial): 5/5/15	11	2281-2283
Notice of Appeal: 11/8/18	12	2651-2652
Notice of Entry of Findings of Fact, Conclusions of Law	12	2622
NvSC 2/17/17 Cert./Judgment (reversal and remand)	11	2389-2393
Slip Sheet – Defendant’s Sentencing Memorandum	11	2273
State Notice of Intent to Seek Death Penalty: 10/28/10	1	0009-0012
State Notice of Witnesses: 9/6/13	1	0013-0017
State Response: Petition (HC), M/Appt Counsel: 1/26/16	11	2313-2379
State Response to Supp to Petition (HC): 1/16/18	12	2514-2544
State Second Supp. Notice of Witnesses: 10/15/14	1	0222-0226
State Third Supp. Notice of Witnesses: 1/12/15	2	0323-0327
Stipulation/Order Waiving Separate Penalty Hrg: 2/9/15	8	1723-1724
Transcript: 10/14/14 Calendar Call; Defendant Motions	2	0227-0281

Transcript: 10/20/14 All Pending Motions	2	0282-0322
Transcript: 1/27/15 Jury Trial (Day 6)	2	0328-0454
Transcript: 1/27/15 Jury Trial (Day 6) continued	3	0455-0545
Transcript: 1/28/15 Jury Trial (Day 7)	3	0546-0660
Transcript: 1/29/15 Jury Trial (Day 8)	3	0661-0685
Transcript: 1/29/15 Jury Trial (Day 8) continued	4	0686-0792
Transcript: 1/30/15 Jury Trial (Day 9)	4	0793-0909
Transcript: 1/30/15 Jury Trial (Day 9) continued	5	0910-1011
Transcript: 2/5/15 Jury Trial (Day 10)	5	1012-1136
Transcript: 2/5/15 Jury Trial (Day 10) continued	6	1137-1315
Transcript: 2/6/15 Jury Trial (Day 11)	6	1316-1351
Transcript: 2/6/15 Jury Trial (Day 11) continued	7	1352-1525
Transcript: 2/9/15 Jury Trial (Day 12)	7	1526-1589
Transcript: 2/9/15 Jury Trial (Day 12) continued	8	1590-1722
Transcript: 2/10/15 Jury Trial (Day 13)	8	1725-1804
Transcript: 2/10/15 Jury Trial (Day 13) continued	9	1805-1899
Transcript: 2/11/15 Jury Trial (Day 14)	9	1900-2032
Transcript: 2/11/15 Jury Trial (Day 14) continued	10	2033-2101
Transcript: 2/12/15 Jury Trial (Day 15)	10	2102-2198
Transcript: 2/17/15 Jury Trial (Day 16) Verdict	11	2257-2268
Transcript: 4/23/15 Sentencing	11	2274-2280
Transcript: 4/17/18 Hearing Argument	12	2556-2565
Transcript: 9/20/18 Evidentiary Hearing	12	2566-2621
Verdict: 2/17/15	11	2269-2272

1 MR. SGRO: No objection.

2 THE COURT: It'll be received.

3 (State's Exhibit 299 admitted.)

4 BY MR. DiGIACOMO:

5 Q Can you tell me what the phone number of the --  
6 of the phone that is being requested?

7 A Yeah. It's right at the top and it's right  
8 after the word "MSISDN." And basically that's just a real --  
9 a fancy name for phone number. The number is 702-927-8742.

10 Q And who is the registered -- or the billing  
11 account name?

12 A Billing account name is Winifred F. Hill.

13 Q And can you tell from this document whether or  
14 not it is a prepaid or a postpaid phone?

15 A It's a postpaid phone, which is a monthly phone.  
16 It's billed monthly to the address.

17 MR. ORAM: Counsel, I'm sorry, could you give me the  
18 last four digits of that? Is it 8742?

19 MR. DiGIACOMO: 8742.

20 MR. ORAM: Sorry.

21 BY MR. DiGIACOMO:

22 Q And -- and I'm sorry, you were answering that  
23 it's a postpaid?

24 A It is.

25 Q So this is like somebody gets a normal bill at

1 the end of the month?

2 A Yes. Yes.

3 Q Now I'm going to show you State's Proposed  
4 Exhibit 303 and ask you if you recognize what that document  
5 is?

6 A I do. These are records, billing records which  
7 include cell site records. When we get a request for cell  
8 site information, at the -- at the time back in 2010, this is  
9 the application that we would go to in order to pull that  
10 information out, cell site information, and that's what this  
11 record is for.

12 Q And is that the corresponding cell site records  
13 for the 927-8742 number?

14 A It is. It's -- the number matches the  
15 subscriber number for the -- for these records.

16 Q And they're true, fair and accurate copies,  
17 they're business records of T-Mobile?

18 A Yeah. The only thing that this isn't going to  
19 pick up will be text messaging. And the reason for that is  
20 when we get a request for cell site information, when our --  
21 our people at our office run it, they run only voice calls,  
22 because it's the voice calls that generate the cell site  
23 information. Our -- our records don't capture the cell site  
24 information for text messaging, so they won't be on here.

25 Q So these are -- are voice calls that establish

1 that there's cell tower communication of those voice calls?

2 A Yes. Yes.

3 Q And because they're -- text messages don't  
4 actually capture the cell tower information, that wouldn't be  
5 contained in this document?

6 A Right. They don't run them with the text  
7 messaging for that reason.

8 MR. DiGIACOMO: Move to admit 303.

9 MR. ORAM: No objection.

10 MR. SGRO: No objection.

11 THE COURT: It'll be received.

12 (State's Exhibit 303 admitted.)

13 BY MR. DiGIACOMO:

14 Q Set this one aside for just a moment. 300. Do  
15 you recognize what's been marked as State's Proposed Exhibit  
16 300?

17 A I do.

18 Q And what is that?

19 A Again, this is a subscriber page. An  
20 in-house-built system for us to utilize. And again, it has  
21 certain information, the subscriber phone number, account  
22 information, name. In this case, does not have the address.  
23 And this is a prepaid phone.

24 Q Okay. And is this the subscriber information  
25 for 512-629-0041?

1           A     It says, "Billing account name Dequita None  
2 Clark [phonetic]." And the "none" is a placeholder. We see  
3 that on the records quite often with the prepaid.

4           Q     What I was asking is it for the phone number  
5 512-629 --

6           A     Oh, oh, I'm sorry, the phone number. Okay.

7           Q     -- 0041?

8           A     512-629-0041, yes.

9           Q     Okay. And once again that's a business record?

10          A     Yes, it is.

11          Q     And it appears to be a true, fair and accurate  
12 copy?

13          A     Yes.

14          MR. DiGIACOMO: Move to admit 300.

15          MR. ORAM: No objection.

16          MR. SGRO: No objection.

17          THE COURT: Be received.

18                   (State's Exhibit 300 admitted.)

19 BY MR. DiGIACOMO:

20          Q     And you sort of answered my question. The  
21 billing name is a Dequita Clark?

22          A     Yes.

23          Q     And then this is a prepaid phone?

24          A     It is.

25          Q     Based upon the fact that it's prepaid, is there

1 any -- well, let me -- I guess I should ask you when someone  
2 has a postpaid customer, is there a check to make sure this is  
3 actually the person who's purchasing the phone so that they're  
4 getting their cell phones on a kind of credit, whether it gets  
5 paid?

6 A There is. Because the company needs to verify  
7 that information. So they have to -- when they are opening an  
8 account, they would have to produce a -- a picture ID,  
9 typically a government type, like a drivers license. Because  
10 it -- they're going to get billed each month. It's a credit  
11 situation that the company wants to make sure that they are  
12 the person who they are that's going to be paying the bill and  
13 it's going to go to that address. Where --

14 Q You're about to go to where. On a prepaid, is  
15 it different?

16 A On a prepaid it's a little different. Because  
17 there are no bills that go to the house or to an address. The  
18 company has no business need for that information. So there's  
19 really no checking on a person that's opening the account.  
20 You can walk into the store, you can -- you can put whatever  
21 name you want down. We see all kinds. Or no information at  
22 all. And a lot of times you could just buy a prepackaged  
23 phone with a SIM card and walk out the door with it with --  
24 with no information at all. Just, again, the company doesn't  
25 need that information because there's no credit checks done,

1 there's no billing sent to the house. Everything is paid for  
2 up front for the prepay.

3 Q I'm going to show you State's Exhibit --  
4 Proposed Exhibit 304. Is that the corresponding cell site  
5 information for the 512-629-0041?

6 A Yes, it is.

7 Q Let me ask you a question, then, about the two  
8 separate cell site informations, 303 and 304. On those cell  
9 site, there's a date and time of calls being placed and calls  
10 being terminated. The date and time that's on there, is it  
11 correlated to any information as to -- so the -- so whether or  
12 not we know it's an accurate time? Do you understand my  
13 question?

14 A No.

15 Q All right. Let me ask it this --

16 THE COURT: I don't understand it.

17 MR. DiGIACOMO: I know. It was a terrible question.

18 BY MR. DiGIACOMO:

19 Q Let me ask it this way. The date and time, how  
20 is the date and time generated on these documents?

21 A These documents, the date and time is the --  
22 obviously the date -- the date and time of the activity of the  
23 phone. And this information is pulled out of a server that  
24 gets the time stamping from the switch.

25 Q Okay. So if the switch is located in Las Vegas,

1 Nevada, the time on the record should be local time, Las  
2 Vegas, Nevada?

3 A Yes.

4 Q So now I'm going to ask you about State's  
5 Proposed Exhibit No. 324. Do you recognize that document?

6 A Yes, I do.

7 Q And are these also records of T-Mobile that are  
8 kept in the ordinary course of business?

9 A Yes, they are.

10 Q And they're true, fair and accurate records?

11 A Yes.

12 MR. DiGIACOMO: Move to admit 324.

13 MR. ORAM: No objection.

14 MR. SGRO: No objection.

15 THE COURT: Received.

16 (State's Exhibit 324 admitted.)

17 BY MR. DiGIACOMO:

18 Q Now, 324, there's actually a copy of what  
19 appears to be 300 as page 2, and then there's pages 3 through  
20 27, which appears to be some sort of phone records. Can you  
21 explain to the ladies and gentlemen of the jury what 324 is?

22 A This is an application, we have a lot of  
23 applications. But this is an application that we utilize.  
24 Again, this was a system built in-house for us in order to  
25 pull subscriber information and also call detail information.

1 And so these are what we -- we call billing records, call  
2 detail records. And it would show the subscriber phone  
3 number, date, time of the activity and the type of activity at  
4 the bottom.

5 There's a legend or a key down there that will show  
6 you if you see nothing next to the calls, that just means just  
7 a regular old call. Sometimes you might see things, like you  
8 see a lot of D's on here. Those are text messages.

9 Q Now, on the time stamp that is on that record,  
10 is that time stamp different than is going to be on -- I guess  
11 I should back up.

12 This is for 512-629-0041; is that correct?

13 A Yes.

14 Q Okay. And then is the time record that is  
15 contained on State's Exhibit No. 324 going to be different  
16 than the time record that's on State's Exhibit No. 304?

17 A Well, these times, call times for prepay and  
18 SMS, which is text messaging, and it says right on here are in  
19 Pacific time. And this, to go a little further, these records  
20 are back in August and -- of 2010. And during that time,  
21 these -- these records are time stamped when they go to  
22 billing. And the billing computers for prepay are on the West  
23 Coast. So that's why they get time stamped on Pacific time.

24 However, one other thing is in the summertime, like  
25 in August, daylight saving time, there were certain years that

1 the records -- or the billing computers, when they did time  
2 stamping, didn't compensate for daylight saving time.

3 Q Okay. So daylight savings time, and this is the  
4 first week in November or October, somewhere around there,  
5 fall, you fall back. So you go back an hour. So if on these  
6 records, for example, if we go to August 7th of 2010, and only  
7 because I remember off the top of my head that there's going  
8 to be a record on here at 3:49 in the morning -- oh, sorry,  
9 3:29 in the morning --

10 A 3:29.

11 Q -- that call actually took place at 4:29 in the  
12 morning?

13 A And I have to do math.

14 Q You'd add a hour?

15 A Yeah. So it would be an hour ahead here in Las  
16 Vegas. Yes.

17 Q So -- so these records are going to be an hour  
18 off for the call detail records --

19 A Yes.

20 Q -- these records which are on 304?

21 A Yes.

22 Q Now, I want to put on the overhead for you, how  
23 we read some of these records for the ladies and gentlemen of  
24 the jury. So we're going to have to zoom in on the various  
25 columns here. So let me just start on the left side. And you

1 can just -- there we go.

2 Can you see on your screen there?

3 A I don't see -- there's nothing up there. Want  
4 me just to go down there and do it? Or --

5 MR. DiGIACOMO: Judge, may I have him step down if --

6 THE COURT: No. Hang on.

7 THE WITNESS: There it is. Just came on.

8 BY MR. DiGIACOMO:

9 Q Can you read that from there?

10 A I can. Yes, sir.

11 Q Okay. And actually if you touch the screen,  
12 it'll actually make a mark on this TV in front of the jury.  
13 So I'm just going to touch my finger on -- onto here, but the  
14 first column starts with LAC, and there's a bunch of numbers  
15 here. What is LAC?

16 A LAC is -- LAC is a location area code. And  
17 these are numbers that are assigned by engineering to switch  
18 or market areas. And the reason that we need LACs is because  
19 cell site ID numbers, which will be the next number we talk  
20 about, is -- they'll -- they repeat themselves throughout the  
21 country. And a lot of times even within a state, those  
22 numbers will repeat themselves.

23 So engineering will assign LACs to a particular cell  
24 site with a cell site ID number. So when we look at a call  
25 and want to know where that cell site is, we will match the

1 cell site ID number and the LAC together and look at the  
2 address next to that. And that's going to be the location of  
3 that cell site.

4 If it wasn't -- if we weren't looking at the LACs,  
5 you could see four or five, six cell site ID numbers. And  
6 with different addresses, you wouldn't know which one it -- it  
7 went to.

8 So, basically, the LAC is similar to, say, an area  
9 code on your phone. I know it's 702 out here. I know you're  
10 from Las Vegas. 201 for me, you'd know I was from New Jersey.  
11 So LACs kind of operate the same way. So we match the LAC  
12 with the cell site ID number.

13 Q Let me ask you this. Can -- can LACs overlap?  
14 For example, can LAC 146 also be the same as LAC, you know,  
15 24597; could they still be in the same location in the valley?

16 A They can be. What -- what happens when  
17 engineering will put more equipment onto a cell site  
18 structure, tower, building or whatever. When they add more  
19 equipment to it, they may assign a LAC to that new equipment.  
20 So you may have two -- as you go down looking at the list, you  
21 may have two LACs at the same address and you'd be -- scratch  
22 your head, saying what the heck is this. But that's how  
23 they're assigned. So you can have more than one LAC assigned  
24 to the same cell site address.

25 Q Then cell ID. This may be somewhat

1 self-explanatory after your last answer, but just explain what  
2 a cell ID is?

3 A Well, cell site ID is, again, every cell site  
4 has a number assigned to it. And normally ours are five  
5 digits. They don't always have to be, they can be less. The  
6 interesting thing with the cell site ID, if you look at the  
7 last digit of the cell site ID, that is the sector that the  
8 signal hit that cell site on.

9 And cell site is broken down to typically --  
10 typically a three-sector site. And your kind of northeast  
11 area, north area would be Sector 1. Your southern area would  
12 be Sector 2, and Sector 3 would be kind of your northwest  
13 area. Those are broken down to 120 degrees each to make 360  
14 degrees, similar to a compass.

15 Q And then the latitude -- well, I guess the next  
16 one -- you just sort of talked about the orientation on the  
17 horizon, or maybe it's horizontal?

18 A The orientation is -- not all cell sites face  
19 exactly north. So the orientations are important. To look at  
20 the first one, there's an orientation of zero. So this  
21 particular cell site would be facing north. It's the Sector 1  
22 and zero orientation. So what would happen is your cell  
23 sectors are, with the three-sector site, 120 degrees each. At  
24 zero is the center of that sector. And you would just go out  
25 60 degrees to one side, 60 degrees to the other side of that

1 zero, and that's the coverage of that sector.

2 Q So if we skip down to the third one, which is  
3 LAC 281, Cell Site 11021, and the -- or the orientation is 45,  
4 that cell site is at -- the 1 is at 45 degrees, and so you'd  
5 go 60 in one direction, 60 in the other direction?

6 A From 45 degrees you go 60 one way, 60 the other  
7 way to make -- yes -- 120.

8 Q Okay. And then the latitude and longitude?

9 A Latitude and longitude is the actual location of  
10 the cell site. When we would plot these on a map, we would  
11 use the latitude and longitude instead of the actual address  
12 for the cell site. The address for the cell site is for -- so  
13 engineering knows where to go when they have to go up and work  
14 on the cell site or look at it. It's kind of like a mailing  
15 address. But the cell site may not be right exactly at that  
16 address on the street. It'd be like if you live on One Main  
17 Street, your houses might be on the street, or it could be 50  
18 yards back from the street. So the same concept.

19 Cell sites normally aren't that far from the physical  
20 address. But the latitude, longitude is what we would use to  
21 map the cell site.

22 Q So if you were to go onto Google Maps and enter  
23 the latitude and longitude, you get a point as exactly what  
24 the tower is, not necessarily what the street address was?

25 A Yes.

1           Q     Okay. It says the market is San Francisco and  
2 the region is West, I think that's going to be somewhat  
3 self-explanatory, because then there's a physical address,  
4 state, ZIP code, the county of Nevada that that cell site is  
5 in, and then it gives you information on which switch is being  
6 used. And then what's the MSC at the end?

7           A     That's a multi-switch center. It's just another  
8 type of switch.

9           Q     So now I want to go to, first, the 927 cell site  
10 record, which is 303, and put those up there. I'm going to  
11 start off on -- start right there.

12                So explain to the ladies and gentlemen of the jury  
13 what information you can gather from the call type?

14           A     Call type, when you see MOC, that's a mobile  
15 outgoing call. That's a call from the subscriber's handset to  
16 another number. And you may see -- you look down, further  
17 down, about part way down, you see a MTC, that's mobile  
18 terminating call. That is a call that terminated at the  
19 subscriber's handset. So, basically, an incoming call from  
20 another phone.

21           Q     Okay. IMSI?

22           A     IMSI is international mobile subscriber identity  
23 number. That is a number that's particular to the SIM card to  
24 the -- linked into that person's account. The first  
25 couple-three digits are country code. Then the 260 is like a

1 company code. And then you start looking at the individual  
2 number that would be hooked into that person's SIM card or  
3 their account.

4 Q The calling number?

5 A The calling number is the phone that is making  
6 the call.

7 Q And since -- since this one is an MOC, it's an  
8 outgoing call, the calling number is in fact the subscriber of  
9 these records, 702-927-8742?

10 A Yes. Correct.

11 Q Okay. And then next one is the called number?

12 A Called number. That's the number that's being  
13 called.

14 Q And in this case it's our other record, the  
15 512-629-0041. And then the translated number, does that have  
16 any meaning for those of us in the courtroom or what is that?

17 A Not that I know of. Those translated numbers,  
18 that's something engineering would look at that's switch-type  
19 information, brings the call through the switches. So I don't  
20 -- I don't know a lot more beyond that.

21 Q Slide over, some of this may be somewhat  
22 self-explanatory. But the duration is what?

23 A Call duration, those are in seconds.

24 Q And that call duration, is that necessarily the  
25 call -- is that going to correlate to the answer time and the

1 disconnect time, or is that a different number?

2           A     Well, it -- when you look at the record,  
3 depending on how these records are pulled, you would look at  
4 the answer time and the disconnect time, and add those times  
5 together. And if you have time left over, you may have four  
6 seconds, five seconds, nine seconds left over, that would be  
7 the switch time, it would go beyond the actual connection time  
8 between the phones. It would be the time of the signal going  
9 through the switch prior to connection.

10           Q     The next two columns is the answer and  
11 disconnect, and on line 1 the answer time is 47 minutes after  
12 midnight and 19 seconds, and the disconnect time is five  
13 seconds later, but your call duration is 29 seconds. So  
14 there's 24 seconds of additional time that the phones weren't  
15 actually in contact with each other?

16           A     Correct. Yes.

17           Q     And then there is -- let me slide it over so  
18 they can see both -- there's a first cell ID and a last cell  
19 ID, and then there's a first LAC and a last LAC.

20           A     First cell ID is the first cell site that the  
21 call initiated on. So at the start of the call, that's the  
22 cell site that handled the signal from that call or from that  
23 phone. And the last cell ID is the last tower that the call  
24 terminated on at the end of the call. That's the tower it was  
25 on. We only show in our records the beginning cell site and

1 the ending cell site. Our records don't show any intermediate  
2 cell sites. So if there were any connection to cell sites  
3 beside the first and last, we wouldn't show those on the  
4 records.

5 Q And on this one, it's 64292 is the cell ID and  
6 the first LAC -- I guess they're the same, but the LAC is 146  
7 and the cell ID is 64292?

8 A Yes.

9 Q Okay. So if I go to the record we were just on  
10 previously, you would then go to -- let me see if I can --  
11 146, 64292, the center of that array is 120 degrees, then  
12 you'd get your cell site location, and then if you were to  
13 continue to slide over, you'd see that it was 1514. It looks  
14 like the column's cut off, because that's going to be North  
15 Nellis, I believe. Then you can keep on going over through  
16 the records --

17 A Yes.

18 Q -- would that be true?

19 A Yes.

20 Q Okay. And then I just wanted for the jury to  
21 see the very next phone call is actually -- the cell ID is 6  
22 -- well, the next phone call -- let me ask you this. The next  
23 phone call, there is no information that is included in the  
24 cell ID, first cell, last cell; does that indicate anything to  
25 you?

1           A     I'm pretty sure I know what it is, but if you  
2 could just go back over toward the -- so I can see the number.

3           Q     You need to see -- just tell me when I need to  
4 stop.

5           A     So that -- when you see on the records there's a  
6 805-637-7249. So just remember an 805 number that ends in  
7 7249 or 7243, those are numbers are -- from our voicemail  
8 platforms. And these are calls that are dropping into  
9 voicemail. And sometimes they will show a cell site ID  
10 number, sometimes they won't. If the phone's on, typically  
11 you'll get a cell site ID number. If the phone is off, then  
12 -- or out of network, whatever, it won't generate the cell  
13 site ID number. But those 7249, 7243 are voicemail platform  
14 numbers.

15          Q     When you see the 805-whatever-whatever, 7749,  
16 you're going to know that that's a -- the voicemail that comes  
17 -- kicks over to the voicemail; either it did connect to the  
18 phone or didn't connect to the phone, but it certainly went to  
19 voicemail?

20          A     Right. Yes. And sometimes it'll show the  
21 number calling in. A lot of times it won't. It just depends  
22 on which platform it went through at any particular time. I  
23 think, if I remember looking at a majority of these, it  
24 doesn't show the number that was calling into voicemail. It  
25 just shows calls dropping to voicemail.

1           And also when a call drops to voicemail, it's going  
2 to look like an outgoing call. You're going to see an MOC for  
3 mobile outgoing call. And the reason for that, even though  
4 it's really an incoming call that makes it go to voicemail, is  
5 the phone pushes it to voicemail. So it's going to, in our  
6 records, anyway, for whatever reason, it's going to look like  
7 an outgoing call. I can see MOC.

8           Q     And then I want you to jump down to that third  
9 line for a second. If you notice the -- the cell ID, while  
10 it's a different, you know, side of the tower, but it's 6429,  
11 but the LAC is 24597 instead of 146; do you see that?

12          A     Yes.

13          Q     Okay. So now I want to go back to these records  
14 so -- so the jury can read all of the records when they have  
15 them. There is, in fact, a different LAC, 24597, with the  
16 64293, even though it's showing the same location as the 146.  
17 So there could be multiple LACs on the same tower?

18          A     Can be, sure.

19          Q     There is also times -- and we had a chance to  
20 review these records this morning; is that correct?

21          A     Yes.

22          Q     Okay. There are times when you'll see two phone  
23 calls that overlapped in connection and disconnection time; do  
24 you remember my questions about those?

25          A     Yes.

1           Q     Okay. Is there a reason why that could happen,  
2 as well?

3           A     There -- there are reasons. It's -- you can --  
4 if you're on the call -- if you're on a call and somebody else  
5 calls you, you can -- it could come in on call-waiting, you  
6 can click -- click -- I don't usually do it so I don't know,  
7 but you can kind of click the button and put them on hold and  
8 then bring the other call in on call-waiting, so it'll look  
9 like two calls at the same time. I don't know how many times  
10 you can do it, but, you know, you can bring other people in.

11           There is also another way of doing a conference-type  
12 call on your cell phone, bringing more than one person in on a  
13 call. So those -- just a couple things that I -- I know about  
14 offhand. So.

15           Q     And then last thing I'm just going to put up  
16 here -- put 304. There's a few less columns on 304, but  
17 essentially there's similar type information. You get the  
18 call type in the first column, and -- and it's the same MOCs  
19 versus MTCs; is that correct?

20           A     Yes. Yes.

21           Q     Okay. So the MOC is the outgoing call, the MTC  
22 is the incoming call?

23           A     Yes.

24           Q     This is a different IMSI, because I'm assuming  
25 that each phone has their own unique IMSI or each SIM card

1 does, anyway?

2 A Yeah. The SIM cards, yes.

3 Q The calling number is the number actually  
4 dialing out the phone?

5 A Yes.

6 Q And so in this case it's an outgoing call. This  
7 is the record for 512-629-0041, and then there's the number  
8 that has been called?

9 A Yes.

10 Q All right. On this they skipped the column that  
11 has the --

12 A Translations.

13 Q -- translations --

14 A [Indiscernible] on there.

15 Q -- and then just went to apparently the -- oops,  
16 going to slide back here. This one has column, the first  
17 column is the duration, then it has the cell site information,  
18 and then the date and time which is correlated to the switch  
19 on the right side; is that correct?

20 A Yes.

21 Q Thank you, sir.

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

23 THE COURT: Mr. Sgro?

24 MR. SGRO: Thank you.

25 CROSS-EXAMINATION

1 BY MR. SGRO:

2 Q Good morning, sir.

3 A Good morning.

4 Q Okay. I just have a couple questions. And I  
5 guess I'll start backwards.

6 You -- you said there can be reasons for some of the  
7 calls to show multiple calls because of caller ID and  
8 conference calls; do you remember just saying that a minute  
9 ago?

10 A Call-waiting?

11 Q Call-waiting?

12 A Yes. Yes.

13 Q And -- and I think you said, I don't know how  
14 many ways or how many times you can do caller ID, but that  
15 would be one example; would that be fair?

16 A Correct. Yeah. I -- I don't do it, so I don't  
17 know how -- how many different numbers you can bring in at one  
18 time. So.

19 Q So -- so I think you offered as explanations  
20 caller ID, conference calls, and then you said a couple other  
21 things; is that right?

22 A I -- I don't remember. I -- I don't know.

23 THE COURT: I think you said call-waiting.

24 BY MR. SGRO:

25 Q Right. Call-waiting, caller ID, and I -- and I

1 heard conference calls; did you also say that?

2 A I said call-waiting, and I'm not sure why I  
3 would say caller ID, but call-waiting, and conference calls.

4 Q Okay.

5 A I don't -- I don't know beyond that, so I don't  
6 know.

7 Q But there are other explanations beyond that?

8 A There could be. I don't know.

9 Q Okay. So let's start with -- I'm just -- you  
10 went through a couple of exhibits and testified about some of  
11 the entries on some of the exhibits, right?

12 A Yes.

13 Q Okay. Now, I'm showing you Exhibit 324. Just  
14 so -- I'll show it to you so you see which one we're talking  
15 about.

16 A Okay.

17 Q Okay? So this is a 512 area code, correct?

18 A Yes.

19 Q And do you know 512 comes from Texas?

20 A Not offhand, no. If you say so, I don't know.

21 Q Pardon me?

22 A I don't know. I -- I don't know.

23 Q Let's assume 512 comes from Texas. Texas is two  
24 hours ahead of us, right? They're in a different time zone?

25 A Yes.

1           Q     All right. So Texas is two hours ahead of us,  
2 right? If I'm right --

3           A     Yes, I don't know. Yeah. Okay. Go ahead.

4           Q     We have different time zones in the United  
5 States --

6           A     Yes.

7           Q     -- you recognize that? Okay. Daylight savings  
8 time -- we have to start from the preface that I'm confused.  
9 Okay. So I need you to walk me through a couple of things.  
10 In 2010, daylight savings time started on March 14th, 2010,  
11 right?

12          A     It's sometime over the summer, yes. I don't  
13 know when.

14          Q     Well, do you consider March of 2010 over the  
15 summer?

16          A     Well, it would be the spring. But -- I mean, I  
17 don't know exactly when it starts or ends. I do know over the  
18 warmer months you have daylight savings time. So.

19          Q     Sir, you just told the jury that somehow  
20 daylight savings times may have impacted records that  
21 generated in August. You just said that, right?

22          A     That's correct. Because --

23          Q     Okay. So --

24          A     -- I know August is within that time period.

25          Q     Okay. If you come in and testify and tell the

1 jury that day -- daylight savings time has an impact, would it  
2 be fair to assume you knew when daylight saving time began?

3 A I know August is in daylight saving time. The  
4 exact date it begins or ends, I don't know.

5 Q Do you see where it says there -- and I'm not --  
6 sorry, sir, I -- I said there. I don't mean to direct you  
7 away from your screen. Can you see it on the screen?

8 A Yes.

9 Q Or no? You can. Do you see where it says there  
10 all call times were prepaid and all SMS messages are Pacific  
11 time, right?

12 A Yes.

13 Q There's nothing on this record that talks about  
14 a convoluted explanation of the impact of daylight savings  
15 time and how it affects this record, fair?

16 A There's nothing on the record that says that,  
17 correct.

18 Q And if I flip through this record, every page  
19 says Pacific time, right?

20 A Yes.

21 Q And daylight savings time ended in 2010 and  
22 November 7th; does that sound about right?

23 A Yeah, I -- I guess. Yeah, I don't know.

24 Q So your testimony is essentially every single  
25 entry on Exhibit 324, every single time entry on this exhibit

1 is wrong, correct?

2 A It's only wrong if you don't know the reason  
3 behind it.

4 Q Well, sir, if I'm your customer and I get this  
5 bill --

6 A You don't get that bill. Prepaid doesn't  
7 receive bills.

8 Q As -- as the reader of this document, if I don't  
9 have you at my side to explain, every single entry in Exhibit  
10 324 is wrong; you agree?

11 A Well, who would be looking at it besides us? I  
12 mean, that's why I'm here, right? To explain it.

13 Q Are you willing to concede, sir, that as  
14 printed, Exhibit 324 is wrong?

15 A No.

16 Q No?

17 A It's not wrong, because that is how the records  
18 were done in 2010 in August. They -- they did not compensate  
19 -- on the billing computers, did not compensate for daylight  
20 saving time.

21 Q Where is the --

22 A They're only wrong if you don't know why the  
23 time is -- is --

24 Q They're only wrong if I look at it and I see an  
25 originating call that happened at 8:13 and I need to know it's

1 9:13, according to you, right?

2 A It doesn't -- it doesn't make it incorrect.

3 Q This doesn't --

4 A It's just the way that they did the records.

5 Q I understand what you're saying, sir. This  
6 record does not comport with any time differentials because of  
7 ways that "they did records"; would you agree with that?

8 A Yes. Those records are off by an hour. That's  
9 what I said.

10 Q Do you have anything with you to tell us or to  
11 show us this record-keeping process of this daylight savings  
12 time phenomenon where it -- you need to have that in  
13 conjunction with this to understand how to read these; is  
14 there some document you have?

15 A I -- no, I don't have any document with me. No.

16 Q Is -- is there a record from a machine or a  
17 computer that explains the calibration process of how this is  
18 done?

19 A I'm sure somewhere there may be in the company.  
20 I -- I don't know offhand.

21 Q Were you asked to bring it?

22 A No.

23 Q You were simply asked to tell people, Hey, this  
24 is how it works, right?

25 A That's -- yes. That's -- that's how the billing

1 computers were set up at that time.

2 Q Okay. Are they changed now? Are they  
3 different?

4 A It depends. They -- they -- at the bottom of  
5 the -- a lot of the records now, they'll -- they'll say that  
6 its Pacific Daylight Time or Pacific Standard Time. Here they  
7 just had Pacific time. So.

8 Q And in 2010 they had distinguishing  
9 characteristics, like Pacific Daylight Time or Pacific  
10 Daylight Savings Time, correct?

11 A Correct.

12 Q That existed in 2010 even at T-Mobile, didn't  
13 it?

14 A But the records don't say they were in -- on --  
15 on daylight saving. They say --

16 Q You're --

17 A -- Pacific time.

18 Q You're kind of making my point. These records  
19 don't use some of the very descriptors that were available to  
20 T-Mobile in 2010, correct? These records don't have it,  
21 right?

22 A They don't, right.

23 Q So, because it doesn't have it on the record,  
24 you're assuming -- you're assuming that Pacific time really  
25 means after it's been calibrated by the computer differently,

1 right?

2 A I don't assume, because I know that that's how  
3 it was done.

4 Q You know?

5 A Yes.

6 Q You -- were you there in 2010 as the computer  
7 was printing out these records?

8 A No.

9 Q Okay.

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

11 (Pause in proceedings)

12 BY MR. SGRO:

13 Q Does the fact -- and I appreciate you said you  
14 don't know that 512 is from Texas. And I appreciate your  
15 taking my representation that Texas is two hours ahead. Okay.  
16 If Texas is two hours ahead, and -- and I'm using my -- my  
17 Texas cell number, and the computer recalibrates and changes  
18 it an hour, wouldn't these records be one hour in front of  
19 Pacific time?

20 Yeah, trust me, that's the same look I have over  
21 here.

22 A I'm not sure what you're asking.

23 Q Okay. A cell phone that you -- that we just  
24 went over -- and I'll put it up here again. This 3 -- I just  
25 want to make sure you understand the -- this is still 324, and

1 this is the one that we were talking about. You see all the  
2 512 numbers there on the left?

3 A Yes.

4 Q Okay. The 512 number, if you accept my  
5 representation it comes from Texas, okay, and that Texas is  
6 two hours ahead -- let's kind of put a pause button on that.

7 Do you remember telling the jury that the impact of  
8 what the computer did when it generated these documents is it  
9 put them back an hour, right?

10 A It --

11 Q That's the gist of what you said?

12 A They're off by an hour, yes.

13 Q They're off by an hour?

14 A Right.

15 Q So if I'm in Pacific Standard Time and I have  
16 records that start two hours ahead, right? We're going from  
17 zero to plus-two. Then I have a computer that puts them  
18 minus-one. Two minus one means these phone records would be  
19 an hour ahead if I compared them to another phone that didn't  
20 go through this same sort of machination process?

21 A But where was the phone at the time?

22 Q Well --

23 A Was it in Texas or was it in Las Vegas?

24 Q Does it matter?

25 A Yes.

1           Q     Okay. So your testimony is that the time  
2 difference in Texas doesn't matter, the location is what  
3 controls, right?

4           A     Because that -- the switch it goes through.  
5 Yes.

6           Q     And the fact that -- so if I'm using an  
7 out-of-state number in Las Vegas, I'm on Pacific time?

8           A     For a prepay, yes.

9           Q     Okay. So if I'm using a -- so I just want to  
10 make sure I got it correct. If I'm using a Texas number and  
11 I'm in Las Vegas, I'm on Pacific time?

12          A     Yes.

13          Q     And then I have another document that -- that  
14 also says a 512 number, while in Las Vegas, was on Pacific  
15 time, right?

16          A     It would be on the switch on Las Vegas time.  
17 But if it's a prepay, it would -- obviously on these records,  
18 would be Pacific time.

19          Q     Right. The switches are all on Pacific time,  
20 right? In Las Vegas, aren't they?

21          A     I guess it's the same time, yeah. I -- I don't  
22 know.

23          Q     You don't know if all the --

24          A     I'm not familiar with -- with this area. So I  
25 don't know what time zone it's on. If it's on Pacific time

1 zone, then yes.

2 Q Are you aware of any towers in Las Vegas that  
3 are not on Pacific time?

4 A Assuming Las Vegas is on Pacific time, which I  
5 believe it is, then they -- they would be on Pacific time,  
6 yes.

7 Q Okay. You understand, sir, you're the one  
8 that's been designated from T-Mobile as a representative to  
9 come here and explain this stuff to us. Do you -- you  
10 understand that --

11 A Yes.

12 Q -- correct? And do you remember telling the  
13 jury about all your qualifications, you worked in the legal  
14 department, you respond to these things. I imagine this sort  
15 of interplay is something you do quite often, fair?

16 A Yes.

17 Q Okay. Do you try to prepare when you go to a --  
18 you're not from Las Vegas, right?

19 A Correct.

20 Q Do you try to prepare when you go to a different  
21 city to explain potential differentials in time zones?

22 A I don't really consider the differences in time  
23 zones unless it comes up, then I'll sit there and try to --  
24 try to figure out who's in what time zone.

25 Q Okay. So if I understand what you're saying

1 correctly, if I'm in Las Vegas with an out-of-state number,  
2 I'm on Pacific time, right?

3 A Yes.

4 Q The records that I showed you that referenced a  
5 Texas phone that was being dialed in Las Vegas says all these  
6 times are Pacific time, correct?

7 A Correct.

8 Q The -- the technology about the differential  
9 between Pacific Daylight Time and Pacific Savings Time, that  
10 was available to T-Mobile in 2010, right?

11 A Yes.

12 Q And on this record, those entries do not appear,  
13 right?

14 A What entries?

15 Q Sorry about entry. There's -- there is nothing  
16 in the entire text of Exhibit 324 that references Pacific  
17 Daylight Savings Time or anything else, correct?

18 A It just says Pacific time on those records.

19 (Pause in proceedings.)

20 MR. SGRO: Apologize, Your Honor.

21 BY MR. SGRO:

22 Q Now, the billing records that T-Mobile sends  
23 out, okay, we had Exhibit 24 is not a billing record, correct?  
24 And I'm sorry, this is -- it's this the same one we keep  
25 talking about.

1           A     Well, the customer doesn't receive a bill if  
2 it's a -- a prepay. But these are records -- I mean, we -- we  
3 refer to them as billing records. They can be called detail  
4 records. I mean, we look at them as pretty much the same.  
5 So.

6           Q     Do you know what a pen register is?

7           A     I do.

8           Q     Is this a pen register?

9           A     No.

10          Q     Exhibit 304, what -- what record would you call  
11 that?

12          A     These are records that come off -- called detail  
13 records. These are records that come off a server, it pulls  
14 the information from the switch.

15          Q     Okay. And just so we're all on the same page,  
16 304 is referencing which telephone number?

17          A     512-629-0041.

18          Q     What time zone is 304 on?

19          A     Well, I don't see any switch information, so I  
20 can't answer that.

21          Q     Okay. Now, we just spent about 10 or 15 minutes  
22 discussing the guy from Texas that has a Texas phone in Las  
23 Vegas, the Pacific time zone, etcetera, right?

24          A     Yes.

25          Q     All right. Now we have another exhibit that

1 appears to correlate with the same telephone number, right?

2 A Yes.

3 Q Would we expect, if it's the same phone and  
4 T-Mobile produced both sets of records, what if we expect them  
5 to match?

6 A Match?

7 Q If I -- hypothetical, if there's a call on 324  
8 that was made at 1:00 p.m., because of the recalibration done  
9 by the computer in -- on the West Coast, okay. A 1:00 p.m.  
10 call on 324, should I have a 1:00 p.m. call on 304?

11 A No. We would have to look. We could look at  
12 the cell site and the LAC and see where -- where the phone was  
13 at the time.

14 Q So even as you sit there, you'd want to look at  
15 these documents to determine inconsistency?

16 A Well, once again, these records are going to be  
17 off by an hour from those records.

18 Q Okay. Let me ask that. You just said these,  
19 324, is going to be off an hour. So now, without having any  
20 information, you're presupposing that 304 is also off by an  
21 hour; is that your testimony? I'll show them to you --

22 A Off an hour from what?

23 Q -- it's the same phone. Well, look, 304 is a  
24 512 area code --

25 A Uh-huh.

1 Q -- right? Is this also a phone number, 512?

2 A Yes.

3 Q If what you said is true to the jury by this  
4 whole one-hour-off thing, 304 and 324 should both suffer from  
5 the same one-hour recalibration because of the computer on the  
6 West Coast, right?

7 A No. These were. These come off the switch.

8 Q So even amongst the same phone -- the same  
9 phone, the same Texas number, all the time zone things we  
10 talked about, there's still going to be inconsistencies in  
11 between the two records that describe the same phone, right?

12 A They're -- they're going to be off by the hour,  
13 yes.

14 Q If they're off by something other than an hour,  
15 would you say there's an error in the records?

16 A I would have to look at it and see. But I would  
17 have to assume that if it's less than an hour, if it's --

18 Q What if they're the same; would you assume that  
19 there's an error in the records?

20 A No.

21 Q No? So they should be off an hour, but if -- if  
22 they're the same, there's still no error; is that what you're  
23 saying?

24 A So are you -- what -- what you're asking is --  
25 or saying that these records and these records match time

1 exactly?

2 Q Sir, what I'm asking you is you made some  
3 statements about some time differences that exist because of  
4 the phone that was used and because of how T-Mobile operated  
5 at a certain time, and this West Coast computer; do you  
6 remember that?

7 A Yes.

8 Q Okay. Now I have in front of you two bills that  
9 are talking about the same phone.

10 A Okay.

11 Q Would you expect, then, that since T-Mobile did  
12 the same treatment to the phones, that all the times match.  
13 Okay. So we have three choices. One, all the times match  
14 between the two bills that talk about the same phone; is that  
15 what you would expect?

16 A Well, no.

17 Q Okay. Choice B, all the times between one  
18 exhibit and the other are an hour off; is that what you would  
19 expect?

20 A Yes. These --

21 Q Okay.

22 A -- would be off by an hour.

23 Q Now, let's say the calls between those two  
24 exhibits match time; would that be an error?

25 A I suppose it would -- it would be an -- an error

1 of me thinking that -- that -- I'd have to see where this  
2 phone was.

3 Q Let's assume -- fair -- fair point. Let's  
4 assume the phone's always in Las Vegas for the timeframe that  
5 we're talking about, okay? The phone's always in Vegas, we're  
6 August of 2010, and those records, let's say they match. You  
7 would agree, then, based on your testimony, that one of the  
8 records is wrong, right? Because they should be an hour off.  
9 Sir?

10 A Can I see the other cell site records?

11 Q Which ones do you need? Is this the one that  
12 you're looking at?

13 Sir, I just have to do this for the record. Are you  
14 -- are you looking to compare 303?

15 A I -- I'm looking at 303.

16 Q Okay.

17 MR. DiGIACOMO: I apologize. But isn't 304 the  
18 record that --

19 MR. SGRO: I asked --

20 MR. DiGIACOMO: -- correlates to the two?

21 MR. SGRO: I was asking him about 304. He asked to  
22 look at that one.

23 MR. DiGIACOMO: Oh, okay.

24 THE COURT: Counsel, did you move to admit 304? I  
25 didn't hear.

1           MR. DiGIACOMO: We moved to admit all those records.  
2       So 304 is in.

3           THE COURT: I think 304 is in, has been received.

4           THE CLERK: Okay.

5           MR. SGRO: I think so, too.

6           THE WITNESS: Okay.

7       BY MR. SGRO:

8           Q     Well, okay --

9           A     These -- these -- these --

10          Q     Well, hold -- hold on.

11          A     Okay.

12          Q     Hold on. If two bills both generated by  
13       T-Mobile match relative to the time that the calls are  
14       reflected on those documents, would one of them be in error?

15          A     No. And I'll tell you why.

16          Q     Well, hold on. Hold on. So then do you modify  
17       your position that this computer from the West Coast  
18       recalibrated records and made them an hour off?

19          A     No.

20          Q     All right. Okay. Bear with me.

21          A     All right.

22          Q     What -- what would your position be if the same  
23       phone was examined by T-Mobile such that these documents could  
24       be created and calls appear on one of the two records, but not  
25       on the other; would that be a mistake in the records?

1           A     I'm sorry?

2           Q     Okay. You have two bills there --

3           A     Yeah.

4           Q     -- that talk about the same phone, right?

5           THE COURT: They're not bills.

6 BY MR. SGRO:

7           Q     Two documents, sorry. Two documents talk about  
8 the same phone. Going back to my hypothetical, if -- if I'm  
9 calling you and we're both T-Mobile prepaid customers,  
10 etcetera, I call you at 1:00 p.m., those two documents should  
11 both reflect my call to you at 1:00 p.m., right?

12          A     It may not reflect the same times, but it would  
13 -- the call would be there.

14          Q     Okay. So now there's a -- there's a caveat  
15 potentially on the time, but you're certain the call would be  
16 there on both, right?

17          A     Well, I mean, there are -- there are instances  
18 where calls may not show on -- on -- on these records. An  
19 attempted call won't show on these records. They may show on  
20 -- on these records.

21          Q     Okay.

22          A     Calls dropping to voicemail will show on these  
23 records, but they won't show on these records.

24          Q     So there are times --

25          A     Like that. Yes.

1 Q -- when calls are made that would show on one  
2 record that was done for a phone, yet another record done for  
3 the very same phone won't show those calls?

4 A Yes.

5 Q All right. So can you go to page 20 of 27 of  
6 324, and can you look down --

7 MR. DiGIACOMO: Sorry, Judge. Can I just look over  
8 either his shoulder or --

9 MR. SGRO: Yeah.

10 BY MR. SGRO:

11 Q So I'm showing you a copy, because mine are  
12 highlighted. So I want you to go -- do you see -- sir, can  
13 you look on --

14 A Oh, yeah.

15 Q -- your screen? Do you see what I have  
16 highlighted there?

17 A Yes, I do.

18 Q Okay. Now these are on 324, right? You have to  
19 go to your exhibit now. Do you see them on your exhibit?  
20 Does that help?

21 A No, you keep moving it around.

22 Q Look over here, look over here.

23 A Okay.

24 Q Do -- do you have --

25 A I see the 3:29 call.

1           Q     Okay. Can you find the three -- let's just take  
2 that one, the 3:29 call. Can you find that call on the other  
3 document that was prepared by T-Mobile for the same phone?  
4 And by other document, I'm talking about 304.

5           Do you see it?

6           A     I do.

7           Q     Okay.

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

9           THE COURT: Yes.

10          BY MR. SGRO:

11          Q     Can you --

12          A     It's 3:29 and I can't say for a fact that it's  
13 the same call, because on a voicemail it's not showing the  
14 incoming number that's calling. But at 4:29 there is a call  
15 there, which is off by an hour.

16          Q     Right. So now this would be an example of you  
17 making your best guesstimate to -- to show one call to the  
18 other, we have to do a guesstimate of a couple of things.  
19 Number one, we have to assume that the two records that are  
20 about the same telephone came back with different times on  
21 them, right? One because of the West Coast thing, but one  
22 that wasn't impacted by the West Coast thing, right?

23          A     Right.

24          Q     The West Coast computer. Okay. So the first  
25 thing we have to do is we have to presuppose that the same

1 phone was examined and the times came back differently. And  
2 then if you look on -- on the exhibit I'm showing you, the  
3 call that you can't find specifically lasts two minutes,  
4 right?

5 A Yes. Well, we bill out to the minute. So  
6 that's anything between a minute to two minutes. So, yeah.

7 Q Okay. And the 4:29 call on the other one?

8 A Okay. So it's 10 seconds, then there's another  
9 one for 15 seconds. Or 15 --

10 Q And you just said you bill to the minute.

11 A We do.

12 Q Correct?

13 A Yep.

14 Q Okay. So now on this one telephone call, we  
15 have to get past the time differential, then we have to get  
16 past the differential of the length of the call, correct?

17 A Yes.

18 Q And if you bill by the minute and an exhibit  
19 shows a 10-second bill, would that also be something unusual  
20 in the realm of how T-Mobile operates?

21 A It would be, assuming it's the same call. But,  
22 yes.

23 Q Assuming it's the same call?

24 A Uh-huh.

25 Q Could be a different call, correct?

1           A     It could be. I mean, I don't know. I mean,  
2 there -- there's a call that dropped to voicemail around the  
3 same time. I mean, that's all I can tell you --

4           Q     Right.

5           A     -- is what's on the record. So.

6           Q     And you just try to guess, right?

7           A     Well, I -- I guess. Yeah. I mean, it's, you  
8 know, it's --

9           Q     Okay. Can you do me a favor, sir, can we do the  
10 same thing on the next one? You see -- and 324, I want to  
11 start with 324. See the second one that's highlighted? It's  
12 going to just be one below the one you just examined.

13          A     3:46?

14          Q     Yes, sir.

15          MR. SGRO: The DA said I'm fine, Judge.

16          MR. DiGIACOMO: He's fine.

17          THE COURT: Oh, we've all been wrong.

18 BY MR. SGRO:

19          Q     Do you -- have you located it, sir? Literally,  
20 you have your finger on it, right?

21          A     I do on this one.

22          Q     Okay. Can you find it on the other one?

23          A     No, I don't see it here.

24          Q     Pardon me?

25          A     I don't see it here.

1           Q     Okay. So would this be an example of -- of a  
2 phone that was looked at by T-Mobile for which two documents  
3 were generated, one that reflects a call at 3:46 -- by the  
4 way, how many minutes was that call according to Exhibit 324?

5           A     Looks like three.

6           Q     Three minutes. And that three-minute call you  
7 can't find it at all on the other document, right?

8           A     I don't -- I don't see it, no. Oh, wait a  
9 minute. There's a 4 -- 4:46. See if it's the same call or  
10 not.

11          THE COURT: We lost our screen.

12          MR. DiGIACOMO: Well, he just took the -- he took the  
13 exhibit.

14          MR. SGRO: What happened?

15          THE COURT: Oh. You took the --

16          THE WITNESS: There's a call at 4:46 for 147 seconds.

17 BY MR. SGRO:

18          Q     Okay. Now, this one again, let's start with  
19 T-Mobile bills by the minute.

20          A     Uh-huh.

21          Q     That particular document shows bills in seconds,  
22 correct?

23          A     Yes.

24          Q     All right. Now, on this one, three minutes and  
25 140 seconds, close enough?

1           A     I don't know. I could take my phone out and my  
2 calculator and figure it out. But --

3           Q     Okay. But on this one, then, we would just have  
4 to figure out that the time is off, right?

5           A     Would be off by the hour, yes.

6           Q     All right. So -- and lastly --

7           MR. SGRO: May I approach, Your Honor?

8           THE COURT: Yes.

9 BY MR. SGRO:

10          Q     305. What's the -- what's the phone number  
11 associated with Exhibit 305?

12          A     There are no phone numbers associated with it.  
13 These are the corresponding addresses for --

14          Q     For cell towers?

15          A     -- for cell towers. Yeah.

16          Q     Okay. So if I understand correctly, 304 and 324  
17 both deal with a phone number that starts with area code 512,  
18 right?

19          A     Yep.

20          Q     Okay. 305 is the cell tower information, right?

21          A     Yes.

22          Q     Now, before we move onto the last exhibit,  
23 relative to cell tower information, would you agree that that  
24 512 area code doesn't have a cell tower location for every  
25 phone call?

1           A     Correct.

2           Q     All right.  Specifically, for the 3:29 and 3:46  
3 a.m. telephone numbers, is there a cell tower that corresponds  
4 with those calls?

5           A     On which -- which phone, now?

6           Q     324.

7           A     Okay.

8           Q     It's the same calls we've been looking at.  I  
9 want you to tell the jury what the cell tower is?

10          A     By looking --

11          Q     What --

12          A     -- only at 324?

13          Q     You have -- whatever documents you have.

14          A     Okay.

15          Q     You have all of them there.

16          THE COURT:  Would -- would any of the jurors like a  
17 mid-morning break?  I think we -- we need to take a break for  
18 a few minutes.

19                During the recess, ladies and gentlemen, it's again  
20 your duty not to converse among yourselves or with anyone else  
21 on any subject connected with this trial, or to read, watch,  
22 or listen to any report of or commentary on the trial from any  
23 medium of information including newspapers, television, or  
24 radio.  You may not form or express an opinion on any subject  
25 connected with this case until it's finally submitted to you.

1 Be in recess for about 10 minutes.

2 (Jury recessed at 11:25 a.m.)

3 THE COURT: Record reflect that the jury has exited  
4 the courtroom. Off the record.

5 And counsel, will you approach the bench.

6 (Court recessed at 11:25 a.m. until 11:39 a.m.)

7 (In the presence of the jury.)

8 THE COURT: You may be seated. This is Burns and  
9 Mason. The record will reflect the presence of both  
10 defendants, their counsel, the district attorneys and all  
11 members of the jury. We're still on recross-examination by  
12 Mr. Sgro.

13 CROSS-EXAMINATION (continued)

14 BY MR. SGRO:

15 Q During the break, did we talk about the last  
16 question that was pending, about the tower?

17 A Yes.

18 Q All right. And did the State and I come here  
19 and you were able to find some information out?

20 A Yes.

21 Q So just to make it quick, the entries above the  
22 ruler, the 3:29 and 3:46, you would agree that there is no  
23 corresponding tower information for those times for those two  
24 calls, correct?

25 A Correct.

1 Q And then you went and looked at 4:29 and 4:46,  
2 right?

3 A Yes.

4 Q And you found some tower information based on  
5 those times, correct?

6 A Yes.

7 Q When is the first time you told anyone about  
8 this daylight savings with the West Coast computer, how that  
9 impacts it? Do you remember ever discussing that before in  
10 this case?

11 A As regards specifically to this case?

12 Q Yes, sir.

13 A Oh, okay. It was either yesterday or the day  
14 before maybe.

15 Q Okay. Prior to that you hadn't, correct?

16 A To the best of my -- what I can remember, right.  
17 Yes.

18 Q Do you know who Detective Bunting is? Chris  
19 Bunting, does that name ring a bell?

20 A Chris Bunting. Not offhand, no.

21 MR. SGRO: That's all, Your Honor.

22 THE COURT: Anything further, Mr. Langford?

23 MR. LANGFORD: Nothing, Your Honor.

24 THE COURT: Mr. -- Mr. McDonald, if a person  
25 subscribes to a T-Mobile cellphone by going into a T-Mobile

1 store and opening an account, and they're going to pay for it,  
2 you get a T-Mobile phone, and does that phone have the area --  
3 have the prefix or the area code for where it's sold?

4 THE WITNESS: Typically. However --

5 THE COURT: And can you request a different area  
6 code?

7 THE WITNESS: You can. You can request different  
8 area codes. It's not specific to a local area, like through  
9 land lines it was to that area. For instance, like my wife,  
10 we're moving back up to Boston and she wanted a Boston number,  
11 so --

12 THE COURT: I was wondering what that accent was.

13 THE WITNESS: Yeah. Yeah, it's not in Jersey. But  
14 you have to live somewhere, right. But anyway, she wanted a  
15 Boston number ahead of time, so I called and got her a Boston  
16 number. For some reason my daughter wanted a Hawaii number, I  
17 don't know. To impress her friends, I don't know. But so she  
18 has an 80 -- 808 number, I guess. So you can get numbers for  
19 just probably whatever area code you'd -- normally you can.

20 THE COURT: And if you purchase a prepaid phone, you  
21 often walk into a convenience store or an airport or a market  
22 or someplace like that, and you can just purchase the phone  
23 right off the shelf, right?

24 THE WITNESS: Yes. Yes.

25 THE COURT: And you get whatever --

1 THE WITNESS: Whatever you get.

2 THE COURT: -- whatever you get?

3 THE WITNESS: Yes.

4 THE COURT: Now, you don't necessarily get the area  
5 where you purchased it, do you?

6 THE WITNESS: Probably most of the time you would,  
7 but that doesn't have to hold true, no.

8 THE COURT: So the fact that a 512 area code phone is  
9 involved in what you were discussing here, which may or may  
10 not be from Texas, I don't know, but the fact that it doesn't  
11 mean that that phone was purchased in Texas. It could have  
12 been purchased in Nevada --

13 THE WITNESS: It could --

14 THE COURT: -- subscribed to in Nevada?

15 THE WITNESS: It could have been, or I mean, you  
16 can -- you can just --

17 THE COURT: Or it could have been purchased in  
18 Wyoming?

19 THE WITNESS: It could have been, or you could just  
20 have bought it off somebody else too. I mean, I don't know.

21 THE COURT: Okay. Anything further briefly?

22 MR. DiGIACOMO: Just very briefly.

23 REDIRECT EXAMINATION

24 BY MR. DiGIACOMO:

25 Q A lot of discussion. Let me ask it this way.

1 If we go to 303, 304, which is the actual cell tower records,  
2 these times are going to be accurate to the switch or the  
3 wherever that tower is situated, correct?

4 A Yes, where the phone -- the phone's making the  
5 calls through that particular switch.

6 Q And the Daylight Savings Time versus the  
7 Standard Time, it's irrelevant when it comes to these records;  
8 these should be whatever date and time that these calls were  
9 made at the location where those towers were?

10 A Yes. Because it's coming off switch time versus  
11 the other records we were looking at, where it's time stamped  
12 on the West Coast through the billing, when they go through  
13 the billing computers.

14 Q And it is irrelevant what the area code is when  
15 it comes to a cellphone; that has no bearing whatsoever on the  
16 records and what's generated on those records, correct?

17 A Besides the phone number, no.

18 Q Okay. So but it's not relevant as it goes to  
19 time?

20 A [No audible response.]

21 Q So the only issue between these two records,  
22 which is 3:24 and 3:04, is that there may be -- like for an  
23 example, there is no entry on 3:04, for 3:29, and 3:46 on 8/7  
24 of 2010, correct?

25 A Correct.

1           Q     Now, if you are an hour off, like you think you  
2 might be on these records, you would expect to find a call at  
3 4:29 to the 92 -- or from the 927 number, I guess, that lasted  
4 approximately two minutes; would that be correct?

5           A     Yes.

6           Q     And then you would expect to find a call at  
7 4:46, same number, for approximately three minutes, correct?

8           A     Yes.

9           Q     And then you'd expect to find a call at 4:10,  
10 somewhere around a minute, and that is the voice mail number  
11 that's generated; is that correct?

12          A     That's a voice mail number, yes.

13          Q     Okay. So now I want to go back to 304 for just  
14 a second here, and I'm going to back out a little bit here so  
15 the jury can see. But really you only need to see the time,  
16 but I'll slide it back over in just a minute. And I want to  
17 start down here at the bottom and ask you to read, though you  
18 need to see this number over here, what number -- oh, I guess  
19 you need to see this too, that it's a terminating call.

20                There is a terminating call from 702-927-8742 to  
21 512-629-0041 that's 127 seconds that hit on the tower at  
22 4:29:43 on 8/7 of 2010; would that be correct?

23          A     Yes.

24          Q     Now, do you get billed for the time the phone is  
25 actually connected, or do you get billed for the entire

1 network time?

2 A You get billed for the time that the phone's  
3 actually connected.

4 Q Okay.

5 A Well --

6 Q And it --

7 A Yeah, on these. Yeah.

8 Q And this call connected at 4:29:43 and  
9 disconnected at 4:31:42. So wherever that person was, was  
10 lucky, because the 119 seconds, just short of two minutes;  
11 would that be correct?

12 A Give or take, I guess, yeah. Yes.

13 Q So now I should slide this down, the very next  
14 thing, better -- should be 4:46. Oh, it is. So let's slide  
15 this over. You have a mobile terminating call. It is from  
16 that 927 number. It is to the 512 number. It's 147 seconds,  
17 and it's at 4:46 in the morning on August 7, 2010; is that  
18 correct?

19 A Yes.

20 Q And the 147 seconds is somewhere over 120  
21 seconds and somewhere less than 180 seconds, correct?

22 A Yes.

23 Q So that should bill out at --

24 A Three minutes.

25 Q -- the three minutes that Mr. Sgro was asking

1 you about, correct?

2 A Yes.

3 Q And then if I were to slide my ruler down one,  
4 there's one with no tower on this record, correct?

5 A It's voice mail again.

6 Q So it did not connect to the phone. So because  
7 it didn't connect to the phone, would you expect to see it on  
8 this record, the 3:24 record?

9 A Incoming? Was it incoming, did you say?

10 Q Well, it's actually a -- it says "MOC to voice  
11 mail," is what it says. MOC to voice mail.

12 A Okay. Yeah. It wouldn't be on the billing  
13 record, so to speak. It wouldn't be on --

14 Q It would not be on this record?

15 A It wouldn't be on that record though, no.

16 Q So the next call we should find that's on this  
17 record is an originating call at 4:10 or 5:10 in the morning,  
18 so we go to the bottom here. Originating call. It's that  
19 voice mail number that we just talked about. It says the  
20 network time connection is 65 seconds, but the actual time is  
21 exactly one minute at 5:10 on 8/7 of 2010, correct?

22 A Yes.

23 Q And based upon that, would you expect -- taking  
24 out the D's that are on these, because these are text  
25 messages --

1           A     Text messaging.

2           Q     -- that shouldn't be on here?

3           A     Correct.

4           Q     And anything that wouldn't generate on here,  
5 like the voice mails that don't connect to a tower or other  
6 items, would you expect that you could go through these  
7 records and correlate them to every one of these records that  
8 are on 304?

9           A     Yes.

10          MR. DiGIACOMO:  Nothing further, Judge.

11          THE COURT:  Anything from Mr. Sgro, Mr. Langford?

12          MR. SGRO:  No, Your Honor.

13          MR. LANGFORD:  No.

14          THE COURT:  All right.  Mr. McDonald, thank you for  
15 being a witness.  You'll be excused, sir.

16          THE WITNESS:  Thank you.

17          THE COURT:  Would you like to call an additional  
18 witness this morning?

19          MS. WECKERLY:  Yes, Your Honor.

20          THE COURT:  All right.

21          MS. WECKERLY:  Devonia Newman.

22                 DEVONIA NEWMAN, STATE'S WITNESS, SWORN

23          THE CLERK:  Please state your name and spell your  
24 first and last name for the record.

25          THE WITNESS:  Can you repeat that?

1 THE CLERK: Can you please state your name and spell  
2 your first and last name for the record.

3 THE WITNESS: My name is Devonian Newman.

4 THE MARSHAL: Hold on one second. You speak real  
5 soft, so we're going to make this -- speak right into the  
6 microphone.

7 THE COURT: And move up a little bit.

8 THE WITNESS: My name is Devonian --

9 THE COURT: Move up. Thank you.

10 THE WITNESS: My name is Devonian Newman.

11 MS. WECKERLY: Can you spell your name, please.

12 THE WITNESS: D-e-v-o-n-i-a.

13 MS. WECKERLY: And can you -- I'm sure it's spelled  
14 how it sounds, but could you spell Newman for us too, please.

15 THE WITNESS: N-e-w-m-a-n.

16 DIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q And can I call you Devonian, or do you prefer  
19 Ms. Newman?

20 A It doesn't matter.

21 Q Okay. Devonian, how old are you today?

22 A Seventeen.

23 Q Seventeen. And so back in August of 2010, how  
24 old were you?

25 A Eleven.

1 Q Eleven. And when is your birthday?

2 A December 9, 1997.

3 Q December 9, 1990?

4 A Seven.

5 Q Back in 2010, in August, how -- well, where were

6 you living? Do you remember the street?

7 A No.

8 Q Okay. Do you remember if it was a house or

9 apartment?

10 A Apartment.

11 Q I'm sorry?

12 A Apartment.

13 Q Okay. And who lived there with you back then?

14 A My mom, my dad and my three siblings.

15 Q Your mom's first name?

16 A Derecia.

17 Q And did you call your dad Dad?

18 A No.

19 Q What'd you call him?

20 A C-Note.

21 Q And then you had three --

22 A Younger siblings.

23 Q Okay. So you were the oldest?

24 A [No audible response.]

25 Q Was that yes?

1           A     Yes.

2           Q     Okay. The place that you lived, was it -- do  
3 you remember how many bedrooms it was?

4           A     Two.

5           Q     Two. And where did everybody stay in terms of  
6 the bedrooms when they were sleeping?

7           A     I slept in the room with my siblings and my mom  
8 and dad slept in their room.

9           Q     And what -- what -- do you remember the kind of  
10 beds that were in the room that you slept in?

11          A     Bunk beds.

12          Q     Bunk beds. And so there were four of you,  
13 right, so one on each bed?

14          A     Yeah.

15          Q     Okay. Back at that time, do you remember -- I  
16 guess you have a cousin or -- named Erica?

17          A     Yeah.

18          Q     And what -- explain how you're related to her.

19          A     That's my mom's sister.

20          Q     Okay.

21          A     She's my aunt.

22          Q     So she's really your aunt. How old was -- or  
23 how old is she in related to you? Are you guys about the same  
24 age?

25          A     Yes.

1           Q     So back at that time and maybe even today, do  
2 you -- do you two spend a lot of time together?

3           A     Yes.

4           Q     Does it seem like she's more like a sister?

5           A     Yes.

6           Q     Do you remember if she stayed over at your house  
7 on August 6, 2010?

8           A     Yes.

9           Q     And do you remember why she was there?

10          A     Because she always comes over and just --

11          Q     Okay. What do you remember about the evening of  
12 August 6?

13          A     I woke up like around 2:00, and I was with my  
14 mom for like a short period of time, and --

15          Q     Can I just interrupt you one second, and I'm  
16 sorry. Before you went to bed, because you said you woke up,  
17 right?

18          A     Yeah.

19          Q     Who was in the house?

20          A     My mom, my dad and my siblings and Erica.

21          Q     Do you remember where everyone, at least the  
22 kids, were sleeping?

23          A     Yes.

24          Q     Could you tell us where that was?

25          A     In the room, the room with --

1 Q Is that in the bunk bed room?

2 A Yes.

3 Q And you said you woke up?

4 A Yes.

5 Q Had you been sleeping in that room?

6 A Yes.

7 Q How did you all fit? Because there's five of  
8 you then, right? Because there's Erica?

9 A Yeah. Like sometimes the two little ones would,  
10 Cashmere and Cordazia would lay in the same one, and Erica  
11 would sleep in the one on the top.

12 Q Okay. And you wake up, I think you said about  
13 2:00?

14 A Yeah.

15 Q Do you get out of bed?

16 A Yeah.

17 Q Where did you go?

18 A In the living room with my mom.

19 Q And when you saw your mom, did you see anybody  
20 else in the room?

21 A Yes.

22 Q And who was in there?

23 A This lady named Stephanie.

24 Q And I want to -- I want to back up just a little  
25 bit before that. Do you know where C-Note was before --

1 A In the bedroom.

2 Q -- all [inaudible]?

3 In the bedroom?

4 A [No audible response.]

5 Q Do you remember what you and your mom were doing  
6 right before you see Stephanie? Like -- like were you  
7 watching TV? Were you --

8 A No.

9 Q Do you remember where you were?

10 A In the living room, but I don't like recall like  
11 what I was exact doing.

12 Q Okay. Now, let's talk about Stephanie for a  
13 second. Okay. Do you know -- do you know someone named  
14 Stephanie Cousins?

15 A Hmm?

16 Q Do you know someone named Stephanie Cousins?

17 A Yes.

18 Q And how long had you known her in 2010?

19 A I known her when I was like -- since I was like  
20 six. I was real close to her niece.

21 Q Okay. So was she someone that would sometimes  
22 come over to the house?

23 A Yeah.

24 Q And would you see her more than once a year, do  
25 you think?

1           A     Yeah.

2           Q     Okay. Now, you said that at some point you see  
3 Stephanie at your house?

4           A     Mm-hmm.

5           Q     Is that yes?

6           A     Yes.

7           Q     Okay. Before you see Stephanie, were there any  
8 calls or anybody else awake that you remember?

9           A     No.

10          Q     Okay. And at the time Stephanie comes over, are  
11 the little kids all in the room with Erica?

12          A     Yeah. They were asleep.

13          Q     And then where was C-Note?

14          A     In the bedroom.

15          Q     And where were you?

16          A     In the living room.

17          Q     And where was your mom?

18          A     And she came -- well, she came from out of the  
19 room into the living room.

20          Q     Okay. And how did you all know that Stephanie  
21 was there?

22          A     There was a knock at the door.

23          Q     Did you answer it, or your mom?

24          A     My mom answered the door.

25          Q     But you're in the living room area?

1 A Yeah.

2 Q Do you remember if you were sitting or standing?

3 A No.

4 Q What happens as your mom answers the door?

5 A Stephanie came in and my mom told her to close  
6 the door, and she didn't.

7 Q She didn't? What happened after that?

8 A A man entered, pushed the door open and entered  
9 and shot her.

10 Q Shot who?

11 A My mother.

12 Q Do you remember where on her body?

13 A In her face.

14 Q And do you remember where Stephanie was when  
15 that happened?

16 A Like -- like in front of the door.

17 Q Okay. Do you remember Stephanie's reaction at  
18 all?

19 A Yeah. Like she like fell to the ground.

20 Q Okay. Did you -- was your impression that  
21 Stephanie was surprised?

22 A No.

23 Q Why not?

24 A Just body language and the like -- the reaction.

25 Q Okay. What happened after your mom was shot?

1           A     I ran. I ran into my mother's bedroom.

2           Q     Okay. Was that down that hallway?

3           A     Yes.

4           Q     And so if I'm understanding you, you didn't turn  
5 into the room where the bunk beds are?

6           A     No.

7           Q     So you run to your mother's bedroom. Did you  
8 hear anything as you were running?

9           A     No.

10          Q     As you ran into your mother's bedroom, what did  
11 you do?

12          A     I went to the bathroom.

13          Q     And was there anyone in the bathroom?

14          A     My dad.

15          Q     Did you -- were you yelling, or do you remember  
16 anything about --

17          A     No. I just know that I tried to close the  
18 bathroom door.

19          Q     Explain what happened as you did that.

20          A     As I was trying to close the door, I got shot in  
21 the stomach.

22          Q     Do you remember a shot going through the door?

23          A     No.

24          Q     Were -- when you're shot in the stomach, can you  
25 explain to us a little bit about how you were positioned?

1           A     I was standing up like trying to like push it  
2 closed.

3           Q     What happened after you were shot?

4           A     The man went, was like checking my pockets  
5 looking for something.

6           Q     Were you standing up at this time, or were you  
7 on the ground?

8           A     On the ground.

9           Q     And do you remember anything about what clothes  
10 you were wearing?

11          A     Not really.

12          Q     And so are you laying on the ground? Are these  
13 your front pockets that the man's checking?

14          A     Yeah.

15          Q     Did he say anything?

16          A     No. Not that I know of.

17          Q     Okay. What were you doing as he -- as he was  
18 saying that -- or as he was checking your pockets?

19          A     Laying there.

20          Q     Were you crying or were you in shock?

21          A     I don't really like recall.

22          Q     You don't recall?

23          A     No.

24          Q     What happened after that?

25          A     And after he was done like checking my pockets

1 he left, and that's when my dad came from out of the shower  
2 and he was like, Lay there, and he's calling the police and  
3 he's like, Lay there. And then that's when like two minutes  
4 later I seen like the ambulance and stuff.

5 Q Okay. So paramedics came --

6 A Yeah.

7 Q -- to get you?

8 A Yeah.

9 Q Did you go to the hospital?

10 A Yes.

11 Q Do you remember being in the hospital?

12 A Yeah.

13 Q How long were you there?

14 A Three months.

15 Q Do you remember getting surgery over those three  
16 months?

17 A No.

18 Q Did you have procedures done on you --

19 A Yeah.

20 Q -- that you know of? Was that --

21 A Yes.

22 Q Okay. And what grade were you in at the time  
23 this happened?

24 A I would have been going to the sixth grade.

25 Q To the sixth grade. Okay. So you kind of --

1 you were in the hospital, so you missed the school year  
2 obviously?

3 A No.

4 Q The first part of it?

5 A Yeah.

6 Q Okay. While you were in the hospital, were you  
7 ever visited by Cornelius or C-Note or your dad?

8 A No.

9 Q Were you visited -- do you remember if the  
10 police ever came to talk to you?

11 A Yes.

12 Q Do you remember when that was?

13 A No.

14 Q Do you remember if they recorded you?

15 A No. Well, now I do.

16 Q Now you know?

17 A Yeah.

18 Q But you don't have an independent recollection  
19 of that?

20 A No.

21 Q Do you remember the police coming another time  
22 and showing you some pictures?

23 A Yes.

24 Q I want to talk a little bit about the man, okay,  
25 that you said comes in after Stephanie.

1           A     Mm-hmm.  Yes.

2           Q     Was that yes?  Okay.  I just want to be clear  
3 who we're talking about.  Do you remember, as you sit here  
4 today, anything about him?

5           A     No.  I just remember like basically what he had  
6 on.

7           Q     What did he have on?

8           A     He had on an orange cap and like -- like  
9 suspender type of things.

10          Q     Okay.  Would it --

11          THE COURT:  What type of things?

12          THE WITNESS:  Like -- I don't know how to explain it.  
13 Like over -- overalls.

14          THE COURT:  Overalls.

15          THE WITNESS:  Yeah.

16 BY MS. WECKERLY:

17          Q     So you remember a cap --

18          A     Yeah.

19          Q     -- and some overalls?

20          A     Yeah.

21          Q     Did you -- do you remember like what race he  
22 was?

23          A     No.  I just remembered hair.

24          Q     Okay.  And as you sit here today, do you  
25 remember anything about the gun?

1           A     No. I can't recall. No.

2           Q     You do know, you know now or you -- you're aware  
3 now that the police did interview you while you were in the  
4 hospital?

5           A     Yes.

6           Q     Do you remember giving the height and weight and  
7 sort of a what I would call a physical description of the man,  
8 like he's tall or skinny or, you know, like that?

9           A     Hmm.

10          Q     Do you remember the police asking you about  
11 that?

12          A     No.

13          Q     I'm sorry?

14          A     No.

15          Q     I'm going to show you --

16          MS. WECKERLY: May I approach the witness, Your  
17 Honor?

18          THE COURT: Yes. Is this to refresh her  
19 recollection?

20          MS. WECKERLY: Yes.

21          THE COURT: Okay.

22          BY MS. WECKERLY:

23                Q     I'm going to show you, Devonian, this document.  
24 Have you seen this before?

25                A     Yes.

1 Q And do you know what it is now?

2 A Yeah. It's a copy of my interview.

3 Q Okay. And I'm going to flip to page 4 of it,  
4 and just ask you -- well, we'll read the bottom of the page 3.

5 MS. WECKERLY: It's the bottom of page 3, Counsel.

6 MR. SGRO: Got it. Thank you.

7 BY MS. WECKERLY:

8 Q Sort of in the middle of the page. Can you just  
9 read this section to yourself.

10 A [Complies.]

11 Q Have you read that little bit?

12 A Yeah.

13 Q Okay. And then we're going to go on to page 4.

14 A You want me to read all of it?

15 Q Yeah. Can you get all the way to the end,  
16 please.

17 A I'm finished.

18 Q Okay. Now, having looked at that, does that  
19 refresh your recollection as to whether or not you gave a  
20 description of what this person looked like to the police?

21 A No. I don't remember saying that.

22 Q You don't?

23 A No.

24 Q And is it because you don't remember saying  
25 these words, or are you saying these words are incorrect?

1           A     I don't remember saying it.

2           Q     Okay. But in looking at the document, would you  
3 agree with me that there is actually a description written on  
4 this piece of paper that --

5           A     Yes.

6           Q     -- is on here, I guess?

7           You just don't remember this at all?

8           A     Yes.

9           Q     Okay. Do you remember that when the police  
10 talked to you, that you gave some description of the gun? Do  
11 you remember that?

12          A     I don't recall that.

13          Q     I'm sorry?

14          A     I don't recall that.

15          MS. WECKERLY: Okay. And this time, Counsel, it will  
16 be on page 6.

17          MR. SGRO: Thank you.

18 BY MS. WECKERLY:

19          Q     And if you could just read just this, this  
20 little bit right here, and just let me know when you finish  
21 that line. Okay.

22          A     [Complies.]

23          Q     And having looked at that, does that refresh  
24 your recollection at all about whether or not you were -- you  
25 gave some description of the gun?

1 A No.

2 Q And again, I'm just asking you is it that you  
3 don't remember giving the description, or this just doesn't  
4 refresh your memory --

5 A I don't remember giving the description.

6 Q You don't remember giving the description?

7 A Yes.

8 Q Okay. But you would agree with me that on page  
9 6, there is a little bit of a description of the gun?

10 A Yes.

11 Q When the -- I want to go back to the events of  
12 that night. Okay. When the -- after you had been shot and  
13 when the man was going through your pockets, could you see if  
14 he went anywhere else in the bedroom or if he took anything?  
15 Could you see anything else that he did?

16 A He went over by the nightstand.

17 Q He went over by the nightstand?

18 A Yes.

19 Q And do you know what was on the nightstand,  
20 or --

21 A I don't recall.

22 Q Okay. Did you see him go anywhere else in the  
23 room?

24 A No.

25 Q Just by the nightstand?

1           A     Yes.

2           Q     Do you remember seeing your dad at all before  
3 you went into the bathroom?

4           A     No.

5           Q     Do you remember if your dad had anything with  
6 him in the bathroom?

7           A     No.

8           Q     Do you remember talking to the police about your  
9 dad picking up his phone and some money?

10          A     No.

11          MS. WECKERLY: And this, Counsel, is -- it's sort of  
12 on page 8 and 10.

13          MR. SGRO: Okay.

14 BY MS. WECKERLY:

15          Q     Okay. So this is the middle of page 8.  
16 Devonia, I'm just going to ask you to read just the first --  
17 the first half. Okay. So you read to here?

18          A     Mm-hmm.

19          Q     Okay. So you -- looking at again, this  
20 transcript of your interview, does that refresh your memory at  
21 all about discussions about what the man did in the room?

22          A     Can you repeat that?

23          Q     Sure. That was a really long question. You've  
24 read that little bit I --

25          A     Mm-hmm. Yes.

1 Q -- referenced for you on page 8?

2 Does that help you remember other things that the man  
3 did in the room or what he might have taken?

4 A No.

5 Q And is it the same thing, where you just don't  
6 remember giving this interview?

7 A Yeah. I just don't remember.

8 Q Okay. Is it -- well, would you agree though,  
9 that there is a discussion about that in the interview?

10 A Yes.

11 Q The events of that night into the morning, we're  
12 about almost five years ago, is it hard for you to remember  
13 them?

14 A Yes.

15 Q Devonia, I'm going to show you this piece of  
16 paper that's marked as State's Exhibit 277. Do you recognize  
17 this?

18 A No.

19 Q Do you remember drawing this at all?

20 A No.

21 Q So you have no recollection of this item at all?

22 A No.

23 Q I have one more thing for you to look at. Now  
24 I'm showing you two -- State's 280. I don't know if you would  
25 have seen that page, but the second page of it, do you see

1 some writing?

2 A Mm-hmm.

3 Q Is that yes?

4 A Yes.

5 Q Okay. Does that look like your writing to you?

6 A Yes.

7 Q And then there's someone circled?

8 A Yes.

9 Q Did you do that?

10 A I don't recall.

11 Q You don't recall?

12 A But it's my handwriting, but I don't remember.

13 Q Okay. That does look like your handwriting  
14 though?

15 A Yes.

16 Q Do you remember the police showing you this  
17 group of pictures at all?

18 A No.

19 Q I'm sorry?

20 A No.

21 Q Okay. When this -- well, let me ask you this.  
22 When the man who shot you, could that have been C-Note?

23 A No.

24 Q And do you think you could have been confused at  
25 all about whether it was C-Note?

1           A     No.

2           Q     It was someone -- had you ever seen that person  
3 before?

4           A     Hm-mm.

5           Q     Is that --

6           A     No.

7           Q     -- no?

8                 After you were shot, do you remember whether or not  
9 your stomach was bleeding a lot?

10          A     No.

11          Q     Do you remember anything about what your clothes  
12 looked like at all after you were shot?

13          A     No.

14          Q     But you do remember you were wearing some kind  
15 of pants?

16          A     Yes.

17          Q     Did C-Note or Cornelius, I call him Cornelius,  
18 did he ever tell you what to tell the police?

19          A     No.

20          Q     Has any -- did anyone ever tell you what to say  
21 in this interview?

22          A     No.

23                 MS. WECKERLY: Your Honor, at this time I'd like to  
24 admit -- move to admit her voluntary statement. We can  
25 certainly do it the audio, because I know defense counsel

1 had --

2 THE COURT: Of course the best evidence is the  
3 audio --

4 MS. WECKERLY: Right.

5 THE COURT: -- but if they have no objection to the  
6 transcript as opposed to the audio.

7 MR. SGRO: The Court's indulgence, Your Honor.

8 (Pause in proceedings)

9 MR. SGRO: Your Honor, I brought the audio with me.

10 MR. DiGIACOMO: I have a previously marked --

11 MR. SGRO: Oh, you do?

12 THE COURT: Do you want the audio instead of the  
13 transcript, or is the transcript acceptable? It may be easier  
14 for the jurors to read the transcript later on during  
15 deliberations.

16 MR. DiGIACOMO: For the record, Judge, the audio's  
17 been marked as State's Proposed 291.

18 MS. WECKERLY: So I would move to admit that.

19 THE COURT: All right. That will be received.

20 (State's Exhibit 291 admitted.)

21 THE COURT: Does that conclude your direct?

22 MS. WECKERLY: The Court's indulgence for one second.

23 (Pause in proceedings)

24 MS. WECKERLY: Thank you, Your Honor. I'll pass the  
25 witness.

1 THE COURT: Any cross?

2 MR. SGRO: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. SGRO:

5 Q Hi, Devonian. How are you doing?

6 A Hello.

7 Q Do you remember talking to me a little -- a few  
8 months back with my investigator about this case?

9 A I think so.

10 Q Remember when we came over, I think it was your  
11 grandma's house?

12 A Oh, yes. Yes.

13 Q You remember that? I was way younger back then.  
14 Devonian, so I want to ask you about a couple things  
15 about your statement. The DA showed you this statement,  
16 right, the typewritten document?

17 A Yes.

18 Q You know you talked to the police at some point,  
19 right? You just don't remember --

20 A Yes.

21 Q Okay. And you don't remember what the words are  
22 that you said, right?

23 A Yes.

24 Q Now, do you remember when you met -- when you  
25 met with me, do you remember my investigator also?

1 A I'm not sure.

2 Q Let me get to his --

3 MR. SGRO: May I approach the clerk, Your Honor?

4 THE COURT: Yes.

5 (Pause in proceeding.)

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

7 THE COURT: Yes.

8 BY MR. SGRO:

9 Q Do you see over here at this table there is a  
10 woman sitting in the dark suit?

11 A Hmm.

12 Q Yes?

13 A Yes.

14 Q And then next to her is a guy with a dark suit  
15 and a light colored shirt?

16 A Yes.

17 Q And you remember he was with me when we came?

18 A Yes.

19 MR. SGRO: Okay. And may I approach?

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q And this is Exhibit T like Tom. That's my  
23 investigator, right?

24 A Yes.

25 Q And then there was another woman that was with

1 us, remember that?

2 A Yes.

3 Q And we sat around your kitchen table there,  
4 right?

5 A Yes.

6 Q Okay. Now, you were asked some questions about  
7 things in your statement, and you said you didn't remember  
8 saying certain things, right?

9 A Yes.

10 Q Now, do you remember telling us that after you  
11 read your statement things on the statement didn't seem right?

12 A Yes.

13 Q In other words, once you had the benefit of  
14 reading your statement and then looking back on what you  
15 remembered, your statement didn't seem very accurate to you?

16 A Yes.

17 Q Do you remember saying things like, they asked  
18 me how old he was, how am I supposed to know how old he was?

19 A Yes.

20 Q And you still believe that today, right? You  
21 have no idea how old this person was?

22 A Yes.

23 Q And they asked you how tall he was and you said,  
24 "How would I know. I was on the ground." Do you remember  
25 that?

1           A     Yeah.

2           Q     And you still stick with that today, you would  
3 have no idea how tall he was, right?

4           A     Yes.

5           Q     Now, you were asked some questions about  
6 complexion. Do you remember you told us that his skin tone  
7 was darker than your skin tone? Do you remember telling us  
8 that?

9           A     I don't recall.

10          Q     Okay. Do you recall drawing something for us?

11          A     Yes.

12          Q     I had a white piece of paper here. Here it is.  
13 Now, when we talked about the difference between what you  
14 told -- or what appeared on that police statement and what you  
15 remembered, do you remember telling us that there were some  
16 things you remembered different?

17          A     Yes.

18          Q     And do you remember telling us that you  
19 remembered that this man had a hat?

20          A     Yes.

21          Q     And you remember telling us he had a bandanna?

22          A     Yes.

23          Q     And remember -- and I think you said, I just was  
24 able to see his eyes and that's it.

25          A     Yes.

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

2 THE COURT: Sure.

3 MR. SGRO: I'm handing you just a blank piece of  
4 paper and a pen.

5 Your Honor, may I move this box just for a moment?

6 THE COURT: Sure.

7 BY MR. SGRO:

8 Q So Devonian, you were kind enough to draw me a  
9 picture back when we met a few months ago at your grandma's,  
10 right?

11 A Yes.

12 Q Do you mind doing that for me again, please.  
13 Can you -- and just tell me when you're done.

14 A I'm finished.

15 Q Do you mind signing your name on that for me,  
16 please.

17 A [Complies.]

18 Q Thank you.

19 MR. SGRO: And may I approach the clerk, Your Honor?

20 THE COURT: Yes.

21 MR. SGRO: Your Honor, I'd move into evidence Defense  
22 Exhibit V, like Victor.

23 THE COURT: It will be received.

24 (Defendant's Exhibit V admitted.)

25 MR. SGRO: May I publish?

1 THE COURT: Yes.

2 MR. SGRO: Sorry.

3 MR. LANGFORD: No objection, Your Honor.

4 BY MR. SGRO:

5 Q Do you remember when we talked about the police  
6 statement that's on the tape, you were kind of upset because  
7 you thought people were putting words in your mouth about what  
8 the description was, right?

9 A Yes.

10 Q And you remember part of your being upset was  
11 because you tried to tell the DA's and they said, Don't worry  
12 about it?

13 A Yes.

14 Q I'm sorry?

15 A Yes.

16 Q Okay. Now, just for an example --

17 THE COURT: Put that box back so she can --

18 MR. SGRO: I'm sorry. Sorry.

19 THE COURT: There you go.

20 BY MR. SGRO:

21 Q So one of the things that you told us when we  
22 were together was, you know, they asked me -- or you realized  
23 that on your statement you described some facial hair, like  
24 mustaches and stuff?

25 A Yes.

1           Q     And when you looked back and recalled, you  
2 realized that if the person had a bandanna on you weren't  
3 going to be able to tell if he had a mustache or not?

4           A     Yes.

5           Q     And these are parts of the reasons why you were  
6 frustrated when you saw your police statement, right?

7           A     Yes.

8           Q     And did you also tell me that after reading your  
9 police statement, it appeared to you like the detectives put  
10 words in your mouth?

11          A     Yes.

12          Q     And you don't -- I think what you said is, I  
13 don't talk like that, and you were pointing to your statement,  
14 right?

15          A     Yes.

16          Q     Do you remember when C-Note or Cornelius came to  
17 visit with you in the hospital?

18          A     He never came and visited me in the hospital.

19          Q     Okay. And you were asked something about some  
20 suspenders --

21          A     Yes.

22          Q     -- remember that?

23               And you don't remember drawing anything having to do  
24 with suspenders, right?

25          A     No. Yes, I do.

1 Q Oh, you do remember --

2 A I don't -- no, I didn't draw -- I don't remember  
3 drawing anything, but I remember saying something about it.

4 Q Okay. And let me back up, if I misspoke. You  
5 don't remember drawing, drawing it actually on a piece of  
6 paper?

7 A No.

8 Q You spent some time with CPS after this case, or  
9 after the shooting happened, right?

10 A Yes.

11 Q And you also told people at CPS --

12 A Well, no. I never been down to the place. I  
13 was in the hospital --

14 Q Okay.

15 A -- for three months and I moved with my aunt.

16 Q Okay. Did you speak to people from CPS though?

17 A No.

18 Q You don't remember that?

19 A No.

20 Q Do you remember if you ever told anyone from CPS  
21 that your statement didn't look right to you?

22 A No.

23 Q Did that ever come up? Okay.

24 Cornelius or C-Note has been outside for a couple  
25 days, right?

1 A Huh?

2 Q C-Note has been outside the courtroom waiting to  
3 testify and then testified, right?

4 A Yes.

5 Q And you've seen him out there?

6 A Yes.

7 Q Did he tell you what he testified about when he  
8 was --

9 A No.

10 Q -- on the stand?

11 Okay. Now, you said that Stephanie didn't seem  
12 surprised when someone broke in or pushed her away, right?

13 A Yes.

14 Q And you do remember telling me that Stephanie  
15 could have been acting?

16 A Yes.

17 Q Okay. The fact -- and you used those words,  
18 right; Stephanie could have been acting?

19 A Yes.

20 Q Could the phrase "Stephanie could have been  
21 acting," could that have come from Cornelius, or no?

22 A No.

23 Q Now, when we -- when we spoke, do you remember  
24 anything about C-Note before -- before going into the  
25 bathroom, taking some stuff out of the drawer?

1           A     No.

2           Q     Okay.  If I -- if I put it in the context of  
3 getting money for some school clothes -- remember, this was  
4 August, right; school was about a couple weeks away?

5           A     Yes.

6           Q     Does it refresh your memory if I tell you in the  
7 context of school clothes that you had said Cornelius got some  
8 money for some school clothes out of the drawer before he went  
9 in the bathroom?

10          A     I don't recall saying that.

11          Q     Okay.  Did you remember at any point seeing  
12 C-Note by those drawers as you're here today?

13          A     No.

14          Q     Does C-Note, back in August of 2010, did he have  
15 two brothers?

16          A     I'm not sure.  I wasn't really close to his  
17 family.

18          Q     Had you ever met his brothers, or no?

19          A     No, not that I know of.

20          Q     All right.  Do you remember that there was some  
21 questions about what kind of clothes you had on; you said you  
22 had some pants on?

23          A     Huh?

24          Q     On the night that the shooting happened --

25          A     Yes.

1 Q -- Ms. Weckerly just asked you what kind --

2 A Yes.

3 Q -- of clothes you had on.

4 Okay. On that night, could you have been wearing  
5 stretch pants like the, you know, the tight stretchy ones that  
6 don't have pockets?

7 A No.

8 Q Okay. So --

9 A Well, I don't know. I'm not sure.

10 Q You may have been wearing stretch pants, you may  
11 not have been?

12 A Yeah.

13 Q Had you seen -- back in the summertime right  
14 before the shooting happens, had you ever seen C-Note in  
15 ownership or possession of a gun?

16 A No.

17 Q Do you remember telling CPS that you felt that  
18 C-Note saved your life? Did that ever come up?

19 A I don't remember talking to CPS, no.

20 THE COURT: She said she doesn't remember talking to  
21 C-Note -- or to CPS.

22 BY MR. SGRO:

23 Q You don't remember any conversations at all with  
24 CPS?

25 A No.

1 MR. SGRO: Okay. Thank you, Judge.

2 BY MR. SGRO:

3 Q So let me ask you this question. Do you believe  
4 that night that C-Note saved your life?

5 A Like I don't get like what you mean like.

6 Q Okay. Was the bathroom that you ran into, was  
7 it pretty small?

8 A [No audible response.]

9 Q How much room was it, do you know?

10 A I'm not really sure.

11 Q Do you remember telling the police after --  
12 after you record this statement, you've seen the police since  
13 that time, right, and before --

14 A No.

15 Q You haven't seen the police. Have you spent  
16 time with the DA's?

17 A Yeah.

18 Q Have you ever told them that you saw three men  
19 grabbing drugs and money --

20 A No.

21 Q -- does that ring a bell?

22 Do you remember anything about C-Note winning a big  
23 basketball bet in August of 2010?

24 A No.

25 Q Was he a gambler as far as you know?

1           A     No.

2           Q     Do you remember him ever winning \$2500?

3           A     No.

4           Q     Was there -- was there crack cocaine in that  
5 apartment?

6           A     I don't recall.

7           Q     You don't recall if --

8           A     No.

9           Q     -- there was any cocaine?  
10 Would you know if there was any marijuana?

11          A     I'm not sure.

12          Q     Pardon me?

13          A     I'm not sure.

14          MR. SGRO:   Okay.  May I approach the clerk, Judge?

15          THE COURT:  Yes.

16                   (Pause in proceeding.)

17          MR. SGRO:  And may I approach the witness, Your  
18 Honor?

19          THE COURT:  Yes.

20          BY MR. SGRO:

21                Q     Devonia, I wanted to show you a couple pictures.  
22 Okay.  You tell me if you've ever seen these people before.

23                A     Okay.

24                Q     Okay.  The first one, see the letter W on the  
25 back?

1           A     Mm-hmm.

2           Q     All right.  Defense Exhibit W, do you know  
3 who -- have you ever seen that person?

4           A     No.

5           Q     Defense Exhibit Y, have you ever seen that  
6 person?

7           A     No.

8           Q     And do you remember telling me that you got a  
9 vibe from the person, the man that came into the house, you  
10 got a vibe from his eyes?  Does that sound familiar?

11          A     I'm not sure.  I don't get like your question.

12          Q     Okay.  Defense Exhibit X, does he look familiar  
13 at all?

14          A     No.

15          MR. SGRO:  Okay.  That's all I have, Your Honor.

16          THE COURT:  Anything further, Mr. Langford?

17          MR. LANGFORD:  Yes, Your Honor.

18                       CROSS-EXAMINATION

19          BY MR. LANGFORD:

20               Q     Devonia, a couple things.  You knew Stephanie  
21 Cousins; is that right?

22               A     Yes.

23               Q     How did you know Stephanie Cousins?

24               A     When I was a little girl, I used to live in this  
25 neighborhood and I was real close with her niece.

1           Q     Okay.  And did she -- did she have a sister that  
2 you knew?

3           A     Yeah.

4           Q     And did her sister's kids used to come over to  
5 your house a lot?

6           A     Just her sister's one daughter.

7           Q     Okay.  And your mom would watch her; is that  
8 right?

9           A     Yeah.

10          Q     Okay.  How often would you say Stephanie was  
11 over to your house?

12          A     Like sometimes like every other couple of --  
13 like probably like two times out of the month.

14          Q     Okay.  Prior to this happening, would you say  
15 that Stephanie Cousins was a good friend of your mom's?

16          A     I'm not sure.  I don't really recall.

17          Q     When she was over, would they argue and fight?

18          A     Sometimes they would bump heads.

19          Q     Sometimes they would --

20          A     Sometimes.  Sometimes.

21          Q     About what?  What would they fight about?

22          A     I don't know.

23          Q     You didn't know what they were fighting about?

24          A     No.

25          Q     You're just sure they were fighting?

1           A     Not fighting, but like -- I don't know. Like I  
2 don't know how to explain.

3           Q     Is it possible you don't want to say that she  
4 was a friend today because of what has happened?

5           A     Yeah, you can say that.

6           Q     Now, you said also that when you gave the  
7 statement to the police officers, that you don't remember a  
8 lot about that today, right?

9           A     Yes.

10          Q     That's a true statement; you don't --

11          A     Yes.

12          Q     -- remember very much about that?

13                You were under a lot of medication at the time?

14          A     Yes.

15          Q     You also were in a hospital room, right?

16          A     Yes.

17          Q     People coming and going, hospital staff coming  
18 and going as they're taking care of you, correct?

19          A     Yeah.

20          Q     And you had been there about, I don't recall how  
21 long, but do you recall how long you'd been there when you  
22 started -- when you gave that statement?

23          A     No.

24          Q     Is it possible that you may have received visits  
25 from other people as well that you just don't recall?

1           A     No. My aunt said they had it set up a certain  
2 way where only -- you have to be on the visitors list.

3           Q     Okay. There was a security guard there, right?

4           A     Yes.

5           Q     Okay. Making sure that only certain people got  
6 in to see you, correct?

7           A     Yes.

8           MR. LANGFORD: Nothing further, Your Honor.

9           THE COURT: Does that conclude the --

10          MS. WECKERLY: No, Your Honor. I have a couple  
11 questions, please.

12          THE COURT: Okay. I wanted to finish her before we  
13 head to break, but I -- it's getting late, so.

14          MS. WECKERLY: I'll just be like five minutes.

15          THE COURT: All right.

16                         REDIRECT EXAMINATION

17          BY MS. WECKERLY:

18                 Q     Devonia, what -- from that night that this  
19 happened and the guy who shot you, what is -- as you sit here  
20 today, can you give us any description of what you remember  
21 about him?

22                 A     I remember hair.

23                 Q     You remember hair?

24                 A     Hair.

25                 Q     What was the hair like?

1 A It was like curly. It stuck out the hat.

2 Q Curly and stuck out of the hat?

3 A Yeah.

4 Q And do you remember his race?

5 A No.

6 Q And do you remember how tall he was?

7 A No.

8 Q And do you remember -- I think you talked of  
9 that you do remember something about the clothing?

10 A Yeah.

11 Q And what was that?

12 A The overalls.

13 Q The overalls. Mr. Sgro called it suspenders.

14 Do you know the difference, or do you consider those the same  
15 or different?

16 A Under the same, because they both have the  
17 straps.

18 Q Okay. And when you say overalls, like how --  
19 how would those look on the front of somebody?

20 A Like -- like kind of square shape at the top.

21 Q Square across here --

22 A Yeah.

23 Q -- across the chest?

24 Okay. This picture, Defense Exhibit V --

25 A Yeah.

1           Q     -- how are you able to draw the face? Is that  
2 like -- I guess what I'm asking, can you remember the face of  
3 the person back on August 7, 2010?

4           A     No. I just remember like mask on the face.

5           Q     Okay. So this is based on your memory as you  
6 sit here --

7           A     Yes.

8           Q     -- today?

9           A     Yes.

10          Q     Okay. And it's been about 4 1/2 years.

11          A     Yes.

12          Q     Okay. You said that you were -- that you  
13 believed that the police kind of put words in your mouth?

14          A     Yes.

15          Q     Can you give me examples of that from the -- the  
16 interview, if you look at it? Maybe you could point one out  
17 to me?

18          A     Well, there was just like confusion like when  
19 they said --

20          THE COURT: You're going to have to speak up, Miss.

21          THE WITNESS: Oh, I'm sorry. It was just like  
22 confusion, like when they were like saying I was describing  
23 like how old he was and his height. Like I don't remember.

24 BY MS. WECKERLY:

25          Q     You don't remember saying it?

1           A     Saying it.

2           Q     Do you think they --

3           A     So that's why I thought until I heard it, it was  
4 just like I just don't remember.

5           Q     So you don't remember?

6           A     Yeah.

7           Q     Did -- did you feel like they were telling you  
8 to say certain things?

9           A     Yeah. But then like when I heard it, it was  
10 like I did say that, but I don't recall saying it.

11          Q     Okay. So you heard your --

12          A     Because my memory, I just don't, really just  
13 don't remember.

14          Q     Okay. So when you heard it, you didn't -- did  
15 you hear them suggesting answers to you, or it's just no, I  
16 don't even remember saying that?

17          A     When I just heard it, I was just like, wow,  
18 yeah, don't remember saying it.

19          Q     Don't remember saying it. Now tell me about the  
20 meeting you had with defense counsel where Mr. Sgro was there  
21 and the investigator was there. How many people were talking  
22 to you?

23          A     I think it was like five of them. Five.

24          Q     One at a time?

25          A     Sometimes they would talk at the same time, and

1 then -- then they'd --

2 Q Imagine that, with lawyers.

3 A Yeah. They just like -- like two people would  
4 be talking at me at once, and it was just like kind of  
5 sometimes confusing.

6 Q So it was a little confusing?

7 A Yeah.

8 Q Did they tell you who they were?

9 A No. I found out like the next day.

10 Q Did they tape record you?

11 A No.

12 Q Did you feel any pressure one way or the other  
13 in that meeting?

14 A No, not really.

15 Q How about when you met with me and Mr.  
16 DiGiacomo, did you feel pressured?

17 A No.

18 Q Did we tell you how you had to answer any  
19 questions?

20 A No.

21 Q Do you consider C-Note your dad?

22 A Yes.

23 MS. WECKERLY: Thank you.

24 MR. SGRO: One question, Your Honor.

25 THE COURT: Okay.

RE CROSS-EXAMINATION

BY MR. SGRO:

Q Devonia, any doubt that the person that came in that night had a mask on?

A      Huh?

Q Do you have any doubt that the person that came into that apartment last night had a mask on?

A        Are you like asking me like if he did or didn't  
like --

Q Yeah. Did he? Did he have a mask on?

A From my memory, yes.

MR. SGRO: Okay. Thank you, Judge.

MR. LANGFORD: Nothing, Your Honor.

THE COURT: All right. Devonian, thank you very much for being a witness. You'll be excused.

THE WITNESS: Thank you.

THE COURT: We'll take our luncheon recess now, ladies and gentlemen. Again, it's your duty not to converse among yourselves or with anyone else on any subject connected with this trial, or to read, watch or listen to any report of or commentary on the trial from any medium of information, including newspapers, television and radio. You may not form or express an opinion on any subject connected with this case until it is finally submitted to you.

Be in recess for about an hour for lunch. We'll see

1 you back here as soon as -- and the marshal will tell you when  
2 we're ready to go.

3 (Jurors recessed at 12:40 p.m.)

4 THE COURT: Don't walk away with the exhibits.

5 MR. DiGIACOMO: Excuse me. He has three defense  
6 exhibits, doesn't he?

7 MR. SGRO: I do?

8 MR. DiGIACOMO: Or did he give those back?

9 THE CLERK: Yes. No. That's the three you had me  
10 mark.

11 THE COURT: She'll tackle you on the way out if  
12 you've got exhibits. Don't think my clerk can't do it.

13 MR. ORAM: What time, Judge? What time do you want  
14 us back?

15 THE COURT: The record will reflect that the jury has  
16 exited the courtroom. Anything further on the record?

17 MR. ORAM: What time are you telling us to come back,  
18 1:45?

19 THE COURT: Oh, an hour. As quickly as you can.

20 MS. WECKERLY: Your Honor, thank you for  
21 accommodating that witness and counsel.

22 (Court recessed at 12:41 p.m. until 1:54 p.m.)

23 (Outside the presence of the jury.)

24 THE COURT: All right. We're on the record. Burns  
25 and Mason. The record will reflect the presence of the

1 defendants, their counsel, and the district attorneys.

2 Before we get to your matter, I was informed a few  
3 minutes ago that one of the jurors has to leave on a plane  
4 tonight to attend a funeral and I had promised we will be  
5 through before 5:00.

6 MR. ORAM: That's fine.

7 MR. DiGIACOMO: That's not going to be an issue.

8 THE COURT: Okay. Well, I just wanted you to know.

9 All right. You had something you wanted to put on  
10 the record.

11 MR. ORAM: Your Honor, you have just heard a 911  
12 tape. And the 911 tape apparently is Stephanie Cousins  
13 relaying to another party information, and now this other  
14 party is becoming an accuser of which we will not be about to  
15 confront Stephanie Cousins who is the original accuser.

16 There's actually a U.S. Supreme Court case that  
17 addresses 911 calls. And it talks about whether the call is  
18 for, in other words, emergency, come and -- come and help in  
19 which they can use it. But they cannot use it in the event  
20 that they are doing it for investigative purposes. And when I  
21 heard that, one, it's -- it's -- that is inadmissible and  
22 hearsay on a number of different grounds because we are not  
23 able to cross-examine Stephanie Cousins.

24 And so, to me, that seems obvious unless the State  
25 thinks that they can get that in, in which case we're probably

1 going to have to go, I'll have to go get that case, because I  
2 briefed this issue before in the Nevada Supreme Court. I  
3 don't think they have a chance of letting that in.

4 MR. DiGIACOMO: If I could, Mr. Oram is confusing  
5 two things. He's talking about Washington v. Davis, which is  
6 related to the 911 call. But there is a step that you have to  
7 get through before that, which is the statements of Stephanie  
8 Cousins. I believe we'll be able to lay the foundation to the  
9 next witness that Stephanie came, her feet were bleeding,  
10 she's screaming, she's upset, she's clearly under the effects  
11 of the event.

12 And there's a whole lot of case law that says if  
13 there is an exception to the hearsay rule it's not  
14 confrontation. The statements made by Stephanie daughter are  
15 excited utterances. What the daughter then does is call 911  
16 and we're offering it for two separate purposes. One of which  
17 is obviously the woman on this tape is excited. She's here.  
18 She's going to be cross-examined as to her statements.

19 But also at the end she provides two separate phone  
20 numbers that she utilizes and ultimately it's going to be  
21 relevant in her testimony because they show up on our phone  
22 records and are going to be admissible as it relates to her  
23 phone -- to her phone records. So both the initial statements  
24 that Stephanie made to -- to her daughter were -- we were  
25 intending to elicit that while the witness is on the stand, as

1 well as I don't know that she remembers.

2 As a matter of fact I know she doesn't remember.

3 She may have found out since our pretrial what the numbers  
4 were, but I know she doesn't remember it. So we are going to  
5 play the 911 to establish the -- the phone numbers that she  
6 was using, as well as what she's saying on the 911 is come to  
7 my house because I've got a problem, which is Washington v.  
8 Davis says that's admissible if the 911 call is to seek help  
9 from the police because of an emergency situation.

10 And she's thinking Cornelius is coming to kill her  
11 and she's telling the police he's coming to kill her because  
12 Willie killed somebody at this house on Christy Lane and Lake  
13 Mead, which is right next to our crime scene. All of that is  
14 admissible.

15 MR. ORAM: Judge, I -- I --

16 MR. DiGIACOMO: Well, then she says, yeah, Willie is  
17 coming to kill her because my mom is saying something to the  
18 effect of if I say anything I'll get killed.

19 MR. ORAM: When she says these other people are  
20 involved, there are three other people involved. This is what  
21 causes me concern. That woman doesn't know that at all. She  
22 didn't see any of this. And so I think we've run a reasonably  
23 clean trial. I think to let this in against Mr. Burns would  
24 be devastating.

25 And I'm not sure -- when I hear Mr. DiGiacomo say

1 that, I think he probably should -- we should either brief  
2 this over the weekend so we can give the Court, since it's a  
3 recording, it's not going anywhere, we can give the Court  
4 briefs and determine whether this is admissible because that,  
5 to me, sounds like inadmissible hearsay that is particularly a  
6 violation of --

7 THE COURT: I heard the tape. It sounded to me like  
8 it was an emergency call.

9 MR. DiGIACOMO: Well, she -- she's --

10 THE COURT: I would consider that an emergency.  
11 Now, I -- you know, I'm willing to listen to your arguments,  
12 but --

13 MR. ORAM: Could we at least brief it? Or could --  
14 or we could just simply remove the portion out where she  
15 says --

16 MR. SGRO: Exactly.

17 MR. ORAM: We can remove out -- if they want it for  
18 other purposes, but if we can remove out she says there -- I  
19 forget exactly the two or three other people that she has no  
20 knowledge of whatsoever, then I have no -- I don't have a  
21 difficulty with it. I don't have a difficulty with 95 percent  
22 of that. It's that one little blur that I thought, boy,  
23 that's -- that is -- she becomes an accuser of Burns through  
24 Stephanie Cousins and that is hearsay and it's a violation of  
25 confrontation.

1 MR. DiGIACOMO: Well, except for that so long as the  
2 statement of Ms. Cousins is an excited utterance at the time  
3 that she makes it to her daughter, there is no issue.

4 MR. ORAM: Yeah, but that's not -- that's not what  
5 you're bringing in. She's not bringing -- it's not as though  
6 this woman is coming in and --

7 THE COURT: That's the only way she knows to say  
8 that to the police is what she hears from Stephanie; right?

9 MR. DiGIACOMO: Correct.

10 MR. ORAM: So -- so what I would do, Judge, is I  
11 would suggest since we're going to be out of here and starting  
12 back up on Monday, that we simply brief it.

13 MR. DiGIACOMO: Except for the witness is here.

14 THE COURT: Yeah, the witness is here.

15 MR. ORAM: She's local.

16 MR. DiGIACOMO: The witness is --

17 MR. ORAM: She's local --

18 MR. DiGIACOMO: -- going to testify.

19 MR. ORAM: -- though; right?

20 MS. WECKERLY: She is local.

21 MR. DiGIACOMO: She's local, but, I mean, she is  
22 here to testify today.

23 THE COURT: I think it's probably admissible.

24 MR. SGRO: Judge.

25 THE COURT: Are we ready to go?

1           MR. SGRO: We're not -- one more thing to supplement  
2 the record. We never got this tape in discovery, okay. We  
3 never got it. We have a computer generated what they call the  
4 CAD, but we never got access to the tape. They're springing  
5 this on now. You have already previously ruled in this case.  
6 And I remember you telling me at one time, well, if it was  
7 produced in discovery, they can use it.

8           THE COURT: That's right.

9           MR. SGRO: This was not produced in discovery.

10          THE COURT: I don't know why it wasn't produced in  
11 discovery. It should have been.

12          MR. DiGIACOMO: I can address that, Judge. As it  
13 relates to the photographs that are in evidence, and Mr. Sgro  
14 acknowledged that, too, 911 calls and jail records, those are  
15 the three items that get released to the defense. We give  
16 them the CADs. They can order the 911 calls, they can order  
17 the photographs, and they can order the jail records.

18          MR. SGRO: No, no, no.

19          MR. LANGFORD: That's not right.

20          MR. SGRO: We subpoena, they do a motion to quash,  
21 we come into court --

22          MR. LANGFORD: Every time.

23          MR. DiGIACOMO: Not as it relates to those three  
24 items, Judge. And so this CAD we made a request to Metro  
25 saying, hey, we have the CAD that has --

1 THE COURT: When did you get it?

2 MR. DiGIACOMO: -- all this information.

3 THE COURT: When did you get it?

4 MR. DiGIACOMO: Friday.

5 MS. WECKERLY: Friday or Thursday.

6 MR. DiGIACOMO: Friday.

7 MR. SGRO: And we're hearing this --

8 MR. DiGIACOMO: I sent --

9 MR. SGRO: -- right now?

10 MR. DiGIACOMO: I sent an e-mail off to them  
11 saying --

12 THE COURT: You got it last Friday?

13 MR. DiGIACOMO: Yes.

14 THE COURT: A week ago today?

15 MR. DiGIACOMO: Yeah, a week ago today. Maybe it  
16 was Monday.

17 MR. SGRO: How is that not trial by ambush, Your  
18 Honor? And, Judge, just by the way in this case --

19 MR. DiGIACOMO: Well, we can put the CAD in.

20 THE COURT: Why didn't you get it sooner than that?

21 MR. DiGIACOMO: Because I -- I never even looked at  
22 the CAD until we talked to the woman who came in and she says  
23 I'm the person who called. Because the CAD shows it's a  
24 Christine Cyrill (phonetic) and the woman's name is actually  
25 Christine something else.

1 THE COURT: It concerns me that you didn't get this  
2 before then and you didn't give it to them before then.

3 MR. DiGIACOMO: Well -- well, I -- well, I  
4 understand that. We gave them the computerated generated  
5 computer list that shows a 911 call was made on this date at  
6 this time at this location and here is what it says.

7 THE COURT: Oh, they had -- you had the transcript?

8 MR. DiGIACOMO: Well, it's not --

9 MR. SGRO: No.

10 MR. LANGFORD: No.

11 MR. DiGIACOMO: -- a transcript. It's a CAD.

12 MR. SGRO: No.

13 MR. LANGFORD: Not a transcript.

14 MR. DiGIACOMO: I can pull it up for you, Judge.

15 It's a --

16 MR. SGRO: No, we did not have a transcript. Here's  
17 the -- here's the situation, Your Honor. We didn't know --

18 THE COURT: Wait. Time out. Either you had a  
19 transcript or you didn't.

20 MR. SGRO: We did not.

21 MR. DiGIACOMO: We have a CAD.

22 MR. SGRO: We have a CAD.

23 THE COURT: I don't know what a CAD is.

24 MR. SGRO: A CAD is --

25 MR. DiGIACOMO: I'll pull it up --

1 MR. SGRO: -- a computer --

2 MR. DiGIACOMO: -- for the Court, Judge.

3 MR. SGRO: -- it's a computerated -- computer  
4 generated -- it's like -- it's the difference between a court  
5 transcript and a minute order or in the court minutes. The  
6 minutes serve to very summarily reflect the proceedings in a  
7 courtroom. That's what a CAD is to 911 calls. That's all we  
8 had. We didn't talk about this in opening. We didn't talk  
9 about this through any examination of any of the other  
10 witnesses. We didn't -- we, Your Honor, are completely  
11 surprised by this.

12 It's far more -- even -- even if the Court finds  
13 that it's -- it's somehow an exception to the hearsay rule,  
14 and by the way you'd have to do a double loop, excited  
15 utterance to excited utterance, which I've never heard of  
16 before. I understand if I'm excited and I relay information,  
17 that's maybe an exception. But if I'm excited and then I get  
18 Mr. Oram excited and then he goes and tells somebody else, is  
19 my initial excited utterance admissible through him?

20 THE COURT: You can cross-examine her on it why she  
21 said what she said.

22 MR. SGRO: Well, the other -- the other issue is --

23 THE COURT: That's not the important thing. I think  
24 it's an excited statement to the -- calling to the police,  
25 asking for help. I think that that's good enough to get it

1 into evidence. Now, the only issue I'm concerned about is why  
2 this wasn't produced as part of discovery.

3 MR. SGRO: And the other issue is the prejudice  
4 versus the probative value. Even if they meet the hearsay  
5 exception, I'll tell you why, Your Honor. She says Willie  
6 Mason, and then she says the word them. Them. The -- the --  
7 the inability of us to examine of who them is or who --

8 THE COURT: You can cross-examine her.

9 MR. SGRO: We can't because she doesn't know. She  
10 -- in order to cross-examine --

11 THE COURT: I thought she was going to testify.

12 MR. SGRO: Yeah, but we have to cross-examine her  
13 based on what her mother told her. She wasn't there at the  
14 scene. How are we going to do that?

15 THE COURT: You can still cross-examine her. She's  
16 going to be -- she's going to be on the stand.

17 MR. DiGIACOMO: Judge, on your screen -- yes. And  
18 on your screen is the document that they got showing the event  
19 number, the call, and then the report of the -- the call  
20 taker's notes as to what it is that this person is reporting  
21 is going on at that location at that time.

22 MR. SGRO: Right. And that's Cornelius Mayo. As we  
23 read the discovery in its entirety, this CAD is Cornelius  
24 Mayo.

25 MR. DiGIACOMO: Really? It says suspect, Willie

1 Mason, black male adult, 27 years old --

2 MR. SGRO: Right.

3 MR. DiGIACOMO: -- 5'4, 130 pounds, black hair, and  
4 have no further description, white Jeep, unknown plates, two  
5 other suspects also involved. Suspects known to do drive,  
6 this male --

7 THE COURT: It does sound like you had it. All  
8 right. We're going to go ahead. Let's go.

9 MR. DiGIACOMO: Thank you, Judge.

10 THE COURT: Bring in the jury.

11 THE MARSHAL: Yes, sir.

12 MR. ORAM: Judge, just to prefect the record, just  
13 -- I understand the ruling --

14 THE COURT: Bring in the jury.

15 (In the presence of the jury.)

16 THE COURT: State of Nevada versus Mason and Burns.  
17 The record will reflect the presence of the defendants, their  
18 counsel, the district attorneys, and all members of the jury.  
19 We're ready to proceed with the State's next witness.

20 MS. WECKERLY: Thank you, Your Honor. The State  
21 calls Monica Monroe.

22 MONICA MONROE, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated. Please state your  
24 name and spell your first and last name for the record.

25 THE WITNESS: Monica Monroe; M-O-N-I-C-A

1 M-O-N-R-O-E.

2 DIRECT EXAMINATION

3 BY MS. WECKERLY:

4 Q Ms. Monroe, are you related to someone named  
5 David Burns?

6 A Yes.

7 Q Ma'am, can you say yes or no for the record  
8 just because --

9 A Yes.

10 Q -- of our recording? Thank you. And do you  
11 see him in the courtroom today?

12 A Yes.

13 Q Could you point to him and describe what he's  
14 wearing?

15 A Over here in the blue.

16 MS. WECKERLY: Your Honor, may the record reflect  
17 identification?

18 THE COURT: The record will so reflect.

19 MS. WECKERLY: Thank you.

20 BY MS. WECKERLY:

21 Q How are you related to him, ma'am?

22 A He's my cousin, second cousin.

23 Q Okay. And back in August and September of  
24 2010, can you give us the county or just sort of general  
25 description of where you were living?

1           A     Victorville, San Bernardino County.

2           Q     Okay. At the -- towards the beginning of  
3 August of 2010, did you receive some phone calls from Mr.  
4 Burns?

5           A     I received a phone call, and the reason I know  
6 that was because it was on an answering machine. That's it.  
7 Not --

8           Q     Okay. And do you know or can you remember the  
9 number that he was dialing from?

10          A     I remember a digit.

11          Q     What do you remember?

12          A     There was a 5. That's what I told the  
13 deputies when they came. Well, the officers when they came  
14 out.

15          Q     Okay. And some detectives did come and talk  
16 to you in September of '10; correct?

17          A     Yes.

18          Q     And they were asking you about these calls?

19          A     They asked me have I heard from my cousin and  
20 I said, yeah, on my answering machine he called. And then  
21 they didn't ask the number -- yeah, they did ask the number  
22 and I gave them a 5 because I remember there it was a 5  
23 something.

24          Q     Okay. Do you remember giving them a number  
25 that you received a call from that was a 909 area code?

1 A I don't recall.

2 Q Okay.

3 A I don't know.

4 Q You did give a taped statement to them?

5 A No. He asked for one.

6 Q Okay.

7 MS. WECKERLY: Can I -- may I approach the witness,  
8 Your Honor?

9 THE COURT: Yes.

10 MS. WECKERLY: This is the top of page 5.

11 MR. ORAM: Thank you, Counsel.

12 BY MS. WECKERLY:

13 Q Ms. Monroe, I'm showing you a document which  
14 you -- I don't know if you've seen it before.

15 A No.

16 Q But it appears to be a transcript of an  
17 interview that you gave to the detectives. Do you recall  
18 that?

19 A I've never seen that.

20 Q Okay.

21 A Uh-huh.

22 Q Do you recall them speaking with you?

23 A Yeah.

24 Q Okay. And they sort of start the interview  
25 out and they say they're with you. And they discuss --

1           A       They came, they knocked at the door, they  
2 asked me did I know a guy, and they said his name.

3           Q       Uh-huh.

4           A       And I said yeah. And they said he was  
5 [indecipherable] in Las Vegas and we would like to talk with  
6 him.

7           Q       Okay. And so are you saying you didn't do  
8 this tape recorded statement?

9           A       No, I didn't do a tape recorded statement.

10          Q       Okay.

11          A       I don't recall doing no tape recorded  
12 statement. The man asked me and I told him no.

13          Q       Okay. You will agree with me, though, that  
14 there is a question here about how you're related to a David  
15 -- it says Burn in the transcript. This is page 2. And you  
16 somewhat answer his cousin.

17          A       I always say second cousin because his mom is  
18 my first.

19          Q       Okay.

20          A       I said cousin.

21          Q       So you're denying that this is you talking  
22 maybe? Or what are your -- what do you remember about that?

23          A       I remember talking to him and he asked me  
24 could he record it and I told him no.

25          Q       Okay. So if there's a recorded statement

1 where the detectives are openly recording you --

2 A Uh-huh.

3 Q -- that's not you on the tape?

4 A If it's my voice, it's my voice. But I didn't  
5 -- he wasn't recording me. I don't recall him recording me.

6 Q Okay. Is it possible they could have recorded  
7 you and you don't remember it?

8 A Could be.

9 Q Okay. Let me -- let me have you look at a  
10 different page.

11 MS. WECKERLY: And this will be page 5, counsel, at  
12 the top.

13 THE WITNESS: Okay.

14 BY MS. WECKERLY:

15 Q And it looks like they ask you -- well, the  
16 detective starts off I showed you a couple of numbers that  
17 those phone calls came from and he gives a -- a 909-233-0860  
18 phone number; correct?

19 A I don't know about that because he asked me --

20 Q Right. And what is your --

21 A -- did I get a call. And the only thing I  
22 said to him was yeah.

23 Q Okay.

24 A And I told him the number was a 5-something  
25 number. But he was mentioning another number, but I never

1 said I got a call from no other number. I said 5 because he  
2 only called one time that I could recall because I never  
3 talked to him verbally.

4 Q Uh-huh.

5 A He was on the answering machine. He just said  
6 Auntie and held the phone --

7 Q Okay.

8 A -- when he called.

9 Q And now we're referring page 3 and into page  
10 4. Can you read the bottom of page 3 and to the top half of  
11 page 4 and just let me know when you're doing reading it,  
12 please.

13 A Start here?

14 Q Yeah. Just to yourself, though.

15 A Uh-huh.

16 Q Whoops. The next page is underneath.

17 A Okay.

18 Q That's okay.

19 A I don't remember this. Seriously. Okay. I'm  
20 old in the brain.

21 Q That's okay. No, that's okay.

22 A I remember --

23 Q Is it -- is it jogging --

24 A Uh-huh.

25 Q -- your memory a little bit?

1 A Uh-huh. And the shoe thing. Yeah.

2 Q Okay.

3 A Uh-huh.

4 Q Was there -- was there more than one call to  
5 the best of your recollection after you read this?

6 A I don't remember.

7 Q Is it fair to say there's a discussion about  
8 there maybe being a couple calls in the interview?

9 A Yeah, because this shoe thing. Yeah.

10 Q Okay. So a couple calls about shoes.

11 A No, I don't remember. Just that one and then  
12 the other one was just the answering machine.

13 Q Okay. So maybe there were two calls.

14 A Yeah.

15 Q Okay. And they ask you about this 909 number.  
16 And at least your answer on the transcript is yes; right? Or  
17 yeah?

18 A Well, when he asked me I kept saying no  
19 because I didn't know this was that there. All I remember is  
20 checking the answering machine and seeing a 5 number.

21 Q Okay.

22 A So I never said yes to that number. But if  
23 this came from that number, it must have been yes, but I never  
24 said yes to that number. I just said 5. He called me from a  
25 5-something number.

1           Q     Okay.  Would you agree with me, though, that  
2 your answer after he says the 909 number, at least on the  
3 transcript says yeah?

4           A     I guess because --

5           Q     Okay.

6           A     I mean, like it was so long ago and I don't  
7 remember --

8           Q     Sure.

9           A     -- saying that, so I don't --

10          Q     Okay.  And then -- and then he does mention  
11 the number that you're talking about; right?

12          A     Yeah.

13          Q     The 512?

14          A     Well, I told him that it was a 5 number  
15 because that's the only one I remember.

16          Q     Okay.  And you actually said he might have  
17 called from 512.

18          A     5-something number.  Yeah.

19          Q     What is your answer there?  Can you read that?

20          A     Oh, and I said he might have called from a  
21 512.  Well, maybe, then, I did say that.

22          Q     Okay.  So at least that's what it says on  
23 the --

24          A     Uh-huh.

25          Q     Is that yes?  Sorry.

1 A Yes, that's yes.

2 Q Okay.

3 A Uh-huh.

4 Q And just one last question. Does David Burns  
5 -- doe she have a nickname?

6 A I was told he has a nickname.

7 Q Have you ever --

8 A I've never called him a nickname.

9 Q Okay. Have you ever --

10 A Peep. That's all I've called him. But I've  
11 never called him a nickname. I was told when they asked me.

12 Q Okay. Have you heard the nickname D-Shot?

13 A They asked me that. Yeah.

14 Q And you actually indicated you had.

15 A I've heard it, yes.

16 Q Ma'am, at that time what was your home number?

17 A Oh, God.

18 Q Do you remember if you told the detectives?

19 A Yeah, I did. I think I did because I remember  
20 him telling him the other officer go get -- like go get, I  
21 guess, the information for their phone number.

22 Q Okay. And did you tell them yourself, too?

23 A Most likely. I probably did.

24 Q Okay.

25 MS. WECKERLY: And then, counsel, this is at page 9.

1 BY MS. WECKERLY:

2 Q Maybe this will help you remember. Looking at  
3 the middle of page 9 they actually ask you what was your cell  
4 number, and what's the answer you give?

5 A 909. That was my cell, yes.

6 Q And what is it?

7 A 909-522-7798.

8 Q And then they ask you your home number; right?

9 A Uh-huh.

10 Q Is that yes?

11 A Yes, that's the home number, 760-596-3191 was  
12 it.

13 Q Okay. So your home number is 760-596-31 --

14 A 3191.

15 Q Okay. Thank you.

16 A Uh-huh.

17 MS. WECKERLY: I'll pass the witness.

18 MR. ORAM: No questions, Your Honor.

19 MR. LANGFORD: No questions, Your Honor.

20 THE COURT: Thank you for being a witness, miss.

21 THE WITNESS: Okay.

22 THE COURT: You will be excused.

23 THE WITNESS: Okay. Thank you, Your Honor.

24 MS. WECKERLY: Christine Pierce.

25 TAMIKA PIERCE, STATE'S WITNESS, SWORN

1 THE CLERK: Please be seated. Please state your  
2 name and spell your first and last name for the record.

3 THE WITNESS: Tamika Pierce; T-A-M-I-K-A  
4 P-I-E-R-C-E.

5 THE CLERK: I'm sorry. I didn't hear the first  
6 name.

7 THE COURT: Your first name is?

8 THE WITNESS: Tamika.

9 THE COURT: And spell Tamika again.

10 THE WITNESS: T-A-M-I-K-A.

11 THE CLERK: Thank you.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q And do you call your -- do you go by  
16 Christine?

17 A Yes.

18 Q Is that your middle name?

19 A Yes.

20 Q Are you related to Stephanie Cousins?

21 A Yes.

22 Q And can you --

23 THE MARSHAL: I'm sorry, ma'am. Can you --

24 BY MS. WECKERLY:

25 Q -- pull that a little closer to you?

1 THE COURT: Yeah, would you move up a little closer  
2 to that microphone. Talk right into it please.

3 THE WITNESS: Okay.

4 BY MS. WECKERLY:

5 Q You are related to Stephanie Cousins?

6 A Yes.

7 Q How?

8 A She's my mother.

9 Q Okay. Back in August of 2010, what street  
10 were you living on?

11 A Aloha.

12 Q And where was your mom living?

13 A On Vegas Valley.

14 Q How close were your two residences?

15 A Like two minutes away. Right across the  
16 street.

17 Q As of August of 2010, did you know someone by  
18 the name of Willie Mason?

19 A Yes.

20 Q Do you see him in the courtroom today?

21 A Yes.

22 Q Could you point to him and describe what he's  
23 wearing today, please.

24 A A burgundy plaid shirt.

25 MS. WECKERLY: Your Honor, may the record reflect

1 identification of Mr. Mason.

2 THE COURT: The record will so reflect.

3 BY MS. WECKERLY:

4 Q How did you -- how did you know Mr. Mason?

5 A I've known him for years through my kids'  
6 father.

7 Q Okay. And what's your child's father's name?

8 A Latoy.

9 Q Latoy what?

10 A Clinkscale.

11 Q Okay. And did Latoy have any brothers?

12 A Yes.

13 Q Who were the brothers?

14 A Shawn Clinkscale.

15 Q Okay. Did you know anyone at that time by the  
16 name of Jerome Thomas?

17 A Not by that name, but yes.

18 Q How about Job-Loc?

19 A Yes.

20 Q Okay. Did you know him socially, or you just  
21 kind of were aware of him?

22 A We were all social.

23 Q Social?

24 A Yeah.

25 Q I'm that yes?

1 A Yes.

2 Q I'm sorry. We're recording, so you have to  
3 say yes or no rather than yeah just so it's a little bit  
4 clearer.

5 A Okay.

6 Q Thank you. Did you know Mr. Mason's mom?

7 A Yes.

8 Q What was her name -- or what is her name?

9 A Natalie.

10 Q And how long -- as of 2010, how long had you  
11 known Mr. Mason?

12 A From 2002, eight years.

13 Q So a pretty long time.

14 A Yeah.

15 Q Is that yes?

16 A Yes. I'm sorry.

17 Q That's okay. And you said you kind of  
18 socialized with him?

19 A Yes.

20 Q Now, as of August 2010, did you -- well, using  
21 that date as a marker, August 2010, how much previous had you  
22 heard from Mr. Mason?

23 A The last time before then, the last time I  
24 heard from him was in May of 2009.

25 Q Okay. May of 2009 you hear from him. And do

1 you hear from him in August of 2010?

2 A Yes.

3 Q So a little over a year later?

4 A Yes.

5 Q How is it that you come in -- you get  
6 contacted or do you contact him or he contacts you in August?

7 A He contacted me.

8 Q In person or how?

9 A Over the phone.

10 Q And when he contacted you in person, was it a  
11 voice call?

12 A We -- in the year 2010 we never had no  
13 personal contact.

14 Q In August?

15 A Yeah, we never seen each other in August.

16 Q Okay. But was it a voice call like on a cell  
17 phone?

18 A Yes.

19 Q Okay. And tell us about the conversation that  
20 you had.

21 A He was telling me to come help him, save him,  
22 and he needed help.

23 Q And when you got the call, do you remember if  
24 it was towards the beginning of August?

25 A It was towards -- it was like, yeah, the

1 beginning of August, end of July. He called a few times.

2 Q And when you spoke to him when he was saying  
3 come to help me -- or come help me, was there anything else  
4 discussed between the two of you?

5 A No, he --

6 MR. LANGFORD: Your Honor, may we approach.

7 THE COURT: Certainly.

8 (Bench conference.)

9 MR. LANGFORD: I just want to make sure that they  
10 have pre-trialed this witness not to say anything about my  
11 client's --

12 THE COURT: I'm sorry. I can't hear you.

13 MR. LANGFORD: I just want to make sure that they  
14 have pre-trialed this witness that she's not to say anything  
15 about my client's background.

16 MR. DiGIACOMO: Yes. We have instructed her both at  
17 the pre-trial and I just walked outside and said no gang, no  
18 prison.

19 THE COURT: What's -- what's his background?

20 MR. LANGFORD: That he went to prison on a robbery.

21 THE COURT: Oh, okay. He was in prison.

22 MR. DiGIACOMO: Yes, so --

23 THE COURT: Okay.

24 MR. DiGIACOMO: -- we said no gang, no prison.

25 THE COURT: All right. Good.

1 MR. DiGIACOMO: She's been instructed.

2 MR. LANGFORD: All right.

3 (End of bench conference.)

4 BY MS. WECKERLY:

5 Q May I call you Christine?

6 A Uh-huh.

7 THE COURT: You've got to say yes or no.

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 BY MS. WECKERLY:

11 Q We're going to bother you every time you do  
12 that.

13 A I see.

14 Q In August 2010 you get a voice call from him.

15 A Yes.

16 Q And is it just a single call or is there more  
17 than one call?

18 A He called me more than one time, but the  
19 majority of the conversation was through text message.

20 Q Okay. The first time is it a voice call?

21 A Yes.

22 Q And that's the help me, come get me?

23 A That was -- the first call was before August,  
24 like the end of July was the first call. And he called me for  
25 a ride, but I wasn't available to go pick him up. The calls

1 after that was the call stating to come help him.

2 Q Okay. And the -- when he asked you for a  
3 ride, did you know where he was?

4 A No.

5 Q And did you give him a ride?

6 A No.

7 Q Okay. After that there were text messages,  
8 you said?

9 A Yes.

10 Q And what was the nature of the text messaging?  
11 What was talked about?

12 A He had sent me a picture of himself looking  
13 sad and depressed, scared, and asking me to come help him.

14 Q Okay. And did you answer I'll come help you?

15 A No, I avoided the text messages because it  
16 didn't seem right. Like it was weird to me.

17 Q Okay. Did he ask -- did he ever send another  
18 text besides the sad picture and come help me?

19 A Yes.

20 Q And what was that message?

21 A It was to come help him, and then the text  
22 message regarding, you know, his mom and my mom getting back  
23 in contact with each other.

24 Q Okay. When -- explain what that message was.

25 A Which one, the contact message?

1 Q Yes.

2 A Oh, that his mom wanted my mom's number and I  
3 sent my mom's number.

4 Q And was your mom friends with his mom?

5 A Yes.

6 Q And so did that seem like a normal request?

7 A Yes.

8 Q So you -- you, I guess, text messaged Mr.  
9 Mason your mom's phone number?

10 A Yes.

11 Q Okay. Do you remember what time of day it was  
12 that you did that?

13 A The only thing I could say was night because I  
14 was in the bed. I don't know the time.

15 Q Did you get any response from your mom after  
16 you sent that text message?

17 A When I called and told her that I gave him the  
18 number to give to Natalie and she yelled at me because she was  
19 at the slot machines gambling. And I was like, well, don't  
20 answer the phone, then.

21 Q Okay.

22 A And that was it.

23 Q And after that conversation with your mom, did  
24 you have any more contact with your mom or Mr. Mason that  
25 evening?

1 A No, not until after the incident took place.

2 Q Okay.

3 A That's when I got contact from my mom.

4 Q After that conversation with mom, your mom,  
5 how many hours passed before you have contact with your mom  
6 again?

7 A After hours because it was like early morning,  
8 late early morning when I heard back from her.

9 Q Okay. And I'm -- I'm not trying to give you a  
10 hard time, but was it like two hours or more like five hours?  
11 Or if you don't remember.

12 A I'm going to be honest with you. This was so  
13 long ago I don't remember.

14 Q Okay.

15 A But I know it was hours in between.

16 Q And how is that you come in contact with your  
17 mom those hours later?

18 A She came beating down my door.

19 Q And was the knock on the door like just a  
20 gentle, you know, knock or --

21 A No, it was a police knock of beating down my  
22 door.

23 Q Okay. A pretty hard knock.

24 A Yes.

25 Q And was it -- were you in bed or were you

1     awake or --

2             A       We were in bed, but we were woke. The kids  
3     were in bed.

4             Q       Okay. Was the knock pretty hard?

5             A       Yes, loud and hard.

6             Q       Did you open the door?

7             A       No, my husband did.

8             Q       And did you see who it was eventually.

9             A       Once they came into my room and they were  
10    screaming and hollering, yeah, I knew it was my mom.

11            Q       Okay. So your husband answers the door, but  
12    then your husband and your mom appear in your bedroom?

13            A       Yes.

14            Q       And describe how your mom looked at that time.

15            A       Hysterical, shaken up, red eyes, crying, feet  
16    cut up.

17            Q       And her feet were cut up?

18            A       Yes.

19            Q       Did she have shoes on?

20            A       No.

21            Q       And you could actually see like blood or  
22    injuries to her feet?

23            A       Yes.

24            Q       And you used the word hysterical.

25            A       Yes.

1 Q Was her voice raised?

2 A Yeah. She was screaming and hollering they're  
3 dead, they're dead. I'm like, who? What are you talking  
4 about? Like --

5 Q Were her -- was -- I mean, was she -- was she  
6 able to hold still physically, or how would you describe how  
7 she was moving around?

8 A No, she was not holding still physically  
9 because then her phone ended up ringing and she's on her phone  
10 screaming and hollering and you hear the other voice screaming  
11 and hollering. So I'm like, calm down, call the police. And  
12 that's when I called the police.

13 Q Okay. Did you talk to -- did you under --  
14 well, let me back up. Did you have a conversation with your  
15 mom or could you get any information out of her before you  
16 called the police?

17 A Somewhat, yes. She was saying -- that's how I  
18 knew who did it because she was able to say that. And I'm  
19 like he did what? What did he do and who? And I was able to  
20 know the people, plus the victim's husband called. So it like  
21 all put two and two together.

22 Q As you listened to what your mom was saying,  
23 did you react at all emotionally or how did you feel after  
24 what your -- your discussion with your mom?

25 A Yeah, it scared me because now you're running

1 to my house and I got like eight kids up in here. And either  
2 they can come for you or the other people can come for you,  
3 but you're bringing it to my house around my kids now.

4 Q Okay. So --

5 A So, yeah, it scared.

6 Q So you decide you're going to call the police?

7 A Yeah.

8 Q And we've met before; correct?

9 A Uh-huh.

10 Q Is that a yes?

11 A Yes.

12 Q Okay. And we actually played you your 911  
13 phone call?

14 A Yes.

15 Q And you recognize that as your voice?

16 A Yes.

17 MS. WECKERLY: At this time the State will move to  
18 admit 293, which is the disc of the recording.

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

20 (State's Exhibit 293 admitted.)

21 MS. WECKERLY: And, Your Honor, we'd move to publish  
22 it.

23 THE COURT: All right.

24 (State's Exhibit 293 played.)

25 BY MS. WECKERLY:

1           Q       So the -- at the end of the -- that 911  
2 recording you're giving some phone numbers and you actually  
3 say sort of like you're calling from a phone that's not yours?

4           A       Yeah. Okay.

5           Q       Explain that to me.

6           A       Yes. All of our phone numbers started with  
7 622, so the four digits of everybody's phone number was  
8 different. So I had my brother's phone and my phone. But  
9 being that it was so long ago and I no longer have that  
10 number, my sister who is outside, the phones was in her name.  
11 She told me the last four digits of the phone number, that  
12 0829 was my brother's number and other one was mine.

13          Q       You don't remember what your number was back  
14 then?

15          A       No.

16          Q       Okay. Would it be fair to say you tried to  
17 give an accurate number to the 911 operator?

18          A       Yeah. Well, both numbers were accurate.

19          Q       Okay. That's -- that's actually my question.  
20 Do you know of a person by the name of Cornelius Mayo?

21          A       Yes.

22          Q       Okay. And -- and your facial expression  
23 suggests he's someone you're not fond of?

24          A       Yes.

25          Q       Okay. How -- how long have you known him?

1 A 2001.

2 Q Is he someone you socialize with?

3 A No.

4 Q How is it that you know who he is, then?

5 A Him and my aunt and my mother are friends.

6 They socialize.

7 Q Okay. After this -- after your mom comes to  
8 your house on the morning of the 7th when she's upset, do you  
9 ever hear from Cornelius Mayo?

10 A Yes.

11 Q And do you ever actually hear him on the phone  
12 and hear what he's saying?

13 A I actually talked to him on the phone.

14 Q Okay. And what types of things was -- was he  
15 saying on that morning?

16 A Threatening messages. He was going to come to  
17 her house and kill her, he was going to kill her family,  
18 trying to find our location and --

19 Q So he was aggressive and threatening to you?

20 A Yes.

21 Q Prior to the 7th you said you knew of him or  
22 he socialized with your mom since about 2001?

23 A Yes.

24 Q Had you ever been over to his residence?

25 A I've been to his residence. Not inside his

1 residence.

2 Q Okay. And what was your purpose to drive --  
3 in driving over to the residence and not going inside?

4 A Because I don't affiliate with people like  
5 that and I was taking my mother over there.

6 Q Okay. You're -- you're taking your mother  
7 over there. After your -- after you took your mother there,  
8 did she ever come back and you give her a ride home?

9 A Yes.

10 Q And did she have anything with her?

11 A Yes.

12 Q What?

13 A Narcotics.

14 Q Okay. And so did she have that before you --  
15 you let her -- drop her off there?

16 A No, that was my whole purpose of taking her  
17 over there.

18 Q Okay. And your mom is someone who -- how  
19 would you describe -- how would you describe her in terms of  
20 narcotics?

21 A She's an addict.

22 Q And how long has that been the case?

23 A Like 25 years.

24 Q After you make the 911 call, we're into, I  
25 guess, the early morning of the 7th. So are you kind of with

1 me on the time frame I'm talking about?

2 A Uh-huh.

3 Q That's yes?

4 A Yes.

5 Q Okay. Do you ever hear from Willie Mason  
6 again?

7 A Yes, he called later on that day.

8 Q What did he say?

9 A Is moms okay, what's going on?

10 Q Who is moms?

11 A My mother, Stephanie.

12 Q Okay. And what did you say?

13 A I went off. I cussed him out.

14 Q Okay. So you're angry?

15 A Yeah.

16 Q And so you cuss him out. I mean, do you  
17 remember anything about the nature of what you said?

18 A What the fuck you mean what's going on? You  
19 know what the fuck you did.

20 Q Okay.

21 A Just went off from there.

22 Q What was his response to what you said?

23 A He paused. I hung up. And Detective Marty  
24 came.

25 Q And who is Detective Marty?

1           A       The detective who worked the case.

2           Q       Okay. And so when you had that first phone  
3 call -- well, not the first one. When you had the phone call  
4 where you're cussing him out, is Detective Marty there at that  
5 time or does he come right after?

6           A       He came right after.

7           Q       And so do you -- you interact with Detective  
8 Marty?

9           A       Yes.

10          Q       Do you try to call Willie Mason back?

11          A       He told me to call back and I called back. I  
12 didn't get a response.

13          Q       Since that attempt at calling back, have you  
14 had any other phone contact with him?

15          A       No.

16          Q       Did -- in the calls prior to the incident  
17 where you said you had several calls with Willie Mason, you  
18 had the one call, I guess, is the voice call where it's come  
19 help me and the picture sent, and then you said there are text  
20 messages?

21          A       Uh-huh.

22          Q       Is that yes?

23          A       Yes.

24          Q       Okay. Was there ever any conversation about  
25 any kind of drugs?

1           A       He asked me one time for some marijuana. That  
2 was about it.

3           MR. LANGFORD: Objection. Foundation.

4           THE COURT: Okay.

5 BY MS. WECKERLY:

6           Q       Do you remember about when that text was?

7           A       July, like the end of July.

8           Q       The end of July. Okay. Thank you very much.

9           A       Uh-huh.

10          THE COURT: Cross-examination.

11          MR. ORAM: None, Your Honor.

12          THE COURT: Mr. Langford.

13          MR. LANGFORD: Thank you, Your Honor.

14                   CROSS-EXAMINATION

15 BY MR. LANGFORD:

16          Q       We just listened to the 911 tape and that's  
17 clearly you on the phone; is that correct?

18          A       Yes.

19          Q       Okay. You were angry; is that right?

20          A       I was scared.

21          Q       You were scared?

22          A       Yes.

23          Q       And angry?

24          A       No, I wasn't angry.

25          Q       You weren't --

1           A       I was scared.

2           Q       You weren't angry that -- I think you said  
3 earlier you were upset that your mother brought this to your  
4 house; is that right?

5           A       When she asked me a question pertaining to  
6 something else. It wasn't pertaining to the 911 call when she  
7 asked me the question.

8           Q       When she asked you what question?

9           A       She had asked me a question pertaining to  
10 something else. Yes, I was mad my mom brought it to my house.  
11 I had eight kids there.

12          Q       Okay.

13          A       But it had nothing to do with the 911 call.

14          Q       Okay. So you're mad she brought this to your  
15 house, but then you're not mad when you make the 911 call?

16          A       If you're getting threatening messages and you  
17 have kids at your house, wouldn't you be more scared than mad?

18          Q       Probably a little bit of both. Yeah. Yeah.

19          A       Well, no, I was more scared.

20          Q       Okay. You were getting text messages. Who  
21 were those text messages from?

22          A       Willie.

23          Q       Okay. And they were threatening?

24          A       I never stated Willie sent me a threatening  
25 text messages.

1 Q Okay. So we'll --  
2 A Now, if you want the threats came to my mom's  
3 phone.  
4 Q Okay.  
5 A Not mine.  
6 Q Okay. And then you also said, then, a little  
7 later Willie called and you talked with Willie; is that right?  
8 A No, I said I only had one voice call with  
9 Willie.  
10 Q Okay.  
11 A And then he called after, hours after the  
12 incident.  
13 Q Okay. Hours after the incident you talked to  
14 him again; is that right?  
15 A Yes.  
16 Q Okay. And in that call he said how is your  
17 mom?  
18 A Yes.  
19 Q He didn't threaten?  
20 A No.  
21 Q He didn't threaten you?  
22 A No.  
23 Q Did you talk to Cornelius Mayo that day?  
24 A That morning, yes.  
25 Q You personally talked to Cornelius?

1           A       Yes, I answered my mom's phone.

2           Q       How long after your mom had showed up before  
3 you talked to Cornelius Mayo?

4           A       I don't know. This is like four years ago.

5           Q       Possibly you talked to Cornelius before you  
6 made the 911 call?

7           A       No. She probably talked to him before I made  
8 the 911 call, but, no, I didn't talk to him until after and  
9 that's a known fact.

10          Q       But you think she talked to him before you  
11 made the 911 call?

12          A       Nine times out of ten, yes.

13          Q       Okay. In other words you're almost sure that  
14 happened?

15          A       Nine times out of ten.

16          Q       Other than -- you say there are three guys; is  
17 that right?

18          A       I'm going off hearsay, yes.

19          Q       Okay. It's all hearsay. So your -- you say  
20 there's three guys?

21          A       Yes.

22          Q       That's what you said on the 911 call?

23          A       Yes.

24          Q       Other than Willie Mason, you didn't know  
25 anybody else; correct?

1           A       No.

2           Q       Fair to say you were pretty angry at Willie at  
3 that point?

4           A       I'm not going to say I was pretty angry at him  
5 because, one, I know Willie himself wouldn't do nothing like  
6 this. I'm more so I feel he was stupid. Yeah. So I wasn't  
7 angry at him.

8           MR. LANGFORD: No further questions, Your Honor.

9           THE COURT: Anything further?

10          MS. WECKERLY: No, Your Honor. Thank you.

11          THE COURT: Thank you for being a witness, miss.  
12 You'll be excused.

13          MR. DiGIACOMO: Judge, may we approach?

14          THE COURT: Yes.

15                   (Bench conference.)

16          MR. DiGIACOMO: I don't think we have anybody here  
17 until 3:00, so you want to let the jury out for just a few  
18 minutes? Then we have just a fingerprint expert. This is  
19 because we had Larry --

20          THE COURT: That's only 15. We'll take a break  
21 right now and then we'll -- okay.

22                   (End of bench conference.)

23          THE COURT: All right. The attorneys have a witness  
24 coming, but it will be a few minutes. So we're going to take  
25 our mid-afternoon recess right now, ladies and gentlemen.

1           During the recess it's again your duty not to  
2 converse among yourselves or with anyone else on any subject  
3 connected with this trial, or to read, watch, or listen to any  
4 report of or commentary on the trial from any medium of  
5 information, including newspapers, television, and radio. You  
6 may not form or express an opinion on any subject connected  
7 with this case until it is finally submitted to you.

8           And by the way, for those of you that need to leave  
9 early, we will be through before 5:00. I promise.

10                   (Jury recessed at 2:48 p.m.)

11           THE COURT: The record will reflect that the jury is  
12 out of the courtroom. Tell us when you're witness is here --

13           MS. WECKERLY: Sure.

14           THE COURT: -- so we can get everybody together.

15           MS. WECKERLY: Thank you.

16           MR. SGRO: Thank you, Judge.

17                   (Court recessed at 2:48 p.m. until 3:05 p.m.)

18                   (Outside the presence of the jury.)

19           MR. ORAM: When I asked her, Do you know who --  
20 should they bring the jury in?

21           THE COURT: She what?

22           MR. ORAM: They're bringing the jury in.

23           MS. WECKERLY: I just told them to wait.

24           MR. ORAM: It's -- she says that -- I asked her, Do  
25 you know of either one of these two? She said, Yes, I know

1 that one of them is my cousin. I said, Which one? She said,  
2 David Burns.

3 THE COURT: Okay. Well, tell her to keep away.

4 UNIDENTIFIED ATTORNEY: Absolutely.

5 THE COURT: You can bring them in.

6 (Jury entering 3:10 p.m.)

7 THE COURT: State of Nevada versus Mason and Burns.

8 The record will reflect the presence of the defendants, their  
9 counsel, the district attorneys and all members of the jury.

10 And -- okay. You were hiding. I didn't see you  
11 there for a second. All right. You can call your next  
12 witness.

13 MS. WECKERLY: Thank you.

14 KATHRYN AOYAMA, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated.

16 THE WITNESS: Thank you.

17 THE CLERK: Please state your name and spell your  
18 first and last name for the record.

19 THE WITNESS: Kathryn Aoyama. K-a-t-h-r-y-n,  
20 A-o-y-a-m-a.

21 DIRECT EXAMINATION

22 BY MS. WECKERLY:

23 Q And how are you employed?

24 A I'm a forensic scientist with the latent-print  
25 unit of Las Vegas Metropolitan Police Department's forensic

1 laboratory.

2 Q And what does a forensic scientist in the  
3 latent-print section do?

4 A As a latent print examiner for LVMPD, it is our  
5 job to analyze prints -- latent prints that are collected in  
6 the field for comparison quality and compare those to known  
7 exemplars or take those higher qualities prints and search  
8 them through the databases looking for investigative leads.  
9 We also process evidence for latent prints to compare or  
10 search for investigative leads and issue reports with our  
11 findings.

12 Q And what's your training or educational  
13 background that allows you to work in latent prints?

14 A I have a bachelor's degree from the University  
15 of California, San Diego from the Biology Department in Animal  
16 Physiology. I've successfully completed a two-year training  
17 program at Las Vegas Metropolitan Police Department in the  
18 latent-print unit doing hundreds of exercises and researching  
19 certain topics designed to train my eye to look at  
20 fingerprints and eventually looking to search latent prints  
21 against known prints.

22 Q And have you testified before in the area of  
23 latent fingerprint identification and comparison?

24 A I have.

25 Q Can you just distinguish for us what a latent

1 fingerprint is versus a known fingerprint.

2           A     A known print is usually an electronic capture  
3 or an ink capture of a known person's fingerprints or  
4 exemplars. So they either roll with ink or electronically  
5 against a glass platen the image of your -- of each finger and  
6 then of the four fingers and the thumb. Like, they call it a  
7 flat impression, where you just press down and record that  
8 impression.

9           So those are what's known as known prints, where you  
10 know the source of those fingerprints, as opposed to a latent  
11 prints which is called latent because it's usually not  
12 immediately visible to the naked eye, and it usually becomes  
13 visible with black powder processing or chemical processing to  
14 develop that print.

15           Q     And how is it that people leave fingerprints on  
16 an object?

17           A     Every time you touch an object, you won't  
18 necessarily leave a print, but it depends on various  
19 conditions. It depends on the condition of your skin. People  
20 who do a lot of outdoor work, masonry, that type of jobs will  
21 have -- tend to have dry rough skin, and it will probably be  
22 harder for them to leave a clean impression of their  
23 fingerprint as opposed to somebody who -- like a masseuse who  
24 has their hands well hydrated all day long.

25           So every time you touch an object, you may or may not

1 leave a print. Like when you got dressed today, you touched  
2 your clothes in every different way imaginable to put them on  
3 and fix them and adjust them. Well, the cloth itself, if it's  
4 very smooth, like silk, you may be able to leave an impression  
5 if you had enough residue left on your hands, but, of course,  
6 if you didn't have very much residue or your hands tend to be  
7 dry, you won't be able to leave a print.

8 And prints are more readily developed on certain  
9 surfaces than others, clothing, more difficult as opposed to  
10 smooth plastic, which is better. A glass or a glass surface  
11 is a better surface to leave a print on because that print --  
12 that -- I'm sorry -- that surface is nonporous, as opposed to  
13 a more porous surface, like paper is a porous surface, but it  
14 is also a good surface to develop latent prints on.

15 Q Now, besides which surfaces are more likely to I  
16 guess hold the latent fingerprint or one that you're more  
17 likely to leave a print on, are there environmental factors  
18 that can affect whether or not a latent fingerprint is left on  
19 an object or how long it might remain on an object?

20 A Environmental factors of course do affect  
21 whether or not a latent print is detectable on a surface. The  
22 drier it -- because the transferred impression is -- depends  
23 on how -- how much residue is present on your hand, oil, sweat  
24 and the like. If your hands are -- like I said, if your hands  
25 are really dry and it's a hot sunny day, of course what little

1 residue was on your fingers is evaporating with the  
2 temperature and the environment.

3           If it's raining, that could have an effect, too. If  
4 you're really sweaty and you left a sweaty print on a car and  
5 it started raining torrential rain, like it was a few months  
6 ago, then of course it would be more difficult to retrieve a  
7 print from the surface, even though you put your hand on the  
8 surface, and it's a nice nonporous surface, readily -- it's a  
9 nice good surface -- receptive surface to a latent print, but,  
10 of course, the environment could -- environmental conditions  
11 are such that it won't stay for very long if you do leave a  
12 print.

13           Q     And, I mean, why are fingerprints valuable in a  
14 forensic setting?

15           A     Fingerprints are -- we like to say highly  
16 discriminating and persistent, which means the pattern that  
17 develops in utero that you're born with is yours for your  
18 entire life. There are -- it doesn't change, meaning you  
19 don't have additional ridges popping up here and there in  
20 between ridges. Those ridges that are present are yours for  
21 life. Of course, there are things that happen over time. The  
22 older you get, your skin starts to flatten out and smooth --  
23 smooth out, but those ridges are still there.

24           Q     And so fingerprints are unique to the  
25 individual?

1           A     The information in those prints are highly  
2 discriminating, enough so that we can distinguish one person's  
3 prints from another's.

4           Q     Now, why you're here this afternoon with us is  
5 you were asked to analyze some latent fingerprints that were  
6 collected from a crime scene, from a car, and then also you  
7 were asked to look at a weapon, correct?

8           A     Yes, I was.

9           Q     You had exemplars of certain individuals that  
10 you were looking at to compare with the latent prints that  
11 were recovered from these three locations?

12          A     Yes, I was.

13          Q     Can you tell the members of the jury the  
14 exemplars that you had. Whose known prints did you have for  
15 comparison?

16          A     I would have to refer to my report.

17          Q     If that'll refresh your recollection, and if --

18          THE COURT: Please do.

19          THE WITNESS: In this case, I was asked to compare  
20 prints from Monica Martinez, a Stephanie Cousins, a David  
21 Burns, Willie Mason, Jerome Thomas, Donovan Rowland, and  
22 Derecia Newman.

23          BY MS. WECKERLY:

24          Q     Okay. Now, let's talk about each of the areas  
25 that you kind of looked at for latents, and one of the items

1 that you were asked to look at was a gun and a holster for the  
2 gun. Do you recall that?

3 A Yes, I was asked to process a gun and a holster  
4 for latent prints.

5 Q And is it unusual for the expert who does the  
6 comparison to process a particular item of evidence?

7 A It's not unusual. As I said, part of our job is  
8 to evaluate the prints that are submitted by outside personnel  
9 and also to process evidence in the lab.

10 Q Now, in terms of the holster, did you process  
11 that item for the presence of latent fingerprints?

12 A The holster, I did not process for evidence. It  
13 was a highly textured canvas-type of material. So it's not  
14 conducive to latent print retrieval.

15 Q Okay. And what about the gun?

16 A The firearm, I did process for latent prints.

17 Q What methods did you do -- or did you utilize to  
18 attempt to I guess locate a latent fingerprint on that gun?

19 A For the firearm, because it is a nonporous item,  
20 first, we visually inspect it to see if I can see any latent  
21 prints that are present on the surface itself without any  
22 processing. There was no visible latent prints. So then I  
23 proceeded to use cyanoacrylate fuming or -- it's a thicker  
24 type of superglue basically that we fume in a humidified  
25 chamber, and that fumes -- those vapors of superglue adhere to

1 any residue that is present on the firearm itself.

2 And after that process, I visually inspect it to see  
3 if there are any latent prints of value for comparison that I  
4 might retrieve from the firearm, and then following the  
5 cyanoacrylate fuming, I applied a fluorescent dye stain to it,  
6 which also adheres to the cyanoacrylate itself in order to  
7 bring up fluorescence under laser light.

8 Q And after completing those processes, were you  
9 able to recover any latent fingerprints off that gun?

10 A I was not. There were no -- there were no  
11 latent prints of value for comparison developed on the gun.

12 Q And do you know of any other method or process  
13 that could be used to attempt any further, I guess, treatment  
14 of the gun in order to locate a latent print?

15 A That is the normal process that we go through in  
16 the laboratory to develop prints on nonporous items.

17 Q So no prints were discovered or found on the  
18 gun?

19 A Correct.

20 Q You were also given prints collected from an  
21 address identified to you as being from Meikle Lane?

22 A Yes.

23 Q Do you recall approximately how many fingerprint  
24 lift cards were turned into you for analysis?

25 A Exactly?

1 Q Uh-huh. Well, just an approximation.

2 A Approximately 30 -- 20 -- sorry -- 23.

3 Q And what were your findings with regard to those  
4 fingerprint cards collected from Meikle Lane?

5 A Those latent print cards did not have any latent  
6 prints of value for comparison on them. So there was nothing  
7 that I could compare to a known print to make a determination  
8 of identification or exclusion.

9 Q And is there anything else you could do to those  
10 cards to enhance the latent or get it to a point where you  
11 could do a comparison, or is it just the nature of the  
12 fingerprint collection that sometimes you just don't get a  
13 usable print?

14 A Sometimes there's just nothing to -- to --  
15 that's present on the card for you to compare. We could take  
16 a closer look under glass. We usually use what we call a loop  
17 to get a magnified view of what is on the card to see if  
18 there's anything of value that we might compare.

19 Q And none were of value from that location?

20 A Correct.

21 Q Now, there were also latent print cards  
22 submitted to you from a Crown Victoria vehicle or purportedly.  
23 You just -- you don't look at the car. You get the cards that  
24 were lifted from the vehicle?

25 A Correct.

1           Q     And in terms of your findings from the list from  
2 the car, were you able to identify any individuals'  
3 fingerprints in that car?

4           A     I was.

5           Q     Who were the individuals you were able to  
6 identify?

7           A     I was able to identify Monica Martinez, and I  
8 identified two other individuals through a fingerprint  
9 database search, Albert Brody and Jermaine Brody.

10          Q     And can you explain what that database search  
11 is.

12          A     AFIS is an Automatic -- Automatic Fingerprint  
13 Identification System, and it houses known fingerprints of  
14 individuals. So we take the latent print and mark the  
15 minutia.

16               And when I'm talking about minutia, I'm speaking of  
17 -- if you are looking at the details on your palms and on your  
18 fingers, you'll see -- if you follow the ridges, you'll see  
19 that they end, and that's what we call a ridge ending, or they  
20 fork or bifurcate, and we mark those ridge endings and  
21 bifurcations in relationship to each other and to the core or  
22 the center of the fingerprint.

23               And then that database is searched. It comes up with  
24 a candidate list of possible candidates based on the minutia  
25 that we marked because the machine itself is looking at the

1 minutia, the relative distance between each of them and the  
2 relationship to each other.

3 Q So in that vehicle, you found latent prints  
4 belonging to Monica Martinez, Jermaine Brody and Albert Brody?

5 A Yes, I did.

6 Q Can you -- can you tell when you look at a  
7 latent fingerprint how old it is or how long it might have  
8 been at a particular location?

9 A No, we have no way of evaluating how long a  
10 fingerprint has been on a surface.

11 Q So it could've been there a month? It could've  
12 been there a year? It could've been there a day?

13 A Correct.

14 Q And is there any way to determine that that you  
15 know of?

16 A Not my knowledge.

17 Q The locations of those prints, can you tell us  
18 where Ms. Martinez's were.

19 A Ms. Martinez was identified on the -- a lift  
20 card from the right side of the exterior front windshield of  
21 the vehicle and also on the interior driver's window of the  
22 vehicle.

23 Q And what about Jermaine Brody?

24 A Jermaine Brody was identified on the exterior  
25 left rear wing window of the vehicle and on the right side of

1 the exterior of the front windshield of the vehicle.

2 Q Okay. So both of Jermaine Brody's prints were  
3 on the outside of the car?

4 A Correct.

5 Q And what about Albert Brody?

6 A Albert Brody was identified on the small rear  
7 window of the exterior left rear window of Vehicle 1 and also  
8 from the exterior left rear wing window of Vehicle 1.

9 Q And so Albert Brody's prints were both on the  
10 outside of the car as well?

11 A Correct.

12 MS. WECKERLY: I'll pass the witness.

13 CROSS-EXAMINATION

14 BY MR. ORAM:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Okay. So you prepared a report in this case,  
18 and I believe the first report you prepared and completed, the  
19 distribution date was April 12, 2012; is that --

20 A Yes, correct.

21 Q And in that report, you actually asked -- am I  
22 moving too fast?

23 A Nope. Go ahead.

24 Q Okay. In that report, you recall it's  
25 approximately six pages long?

1           A     Yes.

2           Q     And at the end of -- on page 6, you ask for  
3 additional exemplars?

4           A     I did.

5           Q     Okay. And that's because there's something  
6 you're seeing as an expert that you think, I need some more  
7 information?

8           A     Not all exemplars are going to look exactly the  
9 same. So some are more well captured than others, and in this  
10 case, I was looking for palm exemplars because there was a  
11 section of the palm exemplars from two individuals that I  
12 needed better exemplars, or it was missing, or the information  
13 wasn't there for me to determine whether or not that person  
14 left the impression based on the information that was  
15 recorded.

16          Q     And that was on card Q37?

17          A     It was.

18          Q     And so what was card Q37? Was that the exterior  
19 left rear window of the vehicle?

20          A     Correct.

21          Q     So you wanted a palm print, and the two people  
22 you wanted the palm print on would've been Mr. Burns, and  
23 Cousins?

24          A     Correct.

25          Q     Okay. And then you obtained that information,

1 didn't you?

2 A I did.

3 Q And you prepared a subsequent report September  
4 20, 2013?

5 A I did.

6 Q And in that report, you determined that Mr.  
7 Burns is excluded?

8 A Correct.

9 Q So you looked at a bunch of different  
10 fingerprints from the Meikle address; is that correct?

11 A I looked at the lift cards submitted by the  
12 person in the field for that address.

13 Q Do you remember where in the apartment these  
14 fingerprints were located?

15 A Do I remember? No, I would have to look at the  
16 report for the exact locations of the lift cards.

17 Q It seems like -- how many were there? Do you  
18 recall?

19 A From the address, I believe I -- 23 --  
20 approximately 23.

21 Q Do you remember how many came from a bathroom  
22 door?

23 A I don't recall. There's -- there appears to be  
24 approximately four lift cards from the doorframe of the  
25 central bathroom.

1           Q     Okay. And let's go through those. Which cards  
2 are those?

3           A     Q4.

4           Q     Q4, and that was a print listed from the east  
5 side of the doorframe of the east facing door to the west  
6 central bathroom?

7           A     Correct, it is a lift card. It's not  
8 necessarily a print because there were no prints on it to  
9 compare.

10          Q     Okay. Fair to say that you looked at all of  
11 these prints, and you compared them to a man named Mr. Burns?

12          A     I did. I looked at all the lift cards that had  
13 comparison quality prints on them and then compared them to  
14 the subjects that were listed.

15          Q     And as of September 20, 2013, once you did the  
16 supplemental report, you can tell us to a reasonable degree of  
17 scientific certainty that Mr. Burns is not located on any of  
18 these prints in any of the fingerprints you analyzed?

19          A     My report has excluded Mr. Burns as the source  
20 of any of the comparable prints in this case.

21          Q     Okay. Now, I'd like to talk to you about these  
22 individuals, the Brody -- Albert Brody and Jermaine Brody,  
23 okay. Where did you locate their fingerprints?

24          A     On the exterior of the vehicle.

25          Q     Could you be as exact as you could, please, with

1 regard to Albert Brody first?

2 A Albert Brody --

3 Q Yes.

4 A -- was identified on the small rear window.

5 Q Okay. Which card number?

6 A Card No. Q39.

7 Q Okay.

8 A And -- I'm sorry -- the small rear window of the  
9 exterior left rear window of Vehicle No. 1.

10 Q So if we're -- if we're looking at a vehicle and  
11 I'm the driver of the vehicle, okay, that would be the door  
12 behind the driver?

13 A Left rear, correct.

14 Q And that, it came back as the index finger of  
15 Albert Brody?

16 A Yes, it did.

17 Q And is that the only time that you find his  
18 fingerprint?

19 A No, I identified him a second time.

20 Q And what card number is that?

21 A Q45.

22 Q And that lift card is from the exterior left  
23 rear wing window of Vehicle No. 1?

24 A Yes, it is.

25 Q And he is located there?

1           A     Yes, his -- Albert Brody is identified. His  
2 left palm is identified on that location.

3           Q     And how about Jermaine, is he also on there?

4           A     Yes.

5           Q     On the same card?

6           A     On the same card, correct. There were two  
7 latent prints of value for comparison, and they were each  
8 identified, one palm to Mr. Jermaine Brody and one to Mr.  
9 Albert Brody.

10          Q     So Jermaine Brody, right palm; Albert Brody,  
11 left palm?

12          A     Yes, that is correct.

13          Q     Okay. How about Q50 -- card Q50?

14          A     Q50 was lifted from the right side of the  
15 exterior front windshield of Vehicle No. 1.

16          Q     And my understanding is, at least on your  
17 report, it says you searched AFIS and received positive  
18 results?

19          A     I did.

20          Q     And that was a criminal record database?

21          A     It is -- AFIS has both criminal and civil prints  
22 in them. For example, our local base -- our local database  
23 has everybody who applies for a CCW. It has everyone who  
24 works for Las Vegas Metro. It's not necessarily just a  
25 criminal database.

1           Q     Do you know whether Albert and Jermaine Brody  
2 have been charged with extraordinarily serious crimes?

3           A     I have no way of knowing that. The database  
4 doesn't tell me anyone's criminal history or reasons why their  
5 prints are in the system.

6           Q     Were you specifically asked to look further into  
7 Brody's palm prints?

8           A     I don't understand your question.

9           Q     Did you talk to homicide in this case --  
10 homicide investigators?

11          A     I don't recall.

12          Q     Okay. Fair enough. Fair to say there is  
13 absolutely -- you looked at the gun. You decided not to test  
14 the holster because you didn't think it would be a good  
15 material to obtain prints on, right?

16          A     It's a heavily textured surface. So, no, it was  
17 not a good receptive.

18          MR. ORAM: Okay. That concludes cross-examination.

19          THE COURT: Mr. Langford.

20          MR. LANGFORD: Yes, Your Honor.

21                   CROSS-EXAMINATION

22          BY MR. LANGFORD:

23          Q     Were you able to match any of the latent prints  
24 that you collected to Mr. Mason?

25          A     I was not.

1 Q None?

2 A There were no prints identified to Mr. Mason.

3 MR. LANGFORD: Nothing further.

4 THE COURT: Any redirect?

5 MS. WECKERLY: Yes, just one question.

6 REDIRECT EXAMINATION

7 BY MS. WECKERLY:

8 Q Just to be -- well, actually, two. Just to be  
9 clear, there were no prints of value that you could make a  
10 comparison to anybody from the Meikle Lane address?

11 A That is correct. There were lift cards  
12 submitted, but on closer examination of each lift card, there  
13 were no -- there was no friction-ridge detail present or not  
14 sufficient friction-ridge detail present in order to evoke a  
15 comparison in which I could determine, yes, it -- someone had  
16 left the print or people were excluded from leaving the print.

17 Q So there's no inclusion or exclusion when the  
18 print isn't of value?

19 A Correct.

20 Q The card --

21 A Well, the card. So there are no suitable latent  
22 -- so when we make a determination of no suitable latent  
23 prints, there's either no friction-ridge detail on the card,  
24 or there's friction-ridge detail present but not sufficient to  
25 compare to an individual.

1 Q And that's the same with the gun?

2 A Correct.

3 MS. WECKERLY: Thank you.

4 THE COURT: Nothing further? Thank you, Miss, for  
5 being a witness. You'll be excused.

6 THE WITNESS: Thank you.

7 THE COURT: I understand that that's our last witness  
8 for this afternoon, ladies and gentlemen. So you'll be coming  
9 back on Monday morning. We anticipate starting at 9:30 Monday  
10 morning. We'll see you then.

11 During the recess, it's again your duty not to  
12 converse among yourselves or with anyone else on any subject  
13 connected with this trial or to read, watch or listen to any  
14 report of or commentary on the trial from any medium of  
15 information including newspapers, television and radio, and  
16 you may not form or express an opinion on any subject  
17 connected with this case until it is finally submitted to you.

18 Have a good weekend. We'll see you Monday morning at  
19 9:30.

20 (Jury recessed 3:38 p.m.)

21 THE COURT: The record will reflect the exit -- the  
22 jurors have exited the courtroom.

23 Anything further on the record this afternoon,  
24 gentlemen?

25 MR. DIGIACOMO: Judge, there is one issue, and I had

1 spoken to both Mr. Oram and Mr. Sgro about that. We expect  
2 Detective Bunting to get on the stand either sometime Monday  
3 or Tuesday, and they were supposed to tell me a very long time  
4 ago what it is they do or do not object to in Mr. Burns's  
5 statement because we may decide to play his entire statement  
6 to the police.

7 THE COURT: I didn't know he had a statement.

8 MR. DIGIACOMO: He did. Mr. Mason does not have a  
9 statement. Mr. Burns does -- well, Mr. Mason has a statement  
10 that we agreed not to use in pretrial rulings. Mr. Burns does  
11 have a statement, and I understand that there's things that we  
12 may agree to redact, and then there's one thing that we need  
13 to argue about the redactions for, and at some point -- it's  
14 going to take me a night to do the redactions. So at some  
15 point they need to be able to get this to me so this can get  
16 done.

17 MR. SGRO: Well, Your Honor, from our perspective,  
18 it's very simple. So just so the Court has an idea of the  
19 statement, Mr. Burns is reticent during the interview, and by  
20 that I mean he's doing a lot more listening than he is  
21 talking, and there are -- the statement itself isn't that many  
22 pages.

23 It takes a long time, and what you have in what  
24 they're calling Mr. Burns's statement is really the police on  
25 and on and on, sometimes for five, six pages. They're just

1 telling him, We know it was you. We know you went there, and  
2 you did this. Why don't you be a man? Why don't you take  
3 responsibility? The Court knows exactly what I'm talking  
4 about.

5 The long and short of it is, I said to Mr. DiGiacomo  
6 a couple weeks ago, We're going to object because that's not  
7 Mr. Burns's statement. So to the extent that there is a  
8 question posed and an answer given, then if they want to play  
9 it, they can play it; however, our objection and our redaction  
10 would be to any of the colloquy by the police.

11 So it won't take a lot of imagination to understand  
12 what we want redacted because, like I said, literally -- I  
13 think that near the end of the statement there is literally a  
14 five-page run-on where it's just transcription of what the  
15 police are saying to Mr. Burns, where he says nothing, and  
16 that would be --

17 MR. DIGIACOMO: There's two issues I would have,  
18 Judge, and to the extent that the detectives make a statement,  
19 and -- and I know we did this in Crawley because they had the  
20 same objection -- the Court instructs the jury that they're  
21 not offered for the truth of the matter asserted, but there's  
22 two reasons why it's relevant in this case, one is they tell  
23 him a number of things, and then ultimately he makes a few  
24 admissions. They tell him some other things. He kind of  
25 sings and hums. Then it goes back and forth for some period

1 of time.

2 One of the things they tell him that is highly  
3 important, which is actually false, is, We know everything  
4 we're telling you from Mr. Mason, G-Dogg. And what happens  
5 after that is that Mr. Burns tells Job-Loc, G-Dogg ratted on  
6 me. And what you will hear and what you will see in the  
7 testimony is that Job-Loc then writes a letter to Mr. Mason  
8 saying, I can't believe you ratted everybody out. I can't  
9 believe you ratted everybody out.

10 Mr. Mason then makes admissions by writing back to  
11 him, Hey, unless you get this in black and white, I didn't say  
12 a damn thing to anybody. The people that sung in this case  
13 were the two women. And then there is a response back from  
14 Job, You know what? I'm sorry. I'm wrong. Mr. Burns just  
15 told me you didn't rat out.

16 Well, then you go to Mr. Burns's letters to Job, and  
17 he comes back and tells him, I found out from my discovery,  
18 these aren't the people -- G-Dogg didn't rat me out. It was  
19 the rest of these people that ratted me out.

20 THE COURT: To the extent that there's a colloquy  
21 where there's some sort of an arguable admission, that's  
22 probably going to come in. The rest of it, if it's just  
23 statements by the law enforcement saying, This is what we  
24 know, you know, I'd exclude that.

25 MR. DIGIACOMO: Okay. But at the very least, I need

1 to be able to establish that law enforcement told Mr. Burns  
2 they got this information from --

3 THE COURT: I don't quarrel with that.

4 MR. DIGIACOMO: -- from Mr. Mason.

5 THE COURT: I'm just saying that if you've got  
6 sections where all we've got is just the law enforcement  
7 giving a colloquy -- actually a story --

8 MR. DIGIACOMO: Right.

9 THE COURT: -- about what they think they know and he  
10 doesn't agree with it or doesn't make any admission to it,  
11 it's of no value.

12 MR. DIGIACOMO: But if the response is some sort of  
13 admission, for example --

14 THE COURT: If there is an admission to it, I don't  
15 have a problem.

16 MR. DIGIACOMO: -- like, they show him videos of --

17 THE COURT: If there is an admission to it, I don't  
18 have any problem --

19 MR. DIGIACOMO: -- and then they make statements.

20 THE COURT: -- but if there's no admission to it, it  
21 doesn't come in.

22 MR. DIGIACOMO: Well, then I need them to give me --  
23 by let's say Sunday morning -- what they believe needs to be  
24 taken out of the statement.

25 THE COURT: Maybe over the weekend you could do that.

1           MR. SGRO: Yes, I'll send him over a redacted copy,  
2 and then we can argue about it on Monday.

3           MR. DIGIACOMO: I mean, I may agree to most of it, or  
4 I may agree to all of it. I don't know. As long as they --

5           THE COURT: If it's of no value, take it out.

6           MR. DIGIACOMO: Sure. No, I understand that. I just  
7 -- I need them to tell me, and I know Mr. Sgro may be more  
8 liberal than I am as to whether it's an admission or not.

9           THE COURT: Well, that's probably true, but you know  
10 what I'm saying.

11          MR. DIGIACOMO: So let me see what he says, but  
12 certainly any time the cops ask Mr. Burns a question, and he  
13 chooses to start humming, like -- like, We have a 12-year-old  
14 girl here who's been shot, and he's humming and he's singing  
15 and all that. They may not think that's admission. I  
16 certainly do.

17           He starts whistling, and he starts, like --

18          MR. SGRO: There's some poetic license with the  
19 description of the statement being taken by the State right  
20 now. I would tell you this, Your Honor. I will submit a  
21 redacted --

22          THE COURT: See if you can get it worked out.

23          MR. SGRO: We'll see if we can get it worked out.  
24 I'll get it to him on Sunday with what I think should be  
25 eliminated, and then he can let us know. What we can do for

1 sure is come to court on Monday with a minor area in dispute.

2 THE COURT: Why don't we come to court on Monday at  
3 8:30, and we'll resolve it.

4 MR. DIGIACOMO: That would be great.

5 MR. SGRO: Your Honor, I can't -- I -- with all due  
6 respect, Your Honor, we have a lot we have to get  
7 accomplished.

8 THE COURT: You've got a whole weekend to do this.

9 MR. SGRO: Yes, sir, but my -- you know what, we can  
10 work all day and all night every day, but unfortunately,  
11 people we rely on cannot. They cannot, and so we've been very  
12 diligent in this case, one-hour lunch instead of 90 minutes.  
13 We're here on time.

14 THE COURT: Who takes a 90-minute lunch?

15 MR. SGRO: Every other case I've done.

16 MR. DIGIACOMO: Only because he asks.

17 THE COURT: Not with me you haven't.

18 MR. SGRO: No, sir, not with you, but what I'm  
19 suggesting is 9:30 cuts it right to the dime for us for what  
20 we have to get done in the mornings so we can come ready to  
21 roll. So we can come at 9:30 --

22 THE COURT: How about 9 o'clock?

23 MR. SGRO: We'll be here. We'll be here by 9.

24 THE COURT: 9 o'clock. We'll see you at 9 o'clock on  
25 Tuesday -- Monday morning.

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MS. WECKERLY: Thank you.

MR. DIGIACOMO: Thank you, Judge.

MR. SGRO: Thank you, Your Honor.

(Court recessed for the evening at 3:46 p.m.)

**CERTIFICATION**

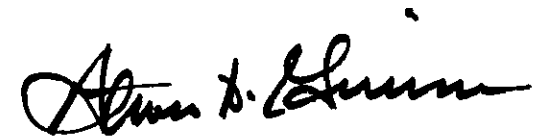
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CLERK OF THE COURT

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.,	)	<b>TRANSCRIPT OF</b>
AKA G-DOGG,	)	<b>PROCEEDING</b>
DAVID JAMES BURNS, AKA	)	
D-SHOT,	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

**JURY TRIAL - DAY 12**

MONDAY, FEBRUARY 9, 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.

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## **I N D E X**

### **WITNESSES FOR THE STATE:**

DANIELLE KELLER

Direct Examination By Ms. Weckerly 10

Cross-Examination By Mr. Sgro 19

JIM BATU

Direct Examination By Mr. DiGiacomo 26

Cross-Examination By Mr. Oram 28

JENNIFER BROWN

Direct Examination By Ms. Weckerly 30

Cross-Examination By Mr. Oram 66

Cross-Examination By Mr. Langford 87

Redirect Examination By Ms. Weckerly 88

Recross Examination By Mr. Oram 91

KEVIN BOLES

Direct Examination By Mr. DiGiacomo 98

Cross-Examination By Mr. Sgro 106

JOHN VASEK

Direct Examination By Mr. DiGiacomo 109

Cross-Examination By Mr. Sgro 127

**WITNESSES FOR THE STATE:**

T. SCOTT HENDRICKS

Direct Examination By Mr. Digiacomo	142
Cross-Examination By Mr. Sgro	162
Redirect Examination By Mr. Digiacomo	185
Follow-Up Examination By Mr. Sgro	192
Follow-Up Examination By Mr. Digiacomo	194

**STATE'S EXHIBITS ADMITTED:****PAGE**

191 through 249	Photographs	12
321	Bag of Clothing and Evidence	18
333 through 335	Charts	37
325	Photograph - Jerome Thomas	103
5 and 6	Booking Photographs	111
9 and 10	Booking Photographs	112
326 through 330	Audio/Videos	114
331	Audio/Video	121
3 and 4	Booking Photographs	123
301 and 302	Phone Records	145
306	PowerPoint - Cell Tower Activity	154

**DEFENDANT'S EXHIBITS ADMITTED:****PAGE**

Z	Photograph	19
AA	Report	72
BB	Report	81

1           **LAS VEGAS, NEVADA, MONDAY, FEBRUARY 9, 2015, 9:34 A.M.**

2                           **\* \* \* \* \***

3                   (Outside the presence of the jury.)

4           THE COURT: We're on the record. State of Nevada vs.  
5 Mason and Burns. The record will reflect the presence of the  
6 defendants, their counsel and the district attorneys. The  
7 record should also reflect the absence of the ladies and  
8 gentlemen of the jury.

9           Counsel advised me that they've entered into a  
10 stipulation or agreement that may affect the remaining  
11 portion, or at least the phase two of the trial, and I'd like  
12 them to announce that on the record at this time.

13           MR. SGRO: Yes, sir. Thank you, Your Honor. We are  
14 going to submit a written agreement to the Court, but because  
15 the trial is nearing at its end and mitigation, and witnesses  
16 for us that are all out of state are in the midst of making  
17 travel arrangements, we wanted to do a brief canvas now, and  
18 that is to memorialize the following:

19           The State and the defense on behalf of Mr. Burns have  
20 agreed to conclude the remainder of the trial, settle jury  
21 instructions, do closings, et cetera. If the jury returns a  
22 verdict of murder in the first degree, Mr. Burns would agree  
23 that the --

24           THE COURT: As to Mr. Burns.

25           MR. SGRO: As to Mr. Burns only. Mr. Burns would

1 agree that the appropriate sentencing term would be life  
2 without parole. The State has agreed to take the death  
3 penalty off the table, so they will withdraw their seeking of  
4 the death penalty.

5 If the verdict comes back at anything other than  
6 first degree murder and there's guilty on some of the counts,  
7 and the judge -- then Your Honor will do the sentencing in  
8 ordinary course like it would any other case. In -- and I  
9 believe that states the agreement, other than there is a  
10 proviso that we, for purposes of further review down the road,  
11 we are not waiving any potential misconduct during the closing  
12 statements. We understand that to be a fertile area of  
13 appeal.

14 The State has assured us that they are -- would never  
15 do anything intentionally. The Court's been put on notice to  
16 be careful relative to the closing arguments, so that there's  
17 not unnecessary inflamed passion, et cetera, et cetera.  
18 Mr. Mason has not given up his rights to appeal, and so there  
19 is a prophylactic safety measure that exists relative to the  
20 arguments advanced by the prosecution at the time of the  
21 closing statements.

22 So the long and short of it is, Your Honor, the  
23 State's agreed to abandon their seeking of the death penalty  
24 in exchange for Mr. Burns is agreeing to life without after we  
25 get through the trial. Yeah. And the waiver of his appellate

1 rights.

2 MR. DiGIACOMO: Correct. So that it's clear, should  
3 the jury return a guilty -- a verdict of guilty in murder of  
4 the first degree or murder of the first degree with use of a  
5 deadly weapon, Mr. Mason and the State will agree to waive the  
6 penalty hearing with the stipulated life without the  
7 possibility of parole on that count, as well as he will waive  
8 appellate review of the guilt phase issues.

9 Mr. Mason's attorney and us have not yet reached any  
10 agreement, but certainly any agreement about waiving penalty  
11 will not involve him waiving his appellate rights, and so the  
12 continued prophylactic rule of any misconduct --

13 THE COURT: Have you not agreed not to have the jury  
14 determine penalty on it?

15 MR. DiGIACOMO: We haven't had that discussion yet.  
16 We just had --

17 MS. WECKERLY: No. Yes.

18 MR. DiGIACOMO: Oh, we did?

19 MR. LANGFORD: Yes. Yes.

20 MR. DiGIACOMO: Oh, okay. Apparently we've now had  
21 that discussion. I apologize, Judge. I wasn't part of that  
22 discussion. So apparently Mr. Mason will waive, if he gets  
23 convicted of first degree murder, and allow the Court to  
24 sentence him.

25 THE COURT: Impose penalty.

1           MR. DiGIACOMO: But he is not waiving his appellate  
2 rights as part of the agreement.

3           THE COURT: I understand. Mr. -- let me start with  
4 Mr. Mason. Mr. Mason, would you stand up, please. Mr. Mason,  
5 in a day or so the jury is going to receive this case and  
6 determine the guilt phase; in other words, whether or not you  
7 are guilty of any of the crimes charged. Do you understand  
8 that?

9           DEFENDANT MASON: Yes, sir. I understand that.

10          THE COURT: In the event the jury finds you guilty of  
11 one or more offenses, at least of the first degree murder  
12 offense, you have a right to have the penalty for that decided  
13 by the jury. Your attorney tells me that pursuant to the  
14 agreement that's been placed on the record a few minutes ago,  
15 that you are waiving the right to have the jury determine  
16 punishment and consenting to myself determining punishment; is  
17 that correct?

18          DEFENDANT MASON: Yes. That's what I spoke to my  
19 attorney about.

20          THE COURT: And you agree with that?

21          DEFENDANT MASON: Yes. He said that's in my best  
22 interest.

23          THE COURT: All right. Mr. Burns. Mr. Burns, as  
24 you're aware, the State has sought a conviction of first  
25 degree murder and other offenses, and in the event you were

1 found guilty by the jury of first degree murder, the State was  
2 going to seek the death penalty.

3 In the colloquy that has been provided to me a few  
4 minutes ago, the attorneys explained to me that the State is  
5 waiving, giving up its right to seek the death penalty in  
6 exchange for which you are agreeing, in the event the jury  
7 returns a verdict of murder in the first degree, that I will  
8 sentence you to life without the possibility of parole. Do  
9 you understand this?

10 DEFENDANT BURNS: Yes, sir.

11 THE COURT: Do you have any questions about it?

12 DEFENDANT BURNS: Yes, sir.

13 THE COURT: Do you agree with it?

14 DEFENDANT BURNS: Yes, sir.

15 THE COURT: You understand that you have a right to  
16 have a penalty hearing where the jury would determine the  
17 punishment in the event they found you guilty of first degree  
18 murder?

19 DEFENDANT BURNS: Yes, sir.

20 THE COURT: You understand you're giving up that  
21 right to have the jury determine that punishment?

22 DEFENDANT BURNS: Yes, sir.

23 THE COURT: And in exchange for which the State will  
24 waive its right to seek the death penalty against you, and you  
25 are giving -- and you are agreeing that I will impose a

1 punishment -- in the event you're found guilty of murder in  
2 the first degree, I will impose a punishment of life without  
3 the possibility of parole. Do you understand that?

4 DEFENDANT BURNS: Yes, sir.

5 THE COURT: You understand that there are -- in the  
6 event I impose a sentence of life without the possibility of  
7 parole, you're never going to get paroled, you're never going  
8 to get out, do you understand that?

9 DEFENDANT BURNS: Yes, sir.

10 THE COURT: You're also giving up your appellate  
11 rights. Do you understand that?

12 DEFENDANT BURNS: Yes, sir.

13 THE COURT: Okay. Anything further on the record?

14 MR. SGRO: No, sir. Just a moment now to go --

15 THE COURT: And you can have a few minutes to go call  
16 your staff and tell them to call off the witnesses that you  
17 would be calling had we had a penalty hearing.

18 MR. SGRO: Thank you, sir.

19 THE COURT: Off the record.

20 MR. DiGIACOMO: We'll make a -- we'll draft a written  
21 stipulation, Judge, [inaudible] up here so we can have it all  
22 signed [inaudible].

23 THE COURT: You can go off.

24 (Court recessed at 9:41 a.m. until 9:48 a.m.)

25 (In the presence of the jury.)

1           THE COURT: State of Nevada vs. Mason and Burns. The  
2 record will reflect the presence of the defendants, their  
3 counsel, the district attorneys and all members of the jury.  
4 Good morning, ladies and gentlemen.

5           We're still in the State's case in chief, and you can  
6 call your next witness.

7           MS. WECKERLY: Danielle Keller.

8           DANIELLE KELLER, STATE'S WITNESS, SWORN

9           THE CLERK: Please state your name and spell your  
10 first and last name for the record.

11          THE WITNESS: Danielle Keller, D-a-n-i-e-l-l-e,  
12 K-e-l-l-e-r.

13                                 DIRECT EXAMINATION

14 BY MS. WECKERLY:

15           Q     How are you employed?

16           A     I'm a senior crime scene analyst with the Las  
17 Vegas Metropolitan Police Department.

18           Q     How long has you worked as a crime scene analyst  
19 for Metro?

20           A     About seven years.

21           Q     And so you were a crime scene analyst back in  
22 2010?

23           A     Yes.

24           Q     What kind of training did you go through to be a  
25 crime scene analyst?

1           A     I have a bachelor's degree in criminal justice,  
2 and then I completed the academy and field training program,  
3 as well as training ever since then.

4           Q     On the 13th --

5           THE COURT:  Would you move up just a little bit and  
6 get closer to that microphone?

7           THE WITNESS:  [Complies.]

8           THE COURT:  You have a soft voice, so we need you to  
9 speak up.

10          THE WITNESS:  Speak up.

11          THE COURT:  Thank you.

12 BY MS. WECKERLY:

13          Q     On the 13th of August of 2010, did you assist  
14 with a search warrant at an apartment located on Torrey Pines?

15          A     Yes.

16          Q     And do you remember the detectives that were  
17 with you for the service of the warrant?

18          A     I believe it was Shoemaker and Wildemann.

19          Q     And as a crime scene analyst, what were your  
20 duties with regard to service of that warrant?

21          A     I just took pictures of the apartment and  
22 everything in it, and then recovered evidence.

23          Q     I've shown defense counsel what's been marked as  
24 State's 191 through 249.  Could you just look through those  
25 photographs and just let me know when you're done, please.

1           A     Okay.

2           Q     Are those a fair and accurate representation of  
3 some of the photographs you took that day?

4           A     Yes.

5           MS. WECKERLY: State moves to admit 191 to 249.

6           MR. SGRO: No objection.

7           MR. LANGFORD: No objection.

8           THE COURT: They'll be received.

9           (State's Exhibit 191 through 249 admitted.)

10          MS. WECKERLY: And may I publish some of these, Your  
11 Honor?

12          THE COURT: Yes.

13          BY MS. WECKERLY:

14          Q     Can you give us just a general overall  
15 description of what the place was that you searched?

16          A     It was just a one bedroom apartment.

17          Q     And it was located off Torrey Pines?

18          A     Yes.

19          Q     We'll put up State's 193 first. And is your  
20 screen on there in front of you?

21          A     Yes.

22          Q     Okay. Can you tell us what we're looking at in  
23 that photograph, please.

24          A     That's the living room.

25          Q     And is it like -- can you kind of orient us

1 where the front door would be?

2 A You know, I'm not sure. I don't recall what  
3 direction the front door faced, but I -- I think it's to the  
4 right.

5 Q And I mean, you didn't already take furniture  
6 out of there; that was just --

7 A No.

8 Q -- how it appeared on that date?

9 A That's how it was, yes.

10 Q And how about 200, can you describe what we're  
11 looking at in State's 200?

12 A That's the living room floor.

13 Q Okay. And what sort of items are marked with  
14 those cones?

15 A It's a knee brace, or some kind of brace, jeans.  
16 And then in the back there's some cigarette packages and  
17 gloves.

18 Q And what type of material were the gloves made  
19 out of?

20 A There were some latex. I think those are the  
21 latex gloves.

22 Q And State's 203, please. Oh, sorry. 202. Is  
23 that a closer picture of the knee brace?

24 A Yes.

25 Q And was that item impounded?

1           A     Yes.

2           Q     Besides the latex gloves and the cigarettes,  
3 were there -- or the latex gloves and the knee brace, were  
4 there also cigarettes located in the residence?

5           A     Yes.

6           Q     Can you describe for the members of the jury  
7 generally where those were located?

8           A     There were some in the living room, and I think  
9 some in the bedroom as well.

10          Q     And Marc, can you put up 212, please.  
11 Is that just a view from the opposite direction?

12          A     Yes.

13          Q     And let's look at 214. That's obviously the  
14 kitchen area of the residence?

15          A     Yes.

16          Q     Did you examine that area for cigarette butts or  
17 anything that might have potential DNA evidence on it?

18          A     Yes. We looked in the kitchen.

19          Q     And what -- do you remember any items that had  
20 potential DNA evidence that you collected?

21          A     I know there was that Sprite can. I'm not -- I  
22 don't recall what else was in there, but I think there were a  
23 few items from the kitchen.

24          Q     And what about the bathroom area, why would you  
25 look in the bathroom area for particular items of evidence?

1           A     We looked in the entire apartment, but anything  
2 like a toothbrush or a pair -- anything that would have DNA,  
3 we looked in the bathroom.

4           Q     And 217, please. What are we looking at in that  
5 photograph?

6           A     This is paperwork in the kitchen.

7           Q     And it appears like some of the paperwork is  
8 medical --

9           A     Yes.

10          Q     -- is that correct?

11               And was that collected as well?

12          A     Yes.

13          Q     Is that just how it appeared when you got there?

14          A     Yes.

15          Q     Except for the cone that's out there?

16          A     The cone. Yes, except for the cone.

17          Q     And then you said you also looked in the  
18 bathroom as well?

19          A     Yes.

20          Q     Was there any medication that you recovered from  
21 the residence?

22          A     Yes.

23          Q     This is State's 233, please. And is that the  
24 medication that was recovered?

25          A     Yes.

1 Q And what's the name of the patient?

2 A Albert Davis.

3 Q All three of those items were collected,  
4 correct?

5 A Yes.

6 Q Could you put on 237.

7 What are we looking at in that picture?

8 A That's the bedroom.

9 Q And obviously the cones are placed there by  
10 Metro, but everything else is how it appeared?

11 A Correct.

12 Q What is 240?

13 A Those are cigarette butts.

14 Q And those were all taken from the residence?

15 A Yes.

16 Q What was the purpose of collecting those?

17 A For potential DNA.

18 Q Are you the person that does the DNA testing  
19 after collection of those cigarette butts?

20 A No.

21 Q That's done by an expert in Metro's lab?

22 A Correct.

23 Q Ms. Keller, I'm showing you what's been marked  
24 as State's 321, and it was actually opened in the presence of  
25 defense counsel prior to court. Do you recognize what this

1 item is?

2 A Yes.

3 Q What is it?

4 A It's a package of clothing that I recovered from  
5 the apartment.

6 Q And the contents in this bag would be what?

7 A There's boxer briefs, pants, the knee brace, and  
8 then a pair of pants -- or shorts. Sorry.

9 Q And does the bag, aside from it being opened,  
10 appear to be in the condition that from when you impounded it  
11 at the apartment?

12 A Yes.

13 Q And I think you have -- I'm taking out  
14 [inaudible] for the record, which has been marked as 321C.  
15 What is this item of evidence?

16 A I believe that's the knee brace.

17 Q Can you remove it from the packaging? Do you  
18 need gloves?

19 A Yes, please.

20 MS. WECKERLY: Can I have some gloves, please. Thank  
21 you. Here you go.

22 THE WITNESS: Thank you.

23 BY MS. WECKERLY:

24 Q And is that the item that you saw at the  
25 apartment that day?

1           A     Yes.

2           MS. WECKERLY:  The State moves to admit 321 and the  
3 contents.

4           MR. LANGFORD:  No objection, Your Honor.

5           MR. SGRO:  No objection.

6           THE COURT:  It will be received.

7                     (State's Exhibit 321 admitted.)

8           MS. WECKERLY:  And I just want to see if I have one  
9 picture of the bathroom, if I could have the Court's  
10 indulgence for one second.

11                     (Pause in proceeding.)

12           MS. WECKERLY:  Can you put on the overhead 222,  
13 please.

14 BY MS. WECKERLY:

15           Q     Is that the bathroom area?

16           A     Yes.

17           Q     What is in the bathtub itself?

18           A     It's just the shower curtain.

19           Q     Okay.  And can you do 221.

20                     Is that still a wider view of the bathroom area?

21           A     Yes.

22           Q     And can you do 225.

23                     All of that sort of disarray was how the apartment  
24 appeared that -- that day when you did the warrant?

25           A     Yes.

1 Q Can you do 224.

2 In the -- on the counter of the bathroom sink there  
3 that we're looking at in 224, there appear to be some  
4 toothbrushes. Were those collected for potential DNA  
5 evidence?

6 A Yes.

7 Q Thank you.

8 MS. WECKERLY: I'll pass the witness, Your Honor.

9 THE COURT: Do you need the bag with exhibits,  
10 Mr. Sgro?

11 MR. SGRO: I do not.

12 THE COURT: Why don't you return that to the clerk.

13 MR. SGRO: Your Honor, the State and I -- the State  
14 has agreed with me to the admission of Defense Exhibit --  
15 Proposed Exhibit Z, like zebra.

16 THE COURT: It'll be received. Is it marked?

17 MR. SGRO: It is.

18 (Defendant's Exhibit Z admitted.)

19 CROSS-EXAMINATION

20 BY MR. SGRO:

21 Q Good morning, ma'am.

22 A Good morning.

23 Q You were one of the participants in the search  
24 at the Torrey Pines residence; is that right?

25 A Yes.

1           Q     And I wanted to ask you, I'm not sure if I got  
2 it or not, but the date of the search was August 13. Does  
3 that ring a bell?

4           A     Correct.

5           Q     So if an event occurred here that's related to  
6 this Torrey Pines residence and I tell you it's August 7, this  
7 search would have occurred about six days afterwards?

8           A     Correct.

9           Q     Do you make it a point to follow up with the  
10 things that you collect and you forward on for testing?

11          A     No, I don't.

12          Q     So some questions were asked, you know, did you  
13 pick up a cigarette butt for example and send it to DNA, to  
14 the people who do DNA.

15          A     Correct.

16          Q     Do you follow back up and find out what the  
17 results are?

18          A     No. Sometimes they will notify us, but we don't  
19 often follow up on them.

20          Q     Did you review the search warrant before  
21 testifying today?

22          A     No.

23          Q     Do you remember the search warrant for this  
24 particular residence calling for any telephones or telephonic  
25 information; to include caller ID, answering machine messages,

1 phone directories, and call history stored electronically in a  
2 residential or a cellular phone?

3 A No, I don't.

4 MR. SGRO: May I approach, Your Honor?

5 THE COURT: Sure.

6 BY MR. SGRO:

7 Q This is the warrant. So I just want to see if  
8 this jogs your memory. Do you see here Apartment 2057 of  
9 Brittinae Pines apartments?

10 A Yes.

11 Q Okay. And that's where you were at, correct?

12 A Correct.

13 Q And it's typical in a search warrant for the  
14 police to ask a judge for permission to look for specific  
15 items?

16 A Correct.

17 Q And that's what it looks like happened here?

18 A Yes.

19 Q Okay. Do you see I have highlighted Number 3?  
20 Can you read that to yourself?

21 A Okay.

22 Q Okay. Does that refresh your memory that one of  
23 the things you were looking for were cellphones?

24 A Yes.

25 Q Now, do you know what a search warrant return

1 is?

2 A Yes.

3 Q Okay. And is it true that the return is the  
4 area after the search warrant's executed, the police officers,  
5 they need to write what they found --

6 A Correct.

7 Q -- or what they took of evidentiary value?

8 A Yes, what they took.

9 Q All right. You -- do you recall as you sit here  
10 today specifically whether or not cellphones were taken?

11 A I did not recover any cellphones. No.

12 Q Do you recall any cellphones being listed on the  
13 return?

14 A I don't recall.

15 MR. SGRO: May I approach, Your Honor?

16 THE COURT: Yes.

17 MR. SGRO: Same document, Counsel.

18 BY MR. SGRO:

19 Q So I'm just showing you the return. Does the  
20 return appear to be filled out correctly and signed by  
21 Detective Wildemann that you referenced during your direct?

22 A Yes.

23 Q And on the return, does it list a number of  
24 items that were recovered; such as the gloves you've talked  
25 about, the knee brace you talked about, correct?

1 A Yes.

2 Q Can you tell the jury if any cellphones were  
3 taken?

4 A It doesn't appear so.

5 Q Now, you would agree with me that you had a  
6 court order to take them?

7 A Correct.

8 Q And it doesn't look like any were taken?

9 A No.

10 Q And now I'm showing you what the State has  
11 stipulated into evidence, Defense Exhibit Z.

12 May I have the ELMO, please.

13 There is a cone in Defense Exhibit Z that is next to  
14 three cellphones; is that right?

15 A Correct.

16 Q Do you know why those phones weren't taken?

17 A No. Typically in search warrants the detectives  
18 will take them, but I don't recall --

19 Q Okay.

20 A -- why they weren't.

21 Q Do you remember being asked to recover them?

22 A No.

23 Q Do you see to the left of the cellphones on  
24 Defense Exhibit Z there's a disposable camera?

25 A Yes.

1 MR. SGRO: And if I may approach, Your Honor.

2 THE COURT: Sure.

3 BY MR. SGRO:

4 Q The disposable camera that's just to the left of  
5 the cellphones was taken, correct?

6 A It's on the return, yes.

7 Q I want to show you State's Exhibit 233. This is  
8 the one that had the prescriptions on it, correct?

9 A Correct.

10 Q Now, what's the date that these prescriptions  
11 were filled, do you know?

12 A I don't recall. No.

13 Q Were there any pills inside these bottles?

14 A I don't recall that either.

15 Q So the bottles were left behind, right, these  
16 prescription bottles, correct?

17 A No. I believe those were impounded.

18 Q I'm sorry. They were impounded. They were left  
19 behind by the tenant of this residence.

20 A They were in the apartment. I don't know how  
21 they got there, but...

22 Q And also you recovered a knee brace, right?

23 A Yes.

24 Q So assuming someone was there before you that  
25 lived there, that would have been another item left behind

1 that you were able to impound?

2 A Yes.

3 Q And the medical records that you saw were all  
4 under the name of Albert Davis?

5 A I believe so, yes.

6 Q Are you aware of medical records that were  
7 impounded relative to the prognosis and treatment of an  
8 injury? Does that make sense?

9 A I didn't read the records, if that's what --

10 Q Okay. So you just picked them up?

11 A Mm-hmm. Correct.

12 MR. SGRO: That's all I have, Your Honor.

13 THE COURT: Mr. Langford.

14 MR. LANGFORD: Nothing from Mr. Mason, Your Honor.

15 THE COURT: Okay. Anything further?

16 MS. WECKERLY: No, Your Honor.

17 THE COURT: Thank you for being a witness,  
18 Ms. Keller. You'll be excused.

19 THE WITNESS: Thank you.

20 MR. DiGIACOMO: Officer Batu.

21 JIM BATU, STATE'S WITNESS, SWORN

22 THE CLERK: Please state your name and spell your  
23 first and last name for the record.

24 THE WITNESS: My name is Jim Batu. It's J-i-m. Last  
25 name's spelled B-a-t-u.

1 MR. DiGIACOMO: May I inquire, Judge?

2 THE COURT: Yes.

3 DIRECT EXAMINATION

4 BY MR. DiGIACOMO:

5 Q Sir, how are you employed?

6 A I'm sorry?

7 Q How are you employed?

8 A With LVMPD.

9 Q And what do you -- what's your assignment with  
10 the Las Vegas Metropolitan Police Department?

11 A Corrections.

12 Q How long have you been in the corrections  
13 division?

14 A Going on seven years.

15 Q I want to direct your attention to December of  
16 2014. Were you one of the officers assigned to the third  
17 floor EF unit of the Clark County Detention Center?

18 A Yeah.

19 Q Were you?

20 A Yes.

21 Q Okay. And did you at that point in time have  
22 contact with a woman identified to you as a Monica Martinez?

23 A Yes. She's housed in that unit.

24 Q And did you have a conversation with Ms.  
25 Martinez related to some threats she was receiving through a

1 vent?

2 A Yes.

3 Q Okay. And based upon the conversation with her,  
4 did you ultimately determine who the person housed above her  
5 on 5EF was?

6 A Not in the beginning until she mentioned who it  
7 was.

8 Q So she has a conversation with you and she  
9 mentions who the person who's threatening her?

10 A Hmm.

11 Q And ultimately do you receive the name of David  
12 Burns from her?

13 A Yes.

14 Q And do you do an investigation to determine  
15 whether or not David Burns is in fact the guy who's housed in  
16 the 5EF module?

17 A Mm-hmm.

18 Q Was that a yes?

19 A Yes.

20 Q Let me ask you this. Normally would an inmate  
21 on the third floor know who was housed on the fifth floor?

22 A Is it normal?

23 Q Yeah.

24 A No.

25 Q Is there a mechanism between the third floor EF

1 cell to communicate to the fifth floor, or vice versa?

2 A It's through the vents.

3 Q Okay. Explain that to the ladies and gentlemen  
4 of the jury.

5 A Basically each and every module, the way the  
6 building's structured, if somebody's on top of you or below  
7 you, there are vents inside the cell rooms and if you can talk  
8 on those vents, anybody above you or underneath you could hear  
9 what you're talking about.

10 Q Based upon the determination that Mr. Burns was  
11 housed directly above Ms. Martinez, did you make it a request  
12 that Mr. Burns be moved out of that cell so he could no longer  
13 have contact with Ms. Martinez?

14 A Yes.

15 Q Thank you, sir.

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

17 THE COURT: Mr. Oram.

18 CROSS-EXAMINATION

19 BY MR. ORAM:

20 Q Good morning, sir.

21 A Good morning.

22 Q How many inmates do you have at the Clark County  
23 Detention Center?

24 A Roughly close to 4,000.

25 Q Four thousand. So it's somewhat coincidental

1 that two people in the same case could be in close proximity  
2 to each other; is that right?

3 A Yes, it's coincidental.

4 Q It's just coincidence, right?

5 A [No audible response.]

6 Q Now, we've heard about Monica Martinez saying,  
7 oh, I'm being threatened. Okay. You didn't hear that; that's  
8 just what Monica Martinez may have expressed to you, right?

9 A That's correct.

10 Q Have you ever heard the term "garbage in,  
11 garbage out"?

12 A No.

13 Q In other words, that you're not here to say,  
14 yeah, I heard these threats. You're here to say that's what  
15 Monica Martinez said?

16 A I never heard the threats.

17 Q So in order to even believe that they're  
18 threats, we have to believe this person Monica Martinez; is  
19 that right?

20 A Yes.

21 MR. ORAM: Nothing further.

22 MR. LANGFORD: Nothing, Your Honor.

23 THE COURT: Anything further?

24 MR. DiGIACOMO: No.

25 THE COURT: Thank you for being a witness, Officer.

1 You'll be excused.

2 THE WITNESS: Thank you.

3 MS. WECKERLY: Jennifer Thomas [sic].

4 JENNIFER BROWN, STATE'S WITNESS, SWORN

5 THE CLERK: Please state your name and spell your  
6 first and last name for the record.

7 THE WITNESS: Jennifer, J-e-n-n-i-f-e-r, Brown,  
8 B-r-o-w-n.

9 DIRECT EXAMINATION

10 BY MS. WECKERLY:

11 Q How are you employed?

12 A I am a forensic scientist in the DNA section of  
13 the Las Vegas Metropolitan Police Department.

14 Q And how long have you worked as a DNA analyst  
15 for Metro?

16 A About 7 1/2 years.

17 Q And what's your educational background that  
18 allows you to work as a DNA analyst?

19 A I have a Bachelor's of Science Degree in  
20 molecular biology from the University of California, San  
21 Diego. I also have six years of previous experience at the  
22 Arizona Department of Public Safety.

23 Q And have you testified before in the area of DNA  
24 analysis and comparison?

25 A Yes.

1 Q Do you have an idea about how many times?

2 A About 20.

3 Q Can you explain for the members of the jury what  
4 we're talking about when we say DNA?

5 A DNA is like a genetic blueprint or set of  
6 instructions for life. It's how information is passed down  
7 from generation to generation. You get half your DNA from  
8 your mother and half from your father. And when we're looking  
9 at a DNA profile, we're looking at 15 specific locations, and  
10 also a marker that tells me if it's a male or a female.

11 Q Is the majority of DNA of human beings the same?

12 A Yes. The majority is the same, and we're  
13 looking at a very small percentage that's different and  
14 unique.

15 Q Okay. So this small percentage or this part  
16 we're looking at on the -- that we're looking at in a forensic  
17 setting is the part that differentiates individual to  
18 individual?

19 A Yes.

20 Q And you said that half of it is determined by  
21 your biological mother and the other half on the strand is  
22 determined by your biological father?

23 A Yes.

24 Q In a forensic setting, what types of materials  
25 or substances contain this unique part of the DNA?

1           A     I look for many different things. I look for  
2 blood and semen. I also look for items that may have saliva,  
3 such as a cigarette butt or a cup. And I also look for things  
4 that may have skin cells that have been handled by somebody,  
5 like a weapon, you know, a gun or a knife. And also I can  
6 look at clothing, a shirt, a hat, and try to get skin cells  
7 from that.

8           Q     And when you get an item of evidence that  
9 appears to have blood on it, what is the process you go  
10 through to obtain what the DNA profile of that spot of blood  
11 is or stain of blood?

12          A     First we'll do a chemical test if something  
13 appears that it might be blood, and that'll give us an  
14 indication that, yes, this, you know, could be blood. We'll  
15 then take maybe a cutting, or if what I received was a swab,  
16 I'll take part of that swab on for DNA. Would you like me to  
17 go through the whole process?

18          Q     Sure.

19          A     So we take it into the lab. And so we'll have  
20 like a little tube that'll either have a cutting from a shirt  
21 or a piece of, you know, a part of a cotton swab. I'll add  
22 some chemicals to it and I'll get the DNA out. It'll  
23 basically break open the cells. The DNA is contained in the  
24 nucleus or the center of the cells.

25                So basically I'll add some chemicals and I'll get the

1 DNA out. We'll take it through a process where we make many  
2 copies of it. It's called PCR, polymerase chain reaction, and  
3 it just makes many copies of the DNA. And then we'll run it  
4 through an instrument that separates out all the little  
5 fragments, and basically you put it in a computer, a computer  
6 program that will give us -- basically, a DNA profile is just  
7 a set of numbers.

8           So I'll get a set of numbers as the profile. And  
9 we're looking at 15 locations, as I stated. So if I have one  
10 or two numbers at each of those locations, it's typically  
11 indicative of a single source or of one profile. Sometimes  
12 we'll get items though, that have numerous different people  
13 on it, like a mixture of profile, and there will be lots of  
14 numbers at every location.

15           Q     So if I'm understanding you, we're looking at a  
16 DNA strand and at 15 different locations, and at each one  
17 there's a component of the mom and a component of the dad at  
18 each of those 15 locations?

19           A     Yes.

20           Q     And that's what you're generating from the spot  
21 of blood or some type of evidence?

22           A     Yes.

23           Q     And then in the forensic setting, do you  
24 typically deal with known samples or someone's DNA sample as  
25 well?

1           A     Yes. We often have known samples to make  
2 comparisons to.

3           Q     And what's a buccal swab?

4           A     A buccal swab actually is just a cheek cell  
5 swab. The inside of your cheeks are called buccal cells, and  
6 so a lot of our known samples, most of them anymore are just  
7 swabs of the inside of a cheek.

8           Q     Okay. And is your DNA profile the same  
9 regardless of whether you take it from a buccal swab or say  
10 blood, or a part of a body organ or something like that?

11          A     Yes.

12          Q     And so it'll show that same unique profile?

13          A     Yes.

14          Q     In this -- in this particular case you were  
15 asked to analyze or look for the presence of DNA on many,  
16 many, many items of evidence; is that correct?

17          A     Yes, many.

18          Q     What were the known samples that you had?

19          A     I had known samples from six individuals.

20          Q     Can you give us the names?

21          A     May I read them from my report?

22          THE COURT: Certainly.

23          THE WITNESS: Thank you.

24          THE COURT: You're going to need your report for  
25 this, so you might as well pull it out.

1 THE WITNESS: Thank you. So I had six buccal swab  
2 samples from Derecia Newman, David Burns, Monica Mitchell, aka  
3 Monica Martinez, Willie Mason, Stephanie Cousins and Donovan  
4 Rowland.

5 BY MS. WECKERLY:

6 Q And so from those buccal swabs you were able to  
7 determine each of those individuals' DNA profile?

8 A Yes.

9 Q And how they were different at each of those 15  
10 locations?

11 A That's correct.

12 Q And then just generally, and we'll go through  
13 each of the items, but generally what types of evidence were  
14 you comparing those known profiles to in this case? What was  
15 the questioned evidence?

16 A There was many different things. There were  
17 some swabs, swabs from a kitchen, swabs from a car. There  
18 were cigarette butts and, I think, drink containers, things  
19 like that.

20 Q Okay. And why would like a cigarette butt or a  
21 drink container contain DNA or be something you could generate  
22 a DNA sample from?

23 A They often have saliva, and saliva is actually a  
24 very good source of DNA.

25 Q And in terms of like swabs that you would get

1 off a kitchen knob or a dresser knob, is that typically a  
2 successful source or a successful place to recover DNA from?

3 A Often it can be very challenging in those  
4 situations one, because if you think of a kitchen counter or  
5 maybe your car, maybe there's multiple people who have touched  
6 that item. And when you're talking about skin cells, the skin  
7 cells you shed very easily actually don't have DNA because  
8 they're dead. They don't have a nucleus. They're kind of  
9 like easily shed cells.

10 So it kind of just depends on how easy, we call them  
11 shedders, if you shed your skin cells a lot. So sometimes  
12 it's just there's just not a lot of DNA there, and sometimes  
13 it can be a mixture.

14 Q Okay. You prepared some charts for your  
15 testimony this morning, correct?

16 A Yes.

17 Q I'm showing you State's 335 -- 333, 334 and 335.  
18 Are those the charts you prepared?

19 A Yes.

20 Q Are they a fair and accurate representation of  
21 your results, or some of the results in this case?

22 A Yes.

23 MS. WECKERLY: The State moves to admit 333 to 335.

24 MR. ORAM: No objection.

25 MR. LANGFORD: No objection, Your Honor.

1 THE COURT: They'll be received.

2 (State's Exhibit 333 through 335 admitted.)

3 MS. WECKERLY: And is the overhead on?

4 COURT RECORDER: Yes.

5 MS. WECKERLY: Oh, thank you.

6 BY MS. WECKERLY:

7 Q I'm putting on the overhead 335. Let me just  
8 zoom in a little bit. Can you see that on your screen?

9 A Yes.

10 Q Okay. So looking at the far left where there  
11 are, you know, blue, green and all these letters and numbers,  
12 explain, if you could, to the members of the jury what that  
13 column is representing on the far left.

14 A Each of those different colored areas represent  
15 the DNA location that I'm looking at. So when I mentioned  
16 that there was 15 locations, there's 15 here plus something  
17 called amelogenin, which helps me to determine if it was a  
18 male or a female.

19 Q So when you talked earlier about the unique part  
20 of our DNA where it differentiates among individuals, this is  
21 actually what that DNA strand is represented by, or this is  
22 the name of that strand or those alleles that make up the  
23 strand?

24 A It's the name of the location.

25 Q Okay.

1           A     Yes.

2           Q     And this one that is sex determinative is on  
3 here as well?

4           A     Yes.

5           Q     Okay. And so at each of these locations as we  
6 go down, you will get -- you will inherit one number  
7 representation from your mother and one from your father?

8           A     That's correct.

9           Q     And the numbers themselves are just -- are they  
10 just a way of identifying each of those DNA components?

11          A     They actually represent -- what we're looking at  
12 is actually something called STR, and it's short tandem  
13 repeats. So it's just basically we're looking at these  
14 repeated segments within the DNA. And so if somebody has, say  
15 if you look at that first location, from their mother, this  
16 person or the profile on this cigarette butt got a 13 repeat  
17 segment from their mother or father, and the other segment  
18 would be a 14 repeat segment.

19          Q     Okay. So at the 13, 14 on the -- at the first  
20 allele location, that would -- we can't tell which one's from  
21 the mom and which one's from the dad?

22          A     I cannot, no.

23          Q     Okay. But when you look at that location and  
24 you see two numbers, does that tell you anything regarding  
25 whether or not that cigarette butt constitutes a mixture or is

1 a single source of DNA on that cigarette butt?

2 A I would look at the profile as a whole. And as  
3 a whole, because there's only one or two numbers in each  
4 location, I'm confident that it would be from a single source.

5 Q Are there times when you recover more numbers  
6 than two at those 15 locations?

7 A Yes.

8 Q And when you see those types of numbers, what  
9 does that tell you as a scientist?

10 A It tells me that most likely more than one  
11 person contributed DNA to that sample. Sometimes if one  
12 person contributed the most amount of DNA, there would be a  
13 major person and I can make a determination of that. Or  
14 sometimes we can't pull out a major and sometimes we can still  
15 make a conclusion on a mixture, and then sometimes it's just  
16 too many people or it's just too much information that we're  
17 not able to make a conclusion.

18 Q Okay. So you took this questioned piece of  
19 evidence, which was a cigarette recovered from a search  
20 warrant, and you went through the process that you described  
21 earlier and developed this DNA profile from it?

22 A Yes.

23 Q And you had a buccal swab taken from Willie  
24 Mason, and that is represented on the right side of the  
25 screen, correct?

1           A     That's correct.

2           Q     And so as an analyst, you actually got results  
3 from the cigarette butt, and what do you do to determine  
4 whether or not Willie Mason is the source of that cigarette  
5 butt?

6           A     We make a comparison, just a direct comparison,  
7 and then if we include somebody, then we'll add a statistical  
8 calculation to that.

9           Q     And so if we were to make the comparison that  
10 you go through just in court, the cigarette butt is the 13,  
11 14; he has a 13, 14 at that location. At the next location  
12 it's 28, 30.2; he is that profile at the next location as  
13 well. Third one is an 8; he's an 8. Why would there only be  
14 one number at this location?

15          A     It simply means that this person got -- or this  
16 profile got both the same, the same 8 from both the mother and  
17 the father.

18          Q     So at that location the mom was an 8 and the dad  
19 was an 8?

20          A     Yes.

21          Q     Okay. And as we go down all the columns,  
22 there's a match at every location?

23          A     Yes.

24          Q     Now, what if, looking at Column 3, there was an  
25 8 and the number here was like 10 or 9 or a different number,

1 what would you conclude from that?

2 A If everything else was the same?

3 Q Yes.

4 A We would -- it could be someone who's related to  
5 them. But we would basically -- basically what I do is I go  
6 through the profile I get from the evidence and I determine  
7 every single location that I believe I can compare. So in  
8 this situation, if that happened to be a 10, and looking over  
9 at the buccal swab from Willie Mason it was an 8, then it  
10 would be an exclusion.

11 Q So all of these would have to match in order to  
12 be included as the source?

13 A Yes.

14 Q And in this particular example, this cigarette  
15 butt, there is a match at every location?

16 A Yes.

17 Q And you said after you get a match you go  
18 through a statistical calculation?

19 A Yes.

20 Q And can you describe for non-math people what  
21 that is?

22 A Basically we have a computer program that can  
23 take the frequencies of the numbers at each location, and  
24 because the DNA, each of these locations is considered  
25 unrelated, it's considered unlinked, we're able to multiply

1 the frequencies across every single location. So they're  
2 each -- each location is kind of an independent event. So  
3 we're able to multiply the frequencies at each location and  
4 then get a statistical value on the end.

5 Q And in this particular case, what was the  
6 statistical calculation?

7 A May I read my report?

8 Q Sure.

9 A The DNA profile obtained from the cigarette butt  
10 is consistent with Willie Mason. The estimated frequency of  
11 this major DNA profile among unrelated individuals in the  
12 general population is rarer than one in 650 billion. Identity  
13 is assumed at that point.

14 Q And so what that calculation means, or the way  
15 you verbalized it, is that you would expect one person in a  
16 population of 650 billion people to have that profile?

17 A The profile from the evidence, that's how rare  
18 that profile is in the population from the cigarette butt.

19 Q And is there any significance to 650 billion, or  
20 why is that calculation used?

21 A At the time that I put together this report the  
22 world population was approximately 6.5 billion. And so we  
23 took 100 times the world population, and when we get to that  
24 point where something is that rare, we say -- we feel  
25 confident we can say something is the source.

1 Q And that's why you say identity is assumed?

2 A Yes.

3 Q And you said that that's 100 times the world's  
4 population?

5 A Yes.

6 Q Are there situations where you get DNA results  
7 that fall well below that threshold of one in 650 billion,  
8 or --

9 A Yes. It doesn't always reach that point.

10 Q So that's what it happened to reach on this  
11 particular item of evidence?

12 A Yes.

13 Q Now I'm putting on the overhead, this is State's  
14 334, and it's another cigarette butt recovered from a search  
15 warrant. And this would be your Item 13A, so it's another  
16 cigarette butt. Now, right away when we look at 334, there  
17 appear to be far more numbers on the cigarette butt than in  
18 the prior chart that we saw.

19 A That's correct.

20 Q And what -- can you explain to us what we're  
21 looking at, why is that on that cigarette butt?

22 A I believe this to be a mixture. I believe that  
23 more than one person contributed DNA to this cigarette butt.

24 Q And when you look at the cigarette butt profile,  
25 some of the numbers you have on the chart are in brackets.

1 What does that signify?

2 A Any of the numbers in brackets are less than 60  
3 percent of the other numbers there in that same, just across  
4 there in that same location. So that first one, D8S1179,  
5 there's both 12 and a 13 in brackets; that means those are  
6 less than 60 percent of the 14 and the 15.

7 Q And is that what you use; you spoke earlier  
8 about determining a major profile versus the minor  
9 contributor?

10 A Yes.

11 Q And so the bracketed ones are less than 60  
12 percent, so that's the minor?

13 A Yes. That's correct.

14 Q And then there's also numbers on there that are  
15 in red, or smaller?

16 A Yes. The numbers in red are ones that were  
17 beneath our threshold. We have a threshold that everything  
18 must achieve before we'll make a conclusion about it, because  
19 sometimes we'll get things that are so low where we can't be  
20 confident that we've got all the information.

21 So all the numbers in red were information that was  
22 there, but we didn't do any -- we weren't able to do anything  
23 with it, but we just wanted to like have it represented so you  
24 would know that there was more information. So anything in  
25 red is just something that's below our threshold for

1 interpretation, but it did show up.

2 Q Now, when you say threshold for interpretation,  
3 is there a machine or something that you're using to detect  
4 the DNA?

5 A Yes.

6 Q And so if it -- is that machine like calibrated  
7 to be reliable at a certain threshold?

8 A It gives us data down to a very, very low  
9 threshold, but we only will interpret data that's above a  
10 certain threshold. In this case it's 100 RFU, and that just  
11 happens to be the unit that we use from this machine.

12 Q And so are the numbers in red below that,  
13 they're below that threshold?

14 A That's correct.

15 Q But you report it out just to indicate that  
16 there is a mixture and this is what it appears to be?

17 A Yeah. This is just exactly as we got it how it  
18 appeared to us, and -- or as it appeared to me, and then we  
19 would just make conclusions on anything that was over our  
20 threshold and able to be made -- have conclusions made from  
21 it.

22 Q So looking at this chart, we also have on the  
23 right-hand side the known sample from a buccal swab of David  
24 Burns, and if we compare it to the cigarette butt of 13A, it  
25 looks like he's a 14, 15 at the first marker, which is

1 D8S1179, and there is a 14, 15 at that first location?

2 A Yes. So when I first got this profile, I would  
3 have -- from the cigarette butt, I would have gone through and  
4 determined what I believed to be the major. I would do that  
5 first, before looking at any known samples, and then I would  
6 make the comparison. So at the first one the major -- or the  
7 major markers are 14 and 15 at that first location.

8 Q And then at the third location there is an 8,  
9 but there's also a 10, 11, and he's a 10, 11. So that 8 is a  
10 minor contributor?

11 A That 8 is, it is a minor contributor. It's even  
12 below our threshold, so we would never have done anything with  
13 that information, but there was a little bit more information  
14 there.

15 Q Okay. And then he's a 15, 17. And as we go  
16 down the chart, his profile is evident at each of the  
17 locations; is that fair?

18 A Yes.

19 Q And when you have a mixture like this with so  
20 much data from the cigarette butt itself, is -- are you able  
21 to do a statistical calculation?

22 A Yes. In this case, because I was able to pull  
23 out a major profile, I was able to do a statistical  
24 calculation similar to the one in the previous one that was a  
25 single source.

1           Q     Now, when it -- when you're looking at what's  
2 the major profile, is it just when you're looking at the  
3 instrument that produces the results on DNA testing the major  
4 profile just appears more dominant, or like at a higher level  
5 of RFU or a higher level of presence?

6           A     Yeah. What we actually are looking at is a set  
7 of peaks. So at every single location we'll see peaks. And  
8 so these peaks were bigger and they actually have a number  
9 associated with them. It's not on here, but there is a number  
10 associated with them.

11                So they'll have a number, say value of just as an  
12 example like 1,000, and then maybe the minor one would have  
13 something that was 500, and so then that would be the minor  
14 because it would be less than 60 percent of those major ones.

15           Q     And so what were your conclusions regarding  
16 David Burns as a source of the DNA on this cigarette butt  
17 which is 13A?

18           A     The DNA profile obtained from the cigarette butt  
19 is consistent with a mixture of at least two individuals  
20 including at least one male. The major profile was consistent  
21 with David Burns. The estimated frequency of this major  
22 profile among unrelated individuals in the general population  
23 is rarer than one in 650 billion. Identity is assumed.

24                And then we compared other profiles in this case to  
25 the minor component, or I compared. Unknown Male No. 4 cannot

1 be excluded as a possible contributor to this mixture. I did  
2 develop some unknown profiles in this case. So Unknown Male  
3 No. 4 couldn't be excluded as a possible minor contributor.

4 And Derecia Newman, Monica Mitchell, aka Martinez,  
5 Willie Mason, Stephanie Cousins, Donovan Rowland, Unknown  
6 Female No. 1, Unknown Male No. 1, Unknown Female No. 2,  
7 Unknown Male No. 2, Unknown Female No. 3, and Unknown Male No.  
8 5 can be excluded as possible contributors to the mixture  
9 profile obtained.

10 Q So let's go through at each location in our case  
11 what you tested and what your results were. Our murder scene  
12 was on -- I know you didn't go there, but was on Meikle Lane,  
13 and what did you look at that was impounded from that  
14 location?

15 A There were -- there was a cigarette butt. There  
16 were some swabs from a front door, some kitchen cabinet swabs,  
17 a nightstand drawer swab, and that looks like the kitchen  
18 cabinet swabs. There was multiple swabs from different  
19 kitchen cabinets.

20 Q And a \$20 bill, right?

21 A Yes.

22 Q Let's start with the \$20 bill and what were your  
23 findings with regard to that.

24 A It was a complex mixture. As you can imagine, a  
25 \$20 bill has been handled by many people. So when I did it,

1 basically what I did is I took a swabbing of that \$20 bill,  
2 and it was just a mixture profile that was not interpretable.

3 Q And that's because there's just so much DNA on  
4 money?

5 A Yes.

6 Q What about the swabs that were taken from the  
7 nightstands?

8 A Let's see.

9 Q I think that's JS5 -- or JT5, sorry.

10 A So yes, they both -- both of them were either  
11 inconclusive or a limited partial; meaning I couldn't make  
12 conclusions on them. They were either degraded, just too --  
13 not enough information for me to make a conclusion. Most  
14 likely also they could have been mixtures.

15 Q So the fact that someone touches something like  
16 a knob or a handle on a nightstand, would you necessarily  
17 expect to recover a complete DNA profile from a location like  
18 that?

19 A It -- it would just depend on the house and how  
20 many people have touched it. And you think of other things  
21 that could be degrading the DNA, like maybe some lotions or  
22 things like that, that you maybe have on your hands when you  
23 touch it. It would -- it would be -- it wouldn't be uncommon  
24 to not find a full, complete, or a good usable profile to  
25 compare to from such things like that when it's a touch DNA

1 sample.

2 Q Okay. So on both the nightstands there wasn't  
3 enough data recovered, and then in the case of the \$20 bill  
4 there was like too much --

5 A Yes. That's correct.

6 Q -- to make any interpretation?

7 A Yes.

8 Q And there were also swabs taken from the kitchen  
9 cabinets, and I think those would be --

10 A The 3A through the 3H.

11 Q Yes. JT3.

12 A Yes.

13 Q What were your findings with regard to swabs  
14 from the kitchen cabinets at the crime scene?

15 A I had a couple different -- different results.  
16 I mean, I was able to make conclusions on a couple of them,  
17 but -- let's see. So I guess 3C and 3H I was able to make a  
18 conclusion on, and the other ones were I was not able to make  
19 any conclusions on.

20 Q So there was one that was like below threshold  
21 and one that was probably either like too complex, like our  
22 \$20 bill and our nightstand?

23 A Yeah. I had a mix of both. I had some that  
24 were limited partial, meaning there was just barely any DNA,  
25 and then I had at least one that was a complex mixture,

1 meaning there was way too much DNA.

2 Q One of the swabs though, or actually two of the  
3 swabs though from the kitchen cabinets you were able to obtain  
4 results, correct?

5 A That's correct.

6 Q And with regard to, I think it's 3C, what were  
7 your findings?

8 A The DNA profile obtained from the kitchen  
9 cabinet swabs, JT3C, is consistent with a mixture of at least  
10 two individuals with at least one being male. The major  
11 profile is consistent with an Unknown Female No. 2, and no  
12 conclusions could be made with regard to the minor  
13 contributors.

14 Q Now, the Unknown Female No. 2, you had the known  
15 profile of Derecia Newman, correct?

16 A That's correct.

17 Q And were you able to make a determination  
18 regarding whether that Unknown Female No. 2 could be a  
19 biological child of Derecia?

20 A Yes. Unknown Female No. 2 was consistent with  
21 being the daughter of Derecia Newman.

22 Q Now, there was another mixture profile from the  
23 kitchen cabinets, I think it's 3H?

24 A Yes.

25 Q And what were your findings with regard to that?

1           A     The DNA profile obtained from the kitchen  
2 cabinet swabs JT3H is consistent with a mixture of at least  
3 two individuals, including at least one male. The major  
4 profile is consistent with an Unknown Male No. 1.

5           Q     Now, that Unknown Male No. 1 profile from the  
6 kitchen cabinet was also found in a cigarette butt at the  
7 scene, correct? That's --

8           A     Yes.

9           Q     -- 1A?

10          A     I believe -- yes. Yes.

11          Q     And --

12          A     Under JT2.

13          Q     Yes.

14          A     Yes.

15          Q     And then there was another cigarette butt found  
16 at the scene, and who was that consistent with? That's JT1C.

17          A     There was a cigarette butt -- the DNA profile  
18 obtained from the cigarette butt JT1C is consistent with  
19 Derecia Newman.

20          Q     Okay. So one of the cigarette butts is  
21 Derecia's. And then there's an unknown male, and he's on a  
22 kitchen cabinet and also a cigarette butt, right?

23          A     That's correct.

24          Q     And then there's another cigarette butt found  
25 outside the complex -- or outside the door of the apartment,

1 and that would be, I think, 1A?

2 A I'm not sure where it was found.

3 Q Well, it's reported to you as that.

4 A The Kool cigarette butt?

5 Q Yes.

6 A Yes. That was consistent with an Unknown Female  
7 No. 1.

8 Q And then we have Unknown Female No. 2, who was  
9 on the kitchen cabinet, but is consistent with being a  
10 biological child of Derecia Newman?

11 A That's correct.

12 Q Now, you also would have examined evidence taken  
13 from the fingernail clippings of Derecia Newman at autopsy?

14 A That's correct.

15 Q And what were the findings with regard to those  
16 fingernail clippings?

17 A On the right hand I obtained a partial profile.  
18 A partial DNA profile obtained from the right-hand fingernail  
19 swab, JT6C, is consistent with Derecia Newman. There are  
20 indications of a male contributor below threshold, however no  
21 conclusions can be made.

22 Q And why is it that no conclusions can be made  
23 for that male portion that seems to be present?

24 A Similar to what we were talking about earlier,  
25 we have a threshold. And so we were able to see that there

1 was a male, a Y showed up below threshold, but we weren't able  
2 to make any comparisons to that data.

3 Q So basically we have Derecia Newman's DNA taken  
4 from her own fingernails?

5 A That's correct, yes.

6 Q Which isn't necessarily a surprising result?

7 A No.

8 Q You also looked at clothing that was impounded  
9 from UMC hospital. I'm going to put it on the overhead. This  
10 is State's 255, and it's a pair of blue pants. And I think  
11 you examined that as well, correct?

12 A That's correct.

13 Q And what part of this, of these pants were you  
14 looking at?

15 A I took a cutting, I believe, from some of the  
16 stained area. If you want to know specifically, I'd have to  
17 look at my picture.

18 THE CLERK: Ms. Weckerly, that hasn't been admitted.

19 MS. WECKERLY: Oh, these are by stip.

20 THE WITNESS: Oh, I'm sorry.

21 MS. WECKERLY: The defense, I think, stipulated  
22 to 255.

23 THE WITNESS: I'm sorry. I misspoke. I actually did  
24 a swabbing of the inside of the pocket of these pants.

25

1 BY MS. WECKERLY:

2 Q So you swabbed the inside of the pocket. Why  
3 would you have done that in this particular case?

4 A I believe to see if there was any foreign DNA  
5 inside the pockets of the pants.

6 Q And what were your findings with regard to the  
7 pockets?

8 A The DNA profile obtained from the light blue  
9 pants, JT21A, is consistent with a mixture of at least two  
10 individuals. The major profile is consistent with the Unknown  
11 Female No. 2. There are indications of a male contributor  
12 below threshold, however no conclusions can be made.

13 Q Now, is there anything that could be done to  
14 enhance the identification of that unknown male portion that  
15 you found on the pockets?

16 A Not anything that we could have done, no. It  
17 was unfortunately too low.

18 Q And the rest of the results, the major component  
19 is Unknown Female No. 2, which you also found on the kitchen  
20 cabinet?

21 A That's correct.

22 Q And this is the person who is consistent with  
23 being the biological child of Derecia Newman?

24 A That's correct.

25 Q You were also given samples taken from a car.

1 Do you recall that?

2 A Yes.

3 Q And those were swabs taken from what areas of  
4 the car?

5 A They were some door handle swabs, some grip  
6 swabs, gear shift and mirror, seat belt, latch plate swabs,  
7 steering wheel. Everything.

8 Q Pretty much all over the car?

9 A Yes, yes.

10 Q And what -- where were you able to get results  
11 from those swabs?

12 A JT8A, which is the steering wheel, which is  
13 steering wheel swabs, I was able to obtain some results. The  
14 DNA profile obtained from the steering wheel swabs, JT8A, is  
15 consistent with a mixture of at least three individuals,  
16 including at least one male.

17 The major profile is consistent with Monica Mitchell,  
18 aka Martinez. The estimated frequency of this major DNA  
19 profile among unrelated individuals in the general population  
20 is rarer than one in 650 billion. Identity assumed. But  
21 there's no conclusions could be made regarding the minor  
22 contributors on that.

23 Q Okay. So Monica Mitchell Martinez's DNA is on  
24 the steering wheel in the car?

25 A Correct.

1           Q     And were you able to recover any DNA from, I  
2 think, like the seat belt latches or other areas of the car?

3           A     Yes. So one of the seat belt latch swabs,  
4 actually a couple of them I was able to obtain some  
5 information.

6           Q     Okay.

7           A     The DNA profile obtained from the seat belt  
8 latch plate swabs, JT8F, is consistent with a possible  
9 mixture. The major profile is consistent with an Unknown Male  
10 No. 2. No conclusions regarding any of the possible  
11 additional contributors can be made.

12          Q     And are you able to look at Unknown Male No. 2's  
13 profile and determine whether that unknown male could be the  
14 biological child of Ms. Martinez?

15          A     Yes. I determined that that Unknown Male No. 2  
16 could not be the son of Monica Martinez.

17          Q     Was there also presence of an unknown -- another  
18 unknown in, I think, the seat belt, another seat belt latch  
19 swab?

20          A     Yes.

21          Q     What were your findings there?

22          A     The partial DNA profile obtained from the seat  
23 belt latch plate swabs, JT8G, is consistent with a possible  
24 mixture profile. The major profile is consistent with an  
25 Unknown Male No. 3. No conclusions with regard to the

1 possible additional contributors can be made.

2 Q And could that Unknown Male No. 3 be the  
3 biological child of Ms. Martinez?

4 A Yes.

5 Q Now, you also examined a gun for the presence of  
6 DNA, correct?

7 A That's correct.

8 Q And we have a chart for that, and this is  
9 State's 333. So would you have swabbed the gun yourself in  
10 order to see if you could recover any DNA material from the  
11 gun?

12 A Sometimes we receive guns previously swabbed by  
13 a crime scene person, and sometimes we swab them ourselves.

14 Q And in terms of this gun, do you recall what you  
15 did, if you were the swabber?

16 A I did swab this one.

17 Q And there was also a holster submitted --

18 A Yes.

19 Q -- that went with the gun. What were your  
20 findings with regard to the holster?

21 A The holster had a complex mixture that's too  
22 much information, couldn't make any conclusions on it.

23 Q And the gun itself, does 333 represent your  
24 findings at least partially with regard to the gun?

25 A Yes.

1           Q     And it looks like in Column 2, again moving from  
2 left to right, it's again a situation where there's a mixture  
3 profile?

4           A     Yes.

5           Q     And you compared it in this particular slide to,  
6 or in this particular chart to Monica Martinez, correct?

7           A     That's correct. In this case the profile I  
8 obtained, I couldn't pull out a major profile, so I had to  
9 make a comparison to the mixture as a whole.

10          Q     And when you do that, is that because there's so  
11 much DNA at the same levels?

12          A     Yes. There's DNA at similar levels. There just  
13 wasn't a clear major all the way across the profile to be able  
14 to pull it out.

15          Q     And what were your findings with regard to  
16 Ms. Mitchell and this gun?

17          A     The DNA profile obtained from the Ruger  
18 revolver, JT8B, is consistent with a mixture of at least three  
19 individuals, including at least one male. Monica Mitchell,  
20 aka Martinez, JT27, and Donovan Rowland, JT30, cannot be  
21 excluded as contributors to the mixture profile.  
22 Approximately one in 36 individuals in the general population  
23 are included as possible contributors to the mixture profile  
24 obtained.

25          Q     One in 36?

1           A     Yes.

2           Q     So can you say that either Monica Martinez  
3 Mitchell or Donovan Rowland are the source of the DNA on this  
4 gun?

5           A     I could not say that they're the source, no. In  
6 this case, because it's a mixture, I was only able to look at  
7 certain locations to do statistics on. In this case I only  
8 did statistics on four locations. The rest of the areas, when  
9 there was red information, the red numbers below, we can't do  
10 statistics on those locations because there could be more  
11 information.

12          Q     And if I understood you correctly, one in 36  
13 people, or less than one in 600 billion, one in 36 people  
14 could be consistent with the data collected from that gun?

15          A     With the locations that we did comparisons to,  
16 yes. So again, there's four locations out of 15 that we did  
17 comparisons to, and the two individuals were included, but  
18 other people could certainly be included. We could never say  
19 that these people were the source of that DNA on there.

20          Q     Because you could pick one -- get 36 people in a  
21 room, pick one at random, and that's what, you know, we would  
22 expect one of them at least to be consistent with the four  
23 locations?

24          A     Statistically it's possible, yes.

25          Q     And that, I mean, the reason why we get a number

1 like that, like one in 36 as opposed to one in 600 billion is  
2 just because of what was actually recovered on the item of  
3 evidence?

4 A Yes. It was definitely at least two, probably  
5 three people minimally on this -- on this gun, therefore we  
6 just couldn't in this case, or I couldn't in this case pull  
7 out a significant contributor.

8 Q I'd like to move to items that were recovered  
9 from an apartment at Torrey Pines. And there were, to be  
10 fair, a ton of cigarette -- well, not a ton, but several  
11 cigarette butts found at this location, correct?

12 A Yes.

13 Q And can you just go through your findings with  
14 regard to the cigarette butts?

15 A So on -- well, some of them I've already read.  
16 Do you want me to continue?

17 Q Well, we can skip the ones that we have in the  
18 chart.

19 A Okay. So I guess the cigarette butt, JT13B, the  
20 DNA profile obtained from that cigarette butt is consistent  
21 with a possible mixture. The major profile is consistent with  
22 an Unknown Male No. 4. No conclusions can be made regarding  
23 additional contributors. So at this location we definitely --  
24 we had some more unknown profiles that were developed.

25 Q Okay. And we have the one where Burns is

1 identified. Was Monica Mitchell identified on a cigarette  
2 butt? And I think this is 13C.

3 A Yes. The DNA profile obtained from the  
4 cigarette butt, JT13C, is consistent with a mixture of at  
5 least two individuals. The major profile is consistent with  
6 Monica Mitchell, aka Martinez, JT27. The estimated frequency  
7 of this major DNA profile among unrelated individuals in the  
8 general population is rarer than one in 650 billion. Identity  
9 is assumed.

10 Q And there was one profile which is 13F, which  
11 was a mixture of Monica Martinez and Unknown Male No. 4?

12 A Yes. The DNA profile obtained from the  
13 cigarette butt JT3F is consistent with a mixture of at least  
14 two individuals including at least one male. Monica Mitchell,  
15 aka Martinez and Unknown Male No. 4 cannot be excluded as  
16 contributors to the mixture profile obtained. Approximately  
17 one in 63 individuals in the general population are included  
18 as possible contributors to the mixture profile obtained.

19 Q And so that's similar to the gun, where it's  
20 like there's so much DNA recovered, or because of the nature  
21 of the DNA recovered you're not able to get a discriminating  
22 statistical calculation?

23 A That's correct.

24 Q And this Unknown Male No. 4 appeared on a  
25 mixture, on JT26 with David Burns, correct?

1           A     JT26?

2           Q     Uh-huh.  And 24A, I think.

3           A     JT24A is a cigarette butt, and the major profile  
4 is consistent with David Burns, and unknown male cannot be  
5 excluded -- and Unknown Male No. 4 cannot be excluded as a  
6 contributor.

7           Q     Did you also test toothbrushes that were  
8 recovered from this scene?

9           A     I did.

10          Q     And what were your findings with regard to the  
11 toothbrushes?  These would be 17.

12          A     The DNA profile obtained from the blue CVP  
13 toothbrush, JT17A, is consistent with Willie Mason.  The  
14 estimated frequency of the DNA profile among unrelated  
15 individuals in the general population is rarer than one in 650  
16 billion.  Identity is assumed.

17                One of the cigarette -- or I'm sorry.  One of the  
18 toothbrushes, the DNA profile obtained from the red and white  
19 Colgate toothbrush is consistent with Unknown Male No. 4.  And  
20 the DNA profile obtained from the blue Colgate toothbrush is  
21 consistent with Donovan Rowland.  The estimated frequency of  
22 this DNA profile among unrelated individuals in the general  
23 population is rarer than one in 650 billion.  Identity is  
24 assumed.

25          Q     Now, did you also analyze, for the presence of

1 DNA, some either latex gloves or knit gloves?

2 A Yes. I did.

3 Q And were any findings made with regard to those  
4 items?

5 A The black knit gloves I was not able to make any  
6 conclusions on. They were just complex mixtures. One of the  
7 DNA profiles I did not obtain -- I'm sorry. One of the latex  
8 gloves I did not obtain a DNA profile from. Some of the latex  
9 gloves there was not enough information available, so I wasn't  
10 able to make any conclusions.

11 And the DNA profile obtained from the latex glove  
12 JT11B is consistent with an Unknown Female No. 3. There are  
13 indications of a male contributor below threshold, however no  
14 conclusions could be made on that.

15 Q So from looking at all the gloves, the only, I  
16 guess, identification or the only thing you could identify was  
17 a profile of another Unknown Female No. 3, correct?

18 A Yes.

19 Q Now, when you're doing the analysis of DNA, all  
20 the -- when we have unknowns at each different scene, like we  
21 had an Unknown Female No. 1 and an Unknown Female No. 2 at  
22 Meikle Lane, those remain compared to anything else you found,  
23 or anything else you generated DNA from at a different  
24 location, correct?

25 A That's correct.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 77424

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**APPELLANT'S APPENDIX**

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**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