

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Feb 28 2019 10:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 77424

APPELLANT'S APPENDIX VOLUME 8 OF 12 PAGES 1590-1804

ATTORNEY FOR APPELLANT

RESCH LAW, PLLC d/b/a
Conviction Solutions
Jamie J. Resch
Nevada Bar Number 7154
2620 Regatta Dr., Suite 102
Las Vegas, Nevada, 89128
(702) 483-7360

ATTORNEYS FOR RESPONDENT

CLARK COUNTY DISTRICT ATTY.
Steven B. Wolfson
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

NEVADA ATTORNEY GENERAL
Aaron Ford
100 N. Carson St.
Carson City, Nevada 89701
(775) 684-1265

INDEX Vol 8
DAVID BURNS, CASE NO. 77424

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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 Q So those profiles actually can be compared to
2 other evidence even though we don't, you know, we don't have a
3 name associated with it?

4 A I think in this case, only Unknown Male No. 3, I
5 didn't compare because I didn't have a complete profile.

6 Q Thank you.

7 MS. WECKERLY: I'll pass the witness.

8 THE COURT: Do any of the jurors wish a mid-morning
9 recess? Yes. Okay. During the recess again, ladies and
10 gentlemen, it's your duty not to converse among yourselves or
11 with anyone else on any subject connected with this trial, or
12 to read, watch or listen to any report of or commentary on the
13 trial from any medium of information, including newspapers,
14 television and radio, and you may not form or express an
15 opinion on any subject connected with this case until it is
16 finally submitted to you.

17 We'll be in recess for about ten minutes.

18 (Court recessed at 10:57 a.m. until 11:13 a.m.)

19 (Outside the presence of the jury.)

20 THE COURT: I think the jury is there.

21 MR. DiGIACOMO: Give me half a second. The defense
22 and the State has stipulated to the admission of 255, 256 --

23 THE COURT: All right. We're on the record. Go over
24 it again.

25 MR. DiGIACOMO: The State and the defense has

1 stipulated to the admission of 250 to 261. Apparently we
2 forgot to put that stipulation on the record, and that's why
3 Ms. Weckerly put an unadmitted exhibit on. But we had
4 previously stipulated to the photographs of Devonia at the
5 hospital as well as her clothing.

6 THE COURT: Is that correct, gentlemen?

7 MR. LANGFORD: Yes, Your Honor.

8 THE COURT: All right.

9 MR. DiGIACOMO: Okay. So now they're -- I guess we
10 should make sure there's nothing else to be stipulated to.

11 THE CLERK: Yeah. Because you guys talk and you
12 don't tell me then.

13 MR. DiGIACOMO: All right.

14 THE MARSHAL: All rise for entering jury, please.

15 (Jury entering at 11:14 a.m.)

16 THE COURT: All right. State versus Mason. The
17 record will reflect the presence of the Defendants or Counsel,
18 the district attorneys and all members of the jury. We're on
19 cross-examination.

20 Mr. Oram?

21 MR. ORAM: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. ORAM:

24 Q Good morning.

25 A Good morning.

1 Q I'm not going to be long, but I want to go
2 through some of this -- some of your results. Now,
3 essentially, you -- you looked at items from a few areas,
4 correct? In other words, you looked at one from the murder
5 scene, items that had been swapped at the murder scene, right?

6 A I didn't know that that's what it was, but from
7 Meikle Lane -- Meikle Lane, yes.

8 Q Okay. So the jury know that that's the
9 murder --

10 A Okay.

11 Q -- scene. Okay. And you also swabbed a
12 vehicle?

13 A I got swabs from a vehicle.

14 Q You analyzed the swabs from --

15 A Yes.

16 Q -- Vehicle No. 1, which we know to be a woman
17 who occupied it as Monica Martinez --

18 A Okay.

19 Q -- all right? And you also looked at an
20 apartment near Torrey Pines? You looked at swabs that were
21 taken from an apartment at Torrey Pines?

22 A Swabs and cigarette butts and some other items,
23 yes.

24 Q And you also looked in the last area at a weapon
25 -- a .44 caliber and a holster that went with that?

1 A That's correct.

2 Q Okay. So the first thing I want to talk to you
3 about is JT8F which is Unknown Male No. 2. It was consistent
4 with Unknown Male No. 2, and that was in the left, rear
5 seatbelt plate latch. Do you recall that? Do you need a
6 second to find it on your report?

7 A I have it. JT8F? Yes.

8 Q Before we go on any further -- okay. So
9 apparently that is from the back or rear left passenger seat
10 of this vehicle; is that right?

11 A I don't know.

12 Q Isn't that what it says on your report?

13 A Left rear seatbelt latch plate of vehicle one,
14 yes.

15 Q When -- when I envision that, if I'm the driver
16 of the vehicle, sounds like the passenger right behind the
17 driver, right, to the left?

18 A Possibly, yes.

19 Q Now, as a --

20 A I didn't -- I didn't collect it. I don't know.

21 Q Okay. But you -- you don't have any reason to
22 dispute what you put in your report that it was consistent
23 with the seatbelt latch plate off the layer -- left rear of
24 that vehicle?

25 A That's correct.

1 Q And it was from an Unknown Male No. 2?

2 A Correct.

3 Q And you were reading to the jury who you tested
4 DNA against; do you recall that?

5 A Yes.

6 Q Okay. And you -- you listed names, Monica
7 Mitchell, also known as Martinez, Stephanie Cousins, David
8 Burns, Willie Mason, Ms. Newman -- two Ms. Newmans.

9 A There was only one Newman that I had the sample
10 from --

11 Q Okay.

12 A -- Theresia [phonetic].

13 Q Theresia? Not Devonian?

14 A No.

15 Q Okay. So on -- you see on the front of your
16 report where it says, Distribution date October 12, 2011?

17 A Yes.

18 Q Is that what you're looking at? Did -- when you
19 have subjects at the bottom, Devonian Newman, you did not test
20 against Devonian Newman, fair?

21 A I did not.

22 Q Okay. That was just listed there, but she was
23 not tested against?

24 A That was most likely listed on the request I
25 received, but it was not a sample.

1 Q There was nobody named in there as a Jerome
2 Thomas, was there?

3 A No.

4 Q Do you recall any aspect of Jerome Thomas in
5 this case?

6 A I do not, no.

7 Q Could you look at that same report of yours and
8 -- that I've just discussed with the distribution date,
9 October 12, 2011. Do you see the front page of that?

10 A Yes.

11 Q Does that appear to be your initials at the
12 bottom where it says, One of ten?

13 A Yes.

14 Q Okay. That's pretty distinctive initials,
15 right?

16 A Yes.

17 Q Okay. Do you remember preparing a report where
18 you wrote or you typed in or caused to have someone type in,
19 Also compare J. Thomas to all DNA profiles obtained? If I
20 showed it to you, would that refresh your memory?

21 A Yes, please.

22 MR. ORAM: Permission to approach? It's marked as
23 Defendant's Proposed Exhibit AA.

24 BY MR. ORAM:

25 Q First of all, Ms. Thomas, does that appear to be

1 your initials at the bottom right?

2 A Mm-hmm.

3 Q That -- is that a yes?

4 A Yes.

5 Q Okay. And so that's a report you prepared; is
6 that correct?

7 A This is not a report I -- I prepared; this is a
8 request from a detective.

9 Q Why would your initials be in the bottom right
10 hand corner?

11 A Because this was part of my case file, and so I
12 initial every page of my case file. And this is at the back.
13 It's the request that I received from a detective.

14 Q Okay. And whose handwriting is that that I'm
15 pointing --

16 A This one?

17 Q Yes.

18 A Yes, this is mine.

19 Q Okay. So you're -- you've actually written in
20 on this particular forensic laboratory examination request?

21 A That's correct. I wrote a note.

22 Q Okay. And you're writing a note where there's a
23 typewritten statement, Also compare J. Thomas and D. Rowland
24 to all DNA profiles obtained; do you see that?

25 A Yes.

1 Q And what do you write?

2 A I wrote, Jerome Thomas, buccal swabs never
3 collected per C. Bunting, and then my initials and date.

4 Q And what's the date of that?

5 A 9/12/11.

6 Q So on September 12, 2011, you were informed that
7 you're not going to do an analysis on Jerome Thomas, correct,
8 pursuant to some conversation you've had with a C. Bunting?

9 A I did add a note at that time that most likely
10 it's possible someone who was reviewing this caselaw, one of
11 my co-workers, mentioned, hey, it says here that you're
12 supposed to do this comparison, so I -- I went and did some
13 research, and I talked to Bunting who is a detective in the
14 homicide unit and was told that there was nothing ever was
15 collected for him.

16 MR. ORAM: Move for its admission?

17 MS. WECKERLY: No objection.

18 MR. DiGIACOMO: No objection, Your Honor.

19 THE COURT: Received.

20 (Defendant's Exhibit AA admitted.)

21 BY MR. ORAM:

22 Q You also looked at the vehicle and we were
23 talking about the left rear seat, and I want to bring your
24 attention to JT9B. Could you find that in your report?
25 That's the --

1 A Yes.

2 Q -- seatbelt latch swabs again. Do you see that
3 on page 6 of 10?

4 A Yes.

5 Q And that included at least three individuals, at
6 least one male, correct?

7 A That's correct.

8 Q Donovon Rowland could not be excluded; is that
9 right?

10 A That's correct.

11 Q But on the vehicle, just so the jury doesn't
12 have to hear us go all throughout all the testing -- I mean,
13 there were multiple places this vehicle was swabbed, and you
14 looked at these individuals to see if you could locate their
15 DNA within the -- within the vehicle?

16 A There was multiple swabs that were taken, some
17 of the profiles I obtained I was not able to make any
18 comparisons to, and then some of them I was able to.

19 Q One thing that you were able to do -- and you
20 can tell this jury with scientific certainty -- is that Mr.
21 David Burns is excluded from all of the samples taken in that
22 vehicle, correct?

23 A Any sample that I could not make a conclusion
24 on, I could not say that; but any sample that I was able to
25 make a conclusion on, yes, that's correct.

1 Q In fact, it's fair to say that you don't have
2 any David Burns's included in any sample taken from that
3 vehicle, do you?

4 A No.

5 Q Now, I want to move to the actual crime scene,
6 Meikle Lane, okay? You were able -- or you're able with
7 scientific certainty to tell us that Mr. Burns is not included
8 in any DNA located in or around that scene; is that fair?

9 A Any of the -- the samples that I can make
10 conclusions on, he was excluded from.

11 Q There was a swab taken from a nightstand; do you
12 recall that?

13 A Yes. There were -- there were, I believe, more
14 than one.

15 Q Now, if there are unknown males out there and we
16 had a known source, we could test it against the unknown
17 males?

18 A That's correct. Any -- any knowns you provided
19 we could compare to it, yes.

20 Q If you did a buccal swab of me today, you could
21 compare them against these unknown males, couldn't you?

22 A Eventually, yes. It would take a little while.

23 Q Okay. That's not something you'd do today,
24 but --

25 A No.

1 Q -- you could -- you could achieve that? If you
2 took a buccal swab from me, you could achieve that; is that
3 right?

4 A Yeah.

5 Q Okay. So if you had this Jerome Thomas's buccal
6 swab or his DNA, you could look at -- at him and compare him
7 to all of these samples that have been tested?

8 A Yes.

9 Q And my understanding is you were told you didn't
10 need to do that by a homicide detective?

11 A I don't believe I was told I didn't need to. I
12 was told that they didn't have it collected. They didn't have
13 a sample for me.

14 Q You're aware that if you're in the penitentiary,
15 they take your DNA for serious crimes, right?

16 A Typically, as a -- as an arrested or convicted
17 felon, typically.

18 Q Okay.

19 A Though the arresting law just came into effect
20 last year, so probably unless you're convicted, it -- you
21 wouldn't be collected automatically.

22 Q If you're doing a lot of time in California,
23 let's say, in a prison, they'd have your DNA?

24 A We don't use that particular type of sample,
25 though, as our comparison. They would have to get a sample

1 specifically for the case.

2 Q And police can get warrants to get that
3 information, can't they?

4 A Most likely, yes.

5 Q Yeah, our homicide detectives here in Las Vegas
6 have the ability to go to a judge just like Judge Thompson and
7 ask -- say here's our -- our probable cause, would you please
8 give us permission, and then the judge can make a
9 determination?

10 A Certainly.

11 Q Now, I want to move to the residence at Torrey
12 Pines, 2051 North Torrey Pines No. 9. You've tested several
13 samples from there, correct?

14 A That's correct.

15 Q And one of them was a toothbrush, JT17C,
16 correct?

17 A That's correct.

18 Q And that toothbrush, you determined to have the
19 DNA of Donovan Rowland on it to the exclusion of all others;
20 isn't that right?

21 A That's correct.

22 Q You could say -- you can tell this jury that
23 toothbrush has been used in some fashion by a man named
24 Donovan Rowland?

25 A Yes, I think that's fair.

1 Q Now, at the Torrey Pines residence you also were
2 able to locate Mr. Burns' DNA at -- at objects at that
3 residence, correct?

4 A That's correct.

5 Q One of those was a punch jug, and that would be
6 JT12 on page 6 of 10.

7 A He was included. It wasn't a single source kind
8 of profile. It wasn't -- he was included in there --

9 Q Okay.

10 A -- on the punch jug swabs.

11 Q So he was one -- he was -- he was included, and
12 that's on a punch jug within the Torrey Pines address, right?

13 A Yes.

14 Q And the very next object down, JT13A, is a
15 cigarette butt, and it appears that Mr. Burns was the major
16 contributor of that cigarette or the DNA on the cigarette
17 butt?

18 A That's correct?

19 Q Most probably saliva?

20 A Most likely.

21 Q Except for a punch jug, a Sprite can, cigarette
22 butts all located at Torrey Pines, none of your report
23 includes Mr. Burns? Does my question make sense?

24 A I think you might have to rephrase it for me.

25 Q Probably poorly asked. Okay. At Torrey Pines

1 you can tell the jury that Mr. Burns is either included or
2 cannot be excluded from a punch jug, right?

3 A Correct.

4 Q Cigarette butts, correct?

5 A Correct.

6 Q A Sprite can? Sprite can is on page 8 of 10.
7 JT16A1.

8 A He is included as a possible contributor on that
9 Sprite can, yes.

10 Q And that's it? From your whole report, that --
11 that's what you can tell us about David Burns, right?

12 A Those were -- yeah, some of the items that were
13 -- he was included in, correct.

14 Q Do you remember sometime in September, maybe
15 September 30, 2010, having a long conversation with Detective
16 Bunting regarding the facts of this case?

17 A I don't recall.

18 Q If I -- if I showed you a report or something
19 that appears to be prepared by you, would that refresh your
20 memory?

21 A Most likely, yes.

22 Q I'm going to show you what has been marked as
23 Defendant's Proposed Exhibit BB.

24 MR. ORAM: Permission to approach, Your Honor?

25 THE COURT: Yes.

1 BY MR. ORAM:

2 Q If you could just read to yourself that -- that
3 to yourself, that document and let me know when you're done?

4 A (Witness complied.) This is definitely included
5 in my case file. This is not a conversation I actually had,
6 though. This analyst had this conversation. This is just
7 part of my case file, which is why my initials are here, but
8 it was part of my case file.

9 Q Okay. So you're -- you're aware of this
10 document?

11 A Yes.

12 Q And, in fact, you initialed this document in the
13 bottom right?

14 A As part of my case file, yes.

15 Q So you were aware of the facts and circumstances
16 of what the laboratory was looking for, correct?

17 A I was aware as -- as related to what is said --
18 stated on there.

19 Q In other words, sometimes you have 100 items
20 listed, homicide may tell you look carefully at these
21 particular five, right?

22 A They'll request particular ones that they're
23 looking for, items -- or looking for DNA from.

24 Q And in this case, the detectives had
25 indicated --

1 MS. WECKERLY: Objection. Hearsay.

2 MR. ORAM: It's what she did next. How is it
3 hearsay?

4 THE COURT: Trying to [inaudible]?

5 MS. WECKERLY: Because it's not her note, and that's
6 not her conversation with the detective.

7 MR. ORAM: It --

8 THE COURT: I thought it was her note?

9 MS. WECKERLY: No. She said it wasn't her note or
10 the conversation or -- and she's not the detective.

11 MR. ORAM: She -- Your Honor, this is in her case log
12 and she has initialed it. She's initialed it at the right --

13 THE COURT: I'll overrule the objection.

14 BY MR. ORAM:

15 Q Did you put -- have in your case communication
16 log that the detective believed that they have to put the
17 suspects in the car and in the Newman residence to corroborate
18 the story, so all samples need to be worked despite the sample
19 limit policy. This has been okayed by Key Merga [phonetic] or
20 K. Merga.

21 A What's the question? Do I --

22 Q Does that seem accurate to you of what you knew
23 in this case?

24 A Certainly. I mean, I'm sure that K. Merga at
25 that time was the DNA manager. She's not a laboratory

1 director, but I'm sure at the time she had spoken to the
2 detective and -- and said that it was a lot of samples to be
3 requested, and so maybe she -- she probably wrote that as
4 justification for doing that many samples.

5 Q So what -- what the jury can understand is that
6 there is a certain policy limit within Metro of each case and
7 how many samples can be tested; is that -- is that fair?

8 A We do try to limit the number -- there is a
9 policy. We do try to limit the number to the most probative
10 or what the detective may see as the most probative in the
11 beginning. We certainly will go back. It's not like we
12 won't -- wouldn't go back and test more, but we try to limit
13 it in the beginning.

14 MR. ORAM: Move for its admission, Your Honor.

15 MS. WECKERLY: No objection.

16 MR. DiGIACOMO: No objection.

17 THE COURT: Received.

18 (Defendant's Exhibit BB admitted.)

19 BY MR. ORAM:

20 Q So I want to go through this report a little
21 more carefully with you.

22 MR. ORAM: May I approach?

23 THE COURT: Yes.

24 BY MR. ORAM:

25 Q In fact, what it does is it describes in this

1 report sort of the facts of the case, doesn't it?

2 A It does describe some of the facts as -- as was
3 told to Kim, I'm guessing.

4 Q Okay. And basically it talks about how they
5 should look specifically or concentrate on the pant pockets of
6 a Ms. Newman because the perpetrator may have put his hands in
7 her pockets; did you read that?

8 A Yes. That's a fairly common thing to -- to be
9 told, though, because sometimes when we're looking at items of
10 clothing we need some sort of idea where they want us to look.

11 Q Okay. And so you're learning this from the
12 detective?

13 A Oftentimes.

14 Q Yeah, okay.

15 A Yeah.

16 Q That's fair enough. You're not there, you're
17 not investigating, you're a scientist?

18 A Correct.

19 Q Okay. And also that the victim had been grabbed
20 around -- the victim being -- you may not know the difference
21 but the mother who was at the door --

22 A Okay.

23 Q -- and it says here that she was grabbed --
24 perhaps she was grabbed around her shirt area, so to look for
25 DNA there; do you recall that?

1 A It does say that, yes.

2 Q Okay. So it tells you look at the package item
3 5, daughter's jeans. One of the suspects rummaged through her
4 pockets looking for money after she had been shot, correct?

5 A That is what it says, yes.

6 Q It also talks about the stuff from Thomas'
7 apartment, doesn't it? See that?

8 A It does say that, yes.

9 Q And I was correct in my representation that
10 after whoever spoke with Detective Bunting at length about
11 this case, they have to put the suspects in the car and in
12 both residences, Newman and Thomas, to corroborate this story,
13 so all these samples will need to be worked despite the sample
14 limits policy, right?

15 A This is correct. That's what it says.

16 Q And that there has to be an okay by a K. Merga,
17 who I think you've described as Kim Merga?

18 A Yes.

19 Q Who is now your laboratory director?

20 A Correct.

21 Q So that more samples could be taken?

22 A Could be processed.

23 Q Above and beyond what was normal?

24 A That's correct.

25 Q Because this is a serious case?

1 A It has a lot of samples that were collected.

2 Q Now, when you hear the word "corroboration" in
3 your world, that means as a scientist, if somebody wants to
4 say I've touched this podium and you're looking for it,
5 homicide wants you to look carefully at the podium and you
6 have my DNA on the -- on this podium, that may -- that may be
7 good for homicide, but that's not your job, is it?

8 A It's not.

9 Q Your job is just to determine is my DNA here?

10 A My job is to -- to get the DNA profile from the
11 evidence and make comparisons if -- if I'm able to.

12 Q But you understand why homicide's job may be
13 that they want to corroborate certain statements by witnesses,
14 right?

15 A Yes.

16 Q And one of the ways you do that is 10 people
17 could say that I stood at this podium, I could say I never
18 stood at this podium, and DNA may just prove it up?

19 A That's correct.

20 Q But it can also help somebody who is accused by
21 liars, can't it? In other words, if two people say I've been
22 in this courtroom and I deny I've ever been in this courtroom,
23 you can't locate my DNA, it may be able to help me?

24 A It is good for inclusions and exclusions as
25 well.

1 MR. ORAM: Court's indulgence.

2 (Pause in proceedings)

3 Again, permission to approach?

4 BY MR. ORAM:

5 Q Well, let me ask you first. Do you remember I
6 showed to you the date that the conversations supposedly
7 happened with Mr. Bunting of September 30, 2010? Do you
8 remember that, or do you want to look at it?

9 A I'd like to look at it, please.

10 MR. ORAM: Permission to approach?

11 BY MR. ORAM:

12 Q Does this appear to state, over here, September
13 30, 2010?

14 A It does.

15 Q And what is the date of this actual report? Are
16 you able to ascertain that from the information you have?

17 A They're from -- this is basically a
18 communication log, so someone took a phone call and recorded
19 it on this piece of paper. From what I'm gathering, it would
20 be another analyst that actually had the conversation. That's
21 why their person -- their initials are here, and then Kim
22 Merga also has a -- an additional note on here. So the
23 only -- I can only conclude that the conversation occurred on
24 November -- I'm sorry, September 30, 2010, based on the
25 information that's there.

1 Q Thank you. Last quick area. So in terms of
2 corroboration with regards to Mr. Burns, what we can
3 determine -- what you're able to determine is he is definitely
4 included in the Torrey Pines residence on some cigarette
5 butts, a Sprite can, and a punch jug?

6 A That's correct.

7 Q On the murder weapon he is excluded?

8 A May I --

9 Q Sure.

10 A -- check again? That's correct.

11 Q But included or not to be excluded off that
12 murder weapon are two people named Monica Mitchell, aka,
13 Martinez and Donovan Rowland?

14 A That's correct.

15 Q So if there are 36 people in this courtroom
16 today, one may not be able to be excluded. You'd be able to
17 exclude 35 others?

18 A Statistically that could happen, yes.

19 Q So -- so Monica Martinez and Donovan Rowland, 1
20 in 36 chance?

21 A 1 in 36 individuals can be included in that DNA
22 profile that was obtained.

23 MR. ORAM: That concludes cross-examination, Your
24 Honor.

25 THE COURT: Mr. Langford?

1 MR. LANGFORD: Thank you, Your Honor. Very briefly.

2 CROSS-EXAMINATION

3 BY MR. LANGFORD:

4 Q The murder weapon in this case, you cannot find
5 any DNA from Mr. Mason; is that correct?

6 A The Ruger?

7 Q Correct.

8 A They're -- he was excluded.

9 Q The -- the Meikle apartment crime scene, he was
10 excluded. Was any DNA found there?

11 A From the -- again, from anything I could make
12 conclusions on, he was not included.

13 Q The vehicle, all of the samples that were taken
14 from the vehicle, he is excluded from anything in the vehicle
15 as well?

16 A Anything that I could make conclusions on.

17 Q The only thing you really found was a cigarette
18 butt at the Torrey Pines apartment; is that correct?

19 A And we're talking about Mason now?

20 Q Yes, ma'am.

21 A There was a cigarette butt that he was -- the
22 identity was found on him -- there was a couple cigarette
23 butts.

24 MR. LANGFORD: No -- no further questions, Your
25 Honor.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MS. WECKERLY:

4 Q So Defense Exhibit BB, I'll bring that back up
5 to you, is notes about a phone message?

6 A That's correct.

7 Q Okay. You didn't write these notes?

8 A I did not.

9 Q You didn't have the conversation with Detective
10 Bunting?

11 A I did not.

12 Q And can you tell who had the conversation with
13 Detective Bunting?

14 A I believe it was another analyst in -- in the
15 DNA section. It's initialed at the bottom.

16 Q Okay. So it's another analyst who talked to
17 Detective Bunting, and then it looks like someone may have
18 talked to Kim Merga who was the -- at the time directed the
19 DNA lab?

20 A That's correct.

21 Q So there's a couple layers of conversation here
22 at a minimum?

23 A Yes.

24 Q Now, there was DNA swabs taken on the
25 nightstands at the murder scene, correct? And there just was

1 no profile generated from both of those?

2 A There was no interpretable DNA profile
3 developed.

4 Q So there's no interpretable results from the
5 crime scene, so you cannot include or exclude anyone and you
6 can't interpret the results?

7 A That's correct.

8 Q And there were samples taken from the car that
9 weren't interpretable from there?

10 A That's correct.

11 Q Now, Mr. Oram, on cross-examination, he made
12 reference to a national database that stores the DNA profiles
13 of felons?

14 A Okay.

15 Q You were familiar --

16 A Yes.

17 Q -- with --

18 A Yes.

19 Q -- this?

20 A Yeah.

21 Q Okay. It's CODIS?

22 A Yes.

23 Q Do states have different rules about when they
24 enter someone's profile into CODIS?

25 A There are different rules by state.

1 Q So someone serving a long sentence, can we
2 assure ourselves that their profile is entered into CODIS the
3 day they step into prison?

4 A No. Some people collect it on their way out.

5 Q Okay. So someone could serve 20 years and get
6 their sample collected at the end?

7 A That's correct.

8 Q And it varies, I think, from state to state?

9 A I believe so.

10 Q Are there rules about what labs can enter into
11 CODIS?

12 A Yes.

13 Q So, for instance, some of your unknown samples
14 or unknown profiles that you found in this case, are there
15 rules for precluding you from entering some of those, you
16 know, Unknown Profile No. 3 into CODIS itself?

17 A Yes, there would be rules.

18 Q And lastly, if I touch something, do I
19 necessarily leave my DNA on it?

20 A You -- you may not.

21 Q And if -- are you able -- say you recover DNA,
22 are you able to tell when it was left?

23 A I am not, no.

24 MS. WECKERLY: Thank you.

25 MR. ORAM: Briefly.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

BY MR. ORAM:

Q Have you ever been present when Metro gets a warrant to, let's say, get somebody's buccal swab?

A No.

Q You've never seen it where, let's say -- maybe the jury had seen a video of, like, a Monica Martinez having it swabbed in there. Have you ever taken one?

A I have not, no.

Q But you know how they happen, like, they -- they open up the mouth and they -- it's like a little Q-tip and they swab in the inside of the cheek?

A Yes.

Q Okay. And they get warrants to do that all the time, don't they?

A They get warrants if they are able to, yes.

Q Okay. If they have probable cause, correct?

A Most likely.

Q And today we're hearing that you don't necessarily leave your DNA on objects, fair enough, right?

A Correct.

Q But there's a reason we have people like you, and that is because people do leave their DNA on things, and sometimes that's a very helpful tool to law enforcement or to juries --

1 A That's correct.

2 Q -- correct? Okay. And you found a lot of
3 DNA -- I mean, there were a lot of samples taken and you were
4 able to make a lot of results in that -- in that paperwork of
5 yours, weren't you?

6 A That's true.

7 Q Mr. Burns may have touched a cigarette and taken
8 a drag off that cigarette and you've got proof that at least
9 he held that cigarette or it's been on his mouth?

10 A He was included in some cigarette butts.

11 Q Including a punch jug, including a Sprite -- a
12 Sprite can?

13 A That's true.

14 MR. ORAM: Nothing further.

15 MR. LANGFORD: No questions, Your Honor.

16 THE COURT: All right. Thank you, Ms. Brown, for
17 being a witness. You'll be excused. You can take your
18 things. Don't take the exhibit, though. You can't have that.

19 THE WITNESS: Okay.

20 THE COURT: Do I understand that that's your last
21 witness for this morning?

22 MR. DiGIACOMO: Yes.

23 THE COURT: That's what I thought.

24 Ladies and gentlemen, you're going to get a long
25 lunch hour. They also have prevailed upon me to let them have

1 until 1:30 this afternoon to start testimony this afternoon.
2 I think they've got an out-of-state witness coming?

3 MR. DiGIACOMO: We have two out-of-state witnesses --

4 THE COURT: Do you have Bunting coming?

5 MR. DiGIACOMO: No, Bunting's tomorrow morning.

6 THE COURT: Bunting's tomorrow. You've got the
7 out-of-state this afternoon.

8 MR. DiGIACOMO: We have three witnesses --

9 THE COURT: Okay. Anyway, so you're going to get a
10 long lunch hour, Ladies and gentlemen.

11 During the lunch 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. You
16 may not form or express an opinion on any subject connected
17 with this case until it is finally submitted to you.

18 You'll be in recess until 1:30 this afternoon, and
19 I'll see you then.

20 THE MARSHAL: Thank you, Jurors.

21 THE COURT: Court meetings while the jury leaves.

22 (Jury recessed at 11:44 a.m.)

23 THE COURT: Let the record reflect that the jury has
24 exited the courtroom. For the record, on Friday I told
25 counsel to look over the proposed jury instructions that I had

1 prepared, based largely upon what the State offered, and then
2 I changed some, I added some, I subtracted some, and I got an
3 email back from Mr. Oram -- I don't think you got a copy of
4 the email, did you?

5 MS. WECKERLY: No, Your Honor.

6 MR. DiGIACOMO: We did not.

7 THE COURT: So I'll tell you what the substance is.
8 He indicated that on Instruction No. 11, page 11 -- they're
9 not numbered yet, which he -- he asks that I change the
10 language of the first sentence to read: You are here to
11 determine whether the Defendants are guilty or not guilty from
12 the evidence in the case. I had no problem doing that.
13 That's -- that's not an issue.

14 MR. DiGIACOMO: We have no objection.

15 THE COURT: I did that. On Instructions 13 and 14
16 have to do with the "accomplice" definition. A conviction
17 shall not be had on the testimony of an accomplice, et cetera,
18 and to corroborate the testimony of an accomplice, et cetera.
19 Those two instructions, he indicated for tactical reasons he
20 did not want and I -- I checked, they are instructions that
21 are often given.

22 MR. DiGIACOMO: I believe they're required by law to
23 be given because a jury may not consider --

24 THE COURT: Well, the first one is a statute.

25 MR. DiGIACOMO: Correct. And the jury may not

1 consider her testimony unless it's corroborated. And then the
2 second one is a definition of Hegelmeier what corroboration
3 is. I recognize that for tactical reasons they may not want
4 it, but ultimately the jury cannot assess the evidence without
5 the proper legal instruction --

6 THE COURT: I'm concerned about excluding these, Mr.
7 Oram, because I'm -- I know the first one is definitely quoted
8 directly from a statute. There's a lot of cases that say
9 this. I'm concerned about excluding them.

10 MR. ORAM: Judge, I --

11 MS. WECKERLY: The issue for us, Your Honor, they
12 have been implying to the jury that the police should have
13 arrested Job-Loc and why haven't they arrested him on the
14 murder, but he doesn't fit the standard because there's
15 nothing corroborating or connecting him to the crime other
16 than accomplice testimony.

17 THE COURT: You can argue that, but --

18 MR. ORAM: I could tell the Court, this caused me
19 concern as well, and that's why I put in the email "tactical
20 reasons." I'm well aware of the Hegelmeier case. I've raised
21 it so many times, but for tactical reasons which I could
22 enunciate at a later time if I was ever put on post-conviction
23 relief, I could enunciate why Mr. Sgro and myself do not want
24 the instruction. And so I will leave it to the Court's
25 discretion. I think it harms Mr. Burns; it doesn't help him.

1 THE COURT: I'm reluctant to exclude them only
2 because I know that they are often given -- the first one is
3 clearly the law. It's given by -- it's required by statute
4 and I'm -- I am reluctant to exclude them.

5 MR. ORAM: I'll submit it.

6 MR. SGRO: Isn't Hegelmeier a defense --

7 THE COURT: Also, I think that Mr. Mason may want
8 them.

9 Mr. Langford?

10 MR. LANGFORD: No, actually, I think I'm going the
11 other way on this one.

12 THE COURT: Okay. The next one that you asked that I
13 exclude was the flight instruction and I guess --

14 MR. DiGIACOMO: I'd ask you to reserve ruling on that
15 until after you hear the testimony.

16 THE COURT: I guess there may be testimony this
17 afternoon that may -- right now I don't think there is
18 evidence of flight, but then I don't have all the evidence in
19 yet.

20 The last one is an instruction that says, Intention,
21 premeditation, and deliberation are questions for you to
22 decide from the facts and circumstances of the killing, such
23 as the use of an instrument calculated to produce death, the
24 manner of use and the circumstances characterizing the act.
25 Direct evidence is not required.

1 I will exclude it if counsel agrees to it. I don't
2 know why I included it. I think it was one that I added.

3 MR. DiGIACOMO: It was the one the Court added. It's
4 a proper instruction of the law. I've given it before. But
5 it wasn't offered by the State in this occasion, and so if
6 they object to it, we have no objection to it being removed.

7 THE COURT: I'll exclude it.

8 All right. That will -- that's all the objections
9 or comments that I have with regard to the instructions thus
10 far. I didn't get anything from Mr. Langford.

11 MR. LANGFORD: I don't have mine yet, Your Honor.
12 They'll be -- the objections that I make are typically ones
13 where the caselaw is clear.

14 THE COURT: I understand.

15 MR. ORAM: And, Judge, I -- I do have some
16 objections, but I mentioned to you before --

17 THE COURT: I understand that you will be making some
18 objections that you're doing for the record.

19 MR. ORAM: Correct.

20 THE COURT: All right. We'll resee you at 1:30 this
21 afternoon.

22 MR. ORAM: Thank you, sir.

23 MR. DiGIACOMO: Thank you, Your Honor.

24 (Court recessed at 11:50 a.m. until 1:36 p.m.)
25

1 (In the presence of the jury.)

2 THE COURT: All right. State of Nevada versus Burns
3 and Mason. The record reflect the presence of the defendants,
4 their counsel, the district attorneys and all members of the
5 jury. You can call your next witness.

6 MR. DiGIACOMO: Special Agent Kevin Boles.

7 KEVIN BOLES, STATE'S WITNESS, SWORN

8 THE CLERK: Please state your name and spell your
9 first and last name for the record.

10 THE WITNESS: Kevin Boles, K-E-V-I-N, B-O-L-E-S.

11 DIRECT EXAMINATION

12 BY MR. DiGIACOMO:

13 Q Sir, how are you employed?

14 A I'm employed as a special agent with the Federal
15 Bureau of Investigation.

16 Q And where's your -- where are you currently
17 assigned?

18 A I'm assigned for the -- to the Los Angeles
19 division, but I sit in an office that covers Riverside and San
20 Bernardino County.

21 Q Is it a special task force that you're assigned
22 to?

23 A Yes, sir. I'm assigned to the Inland Regional
24 Apprehension Team, which is a multi-jurisdictional fugitive
25 task force.

1 Q Does there come a point in time in August of
2 2010 when you were requested by any other agency to assist
3 them in investigation of a homicide that occurred here in Las
4 Vegas?

5 A Yes, sir. I received information from Special
6 Agent Scott Hendricks, who is assigned here in Las Vegas.

7 Q Tell me -- tell me how that works? How -- how
8 is it that they wind up reaching out to you?

9 A Well, within the FBI we -- there are a lot of
10 agents, but it's somewhat of a small community. And as
11 information is developed here in Las Vegas, either through the
12 Las Vegas Metropolitan Police Department and the FBI out here,
13 as they develop information, if they require assistance in
14 another area like mine, for example, to arrest somebody, to
15 acquire evidence, to write a search warrant, anything of that
16 nature, that information is sent to me. It typically starts
17 with a phone call, which is followed up with formal paper
18 requests, and then the folks down in Riverside and San
19 Bernardino County that work with me, we will then move forward
20 and do what they ask as we can.

21 Q Now, you're a special agent of the FBI, but is
22 your task force multi-agency?

23 A Yes, sir. It's comprised of detectives from two
24 other agencies and then a deputy from a third agency as well.

25 Q And the original request that was made of you

1 was to help locate two suspects and identify a third one?

2 A Yes, sir.

3 Q And do you go out and attempt to locate the two
4 suspects?

5 A Yes, sir.

6 Q And who's the first suspect that you attempt to
7 locate?

8 A The first suspect we attempted to locate was an
9 individual named Jerome Thomas. And I believe we were -- we
10 were told that he may be in the --

11 MR. SGRO: Objection to what they were told, Your
12 Honor.

13 BY MR. DiGIACOMO:

14 Q Without telling us what you were told --

15 THE COURT: Sustained.

16 Q -- did you actually go a particular area of town
17 based upon the information that you received?

18 A Yes, sir.

19 Q And where did you go?

20 A We went to an area called Highland, California,
21 which is adjacent to the city of San Bernardino.

22 Q And did you set -- did you have to conduct any
23 sort of surveillance or were you able just to immediately take
24 Mr. Thomas into custody?

25 A No. It was -- I recall it was a lengthy

1 surveillance, almost 12 hours.

2 Q And did Mr. Thomas have other warrants
3 outstanding for his arrest that you were actually looking to
4 execute?

5 A Yes, sir. At the time he was wanted in
6 California for Penal Code 209, which is -- it's a form of
7 kidnapping in the commission of a robbery, as well as a parole
8 violation.

9 Q And so were you there to execute on those
10 warrants as opposed to -- there wasn't anything that you had
11 from Las Vegas that said you could arrest Mr. Thomas; is that
12 correct?

13 A That's correct. I was aware he was a person of
14 interest in Las Vegas, but his actual arrest warrants were
15 based out of San Bernardino.

16 Q Describe for the ladies and gentlemen of the
17 jury the surveillance you had to conduct in order to get Mr.
18 Thomas.

19 A Well, it was an apartment complex. There was a
20 lot of activity in the apartment complex. I recall several
21 young individuals leaving the apartment that we were
22 interested in in walking the neighborhood. We believe they
23 were lookouts looking for --

24 MR. SGRO: Objection. Speculation.

25 THE COURT: Overruled.

1 THE WITNESS: The -- as the surveillance continued,
2 we reached a point where there was enough probable cause to
3 actually obtain search warrants for the apartments in
4 question. We requested San Bernardino Police Department to
5 acquire those search warrants based on their kidnapping
6 warrant. Those warrants were issued and as we executed those
7 warrants everybody in the two apartments of interest were
8 identified, one of which was Jerome Thomas.

9 BY THE CLERK:

10 Q When you first come into contact with Mr.
11 Thomas, does he provide you a false name?

12 A Yes, sir.

13 Q And do you recall off the top of your head what
14 that false name is?

15 A I believe it was Albert Davis.

16 Q Eventually do you learn what his true identity
17 is?

18 A Yes, sir. He eventually told us his true
19 identity.

20 Q And what happens to Mr. Thomas once you've
21 located him and effectuated the warrant out of California for
22 his arrest?

23 A At the time he -- he was placed in a San
24 Bernardino patrol car and he was transported to San Bernardino
25 Police Department at that time for questioning on his case

1 that involved the kidnapping.

2 Q Before he was transported, did you do anything
3 to document the condition of Mr. Thomas?

4 A I photographed him and -- because he had -- he
5 was wearing -- I think he had one crutch, and he had an
6 apparent injury to one of his legs. I don't recall which one,
7 though.

8 MR. DiGIACOMO: May I approach, Judge?

9 THE COURT: Yes.

10 BY MR. DiGIACOMO:

11 Q I'm showing you what's been marked as State's
12 Proposed Exhibit No. 325. Do you recognize what's depicted in
13 that photograph?

14 A Yes, sir. That is a photograph of Jerome Thomas
15 on the day we arrested him.

16 Q Is that the photograph you took?

17 A Yes, sir.

18 MR. DiGIACOMO: Move to admit 325.

19 MR. SGRO: No objection.

20 MR. LANGFORD: No objection.

21 THE COURT: It will be received.

22 (State's Exhibit 325 admitted.)

23 BY MR. DiGIACOMO:

24 Q Let me rotate this for you. Were those the
25 clothes that Mr. Thomas was wearing at the time he was taken

1 into custody?

2 A Yes, sir.

3 Q Subsequent to getting Mr. Thomas into custody,
4 did you attempt to apprehend the second suspect requested out
5 of Las Vegas?

6 A Yes, sir.

7 Q And who was that?

8 A There was an individual by the name of Willie
9 Mason.

10 Q And were you able to identify an address for Mr.
11 Mason?

12 A Yes, sir.

13 Q And did you in fact go to that address?

14 A Yes, sir.

15 Q Can you tell us what town that address was in?

16 A That was -- it was in the city of Rialto, which
17 is an adjacent city to San Bernardino to the west.

18 Q And was Mr. Mason ultimately taken into custody
19 at that location?

20 A Yes, sir.

21 Q And that was on the Las Vegas warrant; is that
22 correct?

23 A Yes, sir. He was wanted in Las Vegas for, I
24 believe it was murder.

25 Q I know it's been a number of years, but do you

1 see the Willie Mason that you took into custody Rialto,
2 California, here in court today?

3 A Yes, I do.

4 Q Can you point him out and describe something
5 he's wearing.

6 A Yes. He's sitting to the -- my far right on the
7 table with the, I think it's a brown shirt, dark brown shirt.

8 MR. DiGIACOMO: May the record reflect the
9 identification of Defendant Mason?

10 THE COURT: Okay. The record will so reflect. I
11 don't know that it's brown.

12 THE WITNESS: I'm sorry. Somewhat gray.

13 THE COURT: I don't know what color it is.

14 MR. DiGIACOMO: Brown, dark gray, something to that
15 effect.

16 THE WITNESS: Dark shirt. There we go.

17 THE COURT: Very far right, in other words.

18 THE WITNESS: Yes. He has the sunglass -- or the
19 clear glasses hanging on his shirt.

20 THE COURT: Thank you. The record will so reflect.

21 THE WITNESS: I have poor color vision, as you can
22 tell.

23 THE COURT: I don't know what color that is, to be
24 very honest with you.

25 MR. DiGIACOMO: Thank you, Judge. I'll pass the

1 witness.

2 THE COURT: All right. Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. SGRO:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q Did you author a report in this case?

8 A I did, on an FBI document at the time.

9 Q Do you have it with you?

10 A I do not, sir.

11 Q What did you review to refresh your memory about
12 the events of four plus years ago before testifying today?

13 A My notes from the case file.

14 Q Do you have your notes with you?

15 A No, sir.

16 Q Where are they?

17 A They're in my office in Riverside.

18 Q Okay. So you didn't bring them with you to Las
19 Vegas?

20 A No. They're -- there might be some in my car,
21 in my laptop case, but the majority of the case file is
22 sitting in my office.

23 Q The outstanding warrants from -- relative to
24 Jerome Thomas involve kidnapping; is that right?

25 A Yes.

1 Q And that crime involves a life term in
2 California, correct?

3 A I'm not aware of the term that that sentence --
4 that that crime has in the state of California.

5 Q You're not aware of the maximum term being a
6 life sentence?

7 A No, I'm not.

8 Q Robbery; are you aware of the term of that
9 particular crime?

10 A No, sir.

11 Q How about the parole violation?

12 A That's typically imposed by parole depending on
13 the nature of the crime.

14 Q And just for clarity, if someone has a parole
15 violation, that means they committed a crime while on parole,
16 fair?

17 A It means they violated whatever terms of parole
18 was set.

19 Q Parole means someone has been released from
20 prison and is now given the opportunity to be on the street
21 subject to certain conditions?

22 A Yes, sir.

23 Q Do you know what the genesis of Mr. Thomas being
24 on parole was?

25 A I do not.

1 Q So the underlying crime for which he was placed
2 on parole, you're not aware of that?

3 A No.

4 Q The -- the young people acting as lookouts, how
5 many were there?

6 A I don't know specifically. I just know from the
7 radio communication of folks in the neighborhood they were
8 describing an individual walking up to their car looking into
9 it, and then that same description would apply to another
10 individual, another officer saying, hey, this individual is
11 now looking at my car, and then that individual would return
12 back to the address of record.

13 Q Did you personally see any lookouts?

14 A I did not.

15 Q So the lookout assertions you made were based on
16 hearsay of others?

17 A It was radio traffic.

18 Q Radio traffic. And the search warrants that
19 were generated so that Jerome Thomas's residence in Highland
20 could be searched, do you have those?

21 A I do not.

22 MR. SGRO: Nothing else, Your Honor.

23 THE COURT: Mr. Langford.

24 MR. LANGFORD: I have no questions, Your Honor.

25 THE COURT: Any redirect?

1 MR. DiGIACOMO: No, Your Honor.

2 THE COURT: Agent Boles, thank you for being a
3 witness. You'll be excused.

4 THE WITNESS: Thank you, sir.

5 MR. DiGIACOMO: Detective Vasek.

6 JOHN VASEK, STATE'S WITNESS, SWORN

7 THE CLERK: Please state your name and spell your
8 first and last name for the record.

9 THE WITNESS: John Vasek, J-O-H-N, V as in victor,
10 A-S-E-K.

11 DIRECT EXAMINATION

12 BY MR. DiGIACOMO:

13 Q Sir, how are you employed?

14 A I'm a sergeant with the San Bernardino City
15 Police Department in California.

16 Q How long have you been with the San Bernardino
17 City Police Department?

18 A About 25 years.

19 Q And how long have you been a sergeant?

20 A Almost five years.

21 Q I'm going to direct your attention back to
22 August of 2010. Were you assigned to a particular task force
23 related to fugitives in San Bernardino?

24 A Yes. I was the detective for the San Bernardino
25 City Police Department assigned to the Inland Regional

1 Apprehension Team, attached to the FBI out of the Riverside
2 office.

3 Q And the FBI agent that you worked with was who?

4 A Kevin Boles was one of them.

5 Q The agent who just left the courtroom?

6 A Yes.

7 Q The -- he's already testified that there was a
8 request --

9 MR. SGRO: Objection to what he testified to.

10 THE COURT: Sustained.

11 MR. DiGIACOMO: I'll rephrase.

12 BY MR. DiGIACOMO:

13 Q Were you part of the request to take into
14 custody two individuals identified as a Jerome Thomas and a
15 Willie Mason?

16 A Yes, I was.

17 Q And were you involved with the activities
18 associated with the -- those two individuals?

19 A Yes, I was.

20 Q Did you come into contact with Willie Mason when
21 you were -- during the course of his arrest?

22 A Yes, I was -- yes, I did.

23 MR. DiGIACOMO: Approach, Judge?

24 THE COURT: Yes.

25 BY MR. DiGIACOMO:

1 Q I'm showing you what's been marked as State's
2 Proposed Exhibits 5 and 6. Do you recognize those two
3 photographs?

4 A Yes, I do. This -- they're --

5 Q Without showing them to the jury yet --

6 A Okay.

7 Q -- do those truly and fairly -- truly, fairly
8 and accurately depict the way that Mr. Mason looked upon his
9 arrest?

10 A Yes, it does.

11 Q And are those in fact booking photos out of San
12 Bernardino?

13 A Yes. There's a front facial booking photo and a
14 profile.

15 MR. DiGIACOMO: Move to admit 5 and 6.

16 MR. LANGFORD: No objection.

17 THE COURT: Will be received.

18 (State's Exhibit 5 and 6 admitted.)

19 BY MR. DiGIACOMO:

20 Q Did you also -- did you ever see Jerome Thomas
21 when he was arrested?

22 A Yes, I did.

23 Q Showing you State's Proposed Exhibits 9 and 10.
24 Is that the way Mr. Thomas appeared on the night that he was
25 arrested in San Bernardino?

1 A Yes, it is.

2 Q And are they true, fair, and accurate depictions
3 of -- well, they are his booking photos from that date; is
4 that true?

5 A Correct.

6 MR. DiGIACOMO: Move to admit 9 and 10.

7 MR. LANGFORD: No objection.

8 THE COURT: Will be received.

9 (State's Exhibit 9 and 10 admitted.)

10 BY MR. DiGIACOMO:

11 Q After these two individuals were taken into
12 custody, were you asked to assist in identifying a third
13 suspect?

14 A Yes, I was.

15 Q And I want to talk a little bit about the
16 information that you had when you were asked to assist. What
17 information did you have about who you were looking for?

18 A They told me -- they showed me -- they sent me
19 pictures and video. They identified by name --

20 MR. SGRO: Objection as to what they told him, Your
21 Honor, or who they identified. We don't even know who the
22 "they" is at this point.

23 BY MR. DiGIACOMO:

24 Q Let me ask you this: Did you have a moniker of
25 an individual that you were looking for?

1 A Yes, we did.

2 Q And did you --

3 A A couple.

4 Q Do you know what moniker of the person you were
5 looking for?

6 A I think it was G-Shock, G-Spot. There's a
7 couple, three of them that they came up with.

8 Q So there's a number of monikers that they gave
9 to you, and they gave you some video?

10 A Yes.

11 Q And they asked you to look and see if there is
12 anything in San Bernardino that would help you identify who
13 that individual is?

14 A Correct.

15 Q Was one of the items that you received the video
16 from the Opera House, the Casino?

17 A Yes. Yes, it was.

18 MR. DiGIACOMO: May I have the Court's indulgence for
19 just a moment.

20 BY MR. DiGIACOMO:

21 Q Did you also receive some, if not the complete
22 video, but at least some of the video from a Greyhound here in
23 Las Vegas?

24 A I don't recall if it's here in Las Vegas, but I
25 know it's a bus stop somewhere.

1 Q Okay. So you had Greyhound video from
2 somewhere?

3 A Yes.

4 Q Okay. And are you aware that there's Greyhound
5 video from both Las Vegas and LA?

6 A I believe so.

7 MR. DiGIACOMO: Judge, by stipulation, the parties
8 agree to stipulate -- these are the original Greyhound Las
9 Vegas discs, which are 326, 327, and 328 that contains all the
10 video. There is a composite of just the Las Vegas which is
11 330, and a composite of the LA, which is 329. I'd offer all
12 of them at this point.

13 MR. SGRO: That's correct. No objection.

14 THE COURT: They'll be received.

15 (State's Exhibit 326 through 330 admitted.)

16 BY MR. DiGIACOMO:

17 Q So first I'm going to start with State's
18 proposed Exhibit No. 272, which is the Opera House, and I'm
19 going to fast forward until the portion where they're actually
20 physically in the casino.

21 (Audio/video played.)

22 Q I know they're the backs of the heads, but were
23 you asked to search for any one of the particular individuals
24 that's in this video?

25 A The person that's closest to us in the video

1 wearing the coveralls and the hat.

2 Q And then I'm going to play for you the Las Vegas
3 composite, 330.

4 (Audio/video played.)

5 Q You may not have seen all of this video, so if
6 you could identify for me if there's any images off this video
7 ultimately that you originally received. And there is a long
8 period of time.

9 (Audio/video played.)

10 A As I see people do you want me to tell you about
11 them, or do you want me to wait until the video ends?

12 Q Well, first I need to know whether or not if
13 this is -- the video -- did you get any outside video of the
14 bus station that you recall, or was it just interior shots?

15 A I think it was the interior shots back late
16 September.

17 Q So I'm going to wait until the interior shots
18 that you've seen.

19 A Okay.

20 (Audio/video played.)

21 Q Is there anybody in this picture that you're
22 asked to see if you could locate or identify?

23 A Yes, sir. I don't remember if we got the video
24 at the time we were looking for these individuals from the
25 Vegas part, but knowing what I've seen on the Los Angeles

1 aspect of the other Greyhound bus station, I can -- I can
2 identify people in this video.

3 Q Okay. Well, we're going to get to you
4 identifying people in this video, but this is not one of the
5 videos that you received that you recall?

6 A We had a lot of information going back and
7 forth. It may have, but I specifically remember the previous
8 one you showed me and the other Greyhound video.

9 Q Let me finish this one and we'll play the Los
10 Angeles Greyhound video.

11 (Audio/video played.)

12 Q Now, 329 is the Los Angeles Greyhound.

13 A As I see people do you want me to tell you?

14 Q Just tell me if there are people you were asked
15 to identify.

16 A Yes.

17 Q Okay. Which one -- which one is it?

18 A He got off the bus. He's wearing the blue
19 shirt. He's almost in the middle of the screen now with his
20 hand to his mouth. They already identified the man --

21 MR. SGRO: Objection to what anyone else identified,
22 Your Honor.

23 MR. DiGIACOMO: No, he's --

24 THE WITNESS: I was told.

25 MR. SGRO: That's hearsay.

1 THE COURT: Overruled.

2 BY MR. DiGIACOMO:

3 Q The other two individuals in this photograph had
4 previously been identified; is that correct?

5 A The authorities in Las Vegas told me they knew
6 who they were. They gave me names.

7 Q Okay. So you had already had names for them.
8 Are those the two people that you had already taken into
9 custody on their request?

10 A Correct.

11 (Audio/video played.)

12 Q Do you see the subject in the blue shirt in this
13 frame now?

14 A Yes. He's just coming through the doors there,
15 and that's the person that they did not know who he was. And
16 he's just at the far right-hand side of the screen, and then
17 he disappeared.

18 Q Other than the videos and the monikers, did you
19 personally do something to try and see if you could gather
20 another lead that might locate -- or might lead you to the
21 identification of the individual that's in this video?

22 A Yes, I did.

23 Q And what did you do?

24 A One of the people we arrested, I monitored his
25 phone calls. And from that I obtained information of a

1 location where we might find this person that was unidentified
2 in the video wearing the blue shirt.

3 Q And who was the person that you monitored?

4 A It was Jerome Thomas's phone calls.

5 Q Did he go by the moniker "Job"?

6 A Yes.

7 Q Okay. And on this phone call did you hear Job
8 making certain statements that caused you to believe that this
9 might lead you to further information?

10 A Yes, I did.

11 MR. DiGIACOMO: Judge, I've had marked as State's
12 Proposed Exhibit No. 331, the portion of that phone call
13 that's relevant that Detective Vasek has heard. I'd offer it
14 at this type.

15 MR. SGRO: We have a hearsay problem with this, Your
16 Honor. So we need to --

17 MR. DiGIACOMO: Clearly a statement by a
18 coconspirator in the course and furtherance of the conspiracy.

19 THE COURT: Is this statement by Job?

20 MR. DiGIACOMO: This is statements by Job.

21 THE COURT: That he intercepted over a telephone?

22 MR. DiGIACOMO: Yes.

23 MR. SGRO: But the -- he's speaking to some other
24 person and there's communication back and forth. And it's
25 post Job's arrest, so there's issue as to whether it's in

1 furtherance or not.

2 THE COURT: I don't know whether it is or not. It
3 may be; it may not be.

4 MR. SGRO: I think the State concedes that -- that
5 it's post arrest.

6 MR. DiGIACOMO: It's post his arrest on the
7 California cases. It's not a post arrest on the Nevada
8 charges that we're talking about here, and there's statements
9 made in course or in furtherance of the conspiracy to an
10 individual.

11 THE COURT: Well, if that's the case, then it's
12 admissible.

13 MR. SGRO: What of the other person on the phone that
14 he's speaking to that's got nothing to do with nothing in the
15 case? How is that not hearsay?

16 MR. DiGIACOMO: That's just --

17 THE COURT: Oh, I thought it was one of these two
18 defendants he was talking to.

19 MR. SGRO: No, it's not.

20 THE COURT: A third person.

21 MR. DiGIACOMO: Yes. Can we approach and --

22 THE COURT: Yes.

23 (Bench conference.)

24 MR. DiGIACOMO: Job gets on the phone with a woman at
25 an apartment complex and it's -- he'll tell you the address

1 that it was at. But he tells Job, hey, he tells the woman,
2 hey, the guy who never changes his clothes, who you'll hear
3 from later on, it's going to be Mr. Burns -- tell him the eye
4 in the sky is looking for him and he needs to keep low. Based
5 upon that, they decide to target that particular one. He's
6 telling her to tell David Burns to avoid contact with the
7 police.

8 MR. SGRO: That is so speculative, Your Honor, how
9 that's not hearsay is beyond me. How can that be in
10 furtherance of a conspiracy to tell someone, hey --

11 THE COURT: Job's statements would be part of this
12 conspiracy --

13 MR. SGRO: Only -- only if they're in furtherance.
14 What does this statement tell a potential arrestee that the
15 police are looking for him? He already knows the police are
16 looking for him.

17 THE COURT: So --

18 MR. DiGIACOMO: How do we know that? How do we know
19 that, Mr. --

20 THE COURT: That's okay. I don't have a problem with
21 that part, if that's all it is.

22 MR. DiGIACOMO: Correct. The woman -- the woman
23 responds back like, okay, I'll tell him or something like
24 that. I mean, that's all her response is. There's nothing
25 substantive from her --

1 THE COURT: It's not offered for the truth of --

2 MR. DiGIACOMO: Right. There's a conversation --

3 THE COURT: -- why he's --

4 MR. DiGIACOMO: This is related to the Nevada murder,
5 too, because he says --

6 THE COURT: Okay.

7 MR. DiGIACOMO: -- this is related to Wes and the gun
8 and the whole thing.

9 THE COURT: Okay.

10 (End of bench conference.)

11 THE COURT: All right. The objection's overruled.
12 It can be played. It will be received.

13 MR. DiGIACOMO: Thank you, Judge. I'm going to play
14 it now. It's 331.

15 (State's Exhibit 331 admitted.)

16 (Audio/video played.)

17 BY MR. DiGIACOMO:

18 Q Based upon that call, what did you decide to do?

19 A We went out to that apartment complex and we
20 monitored the activities that were happening there.

21 Q Okay. In particular is it apartment 109 at a
22 particular location?

23 A It's to the rear south, one of the last few
24 buildings to the south.

25 Q In what part of San Bernardino County?

1 A It's on the east side of our town and it borders
2 -- it's actually a county pocket of East Highland. So it
3 would be south and east of our city just a little bit.

4 Q So it's in East Highland generally?

5 A Basically.

6 Q Okay. At some point do you receive information
7 from the sheriff's office that they have somebody in custody?

8 A Yes. I got a call saying that someone was
9 arrested for trespassing.

10 Q Ultimately do you pull the booking photo for the
11 individual that was arrested?

12 A Yes, I did.

13 MR. DiGIACOMO: May I approach, Judge?

14 THE COURT: Yes.

15 BY MR. DiGIACOMO:

16 Q I'm showing you what's marked as State's
17 proposed Exhibit No. 3 and 4. Do you recognize those
18 photographs?

19 A Yes, I do.

20 Q And are they true, fair and accurate depictions
21 of an individual who was arrested in San Bernardino?

22 A Yes.

23 Q And do you know the person's name?

24 A Yes.

25 Q What is his name?

1 A David Burns.

2 Q And do they -- are they the pictures taken of
3 him during his arrest in September of 2010?

4 A Correct. This is the booking photos.

5 MR. DiGIACOMO: Move to admit 4 and -- 3 and 4.

6 MR. SGRO: No objection, Your Honor.

7 MR. LANGFORD: No objection.

8 THE COURT: They'll be received.

9 (State's Exhibit 3 and 4 admitted.)

10 BY MR. DiGIACOMO:

11 Q Upon review of this booking photo, who do you
12 contact?

13 A I got the information. It came in on a Saturday
14 and I sent all the information about Mr. Burns here up to Las
15 Vegas officials, Detective Bunting was one of them.

16 Q And in response to you forwarding this
17 photograph, does Detective Bunting and Wildemann come down to
18 contact Mr. Burns?

19 A Yes, they do.

20 Q And do you facilitate that contact?

21 A Yes, I do.

22 Q And did you have physical contact with Mr. Burns
23 on September 13th of 2010?

24 A Yes, I did.

25 Q Now, during the course of that contact do you

1 take any sort of booking information or have a conversation
2 related the booking information of David Burns?

3 A Yes, I'm a policeman in California, so I fill
4 out the booking application for the charges. It's a 1551
5 Penal Code section that we use for out-of-state charges when
6 they're in our state. And I spoke with him, fill out the
7 information and technically place him under arrest for that
8 crime.

9 Q And during the time period that you had contact
10 with this Mr. Burns, any indication to you that he didn't
11 understand what you were saying or responses back to you or
12 anything like that?

13 A No.

14 Q He appear to be coherent and cogent and --

15 A Yes, and I -- I was surprised at that.

16 Q Now, you sort of kind of indicated a couple of
17 times here, do you actually see the person, David Burns, who
18 you had contact with in September of 2010?

19 A Yes, I do.

20 Q Can you point him out and describe something
21 he's wearing?

22 A He's wearing the gray shirt, seated at the
23 defense table. He's the third person to my right, away from
24 you, he's got his hair parted in the middle. His hair's
25 different from the time I saw him. He's got like a black tie

1 on. There's a green folder in front of him.

2 MR. DiGIACOMO: May the record reflect the
3 identification of Mr. Burns?

4 THE COURT: The record will so reflect.

5 BY MR. DiGIACOMO:

6 Q You sort of kind of said that now, Mr. Burns has
7 had some change in appearance between the time period that you
8 saw him in 2010 and the time period that he sits here today?

9 A Yes.

10 Q Based upon your review of him personally back in
11 2010 and looking at the -- the exhibits that you looked at
12 back in 2010, being the Opera House and the LA Greyhound, did
13 you form a conclusion as to whether or not Mr. Burns was the
14 person on that video?

15 MR. SGRO: Objection. Relevancy.

16 THE COURT: Overruled. It may be received.

17 THE WITNESS: As soon as I saw the picture of the
18 booking photo pop up when I came in on that Saturday regarding
19 the person arrested for trespassing, Mr. Burns, I immediately
20 said this is the guy. And I fired that up to Las Vegas, even
21 though it was a weekend.

22 BY MR. DiGIACOMO:

23 Q And then after when you physically saw him, did
24 that confirm --

25 A Yes.

1 Q -- the original opinion that you had when you
2 saw the booking photo?

3 A Yes, it did.

4 Q Now, had you prior to seeing the booking photo
5 in September -- somewhere between September 11 and September
6 13 of 2010, had you been grabbing photographs of individuals
7 that might possibly fit the description that was in the video?

8 A Yes. I got lists of people, send them up and
9 let Las Vegas do their work, because even if it wasn't people
10 on this -- maybe 10 or 12 people that we gave them, maybe
11 there's an associate. Just an investigative lead for Las
12 Vegas.

13 Q And any of those people, did you ever say to
14 yourself this is clearly the guy that's on the video that I am
15 looking at?

16 A Not clearly, but possibly. I could -- you know,
17 there's some similarities here, and any kind of question, we'd
18 send it up and let them deal with it.

19 Q Was it a different situation when you received
20 Mr. Burns' photo?

21 A Yes.

22 MR. DiGIACOMO: Thank you, sir. Judge, I pass the
23 witness.

24 THE COURT: Mr. Sgro.

25 MR. SGRO: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. SGRO:

3 Q Good afternoon, sir.

4 A Hi.

5 Q So we're looking at Exhibit 3 on the board and
6 you have it there in front of you, sir?

7 A Yes, I do.

8 Q Now, you heard the phone call from Jerome Thomas
9 to some unidentified female; is that right?

10 A Correct.

11 Q What's that female's name?

12 A I don't recall, but I believe I took Mr. Bunting
13 out to meet her.

14 Q Okay. But you don't have her name with you as
15 you sit here?

16 A In my memory, no.

17 Q Did you prepare a report in this case?

18 A Yes, I did.

19 Q Did you have it with you?

20 A I do. Would you like me to refer to it?

21 Q Please.

22 THE COURT: If it will refresh your recollection as
23 to the name of the female.

24 MR. SGRO: Yes. Thank you, Your Honor.

25 (Pause in proceedings)

1 THE WITNESS: No, sir, I don't see where I named her
2 in my report at all.

3 BY MR. SGRO:

4 Q All right. You didn't actually name the female.
5 Let me ask you this: Did you actually bring Detective Bunting
6 to see her or was it somebody else?

7 A I took him to see a female. I think it was in
8 apartment 109. And if I remember, there was more than just
9 one there, and he spoke to a number of people.

10 Q Right. But -- and you're kind of making my
11 point. You don't know whether or not you took Detective
12 Bunting to see the female that's on the phone speaking to
13 Job-Loc, correct?

14 A I believe I did, but I don't know for a fact.

15 Q There's nothing in your report that says that
16 that's the case?

17 A Correct.

18 Q This happened four plus years ago, right?

19 A Correct.

20 Q You've had many, many other cases in between?

21 A Yes.

22 Q You have spoke to -- spoken to hundreds if not
23 thousands of different witnesses and suspects, right?

24 A Yes.

25 Q And you prepare that report so that when you

1 come to court in a case like this after several years go by
2 you can look to that report to refresh your memory, correct?

3 A Correct.

4 Q Now, Special Agent Boler, did Special Agent
5 Boler draft a report in this case?

6 MR. DiGIACOMO: Boles.

7 MR. SGRO: I'm sorry, Boles.

8 THE WITNESS: I know he does a lot of paper with
9 fugitives stuff, I'm not sure what kind of reports he does for
10 criminal stuff, usually STFOS, if we have state charges in
11 that we'll take it.

12 BY MR. SGRO:

13 Q Let me ask it this way: Did you see a report,
14 ever, authored by Special Agent Boles in this case?

15 A I don't know what their crime reports look like
16 and I don't know -- I mean, differentiate between
17 administrative duties and crime report, I don't know.

18 Q How about any document that had his signature on
19 it, forgetting about the semantical adjective, a report, an
20 administrative summary, did you see anything ever with his
21 signature on it?

22 A Administrative summaries, yes. I guarantee it.

23 Q Okay. You guarantee it. Can you point to one?
24 Do you have one with you?

25 A No, I don't. It's not something I have access

1 to.

2 Q Did you -- okay. You can guarantee it but you
3 don't have access to it?

4 A No.

5 Q In preparing for your testimony today, did you
6 ever read anything authored by Special Agent Boles?

7 A It would be administrative. There's something
8 administrative in the files.

9 Q But nothing you can point to?

10 A No.

11 Q Do you know in California if the maximum term
12 for the crime of kidnapping is a life sentence?

13 A I think 209 is the code section, and kidnapping
14 with intent to commit robbery or something -- yes.

15 Q Were you aware that Jerome Thomas had
16 outstanding charges, active charges that related to kidnapping
17 and robbery?

18 A Yes.

19 Q So he would have been facing a life term?

20 A If convicted. I was not the investigator --

21 Q If convicted. I'm -- I'm speaking to you now
22 only statutorily. The maximum punishment was potentially a
23 life term, right?

24 A Yes.

25 Q Okay. Do you know the underpinnings of his

1 parole violation, what the crime committed was prior to
2 getting paroled?

3 A No.

4 Q You were shown --

5 THE COURT: Could you do me a favor and pull that box
6 with the microphone toward you a little bit. Thank you.

7 MR. SGRO: Can you put the beginning part of the bus
8 stop video, the first one.

9 MR. DiGIACOMO: The first one, the Las Vegas one?

10 MR. SGRO: Yes, thank you.

11 MR. DiGIACOMO: I think it's 330.

12 MR. SGRO: Yes.

13 BY MR. SGRO:

14 Q You were shown a couple -- And you can just
15 pause it, Mr. DiGiacomo. I just want a frame of reference,
16 okay. On the screen right now we have Exhibit 330. This is
17 what's in this case the Las Vegas bus stop video. Can we
18 agree to use that term?

19 A Sure.

20 Q All right. So you have an Opera House video,
21 right?

22 A Yes.

23 Q Las Vegas bus stop video?

24 A Yes.

25 Q And then we have California bus stop video?

1 A Yes.

2 Q Okay. While this video was playing, you were
3 asked -- or you asked a question, do you want me to tell you
4 if I see anybody in the beginning of this video?

5 A Correct.

6 Q Do you remember asking that question?

7 A Yes.

8 Q Did you see persons in this video relevant to
9 this case before it moved into the inside of the bus terminal?

10 A Yes.

11 Q And who was that?

12 A Mr. Burns is in the blue shirt. Looked like
13 Willie. It could have been Willie based on his clothing. And
14 the man with the crutches, Jerome Thomas.

15 Q Okay. So if I understand correctly, in the
16 beginning part of the video you believe you saw Mr. Thomas,
17 Mr. Burns, and Mr. Mason, fair?

18 A Yes. Yes.

19 Q I don't want you to guess. I'm taking you to a
20 specific moment in time when you said, do you want me to tell
21 you who the people are. Do you remember that?

22 A Yes.

23 Q Okay. And that was just a few minutes ago, so
24 I'm asking that if you're telling the jury that before we got
25 to the inside of the bus terminal, you had seen all three of

1 those folks?

2 A Yes.

3 Q All right. You indicated as soon as you saw the
4 booking photo it jumped out at you -- I think -- or you knew
5 immediately that there was someone in the video; is that
6 right?

7 A Yes, it looked just like a match.

8 Q Okay. Which video are you referring to?
9 Between -- are you looking at Opera House when they're walking
10 in?

11 A It was the Opera House, and I also got some
12 stills from the Opera House and I don't remember if I had
13 stills from the Greyhound video as well, but just the way the
14 face was and that, it looked just like him.

15 Q So which one was it, or was it a combination?

16 A Both. Both.

17 Q All right. Thank you.

18 THE COURT: By still, you mean still pictures of the
19 videos? In other words, it wasn't a different camera, it was
20 the same --

21 THE WITNESS: Same, but they give us -- on the videos
22 they can capture pictures and they sent it to us.

23 THE COURT: Okay.

24 BY MR. SGRO:

25 Q Jerome Thomas's apartment was searched, correct?

1 A The apartment that he was in was searched. I
2 don't recall if it was his or not.

3 Q In the apartment that was searched, at least
4 that was attributed to him as a potential resident, did you
5 find any medical records?

6 A I didn't -- I participated with the search. I
7 don't recall what was actually taken, but I had a homicide
8 detective from San Bernardino police department write the
9 search warrant, and whatever was recovered he would have noted
10 in his search warrant.

11 Q Did you say you written it with a homicide
12 detective from San Bernardino?

13 A What search warrant are you talking about?

14 Q Well, I'm asking about the search warrant for
15 the location attributed to Jerome Thomas, where he lived. Who
16 wrote that search warrant?

17 A That should have been Detective Munoz, if I'm
18 not mistaken.

19 Q Okay. And you executed that search warrant?

20 A I was one of the people there, yes, searching.

21 Q And as you sit here, sir, do you remember
22 recovering any medical bills or medical records related to
23 Jerome Thomas?

24 A No, I don't.

25 Q Do you remember recovery of any medical bills or

1 medical records related to Albert Davis?

2 A No, I don't.

3 Q Do you remember any prescription medication
4 related to Albert Davis?

5 A I do not.

6 Q And what was the date of the search of the
7 residence attributed to Jerome Thomas?

8 A If I can refer to my report?

9 Q Sure.

10 A He was arrested on August 12, 2010, so that
11 would have been the date, either the -- depending on the time
12 of day or the time the search warrant was actually written and
13 executed, it would be on the 12th or 13th.

14 Q All right. Of what month?

15 A August of 2010.

16 Q So if we're talking about events here that took
17 place in Las Vegas on or about August 7th, your search warrant
18 in this residence in California would be about five days
19 later?

20 A Yes.

21 Q Now, Mr. Thomas is the one you said has crutches
22 in the video?

23 A Yes.

24 Q He had a single crutch at the time of arrest?

25 A I don't know if it was a single, but I remember

1 there was crutches at the time of the arrest, and he had some
2 kind of soft cast on his leg.

3 Q People can ambulate on crutches, correct?

4 A Yes.

5 Q People can travel across cities on crutches,
6 correct?

7 A Yes.

8 Q And people can commit crime on crutches,
9 correct?

10 A Yes.

11 Q I want to talk to you about the telephone call
12 that was played. All right. Did you have a chance to listen
13 to it as it was being played?

14 A Yes.

15 Q And I understand you listened it to back
16 originally, but you listened to it also here in court?

17 A Yes.

18 Q There was a sentence in there, "They snatched
19 Wes up." Do you remember hearing that?

20 A Yes, I do.

21 Q Do you know who Wes is?

22 A No, I don't.

23 Q There was a sentence in there, "Wes gave" --
24 "gave him a burner." Do you remember hearing that?

25 A Yes, I did.

1 Q Is a burner a cell phone -- is that -- is that
2 slang or vernacular for a cell phone that you throw out?

3 A Not that I'm aware of.

4 Q You don't -- you don't know that's --

5 A A burner -- if somebody tells me they have a
6 burner I'm thinking they have a gun.

7 Q Okay. So you're interpreting Wes has a burner
8 as Wes had a gun?

9 A Yes.

10 Q All right. And you heard the woman in the phone
11 call say in reference to the person that wore the same clothes
12 for a long ass time. Do you remember hearing that sentence?

13 A He said it to her, yes.

14 Q He said to her. The woman says, "He's really
15 slow"?

16 A Correct.

17 Q And when you interacted with Mr. Burns, he was
18 arrested for trespassing, right?

19 A He would have been arrested prior to my
20 interaction.

21 Q I apologize.

22 A I wasn't there.

23 Q Someone else had arrested him for trespassing,
24 correct?

25 A Correct.

1 Q As a homeless person?

2 A I don't remember what his booking app said. I
3 just know he was there trespassing.

4 Q Okay. Well, I thought you told the jurors that
5 you actually filled out that information with --

6 A Yes.

7 Q Did I misunderstand?

8 A No, I did fill out -- not that night I didn't.
9 So whatever -- if he told the deputies or anyone else there
10 that he was homeless, I don't know. I filled out the booking
11 application based on Bunting there.

12 Q And in his photo he looks a little unkempt,
13 disheveled?

14 A Yes.

15 MR. SGRO: Court's indulgence, Your Honor. That's
16 all I have, Your Honor.

17 MR. LANGFORD: No questions.

18 THE COURT: All right. Anything further?

19 MR. DiGIACOMO: No, Your Honor.

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

22 THE WITNESS: Thank you.

23 MR. DiGIACOMO: Judge, we have one more witness today
24 that may be somewhat lengthy, so do you want to give them a
25 break up front?

1 THE COURT: We'll take a brief recess this afternoon.
2 Ladies and gentlemen, during the recess it's again your duty
3 not to converse among yourselves or with anyone else on any
4 subject connected with this trial or to read, watch, or listen
5 to any report of or commentary on the trial from any medium of
6 information, including newspapers, television and radio, and
7 you may not form or express an opinion on any subject
8 connected with this case until it is finally submitted to you.
9 We'll be in recess for about 10 minutes.

10 (Jury recessed at 2:30 p.m.)

11 THE COURT: The record will reflect that the jury has
12 exited the courtroom. Anything further?

13 MR. SGRO: Just very briefly, Your Honor. At some
14 point today during the break we provided the Court with the
15 Rosanik [phonetic] case relative to whether or not Detective
16 Vasek could identify in court Mr. Burns in the video. It's
17 our position that he only interacted with him in a brief
18 situation. He did not have meaningful interaction with him
19 beforehand, and most importantly he was easily able to
20 identify Mr. Burns in the courtroom.

21 So that reflects to me that he -- that Mr. Burns has
22 not changed his appearance over the last four years such that
23 that identification would not have been violative of the
24 jurors' province to make their own assessment. The Court saw
25 the videos in the case. The Opera House one, in my view, is

1 the worst one. You can't even see anybody really walking into
2 the casino. I think you get to see three human beings.
3 Beyond that I think it's pretty tough. And as was elicited on
4 direct, all you can see is the backs of people's heads.
5 Relative to the Greyhound, one if we're talking about changes
6 of appearances, the Greyhound one has different clothing
7 attributed to Mr. Burns as opposed to the Opera House video.
8 And one of the videos he did not recall watching at all.

9 So I think we're talking about the two videotapes
10 that he had the opportunity to view. So we've made our
11 record. I understand the Court's ruling. I understand that
12 the Court disagrees with our interpretation of the Rosanik
13 case, but I wanted to vet that out.

14 THE COURT: I don't disagree with your interpretation
15 of Rosanik, but it appears to me that Mr. Burns' appearance
16 has changed in the last four and a half or five years since
17 this incident occurred, and he -- he looks from the photograph
18 that was introduced very much like he did in the videos
19 compared to what he looks like today. I can see where they
20 could probably identify him, at least in the Greyhound
21 photograph. The Greyhound video's pretty good. I agree with
22 you the Opera House is not very good, but I think for what
23 it's worth I think the -- under the authority of Rosanik,
24 which says that opinion testimony is admissible where it
25 identifies a defendant as a perpetrator of a crime based upon

1 a surveillance video, you think it's admissible. Is there
2 anything further?

3 MR. DiGIACOMO: Just one thing. And Mr. Sgro said
4 you can only see the back of Mr. Burns. In that small portion
5 I played, I just asked the detective to identify which person
6 he was asked to identify. He clearly testified he had the
7 video, and the video certainly has a number of facial shots
8 that are actually even better than Greyhound when you actually
9 play the whole thing forward. It's just I didn't play that
10 for the witness at the time. I just wanted to make the record
11 clear. It's not just a back head shot of Mr. Burns. There's
12 a number of facial shots of Mr. Burns inside the Opera House
13 as well as part of that.

14 THE COURT: He also testified in response to a
15 question I asked him that they have these still shots taken
16 from the video which they can blow up and see the faces of
17 those individuals, and I think that that assisted him in
18 making that identification, but I think it's under the
19 authority of Rosanik that's a good, a good identification, so
20 I admitted it. Anything further on the record before you call
21 your next witness?

22 MR. DiGIACOMO: Not from the State.

23 MR. SGRO: No, sir.

24 (Court recessed at 2:34 p.m. until 2:47 p.m.)

25 (In the presence of the jury.)

1 THE COURT: State of Nevada versus Mason and Burns.
2 Let the record reflect the presence of the defendants, their
3 counsel, the district attorneys and all members of the jury.

4 You can call your next witness.

5 MR. DIGIACOMO: Special agent Scott Hendricks.

6 T. SCOTT HENDRICKS, STATE'S WITNESS, SWORN

7 THE CLERK: Please be seated.

8 THE WITNESS: Thank you.

9 THE CLERK: Please state your name and spell your
10 first and last name for the record.

11 THE WITNESS: First initial T, Scott, S-c-o-t-t,
12 Hendricks, H-e-n-d-r-i-c-k-s.

13 DIRECT EXAMINATION

14 BY MR. DIGIACOMO:

15 Q Sir, how are you employed?

16 A I'm employed as a Special Agent for the FBI.

17 Q And how long have you been with the Federal
18 Bureau of Investigation?

19 A About 12 and a half years.

20 Q I'm going to direct your attention back to
21 August of 2010. What was your assignment?

22 A Assigned to a violent-crime task force.

23 Q And describe for us the nature of this task
24 force.

25 A Our job is to locate and apprehend persons

1 wanted for violent felonies.

2 Q Sometime around August 7th of 2010, were you
3 contacted by homicide detectives in the Las Vegas Metropolitan
4 Police Department to assist in the investigation of a homicide
5 that occurred at 5662 Meikle here in Clark County, Las Vegas,
6 Nevada?

7 A Yes, I was.

8 Q And in that capacity, what did you help them do?

9 A Helped them review evidence, phone records in an
10 attempt to identify possible suspects.

11 Q During the course of your involvement, did you
12 send requests off to various phone companies and receive back
13 records related to various phone numbers that became relevant
14 during the investigation?

15 A Yes, I did.

16 Q And ultimately were those turned over to the Las
17 Vegas Metropolitan Police Department and then were part of the
18 discovery in this case?

19 A Yes.

20 Q In preparation for your testimony today, did you
21 happen -- did you have the opportunity to review the phone
22 records or portion of the phone records of -- well, all three
23 of them, Monica Martinez -- or four -- Jerome Thomas, aka
24 Job-Loc, Willie Mason -- and I don't remember which ones I --
25 Stephanie Cousins?

1 A Yes, I did.

2 Q Okay. And in addition to reviewing those, did
3 you also have an opportunity to review and confirm the
4 plotting of cell tower maps here in Las Vegas to see the date
5 and time that particular phones hit particular towers?

6 A Yes, I did.

7 MR. DIGIACOMO: May I approach, Judge?

8 THE COURT: Yes.

9 BY MR. DIGIACOMO:

10 Q I'm going to show you what's been marked as
11 State's Proposed Exhibits 301 and 302 and ask you, do you
12 recognize what 301 and 302 are?

13 A Yes, I do.

14 Q Okay. Are those the phone records or at least
15 portions of the phone records for Stephanie and Willie Mason
16 or the phone numbers associated with Stephanie and Willie
17 Mason that are also color coded to the phone numbers that the
18 jury has heard during testimony?

19 A Yes, they are.

20 Q Other than the change in who the person is that
21 is being called or receiving the call, these records are the
22 same as the exhibits that are already in evidence from Metro
23 PCS?

24 A That's correct.

25 MR. DIGIACOMO: Move to admit 301 and 302.

1 MR. SGRO: No objection.

2 MR. LANGFORD: No objection.

3 THE COURT: They'll be received.

4 (State's Exhibit 301 and 302 admitted.)

5 BY MR. DIGIACOMO:

6 Q I'll let you keep the paper copies, and I want
7 to start with State's Exhibit No. 301. Can you tell me the
8 number on the top of that.

9 A (702)542-4661.

10 Q And do you know whose phone number that's
11 associated with?

12 A Stephanie Cousins.

13 Q I'm going to start with Ms. Cousins, and I'm
14 going to put each one of the four pages of that record up
15 there in front of the ladies and gentlemen of the jury, and
16 let me just start with showing them the date and time that
17 these records sort of begin, which is August 6th of 2010, and
18 the first record is 2004, and in real time, what is that in
19 those of us who don't do military time?

20 A That would be 8:04 p.m.

21 Q 8:04 at night?

22 A Yes.

23 Q And there is a section -- it's actually even in
24 the first call. There is a section that relates to Christine.
25 Are you aware of a number (702)622-72 -- 7298 -- or 7928?

1 A I think it's 7928, but I'm not sure, but, yes,
2 that number is familiar to me.

3 Q Okay. And who is that?

4 A That's Christine, and I can't remember
5 Christine's last name, but it belongs to Christine.

6 Q Okay. And do you know what her relationship is
7 to Stephanie Cousins?

8 A She's a family member.

9 Q She's a family member. Who -- okay. She's a
10 family member of Stephanie Cousins. And then going back to
11 the first page, there's -- in the middle of Ms. Cousins's
12 records, there shows phone contacts between Stephanie and
13 Christine and then ultimately phone contact between
14 Stephanie's phone and Willie Mason's phone?

15 A That's correct.

16 Q And then I'm going to go to about the time
17 period that the homicide occurred, on Ms. Cousins's phone, and
18 there's contact between Willie Mason's phone and then
19 ultimately there's a phone call at 3:37:20 to a -- to the
20 crime scene's essentially phone number -- that's been
21 identified as Derecia in these phone records -- is that
22 correct?

23 A That's correct.

24 Q And then at 3:47, there's some sort of digit
25 dialed by Ms. Cousins's phone, and then at 3:47:52, there is a

1 second phone call into the crime scene's phone number?

2 A That's correct.

3 Q And then shortly after that, at 3:51:12 and
4 3:51:30, there's two phone contacts between Stephanie's phone
5 and Willie Mason's phone?

6 A That's correct.

7 Q And then at 3:57 a.m., there's a contact between
8 Stephanie's phone and Cornelius -- or as the jury knows him,
9 Mr. Mayo -- Cornelius Mayo's phone?

10 A That's correct.

11 Q And after that, there's a number of contacts
12 between Stephanie's phone and Cornelius Mayo's phone?

13 A Yes.

14 Q That's page 3. There's more, both Christine and
15 Mr. Mayo, and then lastly, on page 4, we'll go to the last
16 contact on page 4 on Stephanie's phone. On August 7th,
17 there's contact at almost 1 p.m. with Cornelius's phone, and
18 then shortly thereafter, at 12:58:02, there's contact between
19 Stephanie's phone and Willie Mason's phone?

20 A That's correct.

21 Q Now I want to move on to Mr. Mason's record,
22 which -- if you could tell me the exhibit number on the back
23 of that. I believe it's 302.

24 A 302.

25 Q Mr. Mason's records, I'm going to start them all

1 the way back for the ladies and gentlemen so they can see.
2 The first record starts, on these records that we have here in
3 color, on August 1st; is that fair?

4 A That's correct.

5 Q Okay. The only highlighted section on the first
6 page is a phone contact between Mason and the number
7 identified to Job-Loc?

8 A Yes.

9 Q The first contact on those records with
10 Christine's number happens on August 1, 2010, at 2148 hours.
11 What's 2148 hours?

12 A That would be 9:48 p.m.

13 Q And if we go back, there's a number of contacts
14 during the 1st and the 2nd on page 2 between Willie Mason's
15 phone and Christine's phone?

16 A That's accurate.

17 Q And then on page 3 of those records, there's
18 contact not only between Willie Mason's phone and Christine's
19 phone, but there is also a contact between the Mason phone and
20 Monica as well as Job-Loc?

21 A Yes.

22 Q Page 4, there's more Christine and at least one
23 contact with the Job-Loc?

24 A Yes.

25 Q Page 5 is only contact with Job-Loc?

1 A Yes.

2 Q Page 6 is Job-Loc and Christine?

3 A That's correct.

4 Q Page 7 is Christine, Job-Loc and Monica?

5 A That's correct.

6 Q Page 7 is just Job-Loc?

7 A Yes.

8 Q Page 8 is just Job-Loc?

9 A Yes.

10 Q Page 9 is Job-Loc and Monica?

11 MR. SGRO: Counsel, I have 10.

12 THE COURT: Sorry. Page 10.

13 BY MR. DIGIACOMO:

14 Q Page 9 is Job-Loc and -- well, it's just
15 Job-Loc?

16 A Page 9 is just Job-Loc, and page 10 is Job-Loc
17 and Monica.

18 Q Okay. Page 11 is Christine and Monica?

19 A Yes.

20 Q Page 12 is Christine and Monica?

21 A Yes.

22 Q Page 13, there's no contact to any of the
23 numbers that we're talking about here; is that correct?

24 A That's correct.

25 Q And then page 14, there's contact earlier in the

1 -- well, earlier in the records with Monica, but then there's
2 two contacts with Christine and then one contact with
3 Stephanie's phone; is that fair?

4 A That's correct.

5 Q Based upon what you just went through in the
6 first -- from August 1st through August 6th at 2208 hours, is
7 that the first time Mr. Mason's phone has contact with
8 Stephanie's phone in those records?

9 A That's the first time, yes.

10 Q And it's shortly after contact at 2130 and 2147
11 between Mr. Mason's phone and Christine's phone?

12 A That's correct.

13 Q 2208 is 10:08 p.m. on the 6th?

14 A 10:08 p.m., yes.

15 Q And then if we look at Mr. Mason's records,
16 there's a number of contacts between him and Stephanie. There
17 is on page 15, one with Monica and then one with Job-Loc in
18 the early morning hours of August 7th; is that correct?

19 A That's correct.

20 Q And that contact continues through the early
21 morning hours, and I want to focus on these phone calls just
22 at the bottom there. Mr. Mason's records reflect that there
23 are two phone calls, two outgoing calls to Stephanie's phone
24 at 3:51:09 and 3:51:25 in the morning?

25 A Yes, that's correct.

1 Q And then at 4:24, his next phone call is to
2 Job-Loc?

3 A Yes.

4 Q The jury has already heard this, but the 9-1-1
5 call was approximately 3:53 in the morning. Does that sound
6 about accurate to you?

7 A Yes, it does.

8 Q And then the records continue to go on
9 throughout the next couple days, and I'm just going to put
10 them up for the jury until we get to August 7th. At about
11 4:02 in the afternoon, or 1602 on these records, is the first
12 time we see Cornelius calling Mr. Mason's phone?

13 A Yes.

14 Q And there continues to be contact -- there's one
15 contact with Mr. Mason but then multiple contacts with
16 Job-Loc?

17 A Yes.

18 Q And I'm just going to put the rest of these up
19 for the jury until a number of calls attempted on August 8th
20 of 2010, between Mr. Mayo's phone and Mr. Mason's phone. Now,
21 by -- when you get the records -- ultimately you receive
22 Job-Loc's phone records and Mr. Mason's phone records. Are
23 you aware in what state that those -- that those phone records
24 are -- what state did those phones appear to be in when you
25 finally received the records?

1 A Which phone are we talking about, Ms. --

2 Q Let's start with Mr. Mason's, the 909 number.

3 A Okay. The 909 number, according to the records,
4 initially is in the California area and then comes to Las
5 Vegas.

6 Q And then after the crime, sometime after August
7 8th, where does that phone show up again in the records?

8 A Back in California.

9 Q Mr. Job-Loc's, the 512 number, sometime after
10 August 8th, where does that phone show up until it's
11 eventually turned off?

12 A Also in California.

13 Q Did you take part in the execution of a search
14 warrant on August 13th at Job-Loc's apartment here at the
15 Brittnae Pines Apartment in Las Vegas?

16 A Yes, I did.

17 Q And I'm going to put up for the ladies and
18 gentlemen of the jury -- during the course of that search --
19 this is Defense Exhibit No. Z -- there appears to a have been
20 identified three cell phones; is that correct?

21 A That's correct.

22 Q As you sit here today, can you remember why it
23 is those three cell phones weren't collected?

24 A I don't -- I don't remember why we didn't take
25 them, other than they weren't needed for the investigation.

1 Q At the time that you were in this apartment, did
2 you know that Job-Loc's phone was in San Bernardino?

3 A Yes, we did.

4 Q Did you know that Mr. Mason's was in --

5 MR. SGRO: Objection. Leading.

6 THE COURT: Sustained.

7 BY MR. DIGIACOMO:

8 Q At the time you did this, did you know where Mr.
9 Mason's phone was?

10 A Yes, we did.

11 Q Where was it?

12 A In San Bernardino area.

13 Q Did you know where Mr. -- where Job-Loc's phone
14 was?

15 A Yes, we did.

16 Q Where was it?

17 A San Bernardino area.

18 Q Did you know where -- did you know whether or
19 not the police had collected Ms. Martinez's and Ms. Cousins's
20 phone already?

21 A Those were both in police possession.

22 Q So at the very least, of the four records we're
23 talking about, those phones couldn't have been the phones that
24 we're talking about?

25 A That's correct.

1 Q I'm going to show you what's been marked as
2 State's Proposed Exhibit No. 306 and ask you to briefly flip
3 through that. Have you seen that before?

4 A Yes, I have.

5 Q Are those -- well, for lack of a better term, is
6 it the printout of a PowerPoint of the relevant cell towers
7 during the relevant time period for the four phones?

8 A Yes, they are.

9 Q And also having plotted out on there where the
10 phone -- what towers the phones were hitting at various times
11 during the 6th and 7th of 2010?

12 A That's correct.

13 Q And have you had a chance to review that for
14 accuracy?

15 A Yes, I have.

16 Q And is it accurate?

17 A It is accurate.

18 MR. DIGIACOMO: I move to admit 306, Judge.

19 MR. SGRO: No, objection.

20 MR. LANGFORD: No, objection.

21 THE COURT: It'll be received.

22 (State's Exhibit 306 admitted.)

23 MR. DIGIACOMO: If I could have just a moment for --
24 sorry, Judge, I have to switch programs to run this.

25 BY MR. DIGIACOMO:

1 Q In 306 there, are we generally looking at an
2 aerial view that encompasses the Brittnae Pines Apartment,
3 Stephanie's apartment and the crime scene?

4 A Yes, we are.

5 Q And this is a close-up, and what are the green
6 pegs represent a close-up of the Brittnae Pines Apartment?

7 A The green pegs are cell tower locations in
8 reference to the Brittnae -- Brittnae Pines Apartments.

9 Q So for the ladies and gentlemen of the jury, the
10 one on the left is what number?

11 A The one on the left is 61171.

12 Q And is that one through three for the three
13 various sides of the tower?

14 A That's correct.

15 Q And then the one on the right-hand side of the
16 Brittnae Pines Apartment, what number is that?

17 A 62551-3.

18 Q Now, Job-Loc's phone between August 6th and
19 August 7th of 2010, where was that phone pinging off of?

20 A Mostly the tower 61171-3. It has one -- also
21 one call to 62551-3.

22 Q And that one call, does it in fact end at -- the
23 00:57:31 call, does it in fact end on the tower that is the
24 6117 tower, the one next to Job-Loc's house?

25 A Yes, it does.

1 Q So every one of his calls between August 6th and
2 August 7th that had tower information hit off the tower by his
3 apartment?

4 A That's correct.

5 Q What are we looking at in the -- on the next
6 page?

7 A This would be an overview of major Las Vegas
8 area with important locations, as well as mapped out T-Mobile
9 -- the green pegs are for T-Mobile cell towers. Yellow pegs
10 are for important locations in reference to the investigation.

11 Q So did you plot out Monica's phone, or is
12 Monica's phone plotted out on 306?

13 A Yes, it is.

14 Q So I want to start with at approximately 12
15 minutes after the hour. Where is her phone? What tower
16 location is she pinging off of?

17 A Let's see.

18 Q You go a page back I think.

19 A So at 12 after the hour, it's at a tower near
20 East Bonanza, and I believe that is --

21 Q Maybe I can do this for you. You know what, we
22 can write on these screens. So if you touch the screen --

23 A Oh, okay.

24 Q If you touch the screen instead of --

25 THE COURT: It's a John Madden kind of screen.

1 THE WITNESS: Right there.

2 BY MR. DIGIACOMO:

3 Q Is that the tower she's hitting off of?

4 A Okay.

5 Q And that tower, is that near what's been
6 identified as Monica's residence on Cinnabar?

7 A That's correct.

8 Q Okay. And then at 15 minutes after the hour,
9 she's at the tower now west of her residence?

10 A Yes.

11 Q 18 minutes after the hour, she's now hitting
12 more west, in the center of Las Vegas?

13 A That's correct.

14 Q And by 27 minutes after the hour, she is now
15 west of the I-15?

16 A Yes.

17 Q And if you continue this map to the west, you --
18 she will ultimately come generally in the area of the Brittnae
19 Pines Apartments?

20 A Yes, she would.

21 Q At 1:32, did she hit off a tower now back sort
22 of south of downtown?

23 A Yes.

24 Q And then between 2:03 and 2:11, does she hit off
25 a tower that's located directly downtown near the Fremont

1 Street Experience?

2 A Yes.

3 Q And then her next phone contact that has tower
4 information is 3:19, as she's headed back down kind of towards
5 the southeast area of the valley?

6 A That's correct.

7 Q And that by 3:32 or 3:33 in the morning, she's
8 hitting off a tower near Stephanie Cousins's apartment?

9 A That's correct.

10 Q And at 3:45 now, approximately eight minutes
11 before the 9-1-1 call, she's hitting on a tower heading north
12 on Nellis from Stephanie's apartment complex?

13 A That's correct.

14 Q Her next phone contact at 4:26 and 4:28, is that
15 near Job-Loc's apartment at the Brittnae Pines?

16 A Yes, it is.

17 Q And then at 4:29, did she hit off a tower near
18 the Texas Hotel and Casino?

19 A Yes.

20 Q And then at about 11:40 in the morning is the
21 next tower information. That puts her back toward Job-Loc's
22 apartment?

23 A Yes, it does.

24 Q What do the red pins mean?

25 A The red pins are locations for Metro PCS cell

1 phone towers.

2 Q So it's a different carrier. So these would be
3 -- the T-Mobile was Job -- Job-Loc's and Monica's carrier,
4 correct?

5 A That's correct.

6 Q And Metro PCS is Stephanie and Willie Mason's
7 carrier, correct?

8 A Yes.

9 Q So let's start with Mr. Mason's phone on August
10 7th. So shortly after midnight, is he hitting off a tower
11 near Job-Loc's apartment? 49 minutes after midnight I guess
12 it would be.

13 A Yes.

14 Q And is this now a map of sort of all the
15 relevant towers as well as the relevant locations for the
16 Metro PCS kind of location information?

17 A Yes.

18 Q So at 2:03, is Mr. Mason hitting off a tower
19 essentially downtown from Metro PCS between 2:03 and 2:25 in
20 the morning on the 7th?

21 A That's correct.

22 Q And then at 2:32, is he hitting a tower
23 generally near Jerry's Nugget, here in Las Vegas?

24 A Yes.

25 Q Between 2:57 and 3:07, is he hitting off -- is

1 his phone hitting off a tower near the Opera House Hotel and
2 Casino?

3 A Yes.

4 Q And then by 3:10 to 3:13, he's now south -- he's
5 going sort of southeast of the Opera House?

6 A Yes.

7 Q And then by 3:23 through about 3:30, he's
8 hitting off towers near Stephanie's apartment?

9 A That's correct.

10 Q And at 3:51:09 and 3:51:25, he's hitting off a
11 tower to the east of the crime scene, which would be
12 identified by this yellow tag?

13 A Yes, the crime scene is the yellow tag, 5662
14 Meikle, and at 3:51:09, hits the tower to the east.

15 Q And then at 3:51:25, does he begin on this tower
16 and ultimately end on the tower to the northwest?

17 A Correct.

18 Q And those would be the two phone calls between
19 his phone and Stephanie Cousins's phone that we previously
20 looked at?

21 A That's correct.

22 Q And then by 4:24 in the morning through 5:15 and
23 5:18, now Mr. Mason's phone is back near Job-Loc's apartment?

24 A That's correct.

25 Q So now these are the towers again for Ms.

1 Cousins's phone. Ms. Cousins between approximately 18 minutes
2 after midnight until almost 3:37 in the morning, is she
3 hitting off the towers near her apartment complex?

4 A Yes, she is.

5 Q And then the phone calls that she makes, the
6 first one at 3:47:24, it's hitting off the tower northwest of
7 the apartment complex, and then at 3:47:52, the tower that's
8 southeast of the crime scene?

9 A That's correct.

10 Q And then the two calls she received from Mr.
11 Mason's phone, now back at that tower on the northwest side of
12 the crime scene?

13 A Yes.

14 Q After those calls at 3:57, did she begin a phone
15 call on a tower heading south on Nellis and end the phone call
16 on the next tower south on Nellis?

17 A Yes.

18 Q And then by 4:02 in the morning, she's back in
19 the area of her apartment complex?

20 A That's correct. Can I -- yeah, 4:02, there it
21 is. Yes.

22 Q 4:02.

23 MR. DIGIACOMO: Thank you, Judge. I pass the
24 witness.

25 THE COURT: Mr. Sgro.

1 CROSS-EXAMINATION

2 BY MR. SGRO:

3 Q Good afternoon, sir.

4 A How are you, sir?

5 Q Good.

6 A Good.

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

8 THE COURT: Certainly.

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

10 BY MR. SGRO:

11 Q I'm going to ask you a couple of questions about
12 some of the records you just testified to.

13 A Sure.

14 Q So just know you have them in front of you.

15 A Okay.

16 Q All right. Now, I think you were asked about
17 this photograph. You executed -- participated in the
18 execution of the search warrant at a residence attributed to
19 Job-Loc or Jerome Thomas; is that right?

20 A That's correct.

21 Q And do you remember that search warrant taking
22 place on August 13th?

23 A Yes, I do.

24 Q All right. So August 13th in relation to events
25 that would've occurred on August 7th is about six days later,

1 right?

2 A That's correct.

3 Q Do you know when the exhibits that you have in
4 front of you were actually received by law enforcement?

5 A Off the top of my head, I don't remember.

6 Q Well, let me ask it this way. What happens in a
7 -- let's use this vernacular, cell phone case.

8 A Okay.

9 Q In a case where cell phones are going to be
10 relevant, right, a police officer, someone from law
11 enforcement would write down the numbers he or she was
12 interested in, right?

13 A That's correct.

14 Q And then they fill out what's called an
15 administrative request for a subpoena, right?

16 A That's right.

17 Q And then that administrative request might take
18 a couple days to get processed internally at Metro, for
19 example, right?

20 A Yeah, there's a processing time. Yes.

21 Q There's a processing time. Well, first thing,
22 you have to figure out which phone numbers you want subpoenas
23 for, right?

24 A That's correct.

25 Q And that could take several days, if not weeks

1 to figure it out?

2 A You know, in this case, I think we had phone
3 numbers pretty quick. I mean, we started running numbers
4 pretty quick, and how those numbers were obtained, I wasn't
5 part of that investigation, but I believe most of those
6 numbers were given to me and said, Hey, what can you find out
7 about this?

8 Q Right. And then you have to fill out a subpoena
9 request, right?

10 A Correct.

11 Q And then it takes each cell phone provider
12 amounts of time to return those records to law enforcement,
13 right?

14 A It takes them time.

15 Q Right.

16 A Each cell phone company is a little different.

17 Q And I guess the point is you don't go down there
18 on Tuesday at 10 a.m. and you get them back in an hour, right?
19 It takes some time to process the request?

20 A It does, but you can -- you can get records
21 expedited. It costs you money. So you just pay to expedite
22 the request.

23 Q You didn't get expedited records in this case,
24 did you?

25 A That, I don't remember. I just, you know -- I

1 request records almost every day.

2 Q And in this case, do you remember testifying in
3 front of the Grand Jury?

4 A Yes, I do.

5 Q And at the Grand Jury, you had recently received
6 the cell phone records from which you were testifying; does
7 that sound, right?

8 A Yeah, that sounds accurate.

9 Q And you didn't testify in front of the Grand
10 Jury until September 28th of 2010, correct?

11 A That's correct.

12 Q So your testimony at the Grand Jury would have
13 been six or seven weeks after you went and did this search,
14 fair?

15 A Yeah -- if the 28th -- yeah, the search warrant
16 was on the 13th. That's correct.

17 Q Okay. Now, you were asked the question by Mr.
18 DiGiacomo, Were you aware where Job-Loc's phone was; do you
19 remember that question?

20 A Yes.

21 Q And you told the jury that it was in California,
22 right?

23 A Depending on the timing of it. Prior to and the
24 day of the incident, it was in Las Vegas --

25 Q Okay. Fair point.

1 A -- after the incident --

2 Q Let's talk about on August 13th, when you walk
3 in. First of all, you don't have the records returned to you
4 yet from Metro and T-Mobile?

5 A That I'm not -- again, I don't recall exactly
6 when I had the records. I would say if -- in fact, I know I
7 had some records because I used a number from Job-Loc's
8 records to figure out which apartment they were staying in.
9 There was some question, and we were trying to figure out
10 which apartment, and there was a number on the apartment
11 application that rung a bell, and I remembered seeing that
12 number on Job-Loc's records. So I knew I at least had
13 received some records.

14 Q Okay. Let's start it -- put it this way. First
15 of all, it's not unusual for someone who is committing crime
16 to have more than one phone, is it?

17 A Lots of -- I'm not committing a crime, but I
18 have two phones. It's not uncommon for people to have more
19 than one phone.

20 Q We're just not that far yet.

21 THE COURT: It sounds like another case to me.

22 MR. SGRO: That's right. That's next Tuesday.

23 BY MR. SGRO:

24 Q Okay. All right. In your experience, it's not
25 -- it wouldn't shock you if someone owned more than one phone,

1 right?

2 A Not at all.

3 Q Okay. And at the time you walk into this
4 residence, you know you have at least the beginnings of what
5 may turn out to be a, quote, unquote, cell phone case. By
6 that, I mean cell phones are going to be relevant, right?

7 A That's correct.

8 Q All right. You've got three phones on the
9 counter there, correct?

10 A Yes.

11 Q Do you know the phone number of any of those?

12 A I don't.

13 Q Do you have entries in the phone records amongst
14 the individuals that you've examined where you are unable to
15 attribute specific numbers to?

16 A Can I state that to make sure I understand --
17 restate that to make --

18 Q Let me ask --

19 A So you're saying there's numbers --

20 THE COURT: I think you better re-ask that.

21 THE WITNESS: Okay.

22 MR. SGRO: I'll re-ask it.

23 THE WITNESS: Okay. Okay.

24 MR. SGRO: That was not very well worded.

25 BY MR. SGRO:

1 Q In the phone numbers that you looked at, were
2 there occasions where you saw a number, and you didn't have a
3 match amongst the four people that you have examined? Those
4 four people are Willie Mason, Stephanie Cousins, Jerome
5 Thomas, Monica Martinez.

6 A Right. So other numbers that weren't attributed
7 to them, were those numbers in the records?

8 Q Yes, sir.

9 A Yes.

10 Q Okay. Are you aware whether the three -- do you
11 know what a SIM card is?

12 A I do.

13 Q And is a SIM card a card that holds memory and
14 information of a particular telephone?

15 A It does. Some phones have SIM cards, some do
16 not. It depends on the technology.

17 Q Do you know if the phones on the counter
18 depicted in Defense Exhibit Z had SIM cards?

19 A I don't recall handling the phones or opening
20 them to see if they -- that's generally behind the battery.

21 Q You had authority in the search warrant to seize
22 cell phones, correct?

23 A Yes, we did.

24 Q And so there was a specific election made for
25 these three phones in Jerome Thomas's apartment to be left

1 untouched?

2 A I'm sure there was a discussion about that. I
3 wasn't privy to that discussion, but for whatever reason,
4 there was a decision not to take the phones.

5 Q Let me ask you this. Would you have liked to
6 have those phones, if for nothing else to eliminate them as
7 part of this crime?

8 A I mean, it's, you know, I guess that's kind of a
9 -- if I thought I needed them -- you know, as a lead
10 investigator, if I thought I needed them, I would take them.
11 If I didn't think I needed them at the time, I wouldn't take
12 them.

13 Q You weren't the lead investigator though, were
14 you?

15 A I wasn't.

16 Q As someone who has been called upon to look at
17 cell phone records and track certain telephones, wouldn't you
18 like to have had those three phones, if for no other reason to
19 eliminate them as being relevant in this case?

20 A To be used as elimination, sure.

21 Q Now, have you known persons to switch cell
22 phones, use someone else's phone?

23 A Yes. Yeah.

24 Q Have you had that happen in cases where you have
25 been called upon to testify?

1 A For example, you're saying somebody uses
2 somebody else's phone, and that was pertinent to an
3 investigation?

4 Q Yes, sir.

5 A Yes.

6 Q All right. So when you say -- in these records,
7 there's names, right? It says Christine. It says Monica. It
8 says Cornelius. You understand that that is someone using a
9 telephone, a cell phone, and someone else responding, but
10 you're not testifying you know who was on either end of that
11 call, are you?

12 A Yeah. Well, the records reflect the numbers
13 called by a handset, and the cell tower locations in the
14 records show the towers used by that handset at those times.
15 It doesn't take a picture of the person using the phone, but
16 it's, you know -- so that's what the records reflect.

17 Q I asked you earlier if you testified at the
18 Grand Jury, and you said you did?

19 A Yes.

20 Q And you identified two cell phone numbers for
21 Jerome Thomas; is that right?

22 A That's correct.

23 Q Do you know what the second number is?

24 A 404 -- it was a different area code, and it
25 started with 404.

1 Q Now, that second --

2 A I can't remember the whole number.

3 Q -- Jerome Thomas cell phone had nothing to do
4 with the 512 number, right?

5 A When you -- what do you mean by --

6 Q It's a different phone than the 512 phone; is
7 that right?

8 A It's a different phone number. Whether it's a
9 different phone or not, I don't know that.

10 Q All right. So Job-Loc has at least a 512 number
11 and a 404 number?

12 A That's correct.

13 Q And neither of those two numbers have anything
14 to do with the three phones that were left in his apartment
15 after the search?

16 A No.

17 Q And in fact, your investigation revealed that as
18 to the 512 phone number that that number was terminated within
19 two days of the homicide?

20 A I know it was after, within two days or so
21 after, yes.

22 Q Would it refresh your recollection, sir, if I
23 showed you the transcript?

24 A Sure.

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

1 THE COURT: Yes.

2 BY MR. SGRO:

3 Q I'm showing you page 128. Do you see what I
4 have highlighted there?

5 A I do.

6 Q Okay. Does that refresh your memory that it was
7 in with -- about two days after the homicide that Jerome
8 Thomas terminated that cell phone, that 512?

9 A The 512 number, yes. Stopped making calls and
10 was terminated, yes.

11 Q Now, I want you to go to Exhibit 304. Do you
12 have that one in front of you?

13 A I do.

14 Q Okay. Now, first of all, you would never want
15 to testify in an effort to deceive whoever's listening to you;
16 would that be fair?

17 A Yeah, I wouldn't want to do that.

18 Q Okay. Now, when you testified in front of the
19 Grand Jury that -- you've testified in front of Grand Juries
20 before, correct?

21 A On a few occasions, yes.

22 Q And at the Grand Jury, that's a group of folks
23 that listens to testimony as the DA presents evidence, sort of
24 like what we're doing here, right?

25 A That's correct.

1 Q But at a Grand Jury, there's no defense
2 attorneys that ask questions, right?

3 A That's correct.

4 Q It's just the DA presents evidence. The matter
5 is submitted, and the Grand Jury decides whether or not the
6 case should go to trial?

7 A Yes.

8 Q Now, you would want to be responsible in your
9 testimony, correct?

10 A That's correct.

11 Q And not leave a bad impression or misimpression?

12 A I would never want to do anything that would
13 mislead.

14 Q Okay. Now, you were asked under oath at the
15 Grand Jury -- and I think you were asked a similar question
16 here today -- whether Job-Loc's cell phone seems to remain in
17 a single location. Do you remember that question?

18 A Yes, during the time of the incident.

19 Q And you were being asked that question with an
20 eye towards establishing, quote, unquote, an alibi for Mr.
21 Thomas, right, excluding him from participation at the
22 homicide given that his cell phone hits off the same towers
23 all night?

24 A Yeah. I mean, the testimony was to identify the
25 locations of Mr. Thomas's phone during the time of the

1 homicide.

2 Q Okay. And do you remember specifically that you
3 testified that, quote, He seems to remain all night in a
4 single location, right?

5 A That's correct.

6 Q Now, let's go to Exhibit 304.

7 MR. SGRO: And if I might approach, Your Honor? Mine
8 is not paginated.

9 THE COURT: Okay.

10 BY MR. SGRO:

11 Q I want to get you to --

12 A Page 7?

13 Q Yes, sir.

14 A 2:04 --

15 Q That's correct. Are you there, sir?

16 A Okay. At 2:04 with a call with -- let's see.
17 That's an incoming call from (702)927-8742.

18 Q I'm going to put my copy on the Elmo. Now, this
19 is Exhibit 304, and is it -- is it Jerome Thomas's cell phone?

20 A Yes, the (512)629-0041.

21 Q Now, would you agree with me, sir, that if this
22 record is correct that Jerome Thomas's phone shows no activity
23 between 2:04 a.m. and 4:25 a.m.?

24 A That's correct.

25 Q All right. Now let's talk about the potential

1 to create a misimpression.

2 MR. DIGIACOMO: Judge, I object to the commentary
3 that Mr. Sgro --

4 MR. SGRO: Well --

5 MR. DIGIACOMO: -- is interjecting.

6 THE COURT: Well, it's argument, but -- so let's go
7 ahead.

8 MR. SGRO: Okay.

9 THE COURT: Just ask questions.

10 BY MR. SGRO:

11 Q Let me ask it this way. In a vacuum, is it
12 accurate that Jerome Thomas's hit off the same tower --
13 remember on direct exam, you said, Well, all -- most of the
14 time, it hit off this one tower, and you pointed at an example
15 where it hit off of a different tower. Do you remember that
16 testimony?

17 A Yes.

18 Q Just a few minutes ago, right?

19 A Yes.

20 Q Okay. So is it true, in a vacuum, that Jerome
21 Thomas's cell phone hit off the same tower that night? Is
22 that true?

23 A Yes.

24 Q Okay. Now, if the homicide in this case
25 happened at 3:45 a.m., more or less, it is not your testimony

1 that Job-Loc's phone is pinging off that tower at 3:45, is it?

2 A I have no records of Job-Loc's cell phone for
3 that time. What I have records for shows him hitting off the
4 same tower for the entire night for what his phone has
5 activity for.

6 Q Other -- right. And when we get to the
7 examination of activity, you agree with me that there is about
8 two hours and 25 minutes of non-activity, correct?

9 A Yes.

10 Q And you've done enough cell phone cases to know
11 that sometimes it is the absence of contact amongst people
12 that shows that they're together. Does that make sense?

13 A I don't know. It depends. You know, my
14 daughter texts me in the car, and I'm sitting right next to
15 her. So, I mean, it just kind of depends.

16 Q Okay. Fair enough. Sometimes though -- and
17 let's not -- let's not use your daughter.

18 A Sure.

19 Q Let's use an adult.

20 A Okay.

21 Q Family member or friend. Typically, if you're
22 driving down the road in a car, and you're together with
23 someone, they're more likely to speak to you than they are
24 call you, right?

25 A Sure.

1 Q And if you're sitting next to someone as you're
2 driving and someone is in your front passenger seat, if you're
3 together, they're not going to text you? They're just going
4 to speak to you, right?

5 A Correct.

6 Q All right. So again getting back to my point,
7 it is not unusual for law enforcement to examine blocks of
8 time of non-use of phones between two different people that
9 they're looking at and say, Ah, you didn't use your phone
10 because you were together. That wouldn't shock you, would it?

11 A No, it wouldn't shock me. It's definitely, you
12 know, something that you might hypothesize to, or, you know, I
13 mean, you're looking for stuff like that, sure.

14 Q And in this case, are you -- do you know who
15 Detective Wildemann is?

16 A Wildemann, sure. Marty.

17 Q Wildemann.

18 A I sure do.

19 Q Are you aware that Detective Wildemann posited
20 that theory that it was precisely because Monica Martinez --
21 you know who that is, right, in this case?

22 A I do, yes.

23 Q Monica Martinez and Jerome Thomas had had a lot
24 of telephone contact throughout the night, and then all of a
25 sudden, there's a two-hour gap of contact. So he posited the

1 theory that that must be because they were together?

2 MR. DIGIACOMO: Objection. Assumes a fact not in
3 evidence, Judge.

4 THE COURT: I didn't hear that testimony.

5 MR. SGRO: I understand.

6 BY MR. SGRO:

7 Q You know Detective Wildemann?

8 A Wildemann.

9 Q Did you work with him on this case?

10 A I did.

11 Q Did you have conversations with him about this
12 case?

13 A Yes, I did.

14 Q Are you -- did you -- in the course of
15 investigating this case, did you speak to him about positing
16 the theory that Monica Martinez and Job-Loc were together,
17 which is why there were no telephone calls between the two of
18 them?

19 A You know, I didn't talk to him about his
20 interview or -- with Monica. So what happened in that
21 interview, I'm not really sure.

22 Q Did you speak to Donovan Rowland?

23 A I -- no, I don't believe I did.

24 Q Well, you testified in front of the Grand Jury
25 that you reviewed information from Donovan Rowland.

1 A Yeah, I would've reviewed some phone records for
2 Mr. Rowland.

3 Q Did you review any medical records that were
4 provided to you?

5 A I don't remember medical records being provided
6 to me, but that could've been the case.

7 Q Are you aware, sir, that we've been in trial in
8 this case for a few weeks? Did you --

9 A Yeah, I received a subpoena and stuff, so I knew
10 trial would start. I know it had started, yes.

11 Q Okay. Now, I want to do a dividing line between
12 a few weeks ago and then prior to a few weeks ago, okay?

13 A Okay.

14 Q Are you aware of something that impacts the
15 timing of what time it says on records when calls are made
16 relative to daylight savings time? Does that ring a bell?

17 A Yes.

18 Q Okay. Is the first time you learned that before
19 trial began or after?

20 A I would say probably before.

21 Q When?

22 A I -- you know, I remember telling Marty that --
23 I think they were on Job-Loc's records -- that the times were
24 an hour off. Sometimes when there's discrepancies with some
25 phone records, it takes time to get in touch with a, you know,

1 tech or somebody at the phone company. So I don't really
2 remember resolving that issue. I just remember recognizing --
3 saying, Hey, these times seem to be an hour off, and telling
4 Marty, Hey, I'm not sure I can explain that yet, but just
5 advising him that that was the case. My initial focus was
6 trying to identify people involved in the investigation.

7 Q So you had a conversation with the detective
8 some time ago, and I'll pin you down on your best -- well,
9 what's your best recollection of when that conversation
10 happened?

11 A It would've been in and around the time of the
12 initial investigation, around then.

13 Q So back in August, September of 2010?

14 A Right.

15 Q So you recognized four -- over four years ago
16 that there were discrepancies on the records relative to some
17 of the timing?

18 A Yes.

19 Q Did you also notice four years ago that some
20 records had phone calls that had not been recorded in other
21 records? Do you remember that?

22 A I remember some discussion about it, but I don't
23 -- I don't recall really resolving that. Again, I was still
24 trying to identify people involved in the -- that we were
25 interested in in the investigation. We were still looking for

1 identification of people --

2 Q And I want to make sure I understand your
3 testimony clearly. You had suggested to Detective Wildemann
4 that there were discrepancies in the records, and you did not
5 know how to explain it?

6 A Yeah, that they were an hour off, that we needed
7 to get in touch with -- you know, that's not uncommon in phone
8 records. Different phone companies, you know, some come in
9 Greenwich Mean Time, some comes Central Time. It depends on
10 the phone company. So sometimes in figuring that out, you've
11 got to call and ask them. It's not uncommon. It's just how
12 phone companies, you know, comply with regulations.

13 Q Was it an oddity to you, sir, that two different
14 records for the same phone came back with different times?

15 A Yeah, it was something we needed to clarify for
16 sure.

17 Q Was it an oddity to you that two sets of records
18 for the same phone came back, and they both said Pacific
19 Standard Time, but they didn't match?

20 A Yes, but it didn't alarm me I guess.

21 Q Would it surprise you that the first time the
22 request you made to clear that up back in 2010 was acted upon
23 was after this trial had already began?

24 MR. DIGIACOMO: Objection. That assumes a fact not
25 in evidence.

1 MR. SGRO: I asked the -- I asked the --

2 THE COURT: First of all, you said the Pacific
3 Standard Time.

4 MR. SGRO: Yes, sir.

5 THE COURT: But the records say Pacific Time. If you
6 look at those records, they don't say Standard. They say
7 Pacific.

8 MR. SGRO: Pacific Time.

9 THE COURT: And I think that that became part of the
10 problem because they're both -- Pacific Daylight and Pacific
11 Standard are both Pacific Time.

12 MR. SGRO: Pacific Time, right. Right. Exactly.

13 MR. DIGIACOMO: I object to the implication that the
14 first time that anyone knew or to clear this up was during
15 this trial. The first time that the witness --

16 THE COURT: Well, I don't know whether that's --

17 MR. DIGIACOMO: The custodian of records that
18 testified was asked that.

19 THE COURT: If that's true, if that's the first time
20 -- if he's the one that cleared it up, and he did so during
21 the trial, you can ask him that, but that's --

22 BY MR. SGRO:

23 Q Did you ever before testifying at trial get an
24 answer to that question from Detective Wildemann?

25 A No.

1 Q Did you ever before coming into trial get asked
2 to do any further follow-up on that question?

3 A No.

4 Q You would agree, based on the record I just
5 showed you contained within Exhibit 304, that Jerome Thomas is
6 not, quote, unquote alibied as a result of the cell phone
7 records?

8 A So I guess what you're asking me is -- are you
9 asking me whether he was at the scene of the homicide or not
10 based on his phone -- I guess I'm trying to figure out what
11 you're asking me.

12 Q I'll ask it a different way. I could not in
13 looking at that -- in looking at that two-hour-and-20-minute
14 time block where there's no phone being used, the homicide
15 happens to occur right in that block. Can we agree on that?

16 A Yes.

17 Q All right. Based on that time block and the
18 absence of using of that phone, we can agree that we can't say
19 Job-Loc was at the scene, and we can't say Job-Loc wasn't at
20 the scene?

21 A Yeah, there's no call activity at the time of
22 the murder that shows where that phone is.

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

24 BY MR. SGRO:

25 Q Can we go back. I do have a follow-up question

1 on Exhibit 304.

2 A Sure.

3 Q If we could go back to that same page.

4 A It was on the 7th at 2:04?

5 Q Yes, sir.

6 A Okay.

7 Q Now, can you tell me -- do you see in between
8 the two that I have highlighted, one is at 2:04, and one's at
9 4:25 a.m? Do you see that, sir?

10 MR. ORAM: It's very blurry.

11 THE WITNESS: So there's one at -- which call are you
12 referring to?

13 BY MR. SGRO:

14 Q The ones that I asked you about just a few
15 minutes ago --

16 A Okay. The 2:03 to the 2:04, yes, and there's a
17 call -- well, there is a -- there's some phone activity in
18 between.

19 Q Right. So there's something that looks like
20 it's entered there, 4:07, 4:08; do you see that? It's in
21 between the two that I have highlighted if you're looking on
22 your screen.

23 A Yes. Yes.

24 Q Okay. What is the relevancy of 4:07, 4:08?
25 What is that?

1 A It shows phone activity. Generally, on
2 T-Mobile, if it's an 805 number, my experience has been that's
3 something regarding to voice mail, maybe a voice mail alert
4 saying, Hey, you've got a voice mail or voice mail
5 notification. I can't confirm that a hundred percent, but
6 there's no tower information for that.

7 Q Okay. And do we have tower information -- okay.
8 So let me -- again, tower information is my last question.

9 A Okay.

10 Q 2:03, we have the tower located at 61172.
11 That's the one by Brittnae Pines?

12 A Yes.

13 Q And then we have no tower information at 4:07,
14 4:08?

15 A That's correct.

16 Q And then we have 61172 at 4:25?

17 A That's correct.

18 MR. SGRO: That's all, Your Honor. Thank you.

19 MR. LANGFORD: No questions, Your Honor.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. DIGIACOMO:

23 Q There was a couple of questions as it relates to
24 a 404 number. Do you remember those questions?

25 A Yes.

1 Q And the number that Job-Loc was using after the
2 512 number, correct?

3 A That's correct.

4 Q From -- in your investigation, you mentioned
5 something about you actually figured out which apartment that
6 the search warrant is supposed to be executed at at the
7 Brittnae Pines Apartments?

8 A Yes.

9 Q Can you explain to the ladies and gentlemen of
10 the jury how it is you figured out which apartment to go to.

11 A So we kind of canvassed a few neighbors in the
12 area. We had a neighbor in an apartment kind of across the
13 way that recognized one of the photos of Mr. Mason. He
14 believed it was in a certain building.

15 We went to the office, spoke to someone at the
16 office, looked at a rental application for unit 2057, and
17 there was a reference and maybe an emergency contact or
18 something that was -- and a telephone number, one for Chernise
19 Clark [phonetic] and Daquita Clark [phonetic] and a (702)296
20 number on there, and I remembered seeing that all over
21 Job-Loc's record, and so I knew I had the right apartment.

22 Q Because -- let me ask you this. There are times
23 when law enforcement receives information physically, the
24 paperwork itself, and there's other times when law enforcement
25 can receive things like, Hey, where's this phone at at this

1 particular point in time without actually physically getting
2 the paperwork; is that fair?

3 A Yes.

4 Q Okay. And you knew at this point in time where
5 Job-Loc's phone was?

6 A That's correct.

7 Q And you knew where the 909 -- the Willie Mason
8 phone was?

9 A Yes, we did.

10 Q Okay. There was a 404 number that was
11 referenced. Were you aware during the course of your
12 investigation that that was the phone that Job-Loc got when he
13 turned off the 512 number?

14 A Yes.

15 MR. DIGIACOMO: May I have the Court's indulgence for
16 just a minute?

17 THE COURT: Yes.

18 BY MR. DIGIACOMO:

19 Q And despite the fact of what phones were or were
20 not collected, ultimately the phone company has the records as
21 to the phone contact that's going back and forth between the
22 phones, correct?

23 A Yes, phone companies collect the
24 inbound-outbound phone traffic for each cellular telephone.

25 Q So whether or not -- whether or not we could

1 ever find the 512 number, we certainly still have the records
2 of calls and contacts between 512 and other numbers?

3 A That's correct.

4 MR. DIGIACOMO: Do we need to approach on the
5 question, Judge?

6 THE COURT: Yes.

7 (Bench conference.)

8 MR. DIGIACOMO: I didn't do this one.

9 THE COURT: What did you do?

10 MR. ORAM: He was -- Marc's messing with you.

11 MS. WECKERLY: He was --

12 MR. ORAM: (Inaudible) --

13 UNIDENTIFIED ATTORNEY: You should say something to
14 the jury.

15 THE COURT: I think I ought to tell the jury that
16 Marc's that kind of a guy.

17 MR. DIGIACOMO: (Inaudible.)

18 UNIDENTIFIED ATTORNEY: We stipulate to that.

19 MR. DIGIACOMO: You can ask that question.

20 UNIDENTIFIED ATTORNEY: Yeah, to both of them.

21 MR. DIGIACOMO: I'm not sure I know exactly what it
22 is they're asking -- (Inaudible).

23 THE COURT: All right.

24 (Bench conference ends.)

25 THE COURT: Agent, with regard to Job's phone, the

1 512 phone --

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: -- the phone was terminated two days
4 after the murder?

5 THE WITNESS: Yes.

6 THE COURT: How do you know the phone was in
7 California on August 13, 2010?

8 THE WITNESS: Yeah, the 512 number was terminated,
9 and his new phone, the 404 number was in California.

10 THE COURT: Okay. It could've been the same
11 telephone but a different number?

12 THE WITNESS: That's correct. It's not uncommon to
13 use the same piece of hardware and change your number. I
14 can't remember if we had figured that out or not, but that's
15 not uncommon to do, swap a SIM card or, you know, whatever.

16 THE COURT: Anything further?

17 MR. DIGIACOMO: I do. I have a couple more
18 questions.

19 THE COURT: On that same subject or --

20 MR. DIGIACOMO: Well, I'm not done asking my
21 redirect.

22 THE COURT: Oh, okay.

23 BY MR. DIGIACOMO:

24 Q There was also questions about kind of your
25 knowledge of where these individuals were. Were you also

1 involved in the collection of the video from the Greyhound in
2 Las Vegas?

3 A Yes, I was.

4 Q And did you have an opportunity to review the
5 manifest of the people that were -- that signed up to get on
6 the Greyhound?

7 A Yes, I did.

8 Q Okay. Did you -- well, in your experience, do
9 you have to have some sort of identification in order to get a
10 Greyhound bus ticket?

11 A No, you do not.

12 Q And so the names are much like a prepaid phone.
13 It could be anybody's names?

14 A That's correct.

15 Q Did you do something to try and determine --
16 well, first of all, was Willie Mason, David Burns or Jerome
17 Thomas's name on the manifest for the Las Vegas Greyhound?

18 A No, they were not.

19 Q Did you do anything to try and identify what the
20 three names were that were utilized for those tickets?

21 A Yes, I did.

22 Q And what did you do?

23 A So there was a bus from Las Vegas to Los
24 Angeles, and then a change on a bus line in Los Angeles to --
25 from Los Angeles to San Bernardino. So it was -- from Las

1 Vegas to Los Angeles, it was Greyhound bus line. From Los
2 Angeles to San Bernardino, it was Crucero bus line, and so we
3 compared the three manifests, and there was only three common
4 names.

5 Q Okay. Let me ask you this. Did you try and get
6 video from the Crucero bus line as well?

7 A You know what, I believe we sent somebody down
8 there, and I don't think they could obtain the video.

9 Q So we have Greyhound Las Vegas, Greyhound LA,
10 and we have three names that are consistent between the three
11 manifests?

12 A That's correct.

13 Q Do you recall what those three names were?

14 A James -- I think it was James Johnson-Rossi
15 [phonetic]. It may have been Benton Court [phonetic], but I'm
16 not sure and Samore More [phonetic].

17 Q Those were the three names in common between the
18 three manifests?

19 A Yeah. Yeah, those were the only three names
20 common on the manifests.

21 MR. DIGIACOMO: Thank you. I have nothing further.

22 MR. SGRO: Just a follow-up. May I approach the
23 clerk for that --

24 THE COURT: Yes.

25 MR. SGRO: -- jury question --

1 FOLLOW-UP EXAMINATION

2 BY MR. SGRO:

3 Q So I just want to follow up just on the question
4 the Judge asked you.

5 A Sure.

6 Q So I think Judge Thompson put it that it
7 could've been the same phone, and he could have changed the
8 number, and it's actually the same operational device that has
9 one number on a Monday and another number on a Tuesday?

10 A Yes.

11 Q Okay. The other way to look at that is it
12 could've been that the phone that was the 512 number might've
13 been one of those ones in the photograph, and another phone
14 could've been obtained, and that could've been the 404 number?

15 A Both scenarios are possible.

16 Q Right. So there's no way for you to tell us
17 which of those two scenarios exists in this case, right?

18 A That's correct.

19 MR. DIGIACOMO: Judge, I have one follow-up.

20 MR. LANGFORD: I don't have any further questions,
21 Judge.

22 MR. DIGIACOMO: I know you have a question from the
23 jury.

24 MR. SGRO: I'm finished I guess.

25 THE COURT: That isn't really true. You're not

1 finished.

2 MR. SGRO: No.

3 THE COURT: First of all, do you know anything about
4 Jerome Thomas's injuries?

5 THE WITNESS: Just from what I saw in the video and
6 maybe from talking --

7 THE COURT: Did you ever see him?

8 THE WITNESS: Physically see him?

9 THE COURT: Personally ever see him? Physically see
10 him?

11 THE WITNESS: No.

12 THE COURT: Okay. The only thing you know is what
13 you heard or somebody told you?

14 THE WITNESS: And saw in the video. I saw him on the
15 surveillance video.

16 THE COURT: You saw him on the surveillance video
17 with the crutches?

18 THE WITNESS: Crutches, yes.

19 THE COURT: Okay. Other than that, you don't know
20 anything about it personally?

21 THE WITNESS: I've never seen him personally, never
22 met him.

23 THE COURT: Okay. I can't ask him about what
24 somebody told him, which would be hearsay.

25 MR. DIGIACOMO: I just want him to go to the last

1 page of 304.

2 FOLLOW-UP EXAMINATION

3 BY MR. DIGIACOMO:

4 Q Do you still have 304, Job's 512 record up
5 there?

6 A Yes, I do.

7 Q Mr. Sgro just suggested that one of the phones
8 on the 13th inside the apartment was the 512 number. Do you
9 remember those questions just being asked to you?

10 A Yes, I do.

11 Q Okay. Now, that phone is turned off on August
12 9th at about 11 o'clock in the morning; is that correct?

13 A That's correct.

14 Q And the towers that they're hitting off of are
15 towers that are somewhere in California?

16 A Yeah, of the serving area of 70 and 26291, if
17 I'm familiar -- right, that serving area is a California
18 serving area.

19 Q So that phone would've left presumably with Job
20 on the 8th into the 9th. You wouldn't expect it to be in the
21 apartment on the 13th?

22 A That's correct. Sorry. That's my oversight.

23 THE COURT: Anything further from anybody?

24 All right. Agent, thank you very much for being a
25 witness. You'll be excused. Have a good day.

1 THE WITNESS: Thank you, Your Honor. You, too.

2 THE COURT: Am I correct that that's your last
3 witness for today?

4 MR. DIGIACOMO: You are correct.

5 THE COURT: Okay. I have a criminal calendar
6 tomorrow morning, ladies and gentlemen. I hope to be able to
7 resume the trial at 9:30, which is -- I've got an 8:30
8 criminal calendar. I'm going to work really hard to try and
9 be back here and start at 9:30 in the morning, and that's when
10 you're going to start.

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, radio. You may
16 not form or express an opinion on any subject connected with
17 this case until it is finally submitted to you.

18 We'll be in recess until 9:30 tomorrow morning, and
19 I'll see you then.

20 (Jury recessed 3:58 p.m.)

21 THE COURT: The record will reflect that the jury has
22 exited the courtroom.

23 Anything further on the record tonight?

24 MR. LANGFORD: Nothing from Mr. Mason, Your Honor.

25 MR. ORAM: No, Your Honor.

1 MR. SGRO: I apologize, Your Honor. 9:30?
2 THE COURT: 9:30.
3 (Court recessed for the evening at 3:58 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

1 SAO
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #6955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 09 2015

BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 DAVID BURNS,
13 #2757610

14 Defendant.

CASE NO: C-10-267882-2
DEPT NO: 20

STIPULATION AND ORDER WAIVING SEPARATE
PENALTY HEARING

16 THIS MATTER being tried before a jury and pursuant thereto on 20th day of
17 January, 2015; the Defendant being represented by counsel, Christopher Oram and Anthony
18 Sgro, the State being represented by Deputies MARC DIGIACOMO and PAMELA
19 WECKERLY, and pursuant to the provisions of NRS 175.552, the parties hereby

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 stipulate and agree to waive the separate penalty hearing in the event of a finding of guilt on
2 Murder In the First Degree and pursuant to said Stipulation and Waiver agree to have the
3 sentence of LIFE WITHOUT THE POSSIBILITY OF PAROLE imposed by the Honorable
4 Charles Thompson, presiding trial judge.

5 FURTHER, in exchange for the State withdrawing the Notice of Intent to Seek the
6 Death Penalty, Defendant agrees to waive all appellate rights stemming from the guilt phase
7 of the trial.

8
9
10 DATED this 9 day of February __, 2015.


DAVID BURNS


11
12 DATED this 9 day of February __, 2015.


CHRISTOPHER ORAM
Nevada Bar #4349

13
14
15 DATED this 9 day of February __, 2015.

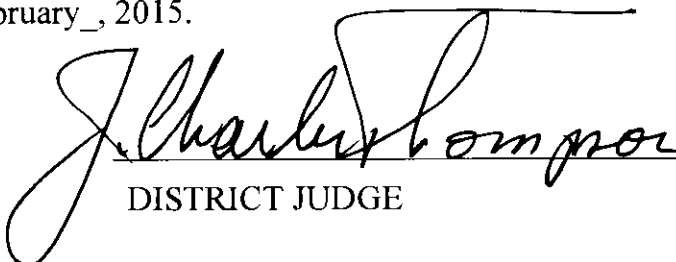

ANTHONY SGRO
Nevada Bar #3811

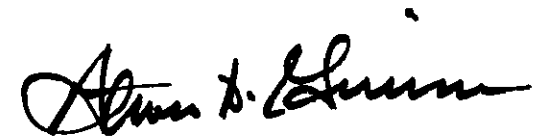
16
17
18 DATED this 9th day of February __, 2015.


MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #6955

19
20
21
22
23 IT IS SO ORDERED

24 DATED this 9 day of February __, 2015.

25
26
27
28

DISTRICT JUDGE



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.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 13

TUESDAY, FEBRUARY 10, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

I N D E X

WITNESSES FOR THE STATE:

CHRISTOPHER BUNTING

Direct Examination By Ms. Weckerly 8

Cross-Examination By Mr. Sgro 80

E X H I B I T S

STATE'S EXHIBITS ADMITTED:

PAGE

277 Drawing 33

280 Photo Lineup 45

163 through 169 Photographs 53

339, 341 - 343, and 345 Letters 72

1 **LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 10, 2015, 9:40 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: All right. Now, State of Nevada vs.
5 Burns and Mason. The record reflect the presence of counsel
6 only.

7 And I was advised you had something out of the
8 presence of the jury?

9 MR. ORAM: Yes, Your Honor. Exhibit 309, State's
10 Exhibit 309 were text messages that were introduced by the
11 State. You may recall, because we approached the bench, we
12 had to read them as quickly as possible.

13 As I look through them, there are some messages
14 between Tyler Mitchell and West, at least it's -- which is
15 Donovan.

16 THE COURT: Tyler Mitchell.

17 MR. ORAM: Tyler Mitchell, that's Monica Martinez's
18 daughter.

19 THE COURT: That's Monica Martinez's father. Okay.

20 MR. ORAM: Daughter.

21 MR. DiGIACOMO: Daughter.

22 MR. ORAM: Daughter.

23 THE COURT: Daughter?

24 MR. ORAM: Yeah.

25 MR. DiGIACOMO: She testified.

1 THE COURT: Oh, she testified? Yes, you're right.

2 MR. ORAM: If you want a [indiscernible] wrongfully,
3 I need to -- okay. And Donovan Rowland --

4 MR. LANGFORD: Wrongfully, I did my guy.

5 MR. ORAM: -- text messages between Donovan Rowland,
6 the embalming fluid band, okay. And -- and Tyler Mitchell.

7 And the text that they -- the text that they put in
8 on 309 are relative -- relevant. And they go up to a period
9 of 8/06, so right before the crime. Then there is this large
10 gap of six weeks. And in this large gap of six weeks,
11 starting on 9/25, so a month and a half after the -- the
12 crime, then there are these messages between Donovan Rowland
13 and Tyler Mitchell, which I would think are just irrelevant.
14 I've asked the State just to remove the first two pages,
15 because I can't see the relevance of Tyler Mitchell and
16 Donovan Rowland.

17 THE COURT: Do they have anything to do with the gun?

18 MR. ORAM: I've asked Mr. DiGiacomo what is the
19 relevance or what -- what is the --

20 THE COURT: Because that's -- he was primarily in --
21 because he disposed of the gun.

22 MR. ORAM: Right.

23 MR. DiGIACOMO: That's correct, Judge. I mean, I
24 offered them to establish Tyler Mitchell said she knew Donovan
25 Rowland as West, and she said she had contact with him in the

1 time period afterwards. There's contact between the two of
2 them. They want to now take out the contact. There's nothing
3 relevant in any of the actual text messages back and forth.
4 It's just like, Hey, how you doing, can I come talk to you?
5 You know, those type of things.

6 THE COURT: Well, there's no issue that --

7 MR. DiGIACOMO: Well, the --

8 THE COURT: -- they weren't associated somewhat.

9 MR. ORAM: No, we're not going to even argue that.
10 We'd even stipulate with them that they --

11 MR. DiGIACOMO: But, I mean, it's an admitted piece
12 of -- of evidence that wasn't redacted in front of the jury
13 that they're now asking me to redact that has nothing
14 prejudicial in it.

15 MR. ORAM: Well, Judge --

16 MR. DiGIACOMO: And so my response to them was no.

17 THE COURT: Was there something prejudicial in it?

18 MR. ORAM: Well, it -- do I see anything prejudicial?
19 I -- I don't necessarily. I just think that it's not
20 relevant. And when they say redact, that redacts it right
21 there. Now --

22 MR. DiGIACOMO: No. Because then we don't establish
23 contact between her and -- and West in -- in September, which
24 is relevant.

25 MR. ORAM: On September 25th?

1 MR. DiGIACOMO: Yes.

2 MR. ORAM: See, then, Judge, then it --

3 THE COURT: What -- I don't know when the gun was --

4 MR. ORAM: The next day -- or that night. They --
5 and then they found the gun within a few days. So I'm not
6 sure why the State is --

7 THE COURT: What's relevant in September?

8 MR. DiGIACOMO: To establish that Donovan Rowland is
9 still in town having contact with her. There's no suggestion
10 in there which the -- which the defense sort of suggested.

11 And you just -- did you just really -- really rip my
12 exhibit apart?

13 MR. ORAM: No, no. That's my exhibit.

14 MR. DiGIACOMO: Okay. And we asked her that. Like,
15 did you have -- did you -- do you know Donovan Rowland? Did
16 you -- did you have contact with him? Did you continue to
17 have contact? Yes.

18 We offered those, they looked at them, they didn't
19 object, and now they want to rip the exhibit apart.

20 THE COURT: Well, if it's not -- if it's not
21 relevant, we'll remove them.

22 MR. ORAM: Thank you, Judge.

23 THE COURT: All right. We'll remove those two pages.
24 I'll agree with that.

25 MR. ORAM: Thank you.

1 THE COURT: And you'll have to talk to the clerk
2 about physically doing that.

3 MR. ORAM: Okay. It -- it would just be the first
4 two pages, Linda.

5 THE COURT: She can do that with a staple remover
6 rather than tearing it the way you do it.

7 MR. ORAM: You didn't see the way I did it? You just
8 -- just --

9 THE COURT: She's -- she's much better than you are.

10 MR. ORAM: I thought it was pretty good.

11 THE COURT: All right. Anything further on the
12 record?

13 MR. LANGFORD: Nothing from Mr. Mason.

14 THE COURT: Off the record.

15 (Court recessed at 9:44 a.m., until 10:00 a.m.)

16 (In the presence of the jury.)

17 THE COURT: All right. State vs. Burns and Mason.
18 The record reflect the presence of the defendants, their
19 counsel, the district attorneys, and all members of the jury.

20 Good morning, ladies and gentlemen. Sorry for the
21 delay this morning. And I can tell you it was not the fault
22 of any of these lawyers.

23 All right. We are still in the State's case in
24 chief, and the State can call their next witness.

25 MS. WECKERLY: The next witness, Your Honor, is

1 Detective Bunting.

2 CHRISTOPHER BUNTING, STATE'S WITNESS, SWORN

3 THE CLERK: Please be seated. Please state your name
4 and spell your first and last name for the record.

5 THE WITNESS: Christopher Sean Bunting,
6 C-H-R-I-S-T-O-P-H-E-R B-U-N-T-I-N-G.

7 DIRECT EXAMINATION

8 BY MS. WECKERLY:

9 Q How are you employed, sir?

10 A With the Las Vegas Metropolitan Police
11 Department.

12 Q How long are -- or how are you currently
13 assigned?

14 A I'm currently in search and rescue.

15 Q Ad how were you assigned in 2010?

16 A With the homicide section.

17 Q Where did you work before homicide?

18 A I worked in major crimes and violent crimes for
19 four years, and then previous to that, Problem-Solving Unit
20 and Patrol.

21 Q And so how long in total have you worked for
22 Metro?

23 A Little over 15 years.

24 Q And you were in homicide, obviously, in August
25 of 2010, then?

1 A Yes, ma'am.

2 Q On August the -- the 7th, did you respond to a
3 crime scene on Meikle Lane?

4 A Yes, ma'am.

5 Q And can you explain to the members of the jury
6 how it is that homicide is notified to respond to a particular
7 scene?

8 A Yes. Essentially, we receive a call from our
9 sergeant notifying us that there's a -- a homicide. And then
10 we respond as a squad, or sometimes multiple squads, depending
11 on the type of homicide. And we respond to the scene. And at
12 the scene we receive kind of a general idea of what took place
13 from the patrol officers that responded to that scene
14 originally.

15 Q And so you wouldn't have been the only homicide
16 detective that responded to that scene?

17 A No, ma'am.

18 Q We -- Detective Jensen responded?

19 A Yes, ma'am.

20 Q And also Detective Wildemann?

21 A Correct.

22 Q When -- when you get to the scene, I think you
23 kind of implied this in your answer, patrol has already been
24 at the scene and the residence is taped off; is that fair?

25 A Yes, ma'am. It's -- the scenes are almost

1 always secure by the time we get there.

2 Q Okay. And then when homicide gets there, how
3 are the investigative duties divided amongst the detectives?

4 A There's usually one detective that will be the
5 primary at the scene or that will handle the scene itself and
6 work along with the crime scene analyst. There's detectives
7 that are also assigned to conduct interviews with witnesses.
8 If there's videos and things of that nature, then they'll also
9 be instructed to -- to do those, or obtain those, as well.

10 Q What was your initial responsibility?

11 A Mine was the scene.

12 Q And so obviously you did a walkthrough of the
13 scene yourself?

14 A Correct.

15 Q Can you describe for the members of the jury
16 just generally what the scene was?

17 A Well, the scene consisted of a quadriplex, kind
18 of a four-apartment building structure. The lower -- which
19 was a two-story building -- the lower left side, or on the
20 west side downstairs was Apartment A, which was the location
21 of the scene in this case. Inside of the front door there was
22 an open living room, dining room, and a kitchen that was kind
23 of all open in one general area.

24 It also consisted of a -- a hallway that ran north
25 from that area to two bedrooms, one being on the northwest

1 side, which was the children's bedroom. The master bedroom
2 was on the northeast corner of the apartment, which had an
3 adjoining bathroom attached to it.

4 In the hallway on the left-hand side or the west side
5 was also a second bathroom. And on the right-hand side there
6 was a laundry room, as well.

7 Q Now, we're going to put on the screen what's
8 been admitted as State's 14. What are we looking at in
9 State's 14?

10 A This would be the south side of 5662 Meikle.

11 Q And would that be how the scene appeared on the
12 morning that you arrived?

13 A Correct. Probably a little darker.

14 Q Little darker. Now, can you -- you can actually
15 write on the screen with your finger. Can you indicate for
16 the jury what apartment was the one at issue?

17 A Right here on the lower left-hand side.

18 Q And you described the interior of the scene.
19 I'm going to put up State's 13, please. What are we looking
20 at in State's 13?

21 A This would be a diagram of Apartment A.

22 Q Okay. And can you orient the jury just a little
23 bit where the front door would be on this exhibit?

24 A So the front door is right there.

25 Q Okay. And when you did -- did your initial

1 walkthrough of the scene, where -- I mean, what would you take
2 note of as a detective as to what areas of the scene might be
3 important or might contain relevant evidence?

4 A Well, we -- I mean, we definitely reviewed the
5 -- looked through the entire apartment. Obviously, initially
6 the front room was pretty significant, because Ms. Derecia
7 Newman was positioned on the couch. She had obviously
8 sustained a -- a gunshot wound to the left side of her face.
9 There were also bullet fragments on floor in the living room.
10 In her possession in her hand she had -- she was gripping a
11 \$20 bill.

12 There were also a number of bullet strikes throughout
13 the apartment. Initially in the -- the kitchen -- is it okay
14 if I --

15 Q Yep. You can write on there.

16 A Right there is the refrigerator in the kitchen
17 area. And the -- the right side of that -- well, right there
18 on the right side of that refrigerator was an apparent bullet
19 strike there to the rear. So it had gone through the right
20 side of the refrigerator, exited out the -- the rear of the
21 refrigerator, and then hit right around there on the left or
22 west side of the hall, where there was another impact. There
23 was also an impact on the -- on the north wall, as well.

24 On the inside, or the opposite side of that wall is
25 the -- the children's closet. And this -- this structure

1 right here is a dresser. The -- it appeared that the bullet
2 had gone through that wall, struck that dresser, fragmented,
3 and then fell to --

4 MR. SGRO: Objection, Your Honor. Foundation. He's
5 talking about travel paths of bullets, fragment potentials. I
6 don't know this man has any sort of experience in ballistics.

7 THE COURT: I think you can cross-examine on it.
8 Overruled.

9 BY MS. WECKERLY:

10 Q You've been to shooting scenes before?

11 A Hundreds.

12 Q Okay. And I would imagine in these hundreds of
13 scenes, you've seen bullets and bullet fragments?

14 A A number of times.

15 Q So when you looked at this scene, it was -- it
16 was apparent to you what you saw was trajectory of bullets and
17 various bullet fragments and other forensic evidence
18 associated with a shooting?

19 A Yes, ma'am.

20 Q Okay. So you -- when you go into the scene, you
21 see, as I understand it, a -- a pathway that kind of starts at
22 the refrigerator and goes down that wall on the left side of
23 our diagram?

24 A Correct.

25 Q Okay. And then there's a pathway to -- to

1 another wall, but on the other side of that wall is the
2 closet?

3 A Yes, ma'am.

4 Q Okay. And what other -- what other observations
5 did you make about the -- the trajectory of bullets at this
6 scene?

7 A There was a vacuum. Actually, it's on here,
8 right there, or alongside that. The handle of that vacuum had
9 an apparent bullet strike, as well, through the handle. Both
10 an entrance and an exit through that handle. There was --
11 later there was also two holes on this wall to the right of
12 the other ones on the north end of the -- the hallways. The
13 -- the little square that's just above that would be where the
14 TV was located. And there was also holes in the TV, as well,
15 on the south side of that TV.

16 The foot end of the bed, right about there, was also
17 in another apparent bullet strike. And then there was, on the
18 window --

19 I'm not sure what happened there. I'll try that
20 again.

21 Okay. Right above the X -- that keeps popping up,
22 that's actually a window. And there was two pieces of fabric
23 that were over that window. There was a hole in the front, or
24 the closest part of that fabric. And a bullet was sitting on
25 a crate beneath that. So it appeared that it had struck the

1 -- the foot end of the bed, ricocheted up into the first
2 fabric, caught by the second fabric, then the bullet dropped
3 and was located on a crate just below that window.

4 Q And can I interrupt you one second. Did -- did
5 that seem unusual to you at all that, like, a bullet, wouldn't
6 it be able to penetrate fabric or, you know, have ricocheted
7 up or anything like that?

8 A Well, bullets -- bullets definitely do strange
9 things, things you wouldn't think they would. And having --
10 having lost its momentum by going or hitting other objects
11 will typically slow it down. And so it's -- it's interesting,
12 but it's not uncommon for -- for things like that to happen.

13 Q Was there any other bullet hole or trajectory
14 that you noticed in the residence?

15 A There was also a hole in the bathroom door. And
16 then alongside the bathroom wall, which appeared that a shot
17 had been fired through the bathroom door, penetrated the door,
18 and then entered into the -- the bathroom wall.

19 Q Okay. And so in your assessment of the scene,
20 how many independent, I guess, shots did you assess from the
21 scene?

22 A Well, it appeared to me that there had been six
23 shots that were fired, when you include the -- the shot that
24 was -- or the injury that was sustained by both Devonina and
25 Derecia Newman.

1 Q Okay. And obviously the -- the projectile was
2 recovered from Derecia Newman at autopsy, that would be one?

3 A Correct.

4 Q And then there was one recovered from Devonia
5 from the hospital, so that's two?

6 A Correct.

7 Q And then on our diagram, could you explain the
8 other ones?

9 A So the -- the first one would be, as she stated,
10 Derecia Newman would have sustained the first gunshot. The
11 second one penetrated the refrigerator, exited the
12 refrigerator, kind of skimmed down the wall. It didn't
13 actually penetrate the wall, but it caused a divot and it --
14 and then traveled north through the north hall wall into the
15 dresser, and that would be No. 2.

16 Q 3.

17 A I'm -- I'm sorry, No. 3. Excuse me. The --
18 well, counting in 1, 2, going down the hall, so Derecia's No.
19 1; the refrigerator down the hall would be No. 2; the one at
20 the end of the -- to the right side of the hall would be No.
21 3; 4 would be off the bed and into the -- towards the window;
22 5 would be through the door into the wall; and then 6 would be
23 the shot that was sustained by Devonia.

24 Q Okay. And in your experience with the -- the
25 hundreds of shootings that you've been to and investigated at

1 crime scenes, when you went into this scene and you saw the
2 damage that had been done to both Derecia Newman and the walls
3 of the apartment, did you look for casings or anything like
4 that in the apartment for additional firearms evidence?

5 A We did. There were no cartridge cases that were
6 found inside of the residence, which obviously indicated to us
7 that it was a revolver that was used.

8 Q And can you explain to the members of the jury
9 why no casings would indicate a revolver?

10 A A -- a semiautomatic firearm, when you shoot it,
11 the cartridge of the bullet exits the cartridge case, and the
12 cartridge case gets ejected out the side of the firearm. So
13 typically in a number of those shootings, you'll have
14 cartridge cases lying on the ground, which also indicate where
15 the individual was when they shot and things of that nature.

16 With a revolver, there is no ejection of the
17 cartridge or the cartridge case after that bullet's been
18 fired. And that cartridge case remains in the cylinder or the
19 wheel of that type of a handgun. So it stays with the handgun
20 unless it's -- it's actually empty.

21 Q And you account for six shots in this scene?

22 A Correct.

23 Q Six -- six fired shots. Now, when you went
24 through the scene, did you look in the -- like, on our diagram
25 there's a kitchen area and there's also sort of a -- it looks

1 like a couch behind where the victim, Derecia Newman, was?

2 A Correct.

3 Q Did those seem disturbed or at issue, or did you
4 make any notation about how those areas of the residence
5 appeared?

6 A Well, we documented those areas, but there was
7 -- the -- there was no necessary evidence that was in those --
8 in those areas, the kitchen or the -- the dining room area.
9 So the most -- all the evidence that -- that we determined was
10 in the front living room where Ms. Derecia was -- Ms. Derecia
11 Newman, in that hallway, in the kitchen, just the
12 refrigerator. So. And in the -- into the hallway and the two
13 bedrooms and the master bathroom.

14 Q Okay. And in terms of the bedrooms where the
15 two bunk beds are, which are in the upper left-hand corner,
16 aside from the ballistic evidence and the -- the projectile or
17 fragment recovered in the closet, was there anything else of
18 note in that room?

19 A No.

20 Q Okay. And so -- and how about that bathroom
21 that's on the, I guess, left-hand side of the diagram;
22 anything of note in there?

23 A There were some -- some ashes in the -- in the
24 bathtub that indicated that somebody was in the -- smoking,
25 obviously, in the -- in the bathtub or next to it. And then

1 obviously the -- the hole in the door and the wall.

2 Q Okay. I think we miscommunicated. In the other
3 bathroom, though, was there anything --

4 A Oh, I'm sorry, in the hallway bathroom.

5 Q Yes.

6 A No, ma'am, there was nothing in there.

7 Q Okay. So we'll get to the other bathroom in one
8 second. In the -- in the master bedroom, what were your
9 observations at the scene with regard to the master bedroom,
10 just generally?

11 A Well, other than the -- the strikes, which I had
12 mentioned before, there was drug paraphernalia inside of the
13 master bedroom, including I believe it was a pipe, a scale.
14 There was also some marijuana in -- in that -- in that room,
15 as well as some small white rock, which is consistent with
16 crack cocaine.

17 Q And the master bathroom, I think you just
18 described it, but just so we're clear, what was in the master
19 bathroom?

20 A There were some ashes in the -- in the tub, in
21 the master bathroom. And once again, there was the strikes to
22 the doorway in the master bathroom, as well as the wall.

23 Q Now, at the time you arrived, had Devonia Newman
24 been transported to the hospital?

25 A She had.

1 Q So you did not see her at the scene?

2 A No, ma'am.

3 Q Obviously, Derecia Newman was present when you
4 arrived?

5 A Correct.

6 Q When you arrive and you're the scene detective,
7 are you the primary detective on the case?

8 A Yes, ma'am.

9 Q Okay. Was Cornelius Mayo present when you were
10 there?

11 A He was.

12 Q Did you have any direct contact with him?

13 A I know I remember seeing him there, but I was
14 not one of the detectives that conducted an interview with him
15 at that time.

16 Q At that -- that morning?

17 A Right.

18 Q Do you know whether a gunshot residue kit was
19 taken from Mr. Mayo that morning?

20 A It was.

21 Q Was that done at your direction?

22 A No.

23 Q Is it typical for a gunshot residue kit to be
24 administered to someone at -- at a homicide scene?

25 A Yes, ma'am.

1 Q Okay. Would you have been the one that decided
2 whether or not to submit that for later testing?

3 A For testing, yes, ma'am.

4 Q And did you submit it?

5 A No.

6 Q Why not?

7 A Well, gunshot residue is typically used when
8 somebody denies being in an area that -- that a firearm has --
9 has been shot. So we already knew that Mr. --

10 MR. SGRO: Objection to what we knew. He can testify
11 to what he believed or what he thought. Calls for hearsay.

12 THE COURT: Well, if -- if you're referring to we,
13 yes, what he did.

14 MS. WECKERLY: Okay.

15 BY MS. WECKERLY:

16 Q Based on what you knew that -- well, that
17 morning, and I guess in the ensuing investigation, why didn't
18 you submit for the gunshot residue test?

19 A Well, I knew --

20 Q You could have done it, right? Any year?

21 A Absolutely. Yeah. I could have submitted to
22 have it tested, but I already knew that he was inside the
23 residence. And you don't necessarily have to be firing a -- a
24 weapon or a firearm in order to get gunshot residue. So if I
25 were to shoot in this room right now and you're present and in

1 this room, there's a high likelihood that you're going to get
2 gunshot residue on your person. So proving that he was inside
3 the residence was already done, because he admitted to being
4 inside the residence. So.

5 Q Okay. Is it because --

6 A And in the room.

7 Q I mean, the test is not particularly sensitive
8 as to who was firing a gun versus who was around when a gun
9 was fired?

10 A Correct.

11 Q At the time you arrived at the scene, did you
12 have an opportunity to listen to the 911 call made by Mr.
13 Mayo?

14 A At the scene?

15 Q Yes.

16 A I don't recall if we had it played at the scene.
17 We do have that capability. I -- I can't remember if I
18 listened to it specifically myself that day or not.

19 Q You've since, and likely in preparation for your
20 testimony, you've heard the 911 call that he made?

21 A Yes, I have listened to the 911 call on more
22 than one occasion.

23 Q When you -- when you hear the call, can you hear
24 whistling in the call?

25 A Yes, ma'am.

1 Q And is there whistling at the same time Mr.
2 Mayo's talking?

3 A There is.

4 Q How long after Mr. Mayo made that 11 -- 911 call
5 did the first patrol officer arrive?

6 A I believe it was approximately three minutes.

7 Q Based on your observations of the scene, did it
8 appear that the drug paraphernalia had been moved out of it
9 prior to the police arriving?

10 A There -- it had definitely been disturbed, for
11 sure. I mean, there was -- you could see it on the ground
12 next to the -- the right side of the bed, the nightstand.

13 Q But there -- it was still present, right? I
14 mean, there was rock crack?

15 A They -- there was obviously -- obviously drugs
16 inside of the residence in that room. Yes, ma'am.

17 Q And the level of disturbance in the master
18 bedroom, how would you -- how would you describe it? Like,
19 you said there was crack cocaine in there. Where would that
20 have been just generally on our diagram?

21 A So on the -- on the right side of the bed or the
22 head of the bed, right there, is a -- is a nightstand. On the
23 floor right at the base of that nightstand, and actually
24 there's -- looks like there's a green mark to the side of the
25 bed, there is -- on that floor area right there, there was a

1 plate that appeared to have been pushed off that nightstand,
2 as well as some of those -- basically, it turned out being
3 crack cocaine on the floor in that area.

4 Q After -- let me ask you this. How soon after
5 your arrival do you become aware of the name Stephanie
6 Cousins?

7 A I believe we received that during our initial
8 briefing. So pretty much right away.

9 Q Okay. So right away when homicide gets there,
10 the name Stephanie Cousins is involved in the investigation;
11 is that fair?

12 A Yes -- yes, ma'am.

13 Q Did you speak to Ms. Cousins that morning?

14 A Not that morning, no.

15 Q Okay. Other officers went and spoke to Ms.
16 Cousins?

17 A Correct.

18 Q Based on that investigation, did you later apply
19 for a pen register?

20 A Yes, ma'am.

21 Q And what number was that on; do you remember?

22 A Whose -- whose number it was?

23 Q Yes.

24 A Willie Mason's.

25 Q And that's with the 909 area code?

1 A Correct.

2 Q Can you explain to the members of the jury what
3 a pen register is?

4 A Essentially, that's a request to obtain cell
5 information, which covers what calls were made, who they were
6 made to. So it provides us with other numbers that they
7 contacted. It also provides us with cell tower data, which
8 can give us the location of individuals at different times
9 that they either text or make phone calls, or when people call
10 or text them, as well as incoming and receiving, and can give
11 us real-time information of where individuals with that phone
12 are.

13 Q So you can see numbers dialed in or out and you
14 can see location based on cell towers?

15 A Yes, ma'am.

16 Q You can't hear conversations, obviously?

17 A No. No.

18 Q And is that pen register something that's signed
19 by a court and then I guess given to a phone company to
20 produce the information?

21 A Correct.

22 Q When you -- you did that initial pen register
23 for Willie Mason's phone, did you also do a subsequent one?

24 A We -- we did obtain further cell information
25 data from other phone numbers. Yes, ma'am.

1 Q Was one of the phones that you got further data
2 on one that you eventually identified to Jerome Thomas or
3 Job-Loc?

4 A Yes, ma'am.

5 Q Based -- based on those pens, did an address at
6 the Brittnae Pines Apartment become relevant in the
7 investigation?

8 A Yes, ma'am.

9 THE COURT: Hold on just a second. We're going to
10 give one of the jurors some water.

11 MS. WECKERLY: I'll hold on. Do you want me to keep
12 going?

13 THE COURT: Hold on.

14 MS. WECKERLY: Okay.

15 (Pause in proceedings)

16 BY MS. WECKERLY:

17 Q Can you explain to us how that -- or the phone
18 data that you got, how that address came to be important in
19 the investigation?

20 A Well, eventually we determined that -- that all
21 the -- well, that Willie Mason, Mr. Burns, Mr. Thomas, and Mr.
22 Martinez had all been inside of that residence.

23 Q And in your investigation initially, were you
24 aware of whose apartment it was?

25 A I'm sorry, say that one more time?

1 Q Initially, when you identified that apartment as
2 being important in -- in the investigation, did you know whose
3 apartment it was or who it belonged to or who it was
4 associated with?

5 A Mr. Thomas.

6 Q Okay. Based on the investigation regarding Ms.
7 Cousins and the information you got from the two pen
8 registers, is that how you all come onto the name Monica
9 Martinez as someone who might be involved in this crime?

10 A Yes, ma'am.

11 Q Prior to your contact with Ms. Martinez, did you
12 speak with the surviving victim, Devonian Newman?

13 A Yes, ma'am.

14 Q Can you explain to the members of the jury when
15 that interview took place; when would that have been?

16 A It was the day after the murder.

17 Q And where was she?

18 A She was at the hospital, UMC.

19 Q And did you go by yourself or did you go with
20 another detective?

21 A By myself.

22 Q And when you went up to talk to her, was there
23 any hospital staff who told you you can or can't talk to her,
24 or was there any issue with you speaking with her?

25 A There was no issue with me speaking with her.

1 Typically, anytime that we go into a hospital setting, we
2 inform them, Hey, we're going to be in this room conducting an
3 -- an interview, is -- is that okay? And, you know.

4 Q When you -- when you spoke to Devonian, how --
5 how would you have -- how would you have described her
6 physically in terms of medical apparatus? Was she intubated
7 or was she not or --

8 A No. Well, she definitely wasn't intubated,
9 because she wouldn't be able to speak. But she had obviously
10 received medical care and was currently under medical care.
11 She was obviously in pain and uncomfortable.

12 Q And I'll put on the overhead State's 250. Is
13 that just a photograph of Devonian at the hospital?

14 A Yes, ma'am.

15 Q When you -- when you went to speak with her, did
16 -- did you bring a recording device?

17 A I did.

18 Q And where did you place it in order to pick up
19 her voice?

20 A Well, as close as I could. Anytime you do an
21 interview in a hospital, it's a little difficult just because
22 of the noise with all the machines and things of that nature.
23 So in this case, I put it as close as possible. Especially in
24 her case, because I knew it was going to be difficult for that
25 to get onto the recorder, because of the noise and the

1 condition that she was in.

2 Q And the fact that she was a child, I mean, she's
3 probably not the youngest person that you've interviewed, but
4 given her age were there extra steps that you tried to take in
5 conducting the interview?

6 A Well, yeah. You try and -- I mean, in this
7 case, try and -- because it's -- once again, that recorder, I
8 was concerned that it wasn't going to pick up what she was
9 saying. So in an effort to ensure that I kind of knew what
10 she was saying and that it was going to be on the recorder, is
11 every time that she would say something, I would repeat that
12 back and -- and to confirm it, essentially. And sometimes she
13 didn't -- she would say yes, and other times if I misspoke she
14 would correct me.

15 Q And we'll play that interview which --
16 [indiscernible.]

17 MR. DiGIACOMO: 291.

18 BY MS. WECKERLY:

19 Q 291.

20 (Audio/Video played.)

21 BY MS. WECKERLY:

22 Q Okay. Why is it important to you to interview
23 her right away?

24 A I was concerned that she was going to pass away.

25 Q Were you concerned about her -- her memory at

1 all, her ability to recall events?

2 A Well, we want to talk to anybody as soon as
3 possible, the longer time goes by, the -- you know, the harder
4 it is for people to remember the account of what takes place.

5 Q Now, obviously, in the background we can hear
6 medical equipment. Is that the -- there's certain, like,
7 tones and sounds?

8 A Yes, ma'am.

9 Q Okay. And her -- there was points where you
10 were telling her to breathe. Can you describe why you were
11 doing that or to calm down or?

12 A Yeah. So there -- when you're in a hospital, a
13 lot of times they put up pole socks, which measures the amount
14 of oxygen in your blood. And as that decreases, the alarm
15 goes off to alert medical staff. I actually have history with
16 those, so I knew what it was doing. So I asked her to breathe
17 to increase that -- that oxygen in her blood, so that it would
18 stop that -- that alarm.

19 Q At the time you interviewed her, did you have
20 any of your pen register information yet showing the
21 information you later learned of -- from phone calls amongst
22 various individuals?

23 A By the time of Devonia's? No.

24 Q Did you have any video recovered from the Opera
25 House or Greyhound?

1 A No.

2 Q Anywhere in that interview did you hear Devonian
3 or take what she was saying to mean that Cornelius Mayo had
4 shot her?

5 A No. She says that she was in the bathroom with
6 him as she was struggling with a burn. So, no.

7 Q Okay. And at the -- can you describe her, I
8 guess her physical state at the end of the interview?

9 A Well, she was definitely fatigued. She was wore
10 out.

11 Q After -- after that interview, or sometime after
12 that interview, you made contact with Monica Martinez?

13 A Correct.

14 Q And sort of in the -- we'll talk about that in a
15 minute, but in the ensuing investigation, you -- you go back
16 to Devonian one more time later in the investigation; is that
17 fair?

18 A Yes, ma'am.

19 Q Can you describe approximately how much later
20 that was?

21 A I believe it was about three or, no, it would
22 have been about five -- about five weeks later, I believe.

23 Q How many times in this investigation did you
24 talk to her?

25 A Twice.

1 Q And when you went back the second time, we'll
2 get to it, but was that to show her a photographic lineup?

3 A Yes, ma'am.

4 Q Sir, I'm showing you what's been marked as
5 State's 277; do you recognize what that is?

6 A I do.

7 Q What is that?

8 A That's a drawing that Devonia drew for me.

9 Q And was that drawn in the hospital?

10 A It was.

11 Q And were you -- you were, I guess, you
12 witnessed, personally, her draw that?

13 A I did.

14 Q Would you have asked her to make that drawing or
15 do the drawing?

16 A Yes.

17 Q And what -- what were you asking her to draw?

18 A When she mentioned -- I just wanted to clarify
19 that we were talking about the same thing, when she mentioned
20 overalls, that I -- I just wanted her to describe those to me.

21 Q And did you provide her the piece of paper?

22 A I did.

23 Q And is this the actual piece of paper she drew
24 on?

25 A It is.

1 MS. WECKERLY: State moves to admit 277.

2 MR. LANGFORD: No objection, Your Honor.

3 MR. SGRO: No objection.

4 THE COURT: It'll be received.

5 (State's Exhibit 277 admitted.)

6 MS. WECKERLY: And may I have that switched over to
7 the overhead, please.

8 BY MS. WECKERLY:

9 Q So State's 277 is her drawing years and years
10 ago, I mean, back in August, September 2010 of the -- of the
11 overalls?

12 A Correct.

13 Q Now, after --

14 MR. SGRO: I'm sorry, exhibit number?

15 MS. WECKERLY: 277.

16 MR. SGRO: Thank you.

17 BY MS. WECKERLY:

18 Q After you make contact with Devonia, you later
19 talk to Monica Martinez; it's not the same day, but I guess a
20 few days later?

21 A Yes, ma'am.

22 Q Explain to us where you made contact with Ms.
23 Martinez?

24 A At her place of employment.

25 Q And was that, like, Novum Pharmaceuticals?

1 A Pharmaceutical, yes, ma'am.

2 Q When you got to that location, did you
3 immediately make contact with Ms. Martinez, or did you -- did
4 she have to be called up to the front and that sort of thing?

5 A She had to be called up to the front. We went
6 to the front desk and basically requested to speak with her.

7 Q Were -- and then you're saying we, so you were
8 with someone else?

9 A Detective Wildemann.

10 Q And were you dressed like you are today, or how
11 were you dressed?

12 A Similar. Probably without the jacket. A dress
13 shirt and slacks. Something along those lines.

14 Q Not as nice? When you made contact with Ms.
15 Martinez, did you ask her to come and speak with you and
16 Detective Wildemann?

17 A Yes, ma'am.

18 Q She agreed?

19 A She did.

20 Q How -- where did you go -- where did you take
21 her to talk to you all?

22 A We asked her to come back to our office to an
23 interview to -- to conduct the interview.

24 Q And did she drive her own car there?

25 A No. She drove with us.

1 Q Okay. When you got to the -- I guess it would
2 be the homicide offices?

3 A Correct.

4 Q And was she put in the interview room?

5 A She was.

6 Q Was she handcuffed?

7 A No.

8 Q When you -- when you first encountered Ms.
9 Martinez, I guess on the ride from her place of employment to
10 homicide, how would you describe her -- her demeanor?

11 A She was definitely nervous. She was a little
12 agitated, I would say, is a good word.

13 Q Is agitated like aggressive? Or is agitated --
14 I mean, what do you mean by that?

15 A Well, you know, she was in a bad situation,
16 because she knew what she did and she --

17 MR. SGRO: Objection, Your Honor. The question is
18 what was her --

19 THE COURT: Sustained.

20 BY MS. WECKERLY:

21 Q How would you describe -- like, was she
22 physically, I guess, moving around, or was she saying things?

23 A Defensive.

24 Q Defensive?

25 A Defensive.

1 Q When she gets to the homicide offices, is her
2 demeanor -- does it change at all initially?

3 A No.

4 Q Once you get -- once you get her in the
5 interview room, it's you and Detective Wildemann who conduct
6 an interview with her?

7 A Correct.

8 Q And we've actually seen that interview played.
9 In total, how much time was she there?

10 A I believe it was close to -- like, total time at
11 the office, maybe 11 hours.

12 Q Okay. And so it's --

13 A 12 hours.

14 Q -- it started during business hours and ends
15 later in the evening?

16 A Correct.

17 Q Is that an unusually long interview?

18 A That's pretty long.

19 Q During the interview, does she initially deny
20 having any knowledge about the events?

21 A She does.

22 Q And some time after that, she gives you I guess
23 what I would call varying accounts of what happened?

24 A Yeah. She -- she went through what I would
25 consider to be the typical process of an interview of any

1 suspect, for sure.

2 Q During the interview, we've seen the -- the
3 videotape of it, at -- later in the interview, you and
4 Detective Wildemann are showing her photographs of various
5 individuals; do you recall that?

6 A I do.

7 Q And who -- who were you showing her pictures of?

8 A There was a lot of people. I believe Mr. Mason,
9 Jerome Thomas, Albert Davis, I believe Ms. Cousins, as well.
10 I think Mr. Clinkscale. And I can't recall if there was
11 others in there.

12 Q And when you say Albert Davis, we now know --
13 like, you were showing the real Albert Davis, not who -- not
14 Jerome Thomas, right?

15 A Correct. Yes, ma'am.

16 Q Okay. And you also showed her a picture of
17 Jerome Thomas?

18 A I believe so. Yes, ma'am.

19 Q At that time did you have a picture of -- at all
20 of David Burns?

21 A Not during that interview, no.

22 Q At the conclusion of that interview, was she
23 arrested?

24 A She was.

25 Q And so she -- then she was booked into CCDC?

1 A Yes, ma'am.

2 Q Detention Center? Sometime after I guess that
3 she was booked in and she was appointed lawyers. Did you meet
4 with her again and myself and Mr. DiGiacomo and her attorneys?

5 A Yes, ma'am.

6 Q And what was the purpose of that meeting?

7 A Well, wanted more information on Jerome Thomas's
8 involvement in the incident.

9 Q Did you want to charge him with murder in this
10 case?

11 A I did.

12 Q And were you successful in doing that?

13 A Not for the murder charge. No, ma'am.

14 Q The murder. When you were speaking with her in
15 the first interview, the 12-hour -- the 12-hour one, did she
16 give any information about the location of the gun?

17 A No.

18 Q Did she give information about other locations
19 that weren't known to you yet in terms of the investigation?

20 A The Brittnae Pines Apartment, she had brought
21 that location up, saying that Mr. Thomas resided there and
22 that she believed that Burns and Mason would be there.

23 Q Did you know at the time you spoke to her that
24 there would be videotape at the Opera House?

25 A Did I know at the time I was initially speaking

1 to her?

2 Q Correct.

3 A No.

4 Q Okay. And that -- so that was something that
5 you didn't have in terms of your investigation?

6 A No. I had no idea about the video yet.

7 Q And did she tell you other locations that she,
8 Mr. Burns, and Mr. Mason went to shortly before the incident?

9 MR. SGRO: I'm sorry, we in her first one or the
10 second one?

11 MS. WECKERLY: I'm sorry.

12 BY MS. WECKERLY:

13 Q In her first interview --

14 A Right.

15 Q -- did -- did she give you various locations
16 that she said she went to with Mr. Burns and Mr. Mason?

17 A Yes, ma'am.

18 Q And were those known to you prior to that first
19 interview with her?

20 A Well, she -- during that interview, yes. Prior
21 to speaking with her, no.

22 Q Okay.

23 A No idea.

24 Q After she gives that interview and she's booked
25 into the detention center, did you make any effort as a

1 detective to try to verify what she had said?

2 A Pretty much everything that she said, yes,
3 ma'am.

4 Q Okay. So videotape was pulled, phone records
5 were requested, that sort of thing?

6 A Yes, ma'am. Essentially everything that she --
7 she stated, we were trying to confirm what she said. Whether
8 that was through video or cell tower or cell information.

9 Q Okay. And did she also -- did she also explain
10 that Mr. Thomas had changed his phone number?

11 A Yes, ma'am.

12 Q And did you go to her work and speak to a
13 colleague of hers?

14 A I did. I believe her name was Ms. Knight.

15 Q And that was to get the subsequent phone number
16 or verify that she had given it to her?

17 A Yes, ma'am.

18 Q Did you also get videotape from I guess the
19 Greyhound bus station based on what she had said?

20 A Yes.

21 Q At the point that you conclude the -- the
22 interview with -- the first interview with Ms. Martinez, who
23 was identified in the investigation?

24 A She did identify --

25 MR. SGRO: Objection. Your Honor, may we approach

1 briefly?

2 THE COURT: Sure.

3 (Bench conference.)

4 MR. SGRO: Your Honor, I don't necessarily want to
5 interrupt the flow. I'm assuming -- I had assumed until now
6 that these were simply foundational to go somewhere else. We
7 listened to -- painfully, by the way -- hours and hours of
8 this tape. To now go over again what we did in the --

9 THE COURT: The tape is the best evidence and that's
10 in evidence.

11 MR. SGRO: Exactly. But this is --

12 THE COURT: That's in evidence.

13 MR. SGRO: So it's --

14 THE COURT: You could ask him what he did next.

15 MS. WECKERLY: They're attacking her credibility, so
16 what she says that later turns out to be verified is relevant.

17 THE COURT: Then he can testify. It's easier if you
18 ask nonleading questions about, you know, based upon what she
19 told you, what did you do?

20 MR. SGRO: Exactly. So, I -- I --

21 MR. DiGIACOMO: As it relates to the [indiscernible].

22 MR. SGRO: I thought this was Ms. Weckerly's witness.

23 MR. DiGIACOMO: Sorry. That's just on video. He has
24 to say who [indiscernible].

25 THE COURT: I -- he's got to -- he's got to say where

1 -- where he went, what he did, and so on.

2 MR. SGRO: Our objection is that at this point it's
3 cumulative, it's violative of the best evidence rule.

4 MS. WECKERLY: I think it is, Judge.

5 MR. DiGIACOMO: The one thing that's not on the
6 videotape is when they're showing the pictures, who those
7 pictures are.

8 THE COURT: And that's fine. You can do that.

9 MR. DiGIACOMO: So that's what he's --

10 THE COURT: That isn't what you're doing.

11 MR. DiGIACOMO: -- testifying to right now, is who
12 does she identify to be in those pictures that you're putting
13 in front of her.

14 THE COURT: Okay. You can do that.

15 MR. DiGIACOMO: Who does she --

16 THE COURT: You can do that.

17 MS. WECKERLY: And if he can't tell who they are, he
18 can't tell who they are.

19 THE COURT: All right. Well, let's go.

20 MR. DiGIACOMO: Okay.

21 (End of bench conference.)

22 BY MS. WECKERLY:

23 Q So at the conclusion, after you've interviewed
24 Monica Martinez the first time, who are the suspects that
25 you've identified in this investigation, not based on her

1 interview, but in terms of your own investigation?

2 A Well, Cousins-- Ms. Cousins, Mr. Mason, and --
3 well, she confirms Jerome Thomas, so.

4 Q So you have his -- you have Mason's name, you
5 have Jerome Thomas's name, and you have Monica Martinez's
6 name?

7 A Correct.

8 Q And at that point in the investigation, had you
9 heard the nickname D-Shot?

10 A Yes.

11 Q And had you heard it from various witnesses in
12 different forms?

13 A Yes. There were various D-Shock, D-Shot, there
14 were -- yes.

15 Q Okay. Were efforts -- I mean, with that type of
16 nickname, or with that nickname, were you able to initially or
17 early on in the investigation associate that nickname with an
18 individual?

19 A Not initially, no.

20 Q And so what efforts were made to associate
21 D-Shot with an actual name?

22 A Well, we sent still photographs of the video.
23 We knew that the suspect --

24 MR. SGRO: Objection to what we knew, Your Honor.

25 THE COURT: Well, he's testifying what he on behalf

1 of his office did. So that's okay. Overruled.

2 Go ahead.

3 THE WITNESS: We sent those -- I sent those
4 photographs to the police department, members of the police
5 department in San Bernardino, where we knew -- I knew that --
6 that the suspects had come from in an effort for them to
7 locate associates of theirs in that area to see if we could
8 identify who was in that photo. We did a number of photo
9 lineups, as well. Some of which, a number -- a number were
10 negative that we did, and then ultimately were positive. And
11 that's how we identified him.

12 BY MS. WECKERLY:

13 Q Now, at -- okay. At some point you get a
14 photograph sent to you from San Bernardino essentially that
15 you put in a photographic lineup to show Monica Martinez,
16 Devonia, and Tyler Mitchell --

17 A Correct.

18 Q -- Monica's daughter. And -- and that was in an
19 -- that was an effort, I guess, to associate D-Shot with a
20 picture?

21 A Correct.

22 Q And showing you what's been admitted as State's
23 279. And then that one's 283, and State's Proposed 280.

24 With regard to 280, do you recognize what that is?

25 A I do.

1 Q And what is that?

2 A That's the photo lineup that was conducted with
3 Ms. Devonian Newman.

4 Q Okay. And there appears to be a signature on
5 the front of 280. Who -- who signed that?

6 A Devonian.

7 Q And there's other writing on the -- on the front
8 of it. Who wrote that?

9 A I wrote that.

10 Q On the second page, there is the photographic
11 lineup and then a circle and a name; who wrote that?

12 A Devonian.

13 MS. WECKERLY: State moves to admit 280.

14 MR. SGRO: No objection.

15 MR. LANGFORD: No objection.

16 THE COURT: Be received.

17 (State's Exhibit 280 admitted.)

18 BY MS. WECKERLY:

19 Q Now, I'm putting on the overhead, this would be
20 the photographic lineup, obviously, of Monica Martinez?

21 A Correct.

22 Q And there are instructions at the top of State's
23 283. Are those --

24 MR. SGRO: Your Honor, this is cumulative. Ms.
25 Martinez testified at length about this. Exhibit's already

1 been admitted.

2 THE COURT: It's an exhibit in -- in evidence. She
3 can testify -- he can testify to it. He took this
4 photographic lineup, I believe.

5 MS. WECKERLY: He did.

6 BY MS. WECKERLY:

7 Q Looking at 283, there are instructions that are
8 printed, I guess, on the actual -- the photographic lineup
9 document. Do you remember if Ms. Martinez read those or if
10 you read them to her?

11 A I don't recall which one of us read them.

12 Q Okay. And then there's a statement part of the
13 lineup where there's comments that says, "The picture I
14 circled and initialed by the person I know as D-Shot. I'm 100
15 percent sure."

16 A Correct.

17 Q Who wrote that?

18 A Ms. Martinez.

19 Q And then I'm going to flip to page 2 of that
20 document and there appears to be a circle and initials?

21 A Yes, ma'am.

22 Q Who would have written that?

23 A Ms. Martinez.

24 Q And so that's who she -- she circled as D-Shot?

25 A Correct.

1 Q And that was -- I'll just show you the date --
2 that was administered to her on the 16th of September --

3 A Yes, ma'am.

4 Q -- 2010? You also showed a photographic lineup
5 to Tyler Mitchell, her daughter?

6 A Correct.

7 Q And it looks like Tyler's was administered on
8 the 17th, so the next day?

9 A Yes, ma'am.

10 Q And then she would have -- we've gone over her
11 comments. But she -- she would have written the -- the
12 comments that are under the statement portion?

13 A Yes, ma'am.

14 Q Flipping to page 2 of State's 279; are those --
15 there's a circle and initials. Who wrote that?

16 A Ms. Mitchell -- Tyler.

17 Q Now, when you went to show Devonia the lineup,
18 were you by yourself or with another detective?

19 A Detective Kyger.

20 Q The top of Devonia's lineup has writing up here.
21 Would you have completed that?

22 A Yes, ma'am.

23 Q And it looks like it was shown to her on the
24 29th at 12:41, which is 10 --

25 A 12:41.

1 Q It's 12:41?

2 A On that one, yes, ma'am.

3 Q Okay. And then there's a statement that says
4 what?

5 A It says, "I believe it's Picture No. 5 because
6 of his eyes. I'm 10 percent sure he's the one who shot my
7 mom. I'm not sure."

8 Q Okay. And that -- and then it says that
9 "Statement written by Detective Bunting in Devonia Newman's
10 words, witnessed by Detective Kyger."

11 A Correct.

12 Q So did she say those actual words when she was
13 looking at the lineup?

14 A Yeah. Whenever we -- whenever we write somebody
15 else's statement on their behalf, we write it verbatim of
16 whatever it is that they say.

17 Q Okay. And when -- did she use the words "10
18 percent"?

19 A She did.

20 Q Okay. And did you ask her or have any further
21 conversation with her about what 10 percent meant?

22 A I did.

23 Q And what did she say?

24 A Well, she kind of struggled with what percent
25 was, which was -- honestly, was my mistake for asking her

1 percentage. That's just a habit we have with adults. So I
2 did that with her. And I could tell she really wasn't
3 grasping it. So I got into, well, that would be like an F in
4 grades. And -- and then she -- I believe she -- during the
5 course of this conversation, I think she said, Well, then 20
6 percent. I said, you don't have to change it. You know, just
7 kind of explained to her that, you know, you don't have to
8 change what you're saying. I just want to understand that you
9 understand. It was basically apparent to me that she didn't.
10 So we kind of stopped the whole percentage and grades issue.

11 Q Okay. But you wrote her comments about being 10
12 percent?

13 A I did.

14 Q At least initially?

15 A Yes.

16 Q And flipping to the second page of what's been
17 admitted as 280, that's -- is that her writing, the circle and
18 then the -- the name Devonia?

19 A It is.

20 Q Now, at some point you -- well, let me ask it
21 this way. Early on in the investigation, did you have any
22 possible murder weapon located?

23 A Early on? No.

24 Q There wasn't one at Monica's house?

25 A No.

1 Q Or at Job-Loc's Brittinae Pines apartment?

2 A No, ma'am.

3 Q And how did you go about locating the weapon?

4 A Well, we received a phone call, we being the
5 homicide office, received a phone call from I believe her name
6 is Ulonda Cooper. And she stated that Donovan Rowland had
7 come to her house, he was an acquaintance of her son, and had
8 attempted to sell them a firearm.

9 Q Based on that phone call, did you do any
10 investigative followup?

11 A I did.

12 Q What was that?

13 A Well, we identified Donovan Rowland.

14 Q And -- and up till that point in the
15 investigation, was Donovan Rowland a name that you had known?

16 A No, I don't believe so at that point.

17 Q Okay. Did you do any investigation, I guess,
18 prior to coming in contact with him to see if -- if you could
19 find out more about him?

20 A Well, we attempted to meet with Ms. Cooper.

21 Q Was that successful?

22 A No. No, it wasn't.

23 Q Okay. Did you eventually find a possible
24 residence for Mr. Rowland?

25 A We did.

1 Q Okay.

2 A Fountain Falls.

3 Q And was that where his -- a relative of his
4 lived?

5 A Yes. It was his grandmother and I believe his
6 father lived there, as well.

7 Q Okay.

8 A Definitely his grandmother.

9 Q Was the grandmother present when you went to
10 that location?

11 A She was.

12 Q Was Mr. Donovan Rowland present?

13 A He was not.

14 Q Later, do you get contacted about Mr. Rowland
15 being present, like, by his father?

16 A Correct. I believe his name is Terence, called
17 and notified us. We left -- we left our information there to
18 contact us in the event that Donovan returned to the
19 residence.

20 Q So eventually you get in contact with Mr.
21 Rowland?

22 A Yes, ma'am.

23 Q You interview him? Yes?

24 A Yes. Sorry.

25 Q Okay. Based on his interview, do you look

1 somewhere else for the -- for the gun?

2 A We did. He informed us that Anthony Lasseter
3 had possession of the gun, that -- that he had given it to
4 Lasseter.

5 Q And based on that information, did you try to
6 find an address for Anthony Lasseter?

7 A Yes, we did.

8 Q And once you had -- had that, did you -- did you
9 prepare a search warrant or did he give you consent to search?

10 A I think both his mother and he both gave us
11 consent --

12 Q And you were --

13 A -- to search the residence.

14 Q Then you searched the residence; does he tell
15 you where the gun is?

16 A Yes. He directs us to it. We didn't have to
17 search the whole residence. He directed us to his closet in
18 his room.

19 Q So he was cooperative in -- in some sense in
20 giving the gun?

21 A Yes, ma'am.

22 Q I mean, he didn't call initially, but...

23 A Right.

24 Q Detective, I'm showing you what's been marked as
25 State's 163 to 169. Could you just look through those and let

1 me know when you're done, please.

2 A Okay.

3 Q Do those photographs fairly and accurately
4 depict the gun itself and also its location at Mr. Lasseter's?

5 A Yes, ma'am.

6 MS. WECKERLY: The State moves to admit 163 to 169 --
7 169.

8 MR. SGRO: No objection.

9 MR. LANGFORD: No objection.

10 THE COURT: They'll be received.

11 (State's Exhibit 163 through 169 admitted.)

12 MS. WECKERLY: May I have this switched back over?
13 Thank you.

14 BY MS. WECKERLY:

15 Q I'm putting on the overhead 163. And can you
16 describe for the members of the jury what they're looking at
17 in that photograph?

18 A We're in -- inside Mr. Lasseter's residence
19 taking a photo of the room, the outside of the room where the
20 firearm's located.

21 Q And we'll put on 164 next.

22 A Just a closer --

23 Q We'll rotate it. Hold on one second.

24 A Sorry.

25 Q Now what are we looking at?

1 A Basically, the same thing, just a little bit
2 closer.

3 Q And where -- I think this will show it a little
4 better. This is 165. Does that show where the gun is? Can
5 you see it?

6 A Yes.

7 Q Can you circle for the members of the jury where
8 it was -- or where it is in that photograph?

9 And now we'll put on the overhead 167. That's the
10 gun once it was recovered?

11 A Yes, ma'am.

12 MS. WECKERLY: Would you put on 168, please.

13 Q And what type of gun is that?

14 A It's a .44 Ruger.

15 Q A revolver or automatic?

16 A Revolver. Sorry. It's a revolver.

17 Q During your investigation, did you have contact
18 with Mr. Mayo after the -- after the 7th, I guess?

19 A Yes.

20 Q And can you describe for the members of the jury
21 your contact with him I guess in relation to fragments or
22 firearms evidence?

23 A With Mr. Mayo?

24 Q With Mr. Mayo.

25 A I'm sorry, can you just ask that question --

1 Q Sure.

2 A -- one more time, please?

3 Q Did Mr. Mayo contact you about stuff found in
4 his TV?

5 A Correct. Yes, ma'am.

6 Q Can you describe how that went?

7 A He notified us and let us know that while he was
8 moving outside of the -- the Meikle address, that he had
9 located two holes in the wall, as well as two holes in the TV
10 that were in his master bedroom, which is the same ones in
11 reference to what I was speaking of earlier. But those were
12 -- we were notified of a later date.

13 Q Did you also see Mr. Mayo later on in family
14 court?

15 A I did.

16 Q And that -- the purpose of that was a proceeding
17 having to do with his parental rights?

18 A Correct.

19 Q Did Mr. Mayo contact you about text messages
20 that he had received, as well?

21 A He did.

22 Q And do you recall just approximately how long
23 after the August 7th, 2010, incident that would have been?

24 A On the text message? I'm not sure, ma'am --

25 Q Okay. Do you have that --

1 A -- of actual time.

2 Q -- in your report?

3 A Yes.

4 Q Could you refresh your recollection with that

5 and then if you could just tell us the page for counsel.

6 A Sorry. It's a big report. Bear with me,

7 please.

8 Q I -- yeah.

9 A Okay. It looks like 9/14/10.

10 Q Okay. So I guess maybe five or six week --

11 well, actually, really a month.

12 A Five?

13 Q Yeah.

14 A Five?

15 Q And he shows you messages on his phone that --

16 A Actually, I'm -- that's for the -- the TV.

17 Q Oh, okay.

18 A I apologize.

19 Q That's okay. I think it's on page 28.

20 A That second paragraph on 10 -- 10/1.

21 Q 10/1 of '10?

22 A Yes, ma'am. Do you want me to read that?

23 Q No. But that's when you have contact with him

24 where he shows you his phone, correct?

25 A Correct. Yes, ma'am.

1 Q And he shows you text messages from a 512
2 number?

3 A Which is identified as Jerome Thomas, yes,
4 ma'am.

5 Q Okay. And do you take any steps to memorialize
6 those messages?

7 A We do. We take the phone. We ask his
8 permission to have the phone. And -- and then we take it to
9 our electronic crimes unit so that they can document the
10 information in those text messages.

11 Q And is there -- was the documentation of this
12 phone unique because of the -- the age of the phone?

13 A I'm not -- I'm sorry. I'm not sure I follow
14 you.

15 Q The -- how -- how did the -- how did the images
16 or the text messages get documented by Metro?

17 A They're -- they're video'd, videotaped on -- at
18 the crime unit that --

19 Q And why were they videotaped and -- instead of,
20 like, documenting in another way?

21 A Well, I think it's by the mechanism of which
22 they do it. But I don't -- I don't have the technical answer
23 for you on that.

24 Q Okay. We'll play those, which has been admitted
25 as State's 294.

1 And looking at 294, are those the messages that he
2 showed you? And you can actually see the number that they're
3 from, that 512 number.

4 A Okay.

5 (Audio/Video played.)

6 Q Okay. They're all from that 512-629 --

7 A Yes. Yes, ma'am. Sorry, it just popped
8 through. So it was scrolling. So 512, yes, ma'am.

9 Q Okay.

10 MS. WECKERLY: Your Honor, may we approach?

11 THE COURT: Yes. You want a recess this morning,
12 ladies and -- yes, they do.

13 During the recess it's again your duty not to
14 converse among yourselves or with anyone else on any subject
15 connected with this trial, or to read, watch, or listen to any
16 report of or commentary on the trial from any medium of
17 information including newspapers, television, or radio. You
18 may not form or express an opinion on any subject connected
19 with this case until it's finally submitted to you.

20 We'll be in recess for about 10 minutes. Court will
21 be at ease while the jury leaves.

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

23 THE COURT: The record will reflect that the jury has
24 left the courtroom.

25 MS. WECKERLY: Your Honor, all I have left is playing

1 his statement with the detective. So I'll just ask him, like,
2 when he had contact and then we'll play the statement. That's
3 when the Court will have to give the jury the advisement that
4 it -- it's been edited.

5 THE COURT: Okay.

6 MS. WECKERLY: And then the statement is about --

7 MR. DiGIACOMO: 53 minutes.

8 MS. WECKERLY: So I don't know if you want us to
9 break in the middle of it or how you prefer to do that.

10 THE COURT: Well, let's see. What time it is here?

11 MS. WECKERLY: It's 11:30.

12 THE COURT: It's 11:30. Well, we could go till
13 12:30, I guess.

14 MS. WECKERLY: Okay.

15 THE COURT: If -- if that -- would that be
16 acceptable?

17 MS. WECKERLY: That's fine. I know the defense wants
18 to look at -- or argue about the letters when we come back
19 from the lunch break. And I -- that's the last thing I have
20 to do with the detective, so that timing will probably work.

21 THE COURT: Okay. Take a few minutes right now, then
22 we'll do the video, then we'll have lunch, and then we'll
23 argue about letters.

24 MR. DiGIACOMO: It's actually audio. But, yes.

25 THE COURT: Whatever.

1 (Court recessed at 11:27 a.m., until 11:44 a.m.)

2 (In the presence of the jury.)

3 THE COURT: All right. You may be seated. State of
4 Nevada vs. Burns and Mason. The record reflect the presence
5 of the defendants, their counsel, the district attorneys, and
6 all members of the jury.

7 Ladies and gentlemen, I'm -- I'm advised that the
8 State is going to play the interview now of -- with Mr. Burns.
9 Actually, the good news -- the interview that you're going to
10 hear is about an hour, they tell me. That's good news,
11 because the actual interview is much longer than that. They
12 have cut down a lot of the irrelevant parts that aren't
13 necessary for you to listen to, so it won't be as long. But
14 it's only about an hour this way.

15 So anyway, we're going to do that, then we're going
16 to have our luncheon. Okay.

17 BY MS. WECKERLY:

18 Q Detective Bunting, you mentioned earlier in
19 direct examination that you get the photograph of David Burns
20 from officers in San Bernardino?

21 A Correct.

22 Q And sometime after that a warrant is issued, and
23 you go down to San Bernardino and meet with Mr. Burns?

24 A Yes, ma'am.

25 Q And was Detective Wildemann with you?

1 A He was.

2 Q He was in custody at that point?

3 A Yes, ma'am.

4 Q And he was informed of his Miranda rights?

5 A Yes, ma'am.

6 Q After that, did he speak with you and Detective
7 Wildemann?

8 A He did.

9 Q And was that interview memorialized or recorded
10 in any way?

11 A Yes, ma'am. It was recorded.

12 MS. WECKERLY: And, Your Honor, now with the Court's
13 permission, we will publish 332, which is the recording.

14 THE COURT: Okay. Which is the edited portion of the
15 video. So don't be concerned that they're edits.

16 MS. WECKERLY: Audio.

17 (State's Exhibit No. 332 played.)

18 THE COURT: That concludes that exhibit?

19 MS. WECKERLY: Yes, Your Honor.

20 THE COURT: Okay. Let's take our recess now, ladies
21 and gentlemen.

22 During the recess it's again your duty not to
23 converse among yourselves or with anyone else on any subject
24 connected with this trial, or to read, watch, or listen to any
25 report of or commentary on the trial from any medium of

1 information including newspapers, television, or radio. You
2 may not form or express an opinion on any subject connected
3 with this case until it's finally submitted to you.

4 It's about 12:40. Let's make it 2:00, because I've
5 got to work with counsel on a couple of things. So you can
6 leave at this time. We'll see you at 2:00.

7 (Jury recessed at 12:40 p.m.)

8 THE COURT: All right. Record reflect that the jury
9 has exited the courtroom. You want to argue about letters
10 now?

11 MR. DiGIACOMO: Judge, there's two more letters that
12 we're going to grab at lunchtime. So I guess we'll be back at
13 1:40.

14 THE COURT: So you come back about 1:40. That'll
15 give us 20 minutes to --

16 MR. DiGIACOMO: We should have it all done by 2:00.

17 MR. SGRO: We're also thinking, Your Honor, because
18 this'll be close to the end of the day, that'll give us -- Mr.
19 Oram and I -- time to regroup tonight. So if we do have
20 anything, it'll be very brief, and we'll just come back
21 tomorrow at 9:30 prepared to either put people on or not, do
22 the jury instructions, and then start our --

23 MR. DiGIACOMO: We'll be able to argue about Mr.
24 Shoemaker and whether or not he'll be allowed to testify --

25 MR. SGRO: Right.

1 MR. DiGIACOMO: -- to what they want him to testify
2 to.

3 MR. SGRO: We can do all that at the end of the day.

4 MR. DiGIACOMO: Because if -- we have to take a break
5 between ours and --

6 THE COURT: Okay. And can we settle jury
7 instructions at the end of the day?

8 MR. SGRO: Yeah. We can do all --

9 MR. DiGIACOMO: I think we can do that, too.

10 MR. SGRO: -- all the logistics.

11 THE COURT: All right.

12 MR. SGRO: Thanks, Judge.

13 THE COURT: See you at 1:40.

14 (Court recessed at 12:42 p.m. until 1:59 p.m.)

15 (Outside the presence of the jury.)

16 THE COURT: All right. Back on the record. With
17 regard to the exhibits, and I had the numbers in front of me
18 and now counsel has them.

19 MR. DiGIACOMO: Yes, I will -- Judge, 337 is a
20 letter from Job-Loc to Monica Martinez.

21 MR. SGRO: So that's out.

22 MR. DiGIACOMO: 338 is a letter from Job-Loc to
23 Willie Mason.

24 MR. SGRO: Out.

25 MR. DiGIACOMO: 340 is a letter from Job-Loc to

1 Willie Mason.

2 THE COURT: I agree that the statements that each of
3 the defendants wrote would be admissible as to them.

4 MR. DiGIACOMO: The rest of these are -- I guess I
5 can put them in order for now. But 336, 339, 341, 342, 343,
6 344, and 345 are all letters either written by Mr. Mason or by
7 Mr. Burns.

8 THE COURT: Okay. I would agree that those are
9 admissible as against the person that wrote them.

10 MR. SGRO: Thank you, Your Honor. Just very
11 briefly, Your Honor. I know we had a colloquy before we got
12 on the record to try and get to the point of what we mean.

13 THE COURT: Well, I agreed with you as to Job-Loc.

14 MR. SGRO: Yes, sir.

15 THE COURT: And we're excluding those.

16 MR. SGRO: Yes, sir. And I think there were three
17 or four that Mr. DiGiacomo just rattled off, and those have
18 been excluded. The issue with Mr. Burns's letters, Your
19 Honor, is we don't believe them to be of anything beyond
20 marginal relevance. They are far more prejudicial than they
21 are probative. A proffer was made at the break that these
22 letters would go to impeach the statements that were made to
23 the detective by Mr. Burns about not being able to remember
24 anything. The letters --

25 THE COURT: Well, they do.

1 MR. SGRO: Well, the letters, though, according to
2 the proffer made by the State, reference activities that
3 occurred in the context of reviewing discovery. It -- it does
4 not begin with I snowed the police, this is what I actually
5 know. They're all written from the context of the discovery.
6 So given the marginal relevancy, we feel that they're far more
7 prejudicial than they are probative.

8 And I understand because of the nature of this case,
9 certain things have been discussed, but now -- relative to
10 custody status. But now we're clearly going to have a
11 continuum of time through which the jurors are going to
12 continue to be advised of Mr. Burns's custody status. And I
13 have a letter here of September of 2011, which is 336.

14 MR. DiGIACOMO: I think that's the only 2011.
15 Everything else is 2010. October 27, 2010.

16 MR. SGRO: 339 is 2010.

17 MR. DiGIACOMO: Sometimes the individual defendants
18 date them. Oh, this is the piggyback letter.

19 THE COURT: If you want it on the record, you're
20 going to have to speak up. They can't hear you.

21 MR. SGRO: Yes, sir. I'm just looking for the date.

22 THE COURT: And that goes to Mr. DiGiacomo, too.

23 MR. DiGIACOMO: I don't know if you can read the
24 time stamp. The time stamp --

25 MR. SGRO: Oh, there it is.

1 MR. DiGIACOMO: -- is November 17, 2010.

2 MR. SGRO: That's from Mason. There's another one
3 in December of 2010, and that one is 343. And that's --
4 that's the total of the ones of Mr. Burns. So we would object
5 to the 2011 letter, Your Honor, which is 336 on the basis of
6 more prejudicial than probative for the revelation of the
7 custody status as well as the marginal relevance the actual
8 statements he even possess because --

9 THE COURT: What's the objection to that -- what's
10 the purpose of that letter?

11 MS. WECKERLY: In the -- at the very bottom of the
12 letter on the first page he's writing to Willie Mason and he's
13 saying you have me wondering about you, like are you going to
14 take probation and go against me. I'm not questioning you,
15 certainly, I'm just lost without a curtain. And then he's --

16 THE COURT: I think we can exclude that letter, too.

17 MR. DiGIACOMO: And just for the record, Judge --

18 THE COURT: We can exclude that letter.

19 MR. DiGIACOMO: -- they put -- but they put in --

20 THE COURT: That's of no real --

21 MR. DiGIACOMO: -- David Burns's letters to Monica
22 Martinez during this time period and the jury is already aware
23 of Mr. Burns's custody status during this time period.

24 THE COURT: We'll just -- we'll use the other
25 letters, the 2010 letters.

1 MR. SGRO: Okay.

2 THE COURT: Okay.

3 MR. SGRO: And then as to -- may I borrow this. And
4 as to 334, 345, and 342, those three letters, Your Honor, are
5 from Willie Mason to David Burns. And it is --

6 MR. DiGIACOMO: No, they're all to David Burns,
7 aren't they?

8 MR. SGRO: Oh, I'm sorry.

9 MR. DiGIACOMO: Oh, there's one to Job-Loc.

10 MR. SGRO: Oh, then 345 -- 345 clearly, on behalf of
11 David Burns, has no relevancy to us. If we're here at a
12 separate trial, a letter from Willie Mason to Jerome Thomas
13 would be excluded.

14 THE COURT: I'll explain to the jurors that the
15 letters by Mason are only admissible as to the case against
16 Mason, and the letters by Burns are only admissible as to the
17 case against Burns.

18 MR. SGRO: Okay. So I appreciate the --

19 THE COURT: Okay.

20 MR. SGRO: -- the limiting instruction.

21 THE COURT: Is that agreeable?

22 MR. SGRO: Well, our -- obviously our position is
23 that they should be excluded because --

24 THE COURT: You want me to so instruct the jury?

25 MR. SGRO: Oh, yeah, assuming that my motion to

1 exclude them is denied, then, yes, as a fallback position.

2 THE COURT: Well, I've excluded all Job-Loc's. I've
3 excluded the 2011 letter from Burns.

4 MR. SGRO: Yes, sir.

5 THE COURT: All right. I think that that's -- the
6 rest of them, I think, are certainly admissible. They're
7 statements by the defendants.

8 MR. LANGFORD: And I have a 2011 letter, as well,
9 September 23, 2011.

10 THE COURT: What's the -- what's the relevancy of
11 that one?

12 MS. WECKERLY: Let me see it.

13 MR. LANGFORD: It's Mason to Burns, Your Honor.

14 MS. WECKERLY: It's Mason to Burns explaining to him
15 that he's not going to essentially testify against him.

16 MR. LANGFORD: So, I mean --

17 THE COURT: I'd like to exclude -- I don't like
18 that.

19 THE CLERK: What number is that?

20 MS. WECKERLY: That's 344.

21 THE COURT: Let's -- let's leave 344 out. I like --
22 I like leaving that out. I don't like that.

23 All right. Are we ready to bring the jury back?

24 MR. DiGIACOMO: We are.

25 MR. LANGFORD: Mr. Mason would also like a limiting

1 instruction, Your Honor.

2 THE COURT: Okay.

3 MR. LANGFORD: Just for the record.

4 THE COURT: When we get to the letters. Who's going
5 to put the letters in?

6 MS. WECKERLY: We're going to have the detective
7 read them.

8 THE COURT: Okay. He can read them?

9 MR. DiGIACOMO: We've just got to redate them for
10 just a second here.

11 THE COURT: Do you have to read them all? I mean,
12 can't you just read the portions that are relevant?

13 MR. DiGIACOMO: We are only reading the portions
14 that are relevant.

15 THE COURT: Okay.

16 MR. SGRO: I'll be back in two minutes, Your Honor,
17 literally. Maybe less.

18 MR. ORAM: Where are you going?

19 (Pause in the proceedings.)

20 (In the presence of the jury.)

21 THE COURT: All right. State versus Burns and
22 Mason. The record will reflect the presence of the
23 defendants, their counsel, the District Attorneys and all
24 members of the jury.

25 I think we need the detective back on the stand.

1 THE MARSHAL: Yes, sir.

2 THE COURT: Detective, you may be seated. And
3 you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. We're still on direct
6 examination, Ms. Weckerly.

7 MS. WECKERLY: Thank you.

8 BY MS. WECKERLY:

9 Q Detective, in the -- in the recording that we
10 just heard of the interview between yourself and Mr. Burns and
11 Detective Wildemann, Detective Wildemann mentions that -- or
12 tells Mr. Burns that Willie Mason had essentially blamed the
13 whole thing on him. Was that true?

14 A No.

15 Q Is that sort of an interviewing technique that
16 detectives use sometimes?

17 A It is.

18 Q During the interview there is a discussion
19 about a lick. What is a lick?

20 A A robbery.

21 Q And there's other points during the interview
22 where you or -- you or Detective Wildemann are telling Mr.
23 Burns to -- to sort of sit up or pay attention. Could you
24 describe what he was physically doing at the time?

25 A Well, he was slouching far into his chair.

1 And as you heard was -- was humming while we were asking him
2 questions. And then just kind of looking off or away. Just
3 disinterested for the most part, I guess.

4 Q And after your interview with Mr. Burns, did
5 you make a request that correspondence between the defendants
6 in this case be kept?

7 A I did.

8 Q And was that copied and given to you?

9 A Yes, ma'am.

10 MS. WECKERLY: Counsel, I think you saw these.

11 MR. SGRO: Yes.

12 BY MS. WECKERLY:

13 Q Detective, I'm going to show you what's been
14 marked as State's 345, 339, 341, 343, and 342. Do you
15 recognize those items?

16 A I do.

17 Q Are those correspondence between the
18 defendants in this case?

19 A It is.

20 Q And are they copies that you received based on
21 your request?

22 A Yes, ma'am.

23 MS. WECKERLY: State moves to admit those exhibits,
24 Your Honor.

25 THE COURT: All right.

1 MR. SGRO: Just what we previously discussed, Your
2 Honor.

3 MR. LANGFORD: Same.

4 THE COURT: All right. They'll be received.

5 (State's Exhibit 339, 341 - 343, and 345 admitted.)

6 THE COURT: Ladies and gentlemen, these are, as I
7 understand it, letters written by either Mr. Burns or Mr.
8 Mason. To the extent that the officer reads portions of it,
9 they're not going to read them all, but there are portions of
10 the letters they're going to read into evidence that may be
11 relevant. To the extent that they do anything that Mr. Burns
12 has said is admissible against Mr. Burns in the case against
13 him. Anything Mr. Mason has said is admissible in the case
14 against Mr. Mason. Okay.

15 BY MS. WECKERLY:

16 Q And the first one is -- appears to be a letter
17 from Mr. Mason to Jerome Thomas.

18 A Correct.

19 Q So Mr. Mason is the writer?

20 A Yes, ma'am.

21 Q And if you look on the second page of the
22 exhibit, is there a postmark on there?

23 A There is.

24 Q And what is that?

25 A It looks like possibly the 20th of October.

1 Q Okay. And just for -- it's a pretty light
2 copy.

3 MS. WECKERLY: For counsel's benefit, I'm going to
4 just concentrate on the first paragraph.

5 BY MS. WECKERLY:

6 Q And can you read that into the record? Or if
7 my copy is darker, you can use mine.

8 A I'll see if I can --

9 MR. DiGIACOMO: Counsel, do you want me to put what
10 we have up on the overhead?

11 MS. WECKERLY: Yes, and that's 345.

12 MR. DiGIACOMO: Page 3?

13 MS. WECKERLY: Page 1.

14 MR. DiGIACOMO: First page of the writing, but third
15 page of the exhibit?

16 MS. WECKERLY: Yes.

17 MR. DiGIACOMO: Okay.

18 THE WITNESS: Just here to here?

19 BY MS. WECKERLY:

20 Q Here to there.

21 A Okay. That's crazy. Despite the obstacles I
22 face, I continue to keep head high. I hope -- I hope this
23 either finds you in good health due to your unfortunate
24 situation with your leg and all. Let's get down to it now. I
25 was always told what don't come out in the wash, will in the

1 rinse. And what the washing machine can't catch, the lint
2 trap on the dryer will. It ain't about thinking at this
3 point, it's knowing and what's in black and white. Now I just
4 got my motion of the discovery and both chicks turned into
5 Mariah Carey. I always told you -- let's go to right there.

6 Q If you can't read the word, you can just skip
7 it.

8 A It hit the fan. It wouldn't remey (phonetic).
9 And once you get your motion of discovery -- and in
10 parentheses -- (in black and white) you will then know.

11 Q Okay. And now let's look at 339 is a letter
12 to Jerome Thomas from David Burns.

13 A From Burns to Thomas.

14 Q Yeah.

15 A Correct.

16 Q So David Burns is the writer of 339?

17 A Correct.

18 Q And we'll flip to page 2 of the letter.

19 MS. WECKERLY: Are you with me there, Marc?

20 MR. DiGIACOMO: So is it page 3 of the exhibit or
21 page 2 of the exhibit?

22 MS. WECKERLY: 2.

23 MR. DiGIACOMO: Page 2 of the exhibit?

24 MS. WECKERLY: 2.

25 MR. DiGIACOMO: Okay.

1 MS. WECKERLY: Yes.

2 BY MS. WECKERLY:

3 Q Can you read that, Detective, please?

4 A How far?

5 Q The whole way through.

6 A The whole letter?

7 Q Well, until the -- until the very top of page
8 2.

9 A Right here?

10 Q Yes. Thank you.

11 A The dog is solid. 34 of them things. What it
12 do, my Loc? I got my paperwork. Go mouth is not the culprit
13 and it is actually the black fucking ho -- or hope. We went
14 to court today. The Loc brought all his paperwork. The fuck
15 boy West put your name all through the shit and I seen it with
16 my own eyes. They added battery with a deadly weapon
17 resulting in substantial bodily harm. That is the eighth
18 count.

19 The stupid pinche heina, somehow her daughter taking
20 the stand along with that black piece of shit who's putting
21 you in the bullshit. They have something about some T-Mobile
22 shit and Metro PCS. I don't know all details. I'm just
23 keeping you updated. Donovan Rowland is the bitch ass nigga
24 name. He got in detail, which is all a lie. But bitch boy
25 got himself out of a firearm charge, so-called cooperating

1 with the alpha bitch boys.

2 Greyhound pictures of us which really don't mean
3 shit, but our weekend was over in Vegas. I got a new copy of
4 charges with you all through the shit. You can beat the punk
5 shit. After all, you didn't know and still don't got nothing
6 to do with it. Dogg got some good news with his shit. The
7 survivor is not IDing him, which is good. He didn't have shit
8 to do with it neither. The Mexico ho saying he get in
9 counting money, but that's the only thing against him.

10 He good and the nigga is smart. He gave me some
11 motions to file and shit to look up. I'm on the top of this,
12 bitch, on the ninth floor. So if you know someone with a
13 chopper, the one with propellers, tell them to come. Get you
14 a blitzer and bring some awa (phonetic), thoop, thoop, thoop.
15 Oh, yeah, they told Brody that he isn't eligible for the death
16 penalty. I think because he ain't got not front teeth.

17 Q Okay. Now we'll move to 341, which is written
18 by who?

19 A It's from David Burns to Willie Mason.

20 Q Okay. And it'll be page 3 at the bottom. And
21 if I could have you read starting here.

22 MR. DiGIACOMO: Is that the right one?

23 THE WITNESS: And how far?

24 BY MS. WECKERLY:

25 Q So to one of us on the second page.

1 A To right here?

2 Q Yes.

3 A I'm sorry, one more time. Right there?

4 Q And you start at they told me.

5 A They told me they just got pictures and DVDs
6 of us walking through casinos and on the strip. Damn, it's
7 true what they say. Conspiracy will railroad the clique.
8 That only shows what I was wearing, though, basically, and
9 that us three were together on the strip. They also got
10 pictures of you walking onto the Greyhound in L.A. which don't
11 mean shit. But they trying to say you basically was hoping to
12 get away of some sort. That -- that just means we were done
13 with our visit to LV.

14 So I don't go further, where again to stop?

15 Q Okay. And then I'll direct you to stop at --

16 A One of those?

17 Q Yes.

18 A The smoker got a gang of different stories
19 which all point me as El Capitan that had on blue overalls and
20 curly hair. The Dogg said it's possible to get her statement
21 ruled out -- to get her statement ruled out because she got
22 five of them. Little mama, the victim, says I had on blue
23 overalls, orange hat, white shirt under with curly hair. Some
24 way somehow I have a law book and it gives examples about
25 IDing witnesses, how stress levels can somehow differ what a

1 person sees or how she could have seen me before it happened
2 and thought it me somehow. Shit, I don't know. It's going to
3 have to play out some way, whether in my favor or not. Dogg
4 got news last time we went to court that he was not IDed,
5 which is good for at least one of us.

6 Q And on the next page of that letter, is there
7 a page he wrote that says at the top pertain to me?

8 A Correct.

9 Q And just read -- can you read what the top
10 line of that section is, or what -- what he wrote?

11 A Section 2: the psychology of eyewitness
12 identification. 5, what factors tend to cause eyewitnesses to
13 identify the wrong person.

14 Q Thank you. Let's look at Exhibit 343. And
15 who is the writer of that letter?

16 A David Burns.

17 Q And who is the letter directed to?

18 A Willie Mason.

19 Q And I'd like you to start on page 2. Starting
20 with he says -- or, yes, are you there?

21 A I am.

22 Q And ending with enough.

23 A He says so, for momo and moker are the only
24 things I got to worry about. And I nor he knows where that
25 bitch at. He asked me where she -- and there's a hole through

1 it, I can see that. I'm going to send her a Christmas card.
2 Ha ha. He says someone says that they seen my at her house
3 afterward, which is a lie. He probably gonna pay her daughter
4 or take some shit off her mom. If that bitch lie for these
5 mother fuckers, she's saying she only seen me once, which is
6 good and bad. I don't know what moker mommy going to do, but
7 if she was smart she would see that she's incriminating
8 herself enough on the bullshit.

9 Q Okay. And then lastly I'd like you to look at
10 342, which is written by who?

11 A From -- it says W. Mason to David Burns.

12 Q Okay. And looking at the next page, if you
13 could just read the -- the sentence where it says my --
14 starting with my personal experience.

15 A And to where?

16 Q Just to, I guess, the end of the paragraph.

17 A My personal experience has taught me that you
18 don't get bit by the snakes in the grass. You get bit by the
19 one you allow into your house. Sometimes the biggest snake in
20 the grass is the woman you're laying next to.

21 Q Thank you. Now, Detective, do you see David
22 Burns in the courtroom today?

23 A Yes, ma'am.

24 Q Could you point to him and describe what he's
25 wearing, please.

1 A He's the third gentleman over on the defense
2 side, black male adult with his hair pulled back in a ponytail
3 wearing a blue short.

4 Q And is there anything about his appearance
5 that's different than when you saw him in 2010?

6 A His hair is definitely longer.

7 MS. WECKERLY: Your Honor, may the record reflect
8 identification of Defendant Burns?

9 THE COURT: The record will so reflect.
10 BY MS. WECKERLY:

11 Q And, sir, do you see Willie Mason in the
12 courtroom?

13 A I do.

14 Q Could you point to him and describe what he's
15 wearing, please?

16 A He's the last gentleman to the right wearing a
17 plaid shirt, collared shirt, black male, and his hair is
18 short.

19 MS. WECKERLY: Your Honor, may the record reflect
20 identification of Defendant Mason?

21 THE COURT: The record will so reflect.

22 MS. WECKERLY: I'll pass the witness, Your Honor.

23 MR. SGRO: Thank you, sir.

24 CROSS-EXAMINATION

25 BY MR. SGRO:

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 77424

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions