

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMMY STEWART,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO. 80084

DISTRICT COURT CASE NO.
C-15-305984-1

APPELLANT'S APPENDIX VOLUME 2 PAGES 243-479

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INDEX
TOMMY STEWART, CASE NO. 80084

<u>DOCUMENT NO.</u>	<u>VOL.</u>	<u>PAGE NO.</u>
Transcript, Preliminary Hearing on April 15, 2015	1	1-103
Criminal Complaint, filed 04-17-2015	1	104-107
Information, filed 04-24-2015	1	108-112
Verdict, Filed 03-27-2016	1	113-114
Transcript, Sentencing on May 10, 2016	1	115-121
Judgment of Conviction, filed 05-17-2016	1	122-123
Notice of Appeal, filed 05-17-2016	1	124-125
Case Appeal Statement, filed 05-19-2016	1	126-127
Nevada Supreme Court Order, filed 06-12-2017	1	128-138
Petition for Writ of Habeas Corpus, filed 03-08-2018	1	139-150
Order for Petition for Writ of Habeas Corpus, 04-13-2018	1	151
Motion for Appointment of Counsel, filed 04-25-2018	1	152-157
State's Response to Petition for Writ of Habeas Corpus, filed 06-01-2018	1	158-173
First Supplemental Petition for Writ of Habeas Corpus, filed 06-06-2018	1	174-215
Motion to Appoint Counsel and Request for Evidentiary Hearing, filed 06-06-2018	1	216-220
Second Supplemental Petition for Writ of Habeas Corpus, filed 06-14-2018	1	221-223
Third Supplemental Petition for Writ of Habeas Corpus, 07-18-2018	1	224-226
Fourth Supplemental for Petition for Writ of Habeas Corpus, 07-27-2018	1	227-229
Confirmation of Counsel, 07-31-2018	1	230
Supplemental Petition for Post-Conviction Writ of Habeas Corpus, filed 02-20-2019	1	231-242

Exhibits 1-5 to Supplemental Petition for Post-Conviction Writ of Habeas Corpus, filed 02-20-2019	2	243-479
Exhibits 6-8 to Supplemental Petition for Post-Conviction Writ of Habeas Corpus, filed 02-20-2019	3	480-522
State's Response to First Through Fifth Supplemental Petition for Writ of Habeas Corpus, filed 04-03-2019	3	523-553
Court Minutes, Hearing on April 29, 2019	3	554
Notice of Appeal, filed 11-06-2019	3	555-557
Case Appeal Statement, filed 11-19-2019	3	558-559
Motion for Appointment of Counsel, 12-02-2019	3	560-563
Findings of Facts, Conclusions of Law, and Order, 12-23-2019	3	564-594
Court Minutes on January 02, 2020	3	595
Notice of Appeal, filed 01-06-2020	3	596-597
Case Appeal Statement, filed 01-07-2020	3	598-599
Court Minutes, Confirmation of Counsel on January 23, 2020	3	600
Order Removing Counsel, filed 08-07-2020	3	601-610
Appointment of Counsel, filed 08-24-2020	3	611-612

EXHIBIT 1

AA000243

STEW01

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMMY LAQUADE STEWART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 70069
District Court Case No. C305984

FILED

JUN 12 2017

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Affirmed."

Judgment, as quoted above, entered this 4th day of May, 2017.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
May 30, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Dana Richards
Deputy Clerk

C-16-305984-1
CCJA
NV Supreme Court Clerks Certificate/Judgm
4868861



AA000244

STEW02

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMMY LAQUADE STEWART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70069

FILED

MAY 04 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, burglary, robbery, and first-degree kidnapping. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Affirmed.

Marchese Law Offices, PC, and Jess R. Marchese, Las Vegas,
for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; Steven B. Wolfson,
District Attorney, and Jonathan VanBoskerck, Chief Deputy District
Attorney, Clark County,
for Respondent.

BEFORE DOUGLAS, GIBBONS and PICKERING, JJ.

OPINION

By the Court, GIBBONS, J.:

In this appeal, we are asked to analyze issues related to dual convictions for first-degree kidnapping and robbery, as well as the sufficiency of the warning given pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Appellant Tommy Stewart, along with another unidentified

man, demanded entry into victim Natasha Lumba's apartment at gunpoint, ordered Lumba to lie face down in her bedroom while being guarded, and stole electronics, cash, and other personal items from the apartment. After a three-day jury trial, Stewart was found guilty on all counts and given a sentence of life with the possibility of parole. On appeal, Stewart argues that (1) there was insufficient evidence to support a conviction of both robbery and kidnapping and (2) the *Miranda* warning given by police was legally insufficient.

We hold that (1) there was sufficient evidence to support Stewart's convictions for kidnapping and robbery and (2) the *Miranda* warning was legally sufficient. Accordingly, we affirm the district court's judgment of conviction.

FACTS AND PROCEDURAL HISTORY

The crime

On January 20, 2015, Stewart and another unidentified man approached Lumba as she entered her apartment, held her at gunpoint, and told her to let them into the apartment. Once in the apartment, the men told Lumba to lie face down on the ground in the back bedroom. The men took turns guarding Lumba while ransacking her apartment and looking for things to steal. While Lumba was on the floor, one of the attackers put his hand under her bra and underwear to search for money or items she might have concealed.

After approximately 10 or 15 minutes, the two men finished their search of the apartment. Just before leaving, the two men told Lumba not to call the police or they would come back to kill her. The two men left Lumba's apartment, taking with them various electronics and cash. Lumba later called 911, and Las Vegas Metropolitan Police Department (LVMPD) personnel arrived on scene.

The investigation

During their investigation, LVMPD evidence technicians found Stewart's fingerprints on Lumba's jewelry box. Additionally, LVMPD detectives conducted a follow-up interview and photographic lineup, wherein Lumba identified two potential suspects, one of whom was Stewart. The LVMPD located Stewart and detained him for further questioning.

The interrogation

Prior to questioning, an LVMPD detective read Stewart the warning from the LVMPD *Miranda* card:

You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to have the presence of an attorney during questioning. If you cannot afford an attorney one will be appointed before questioning. Do you understand these rights?

Stewart indicated that he understood his rights and agreed to talk with the detective. Stewart initially denied being at Lumba's apartment but later admitted to being there after being confronted with the fingerprint evidence. Stewart admitted to being in Lumba's apartment on the night in question with another man and admitted to stealing her personal effects, but Stewart stated that he had not entered the bedroom.

The trial

The State charged Stewart with conspiracy to commit robbery, burglary while in possession of a firearm, robbery with use of a deadly weapon, and first-degree kidnapping with use of a deadly weapon.

Stewart filed two pretrial motions to suppress his statement to LVMPD detectives, arguing that the LVMPD's *Miranda* warning was legally insufficient. The district court denied both motions.

After a three-day trial, the jury found Stewart guilty on all counts. Stewart was sentenced to life with the possibility of parole, and he then filed the instant appeal.

ANALYSIS

Sufficient evidence exists to support Stewart's dual convictions of first-degree kidnapping and robbery

Stewart challenges the evidence underlying the first-degree kidnapping conviction, arguing his conviction for first-degree kidnapping is not supported by the evidence because the movement of Lumba was incidental to the robbery, it did not substantially increase the risk of harm to her, nor did it go beyond that contemplated for completion of the robbery. We disagree.

In order to determine “whether a verdict was based on sufficient evidence to meet due process requirements, this court will inquire whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (internal quotation marks omitted). “The jury’s verdict will not be disturbed on appeal when there is substantial evidence supporting it.” *Brass v. State*, 128 Nev. 748, 754, 291 P.3d 145, 150 (2012).

The crime of first-degree kidnapping is described in NRS 200.310(1), while the crime of robbery is defined in NRS 200.380. A conviction for first-degree kidnapping requires that a “person . . . willfully seizes, confines, . . . conceals, kidnaps or carries away a person by any means whatsoever . . . for the purpose of committing . . . robbery upon or from the person.” NRS 200.310(1). A conviction for robbery requires “the unlawful taking of personal property from the person of

another . . . against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property.” NRS 200.380. Dual convictions under both statutes are permitted based upon the same conduct. *Mendoza v. State*, 122 Nev. 267, 274-75, 130 P.3d 176, 180 (2006). However, in such cases:

[T]o sustain convictions for both robbery and kidnapping arising from the same course of conduct, any movement or restraint must stand alone with independent significance from the act of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery, or involve movement, seizure or restraint substantially in excess of that necessary to its completion.

Id. at 275, 130 P.3d at 181. In general, “[w]hether the movement of the victim is incidental to the associated offense and whether the risk of harm is substantially increased thereby are questions of fact to be determined by the trier of fact in all but the clearest cases.” *Curtis D. v. State*, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982); *see also Gonzales v. State*, 131 Nev., Adv. Op. 49, 354 P.3d 654, 666 (Ct. App. 2015).

Here, we conclude that there is sufficient evidence to support Stewart’s dual convictions for robbery and first-degree kidnapping. The jury heard evidence that Stewart took Lumba’s personal property against her will by means of force, violence, or fear of injury. Further, the jury heard evidence that Lumba’s movement substantially exceeded the movement necessary to complete the robbery and/or substantially increased the harm to her. Indeed, Lumba was accosted as she entered her residence, taken to the back bedroom, guarded at gunpoint, face down, while Stewart and the other suspect rummaged through her house and stole her belongings. Whether Lumba’s movement was incidental to the

robbery, and whether the risk of harm to her was substantially increased, are questions of fact to be determined by the jury in "all but the clearest of cases." *Curtis D.*, 98 Nev. at 274, 646 P.2d at 548. This is not one of the "clearest of cases" in which the jury's verdict must be deemed unreasonable; indeed, a reasonable jury could conclude that Stewart forcing Lumba from her front door into her back bedroom substantially exceeded the movement necessary to complete the robbery and that guarding Lumba at gunpoint substantially increased the harm to her. We conclude that the evidence presented to the jury was sufficient to convict Stewart of both robbery and first-degree kidnapping.

The district court did not err in denying Stewart's motion to suppress statements made to police because the Miranda warning given to Stewart was sufficient

Stewart argues the *Miranda* warnings given to him failed to advise him that he could consult with an attorney before and during interrogation. Stewart contends the warnings simply indicated that he had the right to an attorney, while failing to convey directly or indirectly, that he could actively consult with that attorney throughout the questioning. We disagree.

Miranda establishes procedural safeguards "to secure and protect the Fifth Amendment privilege against compulsory self-incrimination during the inherently coercive atmosphere of an in-custody interrogation." *Dewey v. State*, 123 Nev. 483, 488, 169 P.3d 1149, 1152 (2007). *Miranda* prescribed the four now-familiar warnings:

[A suspect] must be warned prior to any questioning [1] that he has the right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if

he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Florida v. Powell, 559 U.S. 50, 59-60 (2010) (alterations in original) (quoting *Miranda*, 384 U.S. at 479). To be constitutionally adequate, *Miranda* warnings must be “sufficiently comprehensive and comprehensible when given a commonsense reading.” *Powell*, 559 U.S. at 63.

Stewart first argues the *Miranda* warning given in this case did not inform him that he could consult an attorney before and during questioning. This argument is not supported by the record. The *Miranda* warning given to Stewart stated, in part, “You have the right to have the presence of an attorney during questioning. If you cannot afford an attorney one will be appointed before questioning.” Given a commonsense reading, these two clauses provide a constitutionally adequate warning—the warning informed Stewart he had the right to counsel before and during questioning, as specifically required by *Miranda*. See *Powell*, 559 U.S. at 63. Although the warnings were perhaps not the clearest possible formulation of *Miranda*’s right-to-counsel advisement, they were constitutionally sufficient. *Id.* Thus, we conclude Stewart’s first *Miranda* argument fails.

Additionally, Stewart argues that the warning only advised him that he had the right to an attorney but not that he could actively consult with that attorney throughout the questioning. We conclude this argument is without merit. Indeed, the right to an attorney is the right to consult with that attorney, and the argument to the contrary relies on an absurd interpretation of the *Miranda* warning. See *Powell*, 559 U.S. at 62-63. Thus, we conclude Stewart’s second *Miranda* argument fails.

Therefore, we hold that the district court did not err in determining Stewart received an adequate *Miranda* warning prior to making statements to police and, thus, did not err in denying Stewart's motions to suppress those statements.

CONCLUSION

We conclude that there was sufficient evidence to support Stewart's convictions for kidnapping and robbery and that the *Miranda* warning was legally sufficient. Accordingly, we affirm the district court's judgment of conviction.

Gibbons J.
Gibbons

We concur:

Douglas J.
Douglas

Pickering J.
Pickering

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE May 30, 2017

Supreme Court Clerk, State of Nevada

By D. Richards Deputy

AA000253

STEW011

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMMY LAQUADE STEWART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 70069
District Court Case No. C305984

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 30, 2017

Elizabeth A. Brown, Clerk of Court

By: Dana Richards
Deputy Clerk

cc (without enclosures):

Hon. Valerie Adair, District Judge
Tommy LaQuade Stewart
Clark County District Attorney
Attorney General/Carson City
Marchese Law Office

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 12 2017.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED

JUN 05 2017

CLERK OF THE COURT

EXHIBIT 2

AA000255

STEW013

1 INST



ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 17 2016

BY, *Denise Husted*
DENISE HUSTED, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

CASE NO: C-15-305984-1

DEPT NO: XXI

10 -vs-

11 TOMMY STEWART, aka,
12 Tommy Laquade Stewart,
13 Defendant.

14 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

15 MEMBERS OF THE JURY:

16 It is now my duty as judge to instruct you in the law that applies to this case. It is
17 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
18 you find them from the evidence.

19 You must not be concerned with the wisdom of any rule of law stated in these
20 instructions. Regardless of any opinion you may have as to what the law ought to be, it
21 would be a violation of your oath to base a verdict upon any other view of the law than that
22 given in the instructions of the Court.

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AA000256

STEW014

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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STEW015

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 20th day of January, 2015, the Defendant committed the offenses of CONSPIRACY TO COMMIT ROBBERY; BURGLARY WHILE IN POSSESSION OF A FIREARM; ROBBERY WITH USE OF A DEADLY WEAPON; and FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON in the following manner, to-wit: That the Defendant, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided and against the peace and dignity of the State of Nevada,

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did willfully, unlawfully, and feloniously conspire with an unknown individual to commit a robbery.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny and/or robbery, that certain structure occupied by NATASHA LUMBA, located at 805 Rock Springs, Apartment No. 101, Clark County, Nevada, said Defendant did possess and/or gain possession of a firearm during the commission of the crime and/or before leaving the structure.

COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, and feloniously take personal property, to-wit: a laptop computer and/or a cellular telephone and/or lawful money of the United States and/or a camera, from the person of NATASHA LUMBA, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of NATASHA LUMBA, with use of a deadly weapon, to-wit: a firearm, the Defendant being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by providing counsel and/or

AA000258

STEW016

1 encouragement and by entering into a course of conduct whereby Defendant and/or an
2 unknown co-conspirator approached Victim from behind, one of the Defendant and
3 unknown co-conspirator was armed with a handgun, demanded that NATASHA LUMBA
4 open the door to her residence, when the Defendant and an unknown co-conspirator and
5 NATASHA LUMBA entered the said NATASHA LUMBA'S residence, one or more of the
6 Defendant and unknown co-conspirator forced the said NATASHA LUMBA to go to her
7 bedroom and lie on the floor, one of the Defendant and unknown co-conspirator stayed with
8 NATASHA LUMBA while the other went through NATASHA LUMBA'S personal
9 property and/or ransacked her residence, thereafter one of the Defendant and unknown co-
10 conspirator demanded to know if the said NATASHA LUMBA was hiding money in her bra
11 or panties and groped NATASHA LUMBA'S breasts and/or genital area while searching for
12 money, thereafter Defendant and unknown co-conspirator fled the scene together; and/or (3)
13 pursuant to a conspiracy to commit this crime..

14 COUNT 4 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

15 Did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy,
16 abduct, conceal, kidnap, or carry away NATASHA LUMBA, a human being, with the intent
17 to hold or detain the said NATASHA LUMBA against her will, and without her consent, for
18 the purpose of committing robbery, with use of a deadly weapon, to-wit: a firearm, the
19 Defendant being criminally liable under one or more of the following principles of criminal
20 liability, to-wit: (1) by directly committing this crime and/or (2) by aiding or abetting in the
21 commission of this crime, with the intent that this crime be committed, by providing counsel
22 and/or encouragement and by entering into a course of conduct whereby Defendant and/or
23 an unknown co-conspirator approached Victim from behind, one of the Defendant and
24 unknown co-conspirator was armed with a handgun, demanded that NATASHA LUMBA
25 open the door to her residence, when the Defendant and an unknown co-conspirator and
26 NATASHA LUMBA entered the said NATASHA LUMBA'S residence, one or more of the
27 Defendant and unknown co-conspirator forced the said NATASHA LUMBA to go to her
28 bedroom and lie on the floor, one of the Defendant and unknown co-conspirator stayed with

AA000259

STEW017

1 NATASHA LUMBA while the other went through NATASHA LUMBA'S personal
2 property and/or ransacked her residence, thereafter one of the Defendant and unknown co-
3 conspirator demanded to know if the said NATASHA LUMBA was hiding money in her bra
4 or panties and groped NATASHA LUMBA'S breasts and/or genital area while searching for
5 money, thereafter Defendant and
6 unknown co-conspirator fled the scene together; and/or (3) pursuant to a conspiracy to
7 commit this crime.

8 It is the duty of the jury to apply the rules of law contained in these instructions to the
9 facts of the case and determine whether or not the Defendant is guilty one or more of the
10 offenses charged.
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STEW018

INSTRUCTION NO. 4

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

AA000261

STEW019

INSTRUCTION NO. 5

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt, you should so find, even though you may believe one or more persons are also guilty.

AA000262

STEW020

INSTRUCTION NO. 15

Conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

AA000263

STEW021

INSTRUCTION NO. 2

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

AA000264

STEW022

INSTRUCTION NO. 8

Where more than one persons knowingly and with criminal intent join together in such a common design to commit any unlawful act, each is criminally responsible for the acts of his confederates committed in furtherance of the conspiracy. In contemplation of law, the act of one is the act of all.

However, in regard to acts committed by an accomplice, a defendant cannot be criminally responsible under a conspiracy theory, for the crime of:

1. First Degree Kidnapping unless that Defendant also had the specific intent to commit a robbery and/or larceny upon the person.

AA000265

STEW023

INSTRUCTION NO. 9

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

AA000266

STEW024

INSTRUCTION NO. 10

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for an act of a co-conspirator that follows as one of the probable and natural consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

AA000267

STEW025

INSTRUCTION NO. 11

Evidence that a person was in the company of or associated with one or more other persons alleged or proved to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances which may be considered in determining whether a conspiracy exists.

AA000268

STEW026

INSTRUCTION NO. 12

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

Mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. A Conspiracy is seldom susceptible of direct proof and it usually established by inference from the conduct of the parties. In particular, a conspiracy conviction may be supported by a coordinated series of acts in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

AA000269

STEW027

INSTRUCTION NO. 13

Any person who, by day or night, enters any house, room, apartment, or structure,
with the intent to commit larceny and/or robbery, is guilty of burglary.

AA000270

STEW028

INSTRUCTION NO. 14

It is not necessary that the State prove the defendant actually committed larceny and/or robbery after he entered in order for you to find him guilty of Burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the house, room or apartment with the intent to commit larceny and/or robbery regardless of whether or not that crime occurred.

AA000271

STEW029

INSTRUCTION NO. 5

The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

AA000272

STEW030

INSTRUCTION NO. 16

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit assault and/or battery and/or kidnapping and/or murder therein.

Force or a "breaking" as such is not a necessary element of the crime.

AA000273

STEW031

INSTRUCTION NO. 17

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

AA000274

STEW032

Every person who commits the crime of Burglary, who has in his possession or gains possession of any deadly weapon or at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of Burglary while in Possession of a Deadly Weapon.

If you find beyond a reasonable doubt that a deadly weapon was possessed or gained during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, then you shall return the appropriate guilty verdict reflecting "While in Possession of a Deadly Weapon."

If, however, you do not find that a deadly weapon was possessed or gained during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, but you find that a Burglary was committed, then you shall return the appropriate guilty verdict reflecting that the Burglary was not committed while in possession of a deadly weapon.

INSTRUCTION NO. 19

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, to prevent or overcome resistance to the taking, or to facilitate escape, in either of which cases the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property.

AA000276

STEW034

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INSTRUCTION NO. 20

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 21

It is unnecessary to prove both violence and intimidation. If the fact be attended with circumstances of threatening word or gesture as in common experience and is likely to create an apprehension of danger and induce a man to part with his property for the safety of his person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such a case.

AA000278

STEW036

INSTRUCTION NO. 22

In order to constitute robbery, the taking must be accomplished either by force or intimidation, this element being the gist and distinguishing characteristic of the offense; but there need not be force and intimidation, either being sufficient without the other.

AA000279

STEW037

INSTRUCTION NO. 23

If you find the defendant guilty of robbery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

AA000280

STEW038

INSTRUCTION NO. 24

If more than one person commits a robbery, and one of them uses a deadly weapon in the commission of that robbery, each may be convicted of Robbery With Use of a Deadly Weapon, even though he did not personally himself use the weapon.

AA000281

STEW039

INSTRUCTION NO. 25

If you find beyond a reasonable doubt that the defendant committed Robbery With the Use of a Deadly Weapon, then you are instructed that the verdict of Robbery With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Robbery, but you do find that a Robbery was committed, then you are instructed that the verdict of Robbery without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Robbery with the Use of a Deadly Weapon and Robbery without the Use of a Deadly Weapon.

AA000282

STEW040

INSTRUCTION

26 NO.

A kidnapping does not require force.

"Lead" means to go before or with to show the way; to guide in direction, course or action; to conduct or bring.

"Take" means to obtain possession or control of, whether legally or illegally.

"Entice" means to lure or induce; to wrongfully solicit a person to do something.

"Carry" means to take or support from one place to another; convey; transport.

"Detain" means to keep from proceeding; keep waiting; delay; and/or to keep under restraint or in custody.

AA000283

STEW041

INSTRUCTION NO. 2A

In order for you to find the defendant guilty of First Degree Kidnapping and an associated offense of robbery, you must also find beyond a reasonable doubt either:

- (1) That any movement of the victim was not incidental to the robbery;
- (2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the robbery;
- (3) That any incidental movement of the victim substantially exceeded that required to complete the robbery;
- (4) That the victim was physically restrained and such restraint substantially increased the risk of harm to the victim; or
- (5) The movement or restraint had an independent significance or purpose.

"Physically restrained" includes but is not limited to tying, binding, or taping.

AA000284

STEW042

INSTRUCTION NO. 28

The crime of Kidnapping in the First Degree, as charged in this case is a specific intent crime. A specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the state must prove that the defendant knowingly did the act which the law forbids, purposely intending to violate that law.

An act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The intention or purpose for which the victim was held against his or her will is a question of fact to be determined by your consideration of the evidence. The intention may be inferred from the defendant's conduct and all other circumstances.

AA000285

STEW043

INSTRUCTION NO. 29

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for the purpose of committing robbery; is guilty of Kidnapping in the First Degree.

The law does not require the person being kidnapped to be carried away for any minimal distance.

The term "inveigle" means to lead astray by trickery or deceitful persuasion.

AA000286

STEW044

INSTRUCTION NO. 30

You are instructed that if you find a defendant guilty of First Degree Kidnapping, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

AA000287

STEW045

INSTRUCTION NO. 31

A "deadly weapon" is any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

AA000288

STEW046

INSTRUCTION NO. 32

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

AA000289

STEW047

INSTRUCTION NO. 33

The flight of a person after the commission of a crime is not sufficient in itself to establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The weight to which such circumstance is entitled is a matter for the jury to determine.

AA000290

STEW048

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 31

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

AA000294

STEW052

INSTRUCTION NO. 28

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

AA000295

STEW053

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 41

In your deliberation as to whether or not the defendant is guilty or not guilty, you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court.

INSTRUCTION NO. 42

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

AA000299

STEW057

INSTRUCTION NO. 43

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the defendant and his counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

AA000300

STEW058

INSTRUCTION NO. 44

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: Valerie Adair
DISTRICT JUDGE

AA000301

STEW059

EXHIBIT 3

AA000302

STEW060



1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 TOMMY STEWART, aka TOMMY
9 LAQUADE STEWART,

10 Defendant.

CASE NO. C-15-305984-1

DEPT. NO. XXI

11
12 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

13 MONDAY, MARCH 14, 2016

14
15 **RECORDER'S PARTIAL TRANSCRIPT**
16 **JURY TRIAL DAY 1 - OPENING STATEMENTS**

17
18 **APPEARANCES:**

19 For the State:

TIERRA D. JONES
AGNES M. LEXIS
Deputies District Attorney

20
21
22 For the Defendant:

JESS R. MARCHESE, ESQ.

23
24
25 RECORDED BY: SUSIE SCHOFIELD, COURT RECORDER

AA000303

1 LAS VEGAS, NEVADA, MONDAY, MARCH 14, 2016, 2:13 P.M.

2 THE COURT: All right. Court is now back in session. The record should
3 reflect the presence of the State through the Deputy District Attorneys, the presence
4 of the defendant and his counsel, the officers of the Court, and the Ladies and
5 Gentlemen of the Jury.

6 Is the State ready to proceed with their opening statement?

7 MS. JONES: We are, Your Honor.

8 THE COURT: All right. Ms. Jones.

9 MS. JONES: And if I could just ask if we could just switch it over.

10 (Opening Statement for the State)

11 Good afternoon, Ladies and Gentlemen. This is the case of the State
12 of Nevada versus Tommy Stewart. This is going to be a very quick jury trial, but I
13 don't want you to take that to being that this isn't serious because it's going to go
14 fairly quickly for you.

15 In this trial you are going to hear evidence and testimony that on
16 January 20th of 2015, Natasha Lumba resided at this residence. She was residing
17 at 805 Rock Springs, Apartment 101. Natasha Lumba is going to testify to you
18 today and she's going to talk to you about what happened to her on January 20th of
19 2015, when she returned home to her residence at 805 Rock Springs, Apartment
20 101.

21 Natasha Lumba's going to come in here today and she's going to tell
22 you that she had gone out on a drive with some of her friends, and then she had
23 also gone by her boyfriend's house, and on her return from her boyfriend's house
24 she was returning to her own residence, when she's walking up to the gate of that
25 residence and she's approached by two individuals.

1 She's going to tell you that when she's -- as she's being approached by
2 these individuals, she makes eye contact with them and she can sense that
3 something is about to happen to her. And she just starts saying to herself, oh my
4 God, oh my God, because she knows that something's about to happen to her and
5 she can't stop that from happening.

6 She's going to tell you that one of the individuals held up a gun as they
7 approached her. It was at that point that both of these individuals ordered her to
8 unlock the door and let them into her house.

9 So she's going to tell you that she used her own key for her residence
10 and she unlocked her door and let them into her residence because they were
11 standing there with a gun at her and ordering her to do that.

12 She's going to tell you that once they went inside the house, she was
13 then told to go into her own bedroom and lie down on the ground on the floor in her
14 bedroom, and she was to stay down there while they went through all of her
15 belongings and ransacked her house, and went through each and every individual
16 room inside of her house.

17 She's going to tell you that she could hear what was going on and she
18 could see some of what was going on, but she was told not to look at them. So she
19 wasn't making any efforts to look as they're going through her apartment and taking
20 her belongings.

21 You're going to see photographs from her apartment and the disarray
22 that her apartment was left in. You're going to see right here that this is her printer.
23 She's going to tell you that that printer was in her spare bedroom which is where she
24 kept it, somewhat like an office for herself. They took that printer out of her
25 bedroom, they maybe were going to leave the house with it but then when they got

1 to the living room, they decided they didn't want it so they left the printer there, and
2 that's the reason it's sitting in the middle of the living room floor.

3 We're about to talk about her purse and you can see her purse that's
4 right down here in the corner screen. You're going to -- she's going to tell you how
5 they went through her purse, dumped out all of the belongings. You can see a key
6 here; you can see her cigarettes, the things that were contained inside of her purse.

7 She's going to tell you that she saw them removing her credit cards and
8 her debit cards from her wallet that was actually contained inside of that purse.
9 She's going to tell you that at one point one of them asked her, what's the PIN
10 number, and she's going to tell you she gave them the PIN number but she told
11 them it doesn't matter, I don't have any money, so my PIN number's not going to do
12 you any good because I don't have any money.

13 And their response to her was, well, how do you have all this stuff if you
14 don't have any money? And they continued to go through her home and go through
15 all of her belongings and see if there were items in there that they could take. She's
16 going to tell you that also inside of that bag was her cell phone. She had a yellow
17 iPhone 5C. She's going to tell you that they took that from her as well. They
18 demanded that she give them the pass code to her cell phone and she provided that
19 pass code to them, and they walked away with her cell phone.

20 She's going to tell you that the entire time these two individuals were
21 acting together. She's going to tell you that she could -- they would basically take
22 turns. There was a point where one of them would be watching her and the other
23 one is ransacking her stuff.

24 There was another point where the other one would be watching her
25 and the other one is ransacking her stuff, and they would somewhat take turns, but

1 that she had a lot of interaction, engagement, with the shorter of the two individuals
2 is what she's going to tell you.

3 She's going to tell you that these two individuals were wearing black
4 hoodies and that most of the time they had the strings drawn to the hoodies so it
5 was almost impossible for her to see a lot of their face as they were robbing her and
6 taking her belongings.

7 She's also going to tell you that on their way out they asked her, what
8 kind of car do you have? And she told them, I have a Volkswagen. So they told
9 her, well, we'll let you keep your car. And then they exited her residence and she's
10 still down on the ground in her bedroom on the floor.

11 She's going to tell you that after they exited her residence she laid there
12 for a while to make sure that they were gone and she was still somewhat in shock.
13 She was afraid to go out of her house because they had asked her what kind of car
14 she had, so she was afraid to go out of her house and immediately jump into her
15 car. So she waited a while and then she did eventually get into her car and drive
16 over to her boyfriend's house where they then placed the 9-1-1 call that you're going
17 to hear to the Las Vegas Metropolitan Police Department.

18 You're going to hear that her boyfriend makes the beginning of the
19 9-1-1 call. He's calling the police on her behalf, but when the 9-1-1 operator starts
20 asking about specific details of the robbery, she then gets on the phone to explain
21 those to the caller because she is the person who was there; her boyfriend was not
22 present when the robbery actually occurred.

23 You're going to hear that the Las Vegas Metropolitan Police
24 Department responds to her residence and once they respond to her residence they
25 proceed to call out crime scene analysts to collect evidence that may have remained

1 behind at the scene. You're going to see that they put fingerprint powder all over
2 her front door and they put fingerprint powder on various items inside of her
3 residence where they may be able to draw a fingerprint, so hopefully they could be
4 able to find the person who had robbed her and broken into her home.

5 And you're going to hear evidence that on this jewelry box right here,
6 they were able to recover a fingerprint on the top of this jewelry box. And you'll have
7 this photograph back there. And you see this number two right here? That's where
8 the fingerprint was recovered on the jewelry box that belongs to Ms. Lumba that was
9 on top of her washing machine that night when they went through her jewelry box
10 looking for her jewelry, and in an attempt to stop them she told them that all of her
11 jewelry was costume jewelry so they wouldn't be able to get any money for it.

12 You're also going to hear evidence that the Las Vegas Metropolitan
13 Police Department ran those prints and that the print that's on that jewelry box
14 comes back to the defendant, Tommy Stewart.

15 Ms. Lumba's going to be in here and she's going to tell you that she
16 doesn't know Tommy Stewart. She's never met him before, she has no idea who he
17 is, and there'd be no reason for him to be at her house, but yet his fingerprint comes
18 back on the jewelry box that the robbers went through while they were going through
19 the belongings that were at her house.

20 You're going to hear everything said on February 14th of 2015. Tommy
21 Stewart was apprehended by the Las Vegas Metropolitan Police Department
22 Officers Brian Jackson and Officer Vorce apprehended Mr. Stewart. You're going to
23 hear evidence that he was then interviewed by Detective Abell and that when
24 Detective Abell first spoke to him and asked him in regards to his whereabouts and
25 what was going on that night, he told Detective Abell he didn't know what he was

1 talking about, he's never been to that house.

2 Detective Abell then proceeds to confront him with the fact that his
3 fingerprint was left behind on the jewelry box that was ransacked at that house on
4 the night of January 20th of 2015, and all of a sudden he remembers that he was
5 inside of that house.

6 He told Detective Abell that he was inside of that house with a friend of
7 his and that while his friend was engaging in some sort of sexual activity with the
8 victim, he went through her belongings to see if there were items there that he could
9 steal. He also told Detective Abell about the sewing equipment that's located inside
10 of her jewelry box. And if you look right here, there just so happens to be thread
11 and sewing equipment that was inside of her jewelry box, and he knew about that
12 and he told Detective Abell about that.

13 So Ladies and Gentlemen, at the end of this trial the State is going to
14 ask you to convict the defendant, Tommy Stewart, of conspiracy to commit robbery,
15 burglary while in possession of a firearm, robbery with use of a deadly weapon, and
16 first degree kidnapping with use of a deadly weapon.

17 Thank you.

18 THE COURT: All right, thank you, Ms. Jones. Does the defense wish to
19 make their opening statement at this time?

20 MR. MARCHESE: No, Your Honor.

21 (Opening Statements concluded at 2:22 P.M.)

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

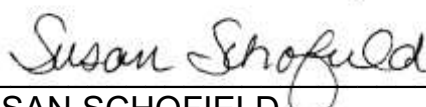
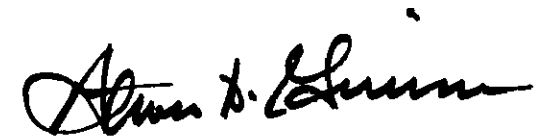
24 
25 SUSAN SCHOFIELD
Court Recorder/Transcriber

EXHIBIT 4

AA000310

STEW068



CLERK OF THE COURT

1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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8
9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

12 **TOMMY STEWART**
13 **aka, TOMMY LAQUADE STEWART**

14 **Defendant.**

) **CASE NO. C305984-1**

) **DEPT. XX1**

15
16 **BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE**
17 **MONDAY, MARCH 14, 2016**

18 ***RECORDER'S PARTIAL ROUGH TRANSCRIPT OF PROCEEDINGS RE:***
19 **JURY TRIAL DAY 1 TESTIMONY AND MOTION ARGUMENT**

20 **APPEARANCES:**

21 **For the State:**

TIERRA D. JONES ESQ.
Deputy District Attorney

22 **AGNES M. LEXIS, ESQ.**
23 **Deputy District Attorney**

24 **For the Defendant:**

JESS R. MARCHESE, ESQ.

25 **RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER**

1 MONDAY, MARCH 14, 2016 at 9:15 A.M.

2 THE COURT: Is there any hope of this resolving?

3 MS. LEXIS: No.

4 MR. MARCHESE: There's no offer, so.

5 THE COURT: No offer?

6 MS. LEXIS: We haven't been approached with an offer. Last I heard an offer

7 wasn't wanted.

8 MR. MARCHESE: Well, going off the -- I didn't do the preliminary hearing.

9 But going off the preliminary hearing transcript --

10 THE COURT: Okay. Well, they said they haven't made an offer.

11 MR. MARCHESE: Yeah.

12 THE COURT: Any hope of resolving this case?

13 MS. LEXIS: We can make an offer. I don't know if --

14 THE COURT: I mean if it's --

15 MS. LEXIS: -- it'll be one that's liked, but.

16 THE COURT: In any event, is there any pretrial matters that --

17 MR. MARCHESE: Yes, there is, Your Honor.

18 THE COURT: Okay.

19 MR. MARCHESE: I had one issue. Last Sunday I noticed I sent a, I RFC'd

20 the State with a motion via facsimile. That motion was filed last Monday it was a

21 motion to suppress.

22 THE COURT: Okay.

23 MR. MARCHESE: This is basically --

24 THE COURT: And I thought that was, was it Judge -- this came out of

25 Department VIII --

1 MR. MARCHESE: Correct.

2 THE COURT: -- is that correct? Now, in passing, and this is the extent of the
3 conversation, Judge Smith mentioned that there had been a motion to suppress filed
4 and that it had been denied.

5 MR. MARCHESE: That is correct.

6 THE COURT: Okay.

7 MS. JONES: That is correct, Your Honor.

8 MR. MARCHESE: So this is the same motion that three separate judges in
9 Federal Court have found merit in basically that they Metro cards --

10 THE COURT: Let me, can I cut you off? Is that the motion that Judge Smith
11 ruled on?

12 MR. MARCHESE: Correct.

13 THE COURT: Isn't that the law of the case?

14 MS. JONES: Yes.

15 MR. MARCHESE: Well, there's more to it though.

16 THE COURT: Okay. I mean, look, if it's wrong, you know, it'll probably be my
17 name that comes out on the reversal, which isn't good but. And if it's right that's
18 great but either way wrong or right it's still is the law of the case because that's what
19 Judge Smith ruled, so you know I'm not gonna revisit his rulings.

20 MR. MARCHESE: Well, and I understand but there's more to it because I
21 was never heard.

22 THE COURT: Okay.

23 MR. MARCHESE: So, this was filed on Monday. The State sent a response
24 to Marc Saggese on Monday. At some point in time, I don't know how, presumably
25 the State called chambers and got the matter on calendar for Wednesday. I was not

1 noticed of this. The only way I found out was the marshal from District Court VIII
2 called me and said hey, where are you, you have a motion on. I said, wait a minute,
3 this motion is, I don't have this on for today. I said I would come back to District
4 Court VIII or you can just move it to the overflow, judge, because by that time we
5 had already been sent to overflow neither of which happened. It was ruled on
6 without me being present, I was unable to make any sort of a record, and here we
7 are.

8 THE COURT: So, was it, was the motion denied based on the briefs?

9 MR. MARCHESE: I don't know.

10 MS. JONES: And it was, Your Honor. If I could enlighten the Court, I was
11 there --

12 THE COURT: Okay.

13 MS. JONES: -- as to what happened.

14 THE COURT: And I would just send this to Judge Smith right now but his
15 water heater just blew up because I just saw him at the elevator, that's how I know
16 that. As you know, he's next door. In any event, so we can't ask him. That was the
17 point of that comment.

18 MS. JONES: Yeah. I was there, Your Honor, on Wednesday --

19 THE COURT: Okay.

20 MS. JONES: -- because this motion was filed on Monday. We had had
21 calendar call the Wednesday before that so with this motion being filed on Monday
22 the court had to put it back on calendar because overflow will not take a case that
23 has a pending motion. So once District Court VIII put it back on calendar for
24 Wednesday we had to get a response out in less than 24 hours to have something
25 on file.

1 When I showed up on Wednesday in front of Judge Smith, Judge Smith
2 had received a copy of the motion based upon the fact the marshal represented that
3 he had spoken to Mr. Marchese and he was in Henderson and Judge Smith's
4 calendar would be over before he would be able to be back, Judge Smith did not
5 allow me to make any argument on the merits. He ruled, I mean on the motions, he
6 ruled on the motion just based on the briefing and what had been filed and he
7 denied the motion on that day, last Wednesday.

8 I did not argue the merits of this motion in any way.

9 THE COURT: I would just note then under the, you know, our rules the
10 motion was untimely.

11 MS. JONES: Which was the beginning of the State's opposition.

12 THE COURT: You know, wasn't 15 days before trial, so --

13 MR. MARCHESE: Well, I mean --

14 THE COURT: -- it was untimely in that regard.

15 MR. MARCHESE: Okay. Well, if I'm found to be ineffective, I'm found to be
16 ineffective.

17 THE COURT: But notwithstanding that, it sounds to me like Judge Smith
18 ruled on the merits even though the motion was untimely.

19 MS. JONES: He did.

20 THE COURT: So, I mean, he had grounds not to consider the motion but he
21 did. He chose to, which is fine. And he denied the motion on the merits. I would
22 also just comment that the reason he had to decide the motion without argument is
23 because it was untimely. So, kind of on you can't have your cake and eat it too
24 point. You know, I mean, it's -- I think that's appropriate, you know, to consider the
25 motion even though it was untimely particularly since the State was able to get a

1 response in. But, that's why, you know, he didn't pass it to another day when you
2 were in Henderson, is that what you said?

3 MS. JONES: That's what the marshal represented to the court.

4 MR. MARCHESE: Well, I offered to come back.

5 THE COURT: When you were in Henderson because the motion hadn't been
6 calendared far enough in advance. I'm sure Judge Smith would have had it been
7 calendared far enough in advance and you were in Henderson just to have said
8 well, let's pass this to the, you know, Wednesday or let's pass it to next Monday, or
9 whatever.

10 MS. JONES: And Judge Smith knew he was gonna be in trial so he said he
11 had to rule on the motion because overflow's not gonna take it with a motion
12 pending and he had his own trial set for today.

13 THE COURT: So that's where we are.

14 MR. MARCHESE: Okay.

15 THE COURT: Any other pretrial matters, or, yeah?

16 MR. MARCHESE: Yeah. The only thing I would add to that is this was an
17 issue that had just come up was based on a recent magistrate decision in the
18 Federal Court. It is not published, obviously, given the fact that it is a magistrate but
19 I will point out that three separate federal judges have granted this particular motion
20 stating that the Miranda cards used by Metro are improperly state the law. Other
21 than that --

22 THE COURT: Okay. Well, the state of the law, as I understand it, is that as
23 long as the Metro cards are read verbatim its fine. Where we've had trouble is
24 where they start adlibbing, in past cases. So, you know, I didn't read the briefs.

25 MR. MARCHESE: No, I understand.

1 THE COURT: I haven't studied the issue because I -- my understanding was
2 it had been decided by Judge Smith and that's the law of the case. So, you know,
3 like I said, that's, you know, where when we take something from overflow we take it
4 subject to the judge's rulings. So, that's where we are on this. You know, off the top
5 of my head, I'm assuming you're talking about the District Court opinions out of the,
6 our district of -- United States District Court here, is that correct? Those are the
7 three decisions you're discussing?

8 MR. MARCHESE: Correct. Nothing's has been published in the Ninth Circuit
9 as of yet. I was trying to, I did a little research over the weekend I was trying to see
10 if there was, if anything has been brought to the Ninth Circuit on appeal but I
11 couldn't find anything.

12 THE COURT: Okay. Yeah. I mean, the last time we had the issue in here
13 the, you know, my understanding is if they stick with the card they're fine. In that
14 particular case the police officer was adlibbing and didn't include all the necessary
15 warnings. So, that statement was suppressed but as I understand it, that's not the
16 issue here.

17 All right. Anything else? Can Kenny go get the panel?

18 MR. MARCHESE: I guess I probably do have one. It's my understanding,
19 and obviously I don't know how the State is gonna play their case out, but when my
20 client was arrested after or this incidence, I mean, not close in proximity he was
21 arrested at a Bells Market. There's some allegations that there was a, when he was
22 arrested that he threw a gun or maybe two guns, or, into a vehicle and I believe that
23 the State is going to try to bring that evidence in. I don't see the relevance
24 necessarily in that it's after the fact. I don't believe there's an allegation that the gun
25 or the guns were the ones that were allegedly used in the crime here. To me, it's a

1 complete and separate incident, so if they wanted to proceed under that under
2 something it should be tried separate. I don't see the relevance in that.

3 MS. JONES: And, Your Honor, the relevance of that is this is a robbery with
4 use of a deadly weapon where victim describes --

5 THE COURT: So they're trying to show that he had possession of guns, and
6 --

7 MS. JONES: Victim describes Defendant as having a black semi-automatic
8 handgun.

9 THE COURT: And then he --

10 MS. JONES: There is a black semi-automatic handgun that's retrieved in that
11 car.

12 THE COURT: Yeah. I think that's relevant then. As long as there's a witness
13 who can say he saw that gun being thrown by this Defendant --

14 MS. JONES: Officer Vorce can testify to that.

15 THE COURT: -- and then the gun was retrieved and it's consistent with the
16 gun that was described by the victims in our case I think that's, you know, ties him
17 in. I mean, if it was a red bandana and he was wearing a red bandana and you
18 catch him with a red bandana it would be admissible, so. I mean, the gun's just
19 evidence of identity, really, that he's --

20 MR. MARCHESE: But it's after the fact. It wouldn't be a prior bad act it's a --

21 THE COURT: Well, no, no. But what I'm saying is if, that's why I used the
22 bandana example it's not coming in as bad act evidence. Let's just say the witness
23 said the man who robbed me had a red bandana on his face and then a week later
24 you catch the Defendant and he's got a red bandana in his pocket. You would
25 introduce the red bandana because it's consistent with the description of the

1 witness. In this case it happens to be a firearm. Now if it was just any firearm, you
2 know, if he throws a rifle and a grenade into the car then we'd have a problem.

3 But you, you know, lay a foundation obviously as to the description of
4 the gun so we can make sure it's the same or similar gun. I mean, it's supposed to
5 be the same gun, that's the point. Like I said, you know, that's why all, when they
6 do a search warrant they look for clothes that are consistent with what they used in
7 the robbery. It's just another way of adding to the identification, so.

8 MR. MARCHESE: Well, and that's my issue is first of all her original
9 statement is, this is how she describes it, he -- where one held would appear to be a
10 gun.

11 THE COURT: Could we maybe get started and revisit this?

12 MR. MARCHESE: Okay.

13 THE COURT: 'Cause we'll let's get started with jury selection and then --

14 MR. MARCHESE: No problem.

15 THE COURT: -- we can make a better record. But like I said, it's not being
16 offered as a bad act it could be, you know, it could be a pair of sneakers, it could be
17 a sweatshirt, it could be, you know, a tattoo that's consistent. It just goes to
18 identification.

19 MS. JONES: And we'll lay the foundation, Your Honor.

20 THE COURT: So, Ms. -- okay. You've done a trial in here, Ms. Lexis has
21 done a trial in here and I don't think you've done a trial in here.

22 MR. MARCHESE: Oh yes, we've had, we've done three.

23 THE COURT: Really?

24 MR. MARCHESE: But one was a long, long time ago.

25 THE COURT: It's because you're so small and you're tiring. I just don't

1 remember you.

2 [Colloquy not transcribed]

3 [Break in the proceedings at 9:28 a.m.]

4 [Jury Selection -- not transcribed]

5 [Opening Statements -- not transcribed]

6 [Inside the presence of the jury]

7 [Proceedings resumed at 2:41 p.m.]

8 **NATASHA LUMBA**

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

10 THE COURT CLERK: And would you please state and spell your name?

11 THE WITNESS: Natasha Lumba, N-A-T-A-S-H-A, L-U-M-B-A.

12 MS. JONES: May I proceed, Your Honor?

13 THE COURT: You may.

14 **DIRECT EXAMINATION**

15 BY MS. JONES:

16 Q Good afternoon, Natasha, how are you?

17 A I'm all right, thanks.

18 Q Okay. Can you slide a little bit closer to the microphone for me? You're
19 just little soft spoken.

20 A Okay.

21 Q Okay. And she just has to take down everything that we're saying,
22 okay?

23 A Okay.

24 Q Natasha, I would like to draw your attention back to January 20th of
25 2015. Where were you living on that day?

A I was living at 805 Rock Springs Drive, Apartment 101, Las Vegas, Nevada, 89128.

Q And prior to that date, how long had you been living at the address on Rock Springs?

A Since June.

Q Okay.

MS. JONES: May I approach the witness, Your Honor?

THE COURT: You may.

MS. JONES: And Your Honor, just for the record, the State, there's a stipulation between the parties to admit State's proposed Exhibit 30, 37, 39, 42, 45, 46, 54, 55, 56, 61, 62, 63, 71, 73, 74, 84, 85, and 86.

THE COURT: Is that correct?

MR. MARCHESE: That's correct, Your Honor. I don't have the exact numbers but that stack of Exhibits we reviewed together and I will stipulate to their admittance evidence.

THE COURT: All right. Those Exhibits will all be admitted.

[Exhibits 30, 37, 39, 42, 45, 46, 54, 55, 56, 61, 62, 63, 71, 73, 74, 84, 85,
and 86, admitted]

MS. JONES: And based on the fact that they're admitted, Your Honor, I have permission to publish?

THE COURT: You do.

MS. JONES: Okay.

BY MS. JONES:

Q And, Natasha, I'm gonna show you a picture from back here, okay?

A Okay.

1 Q And you'll be able to see it on your screen right there.

2 A Okay.

3 Q And when I'm asking you to show us stuff you can write on that screen,

4 you can actually draw on that screen that you're in front of with your finger.

5 A Okay.

6 Q Okay? Natasha, I am showing you what's been admitted as State's

7 Exhibit 30. Do you recognize what we're looking at in that photograph?

8 A Yes, it's the front patio area of my former apartment.

9 Q Okay. So this is the patio area of your apartment on Rock Springs?

10 A Yes.

11 Q And is this the way that it appeared on January 20th of 2015?

12 A Yes.

13 Q Okay. And you said that on January 20th you were living at the Rock

14 Springs address. Do you currently reside at that address?

15 A No.

16 Q Okay. Have you left that address?

17 A Yes.

18 Q Okay. On January 20th of 2015 did something happen to you at your

19 residence that night that's the reason why you're here today?

20 A Yes.

21 Q Okay. Can you tell the ladies and gentlemen where were you coming

22 from?

23 A I was coming from my boyfriend's house.

24 Q Okay. And about what time of day or night is that?

25 A It was about 11 p.m.

1 Q And then what -- where were you -- can you show us on this screen,
2 you can draw on that screen, which direction it was that you were walking.

3 A Um, like this.

4 Q Okay. And, as you were walking into this gate that we see here, did
5 something happen to you?

6 A Yes, out of the corner of my eye I saw two men approaching me rather
7 quickly. And I could tell by the way they were looking at me and, you know, that
8 they were walking really quickly, that they were coming to me, coming towards me.
9 Then, you know, once I was past the gate I was in front of my front door I was
10 fumbling for my keys and then all of a sudden they were right next to me. I just
11 started reacting, I was like, oh my god, oh my god, oh my god. And one of them
12 held up a gun to me and the other one told me not to yell or else they would hurt me.

13 Q Okay. And I'm just gonna stop you right there. And when you said you
14 were approached by two men, were you able to see the race of those men?

15 A Yes.

16 Q What was their race?

17 A They were African-American.

18 Q Both of them?

19 A Yes.

20 Q And what were they wearing?

21 A They were both wearing dark hoodies and dark pants.

22 Q Okay. And when you say hoodies is that like a sweatshirt with a hood?

23 A Yes.

24 Q Okay. And where were -- was it -- were they wearing it normal or were
25 they wearing the hoods?

1 A They had their hoods up.

2 Q Okay. So they had their hoods up when they approached you?

3 A Yes.

4 Q Okay. And so you could see these two men. Were you able to see
5 their face?

6 A It was dark, but, yes.

7 Q Okay, so you were able to see their face?

8 A Yes.

9 Q Okay. And, when these two men approached you, do you see either of
10 those men in this room today?

11 A I am not sure.

12 Q Okay. So when they approached you what happened after? You said
13 you were fumbling for your keys and then what happened to you?

14 A Um, well, like I said they held up a gun and told me, you know, not to
15 tell and then they told me to open the front door and then they followed me in.

16 Q Okay. And you said that there were two men. Was there one of them
17 that was taller than the other one or?

18 A Yes, one of them was taller by I would say, maybe, like two inches.

19 Q Okay. And how tall would you guess he was?

20 A The taller one?

21 Q Yes.

22 A Um, maybe 5, 10ish.

23 Q Okay. And, is that just a guess that you're making?

24 A Yes.

25 Q Okay. 'Cause were you just -- did you get a long time to stare at them?

1 A No.

2 Q Okay. And then you said the other one was about how tall?

3 A Maybe 5, 8 or 5, 9, just two inches shorter than the taller one.

4 Q Okay. And just for clarification, we'll refer to the taller guy as the tall

5 guy and then the smaller one, the shorter one as the short guy.

6 A Okay.

7 Q Which one held up the gun?

8 A The taller one.

9 Q The taller one? Okay. So he held up the gun. And did you see what

10 color the gun was?

11 A Black.

12 Q And are you familiar with handguns at all?

13 A Um, a little, not really.

14 Q Okay. Are you familiar with the difference between a semiautomatic

15 and a revolver?

16 A Yes.

17 Q Okay. Was this a revolver or a semiautomatic?

18 A A semiautomatic.

19 Q Okay. And you said it was black?

20 A Yes.

21 Q And, when he held up the gun did he point it at you?

22 A Yes.

23 Q And this was the taller guy?

24 A Right.

25 Q And while this was happening, what was the shorter guy doing?

1 A He was standing closer to me, kind of behind me, and telling me not to,
2 you know, yell or anything.

3 Q And these hoodies that they're wearing, were these hoodies just up or
4 did they pull the string on them so they were tighter around their face? What did
5 they look like?

6 A Um, well at different points like the hoods were up normally and then
7 later on they were, the drawstrings were pulled really tight so it was kind of, I could
8 only see their eye, I couldn't see the bottom halves of their faces.

9 Q And that's later on after you were already inside your house?

10 A Yes.

11 Q Okay. So, once one of them yells, don't yell or I'll kill you, which one of
12 them was that?

13 A The shorter one.

14 Q And so, what did you do?

15 A I did what they told me to do.

16 Q Which was what?

17 A They told me to open my front door. They followed me in. I just
18 dropped my purse and bag I was carrying and they told me to lay face down on the
19 ground in my back bedroom.

20 Q And, was this your bedroom?

21 A Yes.

22 Q Okay. And when they demanded that you open the door, did you want
23 these people to come inside of your house?

24 A No.

25 Q Did you have a set of keys to that door?

1 A Yes.

2 Q So, did you use your keys to open that door?

3 A Yes.

4 Q Okay. And you said that they forced you to go into the back bedroom
5 and that was your bedroom?

6 A Yes.

7 Q Okay. And if we could just hold on.

8 And, Natasha, I'm going to show you what's been admitted as State's
9 61. Can you touch the bottom right-hand corner of that screen and it'll clear off the
10 marking? There we go.

11 Okay. And I'm gonna show you what's been admitted as State's 61.
12 Do you recognize what that is?

13 A Yes.

14 Q What is that?

15 A That is the floor of my bedroom where I was laying down.

16 Q And is this where you were forced to lay down?

17 A Yes.

18 Q Okay. And can you show us, draw on the screen, like what direction
19 your body was facing when you were lying down in your bedroom?

20 A Um, so my head was here.

21 Q Okay. And so your feet would be down here.

22 A Yeah.

23 Q Okay. And Natasha, I'm also showing you State's Exhibit 62. What are
24 we looking at there?

25 A That is my bedroom.

1 Q And is that also the space where you were forced to lie down on the
2 ground?

3 A Yes.

4 Q Okay. And State's 63, is that another angle of the same thing?

5 A Yes.

6 Q Okay. And if you look down here towards the bottom, can you see my
7 hand?

8 A Yes.

9 Q Where is the door?

10 A The door would be like over here.

11 Q Okay. So your feet are facing the door?

12 A No, my feet are facing this way.

13 Q So your head is facing the door?

14 A Yes.

15 Q To your bedroom?

16 A Yes.

17 Q Okay. And so once you went into your bedroom and you were lying
18 down on the ground what were the two guys doing?

19 A They were taking turns looking through my apartment just like opening
20 all the closets and everything, kind of ransacking it and, you know, usually one of
21 them was, you know, looking after me and the other one was, you know, looking
22 around. Sometimes they were both just looking in, you know, every corner of my
23 apartment, opening things.

24 Q And when you say that one of them was looking after you, were they
25 kind of taking turns doing that or was it always the same one?

1 A They were kind of taking turns but the shorter one was looking after me
2 more often.

3 Q And when you say looking after you, what was he actually doing?

4 A In my -- he was in my bedroom, you know, just making sure I didn't do
5 anything and also looking in my bedroom.

6 Q Was he looking through your things in your bedroom?

7 A Yes.

8 Q Okay. So, he's in your bedroom and he's looking through your things?

9 A Yes.

10 Q But he's also looking at you?

11 A Yes.

12 Q Did you try to get up and run out of the bedroom?

13 A No.

14 Q Why not?

15 A I was really afraid for my safety. I didn't think that, you know, that was
16 an option.

17 Q You didn't think it was an option for you to get up and run out?

18 A No.

19 Q Okay. Did you have like a clear path to get to the door?

20 A No. Someone, you know, either someone was, you know, in the
21 bedroom or I didn't know, you know, or someone was in the living room and I just
22 didn't think that I would be able to make it to my door.

23 Q And the suspect who was actually keeping an eye on you, was he
24 saying anything to you?

25 A Um, well there -- he was asking me where, like, where the cash was

1 hidden, you know, where the money was, what could be sold for money. And at one
2 point he checked to see if there was, if I was hiding any cash like in my underwear.
3 So he told me to flip over and lay on my back and he put his hand up under my bra
4 and also under my underwear.

5 Q Was this the short guy or the tall guy?

6 A The shorter one.

7 Q Okay. And so when he's asking you where the money is did you
8 respond to that? Did you say anything?

9 A Yes, I said I don't have any cash, you know, I don't have any cash
10 hidden anywhere. I had \$2.00 in my wallet at the time and that was it.

11 Q And while all this is happening do these two individuals appear to you
12 that they're acting together?

13 A Yes.

14 Q Okay. And so then when the short one asks you for money and you
15 said you didn't have any money is that when he put his hand down your pants?

16 A Um, yes.

17 Q And, prior to that, where you laying on your stomach on the ground?

18 A Yes.

19 Q And he told you to flip over?

20 A Yes.

21 Q And did you do that?

22 A Yes.

23 Q Okay. And then at that point he ran his hand down your pants?

24 A Yes.

25 Q And underneath your bra?

1 A Yes.

2 Q Was he saying anything to you when he did that?

3 A Um, he told me not to look at him.

4 Q Did you comply with that?

5 A Yes.

6 Q So, did you ever get an opportunity to just stare at these two

7 individuals?

8 A Not for long, no.

9 Q Okay. Did they ask you anything about your cell phone?

10 A They asked me where my cell phone was and my wallet and I told them

11 both of those things were in my purse that I had dropped near my front door.

12 Q And where were you when you said that to them?

13 A I was in my bedroom lying down.

14 Q Okay. And you told them that your wallet and your cell phone were in

15 your purse?

16 A Yes.

17 Q Did they get -- retrieve your wallet from your purse?

18 A Yes.

19 Q Did you see them do that?

20 A No, I didn't see them do that but, you know, after they left when I looked

21 around, you know, I saw that they had emptied my purse out onto the ground and

22 my wallet was open and, you know, cards were pulled out.

23 Q And did they ask you anything in reference to you PIN number?

24 A Yes, they asked me what my PINs were.

25 Q And was this for your debit card?

1 A Yes.

2 Q And did you give them that information?

3 A Yes.

4 Q Why would you give them your PIN number?

5 A I was terrified for my life.

6 Q And at this point, do they still have the gun?

7 A I didn't see it but I assumed that they did.

8 Q Did you have any reason to believe that they didn't?

9 A No.

10 Q So you believed that they still had it?

11 A Yes.

12 Q Okay. Did there ever come a time where they asked you about whether

13 or not you were a prostitute?

14 A Yes.

15 Q What did they say about that?

16 A Well they, they asked me how I had so much stuff if, you know, I didn't

17 have any cash. And, yeah, they asked me if I was a prostitute.

18 Q What did you say?

19 A No.

20 Q And you said you didn't have any cash, did you ever talk to them about

21 whether you had any money in the bank?

22 A Um, yeah, I told them, you know, like I didn't just didn't have, like

23 anything.

24 Q Did you tell them you didn't have any money in the bank either?

25 A Yes.

1 Q And what was their response to that?

2 A Um, they, yeah, they kept asking me, you know, where's the cash, how
3 do you, you know, how do you not have cash if you have all this stuff?

4 Q And was it at this point that the shorter of the Defendants then puts his
5 hand down your pants?

6 A Yes.

7 Q And while he had his hand down your pants and inside of your bra did
8 he move his hand around or did he just put his hand down there?

9 A Um, I mean, he put his hand down there and moved it around enough
10 to like make sure I wasn't hiding money in there.

11 Q Okay. Do you have a jewelry box?

12 A Yes.

13 Q Okay. And I'm gonna show you what's been admitted as State's Exhibit
14 71. Can you tell us what we're looking at in that photo?

15 A Um, so that's my jewelry chest --

16 Q Okay.

17 A -- here.

18 Q And this is what you call a jewelry chest?

19 A Yes, or --

20 Q And where is this item located in your house?

21 A It's in the hallway outside of my, the bathroom in my second bedroom.

22 Q And did they go through the items that were in here?

23 A Yes.

24 Q Okay. And then I'm gonna show you State's 73. Can you tell us what
25 we're looking at in this photo?

1 A Um, the jewelry chest with like this stuff, you know, I didn't do that they
2 had opened up the drawers and, you know, dumped them out.

3 Q So, is this the way it appeared when you had left earlier that night?

4 A No.

5 Q Okay. So this is how it appeared after?

6 A Yes.

7 Q Did they take any of the jewelry that you had inside of this jewelry
8 chest?

9 A No, I don't believe so.

10 Q Okay. And then, Natasha, I'm gonna show you State's Exhibit 84. Do
11 you recognize what that is?

12 A Yes.

13 Q What is that?

14 A That is a like a little chest that, you know, I use to keep, you know,
15 small things like sewing supplies that was -- and it was on a shelf previously.

16 Q Okay. This was on the shelf?

17 A Yes.

18 Q In what room was the shelf located?

19 A In the hallway above the laundry machines.

20 Q And what type of items did you keep in here?

21 A Um, small things like, you know, for sewing and, you know, safety pins,
22 things like that.

23 Q Okay. And I'm gonna show you State's 85. Is that the same chest?

24 A Yes.

25 Q Okay. And just so that we're clear, State's 71 is what you refer to as

1 your jewelry chest, is that correct?

2 A Yes.

3 Q And then State's 85 is just a chest for your sewing items?

4 A Correct.

5 Q And in your jewelry chest did you tell them whether or not your jewelry
6 was real?

7 A I told them that all of it was costume.

8 Q Okay. And how did they respond to that?

9 A They didn't take any of it.

10 Q Okay. Did they ask you if it was costume?

11 A No, I just, I told them that.

12 Q And were you being truthful when you told them that?

13 A No.

14 Q Okay. Why did you tell them that?

15 A Because I didn't want them to take any of it.

16 Q And, Natasha, I'm gonna show you State's 86. What are we looking at
17 in that photo?

18 A That is a piggy bank.

19 Q Okay. And where was this item located?

20 A That was on the desk in my bedroom, I believe, or, you know, I don't
21 entirely remember. It was either -- it might have been on my kitchen table.

22 Q But this is a piggy bank?

23 A Yes.

24 Q Did it have money in there?

25 A Um, you know, I don't remember. If it did, it just had like a few coins.

1 Q Okay. And do you remember if they went through that?

2 A Yes.

3 Q And, Natasha, I'm gonna show you State's 74. Can you tell us what

4 we're looking at in State's 74?

5 A That is the second bedroom in that apartment.

6 Q And this is inside your apartment?

7 A Yes.

8 Q Okay. And inside of that second bedroom were there any items in there

9 that they went through?

10 A Yes.

11 Q What were those items?

12 A Um, well, my laptop was in there, my printer was in there. Yeah, they

13 opened the boxes. They just looked through that room.

14 Q And did you see them do all of this stuff?

15 A No.

16 Q Okay. So, 'cause you were lying down on the ground in your bedroom?

17 A Yeah, in the other bedroom.

18 Q And you refer to a printer. I'm showing you State's 39. Is that the

19 printer that you're referring to?

20 A Yes.

21 Q So, where was this printer previously located?

22 A It was in the second bedroom.

23 Q It's in the photograph that's marked State's 74?

24 A Yes.

25 Q But after the individuals left your home was it now in State's 39?

1 A Yes.

2 Q And what room is -- are we looking at in State's 39?

3 A The living room.

4 Q Okay. So the printer was -- came from the second bedroom and was
5 now in the living room?

6 A Yes.

7 Q How did that printer get there?

8 A Um, one of them carried it.

9 Q Do you remember which one?

10 A I believe the taller one.

11 Q And while that was happening did they appear to be acting together?

12 A Yes.

13 Q And, Natasha, when they went through your residence what all items
14 did they take from you?

15 A My cell phone.

16 Q And what type of phone was that?

17 A Um, an Apple 5C. It was yellow.

18 Q Okay. And what else?

19 A Um, my laptop, my Toshiba laptop and my Cannon camera.

20 Q And did they take any money from you?

21 A The \$2.00 that was in my wallet.

22 Q Okay. And I'm gonna show you State's Exhibit 37. What are we
23 looking at there?

24 A That's the living room and um, it's about five feet into my apartment
25 from the front door.

1 Q Okay. And, what are we see [sic] on the ground in this photograph?

2 A Um, so this is my purse and these are like some of the emptied

3 contents of my purse.

4 Q And can you see your wallet in this photograph?

5 A Um, no.

6 Q Okay. Where was your wallet recovered? Where did you find your

7 wallet?

8 A Um, it was on the ground but it's just not in this photo.

9 Q And the \$2.00 that you were referring to, that was inside your wallet?

10 A Yes.

11 Q Okay. And do you remember what kind of wallet you had?

12 A Um, it was a light pink Kate Spade wallet.

13 Q Okay. And, Natasha, I'm showing you State's 45. What are we looking

14 at here?

15 A Um, that's a different angle of the same stuff.

16 Q Okay. And, what about 46?

17 A Also the same things.

18 Q Okay. And does these -- do these photos appear to depict your house

19 how it appeared after the individuals left your house?

20 A Yes.

21 Q Okay. Well, let's back up a little bit. They're going through your stuff

22 and are you still lying on the ground in your bedroom?

23 A Yes.

24 Q Okay. And, once the guy comes in and runs his hands down your

25 pants and under your bra, what happens after that?

1 A Um, they, um, went back to, you know, looking through everything and
2 just ransacking, looking through all of my things.

3 Q And were they doing that together?

4 A Um, yes.

5 Q Were they still taking turns with somebody watching you and the other
6 one ransacking your apartment?

7 A Yes.

8 Q So, did it appear to you at this point they were still active together?

9 A Yes.

10 Q And while this is happening, are you afraid?

11 A Yes, very.

12 Q Okay. What are you afraid of?

13 A Um, I mean, you know, in that situation I, like anything could have
14 happened I, you know, didn't know. I was afraid of, I was afraid for my life. I was
15 afraid, just afraid for myself.

16 Q And did you have any reason to believe that the tall one didn't still have
17 that gun?

18 A No, I had no reason to believe that.

19 Q Okay. And so, while you're lying down on the ground and after that
20 happens, what happens next?

21 A Um, excuse me? At what happens --

22 Q You're still lying down on the ground?

23 A Yes.

24 Q And they're still going through your things.

25 A Yes.

1 Q How long does that last? How long did they rummage through your
2 apartment and rummage through your things?

3 A I would say maybe like ten minutes.

4 Q Okay.

5 A Fifteen.

6 Q How long did it feel like to you?

7 A Like a half an hour, 45 minutes, an hour, I mean, a very long time.

8 Q It felt like a long time to you?

9 A Yes.

10 Q But you think it was about ten minutes?

11 A Yeah, I think so.

12 Q Does there ever come a point in time where this stops, like they stop
13 going through your things?

14 A Um, before they left they were both in the living room and talking. And,
15 you know, one of them told me not to call the police or they would come back and
16 kill me.

17 Q Which one said that?

18 A I think the shorter one said that.

19 Q And where was the tall one when the shorter guy said that?

20 A Um, from what I could hear they were in the same room, both in the
21 living room.

22 Q Where you still on the ground in your bedroom?

23 A Yes.

24 Q Okay. Then when he said don't call the police or I'll kill you did you
25 believe that was what would happen if you called the police?

1 A Yeah.

2 Q Okay. And I asked you this previously but during the time that you were
3 on the floor in your bedroom did you have a clear shot to the front door?

4 A Um, no.

5 Q Did you feel comfortable making a run for it?

6 A No.

7 Q What did you feel comfortable that you needed to do?

8 A I felt that I just had to do whatever they said or they would hurt me, kill
9 me.

10 Q Were you afraid of them?

11 A Yes.

12 Q So after they said if you call the police that they'll kill you, did they leave
13 your house?

14 A Um, yes.

15 Q And how did they leave?

16 A Um, they very quietly went out the front door.

17 Q Okay. And after they left and exited the front door of your house did
18 you immediately get up to go see if they were gone?

19 A No, I didn't actually hear them leave and, you know, I just laid there for
20 a bit because, you know, I was afraid maybe they were still there they were just
21 being quiet. And so, you know, I just laid there for a bit until I really felt like, okay,
22 they were definitely gone. And then I got up and they hadn't found my iPad so I
23 went I got my iPad, like I didn't have a phone so I couldn't call anyone.

24 Q Why didn't you have your phone?

25 A They had stolen it.

1 Q Okay.

2 A Um, and I changed my password for like the iCloud thing on my phone
3 so they couldn't access it even though they had the PIN. Then, you know, I sat
4 there. I was really overwhelmed. I cried and then I got in my car and went to my
5 boyfriend's place.

6 Q Had they asked you anything about your car?

7 A Yes, they asked me what kind of car I had.

8 Q And which one of them asked you that?

9 A Um, I believe the shorter one.

10 Q And when he asked you what kind of car you had, what did you say?

11 A I had told him, you know, I had a Jetta.

12 Q Where was your Jetta parked at the time?

13 A Parked outside of my apartment in the parking lot.

14 Q And what did he say once you told him you had a Volkswagen Jetta?

15 A Um, he said we're gonna let you keep your car.

16 Q And did they actually take your car?

17 A No.

18 Q Okay. So, after you're waiting to see if they are gone did you get a
19 chance to see the inside of your home?

20 A Yes.

21 Q Natasha, I'm gonna show you State's Exhibit 42. What are we looking
22 at in this photo?

23 A That's my living room and my, part of my kitchen.

24 Q And were all these items strewn all over the floor when you left to go to
25 your boyfriend's house?

1 A Yes.

2 Q They were?

3 A Yes.

4 Q Okay. When you had left earlier in the night to go out with your friends
5 were they all over the floor?

6 A No.

7 Q Okay. So this is when you left this last time?

8 A Right.

9 Q Okay. And I'm gonna show you State's 55. What do we see in that
10 photograph?

11 A Um, this is the laundry machines in my hallway and this is like the box
12 where I kept my sewing stuff and that used to be over here.

13 Q Okay. So that's where it was originally located is on this shelf right
14 here?

15 A Yes.

16 Q Okay. But after the people had left your house it was located there?

17 A Yes.

18 Q Okay. And what about State's 56? Is that a close-up of the same
19 thing?

20 A Yes.

21 Q Okay. And State's 54, what is this doorway?

22 A Um, that separates the living room from the hallway that goes -- leads
23 to my bedroom and --

24 Q Are those like beads dangling?

25 A Yes, that's a beaded curtain.

1 Q So, if you would have run out would you have had to gone through
2 those beads?

3 A Yes.

4 Q Okay. Do they make noise when someone touches them?

5 A Yes.

6 Q Okay. So, after they left and you were able to get up then and you
7 deactivated your phone, what did you do after that?

8 A I drove over to my boyfriend's house.

9 Q Okay. And how far away from you does he live?

10 A It's about a five minute drive.

11 Q Okay. And once you got to your boyfriend's house, what did you do?

12 A Um, well, I knocked on his door and then I told him what happened.

13 Q And what did you guys do together?

14 A We started driving towards my parent's house and that was when we
15 called 9-1-1.

16 Q Okay. Why were you gonna go to your parent's house?

17 A Um, I felt safer there.

18 Q Was your boyfriend gonna take you to your parent's house?

19 A Um, yes.

20 Q Okay. And prior to you arriving at your boyfriend's house did you have
21 a phone available to you to call 9-1-1?

22 A No.

23 Q Were you scared to call the police?

24 A Yes.

25 Q Okay. So about how long after the robbers left your house did you call

1 Metro?

2 A Maybe 20 minutes or so, I don't remember.

3 Q Were you scared when you went put to get into your car?

4 A Yes.

5 Q Why?

6 A I was afraid maybe they were, you know, still around or, you know,
7 somehow still observing me. Um, you know, I figured like they knew which care was
8 mine, I thought maybe they would follow me.

9 Q Okay. But when you went over to your boyfriend's you and him
10 together called 9-1-1?

11 A Yes.

12 MS. JONES: And, Your Honor, may I approach the witness?

13 THE COURT: You may.

14 BY MS. JONES:

15 Q And, Natasha, I'm showing you what's been marked for identification as
16 State's proposed Exhibit 1. Do you recognize what that is?

17 A Yes.

18 Q What is that?

19 A It's a CD with the audio file of the 9-1-1 call.

20 Q And is that the 9-1-1 call that was made by you and your boyfriend?

21 A Yes.

22 Q And, just for the record, what was you boyfriend's name at the time?

23 A Bridgeford Hunt.

24 Q Okay. And so, you and him made this 9-1-1 call?

25 A Yes.

1 Q And did you have an opportunity to listen to part of that today?

2 A Yes.

3 Q Does it fairly and accurately depict how the call that you made to 9-1-1
4 on January 20th of 2015?

5 A Yes.

6 MS. JONES: Your Honor, the State would move for the admission of State's
7 proposed Exhibit 1.

8 THE COURT: Any objection?

9 MR. MARCHESE: No, Your Honor.

10 THE COURT: All right. Exhibit 1 is admitted.

11 [Exhibit 1, admitted]

12 MS. JONES: Permission to publish, Your Honor.

13 THE COURT: You may.

14 [The recording was played for the jury]

15 BY MS. JONES:

16 Q And, Natasha, the voice that we're hearing right now is that you or is
17 that your boyfriend?

18 A That's my boyfriend.

19 Q Okay.

20 [Continue playing recording for the jury]

21 Q So, Natasha, is that the 9-1-1 call that you made that night of January
22 20th of 2015?

23 A Yes.

24 Q And do you remember in that call the 9-1-1 operator was asking you if
25 you could go back to your house and wait for her -- wait for Metro to arrive?

1 A Yes.

2 Q And did you not want to do that?

3 A No, I didn't want to do that.

4 Q Why not?

5 A I didn't feel safe there.

6 Q Who else was living in this apartment with you?

7 A No one.

8 Q You were living there alone?

9 A Yes.

10 Q And when you spoke with 9-1-1 were you still upset?

11 A Yes.

12 Q Even though like 20 minutes had past?

13 A Yes.

14 Q Were you still scared?

15 A Yes.

16 Q And, Natasha, you said that they had basically ransacked your

17 apartment. I'm gonna show you, too many photographs. If I could show you State's

18 proposed Exhibit 66, what are we looking at right here?

19 A That is a small wooden chest.

20 Q And do there appear to be the drawers have been taken out?

21 A Yes.

22 Q Okay. And have -- was it like that when you had left home earlier that

23 night?

24 A No.

25 Q Okay. And I'm gonna show you State's Exhibit 67. Does this appear to

1 be your bedroom?

2 A Yes.

3 Q And were all of these things all over when you had left home earlier that
4 night?

5 A Um, I mean, there was stuff on the floor but not all of those things, no.

6 Q Okay. And I'm gonna show you State's 64. And, does this appear to
7 be a chest as well?

8 A Yes, that's a dresser.

9 Q And do the drawers appear to be open on that dresser?

10 A Yes.

11 Q Okay. And were they like that previously?

12 A No.

13 Q And, Natasha, you said that you had told them that all of your jewelry
14 was costume.

15 A Yes.

16 Q Did you have like diamonds and gold chains?

17 A Um, in one of my jewelry boxes there was a fake gold chain that I had
18 just found in my garage or something like that. And one of them asked me if it was
19 real, I told him it wasn't and it wasn't.

20 Q But did you have any, like, big diamonds --

21 A No.

22 Q -- or anything. Okay. What kind of jewelry did you have?

23 A Um, basically all of its silver.

24 Q Okay.

25 A A lot of turquoise.

1 Q So, it didn't look like your typical big diamonds or gold.

2 A No.

3 Q Do you wear white gold?

4 A No, I mainly wear sterling silver.

5 Q Okay. When you were describing the persons who had robbed you,

6 you said that they were about 5, 9. Were you basing that somewhat on your own

7 height?

8 A Yes.

9 Q And how tall are you?

10 A I'm 5, 2.

11 Q Okay. And do you normally wear high heels?

12 A Yes, I normally wear pretty big shoes.

13 Q And were you wearing them that night?

14 A Yes.

15 Q And how tall were you with those high heels?

16 A Five six or five seven.

17 Q And were you basing it on your best guess?

18 A Yes.

19 Q Okay. Do you know for certain how tall they were?

20 A No.

21 Q And, Natasha, when they were inside of your home did you scream or

22 yell or make any noise so that the neighbors could hear you?

23 A No.

24 Q Why not?

25 A Um, I thought that if I did that they would hurt me or kill me or

1 something horrible.

2 Q And, Natasha, where were you working at the time?

3 A Um, I was working at Top Rank.

4 Q And what's Top Rank?

5 A Um, Top Rank is a boxing promotions company.

6 Q Okay. And what were you doing for them?

7 A I was an administrative assistant.

8 THE COURT: Oh, you have a question?

9 UNIDENTIFIED JUROR: I do.

10 THE COURT: Okay. Kenny?

11 [Bench conference not recorded]

12 BY MS. JONES:

13 Q And, Natasha, on the 9-1-1 call you had referred to your parents living
14 in the Rhodes Ranch community?

15 A Yes.

16 Q What are the names of your parents?

17 A Um, Cesar and Paulita Lumba.

18 Q Okay. And they live on Gulf Pines?

19 A Yes.

20 THE COURT: I'm sorry, can you say their names again?

21 THE WITNESS: Cesar Lumba and Paulita Lumba.

22 THE COURT: Okay. And what's your street address?

23 THE WITNESS: 34 Gulf Pines Avenue.

24 THE COURT: Okay. Thank you.

25 MS. JONES: Thank you, Your Honor.

1 BY MS. JONES:

2 Q And one last thing about the photographs, Natasha, is there anything
3 else in State's 64 that's out of place?

4 A Um --

5 Q Can you point out all the things for us that are out of place?

6 A Yes. So, this.

7 Q What is that?

8 A That is a suitcase that used to be up on this shelf. And that also used
9 to be up on this shelf.

10 Q Okay. And what is this that we're looking at right here?

11 A That is an old stenography machine.

12 Q Okay. And both of those items used to be on the shelf in the closet?

13 A Yes.

14 Q Okay. And is there anything else that's out of place?

15 A Um, well the doors have been opened, you know, these drawers have
16 been opened as well.

17 Q And this is how it appeared after the robbers left your house?

18 A Yes.

19 MS. JONES: And, Your Honor, I don't know if I moved to admit State's
20 proposed 64, 66, 67?

21 MR. MARCHESE: No objection, if they haven't been admitted.

22 THE COURT: All right, those will be admitted if they're not already in.

23 [Exhibit 64, 66, 67, admitted]

24 BY MS. JONES:

25 Q And, Natasha, these people that came into your house and robbed you

1 on January 20th, did you know them?

2 A No.

3 Q Had you ever seen them before?

4 A No.

5 Q Did you invite them into your house?

6 A No.

7 Q And, Natasha, did there come a point in time around February 6th of
8 2015 where you met with a Detective Abell from the Las Vegas Metropolitan Police
9 Department?

10 A Yes.

11 Q And where did that occur?

12 A Um, at my -- at the Top Rank office.

13 Q And was that -- so that's at your job?

14 A Yes.

15 Q Detective Abell came down there?

16 A Yes.

17 Q Okay. And when Detective Abell came down there to your job did he
18 show you a photo lineup?

19 A Yes.

20 Q Okay. And prior to him showing you the photo lineup did he review the
21 lineup instructions with you?

22 A Yes.

23 MS. JONES: And, Your Honor, may I approach the witness?

24 THE COURT: You may.

25 BY MS. JONES:

1 Q And, Natasha, I'm showing you what's been marked as State's
2 proposed Exhibit 87. Do you recognize what that is?

3 A Yes.

4 Q What is that?

5 A Um, that's, um, the, yeah, the photo lineup that I filled out.

6 Q This is the one you filled out on February 6th of 2015?

7 A Yes.

8 Q With Detective Abell?

9 A Yes.

10 Q And up here at the top it lists a whole lot of instructions. Did Detective
11 Abell go over those with you?

12 A Yes.

13 Q And there appears to bear a signature right here from February 6th,
14 2015 at 5:09 p.m. Is that your signature?

15 A Yes.

16 Q Okay. And does this fairly and accurately depict the photo lineup that
17 you did that day?

18 A Yes.

19 Q Okay. And I'm gonna show you page 2. Does page 2 fairly and
20 accurately depict the photographs that Detective Abell showed to you?

21 A Yes.

22 Q Okay. And based upon Detective Abell showing you these photographs
23 were you able to identify anyone?

24 A Well, I picked out number two and three because of their similarities.

25 Q Okay.

1 A I didn't say these were definitely the people but, you know, the face
2 shape of number two was similar. And number 3 the face shape and the eyes were
3 similar. Yeah, there were similarities.

4 Q Okay. And does -- but underneath photograph number two and
5 photograph number three there appears to bear a signature. Is that your signature?

6 A Yeah.

7 Q So does this fairly and accurately depict the photographic lineup that
8 you did with Detective Abell?

9 A Yes.

10 MS. JONES: Your Honor, the State would move for the admission of State's
11 87, proposed 87.

12 MR. MARCHESE: Is it the whole packet or is it, what is it?

13 MS. JONES: It's the three pages.

14 THE COURT: Yeah, just go --

15 MR. MARCHESE: I would object to the first page. Not the second and third.

16 MS. JONES: Okay. So you object to this page?

17 MR. MARCHESE: Yeah.

18 MS. JONES: Okay.

19 MR. MARCHESE: That's hearsay.

20 THE COURT: Counsel, let me see what --

21 [Bench conference not recorded]

22 MS. JONES: And, Your Honor, permission to publish?

23 THE COURT: You may.

24 [Exhibit 87, admitted]

25 BY MS. JONES:

1 Q Okay. And, Natasha, I'm showing you State's admitted 87. And,
2 Natasha, does that appear to be the photographic lineup that you had filled out with
3 Detective Abell?

4 A Yes.

5 Q And you said you had some similar -- there were some similarities in
6 person number two as well as in person number three?

7 A Yes.

8 Q And when you say that are you indicating that person number two
9 would be familiar as one -- from similarities to one of the robbers and person
10 number three had similarities to the other robber?

11 A Um --

12 Q Is that what you mean?

13 A Yes.

14 Q Okay. And, what were the similarities in person number two? Do you
15 want to see the photos?

16 A Yeah.

17 Q Okay. Person number two, what similarities did you see?

18 A Um, the face shape. Um, and um, like complexion, kind of not the
19 mouth and --

20 Q What about the nose?

21 A The nose I think is a little different.

22 Q And was this person have similar features to the tall robber or the short
23 one?

24 A Number two?

25 Q Yeah.

1 A The shorter one.

2 Q Okay. And what similarities did you see in number three.

3 A Also the face shape and the mouth and the eyes.

4 Q And was this similar to the tall one or the short one?

5 A The taller one.

6 Q And when Detective Abell showed you this photo lineup did you say

7 that you were 100 percent certain that one of those two was the person that robbed

8 you?

9 A No.

10 Q Or both of them?

11 A No.

12 Q Okay. Did you just recognize those similarities?

13 A Yes.

14 Q And, Natasha, do you know someone by the name of Tommy Stewart?

15 A No.

16 Q Have you ever heard of that person before this case?

17 A No.

18 Q Have you ever associated with someone by the name of Tommy

19 Stewart?

20 A No.

21 Q Have you ever invited Tommy Stewart into your home?

22 A No.

23 Q Do you know somebody by the name of Raymond?

24 A No.

25 Q Do you know anybody who goes by the name of Raymond?

1 A Um, I have a cousin named Raymond.

2 Q And where does your cousin live?

3 A In the Philippines.

4 Q Have you ever been in any sort of relationship with someone by the
5 name of Raymond?

6 A No.

7 Q Any sort of sexual relationship?

8 A No.

9 Q Did you ever invite someone by the name of Raymond into your home?

10 A No.

11 Q Is there any reason that someone by the name of Raymond or Tommy
12 Stewart would be in your home?

13 A No.

14 Q Did you ever allow them to access any of your items in your home?

15 A No.

16 MS. JONES: Court's brief indulgence, Your Honor.

17 Pass the witness, Your Honor.

18 THE COURT: All right. Thank you. Mr. Marchese?

19 **CROSS-EXAMINATION**

20 BY MR. MARCHESE:

21 Q Good afternoon.

22 A Hi.

23 Q So, you stated on direct examination on the on January 20th, 2015 that
24 you were coming back to your apartment, is that right?

25 A Yes.

1 Q And at some point in time you were going up to, I guess there's kind of
2 a gate and then there's an actual door to your apartment, correct?

3 A Yes.

4 Q Is there a lock on the gate or does it just swing open?

5 A It's like a latch.

6 Q But it wasn't locked, there's no key that's necessary to get in there,
7 correct?

8 A No.

9 Q Okay. And then is that when you first saw those individuals out of the
10 corner of your eye; is that fair to say?

11 A Yes.

12 Q Okay. That's when you got to the swinging gate with the latch, right?

13 A Uh, yes, I was entering the gate when I saw them.

14 Q Okay, so you were already part of the way in, all the way in, what?

15 A Um, I would say that, I think it was like kind of right as I was entering
16 the gate.

17 Q Okay, so half way in, give or take?

18 A Sure.

19 Q All right. So at this point in time is it also fair to say that your facing the
20 door to your apartment?

21 A Uh, yes.

22 Q And is this when you first noticed them out of the corner of your eye?

23 A Yes.

24 Q And to which side did you notice them from the right or the left?

25 A My right.

1 Q Your right side? So, at this point, what did you then do?

2 A Um, well, I looked, you know, 'cause I saw something moving in the
3 corner of my eye and I look in that direction and that's when I saw them.

4 Q Okay. And you stated it's about 11 o'clock at night, correct?

5 A Yes.

6 Q And 11 o'clock at night it's usually dark out, correct?

7 A Yes.

8 Q Now, at some point in time you stated on direct examination you saw
9 what you believed to be a gun, correct?

10 A Yes.

11 Q How close did these individuals get to you at this point?

12 A Um, the one who was holding the gun was I would say, maybe, about
13 three feet from me. And the one who wasn't was standing closer to me and telling
14 me not to yell or anything.

15 Q Now, on direct examination you said -- you stated it didn't take a long
16 time -- you didn't get a long time to stare at them, is that right?

17 A Correct.

18 Q You remember making that statement? So how long did you look at
19 them, if you remember?

20 A Um, not very long. Maybe like 30 seconds.

21 Q It took 30 seconds to get into your home?

22 A Um, well I was like, I was fishing for my keys, so.

23 Q Did you drop your keys?

24 A I don't remember.

25 Q All right. So, you're looking through your purse trying to get your keys

1 out?

2 A Yes.

3 Q All right. And then you got your keys eventually, correct?

4 A Yes.

5 Q All right. And then you went into your -- you opened your apartment,
6 correct?

7 A Yes.

8 Q And then is that -- did you immediately go into your bedroom?

9 A Um, well, they told me like after, you know, they had me open my
10 apartment and they followed me in. I dropped my stuff in the living room and they
11 told me to go into my bedroom and lie down on the ground.

12 Q Okay. And was that pretty much immediately or was there a lag time,
13 how did that go?

14 A No, it was pretty much immediate.

15 Q Okay. You know, we saw some pictures of your apartment, we saw
16 those beads. Is that, does that only go to your bedroom?

17 A Yes.

18 Q Okay. So, you open the door and that's your living room right there,
19 correct?

20 A Yes.

21 Q All right. And then if you're standing to the entrance to your apartment
22 which way is the bedroom, to the right, left, straight?

23 A Straight.

24 Q Straight ahead? And that's down a hallway, correct?

25 A Yes.

1 Q Okay. Now, while you were in there, you basically went into the
2 bedroom and you lay down, correct?

3 A Yes.

4 Q All right. And there was never a point in time while these individuals
5 were in your apartment that you actually left the bedroom, correct?

6 A Um, only when they asked me to open up the jewelry case that was
7 hanging on my wall.

8 Q Okay. And at what point in time was that?

9 A Um, it was like earlier on in the whole situation.

10 Q Okay. Is there a lock on the jewelry case, I assume?

11 A No.

12 Q Okay. They just asked you to open it, just for whatever reason?

13 A Yes.

14 Q Now, on direct examination you said that you're about 5, 2; correct?

15 A Yes.

16 Q Okay. And you normally wear heels, correct?

17 A Yes.

18 Q And on the night in question you were wearing heels?

19 A Yes.

20 Q So it's your estimate there were two individuals and what were these
21 two individuals height?

22 A Um, I would say about 5, 8 and the other one, there was it seemed like
23 there was a two inch difference between them, so 5, 8 and 5, 10.

24 Q And, the one with the gun, that would be the taller one, correct?

25 A Yes.

1 Q As a matter of fact you never saw the shorter one with a gun, correct?

2 A I did not see him with a gun, no.

3 Q The only time you saw the gun your testimony would be when you was

4 outside, correct?

5 A On my front patio, yes.

6 Q Right. And you never saw it again?

7 A No, I didn't see it again.

8 Q Now while inside on direct examination you had mentioned that it

9 looked as if or it appeared to be that these two individuals were taking turns

10 watching you, correct?

11 A Yes.

12 Q But its true -- isn't it true that they weren't watching you at all times?

13 A Um, yes there were times that neither of them were in my bedroom.

14 Q Now, the shorter one of these two individuals one was, he had on a

15 dark hoodie and dark pants, is that right?

16 A Yes.

17 Q And then the taller one was the one who had on possibly dark jeans, a

18 hoodie and Adidas, right?

19 A Yes, yes.

20 Q And that's the individual with the gun? Correct?

21 A Yes.

22 Q Okay. You know, I want to talk about this gun for a moment. The first

23 contact you had with anyone from law enforcement would that have been the 9-1-1

24 call, is that fair to say?

25 A Yes.

1 Q Okay. And you just listened to that here in court, is that right?

2 A Yes.

3 Q And, isn't it true that on the 9-1-1 when asked if there was a weapon
4 you said, I believe so, is that right?

5 A Yes.

6 Q And you also said that I think that they had a gun on that 9-1-1 tape?

7 A Yes.

8 Q Correct? And then you also said I didn't see clearly because it was
9 dark, is that fair to say?

10 A Yes.

11 Q And at some point in time the detectives or someone from Metro came
12 out, correct?

13 A Yes.

14 Q And you gave a voluntary statement to the police, right?

15 A Yes.

16 Q And, within that voluntary statement is the handwritten one, you
17 remember making that statement, correct?

18 A Yes.

19 Q And, you wrote in that, one had held what appeared to be a gun,
20 correct?

21 A Yes.

22 Q All right. You couldn't identify that gun today in court if you saw a gun
23 or saw that gun, correct?

24 A Um, I couldn't identify it, is that what you're asking me?

25 Q Correct.

1 A Um, I mean, you know I could rule out that it wasn't a shotgun, but.
2 Q Sure.
3 A Yeah.
4 Q And in addition you testified earlier at a preliminary hearing, correct.
5 A Yes.
6 Q Just kind of a hearing similar to this, there's a judge and there's some
7 attorneys asking you questions, correct?
8 A Yes.
9 Q And you have to testify under oath, correct?
10 A Yes.
11 Q And isn't it true that at that hearing you testified that the shorter one
12 was about 5, 9 to 5, 11; does that sound correct?
13 A Um, I, you know I don't remember exactly saying that.
14 Q If I was to show you a transcript of your statement would that refresh
15 your recollection?
16 A Yes.
17 MR. MARCHESE: Your Honor, may I approach?
18 THE COURT: Yes, you may move freely.
19 BY MR. MARCHESE:
20 Q Just kind of look at the bottom here and to there. Just read that silently
21 to yourself and look up if that refreshes your recollection.
22 A Okay.
23 Q And does that refresh your recollection?
24 A Yes.
25 Q And you now remember testifying at the preliminary hearing --

1 A Um --

2 Q -- that you thought the shorter one was about 5, 9 to 5, 11?

3 A Yes. I mean, you know, that's a transcript, I said that.

4 Q And, also at that same hearing did you also testify that the taller one
5 was about 5, 11 to six foot?

6 A That's on the transcript so, yes, I did testify that.

7 Q And, earlier you were given a copy of the photo lineup that you did on
8 February 6th of 2015, correct?

9 A Yes.

10 Q Okay. And you picked out a few individuals, correct?

11 A Yes.

12 Q There were two individuals. And those two particular individuals, you're
13 not sure if they were the individuals that committed this robbery, it was more the
14 similarities of what you remember from the night in question, correct?

15 A Yes.

16 Q And isn't it also true that when the State asked you to identify Mr.
17 Tommy Stewart you could not do that, correct?

18 A When was that?

19 Q Today, here in court.

20 A Oh, I can't see him.

21 Q But, you had --

22 A But yes I --

23 Q -- said something to the effect of you're not a 100 percent not certain,
24 correct?

25 A Yes.

1 MR. MARCHESE: No further questions.

2 THE COURT: All right. Redirect?

3 **REDIRECT EXAMINATION**

4 BY MS. JONES:

5 Q Ms. Lumba, I apologize, did you just say you can't see him?

6 A Yes, the computer screen is in the way.

7 Q Okay. Ms. Lumba, would you be able to stand up for us and tell us if
8 you recognize anyone who robbed you in the courtroom today? Would you be able
9 to stand up where you are?

10 A I'm not sure.

11 Q Okay. And, Ms. Lumba, you were asked about the photo lineup that
12 you did. Do you remember giving that photo lineup?

13 A Yes.

14 Q Do you remember saying that number three has a similar face shape,
15 eyes, nose, complexion and face shape as the taller assailant?

16 A Yes.

17 Q And is that what you said?

18 A Yes.

19 Q And when you discuss the height, when you discussed them with
20 Detective Abell, when you testified today, when you previously testified, are you
21 certain or is that your best estimate?

22 A That's my best estimate.

23 Q Okay. And were you focused on how tall these people were when they
24 were in your apartment on January 20th of 2015?

25 A No.

1 Q Were you just trying to give the police all the information you could
2 have?

3 A Yes.

4 Q And when they were inside of your apartment when there came -- you
5 said you previously testified there was a time that neither of them was in your
6 bedroom with you?

7 A Yes.

8 Q Did you feel like you were free to leave?

9 A No.

10 Q Why not?

11 A Um, because as far as I knew there was a gun, there was two of them,
12 you know, that could have made the situation much worse.

13 Q Now, do you remember previously when you had testified today saying
14 that one, I mean, do you remember when you heard the 9-1-1 call, when you told
15 the 9-1-1 caller that they -- one of them told you they had a gun?

16 A Yes.

17 Q And did you see an object that resembled a gun?

18 A Yes.

19 Q So, did you believe that they had a gun?

20 A Yes.

21 Q And were you reacting based on believing that they had a gun?

22 A Yes.

23 Q Did there ever come a point in time where you thought that they no
24 longer had the gun?

25 A No.

1 Q So, the entire time they were in your house did you believe they always
2 had that gun?

3 A Yes.

4 Q And did you ever see either of them wearing any gloves when they had
5 the gun?

6 A Any gloves?

7 Q Yeah.

8 A No, they had, they had pulled the sleeves of their hoodies over their
9 hands.

10 Q Okay. And you saw them with the sleeves of their hoodies over their
11 hands?

12 A Yes.

13 Q And was this a zip up hoodie or do you pull it over your head?

14 A A zip up hoodie, each of them.

15 Q And today you described the gun as a black semiautomatic handgun?

16 A Yes.

17 Q And is that the gun that you saw?

18 A Yes.

19 Q And you said that they asked you to open one of your jewelry cases, do
20 you remember which one of your jewelry cases they asked you to open?

21 A My jewelry chest and also the one that was hanging above it.

22 Q Okay. Let me just show you. And I'm showing you State's Exhibit 73.
23 And is this the jewelry chest that you're referring to?

24 A Um, it's actually this one that they asked me to open myself.

25 Q So, does it appear to be white in this photograph?

1 A Yes.

2 Q And they asked you to open it?

3 A Yes.

4 Q Did you comply with that?

5 A Yes.

6 Q And what's inside of there?

7 A More jewelry.

8 Q Okay. And did they take any of that jewelry.

9 A Uh, no.

10 Q At what point during the robbery did they ask you to open that?

11 A Towards the beginning.

12 Q Was this before they made you lay down in your bedroom or after?

13 A Before.

14 Q Okay, so it was before you laid down on the ground in your bedroom?

15 A You know, I can't remember if I laid down and then they had me do that

16 then had me lay back down again or if they had me do that first and then had me lay

17 back down.

18 Q And, does -- is it -- do you know why they had you to open that?

19 A No.

20 Q Okay. They just asked you to?

21 A Yes.

22 Q Which one of them asked you to open that?

23 A The shorter one.

24 Q The shorter one asked you?

25 A Yes.

1 Q And where was the taller one when that happened?

2 A I don't remember. I'm not sure.

3 Q And the entire time that these two individuals were in your house did
4 they tell you not to look at them?

5 A Yes.

6 Q Okay. And were their hoodies over their face some of the time?

7 A Um, yes.

8 Q Did you believe that they were acting together?

9 A Yes.

10 Q And were you afraid?

11 A Yes.

12 MS. JONES: Pass the witness, Your Honor.

13 THE COURT: Any recross?

14 MR. MARCHESE: No recross based on that, Your Honor.

15 THE COURT: All right. Did we have any juror questions for the witness? All
16 right. I see no juror questions.

17 Ma'am, thank you for your testimony. Please do not discuss your
18 testimony with anyone else who may be a witness in this case.

19 THE WITNESS: Okay.

20 THE COURT: Thank you and you are excused.

21 THE WITNESS: Thanks.

22 THE COURT: And did the State have any additional witnesses for today?

23 //

24 //

25 //

1 MS. JONES: And, Your Honor, I apologize, based on the -- how quickly we did jury
2 selection we don't have any more witnesses for today.

3 [Jury Admonishment -- not transcribed]

4 [Proceedings concluded at 3:55 p.m.]

5 * * * * *

6 ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I
7 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.


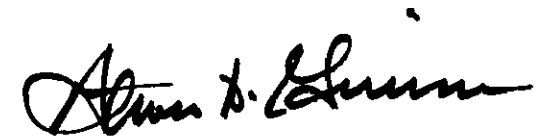
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9 DALYNÉ EASLEY
10 Court Transcriber

EXHIBIT 5

AA000372

STEW0130



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TOMMY STEWART
aka, TOMMY LAQUADE STEWART

Defendant.

CASE NO. C305984-1

DEPT. XX1

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
TUESDAY, MARCH 15, 2016

**RECORDER'S PARTIAL ROUGH TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL DAY 2 TESTIMONY AND MOTION ARGUMENT**

APPEARANCES:

For the State:

TIERRA D. JONES ESQ.
Deputy District Attorney

AGNES M. LEXIS, ESQ.
Deputy District Attorney

For the Defendant:

JESS R. MARCHESE, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

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TUESDAY, MARCH 15, 2016 at 11:11 A.M.

[In the presence of the jury]

THE MARSHAL: Thank you. You may be seated.

THE COURT: All right. Court is now back in session. The record should reflect the presence of the State through the Deputy District Attorneys, the presence of the Defendant and his counsel, the officers of the court, and the ladies and gentlemen of the jury.

And is the State ready to call its next witness?

MS. LEXIS: We are, Your Honor. The State calls Noreen Charlton.

THE COURT: All right.

THE MARSHAL: Charlton?

MS. LEXIS: Charlton.

THE MARSHAL: Charlton.

MS. LEXIS: Thank you.

THE MARSHAL: Please remain standing, raise your right hand and face the person to your left, please.

NOREEN CHARLTON

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

THE COURT CLERK: Thank you. Please be seated and please state and spell your name.

THE WITNESS: Noreen Charlton, N-O-R-E-E-N, C-H-A-R-L-T-O-N.

THE COURT: All right, thank you.

Ms. Lexis.

MS. LEXIS: Thank you, Your Honor.

DIRECT EXAMINATION

1 BY MS. LEXIS:

2 Q Hello, Ms. Charlton.

3 A Hello.

4 Q How are you employed, ma'am?

5 A I'm a senior crime scene analyst with the Las Vegas Metropolitan Police
6 Department.

7 Q And how long have you been employed as a crime scene analyst with
8 Metro?

9 A About seven and a half years.

10 Q And what did you do prior to that?

11 A College.

12 Q Okay. Can you briefly tell the ladies and gentlemen of the jury what
13 kind of training and experience you have to be qualified to be a crime scene analyst
14 with Metro?

15 A So, I have a bachelor's of science in biology from John Carroll
16 University in Cleveland, Ohio. When I hired on with LVMPD I completed a 10 week
17 crime scene analyst academy followed by 12 weeks in the field training and
18 evaluation program. In 2012 I promoted to the position of senior crime scene
19 analyst, and over the past seven and a half years I've completed approximately
20 1200 hours of training.

21 Q Okay. So, when you talk about training those 1200 hours of training, is
22 that continued training on the job?

23 A Correct.

24 Q Okay. Can you briefly now tell the ladies and gentlemen of the jury
25 what it is that you do as a crime scene analyst?

1 A Sure. So, I respond to a variety of crime scenes and my whole job
2 there is to document the scene which I do through notes, photography, and my
3 reports. I then identify and recover any evidence, and I do latent print processing.

4 Q Okay. So, it's not like the -- like on TV where, have you seen CSI Las
5 Vegas?

6 A Yes, I have.

7 Q Is your job a little bit different than that?

8 A A lot different, yes.

9 Q Okay. You don't go out and talk to suspects or anything like that, is that
10 fair to say?

11 A That's fair, correct.

12 Q Document and preserve evidence.

13 A Correct.

14 Q Okay. Were you employed as a crime scene analyst back on January
15 20th of 2015?

16 A Yes, I was.

17 Q Okay. At some point, were you called out to a location, an apartment
18 actually, at 805 Rock Springs Drive, Unit 101?

19 A Yes, I was.

20 Q Okay. When you respond to a scene, Ms. Charlton, what, is there an
21 event number that you're responding to?

22 A Yes, there is.

23 Q And can you briefly explain what an event number is to the ladies and
24 gentlemen of the jury?

25 A So, event numbers are given to every incident that is called into Metro

1 and they're given by the year, the month, and the day, and then the last four digits
2 are a succession of the events that happened that day.

3 Q Okay. And are you aware of the event number in this particular case or
4 for that event at 805 Rock Springs Drive, Unit 101 as being 150120-4490?

5 A Correct.

6 Q Okay. When you responded to the scene, what is it that you did?

7 A When I first responded to the scene I spoke to the patrol officer who
8 requested me to be there. He gave me a rundown of the story that he had and then
9 he walked me through the scene. Once I did my walkthrough I completed my notes
10 noting anything that was out of place or reportedly disturbed and I followed that up
11 with my crime scene photography.

12 After my photography I kind of looked around, looked for any evidence
13 or any items that were reportedly disturbed that would be conducive for latent print
14 processing and then I processed those items.

15 Q Okay. And is that what you did -- is that all you did at 805 Rock Spring
16 Drive?

17 A Yes.

18 Q Okay. Let's talk about the photography first.

19 MS. LEXIS: Your Honor, may I approach with, some of these have been
20 admitted others have not been.

21 THE COURT: Okay.

22 MS. LEXIS: But they are State's Exhibits 30 through 86.

23 THE COURT: Okay.

24 MS. LEXIS: And, I'll just approach Defense counsel and show him.

25 BY MS. LEXIS:

1 Q All right. Ms. Charlton, I'm showing you State's Exhibits 30 through 86.
2 Can you, please, just thumb through the photographs and see if you recognize
3 them?

4 A Yes, this looks like all the photos that I took when I arrived on scene.

5 Q Okay.

6 A Yeah.

7 Q And that's the incident that we've been talking about?

8 A Correct.

9 Q Okay. And so, what is it that you photographed once you got there?

10 A So, once I got there, before I moved anything, I just photographed the
11 apartment as it was with everything disturbed, as it was reported to me, before I did
12 anything else.

13 Q Okay. You indicated that --

14 MS. LEXIS: Your Honor, I'm sorry, at this point I move to admit State's
15 Exhibits 30 --

16 MR. MARCHESE: No objection.

17 THE COURT: Well, wait.

18 MS. LEXIS: Thirty through eighty-six.

19 THE COURT: No objection?

20 MR. MARCHESE: No, Your Honor.

21 THE COURT: All right. To the extent some of those weren't admitted, those
22 will now be admitted.

23 [Exhibits 31-36, 38, 40, 41, 43, 44, 47-53, 57-60, 65, 68-70, 72, 75-83, admitted]

24 BY MS. LEXIS:

25 Q Okay. You indicated that you did latent print processing?

1 A Correct.

2 Q Can you please explain to the ladies and gentlemen of the jury what
3 that is or what that consists of?

4 A Sure. So, for latent print processing in this case, specifically, I used
5 what we call magnetic powder. So, we have a magnetic wand, the powder adheres
6 to it and then I apply that to different surfaces or different objects throughout the
7 residence. The powder itself adheres to the fats and the oils in fingerprints that's left
8 behind and that makes them visible so then I can see them.

9 Q Okay. So, do you use that brush like they show on the TV show with
10 the black powder?

11 A Similar, yes.

12 Q Okay. So, what areas of the home did you process for latent prints?

13 A Um, oh, I specifically processed the exterior side of the front door, and
14 then I gathered several items throughout the residence that I thought would be
15 conducive to latent print processing and I processed them.

16 Q When you say conducive to latent print processing, what are you
17 referring to?

18 A Looking for objects that are smooth, non-porous, something that if you
19 touched it it was likely that, you know, you could leave a print on it. I'm not looking
20 for paper or anything like that. Anything that's porous or rigid or bumpy was not
21 good for latent prints.

22 Q Okay. So, fair to say that essentially, just because you touched
23 something doesn't necessarily mean you'll leave a print?

24 A Correct.

25 Q Okay. There are factors that affect that?

1 A Absolutely.

2 Q And these are the factors that you just talked about?

3 A Yes.

4 Q Okay. Did you process the door --

5 A Yes, I did.

6 Q -- to the resident? Did you process the inside or the outside?

7 A The exterior side.

8 Q Okay. I'm gonna show you what's been admitted as State's Exhibit
9 number 81. Do you recognize what's depicted in this photograph?

10 A Yes.

11 Q Okay. And what is that?

12 A So, this right here, you can kind of see where the powder adhered to
13 prints on the door. The tape doesn't necessarily -- the tape isn't good at lifting prints
14 off of a surface like a door. So, this scale is there for my photography of the prints

15 Q Okay. I'm gonna show you what's been marked and admitted as
16 State's Exhibit number 80.

17 MS. LEXIS: I'm sorry. Our screen's not working in terms of clearing it. Do
18 you know how to clear that?

19 THE MARSHAL: Hit bottom right-hand corner.

20 MS. LEXIS: The right bottom.

21 THE WITNESS: Bottom right? Okay.

22 BY MS. LEXIS:

23 Q Okay. Do you see State's Exhibit number 80?

24 A Yes.

25 Q Is this some more overall photo of on the door that we've been

1 discussing?

2 A Yes.

3 Q Okay. Can you tell the ladies and gentlemen of the jury what was
4 relevant with this photograph?

5 A Um, this is just a more wide view of the exact same prints with the same
6 scale.

7 Q Okay. And can you just, okay, you circled the prints there?

8 A Yeah.

9 Q Okay. Thank you very much. And as a close-up, State's Exhibit
10 number 82, are you able to see the prints in this photograph?

11 A Yes.

12 Q And, could you circle them, please?

13 A Um, I don't know if there's more to it on the bottom. It should be a full
14 scale.

15 Q Oh, okay. Let me, how's that?

16 A Yeah. So, we're looking pretty much right here.

17 Q Okay. So, once you put the powder on it and you see, you identify that
18 there are prints to be lifted what do you do?

19 A So, in this case, typically I affix a piece of tape and the tape lifts the
20 print, but in this case, because of the surface of the door, they don't lift well. So,
21 essentially, what I do is I take a photograph for comparative purposes and then I
22 submit the photograph, essentially like a taped lift, so the latent print examiner can
23 look at the photograph with a scale rather than having a taped lift of the print.

24 Q Okay. What else did you process for prints in Apartment 101?

25 A Um, there were several items throughout the residence that I

1 processed.

2 Q Okay.

3 A I don't know specifically.

4 Q I am going to show you State's Exhibit number 86. Do you recognize
5 what's depicted in this photograph?

6 A Yes.

7 Q Okay. And, what's depicted?

8 A This was a coin bank that was found on a dresser in the northeast
9 bedroom.

10 Q Okay. And do you see in this particular photograph, State's Exhibit 86,
11 where it is that you processed for prints?

12 A Yes.

13 Q And, could you circle that for the jury?

14 A So, this picture specifically is depicting this area right here, which is a
15 piece of the tape that I used to lift the prints.

16 Q Okay. And, so you were able to identify and lift a print from this or
17 multiple prints from this, from this exhibit?

18 A Um, I would have to see the latent print card to know what was actually
19 on the tape. I can't tell in this photo.

20 Q Okay. We'll go through that in just a minute. I am gonna show you
21 State's Exhibit number 84. Do you recognize what's depicted in this photograph?

22 A Yes.

23 Q What is it, ma'am?

24 A So, this was a box that I processed that was found on top of the washer
25 in the laundry room. And this picture specifically is showing the piece of tape where

1 I lifted the prints.

2 Q Okay. And I am gonna show you State's Exhibit number 85. Do you
3 recognize what's depicted in this photograph?

4 A Yes. That's just a close-up view of that tape lift.

5 Q Okay.

6 A From that box.

7 Q Okay. Thank you.

8 So you were talking about latent lift cards.

9 A Correct.

10 Q Can you explain to the jury what that is?

11 A Yes. So, when I process for prints and I can see something that might
12 be sufficient enough to submit to the latent print detail I affix a piece of tape, which
13 you saw in those photos. Um, essentially that piece of tape is lifted off and put on a
14 white card, looks kind of like an index card it's just shiny on one side.

15 When I get back to the lab I put a latent print label on that and the label
16 just indicates the event number, which we spoke about earlier, my name and my P
17 number to identify that I was the one that lifted the tape, the date that I responded to
18 the scene, the location of the scene and the location of the print itself.

19 Q Thank you.

20 MS. LEXIS: Your Honor, may I approach with, Court's brief indulgence.

21 THE COURT: Okay.

22 MS. LEXIS: I'll just have, to save time, Your Honor, may approach the clerk?

23 THE COURT: Sure.

24 MS. LEXIS: Thank you. May I approach Defense counsel?

25 THE COURT: You may move freely, Ms. Lexis.

1 MS. LEXIS: Showing what's been now marked as State's proposed Exhibits
2 95 and 96, may I approach the witness?

3 THE COURT: You may.

4 MS. LEXIS: Thank you.

5 BY MS. LEXIS:

6 Q Ma'am, I'm showing you State's proposed Exhibits 95 and 96. Do you
7 recognize what's depicted here?

8 A Yes.

9 Q What is that?

10 A These are copies of my latent print cards.

11 Q Okay. Going over State's Exhibit or proposed Exhibit number 95 first,
12 what would this show?

13 A Um, this is a copy of two of my latent print cards. One is the lift from the
14 front door and the second one is the lift from the jewelry box.

15 Q And State's Exhibit number 96. What does this show?

16 A Um, this shows the lift from the coin bank.

17 Q Okay. And these aren't the actual lift cards, is that correct?

18 A Correct.

19 Q Are these -- do these fairly and accurately represent a copy of the lift
20 cards that you lifted from 805 Rock Springs Drive, Apartment number 101 on
21 January 20th or 21st, 2015?

22 A Yes.

23 Q Thank you.

24 MS. LEXIS: Your Honor, I move to admit State's proposed Exhibits 95 and 96
25 into evidence.

1 MR. MARCHESE: Objection, best evidence.

2 MS. LEXIS: May we approach?

3 THE COURT: Yeah, well, it's overruled.

4 MS. LEXIS: Okay. Thank you.

5 [Exhibits 95 and 96, admitted]

6 MS. LEXIS: Permission to publish 95?

7 THE COURT: Yes. I'm sorry.

8 BY MS. LEXIS:

9 Q And, Ms. Charlton, can you show -- can you tell us what we're looking
10 at here?

11 A Yes, sure. So, essentially, if I were to draw a line, this top one would be
12 one card and the bottom one's a separate card, they're just photo -- photocopied on
13 the same page. Um, the top portion of both cards is that label that I affix that gives
14 all the identifiers to this case and to this latent print.

15 The red marks, all these red marks I did not put there. Those would be
16 put there by a latent print examiner. Um, all that I put on there was my initials on
17 both the label and the tape just to show that I was the one that put those both on the
18 card and then I put an up arrow to designate to the latent print examiner which way
19 was up on the surface.

20 Q Okay. So, in State's Exhibit number 95 you put the event number down
21 that you referred to, is that right?

22 A Correct.

23 Q Linking it to this particular event. Your initials are there, the date is
24 there and the location is also there, is that right?

25 A Yes.

1 Q And then you put the print location, so this top portion indicates that it's
2 from the exterior side of the west facing front door, is that right?

3 A Correct.

4 Q Okay. And then the second half indicates that you took prints from the
5 jewelry box atop the washer in the laundry area.

6 A Correct.

7 Q Okay. State's Exhibit number 96, is this another latent print card?

8 A Yes, it is.

9 Q Okay. And, does it show in this particular Exhibit the event number,
10 your name, the date, location and the print location?

11 A Correct.

12 Q Okay. And does this one say from the coin bank atop the dresser at the
13 west wall of the master bedroom?

14 A Yes.

15 Q Okay. So, after the prints that you located from the door, from the piggy
16 bank and from the jewelry box after you put those on the cards, what do you do?

17 A When I take those back to the lab and I put the latent print label on it,
18 like you saw, I put those into an envelope and the envelope gets sealed with
19 evidence tape. That envelope is then logged and dropped into a secure box for
20 someone from the forensic evidence vault to pick up.

21 Q Okay. And when you say you seal it, how do you seal it?

22 A We just have red evidence tape that goes over the flap of the envelope,
23 and then I put my initials and P number and the date that I seal it on there.

24 Q Okay. And, do you know what elimination prints are?

25 A Yes.

1 Q Okay. What are they? What is that?

2 A So, as I'm sure you all can assume, in your own house your prints are
3 gonna be on your items. So, when we recover prints from any kind of crime scene
4 we take elimination prints from the victim or from anyone who lives in the home to
5 eliminate their prints from the prints that we've recovered.

6 MS. LEXIS: Your Honor, may I approach with what's been previously marked
7 as State's proposed Exhibit number 97?

8 THE COURT: All right.

9 MS. LEXIS: Thank you.

10 BY MS. LEXIS:

11 Q And I'm showing you what's been marked as State's proposed Exhibit
12 number 97. Do you recognize this?

13 A Yes.

14 Q What is it?

15 A These are my elimination cards.

16 Q Okay. Do they fairly and accurately depict the elimination cards you
17 took on January 21st, 2015 pursuant to the event that we've been talking about?

18 A Yes.

19 MS. LEXIS: I move to admit State's Exhibit 97 into evidence.

20 THE COURT: Same objection?

21 MR. MARCHESE: Yes, Your Honor.

22 THE COURT: All right. Ninety-seven will be admitted.

23 [Exhibit 97, admitted]

24 MS. LEXIS: Permission to publish?

25 THE COURT: Excuse me, you may.

1 BY MS. LEXIS:

2 Q So, I'm sorry if I missed it. Did you take elimination prints from
3 someone in this particular case?

4 A Yes, I did.

5 Q And who did you take them from?

6 A The victim, Natasha Lum -- Lumba.

7 Q Okay. And, so when you put -- you put her elimination prints on a lift
8 card, is that right?

9 A Correct.

10 Q And this is a copy of that lift card?

11 A Yes.

12 Q And it says right here at the top, print location eliminations, Natasha
13 Lumba?

14 A Yes.

15 Q Same on the bottom one?

16 A Correct.

17 Q Thank you.

18 MS. LEXIS: No more questions. Thank you, Your Honor.

19 THE COURT: All right. Cross.

20 **CROSS-EXAMINATION**

21 BY MR. MARCHESE:

22 Q You stated on direct examination that you take elimination prints from
23 Ms. Lumba. Where did you get those from?

24 A From her.

25 Q And where, in this particular incident where did you get those? Where

1 was the location when you got them?

2 A I'm sorry, the location of rolling her prints?

3 Q Correct.

4 A Was just outside of her residence.

5 Q So she was present when you did that?

6 A Correct.

7 Q Do you know what time that was at?

8 A I do not.

9 Q Do you know what time you were called out to the scene?

10 A I know when I arrived. I do not know what time I was requested.

11 Q What time did you arrive?

12 A Midnight 50.

13 Q So that's 12:50 a.m.?

14 A Correct.

15 Q Now, you stated on direct examination what you do is you go through,

16 you take your pictures; and is the last thing that you do in this particular case the

17 prints?

18 A Yes.

19 Q Approximately how long did that take?

20 A I can't recall.

21 Q And your normal course of action is to take the prints and then you go

22 back to the lab, is that correct?

23 A Correct.

24 Q And that's what you did in this case?

25 A Yes.

1 Q And then when you went back to the lab that is when you place it into
2 the envelope, is that correct?

3 A That's when I do my labels and then put them into the envelope,
4 correct.

5 Q And, what are the labels?

6 A The labels that were on the top of the latent print card with all the
7 information, the event number, the victim's name, the location of the incident and the
8 location of the print.

9 Q So, all the personal identifiers, for lack of a better term, that would make
10 you able to understand which case this is for?

11 A Correct.

12 Q So, then you do your labels and then what do you do?

13 A They are placed in the latent print envelope. Then I fill out the outside
14 of the latent print envelope with all pretty much the same information and that's what
15 gets sealed with the evidence tape, and dropped into a secure box.

16 Q And that evidence tape is typically red?

17 A Correct.

18 Q Would there be anyone else's handwriting on that evidence tape?

19 A Not when I drop it.

20 Q And is that the last time that you have any contact with the prints?

21 A Correct.

22 Q Who else's handwriting should be on the evidence tape, to your
23 knowledge, if you know?

24 A If they were examined by a latent print examiner their initials should
25 also probably -- or would also be on the tape once they reseal it.

1 Q Anyone else?

2 A Not to my knowledge.

3 Q In this, I think you describe it as a secure box, is that a correct

4 description of where you drop the prints?

5 A Correct.

6 Q Okay. And describe to the jury what that is.

7 A Um, well, first of all it's in a secure room, you can only get in if you have

8 a proxy card. The box itself is locked. It just has a slot big enough for the envelope

9 to slide into. So I log it in a book with the event number, the date that I'm putting in

10 the box and my initials and P number and then it's dropped in the box for someone

11 to come pick up and take the chain of custody on it.

12 Q And who's that someone that picks it up?

13 A It's someone who works in the forensic lab's evidence vault.

14 Q Are you aware of who that was in this particular case?

15 A I am not, no.

16 MR. MARCHESE: No further questions.

17 THE COURT: All right. Thank you. Any redirect?

18 MS. LEXIS: No, thank you, Your Honor.

19 THE COURT: Any juror questions for the witness? No?

20 All right, ma'am, I see no further questions. Thank you for your

21 testimony, and please don't discuss them with anyone else who may be a witness in

22 this case.

23 THE WITNESS: Thank you.

24 THE COURT: You are excused.

25 State, call your next witness.

1 MS. JONES: Your Honor, the State's next witness is Heather Gouldthorpe.

2 THE MARSHAL: Just remain standing, raise your right hand, face the clerk to
3 your left.

4 **HEATHER GOULDTHORPE**

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

6 THE COURT CLERK: Thank you. Please be seated. And, please state and
7 spell your name.

8 THE WITNESS: My name's Heather Gouldthorpe. Heather, H-E-A-T-H-E-R,
9 Gouldthorpe, G-O-U-L-D-T-H-O-R-P-E.

10 THE COURT: Thank you.

11 Ms. Jones.

12 MS. JONES: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 BY MS. JONES:

15 Q Heather, can you tell the ladies and gentlemen of the jury how you're
16 employed?

17 A I'm a forensic scientist at the Las Vegas Metropolitan Police
18 Department Forensic Lab in the Latent Print Unit.

19 Q And how long have you been employed by Metro?

20 A By Metro? For 11 years.

21 Q And how long have you been in the forensic lab?

22 A I've been at the forensic lab for almost nine years. I started out as a
23 forensic lab technologist. I did that for about three and a half years where I learned
24 the basics of fingerprint comparisons, how to enter and search prints through our
25 AFIS system, which is our automated fingerprint identification system, and how to

1 recover prints from evidence.

2 I then became a forensic scientist trainee where I learned for another
3 year. I trained on how to do more complex comparisons, how to issue reports and
4 how to testify in court. And then I've been a forensic scientist for four years now.

5 Q And, Heather, that covers your on-the-job training. What type of
6 training did you have prior to being hired by Metro to be able to work in the forensic
7 lab?

8 A Um, I have my bachelor's degree in sociology, I have my master's
9 degree in forensic science.

10 Q And have you had to take any courses while you've been employed by
11 the Las Vegas Metropolitan Police Department to stay certified?

12 A Well, I am certified as a latent print examiner through the International
13 Association for Identification, which is the leading professional organization for latent
14 print examiners in the country, as well as we are also take workshops and we go to
15 conferences and we read articles to keep abreast of current topics in our field.

16 Q And what are your main job duties as a forensic scientist at Metro?

17 A I look at latent prints and I compare them to known prints. I search
18 those prints through our AFIS system and I also recover evidence from -- or recover
19 latent prints from evidence and issue reports and testify in court.

20 Q And, Heather, do you actually go out to the crime scenes and collect
21 the latent prints or how are they provided to you?

22 A I do not go to the crime scenes. Our latent prints come to us through
23 our evidence technicians and they are located in a secure vault area that we can
24 access.

25 Q And then does it become your job to then examine those prints?

1 A When it is requested or it comes through our AFIS process, yes.

2 Q And, let's talk about how does something come through your AFIS
3 process?

4 A Anytime a crime scene analyst or someone that can take latent prints,
5 officers, residential officers, cadets or PSRs, they submit their latent print packet to
6 our evidence custodians, our evidence technicians. And certain crime types such as
7 robberies, homicides, burglaries, automatically get screened through our bureau or
8 through our section for AFIS entry.

9 Q Okay. And those are certain, those types of crimes?

10 A Yes.

11 Q And, Heather, in your training and experience if someone touches
12 something is it an automatic that they would leave a print behind?

13 A No, it's not.

14 Q Are there different reasons why a print would not be left behind?

15 A Yeah, there are many factors. So, the condition of your skin, if your
16 skin is dry then you're typically not gonna be able to leave a print. The residue that
17 coats your skin, if there's too much residue you're gonna leave behind like a big
18 smudge, or if there's not enough residue on your skin.

19 The surface of the area is important whether or not it's textured or too
20 small to recover latent print from, as well as how you touch the item. So, if you
21 touch something and pull your hand up then you're more likely to recover a print
22 then if you touch something and move your hand, and it's gonna be distorted.

23 And then there's also environmental factors. So, if an object was laid
24 out in the desert all summer long we're typically won't be able to recover any latents
25 from that.

1 Q And, Ms. Gouldthorpe, are you familiar with what an event number is?

2 A I am, yes.

3 Q Can you tell the ladies and gentlemen of the jury what's an event

4 number?

5 A Event number is assigned to the call by dispatch.

6 Q And I'd like to draw your attention to an event number that's

7 1501204490. Are you familiar with that event number?

8 A I am.

9 Q And in that particular case, were you provided with some prints to run

10 through the AFIS system?

11 A I was.

12 MS. JONES: And, Your Honor, may I approach the witness?

13 THE COURT: Yes.

14 BY MS. JONES:

15 Q And, Ms. Gouldthorpe, I'm showing you what's already been admitted

16 as State's Exhibit 97, 95 and 96. Are you familiar with those items?

17 A Yes, those are the latent print cards and also the exemplar prints that

18 were contained in the latent print packet.

19 Q And how do you know that those are the ones you received in this

20 packet?

21 A Um, on the latent print cards it has a designated a cue number, so cue

22 one, cue two and cue three as well as my initials next to that. And then on the

23 exemplar my initials are on the exemplars.

24 Q Okay. And if I showed these to the ladies and gentlemen of the jury on

25 my screen could you indicate to us which markings you're referring to as the cue

1 markings that you put on that?

2 A Yes. Um, in the lower right hand corner is where we would designate
3 our cue number, so cue one, cue two, and then cue three would be marked as well
4 at the lower right-hand corner.

5 Q And those are markings that were made by you?

6 A Correct.

7 Q And how many lift cards were you provided in this particular event?

8 A Three.

9 Q Okay. And you were provided with three cards. And did you actually
10 process those? Did you run them through AFIS?

11 A Yes, I did.

12 Q Okay. And what did you do after you ran them through AFIS?

13 A Um, when we run a print through AFIS we get a candidate list. And
14 once we receive that candidate list we manually compare onscreen the list. If we
15 designate one of those as a hit we then pull that exemplars and then do manual
16 comparison. So in this particular case, I ran one print through AFIS and I got a
17 potential hit and that came back to the Natasha Lumba, I believe it was.

18 Q Okay.

19 A And, then I compared her to the rest of the prints in the case. There
20 was one print that I additionally ran in AFIS and got a potential hit in that one and I
21 manually compared that to Tommy Stewart.

22 Q So, you had three lift cards that you were provided?

23 A Correct.

24 Q And did you have one lift card from the exterior side of the west facing
25 door?

1 A Can I refer to my report, please?

2 Q Did you prepare a report in this case?

3 A I did.

4 Q Okay. And would looking at a copy of that help you?

5 A Yes, please.

6 MS. JONES: Your Honor, may I approach?

7 THE COURT: You may.

8 MR. MARCHESE: And Your Honor, I'm gonna object as to the findings of
9 AFIS as to hearsay.

10 THE COURT: Well, I think it's just being -- that's true, offered to show the
11 direction and why she took the direction she took.

12 MS. JONES: It does, Your Honor, and she'll get into the [indiscernible].

13 THE COURT: Right. I mean, she's gonna have to testify as to her own work.

14 MR. MARCHESE: I understand, just making a record.

15 MS. JONES: And, Your Honor, for the record, I'm showing the witness what's
16 been marked for identification as State's proposed Exhibit 88.

17 BY MS. JONES:

18 Q Are you familiar with what that is?

19 A I am.

20 Q And what is that?

21 A That is my report that I -- of examination that I wrote.

22 Q And how do you know that's associated with this case?

23 A On there is the event number, our lab case number as well as below is
24 my signature with P number.

25 Q And does this report fairly and accurately depict your findings in this

1 case?

2 A It does.

3 MS. JONES: Your Honor, State would move for the admission of State's
4 proposed Exhibit 88.

5 MR. MARCHESE: Same objection, Your Honor.

6 THE COURT: All right. That's sustained. She can testify as to --

7 MS. JONES: Okay.

8 THE COURT: -- what's in it.

9 MS. JONES: Okay.

10 THE COURT: You know.

11 BY MS. JONES:

12 Q And so, in response to the lift card that came from the exterior side of
13 the west facing door, did you do any analysis with that?

14 A Yes, I did.

15 Q What did you do?

16 A I entered that print into our AFIS system. I then got a potential hit and I
17 manually compared the prints to Natasha Lumba, which I subsequently identified to
18 prints to her.

19 Q And you identified those prints to Natasha Lumba?

20 A Correct.

21 Q Okay. And on the second print card, where did the second print come
22 from?

23 A That came from the jewelry box atop of the washer in the laundry area.

24 Q And did you do any analysis on that?

25 A I did.

1 Q And what were -- what other analysis did you do?

2 A I ran that print also through our AFIS system. I got a potential hit and
3 manually compared that to and identified Tommy Stewart.

4 Q And was that a match to Tommy Stewart?

5 A It was.

6 Q And was there a third print that you analyzed?

7 A I did.

8 Q Where was that print collected from?

9 A From the coin bank atop the dresser in the west wall of the master
10 bedroom.

11 Q And did you do any analysis in regard to this print?

12 A I did a manual comparison in this case and identified it to a Natasha
13 Lumba.

14 Q And you did your own manual comparison?

15 A Correct.

16 Q And after you had conducted these comparisons --

17 THE COURT: I'm sorry does, can people not, oh, you have a question?

18 UNIDENTIFIED SPEAKER: I do.

19 THE COURT: Okay. Go on Ms. Jones.

20 BY MS. JONES:

21 Q And after you had compared these, what is your next step?

22 A After I compare it I do a conclusion and then once I do a conclusion I
23 write my notes, write the report and it gets sent for verification by another -- and
24 technical review by another forensic scientist in the unit.

25 Q And did you pull any archive prints in relation to this case?

1 A I did.

2 Q And what archive prints did you pull?

3 A I pulled the archive prints for Tommy Stewart.

4 MS. JONES: And, Your Honor, may I approach the witness?

5 THE COURT: Sure.

6 BY MS. JONES:

7 Q And, I am showing you what's been marked as State's proposed Exhibit
8 89. Do you recognize what that is?

9 A I do.

10 Q What is that?

11 A That is the archived prints of Tommy Stewart.

12 Q And is this a fair and accurate copy of the archived prints that you had
13 in this case?

14 A It is.

15 Q And do you actually have a signature stamp on there authenticating this
16 document?

17 A I do.

18 MS. JONES: State would move for the admission of State's proposed 89.

19 THE COURT: Same objection?

20 MR. MARCHESE: Yes, Your Honor.

21 THE COURT: Eighty-nine is admitted.

22 [Exhibit 89, admitted]

23 BY MS. JONES:

24 Q And so, these are the prints that you pulled belonging to Tommy
25 Stewart?

1 A Correct.

2 Q And, once you pulled those prints belonging to Tommy Stewart, what
3 did you do after that?

4 A After I get the prints I do a manual comparison. And what I mean by
5 manual comparison is a side by side comparison. So, I look at all the data that's in
6 the print, the latent print, compare that to what's -- all the data in the known print, to
7 see whether or not it can draw a conclusion from that. And in this case I did identify
8 that.

9 THE COURT: Can you tell us what you mean by data from one print to the
10 next?

11 THE WITNESS: Yes. So, if you look at your skin you see the skin of your
12 hands is different from the rest of your skin. This is more rough, so this is called
13 friction ridge skin. And what friction ridge skin is comprised of is ridges and furrows
14 and ridges, they do something, so they don't just go horizontal or vertical, they have
15 a flow to them. And you trace each ridge out it does something so it either stops,
16 which would be a ridge ending, or it merges or divides into another ridge, which
17 would be a bifurcation. And each one of those points are called minutia points.

18 Those are data that we look at as well as the flow of the ridge, and any
19 -- the shape of the ridge, so the shape is not just like a pencil line it does have some
20 kind of shape to it, we look at those as well. All that data that we take into
21 consideration when we do our comparisons.

22 BY MS. JONES:

23 Q And, do you have any specialized training to do this manual
24 comparison?

25 A Yes, like I said, I was a forensic lab technologist where I learned the

1 basics of that, and then I spent a whole year as a trainee where we delved into the
2 more difficult, complex latent prints.

3 Q And, when you conducted the manual comparison in this case, what
4 were the results of that comparison?

5 A I identified the print to Tommy Stewart and identified some prints to
6 Natasha Lumba.

7 Q And so, were these findings consistent with the previous findings?

8 A Yes.

9 Q In AFIS?

10 A Yes, it was.

11 Q Okay. But these were the ones you did with your manual -- where you
12 looked at the ridges yourself?

13 A Correct.

14 MS. JONES: Pass the witness.

15 THE COURT: All right. Cross.

16 **CROSS-EXAMINATION**

17 BY MR. MARCHESE:

18 Q Good morning.

19 A Morning.

20 Q So on direct examination you were obviously asked questions about the
21 prints and the cards that you had received. In this particular case, when did you first
22 receive the prints?

23 A When we got the request from crime scene to do an AFIS examination
24 on it.

25 Q Okay. And when was that?

1 A When was that?

2 Q Yeah.

3 A Um, can I?

4 Q Do you have your report with you --

5 A Yes.

6 Q -- and would that refresh your recollection?

7 A Yes, it would.

8 Q Why don't you take a look and let us know if that refreshes your

9 recollection.

10 A Um, it was on or about January 28th, 2015.

11 Q Okay. And that's when you actually received the prints?

12 A That's when -- if I can refer to my notes?

13 Q Sure.

14 A That's when the report was issued, and I did start the examination that

15 day; yes.

16 Q So, basically, you did it all in one day. You got the prints and then you

17 did whatever follow-up you needed to do in reference to your investigation and then

18 you did your report?

19 A That is correct.

20 Q Okay. And then after you did your report did you do anything else or

21 did you just submit it to the detective and go from there?

22 A After I do my report it goes to technical review and verification by

23 another forensic scientist, and in this case it was Kathryn Aoyama that did my

24 technical review.

25 Q Okay. But, for you though, personally.

1 A For me?

2 Q Did you do anything else?

3 A No, I did not.

4 Q Okay. So, you just do your report and then you hand it off and, unless
5 you get subpoenaed to come to court or something or another, you're pretty much
6 done with the report?

7 A That's correct, yes.

8 Q Okay. And that was on January 28th, correct?

9 A Correct.

10 Q So, in this particular case, you indicated that one of the first things that
11 you'll do is you'll run prints through AFIS, correct?

12 A That's correct.

13 Q And is that just a national database which or something or another that
14 has prints in it?

15 A Um, what we, we actually search multiple databases. We search our
16 local database first then we search the California Department of Justice database.

17 Q My question was I was asking you about AFIS.

18 A This is all about AFIS.

19 Q Okay.

20 A We do, like in AFIS we search our local database first then we search
21 the California Department of Justice database and then WIN, which is the Western
22 Identification database, and then the FBI IAFIS, which is the national database.

23 Q Okay. So, AFIS is an all-encompassing system with everything in the
24 United States, is that fair to say?

25 A Overall, the IAFIS system is, yes.

1 Q Okay. So, you search AFIS, you grab the prints, and then you do a
2 comparison, correct?

3 A Correct. So when I enter a print into AFIS --

4 Q Just a yes or no.

5 A Okay.

6 Q Yeah. And so, you then you do your comparison, correct?

7 A Correct.

8 Q All right. And that comparison, you've used the word manually several
9 times, it's done manually, correct?

10 A The comparison is? Yes, yes.

11 Q Okay. Now, describe to the jury how you do that manually.

12 A So, what I do is I get the latent prints and I get the exemplar prints or
13 known prints and then I look at the data in the latent print and I look at -- I find a area
14 that I target as my initial target group, my initial search area, and then I look at the
15 ridges and see if I can find any corresponding ridge details and ridge endings in the
16 known prints. When I do find correspondence I then, basically, I just go ridge by
17 ridge and I look at all the details and see if I have enough to come to a correct
18 conclusion. And once I do have enough information then I can, if I have enough that
19 corresponds, then I can issue a conclusion of identification.

20 THE COURT: Just -- I'm sorry, go on.

21 THE WITNESS: I was gonna say, if I don't have enough data I can issue a
22 conclusion of exclusion.

23 THE COURT: Do you just do that with naked eye or do you have like some
24 kind of special tool or device that you use?

25 THE WITNESS: Um, we usually use magnifiers that are called loops or we

1 can also do it on the computer.

2 BY MR. MARCHESE:

3 Q So, in this particular case, you did that and it was your conclusion
4 based on the AFIS system that there was a match with Tommy Stewart, correct?

5 A Correct.

6 Q And then you had talked about some left cards that you had for Mr.
7 Stewart, I believe that would be State's Exhibit 89. Do you recognize that?

8 A The exemplar prints? Yes.

9 Q And is this, I believe you already answered this but this was a true and
10 accurate copy of the one you did in this case?

11 A That is correct.

12 Q Okay. And, in this particular case you did that match and then it came
13 back to Mr. Stewart again was your testimony, is that correct?

14 A That's correct, yes.

15 Q And this was all done in one day, correct?

16 A Correct.

17 MR. MARCHESE: No further questions.

18 THE COURT: All right. Redirect?

19 MS. JONES: Nothing further, Your Honor.

20 THE COURT: Any additional juror questions? I think we covered the last
21 juror question.

22 THE MARSHAL: Any others?

23 [Bench conference not recorded]

24 THE COURT: -- some juror questions up here.

25 **QUESTIONS BY THE JURY**

1 THE COURT: When a print is run through AFIS and there's a hit, like you
2 testified, is that 100 percent that it's the same print or is there something else that
3 has to be done to verify that the AFIS hit and the known print are from the same
4 individual? Can you kind of explain that for us?

5 THE WITNESS: Yeah. What it is it's a potential match and that's why we do
6 a manual comparison to determine whether or not it actually is a true hit.

7 THE COURT: And, were there any other, did AFIS come up with any other
8 potential matches?

9 THE WITNESS: What we do is we look at the candidate list and we
10 determine by doing -- it's basically an onscreen comparison. What --

11 THE COURT: So you can kind of, based on your experience, narrow it down?

12 THE WITNESS: Correct. We look at all the details on screen and we
13 determine whether or not that has the potential to be a true match. And then that's
14 when we pull the actual exemplars of that person and then do a manual comparison.

15 THE COURT: And, did you just do the one manual comparison in this case,
16 meaning between the Defendant's prints and the latent prints?

17 THE WITNESS: Yes.

18 THE COURT: Okay. And the prints that are used for exclusion, how are
19 those obtained; the exclusionary prints?

20 THE WITNESS: Exclusion is basically a conclusion that we can render. So,
21 in this case I didn't have any exclusions so, I did not exclude anybody in this case.
22 So, had I compared, for instance, Natasha Lumba to the other print in this case that
23 belonged to Tommy Stewart there would not be corresponding detail between
24 Natasha Lumba and Tommy Stewart. So, in that case I would, if I compared it, then
25 I would probably issue an exclusion report or conclusion.

1 I don't know if that makes sense. I have no exclusions in this case so,
2 in this case it doesn't particularly, it's not really a factor in this case 'cause I made all
3 identifications in this case.

4 THE COURT: Okay. Do you want to follow up, Ms. Jones?

5 MS. JONES: Yes, please, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. JONES:

8 Q Ms. Gouldthorpe, just so we're clear, when a print comes in and you're
9 asked to run it through AFIS, this AFIS is a computer program that does the initial
10 comparison, is that correct?

11 A Right. What happens is I scan the print into AFIS and I manually
12 encode it looking at the data points, the minutia points. I manually encode that and
13 it searches the algorithm and comes up with the closest candidate list. And then I
14 look at that candidate list, do an onscreen comparison and from that comparison,
15 onscreen comparison, if I find something that's a potential hit, which in this case I
16 did, I pull those exemplar prints and do a manual comparison on those.

17 Q And that's what you did in this case?

18 A Correct.

19 Q And, I'm showing you State's Exhibit 95. And here at the bottom, is this
20 the print that came off the jewelry box?

21 A That's correct.

22 Q And does it appear to only be one print there?

23 A Correct.

24 Q And that's the print that you analyzed?

25 A Correct.

1 Q And you got a match to Tommy Stewart?

2 A That's correct.

3 Q And after you did that you pulled State's Exhibit 89, which is the
4 exemplar prints of Tommy Stewart?

5 A Correct.

6 Q And then you compared the two?

7 A Yes.

8 Q And I'm gonna show you, I have absolutely no forensic training, but if I
9 show you these two side by side, is this basically the comparison that you do but
10 you have training and experience to do the comparison?

11 A Yes. And I actually did a chart in this case.

12 Q Okay.

13 A I don't know if that would help, um.

14 THE COURT: Would it help you explain?

15 THE WITNESS: The -- explain.

16 THE COURT: Okay.

17 BY MS. JONES:

18 Q Yes, can you refer to the chart to explain to us?

19 A So, in this case, this is the latent print of --

20 THE COURT: You want to mark that?

21 MR. MARCHESE: Yeah, I'm gonna object. I don't -- this hasn't been entered
22 into evidence that I'm aware of.

23 MS. JONES: Yeah, can I approach, Your Honor?

24 THE COURT: Yeah, you need to mark it.

25 MS. JONES: May I approach the witness?

1 THE COURT: You may.

2 BY MS. JONES:

3 Q And, Ms. Gouldthorpe, I'm showing you, oh, and I apologize. If I could
4 show it to opposing counsel first.

5 Ms. Gouldthorpe, I'm showing you what's been proposed to be State's
6 Exhibit, proposed Exhibit 98, what are we looking at here?

7 A This is the chart that I made based on the latents and the exemplar
8 prints that I was provided. Our charts are just, basically, another tool that we have
9 to support our conclusions.

10 Q And did you use this chart to make the comparison in this case?

11 A It is a representation of the comparison that I did.

12 Q And, this was prepared while you were doing the work on this case?

13 A It was, yes.

14 Q And does this photograph fairly and accurately depict the comparison
15 that you did in this case?

16 A It does.

17 MS. JONES: The State would move for the admission of State's proposed
18 98.

19 MR. MARCHESE: I would ask for more foundation as to which print she was

20 --

21 THE COURT: Yeah, what exactly is on that?

22 BY MS. JONES:

23 Q Okay. Can you tell us what's on this sheet?

24 A Yes, this is the latent print from Q2 A, which is the latent print from the
25 jewelry box atop the washer in the laundry room area, and Q2 is the latent card, and

1 A is the latent identifier.

2 Q And then what is that?

3 A Then the other part of that is the known left middle finger of Tommy
4 Stewart, which is taken from the exemplar prints that I pulled.

5 THE COURT: Okay, so it's the known of the left middle finger?

6 THE WITNESS: Correct.

7 THE COURT: And you just put those side-by-side like that on your chart so
8 that you could look at them more closely?

9 THE WITNESS: Correct.

10 THE COURT: Okay. Exhibit 98 was it?

11 MS. JONES: Ninety-eight.

12 THE COURT: Is admitted.

13 [Exhibit 98, admitted]

14 MS. JONES: May I have permission to publish, Your Honor?

15 THE COURT: You may.

16 BY MS. JONES:

17 Q And, Ms. Gouldthorpe, I'm showing you and the ladies and gentlemen
18 of the jury State's Exhibit 98. And can you explain to the ladies and gentlemen of
19 the jury the comparison that you did with these two items?

20 A Yes. When I say I look at the ridge flow you can see how the ridges are
21 flowing here, so they go up and they kind of curve around. This is indicative of a left
22 slant loop, which in this case it is, and you can see how the ridges they're not
23 straight, they don't do -- they kind of have a little bit of shape to them, so we look at
24 that.

25 And then we also look at the minutia points. And you can see the red

1 dots indicate where I said that there was a minutia marking, so it's either bifurcation
2 or ridge ending. And then I just started went ridge by ridge and I marked all the
3 minutia that I found in agreement and that's only a representation, there are other
4 minutias, points that are in there that I did not mark. But, I look at all that detail and I
5 come to the conclusion of identification in this case.

6 Q And was there only one potential match that you came up with in this
7 case?

8 A In this case, yes.

9 Q And that was to Tommy Stewart?

10 A Correct.

11 Q And did you -- you didn't indicate this but that's what you indicated in
12 the report that you prepared in this case?

13 A That was correct.

14 Q When did you prepare that report?

15 A On January 28, 2015.

16 Q Okay, so all this was done on the same day?

17 A Correct.

18 Q And then you did -- this is the result of your manual comparison?

19 A Correct.

20 MS. JONES: Pass the witness, Your Honor.

21 THE COURT: All right. Mr. Marchese.

22 **RECROSS EXAMINATION**

23 BY MR. MARCHESE:

24 Q You indicated on redirect that the first thing that you do is you go to this
25 AFIS system and you pull the prints, correct?

1 A Well, I enter the prints into the AFIS system next.

2 Q Correct.

3 A Yes.

4 Q And then that's nothing that you have any control over, it's just
5 something that you have access to, correct?

6 A The AFIS system?

7 Q Yes.

8 A Right, it's a database and its, the system's algorithms are set by the
9 company that designed it.

10 Q And you don't work for that company, correct?

11 A I do not.

12 Q You don't actually do any input of prints into that system, correct?

13 A Um, in order to search it, yes. The database, no.

14 Q Right. So then once you do that you get the hit and then the next thing
15 you'll do is you'll pull it manually and from your local system or if you have access to
16 something, and in this case you did, correct?

17 A Correct.

18 Q And you did all this on January 28, 2015?

19 A Correct.

20 Q Okay. And how do you get those prints, are they -- do you print them
21 off, are they faxed to you, how does that work?

22 A In our AFIS system it will give us an ID number then we go to archive,
23 which is a database, and then we input that number that we get from the AFIS
24 system into that archive system and then we print the fingerprints from that archive
25 system.

1 Q Okay. So, I'm showing you what's State's Exhibit 89. And these are
2 the ones that you pulled in this particular case, you testified earlier, correct?

3 A Correct.

4 Q Okay. And they have some personal identifiers on it such as at the top
5 it says Tommy Stewart, correct?

6 A Correct.

7 Q I believe there's probably some sort of date of birth or some personal
8 identifiers like height and weight and hair color and all that, correct?

9 A Correct.

10 Q And then below that there's a date. Do you see that date on the second
11 line below the height and weight and eye color and all that?

12 A Um, on this line right here?

13 Q Yes, it'd be right about here.

14 A Right here?

15 Q Yes. And what does that indicate?

16 A That is the date that I printed off those exemplars.

17 Q Okay.

18 MR. MARCHESE: All right. No further questions.

19 THE COURT: All right. Any redirect?

20 MS. JONES: No, Your Honor.

21 THE COURT: Re-redirect. Any additional juror questions?

22 All right, ma'am, I see no additional questions. Thank you for your
23 testimony. You are excused.

24 THE WITNESS: Thank you.

25 MS. LEXIS: Your Honor, State calls Officer Brian Jackson.

1 THE COURT: All right.

2 Face that lady right there.

3 **BRIAN JACKSON**

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

5 THE COURT CLERK: Thank you. Please be seated and please state and
6 spell your name.

7 THE WITNESS: Brian Jackson, B-R-I-A-N, J-A-C-K-S-O-N.

8 THE COURT CLERK: Thank you.

9 MS. LEXIS: May I, Your Honor?

10 THE COURT: Yes.

11 **DIRECT EXAMINATION**

12 BY MS. LEXIS:

13 Q Mr. Jackson, how are you employed?

14 A I am a detective with the Las Vegas Metropolitan Police Department.

15 Q And how long have you been so employed?

16 A Just under 10 years.

17 Q You're a detective currently?

18 A Yes ma'am.

19 Q How long have you been a detective?

20 A Approximately six months.

21 Q Okay. And prior to that were you a patrol officer?

22 A Yes, ma'am.

23 Q Okay. And how long were you a patrol officer?

24 A Nine years.

25 Q Okay. Were you employed in your capacity as a patrol officer or as an

1 officer with Metro back on February 14th of 2015?

2 A Yes, I was.

3 Q Calling your attention to about 1700 hours, can you tell the ladies and
4 gentlemen of the jury what it is that you were doing on that particular day?

5 A Can you mention the date again, please?

6 Q Yes, February 14th of 2015.

7 A I was working as a patrol officer in our problem solving unit for Bolden
8 Area command. That's a plain clothes investigative unit for that area command.

9 Q Okay. And were you in a certain area of town or where were you?

10 A I was working in an area commonly known as the west-side or west Las
11 Vegas, which specifically we were working at H and Owens.

12 Q Okay.

13 A H Street and Owens.

14 Q And is that here in Las Vegas, Clark County, Nevada?

15 A Yes, it is.

16 Q When you say, we were working, who are you referring to?

17 A I was working with other members, other officers from my squad.

18 Q And regarding the other officers in your squad, you indicated you were
19 in plain clothes, is that right?

20 A Yes, ma'am.

21 Q Were the other officers in your problem solving unit squad also in plain
22 clothes?

23 A Yes, ma'am.

24 Q When you say plain clothes is that mean you're not in your patrol
25 uniform?

1 A Yes, ma'am.

2 Q Okay. In terms of vehicles, did you have vehicles with you at that time?

3 A Yes, ma'am.

4 Q Were you in a particular vehicle?

5 A I was in a unmarked Metro vehicle, a pickup truck.

6 Q When you say unmarked, what does that mean?

7 A It's a -- looks like a regular vehicle. It's a regular vehicle, for all intents
8 and purposes, with no overt or obvious insignias, lights, although it does have covert
9 lights and sirens inside of the vehicle.

10 Q Okay. And were others in your squad also in unmarked LVMDP
11 vehicles?

12 A Yes, they were.

13 Q That particular night, February 14th of 2015, do you recall what type of
14 vehicle you were in?

15 A I was driving a silver Dodge, 4-door, pickup truck.

16 Q At some point is it fair to say, Detective Jackson, that you and your
17 squad were conducting surveillance in that area of H and Owens?

18 A Yes, ma'am.

19 Q Okay. At some point, did you and other officers become involved in the
20 investigation concerning an individual by the name of Tommy Stewart?

21 A Yes, ma'am.

22 Q Okay. Can you tell the ladies and gentlemen of the jury how it is that
23 that came about?

24 A I had received information from Detective Abell, robbery detective, of an
25 investigation that he was working and was given his name due to the fact that it was

1 believed that he might be in that area.

2 Q Okay. And prior -- when were you given this name by Detective Abell,
3 that same day or on a prior date?

4 A I don't recall if it was that day or maybe the day earlier, I honestly don't
5 remember.

6 Q Okay. But was this kind of on your to-do list, keeping your eye out for
7 an individual, a suspect by the name Tommy Stewart?

8 A Yes, ma'am.

9 Q At some point did you receive information that this individual, Tommy
10 Stewart, may have been in the area of H and Owens?

11 A Yes.

12 Q Particularly in an area with an address of 720 West Owens, do you
13 recall that?

14 A Yes.

15 Q What's located on 720 East or West Owens?

16 A There's a gas station on the northeast corner, Bells Market I believe it's
17 called. And just north of that is another little shopping strip that's within a few feet of
18 it.

19 Q Okay. And that's here in Las Vegas, Clark County, Nevada?

20 A Yes, it is.

21 MS. LEXIS: Your Honor, may I approach with what's been previously marked
22 as State's Exhibits 2, 3 -- 2 and 3, and 91 through 94.

23 THE COURT: All right. Are those admitted? No? Okay.

24 MR. MARCHESE: I'll stipulate to those.

25 THE COURT: All right. Thank you.

1 MS. LEXIS: Thank you. Permission to publish?

2 THE COURT: Sure.

3 [Exhibits 2, 3 and 91 through 94, admitted]

4 BY MS. LEXIS:

5 Q Actually, let me just show Detective Jackson, State's Exhibits 91
6 through 94. Detective Jackson, can you please take a look at this, these Exhibits,
7 they've already been admitted, I just want you to have a better look at the Exhibits
8 before I publish them.

9 Do you recognize what's depicted in State's Exhibits 91 through 94?

10 A Yes, ma'am.

11 Q Okay. And what do you recognize them to be?

12 A That's the parking lot of Bells Market with the other parking lot looking
13 west from Bells Market where we had surveillance.

14 Q Okay. I'm gonna show you what's now been admitted by stipulation as
15 State's Exhibit number 2. Detective Jackson, can you please clear the screen. Do
16 you know how to do that?

17 THE COURT: I'll do it.

18 MS. LEXIS. Thank you, Your Honor.

19 THE COURT: Just if you touch the bottom corner it'll clear it, but I already did
20 it.

21 THE WITNESS: Okay.

22 MS. LEXIS: Thank you. Ours isn't working.

23 THE COURT: Perfect. For future.

24 BY MS. LEXIS:

25 Q Okay. What's this showing, Detective?

1 A That's the main sign for the gas station and Bells Market at H and
2 Owens.

3 Q Okay. And I'm gonna show you State's Exhibit number 92. Do you
4 know what this is depicting?

5 A That is a map view of Bells Market looking east --

6 Q Okay.

7 A -- from H Street.

8 Q Okay. And so at some point on February 14th of 2015 was your
9 attention or surveillance drawn to this particular location?

10 A Yes, it was.

11 Q And were there other officers in your squad, plain clothes in an
12 unmarked patrol vehicles or unmarked Metro vehicles also in the area?

13 A Yes.

14 Q Specifically, were you working with an officer Vorce or Detective Vorce
15 at that time?

16 A Yes.

17 Q Do you know where he was stationed at?

18 A If you're looking at this view right here and if you imagine that you're
19 standing there yourself it would have been directly behind you. So, from this view
20 looking east Officer Vorce, at that time, would have been west further behind where
21 this photo was taken in that other parking lot.

22 Q I'm gonna show you State's Exhibit number 93. Does that show the
23 location that you just described Officer Vorce as being in?

24 A Yes.

25 Q Okay. And do you know particularly where, I know there are cars in this

1 particular vehicle -- or in this particular photo but do you know whereabouts
2 Detective Vorce would have been that night?

3 A In the evening time from that box truck over to the white van or the
4 white bus that's parked, those cars are not there in the evening time, so
5 approximately straight back and right where those trees are at, just on the other side
6 where you'd see that first row of vehicles.

7 Q Can you just circle the area? Okay. So, for the record, you're, it's kind
8 of towards the center or the middle the cluster of cars located in State's Exhibit
9 number 93?

10 A Approximately, that would have been where he was at just a little
11 further west there.

12 Q Okay. Was he tasked also with conducting surveillance?

13 A Yes.

14 Q Okay. Where were you when you first became aware of Tommy
15 Stewart potentially being in this area?

16 A I --

17 Q This gas station?

18 A Initially, I was on J Street, just north of Doolittle.

19 Q Okay.

20 A Which is just around the corner.

21 Q And, when you make your way there, what do you see?

22 A When I receive information that he's there I proceed down Doolittle and
23 I turn south on H Street. And as I'm approaching the Bells Market, off to my left-
24 hand side or facing east as I'm traveling south I see an individual, who's wearing the
25 items that are described to me, walking from the little shopping center just north of

1 Bells Market around the wall into Bells Market property.

2 Q Okay. And, that individual that you saw did you later identify that
3 person as Tommy Stewart?

4 A Yes, I did.

5 Q You indicated he was wearing items of clothing that had been described
6 to you. What were you told that he was wearing?

7 A I recall it was a black hoodie.

8 Q Okay. One of those sweatshirt-type hoodies?

9 A Yes, ma'am.

10 Q Okay. I'm gonna show you State's Exhibit number 94. Does this show
11 how you came into that gas station?

12 A Yes, it would.

13 Q Okay, and can -- thank you, Your Honor, or thank you, Detective.

14 And can you just show the ladies and gentlemen of the jury how it is
15 that you approached Bells Gas Station?

16 A I drove south on H Street and then I turned into the parking lot and the
17 individual that I initially saw was rounding this pony wall and this plant and walking
18 back into the property here.

19 Q Okay. Let me show you State Exhibit number 91. Maybe this has a
20 better view of where you saw the individual, the individual you identified as Tommy
21 Stewart, correct?

22 A Yes, ma'am.

23 Q Okay. Can you clear that?

24 A Is the bottom left, is that it?

25 THE MARSHAL: The bottom right corner.

1 THE WITNESS: The bottom right corner, sorry.

2 MS. LEXIS: Bottom right, sorry. Thank you, Detective.

3 BY MS. LEXIS:

4 Q Okay, so where is it that you saw Tommy Stewart, initially?

5 A Initially, walking around this plant over here.

6 Q Okay. Now, the individual that you saw in that area, which you just

7 pointed out in State's Exhibit number 91 on February 14th of 2015, do you see him

8 here in court today?

9 A I can't see behind the monitor. Can I stand up?

10 Q Yes.

11 THE COURT: Sure.

12 MS. LEXIS: Thank you.

13 THE WITNESS: Yes, ma'am.

14 BY MS. LEXIS:

15 Q Okay. Can you, well, can you tell us where he's sitting?

16 A He's sitting behind the monitor at the desk behind you.

17 Q Okay.

18 MS. LEXIS: Your Honor, please, let the record reflect identification of the

19 Defendant.

20 THE COURT: It will.

21 MS. LEXIS: Thank you.

22 BY MS. LEXIS:

23 Q And so, you pull into the gas station, is that correct?

24 A Yes, ma'am.

25 Q State's Exhibit number 92, does that show where you pulled into, kind

1 of?

2 A Yes.

3 Q Okay. Where was that?

4 A When I pulled in I proceeded across the parking lot. Individual was
5 walking through the parking lot and as I passed, made contact, eye contact with
6 each other, or I believed it was eye contact, and I proceeded past and I stopped
7 here at this red vehicle parking at the pump to not stop right next to him.

8 Q Okay. And what did you do next?

9 A At that point I advised my team as we were on the same channel, raider
10 channel, that it was a positive identification that it was him.

11 Q Okay.

12 A And then I proceeded to exit my vehicle.

13 Q And upon exiting your vehicle, what did you do next?

14 A Mr. Stewart had proceeded over here in between some vehicles where
15 there was a couple of vehicles parked. I moved in between the pumps and
16 approached this way and verbally made contact from approximately that distance
17 across the parking lot with him.

18 Q Okay. Did you at any time as you were approaching him or as you
19 parked into or pulled into that, near that gas pump, did you observe Mr. Stewart, the
20 Defendant, near any vehicles?

21 A Yes, I did.

22 Q Okay. What type of vehicle?

23 A I believe it was a white vehicle but I --

24 Q Showing you State's Exhibit number 3. Can you clear that Detective?
25 Do you recognize what's depicted in State's Exhibit 3?

1 A Yes, ma'am.

2 Q What is it, sir?

3 A That's a Toyota Corolla, which is the vehicle where Mr. Stewart had
4 moved over to.

5 Q Okay. And so you saw him near this vehicle. Was he alone or with
6 other people?

7 A There were several other individuals with him.

8 Q Okay. Were there other males with him?

9 A Yes.

10 Q Okay. And was there also a female?

11 A Yes, there was.

12 Q Do you recall approximately how many subjects were near Mr. Stewart
13 near this vehicle?

14 A I believe there were three other males and one female.

15 Q Thank you. And, as you're walking towards Mr. Stewart, who's near
16 this car, what happens?

17 A Since there was other individuals over there and I was trying to not
18 escalate anything, I called him over to myself. And I utilized a ruse and I believe I
19 asked him if he had been involved in an altercation at the business just north of
20 where we were at.

21 Q Okay. And, did he, when you called him over, obviously he came up to
22 you.

23 A Yes. He said that he had not been and I just asked him to cover over
24 and talk to me so that I was not placing myself in between other vehicles where the
25 other people, who I didn't know were, were at.

1 Q Okay. At some point did you receive information from other detectives
2 in your squad to indicate that there was a potential safety hazard concerning this
3 scene?

4 A Initially, no. I learned later that they had tried but I had already exited
5 my vehicle and I didn't have raider communication with them.

6 Q Okay. And, later you found out what was the safety hazard?

7 A There were a couple of weapons involved.

8 Q Okay. So, you have Mr. Stewart now, towards you. Does State's
9 Exhibit number 2 show where it is that you and Mr. Stewart, the Defendant, are
10 talking?

11 A Approximately, yes.

12 Q Can you circle that area?

13 Okay. So, kind of where that SUV is on the first parking spot towards
14 the left of the front door of Bells, is that right?

15 A Approximately in that area, yes.

16 Q Okay. And, do you take him into custody at that time?

17 A Initially, to not have him think anything serious is going on I'm telling
18 him that I was believed he might have been in an altercation, needed to pat him
19 down for safety, and he was cooperative at that point. Had him turn around so I
20 could pat him down for weapons, as he cooperated I just placed him in handcuffs
21 and told him he was being detained.

22 Q Okay. And at some point did you transport the Defendant to robbery
23 headquarters or to Metro headquarters so he could be interviewed by Detective
24 Abell?

25 A I do not recall if I specifically transported him or I believe a marked unit

1 transported him.

2 Q Okay.

3 MS. LEXIS: Court's brief indulgence. I have no further questions for this
4 witness. Thank you.

5 THE COURT: All right.

6 MR. MARCHESE: No questions, Your Honor.

7 THE COURT: No questions? Any jury questions for the witness?

8 All right. Detective, I see no further questions. Thank you for your
9 testimony. Please don't discuss your testimony with anybody else that may be a
10 witness in this case.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Sir, you are excused.

13 May I see counsel at the bench?

14 [Bench conference not recorded]

15 THE COURT: State, call your next witness.

16 MS. JONES: The State's next witness is Officer Vorce.

17 THE MARSHAL: Just remain standing, raise your hand, face the clerk to your
18 left, please.

19 **MATTHEW VORCE**

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

21 THE COURT CLERK: Thank you. Please be seated and please state and
22 spell your name.

23 THE WITNESS: Matthew Vorce, M-A-T-T-H-E-W, Vorce, V as in Victor-
24 O-R-C-E.

25 THE COURT: All right.

1 Ms. Jones.

2 MS. JONES: Thank you, Your Honor?

3 **DIRECT EXAMINATION**

4 BY MS. JONES:

5 Q Officer Vorce, can you tell the ladies and gentlemen of the jury how
6 you're employed?

7 A I'm a sergeant with Las Vegas Metropolitan Police Department.

8 Q And how long have you been employed there?

9 A Just a little over 14 years now.

10 Q Okay. And how long have you been a sergeant?

11 A Little over five months now.

12 Q Okay. I'd like to draw your attention back to February 14th of 2015. In
13 what capacity were you working at that time?

14 A At that time I was working in a plain clothes unit called the problem
15 solving unit.

16 Q Okay. And were you a sergeant at that time?

17 A Then I was just an officer.

18 Q Okay. And were you working alone or were you with a partner?

19 A I was actually in my own vehicle conducting surveillance and one of my
20 partners had just actually just pulled in next to me and our vehicles were sitting side
21 by side, we're having conversation through our windows.

22 Q In what area were you located where you were conducting this
23 surveillance?

24 A I was conducting this surveillance at the area of the intersection of H
25 Street, H as in Henry, and Owens.

1 Q Okay. And Officer Vorce, I'm -- Sergeant Vorce, I'm gonna show you
2 what's been admitted as State's Exhibit 93. Does that look familiar to you?

3 A Yes.

4 Q Okay. And is this the area where you were actually located?

5 A Yes, this picture is taken from the parking lot of the Bells Market, which
6 is a gas station, which is located on the northeast corner of the intersection. And I
7 would have actually been located, if you could look at the picture, by the palm trees
8 where the --

9 Q You can actually draw on your screen.

10 A Okay. I would have been back in this area right over there.

11 Q Okay. And you said you were parked in a vehicle?

12 A Yes, I was.

13 Q Was this a marked vehicle or what type of vehicle was this?

14 A No, it was what we consider a covert vehicle. It was a black Kia
15 Optima, nothing distinguishing about it, it was just a regular black sedan with
16 blacked out windows, so.

17 Q And, Officer Vorce, what was the purpose of your surveillance that day?

18 A One, we were attempting to try and locate some subjects and we've
19 had some recent disturbances at the, between the -- there's two gas stations right
20 there or a convenient store and a gas station side-by-side. We've had some
21 problems in the area so we're trying to curb the issues at that location.

22 Q Okay. And one of the individuals that you were attempting to search
23 for, were you searching for an individual by the name of Tommy Stewart?

24 A That's correct.

25 Q And, Sergeant Vorce, do you see the individual that you were looking

1 for in the courtroom today?

2 A It's kind of -- the monitor's blocking him but I believe that's him behind
3 that.

4 Q Okay.

5 A Yes, that'd be him.

6 Q Okay.

7 MS. JONES: May the record reflect identification of the Defendant?

8 THE COURT: It will.

9 BY MS. JONES:

10 Q And did there come a point in time on February 14th of 2015 where you
11 actually saw Tommy Stewart?

12 A Yes, I did.

13 Q And where was he when you saw him?

14 A He was in the parking lot of the Bells Gas Station.

15 Q Okay. And, Officer Vorce, I'm gonna show you State's Exhibit 92. And
16 if you would just touch the bottom right-hand corner of your screen you can actually
17 get rid of that mark.

18 Okay. Can you show us in State's Exhibit 92 where Tommy Stewart
19 was actually located when you first noticed him?

20 A It would have been approximately in this area right here.

21 Q Okay. And, how did you notice him?

22 A I notice -- initially I had received information from Officer Jackson that
23 he was possibly in the parking of the Bells Gas Station as Officer Jackson was
24 pulling into the parking lot. As Officer Jackson's vehicle was crossing my line of
25 sight into the parking lot I noticed, that's when I was able to pick up Tommy Stewart

1 right as the vehicle passed his location.

2 Q And did you have any sort of information that would assist you in
3 identifying Tommy Stewart.

4 A Yeah, actually, earlier, before we hit the streets that day we printed out
5 pictures of the subjects and their names and their personal information, so I had a
6 current picture of Tommy Stewart as well as his physical description.

7 Q And what was Tommy Stewart wearing that day?

8 A He was wearing a black hoodie.

9 Q Was he alone?

10 A No, he was with a group of approximately four to five other subjects in
11 the parking lot.

12 Q And do you know whether those subjects were male or female?

13 A I believe it was three or four other males and one female with him.

14 Q Okay. And they were all next to -- they were all in this parking lot?

15 A Yeah, they're -- the parking lot is one business and there's actually a lot
16 of traffic in and out of the business and a lot of people that loiter in the property line
17 but it appeared that their group, who they were having conversation with and
18 speaking with, appeared to be approximately the four or five of those subjects.

19 Q And were they standing next to any vehicle?

20 A After Officer Jackson's truck pulled into the parking lot they walked back
21 over to a white vehicle that was parked on the north parking spot of the parking lot.

22 MS. JONES: Your Honor, if I could approach. And, Your Honor, just for the
23 record, the Defense will stipulate to State's proposed Exhibit 4, 5, 6, and 7.

24 MR. MARCHESE: Correct statement.

25 BY MS. JONES:

1 Q And, Officer Vorce, if I could show you State's Exhibit 5, does that
2 appear to be the vehicle that they were standing next to?

3 A That is correct.

4 Q And is State's Exhibit 6 appear to be the same vehicle?

5 A Yes, it is.

6 Q And you said that saw Officer Jackson drive into the parking lot of the
7 gas station?

8 A Yes.

9 Q Were you looking at this with your naked eye or did you have some sort
10 of assistance in seeing what was going on across the street?

11 A Due to the distance I was using a pair of binoculars.

12 Q And, about how far away were you?

13 A Approximately 100 to 150 yards away.

14 Q And you would use some binoculars?

15 A Yes, and when I was in the problem solving unit it's pretty much
16 primarily what we do. We do large amounts of surveillance so I had an effective pair
17 of binoculars.

18 Q And, from the photograph that's depicted in State's Exhibit 6, can you
19 show us, is it visible on that photograph where the subjects moved to once Officer
20 Jackson pulled into the parking lot?

21 A Pretty much right where the current white dot is, they were loitering in
22 this area near the rear of the vehicle.

23 Q Okay. And, I'm gonna show you State's Exhibit 92. Can you see on
24 this photograph where Officer Jackson would have pulled into?

25 A He pulled over into the gas pumps. I don't recall if it was the first row of

1 gas pumps or the ones closer to the intersection, the one where the red car is here
2 or the next set of pumps closer to the intersection. I don't recall exactly which ones
3 he --

4 Q But he pulled into the gas pumps?

5 A He pulled into the area where the gas pumps are, correct.

6 Q And while he pulled into the gas pumps are you monitoring from across
7 the street, like what's going on?

8 A Yeah, that is. And then most of this is happening simultaneously
9 basically, you know, you have the vehicles pulling into the parking lot and as I see
10 Tommy Stewart all at the same time. So, I'm monitoring as the vehicle, Jackson's
11 vehicle passes and when I was able to identify Tommy Stewart I monitored his --
12 continued monitoring his movements 'cause he was obviously one of the subjects
13 that we were looking for.

14 Q Did you ever see Tommy Stewart do anything?

15 A Yeah, he walked over to the rear, the rear passenger side door of that
16 white Toyota, which was parked over in the parking stall.

17 Q Okay. And where at in -- on State's Exhibit 6, can you show us where
18 he walked to?

19 A He walked over and he basically stood right in this area, opened up the
20 rear passenger side door of the vehicle and he stood in the rear passenger side of
21 the vehicle. Him and then some of the other males started all migrating over from
22 the initial spot where I pointed out in the parking lot, they all basically started
23 migrating over to the rear of the vehicle.

24 Q So, the rear passenger door is open at that point?

25 A There was a subject that was with them who remains unidentified and

1 we were never able to contact him. It was a taller, older, black male adult wearing a
2 red t-shirt, he went over and actually opened up the rear passenger door and that's
3 when I saw Tommy Stewart walk over to the rear passenger door of the vehicle.

4 Q And, after all the other individuals migrated over there, what happened
5 next?

6 A At this point I saw Tommy Stewart lift up the front of his hoodie as the
7 other subjects were moving in. I saw him remove a firearm from the front of his
8 pants and place it on the rear passenger floorboard of the vehicle.

9 MR. MARCHESE: Objection, relevance.

10 THE COURT: Overruled.

11 BY MS. JONES:

12 Q And you saw him place that firearm on the floorboard of the vehicle?

13 A That is correct.

14 Q And, Officer -- Sergeant Vorce, from where you were sitting were you
15 still using your binoculars at this point?

16 A At this I was continually monitoring through my binoculars the entire
17 time.

18 Q So, were you able to clearly see whether or not that was actually a
19 firearm?

20 A That is correct.

21 Q And was that actually a firearm?

22 A Yes.

23 Q Okay. And did you see one of the other individuals do something?

24 A Yes.

25 Q What happened?

1 A So at this point, after Tommy Stewart placed his firearm in the back
2 floorboard of the vehicle all the other subjects they all basically moved in and they
3 were tight bunched up in the door. The rear passenger door was open. So
4 basically you got the v-formation of the vehicle and, granted, to remember for my
5 position, I was directly behind the vehicle approximately 100 to 150 yards back, so I
6 had a clear view directly into it. But when they all, the subjects, bunched up into it
7 all I could see is the herd of the subjects, and I was able to see a second arm, or the
8 subjects moving, and I see a second arm go back into the rear floorboard of the
9 vehicle with a second firearm being placed on the floorboard of the same vehicle
10 next to the initial location where Tommy Stewart's gun was placed.

11 Q And were you able to clearly see what this second item was?

12 A The second item I was able to identify as a firearm. I could tell 'cause I
13 could see the bottom of the firearm. But I was not able to see what other subject
14 placed it 'cause I was only able to see the arm going down and the firearm being
15 placed on the floorboard. I could not see what other subject placed the firearm on
16 the car.

17 Q And then, what happened after that?

18 A At this point I sent Detective Davis, who was located next to me. I
19 immediately had him respond over to the location to assist Officer Jackson because
20 Officer Jackson, he was unaware of the firearms being placed on the floorboards
21 'cause he initially just pulled into the parking lot and as he's exiting his vehicle.
22 There's a down time where you go into the radio silence between turning on a
23 portable radio and having the vehicle radio accessible. So, I sent Officer Davis over
24 there to go assist him due to the multiple subjects and I continued to maintain
25 surveillance and notifying of them over the radio of the firearm being placed on the

1 ground -- or on the floorboard.

2 Q And had you tried to notify Officer Jackson over the radio about the
3 firearms?

4 A That is correct. I was trying to notify him over the radio. I was not
5 getting immediate response and I, granted, I'm able to see him, as well as he's
6 contacting Tommy Stewart and he was contacting him closer over by the gas
7 pumps. But the other subjects still remained over by the vehicle and that's when I
8 sent Officer Davis over to assist.

9 Q And why did you send Officer Davis over to assist?

10 A Because as I was continuing to monitor the parking lot subjects the
11 door remained ajar and a black female actually went and sat into the rear of the
12 vehicle with her -- set on the rear passenger seat with her buttocks on the rear seat
13 with her feet on the pavement outside the vehicle with the door ajar, knowing that
14 the two firearms were located next to him [sic]. And I identified that as a possible
15 threat to Officer Jackson.

16 Q Okay. And so, it was a safety concern?

17 A Absolutely.

18 Q Did they ever try to close the door to the Toyota Corolla?

19 A She sat in the vehicle for a few minutes I believe. When she exited the
20 vehicle the door would have been closed.

21 Q And, after you had sent Officer Davis over to assist Officer Jackson did
22 there come a point in time where you approached the Toyota Corolla?

23 A Yes. Once Officer Jackson had dealt with Mr. Stewart and Detective
24 Davis was assisting with the other subjects and basically what we're trying to do is
25 render the scene safe. My vehicle is the surveillance vehicle so I have to actually

1 leave my vehicle at its initial location because what we call -- we don't want to burn
2 our vehicle 'cause if we pull it up to a scene, obviously, the criminals are gonna see
3 what vehicles we're utilizing. So I had to park my vehicle and I had to approach on
4 foot over to the initial stop location.

5 Q And did you actually do that?

6 A I did. And then that's when I began assisting the other officers on
7 scene and continuing with our investigation.

8 Q And did there ever come a point in time where you conducted a
9 probable cause search on the Corolla?

10 A That is correct.

11 Q And, what was the basis for that?

12 A So, initially the vehicle was running, I shut the vehicle off and noticed
13 the smell of gasoline in the vehicle. Conducted a search of the vehicle due to me
14 observing Mr. Stewart place the firearm on the rear of the vehicle, conducted a
15 search of the vehicle, located a bag with the firearms inside of them.

16 MS. JONES: Your Honor, may I approach the witness?

17 THE COURT: You may.

18 MR. MARCHESE: Your Honor, I'll stipulate that they're fair and accurate
19 depictions of what the sergeant saw on the date in question but we would object
20 under the relevance.

21 THE COURT: All right. It's overruled on the relevance prongs.

22 MS. JONES: It's overruled on the relevant [indiscernible]? Okay.

23 THE COURT: Uh-huh.

24 MS. JONES: And, Your Honor, with that stipulation, the State would move to
25 admit State's 10, 11, 12, 13, and 14.

1 THE COURT: All right. Those are all admitted.

2 [Exhibits 10 through 14, admitted]

3 MS. JONES: Permission to publish?

4 THE COURT: You may.

5 BY MS. JONES:

6 Q And, Sergeant Vorce, I'm going to show you what's been marked and
7 admitted as State's Exhibit 10. Do you recognize what we're looking at in that
8 photograph?

9 A That would have been the bag located in the vehicle with the two
10 firearms inside of it.

11 Q And, does it appear to have the firearms in it as we're looking at it right
12 here?

13 A That is correct.

14 Q And showing you State's 11. Is that just the actual bag itself?

15 A That is correct.

16 Q And, State's 12, does that depict where it was located?

17 A Absolutely.

18 Q And, in State's 14, just a different angle of that bag?

19 A Yes.

20 Q And, that's the bag that contained the firearms?

21 A That is correct.

22 Q And, you actually saw the firearms inside of that bag?

23 A Yes.

24 Q Okay. And, at that point, did you freeze the vehicle?

25 A That is correct.

1 Q Why would you -- what's the purpose of that?

2 A The purpose of the vehicle is, that way we have an accurate
3 documentation. So when we have the point, what we call freeze, and then we'll
4 have our ID techs and the detectives that are actually investigating respond to the
5 scene and they will assist and determine the proper course of action. And then
6 having the ID or the CSI come out and conduct overalls the pictures of the vehicle
7 so that way the pictures you see is exactly how we found the vehicle.

8 Q And, but you were present for to see the vehicle in that condition?

9 A That is correct.

10 Q And once you call out the CSI to take the photographs and depict the
11 overall condition of the vehicle, at that point, do you leave?

12 A I've remained on scene for the duration of the stop.

13 Q And was Detective Abell called out to the scene?

14 A Yes.

15 Q And so, were you present when CSI actually conducted the overall
16 search of the vehicle?

17 A Yes.

18 Q Okay.

19 MR. MARCHESE: Your Honor, I will stipulate that they are fair and accurate
20 depictions of what the sergeant saw on that date in question.

21 THE COURT: But object as to relevance?

22 MR. MARCHESE: As to relevance.

23 THE COURT: All right.

24 MR. MARCHESE: Just to continue objection, Your Honor.

25 THE COURT: That's fine. Those will -- that objection is overruled and those

1 Exhibits can be admitted.

2 MS. JONES: And, just for the record, Your Honor, that is State's 15, 16, 17,
3 18 through 28; 15 through 28.

4 THE COURT: All right.

5 [Exhibits 15 through 28, admitted]

6 BY MS. JONES:

7 Q And, Sergeant Vorce, you were present when the CSI actually went
8 inside the vehicle, is that correct?

9 A That's correct.

10 Q And what was recovered -- I'm gonna show you State's Exhibit 16. Do
11 you recognize what we're seeing in that photograph?

12 A That is the Ruger firearm that was located in the white bag that was
13 photographed on the front passenger floorboard.

14 Q And, did the crime scene analyst take multiple pictures of this firearm to
15 depict the serial number?

16 A That is correct.

17 Q And, I'm showing you State's Exhibit 18. What are we looking at there?

18 A That is the serial number on the actual firearm.

19 Q Okay. And State's Exhibit 17, is that another photograph of the actual
20 Ruger firearm that was located inside that bag?

21 A That is correct.

22 Q And, Sergeant Vorce, I'm also going to show you State's Exhibit 20.
23 What are we seeing in that photograph?

24 A That is the second firearm that was located in the black or in the white
25 bag.

1 Q Okay. And so, this is the second firearm that was located?

2 A That is correct.

3 Q And, were there also multiple photos taken of this firearm to depict the
4 serial number and the condition of the firearm?

5 A That is correct.

6 Q I'm showing you State's Exhibit 25. What are we looking at there?

7 A That would be the serial number attached to the firearm.

8 Q What about State's Exhibit 27, what do we see there?

9 A That's overall the firearm is what we call a countdown and the
10 representative of the countdown would show how many rounds were in the
11 magazine as well as if there would have been one chambered in the firearm.

12 Q And this one round that seems to be like kind of hanging out on its own
13 at the top, what does that indicate?

14 A That would indicate that was the round that was actually chambered in
15 the firearm, and the rounds next to the magazines which would depict the ones that
16 were located within the magazine itself.

17 Q So, it appears that there's 10 rounds over here and then this one would
18 have been chambered?

19 A That's correct.

20 Q Okay. And does this, State's Exhibit 28 is that also a photograph of that
21 same firearm?

22 A Yes.

23 Q Okay. And that's after the round has been taken out?

24 A Yes.

25 Q Okay. And, I apologize, is this a different firearm or is this the same

1 one?

2 A I can't tell by that, the glare. I recognize it over by the one having the
3 silver slide.

4 Q Okay. It appears to be the same one by the Millennium --

5 A Yeah, that should be --

6 Q -- brand.

7 A Yeah, that's I believe the Taurus and the other one's the Ruger.

8 Q Okay. And, so then going back to the Ruger I'm going to show you
9 State's Exhibit 24. What are we looking at there?

10 A Same, same depictions [sic]. That's the firearm with the overall
11 photograph of the breakdown of the round.

12 Q And this is the Ruger though so that other one was the Millennium.

13 A Yeah, I believe that --

14 Q What type of firearm was the Millennium?

15 A That's a Taurus.

16 Q Okay. And then this is the Ruger?

17 A Correct.

18 Q What caliber is this?

19 A I guess, I don't recall 100 percent, I would say 9 mm by like another
20 rounds.

21 Q Okay. And this one round that seems to be up here, what does that
22 indicate to you?

23 A That would have been another chambered round.

24 Q And these would have been the rounds that's actually inside the
25 firearm?

1 A That's correct, within the magazine itself.

2 Q And that appears to be 14 of those?

3 A That's correct.

4 Q And then State's Exhibit 23, would that have been before the rounds
5 were actually removed from the magazine?

6 A Correct.

7 Q And then the one that was chambered?

8 A Correct.

9 Q And this -- these were two firearms that were found inside that white
10 Michael Kors bag?

11 A That is correct.

12 Q Okay. And you were there when those were recovered by CSI?

13 A That is correct.

14 Q And you saw Tommy Stewart place a firearm into the backseat of that
15 vehicle?

16 A Yes, I did.

17 Q And when you saw the black -- African American female that you saw
18 you said that she sat inside the vehicle but her feet were never inside?

19 A That is correct. Basically, obviously, when the door's ajar she sat in the
20 passenger or the rear passenger side of the vehicle with her feet on the ground and
21 I can see her reaching down where the firearms were at as well as the bags
22 location. I saw her movements in the vehicle. And, again, that's when I was
23 notifying Detective Davis that I observed the black female in the vehicle of possibly
24 moving the firearms or handling the firearms within the interior of the vehicle.

25 Q So, based on the actions that you observed from her you believe she

1 may have been moving those firearms?

2 A Moving the, like saying, initially concealing the firearms from view by
3 placing them in the bag and moving them from their location up to the front
4 passenger seat of the vehicle just by reaching around the seat and dropping the bag
5 down.

6 Q And did you actually see her arm reach around the seat?

7 A I saw her movements. I saw the motions are right up to the front of the
8 vehicle.

9 Q And then the white bag is recovered in the front seat of the vehicle?

10 A That's correct.

11 Q Okay. And was there only one female in this group?

12 A So, initially there was -- there was actually two females in the group, if I
13 recall correctly. The one who actually moved the firearms, she was not in that initial
14 group that was in the huddle before Officer Jackson's arrival. She arrived as all the
15 officers were arriving or just prior to all the officers arriving so she just happened to
16 be in between Officer Jackson taking action with Stewart and my initial surveillance,
17 so.

18 Q But you saw her moving around inside the vehicle?

19 A That's correct.

20 Q And manipulating the bag?

21 A Yeah. And, again, this just has to just do with the amount of volume of
22 foot traffic that's in the parking lot. A lot of people know each other and it's a
23 community and they know each other, and so there's constant interactions between
24 people coming in and out of the gas station as well as the people in the parking lot.

25 Q And, Sergeant Vorce, these two firearms that we've been looking at in

1 the photographs, are both of those firearms semiautomatic?

2 A Yes.

3 Q And, the individuals that were originally there when you and Officer
4 Jackson began your surveillance, was there somebody who was able to leave
5 before you guys could detain him?

6 A That would have been the initial subject who opened the door, it would
7 have been the taller, older black gentlemen wearing a red t-shirt.

8 Q And was he able to leave before you could even identify him?

9 A Yes, we weren't -- I never was able to contact him because basically,
10 initially when the officers arrived on scene it was initially just said, officer, now
11 Detective Jackson, as well as Detective Davis, they arrived at different, you know,
12 and they starting contacting people. Detective Davis' first primary responsibility was
13 to secure the closest thing to the firearms, so get the vehicle and the people moved
14 away from the vehicle where we knew the firearms were located, start contacting
15 people individually, conducting pat downs make sure they didn't have any additional
16 firearms on them. And while all this is going on the subject was able to slip away.

17 Q But that was a black, male adult?

18 A That's correct.

19 Q Okay.

20 MS. JONES: Pass the witness.

21 THE COURT: All right.

22 MR. MARCHESE: No questions, Your Honor.

23 THE COURT: No questions? Any juror questions for this witness?

24 No, I see no questions. Officer, thank you for your testimony. Please
25 don't discuss your testimony with anyone else who may be a witness in this case,

1 sir.

2 THE WITNESS: Thank you.

3 THE COURT: And, you are excused.

4 All right. Ladies and gentlemen, we're gonna go ahead and take
5 our lunch break. We'll be in recess for the lunch break until 1:55.

6 [Jury admonishment not transcribed]

7 [Recess taken at 12:50 p.m.]

8 [Proceedings resumed at 2:04 p.m.]

9 THE COURT: All right. Court is now back in session. The record should
10 reflect the presence of the State through the Deputy District Attorneys, the
11 Defendant and his counsel, the officers of the court, and the ladies and gentlemen of
12 the jury.

13 And, State, you may call your next witness.

14 MS. LEXIS: Your Honor, the State calls Jeffery Abell.

15 THE COURT: And then, sir, please remain standing, facing that lady right
16 there who will administer the oath to you.

17 **JEFFERY ABELL**

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

19 THE COURT CLERK: Thank you. Please be seated and please state and
20 spell your name.

21 THE WITNESS: It's Jeffery Abell, J-E-F-F-E-R-Y, A-B-E-L-L.

22 MS. LEXIS: May I, Your Honor.

23 THE COURT: You may.

24 MS. LEXIS: Thank you.

25 **DIRECT EXAMINATION**

1 BY MS. LEXIS:

2 Q Mr. Abell, how are you employed?

3 A With the Las Vegas Metropolitan Police Department.

4 Q And how long have you been employed with Metro?

5 A Over 10 years.

6 Q Okay. Are you currently a detective?

7 A Yes.

8 Q How long have you been a detective?

9 A Little over four years.

10 Q Okay. And prior to that where were you assigned?

11 A At PSU in northeast area command, prior to that.

12 Q And what does PSU stand for?

13 A It's a problem solving unit.

14 Q Okay. Northeast area command?

15 A Yes.

16 Q Okay. Are you currently a detective with the northeast area command?

17 A Yes.

18 Q Okay. Did you become assigned as a detective in that area a case to
19 investigate with a victim by the name of Natasha Lumba?

20 A Actually I was assigned to the robbery section at that time then I was
21 assigned that case.

22 Q Okay. So, fair to say between January 20th, 2015 and now you've been
23 reassigned to a different unit?

24 A Yes.

25 Q Okay. So, back on January 20th, 2015 where were you assigned?

1 A As a robbery detective with Metro.

2 Q Okay. And while you were a robbery detective, January 20th, 2015
3 were you assigned to investigate a robbery, kidnapping with a weapon involving a
4 victim by the name of Natasha Lumba?

5 A Yes.

6 Q Okay. And, do you know that incident location to have occurred at 805
7 Rock Springs, Apartment number 101, here in Las Vegas, Clark County, Nevada?

8 A Yes, that's correct.

9 Q Okay. So, can you tell the ladies and gentlemen of the jury, detective,
10 that how it is a detective gets assigned to a case? I mean, you're not a first
11 responder, you don't show up after a 9-1-1 call, is that fair to say?

12 A It depends on the time frame of the call. If we're on duty a lot of times
13 on home invasions or residential robberies we will respond out but I believe this
14 happened right at the end of our shift, so nobody went out to the scene except for
15 the patrol officers and CSI. So, we would get the case later as it came through the
16 system.

17 Q Okay. And did you, in fact, get the case later?

18 A Yes.

19 Q So you didn't actually go to 805 Rock Springs, Apartment number 101?

20 A Not that night, no.

21 Q Okay. At some point when you're assigned the case do you look over
22 the documentation or reports that had already been done concerning the case?

23 A Yes.

24 Q And in this particular case there was a 9-1-1 call made by the victim,
25 correct?

1 A Yes.

2 Q Okay. And you're aware of that?

3 A Yes.

4 Q Were you also aware that a crime scene analyst responded to the
5 scene?

6 A Yes.

7 Q Okay. The crime scene analyst's name is Noreen Charlton. Did you
8 know that?

9 A No.

10 Q Okay. At some point did you know or were you notified that latent prints
11 had been lifted and subsequently recovered from a jewelry or sewing box located on
12 the top of a washer in the laundry room area of apartment 101?

13 A Yes.

14 Q Okay. And, did you become aware that that particular, the print lifted off
15 of this jewelry box had returned to an individual by the name of Tommy Stewart?

16 A Yes.

17 Q I'm gonna show you what's already been admitted as State's Exhibit
18 number 56. Oops, Kenny, just turn on the TV. Thank you.

19 So, Detective, I'm showing you State's Exhibit number 56. Do you
20 recognize what's depicted here?

21 A Yes.

22 Q And what is it, sir?

23 A It's a small what they called a jewelry box in the laundry room area.

24 Q Okay. And this jewelry box that ultimately had a finger print belonging
25 to -- oh, first of all, do you see Tommy Stewart here in court?

1 A Yes.

2 Q Can you point to him and describe something he's wearing?

3 A He's sitting right here at the table with the gray shirt on.

4 MS. LEXIS: Okay. Your Honor, let the record reflect identification of the
5 Defendant.

6 THE COURT: It will.

7 MS. LEXIS: Okay.

8 BY MS. LEXIS:

9 Q So, based on your understanding, you're the case detective in this
10 case, correct?

11 A Correct.

12 Q Okay. So, is it your understanding that a print was lifted from this
13 particular jewelry box on January 20th, 2015?

14 A Correct.

15 Q Okay. And at some point did you receive a report from a fingerprint
16 analysis, Heather Gouldthorpe, on January 28th, 2015?

17 A Yes.

18 Q And, on January 28, 2015 that report, it noted that the Defendant's
19 fingerprint was found on this box shown in State's Exhibit number 56, is that right?

20 A Yes.

21 Q Okay. So is that how you identified Tommy Stewart as a suspect in this
22 robbery, kidnapping with a deadly weapon case?

23 A Yes, I did.

24 Q Once you identify a potential suspect did you -- what did you do?

25 A I constructed a photo lineup with his picture in the photo lineup and

1 showed it to the victim.

2 Q Okay. When you -- do you recall when you constructed that photo
3 lineup? Does February 4th, 2015 sound about right?

4 A Yeah, it was a couple days before I showed it to her, so that sounds
5 about right, yeah.

6 Q Okay. And, by the time that you constructed the photo lineup,
7 Detective, did you only know the identify of -- I mean, first of all, where you aware
8 that there were two individuals who robbed and kidnapped this woman at gunpoint?

9 A Yes.

10 Q Okay. But as of the time that you conduct or you put together the photo
11 lineup you were only aware one suspect, is that right?

12 A The identity of one, correct.

13 Q The identity of one, okay.

14 And so, let me show you what's already been admitted as State's
15 Exhibit number 87. It's a three page document. I'm gonna show you Exhibit
16 number or, excuse me, the first page first. And we kind of went over this with the
17 victim but can you tell the ladies and gentlemen of the jury what this top portion of
18 page number one is?

19 A That's just a statement we read to the victims. It's like instructions on
20 the photo lineup that they're about to see so that they understand what their role is
21 and not to assume that we've actually identified anybody but just to free innocent
22 persons from suspicion or identify those who are guilty.

23 Q Okay. So is this, typically this portion, these instructions, typically read
24 or given to the individual you're showing the lineup to?

25 A Yes.

1 Q Okay. And in this particular case, or in all cases, once this, the
2 instructions are read does the individual that you read them to sign the bottom and
3 then put the date and time?

4 A Yes.

5 Q Okay. So, I'm gonna call your attention to the date of this photo lineup.
6 Fair to say the top right-hand corner indicates a date of 2/6/2015?

7 A Correct.

8 Q At approximately 5:07 p.m.?

9 A Yes.

10 Q And the location being 748 Pilot Road?

11 A Yes.

12 Q Okay. Where did you -- did you meet the victim at a location when you
13 showed her this lineup?

14 A At her place of employment.

15 Q Okay. Do you recall where she worked at the time?

16 A It was a promotion, a boxing promotion company.

17 Q Okay. And you put the event number at the top linking all of the
18 documents in this case, is that right?

19 A Correct.

20 Q Okay. And, so, can you explain to the ladies and gentlemen of the jury,
21 my understanding is, first you read them the instructions?

22 A Yes.

23 Q Okay. Once they sign and acknowledge having been told or read the
24 instructions, what do you do next?

25 A I just give them the photographs of the six individuals on a sheet and

1 ask them if they recognize anybody --

2 Q Okay.

3 A -- as a possible suspect.

4 Q I'm gonna publish page two of State's Exhibit number 87. Do you recall
5 showing page two to Natasha Lumba on February 6th, 2015?

6 A Yes.

7 Q Okay. And when she's looking at these photographs what are you
8 doing, Detective?

9 A I just sit there and watch her, watch her reaction.

10 Q Okay. And in this particular case -- or, excuse me. If the person that
11 you're showing the lineup to actually identifies someone or recognizes someone
12 what do you tell them to do?

13 A Either tell them to circle it or sign their name below their picture and tell
14 me why they identified that person.

15 Q Okay. And in this particular case did Natasha Lumba actually sign
16 under two different pictures?

17 A Yes.

18 Q And which position are the pictures that she signed under?

19 A Position two and position three.

20 Q Okay. So, this is the only page that you show -- this is the only page
21 with pictures that you show the victims or the person you're asking to identify?

22 A Yes.

23 Q Okay. After she writes down or identifies someone, what do you do?

24 A I ask her why she picked those people out and then write a statement of
25 why she did that.

1 Q Okay. So I'm gonna direct your attention to back to the first page of
2 State's Exhibit number 87 and do you recall watching her write out this particular
3 statement?

4 A Yes.

5 Q Okay. Could you please read the statement to the jury?

6 A After viewing the photos to me by Detective Abell the people in position
7 two and three have similar features to the people who robbed me. Number two has
8 a similar nose, face shape to the shorter assailant but different eyes and mouth.
9 Number three has a similar face shape, eyes, nose, complexion and face shape as
10 the taller assailant. However, both of the assailants are thinner than number two or
11 three. Number three looks a lot like the taller robber than I remember.

12 Q Okay. And so, in reading the statement that she wrote out is it fair to
13 say that she is describing two different individuals?

14 A Yes.

15 Q And that she identified two individuals on the second page of this
16 Exhibit, correct?

17 A Yes.

18 Q And, my understanding, and, correct me if I'm wrong, is that the person
19 in number two she indicated in her statement, written statement, reminded her had
20 similar features to the shorter assailant.

21 A Yes.

22 Q Okay. And that the person in position number three had very similar
23 features to the assailant she indicated was the taller one?

24 A Yes.

25 Q Okay. Did that cause you concern that she picked out two different

1 individuals or assumed that there were pictures of either both assailants would be
2 present in this photo lineup?

3 A I think she got confused that she was looking for both --

4 MR. MARCHESE: Objection, speculation.

5 THE COURT: Yeah, that's sustained. You can rephrase.

6 MS. LEXIS: Okay.

7 BY MS. LEXIS:

8 Q When you read the photo lineup instructions to her does it indicate
9 whether or not there's one assailant or two assailants noted in the photo lineup?

10 A No.

11 Q Okay. And, in this particular case she picked out two different
12 individuals, correct?

13 A Correct.

14 Q And noted that they looked similar to two different assailants, correct?

15 A Correct.

16 Q Okay. And so, to answer my question, did it concern you that she
17 picked out two different individuals but linking them to separate assailants who were
18 in her home January 20th, 2015?

19 A Not at that time 'cause that's why I had her sign both of them.

20 Q Okay. Okay. And, you had her write out a description.

21 A Correct.

22 Q Detailed description on page one, is that right?

23 A Yes.

24 Q Okay. Now, there are three pages to State's Exhibit number 87. I'm
25 gonna show you the third page. Does the third page have the names of the

1 individuals you put in the photo lineup?

2 A Yes.

3 Q Okay. And, is this third page ever shown to the person you're showing
4 the lineup to?

5 A No.

6 Q Okay. So, only you know the identity of the individuals or the names of
7 the people in the lineup, is that fair to say?

8 A Correct.

9 Q Okay. And, Tommy Stewart, who you identified in court today, was he
10 in this photo lineup?

11 A Yes.

12 Q Okay. What position was he in?

13 A Number three.

14 Q Okay. Right here?

15 A Correct.

16 Q Okay. And this is the person that Natasha indicated had similar
17 features to the taller assailant, is that correct?

18 A Yes.

19 Q Did you at some point meet with her -- when you met with her at her
20 place of employment on February 6th, 2015 did you have an occasion to talk to her
21 about what happened on January 20th, 2015?

22 A Yes.

23 Q As the case agent, was it important for you to confirm certain pieces of
24 information so you knew how to further the investigation?

25 A Yes.

1 Q Okay. At some point did you have an occasion to speak with Natasha
2 about the box that's shown in State's Exhibit number 56?

3 A Yes, I did.

4 Q And, what, if anything, did she tell you about this particular box?

5 A She told me that --

6 MR. MARCHESE: I'm gonna object as to hearsay.

7 MS. LEXIS: It's a --

8 THE COURT: It's overruled.

9 MS. LEXIS: Thank you.

10 THE WITNESS: She said that was a box she kept her knickknacks in and
11 sewing equipment and that it was on the shelf above the washer and dryer prior to
12 the incident.

13 BY MS. LEXIS:

14 Q Okay. And did she tell you specifically where it was on the shelf?

15 A Yes.

16 Q Can you draw on that screen? It'll show up for the ladies and
17 gentlemen of the jury. Do you recall, Detective?

18 A It was like over in this area, over on the top on one of the shelf right
19 here.

20 Q Okay. Kind of where that void is?

21 A Yes.

22 Q Okay. And, you indicated that she told you what she kept in there, is
23 that right?

24 A Yes.

25 Q And, you indicated knickknacks and sewing supplies?

1 A Yes.

2 Q Okay. Did she give you a description of the two assailants who
3 attacked her and held her at gunpoint?

4 A Yes.

5 Q And, what descriptions did she give them -- did she give you?

6 A She gave -- she said they were wearing all dark clothing, two black
7 males and they were under age of 26, medium build, wearing dark hoodies,
8 approximately one was 5, 8 to 5, 9, she told me, and the other one was 5, 10 to 5,
9 11, is what she thought.

10 Q Okay. And, did she tell you, since there were two assailants, did she
11 tell you whether she had equal contact with the both of them or whether, I mean,
12 what kind of contact she had with them?

13 A She said they switched off watching her as they went through the
14 house.

15 Q Okay. And, did she tell you where they kept her?

16 A In the bedroom.

17 Q Okay. And, do you recall her telling you that her camera was stolen?

18 A Yes.

19 MR. MARCHESE: Objection, leading and hearsay.

20 MS. LEXIS: I'll rephrase.

21 THE COURT: You are leading.

22 MS. LEXIS: Thank you.

23 BY MS. LEXIS:

24 Q Detective, did she tell you what was stolen from her residence?

25 A Yes.

1 Q What did she tell you?

2 MR. MARCHESE: Objection, hearsay.

3 THE COURT: May I see counsel up here?

4 [Bench conference not recorded]

5 THE COURT: Sustained.

6 MS. LEXIS: Thank you.

7 BY MS. LEXIS:

8 Q Detective, did Natsha tell you whether or not the assailants, what types
9 of weapons, if any, the assailants had?

10 A Yes.

11 Q And, what did she tell you?

12 A She described it as a dark colored semiautomatic handgun.

13 Q Is it dark colored or did she tell you a specific color?

14 A I don't think she -- maybe black, dark and black.

15 Q Okay. Court's brief indulgence.

16 Detective, because this is important, would looking at page two out of
17 your three page arrest report refresh your memory?

18 A Yes.

19 Q Okay. Concerning the color of the gun

20 MS. LEXIS: May I approach, Your Honor?

21 THE COURT: Sure.

22 MS. LEXIS: Thank you.

23 BY MS. LEXIS:

24 Q I'm gonna direct you to the second full paragraph, Detective.

25 A This one?

1 Q Mm-hmm.

2 A Yes.

3 Q Okay. Did that refresh your memory?

4 A Yes.

5 Q Thank you. What color did Natasha tell you the gun was?

6 A It was a black --

7 MR. MARCHESE: Objection, double hearsay.

8 THE COURT: The purpose?

9 MS. LEXIS: Your Honor, this item is it's a prior consistent statement and --

10 THE COURT: Oh, well, no, that's, it's, I would rule it's sustained as to that
11 reason.

12 MS. LEXIS: Okay. May we approach?

13 THE COURT: Sure.

14 [Bench conference not recorded]

15 BY MS. LEXIS:

16 Q Detective, a weapon was used or a gun was used to rob and kidnap
17 Natasha, correct?

18 A Correct.

19 Q Okay. During the course of your investigation was a gun ultimately
20 recovered matching the description of the gun described to you by Natasha?

21 A Yes.

22 Q Okay. And we're gonna talk about that in just a minute.

23 Once you identified the Defendant, Tommy Stewart, as a suspect in this
24 particular case did you ask others in your division or the problem solving unit to
25 locate Tommy Stewart?

1 A Yeah, I got a hold of Officer Jackson, who's in the problem solving unit,
2 to help me locate Tommy Stewart.

3 Q Okay. And, at some point did you become aware of the fact that they
4 had apprehended Tommy Stewart?

5 A Yes.

6 Q And do you recall that occurring on February 14th, 2016?

7 A Yes.

8 Q Do you recall where that happened, Detective?

9 A I believe it was the Bells Market at H and Owens.

10 Q Okay. And did you actually respond to that scene?

11 A Yes, I did.

12 Q Court's brief indulgence.

13 I'm gonna show you State's Exhibit number 27. Are you familiar with
14 what's depicted in this photograph?

15 A That was the gun recovered from a vehicle at the scene.

16 Q Okay, where Tommy Stewart was taken into custody?

17 A Yes.

18 Q On February 14th, 2015?

19 A Yes.

20 Q Okay. I'm gonna show you State's Exhibit number 24. Are you familiar
21 with what's depicted here?

22 A That's the second gun that was recovered from the vehicle at the
23 scene.

24 Q Okay, at the Bells Gas Station?

25 A Yes.

1 Q On February 14th, 2016 -- or 15?

2 A Yes.

3 Q Thank you. After the Defendant was detained at the Bells Gas Station

4 did you have an opportunity to conduct an interview with the Defendant?

5 A Yes, I did.

6 Q And, at some point where did this interview occur?

7 A At the headquarters building on Martin Luther King.

8 Q Okay, near downtown?

9 A Yes.

10 Q Okay. And, where did you interview him?

11 A Where?

12 Q Uh-huh.

13 A In an interview room, in the bottom floor.

14 Q Okay. Was this video or audio recorded?

15 A Both.

16 Q Okay. Prior to taking the Defendant's statement did you read him his

17 Miranda rights?

18 A Yes.

19 Q And, did you read that from memory or read it from a card?

20 A I read it from a LVMPD 148 card.

21 Q Okay. And, do you recall the exact admonition you gave him?

22 A Verbatim?

23 Q Yes.

24 A Not without reading from the card, I mean I could probably do it.

25 Q Okay. Would looking at the statement transcript, are you aware of

1 transcripts being done of this taped interview with Mr. Stewart?

2 A Yes.

3 Q Okay. Would looking at page 10 of your, of the transcript of the
4 statement help refresh your memory?

5 A Yes.

6 MS. LEXIS: May I approach, Your Honor?

7 THE COURT: You may.

8 MS. LEXIS: Thank you.

9 MS. LEXIS: And, if there's no objection, I'd like to just have him read it so that
10 it is verbatim, the admonition.

11 THE COURT: Okay.

12 BY MS. LEXIS:

13 Q Thank you, Detective, go ahead.

14 A The highlighted areas?

15 Q Yes.

16 A Okay. So, well, so let's talk about the situation tonight. And before I
17 talk to you I want to read you your right since you're in custody. All right? And he
18 responds, okay.

19 You have the right to remain silent. Anything you say can be used
20 against you in a court of law. You have the right to have the presence of an attorney
21 during questioning. If you cannot afford an attorney one will be appointed before
22 questioning. Do you understand these rights?

23 Q Okay. And so are these the rights that you read to him prior to the
24 interview?

25 A Yes.

1 Q And, it doesn't show on page 10 but did he indicate to you that he
2 understood his rights?

3 A Yes.

4 Q And did he agree to speak with you?

5 A Yes.

6 Q Okay. How did the interview start? What did you talk about first?

7 A We just talked about normal things, you know, his girlfriend, his life,
8 stuff like that.

9 Q Okay. When you first started bringing up what happened to Natasha
10 over on Rock Springs, Apartment 101, tell us the context of that, of your
11 conversation with the Defendant then.

12 A I asked him about the 805 Rock Springs apartment complex and if he
13 had ever been over there or if he knows anybody that lives there and he said no.

14 Q Okay. And, at some point with his denial did you confront him with
15 some evidence?

16 A Yes.

17 Q And, what did you tell him?

18 A I confront him with his fingerprint coming back to inside an apartment at
19 that location.

20 Q And right when you first confronted him with the fingerprint evidence
21 what was his response?

22 A He said that's impossible.

23 Q Okay. Did he continue to maintain that position during your interview?

24 A For a while, yes.

25 Q Okay. At some point did he change his story?

1 A Yes.

2 Q And, what did he tell you when he changed his story?

3 A He said him and a friend of his, he called Raymond, met up with a girl
4 at overpass bridge near the MGM and they followed her back to her residence.

5 Q Okay. So they met her at the MGM, which is a casino on the strip?

6 A Yes.

7 Q Okay. And, did you say pedestrian bridge?

8 A Yeah, one of the bridges that go over the highway or the boulevard.

9 Q Okay. Did he indicate to you approximately what time that was?

10 A He said he got up that night around 9 p.m. and he went down to the
11 strip, so some time after 9 at night.

12 Q Okay. And, did he give a description of this girl that he and Raymond
13 met on the strip?

14 A Yes.

15 Q And, what was the description?

16 A Petite, white girl, wearing high heels, probably in her 30s.

17 Q Did he indicate whether he thought she was good looking?

18 A Yes, he indicated that he thought she was nice looking.

19 Q Okay. Did he tell you his initial impression of this girl and what she did
20 for a living when he first laid eyes on her?

21 A He told me he though she was a prostitute.

22 Q And you just told the ladies and gentlemen of the jury that he and
23 Raymond then followed her to her apartment?

24 A Correct.

25 Q Okay. Did he tell you around what time that was?

1 A Mmm, I think he said between 11, 12, 1:00 in the morning, somewhere
2 in that timeframe.

3 Q Okay. And, did he tell you what it is that happened when the three of
4 them arrive at her apartment?

5 A He said that Raymond and her went back in the bedroom to have sex
6 and he looked for items to steal.

7 Q Okay. And did he indicate where he was in the apartment while this
8 individual, Raymond, and the girl that they met on the strip were having sex?

9 A He said he was mostly in the living room area.

10 Q Did he indicate to you whether he, did he admit to stealing anything
11 from this apartment?

12 A Yes.

13 Q What did he tell you he stole?

14 A A watch, ring and some coins.

15 Q Okay. At some point, you had already confronted him with the
16 fingerprint evidence at this point, correct?

17 A Correct.

18 Q Okay. And, did you show him a photograph, after he admitted to taking
19 the watch and the ring, did you then show him a photograph of this jewelry box
20 where his fingerprint was recovered from Apartment 101?

21 A Yes.

22 Q Okay. I'm gonna show you State's Exhibit number 55. Is this the
23 photograph that you showed him?

24 A Yes, it is.

25 Q And, why is it in this particular photograph, it's not very blown up and

1 it's kind of towards the, you know, the middle left-hand side, can't really tell what's
2 inside, why did you choose to show him this particular photo?

3 A I wanted to see if would describe it or describe what was inside of it,
4 what he was looking for.

5 Q Okay. And why was that important?

6 A That would place him inside the house and have knowledge that only
7 the perpetrator would know.

8 Q Okay. When you asked him about the box, shown in State's Exhibit
9 number 55, did he indicate to you whether he found money in that box?

10 A He said there were some coins in it like buffalo head nickels.

11 Q Okay.

12 A Like that.

13 Q But no actual money?

14 A No.

15 Q Okay. And, did he indicate to you what it is he saw when he opened
16 this particular jewelry box?

17 A He told me he saw sewing supplies.

18 Q Okay. Do you recall specifically what kind of supplies he indicated?

19 A Just sewing, as far as I can remember.

20 Q Would looking at page three of your arrest report refresh your memory?

21 A Yes.

22 Q Court's brief indulgence. Actually I'm gonna show you a transcript,
23 Detective. Page 87.

24 MS. LEXIS: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MS. LEXIS:

2 Q Detective, I'm gonna call your attention to the last, like, three lines on
3 this page.

4 Sir, did that refresh your memory?

5 A Yes.

6 Q Did he note specifically what kind of sew -- or what kind of sewing
7 supplies were inside the box shown in State's Exhibit number 55?

8 A Just like needle and threads and sewing things.

9 Q I'm gonna show you what's already been admitted as State's Exhibit
10 number 84. Okay. Do you see the needle and thread in this photograph?

11 A I can see the thread, I don't know if I can see the needles.

12 Q Okay. State's Exhibit number 85. It's just a bigger photo, you can see
13 the thread there again, is that right?

14 A Yes.

15 Q Did you ever ask the Defendant about taking electronics from the
16 home?

17 A Yes.

18 Q And what, if anything, did he say about that?

19 A He denied taking any electronics.

20 Q Did you, at any point, ever ask the Defendant or did he ever tell you
21 whether he had been in Natasha's bedroom?

22 A He said he did not go in the bedroom.

23 Q And, during the course of your interview did he indicate to you what it
24 was that he was truly looking for in the apartment?

25 A For money.

1 Q Okay. And, did he tell you whether he thought she had money in this
2 apartment?

3 A He said he thought she would have money 'cause he thought she was
4 a prostitute.

5 Q Okay. And, did he tell whether he did in fact find money after he looked
6 through this apartment?

7 A He didn't find no money.

8 Q Okay. Did he indicate to you, do you recall him saying she hoin', she
9 gonna have some money somewhere?

10 A Yes.

11 Q And that's why I was searching that much?

12 A Yes.

13 Q Okay. So that's what he said as his explanation for one, believing that
14 there was money in the apartment and why he searched so hard in the apartment
15 for that money.

16 A Yes.

17 Q Detective, during the course of your investigation were you ever able to
18 identify the second assailant?

19 A Not at this point, no.

20 Q After your taped interview with the Defendant was he taken into custody
21 and booked into the Clark County Detention Center?

22 A Yes.

23 Q As a robbery detective at the time, do you have access to the jail call
24 systems in the Clark County Detention Center?

25 A Yes, I do.

1 Q Okay. Once a person is booked into the Clark County Detention Center
2 are they able to make calls?

3 A Yes.

4 Q Okay. And are those calls recorded?

5 A Yes.

6 Q And as a robbery detective around February 14th, 2015 did you have
7 access to that?

8 A Yes, I do.

9 Q Are you able to pull actual calls made by a particular person?

10 A Yes.

11 Q And are you able to listen to the calls while you're in your office?

12 A Yes.

13 Q And then are you able to subsequently burn those calls into a CD or
14 some other type of recording device and make it available to the District Attorney's
15 Office?

16 A Yes.

17 Q And did you do that in this particular case?

18 A Yes, I did.

19 Q Detective, prior to testifying in court today, were you in my office and
20 did we listen to two calls made by the Defendant?

21 A Yes, we did.

22 Q Okay. One of the calls do you recall being made on February 15th,
23 2015 at approximately 12:12 a.m.?

24 A Yes.

25 Q And , do you remember another call we listened to being made on

1 February 16th, 2015 at approximately 1:53 p.m.?

2 A Yes.

3 Q Okay. So, these were made what a day or two after he was taken into
4 custody?

5 A That's correct.

6 Q And, I'm gonna show you what's been previously marked as State's
7 Exhibit number 90. Did you watch me burn this particular CD in my office in the
8 lunch break?

9 A Yes, you did.

10 Q Okay. If we're to play this would it show the two jail calls that we just
11 discussed?

12 A Yes.

13 Q Thank you.

14 MS. LEXIS: Your Honor, I move to admit State's Exhibit 90 into evidence.

15 MR. MARCHESE: No objections.

16 THE COURT: All right, that'll be admitted.

17 [Exhibit 90, admitted]

18 BY MS. LEXIS:

19 Q So while we, while we're booting this up, Detective, can you just briefly
20 tell the ladies and gentlemen of the jury how it is, well, first of all, you interviewed the
21 Defendant, correct?

22 A Correct.

23 Q So you're familiar with his voice?

24 A Correct.

25 Q Okay. So when you pulled up the jail calls did the voices match?

1 A Yes.

2 Q Okay. How else are you able to pull up calls with the jail call system?

3 A By the Defendant's ID number.

4 Q Okay. So, they're assigned an ID?

5 A Yes.

6 Q Okay. And once you pull the call -- so you pulled, let's play the one
7 from February 15th, 2015 at approximately -- court's brief indulgence.

8 MS. LEXIS: By stipulation, Your Honor, we're not gonna play the entire thing
9 for completeness we're just gonna play the relevant parts.

10 THE COURT: Okay.

11 MS. LEXIS: And so, on this particular call, number 40958989 we're gonna go
12 to --

13 [The recording was played for the jury]

14 MS. LEXIS: Your Honor, we just received indication that the jurors couldn't
15 necessarily hear so we're gonna start it back up at 1:55 this time with the
16 microphone on.

17 THE COURT: All right. And, ladies and gentlemen, you'll have copies, you'll
18 have this Exhibit as well as all the other Exhibits that were admitted into evidence
19 back into the jury deliberation room with you so you can play it again if you choose
20 to.

21 [The recording was played for the jury]

22 MS. LEXIS: We're gonna stop it 2:47.

23 BY MS. LEXIS:

24 Q Detective, do you remember or did you hear just now the Defendant
25 telling whoever it was he was talking to tell baby to call Hannah?

1 A Yes.

2 Q And, shit happened in his area, his apartments.

3 A Yes.

4 Q Is that right? Okay. Did you flag this particular call for Ms. Jones and
5 myself?

6 A Yes.

7 Q And what was the purpose, what was the relevance of that call?

8 A He was trying to get word to the other co-conspirator that stuff
9 happened in his area and to let him know what his charges were.

10 Q Okay. And again, a second suspect has not been identified.

11 A Correct.

12 MS. LEXIS: If we could please play the one from February 16th at 13:20?

13 [The recording was played for the jury]

14 MS. LEXIS: Court's brief indulgence.

15 Your Honor, may we approach, briefly?

16 THE COURT: Sure.

17 [Bench conference not recorded]

18 THE COURT: All right, ladies and gentlemen, we're gonna take a quick, just
19 about a 10 minute break, that'll put us at 2:55.

20 [Court's admonishment not transcribed]

21 [Recess taken at 2:48 p.m.]

22 [Proceedings resumed at 3:03 p.m.]

23 THE COURT: All right, court is now back in session.

24 And Ms. Lexis, you may proceed.

25 MS. LEXIS: Thank you.

1 BY MS. LEXIS:

2 Q Detective, we left off but we weren't successful in trying to play the call
3 number 40988323 made on February 16th, 2015 at approximately 1:53 p.m. We're
4 gonna do that now at position 1430.

5 [The recording was played for the jury]

6 BY MS. LEXIS: And we stopped it at 16:10 for the record.

7 BY MS. LEXIS:

8 Q So, Detective you heard what the Defendant said during this particular
9 call, just now?

10 A Yes.

11 Q Okay. He indicated, do you recall him indicating that you didn't have
12 fingerprints on him?

13 A Correct.

14 Q Okay. In fact, State's Exhibit number 55 you did have his fingerprint on
15 the box found in the victim's home, is that right?

16 A That's correct.

17 Q When you asked the Defendant or when you showed him this picture,
18 State's Exhibit number 55, did he tell you about the placement of this particular box?

19 A Yes, he was confused it was there 'cause he thought he'd thrown it
20 behind the washer and dryer.

21 Q Okay. So he admitted at least having touched and accessed this
22 particular box?

23 A Yes.

24 Q Okay. And, did you hear him mention during this particular call talking
25 about how, you know, we don't have that lady come and identify him. That call was

1 made February 16th, 2015, is that right?

2 A Yes.

3 MR. MARCHESE: Objection, leading.

4 MS. LEXIS: Just trying to --

5 THE COURT: It's a little--

6 MS. LEXIS: -- refer to --

7 THE COURT: It's kind of leading. I know it's been an issue.

8 MS. LEXIS: Okay.

9 BY MS. LEXIS:

10 Q When was that call made?

11 A February 16th --

12 Q Okay.

13 A -- 2015.

14 Q Okay. And, by that point had you already shown Natasha Lumba the
15 photo lineup?

16 A Yes.

17 Q Okay. And by that point she had already identified -- had she already
18 identified the Defendant as potentially one of her assailants?

19 A Yes.

20 Q And, by that particular call, 2/16/15, had the Defendant already given a
21 taped statement with you?

22 A Yes.

23 Q Thank you.

24 MS. LEXIS: Court's brief indulgence.

25 I have no further questions for this witness. Thank you.

1 THE COURT: All right. Mr. Marchese, cross?

2 MR. MARCHESE: Briefly, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. MARCHESE:

5 Q You indicated on direct examination that you read my client his Miranda
6 warnings, correct?

7 A Yes.

8 Q And you read that directly off of your department issued card that you
9 get as an officer? Correct?

10 A Yes.

11 Q And now you're a detective but you still use the same card, correct?

12 A Correct.

13 Q Now, in this particular instance you also did a photo lineup with Ms.
14 Lumba, correct?

15 A Correct.

16 Q And when you did that lineup you gave her the typical instructions that
17 are on the front, you didn't give her any additional instructions, correct?

18 A Correct.

19 Q And, in this particular lineup she picked out two individuals, correct?

20 A Yes.

21 Q Who she believed had similar features to her assailants from the night
22 in question, right?

23 A Correct.

24 Q And Mr. Stewart was in fact one of the individuals in number three on
25 the lineup, correct?

1 A Yes.

2 Q And that was the individual that she had indicated was the taller of the
3 two individuals, correct?

4 A Correct.

5 Q And by taller, give or take would be approximately 5, 11; is that right?

6 A The taller one she described as being 5, 10, 5, 11, yeah.

7 Q And you were the officer that booked Mr. Stewart into custody?

8 A Yes.

9 Q And isn't it true that on the booking sheet you listed him as 5 foot 5?

10 A Correct.

11 Q Now, you also had interviewed my client in reference to the evening in
12 question, correct?

13 A Correct.

14 Q And, at first he denied having anything to do with it, correct?

15 A Correct.

16 Q And then he did admit to at some point in time possibly being over at, I
17 think it was the white bitch's, for lack of a better terms, apartment; correct?

18 A Yes.

19 Q But never in any point in time did he admit to being any part of any
20 robbery, is that correct?

21 A Correct.

22 MR. MARCHESE: Court's indulgence.

23 THE COURT: All right.

24 MR. MARCHESE: Nothing else, Your Honor.

25 THE COURT: All right. Redirect?

1 MS. LEXIS: We have no direct.

2 THE COURT: All right. Do we have any juror questions? All right. Can I see
3 counsel at the bench, please?

4 [Bench conference not recorded]

5 THE COURT: We have a couple of questions up here.

6 A juror asks, were the guns taken at the convenience store
7 fingerprinted?

8 THE WITNESS: The CSI impounded them so that they could be processed
9 later if we needed them. But as far as I know they weren't at this time.

10 THE COURT: All right. So nobody directed the CSI then to examine them to
11 see if there --

12 THE WITNESS: No.

13 THE COURT: -- were any recoverable prints?

14 THE WITNESS: They're still in evidence right now.

15 THE COURT: All right. And then the next question is, is there any video or
16 audio or both recording the interrogation of Tommy Stewart?

17 THE WITNESS: Yes, both, video and audio.

18 THE COURT: All right. State, any follow-up?

19 MS. LEXIS: Court's brief indulgence. We have no more questions, we have
20 no follow-up questions but perhaps an issue to address with the Court at a later
21 time.

22 THE COURT: Okay.

23 MR. MARCHESE: Nothing based on those questions, Your Honor.

24 THE COURT: All right, no additional questions for the detective. Any other
25 questions? All right, I'm gonna go ahead and excuse the detective.

1 Detective, thank you for your testimony, you are excused at this time.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: State.

4 MS. JONES: And, Your Honor, subject to all of the Exhibits being admitted
5 and the stipulation to Exhibit number 29, the State would rest.

6 [Proceedings continued -- not transcribed]

7 * * * * *

8 ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I
9 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

10 *Dalyné Easley*
11 DALYNÉ EASLEY
12 Court Transcriber

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