

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

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DEVOHN MARKS,

Appellant,

*vs.*

THE STATE OF NEVADA,

Respondent.

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Docket No. 80469

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Appeal from a Judgment of Conviction  
Following a Jury Trial and Verdict  
Eighth Judicial District Court, Clark County  
The Honorable Carolyn Ellsworth, District Judge  
Case No. C-18-337017-2

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**APPELLANT'S APPENDIX  
VOL. 8 OF 9**

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Electronically Filed  
Nov 06 2020 05:14 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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### **CERTIFICATE OF SERVICE**

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### **AFFIRMATION**


Pursuant to NRS 239B.030, this document contains no social security numbers.

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11-6-20

Date



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DEVOHN MARKS, )  
 )  
Defendant. )

CASE NO. C-18-337017-2  
DEPT NO. V

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

THURSDAY, JULY 25, 2019

**JURY TRIAL - DAY 7**

APPEARANCES:

FOR THE STATE:

NICOLE J. CANNIZZARO, ESQ.  
Chief Deputy District Attorney  
LINDSEY MOORS, ESQ.  
Deputy District Attorney

FOR THE DEFENDANT:

JESS Y. MATSUDA, ESQ.

RECORDED BY: TRISHA GARCIA, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

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1       **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 25, 2019, 2:03 P.M.**

2                               \* \* \* \* \*

3                               (Outside the presence of the jury.)

4               THE COURT: All right. We are on the record in Case  
5       Number C337017, State of Nevada versus Devohn Marks. The  
6       record will reflect the presence of Mr. Marks with his counsel.  
7       The prosecutors are present, as are all officers of the court.

8               We are outside the presence of the jury because we  
9       need to put something outside the presence on the record.

10              MS. MOORS: Yes, Your Honor. So in preparation for  
11       today's testimony, knowing that we only had one witness left  
12       and that it was my understanding that Mr. Marks would be  
13       testifying, I went to make sure that I had certified judgments  
14       of conviction.

15              I did not realize that this individual is violent  
16       habitual eligible. This was not my case originally. It was  
17       Mr. Giordani's case. I was second chair. Then it was handed  
18       over to me and Ms. Cannizzaro. So I did not notice that until  
19       this morning. I did then file a notice of intent to seek  
20       punishment as a habitual criminal. I understand that I did not  
21       comply with 207.016 with regards to it being two days before  
22       trial, but I would point out that I am mandated by 207.012 to  
23       file this because he is violent habitual eligible, and so I did  
24       have this electronically filed today at 1:02.

25              THE COURT: Okay. And prior to the trial commencing,

                              JD Reporting, Inc.

1 had there been any offers of --

2 MS. MOORS: So there have never been offers made by  
3 Mr. Giordani or myself because at every hearing that I was  
4 present at, the defendant was maintaining his innocence, and so  
5 when we're in this territory of the penalty range that we're  
6 looking at and they're claiming, you know, factual innocence, I  
7 did not make an offer. So an offer had not been made.

8 THE COURT: Okay. All right. So that is something  
9 that I know the Supreme Court has taken in to account, where  
10 there is a filing later or after a withdrawal of plea, and  
11 et cetera, but obviously we'll cross that bridge if and when,  
12 you know, we come to it. You'll file it today. We know that  
13 you acknowledge that it doesn't comply as far as timeliness  
14 with the statute, but you're required to also file it by the  
15 statute, and if it comes to it for the Court to have to be able  
16 to consider that, then, you know, you'll have the opportunity  
17 to brief the issue.

18 MR. MATSUDA: Yes, Your Honor.

19 THE COURT: Okay.

20 MS. MOORS: That was all, Your Honor.

21 THE COURT: All right. Let's bring the jury in.

22 (Jury reconvened at 2:06 p.m.)

23 THE COURT: Thank you. Please be seated. And the  
24 record will reflect that we are now within the presence of all  
25 12 members of the jury as well as the three alternates.

1 I apologize, ladies and gentlemen, for keeping you  
2 waiting because you are a very prompt jury, and I appreciate  
3 you always being on time. We had some technical difficulties  
4 with cables and cords not quite reaching, and, however, we've  
5 come up with a workaround that should enable us to go forward  
6 without any further wait.

7 So you may call your next witness.

8 MS. CANNIZZARO: Thank you, Your Honor. And the  
9 State calls Genio Basilotta to the stand.

10 **EUGENIO BASILOTTA**

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

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

15 THE WITNESS: First name is Eugenio. It's spelled  
16 E-u-g-e-n-i-o. The last name is Basilotta, spelled  
17 B-a-s-i-l-o-t-t-a. Nickname is Genio.

18 THE COURT: All right. Thank you.

19 You may proceed.

20 MS. CANNIZZARO: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MS. CANNIZZARO:

23 Q Good afternoon, Mr. Basilotta. Where are you  
24 currently employed?

25 A I'm currently employed by the Las Vegas Metropolitan

1 Police Department.

2 Q What's your position with the police department?

3 A I am detective level police officer, and I currently  
4 work in a unit called TASS. TASS stands for the Technical And  
5 Surveillance Squad. It's part of the Southern Nevada  
6 counterterrorism section under Homeland Security.

7 Q And what is your position within that? Do you have a  
8 particular position within that particular division?

9 A TASS does a myriad of things. Mostly what I tell  
10 people is that we're the geek squad of the department. We do  
11 all things electronic surveillance.

12 Q And how long have you had that position?

13 A I've been there nine years in August.

14 Q As part of your assignment to the TASS unit, what are  
15 your typical job duties?

16 A So we do a variety of things. We provision something  
17 called pen registers, wiretaps. We've got some other covert  
18 operations that we do that we don't disclose. Over cameras,  
19 most of The Strip cameras that you've seen on the Las Vegas  
20 Strip, be it on the news, we've got about 450 cameras that we  
21 maintain with our unit, and we do a few other things, but it's  
22 mostly all electronic surveillance.

23 Q And do you have any training or experience that has  
24 prepared you for that particular position?

25 A Well, I've been in the computer business in terms of

1 experience, I've been in computers since 1983, and then when I  
2 got on with the department, after being in the private sector  
3 for 20 years holding different positions in the technology  
4 arena, after I did my time in patrol, I tested for this unit,  
5 and in 2010, when I transferred, I've had various training  
6 courses throughout the last nine years that apply to pen  
7 registers and wiretaps and the like.

8 Q And what about ongoing training? Do you still  
9 participate in ongoing training as a result of your position?

10 A I do. One of the things I do is I interact with the  
11 National Domestic Technical Assistance Center. It's a division  
12 of the FBI, and I go to that twice a year. That is a  
13 conference that's held -- chaired by the FBI. And the goal of  
14 the conference is to keep detectives in the electronic  
15 surveillance arena up-to-date on all electronic surveillance  
16 technologies.

17 Q Have you ever testified in court before in your  
18 capacity?

19 A I have.

20 Q And is that state and federal court, or just state  
21 court?

22 A It's mostly been state court. I haven't had any  
23 federal cases.

24 Q And in the course of your assignment with the TASS  
25 unit, do you often review phone records?

1           A     A lot.

2           Q     Okay. And approximately could you even estimate for  
3 us how many phone records you've had the opportunity to review?

4           A     It's a lot. I mean, I'm sure it's in the hundreds of  
5 thousands in terms of the number of records. We provision  
6 approximately give or take about 400 pen registers and wiretaps  
7 a year. That's altogether. There's always records usually  
8 that come with those pen registers, historical records, and we  
9 don't analyze every single one of them, but we're called upon a  
10 lot to look at those historical records and do workups on them  
11 for detectives within Metro.

12          Q     As part of your job duties, you've mentioned that you  
13 participate in pen registers as well. What's a pen register?

14          A     So the basic idea behind a pen register is it's a  
15 Court ordered intercept on a phone number with proper process.  
16 The detective doing the investigation can file a court order  
17 for a pen register or what they call a search warrant for a pen  
18 register with precision location. And our job, once we have  
19 the detective give us that order or search warrant in hand is  
20 to send it to the phone company.

21               And then one of the things TASS has, and we're the  
22 only entity as far as Police Departments Las Vegas wide, we  
23 have the ability to actually take the data from the phone  
24 company and adjust that data. So what it basically does is  
25 once the pen register is installed, our system captures call

1 detail, live call detail from the phone.

2           So as the phone is being used, the numbers that are  
3 dialed from the phone or numbers that are coming in to the  
4 phone via phone call or a text message get recorded -- and  
5 again this is under a court order or a search warrant -- we  
6 record that information, store it and make it available to the  
7 detective once the pen register is done.

8           They can end the pen registers early if they like,  
9 but pen registers have a 60 day court ordered time frame. So  
10 they can go up on a pen on a target number for up to 60 days,  
11 and they can even extend that.

12         Q     You've talked a little bit about the pen registers  
13 and some data, and I want to break that down a little bit. You  
14 mentioned precision location data and then that you would be  
15 able to see where those live calls are coming from. Is that  
16 different from historical cell data that you might get from the  
17 company?

18         A     So it is. I'll answer it a couple different ways.  
19 When the call comes in via the pen getting delivered from the  
20 phone company into our system, it records the date -- some of  
21 the things it records I should say are the date, the time, the  
22 number that it dialed, the device dialed or the number that  
23 dialed the device. So it's an incoming or outgoing call or  
24 text message. It will record the cell tower that that device  
25 received or made the call from or the text message and a bunch

1 of other system-type information.

2 If they go up on a pen register with precision  
3 location, one of the added features of that under the search  
4 warrant arena is every 15 minutes the phone company sends a  
5 location of where the phone may be. That's different than a  
6 cell tower. The cell tower will tell you which cell tower the  
7 phone connected off of and what side of the cell tower it  
8 connected off of, and I can expand on that in a second if you  
9 like.

10 The precision location that comes in every 15 minutes  
11 gives our systems the latitude and longitude, which is a  
12 position on the earth of where the center point of where that  
13 phone may be, and then it sends an extra piece of information  
14 which we call uncertainty, and that's a meter hit. So it may  
15 come in and say latitude longitude, and let's say it says  
16 3-meter uncertainty. So that means that that phone is within a  
17 3-meter radius of where that latitude and longitude will be  
18 plotted on the earth.

19 Q And that's whenever a pen register is currently  
20 placed on a phone, and you also have the precision location --

21 A Correct.

22 Q -- permitted within that register?

23 A Correct.

24 Q For something that -- well, let me ask a question  
25 first. For cell phones that have been disconnected, would you



1 be able to get that information from those cell phones?

2 A If we send a pen register to a phone company that has  
3 been canceled by the subscriber, or it's been disconnected, the  
4 phone company advises us immediately that the phone number has  
5 been canceled. We actually have an option to go ahead and put  
6 the pen register up, but in most cases, when it's canceled, we  
7 don't put it up. If it's canceled during the life of the pen  
8 register, we see data differences coming in on the pen data.  
9 Sometimes the phone companies contact us and say, hey, the  
10 subscriber canceled their service. Sometimes not. It depends  
11 on the length of the time it's been canceled, but there's a  
12 variety of factors that cause the phone company to call us and  
13 let us know that. So.

14 Q For data that you are attempting to get from a past  
15 date, would that be the same -- would you get the same kind of  
16 data as you would with a precision location?

17 A As with a pen register or with precision?

18 Q Correct.

19 A Okay. So one of the things the detective can ask for  
20 in the pen register, besides putting the pen register up and  
21 live for 60 days is to ask for -- also ask for historical  
22 records prior to the pen going up. So that's part of an option  
23 for them when they filed a search warrant or the order.

24 So the records you get back from that are a couple  
25 different types. Each telephone company has a different flavor

1 of records. The one constant with all phone companies is they  
2 send you the basic call detail, which is everything the pen  
3 gives you live, but it's in the past. So you're still going to  
4 get the date, the time, the cell tower location that the phone  
5 hit off of when the call was made or received.

6 It depends on the phone company, but when it comes to  
7 text messages, some phone companies don't send the historical  
8 cell tower locations of the text messages. The best  
9 explanation on why they don't is because the amount of texting  
10 that goes on in the world right now I've been told is the  
11 hard-drive-retention issue. They just don't have the space,  
12 and so they basically extract the cell tower locations from  
13 historical text messages because there's so many.

14 Then they offer other types of records. Some phone  
15 companies can give you historical GPS locations. Some phone  
16 companies can give you historical distance to tower locations,  
17 which is kind of like a precision location, but it's not  
18 exactly.

19 Historical IP session location information, which  
20 basically most of you probably have a smartphone. When you  
21 pick up your smartphone and you go to YouTube and you play a  
22 video, that's not a phone call. It's not a text message, but  
23 it's using the same cell tower that would deliver a phone call  
24 to you, but the difference is it uses what we call the data  
25 side of the tower. There is a piece of that antenna that

1 services only data. So you can go to Google. You can look  
2 stuff up. You can go to Facebook. You can go to YouTube. And  
3 those would become under the historical package of IP data  
4 session information.

5 It's important to also note that pen registers and  
6 basic historical call information does not contain content.  
7 There's a difference between call detail and call content.  
8 Call detail is strictly the data about the call -- date, time,  
9 duration, who texted you, who you texted -- but not the content  
10 of the text message. So, hey, you want to meet at Starbucks,  
11 that's content. That's not available under pen register or  
12 traditional historical call detail records.

13 Q And so you mentioned historical call detail records.  
14 Those are records of what has occurred within that particular  
15 phone and would include the stuff like the cell tower  
16 information and the location for those types of phone calls  
17 that are being made?

18 A Correct.

19 Q And then you mentioned, and I think you answered  
20 probably what my next question would be, which was about the  
21 actual content. And so with the text messages, are you getting  
22 actual content with those for historical data or for call  
23 detail records?

24 A No.

25 Q And is it -- is it common for phone companies that

1 you typically would review records for to not keep location  
2 data for text messages? That's pretty common.

3 A It is pretty common. There are a couple telephone  
4 companies that do. AT&T is one. I'd have to look at my notes  
5 really quick, but they're one of the only ones that are keeping  
6 past, you know, not pen live stuff, but past historical  
7 records. They're one of the only ones that actually maintain a  
8 cell tower associated with a text message in the past.

9 Q And so that would be dependent on a particular  
10 company?

11 A Correct. And I should add -- I'm sorry to interrupt  
12 you.

13 Q It's okay.

14 A It also depends on the order level. Due to the  
15 Carpenter decision, there was a decision called UV Carpenter  
16 last June, and Carpenter, the Supreme Court decision focused  
17 around cell tower information. So as of June last year, the  
18 detective or the investigating badged employee would need to  
19 serve a search warrant to get anything cell tower related.

20 Q And that would be specific to text messages?

21 A That would be specific to any past historical records  
22 and including anything with a pen register moving forward. So  
23 that's the pen register with precision location moved to a  
24 search warrant level status to be able to get current live cell  
25 tower location information.

1           Q     Now, you mentioned from some of this -- from some of  
2 the historical data as well you were able to see where these  
3 phones may be in relation to a cell tower. And can you  
4 describe -- you've talked a little bit about the antennas and  
5 how you might be able to see where that phone is located. Can  
6 you describe for the members of the jury what you're talking  
7 about in that.

8           A     Sure.

9           Q     In that vein.

10          A     So most of you have probably seen a cell tower. They  
11 come in different flavors. Some look like palm trees. Some  
12 are blatantly obvious. They're a big huge pole centered in the  
13 ground. Sometimes you see them in storage unit areas.  
14 Sometimes they're in parks. Sometimes they're off the 215 and  
15 Lone Mountain.

16                You can't tell which carrier is on that tower, but  
17 generally there's different levels of that tower. So sometimes  
18 the carriers share the tower, and one carrier will be AT&T, and  
19 so that's one set of antennas, and then another carrier will be  
20 Verizon. But they're spread across the town.

21                If you look at the monitor there really quick, just  
22 so I can show you a little bit about the sector information,  
23 most cell towers have three sides, and if you can think of a  
24 triangle -- three triangles that go all around the tower,  
25 basically the first side is almost always facing north to

1 northeast. So that top left-hand shaded red one that's labeled  
2 73, that's an idea that that's probably the first side of the  
3 tower because it's almost facing north, which is up, but it's a  
4 little northeast. For some reason, the cell tower company  
5 probably decided that that tuning was best for Side 1 to start  
6 there.

7 And then as you swing around, Side 2 would be the  
8 next set of triangle. And Side 3 would be the following one  
9 kind of facing down to the bottom left.

10 The reason there's three sides to a tower is because  
11 the antennas work best when they can focus a beam. So an  
12 example of a reason why they do that is it gets a better  
13 distance when you have a focused beam versus like an antenna on  
14 your car, or antennas that we used to have on cars where they  
15 stick up. That's a 360 antenna. That can receive  
16 radiofrequency on all 360, the whole entire side.

17 So the reason the cell tower companies don't do that  
18 is basically antenna technology, but it's better to put a  
19 focused beam on three sides of the tower. So that way that  
20 tower can reach out to -- I've had -- I found people, missing  
21 people up to 15 miles away from a tower out in a rural area.  
22 So the coverage on them, if they're tuned up can go quite far.

23 Most towers in the city are designed, because you can  
24 see the clustering and the sharing of the towers, most towers  
25 generally are designed when they program them for power to

1 reach out between zero to threeish miles, and then the idea is  
2 once you get away from that there's another tower that picks up  
3 coverage.

4 The idea behind all this is really quality of service  
5 to you to use your phone so that as you drive around town on a  
6 very long phone call, the switching of the antennas while  
7 you're on your call is transparent to you. Some of you may  
8 remember when cell phones came out in the '80s. I had one.  
9 And we used to have a lot of dropped calls. The technology  
10 back then was terrible because the switching wasn't fantastic.  
11 So you would get a dropped call because you just moved right  
12 outside the fringe of an antenna, and then it didn't do the  
13 switching properly. So it dropped your call, and then you'd  
14 have to redial.

15 Nowadays, that's pretty much a past history. Now  
16 most people just want to be able to get YouTube. And the same  
17 thing applies. The same thing applies if you start a YouTube  
18 video and you're walking around. It will switch for you and  
19 handoff.

20 Q And you touched on something that I want to follow up  
21 on. You mentioned that in some rural areas you might be able  
22 to get location of a, for example, a missing person within a  
23 very long distance, but then mentioned that in the city those  
24 typically are a little closer together. Why would that be?

25 A So if you take a trip to California and you take

1 I-15, go past Stateline, go up the hill, make a right to go  
2 down to Baker, for some of you that may have done that, there  
3 is pretty much like one to two cell towers from the Sloan exit  
4 all the way to the top of that hill as an example.

5 The reason they only have a couple of cell towers is  
6 because there's not a large population in that area. So it  
7 costs them a lot of money to put a tower on the ground and to  
8 run power and fiber up to that tower because they've got to get  
9 the data out somehow. It just doesn't magically happen. So  
10 you've got to have infrastructure in the ground to where when a  
11 phone connects to it, it eventually goes back somewhere.

12 So in those rural areas, those towers can reach out  
13 and touch somebody -- touch somebody's phone, you know, a good  
14 10 to 15 miles away. So in that case, the call data records,  
15 when we analyze them, we base potential location of devices  
16 based on how many cell towers in the area. And if there's a  
17 distance-to-tower measurement, which is one of the call detail  
18 records that you can get from the phone company, a lot of times  
19 that distance-to-tower measurement can be a lot wider range to  
20 find out where the device is at or could be.

21 Q And within an urban area, let's say the Las Vegas  
22 area specifically, would you expect for that -- I guess that  
23 range to be smaller then?

24 A Yes.

25 Q You mentioned the distance-to-tower measurement. And



1 so can you describe what you mean by that and how that works.

2 A So the distance-to-tower measurement is a certain  
3 type of historical call detail record file we can get from the  
4 phone company. What it amounts to is for marketing reasons,  
5 most phone companies are mining your phone location information  
6 a lot. You don't have to make a phone call for this to happen.

7 The best way I can describe it is they resell the  
8 information about devices anonymized to companies that pay  
9 money for it to determine patterns and where you go and if you  
10 hung around Starbucks a little bit. Then maybe Starbucks is  
11 interested in knowing about that.

12 That particular report doesn't require you to make a  
13 phone call or receive a phone call or send a text message.  
14 It's just reaching out and basically estimating where your  
15 phone is at and keeping that information for marketing reasons  
16 usually.

17 In our case, for law enforcement, it's, in my case,  
18 specifically personally from personal experience, this is a  
19 very useful tool because I've been out, in the nice years I've  
20 been in TASS, I've been part of dealing with many suicidal  
21 missing people, and I've used the what we call the distance to  
22 tower report to try to nail down where our missing person is,  
23 missing child, missing person, suicidal person. And my  
24 experience is it's very accurate.

25 The way it works is the tower is talking to the

1 device, your phone. It sends out signaling information, like a  
2 boomerang, and when it hits your phone, it measures the time it  
3 took to get to your phone and the time it took to get back.  
4 And based on the round-trip time, which they also call RTT or  
5 distance to tower, they make an estimation of how far up that  
6 phone is from the tower. And the record looks like a little  
7 arc, and that's distance to tower information. So again, my  
8 experience is it's very accurate when it comes to my personal  
9 history and finding missing people.

10 Q With respect to the distance-to-tower measurement,  
11 would you always get that information for every minute of every  
12 day from the cell phone company?

13 A So the phone companies generally keep that  
14 information only 7 to 10 days. The reason is, it's a lot of  
15 information. It can be in the span of a couple days, 3-, 4-,  
16 500 records based on just mining your phone. So they only keep  
17 it for a short period of time, and then it truncates, or it  
18 drops. So if you don't ask for distance to tower information  
19 from now, 7 days prior, you're not going to get it. Anything  
20 prior to 7 to 10 days, they don't keep it.

21 Did I answer the question?

22 Q Yes.

23 A Okay. I was thinking there was another question,  
24 but...

25 Q And so that wouldn't be -- you wouldn't always expect

1 to have that information if you're looking at historical data,  
2 if it goes past that 7 days or it wasn't asked for  
3 specifically?

4 A Correct. There is one thing I wanted to add. The  
5 phone company gives you what they have. I've had several  
6 situations where the same scenario, we were looking for  
7 somebody, and they sent me over -- the records were very short,  
8 but we knew the phone was active for the last week, and I've  
9 had this happen many times.

10 The phone company basically uses a third-party to  
11 mine its information and send it to them. So the regular phone  
12 company line, when I ask why there's only a few pieces of  
13 information in there is that's all they have. So it's  
14 dependent on the technology of the phone company, if they're  
15 actively mining that information at that time and if they have  
16 it to give us.

17 Q Earlier you also made mention of the data side of an  
18 antenna. What would that -- what would that be?

19 A So when you pick up your smartphone and go to YouTube  
20 or Google, that's -- that cell tower has a -- I'll call it like  
21 a data side, but there's a voice and text side, and there is a  
22 data side. So basically they're just using a different  
23 frequency and a different type of antenna to wall off traffic  
24 so they can keep the quality of service of the voice traffic  
25 constant.

1           And there's a lot more requirements for data. If  
2 you're streaming a video, or you're trying to watch Netflix on  
3 your phone while you're on a cell tower, there's a lot more  
4 that they have to have in terms of the cell antenna to be able  
5 to deliver that data to you because you're talking about a  
6 pretty big video.

7           Voice and text is very tiny. You know, voice calls  
8 don't require much out of a tower. So they, especially when 4G  
9 came out in 2014, or they call it 4G back then, it's now known  
10 as LTE, which is long-term evolution. So you may have seen LTE  
11 on your phone. The introduction of LTE enabled you to be able  
12 to Google and FaceTime and YouTube and all that stuff. So it's  
13 a little bit more of a hardy delivery system to get you the  
14 quality of service on the cell tower side. And, of course,  
15 they like to charge you for that. So.

16         Q     When you are -- when you receive historical data from  
17 cell phone companies, do you typically analyze that  
18 information?

19         A     It depends. IP historical records can be helpful if  
20 we don't have -- I'll use a missing person case again. If  
21 we've got a missing person and they're not chatty on their  
22 phone, they don't make any phone calls, well, I'm not going to  
23 have any phone records to look at; right? Because nothing  
24 popped because they didn't make a phone call.

25               Sometimes we use the IP data records for stuff that

1 they've used on their phone. Maybe they're posting some stuff  
2 to Facebook to a friend or something like that. That's where  
3 that would come in to play. So with those IP data records, you  
4 get a tower location as well, and I would probably spend more  
5 time focusing on IP records if I didn't have anything else to  
6 deal with. But generally the phone calls or the text messages  
7 on a live pen or distance to tower is going to be much more  
8 helpful than me going into data records.

9           The data records pose some significant challenges  
10 because of some date and times and the way they record them.  
11 The main thing I always try to focus on is the cell tower  
12 location if I'm trying to find a missing person.

13           Q     Would it be fair to say that depending on the phone  
14 company and the type of records that you actually receive, that  
15 would also play a part in your ability to analyze that  
16 information?

17           A     True statement.

18           Q     We've been talking a little bit in generalities about  
19 the type of information you may receive from phone companies.  
20 Typical to receive things like phone calls and text messages  
21 and cell tower data that would be part of your analysis if you  
22 received that?

23           A     Correct.

24           Q     Now, when you are receiving some of these reports,  
25 have you ever received reports that have different time and

1 date stamps on them?

2 A Yes.

3 Q And how do you sort of differentiate between those  
4 and reconcile them?

5 A So I'll get back to the statement I made earlier that  
6 cell phone companies send you different flavors of records.  
7 One of the things that they do is send the records to you in  
8 different time zones. Most all the phone companies are moving  
9 to what we call UTC time, Universal Coordinated Time. Some of  
10 you may understand it to be Zulu time or Greenwich Mean Time.  
11 But for Las Vegas, that's seven hours ahead of us in the summer  
12 and eight hours ahead of us in the winter.

13 So we have to look at the records based on the phone  
14 company, and they tell you in the records, look, this is in UTC  
15 time. So when you're looking at records, you have to  
16 understand what time zone they're using.

17 Sprint records, for example, come in local time, but  
18 the text messages are in Central Time.

19 T-Mobile records are all UTC time. So you always  
20 have to do them minus seven, minus eight, the math.

21 AT&T's are usually UTC.

22 Verizon records are for calls it's if the handset was  
23 in Las Vegas, then it's local time. They're starting to send  
24 some stuff in UTC, and that's noted inside the record as well.  
25 So Verizon is moving toward the whole GMT, UTC time zone thing,

1 but they tell you in the record so you can make that  
2 adjustment.

3 Q And you're able as part of your training and  
4 experience when you're looking at those records to be able to  
5 make those differentiations, and I think you just mentioned a  
6 couple of different cell phone companies and how they send  
7 those to you?

8 A Correct.

9 Q Now, with respect to location, location data and when  
10 you're able to analyze the location of a particular cell phone,  
11 we've talked about the cell towers and the different sectors.  
12 Is that information that you would need in order to be able to  
13 analyze it for that location for historical data?

14 A Yeah. We require, in order to find out if the  
15 handset is in an area, we need the phone company to send that  
16 data to us so we can analyze it.

17 Q Now, we have heard testimony that cell phones may not  
18 always connect to the closest tower. They may look for the  
19 stronger signal. Is that something that you would be able to  
20 analyze from some of those records as well?

21 A The answer, it depends. So I'll use the example in  
22 this room, if we're sitting in this room and we want to use our  
23 phone, let's just pretend there's a big glass bay window behind  
24 us over here, and it's clear that we can see all the way to  
25 East Las Vegas. But behind me I have a brick wall, and maybe

1 that brick wall has a bunch of rebar in it and stuff that makes  
2 the signal worse going this way. And maybe there's a cell  
3 tower two blocks west of me here. And there is, as far as the  
4 east direction, there's a cell tower that's maybe 2 miles that  
5 way.

6 So the phone, as your phone sits right now, your  
7 phone, when it's on, on network, it is what they call stacking  
8 and racking the five best cell towers. It does this inside  
9 unbeknownst to you so that when it comes to delivering a phone  
10 call or a text message or a notification from Facebook or  
11 whatever, it knows the strongest tower, the strongest tower  
12 with the clearest signal. So notice I didn't say closest  
13 tower. It's the strongest tower.

14 So the phone is mining all the cell towers around you  
15 and is saying this cell tower is best right now if something  
16 needs to be done with the phone. That may be a cell tower that  
17 is 3 miles that way because the signal strength, what they call  
18 the Rizzi [phonetic] or the signal strength and the quality of  
19 the signal, you can have a great signal. You can turn your  
20 stereo up and crank that static, but you may not be able to  
21 hear the uttered word clearly. So you can still have a strong  
22 signal here, but if it's staticky because of all this building  
23 in my way, which is what the cell phone is looking at, it's  
24 going to choose to select that cell tower down the road.

25 So I guess the answer to that is it just depends on



1 the cell phone movement if we know where the person is, because  
2 it may choose to select that cell tower down the road versus  
3 the cell tower behind me.

4 THE COURT: We've got some dozers. I mean, I know  
5 you're --

6 THE WITNESS: I know it's dry. I apologize. It's  
7 techno stuff. I'm just answering the questions the best I can.

8 THE COURT: Right. I know.

9 THE WITNESS: I apologize.

10 THE COURT: So let's all, since I'm having a little  
11 trouble too, let's all stand up for a minute, take some deep  
12 breaths.

13 (Pause in the proceedings.)

14 THE COURT: And I find this fascinating, but I've  
15 been up since 5:30.

16 Okay. Are we ready to go?

17 Yeah. Okay. Let's do it. Let's hit it.

18 THE WITNESS: I apologize.

19 BY MS. CANNIZZARO:

20 Q And so, Mr. Basilotta, we were just talking about  
21 the -- when a cell phone may connect to a particular tower, if  
22 it might choose the one that's always closest or if it might  
23 choose the one that's always a little bit stronger. If a cell  
24 phone were choosing, let's say in your example the cell phone  
25 is choosing to connect to the cell tower that's 2 or 3 miles

1 down the road, would you still expect for that particular phone  
2 to be within whatever the distance or radius that that tower  
3 covers?

4 A Yeah. In a normal city area or a highly populated  
5 area such as you're seeing on the screen there, most all cell  
6 towers won't need coverage more than a couple, 2 and a half,  
7 3 miles because the phone companies, again, going back to that  
8 quality of service thing, they put multiple cell towers in the  
9 area to take care of that because there's a lot of people. And  
10 when more people jump on a cell tower to stream YouTube and  
11 face -- YouTube and Facebook and make phone calls, the highway  
12 gets full. You know, when you merge onto the 15, you've got a  
13 full highway. So there's only so much a cell tower can handle  
14 in terms of, you know, traffic. That's why they put many up in  
15 a populated area to handle that quality of service.

16 Q We talked a little bit about the different areas on a  
17 tower with respect to the three triangles or the sectors that  
18 that particular cell tower may cover. When you have a cell  
19 phone that is indicating a particular sector within that tower,  
20 would you also always expect that cell phone to be within that  
21 particular sector?

22 A Generally, it's going to be, yes.

23 Q Now, in this particular case, you were asked to  
24 review some records in order to analyze them with respect to  
25 this particular case.

1           A     Yes, ma'am.

2           Q     I think I said that twice.

3           MS. CANNIZZARO: And so may I have permission to  
4 approach your clerk?

5           THE COURT: You may.

6 BY MS. CANNIZZARO:

7           Q     And, specifically, were you asked to review some  
8 records for both T-Mobile and Verizon?

9           A     I was. Correct.

10          MS. CANNIZZARO: Permission to approach the witness,  
11 Your Honor?

12          THE COURT: Granted.

13          MS. CANNIZZARO: Showing the witness what has been  
14 admitted as State's Exhibit 70. And before we get into actual  
15 analysis, I just want you to take a look at these particular  
16 records in State's 70, and let me know if those are the same  
17 records from T-Mobile that you reviewed with respect to this  
18 particular case.

19          A     Yes. This is the correct target number for this  
20 device. Obviously I can't go through every single one of  
21 these.

22          Q     Sure.

23          A     But it's consistent.

24          Q     Okay. You were familiar with a -- you mentioned a  
25 target device, and so there's a phone number that's associated

1 with this particular set of records. Would that be fair to  
2 say?

3 A Correct.

4 Q And that is, in fact, the phone number that begins  
5 with 424?

6 A Correct.

7 Q And that was one of the phone numbers that was part  
8 of your analysis in this particular case?

9 A That's correct.

10 Q Okay. And then you also were asked to review some  
11 records from Verizon. Is that fair to say?

12 A Correct. Correct.

13 Q And there were, with respect to the Verizon records,  
14 do you recall there being a number of different individual  
15 records?

16 A There's different types of records, yes.

17 Q They weren't produced. I guess if I could compare  
18 them to this stack that you just looked at from T-Mobile, there  
19 were multiple documents?

20 A Correct.

21 Q Okay. And those were contained within digital files  
22 that you were able to review; is that right?

23 A Correct.

24 Q Okay. I'm also going to show you what has been  
25 admitted as State's 68 and 69. If you could take a look at

1 these two printed-out documents and let me know if those appear  
2 to be the same documents that were part of your analysis with  
3 respect to the Verizon records.

4 A Yes, they are.

5 MS. CANNIZZARO: Okay. And then, Your Honor, if I  
6 may have permission to publish State's 65?

7 THE COURT: That's granted.

8 MS. CANNIZZARO: Court's brief indulgence while we  
9 switch over.

10 BY MS. CANNIZZARO:

11 Q Okay. And we're going to go ahead and open up the  
12 first file on State's 65, and you should be able to see that on  
13 that monitor right in front of you. Do you recognize this  
14 particular file?

15 A I do.

16 Q And what are we looking at in this particular file?

17 A So this is a Verizon call detail record file. It's  
18 basically call detail records from the 3092 number, and it  
19 looks like you got only a couple that actually recorded cell  
20 tower location information.

21 Q Okay. There was another number that you were asked  
22 to review with respect to the Verizon records. Do you see that  
23 number contained in this particular record?

24 A So I see the 3092 number, and I see a 2160 number.

25 Q And I believe the 3092 number, does that appear to be

1 the phone number associated with this particular Verizon  
2 account?

3 A Yes. Yes.

4 Q Okay. And so that was part of the Verizon records  
5 that you actually analyzed --

6 A Correct.

7 Q -- in this case?

8 A Correct.

9 Q When you say call detail records and you only have a  
10 few, what do you mean by that?

11 A Well, this would have been, knowing what I know about  
12 the case, I believe that the detective only requested a couple  
13 of days. So that's why you only have October 27th through  
14 the 29th. And then, if you look at Column G where it says  
15 first serving cell site, there are only a couple lines where  
16 there was interaction with a cell tower by that device.

17 Q And specifically, you're referring to lines 9 and  
18 10 in this particular document?

19 A Yes. I apologize. I can't see the left side of that  
20 C9 and 10. So.

21 Q Okay.

22 A It's cut off.

23 Q I apologize. It is cut off. So it's the bottom two  
24 lines that you're referring to?

25 A Correct.

1           Q     And right there where it says 208, is that the number  
2     where you mentioned there was a record of the cell tower -- or  
3     the first serving cell site?

4           A     That's Verizon referring to the -- where the call  
5     initiated came from, which is cell tower 208. And then if you  
6     look at Column H, that's the first serving cell face column.  
7     That's basically saying that it happened off of this first  
8     sector of the tower.

9           Q     With respect to these Verizon records, you mentioned  
10    that's where the phone call would have originated. Would you  
11    typically get information of every tower that that phone used  
12    during the course of a particular phone call?

13          A     So the phone companies generally have beginning cell  
14    site and ending cell site. The best answer I can give you for  
15    that is sometimes you get both beginning and ending. That  
16    would mean that when the call was started or when they first  
17    received a call, it records the first cell site. And when the  
18    call is done, it records an ending cell site. We don't always  
19    get both. Sometimes you only get the beginning. Sometimes you  
20    only get end, and sometimes you get both.

21          Q     In Column I, it's labeled last serving cell site, and  
22    so would that be what you refer to as sort of being the ending  
23    cell site?

24          A     Correct.

25          Q     In Column H where you said first serving cell face,

1 there is a 1 on both of those lines which are lines 9 and 10,  
2 which I know you can't see on your record, but the last two  
3 lines on this particular document. What does that refer to?

4 A So that's the side of the tower. That's the sector  
5 of the tower. Remember we talked about cell towers have three  
6 sectors. Sometimes it's A, B, C; 1, 2, 3; X, Y, Z. So in this  
7 case that's going to be the first sector or usually the north  
8 facing side, but we have to delve into it a little bit more to  
9 understand what side of the tower that really is or where it's  
10 facing I should say.

11 Q We know it's Sector 1. And then it appears as though  
12 there's also in Column K -- or excuse me, in Column J, last  
13 serving cell face, is that also the same idea with the sectors  
14 as it pertains to the end of the call?

15 A That's correct.

16 Q Okay. So you would expect for that in this  
17 particular -- for that to also be where that call ended?

18 A Correct.

19 Q I'm going to go to the second document on State's 65.  
20 Mr. Basilotta, are you familiar with what information is  
21 contained in this particular document?

22 A Yes.

23 Q And what type of information are we looking at in the  
24 second file labeled FDR results?

25 A So this is the IP data record file. This is going to



1 be recording anything that was data from the phone. So that  
2 would be your YouTube, Facebook, Google, anything not a phone  
3 call or a text message. So you've got a lot of confusing  
4 information here.

5           Some of you may have heard what IP address is. It  
6 stands for Internet protocol, but it's basically recording a  
7 bunch more information, such as the IP address that the phone  
8 provider assigned to the phone so that they could get on the  
9 Internet or get on the data side of the tower. And then they  
10 record a whole bunch more information in there that's very,  
11 very confusing, but we talk about, from what I see on the  
12 screen here, the bytes that was transferred. So that gives the  
13 phone company an idea of how much was done by that device.  
14 Maybe there was a video that was streamed. So the bytes we  
15 would see transferred on that particular line would be a much  
16 higher than say just you receiving a chat notification from  
17 Instagram or something like that.

18       Q     For these particular records, were you able to  
19 analyze them for location data?

20       A     I don't believe we had anything in here that we could  
21 use for location data. So we just basically discarded it.

22       Q     Okay. We'll go to the third item on State's 65,  
23 which is titled TDR 2 results at the end. Do you recognize  
24 this particular document?

25       A     I do.

1           Q     And what is contained in this? What sort of  
2 information are we looking at in this document?

3           A     So this is the -- going to be the LTE side of the  
4 tower, but basically it's more of the same. There's some data  
5 records in here that actually show a cell tower, and that's in  
6 Column E. So basically what it's doing is its showing you what  
7 cell tower each time this phone had interaction with a cell  
8 tower was at.

9                     For instance, the first line is -- in Column E is  
10 20208. So that's an actual tower that it hit off of, and it's  
11 showing some other stuff in there like an IP information,  
12 information which is in Column F, and the total number of  
13 megabytes that was transferred from that device, which is in  
14 Column D.

15          Q     You mentioned that there is cell tower information  
16 contained within this particular document. Was this  
17 information that you used in order to conduct an analysis in  
18 this case?

19          A     This, if you scroll down, if you can scroll down a  
20 little bit more, because we've got, in Column I the cell ID is  
21 all zeros. So if you can scroll to the bottom of that  
22 document. So scroll back up to the top for me, please. So  
23 there's two ways they can record this.

24                     There's -- I want to make sure that the jury is  
25 clear -- there's cell ID in Column I and then there's

1 [indiscernible] BID in Column E. Both of those are cell tower  
2 location information. So don't get confused because there's a  
3 bunch of zeros in the cell ID column, which is Column I.  
4 Column E has got the cell tower information which is useful in  
5 charting where that phone was at when that device had some  
6 activity.

7 Q As part of your analysis, was this information that  
8 you then used?

9 A Yes.

10 Q Okay. We'll go to the next item on State's 65, which  
11 is -- which ends in Las Vegas LEA.

12 Do you recognize this particular document?

13 A Yes.

14 Q And what sort of information are we looking at in  
15 this document?

16 A So if you could -- do you know how to make those  
17 columns wider? Do you know how to do it all at once?

18 MS. MOORS: No.

19 THE WITNESS: Right to the left of A, there's a  
20 little box. Click on that once, and then move your mouse to  
21 where it turns into double arrows to the right ever slightly.

22 MS. MOORS: Right there?

23 THE WITNESS: A little bit to the right.

24 Double-click when it -- double-click when it turns to double  
25 arrows. You should be able to double-click when it's a plus

1 maybe. Try that.

2 MS. MOORS: When it's a plus?

3 THE WITNESS: Yeah. Double-click.

4 Okay. Then while it's all highlighted, take the  
5 vertical line to the right of the A before the B, and drag it  
6 out a little bit just so we can expand the columns a little  
7 bit. Just that's good for right there. That should bring  
8 everything up a little bit. Just a little easier to see.

9 MS. MOORS: Learning something new today.

10 THE WITNESS: Fun with Excel.

11 Okay. So this is another version of a call detail  
12 record. This is going to be, if you scroll -- you've got  
13 several pieces of information in here. First of all, the  
14 market ID, which is 64, is actually Las Vegas, but you know  
15 that because in Column C it tells you switch name is Las Vegas.  
16 It gives you a site number. It gives you a latitude and a  
17 longitude of where that tower was at. If you scroll a little  
18 bit more to the right, you've got street address, which is  
19 actually the street address of where that lat and long would  
20 be.

21 Just scroll a bit more to the right. Keep going.

22 It's giving you sector information, which again is  
23 that one of three sides of the tower. It's giving you  
24 something else in Column L called azimuth. The azimuth is the  
25 phone company telling the network where the center point of

1 that sector is. So if I have that 180 degree sector facing  
2 north, the azimuth would be zero. So when you see an azimuth  
3 of 155, you're talking about, you know, if you take it 180 is  
4 zero and 180, the center point of that tower would be about  
5 155 degrees that way. That's what they're referring to as far  
6 as azimuth.

7 The antenna heading is programming for them. PN  
8 offset is their information.

9 Keep scrolling to the right. More, as I call it,  
10 gobbledygook for the Verizon text to deal with. The channel  
11 type tells you what kind of data you're dealing with. So you  
12 see that there's RTT traffic in here. That is the distance to  
13 tower measurement that they are sending us.

14 There's EVDO traffic, which is another data type of  
15 traffic. So that's again information on the type of record it  
16 is.

17 And then if you go to Column R, that's the vendor.  
18 In this particular case they're reminding themselves that that  
19 is a Nortel switch. So phone companies have to route  
20 everything through some sort of a switch. If you remember the  
21 old days for telephone systems, when you made a phone call, you  
22 would go to a switchboard. Same idea. It's just a vendor that  
23 they're using for that particular switch for that particular  
24 market, and it happens to be Nortel.

25 Q In this particular record, we saw columns labeled

1 latitude and longitude, and then you mentioned the azimuth. Is  
2 that data that you can then use to determine exactly where that  
3 cell tower is and where those different sectors are?

4 A It depends on how much data is in there but, yes,  
5 generally you can -- you know that that's where that tower is  
6 going to be planted. And then based on the sector and which  
7 way the azimuth is pointing you can determine which side of  
8 that tower that phone would have hit off of.

9 Q Okay. And so this particular document would allow  
10 you to determine where those towers are located and also  
11 covering?

12 A Correct. And we would use this document with the  
13 other types of call detail records and combine them all  
14 together to try to formulate a pattern of where the phone is or  
15 where it was.

16 Q Okay. We can go ahead and move to the next record  
17 which is labeled device. Actually, let's go to the next.  
18 Sorry. Let's go to the next record. Labeled historical.

19 THE WITNESS: If you also select the top left-hand  
20 box column and then take the A, vertical line to the right of  
21 the A and then drag it just a little bit. That'll bring it out  
22 a little bit more.

23 That's probably plenty.

24 You can actually bring it back a little bit, please.

25 / / /

1 BY MS. CANNIZZARO:

2 Q Okay. And do you recognize this particular document  
3 as being one of the ones produced by Verizon?

4 A Yes.

5 Q And what type of data is included in this particular  
6 record?

7 A This particular record recorded some sort of MMS  
8 picture sent to the phone. There's not much in here. It's  
9 telling you the message size. If you scroll to the right, it's  
10 basically telling you the origination phone, which is an F and  
11 then who the recipient would have been, which is the H Column,  
12 and then you've got a date and a time.

13 Q Okay. Did you use any of this information?

14 A I did not.

15 Q Okay. And let's go to the -- I believe what should  
16 be the final item on this particular one, on State's 65. And  
17 we'll go ahead and expand those columns.

18 A Just drag it a little bit to start with, and then let  
19 go, and then let's see if that gives us what we want.

20 A little bit more.

21 Those pound signs indicate it's not able -- there we  
22 go.

23 Q Do you recognize this particular document?

24 A I do.

25 Q Okay. And is this also one of the records that was

1 produced by Verizon with respect to this particular case?

2 A It was. This is a text message historical document  
3 only.

4 Q So this would -- this would be then just a document  
5 that shows that there are text messages happening within these  
6 dates and times?

7 A Correct.

8 Q Specifically with the dates and times, are you able  
9 to tell in this record whether we're looking at something that  
10 is in -- that's utilizing UTC or something that's been adjusted  
11 for local time?

12 A This particular document should be local time. I  
13 don't have any UTC adjustments in here. So this all should be  
14 based on where the phone was located. So if we scroll to the  
15 right a little bit, what else do we have over here to the  
16 right?

17 Okay. So we're back. So this all should be based on  
18 where the phone was located, which is -- just scroll down for  
19 me. Sorry. I just want to see what we have at the bottom  
20 here.

21 Okay.

22 Yeah. So these are all going to be, as much as I can  
23 tell, because there is no UTC notification in here, it's going  
24 to be local time.

25 Q Okay. And earlier you testified that the Verizon



1 records will often have some things in UTC time and then some  
2 things that would be adjusted for local time.

3 A Correct. There's another record that should be there  
4 that has that indicated in there.

5 Q Okay. I want to ask just a couple of questions about  
6 the final -- the final three rows on this particular record,  
7 and I know you can't see that on your screen, but here on this  
8 screen with the jury, we can see that it's 3:41, 3:42 and 3:43,  
9 those three lines. And in Column D, they appear to have a date  
10 of 10/31/2018.

11 A So the bottom three is what you're asking?

12 Q Yes. So the bottom three. Those appear to be text  
13 messages attempting to be sent with this particular record?

14 A Correct.

15 Q And in Column F, for those three, there also appears  
16 to be the number 3 listed. Are you familiar with the type of  
17 information we might see and Column F?

18 A Yes. So there is usually a legend that Verizon  
19 sends. Just because I reviewed it before court, there's a lot  
20 of -- the Column F is a message completion code column. That  
21 basically is telling you how that message was handled. Column  
22 3 happens to be not delivered -- I'm sorry. The 3 in Column F  
23 happens to be not delivered. And the 1 in Column F happens to  
24 be a delivered message. So you're extrapolating from this that  
25 everything that's a 1 in the Column F, that message was

1 successfully delivered to the device. And where it's noted 3,  
2 it didn't make it.

3 Q So those are -- those would be uncompleted?

4 A Correct.

5 Q That's why we would see that 3 there.

6 A Correct. Undelivered --

7 Q Or undelivered?

8 A In case of SMS, it's undelivered.

9 MS. CANNIZZARO: Your Honor, permission to publish  
10 State's 72.

11 THE COURT: Granted.

12 MS. CANNIZZARO: We're going to move to the next  
13 item.

14 BY MS. CANNIZZARO:

15 Q And there's one file on State's 72 that we will go  
16 ahead and open. Do you recognize this particular document?

17 A I do.

18 Q And what are we looking at in this particular  
19 document?

20 A So this is one of Verizon's distance to Tower  
21 Records, and this is that distance to tower historical record I  
22 was talking about earlier where the device does not need to  
23 make a phone call or receive a phone call or send a text  
24 message, but the phone company is mining location information  
25 from the device for marketing reasons usually.

1 Q And is this information that you use when conducting  
2 an analysis in this particular case?

3 A Yes.

4 Q We also took a look at --

5 MS. CANNIZZARO: And I'm asking for permission to  
6 publish State's 68.

7 THE COURT: Granted.

8 MS. CANNIZZARO: Court's brief indulgence.

9 (Pause in the proceedings.)

10 BY MS. CANNIZZARO:

11 Q Okay. So we'll kind of go line by line for State's  
12 68 as well. You recognize this particular document --

13 A I do.

14 Q -- in front of you as well? And what information are  
15 we looking at on State 68?

16 A So this should be call detail records from an LTE  
17 perspective. So these should be LTE call detail records.

18 Q And is this also information that you used when  
19 conducting your analysis?

20 A Yes.

21 Q You mentioned earlier, and we talked a bit about the  
22 differences in the Verizon records when they refer to GMT time.  
23 In this second column here, and I'll go in this first line,  
24 there appears to be a date of 10/27/2018, with a time stamp of  
25 7:28:19, and then in parentheses GMT minus 7. What does that

1 indicate to you?

2 A So the first thing to answer that question is to look  
3 at the third column where it says record opened daytime, GMT.  
4 That is the record for that particular item.

5 Q Do you need this bigger?

6 A Yes. And that is an actual GMT time zone. So what  
7 Verizon does, and I don't have a good explanation of why they  
8 do this, but some of the records they adjust them for you, and  
9 some they don't. So the ones that were adjusted have an  
10 indicator in that second column. In this case GMT minus 7,  
11 probably because the device was in Las Vegas. So what they're  
12 doing is they're adjusting it for local time for you, and  
13 that's indicated by minus seven. So in actuality, that call --  
14 that transaction at 7:28 in the morning and everything is  
15 military time, so 7:07 is definitely 7:00 in the morning, they  
16 adjusted it, and that's the actual local time of that call.

17 In some cases, if you look at the bottom two, they  
18 say GMT minus zero, and that indicates that they did not adjust  
19 it. So you're going to need to do the math on your fingers to  
20 figure out what the actual local time would have been for that  
21 call.

22 Q So your -- and you're referring to these last two  
23 lines here where it says GMT minus zero?

24 A Correct.

25 Q And then we would also expect that because this time

1 in these last two lines indicates GMT minus zero that it would  
2 match this time where it comes in for Verizon?

3 A Correct. So you're going to have to, if you want to  
4 figure out what the Las Vegas version of that is, you have to  
5 minus seven. If it's -- I'm not sure if -- see I don't know  
6 when we fall back, but you have to determine that based on what  
7 time zone you're in. So.

8 Q Okay. This particular time, when you're conducting  
9 an analysis would require an adjustment if you were to be  
10 producing information to us in current local time?

11 A Correct. And what we'll get into at some point is  
12 how ZetX takes all this into account and does it for you  
13 automatically, which makes it easier.

14 MS. CANNIZZARO: Okay. And permission to publish  
15 State's 69?

16 THE COURT: Granted.

17 BY MS. CANNIZZARO:

18 Q And I think we looked at this as well because it  
19 exists both in electronic form and then also in a printed form.  
20 You recognize this particular document?

21 A That is the call, the regular call detail record from  
22 Verizon, yes.

23 Q Okay. And this was also used with respect to your  
24 analysis in this case?

25 A It was.

1           Q     And all of the records that we have just looked at  
2 that were produced to you, they appear to be fair and accurate  
3 copies of what you looked at as well?

4           A     Correct.

5           Q     So you mentioned this briefly, and I want to talk a  
6 little bit about what this program is. You mentioned ZetX.  
7 Are you familiar with ZetX and a program called TRAX?

8           A     I am.

9           Q     And can you describe for the members of the jury how  
10 it is that you utilize that in order to conduct an analysis of  
11 cell location data -- cell phone location.

12          A     Sure. A little history is appropriate here. So in  
13 the nine years I've been in this unit, I have analyzed a lot of  
14 records. A few years ago we started looking at companies that  
15 were starting to produce programs to assist with this because  
16 we've seen a few records here, but you can imagine if a  
17 detective requests six months or a year worth of call detail  
18 records, that's a lot of numbers to go through, and then you  
19 have time zones, and you have cell tower sides and all this  
20 stuff.

21                   So this company, we, after some diligent research,  
22 the Las Vegas Metropolitan Police Department, purchased a  
23 program called TRAX. It's spelled TRAX, a-n-d it's made by a  
24 company called ZetX, and after reviewing several, we landed  
25 with this one because it had the best feature set for us to

1 take these types of records and show them to you, as you saw on  
2 that previous Google Earth screen, in a format that it's a lot  
3 easier to digest.

4 Q And is this a program then you mentioned that's  
5 something that the Las Vegas Metropolitan Police Department  
6 uses? Is this a program you are familiar with using?

7 A It is. And I've taken two pretty extensive classes  
8 with the company to make my skill set better.

9 Q And have you also used this program when analyzing  
10 other cases and records that you've been asked to take a look  
11 at?

12 A Yes. Just about every case that comes through, I'm  
13 going to use the program to look at all the records.

14 Q What type of information are you utilizing with this  
15 program in order to -- well, let me start -- let me ask that  
16 question a little bit differently.

17 What information do you put into this program in  
18 order to generate an analysis?

19 A So ZetX basically is web-based. We go to a website.  
20 It's in the cloud. It's all secure at that. That was one of  
21 the things that we had to have them meet a requirement for.  
22 And basically you upload the records to their -- you create a  
23 case. It's all private. You create a case. You adjust the  
24 records. What they do for you is they read those records, and  
25 they kick you out a Google Earth friendly file that Google

1 Earth can read.

2           So we're not really showing the records in ZetX in  
3 this particular case. We use ZetX to ingest the records,  
4 adjust the time zones, plot the tower locations and sides, do  
5 some shading for us and spit it out into a file format that you  
6 can use Google Earth to display.

7           Q     When you conduct an analysis using ZetX, are you able  
8 to also then look at the records and the analysis to ensure  
9 that you're sort of getting the right data in and having the  
10 right results produced?

11          A     Yeah. So once you -- once you bring up the exported  
12 file in Google Earth, and as you go through those records, you  
13 can actually click on each call, and it will tell you --  
14 actually tell you the line number of where it exists in the  
15 original Excel file, and it'll actually tell you the line  
16 number to go to so you can do some validation and some checking  
17 to make sure that everything jibed correctly.

18          Q     In this particular case, we've talked about the  
19 records that you utilized in order to conduct an analysis.  
20 Were you also able to then take that analysis from ZetX and  
21 create a copy of that?

22          A     Yes.

23          Q     And is that something that you were able to then  
24 provide with respect to this case?

25          A     Yes.



1 MS. CANNIZZARO: Permission to approach your clerk,  
2 Your Honor?

3 THE COURT: Granted.

4 BY MS. CANNIZZARO:

5 Q Mr. Basilotta, I'm showing you what has been marked  
6 as State's Proposed Exhibit Number 66. Are you familiar with  
7 this particular disc?

8 A This is the one that has the ZetX files on it. Yes,  
9 I am.

10 Q Okay. And there was a disc that you -- that you and  
11 I looked at before court to ensure that it had the same files?

12 A Correct.

13 Q That you produced with respect to ZetX?

14 A That's correct.

15 Q And this appears to be a fair -- the same disc that  
16 we looked at previously?

17 A That's correct.

18 Q When we looked at this disc, the items that were on  
19 that disc were a fair and accurate copy of the analysis that  
20 you conducted in this case?

21 A That's right.

22 Q Okay. And if we were to put this into a computer, we  
23 would expect to see those files?

24 A Correct.

25 MS. CANNIZZARO: State would move to admit State's

1 Proposed Exhibit 66.

2 THE COURT: Any objection?

3 MR. MATSUDA: None, Your Honor.

4 THE COURT: Granted.

5 (State's Exhibit Number(s) 66 admitted.)

6 MS. CANNIZZARO: And, Your Honor, permission to  
7 publish State's Exhibit 66 for identification?

8 THE COURT: Granted.

9 (Pause in the proceedings.)

10 BY MS. CANNIZZARO:

11 Q And, Mr. Basilotta, we just were referring to State's  
12 66, which is -- which indicates the files that are up on that  
13 screen in front of you. Does that appear to be a fair and  
14 accurate copy of the records that you produced in this case?

15 A Yes, ma'am.

16 Q And what you would expect to find on State's 66?

17 A Yes, ma'am.

18 Q We have in front of us on this podium a laptop that  
19 you utilize in the course of your duties with tasks?

20 A Correct.

21 Q And before court started today, you made a copy of  
22 this to put on this laptop so that you could utilize it with  
23 the courtroom equipment for the jury today?

24 A That's correct.

25 MS. CANNIZZARO: And, Your Honor, at this point in

1 time, I would ask that Mr. Basilotta be allowed to come down to  
2 this laptop so that we can walk through these records with the  
3 jury.

4 THE COURT: And that will be fine. However, I'm not  
5 sure how long this is going to go, and I want to make sure --  
6 Jury, do you need a break? Nobody needs to use the rest room?

7 UNIDENTIFIED SPEAKER: Yes, I do.

8 THE COURT: You do. Okay. We'll take a quick break  
9 here. And then we'll launch into our explanations. Good.

10 All right. So, ladies and gentlemen, we're going to  
11 take -- this will be your recess for the afternoon -- 15  
12 minutes.

13 During this recess, it is your duty not to converse  
14 among yourselves or with anyone else on any subject connected  
15 with the trial; or to read, watch or listen to any report of or  
16 commentary on the trial by any person connected with the trial,  
17 or by any medium of information, including without limitation,  
18 newspaper, television, radio or Internet. You are not to form  
19 or express an opinion on any subject connected with this case  
20 until it's finally submitted to you.

21 We'll be in recess for 15 minutes.

22 (Proceedings recessed at 3:16 p.m., until 3:34 p.m.)

23 (Jury reconvened at 3:35 p.m.)

24 THE COURT: Thank you. Please be seated. And the  
25 record will reflect that we're back in the presence of all 12

1 members of the jury and the three alternates. Defendant is  
2 present with his counsel. Prosecutors are present, as are all  
3 officers of the court.

4 The witness is still under oath. And he was going to  
5 join you right down --

6 MS. CANNIZZARO: Yes, Your Honor. And if we may  
7 allow him to come down here so that we can go through --

8 THE COURT: Of course.

9 MS. CANNIZZARO: -- the exhibit that we got, which is  
10 State's 66.

11 BY MS. CANNIZZARO:

12 Q Mr. Basilotta, we were looking at this State's 66 was  
13 up earlier when we were making reference of what we would  
14 expect to see for towers and sectors and areas where the  
15 coverage would exist; is that fair?

16 A That's correct.

17 Q Okay. And so we are looking at State's 66. There  
18 are a number of files that you mentioned that you had analyzed  
19 in order to conduct an analysis using the ZetX program, and so  
20 can you kind of explain for us and walk us through what we are  
21 seeing in this portion of State's 66.

22 A Sure. So this is a Google Earth culmination of three  
23 sets of records from Verizon for the 3092 number. We have  
24 three types. We have the first one, which I'll highlight here  
25 is the Verizon regular voice usage, the regular call detail

1 record file that I think only had two lines worth of cell  
2 towers in it. It was pretty short. The second one is the  
3 voice over LTE or VOLTE for short. That is the network routing  
4 a call on the VOLTE side of the newer technology, LTE side.

5 So a quick review, you can -- your phone is sitting  
6 here today can connect to an LTE tower for both voice and data,  
7 but sometimes you're in an area where it's older technology.  
8 And let's just call it 3G and sometimes 2G, but most phones  
9 don't talk to 2G anymore. So those are reflected in the older  
10 CDR file.

11 So we've got the regular CDR file, the call detail  
12 record file, the VOLTE call detail record file, and then this  
13 is the very infamous RTT or distance to tower which doesn't  
14 require a phone call or any interaction on the phone, and  
15 that's the third line down.

16 And then I plotted a couple of locations in here with  
17 pushpins which reflected here and the Torrey Pines Pub down  
18 here. The first one is a Gowen Road address, and the second  
19 one is a Torrey Pines address, and what I've done initially  
20 here just to kind of complete this overview is these are all of  
21 the records shown at once. So I've -- there's a time slider,  
22 which I'll go through here, but the time slider has been  
23 widened out to basically take the very first record and the  
24 very last record and show all of the call activity plotted at  
25 once. That's why you see a myriad of red out there.

1           Q     And so this is basically reflecting all of the data  
2     that currently exists within the analysis, and it's shown kind  
3     of all at the same time. Would that be fair to say?

4           A     Yes.

5           Q     Okay. Up in the left-hand corner, there appears to  
6     be a blue sliding bar. That's the bar where you've indicated  
7     you've included all of the records for this particular time  
8     period; is that right?

9           A     Correct. You can use that time slider bar, which  
10    we'll go into to bring the time frame down so we can show like  
11    a half an hour time frame. So as we step through the records,  
12    we can step through the records showing from the beginning to  
13    the end as the phone moves about the geographical area, where  
14    which cell towers it hits.

15                   And then just to also repoint out here, every one of  
16    these has a number by it. So when we -- you can actually --  
17    this is the actual center point of the tower. If I zoom in  
18    here, this is actually where the tower is planted in the  
19    ground, and this number indicates the actual record that was  
20    derived from plotting this particular red blob, as I call it,  
21    in this case an incoming call from this number, and it tells  
22    you the duration and the tower it was located on. So the  
23    numbers are important because we can actually refer back to the  
24    original record number, line 73. So we can actually  
25    corroborate what this reflects in the original telephone

1 company sent files.

2 Q So all those records that we were just reviewing  
3 here, you've highlighted in the left-hand pane the Verizon  
4 VOLTE usage, and then we just were referring to the Number 73,  
5 and there appears to be a sort of a red dot with a black line  
6 connected to it, and that represents the tower?

7 A That's where the center of the tower is, yes.

8 And it's important to note too that if there were  
9 records that were in the original files that didn't have a cell  
10 tower location, those won't be shown. So the purpose of this  
11 tool is to plot cell tower location history. So if the phone  
12 had a bunch of calls coming into it when the phone was off,  
13 those won't be reflected here because there was no cell tower  
14 to plot.

15 Q Now, we've talked a little bit about the pushpins,  
16 and you mentioned there were two. There was one at 7075 West  
17 Gowan. Was your understanding that that represented sort of an  
18 apartment complex that we discussed with respect to your  
19 analysis in this case?

20 A Correct.

21 Q And then there was another pushpin at 6374 West Lake  
22 Mead, and that is labeled Torrey Pines Pub?

23 A That's correct.

24 Q And your understanding was that that was the location  
25 that we were particularly interested for this case?

1           A     Correct.

2           Q     Now, if we could, what I would like to do is step  
3 through each of these particular records. And if we could  
4 shorten the time frame and have you explain to us how that  
5 works with the -- with the slider up at the left-hand corner.

6           A     Okay. I'm just getting some water.

7                     Okay. So the time slider right now, you're going to  
8 see in the top left here of the bar that it's probably going to  
9 be really hard to see, but there's a little left bracket right  
10 there, and I can actually take that and move that. So what I'm  
11 doing is I'm shrinking the time period down, and you're seeing  
12 that the activity is disappearing because I'm shrinking the  
13 time period down.

14                    So this is the other side of the time-slider bar, and  
15 I'm going to bring this back, and you're going to see movement  
16 around for that. And what you're going to see now, although  
17 it's a little tiny, but I'll read it to you is that this is on  
18 the 27th of October, 2018, 8:49 p.m. to 10:25 p.m.

19                    So what I'm going to do, since this gets a little  
20 more tedious, is I can do one of two things. I can zoom in  
21 here and make this a little bit smaller, or I can actually go  
22 in here with the toolbar, and I can manually change this. And  
23 I'm going to do that manually.

24                    I'm going to take a half an hour period here, and I'm  
25 making it from 9:25 p.m. to 9:55 p.m., setting in effect a half



1 an hour time period here. So now, when I've done that, I've  
2 actually taken it -- so now as I move through the history here,  
3 I'm only going to show half an hour snippets as I move forward  
4 or back.

5 Q And so this would show, if there was activity for  
6 that particular phone, in these records that have all been  
7 checked on the left-hand side for each of those three records  
8 we talked about previously, for this particular time period, if  
9 that phone is interacting with the cell tower either through  
10 the voice, the VOLTE or through the distance-to-tower  
11 measurement that it would show within this shaded area?

12 A It would show on there in red, yes, because I've  
13 colored them red for just a color shading perspective.

14 Q Okay. And we would expect that that cell phone  
15 during this time period would be within this shaded -- the  
16 shaded area?

17 A Yeah. It's typical that it is in the shaded area.  
18 It's an estimation of coverage. That's not to say the phone  
19 can be on the edge or just a little bit outside, but in most  
20 cases, in my experience, it's always within that shaded area  
21 because of other cell towers that could cover it in the area.

22 Q And when we've been talking about these records, when  
23 they have the tower location, the sector and the different  
24 distance measurements, that's essentially a visual of what  
25 we're talking about and being able to do the location for where

1 that cell phone is being used. Would that be fair to say?

2 A Correct.

3 Q So what I would like to do, if we could start from  
4 the beginning of these records and kind of tab through so that  
5 we can see where and how this particular cell phone is  
6 interacting with the towers. That are recorded.

7 A So you want to start from the beginning?

8 Q Yeah. Just so we can walk through and show members  
9 of the jury how this -- how this particular analysis has -- has  
10 resulted in the different shaded areas that we saw sort of all  
11 at once.

12 A Okay. So I'm going to set my Delta again here. I'm  
13 going from in this particular case, it starts on October 26,  
14 2018. We're starting at 2:53 a.m., and we're going to  
15 3:25 a.m. on the 26th. So again, I'm setting that half an  
16 hourish time frame. So as we step through these, we're going  
17 to show half an hour blocks.

18 So and you're seeing the end time here. So this  
19 3:25 is the end time for my block. So as I step through this,  
20 I'm going to -- now, we're at 3:49 a.m. on the 26th. I'll do a  
21 couple of these slowly, and then I'll go a little faster  
22 because, again, as you step through times, you're not going to  
23 necessarily get stuff that happened within that time, if that's  
24 fair to say.

25 So I'm stepping through. We're still on the 26th at

1 around 6:00 in the morning. Nothing coming up.

2 8:00 in the morning.

3 9:00 in the morning.

4 10:00.

5 We're into 12:00 p.m. now on the 26th. Now, we're at  
6 a time period between 12:29 p.m. on the 26th and 1:01 p.m. on  
7 the 26th. And we actually have something that popped up here  
8 on the 26th at 12:51. In this particular case there was an  
9 incoming call to the 3092 number from this number here for a  
10 duration of 182 seconds, and it tells you what the tower is,  
11 but you can see visually that that is the tower that serviced  
12 that call.

13 Q And I want to just ask one follow-up question. When  
14 we clicked on this particular tower and the evidence of the  
15 record with respect to the Verizon records showed up, it did  
16 say Pacific Time. When you put this information into this set  
17 ZetX TRAX program, does it adjust for the time zone?

18 A Yeah. That's one of the major features that's made  
19 our lives easier in terms of analyzing thousands of records is  
20 the time zone adjustment. When we adjust those in and we  
21 choose the time zone that we're dealing with, since we're  
22 working in this time zone, so that way anything that comes  
23 across in whatever other time zone they set within the original  
24 records, whether it's GMT or Central Time or whatever it is, it  
25 adjust it for us. So you're looking at Pacific Time in this

1 case.

2 Q So when we talk about the time stamp in the slide bar  
3 at the top, that is all in current Las Vegas --

4 A Correct.

5 Q -- Pacific Standard Time.

6 A Pacific Time.

7 Q Perfect. Okay. So if we could continue to tab  
8 through these records.

9 A All right. Getting in to two. So here's -- we're in  
10 the 2:00 o'clock time frame from 1:41 p.m. to 2:13 p.m.  
11 Another call.

12 Do you want to keep going?

13 Q Yeah.

14 A Okay. All right.

15 3:00 p.m., 3:49 p.m.

16 4:13 p.m. I'm going to just make it a little bit  
17 faster. So we're 7:00 p.m. on the 26th.

18 One thing I want to point out here is you see a few  
19 more numbers have shown up. So again, we're in that -- we're  
20 at 6:53 p.m. to 7:25 p.m. on the 26th, and if I blow this up,  
21 you can see there's several calls that happen in that period.  
22 So if we wanted to see them one in particular, again, you click  
23 on it, and it shows it; that was at 6:58 p.m. That's military  
24 time. This particular one was at 6:58 p.m. and 12 seconds. So  
25 and some of them are distance to tower measurements, and some

1 are not. So let's take this opportunity just to show you how  
2 that works since we're showing a few here.

3           So if you look carefully, you will see these red  
4 lines right here, and it's overshadowed by the actual call,  
5 which is the shaded part. The calls are the shaded part. This  
6 is in RTT measurement, or distance-to-tower measurement. So  
7 these red arcs here is that whole phone company mining your  
8 phone on where you're at, and you don't need to make a call.  
9 It's basically, for whatever system reason was able to pull two  
10 distance to tower measurements of where that phone was at this  
11 particular time, and that's indicated by the red arches there.  
12 And so what's pretty wild about these red arches is the phone  
13 is somewhere close to where that line is. It doesn't need to  
14 be up to the line, like the shaded area. It's somewhere close  
15 to that actual line.

16       Q     And earlier when we were talking about the distance  
17 to tower, you may get some of that information, but you might  
18 not get it for every minute of every day?

19       A     Correct. It would be nice for some of the missing  
20 people that we deal with and stuff like that. It would be nice  
21 to have more, but we only can -- we only can process what they  
22 send us, and they don't always send us a whole lot.

23       Q     And just in this particular time frame, there appears  
24 to be that there was some of that data produced in these  
25 records?

1           A     Correct.

2           Q     And we talked a little bit about that earlier when  
3 going over the records. Within this particular red shaded area  
4 that we're looking at, that pushpin for 7075 West Gowan, we  
5 mentioned that's an apartment complex; is that right?

6           A     Correct.

7           Q     And it was your understanding that that was believed  
8 to be where that both the witness and the defendant were living  
9 at the time?

10          A     That's what was told to me, yes.

11          Q     And that particular pushpin is just within that  
12 apartment complex, not specific to an apartment?

13          A     Correct.

14          Q     Okay.

15          A     Yeah. And that's -- and that's true. And the other  
16 thing that's nice about this tool being Google Earth is if I  
17 need to do some measurements to find out how far away that  
18 complex is from that tower, all I have to do is pull up a  
19 ruler, and I can draw a line in miles and actually determine  
20 that that is just shy of half a mile from that tower. So that  
21 helps from our understanding perspective of it's only a half a  
22 mile away from the tower. It's fair to say that that tower  
23 definitely would service that area because we talked about  
24 towers servicing everywhere from 0 miles from the tower out to  
25 potentially 3 to 4 miles on average.

1           Q     Okay. So if we could zoom out and start -- and I  
2 don't know that we need to go super slow through the rest of  
3 these. I think we're getting the idea that this will show up  
4 when we have calls and data. Would it be fair to say we're  
5 looking at quite a bit of data where we see this same shaded  
6 area popping up near the 7075 West Gowan address?

7           A     Yes. There's a lot of activity that's pointing  
8 towards that residence.

9                     And the other thing that's interesting when we  
10 analyze this stuff is sometimes you see the towers move off a  
11 little bit and back, but what was interesting about this to me  
12 is that it's pretty consistently hitting the same sector  
13 towards that same side of the tower.

14          Q     So that particular phone is in this, we would  
15 presume, would likely be in the same place while it's making  
16 all these kinds of calls --

17          A     Yeah.

18          Q     -- or near that same place?

19          A     Correct. And I'll take it a technical level, without  
20 trying to put you to sleep, a little further. The center part  
21 of the tower versus these outside what we call lobes, this is  
22 going to be your best signal in the center of this tower. So  
23 you have some tower switching. For instance, it's not uncommon  
24 if somebody lives over in this area if you see some shifting  
25 because it's on the fringe end of the tower. So the other

1 tower picks it up on the other side, but this is very  
2 consistently in the same area. The tower didn't move. So it's  
3 usually, from training and experience, it tells me that it's  
4 got a nice strong signal somewhere in the center part of that  
5 lobe.

6 Q And if we could zoom out and continue to go through  
7 some of these records.

8 A So the afternoon of the 28th.

9 Q Okay. So I want to stop right there because we just  
10 saw -- we've seen a lot of the red shading area near the 7075  
11 West Gowan address, and now there appears to be one that is  
12 popping up with a Number 23 down towards what is I guess the  
13 nearest crossroad right there that's being yellow is Jones.  
14 This is Torrey Pines Pub is up in the corner from this view.

15 A Right.

16 Q What time frame are we talking about with this  
17 particular record?

18 A So this is an incoming call to the 3092 device on the  
19 28th of October at 3:29 p.m.

20 Q Okay. And can you tell -- and you said 3:29 -- I'm  
21 sorry.

22 A 3:29 p.m. and 9 seconds is when the call started.

23 Q And that's on the 20 --

24 A The 28th of October.

25 Q -- of October within that particular area?



1 A Correct.

2 Q Okay. Let's continue to go into the remainder of  
3 these records.

4 A So we're at the 5:00 p.m., 5:25 p.m. on the 28th time  
5 frame. 7:00, almost close to 8:00 p.m. on the 28th.  
6 8:37 p.m., 9:25 p.m. It looks like there was a little bit of a  
7 shift there.

8 Q And this appears to be sort of I guess would be more  
9 northerly --

10 A Yeah. It's hitting a tower that's a couple blocks  
11 north of the Gowan Road address, and it's facing north.

12 Q Okay.

13 A And now we're moving into 10:00 p.m., 11:00 p.m. on  
14 the 28th. All right, now we're on the 29th at 1:00 a.m. This  
15 is at 1:25 a.m. on the 29th.

16 Q And we are again seeing that this particular time  
17 frame, there's the same type of shading that we've seen with  
18 the 7075 West Gowan address?

19 A Correct.

20 Q Okay.

21 A Same sector.

22 Q Okay. Let's continue.

23 A 1:17 a.m. 1:41, and then it looks like we're in the  
24 time frame of the 29th, early morning of the 29th between  
25 2:05 a.m. and 2:37 a.m. In particular, this is an incoming

1 call at 2:18 in the morning.

2 Q And can you tell which number is the incoming call  
3 coming from?

4 A Yes. It's right here. It says connected to area  
5 code (424)375-1085.

6 Q Okay. And we also see that this is a different  
7 shaded area, and it is labeled with the Number 12, and it  
8 appears to be including this Torrey Pines Pub that we have been  
9 discussing as well. Would that be fair to say?

10 A Correct.

11 Q Can we zoom in on this particular shading area.

12 A (Witness complies.)

13 Q So we're seeing that this tower is sort of in a  
14 different direction, if that's fair to say?

15 A It is.

16 Q Okay. And you mentioned as well that you have the  
17 ability to tell how far a particular address is from a  
18 particular tower?

19 A Yes.

20 Q And can you do that for this particular record?

21 A So ish about .55 miles from the tower as the crow  
22 flies over to the basic general area of the top of 6374 West  
23 Lake Mead.

24 Q And referring to the last record where we were able  
25 to take a look at how far that tower was from, the 7075 West

1 Gowan address, does this operate the same way in that we would  
2 expect this would be a fairly strong signal within this area?

3 A For the most part when it's that close to the tower,  
4 yes.

5 Q Would we expect that this phone is near this Torrey  
6 Pines Pub address then if it is getting one of those strong  
7 signals within that area?

8 A It's fair to say it's possible. I can't tell you  
9 where the phone is at exactly, but that's the side of the tower  
10 that it would hit consistently as it's pretty close to the  
11 center point of that antenna.

12 Q We do not see in this particular record those red  
13 arches that would indicate the distance to tower ratio?

14 A Yeah. There is no RTT data that we were able to  
15 chart based on that address.

16 Q Okay. And if we could zoom out and move through the  
17 remainder of these records.

18 A 3:01 a.m. on the 29th; 4:00 a.m., 29th. 5:00 a.m.  
19 And then it looks like the next time some activity happens on  
20 the phone is on the 29th at 5:27 in the morning, an outgoing  
21 call made that lasted about six seconds.

22 Q Again, in this record that's labeled with 11, we are  
23 seeing that same shaded area that encompasses that 7075 West  
24 Gowan address. Would that be fair to say?

25 A That's correct.

1 Q And so we're looking at the same -- the same  
2 direction as well with the shading that we've been seeing in  
3 these records?

4 A Correct.

5 Q And just to be sure that we're going through the  
6 remainder -- I don't know if that was exactly the end or if  
7 there might be a few more.

8 A It's very close.

9 6:00 in the morning, 7:00 in the morning. Let's see  
10 where it says 7:47 a.m., there's a few more records there.

11 Q And I'll stop you just for a second.

12 A And that's actually the last one.

13 Q And that's the last of it. This appears to be, and  
14 you mentioned there's a number -- there's a few numbers there:  
15 10, 10, 2, 3, 9 that we can see. And then when you expand it,  
16 there's a few more. This shading, would it be fair to say, is  
17 darker than the other shading that we've seen?

18 A Correct. Because there's multiple calls. So what  
19 it's doing is it's plotting each red shade on top of each  
20 other. It's actually creating -- for each call, it creates a  
21 red shade. So it's darker because there's multiple layers  
22 there which darkens the color.

23 Q Okay. And so that would explain why this one appears  
24 to be darker?

25 A Correct.

1 Q And this time frame encompasses I believe it was  
2 7:00 --

3 A 7:15 in the morning until 7:47 in the morning on the  
4 29th.

5 Q Okay. Now, Mr. Basilotta, we also discussed the  
6 T-Mobile records that were associated with the 424 number that  
7 you were able to take a look at as well; is that right?

8 A Correct.

9 Q And were you asked to then compare the number of  
10 times that the 424 number from the T-Mobile records was  
11 communicating with the 323 number from the Verizon records?

12 A Correct, I was.

13 Q And what specifically were you able to do to conduct  
14 that analysis?

15 A So what we did to do that is our same program that we  
16 use for putting pen registers up has some analysis tools in it,  
17 and we ingested both sets of text message records and call  
18 records from both devices and did a comparison to show the  
19 interaction between the two.

20 MS. CANNIZZARO: Permission to approach your clerk,  
21 Your Honor?

22 THE COURT: Granted.

23 BY MS. CANNIZZARO:

24 Q Now, Mr. Basilotta, did you -- were you asked to  
25 compare two different sets of dates, one just for October

1 29th of 2018, and then one that would encompass the month of  
2 October?

3 A Correct.

4 Q And I'm going to show you what has been marked as  
5 State's Proposed 73, and I'm going to ask you if you recognize  
6 that particular document?

7 A Yes. This should be the one for the couple days  
8 between the two numbers.

9 Q And is this a fair and accurate copy of the same type  
10 of information that you produced using the pen register system  
11 that we were just discussing?

12 A Correct.

13 Q And this would be from sort of the end of the 28th --  
14 I apologize, the end of the 28th --

15 A Right.

16 Q -- into the 29th?

17 A Correct.

18 Q Okay. And then I am also going to show you what has  
19 been marked as State's Proposed 74. Do you recognize that  
20 document?

21 A I do.

22 Q And what is that document?

23 A This is common calls between the two numbers for the  
24 whole month of October.

25 Q And is this a fair and accurate copy of that same

1 analysis you conducted using the pen register software?

2 A Correct.

3 MS. CANNIZZARO: Okay. State would move to admit  
4 State's Proposed 73 and 74 into evidence.

5 THE COURT: Any objection?

6 MR. MATSUDA: None, Your Honor.

7 THE COURT: Those will be admitted.

8 (State's Exhibit Number(s) 73-74 admitted.)

9 BY MS. CANNIZZARO:

10 Q Mr. Basilotta, do you also -- this appears to be a  
11 document that was printed out. When you conducted this  
12 analysis, does it exist specifically within the same laptop  
13 that we've been reviewing?

14 A Yes, I have it on there.

15 MS. CANNIZZARO: And, Your Honor, permission to  
16 publish State's 73 and 74 through the use of the laptop?

17 THE COURT: Granted.

18 BY MS. CANNIZZARO:

19 Q Okay. Mr. Basilotta, if we could go to the records  
20 for the month of October. And so what we're looking at in this  
21 particular item is the number of times these two numbers are in  
22 contact with one another?

23 A Correct.

24 Q And this encompasses both the T-Mobile and the  
25 Verizon records; is that fair to say?

1           A     That's correct.

2           Q     Are you able to tell how many times these two numbers  
3 between those two records have been in contact with one another  
4 for the month of October 2018?

5           A     So it's hard to do it through this medium. What I  
6 can do is run Excel real quick and pull it into that.

7           Q     And when you say "run Excel," that would be typically  
8 how you would compile this information, and then you would  
9 produce ultimately the report that we've been talking about in  
10 State's 73 and 74?

11          A     Correct.

12               MS. CANNIZZARO: Okay. And, Your Honor, permission  
13 to show that so that we may count it?

14               THE COURT: That's granted.

15               MS. CANNIZZARO: And Court's brief indulgence.

16 BY MS. CANNIZZARO:

17          Q     And so what we are looking at now in Excel here is  
18 the common communication for October of 2018. And again this  
19 is for both the 424 and the 323 number; is that right?

20          A     Correct.

21          Q     And how many times have these two numbers between the  
22 two records been in contact with one another?

23          A     Well, just as a brief overview here, if we go to the  
24 very bottom of this, which is going to take a second for me to  
25 scroll, we've got 1490 so entries or rows. So you back out



1 about four for the header, and you've got about, what, 1486;  
2 right? Is that right. Did I do the math right? 1490 --

3 Q Yes. 1486.

4 A 1485 -- -86. Right.

5 Q So I want to clarify. If we've heard testimony from  
6 witnesses in this case that they had been in contact after  
7 reviewing one set of records 1222 times, would that also be  
8 consistent with the data that we're observing in this  
9 particular record?

10 A Yeah. It would be. I mean, you've got -- these are  
11 basically a comparison of the interaction between these two  
12 numbers only. And you've got 1490 of them. So that's within  
13 the tolerance of the number you're talking about.

14 Q And we're also including both sets of records in this  
15 particular document as well; is that right?

16 A Correct. This is taking all the different types of  
17 interaction you've got. If you look at the column here, I've  
18 got a few voice records in here, but there are a lot of text  
19 records in general. So it's combining voice and text.

20 Q Okay. And so might you see a record that existed  
21 both on the T-Mobile records and on the Verizon records that  
22 would essentially be counted twice if you will?

23 A Correct.

24 Q Okay. And so what I would like to do next is move to  
25 the record for just the end of October --

1           A     The October --

2           Q     -- October 28th to October 29th, and we're talking  
3 about the late evening hours going into the morning hours of  
4 the 29th.

5           A     Okay. Court's indulgence.

6                     Let me just double check here.

7                     Okay.

8           Q     Okay. So again, we're in this same type of Excel  
9 spreadsheet showing the communication between the 323 and the  
10 424 number that we've been discussing today. And how many  
11 entries do we have in this particular document?

12          A     So we've got 570 less the 4 for the header.

13          Q     Gotcha.

14          A     So 566. Right?

15          Q     Yes. If I can do math. And so again, if we were  
16 seeing that this has both records included in it, there may be  
17 items in this particular document that would appear in both,  
18 and thus would count for essentially two?

19          A     That's correct.

20                     MS. CANNIZZARO: Court's brief indulgence.

21 BY MS. CANNIZZARO:

22          Q     Okay. So I just wanted to -- and I apologize. I  
23 think I may have glossed over some of the -- in terms of the  
24 numbers. This wouldn't necessarily be exactly double in terms  
25 of the number of entries indicating contact, would it?

1           A     Well, it's going to be -- this is both numbers. So  
2 what you have here, if you look at the first column, is you've  
3 got -- for instance if you look at column -- row 101, this is  
4 an outgoing text from 3092 to 1085. So what you're going to  
5 deal with here is you're going to have the same thing coming  
6 back right below it. So the incoming text is back because  
7 we're comparing both in the same spreadsheet.

8           Q     Got it. And so I guess my question though is that  
9 there wouldn't necessarily in both the T-Mobile records and the  
10 Verizon records be a match for match? There may be more  
11 records with, for example, the T-Mobile records cover a bigger  
12 time frame than the Verizon records?

13          A     Well, true. And not only that, that's not the only  
14 number that the phone potentially interacted with either. So  
15 there's more records by them either calling other numbers or  
16 other numbers calling it.

17          Q     And so would this -- when we're talking about this  
18 particular document, this is consistent with the records that  
19 you were able to review in this case?

20          A     Right. Correct.

21          Q     The other thing I wanted to just note is that when  
22 we're talking about those shaded areas, are we referring to,  
23 when you see that, just phone calls, or are those also text  
24 messages?

25          A     No. Those are phone calls only.

1           Q     Okay. So we don't -- we actually have the location  
2 data in order to create this in the ZetX TRAX program for phone  
3 calls, not necessarily for text messages?

4           A     Right. There is no -- we don't have historical cell  
5 tower locations for text messages in this particular phone  
6 company's case.

7                     MS. CANNIZZARO: Okay. I have no further questions,  
8 Your Honor, and I would pass the witness.

9                     THE COURT: Cross.

10                    MR. MATSUDA: Thank you, Your Honor.

11                    THE COURT: Do you need the witness to be able to --

12                    MR. MATSUDA: Yeah, that's fine.

13                    You can, yeah. Thank you. Sorry.

14                                     CROSS-EXAMINATION

15 BY MR. MATSUDA:

16           Q     Good afternoon, Detective.

17           A     Good afternoon, sir.

18           Q     Now, I missed something in the beginning. Could you  
19 go over everything again one more time. Just really quickly.  
20 Is that possible? I'm kidding, okay.

21                    All right. So all this data, all these pictures on  
22 these graphs, it's number to number; correct?

23           A     Say that again.

24           Q     It's certain numbers communicating with certain  
25 numbers?

1           A     Well, on topical view, yes. In this particular case,  
2 this Google Earth depiction that I've shown is one target's  
3 number -- one target number's phone voice activity.

4           Q     And the last graph we saw, we saw two numbers, and  
5 it's the two numbers communicating with each other?

6           A     Those were the two numbers communicating with each  
7 other. It's a common call report --

8           Q     Okay. And this --

9           A     -- that was generated.

10          Q     I'm sorry. And this map we're looking at is the  
11 location of the device?

12          A     The map you're looking at is showing you this  
13 particular area in Las Vegas, and it's showing you the cell  
14 tower location of where the cell tower is planted and the side  
15 of the cell tower that the device connected with.

16          Q     Okay. And specifically talking about a device;  
17 right? Not a person?

18          A     Correct. That's the device that's connecting.  
19 Correct.

20          Q     Okay. We can't unequivocally say who had the device  
21 in this location?

22          A     That's correct.

23               MR. MATSUDA: Thank you, sir.

24               Nothing further, Your Honor.

25               THE COURT: Redirect?

1 MS. CANNIZZARO: Nothing from the State, Your Honor.

2 THE COURT: Questions from the jury?

3 I see no hands.

4 Thank you very much for your testimony.

5 THE WITNESS: Yes, ma'am.

6 MS. CANNIZZARO: Thank you. If we may have the

7 Court's brief indulgence to verify exhibits and to allow

8 Mr. Basilotta to grab his laptop.

9 THE COURT: Of course.

10 MS. CANNIZZARO: Thank you, Your Honor. May we

11 approach your clerk?

12 THE COURT: Yes.

13 (Pause in the proceedings.)

14 MS. MOORS: Your Honor, at this point in time, it's

15 my understanding that all of our exhibits except for one have

16 been admitted.

17 Is that correct?

18 THE CLERK: Yes.

19 MS. MOORS: Okay. Based on that, Your Honor, at this

20 point in time the State would be resting.

21 THE COURT: All right. Ladies and gentlemen, the

22 State has rested its case.

23 Counsel, approach.

24 (Conference at the bench not recorded.)

25 THE COURT: So, ladies and gentlemen, I told you we

1 were going -- that that last break was going to be your last  
2 break, but I fibbed. No, I didn't know at the time, but so  
3 we're taking a brief recess. This will just be about five  
4 minutes. So don't stray far.

5           During this recess, it is your duty not to converse  
6 among yourselves or with anyone else on any subject connected  
7 with the trial; or to read, watch or listen to any report of or  
8 commentary on the trial by any person connected with the trial,  
9 or by any medium of information, including without limitation,  
10 newspaper, television, radio or Internet. You are not to form  
11 or express an opinion on any subject connected with this case  
12 until it's finally submitted to you.

13           So I'll see you back in about five minutes.

14                     (Jury recessed at 4:14 p.m.)

15           THE COURT: All right. The record will reflect the  
16 jury has departed the courtroom. That last bench conference  
17 was just about scheduling, and so I needed to find out where we  
18 were going next, and that determination was made that I need to  
19 now canvass the defendant.

20           So Mr. Marks is already standing.

21           THE DEFENDANT: Yes, ma'am.

22           THE COURT: So, Mr. Marks, under the Constitution of  
23 the United States as well as the Constitution of the State of  
24 Nevada, you cannot be compelled to testify in this case. Do  
25 you understand that?

1 THE DEFENDANT: Yes, ma'am, I do.

2 THE COURT: Now, you may of course at your own  
3 request give up this right and take the witness stand and  
4 testify. Now, if you do that, you're going to be subject to  
5 cross-examination by the district attorney, and anything that  
6 you might say, whether it's on direct examination by your  
7 lawyer or cross-examination by the prosecutor, that's going to  
8 be the subject of fair comment to the jury by the district  
9 attorney when they speak to the jury in closing arguments.

10 Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Now, if you choose not to testify, the  
13 Court will not permit the DA to use that against you in any  
14 way. You know, for example, they can't stand in front of the  
15 jury if you decide not to testify and say, you know what, if  
16 Mr. Marks was truly an innocent man, he'd take the stand and  
17 tell his side of the story. That's not allowed. And in fact,  
18 if you requested through your lawyer for the jury to be  
19 instructed, then I would, in fact, instruct the jury that  
20 they -- that you're not compelled. Any defendant is not  
21 compelled in a criminal case to take the stand and testify and  
22 that no presumption may be raised, and no inference of any kind  
23 may be drawn from the failure of the defendant to testify. So  
24 the jury would be instructed in writing that they couldn't  
25 consider that or hold it against you. So you understand that?



1 THE DEFENDANT: Yes, ma'am, I do.

2 THE COURT: And have you had an opportunity to chat  
3 with your lawyer and consult with him to make a decision as to  
4 whether or not you want to testify?

5 THE DEFENDANT: Absolutely. Yes, ma'am.

6 THE COURT: All right. What's your decision?

7 THE DEFENDANT: I would like to testify.

8 THE COURT: All right. Now, you also understand  
9 that -- I believe you have felony convictions.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Within the past 10 years, and so those  
12 convictions may be used to impeach you.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: So the jury will learn of those  
15 convictions, one or more, whatever they are. And, okay. So  
16 they're going -- they're permitted to ask you if you've been  
17 convicted of a felony, what the felony was and when it  
18 happened.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. They can't go into details about  
23 that, but, of course, your other prior matter was admitted as  
24 part of other litigation in the case. So they're aware of  
25 that. And obviously the date is out there already. So they're

1 going to know it's that Fred's Tavern thing. Okay. So you  
2 understand all of that.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. And you still want to  
5 testify?

6 THE DEFENDANT: Yes, ma'am, I do.

7 THE COURT: All right. Very good.

8 MS. MOORS: And, Your Honor, if I could just make a  
9 brief record. I do have two certified Judgment of Conviction.  
10 One being a case where he was convicted of conspiracy to commit  
11 robbery as well as robbery with use of a deadly weapon filed  
12 August 16th of 2011. That would be Case Number C272989.

13 I also have an Amended Judgment of Conviction. It  
14 was filed May 2nd of 2012, on a separate case, Case C273034  
15 for a conspiracy to commit robbery as well as robbery with use  
16 of a deadly weapon. It's my understanding that Mr. Marks might  
17 be a little confused, indicating that he originally pled to  
18 both in 11. I think that was the case, but this was the final  
19 amended that was filed in that case. So I just wanted to make  
20 sure that the Court is aware they are two different cases, two  
21 different pleas, two different felony convictions.

22 THE COURT: And has the defense had the opportunity  
23 to inspect those?

24 MR. MATSUDA: I did see an email from the State this  
25 morning, Your Honor, and these look good.

1 THE COURT: All right.

2 THE DEFENDANT: May I please use the rest room before  
3 we --

4 THE COURT: Yes. So let's have him use the rest  
5 room, and then we will bring the jury back in.

6 (Proceedings recessed at 4:19 p.m., until 4:24 p.m.)

7 (Jury reconvened at 4:24 p.m.)

8 THE COURT: Thank you. Please be seated.

9 And the record will reflect that we have been  
10 rejoined by all 12 members of the jury as well as the three  
11 alternates. And Mr. Marks is present with his counsel. The  
12 prosecutors are present, as are all officers of the court. The  
13 State has rested its case.

14 Defense, would you like to put on a case?

15 MR. MATSUDA: Yes, Your Honor.

16 The defense is going to call Mr. Marks.

17 THE COURT: Mr. Marks, if you'll take the witness  
18 stand, please.

19 **DEVOHN MARKS**

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

22 THE CLERK: Thank you. Please be seated. State and  
23 spell your name for the record.

24 THE WITNESS: Devohn Marks. First name, D-e-v-o-h-n.  
25 Last name M-a-r-k-s.

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DIRECT EXAMINATION

BY MR. MATSUDA:

Q How's it going, Mr. Marks?

A Good morning, sir. Well, good evening.

Q Okay. So just to start, you have a couple felonies;  
correct?

A Yes, sir.

Q Felonies. One in 2011 for conspiracy to commit  
robbery?

A Yes, sir.

Q And robbery with use of a deadly weapon?

A Yes, sir.

Q One in 2012 for conspiracy to commit robbery?

A Yes, sir.

Q Robbery with a deadly weapon?

A Yes, sir.

Q Okay. Now, you heard the testimony.

A Yes, sir.

Q Do you recall Mr. Johnson getting on the stand?

A Yes, sir.

Q Do you know Mr. Johnson?

A Yes, sir.

Q How do you know Mr. Johnson?

A We actually live in the same apartment complex -- we  
lived in the same apartment complex.

JD Reporting, Inc.

1 Q Okay. And how long were you living in that complex  
2 before you got to know Mr. Johnson?

3 A I actually moved into those apartment complexes in  
4 July, 2018. So that's when I first had a encounter with him,  
5 just in passing, saying what's up, hey, what's going on, just  
6 being cordial.

7 Q Okay. You didn't know him prior to that?

8 A No, sir.

9 Q Okay. So you met him in July of 2018?

10 A Yes, sir.

11 Q Now, did he move in after you, or were you already in  
12 there?

13 A When I moved in, he was already there.

14 Q Okay.

15 A To the best of my knowledge.

16 Q Okay. Now, how did you meet him?

17 A Just walking my dog. Our apartment complexes are  
18 actually separated. When you first pull into the parking  
19 complex, his is the first one. They have another building in  
20 the middle. Then my building is the one after that. So I  
21 would have to actually come out of my apartment complex, go  
22 behind the one in the middle of ours, and there's actually a  
23 miniature dog park, a little grass area, you know, like they  
24 have the post with the plastic bags. I go take my dog to walk  
25 and do her business, and that's actually where he lives. So

1 that's when I initially seen him. And I said what's up; a  
2 couple of times we said what's up before we actually engaged in  
3 any kind of real conversation. It was just a, you know, what's  
4 up, walking past.

5 Q Okay. So just kind of a cordial hi, how are you  
6 doing?

7 A Yes, sir.

8 Q Goodbye. Okay. So at some point -- would you  
9 consider him a friend?

10 A No, sir.

11 Q Okay. At some point you guys exchanged numbers?

12 A Absolutely.

13 Q Okay. Why?

14 A Well, one day I was walking my dog, and I was  
15 smoking, and he smelled the aroma. We had a conversation about  
16 that, and that's how we basically exchanged numbers. Like,  
17 hey, I smoke too. Hey, maybe we can get together one time and  
18 we can smoke and chop it up.

19 Q Okay. And when you say "chop it up," what do you  
20 mean?

21 A Which is converse. Dialogue.

22 Q Okay. And what kind of things did you guys discuss?

23 A Life, sports, stuff like that. I know a lot about  
24 football, and he had mentioned that he was involved in like,  
25 you know, sports betting. He liked to bet favorites, odds and

1 stuff like that, and I knew a lot about -- I know a lot about  
2 like players, actual, you know, the details of the sport. So  
3 we would have a lot of conversation about that.

4 Q Okay. How often do you think you hung out with him?

5 A Not often at all. Not often at all.

6 Q Okay. If you --

7 A I would probably say when I first moved in in July,  
8 it was really never. I didn't really start actually having  
9 that kind of contact with him until about September, and that  
10 was after I had changed jobs. So my shift kind of changed. So  
11 I started seeing him a little more often. And that's when we  
12 initially started conversing on a deeper level, you know, as  
13 far as what I told you about sports and everything like that,  
14 and I would say I probably seen him like once a week.

15 Q Okay. Now, and you mentioned a job. Were you  
16 working at the time?

17 A Yes, sir.

18 Q What were you doing?

19 A I was working at Apex Linen. It's actually a -- it  
20 was through a temp agency. It's basically a laundry company  
21 over there on Arville off of Sunset. It's basically like a  
22 laundry factory. We do all of the laundry and the sheets for  
23 the big hotels and stuff like that.

24 Q Okay. And were you living by yourself in that  
25 complex?

1           A     No, sir. I was actually living with my then  
2 girlfriend.

3           Q     Okay. And anyone else living with you guys?

4           A     At the time, in September, no. In October, well,  
5 basically the end of October, her daughter, 8-year-old daughter  
6 and her 6-year-old nephew actually moved out with us and got  
7 checked in school and in Las Vegas.

8           Q     Okay. Now, seeing that you're an ex-felon, was it  
9 hard to get a job?

10          A     Actually, sir, no. I just, you know -- I would go  
11 through temp agencies, you know. When I was in prison, they  
12 had a reentry program for me at camp. So they basically just  
13 taught us like, you know, it's not about whether or not you can  
14 get a job. What kind of job are you looking for, you know,  
15 what kind of work are you willing to do? So I would go through  
16 temp agencies, and they would pretty much start the next day.  
17 So.

18          Q     Okay. And how long were you at that linen job --  
19                When you were living at that complex -- let me  
20 rephrase that. When you were living in that complex, did you  
21 always have that job?

22          A     Not the whole time, no, sir. Previous to that I  
23 actually worked at a call center. It's on Las Vegas Boulevard  
24 off of Warm Springs called GSK Research, and it was just way  
25 too far from where I lived. So I switched jobs and the actual



1 schedule was kind of conflicting with my girlfriend's schedule.  
2 So I switched jobs, and that job was actually supposed to be  
3 temporary just to keep a job until I initially got into the job  
4 that I had last.

5 Q Okay. I'm going to jump backwards, but when you  
6 smoked with Mr. Johnson, where would you guys go?

7 A As far as I remember, it was always in his car.

8 Q Okay.

9 A Sitting in the parking lot. Like I said, we shared  
10 the same parking lot. Our buildings are literally separated by  
11 one. So if I walked downstairs, I could walk through the  
12 parking lot. There's a trash can right there. If he comes out  
13 of his, we're basically right in the same parking lot, and we  
14 basically share the same --

15 Q Okay. And was there a reason why it was his car?

16 A No. Well, initially the first time we actually  
17 smoked together he was sitting in his car, and I was walking  
18 past taking out the trash. He was like -- he rolled down his  
19 window. Hey, you want to smoke? Yeah, we can smoke. I went  
20 and jumped in his car. We smoked. And after that, it was  
21 pretty much just whenever we did decide to smoke, it would be  
22 in his car.

23 Q Okay. And did you ever discuss your past with him?

24 A Absolutely, yes, sir.

25 Q And what was discussed about your past?

1           A     Pretty much just gave him a brief story about how I  
2 even got in the position that I was in, that ultimately landed  
3 me in prison. I let him know what I went to prison for. I let  
4 him know that, hey, I just did seven years. I'm fresh out, you  
5 know what I'm saying, and this is where I am now.

6           Q     Okay. And he knew why you were in prison?

7           A     Yes, sir.

8           Q     Okay. Did he ask a lot of details about that or --

9           A     No, sir, not that I can recall. Not that I can  
10 recall. I mean, he asked what did I do. I told him what I  
11 did. I told him how many people I did it with and pretty much  
12 that was it. I told him, you know, like I said, ultimately  
13 just how much time I got for what I did and, yeah, that's  
14 pretty much all I can really remember to be honest.

15          Q     Okay. Now, there's allegations about contacting him,  
16 and I'm speaking about Mr. Johnson. Do you know when the last  
17 time you actually had contact with Mr. Johnson?

18          A     The last time I can recall, it was the same Friday my  
19 then girlfriend actually left to go to California for the  
20 weekend for her cousin's birthday party. And that was the  
21 Friday before Halloween.

22          Q     Do you know approximately what date that was?

23          A     If I can recall correctly, it was October 26th.

24          Q     Okay. And how do you remember that date so vividly?

25          A     I've been dealing with this case, to be honest with

1 you. So, you know, I just remember. I actually lost my phone  
2 around that time as well. So then this case came up, and, you  
3 know, I had to backtrack and go back in time and kind of figure  
4 things out.

5 Q So, yeah. I'll stop you right there. Let me ask you  
6 about that. So if the last time you contacted Mr. Johnson was  
7 the 26th?

8 A Yes, sir.

9 Q State's alleging that you contacted him after that.

10 A Yes, sir.

11 Q Why?

12 A You got to understand because my phone was still in  
13 contact with his phone at the time. So I'm assuming they  
14 believe that I was still in possession of my phone at that  
15 time.

16 Q Okay. And you said -- I think you previously just  
17 said you lost your phone?

18 A Yes, sir.

19 Q When did you lose your phone?

20 A That Friday. Like I said, I worked at Apex Linen  
21 Monday through Thursday, and I was actually working graveyard.  
22 So it was like 3:00 p.m. to about 12:00 a.m. Then I would do  
23 two hours overtime so I would get off around like 2:00 a.m. My  
24 then girlfriend worked at Amazon. She still works there, human  
25 resources. She gets off work roughly around 6:00,

1 7:00 o'clock. So on Fridays, I would usually be home because  
2 I'm not at work, and I will always go downstairs and help -- go  
3 downstairs and help her get all of her belongings out the car,  
4 talk to her.

5 And my life is pretty routine. Basically after that  
6 I go to the gym, and I work out. On this particular night, I  
7 do recall going downstairs and smoking with Johnson or Antwaine  
8 in his car. I jumped out, went to the gym. I worked out, and  
9 around that time my then girlfriend was actually leaving to go  
10 to California, and she said she had sent me a text, but I  
11 didn't receive it.

12 So at that point that's when I started, hey, my  
13 phone's not in my pocket. I ran back in the gym where my  
14 belongings were, and I wanted to try to go find my phone. I  
15 didn't find it. I came back outside. I looked in her car. I  
16 didn't see the phone in her car. She was in a rush. So I  
17 said, hey, look, if I don't find it by the time you get back  
18 from California, we'll just report it stolen. So the whole  
19 weekend I pretty much stayed home cleaning up the house and  
20 ultimately didn't find the phone.

21 At that time, I tried to go locate Johnson and see if  
22 I had dropped it in his car, but he was not there. So I didn't  
23 see him again until like early November. I asked him about it.  
24 He actually said no, I didn't leave it in his car and at that  
25 point it was already reported stolen. So I didn't make a big

1 deal of it. I just went on with my life.

2 Q Okay. And so your belief is you lost your phone  
3 around 10/26?

4 A Yes, sir.

5 Q Is that right?

6 A 10/26, the date, yes, not the time. Yeah.

7 Q Okay. And, I mean, this is kind of a -- I hate when  
8 people asked me this question, but do you remember the last  
9 time you actually had your phone?

10 A No, I don't, sir, to be honest with you.

11 Q Now, what kind of phone did you have?

12 A An iPhone 7 plus.

13 Q Now, is that -- is that model a fingerprint or a face  
14 ID model?

15 A Can you further explain the question. I'm not --

16 Q Yeah. You know how some cell phones, they have pass  
17 codes; I'm trying to get at?

18 A Yeah. No. It's actually you can pick. You can  
19 actually pick what kind of pass code you want to have. You can  
20 either have the kind where you draw out something or you will  
21 have an actual number. In this case, initially I had a pass  
22 code, but I have a habit of sitting my phone face down to  
23 prevent things from falling onto my screen because that's how I  
24 broke my previous phone. I would set it face up, and my  
25 touchscreen got broke. So I always set my phone face down.

1 And my then girlfriend will always kind of complain, like, hey,  
2 why you, like, you trying to like hide something. Why you  
3 always putting your phone face down. So I initially pretty  
4 much just took the code off like look, I don't have anything to  
5 hide. I took the code off, but I still wanted to be able to  
6 place it face down without her basically like, you know --

7 Q Okay. So at the time you lost your phone, you didn't  
8 have a pass code on it?

9 A No, sir.

10 Q Okay. So that means if you turned it on you could  
11 get right into the phone?

12 A Yeah. There's actually a slider at the bottom where  
13 you just slide it to the right. If you have a code, then the  
14 code pops up, and you have to put in a code. If you don't,  
15 then the phone just opens.

16 Q Okay. So at the time you lost your phone, there was  
17 no code?

18 A No, sir.

19 Q Okay. Now, how tall are you?

20 A I'm 6-3, sir.

21 Q 6-3?

22 A Yes, sir.

23 Q And how old are you?

24 A I will be 28 October 9th. I'm actually 27 right  
25 now.

1 Q And you're saying that around this time you were  
2 working a job; correct?

3 A Yes, sir.

4 Q Were you financially struggling?

5 A No, sir. I was actually doing pretty well.

6 Q Okay. Now, did you ever conspire or talk about  
7 robbing a bar with Mr. Johnson?

8 A No, sir, I did not.

9 Q Okay. Did you ever actually rob a bar with  
10 Mr. Johnson?

11 A No, sir, I did not.

12 MR. MATSUDA: Thank you, Mr. Marks.

13 Nothing further, Your Honor.

14 THE WITNESS: Thank you.

15 THE COURT: Cross.

16 CROSS-EXAMINATION

17 BY MS. CANNIZZARO:

18 Q Good afternoon, Mr. Johnson -- excuse me, Mr. Marks.  
19 I don't know why I said Mr. Johnson.

20 A Good afternoon, ma'am.

21 Q I'm thinking of the testimony.

22 So I want to kind of just talk a little bit about  
23 your testimony today.

24 A Yes, ma'am.

25 Q You -- today you are telling the members of the jury

1 you moved into this apartment complex in July of 2018; right?

2 A Yes, sir -- yes, ma'am. Excuse me.

3 Q And when you were living in this apartment complex,  
4 you were there with your girlfriend?

5 A Yes, ma'am.

6 Q And your girlfriend's name is Destiny; is that right?

7 A Yes, ma'am.

8 Q You and Destiny were living in these apartments. You  
9 move in in July, and you kind of go about your business every  
10 day; right?

11 A Yes, ma'am.

12 Q And your everyday routine is to go from work to your  
13 apartment, to the gym, back to your home, sometimes maybe take  
14 out the trash. Sometimes you walk the dog. Is that fair to  
15 say?

16 A Nonetheless, yes, ma'am.

17 Q Okay. And you're pretty -- you're pretty routine  
18 about that. You aren't kind of going and running around with a  
19 bunch of people; right?

20 A No, ma'am.

21 Q You're not trying to cause any, you know, problems  
22 with any of your neighbors or anything like that?

23 A No, ma'am.

24 Q You're just going about your business?

25 A Yes, ma'am.



1 Q And so most of your days are pretty -- pretty  
2 standard. You hang out with your girlfriend; right?

3 A Yes, ma'am.

4 Q And you were working at the time. And you mentioned  
5 that you were working even up until October?

6 A Yes, ma'am.

7 Q Different jobs?

8 A Yes, different jobs.

9 Q But always kind of had a job and working. You wanted  
10 to support your girlfriend and yourself?

11 A Yes, ma'am.

12 Q Okay. And going up until the end of October, you  
13 were actually employed?

14 A Yes, ma'am.

15 Q And you had a job?

16 A Yes, ma'am.

17 Q And you mentioned that your girlfriend also had a  
18 job; right?

19 A Yes, ma'am.

20 Q She was working for Amazon?

21 A Yes, ma'am.

22 Q And so you two it sort of sounds like were working  
23 opposite shifts?

24 A Yeah. At the time, yes, ma'am.

25 Q Okay. So you weren't working at the same time. You

1 were working at different times?

2 A Yes, ma'am.

3 Q Fair to say then that you would often wait for her to  
4 come home from work?

5 A Well, whatever days I wasn't at work, yes, ma'am.

6 Q And while you're at the house, you're trying to be,  
7 you know, somebody who's cleaning up the house, taking out the  
8 trash, walking the dog, those kinds of things?

9 A Pretty much, yes, ma'am.

10 Q Minding your own business mostly?

11 A Yes, ma'am.

12 Q And your testimony today is that you and Mr. Johnson  
13 met each other in that same apartment complex?

14 A Yes, ma'am.

15 Q And you actually first noticed him in September?

16 A No. I noticed him in July when I first moved in, but  
17 I didn't start interacting with him on a regular until  
18 September.

19 Q So let me rephrase. You had seen Mr. Johnson in the  
20 apartment complex sort of on your way to the gym or to take out  
21 the trash or walk your dog you'd see him?

22 A Yes, ma'am.

23 Q And you just kind of say, you know, hey, what's up,  
24 and keep kind of going about your business?

25 A Yes, ma'am.

1           Q     But then in September, he starts up a conversation  
2 with you. The two of you have a friendly conversation, and  
3 eventually you start to sort of hang out with him and smoke  
4 weed?

5           A     Not really hang out, but we would link up and smoke  
6 weed, and that was pretty much as far as our association went  
7 to be honest with you.

8           Q     You smoked weed with him more than once?

9           A     Yes, ma'am.

10          Q     You smoked weed with more than twice?

11          A     Yes, ma'am.

12          Q     You smoked weed with him maybe more than 10 times?

13          A     I honestly wouldn't even say 10 times to be honest  
14 with you.

15          Q     And you would often meet up with him and sit in his  
16 car?

17          A     Yes, ma'am.

18          Q     And you actually had his phone number?

19          A     Yes, ma'am.

20          Q     And he had your phone number?

21          A     Yes, ma'am.

22          Q     And the two of you would often talk with one another;  
23 right?

24          A     Yes, ma'am.

25          Q     You did not consider Mr. Johnson a friend?

1           A     I don't.

2           Q     You wouldn't even call him an acquaintance?

3           A     I will call him an acquaintance. I mean, he's an  
4 associate, but not a friend.

5           Q     So your testimony today is that he's an associate,  
6 not a friend?

7           A     It depends on what you are terming a -- are saying an  
8 associate is. I mean, I've never hung out with him outside of  
9 the apartment complex, never clubbed with him or anything like  
10 that. I mean --

11          Q     But your testimony is that he -- you just said he's  
12 an associate.

13          A     Absolutely.

14          Q     Somebody you associate with?

15          A     I mean, we converse.

16          Q     Fair to say?

17          A     We text message.

18          Q     So you guys text message --

19          A     And smoke.

20          Q     -- not that often?

21          A     Not that often.

22          Q     Not that often.

23          A     No, ma'am.

24          Q     You talked to him not only about sports betting and  
25 things like that. Did you ever talk to him about your past?

1 A Yeah, about life. Yes, ma'am.

2 Q Okay. And, Mr. Marks, you have -- you actually have  
3 four felony convictions; is that correct, from two cases?

4 A Yes, ma'am.

5 Q Okay. And I think Mr. Matsuda had talked to you  
6 about those two cases, four felony convictions; is that right?

7 A Yes, ma'am.

8 Q Okay. Did you talk to Mr. Johnson about both of  
9 those cases?

10 A Well, those cases pretty much kind of coincided. So,  
11 yes, ma'am.

12 Q Now, you mentioned that your last time you remember  
13 having your phone, the last contact that you had with Mr.-- or  
14 with Mr. Johnson was on the 26th of October?

15 A Yes, ma'am.

16 Q And you especially remember that date; right?

17 A I do.

18 Q That was going to be the weekend where your  
19 girlfriend was going to go to California and get her kids and  
20 come back to live with you and her in the apartment complex?

21 A That is the weekend she drove to California, yes,  
22 ma'am.

23 Q And so that weekend in particular sticks out in your  
24 mind?

25 A Yes, ma'am.

1 Q And it was less than a year ago; fair to say?

2 A Yes, ma'am.

3 Q So you still very specifically remember that date?

4 A I remember it enough, yes, ma'am.

5 Q And your testimony today is that you see Mr. Johnson.

6 You get into his car. The two of you smoke weed. You then --

7 Is that a yes?

8 A Yes, ma'am.

9 Q Okay. You then leave his car, and you actually see  
10 your girlfriend on her way to California?

11 A I actually go to the gym, and I work out for a  
12 roughly 20, 30 minutes. She was --

13 Q Okay. So you first work out. Then you see your  
14 girlfriend?

15 A Yes, ma'am.

16 Q And that's in the parking lot?

17 A Yes, ma'am.

18 Q And her car, she's in her car?

19 A Yes, ma'am.

20 Q And when you talk to her, you mentioned to her that  
21 you can't find your phone?

22 A Yes, ma'am. She said she had text me, and I said I  
23 didn't receive it. That's when I noticed, hey, where's my  
24 phone, and I went in the gym and looked for it. Yes, ma'am.

25 Q So at some point between you getting into

1 Mr. Johnson's car and you seeing your girlfriend in the parking  
2 lot, you actually cannot find your phone; you have misplaced  
3 it?

4 A Pretty much, yes, ma'am.

5 Q And your conversation, your agreement with her is  
6 well, it's got to be around here somewhere; right?

7 A Yes, ma'am.

8 Q And you'll probably find it in the gym or in  
9 Mr. Johnson's car or somewhere; right?

10 A Or at home, yes, ma'am.

11 Q Because you had it?

12 A Yes, ma'am.

13 Q And then you didn't have it. We've all misplaced  
14 cell phones from time to time?

15 A Yes, ma'am.

16 Q And so you tell her, don't worry about it. And you  
17 tell her go ahead and go for the weekend. When you get back,  
18 if I still can't find it, then we'll just report it as, you  
19 know, being missing or stolen, whatever. I'll get a new cell  
20 phone; right?

21 A Yes, ma'am.

22 Q And so you were going to wait the whole weekend for  
23 that?

24 A Pretty much. I was waiting on her to get back from  
25 California. Yes, ma'am.

1 Q Her plan was to be back Monday?

2 A Yes, ma'am.

3 Q Okay. And you mentioned that she had texted you, and  
4 you told her that you actually didn't receive that text  
5 message. That's what alerted you to your phone?

6 A Yes, ma'am.

7 Q Okay. So she knew you didn't have a cell phone?

8 A She knew that -- she knew I had a phone, but she was  
9 texting me right before she left to California.

10 Q Right. When she left to go to California, you told  
11 her the cell phone was misplaced, stolen, you didn't have it?

12 A Yes, ma'am.

13 Q She knew you didn't have it in your possession?

14 A Yes, ma'am.

15 Q And presumably you told her, hey, I'll let you know.  
16 I'll text you or call you if I find it?

17 A Yes, ma'am.

18 Q And that's how you were going to let her know you  
19 found the cell phone?

20 A Yes, ma'am.

21 Q At the time you were working at you mentioned a temp  
22 agency that -- and what were the hours that you were working  
23 again?

24 A 3:00 p.m. to 12:00 a.m. but I would do overtime.

25 Q 3:00 p.m.?



1 A So it would be 2:00 a.m.

2 Q So 3:00 p.m. to 12:00 a.m. to 2:00 a.m. is when you  
3 would be working?

4 A Yes, ma'am.

5 Q Okay. And that was how many days a week?

6 A It was Monday through Thursday, and I was off Friday  
7 through Sunday.

8 Q Okay. So Monday through Thursday you were working  
9 3:00 p.m. until 2:00 a.m. That's where you would be?

10 A Yes, ma'am.

11 Q And so presumably the 29th, which is that Monday?

12 A Yes, ma'am.

13 Q Same Monday that your girlfriend was going to come  
14 back from California?

15 A Yes, ma'am.

16 Q You would have been at work that day?

17 A I didn't go to work. I went to go check in the kids.  
18 I went to go check the kids in school that day. That specific  
19 day. We both took off work to go check the kids in school, buy  
20 them uniforms and things of that nature, school supplies.

21 Q So you were, in fact, not at work that day?

22 A I was not at work on Monday.

23 Q Now, you also mentioned that this was your ordinary  
24 shift from 3:00 p.m. to 12:00 a.m. Mr. Marks, you mentioned  
25 that you had -- you had at this point you had come out of

1 prison. You were on parole?

2 A Yes, ma'am.

3 Q You had a curfew on that parole; isn't that right?

4 A Yes, ma'am.

5 Q And your curfew was that you were to be at home  
6 between the hours of 6:00 a.m. to 10:00 p.m. isn't that  
7 correct?

8 A Yes, ma'am. Up until I got this job, yes, ma'am.

9 Q Okay. So your testimony today is that there was a  
10 big exception made for you to be at work from 3:00 p.m. until  
11 2:00 a.m., sometimes 12:00 p.m., despite the fact that you had  
12 a curfew?

13 A Yes, ma'am --

14 Q Okay.

15 A -- they actually took the curfew off --

16 Q So at this point time --

17 A -- because I had this job.

18 Q So at this point in time you didn't have a curfew?

19 A I didn't have a curfew, no, ma'am.

20 Q Okay. So that's what your testimony is today --

21 A Yes, ma'am.

22 Q -- that you didn't have a curfew?

23 Now, Mr. Marks, you mentioned that you, in fact,  
24 didn't lock your cell phone. You took that off of your cell  
25 phone?

1 A Yes, ma'am.

2 Q You disabled that function?

3 A Yes, ma'am.

4 Q So anybody could get into your cell phone?

5 A Yes, ma'am. In particular my girlfriend, but yes,  
6 ma'am.

7 Q And in particular your girlfriend. You didn't give  
8 her the pass code or tell her how she could access it. You  
9 just took that off entirely?

10 A I just took it off.

11 Q Take your phone to work when you go to work?

12 A Yes, ma'am.

13 Q You're allowed to have your phone with you on the  
14 job?

15 A Back pocket.

16 Q Okay. So you always keep it with you, and there's no  
17 pass code on it. So you kind of keep a tight hold on that cell  
18 phone?

19 A Yes, ma'am.

20 Q Fair to say?

21 A Yes, ma'am.

22 Q You wouldn't want that to get into the wrong hands?

23 A Yes, ma'am.

24 Q You wouldn't want somebody to pick that up and just  
25 open up your cell phone?

1 A Pretty much, yes, ma'am.

2 Q They would have a lot of access to your personal  
3 information?

4 A Yes, ma'am.

5 Q Okay. Now, Mr. Marks, do you remember interviewing  
6 with detectives on November 15th of 2018?

7 A Absolutely.

8 Q And you actually interviewed with Detective Miller  
9 who testified earlier?

10 A Yes, ma'am.

11 Q When you interview with Detective Miller, he did  
12 advise you that that interview was, in fact, recorded?

13 A Yes, ma'am.

14 Q And you agreed to speak with him?

15 A Yes, ma'am.

16 Q He read you your Miranda rights?

17 A Yes, ma'am.

18 Q And you said that yes, you would like to speak with  
19 him?

20 A Yes, ma'am.

21 Q And when Mr. Miller spoke with you, he actually asked  
22 you about this robbery that we've heard so much about?

23 A Yes, ma'am. He did accuse me of committing this  
24 crime.

25 Q Now, at that point in time, you didn't know anything

1 about the robbery?

2 A No, ma'am.

3 Q You didn't have anything to do with it?

4 A No, ma'am.

5 Q And that's in fact what you told Detective Miller?

6 A Yes, ma'am.

7 Q And when Detective Miller told you that he believed  
8 that you were involved, you denied that?

9 A Yes, ma'am.

10 Q You said you were absolutely not involved in this  
11 robbery?

12 A Yes, ma'am.

13 Q You wouldn't be doing that kind of thing?

14 A Yes, ma'am.

15 Q Okay. And you indicated to him that one of the  
16 reasons why was because you had lost your cell phone?

17 A Yes, ma'am.

18 Q And you also told him that you didn't -- you didn't  
19 have it. He reported it stolen; right?

20 A Yes, ma'am.

21 Q And that had been on the 29th of October?

22 A Yes, ma'am.

23 Q And you reported it stolen to Verizon?

24 A Yes, ma'am.

25 Q You did not report it stolen to the police?

1 A I did not.

2 Q And that was because you had a \$200 deductible. You  
3 might as well pay the deductible, plus maybe you misplaced your  
4 phone?

5 A Yes, ma'am.

6 Q So maybe it's just misplaced. In either case, you  
7 were going to pay the deductible?

8 A Yes, ma'am.

9 Q When you talked with Detective Miller, he actually  
10 asked you about your girlfriend; isn't that right?

11 A Yes, ma'am.

12 Q And you told him your girlfriend is Destiny Vincent?

13 A Destiny Dixon.

14 Q Sorry. Destiny Dixon. And he asked you what the  
15 phone number was for Ms. Dixon?

16 A Yes, ma'am.

17 Q And you gave him that phone number?

18 A Yes, ma'am.

19 Q That phone number was (951)489-2160?

20 A Yes, ma'am.

21 Q That's the number you always used to contact Destiny?

22 A Yes, ma'am.

23 Q You would text Destiny. You would call her. That's  
24 how the two of you would communicate?

25 A Yes, ma'am.

1 Q And that was how you primarily got in contact with  
2 her on a regular basis?

3 A Yes, ma'am.

4 Q Fair to say that if we looked back at those cell  
5 phone records we've been talking about you have a fair amount  
6 of contacts with that 951 number?

7 A Well, the records you guys have, I wasn't in  
8 possession of my phone. So.

9 Q Right. Right. Right. So you at this point didn't  
10 have the records?

11 A No, ma'am.

12 Q When you talked to Detective Miller, you weren't  
13 looking at phone records?

14 A No, ma'am.

15 Q You hadn't sat through testimony from individuals  
16 from the phone company?

17 A No, ma'am.

18 Q You hadn't sat through testimony from Mr. Basilotta  
19 who we heard from today?

20 A No, ma'am.

21 Q Didn't hear from Detective Miller about those cell  
22 phone records?

23 A No, ma'am.

24 Q In fact, he never mentioned cell phone records during  
25 his interview with you?

1           A     He mentioned that he had cell phone records but not  
2 specifically pertaining to what you're questioning me about.

3     No, ma'am.

4           Q     He did not show you cell phone records?

5           A     No, ma'am.

6           Q     He mentioned that he might have cell phone records?

7           A     Yes, ma'am.

8           Q     He might be able to get cell phone records?

9           A     Yes, ma'am.

10          Q     And that was because when he asked you if you knew  
11 anybody in that apartment complex, you adamantly denied knowing  
12 anyone in that apartment complex?

13          A     Yes, ma'am.

14          Q     You said you have no friends in that apartment  
15 complex?

16          A     Yes, ma'am.

17          Q     You don't know anybody in that apartment complex.

18          A     Yes, ma'am.

19          Q     You just moved in there?

20          A     Yes, ma'am.

21          Q     That's what you told him?

22          A     After being accused of committing a crime, yes,  
23 ma'am, I did tell him that.

24          Q     Okay. So you told him you just moved in there?

25          A     Yes, ma'am.



1           Q     You told him you moved into that apartment complex  
2 around June. Do you remember that?

3           A     June or July, yes, ma'am.

4           Q     And you remember telling him you moved in there  
5 around June; right?

6           A     June or July, yes, ma'am.

7           Q     So your testimony -- or your interview with Detective  
8 Miller was recorded; is that correct?

9           A     Yes, ma'am.

10          Q     You had an opportunity to review the transcript of  
11 your interview?

12          A     Yes, ma'am.

13          Q     And so if in this interview you had told Detective  
14 Miller you moved into that apartment complex in June, you  
15 wouldn't have a reason to doubt me?

16          A     No, ma'am.

17          Q     Okay. So if you made no mention of July during your  
18 interview with Detective Miller, that would not be inaccurate?

19          A     If it doesn't reflect that, I'm pretty sure I did,  
20 ma'am. I reviewed it.

21          Q     Okay. You also told him that you don't have any  
22 friends in that apartment complex. I don't even associate with  
23 anybody in the apartment or know anybody in those apartments?

24          A     Yes, ma'am.

25          Q     You told him you didn't know anybody in the

1 apartments?

2 A Yes, ma'am.

3 Q That was what you told Detective Miller?

4 A Yes, ma'am.

5 Q And he again asked you several times, Are you sure?

6 Because I can link you to someone in that apartment complex;

7 isn't that correct?

8 A Yes, ma'am.

9 Q And you told him there was no way that he could link  
10 you to anybody in that apartment complex?

11 A Yes, ma'am, because he made as if --

12 Q And Detective Miller then asked you if you knew  
13 anybody's name in that apartment complex who you would have had  
14 contact with. And your answer to him was, no, you didn't have  
15 contact with anyone in that apartment complex?

16 A Yes, ma'am.

17 Q Even after he told you that there may be some cell  
18 phone records that would link you with someone in that  
19 apartment complex, you continued to admit -- to adamantly deny  
20 that you knew anybody?

21 A I asked him if I could see the phone records.

22 Q You told him that you did not know anybody in that  
23 apartment complex even after he told you he would have some  
24 records that could potentially link you to them because you  
25 told him that you don't associate with anybody that lives in

1 that apartment complex; isn't that correct?

2 A Yes, ma'am.

3 Q And you told him -- you told him on multiple  
4 occasions, I don't associate with nobody at that apartment  
5 complex?

6 A Yes, ma'am.

7 Q No one knows me in that apartment complex?

8 A Yes, ma'am.

9 Q Right? And, in fact, you told Detective Miller you  
10 in fact, after he had asked you multiple times, at least seven  
11 times during the course of that interview when he asked you  
12 repeatedly if you knew anybody at that apartment complex, you  
13 said no?

14 A Well, I'm being accused of a crime. Yes, ma'am.

15 Q Correct?

16 A That I know I did not commit.

17 Q Isn't that correct? You said --

18 A Yes, ma'am.

19 Q -- you didn't know anybody?

20 A Yes, ma'am.

21 Q And, in fact, you then went on to explain that you  
22 wouldn't know anybody because you, in fact, didn't talk to  
23 anybody. You just would go to the trash, go to the gym, walk  
24 your dog, go to work, go home and be with your girlfriend,  
25 point blank, period.

1           A     I explained to him that I do talk to people  
2 throughout that process.

3           Q     So that is correct? You did say that to him?

4           A     I told him that I do talk to people.

5           Q     You then, when he continued to press you about  
6 knowing someone in that apartment complex, you mentioned that  
7 you did occasionally say hello to people while you were walking  
8 in the apartment complex?

9           A     Exactly. Yes, ma'am.

10          Q     Detective Miller then specifically asked you after  
11 that point in time if you knew somebody by the name of  
12 Antwaine --

13          A     And I said I did not know an Antwaine.

14          Q     -- and you -- and you said you didn't know anybody  
15 named Antwaine; isn't that right?

16          A     Yes, ma'am.

17          Q     You adamantly denied knowing anyone named Antwaine?

18          A     I told him that I do not know an Antwaine, yes,  
19 ma'am.

20          Q     You told him that more than once?

21          A     Yes, ma'am.

22          Q     You told him that more than twice?

23          A     Yes, ma'am.

24          Q     You told him that more than three times?

25          A     Yes, ma'am.

1 Q Didn't know anyone who was named Antwaine?

2 A Yes, ma'am.

3 Q When Detective Miller told you that you would've been  
4 in contact with Antwaine, and he would be able to demonstrate  
5 that you had contact with Antwaine, you responded, Who the fuck  
6 is Antwaine? I don't even know an Antwaine?

7 A Yes, ma'am.

8 Q You, in fact, then went on to deny knowing anyone  
9 named Antwaine two more times?

10 A Yes, ma'am.

11 Q Isn't that right?

12 A Correct.

13 Q So even though the detective told you he would be  
14 able to show you you had contact with Antwaine, you denied  
15 that?

16 A Correct.

17 Q And you didn't actually see the records on that day,  
18 did you?

19 A I didn't see the records or who Antwaine was at that  
20 time.

21 Q And when -- when Detective Miller finally showed you  
22 a picture of Antwaine, you mentioned that you did know him?

23 A Yes, ma'am. I knew that face.

24 Q And you would agree with me today that you said you  
25 hung out with Antwaine many times?

1           A     Yes, ma'am. I knew him by the name of Fane  
2     [phonetic].

3           Q     You had -- you had -- now, Detective Miller asked you  
4     about Antwaine. He showed you a picture of him; correct?

5           A     Yes, ma'am.

6           Q     And that's when you tell him, I may have smoked weed  
7     with him once?

8           A     I didn't say once.

9           Q     You mentioned that you didn't --

10          A     I said occasionally.

11          Q     -- associate with Antwaine?

12          A     I did say I don't associate with Antwaine.

13          Q     And you said that you hadn't hung out with him; is  
14     that correct?

15          A     I said that I don't hang out with him extensively.  
16     Yes, ma'am, I did say that.

17          Q     And that you don't contact him a lot?

18          A     Yes, ma'am.

19          Q     You don't associate with him. He's not your friend.  
20     We may smoke weed?

21          A     Yes, ma'am.

22          Q     But you don't contact him a lot?

23          A     I did say that.

24          Q     You just see him in the apartment complex?

25          A     Yes, ma'am.

1 Q And that was after he finally showed you a picture of  
2 Antwaine?

3 A Who I knew as Fane.

4 Q Isn't that correct?

5 A Yes, ma'am.

6 Q Now, earlier we talked a little bit about when you  
7 mentioned that your phone was missing. Your testimony today is  
8 that the 26th of October specifically stands out in your mind  
9 because that was the Friday before your girlfriend went to go  
10 pick up her kids?

11 A Friday before Halloween, yes, ma'am.

12 Q And you would remember that date; correct?

13 A Yes, ma'am.

14 Q When Detective Miller asked you what date you lost  
15 your phone, you were unsure of that date; isn't that right?

16 A Yes, ma'am, at the time I was.

17 Q And this was an interview that took place November  
18 15th of 2018?

19 A I told him it was the 26th or the 27th.

20 Q You told him that you had lost your phone on the  
21 27th?

22 A On the 26th or the 27th.

23 Q You actually gave multiple dates to Detective Miller;  
24 isn't that correct?

25 A The 26th or the 27th, yes, ma'am.

1           Q     You had first told him that you had lost your phone,  
2     and it had been lost on the 27th; isn't that right?

3           A     I told him around the 27th.

4                   MS. CANNIZZARO: Okay. Court's brief indulgence.

5     BY MS. CANNIZZARO:

6           Q     Your testimony today is that you told him it was  
7     around the 27th?

8           A     Yes, ma'am.

9           Q     Okay. So --

10          A     And later on in the interview, I said the 26th or the  
11     27th. I didn't know the exact --

12          Q     Before you get to --

13          A     -- date was Friday.

14          Q     -- that point in the interview, when you were first  
15     asked, Mr. Marks, you said that you had lost your phone on the  
16     27th; is that correct?

17          A     Around the 27th, yes, ma'am.

18          Q     Okay. So you believe that you told him around the  
19     27th?

20          A     I know for a fact I did.

21          Q     Okay. So if you don't recall saying to him, I  
22     haven't had my phone since like the 27th?

23          A     "Since like the 27th," yes, ma'am.

24          Q     Okay. You didn't tell him the 26th?

25          A     Not at that --



1 Q You told him the 27th?

2 A Not at that exact moment, no, ma'am.

3 Q He then asked you what date you reported it stolen;  
4 isn't that right?

5 A Yes, ma'am.

6 Q And your response to him was you reported it stolen  
7 on the 28th of October?

8 A The 28th or the 29th. I told him I didn't know exact  
9 dates, ma'am.

10 Q You told him that you had actually reported it stolen  
11 on the 28th, and the reason for that was because you wanted to  
12 wait until your girlfriend had gotten home from work, and you  
13 wanted to wait one day because you had lost it while she was at  
14 work?

15 A I specifically told Mr. Miller --

16 Q That's --

17 A -- I didn't remember exact dates, but I lost it  
18 around that time, and I was waiting on my girlfriend to get  
19 home to report it stolen if I hadn't found it at that point --

20 Q So your testimony today --

21 A -- yes, ma'am.

22 Q -- is that a few weeks after losing your phone --

23 A Yes, ma'am.

24 Q -- you don't remember the exact dates, and you don't  
25 remember exactly when you talked to your girlfriend?

1 A Yes, ma'am.

2 Q Or exactly what you told her, but today you remember  
3 the exact dates, exactly where your girlfriend was and exactly  
4 what you told her?

5 A Yes, ma'am.

6 Q That's your testimony today?

7 A Upon review of this case, yes, ma'am.

8 Q That was after you've reviewed all the records in  
9 this case?

10 A Yes, ma'am.

11 Q After you sat --

12 A I've done the dates.

13 Q -- through all of the testimony.

14 You told the detectives that when you did lose your  
15 phone you were going to wait just one day before you actually  
16 reported it stolen; isn't that right?

17 A Yes, ma'am.

18 Q Okay. But your testimony today is you we're going to  
19 wait the whole weekend?

20 A I said I lost it on the 26th or the 27th, and I  
21 reported it around the 28th or the 29th. I didn't remember  
22 exact dates at the time. So, yes, ma'am, I did tell him.

23 Q You gave --

24 A -- once I realized it was stolen, then I reported it.  
25 Yes, ma'am.

1 Q You gave multiple dates to Detective Miller; isn't  
2 that correct?

3 A Yes, ma'am.

4 Q And you gave multiple dates to Detective Miller  
5 because when he initially asked you, you said you haven't had  
6 your phone since like the 27th?

7 A Yes, ma'am.

8 Q And that you reported it stolen on the 28th. And  
9 when he starts to tell you that he has phone records that could  
10 link you to someone, you then change your story and tell him  
11 that it might have been the 27th or the 28th, and you can't  
12 remember exactly what day you reported it stolen?

13 A I don't recall changing my story, ma'am.

14 Q Isn't that correct?

15 MS. CANNIZZARO: Court's brief indulgence.

16 BY MS. CANNIZZARO:

17 Q You mentioned today your testimony is that you were  
18 actually employed at the time that this occurred; is that  
19 correct?

20 A Yes, ma'am.

21 Q You remember telling Detective Miller you actually  
22 weren't working at that point in time?

23 A I wasn't working on that day.

24 Q You told Detective Miller that you did have a job,  
25 but then you had left that job, and so you weren't currently

1 working. So you had been at home more often; isn't that  
2 correct?

3 A I told him I had took a couple days off because I had  
4 gotten sick. Yes, ma'am.

5 Q You told him that you actually weren't working  
6 anymore, and that's how come --

7 A I told him I was not working on the 29th.

8 Q When he asked you if you were employed, you told him  
9 that you weren't working anymore?

10 A I told him that I wasn't working at the time because  
11 I had --

12 Q That you did have a job.

13 A -- gotten sick, and he asked me if I was working on  
14 the 29th, and I told him no.

15 Q Now, and you were, in fact, living in that 7075 Gowen  
16 address; is that correct?

17 A Yes, ma'am.

18 Q Now, you actually told Detective Miller that one of  
19 the problems was that your phone was just calling all the  
20 people that you knew, and you found out about it, and that's  
21 how come you reported it stolen?

22 A I did let him know that.

23 Q Isn't that correct?

24 A My phone was contacting my --

25 Q Because --

1 A -- my peoples, quote unquote. That's what I said.

2 Q Because your phone was actually in contact with a  
3 number of individuals who you know?

4 A Yes, ma'am.

5 Q And you had found out about that?

6 A Found out after Destiny got home, yes, ma'am.

7 Q And so you decided at that point that you might want  
8 to report it as being missing, and that's when you called  
9 Verizon?

10 A That's when I reported it stolen, yes, ma'am.

11 Q And you did not testify to that today, but you did  
12 tell Detective Miller that, was that you --

13 A Yeah.

14 Q -- in fact, had your phone and were advised that your  
15 phone was still contacting a number of people that you know?

16 A Yes, ma'am. When she got home she --

17 Q It was calling --

18 A -- she let me know.

19 Q It was calling your friends. It was texting your  
20 friends; right?

21 A Yes, ma'am.

22 Q Okay. And you found out about that?

23 A Yes, ma'am.

24 Q Even though you told your friends and family that  
25 your phone had been stolen?

1           A     I told them afterwards, yes, ma'am.

2           Q     Your conversation with Detective Miller was that you  
3 had told people your phone was stolen, but the phone was still  
4 having contact with all these people that you knew?

5           A     I never told him when I got in contact with my people  
6 to let them know I changed my number, but I did let them know  
7 that -- I contacted my people and told them don't call that  
8 number anymore. Yes, ma'am. Because I changed my number due  
9 to that fact.

10          Q     So you don't remember telling Detective Miller that  
11 you told people don't call that number. My phone has been  
12 reported stolen, but people were still calling it, and that's  
13 how come you reported it stolen?

14          A     No. I didn't say that's why I reported it stolen. I  
15 said that -- I let people know my phone was missing. Some of  
16 the people were still contacting that number because when they  
17 finally got in contact with me they said, hey, I been calling  
18 your phone. What's wrong. I said, look, I changed my number.  
19 Don't call that number anymore.

20          Q     So today your testimony is that you actually didn't  
21 find out that your phone was still being used to contact people  
22 until after you made the decision to report it stolen?

23          A     When Destiny got home.

24                MS. CANNIZZARO: Court's brief indulgence.

25                I have no further questions, Your Honor, and I pass

1 the witness.

2 THE COURT: Thank you.

3 Redirect?

4 REDIRECT EXAMINATION

5 BY MR. MATSUDA:

6 Q Mr. Marks, what's your definition of an associate?

7 A Hanging out, going to club.

8 Q Okay. What's your definition of a friend?

9 A Somebody that you've been knowing for years and that  
10 you trust.

11 Q Okay. And then you just got out of prison?

12 A Yes, sir.

13 Q If some detective is asking you if you know someone  
14 in your apartment complex, what are you going to say?

15 A When he was accusing me of the crime, I said no. I  
16 didn't -- no.

17 Q Why? Why? Why? Why do you do that?

18 A Because initially he didn't come to mind to be honest  
19 with you.

20 Q Okay. And the State was asking you if you knew this  
21 Antwaine, Antwaine, Antwaine. What did you know him by?

22 A I knew him by Fane.

23 Q Okay. Now, is that common in the apartment complex  
24 where you were living?

25 A Yes, sir.

1 Q Do you know people's names?

2 A No, sir. I knew his nickname.

3 Q Okay. And his nickname was?

4 A Fane.

5 Q Okay. So you didn't know him by Antwaine?

6 A No, sir.

7 Q Until the detective showed you a picture.

8 A Yes, sir.

9 Q You said I know that dude.

10 A Yes, sir.

11 Q I don't know him by Antwaine, but I know him?

12 A Yes, sir.

13 Q Okay. Now, the State wants to -- or the State was  
14 asking you that you didn't know the exact times or date that  
15 you lost your phone --

16 A Yes, sir.

17 Q -- is that correct?

18 A Yes, sir.

19 Q Do you know the exact time and date you lost your  
20 phone?

21 A I don't know the exact time. I know it was the  
22 Friday before Halloween.

23 Q Okay.

24 A Which is the 26th.

25 Q And when you say it, Like 27, does it mean exactly



1 that date I lost it?

2 A No, sir.

3 Q Okay. And when you lose something, do you  
4 automatically call or -- what was your thought process? Let me  
5 ask you that. If you lost something, why didn't you just  
6 disconnect it right away?

7 A Like I said, I was actually at home when she got  
8 home. I helped her get her stuff out of the car, carried it  
9 upstairs. I talked to her for, like, 10, 15 minutes. Went  
10 downstairs. Smoked with Antwaine. Then I went to the gym, all  
11 within that time. I don't know where I put my phone. So  
12 initially I'm thinking, hey, I could have misplaced it. I  
13 could have left it in the house. I could have dropped in his  
14 car, and I can get it back. I could have dropped it in her  
15 car, helping her get her stuff out of the car. So I didn't  
16 know exactly where I left it. So I didn't want to just jump  
17 to, hey, I'm going to report it stolen immediately because then  
18 I might turn around and find it the very next day in my  
19 apartment, or he might bring it to me, or it might be in her  
20 car when she gets back.

21 Q Okay. So that's why you didn't automatically, once  
22 you couldn't find it, you didn't automatically disconnect it?

23 A Yes, sir.

24 Q But ultimately did you disconnect it?

25 A Yes, sir.

1 Q And what date was that?

2 A October 29th, that morning that she arrived back  
3 home.

4 Q Okay. So this detective is asking you questions; you  
5 remember that interview?

6 A Yes, sir.

7 Q And you tell him that you moved into that apartment  
8 complex June or July?

9 A Yes, sir.

10 Q You did say that; correct?

11 A Yes, sir.

12 Q You didn't say I moved in June? You didn't say I  
13 moved in July?

14 A I said June or July.

15 Q Okay. Now, how do you remember it was June or July?

16 A That's when she actually moved to Vegas. I actually  
17 paroled to a halfway house for two months. Then I went to my  
18 sister's house, and then she moved out June or July. It was  
19 somewhere in between that time. I just know that's when she  
20 actually moved to Vegas. That's when her job got transferred  
21 out here.

22 Q And when -- I want to get back to this associate,  
23 friend thing because what is your definition of an associate?

24 A Actually like -- mines would be, you know, like  
25 hanging out. You know, we go kick it. We play basketball. We

1 spend time together.

2 Q Okay. And what is your definition of a friend?

3 A A friend is somebody that you trust that you've been  
4 knowing for years, you would let into your house. You know,  
5 you would do family things with them, go out with them. You  
6 know, you know each other's families, stuff like that.

7 Q Okay. And the whole time the detective is talking to  
8 you, he keeps on referring to this guy by the name of Antwaine;  
9 correct?

10 A Yes, sir.

11 Q Does he ever say the name Fane?

12 A No, sir.

13 Q Okay. When you were speaking to Detective Miller,  
14 did you ever change your story?

15 A No, sir.

16 Q Okay. And why is that?

17 A I was just telling the truth.

18 Q Okay. And the truth is what? About you and Antwaine  
19 or Fane?

20 A I met him in my apartment complex. We smoked  
21 occasionally together. I've contacted him via text message,  
22 and we've had conversations about life, things of that nature,  
23 and that's pretty much it.

24 MR. MATSUDA: Court's indulgence.

25 / / /

1 BY MR. MATSUDA:

2 Q So going back to this interview with the detective,  
3 Detective Miller, when he started the interview with you, did  
4 you know it was recorded?

5 A Yes, sir.

6 Q Okay. And he started asking you about a crime?

7 A Yes, sir.

8 Q Okay. And you answered what you knew about the days  
9 in question?

10 A Yes, sir.

11 Q Okay. Did you ever change your dates more than a  
12 couple days from what he was asking?

13 A No, sir.

14 Q Okay. Did you ever substantially change and say no,  
15 I was in California?

16 A No, sir.

17 Q I was in Arizona?

18 A No, sir.

19 Q Okay. So when the State's asking you why were you  
20 off a day, why were you off a day?

21 A I didn't know exactly what day Friday was. I would  
22 have had to look at a calendar and actually tell you, hey,  
23 okay, the 26th was Friday at that time. I didn't know what  
24 date was Friday. So that's why I said the 26th or the 27th. I  
25 just knew it was some time before Halloween that weekend.

1 Q Okay. So he's in your face asking you about a crime?

2 A Yes, sir.

3 Q He's given you dates?

4 A Yes, sir.

5 Q But he's not giving you days of the week?

6 A Yes, sir.

7 Q Okay. So to the best of your recollection, because  
8 you don't have a calendar in front of you?

9 A Yes, sir.

10 Q You were giving him information.

11 A Yes, sir.

12 Q That you can recall off the top of your head?

13 A Yes, sir.

14 Q Okay. And you're within a day or two off?

15 A Yes, sir.

16 MR. MATSUDA: Thank you, Mr. Marks.

17 Nothing further, Your Honor.

18 THE WITNESS: Yes, sir.

19 THE COURT: Recross?

20 MS. CANNIZZARO: Yes, Your Honor.

21 RECROSS-EXAMINATION

22 BY MS. CANNIZZARO:

23 Q Now, Mr. Marks, you've been asked a lot about the  
24 exact time. Today, your testimony has been adamantly that you  
25 remember this exact date because it was the Friday before

1 Halloween?

2 A Yes, ma'am.

3 Q Friday before Halloween sticks out in your mind?

4 A Yes, ma'am.

5 Q You remember it being a Friday.

6 A I remember it being a Friday because --

7 Q You remember it being --

8 A -- that's the day she got off work. Yes, ma'am.

9 Q You remember it being the Friday before Halloween?

10 A Yes, ma'am.

11 Q You never once mentioned Friday before Halloween to  
12 Detective Miller, did you?

13 A No, ma'am.

14 Q You never once told him you couldn't remember the  
15 exact date, but it was for sure the Friday before Halloween;  
16 isn't that right?

17 A I didn't tell him it was the Friday before Halloween.

18 Q You never mentioned that to him?

19 A No. I just said --

20 Q Ever?

21 A -- the 26th or -7th.

22 Q You just kept rattling off different dates. And your  
23 testimony today is because you didn't remember the exact date,  
24 but you specifically remember it being the Friday before  
25 Halloween; isn't that right?

1           A     Yes, ma'am.

2           Q     Now, your testimony today, and you were just asked on  
3 redirect, that you waited to -- sorry. Let me ask you a  
4 different question.

5                     You mentioned that Mr. Johnson didn't come to your  
6 mind because he wasn't a friend; is that correct?

7           A     Yes, ma'am.

8           Q     He's not somebody you would characterize as a friend.  
9 And you've given us a definition of something that you would  
10 call associating with people, an associate and somebody who you  
11 call a friend?

12          A     Yes, ma'am.

13          Q     That's correct?

14                     You remember Detective Miller asking you if you knew  
15 him after he showed you a photo?

16          A     Yes, ma'am.

17          Q     And you said that you don't know -- you don't know an  
18 Antwaine. I don't associate with anybody. Associating is  
19 hanging out with people; right?

20          A     Yeah. Yes, ma'am.

21          Q     And that's how you defined it for Detective Miller?

22          A     Yes, ma'am.

23          Q     Was that you were hanging out with people, and after  
24 he showed you the photo, you said that Mr. Johnson was not an  
25 associate with you?

1           A     Yes, ma'am.

2           Q     He would not fall within your definition that day of  
3 associating?

4           A     Yes, ma'am.

5           Q     Today your testimony is that you wouldn't call him a  
6 friend, but you would call him an associate?

7           A     Yes, ma'am.

8           Q     And you would call him an associate because you would  
9 hang out with him from time to time?

10          A     Because we smoked weed together.

11          Q     And someone who is an associate then would be someone  
12 who you have contacted before your phone was stolen thousands  
13 of times?

14          A     A thousand times, yes, ma'am. I didn't know the  
15 exact count --

16                MS. CANNIZZARO: I have no -- I have no further  
17 questions for this witness.

18                THE WITNESS: Yes, ma'am.

19                THE COURT: All right. Any questions from the jury?  
20 I see no hands.

21                You may rejoin your counsel.

22                THE WITNESS: Yes, ma'am. Thank you.

23                THE COURT: Counsel, approach.

24                (Conference at the bench not recorded.)

25                THE COURT: All right. So, Mr. Matsuda, do you have



1 any other witnesses to call?

2 MR. MATSUDA: None, Your Honor. The defense rests.

3 THE COURT: All right. The defense has rested its  
4 case. I discussed scheduling with the lawyers. The State is  
5 putting on a rebuttal case.

6 Is that correct?

7 MS. MOORS: Yes, Your Honor.

8 THE COURT: Okay. So I'm going to have the jury  
9 return at 9:00 a.m. tomorrow to finish the rebuttal case. From  
10 there we'll go in to instructing you on the law, and then  
11 you'll hear the final arguments of counsel, and then you'll  
12 begin your deliberations. So please be prompt at 9:00 because  
13 that's when we'll be ready to go. I don't have any drug court  
14 tomorrow. So we can start early.

15 We will -- like I say, be commencing at 9:00 a.m.

16 And so, ladies and gentlemen, we're going to take an  
17 overnight recess. And during this recess, it is your duty not  
18 to converse among yourselves or with anyone else on any subject  
19 connected with the trial; or to read, watch or listen to any  
20 report of or commentary on the trial by any person connected  
21 with the trial, or by any medium of information, including  
22 without limitation, newspaper, television, radio or Internet.  
23 You are not to form or express an opinion on any subject  
24 connected with this case until it's finally submitted to you.

25 And, of course, no research, experiments, you know,

1 looking up things in encyclopedias -- who has an encyclopedia  
2 anymore -- on your smart phones, et cetera.

3 And I'll see you tomorrow morning.

4 (Jury recessed at 5:19 p.m.)

5 THE COURT: And the record will reflect that the jury  
6 has departed the courtroom.

7 Now, I know you didn't offer the certified copies of  
8 the convictions. Did you want to have them marked as court  
9 exhibits?

10 MS. CANNIZZARO: Yes, Your Honor.

11 THE COURT: Okay. We'll mark those as court exhibits  
12 next in order.

13 And then we've agreed that you'll meet me in chambers  
14 at 8:00 o'clock, and we can get the jury instructions settled.

15 Do you think it's possible, Officer, to have  
16 Mr. Marks here by like a quarter to 9:00?

17 CORRECTION OFFICER: Absolutely.

18 THE COURT: All right. So in case we need to put the  
19 instructions on the record he'll be present, and we can go  
20 ahead and do that at that time.

21 CORRECTION OFFICER: Yes, Your Honor.

22 / / /

23 / / /

24 / / /

25 / / /

1 THE COURT: Great. All right. Court is in recess.  
2 I'll see you tomorrow in chambers at 8:00, and then we'll  
3 commence at 9:00.

4 MS. MOORS: Thank you.

5 THE COURT: Thank you.

6 (Proceedings recessed at 5:20 p.m.)

7 -oOo-

8 ATTEST: I do hereby certify that I have truly and correctly  
9 transcribed the audio/video proceedings in the above-entitled  
10 case.

11   
12

13 Dana L. Williams  
14 Transcriber  
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BY MR. MATSUDA: [4] 78/15 86/2 129/5 134/1 BY MS. CANNIZZARO: [20] 5/22 27/19 29/6 31/10 41/1 44/14 45/10 47/17 51/4 52/10 54/11 71/23 73/9 73/18 74/16 76/21 97/17 122/5 125/16 135/22 CORRECTION OFFICER: [1] 140/21 MR. MATSUDA: [12] 4/18 52/3 73/6 78/10 78/12 79/23 84/24 85/15 97/12 133/24 135/16 139/2 MS. CANNIZZARO: [34] 5/8 5/20 29/3 29/10 29/13 31/5 31/8 44/9 44/12 45/5 45/8 47/14 51/1 51/25 52/6 52/25 54/6 54/9 71/20 73/3 73/15 74/12 74/15 76/20 78/7 80/1 80/6 80/10 122/4 125/15 128/24 135/20 138/16 140/10 MS. MOORS: [12] 3/10 4/2 4/20 37/18 37/22 38/2 38/9 80/14 80/19 84/8 139/7 141/4 THE CLERK: [3] 5/13 80/18 85/22 THE COURT: [69] 3/4 3/25 4/8 4/19 4/21 4/23 5/18 27/4 27/8 27/10 27/14 29/5 29/12 31/7 44/11 45/7 47/16 51/3 52/2 52/4 52/8 53/4 53/8 53/24 54/8 71/22 73/5 73/7 73/17 74/14 78/9 78/11 79/25 80/2 80/9 80/12 80/21 80/25 81/15 81/22 82/2 82/12 83/2 83/6 83/8 83/11 83/14 83/20 83/22 84/4 84/7 84/22 85/1 85/4 85/8 85/17 97/15 129/2 135/19 138/19 138/23 138/25 139/3 139/8 140/5 140/11 140/18 141/1 141/5 THE DEFENDANT: [13] 81/21 82/1 82/11 83/1 83/5 83/7 83/10 83/13 83/19 83/21 84/3 84/6 85/2 THE WITNESS: [15] 5/15 27/6 27/9 27/18 37/19 37/23 38/3 38/10 40/19 80/5 85/24 97/14 135/18 138/18 138/22 UNIDENTIFIED SPEAKER: [1] 53/7 \$ \$200 [1] 112/2	'80s [1] 17/8 - -7th [1] 136/21 -86 [1] 75/4 -oOo [1] 141/7 . .55 [1] 68/21 .55 miles [1] 68/21 0 0 miles [1] 64/24 1 1 in [2] 43/23 43/25 10 [11] 18/14 20/14 20/20 32/20 34/1 70/15 70/15 83/11 101/12 101/13 131/9 10 in [1] 32/18 10/26 [2] 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50/18 55/11 57/15 59/22 66/10 67/17 70/2 70/17 73/13 74/9 74/25 75/5 76/10 76/12 105/13 110/22 113/5 133/22 140/13</p> <p><b>weapon</b> [4] 84/11 84/16 86/11 86/15</p> <p><b>web</b> [1] 49/19</p> <p><b>web-based</b> [1] 49/19</p> <p><b>website</b> [1] 49/19</p> <p><b>weed</b> [9] 101/4 101/6 101/8 101/10 101/12 104/6 120/6 120/20 138/10</p> <p><b>week</b> [4] 21/8 89/14 107/5 135/5</p> <p><b>weekend</b> [9] 92/20 94/19 103/18 103/21 103/23 105/17 105/22 124/19 134/25</p> <p><b>weeks</b> [1] 123/22</p> <p><b>well</b> [40] 4/25 6/25 8/13 10/24 15/2 22/22 23/4 24/24 25/20 32/11 45/12 45/14 47/18 48/3 49/15 68/9 68/16 70/2 71/7 74/23 75/15 77/1 77/13 79/1 81/23 84/11 84/15 85/10 86/4 88/14 90/4 91/16 93/2 97/5 100/5 103/10 105/6 112/3 113/7 117/14</p> <p><b>went</b> [15] 3/13 91/19 92/3 94/8 95/1 101/6 104/24 107/17 107/18 117/21 119/8 121/9 131/9 131/10 132/17</p> <p><b>were</b> [98] 15/2 21/6 21/7 27/20 27/24 28/23 29/7 29/24 30/10 30/13 30/19 30/21 30/22 31/2 31/21 35/18 46/9 47/9 48/2 48/15 50/20 50/23 51/18 51/19 51/22 52/11 54/12 54/13 57/2 57/4 57/8 57/9 57/16 57/25 63/16 64/8 68/24 69/14 71/6 71/7 71/9 71/13 71/24 72/11 76/15 77/19 79/6 81/1 81/18 87/1 87/11 89/15 89/18 89/24 90/18 90/19 90/20 92/6 94/14 97/1 97/4 98/3 98/4 98/8 99/4 99/5 99/13 99/22 100/1 105/22 106/18 106/21 106/22 106/22 107/8 107/21 108/1 108/5 111/8 111/10 112/7 118/7 121/15 122/14 124/15 125/17 126/8 126/15 127/14 128/12 128/16 129/24 133/13 134/19</p>	<p>134/20 135/10 137/2 137/23</p> <p><b>weren't</b> [7] 30/17 99/25 113/12 125/22 125/25 126/5 126/9</p> <p><b>west</b> [10] 26/3 57/16 57/21 64/4 65/6 66/11 67/18 68/22 68/25 69/23</p> <p><b>what</b> [136] 6/7 6/9 6/14 7/8 8/17 8/24 10/7 12/24 13/14 13/20 15/6 19/1 19/4 19/21 21/5 21/18 21/18 24/9 24/16 26/7 26/17 26/23 29/13 30/24 31/16 32/10 32/11 33/22 34/3 34/9 34/20 34/23 35/5 35/11 36/1 36/1 36/6 36/6 37/14 39/5 39/11 41/5 41/15 41/19 42/15 42/19 43/11 44/18 45/14 45/25 46/6 46/11 46/20 47/4 47/6 47/11 48/3 48/6 49/14 49/17 49/24 51/5 52/16 54/13 54/20 55/19 56/25 58/2 58/10 58/16 58/19 59/24 60/3 61/10 63/21 64/10 65/11 65/21 66/12 66/16 70/18 71/13 71/15 72/4 72/18 72/22 73/20 74/5 74/17 75/1 75/24 77/2 77/4 82/15 83/17 88/19 88/22 89/13 89/18 90/14 90/15 91/25 92/3 92/5 92/10 92/10 92/13 92/22 95/11 95/19 102/7 106/5 106/22 108/20 111/5 112/14 114/2 114/21 116/3 121/14 123/3 124/2 124/4 125/12 127/1 129/14 129/21 131/4 132/1 132/23 133/2 133/18 134/8 134/12 134/21 134/23</p> <p><b>what's</b> [13] 6/2 8/13 63/12 83/6 87/5 87/5 88/1 88/2 88/3 100/23 128/18 129/6 129/8</p> <p><b>whatever</b> [8] 26/11 28/2 61/23 61/24 63/9 83/15 100/5 105/19</p> <p><b>when</b> [138] 4/5 4/11 7/1 7/5 9/19 11/6 11/23 12/5 12/6 12/20 16/11 16/13 16/25 17/8 18/10 18/15 20/2 20/8 21/12 21/19 22/8 22/16 22/16 23/24 24/15 25/4 25/9 26/7 26/9 27/21 28/10 28/12 28/18 32/9 33/16 33/16 33/17 37/5 37/24 37/24 37/25 38/2 39/2 39/21 45/1 45/18 45/22 47/6 47/8 49/9 50/7 51/18 54/13 56/16</p>
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<p><b>W</b></p> <p><b>when...</b> [84] 57/12 59/1 59/22 59/22 61/13 61/16 61/20 62/2 63/16 64/2 65/4 65/9 66/22 69/3 70/15 73/11 74/7 77/17 77/21 77/23 82/9 83/17 87/4 87/13 87/18 88/1 88/19 89/7 89/11 90/11 90/19 90/20 91/5 92/16 93/19 94/12 95/7 98/3 100/16 104/20 104/23 105/17 106/10 107/2 109/11 110/11 110/21 111/7 112/9 113/12 114/10 117/11 118/5 119/3 119/21 119/21 120/6 121/6 121/14 122/14 123/25 124/14 125/5 125/9 126/8 127/8 127/10 127/16 128/5 128/16 128/23 129/15 130/25 131/3 131/7 131/20 132/16 132/19 132/20 132/22 133/13 134/3 134/19 139/13</p> <p><b>whenever</b> [2] 10/19 91/21</p> <p><b>where</b> [78] 4/9 5/23 9/15 10/5 10/12 10/12 10/17 15/2 15/5 16/14 18/10 18/20 19/9 19/14 19/22 21/6 23/2 27/1 32/14 32/15 33/1 33/2 33/4 33/10 33/25 34/9 34/17 37/5 37/21 38/17 38/19 38/25 40/2 40/3 40/5 40/10 40/14 40/15 42/14 42/18 44/1 44/22 46/3 46/23 47/2 50/14 54/14 55/7 56/6 56/13 56/18 57/7 59/25 60/5 63/8 63/10 63/13 64/8 65/5 68/24 69/9 70/10 79/14 81/17 84/10 87/25 90/25 91/6 92/5 94/13 95/20 96/12 103/18 107/9 124/3 129/24 131/11 131/16</p> <p><b>where's</b> [1] 104/23</p> <p><b>whether</b> [5] 42/9 61/24 82/6 83/4 90/13</p> <p><b>which</b> [50] 10/6 10/11 10/14 12/2 12/17 12/19 13/20 15/16 16/3 18/17 20/4 22/10 26/23 33/5 34/1 34/2 35/23 36/12 36/13 37/3 37/4 37/10 37/11 38/14 38/18 38/22 39/14 40/6 40/7 40/17 41/10 41/11 42/18 47/13 52/12 52/12 54/9 54/24 55/13 55/17 55/22 56/9 56/14 63/5 68/2 70/22 74/24 88/21 107/11 130/24</p> <p><b>while</b> [8] 17/6 22/3</p>	<p>31/8 38/4 65/15 100/6 118/7 123/13</p> <p><b>who</b> [16] 13/9 13/9 41/11 79/20 110/9 113/19 116/13 119/1 119/5 119/19 121/3 127/3 137/10 138/11 138/12 140/1</p> <p><b>who's</b> [1] 100/7</p> <p><b>whole</b> [11] 16/16 24/25 35/10 63/7 63/22 72/24 90/22 94/18 105/22 124/19 133/7</p> <p><b>why</b> [29] 12/9 16/12 17/24 21/12 28/14 32/13 44/5 46/7 55/25 70/23 88/13 91/15 92/6 93/11 96/2 96/2 97/19 111/16 128/14 129/17 129/17 129/17 129/17 131/5 131/21 133/16 134/19 134/20 134/24</p> <p><b>wide</b> [1] 8/22</p> <p><b>widened</b> [1] 55/23</p> <p><b>wider</b> [2] 18/19 37/17</p> <p><b>wild</b> [1] 63/12</p> <p><b>will</b> [31] 3/6 4/24 9/24 10/6 10/17 15/18 15/19 17/18 43/1 44/15 50/13 53/4 53/11 53/25 63/3 65/3 73/7 75/22 81/3 81/15 82/13 83/14 85/5 85/9 94/2 95/20 96/1 96/24 102/3 139/15 140/5</p> <p><b>Williams</b> [1] 141/13</p> <p><b>willing</b> [1] 90/15</p> <p><b>window</b> [2] 25/23 91/19</p> <p><b>winter</b> [1] 24/12</p> <p><b>wiretaps</b> [3] 6/17 7/7 8/6</p> <p><b>withdrawal</b> [1] 4/10</p> <p><b>within</b> [32] 4/24 6/7 6/8 8/11 10/16 10/22 13/14 17/22 18/21 28/2 28/19 28/20 30/21 36/16 42/5 56/2 59/11 59/15 59/20 60/23 61/23 64/3 64/11 66/25 69/2 69/7 73/12 75/12 83/11 131/11 135/14 138/2</p> <p><b>without</b> [6] 5/6 53/17 65/19 81/9 96/6 139/22</p> <p><b>witness</b> [15] 3/11 5/7 5/11 29/10 29/13 54/4 64/8 68/12 78/8 78/11 82/3 85/17 85/20 129/1 138/17</p> <p><b>witnesses</b> [4] 2/3 2/7 75/6 139/1</p> <p><b>won't</b> [3] 28/6 57/10 57/13</p> <p><b>word</b> [1] 26/21</p> <p><b>work</b> [23] 6/4 16/11 90/15 93/25 94/2 94/6 98/12 100/4 100/5 104/11 104/13 107/16 107/17 107/19 107/21</p>	<p>107/22 108/10 109/11 109/11 117/24 123/12 123/14 136/8</p> <p><b>workaround</b> [1] 5/5</p> <p><b>worked</b> [4] 90/23 93/20 93/24 94/8</p> <p><b>working</b> [24] 61/22 89/16 89/19 93/21 97/2 99/4 99/5 99/9 99/20 99/22 99/25 100/1 106/21 106/22 107/3 107/8 125/22 125/23 126/1 126/5 126/7 126/9 126/10 126/13</p> <p><b>works</b> [5] 19/1 19/25 58/5 63/2 93/24</p> <p><b>workups</b> [1] 8/10</p> <p><b>world</b> [1] 12/10</p> <p><b>worry</b> [1] 105/16</p> <p><b>worse</b> [1] 26/2</p> <p><b>worth</b> [2] 48/17 55/1</p> <p><b>would</b> [160]</p> <p><b>would've</b> [1] 119/3</p> <p><b>wouldn't</b> [12] 20/25 20/25 76/24 77/9 101/13 102/2 109/22 109/24 111/13 115/15 117/22 138/5</p> <p><b>writing</b> [1] 82/24</p> <p><b>wrong</b> [2] 109/22 128/18</p> <p><b>Y</b></p> <p><b>yeah</b> [28] 25/14 27/17 28/4 38/3 42/22 50/11 59/17 60/8 61/18 62/13 64/15 65/17 67/10 69/14 75/10 78/12 78/13 91/19 92/13 93/5 95/6 95/16 95/18 96/12 99/24 103/1 127/13 137/20</p> <p><b>year</b> [7] 7/12 8/7 14/17 48/17 90/5 90/6 104/1</p> <p><b>years</b> [10] 6/13 7/3 7/6 19/19 48/13 48/14 83/11 92/4 129/9 133/4</p> <p><b>yellow</b> [1] 66/13</p> <p><b>yes</b> [299]</p> <p><b>you</b> [1008]</p> <p><b>you'd</b> [2] 17/13 100/21</p> <p><b>you'll</b> [7] 4/12 4/16 85/17 105/8 139/11 139/11 140/13</p> <p><b>you're</b> [55] 4/14 12/3 15/6 17/7 17/18 20/19 21/1 22/2 22/2 22/3 22/5 24/15 25/3 25/4 25/10 27/5 28/5 32/17 32/24 39/3 39/11 43/11 43/24 46/19 46/22 47/3 47/7 47/8 50/9 55/7 58/7 58/11 58/15 58/16 60/18 60/22 61/25 63/8 75/13 77/4 77/5 79/12 82/4 82/20 90/8 97/1 98/17 98/17 98/21 98/24 100/6 100/6 109/13 114/2 135/14</p>	<p><b>you've</b> [26] 6/19 8/3 8/12 9/12 15/4 18/10 28/12 35/3 38/12 38/18 41/12 49/10 56/6 56/7 57/3 75/1 75/10 75/12 75/17 77/2 83/16 124/8 129/9 133/3 135/23 137/9</p> <p><b>your</b> [233]</p> <p><b>yourself</b> [2] 89/24 99/10</p> <p><b>yourselves</b> [3] 53/14 81/6 139/18</p> <p><b>YouTube</b> [9] 12/21 13/2 17/16 17/17 21/19 22/12 28/10 28/11 35/2</p> <p><b>Z</b></p> <p><b>zero</b> [6] 17/1 39/2 39/4 46/18 46/23 47/1</p> <p><b>zeros</b> [2] 36/21 37/3</p> <p><b>ZetX</b> [14] 47/12 48/6 48/7 48/24 49/19 50/2 50/3 50/7 50/20 51/8 51/13 54/19 61/17 78/2</p> <p><b>zone</b> [9] 24/16 24/25 46/6 47/7 61/17 61/20 61/21 61/22 61/23</p> <p><b>zones</b> [3] 24/8 48/19 50/4</p> <p><b>zoom</b> [6] 56/17 58/20 65/1 66/6 68/11 69/16</p> <p><b>Zulu</b> [1] 24/10</p>
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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT



JUL 26 2019

BY, *Shannon M. Emons*  
SHANNON M. EMONS, DEPUTY

1 INST

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA, )  
8 Plaintiff, )

9 -vs- )

10 )  
11 DEVOHN MARKS, )  
12 Defendant. )

CASE NO: C-18-337017-2  
DEPT NO: V

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

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

18 You must not be concerned with the wisdom of any rule of law stated in these  
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
20 would be a violation of your oath to base a verdict upon any other view of the law than that  
21 given in the instructions of the Court.  
22  
23  
24  
25  
26  
27  
28

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.



INSTRUCTION NO. 3

A Superseding Indictment 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 Indictment that on or about the 29th day of October, 2018, the Defendant committed the crimes of CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480); ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 200.380, 193.165, 193.167); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165); BATTERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 200.481, 193.167) and BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481), committed at and within the County of Clark, State of Nevada, as follows:

COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

did willfully and unlawfully conspire with each other and an unknown co-conspirator to commit a burglary, by the conspirators committing the acts as set forth in Counts 2 and 4 through 9, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did willfully, unlawfully, and feloniously enter TORREY PINES PUB, owned or occupied by GERALD FERONY and/or SHAYLENE BERNIER and/or MYER GOLDSTEIN and/or KATHLEEN PETCOFF, located at 6374 W. Lake Mead, Clark County, Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining possession of a firearm and/or pneumatic gun, a deadly weapon, during the commission of the crime and/or before leaving the structure, 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 counseling, encouraging, hiring,

1 commanding, inducing and/or otherwise procuring the other to commit the crime, whereby  
2 ANTWAINE KIRBY JOHNSON conspired with DEVOHN MARKS and an unknown co-  
3 conspirator to commit a robbery upon the occupants and/or employees of the TORREY  
4 PINES PUB, thereafter, ANTWAINE KIRBY JOHNSON entered the business with the  
5 intent to aid and abet DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR,  
6 thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entered the  
7 business armed with firearms and/or pneumatic guns to commit the said robbery; and/or (3)  
8 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
9 Defendants acting in concert throughout.

10 COUNT 3 - CONSPIRACY TO COMMIT ROBBERY

11 did willfully, unlawfully, and feloniously conspire with each other and an unknown  
12 co-conspirator to commit a robbery, by the conspirators committing the acts as set forth in  
13 Counts 4 through 9, said acts being incorporated by this reference as though fully set forth  
14 herein.

15 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF  
16 AGE OR OLDER

17 did willfully, unlawfully, and feloniously take personal property, to wit: a wallet and  
18 contents, from the person of GERALD FERONY, who is 60 years of age or older, or in his  
19 presence, by means of force or violence, or fear of injury to, and without the consent and  
20 against the will of GERALD FERONY, with use of a deadly weapon, to wit: a firearm  
21 and/or pneumatic gun, the Defendant being criminally liable under one or more of the  
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or  
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be  
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
25 procuring the other to commit the crime, whereby ANTWAINE KIRBY JOHNSON scoped  
26 the business out and/or opened a locked door to allow DEVOHN MARKS and AN  
27 UNKNOWN CO-CONSPIRATOR entry to the business, thereafter DEVOHN MARKS and  
28 AN UNKNOWN CO-CONSPIRATOR entered said business with firearms and/or

1 pneumatic guns, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR  
2 robbed the said victim of the said property; and/or (3) pursuant to a conspiracy to commit  
3 this crime, with the intent that this crime be committed, Defendants acting in concert  
4 throughout.

5 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

6 did willfully, unlawfully, and feloniously take personal property, to wit: U.S.  
7 Currency, from the person of SHAYLENE BERNIER, or in her presence, by means of force  
8 or violence, or fear of injury to, and without the consent and against the will of SHAYLENE  
9 BERNIER, with use of a deadly weapon, to wit: a firearm and/or pneumatic gun, the  
10 Defendant being criminally liable under one or more of the following principles of criminal  
11 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
12 commission of this crime, with the intent that this crime be committed, by counseling,  
13 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
14 the crime, whereby ANTWAINE KIRBY JOHNSON scoped the business out and/or opened  
15 a locked door to allow DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR  
16 entry to the business, thereafter DEVOHN MARKS and AN UNKNOWN CO-  
17 CONSPIRATOR entered said business with firearms and/or pneumatic guns, thereafter  
18 DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR robbed the said victim of  
19 the said property; and/or (3) pursuant to a conspiracy to commit this crime, with the intent  
20 that this crime be committed, Defendants acting in concert throughout.

21 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

22 did willfully, unlawfully, and feloniously take personal property, to wit: a wallet and  
23 contents, from the person of MYER GOLDSTEIN, or in his presence, by means of force or  
24 violence, or fear of injury to, and without the consent and against the will of MYER  
25 GOLDSTEIN, with use of a deadly weapon, to wit: a firearm and/or pneumatic gun, the  
26 Defendant<sup>e</sup> being criminally liable under one or more of the following principles of  
27 criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or  
28 abetting in the commission of this crime, with the intent that this crime be committed, by

1 counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other  
2 to commit the crime, whereby ANTWAINE KIRBY JOHNSON scoped the business out  
3 and/or opened a locked door to allow DEVOHN MARKS and AN UNKNOWN CO-  
4 CONSPIRATOR entry to the business, thereafter DEVOHN MARKS and AN UNKNOWN  
5 CO-CONSPIRATOR entered said business with firearms and/or pneumatic guns, thereafter  
6 DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR robbed the said victim of  
7 the said property; and/or (3) pursuant to a conspiracy to commit this crime, with the intent  
8 that this crime be committed, Defendants acting in concert throughout.

9 COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF  
10 AGE OR OLDER

11 did willfully, unlawfully, and feloniously use force or violence upon the person of  
12 another, to wit: GERALD FERONY, who is 60 years of age or older, with use of a deadly  
13 weapon, to wit: a firearm and/or pneumatic gun, by a co-conspirator striking the said  
14 GERALD FERONY in the head with said firearm and/or pneumatic gun, the Defendant<sup>E</sup>  
15 being criminally liable under one or more of the following principles of criminal liability, to  
16 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission  
17 of this crime, with the intent that this crime be committed, by counseling, encouraging,  
18 hiring, commanding, inducing and/or otherwise procuring the other to commit the crime,  
19 whereby ANTWAINE KIRBY JOHNSON scoped the business out and/or opened a locked  
20 door to allow DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entry to the  
21 business, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entered  
22 said business with firearms and/or pneumatic guns, thereafter DEVOHN MARKS and AN  
23 UNKNOWN CO-CONSPIRATOR robbed the said victim of the said property, and during  
24 the course of said robbery, DEVOHN MARKS or AN UNKNOWN CO-CONSPIRATOR  
25 struck the said victim with the firearm and/or pneumatic gun; and/or (3) pursuant to a  
26 conspiracy to commit this crime, with the intent that this crime be committed, Defendants  
27 acting in concert throughout.

28 ///

1     COUNT 8 - BATTERY WITH USE OF A DEADLY WEAPON

2             did willfully, unlawfully, and feloniously use force or violence upon the person of  
3 another, to wit: MYER GOLDSTEIN, with use of a deadly weapon, to wit: a firearm and/or  
4 pneumatic gun, by a co-conspirator striking the said MYER GOLDSTEIN in the head with  
5 said firearm, the Defendant being criminally liable under one or more of the following  
6 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by  
7 aiding or abetting in the commission of this crime, with the intent that this crime be  
8 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
9 procuring the other to commit the crime, whereby ANTWAINE KIRBY JOHNSON scoped  
10 the business out and/or opened a locked door to allow DEVOHN MARKS and AN  
11 UNKNOWN CO-CONSPIRATOR entry to the business, thereafter DEVOHN MARKS and  
12 AN UNKNOWN CO-CONSPIRATOR entered said business with firearms and/or  
13 pneumatic guns, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR  
14 robbed the said victim of the said property, and during the course of said robbery, DEVOHN  
15 MARKS or AN UNKNOWN CO-CONSPIRATOR struck the said victim with the firearm  
16 and/or pneumatic gun; and/or (3) pursuant to a conspiracy to commit this crime, with the  
17 intent that this crime be committed, Defendants acting in concert throughout.

INSTRUCTION NO. 4

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

INSTRUCTION NO. 5

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.

INSTRUCTION NO. 6

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.



INSTRUCTION NO. 7

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 a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the reasonably foreseeable 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. Burglary is a specific intent crime. Robbery and Battery are general intent crimes.

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect a defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies. If circumstances and evidence from sources other than the testimony of the accomplice tend on the whole to connect the accused with the crime charged, the accomplice is corroborated.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect a defendant with the commission of the offense.

Evidence showing that a defendant was with an accomplice near the scene of the crime on the morning it was committed, at the time it was committed is not, in and of itself, sufficient evidence to corroborate the testimony of an accomplice. Where the connecting evidence shows no more than an opportunity to commit a crime, simply proves suspicion, or is equally consonant with the reasonable explanation pointing toward innocent conduct on the part of a defendant, the evidence is to be deemed insufficient.

If there is not such independent evidence which tends to connect a defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

Antwaine Johnson is a co-defendant in this case and has testified. His negotiations were explained through testimony whereby he must testify truthfully to receive the benefit of those negotiations. Antwaine Johnson has not been sentenced and the State has not indicated if they believe he has testified truthfully. You may view his testimony and regard the same in the light of possible pressure to which he is subject, which may include his desire to assist the State in obtaining a conviction, and his desire to receive the benefit of his negotiations.

The fact that a witness was given an inducement in exchange for his or her cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

INSTRUCTION NO. 10

Every person who, by day or night, enters any room, or other building, with the intent to commit a felony such as robbery or battery with a deadly weapon therein is guilty of Burglary.

INSTRUCTION NO. 11

It is not necessary that the State prove the defendant actually committed a felony inside the room or building 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 room or building with the intent to commit a felony regardless of whether or not that crime occurred.

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INSTRUCTION NO. 12

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.

INSTRUCTION NO. 13

Robbery is the unlawful taking of personal property from the person of another, or in his or her presence, 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, or the person or property of a member of his or her family, or of anyone in his or her 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.

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. 14

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. It is not necessary to prove actual fear, as the law will presume it in such a case.



INSTRUCTION NO. 15

Battery is the willful and unlawful use of force or violence upon the person of another.

Battery with a deadly weapon is when a battery occurs with use of a deadly weapon.

INSTRUCTION NO. 16

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.

You are instructed that a firearm is a deadly weapon.

You are instructed that if you find the defendant guilty of Burglary, or Robbery, you must also determine whether or not a deadly weapon was used in the commission of these crimes.

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.

You are instructed that if you find the defendant guilty of Robbery or Robbery with a Deadly Weapon with regards to Count 4 and/or Battery with use of a Deadly Weapon with regards to Count 7, you must also determine whether or not the victim of these crimes was 60 years of age or older.

If you find beyond a reasonable doubt that the victim of these crimes was 60 years of age or older, then you shall return the appropriate guilty verdict reflecting "Victim 60 Years of Age or Older".

If, however, you find that the victim of this crime was not 60 years of age or older, but you find that either of these crimes were committed, then you shall return the appropriate guilty verdict reflecting that the victim of either of these crimes was not 60 years of age or older.

INSTRUCTION NO. 19

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.

INSTRUCTION NO. 20

Evidence of other crimes cannot be considered by you for any purpose unless you first find the acts alleged have been proven by plain, clear and convincing evidence.

Evidence that the Defendant committed offenses other than that for which he is on trial, if believed, was not received and may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose of proving the Defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. You must weigh this evidence in the same manner as you do all other evidence in the case.

Evidence that the Defendant was previously convicted of felony crimes may be considered by you for the purpose of weighing his credibility.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each person<sup>e</sup> 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 aid and abets the commission of a crime if he knowingly, and with criminal intent, aid<sup>e</sup>, 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.



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.

INSTRUCTION NO. 24

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.

INSTRUCTION NO. 25

You are here to determine if the Defendant is guilty or not guilty based on 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 of the Defendant, you should so find, even though you may believe one or more persons are also 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 ordered stricken by the court.

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

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 or her opinion as to any matter in which he or she is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such 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.

INSTRUCTION NO. 28

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.

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

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 30

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



During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case or anyone involved with the case on your own.

You may, of course, during deliberations, communicate with other members of the jury while you are in the jury deliberation room after the case has been submitted to you for deliberation.

INSTRUCTION NO. 32

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.

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

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

  
DISTRICT JUDGE