

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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ATTORNEY FOR APPELLANT

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

ATTORNEYS FOR RESPONDENT

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

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

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REDIRECT EXAMINATION

BY MR. DIGIACOMO:

Q Ma'am, Mr. Sgro just asked you a variety of questions about your statement. Do you remember those questions?

A Yes.

Q Okay. I'm going to show you what's been marked as State's Proposed 262 for identification, and I'm just going to have you briefly look at it. It says, Erica Newman and conversation 8/7/2010, at 6:51 in the morning.

A Uh-huh.

Q Okay. Does this look like the document that Mr. Sgro was just showing you?

A Yes.

Q Okay. The police come to you in that morning and asked if they could tape a statement from you; is that fair?

A Yes.

Q And Mr. Sgro asked you a number of questions from this statement, correct?

A Yes.

Q Do you remember everything that was either asked of you or what every one of your answers was?

A Like I said, I don't remember.

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

1 THE WITNESS: I can't say that I remember everything
2 that was asked.

3 BY MR. DIGIACOMO:

4 Q Would you have tried to tell the truth as best
5 as your ability to the questions that were being asked you
6 that morning?

7 A Yes.

8 MR. DIGIACOMO: Judge, I offer 262.

9 MR. SGRO: I suppose I'll submit it. I'm not used to
10 actually the text of the transcription coming in. I have no
11 objection to the tape. Typically the best evidence is the
12 tape. There are some unintelligible marks on the transcript,
13 but I'll leave it to Your Honor.

14 THE COURT: Technically the best evidence rule would
15 require the tape.

16 MR. DIGIACOMO: I have the tape as well, Judge.

17 THE COURT: Okay.

18 MR. DIGIACOMO: If you would like me -- I haven't
19 burned the disc. I would like to ask her questions, and we'll
20 put the tape in through another detective, but I want to be
21 able to ask her some questions. I can play the entire tape
22 for the jury right now.

23 THE COURT: Technically his objection is accurate.

24 MR. SGRO: And the other one, Your Honor, would be --

25 MR. DIGIACOMO: Unless you're going to withdraw it,

1 the objection is good.

2 MR. SGRO: She's -- she's not -- her memory hasn't
3 been exhausted. So I'm not sure of the relevancy of the
4 statement yet. So I guess I would object because we don't
5 know at this point --

6 THE COURT: Well, I think it's relevant, but I --
7 technically, if you object to the transcript, I would sustain
8 the objection, unless it's been proven that the transcript is
9 accurate, which it hasn't been.

10 MR. SGRO: It hasn't been, and I tell you what, Your
11 Honor, just to facilitate this, if we could do the tape with
12 the transcript, then that's fine. I can --

13 THE COURT: If he represents he'll introduce the
14 tape --

15 MR. SGRO: -- yes, sir.

16 THE COURT: -- you have no objection to the
17 transcript then?

18 MR. SGRO: No, sir.

19 THE COURT: That being the case, the transcript is
20 admitted. The exhibit will be received.

21 MR. LANGFORD: I don't either, Judge.

22 (State's Exhibit 262 admitted.)

23 THE COURT: Thank you.

24 MR. DIGIACOMO: Thank you.

25 BY MR. DIGIACOMO:

1 Q Now, ma'am, Mr. Sgro ask you a bunch of
2 questions. Do you recall if the police ever asked you in your
3 tape-recorded statement what the man that you saw was wearing?

4 A I don't know.

5 Q You have no idea; would that be fair?

6 A Yeah.

7 Q Okay. But I want to go to -- Mr. Sgro asked you
8 questions about you said you never actually saw the man.

9 MR. DIGIACOMO: Counsel, page 7.

10 BY MR. DIGIACOMO:

11 Q There's a question being asked to you:

12 Question, And where did the shooting happen? In the
13 master bedroom or in the living room?

14 And your answer is, Um, I don't know whether or not
15 it happened. I don't know whether my sister got shot or --

16 MR. SGRO: This is leading, Your Honor, and I'm not
17 sure it's appropriate. Again this is something --

18 THE COURT: Well, he's reading from an exhibit.

19 MR. SGRO: Yes, sir.

20 THE COURT: He can do that.

21 MR. SGRO: Okay.

22 BY MR. DIGIACOMO:

23 Q -- but I remember seeing the person pointing the
24 gun into the master bedroom.

25 A Yes.

1 Q Is that what your answer was?

2 A Yes.

3 Q So would it be accurate to say you did tell the
4 police that morning --

5 MR. SGRO: Leading and it's not --

6 THE COURT: That is leading.

7 MR. SGRO: -- because he's reading it out of context.

8 THE COURT: That is leading.

9 BY MR. DIGIACOMO:

10 Q Did you say, I remember seeing the person
11 pointing the gun into the master bedroom?

12 A Yes.

13 Q Okay. There were some questions asked about
14 Cornelius and Cornelius being on the phone. Do you remember
15 exactly what you told the police about Cornelius being on the
16 phone in relation to when the police arrived?

17 A No.

18 MR. DIGIACOMO: Page 7 again, Counsel.

19 BY MR. DIGIACOMO:

20 Q Why don't you read that to yourself right there
21 starting with, Question. They're talking about Cornelius.
22 You call him C-Note; is that fair? Is that his nickname?

23 A Yes.

24 Q C-Note?

25 A Yes.

1 Q And they ask you where he was this -- when it
2 all happened, and read to yourself.

3 A Uh-huh. Okay.

4 Q Do you remember telling the police that he was
5 on the phone, and that's when the police walked in?

6 A Yes.

7 Q And that he was walking out of the master
8 bedroom when you saw him?

9 A No, I don't remember that, but I see that.

10 Q Okay. You don't remember that he was walking
11 out of the master bedroom. Does your statement say that's
12 what happened?

13 A Yes.

14 Q In your statement, do they also ask you about
15 what was going on in the house prior to the shooting? Do you
16 remember those statements -- those questions?

17 A No.

18 Q Okay.

19 MR. DIGIACOMO: Bottom of page 6, Counsel, is the
20 question. The answer is on page 7.

21 BY MR. DIGIACOMO:

22 Q This is right after they tell you that Devonina
23 is shot, correct?

24 A Uh-huh.

25 Q And they ask you, Any idea how the shooter got

1 into your -- into this apartment or why they were here at 3
2 o'clock in the morning? Was there a party or anything?

3 Why don't you read to the ladies and gentlemen of the
4 jury what your answer was.

5 A No, but -- well -- well, I did overhear that
6 they opened the door for someone, and it was a female, but
7 there weren't any names involved, and I guess they believe
8 that person had something to do with the shooting.

9 MR. DIGIACOMO: Thank you. I have nothing further,
10 Judge -- court's indulgence. Apparently I do.

11 BY MR. DIGIACOMO:

12 Q And just so we're clear, you were 11 at the time
13 you gave this statement?

14 A I don't know, maybe 11 or 12.

15 Q Okay. Somewhere in that range?

16 A Yes.

17 MR. DIGIACOMO: Thank you.

18 THE COURT: Anything further?

19 MR. SGRO: Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. SGRO:

22 Q Can you tell the jury when was the last time you
23 spoke to the DA about this case? Was it yesterday? a month
24 ago? When was it?

25 A I would say a couple months.

1 Q A couple months?

2 A Yeah.

3 Q When is the first time you ever said, Overalls,
4 that word?

5 A I -- when -- I couldn't tell you.

6 Q Do you think it was in terms of getting ready
7 for this trial?

8 A No, I know I've said it before.

9 Q You've said it before. So just someone did not
10 write it down?

11 A Yes.

12 Q Who'd you say it to?

13 A I don't know.

14 Q You can't tell us -- strike that. Who could we
15 go to and ask, listen, Erica Newman said that she told you
16 about overalls? Who's that person that we can go find?

17 A I don't know.

18 Q Nobody?

19 A It's almost five years. So I don't know.

20 Q When you were just asked about Cornelius walking
21 out of the room and being on the phone and that's when the
22 police walked in -- I want to ask you this question. Are you
23 aware that Cornelius called 9-1-1, and he told the 9-1-1
24 operator that he was in some bushes outside the house?

25 MR. DIGIACOMO: Objection. Assumes a fact not in

1 evidence.

2 MR. SGRO: I'm asking her if she's aware, Your Honor.

3 THE COURT: Well, you state it as though it was true.

4 BY MR. SGRO:

5 Q Are you aware -- let me ask it differently then.
6 Are you aware of Cornelius Mayo actually being outside of the
7 house when he was on the phone with 9-1-1?

8 A No.

9 Q And just to be clear, in your statement, when
10 Mr. DiGiacomo referred to, I remember seeing the person
11 pointing a gun in the master bedroom -- do you remember when
12 he just showed you that?

13 A Yes.

14 Q That's the same as what you said earlier in your
15 statement when you said, I didn't see who the person was, but
16 I did see the gun, right?

17 A Yes.

18 Q You always told the police you saw a gun, and
19 you saw the direction the gun was pointing, right?

20 A Yes.

21 Q So when he showed you in your statement about
22 seeing the person pointing a gun, you were telling the police
23 about seeing a weapon and the direction it was pointed, right?

24 A Yes.

25 MR. SGRO: Okay. That's all, Your Honor.

1 MR. LANGFORD: I have no questions still, Your Honor.

2 THE COURT: All right. Ms. Newman, thank you for
3 being a witness. You'll be excused.

4 MS. WECKERLY: Officer Atwood.

5 CURTIS ATWOOD, STATE'S WITNESS, SWORN

6 THE CLERK: Please be seated. Please state your
7 name, and spell your first and last name for the record.

8 THE WITNESS: My name is Curtis Atwood. First name
9 is C-u-r-t-i-s. Last name is A-t-w-o-o-d.

10 MS. WECKERLY: May I proceed, Your Honor?

11 THE COURT: Yes.

12 DIRECT EXAMINATION

13 BY MS. WECKERLY:

14 Q How are you employed, sir?

15 A I'm with LVMPD as a police officer.

16 Q How long have you worked for Metro?

17 A For seven years.

18 Q And you were working for Metro in August of
19 2010?

20 A I was.

21 Q Do you remember what area command you worked for
22 or what assignment you had?

23 A Northeast patrol, graveyard shift.

24 Q And what hours are graveyard?

25 A It's 2200 to 0800.

1 Q And so in regular people time, that would be --

2 A Oh, it's -- I'm sorry. It's 10 o'clock at night
3 until 8 o'clock in the morning.

4 Q Okay. 10 at night to 8 in the morning?

5 A Yes, ma'am.

6 Q Were you working from August the 6th, 2010, into
7 the morning of the 7th?

8 A Yes, ma'am, I was.

9 Q Do you remember responding to a residence, an
10 apartment on Meikle Lane?

11 A I do.

12 Q And that's obviously in Las Vegas, Clark County,
13 Nevada?

14 A Yes, ma'am, it is.

15 Q Do you recall if you were the first officer to
16 respond?

17 A I was.

18 Q And were you in a marked patrol unit and
19 uniform?

20 A Yes, ma'am.

21 Q Can you tell the members of the jury what you
22 saw as you got up to the location.

23 A As we arrived at the location, myself and two
24 other partners cleared the residence. It was a call of a --
25 someone was shot. We went in, and there was a female that was

1 obviously shot and deceased on the couch. We went down the
2 hallway, cleared the residence, made sure there was nobody in
3 there, came to a room on the left where several children were
4 sleeping and then went into another room down the hallway, a
5 little further to the right, which was a master bedroom where
6 we found a little girl that was shot in the abdomen area.

7 Q When you first got to the residence, was there
8 anyone outside of it?

9 A There was.

10 Q And do you remember anything about this person,
11 male, female, anything like that?

12 A He was a male. He just kept yelling at us that
13 his girlfriend was shot, and he wanted us to come in and help
14 -- help out.

15 Q Was he holding anything?

16 A Not that I recall, just a phone.

17 Q A phone in his hand?

18 A Yes, ma'am.

19 Q Do you recall anything about his demeanor?

20 A Just very upset, yelling.

21 Q And when you saw him, can you give us like an
22 approximation of how close he was to maybe the front door of
23 the residence.

24 A When we first arrived, he was right at the door.
25 Then he ran out to us, and then he ran back up to the door and

1 was trying to get us to come in. We were waiting for more
2 units to come clear -- clear the apartment first.

3 Q And is it policy to wait for more units to come
4 in and clear it?

5 A It is if -- you know, because we were just right
6 there when the call came out. So we arrived pretty -- fairly
7 quickly. We weren't sure if there was any of the actual
8 shooters inside. So we waited.

9 Q And that's, like, what you're trained to do?

10 A Yes, ma'am.

11 Q And so how many people -- or how many officers
12 arrived before you could clear the residence?

13 A I believe we waited until there was a third
14 officer, myself and two others.

15 Q Okay. And clearing the residence is what?

16 A Basically you just -- you're clearing to make
17 sure there is no more bad -- bad people or, you know, suspects
18 inside.

19 Q Okay.

20 A You know, clearing room to room, making sure
21 there's nobody hiding.

22 Q And in this residence, would you describe it as
23 large? small?

24 A It was small, two-bedroom apartment.

25 Q Was it cleared fairly quickly?

1 A It was.

2 Q Inside the residence, you mentioned there were
3 several small children?

4 A Yes, ma'am.

5 Q And then you also mentioned there was another
6 child who had been shot, right?

7 A Yes, ma'am.

8 Q Were those children in the same room, or do you
9 recall anything about that?

10 A No, they weren't in the same room. There was --
11 there was -- I would say -- I want to say three children in
12 another room, a separate room that we cleared. They were
13 laying on beds, and then the child that was shot was by
14 herself in a room and just crying.

15 Q And the child that was shot, you said you heard
16 her crying?

17 A Yes, ma'am.

18 Q Did she appear conscious?

19 A She was.

20 Q And do you remember whether or not you or
21 someone else called medical for her?

22 A I -- I believe one of my partners did over the
23 radio. I didn't. Medical responded fairly quickly.

24 Q You saw medical respond?

25 A Yes, ma'am.

1 Q When she was crying, was it that you could see
2 -- could you see actually how she was injured?

3 A I could see -- yeah, I could see an injury. She
4 said she was shot, and I could see it. I'm not exactly sure
5 where it was, but it was -- I want to say it was on the
6 abdomen area.

7 Q Okay.

8 A And it was obviously a gunshot wound.

9 Q And was she sitting up? sitting down? Do you --

10 A She was sitting down when we went in there, in
11 between the bathroom and the room.

12 Q Medical is called, and then what are your
13 responsibilities in terms of a scene like that?

14 A After medical came out, we -- we just tape off
15 the scene, the area, kind of lock it down and wait for
16 investigators to show up.

17 Q And the purpose of taping off a scene is?

18 A It is so -- to preserve the crime scene.

19 Q And after -- once you all arrive and tape off
20 the scene, was anyone allowed -- any civilians, I guess,
21 allowed into the residence?

22 A No, ma'am.

23 Q And by this time the little girl had been
24 transported?

25 A Yes, ma'am.

1 Q And does that I guess -- did you do anything
2 else in terms of this investigation, or were you, you know,
3 the initial response and then that's it?

4 A Just the initial response.

5 MS. WECKERLY: Thank you, sir. I'll pass the
6 witness, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ORAM:

9 Q Good afternoon.

10 A Good afternoon.

11 Q When you observed the little girl, you said she
12 was sitting up; is that right?

13 A She was sitting up on her butt.

14 Q On the floor?

15 A On the floor yes, sir.

16 Q And do you remember the layout of the residence
17 quite well?

18 A It was a long time ago, so, fairly.

19 Q Okay. Where did you see her? Where was her
20 location within the residence?

21 A She was in the far back bedroom to the east of
22 -- the east room, the furthest bedroom. In the bedroom,
23 there's -- if you go in the bedroom, off to the right there's
24 a bathroom and then the bedroom itself, and she was kind of in
25 between that bathroom and room area when I saw her.

1 Q So as you remember back, how far would you say
2 she was from that bathroom?

3 A She was almost in the doorway, in the doorway of
4 the bedroom and bathroom when I saw her.

5 Q Very close?

6 A Very close.

7 Q And you said that you noticed an obvious gunshot
8 wound to the abdomen?

9 A Yes, sir.

10 Q And how were you -- was her shirt up, or how
11 were you able to observe that?

12 A Well, she had her -- she had her shirt up
13 showing us her injury.

14 Q Was she bleeding?

15 A She was.

16 Q Profusely?

17 A No. From what I recall, there was a amount of,
18 like, fat tissue that was blocking the actual gunshot wound,
19 you know, keeping it from bleeding.

20 Q Okay. So you could see she was bleeding, but it
21 wasn't profusely, and it wasn't just all over the place?

22 A No, not that I remember.

23 Q Okay. Did you see -- do you know what a gunshot
24 residue test is?

25 A I do.

1 Q Did you perform that?

2 A I did not.

3 Q Did you see that performed on the male that you
4 had seen yelling?

5 A I did not.

6 Q So you have no idea if that was done or not?

7 A I do not know.

8 Q The man you saw yelling outside, can you
9 describe him.

10 A Fairly. He was a tall black male, large build,
11 and that's about all I can remember of him.

12 Q Hair puffed out on the sides?

13 A I can't remember what his hair was like.

14 Q Fair enough. Was he -- did you ever observe him
15 using a cell phone that evening?

16 A He had one in his hand, yes, sir.

17 Q Was he talking or appear to be talking? using
18 it?

19 A Not when I saw him. He had it in his hand. I
20 assumed he was talking to dispatch.

21 Q So it wasn't up to his ear; he just had in his
22 hand?

23 A Yes, sir.

24 Q Okay. Now, as a first responder, one of the
25 things you're taught is to make sure that a crime scene is

1 well preserved?

2 A Yes, sir.

3 Q Okay. You don't want to be kicking around
4 cartridges if there were cartridges?

5 A Yes, sir.

6 Q And that's why you put up a yellow tape?

7 A Yes, sir.

8 Q You don't want to be stepping over or on bodily
9 fluids or anything like that?

10 A Yes, sir.

11 Q And I imagine your partners who were with you
12 were also aware of that type of training and experience in
13 making sure that crime scenes are properly preserved?

14 A Yes, sir.

15 Q And so you did your best, did you not, to make
16 sure that this crime scene was properly preserved?

17 A Yes, sir.

18 Q Okay. What -- did you move anything or touch
19 anything?

20 A No, sir. Other than people, no.

21 Q And when you say people, did you get everybody
22 out of that house?

23 A Yes, sir.

24 Q Except for the injured girl?

25 A Yes, sir.

1 Q Okay. She stayed put?

2 A Well, until medical got there and brought her
3 out.

4 Q Okay. Did you notice anything being moved?

5 A No, sir.

6 Q So as you sit here today, you feel pretty
7 confident that you were able to properly preserve that
8 particular crime scene?

9 A Yes, sir.

10 Q Okay. Were there -- did any other males arrive
11 at that scene that were first responders?

12 A Not that I remember.

13 Q You don't remember any other black males showing
14 up, talking to the man that you described with the cell phone?

15 A I don't remember.

16 Q Nothing like that?

17 A No, sir.

18 MR. ORAM: Court's indulgence. That concludes
19 cross-examination, Your Honor.

20 THE COURT: Mr. Langford.

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

22 MS. WECKERLY: No redirect.

23 THE COURT: No redirect?

24 MS. WECKERLY: No, thank you.

25 THE COURT: Officer, thank you for being a witness.

1 THE WITNESS: Thank you, sir.

2 THE COURT: You'll be excused.

3 MR. DIGIACOMO: Officer Houghton.

4 JONATHAN HOUGHTON, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated.

6 THE WITNESS: Thank you.

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

9 THE WITNESS: Jonathan Houghton. J-o-n-a-t-h-a-n,
10 H-o-u-g-h-t-o-n.

11 MR. DIGIACOMO: May I inquire, Judge?

12 THE COURT: Yes.

13 MR. DIGIACOMO: Thank you.

14 DIRECT EXAMINATION

15 BY MR. DIGIACOMO:

16 Q Sir, how are you employed?

17 A Las Vegas Metropolitan Police Department.

18 Q And how long have you been with Metro?

19 A Eight years.

20 Q And what is your current assignment?

21 A Patrol officer.

22 Q Directing your attention back to August 7th of
23 2010, almost 4 a.m. in the morning, slightly before 4 a.m. in
24 the morning, were you assigned or did you respond to a
25 homicide that occurred at 5662 Meikle Lane here in Clark

1 County, Las Vegas, Nevada?

2 A Yes, I did.

3 Q And when you arrived, were you one of the
4 numerous patrol officers that wound up arriving at the scene?

5 A That is correct.

6 Q Were you given a particular assignment when you
7 arrived on scene?

8 A Yes, I was. I was to watch Cornelius Mayo to
9 make sure he didn't leave the scene prior to detectives
10 conducting their investigation.

11 Q Did you remain with Mr. Mayo until detectives
12 were ready to interview him?

13 A Correct.

14 Q And while you were with Mr. Mayo, did you see
15 him with a cellular phone?

16 A Yes, I did.

17 Q And during that time you are standing with Mr.
18 Mayo, do you see Mr. Mayo utilizing that cellular phone?

19 A Yes, he was.

20 Q And could you hear whether or not there was a
21 male or a female on the other end of the line?

22 A It was a female's voice that I could overhear.

23 Q Can you describe Mr. Mayo's demeanor at this
24 point.

25 A He was agitated, obviously upset from what had

1 just happened.

2 Q And how long between the time you think you
3 arrived on scene and the time that you overhear this phone
4 call between Mr. Mayo and whoever he's talking to?

5 A It was probably just a few minutes after I was
6 assigned to keep an eye on him.

7 Q So is it still dark outside?

8 A Correct.

9 Q I mean, it's still early in the morning?

10 A Very much so.

11 Q When Mr. Mayo is agitated, do you overhear him
12 saying something to the female on the phone?

13 A Yes, I did.

14 Q And what do you hear him say?

15 A I heard him say that, You know who did this.
16 I'm going to bring all my niggas, and -- you know, I asked him
17 what he was talking about.

18 Q Do you remember him making any statement about,
19 You better hide by a police station?

20 A I did, yes.

21 Q When you asked him who -- did you ask him who he
22 was talking to?

23 A I did, after he hung up the phone.

24 Q And did he respond to you who it was?

25 A Yes, he did.

1 Q And who did he tell you he was talking to?

2 A He said it was Stephanie Cousins.

3 Q Did you ask him about some identifying
4 information for Ms. Cousins?

5 A I did. I asked him if he knew her birth date.

6 Q And was he able to provide you a birthday?

7 A No, he wasn't, but he told me that she was in
8 her 40s and that he'd known her for quite a while.

9 Q And did you ask Mr. Mayo what the nature of the
10 conversation he was having with Ms. Cousins?

11 A I asked him what they were talking about,
12 basically, and he had said to me that Ms. Cousins called his
13 girlfriend, Ms. Newman, asked her if she could come over.
14 They agreed. The girlfriend -- I mean -- sorry -- Ms. Cousins
15 showed up, knocked on the door, and Ms. Newman opened the
16 door, and at that time two males stormed in, knocked Ms.
17 Cousins down to the ground, then dragged her into the
18 apartment, and then that's when he heard two -- some gunshots.

19 Q Okay. Did Mr. Mayo tell you the description of
20 one or both that Ms. Cousins provided him of those males?

21 A Yeah, it was a light-skinned male with some
22 curly hair, and she didn't have a description of the second
23 person.

24 Q Did Ms. Cousins relay what she heard one of the
25 males saying?

1 A Where is it? Where is it, as they were entering
2 the apartment.

3 Q And according to Ms. Cousins, as she's speaking
4 to Mr. Mayo, what did she do when these --

5 MR. SGRO: Objection. Now this is hearsay within
6 hearsay. I let -- I understand the initial part, but this is
7 beyond now.

8 THE COURT: It probably is. Sustained.

9 BY MR. DIGIACOMO:

10 Q Let me back up. You indicated that Mr. Mayo
11 informed you that one of the suspects was a light-skinned
12 male. Did he tell -- did he use the term whether or not he
13 was tall or short?

14 A Tall.

15 Q And did he describe anything about the hair?

16 A That it was curly.

17 Q In addition to the conversation he described to
18 you about Ms. Cousins, does Mr. Mayo also sort of -- or
19 describe to you his memory of the incident that occurred?

20 A He did.

21 Q Okay. And then after taking that information
22 from Mr. Mayo, did you continue to wait with him while waiting
23 for detectives?

24 A I did.

25 Q Did he continue to exhibit agitation and

1 emotion?

2 A Yes, he was.

3 Q And do you hear him make any statements, not on
4 his phone, while he's just sitting on the curb as it relates
5 to basically what he's going to do?

6 A He did. He said he -- he was sitting on the
7 curb. He, like, had his hands in his face, and he said,
8 Someone's going to die in the next 24 hours. Watch. And I
9 asked him -- I said, Who? And he said, Stephanie.

10 Q Did he also use the term, She deserves to die?

11 A Correct, actually, she did -- or he did. I'm
12 sorry.

13 Q At some point, do you pass Mr. Mayo off to an
14 Officer Scanlon?

15 A I did.

16 Q At that point, is your responsibility at this
17 scene done?

18 A Yes, sir.

19 MR. DIGIACOMO: Thank you, sir. Judge, I pass the
20 witness.

21 CROSS-EXAMINATION

22 BY MR. SGRO:

23 Q Good afternoon, sir.

24 A How are you doing?

25 Q You reviewed the officer's report in this case

1 before testifying?

2 A Correct.

3 Q Did you review anything else?

4 A Just the officer's report.

5 Q And spoke to the State I assume, right, for a
6 few minutes?

7 A Briefly.

8 Q Okay. So if I understand correctly, you are
9 there, and your job is to watch Cornelius Mayo, right?

10 A That is correct.

11 Q Okay. So I don't remember getting what time you
12 got there. Can you tell us.

13 A Without looking -- referring back to the report,
14 I don't remember exactly the time.

15 Q Okay. Well, and that's why --

16 A I don't want to quote a bad time.

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

18 THE COURT: Yes. You didn't bring a copy of the
19 report with you?

20 THE WITNESS: I do not have it with me, no.

21 THE COURT: Okay. Yes, you can show it to him.

22 THE WITNESS: I'm not --

23 BY MR. SGRO:

24 Q So and this is why I ask. This looks like a
25 copy of the officers' report that you reviewed, correct?

1 A Correct.

2 Q And conduct is attributed to you. This report
3 is sort of like a compilation, right?

4 A Uh-huh.

5 Q Yes?

6 A Yes, sir.

7 Q Thank you. Now, it start with the overview of
8 the incident, that things started around 3:53 a.m., right?

9 A Correct. Uh-huh.

10 Q Now, in the conduct that's attributed to you, it
11 goes through a lot of things you just spoke of, but it doesn't
12 say what time you actually got there.

13 A Okay.

14 Q So let me ask it this way. Do you have an
15 estimate as to the time that lapsed from the 9-1-1 call till
16 you got there to watch over Mr. Mayo? In other words, would
17 it have been minutes?

18 A Correct.

19 Q Okay. So very -- you may not have it down to
20 the exact minute, but, you know, you got there shortly after?

21 A You could look at your -- at the CAD reports for
22 my arrival time if you want an exact time that I showed up on
23 scene, but it was -- I would guess -- estimate anywhere from
24 10, maybe 15 minutes at the most.

25 Q Okay. While Mr. Mayo is outside of the

1 residence and on the phone, he is threatening Stephanie
2 Cousins?

3 A Correct.

4 Q And it appears that the -- and these are my
5 words, not yours -- but the scare tactics that he employed
6 were working because she was giving him responses, right?

7 A Correct. It sounded like it.

8 Q Right. So he's -- you're hearing him say
9 clearly, You know who did this. I'm going to kill you, all
10 those sorts of things, and then you know there's a female
11 voice on the other end that's providing information?

12 A Correct.

13 Q And I think you said Stephanie Cousins
14 identified two men, right?

15 A Just one. There were two men there, but she
16 only could describe one.

17 Q That's exactly right. That's my point. The one
18 individual that Stephanie Cousins provided identifying
19 material about was only one, right? Not both, right?

20 A Correct.

21 Q Do you know the relationship that Stephanie
22 Cousins shares or shared at the time with any of the people
23 that were suspected of being involved in this?

24 A The only thing I knew is that Mr. Mayo said that
25 he'd known Stephanie Cousins for a long time.

1 Q Right. But as to the two males, you're not
2 aware of Stephanie's closeness or not closeness with either of
3 the two of them that she told --

4 A No, I'm not.

5 Q -- Mr. Mayo was there, right?

6 A No, I'm not.

7 Q All right. Now, at the time that you were
8 there, do you stay with Mr. Mayo until he's interviewed on
9 tape by the police?

10 A I handed him off to Officer Scanlon.

11 Q All right. And do you know what time that was?

12 A Not -- not exactly, no. It was probably close
13 to shift change I'm guessing.

14 Q And do you remember when that was approximately?

15 A Our -- our shift change would be -- we usually
16 come back off the streets around 7 in the morning, but Scanlon
17 I want to say is a Frank unit, which we're separated in two
18 sections, Frank and George. I was a George unit responding to
19 a Frank area. So if he took him from her -- from me, then it
20 would have been earlier in the evening so that I could go take
21 care of calls in my regular area.

22 Q Okay.

23 A The George area.

24 Q Now, Cornelius told you that he was in the
25 bathroom using the toilet during this whole event?

1 A Correct.

2 Q All right. Did he tell you that he had grabbed
3 money and drugs at the time the shooters first went into the
4 residence?

5 A No, he did not. He said he was in the bathroom
6 using the toilet.

7 Q Okay. Actually in the bathroom using the
8 toilet. So did he tell you that him and -- do you know
9 Devonian, the little --

10 A The daughter?

11 Q Yes, sir.

12 A Correct.

13 Q You know that's her name, right?

14 A Correct.

15 Q Did he tell you that him and Devonian went into
16 the bathroom together?

17 A He said that she ran to the bathroom when he
18 heard the -- when she heard the gunshots towards him.

19 Q Did you ask him if he owned a gun?

20 A No, I did not.

21 Q Were you aware that a gunshot residue test was
22 performed on Mr. Mayo?

23 A No, I did not.

24 Q Did Mr. Mayo ever discuss with you about a fight
25 -- and I'm going to use that term loosely -- a struggle at the

1 bathroom door where Devonia and her assailant were fighting
2 with one another?

3 A He didn't tell me that at all. Excuse me.

4 Q Did Mr. Mayo admit to you that he was a drug
5 dealer?

6 A He did not.

7 Q Okay. Did you ask him whether he sold drugs?

8 A I did not.

9 Q Were you aware that there were a number of items
10 related to drug trafficking located in his apartment?

11 A No, I was not.

12 Q Were you the one that located a razor blade that
13 had some powder on it?

14 A No, sir.

15 Q Was that ever shown to you?

16 A No, sir.

17 Q Were you the one that located a scale -- a scale
18 to weigh --

19 A No, sir, I wasn't inside. So.

20 Q Right. And often times when people go into the
21 residence, they'll bring things out. They'll mark it, that
22 sort of thing, but you didn't have anything to do with that?

23 A No, sir.

24 Q In the time that you watched Mr. Mayo, would you
25 say a couple hours probably went by?

1 A Probably.

2 Q Were you aware of other officers as those couple
3 officers were going by asking him questions about what
4 occurred, or was he sort of left alone?

5 A He was left alone with me when I was with him,
6 and then after I handed him off to the next officer, I don't
7 know who spoke with him.

8 Q Did Mr. Mayo give you the impression as he was
9 speaking to Stephanie Cousins that she was afraid he was going
10 to harm her?

11 A Repeat that again. I'm sorry.

12 Q Sure. Did Mr. Mayo give you the impression
13 while he was on the phone with Stephanie Cousins that
14 Stephanie believed he was going to harm her?

15 MR. DIGIACOMO: Objection.

16 THE COURT: You can't ask --

17 MR. DIGIACOMO: Speculation.

18 THE COURT: -- the state of mind of a third person.

19 MR. SGRO: Okay. I'll withdraw it, Your Honor.

20 BY MR. SGRO:

21 Q Were you there when the paramedics arrived, sir?

22 A Correct.

23 Q Okay. The paramedics, how many of them showed
24 up?

25 A Off the top of my head, I couldn't tell you.

1 Q Do you know if it was more than one?

2 A Yes.

3 Q And were they allowed access into the residence
4 to retrieve Devonia?

5 A Correct.

6 Q Put her on a gurney?

7 A I believe -- yeah, I believe she came out on a
8 gurney.

9 Q And then transport her out of there?

10 A Correct.

11 Q And was anything done relative to photography to
12 assure the integrity of that scene as paramedics went in and
13 out?

14 A There was no CSI on scene at that time they were
15 -- medical was responding for life saving.

16 Q Okay. So we just had some testimony about the
17 integrity of the scene. You agree it's important to preserve
18 the integrity of the scene, right?

19 A Correct.

20 Q Are you aware in this case of things that were
21 located, bullet fragments and that sort of thing?

22 A No, sir.

23 Q Okay. Are you aware that some caution needs to
24 be taken if paramedics are running in -- I mean, they're
25 running to save a 12 year old's life, right?

1 A Correct.

2 Q They're aggressive, in a hurry, running in, I
3 assume?

4 A I didn't see anybody running, but they respond
5 when we let them know that the scene is safe.

6 Q Okay. Safe meaning everyone is out?

7 A It's static. Nobody is shooting at each other
8 anymore.

9 Q Right.

10 A And there's -- the medical folks are safe to go
11 in when their are lives aren't in jeopardy.

12 Q Okay. And the paramedics were allowed access
13 in, recovered Devonia --

14 A Transported her.

15 Q -- transported her away all before anyone from
16 CSI was there?

17 A Correct.

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

19 THE COURT: Yes.

20 MR. SGRO: That's all.

21 THE COURT: Mr. Langford.

22 CROSS-EXAMINATION

23 BY MR. LANGFORD:

24 Q Good afternoon, Officer.

25 A Hello.

1 Q Okay. So your task essentially was to watch Mr.
2 Mayo; is that right?

3 A That's correct.

4 Q Who assigned you that task?

5 A Probably my sergeant.

6 Q All right. Did he direct you to a particular
7 area to keep Mr. Mayo in?

8 A Just -- we stood by the sidewalk, right along
9 the curb.

10 Q And why was it that you were watching Mr. Mayo?

11 A Just to ensure he didn't leave the scene.

12 Q Why were you concerned about him leaving the
13 scene?

14 A Because he was a witness to what had happened.

15 Q At some point, he takes out his cell phone and
16 calls somebody; is that right?

17 A I believe he gets a phone call.

18 Q Okay. So he gets a phone call from somebody?

19 A Correct.

20 Q And you are close enough that I believe you said
21 you could hear a female voice?

22 A I could.

23 Q Okay. Are you close enough that you can hear
24 any of the specifics of the conversation itself?

25 A Just that it was a female's voice. I was

1 probably within a couple feet of him.

2 Q Okay. So the only side of the conversation that
3 you're hearing is Mr. Mayo talking to the person on the other
4 end; is that right?

5 A That's what I could hear, correct, his words.

6 Q Okay. All right. And at some point, he says,
7 who did this? Or words to that effect?

8 A You know you did this. You better hide by a
9 police station. I'm going to bring all my niggas. That's
10 exactly what he said.

11 Q Okay. And at some point, he tells you that she
12 told him about the people that did it; is that right?

13 A Correct.

14 Q Okay. And she says two people stormed in, two
15 males --

16 A Uh-huh.

17 Q -- but then she only tells him the description
18 for one of the males; is that right?

19 A Correct.

20 Q Okay. Doesn't it seem odd to you that -- or did
21 -- let me rephrase that. Did you ask him, Well, did she give
22 you the description of the other person?

23 A I asked him if she knew what they looked like,
24 and she gave the description of the one male but didn't get a
25 description on the second one because I guess she got knocked

1 down during the entry.

2 Q Okay. Now, are you just supposing that, or is
3 that what he told you she said?

4 A He told me that she said the description of the
5 one and did not have a description on the second person.

6 MR. LANGFORD: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MR. DIGIACOMO: Yes.

9 REDIRECT EXAMINATION

10 BY MR. DIGIACOMO:

11 Q You said you were G unit. What was your call
12 sign that night. Do you remember?

13 A 1, George, 24.

14 Q 1, George, 24, and you mentioned something about
15 a CAD. What's a CAD?

16 A That's where we document all of our -- when we
17 get assigned a call, it comes to us on the computer, and we
18 clear the call -- or we arrive. We hit the arrive button.
19 When we clear the call, we clear with detail, and that's a
20 document that tells all the information.

21 Q I'm going to guess as a patrol officer you
22 aren't responsible for pulling the CAD from this particular
23 event --

24 A No, sir.

25 Q -- would that be fair?

1 A I've never done that.

2 Q If someone were to pull the CAD from this event
3 and were to look at 1G24, would we be able to tell when you're
4 assigned, when you arrived and when you cleared a particular
5 scene?

6 A That is correct.

7 Q You indicated that you weren't sure of the exact
8 time periods. If the CAD reflects that you were assigned at
9 4:01 and arrived at 4:09, does that sound about right to you?

10 A That could be very accurate.

11 Q Oh, one other thing. In the description that
12 Cornelius Mayo gives you that Stephanie gives him, did he ever
13 use the term overalls?

14 A I don't recall. I'd have to refer to the report
15 to remember that.

16 Q Well, let me ask you this. If it's not in this
17 report, would it have -- let me phrase it this way. Did you
18 give everything that you received to the homicide detective?

19 A Correct.

20 Q And have you had a chance, at least in the past,
21 to review this particular report?

22 A Briefly, yes.

23 Q If the information of overalls for the one
24 suspect that's description was not in the report, would you
25 have received the description of overalls?

1 MR. SGRO: What?

2 BY MR. DIGIACOMO:

3 Q Do you understand? That was a terrible
4 question. Let me rephrase the question.

5 MR. SGRO: Yes.

6 THE COURT: Yes, I didn't even understand it.

7 THE WITNESS: Me neither.

8 MR. DIGIACOMO: May I approach, Judge? Page 9,
9 Counsel.

10 THE COURT: Yes.

11 BY MR. DIGIACOMO:

12 Q I'm going to show you page 9 and ask you to just
13 read the bottom paragraph for the description, which I believe
14 is four lines up from the bottom, to yourself. Does that --
15 sorry.

16 A I'm sorry. Go ahead.

17 Q Does that refresh your recollection as to
18 whether or not Mr. Mayo told you anything as it relates to
19 overalls?

20 A Yes, it does, and there's nothing in there about
21 overalls.

22 Q Okay. As far as -- as you sit here today, you
23 have no recollection of overalls being mentioned?

24 A I do not.

25 MR. DIGIACOMO: Thank you very much. I pass the

1 witness, Judge.

2 RECROSS-EXAMINATION

3 BY MR. SGRO:

4 Q Officer, where's your report that you wrote down
5 what Cornelius told you?

6 A I had a notepad that I had in my pocket that we
7 carry around.

8 Q Where is it?

9 A Where is it?

10 Q Yes.

11 A I probably -- I'd probably be able to find it in
12 my locker actually, maybe not from five years ago but -- or
13 four years ago.

14 Q The bottom line is this. The report that you
15 were just asked if it refreshes your recollection is a
16 compilation of a lot of people feeding information into a
17 document, right?

18 A The information that I passed on to a detective,
19 correct.

20 Q You're one of several people that's referenced
21 in that report, correct?

22 A Correct.

23 Q That report is a summary of the day's
24 activities, correct?

25 A Correct.

1 Q Okay. You didn't refresh your memory with what
2 you actually wrote down, fair?

3 A What I wrote down?

4 Q Yes, sir.

5 A It would be on my notepad.

6 Q I get it's the notepad in the locker.

7 A Okay.

8 Q I get it.

9 A Uh-huh.

10 Q When you were just asked to refresh your memory,
11 you were shown a document that is a compilation that you did
12 not even write, correct?

13 A Correct.

14 Q So you have to assume if you're correct --
15 because when you first were asked the question, Does Cornelius
16 Mayo tell you about overalls, your first answer was, I don't
17 know, right?

18 A Correct.

19 Q Now, you have to assume in that report you said
20 something to somebody who relayed to somebody else who then
21 typed it in a document, and that's what the State is showing
22 you to refresh your recollection, right?

23 A All I can testify to is that I relayed the
24 information to a detective. Where it went from there --

25 Q I get it.

1 A -- I couldn't tell you if it changed hands one
2 or five times.

3 Q And you're making my point. You cannot tell us
4 all -- strike that. All you can tell us is at some point 4
5 years ago you provided information to some police officers,
6 right?

7 A The detective, correct.

8 Q To the detective. The detective then got with
9 other detectives, created a summary, right?

10 A That I do not know.

11 Q Okay. Well, you have a summary report in front
12 of you, right?

13 A I do.

14 Q Someone put that together, right?

15 A Correct.

16 Q You were never asked in all four years, Review
17 this for accuracy. See if it matches up to what you wrote
18 down, right?

19 A No.

20 Q Okay. The detective didn't come to get your
21 opinion on the accuracy of what's in there, right?

22 A No.

23 Q Okay. And, again, as you sit here right now,
24 you can't tell the jurors with any specificity at all whether
25 Cornelius did or did not tell you about overalls, fair?

1 A Correct.

2 MR. SGRO: All right. That's all.

3 MR. LANGFORD: Nothing, Your Honor.

4 THE COURT: Thank you Officer Houghton for being a
5 witness. You'll be excused, sir.

6 THE WITNESS: Thank you.

7 MR. ORAM: Judge, can we approach very briefly?

8 THE COURT: Sure.

9 (Bench conference.)

10 MR. ORAM: Judge, it has come to my attention that
11 Mr. DiGiacomo needs a bathroom break.

12 MR. DIGIACOMO: He was totally -- (unintelligible) --

13 MR. ORAM: -- and once he said that, I thought, geez,
14 so do I.

15 THE COURT: It's about time for a break. Okay.

16 MR. DIGIACOMO: We have two small witnesses -- well,
17 one small witness, one long one. So either way you want to do
18 it.

19 THE COURT: I don't care. We'll take a 10-minute
20 break.

21 MR. DIGIACOMO: Perfect.

22 THE COURT: Okay.

23 (Bench conference ends.)

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to take a brief recess.

1 During the recess, again, it's your duty not to
2 converse among yourselves or with anyone else on any subject
3 connected with this trial. You may not read, watch or listen
4 to any report of or commentary on the trial from any medium of
5 information including without limitation newspapers,
6 television and radio, and you may not form or express an
7 opinion on any subject connected with this case until it is
8 finally submitted to you.

9 We'll be in recess for about 10 minutes. The Court
10 will be at ease while the jury leaves.

11 (Jury recessed 2:24 p.m.)

12 MR. SGRO: Your Honor, may we be excused?

13 THE COURT: The record will reflect that the jury is
14 out of the courtroom. 10 minutes.

15 MR. DIGIACOMO: Thank you Judge.

16 (Court recessed at 2:24 p.m. until 2:39 p.m.)

17 (Outside the presence of the jury.)

18 THE COURT: All right. We're on the record, Mr.
19 Oram.

20 MR. ORAM: Your Honor, the -- the State has indicted
21 to me that based upon Mr. Sgro's opening argument, and maybe
22 their own tactics, there is a chance that during Monica
23 Martinez's testimony that they will play her entire statement.
24 It's lengthy.

25 I do understand why the State may desire to do that,

1 but there's a portion of it that causes me concern. It's very
2 small and I've addressed it with Mr. DiGiacomo. She refers to
3 the individuals in this case, including what I would say is
4 lumping in Mr. Burns together as in a gang. And so I wanted
5 to address that with the Court so we're not doing it, you
6 know, and Mr. DiGiacomo wouldn't have time to -- wouldn't have
7 time to redact it if you ruled in our favor. If we didn't,
8 we're not jumping up in front of the jury.

9 I don't see the relevance of -- in her -- it's a
10 12-hour statement, actually. They're going to reduce it down
11 to five and a half hours. Why it's relevant to -- why it's
12 relevant to the case. I guess they're arguing there's some
13 kind of fear factor here.

14 I would imagine if Ms. Martinez had seen somebody or
15 saw people coming out of an apartment and they've shot and
16 killed somebody that could cause her fear and we don't need to
17 get into gang information. So for that reason I would ask
18 that the Court preclude that portion of the video and the
19 audio.

20 MR. DiGIACOMO: Thank you, Judge. It is, actually,
21 I think 15 hours that she's in the room, but she's actually
22 speaking as it relates to this case for 5 hours and 26 minutes
23 and a few seconds.

24 During the course of that conversation, the -- the
25 police are trying to identify the suspects. And in the course

1 of that conversation, she ultimately acknowledges, you heard
2 from Mr. Sgro's opening, that it takes her some time. That
3 not Mr. Burns, but Mr. Mason comes from the same neighborhood
4 as Job-Loc and it's -- they just say PPHG or DPHG. They don't
5 -- I think it's players, pimps, hustlers, and gangsters, which
6 is a gang out of San Bernardino. They don't actually
7 specifically address they're gangsters or they're gangbanging
8 or anything else like that that --

9 THE COURT: She didn't use --

10 MR. DiGIACOMO: -- I recall.

11 THE COURT: -- the word gang?

12 MR. DiGIACOMO: I do not believe she uses the word
13 gang. I don't know if maybe I -- it's 5 hours and 26 minutes.
14 We'll have to go back and confirm that. But she clearly has a
15 concern and a fear as it relates to them and she's providing
16 identifying information as it relates to them. And, in fact,
17 that's how they wind up locating Job-Loc and Willie and then
18 tie in Mr. Burns.

19 I believe that every witness in this case will say
20 that Mr. Burns is not a PPHG. So I think it would be more of
21 an objection by Mr. Langford than it was necessarily by Mr.
22 Burns. I believe that everybody is going to say he did not
23 come -- grow up in that neighborhood. And most of these
24 people use those type of terms like neighborhood, those type
25 of things.

1 I don't think they specifically reference the term
2 gang, but Mr. Oram and I were just having this conversation.
3 We'll confirm that up as to exactly what it is. But if I'm
4 going to redact that, I'm going to need some time to redact
5 it, and she's probably going to hit the stand tomorrow.

6 THE COURT: I know the Supreme Court has had some
7 concern about the use of gang terms or gangs unless there's a
8 real good reason to do it. If there's no real good reason to
9 do it, let's -- let's redact it.

10 MR. DiGIACOMO: Well, there's a very good reason to
11 do it. One is it relates to their opening as it relates to
12 why Monica would lie, why is she saying these things. She's
13 scared to death of these individuals.

14 THE COURT: If she's scared of them because of a
15 gang relationship.

16 MR. DiGIACOMO: Well, I believe that will be her
17 testimony. Absolutely.

18 THE COURT: Well, then it becomes more relevant. I
19 mean, I don't know. If that's why she's scared of them
20 because she's scared of that gang, I can see her -- I can see
21 the -- the relevancy of it and it's probably admissible.

22 MR. ORAM: Your Honor, could I just put on the
23 record exactly what she says? I have her statement and it's
24 located at page 224. And she -- they say by the --

25 MR. DiGIACOMO: It's only the one at 224 that you're

1 concerned about?

2 MR. ORAM: No, I'd be concerned about every
3 reference to it, but let me go through this.

4 MR. DiGIACOMO: Oh, okay. Yeah.

5 MR. ORAM: Who do they run with? Question by the
6 detective. What gang are they in? Marty Wildemann. Answer,
7 I think the DPHD. Detective, thank you. Question, DBHG? And
8 so they do specifically say what gang.

9 THE COURT: Is that the only reference to gang?

10 MR. ORAM: It is the only one that I --

11 THE COURT: That doesn't sound like -- in other
12 words, is there a question why are you afraid of them and it's
13 because of the gang?

14 MR. ORAM: No, there's nothing like that.

15 THE COURT: Then let's redact it. It seems like if
16 he --

17 MR. DiGIACOMO: If that's the only one that he's
18 talking about, I don't have a problem with that.

19 THE COURT: All right. Let's redact it.

20 MR. DiGIACOMO: Yeah. We can take out -- and I
21 believe it starts at --

22 THE COURT: Can you do that electronically? I know
23 anything can be done, the question is can you do it or can you
24 have somebody do it?

25 MR. DiGIACOMO: Oh, I --

1 MS. WECKERLY: He can do it.

2 MR. DiGIACOMO: I can have it done tonight.

3 THE COURT: Do you have technicians that do those
4 things?

5 MR. DiGIACOMO: No, no.

6 MS. WECKERLY: He can do it. He's a magician.

7 MR. DiGIACOMO: No, there's 11 seconds, so I cut the
8 tape out on it.

9 MR. ORAM: Do you see any other portion? I don't --

10 MR. DiGIACOMO: I put in DPHG and that's the only --

11 MR. ORAM: That's the only time --

12 MR. DiGIACOMO: -- DPHG that comes up --

13 MR. ORAM: -- I found it.

14 MR. DiGIACOMO: -- in the entire thing. But I know
15 that their own gang name is PPHG. She doesn't even know the
16 real name.

17 MR. SGRO: Which how -- if she's afraid of them, she
18 doesn't even know their real name.

19 MS. WECKERLY: She just knows --

20 MR. SGRO: So afraid.

21 MS. WECKERLY: -- what they do.

22 MR. DiGIACOMO: Yeah, she just knows -- she knows
23 them by reputation.

24 THE COURT: She just knows they're a gang. That's
25 all right.

1 MR. SGRO: Yeah.

2 THE COURT: But it sounds more prejudicial that
3 probative, so I think we ought to redact it.

4 MR. DiGIACOMO: I can remove that. And, in fact --

5 THE COURT: All right. I mean, if we can --

6 MR. DiGIACOMO: -- it's four hours and --

7 THE COURT: -- avoid the gang references, I would
8 just as soon do it.

9 MR. DiGIACOMO: It's four --

10 THE COURT: All right. Are we ready to bring the
11 jury in?

12 MR. DiGIACOMO: Absolutely, Your Honor.

13 MR. LANGFORD: Mr. Mason is, Your Honor.

14 THE COURT: All right. You can bring the jury in.

15 (Pause in the proceedings.)

16 (In the presence of the jury.)

17 THE COURT: All right. State versus Mason and
18 Burns. The record will reflect the presence of the
19 defendants, their counsel, the district attorneys, all members
20 of the jury.

21 It did take us a few more than ten minutes, ladies
22 and gentlemen. But the good news is in the interim that
23 counsel has marked some of the evidence bags, opened them. We
24 saved us some time in going through the evidence because
25 they've agreed to let them -- let the clerk mark them and so

1 we'll get right into some of the evidence.

2 All right. You can call your next witness.

3 MR. DiGIACOMO: Barry Jensen.

4 BARRY JENSEN, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated.

6 THE WITNESS: Thank you.

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

9 THE WITNESS: My name is Barry Jensen. It's
10 B-A-R-R-Y J-E-N-S-E-N.

11 MR. DiGIACOMO: May I inquire?

12 THE COURT: Yes.

13 DIRECT EXAMINATION

14 BY MR. DIGIACOMO:

15 Q Sir, how are you employed?

16 A I'm employed with the Las Vegas Metropolitan
17 Police Department.

18 Q In what capacity?

19 A I'm currently assigned to the homicide detail.

20 Q And how long have you been with Metro?

21 A I've been with Metro for 26 years.

22 Q And how long have you been with homicide?

23 A 14 years.

24 Q I'm going to direct your attention to the
25 early morning hours into the morning hours of August 7th of

1 2010. Did you respond to a homicide with a number of other
2 law enforcement personnel at a homicide located at 5662 Meikle
3 Lane here in Clark County, Las Vegas, Nevada?

4 A Yes, I did.

5 Q If you could just briefly explain to the
6 ladies and gentlemen of the jury as it relates to homicide,
7 how many individuals went out to this particular scene?

8 A For the -- we have -- I believe at that time
9 in 2010 we had three homicide squads, six detectives on a
10 squad, on sergeant per squad, and we work in two-man teams.
11 And usually for a homicide we would call out the -- the team
12 that's on call, and usually two more detectives to -- to help
13 them. I believe on this case that we called out a few extra
14 detectives for whatever reason. I wasn't the homicide
15 detective on call. It was another team.

16 Q And that was going to be my next question.
17 Were you the homicide detective that's ultimately responsible
18 for the underlying investigation of Derecia Newman's homicide?

19 A No, I was -- I was what we refer to as a
20 third wheel. We generally do outlying witnesses and other odd
21 tasks.

22 Q You were assisting other detectives?

23 A Yes.

24 Q And who were those detectives?

25 A I was assisting Detective Chris Bunting and

1 Marty Wildemann.

2 Q In the process of assisting them, did you seek
3 consent in order to conduct a search of the interior of
4 Apartment A at 5662 Meikle?

5 A Yes, I did.

6 Q And who did you seek that consent from?

7 A I -- I spoke with Cornelius Mayo who was -- he
8 resided inside that apartment. I explained the consent to
9 search form, which is him allowing us to go in without a
10 search warrant. He signed it and that was the end of my --
11 our contact with him at that point.

12 Q I imagine that an investigation and a homicide
13 scene is not something that gets wrapped up very quickly?

14 A No, they -- the -- I believe it was several
15 hours that we were at the scene.

16 Q During this time period do you learn that Mr.
17 Mayo wants to leave the -- the scene and either report to the
18 hospital or some other place?

19 A Yes.

20 Q Did you agree to help him in some manner so
21 that he could eventually now leave the scene?

22 A Yes, I did. He -- for him -- he didn't have
23 shoes on, he needed a shirt, and I -- I think he wanted
24 cigarettes from his -- inside of the -- the apartment. I went
25 into the master bedroom where he told me those things would

1 be. I picked up a pair of shoes, I grabbed his shirt, I think
2 it was on the back of a door, and a pack of cigarettes from
3 the bedroom. And I too them out to the parking lot where Mr.
4 Mayo was and handed those items to him.

5 Q Why didn't you let Mr. Mayo go inside the
6 master bedroom and collect his items?

7 A Well, we try to keep the people in and out of
8 the crime scene limited, and letting him come back into the
9 crime scene to get those things just isn't what we do.

10 Q Once you provide him his shoes, his shirt, and
11 some cigarettes, do you ever get notified that there is an
12 issue?

13 A Yes, I do. It's not my finest hour in law
14 enforcement, but a little while later I was contacted by a
15 patrol officer who was standing by Mr. Mayo and he was putting
16 his shoes on, and a clear plastic of what appears to be a rock
17 of cocaine fell out of the shoes that I had provided him.

18 Q Did you recover that item of rock cocaine?

19 A I did.

20 Q And did you allow Mr. Mayo to go on his way?

21 A I did, yes.

22 Q Thank you, Detective.

23 A Thank you.

24 MR. DiGIACOMO: Pass the witness.

25 THE COURT: Any cross?

CROSS-EXAMINATION

BY MR. SGRO:

Q How are you doing, sir?

A Good, sir. How are you?

Q Excellent. You have been in Metro 25, 26 years?

A 26 years.

Q You have taken a number of witness statements?

A I have.

Q And over the years you feel like you've gotten pretty good at it?

A Yes.

Q And do you feel as that now -- at the time you would have been a homicide detective 10 years, you've taken a lot of statements related to homicide cases; right?

A Yes, I have.

Q And one of the things that you do is -- is you ask the right question so that you can get the right information; right?

A We try to ask pertinent questions to get correct information.

Q And in the big picture, did you see anything or did you see anybody, those are the questions that come right off the top.

A Correct.

1 Q You interviewed Erica Newman; correct?

2 A I believe so.

3 Q Okay. Can you remember any memorialization of
4 your interview with Erica Newman? Now, she would have been,
5 just so I can give you some context, she would have been 12 at
6 the time. She's around 16 now. She testified earlier today.
7 You may have seen her in the hallway. Does that sort of jog
8 your memory?

9 A Yeah, I didn't see her in the hallway. Was
10 she sleeping in the -- in the bunk bed room?

11 Q Yes, sir. She was sleeping. It was her
12 sister, actually, that was shot and killed.

13 A That's correct.

14 Q All right. Does that ring a bell now?

15 A Yes.

16 Q All right. So you are tasked with the job of
17 interviewing her and finding out what she knows?

18 A Yes, sir.

19 Q Okay. And do you remember reporting your
20 findings to homicide detectives Bunting and Wildemann because
21 it was their case? Did you tell them what was happening?

22 A Usually when we get done doing an interview or
23 through the course of the investigation, we would get together
24 and kind of update the other detectives of -- of what we have
25 and what we've discovered.

1 Q And do you remember telling the detectives
2 that you had interviewed Erica Newman?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q And do you remember telling the detectives
7 that Erica had woken up to the sound of gunshots, saw a man
8 with a gun walk into the master bedroom, but could not
9 identify him?

10 A That's correct.

11 Q All right. And if someone tells you during a
12 tape recorded statement I didn't -- I can't identify the
13 person, that, as an experienced and seasoned homicide
14 detective, means, okay, well, they've already answered whether
15 or not they could see him; right?

16 A Right.

17 Q Okay. And did you feel comfortable relative
18 -- well, let me strike that. In 2010 in August, and I don't
19 mean to be flippant or facetious, but you considered yourself
20 to be a competent homicide detective capable of extracting
21 important information from witnesses?

22 A Yes.

23 Q Okay. And the last thing is the time. Did
24 you have Mr. Mayo sign a consent to search?

25 A Yes, I did.

1 Q And I missed if you told us the time.

2 A I believe it was around -- it was early
3 morning when we were out there, so I would say around 6:00 in
4 the morning.

5 Q Okay. And just for context, are you aware
6 that the events related to the homicide occurred around 3:45
7 a.m.

8 A Yes.

9 Q And so just best estimate would be your
10 obtaining of the search warrant to look for things inside the
11 residence would have come two hours to two and a half hours
12 after the homicide roughly?

13 A Roughly, yes.

14 Q Okay. That's all.

15 MR. SGRO: Thank you, Your Honor.

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

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. DIGIACOMO:

20 Q Is it unusual for it to take two, two and a
21 half hours for you to get the consent, or if you need to go
22 get a search warrant to enter an apartment?

23 A No, it's not usual at all.

24 Q Why not?

25 A Well, usually when the -- when the 911 call or

1 however patrol gets notified of a situation like this, patrol
2 responds and they will -- they'll say, oh, you know, it's a
3 shooting, somebody is dead, and they will call another
4 detective bureau or another bureau. At that time I believe it
5 was called violent crimes. Those detective arrive. They
6 determine that further investigation is needed by the homicide
7 detail. They will call dispatch or they will call the on-call
8 sergeant at home themselves. The on-call sergeant has to call
9 the up team, and this is early in the morning, 2:30 in the
10 morning. We have to get up, get dressed, you know, get your
11 bearings, and then drive to the crime scene. You know, we try
12 to be to the scene within an hour of the time we get called at
13 home.

14 Q And patrol officers, when they arrive on
15 scene, their responsibility is what?

16 A Well, their responsibility in something like
17 this, they're a first responder. You know, they're going to
18 go in the apartment and make sure there's not other victims or
19 -- or suspects hiding in the apartment. They're going to
20 secure the -- the scene and they're going to try to locate
21 items of evidence so that the evidence does not get destroyed
22 by other officers stepping on it, ambulances driving over it,
23 things like that.

24 Q And then that scene remains secure until
25 homicide arrives, takes over the investigation, and you get

1 the consent to search from Mr. Mayo?

2 A That's correct.

3 Q There were some questions asked of you about
4 your interview with Erica Newman --

5 A Yeah.

6 Q -- and some questions back and forth about
7 what you reported to your fellow detectives as to what Ms.
8 Newman told you. You remember those questions?

9 A Yes, I do.

10 Q Did the information you gleaned from Ms.
11 Newman come from a taped interview that you took from Ms.
12 Newman?

13 A I don't recall if I taped it, but I did
14 interview her and that's where that information came from.

15 MR. DiGIACOMO: May I approach, Judge?

16 THE COURT: Yes.

17 BY MR. DiGIACOMO:

18 Q I'm going to show you what's been marked as --
19 well, it's now been admitted as State's Exhibit 262, and ask
20 you --

21 A Oh, yeah.

22 Q Does that appear to be -- well, does this
23 appear to be a transcript of Ms. Newman's statement and are
24 you the detective that's referenced as the interviewing
25 detective?

1 A Yes, it is. And this would indicate that I
2 did take a taped statement from her.

3 Q And that would have been the information or
4 where you got the information to relay to your fellow homicide
5 detectives for information included in the report?

6 A Yes.

7 MR. DiGIACOMO: Nothing further, Judge.

8 MR. SGRO: Nothing Your Honor.

9 MR. LANGFORD: Nothing, Your Honor.

10 THE COURT: Okay. Thank you, Detective, for being a
11 witness.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You'll be excused. Have a good day.

14 THE WITNESS: Thank you.

15 THE COURT: Good to see you again.

16 MR. DiGIACOMO: Moretta McIntyre.

17 MORETTA MCINTRYE, STATE'S WITNESS, SWORN

18 THE CLERK: Please be seated. Please state your
19 name and spell your first and last name for the record.

20 THE WITNESS: Moretta McIntyre; M-O-R-E-T-T-A
21 M-C-I-N-T-Y-R-E.

22 MR. DiGIACOMO: May I inquire, Judge?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MR. DIGIACOMO:

1 Q Ma'am, how are you employed?

2 A I am currently employed as a crime scene
3 analyst with the Las Vegas Metropolitan Police Department.

4 Q How long have you been with Metro?

5 A Approximately seven years.

6 Q And how long have you been a crime scene
7 analyst?

8 A Approximately seven years.

9 Q Okay. In order -- well, let me ask you this.
10 What do you do? What do you do for a living for Metro?

11 A I am employed as a crime scene analyst.

12 Q I mean, like what physically does that mean a
13 crime scene analyst does?

14 A A crime scene analyst responds to crime
15 scenes, documents those crime scenes through the use of notes,
16 reports, photographs, sometimes diagrams, collects evidence,
17 and recovers and develops latent prints.

18 Q Do you have any specialized training,
19 experience, on the job training, anything like that that
20 allows you to hold the job that you do?

21 A I do. I have an Associate's Degree in
22 Forensic Technology from Grossmont College. I have attended a
23 crime scene analyst academy through Las Vegas Metropolitan
24 Police Department that's approximately 10 weeks long. I
25 completed 12 weeks of field training and have hundreds of

1 hours in crime scene documentation and crime scene processing.

2 Q Were you one of the crime scene analysts that
3 was directed to respond to a homicide on the early morning
4 hours of August 7, 2010, at 5662 Meikle Lane here in Clark
5 County, Las Vegas, Nevada?

6 A Yes, I was.

7 Q When there is a homicide scene, is there a
8 particular number of crime scene analysts that respond to a
9 scene?

10 A There is a crime scene supervisor, and at
11 least two crime scene analysts that respond to the scene.

12 Q And do you work with other units in order to
13 process a scene?

14 A Yes.

15 Q Who else do you work with?

16 A Usually homicide.

17 Q When you, as part of your processing of a
18 scene, are the duties split up between the two separate crime
19 scene analysts, at least two separate crime scene analysts
20 that show up at a homicide?

21 A Yes.

22 Q Can you explain that to the members of the
23 jury?

24 A The crime scene supervisor divides the duties
25 such as reports, notes, and photographs to one crime scene

1 analyst, and the other crime scene analyst is responsible for
2 collection of evidence and for the diagram.

3 Q All right. In this particular case, what were
4 your responsibilities?

5 A I was assigned the collection of evidence and
6 the diagram.

7 Q And who else did you respond with?

8 A I responded with Crime Scene Analyst Robbie
9 Dahn, Crime Scene Analyst Danielle Carvounaiaris, and my
10 supervisor Al Cabrales.

11 Q So in this situation there's actually three
12 crime scene analysts that wound up at this homicide?

13 A That is correct.

14 Q Okay. Do you work as a team in order to
15 document, process, and ultimately collect evidence from inside
16 the residence?

17 A Yes.

18 Q And have you had an opportunity to review not
19 only the photographs, but as well as look at your reports to
20 -- to make sure that you're familiar with this particular
21 scene?

22 A Yes.

23 MR. DiGIACOMO: May I approach, Judge?

24 THE COURT: Yes.

25 BY MR. DiGIACOMO:

1 Q Ma'am, I'm going to start with -- well, I
2 guess before I approach, I'm going to put up for you what's
3 been admitted as State's Exhibit No. 13. Maybe I'm going to
4 put up State's Exhibit No. 13. There we go. Since this has
5 been previously admitted, do you -- well, what is State's
6 Exhibit 13?

7 A This is a diagram.

8 Q Of what?

9 A Of the scene.

10 Q And who created it?

11 A I did.

12 Q And what information can we glean from State's
13 Exhibit 13?

14 A This is a bird's eye view of the scene. It
15 also lists all of the evidence that was collected and all of
16 the pertinent information connected with the scene.

17 Q So if you touch the actual screen over there
18 that's in front of you, you can make little marks on the
19 screen. So you said it lists all the evidence. Do you have a
20 legend that lists the items of evidence that were collected
21 from inside the home?

22 A Yes, it is right here.

23 Q And then I see that that list includes numbers
24 next to them. Are there numbers on the diagram to correlate
25 to the physical pieces of evidence that you collected?

1 A Yes.

2 Q So let me clear this for just a second. I'm
3 going to jump in for a second here. I'm going to focus in on
4 this area of the crime scene diagram. So the little numbers,
5 the green numbers we see here, 6, 7, 25, 5, 8 are references
6 to what?

7 A They are the locations of where evidence was
8 collected from.

9 Q I'm going to show you first two that have been
10 previously admitted, so 66 and 67. Looking at that, do those
11 appear to be photographs of inside the scene?

12 A Yes.

13 Q And are they of the bunk bed or the -- the one
14 bedroom that has the bunk beds in it?

15 A That is correct.

16 Q Let me just stick this aside for a second.
17 And now I'm going to ask you to look at State's Proposed 14
18 through 125, with the exception of 66 and 67 and just briefly
19 flip through those and see if those appear to be photographs
20 that you took at the scene.

21 MR. SGRO: May we approach briefly while she's doing
22 that, Your Honor.

23 THE COURT: Certainly.

24 (Bench conference.)

25 MR. SGRO: So we did a pretrial motion to limit the

1 photographs of the victim in the case. It was deferred until
2 trial. Just flipping through what Mr. DiGiacomo has offered,
3 there is a number that show the victim in the case from a
4 bunch of different angles. So I don't want to interrupt the
5 proceedings. I don't have a problem with any of the other
6 photographs subject to at a break you can look at all of them
7 and decide if all of them are necessary, or if we can limit
8 the amount of those photos.

9 THE COURT: You're talking about the photos of the
10 victim?

11 MR. SGRO: Yes, sir.

12 THE COURT: Her head of something?

13 MR. SGRO: Exactly. She's -- in the crime scene
14 she's depicted from a number of different vantages.

15 THE COURT: Well, the crime scene is probably
16 relevant.

17 MR. SGRO: I'm not suggesting that none of them are
18 relevant. I'm suggesting I quickly thumbed through them and I
19 think there were four.

20 MR. DiGIACOMO: From different -- basically from
21 different angles.

22 MR. SGRO: Right. What I'm saying this thing is for
23 is probably not relevant. One or two might give --

24 MR. DiGIACOMO: It's from different angles. It's
25 very hard to see this --

1 THE COURT: Well, let me look at them.

2 MR. SGRO: Yes, sir. That's all I wanted. I didn't
3 want to interrupt.

4 THE COURT: We'll do it later.

5 MR. SGRO: Okay.

6 THE COURT: We'll do it later. We'll take a look at
7 it. Do we need it? She's just doing foundation?

8 MR. DiGIACOMO: No, she's going through the whole
9 exhibit, so --

10 THE COURT: And she's going to --

11 MR. SGRO: Yeah, so -- well, we --

12 MS. WECKERLY: She can start.

13 MR. SGRO: Yeah, she can do everything other than --

14 MR. DiGIACOMO: She's not -- I mean, like you walk
15 through the front door, there's a dead lady. That's -- like
16 I'm about six questions in at that point.

17 MR. SGRO: Right. No, I get it. What I'm
18 suggesting is maybe the State can pick one. We could defer --

19 MR. DiGIACOMO: Well, I'm not going to [inaudible].

20 THE COURT: Let me see the four.

21 MR. SGRO: Well, then --

22 THE COURT: Pull them out and let me see them.

23 MR. DiGIACOMO: We're going to have to wait for her
24 to -- well, she's probably passed them.

25 MR. SGRO: Thank you.

1 MR. DiGIACOMO: I don't know that these are all of
2 them, the ones you're talking about.

3 THE COURT: That's not offensive.

4 MR. DiGIACOMO: For example [inaudible].

5 MR. SGRO: Is that all of them?

6 MR. DiGIACOMO: No, there is one [inaudible].

7 THE COURT: There's nothing wrong with these here.

8 MR. SGRO: So I said four. It looks like there's
9 more like eight, and two of them appear to be the same exactly
10 shot.

11 THE COURT: Well, you don't need both of these.

12 MR. DiGIACOMO: Well, you're right. You can take
13 that one out. I actually that that -- I need that one from
14 that side, and that one from that side. I had these for
15 distance.

16 THE COURT: You don't need this, do you?

17 MR. SGRO: No, it's the same as this one.

18 THE COURT: You don't need this.

19 MR. DiGIACOMO: Well, it's not the same as that one.

20 THE COURT: Well, it's not the same, but it's --

21 MR. DiGIACOMO: [Inaudible].

22 THE COURT: Why don't I exclude these two and you
23 keep these?

24 MR. DiGIACOMO: That's fine. I just --

25 THE COURT: Okay.

1 MR. SGRO: Thank you, Judge.

2 MR. DiGIACOMO: I can't get -- I can't get to around
3 the whole room because the rooms were too small. That photo
4 is the deal lady in the middle of the room, Judge.

5 THE COURT: Do you need this? We don't need this
6 one.

7 MR. DiGIACOMO: I don't need that one.

8 THE COURT: Okay.

9 MR. DiGIACOMO: But I can't circle the room without
10 a dead lady in the middle of it. It's not my fault.

11 THE COURT: All right. I'll let you have this one.
12 Okay. We'll exclude 41.

13 MR. DiGIACOMO: Are we good?

14 THE COURT: Thank you. Hold on. I've got to push
15 the right button here.

16 (End of bench conference.)

17 THE COURT: All right. I've pushed the right
18 button. I'm excluding Exhibit 41.

19 MR. DiGIACOMO: And so I guess then I'll offer 14
20 through, I think it was 125.

21 MR. SGRO: Other than what was discussed at the
22 bench, no objection.

23 THE COURT: Okay.

24 (State's Exhibit 14 through 40, 42 through 65 and 68 through
25 125 admitted.)

1 BY MR. DiGIACOMO:

2 Q Now, I'm going to try and start sort of at the
3 beginning and I'm just going to ask you -- I kind of have the
4 crime scene diagram up on the left side. So as I go through
5 the photographs, I'm going to put the photographs up -- sorry,
6 the diagram is on the right side. I'm going to put the
7 photographs up on the left side and ask you not only what
8 we're looking at, but to orient us in relationship to that
9 crime scene diagram so the jury understands inside the
10 apartment. Okay?

11 A Okay.

12 Q I'm going to start with Exhibit No. 14.
13 Obviously this is not inside the apartment, but what are we
14 generally looking at?

15 A This is the front of the building where the
16 apartment was located.

17 Q And the front door to this particular
18 apartment, where would it be on the building that we're
19 looking at?

20 A It was behind the stairwell right here.

21 Q So is it first floor?

22 A Yes.

23 Q And so you would go in if you were to walk
24 past the stairwells on your left and you'd have to turn left
25 to go into the doorway?

1 A That is correct.

2 Q On the diagram, is there -- the front door, is
3 that referenced on State's Exhibit 13?

4 A Yes. It is located right here.

5 Q So as you come through the front door of the
6 residence, what room do you wind up in?

7 A You wind up into the living room.

8 Q And now I'm going to move on to State's
9 Exhibit No. 25. Can you see the front door area anyway on 25?

10 A Yes, you can.

11 Q And then I'm just going to slowly, attempt to
12 anyways, walk inside the apartment. So State's Exhibit 26, is
13 that the front door?

14 A That is.

15 Q And then 27. Describe what we're looking at
16 for the record.

17 A This is standing at the entryway of the front
18 door looking into the living room.

19 Q And 28. What are we looking at in 28?

20 A This is a view from a corner of the living
21 room or the south portion of the living room looking toward
22 the front door.

23 Q So the first shot that we had was looking into
24 the door, and the second shot is now looking outside of the
25 door. Would that be fair?

1 A The first shot was looking into the living
2 room, and this shot is looking at the front door from the
3 living room.

4 Q And then if we were to turn, where that person
5 who's standing is, if we were to turn right -- I'm going to
6 put up State's Exhibit 29, would that be as if you were
7 panning right around that room?

8 A That is correct.

9 Q State's Exhibit 30.

10 A This is another view going to the right of the
11 last shot.

12 Q And then State's Exhibit 31. What are we
13 looking at?

14 A This is a view from, actually, it looks --
15 appears to be the front door area, the entryway area into the
16 living room.

17 Q So we came through the door, we took a shot
18 out the door, turned right, turned right, and now someone is
19 back by the door shooting into the living room.

20 A That is correct.

21 Q And the angle of the picture is in this
22 general direction?

23 A That is correct.

24 Q I'm going to focus in on the woman that you
25 see there on the couch, State's Exhibit No. 34, and ask you --

1 first of all, for the record, what are we looking at?

2 A This is a photograph of a deceased woman that
3 is on the sofa in the living room.

4 Q Now, when someone -- when you first arrive on
5 scene as a crime scene analyst, is there a particular
6 procedure that you go through in order of sort of processing a
7 scene?

8 A Yes, there is.

9 Q Can you explain that to the ladies and
10 gentlemen of the jury?

11 A Sure. We usually arrive on scene and make
12 contact with the first responding officers, and in this case
13 also with homicide detectives. We get -- we have a briefing
14 where we find out information about the case and information
15 about the victim. Then we then walk in through -- do a
16 walkthrough of the scene observing anything that might be
17 important such as evidence, or in this case the deceased woman
18 on the sofa. And then after that we take photographs of the
19 scene as it is upon our arrival, and then we collect evidence
20 and process for prints.

21 Q Now, during the course of the collection or
22 prior to the collection of evidence, when you first arrive,
23 does a crime scene analyst, one of the crime scene analysts
24 supposed to document in photography the way the scene looks at
25 the time you arrived?

1 A That is correct.

2 Q And then during the course of the processing
3 as items of evidence are located, are there times when things
4 are put to identify various pieces of evidence?

5 A Yes.

6 Q Okay. Like in some of these photographs
7 you'll see little orange cones.

8 A That --

9 Q Those orange cones would have been placed
10 there by law enforcement personnel as they identified evidence
11 after the initial documentation of the scene occurred?

12 A It would be placed there by a crime scene analyst.

13 Q Okay. Now, as you look at the woman who is
14 sitting -- or Ms. Newman who is obviously deceased on the
15 couch, in her right hand, and this is State's Exhibit No. 36,
16 did she have a piece of evidence or did she have an item for
17 lack of a better term?

18 A Yes, she did.

19 Q And what was that?

20 A It was a \$20 bill.

21 Q And then between her legs, this is Exhibit No.
22 40, were there also some items of evidentiary value?

23 A Yes, there was.

24 Q What was it?

25 A There was two pieces of fabric and several

1 pieces of bullet fragments.

2 Q Can you see both the pieces of fabric, as well
3 as the bullet fragments?

4 A Yes.

5 Q And can you circle that for the ladies and
6 gentlemen of the jury?

7 A It's difficult to see if there are more on the
8 floor.

9 Q Okay. Your screen is actually smaller than
10 theirs, so --

11 A Okay.

12 Q But generally those are pieces that you
13 collect, you collect the metal fragments suggestive of
14 firearms evidence, as well as two pieces of cloth?

15 A That is correct.

16 Q Why did you collect those two pieces of cloth?

17 A They appeared to be consistent with the
18 bandanna that the victim was wearing on her head.

19 Q There is processing that occurs, obviously,
20 from these pictures while the victim is still present at the
21 scene. Does there come a point in time where there is
22 documentation when she is removed from the scene, as well?

23 A Yes, there is.

24 Q Okay. I'm going to put up State's Exhibit No.
25 44 and ask you what's being documented there.

1 A This is the sofa after the victim has been
2 removed from the scene.

3 Q Now, obviously on the sofa there is a large
4 amount of blood. Inside the residence was there other blood
5 or some sort of matter located?

6 A Yes, there was.

7 Q And can you explain that to the ladies and
8 gentlemen of the jury.

9 A Sure. There were several pieces of what
10 appeared to be tissue and bone located around the living room.

11 Q With the exception of the tissue and bone
12 that's located around the living room, which -- well, let me
13 ask you this. Do you have an opinion as to whether or not it
14 was consistent with the wound that Derecia Newman had at that
15 scene?

16 A Yes.

17 Q Okay. With the exception of the area that's
18 associated with Ms. Newman, did you find any other blood
19 inside the residence?

20 A No.

21 Q So now I'm going to, from the living room,
22 sort of move through the rest of the house, State's Exhibit
23 No. 48, and ask you what we're looking at.

24 A This is a view of the kitchen from the living
25 room.

1 Q And as you -- I'm guessing that once again
2 this is sort of in this area kind of facing into that kitchen
3 area there.

4 A That is correct.

5 Q And as we move around, State's Exhibit No. 49,
6 what are we looking at?

7 A This is a view of the hallway from the corner
8 of the living room looking south to north.

9 Q So can you just draw an arrow which direction
10 that this -- that we're looking with that camera?

11 A Sure.

12 Q Is the vacuum cleaner we see in State's
13 Exhibit 48, is that also identified on the crime scene
14 diagram?

15 A That is correct. It is right here.

16 Q So as you travel down that hall, what's the
17 first room, for lack of a better word, that's on your right
18 side?

19 A That would be the laundry room located here.

20 Q And then after you pass the laundry room, as
21 you head down that hall what's the next room that you would
22 hit?

23 A That would be the bathroom in the west area.

24 Q So there's a door on your right that leads to
25 the laundry room. Then as you keep walking down there's a

1 door on the left that has a bathroom?

2 A That is correct.

3 Q Inside that bathroom did you find anything of
4 relevance that you were aware of?

5 A No.

6 Q As you come out of that bathroom, this is
7 State's Exhibit No. 58, is that the vacuum cleaner we were
8 talking about earlier?

9 A Yes, it is.

10 Q And does it appear to have a defect on it?

11 A Yes, it does.

12 Q Can you explain that to the ladies and
13 gentlemen of the jury?

14 A The vacuum appears to have holes in the handle
15 area. And it is sitting in the middle -- or, I'm sorry, in
16 the east portion of the hallway.

17 Q And I want to put a picture up, State's
18 Exhibit No. 64. Now we're on the other side of that vacuum,
19 but this item back here, that my screen is now not drawing on,
20 what is the -- what's the shelf back there? What is that?

21 A It appears to be a hutch or an armoire of some
22 sort.

23 Q And that item is between -- that hutch or
24 armoire is between that -- well, it's on the outside of that
25 wall, obviously, that backs up against the end of the hallway?

1 A Yes.

2 MR. SGRO: What exhibit number, Counsel? Sorry.

3 MR. DiGIACOMO: 64.

4 BY MR. DiGIACOMO:

5 Q As you continue down that hallway, State's
6 Exhibit 65 -- well, describe for the ladies and gentlemen of
7 the jury. If I'm standing here as the camera man, what's on
8 my left side?

9 A The bathroom door is on your left side.

10 Q And directly in front of the bathroom door,
11 what is that?

12 A There is a box and several piles of -- appears
13 to be bedding or clothing, and also the hutch that we
14 mentioned earlier.

15 Q And if you were to continue down this hall and
16 turn left, where would you go to?

17 A You would be heading into the northeast
18 bedroom.

19 Q Is that the bedroom with the bunk beds that we
20 talked about earlier?

21 A Yes, it is.

22 Q State's Exhibit, for identification, 68. Did
23 you photograph the interior of this room, as well?

24 A I did not photograph. Robbie Dahn
25 photographed the interior of this room.

1 Q And State's Exhibit 69, her photographs from
2 the interior of this room?

3 A Yes.

4 Q Inside that closet, State's Exhibit 72, was
5 there a piece of furniture inside the closet of that back
6 bedroom?

7 A Yes, there was. There was a dresser.

8 Q Then if you walk directly out of that back
9 bedroom and cross the hall, where are you going in the house?

10 A You are heading into the master bedroom in the
11 northeast area of the apartment.

12 Q State's Exhibit 75. Just orient the ladies
13 and gentlemen of the jury what we're looking at.

14 A We are looking at a view of the master bedroom
15 door from inside the master bedroom.

16 Q And just to the right of the cameraman
17 anyways, or to the right side of this picture, what's that
18 dark item that's depicted in the photograph, can you tell?

19 A It's a television.

20 Q And does that television back up the wall
21 that's on the -- or back against the wall, but on the opposite
22 side as where that shelf is that we were talking about
23 earlier?

24 A That is correct.

25 Q So that hutch that leans up at the end of the

1 hall backs up to a wall that then backs up to the big TV
2 that's inside the master bedroom?

3 A Yes.

4 Q State's Exhibit 79. Now where is the person
5 who's taking the photograph standing?

6 A This is a view looking into the master bedroom
7 from the master bedroom doorway.

8 Q So as before, we were -- or the cameraman was
9 shooting outside the door, now this is standing at the door
10 shooting into the room; is that correct?

11 A That is correct.

12 Q Now, generally speaking, what kind of a size
13 of an apartment are we talking about here?

14 A An average size apartment. I don't know the
15 square footage.

16 Q Let me ask you this, when you were -- I know
17 you didn't take the photographs, but I'm assuming you
18 photographed in apartments this size before.

19 A Yes.

20 Q Can you explain to the ladies and gentlemen of
21 the jury the -- if there is a difficulty as it relates to
22 being able to take orienting shots inside the crime scene?

23 A Yes, there is difficulty in photographing
24 small areas. You try to get overalls depicting the entire
25 room, but sometimes space dictates that you have to take

1 multiple photos and you may not be able to get everything in
2 all -- just one shot. It may take multiple views to get the
3 whole entire room.

4 Q And so that's why we're getting small little
5 sections as we go along in order to -- to kind of show the
6 entire house?

7 A Yes.

8 Q State's Exhibit No. 83. What are we looking
9 at?

10 A This is a view looking from what would be the
11 northwest corner of the room looking into the northeast corner
12 of the room of the master bedroom.

13 Q Thank you. Is it this side of the bed, then,
14 that we're looking at?

15 A That is correct.

16 Q Okay. The photograph in 83, there was a
17 drawer that I just put my finger over there. That drawer
18 appears to be open; is that correct?

19 A That is correct.

20 Q Was it in that condition when you arrived on
21 scene?

22 A Yes.

23 Q And now I'm going to show you State's Exhibit
24 No. 85 and ask you what we're looking at.

25 A This is a view from the -- it appears to be

1 the northwest corner looking in toward the southeast area of
2 the room.

3 Q And there's kind of a Culligan water bottle.
4 To kind of orient ourselves, what is on the other side of that
5 Culligan water bottle?

6 A That is the bathroom, the master bathroom.

7 Q And this would have been an overall shot taken
8 -- well, is it an overall shot taken before any of the
9 processing that occurred in the room?

10 A Yes.

11 Q I'm going to go back to the -- that side of
12 the bed that's depicted in the photograph, State's Exhibit 86.
13 What are we looking at?

14 A This is a view from looking from the -- it
15 would be the bottom south corner of the bed looking towards
16 the southeast corner of the room.

17 Q And I'm going to start zooming in on that
18 plate. State's Exhibit 87. Was there -- in this photograph
19 there's a lot of white dots on that carpet. Can you tell the
20 ladies and gentlemen of the jury what that was?

21 A It appeared to be a rock-like, white unknown
22 substance.

23 Q And while -- well, let me ask you this. I'm
24 assuming you didn't do any presumptive tests on this item when
25 you took it; is that correct?

1 A I did not.

2 Q In your training and your experience, was it
3 consistent with some sort of illegal narcotic?

4 A Yes.

5 Q And what narcotic was it consistent with?

6 A Possibly cocaine.

7 Q Have you ever heard the term crack before?

8 A Yes.

9 Q Is it consistent with crack cocaine?

10 A Yes.

11 Q Okay. And then State's Exhibit No. 88. And
12 for the ladies and gentlemen of the jury, I'm just going to
13 zoom in on one portion of the white stuff so they can see it
14 maybe a little better. The little rock-like substance that
15 was found on the -- the floor, describe for the ladies and
16 gentlemen of the jury -- well, how was it -- was it scattered
17 across that portion of the bedroom?

18 A Yes, it was.

19 Q And State's Exhibit No. 91. What are we
20 looking at?

21 A This is a view of the southeast corner of the
22 bedroom looking at the nightstand and the Culligan water
23 bottle.

24 Q Now, this draw, as well, on the right side is
25 open. Was that in that condition when the crime scene analyst

1 began processing the scene?

2 A Yes.

3 Q State's Exhibit No. 92, just orient the jury.
4 The water bottle is right next to that bathroom door, is that
5 fair?

6 A Yes.

7 Q And then if you were to stand inside the
8 bathroom, State's Exhibit No. 93. What are we looking at?

9 A This is a view looking out into the bedroom
10 from the bathroom doorway.

11 Q Now, in this area kind of where the plate is,
12 where the bathroom is in there, was there any evidence that
13 you saw of an item that in your training and experience you
14 would expect to be blood?

15 A No.

16 Q All of the blood and that type of material was
17 found out by Derecia's body?

18 A That is correct.

19 Q I'm going to go to State's Exhibit No. 94.
20 What are we looking at?

21 A This is a view of the bathroom door. And I
22 can't tell if it's in or out, though.

23 Q Okay. Let me ask you this. Is the top of
24 this photograph the top of the bathroom door?

25 A Yes.

1 Q And these items up here, what does that appear
2 to be?

3 A Clothing and possibly a towel.

4 Q Okay. And then right here is there something
5 in the door?

6 A Yes, there is a defect in the door.

7 Q And what was that defect consistent with?

8 A It was consistent with a bullet hole.

9 Q State's Exhibit No. 95, do you give it to us
10 from a different angle? Do you see the bullet hole in -- let
11 me ask you this. On both sides of this door was there a
12 defect similar to a bullet going through the door?

13 A Yes.

14 Q Was there only one defect in the door as it
15 relates to a bullet? I mean, one bullet, but through and
16 through?

17 A Yes.

18 Q And then obviously inside the bathroom of
19 State's Exhibit No. 98. Did that -- did it appear that that
20 bullet that went through the door wound up lodging somewhere?

21 A It appeared that it actually entered the wall
22 in the east area of the bathroom.

23 Q Now, during the course after you've kind of
24 processed the scene, do you go back through and look for
25 evidence other than just the physical evidence at a scene? Do

1 you try and determine if there's bullet strikes or anything
2 else like that inside the residence?

3 A Yes.

4 Q Were you aware at the time you arrived that
5 Devonian Newman had been transported to the hospital?

6 A Yes.

7 Q Okay. And I'm assuming because Devonian is
8 transported you would have no way of knowing whether or not
9 she has a bullet inside of her or not while you're processing
10 the scene, is that fair?

11 A That is correct.

12 Q First I'm going to put up State's Exhibit No.
13 42. That's Ms. Newman as you found her at the scene?

14 A That is correct.

15 Q And there is a substantial portion of the left
16 side of her face that's missing.

17 A That is correct.

18 Q As it relates to the injury to Ms. Newman,
19 other than the fragments that you've kind of discussed that
20 you found around her legs and -- and in the area of the living
21 room, did you ever find a large bullet core anywhere inside
22 the scene in the living room?

23 A No.

24 Q So now I want to move onto the next evidence
25 of firing of bullets in State's Exhibit No. 102. Did you

1 identify a path of a bullet that you labeled A?

2 A Yes.

3 Q And can you describe for the ladies and
4 gentlemen of the jury first your labeling process? How does
5 that work?

6 A Sure. Usually when we have trajectory of a
7 bullet or the path of the bullet, we label each hole
8 consistently and consecutively. So our first bullet hole
9 would be A, our second would be A-1, our third one would be
10 A-2, until they -- until it appears to have either terminated
11 in lodging in something or terminated and fallen to the
12 ground.

13 Q So as I talked with -- first you have --
14 there's a shot to Derecia, but then you have a bullet path
15 that's marked A, is that -- is that fair?

16 A Yes.

17 Q Can you describe for the ladies and gentlemen
18 of the jury -- first describe for them the path of bullet A,
19 and then if you could trace for the ladies and gentlemen of
20 the jury A on Exhibit No. 13.

21 A The path of bullet A appeared to be going from
22 a south to north direction, entering -- the first strike
23 entering the side of the refrigerator, exiting out the back of
24 the refrigerator, and in this picture A-3 would be creasing
25 along that west wall. And then the path continues into the

1 wall, the north wall of the hallway, going through that wall
2 and impacting the dresser that's inside the closet.

3 Q So A hits refrigerator, comes out back of
4 refrigerator, hits that left wall, goes down the left side,
5 hits the wall, and winds up hitting the dresser that we talked
6 about was inside the closet inside the room with the double
7 bunk beds?

8 A Yes.

9 Q Do you recover an item with evidence between
10 the dresser with the TV on it and the -- and the wall of the
11 closet that's inside that double bunk bed room?

12 A Yes, we recovered bullet fragments on the
13 floor between the dresser and the wall.

14 Q So now let's go to the path of what you
15 described as B. And I want to start with Exhibit No. 109.
16 Can you describe for the ladies and gentlemen of the jury sort
17 of the path? And I know that we have to get into another
18 room, but before I go off 9 can you start with B where you
19 first see a strike and then ultimately where it winds up?

20 A This is the defect that was mentioned prior in
21 the vacuum, in the handle of the vacuum. We labeled this one
22 B-1. There's actually two holes. You can't see the other
23 side of the handle, but it appears to have gone through the
24 handle of the vacuum, and it ultimately -- the bullet
25 ultimately ends up in the master bedroom on a crate.

1 Q So it goes through that handle. Then 111. Is
2 there a green tag on the bed there?

3 A Yes, there is.

4 Q Okay. And what does that represent?

5 A That represents either a bullet strike or a
6 bullet hole that we found.

7 Q And then State's Exhibit No. 113. What are we
8 looking at there?

9 A This is a view of the curtain covering the
10 north window. There is a defect in the curtain. And then on
11 the crate, there is the bullet underneath it.

12 Q For the jury 114, this is a picture of a -- of
13 a bullet lying on that red crate?

14 A That is correct.

15 Q So it goes south to north through the vacuum
16 cleaner, bounces off the bed, hits the window, and then lays
17 down at the base of the window?

18 A That is correct.

19 Q Let's talk about bullet number or -- bullet
20 letter C, I guess, it is. And I will just do State's Exhibit
21 No. 116. What do we have?

22 A This is a view of the bathroom door looking
23 into the bathroom. And the first -- the defect that we talked
24 about prior is labeled C-1 on the exterior side of the door.

25 Q So C-1 is the exterior side. C-2 would be

1 what?

2 A The interior side.

3 Q And then C-3?

4 MR. DiGIACOMO: And that's Exhibit 119, Counsel.

5 BY MR. DiGIACOMO:

6 Q And 119, C-3.

7 A This would be where the bullet impacted into
8 the wall.

9 Q So -- and can you put on the diagram, it's
10 hard to tell from some of the pictures, kind of where in the
11 bathroom C-3 winds up?

12 A Sure. In this area right here.

13 Q Now, in addition to looking for firearms
14 related evidence -- well, let me ask you this. Do you guy
15 search the house to see how -- if you can find all the
16 firearms related evidence that you possibly can?

17 A Yes, we do.

18 Q Okay. When you were inside this scene, did
19 you find any shell casings?

20 A No, we did not.

21 Q Was that suggestive to you in your training
22 and experience?

23 A That is indicative of a possible revolver.

24 Q Do you know as you're standing at the scene
25 how many shots had been fired?

1 A No.

2 Q And so do you have to search everywhere --
3 well, let me ask you this. What do you do in order to see if
4 you can gather as much of the firearms evidence as possible?

5 A A thorough search is conducted of the crime
6 scene.

7 Q So that means, what?

8 A That means you're removing items, we're
9 looking in every place that there may be more evidence that is
10 consistent with evidence that we've already found.

11 Q And as you're taking these scene apart looking
12 for firearms related evidence, did you ever come across a
13 firearm?

14 A No, we did not.

15 Q Do you, in fact, collect as much of the
16 firearms evidence as you possibly can?

17 A Yes.

18 Q I'm going to show you now State's Exhibit No.
19 126 to 134. Is there a process after the evidence is
20 physically collected where it is documented in photographs
21 before you impound it into evidence?

22 A That is correct.

23 Q And I apologize as I walk back here and it's
24 getting late in the day, what numbers are those exhibits in
25 front of you?

1 A 126 to 134.

2 Q Looking at 126 to 134, do those appear to be
3 photographs of the -- of some of the physical evidence that
4 was taken out of the crime scene?

5 A Yes.

6 MR. DiGIACOMO: I would move to admit --

7 MR. SGRO: I have no objection, Your Honor.

8 MR. DiGIACOMO: -- 126 to 134.

9 MR. SGRO: Have you shown these to me already?

10 MR. DiGIACOMO: Yeah.

11 MR. SGRO: No objection, Your Honor.

12 THE COURT: They'll be received.

13 (State's Exhibit 126 through 134 admitted.)

14 BY MR. DiGIACOMO:

15 Q I'm going to show you what's been marked as
16 State's Proposed Exhibit No. 263 and ask you if you recognize
17 that.

18 A Yes, I do.

19 Q What is it?

20 A It is a package containing a label and
21 evidence seal tape across the top and the bottom.

22 Q Why don't you take me through the process of
23 how it is you wind up impounding evidence.

24 A I'm not sure --

25 Q What -- what do you physically do?

1 A The evidence is collected. It is placed in an
2 envelope or some box or a certain type of a package that would
3 cover it that would keep it secure. It is sealed with red
4 evidence tape and a label is attached to the front, which is
5 showing all the pertinent information regarding the case and
6 the items that are actually in that package.

7 Q And then when you seal the package with red
8 tape, do you write anything on it so that you know that it's
9 never -- that is hasn't been touched?

10 A Yes, I do.

11 Q What do you do?

12 A I put my initials and my P-number and the date
13 that it was actually sealed.

14 Q And you do that over the tape itself so
15 someone knows if it's ever been tampered with?

16 A Yes.

17 Q You said there's a label on the outside. One
18 of the things on this label is an event number. What is an
19 event number?

20 A An event number is a number that Metro uses.
21 It is consistent of the year, the month date, and whatever --
22 or, I'm sorry, whatever sequence that call came in that day.

23 Q So in this particular case, our crime occurred
24 or our even occurred on October -- or, sorry, August 7th of
25 2010, so our first six numbers are what?

1 A It's going to be 100807.

2 Q And then this is the 732nd call or even
3 generated by Metro, so what's our last four number?

4 A It would be 0732.

5 Q So that's a -- is that a unique identifying
6 number for physical evidence that are associated with the case
7 so that later on you can match up evidence with reports to
8 forensic analysis, those type of things?

9 A That is correct.

10 Q Okay. Now, I want you to ignore, because I
11 can represent to you that the clerk and the attorneys and I
12 cut these in open court on top, so I want you to ignore the
13 fact that these things are open --

14 A Okay.

15 Q -- for my next series of questions. With the
16 exception of your red tape, is there anything else done to
17 this package after you've placed it into evidence?

18 A Yes, there is blue tape located at the bottom
19 of the package.

20 Q And does that blue tape suggest anything to
21 you?

22 A It suggests that someone from our forensic lab
23 opened this package?

24 Q And conducted some sort of analysis?

25 A That is correct.

1 Q With the exception of the cut to the top and
2 the blue tape at the bottom, is this in substantially the same
3 or similar condition as when you impounded it into evidence?

4 A Yes, it is.

5 Q Okay. And if you were to open this package,
6 what would you expect to find in there?

7 A According to the label there would be one
8 copper jacket fragment, one bullet fragment, and four bullet
9 fragments.

10 Q And that -- would those correlate to your
11 Items 4, 5, and 6, and also correlate to 4, 5, and 6 on the
12 crime scene diagram?

13 A That is correct.

14 MR. DiGIACOMO: I move to admit 263.

15 MR. SGRO: No objection. Sorry, Judge.

16 MR. LANGFORD: No objection, Your Honor.

17 THE COURT: It will be received.

18 (State's Exhibit 263 admitted.)

19 BY MR. DiGIACOMO:

20 Q Let's move on to 264. I'm not going to ask
21 you all of those foundational questions again, but once again,
22 is that package similarly packaged as 263 with the exception
23 that the clerk has cut it and the forensic lab has opened it
24 and done some sort of testing?

25 A It is in the original condition except for

1 those areas.

2 Q And if you were to open that package, would
3 you expect to find -- well, what would you expect to find?

4 A I would expect to find three bullet fragments
5 and one bullet.

6 Q And those would have correlated to Items 14
7 and 15 from the scene, as well as the diagram?

8 A That is correct.

9 MR. DiGIACOMO: Move to admit 264.

10 MR. SGRO: No objection, Your Honor.

11 MR. LANGFORD: No objection.

12 THE COURT: It will be received.

13 (State's Exhibit 264 admitted.)

14 BY MR. DiGIACOMO:

15 Q Showing you what's been marked as State's
16 Proposed Exhibit No. 265. What is that?

17 A This is a package containing two small
18 shredded pieces of fabric.

19 Q And are those the two small pieces of fabric
20 that were found between Ms. Newman's legs that appeared to be
21 consistent with the bandanna that was on her head?

22 A That is correct.

23 MR. DiGIACOMO: Move to admit 265.

24 MR. LANGFORD: No objection.

25 MR. SGRO: No objection, Your Honor.

1 THE COURT: They'll be received.

2 (State's Exhibit 265 admitted.)

3 BY MR. DiGIACOMO:

4 Q And lastly, inside the house as you were
5 collecting items, did you collect what's been marked as
6 State's Proposed Exhibit No. 266?

7 A Yes, I did.

8 Q And what is 266?

9 A 266 contains two pieces of paper bearing
10 apparent footwear impressions. They would correlate with
11 Items 12 and 13 in the diagram, and also in the impounding
12 report.

13 Q Why did you collect those?

14 A I collected those because they appeared to
15 have footwear impressions on them.

16 Q When you are at a crime scene -- well, I guess
17 I should finish. With the exception of the blue seal, is that
18 in substantially the same or similar condition as when you
19 impounded it?

20 A Yes, it is.

21 MR. DiGIACOMO: Move to admit 266.

22 MR. SGRO: No objection.

23 MR. LANGFORD: No objection.

24 THE COURT: It will be received.

25 (State's Exhibit 266 admitted.)

1 BY MR. DiGIACOMO:

2 Q When you are at a crime scene -- well, let me
3 ask you. What's your philosophy on -- on collecting evidence?

4 MR. SGRO: Objection to her philosophy. Relevance.

5 THE COURT: What's --

6 MR. DiGIACOMO: I'll rephrase.

7 THE COURT: What's her procedure.

8 BY MR. DiGIACOMO:

9 Q What's your procedure for collecting evidence?

10 A Our procedure for collecting evidence is
11 obviously doing a crime scene search to gather as much of the
12 evidences that we can, to find as much evidence as we can. We
13 collect it wearing gloves. We don't want to contaminate the
14 evidence. We put in packages and keep them separated from
15 other items that are not either touching it or in the same
16 vicinity. So they are kept so that there is no contamination.

17 Q Okay. When you're at a scene, do you always
18 know whether or not a piece of evidence is going to be
19 relevant or not to your investigation?

20 A No.

21 Q Well, then, what do you do as it relates to
22 being under inclusive or over inclusive in taking evidence?

23 A You take evidence that is important to the
24 information that you have at that the time.

25 Q At the time that you took those two pieces of

1 paper, did you know whether or not those two pieces of paper
2 would or would not ultimately be relevant in the
3 investigation?

4 A No, I did not.

5 Q Well, then, why did you take them?

6 A Because we don't know where -- what role that
7 they played in this scene in the incident. We don't know if
8 they were there before the scene -- before the incident
9 happened. We don't know if they were there during the
10 incident. So it was relevant at that time. They are physical
11 evidence. They are containing footwear impressions.

12 Q So that might be something that would help
13 identify somebody at some point in time, so you took it?

14 A Yes.

15 Q Did you do anything else to process the scene
16 in the homes that at some point it may be helpful in making
17 some sort of identification?

18 A Yes, we processed the scene for latent prints.

19 Q Okay. And when you say process the scene for
20 latent prints, what does that mean you do?

21 A We look at all areas that might have possibly
22 been handled or possibly touched during an incident. We
23 obviously don't know where that would be, but we look at any
24 areas that logic would say is possible. We throw powder onto
25 a surface and we brush it with a special brush and look for

1 any fingerprints that might develop up from that.

2 Q At the time that you're putting powder on, do
3 you know whether or not somebody has or hasn't touched a
4 particular item as it relates to the crime itself?

5 A No.

6 Q So you're placing it on there because you have
7 one shot at a crime scene?

8 A That is correct.

9 Q Is there anything else that you did in order
10 to gather evidence while you were there processing the crime
11 scene?

12 A Yes. We swabbed the handles of the two
13 nightstands in the master bedroom, and there was several
14 drawers that were open in the kitchen. We also swabbed those
15 for possible DNA, as well.

16 Q Thank you very much, ma'am.

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

18 MR. SGRO: Actually, can I have you put that crime
19 scene, just the --

20 MR. DiGIACOMO: Just the crime scene?

21 MR. SGRO: Just the crime scene diagram. Thank you.
22 May I proceed, Your Honor?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. SGRO:

1 Q Good afternoon.

2 A Good afternoon.

3 Q I want to talk to you a little bit about your
4 background before we get rolling. You have had to have a
5 significant amount of training to have the job that you have
6 today, would that be fair?

7 A That is fair.

8 Q And you studied -- we've got a copy of your
9 resume. You studied blood pattern analysis; right?

10 A That is correct.

11 Q How to process crime scenes?

12 A That is correct.

13 Q You have familiarity with DNA?

14 A That is correct.

15 Q You also spent about ten times more credit
16 hours on something called forensic science than anything else;
17 right?

18 A That is correct.

19 Q A lot of time is invested in your education to
20 be able to ascertain what is and is not important; right?

21 A That is correct.

22 Q And science has a place in criminal cases;
23 right?

24 A Yes, it does.

25 Q Science -- would you agree with me that

1 science does not have a motive or an agenda to fabricate like
2 maybe a witness would?

3 A That is correct.

4 Q And you took this case serious, it's a
5 homicide case; right?

6 A Of course.

7 Q Now, you also in your studies studied a lot
8 about drugs and drug trafficking, so you are alerted to what
9 items to look for in that kind of a scene?

10 A That is correct.

11 Q All right. And so when -- when Mr. DiGiacomo
12 asked you about your experience relative to the crack cocaine,
13 you fully understood that that substance that you saw was
14 consistent with crack cocaine the night you were at that
15 scene?

16 A That is correct.

17 Q And in addition to that you also found a razor
18 blade with some white powdery substance; correct?

19 A I know there was a razor blade. I don't
20 recall if there was any white powdery substance on it or not.

21 Q Okay.

22 MR. SGRO: May I approach briefly, Your Honor?

23 THE COURT: Certainly.

24 BY MR. SGRO:

25 Q I'm just showing you a copy of the report.

1 A Okay.

2 Q If that refreshes your recollection. Do you
3 see where it says a razor blade with a white powdery
4 substance?

5 A Yes, I do.

6 Q Does that refresh your recollection?

7 A Yes.

8 Q Okay. And are you also familiar with the
9 location of something called a blade scale digital scale?

10 A I am not.

11 Q I'm sorry.

12 MR. SGRO: May I approach, Judge?

13 THE COURT: Yes.

14 BY MR. SGRO:

15 Q Does it say here that --

16 A Oh, yes.

17 Q Did I pronounce it wrong?

18 A No, you're fine.

19 Q Okay. It's a blade scale digital scale;
20 right?

21 A Yes.

22 Q Okay. And -- and scales are items used, as
23 you know, from your education, they're used by persons in the
24 drug trafficking business to weight things; correct?

25 A That is correct.

1 Q All right. And that would be a reason why
2 that particular item of evidence was impounded, fair?

3 A Yes.

4 Q Now, you were asked some questions generally
5 about the items that you recovered and how to go through the
6 scene; right? Yes?

7 A Yes.

8 Q Okay. You would agree with me that the more
9 pristine the location you are examining, the cleaner it is,
10 the more things are put away, the easier your job is?

11 A Yes.

12 Q Now, you were not shown all the pictures of
13 the inside of the residence that were taken that day; right?
14 You were shown a representative example.

15 A That is correct.

16 Q Would you agree with me -- well, would you
17 tell the jurors that the residence itself was -- and I don't
18 want to get caught up in adjectives, but it was not clean, it
19 was kind of dirty?

20 A That is correct.

21 Q There were multiple pieces of garbage on the
22 ground?

23 A There were multiple items on the ground.

24 Q Okay. Some that look like refuse or garbage?

25 A That is correct.

1 Q And the -- the residence itself was small,
2 yes?

3 A Yes.

4 Q And there were, in addition to debris, there
5 were large piles of clothing around the apartment; right?

6 A Yes.

7 Q The kitchen had a lot of items like used
8 cookware, used cups, that sort of thing?

9 A That is correct.

10 Q So those sorts of things can tend to make your
11 job more difficult; correct?

12 A That is correct.

13 Q It is easier to miss something if it's hidden
14 in a pile of clothing or behind some trash, that sort of
15 thing, fair?

16 A That is fair.

17 Q All right. Now I want to talk to you for a
18 second about the master bedroom, okay. And if you could do me
19 the favor just to orientate everyone again. It's -- it's on
20 the top right of this diagram as we look at it; is that right?

21 A That is correct.

22 Q Now, can you circle just the master bathroom?

23 A The closet is also included in there.

24 Q Okay. Right. And so what -- what you would
25 agree with is that the master bathroom itself starts where the

1 toilet is; right?

2 A Yeah.

3 Q Okay. So next to the toilet is -- is a
4 closet; is that right?

5 A I'm sorry. The closet -- it's a tub next to
6 the toilet, and the closet is actually right here.

7 Q Okay. It's in front of the toilet.

8 A Right.

9 Q All right. Now, the door -- and just to
10 orientate everyone, if I'm walking through, and the record
11 will reflect I'm facing the back wall of the courtroom, I'm
12 walking through the bathroom, which way is the door going to
13 swing?

14 A It's --

15 Q To my right or to my left?

16 A It's going to swing to your left.

17 Q So the door is going to open to my left.
18 Which means if, hypothetically, I was sitting on the toilet,
19 right --

20 A Yes.

21 Q -- using the toilet as the door opened, the
22 door is going to open to allow my view straight into that
23 space; right?

24 A Yes.

25 Q Okay. Now, we have heard testimony about the

1 overall residence being relatively small. Would you agree
2 with that?

3 A That is correct.

4 Q And I think you said you weren't sure on
5 square footage, but it's a reasonably small place.

6 A Yes.

7 Q Now, the bathroom, you would agree, literally
8 if you stood in the middle of the bathroom, you can touch
9 every part of the bathroom. It's pretty small, isn't it?

10 A Yes, it is.

11 Q Okay. There's nothing in the bathroom that
12 creates an obstruction in terms of sight or vision; right?
13 You can see the bathroom. In other words, the toilet below,
14 the sink is waist level, and the shower, as you pointed out
15 earlier, is a low tub; right?

16 A Yes.

17 Q Okay. Do you know what the dimensions are?
18 So if I asked you how many feet from the edge of the toilet to
19 the entry there of the door, do you know what that number is,
20 ma'am?

21 A I don't know off the top of my head, but
22 according to the scale, approximate scale right here, it could
23 possibly be a little more than four feet.

24 Q One -- one stride?

25 A Sure.

1 Q Right? And what happened -- I'm trying to get
2 you to articulate. It's one step from the door to the toilet;
3 right?

4 A Approximately, yes.

5 Q Okay. And, again, it's -- it's less than one
6 full stride from where the opening of the door is to the sink;
7 right?

8 A Yes.

9 Q Okay. Now, you were asked some questions
10 about the nightstand drawers being open and you just
11 photographed them as they were; right?

12 A That is correct.

13 Q And sometimes that can be evidence of
14 something. Sometimes it's evidence of nothing other than the
15 doors happen to be open; right?

16 A That is correct.

17 Q Okay. And you aren't going to tell us
18 factually how those doors came to be open. All you can tell
19 us is that's how it was when I got there?

20 A That is correct.

21 Q You were asked some questions -- do you mind,
22 if you touch that again off to the side it will erase the mark
23 you just made.

24 MR. DiGIACOMO: I'll do it. There you go.

25 MR. SGRO: Thank you.

1 BY MR. SGRO:

2 Q Now, by the bathroom door, you were asked some
3 questions about whether you could see blood; right?

4 A That is correct.

5 Q And I'm going to take it by your answer that
6 you were responding relative to what you could see with the
7 naked eye; correct?

8 A That is correct.

9 Q And you know based on your education that
10 sometimes I could look at this carpet with my vision and not
11 see anything, right, but that doesn't mean there's no blood
12 there; correct?

13 A That is correct.

14 Q Do you know what luminol is?

15 A Yes, I do.

16 Q Can you explain to the jury what luminol is?

17 A Luminol is a chemical that reacts with certain
18 components of blood. It is a fluorescent chemical, so it has
19 to be administered in the dark. And if there would be any
20 presence of blood, it would illuminate.

21 Q And that will even work through a cleaning
22 agent, won't it?

23 A It will react with cleaning agents, yes.

24 Q Right. It will react not only to blood, but
25 also to a cleaning agent?

1 A That is correct.

2 Q So not only could we tell if there was blood
3 there, we could tell if someone tried to clean it up?

4 A That is correct.

5 Q Okay. Do you have a report you can show me
6 where luminol was used to determine whether or not there was
7 any blood by the door?

8 A No.

9 Q All right. Is that because luminol was not
10 used in this case?

11 A That is correct.

12 Q What -- as you are processing the scene, are
13 you aware that a 12 year old girl had been shot in the
14 stomach? Did you know that?

15 A I was aware that a 12 year old girl was shot.

16 Q Okay. But -- well, let me ask a better
17 question. Were you aware of the location of where the 12 year
18 old girl was supposed to have been shot?

19 A Vaguely.

20 Q All right. So there would have been no
21 reason, then, for you to single out a particular area to
22 administer luminol, fair?

23 A That is correct.

24 Q All right. Were you present, ma'am, when a --
25 when a big screen television was taken apart in order to

1 search for a fragment?

2 A No, I was not.

3 Q You understand part of your job would be to do
4 things like that; right? Remember you said to Mr. DiGiacomo
5 we move things around, we look the best we can; right?

6 A That is correct.

7 Q We try to be thorough?

8 A Yes.

9 Q And in -- have you ever had the opportunity
10 where you've taken apart an appliance to look for evidence?

11 A Yes.

12 Q When you take apart an appliance, you examine
13 with the same scrutiny and thoroughness you do any scene,
14 fair?

15 A That is correct.

16 Q It's not going to be something where you
17 cursory look at it and then maybe you learn later you missed
18 something; right?

19 A That is fair.

20 Q You were asked questions about whether or not
21 you had ever seen or recovered a firearm; right? This day at
22 this residence, do you remember being asked if you had seen or
23 recovered a firearm that day?

24 A That is correct.

25 Q Now, what time did you go through this

1 residence?

2 A We arrived approximately at 7:00 in the
3 morning.

4 Q Okay. So in terms of context, are you aware
5 that the homicide was to have taken place approximately 3:45
6 a.m.?

7 A That is correct. I was aware.

8 Q Okay. So you arrived to do the thorough
9 investigation relative to the crime scene about three hours
10 and 15 minutes after roughly?

11 A Yes.

12 Q All right. Did you ever ask anyone if the
13 owner or the tenant of this residence owned a firearm?

14 A I did not personally.

15 Q Okay. You were asked to comment on some
16 footwear impressions that were obtained; right?

17 A Correct.

18 Q Sometimes footwear impressions can be compared
19 to other shoes, right, to make matches. Is that fair?

20 A That is fair.

21 Q So you take a footwear impression which is an
22 imprint of the bottom of a Nike tennis shoe, for example,
23 right, and you can say, hey, this was a size 8 or this was a
24 size 14; right?

25 A Yes.

1 Q And you can look at the bottom of the shoe and
2 talk about how much of the shoe is worn out and then compare
3 it to another shoe and see if the wear is the same; right?

4 A A forensic analyst can do that, yes.

5 Q Right. And when I say you, I'm speaking
6 generally law enforcement. That's the reason why you would
7 collect a footwear impression off of a piece of paper; right?

8 A Yes.

9 Q It could very well be the footprint of the
10 person that was involved in a homicide?

11 A That is correct.

12 Q All right. Now, you were asked about travel
13 paths of bullets. Do you remember that?

14 A Yes.

15 Q Now, if we look at this crime scene again, we
16 see the directional arrow on the bottom left with north
17 pointing up; right?

18 A That is correct.

19 Q And I'm going to apologize in advance. I'm
20 directionally challenged, so please bear with me. As someone
21 would enter into the door, okay, if they turned to their left
22 -- you see where the person that was shot is on the couch?

23 A Yes.

24 Q Okay. You're going to agree that that's one
25 travel path; right? You didn't collect the bullet. There was

1 some fragments. That's one travel path, whatever bullet was
2 used to inflict a fatal wound into that person?

3 A That is correct.

4 Q All right. So we have that as one. And then
5 did I hear you describe for the jury three distinct travel
6 paths independent of the one that struck and killed Ms.
7 Newman?

8 A That is correct.

9 Q All right. So at least insofar as you saw the
10 scene that day, you left that scene understanding that you had
11 four specific shots.

12 A Five.

13 Q Five. The fifth being?

14 A The 12 year old girl who was shot.

15 Q Okay. Five. Fair enough.

16 MR. SGRO: Now, Ms. Clerk, could I have -- does the
17 Elmo work?

18 THE MARSHAL: Yes, she's just got to switch it over
19 for you. There you go.

20 MR. SGRO: Do I need to do anything?

21 THE MARSHAL: Nope.

22 MR. SGRO: Thanks.

23 THE COURT: How did you do that?

24 THE MARSHAL: You can zoom in and out on there.

25 MR. SGRO: Oh, okay.

1 BY MR. SGRO:

2 Q Now, can you see this on your screen, as well?

3 A Yes, I can.

4 Q I want to talk to you about the travel path --
5 the one in the vacuum cleaner is the B like boy travel path;
6 right?

7 A That is correct.

8 Q All right. I want to just walk through an
9 example of one of the flight paths of a bullet that you did
10 that day. Now, this vacuum cleaner, is that tagged B-1?

11 A That is correct.

12 Q So what that means is this is the first impact
13 of a bullet that was fired along a particular travel path, it
14 hit the vacuum cleaner handle?

15 A That is correct.

16 Q All right. B-2 is that same vacuum cleaner
17 handle, but now we see an exit; is that correct?

18 A This is still labeled B-1, I believe.

19 Q Oh, okay. My mistake. So B-1 is a through
20 and through?

21 A That is correct.

22 Q Now --

23 MR. DiGIACOMO: I'm sorry, Counsel. For the record,
24 can you just put the exhibit numbers on them for the record.

25 MR. SGRO: You know, I didn't match them up which

1 ones these are. Actually, may I approach the clerk, Your
2 Honor, just to expedite it? I'll just mark these A through --

3 THE COURT: Oh, these aren't marked?

4 MR. DiGIACOMO: That's what I was wondering.

5 MR. SGRO: They are, but I did not take note to --

6 MR. DiGIACOMO: I believe he's using the ones that
7 I'm using.

8 Mr. Sgro, I have them here for you.

9 THE COURT: You're not using his, you're using your
10 own? That's okay. You can use --

11 MR. SGRO: I'll just --

12 THE COURT: -- anything you want.

13 MR. SGRO: -- mark these because some --

14 THE COURT: Okay.

15 MR. SGRO: I think I have one that's different.

16 Thank you, Judge.

17 You've got to keep your eye on my Judge.

18 THE COURT: You're right. I do. I just assumed you
19 -- I just assumed you were using his.

20 MR. SGRO: I'm using the same photographs, but I
21 don't know that each number is his.

22 THE COURT: But -- but they're not using his. Okay.

23 MR. DiGIACOMO: I -- I make the same assumption,
24 Judge.

25 THE CLERK: A through G.

1 MR. SGRO: Thank you.

2 MR. DiGIACOMO: Yeah, those are all in evidence. I
3 have no objection, Judge. We'd stipulate to their admission.
4 Just --

5 THE COURT: All right.

6 MR. DiGIACOMO: -- to keep --

7 THE COURT: They'll be received.

8 MR. DiGIACOMO: -- the record clean, he's going to
9 use his letters.

10 THE COURT: They'll be received.

11 (Defendants' Exhibit A through G admitted.)

12 MR. SGRO: Thank you.

13 BY MR. SGRO:

14 Q Okay. So the through and through, just for
15 purposes of the record, this is Defense Exhibit A. And that's
16 the through and through B-1; right?

17 A That is correct.

18 Q Okay. Now, when a bullet travels through
19 metal, the velocity of that bullet will slow down
20 considerably, fair?

21 A That is fair.

22 Q And this particular bullet not only went in
23 one sheet of metal -- that handle, by the way, is metal;
24 right?

25 A I don't recall what surface it is, but --

1 Q Okay. It was something solid?

2 A Yes.

3 Q All right. And -- and so the bullet that struck
4 this vacuum cleaner not only went in one side, it came out
5 another?

6 A That is correct.

7 Q Which going -- is going to further slow down the
8 velocity of that bullet?

9 A That is correct.

10 Q Then I believe you said -- and this is Defense
11 Exhibit C -- is that upside down?

12 A It's the foot of the bed, so --

13 Q Okay. It's the foot of the bed?

14 A -- it doesn't really matter.

15 Q Now, it's hard to see, but I think you testified
16 that B2 was where there was an imperfection in the fabric; is
17 that right?

18 A That is correct. It was an imperfection in the
19 sheet as well as in the mattress.

20 Q Right. Okay. Now, can you do me a favor,
21 please, and circle the sheet? And did you circle the
22 imperfection?

23 A Yes.

24 Q All right. Now, I want to examine this just for
25 a moment longer. The bullet, in your view, as you did these

1 travel paths, went through one part of the vacuum handle, went
2 through the second part of the vacuum cleaner handle, had lost
3 velocity such that it didn't go through the sheet, right?

4 A It did go through the sheet, but it did not go
5 through the mattress.

6 Q Okay. Went through the sheet but not through
7 the mattress. Did it leave a burn mark?

8 A No, I do not believe it did.

9 Q Would you agree with me that at this point the
10 bullet that has taken this travel path, that's gone through
11 both sides of the vacuum cleaner handle, the speed of that
12 bullet has dropped dramatically?

13 A That is correct.

14 Q Okay. Even to where it couldn't penetrate a
15 thin sheet, right?

16 A It penetrated the sheet but not the mattress.

17 Q You keep saying that and I apologize, even to
18 the point where it didn't penetrate the mattress, correct?

19 A That is correct.

20 Q All right. Now, there is a brown -- and I'm
21 saying "brown," maybe I should ask you: How would you
22 describe the color of the top part of these drapes?

23 A It was a dark color. It's hard to see in this
24 photograph, but it's -- it's a dark color, either brown or
25 burgundy or black.

1 Q Okay. Now, your testimony is -- your testimony
2 is that the bullet had slowed down such that it left an
3 impression on the sheet; it did not have enough velocity to
4 impact the mattress, right?

5 A To -- yes.

6 Q Right?

7 A To penetrate the mattress, yes.

8 Q Right. And then your testimony is that the same
9 bullet -- the same bullet left a fabric imperfection on, let's
10 just call it dark brown so -- there's a lighter piece of
11 fabric on the bottom, right?

12 A That is correct.

13 Q Okay. If I say "dark brown," even though maybe
14 some different shade, can we agree that we're talking about
15 the darker piece on top?

16 A That is correct.

17 Q All right. The dark brown piece on top is
18 impacted by a bullet strike, correct?

19 A That is correct.

20 Q Now, from this particular picture we see the
21 dark brown fabric is higher than, taller than, the mattress,
22 correct?

23 A That is correct.

24 Q All right. Now, how far off the ground is the
25 mattress?

1 A I don't recall.

2 Q Do you remember some milk crates supporting a
3 box spring?

4 A Yes.

5 Q Okay. And milk crates, those -- the old school
6 milk crates, you know what I'm talking about, right, the
7 plastic things?

8 A Yes, I do.

9 Q Okay. Are they about a foot off the ground?

10 A Approximately.

11 Q And the box springs and mattress in this case,
12 is that about another 12 to 18 inches off the ground?

13 A It could be.

14 Q Okay. Do you know how much higher off the
15 ground B -- and is that B3 that's marked on that brown piece
16 of fabric?

17 A That is correct.

18 Q All right. How much higher off the ground is B3
19 than the mattress?

20 A It's higher.

21 Q I understand. Is it -- it's a couple feet
22 higher, isn't it?

23 A It could be. It's hard to tell from this photo,
24 but it could be.

25 Q Now, you are always seeking to do your best when

1 you go through these seams, correct?

2 A That is correct.

3 Q And you are always seeking to do your best to
4 count for as many bullets as you can any given crime scene if
5 guns are involved, correct?

6 A That is correct.

7 Q All right. Now, if I understand correctly, a
8 single bullet traveled through two pieces of metal or a hard
9 substance to the vacuum cleaner, lost sufficient velocity such
10 that it impacted the sheet but didn't touch the mattress,
11 right? Then -- then traveled upwards about 3 feet to strike
12 the curtain; is that what your testimony is?

13 A That is correct.

14 Q And the curtain -- was that a hole in the
15 curtain where it went through?

16 A There was a divot, yes. I can't remember if it
17 actually went through or not, but yes, there was a defect.

18 Q So your testimony is that the bullet was not
19 enough to leave an impression on the mattress, but it was
20 sufficient enough to go through the fabric on the curtain?

21 A It left an impression on the mattress.

22 Q Okay. It didn't go through --

23 A It didn't go through. It did not penetrate the
24 mattress.

25 Q Okay. Okay. And just -- I don't want to put

1 words in your mouth, I just want to make sure I understand the
2 testimony 100 percent, it -- it caused an imperfection in the
3 sheet, it left a mark on the mattress, right?

4 A That is correct.

5 Q Did not have sufficient velocity to go through
6 the mattress, but was able to rise up and strike that curtain?

7 A That is correct.

8 Q All right. Was the bullet that was the C travel
9 path -- the one that went through the bathroom, was that
10 bullet recovered?

11 A No, it was not.

12 MR. SGRO: May I reapproach, Your Honor?

13 THE COURT: Yeah.

14 MR. SGRO: Okay.

15 BY MR. SGRO:

16 Q Do you know -- well, strike that.

17 The -- the landing spot of the travel path of the B
18 bullet was on top of a crate; is that right?

19 A That is correct.

20 Q All right. Now, do you know how many people
21 entered the scene before you were able to do the thorough
22 canvass that you just testified about?

23 A I do not know.

24 Q Are you advised as a matter of policy as you
25 approach this scene, hey, you know, six kids were taken out of

1 here before you got here. Do you know things like that as
2 you're walking in to do the scene?

3 A Yes. We get that kind of information in our
4 briefing.

5 Q Okay. And so you would have been aware that
6 several paramedics had gone through the scene?

7 A That is correct.

8 Q And -- and put Devonian. Do you know -- we talk
9 about Devonian, right? The -- the little girl who was shot.

10 A Yes.

11 Q And taken out on a gurney. Were you aware of
12 that?

13 A I was aware she was transported.

14 Q Transported? So --

15 A Yeah.

16 Q -- a gurney is a mechanism that is, like, a bed
17 on wheels, right? It's sturdy, it's metal, people push it
18 down, right, when someone is on it?

19 A That is correct.

20 Q And those people in and out -- the gurney in and
21 out, children being removed from the scene. The tenant -- the
22 adult male in the scene, those are all things that potentially
23 can alter the things that you're there to go look at, right?

24 A That is correct.

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

1 Pass the witness, Your Honor.

2 MR. LANGFORD: No questions.

3 THE COURT: Okay. Redirect?

4 MR. DIGIACOMO: Just very briefly.

5 REDIRECT EXAMINATION

6 BY MR. DIGIACOMO:

7 Q Mr. Sgro asked you a number of questions about
8 B, the bullet B threw the vacuum cleaner into the bed, hitting
9 the -- the window, kind of bringing the -- wound up on that
10 right crate. It seemed to have a tone that suggested it was
11 unusual. In your experience was the path of this bullet
12 necessarily that unusual for the number of crime scenes you've
13 seen?

14 A No, it was not.

15 Q That's consistent with other stuff you've seen
16 before?

17 A Yes.

18 Q Second question I have for you is there are
19 times -- well, let me ask you this: Are there times in your
20 experience when bullets hit something hard that they separate?

21 A That is correct.

22 Q And that's -- you -- we've kind of seen some
23 pieces that you saw around Ms. Newman; is that fair?

24 A Yes.

25 Q And you said you collected pieces from inside

1 the closet in the double bunk bed room; is that correct?

2 A That is correct.

3 Q Mr. Sgro brought up a good point. You -- did
4 you do anything to try and find that bullet that was in C3?

5 A Yes, we did.

6 Q What did you do?

7 A We cut a hole in the wall to see if it had
8 lodged into a wall -- into the actual wall or a stud behind
9 the wall, and we cut into the wall and it was an empty wall
10 behind it and we could not find the bullet. We did not
11 recover it.

12 Q You looked for it, but you ultimately couldn't
13 find a small piece of metal inside a wall somewhere?

14 A That is correct.

15 Q As you were preparing for your testimony in this
16 case, did you go back and look at all the photographs involved
17 in this case?

18 A Yes, I did.

19 Q And during the course of that, did you
20 ultimately learn that you missed at least one bullet hole in
21 this house?

22 A Yes.

23 Q Let me ask you this: Did you guys, when you
24 were doing this whole search, pull that shelf or armoire --
25 what terms did you -- hutch -- away from the wall and pull the

1 T.V. in the master bedroom away and look to see if there was a
2 defect?

3 A I personally did not.

4 Q At the time that you were processing in the
5 scene did you know that there might be a defect behind that
6 armoire?

7 A No.

8 MR. DIGIACOMO: Nothing further.

9 RECROSS-EXAMINATION

10 BY MR. SGRO:

11 Q Do you have pictures of the armoire that are
12 close up that would show entry that we can show the jury?

13 A No, we do not.

14 Q Do you have a single photograph that shows those
15 shelves -- those shelves, by the way, when Mr. DiGiacomo and
16 -- when you described them for him earlier, you said that the
17 doors were closed?

18 A Yes.

19 Q Do you have a photograph we can show the jury
20 that shows holes through those doors that would enlighten them
21 as to what was missed that day?

22 A We have photographs of the hutch showing the
23 doors closed, but I do not believe there are any closeups. We
24 did not know at that time.

25 Q I understand you did not know. What I'm asking

1 is: Can you -- when I saw -- when I looked at those pictures,
2 I can't see anything close enough to see if there is a hole.
3 Do you have a photo that the jury can see so that they can see
4 the hole that you guys missed?

5 A No.

6 Q All right. And this is a hutch and as you go
7 down the hallway this is smack in the middle of the hallway.
8 One bedroom is on the left, one bedroom is on the right,
9 correct?

10 A That is correct.

11 Q Okay. And so even you, with the resume we
12 talked about with your training -- and incidentally, since
13 this event you have been promoted to senior crime scene
14 analyst, right?

15 A That is correct.

16 Q Your testimony is that you left with the
17 knowledge and your training and experience that five rounds
18 had been expended, right?

19 A That is correct.

20 Q And you missed -- you missed the bullet holes
21 that are attendant to that armoire?

22 A That is correct.

23 MR. SGRO: Nothing else.

24 MR. DIGIACOMO: Nothing.

25 THE COURT: All right. Ms. McIntyre, thank you very

1 much.

2 We'll take our evening recess now, ladies and
3 gentlemen. You know, I have three really brief matters at
4 9:00 tomorrow on my civil calendar. Do you want to start at
5 9:30?

6 MR. DIGIACOMO: Court's pleasure.

7 MR. SGRO: Yes, Your Honor.

8 THE COURT: All right. 9:30 tomorrow morning.

9 During the recess, it's again -- it's again your
10 duty not to converse among yourselves or with anyone else on
11 any subject connected with this trial or to read, watch, or
12 listen to any report of or commentary on the trial, or any
13 medium of information, including newspapers, television, and
14 radio and you're not to form or express an opinion on any
15 subject connected with this case until it's finally submitted
16 to you.

17 We'll see you tomorrow morning at 9:30.

18 THE MARSHAL: Jurors, please leave your pens and your
19 notepads on your chairs.

20 (Jury recessed at 4:27 p.m.)

21 THE COURT: The record will reflect that the jury has
22 exited the courtroom.

23 Anything further on the record tonight?

24 MR. DIGIACOMO: We do. One thing, Judge.

25 Mr. Oram found it -- what he was talking about

1 because this is what I initially thought he was talking about.
2 At page 213 of Monica's statement -- this is in a different
3 section than the -- what Mr. Oram and I discussed earlier.
4 The detectives say to Monica, "Okay, and what's he go by?"

5 Answer: Either G-Shock or D-Shock, which I'll
6 represent to you is the Defendant -- is her term for him.

7 Question: Is he in the same gang with all these
8 guys? If that's what's going on here, Monica, please don't
9 wreck it now, okay? Come clean. And her response -- Ms.
10 Martinez's responses, Can I -- can you please put me in
11 protective custody.

12 And Mr. Oram wants us to redact out, "is he in the
13 same gang with these guys," when her response to that question
14 is, "Please put me in protective custody before I answer the
15 question." They don't ever talk about the gangs. I'm more
16 than willing to redact the one we've talked about, but I
17 believe the detective's question to her or her responses, "I'm
18 in fear," and I don't want to relay this information is highly
19 relevant.

20 THE COURT: Okay. The response doesn't indicate that
21 he's in a gang.

22 MR. DIGIACOMO: Correct.

23 MR. SGRO: So there's no bad act of --

24 THE COURT: You don't need to redact that.

25 MR. DIGIACOMO: Thank you.

1 THE COURT: Okay. We'll see you tomorrow morning at
2 9:30.

3 (Court recessed for the evening at 4:29 p.m.)
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CERTIFICATION

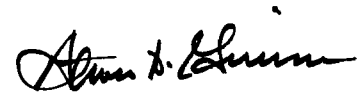
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 7

WEDNESDAY, JANUARY 28, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

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AA 1643

I N D E X

WITNESSES FOR THE STATE:

ALANE OLSON

Direct Examination By Ms. Weckerly 9

Cross-Examination By Mr. Oram 23

MONICA MARTINEZ

Direct Examination By Mr. DiGiacomo 26

E X H I B I T S

STATE'S EXHIBITS ADMITTED:

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1 and 2 Map/Photograph 77

274 CD - Interview of Monica Martinez 110

1 **LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 28, 2015, 9:27 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: On the record. State of Nevada vs. Mason
5 and Burns. The record will reflect the presence of the
6 defendants and their respective counsel. Mr. -- Counsel.

7 MR. SGRO: Thank you, Judge. Just very briefly, we
8 wanted to make a record that Ms. Martinez's attorneys have
9 been present through much of the court proceedings. I saw --
10 I saw them during jury selection. I made a point of telling
11 the jury that they were here for the opening statements, and
12 they were here for Ms. Weckerly's presentation as well as
13 mine.

14 I don't recall how much they stayed in the afternoon,
15 and they're in the back right now. When I say in the back,
16 behind the hallway where chambers is there's a room where they
17 are visiting with their client as we speak. And I just don't
18 want there to be an argument.

19 I'm going to predict some modification from testimony
20 right from her police statement where she said no one had
21 nothing to do with anything, and I'm obviously being
22 over-general. I don't want her modifications -- let me strike
23 that.

24 I don't want to be precluded from arguing that her
25 lawyers were here, they had conversations, and that could be a

1 basis of modification.

2 In other words, if the lawyers heard my opening or
3 Ms. Weckerly's opening, they can now go back there and say,
4 hey, this is what they said, and prepare her for how to best
5 deal with either what I said or what Ms. Weckerly said. So
6 I'm making a record of it because I want judicial notice to be
7 taken that they have been here, they were here for openings,
8 and they're in the back room right now.

9 I can't get into what conversations were had, but
10 just the presence and the opportunity to instruct Ms. Martinez
11 on what occurred, and I don't want the State to say she wasn't
12 here, you know, that sort of thing. So I wanted to make that
13 record and not have the State argue anything different than
14 what the actual facts are.

15 MR. DiGIACOMO: Well, I mean, I don't know. I know
16 that at some periods of time they were present in the
17 courtroom. You know, if Mr. Sgro wants to allege you have
18 lawyers that -- and because you have a lawyer you might be
19 able to change your story, that seems like a dangerous
20 argument from a defense attorney to me.

21 But ultimately, if he can establish their presence in
22 the courtroom -- I mean, if he asks the witness, are you aware
23 whether or not they're there, she would have no way of knowing
24 unless she was told --

25 THE COURT: Gentlemen, I don't even know who her

1 lawyers are.

2 MR. SGRO: Then if that's the position, then I want
3 to get them out of the back room and ask them, and let's make
4 a quick record that they were here. Because --

5 THE COURT: We're not calling them as witnesses.

6 MR. SGRO: Exactly. Exactly. I don't --

7 THE COURT: And besides, I'm not going to -- you
8 would be asking them to reveal confidential communications --

9 MR. SGRO: No, no. No, sir.

10 THE COURT: -- and I'm not going to let you do that.

11 MR. SGRO: Sir, I'm not. I'm asking them were you
12 here during opening statements. If Mr. DiGiacomo is not
13 prepared to stipulate to that, then I want to ask them.

14 THE COURT: Well, we can do it later, but I --

15 MR. SGRO: Well, they're here right now, Your Honor,
16 is why I bring it up. They're literally 5 feet away in the
17 back room.

18 THE COURT: I don't even know who their lawyers are.

19 MR. SGRO: Andi Luem and Julia Murray.

20 THE COURT: Andi --

21 MR. SGRO: Luem. I think she spells it L-e-u-m
22 [sic], if I -- I think I got that --

23 THE COURT: L-e-u --

24 MR. SGRO: M.

25 THE COURT: M.

1 MR. SGRO: And Julia --

2 THE COURT: That's a female?

3 MR. SGRO: Yes, sir.

4 THE COURT: I don't know her.

5 MR. SGRO: And Julia Murray.

6 THE COURT: They're Nevada counsel?

7 MR. SGRO: Pardon me?

8 THE COURT: They're Nevada counsel?

9 MR. SGRO: Yes, sir. Ms. Luem was at the public
10 defender's office. Ms. Murray still is at the public
11 defender's office and Ms. Luem recently left, but apparently
12 she still has this particular case. And Ms. Murray I've seen.
13 Ms. Luem I saw -- specifically I saw Ms. Luem during jury
14 selection. I specifically saw her during my opening.

15 THE COURT: I'll accept your representations that
16 they were here. That's okay.

17 MR. SGRO: Okay.

18 THE COURT: I'm sure you're not lying to me. I mean,
19 if they were here, they were here.

20 MR. SGRO: The only reason I say it is because of the
21 equivocated response we got; well, if -- we can't ask Monica
22 Martinez are you aware your lawyers were here, because how is
23 she going to know. She was in custody. Her lawyers were
24 here.

25 THE COURT: If you tell me that her lawyers were

1 here, that's fine. I don't know what difference it makes,
2 but --

3 MR. SGRO: Okay.

4 MR. LANGFORD: For the record, it's L-u-e-m.

5 MR. ORAM: Judge, one other fact. I'm sure that the
6 State would have turned it over. I just want to make
7 abundantly clear, I presume that Ms. Martinez went over to the
8 district attorney's office and probably provided them
9 information, conversation, a proffer. And we have not been
10 provided any reports or any video or any audio from that. I
11 presume that there is none. And so I just want them to state
12 on the record that there is none.

13 THE COURT: If they have made an arrangement with the
14 district attorney's office for their testimony as part of a
15 plea bargain, certainly anything that's in writing has to be
16 provided to you that would be Brady material. Is there
17 anything in writing?

18 MR. DiGIACOMO: Well, we've turned over the guilty
19 plea agreement -- with the agreement to testify.

20 THE COURT: Oh, okay.

21 MR. DiGIACOMO: What he's requesting is an audio, a
22 video recording of the interview. There isn't one.

23 MR. ORAM: And there --

24 THE COURT: If there isn't one, then --

25 MR. ORAM: And that's what I wanted to do. Here's

1 what we didn't want. We didn't want questions to Ms. Martinez
2 and then the State say, well, we have video. And so that's
3 all I'm doing. And another --

4 THE COURT: Obviously if they haven't turned it over
5 to you they can't use it.

6 MR. ORAM: And also there's no notes, there's nothing
7 along those lines; is that fair, Mr. DiGiacomo?

8 THE COURT: Well, there may be attorney-client --
9 there may be some work product stuff.

10 MR. DiGIACOMO: Yeah. I don't want to speak for her
11 attorneys, whether or not they have something that --

12 THE COURT: Well, you can't ask her attorney for
13 anything.

14 MR. ORAM: No, I don't -- I'm more talking about I
15 imagine homicide detectives were there or --

16 MR. DiGIACOMO: It's my understanding that there is
17 no notes from any investigator who was present at the meeting.

18 MR. ORAM: And so there's nothing -- there's nothing
19 discoverable, and that's what I wanted to make sure --

20 THE COURT: Okay.

21 MR. ORAM: -- so we're not doing it when she's on the
22 witness stand. There's nothing discoverable; is that right?

23 MR. DiGIACOMO: Correct. There is nothing -- we have
24 turned over everything that's discoverable and there is
25 nothing else discoverable to provide.

1 THE COURT: All right. Well, we're waiting for the
2 marshal to come in and tell me that we've got enough jurors.

3 (Pause in proceeding.)

4 (Jurors enter at 9:37 a.m.)

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

8 Good morning, ladies and gentlemen. We're still on
9 the State's case in chief. Mr. DiGiacomo or Ms. Weckerly.

10 MS. WECKERLY: Your Honor, the State calls Dr. Alane
11 Olson.

12 ALANE OLSON, STATE'S WITNESS, SWORN

13 THE CLERK: Please state your name and spell your
14 first and last name for the record.

15 THE WITNESS: My name is Alane Olson. My first name
16 is spelled A-l-a-n-e. My last name is spelled O-l-s-o-n.

17 DIRECT EXAMINATION

18 BY MS. WECKERLY:

19 Q How are you employed?

20 A I'm employed as a medical examiner at the Clark
21 County Coroner's Office.

22 Q How long have you worked at the coroner's
23 office?

24 A I've worked in Las Vegas since September of
25 2005.

1 Q And what is your position at the coroner's
2 office?

3 A I'm a medical examiner.

4 Q Can you describe your educational background
5 that allows you to work as a medical examiner?

6 A Sure. I have a bachelor's degree in
7 microbiology from the University of Idaho. I spent one year
8 at the University of Chicago in a PhD program and decided I
9 didn't want to spend the rest of my life in a research lab, so
10 I applied to medical school. I was accepted at the University
11 of Nevada school of medicine, which is based in Reno, and
12 that's where I did my MD degree.

13 Once I graduated from medical school, I moved to
14 Portland, Oregon and spent five years at Oregon Health
15 Sciences University in a residency program for anatomic and
16 clinical pathology. In essence, pathology is the study of
17 disease, and pathologists are the doctors who do autopsies.

18 We also look at the specimens, organs and tissues
19 that are removed during surgery so we can make diagnoses that
20 help clinicians, doctors who see living patients, decide about
21 therapy and treatment. We also generally run the clinical
22 laboratory. So if you've ever had a blood test done, a
23 pathologist was probably involved in validating the results.

24 Once I finished my residency at Oregon Health
25 Sciences University, I moved to Milwaukee, Wisconsin and spent

1 one year at the Milwaukee County Medical Examiner's Office.
2 That's where I specialized in forensic pathology.

3 Forensic pathology is essentially investigations of
4 deaths, and every jurisdiction has different rules about the
5 types of death that must be reported. But oftentimes there
6 are deaths that are the result of violence, and we do
7 autopsies and other types of examinations with the goal of
8 determining cause and manner of death.

9 I have a license to practice medicine in the state of
10 Nevada. I'm also board certified by the American Board of
11 Pathology in anatomic, clinical and forensic pathology, and
12 I've been in practice for almost 15 years.

13 Q Do you have any estimate of how many autopsies
14 you've personally performed or participated in?

15 A Somewhere between 2 and 3,000.

16 Q And you've testified obviously in the area of
17 forensic pathology?

18 A Yes, I have.

19 Q Were you working as a pathologist on August 8,
20 2010?

21 A Yes, I was.

22 Q And did you conduct an autopsy of an individual
23 identified to you as Derecia Newman?

24 A I did.

25 Q How is it that you were the doctor that got

1 assigned this autopsy? How does it work?

2 A On any particular day we have a doctor who is on
3 call, and that doctor has the responsibility of assigning who
4 does which case. Since Ms. Newman's death was the result of
5 violence, I was likely on call that day and so I decided that
6 I would do the case.

7 Q And when you conduct an autopsy or when you did
8 this particular autopsy, is there a procedure that you go
9 through in the process of doing the autopsy?

10 A Yes, there is.

11 Q And can you describe that for the jury, please.

12 A Sure. In general, an autopsy consists of two
13 parts. There's an external examination and an internal
14 examination. And the external part consists of everything
15 from how much does the person weigh, how long they are. We
16 don't call it height because they're not standing up. Hair
17 color, eye color, marks, scars, tattoos, whether there's been
18 attempts to resuscitate them, and we also look at evidence of
19 injury.

20 Prior to an autopsy, in some cases we also do what we
21 call process on the body. And that means we take photographs
22 from when they're in the body bag to get an idea of what they
23 look like when they arrived at the coroner's office. The body
24 is then sequentially photographed as it is undressed, and any
25 evidence is collected usually with the help of crime scene

1 analysts from Metro or whichever jurisdiction is involved. We
2 do x-rays, particularly in cases where someone has been shot,
3 so that we have an idea of where the bullets are, and then I
4 do my examination.

5 Once I've done the external examination, then we do
6 an internal examination. That starts with a Y-shaped incision
7 on the front of the body going from shoulder to shoulder down
8 to the bottom of the chest, and then down to the bottom of the
9 abdomen.

10 We use a saw to take off the front of the rib cage,
11 and that allows me to look at the body as all of the organs
12 lie. And again, I'm looking for evidence of injury as well as
13 natural disease. Once we've opened the body, all of the
14 organs are removed one by one and I weigh them and I examine
15 them individually.

16 We also look at the contents of the head. We make a
17 cut in the scalp across the top of the head from ear to ear.
18 We move the scalp to the side. We use a saw to take off the
19 top of the skull and remove that. And again, I have the
20 opportunity to look at the brain, see if there are any
21 injuries or evidence of natural disease. The brain's then
22 removed from the head and weighed and again, individually
23 examined. We also look at the neck to see if there are any
24 evidence of injury or natural disease there.

25 During the course of an autopsy we collect samples

1 for toxicology testing and other types of testing depending on
2 the nature of the case, and in cases where someone has been
3 shot, we attempt to recover the bullets if we can.

4 MS. WECKERLY: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 BY MS. WECKERLY:

8 Q Doctor, I'm showing you what's been previously
9 shown to defense counsel. These are photographs marked 157 to
10 162. Can you look through all those and just let me know when
11 you're done, please.

12 A Yes. I'm done.

13 Q Were those photographs taken in the course of
14 the autopsy of Derecia Newman?

15 A Yes, they were.

16 Q And are they a fair and accurate depiction?

17 A Yes, they are.

18 MS. WECKERLY: State moves to admit 157 to 162.

19 MR. SGRO: No objection.

20 MR. LANGFORD: No objection, Your Honor.

21 THE COURT: They'll be received.

22 (State's Exhibit 157 through 162 admitted.)

23 BY MS. WECKERLY:

24 Q Dr. Olson, in the process of the autopsy, are
25 there ever x-rays taken of the decedent?

1 A Yes, there are.

2 Q And could I ask you to put on State's 157,
3 please.

4 And looking at -- do you want that turned?

5 A Yes, please.

6 Q Okay.

7 A It's a little bit easier for the jury to figure
8 out what they're looking at.

9 Q Does that work?

10 A Yes.

11 Q Okay. Looking at what now is on our monitor as
12 State's 157, obviously that's an x-ray, but can you describe
13 how you would use this image in your work.

14 A Sure. So what you're looking at is an x-ray,
15 and it was taken not from front to back, but it was taken from
16 side to side. So you can see her jaw down here and the back
17 of her head is back here, just so you know where things are.
18 When I look at x-rays, particularly when someone has been
19 shot, what I'm looking for is where the bullet is or where the
20 fragments are, so that I can go in and recover them.

21 In this particular instance she has fillings in her
22 teeth, and she has a tongue piercing which you can see here.
23 But she also has some metal fragments that basically ended up
24 not quite in the roof of her mouth, but just above that. So
25 those are the bullet fragments that I went in and recovered

1 during the course of the autopsy.

2 Q And I'm just putting on the monitor now State's
3 158. What are we looking at in this photograph?

4 A This photograph is a picture of the tag,
5 identification tag. So it lists Ms. Newman's name here as
6 well as the case number that she was assigned at the coroner's
7 office. Every death that's reported to the coroner's office
8 is assigned a specific and unique case number. So in this
9 case it was 10, which represents 2010, and then 6545.

10 This is -- this photograph also contains some
11 portions of the bag in which her body was received at the
12 coroner's office, and there's a little blue tag which is a
13 seal. So that closes the body bag so that no one can tamper
14 with it until it's time for us to officially open it and start
15 our examination.

16 Q And that placard with the -- the gray placard
17 with the Number 106545, would that be a unique number assigned
18 to every autopsy?

19 A Well, that was the unique number assigned to
20 Derecia Newman's case and her autopsy. So that photo tag is
21 in most of the photographs that were taken of her during the
22 course of the autopsy.

23 Q And in that way you're able to make sure that
24 the photographs are -- belong to this particular autopsy?

25 A Yes. That's correct.

1 Q Now we're going to put on the overhead State's
2 159.

3 And because obviously the injury's to the right side
4 and part of that was cut off in the larger view, we're going
5 to work with it, if it's okay with you, Doctor, in this
6 smaller format.

7 A Sure.

8 Q Okay. And describe what we're looking at in
9 this exhibit.

10 A This particular photograph was taken before I
11 started my examination during the course of processing. So
12 she's still wearing the clothing that she wore when she died.
13 And in this particular case, in this photograph it's taken
14 from the left side of her body, so you can see the left side
15 of her face, the left side of her chest.

16 You can see her left arm. You can see her abdomen,
17 and you can see part of her pelvis. And in this particular
18 photograph you can see that she has a very large injury that
19 involves the majority of her left forehead and upper face.

20 Q Now, when you conduct an autopsy, do you take
21 note of how the decedent presents before you conduct the
22 autopsy?

23 A Sometimes it's important, sometimes it's not.
24 I -- if I have the opportunity, I usually try and describe the
25 clothing. Sometimes that's key, because if an article of

1 clothing is present over the skin where someone was shot, that
2 can represent a barrier to certain parts of a gunshot wound
3 that help determine what the range was.

4 In this particular case she didn't have any clothing
5 that was present, that I knew to be present on her face, so it
6 wasn't of prime importance for me to look at her clothing and
7 look at her as she was received.

8 Q And obviously in this particular case the injury
9 that she suffered is -- it's obvious.

10 A Yes, it is obvious.

11 Q Okay. We'll put on the overhead now 160,
12 please.

13 And then in State's 160, what do you take note of in
14 that photograph as a forensic pathologist?

15 A I take note of the appearance of the gunshot
16 wound. And in this particular instance the appearance of the
17 gunshot wound tells me that the end of the barrel was in
18 contact with her forehead when the shot was fired.

19 Q How are you able to tell that the barrel of the
20 gun was in contact with her forehead at the time the gun was
21 fired?

22 A Because of the characteristics of the wound.
23 When a gun is fired, a bullet isn't the only thing that comes
24 out the end of the barrel. There is hot gas which comes from
25 the gunpowder burning. There is soot from the burned

1 gunpowder, and sometimes there are particles of unburned
2 gunpowder. And what you see on the skin's surface can tell
3 you a lot about how much distance there was between the end of
4 the barrel and the skin surface when the gun was fired.

5 In this particular instance the wound tells me that
6 the barrel was pressed against her skin. And the reason I say
7 that is because when the barrel is pressed against the skin,
8 particularly on gunshot wounds of the head, when that gas
9 comes out of the end of the barrel, it basically -- it can't
10 escape out into the air. It goes into and around and under
11 the skin. And it basically balloons the skin out and it tears
12 it.

13 Another reason that I can say it was a contact wound
14 is because if you were to see a photograph of the -- a
15 close-up photograph of the wound, the entry wound, there's
16 actually black soot that's deposited in the wound and also on
17 the skull underlying this injury. That tells me that again,
18 the barrel was in contact with her skin when the gun was
19 fired.

20 Q And when you were explaining your last answer,
21 you actually pointed to your forehead, and her injury goes
22 below her eye. Were you able to tell from looking at her
23 injury where the barrel was in contact with on her face as
24 well --

25 A Yes.

1 Q -- because of the soot?

2 A It was basically in the mid portion of the left
3 side of her forehead.

4 Q And I think you explained because of the energy
5 that escapes from the barrel of the gun, that that makes
6 the -- sort of the skin expand. When she presented or when
7 you examined her at autopsy, how, I guess, deep did that type
8 of injury go into her head? I mean, all the structures appear
9 to be damaged; would that be fair?

10 A She had extensive injuries. She had skull
11 fractures which went down into the -- there's a bony roof over
12 the top of the eyes. Those areas were fractured. The base of
13 her skull was fractured. The front of her brain was
14 extensively torn. Her left eye globe had been damaged, so it
15 was deflated.

16 She had fractures in the bones of her face, and I
17 actually recovered two fragments of the missile from deep in
18 her face, basically at the junction of her nose and her -- the
19 roof of her mouth.

20 Q And this may be a silly question. If you suffer
21 an injury like that, are you immediately -- are you
22 immediately dead?

23 A Someone with this type of injury, they might
24 take a few breaths, they might have a heartbeat for maybe a
25 few minutes, but it would be rapidly fatal.

1 Q And Doctor, I'm now putting on the overhead
2 State's 161. And obviously that's her hand. What's the
3 purpose of documenting how a decedent's hands appear at
4 autopsy?

5 A Well, we take photographs of their entire body,
6 but we do take specific photographs of their hands because
7 we're interested in whether they tried to fend someone off or
8 whether there was a fight before this person died. And in her
9 particular instance there's a little bit of blood. You can
10 see it on her thumb. But she didn't have any injuries on her
11 hands.

12 Q And I'm going to just put on the photograph of
13 her other hand, which is 162. And neither of her hands had
14 any what we would call defensive injuries?

15 A That's correct.

16 Q Is a toxicology performed in the course of an
17 autopsy?

18 A Yes.

19 Q And was that done in this case?

20 A It was.

21 Q Do you recall what your findings were, what the
22 findings were?

23 A Sure. The toxicology report indicated that she
24 had marijuana and one of its metabolites present in her blood
25 at the time that she died.

1 Q And did the toxicology, in your opinion, have
2 any bearing at all as to the cause or manner of death in this
3 case?

4 A No.

5 Q Besides the big injury on her head, were there
6 any other notable findings on the rest of her body showing
7 evidence of injury, or was it unremarkable?

8 A It was basically unremarkable. She didn't have
9 any other significant injuries.

10 Q Based on your -- the totality of your
11 examination of her, did you reach an opinion regarding the
12 cause of death?

13 A I did.

14 Q And what was that?

15 A She died as the result of a gunshot wound at the
16 head.

17 Q And did you reach a conclusion regarding the
18 manner?

19 A I did.

20 Q And what was that?

21 A The manner of death is listed as homicide.

22 Q Thank you.

23 MS. WECKERLY: I'll pass the witness, Your Honor.

24 THE COURT: Mr. Oram.

25 MR. ORAM: Thank you.

1 CROSS-EXAMINATION

2 BY MR. ORAM:

3 Q Good morning, Dr. Olson.

4 A Good morning.

5 Q Just a couple questions for you. You talked
6 briefly about bullet fragments. Do you recall that?

7 A I do.

8 Q And were there multiple bullet fragments that
9 you found, or was this mostly an entire bullet?

10 A I recovered two fragments.

11 Q Do you recall how large they were, or is that
12 something you didn't pay much attention to?

13 A I didn't record it in my report and I don't
14 recall at this point.

15 Q But you noted it just because you saw it as this
16 is the bullet that killed her; is that right?

17 A Yes. We make a habit of recovering bullets and
18 we turn them over to the crime scene analyst.

19 Q Also, there appears to be quite a lot of blood
20 at the scene connected with the victim in this case. That
21 doesn't seem unusual to you at all, does it?

22 A No, it doesn't.

23 Q In fact, she would have bled quite rapidly and
24 profusely?

25 A Given the extent of her injuries, yes.

1 Q And since you said it was a contact wound, you
2 find that as a result of stippling; is that right?

3 A No. In fact, she didn't have any stippling, and
4 that's one of the reasons why I say it was a contact wound.

5 Q Okay. So she didn't have stippling, so what you
6 conclude is that the gun was pressed against her head?

7 A Correct.

8 Q And I don't know if you've ever seen the gun in
9 this case, but I think they say it's about 11 inches long.
10 Okay. It's the size of a large gun. Okay. So my question to
11 you would be the hand or the arm at the end of that gun could
12 easily have obtained blood on the --

13 A Possible.

14 Q Possible or plausible?

15 A I'll stick with possible.

16 Q And in fact, blood could have come out all over
17 the shooter?

18 A Possible.

19 Q But no reason to dispute that? In other words,
20 it could be, maybe it's true, maybe it's not; is that what
21 you're saying?

22 A Yes.

23 Q And I don't know -- strike that.

24 There was another victim inside the home, and she was
25 shot in the stomach. Okay. Would a stomach wound bleed a

1 lot?

2 A Sometimes they do and sometimes they don't.

3 Q If a person -- when you say that, is it more
4 common or not for a wound like that to bleed profusely, a
5 stomach wound?

6 A Again, it's depending on where the injury is and
7 what the bullet hit as to whether someone bleeds a lot from --
8 well, if someone bleeds a lot outside of their abdomen when
9 they are shot in the abdomen.

10 Q So fair to say that the perpetrator may have had
11 blood on him or her, or they may not; is that fair to say?

12 A Yes.

13 Q And no reason to dispute that whatsoever, that
14 it could happen and maybe it did happen and maybe it didn't?

15 A Correct.

16 Q If a person was shot in the stomach with a large
17 caliber bullet, and then somebody other than the victim was
18 going through the pockets of that person, that would perhaps
19 expose the person to blood?

20 A Possibly.

21 Q And you sound again unsure. Is that because you
22 just don't know enough facts to make that determination?

23 A Yes. I don't know anything about the other
24 victim aside from the fact that someone else was shot.

25 MR. ORAM: Nothing further.

1 MR. LANGFORD: Nothing from Mr. Mason.

2 THE COURT: Any redirect?

3 MS. WECKERLY: No, Your Honor. Thank you.

4 THE COURT: Thank you for being a witness, Doctor.
5 You'll be excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Have a good day.

8 MR. DiGIACOMO: Judge, our next witness is in the
9 back. It's Monica Martinez.

10 (Pause in proceeding.)

11 MONICA MARTINEZ, STATE'S WITNESS, SWORN

12 THE CLERK: Please state your name and spell your
13 first and last name for the record.

14 THE MARSHAL: You need to speak directly into the
15 microphone.

16 THE COURT: Move your chair up there a little bit.
17 Thank you.

18 THE WITNESS: Monica Martinez, M-o-n-i-c-a,
19 M-a-r-t-i-n-e-z.

20 MR. DiGIACOMO: May I inquire, Judge?

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MR. DiGIACOMO:

24 Q Ma'am, how old are you?

25 A Forty-three.

1 Q Where do you currently reside?

2 A Clark County.

3 Q Right now. Where'd you wake up this morning?

4 A At Clark County Detention Center.

5 Q The Clark County Detention Center. How long
6 have you been there?

7 A About 4 1/2 years.

8 Q I'm going to direct your attention to before you
9 went to the Clark County Detention Center, so early 2010. Did
10 you meet an individual that ultimately you learned his name
11 was Jerome Thomas?

12 A Yes.

13 Q What did you call him?

14 A Job-Loc.

15 Q Job-Loc?

16 A Yes.

17 Q Would that be J-o-b, L-o-c?

18 A Yes.

19 Q How do you meet Job-Loc?

20 A I was seeing another guy that knew him.

21 MR. SGRO: Judge, I can't hear her.

22 THE COURT: Can you pick her up all right?

23 THE MARSHAL: I'll raise the microphone up, Judge.

24 MR. DiGIACOMO: Give us just a second. We're going
25 to move that microphone up in front of you, okay?

1 THE COURT: Can you pick her up all right?

2 BY MR. DiGIACOMO:

3 Q Ms. Martinez, at times you have a soft voice.
4 Everybody's got to hear you. That's why I'm going to stand
5 back here, because if I can't hear you, then they can't hear
6 you, okay?

7 A Okay.

8 Q You said that you met Job through somebody else.
9 Who is the person that you met him from?

10 A Shawn Clinkscale.

11 Q And did Shawn have a nickname?

12 A S-Loc.

13 Q S-Loc?

14 A Yes.

15 Q And did Shawn and Job know each other?

16 A Yes.

17 Q And were they from a particular state?

18 A Yes.

19 Q What state is that?

20 A California.

21 Q And was there a particular neighborhood in that
22 state that they were from?

23 A When you mean neighborhood, what are you talking
24 about?

25 Q Is there a town? Let's go with that.

1 A San Bernardino.

2 Q About when do you meet Job-Loc?

3 A It was either January of 2010 --

4 Q If this incident occurred in August of 2010,

5 it's seven, eight months, somewhere in that range?

6 A Yes.

7 Q When do you -- do you eventually start a

8 relationship with Job-Loc?

9 A Yes.

10 Q When do you start the relationship with Job-Loc?

11 A Probably about March or April 2010.

12 Q And how does that come about? How do you wind

13 up in a relationship with Job?

14 A An argument between me and Shawn and we had

15 broke up. He had made a pass at my daughter, and then I

16 went -- I went running, crying to Job-Loc.

17 Q You mentioned you have a daughter. What's her

18 name?

19 A Tyler.

20 Q Do you have other children as well?

21 A Yes.

22 Q Who are your other children?

23 A Willie and Deangela [phonetic].

24 Q And how old are Willie and Deangela?

25 A Nineteen and 16.

1 Q Today they're 19 and 16. So we're talking four
2 or five years ago, 15 and 12, somewhere in that range?

3 A Yes.

4 Q Where -- well, when you meet Job, do you have a
5 job? Do you have a regular job?

6 A Yes.

7 Q And how were you employed?

8 A You mean my title?

9 Q Who were you working for?

10 A Novum Pharmaceutical Research Company.

11 Q And what does that mean you do for a living --
12 or did for a living?

13 A I was a recruiter, a receptionist, appointment
14 setter.

15 Q And was this a regular 9:00 to 5:00 type job?

16 A Yes.

17 Q How long had you been there when you met Job?

18 A Three and a half years.

19 Q At some point do you and Job start having a
20 discussion about needing more money?

21 A Yes.

22 Q Describe that for the ladies and gentlemen of
23 the jury.

24 A I'm sorry?

25 Q Describe that for the ladies and gentlemen of

1 the jury, the discussion.

2 A He said that --

3 MR. ORAM: Judge, objection as to what Job-Loc said.
4 It's hearsay.

5 MR. DiGIACOMO: It goes directly to her state of
6 mind.

7 THE COURT: If it goes to why she did what she did,
8 the objection's overruled.

9 MR. DiGIACOMO: Thank you, Judge.

10 THE WITNESS: He said that he needed an attorney,
11 that he was on the run, that he needed an attorney.

12 BY MR. DiGIACOMO:

13 Q And did he ask you for anything?

14 A He always asked me for money.

15 Q Did Job have a regular employment? I don't want
16 to say did Job have a job. So did Job have a regular
17 employer?

18 A No.

19 Q How was Job making his money?

20 A Basically off of me.

21 Q Were you and Job -- you or Job engaged in any
22 sort of illegal activity in order to acquire money?

23 A Yes.

24 Q Which one, you or Job?

25 A Both.

1 Q Let's start with Job. What was Job doing?

2 A Selling pills or weed.

3 Q When you say pills, you mean prescription
4 medication?

5 A And also on street. Yes, both.

6 Q Street drugs as well?

7 A Yes.

8 Q Do you remember what street drugs he was into?

9 A Ecstasy.

10 Q Along with selling drugs, Job ever use them?

11 A Yes.

12 Q And let me ask you this. Was he making any
13 money off of his selling business?

14 A A little bit. He did -- whatever he did make he
15 would just drink or buy food.

16 Q Well, it wasn't --

17 A I don't know what he did when I wasn't there.

18 Q From your perception, was Job's drug business a
19 lucrative business?

20 A No.

21 Q At some point does he ask you to do something?

22 A Yes.

23 Q What did he ask you to do?

24 A You mean outside of selling the pills and the
25 marijuana?

1 Q Well, does he ask you to sell the pills and
2 marijuana as well?

3 A Yes.

4 Q And do you do so?

5 A The marijuana.

6 Q What'd you do with the money that you would make
7 from selling the marijuana?

8 A Give it to him.

9 Q With the exception of your household expenses,
10 what'd you do with your other extra money?

11 A It just went to my kids or to what I had to pay.

12 Q Did Job ever ask you to do anything else?

13 A Yes.

14 Q What did he ask you to do?

15 A Prostitution.

16 Q When Job asks you to engage in prostitution,
17 describe for the ladies and gentlemen of the jury the nature
18 of that conversation.

19 A He said, Mon, he said, I really need this money
20 for an attorney. I know I can beat this case, and you don't
21 have to do it. He just came like real subtle with it. He
22 didn't just point blank tell me to do it. And he said, But
23 you know what, I just need this money. So I kind of
24 volunteered to. I brought it up, about prostituting.

25 Q And did you in fact turn tricks?

1 A Yes.

2 Q When did that start?

3 A Probably around July of 2010.

4 Q In July of 2010, does Job also wind up getting
5 injured somehow?

6 A Yes.

7 Q Explain to the ladies and gentlemen of the jury
8 what you know about that.

9 MR. ORAM: Judge, objection. Foundation.

10 THE COURT: Well, all right. Lay a foundation as to
11 how she knows of it.

12 BY MR. DiGIACOMO:

13 Q The day that Job got injured, where were you?

14 A I was at work.

15 Q Had you loaned your car to anybody?

16 A Yes. I loaned it to Job.

17 Q And at some point do you find out that Job is
18 injured?

19 A Yes.

20 Q And did you go and see Job?

21 A Yes.

22 Q Where is he?

23 A At UMC hospital.

24 Q At UMC -- well, let me ask you this. Before he
25 ever goes to UMC, had you done anything to help Job with his

1 identity?

2 A No. Prior to the UMC?

3 Q Yes.

4 A No.

5 Q At some point do you help him with his identity?

6 A Yes.

7 Q What do you do?

8 A I had access at my job, I had access to clients
9 that do the studies there, and I found somebody that fit his
10 age and height, weight description, and got the name and
11 Social Security and gave it to him.

12 Q How many people did you write down?

13 A About three or four.

14 Q What name ultimately does Job take from the
15 group that you provided him?

16 A Albert Davis.

17 Q After Job's injury where he goes to UMC, do you
18 ever try and get him additional medical treatment?

19 A Yes.

20 Q What do you do?

21 A I drove him to Utah. I took him to an emergency
22 room out there.

23 Q Why'd you drive him to Utah?

24 A He was afraid that he would be arrested, like
25 he -- that they would find out because he was on the run. He

1 wanted to avoid that.

2 Q So you helped him by taking him to Utah?

3 A Yes.

4 Q Did he get much in the way of medical assistance
5 in Utah?

6 A No.

7 Q So what'd you do?

8 A Took him to -- well, they did the x-rays and
9 everything in Utah, and they told him that he definitely
10 needed surgery. There was -- there was no way around it from
11 the break that he had in his leg. And so they said that it
12 was best that he --

13 MR. ORAM: Judge, objection as to what doctors said.
14 It's hearsay.

15 THE COURT: It probably is. Sustained.

16 BY MR. DiGIACOMO:

17 Q Based on what the doctors told you, did you make
18 a decision as to what you were going to do in order to help
19 Job get the surgery he needed?

20 A Yes. I took him to Sunrise Hospital and under
21 the name of Albert Davis.

22 Q Did he actually have the surgery there?

23 A Yes.

24 Q Describe for the ladies and gentlemen of the
25 jury the nature of that surgery.

1 MR. ORAM: Judge, objection. Foundation.

2 MR. LANGFORD: Relevance, Your Honor.

3 THE COURT: Well, does it make any difference?

4 MR. DiGIACOMO: Well, it's highly relevant that the
5 injury still exists as of August 7 --

6 THE COURT: Well, if she knows what was done because
7 she observed his healing, I suppose it's -- she can describe
8 what she saw, not what she heard, because that would be
9 hearsay.

10 BY MR. DiGIACOMO:

11 Q Do you in fact -- let me ask you this. Do you
12 get the medical -- or some of the medical records and x-rays
13 from both Utah and Sunrise?

14 A I don't remember for Utah. Well, I remember
15 having the x-rays, but I don't remember from which one. And
16 the medical, yes.

17 Q And did you have an understanding in your mind
18 as to what type of injury he had to his leg?

19 MR. ORAM: Same objection. Foundation.

20 THE COURT: That was a yes or no question. All
21 right. Overruled.

22 BY MR. DiGIACOMO:

23 Q Do you have an understanding of the severity of
24 his injury?

25 A Yes.

1 Q And did he in fact get surgery on his leg?

2 A Yes.

3 Q After the surgery, who cared for him?

4 A Mostly me. But when I was at work, he had
5 friends.

6 Q Did he have any sort of devices he had to wear
7 after the surgery?

8 A It was a -- it wasn't a cast. It was something
9 that was Velcro that he could adjust. And it had the things
10 on the side to adjust the angle of his leg.

11 Q Did he have to use anything to help him move
12 around?

13 A Crutches.

14 Q And was he able to or did you ever see him able
15 to put weight on the knee that was injured?

16 A Seldom. He was in too much pain to do that. He
17 couldn't do it.

18 Q Coming up to August 7th and thereafter, did Job
19 still have the medical brace on his knee?

20 A Yes.

21 Q And was he still in need of crutches?

22 A Yes.

23 Q Now, did you have a residence?

24 A Yes.

25 Q Who lived at that residence?

1 A My children and myself.

2 Q Do you remember where that residence was

3 located?

4 A Off Cinnabar. I had just moved there.

5 Q Where is that in town?

6 A The east.

7 Q The east part of town?

8 A Yes.

9 Q Did Job have his own place?

10 A He stayed at his -- it was a relative's

11 apartment that he stayed at.

12 Q What -- do you know what relative it was?

13 A I think it was his cousin. I don't know the

14 name.

15 Q Male or female?

16 A Male.

17 Q And what apartment was that? Like where is that

18 apartment?

19 A Off of Torrey Pines and -- I don't remember.

20 Q But Torrey Pines?

21 A Area.

22 Q Was it some distance from your house?

23 A Yes.

24 Q Do you remember the name of the apartment

25 complex?

1 A Brittnae Pines.

2 Q The Brittnae Pines apartments?

3 A Yes.

4 MR. SGRO: Your Honor, I'm sorry. May we approach
5 very briefly?

6 THE COURT: Yes.

7 (Bench conference.)

8 MR. SGRO: I apologize for the interruption. But
9 there is a witness in the back, some -- Monica Martinez has
10 some family here. We noticed Manny Meara [phonetic], who's
11 her cousin, as a witness in this case. When they walked in I
12 didn't recognize them, so I had Ms. Weaver go through and
13 figure out who everyone was. Now there's a gentleman back
14 there who refused to give us his name.

15 They all are sitting together and came in around the
16 same time, so I'm assuming they're all associated with
17 Ms. Martinez. And just so you know, Your Honor, Ms. Martinez,
18 while she's in custody, communicated and continues to
19 communicate with family and in some of those cases discusses
20 the case, which is why they are subpoenaed witnesses, just to
21 give you some context.

22 Long story short, if they're witnesses, they can't be
23 here while she's testifying. And I know I have one subpoenaed
24 and one I just don't know what his name is.

25 THE COURT: Your witness, State. You haven't invoked

1 the exclusionary rule to the best of my knowledge.

2 MR. DiGIACOMO: [Inaudible] for them to be able to
3 call any witness they need to call. [Inaudible.]

4 MR. SGRO: Yeah. We don't want them sitting here
5 through all witnesses.

6 MR. DiGIACOMO: They're subpoenaed?

7 MR. SGRO: Yeah.

8 (Inaudible.)

9 THE COURT: Sure. If they're witnesses, they can be
10 excluded.

11 MR. SGRO: [Inaudible] from this point forward. I
12 mean --

13 THE COURT: Tell the marshal to exclude them.

14 (Inaudible.)

15 MR. SGRO: He won't give me his name.

16 MR. DiGIACOMO: He doesn't have to give you his name.

17 MR. LANGFORD: It's only in an abundance of caution
18 we should exclude him.

19 MR. ORAM: If he's going to be --

20 MS. WECKERLY: Well, if he's not subpoenaed --

21 THE COURT: If they're witnesses, they can be
22 excluded. Now, if he's not a witness, he can sit here.

23 MR. SGRO: Right. But I don't know. I can't -- I
24 don't know him, Your Honor.

25 MS. WECKERLY: So just say who you subpoenaed and

1 then we'll figure out if that's him.

2 MR. SGRO: So everyone but the man has to go.

3 THE COURT: Yeah.

4 (End bench conference.)

5 THE COURT: All right.

6 (Pause in proceeding.)

7 THE COURT: All right. Mr. DiGiacomo.

8 MR. DiGIACOMO: Thank you.

9 BY MR. DiGIACOMO:

10 Q Ma'am, I apologize. I forgot where I was. So
11 let me back up. We were talking about Job and Job's injury to
12 his leg. Oh, no. I'm sorry. Now I'm at the apartments, and
13 you were at the -- he said you -- he stayed at the Brittnae
14 Pines apartments.

15 A Correct.

16 Q Is that a multiple story apartment complex?

17 A Yes.

18 Q What floor was he on?

19 A He was upstairs.

20 Q And did anybody else live there with Job on a
21 permanent basis?

22 A No.

23 Q So that was his apartment?

24 A Pretty much his.

25 Q Did Job ever live with you?

1 A He didn't live with me, but he was there
2 frequently. He was there a lot.

3 Q Had Job met your daughter, Tyler?

4 A Yes.

5 Q Had he met your two sons?

6 A Yes.

7 Q I want to direct your attention sometime July,
8 August. Is there any point in time when you take a trip to
9 California with Job?

10 A Yes.

11 Q How many times did you drive Job to California?

12 A I drove him twice, and another time he went out
13 there on his own and I picked him up. I drove out there to
14 pick him up. So I was out there about three times.

15 Q So let's talk about that. You said twice you
16 drove him and once you picked him up in California --

17 A Yes.

18 Q -- is that what you just said?

19 A Yes.

20 Q Let's talk about those times. Can you remember
21 generally when the first time you went to California was with
22 him?

23 A Around -- you mean the time, month?

24 Q Yes.

25 A No, I don't remember.

1 Q When you went to California with Job, did you
2 ever go with anybody else in the car to California?

3 A Yes.

4 Q Who?

5 A I don't remember both their names. One of them
6 was Blue, but I don't remember. I don't remember their names.

7 Q When you picked Job up and came back or you
8 drove there with Job and came back, did you ever come back
9 with anybody from California?

10 A Yes.

11 Q Let's talk about there's three separate times
12 you've now driven back from California. The first time, do
13 you remember anybody being in the car with you and Job?

14 A The very first time was my daughter. My
15 daughter drove out there with us. Well, now, actually, when
16 she -- she drove with me when I went to go pick him up.

17 Q And then she stayed there?

18 A No. It was just we went to pick him up and come
19 back.

20 Q So the time that you didn't drive him there,
21 just to go pick him up, you took Tyler with you?

22 A Yes.

23 Q Any other time that you drove anybody back?

24 A Yes. And that was the last -- the last time I
25 was out there, the last trip.

1 Q The last trip you were out there?

2 A Yes.

3 Q And how many people did you bring back with you?

4 A Two.

5 Q Do you remember either one of those people's

6 names?

7 A Yes.

8 Q What were their names?

9 A What I -- what I know them as?

10 Q Well, let me ask you this. Do you now know

11 their names?

12 A Yes.

13 Q Okay. At the time that you're driving them

14 back, did you know one or both of their names?

15 A Their legal names, no.

16 Q So let's talk about what you called them back

17 then. You tell me what the -- the two people that were in the

18 car, what the names that you knew them as.

19 A G-Dogg and D-Shock.

20 Q Did you say Shock, S-h-o-c-k?

21 A I believe so. That's how I say it, yeah.

22 Q Now, this is 4 1/2 years later. Four and a half

23 years later do you know the true names or the given names of

24 G-Dogg and D-Shock, as you call him?

25 A Yes.

1 Q So let's start with G-Dogg. Who is G-Dogg?

2 A Willie Mason.

3 Q And then D-Shock, what's his true name?

4 A David Burns.

5 Q Now, up until you get arrested for this case,
6 did you know their true names?

7 A No.

8 Q So during the time period you knew them, you
9 knew them just by their nicknames?

10 A Yes.

11 Q Let's talk about Mr. Mason. And I know there's
12 a lot of monitors in this courtroom, but do you see Mr. Mason
13 here in court today?

14 A Yes.

15 Q Can you -- I know it's hard to point with your
16 shackles on, but generally can you point in the direction and
17 describe some article of clothing he's wearing?

18 A Black shirt with glasses hanging.

19 MR. DiGIACOMO: May the record reflect identification
20 of Defendant Mason, Judge?

21 THE COURT: The record will so reflect.

22 BY MR. DiGIACOMO:

23 Q And then do you see the person that you knew as
24 D-Shock here in court?

25 A Yes.

1 Q Can you point him out and describe some sort of
2 article of clothing he's wearing?

3 A It looks like a blue shirt. He has long hair.

4 Q He's the gentleman with long hair at the table
5 next to me?

6 A Yes.

7 MR. DiGIACOMO: May the record reflect identification
8 of Mr. Burns?

9 THE COURT: The record will so reflect.

10 BY MR. DiGIACOMO:

11 Q The time that you were driving, was Job in the
12 car too?

13 A Yes.

14 Q You got Job, you have G-Dogg and you got D-Shock
15 in the car. Had you ever met G-Dogg or D-Shock before they
16 got in your vehicle?

17 A I think I met Willie before, G-Dogg.

18 Q You think you had met G-Dogg before?

19 A Yes.

20 Q And --

21 A I know him a little bit longer than prior to
22 when I met --

23 MR. LANGFORD: I can't understand about half of what
24 she's saying, Your Honor.

25 THE COURT: Can you just lean a little forward so

1 that it picks up your voice, please. Thank you.

2 BY MR. DiGIACOMO:

3 Q When had you met G-Dogg before?

4 A I don't remember. It's probably at -- I
5 honestly can't say when. I don't remember.

6 Q Was it here in Las Vegas, or was it in
7 California with one of the times with Job? Do you remember
8 that?

9 A I don't remember.

10 Q How long prior to the incident we're here to
11 talk about today, how long before that is this trip where you
12 drive G-Dogg and D-Shock back to Las Vegas?

13 A Maybe two weeks prior to the incident.

14 Q When you bring them back, where do G-Dogg and
15 D-Shock stay?

16 A At my house.

17 Q What about Job, does he stay at your house at
18 that point in time too?

19 A Yes.

20 Q Do G-Dogg and D-Shock meet your family?

21 A Yes.

22 Q Including your daughter, Tyler?

23 A Yes.

24 Q How long did they stay at your house for?

25 A A few days. Maybe three or four days at the

1 most.

2 Q Three or four days at the most, and then where
3 do they go?

4 A Back to the Brittnae Pines apartments.

5 Q With Job?

6 A Yes.

7 Q Are you continuing to work during this time
8 period?

9 A At Novum?

10 Q Yes.

11 A Yes.

12 Q Okay. And I apologize. When I use the term
13 "work," I'm talking legitimate activity. And I'm sorry. Is
14 that a yes for the record?

15 A Yes.

16 Q Were you also continuing to engage in the
17 illicit conduct you've described to the jury previously?

18 A Yes.

19 Q During the time period other than the time
20 period that D-Shock and G-Dogg are at your house, do you see
21 D-Shock and G-Dogg prior to the evening of August 6 into the
22 early morning hours of August 7?

23 A No, not that I -- no. I don't remember.

24 Q On the evening of August 6, somehow you wind up
25 coming into contact with G-Dogg and D-Shock?

1 A Okay. You're saying the August 7, because the
2 after midnight time, right?

3 Q Yeah. Let me clarify it for you.

4 A Okay.

5 Q The homicide, if I will represent to you,
6 occurred at shortly before 4:00 a.m. on the 7th. The 6th
7 would have been that night into the early morning would have
8 been the 7th. So when I'm talking about the 6th, I'm talking
9 the evening before the homicide.

10 A The evening of the 6th I did have contact with
11 Job.

12 Q And how is it that -- well, let me ask you this.
13 On the day of the 6th did you work?

14 A Yes.

15 Q Did you have a car?

16 A Yes.

17 Q What kind of car was it?

18 A A Ford Crown Victoria.

19 Q What color was it?

20 A Silver-ish gray.

21 Q Was that the same car you had loaned Job on the
22 day that he winded up getting the injury to his knee?

23 A Yes.

24 Q After work, what happens? Just describe it for
25 the ladies and gentlemen of the jury. How is it you wind up

1 coming into contact with G-Dogg and D-Shock?

2 A After I got off of work I stopped and grabbed
3 some alcohol, and I went home and relaxed and spent time with
4 the kids and fell asleep. And earlier that day when I was at
5 work, Job asked if I was going to go out soliciting that night
6 and I told him yes. It was -- I had fell asleep, and he just
7 kept --

8 MR. ORAM: Judge, I wouldn't normally object to
9 hearsay. However, it seems to me that if she is just telling
10 us that based upon what she did next, that's fine. But I just
11 want the Court to recognize it sounds like hearsay. But if
12 that's what it's coming in for, then that --

13 THE COURT: It sounded like he had called her to tell
14 her something to do, which is not hearsay.

15 MR. ORAM: Fine, as long as it's what she does next
16 as opposed to anything [inaudible].

17 THE COURT: Yeah.

18 BY MR. DiGIACOMO:

19 Q So Job had asked you earlier in the day whether
20 or not you were going to go out soliciting that night?

21 A Yes.

22 Q To make money?

23 A Yes.

24 Q And what was your answer to him when he asked
25 you that?

1 A I told him yes, I would.

2 Q When you went home and you picked up the alcohol
3 and you got home, you said you fell asleep?

4 A Yes.

5 Q So how is it that you wind up waking up that
6 night?

7 A He kept calling me and calling me. He was upset
8 because I wasn't out yet. And it was probably around
9 11:00-ish the last time he called. I told him I was on my way
10 over there. And that's when he told me that his homies needed
11 a ride to go meet their people. And I said, Well, what do you
12 want me to do.

13 I offered to pick them up and I said, I don't know if
14 they have ID's or anything because, you know, I'm going to be
15 downtown freelancing. And he told me just to go swing by,
16 that they had -- that his homie had been trying to get ahold
17 of his people for the last three days and he needed to go get
18 ahold of him, so I went over there and I picked them up.

19 Q I'm sorry. I didn't hear that last part. He
20 said his homie's been trying to get ahold of his people for
21 the last three days and what?

22 A And so I went over there to go -- to go pick up
23 his homies.

24 Q So you physically drive your car to the Brittnae
25 Pines apartments?

1 A Yes.

2 Q And do you go inside the apartment?

3 A Yes.

4 Q And is there any discussion with G-Dogg and
5 D-Shock, kind of what's going to happen that night?

6 A No.

7 Q What happens? What do you do?

8 A We leave from there and I go to a downtown area,
9 because I had been to the Golden Nugget before freelancing.

10 Q That's the second time I've heard you use the
11 term "freelancing." It may be somewhat obvious to some
12 people, but explain what freelancing is to the ladies and
13 gentlemen of the jury.

14 A Just sitting in the casino area waiting for
15 potential trick, a john, I don't know what to say, to approach
16 you for solicitation, prostitution.

17 Q So your plan was to go downtown and hopefully
18 make some money?

19 A Yes.

20 Q Who's in the car with you when you leave the
21 Brittinae Pines apartments?

22 A Willie and David.

23 Q G-Dogg and D-Shock?

24 A Correct.

25 Q And where do you first go? Where do you park?

1 A I park at the Horseshoe parking garage.

2 Q And then just describe to the ladies and
3 gentlemen of the jury once you park your car, what does
4 everybody do?

5 A We get out and walk through the casino to get to
6 the Golden Nugget. It's like right across from the Horseshoe.

7 Q Do D-Shock and G-Dogg stay with you?

8 A Yes. At that point, yes.

9 Q You said at that point yes. At some point do
10 you guys separate?

11 A Yes.

12 Q Where do you separate?

13 A They -- I was going in to prostitute, to
14 solicit. I was going into the Golden Nugget, and I gave them
15 \$10 to go buy drinks or go do whatever. At that point, when I
16 had picked him up, his -- his people weren't ready to meet up
17 yet.

18 Q Whose people weren't ready?

19 A G-Dogg's.

20 Q And did that come from G-Dogg, or did that come
21 from Job-Loc?

22 A I don't remember.

23 Q So his people weren't ready yet, you give him
24 \$10, and then where do you go?

25 A I go inside the Golden Nugget.

1 Q And how long do you think -- well, do you do
2 anything inside the Golden Nugget other than just go sit at
3 the machines?

4 A Yeah. I went to the ATM and pulled out some
5 money so I can gamble, to make it look like I wasn't just
6 soliciting.

7 Q Were you able to get a trick?

8 A No.

9 Q So what happens at that point, when you don't
10 get a trick?

11 A I don't remember if G-Dogg called me or if I
12 called him. I told him nothing was going on, so we can go
13 ahead and go to meet his people or do whatever.

14 Q And do you know approximately what time this is?
15 Is it before midnight, after midnight, do you remember?

16 A After midnight.

17 Q After midnight.

18 A Yes.

19 Q So it's late.

20 A Yes. Early morning, yes.

21 Q Early morning hours of August 7, 2010.

22 A Correct.

23 Q Do you eventually get -- meet up with G-Dogg and
24 D-Shock again?

25 A Yes.

1 Q Where do you meet up with them at?

2 A Still in the downtown area where the Fremont
3 Experience is.

4 Q So outside the Nugget, but on the Fremont
5 Experience?

6 A Yes.

7 Q And when you meet up with G-Dogg and D-Shock, is
8 either one of them talking about anything?

9 A Yes. They had mentioned there was a guy in a
10 green shirt with gold chains that they should have got.

11 Q When you say they, who's doing the talking?

12 A I don't remember.

13 Q Were they both present at the time?

14 A Yes.

15 Q And they said there's a guy in a green shirt
16 with gold --

17 MR. ORAM: Objection as to they said, Judge.

18 THE COURT: Well, it's okay. Overruled.

19 BY MR. DiGIACOMO:

20 Q There is a guy with a green shirt with gold
21 chains that they should have got; is that what they said?

22 A Yes.

23 Q Did you know at that point what they were
24 talking about?

25 A Yes.

1 Q Okay. How is it that you knew?

2 A It's just I've been around street people before.
3 I know the lingo.

4 Q What does it mean?

5 A Like they should have robbed him.

6 Q They should have robbed him. Is that the first
7 time that the discussion of robbery comes up in your presence
8 that night?

9 A Yes.

10 Q Do they actually rob the guy in the green shirt?

11 A No. We leave.

12 Q When you leave, where do you drive to?

13 A Las Vegas Boulevard. I think I stopped at the
14 7-Eleven there on Bonanza Boulevard for some cigarettes, and
15 from there we continued down to Jerry's Nugget.

16 Q And what were you guys going to Jerry's Nugget
17 for?

18 A On the way -- on the way there, D-Shock said
19 that -- that they were just at that point looking for anybody,
20 somebody in a bus stop or whatever. So we parked in the
21 Jerry's Nugget and they seen the security guard, and they had
22 talked about robbing the security guard for his gun.

23 Q At this point have you seen anybody with a
24 weapon?

25 A No.

1 Q Had you had any indication though, that somebody
2 had a weapon on them?

3 A Yes.

4 Q How did -- what indication did you have that
5 somebody had a weapon on them?

6 A Initially when we got to the Horseshoe parking
7 lot and we were coming -- walking towards the casino from the
8 Horseshoe parking lot, D-Shock had his hands in his overalls
9 and G-Dogg told him to relax, take one out so it doesn't make
10 it so obvious.

11 Q What from that made you draw the conclusion,
12 hey, one of these people may be armed?

13 A Because I knew that Job-Loc carried a weapon and
14 if he didn't have it his friends would have it.

15 Q Do you remember what kind of gun Job-Loc owned?

16 A It was a big -- a big gun, a .45 revolver.

17 Q So it was a big revolver?

18 A Yes.

19 Q Do you remember what it looked like at all?

20 A It had a wood grain handle.

21 Q Do you remember what the metal part of it looked
22 like; was it black, was it silver, was it chrome?

23 A I don't remember.

24 Q Had you seen Job with that gun before?

25 A Yes.

1 Q Where did Job normally keep that gun?

2 A When he was at the house or his apartment it
3 would be right next to him, or if like he was sleeping it
4 would be under his pillow. If we were out and about it would
5 be in a -- in a designer bag.

6 Q So now you've driven to Jerry's Nugget and
7 there's a discussion or at least D-Shock has said we're
8 looking for somebody, and you're now parked at Jerry's Nugget
9 and there's a discussion about robbing a security guard for
10 his gun. Does it happen?

11 A No.

12 Q Does anybody actually get out of the car at
13 Jerry's Nugget?

14 A We all three stepped out of the car, but we
15 didn't leave the surrounding the car. We got back in.

16 Q And you drove off?

17 A Yes.

18 Q Where do you go after you go to Jerry's Nugget?

19 A Opera House.

20 Q Did you know the Opera House?

21 A Yes. I used to work there.

22 Q Where generally is the Opera House located?

23 A North Las Vegas Boulevard.

24 Q North Las Vegas Boulevard?

25 A Yes.

1 Q And what kind of establishment is the Opera
2 House?

3 A It's a very small casino for locals. Very
4 small.

5 Q Do you enter the Opera House?

6 A Yeah. All three of us did.

7 Q You, G-Dogg and D-Shock?

8 A Yes.

9 Q Why do you stop at the Opera House?

10 A I was looking for to pick up a potential trick
11 there.

12 Q So you're still looking to make money?

13 A Yes.

14 Q What about G-Dogg's people?

15 A Still weren't ready at that time to meet up.

16 Q So when you enter the Opera House, where do you
17 go?

18 A I go to the bar and buy a drink.

19 Q Do you buy just one or more?

20 A Just one.

21 Q What about the other two, G-Dogg and D-Shock,
22 what do they do?

23 A They continued towards the back of the casino
24 and sit down at the machines.

25 Q Do you ever meet up with them in the casino

1 area?

2 A Yeah. After I bought my drink I went over there
3 and shared it.

4 Q You shared your drink with them?

5 A Yes.

6 Q Is there any discussion about G-Dogg's people
7 while you're at the Opera House?

8 A No. We sat there gambling for a little bit.
9 And G-Dogg stepped up and walked away and I asked D-Shock, you
10 know, where he went, and he said to answer his phone. And
11 then when I looked to my left I saw him and he was on the
12 phone. And then he approached and he said, We can go, go
13 meet -- go meet my people now.

14 Q So G-Dogg says we can go meet the people now.
15 Do you -- the three of you leave the Opera House?

16 A Yes.

17 Q Where do you go from the Opera House?

18 A Back to the east part of town on Nellis and
19 Vegas Valley.

20 Q Did you know who you were going to meet?

21 A No.

22 Q So describe -- well, how do you get there?
23 Who's directing you?

24 A G-Dogg.

25 Q Where do you -- where do you go? Nellis and

1 Vegas Valley, is there a particular location you go to?

2 A She was at a 7-Eleven. She had an older man
3 with her, the female that he was meeting. And then --

4 THE COURT: I'm sorry. Repeat that, because I didn't
5 understand that.

6 THE WITNESS: It was a 7-Eleven on the corner, and
7 he -- she was with another gentleman. They were -- they were
8 walking.

9 THE COURT: Who is she?

10 THE WITNESS: The person that we were supposed to
11 meet.

12 THE COURT: Oh.

13 MR. DiGIACOMO: I was just getting to that.

14 BY MR. DiGIACOMO:

15 Q So the person that you're supposed to meet was a
16 woman?

17 A Yes.

18 Q Can you describe the woman at all for us?

19 A She's an older black lady.

20 Q At the time do you physically get introduced to
21 her for name to name?

22 A No.

23 Q Do you now know 4 1/2 years later what her name
24 is?

25 A Yes.

1 Q What's her name?

2 A Stephanie Cousins.

3 Q You said when you first see Stephanie she's with
4 an older black male near a 7-Eleven. What happens?

5 A We turn up Vegas Valley towards the apartments
6 where she resides, and they walk up and meet us at the gate.
7 And there was some discussion between Stephanie and G-Dogg at
8 the window, but I wasn't paying attention to what they were
9 saying. And then the older man went to the keypad to enter
10 the gate code so that we can go through the gate.

11 Q And then do you drive into the apartment
12 complex?

13 A Yes.

14 Q Do you park in front of anyone's apartment?

15 A At the time I didn't know, but it was
16 Stephanie's apartment.

17 Q At the time you didn't know, but you now know
18 that to be Stephanie's apartment?

19 A Yes.

20 Q Was it upstairs or downstairs?

21 A Downstairs.

22 Q And when you pulled in, do you remember what the
23 parking was like? Was there covered parking, uncovered
24 parking, anything like that?

25 A There was both. I parked on the right, and so

1 it was under the awning.

2 Q And when you pulled into the parking space, did
3 you pull straight in or did you back in?

4 A Straight in.

5 Q Do you get out of the car at this point?

6 A No.

7 Q Who does?

8 A G-Dogg and D-Shock.

9 Q And before they got out of the car, I haven't
10 asked you this, when you're driving around with them, are they
11 always sitting in the same seats of your car?

12 A Yes.

13 Q So where is G-Dogg sitting?

14 A Front passenger.

15 Q And where is D-Shock sitting?

16 A Behind me.

17 Q Behind you?

18 A Yes.

19 Q So Willie and -- or sorry. G-Dogg and D-Shock,
20 they get out of the vehicle and where do they go?

21 A They went inside Stephanie's apartment.

22 Q How long were they gone for?

23 A Maybe ten minutes, five, ten minutes.

24 Q Do they eventually come out?

25 A Yes.

1 Q Does anybody explain to you what's going on?

2 A No.

3 Q Does anybody else come out with them?

4 A Stephanie and her companion.

5 Q They both came out?

6 A Mm-hmm.

7 Q Is that a yes?

8 A Yes.

9 Q So when Stephanie and her companion come out,
10 and I'm assuming G-Dogg and D-Shock came out as well?

11 A Yes.

12 Q Okay. What's going on?

13 A Can I refer to them as Willie and David?

14 Q Sure.

15 A Okay. They both get in the car, Willie and
16 David both get in the car and we leave, but I don't
17 remember -- I don't remember where we went.

18 Q So you leave that apartment complex. And how
19 long do you think you were gone for?

20 A I don't remember how long. It wasn't that long
21 that we were gone before we met back up with Stephanie,
22 because she didn't get in the car. So I want to say it's just
23 to get rid of the guy, the gentleman that she was with.

24 Q Do you meet back up with Stephanie?

25 A Yes.

1 Q Where do you meet back up with Stephanie?

2 A At her apartment, but not in -- not in front of
3 her apartment like where we were though.

4 Q Do you have to go back through the gate, or does
5 she meet you on the street?

6 A On the street.

7 Q Does Stephanie get in the car?

8 A Yes.

9 Q And where does she get in the car?

10 A In the back passenger.

11 Q So behind Willie?

12 A Yes.

13 Q Is there some discussion going on as to what's
14 happening at this point or what's supposed to be happening at
15 this point?

16 A Yes. There was --

17 Q Let me stop you first. Who's having this
18 conversation?

19 A Willie and Stephanie.

20 Q And what are Willie and Stephanie discussing?

21 A Doing robberies.

22 Q And is there a particular robbery that they're
23 discussing first?

24 A She was telling them about a guy, a white guy
25 that stayed in the apartment complex, in her apartment

1 complex. She was telling him that -- basically he was a
2 baller. He had a lot of -- a lot of money. And but she said
3 she didn't want to -- she didn't want to do that, she knew a
4 couple other places, because he lived -- he lived in her
5 apartment complex.

6 Q She says there's a -- there's a discussion about
7 a white guy and you said a baller, he has a lot of money.
8 What does a baller mean on the street?

9 A He sells a lot of weight.

10 Q He sells a lot of weight. What does selling a
11 lot of weight mean?

12 A Well, it's not just like nickel and dime.
13 It's -- I don't know how to explain it. He's just a -- he's a
14 big time dope dealer.

15 Q That's what I'm getting to.

16 A Okay.

17 Q He makes his money by selling drugs?

18 A Yes.

19 Q Okay. And he's a baller, meaning that he makes
20 good money from the drugs that he sells?

21 A Correct.

22 Q What is Willie's reaction to Stephanie saying
23 not in my apartment complex?

24 A Well, he was still adamant. He wanted to --
25 that's the one that he wanted to do. But she kept telling him

1 no, so we drove out of the apartment complex and went around
2 the corner of -- not literally around the corner, but went
3 towards Nellis and made a right on Nellis and then a left into
4 another apartment complex. And --

5 Q And do you know why you were going to this
6 apartment complex?

7 A She said that there was another -- another dope
8 dealer in there.

9 Q There's another dope dealer in that apartment
10 complex?

11 A Yes.

12 Q And was this dope dealer on the first floor or
13 the second floor?

14 A Second.

15 Q And when you pull in, are you directed to park
16 in any particular place or way or manner or anything like
17 that?

18 A Yeah. When we pull in, she had me pull up --

19 MR. ORAM: Judge, objection as to what Ms. Cousins is
20 saying. It's a violation of the confrontation clause. And
21 they keep introducing information that Ms. Cousins says.
22 We're not able to cross-examine her.

23 MR. DiGIACOMO: It's a statement by a co-conspirator
24 in the course or in furtherance of the conspiracy.

25 THE COURT: That's non-hearsay. Objection's

1 overruled.

2 MR. DiGIACOMO: Thank you, Judge.

3 BY MR. DiGIACOMO:

4 Q Let me back up just a second. I think I was at
5 the point where Stephanie has directed you to another
6 apartment complex where there's another drug dealer that could
7 be robbed?

8 A Yes.

9 Q And I was asking you about whether or not you
10 were instructed to park in a certain manner.

11 A Yes.

12 Q Can you explain that?

13 A His apartment was close to the driveway, so we
14 pulled up close to where his apartment was at parallel. And
15 three of them got out so she could show them which apartment
16 it was, and they told me to go park towards the end of the
17 buildings and just wait for them there.

18 Q And did you park down by the end of the
19 buildings?

20 A Yes.

21 Q So could you see the apartment that they were
22 going up to, to commit this robbery?

23 A No.

24 Q All three of them got out of the vehicle at this
25 location?

1 A Yes.

2 Q Who do you see first come back to the vehicle?

3 A Stephanie came back.

4 Q And did she have anything with her when she came
5 back?

6 A Yeah. She had Willie's cellphone. She told me
7 that he wanted me to have it. I don't know for what reason.

8 Q So Willie wanted you to hold on to his
9 cellphone?

10 A Yes.

11 Q You -- Stephanie comes back to the vehicle. How
12 long is she back at the vehicle before you see G-Dogg or
13 D-Shock again, or Willie and David again?

14 A Five minutes or so.

15 Q And eventually do they return to the vehicle?

16 A Yes.

17 Q Is there a discussion about what happened up at
18 that apartment?

19 A Yeah. Willie said that they didn't do anything
20 because they seen a gun through the window, and Stephanie kept
21 saying no, that he doesn't have a gun.

22 Q So there's a discussion back and forth about why
23 they didn't commit the robbery and Stephanie is telling them,
24 no, there's no gun there, and there's an argument?

25 A No. Just discussion.

1 Q So what's the conversation at that point?

2 A We leave from -- we're leaving from there and --
3 well, it was, I guess, a debate, not so much like a loud
4 argument, but she just was really persistent in saying that
5 there wasn't a gun there and they said that they weren't going
6 back up there.

7 MR. ORAM: Judge, I just want to make sure there's a
8 continuing objection. I'll stop as long as we understand that
9 there's a continuing objection to what anything Ms. Cousins
10 says. If the Court has found that it's not hearsay, then I
11 just want to make sure that I don't have to keep standing up
12 and objecting.

13 THE COURT: If you're objecting to non-hearsay
14 because it's hearsay, your objection is overruled.

15 MR. ORAM: I'm objecting to it being a violation of
16 the confrontation clause. But I understand the Court's
17 ruling. I just don't want to continue to stand up and object
18 each and every time, just so that there's preservation for the
19 objection for the record. Does that make sense, Judge, what
20 I'm saying?

21 THE COURT: It makes sense.

22 MR. DiGIACOMO: May I proceed?

23 THE COURT: Yes.

24 MR. DiGIACOMO: Thank you.

25

1 BY MR. DiGIACOMO:

2 Q So there's a discussion as you're leaving
3 between Willie and Stephanie about the gun and whether or not
4 there is a gun or not a gun inside this apartment?

5 A Yes. And Willie said that he wanted to go back
6 and rob the white guy. She kept telling him no, that there
7 was another place that she can go. There was a -- there
8 wasn't definitely any weapons there. It was women and
9 children and one guy, boyfriend to one of the girls.

10 Q So as there's the argument about, or the
11 discussion about the gun being in that apartment that they
12 went to, Willie's desire is to go back and now go get the
13 baller dope boy white guy in Stephanie's apartment, and she
14 offers up an alternative?

15 A Yes.

16 Q And you said something about she described why
17 this was a better alternative than going back to the white
18 boy. And what is it that Stephanie says about why this is a
19 better place to go?

20 A There aren't any weapons, that there was women
21 and children and only one guy in there.

22 Q And is there an agreement at some point to go
23 there?

24 A I guess so. That's where we went. They just
25 told me to drive down -- Stephanie told me to drive down

1 Nellis towards Lake Mead.

2 Q As you're driving down Nellis to Lake Mead, does
3 anybody make a statement about what's going to happen inside
4 this apartment that you're driving to with the women and the
5 children and no weapons?

6 A Yes. David said he wasn't going empty -- going
7 home empty-handed, and he was basically going to go in there
8 shooting.

9 Q Did he use the term "I'm going to go in
10 shooting"?

11 A Yes.

12 Q Did he use any other term?

13 A He said that he was going to go in there
14 shooting and just merk whoever was in there, he was going to
15 kill whoever was in there.

16 Q And you are a 39-year-old woman who has a job.
17 What are you thinking at this point?

18 A Well, I had just barely met him, so I -- I
19 wasn't really judging his character. You know, I didn't know
20 him well enough to believe that he was going to do anything
21 like that.

22 Q Would you acknowledge that you're aiding these
23 people at least in a robbery at this point?

24 A Yes.

25 Q Why?

1 A I don't know.

2 Q Where do you go?

3 A On Nellis towards Lake Mead.

4 Q And do you turn before or after you get to Lake
5 Mead?

6 A Make a right before Lake Mead.

7 Q Describe the condition of that street, the
8 lighting condition.

9 A It's very dark. It was a very dark street.

10 Q And how far do you drive down there?

11 A Quite a bit a ways from Nellis. It was far off
12 from Nellis.

13 Q Ma'am, I'm going to show you what has previously
14 been shown to counsel as State's Proposed Exhibits 1 and 2,
15 and ask you do you generally recognize the aerial view of the
16 Valley here in Clark County?

17 A Yes.

18 Q And there's a pin on here that marks the -- on
19 the Google map 5662 Meikle Lane. Do you see that pin on
20 there?

21 A Yes.

22 Q Does that generally fit your recollection of the
23 general location of where that apartment is?

24 A Yes.

25 Q Does it appear to fairly and accurately reflect

1 what Google Earth has for pictures of Clark County?

2 A Yes.

3 MR. DiGIACOMO: Move to admit one and two.

4 MR. ORAM: I have no objection. Can I see it very
5 quickly?

6 THE COURT: Sure.

7 MR. LANGFORD: I have no objection, Your Honor.

8 THE COURT: While we're looking at photographs, it's
9 about 11:00 o'clock, ladies and gentlemen. Does anybody like
10 a recess this mid-morning? Okay. We got a couple of them.
11 We're going to take a brief recess.

12 Ladies and gentlemen, during the recess, it's again
13 your duty not to converse among yourselves or with anyone else
14 on any subject connected with this trial, or read, watch or
15 listen to any report of or commentary on the trial from any
16 medium of information, including newspapers, television and
17 radio, and you're not -- you may not form or express an
18 opinion on any subject connected with this case until the time
19 it's submitted to you.

20 Be in recess for about ten minutes. The court will
21 be at ease while the jury leaves.

22 (Jurors recessed at 10:57 a.m.)

23 THE WITNESS: Your Honor, am I supposed to be
24 standing?

25 THE COURT: The record will reflect that the jury has

1 exited the courtroom. For the record, Monica indicates she
2 needs to go to the restroom too, so I don't know which
3 officers are in charge of Monica.

4 MR. DiGIACOMO: Our investigator.

5 MS. WECKERLY: Our investigator will --

6 THE COURT: Are you in charge of Monica?

7 THE INVESTIGATOR: Yes.

8 THE COURT: Good morning.

9 THE INVESTIGATOR: Good morning. How are you?

10 THE COURT: I'm great. She says she needs to go to
11 the restroom too.

12 THE INVESTIGATOR: We'll wait until the jurors are
13 out of the hallway.

14 THE COURT: Yeah. Make sure the jurors are back in
15 their room. Where are you going to go? Is there a place to
16 take her?

17 THE INVESTIGATOR: Right back here.

18 THE COURT: Okay.

19 MR. ORAM: Judge, if we -- can I make just a very
20 brief record so it's clear?

21 THE COURT: Okay.

22 MR. ORAM: What I'm saying is we're going to hear, I
23 think, a lot about Stephanie Cousins. And I write a lot of
24 appeals, Judge, and one thing the State does in response to
25 those appeals is they say, oh, we didn't object. And we get

1 that a lot, then they go to plain error standard.

2 I want to be able to raise this on appeal without --
3 in the event of an appeal, without the State being able to say
4 you didn't object. And so every time Stephanie Cousins is
5 speaking, I don't want to stand up and object and make the
6 same kind of record when I know what the Court's ruling is.
7 So that's all I wanted to do is make sure that this was
8 considered a continuing objection.

9 THE COURT: I have no problem with continuing
10 objection. Let me talk to counsel in chambers for a moment.
11 We're off the record.

12 (Court recessed at 10:59 a.m. until 11:10 a.m.)

13 (In the presence of the jury.)

14 THE COURT: All right. State of Nevada vs. Burns and
15 Mason. The record reflect the presence of the defendants,
16 their counsel, and the district attorneys. Also all members
17 of the jury.

18 Ms. Martinez, you're still under oath.

19 And Mr. DiGiacomo, you may proceed.

20 MR. DiGIACOMO: Thank you, Judge. I think I just
21 moved to admit 1 and 2, and Mr. Oram was going to answer
22 whether or not he had an objection.

23 MR. ORAM: No objection.

24 THE COURT: Be received.

25 (State's Exhibit 1 and 2 admitted.)

1 MR. DiGIACOMO: Thank you, Judge.

2 BY MR. DiGIACOMO:

3 Q Ma'am, I'm going to put on the screen in front
4 of you there State's Exhibit No. 2. That's kind of an
5 overhead of the valley. And can you see the -- the yellow
6 mark for 5662 Meikle Lane?

7 A Yes.

8 Q Okay.

9 THE COURT: Was that a yes?

10 THE WITNESS: Yes.

11 MR. DiGIACOMO: I don't know that she's going to be
12 able to reach that screen to draw on.

13 THE COURT: No. She isn't going to be able to.
14 Don't ask her.

15 MR. DiGIACOMO: So maybe I'll do it from back here.

16 THE COURT: You can do it for her.

17 BY MR. DiGIACOMO:

18 Q You indicated you went up Nellis and then turned
19 on Meikle before you -- you drove down -- or you drove down a
20 dark street before Lake Mead; is that fair?

21 A Yes.

22 Q Okay. So let's see if this thing's going to
23 draw. So up Nellis and then down the dark street?

24 A Yes.

25 Q When you got down to generally the area where

1 the -- well, describe what the location looked like to you;
2 home, apartment, what is it?

3 A Apartments.

4 Q I'm going to put up Exhibit No. 1 and represent
5 to you that that yellow tag there is 5662 Meikle Lane.

6 When you get there, where do you park? And can you
7 see it from here or do you need a different photograph?

8 A If you have a different photograph, something
9 closer?

10 Q Let me ask you a couple of questions first.

11 A Okay.

12 Q Do you drive -- do you stop before you get to
13 the apartment? Do you park directly in front of the
14 apartment, or do you go past the apartment?

15 A I pull into the parking area in front of the
16 apartments.

17 Q And then, do you -- where -- generally, do you
18 remember anything you were near when you parked?

19 A The trash bin, a green trash bin.

20 Q A green trash bin? I'm going to put up State's
21 Exhibit No. -- I'm going to start with 20. I'm going to
22 represent to you that this is the front entrance to that
23 apartment complex at 5662. There's kind of a cement dumpster
24 area here with the green trash bin and then in front of the
25 next apartment building there's a green trash bin that doesn't

1 have a cement dumpster enclosure around it. Do you recall
2 where you parked, which one of those green dumpsters we're
3 talking about?

4 A No.

5 Q Could you see inside the front entrance of the
6 apartment?

7 A No. I was sitting back a ways, probably between
8 the two apartments, not close, but, I mean -- because I -- I
9 could only see at a angle.

10 Q You could only see the angle? Could you see the
11 -- the front door?

12 A No.

13 Q Did you park pulled in or did you park in a
14 different way?

15 A I -- I pulled in opposite of what that white
16 pickup truck is.

17 Q Opposite of this white pickup truck? So you
18 were facing -- the front would have where the back is?

19 A Correct.

20 Q Okay. So you're facing, in order -- now, back
21 down Meikle?

22 A Towards Nellis, facing Nellis.

23 Q And does anybody get out of the vehicle?

24 A Stephanie, Willie, and David.

25 Q Why did you back in?

1 A Stephanie told me to back in.

2 Q Stephanie told you to back in?

3 A Yeah.

4 Q Stephanie, Willie, and David. Now, prior to
5 them getting out of the vehicle, is there any discussion about
6 how it is that these individuals are going to get inside the
7 crime scene?

8 A Stephanie had mentioned that this was her drug
9 connect, and Willie asked me for \$20 so that it'd make it look
10 like a buy.

11 Q Willie asked you for \$20 so that you can -- so
12 that --

13 A They can make it look like a drug buy.

14 Q So do you get \$20 out of your purse?

15 A Yes.

16 Q Did you give it to Willie?

17 A Yes.

18 Q What does Willie do with that money?

19 A He gives it to Stephanie.

20 Q And you said Stephanie can make it look like a
21 buy. Was there any discussion about how it was supposed to go
22 down that you recall?

23 A Not that I recall. They just all three got out.

24 Q Prior to you arriving at the apartment complex,
25 did you see Stephanie on the phone at all?

1 A Yes.

2 Q And did you know what she was doing?

3 A She had called the peoples who -- who resided in
4 the apartment and told them that she was going to be on her
5 way over there to go buy some crack. She was going to --
6 well, she didn't say crack, but she was going over there --
7 she was on her way over there, that's what she told them.

8 Q So she called the target's apartment and let
9 them know that she's on her way over?

10 A Yes.

11 Q You said Willie, Stephanie, and David all got
12 out of the vehicle. Where do you see them go?

13 A Again, it was dark. Where that stairwell is,
14 where that person is standing, in -- in that general area.

15 Q Do you remember who was going -- who was first,
16 who was second, who's third, anything like that?

17 A No.

18 Q What's the next thing that you see or hear?

19 A Screaming.

20 Q Describe the screaming, male or female?

21 A Female.

22 Q And what kind of screaming are we talking about?

23 A It was life-threatening screaming.

24 Q Associated with that screaming, do you hear
25 anything else?

1 A Gunshots.

2 Q How many do you think you heard?

3 A Four.

4 Q After the initial screaming, do you hear -- does
5 that screaming continue throughout the gunshots?

6 A No. It was dead silent. It -- it was dead
7 silent. It was eerie, quiet.

8 Q So, screaming, gunshots, then dead silence?

9 A Yes.

10 Q How long after you saw Stephanie, Willie, and
11 David get out of the car till the time period you hear the
12 screaming and hear the gunshots?

13 A I couldn't give a time. It just -- it seemed
14 like everything happened so fast.

15 Q After the gunshots, do you see Willie, David, or
16 Stephanie again?

17 A Willie and David come running to my car, like in
18 a duck.

19 Q Ducked down?

20 A Yes.

21 Q And do they get in the vehicle?

22 A Yes.

23 Q Where does Willie get in?

24 A In the front passenger.

25 Q Where's David get in?

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 80834

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of August, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions