

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

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Aug 12 2020 02:25 p.m.  
Elizabeth A. Brown  
Supreme Court Case No. 80834  
Clerk of Supreme Court

---

**APPELLANT'S APPENDIX VOLUME 11 OF 16 PAGES 2163-2381**

---

**ATTORNEY FOR APPELLANT**

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

**ATTORNEYS FOR RESPONDENT**

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

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

**INDEX Vol 11**  
**DAVID BURNS, CASE NO. 80834**

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
Burns' Motion in Limine #1-3, 10/12/14	1	0013-0046
Instructions to the Jury: 2/17/15	16	3296-3353
Judgment of Conviction (Jury Trial): 5/5/15	16	3377-3379
Notice of Appeal: 3/17/20	16	3380-3381
Notice of Intent to Seek Death Penalty, 10/28/10	1	0009-0012
State's Opp. Burns' Motion in Limine #1-3, 10/13/14	1	0047-0053
Stip. and Order Waiving Separate Penalty Hrg., 2/9/15	14	2820-2821
Superceding Indictment, 10/13/10	1	0001-0008
Transcript: 10/20/14 All Pending Motions	1	0054-0094
Transcript: 1/20/15 Jury Trial (Day 1)	1	0095-0208
Transcript: 1/20/15 Jury Trial (Day 1) (continued)	2	0209-0361
Transcript: 1/21/15 Jury Trial (Day 2)	2	0362-0424
Transcript: 1/21/15 Jury Trial (Day 2) (continued)	3	0425-0643
Transcript: 1/22/15 Jury Trial (Day 3)	4	0644-0853
Transcript: 1/22/15 Jury Trial (Day 3) (continued)	5	0854-0887
Transcript: 1/23/15 Jury Trial (Day 4)	5	0888-1069
Transcript: 1/23/15 Jury Trial (Day 4) (continued)	6	1070-1223
Transcript: 1/26/15 Jury Trial (Day 5)	6	1224-1289
Transcript: 1/26/15 Jury Trial (Day 5) (continued)	7	1290-1424
Transcript: 1/27/15 Jury Trial (Day 6)	7	1425-1507
Transcript: 1/27/15 Jury Trial (Day 6) (continued)	8	1508-1642
Transcript: 1/28/15 Jury Trial (Day 7)	8	1643-1725
Transcript: 1/28/15 Jury Trial (Day 7) (continued)	9	1726-1757
Transcript: 1/29/15 Jury Trial (Day 8)	9	1758-1889
Transcript: 1/30/15 Jury Trial (Day 9)	9	1890-1944
Transcript: 1/30/15 Jury Trial (Day 9) (continued)	10	1945-2108
Transcript: 2/5/15 Jury Trial (Day 10)	10	2109-2162
Transcript: 2/5/15 Jury Trial (Day 10) (continued)	11	2163-2381
Transcript: 2/5/15 Jury Trial (Day 10) (continued)	12	2382-2412

Transcript: 2/6/15 Jury Trial (Day 11)	12	2413-2599
Transcript: 2/6/15 Jury Trial (Day 11) (continued)	13	2600-2622
Transcript: 2/9/15 Jury Trial (Day 12)	13	2623-2819
Transcript: 2/10/15 Jury Trial (Day 13)	14	2822-2996
Transcript: 2/11/15 Jury Trial (Day 14)	14	2997-3032
Transcript: 2/11/15 Jury Trial (Day 14) (continued)	15	3033-3198
Transcript: 2/12/15 Jury Trial (Day 15)	15	3199-3248
Transcript: 2/12/15 Jury Trial (Day 15) (continued)	16	3249-3295
Transcript: 2/17/15 Jury Trial (Day 16)	16	3358-3369
Transcript: 4/23/15 Sentencing	16	3370-3376
Verdict: 2/17/15	16	3354-3357

1           A       Correct.

2           Q       And what's done -- what's done to the vehicle  
3 either by yourself or other analysts with you at this  
4 location?

5           A       The next day I -- I photographed the vehicle  
6 again to show that the seals on the vehicle were still  
7 affixed. And then after all the photographs were taken, I  
8 processed it for latent fingerprints and did a search with the  
9 homicide detectives for items of evidence, and then did an  
10 additional search for the presence of blood using Leuco  
11 Crystal Violet.

12          Q       Okay. Now, in terms of the fingerprints --

13          A       Yes.

14          Q       -- when you collect the fingerprints, how do  
15 you preserve them?

16          A       I preserve them -- so basically apply a  
17 powder. And once a print is developed, a piece of clear tape  
18 is affixed over it. And then we take a photo of it to show  
19 where that tape was on an item. And then we lift the tape and  
20 then put it on a white -- almost like a photo paper, a piece  
21 of photo paper, a plain white card. Then all of the latent  
22 prints are labeled and put into an envelope that's then  
23 submitted to the latent print section.

24          Q       Now, are you the person that does the  
25 comparison of the latent print that is developed from the

1 vehicle to known prints?

2 A No, I am not.

3 Q That's done by a fingerprint expert?

4 A Yes. Correct.

5 Q Okay. Now, you also mentioned that you  
6 processed the vehicle with Leuco Crystal Violet?

7 A Yes.

8 Q Describe for the members of the jury what that  
9 is and how that's done.

10 A So Leuco Crystal Violet, or LCV, it's a  
11 colorless chemical that we mix together and then put basically  
12 in a spray bottle. And then you spray it on surfaces and in  
13 the presence of blood it'll change from a clear color to  
14 purple.

15 Q And what were the results or what did you see  
16 when that was applied to the vehicle?

17 A Negative results, so there was no blood using  
18 LCV recovered from the vehicle.

19 Q Were there swabs taken for DNA purposes in the  
20 vehicle?

21 A Yes, there were.

22 Q Okay. And where -- what types of locations  
23 would you typically be kind of looking for to swab for DNA?

24 A For -- for DNA, I took samples from the door  
25 handles, the steering wheel, the gear shift, the rearview

1 mirror, surfaces that would have been touched and that are  
2 more rough in texture that would be more suitable for DNA as  
3 opposed to fingerprint processing.

4 Q And that would be the texture like some skin  
5 cells may come off onto an objection?

6 A Exactly. Yes.

7 Q And, again, are you the person that later does  
8 the DNA analysis or --

9 A No, I'm not.

10 Q Okay. And you submit all of those for later  
11 testing?

12 A Correct.

13 Q And is that -- that -- the Leuco Crystal  
14 Violet, the prints, and the DNA. Did you do a footwear in the  
15 car?

16 A There was an envelope in the back floorboard  
17 on one of the rear floorboards that had a partial footwear on  
18 it, and I did photograph that and impound it, and then that  
19 was -- that can be submitted to a footwear examiner. That  
20 would be who would look at that.

21 Q For later testing?

22 A Correct.

23 Q Okay. Now, after you did that work, did you  
24 ever respond to the original crime scene on Meikle Lane?

25 A I did a little over a month later.

1 Q And what was the purpose of going back to that  
2 location?

3 A Homicide detectives requested us back to  
4 document bullet holes that were in a hallway wall.

5 Q And I'm going to show you now State's 135 to  
6 147 and ask you to look through those photographs, please.

7 MR. SGRO: The numbers, Counsel? I'm sorry.

8 MS. WECKERLY: 135 to 147.

9 BY MS. WECKERLY:

10 Q Do you recognize those photographs?

11 A I do. I took those photographs.

12 Q Okay. And do they reflect accurately the  
13 later processing you did, as well as the collection of a  
14 bullet fragment?

15 A Yes.

16 MR. SGRO: Objection. Leading.

17 MS. WECKERLY: Well, it's foundational.

18 THE COURT: Okay. What do they reflect.

19 BY MS. WECKERLY:

20 Q What do they reflect?

21 A Those photographs show the apartment that I  
22 responded to and the bullet holes inside. And then it also  
23 shows another apartment that I responded to with a big screen  
24 TV that I recovered a bullet fragment from.

25 Q Let's look at, first, State's 136.

1 THE CLERK: Are they admitted?

2 MS. WECKERLY: Mark can do it, thank you.

3 Or can you?

4 MR. DiGIACOMO: Did you offer them?

5 MS. WECKERLY: Oh, well, State moves -- thank you.

6 Now I know what you said. State moves to admit 135 to 147.

7 MR. SGRO: No problem.

8 MR. LANGFORD: No objection.

9 THE COURT: They'll be received.

10 (State's Exhibit 135 through 147 admitted.)

11 BY MS. WECKERLY:

12 Q Okay. So looking at 136, can you explain to  
13 the members of the jury what we're looking at in that  
14 photograph?

15 A This is the interior of the apartment, and  
16 this is a hallway, north/south hallway, and this is the north  
17 wall of that hallway.

18 Q And this is in -- in September at this point;  
19 correct?

20 A Yes.

21 Q So it's a couple months after the homicide?

22 A Yes. I believe five or six weeks later.

23 Q Okay. And so things have been cleared out  
24 that were there, obviously, earlier?

25 A Yes. When I went there the apartment was



1 unfurnished.

2 Q Okay. Now, looking back at the wall in the  
3 back of 136 there appears to be like defects in the wall. Can  
4 you explain what that is?

5 A Yes. The -- these right here are the -- the  
6 bullet holes that I documented that were in the wall.

7 Q And I'm going to ask --

8 MS. WECKERLY: Can you put on 138, please.

9 BY MS. WECKERLY:

10 Q And if you touch the bottom corner of your --  
11 yeah.

12 A Oh, sorry.

13 Q That's okay. So is that a closer view of  
14 those bullet holes?

15 A It is. They're turned on their side, but  
16 that's -- yes, that's them.

17 Q So now it's oriented correctly?

18 A Correct.

19 Q And those -- when we saw the prior cutouts,  
20 that was done by other crime scene analysts?

21 A Yes, those were there when I arrived, and I  
22 don't know what they were there from.

23 Q Okay. But these bullet holes, which if we go  
24 back to 136, I'm going to just have you circle where those  
25 were.

1           A       They were right down here.

2           Q       Okay. And close up is 137 and you were  
3 documenting those?

4           A       Correct.

5           Q       Now, did you make any effort to -- to like  
6 recover a projectile or anything like that in the apartment?

7           A       I did. I did a search and I did not recovery  
8 any bullet fragments or bullets from the apartment.

9           Q       Okay. Associated with what you saw there?

10          A       Correct. Yes.

11          Q       Later that day did you do something else in  
12 terms of the investigation?

13          A       Yes, I -- after we were done here, we went to  
14 an apartment on Owens Avenue. I can't remember the exact  
15 address off the top of my head. But that is where reportedly  
16 the big screen TV that was in the bedroom was moved to. And I  
17 recovered -- I documented a hole I the TV and recovered a  
18 bullet fragment from inside.

19          Q       Now I'm putting on State's 142. please. And  
20 what are we -- is that the second location that you just spoke  
21 of?

22          A       That is. This is the Owens address and this  
23 is the TV that was reportedly in -- in the bedroom of that  
24 original apartment.

25          Q       Okay. And 144, what are we looking at in that

1 one?

2 MS. WECKERLY: Well, can we just turn it, please?

3 MR. DiGIACOMO: Oh, sure.

4 THE WITNESS: This here is the side of the  
5 television, and right here is where the apparent bullet hole  
6 is in it.

7 MS. WECKERLY: Can we put on 145, please.

8 BY MS. WECKERLY:

9 Q What are -- is that a closer view?

10 A It is. Right here is the bullet hole that I  
11 was documenting.

12 Q Okay. And now lastly, 147. What is that?

13 A That right there is the bullet fragment that I  
14 recovered from inside the television. We opened it up and  
15 there was a bullet fragment inside.

16 Q And what did you do with that fragment?

17 A That was impounded. After I -- I photographed  
18 it, I put it in a vial and impounded it. And that could be  
19 sent to a firearm's examiner for later testing.

20 Q And so you're obviously not the person who  
21 does that later testing?

22 A No, I do not.

23 Q Okay. Thank you.

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

25 MR. SGRO: May I approach the clerk briefly, Your

1 Honor.

2 THE COURT: Certainly.

3 MR. SGRO: And could I have the Elmo, please.

4 May I proceed, Your Honor?

5 THE COURT: Certainly.

6 CROSS-EXAMINATION

7 BY MR. SGRO:

8 Q Good morning. How are you doing?

9 A Good morning. I'm well, thank you.

10 Q I want to ask you -- I'm going to go in the  
11 same order.

12 A Okay.

13 Q So first of all let's talk about your  
14 qualifications, all right?

15 A Okay.

16 Q How long have you been in Metro?

17 A Over eight years.

18 Q And have you -- well, strike that. Were you  
19 in 2010, in August, someone that other law enforcement  
20 officials could rely upon in terms of the quality and accuracy  
21 of your work?

22 A Yes.

23 Q Have you come to be known as someone who does  
24 a good job, who is accurate?

25 A Yes.

1 Q Pardon me?

2 A Yes.

3 Q Okay. And you continued your training even  
4 beyond August of 2010; right? You're still going to classes.  
5 I see in your resume here you're still going to seminars; is  
6 that right?

7 A Correct. Yes.

8 Q Now, one of the things that you do as part of  
9 your job is you create reports; right?

10 A Yes.

11 Q And these reports -- and let's just take an  
12 example. You were asked about -- you know, you recovered a  
13 fire -- or a bullet or a fragment. That gets sent off; right?

14 A Correct. Yes.

15 Q Now, whoever that person is that it gets sent  
16 off to is going to rely on what you tell them in your report;  
17 right?

18 A Yes.

19 Q Where you got it, what time it was, the  
20 circumstances, all those things; correct?

21 A Correct.

22 Q And you're trained in the discipline not only  
23 of the science, but also how to draft a report that people can  
24 rely on.

25 A Yes, that's correct.

1           Q     And you told the jury that one of the --  
2 another thing that you did was you lifted some prints and you  
3 sent those off, as well.

4           A     Yes.

5           Q     And, again, same questions, same answers.  
6 That person receiving those fingerprint cards needs to be able  
7 to trust you, rely on you, and believe that you're accurate?

8           A     Yes.

9           Q     All right.

10          A     Correct.

11          Q     Now, when we get to the issue of the car,  
12 first of all, do you remember the condition of the car as you  
13 photographed it?

14          A     The -- do you just -- the doors were closed,  
15 the windows were up, the seals were affixed.

16          Q     Okay. Did you look inside the car?

17          A     Yes. After the photographs were taken from  
18 outside, then we proceed inside the car.

19          Q     Right. And you took picture of the inside of  
20 the car, too?

21          A     Yes.

22          Q     And would you agree with me that the car was  
23 dirty?

24          A     It wasn't -- do you mean the outside or the  
25 inside? I'm sorry.

1 Q The inside. I'm sorry.

2 A The inside --

3 Q The inside of the car has stuff all over it;  
4 right?

5 A Not items. It wasn't cluttered with items,  
6 but --

7 Q What does it have?

8 A -- it wasn't clean. There was a towel on the  
9 rear floorboard, an envelope. But it wasn't cluttered with  
10 items.

11 Q Do you recall any clothing in the back seat?

12 A In the back seat I believe there are a pair of  
13 shoes, a pair of heels.

14 Q Okay. Now, let's start with the -- is the  
15 acronym LCV?

16 A Yes.

17 Q Okay. Can you say that again, the word?

18 A Leuco Crystal Violet.

19 Q All right. That is a chemical agent that is  
20 going to react to blood; right?

21 A Correct.

22 Q And it also reacts to cleaning agents, doesn't  
23 it?

24 A Yes, it can.

25 Q Was there a reaction from the LCV to a

1 cleaning agent in the backseat?

2 A No, there was no reaction of LCV at all.

3 Q Okay. So just to put it to bed, do you know  
4 the name of the individual, the names, of the defendants in  
5 this case?

6 A I do now that I have the -- the subpoena and  
7 -- yes.

8 Q Okay. So let's go from the generic to the  
9 specific.

10 A All right.

11 Q David Burns's DNA was not in the left side of  
12 the back seat; right?

13 A Well, I don't know if his DNA was or not. I  
14 took DNA swabs, but I don't know the results.

15 Q Blood.

16 A Okay, blood. No. No blood.

17 Q All right. You spoke to the jurors about some  
18 footwear impressions that you got from the backseat of the  
19 car; right?

20 A Correct.

21 Q What side of the backseat?

22 A It was the -- the left side.

23 Q The driver side?

24 A Yes

25 Q Are you aware that those footwear impressions



1 that you obtained were compared to someone named Job-Loc?

2 A No.

3 Q So I guess let me ask a more broader question.  
4 When you tell -- when you come in and you testify and you say,  
5 hey, we sent these things out, do you ever circle back and  
6 determine what the results are or what the findings were?

7 A No, not usually, only if I find out about  
8 them. So I submit them as items of evidence. And if a  
9 request is put in for them to be examined, then they are.

10 Q So let me ask it this way. Relative to the  
11 footwear impression that you obtained from the driver side  
12 backseat of the car, does the name Job-Loc ring a bell to you  
13 at all?

14 A No.

15 Q Jerome Thomas?

16 A No.

17 Q Okay. I asked you a number of questions about  
18 your qualifications. Would one of your qualifications be to  
19 be able to do something like take apart a big screen TV and  
20 locate a fragment?

21 A Yes.

22 Q And are you trained how to look for things  
23 like that?

24 A Yes.

25 Q And do you do the best that you can so you

1 don't miss anything?

2 A Yes, of course.

3 Q And you understand how important, especially  
4 in a homicide case, bullets and bullet fragments can be;  
5 correct?

6 A Yes.

7 Q In this case did you take pains to go through  
8 and dismantle that TV?

9 A Yes, we -- so it was one of those big TVs with  
10 the back on it, so we took the back off and the bullet  
11 fragment was recovered. And then we even looked in the base  
12 under the TV portion, and that was searched with -- with  
13 negative results. There were no other bullets or bullet  
14 fragments found in it.

15 Q Were you comfortable when you left that you  
16 had adequately searched that television and that you recovered  
17 the one and only fragment that was in there?

18 A Yes.

19 Q And that's the same kind of comfort you have  
20 in terms of allowing people beyond you to rely on you on what  
21 you found; right? Things that you submit to other people.

22 A Yes.

23 Q Okay. Now, I have here some photos I want to  
24 flip through.

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

1 THE COURT: Certainly.

2 BY MR. SGRO:

3 Q And I'm showing you -- they're all grouped  
4 together. Defense Exhibit S, like Sam. Right? You see that  
5 there?

6 A Yes.

7 MR. SGRO: And I believe the State has no objection.

8 MS. WECKERLY: That's correct.

9 THE COURT: All right. They'll be received.

10 (Defendant's Exhibit S admitted.)

11 MR. SGRO: Thank you, Your Honor.

12 BY MR. SGRO:

13 Q Have you had a chance to flip through them?

14 A Yes.

15 Q And do they appear to reflect the -- the two  
16 bullet holes that you testified on direct examination?

17 A Yes.

18 Q Now, I want to show -- I want to go through a  
19 couple of them. Let's see here. Just so we have some  
20 context. To the left it's black. Is that the end of the  
21 wall, is that an open door? Can you orientate the jury to  
22 what this hole is?

23 A Yes, this is not going to be in the hallway  
24 anymore. This is inside the master bedroom. And so this is  
25 small wall. It's like a cutout along the West side of the

1 bedroom. So on the other side of this wall is the hallway  
2 wall.

3 Q So we've had some testimony earlier in this  
4 case about how crime scene analysts mark travel paths of  
5 bullets. You're familiar with that; right?

6 A Yes.

7 Q And it's very common to take a travel path and  
8 -- and -- of one bullet and call it A, and do the next one B,  
9 C, etcetera; right?

10 A Yes, that's correct.

11 Q Okay. And that's what you did here; right?  
12 You have an A and a B?

13 A Yes. These ones are actually A-2 and B-2  
14 because these are the -- the other side.

15 Q Right. Right. This is the -- from the master  
16 bedroom perspective.

17 A Correct. Yes.

18 Q All right. Can you orientate us as to this  
19 one?

20 A Yes, this right here, now we're back in the  
21 hallway and this is the ones that we saw before. And then so  
22 this doorway to the right is opening into that master bedroom.

23 Q All right. Now, this is A-1 and B-1; right?

24 A Yes.

25 Q This is the entry of each bullet?

1           A       Yes.

2           Q       And you also have, I don't know what the term  
3 of art is, but tools or instruments that allow you to  
4 calculate flight paths of projectiles, would that be fair?

5           A       Yes, that's correct.

6           Q       And would this photo within the packet of  
7 Defense Exhibit S, would this be an example of some of the  
8 things you can use to have ideas of flight paths?

9           A       Yes, they are. Those are trajectory cards --  
10 sorry, trajectory rods with centering cones.

11          Q       All right. And then this photo here is simply  
12 a close up, would that be fair?

13          A       Yes, that's -- that's right.

14          Q       The same wall looking in the hallway?

15          A       Yes, this is the hall wall again.

16          Q       All right. So you go -- you go to this  
17 residence. You, amongst other things, memorialize these holes  
18 in the wall and you -- and you create a report about it;  
19 right?

20          A       That's correct.

21          Q       And in your report you describe two bullets  
22 creating the holes in that wall; right?

23          A       Yes.

24          Q       Do you have your report?

25          A       I do. It's right here.

1 Q Okay. Do you need to refresh your  
2 recollection or no?

3 A Not at this point.

4 Q Okay.

5 A Possibly after.

6 Q If you need to refresh your recollection, let  
7 me know.

8 A Okay.

9 Q Did you recall in your report also -- well,  
10 strike that. Let me ask you first, do you recall the  
11 direction of the trajectory of Bullet A?

12 A Do you mean the -- just the flight path that  
13 they were in a down -- mostly downward angle?

14 Q Do you remember which direction, north, south,  
15 east, west?

16 A Oh, north.

17 Q Okay.

18 A Generally north directions.

19 Q Generally northwest, does that sound right?

20 A Generally northwest.

21 Q Would it refresh your recollection?

22 A Yes, it would.

23 MR. SGRO: Your Honor, may I approach? I have it  
24 highlighted here.

25 BY MR. SGRO:

1           Q       Do you see here it says the flight path of the  
2 bullet that created the west hole in the north hallway wall  
3 labeled A traveled in a generally northwest direction.

4           A       Okay. Yes.

5           Q       Is that right?

6           A       Yes.

7           Q       And then as to the second bullet, the flight  
8 path of the bullet that created the east hole labeled B  
9 traveled in generally north.

10          A       Yes.

11          Q       So one of those bullets when northwest  
12 generally; right?

13          A       Yes.

14          Q       And one of them went north.

15          A       Yes.

16          Q       Were you ever shown the media console or the  
17 niche? I'm not a big --

18          A       Oh.

19          Q       -- furniture person, but you know the shelving  
20 unit that was in front of that wall?

21          A       No, I never saw any other furniture besides  
22 the TV.

23          Q       So I guess what I'm asking is this. You were  
24 sent to a different location to examine the big screen  
25 television.

1           A       Correct.

2           Q       All right. Did anyone ever send you to a  
3 location to look at that piece of furniture that was in front  
4 of the two bullet paths that you --

5           A       No. I wouldn't have known what -- I didn't  
6 even know what type of furniture was in that hallway.

7           Q       Now, you were asked if you looked for any  
8 other evidence related to bullets or fragments. Do you  
9 remember that?

10          A       Yes.

11          Q       And did you do that?

12          A       Yes, I did.

13          Q       What did you do relative to efforts to seek  
14 those materials out?

15          A       A -- excuse me. A visual search, and I also  
16 cut a hole in that hallway wall.

17          Q       When you say a visual search, you just looked  
18 around the residence to see if you could see anything?

19          A       Yes, in that bedroom area.

20          Q       And this search that you did, the visual  
21 search, would have been about seven weeks after the tenants  
22 had relocated?

23          A       I don't know when they relocated, but seven  
24 weeks since the original incident, yes.

25          Q       Seven weeks. Okay. Let's stick with that.



1 Seven weeks since the incident, that's when they -- that's  
2 when you found yourself seeing if there was additional  
3 evidence?

4 A Correct.

5 Q In the same residence that's the scene of the  
6 homicide?

7 A Yes.

8 MR. SGRO: Court's indulgence, Your Honor. Pass the  
9 witness.

10 MR. LANGFORD: Nothing, Your Honor.

11 THE COURT: Redirect.

12 MS. WECKERLY: Just briefly.

13 REDIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q When you say you did a visual search in the --

16 A Yes.

17 Q -- residence, is it -- can you describe what  
18 you do?

19 A Yes, like I -- I look in all the areas. So as  
20 I saw where the bullet holes went through that master bedroom  
21 wall, I looked on the carpeting area just to -- made sure  
22 there was no other bullet holes in another wall. There  
23 wasn't. There was some items in there, not -- not very many.  
24 I just -- I just checked all of those.

25 Q Now, when you say in your report bullet holes,

1 what do you mean by that?

2 A The bullet holes -- I'm sorry. I don't  
3 understand.

4 Q Well, do you know -- I mean, I guess you've  
5 seen bullet holes before; correct?

6 A Yes.

7 Q In your work. And do you in your report  
8 writing, do you distinguish between something that could be  
9 caused by an intact bullet or a fragment of the bullet?

10 A No, I don't, so I just call them bullet -- so  
11 when I refer to bullet and those bullet holes, it could be the  
12 bullet broke apart first and those are fragments making both  
13 these holes, or they're two separate -- separate bullets. I  
14 don't distinguish that. I just say the flight path of  
15 basically whatever part of the bullet that went through the  
16 wall created that hole and traveled at those directions.

17 Q And would there be any way to tell to your  
18 knowledge and your experience and training and work, when you  
19 looked at those two holes that -- that were marked A and B to  
20 ever tell if it was a bullet or a fragment?

21 A I couldn't tell on those.

22 Q And when you said you looked at -- in the  
23 secondary part of that day when you go and look at the TV --

24 A Yes.

25 Q -- and there's sort of the defects in the

1 bottom.

2 A Yes.

3 Q What -- what did you physically take apart of  
4 the TV

5 A We took the -- the back plastic backing, I  
6 guess you'd call it. of the TV off. And then we also -- it  
7 was on one of those big wooden bases, and lifted it off of  
8 there just to check underneath.

9 Q Okay. And that -- and you didn't see anything  
10 in either of those places?

11 A No.

12 Q Okay. Thank you.

13 RECROSS-EXAMINATION

14 BY MR. SGRO:

15 Q Ma'am, did I hear you just tell the jury that  
16 you didn't distinguish between bullets and bullet fragments in  
17 the report?

18 A I don't know. I don't.

19 Q Then why did you just tell the jury that you  
20 didn't?

21 A I -- I don't distinguish between them.

22 Q You don't?

23 A And that's what you just --

24 Q Can you go to --

25 A I'm sorry. I'm confused.

1 Q Can you go -- well, let's clear it up.

2 A Okay.

3 Q Do you have your report?

4 A I do.

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

6 THE COURT: Yes.

7 BY MR. SGRO:

8 Q Does it say here in your report relative to  
9 the television the back of the television was removed and a  
10 bullet fragment --

11 A Yes.

12 Q -- was located -- let me finish.

13 A Okay.

14 Q Was located inside the television. Does it  
15 say that?

16 A Yes.

17 Q Do you in your report distinguish between  
18 bullets and bullet fragments?

19 A On items of evidence, yes.

20 Q Did you qualify that when the prosecutor asked  
21 you the question?

22 A No, I'm sorry. She was discussing the holes,  
23 so I was talking about the holes at that time.

24 Q Ma'am, are you aware that there is an issue in  
25 this case relative to the amount of shots that were fired in

1 the residence?

2 A No.

3 Q Okay. Are you answering in conformity with  
4 what you believe the prosecutor wants to hear?

5 A No.

6 Q You were asked a very general question. Do  
7 you in your report, in your report, distinguish between bullet  
8 and bullet fragment, do you remember that question?

9 A I do.

10 Q All right. And you told the jury, no, I  
11 don't; right?

12 A I did.

13 Q You did. So your prior answer was a mistake;  
14 right?

15 A In relation to that, yes.

16 Q And when it comes to in relation to the wall,  
17 clearly at the time of the report that you drafted you knew  
18 the difference between what a bullet was and what a fragment  
19 was; correct?

20 A To look at them as items of evidence, yes.

21 Q Okay. Do you at any point in your report that  
22 you drafted at the time you're at the scene characterize the  
23 two holes that I showed you, the A and the B, as anything  
24 other than bullet holes?

25 A No.

1           Q       Do you ever in your report suggest anything  
2 along the line of this could have been caused by a fragment?

3           A       In relating to holes, no.

4           Q       Okay. That's all.

5           MR. LANGFORD: Nothing.

6           THE COURT: Thank you for being a witness, Ms.  
7 Taylor. You'll be excused.

8           THE WITNESS: Thanks.

9           THE COURT: Do any of the jurors want a recess  
10 before we continue on this morning? I'm seeing -- oh, we've  
11 got one back here. All right. Let's take a ten minute  
12 recess, ladies and gentlemen.

13                 During the recess you're again admonished it's your  
14 duty not to converse among yourselves or with anyone else on  
15 any subject connected with this trial. You may not read,  
16 watch, or listen to any report of or commentary on the trial  
17 from any medium of information, including newspapers,  
18 television, and radio, and you may not form or express an  
19 opinion on any subject connected with this case until it is  
20 finally submitted to you. We'll be in recess for about ten  
21 minutes.

22                 The Court will be at ease while the jury --

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

24           THE COURT: Ten minutes.

25           MR. ORAM: Thank you, sir.

1 MR. DiGIACOMO: Just -- just for the record, or  
2 maybe off the record, the first witness, Erica Newman, we  
3 offered 262 and you said if you make the disc of the actual  
4 audio itself, which is now marked as 262A, I just want to make  
5 sure the record is clear that the Court admitted that based  
6 upon the request of the defense that the audio be admitted.

7 THE COURT: That was my understanding.

8 MR. ORAM: Yes, sir.

9 THE COURT: It will be received.

10 (State's Exhibit 262A admitted.)

11 (Court recessed at 11:23 a.m., until 11:36 a.m.)

12 (In the presence of the jury)

13 THE COURT: All right. We're back on the record.  
14 All right. State versus Burns and Mason. The record will  
15 reflect the presence of the defendants, their counsel, and the  
16 District Attorneys, and all members of the jury.

17 You can call your next witness.

18 MR. DiGIACOMO: Tyler Mitchell.

19 TYLER MITCHELL, STATE'S WITNESS, SWORN

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

22 THE WITNESS: Tyler Mitchell; T-Y-L-E-R  
23 M-I-T-C-H-E-L-L.

24 MR. DiGIACOMO: May I inquire, Judge?

25 THE COURT: Yes.

1 DIRECT EXAMINATION

2 BY MR. DiGIACOMO:

3 Q Good morning, ma'am.

4 A Good morning.

5 Q Do you know --

6 THE COURT: You're going to have to speak up so that  
7 we can hear you. There's a --

8 THE WITNESS: Oh.

9 THE COURT: There's a microphone right there and  
10 we'll probably need you to kind of speak loudly so it'll pick  
11 you up, okay?

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 THE WITNESS: Thank you.

15 BY MR. DiGIACOMO:

16 Q That's our very high tech mechanism to get the  
17 microphone.

18 A Yeah.

19 Q Ma'am, do you know Monica Martinez?

20 A Yes, I do.

21 Q How do you know her?

22 A She's my mother.

23 Q Okay. And how old are you today?

24 A 23.

25 Q 23. So back in 2010 you were about 19?



1           A       Yeah, 18, 19.

2           Q       18, 19, somewhere in that range. Were you  
3 living with your mother when you were 18 or 19 in 2010?

4           A       Yes.

5           Q       And I want to direct you generally to the time  
6 period around where your mother got arrested. Do you remember  
7 that?

8           A       Yes.

9           Q       Okay. Prior to your mom being arrested, did  
10 she have a boyfriend?

11          A       Yes.

12          Q       And what was his name?

13          A       Job.

14          Q       Job?

15          A       Yes.

16          Q       And did there come a -- well, let me ask you  
17 this. Did Job live at your house?

18          A       He was around a lot, but he didn't really live  
19 there.

20          Q       How often did you meet Job?

21          A       I probably met him quite a few times.

22          Q       Quite a few times?

23          A       Yeah.

24          Q       Have you seen him since your mother was  
25 arrested?

1 A No.

2 Q So prior to your mom getting arrested, did Job  
3 have an injury of some sort?

4 A Yes.

5 Q And where was that injury?

6 A He broke his leg. I think it was his left  
7 leg.

8 Q Did he have some sort of -- was he able to get  
9 around?

10 A No, he had crutches.

11 Q And even up into sort of the time period your  
12 mom got arrested, was he still on those crutches?

13 A Yes.

14 Q Does there come a point in time when you meet  
15 some friends of Job's?

16 A Yes.

17 Q Okay. And who do you meet?

18 A D-Shot and G -- D-Shot and G --

19 Q Something G?

20 A Yeah.

21 Q Okay. Let me ask you this. Do you meet G  
22 first or D-Shot first, do you remember?

23 A I believe D-Shot.

24 Q Okay. And how do you meet him?

25 A Through Job. He was at the house.

1 Q At what house?

2 A The house that me and my mother lived on  
3 Cinnabar.

4 Q So at the Cinnabar house you met D-Shot?

5 A Uh-huh.

6 Q Is that a yes?

7 A Yes.

8 Q How was he introduced to you?

9 A He was just sitting on the couch and they just  
10 said he was a friend of Job's.

11 Q Okay.

12 MR. LANGFORD: I'm sorry, Your Honor. I can't hear  
13 what she's saying.

14 THE WITNESS: I'm sorry. I met him through Job.  
15 They introduced me as his friend.

16 BY MR. DiGIACOMO:

17 Q So they introduced you to D-Shot --

18 A Uh-huh.

19 Q -- as a friend of his?

20 A Yes.

21 Q Okay. You said you also met G. Where did you  
22 meet G?

23 A At the house, as well.

24 Q The Cinnabar house?

25 A Yes.

1 Q Okay. And about how long do you think this  
2 was prior to the time your mom got arrested?

3 A It was weeks before.

4 Q Weeks before?

5 A Yeah.

6 Q Okay. And how was it that you meet G?

7 A Through Job, as well. They were both at the  
8 house. I just happened to walk in and they were there.

9 Q Do you ever exchange phone numbers with either  
10 -- well, first of all, did you have Job's phone number?

11 A Yes.

12 Q Okay. Did you have G-Dogg or G's number?

13 A Yes.

14 Q Okay. What about D-Shot, did you have a phone  
15 number for D-Shot?

16 A No.

17 Q Okay. Did you even now if D-Shot had a phone?

18 A No.

19 Q How many times do you think you met G?

20 A I met them once.

21 Q Both of them one time?

22 A Yes.

23 Q Had you ever communicated with them on text  
24 messages that you remember as you sit here today?

25 A Yes.

1 Q Okay. Who did you text with?

2 A Really D-Shot.

3 Q D-Shot?

4 A Yes.

5 Q Okay. And do you know whose phone he was  
6 using as he was texting with you?

7 A Job's.

8 Q Job's phone?

9 A Yes.

10 Q Does there come a point in time -- well, let  
11 me ask you this. I know it's been several years now. Do you  
12 think you would recognize G again if you were to see him  
13 again?

14 A Yes.

15 Q Do you see him here in court today?

16 A Yes.

17 Q Can you point him out and describe something  
18 he's wearing?

19 A He's wearing a collared shirt and ponytail.

20 Q Okay. So that's the individual you know as G?

21 A Yes.

22 Q Okay.

23 MR. DiGIACOMO: And may the record reflect the  
24 identification of Burns.

25 THE COURT: The record will so reflect.

1 BY MR. DiGIACOMO:

2 Q And then the person you know as D-Shot, do you  
3 see him over at the table?

4 A Yes.

5 Q Or do you see him in the courtroom? Okay.  
6 And where is he sitting?

7 A The last one in the row, or that's to the  
8 right.

9 Q The gentleman all the way at the end?

10 A Yes.

11 MR. DiGIACOMO: May the record reflect the  
12 identification of Mason?

13 THE COURT: The record will so reflect.

14 BY MR. DiGIACOMO:

15 Q So let me take you back to 2010. Do you  
16 remember the police coming to you and showing you a photo  
17 lineup of an individual?

18 A Yes.

19 Q And were you able to identify the person that  
20 you knew as D-Shot in that photo lineup?

21 A Yes.

22 MR. DiGIACOMO: May I approach, Judge?

23 THE COURT: Yes.

24 BY MR. DiGIACOMO:

25 Q Ma'am, I'm going to show you what's been

1 marked as State's Proposed Exhibit No. 279 and ask you if you  
2 recognize the front of that exhibit.

3 A Yes.

4 Q Okay. Do you recognize your name on there?

5 A Yes.

6 Q Do you recognize your writing?

7 A Yes.

8 Q Were these instructions provided to you prior  
9 to them showing you the photo lineup?

10 A What do you mean?

11 Q Well, did they show you this form at the time  
12 they showed you the photo lineup?

13 A Yes.

14 Q And did either you read it or they have a  
15 chance to read it to you and is that your signature at the end  
16 of the instructions?

17 A Yes.

18 Q And then I'm assuming they showed you some  
19 photographs.

20 A Yes.

21 Q And then they asked you to write out a  
22 statement as to what it is you know and how you know it?

23 A Yes.

24 Q So now I'm going to show you page 2 here. Do  
25 you recognize what's been circled there as TM?

1           A       Yes.

2           Q       Okay. Is that your circle and indication of  
3 identification?

4           A       Yes.

5           MR. DiGIACOMO: Move to admit 279.

6           MR. ORAM: No objection.

7           MR. LANGFORD: No objection.

8           THE COURT: It will be received.

9 BY MR. DiGIACOMO:

10           Q       Ma'am, I'm going to put up on the overhead in  
11 front of you or that screen in front of you. Or I won't be.  
12 I guess we'll go to the overhead.

13           MR. DiGIACOMO: Can we go to the overhead?

14 BY MR. DiGIACOMO:

15           Q       Okay, Tyler. I'm going to ask you to read  
16 what you wrote.

17           A       The photograph that I have circled is known as  
18 D-Shot. In the beginning of August 2010, D-Shot, G-Dogg, and  
19 Job were at my house, alone with my mother's house -- along  
20 with my mother's house for a day and that is how I know D-Shot  
21 both and G-Dogg. And Job introduced me to D-Shot, but D-Shot  
22 introduced himself as Curly.

23           Q       As you sit here today, do you remember D-Shot,  
24 that individual, identifying himself to you as Curly?

25           A       Yes.



1           Q     Okay. But the other individuals identified  
2 him to you as D-Shot?

3           A     Yes.

4           Q     I'm going to turn to page 2. When you were  
5 shown the photo lineup, were you able to identify the  
6 individual in that photograph as D-Shot?

7           A     Yes.

8           Q     Okay. Now, in addition to those individuals,  
9 did you meet someone that you knew as Wes?

10          A     Yes.

11          Q     Is it Wes or West?

12          A     West.

13          Q     With a t?

14          A     Yes.

15          Q     Okay. How did you meet West?

16          A     I've known him through a mutual friend before.

17          Q     Did you know that he was also friends with  
18 Job, as well?

19          A     Yes.

20          Q     Okay. And does there come a point in time  
21 where after your mom was arrested West has contact with you?

22          A     Yes.

23          Q     And ultimately did the police make a request  
24 of you to get your phone and download your text messages from  
25 your phone?

1           A       Yes.

2           Q       In addition to that -- well, did you give them  
3 -- you and your mother both give them consent to download your  
4 phone?

5           A       Yes.

6           Q       Okay.

7           MR. DiGIACOMO: Judge, I believe there's an  
8 agreement between the parties as to State's Proposed Exhibit  
9 No. 308 which is the list of contacts from the phone, 310  
10 which is the entirety of all the text messages on Ms.  
11 Mitchell's phone, and then 309 which is just portions of  
12 relevant text messages on this phone, and I would offer them  
13 at this point.

14           MR. ORAM: May we approach, Judge?

15           THE COURT: Sure.

16                   (Bench conference.)

17           MR. ORAM: Judge, my understanding is we have no  
18 objection to the -- like the phone numbers, but I understand  
19 -- what my understanding is the State wants to put in all the  
20 actual text of the information and we'd have to look that over  
21 before we agree to that. I didn't agree to that.

22           MR. SGRO: Your Honor, I thought we were trying to  
23 save time with Larry Smith who is my expert because he did the  
24 cell phone dump which I agreed to and I, you know --

25           THE COURT: Well, if they're texts that she made or

1 received that are otherwise relevant, they're admissible,  
2 aren't they?

3 MR. SGRO: They'd be hearsay statements.

4 THE COURT: They could be. You've not seen them  
5 before?

6 MR. ORAM: I have seen them. I just don't know  
7 which ones they're putting in.

8 THE COURT: Well, look at them.

9 MR. DiGIACOMO: Those are the relevant ones. I  
10 mean, she's got a whole bunch of them to different people,  
11 but --

12 MR. ORAM: How about we do this while -- are you  
13 going to show them right now?

14 MR. DiGIACOMO: Oh, absolutely.

15 MR. ORAM: [Inaudible].

16 MR. DiGIACOMO: Some of them do and some of them  
17 [inaudible] on Job's phone.

18 MR. ORAM: [Inaudible].

19 THE COURT: I don't know what you're talking about.  
20 I can't hear you.

21 MR. ORAM: I said we had no idea of this. We have  
22 to look at it before they --

23 MR. DiGIACOMO: They were in discovery.

24 MR. ORAM: No, I realize that but you're saying that  
25 we stipulate to admissions when --

1           THE COURT: No, you don't have to stipulate. I  
2 mean, she can testify as to foundation.

3           MR. DiGIACOMO: I don't think they have a foundation  
4 problem. Their problem is that they want to have a  
5 substantive objection to the records. We agreed to this  
6 because they happened to hire Larry Smith as their expert.

7           THE COURT: I understand. I remember that business.

8           MR. DiGIACOMO: So --

9           MR. SGRO: What Mr. DiGiacomo just said is right. I  
10 agreed with him --

11          MR. DiGIACOMO: Right.

12          MR. SGRO: -- because we wanted to avoid the whole  
13 Larry Smith situation because we endorsed him as our expert  
14 witness.

15          THE COURT: Okay. The only issue is whether there's  
16 something that's inadmissible in there; right?

17          MR. ORAM: Right.

18          THE COURT: Well, look through it and see if there's  
19 anything inadmissible.

20          MR. ORAM: Oh, there's a lot of them, Judge.  
21 There's a lot of them.

22          THE COURT: There's four five -- it looked like five  
23 or six pages.

24          MR. DiGIACOMO: There's only eight pages of  
25 relevant.

1 MR. ORAM: [Inaudible].

2 THE COURT: Well, look at the eight pages, see if  
3 there's anything objectionable.

4 MR. ORAM: Sure. Okay. Okay. Want me to do it  
5 right now?

6 THE COURT: Yeah.

7 MR. ORAM: Okay.

8 (End of bench conference.)

9 (Pause in the proceedings.)

10 MR. DiGIACOMO: Judge, I think I can continue with  
11 some questions on 308 because I believe there is going to be  
12 no objection to that one.

13 THE COURT: All right. Any objection to the  
14 admission?

15 MR. SGRO: No, those are the contacts and that's  
16 fine.

17 THE COURT: All right. They'll be received.

18 (State's Exhibit 308 admitted.)

19 BY MR. DiGIACOMO:

20 Q So let's go to 308 which is the phone  
21 contacts. And there's a lot of people that you have by phone  
22 numbers in here and you have kind of nicknames for them, okay?

23 A Uh-huh.

24 Q So -- is that a yes?

25 A Yes.

1           Q     All right. So I just want to go through some  
2 of the contacts that you have. Not all of them.

3           A     Okay.

4           Q     All right. So first I'm going to zoom into  
5 702-927-8742. It kind of looks like a sort of smiley face  
6 with a star, Mami my heart.

7           A     Yes.

8           Q     Who are you referring to?

9           A     My mom.

10          Q     Monica?

11          A     Yes.

12          Q     It says Q-Dogg, but there's a number that says  
13 909-233-0860.

14          A     Yes, G-Dogg. I use my Qs as Gs.

15          Q     Okay. So you -- so you use your Qs and Gs.  
16 So that's, if you were to read it, G-Dogg. And his number is  
17 909-233-0860?

18          A     Yes.

19          Q     And then, ma'am, I apologize in advance for  
20 asking you this, but do you remember how you had Job-Loc in  
21 your phone?

22          A     I remember a few words, but, yes, I do.

23          Q     What was it?

24          A     I think it was faggot ass bitch or something.

25          THE COURT: I'm sorry. Repeat that?

1 THE WITNESS: Faggot ass bitch. Or Faggot ass.

2 BY MR. DiGIACOMO:

3 Q And that's 512-629-0041?

4 A Yes.

5 Q Why is it that you used that term for Job?

6 A I did not like him.

7 Q Did you ever like him?

8 A No.

9 (Pause in the proceedings.)

10 MR. DiGIACOMO: I guess I could ask a couple more  
11 questions while Mr. Langford finishes looking at that.

12 THE COURT: And we have some jurors are going to ask  
13 questions, too.

14 BY MR. DiGIACOMO:

15 Q Did you ever travel to California with your  
16 mother?

17 A No.

18 Q Had you met either one of these two  
19 individuals as best as you can remember prior to that couple  
20 of weeks prior to your mom got arrested?

21 A Can you repeat that?

22 Q Had you met either G-Dogg or D-Shot as far as  
23 you could remember prior to the one time you saw him at the  
24 house together?

25 A No.

1 Q Okay.

2 MR. DiGIACOMO: I believe they are done looking at  
3 the records, 309.

4 THE COURT: Okay. I have a juror's question that  
5 isn't a problem. It's just she wants the phone numbers again.

6 MR. DiGIACOMO: Well, I'll get to that again.

7 THE COURT: You'll get to that. Okay.

8 MR. DiGIACOMO: Okay.

9 THE CLERK: So is --

10 MR. DiGIACOMO: 309 admitted?

11 THE COURT: Yeah, 309 is received.

12 (State's Exhibit 309 admitted.)

13 MR. DiGIACOMO: Thank you.

14 BY MR. DiGIACOMO:

15 Q Now, I'm going to turn to page 3 of -- of 309.  
16 And I'm going to just back up to this very first one. You see  
17 it says G-Dogg there, it's kind of highlighted in purple

18 A Yes.

19 Q Okay. And for the juror, the number  
20 associated in your phone with G-Dogg is 909-233-0860?

21 A Yes.

22 Q And then as it relates to Job as in your  
23 phone, the number that's associated with Job's phone is  
24 512-629-0041?

25 A Yes.



1           Q       And I walked off with my other exhibit. For  
2 your mom's phone, State's Exhibit No. 308, which is Mami my  
3 heart, it's 702-927-8742.

4           A       Yes.

5           Q       So I really only want to focus right now for  
6 your testimony on this one page that references text messages  
7 from Job's phone. And you can see it starts off with sent,  
8 which would have been sent from your phone in your inbox,  
9 phone number, and then date and time that they're sent. And  
10 so for the ladies and gentlemen of the jury, what I want you  
11 to start with is I'll tell you the bottom says sent at  
12 8/5/2010 at 9:41:37 a.m. You send a text to Job's phone that  
13 says what?

14          A       She's home. Thanks for, I believe, asking.

15          Q       And then at 8/5/2010 at 9:44 a.m. you receive  
16 a text. And can you read that as to what your understanding  
17 what that says?

18          A       Ay, this D-Shot. What that shit do?

19          Q       And then your response at 9:44:13, so 13  
20 second later, what does that say?

21          A       Nothing. Bye.

22          Q       Okay. And then the response back from Job's  
23 phone at 9:45:50, what is it?

24          A       Job sleep. He just wanted to check on your  
25 mom.

1 Q And your response back being?

2 A Okay. I sent him a text letting him know  
3 she's good. So when he wakes, he will see.

4 MR. DiGIACOMO: Thank you, Judge. I pass the  
5 witness. THE COURT: Cross-examination.

6 MR. ORAM: Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MR. ORAM:

9 Q Good morning.

10 A Good morning.

11 Q If I understood you right when Mr. DiGiacomo,  
12 the gentleman who was just asking you questions, he asked you  
13 if you had ever traveled with your mother to California and I  
14 understood you to say, no, that you hadn't don't that.

15 A Yes.

16 Q Okay. And that's true, isn't it?

17 A Yes.

18 Q That would be something you would remember if  
19 you traveled with your mother, wouldn't it, to California?

20 A Yes.

21 Q Did she ever talk to you about whether you  
22 guys traveled to California?

23 A No.

24 Q All right. Now, you also told the ladies and  
25 gentlemen of the jury you knew a man named West. North,

1 south, east, west.

2 A Yes.

3 Q With a ton the end.

4 A Yes.

5 Q Was this somebody who would come by the house  
6 on a reasonably regular basis?

7 A Yes.

8 Q Somebody who was pretty close with Job?

9 A Yes.

10 Q Very close. I mean, did -- do you know West  
11 also as, I think he signed his name Baby Job-Loc on a letter.  
12 Do you know that name?

13 A I've never heard him refer to himself as that.

14 Q Fair enough. But you -- you know that West is  
15 Donovan Rowland?

16 A Yes.

17 Q Can you at that time describe what Donovan  
18 Rowland sort of looked like, his physical appearance?

19 A I'd say he's about like 5'6, slip, short hair.

20 Q Okay. So short curly hair?

21 A No curly hair. Just -- he had like a fade.

22 Q Okay. And you said that he was slim?

23 A Yes.

24 Q A slight build?

25 A Yes.

1           Q       Now, the prosecutor asked you, Mr. DiGiacomo  
2 asked you if you could identify D-Shock and -- D-Shot and  
3 G-Dogg in the courtroom. Do you remember that?

4           A       Yes.

5           Q       And you told the ladies and gentlemen of the  
6 jury that the man with the ponytail was G-Dogg.

7           A       D-Shot. I don't -- they're -- they're names  
8 are similar so -- they sound the same to me.

9           Q       Okay. And -- and I can understand that. And  
10 so really what I want to do is I -- you did say that the man  
11 with the ponytail, originally you told the jury that was  
12 G-Dogg.

13          A       Their -- their names are the same. I get the  
14 names confused with the person. But I know who he is.

15          Q       Okay. And I'm not trying to confuse you. I  
16 just want to go through this, okay. At first when you were  
17 asked --

18          A       Yes.

19          Q       -- I understand --

20          A       At first, yes.

21          Q       -- you said that you could identify the man  
22 with the ponytail as G-Dogg and the other man with the white  
23 shirt with the glasses on his shirt, you thought that was  
24 D-Shot. That's what you said at first?

25          A       Yes.

1 Q Okay. But then the prosecutors showed you --

2 A A picture.

3 Q -- some evidence of where you looked at a six  
4 pack lineup.

5 A Yes.

6 Q And you realize that you have identified --  
7 it's a mistake.

8 A Yes.

9 Q Okay. And so now you can tell the ladies and  
10 gentlemen of the jury you're confident that the man you know  
11 as D-Shot is the man with the ponytail?

12 A Yes.

13 Q And the man you know as G-Dogg is the man with  
14 the white shirt?

15 A Yes.

16 Q Now, my understanding is you said that you met  
17 D-Shot one time at -- at the house; is that right?

18 A Yes.

19 Q And he was at the house on -- what was the  
20 name of the street? Do you recall?

21 A Cinnabar.

22 Q Cinnabar. Okay. And you said he was sort of  
23 lounging on the sofa relaxing of something along those lines?

24 A Yes.

25 Q Okay. And at some point you believed he

1 thought you were pretty?

2 A Yes.

3 Q And so it's your testimony that at some point  
4 you think he's using somebody else's phone just with that text  
5 we saw?

6 A Yes.

7 Q Okay. You really don't know who is sending a  
8 text, but you assume, based upon what you know that it was  
9 from D-Shot?

10 A Yes.

11 Q Okay.

12 MR. ORAM: Court's indulgence. Nothing further.

13 MR. LANGFORD: Nothing, Your Honor.

14 THE COURT: Anything further?

15 MR. DiGIACOMO: Nope.

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

18 THE WITNESS: Thank you.

19 THE COURT: Can she be permanently excused?

20 MR. DiGIACOMO: She can.

21 THE COURT: Okay.

22 MR. DiGIACOMO: As far as we're concerned.

23 MR. SGRO: Yes, sir.

24 THE COURT: Now, as I understand it, this is the  
25 last witness you had this morning?

1 MR. DiGIACOMO: Yeah. I let the next witness go to  
2 lunch and I told him to be back at 1:00, so --

3 THE COURT: All right. We'll recess until 1:00.

4 Ladies and gentlemen, again, it's your duty not  
5 converse among yourselves or with anyone else on any subject  
6 connected with this trial or to read, watch, or listen to any  
7 report of or commentary on the trial from any medium of  
8 information, including newspapers, television, and radio. You  
9 may not form or express an opinion on any subject connected  
10 with this case until it is finally submitted to you. We'll be  
11 in recess until 1:00.

12 (Jury recessed at 12:03 p.m.)

13 THE COURT: The record will reflect that the jury  
14 has exited the courtroom.

15 MR. DiGIACOMO: Judge, the only question I have is  
16 on 310 which is the original which I really put in for solely  
17 foundational purposes. I don't know that there was ever a  
18 ruling by the Court as to whether or not they want all of this  
19 to put some of those text messages in context.

20 THE COURT: You guys want it?

21 MR. SGRO: We don't. We don't.

22 THE COURT: Mr. Langford?

23 MR. LANGFORD: No, Your Honor.

24 MR. DiGIACOMO: Then 310 is not in, but 309 is in?

25 THE COURT: Yes.

1 MR. ORAM: Thank you, sir.

2 MR. SGRO: Thank you.

3 THE COURT: Recess until 1:00.

4 (Court recessed at 12:04 p.m. until 1:06 p.m.)

5 (In the presence of the jury.)

6 THE COURT: State vs. Burns and Mason, the record  
7 reflect the presence of the defendants, their counsel, the  
8 district attorneys and all members of the jury. We're still  
9 on the State's case in chief and you can call your next  
10 witness.

11 MR. DiGIACOMO: Jim Krylo.

12 JAMES KRYLO, STATE'S WITNESS, SWORN

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

15 THE WITNESS: James Krylo, J-A-M-E-S K-R-Y-L-O.

16 MR. DiGIACOMO: May I inquire, Judge?

17 THE COURT: Yes.

18 DIRECT EXAMINATION

19 BY MR. DiGIACOMO:

20 Q Sir, how are you employed?

21 A I'm the lab manager of the firearms tool mark  
22 detail for the Las Vegas Metropolitan Police Department's  
23 Forensic Laboratory.

24 Q What does that mean you do for a living?

25 A Well, basically, I manage the firearms and tool



1 mark detail. I run the detail, assign cases, review reports,  
2 anything having to do with the running of that detail.

3 MR. SGRO: I'm sorry -- I'm sorry to interrupt. Your  
4 Honor, do you mean, can I just -- this thing has lined itself  
5 up perfect for Mr. Krylo.

6 THE COURT: That was designed that way.

7 MR. SGRO: Can I take it down? I'll take it down  
8 until I need it. How's that?

9 THE WITNESS: I'm not going to take that personal at  
10 all.

11 BY MR. DiGIACOMO:

12 Q How long have you been the manager of that unit?

13 A Since last March.

14 Q Prior to becoming the manager of that unit, what  
15 did you do for Metro?

16 A I was a firearms and tool mark examiner in that  
17 same detail.

18 Q And how long have you been a firearms and tool  
19 mark examiner?

20 A With Metro, let's see, almost 16 years.

21 Q Prior to Metro did you also do firearms and tool  
22 mark?

23 A Yes.

24 Q And where is it that you did that at?

25 A I started with the sheriff's department in

1 Orange County, California. Took a break for a while and did  
2 crime scenes and latent print processing, then went back into  
3 firearms with the Washington State Patrol in Tacoma,  
4 Washington.

5 Q Grand total, how many years have you been doing  
6 firearms and tool mark examinations?

7 A Over 20.

8 Q In order to be a firearms and tool mark  
9 examiner, do you have to have a certain education, training,  
10 experience, and background?

11 A Yes.

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

14 A Well, the firearms and tool mark detail's within  
15 the forensic laboratory. So pretty much all the -- the  
16 scientist jobs in the laboratory retire -- require some sort  
17 of science degree. I have a Bachelor of Science Degree in  
18 criminalistics, which is kind of half science, half criminal  
19 justice type course work. Once you have your degree and then  
20 you're in the door, then the majority of the training is  
21 on-the-job training. So I received my on-the-job training  
22 with the sheriff's department in Orange County, California.

23 And then beyond that, then we just go to continuing  
24 education. And that's seminars presented by law enforcement  
25 agencies, forensic associations, and even classes offered by

1 the manufacturers themselves. So that continued education,  
2 I've got over 600 hours of that now.

3 And then if we go on, there's an association, an  
4 international association that's actually here in the United  
5 States. It's the Association of Firearm and Tool Mark  
6 Examiners. I'm a distinguished member and past president of  
7 that association. I'm also certified by that association to  
8 form these type of examinations.

9 Q Now, you talked about certifications. I guess I  
10 should start off with what exactly does a firearms and tool  
11 mark examiner do?

12 A Basically, we examine firearms and tool mark  
13 type evidence. What that means is we examine firearms  
14 themselves, we examine ammunition and fired components of  
15 ammunition, the main aspect there being trying to identify  
16 ammunition as having fired from a certain gun. We do those  
17 same type exams with tool marks. If you have a tool mark,  
18 that leaves a -- like a screwdriver leaves a pry mark on  
19 something, we actually do the comparison of the tool to the  
20 mark that it left.

21 Q And is there under -- some underlying forensic  
22 science basis in order to do some sort of comparison of either  
23 a firearm or a tool mark to a mark being left on a particular  
24 piece of evidence?

25 A The basis is that no two tools will leave marks

1 that are so similar that it would confuse you and think that  
2 two marks that were made by two different tools could have  
3 been made by the same tools. So in other words, at a  
4 microscopic level you can look at these marks and look at  
5 tool-to-mark, or bullet-to-gun, cartridge-case-to-gun, and you  
6 can tell one gun apart from another, one screwdriver apart  
7 from another.

8 Q You indicated that you've been certified by an  
9 association, the International Association of Firearms and  
10 Tool Marks, is that what you said it was?

11 A It's the -- the Association of Firearm and Tool  
12 Mark Examiners.

13 Q Okay. You -- in order to be certified by them,  
14 what do you have to do to gain a certification?

15 A Well, minimum, you have to have five years  
16 experience before they let you take the test. And then it's a  
17 written test, followed by a practical test.

18 Q And what kind of -- what do you mean by a  
19 practical test? What does that mean you do?

20 A The practical test is they actually give you  
21 fired bullets, fired cartridge cases, and have you examine  
22 them, and, you know, then you submit your answers on that  
23 exam.

24 Q So they know the answers to the questions, and  
25 then they submit to you as if it's questioning evidence, and

1 then you have to answer the questions as to whether or not you  
2 think a particular bullet was fired from a particular gun,  
3 those type of things?

4 A Correct.

5 Q Does the Las Vegas Metropolitan Police  
6 Department, their forensic lab also conduct certifications of  
7 their examiners?

8 A Not so much certifications. There's a -- you  
9 have to, based on your qualifications, you are basically given  
10 a memo that says, Yes, you can perform case work. But beyond  
11 that, within the scope of our accreditation, we take what are  
12 called proficiency tests. And these are tests similar to the  
13 practical test from -- from AFTE, the Association of Firearm  
14 and Tool Mark Examiners, where an outside entity submits the  
15 test, we take the test, it's a practical test, they actually  
16 send bullets or cartridge cases or pieces of metal with tool  
17 marks on them. We take that test, submit our answers back to  
18 that agency, and find out if we passed or not.

19 Q Let me ask this question. Have you testified in  
20 the area of firearms and tool marks analysis here in the state  
21 of Nevada?

22 A Yes, I have.

23 Q Have you done so in front of a jury in jury  
24 trials?

25 A Yes.

1           Q     And can you guesstimate how many times you've  
2 testified as a -- testified and given opinions in the area of  
3 firearms and tool marks analysis in the state of Nevada?

4           A     Well, if you -- if you combine them all, I've  
5 got state of California I've testified, state of Washington,  
6 and now in Nevada, all total it's almost 300 times.

7           Q     Were you requested to be the firearms examiner  
8 on a homicide case that was identified to you under Metro  
9 Event No. 100807-0732?

10          A     Yes.

11          Q     Okay. And what is it that you were asked to do  
12 under that event number?

13          A     Basically, I was asked to examine a firearm,  
14 some bullets and some bullet fragments, and compare those  
15 bullets and bullet fragments back to the firearm.

16          Q     Okay. Let me start with what's been marked as  
17 State's Proposed Exhibit 320, and then 320A and B.

18          MR. DiGIACOMO: Judge, and I believe there's a  
19 stipulation between the parties that this will be admitted,  
20 there'll be subsequent foundation to -- for purposes of Mr.  
21 Krylo's testimony that it'll be admitted.

22          MR. SGRO: And in fact, to save some time, Your  
23 Honor, I don't have a problem with the admissibility of any of  
24 the things that Mr. DiGiacomo and I -- and I reviewed at the  
25 break. However, I would like to submit for the Court's

1 consideration the -- the expert admission here at this time.

2 THE COURT: The qualifications?

3 MR. SGRO: Yes, sir.

4 THE COURT: Well, he has a Bachelor of Science in  
5 criminalistics. He has over 20 years of experience in  
6 firearms and -- and tool mark analysis. He's been certified  
7 and this is a recognized field that, albeit with some  
8 controversy, has been recognized in virtually every state in  
9 this country. I -- I think that it will be of assistance to  
10 the jury to have the testimony. You can cross-examine on any  
11 issues that you think are appropriate. I'll -- I'm willing to  
12 permit him to testify.

13 MR. SGRO: Thank you, Your Honor.

14 MR. DiGIACOMO: And for the clerk, that means we're  
15 admitting 311 and 311A, 312 and 312A, and 315 and 315A are  
16 admitted now by stipulation.

17 THE COURT: Is that correct, gentlemen?

18 MR. SGRO: Subject to the Court's ruling just now --

19 MR. ORAM: Yes, Your Honor.

20 MR. SGRO: -- yes, sir.

21 THE COURT: Okay. They'll be received.

22 (State's Exhibit 311, 311A, 312, 312A, 315, and 315A  
23 admitted.)

24 MR. DiGIACOMO: And 320 and 320A and B, I already  
25 told you; is that correct?

1 BY MR. DiGIACOMO:

2 Q So let me start with 320, have you look at the  
3 outside of this box, obviously. It's been cut prior to you  
4 being entered into it. But did you receive that item when it  
5 was still sealed either by your -- the crime scene analyst or  
6 by a prior forensic examiner who sealed it with blue tape?

7 A Yes.

8 Q Okay. And if you were to open that you would  
9 expect to find what?

10 A The revolver and the holster.

11 Q Okay. Go ahead and open 320. 320A, for the  
12 record, is the holster that was submitted to you along with  
13 the -- the firearm in -- in 320?

14 A Correct.

15 Q Okay. And then 320B, we've cut it out of the  
16 box at this point, but it's still safe, meaning that it's not  
17 operational, correct -- is that correct?

18 A Well, can I examine?

19 Q Sure.

20 A Basically correct. It's -- what's keeping it  
21 from being functional is this orange strap right here. That  
22 means the -- the cylinder can't close, so it can't be put  
23 completely into a ready-to-fire position.

24 Q So I'm going to refer my questions to 320, but  
25 basically can you explain to us what 320B is?



1           A     This is a Ruger revolver. The caliber is .44  
2 magnum. And it's -- basically, it's -- it's a revolver, will  
3 fire both single or double action.

4           Q     Well, why don't you explain to the ladies and  
5 gentlemen of the jury first, what makes it a revolver versus  
6 semiautomatic pistol?

7           A     The main difference is in a semiautomatic  
8 pistol. Each time you fire it, a cartridge case is ejected  
9 from the gun and another round of ammunition is chambered,  
10 making it ready to fire. With a revolver, you have this  
11 revolving cylinder right here. When you want to get it ready  
12 to fire, you load the ammunition into the cylinder, close the  
13 cylinder up, now it's ready to fire. You can fire -- this  
14 particular revolver will hold six shots.

15           After you've fired it, you have to manually unload  
16 it. You have to open the cylinder back up and then you can  
17 use the ejector rod here and you can dump the ammunition --  
18 the fired cartridge cases of the revolver.

19           Q     Okay. You also mentioned the term double action  
20 versus single action. Explain what the difference between  
21 those two are.

22           A     It's two different ways to fire the gun. For  
23 single-action firing, you manually -- this piece here is  
24 called the hammer. You manually cock the hammer, and then  
25 when you pull the trigger, it's a fairly short and light

1 trigger pull.

2 Double-action firing would be with the hammer down,  
3 like it is here, and all you do is just pull the trigger. And  
4 as you pull the trigger, the hammer comes back and releases  
5 and fires.

6 Q And then if you were to pull the -- if it's  
7 fully loaded with six live rounds, right, that holds six  
8 shots?

9 A Correct.

10 Q Okay. If you had six live rounds in there, you  
11 could pull the trigger six times and fire all six rounds as  
12 the cylinder rotates?

13 A Correct.

14 Q Okay. Did you do testing on that weapon to  
15 determine whether or not it was an operational firearm?

16 A Yes, I did.

17 Q And is it, in fact, an operational.44 caliber  
18 firearm?

19 A Yes.

20 Q Did you make any determination as to the trigger  
21 pull in either single action or double action?

22 A I measured both.

23 Q And could you tell us what the trigger pull on  
24 single action is?

25 A Yeah. May I use my work --

1 THE COURT: Yes.

2 A -- notes? The single-action trigger pull was  
3 4-1/4 to 4-3/4 pounds.

4 BY MR. DiGIACOMO:

5 Q And then is that within the manufacturer's  
6 specification or a reasonable trigger pull?

7 A Yes.

8 Q And then on double action?

9 A Double action trigger pull was 8-3/4 to 9-1/4  
10 pounds.

11 Q And is that a reasonable trigger pull for the  
12 manufacturer's specifications?

13 A Yes.

14 Q Okay. So essentially it's a normal functioning  
15 firearm?

16 A Correct.

17 Q And it takes about twice the amount of pressure  
18 to -- to pull the trigger double action than it does in single  
19 action?

20 A Yeah. Not only -- not only more pressure, but  
21 more travel.

22 Q More travel. So it takes a longer time for it  
23 -- or more pull on the trigger for it to --

24 A More movement and more -- and more pressure.

25 Q Did you also have a number of pieces of expended

1 firearms evidence in order for you to do an analysis of?

2 A Yes.

3 Q So I'm going to show you what's now been  
4 admitted as State's Proposed Exhibits 263, 264, 311, 312, and  
5 315, and ask you are those five of the packages of expended  
6 firearms evidence that you looked at?

7 A Yes.

8 Q Now, was there a sixth package that isn't going  
9 to be here till this afternoon that you also looked at?

10 A Yes.

11 Q Okay. So let's go through each one of the  
12 packages and what's contained in each one of the packages. So  
13 I'll let you go in -- do you want to go in the order of your  
14 report or you want to go the order of the packages?

15 A Well, the order of my report works easier for  
16 me.

17 Q Okay. So why don't -- do you have your report  
18 with you?

19 A I do.

20 Q And would it help you refresh your recollection  
21 to be able to refer to your report and go in the order of  
22 packages that you have?

23 A Yes.

24 Q Okay. So why don't we start with what was the  
25 first package that you looked at?

1           A     It's State's Exhibit 263.

2           Q     And what is contained in State's Exhibit 263?

3           A     There are three items in here.  A -- basically  
4 all fragments of a bullet.

5           Q     Okay.  Let's pull those out for just a second  
6 here.  They're all going to be I believe contained in A, B,  
7 and C.  And those are all portions of a bullet.  So let's  
8 start with A.

9                     Can you tell the ladies and gentlemen of the jury  
10 what A is?

11           A     A is what I called a bullet jacket fragment from  
12 a .44 -- basically, a .44 caliber bullet.

13           Q     Okay.  Let's talk a little bit about how bullets  
14 are made.  You said something about a jacket.  Can you explain  
15 what -- what it is you're talking about?

16           A     Yeah.  One of the -- the common styles of bullet  
17 here in the United States is a copper jacketed bullet with a  
18 lead core.  So you have a -- a piece of copper that they form  
19 into basically a cup.  Then into this cup goes a piece of  
20 lead.  So you have a piece of lead surrounded by this copper  
21 jacket.  So you have the copper jacket and the lead core.

22                     And a common manufacturing process for this is just  
23 -- they are press fit.  They're not glued together.  They're  
24 not -- for a lot of manufacturers they're not fused together.  
25 So you have a copper jacket with a lead core, and then you can

1 -- they can take and kind of shape those to -- into different  
2 styles. If you have a style where the -- the copper kind of  
3 covers the top and the sides and it's got a rounded nose,  
4 typically a full metal jacket bullet. If you put the lead  
5 exposed at the top and you can put a -- a cavity in there,  
6 then you have a jacketed hollow point bullet.

7 So a lot of different styles. But it's a basic  
8 construction of this outer copper jacket with a lead core.

9 Q And then before I go farther, once you have a  
10 bullet that's a copper jacketed with a lead core, is it  
11 attached to anything in order to make it fire out of a  
12 firearm?

13 A Well, then that bullet is loaded into a  
14 cartridge case. And those components, along with gunpowder  
15 and a primer, that makes up one round of ammunition that I  
16 call a cartridge.

17 Q And then as using 320B, the firearm, can you  
18 explain to us essentially how it is that a bullet leaves a  
19 gun?

20 A Sure. So if we go back to our Ruger revolver  
21 here, remember we have this multi-chambered cylinder, we take  
22 a cartridge and we load it into one of these holes. And those  
23 holes are called chambers. So obviously I can load six rounds  
24 of ammunition into this gun, close the cylinder up, lock it in  
25 place. And then when I go to fire this gun, the firing pin,

1 which is right kind of up in this part of the gun here in  
2 front of the hammer, between the hammer and where the cylinder  
3 closes, the firing pin hits the primer of the cartridge case.  
4 Primer has a really shock sensitive material in it. That  
5 material ignites, which in turn ignites the gunpowder inside  
6 the cartridge.

7 That gunpowder burns, starts to generate gas  
8 pressure, and the gas pressure then forces the bullet, which  
9 is in the -- the open end of the cartridge case, the mouth of  
10 the cartridge case, which is in this chamber, and that gas  
11 pressure then pushes the bullet down the barrel and out the  
12 muzzle.

13 Q Okay. Is there anything left on the bullet that  
14 is helpful to you in doing a firearms and tool marks analysis?

15 A Yes.

16 Q What is that?

17 A Well, if you were to look down the barrel of  
18 this firearm, you'll see that there are spiraling grooves in  
19 that barrel. It's called rifling. Looks kind of like a candy  
20 cane. That rifling is there, so as the bullet goes down the  
21 barrel, it picks up spin. And that spin then imparts  
22 stability on that bullet so it'll just fly straighter. Kind  
23 of like when a, you know, quarterback throws a football and  
24 wants to throw a spiral, same thing with that bullet. You  
25 want that bullet spinning so that it flies straight.

1 Well, as that bullet went down the -- the barrel,  
2 that rifling is impressed on the sides of the bullet. And  
3 it's that -- those rifling impressions that I can use to  
4 compare a fired bullet back to a specific firearm.

5 Q And is there a difference between general class  
6 characteristics as -- as opposed to unique identifying  
7 characteristics that are placed on the expended bullet?

8 A Yes. The -- the class characteristics of the  
9 rifling are the manufactured or -- or the intentional  
10 characteristics of that rifling. So we know that that rifling  
11 as these spiraling grooves. So different manufacturers can  
12 use different numbers of grooves. They can have four, five,  
13 six -- oh.

14 JUROR NO. 7: I'm sorry. I'm trying to get the  
15 marshal's attention. I'm sorry, folks. I'm really not  
16 feeling very well. I --

17 THE COURT: You okay?

18 JUROR NO. 7: I'm not sure. I may need to exit the  
19 courtroom [indiscernible].

20 THE COURT: Let's take a recess for a few minutes,  
21 ladies and gentlemen.

22 During the recess it's again your duty not to  
23 converse among yourselves or with anyone else on any subject  
24 connected with this trial, or to read, watch, or listen to any  
25 report of or commentary on the trial from any medium of



1 information including newspapers, television, or radio. You  
2 may not form or express an opinion on any subject connected  
3 with this case until it's finally submitted to you.

4 Be in recess for a few minutes.

5 THE MARSHAL: Juror, please.

6 (Jury recessed at 1:27 p.m.)

7 THE COURT: Record reflect that the jury has exited  
8 the courtroom. Off the record.

9 (Court recessed at 1:27 p.m., until 1:37 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: All right. We're on the record now.  
12 Record should reflect that in the absence, the marshal advised  
13 me that Juror No. 7, Ms. Paradis, was sick and -- sick enough  
14 that I invited counsel into chambers and we all agreed, and I  
15 wanted to put this on the record, that she be excused, and we  
16 substitute an alternate.

17 MR. ORAM: That's correct.

18 MR. SGRO: Correct.

19 MS. WECKERLY: Yes.

20 MR. DiGIACOMO: Correct, Your Honor.

21 THE COURT: All right. Anything further on the  
22 record before --

23 MR. ORAM: Yes, Judge.

24 THE COURT: Quickly. The jury's in the hall.

25 MR. ORAM: Yes, very quickly. The State has -- I

1     thank the State for bringing it to my attention, that  
2     Cornelius Mayo --

3             THE MARSHAL: I'm not bringing them in.

4             MR. ORAM: Cornelius Mayo, he is the -- the man in  
5     the house, the, you know, the significant other. And the  
6     State has indicated that he seems very agitated. And the  
7     State has shown some concern for if he testifies, that we want  
8     to make sure that the Court is aware that he just controls  
9     himself. I'll make sure that Mr. Burns --

10            THE COURT: I'll watch him.

11            MR. ORAM: -- doesn't stare at him or anything along  
12     those lines, laugh --

13            THE COURT: I'll watch him.

14            MR. ORAM: Okay.

15            MS. WECKERLY: I don't think he's, like, agitated.  
16     But he's obviously extremely emotional about this -- this  
17     incident. Because --

18            THE COURT: I'll --

19            MS. WECKERLY: Okay.

20            THE COURT: -- if I need to, I'll tell him to calm  
21     down.

22            MS. WECKERLY: Okay. Thank you.

23            THE COURT: All right. You can bring in the jurors.

24            MR. ORAM: Thank you, Judge.

25            THE MARSHAL: All rise for an entering jury, please.

1 Jurors, please.

2 (Jury reconvened at 1:38 p.m.)

3 THE MARSHAL: Thank you. Please be seated.

4 THE COURT: All right. State vs. Burns and Mason.

5 The record reflect the presence of the defendants, their  
6 counsel, the district attorneys.

7 Ladies and gentlemen of the jury, as you're aware,  
8 Ms. Paradis -- Paradis is not feeling well. I have excused  
9 her. And we -- we're going to substitute Cindy Arnold as a  
10 regular juror in place of Ms. Mason [sic].

11 Ms. Arnold, if you'd stand and raise your right hand,  
12 please, the clerk will administer the oath to you.

13 (Juror sworn.)

14 THE CLERK: Please be seated.

15 THE COURT: All right. We're on direct examination  
16 of Mr. Krylo.

17 MR. DiGIACOMO: Thank you.

18 BY MR. DiGIACOMO:

19 Q Mr. Krylo, I think I left off at the point where  
20 we were talking about general or class characteristics versus  
21 unique identifying characteristics of a firearm. And if you  
22 could go back to the general characteristics, I think you  
23 talked about lands and grooves, but I don't know that you got  
24 any farther than that.

25 A Correct. So the -- the rifling impressions in a

1 barrel are made up of what are called lands and grooves. A  
2 groove is just that, it's the cut-out area that makes up that  
3 spiral. And the land is just the area between two grooves.

4 So the class characteristics of that rifling are the  
5 number of lands and grooves, the direction they twist, and how  
6 wide they are. So, you know, different manufacturers can use  
7 different numbers of lands and grooves. They can use five  
8 lands and grooves and have them twist to the right, they can  
9 use six lands and grooves and have them twist to the left.  
10 And then with -- when -- within those lands and grooves, they  
11 can vary how wide they are. So those are the class  
12 characteristics of the rifling inside the barrel that are then  
13 imparted onto the bullet as it goes down that barrel.

14 Q And so, basically, that firearm fires .44 caliber  
15 bullets with what type of rifling, lands and grooves?

16 A May I check my notes?

17 Q Yes, sir.

18 A For this Ruger revolver, it has six lands and  
19 grooves that twist to the right.

20 Q Okay. You talked about the -- the class  
21 characteristics. Now, is there -- on every -- on any given  
22 firearm, are there some unique character -- characteristics  
23 that can be imparted to a bullet as it's fired down the barrel  
24 of a gun?

25 A Yes.

1 Q And what is that?

2 A Well, the unique or individual characteristics  
3 are those that are marks that are inside that barrel that are  
4 -- basically do not reproduce. They're not class  
5 characteristics. They're -- they're unique just to that  
6 barrel. And they start really early on in the manufacturing  
7 process of a gun. If you think of a piece of steel, steel has  
8 a crystalline structure. So when you get down to a  
9 microscopic level, that crystalline structure isn't  
10 necessarily uniform. So there's already -- already some  
11 uniqueness in that steel.

12 And then as you drill that barrel, ream that barrel,  
13 and then rifle that barrel, those are all machining processes.  
14 And each time you machine a piece of steel like that, the tool  
15 that makes it changes it a little bit as it does the  
16 machining. There's what's called chip formation, which is  
17 little tiny chips of metal that form as that -- the blade of  
18 that machine tool goes down that steel. So these impart  
19 unique or individual characteristics onto that barrel.

20 And then beyond that, there's the characteristics of  
21 just where, you know, use or abuse of that firearm.

22 Q So let me go back now to the exhibits here. And  
23 I think I was on 26--what?

24 A These are 263A, B, and C.

25 Q So 263A, that's the jacketing that might have

1 some class characteristics and unique markings from going down  
2 the barrel of a gun?

3 A Correct.

4 Q Okay. What about B?

5 A B is just a lead fragment. With a bullet --  
6 remember, if this is from the bullet, it's from the core,  
7 which is inside the jacket. So the core doesn't touch the  
8 rifling in the barrel. So there won't be any marks on the  
9 core that I can use for a comparison.

10 Q So essentially 263 -- because you just said if  
11 it's from a bullet, 253B is a hunk of lead?

12 A Correct.

13 Q It may be from a bullet or it may not be?

14 A Let me -- let me check real quick. The -- the  
15 size of it looks consistent with a bullet core, but I didn't  
16 see anything on it that I could conclusively say it's a bullet  
17 core. Packaged with a bullet jacket, you know, may or may not  
18 be.

19 Q Okay. And then how about 263C?

20 A 263C was a -- a small bullet jacket fragment,  
21 and then three more small lead fragments.

22 Q Okay. So once again, there's three lead  
23 fragments, but then there's a small jacket. Does that have  
24 some characteristics on it that may have been imparted from  
25 the -- the rifle of the gun?

1           A     Yes.

2           Q     Okay.  Let's set those aside for a second and  
3 move to 264, is that the next one on your list?

4           A     263 here.

5           Q     What's the next one on your list?

6           A     264.

7           Q     Okay.  And pull those items out and let's talk  
8 about what's in there.  Start with 264A.  Were you able to  
9 draw any conclusions about 264A?

10          A     264A are -- is three small lead fragments.

11          Q     So they may be part of a bullet or they may not?

12          A     Correct.

13          Q     Okay.  And then 264B?

14          A     264B is a .44 caliber bullet.

15          Q     .44 caliber bullet.  So do you distinguish  
16 between a fragment versus a bullet?

17          A     Yes.

18          Q     And how do you do that?

19          A     Well, there's no set definition of what makes a  
20 fragment or a bullet.  But if -- if it's basically intact, I  
21 can easily visually identify it, I can easily see all the  
22 lands and grooves on the side of the -- the bullet, I can  
23 measure its dimensions.  Then I go ahead and call it, you  
24 know, a bullet rather than a bullet fragment.

25          Q     Let me ask you, when a bullet fires out of the

1 front of a gun and it hits something hard, what does it have a  
2 tendency to do?

3 A Well, there's -- there's a lot of things that  
4 can -- that can happen or it has a tendency to do. It depends  
5 on what it hits. So if you think of the bullet, it's lead and  
6 copper. Lead is -- is relatively soft. Copper is fairly  
7 soft. Depending on what they hit, it may deform, it may  
8 fragment, it may not -- if it hits something soft it may not  
9 do too much of anything.

10 Q And when you hit something hard, if let's say a  
11 bullet is fired out of a gun and it hits something hard and it  
12 fragments, can those fragments kind of change directions or  
13 deviate from the straight line of the -- what the shot was?

14 A I would expect them to, yes.

15 Q You would expect them to? So let's pull aside  
16 -- I'm going to pull aside any one that has a jacket in it.  
17 So pull aside 264B, and move onto the next one in your list.

18 A That's 315A.

19 Q And what is 315A?

20 A Two lead fragments.

21 Q Okay. Is there any rifling characteristics of  
22 315A?

23 A No.

24 Q Okay. Put this over here in this file, or you  
25 can put it back in the bag. Eventually we'll put it back in



1 that pile. Let's go to the next one on your list.

2 This is marked as?

3 A This is 312A.

4 Q 312A?

5 A Uh-huh.

6 Q And there's a container inside 312A, and then  
7 there's something inside [indiscernible]?

8 A There's a little coin envelope.

9 Q And before we get to the -- what's inside there,  
10 let's -- I want to talk about that container for a second.

11 Does that container have any identifying information  
12 on it?

13 A Yes, it does.

14 Q What does it say?

15 A Well, it has several things on it. It has the  
16 Metro event number, the 1008070732, and also has a name on it.  
17 Last name is Newman.

18 Q Okay. And then is there another label looks  
19 like from the hospital that has a doctor's name on it?

20 A Yes. Looks like Dr. Gosche and Dr. Filmore.

21 Q Okay. And then, setting that aside for just a  
22 second, is there something inside the -- and what is that?

23 A This is a bullet jacket and a bullet core.

24 Q And obviously the core itself -- well, let me  
25 ask you this. Does the core have any rifling characteristics

1 on it?

2 A It does not.

3 Q Okay. So just the jacket does?

4 A Correct. And -- and just so you know, when I  
5 received this, it was all one piece. But during my  
6 examination, when I go to look at the rifling impressions on  
7 the side, I bend the bullet, this -- these petals out a little  
8 bit, and that's when it separated.

9 Q Okay. So when you got it, it was intact, but  
10 the core and the rifling or -- and the -- and the jacket. And  
11 then during your examination, the core came out of the  
12 jacketing?

13 A Correct. Because, remember, these aren't glued  
14 or fused together.

15 Q Okay. So let's pull that one aside for just a  
16 second. And then we'll slide it up here. And then move onto  
17 the last package you have in front of you.

18 A And this is 311A.

19 Q And what is 311A?

20 A 311A is another lead fragment.

21 Q Okay. No rifling characteristics on it?

22 A Correct.

23 Q So let's stick that one aside, as well. Is -- I  
24 don't know if I asked you this in front of the jury -- is  
25 there one more bullet that you looked at that's not there in

1 front of you?

2 A Yes.

3 MR. DiGIACOMO: And, Judge, I have previously marked  
4 and I believe both parties are going to stipulate to the  
5 State's Proposed Exhibits 148 and 149, which is a photograph  
6 of that bullet that should be here sometime this afternoon.

7 MR. SGRO: That's correct, Your Honor.

8 MR. LANGFORD: That's correct, Your Honor.

9 THE COURT: All right. It'll be received.

10 (State's Exhibit 148 and 149 admitted.)

11 BY MR. DiGIACOMO:

12 Q Mr. Krylo, I've showed you 148 and 149  
13 previously. And did you compare it to the photographs you  
14 take during your examination and does it appear to be the last  
15 bullet that you looked at?

16 A Yes.

17 Q Okay. Can you tell us what that is?

18 A That is another .44 caliber bullet.

19 Q And does that have rifling characteristics on  
20 it?

21 A Yes, it does.

22 Q So we wind up with firearms evidence that you  
23 looked at, one, two, three, four, five separate pieces that  
24 happen to have rifling characteristics on them?

25 A Correct.

1           Q     Okay. I want to start with first 263C, and talk  
2 about the small rifling characteristics -- or the small  
3 fragment that has some rifling characteristics in 263C. Were  
4 you able to draw any conclusions concerning that fragment?

5           MR. SGRO: Your -- Your Honor, and -- and I don't  
6 mean to interrupt the presentation, but I -- I noticed Mr.  
7 Krylo's looking at his report. He has it marked by JJK, his  
8 initials. So if he could correlate when he's looking at 263  
9 which part of his report he's looking at, whether it's JJK  
10 234, that would be helpful.

11          THE COURT: Would that be helpful?

12          THE WITNESS: Oh, yeah. I can -- that's easy to do.

13          THE COURT: Okay. Let's do that.

14          MR. SGRO: Thank you.

15 BY MR. DiGIACOMO:

16          Q     263C, what's -- what's your item number?

17          A     That is my item JJK2-6.

18          Q     And what conclusions were you able to draw about  
19 the one fragment in there that has rifling characteristics?

20          A     That the rifling characteristics here that are  
21 consistent with the -- both the revolver and the rest of the  
22 fired bullets. But there -- it's too small, there's not  
23 enough detail there for me to make a conclusive identification  
24 or elimination of this item.

25          Q     So it could have been fired from that weapon,

1 but you can't tell it was fired from -- from either that  
2 weapon or from the same gun that fired the other bullets?

3 A Correct.

4 Q And that's due mainly to the size of the -- the  
5 piece that you're looking at?

6 A Correct.

7 Q Want you to set that one aside for a second,  
8 then. And I'm going to ask you questions about the remaining  
9 three, which is --

10 THE COURT: There's four remaining.

11 THE WITNESS: Yes.

12 MR. DiGIACOMO: Is there four? Oh, there's four  
13 remaining counting the one that -- thank you, Judge.

14 BY MR. DiGIACOMO:

15 Q The three that are here plus the picture. Of  
16 the four remaining ones, are you able to draw any conclusion  
17 as to whether or not they were fired from the same firearm?

18 A Yes.

19 Q Okay. And what conclusions are you able to draw  
20 as to the four remaining bullets and/or bullet fragments that  
21 you have?

22 A That all four were fired from the same firearm.

23 Q And how is it that you're able to make that  
24 determination?

25 A Basically, could we back up just a little bit.

1 This examination starts, I do some kind of just general  
2 observations, the size of these items, how many lands and  
3 grooves, what direction they twist, those class  
4 characteristics that they talked about.

5           Once I've done that, I've got a piece of equipment at  
6 the lab called a comparison microscope. It's basically two  
7 compound microscopes joined together with what's called an  
8 optical bridge. What that allows me to do is look at two  
9 objects side by side through my microscope. So I can actually  
10 do a side-by-side comparison under my microscope of any item I  
11 could actually fit under there.

12           So that's what I do with these bullets. I mount one  
13 bullet on one stage, the other bullet on another stage. I do  
14 a microscopic comparison of those rifling impressions that are  
15 on those bullets. And by doing that comparison, then I can  
16 make a determination as to whether or not two bullets were  
17 fired from the same gun.

18           Q     And as to all four of the items that you have  
19 left in front of you, your conclusion was all four of them  
20 were fired from the same firearm?

21           A     Yes.

22           Q     Okay. Did you do any comparison of those four  
23 bullets that -- or four bullets and/or bullet fragments to the  
24 Ruger, the .44 caliber Ruger that was submitted to you under  
25 the case number?

1           A     Yes, I did.

2           Q     And were you able to draw any conclusions?

3           A     I was able to draw some conclusions.

4           Q     Okay.  What conclusions were you able to draw?

5           A     Well, the -- the class characteristics of the  
6 rifling impressions on the evidence bullets are the same as  
7 the rifling inside the Ruger revolver.

8           Q     Was there something about the Ruger revolver  
9 which hampered your ability to make a conclusive  
10 identification between those bullets and the Ruger itself?

11          A     Yes.

12          Q     And what was that?

13          A     Well, if you were to look into the muzzle end of  
14 this barrel and -- and you could see the rifling impressions  
15 in there -- or the rifling in there, you'll see that there's  
16 some -- it's been gouged and scratched, kind of going around  
17 in a circle just inside the muzzle.  That's not from  
18 manufacturing, it's not from normal wear or use.  But those  
19 gouges are so significant that when I test fired it, it -- I  
20 didn't see the same marks on my tests that I saw on my  
21 evidence.  But since the barrel's been scored like that, I  
22 can't eliminate or identify this barrel to these bullets.

23          Q     You said that it was the gouging that's in there  
24 -- I'm assuming you've worked with firearms for a very long  
25 time?

1           A     20-plus years.

2           Q     And I'm sure you've shot and cleaned firearms  
3 over the course of that time period?

4           A     Yes.

5           Q     Is it the type of damage you would expect to see  
6 from a normal cleaning and/or taking care of a weapon?

7           A     No.

8           Q     In order to gouge that type of material as a  
9 firearms and tool marks examiner, what are we talking about  
10 had to be put into the front end of that barrel?

11          A     Well, it would have to be fairly -- you know,  
12 something fairly hard. I mean, this is stainless steel.  
13 Stainless steel is pretty hard. So it's going to have to be  
14 something basically as hard as stainless steel, you know,  
15 right in that, you know, a hard metal.

16          Q     Were you able to make any determination as to  
17 how recent the -- the damage was to the front end of the  
18 barrel?

19          A     No.

20          Q     Okay. That's not something you -- or is that  
21 something you can ever do or is it something that in this case  
22 you weren't able to do?

23          A     I'm not sure how you would go about that other  
24 than if you had samples of the bullets that had been fired  
25 through this gun over the years, and then you could look for



1 when it changed.

2 Q But once that damage is -- is in there, if that  
3 damage is subsequent to, say, the firing of a bullet, that  
4 would change the way the bullet would look the next time you  
5 fired it?

6 A Correct. You can't identify or eliminate  
7 bullets before damage to bullets after.

8 Q Thank you, sir.

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

10 CROSS-EXAMINATION

11 BY MR. SGRO:

12 Q Good afternoon, sir. I want to start with you  
13 on your qualifications. Okay?

14 A Okay.

15 Q So we have a resume for you. And you keep your  
16 resume up to date; would that be fair?

17 A Yes.

18 Q And when you -- the version of the resume I have  
19 is dated August of 2010.

20 A That's an old version.

21 Q Right. And -- and you, in August of 2010, you  
22 had put down that you were certified in firearm and tool mark  
23 examination in May of 2003; does that ring a bell?

24 A That sounds right.

25 Q And this is AFTE?

1           A     Correct.

2           Q     That's --

3           A     The Association of Firearm and Tool Mark

4 Examiners.

5           Q     Right. So I got the acronym correct?

6           A     Yes.

7           Q     All right.

8           A     We -- short -- we call it AFTE.

9           Q     Right. Now, each certification is only for five

10 years; is that right?

11          A     Each -- correct.

12          Q     And -- and if you don't review your

13 certification, it expires after five years, right?

14          A     Correct.

15          Q     All right. And so can I assume then that in

16 2010, the resume that we got in conjunction with this case, at

17 the time you had conducted these exams on these bullets, your

18 certification had expired; would that be fair?

19          A     No.

20          Q     Okay.

21          A     I recertified in 2008.

22          Q     Okay. So it's a mistake on your resume?

23          A     No. That's my initial certification is 2003.

24          Q     Right. But you renew your certification every

25 five years.

1 A Correct.

2 Q You wouldn't have bothered to put your renewal  
3 of your certification on your resume?

4 A As long as it was in effect, I don't know if I  
5 thought it was necessary.

6 Q Well, I guess let me ask it a better way. A  
7 certification obtained in 2003 would not be good in 2010  
8 unless you renewed it, right?

9 A Correct. So it --

10 Q Okay.

11 A -- probably wouldn't be listed on there, then.

12 Q Okay. I want to go through with you couple  
13 other things relative specifically to Rugers. I examined your  
14 resume and the only thing specific to Rugers I could find was  
15 something you did in November of 1993, which would have been  
16 about 17 years or so prior to this examination. You have here  
17 listed a Ruger revolver/pistol/rifle armorers course. Does  
18 that ring a bell?

19 A Yes.

20 Q Now, an armorers course, just to be clear,  
21 according to AFTE, if you go on their Web site it says those  
22 are the classes where you learn how to use and maintain your  
23 firearm, correct?

24 A Use, maintain, how the firearm works, yes.  
25 Those are the -- the manufacturer's classes.

1           Q     Right.  So the classes that you spoke of with  
2 the DA are more the how do the things work, as opposed to  
3 let's see if Rugers make any specific tool mark impressions;  
4 would that be fair?

5           A     Well, the -- the armorers courses, yes.

6           Q     Right.  And you went to some that are -- were  
7 sponsored by Colt Remington, right?

8           A     Yes.

9           Q     Okay.  Would you agree with me, sir, that  
10 relative specific to Rugers, there's nothing on your resume  
11 where you were brought into a class or seminar specifically  
12 dedicated to the ascertaining of tool mark evidence for  
13 Rugers; would that be fair?

14          A     A class -- so a class specifically on  
15 microscopic marks related to Ruger, that would be -- that's  
16 correct.

17          Q     Okay.  Now, you spoke -- oh -- oh, before I get  
18 there, you spoke briefly to the jurors about your  
19 qualifications, and this examination took place in 2012; is  
20 that right?

21          A     Right.

22          Q     Now, in about 2005, 2006, you're a member of  
23 AFTE, right?

24          A     Yes.

25          Q     And, in fact, you were actually the president of

1 AFTE, weren't you?

2 A Yes.

3 Q What years were that -- was that?

4 A That was 2010.

5 Q Okay. Just for one year?

6 A You're president for one year, yes.

7 Q All right. Now, up to the time that you were  
8 president and the year prior to that, this kind of evidence --  
9 and I'm using my fingers as quotes -- the -- the comparison  
10 tool mark evidence had come under attack nationally as to its  
11 quality; would you agree?

12 A I agree that it's been attacked, yes.

13 Q All right. Congress, our government,  
14 commissioned a study to be done in 2009, just to give you some  
15 context, right? And that study in part evaluated AFTE and the  
16 mechanics through which -- the type of testimony the jury just  
17 heard, how -- how does that come to be; would you agree that  
18 that's fair?

19 A That -- if you're talking about the National  
20 Academy of Sciences --

21 Q Yes, sir.

22 A -- report? That covered a lot of topics, not  
23 just --

24 Q Absolutely. And I think my question was amongst  
25 other things, one of the things that they evaluated was the

1 quality of testimony based in science of forensic comparison  
2 testimony; would you agree?

3 A That sounds basically right. Without reviewing  
4 the whole report right now, I'm not real well versed on it to  
5 talk about it right now.

6 Q Well, the National Academy of Science was  
7 extremely critical of AFTE right around the time you were  
8 becoming president of that organization, correct?

9 A Your words, extremely critical.

10 Q Well, can we agree critical?

11 A Again, I would have to go back and review the --  
12 the whole report before I would comment.

13 Q Okay. Well, let me ask it this way. You  
14 remember the report?

15 A Again, yes. I remember it, yes.

16 Q And you know that judges in different parts of  
17 our country received this report and began to modify how this  
18 kind of evidence was going to be received, fair?

19 A I -- I don't know if they modified it. I -- I  
20 only know my experiences here in Nevada.

21 Q Okay. Now, let's talk about -- let's talk about  
22 the experiences here. First of all --

23 MR. SGRO: May I approach the witness, Your Honor,  
24 just so we can get on the same page on this report?

25 THE COURT: Yeah, if he needs his -- to be refreshed,

1 is that what it is? Or --

2 MR. SGRO: Yes, sir.

3 THE COURT: Okay.

4 MR. SGRO: Just to put it into context --

5 THE COURT: Okay.

6 MR. SGRO: -- so we're on the same page.

7 BY MR. SGRO:

8 Q So what I'm showing you purports to be -- I  
9 think it's 450, let me see. About 321 pages of a report done  
10 by the National Academy of Science. Does this look familiar  
11 to you at all?

12 A Okay. This is -- this is not the report I  
13 thought we were talking about.

14 Q Okay.

15 A This is the ballistic imaging report.

16 Q Right.

17 A That had to do with databases.

18 Q Correct. There -- and -- and you mentioned in  
19 your resume something called IBIS, I-B-I-S?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Okay. IBIS was a database that came to be  
24 through a law enforcement agency, right?

25 A Well, right and wrong. IBIS is the name of

1 equipment that is manufactured by a private company that  
2 Bureau of Alcohol, Tobacco, and Firearms has contracted with.

3 Q Right. There is a chapter in this report done  
4 by the National Academy of Science that deals with firearms  
5 identification and use of ballistics evidence, correct?

6 A I don't -- that's what tired -- titled here.

7 Q Okay. Well, sir, you have been offered as an  
8 expert in your field. Do you consider yourself to be an  
9 expert in the area of comparing bullets and fragments one to  
10 another; do you think you're an expert?

11 A I do.

12 Q Okay. And do you think you're an expert in  
13 being able to tell if bullets are consistent or not consistent  
14 with a weapon; do you think you're an expert?

15 A I do.

16 Q And I think you told the jury that part of being  
17 an expert is keeping up on literature, right?

18 A I don't know if I told them that.

19 Q Well, would you agree with me that you need to  
20 read what's going on in your field --

21 A Correct.

22 Q -- right? And you do that?

23 A I do.

24 Q All right. Isn't it -- isn't the attack on  
25 whether or not folks like you should be allowed to testify in



1 court based on -- based on the subjective nature of the  
2 testimony? Does that make sense?

3 A The -- the premise makes sense.

4 Q Okay.

5 A I don't necessarily agree with it.

6 Q Well, let's talk about a couple of things that  
7 you said. First of all, one of the things that the Academy of  
8 Science report did was it distinguished DNA evidence; do you  
9 remember that? They talked a lot about DNA.

10 A Right. I --

11 MR. DiGIACOMO: I apologize. Mr. Sgro is asserting  
12 facts not in evidence. If he wants to ask a question like did  
13 the report say this or did the report say that --

14 MR. SGRO: It's cross-examination.

15 THE COURT: If called to the attention of an expert  
16 who agrees upon a particular document or treatise or study,  
17 then he can -- you can use that. But if he hasn't agreed upon  
18 it or --

19 MR. SGRO: Right.

20 THE COURT: -- he may not -- I don't know if he knows  
21 this that well. So I'm not sure that you're going to get this  
22 into evidence with him. I don't know what you're trying to  
23 do, but I --

24 MR. SGRO: Okay.

25 BY MR. SGRO:

1           Q     This report by the National Academy of Sciences,  
2 as you indicated earlier to the jury, it looked at a bunch of  
3 different disciplines of science, correct?

4           A     I believe it did, yes.

5           Q     One of those disciplines it reviewed was DNA; do  
6 you remember that?

7           A     Yes.

8           Q     And -- and DNA was held in high regard by the  
9 National Academy of Science as something that could be relied  
10 upon, correct?

11          A     Correct. Now -- now we're talking about a  
12 different report than this one here, right?

13          Q     Yes, sir. Right.

14          A     Okay.

15          Q     We're talking about the --

16          A     Just want to make sure that we're -- because  
17 you've -- we've mentioned a couple of different reports now.

18          Q     Right now we're talking about the National  
19 Academy of Sciences. They reported back to Congress, to our  
20 government, because DNA -- as you know DNA has evolved over  
21 years, correct?

22          A     Yes.

23          Q     It's gotten better and better?

24          A     Well, it's gotten more, what, precise, I guess.

25          Q     More precise. Okay. That was -- DNA was

1 referenced in marked contrast to the discipline that you're  
2 involved in, which is tool mark examination; do you remember  
3 that?

4 A Not specifically, you know, worded that way.  
5 No, I don't.

6 Q Well, let's -- let's take a couple of examples.  
7 If you have DNA evidence, you can be subjected to what are  
8 called blind or double-blind examinations, right?

9 A I -- you can -- you can do that in any forensic  
10 discipline.

11 Q Okay. Well, you do it in DNA, right?

12 A I -- I don't know if our DNA section does that.

13 Q Well, let me ask a different question. In DNA  
14 you can say something is with -- something occurs in a  
15 numerical -- it's a numerical or statistical probability; in  
16 other words, it's one in a hundred or one in six billion,  
17 right? You're aware that those numbers are out there?

18 A Correct.

19 Q In firearm and tool mark examination, you don't  
20 say it's one in however many probabilities, do you? You don't  
21 have a statistical formula you rely upon, correct?

22 A Correct.

23 Q And that absence of that statistical formula  
24 that you can't say these bullets, for them to match another  
25 gun is a one in a million chance, or one in ten, or one in a

1 billion; you cannot do that?

2 A Correct.

3 Q And that was one of the criticisms of the  
4 National Academy of Science relative to this kind of  
5 testimony, fair?

6 A Again, I don't remember if it's worded that way  
7 in there. But -- so I can't comment.

8 Q Well, let me ask you this. You told the jury  
9 about something called class characteristics, right?

10 A Yes.

11 Q Okay. Now, class characteristics are the things  
12 -- if I'm the owner of Ruger and I'm going to design a new gun  
13 and I'm going to put a design on the inside of the barrel,  
14 that's going to be consistent with every Ruger that gets  
15 produced in that batch, right?

16 A Yes. As long as they use that same tooling,  
17 yes.

18 Q Right. Now, you then spoke to the jury about  
19 something called identifying characteristics, right?

20 A Yes.

21 Q All right. And you said an identifying  
22 characteristic could be something unusual or different than  
23 the class characteristic, right?

24 A Well, it is, yes.

25 Q All right. Now, what I didn't hear you talk

1 about in direct is something called subclass characteristics;  
2 do you know what those are?

3 A I do.

4 Q Subclass characteristics are when a gun is made,  
5 if there's a defect or an imperfection in the next batch that  
6 gets done, right?

7 A No, not -- not necessarily correct. Subclass is  
8 usually associated with the tool that's doing the machining.  
9 And that tool has a big enough defect that it would carry --  
10 that that mark from that defect would carry over from one  
11 part, one barrel to the next.

12 Q Exactly. Exactly. So in other words, and I'm  
13 going to give you a hypothetical, it's not based on any --  
14 anything in this case. I'm going to make a batch of 10,000  
15 Rugers, they all have the same class characteristic, the  
16 inside of the barrel looks the same. I sell them all. Now I  
17 need 10,000 more. And unbeknownst to me as the manufacturer,  
18 one of those machining devices has chipped, broken, some kind  
19 of defect, right. The next 10,000 is all going to have  
20 something a little bit different, because the machining of  
21 that one tool is a little bit off from the first 10,000. Make  
22 sense?

23 A Yeah. That -- if that defect occurred between  
24 the two batches.

25 Q Exactly.

1           A     Yes.

2           Q     Exactly. And the point of it is this. You told  
3 the jurors about something called unique or individual. And  
4 now let's go back to the National Academy of Sciences and what  
5 they said. Do you recall the National Academy of Science  
6 report criticizing that sometimes testimony by people such as  
7 yourself confuses the word unique, individual used today, that  
8 they confuse that and it's really nothing more than a subclass  
9 characteristic; does that ring a bell?

10          A     Any -- yeah. And I would agree with that. But  
11 that is not -- to me, that is not a criticism of the science.  
12 That's more a practitioner type issue.

13          Q     Okay. Now -- okay. Fair point. Now let's go  
14 to the practitioner issue.

15                Some -- because this is subjective, some of what  
16 you're doing -- and I think you said it in your testimony, if  
17 you'll indulge me one second, Mr. DiGiacomo asked you, How do  
18 you distinguish between a bullet and a fragment, right?

19          A     Correct.

20          Q     Now, in a lot of sciences, when you have to make  
21 decisions on what something is, there's a numerical protocol,  
22 there is -- there is something objective that categorizes a  
23 piece of science into one thing or another, fair?

24          A     Sure.

25          Q     Well, you told the jury a few minutes ago was --

1 and tell me if I got this right -- there's no set definition;  
2 basically, if the bullet's intact, I call it a bullet. If  
3 it's not, I call it a fragment. Did I get the gist of that  
4 correct?

5 A That's basically it.

6 Q So to be able to assess this, whether it's  
7 subjective or objective, you gave us an example a few minutes  
8 ago of something that is subjective. You personally are  
9 looking at the bullet, right?

10 A Correct. But I think it's not necessarily an  
11 apple and oranges things here. But calling something a bullet  
12 or a bullet fragment, that's a different subjective  
13 examination, if you want to call it, from the actual  
14 microscopic comparisons. Because whether it's a bullet or a  
15 bullet fragment, I can still do the comparisons and I can  
16 still make a conclusion.

17 Q I get it. We're going to get to the macroscopic  
18 [sic] comparison in just a second. My point is this. If you  
19 personally are looking at something that you're going to call  
20 a bullet, the only science involved is because you think it's  
21 a bullet, right?

22 A No.

23 Q Your training and experience?

24 A Well, yeah. I mean, it's not just my looking at  
25 this calling it a bullet. This is something -- it's an

1 objective item. It's not a subjective item. The bullet  
2 actually exists. The measurements can be made. Microscopic  
3 comparisons can be done.

4 Q Sir, I just want to -- I don't mean to quarrel  
5 with you. I'm just asking you what you told the jury. You  
6 said there's no set definition of a bullet; did you say that?

7 A I don't know -- I thought we were talking bullet  
8 fragment.

9 Q When you were asked by Mr. DiGiacomo -- let me  
10 get to my notes here -- you were talking about Exhibit 264,  
11 okay, and you said 264A had three small fragments and 264B was  
12 a .44 caliber bullet, right?

13 A Okay.

14 Q And in the context -- that context during that  
15 examination you were then asked why is B a bullet? And you  
16 said, Well, there's no set definition. Basically, if I think  
17 it's intact, there's enough of it there, I call it a bullet.  
18 Do you remember saying words to that effect?

19 A I do. But I thought we were talking about the  
20 bullet fragment at that point.

21 Q Here's my point, sir. If the -- the criticism  
22 -- one of the criticisms lodged against this kind of testimony  
23 is the notion that we have to rely on your training and  
24 experience, because if you see it and you say it's so, there's  
25 no way to challenge it, fair?



1           A     Oh, there absolutely is.

2           Q     Okay. Let me ask you this. You said to the  
3 jury a few minutes ago, I looked at it, I think it's large  
4 enough to be considered a bullet, right?

5           A     Right. If I said that...

6           Q     Okay. Well, this was only a few minutes ago,  
7 sir. Do you remember --

8           A     Right.

9           Q     -- the conversation that you just had with the  
10 State?

11          A     Yes.

12          Q     Okay. Now, here's my question. In looking at  
13 examinations, you talked about rifling -- is rifling the same  
14 as striations?

15          A     No.

16          Q     Okay. You -- did you look at striations in this  
17 case?

18          A     I did.

19          Q     Okay. Let's talk about rifling. You would  
20 agree with me, sir, that people in your line of work that have  
21 done this for a long time can look at the same pieces of  
22 evidence and come to different conclusions, correct?

23          A     I would -- I have to agree, yes.

24          Q     Okay. Now, obviously, you come in as someone  
25 who's pretty seasoned, been around a long time, and you're

1 going to stick to your guns and I expect the other person's  
2 going to stick to his or her guns; would that be fair?

3 A Correct. The -- the one issue I think you're  
4 missing is that if it's two qualified examiners, I expect they  
5 come to the same conclusion.

6 Q You expect it, but it doesn't always happen,  
7 right?

8 A If it doesn't happen, it's usually a shade of  
9 inconclusive versus conclusive. It's not usually two opposite  
10 ends of the spectrum.

11 Q The question, though, is does it happen? I  
12 think the answer you're conceding is yes, right?

13 A Two opposite ends of the spectrum?

14 Q No, sir. Okay. Here's my question very simply.  
15 Okay. And let me do it by analogy, hypothetical. Two doctors  
16 are looking at a slide to determine what -- what treatment is  
17 necessary. Two capable doctors both looking at the same  
18 objective piece of evidence. They can each have a different  
19 opinion how to best treat that -- that illness that they're  
20 looking at. Do you understand my point?

21 A Sure.

22 Q Okay. And in your line of work, two equally  
23 capable persons can look at the same things, because you're  
24 using your vision and you're using a microscope, right?

25 A Correct.

1 Q You're looking through a microscope, correct?

2 A Correct.

3 Q And someone else can look through the same  
4 microscope that you're looking at and come to a different  
5 conclusion, fair?

6 A They could.

7 Q Okay. Now, one of the things that was  
8 criticized by the National Academy of Science was the fact  
9 that you are receiving pieces of evidence in a context of  
10 knowing what these pieces are in the midst of an  
11 investigation; does that make sense?

12 A I mean, knowing that a revolver is a revolver;  
13 is that what you mean?

14 Q You know, that's a very poor question. You  
15 received a report saying we have a suspect firearm, right?

16 A I didn't receive a report. I receive a --  
17 there's a lab request.

18 Q Lab request that says, We have a suspect  
19 firearm, right?

20 A I --

21 Q Do you need to look at it?

22 A Yeah. Let me look at it.

23 Q Okay. It's three pages from the back of your  
24 package of material, sir.

25 MR. SGRO: And actually, Your Honor, may I approach?

1 I can point him right to it.

2 THE COURT: Sure.

3 BY MR. SGRO:

4 Q Those are your initials, right?

5 A Yes.

6 Q And am I showing you a forensic lab examination  
7 request for comparative analysis?

8 A Yes.

9 Q Okay. You have found the right page. Okay.  
10 You are told that there is a suspect firearm in the case?

11 A In this case, yes.

12 Q How many Rugers has Ruger produced in the last  
13 25 years?

14 A Oh, I don't know.

15 Q Would you be surprised to say that they have  
16 produced about 25 to 30 million guns in that period of time?

17 A Is -- all told, I'm not --

18 Q All --

19 A -- sure if that would be -- that would not be  
20 all of one model.

21 Q All total. Do you remember when they had a  
22 campaign, something having to do with NRA, they made 1.2  
23 million guns in one year; does that ring a bell?

24 A No, it doesn't.

25 Q All right. How many Rugers are at the

1 Metropolitan Police Department right now that have been  
2 impounded in evidence in other cases?

3 A I don't know.

4 Q A lot, though, right?

5 A Probably, yes.

6 Q All right. Did you test fire any of those other  
7 Rugers that you have access to to see if those Rugers made the  
8 same kind of marks as appear on the bullets in front of you?

9 A No, I did not.

10 Q And the fact that you don't do that, the fact  
11 that you're told you have a suspect firearm, that's one of the  
12 criticisms lodged against your industry when you come into  
13 court and testify as an expert, agree?

14 A I agree it's a criticism. I don't necessarily  
15 agree that it's valid. And I can explain if you'd like to  
16 hear.

17 Q I understand you have a position, you were --  
18 you've been doing this work for a long time. I understand  
19 that. But you -- you can understand why, if it's going to be  
20 science, we want to test fire a bunch of different Rugers.  
21 Would you agree with that?

22 A No.

23 Q Okay. Would you think it would be more  
24 compelling if you told the jury, I fired 10 Rugers that I had  
25 in the evidence vault, I fired 2,500 Rugers that I had in the

1 evidence vault, and you know what, out of all those firings,  
2 only the one that the police think is the suspect weapon looks  
3 close to this; don't you think that'd be more compelling?

4 A It -- it would. But the problem that that  
5 belies is that you can extrapolate that to all the guns. If  
6 you say, Well, if I -- it would be more compelling if I  
7 compared these 10, then you would -- then you would say it  
8 would be more compelling if I compared all the guns in  
9 Southern Nevada. And then if I agree to that, then you'd say,  
10 Well, it would be more compelling if I compared all the guns  
11 in the United States.

12 So, and scientifically --

13 Q So it's too -- too much work to do? You  
14 understand we're in a capital murder trial, right?

15 A I understand that. Absolutely.

16 Q You came -- you came here as an expert -- you  
17 came here as an expert and you just told the jury that in your  
18 expert opinion, four bullets match, right?

19 A Correct.

20 Q Okay. So are you suggesting that you shouldn't  
21 use other weapons because it takes too much time or it's too  
22 much work?

23 A There were not other weapons presented to me --

24 Q Exactly.

25 A -- and --

1 Q Exactly.

2 A -- the weapon that was presented, going back to  
3 your arguments, I didn't identify that revolver. So that's  
4 where the science now works.

5 Q Here's the question. The marks you saw on the  
6 bullets had certain imperfections that appeared to match one  
7 with the other, correct?

8 A They didn't appear. They did.

9 Q Okay. In your opinion, right?

10 A Well, I can show you.

11 Q Sir, let's talk about -- do you have the  
12 pictures in front of you?

13 A Which ones?

14 Q Well, did you take pictures in this case?

15 A Yes.

16 Q Okay. Did you take pictures, you know how you  
17 lined up the bullets --

18 A Uh-huh. Yes.

19 Q -- with that macroscope?

20 MR. SGRO: Can I get this turned on?

21 Q May I see the photos, sir?

22 A You should have them, right?

23 Q Oh, I thought you had them up here.

24 A I have -- I have mine. These?

25 Q Yes. But did you mark -- can I show the

1 prosecutor, see if this is in evidence yet.

2 MR. DiGIACOMO: I didn't mark those. What I -- what  
3 I think he's saying is that's his original file. So if you  
4 have a nice copy, he'd prefer you to mark that.

5 MR. SGRO: Okay.

6 THE COURT: Don't take his original file.

7 MR. SGRO: I will not.

8 THE COURT: Good.

9 BY MR. SGRO:

10 Q You took some pictures of bullets at high  
11 magnification underneath a macroscope.

12 A Using a comparison microscope, yes.

13 Q Comparison. And is it comparison microscope or  
14 macroscope? Because I saw it used alternatively.

15 A It is used both ways, and from the manufacturer  
16 of our microscope, called it both ways.

17 Q Okay. Now, I want to get to a point here of  
18 another line of criticism, but I want to understand that  
19 process that you employed to create the match. Okay?

20 A Okay.

21 Q You take a bullet -- you test fired some  
22 bullets, correct?

23 A Correct.

24 Q And you compared the test fired bullet to the  
25 ones in front of you?



1           A     Well, I compared test-fired bullet to test-fired  
2 bullet, and then test-fired bullet to evidence bullet.

3           Q     Okay. And your testimony is test-fired bullet  
4 matched the bullets that were given to you?

5           A     No, that is not my testimony.

6           Q     Your testimony is test-fired bullet doesn't  
7 match the bullets that were given to you?

8           A     It's -- my testimony was it was inconclusive.

9           Q     Okay. That means you can't make a match?

10          A     Correct.

11          Q     Okay. So your testimony is that the four that  
12 you have all match one another?

13          A     Correct.

14          Q     All right. Now, there was an explanation given,  
15 and I'll give it to you by hypothetical situation so you can  
16 understand where I'm going. This comparison microscope has  
17 mechanisms by which you can turn things to continue to look to  
18 see if they match, right?

19          A     Correct.

20          Q     So you can rotate -- you can rotate the bullets  
21 that you're examining to see if there comes a time when they  
22 line up?

23          A     Correct.

24          Q     All right. Now, let's go back to the Academy of  
25 Science report. Do you remember an example they gave about

1 tearing off half a UPC code off a bag of Cheetos and then  
2 tearing off a UPS code off a completely different bag of  
3 Cheetos. And that at some point -- if you rotate them  
4 correctly, at some point you're going to be able to get a  
5 match such that someone would say, Yeah, they're from the same  
6 bag. Does what I'm saying make sense?

7 A Well, it makes sense. I don't remember that at  
8 all.

9 Q Okay. Well, let me ask it this way. You are  
10 rotating the items underneath the microscope until you find a  
11 match, right?

12 A Until you find an area where the striations that  
13 you mentioned before, which are the fine lines, till those  
14 line up.

15 Q Right. Now, have -- have you ever mislabeled,  
16 switched, or misplaced any samples that you've ever analyzed?  
17 You ever made a mistake?

18 A I've made lots of mistakes in life. But as far  
19 as --

20 Q And I -- I understand the -- the answer. As  
21 someone that does this stuff for a living, you've testified  
22 you've done this hundreds and hundreds of times, right?

23 A I don't know if we -- I don't know if we went  
24 into numbers, but I have, yes.

25 Q You have done this -- I think you've been doing

1 this kind of work for 25 years?

2 A About, yeah.

3 Q Okay. Do you think you've ever made a mistake?

4 A I don't think I have.

5 Q Okay.

6 A As far as an identification versus elimination.

7 Q Okay. There was a study done where examiners  
8 were not told this is the suspect weapon or this is the weapon  
9 that we have. And it was a blind study --

10 MR. DiGIACOMO: I apologize. Once again --

11 THE COURT: Sounds to me like you're testifying now.

12 MR. DiGIACOMO: Mr. Sgro's testifying.

13 MR. SGRO: Let me ask -- let me ask --

14 THE COURT: Okay.

15 BY MR. SGRO:

16 Q Are you aware of studies that have been  
17 conducted -- studies that have been conducted where capable,  
18 talented tool mark examiners are tested blindly as to matching  
19 different bullets?

20 A Yes. I know there -- yes.

21 Q Okay.

22 A I've participated in some of those.

23 Q And you are aware, sir, that there are margins  
24 of error that come as a result of those blind tests, correct?

25 A There are, yes.

1 Q Okay. And are you aware the margin of error has  
2 been as high as 20 percent?

3 A You -- you would have to show me that particular  
4 study and I could review it.

5 Q Let me --

6 A Do you have that -- do you have that -- can you  
7 give me that -- that study?

8 Q Are you aware with a study conducted by Smith &  
9 Wesson on a revolver, they were .38 revolve -- you know, .38  
10 caliber revolvers, where there was a margin of error recorded  
11 of 20 percent when the study was done blind?

12 A That doesn't ring a bell.

13 Q Okay. Are you aware whether Metro has a margin  
14 of error in its department that does this kind of testing? Do  
15 they -- in other words, does Metro say if our forensic tool  
16 mark guy says it's so, it's so? Or like other science is  
17 there a margin of error that's attributed to that entirety of  
18 that science?

19 A I don't believe Metro has a margin of -- or a  
20 margin of error in the firearms detail.

21 Q Okay. So it is expected that human beings that  
22 work at the tool mark and firearm lab are always perfect,  
23 right?

24 A No. And that's why we have a system of reviews  
25 in our case work.

1           Q     Let's talk about that review. That was another  
2 area of criticism by the National Academy of Science; do you  
3 recall that?

4           A     Again, just in general, I -- if you want to go  
5 through that report, we're going to have to go and take some  
6 time to review it.

7           Q     Okay. Let's talk about the review system. Have  
8 you ever had a reviewer come and look at your work and  
9 disagree with your findings?

10          A     On an identification or --

11          Q     Yes, sir. I'm sorry. Fair -- fair point. As  
12 to an identification, I think this bullet and this bullet came  
13 from the same weapon, right? You write the report, here comes  
14 a reviewer. Have they ever disagreed with you?

15          A     Yes.

16          Q     Okay. Now, you belong to this organization,  
17 AFTE, you're a distinguished member and you were its  
18 president, correct?

19          A     Correct.

20          Q     They have ethical rules, right?

21          A     Yes.

22          MR. SGRO: I'm sorry, Your Honor. I just need a  
23 second.

24          Q     One of the ethical rules of the organization  
25 that you were the president of was if there's a disagreement

1 between the reviewer and the original examiner, "It is in the  
2 interest of the profession that every effort be made by both  
3 examiners to resolve their conflict before the case goes to  
4 trial." Is that right?

5 A Oh, absolutely.

6 Q Right. Because you don't want jurors to know  
7 about the conflict, you only want the jurors to have it  
8 reviewed and agreed to, right? It's for the sake of the  
9 profession, right?

10 A No.

11 Q Sir, in the -- in the credo of the ethics of the  
12 American Firearms and Tool Mark Examination, in its credo it  
13 doesn't say, It's in the best interests of justice to resolve  
14 conflict, does it? It says, "It's in the best interests of  
15 the profession," right?

16 A The profession, the science. And you have the  
17 name wrong, too. It's the Association of Firearm and Tool  
18 Mark Examiners.

19 Q I apologize. AFTE has in it -- its -- in its  
20 ethical code, firearms and tool mark examiners, you all work  
21 it out before the case goes to trial, right? Do you want me  
22 to show it to you?

23 A No, I -- I know what you're talking about.  
24 You're -- but the -- the slant there is that we're trying to  
25 cover it, whereas the intent is that if you have a conflict,

1 you figure out why there's a conflict and -- and sort it out.

2 Q Right. And you'd want to do that in the  
3 interest of the profession, right?

4 A In the interest of science.

5 Q Sir, does it say science or does it say  
6 profession?

7 A Well, I think that's what the intent was.

8 Q Okay. The word, though, is in the interest of  
9 the profession, correct? And that is a concept that you  
10 propounded affirmatively while you were president of this  
11 organization, right?

12 A Yes.

13 Q Now, are you aware of any of the findings that  
14 were made by the Academy of Science in its report relative to  
15 the validity of this kind of testimony? Let me ask it in a  
16 different way.

17 I -- I think, if I understand correctly, I know the  
18 report came out a few years ago, and this is not supposed to  
19 be a memory test. I -- I want to ask you if you're familiar  
20 with the following concepts, okay?

21 A Okay.

22 Q The validity of the fundamental assumption of  
23 uniqueness and reproduceability of firearms-related tool marks  
24 has not yet been fully demonstrated. Does that sound  
25 familiar?

1           A     That sounds familiar. I don't agree with it,  
2 but it sounds familiar.

3           Q     Okay. Let me ask you this. Forensic science  
4 professionals have yet to establish either the validity of  
5 their approach or the accuracy of their conclusions and the  
6 courts have been utterly ineffective in addressing this  
7 problem. Sound familiar?

8           A     Again, sounds familiar. I don't agree.

9           Q     Okay. There is no scientific methodology behind  
10 how many things you have to find match before you come into  
11 court and tell juries I found a match, fair?

12          A     There's no numerical value, if that's what  
13 you're looking for.

14          Q     Correct. That's one of the things that's  
15 criticized about the things that you testify about, fair?

16          A     Yes.

17          Q     There is no database that's used for a  
18 statistical comparison, right?

19          A     I'm not quite sure --

20          Q     Let me -- okay. So let me -- let me make sure  
21 we're on the same page. You can't go to a computer and type  
22 in .44 caliber Ruger Redhawk, enter, and it gives you all the  
23 different tool marks that are possible having been created by  
24 that gun, right?

25          A     I don't believe that's even possible no matter



1 what.

2 Q Okay. Firearms examiners can, if they wanted  
3 to, record their own data as they do testing and input it into  
4 a common computer, could they?

5 A No. I don't agree.

6 Q Isn't the fact that this sort of database, the  
7 fact that it doesn't exist, that is a criticism of this kind  
8 of testimony?

9 A It's a criticism, yes.

10 Q Okay. We covered the statistical likelihood,  
11 that does not exist in this field, correct?

12 A Well, the -- there is a statistical likelihood.  
13 But I believe it was an oversimplification of what we were  
14 looking at. So I don't know if it was actually -- it was not  
15 applicable in -- in a broad spectrum.

16 Q Do you remember the -- the finding by the  
17 National Academy of Science where they stated, "Forensic  
18 evidence is offered to support conclusions about  
19 individualization with the exception of DNA analysis.  
20 However, no forensic method has been rigorously shown to have  
21 the capacity to consistently and with a high degree of  
22 certainty demonstrate a connection between evidence and a  
23 specific source." Do you remember that, sir?

24 A I remember. And again, I don't agree.

25 Q Okay. The National Academy of Science was

1 commissioned by Congress as an independent body to evaluate,  
2 as you pointed out earlier, not only forensic science, but  
3 DNA, fingerprints, other things, right?

4 A Right.

5 Q They didn't have a dog in the race necessarily,  
6 right?

7 A I don't know.

8 Q Okay. Now, you compared those four bullets one  
9 to another, and along the way you used a couple of different  
10 tools, one being the microscope, which we discussed, right?

11 A Yes.

12 Q And there's another tool, and I'm not going to  
13 be able to pronounce it, but the acronym it is XRF?

14 A Correct.

15 Q What does that stand for?

16 A It's a device that uses x-rays, causes -- it  
17 basically excited electrons and it -- it basically is an  
18 elemental analyzer. It'll tell you what elements are present  
19 in a sample.

20 Q Right. So this -- this device shoots energy and  
21 radiation into an element and then it spits out a printout  
22 what the chemical compound of that element was?

23 A Correct.

24 Q All right. And -- and you did that in this  
25 case?

1           A     Correct.

2           Q     I don't recall you being asked any questions  
3 about that on direct; is that right?

4           A     Well, I would have -- the only time we would  
5 have talked about it, when we described something as being a  
6 lead fragment.

7           Q     Okay. Now, relative to the chemical  
8 composition, one of a number of different ways to tell if  
9 bullets are consistent, one with another, would be the  
10 chemical composition; would that be fair?

11          A     You -- you could do that, yes.

12          Q     All right. Now, in this case, you made a  
13 decision to do what's called XRF testing, right?

14          A     Yes.

15          Q     And you tested a bunch of fragments, correct?

16          A     Correct.

17          Q     You made a decision not to test the chemical  
18 composition of the bullets, right?

19          A     Correct. There was no need to.

20          Q     In your opinion --

21          A     Well --

22          Q     -- right?

23          A     -- if you can tell me another reason to do it.

24          Q     Well, how about can we go -- can you and I go to  
25 a book and -- and look at an objective list of criteria that

1 says here's when you need to test the bullets to see their  
2 chemical compound and here's when you don't; can you and I go  
3 do that right now?

4 A I don't know if we can.

5 Q Right. And we can't do that with a fragment,  
6 either. We -- there's no -- there's no authoritative text  
7 that governs all you guys and all you men and women that do  
8 this work, there's no text where we can say, Okay, in this  
9 situation we need to test the chemical compound of the  
10 fragments but not the bullet, fair?

11 A Correct.

12 Q The AFTE that you belong to has attempted to  
13 promote a standard for comparison prior to a forensic examiner  
14 such as yourself comes into court and says these match or they  
15 don't match, right?

16 A I'm not sure I --

17 Q Okay. Let me ask it this way. Have you ever  
18 heard of the term sufficient agreement?

19 A Yes.

20 Q All right. Now, sufficient agreement -- well,  
21 strike that.

22 Do you agree AFTE, the organization you were  
23 president of, the one you promulgated its policies, they came  
24 up with a theory of identification, right? It's called a  
25 theory of identification?

1           A     Yes.

2           Q     The theory of identification, as it pertains to  
3 tool marks, enables opinion of common origin to be made when  
4 -- and this is the part I want you to focus on -- the unique  
5 surface contours of two tool marks are in sufficient  
6 agreement; does that sound right?

7           A     Sounds right.

8           Q     Okay. Sufficient agreement is only defined as  
9 two or more things that match, right?

10          A     I think -- he's talking -- that's how AFTE  
11 defines it?

12          Q     How does AFTE, in your opinion, define what  
13 constitutes sufficient agreement?

14          A     Again, it's -- it's based on if you read  
15 through, it's the contours that are there.

16          Q     Correct. And those contours have to be seen and  
17 evaluated by a human being based on his or her own experience  
18 and whatever brings them to the table that day, right?

19          A     Right.

20          Q     There's nothing independent, nothing objective.  
21 I can go read right now to find out how to do it?

22          A     Correct.

23          Q     Okay. Do you recall the finding by the Academy  
24 of Science where they said, "Forensic evidence used in  
25 criminal trials is not immune from the risk of manipulation."

1 Does that sound familiar?

2 A Again, I'm -- I'd have to review the whole --  
3 the whole report to say that I agree that it's in there.  
4 But --

5 Q Well, let me --

6 A -- I mean --

7 Q Let me ask this question. Do you agree -- do  
8 you agree that forensic evidence is not immune from the risk  
9 of manipulation?

10 A Yes.

11 Q All right. And you agree that when we talk  
12 about comparisons, one bullet to the next, that as human  
13 beings we're only as good as whatever we can deliver on that  
14 given day, right? I'm not -- do you -- do you follow what I'm  
15 saying?

16 A No.

17 Q Let me rephrase it. You don't come into  
18 courtrooms after having been here hundreds of times with a  
19 specific motive to be dishonest, right? You're not -- you're  
20 not coming in to be dishonest, correct?

21 A That's correct.

22 Q You're coming in to do the best job that you  
23 can, correct?

24 A Correct.

25 Q And you agree that when you're told things in

1 the midst of a case, that could tend to affect you as a human  
2 being regarding your bias and take away from your ability to  
3 be a scientist; would you agree?

4 A No.

5 Q Okay. So you don't think it's of any  
6 consequence to be told, We have the murder weapon, see if  
7 these bullets come from it; you don't think that affects you?

8 A No.

9 Q Okay. You don't --

10 A And I'll tell you why. Because --

11 Q Sir --

12 A -- I've eliminated --

13 Q Sir --

14 A -- murder -- the murder weapon many times.

15 Q Sir, you'll have an opportunity with a very  
16 capable prosecutor for you to explain. Okay.

17 You don't think it affects your bias to have these  
18 four bullets in front of you or five bullets in front of you  
19 and be told by police in your request for comparison, We got  
20 all these from the scene; you don't think that affects you at  
21 all?

22 A I don't.

23 Q Do you agree that the discipline that you're  
24 involved in, this tool mark comparison, should not be housed  
25 under this -- under the Rubric of law enforcement? In other

1 words, right now I think you work for -- you work for Metro,  
2 right?

3 A Correct.

4 Q There is some debate as to whether or not you  
5 can be an objective scientist and work for the police, right?

6 A There's debate, yes.

7 Q There is -- there are those that suggest that  
8 you would have the ability to be more objective if you were a  
9 self-standing lab, a science lab, as opposed to working under  
10 Metro's roof, fair?

11 A Well -- well, there are those that -- that argue  
12 that, yes.

13 Q Okay. And there are those along the same lines  
14 that, because you work under the same roof as Metro, that  
15 there are potential -- that there is the potential for  
16 conflicts of interest to arise, correct?

17 A There's those that argue that, yes.

18 Q Do you agree with the following statement, okay:  
19 After eyewitness testimony, forensic identification is the  
20 most common type of testimony that jurors relied on in  
21 returning erroneous verdicts; do you agree or disagree?

22 A I don't know.

23 Q Okay. There are classes that up-and-coming tool  
24 mark examiners take as they -- as they become more and more  
25 able to make comparisons, agree?



1           A     Yes.

2           Q     There are seminars that are done, correct?

3           A     Yes.

4           Q     It is proffered or advanced in these seminars  
5 that the more an examiner has confidence, that the more the  
6 examiner can ID tool marks; in other words, sometimes the  
7 difference between yes, they match or no, they don't match is  
8 simply the personal confidence level of the examiner. Do you  
9 agree with that?

10          A     No. Because I think you've -- to me, when you  
11 say no, they don't match, that means that's an elimination.  
12 And you're going from saying yes, they're an identification,  
13 you're glossing over inconclusive --

14          Q     Fair point.

15          A     -- and going all the way to elimination. And  
16 that's what I don't --

17          Q     And you're --

18          A     -- don't expect to see.

19          Q     You're exactly right. And it's actually from  
20 inconclusive to yes, they match. Okay.

21          A     Or to yes, they don't -- or to no, they don't  
22 match.

23          Q     Let's -- let's stick with the syllabus -- strike  
24 that.

25                Is there a theory advanced that the difference

1 sometimes between inconclusive and yes, they match, depends on  
2 the individual confidence level of that examiner?

3 A Yes.

4 Q That, then, would be something subjective and  
5 has nothing to do with science, right?

6 A Again, I don't want to say it doesn't have  
7 anything to do with science, because I believe there are  
8 strong elements of science in every comparison.

9 Q The reviewer that reviewed your report, I can't  
10 make out the signature, do you recognize it?

11 A The -- there are two reviews. Which one are you  
12 referring to?

13 Q I'm looking at the very first --

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

15 THE COURT: Sure.

16 BY MR. SGRO:

17 Q The one on the very first page. Yes, that one.

18 A That's Randall Stone.

19 Q Okay. Randall Stone ostensibly reviewed your  
20 work, right?

21 A Ostensibly? I mean --

22 Q Reviewed your --

23 A -- yes, he -- he reviewed my work.

24 Q How long have you known Randall Stone?

25 A I met him when I first went to work for the

1 forensic lab.

2 Q How many years ago?

3 A That was in 1998.

4 Q He trusts you?

5 A You'd have to ask, you know --

6 Q You don't have any opinion of whether or not he  
7 trusts you?

8 A Well, I -- I would assume he does.

9 Q Okay.

10 A But --

11 Q He relies upon you and your work product?

12 A I would say yes.

13 Q Where are his notes that shows what he reviewed  
14 of your work; do you have them?

15 A No.

16 Q Where -- do any exist?

17 A His review was an administrative review, which  
18 is at -- that's the last review process we go through. So his  
19 review is of the entire case packet.

20 Q The entire case packet, which is your report,  
21 right?

22 A Yes.

23 Q So let's go through the entire case packet. So  
24 this is what Randall Stone supposedly, for an independent  
25 review, looks at. Your first page that says the four bullets

1 match, right?

2 A The report.

3 Q The report. There's a review sheet that makes  
4 sure you did things and signed things, right?

5 A Yes.

6 Q Then there are two pages that talk about where  
7 these bullets came from?

8 A The -- the packaging.

9 Q The packaging, yes. Right?

10 A Yes.

11 Q And there's something called Firearm Worksheet?

12 A Correct.

13 Q A picture of the revolver?

14 A Yep.

15 Q A picture of the barrel?

16 A Yes.

17 Q The target that shows you shot it three times  
18 and that the firearm works?

19 A Well, that -- that's not the only test firing I  
20 did. But yes, the target that I shot.

21 Q Well, you didn't -- you said he gets this case  
22 file, right?

23 A Right.

24 Q So in terms of Mr. Stone, that's all he's going  
25 to get, right? This piece of paper?

1           A     Right. And then the previous -- the page --  
2 the --

3           Q     Correct.

4           A     -- the firearm examination page --

5           Q     We have something --

6           A     -- that describes the test firing.

7           Q     We have something called Bullet Worksheet,  
8 right?

9           A     Yes.

10          Q     We have the photos of the fragments, right?

11          A     And the bullets, yes.

12          Q     That's your notes on comparisons, right?

13          A     Yes.

14          Q     Photos of the microscope, which we talked about  
15 earlier?

16          A     Yes.

17          Q     Then this XRF testing that you did?

18          A     Yes.

19          Q     And then he gets an e-mail that talks about the  
20 event, correct?

21          A     It talks about the -- the bullet and the  
22 revolver.

23          Q     Right. Then he gets all the requests for  
24 forensic lab comparison, correct?

25          A     Correct.

1           Q     And Randall Stone would also be told, as he's  
2 doing this objective review, that you wanted to match the  
3 suspect firearm and you had some bullets from the homicide  
4 scene, right?

5           A     Well, he'd see the request. I didn't ask him to  
6 do the -- I didn't ask to do that.

7           Q     Understood. But he would have that, right?

8           A     Yes.

9           Q     He makes no notes and simply signs off?

10          A     Correct.

11          Q     That's the review?

12          A     That's the administrative review.

13          Q     Did he call you and discuss the case with you  
14 before he signed off?

15          A     I don't remember.

16          Q     Do you agree that if the only weapon you're  
17 shown to work on is the suspect weapon, do you agree that  
18 that's more akin to an evidentiary showup as opposed to a  
19 blind test?

20          A     What's -- what's an evidentiary showup?

21          Q     Here's the evidence, as opposed to, Tell us  
22 where these bullets came from blindly. In other words, let's  
23 not look at -- and I apologize, I'm going to approach -- let's  
24 not look at this. Okay?

25          A     Okay.

1           Q     All you have is those bullets. Tell us the  
2 make, model, type of weapon, all the possibilities where those  
3 bullets could have come from, right? That's not how this  
4 happened, correct?

5           A     Correct. But that can be done.

6           Q     But you didn't do it in this case, right?

7           A     In -- in a way sort of yes, sort of no.

8           Q     Do you agree that markings change over time  
9 inside the barrel of a gun?

10          A     That, you have to qualify. Because it -- it  
11 depends on a lot of factors.

12          Q     Let me ask this. You described pin hits the  
13 primer, ignites, creates gas pressure, and then ejects the  
14 bullet, right?

15          A     No. It propels the bullet.

16          Q     Propels the bullet.

17          A     Right.

18          Q     That gas is like a gas explosion, for lack of a  
19 better term. It creates the energy necessary such that the  
20 bullet releases from the barrel?

21          A     Correct.

22          Q     And this revolver, a bullet traveling out of  
23 this revolver, this barrel, is traveling about how many feet  
24 per second?

25          A     Typical .44 magnum load, probably in the

1 vicinity 1200 feet per second.

2 Q 1200 feet per second is going to require a lot  
3 of energy from that gas to ignite it such that it can propel  
4 out at that level, fair?

5 A Yes.

6 Q And it is that gas explosion inside the barrel  
7 that occurs each time a weapon is fired that can create  
8 differences amongst the bullets, even one after the other,  
9 fair?

10 A Right. I mean, that's -- that's part of the  
11 exam. When you look at test bullet to test bullet, you see  
12 differences, if -- if -- you can't absolutely reproduce each  
13 time.

14 Q Exactly. And it is up to you subjectively to  
15 look at those differences and determine, hey, did the  
16 differences in these bullets happen because they're not from  
17 the same gun, or did the differences in these bullets happen  
18 because of this gas explosion that changes what bullets look  
19 like every time, fair?

20 A The gas -- the gas explosion, as you describe  
21 it, that's not the major factor from -- I mean, it is a factor  
22 from test to test. But that's the reason for looking test to  
23 test, so you can see what marks are there. And if there is  
24 some variation --

25 Q That would be an area, though, where opinions



1 could disagree, correct?

2 A In -- in test to test -- I'm not sure what you  
3 -- what you mean there.

4 Q The difference between these bullets now look  
5 different, is it because of the explosion that occurred in the  
6 barrel or is it because they're from different guns? That's  
7 an area where opinions can -- can differ, right?

8 A The explosion in the barrel, I'm not -- I'm not  
9 getting that, that that's the -- if you're talking about the  
10 pressures that are involved and the velocity down the barrel.  
11 But the explosion itself, I'm not sure what I'm getting when  
12 you use that term.

13 Q Do you know what a discrepant result log is?

14 A No.

15 Q Are there organizations in different cities  
16 outside of Las Vegas that keep track of times when there are  
17 disagreements amongst the examiners? Do you know that to be  
18 the case?

19 A I -- there might be. I don't know that.

20 Q If I suggested to you that a log that is kept  
21 when disagreements occur amongst examiners, if I suggested to  
22 you that that's what a discrepant result log is, does that  
23 mean anything to you?

24 A Well, that would -- that would be something you  
25 could call it, sure.

1           Q     Okay.  Is there any such log of disagreements  
2 that is kept at Metro?

3           A     No.

4           Q     So when you suggested to the jury a little while  
5 ago that there have been times when you've disagreed with the  
6 reviewer or a reviewer disagreed with you, there's no note of  
7 that, there's no record of that?

8           A     No, not -- that's not necessarily true.  That  
9 actually might --

10          Q     How -- how would I find it?

11          A     -- that actually might be recorded in the notes  
12 for that particular case.

13          Q     What are the quality control procedures at  
14 Metro?  How often do you guys get blind-tested by an outside  
15 agency?

16          A     We don't blind test.  We take proficiency tests.  
17 Every examiner takes a proficiency test every year.

18          Q     But there's no other outside group like there is  
19 in other forms of science that comes in to pull case files and  
20 independently evaluate the testing that you've done, fair?

21          A     The only pulling of case files, as you've  
22 described, is when we go through our accreditation.

23          Q     Who credits the lab?

24          A     We're accredited by the -- by ASCLAB, the  
25 American Society of Crime Laboratory Directors Laboratory

1 Accreditation Board.

2 Q You are not accredited by the National Academy  
3 of Science, are you?

4 A No. I don't believe they're an accrediting, you  
5 know, organization.

6 Q Would you -- do you know what a confocal  
7 microscope is?

8 A I know the term. To -- I can't describe the  
9 mechanics of how it works to you.

10 Q You told the jury that one of the things that  
11 you do is you look at striations, right?

12 A Yes.

13 Q You look at rifling, right?

14 A Correct.

15 Q And these are the lines in the bullet, if I  
16 understood correctly?

17 A Yeah. The -- the rifling is impressed onto the  
18 bullet, and then within the rifling are the striations, which  
19 are more finer lines.

20 Q Right. So for -- for someone lay, like me,  
21 these are the lines on the bullet itself, right?

22 A Correct.

23 Q And you took pictures of, you know, in that  
24 microscope that you rotate, of the lines matching other lines?

25 A Correct.

1           Q     Okay. You said you're familiar with the term  
2 confocal microscopy. Isn't that a technique that allows  
3 someone like you to do a three-dimensional imaging to test for  
4 the depth of the lines?

5           A     That sounds right. Again, I would -- I'm not --  
6 confocal microscopy is not my -- you know, I -- we don't have  
7 a confocal microscope, I don't --

8           Q     And -- and you just made my point. In Las Vegas  
9 at Metro we don't even possess that kind of microscope,  
10 correct?

11          A     Correct. Most law -- most forensic labs don't  
12 have a confocal microscope.

13          Q     You would agree that aside from just looking at  
14 these lines, that if you had 3D imaging, it would help you  
15 better assess the depth of the line inside -- or, I'm sorry,  
16 the depth of the line that appears on each bullet that you're  
17 looking at?

18          A     True. But we get a representation of that when  
19 we look through the microscope, because we use what's called  
20 oblique lighting. We bring the light in from an angle. And  
21 so based on the height of the lines, even though they're --  
22 they're different, you get a -- you can tell which lines are  
23 higher than the others.

24          Q     Oblique lighting is what they also call shading,  
25 right? You ever heard that term?

1           A     No, not -- not that way, no.

2           Q     Isn't there a problem with the uses of oblique  
3 lighting in that it can cause the examiner to see shadows such  
4 that it can interfere with examination?

5           A     I'm not really aware of that, no.

6           Q     Relative to 3D imaging, would you not agree that  
7 that would be more accurate to measure the lines of the  
8 bullets as opposed to simply trying to match them up on the  
9 microscope, would you agree?

10          A     Well, are you trying -- if you're trying to  
11 measure, that's -- I'm not trying to measure the lines when  
12 I'm doing a comparison.

13          Q     Did you measure the depth of the striations on  
14 these bullets?

15          A     No, I didn't.

16          Q     Isn't measuring the depth of the striations  
17 something that causes a bullet to have a more unique  
18 characteristic? The depth of the striation would be  
19 something --

20          A     Well, measuring them doesn't cause it to be more  
21 unique. You're saying the measurement -- if the measurement  
22 does -- I don't -- there's not a lot of studies yet published  
23 on that.

24          Q     I guess let me -- let me put it this way. You  
25 will agree with me that your field necessarily includes

1 subjective input by the examiner, correct?

2 A Correct.

3 Q You would agree with me that because of that  
4 subjectivity, different people can look at the same pieces of  
5 evidence and come to a different conclusion, fair?

6 A Again, as long as -- when you're talking a  
7 difference of -- of conclusion, going from an identification  
8 to maybe inconclusive, or inconclusive to elimination. But  
9 not the broad spectrum. Not two qualified examiners.

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

11 Pass the witness.

12 MR. LANGFORD: I have nothing, Your Honor.

13 THE COURT: All right. We've got a question over  
14 here.

15 MR. DiGIACOMO: Are we approaching on the question?

16 THE COURT: Yes.

17 (Bench conference.)

18 THE COURT: I'll ask the question, but I think I know  
19 the answer's no. It's possible for a bullet [indiscernible].  
20 And I think the answer's yes.

21 (End of bench conference.)

22 THE COURT: All right. Back on the record. The --  
23 the lawyers have agreed to my asking both questions.

24 First of all, based on the number of fragments, are  
25 you able to tell how many bullets were fired?

1           THE WITNESS: No. I can tell you a minimum number,  
2 that there was a minimum of four. But I can't tell you a  
3 maximum number other than beyond the total number of  
4 fragments, which is -- so a minimum of four. If each fragment  
5 represented a -- a separate bullet, it would be 15.

6           THE COURT: That's only because --

7           MR. SGRO: I'm sorry, I didn't -- I'm sorry, Your  
8 Honor. If each fragment represented a bullet?

9           THE WITNESS: If each bullet -- excuse me. If each  
10 fragment represented a -- one specific bullet, there are 15  
11 bullets and fragments total. So there's -- there could be 15,  
12 if none of these go to the same. I didn't attempt to match  
13 fragments together. But there's a minimum of four.

14          THE COURT: So you -- assuming for the sake of  
15 argument that these all came from the same location and so on  
16 and were part of the same scene, you think it's a minimum.  
17 You just know what you've got here, you don't know where they  
18 came from or what they were part of?

19          THE WITNESS: Correct.

20          THE COURT: Okay. And is it possible for a bullet to  
21 hit something hard and break into several fragments?

22          THE WITNESS: Oh, absolutely. Yes.

23          THE COURT: That's not uncommon at all, is it?

24          THE WITNESS: No.

25          THE COURT: I've tried a lot of cases where that's

1 happened.

2 THE WITNESS: Right.

3 THE COURT: Okay. Redirect?

4 MR. DiGIACOMO: Briefly, I hope.

5 THE COURT: Briefly, I hope.

6 REDIRECT EXAMINATION

7 BY MR. DiGIACOMO:

8 Q You -- there was a lot of questions, a whole lot  
9 of questions about a review, and you kept saying  
10 administrative review. And I got the impression there might  
11 be something other than an administrative review that happens?

12 A Correct.

13 Q What else happens?

14 A We have three types of review when we do case  
15 work. The first is a verification. So if an examiner  
16 identifies two bullets as having been fired from the same gun,  
17 a second examiner actually looks at those two bullets under  
18 their microscope and does a comparison to see if they come up  
19 with the same conclusion. That's a verification. And that's  
20 -- that's recorded in the notes.

21 The next review --

22 Q Before you get to that, did someone do a  
23 verification on this one?

24 A Let me double check. Yes.

25 Q And who did the verification?



1           A     Randall Stone.

2           Q     So Randall Stone physically does a verification  
3 of what your conclusion is by looking at the underlying  
4 evidence?

5           A     Correct.

6           Q     Okay. What's the next type of review?

7           A     The next review is a technical review. And  
8 that's this -- the -- the second page here in my case file.  
9 And this review is to look through the case file and make sure  
10 that whatever -- basically, whatever conclusions are in the  
11 report are supported within the case notes.

12                And then the last review is the administrative  
13 review, and that's more of a review to make sure the -- the  
14 case packet is put together correctly, there's no, you know,  
15 glaring grammatical errors, everything is numbered correctly,  
16 that sort of thing.

17           Q     Okay. And then all of that paperwork is  
18 maintained by the Las Vegas Metropolitan Police Department --

19           A     Correct.

20           Q     -- correct? And the if anybody asks, like  
21 myself, or apparently Mr. Sgro has a copy of your file,  
22 there's even pictures of the comparisons that you did; is that  
23 fair?

24           A     Yes.

25           Q     And anybody on Earth can look to see if they

1 agree or disagree with you?

2 A Well, I don't know about anybody on Earth. But,  
3 you know --

4 Q Sure.

5 A -- anybody who has access to the photos.

6 Q Anybody who looks at that can tell you if they  
7 agree or disagree, correct?

8 A Correct.

9 Q Have you in this case learned that there's  
10 anybody who disagrees with your conclusion? Has any firearms  
11 examiner contacted you and had a conversation saying, Hey, I  
12 disagree with your conclusion in this case?

13 A No.

14 Q The cross-examination started with have you ever  
15 had a class specifically in Rugers as to unique  
16 characteristics; do you remember the beginning of the  
17 cross-examination?

18 A Yes.

19 Q And let me ask you this. Would it matter who  
20 the manufacturer is to make the type of comparison between the  
21 firearm and the bullet?

22 A The -- the theory is -- is that it doesn't  
23 matter.

24 Q Why?

25 A Because the -- the marks and the -- the tooling

1 process is carryover from manufacturer to manufacturer.

2 Interestingly, I've done some -- I've participated in some  
3 studies of consecutively manufactured Ruger parts.

4 Q And in those studies, were you able to, even as  
5 a firearms examiner, determine when one firearm versus another  
6 firearm fired a particular bullet?

7 A Correct. Yes.

8 Q There was a lot of questions about all the --  
9 all the forensic scientists, I mean, with the exception of  
10 DNA; do you remember those kind of questions?

11 A Yes.

12 Q And the -- what he called criticisms, I will  
13 call discussions, there's been a discussions about the  
14 difference between statistical things like DNA versus firearms  
15 and fingerprints and all the other forensic sciences?

16 A Correct.

17 Q Okay. And the suggestion was that somehow  
18 firearms evidence, or firearms examination is less credible  
19 than DNA; do you remember those questions?

20 A Yes.

21 Q You'd agree with me there are good firearms  
22 examiners out there and bad firearms examiners out there,  
23 correct?

24 A Sadly, yes.

25 Q Okay. I mean, it's like any profession.

1 There's probably a range of qualifications of individuals,  
2 correct?

3 A Yes.

4 Q Would you agree with that same statement as it  
5 relates to DNA analysts, there are times when they get their  
6 own DNA inside the sample and those type of things occur,  
7 correct?

8 A Yes.

9 Q The difference in forensic -- or in DNA versus  
10 firearms examination is that there is a statistical  
11 calculation that is made in DNA that is not made in firearms,  
12 fingerprints, and the other forensic sciences?

13 A The comparative disciplines, yes, correct.

14 Q There was a lot of questions as it relates to  
15 you're biased in cases in the 20-some-odd years, in cases, has  
16 there been occasions when you get told, Hey, we have a  
17 suspected firearm, here's our bullets at the scene, and you've  
18 said, Hey, that ain't the firearm?

19 A Yes.

20 Q Okay. And is that a routine or is that a unique  
21 situation for you?

22 A It's not unique, it's not necessarily routine.  
23 But it's definitely not uncommon.

24 Q Are there situations when you don't have a  
25 firearm at all and they just give you all the firearms

1 evidence and you come back with conclusions as to caliber and  
2 potential manufacturers of firearms?

3 A Yeah, now, that's a fairly routine exam that we  
4 do.

5 Q How do you do that?

6 A Well, you would take a bullet, and it's the same  
7 sort of exam that you start with every time. I look at the  
8 bullet, what type of bullet is it? You know, in this  
9 particular case it's a copper jacketed bullet. Weigh it,  
10 measure it, look at the lands and grooves, look at what  
11 direction they twist, how many, actually measure their widths.  
12 And then I can take that data, take that to a database and  
13 look and see, okay, what type of manufacturers use those same  
14 type rifling characteristics in that caliber.

15 Q And you could come back with a list of -- of  
16 manufacturers, correct?

17 A Correct. And you'll see some, you know, that  
18 will come back with a list of many manufacturers, and  
19 sometimes you can narrow it down to just, you know, a few or  
20 even one manufacturer.

21 Q And the only other area I want to go through is  
22 there was some discussion about why it is you x-rayed the  
23 fragments, but you didn't x-ray the bullets. Why do you x-ray  
24 the fragments and not x-ray the bullets?

25 A The bullets, I know they're bullets, I can see

1 physical characteristics that identify them as -- as fired  
2 bullets. Basically, their shape, their size, what they look  
3 like, and the rifling impressions on them. The lead fragments  
4 don't have those. I know that typical bullet manufacturer,  
5 copper jacket, lead core. So I just want to take a look at  
6 these bullets and I just want to see, are they all lead? If  
7 they're all lead, then they can -- I can't absolutely  
8 conclusively associate them with a bullet, but they could be  
9 part of the bullet.

10 Q So, for example, because it's in evidence, 148,  
11 that is pretty clearly a bullet based upon its just physical  
12 characteristics as you look at it?

13 A Correct.

14 Q 264A, that's just a hunk of metal, correct?

15 A Correct.

16 Q You use the x-rays to determine that's, in fact,  
17 lead?

18 A Correct.

19 Q And then from there you can make a determination  
20 that potentially it could have come from a bullet?

21 A It's a -- a common material used in bullets.

22 Q And that's the reason why you x-ray the hunk of  
23 metal and not the bullet itself?

24 A Correct.

25 Q Any question in your mind that the four bullets,

1 or the four pieces or five pieces of evidence that you were  
2 actually able to physically match up under a microscope came  
3 from the same firearm? And I guess -- I think I said four and  
4 I said five. So let me make sure --

5 A It's four.

6 Q Four, and there's a fifth one that's  
7 inconclusive?

8 A Correct.

9 Q Yeah. Any question in your mind that those four  
10 bullets or those four bullets and/or fragments came out of the  
11 same gun?

12 A None at all.

13 Q And then ultimately you weren't able to  
14 conclusively identify it to the .44 caliber Ruger?

15 A Correct.

16 MR. DiGIACOMO: Nothing further, Judge.

17 MR. SGRO: Very briefly, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. SGRO:

20 Q You were asked about the XRF and why didn't you  
21 do it with the bullets. So you examine all the fragments,  
22 would you agree you started on March 20th, 2012, at 9:57 and  
23 you were done examining 10 items by 9:58?

24 A And -- and where are you looking at now?

25 Q Your page 16 of your case file.

1           A     Oh, that's -- that would be the time that I  
2 captured those images.

3           Q     Right.

4           A     That -- so the -- the XRF takes -- you can't --  
5 it can't be done that fast. Each -- each exam takes a small  
6 amount of time.

7           Q     Right. How much -- so this is the result of  
8 what you -- the materials that you put into the XRF, right?

9           A     The -- I mean, well, not put into -- the --

10          Q     Had each examined by?

11          A     Right.

12          Q     Okay. And it took a few minutes to assess each  
13 of those fragments, would you -- would that be fair?

14          A     Correct. Each -- how it actually works, I mean,  
15 if you're interested, you take the fragment, the XRF, the best  
16 way to describe it is it looks kind of like a hairdryer.  
17 That's kind of its general shape. It's portable, but we have  
18 it mounted in a stand. So it's sitting in a stand pointed up.

19                So you take your sample and we put it on a -- just,  
20 like, a glassine, a little piece of mylar, put it on the  
21 mylar. It sits on top of the examination window of the XRF,  
22 close the lid because it's got x-rays, you have to protect  
23 everything. And then you -- you just basically run that  
24 sample. Typical sample times for us are 20 to 30 seconds.  
25 Once you've run that sample, take it off, put it back in the



1 vial, go to the next one and, you know, repeat till you've  
2 done all the samples.

3 Q All right. So if we have five bullets and it  
4 takes 20 or 30 seconds for each bullet --

5 A That's for the -- that's for the -- the run time  
6 for the machine. And then your time to put it in and out of  
7 the vials, make your notes, that kind of stuff.

8 Q You could have done those bullets in 5, 10  
9 minutes?

10 A Right.

11 Q Okay. Now, I asked you on the review that was  
12 done, you said that there's three types of review. If I  
13 understand correctly, Mr. Stone did your preliminary and your  
14 third review, right? He did ones Nos. 1 and 3?

15 A He did the verification and the administrative,  
16 yes.

17 Q Okay. So the same guy is reviewing who already  
18 has verified?

19 A Correct.

20 Q Okay. And then your second review, that's more  
21 did you dot the I's and cross the T's, right?

22 A No. That's -- the administrative review is more  
23 the dot the I's, cross T's. The technical review should be  
24 looking at the case file and saying, Okay, if I say that this  
25 bullet is a .44 caliber bullet, where in my notes is something

1 recorded that supports that? And that's where you would then  
2 go to the bullet worksheet, and you would see that, let's say  
3 under one of the -- the -- let's go to a different one here --

4 Q Mr. -- Mr. Krylo, maybe I can clear up where I'm  
5 going to.

6 A Okay.

7 Q When I -- when I hear the term review, and I  
8 hear it discussed, I'm thinking someone has redone what you  
9 have done to determine if the same result will occur. Okay.  
10 When I look at page 2, what you just told the jury was the  
11 secondary review, the first question is, "Is the source and  
12 disposition of evidence recorded?" And you circled "yes." Or  
13 it was circled?

14 A I didn't circle it, yeah.

15 Q I'm sorry, the reviewer circles "yes," right?

16 A Correct.

17 Q That has nothing to do with getting behind the  
18 microscope to verify what you've just done?

19 A Correct. That's already been done.

20 Q Right. Is the evidence adequately described?  
21 It's circled "yes." Right?

22 A Correct.

23 Q That still has nothing to do with getting behind  
24 the microscope to -- to redo it, correct?

25 A Correct. That's already been done.

1 Q Okay. And then the next one talks about, you  
2 know, are your initials in the right place? Right? Are the  
3 notes numbered, right? Those are the things that are Review  
4 No. 2, fair?

5 A Well, correct. Except, you know, does the  
6 examination comply with the unit's technical procedures?  
7 Don't leave that out. Has second opinion --

8 Q What -- what are the --

9 A Has second opinion --

10 Q Hold on.

11 A -- review been completed? Don't leave that out.

12 Q Sir, I wasn't done. What are the unit's  
13 technical procedures? Is that in the book somewhere?

14 A Yes.

15 Q It's in a book at Metro?

16 A Yes.

17 Q Okay. And so the technical procedures are to  
18 establish that you filled out the worksheet, right?

19 A No.

20 Q Taken notes?

21 A Technical procedures actually describe how we do  
22 these examinations.

23 Q And the last question I have for you, Mr.  
24 DiGiacomo asked you would you agree it's like anything else,  
25 we have some good examiners and some bad ones, right?

1           A     Yes.

2           Q     You agree that that's exactly why we need  
3 objective criteria, so that the ones that are bad never get to  
4 a courtroom, right?

5           A     Yes. But that assumes that objective criteria  
6 will eliminate bad examiners. And if there are bad examiners  
7 in DNA, then the objective criteria obviously fell short  
8 there. So that's not the only criteria we can use to  
9 eliminate bad examiners.

10          Q     It's not the only criteria, but it would be  
11 helpful, wouldn't it?

12          A     No, I don't agree.

13          Q     You don't agree that to have some objective  
14 measuring systems in place would help us in a case like this?

15          A     In this case, no.

16          Q     Okay.

17          MR. SGRO: Pass the witness, Your Honor.

18          THE COURT: Mr. Langford?

19          MR. LANGFORD: No, Your Honor.

20          THE COURT: All right. Thank you, Mr. Krylo, for  
21 being a witness. You'll be excused, sir.

22                And would any of the jurors like a recess? I believe  
23 we have one more witness. They all want a recess. All right.

24                During the recess it's again your duty not to  
25 converse among yourselves or with anyone else on any subject

1 connected with this trial, or to read, watch, or listen to any  
2 report of or commentary on the trial from any medium of  
3 information including newspapers, television, or radio. You  
4 may not form or express an opinion on any subject connected  
5 with this case until it's finally submitted to you.

6 Be in recess for about 10 minutes.

7 (Jury recessed at 3:20 p.m.)

8 MR. SGRO: Your Honor, we need to --

9 THE COURT: Okay. Off the record.

10 MR. SGRO: We need to place --

11 THE COURT: Oh, you want to go on the record?

12 MR. SGRO: Yes, sir. Very briefly.

13 THE COURT: Okay. We're on the record.

14 MR. SGRO: I need to make a motion at this time for a  
15 mistrial, Your Honor. And my alternative is going to be for a  
16 curative instruction, and this is why.

17 I didn't object to it at the time, but Mr. -- because  
18 I didn't want to draw more attention to it. But Mr. DiGiacomo  
19 in his questioning on redirect was all tantamount to burden  
20 shifting. Mr. DiGiacomo asked, Are you aware if anyone has  
21 disagreed with your opinions? And that leaves open the door  
22 that we had the ability to, that -- whether or not we retained  
23 a ballistic expert, etcetera, etcetera.

24 And the questioning that was asked about whether or  
25 not we had -- or, I'm sorry, the implicit suggestion as to who

1 disagreed shifts the burden to us that we have to suggest that  
2 someone else is out there that disagreed.

3 And we would suggest, Your Honor, that that is burden  
4 shifting, that that line of questioning was completely  
5 inappropriate.

6 THE COURT: I heard the questions. I got the  
7 impression he was talking about somebody else reviewing his  
8 work or -- or somebody else in the department. I had -- it  
9 didn't even dawn on me that it had anything to do with you.

10 MR. SGRO: Well, my -- my impression hearing it was  
11 that it was -- the question -- the predicate was anybody else.

12 THE COURT: Well, I'm not going to grant a mistrial,  
13 because I don't think -- I really don't think it shifted the  
14 burden, because it didn't talk about you. It was talking -- I  
15 think the inference was it was talking about somebody else in  
16 his department --

17 MR. SGRO: That -- that --

18 THE COURT: -- criticizing his work.

19 MR. SGRO: And, Your Honor, I know you were paying  
20 attention during that testimony. I don't want to quarrel --

21 THE COURT: I was.

22 MR. SGRO: -- I don't want to quarrel with you. But  
23 the --

24 THE COURT: If you want a curative instruction, well,  
25 you prepare one --

1 MR. SGRO: Yes, sir.

2 THE COURT: -- we'll include it with the other ones.

3 MR. SGRO: I would like it to be given when we get  
4 back from the break.

5 THE COURT: Okay.

6 MR. SGRO: Okay. Thank you, sir.

7 THE COURT: Remind them that the defense has no  
8 obligation to call witnesses or produce evidence.

9 MR. SGRO: Yeah, and that's all we're looking for,  
10 that the --

11 THE COURT: Okay.

12 MR. SGRO: -- the jury is not to be confused or to  
13 assume that the defense has any burden in this case, or  
14 call --

15 THE COURT: I can remind them of that, if that -- if  
16 you'd like that.

17 MR. SGRO: Thank you, sir.

18 THE COURT: Can we go off the record now for five  
19 minutes?

20 MR. SGRO: Yes, sir. I apologize.

21 (Court recessed at 3:23 p.m. until 3:31 p.m.)

22 (Outside the presence of the jury.)

23 THE COURT: All right. We are on the record.  
24 Anything before we bring in the jury?

25 MS. WECKERLY: No, Your Honor.

1 MR. SGRO: Nothing from Mr. Burns.

2 THE COURT: Bring in the jury.

3 (Jury entering 3:35 p.m.)

4 THE COURT: All right. State of Nevada versus Burns  
5 and Mason. The record will reflect the presence of the  
6 defendants, their counsel, the district attorneys and all  
7 members of the jury.

8 Ladies and gentlemen, I want you to keep in mind that  
9 the defendant in a criminal case is never required to present  
10 evidence or call witnesses. The burden of proof is always  
11 upon the State to prove the defendant's guilt by evidence  
12 beyond a reasonable doubt. The law never imposes upon the  
13 defendant in a criminal case the burden of calling witnesses  
14 or producing any evidence.

15 All right. We're still in the State's case in chief.  
16 The State can call its next witness.

17 MS. WECKERLY: Thank you, Your Honor. Cornelius  
18 Mayo.

19 CORNELIUS MAYO, STATE'S WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Please  
21 state your name, and spell your first and last name for the  
22 record.

23 THE WITNESS: Cornelius Mayo. C-o-r-n-e-l-i-u-s,  
24 M-a-y-o.

25 MS. WECKERLY: May I proceed?



1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MS. WECKERLY:

4 Q Mr. Mayo, in August of 2010, where were you  
5 living?

6 A 5662 Meikle Lane, Apartment A.

7 Q And, sir -- Apartment A. And, sir, who were you  
8 living with?

9 A With my girlfriend Derecia Newman and my four  
10 kids, Devonia Newman, Cashmere Mayo, Cornelius Mayo Junior and  
11 Cordazia Mayo.

12 Q And Cornelius is -- do people call him Junior?

13 A Yes, he's Junior.

14 Q Named after you?

15 A Yeah.

16 Q Now, you mentioned Devonia. Are you her  
17 biological father?

18 A No.

19 Q How long have you been in Devonia's life, as of  
20 2010, I guess?

21 A Well, I've known her since she was, like, 11  
22 months, but we've been living together since 2001, July --  
23 like, July 6, 2001.

24 Q Okay. So you had known her since or at least  
25 lived with her at least since about two years onward as of

1 2010?

2 A Yes.

3 Q Okay. And your girlfriend is Derecia?

4 A Yes.

5 Q -- at that time -- during that time back in  
6 2010, can you tell me what the ages of your three youngest  
7 children were.

8 A 2010 --

9 Q So about five years ago.

10 A Okay. Cordazia -- Cordazia Mayo was probably --  
11 Cordazia was, like, 4 I believe at the time, and Cornelius  
12 Mayo Junior, he was, like -- he was 5. He was going to turn 6  
13 in January. So he was 5, and cashmere Mayo, she was -- Cash  
14 was, like, 7.

15 Q Okay. And then so Devonina would've been  
16 about --

17 A 12.

18 Q 12. At that time, did you know an individual by  
19 the name of Stephanie Cousins?

20 A Yes.

21 Q As of 2010, how long had you know her -- known  
22 her?

23 A Probably since, like, 2003. That's when I met  
24 her.

25 Q Okay. Had she ever met any of your children?

1           A     Yes.

2           Q     As of 2010 in August, had she been to your  
3 residence on Meikle Lane?

4           A     Yes.

5           Q     Do you know approximately how many times?

6           A     No, I can't just say offhand.

7           Q     More than three times?

8           A     Yeah, more than three.

9           Q     Okay. And, sir, now I want to focus on the  
10 events of August the 6th into August the 7th of 2010, okay.

11          A     Okay.

12          THE MARSHAL: I'm sorry. The recorder is having  
13 trouble hearing. If you could just speak up.

14          THE COURT: Can I get you to kind of speak up, sir.  
15 The microphone there will pick up your voice a little bit  
16 better if you speak up. Even though the jurors can hear you,  
17 they're recording what you have to say, and you need to kind  
18 of speak up.

19          THE WITNESS: Okay.

20          THE COURT: For the microphone, okay. Can you do  
21 that?

22          THE WITNESS: Yes.

23          THE COURT: Thank you.

24 BY MS. WECKERLY:

25          Q     On the night of the 6th, who was in the house?

1           A     Me, Derecia Newman. Do I got to name all my  
2 kids or --

3           Q     No, you can just say the three little kids.

4           A     My three little kids, Devonia, and Derecia's  
5 sister Erica Newman.

6           Q     And Erica was about how old back then?

7           A     Erica at the time, she was 11.

8           Q     Okay. And was Erica living there, or was she,  
9 like, just visiting?

10          A     Just visiting because they usually -- her and  
11 her other sister usually spend a weekend with us -- well, with  
12 they cousins, or with nieces I should say.

13          THE MARSHAL: I'm sorry, Counsel. You're just real  
14 soft-spoken. She's having a tough time. We're just going to  
15 raise that up a little.

16          THE WITNESS: All right.

17          THE COURT: You can move that box towards you if you  
18 want.

19          MS. WECKERLY: Pretty high-tech, right?

20 BY MS. WECKERLY:

21          Q     Sir, you said Erica was just over visiting  
22 because she would sort of stay with her sisters?

23          A     Well, she had come stay -- they had just come  
24 spend the night. So we usually have Erica and Derecia's other  
25 sister Jamiah. Well, Jamiah was out of town. That's probably

1 the only reason she wasn't there.

2 Q Okay.

3 A But, like, every weekend they usually come spend  
4 the night.

5 Q And on the night of the 6th, do you remember  
6 about what time the three youngest children would've gone to  
7 bed?

8 A They probably went to bed, like, around 9.  
9 Devonia went to sleep, too, like, around 9.

10 Q Okay. And did you go to sleep at 9?

11 A No, I wasn't.

12 Q Okay. Where -- where were you around 9 o'clock  
13 in the apartment?

14 A Probably in the bedroom.

15 Q Okay. And I should've asked this earlier. How  
16 many bedrooms is the apartment?

17 A It's two.

18 Q And are the bedrooms adjacent to each other or  
19 across from each other?

20 A They're right across from each other.

21 Q Did -- you said you were probably in your  
22 bedroom. The kids are asleep. Do you know where Derecia was?

23 A She was right in the bedroom with me. We wasn't  
24 in the bedroom. We was in the living room.

25 Q In the living room. At some point, does Devonia

1 come back out to the living room?

2 A Yeah, Devonian woke back up, like, around -- I  
3 think, like, around 1 and said she was hungry.

4 Q So what happened after that?

5 A Derecia made me, Devonian and her an omelette, an  
6 egg omelette.

7 Q Okay. And that's, like, into the 7th, right,  
8 because it's now 1 in the morning?

9 A Yes.

10 Q Okay. After that happened, did you all three  
11 stay in the living room?

12 A Probably for, like, an hour probably. Then me  
13 and Derecia went in the room, in the bedroom.

14 Q Okay. Was there a point in time when you -- the  
15 house received a phone call?

16 A Yes.

17 Q Do you remember approximately what time that  
18 was?

19 A Yeah, because I looked at the caller ID after  
20 the fact. It was at 3:39 a.m.

21 Q Okay. And so you had a landline in that  
22 apartment?

23 A Yes.

24 Q And from your landline, were you able to see  
25 caller ID off your phone?

1 A Yes.

2 Q And what did it tell you?

3 A Stephanie Cousins.

4 Q Okay. Did you --

5 A Or it said Stephanie C actually.

6 Q Okay. Did you speak with Ms. Cousins, or did  
7 someone else?

8 A No, I didn't. Derecia spoke to her.

9 Q And how long was that conversation do you think?

10 A Probably, like, a minute or two.

11 Q Okay. And you think that was at about -- did  
12 you say 3:30?

13 A 3:39 a.m.

14 Q At the time that call came in, where were you?

15 A Oh, in the bedroom.

16 Q And where was Derecia?

17 A We were both on the bed. We were laying down on  
18 the bed.

19 Q Okay. And I assume you couldn't see where  
20 Devonia was at that point?

21 A No, she was in the living room, either watching  
22 TV or playing the Xbox.

23 Q Okay. Could you actually hear sound from the  
24 living room?

25 A Yeah, I can hear the TV.

1           Q     Okay. Sometime after that, does Derecia leave  
2 the room, or what happens after that phone call that you  
3 remember?

4           A     After the phone call, I probably got up, like, a  
5 minute later and went to go use the bathroom, and then I was  
6 in the bathroom, and then I heard the phone ring again, and I  
7 know -- well, Derecia told me she was supposed to go get the  
8 door.

9           Q     Okay. Did you actually hear a knock at the  
10 door, or you just knew because Derecia left?

11          A     No, I did -- well, I know Stephanie called back  
12 at 3 -- exactly 3:49, so 10 minutes later after she called the  
13 first time.

14          Q     Okay. And again, on the second call, are you  
15 the one that talks to her?

16          A     No, I was in the bathroom. So I assume Derecia  
17 had answered the phone for her.

18          Q     Okay. But you didn't see that one because  
19 you're in the bathroom?

20          A     Yeah.

21          Q     Is that yes?

22          A     Yes.

23          Q     At the -- as you're in the bathroom, what's the  
24 next thing that you become aware of?

25          A     Well, you know, I hear -- like, I hear



1 commotion. I hear, like, a female scream or something like  
2 that, but I can't really just say clearly because it was,  
3 like, muffled. So -- but I heard, like -- I heard a female  
4 scream. Like, she said something like, No, or something.

5 Q Could you -- let me interrupt you, if I could.  
6 When you said you hear a commotion, what did it sound like?

7 A Like, a little scuffle I guess or something.

8 Q Okay. And then you said you heard a scream?

9 A Yeah, like -- it sounded to me like it was  
10 Stephanie that said it. She said, No, or something like that.

11 Q Okay. It sounded like Stephanie's voice rather  
12 than Derecia or Devonian's?

13 A Yeah. It wasn't -- it wasn't Derecia or  
14 Devonian.

15 Q Okay. And it -- you think she said, No?

16 A Yes.

17 Q What did you hear after that?

18 A I heard a little pop noise because it didn't  
19 sound loud where I was at, and then I heard, like, two --  
20 well, two gunshots.

21 Q Okay.

22 A And then after that, probably, like, a second or  
23 two later, I heard, like, two more, and that's when Devonian  
24 came and ran in the bathroom where I was at.

25 Q Could you hear Devonian at all after those first

1 two gunshots till the time she arrived in the bathroom? Like,  
2 was she yelling, or could you hear running or anything like  
3 that?

4 A No, I guess she, like -- somebody was hitting  
5 the wall because I heard a wall -- like, somebody bumped into  
6 the wall. I don't know if it was Devonian or somebody else.

7 Q You could hear a sound on the walls?

8 A Yes.

9 Q And you said Devonian comes running into the  
10 bathroom, which is where you are?

11 A Yes.

12 Q And we've seen actually a diagram of your  
13 apartment. Can you just tell us which bathroom that you're  
14 talking about.

15 A The bathroom in the bedroom.

16 Q In the master bedroom?

17 A Yes.

18 Q Okay. So Devonian comes in, and what happens,  
19 you know, once she gets to that location?

20 A At, like -- when she come in the bathroom, she  
21 looked scared. Well, at the same time she coming into the  
22 bathroom, I'm pulling my -- I'm pulling up my pants trying to  
23 whatever.

24 Q Okay.

25 A But she looked scared, and then I asked her,

1 What's going on? And then, like, right when I said that,  
2 somebody shot through the door.

3 Q Through the bathroom door?

4 A Yeah, because the door was -- she closed the  
5 door behind her when she came in.

6 Q Okay. When the shot comes through the bathroom  
7 door, does it hit anything in the bathroom or yourself or  
8 Devonia?

9 A No, but after the fact, like -- well, I know it  
10 hit, like, my clippers that was on the sink.

11 Q Okay.

12 A And then the wall right there, right behind the  
13 sink or somewhere right there. I'm not for sure. I don't  
14 remember exactly.

15 Q After that shot comes through, what happens?

16 A Devonia, like -- Devonia jumped up, and I guess  
17 she went to the door, and as she opened the door, she gets  
18 shot.

19 Q Where did she get shot on her body?

20 A On, like, her stomach.

21 Q Okay.

22 A Her stomach area, like right --

23 Q And did you hear that shot and see the shot?

24 A No, I didn't actually see the shot. I heard it  
25 though, and she fell.

1 Q You could see her fall?

2 A Yeah, like -- yeah, because she was laying down.  
3 Like, I see -- like, where she was laying, I could see, like,  
4 the top of her head.

5 Q Okay. What happens after that?

6 A Well, that's when I walked over there to her or  
7 stepped over there to her, and I was, like -- I asked her was  
8 she all right.

9 Q And when you're stepping to her, she's on the  
10 ground?

11 A Yeah, she on the ground, like, holding her  
12 stomach.

13 Q Okay. Did you, like, bend down to her, or were  
14 you still standing up do you think?

15 A I was standing up, but I was bent over.

16 Q Okay.

17 A Because I lifted up her shirt to see where she  
18 got shot at.

19 Q Could you see the wound on her -- on her body?

20 A Yes.

21 Q Okay. And was she holding it with her hands?

22 A Well, she was at first until I lifted up her  
23 shirt, and then I guess she -- I don't know if she went back  
24 to holding it or not, but --

25 Q Okay. What did you do?

1           A     Well, I just told her -- I just told her that  
2 she would be -- I think I told her she would be all right, and  
3 I want -- well, I told her I'm already on the phone with  
4 9-1-1. So I just told her to sit there, be still, and they  
5 coming.

6           Q     Okay. So did you have a phone with you in the  
7 bathroom, or how did you get the phone for 9-1-1?

8           A     Because the cordless phone was on the bathroom  
9 sink because we got, like -- we had, like, three cordless  
10 phones.

11          Q     Okay. So you grabbed a phone, or it was in the  
12 bathroom?

13          A     It was in the bathroom already.

14          Q     And you dialed 9-1-1. Do you know when you  
15 actually started entering the digits?

16          A     Like what time?

17          Q     Well, no. Was it -- you know how you said you  
18 checked and lifted up her shirt, was it kind of before that or  
19 after that, or do you even know?

20          A     It was probably, like, around the same time I  
21 was, like, bending over to look at her.

22          Q     Okay. And you actually speak to 9-1-1?

23          A     Yes.

24          Q     As you're speaking to the 9-1-1 operator, do you  
25 stay there with Devonia?

1           A     No, I was walking out of the room as I was on  
2 the phone.

3           Q     And where do you go?

4           A     I went to go look at my other kids and make sure  
5 they was -- they was all right. I went to go look at my other  
6 kids, make sure they was all right.

7           Q     Then where did you go?

8           A     And then I went down the hallway back towards  
9 the living room.

10          Q     And what did you see?

11          A     I saw Derecia sitting on the couch with half her  
12 face gone.

13          Q     Okay. Sir, I'm going to play just a little  
14 portion of the 9-1-1 to see if you recognize your voice, and  
15 then we'll play the whole thing if you do.

16          A     Okay.

17          MS. WECKERLY: And for the record, this is 323.

18                (State's Proposed Exhibit No. 323 played.)

19 BY MS. WECKERLY:

20          Q     Sir, do you recognize that as your voice calling  
21 9-1-1?

22          A     Uh-huh.

23          Q     Do you need to hear more, or do you recognize  
24 it?

25          A     Yeah, it sounded like me. Yeah.

1 Q Okay. We're going to resume playing that.

2 THE CLERK: Are you admitting it?

3 MS. WECKERLY: I think it's admitted by -- Isn't this  
4 admitted by stipulation?

5 THE COURT: Any objection?

6 MR. LANGFORD: None from Mr. Mason.

7 MR. SGRO: No, Your Honor.

8 THE COURT: It'll be received.

9 (State's Exhibit 323 admitted.)

10 MS. WECKERLY: Thank you.

11 (State's Exhibit No. 323 played.)

12 BY MS. WECKERLY:

13 Q Sir, are you okay?

14 A Uh-huh.

15 Q After you called 9-1-1, do you have any idea in  
16 your head how long it was until police arrived?

17 A Probably, like, two minutes or something like  
18 that.

19 Q Did you call any of your friends or family,  
20 anybody like that before you called 9-1-1?

21 A No.

22 Q When the police got there, are you the one that  
23 made contact with them?

24 A Yes.

25 Q What -- what was your -- what was your

1 interaction with them? What happened with -- did you say who  
2 you were, or did you meet them outside? How did that work?

3 A Well, they was coming down the street, and I was  
4 in the middle of the street, and I flagged them down.

5 Q Okay. And once you flagged them down, what  
6 happened?

7 A Well, he got out the car -- well, I told him,  
8 I'm the one that called y'all.

9 Q Okay.

10 A Then he got out the car because he was asking me  
11 if -- was they in the house. I'm, like, No, ain't nobody in  
12 the house but my kids.

13 Q And then did you take -- did he walk with you up  
14 to the apartment?

15 A Well, he went in. I didn't go in.

16 Q Where did you wait?

17 A I was just, like, in the parking lot.

18 Q Okay. Once that officer goes in, do you have  
19 any more contact with the police, or what happened next that  
20 you saw?

21 A Well, probably like a couple more police cars  
22 pulled up by then, and I know I end up going, like, back in  
23 the house probably, like, 30 seconds after that.

24 Q And what did you do when you went back in the  
25 house?



1           A     Well, the police was bringing my other kids down  
2 the hallway, and I stopped him from doing that because I'm,  
3 like, I don't want them to see they mother like that.

4           Q     So what did you do?

5           A     I went and grabbed a blanket, and then once I  
6 grabbed the blanket and lift the blanket up and we walked out  
7 the living room and walked outside.

8           Q     Okay. And just so I'm understanding, are you,  
9 like, holding up the blanket so --

10          A     Yes, I'm holding the blanket up like this.

11          Q     So they can't see?

12          A     Yes.

13          Q     And so the kids all leave?

14          A     Yes, everybody outside by now.

15          Q     Did you see paramedics arrive for Devonian?

16          A     Yes.

17          Q     And did you -- were you -- did you talk to her  
18 at all when the paramedics arrived, or were you kind of off in  
19 another area?

20          A     Well, I was outside by the -- by the police cars  
21 by then.

22          Q     And as you were waiting by the police cars, do  
23 you remember if you called anybody?

24          A     Well, before I got to the police -- like, before  
25 I got to the police cars and when I went back outside, that's

1 the first thing I did was call Stephanie phone.

2 Q And did you call her on the landline, or was  
3 this on a cell phone?

4 A I called her on my cell phone.

5 Q Do you remember the number?

6 A My cell phone number?

7 Q Uh-huh.

8 A (702)609-4483 I believe.

9 Q Okay. And tell me what you told Stephanie or  
10 what you said.

11 A Well, when she first actually picked up the  
12 phone, I'm, like, How could you do that? Like, How can you do  
13 that to us? And she said -- I can't remember her exact words,  
14 but she had basically denied it though. Like, she denies --  
15 she denied that she had anything to do with it.

16 Q Okay. Did she give you a description of anyone  
17 who was involved?

18 A She said when she came to knock on the door two  
19 dudes came from around the corner, and by the time Derecia  
20 opened the door, they was, like, at the door with her again,  
21 and they pushed her in the house or something like that she  
22 said.

23 Q Did she describe the two men?

24 A No.

25 Q At all?

1           A     No, I think she just said, two black, but she  
2     ain't describe them, like, in detail, nothing like that.

3           Q     Okay. So based on your conversation with her,  
4     did you know who she was talking about?

5           A     No.

6           Q     After you have that -- let me ask you this.  
7     When you're talking to her at that time, did you threaten her?

8           A     Yes.

9           Q     And, I mean, was it a threat to kill her, a  
10    serious threat?

11          A     Yeah, I told her I'm going to kill her and her  
12    whole family.

13          Q     Okay. And was the conversation, like, 30  
14    seconds, do you think, or longer?

15          A     It was -- I don't think it was that long, but it  
16    was -- because I called her, like, a couple times --

17          Q     Okay.

18          A     -- before the police took my phone actually.

19          Q     Did a police officer at the scene hear you  
20    calling her?

21          A     Yeah, they heard our -- my conversation. So  
22    that's why they took my phone.

23          Q     Okay. And so at some point the officer takes  
24    the phone away from you?

25          A     Yes.

1           Q     How long would you say you were at the scene  
2 that morning?

3           A     I think they let me leave, like, around 5 or 6  
4 something.

5           Q     In the -- and so this is in the morning, right?

6           A     Yes.

7           Q     Where did you go, if you remember?

8           A     Well, because my brother and them was up the  
9 street behind behind the yellow line, and I walked up there.  
10 I walked up there and left with them.

11          Q     You walked up there and what?

12          A     Left with them. Left with my brothers and a  
13 couple of my friends.

14          Q     Where did you go?

15          A     I went to my brother house.

16          Q     Okay. And at your brother's house, what did you  
17 do?

18          A     I kept calling Stephanie.

19          Q     Okay. Is it more of the same kind of threats  
20 and, you know, I guess, like, saying that you're going to kill  
21 her, that sort of thing?

22          A     Yes.

23          Q     At any point do you talk to anyone other than  
24 Stephanie?

25          A     I don't know who exact -- the name of the

1 person, but it was one of Stephanie daughter's boyfriend.

2 Q Now, during these calls that are I guess about 6  
3 in the morning, this series of calls --

4 A Yes.

5 Q -- does -- do you get any information from  
6 Stephanie or anyone else during that morning?

7 A Stephanie daughter boyfriend told me it was  
8 somebody named --

9 MR. SGRO: Objection.

10 MR. LANGFORD: Objection. Hearsay.

11 THE COURT: Sustained.

12 BY MS. WECKERLY:

13 Q Okay. I don't want to know exactly what he  
14 said, but you get some -- someone tells you about -- someone  
15 gives you some information, correct?

16 A Yes.

17 Q Okay. And is this in that, like, series of  
18 phone calls at about 6 in the morning?

19 A Yes.

20 Q Okay. After that, do you go anywhere?

21 A After I leave my brother house?

22 Q Yeah.

23 A Yeah, I went to Stephanie house.

24 Q Okay. And do you see Stephanie?

25 A No.

1 Q Did you see anybody?

2 A No, I know the police was up there though.

3 Q Okay. And where do you go after that?

4 A I went back to my brother house.

5 Q And do you spend the rest of the day with your  
6 brother?

7 A Yeah, until, like -- probably, like, around 8  
8 o'clock at night.

9 Q And where -- do you go somewhere at 8?

10 A I left with my other brother, and I -- because I  
11 ain't gonna spend the night at my other brother house that  
12 night.

13 Q Okay. Is there a point where you go and see  
14 Devonia at the hospital?

15 A Oh, yeah. Yeah, I went -- I -- we went there.  
16 I forgot about that. I went there. I went to the hospital,  
17 like, around probably, like, 10 that morning I think.

18 Q Okay. That same morning, on the 7th?

19 A Yes, that Saturday morning.

20 Q Okay. So tell me about that. Where do you go?

21 A To UMC.

22 Q And did you know where she was, or how -- how  
23 did you figure out where to go?

24 A Well, I just went to the -- whatever it is, I  
25 think, the trauma, either the -- it wasn't the emergency room.

1 It was, like, the trauma part of the hospital I believe.

2 Q Okay.

3 A And then I know one of the doctors -- I heard  
4 one, like -- one of the doctors says --

5 MR. SGRO: Objection to what the doctor said, Your  
6 Honor.

7 THE COURT: Well, I don't know that it's  
8 inadmissible, but --

9 BY MS. WECKERLY:

10 Q Based on what the doctor said, did you go to a  
11 particular location?

12 A Yes.

13 Q And what did you find there?

14 A Well, Devonian, she was in the hospital bed.

15 Q She was in the hospital bed?

16 A Yeah.

17 Q Was she awake? Was she conscious?

18 A She asleep.

19 Q Okay. Did you tell her anything?

20 A Well, I just told her I love her.

21 Q Did you tell her, Look, this is what you need to  
22 tell the police about who did it?

23 A No, she wasn't even woke.

24 Q Did you tell her what the people were wearing  
25 who shot her and her mom?

1           A     No, because I didn't even see them.

2           Q     Okay. Did you tell her how to answer any  
3 questions to the police at that time?

4           A     No, I didn't even -- I ain't talk to Devonia  
5 till, like, a month after this all happened.

6           Q     Okay. When -- as you're there in her room, did  
7 you say or were you allowed to say what happened?

8           A     No, the security guard came up there and told me  
9 that I wasn't supposed to be in there.

10          Q     Did you leave?

11          A     Yeah, I kissed Devonia on the forehead and just  
12 told her I'll be back.

13          Q     Okay. Was there, like, a big problem there, or  
14 was it, once he told you to leave, you left?

15          A     Yeah, I left right after he told me to leave.

16          Q     Okay. And it's -- it's -- I guess during this  
17 initial time period that I'm talking about, you -- do you  
18 continue -- I don't want to know what they said, but do you  
19 continue to make phone calls to Stephanie's number?

20          A     Yes.

21          Q     At some point, do you get a different phone  
22 number that you call?

23          A     Yes.

24          Q     Do you remember what date that was?

25          A     Oh, the date I got the number?



1 Q Yes?

2 A On the 7th.

3 Q Okay. And is there a date that you call the  
4 number?

5 A On the 7th, the 7th of August.

6 Q Okay. For Stephanie or for a different number?

7 A Oh, for the different number.

8 Q Do you remember writing some notes for the  
9 police?

10 A Yes.

11 MS. WECKERLY: Court's indulgence for one minute,  
12 please.

13 Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 BY MS. WECKERLY:

16 Q Sir, I'm showing you what's been marked as  
17 State's Exhibit No. 278. Do you recognize this piece of  
18 paper?

19 A Yeah.

20 Q Is that your handwriting on it?

21 A Yes.

22 Q How did this -- how did this piece of paper come  
23 into existence? What happened with that?

24 A Well, I remember -- I believe detective --

25 THE COURT: You're going to have to speak into the

1 microphone, sir.

2 THE WITNESS: Okay. I believe Detective Bonnie (sic)  
3 -- or I'm not sure if I'm pronouncing his last name right, but  
4 he told me to write that.

5 BY MS. WECKERLY:

6 Q Okay. And had you called him about something?

7 A Yeah.

8 Q What did you call him about?

9 A I called him and told him, like, I been --  
10 whoever the number is that they gave me, that we've been  
11 texting each other back and forth, and I've been calling the  
12 number.

13 Q Okay. So you called a particular number, and  
14 you wrote it on this piece of paper, right?

15 A Yes.

16 Q What's the number that you told them -- or that  
17 you called?

18 A (909)233-0860.

19 Q Okay. And that number, you dialed yourself, off  
20 your phone?

21 A Yes.

22 Q And when -- when you called that number, did  
23 someone answer?

24 A Yes.

25 Q Who -- well, did you say who you were?

1           A     Eventually. I don't think I said it just right  
2 offhand.

3           Q     What did you say at first?

4           A     I told them, like -- I ain't tell them my real  
5 name, but I told them, like, This is Cory, or something like  
6 that, but --

7           Q     Did the person identify themselves, or did you ask  
8 who they were?

9           A     Yeah, I believe I asked, like, Who is it, but I  
10 don't think they ever, like, told me a name.

11          Q     Okay. So no one ever told you a name. And what  
12 happened when the person answered the phone? What did you  
13 say, besides not using your name?

14          A     Well, like, I know I told him, like, I know you  
15 one of the persons that -- you just shot my girlfriend and my  
16 daughter.

17          Q     And what did the person answer?

18          A     His exact words I can't remember, but, like,  
19 it's been so long. So -- and then, like, all during -- that  
20 whole day was, like, very stressful for me. So.

21          Q     Okay. Can I -- can I ask you to take a minute  
22 and just review what you wrote here for one second.

23               MS. WECKERLY: And for the record, this is 278, which  
24 the State will move to admit.

25               MR. LANGFORD: No objection.

1           MR. SGRO: I mean, it's a hearsay document, Your  
2 Honor. I'll submit it.

3           THE COURT: Well, it's hearsay. If you want to  
4 object to it, I'll sustain the objection. He can use it to  
5 refresh his recollection.

6           MR. SGRO: Of course. Yes, I object to its  
7 admission.

8           THE COURT: All right. Sustained.

9 BY MS. WECKERLY:

10           Q     After getting a chance to read that over, does  
11 that refresh your recollection a little bit about the back and  
12 forth in the conversation?

13           A     Yeah.

14           Q     Okay. So walk us through what was said in the  
15 conversation.

16           A     Like, from the phone call?

17           Q     Yes.

18           A     Well, like, I asked him to -- whoever he was on  
19 the phone, I'm, like, They -- I'm, like, They keep giving me  
20 your number saying you the person.

21           Q     And what did the person answer?

22           A     At first he was like, No, that's not me. I  
23 ain't had nothing to do with that. They trying to -- they  
24 trying to put the blame on him instead of them. Like, I guess  
25 talking about Stephanie -- Stephanie -- Stephanie son-in-law I

1 guess.

2 Q Okay. And then what did you say?

3 A My exact words?

4 Q Yes.

5 A I said, That's bullshit. You one of them  
6 niggers.

7 Q Okay. And then what did the other person say?

8 A I don't know if that time he said that or he  
9 denied that -- he denied it some more, but I know eventually  
10 in the conversation he told me he's a gangsta and do my  
11 investigation.

12 Q Okay. Do your investigation and, like, see what  
13 happens, or do your investigation and -- or is that all he  
14 said?

15 A Like, that -- I believe he hung up the phone  
16 after he said that.

17 Q And was there any other texts or conversations  
18 with this 909 number that you recall?

19 A Yes.

20 Q And tell us about those.

21 A The text message -- I know I -- I can't remember  
22 my exact text, what I sent, but I know I threatened him and  
23 told him, If I find out who you is and all that, I'm going to  
24 kill you on site, and then I know -- I don't know which text  
25 message he responded back to, but he was, like -- he said, Ha

1     ha ha, fuck that bitch.

2             Q     Did you -- I'm going to show you the back of  
3     278. And it looks like there's -- is this also your writing,  
4     sir?

5             A     Yeah.

6             Q     Okay. Looking at that, what do you have --  
7     well, actually I should ask you, do you remember writing that?

8             A     Yes.

9             Q     Okay. Was that also something that you wrote  
10    for Detective Bunting?

11            A     Yes.

12            Q     And was this also a number that you dialed?

13            A     Yes, I think -- I dialed this number, but I  
14    don't believe nobody ever answered the phone to this number.

15            Q     Okay. And what's the -- what's the number you  
16    dialed here?

17            A     (512)629-0041.

18            Q     Okay. And you think you dialed that one, but no  
19    one ever answered it?

20            A     No.

21            Q     When -- after this incident, sir, you eventually  
22    moved out of that apartment?

23            A     Yes.

24            Q     And did you take the TV you had with you?

25            A     Yes.

1           Q     Was -- did you eventually find something in the  
2 TV or find something that you gave to the police?

3           A     Yes.

4           Q     Tell -- tell me about when that was, to your  
5 recollection.

6           A     It was probably, like, around December --  
7 probably, like, December 2nd or 3rd, 2010.

8           Q     Okay. So tell us what happened around that  
9 date.

10          A     Well, Derecia mother the one that brought it to  
11 my attention.

12          Q     What did you see?

13          A     Because she showed me, like, the bullet fragment  
14 because she said it fell out the TV.

15          MR. SGRO: Objection to what she said, Your Honor.  
16 Move to strike.

17 BY MS. WECKERLY:

18          Q     When you were with Derecia's mother --

19          THE COURT: Time out.

20 BY MS. WECKERLY:

21          Q     -- did she have something with her, or, like,  
22 how did you -- well, did you give something to the police on  
23 that day?

24          A     Yes.

25          Q     Who did you get it from?

1           A     I got it from Wanda Newman.

2           Q     Okay. And when you got whatever that thing was  
3 from Wanda Newman, did you get it from her hand or from, like,  
4 her person, or how did you get it?

5           A     No, she had it in a -- like, a sandwich bag.

6           Q     In a sandwich bag. And then she gives it to  
7 you?

8           A     Yes, she gave it to me.

9           Q     And then you called one of the detectives?

10          A     Yes, I called Detective Bonnie or --

11          Q     Bunting?

12          A     Bunting.

13          Q     Okay. And does the detective come and pick up  
14 whatever it was?

15          A     Yeah -- well, he ain't actually come. He sent  
16 -- I guess he sent somebody from, I guess, like, the crime  
17 scene unit because they came and took pictures, and they took  
18 it.

19          Q     Okay. And what was the thing in the bag?

20          A     Like, a bullet fragment, the actual bullet.

21          Q     Okay. And that's what you handed over?

22          A     Yeah.

23          Q     Do you remember them ever taking apart your TV?

24          A     I know he said he did, but I didn't -- I  
25 didn't --



1 MR. SGRO: Objection to what he --

2 BY MS. WECKERLY:

3 Q Okay. Were you present --

4 THE COURT: Well, that's not offered for the truth of  
5 the -- obviously.

6 BY MS. WECKERLY:

7 Q Were you ever present when someone from crime  
8 scene or Bunting took apart a TV -- your TV actually?

9 A No, I didn't see it.

10 Q Okay. Do you remember ever showing the  
11 detectives messages on your actual cell phone?

12 A Yes.

13 Q And when did that occur, to the best of your  
14 recollection?

15 A Like, when the text message was sent?

16 Q That's a good question. When were they sent,  
17 first?

18 A I'd say that Sunday, on the 8th.

19 Q Okay. And when did you show the detectives?

20 A If it wasn't the following day, Monday, it was  
21 Tuesday.

22 Q Okay.

23 A It was -- it was close though. I'm not for sure  
24 though.

25 Q And did they take your phone, or how did they --

1 did they film it, or do you know how they looked at the  
2 messages or documented it?

3 A I know he looked at it, and then he, like, wrote  
4 them down, and he took a picture of it.

5 Q And I'm going to show you State's 294, what's  
6 been admitted as 294.

7 MR. DIGIACOMO: They're going to stipulate, but we  
8 didn't offer it.

9 MS. WECKERLY: Well, we need to put it up though.

10 MR. DIGIACOMO: I have it up.

11 MS. WECKERLY: 294, that was stipulated for the  
12 admission. State moves to admit 294.

13 MR. SGRO: Yes, we've agreed, Your Honor.

14 THE COURT: Okay. So we're --

15 (State's Exhibit 294 admitted.)

16 MS. WECKERLY: Okay. Now, let me have that paused  
17 for one second.

18 BY MS. WECKERLY:

19 Q Do you recognize that?

20 A Yes.

21 Q Do those look like the messages that were sent  
22 to your phone?

23 A Yes.

24 Q And are you able to see the phone number that  
25 sent those messages?

1           A     Yes.

2           Q     What's the number?

3           A     (512)629-0041.

4           Q     And was that one of the numbers that you wrote  
5 down on your handwritten statement for Detective Bunting?

6           A     Yes.

7           Q     And what is the -- what is the message that was  
8 sent?

9           A     It was, K, bitch, fuck you, ha ha.

10          Q     Okay. Did you answer that?

11          A     Yeah, I probably replied to it.

12          Q     Similarly or --

13          A     I don't know my exact text, but I know I  
14 threatened him.

15          Q     Okay. And all of these messages came from --  
16 came from your phone. You showed those to Detective Bunting?

17          A     Yes.

18          Q     Sir, during this time period of August the 6th  
19 and 7th, did you have a gun in your apartment?

20          A     No.

21          Q     And did you shoot anyone on the 6th or the 7th?

22          A     No.

23          Q     Are you responsible at all for any of the  
24 injuries to Devonian or Derecia?

25          A     No.

1           Q     In the search of the apartment, there -- the  
2 police found narcotics, cocaine; you're aware of that?

3           A     Yes.

4           Q     What -- I guess what is your -- how was that in  
5 the apartment?

6           A     I don't know how they got there.

7           Q     Okay. You don't know anything about that?

8           A     No.

9           Q     After these events took place, were you charged  
10 with a crime associated with this incident?

11          A     Yeah.

12          Q     And do you know what the charge was?

13          A     It was child -- child abuse or child neglect  
14 with substantially bodily harm, then just child neglect and  
15 trafficking.

16          Q     Okay. And are -- is that case -- do you know  
17 what the status of it is or what's happening with that case?

18          A     I'm still going to court.

19          Q     Okay. And is that case being continued till the  
20 end of this trial?

21          A     Yes.

22          Q     Do you have any other cases that are pending?

23          A     Yes.

24          Q     Tell me about the other one, what -- the charges  
25 I guess.

1           A     Destruction of property or -- it's destruction  
2 of -- I don't know the exact charge, but it's, like,  
3 destruction of property or something like that.

4           Q     And is that one similarly being continued until  
5 the end of this case?

6           A     Yes.

7           Q     After these events took place in August, did you  
8 have to appear in Family Court and go through proceedings  
9 there as well?

10          A     Yes.

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

13          THE COURT: Mr. Sgro.

14          MR. SGRO: Yes, sir.

15                       CROSS-EXAMINATION

16 BY MR. SGRO:

17          Q     Good afternoon, sir.

18          A     Good afternoon.

19          Q     Mr. Mayo, I want to start with sort of where you  
20 left off. You have some cases that are currently pending  
21 against you, right, some charges against you?

22          A     Yes.

23          Q     One of them is for drug trafficking; is that  
24 right?

25          A     Yes.

1 Q And that's for crack cocaine?

2 A I don't know -- I don't know exactly what it's  
3 for, but I know it's trafficking.

4 Q Well, would it refresh your memory if I showed  
5 you the docket for your case?

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

7 THE COURT: Yes, if he's familiar with the docket.

8 THE WITNESS: Yeah, I've never seen it.

9 BY MR. SGRO:

10 Q Does it look like -- according to this document  
11 -- the charge is trafficking in cocaine?

12 A Yes, that's what it -- yeah.

13 Q Now, you just told the jury that the cocaine  
14 that was in your house, you don't know where it came from,  
15 right?

16 A No, I don't.

17 Q Okay. Did you tell that to the DAs before they  
18 charged you with trafficking?

19 A Like, we never had a conversation about that.

20 Q You know trafficking is a serious crime; it  
21 carries prison time?

22 A Yes.

23 Q Okay. Despite you telling the DAs that you  
24 don't know where the cocaine came from, they still are  
25 charging you with trafficking, right?

1           A     Yes, that's the charge.

2           Q     Would you agree that it seems like they don't  
3 believe your version?

4           MS. WECKERLY:  Objection.

5           THE COURT:  Sustained.

6 BY MR. SGRO:

7           Q     You also got charged with child neglect with  
8 substantial bodily harm; is that right?

9           A     Yes.

10          Q     And all of these charges, including allowing  
11 children to be present where drug laws are being violated, all  
12 those charges have been postponed now for several years,  
13 right?

14          A     Yes.

15          Q     And it's all being postponed until after you --  
16 until this trial is over, right?

17          A     I guess.  I'm not for sure.  I don't know.

18          Q     Well, do you believe that by testifying in this  
19 case it helps you in the cases that you're facing right now?

20          A     No.

21          Q     You don't think it helps you?

22          A     No.

23          Q     Do you think that the DA indefinitely postpones  
24 cases all the time, or do you think you're getting some --

25          A     I don't know how the DA work.

1           Q     Okay. Let me finish my question, okay. Do you  
2 believe that the DA is just postponing these cases  
3 coincidentally and that they're not giving you any sort of favor  
4 because you're testifying in this case? Is that what you  
5 think?

6           A     I don't think they giving me no type of favor.

7           Q     Okay. You also have I think you said some kind  
8 of destruction of property, but it's actually tampering with a  
9 vehicle, which is a felony, right?

10          A     No, it was a misdemeanor.

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

12          THE COURT: Yes.

13 BY MR. SGRO:

14          Q     I'm showing you a court document. Does it look  
15 like that tampering with a vehicle charge you're charged with  
16 is a felony?

17          A     That's what it say, but my court papers say it's  
18 a misdemeanor.

19          Q     So this court document is a mistake?

20          A     Or my court paper is a mistake, one of them, but  
21 when I was charged with it, it was a misdemeanor.

22          Q     Okay. In this particular felony, if I'm right,  
23 this felony was charged in June of 2011, right?

24          A     Yeah, that sounds about right.

25          Q     About nine months after the events we're talking



1 about, right?

2 A Yes.

3 Q And you haven't faced anything in this case yet  
4 either, right?

5 A No, we still going to court.

6 Q Okay. Do you think that the fact that the DA is  
7 postponing this felony case as well that it is a favor to you  
8 or a benefit to you or no?

9 A No.

10 Q Okay. You were asked some questions by the DA  
11 today, right?

12 A Yes.

13 Q You have been interviewed by police in this  
14 case, right?

15 A Yes.

16 Q You've written out a handwritten statement?

17 A Yes.

18 Q And you've also dealt with CPS, right?

19 A Yes.

20 Q And you dealt with police officers at the scene.  
21 Remember when you were outside calling Stephanie Cousins,  
22 there were police officers there?

23 A Yes.

24 Q And with each of these different people you've  
25 dealt with, you've been asked questions sort of like the ones

1 you've been asked here today, right?

2 A Yes.

3 Q Do you remember being asked about Stephanie  
4 Cousins?

5 A Being asked about her like what?

6 Q Okay. Good question. When you did your  
7 voluntary statement, when you spoke to the police and it was  
8 tape-recorded, okay -- so just to give you the right context,  
9 you're sitting outside. At some point, your phone gets taken  
10 away, and shortly after that, you'd be sitting with  
11 detectives, and the tape recorder is on, remember that?

12 A Yes.

13 Q Okay. When the tape recorder is on, you were  
14 asked about Stephanie Cousins, right?

15 A Yes.

16 Q And you told the police that she was coming over  
17 probably to get some weed; do you remember that?

18 A Well, I told her she was coming to bring me some  
19 weed.

20 Q Well, and I think that's sort of what I need to  
21 clear up.

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

23 THE COURT: Yes.

24 MR. SGRO: Page 6, Counsel.

25 BY MR. SGRO:

1           Q     So I'm showing you your voluntary statement. Do  
2 you see where it says here 6:21 a.m.?

3           A     Yeah.

4           Q     On August 7th, right?

5           A     Yes.

6           Q     Look at page 6. You see the question, But she  
7 calls at 3 o'clock. What did she want?

8           A     And you said, I know she wanted some -- probably some  
9 weed, right?

10          A     Yeah, that's what it say, but --

11          Q     Do you disagree with that?

12          A     She was coming to bring me some weed.

13          Q     Now, you would later -- you would later have an  
14 interview with CPS. Do you remember telling CPS that  
15 Stephanie was going over to bring you some weed?

16          A     Do I remember? Just not offhand. I don't  
17 remember our conversation went down like that. So.

18          Q     All right. You agree with me, at least on this  
19 transcript, that is says Stephanie is coming over to buy some  
20 weed, right?

21          A     Yeah, but I didn't say -- I didn't say, Buy no  
22 weed.

23          Q     No, you said, She probably wanted some weed.  
24 That's what the words on the paper say, right?

25          A     That's what it say on the paper.

1 Q Okay. Do you remember my investigator coming to  
2 see you, a guy named Eiffel?

3 A Yeah.

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

5 THE COURT: Yes.

6 MR. SGRO: Actually, I need to have it marked.

7 THE COURT: Right. You've got to have it marked.

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

9 THE COURT: Yes.

10 BY MR. SGRO:

11 Q I'm showing you what's been marked as Defense  
12 Exhibit T, like Tony. That's Eiffel, isn't it?

13 A Yes, I believe so.

14 Q He's a tall African American, probably maybe --  
15 maybe as tall as you, maybe a little taller, right?

16 A Yes.

17 Q And he asked you questions, too, right?

18 A Yeah.

19 Q And you told him that Stephanie came over to  
20 give you -- sell you weed, not buy weed, right?

21 A Yes.

22 Q Now, you've been asked a lot of questions in  
23 this case by a lot of people about drugs; would that be fair?

24 A Somewhat.

25 Q CPS asked you if you were selling drugs out of

1 your residence, right?

2 A Something like that but that ain't -- yeah, I  
3 guess that you could say that.

4 Q Okay. Well, one of the charges that you face  
5 right now is having kids in a place where drugs are being  
6 sold?

7 A There was no drugs being sold.

8 Q Okay. We've got to do this one at a time. One  
9 of the charges you have right now involves having drugs in a  
10 place where kids are there, right? That's one of your  
11 charges; is that right?

12 A Yeah, but I don't think -- I don't tie it to  
13 that though.

14 Q Okay.

15 A AS far as my knowledge, it's for what happened  
16 with Devonia.

17 Q Okay. I guess all I'm looking for is, do you  
18 remember telling CPS you did not sell drugs out of the house?

19 A Yeah.

20 Q You've told the DA you didn't sell drugs out of  
21 that house, right?

22 A Yeah.

23 Q And despite -- despite that, you're still being  
24 charged with this crime of selling -- of allowing your kids to  
25 be present where drugs are being sold, right?

1           A     Yes, that's what you keep saying, but, yes.

2           Q     Okay. And do you remember an officer named  
3 Huffton(sic)?

4           A     No.

5           Q     Do you remember an officer named Shoemaker?

6           A     The last name sound familiar.

7           Q     You were being asked -- remember while you were  
8 outside on your cell phone and you're having conversations  
9 with Stephanie Cousins, you're also talking to various police  
10 officers, right?

11          A     Not when I was on the phone, but --

12          Q     Did you admit to Officer Huffton that you were  
13 selling drugs out of the house?

14          A     No.

15          Q     Are you aware that he's testified already in  
16 this case about what you told him about that?

17          A     No, I never said I was selling drugs.

18          Q     Okay. How about officer -- or Detective, at  
19 that time, Shoemaker, did you ever tell him you were selling  
20 drugs?

21          A     No.

22          Q     You were asked questions about drugs in the  
23 Grand Jury as well, right?

24          A     Yes.

25          Q     And in fact, the Grand Jury is where you to

1 swear to tell the truth as well, just like you did here,  
2 right?

3 A Yes.

4 Q You told the Grand Jury --

5 MR. SGRO: It's page 28, Counsel.

6 BY MR. SGRO:

7 Q You told the Grand Jury, under oath, There was  
8 no drugs in there. Do you remember saying that?

9 A Not drugs what they said. It was, I had  
10 marijuana there.

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

12 THE COURT: Yes.

13 BY MR. SGRO:

14 Q Do you see the question there? Do you remember  
15 Ms. Weckerly questioning you in the Grand Jury?

16 A Yes, I remember the Grand Jury, but I don't  
17 remember it word for word, but --

18 Q No. Do you remember that prosecutor asking you  
19 questions?

20 A Yeah.

21 Q And you remember swearing to tell the truth?

22 A Yeah.

23 Q And did she ask you, Were any drugs taken? And  
24 you said, There's no drugs in there. Did I read that right?

25 A Yes, that's what it say.

1           Q     Okay. And then later you said, Well, I did have  
2 a sack of marijuana, right?

3           A     Yeah, I did.

4           Q     So you told the Grand Jury under oath that there  
5 were no drugs in your residence?

6           A     It's because that's -- okay. I don't consider  
7 marijuana drugs. So that's not what we was talking about.

8           Q     Let's set the marijuana aside for a second. How  
9 do you feel about crack cocaine? Is that a drug?

10          A     Yeah.

11          Q     Did you have crack cocaine in your house?

12          A     No.

13          Q     You didn't?

14          A     No.

15          Q     So if there's pictures that show a bunch of  
16 rocks of crack cocaine --

17          A     I don't know how it got there.

18          Q     Do you remember, you were outside, and at one  
19 time -- at one point in time, you interacted with another  
20 homicide detective named Barry Jensen, who has also testified  
21 here; do you remember him?

22          A     No.

23          Q     White guy, kind of heavysset, wears one of those  
24 hats?

25          A     The only detective I remember is Bonnie.



1           Q     Do you remember there came a time when you asked  
2 for a pair of shoes because you were outside barefoot?

3           A     Yeah, they brought my shoes outside.

4           Q     Do you remember when rock cocaine fell out of  
5 your shoes when you went to go put them on?

6           A     I put my shoe on. Then I felt something in my  
7 shoe, and I took my shoe back off, and I put it on the  
8 sidewalk, whatever was in my shoe.

9           Q     Do you remember that the stuff that you -- let's  
10 say that that's right. The stuff that you felt in your shoe,  
11 do you remember that that was rock cocaine?

12          A     I don't know what it was.

13          Q     You don't know?

14          A     No, I don't know.

15          Q     Do you have any reason to dispute it if Homicide  
16 Detective Jensen told the jury that that was rock cocaine? Do  
17 you have any reason to dispute it?

18          A     Yes, I don't know where it came from. I didn't  
19 go in there and get my shoes.

20          Q     So perhaps the police did something that caused  
21 that rock cocaine to be in your shoe?

22          A     I don't know how it got in there.

23          Q     Do you recall admitting to Detective Shoemaker  
24 that you sold drugs?

25          A     No, I didn't.

1           Q     Do you know that CPS called Detective Shoemaker  
2 to verify --

3           MS. WECKERLY:  Objection.  This is hearsay.

4           MR. SGRO:  I'm not asking him what was said.

5           THE COURT:  Well --

6           MS. WECKERLY:  Well, okay.

7           THE COURT:  -- how would he know --

8           MS. WECKERLY:  Then it's calling for speculation.

9           THE COURT:  -- if somebody else called somebody else?

10          MR. SGRO:  I'll ask it differently.

11          THE COURT:  Okay.

12 BY MR. SGRO:

13          Q     Were you ever confronted -- I'll ask you a  
14 different way.  You gave CPS a version of events, right, not  
15 only about drugs but what happened in the apartment, how the  
16 shooting happened, all those things, right?

17          A     Yes.

18          Q     You knew that CPS was going to try to verify  
19 what you told them, right?

20          A     Yes.

21          Q     Did you have a conversation with Detective  
22 Shoemaker where you told him -- you admitted to selling drugs  
23 out of the home?  Do you remember that?

24          A     No.

25          Q     Now, one of the things that happened in this

1 case or as a result of this case is there's been some other  
2 court proceedings in Family Court, right? The DA just asked  
3 you some questions about that.

4 A Yes.

5 Q You said you remember Chris Bunting, right?

6 A Yes.

7 Q Chris Bunting actually testified against you in  
8 the Family Court proceeding, right?

9 A He wasn't there when I was there, but I guess.

10 Q Are you aware that he testified in Family Court  
11 relative to what you told him?

12 A I know he told me he had to go to Family Court  
13 to testify.

14 Q Did you admit to Detective Bunting that you sold  
15 drugs?

16 A No.

17 Q So if he had testified about that, he'd be  
18 mistaken?

19 A He got to because I never said that.

20 Q Did you ever tell CPS that you sold nick bags?  
21 What's a nick bag?

22 A Nick -- a nick bag, I don't know --

23 Q You don't know what that is?

24 A But a nick, I guess \$5.

25 Q Pardon me?

1           A     A nick, a nickel, \$5 I guess.

2           Q     Okay. So \$5 worth of marijuana?

3           A     No, I don't know five -- no, I never told nobody  
4 nothing like that.

5           Q     Did you tell CPS when they interviewed you about  
6 drugs that you use marijuana but kept extra in case your  
7 friends wanted to buy a nick bag? Did you ever say that?

8           A     No.

9           Q     Now, you were also asked some questions about  
10 Devonian, right, your stepdaughter?

11          A     Devonian.

12          Q     Devonian, sorry. You were also asked some  
13 questions about Devonian and what if any participation she  
14 might've had regarding drugs at your apartment. Do you  
15 remember CPS asking you questions?

16          A     I don't -- I can't recall the exact questions,  
17 but I --

18          Q     Did you use Devonian to go to the front door to  
19 collect money from Derecia and bring the money back to you?

20          A     No.

21          Q     Did you ever tell -- do you remember Detective  
22 Shoemaker?

23          A     I just told you I didn't.

24          Q     Okay. Did you ever tell Detective Shoemaker  
25 that Devonian collected money --

1 A No.

2 Q Let me -- let me finish the whole statement,  
3 okay -- that Devonian collected money from Derecia at the front  
4 door of the apartment and took it back to the bedroom where  
5 you would then give her drugs to bring back up front to  
6 Derecia?

7 A No.

8 Q Did you tell Detective Shoemaker that that's why  
9 Devonian was in the front room during the shooting?

10 A No.

11 Q Never happened?

12 A No.

13 Q So you're telling the jury today that Devonian  
14 was there because she woke up at 1 in the morning, had an  
15 omelette, and you guys went -- you and Derecia went back to  
16 bed after you got done eating, and Devonian stayed out front to  
17 play Xbox?

18 A Or she was watching TV.

19 Q Did you ever sell drugs to Stephanie?

20 A No, I bought weed from Stephanie.

21 Q You never sold any to her?

22 A No.

23 Q In --

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

25 THE COURT: Yes -- oh, yes.

1 BY MR. SGRO:

2 Q Showing you State's Exhibit 86, does this  
3 picture look like your master bedroom?

4 A Yeah.

5 Q Do you see that plate there, kind of just off to  
6 the left of the picture?

7 A Yes.

8 Q Did that plate have a bunch of rock cocaine on  
9 it before the shooting happened?

10 A No.

11 Q Do you see the white rocks all around the floor  
12 there?

13 A Yeah, I see it.

14 Q Do those white rocks, could they have been  
15 disbursed as the plate hit the ground?

16 A They wasn't there. So I don't see how.

17 Q Have you ever accused anyone of planting crack  
18 cocaine at your residence?

19 A Have I ever accused anybody?

20 Q Yes, sir.

21 A No.

22 Q State's Exhibit 87, another vantage point, does  
23 this refresh your recollection of all -- what those white  
24 rocks were?

25 A I don't know what that is.

1           Q     Are you aware, sir, that the police went through  
2 your residence and searched your place after the shooting  
3 happened?

4           A     That's what I assumed they was in there doing.

5           Q     Did they ask you about a razor blade that had a  
6 white powdery substance on it?

7           A     If they did, I don't recall it.

8           Q     Do you remember seeing a razor blade with a  
9 white powdery substance?

10          A     No.

11          Q     Do you recall having a razor blade on top of the  
12 shoe box, close to where that weight was located?

13          A     No.

14          Q     How about a scale, a digital scale with the  
15 brand name of Blade Scale, does that ring a bell?

16          A     No.

17          Q     Do you know whether or not you owned a scale, a  
18 Blade scale?

19          A     I don't know, unless it was in one of my old  
20 boxes in the closet or something.

21          Q     Would you own a digital scale for the purpose of  
22 selling drugs, to weigh it?

23          A     No.

24          Q     So you as you sit here right now have no  
25 recollection of the scale, and you have no recollection of the

1 razor?

2 A Well, I have razor blades in my house, but not  
3 as you described them.

4 Q Okay. I understand. You shave, right? But  
5 this is a razor blade with a white powdery substance, not a  
6 razor blade for shaving, ring a bell?

7 A No.

8 Q I want to talk to you about what was taken that  
9 night. Do you have any recollection as to what was taken?

10 A What was taken -- the only thing that was in my  
11 drawer that was in --

12 Q What was in the drawer?

13 A It was, like, a hundred dollar bill -- or a  
14 hundred dollar bill, a pack of Newports and some weed.

15 Q Do you remember telling CPS that it was a  
16 hundred and twenty dollars, cigarettes and a stick of  
17 deodorant?

18 A A stick of deodorant?

19 Q Yes, sir.

20 A No, I don't remember saying nothing about no  
21 stick of deodorant.

22 Q Okay. You told the Grand Jury -- do you  
23 remember -- do you remember how much money you told the Grand  
24 Jury had been taken?

25 A It was only, like, a hundred dollars in the



1 drawer. So.

2 Q I know. That's what you said today, right? Do  
3 you remember what you told the Grand Jury?

4 A Not -- not exactly about that question.

5 MR. SGRO: Page 28, Counsel.

6 MS. WECKERLY: Thank you.

7 BY MR. SGRO:

8 Q Do you see on page 28 that you told the Grand  
9 Jury that \$450 was taken?

10 A See, I told them I had some money in the house.

11 Q Right. So the question, Did you notice whether  
12 anything was taken, anything was missing, right?

13 A Yeah.

14 Q The only thing they took was, like -- because my  
15 drawer was right there by the bathroom in our room. It was  
16 open already, and I have, like \$450. So you're answering what  
17 was taken by saying \$450, right?

18 A Yeah, I don't remember saying \$450 though.

19 Q I read it right though, didn't I?

20 A Yeah, that's what the paper say.

21 Q And when you went to CPS, you told the CPS  
22 people -- they asked you, they said, Why would people come  
23 over to your place if you weren't selling drugs? Do you  
24 remember those questions they asked you?

25 A Somewhat but not.

1           Q     Do you remember telling CPS that you were  
2 targeted because of a \$2500 basketball bet that you won?

3           A     I don't think I said basketball. I think I  
4 probably said I just put in a ticket.

5           Q     Do you remember the Judge -- strike that. Do  
6 you remember learning that after you'd said basketball bet  
7 that there weren't enough basketball games on the day that you  
8 said that you made the bet --

9           A     I --

10          Q     Let me finish -- let me finish. Do you remember  
11 learning that there weren't enough basketball games on the day  
12 you said you made the bet such that you could win \$2500?

13          A     No, because I never said exactly what date I won  
14 or put in my ticket. The date or the issue of when I won that  
15 money was never brought up.

16          Q     Do you remember saying that you bet \$5? Do you  
17 remember that?

18          A     Yeah, I bet 5. That's what I usually bet.

19          Q     And you selected 10 teams, right?

20          A     Yes.

21          Q     Do you remember learning that parlay tickets  
22 don't pay 500 to 1 on a \$5 bet for 10 teams? Do you remember  
23 that?

24          A     Yes, I do.

25          Q     So your position is they do?

1 A I just put in a ticket yesterday for \$5.

2 Q On 10 teams and pays 500 to 1?

3 A It's paid \$3442.

4 Q Okay.

5 A I could've brought it if I knew I was going to  
6 need it.

7 Q As you sit here today, do you have a specific  
8 recollection of how much cash was taken at all?

9 A What was in the drawer, it was, like, a hundred  
10 dollars.

11 Q Did you go to the drawer before you went into  
12 the bathroom to grab money out of the drawer?

13 A No.

14 Q You didn't do that?

15 A No.

16 Q You didn't do that. Now, you were asked a bunch  
17 of questions by the police during the tape recording, right?

18 A Yes.

19 Q The police never asked you if you owned a gun,  
20 did they?

21 A I can't recall. I'm not for sure.

22 Q Do you remember my investigator, Eiffel, the one  
23 whose photos are next to you?

24 A Yeah.

25 Q He asked you if you owned a gun, didn't he?

1           A     Yeah, he asked me if I had one.

2           Q     Do you remember telling him that you did own a  
3 gun?

4           A     No, I didn't.

5           Q     You never said that?

6           A     No. What I told him is if I had a gun I  
7 wouldn't be talking to y'all right here, right now.

8           Q     Do you remember saying to -- you know his name  
9 is Eiffel, right? Did we cover that already?

10          A     Yeah.

11          Q     Do you remember telling Eiffel that Stephanie  
12 had told you that they hadn't robbed someone else because they  
13 had a gun, and it didn't make sense to you because Stephanie  
14 knew you had a gun all the time?

15          A     No.

16          Q     You never said that?

17          A     No, I didn't.

18          Q     Do you remember telling Eiffel that by  
19 coincidence you had loaned your gun to one of your friends  
20 that day?

21          A     No, that's not what I said.

22          Q     Do you remember telling CPS that before you made  
23 the 9-1-1 call you called friends and family -- let me finish  
24 the question, okay. Do you remember telling CPS that before  
25 you called 9-1-1 you called friends and family to come over to

1 your house?

2 A No, I didn't.

3 Q Now, you told the jury today that your brothers,  
4 within minutes, happened to be across the street, right?

5 A Not within minutes. After all that happened, I  
6 called my brothers and told them they need to get over here.

7 Q Before or after 9-1-1?

8 A It was after the police were already there.

9 Q Do you remember telling Eiffel when he  
10 interviewed you that you had called your brothers to, quote,  
11 Come take care of their business?

12 A No, I did not say nothing like that.

13 Q So that's just a fantasy?

14 A It must be if he -- if that's what he said.

15 Q Okay. Have you had a chance to read your  
16 statement before testifying today?

17 A Which statement?

18 Q Any of them.

19 A Yeah, I read a couple of them.

20 Q In your statement, you said that you were in the  
21 bathroom, right, and as Devonian came into the bathroom, you  
22 pulled your pants up; is that right?

23 A Yes.

24 Q And then you said for no known reason Devonian  
25 ran out of the bathroom?

1           A     She ain't run out. She went to the door to open  
2 the door.

3           Q     Do you remember saying that she ran when you  
4 spoke to CPS, that she ran out of the bathroom?

5           A     I could've said she ran, but she never made it  
6 out the bathroom.

7           Q     Do you remember telling -- she never made it out  
8 of the bathroom, right? We're going to come back to that in a  
9 second. Do you remember telling the police that it looked  
10 like Devonia lunged towards the person that was the shooter,  
11 right?

12          A     No, I know she -- when Devonia opened the door,  
13 that's when she got shot.

14          Q     Now, you didn't say anything to the police,  
15 nothing to the Grand Jury, nothing to my investigator ever  
16 about seeing who did this, right?

17          A     No, I never saw.

18          Q     You never saw a gun --

19          A     No.

20          Q     -- right? And when Devonia -- Devonia -- sorry.  
21 When Devonia was sitting there after she'd been shot, you  
22 didn't see anybody at that time either, right?

23          A     No.

24          Q     You didn't hear anything more at that point,  
25 right?

**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