

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVONTAE WHEELER,)	SUPREME COURT NO. 81374
)	
Appellant,)	
)	
vs.)	APPEAL
)	
STATE OF NEVADA,)	
)	
Respondent.)	
)	DISTRICT COURT NO. C-17-328587-3
)	
)	

APPELLANT'S APPENDIX

(VOL. 8 OF 14)

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1 already said yeah."

2 Now, Robert Mason continued on his jog. What he
3 didn't realize is what happened after he passed those young
4 men. So after he finishes his three-mile loop, he kind of
5 loops back around, headed back home, and sees a perimeter set
6 up. He sees cops around, and the cops are kind of walking
7 around, trying to get the scene, and he's yell -- kind of
8 flagging one down.

9 So one of the officers walks over; who is this guy?
10 And he says, hey, my wife's the one who called 311; I was the
11 one who saw something here. And the officer's like, wait,
12 what did you say? And Robert Mason says, I got the license
13 plate.

14 (Video is played)

15 (Stopped playing of video)

16 MR. BROOKS: So at that point in time, that's kind
17 of the first investigative lead. He gives it to the officer;
18 the officer gives it to the detective. Robert Mason at this
19 point in time still has no idea why -- what that license plate
20 means; why it's relevant.

21 What he doesn't know is that when he passed those
22 four men, someone else had come home. Someone else lived at
23 5536 West Dewey. That's 24-year-old Gabriel Valenzuela. You
24 may sometimes hear his family refer to him as Kevin, but
25 Gabriel Valenzuela was a nursing student at CSN.

1 He came home, and it was his job to get the family's
2 mail. You're going to learn that there was one mail key to
3 that mailbox that I told you, that -- that arrow earlier. So
4 at night, he would get the mail, bring it home, start looking
5 at it, sift through it, decide what's junk mail, what needs to
6 go in the house. And on that night, that's what he did.

7 He was heading into his home, but he didn't make it
8 into his home, because right there on the corner of this RV
9 ramp where he went to park -- that's his car -- where those
10 four men were huddled, right there, with those papers on the
11 ground, which is mail you'll see photos of, he was asked for
12 his stuff. Those four guys wanted his stuff, wanted his
13 property, and that didn't go well for Gabriel Valenzuela.

14 A smaller-caliber bullet was shot into his abdomen
15 on the left side. Now, that doesn't exit, so there's no exit
16 wound to show you. As you can see from that x-ray that I've
17 circled right there, that is the bullet recovered during the
18 autopsy.

19 Now, additionally, see this stitching right here?
20 That's just medical intervention by the hospital trying to
21 save his life. That's not anything that happened during this
22 incident. I just want to point that out. The circle over the
23 smaller-caliber bullet entering the abdomen is the focus of
24 this.

25 Additionally, Gabriel Valenzuela was shot with a

1 larger-caliber bullet in the back of the head. That's the
2 entry wound. It's on the right side near his ear. There's an
3 exit wound on the front portion of his head right above his
4 eye.

5 Additionally, a larger-caliber bullet, which you'll
6 learn is a .45 caliber bullet, is found in his left leg. So
7 you'll see photos. This circle right here on the right leg,
8 that's an entry wound. There is an exit wound on the other
9 side of that right leg, and then there's an entry wound in
10 that left leg, and the bullet is found in the upper portion by
11 the calf of that left leg. His tibia and fibula is broken
12 through on -- by the bullet in the right leg, and his tibia
13 and fibula is broken through on the left leg by that bullet.

14 People were at the scene. So, at the scene, while
15 Gabriel Valenzuela was rushed to the hospital, but he dies in
16 transit to the hospital, detectives are there, CSA, which are
17 crime scene analysts, are there, patrol officers are setting
18 up the perimeter, and they've started the investigation. And
19 one of the places that most investigations start, especially
20 in a homicide shooting like this, is collecting the cartridges
21 at the scene.

22 At the scene, four cartridges remained. This middle
23 one that you'll see identified as 1, that's the
24 smaller-caliber .22 cartridge. The other ones, 2, 3, and 4,
25 are .45 -- .45 caliber cartridge cases. And if you'll notice,

1 there's different headstamps on each one.

2 When this was initially set up, it's kind of a
3 dynamic scene. There was a call; hey, we have a shooting, get
4 here, because although Robert Mason's wife calls, other people
5 call when they actually hear shots, and then Gabriel
6 Valenzuela's family calls. So people rush there, patrol
7 officers rush there, and some even come from other command
8 posts.

9 So, south of Sunset is one command post, and they
10 were kind of close to the incident. So if you see here,
11 here's Sunset. Officers that were below Sunset rushed up to
12 that 5536 West Dewey and were part of the people who initially
13 set up the perimeter. One of those is Sergeant Tromboni.
14 You're going to hear from him. At that point in time, he was
15 just Officer Tromboni.

16 So once everybody gets there, and some of the -- it
17 goes late into the night, some of the patrol officers are sent
18 home, others come, and they kind of shift in and out. Well,
19 Sergeant Tromboni was sent -- you can go back to your command
20 post. So he starts driving south past Sunset, back to his
21 command post.

22 He has to go to the bathroom, so he decides to stop
23 at that 7325 South Jones Boulevard address. It's a
24 convenience store. There's a photo of the convenience store
25 in daylight hours. At that point in time, it wasn't daylight.

1 This is a photo in daylight hours. The Short Line Express
2 Market. He has to go to the bathroom, and he's with a partner
3 who's driving another patrol vehicle, Lopez, and he pulls in
4 there, too. So Officer Lopez and Officer Tromboni, they go
5 into the Short Line Express.

6 (Video is played)

7 (Stopped playing of video)

8 MR. BROOKS: So that's Officer Lopez's body cam, and
9 that's Sergeant Tromboni there. They go in there, they use
10 the bathroom, and then when they're done, they're kind of just
11 talking to the Clerk. They said, hey, how's it going tonight?
12 Anything unusual? Everything okay?

13 The store Clerk of that market is named Nikolaus
14 Spahn. And Nikolaus Spahn says, you know, there was something
15 odd. About a half-hour ago, about 11:30, which was earlier in
16 the night, four guys came in. It was just a little odd. One
17 of them was open carrying and he had a gun right on his hip.
18 It just kind of was a little odd. It was four young black
19 males, and he went in the bathroom -- the guy that was open
20 carrying went in the bathroom for a while, a little longer
21 than normal. Nothing happened, I mean, it was just odd, and
22 then they kind of sat outside the store for a while and
23 lingered.

24 So Sergeant Tromboni says, any chance you saw what
25 kind of car they had? And Nikolaus Spahn says, yeah,

1 actually, I walked outside to kind of check to see what was
2 up, and it was an older white car, like a Crown Vic type car.
3 At that point in time, Sergeant Tromboni says, hey, I need
4 someone to pull this video surveillance. Can we get the video
5 surveillance of them in the store and that car? So the
6 manager comes, starts pulling the video surveillance.

7 And this is the video surveillance from earlier that
8 night, around 11:27 P.M. Now, in this short video clip,
9 you're only going to see three people walk in, then you'll see
10 other photos with the four.

11 (Video is played)

12 MR. BROOKS: DeMario Lofton-Robinson walks in,
13 Davontae Wheeler with the gun on his right hip, and Raekwon
14 Robertson.

15 (Stopped playing of video)

16 MR. BROOKS: That's the four of them standing right
17 there, and that's Nikolaus Spahn helping the customer ahead of
18 them. Now, at no point in time did they use the gun, or flash
19 the gun, or anything towards the store Clerk. As you can see,
20 there's the open carry, and there's another portion of that
21 shiny handgun that's right there, holstered at Davontae
22 Wheeler's hip.

23 Then, they pull the video surveillance from outside.
24 So Lora Cody, one of the detectives you'll hear from, starts
25 looking at this video surveillance, zooming in, back, forth,

1 and can see a "47" -- a "473" at that starting license plate.
2 And so at this point in time, she's like -- hey, this vehicle
3 that was in -- you know, a vehicle of interest initially, it
4 really is a vehicle of interest; let's go ahead and try to
5 track that down. So she's trying to track it down all night.
6 Other detectives who you'll hear from, Detective Mitch Dosch
7 and Detective Ryan Jaeger, they're also at the scene and
8 trying to begin the investigation.

9 Eventually, Lora Cody tracks that vehicle down. And
10 when she does, she takes the vehicle into custody and the
11 driver at that point in time. That's DeMario Lofton-Robinson.
12 He was the owner of the vehicle at the time, and the driver
13 when the vehicle was pulled over. The vehicle was stopped and
14 taken into custody. That's the person you may hear referred
15 to as DJ.

16 Now, DJ is going to be a part of these proceedings.
17 You're going to hear a lot about him because this is a
18 conspiracy case. And so you'll hear different evidence about
19 DeMario Lofton-Robinson, but he's not on trial in this
20 proceeding, so you guys won't be charged of determining guilt
21 or not guilty with regard to DeMario Lofton-Robinson; just
22 Raekwon Robertson And Davontae Wheeler.

23 That's DeShawn Robinson. He was 14 at the time, and
24 that's DJ's younger brother. You're going to hear from
25 DeShawn Robinson, and he's going to provide additional details

1 and other things that occurred that night.

2 That's Raekwon Robertson dressed in the black
3 hoodie, and that's Davontae Wheeler going into the bathroom.
4 As you can see, firearm on the hip, firearm on the hip, and
5 Raekwon Robertson right behind him.

6 When the vehicle is located by Detective Cody and
7 the other officers, the vehicle's impounded and brought to the
8 CSA lab. Inside that vehicle, they find a few things, one of
9 which is .45 caliber cartridge cases, bullets, and the
10 headstamp on these found in the car matches one of those
11 cartridges found back at the scene. Additionally, you're
12 going to see those Jordan 5 sneakers, those Jordan 5 red
13 sneakers being worn in the video by DeMario, DJ, and DeShawn.

14 Then they process the car, so you're going to hear
15 from crime scene analysts who talk about fingerprint
16 processing. They processed that entire vehicle. And over the
17 course of that vehicle, you're going to find out that DeMario
18 Lofton-Robinson's fingerprints, which is expected because it's
19 his car, are all over it, DeShawn Robinson's fingerprints are
20 all over it, Raekwon Robertson's fingerprints are on it, and
21 Davontae Wheeler's fingerprints and palm prints are on it.

22 So then officers execute a search warrant on DJ and
23 DeShawn's residence, so they go to 919 Bagpipe here in North
24 Las Vegas. And when they initially execute the search
25 warrant, they bring in a dog because they're looking for a

1 firearm. So Trigger, this little K9, is sent through the
2 house. So Trigger's going through the house, going through
3 the house, and he hits on that pink backpack up in one of the
4 bedrooms. He hits on it, and then officers go to the
5 backpack.

6 Officers then open the backpack, and low and behold,
7 inside that pink backpack is an Interarms Star handgun. It's
8 a ten-round magazine with six rounds left in it. They take
9 that gun into possession, impound it into evidence, and begin
10 testing. You'll learn that that Interarms Star firearm was
11 tested, and the .45 caliber cartridge here, here, and here
12 left on the scene, all three of them, were identified as
13 having been fired from that Star firearm.

14 Additionally, the bullet down in this screen -- if
15 you're wondering, you're going to learn that that W5228S,
16 that's the name of the CSA who actually impounds that, and
17 that's why that photograph's there. That bullet found at the
18 scene, that's identified as having been fired through that
19 Star firearm. And then, the bullet taken out of Gabriel
20 Valenzuela's left leg during the autopsy was tested and
21 identified as having been fired out of that Star firearm.

22 The sweater that DJ's wearing with the Jordan symbol
23 up there was found in the back of that car. And as you can
24 see from the video surveillance, the emblem on the chest, and
25 then you can see the bulge in DeMario Lofton-Robinson's pants.

1 A few days later, 6647 West Tropicana, the apartment
2 right there, was then -- a search warrant was executed on it.
3 That's the residence of Raekwon Robertson. Inside there, they
4 go to a bedroom, and in the bedroom, there's a dresser. They
5 pull out the drawer, the bottom left drawer, and hidden below
6 that bottom left drawer is a Taurus .22.

7 Additionally, they find .22 caliber bullets. When
8 you look at the headstamp, you'll see the headstamp on that
9 .22 caliber bullet right there matches the headstamp on the
10 cartridge case found back at the scene. In the closet, the
11 shoes that Raekwon Robertson was wearing in the video
12 surveillance footage is found.

13 And testing occurs on the gun. You're going to
14 learn Raekwon Robertson's DNA is found on that Taurus .22.
15 You're going to learn that cartridge case left at the scene
16 was tested and can be identified as having been fired from
17 that Taurus .22.

18 Now, the bullet that's taken out of Gabriel
19 Valenzuela's stomach, that went through his stomach and his
20 rear back, that was tested, and you're going to learn that it
21 has similar riffling characteristics as having been fired
22 through that Taurus .22. However, they can't -- the scientist
23 isn't going to be able to tell you identification, because, as
24 you can expect, when a bullet goes through somebody's insides,
25 ricochets off their organs, the bullet kind of gets mangled,

1 and so that's as much as they can tell about that bullet.

2 Then, 3300 Civic Center, a search warrant is
3 executed on. And in the bed -- bedroom right there, with the
4 bed wedged right up against that kind of like -- that -- it's
5 not a desk, but that piece of furniture, you're going to see a
6 Millennium Taurus .45. Officers are going to take that
7 Millennium Taurus .45 and impound it. Additionally, there's a
8 holster right near it, and that holster is very similar to the
9 holster being worn by Davontae Wheeler in that video
10 surveillance footage.

11 The gun is processed, and the magazine located
12 inside that gun has Davontae Wheeler's fingerprint on it.
13 Additionally, if you look at the headstamp on those bullets,
14 that headstamp matches one of the bullets that was left at the
15 scene. Now, that gun's tested, and none of the cartridge
16 cases that are left at the scene are going to come back as
17 being identified as having been fired through that gun. All
18 three of the .45 cartridges that were left at the scene are
19 from the Star, and then the .22 is obviously from the Taurus.

20 The Huaraches that Davontae Wheeler is depicted
21 wearing right there in that video surveillance are found in
22 that apartment. And additionally, that Chicago Blackhawks hat
23 that can be seen being worn in the video surveillance footage
24 is found at that apartment.

25 All four of the suspects are eventually taken into

1 custody. Why were they there? They went to hit a house that
2 night, but instead, something else happened. They saw an
3 opportunity to hit Gabriel Valenzuela, and the only reason
4 that Gabriel Valenzuela didn't make it inside his house with
5 his mail is because those four guys wanted his stuff.

6 And so at the end of this trial, Mr. Pesci is going
7 to stand up and he's going to ask you to return a verdict of
8 guilty to all three counts: conspiracy to commit robbery,
9 attempt robbery with use of a deadly weapon, and first degree
10 murder with use of a deadly weapon. Thank you.

11 THE COURT: Thank you. Mr. Sanft?

12 DEFENDANT ROBERTSON'S OPENING STATEMENT

13 MR. SANFT: Ladies and gentlemen, we spent the last
14 two days together, determining who could be a good juror for
15 this case. If you've sat here now and listened to what the
16 State has told you what they believe the evidence would show
17 beyond a reasonable doubt, and now think in your mind, well,
18 why are we even here, then you haven't done your job, and we
19 haven't done our job in picking good jurors.

20 But my guess is, my assumption is that as you're
21 sitting here right now, what you're determining in your mind
22 is exactly what we are going to do during the course of this
23 trial: prove this to me beyond a reasonable doubt. That's it.

24 Now, one of the things that we were cautioning you
25 on when we first met with you as a panel was whether or not --

1 if you could look at photographs -- the crime scene
2 photographs, autopsy photographs -- and not be swayed
3 emotionally, but look at it dispassionately.

4 We're asking you to look at everything
5 dispassionately, whether it's the photographs in this case,
6 whether it's the testimony of the witnesses that will testify
7 in this case, and ask yourself over, and over, and over again,
8 has the State proven to me beyond a reasonable doubt that that
9 person right there, Raekwon Robertson, is a person that's
10 responsible for a murder of a 24-year-old young man in the
11 middle of the night?

12 That's the question you should be asking yourself
13 over, and over, and over again. Is that really Robertson
14 that's up in the video, is that really Robertson that had the
15 gun, and is that really Robertson who shot those bullets that
16 went into this person and killed him in the middle of the
17 night? That's the question.

18 And as you, and me, and the State of Nevada journey
19 through this and get to the end of our case, what you're going
20 to determine at that particular point is the State of Nevada
21 has not proven to you beyond a reasonable doubt that Raekwon
22 Robertson was responsible for the murder of this particular
23 individual. Thank you.

24 THE COURT: Thank you. Mr. Ruggeroli?

25 //

1 DEFENDANT WHEELER'S OPENING STATEMENT

2 MR. RUGGEROLI: Your Honor, counsel, ladies and
3 gentlemen of the jury. Davontae Wheeler is not guilty. He
4 starts this trial, just like we questioned you during the jury
5 selection process, with a presumption of innocence. The
6 State, I'm sure, would say that they welcome their burden of
7 proving that he's guilty beyond a reasonable doubt; but in
8 this case, the State will not prove that case against Davontae
9 Wheeler, and they will not prove this case beyond a reasonable
10 doubt.

11 As you listen to the evidence in this case, as a
12 juror, you would want to have confidence of guilt to
13 comfortably convict someone. And to have belief beyond a
14 reasonable doubt, you deserve to have evidence that's based on
15 reliable and trustworthy testimony from the witnesses or the
16 witness; a situation that's not so suspicious and convoluted.
17 And I'm going to point this out because the State's
18 presentation of this case is very matter of fact, it's very
19 succinct, but it's interesting that they left some very
20 important information out.

21 And you should not make a rush to judgment like the
22 police in this case did, and at a minimum, you should have an
23 adequate investigation. In this particular case, you don't
24 have that. You have an unreliable and an untrustworthy star
25 witness on behalf of the State. Now, I'm not talking about

1 every witness. There's going to be a number of them. In
2 particular, for instance, the jogger, I'm not saying that he's
3 a liar or anything like that. But you're going to hear from
4 DeShawn, and it's going to be your job to test his
5 trustworthiness. I think when you listen to the evidence, you
6 will see that there are very, very serious concerns about his
7 reliability and trustworthiness.

8 Here, you're going to have a situation that's
9 actually suspicious and convoluted with insufficient evidence
10 that lacks corroboration as to what happened particularly at
11 the scene of the shooting at Dewey. And you're going to see
12 that there was a rush to judgment, and in particular, that
13 rush to judgment was because the police got notice that one
14 person was open carrying on that video at the Short Line
15 Express a half-an-hour or 45 minutes before the shooting.

16 And that's very important, because that fact colored
17 the investigation moving forward. They believe that Mr.
18 Wheeler had that .45 open carry, they knew that they had a
19 high-caliber injury, and that fact led them to believe in the
20 beginning that they've got their man, this is almost an
21 open-and-shut case, and Mr. Wheeler's got the .45, so he must
22 be the gunman. Because of that, they didn't fully investigate
23 everything that they should have in this case.

24 Now, the State left this out. The evidence in this
25 case will actually show that at the Short Line Express, there

1 were five people, not four. There's an independent witness.
2 He was contacted by the police. And when the police showed up
3 to talk to him, because the police had seen the video at Short
4 Line Express -- you saw the photos -- the police are thinking,
5 well, we've got four people. So when they approach this
6 individual, they say, were you there? Did you buy one of them
7 a Black and Mild cigarillo? He says, yes.

8 They say, we have these four individuals. The first
9 thing that that individual says is, yeah, I saw five. There
10 are some more questions and answers, and he does waver,
11 because the police are questioning him, and they think that
12 there's four at the Short Line Express. But that independent
13 witness, his first statement was, there are five. And that's
14 very important, because when we get to the jogger a
15 half-an-hour or 45 minutes later, he is absolutely consistent
16 there were only four. So what happened with number 5?

17 I also want to point out, before we get to that --
18 and this was mentioned by the State just now during their
19 opening, but I think it needs to be highlighted a bit more.
20 There was one .22 caliber bullet that they recovered, and one
21 .22 caliber cartridge case, and there were three .45 caliber
22 bullets, and three .45 caliber cartridge cases that they
23 recovered.

24 Mr. Wheeler's .45 caliber, which was obtained during
25 a search warrant at the Civic Center address, was excluded

1 because it wasn't one of the .45 caliber cartridge cases that
2 were recovered, it did not fire them, and it did not fire any
3 of the three bullets that were recovered either. That is
4 because Mr. Wheeler was not a part of this, because he is the
5 fifth person. He was present at Short Line Express, but he
6 wasn't present at the Dewey address. Mr. Wheeler was not
7 present at the shooting.

8 We asked you to be a good juror; you were selected
9 because we believe you will. And after hearing the evidence
10 in this case, if you do your job, we believe that you're going
11 to have some more questions than answers in terms of the
12 State's theory of the case. You'll have more doubts because
13 of the evidence than certainty.

14 Everybody will agree that you must hold the State to
15 that burden. They're going to welcome you to do it, but
16 they're not going to meet that high burden here. They will
17 not be able to prove that Mr. Wheeler is guilty beyond a
18 reasonable doubt.

19 We respectfully request that you do your job as good
20 jurors. Evaluate the trustworthiness of the witness -- the
21 witnesses. Don't rush to judgment. Don't just assume because
22 there's four on a video, and one of them's open carry,
23 automatically, we've got our guy. Fulfill your duty as
24 jurors. And very simply, if you do so, you will have too many
25 reasonable doubts at the conclusion of the evidence, and you

1 will find Mr. Wheeler not guilty. Thank you.

2 THE COURT: Thank you. Thank you very much. The

3 State of Nevada may call their first witness.

4 MR. BROOKS: Your Honor, State calls Robert Mason.

5 THE MARSHAL: Just straight ahead.

6 THE WITNESS: Okay.

7 THE MARSHAL: If you'll please step up into the

8 witness stand. Remain standing, raise your right hand, and

9 face the Clerk.

10 ROBERT MASON, STATE'S WITNESS, SWORN

11 THE CLERK: You may be seated. Please state and

12 spell your first and last name for the record.

13 THE WITNESS: Robert Mason.

14 THE CLERK: Go ahead and spell your first and last

15 name, please.

16 THE WITNESS: Oh. R-o-b-e-r-t. Mason, M-a-s-o-n.

17 THE CLERK: Thank you.

18 THE WITNESS: Um-hum.

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q Mr. Mason?

22 A Yes, sir.

23 Q Back in 2017, where did you live?

24 A 5524 Zachary Street, Las Vegas, Nevada, 89118.

25 Q Is that here in Clark County?

1 A Yes.

2 Q And what area of town? Just kind of -- if you could

3 orient us to where that would be.

4 A Southwest. Yeah.

5 Q Southwest? Okay, so were you married?

6 A Yes.

7 Q Are you still married?

8 A Yes, sir.

9 Q What's your wife's name?

10 A Lucinda Mendoza.

11 Q So back in 2017, around August, specifically, how

12 long had you lived in that area? How long had you lived in

13 that home?

14 A Oh, 2017, I would say probably about four or five

15 years then at that point.

16 Q Were you familiar with the area?

17 A Oh, very. Yeah.

18 Q I want to turn your attention to around midnight

19 between August 8th and August 9th of 2017. Do you recall an

20 incident that brings us here to court today?

21 A Yes, sir.

22 Q So tell me a little bit about what you initially

23 remember when -- why you left your house that night.

24 A Just to start off, my jog, since it was warm at

25 night -- or during the day, I would jog in the evenings rather

1 than during the day. I jog twice a week, if not more, and so
2 I jog at night. And just happened to get off work, and decide
3 to just go for a random jog, and left my house.

4 Q So back then, what time, do you remember, did you
5 get off work? What were your typical hours back then?

6 A Oh, I would get off around 11:00, 11:30, just
7 depending.

8 Q So if I think it's unusual to go on a jog at
9 midnight, that was a normal thing for you?

10 A Oh, yeah, yeah.

11 Q So when you leave your house, what was your typical
12 route?

13 A Typically, I would do the same route in that general
14 area. Leave my house going southbound on my street that I
15 lived off of, Zachary, and then I would make a left and go
16 down -- what's that? Lindell, I -- no, not Lindell. Dewey,
17 Dewey. I would make a left on Dewey and head east. And then,
18 from there, I would head to Lindell, and make a north turn on
19 Lindell.

20 Q Okay. And is that the path you started out on on
21 that August 9th, 2017 night?

22 A Yeah.

23 MR. BROOKS: Your Honor, permission to approach the
24 witness?

25 THE COURT: Sure.

1 BY MR. BROOKS:
2 Q Mr. Mason, showing you State's Exhibits 4, 3, and 1,
3 do you recognize the maps and the area depicted in these
4 photographs?
5 A Oh, yeah.
6 Q And specifically, in State's Exhibit 1, is that that
7 Dewey and Lindell address that you just referred to?
8 A That is Dewey and Lindell.
9 Q And State's Exhibit 4, do you recognize a yellow pin
10 where your address is, and then --
11 A Um-hum.
12 Q -- a pin where an address in question --
13 A Yes.
14 Q -- later that night?
15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibits 3, 1, and 4.
17 THE COURT: Any objection?
18 MR. SANFT: No objection, Your Honor.
19 MR. RUGGEROLI: No, Your Honor.
20 THE COURT: Okay, they're admitted.
21 (State's Exhibits 1, 3, and 4 are admitted)
22 MR. BROOKS: So permission to publish, Your Honor?
23 THE COURT: You may.
24 BY MR. BROOKS:
25 Q Mr. Mason, see that screen next to you?

1 A Yeah.
2 Q So is there a mouse there?
3 A Sure is.
4 Q So take us through -- and I'm sorry I made you do
5 this without a map earlier. Take us through that route that
6 night.
7 A All right. How does this work? Let's see. Do I
8 have to press anything, or?
9 Q I don't think so.
10 THE MARSHAL: Well, hang on a second.
11 THE WITNESS: Oh.
12 THE MARSHAL: He's got the wrong -- give me one
13 second, sir.
14 THE WITNESS: Okay.
15 THE MARSHAL: Now you should --
16 THE WITNESS: Now I can --
17 THE MARSHAL: -- be able to mark.
18 THE WITNESS: -- mark the area? So I would leave my
19 house, and usually kind of stretch a little bit, maybe five
20 minutes or less, and then just start bolting down -- what is
21 this? Zachary. Eesh, I'm terrible. So I would take my jog
22 down here, usually starting out with a really high-intensity
23 pace. I always try to start out quick. So I go really fast
24 down Zachary, and then I hit this corner here. And you just
25 want me to show you my route?

1 BY MR. BROOKS:

2 Q No, that night. So --

3 A That night?

4 Q -- that night, you hit that corner, and then what
5 happens?

6 A Okay. As I -- when I made it to this corner, I just
7 -- I saw what, at my vantage point, looked like a group of
8 people. I didn't know how many at that time, but I saw a
9 group of people standing -- where's the wall? So there was a
10 group of people right in this general area of the wall. Can I
11 erase?

12 Q Let me -- I'll take care of that. And then, let me
13 show you a zoomed-in one, maybe that will help. State's
14 Exhibit 3. Does -- does that help? Is that a better angle?

15 A Yeah, yeah, yeah.

16 Q Okay.

17 A That works. So there's this wall here. And as I
18 rounded this corner, I could see just a group of people
19 standing here, which didn't really bother me at first, so I
20 just continued down this route -- oh, let me see here. I
21 continued down here, jogging, jogging, jogging, jogging. And
22 as I got closer, I just, you know, got a little more power in
23 my run, so I started running pretty -- pretty fast.

24 As I got closer, I decided, rather than run through
25 them, which -- because they were standing here and in this

1 general area. And as I got closer, they proceeded to kind of
2 step away from the wall, and were in a general area of like in
3 that vicinity.

4 Q And at that point --

5 A So I -- excuse me.

6 Q Sorry. At that point in time, when you're right
7 about there, have you identified how many people yet?

8 A Yes. By this -- by this point, I determined there
9 was four individuals standing in a --

10 Q And so what do you do?

11 A So at that point, I just got a bad feeling in a
12 sense of just never really running into people while I was
13 jogging. They were all wearing dark clothing. They were all
14 wearing sweatshirts or some sort of jacket-type material, and
15 it was hot out. So at that point, my mind just said, this
16 just doesn't feel right. So I decided to run even harder,
17 kind of just pushing it, and kind of jogged to the outer --
18 does this thing work? Jogged out to this part of the street,
19 and around them, and then this way.

20 Q And as you pass them, are you able to identify what
21 race they are?

22 A Yeah, pretty -- pretty distinct.

23 Q And what were they?

24 A Four black male individuals. Yeah.

25 Q Okay. Were you able to identify if they were young,

1 old?

2 A Fairly young. I didn't see any distinct older

3 features in any of them that I could -- you know.

4 Q Fair to say, you don't get a good enough look to do

5 any identification or anything?

6 A Not -- not face-to-face, no.

7 Q Okay.

8 A I wouldn't say.

9 Q So my question is, right here --

10 A Yes.

11 Q -- when you're running past them, what do they do?

12 What do they -- what do they do?

13 A Well, at this point, as I run past them, I look at

14 one of them at a glance, and he looked at me. And I just kind

15 of just gave my -- just kind of just jogged past them like

16 they weren't even there in a sense.

17 Q Do they recognize you, and do you -- and by

18 recognize, I mean do you see them, and do they --

19 A Oh, for sure, yes.

20 Q -- see you?

21 MR. RUGGEROLI: Judge, I'm going to object to

22 speculation.

23 THE COURT: Okay, based on your own observation.

24 THE WITNESS: If -- my observation was that they

25 knew I was running past them.

1 BY MR. BROOKS:
2 Q Did you make eye contact with at least one or two of
3 them?
4 A I made eye contact with at least one.
5 Q Okay.
6 A Yes.
7 Q So I guess that's what I meant by recognizing.
8 A Yeah.
9 Q Don't mean identify.
10 A It was a quick -- like a quick, and that was it.
11 Q So like, I see you, you see me?
12 A Yeah. If I were to look at you, I'd just look away
13 and keep jogging.
14 Q So you mentioned jackets or sweatshirts. Was there
15 something in particular that was odd about those sweatshirts?
16 A Dark. Just not really anything in particular that
17 was odd, except for it was hot, and it was -- I just -- I
18 never see people wearing black sweatshirts at night -- or not
19 at night, but during the summer, during the heat.
20 Q So as you turn the corner on Lindell here and start
21 heading north, what do you notice next?
22 A So as I -- as I make the corner here -- do I --
23 Q Oh, you don't need to --
24 A Okay.
25 Q Yeah, just --

1 A So --
2 Q -- tell us.
3 A When I made this corner here, I just saw a car
4 parked in the street, and I put two and two together, assuming
5 that it was their car in the street. And I observed the
6 license plate on the front as I jogged by, and just out of --
7 just -- I don't know, just an instinct, I guess, to look back
8 at the reverse plate on the back, memorized the license plate
9 and started to put it in my phone.
10 Q So before we get to that, what color car was that?
11 A It was white.
12 Q Now, back then, what did you describe it as being?
13 What kind of car?
14 A I believe I described it as a Crown Vic, or a Crown
15 Vic style.
16 Q And was it new; was it old?
17 A It was older.
18 Q Do you remember whether you said anything about
19 whether the windows were tinted? Did you look inside the car?
20 A As I jogged by, I glanced in at the insides of the
21 car. But as far as windows, I could see inside the car, so I
22 believe I said the windows were not tinted. But as I glanced,
23 I could see into the car.
24 Q Was anyone in -- was there a human inside the car?
25 A Unless they were under the seats or hidden

1 underneath something, no, empty.

2 Q Were you previously even asked whether -- inside of
3 the car, whether the seats were torn, or if it was dirty, or
4 trashed inside?

5 A Yeah, yeah.

6 Q And do you remember?

7 A Yeah. I remember saying, I believe, that it was
8 kind of messy, or cluttered, or whatnot. It was just dirty,
9 and then the seats were kind of torn.

10 Q So you got a good enough look inside the car to
11 notice that it was trashy and the seats were torn?

12 A Yeah.

13 Q And there was no human inside?

14 A Yeah, as far as I could tell.

15 Q So as you jog past it, you said you tried to
16 remember the license plate. When you're about 20 or 30 feet
17 past the car, do you do something with that license plate?

18 A I wouldn't say 20 or 30 feet; I would say a lot
19 sooner than that. Probably within the first ten feet of me
20 passing that car, I put the license plate into my phone. And
21 then decided to call my wife at that point, because I just
22 realized I had left the front door unlocked, and I just felt a
23 little eerie about these guys in our neighborhood and wanted
24 to make sure that she locked the door.

25 Q And do you tell her to do something other than lock

1 the door?

2 A Yeah. And then, I was probably at that point 40, 50
3 feet down the road, and I just said, you know what, just, if
4 you would, call 311 and report suspicious individuals in the
5 neighborhood.

6 Q And subsequently -- subsequent to then, have you
7 since learned that she did call 311?

8 A Yeah, yeah.

9 Q And when you initially tell your wife there's
10 something suspicious, do you guys have a conversation about
11 what the people are wearing and the temperature?

12 A Yes.

13 Q And what was that?

14 A Oh, that they were just there -- I felt a little
15 uncomfortable that there was four people in dark clothing and
16 hoodies in the neighborhood, sweatshirt -- well, not
17 sweatshirt, but just hoodies in the neighborhood, and just
18 felt uncomfortable about it.

19 Q And now, I think you were asked this previously.
20 When say hoodies, the hoods were up, but they weren't like
21 cinched?

22 A No, no, no, no. They're just up -- yeah, the hoods
23 were up, and -- but not -- not cinched down or nothing like
24 that, as far as I could tell.

25 Q Was this an unusually cold night in Las Vegas in

1 August?
2 A No, no.
3 Q Was there any reason for someone's hood to be up
4 that night?
5 A No. Well --
6 Q That you --
7 A Unless you're concealing your identity, I mean, in
8 my opinion.
9 Q Well, I don't --
10 MR. SANFT: Objection, Your Honor, speculation.
11 THE COURT: Sustained.
12 MR. BROOKS: Yeah.
13 THE COURT: The objection's sustained.
14 BY MR. BROOKS:
15 Q And so, as you finish your jog, do you make contact
16 with your wife and find out that she's called 311?
17 A Yes.
18 Q Okay. And see this area right here?
19 A Yeah.
20 Q Do you return back to that area that night before
21 you go home?
22 A Yeah. I made my -- my jog around, which is a
23 three-mile jog, and it usually takes me eight minutes,
24 eight-and-a-half per mile. So at that point, I get back to
25 that general area right around 25 or 20 so minutes. Between

1 20 and 25 minutes, I'm back in that general area every --
2 every time I come back.

3 Q Which direction, by the way, was the car facing?

4 A The car was facing southbound, this way.

5 Q And how busy is Lindell? Do cars ever park on that
6 street?

7 A The street can be fairly busy at night. Not so
8 much, but cars never -- never park on the street there, ever.

9 Q So was that why it was kind of unusual to you?

10 A Yes.

11 Q And --

12 A The only time I've seen people parked there is when
13 they're picking up their kids from the school, you know, and
14 they're just kind of getting in the way on that street, and
15 there's a lot of traffic in the day.

16 Q In general, you don't usually see cars?

17 A No, never.

18 Q Have you had the opportunity to come meet me and Mr.
19 Pesci and view some video from that night?

20 A Yes.

21 Q Video from an officer's body cam that you --

22 A Yeah.

23 MR. BROOKS: Your Honor, at this point in time, I
24 want to play a portion of State's Proposed Exhibit 329 to see
25 if he can identify himself before moving it into evidence.

1 THE COURT: Okay.
2 MR. BROOKS: Unless --
3 THE COURT: Is there going to be any -- is there an
4 objection?
5 MR. SANFT: No objection, Your Honor.
6 MR. RUGGEROLI: No, Your Honor.
7 MR. BROOKS: Then --
8 THE COURT: Okay, so if you want to offer it.
9 MR. BROOKS: State moves Proposed Exhibit 329 into
10 evidence.
11 THE COURT: Okay, it's admitted.
12 (State's Exhibit 329 is admitted)
13 THE COURT: And you may publish.
14 (Video is played)
15 (Stopped playing of video)
16 MR. BROOKS: Your Honor, permission to approach?
17 THE COURT: You may.
18 BY MR. BROOKS:
19 Q Mr. Mason, do you recognize the house and the wall
20 depicted in this photograph?
21 A Yeah.
22 Q Does it fairly and accurately depict the area that
23 you were just referring to --
24 A Yeah.
25 Q -- to the officer?

1 A Yeah.

2 MR. BROOKS: Your Honor, State moves for admission
3 of Exhibit 10.

4 THE COURT: Any objection?

5 MR. SANFT: No objection, Your Honor.

6 MR. RUGGEROLI: No, Your Honor.

7 THE COURT: Exhibit 10 is admitted.

8 (State's Exhibit 10 is admitted)

9 BY MR. BROOKS:

10 Q Mr. Mason, if you could, just kind of -- and you
11 don't need to mark it, but if you could take the mouse and use
12 it to show us what you were telling the officer; where you
13 were pointing where you saw the four men.

14 A So the -- I saw the four individuals right in this
15 general area here.

16 Q Okay, so that's what you were kind of describing to
17 him?

18 A Yeah.

19 Q Sort of on the property, sort of on the side of it?

20 A Yeah. When I ran by, it looked to me the two --
21 there was two individuals here that stepped away from the
22 wall, and then were mingling amongst each other when I -- as
23 if they noticed me coming, so it kind of threw them off.

24 Q So let me see if I understand you right. So right
25 here where this mouse is, are you telling me there were two

1 here initially, and then two here, and as you come past, they
2 all four gather together? Or am I --

3 A In my recollection, it was as if -- I honestly say
4 they were here, and then moved out, but it looked as if they
5 were huddled up against the wall just in this general area.

6 Q Okay.

7 A So, I mean, I don't honestly know if they were all
8 the way over here or on this side of the wall, but in this
9 general location. And then they moved out to this -- this way
10 when I came -- when I approached them.

11 Q All four of them?

12 A Yeah.

13 Q And then, showing you State's Proposed Exhibit 155.
14 It was kind of -- it wasn't very loud right there.

15 A Yeah.

16 Q But does this photo fairly and accurately depict
17 the --

18 A Yes.

19 Q -- license plate that you just said on the body cam,
20 473YZB?

21 A Yeah.

22 Q And does this photo fairly and accurately depict the
23 front of the car that you saw that night?

24 A Yeah.

25 MR. BROOKS: Your Honor, State moves for admission

1 of Exhibit 155.

2 MR. SANFT: No objection, Your Honor.

3 MR. RUGGEROLI: No objection.

4 THE COURT: Thank you. It's admitted.

5 (State's Exhibit 155 is admitted)

6 BY MR. BROOKS:

7 Q Mr. Mason, is that what you referred to that night

8 as a Crown Vic, older-style car?

9 A Yeah.

10 Q And is that the license plate that you put down in

11 your phone and then showed the officer?

12 A Yes.

13 MR. BROOKS: Pass the witness, Your Honor.

14 THE COURT: Cross-examination, Mr. Sanft?

15 MR. SANFT: Yes, Your Honor. May we approach for a

16 sec?

17 THE COURT: Of course.

18 (Bench conference)

19 MR. SANFT: How long can we go for before lunch?

20 Can we just keep going all the way through?

21 THE COURT: Yeah.

22 MR. SANFT: Okay.

23 THE COURT: Hopefully, you can finish this witness.

24 MR. PESCI: Well, if we could, his wife is here, and

25 then we also have an Officer Calleja who's been on like a

1 swing shift, I think. So if we can maybe get through those
2 three --

3 THE COURT: I have no problem with that.

4 MR. PESCI: -- before we break for lunch.

5 THE COURT: Okay.

6 MR. PESCI: Just because they've missed yesterday in
7 their schedule for work.

8 THE COURT: Okay. All right.

9 MR. SANFT: Oh, and just one other housekeeping
10 matter. I don't have any objection to the exhibits, so
11 (indiscernible).

12 MR. RUGGEROLI: For the most part. If you want to
13 run them by us, like photos --

14 THE COURT: Right. Maybe we could stipulate.

15 MR. SANFT: We would stipulate to the --

16 MR. RUGGEROLI: Streamline some of it.

17 MR. PESCI: Okay, sure.

18 MR. BROOKS: Okay.

19 MR. PESCI: Thank you.

20 THE COURT: Thank you.

21 (End of bench conference)

22 THE COURT: Okay, Mr. Sanft. You may begin with
23 your cross.

24 MR. SANFT: Yes, Your Honor.

25 //

CROSS-EXAMINATION

BY MR. SANFT:

Q Mr. Mason, the -- your video of yourself a couple years ago, it looks like you have been doing pretty good on your runs.

A Oh, yeah.

Q Congratulations on that, by the way.

A Yeah, thank you.

Q Now, your testimony is that you had been in this area -- thank you. You had been in this area and had lived in this area for quite some time prior to this incident occurring in August of 2017?

A Yes.

Q Okay. Just a couple quick questions.

A Sure.

Q The -- showing you once again what's been marked and admitted as State's Exhibit number 3.

A Okay.

Q This photograph right here. Your testimony was that as you were running from your house, you turned the corner, and you started heading in this direction towards Dewey, which is this particular road that's right here? I'm pointing with my pen. Correct?

A That is Lindell, actually.

Q Oh, that's Lindell?

1 A Yes.

2 Q I'm sorry. And as you were running down Lindell --

3 or running towards Lindell, that you were basically at a

4 high-intensity pace?

5 A Pretty -- pretty fairly, yeah.

6 Q And is that basically a reference to like

7 high-intensity interval training? Is that what we're talking

8 about here?

9 A No, basic running. Just -- no, I'm not super fast,

10 you know. Just basic running, I mean, but at a high -- I

11 mean, just going a good pace.

12 Q Fair. And --

13 A Yeah, not -- not jogging slow, but jogging with

14 intensity, so.

15 Q Right. And as a result of that, as you're heading

16 in this direction, you're keeping that pace as you're

17 approaching what you believe you see; four individuals

18 sitting --

19 A Yes.

20 Q -- somewhere around this particular area here? I'm

21 pointing for the jury once again. Is that correct?

22 A Yes.

23 Q Okay. Now, your testimony was that as you were

24 approaching these four individuals, you felt uncomfortable,

25 and at some point decided, I'm not going to run -- stay on

1 that sidewalk or in that area; I'm going --
2 A Yes.
3 Q -- to go around them, fair?
4 A Yes.
5 Q All right. Now, as you did so, and you went around
6 the area, you said that you saw a group of people, but you
7 could identify kind of roughly maybe general descriptions of
8 them, but nothing specific?
9 A No, nothing specific.
10 Q Okay. Now, at some point after you had spoken with
11 the police officers that we see in the video, at some point in
12 the future, I'm guessing you spoke with detectives? Did
13 anyone come over to your house --
14 A Yes.
15 Q -- and interview you?
16 A Yeah.
17 Q Okay.
18 A No. Actually, I stayed on the scene up until about
19 4:00 A.M., and it was right around I would say 3:00 A.M. or
20 so, in that general -- 2:30, 3:00 o'clock in the morning that
21 one of the detectives approached me and pulled me aside into
22 their vehicle.
23 Q All right. And at that point, you had an interview
24 with that detective?
25 A Yes.

1 Q And during the course of that interview, my guess is
2 the detective was asking you for more specifics; if you could
3 remember shoes, or color of clothing, or maybe specific
4 physical attributes of any of the individuals you saw?

5 A Yes.

6 Q And you couldn't give him anything like that?

7 A No. I actually -- at that point, I remembered that
8 one of the individuals had a -- a curly hairstyle with a crop
9 top, like a -- I don't know how it would be called. A -- it
10 was a certain hairstyle at that time that was pretty popular,
11 but yeah, I can't -- I don't know what it's called, but they
12 had like a crop top fade.

13 Q So there was some type of hairstyle?

14 A Yeah, outside the hoodie. It was like a crop top
15 type hairstyle.

16 Q Okay, and that would be my next question. You've
17 testified and you've told this jury --

18 A Yes.

19 Q -- that every person had their hoodie or a hoodie
20 up?

21 A Yes.

22 Q So this person had a hoodie that maybe went to the
23 middle of the head, and then the hair was just sticking out
24 like that?

25 A It was sticking out the front of the hoodie, yes.

1 Q Okay. Now, your testimony was that you identified
2 or you saw these four individuals, you turned the corner, ran
3 down the street, then took a license plate, right? Did you
4 ever see -- did you ever see any of those four individuals by
5 that vehicle?

6 A No, no one near the vehicle at all.

7 Q Okay. And you're still running down that street,
8 right?

9 A Yeah.

10 Q And I'm pointing once again to the street right
11 here.

12 A Yes.

13 Q And that's Lindell, right?

14 A Yes.

15 Q Okay. And as you're running down, did you at any
16 point ever look back to see anybody walking towards that
17 vehicle?

18 A No.

19 Q Did you hear --

20 A Well, as I ran past the vehicle, I looked at the
21 front plate. And then, as I ran past, I turned back and
22 looked at the rear-view plate, and that's when I turned back
23 and kept running northbound.

24 Q Now, in the video --

25 A But I did turn back.

1 Q Okay.

2 A Sorry.

3 Q I didn't want to cut you off. But in the video,
4 it's obvious you're surprised as to what happened, right? You
5 arrive on the scene --

6 A Yeah.

7 Q -- and you see the police officers there, and you
8 don't know what happened, fair?

9 A Yeah. Yes.

10 Q Okay. Did you hear gunshots when you were running
11 in the --

12 A No.

13 Q -- that direction down Lindell?

14 A No.

15 Q Okay. At any point during your run?

16 A No.

17 Q Were you wearing earphones that night?

18 A Yes.

19 Q Okay. Now, as you were getting ready to begin your
20 run, you had said you had stretched a little bit, and then the
21 pace of your jog was relatively fast, fair?

22 A Fair to say, yes. Fast.

23 Q From your -- okay. Is there -- can you describe for
24 me a little bit about the lighting in the area? We're looking
25 at this photograph here, and my understanding was, according

1 to what we saw in the video, is you were probably over here in
2 this area when police officers approached you and asked you
3 what happened?

4 A Yeah.

5 Q Okay. And once again, just for the record, pointing
6 to -- looked like the corner of Dewey and Lindell on the
7 southwest side. But in this area here, we see in the video a
8 light pole?

9 A Yes.

10 Q Are there any other light poles in this particular
11 area that you could point out for the jury? That you -- that
12 you know since you've been there?

13 A That I recall of?

14 Q Yeah.

15 A I believe there's one over here. There's none here.
16 I don't believe there are any in this general area also. I
17 think -- yeah, I honestly couldn't tell you exactly where all
18 the light poles are. Maybe --

19 Q I don't need for you to guess.

20 A Yeah.

21 Q If you know, and if you don't know, that's fine.

22 A Yeah, no. I know there's one here for sure.

23 Q Okay.

24 A Because that night -- when I've jogged through there
25 in the past, there's -- there's always adequate lighting over

1 here.

2 Q Right.

3 A But I would say there's not too much adequate
4 lighting on this side of the street, but more so on this side
5 of the street, so.

6 Q Okay. And when you say on this side of the street,
7 I just want to make sure we're clear for the record. What
8 you're looking at is you're pointing to the north side of
9 Dewey here, versus the south side of Dewey, which is --

10 A Yes, yes.

11 Q -- right here? And you're testifying -- you're
12 telling the jury that on the south side, you don't believe
13 that there's --

14 A No, no, no.

15 Q -- there's no lighting here?

16 A There's adequate lighting on this side. On the --
17 on this side, it's more so these houses that have the lights
18 on, and -- and -- and they have pretty adequate lighting on
19 their house, so this whole house is lit up that night. It's
20 pretty -- pretty bright over there.

21 Q Okay, and let me show you this as well. This is
22 State's Exhibit number 10. You were shown this earlier by the
23 State.

24 A Yeah.

25 Q Is that how the house is typically?

1 A Yeah.

2 Q Now, and just in terms of this particular night in
3 August of 2017, were the lights like this on that night?

4 A At that point, no. I could say probably not.

5 Q Okay.

6 A I mean, I'd be guessing in a way, but --

7 Q Right, and I don't want you to guess.

8 A Yeah.

9 Q So just tell me what you recall and don't recall.
10 That's fine.

11 A I don't recall lights being on in the -- like, that
12 bright --

13 Q Okay.

14 A -- at all.

15 Q Now, in addition to that, did you ever know the
16 people that lived in that house prior to this incident
17 occurring?

18 A No.

19 Q And are you -- did you ever know the person that was
20 shot in front of this house on that night --

21 A No.

22 Q -- prior to him being shot?

23 A No.

24 Q Okay. So you're not familiar, for instance, with
25 his friends or --

1 A No.
2 Q -- acquaintance, or anything like that?
3 A No, I don't know him.
4 Q Okay.
5 MR. SANFT: Your Honor, I have no further questions.
6 THE COURT: Mr. Ruggeroli?
7 CROSS-EXAMINATION
8 BY MR. RUGGEROLI:
9 Q Mr. Mason?
10 A Yes, sir.
11 Q You spoke to the police that night in the early
12 hours of August 9th, 2017, correct?
13 A That morning. Yes, sir.
14 Q You gave a Voluntary Statement; you verbally told
15 them what you observed?
16 A Yes.
17 Q And we saw that on the body cam footage that was
18 played for you a moment ago, correct?
19 A Yeah.
20 Q And then, you wrote out a Voluntary Statement,
21 correct?
22 A Yeah.
23 Q You also testified before the grand jury on November
24 29th, 2017, correct?
25 A What was that again?

1 Q The grand jury? Do you recall testifying before the
2 grand jury?

3 A Yeah. I don't know the exact date, but yeah.

4 Q Approximately November of 2017?

5 A Okay, yeah.

6 Q You've been very consistent that there were -- on
7 the video, you said, "Four black dudes"?

8 A Um-hum.

9 Q Is that a yes?

10 A It was four black individuals, yes.

11 Q Yes, in all black hoodies, correct?

12 A In all black hoodies, yes.

13 Q And do you recall that when you testified before the
14 -- before the grand jury, you also said that all of them were
15 dark-skinned, black individuals?

16 A Yeah. Or, I didn't -- I don't know if I said
17 dark-skinned, but yeah.

18 Q Do you recall?

19 A No, I don't recall.

20 Q Okay.

21 A I --

22 MR. RUGGEROLI: Judge, may I approach to refresh --

23 THE COURT: You may.

24 THE WITNESS: It's been so long.

25 MR. RUGGEROLI: -- his recollection?

1 THE COURT: You may.
2 MR. RUGGEROLI: This is page 47.
3 THE COURT: Of grand jury?
4 MR. RUGGEROLI: Yes, Your Honor.
5 THE COURT: Okay.
6 THE WITNESS: This is the grand jury testimony?
7 MR. RUGGEROLI: Yeah.
8 THE WITNESS: Okay.
9 BY MR. RUGGEROLI:
10 Q Would you just read this line to yourself, please?
11 A Okay. Yes.
12 Q Thank you. You were -- and today, all of the times
13 that you've given information, you're just trying to do your
14 best, correct?
15 A Yeah.
16 Q And --
17 A I mean, it's been well over a year now, so.
18 Q Right. And so, at the grand jury, you testified
19 they were dark-skinned, black individuals, correct?
20 A That's -- if that's on that paper, then that's what
21 I testified as.
22 Q Thank you.
23 A Yeah, I'm guessing.
24 MR. RUGGEROLI: I have nothing further. Thank you,
25 Your Honor.

1 THE COURT: Any redirect?
2 MR. BROOKS: No, Your Honor.
3 THE COURT: Okay. Thank you very much for your
4 testimony here today. You may step down.
5 THE WITNESS: Okay.
6 THE COURT: And you are excused from your subpoena.
7 Thank you for being here.
8 THE WITNESS: Okay, thank you.
9 THE COURT: You may call your next witness.
10 MR. PESCI: Can we approach real fast, Your Honor?
11 THE COURT: Sure.
12 (Bench conference)
13 MR. PESCI: We're going to ask if we can take the
14 next officer a little bit out of order. We had told him in
15 order previously. When I was out in the hall checking with
16 the witnesses, this officer's son just fell at the school, so
17 he's at the --
18 THE COURT: Just what?
19 MR. PESCI: Just fell --
20 THE COURT: Fell down?
21 MR. PESCI: -- at the school and hit his head. He's
22 at the --
23 THE COURT: Okay.
24 MR. PESCI: -- nurse's office, so we're trying to
25 get this officer on now. So we're out of order, but that's --

1 that's why we're doing it, so he can get to the school.
2 THE COURT: Okay, that's fine.
3 MR. PESCI: His wife's there, but --
4 THE COURT: So do we have to do four witnesses now?
5 MR. PESCI: No, no, no. We're just --
6 THE COURT: Okay.
7 MR. PESCI: We're taking him out of the order that
8 we told them we're calling people.
9 MR. RUGGEROLI: Who is it?
10 THE COURT: Perfect. And then you're going to
11 call --
12 MR. PESCI: Anthony Calleja.
13 MR. RUGGEROLI: Oh.
14 THE COURT: And then Mr. Mason's wife?
15 MR. PESCI: Yes, but we're doing this guy first so
16 he can get to his kid.
17 THE COURT: Perfect.
18 MR. PESCI: Okay, thank you.
19 THE COURT: Okay.
20 (End of bench conference)
21 MR. PESCI: Your Honor, the State calls Anthony
22 Calleja.
23 THE MARSHAL: And if you'll please remain standing,
24 Officer, raise your right hand, and face the Clerk.
25 OFFICER ANTHONY CALLEJA, STATE'S WITNESS, SWORN

1 THE CLERK: You may be seated. Please state and
2 spell your first and last name for the record.

3 THE WITNESS: Anthony Calleja. A-n-t-h-o-n-y,
4 C-a-l-l-e-j-a.

5 MR. PESCI: May I proceed, Your Honor?

6 THE COURT: You may.

7 MR. PESCI: Thank you.

8 DIRECT EXAMINATION

9 BY MR. PESCI:

10 Q Sir, based on your uniform, are you a Metro officer?

11 A Yes, I am.

12 Q How long have you been doing that?

13 A Coming up on 14 years.

14 Q Back in August of 2017, specifically focusing on the
15 late hours of August 8th, going into the early hours of August
16 9th of 2017, were you working?

17 A Yes, I was.

18 Q What shift was that?

19 A Graveyard shift.

20 Q Okay. What are the hours of graveyard?

21 A We start at 10:00 P.M. and work through 8:00 A.M. in
22 the morning.

23 Q What shift do you work now?

24 A I work the same shift.

25 Q Okay. Are you a little tired?

1 A Little tired.

2 Q Okay, all right. I want to show you what's been
3 marked as State's Proposed Exhibit 327.

4 MR. PESCI: And it's been shown to defense counsel.
5 I believe there's a stipulation.

6 MR. SANFT: Yes, Your Honor.

7 MR. RUGGEROLI: Yes, Your Honor.

8 THE COURT: Okay, it's admitted.

9 (State's Exhibit 327 is admitted)

10 BY MR. PESCI:

11 Q Are you familiar with -- and in anticipation of your
12 testimony, did you review some body-worn camera from you?

13 A Yes, I did.

14 Q Okay.

15 MR. PESCI: Your Honor, I'm sorry, did you say it
16 was admitted?

17 THE COURT: It's admitted.

18 MR. PESCI: Thank you very much.

19 BY MR. PESCI:

20 Q Sir, you know, the ladies and gentlemen of the jury
21 maybe have heard about body-worn camera, but can you tell us
22 about it? How does it work?

23 A We have a camera -- because I'm not working the
24 shift currently, my camera is plugged in to download the film
25 from last night. So I'm not wearing it, but normally, it's --

1 we keep it either on our lapel, our collar, or some even have
2 it on glasses if they wear. The camera is kept with us the
3 entire shift, and there's an activation switch that we keep
4 various places on our body. I keep mine on my hip.

5 Q Is yours on your hip right now?

6 A Right now, what I have is -- if I can stand up here.

7 THE COURT: Sure.

8 MR. PESCI: Please.

9 THE WITNESS: This is where I keep my activation for
10 my camera. As soon as we're assigned to a call, we get
11 assigned to a call, or we initiate a call on our own, I start
12 the camera. The camera has a constantly running feed -- video
13 feed. And when you activate it, it takes 30 seconds back,
14 just in case you get involved in something, it gives you 30
15 seconds to turn on the camera. But at that point, when you
16 turn on the camera, it records everything that you see.

17 My camera is on my left collar. I do have that, and
18 I've always kept it at the same position. It has a fairly
19 good field of view that you can see pretty much what I'm
20 looking at. And generally, we keep the camera on the entire
21 shift or in the entire call until let's say you need to confer
22 with another officer, detective, use the restroom, anything
23 that you would not like on camera because it's a little
24 personal in nature. So generally, we keep the camera on. And
25 in this event, I had it on for approximately 20 -- 21 or so

1 minutes.

2 BY MR. PESCI:

3 Q Okay, and so that camera you spoke of that's yours
4 right now is back at your area command?

5 A That's correct.

6 Q And it's set for downloading?

7 A Yes.

8 Q And does that mean that there's, in the Cloud, in
9 essence, the video from your shift that you finished?

10 A That's correct. We plug it in. They're contracted
11 with Evidence.com. Then, as soon as I plug it in, it
12 downloads, and the battery pack, the activation switch, is
13 recharged, because it's only active for approximately eight or
14 nine hours.

15 Q And so, your shift from yesterday, someone could
16 download it and review it?

17 A That is correct.

18 Q All right. And so, from back on August 8th, going
19 into August 9th, was your body-worn camera activated?

20 A Yes, it was.

21 Q And was that later downloaded?

22 A Yes, it was.

23 Q And does it show what you did in this particular
24 case?

25 A Yes, it does.

1 Q All right. Now, you talked about how it backs up a
2 certain amount of time. Is that, you push the button, and
3 then it picks up some video from before that time?
4 A That is correct. The moment you activate it, it
5 keeps the prior 30 seconds, attaches it to the entire video,
6 but those 30 seconds do not have sound.
7 Q All right, you just went to the next point that I
8 wanted to point out. Sometimes when we play these, at the
9 very beginning, there's just no audio?
10 A That's --
11 Q Is that accurate?
12 A That is correct.
13 Q All right. But you can see, there's the video, it's
14 picking up the video, but the audio just doesn't come in yet?
15 A That is correct.
16 Q Is that a function of that company that runs this
17 system?
18 A Yes, it is.
19 Q Okay. So that portion there, the first 30 seconds,
20 you can see, you can't hear, and then the audio kicks in?
21 A That's true.
22 Q Okay. Now, on this particular case, were you called
23 out to a scene on Dewey Avenue?
24 A Yes, I was.
25 Q Do you remember the address, 5536 Dewey Avenue?

1 A Yes, in the area of Dewey and Torrey Pines.

2 Q All right. Do you have an area that you work in

3 specifically; a certain section of your area command that

4 you're assigned to?

5 A Yes. They're assigned sectors, and my area at that

6 particular time is -- is Sam 5. Sam 5 area is from Tropicana

7 south down to Sunset; from Jones down to Durango. So that

8 area on Torrey Pines and Dewey is within my sector.

9 Q Showing you State's Exhibit 4, which has previously

10 been admitted, do you recognize the streets in this area?

11 A Yes, I do.

12 Q And then, could you show us where Lindell runs?

13 A Lindell is --

14 Q Here, I'm going to help you out.

15 A Yeah. I'm like, looking at the screen.

16 Q State's 1, that's more close-up.

17 A Okay.

18 Q Can you orient us as far as where Lindell is and

19 where Dewey is?

20 A Okay. Lindell is the one running north and south.

21 Q So, I apologize. There's a little mouse in front of

22 you.

23 A Oh, I'm sorry.

24 Q If you'd grab that mouse.

25 A This is Lindell right here.

1 Q There we go, thank you. And then Dewey?
2 A And Dewey is right here.
3 Q All right. And did you respond, looking at State's
4 Exhibit 3, to a particular location?
5 A Yes, I did. I did respond to this location right
6 here. My patrol car came to this location.
7 Q All right. I'm going to show you State's Exhibit
8 10. What time was it when you got there approximately?
9 A Approximately 12:20 in the morning.
10 Q 12:20? So this is August 9th of --
11 A That is correct.
12 Q -- 2017?
13 A Yes.
14 Q All right. Do you -- when you're working a shift on
15 that particular night, do you have a partner with you?
16 A No, I am by myself.
17 Q Okay, is that common? Is that the system that's
18 utilized?
19 A Yes, unless you're a training officer, or every
20 other training night, so every two weeks, we can double-up
21 because there's a lot of officers working that night. But as
22 a regular patrolman, I am by myself.
23 Q Do you remember what the call was; what it came out
24 as?
25 A It came out -- the code that they use for 15A is

1 assault battery with a firearm. A gunshot is the way the call
2 came out.

3 Q All right. So your information as you're responding
4 to this scene is that some shots have been fired?

5 A That is correct.

6 Q And you're riding to the scene by yourself?

7 A Yes.

8 Q Where did you come from, and how did you get there?

9 A I came from a distance. I do know I came further
10 northeast of the location. When the call came out, as soon as
11 it was activated, just roughly based on the 100 blocks, I knew
12 the location, where it was within my sector beat. She does
13 call out -- the dispatcher does call out over the air it's in
14 Sam 5 area, so I know the general location to go to. I
15 activate my camera as soon as I receive the call. And because
16 of the type of call and the nature of the call, I activated my
17 lights and sirens, so that way, at least I can get there a
18 little faster.

19 Q All right, and what's that referred to sometimes
20 when you're responding that way?

21 A Code 3 driving.

22 Q Okay, and is that because you're trying to get there
23 as fast as you can?

24 A That is correct.

25 Q Okay. And then, eventually, do you -- are you kind

1 of flagged down as to what direction to go to?

2 A Yes.

3 Q What happens?

4 A As I approach the scene, the area, I went to one
5 street to the north of, looking for a victim. The call that
6 came out -- may I give a little bit of background --

7 Q Sure, sure.

8 A -- as far as the call that came out? The call that
9 came out said an individual heard what sounded -- sounded like
10 gunshots, went outside, and found his cousin, who appeared to
11 be hit by bullets, so he called 911. Because he was outside,
12 what I did was, when I arrived in the area of the
13 neighborhood, I was looking for someone outside, lying --
14 looking for help.

15 I drove through the cul-de-sac one street to the
16 north of. There was a person standing outside. As I was
17 asking did they call for help, someone came down, flagged me
18 down, waved; we're over here, over here on the next street.
19 Drove south down to Dewey to the street right here, and as I
20 pulled around the corner, I could see the individual on the
21 driveway.

22 Q Okay.

23 MR. PESCI: Your Honor, at this point, I'd move to
24 publish State's Exhibit -- and I apologize. Before we turn
25 that on, last time, our volume was a little bit lower. I'm

1 not sure. I don't think I can control the volume. Is it
2 something that's controlled here? Oh, all right. Well --
3 THE COURT: And is it 327?
4 MR. PESCI: It's 327. Yes, Your Honor.
5 THE COURT: Okay.
6 MR. PESCI: May I publish?
7 THE COURT: You may.
8 (Video is played)
9 BY MR. PESCI:
10 Q You spoke of someone flagging you down, sir. Is
11 that who we see in the video right now?
12 A Yes, that is.
13 Q Okay, and we talked earlier about how there's not
14 audio at first?
15 A Yes.
16 Q Do you know who is who when you first arrive on a
17 scene like this?
18 A Absolutely not.
19 Q In this specific scene, did you know who was who?
20 A No, I did not.
21 Q Sir, when you -- so, as we're watching, are you
22 putting gloves on?
23 A I am.
24 Q Why?
25 A There's a lot of blood at the scene.

1 Q Was he still breathing when you first got there?
2 A He appeared to be breathing, yes.
3 Q Did paramedics arrive?
4 A I'm sorry?
5 Q Did paramedics arrive?
6 A Yes, they did.
7 (Stopped playing of video)
8 BY MR. PESCI:
9 Q So, sir, I want to kind of ask you some questions
10 based on what we just were watching, and ask them based on
11 this Exhibit number 10.
12 A Okay.
13 Q So when you first arrived on that scene, were you
14 the first and only officer at the scene?
15 A Yes, I was.
16 Q We watched in the video, there seems to be a lot of
17 commotion near the body of the victim, correct?
18 A Correct.
19 Q How many people did you have coming and going
20 through that area at first?
21 A At first, initially, about four individuals.
22 Q Family-related?
23 A Yes.
24 Q Okay.
25 A That I found out later.

1 Q All right. Was -- were paramedics called to the
2 scene?
3 A Yes.
4 Q Did they arrive to the scene?
5 A Yes.
6 Q Did they get to the body?
7 A Yes, they did.
8 Q All right. Is the most important thing at that
9 particular time the efforts to try to preserve life?
10 A Yes.
11 Q Okay. Was that done by these paramedics?
12 A Yes.
13 Q All right. In that -- in the melee or the confusion
14 of the family coming out and the paramedics coming to the
15 scene, were there people, in essence, all over where the
16 shooting occurred?
17 A Yes, they were.
18 Q Was that something that you hoped for? Would you
19 have liked to have it been different?
20 A No.
21 Q What would you prefer?
22 A I'd prefer, of course, keeping everything as --
23 exactly as they were, but because he was in the state he was,
24 obviously, he needed medical attention, that took priority, so
25 allowing everyone to come in and do what they needed to. I

1 kept anyone that was nonessential -- tried to keep them off
2 the scene.

3 Q That was my next question. I heard you say to the
4 family, "Please move away," correct?

5 A Yes.

6 Q As hard as that is for family members to see the
7 victim, you tried to get them out of the scene?

8 A That's correct.

9 Q But then the paramedics still came in, because, as
10 we were watching, he was still breathing, wasn't he?

11 A Yes.

12 Q That's the reason why the paramedics got into the
13 scene and took him away?

14 A Yes.

15 Q Okay. After that, you talked about trying to set up
16 a perimeter; is that correct?

17 A That is correct.

18 Q All right. And you talked about how it was maybe a
19 possible drive-by?

20 A That's correct. The call came out where he -- the
21 cousin, Mr. Relato, did call stating that he believes it was a
22 drive-by, so we had to take that into account.

23 Q All right. So you didn't know for sure, but that
24 was a piece of information that you had?

25 A That's true.

1 Q Based on that, did you expand the perimeter?
2 A Yes, we did.
3 Q When we say perimeter, what do we mean?
4 A We set up an area that we don't want anyone to come
5 into, just in case there's evidence. There's a crime scene;
6 we want to make sure everything's preserved. So we set up an
7 inner-perimeter, which is where the immediate crime scene is,
8 the immediate location of whatever we have. In this case, we
9 had the victim in his driveway, that immediate crime scene.
10 The end of the street on one end, east and west, to
11 make sure if there's anything else there; shell casings,
12 cigarette butts, anything that we have to make sure no one
13 tramples on it after that point. Then we have an exterior
14 crime scene where people can walk around, but we keep only
15 personnel in there, whether it be other officers, or
16 detectives, or anyone else.
17 Q Okay. You spoke a moment ago about shell casings.
18 Is that when a firearm is shot, and a cartridge case is
19 expelled out of the firearm?
20 A Yes.
21 Q Assuming it's a semiautomatic?
22 A Yes.
23 Q Okay. Now, you talked about how, after you got this
24 perimeter up, you're trying to preserve that scene?
25 A Yes.

1 Q Okay. It seems as if, from the video, there were
2 some other officers got there as well?
3 A Yes.
4 Q Did they assist you with that?
5 A Yes, they did.
6 Q Okay. So at that point, were you trying to keep
7 that scene, as best as you could, as it was?
8 A Yes.
9 Q All right, after the family's been moved over and
10 the paramedics have left the area?
11 A Yes.
12 Q All right. You're trying to freeze that for further
13 investigation from others?
14 A Yes.
15 Q Did you touch anything?
16 A No.
17 Q Okay. So you weren't picking up cartridge casings,
18 or opening up doors, or doing anything?
19 A No, I do not do that. No.
20 Q Okay. You were a patrol officer at the time?
21 A Yes.
22 Q Did you have a sergeant?
23 A Yes.
24 Q Did you relay the information that you had to your
25 sergeant?

1 A Yes, I did.

2 Q Is there kind of a chain of command within
3 Metropolitan Police Department?

4 A Yes.

5 Q Does that information then get relayed to further
6 investigators down the road?

7 A Yes, it does.

8 Q Did you stay around to kind of relay some of that
9 information?

10 A Yes.

11 Q Okay. And did you assist with getting information
12 as far as who was at the scene, names, and things of that
13 nature?

14 A Yes, I did.

15 Q Okay.

16 MR. PESCI: Court's indulgence.

17 BY MR. PESCI:

18 Q Sir, I apologize. At the beginning, or towards the
19 beginning, when you first approached, you were asking the
20 individual who was helping the victim about firearms. Why was
21 that?

22 A At this point, we didn't know who had shot him,
23 where there were firearms, if there were any firearms present.
24 Because we had a scene that we considered to be dynamic, we
25 still don't know everyone that's involved. What I didn't want

1 is I didn't want there to be someone come out of the house
2 with a firearm, or if there was a firearm that he may have
3 owned himself, I wanted to be aware at least what was in the
4 immediate area at that house as far as safety for the other
5 officers anywhere else.

6 MR. PESCI: All right, thank you very much. Pass
7 the witness, Your Honor.

8 THE COURT: Cross-examination, Mr. Sanft?

9 MR. SANFT: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SANFT:

12 Q Officer Calleja?

13 A Yes, sir.

14 Q Okay. During the course of your career as a
15 Metropolitan Police Department police officer, have you ever
16 been on this kind of scene before?

17 A Yes, I have.

18 Q And since then?

19 A Yes.

20 Q Very dynamic scene, right?

21 A Yes.

22 Q And as what the State has asked you, a lot of moving
23 parts, right?

24 A Yes.

25 Q Now, you arrived on the scene. Would it be fair to

1 say you were the primary officer, first on the scene?

2 A Yes.

3 Q And as a result, based upon your policy and
4 training, as the first officer on the scene, you arrive, and
5 then at that point, you're kind of taking point when other
6 officers arrive on the scene following that same call, fair?

7 A Yes.

8 Q Okay. And as the person that's on the scene as the
9 primary officer, you're in charge at that point on protecting
10 the safety of the individuals that are there?

11 A Yes.

12 Q So you're determining whether maybe the threat is
13 still there or not, fair?

14 A That's correct.

15 Q And then, once that's determined, or once that's
16 resolved, then the next part of the process is preserving the
17 scene for evidentiary value?

18 A Yes.

19 Q Now, what the State had asked you earlier was you
20 didn't pick up any what you believed to be of evidentiary
21 value during the time that you were spending there, fair?

22 A That -- that's correct.

23 Q Okay, but it is a team effort, right?

24 A Yes.

25 Q So if you saw something on the ground that you

1 believed was of evidentiary value, like, say, for instance, a
2 spent cartridge casing --

3 A Um-hum.

4 Q -- you would have at some point identified it, maybe
5 put a cone by it, tell somebody else, hey, we've got something
6 here, don't step over here, something like that, fair?

7 A Not put a cone, but definitely let people know where
8 there are shell casings, yes.

9 Q Right. Now, at some point in the future when you
10 handed it off to your sergeant, he would then, in turn, hand
11 it off to maybe detectives that are responsible for this kind
12 of case, right?

13 A Yes. I won't hand off the scene to my sergeant. My
14 sergeant will arrive and then make sure that I'm within
15 policies and guidelines. And then, when detectives arrive,
16 I'll brief them on the scene, and then it becomes their
17 investigation.

18 Q Okay. So even though your sergeant was present,
19 you're still the primary officer on the scene?

20 A That's correct.

21 Q And then, he's there in an advisory capacity sort of
22 thing?

23 A Yes.

24 Q And at some point, you hand over your
25 responsibilities as primary officer to detectives to continue

1 with the investigation?

2 A Yes.

3 Q Okay. Now, in this case, and what I'm trying to
4 explain to the jury here through you is that it's -- it's a
5 team effort, right? Meaning, every officer that arrives on
6 the scene is doing one of those things; protecting the people
7 that are there, or in the alternative, protecting the scene
8 for evidentiary value, or conducting investigation?

9 A Yes.

10 Q And it's -- you all talk to one another --

11 A Yes.

12 Q -- to make sure that, hey, if you see something
13 that's of value, you let other people know, right?

14 A Yes.

15 Q Okay. Now, in this case, as you were going through
16 this process, we saw the video of what you saw, and you saw
17 these individuals that were crying that were there, right?

18 A Yes.

19 Q You've been on scenes like that before, right?

20 A Yes.

21 Q Where you arrive, and then the people that are there
22 are potentially trampling over things that are of evidentiary
23 value, fair?

24 A Yes.

25 Q But once again, your number one priority at that

1 point is not evidentiary value; it's to protect the safety of
2 the people that are there?

3 A Yes.

4 Q Right? Now, in this case, as you are conducting
5 this investigation or at some point in the future, did you
6 ever interview anybody in furtherance of what happened; any of
7 the individuals that were there that we saw in the video, or
8 people in the area? Did you do any of that type of
9 investigation?

10 A I did talk to some of the individuals that were
11 there, but after other officers had already conducted an
12 investigation. Gathered names, details as to what they saw,
13 put it down in notes, and then I would then confer -- confirm,
14 "Hey, you ended up seeing this; this is what you were doing?"
15 "Yes," and then I would put it down in my notes for -- for the
16 detectives.

17 Q Okay, and that's just -- just to make sure, that
18 everything kind of went through you at that point as to who
19 was talking to who --

20 A Yes.

21 Q -- and what was said by who?

22 A Yes.

23 Q A general description, fair?

24 A Yes.

25 Q Did you ever write a report with regards to what you

1 did in this case?

2 A Yes.

3 Q And is that a report that was then submitted to the
4 detectives to help them in furtherance of their investigation
5 of this case?

6 A Yes.

7 Q Okay. Now, there was some discussion about this
8 idea that, when you arrived on the scene, potentially, it was
9 a drive-by?

10 A Yes.

11 Q Do you recall, from the time that you received the
12 call to the time that you arrived on the scene, how long that
13 was? What period of time?

14 A Approximately three, four minutes. The body camera
15 does capture the entire drive time, but I'm just -- I'm just
16 guessing, because I do know it was a little distance. I was
17 driving Code 3, going faster than authorized by just general
18 public, so there were intersections I had to clear. So I'm
19 guessing approximately three, four minutes.

20 Q Okay. Did you at any point ever speak with the
21 cousin or the family member that said that they believe there
22 was a drive-by shooting?

23 A Mr. Relato?

24 Q Yes.

25 A Yes.

1 Q Did you ever at any point capture that interview or
2 that discussion with him in a report, or with your notes, or
3 anything like that?

4 A The notes -- the basic notes that I ended up taking
5 that I submitted to detectives, yes.

6 Q Now, you had videotaped that portion with your body
7 cam. Did you videotape your interview with this particular
8 family member when you were speaking to them?

9 A I really don't recall. I don't recall if I did or
10 not.

11 Q Okay. Now, and once again, for this jury, make sure
12 we understand, the body cam that you have isn't automatically
13 turning on and off; you have to make the choice to turn it on
14 or off, fair?

15 A Yes.

16 Q Okay. And based upon your training and experience
17 in this sort of technology, in this case, you received the
18 call, you immediately turned it on, turned your car, and
19 started driving in the direction in which you were taking the
20 call?

21 A Yes.

22 Q Okay. And at some point, you chose to turn off your
23 camera, and that was after this incident occurred, sometime a
24 little bit later, fair?

25 A Yes.

1 Q But you didn't turn it back on when you were
2 interviewing potential people that could have had something to
3 say on this case?

4 A I don't recall if I did or did not.

5 Q Okay.

6 A Probably not. If I do turn off, one of the policies
7 that we have when we turn off a body camera, we have to
8 dictate so you can hear through the camera why you're turning
9 it off. Generally, if I turn off a camera when let's say a
10 supervisor or a detective arrives on scene because they're
11 taking over the investigation, I'll usually say, "Turning off
12 camera to confer with sergeant or detective." I shut off the
13 camera, and at that point, it only comes back on if there's
14 something that I think, hey, I need to turn it back on for, if
15 I recall.

16 Q And once again, I just need to know, I -- and you
17 can understand this. If you are interviewing somebody that
18 may be somebody who saw something, like in this case, that's
19 not a reason for you to turn it back on at that point?

20 A Depends on why I'm interviewing. If I could,
21 detectives were coming to the scene. Not just our local PD
22 detectives; we knew that homicide was going to be coming to
23 the scene as well. When homicide comes to the scene, I do not
24 do in-depth interviews because I don't interfere with their
25 investigation.

1 So the basic information I usually ask someone is,
2 "What did you see until you gave us a call," to gather the
3 basic information to give to detectives so they can go ahead
4 and ask the further questions during the interviews. I don't
5 do in-depth interviews as a preliminary -- as the primary
6 officer, just because I'm more of triage; get everything set
7 up so that when detectives arrive, they can go ahead and
8 conduct the investigation.

9 Q All right. But you are aware, of course, just as a
10 matter of human nature, that when you ask someone a question
11 like, "What did you see," it's not like they're giving you a
12 concise version of what they saw; they're telling you what
13 they saw, fair?

14 A Yes, absolutely.

15 Q And you're the first person that's probably going to
16 be asking them that question in a long line of people asking
17 them that same question, fair?

18 A Yes.

19 Q Okay. All right. Now, in addition to that, you --
20 when you arrived on the scene, there was an individual that
21 was running from the corner back over to that area. Do you
22 know who that was by any chance?

23 A No.

24 Q Okay. Did you ever, during the time that you spent
25 on this scene, ever ask anyone with regards to video footage,

1 phone footage, anything like that of any of the individuals in
2 the area?

3 A Did I ask if -- you mean --

4 Q Did you conduct that type of investigation? I just
5 want to know if you asked --

6 A Yeah, we identify who has cameras outside. We try
7 to identify the houses, so that way, people can start asking,
8 doing a knock on the residents. Is that what you're asking?

9 Q Yes, yeah.

10 A Yes, we do that.

11 Q Okay, but did you do -- did you personally do that
12 in this case, as far as you recall?

13 A I pointed out to houses where officers could go make
14 knocks. I said, across the street, there's a camera there,
15 there may be a camera there. But we start that, and then
16 there are officers that are assigned specifically --

17 Q To knock on the --

18 A -- to start knocking on houses.

19 Q Okay.

20 MR. SANFT: All right, I have no further questions,
21 Your Honor. Thank you.

22 THE WITNESS: You're welcome.

23 THE COURT: Thank you. Mr. Ruggeroli?

24 CROSS-EXAMINATION

25 BY MR. RUGGEROLI:

1 Q Officer, you were asked about priority. I think one
2 of the things you said was policies and guidelines; do you
3 remember that?

4 A Yes.

5 Q And so your priority is to follow the policy and
6 guidelines that you've been taught -- trained to follow,
7 correct?

8 A Yes.

9 Q One of those -- does that include things like
10 putting on the gloves?

11 A It's not specified in a policy, but it's safe
12 practice.

13 Q And when you show up on a scene like that, you have
14 a general procedure that you would go through though, correct?

15 A Yes.

16 Q In this particular case, you mentioned that part of
17 the protocol was to preserve the crime scene, but you're
18 obviously focused on the individual that's injured and trying
19 to get them assistance, correct?

20 A Yes.

21 Q A number of things are going on at once?

22 A Yes.

23 Q At the end of it though, there's going to be a crime
24 scene that's there, correct?

25 A Yes.

1 Q And in this situation, you have to deal with it as
2 you come into it. But it would be fair to say, to a certain
3 extent, this crime scene was compromised because of what the
4 activity was going on around it in an attempt to save the
5 individual's life?

6 A To some extent, yes.

7 Q And so, you mentioned shell casings. Did you
8 specifically look for any evidence like shell casings?

9 A When I first arrived, if you look at the body -- the
10 footage, the first thing I did, went to the victim, and then I
11 did a scan with my flashlight because I knew people were going
12 to be trampling over that particular area. And what I tried
13 to do was preserve at least the immediate area, and I see -- I
14 did a scan. I would look down, I moved around, I backed up so
15 the camera would catch at least most of what we have there
16 initially, because there were things that were moved, and I
17 did see shell casings.

18 Q What about -- did you say cigarette butts, or was
19 that a question that was asked of you?

20 A No, I mentioned that that's one of the things that
21 we're taught in evidence preservation, that if there's
22 anything there, just leave everything as-is because we don't
23 know if it could be evidence or not.

24 Q And something like a cigarette butt could be a very
25 important piece of evidence?

1 A It could be, yes.

2 Q Were you there when the crime scene analysts
3 arrived?

4 A Yes.

5 Q And did you assist them?

6 A As a primary officer, it is my responsibility to
7 point out the crime scene the best that we know. What I ended
8 up doing -- usually, when an analyst arrives, male or female,
9 when they arrive, I have to tell them if I did touch anything,
10 because when they process and lift prints, they're going to
11 check to see if I touched anything. Since I had gloves on,
12 usually I'll say, I put gloves on, I did this, I touched that,
13 but they keep that in their notes when they go ahead and start
14 photographing, and then collect evidence.

15 Q And you had some information about this potentially
16 being a drive-by?

17 A Yes.

18 Q But you didn't have any specific information
19 regarding a suspect, correct?

20 A That's correct.

21 Q Or -- at this time, or any descriptions of a
22 potential suspect?

23 A Well, suspects, as in people of interest, yes, we
24 did have a description, because there was a call that came out
25 a minute prior to me --

1 Q Okay.

2 A -- going to that call.

3 Q I'm specifically referring to the individuals on the

4 scene that you were talking to, and the information that you

5 had at that time.

6 A Okay.

7 Q Okay.

8 A That's --

9 Q Thank you.

10 A That's correct.

11 MR. RUGGEROLI: I have nothing further.

12 THE COURT: Any redirect?

13 MR. PESCI: Yeah.

14 REDIRECT EXAMINATION

15 BY MR. PESCI:

16 Q Well, aside from the people on the scene, you were

17 just about to tell us that you had more information about

18 this, didn't you?

19 A That is correct.

20 Q And what was the information?

21 A That a minute prior to the call coming out -- I say

22 a minute; it could be a couple minutes before -- there were

23 individuals that live on the south side of the street, almost

24 directly across the street from the crime scene, that called

25 in a suspicious circumstance. It was a different call that

1 was generated almost the same time. A gentleman, I believe
2 his name was Mr. Mason, was jogging, he goes for a jog in the
3 morning, saw four individuals --

4 MR. RUGGEROLI: Judge, I'll object to the hearsay.

5 THE COURT: All right, just --

6 MR. PESCI: Okay.

7 THE COURT: I mean, I'm assuming you want him to
8 stop now, or?

9 MR. PESCI: Okay.

10 BY MR. PESCI:

11 Q So you had some information from someone that called
12 in a suspicious situation going on?

13 A That is correct.

14 Q Okay. So you had that through dispatch, correct?

15 A That is correct.

16 Q So it wasn't just the people at the scene?

17 A That is correct.

18 Q Okay. So you're working with the information from
19 dispatch; you're working from the information at the scene;
20 you're working there to try to take down information, correct?

21 A Yes.

22 Q Defense counsel just asked you a few questions
23 about, all right, the body cam's on during interviews, the
24 body cam's not on during the interviews; do you remember those
25 questions?

1 A Yes.

2 Q I think you said you weren't sure; you couldn't

3 remember?

4 A Right.

5 Q Okay. Well, let's see if we can help you remember.

6 The earlier video we watched, it stopped after the individual

7 was put inside of the ambulance, correct?

8 A Yes.

9 Q All right. You stayed on the scene?

10 A Yes.

11 Q And you talked with some of the individuals there?

12 A Yes.

13 Q Okay, and this is still your body cam, correct?

14 (Video is played)

15 THE WITNESS: Yes.

16 (Stopped playing of video)

17 BY MR. PESCI:

18 Q Is there another officer working this with you?

19 A Yes, there were several.

20 Q Is he -- is -- I believe it's a he; is that correct?

21 A Yes.

22 Q Is he gathering information from these witnesses?

23 A Yes, he is.

24 Q You still have the body cam on?

25 A Yes.

1 Q Okay.

2 (Video is played)

3 (Stopped playing of video)

4 BY MR. PESCI:

5 Q So now we have the individual who was the first

6 person. Looks like he's got a shirt on, correct?

7 A Yes.

8 Q And you're interviewing him, getting some basic

9 information?

10 A Yes.

11 Q Body cam's still on, correct?

12 A Yes.

13 (Video is played)

14 (Stopped playing of video)

15 BY MR. PESCI:

16 Q You told us earlier that you're trying to gather

17 information from who's who, what -- the basics, and then hand

18 off to other detectives, correct?

19 A Yes.

20 Q All right. And for the purposes of this jury not

21 having to sit so long, I'm going to move it forward a little

22 bit. As we're moving forward, can you see -- are you still

23 there talking with this witness?

24 A Yes.

25 (Video is played)

1 BY MR. PESCI:
2 Q (Indiscernible) mention he's a student?
3 (Stopped playing of video)
4 BY MR. PESCI:
5 Q So, all this has been preserved?
6 A Yes.
7 Q All of this is available for review?
8 A Yes.
9 MR. PESCI: Okay, thank you very much.
10 THE COURT: Any recross?
11 RECROSS-EXAMINATION
12 BY MR. SANFT:
13 Q Officer, just -- I want to make sure that you and I
14 are clear. I asked you a question earlier about whether or
15 not you had interviewed and saved that body cam footage. Now,
16 we've seen some body cam footage, right?
17 A Yes.
18 Q Okay. That's part of your job is to make sure that
19 you capture whatever you can in terms of evidence, potentially
20 to show a jury, right?
21 A Yes.
22 Q And I want to make sure I'm clear. I -- when I
23 asked you earlier about the body cam footage, you said no.
24 Did you say no?
25 A I said I don't recall.

1 Q You don't recall? Okay, but here it is.
2 A Okay.
3 Q Right? Right? Is that a yes?
4 A Yes.
5 Q Okay. Which means, typically, that these types of
6 things help you recall, because I'm sure you answer hundreds
7 of calls since August of 2017. This is the type of technology
8 that can help you recall specifically things that can turn --
9 that you could then turn to a jury and say, yeah, I do
10 remember now that this did happen?
11 A Okay, yes.
12 Q Would that be fair?
13 A Yes.
14 Q Okay, and that's the reason why we have those
15 things, right?
16 A Yes.
17 Q Okay.
18 MR. SANFT: No further questions, Your Honor.
19 THE COURT: Thank you.
20 MR. RUGGEROLI: Thank you, Your Honor. I have no
21 questions.
22 THE COURT: All right. Officer, thank you very much
23 for your testimony here today. You may step down, and you are
24 excused from your subpoena.
25 THE WITNESS: Okay, thank you.

1 THE COURT: Thank you. And you may call your next
2 witness.

3 MR. BROOKS: State calls Lucinda Mendoza.

4 THE MARSHAL: If you'll please watch your step.
5 Step up into the witness stand.

6 THE WITNESS: Sure.

7 THE MARSHAL: Remain standing, raise your right
8 hand, and face the Clerk, please.

9 LUCINDA MENDOZA, STATE'S WITNESS, SWORN

10 THE CLERK: You may be seated. Please state and
11 spell your first and last name for the record.

12 THE WITNESS: Lucinda Mendoza. L-u-c-i-n-d-a.
13 Mendoza, M-e-n-d-o-z-a.

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Ms. Mendoza, do you recall an incident that occurred
17 back on August 9th, 2017 that brings us here in court today?

18 A Yes.

19 Q Do you recall your husband leaving the house around
20 midnight?

21 A Yes.

22 Q I want to show you State's Exhibit 4. Can you -- do
23 you recognize what's depicted in this map?

24 A Yes.

25 Q And back in 2017, did you live at that 5524 Zachary

1 Street address?

2 A Yes.

3 Q So when your husband went on his jog, as he started
4 off his jog, at some point, do you receive a phone call from
5 him?

6 A Yes.

7 Q And based on that phone call, does he ask you to do
8 something?

9 A Yes.

10 Q Do you end up doing that?

11 A Yes.

12 Q What do you do?

13 A I called the non-emergent 311 number.

14 Q And do you relay some information that your husband
15 had just given to you?

16 A Yes.

17 Q And have you had the opportunity to come and listen
18 to that 911 call previously?

19 A Yes.

20 MR. BROOKS: Your Honor, I don't think there's
21 any --

22 MR. SANFT: No objection, Your Honor.

23 MR. BROOKS: -- objection to State's Proposed
24 Exhibit 330.

25 MR. RUGGEROLI: No objection.

1 THE COURT: Okay, 330 is admitted.
2 (State's Exhibit 330 is admitted)
3 THE COURT: And you may publish.
4 (911 call is played)
5 (Stopped playing of 911 call)
6 BY MR. BROOKS:
7 Q Ms. Mendoza, what's your husband's name?
8 A Robert.
9 Q And is it Robert Mason?
10 A Yes.
11 Q Now, we heard you just relay some facts to a 311
12 operator.
13 A Um-hum.
14 Q At that point in time, had you seen any of those
15 things, or were you just relaying what you --
16 A No, strictly just relaying what I was told to relay.
17 Q So you have no idea whether they were black males or
18 Asian males?
19 A No.
20 Q No? And you have no idea if it was a Ferrari or a
21 white Crown Victoria?
22 A No.
23 Q So you just said white Crown Victoria type car
24 because that's --
25 A Right.

1 Q -- what he said?

2 A That was the description I was given.

3 Q Okay. However, was it hot that night?

4 A Yes.

5 Q And did you think it was odd that people were

6 wearing hoodies?

7 A Very.

8 Q And is that why --

9 A That was the first red flag of suspicion was,

10 midnight, 90 -- it was hot, 90 degrees, unfamiliar people in

11 the neighborhood. So, yeah.

12 Q And so, at that point in time, did you know whether

13 your husband had gotten the license plate or not?

14 A No, I had not known yet.

15 Q Subsequently, did you learn whether he had or not?

16 A After, yeah.

17 Q After. But when he called you, he wasn't trying to

18 report a license plate?

19 A Correct, just the suspicion.

20 MR. BROOKS: Thank you. Nothing further. Pass the

21 witness.

22 THE COURT: Mr. Sanft?

23 MR. SANFT: No cross, Your Honor.

24 THE COURT: Mr. Ruggeroli?

25 MR. RUGGEROLI: Just briefly.

CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Mr. Mason is your husband?

A Correct.

Q He contacted you that night?

A Correct.

Q He gave you some information, correct?

A Yes, correct.

Q And you called it in, correct?

A Correct.

Q Four individuals?

A Correct.

Q All wearing dark clothing?

A Correct.

MR. RUGGEROLI: Nothing further.

THE COURT: Okay. Thank you very much for your testimony here today. You may step down, and you're excused from your subpoena.

THE WITNESS: Thank you.

THE COURT: Thank you very much for being here. At this time, we're going to recess for lunch. During this recess -- we're good, right?

MR. PESCI: Yes, Your Honor.

THE COURT: We got through all the witnesses?

MR. PESCI: Yes, thank you.

1 THE COURT: Okay. During this recess, you're
2 admonished not to talk or converse amongst yourselves or with
3 anyone else on any subject connected with this trial, or read,
4 watch, or listen to any report of or commentary on the trial,
5 or any person connected with this trial, by any medium of
6 information, including, without limitation, newspapers,
7 television, the internet, or radio, or form or express any
8 opinion on any subject connected with this trial until the
9 case is finally submitted to you.

10 We'll be in recess until 2:00 o'clock. Thank you.

11 THE MARSHAL: Thank you. All rise for the exiting
12 jurors. Jurors, please leave your notebooks on the chairs.

13 (Outside the presence of the jurors at 12:52 p.m.)

14 THE COURT: Anything outside the presence?

15 MR. SANFT: No.

16 MR. PESCI: No.

17 THE COURT: We're good?

18 MR. RUGGEROLI: No, Your Honor.

19 THE COURT: Okay.

20 MR. SANFT: Thank you, Your Honor.

21 (Court recessed at 12:52 P.M. until 2:08 P.M.)

22 (Outside the presence of the jurors)

23 THE COURT: Is this -- are these exhibits?

24 MR. PESCI: Yes, ma'am.

25 THE COURT: Okay. Have they been given to the Clerk

1 yet, or are you getting ready to give them to her?

2 MR. PESCI: No.

3 THE COURT RECORDER: She has them. She's marking
4 them, I believe.

5 THE COURT: Oh, okay. All right, okay. I'm just
6 trying to figure -- it's okay. I got to wait for my Clerk
7 though. No, you're fine.

8 Okay. The record will reflect that the hearing is
9 taking place outside the presence of the jury panel. Both
10 defendants are present. Anything outside the presence?

11 MR. PESCI: No, Judge.

12 MR. RUGGEROLI: I don't have anything.

13 THE COURT: Okay.

14 MR. SANFT: No, Your Honor.

15 THE COURT: Bring them in.

16 (Pause in the proceedings)

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

18 (Within the presence of the jurors)

19 THE MARSHAL: Thank you, everyone. Please be
20 seated.

21 THE COURT: Does the State stipulate to the presence
22 of the panel?

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: Mr. Sanft?

25 MR. SANFT: Yes, Your Honor.

1 THE COURT: Mr. Ruggeroli?
2 MR. RUGGEROLI: Yes, Your Honor.
3 THE COURT: Thank you. State may call their next
4 witness.
5 MR. PESCI: State calls Allison Rubino.
6 THE MARSHAL: Please remain standing, raise your
7 right hand, and face the Clerk.
8 ALLISON RUBINO, STATE'S WITNESS, SWORN
9 THE CLERK: You may be seated. Please state and
10 spell your first and last name for the record.
11 THE WITNESS: My name is Allison Rubino.
12 A-l-l-i-s-o-n, R-u-b-i-n-o.
13 MR. PESCI: May I proceed, Your Honor?
14 THE COURT: You may.
15 MR. PESCI: Thank you.
16 DIRECT EXAMINATION
17 BY MR. PESCI:
18 Q Ma'am, what do you do for a living?
19 A I am a forensic scientist in the Biology/DNA Detail
20 at the Las Vegas Metropolitan Police Department Forensic
21 Laboratory.
22 Q How long have you been doing that?
23 A I've been with Metro since January of 2014, so just
24 over six years now.
25 Q What training and experience do you have that brings

1 you to this job?

2 A So I have a Bachelor's of Science Degree in
3 biochemistry from the University of Scranton in Pennsylvania.
4 I also have a Master's of Science in forensic science from the
5 University of New Haven in Connecticut. Prior to working here
6 in Las Vegas, I was a forensic scientist at the Armed Forces
7 DNA Identification Laboratory in Dover, Delaware. I was there
8 for about a year-and-a-half. And before that, I was a
9 research associate in forensic sciences at the Suffolk County
10 Crime Laboratory in Hauppauge, New York.

11 When I arrived here in Las Vegas, we don't just go
12 right into casework. We go through a well-documented training
13 program. That includes following all of the procedures and
14 protocols that we have in place that we need to fulfill our
15 everyday duties. We go through oral exams, practical exams,
16 written exams, as well as, at the end, kind of a big mock
17 case, moot court type of situation, where it kind of puts us
18 right into what we would be doing on a regular basis before
19 being released into independent casework.

20 Q Ma'am, considering all that you just said, have you
21 had a focus in the area of DNA?

22 A Yes.

23 Q What is DNA?

24 A DNA, it stands for deoxyribonucleic acid. It's
25 found in nearly every cell within our body, and it contains

1 all of the information that make us into the individuals that
2 we are, from our hair color, our eye color, numbers of fingers
3 and toes we have, the size of our organs, things like that.

4 Our DNA is inherited. That means we get half of our
5 DNA from our mother, and half of our DNA from our father. And
6 known -- no known people are known to have the same DNA, with
7 the exception of identical siblings, like identical twins,
8 identical triplets, et cetera.

9 Q And have you testified in the area of DNA analysis
10 here in Nevada and other courts?

11 A Yes.

12 Q Okay. You talked a minute ago about the unique
13 nature of DNA. What is DNA though? How do you break it down
14 to analyze it; to look at it?

15 A So the steps of the process that we utilize in the
16 lab is first -- the first step is called an extraction. So
17 the extraction, we take a sample, whether it be a swab that
18 may have DNA on it, another item of evidence where we're
19 trying to recover DNA on it. We want to remove all of the DNA
20 from all of the other stuff that's present.

21 So if we think about a swab -- a swab of a
22 doorhandle, for example, there could be -- we want to first
23 remove the DNA from the swab itself, and we also want to
24 remove the DNA from all of that other cellular material, or
25 maybe dirt on the swab, all of those things we don't need for

1 our downstream processing.

2 Once we've isolated the DNA, we quantify it, just
3 find out how much DNA is present in that sample. We'll then
4 take a small portion of that DNA and put it in a copy machine,
5 where we're going to make millions and millions of copies of
6 different parts of the DNA that we're going to analyze. All
7 of those copies go through an instrument, and that instrument
8 separates the different parts of DNA, and they go past a
9 camera.

10 And this camera will take all of these snapshots of
11 all the different parts of DNA as they travel through the
12 instrument. And all of those pictures kind of get --
13 accumulate into a software program, and it generates a DNA
14 profile that we use as analysts for interpretation, reporting,
15 and further investigation as to comparisons between samples.

16 Q And when you're doing that, is there something about
17 alleles that are part of that entire process of analysis?

18 A Yes. So we look at different locations on the DNA,
19 as I said. And when I get my picture of this DNA profile,
20 there -- what I'm going to see are a series of peaks, so I'm
21 going to see peaks that have numbers attributable to them.
22 And what we call those peaks, they're known as alleles.

23 Q And then, those alleles, do you have markers or
24 things at those alleles that will tell you, this is from one
25 person versus another person?

1 A So if we're looking at, let's say, a DNA profile
2 from a known individual, we encounter that a lot, and we call
3 them reference standards. So when we have a reference
4 standard, this known DNA from a known source, we look at the
5 certain number of locations, and we assess these alleles or
6 peaks at each location. So at all of these locations, I'm
7 expecting to see one or two numbers, or one or two alleles
8 that will be indicative of an -- indicative of an individual.

9 Q Speaking of that analysis, you brought with you a
10 water bottle today; is that correct?

11 A Yes.

12 Q All right. Have you held that in your hand?

13 A Yes.

14 Q Okay. Is it possible for DNA from you to be
15 transferred onto that water bottle?

16 A Yes, both on the surface from me holding it, it's
17 possible, but also from drinking the water bottle around kind
18 of the mouth or inside the cap.

19 Q So let's start off with the surface as far as
20 holding it. What would you call that type of DNA?

21 A We call that type of DNA maybe a transfer DNA or
22 touch DNA, and it simply refers to the DNA that gets
23 transferred when a person comes into contact with someone or
24 something else.

25 Q Now, instead, if you had looked at the area -- at

1 the opening of the water bottle where you have drank, would
2 you find a different type of DNA, or would it be a different
3 source, potentially?

4 A It potentially could be a different source. The
5 DNA, if it's -- if it's from me, it would be the same DNA,
6 because the DNA that would maybe come from me drinking from
7 the water bottle would be the same DNA as my DNA if I was
8 holding it. So, regardless of the type of DNA, whether it be
9 blood, saliva, my skin cells, that -- the DNA would be the
10 same from all of those regions.

11 Q So, if I understand correctly, the DNA, meaning that
12 photograph, that microscopic photograph, is the same, correct?

13 A If I were to -- if I were to have DNA picture
14 profiles, and they were to be single-source profiles, and you
15 compared it to my reference standard, it's definitely possible
16 that it could be the same from the handling it, if I'm the
17 only one handling it, and if I'm the only one drinking it.

18 Q A moment ago, you talked about some different
19 sources of DNA, which included -- I think you said blood,
20 saliva, things of that nature, correct?

21 A Yes.

22 Q So let's change the scenario, and let's say you
23 unfortunately cut your finger, and you grab that bottle, and
24 there was blood on the bottle. Is that a source of DNA?

25 A Yes.

1 Q When you compare, let's say blood versus touch DNA,
2 are you more likely -- or in your experience, have you seen
3 that some samples are better sources of DNA?

4 A Definitely body fluids are better sources of DNA
5 than say maybe what we're talking about, touch DNA. Touch DNA
6 is generally from your skin cells, and that can be a very
7 variable situation, because when you think about the type of
8 environment we live in, it's dry out here. So when you're
9 holding something, you may not be inclined to remove skin
10 cells maybe during the winter than you are maybe during the
11 summer when you're sweating a lot, and that sweat is going to
12 be a good vehicle from your skin cells.

13 Another thing to take into consideration is the
14 surface that you're touching in general. If you think of
15 something like sandpaper, if you were to think of rubbing
16 maybe your hand against a piece of sandpaper, because of all
17 those grooves and rough textures, it's more likely to take off
18 skin cells onto that sandpaper as opposed to a smooth surface
19 which doesn't have all those little grooves or any textures to
20 really adhere to the DNA.

21 Other things to think about are maybe duration of
22 handling. If you're holding something or touch something
23 once, you may leave behind less DNA than the pen that you're
24 using all day long. So there are so many factors that do come
25 into play when we talk about touch DNA, so it's a very --

1 sometimes we'll get a profile, sometimes we won't.

2 Q Speaking of DNA and getting a profile, if you don't
3 get a profile, what does that mean?

4 A It's just that there was -- whether there be no
5 detectable DNA using our procedures, or there -- if there's
6 very little, it may not be enough for -- or suitable for
7 interpretation because there just isn't enough DNA present.

8 Q So the example that you gave, being in this dry
9 environment, if I touch that water bottle and I don't really
10 have much sweat, it could be that I just don't leave any DNA
11 molecules on the water bottle?

12 A It's possible.

13 Q Okay. You spoke of a reference sample earlier,
14 correct?

15 A Yes.

16 Q When you're doing analysis of certain pieces of
17 evidence, do you try to compare it against known reference
18 samples?

19 A Yes.

20 Q Okay. And in this particular case, were you asked
21 to analyze some pieces of evidence against some known samples?

22 A Yes.

23 Q Okay. And I want to backtrack for one thing that
24 you said earlier. You talked about, originally, when you
25 extract the DNA, you talked about you could get it from a

1 swab. What's a swab?

2 A So a swab is really just a -- we see them in the
3 form of like a long, thin, wooden stick with kind of the end
4 of a Q-tip on it. So it's a little piece of cotton that
5 somebody will use to wipe down an item of evidence, and submit
6 that swab as being from a particular item.

7 Q So if we had a crime scene analyst come in here
8 today and take a swab from your water bottle, would you expect
9 that to look like you're saying; almost like a piece of wood
10 with a little Q-tip end?

11 A Yes.

12 Q That would be rubbed along the areas on that
13 particular item, and then that swab is impounded into
14 evidence?

15 A Yes.

16 Q All right. Then, are you able to call up that
17 evidence, which means bring it to you to analyze?

18 A Yes.

19 Q If I understand, you don't go to the scene when
20 there's a shooting, a murder?

21 A No.

22 Q You're --

23 A No, I do not.

24 Q You're working in a laboratory?

25 A Yes.

1 Q Okay. Now, to call up a piece of evidence, is there
2 a unique number that's associated with this specific
3 investigation?

4 A Yes. It's called -- it's called an event number.

5 Q And is an event number associated with -- whenever a
6 call is generated by 911, a specific, unique number is given
7 to that, and then all of the research associated with it is
8 tied to that number?

9 A Yes.

10 Q Okay. In this particular case, were you asked to
11 analyze some evidence assigned to Event Number 170809-0029?

12 A Yes.

13 Q Okay. So you knew that's the evidence that you
14 needed to retrieve to be able to look at, and then compare it
15 to some known samples?

16 A Yes.

17 Q Speaking of known samples, did you have known
18 reference samples in this particular case for a DeShawn
19 Robinson, a DeMario Lofton-Robinson, a Davontae Wheeler, and a
20 Raekwon Robertson?

21 A Yes.

22 Q Okay. You didn't get those, but they were
23 eventually at a position where you could analyze them?

24 A Yes.

25 Q Okay. So someone else in the chain of this whole

1 process took a sample from these individuals, which was then
2 able to be -- created an extraction, and then a profile to be
3 able to compare it to?

4 A Yes.

5 Q All right. So you had those known reference samples
6 of those individuals to compare to the evidence from this
7 incident?

8 A Yes.

9 Q Okay. I want to kind of go over a few reports. Did
10 you generate two reports in this case?

11 A Yes.

12 Q Okay. I want to first look at the one that you
13 generated that says November of 2017. Do you have that
14 report?

15 A Yes.

16 Q And will it help you refresh your recollection to
17 review the report as you testify?

18 A Yes.

19 MR. PESCI: Any objections from the defense?

20 MR. SANFT: No, Your Honor.

21 MR. RUGGEROLI: Can I -- can I just take a look at
22 it?

23 MR. PESCI: Sure. This has got notes all over it,
24 but --

25 MR. RUGGEROLI: Yeah, thanks.

1 MR. PESCI: Okay.

2 MR. RUGGEROLI: Yeah.

3 MR. PESCI: Thank you. Your Honor, with your
4 permission then, is it okay if she refers to her report?

5 THE COURT: Absolutely.

6 MR. PESCI: Thank you very much.

7 BY MR. PESCI:

8 Q Ma'am, so, focusing on that first report, there are
9 a lot of different people that are involved in this process
10 before you get the case to work; is that correct?

11 A Yes.

12 Q All right. And then, are you familiar with what's
13 referred to as a personnel number?

14 A Yes.

15 Q Do you have a personnel number?

16 A Yes, I do.

17 Q And what number is that?

18 A My personnel number is 14784.

19 Q Is that a unique number for every employee at the
20 Metropolitan Police Department?

21 A Yes.

22 Q Okay. Now, are you accustomed and have you seen on
23 many situations where you refer to or look at items of
24 evidence that are impounded by someone else with a different P
25 number?

1 A Yes.

2 Q I'm sorry, I said P number. Is that what it's often
3 referred to?

4 A Yes, a personnel number. We just shorten it for P
5 number.

6 Q Okay. And in this particular case, did you have
7 evidence brought to you that was impounded by a P number 5158?

8 A Yes.

9 Q Okay. And then, when that person impounds the piece
10 of evidence, does that particular CSA impound it in a package
11 that has a unique package number, and then the items inside
12 the package have unique item numbers?

13 A Yes.

14 Q Okay. When you work that information and that
15 evidence, do you assign a different number for your report?

16 A Yes, I do.

17 Q All right. So we're going through this just to make
18 connections of the dots as far as the CSA's number versus your
19 number; is that okay?

20 A Yep.

21 Q All right. So, staying with 5158, did you receive a
22 package which was an Impound Package number 5 from 5158, and
23 Impound number 11 and 12?

24 A Yes.

25 Q Okay.

1 MR. PESCI: Court's indulgence. All right, so
2 there's not an objection.
3 BY MR. PESCI:
4 Q I'm going to put a name to a number; is that okay?
5 A Sure.
6 Q All right. So, for 5158, it's Ebony Stephens. She
7 had two pieces of evidence. What were those?
8 A They were two cigarettes -- cigarette butts.
9 Q Okay. And what did you do with those cigarette
10 butts?
11 A So after examining the cigarette butts, what I'm
12 trying to do is look for the best place to obtain where DNA
13 may be coming from. So when you think about a cigarette butt,
14 it's going to be from someone's mouth. So I take a
15 cross-section, including that filter and paper at the
16 non-burnt end, and I process that for DNA.
17 Q Okay. And then, we'll go through those individual
18 items after we go over what items you have, okay? In addition
19 to items impounded by Ebony Stephens, did you have items
20 impounded by 5228, a William Speas?
21 A Yes.
22 Q And specifically, did it have his Package number 5,
23 and two items, being his Item 6 and 7?
24 A Yes.
25 Q And what were those items?

1 A They were a swab from an Interarms handgun, and a
2 magazine.
3 Q When you say a magazine, meaning a firearm magazine?
4 A Yes.
5 Q Okay. And then, additionally, did you have items of
6 evidence impounded by a P number 15291, being Crime Scene
7 Analyst Browning?
8 A Yes.
9 Q And were there three items impounded by her; her
10 Package 3, and Items number 15, 16, and 17?
11 A Yes.
12 Q And what were those items?
13 A They were three swabs from inside a vehicle. One --
14 I believe one was from the right seat back headrest, the other
15 was from the right rear door interior arm rest, and one was
16 from the right rear door just above the handle.
17 Q Okay. And lastly, did you have another reference
18 standard -- I apologize -- sample, under 9618, that same
19 individual of Jeffrey Scott?
20 A Yes.
21 Q Okay, and I apologize. It looks like he has a
22 Package 3, Items 5 and 6, and then a Package 2, which is an
23 Item 2; is that correct?
24 A Yes.
25 Q And then, his numbers 5 and 6, what were they from?

1 A They were swabs from the finger -- the right and
2 lefthand fingernails of a Gabriel Valenzuela.

3 Q Okay. And so, in addition to swabs from his
4 fingernails, did you have the reference standard from Gabriel
5 Valenzuela?

6 A Yes.

7 Q And was that impounded by the same P number 9618,
8 Jeffrey Scott; his Package 2, Item 2?

9 A Yes.

10 Q All right. So now we got all the pieces of evidence
11 from this report. Let's go into specific results. What did
12 you do to compare the items to the known samples?

13 A So once I obtain the DNA profile, I have to
14 interpret it. I kind of have to make the decision as to, one,
15 how many people are present in a particular sample. I then
16 have to determine maybe if there's male present in that
17 profile. And then the next thing I have to do is determine
18 whether it is suitable; whether there's enough information
19 there that's suitable for comparison.

20 Q Okay. And if it's not suitable for comparison, what
21 do you do?

22 A We call it inconclusive, and we don't make any
23 comparisons. So once we deem a profile as not having enough
24 information, or maybe having too much information, that it's
25 too complex, we just won't make any comparisons further.

1 Q Is it strange for you to sometimes have samples
2 where you cannot make a comparison?

3 A No, it happens. Like we had talked about, how touch
4 DNA could be variable, sometimes we won't get a profile
5 suitable for comparison, and sometimes we will.

6 Q All right. And when you're making comparisons and
7 you're looking at those photographs, as you referred to them,
8 are there things that are unique to males versus females
9 within DNA?

10 A Yes. So two of the locations that we do our testing
11 on give us an indication of gender. One is a gender-specific
12 location, and there are only two options. We have females
13 that are XX, and males that are XY. So if I have a DNA
14 profile and I see that Y present, I can say that that male is
15 present in the sample. We also have another location that is
16 male-specific, so when we see a peak in that position, we can
17 then say also a male is present.

18 Q Okay. Looking at your Lab Item 18.1, which
19 corresponds to the cigarette butt, which I believe is 5158's
20 Item 11, what were your conclusions?

21 A I obtained a DNA profile from a single-source DNA
22 profile that was male.

23 Q Okay. And then did you compare that male profile to
24 all the known samples we just spoke of?

25 A Yes.

1 Q Was there a match on any of them?

2 A Every one that was compared to was excluded.

3 Q All right, so what does it mean to be excluded?

4 A Excluded is that there were -- they didn't match

5 that DNA profile.

6 Q So those alleles that we talked about, there were

7 nothing that matched up or lined up around there?

8 A It -- it's not necessarily that one or -- it's not

9 necessarily every single one didn't line up. We have to look

10 at the combination of numbers. And if all of those

11 combinations of numbers at all locations don't match a known

12 sample, the person is excluded.

13 Q All right. So were DeShawn Robinson, DeMario

14 Lofton-Robinson, and Davontae Wheeler, and Raekwon Robertson,

15 and even Gabriel Valenzuela excluded?

16 A Yes.

17 Q All right. And did you actually have some known

18 sample -- reference samples for a couple other individuals; an

19 Anthony (phonetic) Robinson and a Johnquiel Brown?

20 A Yes.

21 Q Okay. All of those people were excluded?

22 A Correct.

23 Q Okay. Now, you had a second cigarette butt,

24 correct?

25 A Correct.

1 Q So your Lab Item 19 corresponded to Ebony Stephens's
2 number 12, correct?

3 A Correct.

4 Q And what did you find from that?

5 A I also got a single-source male profile. That
6 profile was the same as in the other cigarette butt, so every
7 -- all of the reference standards that I had were excluded.

8 Q Okay. So we know the two cigarette butts were
9 touched or used by a male, and it's Unknown Male number 1?

10 A Correct.

11 Q And that Unknown Male number 1 is not any of the
12 reference samples that we have?

13 A Correct.

14 Q Okay. So moving then to the swabs from the
15 Interarms Star handgun, what did you find out about that?

16 A So from the swab of the handgun, I obtained a
17 mixture DNA profile where I determined at least one of those
18 contributors was male. Unfortunately, there was just not
19 enough information to make any further conclusions.

20 Q Okay.

21 A So this profile was deemed inconclusive.

22 Q And when you talk about a mixture, what does that
23 mean?

24 A A mixture is -- so we talked about single-source
25 being from one person. A mixture DNA profile originates from

1 more than one individual.

2 Q Okay. And that particular swab, which is your
3 number 28, is that coming from the Interarms Star handgun; the
4 grips, the hammer, the slide, and the trigger, and the trigger
5 guard area?

6 A Yes.

7 Q Okay. And then, your second swab from the Interarms
8 Star, corresponding to your number 29, is that coming from the
9 base and the ramp of the magazine of that firearm?

10 A Yes.

11 Q What were your results on that?

12 A I did not obtain a DNA profile from that sample.

13 Q All right, so no profile at all?

14 A None at all.

15 Q Okay. Moving onto number 30 and 31, those
16 correspond back to the samples from the victim's fingernails,
17 correct?

18 A Correct.

19 Q And what did you find?

20 A For both of those items, the DNA profiles that were
21 obtained were consistent with Gabriel Valenzuela.

22 Q Okay. And then, moving to your Item 33, which
23 corresponds to Claire Browning's Item 15, is this from
24 different locations inside the car; from the front seat of --
25 the right side of the right front seat of the car?

1 A Yes.

2 Q And what was your result?

3 A So for this sample, I obtained a mixture DNA profile
4 that had two contributors in them, one of which was male.

5 Q Okay. And then, you said it was a mixture, correct?

6 A Correct.

7 Q And then, were you able to include anybody?

8 A Yes, I was.

9 Q And who was that?

10 A DeShawn Robinson was individually included.

11 Q All right. So we've been speaking about exclusion.
12 This is the first time we're talking about inclusion. What
13 does that mean?

14 A When the -- when an inclusion is made, that -- that
15 means, when comparing that reference standard to that mixture
16 DNA profile, a certain statistic is given to show that this
17 person has as high probability of being included in this
18 mixture DNA profile.

19 Q Okay. Now, that number that you come up with, is
20 that based on looking at the DNA and all of those points of
21 reference that match?

22 A It's based on -- so we use the software for a lot of
23 our mixture interpretation and comparisons. So it's based on
24 the numbers that are present, those alleles that are present
25 in that sample, and how well a particular reference standard

1 matches the breakdown of the different contributors.

2 Q Okay. And then, you said that you came up with a
3 number associated with that?

4 A Correct.

5 Q And what was that?

6 A So the number that we calculate, the statistic we
7 use, is a likelihood ratio. And a likelihood ratio compares
8 two different conclusions.

9 So for example, if we're thinking of something like
10 the weather, when you're watching the weather in the morning
11 and they're talking about, you know, the percentage of --
12 percentage of sun, so they say it's based on all of their
13 Doppler, their radar, that there's a 90 percent chance it's
14 going to be sunny today. So, out of 100, that means there's a
15 ten percent chance that it's going to be something other than
16 sunny for the weather. When you make the comparison between
17 the two, the resulting likelihood ratio would essentially be
18 it's nine times more likely to observe all of this information
19 we have about the weather if it was going to be sunny than it
20 was going to be something other than sunny.

21 So when I'm -- so when this likelihood ratio is
22 calculated for this particular item, we say it in the form of:
23 the probability of observing this mixture DNA profile from the
24 swab from the seat back is at least 1.76 octillion times more
25 likely if this profile originated from DeShawn Robinson and

1 one unknown random contributor than if this profile originated
2 from two unknown random contributors.

3 Q Because you have the known of DeShawn Robinson to be
4 able to factor into the equation?

5 A Yes.

6 Q Okay. And so, you said it's 1.76 octillion?

7 A Yes.

8 Q What is octillion?

9 A So we could start -- we'll start at a million that
10 has six zeros to it, a billion has nine, a trillion has 12, a
11 quadrillion has 15, a quintillion has 18, a sextillion has 21,
12 a septillion has 24, and then an octillion has 27.

13 Q And when you say 27, do you mean zeros?

14 A Yes. So when you think about 1.76 octillion, if you
15 move that decimal place over two spots, you have 176 followed
16 by 25 zeros.

17 Q All right. And that's that likelihood ratio as far
18 as finding somebody else who's going to have that?

19 A It's comparing that it's that -- that many more
20 times more likely to see this profile if it originated from
21 DeShawn Robinson and one unknown random contributor rather
22 than two other unknown random contributors.

23 Q So that's how you come to the labeling of
24 "individually included"?

25 A Yes.

1 Q All right. So DeShawn Robinson is included based on
2 the DNA analysis that you did, but we have exclusions in this
3 as well?
4 A Yes.
5 Q All right. So all of the other individuals we've
6 mentioned before, they were all excluded from this particular
7 source?
8 A Correct.
9 Q All right. Moving to you Lab Item 34, a swab from
10 the interior right rear door armrest, was this a mixture
11 profile?
12 A Yes, it was.
13 Q And then did you include DeShawn Robinson in this
14 one?
15 A Yes, I did.
16 Q Individually included? I apologize.
17 A Yes.
18 Q And then, what was the likelihood ratio on this?
19 A So the -- this was also a mixture of two
20 individuals, at least one of which was male. And the
21 probability of observing this mixture DNA profile was at least
22 2.56 octillion times more likely if it originated from DeShawn
23 Robinson and one unknown random contributor than if it
24 originated from two unknown random contributors.
25 Q Still 27 zeros?

1 A Yes.

2 Q Okay, and then the number's higher. It's gone from
3 1.76 to 2.56?

4 A Yes.

5 Q Okay. Now, he is individually included from that
6 sample, and then are all the rest, again, excluded?

7 A Yes, they were.

8 Q Okay. Now, moving to Lab Item 35 -- your Lab Item
9 35, does that come from the interior right rear door above the
10 handle?

11 A Yes.

12 Q Okay. And then, was this a mixture, or just one?

13 A This was actually deemed to be -- only have one
14 contributor present in this sample.

15 Q Okay. And then, were you able to include anybody?

16 A Yes, DeShawn Robinson was individually included.

17 Q And then, what was the likelihood ratio for this
18 one?

19 A So the probability of observing this DNA profile is
20 at least one septillion times more likely if it originated
21 from DeShawn Robinson than if it originated from an unknown
22 random contributor.

23 Q I think you told us earlier a septillion is with 24
24 zeros?

25 A Yes.

1 Q So it's less than the octillion?

2 A Correct.

3 Q But it still has 24 zeros after the number?

4 A Correct.

5 Q Okay. And then, as far as exclusion, were all of

6 the known reference samples, all the others that we've

7 mentioned, excluded?

8 A Yes, they were.

9 Q Okay. And that's the information that you have for

10 this particular report, correct?

11 A Yes.

12 Q All right. Before we move onto the next report --

13 you have a second report, correct?

14 A Correct.

15 Q All right. Before we move onto that, when we're

16 talking about these numbers and we're talking about DNA, is

17 there a way to date DNA, meaning a time frame?

18 A No.

19 Q Okay. I could touch this lectern a year ago, and I

20 could touch it now; you could potentially get my DNA from a

21 year ago?

22 A Yeah, we don't determine time -- time, space. We

23 just answer what DNA is -- is there. We don't answer how it

24 got there, when it got there, why it got there. We just are

25 there to say what's actually there.

1 Q Even though you can't necessarily date it, is it
2 true that there are environmental variables that can affect
3 DNA?
4 A Yes.
5 Q What are those?
6 A So if you leave something out in the sun for too
7 long, the sun has the potential to break down DNA. Let --
8 let's say after -- after a day, janitors come in and clean all
9 of the different spaces, that's potential to wipe up the DNA,
10 depending on the cleaner they use, like bleach or something
11 like that. So those can have an effect on the remaining DNA
12 present in a particular location. All of those things can
13 have an effect on the presence of DNA.
14 Q Can rain, wind, things of that -- that nature?
15 A Yes.
16 Q Okay. All right. Looking at your -- your other
17 report, did you also have a report of an item that was
18 impounded or swabbed by -- impounded and swabbed by a P number
19 13771?
20 A Yes.
21 Q Okay. Those items were your numbers 38 and 39,
22 correct?
23 A Yes.
24 Q And do they correspond to that individual P number's
25 Package 1, Items 1 and 2?

1 A Yes.

2 Q And then, did number 1 come from a swab from a
3 Taurus handgun?

4 A Yes, it did.

5 Q And number 2 come from a swab from a magazine?

6 A Yes.

7 Q Okay. And then, did you do the same analysis that
8 you've spoken of earlier from your first report?

9 A Yes, I did.

10 Q All right. What did you find out from your Lab Item
11 38, which is a swab from a Taurus handgun?

12 A So from the handgun, I obtained another mixture DNA
13 profile of two contributors; at least one of those
14 contributors was a male.

15 Q Okay. And then, did you have the same known
16 profiles you were comparing with?

17 A Yes, I did.

18 Q And what did you find out from those comparisons?

19 A So in this particular item, Raekwon Robertson was
20 individually included as being a part of this mixture DNA
21 profile.

22 Q What was the likelihood ratio?

23 A So the probability of observing this mixture DNA
24 profile is at least 33.3 million times more likely if it
25 originated from Raekwon Robertson and one unknown random

1 contributor than if it originated from two unknown random
2 contributors.

3 Q All right, so he was individually included based on
4 those numbers?

5 A Correct.

6 Q And then were you able to exclude anybody of the
7 remainder of individuals?

8 A Davontae Wheeler was excluded as being a part of the
9 mixture.

10 Q All right, but were you able to exclude everybody
11 else?

12 A No. The remaining individuals, so that would be
13 Anthony Robinson, DeShawn Robinson, DeMario Lofton-Robinson,
14 Johnquiel Brown, Gabriel Valenzuela -- think I got them all.

15 Q Yeah.

16 A They were all deemed as inconclusive.

17 Q What does that mean?

18 A So for each individual, that likelihood ratio is
19 calculated. There is this window where there isn't a lot of
20 support that a person can be included or excluded, and that's
21 based on the work that we do during validation of our
22 procedures, and all of those individuals had likelihood ratios
23 that were calculated within that range. And so, when they're
24 within that range, we call them inconclusive because we can't
25 definitively say either way.

1 Q Okay. So you can't say they're included, and you
2 can't say they're excluded?
3 A Correct.
4 Q All right, so it's just inconclusive as to those
5 individuals?
6 A Yes.
7 Q All right. And then, Lab Item 39, the swab from the
8 magazine, was it one contributor?
9 A Yes.
10 Q Because earlier, the Taurus handgun was two
11 contributors, correct?
12 A Correct.
13 Q All right. So, on the magazine, was it one male
14 contributor?
15 A Yes.
16 Q All right. And then, did that match to any of the
17 other known samples?
18 A Everybody was excluded.
19 Q Okay. So all the list of people that you spoke of
20 earlier were excluded from that particular item?
21 A Correct.
22 MR. PESCI: Court's indulgence. Pass the witness.
23 THE COURT: Mr. Sanft, cross?
24 MR. SANFT: Yes, Your Honor.
25 //

1 CROSS-EXAMINATION

2 BY MR. SANFT:

3 Q Good afternoon, Ms. Rubino.

4 A Good afternoon.

5 Q I just want to get to the point. I represent Mr.
6 Robertson that's over here, Raekwon. The testing that you did
7 in this case, and what you've testified to this jury on, out
8 of all the tests that you've done, is the last portion of your
9 testimony specific to Mr. Robertson with regards to the Taurus
10 handgun?

11 A The testimony is just based on what was then
12 requested for processing, and then all of the reference
13 standards that were present in that case that were compared to
14 every other samples from that first report are automatically
15 compared to all of any additional items in the case.

16 Q So with regards to the other items that we talked
17 about; the car, for instance, and so forth, was there any DNA
18 that you found with regards to my client being in that car?

19 A From the -- he was excluded from those items.

20 Q Okay. And specifically, going back again to the
21 Taurus handgun, your testimony was that he was included on the
22 Taurus handgun, but you can't tell the jury how that DNA was
23 found -- or how it was placed on that handgun, correct?

24 A Correct.

25 Q Okay. Now, you had said that there were two

1 contributors; one of them was at least male?

2 A Correct.

3 Q Meaning that, potentially, out of the two
4 contributors that had DNA on that handgun, the other person
5 could have been male as well?

6 A Correct.

7 Q Okay. Now, and we've gone through this octillion
8 thing, and I want to make sure we're clear here. The State
9 says -- or says that it's a number followed by -- I don't know
10 how many zeros. 27 zeros for an octillion? Really?

11 A Yeah, one octillion.

12 Q That's a lot.

13 A That is a lot.

14 Q Is there a presumption that, the higher that number,
15 the more accurate, or the more -- less probability that it
16 could have come from somebody else? Is that how that works?

17 A Well, it also is based on essentially kind of the
18 quality of the DNA profile. We see a lot of different
19 profiles in the lab. Some -- when -- if we just talk about
20 maybe a single-source profile, we can get -- if we get data at
21 every single location that we test at, we're going to get a
22 high number because we have all of this information for
23 comparison and we have all this information to calculate
24 statistics with.

25 When we have -- when we start to lose some of that

1 information, and maybe some of that information is missing
2 where we only have maybe a partial profile and we don't have
3 as many locations, that statistic will naturally be less
4 because there are less areas of comparison. So, a lot of the
5 time, some of the statistics is based on just how much
6 information is there for comparison.

7 Q I'm -- because I'm not -- obviously, you are very
8 smart with this, because these numbers are -- I don't know how
9 to begin to even describe them. But in terms of -- just
10 breaking it down to it's bare tacks for this jury, the bigger
11 the number, the more sure; the lesser the number, the less
12 sure, right?

13 A Personally, it doesn't have anything to do with
14 being sure or not sure. It's based on the profile that we
15 have and how -- how that can be compared to the reference.
16 It's sometimes -- I guess it's not -- for me, not a personal
17 "this is more sure than this." It's just, for certain items,
18 I have more data to work with and compare to, so that will
19 give me a higher number than maybe some of the other items
20 that may not have as much information, or some of the other
21 people that may not have as much information present.

22 So, for me, it's not, I'm more sure of this DNA
23 profile than I am of this DNA profile; it's the numbers are
24 what they are based on the quality and quantity of data I have
25 for comparison.

1 Q Okay. So, I guess, then what's the point? What's
2 the point of talking about 27 zeros after a number, versus,
3 like, for instance, in this case, with my client, Mr.
4 Robertson, the DNA sample that was located was 33.3 million,
5 which is six zeros? I mean, do we say here, well, his DNA,
6 because it was six zeros -- I mean, what's the point? What's
7 the point of putting a number behind something and talk about
8 the number of zeros that are behind the number?

9 A The point for us is when we make our comparisons, we
10 want to attribute a weight to that comparison. And that
11 weight is not for me to make any further conclusions; it's to
12 inform any -- the reader, the jurors, anybody that is taking
13 those -- that information into account, it's to give them the
14 weight of that particular item.

15 Q Okay. And the other item that you swabbed with
16 regards to the Taurus handgun, you had one contributor that
17 was male, and none of the people, including Raekwon Robertson,
18 was identified as that male?

19 A Everyone was excluded. Correct.

20 Q Okay. Now, going back again to the Taurus handgun,
21 you had said as well that everyone that was inconclusive, that
22 also included Gabriel Valenzuela?

23 A Yes.

24 Q As a possible contributor to whatever the DNA was on
25 the actual Taurus handgun?

1 A They're compared, but that person -- Gabriel
2 Valenzuela was inconclusive.

3 MR. SANFT: Okay. I have no further questions, Your
4 Honor. Thank you.

5 THE COURT: Mr. Ruggeroli?

6 CROSS-EXAMINATION

7 BY MR. RUGGEROLI:

8 Q Good afternoon, Ms. Rubino.

9 A Good afternoon.

10 Q I represent Davontae Wheeler; he's present on your
11 right. You had a number of known reference samples, correct?

12 A Correct.

13 Q And a couple of names were mentioned, and I just
14 want to touch on this. You did have a reference sample from
15 Anthony Robinson?

16 A Yes.

17 Q And a reference sample from Johnquiel Brown?

18 A Yes.

19 Q But you did not have a reference sample from Adrian
20 (phonetic) Robinson?

21 A No, I did not.

22 Q And you went through a number of items, but just
23 briefly, there were two cigarette butts?

24 A Correct.

25 Q You were able to get a source without a linking

1 identity?

2 A Essentially, yes.

3 Q And then, you had the swab from the handgun and the
4 magazine, correct?

5 A Correct.

6 Q From inside the vehicle, correct?

7 A Yes, correct.

8 Q Yeah, a couple other items?

9 A Yes.

10 Q And as far as Mr. Wheeler, the wind-up is that Mr.
11 Wheeler has been excluded from all of the items?

12 A All of those items -- all of the items, yes.

13 Q And then, the second package, Report number 2, was
14 the Taurus handgun, and he was excluded from that as well?

15 A Correct.

16 Q And from the magazine?

17 A Correct.

18 Q So, in total, no DNA evidence from these items
19 regarding Mr. Wheeler?

20 A He was excluded from all items where conclusions
21 could be made.

22 MR. RUGGEROLI: Thank you. Nothing further.

23 THE COURT: Any redirect?

24 MR. PESCI: You know, sometimes --

25 THE COURT: Just a minute. It's when both sides are

1 done --

2 UNKNOWN SPEAKER: Okay.

3 THE COURT: -- questioning the witness. Go ahead.

4 MR. PESCI: Sorry. Thank you.

5 REDIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Sometimes with lawyers, words can be semantics, so
8 I'm going to try not to go that route, but I'll probably get
9 there anyway. We just heard from defense counsel that his
10 client was excluded from all of the evidence, correct?

11 A Where conclusions were made, yes.

12 Q Okay. So some people might put a weight to that,
13 because you were just asked, what's the purpose; why are we
14 going into numbers? That information -- those numbers told
15 you that person was excluded from touching that item?

16 A Correct.

17 Q All right. We could attribute a weight to that in
18 the sense that there's nothing to connect him via DNA to that
19 item?

20 A So when someone's excluded, a number is also
21 calculated for them, and we don't generally report them;
22 they're just excluded. But when we're talking about a
23 likelihood ratio in those two different conclusions, it would
24 essentially be saying that the probability, it's a certain
25 amount times more likely that the profile originated from two

1 unknown random contributors than if it originated from a
2 particular person and one unknown random contributor. So it's
3 just not likely that that DNA is there.

4 Q And it's not likely because that number, because
5 there's actually a number associated, is so low?

6 A It -- it's deemed -- it's in our excluded.

7 Q So there's a point to these numbers, right?

8 A Sure, yes.

9 Q Because when it gets so low, somebody's excluded?

10 A Correct.

11 Q Would you agree then, when it gets higher, it points
12 to your conclusions of individual inclusion?

13 A Yes.

14 Q And then, if I heard you correctly, I thought maybe
15 you were being asked, or you thought you were being asked your
16 personal belief about this. You're talking about numbers; not
17 your personal belief?

18 A Correct.

19 Q Okay. So setting aside any personal belief, the
20 numbers that you have, when we've got 27 zeros, is that based
21 on you having more information to deal with?

22 A Yes.

23 Q More DNA data?

24 A Correct.

25 Q And that number makes your ratio go higher?

1 A Correct.

2 Q In the inverse of the person who's absolutely
3 excluded?

4 A Correct.

5 Q So there is a weight to those numbers?

6 A Yes.

7 MR. PESCI: Thank you.

8 THE COURT: Mr. Sanft, any recross?

9 MR. SANFT: Yes, Your Honor, just one question.

10 REXCROSS-EXAMINATION

11 BY MR. SANFT:

12 Q So I -- going back again to these numbers, the idea
13 of information, the more information you have, the bigger the
14 number; the less information you have, the lesser the number?

15 A That will also depend on the comparison of that
16 individual to that profile. So if we're talking about a
17 single -- if we're talking about the single-source profile,
18 the more information we have from that single-source evidence
19 profile if we have someone that's included, that weight, that
20 likelihood ratio, is going to go higher and higher with the
21 more information we have, if they're actually included. If
22 somebody is excluded, more often than not, we're going to get
23 actually a number of zero because that person has no chance of
24 being part of that DNA profile.

25 So when we -- it gets a little more complicated when

1 we're dealing with mixtures. Generally, when you have more
2 information and good quality information to work with, you'll
3 see higher likelihood ratios. When you start to get
4 lower-quality DNA profiles and have less DNA, you're generally
5 going to see sometimes lower DNA -- lower likelihood ratios.

6 Q Okay. So if someone's on the inclusive, what's the
7 threshold for that?

8 A So our threshold, it has to be ten to the fourth, so
9 10,000, in order for someone to be determined as individually
10 included.

11 Q Right. So anything below ten to the fourth would be
12 inconclusive?

13 A So anything between ten to the third, so 1,000, down
14 to ten to the minus-three, so that's 1,000th, so it's .001,
15 that's our -- that's what we call our inconclusive zone. And
16 it's based on our validation where certain people may have
17 been, during the course of a validation, falsely included and
18 excluded. By increasing our inclusion section to ten to the
19 four, it's giving us this cushion where, as a laboratory, we
20 are confident that anybody reported as included is actually
21 included.

22 Q Is that the national standard, or is that a standard
23 that you've set here in Nevada?

24 A It's based on the validation that we've done at the
25 laboratory.

1 Q Okay. But once again, my question is, is that the
2 national standard? Is there a national standard across the
3 board with regards to that validation?
4 A Every laboratory does their own internal validation
5 and develops their own way of interpreting and reporting
6 samples.
7 MR. SANFT: No further questions. Thank you.
8 THE COURT: Mr. Ruggeroli?
9 MR. RUGGEROLI: No further questions. Thank you.
10 THE COURT: Okay, we have a question.
11 (Bench conference)
12 THE COURT: You can approach. If the attorneys will
13 approach.
14 MR. PESCI: She doesn't know. Well, I'll ask her,
15 but I don't think she knows.
16 THE COURT: Okay. I usually will allow both sides
17 to follow up if you have any questions after this.
18 MR. RUGGEROLI: Sure, okay.
19 THE COURT: So do you want me to ask her, or do you
20 just want to follow up?
21 MR. PESCI: Whichever way. Do you mind asking,
22 because (indiscernible)?
23 THE COURT: No, I don't.
24 MR. PESCI: Okay.
25 (End of bench conference)

1 THE COURT: Okay. The question has been marked as
2 Court's Exhibit number 3. Which Taurus handgun, the .45 or
3 the PT22?

4 THE WITNESS: That I actually -- I don't know. I go
5 based on what's on the package, and the package referred to a
6 Taurus -- Taurus handgun. That's something that would be
7 found on maybe other information from the individual who
8 swabbed it, or in the Evidence Impound Report that would be
9 generated.

10 THE COURT: Any follow up from the State?

11 MR. PESCI: Yes, please.

12 FOLLOW-UP EXAMINATION

13 BY MR. PESCI:

14 Q Ma'am, that information, as you're indicating, comes
15 from the crime scene analyst that impounded that particular
16 item, correct?

17 A I believe that -- those particular swabs were taken
18 by one of the firearms analysts.

19 Q Okay. And are we taking you somewhat out of order
20 because you're flying out of town?

21 A Correct.

22 Q All right. So, eventually, we're going to get that
23 information; we're just trying to get to yours so -- so you
24 can get out of town?

25 A Correct.

1 MR. PESCI: Okay, thank you.
2 THE COURT: Any follow up from Mr. Sanft?
3 MR. SANFT: No, Your Honor. Thank you.
4 THE COURT: Mr. Ruggeroli?
5 MR. RUGGEROLI: No, Your Honor.
6 THE COURT: Okay. Thank you very much for your
7 testimony here today. You may step down, and you are excused
8 from your subpoena. You may call your next witness.
9 MR. PESCI: John Relato. May I approach your Clerk?
10 THE COURT: Yes.
11 THE MARSHAL: I'm sorry, what was the last name?
12 MR. PESCI: Relato. Can I approach?
13 THE COURT: Uh-huh.
14 THE MARSHAL: Straight ahead. Please step up into
15 the witness stand. Remain standing, raise your right hand,
16 and face the Clerk, please.
17 JOHN RELATO, STATE'S WITNESS, SWORN
18 THE CLERK: You may be seated. Please state and
19 spell your first and last name for the record.
20 THE WITNESS: First name, John, J-o-h-n. Last name,
21 Relato, R-e-l-a-t-o.
22 MR. PESCI: May I proceed, Your Honor?
23 THE COURT: You may.
24 MR. PESCI: Thank you.
25 //

1 DIRECT EXAMINATION

2 BY MR. PESCI:

3 Q Sir, I want to direct your attention to August 8th,
4 and then to August 9th of 2017. Where did you live back then?

5 A I lived at 5536 West Dewey Drive.

6 Q Is that here in Las Vegas?

7 A Yes, sir.

8 Q All right. Now, when -- back on August 8th into
9 August 9th of 2017, who lived there with you?

10 A My mother, father, sister, and my cousin.

11 Q What was your cousin's name?

12 A Legal name is Gabriel Valenzuela, but his friends
13 and I call him Kevin.

14 Q Okay. And so, Kevin, what did he do back then?
15 What was his -- was he going to school? Was he working?

16 A Yes, he was a nursing student.

17 Q Okay. Do you know where he was going to nursing
18 school?

19 A College of Southern Nevada.

20 Q Okay. And then, how many people total was that? It
21 was you; did you say your sister?

22 A My sister, mother, step-father, and my cousin.

23 Q So five of you total?

24 A Yes, sir.

25 Q How many cars were associated with the house?

1 A About four.

2 Q Okay. Was there a lot of movement amongst all of
3 you as far as driving in and out?

4 A Yes, sir.

5 Q All right. And did you have -- did you have a
6 garage that covered, and part that's not covered?

7 A I have a garage that's covered, and we also park the
8 cars on, like, driveways. Like sloped, ramped, like,
9 driveways.

10 MR. PESCI: May I approach the witness?

11 THE COURT: You may.

12 MR. PESCI: Your Honor, I'm showing to the witness
13 Exhibits 11, 12, and 14, previously shown to defense counsel.
14 I believe there's no objection to their admission.

15 MR. SANFT: No, Your Honor.

16 MR. RUGGEROLI: That's correct.

17 THE COURT: Okay, they're admitted.

18 (State's Exhibits 11, 12, and 14 are admitted)

19 THE WITNESS: That's correct.

20 MR. PESCI: May I --

21 THE WITNESS: I'm sorry.

22 MR. PESCI: -- move for their admission and ask to
23 publish?

24 THE COURT: They're admitted, and you may publish.

25 MR. PESCI: Okay.

1 BY MR. PESCI:

2 Q So, I apologize. I was asking about the parking at
3 that location. To your right, there's a computer. So are we
4 looking at the garage that's, you said, covered, correct?

5 A Yes, sir.

6 Q Would that be as you're facing the house on the
7 lefthand side?

8 A What do you mean by that?

9 Q So if you were standing here where the picture was
10 taken, is the garage furthest to the left the one that's
11 covered?

12 A Yes, this is the one that's covered.

13 Q Okay, and is there one to the right of that one that
14 is uncovered?

15 A Yeah, this is uncovered.

16 Q Okay. And then, you just talked about another
17 location where cars are parked. Where is that?

18 A This one here, usually.

19 Q Okay. And you said -- was -- is there a slant?

20 A This is -- I mean, it's like a slope, you know?

21 Q Okay. So that --

22 A The driveway.

23 Q That driveway area -- let's show you Exhibit 14. Is
24 that reflective of that slant? Is it higher where the car is,
25 and gets lower down to the street?

1 A Yes, sir.
2 Q Okay. So, on that night, were you home?
3 A Yes, sir.
4 Q Did something happen that brings you here to court?
5 A There was the murder of my cousin --
6 Q Okay.
7 A -- that night.
8 Q Do you remember or do you know when your cousin came
9 home?
10 A I don't know the exact time, but I know it was
11 around midnight; around 12:00 o'clock.
12 Q Okay. So in the late hours of the 8th, going into
13 the early hours of the 9th?
14 A Yes, sir.
15 Q Okay. Was it normal for him to usually come home
16 this late?
17 A Usually, he comes home a little later. But yeah,
18 usually, he doesn't -- like, no earlier than this.
19 Q Okay. And then, speaking of normal -- what's done
20 normally, was there something that your cousin would do with
21 the mail? Is he the one that would pick up the mail?
22 A Yes, sir.
23 Q Okay. And then, where is the mail in relation to
24 your house?
25 A It's -- it's a little more towards this way. It's

1 like in my neighbor's side of the -- I mean, like, going --
2 you know, if you keep going down this sidewalk.

3 Q Okay.

4 A Just keep going, and there's like --

5 Q So the direction that you're pointing now is kind of
6 going to the left of that photograph, correct?

7 A Yes, sir.

8 Q All right. We're going to get you an aerial in just
9 a second that you can kind of point that out. And so, if I'm
10 understanding correctly, your cousin would be the one who
11 would go pick up the mail?

12 A Yes, sir.

13 Q All right. And then, is this something he did
14 routinely?

15 A Yes.

16 Q And what would happen when he did it? Would he go
17 through that mail?

18 A Yeah. He usually picks it up, make -- like, he
19 drives over there, like in front of the mailbox, picks it up.

20 Q Let me stop you.

21 A Oh, yeah, sorry.

22 Q Looking at 3.

23 A Yeah. Usually, he comes in from here, drives to the
24 mailbox right around this area here.

25 Q I'm going to move this up so that it can be seen a

1 little better.

2 A Sure. It's not showing on the picture, but there's
3 a mailbox for the -- the neighborhood.

4 Q I'll show you Exhibit 4. Let's see if you can get
5 to the mailbox.

6 A Yes, okay. So, usually, he comes in over here. The
7 mailbox is around this area here. He usually drives over
8 there, picks up the mail, makes a U-turn, and parks the car at
9 the parking over here.

10 Q Okay. And speaking of that, we'll go back to
11 State's Exhibit 14. Is the car that's depicted in State's 14
12 your cousin's car?

13 A Yes, sir.

14 Q The car that he would drive?

15 A Yes.

16 Q Okay. And so, was there a routine as far as what he
17 would do as far as going through the mail?

18 A Usually, he just grabs the whole stack, sits around
19 this area over here --

20 Q When you say this area over there, is there kind of
21 a little --

22 A The retaining wall.

23 Q A retaining wall? Okay.

24 A Yes, sir.

25 Q Sits there, and then goes through the mail?

1 A Yes, because that's where the lighting is. He can
2 do it in the car while it's -- it's well-lit in this area.

3 Q Okay. And so, on that particular night, did you
4 hear something that got your attention?

5 A Gunshots.

6 Q Okay. Do you recall how many gunshots?

7 A I recall two.

8 Q Okay. And then what did you do based on hearing
9 gunshots?

10 A First, I went to -- I went to check -- I went
11 upstairs.

12 Q All right, let me show you State's Exhibit 12.
13 Maybe that could help us orient to where you're saying
14 upstairs.

15 A I went upstairs to kind of check out the
16 neighborhood. So I went to --

17 Q When you say -- let me interrupt.

18 A Sorry.

19 Q I apologize. When you say upstairs, were you
20 already inside the house?

21 A Yes, sir.

22 Q Okay. So you went from the inside downstairs to the
23 upstairs?

24 A Yes.

25 Q So you could try to have a better vantage point?

1 A Um-hum.
2 Q Is that a yes?
3 A Yes.
4 Q Okay, and then what happened?
5 A I tried to check out the window over here, but it
6 was -- there was like no view. Like, it's very, like,
7 obstructed by this here. There's like nothing around, so I
8 tried to go to another window.
9 Q Let me stop you for a second.
10 A Go.
11 Q I'm going to show you State's Exhibit 1. You talked
12 about it being obstructed. Are there some trees in your yard
13 in that area?
14 A Yes, sir. Those are the trees that obstructed my
15 view.
16 Q Okay. So did you move based on that?
17 A Yes. I moved -- I moved over here by this window,
18 like in the -- this room over here.
19 Q Okay.
20 A I did see the car, but -- and I did see something --
21 something shiny, which turned out to be the blood.
22 Q Okay. What did you do based on seeing the car and
23 seeing what was shiny on the ground?
24 A What was, I guess, out of character for him was that
25 the door was open. Usually, he doesn't leave the door open.

1 Q To his car?

2 A To his car. Whenever he leaves, you know, to like
3 pick up the mail, usually, he just leaves -- he just closes
4 it.

5 Q Okay, let me stop you for a second. Speaking of
6 doors, where is -- as we look at State's Exhibit 12, where is
7 the front door?

8 A The front door is behind this car over here.

9 Q Okay. So what's the normal way of entry into the
10 home?

11 A Usually, through the garage.

12 Q Okay. So now, you were speaking about how the door
13 being opened seemed strange to you, and what did you do?

14 A Could you repeat the question?

15 Q You said that the door being open seemed strange to
16 you, so what did you do?

17 A Oh, sorry. The car door. I did see the car. I saw
18 the car door was open --

19 Q Yes.

20 A -- his car door.

21 Q Yeah, I apologize, you're right. The car door. So
22 what did you do?

23 A I immediately started calling my cousin --

24 Q Okay.

25 A -- like through his cell phone.

1 Q And do you know when you called your cousin?
2 A I believe it was like 12:09, somewhere around that
3 time.
4 Q When this happened back in August of 2017, did you
5 relay the information to the police when they eventually got
6 there as far as when you had actually called?
7 A Yes, sir. I called 911, and they started coming in.
8 Q Okay. So, first, you called your cousin?
9 A Yes, sir.
10 Q What happened?
11 A Oh. After I started calling him, I wanted to check
12 out what's going on, because I mean, the car is there; that
13 means he's there. So I went out the front door, and I just
14 saw him lying there.
15 Q Okay. Did you see anybody else in the area?
16 A I did not.
17 Q Okay. Anytime that you had been looking outside to
18 see what's going on after hearing the shots, did you see
19 anybody?
20 A I did not.
21 Q Okay. When you saw your cousin, where were you when
22 you first saw him?
23 A I was over here. I came out of the front door.
24 Q Okay.
25 A I walked a little further, because he was lying in

1 the ground over here.

2 Q Okay.

3 A And this retaining wall is obstructing my view, so
4 as I kept walking, I just saw his -- I just saw him there.

5 Q And what did you do?

6 A I immediately called 911.

7 Q And then did 911 tell you to do anything?

8 A Yes. They told me to -- I informed them of where
9 the gunshot, like, is; where the wound is. And they told me
10 to -- the first thing I should do is stop the bleeding. And
11 in order to do that, I needed -- they preferred I use a clean,
12 like, cloth. However, I was unable to get back inside because
13 of a jammed door, which is why I had to use my own t-shirt to
14 try to stop the bleeding.

15 Q All right. Did you take your t-shirt off?

16 A Yes, sir.

17 Q All right. And then did you try to stop the
18 bleeding of your cousin with that t-shirt?

19 A Yes.

20 Q Okay. When you ran outside, what were you wearing?

21 A I was wearing a -- I was wearing like basketball
22 shorts and a white t-shirt.

23 Q Okay, and did you have anything on your feet?

24 A I did not, because I usually -- like, we -- we
25 usually entered mostly through the garage, so we don't leave

1 anything like in the front, like, steps.

2 Q Okay.

3 A Like, we don't leave slippers, shoes there.

4 Q So you took your shirt off when you were trying to
5 stop the bleeding, and then what happened?

6 A I was mostly speaking with the 911 operator. Oh,
7 well, first, when -- I'm sorry, I have to go back a little
8 bit.

9 Q Okay.

10 A After I spotted him, I decide to call 911. They --
11 they told me to find a clean, like, cloth, right? I attempted
12 to go back inside. I couldn't get back inside because the
13 door was like jammed, as -- it was just jammed. So I was
14 ringing the doorbell, trying to call more of my family members
15 outside for help. And I went back down here, and then used my
16 shirt to stop the bleeding.

17 Q Okay.

18 A In the meanwhile, I was speaking to the 911
19 operators. Some of my neighbors did come out, and I
20 instructed them to try to -- try to go to like the opposite --
21 like, I told one of them to go over here, another one to go
22 somewhere over here, and instructed them to try to pin down
23 the officers, just to -- just so they can easily spot the
24 streets.

25 Q Try to flag the officers?

1 A Exactly.

2 Q Okay, all right. And then, based on you ringing the
3 doorbell, did anybody from your family come out?

4 A Yes, sir. My -- the rest of my family did.

5 Q Okay. What did they do when they got out?

6 A My mother was crying. So was my -- my sister and my
7 step-dad were in distress.

8 Q Okay. And did you stay with your cousin?

9 A Yes, I did.

10 Q And did you continue to try to put pressure?

11 A Yeah, I continually held the -- the t-shirt there.

12 Q All right. And then, your family members, did they
13 come nearby --

14 A Yes, sir.

15 Q -- to where you were?

16 A Yes.

17 Q You described them as distressed?

18 A Yes.

19 Q Okay. And then did the police make it to the scene?

20 A Yeah, I believe the police officer was there first,
21 then the ambulance.

22 Q Okay. What did the police officer do when he got
23 there?

24 A He instructed me to continue, like, holding the --
25 holding the t-shirt, like, onto my cousin's head, again, to

1 try to stop the bleeding.

2 Q And then did the paramedics arrive?

3 A Yes.

4 Q Okay. Did they come and take over for you?

5 A Yes.

6 Q What did they do?

7 A I -- the guy -- one of the paramedics just -- one of

8 the paramedics took hold of the T -- like, the pressure for

9 me, and I'm not really sure exactly what the details were

10 after that.

11 Q Okay.

12 A I kind of just backed away.

13 Q And when you backed away, did the paramedics take

14 over?

15 A Yes, pretty much.

16 Q Okay. Did you eventually get yourself a t-shirt?

17 A Yes, I did. I instructed my sister to get me a

18 t-shirt and a slipper. At the same time, I kind of didn't

19 want her to see anything; the scene, I guess.

20 Q And what was your concern about your sister? Why

21 were you concerned about your sister?

22 A She's autistic --

23 MR. SANFT: Your Honor --

24 THE WITNESS: Sorry.

25 MR. SANFT: I'm going to object to this line of

1 questioning as being irrelevant and highly prejudicial.

2 THE COURT: Do you want to approach?

3 MR. SANFT: Yes.

4 (Bench conference)

5 MR. SANFT: I don't understand the relevance of what
6 we're getting in here about -- I mean, it's nothing to do
7 about whodunit; it's not about preserving evidence. I'm not
8 quite clear why we hear about an autistic --

9 MR. PESCI: Well, I don't know where the defense is
10 going. And in the body-worn camera, there's evidence of
11 people acting understandably very emotionally, and I think
12 that that's an added layer to the emotional reaction that's
13 based on her condition, and, you know, that's why I'm trying
14 to get that out, so.

15 MR. SANFT: But I think that's more prejudicial than
16 probative in terms of what exactly you're trying to do with
17 that. I don't understand what the purpose of that is. How
18 does that go back to the issue of who did what in terms of
19 this person dying?

20 MR. PESCI: Because he's trying to get her out of
21 the scene, and so we've got tons of people in the scene that
22 are not responding right away. If you remember the video, the
23 officer's telling them repeatedly to move back, and some don't
24 move back right away. And so that can be some explanation as
25 to -- but I'm not going to stand up and say, convict him

1 because his sister's autistic.

2 THE COURT: Right. Okay, I'm going to allow it.

3 Does anybody else want to say anything?

4 MR. RUGGEROLI: No, Your Honor.

5 THE COURT: Okay.

6 (End of bench conference)

7 THE COURT: Okay, you may proceed.

8 MR. PESCI: I'm sorry, Your Honor?

9 THE COURT: You may proceed.

10 MR. PESCI: Okay, thank you.

11 BY MR. PESCI:

12 Q Did you -- if I heard it correctly, did you say your

13 sister brought out to you a shirt?

14 A Yes, sir.

15 Q And did you say sandals?

16 A Yes, slippers.

17 Q Kind of like slippers for --

18 A Flip-flops, yes.

19 Q Okay, all right. And then were there other officers

20 that arrived?

21 A I believe so.

22 Q Okay. Did officers speak with you and with your

23 family members outside in the area in front of the parked

24 cars?

25 A Mostly around this area here. I believe their main

1 concern was to preserve the evidence, as I recall them telling
2 me.

3 Q That was my point. Did they move you away from the
4 area where your cousin was to a different location to the
5 side?

6 A Yes.

7 Q In fact, eventually, didn't they ask you to even --
8 to go -- did they ask permission to go into your house --

9 A Yes, they did.

10 Q -- to speak with you?

11 A Yes.

12 Q And did they speak with you inside?

13 A Yes, sir.

14 Q All right. And in speaking with you, did you
15 recount to them some of the things that you've just told us?
16 Did you tell them about the things that you just told the
17 jury?

18 A Oh, yes, yes.

19 Q Okay. And did they ask to see some things based on
20 what you had told them?

21 A Yes, sir.

22 Q Okay. So I'm going to show you what's been
23 previously shown to defense counsel as exhibits -- try and get
24 them in order. Okay, so 30, 31, 32, 35, 36, 72, 76, 77, and
25 78.

1 MR. PESCI: I don't believe that there are any
2 objections.
3 MR. SANFT: No, Your Honor.
4 MR. RUGGEROLI: No, Your Honor.
5 MR. PESCI: Move for the --
6 THE COURT: They're admitted.
7 (State's Exhibits 30, 31, 32, 35, 36, 72, 76, 77, and 78 are
8 admitted)
9 MR. PESCI: Thank you.
10 BY MR. PESCI:
11 Q I'm going to show you these in the same way we did
12 that, okay? So earlier, you talked about your cousin going
13 through the mail in the car. Showing you State's Exhibit 30,
14 do you recognize that car?
15 A Yeah, this is the CRV --
16 Q Okay, is that --
17 A -- we still have.
18 Q Is that the car your cousin drove?
19 A Yes, sir.
20 Q Looking at State's 31, is that the back seat area of
21 your cousin's car?
22 A Yes, sir.
23 Q And then, kind of focusing in on State's 32, is that
24 a close-up of some of the items on the ground or the
25 floorboard in the backseat area?

1 A Yes.

2 Q All right. And then, showing you Exhibit 35, do you
3 recognize that?

4 A Yes, that's his ID.

5 Q Okay. And that's your cousin, Gabriel?

6 A Yes, sir.

7 Q That you refer to as Kevin?

8 A Yes.

9 Q All right. And then, showing you State's Exhibit
10 36, do you recognize that item?

11 A Yes, I saw this a couple days after.

12 Q Okay. What is -- is it Fukumimi Ramen?

13 A It's a ramen shop -- restaurant --

14 Q Okay.

15 A -- by Eastern.

16 Q And was your cousin someone who would go there
17 often?

18 A Yes, yes.

19 Q All right. And then, this receipt's dated on August
20 the 8th of 2017 at about 8:59 P.M.?

21 A Yes.

22 Q Is that correct? Okay. Showing you Exhibit 78.
23 When you were out there working on your cousin, did you see
24 items of mail that had been ripped?

25 A Yes. He often does that with -- with junk mail.

1 Q Okay. And then, showing you State's 77, next to the
2 items that are ripped, whose glasses are those?
3 A Those are his glasses.
4 Q Okay. And then, showing you State's 76, whose phone
5 is that?
6 A That's his iPhone.
7 Q All right. Now, earlier, you spoke of a retaining
8 wall. Is that where this iPhone is located?
9 A Yes, sir.
10 Q All right, so is that down the slope of that third
11 parking area where the CRV was parked?
12 A Yes.
13 Q Okay. And that's your cousin's?
14 A Yeah, it's his phone.
15 Q Did you see how it got there?
16 A I remember it was -- I was still calling -- no.
17 After I rang the doorbell, I believe my mother or someone in
18 the family started calling his phone. It was still in his
19 hand. It was -- it was ringing --
20 Q Okay.
21 A -- while I was holding the -- his wound.
22 Q So when you were working on your cousin, you saw
23 this phone in your cousin's hand?
24 A Yes, sir.
25 Q And so, when people inside were calling, your

1 cousin's phone was ringing?

2 A Yes.

3 Q All right. Do you know how it got from your

4 cousin's hand to that retaining wall?

5 A I remember it got -- like, the paramedics picked him

6 up on the stretcher, and I recognized it, like, just drop, and

7 someone bent over to pick it up and place it on the retaining

8 wall.

9 Q Okay. Showing you -- speaking of phone -- phones,

10 State's 72, do you recognize that phone?

11 A That's -- yes. That's my aunt -- his aunt, my

12 mother, calling him. That's -- this is me calling him.

13 Q Okay. So that's a screenshot of your cousin's

14 phone?

15 A Yes.

16 Q Okay. And so you -- you said that -- JP, is that a

17 nickname that you have?

18 A Yes, that's my initials for --

19 Q Okay.

20 A It's my first and middle.

21 Q And you were calling your cousin at 12:10 A.M.?

22 A Yes, sir.

23 Q All right. And then, this is pictures being taken

24 on Wednesday, August 9th at 4:51 A.M.?

25 A Yes.

1 Q So the police are talking to you, and they're
2 getting this information from your phone -- or from your
3 cousin's phone?
4 A Yeah, from my cousin's phone.
5 Q Right. But that's based on the information that you
6 gave to them that you had called him and that your aunt had
7 called him?
8 A Yes. My mother, his aunt.
9 Q I'm sorry. Your mother, his aunt. I apologize.
10 And then did you speak to the police and tell them all these
11 various things that you've been telling us here today?
12 A Yes, sir.
13 Q Okay.
14 MR. PESCI: Court's indulgence.
15 BY MR. PESCI:
16 Q I want to go back to Exhibit 31. Do you recognize
17 what any of those items are in the back seat?
18 A He usually plays the -- those tabletop games, like,
19 you know, Dungeons and Dragons, Warhammer 40K, all that.
20 Q Okay.
21 A And those are just figurines. There's like a lot of
22 them. That's -- what do you call it? That's like -- that's
23 like foam to like keep -- it usually cuts as a shape just to
24 keep like those things secure.
25 Q Okay.

1 A Like -- yeah.

2 Q So those items in the car, this foam, and this is

3 the -- the tabletop games that you referred to?

4 A Yeah, the figurines.

5 Q Okay, and that's what you knew that he enjoyed

6 playing?

7 A Yes, sir.

8 Q Okay.

9 MR. PESCI: Pass the witness. Thank you.

10 THE COURT: Cross-examination?

11 MR. SANFT: No cross, Your Honor.

12 MR. RUGGEROLI: I have no questions, Your Honor.

13 THE COURT: Okay. Thank you very much for your

14 testimony here today. You may step down. You are excused

15 from your subpoena. Thank you for being here.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: And you may call your next witness.

18 MR. BROOKS: Your Honor, the State calls William

19 Speas.

20 THE MARSHAL: If you'll please remain standing,

21 raise your right hand, and face the Clerk.

22 WILLIAM SPEAS, STATE'S WITNESS, SWORN

23 THE CLERK: You may be seated. Please state and

24 spell your first and last name for the record.

25 THE WITNESS: My name is William Speas.

1 W-i-l-l-i-a-m, and then Speas, S-p-e-a-s.

2 MR. BROOKS: May I, Your Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q Mr. Speas, how are you currently employed?

7 A Currently, I'm -- I'm retired.

8 Q And when did you retire?

9 A Two years ago.

10 Q And prior to that, how were you employed?

11 A I was Las Vegas Metro Police Department CSI.

12 Q And what -- what is that? What were your duties?

13 A Crime scene investigator. My jobs were to go out to
14 scenes, assist officers or detectives on the scene, document,
15 photographs, taking notes. Also, collect and protect evidence
16 to process for fingerprints.

17 Q And tell me -- tell me about the progression. So,
18 essentially, did you start as a CSA 1, or was that term not
19 even around when you started?

20 A Yes, it was.

21 Q Okay.

22 A I started out -- I went to a crime scene
23 investigation academy and graduated from that. I was a crime
24 scene analyst or CSA 1. Then, progressed to CSA 2, and then
25 to senior CSA, which is what I was when I retired.

1 Q And senior CSAs, would senior CSA typically do
2 different type of investigations than you would have done as a
3 CSA 1?

4 A We can do more complex crime scenes. Actually, as a
5 2, I did some pretty complex ones, too. It all depends on
6 manning.

7 Q Now, I want to turn your attention to August 9th,
8 2017. Do you remember an incident that brings us here to
9 court today?

10 A Yes, I do.

11 Q And were you part on an investigation that started
12 on that day and proceeded for a few days?

13 A Yes.

14 Q So tell me a little bit about when you were
15 initially dispatched, where you were sent.

16 A Okay. At -- we were sent to a resident on Dewey a
17 little after midnight.

18 Q And is that 5536 West Dewey Drive?

19 A That should be it.

20 Q And is that here in Las Vegas, Clark County, Nevada?

21 A Yes, it is.

22 Q Okay. So when you get there, tell me, as a crime
23 scene analyst, you show up; what do you do first?

24 A First, we meet with the detectives and we kind of go
25 hash out a little plan of what we want to do. I was the lead

1 CSI on this one, which meant I was the one that did reports
2 and photographs. So I started out, I would photograph the
3 entire scene as we saw it when we arrived. And then, later,
4 as we did search, we found pieces of evidence or evidence that
5 was right out there. They were marked, they would be
6 photographed again, showing where evidence was, and then we
7 photograph what the evidence was.

8 Q Okay. So when a CSI is eventually dispatched and
9 sent to a scene, is the victim typically still present?

10 A It -- it will vary. In this scene, the victim had
11 been transported.

12 Q So the victim had already been transported to UMC?

13 A Yes, prior to -- well, I'm not sure where, but prior
14 to our arrival, the victim had been transported.

15 Q Okay. And so, when you arrive, do you arrive with
16 another CSA? Not necessarily at the same time, but are you
17 kind of paired with someone?

18 A We arrive pretty much the same time. It was Ebony
19 Stephens.

20 Q Oh, sorry, that's a poor question. Yeah, did you
21 have like a partner this day?

22 A Yes, I did.

23 Q And who was that?

24 A That was Senior Crime Scene Analyst Ebony -- Ebony
25 Stephens.

1 Q And has she since retired?

2 A She -- yes, she has also retired.

3 Q Okay. So you kind of mentioned earlier -- forgive
4 me, I don't remember the word. Did you say you were primary,
5 and she was secondary, or what? How does that work?

6 A It -- it varies. We work as a team. Basically, I
7 was the one that, like I said, did photographs and report.
8 And in this place, she did evidence and diagram.

9 Q Oh, okay. So is that typically how it's broken up?

10 A It will break it up, yes.

11 Q And what does diagram mean?

12 A Diagram is just as it sounds. Diagram is just a --
13 she'll go out and she'll make a sketch of the area. She'll
14 measure out like landmarks, driveways, walls where a house is
15 located, and then just the whole -- basically, the scene.
16 Then she will go around where all the evidence is.
17 She'll find a point of reference, like the end of -- in this
18 case, I believe it was the end of a wall. And they'll say,
19 okay, this piece of evidence is so many feet west, so many
20 feet north of -- of this corner of the wall or whatever. And
21 she'll measure in all the pieces of evidence that we find
22 there so that we would supposedly be able to go back and place
23 them.

24 Q And so, you said diagram. Does that happen on every
25 case, or just on some?

1 A It happens on major cases, most -- we do those on
2 homicides and officer-involved shootings.

3 Q And when you said reference point, does she pick
4 like a chair, or does she pick something --

5 A No, she picks something that's permanent, stationed
6 in there. Nothing that can be moved.

7 MR. BROOKS: And Your Honor, I've shown all these
8 photos to defense. So at this point in time, may I approach
9 occasionally with different packets of the photos to work with
10 Mr. Speas?

11 THE COURT: Sure.

12 MR. SANFT: And Your Honor, just for the record, on
13 behalf of Mr. Robertson, we have no objection to their
14 admission at this particular time.

15 MR. RUGGEROLI: Same for Mr. Wheeler.

16 THE COURT: Okay. Do you just want to cite for the
17 record what you have?

18 MR. BROOKS: Yes. Exhibits 37 through 56.

19 THE COURT: Okay, they're admitted.

20 (State's Exhibits 37 through 56 are admitted)

21 MR. BROOKS: Exhibits 9 through 36. Some have -- a
22 couple have already been admitted with the last witness.

23 THE COURT: Okay, they're admitted.

24 (State's Exhibits 9 through 36 are admitted)*

25 MR. BROOKS: Exhibits 57 through 71.

1 THE COURT: They're admitted.
2 (State's Exhibits 57 through 71 are admitted)
3 THE COURT: They're admitted.
4 MR. BROOKS: Exhibits 72 to 80.
5 THE COURT: They are admitted.
6 (State's Exhibits 72 through 80 are admitted)
7 MR. BROOKS: And Exhibits 81 to 92.
8 THE COURT: And they are admitted.
9 (State's Exhibits 81 through 92 are admitted)
10 MR. BROOKS: And then, those -- that's with the West
11 Dewey address. The second one that I'll work with him later
12 on is 2 -- is the Bagpipe address, 215 to 229.
13 THE COURT: They're admitted.
14 (State's Exhibits 215 through 229 are admitted)
15 MR. BROOKS: And 230 to 234.
16 THE COURT: And they are admitted.
17 (State's Exhibits 230 through 234 are admitted)
18 MR. BROOKS: May I publish, Your Honor?
19 THE COURT: You may.
20 BY MR. BROOKS:
21 Q So, Mr. Speas, you were kind of talking about a --
22 that diagram. Do you recognize what's depicted here?
23 A Yes, this is a diagram that Ebony made.
24 Q Okay.
25 THE COURT: What exhibit is that?

1 MR. BROOKS: Oh, I'm so sorry. Exhibit 37.

2 BY MR. BROOKS:

3 Q And now, I kind of want to -- I want you to walk us
4 through, because you took the photos. So walk us through,
5 essentially, as I go through these photos, what you're doing
6 and why you're taking certain photos. Exhibit 10?

7 A Okay, this is a location photograph. I'll do some
8 that pan around the area. As you can see, the sky is kind of
9 a cobalt color. This was late at night; it was dark. What I
10 had done for this, I had taken a timed exposure, putting my
11 camera on a tripod, and then having my exposure for an
12 extended period of time, which you do for that color and
13 stuff. It wasn't quite that light; it was a lot darker.

14 Q Okay, I want to move to a different sort area and a
15 different zoom. On State's Exhibit 13, what are you doing
16 here?

17 A Okay. That moved in, this is like an RV driveway
18 that they have, and that is right there on the -- in front of
19 the house.

20 Q Do you recall that driveway being slanted?

21 A Yes, it's slanted from the west going up to the
22 east.

23 Q And you note that in your report. Why would you
24 note something like that?

25 A Just to -- well, as things could roll down. In this

1 case, we have apparent blood that's there; we had cartridge
2 cases. Anything that just could -- gravity would just take it
3 down that hill --

4 Q Okay, so when Ms. --

5 A -- incline.

6 Q When Ms. Stephens on the crime scene diagram is
7 noting where cartridge cases are found, that is where they
8 were static. But your -- when you're going to report and
9 noting the slant, is that why you're doing that, so that those
10 two could be used in conjunction?

11 A It could be. I just did it because that's what I
12 saw.

13 Q Okay. Exhibit 15?

14 A Okay. This -- if I can mark on here?

15 Q Yes, sir.

16 A All right.

17 Q With -- oh, with the mouse now.

18 A Okay. Right -- this area here, this is the
19 sidewalk, this is the cinder block wall, this is the opening
20 or the beginning of that little driveway.

21 Q Let me get you a different photo. Why were you
22 documenting here, 17?

23 A I was just documenting this apparent blood and these
24 -- also, we have some torn mail, and some apparent footwear,
25 and apparent blood that's also on the pavement.

1 Q And State's Exhibit 23, what is that?

2 A That's a vehicle that was parked at the end of the
3 driveway, at the east end.

4 Q Exhibit 24?

5 A That's just another view of it, showing that the
6 passenger door is slightly open -- or is open.

7 Q Now, tell us about the -- in the diagram, Ms.
8 Stephens notes cartridges. I want you to explain to us what
9 we're seeing in 38. What are those yellow markings there?

10 A Okay. That you can see, right back here is one --
11 these are little -- called tent markers. They're numbered
12 tent markers. This is just a view going back to kind of show
13 where they're at. I'll do a series of these photos as they
14 come in, so you'll be able to read -- read the tent markers,
15 read the numbers on them. What they do is they mark the
16 location of pieces of evidence, and they -- the numbers
17 corresponds to the numbers that are given to -- to each piece
18 of evidence. Like, Tent Marker number 1, Evidence Item number
19 1.

20 Q All right. Showing you a different angle, do you
21 see in State's Exhibit 41 those same tent markers?

22 A Yes, I see -- yes.

23 Q All right. I want to zoom-in on just some of the
24 tent markers, and then what essentially they were. So here's
25 State's Exhibit 45. What is that?

1 A That is a .22 caliber cartridge case.

2 Q And in State's Exhibit 44, is that what it looked
3 like prior to you putting the tent marker there?

4 A Yes, it is.

5 Q Now, after you've taken those photos without
6 disturbing it, what do you do here in State's Exhibit 46?

7 A What I did, after I had photographed it in place and
8 showed where it was, I placed it on top so you were able to --
9 I was able to photograph the headstamp. As you can see -- can
10 we enlarge that?

11 Q Let me see if I can.

12 A Yeah. It's -- there is a letter C on there. It's a
13 small cartridge case. .22s don't normally say .22 caliber,
14 but the "C" shows who the manufacturer is.

15 Q Now, I want to show you Exhibit 50. What is that?

16 A That's the headstamp of the .45 caliber cartridge
17 case.

18 Q And was that Item 2?

19 A Yes.

20 Q Showing you Exhibit 53, what is that?

21 A That's another .45 caliber cartridge case.
22 Different headstamp, but the same caliber.

23 Q And lastly, Exhibit 56?

24 A Again, a .45 caliber cartridge case. Also a
25 different headstamp, but same caliber.

1 Q Okay. See if you can then, with that mouse -- and
2 then we'll put back up Exhibit 37. And here, Ms. Stephens has
3 labeled 1, and then 2 through 4.

4 A Yes.

5 Q So could you use that mouse and tell us where each
6 thing would have been?

7 A Okay. Number 1, which was the .22 caliber case, is
8 right here. That is like right at the bottom of the -- looks
9 like the bottom of the incline, going up into the -- want to
10 make sure exactly where the incline comes in right here. But
11 it's right at the opening of the -- of the driveway here,
12 because here's the wall. It's right here near a retainer
13 wall.

14 Our Item number 2 is out here in the street;
15 cartridge case. Item number 3, another cartridge case, is
16 right here. And Item number 4 is right here, kind of on the
17 walkway.

18 Q Perfect. Now that we've looked at that, I'm going
19 to show you Exhibit 39. And I'll try to zoom-in a bit.

20 A Yeah, I can -- I can --

21 Q Can you --

22 A I can make these out.

23 Q Can you see what you just described to us?

24 A Okay. Like, here's Item number 1 again, the .22
25 cartridge case right -- here it is, right there at the start

1 of the incline. Number 22 out in the street -- number --
2 number 2, which is a .45 out in the street. Number 3 is right
3 at the entrance. And number 4 right here on the walkway or
4 the little sidewalk where it curves up.

5 Q And now, you weren't in charge of impounding; that
6 was Ms. Stephens?

7 A Yes.

8 Q Okay. So how long were you guys still at the -- at
9 the scene? Do you know? Were you guys in and out in 15
10 minutes?

11 A I -- no, no, no. This is an all night thing, pretty
12 much.

13 Q Okay. So were you there even when the sun rose?

14 A I believe so.

15 Q When the sun rose, did you take additional photos?

16 A Yes.

17 Q Showing you State's Exhibit 57. Oh, let me zoom
18 back out.

19 A Okay.

20 Q Is that -- is that you who took that?

21 A Yes.

22 Q All right. I want to show you, when the sun was up,
23 did you guys have a little more light, and were you able to
24 find something that you didn't see the night before?

25 A Yeah. This is not unusual on a crime scene, is

1 we're working in the dark and searching for things as small as
2 cartridge cases, or bullet, or bullet fragments in the dark,
3 and then when the sun comes up and we have a lot of light,
4 we'll find additional stuff. That's one of the reasons we
5 would stick around and we would search. And we were
6 constantly searching as we were going around photographing and
7 -- and looking at the scene.

8 Q So I want to show you State's Exhibit 63. Do you
9 see a cone there?

10 A Yes, it's a cone. It's right -- right here next to
11 this palm tree.

12 Q Now -- and is that the car in the left side of that
13 photo --

14 A Yes.

15 Q -- to help us orient us where we are?

16 A So that would be towards the east end of the
17 driveway, and then over into the planter area.

18 Q All right. Now, I want to zoom-in on that cone in
19 State's Exhibit 64. Why did you put that cone there?

20 A That would be to -- trying to see if that's it. The
21 cone was placed to mark, I believe, a bullet or bullet
22 fragment.

23 Q Okay. Now, it's not really clear because of that.
24 So now the cone's moved away. I'm going to zoom-in a bit in
25 State's Exhibit 62. Do you see now why you placed the cone

1 there?

2 A Yes, it was a bullet there.

3 Q Okay. I'm going to zoom-out, show you State's
4 Exhibit 65. What are we looking at?

5 A We're looking at a bullet. It's a spent -- it's
6 called a spent bullet. This bullet has impacted something.
7 That's not what it looks like coming out of the -- when it's
8 fired out of the cartridge. And I took this photo because --
9 I can tell because it's my personnel number right here with my
10 initials.

11 Q And who's holding it? Do you know?

12 A It's probably Ebony.

13 Q Okay, and you're taking it. Who would have
14 impounded that?

15 A Ebony.

16 Q Ebony would have impounded it?

17 A Yes.

18 Q So if that bullet needed to be tested, it was in her
19 sole care and custody until being impounded, even though
20 that's your P number right in front of it?

21 A Yeah, just my P number, just to show I photographed
22 it. Yes.

23 Q After you leave the scene -- or I guess, while
24 you're at the scene, do detectives gain some sort of
25 information about a possible other place of interest?

1 A I was -- yes. I was -- well, in fact, I went to one
2 the next night. I'm not sure exactly when they got that, but
3 I know that I was dispatched for a search warrant the
4 following evening.

5 Q Okay. So -- oh, no, sorry. That morning, roughly
6 6:00 -- 5:00, 6:00 A.M. when you leave the West Dewey
7 location, do you go to a convenience store?

8 A Oh, yes.

9 Q And was that based on something that detectives
10 learned while --

11 A Yes. There was -- there was some conversation about
12 there may have been some suspects that were seen at this
13 scene.

14 Q But you at least were told to go document just the
15 front?

16 A Yeah. It was right next to our lab, and I went and
17 photographed just the scene in case this came up.

18 Q Showing you State's Exhibit 71. Do you recognize
19 that?

20 A Yes.

21 Q Is that the convenience store you went to?

22 A Yes, it is.

23 Q Now, I want to ask you, back at the scene -- and
24 I'll represent that on Ms. Stephens's diagram, this says
25 "Cigarette butts" here in State's 73.

1 A Okay.

2 Q How do you -- how do you know? What is it there?

3 A Those -- we have them marked also with cones there.

4 Q Okay. And that's -- why would that be of interest

5 to you?

6 A Well, we will look on a scene like that, and we'll

7 look -- if we find cigarette butts, they are a good source of

8 DNA, especially through the filters on those, in case a person

9 of interest were to be smoking a cigarette and throw it down.

10 Q So that's why that would have been documented?

11 A Documented and collected.

12 Q And Ms. Stephens would have impounded that?

13 A Yes.

14 Q Okay. And then did you learn that there was a lot

15 of foot traffic around the victim?

16 A Yes. There was foot traffic around the victim

17 because, as he was there after he had been shot, first

18 responders showed up; paramedics, police -- or not --

19 paramedics, fire department.

20 Q And did you have the opportunity to take some

21 photographs of the people who were around the body?

22 A Yes. Because we found footwear prints there, we

23 took photographs of -- took photographs of the individuals and

24 the soles of their feet to -- so they could be compared to

25 footwear impressions that were -- or footwear prints that were

1 found on the pavement.

2 Q And is there a word for that that you would use?

3 A Just footwear comparison, or?

4 Q I guess, if it's the first responder and it's the
5 firefighter or the paramedic who picked the victim up and put
6 him on the gurney, if you're taking a photo of his shoe, why
7 are you doing that?

8 A We call them -- for elimination, just in case --
9 just to show that it -- it's not him.

10 Q Okay. So in State's Exhibit 81, we see some
11 firefighter there. And then, in State's Exhibit 83, what is
12 that?

13 A That's the sole of his shoe.

14 Q Okay. State's Exhibit 84, is that a paramedic?

15 A Yes.

16 Q And then, would you have also taken, in State's
17 Exhibit 86, the bottom of his shoe?

18 A Yes.

19 Q Additionally, in 87, so Exhibit 87, is that a
20 flip-flop sandal thing?

21 A Yes, a family member that had gone out to the scene,
22 too, and we took photos of the shoe that they were wearing.

23 Q And then, if you could just describe, I guess, for
24 the ladies and gentlemen of the jury, in 90, is that what you
25 were working on trying to eliminate?

1 A Yes.

2 Q All right. A few days later, does another location
3 become of interest in this investigation?

4 A I believe it was the following night.

5 Q It was the following night, August 9th, 2017,
6 around, what, 11:00 P.M.?

7 A Yes. It was not too long after I arrived to work.

8 Q Okay. And where were you dispatched?

9 A I was dispatched to a house on Bagpipe.

10 Q Is that 919 Bagpipe Court?

11 A Yes.

12 Q Here in Las -- North Las Vegas area?

13 A Yes.

14 Q All right. And I guess, forgive me, I didn't ask
15 this on the last one. When you initially arrived on the
16 scene, do you get some direction from detectives as far as
17 what's of interest; what you guys are looking to document?

18 A Yes. We'll -- we'll have a conference with the
19 detective or the police officers, whoseever the lead in there
20 when we arrive.

21 Q Do you remember who kind of the detectives were at
22 that initial Dewey scene that we talked about?

23 A I know there was -- I believe an Officer Jaeger, and
24 there was a different one. One of the other officers came to
25 us -- came with us on the night of the search warrant was the

1 lead. I don't remember exactly. It's two-and-a-half years
2 ago. I don't remember exactly which officers are there.

3 Q No problem. And at the 919 Bagpipe location, do you
4 recall which detective would have been at that location?

5 A I don't recall the name right now. It's in my
6 report.

7 Q If Detective Cook is in your report, is that --

8 A Yes.

9 Q Okay. So you get to that location. And tell us,
10 when a search warrant has been executed on an apartment or a
11 residence, do you go in while it's being executed? What --
12 what -- at what point do you go in and start taking photos?

13 A What I will do there is, normally, I'll go in, and I
14 will take photos of the scene. I'll take photos of what it
15 looks like. Officers will -- the location of evidence, I'll
16 take pictures of the search warrant, the returns, and anything
17 that's recovered there. Basically, I'm documenting the search
18 warrant and what's being done.

19 Q In State's Exhibit 215, although it says "19" up in
20 that corner, what was the residence?

21 A It would be in my report.

22 Q So if it's 919 in your report --

23 A Yeah.

24 Q -- is that just missing a number?

25 A That would be --

1 Q Okay. And then, showing you State's Exhibit 216,
2 are we just moving closer to the door here?
3 A Yes.
4 Q Okay. And then, 217, it appears you've gone
5 upstairs into the residence; is that correct?
6 A Yes.
7 Q All right. Tell us what we're looking at in 218.
8 A I'm not sure with this print and everything exactly
9 what we're --
10 Q Sure.
11 A -- you're referring to.
12 Q So let me show you three photos in succession, and
13 then you tell me what you were doing as the CSA. So that was
14 218, now 219, and then 220.
15 A Okay. This is -- I'm going -- this is just going
16 into the bedroom. And then, on the bed, we have a pink
17 backpack.
18 Q Okay. So that was kind of a progression of how you
19 would have walked once you got up the stairs --
20 A Oh, yes.
21 Q -- into a certain bedroom?
22 A Yes.
23 Q All right, and then you mentioned the pink backpack.
24 Let's go to State's Exhibit 222. Is that just a close-up?
25 A That's just a close-up of it.

1 Q Was there something of interest inside this
2 backpack?
3 A Yes.
4 Q What was it?
5 A It's a handgun.
6 Q And is this -- Exhibit 223?
7 A Well, that's a little dark, but yeah, there's a
8 handgun in there.
9 Q Yeah. I'm color-blind and that doesn't look
10 correct. Let me show you a different one in 224.
11 A Okay. That's the handgun that was recovered from
12 the bag.
13 Q So it was taken out of the bag, and that's --
14 A Yes.
15 Q -- that's why the previous photo had it in there?
16 A The reason it's all black in this area, it's in a
17 holster. It's in a black canvass holster.
18 Q And that's how you document it initially?
19 A Yes.
20 Q Would you then take it out in like State's Exhibit
21 226?
22 A Yeah, I did it in stages, and that's the handgun as
23 it's pulled out.
24 Q I want to show you 228. What are you doing here?
25 Why that photo?

1 A Okay. This -- I did a download just to show the
2 cartridges. These are the unfired cartridges that went into
3 it. This is the magazine. It came out of the bottom here in
4 the handle, the magazine well. As you can see, there's six
5 cartridges right here. Those came out of the magazine.
6 Sometimes, if there's one in the chamber, which is up here, I
7 will place that bullet in my photograph up here. This case, I
8 didn't, which means there was just six in the magazine; there
9 was none in the chamber.

10 Q And how many rounds did that magazine hold?

11 A 40 -- I'm not -- possibly seven or eight. Usually,
12 this is around seven. I'm not sure exactly. I didn't load it
13 all the way, and I didn't see any markings on this.

14 Q Now, would it have been in your report, or would
15 that be something that the firearms expert would have done?

16 A Firearms experts would have more information on
17 that.

18 Q Okay. And then, 229, what is that?

19 A Okay. That is showing the headstamps of the unfired
20 cartridges that came out of that magazine, and in this case,
21 they're all the same. They're all RP45 Auto; they're .45
22 caliber cartridges.

23 Q So that Interarms Star .45 caliber handgun, do you
24 impound it into evidence?

25 A Yes.

1 Q Would it stay in your sole care and custody until
2 being impounded into evidence?

3 A It would be either in my care and custody, or it
4 would either be under lock and key in a locker and in a locked
5 room until it was ready to be impounded. Once it was
6 processed and it was packaged up, it would be put into a room
7 that I couldn't even get into. That's where it would be
8 picked up by the evidence vault and taken away.

9 Q So did you do something forensically to this firearm
10 prior to impounding it?

11 A Yes. I swabbed the firearm for possible DNA
12 evidence, and then I also chemically processed the handgun and
13 the magazine for possible latent prints.

14 Q Okay, so explain that to us. You swabbed it for
15 DNA. How would that process --

16 A Okay. It's like a big Q-tip. It's slightly
17 dampened. On the handle where it has like a textured grip or
18 checkered grip on the handles, which can actually kind of peel
19 off our small epithelial cells from the palm, which is good
20 for DNA evidence.

21 Also, on the trigger, and on the hammer, and on the
22 slide, they all have little sharp edges or have -- so you can
23 grip them, but they also peel off little cells from the palm
24 of the hand. And that's why I was swabbing those areas, in
25 hope to collect possible epithelial cells or for DNA evidence.

1 Q And would that have been impounded under your P
2 number?

3 A Yes.

4 Q Additionally, did you swab the magazine?

5 A Yes. The magazine, I take it, and I swab it at the
6 base where it gets -- if you've ever seen in the movies where
7 the guy puts a gun in and he kind of punches it on the bottom,
8 that's the base. Also, at the top is where you push down the
9 cartridges to load -- load them into the magazine. There's
10 kind of like some sharp edges or -- that will also take off
11 epithelial cells.

12 Q When you said you processed these for prints, were
13 there any results?

14 A There was negative results.

15 Q Okay, and how would you have processed it?

16 A What I did is called a -- well, it's super glue,
17 cyanoacrylate fuming, but super glue fuming. They're put into
18 a tank which has got a humidity set into it, and then there is
19 a little pan of super glue that is heated in there. Once the
20 super glue fumes heat up, they adhere to fingerprints that --
21 they can adhere to fingerprints that are on there and make
22 them visible.

23 Then, I used a stain called Rhodamine 6G, which, if
24 they found fingerprints and everything, it would make them
25 more visible. And I did that to those two items and found

1 nothing on it. It's not unusual for handguns to be very bad
2 for fingerprints.

3 Q And did you impound any other items from this 919
4 Bagpipe house?

5 A I would have to look at my thing. I know I -- I did
6 the -- I had the swabs, I had the handguns, I had the
7 cartridge cases, I had the --

8 Q Holster?

9 A The holster, yes.

10 Q The bullets?

11 A Or -- yeah, cartridges.

12 Q Did you also do some Air Jordan shoes?

13 A Yes, yes. Excuse me. There was a pair of red Air
14 Jordan athletic -- high-top athletic shoes. And those were --
15 I got from under the -- under a desk, in I believe the same
16 room.

17 Q And so, kind of how you just said that those things
18 were impounded under your P number at that 919 Bagpipe house,
19 you know how we went through all the cartridges at the West
20 Dewey address; we went through --

21 A Yes.

22 Q -- the cigarette butts? Would those have been
23 impounded under Ebony Stephens's P number, which is 5158?

24 A Yes.

25 Q And that would include the four cartridges; the

1 bullet that you found in the morning?

2 A And the bullet fragment.

3 Q And the bullet fragment. Oh, okay. So the bullet
4 that we saw in the grass there --

5 A Yes.

6 Q -- was there also something else that you just
7 referred to?

8 A Yes, there was a bullet fragment. Bullets, when
9 they're fired, if they hit something hard, they hit -- hit the
10 -- if they come down, they ricochet, or if they hit the
11 cement, or actually, if they hit a body, hit bone or
12 something, they can fragment, and they a lot of times will not
13 stay intact.

14 Q Okay. So that will be impounded, but oftentimes not
15 tested because it's so small?

16 A Well, it can be test -- tested in which way? Are
17 you talking for identification? For --

18 Q Yes.

19 A It would all depend on the size of the fragment, on
20 what they have. A lot of times, they'll have copper that --
21 they'll have a lead core with copper wrapped around it for the
22 bullet, and the copper will have all the markings, but it will
23 peel off of it. That will be considered a fragment because it
24 doesn't have the whole bullet, but the striations will be on
25 the copper that I know that firearms identification can

1 sometimes get some info off of.

2 THE COURT: Okay. We're going to break right now
3 and take a recess.

4 During this recess, you're admonished not to talk or
5 converse amongst yourselves or with anyone else on any subject
6 connected with this trial, or read, watch, or listen to any
7 report of or commentary on the trial, or any person connected
8 with this trial, by any medium of information, including,
9 without limitation, newspapers, television, the internet, or
10 radio, or form or express any opinion on any subject connected
11 with this trial until the case is finally submitted to you.
12 We'll be in recess for 15 minutes.

13 THE MARSHAL: Thank you. All rise for the exiting
14 jury, please. Jurors.

15 (Court recessed at 4:01 P.M. until 4:14 P.M.)

16 (Outside the presence of the jurors)

17 THE MARSHAL: All rise for the entering jury,
18 please.

19 (Within the presence of the jurors)

20 THE MARSHAL: Thank you, everyone. Please be
21 seated.

22 THE COURT: Does the State stipulate to the presence
23 of our panel?

24 MR. PESCI: Yes, Your Honor.

25 THE COURT: Mr. Sanft?

1 MR. SANFT: Yes, Your Honor.
2 THE COURT: Mr. Ruggeroli?
3 MR. RUGGEROLI: Yes, Your Honor.
4 THE COURT: Thank you. You may proceed with your
5 direct.
6 BY MR. BROOKS:
7 Q Mr. Speas, just a couple last questions. Back to
8 that Dewey -- the primary scene, the Dewey Drive address, did
9 Ms. Stephens also impound a pair of eyeglasses with apparent
10 blood and a black fidget spinner?
11 A Yes.
12 Q And was one of the two cigarettes a Marlboro Red?
13 A Yes, it was.
14 MR. BROOKS: Thank you. Pass the witness, Your
15 Honor.
16 THE COURT: Cross-examination?
17 MR. SANFT: No cross, Your Honor.
18 MR. RUGGEROLI: Thank you, Judge. Need to get one
19 of the exhibits. If I could just --
20 THE COURT: Of course.
21 MR. RUGGEROLI: -- have Court's indulgence. 37.
22 (Pause in the proceedings)
23 CROSS-EXAMINATION
24 BY MR. RUGGEROLI:
25 Q Good afternoon. Is it Officer Speas?

1 A No, it's just Mr. Speas, if you want.

2 Q Mr. Speas. I'm going to show you State's 37. This
3 is that diagram. You're familiar with that, correct?

4 A Yes, I am.

5 Q Okay. Before we get into that, I want to back up
6 just a tad. When you're called out -- you said CSI, and I
7 think you were drawing a little bit of a distinction, just
8 maybe on time, between a CSA. Can you just clarify that
9 briefly?

10 A Okay. CSI -- and it's kind of become -- because of
11 the television program, everybody thinks of all of us as crime
12 scene investigators. We're actually called crime scene
13 analysts. The section is CSI; the actual individuals that
14 work in it are CSAs.

15 Q Okay, thank you. So when you come out, you have
16 certain tasks that you follow up on, and a lot of that is to
17 document, correct?

18 A Yes.

19 Q And then, do you do some independent investigation
20 of your own in looking for things, or do you just wait for
21 other officers, detectives, whoever to tell you where to do
22 your documentation?

23 A No, we search -- everybody searches.

24 Q Okay. Do you have like a special flashlight or any
25 other equipment that --

1 A I have a very bright flashlight, and then we would
2 do certain search patterns that -- you know, up, down, up,
3 down, and we're pretty thorough.

4 Q Okay. So looking at this State's 37, these numbers
5 correspond to the items that you found at -- at the scene and
6 documented, correct? So number 1, that's that .22 caliber
7 cartridge case?

8 A That's correct.

9 Q Okay. I don't think the State went through it, but
10 I did want to have you talk about it. This number 10, that
11 was a fidget spinner; is that right?

12 A Yes.

13 Q Okay. And then that would have been documented;
14 it's put on this diagram, correct?

15 A That's correct.

16 Q And then, you or -- is she your partner?

17 A She was a coworker.

18 Q Okay, and she's another CSA?

19 A Yes, she is.

20 Q And --

21 A Another senior CSA, yes.

22 Q Senior CSA, Ms. Stephens. One of the two of you
23 would have got the fidget spinner, and then impounded it, and
24 kept it under seal, and then --

25 A All of the -- all items of -- all items of evidence

1 were collected and secured, yes.

2 Q Okay. The car had the driver's side door open?

3 A Yes.

4 Q And it was like that when you arrived?

5 A Yes.

6 Q It's your understanding that it was like that at the
7 time? Nobody that responded that you're aware of would have
8 opened that door?

9 A No. When we arrived, that's the way it was.

10 Q Did you do anything to process the car for any
11 swabbing of DNA or processing for prints?

12 A Know we did a search. I do not recall.

13 Q Okay, so -- okay, break that down. You recall doing
14 a search?

15 A I recall we did a search in there.

16 Q And you did take some photos; we saw some of those?

17 A Yes.

18 Q But in terms of specifically swabbing the car for
19 DNA or for processing for prints, you're not sure?

20 A No, I don't believe we did.

21 Q And then, you did document the -- and I wanted to
22 have you clarify this, if you don't mind. The -- there was a
23 pool of blood located near number 13, correct, because that's
24 where that t-shirt was?

25 A Yes, it was right down at the bottom of the incline.

1 Q Could you use the mouse and just show the jury where
2 13 is, please?

3 A Right -- here's number 13.

4 Q Thank you. And so there was -- there was a pool of
5 blood that led down the slope of that embankment, correct?

6 A I believe it actually -- instead of going down the
7 embankment --

8 Q Right.

9 A -- it kind of came kind of south here.

10 Q And for the record, you're going from kind of top to
11 bottom?

12 A Yeah, top to bottom.

13 Q Thank you. You had noticed that there was a number
14 of footprints in the blood?

15 A We all noticed that, yes.

16 Q And so what you did was you tried to eliminate
17 certain prints of known contributors, including the firemen,
18 correct?

19 A First responders, yes.

20 Q AMR, correct? But you're not a footprint expert?

21 A No.

22 Q And so all you did was document it?

23 A We documented, and we looked, yes.

24 Q And you are aware that there are experts that would
25 testify potentially that would do an actual expert analysis of

1 footwear or impressions; you're not that guy though?

2 A I am not that guy.

3 Q Okay, thank you. How far was your perimeter, for
4 lack of a better word, in this exact location to look for
5 evidence?

6 A Hmm.

7 Q And before you answer that, I'll clarify. If you
8 could put the mouse on 11 and 12. Okay. Those were where the
9 cigarette butts were found?

10 A Yes.

11 Q And then, down back to 10 again, if you don't mind.
12 Correct?

13 A Yes.

14 Q Okay, but there are no other numbers on the street.
15 If you go to the east on the -- yes. That's Lindell, right?

16 A Yes.

17 Q Did you have information that there was a vehicle
18 located over there?

19 A I'm not sure when I heard, but I did know that there
20 was apparently a vehicle parked out in that area.

21 Q And I don't know if we saw any photos; I don't
22 recall any. Did you take any photos of that street at that
23 location?

24 A I took a photo of the street sign showing at the
25 corner, and that's for the location.

1 Q In terms of those numbers there, those are
2 documented pieces of evidence, correct?
3 A Yes.
4 Q And I don't see any numbers for anything located on
5 that east side over on Lindell Street?
6 A No.
7 Q Okay. Do you know how thoroughly that was searched?
8 A Been two years. I -- I know that we -- but this is
9 all conjecture. What's standard procedure, we would have
10 walked up and down, and we would have looked around the area.
11 MR. RUGGEROLI: I have nothing further. Thank you,
12 Your Honor.
13 THE COURT: Thank you. Any redirect?
14 MR. BROOKS: No, Your Honor.
15 THE COURT: Okay. Thank you very much for your
16 testimony here today. You may step down. You are excused.
17 Thank you for being here.
18 THE WITNESS: Okay.
19 THE COURT: You may call your next witness.
20 MR. PESCI: State calls Sergeant John Tromboni. May
21 I approach your Clerk?
22 THE COURT: Uh-huh.
23 THE MARSHAL: If you'll please remain standing,
24 raise your right hand, and face the Clerk.
25 JOHN TROMBONI, STATE'S WITNESS, SWORN

1 THE CLERK: You may be seated.
2 THE WITNESS: Thanks.
3 THE CLERK: Please state and spell your first and
4 last name for the record.
5 THE WITNESS: It's John Tromboni. J-o-h-n,
6 T-r-o-m-b-o-n-i.
7 MR. PESCI: May I proceed, Your Honor?
8 THE COURT: You may.
9 MR. PESCI: Thank you.
10 DIRECT EXAMINATION
11 BY MR. PESCI:
12 Q Sir, what do you do for a living?
13 A I'm a sergeant with the Las Vegas Metropolitan
14 Police Department.
15 Q How long have you been with Metro?
16 A Almost 14 years now.
17 Q Back in August, specifically August 8th and 9th of
18 2017, were you a sergeant at that time, or were you patrol?
19 A I was a patrol officer.
20 Q Okay. And what area did you patrol?
21 A Enterprise Area Command.
22 Q All right. What are the -- kind of the boundaries
23 of Enterprise?
24 A There's two sections. There's Ocean area, which is
25 Sunset south all the way to the M. And then, there's Sam

1 area, which is north of that all the way to Flamingo.

2 Q All right. The names Ocean and Sam, is that
3 something that, internally, you as police officers designate
4 for an area?

5 A Yes, they're sector beats.

6 Q All right, a sector beat?

7 A Yes.

8 Q What was your sector beat back in August of 2017?

9 A It was Ocean area.

10 Q I want to show you State's Exhibit 5, which has been
11 previously shown to defense counsel. Do you recognize that?

12 A Yes.

13 Q Is that a fair and accurate depiction of an aerial
14 of this area that you were describing?

15 A Yes.

16 Q Is Enterprise Area Command, a part of it, in this
17 photograph?

18 A Yes.

19 MR. PESCI: Move for the admission of State's
20 Exhibit 5.

21 THE COURT: Any --

22 MR. SANFT: No objection.

23 MR. RUGGEROLI: No objection.

24 THE COURT: It's admitted.

25 (State's Exhibit 5 is admitted)

1 MR. PESCI: And ask to approach?

2 THE COURT: You may.

3 BY MR. PESCI:

4 Q Looking at State's 5, tell us if you can in this
5 area where Ocean is.

6 A Ocean starts Sunset --

7 Q There's a mouse -- there's a mouse there. If you'd
8 grab the mouse.

9 A Oh, I can grab it? Okay, cool.

10 Q There you go.

11 A Pretty much Sunset all the way to the 15 and then
12 south is Ocean area.

13 Q Okay. And then, on August the 8th of 2017, were you
14 assigned to a call regarding a suspicious vehicle and/or
15 individuals in a certain area?

16 A Yes.

17 Q Okay, how does that work? How do you get assigned
18 to a call? What -- what happens?

19 A Oh, it all depends. If you're one of the units that
20 are clear, then dispatch automatically assigns you.

21 Q Okay. When you say clear, meaning you're not
22 currently working on a particular call, so you're open to take
23 a call?

24 A Correct.

25 Q All right. And on that particular night -- or the

1 early morning hours of the 9th, did you get sent to that
2 particular call about suspicious individuals and a vehicle?

3 A I believe I did eventually through -- through the
4 night when I was assigned to another call.

5 Q Okay. The other call that you were assigned to,
6 what was that?

7 A That was a 415A, which is a shooting.

8 Q Okay. So, the 415A came in after you got the
9 earlier call about a suspicious area -- or vehicle?

10 A Yeah, I'm not sure the timing. I'd have to look at
11 the CAD.

12 Q Okay. What is a CAD?

13 A The CAD is the details of the calls. It has times,
14 who's assigned, where you're assigned.

15 Q Okay, but you do recall going to a 415A?

16 A Correct.

17 Q And that is what?

18 A It's a shooting.

19 Q Okay. And do you remember where it was that you
20 responded to for that shooting?

21 A I do.

22 Q Okay, where was that?

23 A It was in the area of Dewey and Jones --

24 Q Okay.

25 A -- I believe, or Lindell, to be specific.

1 Q And when you responded to that area, what did you
2 do?

3 A I believe at that time, I took a perimeter spot,
4 just to block off traffic.

5 Q What does that mean, a perimeter spot?

6 A It's -- throughout a specific area, units take a
7 perimeter spot. It's pretty much a location of where you're
8 going to be if you have to direct traffic, stop traffic.

9 Q Showing you what's been admitted as State's 13.
10 When we look off on the right hand side of that exhibit, is
11 there some yellow tape?

12 A Yes, it looks like it.

13 Q Is that tape that will be set up to set up a
14 perimeter?

15 A That will --

16 THE COURT: Are you publishing 13?

17 MR. PESCI: Yes. Is it not in yet?

18 THE COURT: Okay, that has not been admitted --

19 MR. PESCI: Oh, I apologize.

20 THE COURT: -- so I just want to make sure.

21 MR. SANFT: No objection, Your Honor.

22 MR. RUGGEROLI: No objection.

23 THE COURT: Okay, it's admitted.

24 (State's Exhibit 13 is admitted)

25 MR. PESCI: Thank you. I apologize.

1 BY MR. PESCI:

2 Q State's 13. Do you see that yellow crime scene tape
3 off to the right hand side?

4 A Yes.

5 Q Okay. Now, is that an example of kind of the
6 perimeter that you were speaking of earlier -- a perimeter?

7 A That could be a perimeter location, yes. It just
8 designates -- sometimes the air unit tells us where to go
9 because they can see better from the aerial view.

10 Q Okay. And so you were assigned to a perimeter,
11 correct?

12 A Yes.

13 Q All right. And then, at some point, did you leave
14 that area or clear that call?

15 A Yes, I -- there was that other call that you were
16 talking about, that suspicious person or vehicle call.

17 Q Uh-huh.

18 A And I realized it was in our same area.

19 Q Okay.

20 A So I had them assign me to it so I can close it out.

21 Q All right. To close it out -- what happens to close
22 something out?

23 A Because it's something that we were already on
24 another call, so we know that vehicle or person that is on --
25 that was called in, they're not in that area, because we are.

1 So it was just for us to close that out.

2 Q All right, so that one was closed out at that point?

3 A Yes.

4 Q Okay. Now, did you leave this 5536 Dewey area that

5 we see depicted in State's Exhibit 5 and head back to your

6 area?

7 A Yes.

8 Q All right. So what's the dividing line between

9 Ocean -- and what was the other area?

10 A Sam area.

11 Q Sam area? And was the shooting in Sam or Ocean?

12 A It was in Sam.

13 Q All right. So you were in Sam; your normal area is

14 Ocean. Did you head south towards your area, Ocean?

15 A Yes.

16 Q Okay. Had you been at that location for some time,

17 that is, the 5536 Dewey area?

18 A Yes.

19 Q All right. Did you need to use the bathroom?

20 A I did.

21 Q Okay. Where did you stop to do that?

22 A Well, I was going to go to the nearest convenience

23 store, and from taking Jones south, the nearest one was right

24 there at Jones and Warm Springs.

25 Q All right. Would you mind, with the --

1 A Oh, sorry.

2 Q -- mouse, showing us Jones?

3 A Yeah. Coming down -- this is Russell here. Coming
4 down Jones, that would have been the first -- there's one
5 here, but instead of making a U-turn, I had to go, so that was
6 the first one I was going to go to.

7 Q Okay. And is that a Short Line Express convenience
8 store?

9 A Yes.

10 Q All right. Now, the town has expanded somewhat
11 since August of 2017; is that correct?

12 A It has, yes.

13 Q All right. So but at that time, was that the
14 closest bathroom for you?

15 A Correct.

16 Q All right. Are you familiar with an Officer Jose
17 Lopez?

18 A I am.

19 Q Was he also working that night?

20 A Yes.

21 Q And was he a part of the Ocean area?

22 A Yes.

23 Q Okay. Did the two of you actually both need to go
24 to the bathroom?

25 A I believe he did also, yeah.

1 Q Okay. All right. Now, we've heard some information
2 about body-worn cameras. Are you familiar with those?
3 A Yes.
4 Q All right. In anticipation of testifying, did you
5 review some body-worn camera?
6 A Yes.
7 Q Specifically, that of Officer Lopez?
8 A Correct.
9 Q And then, are you seen or depicted in Officer
10 Lopez's body-worn camera?
11 A I am.
12 Q Okay.
13 MR. PESCI: Your Honor, we have marked as State's
14 Exhibit 331 that video that's been shown to defense counsel.
15 I believe there's no objection.
16 MR. SANFT: That's correct, Your Honor.
17 MR. RUGGEROLI: He's testifying, right? You're
18 definitely bringing in the Clerk?
19 MR. PESCI: Yeah.
20 MR. RUGGEROLI: Yeah, no objection.
21 THE COURT: Okay. 331 is admitted.
22 (State's Exhibit 331 is admitted)
23 MR. PESCI: I would ask to publish 331.
24 THE COURT: You may.
25 (Video is played)

1 BY MR. PESCI:
2 Q Sergeant, is that you?
3 A Yes.
4 (Stopped playing of video)
5 MR. PESCI: Okay.
6 BY MR. PESCI:
7 Q At the very end, you're seen going inside of the
8 store; is that correct?
9 A Correct.
10 Q And is that a store inside of your area?
11 A Yes.
12 Q Okay. Do you often -- or, not often. Do you
13 sometimes speak with individuals inside of businesses inside
14 your area?
15 A Pretty much every night, yes.
16 Q Okay. So when you went in there, in addition to
17 using the bathroom, did you speak with the Clerk?
18 A Yes.
19 Q Did you ask him any questions?
20 A We usually just -- that night, yes. We -- I asked
21 if -- we must have struck up a conversation as far as his
22 evening, and then, that's pretty much it.
23 Q Okay. But from what he said -- without saying what
24 he said specifically, but from what he said, did it spark some
25 interest in you based on the shooting scene you had left?

1 A Yes.

2 Q Okay. Did he give you information that made you
3 want to see more from inside the store?

4 A Yes.

5 Q Okay. Did you ask him questions based on what he
6 had said to you?

7 A Yes.

8 Q What did you ask him?

9 A I had asked him about a description of people that
10 were in there, and a car that they were driving, if he knew
11 about it.

12 Q All right. Without saying what he said, did he give
13 you information in that regard?

14 A Yes.

15 Q And then, did you ask about video surveillance based
16 on what he told you?

17 A Yes.

18 Q Were you able to see that video surveillance?

19 A No.

20 Q All right. But did you ask him, that Clerk, to
21 obtain that video surveillance?

22 A If he could, yes.

23 Q All right. Did you remain there while that
24 surveillance was obtained?

25 A No.

1 Q Okay. Did he have to call for someone to get that
2 surveillance?
3 A Yes.
4 Q All right. The information that you received from
5 that store Clerk, did you pass that information along to other
6 officers?
7 A I did, yes.
8 Q All right. And the information that you had
9 received from him, did you think it could be connected from
10 the shooting scene you had already gone to?
11 A Yes.
12 Q And based on that, you passed that information
13 along?
14 A I did, yes.
15 Q Okay.
16 MR. PESCI: Pass the witness.
17 THE COURT: Cross-examination?
18 MR. SANFT: No cross, Your Honor.
19 THE COURT: Mr. Ruggeroli?
20 MR. RUGGEROLI: Judge, I have no questions. Thank
21 you.
22 THE COURT: Okay. Thank you very much --
23 THE WITNESS: Okay.
24 THE COURT: -- for your testimony here today. You
25 may step down, and you are excused. And you may call your

1 next witness.

2 MR. BROOKS: Your Honor, the State calls Nikolaus
3 Spahn.

4 THE MARSHAL: Please step up into the witness stand.
5 Remain standing, raise your right hand, and face the Clerk,
6 please.

7 NIKOLAUS SPAHN, STATE'S WITNESS, SWORN

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

10 THE WITNESS: Nikolaus Spahn. N-i-k-o-l-a-u-s.
11 Last name is Spahn, S-p-a-h-n.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q Mr. Spahn, I want to turn your attention back to
15 August 9th of 2017. Do you recall an incident that brings us
16 here to court today?

17 A Yes.

18 Q Back then, where were you working?

19 A Yes, I was.

20 Q Where?

21 A Short Line Express.

22 Q And where's that located?

23 A That's located on Jones and Warm Springs.

24 Q Tell me a little bit about -- I want to turn your
25 attention around roughly 11:30 P.M. that night.

1 A Um-hum.

2 Q Did something unusual happen?

3 A No, just a regular night. I work by myself, I work
4 graveyard, and I had four suspects come in my store that was
5 just out of the ordinary.

6 Q Well, sorry. You used the word "suspect." Just --

7 A I mean, like -- like, they just looked suspicious to
8 me because I was working by -- I'm working by myself. So as
9 soon as they came into my store, it raised a concern.

10 Q Was there just one thing in particular that raised
11 your concern?

12 A Yeah, they were just -- they were just -- a bad
13 vibe, more or less. They went in, looking around, not asking
14 any questions.

15 Q But was there something on one of the four
16 individuals that caused you concern?

17 A Yes, there was a holster on one of his sides.

18 Q And was it just a holster?

19 A As far as I know, it looked like a holster. I
20 couldn't really see a split -- clear image of a gun, but it
21 was a gun holster, and he used the restroom for about 15 to 20
22 minutes.

23 Q The person who had the --

24 A Correct.

25 Q And so did that cause you some concern, that the

1 person who had the gun --

2 A Yes.

3 Q -- was using a bathroom --

4 A Yes.

5 Q -- for an extended period of time?

6 A Yes.

7 Q You work graveyard?

8 A Correct.

9 Q And at this point in time, was that store -- did it

10 have a lot of regulars?

11 A I had my normal -- normal crowd of regulars that

12 came in on grave.

13 Q Okay.

14 A So when I seen a group of someone that wasn't out of

15 the regular, it raises concern, you know?

16 Q Were -- so these guys weren't regulars?

17 A No.

18 Q Okay. How often would you say during your time did

19 you work there?

20 A What do you mean?

21 Q How many years?

22 A I worked there for three years.

23 Q And during that time, how often would someone walk

24 in open carrying?

25 A Not very often. I mean, not -- here -- here and

1 there. I mean, not all the time.

2 Q Under ten? Under five?

3 A About ten, I'd say.

4 Q Ten? Each time, did it cause you a little concern?

5 A Yeah, of course.

6 Q Okay. So that's kind of what mainly sparks --

7 A Correct.

8 Q Okay. Do you do something while one of the regulars

9 is in the store?

10 A Yes, I drop all my money.

11 Q What does that mean?

12 A I drop all my money, meaning I take all my money out

13 of the register because I'm only supposed to have X amount of

14 money in my drawer per company. So when they came inside the

15 store, I had a regular in front of me. I dropped all my money

16 inside an envelope, and I put it in a safe drop, and I dropped

17 it.

18 Q Now, was that just out of precaution?

19 A Yes, out of precaution.

20 Q Get it out of your hands?

21 A Correct.

22 Q It turned out that no one ever used the gun, or

23 flashed the gun, or anything?

24 A No. I didn't feel threatened, there was no -- there

25 was no incident like that. It was just a gut instinct. I

1 just felt -- I just felt uncomfortable.

2 Q You never felt threatened; just gut instinct, and
3 you just --

4 A Just gut instinct.

5 Q Okay. At some point, do these four gentlemen leave
6 the store?

7 A Yes.

8 Q And then, do they stay around outside, or do they
9 just leave?

10 A When I seen them leave, and after I get done helping
11 the rest of my customers that were inside the store, I go
12 outside and I smoke a cigarette, and they're just sitting
13 there at the table, just hanging out at the table.

14 Q Did you get a chance to see what car they were in,
15 or what car they left in, or --

16 A They arrived in a white Mercury, I believe.

17 Q At that point in time, did you think it resembled
18 some other type of car?

19 A Yes, I thought a Crown Vic.

20 Q New or old?

21 A An older one.

22 Q Now, that was at around 11:30. I want to
23 fast-forward later into the night. At some point, do a couple
24 officers come in?

25 A Correct. About 12:15, 12:20.

1 Q Just to use the store?

2 A They just came in, stopped in, and said, hey, how's
3 your night going? And I was like, good, and I expressed what
4 happened. And then they're like, oh, okay. It raised a
5 little concern, and they started asking questions.

6 Q And do they ask specifically if you saw a vehicle?

7 A Yes.

8 Q What vehicle they were in?

9 A Yes.

10 Q At that point in time, does the officer's demeanor
11 kind of change?

12 A Yes. He told me to call my manager to get
13 surveillance tape, and I had to fill out a police officer
14 report.

15 Q Now, those two officers that you initially dealt
16 with, do they stay all night, or does some other detective
17 come later?

18 A Some other detective comes in the morning.

19 Q And is that who gets the video surveillance?

20 A Correct.

21 Q Have you had an opportunity to view these video
22 surveillance clips about this time frame that we're
23 discussing?

24 A No.

25 Q Did you have the opportunity to come in and meet

1 with me and Mr. Pesci?

2 A Yes.

3 Q And we showed you some video clips?

4 A Yes, yes.

5 Q And is -- was that video --

6 A Yes.

7 Q -- surveillance clips --

8 A Sorry.

9 Q -- of this time period?

10 A Yes.

11 Q Did you mean at that night, you didn't?

12 A At that night, no, I didn't.

13 Q Okay.

14 A Because I had no access to it.

15 Q Do these video clips fairly and accurately depict

16 the interaction that you were referring to during that time

17 period?

18 A Yes, it does.

19 Q Okay.

20 MR. BROOKS: Your Honor, having shown defense

21 State's Proposed Exhibit 328, we'd move for admission.

22 MR. SANFT: We have no objection.

23 MR. RUGGEROLI: No objection.

24 THE COURT: Okay, it's admitted.

25 (State's Exhibit 328 is admitted)

1 BY MR. BROOKS:

2 Q Now, Mr. Spahn, we're going to just play a couple
3 different clips; we won't go through all of it. Fair to say
4 I'm not going to hear any sound here?

5 A No.

6 (Video is played)

7 BY MR. BROOKS:

8 Q Is this a camera posted on the outside of your
9 store?

10 A Yes, it is.

11 Q Is that the gas station across the street from your
12 store?

13 A Yes.

14 Q You saw a white vehicle just pull into a parking
15 spot there?

16 A Correct.

17 Q Is that the white vehicle you later tell detectives
18 and officers about?

19 A Yes.

20 Q Now, initially, does one individual come in, and
21 then later on, all three come in?

22 A Yes.

23 Q And by later on, just a few seconds, minutes later,
24 right?

25 A A few seconds later, yeah.

1 Q Okay. I'm going to switch to another angle. Where
2 is this camera placed? Like, what are we looking at?

3 A This camera is faced right in front of the store.
4 As soon as you walk in, there's a monitor right in the --
5 right in the view.

6 Q So you saw one individual just walk in, and now two
7 more are behind him. Do you recognize something in this video
8 picture that caused you concern that night?

9 A Not in that -- that particular direction -- view of
10 that picture, but yes. In person, yes, he was the person
11 behind him.

12 Q Oh, okay. So you're saying that you didn't have
13 this view that night?

14 A That's from the camera view. I was sitting -- I was
15 sitting live, direct, so I seen that -- I seen a better view.

16 Q Let's get one that's a better depiction of your
17 view. Do you see yourself there?

18 A Yes.

19 Q See the person that's right in front of you at the
20 register, kind of like you should be helping him?

21 A Um-hum.

22 Q Do you recognize that person?

23 A Yeah, that's my regular. That's when I was making
24 the money drop; doing the safe drop.

25 Q Oh, okay. So you were supposed to be helping him,

1 but instead, you wanted to do the money drop?

2 A Yeah, I let him know. I gave him -- I warned him.

3 I was like, I got to make a drop, give me a second.

4 Q Okay.

5 A He said, okay, no problem, because I'm by myself.

6 Q And I'm sorry, I worded that poorly. I wasn't

7 trying to say you weren't doing your job when I said "supposed

8 to." I'm sorry. Behind your regular, what have we seen here?

9 A Three more customers.

10 Q Specifically, the three people behind him?

11 A Three people behind him.

12 Q Are these the four men that entered the store?

13 A Yes.

14 Q And is that man right there with that thing on his

15 hip, is that the open carry that you were discussing?

16 A Yes.

17 Q What are you doing?

18 A I'm making a safe drop.

19 (Stopped playing of video)

20 BY MR. BROOKS:

21 Q Now, Mr. Spahn, when you do that money drop, at no

22 point does someone pull a gun or say, hey, give me that?

23 A No.

24 Q No? Okay. And then, eventually, do those four

25 guys, including the one who has the gun on his hip, attempt to

1 buy stuff or do buy stuff?

2 A They bought a water.

3 Q Does one of them try to buy something, and you say

4 no?

5 A Yes. They tried to buy a tobacco product, and they

6 didn't have an ID, so I said no. I refused to sell.

7 Q Eventually though, does someone else come in, and

8 you sell --

9 A Someone comes else in and buys the exact same

10 particular Black and Mild, with a Swisher and a box of

11 condoms, and it was paid on a debit card. So I can't really

12 recall if that was for them outside, but -- if they sent

13 somebody in, you know, fishing for them, but I can't totally

14 recall that.

15 Q Okay.

16 MR. BROOKS: Nothing further. Pass the witness,

17 Your Honor.

18 THE COURT: Cross-examination?

19 MR. SANFT: Yes, Your Honor. All right.

20 CROSS-EXAMINATION

21 BY MR. SANFT:

22 Q Mr. Spahn, you -- you're a Clerk, you're at the

23 store. You can't sell tobacco products to somebody that you

24 believe is under a certain age, right?

25 A Correct. As long as they don't have ID, then I

1 can't sell it to them.

2 Q So if I were to walk in to buy a pack of cigarettes,
3 would you ID me as well?

4 A Yes, I would.

5 Q Okay. Is that just because you have to ID
6 everybody, or because I look young enough to be under the age
7 of 18?

8 A I have to ID everybody.

9 Q Okay. I just want to make sure, because, you know.

10 A No, just doing my job. It's protocol; state law,
11 too. I got to ID everybody.

12 Q All right. Now, with regards to the video that we
13 saw here today, you're telling me that, outside of your
14 conversation with the district attorney prior to today's
15 hearing, that's the only time you've ever seen these videos?

16 A Yes.

17 Q Now, they're stuttery. Is that -- do know any
18 reason why that is?

19 A That's because that was an old camera system.

20 Q I --

21 A That was an old system we had, and now I guess they
22 upgraded it since I've been gone. So I guess they upgraded
23 their camera system, and they're probably better now.

24 Q Okay.

25 A But I mean, they're kind of poor quality a little

1 bit.

2 Q Yeah. And with regard to the location of these
3 cameras, you had one camera that's obviously in front of the
4 store looking at the gas pumps and so forth, then you've got
5 another camera that's on the inside facing towards the
6 entrance of the store?

7 A Um-hum.

8 Q And then you've got one camera that's behind you and
9 the cash register?

10 A Yeah. I have 32 cameras in that store.

11 Q Okay. What other locations are those other cameras
12 in?

13 A Down every single aisle. There's one right -- right
14 before the bathroom. There's one right on the -- to -- if you
15 walk out the door exiting the store, you have one right there
16 to the left, underneath the little awning. Then you have one
17 to the right by the chair -- by the tables and the water jug.
18 Then you have one in the car wash. You have one in the back.
19 You have one facing the garbage cans. You have one in the
20 cooler. We have cameras everywhere.

21 Q That's not an exaggeration.

22 A No.

23 Q Well, let me ask you this. Were all those cameras
24 working on this particular night?

25 A Yes.

1 Q Okay. And as far as you know, once again, you're
2 not responsible for those cameras operating, fair?

3 A Fair.

4 Q That's somebody else who does that?

5 A Yeah, someone else.

6 Q Now --

7 A I mean, if our system goes out, if our camera goes
8 out, it goes out. I mean, sometimes there's a night where we
9 have no footage.

10 Q Okay. But in terms of those -- the location of the
11 recording device that records all that video footage --

12 A Um-hum.

13 Q -- do you have access to that?

14 A No, I do not.

15 Q That's in a separate office that's locked?

16 A No, that's in the office that's located in the
17 store, but I'm not a manager --

18 Q I see.

19 A -- just an employee, so I don't have access to that.

20 Q Got it. Okay. So on this particular night, you
21 told this jury that when you saw these four individuals come
22 into the store -- and I want to make sure I'm not putting
23 words in your mouth. They looked suspicious, they gave you a
24 bad vibe when they walked in, and they were looking around?

25 A Yes, because they looked lost. They were looking in

1 one direction of the store that had just ice, and they were
2 just looking just to see what was going on in the store.

3 Q Okay.

4 A And I was working by myself. I just seen, you know,
5 something on the hip, so I felt -- I was just doing safety. I
6 just feel -- you know?

7 Q Okay. So them walking in and looking around the
8 store, by looking at the ice, you -- made you feel
9 uncomfortable about it?

10 A Yeah. I was just taking protocol, I was just being
11 safe, so I just dropped all my money just in case, you know,
12 if something were to happen, they're not going to get a lot of
13 money, I mean, if -- I mean, take my life, whatever they want
14 to do, you know?

15 Q But I want to make sure you and I are clear though,
16 sir. So your testimony to this jury is these people walk in;
17 you see somebody with what you believe is an open carry?

18 A Correct.

19 Q But you just see what you believe is a holster; not
20 a firearm?

21 A Firearm holster.

22 Q You just see the holster; not the firearm?

23 A I seen the holster.

24 Q Okay. And you -- because of the fact that they're
25 wandering through the store, you felt uncomfortable enough

1 that you decided, I'm going to protect my money, I'm going to
2 make a drop right now --

3 A Correct.

4 Q -- because of that?

5 A Correct.

6 Q Was there any type of interaction between yourself
7 and any of these four individuals outside of just attempting
8 to purchase tobacco?

9 A No, everything was --

10 Q They didn't say anything to you?

11 A No. Hello, sir, how are you doing? That's it.
12 Just regular customers.

13 Q Okay. And with regards to that conversation between
14 -- or your interaction with whoever it was, do you recall who
15 that person was you had the actual conversation about the
16 tobacco?

17 A I -- I don't recall. That was three --
18 two-and-a-half years ago, three years ago.

19 Q Fair, fair enough. Well, let me ask you this
20 though. The -- so your -- you had told this jury as well, at
21 some point, they were sitting outside at the table?

22 A Yes. When they exited out the store, they were
23 sitting outside the table.

24 Q So there's a table that's provided for --

25 A Customers.

1 Q -- patrons to sit outside --
2 A Um-hum.
3 Q -- for a minute?
4 A Yeah.
5 Q And that's what they were doing outside?
6 A Correct.
7 Q Okay. Did you ever inform police of the fact that
8 they were sitting outside at these tables?
9 A No, I just informed -- they asked me the question, I
10 answered their question, and they just -- the information that
11 I gave them, it just fit -- fit the description. And they
12 said instantly, call my manager --
13 Q Okay.
14 A -- we need to pull surveillance film.
15 Q Did you at any point ever see any of the individuals
16 sitting at the table smoking a cigarette?
17 A I don't recall.
18 Q Okay, but would it be fair to say that that would be
19 a normal place for somebody who --
20 A Correct, yeah.
21 Q -- who's a patron --
22 A I sit there at the table and smoke cigarettes, and
23 I'm an employee, so.
24 Q Okay. And you said that the people that were there,
25 the four individuals that walked in there, they're somebody

1 that were not regulars, and that was another reason why it
2 caused you concern?

3 A Yes.

4 Q How does that work? I mean, you are --

5 A Because you work graveyard, and you have regular
6 customers that come in on a regular basis.

7 Q Okay, but --

8 A Like, on the weekends, you have your -- your little
9 crowds.

10 Q All right.

11 A But for the most part, you get your same regular
12 customers throughout, or you get the bar crowd, because
13 there's a bar right across from my store.

14 Q But you're technically right in the middle of Las
15 Vegas. It's not we're talking like Pahrump or Tonopah; you're
16 in the middle of Las Vegas. Are you telling me --

17 A I have a housing complex that's to the left side of
18 that store.

19 Q Okay.

20 A I have another Ampm that's to the caddy-corner, and
21 then I have this big Switch building that's a big data center
22 right across the street --

23 THE COURT: Okay.

24 THE WITNESS: -- and then I have a bar.

25 THE COURT: Sir, if you could wait until the

1 attorney is done --

2 THE WITNESS: Oh, okay, I'm sorry.

3 THE COURT: -- asking his question --

4 THE WITNESS: I'm sorry.

5 THE COURT: -- that would be helpful for us.

6 THE WITNESS: I apologize.

7 BY MR. SANFT:

8 Q I understand that you're nervous.

9 A Oh, no, it's just so long --

10 THE COURT: You're doing fine.

11 THE WITNESS: It's been so long.

12 THE COURT: You're doing fine.

13 THE WITNESS: I mean, I --

14 BY MR. SANFT:

15 Q And once again, I just want to make sure that you

16 and I are clear. You tell this jury that because they -- they

17 were not your regulars, you felt like you -- there was a

18 heightened level of suspicion already, fair?

19 A Fair.

20 Q Okay. Now, you've also told this jury now there is

21 an Ampm that's caddy-corner to where your location is, right?

22 A Correct.

23 Q Meaning it's diagonal from where you're at?

24 A Correct.

25 Q And then, there's a -- I think there's a bar that's

1 actually in the same vicinity as your --
2 A As my store.
3 Q -- gas station, right?
4 A Yes.
5 Q And then, you've also told this jury that there's a
6 housing development that's behind your location, right?
7 A Yes.
8 Q Those houses that are right there, and then there's
9 -- there's residences all over the place?
10 A Yes.
11 Q But because of the fact you -- once again, these
12 four people walk in, you don't recognize them, it's in the
13 middle of the night, and that caused you concern?
14 A Yes.
15 Q Okay. Do you recall how long they were in the
16 store?
17 A I can't recall.
18 Q Okay. Would that be something that would be
19 probably on the video cameras in terms of the length of time?
20 A Correct.
21 Q Okay.
22 MR. SANFT: Your Honor, I have no further questions.
23 Thank you.
24 THE COURT: Mr. Ruggeroli?
25 MR. RUGGEROLI: Judge, could I have Court's

1 indulgence?

2 THE COURT: Um-hum.

3 MR. RUGGEROLI: Judge, State had not moved to admit
4 a number of photos, and there's no objection. If we could
5 just have them admitted at this time.

6 THE COURT: Okay. Do you want to read them off?

7 MR. RUGGEROLI: Yes, please.

8 THE COURT: Thank you.

9 MR. RUGGEROLI: This is going to be State's 320,
10 321, 322, 323, 324, and 325.

11 THE COURT: And there's no objection?

12 MR. RUGGEROLI: No, Your Honor.

13 THE COURT: Mr. Sanft? Mr. Sanft, I just want to
14 make sure there was no objection.

15 MR. SANFT: Yes, Your Honor, there was no objection.

16 THE COURT: Okay.

17 MR. SANFT: Thank you.

18 THE COURT: They're admitted.

19 (State's Exhibits 320 through 325 are admitted)

20 MR. RUGGEROLI: Thank you, Judge.

21 THE COURT: Um-hum.

22 MR. RUGGEROLI: And in a minute, can I publish them?

23 THE COURT: You may.

24 MR. RUGGEROLI: Thank you.

25 CROSS-EXAMINATION

1 BY MR. RUGGEROLI:
2 Q Good afternoon, Mr. Spahn.
3 A Good morning. Good afternoon.
4 Q Are you positively working graveyard, or --
5 A Yes.
6 Q Yeah.
7 A Actually, I'm a handyman, so I worked -- I mean, I'm
8 just trying to wrap up these few last little jobs I got going
9 on, so.
10 Q Okay. I'm showing you State's admitted 324. And
11 you were asked about this photo. Do you see the individual in
12 the white hat and the lighter-colored pullover, and he's got
13 his hand on his -- on his waist?
14 A Yes.
15 Q You were asked about that. Are you aware of whether
16 or not that individual was taking a magazine out of that
17 firearm?
18 A I don't recall.
19 Q Okay. And now I'm showing you State's admitted 323.
20 That's just another angle. We watched a video of that,
21 correct?
22 A Correct.
23 Q Now, you indicated that you had worked there about
24 three years, correct?
25 A Correct.

1 Q One of the individuals was in the restroom, the one
2 with the holster that you say, for an extended period of time,
3 correct?
4 A Yes.
5 Q One of them asked to buy a Black and Mild. That's
6 like a cigarillo or something?
7 A Correct.
8 Q And you wouldn't sell it. Did they protest and get
9 out of line or anything when you said --
10 A No, no.
11 Q Okay, so that's a no?
12 A That's a no.
13 Q They left the store, and your store was empty?
14 A Correct.
15 Q And you had initially indicated that you had some
16 feelings of concern about those individuals specifically?
17 A Yes, because after everyone left the store, they
18 were just hanging out at the tables, and I was by myself. So
19 -- and it was just them four individuals, so it raised a --
20 Q Right. You didn't call 911?
21 A No.
22 Q You didn't call 311?
23 A No.
24 Q You didn't lock the door?
25 A No.

1 Q You actually exited the door and went outside?
2 A Yes.
3 Q Okay. And then, there was another individual that
4 came in and bought the same type of cigarillo that they had
5 wanted to buy that you didn't sell them?
6 A They wanted a Black and Mild, and the gentleman that
7 came in bought a Black and Mild Jazz with a cigarillo, and a
8 box of condoms as well.
9 Q And that was in very close proximity --
10 A Correct.
11 Q -- of time?
12 A Correct.
13 Q And so that individual was an African American,
14 correct?
15 A I don't recall.
16 Q And is he a regular?
17 A I don't recall.
18 Q You had written a Voluntary Statement --
19 A Um-hum, yes.
20 Q -- regarding this event?
21 A Yes.
22 Q To the best of your recollection, this happened
23 approximately 11:20 on August 8th, 2017?
24 A About 11:20 -- between 11:20 and 11:30.
25 Q Was your understanding at the time that the video

1 surveillance did not have a timestamp, an internal timestamp?

2 A I do not recall that.

3 Q Okay.

4 MR. RUGGEROLI: Thank you. I have nothing further.

5 THE COURT: Any redirect?

6 MR. BROOKS: Briefly, Your Honor.

7 THE COURT: You bet.

8 REDIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q Mr. Spahn, do you remember the question that you had
11 a heightened concern based on the fact that you just didn't
12 recognize them?

13 A Yes.

14 Q Do you remember that question?

15 A Is it because you didn't recognize them, or is it
16 because you didn't recognize them and one of them was open
17 carrying in your store around midnight?

18 MR. SANFT: Objection, Your Honor, leading.

19 THE COURT: You are leading.

20 BY MR. BROOKS:

21 Q Which -- why were you -- why did you have a
22 heightened concern?

23 A Because I was working by myself and working
24 graveyard.

25 Q Okay. And at night, do people typically come in

1 that you don't know?

2 A Of course, every single customer. I mean, I don't
3 know everybody.

4 Q Do you always have a heightened concern?

5 A Always.

6 Q Okay. And in this situation, which one went into
7 the bathroom, and was it a normal time to be in the bathroom?

8 A I don't recall if they just went to -- they didn't
9 even ask for the bathroom key, they just went to the bathroom,
10 and the bathroom was unlocked.

11 Q Want to show you -- is that you coming out?

12 A Yes.

13 Q And this video motion sensor?

14 A No.

15 Q Which one was it that went in the bathroom?

16 A The one with the white hat and the maroon sweater.

17 Q Did he have the holster on his hip?

18 A I recall. I believe so.

19 MR. BROOKS: Nothing further, Your Honor.

20 THE COURT: Any recross?

21 MR. SANFT: Yeah. Actually, can I just watch that
22 video again? I don't know who walked into the bathroom. If
23 we could.

24 MR. PESCI: Sorry, it's going to --

25 MR. SANFT: Counsel, can we --

1 MR. PESCI: It's going to take a second for me to --

2 MR. SANFT: Okay.

3 MR. PESCI: -- get logged on. Sorry.

4 RECROSS-EXAMINATION

5 BY MR. SANFT:

6 Q Now, the State had asked you a question specifically
7 about motion sensors?

8 A Yes.

9 Q Meaning that if there is some type of motion, then
10 automatically turns on the video?

11 A Yes.

12 Q That's not what you had?

13 A No.

14 Q So your camera is running the entire time?

15 A Entire time.

16 Q Okay. So right here, this angle that we're showing
17 you is an angle from the hallway that's inside of the store,
18 facing towards the entrance of the store, actually, right?

19 A Yeah, because there's a women's bathroom right here
20 by -- on the back wall, and then there's a men's bathroom, and
21 then there's the cooler door --

22 Q Okay.

23 A -- that I just walked out of.

24 Q Okay. So just for the record, if we can -- well,
25 here. To the bottom lefthand corner of the screen, it looks

1 like there's a little sign right there. That's the female
2 bathroom?

3 A Yes.

4 Q And then, the other door that's on that same wall --

5 A Is the men's bathroom.

6 Q -- is the men's bathroom? Okay. Thank you. And
7 then, this door that's over here to the right, what is that,
8 the one that's open?

9 A That's the cooler door.

10 Q That's a cooler door? Okay.

11 A That's the cooler door.

12 Q And you've told this jury there's a camera in there,
13 too?

14 A Yes.

15 Q Okay.

16 A That -- that one is on motion sensor --

17 Q I see.

18 A -- in the cooler.

19 Q I see.

20 A Because no one can go in the cooler. I mean, unless
21 someone goes in the cooler, then it detects motion, then it
22 records.

23 Q Okay. So what we're going to see next is we're
24 going to see an individual wearing some type of athletic gear
25 that's going to walk here up in the front. That would have

1 been just a customer in the area, right?

2 A Correct.

3 Q Wearing the jersey? All right. And there's another
4 individual who's going to walk past him as well in that area,
5 fair?

6 A Fair.

7 Q Okay. Now, the next person that's going to walk
8 down, is that the individual you're saying was the individual
9 that had the open carry?

10 A Yes.

11 Q Okay. And that's the individual that's there that's
12 walking --

13 A Yes, because you can see it right here.

14 Q All right. Now, when that individual walks in, once
15 again, you're telling us that it's a holster, but no gun, as
16 far as you can tell?

17 A I can just tell, but I don't -- I don't really
18 recall, to be honest. I don't recall.

19 Q Okay.

20 A All I know is it was a holster.

21 Q All right.

22 A Whether the firearm was in there -- you see, the
23 sweater was kind of, you know, bulky, so -- but I don't recall
24 though.

25 Q All right. So this individual then walks into this

1 bathroom. Describe for us -- to the jury, is this a
2 single-person bathroom where you lock the door? Or is that
3 like you could walk in, and I could walk in after --
4 A No, actually, you're supposed to ask for the key.
5 Q I see. Did he ask for the key, this person?
6 A No.
7 Q And -- but the door was open?
8 A Correct.
9 Q Now, once again, is this a bathroom that has
10 multiple stalls in it, or is it just the one --
11 A Just one.
12 Q Okay.
13 A Just one toilet.
14 Q So what we're going to see here, though, I'm
15 assuming, is once this person walks into the bathroom, you've
16 testified to this jury at some point that you believe that he
17 was in there for a very long period of time?
18 A 15 minutes, yeah. And I didn't know he was using
19 the bathroom. He just went into the bathroom --
20 Q Okay.
21 A -- without asking for the key. You know, normally,
22 you ask for the key -- restroom key; where's the restroom at?
23 Q All right.
24 A He just walked right to it.
25 Q But once again, let's say, for instance, that's

1 accurate, and it was 15 or 20 minutes. Does that in and of
2 itself tell you anything at all but the fact that he was in
3 the bathroom for 15 or 20 minutes?

4 A Correct, yeah. He was using the restroom.

5 Q Okay. Anything at all, when he came out of the
6 bathroom and passed you on the way out the door, that --

7 A No.

8 Q -- indicated to you that he was there for any
9 malicious purpose outside of just visiting your store?

10 A No, sir.

11 MR. SANFT: No further questions, Your Honor.

12 MR. RUGGEROLI: Just --

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: May I approach the Clerk?

15 THE COURT: You bet.

16 (Pause in the proceedings)

17 RECROSS-EXAMINATION

18 BY MR. RUGGEROLI:

19 Q Just briefly, Mr. Spahn. The individual that's in
20 front of the -- the four -- this is State's 322. Is this a
21 regular?

22 A At -- at the register?

23 Q Yeah.

24 A Yes.

25 Q And this is a knife that you see --

1 A No.

2 Q -- protruding from his shirt?

3 A No, that's his belt.

4 Q Okay. But you're familiar with him?

5 A Yes.

6 Q And there are some uncertainties that you have about

7 a number of details? This has been two-and-a-half years,

8 correct?

9 A Correct.

10 Q It's possible that the individual may have asked for

11 a key and you forgot?

12 A Well, he didn't have the key; he just opened the

13 door.

14 Q Okay. 15 minutes is an estimation?

15 A Correct.

16 Q And despite your feelings of uncertainty and

17 potential concern, after those individuals left, you went

18 outside as well?

19 A Correct.

20 MR. RUGGEROLI: I have nothing further.

21 THE COURT: Anything else?

22 MR. BROOKS: No.

23 THE COURT: Okay. Thank you very much for your

24 testimony here today. You may step down. You are excused

25 from your subpoena.

1 At this time, we are going to conclude for the
2 evening. During this recess, you're admonished not to talk or
3 converse amongst yourselves or with anyone else on any subject
4 connected with this trial, or read, watch, or listen to any
5 report of or commentary on the trial, or any person connected
6 with this trial, by any medium of information, including,
7 without limitation, newspapers, television, the internet, or
8 radio, or form or express any opinion on any subject connected
9 with this trial until the case is finally submitted to you.

10 You're further admonished you may not communicate
11 with anyone, including your fellow jurors about this case, on
12 your cell phone, through email, Blackberry, iPhone, text
13 messaging, or on Twitter, through any blog or website, through
14 any internet chat room, or by way of any other social
15 networking website, including, but not limited to Facebook,
16 Myspace, Linked In, and YouTube.

17 We are in recess until tomorrow morning at 8:30.
18 Thank you very much, and have a good night.

19 THE MARSHAL: Thank you. All rise for the exiting
20 jury. Jurors, please leave your notebooks on your chair.

21 (Court recessed at 5:06 P.M.)

22 (Court recessed at 5:06 P.M., until Friday,

23 February 14, 2020, at 8:46 A.M.)

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

Julie Lord

JULIE LORD, COURT TRANSCRIBER
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