

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ABDIEL SILVA

Appellant,

v.

STATE OF NEVADA

Respondent.

CASE NO. 81627

Appeal from a Judgment of Conviction After Jury Verdict
in Case CR18-1135(B)
Second Judicial District Court of the State of Nevada, Washoe County
Honorable David A. Hardy, District Judge

APPELLANT'S APPENDIX VOLUME 5

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

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STATE OF NEVADA,)	Case No. CR18-1135B
)	
)	Dept. No. 15
Plaintiff,)	Supreme Court Case No. 81627
vs.)	
)	TRANSCRIPT OF PROCEEDINGS
RICHARD ABDIEL SILVA,)	
)	
Defendant.)	
_____)	

JURY TRIAL - DAY 3
FEBRUARY 26, 2020, RENO, NEVADA

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The Defendant: RICHARD ABDIEL SILVA

Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

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1 RENO, NEVADA; WEDNESDAY, FEBRUARY 26, 2020; 8:45 A.M.

2 ---o0o---

3
4 (Out of the presence of the jury.)

5 THE COURT: We're on the record in the Silva
6 matter. It's 8:45, we're scheduled to begin at 8:45.

7 Counsel, I first want to tell you that
8 yesterday as we talked about schedule I was just
9 thinking about it. I don't want to be bound by anything
10 I had said in terms of Fridays and Mondays, I just want
11 to keep pushing effectively and justly and let's see how
12 we are at the end of the day.

13 Second, just minutes ago I was given a motion
14 to reconsider. I want to invite your advocacy. It is
15 more important to do right than to be right. And
16 there's a sentence in Mr. Lee's motion where he said,
17 I'm paraphrasing, I want to let you know judges hate
18 motion for the reconsideration it's with great
19 reluctance, but you haven't seen that I can tell by your
20 eyes, Ms. Ristenpart.

21 MS. RISTENPART: Correct, your Honor.

22 THE COURT: So Mr. Lee has filed a motion in
23 which he asks me to reconsider my ruling on my oral
24 pronouncement of that position of Mr. Silva's statement

1 will be added to the State's evidence.

2 We're not going to resolve it right now
3 without Ms. Ristenpart reading it, we're not going to
4 resolve it while the jury waits, but here's the issue as
5 I see it, and even I will have it percolate and we'll
6 talk probably during next break.

7 The State is absolutely accurate that Mr.
8 Silva's statement out of court is not hearsay if
9 introduced by the State adverse to Mr. Silva. Mr. Silva
10 can't insist that his out-of-court declaration be
11 presented and avoid cross-examination of these
12 statements presented to the jury. That's the general
13 rule. State gets to select what evidence it presents
14 and the defense does not get to insist that the State
15 add evidence of his prior statements. That must be
16 balanced with NRS 47.120 which is rule of completeness,
17 an evidence prophecy is patterned after Rule 106 and the
18 idea is that only if the second portion somehow provides
19 context to the first, if it explains the first, if it is
20 necessary for full context, that's when it comes in.

21 I can't make that decision about argument in
22 probably reviewing the video, so I acknowledge your
23 motion. I'm holding it in abeyance. When does this
24 particular evidence fall in your sequence?

1 MR. LEE: Towards the end, your Honor.

2 THE COURT: Toward the end of what?

3 MR. LEE: So probably last two witnesses,
4 three witnesses.

5 THE COURT: So not before lunch today.

6 MR. LEE: Not before lunch.

7 THE COURT: Okay.

8 MR. LEE: Well, I was wrong yesterday but I
9 would not expect it before lunch.

10 THE COURT: All right. As a courtesy to Ms.
11 Ristenpart, Ms. Clerk, if you will please print a copy
12 of the State's motion in hard form. Do you have a copy?

13 MS. RISTENPART: Ms. Clerk just provided me
14 one.

15 THE COURT: Thank you. I didn't notice. I
16 was talking. So I want to give you a chance to read it
17 but let's proceed to trial right now and then we'll
18 discuss the terms of the issue when we can
19 contemplatively.

20 MR. LEE: Thank you. I have one other matter,
21 Judge, I have the redaction of the video we talked about
22 yesterday. My sentiment to Ms. Ristenpart the time I'm
23 trying to redact from or that I did redact from I hope
24 that would be sufficient. I don't know if there's

1 anything. I didn't find anything else in that
2 interview. I'll just leave it at that.

3 MS. RISTENPART: May I inquire, your Honor?
4 Mr. Lee, did you send in an email form to my office?

5 MR. LEE: I did.

6 MS. RISTENPART: What time?

7 MR. LEE: Give me a moment.

8 THE COURT: I'd love hearing what time. I
9 love when people send emails at 4:30 in the morning and
10 12:30 at night.

11 MR. LEE: I sent it 5:51 p.m. yesterday.

12 THE COURT: All right. We'll stand for our
13 jury.

14 MR. LEE: I'm sorry, Judge, one more thing.
15 This is the last thing. Because of the redaction
16 there's a clear break in the video, you see a glitch,
17 it's obviously something's been doctored and I would
18 propose an instruction be read just regarding the
19 redaction.

20 THE COURT: Would you read your proposed
21 instruction?

22 MR. LEE: Sure. You're about to hear a
23 recorded conversation between Richard Silva and Reno
24 Police detectives. A certain portion of this recording

1 has been deleted and is not legally available for your
2 consideration based upon rules of evidence. You are not
3 to speculate, Ladies and Gentlemen, as to what would
4 have been in the redacted portion and infer any bad
5 faith on the part of either party.

6 MS. RISTENPART: I'll object to that
7 instruction, your Honor, it just highlights an imperfect
8 redaction that was done by the State which I have not
9 seen yet anticipating that it's going to be a very
10 awkward cut.

11 THE COURT: Well --

12 MR. LEE: And I can show you the portion just
13 right now if you'd like.

14 COURT CLERK: Exhibit 129 marked for
15 identification.

16 (Exhibit 129 is marked for identification.)

17 THE COURT: The jury, please.

18 MR. LEE: I'm sorry?

19 THE COURT: The jury, please.

20 (Jury returns to the courtroom.)

21 THE COURT: The entire jury is present.
22 Ladies and Gentlemen, in a moment a witness from
23 yesterday will return to the witness stand. During
24 testimony you will hear and you will see a recorded

1 conversation between Mr. Silva and Reno Police
2 detectives. A certain portion of that recording has
3 been modified at my direction. Please make no inference
4 about my decision. Please do not speculate or guess
5 about the portion of the ordered modification.

6 You may call your next witness.

7 MR. LEE: Thank you. Detective Ernie Kazmar.

8 THE COURT: The witness remains under oath
9 from yesterday.

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Be seated, please. And the State
12 may continue.

13 MR. LEE: Thank you, your Honor. Do I ask the
14 witness just to step down to look at this computer?

15 THE COURT: Yes.

16 CONTINUATION OF DIRECT EXAMINATION

17 BY MR. LEE:

18 Q Detective, if you could? I'm going to show
19 you what's been marked as Exhibit 129. Go ahead and
20 look through that.

21 A Yes.

22 Q Thank you. You can have a seat. Have you
23 had adequate time to scroll through, look at Exhibit
24 129?

1 A I do.

2 Q Do you recognize this?

3 A I do.

4 Q What is it?

5 A That is the video of interview with Mr. Silva
6 conducted by Detective Thomas and I on November 8th.

7 MR. LEE: Your Honor, I move to admit Exhibit
8 129.

9 MS. RISTENPART: Based upon our earlier
10 conversation, no objection.

11 THE COURT: Exhibit 129 is admitted.

12 (Exhibit 129 is admitted into evidence.)

13 COURT CLERK: Thank you.

14 BY MR. LEE:

15 Q Detective, my intent is to play the entirety
16 of this video but let me ask a few questions up front
17 about it. How did -- as a reminder, how did we get in
18 this situation on November 8th?

19 A Through discussions with Mr. Silva's brother,
20 Bernard, regarding the open CPS case that was currently
21 ongoing in conjunction with our murder investigation,
22 but unrelated, we had requested from Bernard his
23 assistance in getting family members down to conduct
24 voluntarily interviews.

1 Q Including Mr. Silva?

2 A Correct.

3 Q At this point were you specifically

4 interested in talking to Mr. Silva?

5 A We were.

6 Q So let me point out on the table here, looks

7 like a bottle of water?

8 A Correct.

9 Q Who put that there?

10 A Detective Thomas did.

11 Q And the bottom right of the screen, what is

12 that?

13 A That is an empty trash can.

14 Q How do you know it's empty?

15 A Because we made sure it was empty before the

16 interview initiated.

17 Q What was the hope here with that water bottle

18 and that empty trash can?

19 A That at some point during the interview that

20 Mr. Silva would drink from the water bottle and discard

21 it in the trash can, therefore, allowing us to collect

22 the surreptitious DNA subpoena.

23 Q The surreptitious?

24 A Without his knowledge.

1 Q I'm pushing play at the beginning. Excuse
2 me, I'm actually going to scroll forward. Starting at
3 five minutes.

4 THE COURT: Will you hit pause for just a
5 moment, please? What is the source for the sound? Is
6 it just the computer itself?

7 MR. LEE: No, it should be the TV.

8 THE COURT: Okay. Ladies and Gentlemen, if at
9 any time you can't hear, just raise your hand and
10 indicate, okay?

11 Go ahead, Mr. Lee.

12 (Exhibit 129 is being played.)

13 THE COURT: Pause it. It's muffled.

14 (Jurors are saying it is muffled.)

15 THE COURT: One option is that we put a
16 microphone, unless you have a different suggestion.
17 There are three options. Play it as it is, put a
18 microphone in front of it and see if that amplifies it
19 better or any other technological suggestions you have.

20 MR. LEE: No, with the acoustics I guess
21 that's not an option, if we can try the microphone. If
22 not, my other option would be simply to play a portion
23 and ask Deputy Kazmar.

24 THE COURT: Let's try the microphone first.

1 We've had some success in the past with that.

2 Deputy? You should put it at the television
3 or the computer.

4 MR. LEE: I think it does come out of here
5 (indicating). Let me experiment if I could.

6 Stopping it at 6:20. Seems a little clearer
7 for me.

8 THE COURT: Let's play it, go ahead and start
9 it, begin from the beginning.

10 Ladies and Gentlemen, if, again, you just
11 simply can't hear, we'll then go to the third option
12 which is to have Mr. Lee inquire of the witness.

13 MS. RISTENPART: Your Honor, if may I
14 suggest--

15 THE COURT: Hold on. Let's first go off the
16 record so we don't have all the different voices talking
17 all at once. Just pause.

18 (Discussion held off record concerning sound.)

19 MR. LEE: Your Honor, so the intent was I'll
20 play some parts that are not jumbled, certain parts I
21 will try to ask Detective Kazmar if he recalled or
22 understands other parts are so jumbled and we'll let
23 them go.

24 MS. RISTENPART: For the record, I am hearing

1 from the jury that appears to sound better and it's not
2 as jumbled as before.

3 THE COURT: Thank you. You may proceed.

4 MR. LEE: Starting at five minutes.

5 THE COURT: I'm sorry, it's about 90 percent
6 right for me but I just want to try this one other
7 thing. Deputy?

8 MR. LEE: We had stopped at 7:08.

9 THE COURT: All right. Let's return to the 90
10 percent part.

11 Thank you, Deputy, for your assistance.

12 BY MR. LEE:

13 Q All right. Starting at seven minutes let's
14 stop at 12:29. Who is Noe?

15 A Noe is Mr. Silva's and Bernard's younger
16 brother.

17 Q Okay.

18 THE COURT: Mr. Lee, one of the witnesses has
19 written a note and wants the deputy to retrieve it.
20 We'll just do it during the next break, unless it's the
21 bathroom. Do you need the bathroom?

22 UNIDENTIFIED JUROR: Yeah.

23 THE COURT: Ladies and Gentlemen, during this
24 recess do not discuss this case amongst yourselves.

1 Please do not form or express any opinion about this
2 matter until it's been submitted to you.

3 We'll stand for our jury.

4 (Jury is excused for a short break.)

5 THE COURT: Mr. Lee cites several decisions in
6 his motion for reconsideration, two of which are
7 unpublished Nevada decisions, Robles versus State and
8 Banuelos versus State. I have the liberty of reading
9 them from the bench because I just can. I also have
10 staff who can print them off and bring them to me. If
11 -- at your request I'll give printed copies to you
12 before the arguments if you want them.

13 MS. RISTENPART: Your Honor, I'm just going to
14 be very frank, I'm not prepared to argue this.

15 THE COURT: I'm not asking you to argue right
16 now, I'm asking if I can prepare before giving my
17 written decision, that's all.

18 MS. RISTENPART: Thank you, your Honor. I
19 would appreciate some decision if the Court has them.

20 THE COURT: I'd be happy to deliver them.

21 MS. RISTENPART: Thank you. Also I would like
22 to make a record we did not receive an email from Mr.
23 Lee until 11 p.m. last night regarding redactions.

24 THE COURT: We'll see you in about three

1 minutes.

2 (Short break.)

3 (Jury returns to the courtroom.)

4 THE COURT: And to the State at your election.
5 You can proceed.

6 BY MR. LEE:

7 Q Detective Kazmar, what was the purpose of
8 your interview with Mr. Silva at this point, November
9 8th?

10 A We wished to speak with him as previously
11 discussed based on, in part, the preliminary test
12 results that we had gotten regarding the samples, the
13 DNA samples collected at the scene, as well as Bernard's
14 sample that was analyzed showing --

15 MS. RISTENPART: Objection, asked and
16 answered.

17 THE COURT: Overruled.

18 THE WITNESS: Showing link to Bernard's male
19 family members, as well as in any typical
20 homicide/murder investigation any chance that you get to
21 speak with somebody it's always beneficial to sort of
22 lock them into a story you get specific details
23 regarding locations, times, date, actions, things of
24 that nature.

1 BY MR. LEE:

2 Q So we just heard you ask about for several
3 minutes about extended family.

4 A Correct.

5 Q Was that in regards to the YSTR DNA analysis?

6 A It was, that was an attempt to identify any
7 and all hopefully male family members.

8 Q And then you asked a little bit about this --
9 you or Detective Thomas asked a little bit about this
10 early on, and it's coming up here next as well. You
11 inquire as to sleeping arrangements at the house the
12 night before the murder?

13 A Correct.

14 Q Why is that?

15 A Again, just to attempt to kind of pin down
16 and get as accurate information as we can as to the
17 circumstances of what occurred in the house that night
18 as far as the sleeping arrangements go, should there
19 have been any inconsistencies found later on, say, in
20 the investigation we could have come back and revisited
21 that with either Mr. Silva or whoever else we spoke to.

22 MR. LEE: Thank you. I'm going to start
23 playing at 28:59.

24 (Exhibit 129 is played.)

1 BY MR. LEE:

2 Q Detective, stopping it at 3:30:06. We heard
3 some names and we've heard them before. Fernando, Ruby,
4 Dasaniy. Who's that?

5 A Those are Bernard and Ms. Linares' children.

6 Q Thank you.

7 (Exhibit 129 is played.)

8 Stopping at 32:05. Detective, did he -- did
9 Mr. Silva just talk about who was in his room?

10 A He did.

11 Q Who was that?

12 A Mr. Silva said when he woke up on November
13 2nd, that he had to go into his -- what his old room or
14 where Bernard was currently staying and observed both
15 Bernard and Bernard's daughter Dasaniy asleep in the bed
16 at that point.

17 Q Did he state that he went to get shoes?

18 A He did.

19 Q Thank you.

20 (Exhibit 129 is played.)

21 Stopping at 39:54. He's described meeting
22 Arturo. Who's Arturo?

23 A Arturo Manzo.

24 Q Did you know Arturo to be in a relationship

1 with Lucy?

2 A I did.

3 MR. LEE: Thank you.

4 (Exhibit 129 is played.)

5 THE COURT: Ladies and Gentlemen, let's all
6 stand for just a minute. All right. Be seated, please.

7 (Short pause.)

8 BY MR. LEE:

9 Q Detective, just a few clarifying questions.
10 I'm going to show you Exhibit 2. You had asked --
11 Detective, YOU had asked Mr. Silva had he ever been to
12 this area before. Parkview and Mazzone, correct?

13 A Correct.

14 Q Was his statement to you?

15 A That had not, that an unknown amount of years
16 previously when he was attending TMCC he had a school
17 project where his partner at that time lived in the area
18 an unknown location, and he had gone to her apartment to
19 work on that project, as well as the fact that he also
20 had a friend that lived in the area of Peckham and
21 Airway Drive, which is a short distance away from Neil
22 Road, but that friend had moved away approximately six
23 months prior to Ms. Linares' murder.

24 On top of that he mentioned the fact that he

1 specifically avoided the area of Neil Road as well as
2 other locations within Reno that he, quote, deemed a
3 high crime area.

4 Q And so he talked about Airway and Peckham.
5 So if you were to follow Moana it turns into Airway,
6 correct?

7 A Correct.

8 Q And eventually meets up with -- is it Peckham
9 down that -- south?

10 A Correct.

11 Q All right, Detective, we're nearing the end.
12 I had stopped it at 1:04:59. I'll push play.

13 (Resuming playing Exhibit 129.)

14 Stopping at 1:05:20. What Mr. Silva did, is
15 that what you were hoping he would do?

16 A It was.

17 Q What happened to that water bottle
18 afterwards?

19 A It was collected, collected and placed inside
20 a Reno PD evidence envelope seal and then taken to the
21 crime lab for processing.

22 Q Was the crime lab able to rush that?

23 A They were.

24 Q At this point I'm going to skip ahead a

1 little bit until you and Detective Thomas return.

2 And then starting at 1:12:32.

3 (Resuming playing Exhibit 129)

4 And then stopping at 1:22:08. Detective,
5 thank you. That's all the questions I have.

6 THE COURT: To the defense.

7 CROSS-EXAMINATION

8 BY MS. RISTENPART:

9 Q Officer, you -- through your investigation
10 you had learned about this October 20th, 2017, incident
11 between Bernard and Luz, correct?

12 A Correct.

13 Q And you had actually learned about it because
14 Sparks Police Department investigated it, right?

15 A Correct.

16 Q You went and looked at the records and went
17 and saw what happened?

18 A Read the report.

19 Q Read the reports. And, in fact, there was
20 two separate incidences on October 20th of 2017,
21 correct?

22 A There were.

23 Q The first one was an instance of allegation
24 of domestic violence against Luz, right?

1 A I'm sorry, when you say there were two
2 instances are you talking about two instances of the
3 domestic allegations or?

4 Q I'll clarify for you.

5 A Or what happened to Bernard later on the
6 20th.

7 Q The domestic first and then what happened to
8 Bernard later on.

9 A Correct.

10 Q That's two different instances in the same
11 day involving --

12 A Correct.

13 Q So the first was involving a domestic
14 violence allegation against Luz, correct?

15 A I believe it was both ways. I believe there
16 was an allegation against Ms. Linares and Bernard.

17 Q And throughout your investigation, not just
18 based upon that but based upon your interviews and your
19 entire investigation, that you learned and we just heard
20 that Luz and Bernard had a very volatile relationship,
21 correct?

22 A It appeared so.

23 Q With violence?

24 A Correct.

1 Q Then later on that same day that was the
2 second instant we're talking about on the October 20th
3 of 2017 where Bernard used a firearm and somehow shot
4 his chest. Correct?

5 A Correct.

6 Q And we just heard commentary questions as to
7 whether it was self-inflicted or attempted suicide or an
8 accident. Correct?

9 A Correct.

10 Q And from your review of those Sparks Police
11 Department reports you also learned that Luz had showed
12 up at the scene of the shooting of Bernard's wound to
13 his chest, right?

14 A I believe that is correct.

15 Q And then when Luz arrived, Richard, Mr. Silva
16 was trying to calm the situation down.

17 A That may be correct and I apologize, but it's
18 been quite sometime since I read that Sparks Police
19 report.

20 Q It's been two years, right?

21 A Correct.

22 Q Now, Mr. Silva himself, he does not have any
23 children, correct?

24 A I don't believe so.

1 Q And the children we're talking about,
2 Fernando we've already heard of, is Ms. Castillo's
3 biological son, but Bernard and Luz had been together
4 for 11 years, right, married for 11 years?

5 A As I said yesterday, I don't recall the exact
6 time that they were married, but I think either from Mr.
7 Silva or some -- another person that I interviewed
8 indicated it was an extended period of time, I thought
9 it was between 11 and 12 years.

10 Q And from your investigation you knew that
11 Fernando was like Bernard's son, I mean, he helped raise
12 him and cared for him, correct?

13 A Just not biological, yeah.

14 Q And was very close to Bernard also, Fernando
15 and Bernard, as well as the other kids.

16 A I believe so.

17 Q And we heard some conversation between you
18 and Mr. Silva in regards to when Bernard was in the
19 hospital Richard would bring the kids to go visit with
20 Bernard while he was in the hospital?

21 A Correct.

22 Q After the shooting on October 20th --

23 A Correct.

24 Q -- 2017? And we heard that he would go pick

1 up the kids from Luz's mom's house?

2 A Mr Silva indicated that on one occasion
3 that's what occurred.

4 Q And Luz's mom's house, that's the one over on
5 Lester Avenue, correct?

6 A I believe that is that house, yes.

7 Q That would be over by the Nissan dealership?

8 A In that part of town, yes.

9 Q And also in your investigation Bernard was
10 released from the hospital days before Luz's killing.
11 Right?

12 A I believe he was discharged from the hospital
13 on October 30th.

14 Q Now, just to get the timeline very clear
15 here, investigators had an interview with Bernard on
16 November 2nd of 2017. Right?

17 A Correct.

18 Q And that was after you guys went to the day
19 care where he was going to pick up Ruby?

20 A Correct. That was not me, that was other
21 detectives.

22 Q Other people in your investigation, right?

23 A Correct.

24 Q And then this interview with Richard took

1 place on November 8th of 2017.

2 A Correct.

3 Q And during that time -- well, in fact, on
4 November 2nd, 2017, CPS took the three kids, took
5 custody of them, right?

6 A I believe so, yes.

7 Q And then as we heard you repeated over and
8 over again to Richard in this November 8th, 2017,
9 interview that you wanted to be to get the kids back to
10 Bernard. Right?

11 A Correct.

12 Q And that you even admitted that you were
13 using the CPS and that the kids had been taken away as a
14 tool to get the family talking. Right?

15 A Correct.

16 Q And at one point Detective Thomas told
17 Richard in that interview that you guys wanted -- needed
18 to clear Bernard in order to get the kids back.

19 A Correct.

20 Q Because Bernard was a suspect.

21 A No. We were simply saying to Mr. Silva as
22 well as the other family members that part of using that
23 investigative tool with the CPS tangle, that we needed
24 as much information as possible to provide to CPS for

1 them to make that determination whether or not they were
2 going to return the children to Bernard.

3 Q And that's because CPS took the kids because
4 Bernard was a suspect, and were waiting to hear from you
5 as to whether or he was cleared as a suspect, right?

6 A Correct.

7 MR. LEE: Objection, speculation.

8 THE COURT: Overruled.

9 THE WITNESS: I can --

10 THE COURT: If you know the answer you may
11 provide it. If not, please do not guess.

12 THE WITNESS: Well, at that point in the
13 investigation there was no suspect, per se. There was
14 obviously -- if we're talking about November 2nd when
15 CPS took the children, the DNA primary -- preliminary
16 results from Bernard's DNA sample had not been returned
17 yet.

18 BY MS. RISTENPART:

19 Q Okay. But at this point when you're
20 interviewing Richard the kids are still in CPS custody.
21 You had just done a DNA test for the cigarettes against
22 Bernard's DNA. Right?

23 A Correct.

24 Q And you're telling Richard in this interview

1 that you guys need to clear Bernard.

2 A Correct, that's what we said.

3 Q You arrested Richard on November 16th of
4 2017, correct?

5 A Correct.

6 Q And at that time you took some clothing from
7 him on the day of his arrest

8 A We did.

9 Q 49er hat that we talked about with the
10 State?

11 A Correct. Right.

12 Q You also took a black hoodie. Right?

13 A Correct.

14 Q Did you ever get those tested for gunshot
15 residue?

16 A I don't believe we did.

17 Q After you arrested Richard, CPS ultimately
18 gave Bernard back the children, right?

19 A I believe so, yes.

20 Q But there's still actually a CPS case open,
21 isn't there?

22 A I am not aware whether -- what the status of
23 the CPS case is at this time.

24 Q Are you aware as to whether CPS is waiting to

1 see what happens in this trial?

2 A I'm not. I have not spoken to CPS regarding
3 the matter in some time.

4 Q And as you told us yesterday, Bernard and
5 Richard, through your investigation, all your interviews
6 your knowledge is that they're very close to each other,
7 right?

8 A They appeared to have a very strong bond.

9 MS. RISTENPART: No further questions. Thank
10 you.

11 THE COURT: Is there any redirect?

12 MR. LEE: There is none. Thank you.

13 THE COURT: In a moment you'll be free to
14 leave the courtroom. Thank you.

15 Ladies and Gentlemen, during this recess
16 please do not discuss this case amongst yourselves.
17 Please do not form or express any opinion about this
18 matter until it's submitted to you.

19 We'll be in recess until 11:55. We'll stand
20 for our jury. I'm sorry, 10:55.

21 (Short break.)

22 THE COURT: To the State, your next witness.

23 MR. LEE: State will call Arturo Manzo.

24 THE COURT: Deputy Coss, please step all the

1 way up and face the clerk, please.

2 COURT CLERK: Please raise your right hand.

3 ARTURO MANZO-RAMIREZ,

4 called as a witness herein, being first

5 duly sworn, was examined and testified

6 as follows:

7
8 COURT CLERK: Thank you.

9 THE COURT: Take a seat, please. You may
10 begin.

11 MR. LEE: Thank you.

12 DIRECT EXAMINATION

13 BY MR. LEE:

14 Q Good morning, sir. Could you state your
15 first and last name and spell your last name for us?

16 A My name is Arturo Manzo Ramirez. Manzo,
17 M-a-n-z-o, Ramirez, R-a-m-i-r-e-z.

18 Q Is it all right if I just shorten it up and
19 call you Mr. Manzo?

20 A Yes, that's fine.

21 Q Appreciate it. Mr. Manzo, do you know an
22 individual named Luz Linares-Castillo?

23 A Yes, I do.

24 Q Did you call her Lucy?

1 A Yes.

2 Q How were you involved with Lucy?

3 A I was her boyfriend.

4 Q How long had you been with Lucy?

5 A About six months.

6 Q Before?

7 A She got killed.

8 Q Were you romantically involved with her?

9 A Yes.

10 Q Sometimes would Lucy stay at your residence?

11 A Yes, she will.

12 Q Did you live at the time on November -- in

13 November or October of 2017 at 3515 Mazzone?

14 A That's correct.

15 Q And do you know what kind of car Lucy drove?

16 A It was a red Charger.

17 Q Was it a new one?

18 A Yes.

19 Q How about you, you have an SUV at the time?

20 A Yes. Still have it.

21 Q What kind of car is that?

22 A It's a Jeep Grand Cherokee.

23 Q It has license plates UNR 21305?

24 A It does, yes.

1 Q Go back to November 2nd of 2017, actually, a
2 day before that, sir, so let's talk about the evening of
3 the 1st was Lucy staying at your place that night?

4 A Yes, she was.

5 Q And did she drive her car?

6 A Yep.

7 Q Do you recall where she parked?

8 A Right next to my car, to my SUV.

9 Q So Mazzone ends close to your residence.
10 Correct?

11 A Yes.

12 Q How was she parked next to your SUV?

13 A Double line.

14 Q So were you parked on the curb?

15 A Yes.

16 Q She was double parked next to you?

17 A Yeah.

18 Q Do you recall was it normal for Lucy to go to
19 work early?

20 A Not that early, but most likely she would go
21 to work early.

22 Q She did sometimes go to work early, though?

23 A Yes.

24 Q On the morning November 2nd was that one of

1 the mornings she went early?

2 A Yes.

3 Q Were you awake when she went to work?

4 A I walk her out to the door and I saw her get
5 in her car, so.

6 Q Mr. Manzo, after she got in her car did you
7 return back to your -- inside your residence?

8 A Yes.

9 Q You're the first floor. Right?

10 A Yes.

11 Q Did you hear anything after that?

12 A Well, I heard, like, gunshots, you know,
13 there were, like, several gunshots, so which I run
14 upstairs and grab my phone and tried to contact her.

15 Q Did she respond?

16 A If she was okay.

17 Q Did she ever respond?

18 A Nope.

19 Q Did you make it down -- down the street
20 eventually?

21 A Yes, on my way to work.

22 Q What time did you work?

23 A Well, that day I went early, too, because I
24 went -- because I heard the gun shots so I was, like,

1 I'm gonna go and see what's going on, you know, I was
2 just, like, curious if she was not answering the phone
3 so that's why I went to work early.

4 Q Okay. Was the gun shots and her not
5 answering was it anything more than a curiosity at that
6 point?

7 A I want to make sure she was okay because
8 after she left, that's when I heard the gun shots, so I
9 just wanted to make sure that she was okay.

10 Q Okay. So you went to work early, you said?

11 A Yes.

12 Q What were you doing for work at the time?

13 A I scaffolding.

14 Q What?

15 A Now I doing crane operator.

16 Q Let me show you in Exhibit 125. Should
17 appear on the screen in front of you, sir. If you have
18 a hard time seeing it the big screen's available. Is
19 this your vehicle?

20 A Yes.

21 Q And is that where you had parked at or near
22 the scene of that crime?

23 A That's correct.

24 Q Now, there's -- I see three individuals that

1 appear in front of that vehicle one of those yours? Is
2 one of them you? Excuse me.

3 A Yeah, me still in the blue pants.

4 Q One on the right?

5 A Yeah, that's correct.

6 Q Okay. Were you -- when you first arrived
7 there how were you feeling?

8 A Bad.

9 Q Explain that to us. What do you mean by
10 that?

11 A Well, when I got there I just want to make
12 sure that she was okay but nobody was giving no answer,
13 but then I was being curious like something was telling
14 me it was not right.

15 Q You saw her car?

16 A Yes, I saw the back of her car.

17 Q Were there a lot of police around?

18 A Oh, yeah. It was a lot.

19 Q And they weren't giving you answers at that
20 point?

21 A No.

22 Q That upset you?

23 A Yeah, I.

24 Q Eventually did you allow detectives to search

1 your vehicle?

2 A That's correct, after I spoke to them in the
3 police station.

4 Q Okay. Were you aware that the police officer
5 searched your residence?

6 A Yes, that's correct.

7 Q Was that with your knowledge that they were
8 doing that?

9 A Well, I told them to talk to my parents
10 because that was not mine -- my spot, you know.

11 Q So it's your parent's place?

12 A Yes.

13 Q Okay. But you're aware that they did search
14 it?

15 A No, I was at the police station.

16 Q Okay. Sir, you and I have met a few times.
17 Correct?

18 A That's correct.

19 Q What was the purpose of those meetings, do
20 you know?

21 A Just to talk about the case and -- you know.

22 Q In those meetings did I tell you how to
23 testify about anything?

24 A No.

1 Q Did I coach you with testifying?

2 A No.

3 Q What ultimately did I tell you is the most
4 important thing to do when you're testifying?

5 A To tell the true and what I know.

6 Q So your testimony here, is it the truth?

7 A Yes.

8 MS. RISTENPART: Objection, your Honor, that's
9 for the trier of fact to decide.

10 THE COURT: Overruled.

11 BY MR. LEE:

12 Q So is your testimony here today the truth?

13 A Yes.

14 Q Sir, do you know an individual or know of an
15 individual named Bernard?

16 A Yes, I do.

17 Q Who's Bernard?

18 A It was Lucy's ex-partner.

19 Q Were you aware that she -- Luz eye and
20 Bernard were still married in 2017?

21 A No.

22 Q Are you aware that she had been married to
23 him?

24 A Yes.

1 Q What is your understanding of Lucy and
2 Bernard's relationship at that point?

3 A They were living together, but not like
4 sleeping together, stuff like that.

5 Q Okay.

6 A Like kind of roommates because of.

7 Q And then were you aware of an incident on
8 October 20th of 2017, involving Bernard and Lucy?

9 A Yes.

10 Q Where police were called?

11 A Yes.

12 Q Only to show why you did what you did next
13 was it your understanding that Bernard had struck Lucy?

14 A That's correct.

15 Q What did you do because of that?

16 A I got kind a mad, angry, and she called me
17 and I was at work, so I went to his residence, but the
18 Sparks Police was there so I went to go.

19 THE COURT: Hold on, I'd like you to speak a
20 little louder, please. So you went to the residence,
21 and carry on.

22 BY MR. LEE:

23 Q So you went to the residence, Sparks Police
24 were there?

1 A And then I went to go get my car. My car,
2 went to Lucy's house to see if she was okay because she
3 had called me that she already at her mom's house, then
4 I went to Bernard's residence again.

5 Q A second time?

6 A A second time.

7 Q Okay. What happened there?

8 A Well, I saw that he tried to reach something
9 under the seat of his car, so I just kinda look at him
10 and then I just drove off.

11 Q How did you know what he looked like?

12 A I just by pictures and how she describe it to
13 me.

14 Q Okay. Was she with you?

15 A No.

16 Q What did you -- what did you go there, excuse
17 me, for?

18 A Because she told me to go check if Sparks
19 Police was still there.

20 Q Were you at all interested in confronting
21 Bernard?

22 A Well, yes.

23 Q Just based upon what he had done to Lucy?

24 A Yes.

1 Q Did you around that time or even that day
2 have some telephone conversation with Bernard?

3 A That is correct.

4 Q Tell us how that came about.

5 A Well, she called, Lucy, me and Luz were
6 heading to McDonald to get some food, and she told Lucy
7 to -- if he could have his number, my number, in order
8 to call me so Lucy why you want his number for? Because
9 I want to speak to him. And, like, why, just leave him
10 alone, you know, like I'm not with you anymore, I'm with
11 him, so why do you want to talk to him. And I told her
12 just to give it to him and she did. And that's one
13 thing Bernard call me and we had a conversation on.

14 Q I'm sorry, what is the conversation?

15 A I --

16 Q I'm sorry, go ahead.

17 A It was like a conversation long, went on for
18 30 minutes.

19 Q What was it about?

20 A Well, he asked me if I was with Lucy and I
21 told him yes. And that he, like, okay, 'cause
22 supposedly she saying that she's not with you, but she
23 want to make sure I know she's with me. And I was like
24 -- and last -- this is the last thing that he put his

1 hands on her, because now I'm here for her.

2 Q Do you know an individual or know of an
3 individual named Richard Silva?

4 A Yes, I do.

5 Q Did you ever see that person?

6 A No.

7 Q Does that person have a nickname?

8 A Yes.

9 Q What is that?

10 A Rigo.

11 Q Did you ever talk to Willow, not Rigo,
12 Willow?

13 A Yes, I did.

14 Q When?

15 A On same day that, um, I talked to Bernard.

16 Q How did that conversation come about?

17 A Well, it started off good, professionally,
18 but then it went bad, too.

19 Q And what do you mean good, professionally?

20 A 'Cause he -- when I answered phone and he
21 call me he talked to me like professionally.

22 Q Okay. Calm?

23 A Yeah, calm and everything, so.

24 Q How did you know it was Willow?

1 A Because he told me his name was Richard.

2 Q Did he also tell you Willow actually --

3 A Yes.

4 Q -- or just Richard?

5 A Richard and Willow, too.

6 Q Did he tell you who he was in relation to

7 Bernard?

8 A No, because I already knew the relationship

9 between them.

10 Q Okay. What did Willow say to you?

11 A He -- if I was dating Lucy, so I told him,

12 like, why he's worried about it, I already talked to his

13 brother, so he should not be getting into his brother's

14 own problems.

15 Q Do you remember what day this was?

16 A It was the same day that Bernard had the

17 accident, when he shot his self, so I remember that so I

18 remember that day.

19 Q That same day?

20 A Yes.

21 Q How about the different -- the time distance

22 between the time you talked to Bernard and the time you

23 talked to Mr. Silva?

24 A About two hours.

1 Q Okay. So if it started off professionally
2 how did it end?

3 A Because Mr. Willow wanted me to meet him at
4 the park, that's -- behind Nissan of Reno, in order,
5 like, to confirm to him that if he was dating Lucy.

6 Q Did you feel the need to confirm to him
7 anything like that?

8 A No.

9 Q Mr. Manzo, I'm almost done, let me just check
10 over my notes briefly just a moment.

11 In addition to allowing the search of your
12 Jeep did you also provide a DNA sample for the police?

13 A Yes.

14 Q By your consent?

15 A Yes.

16 Q How did the conversation with Mr. Silva end?

17 A I mean, with Bernard or Willow?

18 Q What's that?

19 A Bernard or Willow.

20 Q Willow.

21 A I talking to him on but I already talked to
22 his brother and I told him you want me to meet you at
23 the park which is pretty dark at night. I might be
24 young, but I'm not that stupid in order to go to a place

1 like that.

2 Q And did it end with good-byes or how did it
3 end?

4 A I really don't remember. I don't know if I
5 hang up the phone or not, so.

6 MR. LEE: Mr. Manzo, thank you. That's all
7 the questions I have, your Honor.

8 THE COURT: To the defense.

9 CROSS-EXAMINATION

10 BY MS. RISTENPART:

11 Q Mr. Manzo, you claim that you didn't know
12 that Luz was still married to Bernard while you were
13 romantically involved with her?

14 A What is that? Can you repeat that one more
15 time?

16 Q You claim that you did not know that Luz was
17 still married to Bernard while you were romantically
18 involved with her?

19 A Well, I knew she was married with him but not
20 in the relationship with him.

21 Q But you did know that Luz was still living
22 over with Bernard?

23 A Yes.

24 Q And you stated that you never met Mr. Silva.

1 Is that what you testified to today? Richard, I'm
2 referring to. Yet you knew all about the relationship
3 and who was related to who?

4 A Yes.

5 Q So you learned that all from Luz?

6 A What was that?

7 Q You learned all that from Luz. Right?

8 A Yes, because she told me a lot.

9 Q Now, let's take you to October 20th of 2017,
10 right? You just testified that you knew that there was
11 an incident involving Bernard and Luz. Right?

12 A That's correct.

13 Q And, in fact, Luz called you and told you
14 that Bernard had hit her?

15 A Yes.

16 Q And you went over to Bernard's house?

17 A That's correct.

18 Q How did you know where he lived?

19 A How? Because everybody knows their family,
20 so pretty simple.

21 Q And when you got there there were Sparks
22 Police Department on scene. Right?

23 A Correct.

24 Q So you just drove off.

1 A That's right.

2 Q Didn't talk to anyone?

3 A Nope.

4 Q And that later Luz asked you to go back over
5 again, right?

6 A Yes.

7 Q To see if SPD was still there, Sparks Police
8 Department.

9 A Yes.

10 Q And at this time this time you went over and
11 claim that you saw Bernard reach underneath a seat?

12 A Yes.

13 Q And so you just drove off?

14 A Well, 'cause we look at each other, we make
15 eye contact, so as soon as I thought he tried to grab
16 something I not gonna stand there, stay on there, so I
17 drove off.

18 Q That was Bernard?

19 A Yes.

20 Q And then you claim that that day you also
21 received a phone call from Bernard?

22 A Yes.

23 Q And then it lasted for 30 minutes?

24 A Yes, that's right.

1 Q You guys were just chatting?

2 A Yeah, we were chatting, coming, you know,
3 pretty chill conversation.

4 Q Mr. Manzo, you testified previously about
5 this phone conversation, didn't you? Do you remember
6 being in this courtroom?

7 A What was that?

8 Q Remember being in this courtroom before?

9 A Yes, I do remember.

10 Q Do you remember testifying about this phone
11 conversation that you say --

12 A Yes, I did.

13 Q -- you had with Bernard?

14 A Yes, I did.

15 Q And when you previously testified you were
16 under oath. Right?

17 A Yes.

18 Q Swore to tell the truth?

19 A That's right.

20 Q The whole truth?

21 A I am telling the truth.

22 Q And nothing but the truth?

23 A Yes.

24 Q And on previous testimony, Mr. Manzo, you

1 testified that the conversation with Bernard that he was
2 angry during that. Right?

3 A Well, he was not angry. It was just wanted
4 to make sure he fell with her or not.

5 Q You previously testified that that
6 conversation with Bernard, that it wasn't a good
7 conversation, Bernard was angry. Right?

8 A I didn't say that.

9 Q Are you claiming that you did not testify to
10 that previously?

11 A Well, like I said, I did have a conversation
12 with Bernard that day. I was angry because he had hit
13 Lucy, not him. He was kind of like sad because he had
14 lost the love of his life.

15 Q I know what you're telling us today after
16 you've met with the prosecutor numerous times. I'm
17 asking you about what you testified to previously in
18 courtroom about that conversation with Bernard, and you
19 told us that it was an angry conversation with Bernard;
20 didn't you?

21 A Like I said, I was angry because Lucy had to
22 call me and told me that Bernard had hit her. So when
23 Bernard -- because Bernard called Lucy telling her a
24 bunch of stuff about me, like, talking bad stuff, so I

1 told Lucy to keep my number to him in order so he could
2 call me. So I would get, like, an impression I don't
3 remember this was what, a couple months ago.

4 Q And you also told us -- and you also told us
5 in that prior testimony that that conversation with
6 Bernard took place on October 17th of 2017, didn't you?

7 A Yes.

8 Q Now, you claim that you have never seen
9 Richard Silva. You told us that today. Right?

10 A Yes.

11 Q But, in fact, there was one time that you
12 went over with Luz to drop off the kids. Right?

13 A Yes.

14 Q And Richard was there to pick up Ruby the
15 youngest one and brought Ruby back inside?

16 A Yes, that's right.

17 Q So you have seen Richard before, haven't you?

18 A Well, before -- what do you mean like before
19 all the accident but what was just one time I saw him
20 this was the day. And I have seen him in person and
21 everything but not in pictures and everything, but not
22 in person.

23 Q Now, you also -- Mr. Manzo, you have an
24 ex-girlfriend, Esmerelda Castillo, correct?

1 A Yes.

2 Q Did you end things well with Esmerelda
3 Castillo?

4 A Whoa. I shouldn't answer that because it's
5 not related to that case, so.

6 Q You were having problems with Esmerelda
7 Castillo and the fact Esmerelda was having qualms that
8 you were with Luz. Correct?

9 A I repeat myself why does my ex-girlfriend has
10 to do with this case?

11 THE COURT: You are in a trial in which the
12 State has alleged a crime against Mr. Silva, and Mr.
13 Silva is defending those allegations. You're under
14 cross-examination which is not a comfortable experience
15 for anyone. I determine what is relevant and not
16 relevant.

17 There may be a point at which I do not allow
18 the attorneys to go. But all attorneys are entitled to
19 examine the credibility and the facts present by a
20 particular witness and so as to that question I'm going
21 to instruct you to answer. But I'm mindful of the
22 boundaries and at some point I might have a discussion
23 with the attorneys about what is not relevant. But as
24 to that question you shall answer.

1 THE WITNESS: Okay, your Honor.

2 THE COURT: Thank you.

3 BY MS. RISTENPART:

4 Q Your ex-girlfriend, Esmerelda Castillo, had
5 problems that you were with Luz. Right?

6 A Yes.

7 Q And it's made her, Esmerelda, very angry not
8 only at you but at Luz also. Right?

9 A Yes.

10 Q In fact, there was a physical altercation
11 between Esmerelda and Luz prior to Luz's killing.
12 Right? And by altercation, meaning a fight?

13 A Well, we had been -- well, it happened a few
14 weeks before she got killed.

15 Q And, in fact, when police asked you, you
16 know, who do you think could have done this to Luz in
17 regards to the shooting, your first response was it
18 could have been my ex, referring to Esmerelda. Right?

19 A Yes, or her ex, I told him, too.

20 Q Now, you told us today that you had a
21 conversation over the phone with Willow, right?

22 A That's right.

23 Q Who is Richard. Correct?

24 A Correct.

1 Q Childhood named Willow?

2 A (Nods head.)

3 Q That's a yes?

4 A Yes.

5 Q And you claimed today that that conversation

6 ended badly, didn't you?

7 A Yes.

8 Q And that somehow there was some discussion

9 about meeting up at a park where Richard asked you to

10 meet up at the park?

11 A That's right.

12 Q You've testified about that conversation you

13 had with Richard previously, haven't you?

14 A Yes.

15 Q Where, again, you were in this courtroom,

16 right?

17 A Yes.

18 Q And you swore to tell the truth?

19 A Yes.

20 Q And in that testimony, you stated that Mr.

21 Silva and you, that he had a conversational tone when he

22 was talking to you on the phone.

23 A Yes, I did.

24 Q Wasn't yelling at you?

1 A He wasn't.

2 Q In fact, he said he was talking to me like
3 professional, you know, like no incident, nothing.

4 A That's right. I did say that.

5 Q And you just told him to stay out of it, I
6 already talked to your brother, and you have nothing to
7 do with it?

8 A That's right.

9 Q He didn't say anything about this alleged
10 request to meet up at the park.

11 A Well, yes, I did say that, too.

12 Q Are you claiming you said that previously in
13 your prior testimony?

14 A Like I said, I don't remember things like
15 it's been a few months ago, but I been saying that he
16 asked me to meet him in a park the same day that he
17 called me.

18 Q You're saying that today.

19 A I been saying that since the day one.

20 Q When you prev -- are you claiming you said
21 that to the police too, Mr. Manzo?

22 A Yes, I did.

23 Q Really, when police interviewed you're saying
24 that you told them that there was some request by

1 Richard to meet up in the park.

2 A Yes, I did told them.

3 Q And that would be Detective Thomas, right,
4 who interviewed you?

5 A Yes, he told him, too.

6 Q And you're claiming you told him this?

7 A Yes.

8 Q And you're claiming that you told us at the
9 preliminary -- excuse me, at the hearing that we had?

10 A Yes, I did told you guys the same.

11 Q All right. I'm going to show you the
12 transcript of your testimony from that. Do you want to
13 point out to me where in that testimony you say about
14 this meet up at the park?

15 A I guess, yes.

16 MS. RISTENPART: May I approach, your Honor?

17 THE COURT: Yes. So would you --

18 MS. RISTENPART: There is a portion I can
19 direct it to.

20 THE COURT: Is there a portion? If you'll
21 just point that to him and start at his as opposed to
22 start at page 1.

23 MS. RISTENPART: Thank you.

24 THE COURT: Mr. Manzo, take your time to read

1 the questions, before the questions, after so you
2 understand the context. And then when you're done
3 reading just look back at the attorney if you would,
4 please.

5 THE WITNESS: It don't say it.

6 BY MS. RISTENPART:

7 Q I'm sorry, did you just say it doesn't say
8 that?

9 A Yes.

10 MS. RISTENPART: May I approach, your Honor?

11 THE COURT: Yes.

12 BY MS. RISTENPART:

13 Q So you claim you told the police about this
14 conversation with Richard that it ended badly despite
15 the fact that you testified that this was conversational
16 and professional when Richard called you.

17 A Well, at first it did start professionally
18 and calm. But then he got -- he went into angry
19 conversation because he told me, like, let's meet at the
20 park, I'm, like, hell no.

21 Q And now you're testifying today after having
22 met with the prosecutor, I believe you said several
23 times, and now you're adding on this allegation that
24 Richard tried to meet up at the park with you and that

1 the conversation ended badly.

2 A We had nothing -- I'm telling nothing I -- we
3 didn't add nothing, I'm telling nothing but the truth.

4 Q And you also testified that that conversation
5 with Richard actually took place on October 17th of
6 2017. Correct?

7 A Well, I don't remember the dates, but he did
8 -- it happened the same day that his brother shot his
9 self.

10 Q But you testified it was October 17th of
11 2017.

12 A Like I said, I don't remember the dates
13 exactly. I just remember the dates that it happened
14 everything. I remember, like -- I do remember the
15 month, but not exactly the date. I remember it was on a
16 Friday. And that's all I remember. I don't remember
17 the date.

18 Q How many times have you met with the
19 prosecutor?

20 A A few times. I don't keep track.

21 Q And but talked about your testimony?

22 A What do you mean by my testimony?

23 Q Talked about what you are talking about
24 today.

1 A Well, he just told me to, um, tell him what I
2 know. And that's it.

3 MS. RISTENPART: No further questions.

4 THE COURT: Thank you. To the State.

5 REDIRECT EXAMINATION

6 BY MR. LEE:

7 Q Sir, you mentioned that that happened on
8 October 17th, I think, was your first testimony.
9 Correct?

10 A Yes.

11 Q Do you recall even in that hearing saying
12 October 16th or 17th, it was a Friday?

13 A Yes, I do remember.

14 Q That's what you testified to today. Right?

15 A Yes.

16 Q Would it surprise you that Friday, around
17 that time in 2017 was actually the 20th?

18 A Well, like I said, I don't remember exact the
19 date, like the number of the date, but I remember it was
20 on a Friday and it was in October.

21 MR. LEE: Okay. In October. That's all I
22 have. Thank you, your Honor.

23 THE COURT: Any recross on those narrow
24 questions.

1 MS. RISTENPART: No, your Honor, but we'd ask
2 to keep him under subpoena.

3 THE COURT: Right. So you're free to leave
4 the courtroom, but you are subject to recall so the
5 subpoena is still effective. You will be required to
6 return if somebody contacts you, directs you to return.

7 THE WITNESS: All right.

8 THE COURT: Thank you.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: Let's stand as we wait the next
11 witness.

12 MR. LEE: State's next witness is Louise
13 Roberts.

14 DEPUTY COSS: Please step all the way up and
15 face the clerk, please.

16 COURT CLERK: Please raise your right hand.

17 LOUISE ROBERTS,

18 called as a witness herein, being first
19 duly sworn, was examined and testified
20 as follows:

21 COURT CLERK: Thank you.

22 THE COURT: Good morning, Ms. Roberts.

23 THE WITNESS: Hi.

24 DIRECT EXAMINATION

1 BY MR. LEE:

2 Q Could you please give your first and last
3 name and spell your last, if you could?

4 A Louise Roberts. R-o-b-e-r-t-s.

5 THE COURT: I'll need you to speak to the
6 microphone, pull it close to you. Alternative is you
7 just speak very loudly.

8 THE WITNESS: Okay.

9 THE COURT: The choice is yours.

10 THE WITNESS: Louise Roberts, R-o-b-e-r-t-s.

11 BY MR. LEE:

12 Q Thank you. Ms. Roberts, are you currently
13 retired?

14 A Yes, I am.

15 Q Before retirement where did you work?

16 A I worked at the Nevada DMV in Carson City.

17 Q What were your responsibilities there?

18 A I worked as the vehicle registration
19 programming in head of programming. And then for a year
20 and a half I worked as the acting application manager
21 overall of the programmers.

22 Q So help us out. What does that mean?

23 A All the programming that you see done on the
24 web, our DMV application kiosks, anything you do that

1 takes your data in and puts your registration, your
2 title out, your driver's license out, anything like
3 that, NIT.

4 Q And so your employer was specifically the
5 Department of motor vehicle?

6 A Uh-hum.

7 Q Within the state of Nevada?

8 A Yes.

9 Q Did sometime in December of 2017 were you
10 asked to run a query by investigators in your office?

11 A I was asked. I'm not sure of the date off
12 the top of my head.

13 Q Okay. But do you recall running a query?

14 A Yes.

15 Q About certain individuals employees who may
16 have looked up information?

17 A Yes.

18 Q And also can you -- were you able to search
19 backwards such as give a citizen's information or a
20 licensee and see who ran their information?

21 A Correct. We can tell who touches any record
22 as far as the log in and the computer that was used to
23 do so at the DMV. And I regularly run the searches.

24 Q That's something you would have access to?

1 A Yes. Not very many people do.

2 Q Okay. I'm going to show you Exhibit 87.

3 This is not yet admitted so if you don't mind just
4 keeping it to yourself right now but go ahead and look
5 at both pages in that exhibit.

6 And once you've had sufficient time I'll ask
7 if you recognize them.

8 A Yes, I recognize both of them.

9 Q What are these?

10 A These are the reverse search that I do. So
11 if somebody says information was looked at using the DMV
12 data base can you see who touched it. And so I go back,
13 first I search the person or thing that they want so in
14 this case it was people's names, so I looked for any
15 plates, any Social Security numbers, any driver's
16 license, anything that connects that person to our data.
17 And then from that I look at anybody who has looked at
18 that data using our data base.

19 Q Okay. And does Exhibit 87 have a print-out
20 of what you found?

21 A Yes.

22 MR. LEE: Your Honor, I move to admit 87.

23 MS. RISTENPART: I haven't seen that. No
24 objection.

1 THE COURT: 87 admitted, Ms. Clerk.

2 COURT CLERK: Thank you.

3 (Exhibit 87 is admitted into evidence.)

4 BY MR. LEE:

5 Q Ms. Roberts, I'm going to show now, and you
6 can see on your screen or the big screen behind.

7 A Uh-hum.

8 Q 87, there's two pages in this exhibit.
9 Correct?

10 A Correct.

11 Q Starting with page 1, let me just ask you a
12 few specific questions, then I'm going to ask you to
13 explain some things.

14 A Okay.

15 Q First of all, looking at the bottom letters
16 MCTLR, what's that?

17 A That's my ID.

18 Q So that shows you ran this information?

19 A Yes.

20 Q There's a -- what is this when it says
21 reported -- on the bottom right, reported 12-11-17?

22 A That would be the date that I ran the report.
23 And -- oh, sorry. Go ahead.

24 Q Go ahead.

1 A The thing next to it is the query that I use
2 to run it.

3 Q Does it mean search log and transaction?

4 A That's what I would name my searches that I
5 wrote for it.

6 Q Okay. And then towards the top there's a
7 line that says transactions run around the time of the
8 above searches.

9 A Correct. When we look and we find that
10 somebody has pulled up that data, we then say well,
11 maybe they were gonna do a registration renewal or new
12 driver's license or something, so to justify that search
13 what work was done, there was none. Had there been any
14 they would be there.

15 Q Meaning, so say a customer never came into
16 the DMV to have something done that day.

17 A There's nothing from that record that looks
18 like it was done at that time by that person.

19 Q Okay.

20 A There was -- we don't look at everything that
21 was run that day. What we look at is okay, the person
22 -- because you're never supposed to touch a record that
23 you're not using to go in and look something up, you
24 should be doing something to that record, right? That's

1 the general premise and so this person didn't do
2 anything to that record on that day.

3 Q So would you normally expect if you're to run
4 an inquiry that there was a transaction run that day?

5 A Usually, yes. It could also be a reference
6 for something but, generally, yes, there's a transaction
7 run.

8 Q Okay. Ms. Roberts, at this point I'm going
9 to ask a couple questions, and ask if you can describe
10 them for us, all right?

11 A Uh-huh.

12 Q The screen is a touch screen, I'll hand you
13 this pin, it makes it a little easier to write on it so
14 let me just ask a couple of things. Explain this first
15 box up top if you could. And if you need to touch and
16 show something --

17 A Okay.

18 Q -- please do so.

19 A So the first box, now, I've seen that
20 starting with looking has anybody touched that data so
21 this says that J. Macias is the user who logged in at
22 the date and time of 10-26 17:00 hours using military
23 time, 2017, that would be the employee ID 7984 using a
24 computer with the IP address, this -- the IP address

1 tells us what PVT is done on this computer in room one--

2 THE COURT: Hold on. Hold on.

3 THE WITNESS: Sorry. Sorry.

4 THE COURT: You're going too fast.

5 THE WITNESS: Sorry.

6 THE COURT: That's okay. We have a reporter
7 here and you'll just slow your answers a little bit,
8 please.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 THE WITNESS: So the IP address designates
12 that computer number that was logged into that answered
13 it. The plate number is what they looked up so they
14 typed in a search box, give me UNR 21305, the employee's
15 Jessica Macias, and that would pull up the information
16 for that person.

17 BY MR. LEE:

18 Q So, again, you could tell what this employee,
19 J. Macias, looked up and if that person punched in UNR
20 21305?

21 A Correct.

22 Q The more demographic information that appears
23 somewhat in the middle, what is that?

24 A Was -- they would have asked me to look up,

1 most likely, the Arturo Manzo-Reyes and the Luz
2 Linares-Castillo, they give me usually -- go find this
3 person and see everybody that touched that records. So
4 when they give me that, I have to go into the back end
5 of our database and find all the information that
6 relates to that person because you can search by any
7 piece of information. And so I find it all, then I go
8 and I look for when was this last touched within the
9 date ranges that they gave me. And so here it says
10 between 9-1-2017 and 11-17 they said search to see who
11 touched that record.

12 Q Circle those days, would you?

13 A Those dates are here.

14 Q Okay. So when you're talking about they gave
15 me this information you're talking about the individuals
16 at your work who asked you to look up this information?

17 A Normally only the deputy director and the
18 deputy director will ask for these searches they're
19 pretty isolated in time. So in this case it was the
20 deputy director who asked for it, and gave me the date
21 range and what to look for.

22 Q Okay. And then the deputy director provided
23 some of this demographic information?

24 A No, they would only provide the names

1 generally.

2 Q Okay.

3 A Because you don't know all that demographic
4 information.

5 Q Okay. But correct me if I'm wrong, with the
6 names, however, you're able to come up with other
7 information such as a license plate?

8 A Correct.

9 Q UNR 21305?

10 A Correct.

11 Q Now, if J. Macias looks up UNR 21305 what
12 information can J. Macias find out?

13 A Once you've looked it up, find a lot. You
14 can find out all their other vehicles, titles,
15 registrations, addresses, the basic demographic of the
16 person. There's a lot of information that comes back in
17 the search results to make sure that you have the right
18 person.

19 Q So a current registered address?

20 A Uh-hum.

21 Q I'm now going to go to page 2 of Exhibit 87.
22 Let me ask you many of the same questions here, Ms.
23 Roberts. Again at the top, is this an employee
24 identification at the top left in the box?

1 A Correct. It's the log-in user ID is R.
2 Silva, the date that they did this search, the identify
3 of the employee who did the search, the IP of the
4 computer they did the search on, and in this case used a
5 driver's license number. And that's for Richard Silva.

6 Q And Richard Silva is the employee?

7 A Yes. That's same -- it takes it back to that
8 user log-in and employee ID.

9 Q In this case there was a transaction run
10 around the time. Correct?

11 A Yes, there was a temporary movement permit in
12 there and it used vehicle ID, and it -- so what I look
13 at to see it is I take that vehicle ID that's there and
14 I come down below and find that that vehicle is tied to
15 the vehicle, and has been pulled.

16 Q ID that's there, thank you. Just one moment.
17 Again, if the information such as a driver's license
18 number, that's DLM at the top, correct?

19 A Correct.

20 Q If that is looked up by employee Richard
21 Silva, again, a wealth of demographic information is
22 available?

23 A Yes, on the other tabs.

24 Q Now, at the DMV are people supposed to use

1 each terminal that they are logged into?

2 A No.

3 Q Is that the same for really any state
4 employee?

5 A Correct. There's a state computer policy and
6 a DMV computer policy that says you do not use other's
7 log-in.

8 MR. LEE: Thank you. That's all the questions
9 I have.

10 THE COURT: To the defense.

11 MS. RISTENPART: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. RISTENPART:

14 Q Ms. Roberts, I'm going back to Exhibit Number
15 87.

16 A Uh-hum.

17 Q And I just want to be very clear. This
18 information that I'm marking in the red box that says
19 individual's first, last name, date of birth, license
20 plate, VIN numbers, that doesn't come up in the initial
21 search. Correct?

22 A They could search by any of those items to
23 get to those names, so in order to do the reverse
24 search, I have to pull it off and then go into the

1 search log because it reports what was searched by.

2 Q So this -- the red box is what your search
3 vehicle was when you're doing this rigorous search,
4 right?

5 A I pulled that up to do the research.

6 Q Okay. So this exhibit's -- it's a little
7 misleading because it's not exactly what's seen on the
8 computer screen if someone typed in that plate number
9 and what information came up. Right?

10 A Correct. They could -- they could take the
11 search from that plate to other tabs on the same screen.
12 This is screen comes up and got five tabs across, the
13 data like the demographic data, the vehicle registration
14 data, all of that comes after they type in that search
15 item.

16 Q But we don't have any indication that the
17 other tabs were actually even open or clicked on.
18 Right?

19 A No, this doesn't. Again, they are opened or
20 clicked on them.

21 Q And this search particularly was just for a
22 license plate search that occurred on October 26 of
23 2017. Right?

24 A Correct.

1 Q It wasn't for a name. Right?

2 A The name will come up with the vehicle
3 information. Excuse me, with his.

4 Q The search itself was only for license plate
5 number. Right?

6 A Correct. But with the result pop up that
7 plate will be there with its --

8 Q You have the option of search by name.
9 Right?

10 A Yes.

11 Q Okay. Because when we saw on the second page
12 of that exhibit, that it was searched on September 14th
13 of 2017, it looked like?

14 A Uh-hum.

15 Q And it was done by a driver's license number
16 as we pointed out. Right?

17 A Correct.

18 Q And then it does look like there was some
19 transactions that day for that person, driver's license
20 number for a temporary moving permit. Right?

21 A Correct.

22 Q And one was issued for that person. Correct?

23 A I'm just looking at the information. It
24 looks like a completed transaction, the vehicle ID was

1 put in. Correct.

2 Q And again, this information in the red box,
3 that is not, again, what pops up on even this screen,
4 this is the search term that you put on?

5 A The information returned with the driver's
6 license would return with the person, but yes, this is
7 the information that I searched to -- to do the
8 research.

9 Q So I really want to be clear here because,
10 again, this exhibit is a little -- let me just --
11 confusing to me, but if you typed in a driver's license
12 number and searched for that that came back to Luz
13 Linares-Castillo as you saw, you kind of highlighted it
14 here right here (indicating)?

15 A Uh-hum.

16 Q This other information of Arturo Manzo-Reyes
17 would not come up --

18 A Correct.

19 Q -- under this search?

20 A Correct.

21 Q And despite the fact that is office policy to
22 not use each other's terminals at the DMV, it does
23 sometimes happen. Right?

24 A I have never done it. It's a state policy.

1 It's a security policy and everyone signs a thing that
2 says they will not do it. You don't share passwords or
3 log-ins.

4 Q I know you have never done it, Ms. Roberts,
5 but it's happened before.

6 A I don't know of any example where it does.
7 If they do, then they -- be claiming under that policy
8 that they violated it which I think is a crime in the
9 state of Nevada. But I don't know.

10 Q Okay. But again, you were in Carson, you
11 were nowhere near Galetti?

12 A I've been in Galetti multiple times.

13 Q You just said that you worked in Carson.

14 A I worked at the Carson City DMV. I don't
15 work at the counter.

16 Q You were not day-to-day operation at the
17 Galetti DMV, were you?

18 A Correct.

19 MS. RISTENPART: No further questions, your
20 Honor.

21 THE COURT: Is there any redirect examination?

22 MR. LEE: None, your Honor.

23 THE COURT: Thank you. You're free to leave.

24 Ladies and Gentlemen, we're going to take our lunch

1 break at 12:15. We'll stand as we await the State's
2 next witness.

3 (Short pause.)

4 MR. LEE: State's next witness is Detective
5 Josh Watson.

6 COURT CLERK: Please raise your right hand.

7
8 DETECTIVE JOSH WATSON,
9 called as a witness herein, being first
10 duly sworn, was examined and testified
11 as follows:

12
13 COURT CLERK: Thank you.

14 THE COURT: Be seated everyone, please. To
15 the State.

16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q Detective, could you please give us your
19 first and last name?

20 A Josh Watson. W-a-t-s-o-n.

21 Q And what do you do for a living?

22 A I work at the Reno Police Department.

23 Q In what capacity?

24 A I am a detective in the Computer Crimes Unit.

1 Q How long is that -- it's a police officer
2 position, correct?

3 A Yes.

4 Q How long have you been a police officer?

5 A Eighteen years and seven days.

6 Q How about a -- Detective, how about in the
7 computer crimes -- what unit again?

8 A Computer Crimes Unit.

9 Q About how long have you been working in the
10 Computer Crimes Unit?

11 A Full time for four years plus.

12 Q How about your involvement within that?

13 A Approximately ten years.

14 Q Before full-time position in the Computer
15 Crimes Unit were you in a different unit?

16 A Yes, a couple.

17 Q Tell us what those were.

18 A I was in the family crimes, Domestic Violence
19 Unit, as well as the Sex Crimes Child Abuse Unit.

20 Q In the Reno Police Department how many
21 individuals are in your unit full time?

22 A One.

23 Q Just you?

24 A Just me.

1 Q Do you have any training or education that
2 qualifies you to do the work that you do in your unit?

3 A Yes.

4 Q Explain that if you could.

5 A Nearly a thousand hours of various trainings
6 from all different kinds of entities to include the US
7 Secret Service computer school, the NCFI.

8 Q Do you have experience as well in running or
9 investigating computers, cell phones, other media
10 storage and means?

11 A Yes.

12 Q Give us an idea of what experience you have.

13 A Close to 2,000 examinations of computer
14 tablets, cell phones, DVR cemented video games systems,
15 pretty much anything that holds data, as well as cell
16 phone record deciphering and mapping.

17 Q Explain that. What do you mean cell phone
18 record deciphering and mapping?

19 A So they're called CDs, detailed records in
20 various locations associated with certain times or
21 certain transactions with cell phones, plotting those
22 within a map and being able to go through those and
23 understand and present what that data looks like.

24 Q Is one of the phone -- do you use certain

1 programs to help pull or extract data from a cellular
2 telephone?

3 A Yes.

4 Q What's the programs, the one you use?

5 A Cellebrite.

6 Q Tell us about Cellebrite a little.

7 A Cellebrite is a standalone unit. It's its
8 own computer in which you connect a mobile device, not
9 just cell phones and tablets and other potential
10 devices, that extract, pulls the data from that device
11 in different formats or in different levels, and then we
12 use its adjoining program that is Cellebrite physical
13 analyzer to analyze that data.

14 Q And so does it extract all the data from a
15 phone?

16 A I can't say that it extracts all but
17 everything that it can get, yes.

18 Q And then does it organize it?

19 A Yes.

20 Q And in a searchable format?

21 A Yes.

22 Q With regard to Cellebrite have you found that
23 to be reliable in your field since you've been using it?

24 A Yes.

1 Q And is it used throughout the country and by
2 other experts in your field?

3 A Yes.

4 Q Tell us about what if I were to say a tower
5 dump, what does that mean to you?

6 A A tower dump is a term used to describe
7 request for transmissions that have touched or connected
8 to a specific tower during a specific date and time and
9 window.

10 Q And you're talking about a tower. How about
11 a cell phone tower?

12 A A cell phone tower, yes.

13 Q Now, if a person was to get a search warrant
14 to obtain a tower dump information would it have to be
15 pretty narrow, the time? Let me ask it a better way.

16 You'll easily find information would it have
17 to be pretty narrow or if you didn't narrow it by date
18 would it just be a lot of information?

19 A Yes, it would be -- even narrowing it by date
20 in a small window of time it tends to be a lot of
21 information depending on how busy that tower has been.

22 Q So if a tower dumps the information that
23 pulls is one?

24 A Is what?

1 Q What is that information?

2 A It's going to show date and times for various
3 connections of devices, cell phones or other devices
4 that connect a sim card that connect with tower and give
5 a generally connection time, maybe a disconnection time,
6 what kind of connection it was, whether it was data or
7 voice or text or other, et cetera.

8 Q So just to help me understand or help us all
9 understand, if you were to use my cell phone, right, and
10 look up on the internet would I be using a tower --
11 Assuming I'm not on WiFi would I be using a tower?

12 A Yes.

13 Q And which tower would I be using?

14 A Most often the closest tower.

15 Q But not always?

16 A Not always.

17 Q Let me show you a series of exhibits,
18 Detective. I'm going to show you Exhibits 88 through
19 91. If you don't mind taking a look at those and we've
20 -- when you've had enough time, look up to me, please.

21 Have you had sufficient time?

22 A Yes.

23 Q In fact, on all these pages do your initials
24 appear?

1 A Not all of them.

2 Q Take a look at it, at least the majority of
3 them, or at least on each exhibit do your initials
4 appear?

5 A Yes, on each exhibit my initials appear.

6 Q Have you seen these before then?

7 A Yes.

8 Q First of all, were you aware of the tower
9 dump by search warrant through AT&T?

10 A Yes.

11 Q Was this for any connection involving a phone
12 with a telephone number assigned to a Yiovannie Guzman?

13 A I don't recall which -- yes. Yes.

14 Q I'm sorry?

15 A Yes, sir.

16 Q And was it received with a phone number 775
17 313-1807?

18 A Yes.

19 Q And from your investigation and also looking
20 at Mr. Guzman's phone later did you learn that that's
21 his number?

22 A Yes.

23 Q So this first Exhibit 88 shows a lot of data.
24 What is that in general terms?

1 A That's a tower.

2 Q Exhibit 89 is a map with a location drawn on
3 it. What is that in general terms?

4 A That indicates the location of the tower, or
5 a tower.

6 Q Exhibit 90 is now a satellite image, it
7 appears, of the same rough area; is that correct?

8 A Yes.

9 Q Does that indicate the same thing?

10 A Yes, it indicates location of the tower.

11 Q And then lastly, a photograph appears in 91.
12 What is that?

13 A That's the tower that's indicated on the maps
14 previously.

15 MR. LEE: Move to admit, your Honor, 88
16 through 91.

17 MS. RISTENPART: No objection.

18 THE COURT: 88 through 91 are admitted, Ms.
19 Clerk.

20 COURT CLERK: Thank you.

21 (Exhibits 88-91 are admitted into evidence.)

22 BY MR. LEE:

23 Q Showing you Exhibit 89. Tell us what we're
24 looking at here.

1 A That is a Google map of a specific tower
2 location.

3 Q Where is the tower?

4 A It's where that red -- can I do the drawing
5 on this screen?

6 Q Please.

7 A It's in the middle of all those dots I just
8 made.

9 Q If I give you a pen?

10 A Thank you.

11 Q If you hit the bottom left corner and erase
12 that?

13 A (Witness is marking Exhibit 89.)

14 Q Thank you. Do you know from the mark where
15 the area of Parkview and Mazzone is?

16 A Yes.

17 Q Could you please circle that for us, the
18 intersection?

19 A (Witness circling Exhibit 90.)

20 Q Is this the same thing but just now satellite
21 imagery?

22 A Yes.

23 Q And Exhibit 91 is a specific tower that
24 you've been showing?

1 A Yes.

2 Q Now, moving to Exhibit 88, is this just a
3 custodian of record form from AT&T?

4 A Yes.

5 Q Looking at the third page of the exhibit, do
6 your initials appear in the bottom right?

7 A Yes, sir.

8 Q What's the number?

9 A The phone number?

10 Q No. Does it say your initials and 350?

11 A My badge number.

12 Q Thank you. So what does this page tell us?

13 A That Yiovannie Guzman's cell phone connected
14 to that tower, that I indicated on the map.

15 Q At approximately what time?

16 A This is kinda fuzzy, I can't really see.

17 Q If I hand you the exhibit would that be
18 easier?

19 A Yes, sir.

20 A Approximately 4 -- 3:53 a.m. local time on
21 November 2nd.

22 Q These are UTC time?

23 A Yes.

24 Q Tell us what UTC time is.

1 A It stands for Universal Coordinated Time,
2 although I recognize that the UTC is backwards, which is
3 also known as Green -- GMT, Greenwich Mean Time. It's a
4 zero timing in Greenwich, England.

5 Q So you have to take the time that's given on
6 the exhibit and sync it to get to the Pacific tab time?

7 A Yes, in this case subtract seven hours.

8 Q And on this there's a connection there. Is
9 it with Mr. Guzman's phone?

10 A Yes.

11 Q At 3:53 a.m.?

12 A Yes.

13 Q So what does that mean to us with regard to
14 this tower in Exhibit 91?

15 A That his phone was within range of that tower
16 and connected to that tower.

17 Q Did you also extract information from a
18 Samsung telephone with that same phone number we've
19 discussed earlier, the 775 313-1807?

20 A Yes.

21 Q Did you use Cellebrite to do so?

22 A Yes.

23 Q Do you know how the phone came into your
24 possession?

1 A A detective asked me to examine it.

2 Q Do you recall if it was by consent?

3 A Yes, it was.

4 Q Of Mr. Guzman?

5 A Yes. Or no. Which phone are we talking
6 about?

7 Q I'm talking about Yiovannie Guzman.

8 A Yes. Sorry.

9 Q So by consent, meaning you give you
10 permission to look at it?

11 A Yes.

12 Q And extract?

13 A Yes.

14 Q I'm going to show you Exhibit 92 and 93. And
15 take a look at those. Take as much as time as you need,
16 look up when you're done.

17 Have you had sufficient time?

18 A Yes.

19 Q I'm going to start with Exhibit 92. What are
20 we looking at in that exhibit, in general terms?

21 A In general terms this is a portion of a
22 extraction report from Mr. Guzman's phone.

23 Q And a portion. What kind of portion?

24 A This portion contains a cover sheet

1 indicating extracted information numbers, as well as a
2 section of SMS or text messages, as well as a section
3 from the call log.

4 Q And those sections or portions are arranged
5 by date?

6 A Yes.

7 Q And does it appear -- only pulled a certain
8 date range?

9 A Yes.

10 Q And is that what -- is that part of what you
11 pulled from Mr. Yiovannie Guzman?

12 A Yes.

13 MR. LEE: I move to admit.

14 MS. RISTENPART: Voir dire?

15 THE COURT: Yes. Brief voir dire.

16 VOIR DIRE

17 BY MS. RISTENPART:

18 Q Did you actually create those documents?

19 A No.

20 Q So, in fact, you just download dump of cell
21 phone, correct?

22 A That's one of the things I do, yes.

23 Q Right. And then someone else can go in and
24 selectively choose what to extract from what you

1 downloaded?

2 A What to create a report with, yes.

3 Q And that's what generates that report, 92 and
4 93?

5 A Yes.

6 Q But you did not generate those reports?

7 A No.

8 MS. RISTENPART: Lack of foundation.

9 THE COURT: Supplement foundation?

10 MR. LEE: Sure.

11 BY MR. LEE:

12 Q Let me hand you again 92. All the
13 information that you found in Exhibit 92, does that come
14 from Yiovannie Guzman's phone?

15 A Yes.

16 Q Did you check these phones or did you learn
17 that these do, in fact, on all the pages that follow the
18 initial page come from Yiovannie Guzman's phone?

19 A Yes.

20 Q The collection of cell phone to SMS messages
21 are in chronological order?

22 A Yes.

23 Q And do they contain the cell phone messages
24 from the time parameters within that?

1 A Yes.

2 Q Was there anything deleted from that or
3 omitted from within those time parameters?

4 A I don't know.

5 Q You did initial these. Correct?

6 A Yes.

7 Q That means you've looked over them?

8 A Yes.

9 Q You reviewed them?

10 A Yes.

11 Q You reviewed them with me, actually.
12 Correct?

13 A Yes.

14 Q And you -- by initialing them what does that
15 mean to you?

16 A That these records are true and accurate to
17 information taken from the extraction I did on Mr.
18 Guzman's phone.

19 Q And then that entire extraction is provided
20 in discovery. Correct?

21 A Yes.

22 MR. LEE: Thank you.

23 THE COURT: The objection is overruled. 92 is
24 admitted.

1 COURT CLERK: Thank you.

2 (Exhibit 92 is admitted into evidence.)

3 BY MR. LEE:

4 Q First of all, Exhibit 92, the cover page, I'm
5 zeroing in on some information, it's a little fuzzy,
6 Detective, but can you see it okay?

7 A Yes.

8 Q Do you see the phone number that is
9 associated with this Samsung telephone that you have
10 ran?

11 A Yes.

12 Q Could you circle that for us?

13 A Oh, man. I'll just point at it a couple
14 times.

15 Q So that's the 775 313-1807?

16 A Yes, sir.

17 Q Okay. And then there's information at the
18 bottom that says Yiovannie, and then examiner named
19 Watson. Is that information you enter?

20 A Yes.

21 Q And what's the phone date and time that's
22 just above that?

23 A 11-16-2017 at 9:57:31 p.m.

24 Q What does that mean?

1 A That's the time that was indicated on the
2 actual device when I examined it.

3 Q Looking at page 2 of the exhibit again, these
4 are your initials at the top right corner?

5 A Yes. And badge number.

6 Q Now, explain to us if you could how are these
7 messages arranged?

8 A There's the folder that they originate from
9 so where it was extracted from, whether it was an inbox,
10 so a received message with a sent box, a sent message,
11 the party to or from in which it was sent, as well as
12 the direction indicated, the time stamp for that message
13 taken from the phone, presented in local time, and as I
14 said, UTC minus seven hours. The status, whether it was
15 read or sent, the message itself which is the text
16 within that SMS or text message, and then what source of
17 the extraction did it come from prior to I mentioned
18 multiple levels of extractions and this came from
19 logical extraction.

20 Q So looking at our first row, where's the
21 content of the text message?

22 A On the far right.

23 Q Is this it? I'm circling where it says
24 "Where you at, bro?"

1 A Yes.

2 Q Now I see under the party area it says from
3 -- it gives a number and then a name. Where does that
4 pull from?

5 A That pulls from the contacts list within the
6 phone, so the way that the software deciphers this
7 information when it's extracted from the device it will
8 use if I find a number, it's 775 771-7590 is assigned to
9 a contact name, it will match those two up, say this
10 message came from this person within the context list on
11 the device.

12 Q So in the case where it says Willow cousin,
13 that's what some person had entered in as a name
14 associated with that number, 771-7590?

15 A Yes.

16 Q Let me just ask you about these messages in
17 order. Our first message, comes in at 4:28:15 a.m.

18 A Yes, sir.

19 Q On November 1st?

20 A Yes.

21 Q And it's "Where you at, bro?"

22 A Correct.

23 Q Does that mean that is coming from that
24 number from Mr. Yiovannie Guzman's phone associated with

1 Willow cousin?

2 A Yes.

3 Q And then we have SMS silence until 5:54 on
4 our second call. Correct?

5 A Yes.

6 Q Now, this is a message from Mr. Yiovannie
7 Guzman to his contact Willow cousin, right?

8 A Yes.

9 Q "Just woke up"; is that correct?

10 A Yes.

11 Q Right after the same direction from Mr.
12 Yiovannie Guzman to his cousin, what does that say?

13 A "Alarms doesn't wake me up."

14 Q And our fourth row, what does Willow cousin
15 state back?

16 A "Too late, bro."

17 Q And shortly thereafter, a minute thereafter,
18 row number five also from Willow cousin?

19 A Yes.

20 Q What does that say?

21 A "WTF nigga, you should have said so and I
22 would have had you stay with me until it's time."

23 Q Number six from cous -- or to cousin Willow
24 from Yiovannie Guzman states I did -- "I did you set,

1 set an alarm?"

2 A Yes.

3 Q And then inbox from cousin Willow on row
4 seven, "No nigga, I've been awake this whole time".
5 Correct?

6 A Correct.

7 Q Then from Yiovannie Guzman to cousin Willow,
8 row eight, "Today I'll head over, then you can just wake
9 me up." Correct?

10 A Correct.

11 Q Then we've got a little period you have time
12 from 9:23 a.m. until 5:08 p.m. between columns 8 and 9,
13 but the messages from cousin Willow to Yiovannie Guzman,
14 what does it say?

15 A "What time you out"?

16 Q And the response?

17 A It was response --

18 Q From row ten?

19 A "Six but I gotta help my dad unload some shit
20 to the casa after important day."

21 Q Let's move to the next row from Yiovannie
22 Guzman, what does the text read?

23 A "Don't forget to sleep over."

24 Q And row 13 have response?

1 A "FS. I'll head over around ten or some."

2 Q And then the response to that on row 14 from
3 Willow cousin?

4 A "If you can earlier that be better like at
5 8:30."

6 THE COURT: And with that, Ladies and
7 Gentlemen, we'll take our noon recess. Please do not
8 discuss this case amongst yourselves. Please do not
9 form or express any opinion about this matter until it's
10 been submitted to you.

11 We'll see back here at 1:45, that's almost an
12 hour and a half.

13 We'll stand for our jury.

14 (Jury recesses for lunch break.)

15 THE COURT Counsel, we'll need some time.

16 You indicated the State may close tomorrow.
17 Is that still your --

18 MR. LEE: Meaning Thursday, right?

19 THE COURT: What's today, Wednesday?

20 MR. LEE: Yes.

21 THE COURT: Yes, meaning tomorrow.

22 MR. LEE: I think that still can be done.
23 We're on track for that.

24 THE COURT: Well, tomorrow's a long day. You

1 said -- I'm not trying to trick you or put you in a box,
2 I'm just trying to get a sense because yesterday you
3 surprised me by saying we could be done Thursday
4 morning. Are you still Thursday morning?

5 MR. LEE: I would have to look at things but,
6 again, we're getting close.

7 THE COURT: All right.

8 MR. LEE: We're getting real close but I
9 anticipate certainly tomorrow I can have a little better
10 answer for you after lunch.

11 THE COURT: So today is the day where we
12 should meet outside of the jury's presence in the event
13 that there's any housekeeping or video work or any of
14 that to be done in the evening. So let's plan on
15 sending this jury home probably in the neighborhood of
16 4:15.

17 MR. LEE: Okay.

18 THE COURT: And counsel, we'll spend some time
19 together after that.

20 MS. RISTENPART: For the issue in regards to
21 his filing today?

22 THE COURT: Yes, among other things, to
23 include instructions. I'm starting to read
24 instructions. Now, we won't settle them but might have

1 some things to ask about instructions tomorrow.

2 MS. RISTENPART: I understood, your Honor,
3 I'll just go back and try to prepare for but I don't
4 know if I'll be prepared for argument on the motion this
5 afternoon just to let you know.

6 THE COURT: I'm going to plan on sending the
7 jury home at 4:15.

8 MR. LEE: Thank you.

9 THE COURT: All right. Let me know if that
10 changes dramatically in a way that's not right. All
11 right. We'll see you at 1:45.

12 (Lunch break.)

13 THE COURT: The entire jury is present. The
14 State may continue.

15 MR. LEE: Thank you.

16 BY MR. LEE:

17 Q Detective, where we had dropped off was
18 looking at Exhibit 92, we were talking about a text, an
19 SMS message conversation between Yiovannie Guzman and
20 Willow cousin. Does that sound right?

21 A Yes.

22 Q I think we'd gotten to page 2, text message
23 15.

24 A That's correct.

1 Q Now, these SMS messages, two pages worth and
2 23 messages?

3 A Yes.

4 Q If you want to -- if you're gonna look at
5 something and narrow it down to 23 messages such as
6 this, how do you get to that?

7 A In this case, as in most, there's a filter
8 function, or a search function within the program so
9 when you have all your data up, obviously you rarely
10 want to see absolutely everything, especially if
11 somebody has thousands and thousands of messages, so you
12 can narrow it by either entering a phone number, which I
13 did in this case, or the person's name, contact name, or
14 a date range, and then narrow those things down.

15 Q So on these particular ones, the 23 SMS
16 messages, was it narrowed by phone number?

17 A Yes.

18 Q And by date range?

19 A Yes.

20 Q And so you're not saying that these are all
21 the text messages involving Willow cousin and Yiovannie
22 Guzman.

23 A No, I'm not saying that.

24 Q Well, are these all the text messages within

1 these date ranges from the first row to the 23rd row?

2 A Yes.

3 Q So I'm going to start us back, just for

4 reference, on row number 9 there is some discussion by

5 text, and I believe you already read these in "About

6 what time you out?" Down to 10, "I gotta help my dad."

7 Row 12, Willow says "Don't forget to sleep over." The

8 response "For sure. I'll head over around 10 or

9 something." And Willow asks "Come over earlier, 8:30."

10 Right?

11 A Yes.

12 Q Okay. So that's where we are. Picking up at

13 row 15 now, if you can narrate that for us, would you?

14 A "FS cousin with parents."

15 Q That -- that means Yiovannie sent it.

16 A Yes.

17 Q Okay. Received from Willow cousin is "K".

18 Right?

19 A Correct.

20 Q Row 17, does WYA mean anything to you?

21 A Generally it means where ya at?

22 Q And then that is -- what direction is that

23 coming from?

24 A That was outgoing message followed by an

1 incoming from Willow cousin saying "My house".

2 Q Okay. And what's the next outgoing message
3 say?

4 A It says "FS, OTW in a bit. Who's awake?"

5 Q How about row 20, what is cousin Willow's
6 response?

7 A "Everyone. My parents should leave to the
8 other house, like, in an hour or so, though."

9 Q The question comes on row 21 "What other
10 house?" Correct?

11 A Yes.

12 Q And Willow cousin's answer was what?

13 A "Yeah, they sleep over there."

14 Q And then the last from Yiovannie Guzman "Okay
15 FS." Correct?

16 A Correct.

17 Q With the number of text messages that you
18 have seen in your capacity as a detective do you have
19 any indication of what FS means?

20 A For sure.

21 Q Now I'm turning to page 4 of Exhibit 92.
22 Now, this is labeled call log. Correct?

23 A Correct.

24 Q What is this then?

1 A This is a listed call log in reverse
2 chronological order between those two numbers within a
3 certain time period.

4 Q That's how you search for these?

5 A Yes.

6 Q So correct me if I'm wrong, Detective, you're
7 not just picking a call here and trying to marry up the
8 time picking a call there you can actually filter and
9 arranges this for you.

10 A Yes.

11 Q And then these are all the phone calls to or
12 from cousin Willow and Yiovannie Guzman. Correct?

13 A Yes, within that time frame.

14 Q Let me just point a few of them out. Row 11,
15 this is a call -- if it's outgoing does that mean it's a
16 call from Yiovannie Guzman to cousin Willow?

17 A Yes.

18 Q And that's Halloween night, 11:00?

19 A Yes.

20 Q And then let me draw your attention to row 7
21 and row 8. Correct me if I'm wrong again, these are
22 missed calls so calls from cousin Willow?

23 A Yes.

24 Q To Yiovannie Guzman.

1 A Correct.

2 Q On November 1st, in the 4:00 a.m. hour?

3 A Yes.

4 Q Now, does Cellebrite, is it able to pick up
5 deleted messages?

6 A Sometimes.

7 Q Explain that if you could.

8 A Depending on the operating system of the
9 phone and the version of the operating system on the
10 phone, and where those messages reside within that
11 version of that operating system in the databases, some
12 phones you're able to recover deleted text messages, and
13 some phones you're not.

14 Q Is it by phone or even within the same phone
15 are there times you can and times you can't?

16 A Necessarily not every -- so let's take, for
17 example, a phone that you could potential recover text
18 messages from, deleted text messages. There's no
19 guarantee because of how the operating system works that
20 you will recover all the deleted text message. You may
21 get a portion of them. You may get parts of certain
22 text messages, maybe not even the entire message, so
23 because there's a finite amount of room on that phone or
24 that device, as with a computer or another -- a tablet

1 or anything else, the system is constantly reusing
2 chunks of data. So does that answer your question?

3 Q It does. So let me ask you a hypothetical
4 question. If I text you would -- and none of us delete
5 anything, ideally or in theory would Cellebrite be able
6 to pull my phone and show the text to you?

7 A Yes.

8 Q And if Cellebrite was able to pull, extract
9 from your phone would it show incoming text from me?

10 A Yes.

11 Q So looking at page 2 of Exhibit 92. These
12 text messages that appear on Yiovannie Guzman's phone,
13 if you were to obtain and extract information from the
14 phone associated with the number 775 771-7590, what
15 would you expect to find?

16 A I would expect to find these text messages if
17 they had not been deleted.

18 Q I'm showing you now Exhibit 93. I think
19 you've already looked at that but please take a look
20 again.

21 A Yes, I have looked at this.

22 Q What is that, in general terms?

23 A This is a logical extraction report portion
24 from an Apple iPhone belonging to Richard Silva.

1 Q With that same number, 771-7590?

2 A Yes.

3 MR. LEE: Move to admit 93?

4 MS. RISTENPART: I haven't seen it.

5 MR. LEE: I showed it to you before.

6 MS. RISTENPART: No objection.

7 THE COURT: 93 is admitted, Ms. Clerk.

8 COURT CLERK: Thank you.

9 (Exhibit 93 is admitted into evidence.)

10 BY MR. LEE:

11 Q So is this -- what do you call this page?

12 A That's just the cover summary page.

13 Q Just regarding the phone?

14 A Yes.

15 Q What kind of phone did Mr. Silva have?

16 A An Apple iPhone.

17 Q Now, normally can you just go as a police

18 officer down the street, grab anyone's phone and extract

19 information from it?

20 A No.

21 Q There's laws against that, right?

22 A Yes.

23 Q Do you recall how this phone came into your

24 possession?

1 A From a detective.

2 Q Was it by a search warrant?

3 A No.

4 Q It was by consent?

5 A Yes.

6 Q Let's look at page 2. What can you tell us

7 about timeline?

8 A Timeline is -- it's a running log, if you

9 would, of the information on the device in chronological

10 order so exactly that, a timeline of all the different

11 things that are on that device from a start date until

12 the day I examine it.

13 Q So SMS messages?

14 A Yes.

15 Q Phone calls?

16 A Yes.

17 Q And even other data?

18 A All kinds of other data.

19 Q Now, in this case how did you filter?

20 A This was for phone calls between Yiovannie's

21 phone and Silva's phone.

22 Q Did you also look for SMS messages?

23 A I did.

24 Q Did you find any?

1 A No.

2 Q -- during this frame. Is this time frame
3 coincide with the time frame from Yiovannie Guzman's
4 phone?

5 A Yes.

6 Q Did that surprise you to not find those?

7 A Um, I would expect to have found them based
8 on the fact that I found them on the other phone.

9 Q Okay. But here they're not on Richard
10 Silva's phone.

11 A Correct.

12 Q However, the four phone calls, the call in
13 from the call log that appear, do those match up with
14 Yiovannie Guzman's phone?

15 A Yes.

16 Q So what can you say about -- about the fact
17 that there are missing SMS messages from the phone
18 belonging to Richard Silva?

19 A They were deleted.

20 MS. RISTENPART: Objection, speculation.

21 THE COURT: Overruled.

22 BY MR. LEE:

23 Q Could you answer it again?

24 A They were deleted.

1 MR. LEE: Thank you. That's all I have.

2 THE COURT: To the defense.

3 COURT CLERK: Exhibit 131 marked for
4 identification.

5 (Exhibit 131 is marked for identification.)

6 CROSS-EXAMINATION

7 BY MS. RISTENPART:

8 Q Detective, you were just asked a question in
9 regards to the call log on November 1st, 2017, Exhibit
10 93, compared to a call log for Yiovannie's phone, and
11 the State asked you did they match up. Right?

12 A Yes.

13 Q And you said yes.

14 A Yes.

15 Q Showing Exhibit Number 93. And this is from
16 what you reported to be Richard Silva's phone, correct?

17 A Yes.

18 Q And you see four calls, two outgoing, two
19 incoming. Right?

20 A Yes.

21 Q From all November 1st, 2017.

22 A Yes.

23 Q In Exhibit 92, which was purported to come
24 from Yiovannie's call logs, there's only three calls on

1 this generated report, on November 1st of 2017.

2 A Correct.

3 Q And again, on this report, Exhibit Number 92,
4 as you testified earlier, that you didn't actually make
5 this report, correct?

6 A I worked with -- well, that's not the report
7 that I submitted to the District Attorney.

8 Q You don't know, in fact, who made this
9 report, right?

10 A No, I do.

11 Q And these reports, as opposed to Cellebrite
12 program, these reports can be, well, modified. Right?

13 A It's a selected portion, so yes. It's not
14 the entirety of the extraction if that's what you're
15 asking.

16 Q Because if we're looking at page 1 of 92.

17 A Uh-hum.

18 Q You can see this is a screen shot which is
19 actually what opens as soon as you open a Cellebrite
20 program. Right?

21 A Yes.

22 Q And kind of zooming in over here
23 (indicating), there are several different tabs that you
24 can actually click on to that open up different things

1 to look at like, for example, text messages, right?

2 A Yes.

3 Q Or you could look up and look through images,
4 right?

5 A Yes and no. That's -- I see where you're
6 going. Yes, you can, okay.

7 Q And I know this program's a little bit more
8 complex than I'm simplifying, right, but there's a lot
9 you can actually do with Cellebrite.

10 A Yes, ma'am.

11 Q And when you are going through Cellebrite
12 after you click open, let's say, on one of those tabs or
13 you can do your own search and filter, it opens up its
14 own separate tab with that information, and then you can
15 further filter or search within that topic or tab,
16 right?

17 A Yes.

18 Q So let's just say I clicked on -- I don't
19 know. Call log, right? Which is what we were just
20 talking about.

21 A Yes.

22 Q And it would be a new tab, and then I wanted
23 to filter it to, let's say, November 1st of 2017.

24 Right?

1 A Okay.

2 Q And then I want to filter it further by doing
3 only certain phone calls to a certain person on that
4 day, right?

5 A Okay.

6 Q Then it opens up a new tab where thereupon, I
7 can actually go in and manipulate it and click a check
8 box on or off whatever I want to export into a PDF,
9 generate a report which is Exhibit Number 92. Right?

10 A Yes.

11 Q So I can choose, or whoever's making this
12 report can choose what you leave in and what you take
13 out.

14 A Correct.

15 Q Which, Detective, you can agree with me would
16 change possibly what someone was seeing in generating a
17 report, right, which was actually on the Cellebrite?

18 A It's a representation of a portion of the
19 data from the entirety of the data.

20 Q And I could put hypothetically omit text
21 messages with this method, right, if I just didn't click
22 on that one?

23 A Yes. Hypothetically you could.

24 MS. RISTENPART: With the Court's permission

1 I'd ask that Detective Watson be allowed to use the
2 laptop for some demonstrative evidence?

3 THE COURT: How do you anticipate you will use
4 it? Is he going to join you in the well of the court?

5 MS. RISTENPART: Correct, your Honor.

6 THE COURT: Let's begin by that, yes, that is
7 approved so far. If you'll join counsel in the well of
8 the court, Mr. Lee, you may also stand by and observe,
9 if you like. Ms. Ristenpart.

10 MS. RISTENPART: Thank you, your Honor.

11 THE COURT: Let me know what's going on as it
12 unfolds, please.

13 MS. RISTENPART: I'm just trying to switch off
14 our -- this is just a document screen, okay.

15 Can I get Exhibit Number 131 for demonstrative
16 purposes?

17 THE COURT: Yes. Oh, you do have it.

18 MS. RISTENPART: I do, yes.

19 THE COURT: Go right ahead.

20 MS. RISTENPART: And just for the record, I'm
21 not displaying this to the jury at this time. I'm just
22 asking that Detective Watson be allowed to use this with
23 the computer.

24 BY MS. RISTENPART:

1 Q What did you see as soon as the thumb drive
2 for Exhibit 11 popped up?

3 A I see two folders.

4 Q And how's the first one labeled?

5 A 17-23530, Bernard Silva-Guzman.

6 Q And the second one?

7 A Richard Silva report 2017-11-17.12-53-43.

8 Q And if I click into the folder on Bernard
9 Silva-Guzman, what do you see?

10 A Three folders.

11 Q If I click into the one labeled report, what
12 do you see?

13 A I see a folder containing a report, or
14 labeled as containing a report.

15 Q And if I click that one open?

16 A It's a phone, cell phone model report.

17 Q What is that?

18 A SM-G935B Galaxy S7H.

19 Q And Detective, you were the one who actually
20 did the Cellebrite of Bernard Silva's cell phone.
21 Correct?

22 A Yes.

23 Q And then if I click that one open, what do I
24 see next?

1 A Um, several folders including data within the
2 report, as well as a PDF report labeled, and then the
3 UFED reader program which is an application used to look
4 at the data extracted by Cellebrite in the report.

5 Q And what is the UFED reader?

6 A So UFED stands for universal forensic
7 extraction device, and the UFED reader is what's used by
8 nonexaminers to look at data similar to what the jury
9 sees on the screen.

10 Q And with UFED reader it's a proprietary
11 program meaning I can't go in and change anything,
12 right?

13 A Right, you can't reextract or.

14 Q Once it's extracted it's what it is and
15 that's sent over, right?

16 A Yes.

17 Q If you click open UFED reader.

18 A It will take a minute.

19 Q It will. Because they all take a minute to
20 open, right?

21 A Yeah, it's a very large application program.

22 Q You see a program opening called Cellebrite
23 reader?

24 Takes longer than a minute.

1 A It's a slower computer.

2 Q And it's still opening?

3 A Yes. Now it's processing the data.

4 MS. RISTENPART: With the Court's permission
5 I'd like to publish this image which does not have any
6 -- it just has the kind of reader program without any
7 other information on it.

8 THE COURT: Yes.

9 MS. RISTENPART: Thank you.

10 BY MS. RISTENPART:

11 Q So, Detective, as we're looking at -- on the
12 screen here we're kind of looking at a smaller version
13 of what we looked at in Exhibit Number 92, you can see
14 on the side search topics we had talked about, right?

15 A Yes.

16 Q And also you can see that it is very slowly
17 loading, right?

18 A Yes.

19 Q Okay. I'm taking down the image. Thank you.

20 Now, a clock or something called -- said the
21 device times was detected at UTC minus 0.8.08, so minus
22 eight hours?

23 A Minus eight hours, yes.

24 Q Los Angeles.

1 A Yes.

2 Q It adjusts time stamps to the device's time
3 zone.

4 A Yes.

5 Q And what does that do?

6 A Is if it -- so when the extraction is done
7 everything is in UTC time, because this is a
8 globally-used program, and this adjusts the time stamps
9 on the time-stamped files to a local time.

10 Q And you always click yes?

11 A Yes.

12 Q Now, what popped up after we clicked yes?

13 A The extraction summary which is essentially
14 what was -- is on the screen there.

15 Q That would be Exhibit Number 92.

16 A I mean, they're slightly different but.

17 MS. RISTENPART: With permission to publish
18 just the extraction screen of Exhibit Number 131, your
19 Honor?

20 THE COURT: Yes.

21 BY MS. RISTENPART:

22 Q So we're looking at the extraction screen for
23 Bernard Silva's cell phone. You can see the same search
24 topics and also, of course, you can also see also that

1 it is Bernard Silva's cell phone because why?

2 A Sorry?

3 Q Do you look at the phone number? What do you
4 look at?

5 A Oh, to know it's -- may I?

6 Q I'll turn it on for you.

7 A So I'm not familiar with the name Bernard.

8 Q Bernard's the victim's husband.

9 A Okay. So this isn't Yiovannie's.

10 Q No.

11 A Okay. So --

12 Q So it is his also, right?

13 A Right. I didn't do this one, though. So
14 what's your question again? I'm sorry. How I would
15 know whose phone it is?

16 Q Would you be able to find the phone number --

17 A Yes.

18 Q -- of who it is.

19 A It's the MSISDN.

20 Q Okay. And what's that phone number that
21 you're seeing?

22 A That phone number is 775 544-6587.

23 Q Now, Detective, because we can search and
24 filter, can you search this phone for text messages, or

1 SMS messages we call it, from let's just say October
2 24th of 2017 to November 1st of 2017?

3 A Yes, I can.

4 MS. RISTENPART: With the Court's permission?

5 THE COURT: Yes. Well, let me hear from the
6 State.

7 MR. LEE: Could I voir dire just two
8 questions?

9 THE COURT: Yes.

10 VOIR DIRE

11 BY MR. LEE:

12 Q Did you run this phone?

13 A No.

14 Q You didn't run the extraction on this phone?

15 A No, sir.

16 Q Have you ever seen this phone?

17 A Not that I recall.

18 Q Have you seen this extraction report?

19 A Not that I recall.

20 MR. LEE: At this point there's lack of
21 foundation, your Honor.

22 THE COURT: And is it your intention to have
23 this witness run the report right now in open court?

24 MS. RISTENPART: On two limited -- limited

1 things.

2 THE COURT: Overruled. You may continue.

3 THE WITNESS: When I get to the section I'm
4 going to need the dates again.

5 BY MS. RISTENPART:

6 Q Yes. So just walking it through for the
7 jury, Detective, you just clicked on SMS messages?

8 A You want me to just verbalize what I'm doing?

9 Q Sure, go for it.

10 A Okay. So in the extraction summary screen you
11 had seen before, there were all the little different
12 breakdowns of what was where, SMS messages, MMS, call
13 log et cetera, so I double-clicked and opened the SMS
14 messages which is the text message --

15 THE COURT: Hold on. Slow down, please.

16 THE WITNESS: Sorry. Which is the text
17 message portion commonly referred to. Then once that
18 has populated indicating the totality of the text
19 messages on the device, I opened a time-stamp sorting
20 filter, and I'm going to enter dates --

21 BY MS. RISTENPART:

22 Q October 24th of 2017, to November 1st of
23 2017.

24 A So what I've selected in the filter is the

1 from date of 10-24-2017 at 12 a.m., to -- or the to date
2 of 11-1-2017 at 11:59:59 seconds p.m. And I'm going to
3 click okay. And it will sort and only show the messages
4 in that time frame.

5 Q Okay. And that also actually gives you a
6 number for the amount of messages in time frame, right?

7 A Yes.

8 Q And what is that number?

9 A One thousand nineteen.

10 Q Now, within this tab as we talked about you
11 can further search to only look for a certain phone
12 number or even a contact name, correct?

13 A Correct. That's called the table search.

14 Q So if you typed in Lucy, L-u-c-y space x
15 space wife, w-i-f-e with an asterisk, would that filter
16 through text messages during this time frame to and from
17 that person?

18 A Yes, if that person's contact name was within
19 this phone and associated with the phone number in
20 question.

21 Q See if you type in Lucy ex-wife asterisk.

22 A Is it one word ex-wife, two words?

23 Q It's a space x space wife asterisk.

24 A And you want the asterisk on it.

1 Q Yeah. If you search by a phone number is
2 that maybe better than with the asterisk?

3 A The asterisk --

4 Q Doesn't make sense?

5 A -- generally indicates a wild card.

6 Q Okay. So let's do by phone number 775
7 276-7331.

8 A 775 276-7331?

9 Q Correct. And so of that when you filtered
10 through how many text messages were between that time
11 frame from and to Bernard's phone from that phone
12 number?

13 A Five hundred fifty-four.

14 Q Now you can filter even further through that,
15 and you can only look for text messages that are
16 outgoing, correct?

17 A Yes.

18 Q Meaning text messages that Bernard or this
19 phone is sent to that phone number.

20 A Correct.

21 Q During that time frame.

22 A Yes.

23 Q And how would you do that?

24 A Want me to explain how I do it for or just

1 how doing it?

2 Q Explain how you're doing it.

3 A There's another -- each one of these has a
4 column which denote, say, the number, whether it was
5 ingoing, outgoing, the time stamp, whether it was
6 delivered, read, missed, et cetera, and you can filter
7 each one of those columns out. And it can sort just --
8 it can sort everything, and in this case it can sort
9 just incoming and just outgoing. And you wanted which?

10 Q Just outgoing. And what's the number of just
11 outgoing messages from this Bernard Guzman's cell phone
12 to the phone number associated with Lucy ex-wife between
13 10-24 to November 1st?

14 A Three hundred twenty-five.

15 Q Can you do the same with a call log?

16 A Yes.

17 Q If you went back and did the similar for a
18 call log for phone calls from Bernard's cell phone to
19 Lucy x wife?

20 A Would you like me to do that?

21 Q Sure. For the same time frame, 10-24 to
22 November 1st.

23 A You want to go 10-25 this time? Or 10-24.

24 Q We'll do 10-24 to keep it the same.

1 A Okay.

2 Q How many calls did you see?

3 A A hundred and forty.

4 Q And how many calls were outgoing meaning that

5 Bernard called that phone number associated with ex-wife

6 Lucy?

7 A Eighty-two.

8 Q You can also search in that call log as we

9 saw on timeline calls that Bernard may have made on --

10 or did make on November 2nd of 2017, correct?

11 A I could search for that date and time, yes.

12 Q If you want to go ahead and search for that?

13 And just for calls.

14 A So just within the call log?

15 Q Sure.

16 A I'm sorry, what day?

17 Q November 2nd of 2017. And is there a call

18 pursuant to that report at 10:27:45 a.m.?

19 A Yes.

20 Q And is that call to a phone number that is

21 labeled my lawyer?

22 A Yes.

23 Q And if you just do a search for my lawyer?

24 A Within the call log or in general?

1 Q Within the call logs. And again, brings up a
2 call from November 2nd of 2017, correct?

3 A Yes.

4 Q And lastly, you are able to search images.
5 Right?

6 A Yes.

7 Q I'm just going to direct you to search for
8 image number 150.

9 A That's going to be an underscore?

10 Q No.

11 A 150?

12 Q 910748.

13 A Sorry. 150910.

14 Q 748-9136. And with all images -- well, most
15 images there is associated metadata as to the time and
16 date that it was taken. Right?

17 A Oftentimes, yes.

18 Q Is there a metadata associated with this
19 image?

20 A Yes.

21 Q And what's the date and time?

22 A 10-27-2017 at 12:31:28 seconds p.m. UTC.

23 Q And what you're looking on that image picture
24 and showing you what is going to be marked as Exhibit

1 Number 132?

2 COURT CLERK: Exhibit 132 marked for
3 identification.

4 (Exhibit 132 is marked for identification.)

5 BY MS. RISTENPART:

6 Q And that metadata that you looked at for the
7 time and date, is it accurately reflect what is in
8 Exhibit 132?

9 A Yes.

10 MS. RISTENPART: Move for admission, your
11 Honor.

12 THE COURT: Mr. Lee, Exhibit 132.

13 MR. LEE: I'd love to see it.

14 No objection.

15 THE COURT: 132 is admitted.

16 COURT CLERK: Thank you.

17 (Exhibit 132 is admitted into evidence.)

18 BY MS. RISTENPART:

19 Q And just so we can see, on 131 for
20 demonstrative purposes, that is the picture that we were
21 talking about, correct?

22 A Yes.

23 Q That's also depicted in 132?

24 A Yes.

1 Q In fact, the screen you can actually zoom in,
2 correct?

3 A Yes.

4 MS. RISTENPART: No further questions. Thank
5 you.

6 THE COURT: All right. If you'll return to
7 your seat, please.

8 THE WITNESS: Yes, sir.

9 THE COURT: To the State, do you have any
10 redirect?

11 MR. LEE: No, I do not.

12 THE COURT: All right. You're free to step
13 down and leave the courtroom.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Ladies and Gentlemen, if you'll
16 all stand for just a moment, please, and rest. I'll be
17 back in 30 seconds.

18 (Short pause.)

19 THE COURT: To the State your next witness,
20 please.

21 MR. LEE: Judge, with regard to the next
22 witness could we ask for a side bar?

23 THE COURT: Yes. Continue to be at ease,
24 please.

1 (Sidebar not reported.)

2 THE COURT: Ladies and Gentlemen, at this time
3 we're going to take a recess, it will be at least 20
4 minutes. So if you want to go outside, breathe fresh
5 air, you may do so. If you do leave the jury
6 deliberation room please make sure that you are back in
7 the deliberation for entry into the courtroom at about
8 2:50. It could be after that. My best guess is that
9 we're going to be in recess for 20 minutes.

10 During this recess please do not discuss this
11 case amongst yourselves. Please do not form or express
12 any opinions about this matter until it's submitted to
13 you. You're free to leave.

14 (Jury recesses for short time.)

15 (Outside the presence of the jury.)

16 THE COURT: There are two matters to discuss.
17 First is the availability of Mr. Guzman's lawyer if Mr.
18 Guzman is scheduled next.

19 And then second, accomplice. Second, what
20 visible presence his attorney may or may not have. My
21 understanding from the side bar is that Mr. Guzman
22 continues to be represented by Mr. Routsis. Mr. Routsis
23 was subpoenaed, which would push him within,
24 presumptively, the rule of exclusion, although I can

1 hear from counsel about whether it applies to another
2 attorney.

3 To the State, I'm familiar with the points and
4 authorities underlying the issue, the statute and its
5 decisional authority.

6 Ms. Ristenpart, do you wish to begin with
7 arguments? How do you want to handle it?

8 MS. RISTENPART: So first I think the easiest
9 matter is that it's a unique issue to an accomplice who
10 is represented by private counsel who we did subpoena,
11 and because we don't frankly know what Yiovannie is
12 going to say today. But I think that his right to have
13 counsel trumps potentially the rule of exclusion on this
14 case, so even though I'm asking that he remain under
15 subpoena and possibly for purposes later on depending on
16 what Mr. Guzman claims today, that he still remain under
17 subpoena, that he be allowed in the courtroom during his
18 testimony.

19 THE COURT: And his presence in the courtroom
20 is nondescript and nonidentity, just sit in the
21 spectator gallery?

22 MS. RISTENPART: I mean, no. He's saying my
23 attorney's right there, even me, what does that -- it
24 doesn't seem to matter anyway for --

1 THE COURT: I just want to make sure I
2 understand the boundaries.

3 MS. RISTENPART: Yeah.

4 THE COURT: I've never had accomplice
5 testimony with an attorney present.

6 MS. RISTENPART: Exactly.

7 THE COURT: So I want to make sure I don't
8 unintentionally step on a land mine. I do feel that if
9 Mr. Guzman testifies that Mr. Routsis, that he should
10 always have counsel, particularly because there is a
11 negotiation performance that remains being established
12 and a sentencing scheduled, so he should always have an
13 attorney present.

14 Mr. Lee, should you identify the attorney or
15 is there harm in attorney's identification during Mr.
16 Guzman's testimony?

17 MR. LEE: I don't know that's harm, that's
18 just not relevant. I've reached out to Mr. Routsis at
19 the lunch hour and told him an expected time and asked
20 him to be here. I'm more comfortable with him here as
21 well.

22 THE COURT: Okay.

23 MR. LEE: But whether he's identified, I don't
24 see the relevance of that.

1 THE COURT: Does he sit behind the bar in the
2 spectator gallery?

3 MR. LEE: I think so.

4 MS. RISTENPART: Your Honor, I do think that
5 as part of he's allowed to -- if he's going to be here
6 that I'm allowed to question him that his attorney is
7 there and present and not go into anything obviously
8 privileged or confidential, but there is the fact that
9 -- as the Court's very well aware, that there's
10 sentencing on April 22nd and that there is pressure on
11 this young man.

12 THE COURT: I'd probably allow one question.

13 MS. RISTENPART: I have no problem with that.

14 THE COURT: I can't see the relevance but I
15 want to yield to defense when I can.

16 MS. RISTENPART: Thank you.

17 THE COURT: So if it becomes a focus, then
18 please stand up and object.

19 Let's talk about whether Mr. Guzman testifies
20 about this conversation. Assuming he will, do you wish
21 to preserve any arguments against his participation?

22 MS. RISTENPART: I do, your Honor, even with
23 the State's proffer as to what they believe Mr. Guzman
24 will say, the evidence that they're using, quote,

1 independently corroborate Mr. Guzman's statements are
2 only corroborated by Mr. Guzman's statements meaning the
3 cigarette butts Mr. Guzman who would say oh, yeah,
4 Richard was smoking that day at this time behind the car
5 in that area.

6 In regards to the conspiracy, Mr. Guzman is
7 the only one who claims that there was some kind of
8 conversation between he and Mr. Silva at some
9 convenience store on October 31st of 2017. We've had no
10 independent corroboration of that.

11 In addition, we've had no independent
12 corroboration as to the plan itself in regards to it's
13 only Mr. Guzman making a claim that there was some grand
14 conspiracy between Bernard Silva, Richard Silva and
15 himself, with the purpose to kill Luz.

16 So I know the State's going to stand up and
17 harp on the cigarettes, we've heard a lot of testimony
18 about cigarettes, and whether or not they appeared
19 fresh, but it has to independently corroborate
20 everything that Mr. Guzman is being proffered to testify
21 to. And that is not independently corroborated
22 anything. It's more of they're focusing on one thing
23 and then trying to build Mr. Guzman's uncorroborated
24 accomplice testimony to -- it's kind of like the chicken

1 and the egg situation, your Honor, for lack of a better
2 analogy is that they are not giving independent
3 corroboration of this actually conspiracy beyond Mr.
4 Yiovannie Guzman's claims.

5 THE COURT: I want to ask a few questions
6 before hearing from the State. Part of the challenge is
7 that we are mid trial, and I anticipate that other
8 independent corroboration may be presented to the Court
9 for admission to the jury, specifically, a jail recorded
10 telephone call, and a recorded conversation between Mr.
11 Silva and his brother.

12 How do I efficiently consider or exclude from
13 consideration evidence I'm aware of but not yet before
14 this jury?

15 MS. RISTENPART: So because the State has
16 elected to call Mr. Guzman in the middle of trial with
17 what they believe, and they told you, your Honor,
18 because we had this discussion, I believe it was on
19 Friday, as to well, where is he gonna call a witness
20 with this accomplish testimony motion. And the State
21 said that he would be towards the end because we'll be
22 putting on the corroborating evidence ahead of time.

23 Now, in regards to the Court's question, the
24 evidence before the Court before making this decision is

1 what is the evidence that should control. And that even
2 if we don't even know if the State is going to get in
3 that evidence, I know the Court has made some rulings,
4 but now we're having reopening rulings, and the way the
5 case law is written on uncorroborated accomplice
6 testimony is that the Court does not allow that
7 testimony unless there's independent corroboration
8 before it goes on.

9 THE COURT: So your position, then, is that an
10 evidentiary proffer would be insufficient. Because the
11 State can stand and proffer what it intends to.

12 MS. RISTENPART: Correct.

13 THE COURT: I want to ask about some specific
14 evidence and whether you contest or concede it
15 corroborates. Detective Kazmar talked about motive.
16 That may or may not be independent corroboration. Let
17 me step back.

18 The purpose behind NRS 175.291 is to prevent
19 two accused from pointing the finger at each other, or
20 one pointing the finger at the other without some
21 external corroboration of those cross-allegations. So
22 Detective Kazmar talked about motive. We do have DNA
23 evidence -- well, we have cigarettes, not DNA, excuse
24 me. We have a general description of a -- provided by

1 an early witness in which he saw somebody wearing a
2 black hoodie turn away from him at a very tenuous but
3 existent description, and then we have now text messages
4 that have some significance. I don't apply weight, I
5 just determine if there's any external corroboration.
6 Do any of those constitute corroboration?

7 MS. RISTENPART: For parts of Mr. Guzman is
8 what I anticipate going to claim based upon what he told
9 police, but not the full corroboration. And that's --
10 the heart of this is this conspiracy statement. And I
11 politely disagree with the Court as to accomplice
12 testimony. The case law isn't about preventing two
13 individuals from pointing the finger at each other. The
14 reason for it having corroborated accomplice testimony
15 before allowing it is because it's so highly suspect.

16 In this particular situation, from a life
17 imprisonment case with a deadly weapon consecutive
18 enhancement, down to a conspiracy with battery with a
19 deadly weapon, and a pending sentencing where he must,
20 quote, testify truthfully and cooperate with the State,
21 this is the -- this is exactly why the courts have said
22 there has to be some kind of independent corroboration
23 before it goes on.

24 THE COURT: Well, I accept your proposed

1 front, and I admire the spirit in which it was given by
2 you, and I will disagree about how we describe the
3 purpose of NRS 175.

4 The corroboration in the Court's opinion is
5 necessary so that two accused don't just cross-allege
6 against another, there has to be something.

7 All right. To the State, what am I missing
8 besides my short list of what could be construed as
9 accomplice testimony, and the legal significance of the
10 evidence to be proffered but not yet admitted.

11 MR. LEE: So first of all, your Honor, I found
12 no authority that says a witness is precluded from
13 testimony beforehand. I get the practicality, perhaps
14 it makes sense, but really it's just a verdict can't be
15 had. That's all the statute says.

16 THE COURT: A burden can not be had?

17 MR. LEE: A verdict can not be had on the
18 testimony of an accomplice alone. It doesn't say an
19 accomplice may not testify until it's corroborated.

20 THE COURT: Well, let me just have you -- I
21 want to pause there because I've now read the jury
22 instructions and you have proposed an instruction
23 consistent with this law. Let me look at it.

24 A conviction shall not be had on the testimony

1 of an accomplice, unless it is corroborated by other
2 evidence. And with the -- without the testimony --
3 which in itself without the testimony tends to connect
4 the defendant.

5 All right. I understand your argument.

6 MR. LEE: So that's just one issue. If we
7 were to take it even further, I think the defense is
8 reading of 175.291 is very broad. I mean, every single
9 statement of Mr. Guzman's testimony must be
10 independently corroborated, that is not what the
11 substitute says one bit.

12 Here it is looking for some type of
13 corroboration. It's a low standard, I'm trying to find
14 the exact term here, your Honor, just give me one
15 moment.

16 First "The evidence need not in itself be
17 sufficient to establish guilt. It can be taken from the
18 evidence as a whole direct or circumstantial, but it has
19 to only tend to connect", not connect but just tend to
20 connect him with the crime.

21 And so here what we have is a lot of things
22 going on, even so far what we have in evidence, and I'm
23 just painting a broad stroke, but I'd ask the Court to
24 look at all the evidence together, that's what it

1 permits.

2 We have cigarette butts. And the NXT, we have
3 Mr. Silva linked to these NXT cigarettes. There has
4 been testimony of the YSTR coming back to a male member
5 of the family of Bernard. We have him on video stepping
6 out of a gray SUV six hours before the murder, as a
7 passenger in a gray SUV. That gray SUV was almost
8 identical to that seen at the crime scene by an
9 independent witness who, unbeknownst to him, was
10 following the vehicle, meaning he didn't intend to
11 follow, he just happened behind it. But we have him
12 there so, obviously, we know there's another person
13 involved at least six hours before, he's wearing the
14 similar clothing, dark hoodie, and that's pretty broad,
15 but again, tending to connect and looking at everything
16 together.

17 And then we have text messages indicating a
18 conspiracy, a tie to Mr. Guzman and Mr. Silva, all of
19 which -- I think one of those is enough. Altogether,
20 it's certainly not this, it certainly tends to connect,
21 and the location of the cigarette butts, and the denial
22 of him ever being in this area before, it certainly
23 tends to connect. Apart that, I'm sorry, sometimes my
24 mind goes faster than my mouth, let me think for just a

1 moment.

2 I do agree, I do think that you can use a
3 proffer at this point. The Court's well aware of the
4 evidence that's gonna be coming in shortly, the Court's
5 made some rulings on that evidence and I think it would
6 be absurd to say we can not consider that evidence here.
7 But I don't think we need to in this case. I think
8 there's plenty.

9 THE COURT: I don't have Mr. Guzman's Guilty
10 Plea Memorandum right in front of me. Would you remind
11 me of the two crimes that he entered the guilty plea?

12 MR. LEE: He plead guilty to a --

13 MS. RISTENPART: Your Honor, I should have
14 this marked as an exhibit already. If I may approach.

15 THE COURT: Sure. I'd like to see it.

16 MR. LEE: Your Honor, he pled to a Conspiracy
17 to Commit Murder and a Battery with a Deadly Weapon.

18 THE COURT: Right.

19 MS. RISTENPART: Exhibit Number 120 I'm
20 showing you.

21 THE COURT: Thank you. This is not the time
22 to settle instructions, but I'm going to take advantage
23 of the jury's absence because I am working on
24 instructions now. I have several notes lined up with

1 the conspiracy and aiding and abetting instruction, and
2 I intend to ask about that later, but you both mentioned
3 conspiracy.

4 As I review the information in this B case,
5 and consider lesser includeds, how is it that Mr. Silva
6 conspired with Mr. Guzman -- you know what, as I'm
7 speaking I'm listening to my inner voice. I'm going to
8 stop and lose all the jury instructions.

9 Anything else to add on the -- of Mr. Guzman's
10 participation at trial as an accomplice witness?

11 MR. LEE: Nothing, your Honor.

12 MS. RISTENPART: No, your Honor. We'll submit
13 it.

14 THE COURT: All right. Thank you to the State
15 for adding a few additional items to include the witness
16 description of the vehicle when viewed with the video
17 evidence of the actual vehicle Mr. Silva was in, I find
18 that Mr. Guzman can testify as an accomplice, that his
19 participation does not violate NRS 175.291 or its
20 decisional authorities.

21 MS. RISTENPART: Lastly, your Honor, before we
22 proceed, you know that the State turned over pursuant to
23 the court order some of Mr. Guzman's jail phone call
24 records?

1 THE COURT: Yes.

2 MS. RISTENPART: I ask that I be allowed to
3 inquire about a phone call on February 18th of 2020,
4 between Mr. Guzman and his mother, Sylvia Guzman, where
5 mom instructed Mr. Guzman "Don't worry about anything,
6 there's nothing they can do to take it away", referring
7 to the plea deal.

8 Also on January 30th, at -- the call number is
9 0725, Mr. Guzman talks with his family, specifically his
10 mother, Sylvia, again about the District Attorney
11 visiting him and talking to him and about there's
12 reference to an email that was sent to the family about
13 the deal.

14 I will note, your Honor, even though I
15 requested it the Court had ordered the jail phone logs
16 and I was -- and I never received any of the email
17 correspondence that Mr. Guzman was sending or receiving
18 while in custody.

19 Lastly, your Honor, I would ask that a phone
20 call from, again, January 30th, it's 3536, Mr. Guzman
21 informs his mother "Ain't nobody really know, because I
22 can not say anything over the phone".

23 THE COURT: You will be allowed to examine,
24 cross-examine the witness based upon those telephone

1 calls.

2 MS. RISTENPART: Thank you.

3 THE COURT: Now, I'll just say in advance
4 remember, I just listened to my own inner voice about
5 instructions and I'm overriding that inner voice. The
6 State has proffered an objection. It is -- excuse me,
7 an instruction. It is Instruction Number 22 which this
8 Court customarily gives, but to which the defense has
9 objected in this case.

10 That instruction is "It is not improper for
11 the attorneys to have interviewed witnesses prior to
12 trial in this case. The practice of interviewing
13 witnesses before trial is expected and completely proper
14 under Nevada law."

15 I just want to get a sense for what your
16 objection to that instruction is because I believe that
17 your cross-examination is going to include conversations
18 Mr. Guzman might have had with the State. So what is
19 your objection to this? I'm just trying to avoid any
20 unintended law.

21 MS. RISTENPART: Well, the case law that's
22 cited is not anywhere even near the 9th Circuit let
23 alone the State of Nevada, your Honor. And,
24 particularly, you actually drilled down into the case

1 law, and I don't have it before me, but I believe it's
2 the third case that's quoted by the State, they're
3 talking about the use of pictures, and being shown
4 pictures to a witness prior to testimony, nothing about
5 questioning or meeting privately with witnesses and/or
6 questioning them so it's far beyond the scope.

7 I do have notes on the other cases, I just
8 don't have before me the jury instructions.

9 THE COURT: All right.

10 MS. RISTENPART: But that's -- I have numerous
11 objections to it.

12 THE COURT: All right. Yes.

13 MR. LEE: About that instruction. Judge,
14 there's been questions pushing in bad faith I'm gonna
15 say, malfeasance on my part, there's zero evidence of
16 that. But what your Honor doesn't see are the facial
17 expressions of counsel, the walking back and looking at
18 me and shaking head of counsel, it's inferring something
19 to the jury that there is zero evidence of because there
20 isn't any evidence of it. It's pure showmanship, it's
21 discourteous at the very least, but violates a duty of
22 candor.

23 And I know she's going to attack him, and she
24 can. But the facial expressions, the smirks, the

1 surprise looks, the shaking her head at me for nothing,
2 for something I didn't even do, she's trying to paint a
3 picture that I'm coaching testimony. If she can draw
4 that out, great. But she can not testify in front of
5 this jury by shaking heads and making weird looks --

6 THE COURT: All right.

7 MR. LEE: -- and especially at me.

8 THE COURT: My response rises higher than Mr.
9 Lee's comment about Ms. Ristenpart specifically. I
10 don't invalidate what you're saying. I don't validate
11 it, I simply don't acknowledge it. I'm going higher
12 than that. Justice Scalia wrote a book entitled "Making
13 Your Case". One of the things he said was "To be
14 persuasive an attorney must be likable".

15 In every court drama, regardless of who the
16 attorneys are, includes various forms of nonverbal
17 communication.

18 This is a form of theater, and attorneys will
19 often anticipate and regulate and carefully present
20 themselves to the jury.

21 I am not going to start issuing prior
22 restraint on personality. I would do so against
23 incivility, but both of you may present to this jury any
24 way you want with its risks and rewards.

1 I anticipate a spirited cross-examination of
2 Mr. Guzman. Anything less would be unacceptable.

3 You can be certain, Mr. Lee, that I am going
4 to offer some form of instruction that describes your
5 ability to meet with your witnesses. And then you can
6 argue it however you want after it's given to the jury,
7 but I'm not going to say anything beyond that, the
8 record's been made.

9 I think we have five minutes at most?

10 Mr. Silva, are you okay? Do you need a chance
11 to--

12 THE DEFENDANT: I'm good, sir.

13 THE COURT: You okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Counsel, I'd certainly accommodate
16 you, just coordinate with Deputy Coss so that you can be
17 available as quickly as possible.

18 MS. RISTENPART: Thank you, your Honor.

19 (Short break.)

20 (Jury returns to the courtroom.)

21 THE COURT: To the State, you may call your
22 next witness.

23 MR. LEE: Thank you, your Honor. The State
24 calls Yiovannie Guzman.

1 DEPUTY COSS: Please step all the way up and
2 face the clerk, please.

3 COURT CLERK: Please raise your right hand.

4 YIOVANNIE GUZMAN,
5 called as a witness herein, being first
6 duly sworn, was examined and testified
7 as follows:

8 COURT CLERK: Thank you.

9 THE COURT: Mr. Guzman, please remember -- be
10 seated, please. Please remember to speak slowly and
11 loudly, and become familiar with that microphone.

12 Thank you.

13 THE WITNESS: Yes, your Honor.

14 THE COURT: To the State you may begin.

15 MR. LEE: Thank you.

16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q Good afternoon, sir. Could you please give
19 us your first and last name and spell that for us?

20 A Yiovannie Guzman. Y-i-o-v-a-n-n-i-e
21 G-u-z-m-a-n.

22 Q Mr. Guzman, have you -- you know why you're
23 here today?

24 A Yes, sir.

1 Q Have you made a negotiation with the State of
2 Nevada in exchange for your truthful testimony?

3 A Yes, sir.

4 Q What was that negotiation that you made?

5 A To cooperate fully with the State and -- to
6 cooperate and to testify.

7 Q You pled to lesser charges as well. Correct?

8 A Yes, sir.

9 Q You're originally charged with murder?

10 A Yes, sir.

11 Q And what did you plead to?

12 A I pled to Conspiracy to Commit Murder and
13 Battery with the Use of a Weapon.

14 Q Was that a deadly weapon?

15 A Deadly weapon, yes, sir.

16 Q And as part of that plea negotiation you
17 signed a lengthy agreement with the State as well.
18 Correct?

19 A Yes, sir.

20 Q In open court here?

21 A Yes, sir.

22 Q In this courtroom too, right?

23 A Yes, sir.

24 Q Do you recall what the term cooperation

1 referred to in your agreement or your contract?

2 A Ah, testify here, phone calls, in-person
3 interviews.

4 Q And before you signed it and entered your
5 plea you read it, correct?

6 A Yes, sir.

7 Q Familiarize yourself with it?

8 A Yes, sir.

9 Q You had counsel with you advising you?

10 A Yes, sir.

11 Q And you used that advice?

12 A Yes, sir.

13 Q And when I say counsel's advice that's
14 independent of me, it wasn't my advice, correct?

15 A Right.

16 Q Are you aware that under the agreement on
17 page 5 cooperation requires four things. Five things,
18 excuse me. First, to respond truthfully and completely
19 to all questions. Correct?

20 A Correct.

21 Q Whether in interviews or in court.

22 A Correct.

23 Q The second aspect is to attend all meetings,
24 grand jury sessions, trials, other proceedings.

1 Correct?

2 A Right.

3 Q And the third is to provide all information
4 and evidence within your knowledge or control concerning
5 the shooting of Luz Linares-Castillo on November 2nd,
6 correct?

7 A Right.

8 Q The fourth prong is to provide voluntarily
9 any and all documents, records or other tangible
10 evidence requested, right?

11 A Correct.

12 Q And the fifth is to disclose the existence
13 and status of all evidence, property, records or other
14 tangible evidence of any kind derived from or acquired
15 during or as a result of or used to facilitate the
16 commission of the shooting of Luz Linares-Castillo on
17 November 2nd, 2017. Is that accurate?

18 A Right.

19 Q In anywhere does cooperation define what your
20 testimony will be, like what exact points your testimony
21 will be?

22 A Um.

23 Q Or does it just say truthful testimony?

24 A It says truthful.

1 Q So nothing in your contract, your plea
2 negotiation defines what your testimony is to be, other
3 than just truthful.

4 A Right.

5 Q Are you prepared today to give us truthful
6 testimony?

7 A Yes, sir.

8 Q And nothing else.

9 A Yes, sir.

10 Q Do you know what happens off the top of your
11 head, Mr. Guzman, if you provide testimony that's not
12 truthful?

13 A Yes, sir.

14 Q What happens?

15 A I could also be in trouble.

16 Q How about with the contract in your plea
17 deal, what would happen to it?

18 A Be terminated.

19 Q Okay. And so if you provide testimony that's
20 not truthful, this plea deal can go away and your
21 original charges could be reinstated. Correct?

22 A Right.

23 Q And you're aware of that.

24 A Right.

1 Q Despite all of that you're still willing to
2 testify?

3 A Yet.

4 Q Since I know it will be asked, let me ask
5 you. Have you and I met before?

6 A Yes, sir.

7 Q Now, we've met in a somewhat adversarial
8 setting before as well, right, with you at one table and
9 me at one table?

10 A Yes.

11 Q You with your attorney, right?

12 A Yes, sir

13 Q And then we've met how many times in person?

14 A In person, twice.

15 Q Were those dates January 30th and February
16 24th?

17 A 24th, yes, and I don't recall the other one.

18 Q 24th was just two days ago, correct?

19 A Right.

20 Q Have we met any other times?

21 A No, sir.

22 Q Did we always meet in the presence of other
23 people?

24 A Yes, sir.

1 Q So never alone?

2 A Yes, sir.

3 Q In our conversations did anyone plant words

4 in your mouth?

5 A No, sir.

6 Q Did anyone tell you what to say?

7 A No, sir.

8 Q In our conversations did you tell the truth?

9 A Yes, sir.

10 Q Did you give all evidence that you knew?

11 A Yes, sir.

12 Q Were the questions given to you open-ended,

13 meaning just asked you what kind of questions such as

14 what happened? What did you do? What did you feel,

15 those kind of questions?

16 A Right.

17 Q Were you coached in any way as to what to

18 say?

19 A No.

20 Q Were you shown any of your interviews?

21 A Was I what, sir?

22 Q Shown any previous police interview.

23 A Yes.

24 Q When I talked to you.

1 A No.

2 Q So you may have been shown by your attorney
3 at some point?

4 A Right.

5 Q But when you and I met, that's what I'm
6 asking, when you and I have met have I shown you in
7 media, any interviews, any surveillance cameras,
8 anything like that?

9 A No.

10 Q And when we met did you simply walk the
11 prosecution team through the events?

12 A Say that one more time, sir?

13 Q And when we met did you simply walk our
14 prosecution team through the events that bring us here
15 today?

16 A Yes, sir.

17 Q By me or anybody from the prosecution team,
18 an investigator or otherwise, have you been shown any
19 police reports?

20 A I been shown any police reports?

21 Q By me.

22 A By you? No.

23 Q Have you been -- or by anybody else from the
24 DA's office?

1 A No.

2 Q And have we discussed saying anything other
3 than the truth?

4 A No, sir, just the truth.

5 Q With that, sir, do you know an individual by
6 the name of Richard Silva?

7 A Yes, sir.

8 Q Do you see him in the courtroom here today?

9 A Yes, sir.

10 Q If you could, point to the area he's located
11 and tell us a color of shirt that individual's wearing.

12 A White.

13 MR. LEE: Your Honor, he pointed to his right,
14 my left individual in white, I see only one. May the
15 record reflect that identification of Mr. Silva?

16 THE COURT: Did he say white or right?

17 THE WITNESS: White.

18 THE COURT: White shirt?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Looks blue to me.

21 THE WITNESS: Gray, blue, white.

22 THE COURT: All right. Wearing a tie or not
23 wearing a tight?

24 THE WITNESS: Wearing a tie.

1 THE COURT: All right. Yes, the record will
2 so reflect.

3 MR. LEE: Thank you.

4 BY MR. LEE:

5 Q How do you know Mr. Silva?

6 A He's my cousin.

7 Q And literal cousin?

8 A Literal cousin.

9 Q So where is the relation at?

10 A My father's side.

11 Q Okay. And is it -- it's your father's side?

12 A Yeah, my father is his mother, brother and
13 sister.

14 Q Brother and sister. Okay. How long have you
15 known Mr. Silva?

16 A My whole life.

17 Q Did you grow up here in town locally?

18 A Yes, sir.

19 Q Are you aware of a vehicle that Mr. Silva
20 has?

21 A Yes, sir.

22 Q What kind of vehicle is that?

23 A Blue Lexus.

24 Q Have you seen that vehicle before?

1 A Yes, sir.

2 Q Roughly how many times?

3 A A lot.

4 Q Okay.

5 A A lot.

6 Q Did you used to do any work for Mr. Silva on

7 that car?

8 A Yes, sir.

9 Q What's that?

10 A I used to clean his car and wash his car.

11 Q Would he pay you for that?

12 A Yes, sir.

13 Q Do you remember anything about his license

14 plate?

15 A Yes, sir. It was a Rebels license plate.

16 Q I'm sorry?

17 A It was a Rebels license plate.

18 Q Like UNLV Rebels?

19 A Yes, sir.

20 Q Do you remember the name of it?

21 A Ah, no.

22 Q And Mr. Guzman, going back to November 2nd of

23 2017, were you working at that time?

24 A Yes, sir.

1 Q Where were you working at?

2 A At the Jeep dealership.

3 Q Off Kietzke Lane, is that where it is?

4 A It was on Mill.

5 Q Mill Street? Okay. How long had you worked

6 there?

7 A Roughly three, four months.

8 Q Did you go to high school here?

9 A Yes, sir.

10 Q Did you finish?

11 A Yes, sir.

12 Q What school?

13 A Sparks High School.

14 Q And are you a native of Sparks or Reno or

15 just in Washoe County?

16 A Sparks/Reno.

17 Q Okay. Tell us about -- I'm going to ask you

18 about Bernard Silva-Guzman. Who's that?

19 A My older cousin.

20 Q How is he related to Richard Silva?

21 A His older brother.

22 Q Have you known him your whole life as well?

23 A Yes, sir.

24 Q Now, tell us about Lucy or Luz

1 Linares-Castillo, who is she?

2 A She was married to Bernard.

3 Q Do you know about how long?

4 A I don't.

5 Q Had you met her before?

6 A Yes, sir.

7 Q Multiple times?

8 A Yes, sir.

9 Q How would you describe your relationship with
10 Ms. Linares-Castillo?

11 A Um, I would describe it as whenever I went to
12 their house, I would see her and talk to her, but if I
13 would not go to their house I would not see her or talk
14 to her.

15 Q Did you have any feelings one way or another
16 towards Lucy?

17 A No, sir.

18 Q Did you know anything about a relationship of
19 Lucy and Mr. Silva?

20 A I did not.

21 Q Did you ever see anything that caused you to
22 at least pause and think about it?

23 A Yes, sir.

24 Q Like what?

1 A They were acting too friendly, more than
2 brother-in-law and sister-in-law should be.

3 Q Did you ever ask him about it?

4 A No, sir.

5 Q Did you ever ask her about it?

6 A No, sir.

7 Q But it merely just struck you, you noticed it
8 at least.

9 A Right.

10 Q That's where it ended?

11 A Right.

12 Q Okay. Mr. Guzman, then, tell us about your
13 family. I'm not necessarily interested in names but you
14 have a mother and a father?

15 A (Nods head.)

16 Q Are they married, live together?

17 A Yes, sir.

18 Q Siblings?

19 A Yes, sir.

20 Q A sister?

21 A Yep.

22 Q A brother?

23 A Yes, sir.

24 Q Any other siblings?

1 A Two sisters, two brothers.

2 Q Two sisters, two brothers. Let me go into a
3 couple of -- let's call them background questions again.
4 Sir, you have a screen there in front of you. Hopefully
5 it will be visible, if not, please use the screen up
6 above. I'm showing you Exhibit 37. Do you recognize
7 this?

8 A Yes, sir.

9 Q What is that?

10 A That is Silva's car.

11 Q Okay. And that's the Rebels license plate
12 you described?

13 A Yes, sir.

14 Q Exhibit 40? Excuse the lighting, but can you
15 tell what we're looking at here?

16 A Yes, sir.

17 Q What is this?

18 A That is the residence of Silva's parents.

19 Q Do you know what road that's on?

20 A Sparacio Way.

21 Q Is that right off of Rock?

22 A Yes, sir.

23 Q Do you know where Mr. Silva worked at?

24 A The DMV.

1 Q So Exhibit 44, had you seen that ID badge
2 before?
3 A Yes, sir.
4 Q Do you recall, Mr. Guzman, Halloween night of
5 2017?
6 A Yes, sir.
7 Q Was this a -- was Halloween on a Tuesday that
8 week?
9 A I believe so.
10 Q What were you doing during the evening?
11 A I was at a -- my friend's house. We were
12 planning to have a haunted house theme for his mom, at
13 his mom's house.
14 Q Tell us about that. What do you mean haunted
15 house theme?
16 A So his mom is really into horror, and she
17 wanted to set up a little theme to scare the kids when
18 they get candy. So we dressed up, we hung out and
19 throughout the night I was there at the house scaring
20 kids.
21 Q So kids who would come trick or treating?
22 A Right.
23 Q Were you successful?
24 A Yes, sir.

1 Q You're with friends?

2 A Yes, sir.

3 Q Any family with you there?

4 A No, sir.

5 Q With those friends were you drinking?

6 A No drinking.

7 Q Smoking?

8 A Yes, sir.

9 Q What were you smoking?

10 A Smoking marijuana.

11 Q And were you doing any other type of

12 controlled substances?

13 A Yes, sir.

14 Q Like what?

15 A Cocaine.

16 Q I'm sorry?

17 A Cocaine.

18 Q Cocaine. Is it being snorted?

19 A Yes, sir.

20 Q Do you know -- approximate time, I recognize

21 it's two and half years later. How did the scaring

22 little kids and all that end?

23 A Around, I would say, at nineish.

24 Q Okay. And is it dark outside at that time?

1 A Yes, sir.

2 Q And were you guys set up outside?

3 A Yes, sir.

4 Q So what happened after that?

5 A After that, ah, we -- we cleaned up, we

6 cleaned up all the material that was used to make it

7 seem more haunted house theme. And after that, we

8 smoked in the garage some more, and my friend went to go

9 get some cigarettes, he didn't have any, so I offered to

10 buy him so. And I drove him to Paul's market around the

11 corner.

12 Q You familiar with Paul's market?

13 A Yes, sir.

14 Q What kind of place is that?

15 A It's a little Hindu shop, a little quickie

16 stop.

17 Q What area of town is it in?

18 A Sparks.

19 Q Is it close to Sparacio?

20 A Yes, sir.

21 Q Is it off Rock?

22 A Yes, sir.

23 Q How about are you familiar with where Oddie

24 Boulevard is?

1 A Yes, sir.

2 Q And how about McCarran?

3 A Yes, sir.

4 Q Is it south of McCarran off of Rock?

5 A Yes, sir.

6 Q Okay. In fact, Rock ends at McCarran, right?

7 A Right.

8 Q So I think you said you offered to buy your

9 friend some cigarettes?

10 A Yes, sir.

11 Q Did you do that? Did you buy him cigarettes?

12 A Yes, sir.

13 Q Did you drive there?

14 A Yes, sir.

15 Q What kind of vehicle did you drive?

16 A A Toyota Sequoia.

17 Q What year is that?

18 A 2002.

19 Q Well used?

20 A Well used.

21 Q Has it been in your family a long time?

22 A Yes. As long as I can remember.

23 Q Okay. About that vehicle let me actually

24 rewind. Did something happen mid October to that

1 vehicle?

2 A Yes.

3 Q What was that?

4 A I got in an accident, car crash.

5 Q Where at?

6 A Um, next to Flower, I think it was the Flower

7 Bucket.

8 Q In Sparks or Reno?

9 A In Sparks.

10 Q Did it cause -- what kind of damage did it

11 cause?

12 A Um, scratches on the left bumper and left

13 tail light was busted.

14 Q Okay. Was it still drivable?

15 A Yes, it was.

16 Q And prior to Halloween, so between the crash

17 and Halloween had you guys taken it in to get an

18 estimate?

19 A Yes, sir.

20 Q To a place like Caliber Collision, does that

21 sound familiar?

22 A Yes, sir.

23 Q Were you involved in that?

24 A In taking it there?

1 Q Yeah.

2 A Yes, sir.

3 Q Okay. They provide an estimate but did you

4 take the car back before work was done?

5 A Like did I receive the car back?

6 Q Yeah.

7 A No, it stayed in the shop.

8 Q Okay. But on Halloween you had the car.

9 A Right.

10 Q And so you drive to Paul's market. What

11 happens at Paul's market?

12 A I park, I get out, and same time I'm getting

13 out I see my cousin pulling in.

14 Q Which cousin?

15 A Richard Silva.

16 Q Which kind of car was he in?

17 A I can't recall if it was his Lexus or

18 friends.

19 Q Okay. But he pulls in. Is he with anybody?

20 A Yes, sir.

21 Q Do you know who they are?

22 A Friends and another cousin.

23 Q Okay. So is that cousin also your cousin?

24 A Right.

1 Q Do you know that cousin's name?

2 A Marsie.

3 Q I'm sorry?

4 A Marsier.

5 Q Okay. So what happens next?

6 A I see my cousin Richard, and I say hi to him

7 and I gave him -- my friend the money to go inside the

8 store and buy his cigarettes. And while I'm talking to

9 my cousin, the people that came with him also went

10 inside the store, so it was just me and my cousin

11 outside.

12 THE COURT: Hold on. I would like you to get

13 a little closer to the microphone, please.

14 THE WITNESS: So it was me and my cousin

15 talking outside, everybody went into the store.

16 BY MR. LEE:

17 Q So you never went into the store?

18 A No, sir.

19 Q What did you guys talk about?

20 A He wanted to talk to me about borrowing my

21 car.

22 Q Your SUV.

23 A Yes, sir.

24 Q Tell us about that conversation.

1 A Um. He asked me to borrow my car. And I
2 said for what? And he told me that he had a mission to
3 do and that he had to body somebody.

4 And I said "Why?" And "What?" as, like, my
5 question because I was shocked.

6 Q Let me stop you there. So he had a mission,
7 did I understand?

8 A Right.

9 Q And body somebody?

10 A Right.

11 Q What do you understand that to mean?

12 A To kill somebody.

13 Q Okay. And it was your question to -- in
14 response was what?

15 A "What and why?"

16 Q "What and why." What did he say?

17 A At the time, he didn't give me specifics. He
18 just said that he had reasons.

19 Q Okay. And so at this point he's asked just
20 to borrow your car.

21 A Right.

22 Q Did he tell you when he wanted to borrow your
23 car?

24 A That same night.

1 Q Okay. So are we still on Halloween but
2 before midnight at this time?

3 A Correct.

4 Q Okay. I'll be probably asking you a little
5 bit more on times just so we're clear, okay? But
6 generally, if you're talking about the night of
7 Halloween does that extend into the November 1st
8 morning?

9 A Correct.

10 Q And again, we'll clarify as we go on. All
11 right. After that was there any agreement made? Did
12 you say yes? I mean, how did that go?

13 A Um, I did agree to let him borrow my car, but
14 he told me to call him later, which would be later on in
15 the night because he was gonna be at a friend's house.

16 Q Okay. So you did tell him he could borrow
17 the car?

18 A Right.

19 Q Were you the only one who drove that car?

20 A At the time, yes.

21 Q Your parents didn't drive it?

22 A Rare occasions.

23 Q Okay. They had their own cars?

24 A Right.

1 Q How about your brother?

2 A Rare occasion as well when he needed it.

3 Q Okay. And then how about a younger sister,

4 did she ever drive that?

5 A No, she was too young.

6 Q All right. So we left off I think he said

7 "Call me later".

8 A Yes, sir.

9 Q So at this point you don't know who?

10 A Right.

11 Q And you don't know any circumstances or why.

12 A Right.

13 Q Did you call him later?

14 A Yes, sir.

15 Q Do you recall the -- that conversation?

16 A I do.

17 Q It was all by phone?

18 A Um, I mean, by phone. It was just -- he just

19 told me where he was at.

20 Q Okay. Where was he at?

21 A He was at a friend's house on 4th Street and

22 Greenbrae.

23 Q That's in Sparks area, correct?

24 A Sparks area.

1 Q Is 4th Street -- correct me if I'm wrong. Is
2 4th Street run parallel with Greenbrae, they both east
3 and west streets, or does 4th Street run north and
4 south?

5 A North and south.

6 Q Okay. So 4th Street and Greenbrae, roughly,
7 is where this friend lives?

8 A Right.

9 Q Did you go there?

10 A Yes, sir.

11 Q How come?

12 A Um, because I was gonna let him borrow my
13 car.

14 Q Did you think you were just exchanging cars
15 or was that talked about?

16 A Right. I thought I was just exchanging cars
17 at the time.

18 Q Okay. Now, his car's a stick shift; is that
19 right?

20 A Right.

21 Q Do you know how to drive a stick?

22 A No, sir.

23 Q So help us understand how come you thought
24 you were gonna take that car then.

1 A Um, I wasn't gonna take his car. I was gonna
2 take one of his friend's cars.

3 Q Who was this -- the friend's house, just a
4 first name if you could, who was it?

5 A Martin.

6 Q Martin? When you arrived there did you
7 arrive by yourself or were your friends there?

8 A By myself.

9 Q And how about Mr. Silva, was he with anybody?

10 A He was inside the residence, and there was
11 other people there.

12 Q Multiple people?

13 A Yes, sir.

14 Q Including this Martin?

15 A Yes, sir.

16 Q At that residence did you guys have a
17 conversation?

18 A Outside, yes.

19 Q What was that conversation?

20 A That conversation was, um, a conversation
21 where he told me who he was gonna kill that night, and
22 if I could be the driver.

23 Q So more of a roll at this point?

24 A More of a roll at this point, yes.

1 Q Who did he tell you he was gonna kill?

2 A Luz.

3 Q Who's Luz?

4 A His brother's wife.

5 Q Okay. So I've mentioned before a name Lucy

6 or Luz Linares-Castillo. Is that who you're talking

7 about?

8 A Yes, sir.

9 Q Did he tell you why?

10 A He did tell me why.

11 Q At that time?

12 A At that time.

13 Q What did he tell you?

14 A He told me that he was gonna do it because

15 she was threatening to take the kids away from Bernard,

16 and that she had evidence on him to put him away in

17 prison for a long time.

18 Q Did you know about her and Bernard's

19 relationship, much about it?

20 A Not much about it, but I knew of it.

21 Q How did you -- from what you knew how would

22 you describe Bernard and Lucy's relationship?

23 A Not together.

24 Q I'm sorry.

1 A Not together.

2 Q Not together? So were they not living
3 together at this time?

4 A No, sir.

5 Q Did you know about another individual who she
6 may have been involved with?

7 A Yes, sir.

8 Q Who was that?

9 A Arturo.

10 Q Did you know about this individual before
11 Halloween night?

12 A No, sir.

13 Q You were told it then?

14 A Yes.

15 Q By whom?

16 A By Willow.

17 Q And this whole conversation's outside of
18 Martin's house?

19 A Yes, sir.

20 Q Did you agree to drive?

21 A Yes, sir.

22 Q So tell us what was the plan, then, at that
23 point?

24 A The plan was that we were gonna go and check

1 out the residences where she may be. And if we saw her,
2 then he was gonna do what he said he was gonna do.

3 Q Which was?

4 A To kill her.

5 Q Okay. Now, do you know what kind of car she
6 had?

7 A I believe it was a red Charger.

8 Q And how about before this evening meeting
9 with Mr. Silva, did you know what kind of car she had?

10 A Yes, sir.

11 Q You'd seen it before?

12 A Yes, sir.

13 Q Okay. And so you mentioned go look for her I
14 think you said?

15 A Right.

16 MS. RISTENPART: Your Honor, I'm sorry to
17 interrupt. There's, like, clicking going on behind me
18 in the galley that's quite distracting and
19 reverberating.

20 THE COURT: So I just saw someone stand up and
21 leave. Are you hearing a recurring noise?

22 MS. RISTENPART: Yeah, like someone typing
23 very loudly or, like, clicking or something.

24 THE COURT: Deputy, do you notice anybody

1 taking or using a electronic device in the gallery? If
2 there is, that person will be excluded from the
3 courtroom. This is a public proceeding, everyone is
4 welcome to attend, but not to any level of distraction.

5 MS. RISTENPART: Thank you, your Honor.

6 DEPUTY: Your Honor, it was a granola bar
7 wrapper, is that what she's hearing? They're just
8 trying to eat, that's all.

9 THE COURT: Well,, if you need to eat, sir,
10 please go into the rotunda and eat and then come back,
11 okay? Thank you, Ms. Ristenpart.

12 To Mr. Lee, you may continue.

13 MS. RISTENPART: Thank you, your Honor.

14 THE COURT: I know it's hard to remember but I
15 need you to continually think about speaking louder.
16 We're not yelling at each other but it's a hard room to
17 hear anything, and so I want you to speak loudly or go
18 right into the microphone.

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you.

21 BY MR. LEE:

22 Q Mr. Guzman, any time if you need some water
23 you see the water jug and cups in front of you, okay?
24 Just feel free.

1 All right. I'm trying to remember where we're
2 at.

3 I think we asked you Martin's house, I was
4 talking about the red Charger. Does that sound about
5 right?

6 A Right.

7 Q Um, and you knew about this Arturo Manzo.

8 A Right.

9 Q But you learned that that night from Richard
10 Silva.

11 A Right.

12 Q Before that you had no idea?

13 A Correct.

14 Q Okay. Did something happen on approximately
15 October 20th to Bernard?

16 A Yes, sir.

17 Q What was that?

18 A He shot himself.

19 Q Do you know where he shot himself?

20 A I can't remember. But I believe it was
21 somewhere right here (indicating).

22 Q You're pointing to your chest area?

23 A Yes, sir.

24 Q Do you remember where Bernard lived around

1 that time?

2 A I do but I don't remember the street name.

3 Q Does Sheffield Court sound familiar?

4 A Yes, sir.

5 Q Is that by McCarran, kind of by northeast

6 McCarran, Sparks area?

7 A Correct.

8 Q After he shot himself was he in the hospital

9 for sometime?

10 A Yes, sir.

11 Q Do you know how long?

12 A I don't.

13 Q Multiple days?

14 A I would say so.

15 Q When he got out where did he stay?

16 A His parents' house.

17 Q And where is that house?

18 A Sparacio Way.

19 Q Do you know what room he stayed in?

20 A I don't.

21 Q All right. So from Martin's house are you

22 and Richard together at that point?

23 A Yes, sir.

24 Q What do you do?

1 A Discussing in detail what he was telling me
2 --
3 Q I'm sorry, I cut you off. Go ahead.
4 A Which would be just who it was and what we
5 were gonna do.
6 Q Did he tell you any more details than you've
7 just told us?
8 A Um, that he was planning to do it that same
9 night just a little later on.
10 Q Okay. When you say that same night does that
11 include early, early morning?
12 A Early morning.
13 Q Did he say anything about her work schedule?
14 A Um. I don't remember sure.
15 Q Do you know did her work schedule come into
16 play on any of this in any of your plans?
17 A Yes, sir.
18 Q How so?
19 A He knew what time she worked at so around
20 that time we would go searching for her.
21 Q Okay. Now, this was two and a half years
22 ago?
23 A Correct.
24 Q At some point in the evening did you go to a

1 7-Eleven?

2 A Yes, sir.

3 Q Where is that 7-Eleven at?

4 A Greenbrae.

5 Q Was it pretty close to this Martin's house?

6 A Yes, sir.

7 Q Had you been in that Seven-11 before?

8 A Yes, sir.

9 Q So I'm going to show you Exhibit 95.

10 (Exhibit 95 is played.)

11 I'm going to pause it here at the time stamp

12 of 28. Whose car is that that just pulled up?

13 A My car.

14 Q And if I am to look at the front license area

15 of your car is that match it?

16 A Yes, sir.

17 Q What was the license plate?

18 A 4 Guzman.

19 Q And who's this that just got out of the car?

20 A Richard.

21 Q Were you driving at the time?

22 A Yes, sir.

23 Q Was any one else with you?

24 A No, sir.

1 Q Why did you to go 7-Eleven?

2 A Because he said he needed some cigarettes and

3 he was trying to find -- I can't remember, either a mask

4 or gloves.

5 Q Had you already made the agreement with him?

6 A Yes, sir.

7 Q Let me ask. You saw him smoking. Right?

8 A Yes, sir.

9 Q And you knew him to smoke?

10 A Yes, sir.

11 Q Do you know what cigarettes he liked?

12 A I can't -- I don't know if I'm pronouncing it

13 right, but it's Marlboro.

14 Q How do you know that?

15 A Because whenever I would clean his car I

16 would see them -- the empty -- empty boxes.

17 Q Okay. Do you recall what the boxes looked

18 like?

19 A Black box, green lettering.

20 Q And I'm sorry. So you said he went there.

21 Did he go there also to buy cigarettes I think you said?

22 A Yes, sir.

23 Q But then a mask or gloves or something?

24 A Yes, sir.

1 Q You just don't remember which one?

2 A Yes, sir, I don't remember.

3 Q Does it appear he's asking the clerk

4 something?

5 A Yes, sir.

6 Q But are you familiar with where cigarettes

7 are kept at in a 7-Eleven?

8 A Yes, sir.

9 Q Where's that?

10 A Right behind the clerk.

11 (Exhibit 95 is played.)

12 Q And that car heads west, correct?

13 A Correct.

14 Q Is that toward Pyramid?

15 A Right.

16 Q And now, Mr. Guzman, I've jumped quite ahead

17 a little bit. Not a little bit, quite a lot. This

18 happens now on the evening of November 1st. Right?

19 A Correct.

20 Q Whereas before we were still talking still

21 the night of Halloween early November 1st, right?

22 A Correct.

23 Q So my apologize for jumping ahead, but that

24 night of Halloween, we'll call it, did you eventually go

1 home to your residence?

2 A Yes.

3 Q With your -- where your mom and dad were at?

4 A Yes.

5 Q Did you tell anybody else about this plan?

6 A No.

7 Q What was the plan, then, about timing and
8 what not?

9 A Um, to wake up a couple hours later, after I
10 went home.

11 Q Okay. Do you recall about what time you went
12 home?

13 A I don't.

14 Q Okay.

15 A But I would say sometime around past midnight
16 maybe.

17 Q Okay. But the plan is to wake up and what?

18 A Correct. And then wake up, drive to his
19 house, and then from there we would go looking for Lucy.

20 Q Did that happen?

21 A No, sir.

22 Q Why not?

23 A Because I fell asleep.

24 Q Did you set the alarm?

1 A Yes, sir.

2 Q Didn't work?

3 A It did work, but I just didn't hear it.

4 Q Do you know what time you were supposed to
5 get up and go to Mr. Silva's house?

6 A Around three in the morning.

7 Q Do you remember Mr. Silva sending you text
8 messages that morning?

9 A Yes, sir.

10 Q Did you see them when he sent them or did you
11 see them later?

12 A Later on.

13 Q I'm going to show you Exhibit -- whoops. I'm
14 going to show you Exhibit 92 here, page 2. Now, did you
15 provide your phone to Reno Police detectives?

16 A Yes, sir.

17 Q And you knew that they were gonna pull,
18 extract information content from your phone?

19 A Yes, sir.

20 Q You did that willingly?

21 A Yes, sir.

22 Q Now, I see here, sir, on row 1 it says "party
23 from Willow cousin". Who is that?

24 A Richard Silva.

1 Q Is that how you identified him in your phone?

2 A Yes, sir.

3 Q Okay. So I see it -- at 4:28 a.m., I see a

4 text from Willow "Where you at, bro? Is that a text you

5 received?

6 A Yes, sir.

7 Q And you slept in.

8 A Yes, sir.

9 Q So it's not for another approximately hour

10 and a half on row 2 there that you then respond "Just

11 woke up"?

12 A Yes, sir.

13 Q Looking at page 4 of Exhibit 92, you

14 mentioned before that you had called Mr. Silva on the

15 Halloween night. To find out where he was at?

16 A Right.

17 Q Look at row 11 here. Is this Halloween night

18 at about 11 p.m.?

19 A Right.

20 Q And is this a call to your cousin, Richard

21 Silva?

22 A Right.

23 Q And then moving up to row 8, 7, did Mr. Silva

24 try calling you in the morning at 4:26 and 4:31?

1 A Correct.

2 Q So the murder didn't happen that -- that

3 early morning November 1st. Right?

4 A No, sir.

5 Q And is it because of you sleeping in?

6 A Yes, sir.

7 Q So was that it? Were the plans kaput, were

8 they done?

9 A No, sir, they were just set back.

10 Q Okay. So Lucy had another day in her life?

11 A Right.

12 Q So what happens then? Do you -- you have

13 some text conversation, right?

14 A Right.

15 Q What's the plan then to remedy your sleeping

16 in?

17 A He wanted me to sleep over at his house.

18 Q Does he tell you that on those text messages?

19 A Yes, sir.

20 Q So looking at row 5 what does wtf mean?

21 A What the fuck.

22 Q So he says "What the fuck nigga, you should

23 have said so I would have had you stay with me till it's

24 time". Correct?

1 A Right.

2 Q And row 4 at 5:54 a.m. still on November 1st

3 he called it for the day, right? "Too late, bro"?

4 A Right.

5 Q And then looking at row 12, now we're in the

6 evening hours of November 1st, about five hours before

7 going to 7-Eleven. Right?

8 A Correct.

9 Q And he's reminding you of something. What is

10 that?

11 A "Don't forget to sleep over."

12 Q So did you -- did you go to his house?

13 A Yes, sir.

14 Q You had some other things to attend to first,

15 though, right?

16 A Yes, sir.

17 Q Were you working that day?

18 A Yes, sir.

19 Q From the text it looked like you had to help

20 your dad with something?

21 A Yes, sir.

22 Q Do you recall what time you made it to Mr.

23 Silva's house?

24 A I don't recall the exact time.

1 Q What did you tell your parents you were gonna
2 do?

3 A Sleep over.

4 Q Any problems with that?

5 A No, sir.

6 Q When you got to Mr. Silva's house were his
7 parents there?

8 A No, sir.

9 Q And he explained that to you in the text as
10 well, right?

11 A Right.

12 Q Would it surprise you if his parents told
13 detectives that they were there that night?

14 MS. RISTENPART: Objection. Hearsay.

15 MR. LEE: Merely effect on this listen in.

16 THE COURT: No argument. Overruled.

17 BY MR. LEE:

18 Q Would it surprise you to learn that if his
19 parents, Mr. Silva's parents told detectives that they
20 were there that night?

21 A Would it surprise me? Yes.

22 Q Because they weren't?

23 A Because I didn't see them.

24 THE COURT: We'll going to be taking our last

1 break at about 4:45.

2 MR. LEE: Thank you.

3 THE COURT: So decide when a good break is to
4 space.

5 COURT CLERK: 4:45?

6 THE COURT: What did I say?

7 COURT CLERK: 4:45.

8 THE COURT: I meant 3:45.

9 BY MR. LEE:

10 Q All right. So what happens that night? Now
11 we're in the evening of November 1st, the day after
12 Halloween. What happens?

13 A The evening. Just getting out of work.

14 Q And from the point --

15 THE COURT: Hold on. Let's all stand for a
16 moment. How about some water?

17 (Short pause.)

18 THE COURT: You may continue.

19 BY MR. LEE:

20 Q So at the Sparacio residence at some point
21 then that's the evening you go to 7-Eleven, right?

22 A Correct.

23 Q And you also mentioned that you were gonna go
24 looking or scouting for Lucy's car?

1 A Correct.

2 Q Do you know the order of that?

3 A Yes, sir.

4 Q What was the order?

5 A We were gonna first go to the residence where

6 she lived at the time.

7 Q Do you know where that residence was?

8 A Um, somewhere near Nissan of Reno.

9 Q Do you know what street Nissan of Reno's on?

10 A Kietzke.

11 Q Okay. And did you, in fact, go there?

12 A Yes, sir.

13 Q You drove?

14 A Yes, sir.

15 Q Mr. Silva in the passenger seat?

16 A Yes, sir.

17 Q Was the plan to kill her then?

18 A No, it was just to get a familiar feel with

19 where they were driving.

20 Q Okay. Did you see her car there?

21 A No, sir.

22 Q Where did you go next?

23 A Arturo's house.

24 Q Do you recall where that is?

1 A On Moana and Neil.

2 Q Okay. Did you see her car there?

3 A Yes, sir.

4 Q Do you remember how it was parked?

5 A Um, I do.

6 Q How was it?

7 A So there was a dead end, so it was facing the

8 dead end.

9 Q Was it parked along the curb? Was it double

10 parked? Was it in a parking spot?

11 A Parked along the curb.

12 Q Okay. And it was that red Charger?

13 A Yes, sir.

14 Q How did you know where the address of -- I

15 think you called it Lucy's or was it Lucy's mom or how

16 did you describe it?

17 A I believe it was -- well, I described it as

18 Lucy's residence but I believe it was probably her mom's

19 house.

20 Q How did you know that residence location?

21 A From Silva.

22 Q Okay. How about Mr. Manzo's residence as you

23 described, Moana and Neil, how did you know that?

24 A Also from him.

1 Q So he had these addresses?

2 A Correct.

3 Q Did he tell you where he learned about the

4 address of Mr. Manzo?

5 A Correct.

6 Q Where did he learn it?

7 A From a coworker at the DMV.

8 Q Did he tell you the coworker's name?

9 A No, I just know it was a female.

10 Q It was a female?

11 A Right.

12 Q And he told you that?

13 A Right.

14 Q So confirm the vehicle was there. At that

15 point do you just sit and wait or what did you do?

16 A We went back home, to his house.

17 Q Okay. And again, just you two in the car?

18 A Yes, sir.

19 Q And tell us, and when you go back did you go

20 to sleep?

21 A Yes, sir.

22 Q Where did you sleep?

23 A On a couch.

24 Q Where did Richard Silva sleep?

1 A On the other couch.

2 Q Was Bernard there?

3 A Yes, sir.

4 Q Where was he sleeping?

5 A In a room.

6 Q Did he talk to you that evening?

7 A Yes, sir.

8 Q With all three of you present?

9 A Yes, sir.

10 Q Was that before you went out scouting, after

11 you went out scouting, or when was it?

12 A After.

13 Q Okay. So is it before you go to bed?

14 A Correct.

15 THE COURT: Ladies and Gentlemen, during this

16 last recess please do not discuss this case amongst

17 yourselves. Please do not form or express any opinion

18 about this matter until it's submitted to you.

19 We'll be in recess for 15 minutes. See you at

20 4:00. We'll stand for our jury.

21 (Short break.)

22 THE COURT: To the State you may continue.

23 BY MR. LEE:

24 Q Thank you. Mr. Guzman, we were talking about

1 who was at the house that night, and I think I ended
2 with the question that there was three of you in this
3 room talking; you, Mr. Silva and Bernard, correct?

4 A Correct.

5 Q What room was this?

6 A Living room.

7 Q And where were you sleeping?

8 A I was sleeping on the couch.

9 Q And Richard?

10 A Also on the couch.

11 Q And was Bernard sleeping there or somewhere
12 else?

13 A He was sleeping inside the house but in a
14 room.

15 Q Okay. What was Bernard's condition like at
16 that time? Physical condition I'm asking.

17 A Um, better than what he was when he was in
18 the hospital, but he had a problem still with his chest
19 area.

20 Q How did those problems show themselves?

21 A Hum. I can't quite remember but I feel that
22 he wasn't walking properly, that he had a little -- kind
23 of like a little limp, even though nothing had to do
24 with his feet, it was his chest.

1 Q Okay. Did Bernard know about this plan?

2 A Yes, sir.

3 Q How do you know that?

4 A Because when we were all in the room, in the
5 living room together, he came in and told me before I
6 went to sleep that I'm doing this for him, and that -- I
7 can't quite remember the rest, but this is what I can
8 recall, that he has to keep the kids because he loved
9 the kids.

10 Q He told you this?

11 A Yes, sir.

12 Q Was Richard there?

13 A He was present.

14 Q What was Mr. -- what was Bernard's emotional
15 condition like?

16 A I would have to say it was a mix of emotions.
17 I would say that he was upset, some sorrow, and some
18 pain.

19 Q Could you tell what of those were linked to,
20 like what was he upset about?

21 MS. RISTENPART: Objection, speculation.

22 THE COURT: Sustained.

23 BY MR. LEE:

24 Q Only if you know, okay? If you know and you

1 can describe how do you know that it manifested in any
2 way what his upsettiness was about.

3 A I don't.

4 Q Okay. Was he emotional in tears, anything
5 like that?

6 A No, sir. Not that I can recall.

7 Q But he didn't go with you?

8 A No, sir.

9 Q All right. Did you -- did you go to sleep
10 that night?

11 A Yes, sir.

12 Q On the couch.

13 A Yes, sir.

14 Q How'd you wake up?

15 A I woke up with the sound of the alarm and
16 Richard waking me up as well.

17 Q Had you sat just one alarm?

18 A I had set multiple on my phone.

19 Q Okay. Like in succession?

20 A Yes, sir, around two-minute successions.

21 Q Okay. But you said Richard Silva woke you up
22 as well?

23 A Yes, sir.

24 Q What happens after that?

1 A I can't quite remember the way it was said,
2 but he asked me if I was ready and to wake up so we
3 could leave.

4 Q Okay. Did he appear at all to you worried
5 about you following through with this?

6 A He told me consistently throughout the night
7 not to get cold feet.

8 Q All right. So what happens after that?

9 A After we woke up, I went to my car and I
10 started my car before he also came to the car.

11 Q Where was your car parked?

12 A Right outside his house, on the curb, not in
13 the driveway.

14 Q Okay. Was it parked the right way meaning if
15 you're heading west was it parked facing west?

16 A Yes, sir.

17 Q Okay. And you started it up first?

18 A Yes, sir.

19 Q Was he right there with you?

20 A When I started it up?

21 Q Yes.

22 A No, I can't -- well, hold up. Let me
23 rephrase. I can't remember if he came out with me at
24 the same time, but I do remember me going out first.

1 Q All right. So what's your path at that
2 point? You get in the -- you get in the gray Sequoia.
3 What's next?

4 A So what's next is he tells me to go to the
5 first location that we scouted out beforehand which
6 would be, I believe, is Lucy's mom's house.

7 Q Do you know how you got there from Sparacio
8 Way?

9 A Yes, sir.

10 Q How'd you get there?

11 A I took Rock on Oddie, and then from Oddie I
12 went onto the freeway and --

13 Q Now, Oddie runs into the 580?

14 A I believe so.

15 Q Okay. And you get on the freeway at Oddie?

16 A Right.

17 Q Okay.

18 A And I get off on the exit, I think it's Mill
19 Street, that's the exit.

20 MR. LEE: Can I have an exhibit marked, Ms.
21 Clerk?

22 COURT CLERK: Exhibit 133 marked for
23 identification.

24 (Exhibit 133 is marked for identification.)

1 BY MR. LEE:

2 Q So you said Mill Street was your exit?

3 A I believe that's what the exit's called, yes.

4 Q Okay. Is this, again, going to the mother's
5 house?

6 A Correct.

7 Q Okay. Do you know where you went after Mill
8 Street?

9 A I kept going until I hit Kietzke, I believe,
10 and right on the corner of Kietzke there's Wendy's.

11 Q Okay.

12 A I took a left on that street.

13 Q Let me show you an exhibit here. Exhibit
14 133? Hold that up just to yourself and take a look at
15 it and you rec -- when you've had time anyways, I'll ask
16 do you recognize that exhibit?

17 A Yes, sir.

18 Q What is it showing?

19 A The area.

20 Q Is it a map?

21 A Yes, sir.

22 Q And is it how you know the area to be?

23 A Yes, sir.

24 MR. LEE: Your Honor, I move to admit Exhibit

1 133.

2 MS. RISTENPART: I have no objection.

3 THE COURT: 133 is admitted, Ms. Clerk.

4 COURT CLERK: Thank you.

5 (Exhibit 133 is admitted into evidence.)

6 BY MR. LEE:

7 Q Showing you 133. So is this Mill Street
8 going left to right at a diagonal towards the top middle
9 of the picture?

10 A Correct.

11 Q And so you went up Mill, and then you said
12 until when?

13 A Right there (indicating), took a left on
14 Kietzke Lane.

15 Q Okay. And where do you go on Kietzke Lane?

16 A I go all the way down to where it says East
17 Taylor Street.

18 Q You know what, if you push hard enough on
19 that screen, Mr. Guzman, you can draw on it actually.
20 Let's have you do that. Show us where you went.

21 A (Witness labeling on Exhibit 133 route.)

22 Q And the mom lived on Lester?

23 A Yes, sir.

24 Q Now, this is your second time being at

1 Lester. Correct?

2 A Correct.

3 Q Was the red Dodge Charger there?

4 A No, sir.

5 Q So where did you go next?

6 A After I didn't see it there we proceeded to
7 go to Arturo Manzo's house, which would be on Moana and
8 Neil.

9 Q So did you head at some point south from here
10 (indicating)?

11 A Yes, sir.

12 Q Until you hit Moana?

13 A Correct.

14 Q Now showing you, Mr. Guzman, Exhibit 1. Take
15 a minute just to orient yourself. At the top here
16 (indicating), is this Moana lane?

17 A Yes, sir.

18 Q And then does Neil Road come off that to the
19 south?

20 A Yes, sir.

21 Q Is that where you went?

22 A Correct.

23 Q Okay. So again with your fingers, sometimes
24 fingernail works a little better, show us the path you

1 took.

2 A (Witness marking Exhibit 1.)

3 Q Okay. So you've drawn from Moana right onto

4 Neil, then a right or west onto Parkview. Correct?

5 A Correct.

6 Q You show a little bit of a line going up on

7 Mazzone; is that right?

8 A Correct.

9 Q How far up on Mazzone did you go?

10 A I would say -- I can't quite remember but I

11 would say it was where I was able to visually see Lucy's

12 car.

13 Q From here (indicating) do you remember where

14 Lucy's car was parked?

15 A Yes, sir. Somewhere around right there

16 (indicating) (Witness marking Exhibit 1).)

17 Q So you went up just enough to see her car?

18 A Correct.

19 Q Turned around?

20 A Correct.

21 Q And then where did you park?

22 A Right in front of this house (Marking

23 exhibit.)

24 Q Did you park facing which way?

1 A Facing the opposite direction of originally
2 how the car should be parked.

3 Q Okay. So just in case I may have a different
4 idea of how cars should park, tell us, describe that for
5 us.

6 A So that's an arrow.

7 Q So you parked facing east.

8 A Correct.

9 Q But on which side of the street?

10 A On that side (indicating).

11 Q On the north side?

12 A Correct.

13 Q And you said in front of that first house
14 there?

15 A Correct.

16 Q That night, showing you Exhibit 34, is this
17 the vehicle you were in?

18 A Correct.

19 Q At the time the vehicle didn't have this
20 lettering and markings, did it?

21 A Correct.

22 Q What happens then? You arrive there, what do
23 you do?

24 A I turn the car off and we sit and wait until

1 she comes around the corner at the stop sign.

2 Q This is Luz?

3 A Lucy, right.

4 Q And so you turn the car off and waited. Do
5 you know about how long you waited?

6 A Approximately, I would say, from anywhere to
7 30 minutes to an hour.

8 Q Okay. Did you ever exit the vehicle?

9 A No, sir.

10 Q Did Mr. Silva exit the vehicle?

11 A Yes, sir.

12 Q How many times?

13 A He got out once, stayed out for a little bit,
14 got back in the car, and then got out.

15 Q So he only entered -- reentered the car once
16 in that time?

17 A Right.

18 Q Where was he hanging -- where was he at the
19 times he was outside the car?

20 A He would be on the -- either on the passenger
21 side of my car on this corner stop (indicating) , and I
22 believe -- can't quite remember, but I believe that
23 right there (indicating) next to the stop sign where I
24 would be at.

1 Q So crossing Mazzone?

2 A Correct.

3 Q But you remember seeing him on this northeast
4 corner of Mazzone and Parkview?

5 A Correct.

6 Q Did Mr. Silva ever really leave your sight?

7 A When I was paying attention whenever I saw
8 him in my rear view I saw him but sometimes I wasn't
9 always in the rear view so if he did I wasn't paying
10 attention.

11 Q Did you ever see him walk headed up north on
12 Mazzone?

13 A I don't quite remember, sir.

14 Q Okay. Let me bring you now to Lucy's coming.
15 From where you're parked can you tell me from where
16 she's coming?

17 A From where I'm parked? No, not until she
18 gets closer to the corner.

19 Q Did someone alert you to her coming?

20 A Correct.

21 Q Who?

22 A Richard.

23 Q What did he say?

24 A He said "Don't get cold feet. She's coming

1 around the corner".

2 Q At some point before that did he tell you
3 something about the timing of when he expected her to
4 come?

5 A He told me that he knew the work schedule of
6 hers, but I didn't know exactly what time it would take
7 place.

8 Q Okay. So bringing you back, "don't get cold
9 feet, she's coming"?

10 A Correct.

11 Q Where did he go?

12 A After he told me at the car he waited around
13 this (indicating) general area, so on the corner of
14 Mazzone.

15 Q Okay. Could you see him?

16 A Yes, sir.

17 Q How were you looking at him?

18 A My left rear view mirror.

19 Q So out of the side of your car?

20 A Correct.

21 Q At what point did you see Lucy's car?

22 A When she arrived at the stop sign.

23 Q Did you see her stop at the stop sign?

24 A Yes, sir.

1 Q At that time did you know who was in it?

2 A Yes, sir.

3 Q I mean you couldn't see in the windows, would
4 that be fair?

5 A Correct.

6 Q Was it your assumption that Lucy was in it?

7 A Correct.

8 Q That's just based on it's her car?

9 A Correct.

10 Q Okay. Once she stops at that stop sign there
11 on Mazzone and Parkview, what happens?

12 A When she stops right there at the corner, I'm
13 looking in my left rearview mirror, and I see Richard on
14 her driver's side window, and I see him fire the first
15 shot, but after I saw him fire the first shot I didn't
16 look again until the shooting was done.

17 Q How many shots did he fire, that you
18 remember?

19 A Six.

20 Q Did you hear them?

21 A Yes, sir.

22 Q You saw the first one?

23 A (Nods head.)

24 Q Heard another five?

1 A Yes, sir.

2 Q Do you know the order or the succession of
3 shots, the timing?

4 A Pretty close.

5 Q Okay. Was there any pause between any of the
6 shots?

7 A I felt -- I felt personally that there was a
8 pause between the first and the rest, but that was just
9 -- I feel because I saw that part.

10 Q Okay. After -- could you touch the bottom
11 left of that screen? That will delete that marking. So
12 the shooting happens. Did you see --

13 Well, let me back up. Exhibit 74. Is this
14 the car you saw?

15 A Yes, sir.

16 Q You see the defects to the driver window
17 there?

18 A Yes, sir.

19 Q Is that in the -- at least as far as the
20 first shot that you saw, is that where it appeared Mr.
21 Silva was shooting into?

22 A I believe so.

23 Q Now when -- what was the next thing you saw?

24 A After I heard the shots fire I looked in my

1 middle rear view, and I saw that Richard was coming and
2 I saw this red car continue on slowly towards the curb.

3 Q Okay. Which way did Richard get in?

4 A The passenger side.

5 Q Was he -- how did he get there? Did he run,
6 walk?

7 A I can't quite remember, but it was definitely
8 not walking.

9 Q Now, at the time when -- I'm just going to
10 draw at the intersection there there's a stop sign, you
11 say?

12 A Correct.

13 Q When the red Dodge Charger pulled up did it
14 fully stop?

15 A Correct.

16 Q How soon after that stop did Mr. Silva pull
17 the trigger the first time?

18 A Pretty fast, I would say.

19 Q And I want to ask you about that. Pretty
20 fast you would say. What do you mean by that?

21 A Once I saw the -- once I saw Lucy's car stop
22 at the stop sign, I would say it was in between couple
23 seconds. I would say, like, two, three seconds.

24 Q Okay. Did it appear to you that there was

1 any conversation?

2 A To me, no.

3 Q And then again you said as Richard's
4 approaching your vehicle the red vehicle rolls that way,
5 is that correct, south?

6 A Correct.

7 Q Did you see where it ended?

8 A Right -- that's too far, but right there
9 (indicating) where the curb was, like the tip of that
10 red arrow.

11 Q Okay. Now, what happens next?

12 A Richard entered my vehicle and I turned the
13 car on and I proceed like normal. I drive speed limit
14 and I -- blinkers, put the blinkers on, and then I just
15 drive away like nothing happened.

16 Q Why did you drive normal?

17 A Because Richard told me to drive as nothing
18 would happen so it wouldn't be more suspicious.

19 Q Okay. So you're -- at that point you're
20 working to obey all the laws.

21 A Correct.

22 Q While you were waiting did you ever see
23 anybody approach from these buildings on the south side
24 and walk up to a car parked on Mazzone?

1 A Correct.

2 Q Was that -- do you remember the timing of
3 that? Long before the shooting, right before or
4 anything?

5 A I don't.

6 Q Okay. Do you recall if you ever saw another
7 person south of that intersection just standing somewhat
8 just past the buildings, did you ever see that?

9 A Correct.

10 Q A second person?

11 A Yes.

12 Q Okay. Did you ever see a vehicle that as you
13 were pulling out, did you see a vehicle behind you?

14 A Correct.

15 Q Where did that vehicle come from?

16 A He was parked on -- facing south on this
17 building (indicating), and he did a U-turn going up
18 Neil.

19 Q How far was he behind you for?

20 A Up until I hit the freeway, so he followed me
21 all the way until I made a right on the freeway.

22 Q Now, these three people you talked about, how
23 did you feel when you saw that?

24 A Nervous, anxious.

1 Q And nervous for what?

2 A Nervous that they heard or saw.

3 Q And how about the individual behind you in

4 the car, how did that cause you to feel?

5 A Um, I honestly thought he was gonna follow us

6 all the way.

7 Q Were you fairly relieved when he didn't?

8 A Yes, sir.

9 Q Exhibit 76, you described six shots. Do you

10 see six bullet holes there in that window?

11 A Yes, sir.

12 Q Exhibit 63, now, you never saw this

13 (indicating) area that morning or with any tape around

14 it, did you?

15 A Correct.

16 Q Do you see -- there's little cones here

17 (indicating)?

18 A Correct.

19 Q Do you see a sidewalk here (indicating)?

20 A Yes, sir.

21 Q I'm pointing to the right gutter and also in

22 the right side of the page. Where were you parked

23 around that area?

24 A Right here (indicating).

1 Q So you were you right in front of that
2 sidewalk?

3 A Yes, sir.

4 Q Let me show you now Exhibit 4. I get that
5 the map's upside down, but -- I mean the numbering and
6 lettering but I'm facing north; is that right?

7 A Correct.

8 Q Did the shooting happen roughly in the middle
9 of Mazzone Avenue?

10 A Correct.

11 Q Right at the intersection?

12 A Correct.

13 Q And so where all those circles are that show
14 5, 6, 7, 8, 9, 10, is that an approximate area of where
15 the shooting happened?

16 A Yes, sir.

17 Q Did you see Mr. Silva smoking that night?

18 A Yes, sir.

19 Q Was he smoking where?

20 A A lot of places. He was smoking next to my
21 vehicle and right here (Marking exhibit).

22 Q Okay. Now, you had your phone on you that
23 night?

24 A Correct.

1 Q Or I should say more accurately that early,
2 early morning, right?

3 A Correct.

4 Q While you were sitting waiting were you
5 looking at your phone?

6 A Yes, sir.

7 Q Did Mr. Silva have his phone?

8 A No, sir.

9 Q Where was it?

10 A At the house.

11 Q Why? Only if you know.

12 A Because I remember his older brother Bernard
13 saying not to take your phone.

14 Q But he didn't tell you that?

15 A No, sir.

16 Q So what happens after this?

17 A After all that took place, we drove back home
18 and I dropped him off on the corner of Sparacio.

19 Q Not at his house?

20 A No, sir.

21 Q Why not?

22 A Because he told me that right there was fine.

23 Q Okay. So was it at Rock and Sparacio?

24 A Yes, sir.

1 Q Okay. Then what did you do?

2 A After that I took Greenbrae all the way to my
3 house.

4 Q And home for the day?

5 A Yes, sir.

6 Q Did you work that day?

7 A Yes, sir.

8 Q Do you know if Mr. Silva worked that day?

9 A I do not.

10 Q Did you ever -- did you have other
11 interactions with Mr. Silva after that time?

12 A Yes, sir.

13 Q Give me an example, please.

14 A Um, I would say a couple days later we -- or
15 he texted me if I could go and clean his car again so I
16 said yes and we took it to car wash and vacuumed the
17 inside, washed the outside.

18 Q You were just saying we. Did anyone go with
19 you?

20 A Me and Richard.

21 Q So he came with you?

22 A Yes, sir.

23 Q Did he pay for that washing the car?

24 A Yes, sir.

1 Q Did you talk about this?

2 A Um, I believe so.

3 Q And only if you know for sure. Do you know

4 for sure if you did on that occasion?

5 A No, sir.

6 Q But did you talk to him at some other time

7 after it?

8 A Yes, sir.

9 Q And about the murder?

10 A Yes, sir.

11 Q Tell me about a time -- tell us about a time

12 that you remember talking to Mr. Silva about it.

13 A I would say a couple days before November

14 16th.

15 Q Okay. Where were you at?

16 A McDonald's.

17 Q And what was the conversation about?

18 A If I needed to talk, um, to just go to him,

19 and make sure not to tell nobody. And that everything's

20 gonna be all right.

21 Q Had you been contacted by police at all up to

22 this point?

23 A No, sir.

24 Q Did you know whether police knew about your

1 gray Sequoia at all, at that point?

2 A I had a feeling that they were following me,
3 but I didn't actually know.

4 Q Okay. When was the first interaction you had
5 with police?

6 A When they arrived at my house, which would be
7 November 16th.

8 Q Of 2017?

9 A 2017.

10 Q Do you remember who came to your house?

11 A Female and male.

12 Q Plainclothes?

13 A Yes, sir.

14 Q And did they request something of your
15 family?

16 A Yes, they did. They requested that we go to
17 the Reno department, and they were gonna voluntarily
18 interview us.

19 Q Okay. Did you go with them?

20 A Yes, sir.

21 Q Who else went?

22 A My mom, my dad, and my little sister.

23 Q Did you interview with the detective?

24 A Yes, sir.

1 Q Who was that?

2 A Ms. Jenkins.

3 Q Okay. So female detective that -- you knew

4 she was a detective?

5 A Yes, sir.

6 Q Was that a pretty long interview?

7 A Yes, sir.

8 Q During that interview, did you inform

9 Detective Jenkins that you were the one who drives that

10 car?

11 A Yes, sir.

12 Q And that you were the one who drives that

13 gray Sequoia on November 2nd?

14 A Yes, sir.

15 Q And did you confess to participating in the

16 murder of Lucy?

17 A Yes, sir.

18 Q Did it take a little while to get there?

19 A Felt like it.

20 Q Even at the start you didn't -- you didn't

21 jump in there right away and confess, did you?

22 A No.

23 Q You also had some conversation with your

24 family following your confession?

1 A Yes, sir.

2 Q Only to show why you did next what you did
3 what was the nature of that conversation?

4 A The nature of that conversation was my
5 mother, my father came into the room and they asked me
6 if I was hiding anything, and that I have to speak the
7 truth, and that I should tell them the truth, because
8 that's the right thing to do.

9 Q Had you told the truth up to that point?

10 A Up to that point, I did, but I was just not
11 saying the whole truth.

12 Q Okay. So what did you do as a result?

13 A After that I asked for Ms. Jenkins, after I
14 talked to my parents, and I told her the rest of what I
15 knew.

16 Q What was that extra part?

17 A The part had to include murdering and the
18 drugs and the kids.

19 Q What do you mean the kids?

20 A Um, they both told me, which would be Richard
21 and his brother, Bernard, that Lucy had evidence and
22 pictures of Bernard to -- of drugs to put him away.

23 Q Okay. So that's when you told Detective
24 Jenkins about that aspect?

1 A Correct.

2 Q And you already testified to that today, all
3 right. Correct?

4 A (No response.)

5 MR. LEE: Can I have two exhibits marked?

6 COURT CLERK: Exhibit 134 and Exhibit 135
7 marked for identification.

8 (Exhibits 134 and 135 are marked for
9 identification.)

10 BY MR. LEE:

11 Q Sir, we've talked about your negotiation
12 previously, right?

13 A Correct.

14 Q I'm going to show you two documents marked
15 Exhibits 134 and 135. Again, those are not yet admitted
16 so just hold them to yourself, please, but do you
17 recognize those two exhibits?

18 A Yes, sir.

19 Q Is the first exhibit, 134, an Amended
20 Information with the two charges to which you pleaded
21 guilty?

22 A Yes, sir.

23 Q And Exhibit 135, is that the -- titled Guilty
24 Plea Memorandum, a contract of sort, correct, for your

1 negotiation?

2 A Yes, sir.

3 Q On the last page does your signature appear?

4 A Yes, sir.

5 Q Does your attorney's signature appear?

6 A Yes, sir.

7 Q And is there another signature appearing at
8 least from the prosecutor or the state of Nevada?

9 A Yes, sir.

10 MR. LEE: Your Honor, I move to admit 134 and
11 135.

12 MS. RISTENPART: No objection.

13 That's no objection. Thank you.

14 THE COURT: 134 and 135 are admitted.

15 COURT CLERK: Thank you.

16 (Exhibit 134 and Exhibit 135 are admitted into
17 evidence.)

18 BY MR. LEE:

19 Q Sir, you've had telephone contact with your
20 family since you were arrested back on November 16th.
21 Correct?

22 A Yes, sir.

23 Q Have you talked about this negotiation that
24 you entered into?

1 A Not in depth.

2 Q But you did talk?

3 A A little bit, not in depth.

4 MR. LEE: Thank you. Your Honor, if I could

5 have just one minute. And I think I'll be done.

6 (Short pause.)

7 BY MR. LEE:

8 Q Mr. Silva, I failed to ask you about a gun.

9 Do you know whether a gun was used?

10 A You said Silva?

11 Q Yes, did I -- I'm sorry. Did I call you by

12 the wrong name? Let me start over.

13 Mr. Guzman, do you know whether a gun was used

14 that night?

15 A Yes, sir.

16 Q Did you ever see that gun?

17 A I never saw it.

18 Q You provided a statement to Detective

19 Jenkins. Do you recall that? We just talked about it?

20 A Yes, sir.

21 Q Did you call it a revolver?

22 A Yes, sir.

23 Q Did you get a good look at it, though, that

24 night?

1 A No, sir.

2 Q Why did you call it a revolver?

3 A Because I was assuming that -- that it's a
4 weapon that Richard would use because I've seen him
5 carry that weapon with him.

6 Q Did you know he had a gun that night?

7 A I didn't know, but I was assuming also that
8 he had to have one for all that to take place.

9 Q Okay. So you didn't personally see, that's
10 why you didn't know?

11 A Exactly.

12 Q But you made the assumption that that's the
13 method by which he was going to kill Lucy?

14 A Yes, sir.

15 Q Okay. Sir, have you ever heard the audio of
16 the gunshots?

17 A Me?

18 Q Besides in person did you ever hear it
19 recorded and played?

20 A At the preliminary.

21 Q So at a previous hearing?

22 A Yes, sir.

23 Q You mentioned before that there was, I
24 believe you said, some type of pause after the first

1 shot?

2 A Yes, sir, it felt like it.

3 Q I'm gonna play what's been marked and
4 admitted as Exhibit 100.

5 (Exhibit 100 is played.)

6 Excuse me just a moment. Listen to that. Is
7 that how you remember it?

8 A I remember the shooting, but at the same time
9 I do remember that maybe -- because it was me, but I
10 felt that there was a longer gap in between the first
11 and the second.

12 Q Mr. Guzman, why did you agree that night to
13 drive Mr. Silva?

14 A Honestly? I don't know why, and I ask myself
15 that every day.

16 Q To this day you don't know why?

17 A To this day, I don't know why.

18 MR. LEE: Your Honor, that's all the questions
19 I have. Thank you, Mr. Guzman.

20 THE COURT: Ladies and gentlemen, please
21 stand. I'm going to visit with the attorneys at side
22 bar about some scheduling so I know what to say to you
23 about tomorrow.

24 (Sidebar not reported.)

1 THE COURT Ladies and Gentlemen, during this
2 evening recess, let me get my script. Mr. Guzman, would
3 you be seated for just a moment, please, so I can see
4 everybody. Thank you.

5 During this evening recess, you are admonished
6 not to converse amongst yourselves, or with anyone else
7 on any subject connected with this trial. You will not
8 read, watch or listen to any report of or commentary on
9 the trial by any person connected with this case, or by
10 any medium of information, including without limitation
11 the newspaper, television, internet or radio.

12 You're not to perform any personal
13 investigation, research or experimentation. You're to
14 do no site visits or field trips.

15 Do not form or express any opinion on any
16 subject connected with this case until it is finally
17 submitted to you.

18 I will have a narrow -- a better explanation
19 for the rest of the trial about noon tomorrow. In the
20 meantime I'll have you be here for entry into the
21 courtroom at 9:30 tomorrow morning.

22 Please don't make any plans or anything until
23 you can at least hear from me at nine about where they
24 are. All right. Good night. Thanks for being here.

1 (Jury is excused for the evening.)

2 Mr. Guzman, you may step down. The public
3 session will now be closed. I will clear the courtroom.
4 In a moment we're going to remain in the courtroom just
5 to talk about actually it's an entirely different matter
6 that I need to resolve before trial tomorrow. The
7 challenge I have is that Mr. Silva needs to be here
8 while his attorney argues on his behalf. I don't want
9 to keep the jury, so let's excuse everybody but Mr.
10 Silva and counsel and, of course, staff, on behalf of
11 the attorneys. Good night, everybody.

12 (Jury recesses for the evening.)

13 (Out of the presence of the jury.)

14 THE COURT: Stand if it's comfortable, be
15 seated at your election.

16 MS. RISTENPART: Thank you.

17 THE COURT: We've been seated all day. All
18 right. So I'll quickly say what was said at sidebar.

19 MS. RISTENPART: Your Honor, I do note that
20 Mr. Guzman is still in the courtroom.

21 THE COURT: I agree.

22 MR. LEE: I think they have to wait for some
23 family to clear.

24 THE COURT: I first announced that I wasn't

1 inclined to do much work today. It's 4:45. We're all
2 tired. Our reporter's been writing furiously since
3 8:45. There will be lengthy and possibly spirited
4 arguments about the State's motion to reconsider. It's
5 better to entertain those arguments tomorrow morning.

6 We talked about the problems with translating
7 the portions of the recordings and video -- telephone
8 recording and video that Mr. Silva seeks to have
9 admitted to the State under the rule of completion. The
10 State has asked that I revisit the rule of completion
11 because the accused can not testify by presenting his
12 own evidence without being subject to cross-examine so
13 there's this issue.

14 Counsel, will you talk for just a moment about
15 how I can view the portions that Ms. Ristenpart contends
16 are rule motions. There are logistics. Don't argue the
17 motion or whether it applies or not.

18 MR. LEE: Well, first of all, Judge, if we
19 have two exhibits that are video exhibits with captions
20 embedded, I would not have an objection to the Court
21 looking at that, that is my proposed, it's not the full
22 of the trans -- of the copies, let's say.

23 So in one exhibit, just make sure I'm getting
24 this right, Exhibit 96, it's approximately two minutes

1 long. What the State did is captioned some things up on
2 the video as it goes. The entire interaction between
3 Mr. Silva and his brother, Bernard, is roughly five
4 minutes. And so after the two minutes it's not
5 translated, but certainly available to look at.

6 THE COURT: Well, if it's in Spanish it won't
7 have any purpose for me because I need to determine if
8 the omitted portion provides context to that which is
9 presented.

10 MR. LEE: Your Honor --

11 THE COURT: How much of that five minutes is
12 even intelligible and translatable?

13 MR. LEE: I can't answer that. You can hear
14 some stuff. And from my very limited I can make out
15 some meanings but, again, in a courtroom setting like
16 this it would be tough, I mean, part of what I'm going
17 to bring up tomorrow is how the translator had to listen
18 and interpret, so.

19 THE COURT: Is your translator available
20 tomorrow morning?

21 MR. LEE: I have no idea. She was here this
22 afternoon. But I know what she'll say about that
23 because we've had that conversation. She'll say I'm not
24 -- I will not be able to sit and listen to it in the

1 courtroom and translate.

2 THE COURT: When does the defense have the --
3 stop. All right. As to the telephone recorded
4 recording.

5 MR. LEE: The telephone -- I'm sorry, and the
6 translation itself, your Honor, is marked as Exhibit 97
7 of the entire portion that the State provided. As to
8 the jail calls, that's Exhibit 99, it appears on the
9 thumb drive. I have included the introductory in
10 English remarks, you know, this is a recorded phone call
11 from somebody, and then there's one snippet, off the top
12 of my head I believe it's about 45 seconds to a minute,
13 and it's translated the same way as captions. That
14 translation, however, your Honor, comes in large part
15 originally by Reno Police Department did a translation
16 of it.

17 THE COURT: The entire.

18 MR. LEE: The entire. A translation does
19 exist of that. My interpreter only listened to a few
20 portions and really agreed with those portions.

21 THE COURT: Did or did not agree?

22 MR. LEE: Did.

23 THE COURT: So embarrassed, counsel, I have
24 been to my Ph.D. audiologist and she said there's

1 nothing I can do with hearing, it's this thing.

2 MR. LEE: Well, I've quit wearing mine, so.

3 THE COURT: Do you have -- that is 90?

4 MR. LEE: The audio is 99. If counsel would
5 agree I'd be happy to provide the translation from Reno
6 Police Department. I think whether it's entirely
7 accurate is a different story, but it certainly would
8 give your Honor some idea to what the rest of the call
9 says, I'd be comfortable with that.

10 THE COURT: I'm comfortable -- I'll hear from
11 the defense in a moment but I'm comfortable beginning
12 with just the Court's review of the translated call in
13 its entirety.

14 But now I'm trying to -- Ms. Ristenpart, at
15 the beginning of trial you argued the rule of completion
16 required the admission of more exchange between your
17 client and his brother. So certainly you have an
18 understanding of what is intelligible and what is being
19 said in Spanish?

20 MS. RISTENPART: I do, your Honor.

21 THE COURT: You do.

22 MS. RISTENPART: And I think what's really
23 frustrating, your Honor, is that this Court made a
24 ruling in regards to these translated statement --

1 exhibits that the Court -- that the State is now
2 referring to, I believe he said it was 96 and 99.

3 And the Court was a very clear after watching
4 it saying you can not use that State. Because the
5 captions are unnecessarily emphasizing only certain
6 portions of the translation, and also have labels on it
7 as Bernard and Richard.

8 And now hearing tonight that they want to
9 again use that somehow instead of giving a clean copy
10 with is what we were supposed to do. That is a separate
11 issue, I just don't know where that's going with that
12 because I have not see a clean copy proffered by the
13 Court -- excuse me, by the State.

14 The second issue as to this translation, my
15 anticipation was that their expert who is an expert, I
16 never argued against that, she is bilingual, she's court
17 certified, she does in-court translation at all times,
18 and could in-court translate what we're talking about.

19 It goes back to the original argument as to
20 unintelligibility of this translated statement between
21 Bernard and Richard. And now the State just admitted
22 that most of it is unintelligible yet they want to
23 cherry pick certain statements that they think their
24 translator can hear, which was part of the issue under

1 federal and state law, your Honor, that the Court had to
2 make some kind of even perfunctory finding that it's not
3 so unintelligible that you couldn't get the contents of
4 a statement.

5 THE COURT: In some way we're putting the cart
6 before the horse.

7 MS. RISTENPART: Correct.

8 THE COURT: Because I was presented with the
9 argument, I didn't have time to reflect and analyze as I
10 prefer, I responded to an oral argument with an oral
11 pronouncement.

12 Now that I've read the State's motion, it
13 intrigues me, and it's possible that I was wrong. And
14 if I was wrong, then all of this is irrelevant. And so
15 I need -- go ahead.

16 MS. RISTENPART: I'm sorry. I just don't
17 understand the State's logic. They're claiming and
18 telling the Court that they can't understand what's in
19 the rest of the translated statement?

20 THE COURT: This prosecutor gets to choose
21 whatever evidence he wants to admit against you're
22 client.

23 MS. RISTENPART: I understand that, your
24 Honor.

1 THE COURT: And he doesn't have the
2 responsibility to admit evidence that's your client's
3 own statement unless he wants to.

4 If your client wants to speak to the jury
5 that's a Constitutional choice he'll make in the future.
6 So I don't like the word cherry pick or selective or
7 strategy. The State, as I read the law the State has
8 cited, really has the ability to decide what statements
9 your client made to use against your client they fall
10 outside the hearsay rule.

11 MS. RISTENPART: I would like to pause on this
12 argument because I think this is what you said, the cart
13 before the horse. We're just trying to get to the point
14 of how this Court could hear the rest of the translated
15 statement.

16 THE COURT: So let me make a decision on the
17 motion then before I decide the logistics of how.

18 MS. RISTENPART: The motion for
19 reconsideration.

20 THE COURT: Yes.

21 MS. RISTENPART: Your Honor, I have not had
22 time to --

23 THE COURT: I know.

24 MS. RISTENPART: -- read or prep for that.

1 THE COURT: I know. I'm suggesting you come
2 in in the morning and argue it.

3 Okay. So what time should we be here in the
4 morning?

5 MR. LEE: Jury's at 9:30?

6 THE COURT: Jury's at 9:30.

7 THE COURT: 8:30. All right. There will be
8 two parts to the argument tomorrow morning. The first
9 part is whether the rule of completeness even applies.
10 I'm inviting your attorney -- your arguments after your
11 preparation tonight and tomorrow morning, but that's the
12 first part of the argument. Does the rule of completion
13 even apply. And the State suggests it is not.

14 If I decide the rule of completeness does
15 apply, I have to just, as a general concept, then I have
16 to decide how to measure in this instance, which means I
17 would then have to know what the subsequent statements
18 are to determine if they contextualize the admitted
19 statements. Let's focus on the first part tomorrow
20 morning, and then we'll focus on the second.

21 Who do you have?

22 We have cross-examination of Mr. Guzman. We
23 have redirect and recross. Who do you have after that?

24 MR. LEE: After that I have scheduled Debbie

1 Moreno, she's the jail call person for the one call. I
2 have Ms. Kindra Baum from the lab. I have Reed Thomas
3 and I have --

4 THE COURT: What's Ms. Baum from the lab going
5 to do?

6 MR. LEE: DNA. She's going to show a nice
7 PowerPoint. And but she's the DNA link.

8 THE COURT: Okay. So after Baum you have who?

9 MR. LEE: Then I would have just two witnesses
10 left, Reed Thomas, Suli, and then Schehr, who is the
11 interpreter. Perhaps in a different order, but those
12 are the two.

13 THE COURT: Ms. Ristenpart, please be ready
14 with your defense case to begin sometime around the noon
15 hour tomorrow.

16 MS. RISTENPART: Understood, your Honor.
17 Thank you.

18 THE COURT: Okay. At this point we're going
19 to go off the record, only to talk about scheduling.

20 (Discussion held off the record.)

21 THE COURT: Let's go on the record, please.
22 Counsel, I invite you to think about Juror Number 13,
23 our alternate, who is scheduled to leave Friday at noon
24 and return -- depart Las Vegas Monday morning.

1 Your interest in a fair, Constitutional trial
2 dominates over her inconvenience, I begin by
3 acknowledging that. She is an alternate. We have two
4 alternates. And as I was thinking last night, I
5 wondered whether I was affecting everybody else's
6 schedule by having a Monday afternoon start time to
7 accommodate her. And that felt a little out of balance
8 to me. Because we could -- I don't know what to do.

9 And Deputy Coss said something to me last
10 night that I have intended to put on the record and I
11 just haven't done it yet, which is why I asked the
12 reporter to start writing. Deputy Coss essentially
13 overheard her say she's gonna get sick about Friday,
14 with the flu or something like that. Now, Deputy Coss,
15 clarify, be strictly honest about what you heard, I
16 don't want to speak for you.

17 DEPUTY COSS: I believe it was yesterday or
18 day before as I was in there for whatever reason, she
19 was coughing and made a comment that she had a fever.
20 Not to me but to another juror.

21 THE COURT: Okay. That's different then. So
22 you didn't get a sense that she was strategically
23 planning on being sick and absent.

24 DEPUTY COSS: I just heard her comment that

1 she thought she was getting a fever.

2 MR. LEE: Could I make a suggestion?

3 THE COURT: Please, yes.

4 MR. LEE: I think at the very least, perhaps
5 it could be communicated to her that we are very aware
6 of her schedule, that's a consideration that the Court
7 is taking quite often daily even, and seeing where it
8 progresses, perhaps just to put her at ease and leave it
9 at that. And then maybe by tomorrow at some point,
10 noonish or so when we have a better idea of where we're
11 at, then that decision can perhaps be a little more
12 ripe. But I'm afraid that as she's listening now the
13 whole time she's thinking dog-gone it, I've got this
14 wedding, it's an important thing, obviously, for her,
15 and so I'm afraid that her mind's there, but I don't
16 want -- I don't think we ought to just dismiss her now.

17 THE COURT: Yeah.

18 MR. LEE: But I think her mind ought to be put
19 at ease in some way.

20 THE COURT: Any thoughts?

21 MS. RISTENPART: None.

22 THE COURT: I just want balance in here. The
23 lawyers will often ask during jury selection are you
24 going to be so distracted that you wouldn't be able to

1 pay attention? I hear that regularly. And the fact is
2 I would have excused her for cause if there would have
3 been a request because she has a nondiscretionary fixed
4 event and she could just serve another time, but neither
5 one of you made the request and I didn't want to do
6 anything on my own. She has participated virtuously.
7 She's been here every day on time, she hasn't been a
8 distraction, she hasn't caused anything in the jury
9 deliberation room, so I want to honor what she's given
10 us so far and I'd like a suggestion.

11 Deputy Coss, in the morning at 9:25 we'll
12 bring her in alone and I'll try and put her at ease.

13 DEPUTY COSS: Understood.

14 THE COURT: I'll also hear from her in front
15 of the attorneys and Mr. Silva about whether she has
16 made adjustments to her plane and at some point I'm
17 going to have to make the call whether I discharge her
18 as an alternate. If the defense case rests tomorrow at
19 close of business will the State have any rebuttal case
20 to present?

21 MR. LEE: Obviously it depends, but right now
22 I don't anticipate, but we'll see what happens.

23 THE COURT: So would your request be that we
24 go into instructions and arguments and deliberations on

1 Friday?

2 MR. LEE: I would hope we could settle
3 instructions tomorrow, depending on what time we finish.
4 Just because that would aid in my presentation of my
5 closing, but. So if we have time tomorrow I'd love to
6 put that out there and do that, otherwise, it's fine
7 Friday, I'd love to get it done before the weekend if we
8 can.

9 THE COURT: Let's stop writing because I now
10 know we're over talking about that particular juror.

11 (Proceedings continued until February 27,
12 2020, at 8:30 a.m.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 15 of the above court on Wednesday,
9 February 26, 2020, at the hour of 8:45 a.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 Jury Trial of the case of STATE OF NEVADA, Plaintiff,
13 vs. RICHARD ABDIEL SILVA, Defendant, Case No.
14 CR18-1135B.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 236, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings of the above-entitled
20 action to the best of my knowledge, skill and ability.

21
22 DATED: At Reno, Nevada, this 16th day of March, 2021.

23 /s/ Julie Ann Kernan
24

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8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

11 STATE OF NEVADA,

12 Plaintiff,

Case No. CR18-1135B

13 vs.

Dept. No. 15

14 RICHARD ABDIEL SILVA,

15 Defendant.

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16 TRANSCRIPT OF PROCEEDINGS

17 JURY TRIAL - DAY 4

18 Thursday, February 27, 2020

19 Reno, Nevada

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24 Reported by:

LORI URMSTON, CCR #51

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1 RENO, NEVADA; THURSDAY, FEBRUARY 27, 2020; 8:31 A.M.

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3 (Proceedings outside the presence of the jury.)

4 THE COURT: Be seated as you arrive. We'll go on
5 the record this morning. We are out of the jury's
6 presence. Mr. Silva and his attorney and the State's
7 attorney are present. The State has filed a motion to
8 reconsider this Court's oral pronouncement regarding
9 the rule of completion.

10 Do you wish to argue, Mr. Lee?

11 MR. LEE: I'll just reserve for rebuttal if I
12 could, Your Honor. Otherwise I'll rest on that.

13 THE COURT: Ms. Ristenpart.

14 MS. RISTENPART: Thank you, Your Honor. I do feel
15 that this is the State's attempt to reopen argument
16 that has already been settled by the Court,
17 specifically with regards to the translated portions
18 that they want to use in front of the jury and more
19 even specifically the captions that they had used that
20 the Court had already made a ruling on saying that they
21 had to have a clean copy for court, they couldn't
22 have --

23 THE COURT: I want to ask about that, because you
24 said that yesterday, but I thought I was all over the