

No. 79554

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

CHRISTIAN STEPHON MILES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal

From the Eighth Judicial District Court, Clark County
The Honorable Mary Kay Holthus, District Court Judge

APPELLANT'S APPENDIX
(Volume 7)

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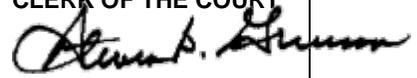
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DISTRICT COURT

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CLARK COUNTY, NEVADA

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STATE OF NEVADA,

CASE#: C-15-306436-1

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Plaintiff,

DEPT. XVIII

9

vs.

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CHRISTIAN STEPHON MILES,

11

Defendant.

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BEFORE THE HONORABLE MARY KAY HOLTHUS
DISTRICT COURT JUDGE
MONDAY, APRIL 8, 2019

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15

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6

16

17

APPEARANCES:

18

For the Plaintiff:

SAMUEL MARTINEZ, ESQ.
KRISTINA RHOADES, ESQ.

19

Defendant Pro Se:

CHRISTIAN MILES

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Standby Counsel for
Defendant:

ROBERT BECKETT, ESQ.

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Las Vegas, Nevada, Monday, April 8, 2019

[Case called at 10:08 a.m.]

[Outside the presence of the jury.]

THE COURT: All we're doing is going on with the recording right now, right?

MR. MARTINEZ: I think Mr. Miles wants to put some additional things on the record as well.

MR. MILES: Yeah, I just received some more proposed exhibits from the State.

THE COURT: Okay. Are we on?

THE CLERK: We are, Judge.

MR. MILES: And again, I'm looking at --

THE COURT: We're outside the presence of the jury.

MR. MILES: Again, I'm looking at what appears to be identification card. The files for these seems to be 2014. There seems to be another picture which depicts --

THE COURT: Let me ask, are these being offered?

MR. MARTINEZ: So what our -- and our intention today is to call Mr. Ramirez to the stand to finish his testimony.

THE COURT: Right.

MR. MARTINEZ: And then Detective Gatus. So --

THE COURT: Wait. Wait. We're not finishing Gatus this morning?

MR. MARTINEZ: No, we're going to do Ramirez first and

1 then Gatus because all we can have Ramirez for is the morning, so we
2 have to get him --

3 THE COURT: Okay.

4 MR. MARTINEZ: -- done.

5 THE COURT: Okay.

6 MR. MARTINEZ: And there were some exhibits that I wasn't
7 able to really go over with Detective Gatus because we couldn't finish
8 with Mr. Ramirez, so I want to get those exhibits admitted before --

9 THE COURT: Okay. I thought we were just going on with the
10 recording and we could just get that going so that the jury doesn't have
11 to wait in the hallway, but obviously not. Go ahead.

12 MR. MARTINEZ: I can't. I can't. I can't.

13 THE COURT: Okay.

14 MR. MARTINEZ: So --

15 MR. MILES: So again --

16 THE COURT: So what -- can I see the exhibits? What are we
17 talking about?

18 MR. MARTINEZ: Yes.

19 MR. MILES: Well, I thought they were marked as proposed.
20 It doesn't seem like it's marked as proposed on my copy.

21 MR. MARTINEZ: Yes, they are.

22 MR. MILES: Oh, on the back?

23 MR. MARTINEZ: No, they're on the originals.

24 MR. MILES: Yeah, these -- this is evidence that I didn't
25 receive.

1 MR. MILES: It's the same -- it's the same argument that he
2 made last time, that he didn't get the report. So these are additional
3 exhibits from Vince Ramirez's examination of the Samsung phone.

4 THE COURT: Okay.

5 MR. MARTINEZ: And so based on some representations that
6 Defendant made that it wasn't his phone, we printed off and made
7 exhibits from different parts of the report to show that it actually is his
8 phone.

9 THE COURT: Those were marked what?

10 MR. MARTINEZ: They've been marked as State's Proposed
11 53.

12 MR. MILES: Yeah, just -- I'm not going to really argue the
13 evidence, but he's saying just because I took a picture, or it looks like I
14 took a picture with the phone, that it's my phone. I don't think that's how
15 it works. Anybody can --

16 THE COURT: Well, you can argue that to the jury in your
17 closing for sure.

18 MR. MILES: But I'm -- like I said, I didn't receive this. This is
19 actually inculpatory evidence. I really didn't receive this before trial. If I
20 did, there would have been a motion in limine made. These exceeds the
21 scope. This is 2014 as well. I mean, we're in February 1st is the State's
22 alleged theory, February 1st through February 8th -- I mean, 13th of
23 2015. I would --

24 THE COURT: It's being offered just to show ownership of the
25 phone.

1 MR. MILES: Yeah.

2 THE COURT: And so I'm going to make the same findings as
3 last week, that you repeated occasions, had the opportunity to review it.
4 The phone records and reports, I gave you more time on Friday. Mr.
5 Beckett has reviewed it with you. Mr. Preusch has referred it. Based
6 upon the totality of the circumstances, I don't see that it's particularly
7 prejudicial. I think you have the opportunity to review it previous. If not,
8 in fact, actually have it in the documents that were produced by Mr.
9 Beckett. So is there anything else?

10 MR. MILES: I think there was one more thing. Oh, yeah, as
11 far as the weighted testimony is going. I think it's very confusing for the
12 jury. We just heard from Ramirez. We stopped in the middle of his
13 testimony, and we heard from Detective Gatus. He said a lot of
14 important things that are relevant to cross-examination.

15 THE COURT: Okay. Well, we're going to get back to that, but
16 the -- but because of issues that have been raised, we've been forced to
17 do this and there's just no choice, so --

18 MR. MARTINEZ: And I'm not done with direct on Detective
19 Gatus.

20 MR. MILES: Yeah, I just think it's kind of confusing, we're
21 going back and forth. We're stopping through it. I didn't get to
22 effectively cross-examine. I think we should call Detective Gatus first,
23 get through that, and then call Ramirez next. I mean, that's just the way I
24 want to do it.

25 THE COURT: Well, I appreciate you offering me the way

1 that -- to run the witnesses, but I'll make those decisions. They started
2 with Detective Ramirez. That's who they were going to go with. That
3 got interrupted, and because of scheduling, he had to -- another -- but
4 now that we're here on Monday, they've got a different scheduling issue.

5 MR. MILES: Okay. I'll -- and I just think --

6 THE COURT: I think the jury can figure it out.

7 MR. MILES: Yeah, just -- the reason why I was objecting to
8 that because it could become prejudicial. They heard evidence that
9 wasn't even admitted into evidence, so you know --

10 THE COURT: No, they haven't. Anything that they've heard
11 is evidence and has been admitted by virtue of it coming to them, so --

12 MR. MILES: Okay.

13 THE COURT: We're done now. Can we go forward?

14 MS. RHOADES: Yes, Your Honor. I think that -- were we
15 going to look at the playback about the weed?

16 THE COURT: We can. Do you want to do it right now? Go
17 ahead.

18 Would you play that for them, please?

19 MR. MARTINEZ: So when we left on Friday --

20 THE COURT: We left on Friday and Mr. Miles objected. His
21 position was that the weed information haven't --

22 Mr. Beckett has just come in. Mr. Beckett --

23 MR. BECKETT: Yes, Judge.

24 THE COURT: Just to give you a heads up, earlier, Mr.
25 Martinez had marked Exhibits -- what are they?

1 MR. MARTINEZ: 51 through 55, and also --

2 THE COURT: 51 through 55.

3 MR. MILES: -- 56.

4 THE COURT: That were further -- can you show those to
5 Bob?

6 MR. MARTINEZ: Yes.

7 THE COURT: Further documents, photos taken off the
8 phone, essentially just to show ownership. Also, contained the original
9 from thumb drive, my understanding is, and I believe printed copied out
10 by your office and provided to the Defendant, or at least reviewed or
11 given the opportunity to review prior to trial. So --

12 MR. BECKETT: Thank you, Judge.

13 THE COURT: Thank you. And now we're just dealing with
14 the weed issue.

15 Okay. Let's proceed.

16 Mr. Miles, we're ready to go.

17 No, we're going to the playback here, right? Not jury yet.
18 We need the playback. Not that I don't think we're going to end up with
19 another break before we get to that witness, but --

20 MS. RHOADES: I was just thinking because we were still
21 waiting for Mr. Beckett, so --

22 THE COURT: Right, but that's what I'm saying, but now that
23 he's here.

24 MS. RHOADES: Okay.

25 MR. MILES: And, Your Honor, can I please -- if I can get

1 those CDs over here, please?

2 THE COURT: What do you want?

3 [Whereupon, an audio recording, was played in open court at
4 10:14 a.m. and not transcribed]

5 [Audio ended at 10:18 a.m.]

6 THE COURT: All right.

7 MR. MILES: Yeah, I think I was looking at the wrong page,
8 because we have weed and then weed on the next page, so I think I was
9 looking at the wrong page. One of them is out, so --

10 THE COURT: Okay.

11 MR. MILES: That's -- yeah, I was looking at the wrong page.
12 Sorry about that.

13 THE COURT: All right. So are we ready?

14 MR. MARTINEZ: We're ready to go.

15 MS. RHOADES: Yes.

16 THE COURT: Yeah.

17 MR. MILES: We'll just wait for them to come in.

18 THE COURT: Bob, do you have to be somewhere at noon,
19 am I hearing?

20 MR. BECKETT: I'm sorry, what?

21 THE COURT: Do I hear you have to be somewhere at noon?

22 MR. BECKETT: No, Judge, I got it all done.

23 THE COURT: Okay.

24 THE MARSHAL: All rise.

25 [Inside the presence of the jury.]

1 THE COURT: Good morning.

2 IN UNISON: Good morning.

3 THE COURT: Welcome back. All right. State.

4 MR. MARTINEZ: The State is going to continue with Vicente
5 Ramirez.

6 THE COURT: All right. Ladies and gentlemen, we're going to
7 flip gears again. Because of scheduling issues for the witnesses, we're
8 going back to Ramirez.

9 THE MARSHAL: Watch your step.

10 THE COURT: Hello, again.

11 VICENTE RAMIREZ, STATE'S WITNESS, PREVIOUSLY SWORN

12 THE CLERK: Please be seated and state your name.

13 THE WITNESS: Name is -- first name is Vicente, last name is
14 Ramirez.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. MARTINEZ:

17 Q How are you today, sir?

18 A Fine. Thank you.

19 Q We -- I believe we continued off -- we were going to get into
20 the report that you were able to generate from Samsung phone that
21 Detective Gatus had brought to you; is that correct?

22 A Correct.

23 Q Okay. I'm going to approach, have you review State's
24 Proposed Exhibits 31 through 34, and 51 through 55, and I want you to
25 examine that and let me know if you recognize what that is.

1 A Yes, I do.

2 Q Okay. And what is it?

3 A That is the report with the contents of the Samsung that my
4 lantern (phonetic) program examined.

5 Q Okay. And is it fair to say that that's not the entirety of your
6 report; is that correct?

7 A Correct.

8 Q Those are portions of the report that you generated, correct?

9 A Correct.

10 Q Those -- are those fair and accurate portions of the report
11 that you generated of the Samsung phone that we've been discussing?

12 A Yes.

13 MR. MILES: Objection, Your Honor, unless we get a
14 foundation as to when.

15 THE COURT: Overruled.

16 BY MR. MARTINEZ:

17 Q That was a yes?

18 A Yes.

19 Q Okay. And did you have a chance to review your report prior
20 to your testimony?

21 A Yes.

22 Q Okay. Once you generated your report, who did you give it
23 to, if anybody?

24 A I actually contacted Detective Gatus.

25 MR. MARTINEZ: Okay. And if I could get those exhibits

1 admitted? Can we get them admitted before we publish them?

2 THE COURT: Did you move them in?

3 MR. MARTINEZ: I move for the admission of State's
4 Proposed Exhibits 31 through 34, and 51 through 55.

5 MR. MILES: And, yes, I've got a couple of objections, Your
6 Honor. I'm going to object to relevancy, and I'm going to object that the
7 probative value is substantially outweighed by the dangers of unfair
8 prejudice and misleading.

9 THE COURT: Okay. Overruled. They'll be admitted.

10 [State's Exhibit 31 through 34 admitted into evidence]

11 [State's Exhibit 51 through 55 admitted into evidence]

12 BY MR. MARTINEZ:

13 Q Did you also have -- were you also asked by Detective Gatus
14 to examine a ZTE phone that was a part of her investigation?

15 A Yes.

16 Q Okay. I'm just going to have you look at State's Exhibit 1
17 that's already been admitted. Do you see on the actual envelope itself,
18 do you see any markings on there that you recognize?

19 A Yes, I do.

20 Q What do you see?

21 A I see a -- on the seal, I see my first initial, my badge number,
22 and my last initial. And I also see on the chain of custody, I see my
23 signature with my P number, 4916, the date that I sealed it, and the time
24 that I sealed it.

25 Q And what was the date that you sealed it?

1 A 10/1 of '15.

2 Q Okay. And just showing you again what's been admitted
3 already as State's Exhibit 2. Do you recognize any writings on that?

4 A Yes.

5 Q And is -- what is it that you recognize?

6 A Again, I recognize my -- on the evidence tag, I recognize my
7 first initial, my badge number, 4916, my last initial, R. I also recognize
8 my signature and the chain of custody with my P number, 4916, with the
9 date, seal -- being sealed, 10/1 of '15, and the time of 10:00.

10 Q Okay. And were you able to generate a report for that
11 particular phone that's in -- I'm sorry, the first exhibit -- turning your
12 attention to the first exhibit, were you able to conduct a report on the
13 ZTE phone?

14 A Yes, I was.

15 Q Okay. And did you provide a copy of that report to Detective
16 Gatus?

17 A Yes.

18 Q And did you have an opportunity to review any part of that
19 report before coming to court today?

20 A Yes, I did.

21 Q Okay. We've got State's Proposed 56. Can you let us know
22 what that is? Or if you recognize what that is?

23 A Yes, I do.

24 Q Okay. What is it?

25 A That is the report that was generated on the examination for

1 the ZTE.

2 Q Okay. Now, is that a fair and accurate copy of that particular
3 portion of the report?

4 A Yes.

5 Q Okay. And can you tell us what portion of the report that is?

6 A The portion is the basic -- the general overview of the
7 contents of the phone that's being examined that identifies the
8 manufacturer, model, and serial number.

9 Q Okay. And is that a fair and accurate copy of that portion of
10 the report?

11 A Yes.

12 Q Okay.

13 MR. MARTINEZ: We'd move for the admission of State's
14 Proposed Exhibit 56.

15 THE COURT: Mr. Miles.

16 MR. MILES: And, Your Honor, I'm going to object to
17 relevancy.

18 THE COURT: Overruled.

19 [State's Exhibit 56 admitted into evidence]

20 MR. MARTINEZ: Okay. While that's getting marked, I'm just
21 going to ask to be able to publish these exhibits that you just admitted.

22 THE COURT: You may.

23 BY MR. MARTINEZ:

24 Q I'm showing -- I'm publishing State's Exhibit 31. All right.

25 Can you explain to the jury what they're seeing on the first page of this

1 exhibit?

2 A That is the overview of a lantern report. The left side is the --
3 basically the table of contents. It will give you the overview, the people,
4 the breadcrumbs, timeline, contacts, calls, messages, calendar, internet
5 bookmarks, internet history, videos, images, and documents.

6 And then the right of the overview, it gives you the evidence
7 summary, and it also puts -- gives you the agency that conducted the
8 examination, which is Las Vegas Metro Police Department, the actual
9 case number that this examination was being conducted under.

10 Q Is that also the event number?

11 A Yes.

12 Q Okay.

13 A The date and time of the examination, the time zone, which
14 is PST for Pacific Standard Time, which is L.A., the examiner, which is
15 myself, V. Ramirez, P number 4916, the version of the lantern software
16 that I'm using. I did not add any notes, and the time zone is
17 automatically detected by the program.

18 Q Okay. Now, if -- turning your attention the left-hand side of
19 that, down on the bottom there's a rectangle that's highlighted, a portion
20 called documents; is that correct?

21 A Correct.

22 Q Okay. And then if we were to click on that, this was the
23 electronic version, would it take us to this following page?

24 A Yes.

25 Q And then if we were to click on -- let -- can you just let us

1 know what the date is on that and then what the file name is?

2 A The date and time is 3/5 of 2015. The time is 2331, which is
3 military time for 11:31 p.m. The file name is Gmail plus accounts-
4 1425627 106727.txt.

5 Q Okay. Is there any significance on the number that's after the
6 Gmail accounts?

7 A That's just the file name that is created by the program.

8 Q Okay. And then clicking on that, would that take us to this
9 list of email addresses?

10 A Yes.

11 Q Okay. And can you let us know what that means, having this
12 list of email addresses on the last two pages of this exhibit? This long
13 list of emails, what is -- what does that mean as it relates to the Samsung
14 phone?

15 A That basically gives you the -- all the library of all the Gmail
16 accounts that have been touched by that phone?

17 Q So the -- it gives you a library of the Gmail accounts that
18 have been touched by that phone; is that correct?

19 A Correct.

20 Q Okay. Can you give us an example of how that -- why a
21 phone would store those in such a way?

22 A Cell phones, of course, they try to make it more people
23 friendly, so instead of having to constantly look through your notes to
24 look up somebody's email, say if I wanted to email myself and I didn't
25 have my exact email on me, I would just start typing, like V, and then I

1 for Vince, and it should populate and give me anything that's listed in
2 there under V-I, and then once I see my name, then I just click on it and it
3 automatically populates the -- you know, to, who you're going to send it
4 to.

5 Q Okay. Now, I'm going to publish what's been admitted as
6 State's Exhibits 31 through 34. And you indicated that you had
7 recognized what's depicted here; is that correct?

8 A Correct.

9 Q And is that from the images section of your report, your
10 cover page here, if you were to click on just above the documents there?

11 A Correct.

12 Q Is that -- that's where it would come up; is that correct?

13 A Yes.

14 Q Okay. Now, if you could explain the -- you see that there's a
15 file -- file time and the source, and then a photo that's next to it. Could
16 you explain to the jury what those things mean, starting with file?

17 A The file name would be the name of the actual image, and
18 that would be picsart_1423483808634.jpg, J-P-G for Jpg. The file time is
19 2/9 of '15 of 0410, Pacific Standard Time, which would be 4:10 a.m. in the
20 morning. The source is basically where that's being stored at, the -- so
21 just like on a directory, it has to put that somewhere, so it's basically
22 putting that picture in the mounted shell, emulated zero picsart -- picsart
23 with the same exact file type name.

24 Q Okay. Now, we'll go back to the file time section of that.
25 What does that tell us where it says February 9th, 2015, 4:10 Pacific

1 Standard Time. What does that tell us?

2 A Typically, it tells you the time that that picture was taken.

3 Q Okay. And does it also indicate that it's stored at that time,
4 or is that when it's taken?

5 A It depends on if that picture was actually taken from that
6 phone or if that picture was transferred to that phone. Typically, it does
7 keep the actual date and time that the picture was actually created, but
8 sometimes it can -- if one picture is transferred to another phone, it can
9 change it, but typically that is the general -- the normal time that that
10 picture was taken.

11 Q Okay. Now, going to the second page of this exhibit, are we
12 seeing the same type of information as far as file, file time, and source?

13 A Correct.

14 Q And then that's the -- if you were to click on the file, then the
15 photo to the left is what would become large; is that correct?

16 A Correct.

17 Q On your screen?

18 A Yes.

19 Q Okay. And then to the third page of this exhibit, there
20 appears to be two photos, and the file, file time and source are -- have
21 the same significance; is that correct?

22 A Correct.

23 Q And then to the fourth page of this exhibit, same significance
24 as the previous pages?

25 A Yes.

1 Q Page 5 of this exhibit?

2 A Correct.

3 Q Same -- same significance; is that correct?

4 A The only difference is the bottom -- the bottom one shows
5 the source of being a TextNow image.

6 Q Okay. The bottom one does?

7 A Yes.

8 Q Okay. That says TextNow, and then I just want to go back to
9 the other ones and see if -- all right. So that's the only one that you
10 could see is TextNow?

11 A Go to -- okay. Third page. Back up one page. One more.
12 Okay. So the bottom one there, when it says DCIM, that is typically from
13 a -- from an SD card, so it could have come -- it could have come from a
14 camera that you take that SD card out, put it in the phone, and then it
15 transfers everything there.

16 So if it -- it says -- it's still the same primary library, so it's mounted
17 shell emulated zero, so that's like the folders that it's hitting, and then it
18 has DCIM, so DCIM typically is from a SD card, or if a card was put into
19 the phone with that picture on it already. So it could have come from a
20 camera and then stored to that phone.

21 Q Okay. And with regards to the TextNow image here on the
22 bottom, you had mentioned that came from a TextNow. In your -- on, I
23 believe it was Friday that you were here, you had testified that generally
24 TextNow data, you can't retrieve it from the TextNow application. Can
25 you explain how this would get stored into the phone where you would

1 be able to recover this specific data?

2 A Basically, he -- he was using that app and then applied that
3 app and then saved it. So that's why -- the only -- the only --

4 MR. MILES: Objection. Speculation, Your Honor. I move to
5 strike.

6 THE COURT: Overruled. Excuse me. Overruled.

7 THE WITNESS: The only way that that TextNow is going to
8 show is if he was actually using the application, snapped a picture, sent
9 it off, and saved it.

10 BY MR. MARTINEZ:

11 Q All right. Now, I'm showing you State's Exhibits 33 and 34.
12 Are these blowup pictures of -- if you were to click on image of what we
13 just looked at?

14 A Yes.

15 Q And 35 -- or, I'm sorry, that's 33. This is 34. Same thing for
16 this exhibit?

17 A Correct.

18 Q All right. And if I could publish State's Exhibits 51 through
19 55. Okay. So this is from the Samsung report still; is that correct?

20 A Yes.

21 Q Just in a different part of the images file?

22 A Correct.

23 Q And does that have the same significance for the file, file
24 time, and source?

25 A Yes.

1 Q And then going to the second page, is that just a blowup of
2 what we were just looking at?

3 A Yes.

4 Q If you were to click on the actual image?

5 A Correct.

6 Q All right. Could you go to exhibit -- I believe it's 3, the -- on
7 the envelope, the Samsung?

8 A It's State's Exhibit 2.

9 Q State's Exhibit 2, could you take that out of that envelope?

10 A Okay.

11 Q And could you hold that up?

12 A Okay.

13 THE COURT: Has that been marked?

14 THE WITNESS: Yes.

15 BY MR. MARTINEZ:

16 Q And that's State's Exhibit 2-A?

17 A 2-A, correct.

18 Q Okay. Can you hold that up for the jury to see?

19 A Thank you.

20 Q Now, I'm showing you State's Exhibit 52. This is from the
21 images section of your report of Samsung; is that correct?

22 A Correct.

23 Q Okay. And same -- there's a file, file time, and source; are
24 these the same significance as the other exhibits?

25 A Correct, but this one actually falls under a scanner where the

1 image was actually scanned into the -- into the phone.

2 Q Okay. And then saved to the phone?

3 A Correct.

4 Q Is that correct?

5 A Correct.

6 Q So it would be a photo that was taken and then scanned to
7 the phone?

8 A Correct.

9 Q Okay. And then these are just blowups of the same; is that
10 correct?

11 A Correct.

12 Q Now, State's 53, we're still in the images portion of the
13 Samsung report; is that correct?

14 A Yes.

15 Q Okay. And then we have the file, file time, source, same
16 significance; is that right?

17 A Correct.

18 Q And then blowups of the images that were on the left?

19 A Correct.

20 Q Is that correct? On pages 2 and 3 of this exhibit? And I'm
21 publishing State's 54. Do we have the same significance? There's a -- it
22 looks like there's a file time and an XF time. What's an XF time?

23 A XF data is just more details of that picture, so if I -- if I had
24 this on my computer, I could actually touch the XF time and find out
25 more information. It would give me like GPS location and things like

1 that. It's just more detailed information about that picture itself.

2 Q Okay. Now, do you see an individual's name? I don't know if
3 we're going to be able to -- it might be a little bit too blurry, so we'll
4 just -- we'll let the -- I won't ask that question since we can't see it on the
5 Elmo. And then, finally State's 55; is this from the same images section
6 of your Samsung report?

7 A Yes.

8 Q Okay. And then does this have the same significance as far
9 as file, file times, XF time?

10 A Yes.

11 Q And so forth? And then these are just blowups of those
12 images that were on the left; is that correct?

13 A Correct.

14 Q Okay. I'm just going to publish State's 56, which you
15 identified as the ZTE phone that you examined.

16 A Correct.

17 Q And I'd like you to identify where it lists the phone number
18 for the phone. Can you see where that would be that's associated with
19 this phone?

20 A Yes. The MSISDN is the designator for the phone number,
21 which is 1(702) 913-2289.

22 Q Okay. And that's -- this is for the ZTE phone; is that correct?

23 A Correct.

24 Q Now, on the Samsung, was there -- that you were able to see
25 a phone number that was specifically associated with that?

1 A The overview of the program did not identify it, so it basically
2 just -- if it can't read it or identify it, it will just put straight up zeros.

3 Q Okay.

4 A So it can't decipher it.

5 Q And with the State's Exhibit 56 of the ZTE, this looks a little
6 bit different than the other one. Was there a different program that you
7 used? You indicated that the Samsung was done with the lantern. Is
8 this a different program?

9 A Yes. This is the actual -- UFED is the Cellebrite program.

10 Q Okay. Thank you. So the phone number that was identified
11 on that exhibit for the ZTE phone, that doesn't give you a date of when
12 that phone number -- all the date range or date that that number was
13 activated or ever in existence; is that correct?

14 A Correct.

15 Q It just shows a phone number there?

16 A It just shows a phone number there.

17 Q Okay. So a phone number can exist prior to being on a
18 particular phone; is that right?

19 MR. MILES: Objection. Speculation.

20 THE COURT: If he knows.

21 BY MR. MARTINEZ:

22 Q If you know?

23 A Yes, because your SIM card is what's going to have the
24 phone number, not the actual phone, so if you switch SIM cards, that
25 phone number becomes whatever phone numbers the subscriber gives

1 you on that SIM card.

2 Q Okay.

3 MR. MARTINEZ: Could I have the Court's brief indulgence?

4 THE COURT: Uh-huh.

5 MR. MARTINEZ: We will pass the witness, Your Honor.

6 THE COURT: Mr. Miles.

7 MR. MILES: Yes, Your Honor.

8 THE COURT: Your witness.

9 CROSS-EXAMINATION

10 BY MR. MILES:

11 Q Good morning, Mr. Ramirez.

12 A Good morning.

13 Q So how long have you been doing cell phone extractions
14 with cellular phones?

15 A With the programs that I use, since 2011.

16 Q Since 2011?

17 A Correct.

18 Q Now, we just heard testimony from you on direct
19 examination that the phone content that's associated when the number
20 was activated is stored on a SIM card? Was that your testimony?

21 A Not the content, just the phone number.

22 Q Just the phone number. Did you do any type of examination
23 on the SIM card on this case?

24 A You don't need to do that because the program actually pulls
25 it out. The only thing the SIM card holds is the contacts and the phone

1 number.

2 Q Were you able to determine when in fact the ZTE phone was
3 actually activated?

4 A No.

5 Q You didn't -- were you asked to do it by Detective Gatus?

6 A No.

7 Q Okay. Now, when you were performing these cell phone
8 extractions, was anybody present with you?

9 A Detective Gatus was.

10 Q She was present?

11 A Yes.

12 Q Now, we did hear testimony from you that the cell
13 extractions are done in a private area, didn't we?

14 A Correct.

15 Q And in that private area, you're still -- it's still your testimony
16 that she was with you?

17 A Correct.

18 Q In that private area?

19 A Correct.

20 Q Did she have clearance to be there with you?

21 A Absolutely.

22 Q Okay. Now, we heard testimony that the UFED file is a
23 Cellebrite program?

24 A Yes.

25 Q Did you preserve the UFED file in this case?

1 A Yes.

2 Q And where is that at, exhibit?

3 A That would be at the Internet Crimes Against Children Office,
4 and it is stored on a drive that I archive all cases.

5 Q Now, when a person performs a Cellebrite extraction from
6 the phone, what is that outputs that you would see on it? Like, would it
7 be PDF? Would it be HTML? Would it be --

8 A You can pick either/or. You can do a PDF or an HTML.

9 Q Now, can you explain to the jury what a PDF file is, please?

10 A A PDF file is just -- is basically a file that -- just like a text
11 document. So the easiest way to explain that is when I see a PDF file, it's
12 just, you know, like a printed copy of something. Nothing can be
13 changed, or if you click on something, it's not going to give you the
14 image. So like on the report, you saw the image file, and if it's a HTML,
15 or if it's a PDF, if I click on that file, it won't show me the thumbnail, or it
16 won't show me the blown-up picture.

17 If I use a HTML, that is a link file, so that one, once I click on it, then
18 it will show me the big picture. So the difference is, the PDF, you can
19 just print it and it will show you exactly what's on there and that's it, but
20 the HTML, that one is a link file, then I'm able to actually click on the link
21 and show what -- you know, what that link actually holds.

22 Q Now, how important is it during an investigation to preserve
23 these UFED files?

24 A Very important.

25 Q And why is it important to preserve those?

1 A Because that is the actual evidence.

2 Q So the PDF document wouldn't be the actual evidence, would
3 it?

4 A It -- any of those documents are the actual evidence.

5 Q Well, you said the UFED file -- excuse me, your testimony
6 was that the UFED file is the actual evidence and isn't that outputted to
7 PDF? I don't know if you understand what I'm saying, but when the
8 UFED file -- when you extract a UFED file from the phone, what actual
9 content is on there? Is --

10 A So when I do an exam, it gives me the actual file. So the file
11 it gives me, that's the working file. All right. That's the copy that I can
12 go and actually do bookmarks. You can't change any of the content on
13 the file whatsoever. You can't manipulate anything. What I can -- the
14 program does allow me to go and bookmark, what they call bookmark,
15 so like all the images that Mr. Martinez had, those were bookmarked.

16 So I'm telling the program, hey, out of this extraction, I want just
17 these specific files, and it will put them either out for me on a separate
18 report, or I'll just take those files and copy off of that. So you have to
19 have a working copy because, you know, you can't come in here with
20 10,000 pages of data. So you know, we always -- when you extract it,
21 once you extract it, that is it. That is the evidence. You cannot
22 manipulate it. Can't -- you can't make any changes or anything to it. It's
23 just giving you what it has.

24 So one copy gets archived and then one copy basically is what
25 you're -- your working copy, and that's what you're doing your review on

1 and exams and everything else.

2 Q HTML files can be altered, can't they?

3 A Yeah.

4 Q So if a detective was to extract data from the phone, and the
5 only thing that was left was the HTML copy itself, the detective would be
6 able to make changes to that HTML file; isn't that correct?

7 A It -- but it -- if you make any changes, it changes the dates
8 and times.

9 Q It changes the dates and times on what?

10 A On that file.

11 Q On that file?

12 A Yeah.

13 Q Now, see, the real question is if she outputted the HTML file
14 onto a CD and the only thing that was left was the HTML data, there
15 wouldn't really be no changes from that file itself, would it?

16 A You still -- you can't make any changes whatsoever. Even
17 though it's a HTML file, all you can really do to a HTML file is open it.
18 That's the only thing it's allowing you to do. So if she took that file, or if
19 anybody took that file, put it on a DVD, and then manipulated that file,
20 and then you copy it somewhere else, that date of the file created date,
21 that's going to totally change.

22 Q So just the file created date would change, nothing else?

23 A Yeah, right. Right. Well, the actual file is going to change.

24 So if I had the original and then I had the one that was changed, then I
25 would just run hashes on each one, and if they don't match, then that file

1 was actually changed.

2 Q Now, we did hear testimony from Detective Gatus that she
3 performed an examination on an LG cellular phone, and it was outputted
4 onto a Tumbler; what is the Tumbler?

5 A A what?

6 Q To a thumb drive?

7 A Excuse me?

8 Q Thumb drive? Thumb drive?

9 A Yeah.

10 Q So if she erased that thumb drive, then she -- would it be fair
11 to say that she erased that evidence?

12 A What do you mean by erased that thumb drive? So she
13 puts -- you're saying she puts the report on that thumb drive?

14 Q Yes.

15 A Well, if she erased it, then she would have a report at all.

16 Q Okay. And it would be actually nothing to compare that
17 evidence to if there was any alterations, would there?

18 A She wouldn't have a report, so how could she compare
19 anything?

20 Q Well, see, the question is we just heard testimony from you
21 that the UFED file is outputted to either a PDF format or HTML format.
22 So if an officer was to output that format, print it out on a paper and then
23 delete the actual UFED file itself, there would be no way to compare that
24 data, would there?

25 A You're not going to delete -- you're still going to have the

1 backup file.

2 Q Well, we --

3 A So on one of your pictures -- on one of the images you saw a
4 .BAK?

5 Q Yes.

6 A That's a backup file.

7 Q Okay.

8 A So the UFED will give you a backup file. So you will have a
9 backup file on that, and that will be actually on the machine itself. The
10 only thing that's getting output is the actual reports, and if you're out in
11 the field, like with me, the reason you can have two is because I am in,
12 you know, a controlled setting in my office. When you're out in the field,
13 now you have the field version of the UFED.

14 So now, you only have that UFED, so the only reason you can put a
15 thumb drive into it is that -- is the UFED will actually say what is your
16 source? They want to know where to push that report to, and that
17 pushes it off to the thumb drive, but it -- the UFED itself will keep a
18 backup file, and it's called .BAK and it's super small, which it would stay
19 within that UFED.

20 Q Now, if she were to testify that she deleted that evidence,
21 then there's no way that you would be able to compare both files to
22 determine if this was the original file, would there?

23 A I would get the UFED and retrieve that backup file.

24 Q Can you say that again? I couldn't hear you. I'm sorry.

25 A I could get the UFED that was actually used and retrieve the

1 .BAK file.

2 Q How can you -- how would you be able to get the UFED if the
3 phone is no longer functioning? How would you be able to do that?

4 A No. The -- if she did an extraction, then that backup file is on
5 the actual device that she used to extract the phone.

6 Q And the device is a thumb drive?

7 A Huh-uh, it's the actual module that -- it's the program, the
8 actual thing that holds the program. So -- I wish I had a picture of it. So
9 let's say this is the UFED, right --

10 Q Okay.

11 A This is a UFED; she goes out in the field and she says, hey,
12 can I examine your phone, so she gets a phone. So now she connects
13 the phone to the UFED. All right. On the UFED, it'll ask you what source
14 are you going to put the report on? Where do you want this pushed off
15 to? So she puts a thumb drive to that and she -- now it recognizes that,
16 so it goes from the phone to the UFED and the report comes here. The
17 UFED, the actual program, the actual physical module that holds the
18 program and runs -- is able to run it, that backup file is kept on that
19 UFED.

20 Q So if there's no backup file, we wouldn't be able to determine
21 which one was the original copy, would we?

22 A You'll always have a backup file on any of the UFEDs.

23 Q And where would that evidence be at?

24 A On the UFED.

25 Q Where is the UFED files contained in?

1 A I have no idea where that UFED that they use to do that
2 exam.

3 Q Now, I was looking at your report and I did see something
4 that I haven't admitted into evidence, but can you explain what MD5
5 hash means?

6 A MD5 -- MD5 hash is just an algorithm. It's a mathematical
7 algorithm, and MD5 hash, it just means that anytime, you know, like I
8 said, if you have two pictures, or I do an exam -- let's just say I do a
9 computer forensic exam, so when I do the computer forensic exam, the
10 computer extracts all the data and it gives me an MD5 hash. This is the
11 MD5 hash of what you just extracted. So then it goes into the
12 verification once it's done. Once it verifies, it gives me the -- another
13 MD5 hash.

14 Those two hashes have to match identical or that -- or it's saying
15 that, hey, somewhere or another, when I did this extraction, this image
16 did not match with this. So we could not verify your image. So then
17 something's either mechanically wrong with the computer, that hard
18 drive, phone, or anything. So the MD5 hash just verifies, you know,
19 what -- you know, what you extracted.

20 So it has to verify, just like I explained with the picture. If I had the
21 original picture and then another picture that was thrown onto a DVD, I
22 could hash those, and that's what it is, MD5 hash, and they should -- they
23 should both match.

24 Q And if they don't match, then that's obviously not --

25 A That means that -- if they don't match, that means that one

1 bit, or one sector, or one -- you know, basically, just one bit could have
2 been moved, or it could have got damaged or something. So one bit
3 could be moved.

4 Q Now, would you be able to demonstrate to the jury how easy
5 it is to alter a HTML document? Would you be able to do that for us
6 today?

7 A I've never tried to alter an HTML document.

8 Q You -- okay. Well, can you explain how HTML works? Does
9 HTML have tags? Does HTML have like a certain format or a certain
10 structure?

11 A It's just basically a link file. It just makes it to where if you
12 click on it now -- like when you saw the report, the report had all the data
13 on it, and then it had a thumbnail, a smaller picture, then you saw bigger
14 pictures, the computer, of course, you know, is going to try to shorten it
15 up. So those small pictures you saw were called thumbnails, so it's just
16 giving me a visual depiction so I can go through it real quick and just,
17 you know, briefly -- you know, just review the report.

18 So when you click on the HTML, the HTML will actually blow up
19 the actual picture that it's depicting, but I've never physically tried to
20 alter HTML, or the only thing that I could even think of changing an
21 HTML is for templates.

22 So if I'm doing a report, let's just say a school report, and the date
23 said, you know, February 14th of 2000 and I don't want it to say that or I
24 don't want that there, well, I can eliminate that link so that way that link
25 doesn't show up in my report. So -- but, you know, with these reports,

1 those links, you can't -- those HTML files, you can't change those. That's
2 -- that's -- that's something that only the programmer of the actual
3 program could actually change those. We don't have authority to go in
4 and change the scripts or anything like that.

5 Q Well, if the HTML document itself was on a file and it had
6 attached, you would be able to, essentially, if you wanted to, change
7 anything that you wanted to with that file; isn't that correct?

8 A I would have to remove it from this program. So I would
9 have to take the program and -- or take the report, move it to something
10 else, and start trying to manipulate it.

11 Q So if I had the report on a CD, for example, you would be
12 able to just change that around, wouldn't you?

13 A Well, that's why we also do PDF files. I do a HTML report
14 and a PDF report also.

15 Q Can PDF files be altered or changed around on Photoshop?

16 A Not Photoshop.

17 Q Why wouldn't that be able to be altered on Photoshop?

18 A Because it's not a PDF editor.

19 Q It's not a PDF editor? It does read PDF files, doesn't it?

20 A Uh-huh.

21 Q Okay. So if it reads PDF files, then it's able to --

22 A Just because it reads PDF files does not mean that it can edit
23 PDF files.

24 Q Now, when I say the word edit, I'm talking about, let's say
25 you have a picture --

1 A Changing it, correct.

2 Q -- make another picture and paste that on top of that picture
3 and then you just output it. You'd be able to do that on Photoshop,
4 wouldn't you?

5 A Yeah, but that's not changing the actual picture.

6 Q It's not changing the actual picture, but if you print it out, it's
7 changing the actual document; isn't that right?

8 A It just -- it shows differently, but that's two totally different
9 layers.

10 Q Okay. So the evidence would show differently. It wouldn't
11 show the same evidence?

12 A But when you -- when you actually have the actual picture, it
13 is whatever was saved there. So you can Photoshop it and -- just like
14 your phone. I can take a picture and then I can edit, and I can get the
15 little scribbly and write something on it. That's just kind of like I have
16 this and then I write -- I put a piece of tape and I write something on that.
17 The basic picture is still the same. So you just wipe off that and you still
18 have the same picture.

19 Q Now, if I was to show you the file that I have on my CD,
20 would you be able to determine what exactly, if it was the original,
21 would you be able to determine if it was a duplicate? Or would you be
22 able to determine if it was altered in any way?

23 A I never tried to do it just by the human eye. I would have to
24 go back and try to do a hash.

25 Q Well, if I watch you do it in front of the jury, would you be

1 able to do it for them today?

2 A One, I don't have the tools here because I use programs. I
3 don't --

4 Q Do you have a computer with you today?

5 A No.

6 Q If a computer was provided, would you be able to use
7 Notepad and explain it for us?

8 A I don't have any undercover computers here.

9 Q Well, I'm talking about as far as my CD. Would you be able
10 to point that out, determine if this was a true and accurate copy of the
11 file? Would you be able to do that for me if I showed you --

12 A I do not know what's on your CD and I could not examine it,
13 you know, just -- just -- just out of the blue without using any forensic
14 tools whatsoever.

15 Q So you need forensic tools to determine if it's a true and
16 accurate copy?

17 A If I want to testify to that and say that that is honestly without
18 a doubt the image or not the image, then, yes.

19 Q So you wouldn't be able to determine that by just looking at
20 the file itself, would you?

21 A I'm not going to just determine -- make a determination just
22 by viewing something. I'm going to back it up.

23 Q Back it up with evidence?

24 A Yes.

25 Q And back it up with a MD5 hash?

1 A MD5 hash or any type of hash that I want, or I can actually
2 put it in a program, and it will tell me, you know, the dates and times.

3 Q Now, MD5 hash has to be compared to another file to be able
4 to determine if it's legitimate; isn't that correct?

5 A Correct.

6 Q So if you wasn't able to extract a file from a phone itself, you
7 would have no idea which one was the original, which one was not?

8 A There's always a backup file somewhere.

9 Q And if there's no backup file, then what do you do next?

10 A Then you have to take it by word that that is their picture.

11 Q So you just take it by word that the evidence is what it is?

12 A Yep.

13 Q Okay.

14 MR. MILES: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. MARTINEZ:

17 Q The Defendant asked you about the -- questions about the
18 phone that Detective Gatus examined; is that correct?

19 A Correct.

20 Q The white LG phone? I'm just going to have you take a look
21 at this. And do you -- is -- do you see any markings on there that you
22 recognize?

23 A Yes, I do.

24 Q What do you recognize?

25 A On the evidence tag, I recognize my first initial, my badge

1 number, 4916, my last initial, R., and on the chain of custody, I recognize
2 my signature, my P number, 4916, the date I sealed it, 10/13 of '16, and
3 the time is 0800, which is 8:00 in the morning.

4 Q Okay. Can you -- can you hold up the sub exhibit so that the
5 actual content of that envelope --

6 A Let me put it back together.

7 Q I should say the sub exhibits.

8 A Yeah, this would be Exhibit 3-A of Exhibit 3.

9 Q And then you put B and C inside of it; is that correct?

10 A Correct.

11 Q Okay. And that's a white LG cellular phone?

12 A That's correct.

13 Q Okay. Now, did there come a point in time during this
14 investigation where you brought that phone or examined that phone in
15 my office in the presence of a defense investigator?

16 A Yes.

17 Q Okay. And was Detective Gatus present as well?

18 A Yes.

19 Q Okay. And were there attempts made to boot up and turn on
20 the phone?

21 A Yes.

22 Q Okay. And were you able to do that?

23 A No.

24 Q Okay. And did the defense investigator make an attempt to
25 be able to boot up the phone or charge it or anything of that nature?

1 A Yes, he was also present during --

2 MR. MILES: Objection. Speculation, Your Honor.

3 MR. MARTINEZ: He was present for it so there's no
4 speculation.

5 MR. MILES: Hearsay.

6 THE COURT: Overruled.

7 BY MR. MARTINEZ:

8 Q And he was unsuccessful as well; is that correct?

9 A Correct.

10 Q Prior to that meeting, had Detective Gatus brought you that
11 LG phone to do a forensic examination?

12 A Yes.

13 Q And were you able to turn it on then at your secure location?

14 A No.

15 Q Okay. Was it -- was -- can you describe for the jury what the
16 phone would actually do when you attempted to retrieve or turn on the
17 phone?

18 A After I made sure it was fully charged, I tried it -- attempted
19 to turn it on and basically got the circle of death. So on your computer,
20 when you get that little circle and it's just sitting there thinking and
21 thinking and thinking, this phone was trying to boot, and it just would
22 not boot.

23 Q Okay. Now, looking at that particular phone, that LG phone,
24 is it surprising to you that it did that?

25 MR. MILES: Objection, Your Honor. Speculation.

1 MR. MARTINEZ: It's not speculation if he's not surprised -- if
2 he is or not surprised.

3 MR. MILES: I think a foundation should be laid.

4 THE COURT: Overruled.

5 MR. MILES: Okay.

6 BY MR. MARTINEZ:

7 Q Okay. So it was not surprising that it didn't boot up; is that
8 correct?

9 A Correct.

10 Q Why is that?

11 A It's just an older phone, almost like a knockoff phone. And a
12 lot of these phones, they're pretty much just -- all the parts are made,
13 and they're just compressed together, so you almost can't do any
14 maintenance whatsoever on it. It's not like an iPhone where I can take
15 the iPhone 100 percent apart and I can change the camera or the speaker
16 or the charging port. This one you can't. You pretty much can't do
17 anything to it. If I try to take this apart, it would totally destroy it.

18 Q Defendant asked you about Detective Gatus using the
19 Cellebrite machine to extract the information from that LG phone; do you
20 recall those questions by the Defendant?

21 A Yes.

22 Q Okay. Now, is it possible to transfer from the UFED file or
23 the Cellebrite machine to a hard drive or other storage device, the
24 original information, a copy of it?

25 MR. MILES: Objection, Your Honor. I don't understand the

1 question.

2 BY MR. MARTINEZ:

3 Q Is it possible -- well, did you understand the question?

4 A Yes.

5 Q Okay. Is it possible to do that?

6 A Yes, I can transfer all the data from the UFED to a thumb
7 drive.

8 Q Okay. And it's essentially a mirror image of what was on the
9 UFED; is that correct?

10 A Correct.

11 Q Okay.

12 MR. MARTINEZ: That's all I have, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. MILES:

15 Q Mr. Ramirez, I'm trying to understand your testimony.

16 A Okay.

17 Q Now, you said you can transfer the data from the UFED
18 machine to a hard drive; isn't that correct?

19 A A thumb drive, hard drive, yes.

20 Q Thumb drive, hard drive.

21 A External -- external device.

22 Q Okay. Now, if the phone is no longer working, how would
23 you be able to compare that evidence to what you have on file to ensure
24 that that is an accurate copy of the device itself? How would you be able
25 to do that?

1 A She was -- was she -- okay. I didn't transfer anything.

2 Q Okay.

3 A So I don't have any copy of anything.

4 Q How would anybody, as a forensic expert, be able to
5 determine that the file that she got was not altered in any way? How
6 would she be able to do that if the original phone is no longer working?

7 A From the original extraction.

8 Q From the original alleged --

9 A Extraction.

10 Q -- extraction?

11 A Yeah. And that would be on the back of that file.

12 Q I'm having a hard time understanding what you mean about
13 the backup file.

14 A All right.

15 Q What do you mean as far as the backup file, because --

16 A So anytime I do any extraction, it gives me a backup file. It
17 has to have something to compare it to see if it verified properly. So
18 that's the only way that you could actually verify that the extraction was
19 correct? You have to have a backup file.

20 So if I lost any of my exams, but I still have the original exam,
21 right, but all I have to do is open up the BAK file and that is the actual
22 extraction, I would take that BAK file, thrown it back into that machine
23 and it would give me another report.

24 Q Okay. So let's say we have a BAK file and that file is called
25 file one, now, we have a cell phone; that cell phone is not working. How

1 would we be able to determine if that file was true and correct just off
2 the backup file itself without being able to compare the evidence?

3 A Because the backup file is the actual file of that device.

4 Q But the file could still be altered.

5 A It's not going to be altered.

6 Q But it can be altered.

7 A You can't even touch the file. You have to basically take that
8 file and reinsert it into something else to pull it up again.

9 Q So if I put that file in the computer, you're telling me I can't
10 alter that file?

11 A No.

12 Q Isn't a BAK file, can it be converted to a text file?

13 A No.

14 Q It can't be converted to a text file?

15 A No.

16 Q So you're telling me it's physically impossible to alter a BAK
17 file?

18 A Correct.

19 MR. MARTINEZ: Objection. Asked and answered.

20 THE COURT: He's already answered. It's fine.

21 MR. MILES: Yeah. I'm going to move on, Your Honor.

22 BY MR. MILES:

23 Q Now, you weren't able to obtain all of the evidence from the
24 LG cellular phone, were you?

25 A The LG is -- the LG wouldn't boot up for me. I wasn't able to

1 do any extractions on that one at all.

2 Q So you weren't able to obtain any TextNow application data?

3 A No.

4 Q You weren't able to obtain any type of images?

5 A No.

6 Q Does the UFED file obtain everything from the phone, or
7 does it just obtain certain things from the phone?

8 A The backup file will have everything that it could possibly get
9 on the extraction when it does even a normal -- so any exam I do,
10 whatever it extracted, that is what -- that's what the backup file will have.
11 There's certain things that sometimes it doesn't see, just like the cell
12 phone number on the one.

13 So if I did that again, it's going to do the same. So even the
14 backup file will be, you know, a copy of that. So basically like a MD5 file,
15 we call it a digital fingerprint. MD5 file is a digital fingerprint, but it's an
16 electronic fingerprint, but it's the same as your human fingerprint.

17 Q Okay. And it's the same as a human fingerprint because of
18 what?

19 A It's identical. There's no two fingerprints that are the same.
20 Same with an MD5 hash.

21 Q And I don't know if I asked you this, but from the Samsung 3
22 phone, you weren't able to determine if it was even a working phone?

23 A The Samsung, that one I was able to do a successful
24 extraction.

25 Q Okay. And you weren't able to --

1 A I can't turn it on because -- I mean, I turn it on to do the
2 exam, but we don't have the internet on to see if it's actually operating or
3 functioning as far as going out to the internet or calling or anything like
4 that. It's always put in airplane mode, so that way the evidence can't be
5 touched.

6 Q Did you obtain any text messages?

7 A I'd have to look at the actual report to see if any -- if it pulled
8 out any text messages.

9 Q Does your report not contain all the information in there?

10 A I don't have that report in front of me.

11 Q Okay. Were you able to obtain any phone calls?

12 A I think it did have call logs.

13 Q And where's that evidence at?

14 A That's in the report.

15 Q That's in the report that we just seen today?

16 A Yes.

17 Q The --

18 A The actual full report. What he showed me today was just
19 exhibits and just pieces of images, not -- that wasn't the actual full
20 report.

21 Q Okay. So it was pieces of images, so it wasn't all the data?

22 A No. The report that you received Friday, that was the actual
23 full report.

24 Q Okay. So the jury didn't get to see everything that was on
25 the phone; isn't that correct?

1 A No, they just saw things that were on the report.

2 Q Okay.

3 MR. MARTINEZ: I'm going to object to that, Your Honor, and
4 I'd like to discuss that outside the presence of --

5 MR. MILES: I think it's a valid question. He just said that it
6 was pieces of the examination. I asked him, okay, so the jury didn't get
7 to see all the other pieces.

8 THE COURT: Well, what -- I believe we just said we would
9 discuss this outside the presence of the jury.

10 MR. MILES: Okay. I'm sorry.

11 THE COURT: And you're also getting well beyond the scope
12 of redirect. So --

13 MR. MILES: So are we going to discuss it right now, or --

14 THE COURT: No, your recross is limited to his -- your re-
15 recross I guess we're at, is limited to his redirect.

16 MR. MILES: He said he --

17 THE COURT: This isn't a whole -- we're not going to do a
18 whole --

19 MR. MILES: Okay.

20 THE COURT: -- testimony again.

21 MR. MILES: He said outside the presence of the jury, so I
22 was kind of confused as if you were telling me I have to stop my
23 examination. That's why I was kind of confused.

24 THE COURT: What you need to do is get your examination
25 back within the scope of redirect.

1 MR. MILES: Okay. No further questions. Thank you.

2 THE COURT: Ladies and gentlemen of the jury, any
3 questions?

4 THE MARSHAL: No other questions?

5 [Sidebar begins at 11:13 a.m.]

6 MR. MARTINEZ: That's fine with the State, Your Honor.

7 MR. MILES: That's fine.

8 [Sidebar ends at 11:14 a.m.]

9 THE COURT: Are the list of emails on the report for emails
10 created on that device or for any emails received by that phone?

11 THE WITNESS: So let's say he has -- you have your phone
12 and then there's your old phone. So there could be emails that were
13 email addresses that were created after he got that phone or when you
14 go into AT&T, for example, I say I want all my contacts transferred over.
15 I want all my contacts and pictures transferred over.

16 So everything that he had on his contacts from his original
17 phone could have started from here and then just been transferred over
18 to here. But no matter what, those were all on his contact list, so they
19 can all just get moved over and populated. He could have added some,
20 so there might be some new ones here that weren't on the original, and
21 vice versa. So they can be transferred over.

22 If it was a brand-new phone that never had anything, which I
23 have no idea if that was or not, then I could say, well, yeah, that was
24 brand spanking new; he never had anything transferred; yes, those were
25 all created. But I can't say that because I don't know if his contacts were

1 transferred to there or if -- you know, can't tell you which ones are brand-
2 new, which ones are transferred on that.

3 THE COURT: So any follow up?

4 MR. MARTINEZ: No, Your Honor.

5 THE COURT: Mr. Miles, follow up?

6 FURTHER RECROSS-EXAMINATION

7 BY MR. MILES:

8 Q So you can't say for sure exactly when these emails were put
9 on this phone, can you?

10 A No.

11 Q So those emails could have been put on the phone at any
12 point in time during the investigation; is that right?

13 A Not the emails, the email contacts.

14 Q The email contacts?

15 A Right.

16 Q Okay. So --

17 A It could have been transferred over.

18 Q Okay.

19 A It could have been originally on the phone, or it could have
20 been transferred from another phone.

21 Q Okay. So --

22 A But one way or another, they're on that phone.

23 Q Okay.

24 MR. MILES: No further questions, Your Honor.

25 MR. MARTINEZ: Your Honor, I just ask that the witness

1 remain for just a couple of minutes while we discuss outside the
2 presence of the jury if we could take a break right now and --

3 THE COURT: Okay. Mr. Ramirez, if you'll just take a seat in
4 the little room.

5 THE WITNESS: Thank you.

6 THE COURT: Don't discuss your testimony with anyone.

7 Ladies and gentlemen, we're going to take a recess. During
8 this recess, you're admonished not to talk or converse amongst
9 yourselves or with anyone else or any subject connected with this trial,
10 read, watch, or listen to any report, commentary on the trial or any
11 person connected with the trial by any medium of information, including,
12 without limitation to newspapers, television, the internet, radio, or form
13 or express any opinion or any subject connected with the trial until the
14 case is finally submitted to you, and no legal or factual research or
15 investigation or recreation of testimony on your own. I assume you all
16 know it, it's just kind of more of a reminder at this point.

17 I'm not going to tell you how long it's going to be because --

18 THE MARSHAL: All rise.

19 [Outside the presence of the jury.]

20 THE COURT: Okay. Our record will reflect we're outside the
21 presence of the jury.

22 MR. MARTINEZ: Your Honor, I just wanted to bring up the
23 fact that State makes every effort to protect the record to not bring in
24 evidence that a jury normally wouldn't see, such as pictures of other girls
25 in the Defendant's phone with phone numbers. I crossed out numerous,

1 numerous photos. Some look extremely young.

2 We kept that information out as officers of the court, and in
3 Mr. Miles' cross-examination of Mr. Ramirez, he made it seem like we
4 don't want the jury to see the entire report. We have the entire report of
5 both phones, of the Defendant's phones on this, and I want it to be clear
6 to the jury that their -- I am fine with them seeing the entire phone,
7 including the ones of girls that look like teenagers that have the
8 advertisement phone number across them. There are dozens and
9 dozens of photos like that.

10 So I am going to move -- and I guess I need to confer with
11 my co-counsel and speak with my expert, because I wasn't anticipating
12 having to do this, but now that the Defendant has opened the door and
13 basically forced our position to include the entirety of the report because
14 he somehow is saying that we did something underhanded by not
15 presenting the entire report, I think we have to. We don't have a choice
16 now.

17 Or it's not going to be fair to the State to not be able to do
18 that. All of that other information, all those other girls that are in his
19 phone is going to be there. There's going to be messages that are there
20 that probably normally wouldn't be appropriate for a jury to see. So --

21 THE COURT: Well, what specifically are you saying he --
22 what exact question?

23 MR. MARTINEZ: Okay. So he says, oh, the -- the messages
24 on the phone, you don't have the whole report in front of you? He was
25 insinuating that because he didn't have his whole report, that we didn't --

1 we didn't want the entire report to be in front of the jury. And so when
2 he says, oh, you don't have your whole report here? So you just -- we've
3 just only seen bits and pieces of it? And then when he answers the
4 question and then he turns around to the State and looks at us for two
5 seconds and then turns back and then starts asking questions again, that
6 is problematic, and it makes -- it's highly prejudicial to the State.

7 And so I would like to at least be able to tell the jury we've --
8 we have the entirety of the whole report and they're welcome to look at
9 any part of it. I have nothing to hide in this report.

10 The Defendant's the one that has the interest in keeping
11 things out, and we've tried our best, as officers of the court to do that.

12 THE COURT: I agree.

13 MR. MILES: That's -- and, Your Honor, that's not what I was
14 insinuating. He said he didn't get text messages from there. He said he
15 didn't get phone calls. That's what I --

16 MR. MARTINEZ: He didn't say that. He said he doesn't have
17 the report in front of him. He didn't bring the entirety of the report.

18 MR. MILES: And, excuse me, I wasn't done.

19 MR. MARTINEZ: And he said that he actually did have the
20 contacts in his full report; everything is there.

21 MR. MILES: I wasn't done.

22 MR. MARTINEZ: So he didn't say he didn't have it. It didn't
23 come up. It's just that it's in the report.

24 MR. MILES: And I -- excuse me, I don't believe I was done
25 making my representations. I let you speak the whole entire time

1 without interrupting you.

2 MR. MARTINEZ: I apologize.

3 MR. MILES: Now, I did ask him what did you receive from
4 the report? And I was looking at the ZTE evidence that the State
5 admitted to -- it's right here. And I was asking him, did you receive
6 messages? Because that was important. I wanted to determine when
7 this phone was activated. He said he doesn't -- he didn't receive any
8 messages. I said, did you receive any call logs?

9 I went down the list with that, and he said, I wouldn't be able
10 to know without looking at my report. I wasn't insinuating that there was
11 other images or other pieces of evidence in there. I was just insinuating
12 that where are these messages at if you retrieved them? He couldn't --
13 he said he wouldn't know without looking at his report. That's why I
14 looked back to see if you would be able to refresh his recollection with
15 the report to determine if there was any messages or contacts taken
16 from the phone.

17 I wasn't saying anything about other images, other
18 messages. It was clear to the jury. I believe they would have probably
19 asked that question if they felt that way. That wasn't what I was
20 insinuating. I wasn't opening the door for other prior bad acts or
21 anything that had to do with other people that are allegedly on some
22 phone that's not even mine.

23 So yeah, I don't really see what the -- where the State is
24 going with this. I mean, that's not what I was insinuating in any way. I
25 made it very clear. And if he -- if Martinez feels like that misstates the

1 testimony, like I always say, we can play it back. I know exactly what I
2 asked him. I write it down when I'm asking him the questions and I
3 remember specific questions of what I was asking the witness.

4 THE COURT: Anything else?

5 MR. MARTINEZ: No, Your Honor.

6 THE COURT: All right. Here's kind of my sense, I think Mr.
7 Miles is dangerously close to opening the door; however, I don't think it
8 was that. I think Mr. Ramirez answered the question why -- where's the
9 rest of the report. You can't bring 10,000 pages. To me, that didn't really
10 leave any sinister state suspicion based upon the testimony overall.
11 Certainly, not worth recalling Mr. Ramirez and putting him back up.

12 I don't think -- like I said, I think it was close, but in light of
13 the way the testimony came out, I don't -- I'm not going to -- we're not
14 going to put the whole thumb drive in because I'm not going to look at
15 10,000 things to determine what the jury has seen or not seen. So that's
16 my ruling.

17 And so are we officially done then with this witness?

18 MS. RHOADES: Yes.

19 MR. MARTINEZ: Yes, Your Honor.

20 THE COURT: Okay. Now, that doesn't mean if something
21 down the road, we'll revisit it, it's just for now.

22 MR. MILES: Yeah, and -- okay.

23 THE COURT: So you --

24 MR. MILES: Yeah, if you --

25 THE COURT: If you want to make accusations that the State

1 is hiding stuff from the jury, understand and remember the reason
2 they're hiding, if you will, is to protect you.

3 MR. MILES: Okay.

4 THE COURT: So as soon as you start throwing that out there,
5 at some point you keep going down the road, I am going to let them say,
6 you know what, we're not hiding anything. The State doesn't have
7 anything to hide in all of this.

8 MR. MILES: Okay.

9 THE COURT: It's all to protect you and your rights. So just
10 keep that in mind.

11 MR. MILES: Okay.

12 THE COURT: Because we're still staying with computer
13 witness next.

14 MR. MILES: Can you say that again? I couldn't hear that last
15 part.

16 THE COURT: I said we're staying with computer witnesses
17 coming up and we have Detective Gatus, right?

18 MR. MARTINEZ: She's the lead detective on the case.

19 THE COURT: But is she going to talk about phones and stuff?
20 Or are we done with that.

21 MR. MARTINEZ: She's going to talk about the LG phone and
22 the things that she reviewed on the Samsung.

23 THE COURT: Okay.

24 MR. MARTINEZ: And the ZTE phone.

25 THE COURT: So that -- I'm just saying, if you make it look

1 like the State is hiding something from the jury, at some point I'm going
2 to let them tell the jury, no, we're not.

3 MR. MILES: Yeah. Yeah. I'm not trying to make it look like
4 they're hiding anything. The only thing that I'm making known is that
5 there's evidence potentially hidden from the LG phone. That's the only
6 thing.

7 THE COURT: Well, that -- okay.

8 MR. MILES: There was none really obtained. They pretty
9 much showed everything they had from the LG. Well, I guess that --

10 MR. MARTINEZ: No, we didn't.

11 MR. MILES: There was more stuff?

12 MR. MARTINEZ: You have the entire phone exam of the LG
13 phone.

14 MR. MILES: No, from the LG phone?

15 MR. MARTINEZ: Yes.

16 MR. MILES: Yeah, you had messages, the contacts, you had
17 some photos she took.

18 MR. MARTINEZ: And just -- right.

19 MR. MILES: They didn't have nothing to do with any other
20 girls and that's what I'm telling her about. Yeah, I don't know what
21 you're getting at with that.

22 MR. MARTINEZ: We can do the whole LG report; that's fine.

23 MR. MILES: No, I'm saying that there was potentially -- we
24 already litigated this, the failure to preserve the evidence with the
25 evidence that is shown.

1 MR. MARTINEZ: Right, and you lost.

2 MR. MILES: Yeah, but I'm still -- you said the factual -- we
3 said factual considerations was for the jury to determine.

4 MR. MARTINEZ: Right.

5 MR. MILES: Okay.

6 MR. MARTINEZ: So there's -- you -- so I guess we need to --
7 before cross-examination, I still have direct examination to do with
8 Detective Gatus.

9 THE COURT: We still have like, what, 20, 30 minutes left of
10 the statement, right?

11 MR. MARTINEZ: Yes. And then we'll probably break for
12 lunch. So that's fine.

13 MR. MILES: The only --

14 MR. MARTINEZ: I just -- I don't want him -- I don't want the
15 Defendant --

16 THE COURT: No, I totally get where you're coming from. I
17 mean, he -- there's definitely -- that's been kind of your tone to --

18 MR. MILES: Well, he --

19 THE COURT: Is to make accusations of either the witnesses
20 or the State, that they're hiding the ball, or not giving everything to the
21 jury, that they're doing something, and it would be easy for them to turn
22 over the thumb drive.

23 MR. MILES: Well, yeah. Yeah. Yeah. I understand that.

24 THE COURT: The thumb drive from that phone and let them
25 look at everything. And there's a lot of probative value to that in terms

1 of, you know, you're saying you're not turning onto these girls, but now
2 all of the sudden there's all these other girls with numbers across that
3 have same similarly. I mean, that's super probative. Is it prejudicial?
4 Yeah, probably.

5 MR. MILES: That is. Yeah, that is.

6 THE COURT: But it's -- but depending on where your
7 defense goes, probative and prejudicial can shift. So I'm just saying --

8 MR. MILES: So the only thing -- because I want to make it
9 clear to the Court, the only thing I'm saying about the LG phone, which I
10 made it clear, is that the number I had, it wasn't functional at the time.
11 So the only thing I'm arguing is the number.

12 THE COURT: Okay.

13 MR. MILES: As far as any other images --

14 THE COURT: I'm not limiting you at all. I'm simply saying if
15 you go down certain roads and the door gets opened, I'm going to rule. I
16 think it's a borderline now. I'm going to air on the side of caution
17 because, for a number of reasons, but --

18 MR. MILES: Does the State feel me saying the number is
19 somehow letting him -- letting you bring in all of the evidence? Do you
20 feel me arguing that I didn't have the number activated is somehow --
21 should all the evidence should come in; is that what you're saying?

22 MR. MARTINEZ: No, that's not what I'm saying.

23 MR. MILES: Okay. Yeah.

24 MR. MARTINEZ: What I'm saying is when a witness is on the
25 stand and you ask them to look at their full report and it's not in front of

1 them, and then you look back at the State, it makes it look like, to the
2 jury, at least from the State's perspective, that we're trying to hide
3 something, and we're not. We'd love to have the entirety of every single
4 phone in, and so we're trying to protect the record, protect your rights,
5 but you're making it difficult for the State to do that because you're
6 accusing people of fraud and perjury and manipulating evidence.

7 So if you go down that road, then there comes a point, like
8 the judge said, that we're going to be able to just show them everything,
9 and we're trying not to do that to protect your rights.

10 MR. MILES: Okay. Yeah. Like I said, I'm just going to still
11 say with the comments.

12 THE COURT: Okay. Like I said, I'm not telling you what to do
13 or not do, I'm just telling you what -- what will happen, you know, under
14 certain circumstances if that -- and that's totally fine. You just -- I just
15 want you to knowingly open that door.

16 Okay. Now what? Are we --

17 MR. MARTINEZ: So we're -- I'm going to let Mr. Ramirez go.

18 THE COURT: Correct.

19 MR. MARTINEZ: And then --

20 THE COURT: We don't need to bring him back in and excuse
21 him, do we? Do we need to ask the jury if there's any final questions?

22 MR. MILES: I think --

23 MR. MARTINEZ: They already did their question and then --

24 THE COURT: I know, but was it --

25 MR. MARTINEZ: -- whatever they did was just follow up.

1 THE COURT: I know, but arguably, do they get a follow up to
2 a follow up?

3 MR. MILES: We could see. I mean, I don't see why we
4 wouldn't. It's up to Your Honor.

5 THE COURT: Let's just bring them in and I'll release them
6 from here, okay? I'm going to run and take two.

7 MR. MILES: Okay.

8 [Recess at 11:28 a.m., recommencing at 11:30 a.m.]

9 THE MARSHAL: Bring them in?

10 THE COURT: Yep.

11 THE MARSHAL: All right.

12 All rise.

13 [Inside the presence of the jury.]

14 THE MARSHAL: Present, Your Honor.

15 THE COURT: Okay. State.

16 You want to bring Mr. Ramirez back in so we can -- please.

17 Where did he go?

18 You could actually stand right there I think.

19 Is this witness free to leave? Any other questions anywhere?

20 Is he good to go now?

21 MR. MARTINEZ: That's fine with the State.

22 THE COURT: Okay. Mr. Miles?

23 MR. MILES: Fine with me too.

24 THE COURT: You're good.

25 Okay. All right. You're done. Thanks for your testimony.

1 Don't discuss it with anybody else.

2 MR. MARTINEZ: Thank you.

3 THE COURT: State, next witness.

4 MR. MARTINEZ: The State calls Detective Justine Gatus.

5 THE COURT: And Detective Gatus, I'll remind you, you're
6 still under oath.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You're still good.

9 THE WITNESS: Okay.

10 JUSTINE GATUS, STATE'S WITNESS, PREVIOUSLY SWORN

11 THE COURT: And I think we're going to resume playing on
12 the statement?

13 MR. MARTINEZ: Yes, Your Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. MARTINEZ:

16 Q I believe we were at approximately 15 minutes into the
17 interview; do you recall, Detective Gatus, that we were in the middle of
18 the interview that you were conducting with the Defendant and Detective
19 Leung?

20 A Yes, I do.

21 MR. MARTINEZ: For the record, we're continuing to publish
22 State's 47, which is a copy of the interview.

23 THE COURT: Okay.

24 [Whereupon, an audio recording, State's Exhibit 47 was played in
25 open court at 11:33 a.m. not transcribed]

1 [Audio ended at 11:57 a.m.]

2 BY MR. MARTINEZ:

3 Q Detective Gatus, you indicated on Friday that you had
4 provided Vince Ramirez with the black Samsung phone and the ZTE
5 phone that were recovered from the Defendant. Do you recall testifying
6 to that?

7 A Yes.

8 Q Okay. And what was the purpose of delivering those phones
9 to him?

10 A For him to do a forensic examination.

11 Q Okay. And were you present when he actually did the
12 forensic examination for the Samsung phone?

13 A Yes, I was.

14 Q Okay. And for the ZTE phone?

15 A Yes, I was.

16 Q Okay. I'm going to show you what's been marked as State's
17 Exhibit 51.

18 MR. MARTINEZ: I'm just going to publish it, if that's okay,
19 Your Honor?

20 THE COURT: Yes. It's been admitted, right?

21 MR. MARTINEZ: Yes, it has been admitted.

22 THE COURT: Okay.

23 BY MR. MARTINEZ:

24 Q I'm going to go to -- do you recognize this being from the
25 Samsung phone?

1 A Yes, I do.

2 Q Okay. If you go to the second page, do you recognize the
3 people depicted in this photograph?

4 A Yes, I do.

5 Q Who are they?

6 A That's Gabrielle King and Christian Miles.

7 Q Okay. And do you see the phone that the Defendant is
8 holding?

9 A Yes, I do.

10 Q Okay. What does that appear to look like to you?

11 A The Samsung.

12 Q And page 3 of this exhibit, same people?

13 A Yes.

14 Q Okay. And who appears to be holding the phone, or can
15 you tell?

16 A I can't really tell right there.

17 Q You had indicated previously that you were able to obtain
18 advertisements of Gabrielle King from Craigslist; is that correct?

19 A Yes, sir.

20 Q And then you were also able to view emails associated with a
21 particular app; is that correct?

22 A Yes, sir.

23 Q Okay. Did have a chance, as a part of your investigation to
24 compare the emails in the three ads from the State's Exhibit 4, which I'll
25 publish now -- is this the email address that you were referring to?

1 A Yes, it is.

2 Q On one of the apps, correct?

3 A Correct.

4 Q Now, the next page there's another email; is that correct?

5 A Yes, it is.

6 Q And then on the third page is another email address, right?

7 A That's correct.

8 Q Okay. Were you able to find any of those emails contained
9 within the Defendant's phone?

10 A Yes, I did.

11 Q Okay. And I'm going to publish what's been marked as
12 State's Exhibit 31. Do you recognize this as the report that Detective
13 Ramirez generated?

14 A Yes, I do.

15 Q I'm going to refer your attention to the third and fourth page.
16 It is -- you'd agree with me there's a large number of emails there; is that
17 correct?

18 A Correct.

19 Q Okay. Those three emails that you were able to view on the
20 Craigslist's ads, were they contained within that list?

21 A Yes, they are.

22 Q Okay. Now, you had indicated previously on State's Exhibit 5
23 and State's Exhibit 6 that these were portions of the Cellebrite data
24 retrieval from Gabrielle's phone -- the white LG phone; is that correct?

25 A Yes, it is.

1 Q Okay. And this is a portion of your report?

2 A Correct.

3 Q Okay. What was it that -- did you -- I guess, did you have a
4 chance to review the entire data of Gabrielle's phone before compiling
5 this report?

6 A Yes.

7 Q Okay. And did you take it -- did you take this information in
8 these exhibits from Gabrielle's entire data retrieval?

9 A Yes, that's I got the information from.

10 Q Okay. Did you change it in anyway?

11 A No.

12 Q So it's safe to say that in State's Exhibits 5 and 6 this isn't the
13 entirety of everything that was on Gabrielle's phone; is that correct?

14 A That is correct.

15 Q Okay. And you provided the State and the Defense copies of
16 the entire report; is that correct?

17 A Yes, I did.

18 Q And also, the Samsung and the ZTE reports, correct?

19 A Correct.

20 Q I'm going to have you --

21 MR. MARTINEZ: this isn't a proposed exhibit, Your Honor,
22 I'm just going to -- I'm not going to publish it or try to admit it. I just
23 want her to identify it if she can.

24 THE COURT: Okay.

25 BY MR. MARTINEZ:

1 Q Do you recognize that?

2 A Yes. This is the --

3 Q How do you recognize it?

4 A It's my handwriting on it.

5 Q Okay.

6 A And it has the event number for this investigation, and the
7 victim's initials.

8 Q Okay. And so what is that in your hands?

9 A This would be a copy of the phone download from her
10 phone -- the data.

11 Q In its entirety?

12 A Yes.

13 Q Correct? Okay.

14 THE COURT: And I'm sorry, what exhibit number was that?

15 MR. MARTINEZ: That's not an exhibit. I'm not going to
16 publish it, Your Honor. We can publish the entirety of --

17 THE COURT: I'm just asking if it's -- so it's being referenced,
18 but not marked?

19 MR. MARTINEZ: Right. It's being referenced, but not
20 marked --

21 THE COURT: Okay.

22 MR. MARTINEZ: -- as containing the entirety of the report.

23 BY MR. MARTINEZ:

24 Q And State's Exhibits 5 and 6 are retrieved from that report.

25 A That's correct.

1 Q And those are fair and accurate copies of the texts and the
2 incoming, outgoing, and missed calls lists from Gabrielle's phone?

3 A Yes, that's correct.

4 Q Okay. I'd like to go back to that data retrieval from the
5 Cellebrite machine, okay.

6 A Okay.

7 Q With the LG phone.

8 A Uh-huh.

9 Q First, before we get there, I'd like to publish State's Exhibit 8.
10 You've seen this photograph before?

11 A Yes, I have.

12 Q Okay. This was contained within Gabby's phone; is that
13 correct?

14 A That's correct.

15 Q Okay. And she's holding what?

16 A Her LG white phone.

17 Q Okay. And is that the -- do we have the envelopes up there
18 or do we have them --

19 A Uh-huh. The evidence, yeah, they're here.

20 Q Okay. And is that the same phone -- appear to be the same
21 phone?

22 MR. MILES: I'm going to object --

23 THE WITNESS: Yes.

24 MR. MILES: -- as speculation.

25 THE COURT: Overruled.

1 BY MR. MARTINEZ:

2 Q Now, when you conducted the Cellebrite retrieval of the
3 white LG phone, was the phone functioning at that time?

4 A Yes, it was.

5 Q And was -- were you able to boot it up and view the
6 information?

7 A Yes. That's correct.

8 Q Okay. When you did the data retrieval, what did the cell
9 phone data -- how does it get from the Cellebrite to, let's say, this
10 particular disk here?

11 A So it comes from the phone, and it goes into the Cellebrite
12 machine, and then it transfers over to a thumb drive. And so then I take
13 the thumb drive and bring it to my desktop and plug it in and copy the
14 thumb drive onto a disk.

15 Q Now, is that a common practice within the vice unit with that
16 particular Cellebrite machine?

17 A Yes, it is.

18 Q Okay. Did you have endless numbers of thumb drives to be
19 able to use for each individual case?

20 A No.

21 Q Okay. Is that due to budgetary constraints?

22 A Exactly.

23 Q Okay. So what would you do once you -- would you make
24 any changes from the you fed file or the thumb drive -- because you
25 indicated that you had plugged that into your computer; is that correct?

1 A Correct.

2 Q And then you would say it to your computer?

3 A Yes.

4 Q Okay. Any changes that take place from the thumb drive to
5 your computer to the report?

6 A No.

7 Q Okay. And then the thumb drive is used for additional cases
8 that are being investigated; is that correct?

9 A Yeah -- yeah. We delete the thumb drive, and then we return
10 it back to the bag, or box that the equipment is in.

11 Q And do you ensure on your computer that the information
12 was actually saved before deleting what the content on the thumb drive?

13 A Absolutely. Yeah.

14 Q And what why do you do that?

15 A Just to make sure that it's accurate, and that it's -- that it is
16 the same. That nothing was altered or changed, or --

17 Q Okay. And did you -- and did you, in fact, do that in this
18 case?

19 A Yes, I did.

20 Q And was it -- was anything altered or changed that you were
21 able to see?

22 A No.

23 Q You had indicated previously that you had taken photos of
24 Gabrielle's phone, is that correct?

25 A That is correct, yes.

1 Q And you brought up in your interview with the Defendant
2 some TextNow app messaging; is that correct?

3 A Yes.

4 Q About an underground service agency?

5 A Yes.

6 Q Okay. Was that -- what you were reading from in the
7 interview was that from the TextNow application photos that you had
8 taken from Gabrielle's phone?

9 A Yes, it was.

10 Q Okay.

11 MR. MARTINEZ: What I'm going to do, Judge, I'm not going
12 to publish it because it gets blurry on the Elmo, I'm just going to have
13 the witness read the third page of 4 that was referenced in the interview.

14 MR. MILES: Yeah. Looks pretty clear right here.

15 BY MR. MARTINEZ:

16 Q So I'm going to have you look at image 8 that you have
17 labeled there -- image 8.

18 A Okay.

19 Q And take a look at it and let me know if that's the message
20 that you were referring to in the Defendant's interview?

21 [Witness reviews document]

22 THE WITNESS: Yes.

23 BY MR. MARTINEZ:

24 Q Okay. Now, you had made it clear to the Defendant that you
25 did not believe that was Gabby that was sending that message; is that

1 correct?

2 A Correct.

3 Q Okay. Could you read that into the record the message that
4 you were referring to in your interview?

5 A It says, "Hey. Sorry, Ace. This is actually an underground
6 service agency. Seems like the girl is a flack. She was just a room, but
7 keeps leaving. You seen a couple of our girls before. There's two cute
8 ones in the same complex. Maybe you would like to see them instead."

9 Q Okay. And that is from the TextNow application that was on
10 Gabrielle's phone; is that correct?

11 A Yes, it is.

12 Q Okay.

13 MR. MARTINEZ: If I could get that back.

14 BY MR. MARTINEZ:

15 Q And then do you recall reviewing in Gabrielle's LG phone
16 examination the text messages between the Defendant and Gabrielle?

17 A Yes, I do.

18 Q Okay. And is -- from what -- based on your investigative
19 abilities, and deductions, were you able to see somewhat of a correlation
20 between Gabrielle towards the end of their texting each other -- so let me
21 start over, because that's a horrible way to start a question.

22 The TextNow app message that you just read, did that seem to
23 correspond with text messages that were going back and forth between
24 the Defendant and Gabrielle?

25 MR. MILES: Objection to a compound question, Your Honor.

1 I think he should narrow the questions down, so we could understand
2 the questions.

3 THE COURT: Can you rephrase it --

4 MR. MARTINEZ: Sure.

5 THE COURT: -- please? Thanks.

6 BY MR. MARTINEZ:

7 Q This TextNow app on State's Exhibit 24 -- the photo -- in
8 number 8, that's just what you read out loud to the jury; is that correct?

9 A Correct.

10 Q Okay. Now, you had indicated previously -- or we heard
11 testimony that there was a TextNow app on both the Defendant's phone
12 and Gabby's phone; is that correct?

13 A Yes, that is correct.

14 Q Did you notice a correlation between the text messages
15 between Gabby and Christian, and with the TextNow app message that
16 you just read?

17 MR. MILES: Objection, Your Honor. I'm not understanding
18 the question. I don't think the witness probably understands that either.

19 BY MR. MARTINEZ:

20 Q Do you understand my question?

21 A Yes.

22 Q Okay. Can you please answer it?

23 A You're -- I believe you're asking if the TextNow messages
24 correspond with the text messages that went back and forth from
25 Gabrielle King to Christian Miles?

1 Q Yes.

2 A And yes, they -- they did. In the -- the text messages
3 between the victim and the suspect she was basically saying that she
4 didn't want to meet up with anybody, or she was tired, she busy, she
5 was kind of giving some type of excuse of why she wasn't available, and
6 at the same time, there was the messages going on the TextNow app
7 saying that yeah, she's -- I'm assuming he meant to say a flake, but "a
8 flack", and that there as other girls available.

9 Q Okay. Now, on the second to last page of State's Exhibit 6,
10 going to go to the bottom, and do you see the particular text messages
11 where Gabby says, "My twin can come see me"?

12 A Uh-huh.

13 Q And then the Defendant says, "Not at the trap spot."

14 A Uh-huh.

15 Q And "Why, she not with nobody. Never mind." And then
16 Defendant says, "You got someone on the way"; is that correct?

17 A Correct. Yes, that is.

18 Q And then he says -- and then he says, "That's why"; is that
19 correct?

20 A Correct.

21 Q And then she responds, "But she's on her way", and right
22 here there's -- "He's coming up. Text me when he's there. He says he's
23 outside." And then she says, "I'm just coming from getting a sweatshirt."
24 And then Defendant says, "WTF you ain't at the house. Answer the
25 phone. Where are you at? How far is you from the room?" Like right

1 there?

2 A Right.

3 Q Okay. Is that the correlation that you were talking about with
4 the TextNow app and the text messages between --

5 A Yes.

6 Q -- the Defendant and Gabrielle?

7 A Yes.

8 Q Okay. In your investigation you were able to obtain a
9 photograph from Facebook -- from Defendant's Facebook account that
10 looked like a photograph room; is that correct?

11 A Correct.

12 Q Okay. Publishing State's Exhibit 30. Is that what you
13 retrieved from the Defendant's Facebook account --

14 MR. MILES: I'm going to object, as to it hasn't been properly
15 authenticated as being from my Facebook account.

16 THE COURT: But it's been previously admitted, so overruled.

17 BY MR. MARTINEZ:

18 Q And what's the author -- what's the account?

19 A "Christian Soo Flyy".

20 Q And is that -- how is that account or user significant to you?

21 A That was the account name of through the investigation who
22 I discovered to be Christian Miles, so it was his account name that was
23 linked to his account.

24 Q Okay. You had indicated previously that on the Defendant's
25 Samsung that we have up there, you took photos of the TextNow

1 application; is that correct?

2 A Yes.

3 Q Okay. And that's -- and that was because it doesn't transfer
4 on a Lantern report, or a Cellebrite report; is that correct?

5 A That's -- that's correct.

6 Q Okay. Now, I'm going to publish State's 43 through 46. It
7 was previously admitted. The first one we're looking at is 43. And
8 what's that a picture of?

9 A It's a picture of one of the phone numbers associated to that
10 TextNow app in the phone.

11 Q Okay. And could you read it for the record?

12 A 702-747-2372.

13 MR. MILES: I'm going to object, Your Honor. I don't think
14 that's what the State's evidence is actually refers to.

15 THE COURT: Those were admitted; were they not?

16 MR. MARTINEZ: Yes, they were.

17 MR. MILES: No, I'm saying I don't think that's what
18 the -- she's saying that that number refers to the TextNow application in
19 Gabrielle King's phone. I think that misstates the --

20 MR. MARTINEZ: That's not what she testified to. She said
21 this is a picture of the Defendant's Samsung phone that she took a
22 picture of in the TextNow app, and I'm asking her to -- it's been admitted,
23 and I'm asking her to read for the record what the phone number is on
24 that TextNow app.

25 THE COURT: Overruled.

1 THE WITNESS: It's 702-747-2372.

2 BY MR. MARTINEZ:

3 Q Okay. And is this a photo from the same phone?

4 A Yes, it is. It's another number.

5 Q And is there a different number associated with the TextNow
6 app there?

7 A Yes, there is. It's --

8 Q Okay. Could you read that for the record?

9 A 702-323-3472.

10 Q And is that another picture from the TextNow app from the
11 same phone?

12 A Yes, it is.

13 MR. MARTINEZ: And for the record, this is 45. The one
14 before that was 44.

15 BY MR. MARTINEZ:

16 Q And could you read that for the record?

17 A It's 702-478-2713.

18 Q And is this another number associated with the TextNow
19 app?

20 A Yes, it is. It's phone number 702-815-7700.

21 MR. MILES: And for the record, he's still publishing some
22 State's exhibit. I don't know what exhibit that is.

23 MR. MARTINEZ: This is State's Exhibit 8 of the envelope.

24 THE COURT: Thank you.

25 BY MR. MARTINEZ:

1 Q You had indicated previously that you took photos of
2 Gabrielle's phone from the TextNow application that were actual photos,
3 correct?

4 A Yes, I did.

5 Q And these have previously been admitted. I just want to
6 publish. This is 25. You found this on her phone; is that correct?

7 A Yes, it is.

8 Q And on the TextNow app?

9 A Yes.

10 Q And this as well, this is State's 26?

11 A Yes.

12 Q And State's 27?

13 A Yes.

14 Q And who is the individual in these?

15 A That's Gabrielle King in all the photos.

16 Q Now, going to the report from the Defendant's phone, State's
17 Exhibit 32, does appear to be the same image that we just looked at that
18 was in -- on the TextNow app of Gabby's phone?

19 A Yes, it does.

20 Q And the second page of that exhibit?

21 A That's correct. It's the same.

22 Q And then the third page of that exhibit?

23 A Yes.

24 Q Fourth page of that exhibit?

25 A Yes.

1 Q And fifth page of that exhibit?

2 A Yes.

3 Q And these are from the Defendant's Samsung phone; is that
4 correct?

5 A Correct.

6 MR. MARTINEZ: I'm going to publish State's Exhibit 56. It
7 was previously been admitted as essentially the cover sheet of the ZTE
8 phone.

9 BY MR. MARTINEZ:

10 Q Can you -- were you able to review this as well?

11 A Yes, I was.

12 Q Okay. And can you see a phone number on there that's
13 associated with that phone?

14 A Yes, I do. It's 702-913-2289.

15 Q Okay. Does that correspond with the text messages between
16 Gabby and the Defendant as being the Defendant's phone that number
17 being saved in Gabby's phone?

18 MR. MILES: Objection. Compound question.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, it was the same phone number.

21 MR. MARTINEZ: May I have the Court's brief indulgence?

22 THE COURT: Uh-huh.

23 BY MR. MARTINEZ:

24 Q As a part of your investigation, did you go to the Suites on
25 Boulder Highway to obtain some registration information?

1 A Yes, I did.

2 Q Why did you go there?

3 A Because that's where Gabrielle told me that they got a room
4 at.

5 Q Okay. And who specifically got the room, according to your
6 investigation?

7 MR. MILES: Objection. Hearsay.

8 THE COURT: Overruled.

9 THE WITNESS: It was Laporscha went inside to get the
10 room.

11 BY MR. MARTINEZ:

12 Q Okay. That particular location, do you recall in your head the
13 part of town that that's in?

14 A Yes. It's right at Boulder Highway and Flamingo.

15 Q Okay. Would you describe that as a particularly nice area
16 and nice suite?

17 MR. MILES: Objection. Speculation.

18 THE COURT: Overruled.

19 BY MR. MARTINEZ:

20 Q Did you see it yourself?

21 A Yes, I saw it myself, and it's -- no, I -- I wouldn't want to live
22 there.

23 Q Okay.

24 MR. MARTINEZ: Publishing State's Exhibit 29.

25 BY MR. MARTINEZ:

1 Q Do you recognize what this is?

2 A Yes, I do.

3 Q Okay. And what is that?

4 A That was the room registration card that I was able to
5 retrieve from the Suites, and that's a picture of Laporscha on fraudulent
6 Texas driver's license card.

7 Q Okay. So you went yourself in person to that location and
8 obtained this room registration; is that correct? ?

9 A Yes, I did.

10 Q Did you provide them with the information that you were
11 looking for?

12 A Yeah. I --

13 Q And then the person working there retrieved it for you?

14 A Yeah.

15 MR. MILES: Objection.

16 THE WITNESS: I actually I had to dig through a fair amount
17 of stuff there, because we only knew that the -- the suspected building
18 number and partial room number, so I went through and I asked them
19 specifically that I needed people who checked in from, like a certain
20 small time frame that I knew that they had the room, and kind of started
21 sorting through, and then actually when I saw this one -- excuse me -- I
22 recognized that the room itself the last two digits were 69, and that's
23 what Gabrielle had told me before.

24 And then also that the signature line on the driver's license
25 was not the same as what was printed on there, so I just kind of assumed

1 it was going to be a fake ID, and that might be who I was looking for.

2 BY MR. MARTINEZ:

3 Q And did that person look familiar to you in that fake ID?

4 A I did not know her at the time --

5 Q Okay.

6 A -- but after reviewing photograph -- known law enforcement
7 photographs of her, then yes, I --

8 Q And you actually had a conversation with Laporscha
9 Ramsey?

10 A Yes, I did.

11 Q And that's who is in this in this ID?

12 A Yes.

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

14 THE COURT: Mr. Miles.

15 MR. MILES: Are we going to break?

16 THE COURT: Everybody good?

17 MR. MILES: It's going to be a very long cross-examination.
18 You didn't want to break?

19 THE COURT: Ladies and gentlemen, you good for a while?
20 We'll go -- we can go part way.

21 MR. MILES: Okay.

22 THE COURT: Do you need a break, Mr. Miles?

23 MR. MILES: I did want to take a break, Your Honor, just to
24 gather all my stuff together, just to make sure it's presented to the jury
25 accordingly. Probably like 10-minute break, 15-minute break.

1 THE COURT: Why don't you do what you can and then we'll
2 take a lunch break?

3 MR. MILES: Okay. Court's indulgence.

4 THE COURT: Unless everybody wants to do a lunch break
5 now. Nobody cares.

6 CROSS-EXAMINATION

7 BY MR. MILES:

8 Q Good morning, Detective Gatus.

9 A Good morning, Mr. Miles.

10 Q During the course of your investigation, were you able to
11 obtain Facebook messages from Gabrielle King's Facebook account?

12 A Yes, I was.

13 Q And what was her Facebook account that you were able to
14 identify?

15 A I can't remember the name of it right off the top of my head,
16 but it was Honey Savage, I believe.

17 Q Honey Savage?

18 A I think that's correct.

19 Q Okay.

20 MR. MILES: And if I can, Your Honor, show the witness a
21 photograph.

22 THE COURT: Sure. Has that been marked?

23 MR. MILES: Not yet, Your Honor.

24 THE COURT: Okay.

25 MR. MILES: But we can mark it.

1 THE COURT: That's the only way we can identify it for the
2 record. So --

3 MR. MILES: Yeah. That'd be -- if we can mark it.

4 BY MR. MILES:

5 Q Do you recognize that photograph?

6 A Yes.

7 Q And what does that photograph appear to be a photograph
8 of?

9 A Of Gabrielle King.

10 Q Of Gabrielle King. Does that photograph look familiar?

11 A Yes, it does.

12 Q What -- how does that look familiar to you?

13 A I've seen this, well, now numerous times. It was in the
14 Facebook records. It was in the TextNow pictures. I don't --

15 Q Was it also in the Craigslist ads as well?

16 A I believe it was, yeah. It's the same -- or no, no, no, no, no.
17 This photograph does not have the number written across the picture of
18 it.

19 Q So the only difference is it doesn't have the number written
20 across the picture?

21 A I can't say exactly. I would have to look at the two
22 photographs next to each other to see which -- what the differences are.

23 Q Okay. Now would it be fair to say that appears to be the
24 same photograph that you said was in the Craigslist photographs?

25 A It is similar if not the same. Yeah.

1 Q It is similar. Now can you tell me what type of phone it
2 appears that she's holding in that photograph?

3 A I can't tell exactly. It's black. I can see that.

4 Q It's black.

5 A Yeah.

6 Q Can you tell me the date that that photograph was uploaded
7 to the server?

8 A It shows February 19, 2015.

9 Q February 19th of 2015?

10 A Or no, I'm sorry. January 19, 2015.

11 Q January 19th of 2015?

12 A Uh-huh.

13 MR. MILES: And, Your Honor, if I could have that admitted
14 into evidence at this time too.

15 THE COURT: We need to have it marked.

16 Has the State seen it?

17 MR. MARTINEZ: I haven't seen it.

18 THE COURT: Okay. If we could have it -- let's have it marked
19 as State's -- all right. Defense --

20 What's Defense next?

21 THE CLERK: EE.

22 THE COURT: Be Defense EE for identification.

23 [Defendant's Exhibit EE marked for identification]

24 MR. MARTINEZ: No objection, Your Honor.

25 THE COURT: Okay. There being no objection, EE will be

1 admitted.

2 [Defendant's Exhibit EE admitted into evidence]

3 MR. MILES: Court's indulgence.

4 BY MR. MILES:

5 Q Now during the course of your investigation, Detective
6 Gatus, did you ever subpoena any Metro records from Metro PCS?

7 A Yes, I did.

8 Q Okay. And can you tell me why you subpoenaed Metro
9 records from Metro PCS?

10 A Because I was able to determine that the Gabrielle King had
11 in her possession was purchased at Metro PCS.

12 Q Okay. I'm going to show you what's marked as --

13 MR. MILES: At least I thought it was marked. Court's
14 indulgence. Here it is.

15 BY MR. MILES:

16 Q I'll show you what's marked as Defendant's Proposed Exhibit
17 BB.

18 THE COURT: I assume the State has seen that, right?

19 MR. MILES: Yes, he's seen it.

20 MR. MARTINEZ: If it's the Metro PCS documents, then yes,
21 we have.

22 BY MR. MILES:

23 Q Do you recognize the first page of that --

24 A Yes, I do.

25 Q -- document? What is that document that you --

1 A That is an administrative subpoena.

2 Q An administrative subpoena. Can you tell me what the
3 purpose of an administrative subpoena is?

4 A It's to ask a company for records.

5 Q Ask a company for records?

6 A Yes.

7 Q For truthful records?

8 A Yes.

9 Q Okay. And do you recognize the signature on that page?

10 A Yes, I do.

11 Q And whose signature is that?

12 A That's my sergeant, Charlie Peck.

13 Q Did you request those records?

14 A Yes, I did.

15 Q What date did you request those records?

16 A Dated the 10th day of March 2015.

17 Q 10th day of March?

18 A Uh-huh.

19 Q Is your email on the subpoena as well?

20 A Yes, it is.

21 Q Okay. And what other information stands out to you on it?

22 A I don't know exactly what you're looking for.

23 Q Does anything stand out that you notice? Can you turn to the
24 next page for me, please?

25 A Yes.

1 Q Okay. Now on the next page, what does that appear to be on
2 the next page?

3 A That's the reply that Metro PCS had given me.

4 Q Okay. And what specific records did you request through the
5 administrative subpoena?

6 A A true and accurate copy of customer records, including
7 names, address, social security numbers, dates of birth of the person
8 listed as the customers or the follow service address or phone numbers.
9 So I requested for area code 702-517-2530 and area code 702-913-2289.

10 Q And you requested -- why did you request the phone number
11 9 -- 702-913-2289?

12 A Because that was your phone number, and that was the
13 number, through my investigation, that led me to believe that you were
14 the suspect.

15 Q Okay. And you ultimately obtained those records that you
16 requested; isn't that correct?

17 A Yes.

18 Q Okay. And can you turn to the next page for me, please?

19 A Uh-huh.

20 Q Now do you recall specifically what that is on the next page?

21 A Yeah. That's the reply that Metro PCS sent to me.

22 Q Okay. And what was the account activation date for number
23 702-913-2289?

24 A They have it as 2 -- as February 25, 2015.

25 Q February 25, 2015.

1 A That's correct.

2 Q And can you also tell the jury what phone is listed as a phone
3 model for that number?

4 A I don't see a model date or a model -- oh, phone model.
5 HUAY301-A1 valiant blue TMUS.

6 Q Is -- excuse me. You said -- was that the first phone or was
7 there another phone on there?

8 A Yeah. Then there's another phone listed below that too.

9 Q And what does that phone say?

10 A The ZTE Olympia TMUS.

11 Q Okay. And does the IMEI look familiar to you?

12 A I don't have those memorized. I don't know.

13 Q You don't have those memorized.

14 A No.

15 MR. MILES: This is not the State's exhibit, but this is a ZTE
16 examination report I'd like to show the witness.

17 THE COURT: Has the State seen it?

18 MR. MARTINEZ: If it's the same --

19 THE COURT: Well, it's what --

20 MR. MARTINEZ: -- then let's use the State's exhibit.

21 MR. MILES: I'd rather not refer to the State's evidence on
22 this one, Your Honor. It's just for recollection purposes. I don't want to
23 refer to the State's evidence. I see some problems with doing that. So I
24 don't want to actually --

25 THE COURT: Okay. I need you to stick to legal --

1 MR. MILES: Okay. Excuse me.

2 THE COURT: Have that marked. The State --

3 MR. MILES: No. It's okay, Your Honor. I can just proceed
4 without it. It's fine.

5 THE COURT: Okay.

6 MR. MILES: And I'd actually -- since she's identified the
7 Metro PCS records and she's offered testimony regarding it, I'd actually
8 move for the admission of that exhibit too.

9 THE COURT: I'm sorry?

10 MR. MILES: I'd actually move for the admission of Defense
11 Proposed Exhibit -- I think it's BB that I handed her.

12 MR. MARTINEZ: Is that the Metro PCS record that she's
13 looked at?

14 MR. MILES: That's the Metro PCS record.

15 THE WITNESS: It says BB at the bottom.

16 MR. MILES: Yeah, BB.

17 MR. MARTINEZ: That's fine with the State.

18 THE COURT: Okay. It'll be admitted.

19 [Defendant's Exhibit BB admitted into evidence]

20 BY MR. MILES:

21 Q Okay. Now you recall earlier I was asking you if you
22 recognized the photograph?

23 A Yes.

24 Q And that appears to be Gabrielle King in the photograph?

25 A Correct.

1 Q Now do you see a specific -- now there's a page number. Do
2 you see that?

3 A Yes, I do.

4 Q What page number does that say?

5 A 445.

6 Q And there was obviously a lot of Facebook records that was
7 obtained from her Facebook account, wasn't it?

8 A Yes, there was.

9 Q And you did indicate that --

10 MR. MILES: Court's indulgence.

11 BY MR. MILES:

12 Q That that file was uploaded on January 19, 2015?

13 A That's correct.

14 Q Now it doesn't say it -- what's listed first. Is it the year that's
15 listed first or is it the month that's listed first?

16 A Right now, that's the year --

17 Q Okay. The year.

18 A -- that's listed first, and then the month, and then the day.

19 Q Okay.

20 MR. MILES: Court's indulgence.

21 BY MR. MILES:

22 Q Now I'm going to show you the second page of Defense
23 Proposed -- I mean Defense Exhibit BB. You've indicated that these are
24 the Metro records?

25 A Yes.

1 Q Now all those Metro PCS records, there's a number,
2 702-913-2289; isn't that correct?

3 A That's correct.

4 Q Okay. And you did indicate that the activation date for that
5 was February 25, 2015?

6 A Correct.

7 Q Now knowing that information, did you include any of that
8 information in any of your warrant affidavits?

9 A What specifically?

10 Q Your arrest warrant affidavit.

11 A No, but I'm asking what information specifically.

12 Q Did you include the actual phone number in any of your
13 arrest warrant affidavit, search warrant affidavits?

14 A From the Metro PCS document? No, I did not.

15 Q You did not?

16 A No.

17 MR. MARTINEZ: And, Your Honor, I'm just going to object to
18 the characterization that it's the phone number activation. I don't know
19 that that -- I think that's a mischaracterization as to what the report says.

20 MR. MILES: Well, I think the report is clear. It says account
21 activation date, February 25, 2015.

22 MR. MARTINEZ: Right. And he said the number.

23 THE COURT: The exhibit speaks for itself. It's in evidence.

24 So --

25 MR. MILES: Okay.

1 BY MR. MILES:

2 Q Now on direct examination from the State, you testified that
3 you ultimately interviewed Gabrielle King; isn't that right?

4 A Yes.

5 Q Okay. And when you interviewed Gabrielle King, what
6 happened next?

7 A A lot. Can you break it down a little bit.

8 Q Well, what was the next thing? Did you draft an affidavit for
9 arrest? Did you conduct a further investigation? What did you do after
10 you had the recorded interview with Gabrielle King?

11 A Well, because there was a lot of different interview. There
12 was only one that was recorded.

13 Q Okay.

14 A So there were a lot of steps in between from the first time I
15 met her and the first time I interviewed her until we -- I think the first
16 thing I did -- what did I pull records for at first? I think it was actually the
17 arrest warrant. And then I pulled -- then -- or that was the first arrest
18 warrant that I did. Then I did a search warrant for Facebook, and then I
19 did a search warrant for -- to get inside the phones.

20 Q Well, see, the question was after you did the recorded
21 interview, you did testify for the State after you did the recorded
22 interview, you drafted up the arrest warrant; isn't that right?

23 A Well, actually, I think I pretty much had it drafted while I was
24 down there talking to her. I submitted it the following day, but it was --

25 Q And --

1 A Yeah, it was right around that same time.

2 Q So the day you submitted it was the 4th?

3 A I don't know which day off the top of my head. I would have
4 to look at it.

5 Q Well, if you interviewed Gabrielle King on March 4th of 2015,
6 that means you would have submitted the arrest warrant which day?

7 A Probably the following day, but I would have to look at the
8 document to see when it was signed by the judge.

9 Q Okay. Probably the following the day.

10 A Or signed -- no. Go ahead. I'm sorry.

11 Q So probably the following day. So either the 5th or the 4th is
12 what you testified?

13 A Somewhere around that timeframe, yeah.

14 Q Okay. Now I'm going to show you what's marked as --

15 MR. MILES: Court's indulgence. It's marked as Defense
16 Proposed Exhibit N.

17 MR. MARTINEZ: Can I see?

18 [Counsel confer]

19 BY MR. MILES:

20 Q So it was your testimony that you had it drafted but didn't
21 submit it to the judge; isn't that correct?

22 A Yeah. It typically takes some time to draft reports.

23 Q Okay. Does that look like a fair and accurate copy of your
24 arrest report?

25 THE COURT: I'm sorry. Exhibit number?

1 MR. MILES: Exhibit number -- I think that's Exhibit N. Yeah,
2 Proposed Exhibit N.

3 THE COURT: Exhibit what?

4 MR. MILES: Exhibit N.

5 THE COURT: N.

6 MR. MILES: I mean Defense Proposed Exhibit N, Your
7 Honor.

8 THE COURT: Okay.

9 THE WITNESS: Yes, this looks accurate.

10 BY MR. MILES:

11 Q Okay. And can you tell me the date that's listed on the back
12 of that arrest warrant?

13 A 3/3 of 2015.

14 Q So that arrest warrant was improperly dates; isn't that
15 correct?

16 A I'm not sure. I would have to -- it looks like it was dated on
17 the 3rd of March.

18 Q And you did testify that you drafted the arrest warrant and
19 you interviewed the alleged victim, and then you submitted the arrest
20 warrant to the Court; isn't that correct?

21 A I talked to her and did the arrest warrant right around the
22 same time. I can't remember exactly which date was which.

23 Q Well, we did hear testimony from you by the State. And I
24 remember this testimony. You stated -- you indicated for the State that
25 you interviewed the alleged victim on the 4th --

1 A Okay.

2 Q -- drafted the arrest warrant, and then submitted that arrest
3 warrant.

4 A Okay. This is just when it was signed that -- it was witnessed
5 that I had signed it. March 3rd -- it just shows that the person witnessed
6 it, that this was the document that I drafted.

7 Q It's two signatures on there; is that correct?

8 A Yes. That's mine and actually my sergeant's.

9 Q Does he have his P number on it?

10 A No.

11 Q So it's no P number on there?

12 A Correct.

13 Q Isn't a P number required to be on an affidavit for a search
14 warrant?

15 A No.

16 Q It's not required?

17 A No.

18 Q So --

19 A Not as a witness.

20 Q Not as a witness? So it'd be fair to say that that arrest
21 warrant, you actually had knowledge of Gabrielle King's reported
22 interview before that arrest warrant was actually submitted, based on
23 your testimony?

24 A This was -- obviously, I signed this on March 3rd.

25 Q Okay.

1 A So -- I'm sorry. What is the question? Did I have --

2 Q Well, the question is, is that warrant improperly dated? You
3 said that you interviewed the alleged victim, drafted the arrest warrant,
4 but it's --

5 A No, the State. They dated this when that person witnessed
6 that I wrote this and that I signed it. They dated it. So I can't say that
7 this is improperly dated unless they wrote the wrong date. You see what
8 I'm saying?

9 Q So it's your testimony that they probably wrote the wrong
10 date on the arrest warrant?

11 A No, that's not what I'm saying.

12 MR. MARTINEZ: Objection.

13 THE COURT: Sustained.

14 MR. MILES: Okay.

15 BY MR. MILES:

16 Q But you are testifying that when that arrest warrant was
17 drafted, you did have knowledge of Gabrielle King's recorded statement.
18 That is your testimony; is that correct?

19 A I know that I had conversations with her up to the point that I
20 was drafting the arrest warrant and after. There was multiple
21 conversations with Gabrielle.

22 MR. MILES: Court's indulgence, Your Honor.

23 BY MR. MILES:

24 Q Now during the recorded interview, do you recall Gabrielle
25 King telling you she was picked up in a white BMW?

1 A Yes, I do.

2 Q Okay. Did you --

3 MR. MILES: Wait. Actually, I think it'll go better like this,
4 Your Honor. Can I actually move for the admission of that arrest
5 warrant?

6 MR. MARTINEZ: And I object to hearsay.

7 MR. MILES: She's the declarant. She's --

8 THE COURT: Sustained.

9 BY MR. MILES:

10 Q Okay. So when you did the recorded interview with Gabrielle
11 King, she did tell you she was picked up in a white BMW; isn't that
12 correct?

13 A Yes, that's correct.

14 Q Okay. Now looking at Defense Proposed Exhibit N, did you
15 include that information in your arrest warrant?

16 A No, I did not.

17 Q You didn't?

18 A And if that -- if the date is correct, this is the date before I
19 interviewed her, before I did the recorded interview with her when she
20 said it was a white BMW.

21 Q Okay. But you did testify that you had knowledge of that
22 statement. That was your testimony. You did testify that you had
23 knowledge of that statement while you were drafting that arrest warrant.
24 That was your testimony; is that right?

25 A No. I've talked to her numerous times about the case at this

1 point while we were -- while I was drafting the arrest warrant. There was
2 many conversations that I have had with her. So I don't understand
3 exactly which statement --

4 Q When you testified for the State that you conducted a
5 recorded interview with her and then you drafted the arrest warrant, was
6 that testimony true and correct?

7 A I can't tell you exactly from moment to moment which one
8 was first. Basically, my course -- the course of my day, I would talk with
9 her, I would type, I would talk with her, I would type. So there's different
10 times that I can't say that that interview happened exactly one day
11 before, that this happened, that -- does that make sense? So it's kind of
12 like a fluid thing.

13 Q Well, the question was when you testified for the State, that
14 you recorded the -- that you conducted the recorded interview with
15 Gabrielle King and you drafted the arrest warrant, was that testimony
16 true and correct? Yes or no.

17 A I still don't really understand what you're saying. One more
18 time.

19 Q I'll rephrase.

20 A Yeah.

21 Q You testified for the State that you conducted the recorded
22 interview with Gabrielle King.

23 A Correct.

24 Q And thereafter, you drafted your affidavit in support of the
25 arrest warrant. Isn't that correct?

1 A Okay. But maybe it was that it was submitted, because right
2 here it clearly shows that I drafted it on 3/3, which actually it wouldn't
3 have been 3/3. It would have been several days leading up to March 3rd.

4 Q So was that testimony true and correct? Yes or no.

5 A That I drafted after the interview, no. That I submitted it after
6 the interview, yes.

7 Q So you're saying you made a false statement on the stand
8 and you testified for the State that you recorded the alleged victim and
9 then drafted --

10 MR. MARTINEZ: Objection. Argumentative.

11 BY MR. MILES:

12 Q -- the --

13 A I may have. Yeah.

14 Q -- this is not -- you did?

15 A I may have. I can't --

16 THE COURT: Overruled.

17 THE WITNESS: I don't know exactly what I said. I'd have to
18 read in my testimony.

19 BY MR. MILES:

20 Q Okay. So if you reheard your testimony, would that refresh
21 your recollection?

22 A Yes.

23 Q Now if you were to hear your testimony, would it surprise
24 you if you actually testified for Mr. Martinez that you conducted the
25 recorded interview with Gabrielle King and then drafted the affidavit in

1 support of the arrest warrant?

2 A No, it wouldn't surprise me. It might have come out that
3 way. I might have said that.

4 Q Okay. And then if you said that, you did admit that that
5 would have been a false statement; is that correct?

6 A Yes, that would have been incorrect, because I didn't look at
7 the date of the actual witness signature on here.

8 Q So let me ask you this, Detective Gatus. Are you taking this
9 hearing serious, this trial seriously?

10 MR. MARTINEZ: Objection.

11 THE COURT: Sustained.

12 MR. MARTINEZ: Argumentative.

13 MR. MILES: I think she could answer the question, Your
14 Honor.

15 MR. MARTINEZ: She sustained it.

16 MR. MILES: Okay.

17 BY MR. MILES:

18 Q Now on that arrest warrant -- the me ask you this. When you
19 were conducting the recorded interviews of Gabrielle King, she did
20 report to you that she ran away from her home; is that correct?

21 A Yes, she did.

22 Q Okay. And when was that recorded interview conducted?

23 A That was on --

24 Q I mean that unrecorded interview conducted. I'm sorry.

25 A Oh, goodness. I probably talked to her unrecorded 10 times,

1 many, many times.

2 Q Okay. The first time you talk to her?

3 A The first time I talked to her was the day that she ended up
4 down at juvi. That would have been February 13th.

5 Q And it is that point in time she indicated to you that she
6 was -- she ran away from home; is that right?

7 A Yes.

8 Q Okay. And what else did she tell you in that unrecorded
9 interview at that time?

10 MR. MARTINEZ: Objection. Hearsay.

11 THE COURT: Sustained.

12 BY MR. MILES:

13 Q Did she also tell you that she wanted to go to her grandma's
14 house?

15 MR. MARTINEZ: Well, objection. That's hearsay. He can't
16 testify -- he can't ask the question with hearsay.

17 THE COURT: You have a response to the hearsay -- do you
18 have an exception for the hearsay?

19 MR. MILES: Well, I'm going to say it's a statement offered
20 against -- Court's indulgence, Your Honor. I'm going to say that is a
21 statement that I have adapted and manifested a belief in its truth. I
22 mean we've heard --

23 THE COURT: Well, that's not an exception to the hearsay.
24 So sustained.

25 BY MR. MILES:

1 Q Okay. And you did -- at some point in time, did you do notes
2 with Gabrielle King? Did you have notes that you did with your
3 unrecorded interviews?

4 A Yeah. There were several times where I would jot things
5 down.

6 Q Okay. Now I'm going to show you what's marked as Defense
7 Proposed Exhibit L. Do you recognize what that is?

8 A Yes, I do.

9 Q What is that?

10 A These are some of my notes that I took.

11 Q When did you take those notes, detective?

12 A While I was talking with Gabrielle King.

13 Q While you was talking to Gabrielle King?

14 A Yes.

15 Q Now what's the date listed on the top of those notes?

16 A The dates are different. One shows February 16th. Two of
17 them show February 19th. And the third one, it doesn't look like it's
18 dated.

19 Q And those are you notes, correct?

20 A Yes.

21 Q And you did write those?

22 A Yes, I did.

23 Q And those were based on alleged interviews that you had
24 with Gabrielle King?

25 A Yes.

1 MR. MILES: And, Your Honor, I'll actually move for the
2 admission of those notes at this time?

3 THE COURT: State.

4 MR. MARTINEZ: I don't have an objection.

5 THE COURT: I'm sorry?

6 MR. MARTINEZ: No objection.

7 THE COURT: It'll be admitted. And what are they marked
8 as?

9 MR. MILES: Defense Proposed Exhibit F.

10 THE COURT: Okay. State's Exhibit F [sic] will be admitted.

11 [Defendant's Exhibit F admitted into evidence]

12 THE COURT: One or two pages?

13 MR. MILES: That's four pages, Your Honor.

14 THE COURT: All right.

15 BY MR. MILES:

16 Q Now while they're marking that --

17 THE COURT: I'm sorry. Are they stapled together as one
18 exhibit?

19 THE CLERK: No, [indiscernible].

20 THE COURT: Okay. So --

21 THE CLERK: It was grouped together.

22 THE COURT: Okay.

23 MR. MILES: While they're marking that, I'll actually -- we'll
24 come back to that.

25 BY MR. MILES:

1 Q Now at some point in time, did Gabrielle King indicate to you
2 that she was with somebody named Durrell and Jay Jay?

3 A Yes. Yes.

4 Q Okay. And didn't she tell you she was with Durrell and Jay
5 Jay from the dates of February 10, 2015 through February 13, 2015?

6 MR. MARTINEZ: I'm going to object. It's hearsay again. And
7 I would ask that the Defendant not make hearsay statements of other
8 witnesses in formulating his question, because it's not a proper question
9 and it's objectionable under hearsay.

10 MR. MILES: And she was the one actually doing the
11 interviews with Gabrielle King. So she can testify to what she heard a
12 what she became aware of.

13 THE COURT: Only if it comes under the hearsay exception.
14 What hearsay exception are you offering?

15 MR. MILES: Well, I'm going to be offering it as a prior
16 inconsistent statement and to stand through the evidence to --

17 THE COURT: Let me hear that question again.

18 MR. MILES: I asked her was there any point in time during
19 the unrecorded interviews that Gabrielle King told her that she was with
20 a friend named Durrell and Jay Jay. She said yes. Then I asked her did
21 she tell you that she was with Durrell and Jay Jay from the dates of
22 February 10, 2015 to February 11, 2015. And then he objected.

23 MR. MARTINEZ: Okay. So, Your Honor, if I could respond to
24 that.

25 THE COURT: Uh-huh.

1 MR. MARTINEZ: That's hearsay, and it's not an inconsistent
2 statement.

3 THE COURT: True. So sustained.

4 BY MR. MILES:

5 Q Now in your arrest warrant, did you indicate in any way that
6 Gabrielle King was with other friends or with other people on certain
7 dates?

8 A I don't believe that I did, no.

9 Q Why didn't you include that in there?

10 A Because that wasn't -- that was not an element of the crime.

11 Q And from your understanding and from your investigation,
12 she didn't tell you, in any of your recorded interviews, that she invites
13 me on Facebook, did she?

14 A I'm not sure if that came out in -- from what you told me a
15 what she told me, but I know, at some point, I think you said that she hit
16 you up on Facebook. I don't recall if Gabrielle told me that.

17 Q Would it refresh your recollection that recorded interview?

18 A Oh, yeah.

19 Q Okay.

20 MR. MARTINEZ: Can you let us know what page you're
21 referring to?

22 MR. MILES: Defendant's Proposed Exhibit Z.

23 MR. MARTINEZ: Which page are you refreshing collection
24 on?

25 MR. MILES: That's going to be page 2.

1 THE WITNESS: Did you say page 2?

2 BY MR. MILES:

3 Q Page 2.

4 A Okay. Yes.

5 Q So did she tell you that she messaged me on Facebook?

6 A Yes, she did.

7 Q Did she tell you that --

8 MR. MARTINEZ: Okay. I'm going to object again if this
9 continues as to hearsay.

10 MR. MILES: This -- I asked her if she recalled the statement,
11 Your Honor. So that was the first question. Then I refreshed her
12 recollection.

13 THE COURT: Okay. But it's --

14 MR. MARTINEZ: But it's still an out-of-court statement
15 offered for the truth of the matter asserted, and it's -- he hasn't --

16 THE COURT: It is --

17 MR. MARTINEZ: -- shown that it was inconsistent.

18 THE COURT: It is still -- it's -- what you exception to the
19 hearsay rule for the out-of-court statement?

20 MR. MILES: I'm just going to say it's relevant, and it's a
21 statement that I adopted a manifested belief in its truth. And I would say
22 that this could actually be a prior inconsistent statement if she does
23 actually recall the statement was that -- I mean she was the one that
24 heard it. So if she can't recall what was said to her, then --

25 THE COURT: Sustained.

1 THE CLERK: Okay.

2 BY MR. MILES:

3 Q Now --

4 MR. MILES: Court indulgence.

5 [Pause]

6 BY MR. MILES:

7 Q Now at some point in time, did you receive Facebook
8 messages from Gabrielle King?

9 A I don't know what you mean by did I receive Facebook
10 messages.

11 Q Did you log into her Facebook account?

12 A Yes.

13 Q About how many times did you log into her Facebook
14 account?

15 A I can't remember how many times.

16 Q You can't remember?

17 A She gave me consent, so it's -- she allowed me to do it.

18 Q Would it surprise you if she said she only gave you consent
19 one time to view her Facebook account?

20 A Okay.

21 Q With that surprise you?

22 A I don't really understand what being surprised at -- know,
23 that -- I'm not surprised.

24 Q If she testified in a previous proceeding that she only gave
25 you permission one time to view her Facebook account --

1 A Oh. Probably because I only asked her the one time for
2 consent to go into it.

3 Q Now when you were looking at her Facebook account, what
4 computer were you using?

5 A It was either my desktop at my workstation or the -- I think
6 we opened it up at juvenile hall, because there's a desktop there too also
7 for officers.

8 Q Okay. And that's the Las Vegas Metro Police Department
9 Headquarters?

10 A My office is at headquarters, yes.

11 Q Okay.

12 MR. MILES: Court's indulgence.

13 BY MR. MILES:

14 Q Okay.

15 A But then the other computer that it could have been on was
16 the one at juvi hall.

17 Q Are you able to find any messages between me and Gabrielle
18 King involving prostitution related activity?

19 A Involving prostitution related stuff, no, I don't believe there
20 was in the Facebook.

21 Q Was she able to show you any messages that would suggest
22 that me and her were talking about prostitution related activity on
23 Facebook?

24 A I think the question needs -- prostitution related activities
25 very vague. So I don't know exactly what you're referring to.

1 Q You didn't see any messages in her Facebook account of me
2 telling her that I wanted her to work as a prostitute for me, did you?

3 A No. There's nothing that says I want you to be a prostitute.
4 No.

5 Q Was there anything that said I seen you walking on Boulder
6 and I wanted you to be a prostitute?

7 A No.

8 Q Okay. Did you see anything between my Facebook
9 messages and her messages that would suggest that I told her I wanted
10 to -- her to work as a prostitute for me?

11 A No, not that I can recall. There might be something there,
12 but not off the top of my head, no.

13 Q There might be or there's not messages?

14 A I would have to look at it. That was -- her Facebook return
15 was very large. It was I think several thousand pages.

16 Q Did you view the whole Facebook return of my
17 account -- Facebook account and her Facebook account?

18 A Oh, yeah.

19 Q Okay. So as far --

20 A But what I'm saying is I -- no, I can't remember every single
21 detail of every little thing off the top of my head. I would have to be able
22 to look at the Facebook account and to look and see if there's something
23 specifically like you're asking.

24 Q Okay.

25 A But I don't believe there is.

1 Q Okay.

2 A I'm just saying I can't say that there's 100 percent not without
3 looking at it.

4 Q Okay. But you're not saying you did find any messages,
5 right?

6 A No. There wasn't much on the Facebook at all.

7 Q Okay.

8 MR. MILES: Court's indulgence.

9 THE COURT: Mr. Miles, how much more do you have to go?

10 MR. MILES: Your Honor, I have a lot. It's kind of hard,
11 because I'm trying to get it admitted into evidence. So is kind of hurting
12 what I'm trying to do.

13 THE COURT: Ladies and gentlemen, we're going to take our
14 lunch break now. Let's take an hour and 15. And, parties, I'd like you
15 back in an hour.

16 Ladies and gentlemen, we're going to take a hour and 15
17 minute recess. During this recess, you are admonished not to talk or
18 converse amongst yourself or with anyone else on any subject
19 connected with this trial, or read, watch, or listen to any report or
20 commentary on the trial, or any person connected with this trial, buy any
21 medium of information, including without limitation to newspapers,
22 television, the internet, and radio, or formal express any opinion on any
23 subject connected with this trial until the case is finally submitted to you.
24 And no legal or factual research or investigation or recreation of
25 testimony on your own.

1 So we'll see you back here at 1:15. Okay.

2 THE MARSHAL: All rise.

3 UNIDENTIFIED SPEAKER: 2:15.

4 THE COURT: Oh, yeah. That's what I meant.

5 MR. MILES: Your Honor.

6 [Outside the presence of the jury]

7 THE COURT: The record reflect were outside the presence of
8 the jury.

9 Detective, we'll see you back here at 2:15, please.

10 THE WITNESS: Okay. Thank you.

11 THE COURT: Obviously, don't discuss your testimony with
12 anyone else.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Okay. Is there anything we need outside the
15 presence?

16 MR. MILES: Yes, there is, Your Honor. I'll wait till she leaves.

17 THE COURT: Okay.

18 [Pause]

19 MR. MILES: And while we was -- we were playing the
20 interview, there was a reference that was supposed to be out that was
21 actually played for the jury. So I mean Your Honor has already ruled that
22 that's --

23 THE COURT: Okay. What was that?

24 MR. MILES: That was on page 20, where it said out, the
25 second one. That actually ended up getting played for the jury after Your

1 Honor has already ruled that was actually supposed to be out.

2 THE COURT: Okay. I did actually tab that. I don't know if
3 you all tabbed it as well.

4 MR. MILES: It was tabbed.

5 THE COURT: Did you guys have that as a pullout?

6 MR. MILES: I have the --

7 MS. RHOADES: I don't believe so.

8 MR. MILES: I have the Court's copy right here. It said in/out.

9 THE COURT: You're correct.

10 MR. MILES: Yeah.

11 MS. RHOADES: Which one?

12 MR. MARTINEZ: Which word? Out call is supposed to be
13 out?

14 THE COURT: Weed and shit was supposed to be out. He
15 wanted weed in. We happened to be selling weed, but then we used to
16 sell weed and shit out.

17 MS. RHOADES: I thought everything --

18 THE COURT: The reality is it's inconsistent with everything
19 else that went on, because there's completely talking about weed
20 throughout. So -- but technically, for whatever reason, that weed and --
21 the weed and --

22 MR. MILES: Yeah. That was --

23 THE COURT: -- my notes --

24 MR. MILES: Oh, I'm sorry.

25 THE COURT: -- my notes indicate should have been out.

1 They are highlighted and I wrote out. Up above it where it says weed in
2 yellow I do show in. Now having said that, my understanding is -- and
3 that was the reason that I had you guys listen to the recording in its
4 entirety over the break, so we wouldn't have this issue. So that being
5 said, I think -- I don't know if you've waived it. I think that -- did you
6 bring that --

7 MR. MILES: I listened to it.

8 THE COURT: -- to Mr. Martinez's attention --

9 MR. MILES: Yeah. It was --

10 THE COURT: -- at the time?

11 MR. MILES: -- that and it was something in the back I
12 marked. I don't have the other copy I marked, because they actually took
13 it out. But it was something in the back that we listened to that we said
14 should have been out.

15 THE COURT: But I believe they --

16 MR. MILES: And I think it was one more change.

17 THE COURT: -- made that change.

18 MR. MILES: They made -- yeah, they made one of the
19 changes. And I think they made pretty much all of them except that right
20 there. But we did listen to it. I was like okay, you missed that, you
21 missed this. So we've already talked about what was supposed to be
22 out.

23 THE COURT: I know that some changes were made by the
24 State at your request.

25 Was that one of the changes he requested be made?

1 MR. MARTINEZ: After we listened to it together or --

2 THE COURT: Correct.

3 MR. MARTINEZ: No.

4 THE COURT: After you listened to it together?

5 MR. MARTINEZ: After listening together, he did not request
6 that we take that out. And we listened to the entire thing together. I
7 don't think we did it on the record. We did off the record. And I also had
8 stated that I had provided Mr. Miles with a copy of our -- what our
9 understanding was, what the rulings were.

10 And he didn't really want to look through it, that we did this
11 in together. And that part, but it was left in, Mr. Miles didn't catch it
12 either. But I don't think it's -- I don't think there's prejudice there because
13 of all the other references that are there.

14 THE COURT: And that's what -- I'm going to find that.

15 Mr. Miles, you were afforded ample opportunities to both
16 listen to the tape, review the redaction. You chose not to exercise --

17 MR. MILES: I reported it to them.

18 THE COURT: You didn't bring it -- I have no reason to believe
19 that you brought it to anyone's attention. In fact, even when we listened
20 to it just now, you didn't raise that --

21 MR. MILES: Well, because I didn't want to object --

22 THE COURT: Excuse me.

23 MR. MILES: Oh, I'm sorry, Your Honor. I'm sorry, Your
24 Honor.

25 THE COURT: You've got to stop.

1 MR. MILES: Yeah, you're right. I'm sorry.

2 THE COURT: You raised an objection to page 19, saying the
3 weed was out. And then we took the time and reviewed JAVS. And you
4 specifically said you wanted the weed in. So all these things considered,
5 to the extent that there was a mistake to have the one word, weed, there
6 are repeated references to the weed and you selling weed and that's
7 your argument, and you have requested specifically that that stay in.

8 I'm not even sure why that one weed -- and you would have
9 requested that in light of all the other weed and drug dealer arguments
10 that you wanted in is, on some level, part of your defense, that you guys
11 were selling weed together. So, therefore, I find that you waived any
12 rights to that. And I don't think that it's prejudicial. And I don't think it's
13 inadmissible in any event, because, quite frankly, at the end of the day, I
14 think your statement covering for what you are really selling for is
15 arguably admissible and not inadmissible, because, certainly, one
16 argument is you weren't selling weed at all.

17 This was your cover story for the police when you were
18 being interviewed, that you were saying no, I wasn't doing prostitution.
19 We were actually selling weed. So I'm not even sure that the selling
20 weed constitutes another bad act. But all that being said, yeah, that's --

21 MR. MILES: Okay.

22 THE COURT: The statement is what it is. And --

23 MR. MILES: I would just bring that to your attention.

24 THE COURT: Any other record we need to make?

25 MR. MILES: Yeah. I wanted to -- I didn't want to do it at the

1 time. But during the --

2 THE COURT: Okay. If you don't make an objection at the
3 time, you waive it.

4 MR. MILES: Well, I did object to the improper remarks, but I
5 wanted the record to reflect why.

6 THE COURT: Okay. Go ahead.

7 MR. MILES: While the jury was -- while he was doing his
8 opening statements, he was showing them my mug shot photo. And I
9 would say that kind of undermines the presumption of innocence. *State*
10 *v. Miles*.

11 THE COURT: You're raising that now?

12 MR. MILES: Well, I object -- I was objecting. I didn't know. I
13 was just objecting, saying it doesn't state the fact fairly.

14 THE COURT: Okay.

15 MR. MILES: And that was one of the --

16 THE COURT: There's no contemporaneous objection. I
17 can't --

18 So what photo did we use?

19 MR. MARTINEZ: It's a photograph of him, and then there's a
20 denim shirt that he's wearing. There's no markings on it. There's
21 nothing that says prison. There's nothing that says he's in custody. It's
22 a photo of him from his -- probably his shoulders up. And it's a blue
23 denim -- it's not a CCDC jumpsuit. It's a denim shirt. And there's no --

24 THE COURT: Well, to the extent that there was --

25 MR. MILES: Prison jumpsuit.

1 THE COURT: -- an objection, you raised it by not raising it
2 earlier. And even had you, it sounds like it would have been overruled in
3 any event. So --

4 MR. MILES: Okay. All right.

5 THE COURT: Are we done now?

6 MR. MARTINEZ: Can I bring up one --

7 THE COURT: Yes, of course.

8 MR. MARTINEZ: -- more thing? So the Defendant, which I
9 didn't object to, the Metro PCS record, that the activation for the account
10 with Metro PCS was activated on February 25th --

11 THE COURT: Correct.

12 MR. MARTINEZ: -- 2015. So what I'm wondering is I have
13 this business records affidavit that we've talked about that has the pawn
14 ticket with the phone number on there from October 2014. Do you want
15 me to wait until a rebuttal case or --

16 THE COURT: Well, let me ask this. Was the affidavit offered
17 shown to the Defendant 10 days prior to trial?

18 MR. MARTINEZ: No.

19 THE COURT: Okay.

20 MR. MARTINEZ: We didn't get it until April 4th.

21 THE COURT: All right.

22 Mr. Miles, do you have any basis, any reason to believe that
23 there's an issue regarding that particular business record?

24 MR. MILES: Yeah. I would doubt the trustworthiness of that.
25 I don't believe that's -- I don't remember ever doing that for the pawn

1 shop. I didn't get a chance to look at it. If it was exculpatory evidence
2 that --

3 THE COURT: You were given that last week.

4 MR. MARTINEZ: I gave it to him on the same day that I got it.

5 THE COURT: Right.

6 MR. MILES: In trial. During trial.

7 THE COURT: Correct.

8 MR. MILES: So I didn't get to see the inculpatory evidence.

9 Pursuant to statute, the State is supposed to provide all evidence --

10 THE COURT: I'm asking you what your issue is at this
11 moment. They can only do what they have. Yes, technically, in order to
12 use the affidavit, it should have been provided 10 days prior. They didn't
13 have it 10 days prior.

14 So now I'm trying to juggle is there actually a reason to
15 require them to bring in the custodian of records to bring the document
16 in or not. And I'm asking you what reason or belief do we have that
17 there's an error in the actual document itself.

18 MR. MILES: I don't believe that the document is true and
19 correct in itself. And I believe the custodians of records for whoever
20 furnished that to her should be present here to testify to the truthfulness
21 of that. She's not the custodian of records. So I don't know exactly how
22 he's going to bring it in, if he's going to show me and ask me. I'm not
23 the custodian of records. I can't vouch for the credibility of that
24 evidence.

25 THE COURT: There's an affidavit attached to it. So --

1 MR. MILES: I mean it's a piece of paper, Your Honor. So I
2 mean I could have somebody print out a piece of paper. I could sign it
3 and say affidavit too.

4 THE COURT: Well --

5 MR. MILES: I mean, technically, anybody could do that. So I
6 believe the custodian of records should testify to it. And if you
7 remember, I just want to make sure the record was straight. The
8 evidence he's referring to in the affidavit was actually provided during
9 trial too.

10 THE COURT: I understand that.

11 MR. MILES: That's what he said.

12 THE COURT: How difficult to bring in the custodian of
13 records?

14 MR. MARTINEZ: They would have to come in from Texas.
15 So we'd have to fly them in for our rebuttal case to say exactly what's on
16 the affidavit. I gave you a copy of it.

17 MR. MILES: I don't know if I brought it here today. I just
18 wanted to why it's Texas.

19 THE COURT: I'm going to -- for the time being, let's save it
20 for rebuttal case.

21 MR. MARTINEZ: That's fine. I mean we'll just make sure that
22 Detective Gatus is available after the Defendant's case in chief.

23 THE COURT: Yeah. Only because it would -- and I get it, but
24 that's more rebuttal.

25 MR. MARTINEZ: That's fine, because --

1 THE COURT: Although, arguably, it's --

2 MR. MARTINEZ: -- I mean it is rebutting --

3 THE COURT: It's rebuttal now. Yeah.

4 MR. MARTINEZ: It's rebuttal of his defense exhibit.

5 THE COURT: Let me think about it over --

6 MR. MARTINEZ: Do you want to see it? Look at it or --

7 THE COURT: Yeah.

8 MR. MARTINEZ: And I'll represent that the information on
9 that, on the actual pawn ticket, has the Defendant's address that he put
10 on there. It has his driver's license number that he took a photo of from
11 his Samsung phone. Everything -- and the phone number matches what
12 he himself told detectives was his phone number.

13 And you can see from the date, it's October 2014. And so,
14 the allegation that that phone number never existed prior to February 25,
15 2015, just isn't accurate.

16 THE COURT: I --

17 MR. MILES: It's not the allegation, Your Honor.

18 THE COURT: I see where it's going.

19 MR. MARTINEZ: So --

20 THE COURT: You weren't able to get anybody from Cash
21 America over the local C of R that could vouch for this?

22 MR. MARTINEZ: My understanding, Detective Gatus had
23 indicated that came from the custodian of records in Texas, because that
24 actual pawn ticket didn't exist anymore at the Las Vegas location. And
25 so, they had to go to the headquarters, go through the storage to find the

1 pawn ticket.

2 THE COURT: Okay.

3 MR. MARTINEZ: They were able to do that, and then they
4 submitted the custodian of records affidavit that it's a true and accurate
5 copy of that. And so, I think it's highly probative, and it rebuts what the
6 Defendant is saying to the jury and what he admitted on the Metro PCS
7 record, which I didn't object to for the record. And I could have, because
8 there's no custodian of records affidavit. But we'll just leave that as it is.

9 THE COURT: Right.

10 MR. MARTINEZ: And he --

11 THE COURT: I just want to pull a copy of this for me,
12 because I think you guys all have copies, but I don't have a copy yet.

13 MR. MILES: Just to make the record straight, Your Honor, he
14 doesn't know what I'm arguing in my case in chief. I might not be
15 arguing that it wasn't activated. I could just be simply arguing that the
16 number wasn't activated at the timeframes they're saying the messages
17 were sent. So --

18 THE COURT: Well, you've clearly highlighted it in front of the
19 jury, that it was March -- or it was February 15th that the phone --

20 MR. MILES: 25th.

21 THE COURT: -- was activated. I don't remember what year.

22 MR. MARTINEZ: And here's the thing. You can't --

23 THE COURT: Yeah.

24 MR. MARTINEZ: The exhibit doesn't say the number was
25 activated. It says the account with Metro PCS was activated. And so, I

1 would ask that the Court admonish the Defendant not to say what's
2 different than what's on that record.

3 THE COURT: I mean he could --

4 MR. MARTINEZ: He could infer it in argument.

5 THE COURT: -- say when, say when.

6 MR. MARTINEZ: He can argue it in --

7 THE COURT: Okay.

8 MR. MARTINEZ: -- argument, but he can't keep saying that
9 that is what it says on cross-examination when that's not what it says.

10 MR. MILES: It says activation date.

11 THE COURT: So I have a continuing objection to that.

12 MR. MILES: It says account activation date. I'm just stating
13 what it says. It says account --

14 THE COURT: Yeah. That's -- as long as you say account
15 activation date.

16 MR. MILES: Okay.

17 MR. MARTINEZ: And not number activation date.

18 MR. MILES: I didn't say --

19 THE COURT: That's fine.

20 MR. MILES: -- number activation date.

21 THE COURT: And if he does, you object and we'll set the
22 record straight.

23 And then, ultimately, in front of the jury, Mr. Miles, that
24 would potentially be your argument, which is why now I think, because
25 you've raised that issue, the State is now offering -- seeking to put in this

1 pawn ticket that shows that, in fact, you had that number back in the day.

2 So --

3 MR. MILES: Okay.

4 THE COURT: -- I will reserve on that. Did you bring your
5 jury -- I have your jury instructions. Can we come back and settle those
6 at 2:00.

7 MR. MARTINEZ: That's fine with the State, Your Honor.

8 THE COURT: How much more do you have with this
9 witness?

10 MR. MILES: Well, because I really wanted to get into it. It's
11 kind of making it a little difficult, because of how the evidence is getting
12 admitted. So it's kind of like I'm going to one subject to another. I
13 actually wanted to, you know, break down each subject during the
14 process.

15 THE COURT: Well, you'll have almost an hour to work on it.
16 So --

17 MR. MILES: Yeah. So I mean I just wanted, you know, the
18 jury to understand the facts, how the arrest warrant --

19 THE COURT: That's fine. You don't have to tell me anything.
20 I just want to know how much longer you think you'll be with this
21 witness.

22 MR. MILES: Probably -- it's really no telling how it's going to
23 go, Your Honor. It depends on how the State objects and how the
24 evidence gets in. I mean if I can't get the evidence in and I can't really
25 get my points across, then it's -- it makes it kind of difficult to argue what

1 I want to argue --

2 THE COURT: I --

3 MR. MILES: -- to the jury.

4 THE COURT: Well, again, I'm --

5 MR. MARTINEZ: It has to be appropriately --

6 THE COURT: -- just asking you how long. If --

7 MR. MILES: If I was to assume --

8 THE COURT: From what I saw in your cross, if it's your
9 intention to go line by line through statements with evidence that
10 doesn't have a legal basis, for example, if you keep asking hearsay and
11 you don't have a hearsay exception, and your belief in the truth of it is
12 not a hearsay exception.

13 MR. MILES: Okay.

14 THE COURT: So if you don't have anything, then you're
15 going to keep stopping. So is that what you're -- and again, you don't
16 have to tell me what you're plan is. I'm just asking for a rough time
17 estimate, so we can keep track of the jury and so we can get your
18 witnesses down here.

19 MR. MILES: I would say probably 30, 40 minutes maybe.

20 THE COURT: Okay. So if you could make arrangements
21 then.

22 Maybe, Mr. Beckett, can you help him out to make the phone
23 call to get his witnesses down here by 2:15?

24 MR. BECKETT: Yes, Judge.

25 THE COURT: Or I guess 2:30, 3:00, whatever.

1 MR. MILES: Okay.

2 THE COURT: All right.

3 MR. MILES: All right.

4 THE COURT: Is that it? See you all at 2:00 for jury
5 instructions.

6 THE CLERK: This is the original.

7 THE COURT: Here is your original thing.

8 THE CLERK: I did it in color.

9 THE COURT: This is mine. These are copies. You gave him
10 a copy, right?

11 MR. MARTINEZ: Yes, I did.

12 THE COURT: Okay. We're in recess. Off the record.

13 [Recess at 1:09 p.m., recommencing at 2:01 p.m.]

14 [Outside the presence of the jury.]

15 THE COURT: Are all your exhibits over here or do you have
16 them all over there?

17 MR. MARTINEZ: They're right here.

18 THE COURT: The admitted ones?

19 MR. MARTINEZ: Yes.

20 THE COURT: Can I see them? Oh, you know, I didn't
21 bring -- unless the jury instructions --

22 [Pause]

23 THE COURT: Are we on the record?

24 THE COURT RECORDER: We are, Judge.

25 THE COURT: Okay. As to the business records from the

1 pawn shop, based upon the cross-examination, I am going to allow the
2 State to go forward using the --

3 Well, Mr. Miles, let me ask you this. What is it you're saying
4 is -- what is your position for saying that this is a -- affidavit is
5 untrustworthy?

6 MR. MILES: Well, I don't think anybody can testify to the
7 trustworthiness of -- and the completeness of that ticket. I don't know if
8 that's --

9 THE COURT: Okay. Well, it's an affidavit and its sworn
10 under penalty of perjury. So --

11 MR. MILES: Actually, Your Honor, I have some right here I
12 found I think the other night that might -- Court's indulgence. So right
13 here -- where is that from again? What pawn shop? Is that Lake Mead?

14 THE COURT: Huh?

15 MR. MILES: Is that Lake Mead pawn shop?

16 MR. MARTINEZ: It's Cash America, Lake Mead.

17 MR. MILES: Okay. See, here's the thing right here. I did end
18 up finding -- I searched all my records and my discovery, and I did end
19 up finding something that was similar. And this actually says two
20 numbers on here. It doesn't say one number. It says two numbers
21 listed. And it has two addresses listed. And it has a whole bunch of
22 other miscellaneous stuff. So I don't think that one is actually complete
23 either.

24 THE COURT: Okay. The question isn't complete. The
25 standard is --

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[Pause]

THE COURT: The standard is that the authenticity of a record is reasonably question. And I'm not seeing any reasonable question of this.

MR. MILES: Well --

THE COURT: It's not a completeness issue. It is -- is there anything to be gained by calling in the custodian of records regarding this pawn ticket, and I think not.

MR. MILES: Yeah, I think something can be gained, because who signed it. If it's a pawn ticket, who signed the signature? Who put the stuff in it? I mean if the pawn shop --

THE COURT: That's --

MR. MARTINEZ: It's John Woodard [phonetic].

MR. MILES: All that could be hearsay.

THE COURT: That's not the standard. The standard, it's a business record. It's admissible as a business record. It's got the appropriate affidavit. The question is, is there any reason to suspect that the affidavit itself is suspect.

MR. MILES: I'm saying I do suspect the content itself, as far as evidence and the affidavit. And I'd rather somebody testify to the truthfulness of these records.

THE COURT: Okay. That's not the standard. Let me ask you this. You received this document a week ago today. What efforts have you made to look into this or do anything with?

MR. MILES: I don't believe it was a week ago, Your Honor. I

1 think it was probably like three, four -- I'm not sure of the exact time. I
2 think it was three, four days.

3 THE COURT: I think it was the first day of trial if I'm not
4 mistaken, but maybe not.

5 MR. MILES: Three, four days ago.

6 THE COURT: The affidavit was Monday.

7 MR. MARTINEZ: So we had the ticket --

8 THE COURT: On Monday.

9 MR. MARTINEZ: -- the day before the affidavit. So it would
10 have been April 3rd.

11 THE COURT: Right. Wasn't that Monday? What was
12 Monday?

13 MR. MILES: We started trial on the 3rd.

14 MR. MARTINEZ: April 1st.

15 MS. RHOADES: The 1st.

16 THE CLERK: April 3rd was Wednesday.

17 THE COURT: Okay.

18 MR. MILES: And I'm in max. We only come out for an hour.

19 And so, it's hard to -- I --

20 MR. MARTINEZ: He has an investigator.

21 THE COURT: Okay. At what point did you ask me to do
22 something about this?

23 MR. MILES: Well, I told you I wanted my expert -- I mean not
24 my expert -- Mark to be able to look into it, verify if it's a true and correct
25 document and be able to --

1 THE COURT: Okay. Well, ultimately, I'm going to rule that
2 the affidavit is sufficient. I don't think that there's any reason to be
3 suspicious. I also note that in comparing -- I don't even know what -- it
4 hasn't been marked yet. Let's mark that, can we --

5 MR. MARTINEZ: Okay.

6 THE COURT: -- so we at least know what we're talking about.

7 MR. MARTINEZ: Right. I was --

8 THE COURT: You can offer it or not offer it.

9 MR. MARTINEZ: I was waiting till the rebuttal.

10 THE COURT: You can offer it or not. No. It's going to -- you
11 can ask on --

12 MR. MARTINEZ: On redirect?

13 THE COURT: Yeah, because it is rebuttal, but it's redirect
14 rebuttal. There's --

15 What are we going to mark it as?

16 THE CLERK: 57.

17 [Plaintiff's Exhibit 57 marked for identification]

18 THE COURT: Okay. So State's Proposed 57 is the Cash
19 America ticket. And it's got the affidavit of John Woodard that appears
20 to have been prepared on April 4, 2019. I would note that the Defendant
21 has had since at least April 4th, and today is -- what is today? The 8th.
22 So he's had it at least four days, including over the weekend, and at no
23 time has asked the Court for any assistance.

24 He -- Mr. Beckett has been seated at the back of the
25 courtroom throughout the trial, and any assistance -- I also note that the

1 pawn ticket indicates that Christian S. Miles gives a driver's lic. of
2 1403732920, DOB of 1/16/94, and an address of 3813 Cranbook Hill
3 Street, Las Vegas 89129. The phone number being 702-913-2289.
4 Physical description of the individual is a male, race black, eye color
5 brown, hair color black, height 5'11, weight 180.

6 MR. MARTINEZ: And it lists the phone number.

7 THE COURT: And indicating that he's pawning a ticket. I
8 also note with -- as -- with respect to State's Exhibit 52, the front page of
9 that appears to be a Nevada identification card of an individual,
10 Christian Steven Miles, with the 3813 Cranbook Hill Estate -- Street, the
11 same zip code, address, the same driver's license of 1403732920, date of
12 birth of 1/16/1994.

13 Also indicates, if I'm reading this correctly, male 5'10, looks
14 like 180 pounds, eyes brown. What is that? I can't make that out. But it
15 all appears to be consistent with the description on the business records
16 affidavit. I, therefore, don't see anything to be gained by calling the
17 actual affiant.

18 And so, to the extent that when it's appropriate for other
19 reasons, I'm not going to keep it out because of the delay. I don't believe
20 that there's been any prejudice whatsoever. And I do believe it's an
21 issue that was raised by the Defendant that wouldn't necessarily have
22 been anticipated by the State.

23 MR. MARTINEZ: So based on that, we'd move for its
24 admission now.

25 MR. MILES: And, Your Honor, when you say anticipated by

1 the State, are you saying that the State's position is they didn't have the
2 evidence before trial or --

3 THE COURT: That's correct.

4 MR. MILES: Because that's not -- that's what I was saying
5 before. That's not true. I have --

6 THE COURT: Okay. Well, I don't find anything exculpatory
7 about it. So I've made my ruling now.

8 MR. MILES: Okay.

9 THE COURT: So yeah, you can go ahead and offer it.
10 State's --

11 MR. MARTINEZ: Proposed 57 we are asking to be admitted.

12 THE COURT: Okay. It'll be admitted.

13 [Plaintiff's Exhibit 57 admitted into evidence]

14 MR. MILES: Can I still make an objection to that admission
15 or --

16 THE COURT: You've already made an objection. You have
17 something different?

18 MR. MILES: Yeah, I have something different.

19 THE COURT: What?

20 MR. MILES: That I'm going to say hearsay and I'm going to
21 say it hasn't been authenticated. It hasn't been properly authenticated.

22 THE COURT: Okay. We've already dealt with the
23 authentication. It's got an affidavit, as required by statute. You haven't
24 raised any reason to believe that there's an issue with that. Now with
25 respect to hearsay, it's not offered of the truth of the matter asserted, I

1 presume.

2 Is that correct?

3 MR. MILES: What is that?

4 MR. MARTINEZ: It is offered for the truth.

5 THE COURT: Well, it's also a business record.

6 MR. MARTINEZ: Yes. It is offered for the truth --

7 THE COURT: Within --

8 MR. MARTINEZ: -- but it's under the business records

9 exception.

10 THE COURT: Do you want these back?

11 MR. MARTINEZ: Yes.

12 THE COURT: We're going to keep -- we'll do jury instructions
13 later. I don't want wait for the -- with the jury in the hallway. So let's just
14 keep moving.

15 You got your witnesses coming in?

16 MR. MILES: I think Bob said 2:30, Mark would be here.

17 MR. BECKETT: Detective -- Investigator Preusch. That's who
18 Mr. Miles told me to call. And he will be here at 2:30.

19 THE COURT: What about your other witnesses?

20 MR. MILES: They'll be here too, Your Honor.

21 THE COURT: Who's getting them in?

22 MR. MILES: I'm working on that. They'll be here, 100
23 percent. The witness is going to be me. It's not a surprise witness. I'm a
24 be a witness in my own case.

25 THE COURT: Oh, you?

1 MR. MILES: Yeah.

2 THE COURT: Oh, all right.

3 MR. MILES: I was going to save it till the end, but since
4 you're asking me.

5 THE COURT: Do I -- should I --

6 MR. MARTINEZ: Admonish him?

7 THE COURT: -- admonish him right now while --

8 MR. MARTINEZ: Yeah, I think so.

9 THE COURT: -- we're outside the presence?

10 Somebody stop Adam, please. He's not bringing the jury in,
11 is he?

12 MS. RHOADES: I don't -- I think he was going to go check.

13 THE COURT: Okay.

14 THE MARSHAL: No, they're not coming in.

15 THE COURT: All right. Hang on.

16 All right. Mr. Miles, under Constitution of the United States
17 and/or the Constitution of the State of Nevada, you cannot be compelled
18 to testify in this case. Do you understand that?

19 MR. MILES: Yes, I understand, Your Honor.

20 THE COURT: You may, at your own request, give up this
21 right and take the witness stand and testify. If you do, you will be
22 subject to cross-examination by the Deputy District Attorney, and
23 anything you say may be, be it on direct or cross-examination, will be
24 the subject of fair comment when the Deputy District Attorney speaks to
25 the jury on his or her final argument. Do you understand that?

1 MR. MILES: Yes.

2 THE COURT: If you choose not to testify, the Court will not
3 permit the Deputy District Attorneys to make any comments to the jury
4 because you have not testified. Do you understand that?

5 MR. MILES: I understand.

6 THE COURT: If you elect not to testify, the Court will instruct
7 the jury but only if your attorney specifically requests, as follows: The
8 law does not compel a defendant in a criminal case to take the stand and
9 testify. And no presumption may be raised, and no inference of any kind
10 may be drawn from the failure of a defendant to testify. Do you have
11 any questions about these rights?

12 MR. MILES: No, I don't, Your Honor.

13 THE COURT: You are further advised that if you have a
14 felony conviction and more than 10 years has not elapsed from the date
15 you have been convicted or discharged from prison, parole, or
16 probation, whichever is later, and the defense has not sought to preclude
17 that coming before the jury, you -- and you elect to take the stand and
18 testify, the Deputy District Attorney, in the presence of the jury, will be
19 permitted to ask you the following. One, have you been convicted of a
20 felony? Two, what was the felony? And three, when did it happen?
21 However, no details may be gone into.

22 Is there a felony conviction in this case?

23 MR. MARTINEZ: Yes, Your Honor. There is pandering,
24 furnishing transportation from the 6th day of April 2015. April 9, 2015 is
25 the file date. And we have a certified copy of that judgment of

1 conviction.

2 THE COURT: And you said that's the file date. What's the
3 date of the conviction?

4 MR. MARTINEZ: The date of conviction is April -- well, the
5 judge --

6 [Counsel confer]

7 MR. MARTINEZ: April 6th of 2015.

8 THE COURT: That's the conviction date?

9 MR. MARTINEZ: Yes.

10 THE COURT: Okay.

11 Do you understand that?

12 MR. MILES: Yeah. I'm just trying to understand how that
13 kind of works too, because that's kind of -- I don't know if it can kind of
14 be misleading. That says April --

15 Did you say 6th, 2015?

16 MR. MARTINEZ: That's when you were sentenced.

17 MR. MILES: Yeah. That's when I was sentenced, but I don't
18 think that's when it actually happened. So I was sentenced and then
19 resentenced. So boot camp --

20 THE COURT: Well, the only things that are going to be asked
21 is if you were convicted of a felony, what was the felony, and when did it
22 happen.

23 MR. MILES: Yeah. See, that's the part, because when did it
24 happen, I'm not sure exactly what day it happened. But I --

25 THE COURT: Well, they're referencing the conviction of the

1 felony, when was the conviction of the felony not the offense date.

2 MR. MILES: Okay. Not the offense date.

3 THE COURT: Right.

4 MR. MILES: Because I think I was done with sentence.

5 Sentenced to boot camp and then resentenced. It's supposed to be a

6 wobbler [phonetic]. And because of this case, it ended up being a

7 felony. So I don't know if that's going to [indiscernible] or not, or how

8 that's going to work.

9 THE COURT: The only purpose for this coming in is for
10 impeachment purposes. So -- but if you chose to open the door and go
11 into all of that --

12 MR. MILES: No, I'm not going to do --

13 THE COURT: -- that's on you.

14 MR. MILES: Yeah. I'm not -- argue that.

15 THE COURT: But all I'm allowing the State to ask is the fact
16 of the felony conviction, what, and when, should you take the stand.

17 MR. MILES: Okay.

18 THE COURT: Okay.

19 Is there anything else now?

20 MR. MILES: I guess so.

21 MR. MARTINEZ: I guess his --

22 THE COURT: You don't have to think of something.

23 MR. MARTINEZ: No, I --

24 THE COURT: You could just say no.

25 MR. MARTINEZ: I guess he doesn't do a direct examination

1 of himself. So he would just get on the stand and give his version of the
2 facts. And if he says anything objectionable, I'll object and wait for your
3 ruling.

4 THE COURT: I think that's --

5 MR. MARTINEZ: I just ask that he stop talking if I object and
6 wait for your ruling. And then I'll cross-examine him when he's done.

7 THE COURT: Yeah.

8 MR. MILES: I don't know how this is going to work, because
9 there might be some times I have to refer to some evidence. So I don't
10 know if I actually have to stand over -- sit over there. I think how it used
11 to work, I had another case where I testified at, and I -- they just let me
12 testify right here.

13 MR. MARTINEZ: Well, I'd rather him be on the stand.

14 MR. MILES: Because it might get confusing. I might have to
15 show some evidence that might be helpful to my direct examination, you
16 know. So I don't want to be --

17 THE COURT: Let me --

18 MR. MILES: I don't want to be walking back and forth. Like
19 let's say he says something. I'm like oh, that just refreshed my
20 recollection. Let me look at some -- in my evidence. Then I have to get
21 up. Then he might have to be touching my stuff. I don't know that's
22 going to work, because I'm my attorney and the witness.

23 THE COURT: I know. I don't know either.

24 MR. MILES: I just don't want it to be confusing.

25 THE COURT: Because, technically, you could have access to

1 everything when you're asking the questions and --

2 I'm going to go ahead and let him stay over here with his
3 stuff rather than to try and bring all the stuff up here, unless anybody has
4 a reason not to.

5 MR. MARTINEZ: It just is extremely awkward to cross-
6 examine somebody that's behind me.

7 MR. MILES: Well, he can -- I -- we can switch the podium
8 or --

9 MR. MARTINEZ: I don't think it's --

10 MS. RHOADES: He should be prepared and bring his stuff up
11 there --

12 THE COURT: Yeah.

13 MS. RHOADES: -- that he needs to admit.

14 THE COURT: You know what? I'm going to have you take
15 your stuff up there, because, quite frankly, I think part of its demeanor --
16 your demeanor on the stand. And I think the jury has the right to
17 observe you. So --

18 MR. MILES: So what if it comes to a point in time where he
19 asks me a question or if I need to refer to my --

20 THE COURT: Then just ask for it.

21 MR. MILES: Okay. Just ask for it.

22 THE COURT: Have we stopped you from asking for
23 anything?

24 MR. MILES: Yeah. I just didn't want it to come to that point,
25 then it looks awkward, like what's going on.

1 THE COURT: All right. You're fine. You can take up
2 whatever you need.

3 Let's go. Let's go. Let's go. Let's go. Let's go.

4 THE MARSHAL: Ready?

5 THE COURT: Jury, please.

6 THE MARSHAL: All rise.

7 [Inside the presence of the jury.]

8 THE MARSHAL: Present, Your Honor.

9 THE COURT: Bring the witness back out, please.

10 MS. RHOADES: Justine Gatus.

11 THE MARSHAL: Gatus?

12 MS. RHOADES: Yeah.

13 MR. MILES: Still under oath?

14 THE COURT: You're still under oath.

15 THE WITNESS: Yes, ma'am. Thank you.

16 THE COURT: Uh-huh.

17 CROSS-EXAMINATION CONTINUED

18 BY MR. MILES:

19 Q All right. Detective Gatus, during the course of your
20 investigation, you did go to Gabrielle King's mother's house; is that
21 correct?

22 A Yes, I did.

23 Q Okay. And did you obtain images from the HOA?

24 A Yes.

25 Q And how was that documented when you received it?

1 A It was written. How was it documented?

2 Q Yeah. How many pieces of paper --

3 A Like in which --

4 Q How many pieces of paper? How did the evidence look?

5 A I know there was the one with the photograph of the vehicle.

6 And I think it was just one page. And I had the license plate on the same
7 page.

8 Q Okay. So I'm going to show you what's marked as Defense
9 Exhibit Y. Is this the images that you received from the HOA?

10 A Yeah. That's a black and white copy of it, but that's -- it was
11 in color when I got it.

12 Q Okay. It was only one image; is that correct?

13 A Well, there's two camera images there but the -- just that
14 page, I believe.

15 Q Okay.

16 MR. MILES: Court's indulgence.

17 BY MR. MILES:

18 Q Now we heard testimony from you that you received the
19 Metro PCS records too; is that right?

20 A Yes.

21 Q Now based on your training and experience with law
22 enforcement, how long does Metro PCS maintain those records?

23 A I have no idea.

24 Q Yeah.

25 A Each company is different.

1 Q During the course of your investigation, did you receive
2 something that's labeled Metro PCS law enforcement relations? Have
3 you heard of that before?

4 A If you could show me what it is, I could tell you if I got it.

5 Q Certainly.

6 A Yeah. This is normally in the email that they send back to us.

7 Q Okay. And how long does Metro maintain their records on
8 file for?

9 A Subscriber information may be obtained with a subpoena.
10 We maintain subscriber information up to six months.

11 Q Up to six months. And how long do they maintain text
12 messages for?

13 A So for the -- oh, text messages. I'm sorry. I was reading the
14 wrong section. Sixty days.

15 Q Sixty days.

16 A And they require a search warrant.

17 Q Okay. And is that a true and accurate copy of the Metro law
18 enforcement records? I mean --

19 A It looks like what I've received in the past. Yeah.

20 Q Okay.

21 MR. MILES: And, Your Honor, if I could have that actually
22 admitted into evidence.

23 THE COURT: State.

24 MR. MARTINEZ: No objection.

25 THE COURT: It'll be admitted as Defense -- what number --

1 letter?

2 BY MR. MILES:

3 Q Now during the course of your investigation --

4 THE COURT: Wait, wait, wait, Mr. Miles.

5 MR. MILES: Okay.

6 THE COURT: I just need -- we need to get it marked.

7 THE CLERK: It wasn't a proposed exhibit.

8 THE COURT: It was never proposed before?

9 MR. MILES: It --

10 THE COURT: So it's a new one? Okay.

11 MR. MILES: It's a new exhibit.

12 THE COURT: Whatever is next.

13 It'll be admitted as Defense Exhibit FF.

14 [Defendant's Exhibit FF marked and admitted into evidence]

15 BY MR. MILES:

16 Q Now during the course of your investigation, did you send a
17 search warrant to get any text messages from any of the cellular
18 phones?

19 A No, I did not.

20 Q From Metro?

21 A Not from the subscriber companies, no. I just pulled what
22 was in the phones.

23 Q Okay. And you had access to the LG cellular phone; isn't that
24 correct?

25 A Yes.

1 Q Were you the sole person that had access to that phone
2 before you gave it to Detective Ramirez?

3 A Yes. Well, it goes to the evidence vault. So it was in another
4 Metro employee's custody, but I was the only detective with access to
5 look at it. Yes.

6 Q Now when you looked at that evidence, did you mark when
7 you sealed it back into evidence?

8 A Which time? There were several times that it went back.

9 Q How many times did -- were you in custody and control of
10 those records?

11 A It went back it looks like three times.

12 Q Okay.

13 A From the tape and stuff.

14 Q How many times have you marked the chain of custody for
15 that?

16 A There was one signature, which is Vince's, when he opened
17 it.

18 Q How many signatures for you?

19 A None for me.

20 Q Oh, none for you. Okay. And you --

21 A Well, except for on the original.

22 Q So for --

23 A Yeah. My original signature is up at the top?

24 Q And that was for the 13th, February 13th of 2015?

25 A Yes.

1 Q And --

2 A So the chain of custody is like if I give it to somebody else.

3 Q Okay.

4 A So I don't sign the bottom portion where Vince signs.

5 Q When you seal that evidence, do you mark when you seal it?

6 If you were to open that evidence and --

7 A Yes.

8 Q -- put it back into the evidence, do you mark when you seal it
9 on the paper?

10 A It's marked on the package --

11 Q Okay.

12 A -- when it's resealed.

13 Q Is there any signatures from you on that package --

14 A Yes.

15 Q -- of when you sealed it? What date is that?

16 A 11/10 of 2016.

17 Q 11/10 of 2016?

18 A The second time, yeah. The first time was 2/13 of '15.

19 Q Okay. Now you were also -- you also indicated that Gabrielle
20 King gave you permission to view her Facebook account?

21 A Yes.

22 Q And you said you were -- you used her Facebook account
23 how many times?

24 A Several I'm sure. I don't have the exact number.

25 Q Several times?

1 A It wasn't that I used it. It's that I opened it to view it.

2 Q You opened it to view it?

3 A Yes.

4 Q And you used a password to get into that?

5 A Yes.

6 Q And I'm going to show you what's marked as Defense

7 Proposed Exhibit X?

8 THE COURT: Has the State seen it?

9 MR. MARTINEZ: I'm not sure what it is.

10 MR. MILES: Facebook records.

11 [Counsel confer]

12 BY MR. MILES:

13 Q Now looking over those documents, do those documents
14 look familiar to you?

15 THE COURT: And for the record, this is Exhibit X, right?

16 MR. MILES: Exhibit X.

17 THE COURT: Proposed Exhibit X.

18 THE WITNESS: Yeah. It's either your or her account. I don't
19 know which account it came from, because it has both of your names on
20 it. But yet, these are a portion of the records that I was able to obtain
21 from Facebook.

22 BY MR. MILES:

23 Q Do you see where it says recipient?

24 A Yes.

25 Q What's the recipient for that page?

1 A On the very first page?

2 Q On the second page.

3 A So on the first record?

4 Q The first record.

5 A On the second page?

6 Q Yeah.

7 A The recipient says Christian So Fly.

8 Q What does the second recipient say?

9 A The second recipient is Honey Savage.

10 Q Okay. And you recognize those names? Do those sound
11 familiar to you?

12 A Yes.

13 Q Okay. Now I want to show you what's marked as Defense
14 Proposed Exhibit Q.

15 THE COURT: Can I ask how many pages are in Exhibit X?

16 MR. MILES: Quite a few.

17 THE WITNESS: 34.

18 THE COURT: Okay. I'm sorry.

19 Now did you give her another exhibit, Mr. Miles?

20 MR. MILES: Yes. I gave her Exhibit Q.

21 THE COURT: Thank you.

22 MR. MILES: Defense Proposed Exhibit Q.

23 BY MR. MILES:

24 Q Now I'm showing you what's marked as Defense Proposed
25 Exhibit -- is that Q for page 1?

1 A Yes.

2 Q Okay. Can you read to me what the Facebook name is for
3 that record?

4 MR. MARTINEZ: Well, Your Honor, since these haven't been
5 admitted yet, I don't think it would be appropriate for her to read into the
6 record what is on those pages, because they haven't been admitted yet.

7 THE COURT: Okay. Was -- so do you have a question
8 regarding them?

9 MR. MILES: Yes, I do, Your Honor.

10 BY MR. MILES:

11 Q Do you recognize those, that name that's depicted in there,
12 do you?

13 A Well, there's a lot of names. There's the real name, vanity
14 name. There's --

15 Q The first name and last name.

16 A Are you asking about where it says first Honey and last
17 Savage?

18 Q Yes.

19 A Okay. Yeah, uh-huh.

20 Q Okay. And if you could -- now on that first page, do you see
21 where some IP addresses are being listed?

22 A Yes.

23 Q Okay. Now if you could turn to the second page. Do you
24 also see some IP addresses listed there as well?

25 A Yes.

1 Q And is there some login information as depicted on there as
2 well?

3 A There's one, two, three, four, five -- lost count. Six places
4 where it says action login.

5 Q And is there dates on there as well?

6 A Yes, there are.

7 Q Okay. If you could turn to page 3. Do you see the same
8 information, IP addresses, dates, and login information?

9 A Yes.

10 Q And if you could turn to page 4. Do you see the same
11 content on page 4?

12 A Yes.

13 Q Do those records look familiar to you?

14 A Yeah. They -- I believe they're going to be Gabrielle King's
15 Facebook.

16 Q Do you have any reason to believe why those aren't true and
17 accurate copies of her Facebook returns?

18 A No.

19 MR. MILES: Your Honor, if I could actually move for the
20 admission of those exhibits as well.

21 THE COURT: State.

22 MR. MARTINEZ: Well, it looks like there's dozens maybe
23 hundreds of pages. And so -- and they're not --

24 MR. MILES: I'm going to start asking questions right now,
25 actually, Your Honor.

1 THE COURT: Okay. Hang on a second. How many pages -- I
2 thought there was only four pages.

3 MR. MILES: This was on Defense Exhibit Q I believe it is.

4 BY MR. MILES:

5 Q Was that page 1, Defense Exhibit Q?

6 A Yes.

7 MR. MILES: Yeah. There's the --

8 THE COURT: How many pages are there entirely?

9 THE WITNESS: There's four on this --

10 MR. MILES: Four.

11 THE WITNESS: -- exhibit.

12 THE COURT: Okay. He's offer four. Q, four pages. Any
13 objection?

14 MR. MARTINEZ: Just to -- as to hearsay.

15 MR. MILES: Oh.

16 THE COURT: What's your response, Mr. Miles?

17 MR. MILES: Yeah. My response is, you know, there is
18 offered for the truth of the matter asserted. And she's testifying that she
19 recalls these records. She's seen these records before. This is part of
20 her records from the Facebook return. She's identified them as Honey
21 Savage's profile page. So I don't see why those couldn't be admitted.

22 THE COURT: So are you saying they are offered for the truth
23 of the matter asserted?

24 MR. MILES: I'm saying -- yeah.

25 THE COURT: Then it's sustained.

1 MR. MILES: Okay.

2 BY MR. MILES:

3 Q Now Gabrielle King's Facebook messages were deleted at
4 some point in time, weren't they?

5 A At -- I'm sure some of them were deleted at some point,
6 yeah.

7 Q Have you seen any other messages in her account there
8 weren't deleted?

9 A I've only seen what Facebook provided me. And so,
10 Facebook gives me a record. And sometimes it shows things just
11 deleted. It doesn't show me what that is.

12 Q Okay. And do you recall any other messages being deleted
13 besides our messages?

14 A Not that I can recall off the top of my head. There could have
15 been, because like I said, I think her return was several thousand pages.
16 So --

17 Q Okay. But at this time, you can't remember, and you don't
18 recall any messages being deleted, do you?

19 A I remember there were some that were deleted. I just can't
20 say whose they were or whatnot. But I'm pretty sure there were some
21 that were. If I could -- if I was able to review the Facebook packet, like all
22 the pages, I would be able to give you an accurate answer.

23 Q Okay. Now you were in custody and control of her records
24 as well, weren't you?

25 A Yes.

1 Q Okay. And that was for how many times? How many times
2 were you looking at her Facebook page?

3 A Oh, I couldn't tell you. There's -- just like with the disc that I
4 gave you, I'm able to look at it anytime I want. So it's digital evidence
5 that -- it's kind of in a case file if that makes sense. So I don't know how
6 many times I opened up that file.

7 Q How many times have you logged into her account?

8 A I can't tell you that. I'm not sure. I think that -- like I said
9 before, I know -- I'm pretty sure we did it at CCJH and then again at my
10 office.

11 Q So two times?

12 A That I can recall, I believe. But I can't give you a 100 percent
13 definitive times on that. So I don't want to misspeak.

14 Q Okay. Now you did say that you took notes with Gabrielle
15 King as well during your unrecorded interviews; is that right? That you
16 have notes for her recorded interviews --

17 A Yes.

18 Q -- I mean her unrecorded interviews?

19 A Yes.

20 Q Okay. I'm going to show you page 3 of Defendant's Exhibit
21 L.

22 THE COURT: Are these the notes that were admitted
23 previous?

24 MR. MILES: Yeah, the notes that were.

25 BY MR. MILES:

1 Q Now there's a date that's on top of this.

2 MR. MARTINEZ: I'm sorry. Is that the actual exhibit?

3 THE COURT: I don't know. That's what I'm asking.

4 MR. MILES: Actual exhibit. Actual exhibit.

5 THE COURT: This is Exhibit L.

6 MR. MILES: There's only one page marked Exhibit L.

7 MR. MARTINEZ: The -- okay.

8 THE COURT: Okay. And how many pages does that consist
9 of?

10 MR. MILES: Do you want me to staple it, so that'll be easier,
11 so we don't get it mixed up? Just four pages.

12 THE COURT: Yeah.

13 BY MR. MILES:

14 Q Now there's a date that's depicted on the first page.

15 A Yes.

16 Q Do you see where that date is?

17 A Yeah. I believe it says February 16th.

18 Q Is that of 2015?

19 A Yes, it would be.

20 Q Okay. I'm going to show you the second page -- or third
21 page.

22 A Uh-huh.

23 Q Do you see a date depicted on that third page as well?

24 A Yes.

25 Q Is there something that says Friday/Saturday with Durrell

1 [phonetic] at Bali's [phonetic]. Let Jay Jay spend the night?

2 A Yes.

3 Q Okay. Did she tell you -- I mean what does that mean to you?

4 A It means that that came up in conversation, and I wrote it
5 down.

6 Q Okay. Now it also says Durrell, did Jay Jay spend the night
7 again on your notes, doesn't it?

8 A If you're pointing to Wednesday, it says nails, see Durrell,
9 then Jay Jay spent night.

10 Q Okay.

11 MR. MILES: No further questions, Your Honor.

12 THE COURT: Anything else from the State?

13 MR. MARTINEZ: Could I have the Court's brief indulgence?

14 THE COURT: Sure.

15 REDIRECT EXAMINATION

16 BY MR. MARTINEZ:

17 Q Detective Gatus, you have the Metro PCS record in front of
18 you?

19 THE COURT: Can we make sure that all the exhibits are
20 staying with the Clerk, everybody?

21 MR. MARTINEZ: That was a proposed --

22 THE COURT: I know we're leaving them at tables.

23 MR. MARTINEZ: That was a proposed exhibit.

24 MR. MILES: That's an exhibit right there. That's an exhibit.

25 That's an exhibit. Oh. You want to give it to her? Oh.

1 BY MR. MARTINEZ:

2 Q Do you have the Metro PCS record that was shown to you up
3 there?

4 A I don't believe that it's here. No.

5 Q Okay.

6 MR. MARTINEZ: Do you know what exhibit that is of yours?

7 MR. MILES: Which one? The Metro PCS that you just
8 handed her? It's on the back.

9 [Counsel confer]

10 THE COURT: There's exhibits there that were admitted; are
11 there not?

12 [Counsel confer]

13 MR. MARTINEZ: Yes. So Defendant's Exhibit BB I'm going
14 to publish.

15 BY MR. MARTINEZ:

16 Q That's the subpoena that you sent to Metro PCS?

17 A Yes.

18 Q And then this is the -- one of the records that you received; is
19 that correct?

20 A Yes.

21 Q Okay. So there is a name associated with this number; is
22 that correct?

23 A Correct.

24 Q What does it say?

25 A Christopher Miller.

1 Q And then what is the address that is here?

2 A 3811 Cranbrook Hill Street, Las Vegas, Nevada 89128.

3 Q And then it says account activation date; is that correct?

4 A Yes, sir.

5 Q It doesn't say number activation date?

6 A Correct.

7 Q It just says account activation date?

8 A That's correct.

9 Q Is there anything in this record that suggests that that
10 number -- the number 702-913-2289 doesn't exist?

11 A No. It's just showing that that's -- that says just the account
12 was activated that day. So --

13 Q The Metro PCS account?

14 A Yeah.

15 Q Have you in -- during the course of your investigation,
16 attempted to retrieve information about the existence of that particular
17 phone number?

18 A Yes, I have.

19 Q Okay. And is that the phone number that the Defendant said
20 to you was his phone number?

21 A That's correct.

22 Q Okay. And when you talked to him, you asked him what his
23 phone number was, and then he actually said the number; is that
24 correct?

25 A That's correct.

1 Q Okay. Were you able to get a business records affidavit and
2 a pawn ticket dated October 17, 2014, from Leads Online Cash America?

3 A That's correct.

4 MR. MARTINEZ: I'd like to publish State's Exhibit 57. It's
5 been admitted.

6 THE COURT: Yeah.

7 BY MR. MARTINEZ:

8 Q Okay. So this is a business records affidavit that you got.
9 And that's from the headquarters in Texas; is that correct?

10 A Yes, sir.

11 Q And then this is the pawn ticket; is that correct?

12 A Yes, sir.

13 Q Okay. And the first thing I would draw your attention to is on
14 the top right, what is the ticket date? Can you see it?

15 A October 17, 2014.

16 Q It says 2014; is that correct?

17 A That is correct.

18 Q And then turning your attention to the other side of the ticket.
19 What is the name associated with that ticket?

20 A Christian Miles.

21 Q And is there -- and then there's an ID portion. What does that
22 say?

23 A It's a driver's license for Nevada, a Nevada driver's license.

24 Q Okay. And then a date of birth?

25 A Of 1/16 of 1994.

1 Q And then what's the address that's listed there?

2 A 3813 Cranbrook Hill Street.

3 Q Okay. So that's two digits off Defense Exhibit BB; is that
4 correct, on the second page? You looked at that address right here.

5 A Yes, sir.

6 Q That's two digits off; is that correct?

7 A Correct.

8 Q And then this has the name of a Christopher Miller?

9 A That's correct.

10 Q And then what is the phone number after the address that is
11 listed associated with this ticket?

12 A 702-913-2289.

13 Q Okay. And what was it that was pawned?

14 A A printer, I believe.

15 Q And again, that date was from October 17, 2014; is that
16 correct?

17 A Correct.

18 [Counsel confer]

19 MR. MARTINEZ: Could I have the Court's brief indulgence?

20 THE COURT: Uh-huh.

21 [Pause]

22 MR. MARTINEZ: Pass the witness.

23 RECROSS-EXAMINATION

24 BY MR. MILES:

25 Q I'm going to show you State's Exhibit 57. Now you indicated

1 that this is the ticket from the pawn shop, right?

2 A From a pawn store, yes.

3 Q This isn't records from a phone store, is it?

4 A No, that's not from a phone store.

5 Q Okay. The ticket date, that doesn't say number activation
6 date, does it?

7 A No, it does not.

8 Q Okay. Now I'm going to show you what's marked as
9 Defendant's Exhibit BB. This is from Metro; is that right?

10 A That's correct.

11 Q And that is a phone store; isn't that correct?

12 A Yes, it is.

13 Q Now you testified previously that the alleged victim received
14 an LG cellular phone; is that correct?

15 A Correct.

16 Q Now what date was that phone activated on, or bought, or
17 purchase?

18 A Oh. I don't have -- if -- it's in the form from the -- I'm sorry. I
19 know you have it. The --

20 Q I know what you're talking about.

21 A The record from Metro PCS, when I went to the physical
22 store, there was a receipt attached to it.

23 MR. MILES: I actually want this marked as an exhibit, Your
24 Honor.

25 THE COURT: State. You have this?

1 MR. MARTINEZ: I believe so.

2 MR. MILES: Yeah. This is the same stuff.

3 [Counsel confer]

4 BY MR. MILES:

5 Q Now are there -- do you recognize those documents?

6 A Yes.

7 Q What do those documents appear to be?

8 A This is what the -- what's his name? Mr. Delgado, the Metro
9 PCS manager, gave me when I went to the store and inquired about the
10 phone.

11 Q Okay. And what do those documents show?

12 A One show a driver's license in your name and a banking card
13 with your name on it. And then the other two, it was -- he basically -- he
14 gave me a receipt, and I just photocopied the receipt and put some notes
15 on the pages.

16 Q Okay.

17 A So it's just one receipt.

18 Q Are those fair and accurate copies of the records you
19 received from Metro PCS?

20 A Yes.

21 Q Okay.

22 MR. MILES: I would move for the admission of those
23 documents, Your Honor.

24 THE WITNESS: And I think you were asking the date initially.

25 THE COURT: State.

1 MR. MARTINEZ: Well, Judge, it has her handwriting on it
2 and different notes. And so, I would object as to hearsay at this point.

3 BY MR. MILES:

4 Q Is that your handwriting in the photographs?

5 THE COURT: Can I see them?

6 THE WITNESS: Yes, ma'am.

7 [Pause]

8 MR. MARTINEZ: I won't -- I'm not going to object, Your
9 Honor. It's fine with the State.

10 THE COURT: Then they'll be admitted as Defense GG.

11 [Defendant's Exhibit GG admitted into evidence]

12 MR. MILES: And if I could actually get those records over
13 here, Your Honor.

14 THE COURT: And I'm just -- you're well outside the scope of
15 recross. So I'm not going to indulge a lot more. So --

16 MR. MILES: Okay. I'll make --

17 THE COURT: -- finish up. It was a very, very narrow subject
18 on redirect.

19 MR. MILES: I'll make it brief.

20 THE COURT: Okay.

21 BY MR. MILES:

22 Q Now you indicated that you received those records from
23 Metro PCS; is that correct?

24 A Yes.

25 Q And that was to inquire when the phone number -- well,

1 when the phone was actually bought?

2 A And to see who bought it.

3 Q Okay. Now I want to show State's Exhibit BB.

4 A Uh-huh.

5 Q That says -- do you see where it says account activation date
6 February 9th of 2015?

7 A Yes.

8 Q Okay. Does it also say account termination date?

9 A It does.

10 Q So it does give you the termination date for the LG cellular
11 phone record; isn't that correct?

12 A Well, I don't know exactly what the account termination date
13 means for that company.

14 Q Okay. Would it be fair to say that account termination date is
15 probably when the account closed?

16 A I -- you know, I couldn't really guess. That's -- it's a month
17 timeframe to be exact. So that could be something that they just put like
18 a 30-day. I don't know what that means.

19 Q Okay. Now you also indicated on direct examination that the
20 name is not the same. It says Christopher Miller; isn't that right?

21 A Not the same as what?

22 Q Not the same as the pawn ticket.

23 A Correct.

24 Q Okay. And based on your training and experience, does
25 Metro PCS allow people to put names that they want to put on the

1 account?

2 A I don't know what Metro PCS's policies are.

3 Q When you have investigated other crimes or other activities,
4 has Metro PCS documents not reflected accurate identification?

5 MR. MARTINEZ: Objection. Relevance and calls for
6 speculation.

7 THE COURT: Sustained.

8 MR. MILES: Okay. No further questions.

9 THE COURT: Ladies and gentlemen of the jury, any
10 questions?

11 Seeing no hands, is this witness excused?

12 MR. MARTINEZ: Yes, Your Honor.

13 THE COURT: You'll be excused. Thanks so much, detective.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: You don't have any exhibits there, do you?

16 THE WITNESS: There are.

17 THE COURT: Don't discuss your testimony.

18 Can I get all the exhibits rounded up too from counsel's table
19 just -- I mean you can always have them back if you need them, but at
20 least get them -- put them up here -- so that they don't get mixed in with
21 all your stuff and disappear.

22 MR. MARTINEZ: Yes.

23 MR. MILES: Okay.

24 THE COURT: You can leave them right down here, Mr.

25 Martinez, on the Elmo --

1 MR. MARTINEZ: On the Elmo?

2 THE COURT: -- shelf if you all need access. I just -- I don't
3 want to mixed up.

4 You can go. Thanks.

5 Thank you. Appreciate it.

6 Okay. Next witness.

7 MR. MARTINEZ: State rests, Your Honor.

8 STATE RESTS

9 THE COURT: Okay.

10 Mr. Miles, are you prepared to start your case?

11 MR. MILES: Opening statements. Yes, Your Honor.

12 THE COURT: Okay. Would you like to give your opening
13 statement?

14 MR. MILES: Yes, I would, Your Honor.

15 THE COURT: All right.

16 DEFENDANT'S OPENING STATEMENT

17 BY MR. MILES:

18 Don't have no fancy slideshow like Mr. Martinez does.

19 Ladies and gentlemen, this case -- nature of the case involves Facebook.

20 Now the evidence will show, and I will prove that between the dates of

21 February 1, 2015 through February 5, 2015, that I didn't send any text

22 messages to Gabrielle King on Facebook involving prostitution activity.

23 The evidence will also show, and I will prove that between the dates of

24 February 10, 2015 and February 13, 2015, I was never with Gabrielle King

25 at any point in time.

1 Q How long have you been a private investigator for?

2 A I've been a state licensed private investigator since 2014. So
3 about five years.

4 Q For about five years? How long have you been in law
5 enforcement for?

6 A I was a police officer almost 27 years; 23 years here with
7 Metro. Then I was in suburban Chicago for about four years before that.

8 Q Okay. Now I'm going to turn your attention to the dates of
9 November 10, 2016. Do you recall a specific even that occurred that
10 day?

11 A I believe that was the date I went down to the DA's Office to
12 examine some cell phones that were impounded as evidence in this
13 case.

14 Q Okay. And who actually told you to go examine those
15 phones?

16 A You did. You are representing yourself, and I was the court-
17 appointed investigator assigned to do investigative tasks for you for this
18 case.

19 Q And do you remember why I directed you to go investigate
20 those cellular phones?

21 A I believe I was to look for any text messages between you
22 and other people on the phone through an app called TextNow I believe
23 is what it was called.

24 Q Okay. And was there any other reason why I sent you to
25 investigate that cell phone that you recall at this moment?

1 A I don't recall.

2 Q Okay. Now did you also take pictures of the LG cellular
3 phone itself?

4 A I took photographs of the cell phones that were -- had been
5 impounded that day, yes.

6 Q Okay. Were you able to view the contents of the LG cellular
7 phone?

8 A No. No. The phones wouldn't turn on or start up or reboot.
9 We just couldn't get the phones to function.

10 Q Okay. So you weren't able to verify if any text messages
11 were actually on the phone itself?

12 A No. No. Was never able to see any content on the phones.

13 Q Okay. I'm going to show you --

14 MR. MILES: This hasn't been marked. If I could get it marked
15 as whatever defense exhibit is next.

16 THE COURT: HH, I think.

17 [Defendant's Exhibit HH marked for identification]

18 THE COURT: Can I get a page count?

19 THE WITNESS: Pardon me?

20 THE COURT: How many pages are there?

21 THE WITNESS: Oh.

22 MR. MILES: It should be eight pages.

23 THE WITNESS: Seven. Seven pages.

24 THE COURT: Okay.

25 BY MR. MILES:

1 Q Okay. Now looking at that first page of the document, do
2 you recall that document there?

3 A Yes.

4 Q Okay. What is the -- what is that document that you're
5 looking at?

6 A The photograph?

7 Q Yeah.

8 A So the photograph is -- it's a standard evidence yellow
9 manila colored evidence envelope --

10 Q Okay.

11 A -- that Metro uses. And it's got a sticker affixed to the front of
12 it where they place, you know, the name of the person that's impounding
13 the evidence, the date, time, the event number. And it's -- usually has a
14 chain of custody block on the bottom in case the evidence is switched
15 from one person to another, they can document the chain of custody for
16 the evidence.

17 Q Okay. Can you turn to the next page?

18 MS. RHOADES: I'm going to object. I don't think this has
19 been admitted. I haven't seen all of the documents in here. And I do
20 want to --

21 THE COURT: Okay.

22 MS. RHOADES: -- look at all of them before he starts
23 testifying about it.

24 THE COURT: Mr. Marshal, will you hand her -- have her look
25 at this?

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[Pause]

BY MR. MILES:

Q Now you indicated that you weren't able to verify if any text messages exist on the phone itself; is that right?

A That's correct.

Q Who was present during that time that you was investigating those cell phones?

A November 10th, it was myself, Mr. Martinez, Detective Gatus, and I believe Detective Ramirez was there as well.

Q Okay. And did they tell you if they was able to perform any type of cellular extraction on the LG cellular phone?

A I believe that they were not able to.

Q Okay.

MR. MILES: Has it been marked as a proposed exhibit. What is it, H?

THE COURT: Let's go ahead and mark it. Staple it, please.

BY MR. MILES:

Q Now have you also interviewed witnesses in this case?

A Yes.

Q What witnesses have you interviewed in this case?

A I interviewed Gabrielle King, the alleged victim, her mother, Becky York, and Mark Hunt I believe is the stepfather or Becky York's boyfriend. I'm not sure what the relationship is.

Q Okay. Now during the recorded interview with Gabrielle King --

1 MS. RHOADES: Objection. Misstates the testimony. I don't
2 believe he said it was recorded.

3 MR. MILES: He said he conducted an interview with
4 Gabrielle King. It doesn't need to be recorded. He conducted an
5 interview. So --

6 THE COURT: Well, you asked him about a recorded
7 interview. So are you talking about the recorded interview that they're
8 talking about?

9 MR. MILES: Oh, I'm sorry. I didn't know.

10 THE COURT: Or is this a different one?

11 MR. MILES: Yeah, I'm sorry. I misspoke. I didn't mean to
12 say recorded --

13 THE COURT: Okay.

14 MR. MILES: -- interview. I'm sorry about that.

15 BY MR. MILES:

16 Q Now during the interview you conducted with Gabrielle King,
17 did she indicate to you what days -- I mean where she was at?

18 MS. RHOADES: Objection. Calls for hearsay.

19 MR. MILES: I mean this could be a prior consistent
20 statement. He's subject to cross-examination.

21 THE COURT: Well, is it a prior inconsistent statement?

22 MR. MILES: No, prior -- I mean it could be a consistent
23 statement, because it's consistent with his testimony. He's -- if these
24 statements --

25 THE COURT: Consistent only if it's offered to rebut a recent

1 fabrication. So --

2 MR. MILES: Well --

3 MR. MARTINEZ: And the State hasn't suggested that Mr.
4 Preusch has done anything of that nature.

5 MR. MILES: Yeah. I mean -- I didn't mean to say it like that.
6 But if he's -- if these statements were told to him and he was aware of
7 those, I think he should be able to testify to that, as to what happened in
8 the interview.

9 THE COURT: I appreciate that, but the hearsay rules are the
10 hearsay rules. So if the objection is hearsay, if it's consistent, it's
11 sustained.

12 MR. MILES: Okay.

13 BY MR. MILES:

14 Q Now do you still got what's marked as Defense Proposed
15 Exhibit N in front of you?

16 A Yes, the report and photographs that I took.

17 Q Now the second page, did you take those photographs?

18 A Did I take the photograph? Yes.

19 Q Yeah. On the third page, did you take that photograph also?

20 A Yes.

21 Q The fourth page, did you take that photograph?

22 A Yes.

23 Q Did you take all those photographs that are in the picture?

24 A Yes.

25 Q Okay.

1 MR. MILES: And I'll be moving for the admission of those
2 documents, Your Honor.

3 THE COURT: Any objection?

4 MS. RHOADES: Your Honor, I have no objection to the
5 photographs, but there is a narrative at the top of the first page. I do
6 have an objection to that as hearsay.

7 MR. MILES: They can strike it, Your Honor, if it's --

8 THE COURT: Can I see it?

9 MR. MILES: -- going to be a problem. I just want the pictures
10 in.

11 THE COURT: All right. Subject to the paragraph at the top
12 that indicates attorney work product, they'll be admitted.

13 MR. MILES: Yeah. We can white it out if you want to.

14 THE COURT: Pardon?

15 MR. MILES: If they have an objection, we can white it out.
16 That's fine.

17 THE COURT: Yeah. We'll take care of that. But other than
18 that, it's in.

19 [Defendant's Exhibit HH admitted into evidence]

20 MR. MILES: Okay. Can I actually get those photographs back
21 from him, please, Your Honor?

22 THE COURT: You sure can.

23 MR. MARTINEZ: Just -- I guess we just need to make sure
24 that that paragraph isn't published as a part of the exhibit.

25 THE COURT: For now, let's just -- here.

1 Give that to me, please. Thanks.

2 [Pause]

3 BY MR. MILES:

4 Q Now I'm going to show you on the screen some of the
5 images that you were able to obtain. I want to go to the last page. What
6 is that a picture of?

7 A Well, that's the LG smartphone. That was one of the phones
8 that was in evidence.

9 Q Okay. And is that the phone trying to boot up?

10 A I believe so.

11 Q Okay.

12 A I believe that's as far as we were able to get the phone to
13 function.

14 Q And there was another photo that you took. What is -- this is
15 the --

16 MR. MILES: Court's indulgence.

17 BY MR. MILES:

18 Q This is the fifth page. What is this a photograph of?

19 A So that would be the back of the phone with the back case
20 removed and the battery removed, placed next to it.

21 Q Okay. I'm going to zoom in. I don't know if you can read it.
22 But can you see where it says IMEI?

23 A I'm sorry. Could you repeat the question.

24 Q I don't know if you can see it. But where my finger is
25 pointing to, do you see where it says IMEI?

1 A Above the barcode?

2 Q Above the barcode.

3 A Yeah. It's hard for me to make out the numbers. I see one.

4 Apparently, that's a serial number.

5 Q Let me see if I can zoom in.

6 A Or maybe not.

7 Q Is that still blurry or can you see it?

8 A Uh-huh.

9 Q What serial number is that?

10 A Well, I'm not sure that's the serial number, that number. I

11 think the serial number is the number that's adjacent to the S/N, which

12 would be one, two, three -- the fourth line down.

13 Q Okay.

14 A And then there looks like a barcode, and then there's another

15 series of numbers there. I really don't know what those are for or what

16 they signify.

17 Q Okay. I want to show you another picture that's a little bit

18 more close up. Do you see where it's depicted that says IMEI?

19 A I'm sorry. Could you repeat the question?

20 Q IMEI. Do you see where it says IMEI in the photograph?

21 A Would you be referring to the sixth line down?

22 Q Yeah, the sixth line. I mean the --

23 A IMEI.

24 Q Yes.

25 A Uh-huh, yes.

1 Q Can you read what that number says?

2 A 014250-00-327797-1.

3 Q Okay.

4 A It appears to me.

5 Q Now at some point in time during your investigation, you
6 said you were able to interview witnesses?

7 A Yes.

8 Q Okay.

9 MR. MILES: No further questions, Your Honor.

10 THE COURT: State.

11 CROSS-EXAMINATION

12 BY MS. RHOADES:

13 Q Sir, how long have you been Mr. Miles' appointed
14 investigator?

15 A Since 2016. I don't recall the exact date, but it may have
16 perhaps been around November or sometime before that. It would have
17 been sometimes before November 2016. I don't recall the exact date.

18 Q You don't remember if it was early, middle of the year?

19 A No, ma'am.

20 Q All right. And since then, you have been working with Mr.
21 Miles and investigating this case for and with Mr. Miles; is that right?

22 A Yes, ma'am.

23 Q You testified about phones not working. And I believe you
24 used the plural. The only phone that wasn't able to boot up was the
25 white LG phone; is that right?

1 A I believe so. I don't recall if there was more than one phone.

2 Q You keep looking down at something. Would it refresh your
3 memory to look at --

4 A Yes, ma'am.

5 Q -- some notes that you have?

6 A Yes, ma'am.

7 Q You may do that.

8 A It's the same report, the same photos that I was looking at.

9 THE COURT: Okay.

10 THE WITNESS: It was one phone.

11 BY MS. RHOADES:

12 Q One phone?

13 A Yes, ma'am.

14 Q Okay.

15 MS. RHOADES: Nothing further.

16 MR. MILES: Nothing further.

17 THE COURT: Ladies and gentlemen of the jury, any
18 questions?

19 Okay. There being none, is this -- is he free to leave?

20 MR. MILES: He's free to leave.

21 THE COURT: Thank you for your testimony. Don't discuss it
22 with anyone else.

23 THE WITNESS: Yes, ma'am. Thank you.

24 THE COURT: Thanks.

25 [Pause]

1 THE COURT: Anything?

2 MR. MILES: Well, I don't know if James Jacob made it. But I
3 don't know if he's here. I'm supposed to call James Jacobs. I don't
4 know if he came. Officer James Jacobs.

5 THE MARSHAL: Nobody is answering to the name James
6 Jacobs.

7 MR. MILES: All right.

8 THE COURT: Do you have any other witnesses you can call
9 for now?

10 MR. MILES: Yes, Your Honor. We discussed that earlier.

11 THE COURT: Okay.

12 MR. MILES: So we'll just do it now.

13 THE COURT: Sure.

14 MR. MILES: Well, I'll call myself to the stand.

15 THE COURT: Okay.

16 THE MARSHAL: Please watch your step.

17 THE CLERK: Stand. Raise your right hand.

18 CHRISTIAN MILES, DEFENDANT, SWORN

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

21 THE WITNESS: Christian Miles, C-H-R-I-S-T-I-A-N M-I-L-E-S.

22 THE CLERK: Please be seated.

23 THE WITNESS: Okay. Now just go?

24 THE COURT: Okay. Obviously, you tell the jury what you
25 want them to know. You don't have to ask yourselves questions though.

1 DIRECT EXAMINATION

2 BY MR. MILES:

3 Ladies and gentlemen of the jury, I'm just going to give you a
4 story of pretty much what happened on the alleged days that is alleged
5 to have taken place, how I met Ramsey. Just pretty much give you, you
6 know, the truth of what happened.

7 So, pretty much, I met Laporscha from a friend. Her name
8 was Justice. And when I first met Porsha, she was a very funny person.
9 I liked her for her personality, and we got really close. And on the day
10 that I first met her, she had a Samsung 3 phone with her, and it wasn't
11 working at the time. I asked her why isn't your phone not working, and I
12 guess she said she stole it from --

13 MR. MARTINEZ: Objection. That calls for hearsay.

14 THE COURT: Sustained.

15 BY MR. MILES:

16 Okay. So I don't really know what to -- I thought I was just
17 testifying to what happened.

18 THE COURT: You can testify, but it still has to be legally
19 admissible evidence. So --

20 THE WITNESS: Okay.

21 THE COURT: -- the rules of evidence, hearsay and that still
22 apply to your testimony.

23 BY MR. MILES:

24 Okay. It's going to be hard. So yeah, pretty much, when I
25 met Porsha --

1 MR. MARTINEZ: And, Your Honor, I'm sorry. I'm going to
2 move to strike that last comment not to be considered.

3 THE COURT: It'll be granted.

4 THE WITNESS: What are we striking, the part where I --

5 THE COURT: No commentary.

6 THE WITNESS: No commentary.

7 THE COURT: Not the it's going to be hard to do this
8 without --

9 THE WITNESS: Yeah. It's going to be -- I really don't --

10 THE COURT: I know, but that's not admissible.

11 THE WITNESS: Okay.

12 THE COURT: Just tell the jury what you saw and what
13 happened.

14 BY MR. MILES:

15 Pretty much -- man, it's kind of hard now by it being hearsay.
16 Well, pretty much, I'll just take you to the dates of February 5, 2015. I did
17 pick Gabrielle King up. She hit me up on Facebook and said I was cute.
18 We'd been talking for like a month, month-and-a-half. She said she
19 wanted to meet me. I thought she was cute too.

20 So I went to go pick her up from her Rose Ranch place. And
21 when I went there, somebody was following me in a car. I didn't know
22 who it was at first. I thought it was some dudes trying to rob me or
23 something. So I sped off. And then, later, she told me that it was her
24 mom. But I didn't know about --

25 MR. MARTINEZ: I'm going to object as to any hearsay

1 statements from the victim in this case.

2 THE WITNESS: Well, she did say somebody followed her in
3 the car.

4 THE COURT: Sustained.

5 BY MR. MILES:

6 So I drove off, and we went to a hotel, because she had a
7 room at the hotel. It was the Rio. Went to the Rio. We kicked it, had a
8 little fun, and I dropped her off at a friend's house. I didn't see her until
9 February 9, 2015.

10 Now on that day, I was grocery shopping with Porsha. I went
11 to go pay my Rent-A-Center bill, and then I end up buying me a phone, a
12 LG phone. And during that time, she hit me up and she said -- I mean --
13 man, this is going to be hard.

14 Is that hearsay too?

15 MR. MARTINEZ: Yes, it is.

16 THE COURT: It -- if --

17 MR. MARTINEZ: I mean I'm going to object to hearsay if he's
18 going to bring up other statements that --

19 THE COURT: Right. If it's another statement in your offering
20 it, and it's either not hearsay or you have a hearsay exception, then you
21 can bring it up?

22 BY MR. MILES:

23 Okay. So I received a Facebook message, and she wanted
24 me to pick her up. So I picked her up. I forgot with addresses. I don't
25 know exactly where I picked her up at, but I picked her up. When I picked

1 her up, we was all driving in the car. And Porsha wanted to go back to
2 the house, because the groceries was getting old and fitting to get
3 spoiled. So I went back to the house, dropped Porsha off.

4 We was all kicking it in the house. Gabrielle King was
5 walking around. She liked the house that I had. It was a four bedroom
6 house. I had my photo studio in there. I had my business stuff set up. I
7 have my company vans outside for my detailing business. I had two
8 vans. And then I had my one car; so a total of three cars. And during
9 that time, she asked hey, and you take some photos.

10 So I said why not. And I said, you know, as long as you give
11 me some money, I don't really care. Just give me like 20, \$30. So I took
12 a couple photos of her, let her download it. And during that time, she
13 said that --

14 MR. MARTINEZ: Objection. Hearsay.

15 THE WITNESS: I'm just not going to --

16 THE COURT: Sustained unless you have an objection.

17 THE WITNESS: Yeah, I know. It's kind of hard to do all of
18 that at once. So I'm just going to just keep moving on.

19 THE COURT: That's --

20 THE WITNESS: I can't do all that.

21 THE COURT: I need you to just keep within the confines of
22 the law and not commentary on it. That's the way it is, okay?

23 THE WITNESS: Okay. Okay. So --

24 THE COURT: You have to follow the same rules as
25 everybody.

1 BY MR. MILES:

2 Okay. So pretty much, she -- is that hearsay if I say she
3 needed somewhere to go? Is that hearsay?

4 Okay. So she needed somewhere to go. So Porsha said she
5 had a room. I mean Porsha had a room. She got it from her family. Her
6 family used to stay out here. I met her family before. Her mom is Indian.
7 Her dad is black. And they had a room at the Suites. They wasn't
8 staying there. They had asked me previously, like I think a week --

9 MR. MARTINEZ: Objection. Hearsay.

10 THE WITNESS: I was --

11 THE COURT: That's sustained.

12 BY MR. MILES:

13 So I drove Porsha and Gabrielle King to the spot, because
14 she didn't have a key at the time. So she went to the office, got the key,
15 give it to Gabrielle. Gabrielle gave her some money. And it was only a
16 couple days left on the room. I think it was like two or one day.

17 So I dropped Gabrielle King off. She wanted to kick it again
18 later. So I was just like okay, let me drop Porsha off first. So I dropped
19 Porsha back off at the house, and then I came back to kick it with her.
20 When we was kicking it, we was taking pictures. She wanted to take
21 pictures with the new phone I bought. So we started taking pictures and
22 photos and stuff. And she wanted to get some weed. And I don't
23 smoke.

24 So she wanted to get some weed and mollies. And I said
25 okay, go ahead. So she called some dude over. And the dude was just

1 kind of skeptical. They looked kind of fishy.

2 MR. MARTINEZ: I'm going to object at this point of what the
3 dude, what -- how he was thinking and how he was perceiving a
4 situation.

5 THE WITNESS: I just said the dude --

6 THE COURT: I think he can testify regarding how he was
7 perceiving the situation. So overruled.

8 MR. MARTINEZ: How the dude was perceiving the situation?

9 THE COURT: I believe he's talking about himself.

10 THE WITNESS: No. How I was looking at him. I said the
11 dude looked kind of fishy.

12 THE COURT: Yeah. So overruled.

13 MR. MARTINEZ: Okay.

14 THE WITNESS: Okay. So --

15 THE COURT: You can answer the -- will continue, I guess.

16 BY MR. MILES:

17 Okay. So the dude had dreads. Didn't know him. Dark
18 skinned dude. And I had my money out and my phone. And he basically
19 said give me all your stuff. So, at first, I was kind of like -- I've been
20 robbed before, but I didn't want to really give him all my stuff, but I
21 didn't want to get shot either. So I said all right, you can have it.

22 So I gave him all my stuff. I gave him some money. I gave
23 him my phone, and I left. And for a minute, I was like okay, well,
24 obviously, Gabrielle King set me up. That's what I was feeling. I felt like
25 I got set up. And that was it. I didn't want to do with Gabrielle King no

1 more, because everything -- every time I've been dealing with her, it's
2 been bad news. So I end up -- I didn't have a phone.

3 So later, on February 25, 2015, I end up buying another
4 phone at Metro PCS. That day, Portia was with me. And when I was at
5 the Metro PCS store, it was a lot of people in the store. So I didn't want
6 to wait. So I told Porsha I'm fitting to just go across the street and go
7 shopping. Right across the street is the mall. And I was just going to go
8 shopping and walk around. But I didn't end up buying anything.

9 So by the time I came back, she said she already filled out
10 the paperwork for me and we could get the phone. And the number that
11 was requested was the 702-913-2289 number. And that number we did
12 have before. That was part of my business number way back long ago in
13 the day. And we was waiting for that number to be available. So when I
14 figured out it was available, that's when I got the number back.

15 But I never had the number between the dates of February 8,
16 2015 and February 13, 2015. And that's the truth. I had it when I had my
17 business, and I think that time was around like August 2014. And that
18 was part of my business number. And I end up changing my business
19 number to -- it's something called a Ring Central number. And I was
20 using it for my companies, where when you have a Ring Central, it's
21 basically like having all the functionalities of a whole customer service
22 but online.

23 So you get call forwarding. You get call waiting. You got the
24 little music to put somebody on pause. And that's what I was just using
25 for the company at first. And when I figured out the number was

1 available, that's when I went to Metro PCS and got the number again.

2 So I end up getting arrested and obviously talked to officers.

3 At first, I didn't really want to tell them what happened. And it was the
4 truth. And I said I didn't give Gabrielle King the phone, because I didn't.

5 But I didn't want to snitch on her and said that oh, I thought she was
6 involved with a robbery. Where I come from, we don't really tell on
7 people like that, because there's repercussions and stuff that happens.

8 So at first, I was really serious when I said I didn't get her
9 phone. And I was shocked to hear that she had the phone, because I
10 thought she was involved with it, but I didn't really know for sure. So
11 why I told officers, at first, like, you know, I didn't get her a phone. And
12 then when I seen she had the phone, I was kind of just trying to say
13 really anything, because I was kind of shocked. I didn't even think I was
14 being recorded. So I didn't really care what I said at first, because I really
15 believed the officers when they said you're not being recorded. So I just
16 said whatever.

17 So the truth is really that I never text her. And that's the
18 truth. And I've been trying to prove that with them Metro PCS records
19 from day one, that I wasn't texting her, and I had nothing to do with
20 whatever she was doing. And whatever she was saying was a complete
21 lie from the beginning. And that's pretty much it.

22 THE COURT: Okay.

23 State.

24 MR. MARTINEZ: Thank you, Your Honor.

25 Your Honor, I would like to have this marked and move for its

1 admission.

2 THE COURT: Let me see. I think you can just ask the
3 questions --

4 MR. MARTINEZ: Okay. That's fine.

5 THE COURT: -- Mr. Martinez.

6 MR. MARTINEZ: That's fine.

7 THE COURT: We'll have it marked as State's proposed.

8 MR. MARTINEZ: That's fine.

9 CROSS-EXAMINATION

10 BY MR. MARTINEZ:

11 Q Mr. Miles, you have a prior felony conviction; is that correct?

12 A Yes.

13 Q What's the name of that conviction?

14 A Pandering.

15 Q Okay. And there's a couple words after that, right?

16 A I believe pandering and furnishing transportation.

17 Q Okay. And do you remember when that was?

18 A When the conviction was oh when --

19 Q Yes.

20 A -- the incident took place? I think it was around April or
21 something. I can't remember for sure.

22 Q Okay. What year?

23 A 2000 -- here again, you're talking about the conviction or
24 when it got --

25 Q The conviction date.

1 A That was 2015.

2 Q Okay. Is it kind of hard to remember?

3 A Well, it's not kind of hard to remember. It's -- I'm thinking
4 about when the incident took place and when it actually -- you know. So
5 I just --

6 Q Okay. But things like that are kind of hard to remember,
7 right, that happened a few years ago?

8 A No. It's not kind of hard to remember. I just don't want to
9 give nothing false under oath.

10 Q Okay.

11 A I don't want to say -- make a false statement and tell you
12 something that I don't know.

13 Q Do you remember telling the detectives it was hard to
14 remember just a month prior?

15 A Well, I think that was taken out of context. I told them that
16 it -- I was kind of telling them when I'm driving somewhere, I can't --

17 Q It's just a yes or no question. Do you remember telling them
18 that?

19 A I can't ask [sic] you a yes or no question, because that's taken
20 out of context. I told them it's like --

21 MR. MARTINEZ: Your Honor, if I ask him a yes or no
22 question, I would ask that he be instructed to answer yes or no.

23 MR. MILES: And I would object to that, because there's no --

24 THE COURT: Mr. Miles, you'll have the opportunity on --
25 after you get questioned here, you'll have an opportunity to re-address

1 any issues that you feel need to be re-addressed. But for the time being,
2 just answer his questions, okay?

3 THE WITNESS: Okay.

4 THE COURT: Thanks.

5 THE WITNESS: What was the question?

6 BY MR. MARTINEZ:

7 Q So you told the detectives that it was hard to remember just
8 things that happened a month prior, right?

9 A That's not what I said.

10 Q Okay. You are a pimp?

11 A No, I wouldn't say so. No.

12 Q You have a pandering conviction?

13 A Yeah, I have a pandering conviction. It just has nothing to do
14 with this case.

15 Q Okay. And you'd agree with me that that phone number that
16 you told detectives was 702-913-2289; is that correct?

17 A Would I agree with you what?

18 Q That the phone number that you said was yours to detectives
19 was 702-913-2289; is that correct?

20 A I told them that the number I mainly use is one.

21 Q You said that was your number; is that correct?

22 A The number I mainly use was what I told them.

23 Q All right. So you might have other phone numbers, right?

24 A No. I just told them that's what I mainly used.

25 Q Okay.

1 A Because at the time, that's the number that I had. And I was
2 using it with Porsche, and we were sharing phones at the time.

3 Q Right.

4 A Until I bought her the Samsung 5 phone like two days before
5 I got arrested. She didn't have a phone.

6 Q Because Porsha didn't have a phone?

7 A Well, she had -- when I say she didn't have a phone, she
8 didn't have a working phone. She loves Samsungs. I bought her the
9 Samsung 5, because she had the Samsung 3 that wasn't working. So
10 she was like okay, well, my Samsung 3 is not working. So she wanted
11 the Samsung 5. I went to the T-Mobile store and bought it for her.

12 Q Thank you. You would agree with me that there's been
13 evidence presented that the 702-913-2289 number existed prior to
14 February 25, 2015, correct?

15 A When you say existed, you're talking about -- I mean
16 numbers exist. So I don't understand that.

17 Q So you would agree with me that that phone number existed
18 prior to February 25, 2015, correct?

19 A It existed at one point in time, I guess.

20 Q And this -- the copy of this pawn ticket says 702-913-2289; is
21 that correct?

22 A Yeah, that's what it says.

23 Q And do you recognize that address of 3813 Cranbrook --
24 Crain -- I'm sorry.

25 A Cranbrook.

1 Q Cranbrook Hill Street?

2 A Yeah. That's my dad's address.

3 Q Okay. And do you see the driver's license number on there?

4 A Yeah, I see it.

5 Q Okay. Is that the same one that you took a photo out of your
6 Samsung phone, same driver's license number?

7 A Well, I wouldn't say I took the photo. I actually know what
8 happened with that photo.

9 Q I'm sorry. I'm just asking you if that's going to be the same
10 number that's in your driver's license photo in your Samsung photo.

11 A I don't know.

12 Q It's just a yes or no question.

13 A I wouldn't know without looking at it.

14 Q Okay.

15 A I don't have my driver's license with me.

16 Q Would you like to publish that?

17 A If you want to, sure.

18 Q Thank you.

19 MR. MARTINEZ: Court's indulgence. Publishing State's
20 Exhibit 52.

21 BY MR. MARTINEZ:

22 Q Is that you?

23 A It appears to be me. It looks like me. Yeah, it looks like me.

24 Q It looks like you?

25 A It looks like it.

1 Q So it might not be you?

2 A Well, you was close up. So I look real young in the photo.
3 So it looks like it's me.

4 Q Okay.

5 A It looks like my driver's license.

6 Q Right. And then do you see the number there?

7 A Yes, I see the number.

8 Q I'm going to put those side by side with the ticket.

9 A Okay.

10 Q And the number.

11 A Yeah. Just looking at the ticket and what's written, I mean it
12 appears to be the same number based off what you're showing me.

13 Q The same one, right?

14 A Based off what you're showing me.

15 Q That the pawn ticket. And that pawn ticket you would agree
16 with me is dated October 17, 2014?

17 A Yeah. It's dated 2014, but I --

18 Q Okay. Now my next question is you took Gabrielle to the
19 Suites on Boulder; is that correct?

20 A The Suites. I think it was the Suites. It should have been the
21 Suites.

22 Q You took her to a rented room there, that Porsha rented; is
23 that correct?

24 A I know it's called the Budget Suites, but yeah, that was on
25 Fairway --

1 Q The one that we've been talking about. The one that we've
2 been talking about with the registration and the one that Porsha had said
3 that she rented at your request, you drove them to that location; is that
4 correct?

5 A Well, see. That actually misstates it. She didn't --

6 Q How --

7 A I was personally there. So I know she didn't rent the room
8 that day. That was for her parents. Her parents were in town. They
9 normally stay in Arizona. Her mom is Indian. Sometimes she stays on
10 the reservation. She gets a reservation check.

11 Q Okay.

12 A So that room had already --

13 Q And she didn't put her parents' names on there, did she?

14 A I'm not the one that filled it out. So I can't tell you.

15 Q She rented it out, right?

16 A I don't know what date it is. You don't have a date on there.

17 Q She rented the room; is that correct?

18 A Yeah, at one point in time not that day.

19 Q Thank you. That's all I'm asking is if she rented the room.

20 A Okay.

21 Q And then you drove Gabrielle to that room; is that right?

22 A No. The room was already rented, and she wanted to go --

23 Q No. I didn't ask you if it was already rented. I'm asking you if
24 you drove Gabrielle to that room.

25 A Yeah. I said --

1 Q Okay.

2 A -- on the 9th, I drove her to the room.

3 Q Okay. Do you know how many times you told the detectives
4 that you didn't buy Gabrielle the LG cell phone?

5 A Well, I didn't know --

6 Q I'm just wondering if you know how many times.

7 A Well, I'm fitting to explain that. I didn't know at first, but I
8 remember on the screen --

9 Q It's just a yes or no question, if you know how many times.

10 A Well, on the screen you published it. I think you said 25.

11 Q Okay. It was more than 10. You said you did not buy her an
12 LG phone; is that correct?

13 A Yeah, that was true.

14 Q Okay.

15 A I didn't buy her the phone.

16 Q Okay. So then when you said oh, yeah, I bought her that
17 phone, you were lying?

18 A I told you that I was just --

19 Q I'm sorry. Were you lying?

20 A It was -- yeah. It wasn't true.

21 Q Okay. So you were lying to the police?

22 A I didn't buy her the phone. Yeah. They was lying to me.

23 Q Okay.

24 MR. MARTINEZ: Court's indulgence.

25 BY MR. MARTINEZ:

1 Q That Samsung phone is yours; is that correct?

2 A No, it's not mine. It's actually --

3 Q It's not your phone? You never -- it's --

4 A I never what?

5 Q It's not your phone is what you're saying?

6 A I'm saying it's not my phone. It's Porsha's phone.

7 Q Okay. Do you see this -- these messages between you and
8 Gabrielle?

9 A Well, I can tell you for sure those are not messages between
10 me and Gabrielle.

11 Q They're not?

12 A Because I didn't send those text messages.

13 Q Okay. You told detectives that your phone number was 702-
14 913-2289; is that correct?

15 A Yeah, because, at the time, I activated the number on
16 February 25, 2015.

17 Q And you'd agree with me that Gabrielle had saved in her LG
18 phone, the one that you bought, under that number, a contact name of
19 Chris; is that right?

20 A No, I don't believe that.

21 Q Okay. And even though it says it on the report itself?

22 A I don't believe that report --

23 Q Okay.

24 A -- at all.

25 Q And you told her that she had an out call; is that right?

1 A I never messaged her, so I didn't tell her nothing.

2 Q You never messaged her. So you never said that she had an
3 out call. And she never said to you that her vagina hurt, but she was
4 going to go anyways?

5 A No, because she was never with me.

6 Q You never said that?

7 A And she'd testify to that.

8 Q Okay. And then you never said that the John had 150 bucks
9 and then after that, you can go to sleep?

10 A Never text her and was never with her --

11 Q Okay.

12 A -- that day. She testified she wasn't with me either.

13 Q Didn't you tell Detective Gatus that the out call had to do with
14 selling weed?

15 A I was just telling them anything.

16 Q You were telling them anything?

17 A Because they were telling me anything.

18 Q Okay.

19 A They know those text messages weren't true.

20 Q So you actually, indirectly, admitted that sent those text
21 messages to Gabrielle, because --

22 A I didn't indirectly do anything.

23 Q -- your explanation was that it was to sell weed. And then
24 she asked you why would her vagina hurt?

25 A No. They asked me what do you -- what does that look like.

1 And I said well, I don't know. I just gave them a little scenario.

2 Q Okay. So --

3 A And I felt like when they told me that, they wasn't telling the
4 truth, because they wasn't telling the truth.

5 Q So you were just making all of that up?

6 A I was telling them anything, because they were telling me
7 anything.

8 Q Okay.

9 A I think it's fair game.

10 Q I will show you State's Exhibit 9. This is you and Gabrielle; is
11 that correct?

12 A Yeah.

13 Q And you see the white LG phone?

14 A My phone? Yes, I see it.

15 Q That's the phone that I bought?

16 A That's the phone I bought for me. You're right.

17 Q And the phone that you said that you bought for Gabrielle?

18 A No, I didn't buy it for Gabrielle. I just told you that earlier.

19 Q But you said that you did, didn't you?

20 A I told you I was just telling them anything.

21 Q But you told the detectives that you bought that for
22 Gabrielle?

23 A It wasn't under oath, and I told them that.

24 Q Okay. And you also told them over 10 times before that, that
25 you didn't buy the LG phone?

1 A Yeah. And I think the evidence shows too, as far as the
2 Metro PCS records, that I didn't buy that phone.

3 Q And then you acknowledged that you bought the phone after
4 they confronted you with your and your debit card; is that right?

5 A Yeah, because I was surprised that she had the phone.

6 Q Right.

7 MR. MARTINEZ: Publishing State's 51.

8 BY MR. MARTINEZ:

9 Q Do you recognize that photo?

10 A Yeah. That was at the -- I want to say the Rio. I don't know
11 if it was the Rio Hotel. That was the room that Gabrielle King had.

12 Q Okay. You see you're holding that phone, right?

13 A Well, I'm holding the Samsung phone in the picture.

14 Q You're holding a Samsung phone. But you're saying
15 that's -- is that a different phone than the one that we have in evidence?

16 A It's a lot of tricky things with the evidence that you have. So I
17 can't really testify to your evidence, because it's a lot of tricky stuff that's
18 going on with that.

19 Q Right.

20 [Counsel confer]

21 BY MR. MARTINEZ:

22 Q So I'm publishing what's inside of State's Exhibit 2, which is
23 the Samsung Galaxy phone.

24 A Okay. Well --

25 Q Does that kind of look like that?

1 A -- your phone looks beat up, and that phone doesn't look
2 beat up.

3 Q It doesn't look beat up?

4 A No.

5 Q Okay. So you're saying those are different phones?

6 A From your phone that you have right here and from that
7 phone, it looks like different phones.

8 Q And you didn't have this phone when you got arrested?

9 A You're saying the Samsung phone that's in the picture?

10 Q The Samsung phone.

11 A That Samsung phone right there, that was actually -- and
12 Gabrielle King has already testified that that was one of the phones she
13 had on her.

14 Q No, no. I'm asking you when you got arrested, did you have
15 that phone on you?

16 A No. Porsha had it on her. And they tried to make it seem like
17 she took it off the hood. The -- all this stuff was on my car. She had that
18 in her seat, but they just placed it and say oh, well, all this stuff is yours.

19 Q Okay.

20 A And she tried to take it, because it was her stuff, and she
21 didn't want to get caught with it. So she took it. They're trying to make
22 it seem like I whispered to her or something.

23 Q So it's Laporsha's fault?

24 A No. It's Laporsha's phone.

25 Q You didn't wish anything to Laporsha?

1 A No. She wanted a kiss, so I gave her a kiss. I don't normally
2 do that kissing type of stuff like that. But I gave her a kiss and she took
3 the stuff. And she tried to run away with it, and she got caught. And
4 then when she got caught, she changed her story. And then she was
5 offered immunity for her testimony to testify against me.

6 MR. MARTINEZ: Could I have the Court's brief indulgence?

7 THE COURT: Uh-huh.

8 [Counsel confer]

9 BY MR. MARTINEZ:

10 Q Do you remember Detective Gatus testifying that she took
11 pictures of the Samsung phone that you're claiming is not yours?

12 A Yeah. I guess she testified to taking some pictures.

13 Q And she took photos of that Samsung phone, correct?

14 A I don't know. I wasn't there.

15 Q Okay. You heard -- you were here for that testimony though?

16 A I was here for the testimony, but it sounded kind of shaky to
17 me.

18 Q Okay. And you'd agree with me -- this is State's 43. It's a
19 photo of the Samsung phone?

20 A No, I wouldn't agree with it, because it looks like -- I could
21 see dates in the background. It says March 24, but there's no year. So
22 this could be any year.

23 Q Okay. And then there's this number here of the same
24 Samsung phone.

25 A Yeah.

1 Q That's a different TextNow app number, right?

2 A And that looks like the number that they said Porsha was
3 using. That's what that number looks like.

4 Q That looks like that number?

5 A Yeah.

6 Q Okay. And do you remember when Laporscha testified that
7 you guys shared a TextNow app?

8 A Yeah, I remember when she testified that she was looking for
9 gestures too.

10 Q Do you remember when Gabby testified that you guys
11 shared a TextNow app as well?

12 A Yeah. Her testimony wasn't true.

13 Q And that they were different phone numbers than the ones
14 that were on the actual cell phones, correct?

15 A I couldn't hear that last part. What'd you say?

16 Q That they were different cell phone numbers than the
17 TextNow app numbers, correct?

18 A I don't know. If that's her testimony and these are her
19 phones. If she wants to testify to what's on her phones, that's on her.

20 Q Okay.

21 MR. MARTINEZ: Court's indulgence.

22 BY MR. MARTINEZ:

23 Q So publishing State's Exhibit 50. Well, 49 and 50. Same
24 Samsung phone?

25 A I don't know. Is it the same Samsung phone? This is your

1 stuff not my stuff.

2 Q I'm just giving -- I'm giving you what the exhibit is. It's the
3 Samsung phone that Detective Gatus testified is the Samsung phone
4 that you were arrested with. And it's a picture of the cell phone. So --

5 A And again, this says --

6 Q -- this is -- so if you could look at that. That's the Samsung
7 phone that we have testified about already. And this says this Christian,
8 right? We friends on Facebook. I'm surprised with all the money pics I
9 post you never hit me up. You think Laporscha wrote that?

10 A I don't know when that's dated. So I think, personally, that --
11 that says March 2nd. It could have been any year that somebody put
12 that on there. I didn't put that on there.

13 Q Any year on that Samsung phone?

14 A I mean where's the year at? It says March 12th.

15 Q It says March 12th.

16 A I mean where's the year at?

17 Q So you didn't type that is what you're saying?

18 A I didn't author those text messages. No.

19 Q You did not at all?

20 A I didn't.

21 Q Okay. And then turning your attention to Exhibit 50 right
22 here. This is Christian, by the way, from March 2nd.

23 A Okay. Not me. I didn't author it.

24 Q You didn't write that?

25 A I didn't author it. No.

1 Q Okay. And you're saying that this is the cell phone that
2 Laporscha had?

3 A I mean she said it was the phone she had too.

4 Q Okay.

5 A So I mean I don't know where you're going with that.

6 Q So do you think Laporscha was using your name on that
7 Samsung phone?

8 A There's -- like I said, there's a lot of tricky things going on
9 with the evidence that I've been trying to prove since day one.

10 Q Okay.

11 A But I didn't put those on there.

12 Q So your testimony -- and you want the jury to believe that
13 Laporscha is the pimp in this case?

14 A No, that's not what I want the jury to believe. I want the jury
15 to believe, looking at the facts --

16 Q I'm sorry. That was just a yes or no question.

17 A Say the question again.

18 Q So you want the jury to believe that Laporscha was the pimp;
19 is that right?

20 A No.

21 Q Is that why you asked Don Hoier if there were females that
22 were pimps sometimes?

23 A Well, I asked him that because I wasn't sure where you all
24 were going with that. She's offered -- she was offered immunity to
25 testify against me. At one point, she said she was looking for gestures

1 on what she wanted to say or not. And she said that you all came
2 looking for her. And I think that's pretty mysterious to me, why you all
3 came looking for her and why she's got immunity --

4 Q It's -- Mr. -- it's --

5 A -- for something that she could get charged with just as well
6 as you're saying I could get charged with. So I thought that was kind of
7 fishy. Why --

8 Q So you think we should have charged Laporscha --

9 A -- am I getting charged --

10 Q -- with the same thing that we charged you with?

11 A Well, here's the thing. If we call --

12 Q Well, do you -- no. I'm just asking if you think that. Do you
13 think that we should have charged Laporsha with the same thing that we
14 charged you with?

15 A Well, just based on the allegations --

16 Q It's just a yes or no question. Do you think we should have
17 charged Laporscha with the same things that we charged you with?

18 A I mean if -- yeah. I believe you all --

19 Q You do?

20 A -- should have, because I'm getting --

21 Q We should have? Okay.

22 A -- accused of allegations of something I didn't do.

23 Q Right. Because you both drove Gabrielle to the room that
24 Laporsha rented, right?

25 A She didn't -- she wasn't driving it.

1 Q Where Gabrielle was engaging in prostitution?

2 A She wasn't engaging in prostitution.

3 Q She wasn't at all? You were with her the entire time?

4 A She said all her text messages were based on TextNow.

5 Q Were you with her --

6 A Can you show me one of those text messages?

7 THE COURT: Guys, we got to --

8 BY MR. MARTINEZ:

9 Q Were you with her the entire time?

10 A No, I wasn't with her the entire time.

11 Q Okay. So you can't possibly say whether or not she engaged
12 in prostitution, right?

13 A Well, I can say it based off -- yeah. And I'll tell you how I
14 could explain that. I'm looking at these text messages.

15 Q I'm not asking you to explain it. It's just a yes or no question.

16 A You said -- repeat the question.

17 Q You weren't with Gabrielle the entire time, correct?

18 A No, I wasn't with her the entire time.

19 Q So you can't say whether or not she actually engaged in
20 prostitution, correct?

21 A I can say. Based off the text messages y'all showed me, I can
22 say that.

23 Q Okay. So you can say that she did, or she didn't even though
24 you weren't physically next to her the whole time?

25 A Based off these messages you're showing me, it's clear that

1 nobody came to the house.

2 Q Okay.

3 A So I'm confused at how --

4 Q So these messages that --

5 A -- she could've engaged in prostitution.

6 Q -- we're showing you right here, she's not engaging in
7 prostitution?

8 A Those aren't --

9 Q That her vagina hurts, but fuck it. Yeah, but you got an out
10 call.

11 A Like I said --

12 Q You've got 150. Go to sleep. You're saying she's not
13 engaging in prostitution based on those messages?

14 A I'm saying I never sent those messages.

15 Q That's what you want the jury to believe; is that correct?

16 A Those messages never existed.

17 Q Never existed.

18 A And you know those messages never existed.

19 Q Okay. And it's clear on the evidence that those messages
20 never existed.

21 MR. MARTINEZ: I have no further questions, Your Honor.

22 THE WITNESS: And I'm a do redirect on my -- well, yeah,
23 redirect on myself.

24 THE COURT: Okay.

25 REDIRECT EXAMINATION

1 BY MR. MILES:

2 I think it's clear based off the -- I mean we've all --

3 THE COURT: Well, this isn't argument.

4 THE WITNESS: Oh, okay. Okay. Yeah, you're right.

5 THE COURT: This is the -- you'll have the opportunity for
6 closing argument.

7 BY MR. MILES:

8 I think it's clear based off the Metro --

9 THE COURT: This isn't evidence.

10 THE WITNESS: Okay.

11 THE COURT: This is testimony. Okay.

12 THE WITNESS: I can still say it like that?

13 THE COURT: Within the confines of cross.

14 MR. MARTINEZ: I'm just going to ask that the Defendant not
15 argue. He's going to have a closing argument.

16 THE COURT: That's correct. That's correct. It's not what the
17 evidence shows.

18 THE WITNESS: Well, it's kind of hard, because he --

19 THE COURT: It's what --

20 THE WITNESS: Okay.

21 THE COURT: -- the evidence is.

22 THE WITNESS: Okay.

23 THE COURT: What you did, what you saw.

24 BY MR. MILES:

25 Okay. I personally didn't send her any text messages, and I

1 know that for sure, 100 percent. I'm not lying about that. I didn't send
2 her any text messages. I've been trying since day one to view these text
3 messages to show that I didn't send no text messages to her. Every time
4 I tried to view it, there was an excuse. The phone doesn't work.
5 Something going on with the evidence.

6 I can't prove my innocence here. I have somebody saying I
7 sent text messages to her, and I know I didn't send her text messages --
8 no text messages between those dates. I know that for a 100 percent
9 fact. I didn't send her no text messages, and she knows that. She's
10 testified -- I mean I can't -- I -- that's argument. Sorry about that.

11 Yeah. As far as the State -- well, I can't say that either. It's
12 just kind of hard doing both, Your Honor. Hold on.

13 Yeah. Like I said, I didn't -- I know for a fact I didn't drive her
14 nowhere to no out calls. And I know for a fact I didn't receive no money
15 at all. I didn't receive a dime for -- if anything, I lost money messing with
16 her. That's why I stopped talking to her and I didn't want nothing to do
17 with her. She's bad news from the start. And once I noticed that, I never
18 wanted to speak to her again. I even blocked her on Facebook, because I
19 was hot about the situation that happened with me and with her and the
20 dude.

21 And then like I said, I received a text. Like I told the officers, I
22 received a text saying oh, that's why I got your bitch. Wasn't my bitch
23 anyway, so I didn't care. So I mean just messing with her. It was --
24 everything was bad from the start, and I wish I never talked to her. I
25 never seen her in the first place, because then I would have never been

1 in this situation from day one. And that's it.

2 THE COURT: Anything else from the State?

3 MR. MARTINEZ: No, Your Honor.

4 THE COURT: Are there any questions, ladies and gentlemen
5 of the jury? Okay. Another one.

6 THE MARSHAL: Anybody else?

7 THE COURT: Show them to both.

8 THE MARSHAL: Yeah.

9 MR. MILES: I don't have no objection if they want questions
10 answered.

11 THE COURT: And can you double-check that we have badge
12 numbers on those? I'm thinking I may not have seen them, or seat
13 numbers. Do they all have juror numbers on them?

14 MS. RHOADES: No.

15 THE COURT: Do any of them?

16 MR. MARTINEZ: No, Your Honor.

17 THE COURT: We're going to hand those back to everybody
18 just to put your juror number on it.

19 Did you get an opportunity to look at them all?

20 Not you.

21 MR. MARTINEZ: Yes.

22 THE COURT: Do you have any objections?

23 MR. MARTINEZ: No.

24 THE COURT: Okay. Grab them back then as soon as they get
25 their -- thanks.

1 Will you check the other notes that we have and make sure
2 that they've all got them, because now that I think about it.

3 Okay. When you went grocery shopping with Porsha and
4 Gabby did you also buy tools to cut off Gabby's ankle bracelet?

5 THE WITNESS: When I went shopping with Porsha and
6 Gabby she already had her bracelet cut off. I didn't buy no tools to cut
7 her bracelet off and she knows that. It was already cut off. After I
8 dropped her off from her friend's house and picked her up -- this was on
9 the night, her bracelet was already cut off, and she was walking around
10 free.

11 THE COURT: Okay.

12 THE WITNESS: And I didn't cut it off.

13 THE COURT: What is your attraction to Gabby?

14 THE WITNESS: I'm going to be honest, when I first met
15 Gabby, like I -- like I said, I'm face -- they call it Facebook famous where I
16 get a lot of pictures on Facebook. I used to throw parties. That's how I
17 used to make my money when I was young. So when I first met her I
18 seen a cute girl. She was Facebook famous too. She gets like 600 likes
19 on her photos as well and I just wanted to, you know, hook up with her.
20 That's how she kind of came up. She hit me up and she said, "You're
21 cute. Let's kick it." So we kicked it and it was straight to the point, and
22 that was pretty much it. Just -- it was just a hook up. That was it.

23 THE COURT: So your attraction was romantic?

24 THE WITNESS: Is that -- yeah, I guess romantic -- attraction
25 just a hook up.

1 THE COURT: And what is "kicking it"?

2 THE WITNESS: Kicking it is pretty much when you say you
3 want to kick it it's, like, we chill, we're talking. It's just -- I mean, you can
4 kick it with a group -- a group of people, or you can kick it with two
5 people. If you're kicking it with a girl, it's normally like y'all talking. Y'all
6 could do the Netflix. Y'all could drink. It's pretty much anything y'all
7 want to do. It's just one-on-one.

8 If you're kicking it with a group of people, it's mostly like a
9 party, or everybody is -- like, I don't smoke or nothing like that, so
10 normally when a group of people my age kick it are, like, smoking or
11 drinking and stuff, so --

12 THE COURT: Is there any follow up? Mr. Miles, anything you
13 wanted to follow up with to the jury questions?

14 THE WITNESS: Let me try to think. Yeah, like -- like -- like,
15 when I -- when I -- when I met Gabby I wasn't looking for, like, no
16 girlfriend or nothing. Me and Porsha we were just, like, kind of had our,
17 like, open relationship kind of thing. I liked Porsha from the beginning
18 because she was -- she had cool personality. She'll make me laugh.
19 She's not really the type of girls I go for, but I just liked her personality,
20 the way she made me laugh.

21 MR. MARTINEZ: I think that kind of goes beyond what the
22 question is, Your Honor.

23 THE COURT: Okay. You have --

24 THE WITNESS: Do you really feel like that?

25 THE COURT: Okay.

1 THE WITNESS: Okay. Yeah, so I mean I guess that's it I don't
2 really know.

3 THE COURT: Okay. State anything? Any follow up?

4 MR. MARTINEZ: No, Your Honor.

5 THE COURT: Okay. I guess -- this witness excused, I guess?

6 THE DEFENDANT: Nobody have no question?

7 THE COURT: Okay.

8 MR. MILES: I have no further witnesses, Your Honor.

9 THE COURT: Okay. Do you rest?

10 MR. MILES: I rest.

11 DEFENDANT RESTS

12 THE COURT: Okay. We're going to go ahead, and I need to
13 talk to the parties outside your presence to determine kind of where
14 we're going to go from here.

15 Does the State have any rebuttal?

16 MR. MARTINEZ: No, Your Honor.

17 THE COURT: Okay. That'll sum up the evidence, but now we
18 need to see kind of where we go, so I'm going to tell you, ladies and
19 gentlemen we're going to take a recess. During this recess you're
20 admonished not to talk or converse among yourselves, or with anyone
21 else or any subject connected with this trial, or watch, read, or listen to
22 any report of, or commentary on the trial, or any person connected with
23 this trial by any medium of information, including without limitation to
24 newspapers, television, the internet, and radio, or form, or express any
25 opinion on any subject connected with the trial until the case is finally

1 submitted to you. And no legal, or factual research, or investigation, or
2 recreation of testimony on your own.

3 And it could be 15 minutes, could be a half hour, and it could
4 be your evening recess, so I'll let you know, as soon as I know. Okay.

5 THE MARSHAL: All rise.

6 [Outside the presence of the jury.]

7 THE COURT: Okay. We're outside the presence of the jury.
8 Are you guys ready to close tonight if we settle instructions
9 now?

10 MR. MARTINEZ: Yes, Your Honor.

11 THE COURT: Mr. Miles, you're good to close?

12 MR. MILES: Yeah, to close, sure. My close?

13 THE COURT: You're ready for closing argument?

14 MR. MILES: Yeah.

15 THE COURT: Okay. So let's go through these jury
16 instructions. Let's go through the State's first. Do you have your copy
17 there, Mr. Miles?

18 MR. MILES: I did, but everything kind of got messy. The
19 Court's indulgence.

20 THE COURT: Do you want another copy?

21 MR. MILES: Yes. If that will speed up the process.

22 THE COURT: Okay. And let's just kind of flip through these
23 one at a time. Yeah.

24 MR. MILES: Yeah.

25 MR. MARTINEZ: Wait. Court's indulgence for a moment.

1 THE COURT: Or actually, Mr. Miles, do you have any
2 objection to any of these?

3 MR. MILES: I'm just going to object, because I'm not sure if
4 Your Honor already did some, but I'm looking at -- you're talking about
5 starting at page 1?

6 THE COURT: Yeah. Well, we can -- just tell me what you
7 object to.

8 MR. MILES: It's just going to be the basic objections. I don't
9 see no legal authority at the bottom. I think the instructions that's on
10 here is probably something that Your Honor is going to give anyway, so
11 it's just going to be the basic ones that doesn't have any type of --

12 THE COURT: Okay. Well, let's pull out at least the
13 constitutional right of the Defendant not to testify, since he testified, so
14 that's a go.

15 MR. MILES: Which page is that? Is that the last page?

16 THE COURT: Well, we haven't really numbered them yet, so
17 I can't --

18 MR. MILES: Okay.

19 THE COURT: -- really reference it.

20 I guess let's start this way: let's go -- let's start with
21 Defendant's, okay.

22 MR. MILES: Okay.

23 THE COURT: Do y'all have a copy of his proposed?

24 MS. RHOADES: Yes, Your Honor.

25 THE COURT: Okay. The first one the State cannot be

1 allowed to benefit in such a manner from its failure to preserve evidence.

2 MS. RHOADES: Your Honor, we're going to -- we object to
3 all -- I believe all of them refer to this failure to preserve, and he's trying
4 to get some sort of a *Sanborn* instruction. I don't think that's appropriate
5 based on the case law and I can go through that. I mean, there's cases
6 that deal with failure to preserve when they talk about dismissing the
7 case, and then the failure to gather, which this is not, but I know that
8 analysis applies as well.

9 There's no bad faith on the State. The State is not receiving
10 any benefit from the evidence not being there. He hasn't shown that
11 there would be anything different if the LG phone would start working,
12 so I don't believe under the case law that he's entitled to any of these
13 instructions. That *Sanborn, Higgs v. State, Daniels v. State, Howard v.*
14 *State*, all those -- all the outlining cases.

15 MR. MILES: Are you done?

16 THE COURT: Okay. With respect to the benefit in such a
17 manner from its failure to preserve evidence, I don't believe that there's
18 any evidence that the State failed to preserve any evidence. A lot of
19 these instructions were actually handled in pre-trial motions to suppress
20 and have previously been ruled on by Judge Togliatti. There's extensive
21 minute orders that address the majority of these issues regarding the
22 State failing to document the chain of custody records to the LG phone.

23 There's no evidence that the chain of custody records were
24 not maintained. The UFED file extracted from the LG cellular phone,
25 again, no evidence that anything was failed to preserve.

1 And failing to record the unrecorded interviews conducted,
2 again, no legal basis for that particular jury instruction: neither in law or
3 quite frankly in fact.

4 These will all be marked -- I'm going to mark this whole
5 things Defendant's proposed instructions to the jury. It'll be Court
6 Exhibit number 1, and it'll contain all the jury instructions, and I'm not
7 going to give any of those.

8 [Court's 1 marked for identification]

9 THE COURT: With respect to the State's instructions, do you
10 want to start numbering as we go through, because then we kind of
11 know what we're talking about?

12 MR. MILES: Yes, around the top right.

13 THE COURT: Okay. So jury instruction 1, any objection?

14 MR. MILES: I'm just going to say no legal basis. No
15 authority cited at the bottom, and it probably might be an instruction that
16 Your Honor gives anyway.

17 THE COURT: Okay. Two, if in these instructions, do you
18 have an objection?

19 MR. MILES: Well, I'm just going to maintain my objection
20 that there's no legal basis, and there's probably instruction that's already
21 going to be given anyway.

22 THE COURT: Okay. Three, an information about a formal
23 method, do you have an objection to that?

24 MR. MILES: Court's indulgence. I'm sorry, Your Honor. I
25 know you're trying to get through this. I'm sorry. Let me bring --

1 THE COURT: No worries.

2 MR. MILES: -- up the case -- what statute is that? I know it's
3 175 for the jury instruction. Go to the chart jury instructions.

4 THE COURT: It just says -- we're just at the information
5 about a formal method of accusing a person of a crime, and it's not
6 evidence of guilt.

7 MR. MILES: Okay.

8 THE COURT: And then it just sets forth the information itself.

9 MR. MILES: I'm just going to say no -- there's no legal basis
10 why this instruction should be given. I think it probably inaccurately
11 states the law. Hold on.

12 MR. MARTINEZ: You're on the wrong instruction, Christian.

13 MR. MILES: I thought it was page 2.

14 MR. MARTINEZ: It's this one.

15 MR. MILES: Oh, we're on 2?

16 MR. MARTINEZ: We're on 3.

17 THE COURT: I'm on 3.

18 MR. MILES: Yeah, that's what I was on, 3.

19 MR. MARTINEZ: So the first page -- the very, very, very first
20 page is the first instruction.

21 MR. MILES: Oh, okay. Yeah.

22 MR. MARTINEZ: And then this one is number 2.

23 MR. MILES: Okay. Yeah, I'm just -- all my objections for the
24 next 1 through -- that doesn't have no legal authority cited, I'm just going
25 to say there's no legal authority, no legal basis just to make it clear for

1 the record.

2 THE COURT: Hang on a second. What did you tell the
3 jurors?

4 THE MARSHAL: I didn't have a time for [indiscernible].

5 THE COURT: All right. Let's tell them -- do you guys want an
6 afternoon break before we start?

7 MR. MILES: I think, yeah. I need some water.

8 THE COURT: All right. Why don't you cut them loose until
9 4:15, and then tell them we'll come back and do closings. Does that give
10 everybody enough time --

11 MS. RHOADES: Yes.

12 THE COURT: -- to set up whatever they need to?

13 Mr. Miles?

14 THE MARSHAL: 4:15?

15 THE COURT: Yeah. Tell them we'll come back and we'll do
16 closings at 4:15.

17 THE MARSHAL: Okay.

18 THE COURT: Okay. I'm sorry. Go ahead. Instruction
19 number 3. Are you objecting to that one?

20 MR. MILES: Yeah, I'm going to object --

21 THE COURT: Okay.

22 MR. MILES: -- no legal basis.

23 THE COURT: Okay. Four, it is the duty of the jury.

24 MR. MILES: I'm going to object, the same thing. And I -- it
25 doesn't have an instruction in place.

1 THE COURT: Well, is that second -- was that just the ending
2 of instruction 3?

3 MS. RHOADES: That's the ending of 3.

4 THE COURT: Okay. Got you.

5 So instruction 4 will be to constitute the crime charged, are
6 you objecting?

7 MR. MILES: Yeah, I'm going to object, no legal basis.

8 THE COURT: Okay.

9 MR. MILES: Inaccurately states the law.

10 THE COURT: Do you want the Defendant is presumed
11 innocent?

12 MR. MILES: I'm going to say no legal basis. Inaccurately
13 states the law.

14 THE COURT: Okay. That's the law the on reasonable doubt.
15 You don't want that?

16 MR. MILES: Oh, that's the one on reasonable doubt?
17 Reasonable doubt, wait. Isn't Your Honor already going to instruct them
18 on reasonable doubt? Isn't that how it works?

19 THE COURT: These are the instructions.

20 MR. MILES: Oh, these are the instructions? Okay.

21 THE COURT: This is the instruction on reasonable doubt.

22 MR. MILES: I mean, we could put that one in.

23 THE COURT: Want that one in?

24 MR. MILES: Wait. No, because that one -- no, I don't like
25 how it's defined reasonable doubt. Reasonable doubt should be defined

1 per the statute that's in the case law, not how they defined it.

2 THE COURT: Well, you didn't bring an alternate reasonable
3 doubt, so this is the reasonable doubt instruction I have. If you have an
4 alternate, I will look at it. This is -- appears to be the law on reasonable
5 doubt.

6 MR. MILES: Okay. I'm still just going to -- my objection
7 inaccurately states the law. Is that okay? I mean, I'm not trying to
8 confuse it. Is it -- can I do that?

9 THE COURT: Yeah, it's okay. I mean, you don't want the jury
10 instruction on reasonable doubt, and you don't bring me another one.
11 You don't like this one. So I don't know what you --

12 MR. MILES: Yes, I'm sorry, Your Honor. I thought
13 normally -- because this is my first time doing a trial -- yeah.

14 THE COURT: This is the very difficult aspect of representing
15 yourself.

16 MR. MILES: Yeah.

17 THE COURT: I'm going to leave that in. I find that's the
18 reasonable -- the legal definition of reasonable doubt.

19 You are here to determine the guilt or innocence -- I'm going
20 to -- isn't that supposed to be guilt, whether the Defendant is guilty?
21 Have you guys not changed that in the docs yet?

22 MS. RHOADES: We haven't, so it should be --

23 THE COURT: Come on. You are here to determine whether
24 the Defendant is guilty or not guilty.

25 MR. MILES: So whether the Defendant is guilty?

1 MR. MARTINEZ: Or not guilty.

2 THE COURT: Yeah. They don't have to find you innocent,
3 just not guilty; meaning, the State hasn't --

4 MR. MARTINEZ: So I think we sent a Word document to
5 chambers and so if they could maybe make that change and then
6 printout --

7 THE COURT: Uh-huh.

8 MR. MARTINEZ: -- consistent with Your Honor's ruling.

9 MS. RHOADES: And then do you want to leave that second
10 sentence in there?

11 THE COURT: Hang on.

12 [Court and Clerk confer]

13 THE COURT: What's your question?

14 MS. RHOADES: Do you want to change the second sentence
15 because that one also says you're not here to determine the guilt or
16 innocence?

17 THE COURT: Yes. Thank you.

18 And that'll be six.

19 Do you have an objection to that?

20 MR. MILES: I'm just going to say it doesn't -- no legal basis.

21 THE COURT: The other two are to consider in this type of
22 case, any objection?

23 MR. MILES: No legal basis.

24 THE COURT: The credibility or believability of a witness?

25 MR. MILES: I'm just going to say no legal basis on that one.

1 THE COURT: Okay. I believe that's the law on credibility.
2 Witness who has special knowledge, skill, and experience.

3 MR. MILES: No legal basis.

4 THE COURT: I believe that's the law on expert testimony.
5 Evidence that the Defendant committed offenses, other than
6 that for which he was on trial if believed was not received or may not be
7 considered.

8 MR. MILES: Wait. I mean, I think that one is fair.

9 THE COURT: That's good?

10 MR. MILES: That's fair.

11 THE COURT: Okay. That'll be 10.

12 11, both of Nevada and the United States Constitution entitle
13 criminal defendants right to counsel, even at no cost if necessary;
14 however, in certain circumstances Defendant may elect himself.

15 MR. MILES: Yes.

16 THE COURT: No inferences, either positive or negative may
17 be drawn. Do you object to that?

18 MR. MILES: That's fine.

19 THE COURT: Okay. 12 a person is guilty of sex trafficking a
20 child, I believe that's the statute.

21 MR. MILES: Hold on. I see 12 is, says it's a -- oh, mine says
22 12, it is a constitutional right to a defendant in a criminal trial that he may
23 not be held to testify.

24 THE COURT: I think that's 11.

25 MR. MARTINEZ: You took that one out.

1 MR. MILES: Oh, we took that one out?

2 THE COURT: Right. Sorry. Because you testified.

3 MR. MILES: Yeah.

4 THE COURT: Okay. So now both the Nevada and United
5 States Constitution that's 11, right?

6 MR. MILES: I have -- when I just took that page out, it
7 says -- oh, yeah, 11 -- well, yeah.

8 THE COURT: Okay. So then 12 is a person is guilty of sex
9 trafficking. That's right out of the statute.

10 MR. MILES: I'm going to say that -- I'm just going to say no
11 legal basis.

12 MR. MARTINEZ: Well, that's the statute itself.

13 THE COURT: It is the statute.

14 MR. MILES: Oh, that's the statute?

15 THE COURT: That'll be given over objection, 12.

16 13, the consent of a child to an act of prostitution. That's also
17 by statute.

18 MR. MILES: But I mean that's the statute, so I already read
19 that so --

20 THE COURT: All right. 14, it's not a defense that the victim
21 (sic) did not have knowledge of the victim's age. That's statute.

22 MR. MILES: Yeah, I think that's the statute too.

23 THE COURT: 15, there's no requirement that the testimony
24 of a victim of sex trafficking be corroborated. Any objection?

25 MR. MILES: Yeah. I'm actually going to object to that,

1 because -- yeah, I'm going to object to that one because it was my theory
2 of the case that it should still be corroborated. I'm still litigating that, so
3 I'll object to that.

4 THE COURT: Okay. I'm going to give that over your
5 objection. That's the law, 15.

6 16, every person who leads takes away -- that's just the
7 definition of kidnapping by statute.

8 MR. MILES: Okay. Okay.

9 THE COURT: Are you okay with that? I'm giving that.

10 17, the person who knowingly accepts, receives, levies, the
11 living off the earnings of a prostitute; that's the statute. Any objection?

12 MR. MILES: I think that incorrectly cites the statute. I don't
13 have the statute right here, but I remember there was some word play
14 going on with the last -- hold on, I could look at it right here.

15 I'm just going to say inaccurately states the law, because I
16 can't -- I don't have the statute right here, but I don't think --

17 MR. MARTINEZ: I guess, what's the Defendant's --

18 MR. MILES: I think there were some words --

19 MR. MARTINEZ: -- interpretation of the statute? What
20 should it say?

21 MR. MILES: Without the consideration part, I would have to
22 look at that, but I know it's some weird -- it was some stuff going on with
23 that. I was going to file a motion to -- you know, in previous proceeding
24 to strike surplusage, but I think it's something funny going on with that.
25 I'll have to -- I'll have to look at the statute, but I'm just going to object to

1 inaccurately states the law.

2 THE COURT: Well, this is the time, so if you have an
3 objection, now is the time. Can you pull up 201.312.

4 THE CLERK: Yeah.

5 MR. MILES: Do you have the statute?

6 THE COURT: Can you just show it to him, please?

7 NRS 201.320 provides living from earnings of prostitute. "A
8 person who knowingly accepts, receives, levies or appropriates any
9 money or other valuable thing, without consideration, from the proceeds
10 of any prostitute, is guilty of" a felony -- well, it actually says, "is guilty of
11 a category D felony and shall be punished as provided in NRS 193.130."

12 Two says, as such "acceptance, receipt, levy or appropriation
13 of money or valuable thing upon any proceedings or trial for violation of
14 this section is presumptive evidence of lack of consideration." That's
15 what it says in its entirety.

16 So are you still objecting?

17 MR. MILES: Should we include that part at the end on --

18 THE COURT: It's in there.

19 MR. MILES: I mean, from what you said out the statute it's
20 like a couple of more words, should we put that in there too, or --

21 THE COURT: What words?

22 MR. MILES: I mean, I'm just -- we'll just -- let's move
23 forward, Your Honor. Let's move forward. That's fine.

24 THE COURT: Okay. That would be 17.

25 18, a person who willfully causes a child, that'll --

1 MR. MILES: I'm going to object to that because I know that
2 statute specifically you have to state if it sexual content -- hold
3 on -- sexual --

4 THE COURT: I think if you'll look at the next page, Mr. Miles,
5 it covers what you're talking about.

6 MR. MILES: I think that should be in the phrase though, as a
7 result of abuse and neglect, it kind of changes what it is. Physical pain,
8 and mental suffering as a result of abuse or neglect to wit sexual
9 exploitation by encouraging, I think that part should be in there too,
10 because abuse and neglect they could infer that to mean anything.
11 There's no guidance.

12 MR. MARTINEZ: There's guidance on the next --

13 THE COURT: Okay. So you want to --

14 MR. MARTINEZ: -- instruction.

15 THE COURT: -- combine these two; is that what you're
16 asking to do?

17 MR. MILES: Yeah, I think it should be combined, because it
18 could be kind of misleading to --

19 THE COURT: Okay.

20 MR. MILES: -- read one page.

21 THE COURT: Any objection?

22 MR. MARTINEZ: No, Your Honor.

23 THE COURT: All right. We'll add the abuse and neglect
24 definitions to jury instruction 18, and then you have no objection to it
25 that way?

1 MR. MILES: Yeah, because that way that's fine.

2 THE COURT: Okay. When a trial witness fails for whatever
3 reason to remember a previous statement made by the witness, the
4 failure of recollection constitutes a denial of the prior statement and
5 makes it a prior inconsistent statement. The previous statement is not
6 hearsay and may be considered both substantively and for
7 impeachment.

8 MR. MILES: I mean, that's crazy that they're actually putting
9 the same jury instruction that that's kind of what I was saying when I was
10 on the stand, like --

11 THE COURT: So I guess you want it, huh?

12 MR. MILES: I mean, it's a little late right now, but that's kind
13 of like what I was saying when I was impeaching the witness just --

14 THE COURT: Okay. So do you have an objection to this jury
15 instruction?

16 MR. MILES: I'm just going to -- the reason why I'm going to
17 object, Your Honor, is because they were denying my reason why I
18 wanted to admit the evidence. I was telling them this and they said no,
19 that's not the hearsay rule, but you're asking for the same hearsay
20 instruction.

21 THE COURT: Well, I disagree that that's what happened,
22 but --

23 MR. MARTINEZ: We can take it out. That's fine.

24 THE COURT: Okay. We'll take it out. And that's consistent
25 with the Defendant's request to not have it.

1 THE COURT: Correct, at Defendant's request, it won't be
2 given.

3 And that, just for the record, is -- well, I read it already, so I
4 don't have to read it again.

5 And now we are on 19. The State has the burden of proving
6 the accused voluntarily, knowingly waived his Miranda. I assume you
7 want that in?

8 MR. MILES: Hold on, Your Honor.

9 THE COURT: That gives the jury the opportunity to
10 determine voluntariness of a confession.

11 MR. MILES: That's fine. Which number is that? Is that 19 or
12 20?

13 THE COURT: That's 19.

14 A statement made by a Defendant, other than at his trial may
15 be either an admission or a confession. Do you want that in, or not? I'm
16 going to defer to you on this one, Mr. Miles. If you want it, you can have
17 it. If you don't, I won't give it.

18 MR. MILES: No, I don't want that in.

19 THE COURT: I'm going to take that one out, guys. I think it's
20 covered by the other statute regarding credibility of a witness.

21 MR. MARTINEZ: No objection.

22 THE COURT: Although you are to consider only the evidence
23 in this case in reaching a verdict, you must frame the consideration of
24 your evidence -- of the evidence your everyday common sense. That'll
25 be 20. The commonsense instruction. Any objection?

1 MR. MILES: Sure.

2 THE COURT: Sure what? You object?

3 MR. MILES: We could have it in.

4 THE COURT: You want it?

5 MR. MILES: Yeah. Yeah, we could have it in.

6 THE COURT: Okay. No objection is that what you're --

7 MR. MILES: No. No objection.

8 THE COURT: Okay. 21, in your deliberation you may not
9 discuss or consider the subject of punishment. Any objection?

10 MR. MILES: That's fine. No objection.

11 MS. RHOADES: I would just say, Your Honor, that second
12 sentence consistent with your prior --

13 THE COURT: Thank you. Yeah. Appreciate it.

14 MR. MILES: So we're taking it out?

15 THE COURT: We're going to just instead of saying guilt or
16 innocence, we're going to say whether the Defendant is guilty or not
17 guilty.

18 MR. MILES: Okay.

19 THE COURT: Innocence is a different connotation. They
20 don't have to believe you're innocent. They just have to find that you're
21 not guilty because the State didn't meet their burden. It's actually a
22 change that works to your benefit, and I will tell you that Defense
23 attorneys always ask for it.

24 MR. MILES: Okay.

25 THE COURT: Okay. But if you don't want it, I won't give it to

1 you. I won't give it. Do you want it?

2 MR. MILES: Sure.

3 THE COURT: Okay. 22, during the course of this trial, and
4 your deliberation you are not to communicate with anyone, and
5 any -- this is really just the --

6 MR. MILES: Same instruction.

7 THE COURT: -- it's the admonishment.

8 MR. MILES: Yeah, admonishment.

9 THE COURT: Do y'all want it?

10 MR. MILES: Yeah.

11 MR. MARTINEZ: Yes, Your Honor.

12 THE COURT: Okay. 22 is in.

13 You're not objecting, right?

14 MR. MILES: Not objecting. No objection.

15 THE COURT: Okay. When you have tried to consider your
16 verdict. No objection, I assume? That's just the -- tells them that they --

17 MR. MILES: No objection.

18 THE COURT: And that will be jury instruction 23.

19 24, if during your deliberation -- that's the read
20 back -- playback. Any objection?

21 MR. MILES: No. No objection, Your Honor.

22 THE COURT: 25, now you will listen to the arguments of
23 counsel. Any objection?

24 MR. MILES: No objection.

25 THE COURT: Okay. State, are you familiar with instructions

1 1 through 25?

2 MS. RHOADES: Yes, Your Honor.

3 MR. MARTINEZ: Yes, Your Honor.

4 THE COURT: Okay. Do you have any additional
5 objections -- any objections that haven't already been put on the record,
6 or do you have any additional instructions to be offered?

7 MS. RHOADES: No.

8 THE COURT: Mr. Miles, are you now familiar with the
9 instructions 1 through 25?

10 MR. MILES: Yes, Your Honor.

11 THE COURT: And other than the instruction -- other than the
12 objections you already placed on the record, do you have any additional
13 objections?

14 MR. MILES: Not at this time, Your Honor.

15 THE COURT: And other than the instructions of yours
16 previously that have been marked as Court's Exhibit 11, do you have any
17 other jury instruction, you seek to offer at this time?

18 MR. MILES: No, not at this time.

19 THE COURT: Okay. Then we will be on break. Well, we're
20 going probably run -- are you familiar with the verdict forms?

21 MR. MILES: I guess I've seen some on TV and --

22 THE COURT: Well, look at these.

23 MR. MILES: Yeah, I looked --

24 THE COURT: Do you have any objection to the verdict
25 forms?

1 MR. MILES: And each of the jury members are going to be
2 provided a copy of each of these verdict forms?

3 THE COURT: Yeah, we're going to go make -- we're going
4 make copies of the whole packet.

5 MR. MILES: Okay.

6 THE COURT: So do you have any objection to the verdict
7 forms?

8 MR. MILES: No.

9 THE COURT: Okay. All right. Jury instructions settled.
10 Thank you.

11 We're going to go make the changes and make copies for the
12 jury. We're probably going to run a little bit late, I mean, honestly,
13 because I think it's a lot easier if they could along and have their own
14 copy of them.

15 Do y'all have an idea of how long your arguments are going
16 to be?

17 MS. RHOADES: 20, 30 minutes. Can the jury not stay late?

18 THE COURT: Yeah, they can stay, but I'm not keeping them
19 crazy late. I'll keep them a little bit late if we could finish up closings, but
20 I'm not keeping them -- it's already ten after.

21 MS. RHOADES: Okay. And then -- okay.

22 THE COURT: Monday nights and --

23 THE MARSHAL: Yeah.

24 THE COURT: -- staff. I just -- I don't think that's --

25 THE MARSHAL: Okay.

1 MS. RHOADES: Are we going to give them the option to stay
2 late and deliberate or just send them home?

3 THE COURT: I don't like to give them too -- I mean, it kind of
4 depends on where we get out. I mean, there's a bib basketball playoff
5 game and such tonight --

6 MS. RHOADES: Oh, okay.

7 THE COURT: -- and stuff. I just --

8 MR. MARTINEZ: Huge.

9 THE COURT: Like I said, I don't mind staying 15 minutes, half
10 hour over to get it done, or if there's some compelling reason. If they
11 beg, I suppose maybe.

12 MS. RHOADES: Okay.

13 THE COURT: Feel them out. And we're off the record now.

14 [Recess at 4:06 p.m., recommencing at 4:13 p.m.]

15 [Outside the presence of the jury.]

16 THE COURT: All right. Let's go ahead and release the jury
17 for the evening and we'll have them come back tomorrow at 1:00, and
18 we'll right from jury instructions, and closings, but I'm going to have
19 you, the parties stay for a little bit until she gets these final to make sure
20 you look them over and we're all good to go so that they can make the
21 copies before we come back tomorrow, and we don't have any problems
22 when we come in.

23 MR. MARTINEZ: So should we make sure that the jury
24 knows that was your decision and like not our request?

25 THE COURT: What's that?

1 MR. MARTINEZ: That we're closing for today and finishing
2 tomorrow?

3 THE COURT: Well, do you want to bring them back in and I'll
4 release them for the night?

5 THE MARSHAL: I think with that explanation for them,
6 because I know one of the -- Ms. Loretta, seat 13, she can't go past 5:15
7 tomorrow, and I told her that she would have a chance to explain to you.

8 MS. RHOADES: She's our first alternate.

9 THE COURT: I told them early on if there's a problem -- you
10 want to bring them in?

11 MR. MARTINEZ: No, I wasn't saying that.

12 THE COURT: No. Oh.

13 MR. MARTINEZ: I wasn't saying we should bring them in.

14 THE COURT: No, I told them we'd quit by 5:00, unless they
15 want to go while we're closed.

16 THE MARSHAL: Yeah, I told her that too.

17 THE COURT: We're not closed, so there's no reason to -- if
18 we go over tonight --

19 THE MARSHAL: Right.

20 THE COURT: -- we're literally going to be here until --

21 THE MARSHAL: Right.

22 THE COURT: -- 6:00, 7:00, and I won't do that. So that being
23 the case, there's no point so we'll come back at 1:00. If she has an issue
24 at 5:15 tomorrow --

25 THE MARSHAL: Yeah.

1 THE COURT: -- we won't worry about it. I think she's an
2 alternate anyway, so it may very well be that she's not even here.

3 MR. MILES: Here's an exhibit. Did y'all get the exhibits
4 already?

5 THE COURT: And see this is why I asked for -- will you do a
6 head count of these exhibits too while we're here, please.

7 THE CLERK: That's what I'm doing right now.

8 THE COURT: I don't know I keep seeing exhibit numbers
9 over both of your tables over there. I see light blue ones and then I see
10 red ones mixed in amongst your other -- everybody's papers.

11 MR. MARTINEZ: Are we on the record?

12 THE CLERK: Yeah.

13 THE COURT: So while we're here, everybody go through
14 their stuff. She's doing a check on her exhibits. You guys check your
15 papers before you leave.

16 You're doing this.

17 [Pause]

18 MR. MARTINEZ: I think there are a few proposed exhibits
19 that we didn't actually admit, so we just need to pull those out.

20 THE COURT: Okay.

21 MR. MILES: What happens to the proposed exhibits? Do I
22 keep them, or do they go --

23 THE COURT: No, leave them with us, right, the proposed
24 that don't get offered?

25 THE CLERK: Until the end and then, because they won't go

1 back into the jury room.

2 THE COURT: Right, but will they stay part of the record?

3 THE CLERK: No. I think it's up to you.

4 THE COURT: I like to keep everything that's referenced on
5 the record, because down the road if we need it, we know what it was, so
6 let's just do that.

7 MR. MILES: Is there any way -- not right now, but eventually,
8 if I could get a copy of all these proposed exhibits, because there was
9 sometime during the trial just to speed it up I was taking some of my
10 only copies. Not right now. We can wait until another day, I'm just
11 saying, just to make sure. I don't need to do it right now.

12 THE COURT: Let's see what happens. You're talking for like
13 appeal purposes and such in the event you're convicted?

14 MR. MILES: Yeah, in the event --

15 THE COURT: Okay. Well, if you're acquitted, then you won't
16 need anything, right?

17 MR. MILES: I mean --

18 MR. MARTINEZ: That's true.

19 MR. MILES: Yeah.

20 THE COURT: I'm just saying. I don't want to make
21 somebody have to go through and make multiple copies. Those are
22 things that you should have taken care of before you came. I don't mind
23 doing it for you if you need them or whatever, I'm just saying let's make
24 sure there's a need to. Okay.

25 MR. MILES: Okay.

1 THE COURT: If you need them for your closing, but you can't
2 reference them anyway, because they're not in evidence, right?

3 MR. MILES: Yeah -- no, my closing is just going to be all
4 from memory.

5 MR. MARTINEZ: Be all what?

6 MR. MILES: All from memory.

7 THE COURT: Okay. So let's go -- do we have anything else
8 on the record?

9 MR. MARTINEZ: Just one thing -- actually, no, we don't.
10 Sorry.

11 THE COURT: Okay. Adam, you released them?

12 THE MARSHAL: Yes, I did.

13 THE COURT: Were there big groans and stuff?

14 THE MARSHAL: Yep. No issues.

15 THE COURT: Everybody's good?

16 THE MARSHAL: Yep.

17 THE COURT: 1:00 tomorrow is fine?

18 THE MARSHAL: Nobody was made or nothing.

19 MR. MILES: These are all the exhibits right here.

20 THE COURT: Those are more exhibits that are admitted?

21 MR. MILES: Just admitted right here, and then you said you
22 wanted everything on the record.

23 THE COURT: I just want the proposed -- no, give me --

24 MR. MILES: Proposed right here, and then here's the
25 admitted exhibit right here.

1 THE COURT: So do those have -- were those numbered --

2 MR. MILES: These were numbered.

3 THE COURT: -- or lettered?

4 MR. MILES: All these were numbered and marked for
5 identification. Let me see if there's another exhibit.

6 THE COURT: Were they actually referenced at all during the
7 trial?

8 MR. MILES: Some were referenced. I know the Facebook
9 one was referenced. The interview was referenced. The -- this at some
10 point was referenced. This was referenced. This wasn't.

11 THE COURT: Yeah, we're going to have to make copies of all
12 that stuff, so bring it up. Yeah, we're going to need to keep -- you
13 offered a lot of them and they were denied, so --

14 MR. MARTINEZ: So that Defense exhibit --

15 THE COURT: That needs to be in.

16 MR. MARTINEZ: Right. But I'm saying is, there may be a
17 temptation to take off the sticky note that you put on there.

18 THE COURT: Let's --

19 MR. MILES: Oh, while we're talking about that, because I
20 wanted to make this clear, the physical evidence is the cell phone
21 evidence, that's not going back with the jury, is it?

22 THE COURT: Yeah.

23 MR. MILES: Well, can we take the batteries out, so they're
24 not tempted to turn on the phones and look at stuff that has nothing to
25 do with the case, because that --

1 MS. RHOADES: They haven't been charged. They're not
2 going to power. I mean, you can try to power them up, they're not going
3 to power up. They haven't been charged in years.

4 MR. MILES: But they have batteries, and they to -- I'm sure
5 the battery has some type of juice. I would just think to be safe take the
6 batteries out if they're going to have it back there. There's no harm in
7 doing that.

8 MR. MARTINEZ: Well, I also don't want the jury believing
9 that we didn't have a functional phone to do a forensic examination on if
10 it's not --

11 MR. MILES: Because if I was the jury --

12 THE COURT: So what are you guys asking? Are you asking
13 me to stipulate that the jury not turn on the phone? I don't even know if
14 that's --

15 MR. MILES: Batteries out because I know if I was a jury, I'm
16 going to try to turn the phone on. That's what I'm going to do.

17 MR. MARTINEZ: Well, that's --

18 MR. MILES: Because the phone is there.

19 MR. MARTINEZ: -- a legal basis to alter the evidence just
20 because he would do it.

21 MR. MILES: I think to be safe, I don't see why he would want
22 that --

23 THE COURT: I'm not going to take out evidence that's been
24 admitted. I can't do that.

25 MR. MARTINEZ: Right. That's the State's position.

1 THE COURT: If evidence is admitted, it has to go back to the
2 jury.

3 MR. MILES: Or just instruct them don't -- because
4 I'm -- they're going to want to turn this on and get to looking at stuff that
5 hasn't been properly admitted innocent evidence that could have prior
6 bad acts, all type of stuff, so that would defeat the whole purpose of
7 having to go through the rules of evidence if they could just look through
8 the phones at will.

9 THE COURT: Let me sleep on that. I'll ask around and figure
10 out whether we just take everything apart. Whether we actually try them
11 and confirm the fact that they're not turning on. I'm certain they're not
12 going to turn on. There's no way. Just the fact that they've been in
13 court not plugged in for week, I can't imagine that they're going to work,
14 but we'll try them. I

15 MR. MILES: Okay.

16 THE COURT: I mean, I'll figures something out.

17 Anything else? Do we have our instructions here?

18 THE CLERK: Yeah. I've printed out copies for them, and --

19 THE COURT: Okay. Everybody flip -- are they numbered and
20 everything?

21 THE CLERK: I numbered them, yeah.

22 THE COURT: Perfect.

23 Guys, look through them. See if the changes that have been
24 made that we promised to make.

25 MR. MARTINEZ: What are we going to do with the Defense

1 exhibit that has the sticky notes over it that has the hearsay?

2 THE COURT: We're going to fix that tomorrow.

3 MR. MARTINEZ: Okay.

4 MR. MILES: You guys could write over it. I already have
5 another copy of that. I don't need that.

6 THE COURT: Oh, what we'll do is, we'll keep an original
7 copy, and then we'll make a secondary copy that we just cover that
8 portion, but we'll have one will Court's exhibit, so we know what was
9 kept in and was kept out, or -- so we have a record of it, but we'll take of
10 that before 1:00 tomorrow.

11 Flipping through, everything looks good? Checking typos?

12 MR. MILES: Oh, I didn't check yet.

13 MS. RHOADES: They just have one verdict form, right?

14 THE COURT: There should have been two, weren't there?

15 MS. RHOADES: Well, just one verdict form to go back with
16 the jury, right? Not one for each juror.

17 THE COURT: Oh, you mean attached to it?

18 MS. RHOADES: Yeah.

19 THE COURT: I don't know if we've ever left them on as just
20 kind of proposed to review or not. Yeah, let's just do one. Yeah. I think
21 you're right. Let's do one, because it gets -- so we don't get confused
22 and end up with 12 different verdict forms since it costs, so we'll take
23 those off and make those separate, please.

24 Are we done?

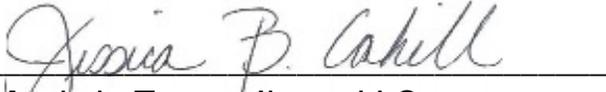
25 MS. RHOADES: Yes.

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THE COURT: I'm done.
MS. RHOADES: Thank you.
THE COURT: Thank y'all. See you tomorrow.
MR. MARTINEZ: Thank you.
MR. MILES: Thank you.
THE COURT: So we rendezvous at 12:45?
MR. MARTINEZ: That's fine.
THE COURT: All right. Come at 12:45, please.
MR. MILES: Yeah. I don't see how y'all not tired. This trial
stuff be wearing me out.
THE COURT: Yeah. And everybody is good with the
instructions, right?
MS. RHOADES: Yes.
MR. MARTINEZ: Yes, Your Honor.
THE COURT: She's making 15 copies or 18 copies, so --
THE CLERK: I'm going to do it in the morning so --
THE COURT: Speak now.
THE CLERK: -- if there's anything you want me to --
THE COURT: Thank you, guys.

[Proceedings concluded at 4:23 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.


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