

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY BROWN

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 81962

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Valerie Adair, District Judge
District Court No. C-17-326247-1

APPELLANT'S APPENDIX VOLUME 12 OF 18

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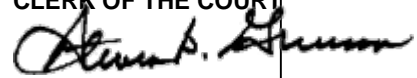
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff(s),

vs.

LARRY DECORLEON BROWN,

Defendant(s).

Case No. C-17-326247-1

Department XXI

BEFORE THE HONORABLE VALERIE ADAIR,
SENIOR DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 18, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – DAY 7 of 9**

APPEARANCES:

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Deputy District Attorney

For the Defendant(s):

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Chief Deputy Special Public Defenders

RECORDED BY: ROBIN PAGE, COURT RECORDER

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None offered.

1 **LAS VEGAS, NEVADA; WEDNESDAY, DECEMBER 18, 2019.**

2 [Proceeding commenced at 9:20 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Everyone ready? The jurors are now all
6 here.

7 MS. TRUJILLO: Yes.

8 MR. GIORDANI: Yes.

9 THE COURT: All right. Bring them in.

10 [Jury reconvened at 9:21 a.m.]

11 THE COURT: Court is now back in session. The record
12 should reflect the presence of the State through the deputy district
13 attorneys, the defendant and his counsel, the officers of the court,
14 and the ladies and gentlemen of the jury. Everyone can be seated.

15 MS. TRUJILLO: Thank you.

16 THE COURT: And is the State ready to call its next
17 witness?

18 MR. GIORDANI: Yes, Your Honor. Our final witness will
19 be Marjorie Davidovic.

20 THE COURT: All right.

21 **MARJORIE DAVIDOVIC,**

22 [having been called as a witness and first duly sworn, testified as
23 follows:]

24 THE COURT CLERK: Thank you. Please be seated. State
25 and spell your first and last name for the record.

1 THE WITNESS: My name is Marjorie Davidovic,
2 M-A-R-J-O-R-I-E, D-A-V-I-D-O-V-I-C.

3 THE COURT: You may proceed.

4 MR. GIORDANI: Thank you.

5 **DIRECT EXAMINATION**

6 BY MR. GIORDANI:

7 Q Good morning, ma'am.

8 A Good morning.

9 Q Thank you for coming back today after waiting yesterday.
10 I appreciate it.

11 A No problem.

12 Q What is it that you do for a living?

13 A I work for the Las Vegas Metropolitan Police Department
14 Forensic Laboratory in the Department of the Biology and DNA
15 Detail, where I'm a forensic scientist 2.

16 Q How long have you been a forensic scientist 2?

17 A Here with Metro, for about six and a half years.

18 Q Where were you prior to that?

19 A Prior to working with Metro, I worked as a forensic
20 scientist -- forensic science technician, and then promoted to a
21 forensic scientist 1 for about eight and a half years at the Suffolk
22 County Crime Laboratory, which is on Long Island in New York.

23 Q Do you have any specialized education or training in order
24 to what you do with Metro?

25 A Yes. There's an extensive amount of requirements for

1 education and training in order to become a forensic scientist. I
2 have a Bachelor's of Science in Biochemistry from Stoney Brook
3 University, and a Master's of Science in forensic examinations from
4 Touro College, which are both in New York.

5 Prior to being released into independent casework, there's
6 a minimum of about a year to a year and a half training that is
7 required to go into forensic science when you're on the job. Even
8 coming here to Metro, I had about eight years' experience
9 beforehand, still required at least another year of training, where
10 there's an extensive amount of competency and proficiency exams,
11 and you can't move forward until the next level of training until you
12 pass each one of these exams.

13 And there's many, many exams and required continuing
14 education that we need to have every year for the rest of our
15 careers.

16 Q What are your general kind of duties and responsibilities
17 on a day-to-day basis as a forensic scientist in the DNA section?

18 A My responsibilities are examining evidence as they're
19 submitted from the scene of a crime. Evidence for biology and
20 DNA could literally be anything. And we also look to identify any
21 types of body fluids using serology or biology fluid testing to look
22 for possible blood or semen, saliva, bone tissue, urine, skin cells,
23 and then also look to develop DNA profiles from this biological
24 material and make comparisons of profiles from evidence to
25 profiles from known standards, which are also known as reference

1 standards, which are just a swab of somebody's inside cheek to
2 collect their cells. And these are known profiles from a known
3 individual. And we use those to make comparisons to the evidence
4 DNA.

5 Q I want to have you educate the jury a little bit and just
6 describe or explain to them what is DNA?

7 A DNA is, basically, a genetic blueprint of every living
8 organism. So it's what makes a plant a plant, a dog a dog, and a
9 human being a human being. Not only is it responsible to make
10 sure we have two arms, two legs, a stomach, a brain, but it also is
11 uniquely individual to each and every one of us, unless you have an
12 identical sibling. We get half of our DNA from our mother and half
13 of our DNA's from our father and again, it's unique to each person.

14 Q And you referenced previously a DNA profile; what does
15 that mean?

16 A A DNA profile in terms of forensic testing is a series of
17 what looks like to us peaks on a graph. And the type of forensic
18 testing that is used here in Metro, but also throughout the United
19 States and throughout the world is known as STR DNA testing.
20 STR stands for Short Tandem Repeat. What it is, is small
21 sequences of DNA that repeat itself one after another after another
22 in sequence. And we target 21 different locations on a DNA profile
23 and look at these short tandem repeats in each one of the se
24 locations.

25 The locations that we are testing for in forensics is not like

1 what you would see on TV, where you would put a vial of blood in a
2 machine and it comes out saying the guy is 6-foot-4 and blond hair
3 and Norwegian descent. It's not like that at all.

4 It's from what is know as non-coding regions of DNA. So
5 these are areas that don't code for proteins that make us look like
6 what we look like. But it's highly individualized. So we look at each
7 one of these locations to see these different peaks. For example, if
8 in one location I have a peak -- I have one peak that's a 13, the other
9 peak that's a 16, I got one from Mom, one from Dad, that means
10 one peak has 13 of these short tandem repeats, the other peak
11 has 16 of these short tandem repeats. And at that location, my
12 profile is a 13-16.

13 I then move onto the next location and look at those
14 peaks. And then the combination of all 21 of those locations, and
15 including the sex-determining genes, determines the entire DNA
16 profile that's used in forensic testing.

17 Q Are there instances in which you can develop multiple or
18 mixture profiles?

19 A Yes, there are.

20 Q Can you describe kind of generally what those are? What
21 that means for the jury?

22 A So there are two main types of evidence DNA profiles.
23 The first one is known as a single source or a full DNA profile.
24 From looking at those peaks that I described, I can tell that this is
25 DNA from one individual, the source is one person. There are also

1 times where I have, in each one of these locations, several peaks,
2 sometimes three, four, five, or six in each location, indicating that
3 there is a mixture of DNA.

4 And if you think of it as a single source, like a jar of white
5 marbles, there's only white marbles, I know this is from one person.
6 But if I see a mixture profile now of, let's say, red, green, and white
7 marbles, well, that could be from three individuals. Sometimes you
8 can tell mathematically that there are a lot more green marbles than
9 there are the red and white marbles. So these green marbles would
10 be the major component of that mixture DNA profile.

11 Q And you've discussed how DNA is unique and that it's
12 stored in our bodies. Where in our bodies can DNA be found?

13 A DNA is in almost every single cell within our bodies. And
14 a DNA from our skin cells is the same DNA that's in the blood cells,
15 that's in our stomach cells, et cetera.

16 Q And how do we shed that DNA in our everyday lives?
17 How can it shed?

18 A We shed DNA literally just by handling any objects or just
19 by sitting in a chair. And that type of DNA that is known as -- that's
20 shedding is what we know in the forensic community as touch
21 DNA. So you can't see it, you can't test for it under a microscope,
22 not like you can see blood or you can see sperm heads from a
23 semen sample from a sexual assault. This is DNA that's used from
24 handling an object or wearing an item of clothing. So if I were to
25 swab the inside of my suit jacket, the back of the neck of the jacket a

1 little later, I'm looking to collect any cells that could have been
2 sloughed off or shed from my skin. And that is used to develop a
3 DNA profile.

4 Also, the purse that I'm holding, if I were to swab the
5 straps, again, this is what's known as touch DNA.

6 Q Is somebody going to necessarily shed or leave touch
7 DNA on an item simply because they handled it or does it depend
8 on the item and multiple factors?

9 A No, it doesn't necessarily mean that you'll leave DNA.
10 It's -- touch DNA is actually one of the most difficult types of DNA to
11 detect and interpret, because there are so many variables. Some
12 people shed more than others or sweat more than others, doesn't
13 really matter. Also, if I wore this jacket for an hour, but I'm not a
14 big shedder, but my sister wore it -- or my friend wore it for three
15 hours or five hours or -- dependent, some people shed more than
16 others. And again, you can't test for it like you could for blood or
17 semen and you can't see it, but you just have to use swabbings or
18 cuttings to collect any possible cells that could have held onto that
19 surface. Some surfaces hold onto cells better than others. There
20 also could be different environmental factors. Was it left out in the
21 sun? Was it through the rain or through laundry? There's a lot of
22 different variables that could have those skin cells slough off that --
23 that handled objects that you're looking to recover the touch DNA.

24 Q Can heat affect DNA?

25 A Dependent on the heat.

1 Q Okay. The large source of fire, maybe?

2 A Yes, for sure.

3 Q I want to discuss your work in this particular case. Were
4 you assigned as the forensic scientist in the DNA section under
5 Event 1702214563?

6 A Yes, I was.

7 Q And during the course of your work on this case, is it fair
8 to say that you've issued three separate reports?

9 A Yes, that's correct.

10 Q So you've gone back and done supplementary work in
11 addition to what you initially did?

12 A That's correct.

13 Q Okay. I'm going to go through kind of each one in a --
14 chronologically, okay?

15 A Okay.

16 Q Your initial report was issued August 14th of 2017?

17 A That's correct.

18 Q And in that particular report or your assignment, did you
19 receive 18 items of evidence total?

20 A Yes, I believe that's correct.

21 Your Honor, may I refer to my report and my case notes to
22 refresh my recollection?

23 THE COURT: Refresh your memory?

24 MS. TRUJILLO: No objection.

25 THE COURT: All right. You may.

1 THE WITNESS: Thank you.

2 THE COURT: Just let us know when you're looking at
3 those so we know you're refreshing your memory.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: All right. Thank you.

6 THE WITNESS: Yes, that's correct.

7 BY MR. GIORDANI:

8 Q Okay. Of those, you did swabbings or cuttings of several
9 of them and those were annotated as some items. Can you
10 describe for the jury what swabbings or cuttings are?

11 A Yes. Dependent on the type of evidence or what type of
12 biological material is observed or what type of touch DNA I'm
13 looking to collect, you could either take a cutting of an item or a
14 swabbing of it. For example, if I were, again, to look for skin cells
15 that could have been left on the inside of a jacket, I'm usually going
16 to take a swabbing of the inside of that jacket to collect a larger
17 area, like, the entire inside of the lapel or the cuffs of the sleeves
18 onto one swab to try to concentrate as many cells as I can in one
19 area. Again, because touch DNA literally is touch and go. You
20 don't know how much you're going to get until the end.

21 If I see staining and then do serological testing on an item
22 that has red-brown staining, characteristic of dried blood, then I
23 would take a cutting of that area, again, dependent on the item. So
24 if it's a fabric, I can take a cutting of the blood. If it's, for example, a
25 knife handle, I would take a swabbing of that bloodstain.

1 Q And while you mention that, there's something that's
2 been referred to by other witnesses, crime scene analysts
3 specifically, as presumptive blood testing. What does that mean to
4 you?

5 A Presumptive testing is one of the types of testing that we
6 do for biological fluids in our department. What a presumptive test
7 is, it means that this is an indication or it could possibly be this
8 biological material. So in my report, when I report that there is a
9 positive presumptive blood test, it's a type of chemical test that's
10 done that indicates a color change. So if I take a small swabbing or
11 a tiny piece of the cutting of a red-brown stain that I see that could
12 be characteristic of dried blood, the color change in the chemicals
13 that I use will make it a fluorescent pink. And so this is a
14 presumptive test for blood.

15 A confirmatory test would then indicate that this is
16 actually blood of higher -- usually of higher primate. A presumptive
17 test means that it's an indication, because there are some false
18 positives for the type of blood testing that we do, one of which is
19 romaine lettuce. And the -- we don't normally do a confirmatory
20 test for blood, because all of the chemicals and reagents that we
21 use throughout the entire laboratory and DNA extraction process
22 are specific to human and higher primate. So if I had a very rich
23 bloodstain and at the end I get a profile that has no DNA there
24 whatsoever, then I can go back and do a confirmatory test to see is
25 this actually human or higher primate blood?

1 Also, if there's an indication or that there was animal on
2 the scene, sometimes there's a dog in the house that could have
3 been bleeding from, let's say, an attack, then I would do a
4 confirmatory test, because I want to know if the blood on evidence
5 was human or if it was from the dog. If I don't get a confirmatory
6 positive result, then I know it wasn't human and I'm not going to
7 take that on for DNA.

8 So that is why it's not customary to do a confirmatory test
9 unless there is a reason as to why we need to.

10 Q Okay. Now, I've referenced 18 items of evidence. We're
11 going to go through those. But you previously talked about known
12 samples.

13 A Correct.

14 Q Which are typically buccal swabs taken from the inside of
15 the cheek of a known participant, suspect, victim, [indiscernible]; is
16 that right?

17 A That's correct.

18 Q In this particular case, initially, did you receive known
19 samples from a Kwame Banks and Anthony Carter?

20 A Yes, I did.

21 Q Subsequently, a couple months later, were two more
22 buccal swabs submitted and DNA processed in the laboratory?

23 A Yes, there were.

24 Q And were those the reference standards of Carnell Cave
25 and Larry Brown?

1 A That's correct.

2 Q I want to go back to your items of evidence and describe
3 kind of what they are.

4 With regard to your first report, it starts with Item 4. Just
5 so the jury is not confused by your numbering system, is it fair to
6 say Items 1, 2, and 3 were pieces of evidence that were forensically
7 tested in other details other than the DNA lab?

8 A That's usually the case, yes.

9 Q And in this particular case, Items 1 and 2 were for the
10 firearms detail, and Item 3 was with the fingerprint detail?

11 A I actually don't know which those items were. All I know
12 is the items that were submitted for biology and DNA testing.

13 Q Fair enough. So yours starts with Item 4; can you
14 describe what that is and how you examined it?

15 A Your Honor, may I again refer to my report?

16 THE COURT: You may.

17 THE WITNESS: Item 4 was a torn piece of a black nitrile
18 glove that was on the pavement of covered parking space 308, and
19 it was adjacent to the west side of the victim. This was a torn piece
20 of glove that did not have all of the fingers. It had --

21 Again, Your Honor, I'm -- can I refer to my notes in my --

22 THE COURT: You may.

23 THE WITNESS: Thank you.

24 BY MR. GIORDANI:

25 Q And if you are going to refer to your pictures, I was going

1 to actually approach you and show you something.

2 A I was going to --

3 MR. GIORDANI: May I?

4 THE COURT: You may.

5 BY MR. GIORDANI:

6 Q Showing you 286 through 290, just glance through those,
7 tell me if you recognize them.

8 A Yes, I do.

9 Q Are those all fair and accurate depictions of what we're
10 about to discuss as two separate pieces of a torn nitrile glove, as
11 well as the evidence package in which you received it?

12 A Yes, those are the pictures I took myself of the evidence as
13 I received it.

14 MR. GIORDANI: And I'll move for the admission of 286
15 through 290.

16 THE COURT: Any objection?

17 MS. TRUJILLO: No objection.

18 THE COURT: All right. Those will all be admitted at this
19 time.

20 MR. GIORDANI: Thank you.

21 [State's Exhibit Numbers 286 through 290 admitted.]

22 BY MR. GIORDANI:

23 Q Showing you 286, zoom out, can you see on your screen
24 there, ma'am?

25 A Yes, I can.

1 Q What are we looking at here?

2 A This is the outside packaging with the date that it was
3 collected, the unique event number to this case, the name of the
4 impounding officer, the location of recovery, and then you can see
5 the impound item description which are what the crime scene
6 analyst noted that was in the contents of the packaging.

7 And the item numbers that are listed as far as the crime
8 scene analysts would collect are not necessarily the same item
9 numbers that we have assigned in the laboratory. There could be
10 literally 200 items of evidence collected at a scene. But not all of
11 them might be probative or necessary for forensic analysis, either
12 in the biology detail or latent prints or firearms. And so once those
13 items that are going to be tested in the lab are decided, then we
14 assign our own unique individual laboratory numbers that are
15 separate from the evidence impound numbers that the CSA took.

16 Q Okay. Now, we're looking at a single paper evidence bag
17 with a description of two separate items on there. Were those two
18 separate items packaged individually within this paper bag?

19 A Yes. Each glove was packaged within its own closed
20 manila envelop within this packaging.

21 Q Showing you State's 287; it's a little washed out. Well,
22 what are we looking at there?

23 A This is Lab item 4, which is the torn piece of the partial
24 nitrile glove that I described earlier. From what I could tell, it
25 appears to be a portion of the thumb, partial index finger, and a

1 piece of the palm area of the torn glove.

2 Q And how did you examine that particular item?

3 A First, I did documentation as to how I received the glove
4 and how it appeared to me, took the photo documents. And then
5 looked to see if there were any possible red-brown stainings or
6 discolorations. I would also look for discolorations, because the
7 item is black. So if there's dried blood on it, and especially because
8 it's a plastic glove and could be difficult to see, if I found a
9 discoloration that I couldn't necessarily tell if it was red or brown,
10 then I would test it to see if it could be possibly blood.

11 But in this case, there are no apparent bloodstains or none
12 of these discolorations that I observed.

13 Q Okay. So on Item 4, there was no apparent bloodstains,
14 but did you do a presumptive blood test on it?

15 A I did, because I -- there were no stainings that I could see, I
16 took a swabbing of the entire area of this portion of the glove. And
17 then I did a testing on a portion of that swab to see if there was
18 possible positive presumptive blood. And again, that was negative
19 for the presence of possible blood.

20 Q Okay. So just as we move along here, Item 4 would be
21 referenced as the glove -- this portion of the glove itself, and then
22 Item 4.1 would be the swabbing that you took from the glove?

23 A That's correct.

24 Q And I apologize if you've already said this, but I need to
25 get it out: When you do a swabbing, is that, like, basically a little

1 Q-tip? Can you describe the process?

2 A Yes. It's a sterile swab that looks like a large Q-tip. And I
3 put sterile water, a little drop of it, on the swab to collect any type of
4 staining or touch cells, touch DNA that could be on that item of
5 evidence. And I swabbed the entire item and then once I'm done
6 swabbing, then that swab head would go into its own unique little
7 tube that I'm -- is going to be, then, further processed for DNA
8 analysis.

9 Q Okay. I want to move on now to Item 5; State's 298. What
10 are we looking at here?

11 A This is a torn piece of a black nitrile glove from the south
12 side of the exit road from the apartment complex west of the
13 leasing office.

14 Q And did you examine that item?

15 A Yes, I did.

16 Q How did you examine? What did you find?

17 A I also did a visual examination to see if there was any
18 discoloration or staining that I could observe on the glove. And this
19 portion of the glove appears to be a small portion of the index
20 finger, the middle finger, ring finger, pinkie, and the majority of the
21 palm and wrist areas. There were many red stains that I observed
22 on this glove, they were actually quite visible on both the inside
23 portion and the outside portion as it was received. Again, it's tough
24 to tell, especially with plastic gloves, what's the inside, what's the
25 outside, because it's how it was submitted and how it was received.

1 And it's torn.

2 So I did in this case, also, was I took a swabbing of the
3 entire torn glove, did a presumptive test for blood, and it was
4 positive for the presumptive test of blood.

5 Q Okay. Moving onto Item 6. Showing you
6 State's 291, 292, 293; do you recognize those --

7 A Yes, I do.

8 Q -- that you're looking at there?

9 A That is the left -- it's a black left Hardy Mechanix glove, a
10 size extra large.

11 Q And was this photographs you documented after
12 receiving this particular item --

13 A Yes, that's correct.

14 Q -- of those?

15 MR. GIORDANI: Move for the admission of those.

16 MS. TRUJILLO: No objection.

17 THE COURT: All right. Those will all be admitted.

18 [State's Exhibit Numbers 291 through 293 admitted.]

19 BY MR. GIORDANI:

20 Q Showing you 291; what are we looking at here?

21 A This is the outside packaging of the left black Hardy
22 Mechanix glove that I received --

23 Q And --

24 A -- with that unique event number for this case and the
25 interim item number.

1 Q Thank you. And again, I'm going to try not to repeat this
2 with every item of evidence, but just so everyone's clear, it's
3 referred to as Item 7 on the bag, but you have a different item for
4 that; is that right?

5 A Hat's correct. That's the impound item number that the
6 crime scene analyst took. But again, we assign our own unique
7 laboratory numbers once we know which items of evidence are
8 going to be submitted for testing from the crime scene.

9 Q And this was a size extra large left-hand glove?

10 A Yes, that's correct.

11 Q Showing you State's 292; what are we looking at there?

12 A This is the left black Hardy Mechanix glove that I just
13 described. And this is the -- one of the pictures that I took of the
14 glove. Again, looking for any type of red-brown staining that could
15 be -- or discolorations that could be observed on this glove and I
16 did not observe any of those. But I took a swabbing from the
17 outside of the glove and then a separate swabbing from the inside
18 of the glove to collect any touch DNA that could be on the outside
19 and also on the inside. And I tested each one of these swabbings
20 and both of them were negative for the presumptive test for blood.

21 Q So for the record, and as we move along, Item 6 would be
22 the glove itself, and then 6.1, 6.2 would be swab of the inside of the
23 glove and a swab of the outside of the glove?

24 A That's correct.

25 Q And I'm not going to give you photos of every single item

1 you tested, don't worry. But one last item. 294, 295, 296, those all
2 look familiar to you?

3 A Yes, they do.

4 Q What are we looking at?

5 A These were pictures that I took of the impound packaging
6 of Lab Item 8, which were -- I noted as Kwame Jamal Banks' green
7 Nike sweatpants. And I took pictures of both sides of those
8 sweatpants and also markings of areas of staining that I observed.

9 MR. GIORDANI: I move for the admission of those, Your
10 Honor.

11 THE COURT: Any objection?

12 MS. TRUJILLO: No objection.

13 THE COURT: All right. Those will all be admitted.

14 [State's Exhibit Numbers 294 through 296 admitted.]

15 MR. GIORDANI: Thank you.

16 BY MR. GIORDANI:

17 Q And again, to eliminate any confusion, we've gone from
18 Item 6, 6.1, and 6.2, which was the glove and the two swabbings
19 inside and outside, skipped over Item 7 and gone to now Item 8; is
20 that right?

21 A That's correct.

22 Q Showing you 294; is that package in which this particular
23 item was received?

24 A Yes, it is.

25 Q Has the biohazard sticker on it?

1 A Most items of evidence submitted to biology and DNA do
2 have the biohazard. But we treat literally every item as if it were a
3 biohazard.

4 Q Got it. 295, is that the front of view of those pants?

5 A Yes, they are. And it's tough to tell in this picture, but
6 they're a nice, rich, pine green color. And on these pictures, I have
7 circled areas of stating that I observed.

8 Q Okay. Fair to say this has a normal front two pockets
9 here?

10 A Oh, yeah, you can see a little better over there. It does.

11 Q Okay.

12 A My screen it looks black.

13 Q And then I just want to show you 296, this is the back side
14 of the pants?

15 A Yes, that's correct.

16 Q So you can see the little front pocket still from the right
17 side?

18 A Yes, I can.

19 Q And then there's also a zipper, what appears to be a zipper
20 pocket that goes around the hip area; is that right?

21 A That's correct.

22 Q Okay. What are these -- well, what did you do with this
23 item? And let me zoom out so you can explain.

24 A So, again, I'm looking for areas that could have red-brown
25 staining, characteristic of dried blood. And I'm going to be testing

1 representative areas of staining. There were several stains on
2 this -- on these pants. But I'm looking for staining that could be
3 unique or a little bit different from one stain to another that could
4 be consistent with not -- maybe not originating from the person
5 who wore the pants. I'm looking for staining that could be
6 individualized or unique or different. Kind of like if there was a
7 trail -- somebody was bleeding from the head and there was a trail
8 of blood and you follow the trail, you're not going to test every
9 single drop of blood following the trail of that person, because it is
10 clear that this is their trail of blood. You're looking for staining that
11 could be different or unique, that seems a little bit out of place. And
12 so you're going to be testing representative stains from that
13 example I gave, but also from an item of evidence.

14 So in this case, I chose two red-brain stainings, one of
15 which was a stain on the rear left leg near the knee, and I circled
16 that S1. And that S2 that you see in the top of the picture is a stain
17 on the right rear hip area near the top of the zippered pocket.

18 Q Okay. I want to move on now to Items 9 through 12. Not
19 going to show you photos of each of them, but I want to walk
20 through them individually. Okay?

21 A Okay.

22 Q Starting with Item 9, what is it? And how did you examine
23 it?

24 A Item 9 was a swab that I received from a Verizon 4G
25 cellular phone, under the left side of the victim. There was some

1 staining and discolorations on this swab, so I tested a portion of it
2 and it gave a positive presumptive blood test for this swab from the
3 Verizon phone.

4 Q What was Item 10 and what did you do with it?

5 A Item 10 was a swab from a Samsung cellular phone on
6 rocks west of parking space 307. Again, there was some staining
7 on this swab indicative that it could be possible blood, performed a
8 presumptive test for blood, and it gave a positive result for
9 presumptive blood.

10 Q Item 10?

11 A Oh, I'm so sorry. I misread. Thank you.

12 Negative presumptive blood test.

13 Q No problem. But -- and just to be clear, Item 9 was the
14 positive presumptive, Item 10 was negative?

15 A That's correct. Sorry. It's a large report.

16 Item 9, the Verizon swab, was positive for presumptive
17 blood, and Item 10, the swab from the Samsung phone, was
18 negative for presumptive blood.

19 Q And Item 10 was the Samsung found -- well, let's describe
20 it as swab from Samsung cellular phone on rocks west of parking
21 space 307?

22 A Correct.

23 Q Okay. Item 11, what was that and how did you examine
24 it?

25 A Item 11 was a swab from the back of a broken Verizon

1 cellular phone on the east end of the exit road, adjacent to the
2 leasing office. There was some staining on this swab and I
3 performed the test for possible blood and it gave a positive
4 presumptive blood test.

5 Q And Item 12, what was it and how did you examine it?

6 A Item 12 was a swab from the shattered glass face of a
7 broken Verizon cellular phone on the east end of the exit road
8 adjacent to the leasing office.

9 Q Out of --

10 A And -- oh, I'm so -- I'm sorry. There was also a positive
11 presumptive blood test on this swab.

12 Q Thank you.

13 Item 13, what was that?

14 A Item 13 was a swab from the acceleration pedal of
15 the 2015 Nissan Altima. And this was a negative presumptive
16 blood test result.

17 Q Item 14, what was that and what did you do with it?

18 A Item 14 was a swab from the brake pedal of the 2015
19 Nissan Altima, and this gave a negative blood test result.

20 Q Let me stop right there for a moment and ask you what is
21 an examination -- I'm sorry, an elimination database?

22 A An elimination database is a database that we have in the
23 biology DNA detail that is comprised of all of the forensic scientists
24 in the biology unit and throughout the entire forensic laboratory, to
25 include toxicology, trace evidence, drug chemistry. Also of crime

1 scene analysts, detectives that are involved in crime scene response
2 or collection of evidence, and any other volunteer personnel within
3 Metro that could come into association with evidence or with a
4 crime scene.

5 We also collect these buccal swabs from engineers or
6 vendors or other personnel that could come into the laboratory to
7 work on any type of the instrumentation or robots that we have,
8 because we want to make sure that they are eliminated from any
9 possible unknown DNA profiles. What we're looking to do is if
10 there is a source of contamination, then we want to know is it
11 attributable to someone who could have handled this case or --

12 Q Is --

13 A -- is it -- could it be -- if there's a known profile, we want to
14 know is it somebody in this laboratory, so we don't upload a profile
15 into a larger DNA database that actually belongs to someone in the
16 lab that would not be, you know, relevant to the case itself.

17 We're just looking to prevent uploading, you know,
18 personnel that worked for the laboratory or vendors or engineers
19 into a database when they're not involved with the crime at all.

20 Q And are those -- or once we get to the testing portion of
21 what you've done, all of those items that we referenced, are those
22 always run through the elimination database?

23 A No, not all of them.

24 Q Okay. I want to move onto Item 15 and 15.1.

25 A Okay.

1 Q What are those and what did you do with them?

2 A Item 15 were Kwame Jamal Banks' left-hand fingernail
3 clippings. So I received the actual clippings of the ends of
4 fingernails. And there was some staining and discoloration I
5 noticed on these fingernail clippings. And I collected that stain with
6 a cut and swab. And I tested that swab to see if it could be possible
7 blood, and I received a positive presumptive blood test on the
8 swabbing from the left-hand fingernail clippings.

9 Q So moving forward, Item 15 are the fingernail clippings
10 themselves from Mr. Banks' left hand, and then 15.1 is the
11 swabbing you took from the left hand?

12 A That's correct.

13 Q What's Item 16?

14 A Item 16 are Kwame Jamal Banks' right-hand fingernail
15 clippings.

16 Q And what did you do with those?

17 A And, again, I observed all of those clippings, noticed
18 staining on them, collected the staining and also looking for
19 possible touch DNA with a cotton swab, tested that swabbing and it
20 was positive presumptive for blood for that -- the right-hand
21 fingernail clipping swab.

22 Q Item 17, what is that and what did you do with it?

23 A Item 17 is a reference standard from Anthony Carter. And
24 like I described earlier, a reference standard is a known standard or
25 a known source of DNA from someone that we know who the

1 profile comes from. So it really looks like a cotton swab that is used
2 to collect cells from the inside of a person's cheek. And that is
3 known as a reference standard. And the profile from the reference
4 standard is then compared to profiles from the evidence items that
5 are developed throughout the case.

6 Q Did you develop a profile from the buccal swab of
7 Anthony Carter?

8 A Yes, I did.

9 Q And Item 19, what is that?

10 A It is a reference standard from Kwame Jamal Banks.

11 Q Did you develop a profile from the buccal swab of Kwame
12 Jamal Banks?

13 A Yes, I did.

14 Q Item 25, what is that?

15 A Item 25 was a swab from the feeding area and base of a
16 pistol magazine from the floor underneath the east nightstand in
17 Bedroom Number 1.

18 Q Okay. Well, let's go onto Item 26, and we're going to just
19 briefly go through 27 and 28 as well.

20 What's Item 26 and what did you do with it?

21 A Item 26 is a swab from the trigger, slide, magazine
22 release, and grips of the Springfield XDM9 pistol, Serial Number
23 MG975091.

24 Q And Item 27, what is that?

25 A A swab from the feeding area and base of a pistol

1 magazine from the well of the Springfield XDM9 pistol that I had
2 just described.

3 Q Item 28, what is that?

4 A Swab from the feeding area and base of a pistol magazine
5 from the floor underneath the east nightstand in Bedroom
6 Number 1.

7 Q Item 29, you previously referenced as a reference
8 standard from Carnell Cave or a buccal swab from Carnell Cave;
9 was a DNA profile generated from that item?

10 A Yes, it was.

11 Q Item 30, you previously referenced. And we're kind of
12 jumping into your second report here. Item 30 previously
13 referenced as a reference standard from Larry Brown or a buccal
14 swab from Larry Brown, was a DNA profile generated from that
15 sample?

16 A Yes, it was.

17 Q Now, you've reference four buccal swabs or reference
18 DNAs, Carter, Banks, Cave, and Brown?

19 A That's correct.

20 Q What did you do with those profiles?

21 A First, the DNA profiles were analyzed from the evidence
22 samples, and then each one of the reference standards from each
23 one of these four individuals were compared to the profiles
24 generated from the evidence.

25 Q Now, I want to start talking to you about the results of

1 your testing, or the initial results, I should say, of your testing.
2 Starting with Lab Item 4.1, which was a swabbing from the first torn
3 nitrile glove that we saw, the kind of the thumb portion; is that
4 right?

5 A Yes, that's correct.

6 MS. TRUJILLO: I apologize. Counsel, what report are you
7 referring to?

8 MR. GIORDANI: September 21, 2017.

9 MS. TRUJILLO: Okay. Thanks.

10 BY MR. GIORDANI:

11 Q What were your results as it applies to Lab Item 4.1?

12 A Your Honor, may I continue to refer to my report --

13 THE COURT: You may.

14 THE WITNESS: -- the lengthy --

15 THE COURT: Yes.

16 THE WITNESS: -- results.

17 So Item 4.1 was the swabbing of that first nitrile glove
18 with the portion of the thumb and index finger. The DNA profile
19 obtained from the swabbing from the torn nitrile glove, from the
20 pavement of the covered parking space, is consistent with a mixture
21 of at least three individuals, with at least one being a male. The
22 partial major DNA profile obtained is consistent with Larry Brown.

23 Should I continue?

24 BY MR. GIORDANI:

25 Q Continue.

1 A Okay. And the probability of randomly selecting an
2 unrelated individual from the general population having a DNA
3 profile that is consistent with a partial major DNA profile from the
4 evidence sample is approximately 1 in 789 septillion.

5 Q 789 septillion, that's a large number. Can you provide
6 some context as to what that number means?

7 A Sure. So if I told you that a number had 15 zeroes or 25
8 zeroes or 40 zeroes, it's really hard to visualize, even for me, how
9 big that number is. So what I usually describe is first you have a
10 million, then a billion, then trillion, quadrillion, quintillion, sextillion,
11 septillion, and so on. So in this case, 1 in 789 septillion is actually
12 an extremely small number.

13 MS. TRUJILLO: Judge, may we approach?

14 THE COURT: Sure.

15 [Off-record bench conference.]

16 BY MR. GIORDANI:

17 Q And, ma'am, Larry Brown's known profile is not the only
18 one that you compared to the evidence profile developed from the
19 thumb portion of the nitrile glove, correct?

20 A That's correct.

21 Q You also compared Anthony Carter's known profile,
22 Kwame Banks' known profile, and Carnell Cave's?

23 A That's correct. Not only to this evidence profile, but I
24 compared all four reference standards to every viable evidence
25 DNA profile throughout the entire case.

1 Q And what were your results as to the profiles of Anthony
2 Carter, Kwame Banks, and Carnell Cave as it applies to Lab
3 Item 4.1?

4 A Anthony Carter, Kwame Jamal Banks, and Carnell Cave
5 were excluded as the possible contributors to the partial major DNA
6 profile. But due to the limited data available, no conclusions could
7 be made to the trace component. So as I explained, this is a
8 mixture of at least three individuals, like I explained with the jar of
9 marbles analogy, sometimes you can tell if they're a major
10 contributor to this mixture, and described here was a partial major
11 component.

12 But sometimes you can't see if those red or white marbles
13 through all of the rest of the mixture. You can see that there's a
14 mixture, but you don't have enough data to make any further
15 conclusions about the remainder of it. And in this case, with the
16 type of statistics that were applied in the analysis done at that time,
17 you could not make any further conclusions about the remainder of
18 the mixture components.

19 Q And you referenced trace; can you just provide some
20 context to that so the jury understands when you say trace?

21 A So trace or trace component or minor component are
22 used interchangeably when describing a mixture DNA profile if you
23 have a major component. So it would be a major component and a
24 trace component, or a major component and a minor component.

25 Sometimes there is enough data in the minor component

1 to make statistics and DNA analysis. Oftentimes, there are not. So
2 the reporting statistics that I had here of the partial major DNA
3 profile being consistent with Larry Brown and the other individuals
4 were excluded, at the time, I could not make any further
5 conclusions about the trace component of that mixture.

6 Q Okay. And just -- I should have done this, but to be clear,
7 lab -- Exhibit 288 is what we've just been talking about?

8 A That's correct.

9 Q And that was consistent with Larry Brown and the statistic
10 associated with that finding was 1 in 789 septillion?

11 A That -- I'm sorry, I could further clarify what --

12 Q I was just clear --

13 A -- so was the partial major component was consistent with
14 him. But --

15 Q Understood.

16 A -- what the statistic means is, it's called a random match
17 probability. It's one of the several types of different statistics that
18 could be used in forensic DNA comparisons. What it means is if I
19 were to randomly choose any person in the entire United States,
20 what is the chance that that random person's profile would match
21 the profile of this partial major component? That's what the
22 random probability would be, it's 1 in 789 septillion that a random
23 person could match this DNA profile.

24 Q Thank you.

25 And now State's 290, as we move on. This is the next

1 item we're about to discuss, ma'am?

2 A Yes, that's correct.

3 Q Lab Item 5 -- this is Lab Item 5, but 5.1 was a swabbing
4 taken from that item, correct?

5 A That's correct.

6 Q And what were your results as to the swabbing taken from
7 that item?

8 A This was the swabbing that had the positive presumptive
9 blood test. And this was a full or a single-source DNA profile, and
10 it's consistent with the profile of Kwame Jamal Banks. And the
11 probability of randomly selecting an unrelated individual having --
12 from the general population having the DNA profile consistent with
13 a full profile from the swabbing of this glove is approximately 1
14 in 1.71 octillion.

15 Q And you indicated earlier this particular torn nitrile glove
16 had a good amount of blood on it, or what appeared to be blood;
17 was that confirmed as blood?

18 A It was a presumptive test for blood, not a confirmatory
19 test for blood.

20 Q Okay.

21 A But yes, this one -- this is the portion of the glove that had
22 a red-brown staining and was positive for presumptive blood.

23 Q And this one you developed a full profile for Kwame
24 Jamal Banks?

25 A That's correct. And Anthony Carter, Carnell Cave, and

1 Larry Brown were excluded as the possible contributors to this full
2 DNA profile.

3 Q Could the fact that there's a good amount of blood on this
4 item contribute to -- I guess, could that blood overwhelm any
5 potential trace that would be left by other individuals on the glove?

6 A It is possible, but I could not say for sure yes or no,
7 because there's no other way to tell. But it is a possibility.

8 Q Okay. I want to move on now to Lab Item 6. And can you
9 refer -- or refresh the jurors as to what that item is?

10 A That was the blacked -- the black left Hardy Mechanix
11 glove, size extra large.

12 Q State's 292?

13 A And 6.1 was the swabbing that I prepared of the inside of
14 this left black glove.

15 Q What was your -- what were your results as it applies
16 to 6.1?

17 A It was consistent with a mixture of at least three
18 individuals, with at least being -- one being a male. But due to the
19 limited data available, no additional conclusions could be made
20 regarding this mixture. So because the data, the information from
21 the DNA was so limited, at this time, I could not make any
22 comparisons of any of the reference profiles to this evidence
23 profile. And so no further conclusions could be made at the time.

24 Q Lab Item 6.2, what was that?

25 A This was a swabbing of the outside of his left Hardy

1 Mechanix glove.

2 Q And what were your results as it pertains to Lab Item 6.2?

3 A It's consistent with a mixture of three individuals, with at
4 least one being a male. And this case, there are two major
5 contributors to this mixture profile, as well as one trace contributor.
6 The major mixture DNA profile obtained is consistent with the
7 known profiles of Kwame Jamal Banks, and one unknown
8 contributor. So the probability of observing this mixture major
9 DNA profile from the three-person mixture is 312,000 times more
10 likely if a mixture originated from Kwame Jamal Banks, and one
11 unknown contributor than if it originated from two unknown
12 random contributors.

13 And this type of statistic is actually different than the one
14 that I had previously explained. This statistic is known as a
15 likelihood ratio. Before I described a random match probability, if I
16 were to randomly choose someone in the country, what's the
17 chance that their profile could match the evidence? A likelihood
18 ratio is different in that it's a comparison of the probability of
19 alternate propositions. So it's a mathematical relationship between
20 two ways to explain the data.

21 So an example that's easy to understand would be the
22 weather man say there's a 90 percent chance it'll rain tomorrow,
23 which means there's a 10 percent chance it won't rain. So the
24 likelihood of it raining is -- there's an -- it's nine times more likely
25 that it will rain than it won't rain. So I'm comparing two alternate

1 propositions.

2 So in this case, the probability of a mixture DNA profile
3 is 312,000 times more likely if it originated from Kwame Jamal
4 Banks and one unknown contributor than if it originated from two
5 unknown random contributors.

6 And continuing, Anthony Carter, Carnell Cave, and Larry
7 Brown are excluded as possible contributors to this two-person
8 major component from the mixture. The partial deduced mixture
9 from the profile, there are no further conclusions that could be
10 made to the rest of the trace or the minor component of this
11 mixture.

12 Q And this particular swabbing that we've been -- you've
13 just been discussing is the outside of this Hardy Mechanix glove?

14 A That's correct.

15 Q 6.1, which you just previously discussed, swabbing from
16 the inside?

17 A That's correct.

18 Q And then 4.1, which you talked about initially with regard
19 to your results, was the thumb area of the torn nitrile glove,
20 correct?

21 A Right. Thumb and partial index finger, and a little bit of
22 the palm area.

23 Q Now, before we move on, I don't want to get into too
24 much depth just yet, but were those three items that I've just
25 reference subsequently tested using new software referred to as

1 STRmix software?

2 A Yes, that's correct.

3 Q Okay. And we'll talk about that in a few minutes. I just
4 wanted to point that out. I want to move on now to Lab Item 8.1;
5 what is that and what was your result?

6 A Item 8.1 was the red-brown stain on the rear left leg, near
7 the knee, of the Nike sweatpants. And the full DNA profile obtained
8 at a single-source DNA profile from this staining is consistent with
9 Kwame Jamal Banks. And again, now I'm going to back to the
10 random match probability statistic. The probability of randomly
11 selected an unrelated individual from the general population having
12 a DNA profile that is consistent with the full DNA profile from the
13 staining is approximately 1 in 1.71 octillion.

14 Anthony Carter, Carnell Cave, and Larry Brown are
15 excluded as a possible contributors from this possible bloodstain.

16 Q Lab Item 8.2, what is it and what were your results?

17 A Item 8.2 was the stain on the right hip area near the
18 pocket of the zippered area of the green Nike pants. Again, this is a
19 full single-source DNA profile consistent with the profile of Kwame
20 Jamal Banks. The probability of randomly selecting an unrelated
21 individual from the general population having a DNA profile
22 consistent with that of this evidence sample is approximately 1
23 in 1.71 octillion.

24 Again, Anthony Carter, Carnell Cave, and Larry Brown are
25 excluded as the source of this full DNA profile.

1 Q Lab Item 9, what is it?

2 A Lab Item 9 is the swab from the Verizon 4G cellular phone
3 under the left side of the victim. And this gave a positive
4 presumptive blood test. And the DNA profile obtained from this
5 swabbing is consistent with that of Kwame Jamal Banks. The
6 probability of randomly selecting an unrelated individual from the
7 general population having a DNA profile consistent with this
8 evidence sample is approximately 1 in 64.1 septillion.

9 Anthony Carter, Carnell Cave, and Larry Brown are
10 excluded as the contributors to this DNA profile.

11 Q Lab Item 10, what is it and what were your results?

12 A Lab Item 10 is the swab from the Samsung cellular phone
13 on the rocks, west of parking space 307. And this is a partial DNA
14 profile obtained from the swabbing. And it is consistent with
15 originating from at least one male contributors. But due to the
16 limited data available from the swab from this phone, no additional
17 conclusions could be made and no comparisons of the reference
18 profiles could be made to this partial DNA profile.

19 Q Lab Item 11, what is it, what were your results?

20 A Lab Item 11 is a swab from the black -- back of the broken
21 Verizon cellular phone on the east end of the exit road adjacent to
22 the leasing office. And the full DNA profile obtained from this swab
23 is consistent with that of Kwame Jamal Banks. Probability of
24 randomly selecting an unrelated individual from the general
25 population having a profile consistent with that of this evidence

1 sample is approximately 1 in 1.71 octillion.

2 Anthony Carter, Carnell Cave, and Larry Brown are
3 excluded as possible contributors to this full DNA profile.

4 Q Lab Item 12, what is it, what were your results?

5 A Item 12 is a swab from the shattered glass face of the
6 broken Verizon cellular phone on the east end of the exit road
7 adjacent to the leasing office. And this gave a positive presumptive
8 test for blood.

9 And Item 12 is a full DNA profile and it is consistent with
10 the profile of Kwame Jamal Banks. The probability of randomly
11 selecting an unrelated individual having the DNA profile consistent
12 with that of this evidence sample is approximately 1.71 octillion.

13 Anthony Carter, Carnell Cave, and Larry Brown are
14 excluded as the source of this full DNA profile.

15 Q Lab Item 13, what is it and what did you find?

16 A Item 13 was the swab from the acceleration pedal of
17 the 2015 Nissan Altima. And it was a partial DNA profile, and it was
18 consistent with a single female individual. In this case, an
19 individual associated with the LVMPD elimination database could
20 not be excluded as a possible source of this partial contributor to
21 this profile. So Anthony Carter, Kwame Jamal Banks, Carnell Cave,
22 and Larry Brown were all excluded as contributors to this partial
23 profile.

24 Q That particular person with in the LVMPD elimination
25 database, did you determine ultimately that she did not work on the

1 scene or the item of evidence that we've just discussed?

2 A Yes. Looking through the various impound reports, crime
3 scene reports, property reports, et cetera, of what crime scene
4 analysts or detectives or police officers that were involved in the
5 crime scene, the individual in our LVMPD elimination database was
6 determined to not have been associated with being involved in
7 evidence collection of the scene.

8 And again, CSAs, crime scene analysts, are a separate
9 entity from the forensic scientists. They are the ones that collect
10 evidence from the scene and we're the scientists that analyze the
11 evidence within the laboratory. So this is why -- one of the reasons
12 we have the elimination database is that if I were to obtain a profile
13 that is an unknown profile, it doesn't -- it's not consistent with any
14 of the reference standards, I'm looking to see could this possibly be
15 a contamination issue or could this be someone associated with the
16 case that we don't want to report as going into a database where
17 they're then, you know, involved with the crime itself. But were
18 they involved with the collection of an item? It's just as important
19 for us to know if there's contamination as if a sample were clean.
20 It's important for us to maintain quality control within our
21 laboratory system.

22 Q And this particular person from the elimination database
23 was not involved in the collection of this evidence?

24 A That's correct.

25 Q So based upon deduction, somehow she left her DNA

1 within the CSI garage or CSA garage?

2 A My understanding is that's what it was. But for further
3 clarification, you would have to speak to the CSA or to the quality
4 manager associated with the CSA department.

5 Q Fair enough. Lab Item 14; what is it and what were your
6 results?

7 A Item 14 was a swab from the brake pedal of the 2015
8 Nissan Altima. And a DNA profile was not obtained from the swab
9 from this brake pedal.

10 Q Lab Item 15.1, what was it and what were your results?

11 A Item 15.1 were -- I'm sorry, Item 15 was the left-hand
12 fingernail clippings from Kwame Jamal Banks, and 15.1 was the
13 swabbing I took of these clippings. And that gave a positive
14 presumptive blood test. And the DNA profile obtained from the
15 swabbing of the left-hand fingernail clippings is consistent with a
16 mixture of at least three individuals with at least one being a male.
17 But due to the limited data in this profile no further conclusions
18 could be made.

19 Q Lab Item 16.1, what is it and what were you results?

20 A Item 16 were Kwame Jamal Banks' right-hand fingernail
21 clippings, and so 16.1 was the swabbing I prepared of these
22 clippings. That also gave a positive presumptive blood test. And
23 assuming Kwame Jamal Banks is the contributor to the partial DNA
24 profile obtained from the swabbing of his own fingernail clippings,
25 no foreign DNA were -- no foreign DNA results were obtained.

1 Q Why would you make that assumption? Like assuming
2 Kwame Jamal Banks is a contributor, why would you make that
3 assumption?

4 A So as far as forensic DNA testing goes, the definition for
5 us, for assumption, is different than the way we would normally use
6 the word assumption on a day-to-day conversation. An assumption
7 means, in forensic testing, that a person's DNA profile is expected
8 to be there, because it is their own item. For example, the
9 fingernail clippings were taken from Kwame Jamal Banks, so it is
10 expected that his own DNA would be on his own fingernails.

11 So this is what's known in forensic biology as an
12 assumption. It's different than the assumption definition that's
13 used in normal day-to-day conversation. So this is an important
14 thing that we use when making DNA analysis and then statistical
15 calculations because we're looking for DNA profile that could be
16 foreign to the assumed contributor.

17 Q Lab Item 25, what is that and what were your results?

18 A Lab Item 25 was the swab from the feeding area and base
19 of a pistol magazine from the floor underneath the nightstand -- the
20 east nightstand in Bedroom Number 1, and a DNA profile was not
21 obtained from this swab.

22 Q Lab Items 26, 27, and 28 are all swabbings or swabs from
23 the various portions of that firearm, correct?

24 A From -- my understanding and from the impound, it was a
25 different firearm. Or it could have been the same, but I don't have

1 the information that separates the distinction --

2 Q Okay.

3 A -- from 25. I have that it's the pistol from underneath --
4 the floor, underneath the nightstand. But 26, 27, 28, that -- the
5 information I received was the serial number. So I don't know if
6 they're the same gun, actually.

7 Q I understand that. I think we can all agree it's the same
8 gun.

9 A Okay.

10 Q So let me just try to get through this a little quicker. Since
11 we know it's not our .40-caliber murder weapon, I'm just going to
12 go through it quickly and say were there any results that you found
13 from that gun that were consistent with any of the profiles of the
14 known individuals in this particular case?

15 A No. These profiles also had limited data and so I could
16 not make any further conclusions or comparisons.

17 Q Okay. Now, that was all your results from your report in
18 September -- issued on September 21st of 2017, correct?

19 A That's correct.

20 Q Subsequent to that date, did you and I have a
21 conversation about STRmix software?

22 A Yes, we did.

23 Q And what is STRmix?

24 A STRmix is a software application that was adapted into
25 the LVMPD in the end of September of 2017. And it's a tool that

1 aids in the interpretation of mixture DNA profiles and of statistical
2 calculations. So it does two things. One, it helps deconvolute,
3 which is a term that we use in DNA analysis, which really means
4 untangle mixture DNA profiles into its individual components or
5 contributors.

6 And from there it then calculates a likelihood ratio statistic
7 based upon the components to that mixture. It's one of the tools
8 that we're using now in order to help DNA analysts analyze
9 mixtures.

10 Q So how does STRmix actually work?

11 A It's a complex software tool that uses mathematical
12 statistics, algorithms, probability distributions, and most
13 importantly for us, what's known as biological modeling. So as a
14 DNA analyst, everything that STRmix is doing or interpreting I can
15 already see and understand to be true about a DNA profile. I can
16 tell if the profile is a single source or if it's a mixture; how many
17 contributors are in this mixture? Is it a robust profile? Is the quality
18 very good? Is it very rich in data or is it limited? Do I have
19 inhibition? Do I have degradation? If there are contributors, can I
20 denote if there's more of a contribution from one person to
21 another?

22 So what STRmix does is it takes all of this biological
23 explanations of a profile that I already know as an analyst, and then
24 it uses mathematical calculations to interpret these mixtures. But
25 STRmix is a more powerful tool in allowing us to then interpret

1 data, the limited data that I knew was there, but mathematically
2 could not apply it and statistically resolve. The STRmix is able to
3 take this information, again, because it can use its algorithms to
4 determine inhibition, degradation, low-level data to then be able to
5 help interpret these mixtures.

6 Q Now that you use the STRmix computer program -- well,
7 let me just ask: Why did you change over from what was used
8 previously to the STRmix program?

9 A Well, the scientific field is advancing and progressing at a
10 very fast rate. And one of the requirements as a forensic scientist is
11 to maintain continuing education and continuing advancement in
12 our field. STRmix is one of those tools that allows us to use
13 technology to help us interpret more complex or complicated
14 mixtures.

15 DNA testing and the chemicals and reagents and robots
16 that we use have also become much more sensitive and can obtain
17 DNA from smaller and smaller pieces of evidence. For example, 15
18 or 20 years ago, to get a full DNA profile at maybe 8 or 11 locations,
19 you needed a bloodstain that was bigger than the size of a quarter.
20 Today, for 23 or more -- 21, 23 locations, I need a bloodstain that
21 can -- that's on the size of a tip of a pin.

22 So as the technology has become more sensitive, mixture
23 interpretation has become much more complex. So data that I
24 would report earlier as limited or could not make any further
25 conclusions was because I could not statistically account for this

1 data. I knew it was there, I knew why it was there, but I couldn't
2 apply mathematical calculation and make a comparison to it.

3 STRmix, using biological modeling and algorithms can
4 then take all of that information and make an analysis of the
5 contributors to that lower-level data or data below the weeds, as we
6 like to call it.

7 What it does is it assigns weights to the probability of this
8 evidence profile being explained by all of those variations that I
9 described, such as is it a mixture? Is it single-source? How many
10 people are in it? Is it degraded or inhibited?

11 But STRmix is not a magical black box where I stop
12 thinking and I just put in the profile and it tells me what it does. I
13 still have to make all the evidence and profile interpretation myself
14 as an analyst, and I still have to analyze all of the data that comes
15 out of STRmix in order to determine whether or not this makes
16 sense to explain the profile.

17 The training and testing that we had for this program was
18 probably the most expensive training on one technological
19 application that I've had in my entire career. It was very intense.
20 And all of the mathematical calculations and algorithms that were
21 used we had to be trained on to be able to understand and know
22 how to do ourselves, besides the computer doing it itself.

23 Q So we just spent 45 minutes or whatever it was going
24 through your initial results with the software you used previously.

25 A Correct.

1 Q Were those wrong or undermined in any way by this new
2 STRmix software?

3 A No, not at all. At the time, all of the procedures that we
4 had for analysis were validated in the laboratory by methods that
5 had been peer-reviewed by other scientists and published in
6 scientific journals throughout the community, not only in the United
7 States, but throughout the world.

8 And so STRmix program is just a different application that
9 more and more laboratories, again, throughout the United States
10 and throughout the world are moving to, because it's a tool that
11 allows us to do more with a limited data that we couldn't do that
12 much with in the past.

13 Q And if you haven't already, ma'am, can you explain how
14 using STRmix differs from how likelihood ratios were calculated in
15 the past?

16 A Likelihood ratios were one of the statistics that I described
17 earlier that we could calculate along with random match probability
18 or other types of stats. But at the time, all we could do was
19 compare one likelihood of something versus another likelihood.

20 The difference with STRmix is that it can calculate a
21 weight to describe how likely is it that this profile from this
22 evidence sample makes sense to explain this data. So it could take
23 more into account, more of the data below the weeds, and make a
24 weighting to assign these are possible genotype combinations of
25 each contributor to this mixture profile.

1 Q Was the process you've described developed specifically
2 for STRmix or is it used in other scientific fields as well?

3 A No. There are many different types of algorithms and
4 applications that are within the program that have been used
5 literally for decades in other fields, such as code-breaking, weather
6 analysis, engineering, other types of statistical analysis. And these
7 same types of statistical analyses and algorithms are part of the
8 application in the software program.

9 Q And are those methods that you've described behind
10 STRmix generally accepted by the forensic biology community?

11 A Yes, they are. There's been numerous publications in
12 peer-reviewed scientific journals both nationally and internationally
13 that have reviewed this data. It's already been accepted in courts
14 here in Las Vegas, throughout the United States, and also in several
15 other countries throughout the world.

16 Q Okay. I want to go back to your likelihood ratio with
17 regard to Lab Item 4.1. You indicated the partial major DNA profile
18 obtained from the evidence sample is consistent with Larry Brown,
19 and the statistic associated with that was 1 in 789 septillion.

20 A For the partial major component, that's correct.

21 Q Correct. Can you kind of describe -- I know you did a little
22 bit earlier -- how large that number is and how that's going to
23 change now that you're dealing with STRmix? Well, not the
24 number change, but -- do you understand my question?

25 A No, I'm sorry. Could you --

1 Q Let me start over again. Here, in this particular case, you
2 chose four specific profiles to run through STRmix.

3 A That's correct.

4 Q Is that right? Why did you do that? Let me ask it that way.

5 A So you heard me report that there were several mixture
6 profiles that were too limited to make any further conclusions or
7 any comparisons. Sometimes the data really is too limited.
8 There's, you know, maybe just a couple of peaks on the type of
9 profile graph that I explained earlier, and there's really nothing
10 further I could do with this no matter what.

11 But there's oftentimes where I can see the limited data or
12 that trace evidence data that I know is real, that I know is real DNA
13 information. But with the tools that I had at the time, there's
14 nothing I could do about it to account for it mathematically.

15 So from -- I looked at all of these more limited profiles that
16 I reported. And for some of these profiles, I knew that there was
17 information here that now, with the new technology we have, I can
18 extrapolate more information from this. So hopefully be able to
19 make comparisons to those reference standards.

20 So this was the reason why I chose these four items of
21 evidence to run through the STRmix program as opposed to all of
22 the maybe eight or nine or so limited data or inconclusive profiles,
23 because these four had the most limited information that I could do
24 something with as opposed to the other ones really not having
25 enough to do anything with.

1 Q Now, I want to refer to your report issued or distributed
2 September 12th, 2019.

3 A Your Honor, may I still refer to this in the report?

4 THE COURT: You may.

5 THE WITNESS: Thank you.

6 BY MR. GIORDANI:

7 Q I want to start with Lab Item 15.1.

8 A Okay.

9 Q What is that item?

10 A 15.1?

11 Q Yes.

12 A This was the swabbing from Kwame Jamal Banks'
13 left-hand fingernail clippings.

14 Q Did you run that item through STRmix?

15 A Yes, I did.

16 Q And what were your results as it applies to Lab Item 15.1,
17 the swabbing from Kwame Jamal Banks's left-hand fingernail
18 clippings?

19 A So the results of the likelihood ratios and recordings from
20 STRmix are going to be a little different than what I had described
21 earlier. First, we determine the number of contributors. And in this
22 case, again, three with at least one being a male. And in this case,
23 instead of reporting major component or trace component, we
24 report an approximate mixture proportion. So the percentage of
25 how much each contributor gave to this mixture. And in this case,

1 it's 65 to 30 to 5. And, also, Kwame Jamal Banks is the assumed
2 contributor to this mixture. Again, it's reasonable to understand
3 that his own DNA profile would be on his own fingernail clippings.

4 So a comparison was made also to the profiles from
5 Anthony Carter, Carnell Cave, and Larry Brown. And the results
6 were it is inconclusive whether Anthony Carter, Carnell Cave, and
7 Larry Brown are contributors to this DNA mixture profile, because
8 the likelihood ratios do not provide sufficient support for inclusion
9 or exclusion. So it is inconclusive on whether or not they
10 contributed to the right -- I'm sorry, the left fingernail clippings
11 mixture profile.

12 Q Lab Item 6.2, was that the swabbing from the outside of
13 the Hardy Mechanix glove?

14 A Yes, that's correct.

15 Q And you ran that through STRmix?

16 A I did.

17 Q And what were your findings there?

18 A Number three contributors with at least one being male.
19 The approximate mixture proportions are 68, 24, to 8. Kwame
20 Jamal Banks is individually included with a likelihood ratio that I
21 will report. And Anthony Carter, Carnell Cave, and Larry Brown are
22 excluded from this mixture.

23 Q And this is, again, the outside of the Hardy Mechanix
24 glove?

25 A That's correct.

1 Q Go ahead.

2 A And a probability of observing this mixture DNA profile is
3 at least 5.07 septillion times more likely if it originated from Kwame
4 Jamal Banks, and two unknown random contributors than if it
5 originated from three unknown random contributors.

6 Q Now I'd like to move onto Lab Item 6.1. Now we're talking
7 about the swabbing from the inside of the Hardy Mechanix glove?

8 A That's correct.

9 Q And what were your results as it applies to the inside of
10 the Hardy Mechanix glove?

11 A There are three contributors with at least one male. The
12 approximate mixture proportions are 83 to 10 to 7. Larry Brown is
13 individually included as a contributor to this mixture, and it is
14 inconclusive whether Anthony Carter, Kwame Jamal Banks, or
15 Carnell Cave are contributors to this mixture profile, because a
16 likelihood ratio does not support enough information for inclusion
17 or exclusion.

18 Q Larry Brown was individually included, and was there a
19 statistic associated with that inclusion?

20 A Yes. The probability of observing this mixture DNA
21 profile is at least 9.09 octillion times more likely if it originated from
22 Larry Brown and two unknown random contributors than if it
23 originated from three unknown random contributors.

24 Q And, finally, I want to go to Lab Item 4.1. Is that the
25 swabbing from the torn nitrile glove from the pavement of the

1 covered parking space?

2 A Yes. That's the first glove that I looked at and described
3 today.

4 Q And you've run that through STRmix as well?

5 A Yes, I did.

6 Q And what were your findings at it applies to Lab Item 4.1?

7 A There is actually a few different likelihood calculations
8 that were made for this result. There were three contributors to this
9 mixture with at least one male. The approximate mixture
10 proportions were 77 to 18 to 5. Kwame Jamal Banks was
11 individually included with a likelihood ratio of at least 410 sextillion.
12 Larry Brown was also individually included with a likelihood ratio of
13 at least 2.77 octillion.

14 From that point -- I'm sorry, and Anthony Carter and
15 Carnell Cave were both excluded as contributors to this
16 three-person mixture.

17 From this point, now having likelihood ratio statistics for
18 two individuals of this three-person mixtures, perform another
19 calculation that's known as the combination of included individuals.
20 So I have a statistic for one person being the included, another
21 person being included. But what is the statistics for these two
22 people combined being included in this three-person mixture?

23 And the probability of this mixture DNA profile is at
24 least 22.1 sexdecillion times more likely if it originated from Kwame
25 Jamal Banks, Larry Brown, and one unknown random contributor

1 than if it originated from three unknown random contributors.

2 Q What is sexdecillion?

3 A So I'm going to count off a little bit from where I was
4 before -- a lot bit. So there's million, billion, trillion, quadrillion,
5 quintillion, sextillion, septillion, octillion, nonillion, decillion,
6 undecillion, duodecillion, tredecillion, quattuordecillion, quindecillion,
7 and sexdecillion. To put it sort of into context, a billion has nine
8 zeroes, a sexdecillion has 51 zeroes.

9 MR. GIORDANI: I'll pass the witness, Your Honor.

10 Thank you, ma'am.

11 THE COURT: All right. Maybe we should take just a quick
12 break, just a little over 10 minutes, put us right at 10:55.

13 And, ladies and gentlemen, during the brief recess, you're
14 all reminded not to discuss the case or anything relating to the case
15 with each other or with anyone else. Do not read, watch, or listen
16 to any reports of or commentaries on the case, person, or subject
17 matter relating to the case. Do not do any independent research by
18 way of the Internet or any other medium. And please do not form
19 or express an opinion on the trial.

20 Please leave your notepads in your chairs. Follow the
21 bailiff through the double doors and come back at 10:55.

22 [Court recessed at 10:42 a.m.; until 10:57 a.m.]

23 [In the presence of the jury.]

24 THE COURT: All right. Everyone can be seated. Court is
25 now back in session. And the defense may begin their

1 cross-examination.

2 MS. TRUJILLO: Thank you very much.

3 THE COURT: Ms. Trujillo.

4 **CROSS-EXAMINATION**

5 BY MS. TRUJILLO:

6 Q Good morning, Ms. Davidovic.

7 A Good morning.

8 Q Did I pronounce that correctly?

9 A Perfectly.

10 Q Awesome. Thank you.

11 So you mentioned two types of DNA earlier on direct,
12 right? You remember that?

13 A I'm sorry, could you -- I didn't hear that.

14 Q You mentioned different types of DNA on direct; do you
15 remember that?

16 A Yes, I do.

17 Q You talked about, you know, cells as one type; is that
18 right? You can find DNA on cells?

19 A Correct.

20 Q Skin cells?

21 A Yes.

22 Q On mucous?

23 A No, not from mucous.

24 Q No? Okay. Can you explain the difference between touch
25 DNA and blood?

1 A Sure. Blood -- DNA comes from cells within our bodies in
2 the area that's known as the nucleus. So it's like the manager
3 sensor of each cell. So the DNA testing, the STR, as I described, is
4 from nuclear DNA. There's -- our DNA in almost every single cell in
5 our bodies. The difference between blood or semen or touch DNA
6 that counsellor was referring to was the cells from blood or the cells
7 from seminal fluid are usually much more abundant and much
8 more rich in sources of cells than, for example, touch DNA, where
9 you could touch an object from a couple of minutes, maybe only
10 leave a few cells behind, and maybe they won't stick on for long
11 enough by the time they're collected, where it's not always as
12 robust. Sometimes it is, sometimes it isn't. But you don't --
13 literally, touch and go; you don't know what type of profile you're
14 going to get until the very end.

15 Q So when you're testing specific items, as in this case, how
16 do you tell the difference? Is it that there's a presumptive test first
17 and then you can determine whether it's touch DNA? Or how does
18 that work?

19 A That's a good question. So we can't say that this is
20 definitely touch DNA, that this is definitely blood DNA. What I can
21 report is the staining was positive for the presumptive test for
22 blood. And this is a DNA profile from that stain. Or this is a DNA
23 profile from the swabbing of this item of evidence that we're
24 looking -- the thing that we're looking for is to collect possible skin
25 cells. But there's no testing or microscopic exam to see if there's

1 "this touch DNA."

2 I can give you results for stains that I can observe or parts,
3 let's say it's a piece of a body part or tissue or bone that I know, that
4 I can observe and report. But skin cells that are left behind, I can't
5 tell you what part of the skin it was on. I can just tell you that these
6 are epithelial, which is the general term for surface skin or surface
7 cells. Epithelial cells were left behind on this item, they were
8 swabbed, and this is the profile.

9 Q Thank you.

10 And as part of this case, you come in as the forensic
11 analyst; you're the forensic scientist, correct?

12 A That's correct.

13 Q And that's to test specifically evidentiary items that were
14 impounded in this case?

15 A That were requested for examination.

16 Q Okay. But as part of your job, you testified on direct that
17 you often -- well, at least in this case, you looked up the evidence
18 impound reports; is that correct?

19 A To determine the source of the -- who could have -- the --
20 excuse me, the contamination for one of the items that I described
21 to see if that person was involved.

22 Q So you did look at the evidence impound reports in this
23 case?

24 A And oftentimes they're submitted, as well.

25 Q Okay. And you looked at the crime scene investigation

1 reports in this case?

2 A Yes, that's correct.

3 Q And you looked at the investigative reports in this case?

4 A That's correct.

5 Q And part of your job, you're familiar with the facts of the
6 case, right?

7 A Some, but not all of the details, because I wasn't at the
8 scene itself and I haven't been there through the investigation. All I
9 can report to is the DNA results and the serology results I did today.

10 Q But you're -- you are provided with some facts of the case,
11 right?

12 A That's correct.

13 Q And that's through the detectives?

14 A Sometimes through the detectives. Oftentimes, there is
15 not verbal or written communication with the detectives. There are
16 sometimes, but oftentimes it's just for information from the -- what
17 CSAs impounded and collected from the scene.

18 Q Okay. What is a case report?

19 A I -- actually, I'm not sure. I think it's dependent and more
20 used by commissioner police officers and civilian in Metro. Unless
21 you can give me an example, because I think it refers to different
22 things.

23 Q Okay. You didn't author a full case report of a forensic
24 laboratory in this case?

25 A Are you referring to my DNA reports?

1 Q No.

2 A I'm sorry.

3 Q It's called a case report and it has your name contained in
4 it. So I'm asking, did you author it?

5 A If you could -- I have three giant case files. If you could
6 refer to which one, I can let you know.

7 Q I'll approach with it.

8 A Okay.

9 MS. TRUJILLO: May I, Judge?

10 THE COURT: Sure. You can move freely.

11 MS. TRUJILLO: Thank you.

12 THE WITNESS: Thank you.

13 So this case report that you're referring to, so we have a
14 software program that's a LIMS, like a -- that we enter all of our --
15 it's kind of -- you know, it has drop-downs for -- this is the evidence
16 item, these are the biology and serology results. Upon discovery,
17 the LIMS, the application program, makes this report for everything
18 that was done and entered into those worksheets. And it's called
19 the case report. But we normally don't see these or work with
20 these. This is what's given up into discovery.

21 BY MS. TRUJILLO:

22 Q Okay.

23 A Usually. So the information that I would have is all in
24 here, and that is in here.

25 Q So you're not familiar with this report?

1 A The -- I am familiar with all of the information that is in
2 here, because this is all the evidence that was submitted and that I
3 examined. I think it also includes some of the chain of custodies or
4 whoever else examined this. But this exact pile of report itself is
5 not customarily how we -- I think the best way to describe this is
6 this is part of our LIMS software program that just kind of
7 summarizes everything into a full case report. But this is not
8 something that we customarily use or refer to. But it is information
9 that is all part of this case.

10 Q Okay. I'm just going to refer you to a section and then ask
11 you to review it to yourself.

12 A Sure. I'm sorry, I just wanted to make clear how that's
13 different from the DNA reports.

14 Q I understand. Thank you.

15 A Yes.

16 Q So you are familiar with this report?

17 A Familiar with the information there, yes.

18 Q Are you -- do you agree that your name is listed in this
19 report?

20 A Because that is the report that I am part. I don't really
21 know how to explain our LIMS system. That's a summary of all of
22 the evidence that was submitted to the lab and any person that had
23 worked on that evidence. And the information that was given to
24 and, I guess, released as part of the LIMS application program. It's
25 a tracking system that keeps track of all the evidence submitted to

1 the lab. So anyone in any section of the laboratory involved in that
2 case would be part of that LIMS report. But the information that I
3 have and I report is the information that I've provided. But that
4 information there is part of the entire case file.

5 Q Okay. You would agree that what I just showed you
6 contains your name, correct?

7 A It has my name, yes.

8 Q You would agree that what I just showed you contains the
9 information about your exam dates?

10 A That's correct.

11 Q Okay. So it has when you started the exams, right?

12 A Yes.

13 Q And when you completed the exams?

14 A That's correct.

15 Q And it has facts about the case in here?

16 A It has information provided to me about the case.

17 Q And who provided that information?

18 A I believe it was the requesting investigator, don't have --
19 it's Detective Darren Cook, if I'm not mistaken. I don't have that
20 summary report. I just have the information from the DNA
21 investigator that's -- the investigator requesting DNA analysis.

22 Q Okay. Thank you.

23 I'm going to move onto the results. You've mentioned
24 several times excluded; can you tell us what excluded means?

25 A Sure. So when I make a comparison of an evidence DNA

1 profile, if it's single-source or a mixture or what have you, I'm
2 making comparisons to the reference or the known DNA profiles
3 from individuals that were submitted. So if a person were excluded
4 as being a contributor to these single-source profile, the partial
5 profile, the major component, or the mixture, it means that the
6 peaks that I have described in giving examples earlier, in those
7 different target locations and the DNA that we examine, those
8 peaks are not overall included in that component in that they're not
9 in that mixture, they're not in that single source, they don't match
10 up to put it colloquially.

11 So if I'm excluding somebody from being a contributor to
12 a mixture or a partial major, or a full single-source profile, that
13 means that the peaks from the evidence do not match all of the
14 peaks in the reference standard.

15 Q Fair to say we already went through you authored three
16 separate reports, right?

17 A That's correct.

18 Q The first report was August 14th of 2017?

19 A Correct.

20 Q And you did come to conclusions in that case, right? We
21 went over some of them.

22 A That's correct.

23 Q Okay. And I'm just going to go over a couple of them.
24 Item 4.1, which is the swabbing from the torn nitrile glove from the
25 parking space.

1 A Yes.

2 Q There -- what was the origin of that DNA, if you know?

3 A Item 4.1 was just the swabbing that I took entirely of the
4 glove. So this is what we would call touch DNA.

5 Q Okay.

6 A Because the -- I did a testing for presumptive blood, and it
7 was negative. But again, I can't say this is exactly where it came
8 from; it's exactly touch or it's exactly blood. All I can say is that
9 we're looking to collect cells that could have been there, and that's
10 what's collected on that swabbing.

11 Q Okay. And that mixture, it's a profile mixture that was
12 recovered, correct?

13 A That's correct.

14 Q And there were at least three individual contributors?

15 A In my initial report, that is correct.

16 Q Okay. And then I want to move to Item 5.1, which is the
17 swabbing of the torn glove -- nitrile glove from the exit road, okay?

18 A Yes.

19 Q What was the source of that DNA or the origin?

20 A Well, that was a positive presumptive blood test for that
21 swabbing. But again, if there were skin cells that were left behind
22 from touch DNA, it could have been also from the touch cells. But
23 since blood is such a much richer source of cells, then it could have
24 also most likely have been from the bloodstain. But again, I cannot
25 say definitively either way, because a DNA profile doesn't -- at the

1 end, the profile doesn't say, This is only blood DNA or this is only
2 skin cell DNA. Because all of our DNA is the same everywhere in
3 our bodies, this -- I can only report this is the profile and these are
4 the biological body fluids that were -- resulted on this type of item
5 of evidence. That's all that can be said.

6 Q Okay. But with regard to 5.1, you could tell that it was a
7 single-source DNA?

8 A That's correct.

9 Q Okay. Moving to Item 6.1, which is the swabbing of the
10 left Hardy glove, you indicated before it was a negative
11 presumptive test; is that right?

12 A Yes, that's correct.

13 Q So do you know the origin of that dan?

14 A Most likely would be touch DNA. But, again, we -- DNA
15 analysts or forensic biologists can never say with certainty this is
16 the origin. All we can say is these are the DNA profiles from the
17 cells collected in this evidence.

18 Q And with reference to that left Hardy glove, there were at
19 least three individual contributors to that mixture, right?

20 A That's correct.

21 Q Okay. And moving to Item 6.2, which is the swabbing of
22 the outside of the left Hardy glove, what was the origin of that
23 DNA?

24 A Item 6.2 was also negative for presumptive blood test. So
25 again, likely touch DNA, but again, never say with certainty which is

1 the origin of the DNA. All we can say is there were cells left behind
2 and these are the profiles that were determined from these cells.

3 Q And 6.2, again, the left Hardy Mechanix glove, there were
4 at least three individual contributors to that mixture profile?

5 A No. There were three contributors with at least one male.

6 Q Okay.

7 A Not at least three.

8 Q Okay. There were three?

9 A That's correct.

10 Q My apologies. Okay. Fair to say Larry Brown is not
11 included in your August 14, 2017, report?

12 A Which item?

13 Q In any of the items in your report.

14 A I would have to review my item -- my own report just to
15 make sure.

16 Q Go ahead.

17 A [Witness reviews document.] Larry Brown is the --
18 consistent with the partial major DNA profile from Item 4.1, the
19 swabbing of a portion of the nitrile glove from the pavement of the
20 covered parking space 308, adjacent to the west side of the victim.
21 That was a -- at least three-individual mixture, and Larry Brown's
22 profile is consistent with a partial major component from my initial
23 report, where I reported the random match probabilities.

24 Q Are you looking at your August 14th report?

25 A August 14th report is the initial report --

1 Q Right.

2 A -- with --

3 Q So my question was -- let me repeat the question.

4 A Okay. I'm sorry.

5 Q With reference to your August 14th, 2017, report, fair to

6 say Larry Brown is not included in any of the results?

7 A I did not have Larry Brown's DNA profile to make

8 comparisons at that time.

9 Q Okay. You completed this report August 14th, 2017,

10 correct?

11 A Correct.

12 Q Are you aware that Larry Brown's buccal swab was

13 received on August 4th, 2017?

14 A No, I was not.

15 Q Okay. Let's move onto your September 21st report. Do

16 you have it in front of you?

17 A Yes, I do.

18 Q Okay. So with reference to Item 4.1 again, the swabbing

19 of the torn nitrile glove from the parking space, now Larry Brown is

20 included; is that correct?

21 A As the partial major component.

22 Q Okay. There's still unknown contributors to that partial

23 profile, correct?

24 A There's still unknown contributors to the mixture profile,

25 but the partial profile had a statistics with the match of that partial

1 major component.

2 Q Okay.

3 A So I just want to make sure the wording is exact, because
4 there is a consistency with the profile of Larry Brown and a partial
5 major. But it's inconclusive for the remainder of the mixture of the
6 profile.

7 Q Okay. And what does inconclusive mean?

8 A Inconclusive means that there was not enough data, it
9 was limited. Sometimes the data is too limited to make any further
10 conclusions, or the data is too complex to make any further
11 conclusions. So the general term for this is -- this portion of the
12 profile was inconclusive, meaning I cannot make any further
13 conclusions or make any comparisons to this trace or remainder
14 component.

15 Q So with that being said, there are still known -- unknown
16 contributors to that portion of the DNA?

17 A At that time, with the type of statistics and the mixture
18 interpretation that was performed, that's correct.

19 Q Yes. And at that time, I'm -- my questions right now are
20 about your September 21st, 2017, report.

21 A Okay. That's correct.

22 Q Okay. With regard to Item 6.1, which is the swabbing of
23 the inside of the left Hardy Mechanix glove, in this report, the DNA
24 profile was obtained and there was a mixture of at least three
25 individuals; is that correct?

1 A That's correct.

2 Q So that remains the same from your August dated report,
3 right?

4 A I believe so. Yes, that's correct.

5 Q Okay. And with regard to 6.1, which is again the left
6 Hardy Mechanix glove, you indicated, and I believe you just stated
7 it, due to the limited data available, no additional conclusions can
8 be made regarding the mixture DNA profile; is that right?

9 A That's correct.

10 Q So fair to say that means Larry Brown was not listed in
11 those results?

12 A I cannot make any comparisons if I have a limited data,
13 and so I cannot say either way.

14 Q Right. In your report you did not list his name under 6.1?

15 A I cannot list anybody's name under that item at -- in the
16 September 2017, because I cannot make any comparisons to any
17 reference standard. So nobody's name would be listed in that
18 profile result.

19 Q Okay. Moving onto Item 6.2, same report, September
20 of 2017, the swabbing of the outside of the left Hardy Mechanix
21 glove, fair to say that there are still unknown contributors to a
22 portion of the mixture of the DNA obtained in that instance?

23 A Yes, that's correct.

24 Q Okay. And Larry Brown was actually excluded on 6.2?

25 A If you'd just give me one moment to re-read through this.

1 He was excluded as a possible contributor to the major
2 component of that mixture. And due to the limited data, for the
3 remainder of the mixture, I couldn't make any further conclusions.

4 Q Okay. So excluded -- can you just repeat that to the
5 major?

6 A Sure. So it was a mixture of three contributors with at
7 least one male. There are two major contributors to this mixture, as
8 well as one trace contributor. The major mixture of profile is
9 consistent with originating from the profiles of Kwame Jamal
10 Banks, and one unknown contributor. Anthony Carter, Carnell
11 Cave, and Larry Brown are excluded as possible contributors to this
12 two-person major component of this three-person mixture. Now,
13 because the remainder of the mixture, the trace had limited data,
14 could not make any further conclusions about this mixture.

15 Q Thank you.

16 Okay. I'm going to move onto September 12th of 2019,
17 which is the newest report in this case, that's the third report,
18 correct?

19 A Correct.

20 Q Third and final report?

21 A Yes, that's correct.

22 Q And you indicated on direct that you retested these
23 specific items because it was, so to speak, data below the weeds,
24 right?

25 A That's correct.

1 Q And that's because a lot of the information on the prior
2 reports were inconclusive?

3 A That's correct.

4 Q Okay. So Item 4.1, the swabbing from the torn nitrile
5 glove from the parking space, you still came to the conclusion that
6 were three contributors to the mixture; fair to say?

7 A That's correct.

8 Q Okay. And now Larry Brown is included, right?

9 A Yes, that's correct.

10 Q But there were still unknown contributors to that mixture?

11 A Yes. And this one, there were two individuals included,
12 this three-person mixture, and there is still one additional
13 contributor that's not accounted for, where these others were
14 excluded from.

15 Q Okay. And then Item 6.1, the swabbing of the left -- the
16 inside of the left Hardy Mechanix glove, there's still three
17 contributors to that mixture too, right?

18 A That's correct.

19 Q And now Larry Brown is included?

20 A That's correct.

21 Q And there's still two other unknown contributors?

22 A That's correct.

23 Q Okay. And inconclusive as to Carnell Cave?

24 A Carnell Cave, Anthony Carter, and Kwame Jamal Banks
25 are inconclusive whether they can be contributors to this mixture or

1 not.

2 Q Okay. And then moving onto Item 6.2, the swabbing of
3 the outside of the left Hardy Mechanix glove, there are still three
4 contributors there?

5 A Correct.

6 Q So that's the same as the two prior reports, right?

7 A That's correct.

8 Q And Larry Brown is excluded as a possible contributor to
9 that mixture?

10 A That's correct.

11 Q And you still have unknown contributors?

12 A I have one, Kwame Jamal Banks is included, so that's one
13 contributor. But there's still two unknown random contributors.

14 Q Two unknown. What do you mean by random?

15 A So the calculations that we performed for likelihood ratios
16 is if I were to randomly select someone from the general
17 populations. So all of these numbers that I've recorded always
18 constitute a random other source of DNA or random other
19 explanation for the statistics as opposed to the comparison that I've
20 made between the evidence profile and the DNA profile. So it's
21 customary for us to say an unknown random contributor, because
22 I'm randomly choosing someone from the United States.

23 Q Okay. And, finally, the last item you retested, Item 15.1,
24 the swab from left fingernail clippings of Kwame; is that right?

25 A That's correct.

1 Q And that still has three unknown contributors?

2 A No. It has the assumed contributor and two unknown
3 contributors.

4 Q Okay. My apologies. So two unknown contributors?

5 A That's correct.

6 Q And the -- as to the rest of the results, they were
7 inconclusive?

8 A That's correct. Inconclusive whether Anthony Carter,
9 Carnell Cave, or Larry Brown could be contributors to the
10 swabbings from the left-hand fingernail clippings, because the
11 likelihood ratios did not support inclusion or exclusion for these
12 three individuals.

13 Q Okay. Why didn't you retest Item 10?

14 A I didn't -- like I explained earlier, there's some inconclusive
15 profiles that just really don't have enough data that I cannot do
16 anything with, regardless of the type of software that we have or
17 the mathematical applications, it can make two biological principals
18 of a DNA profile. So the -- I only chose these four that had
19 inconclusive information that I reported the first time, but I knew,
20 again, that there is data there that could -- something could be done
21 with it, but at the time of the technology we had with our mixture
22 interpretation, I could not apply a mathematical application or
23 statistics to that data that was limited.

24 With the algorithms that STRmix uses, it mathematically
25 can apply information such as low-level data, partial profiles,

1 mixture interpretation, degradation, inhibition, contributors,
2 everything I already know as an analyst that is there and is true
3 about a profile, but mathematically, at the time, I couldn't do
4 anything with. And now I could.

5 So the profiles that were inconclusive or had limited data
6 or I could not make further conclusions that I did not use STRmix
7 on, that's because the data was so limited there was nothing else I
8 could do. These are the profiles that I chose, because there was
9 enough limited data that I knew was real that I was looking to get
10 some more information from using the STRmix applications.

11 Q So Item 10 was the swab from the Samsung cellular
12 phone in the rocks west of the parking space, right?

13 A That's correct.

14 Q So you're saying that there was not sufficient DNA to do
15 further testing?

16 A Your Honor, if I could refer to my case file to re-review the
17 profile just to make sure?

18 THE COURT: Go ahead, sure.

19 THE WITNESS: I don't want to misspeak about that exact
20 profile.

21 Yes, that's correct. There is virtually almost no data in this
22 profile. There are literally four peaks from all of the target locations
23 that we examine, and normally a DNA profile has the 21 target
24 locations with one or two peaks for a full profile. And it's in -- in
25 this entire thing, there are four very low-level peaks.

1 BY MS. TRUJILLO:

2 Q Okay. And that's, again, on the cellular phone found in
3 the rocks?

4 A That's Item 10, correct.

5 Q Okay. And you make the determination whether or not to,
6 I guess, I don't know how -- what the proper term is, but to allow
7 STRmix to interpret the data, right?

8 A That's correct.

9 Q Okay. All right. I'm going to move onto -- you never did
10 any follow-up testing on a substance from Polo boots impounded in
11 this case, did you?

12 A I only tested what was requested and submitted to the
13 laboratory for this case.

14 Q Okay. Are you aware that Polo boots were impounded in
15 this case?

16 A I don't have recollection of that, no.

17 Q Okay. Even though you reviewed the evidence
18 impounded?

19 A At the time I could have known. But as of now, I don't
20 have any recollection of that. And, again, I only focus on the items
21 that are submitted for this case --

22 Q Okay.

23 A -- and for DNA analysis. So there could have been 200
24 other evidence impound reports or anything else that I don't
25 memorize or not familiar with right now, but at the time I could

1 have known.

2 Q Understood. Okay. So you never did any testing on Polo
3 boots to your recollection?

4 A No, I never did any testing to them, no.

5 Q Okay. And nothing about Polo boots are listed in either
6 three of your reports?

7 A That's correct.

8 Q Okay. Even though you testified on direct that heat can
9 destroy DNA, right? In this case, you actually found DNA from the
10 Altima --

11 A I said it was --

12 Q -- right?

13 A -- dependent on what type of heat.

14 Q You said it was possible, though?

15 A What -- the counselor asked if fire could destroy DNA, and
16 I said it was possible. But not all heat --

17 Q Right.

18 A -- can destroy DNA.

19 Q And you actually received swabs of DNA from evidence
20 collected from the Altima in this case?

21 A That's correct.

22 Q Okay. And other than the swabs from the pedals of the
23 Altima, you never received any other items for DNA testing?

24 A No, I did not.

25 Q You never received swabs from the floor mat of the

1 Altima?

2 A No, I did not.

3 Q You never received swabs from the baseball cap in the

4 Altima?

5 A That's correct.

6 Q You never received swabs from the lighters in the Altima?

7 A No, I did not.

8 Q You never received swabs from the Swisher Sweets in the

9 Altima?

10 A Correct.

11 Q You never tested DNA swab from the Snapple bottle in

12 the Altima?

13 A I never received --

14 Q Okay.

15 A -- swabs from --

16 Q Never received swabs from the Gatorade bottle, right?

17 A That's correct.

18 Q And you never received swabs from any of the water

19 bottles located in the Altima?

20 A That's correct.

21 Q So no testing done on any of those things?

22 A That's correct.

23 Q You testified on direct a little bit about contamination; can
24 you tell us what contamination is?

25 A Sure. Contamination is a source of DNA that we call

1 either attributable or unattributable. So, in general, crime scenes
2 are not beautiful, pristine, clean places. It's part of, you know, the
3 world, living day to day. Things could be outside, inside. And so
4 we're just looking to see what DNA profiles could be on what item
5 of evidence. Like I described earlier, I can tell you what profile is
6 there if it -- someone is included or excluded. But I cannot tell you,
7 as an analyst, it's not like TV, how it got there, what time it got
8 there, or anything else about that profile. All I can say is that it is
9 there.

10 Contamination is an issue for a forensic laboratory,
11 because we want to ensure that we don't put our DNA onto an item
12 of evidence, but in the same way, we don't want the item of
13 evidence to then put any blood or any other type of biohazard onto
14 us. So we want to have as many protective measures as we can in
15 between both situations to prevent us from contaminating it, or it
16 contaminating us.

17 The attributable contamination means someone from the
18 LVMPD elimination database, either from the forensic lab or CSI or
19 a detective investigator or an engineer or a software person that
20 could be within our laboratory, we have their profiles to see if we
21 can attribute their DNA profile to an unknown profile in the case.
22 Because this would be a profile that's associated with an employee
23 as opposed to a profile that's actually associated with this case.
24 And we make the comparisons only to unknown DNA profiles from
25 evidence, because we want to ensure that a person that is working

1 the crime scene or working in the laboratory, that their profile
2 doesn't get, then, uploaded into national databases, as they're not
3 actually involved in the crime itself.

4 So we're looking -- if it's an unattributable source of
5 contamination, now we go through various different measures to
6 see how could this contamination have occurred? When? Where?
7 Why? Because we want to take steps to prevent it from happening
8 in the future. So in this case, it was attributable to the CSA that was
9 actually not involved with this case.

10 Q Okay. You testified and you gave us an example on direct
11 about you touching your collar jacket, right?

12 A Correct.

13 Q And then after that, you could swab it for potentially touch
14 DNA, right?

15 A That's correct.

16 Q That's known as the primary transfer of DNA, right?

17 A That's correct.

18 Q And explain to the jury what primary transfer of DNA is.

19 A So primary transfer is primary, being the first, the first
20 contact or the first deposit of DNA or cells from one object to
21 another. There's -- so me wearing this jacket, I am the primary
22 transfer of DNA will be from my body, my skin cells, to this jacket.
23 That would be the primary transfer.

24 Q Okay. And what is secondary transfer?

25 A A secondary transfer is now another object or individual

1 has taken the primary source of cells and then deposit it into
2 another area. So, for example, I'm pouring water from this mug. If
3 the detective testifying earlier was pouring water from this mug and
4 now I'm pouring water from this mug, now his skin cells could be
5 on my skin cells from my hand that are now touching this cup. So
6 that would be the secondary transfer, because the primary would
7 be my hand to the cup, and now his skin cells from the mug to my
8 hand to the cup. And that would be secondary.

9 Q So, obviously, as a forensic scientist, you're familiar with
10 the transfer of DNA, right?

11 A That's correct.

12 Q Both primary and secondary, as you just testified to?

13 A Yes.

14 Q Are you aware that research has shown that secondary
15 transfer of DNA should be considered in touch DNA results?

16 A It always is. And like I said, I can tell you what the DNA
17 results are, but I cannot tell you how they got there, how the skin
18 cells were deposited, how the blood cells were deposited. I can tell
19 you the biological material, if it's blood, semen, saliva, example --
20 for example, but I cannot tell you how it was -- how it got there,
21 why it got there, how long it's been there. That I cannot say.

22 Q And you're familiar with corrective action reports, right?

23 A Yes, I am.

24 Q And what is a corrective action report?

25 A Corrective action report is when there is an issue with

1 either an analyst or a laboratory procedure that was not in
2 conjunction with our standard operating procedures, that was
3 noticed by either one of the reviewers or a supervisor, or something
4 to that effect, that then we have to look at what was the source of
5 this error, and how -- what was the root cause, and how can this be
6 prevented in the future.

7 So each one of my case files is thoroughly reviewed by
8 two other biologists and DNA analysts. One is a technical review,
9 and the next is an administrative review. So technical review is did
10 I follow the standard operating procedures? Was all of the
11 chemistry and the science and the mathematics applied in this case
12 correct? Do they also agree with what my interpretations of the
13 profiles were? And then it goes through an administrative review
14 by another scientist; legally, am I recording everything correctly? Is
15 everything in my case file being represented in my report correctly
16 to the reader?

17 So it has to go through two sets of eyes and they could
18 either agree or disagree with some of my findings, and that would
19 always be addressed. But it's another quality control measure that
20 we have to say I'm not the only one making these opinions, there
21 are two other scientists looking at this behind me to see if there
22 could have been an error.

23 And in the case of a correction -- corrective action, it's an
24 error that then could be reported to the laboratory to say this was
25 an issue and how can we shore things up and fix things even for

1 the laboratory as a whole.

2 Q So, essentially, to aid in the quality of the lab?

3 A It's a quality control measure, that's correct.

4 Q Okay. And there was a corrective action report authored
5 in this case, right?

6 A In this case? I don't believe there is. But I can double
7 check my case file?

8 Q Go ahead. I have a copy of it if you -- if it would be easier.

9 A Are you referring to the case notes? Or --

10 Q No.

11 A -- the corrective --

12 Q I'll approach.

13 A Okay. Yes, this is a corrective action report for the CSA
14 contamination on the swabbing of the pedal.

15 Q So that's related to this case?

16 A That is not in my case file, the corrective action report.

17 Q Is this about the evidence in this case?

18 A That's correct. But you said that I had that in my report --
19 in my case file, and I do not.

20 Q All right. I didn't say you had it.

21 A I'm sorry.

22 Q My apologies. My question was: Was there one authored
23 in this case?

24 A If I don't have it, then I wouldn't know. If another -- CSI is
25 completely separate from us. So if they issued a corrective action

1 report, that's not part of my DNA case file.

2 Q Okay.

3 A I have a case note, but not a corrective action.

4 Q So you just had an opportunity to review it, right?

5 A I glanced at it, yes.

6 Q And you just testified that it's related to the CSA's
7 contamination of the evidence in this case?

8 A Correct.

9 Q Okay. Is that instance that you testified on direct and we
10 just reviewed in your -- in the corrective action report, not your
11 report, is that an example of secondary DNA transfer?

12 A It could be, yes.

13 Q It could be. Can you explain that?

14 A Again, since the CSA it was determined, was not involved
15 in this case, somehow her DNA profile ended up on that swabbing
16 that she took -- or, I'm sorry, a different CSA took of the acceleration
17 pedal from the Nissan Altima. So they could determine the root
18 cause, which is how did that other CSA's profile get on this swab?
19 So that is an attributable contamination and it could have happened
20 from primary contamination -- I'm sorry, primary transfer,
21 secondary, tertiary. But it's now something that we have to look at
22 with CSA that -- CSI to prevent this from happening or reduce the
23 chance of this happening in the future, which was concerning,
24 because the CSA was not involved in this case.

25 Q Okay. So CSA not involved in the case. Fair to say that

1 CSA did not process the car in the garage?

2 A That's correct.

3 Q Fair to say that CSA was not present when the car was
4 processed?

5 A That's what I learned, that's correct.

6 Q Okay. To fair to say that crime scene analyst did not come
7 into contact with the vehicle, which is the Altima?

8 A For my understanding, that's correct.

9 Q Okay. So even though the DNA appears on that swab,
10 which was a swab of the pedal --

11 A Correct.

12 Q -- of the Altima, so it appears the CSA had contact -- she
13 actually didn't have contact with the car?

14 A From what I had learned from speaking to the quality
15 managers at CSI, that is correct.

16 Q Let me give you a hypothetical. Suppose someone came
17 into contact with Mr. Brown's hand and -- or some other form of
18 contact with his body --

19 A Okay.

20 Q -- and then they came into contact with that glove, would
21 it be possible for the person to transfer Mr. Brown's DNA to that
22 glove?

23 A Possible, but not likely in the scenario you gave me.

24 Q Okay. But it's possible?

25 A That's correct.

1 Q I want to talk to you about -- we've seen pictures of
2 Mr. Banks' sweatpants. You just testified about them, right?

3 A Correct.

4 Q You did some testing on the pants?

5 A That's correct.

6 Q The Nike sweatpants?

7 A Yes.

8 Q Okay. We have seen some pictures that the pockets were
9 pulled inside out; are you aware of that?

10 A No, I'm not aware. I take pictures as the evidence -- as I
11 receive it.

12 Q Okay.

13 A So if the pockets were put back in and it was packaged,
14 then I wouldn't know that. I would just take pictures as it's
15 received. Or if it has anything abnormal, for example, like the
16 pockets out, then that would be in my notes.

17 Q Okay. Can you refer to your notes and let me know how
18 the pants arrived to you.

19 A Yes. Give me one moment, please.

20 In my notes, I do not have that they were received with
21 the pockets inside out.

22 Q Okay. As the forensic scientist doing the testing in this
23 case, if you're aware that the pockets were pulled out in a murder
24 investigation, would you have wanted that to be swabbed?

25 A It's dependent as the analyst. I do examine the inside of

1 the pockets to see if there's -- sometimes there are things left
2 behind in the pockets, and we have policies. Sometimes we have
3 found drugs or money, and so there's very specific laboratory
4 policies how to deal with those things, so we have to look in all of
5 the pockets. And if there were stainings that were observed in the
6 pockets, to me, like I said, I test representative red-brown staining,
7 things that would look unusual or a little bit different from the other
8 stains. If I had observed that there were stainings on the inside of
9 the pocket, I certainly would have liked to have tested that, yes.

10 Q Okay. But in this case, you personally didn't swab
11 anything from the inside of those pants pockets, right?

12 A That's correct.

13 Q And you didn't receive any swabbings from the inside of
14 those pants pockets, correct?

15 A That's correct.

16 Q Okay. But in your professional opinion, would you agree
17 that if the pockets were inside out, and the accusation is a robbery,
18 that it would have been important to swab the inside of that pocket?

19 A It could have been, but it's really specific and
20 case-dependent. I can't say overall how important that would be.
21 But it's a possibility.

22 Q Okay. If a person went into the pants pockets, could there
23 be DNA transfer?

24 A There could be, yes.

25 Q Okay. With DNA, you can never tell when the DNA was

1 actually deposited on the item, right?

2 A That is correct.

3 Q And you can also never tell, like, what location it was --
4 where it happened, right?

5 A That's correct.

6 Q You just know the DNA is present?

7 A That's correct.

8 Q So you also can't tell how the person's DNA actually got
9 on the object?

10 A Yes, that is correct.

11 Q Okay. And just want to refer you back to your
12 September 21st, 2017, report. And we were just talking about the
13 Nike sweatpants, Item 8.1.

14 A Uh-huh.

15 Q And I just want to confirm Larry Brown was excluded as a
16 possible contributor to that DNA mixture, right?

17 A 8.1 was not a mixture, it was a full single-source profile.

18 Q Okay. So Larry Brown was excluded as a possible
19 contributor?

20 A Yes, that's correct.

21 Q Okay. And on Item 8.2, which is the right hip near the
22 zippered pocket of the same sweatpants we're talking about, those
23 Nike green sweatpants, Larry Brown was also excluded as a
24 possible contributor?

25 A Yes, that's correct.

1 Q Okay. Item 9, the swab from the Verizon 4G cell phone
2 found under Mr. Banks' body, Larry Brown was excluded as a
3 possible contributor?

4 A Yes, that is correct.

5 Q Item 11, the back of the Verizon cell phone near the exit
6 road, Larry Brown was excluded as a possibility contributor?

7 A That is correct.

8 Q Item 12, the swab from the shattered glass of the broken
9 Verizon phone near the exit road, Larry Brown was excluded as
10 possible contributor.

11 A That's correct.

12 Q Item 13, the acceleration from the pedal of the Altima,
13 Larry Brown was excluded as a possibility contributor?

14 A That is correct.

15 Q Thank you.

16 MS. TRUJILLO: Pass the witness.

17 THE COURT: All right. Redirect.

18 MR. GIORDANI: Just real briefly.

19 **REDIRECT EXAMINATION**

20 BY MR. GIORDANI:

21 Q Ms. Trujillo gave you an example just now or a
22 hypothetical about testing the pockets of the pants; do you
23 remember that?

24 A Yes.

25 Q Kind of line of questioning?

1 A I do.

2 Q And you seemed to be hesitant to respond because there
3 were factors or several factors that could be taken into account,
4 correct?

5 A It's difficult to respond to a lot of hypothetical questions,
6 especially for DNA. And even with the reports, case report, case
7 note, or corrective action report, because we have to be so specific
8 with our statistics. Any word that I misuse reporting on statistics
9 actually mathematically translates into something different.

10 So I can give general information about -- that counselor
11 was correct, I cannot say how that DNA got there. I cannot tell you
12 how long it's been there. I cannot tell you how that was deposited.
13 All I can say is this was the DNA profile obtained from the cells that
14 were left behind on this item of evidence that was either positive for
15 presumptive blood or negative or not. So I cannot give you the
16 source or the information of how that got there.

17 So my hesitance is really -- I have -- there's a lot of
18 information to take into consideration of what I can say yes or no to
19 without being misleading. Because there are so many specifics, not
20 just in the biochemistry and the cellular biology of what we do, but
21 very importantly, in the mathematics of what I report.

22 Q If you had free rein, if it was your decision of all the
23 hundreds of items to request in a particular case, and it was -- there
24 were pants that were alleged to have been rifled through by the
25 robber and killer. Right? Would your analysis as to whether to test

1 those pockets be affected by the fact that the person rifling through
2 them was wearing two layers of gloves?

3 A It could possibly change it. But again, the lack of evidence
4 doesn't necessarily mean that evidence is lacking. So if I -- for
5 gloves, sometimes I can get a DNA profile, and sometimes not,
6 dependent on are there holes in the gloves? How porous are these
7 gloves? For example, the gloves that we wear in our analysis in the
8 laboratory, we want to make sure they protect us from biohazards,
9 so they're made from a very specific material, because so many of
10 the -- well, everything that we work with, really, has blood, semen,
11 saliva, body parts, et cetera. And there's different types of gloves
12 that aren't as protective and are more porous.

13 So it be very case-specific on what I would test and why.
14 It would have to make sense, not just a willy-nilly random testing of
15 everything. But it would have to actually be congruous and make
16 sense with the case scenario, and also scientifically, does this
17 makes sense in something to do.

18 Q Let's be case-specific for a second. When Ms. Trujillo was
19 questioning you about the difference between your
20 September 21st, 2017, report, and your September 12th, 2019,
21 report.

22 A Correct.

23 Q She referenced Lab Item 4.1.

24 A Yes.

25 Q I want to be very clear here. Since you had Larry Brown's

1 reference standard and buccal swab, he has been on that 4.1, that
2 latex glove? The statistic changed from the use of the STRmix
3 software of the -- yeah, the statistic?

4 A Yes, and -- and sort of yes, to answer both of your
5 questions. The statistics changed because it was a different type of
6 statistical calculation.

7 Q Right.

8 A For that initial report in 4.1, it was a random match
9 probability. For the subsequent report in September of 2019,
10 calculated a likelihood ratio. So those are two different
11 propositions of statistics that give two different results, because
12 those two statistics mean two different things.

13 Q Lab Item 4.1 in your September 21st, 2017, what was the
14 statistic associated with Larry Brown being included as the partial
15 major?

16 A So my initial report was there is at least three individuals,
17 with at least one being a male, from the swabbing from this piece
18 of the nitrile glove. The partial major DNA profile obtained is
19 consistent with that of Larry Brown. And the probability of
20 randomly selecting an unrelated individual from the general
21 population having a DNA profile matching of this partial major
22 component is approximately 1 in 789 septillion.

23 And then further continuing is that --

24 Q Well --

25 A Oh, I'm sorry.

1 Q I mean, you can. Go ahead.

2 A That the remainder of the reference standards I compared
3 were excluded as the source of this partial major component from
4 the mixture.

5 Q Okay. So with the -- I'll refer to the older software.

6 A Okay.

7 Q Lab Item 4.1, Larry Brown included with that statistic you
8 just referenced. Banks, Carnell Cave, Anthony Carter all excluded
9 on that?

10 A From the partial major component.

11 Q Got it.

12 A The trace -- the remainder of the mixture was limited data
13 at the time, and I could not make comparisons.

14 Q Got it. And then based upon that, you run that same item
15 through STRmix and issue the September 12th, 2019, report,
16 correct?

17 A That is correct.

18 Q And then you indicated earlier there was a mixture
19 proportion?

20 A That's correct.

21 Q 77, 18, and 5?

22 A That's correct.

23 Q Adds up to 100, right?

24 A Correct.

25 Q There were two people included and two people excluded,

1 correct?

2 A Correct.

3 Q The included people were Kwame Banks and Larry
4 Brown?

5 A That's correct.

6 Q The excluded people were Anthony Carter, Carnell Cave?

7 A Correct.

8 Q You indicated there was a statistic associated with the
9 combination of included individuals?

10 A That is correct.

11 Q And again we're talking about Larry Brown and Kwame
12 Banks?

13 A Yes.

14 Q And that statistic was?

15 A So the probability of this mixture DNA profile is at
16 least 22.1 sexdecillion times more likely if it originated from Kwame
17 Jamal Banks, Larry Brown, and one unknown random contributor
18 than if it originated from three unknown random contributors.

19 Q Thank you.

20 MR. GIORDANI: And I will pass the witness at this time.

21 THE COURT: All right. Any recross?

22 MS. TRUJILLO: Yes, thank you.

23 **RECROSS-EXAMINATION**

24 BY MS. TRUJILLO:

25 Q Ms. Davidovic, I understand you just testified that it's

1 difficult to respect do hypothetical questions. However, when the
2 DA asked you on direct whether it was a possibility that through fire
3 heat, DNA could be, so to speak, disappear, you answered possible,
4 right?

5 A Because of the clarification of heat. Heat, I said, I need
6 more specific. Fire, yes, it's very much more likely that you would
7 lose DNA because of the fire.

8 Q And that's a hypothetical question, right?

9 A But a more specific one. Like I said, I can answer if the
10 question is a little bit more specific as opposed to just a very broad
11 can-I-lose-DNA-like-this? I need a little bit more information to give
12 to not be misleading to the jury in my answer for either you or for
13 the prosecution.

14 Q Okay. You're wearing your jacket, right?

15 A Correct.

16 Q The same -- let's use the same analogy. You indicated
17 there could be touch DNA on the collar, right?

18 A That's correct.

19 Q If you took your jacket off and gave it to me, there could
20 be a secondary transfer of that DNA?

21 A If you wore it?

22 Q Yes.

23 A Yes, that's correct.

24 Q Okay. We just talked a little bit about the -- whether or not
25 you would have made the decision to test the inside of the pocket,

1 right? You remember that conversation?

2 A I do.

3 Q Fair to say you received, and we saw pictures on direct, of
4 torn pieces of the nitrile glove, right?

5 A That's correct.

6 Q Fair to say that the person who was wearing those gloves
7 had missing portions and their hands were exposed?

8 A That is correct.

9 Q Okay.

10 MS. TRUJILLO: No further questions.

11 THE COURT: Anything else from the State?

12 **FURTHER REDIRECT EXAMINATION**

13 BY MR. GIORDANI:

14 Q After the glove was torn, correct?

15 A That would be my assumption.

16 Q Okay.

17 MR. GIORDANI: No further questions.

18 THE COURT: Nothing else?

19 MS. TRUJILLO: Nothing.

20 THE COURT: Do we have any juror questions for the
21 witness?

22 All right. Counsel approach.

23 [Off-record bench conference.]

24 THE COURT: All right. We have some jurors' questions
25 here. A juror asks: Was Brown's DNA found inside or outside of

1 the torn glove?

2 THE WITNESS: I would have to refer to my notes.

3 THE COURT: That's fine. Go ahead and refresh your
4 memory.

5 THE WITNESS: I'm sorry, which glove? Did it make a
6 difference?

7 THE COURT: Was Brown's DNA found inside or outside
8 of the torn glove?

9 THE WITNESS: So there were two torn gloves. And,
10 again, because they were nitrile, and that plastic material, and
11 torn, there's real -- no way for me to know how the person wore it.
12 So there was one swabbing prepared from the entire piece of each
13 glove. So Item 4 was a piece of glove. Item 5 was a piece of a
14 glove. And again, since you can't tell how the person wore it,
15 swabbing was prepared from the entirety of that glove. And again,
16 also because the items are small and I'm looking to collect as much
17 possible cells as I can.

18 THE COURT: Okay. And then another juror asks: Did you
19 test only the Samsung phone, or did you also swab the case?

20 THE WITNESS: Actually -- I'm sorry, that's Item --

21 THE COURT: Maybe the State can help us out?

22 MR. GIORDANI: I can.

23 MR. DICKERSON: 10.

24 THE WITNESS: The Samsung cellular phone is Item 10.
25 So I did not perform the swab of this phone itself. This is the swab

1 that I received from CSI. So the items that I did examine were the
2 gloves, the glove pieces, the Hardy Mechanix glove, the pants, the
3 fingernail clippings, and I prepared swabbings of each of those
4 items myself, or cuttings.

5 If an item was submitted from any one of these other
6 phones as a swab from a phone, swab from Verizon phone, swab
7 from acceleration pedal, et cetera, that was the swab that a CSA
8 prepared and then submitted the swab to me for a DNA analysis.

9 THE COURT: So you can't tell what was swabbed,
10 whether it was the phone or the phone case or?

11 THE WITNESS: I did not see the phone. And if I would
12 have, it would be a question for the CSI to look at that CSI's notes
13 as to where on the phone they swabbed.

14 THE COURT: All right. A juror asks: Does the inside of
15 the palm shed differently than the outside of, you know, the back of
16 the hand? Is there a difference in how those, you know, shed?

17 THE WITNESS: That's a tough-to-answer question, as
18 well, because of the variabilities when it comes to touch DNA. In
19 general, the palms of the hands are a little bit more sweaty. And so
20 it could have more DNA transfer of the cells to an item. But at the
21 same time, because it's sweaty, your own skin cells could stick to
22 your hand better and not transfer to another item. So it's -- touch
23 DNA is really very dependent upon is -- for whatever the variables
24 are in this scenario, is the skin cells from my body going to hold
25 onto that other object, and does that other object hold onto skin

1 cells well? And then when it's swabbed, are there going to be
2 enough skin cells there for testing? It's very, very dependent.

3 So like I was saying, even if I was wearing this jacket for
4 an hour, I could be a huge shedder. Someone else wears this for
5 three hours and there's not that much DNA there from them. It's
6 very, very dependent on the person, the scenario, the type of item
7 that it is, the sweating, the dryness, the flakiness. There's so many
8 variables involved that it's really difficult to just say yes or no to any
9 of these touch DNA questions.

10 THE COURT: All right. Another juror asks: How often is
11 the equipment/instrumentation in your lab calibrated?

12 THE WITNESS: We have -- that's a good question.
13 There's several different types of instrumentation we have for the
14 entire DNA extraction processes, and then amplification, and then
15 getting the profile. They're constantly being calibrated on --
16 depending on what type of instrument or robotics or chemistries
17 are being used. Some of them are monthly, some of them are
18 quarterly.

19 But before anything can be used in our laboratory, and
20 that is any instrument or any type of chemical reaction, they all
21 have to go through a validation and a performance check. So a
22 validation is extremely expensive. We've had instruments that
23 have taken over a year to validate, because we are testing it at
24 every capability to see if it does what it's actually supposed to do.
25 Do I get the right expected results for something that makes sense?

1 Now, do I get the wrong results for something that makes sense?
2 The validations are very, very thorough and they have to pass
3 many, many different types of tests before we can even use them.

4 So everything is first validated, and then constantly
5 performance checks throughout the remainder of its usage when
6 it's "online" for case work.

7 THE COURT: All right. And then a follow-up to that
8 question is: Is this done by an outside company or agency?

9 THE WITNESS: The calibrations?

10 THE COURT: Uh-huh.

11 THE WITNESS: That is also dependent. Most of the
12 calibrations for most of the instruments are performed by DNA
13 analysts. Because every new type of technology that comes into
14 the laboratory, we have to have multiple competency and
15 proficiency tests on before we can even use it. So we have to pass
16 written exams, technical exams, sometimes hands-on application
17 exams, sometimes mock moot court exams, oral boards for all of
18 the different types of technology. It's not just a robot that does this
19 magical thing and we press play. We have to understand all of the
20 chemistry and all of the physics that goes behind all of these
21 applications.

22 Besides that, we are proficiency tested at least twice a
23 year, and all of our proficiency tests encompass all of the different
24 types of technologies that we use from evidence examination
25 throughout all the laboratory procedures to getting DNA out and

1 getting those profiles to then writing reports.

2 So some of the instruments are calibrated, for example,
3 some of the pipettes, which are those little things you see on TV,
4 the tubes that pick up, you know, little amounts of water or
5 chemicals, those could be calibrated by an outside agency that has
6 been tested and proven competent that they can make this
7 validation for a forensic testing laboratory. Because all of these
8 agencies also have to go through what's allowed for in our
9 accrediting -- accreditation body.

10 But even after they're calibrated, let's say by an outside
11 engineer, we have to perform a performance check behind them to
12 say was there a calibration? Did it give results as expected? If yes,
13 we can use it for case work again. If not, then we will not use that
14 item for -- or that instrument or robot for case work until whatever
15 issue it's having is fixed and resolved, that we know now it's going
16 to produce quality and expected work for whatever we have to do
17 with our case.

18 THE COURT: All right. Thank you.

19 Another juror asks: Can DNA simply disappear if enough
20 time has gone by?

21 THE WITNESS: That's also very tough to answer, for it to
22 simply disappear. There's also other types of DNA besides nuclear
23 DNA from skin cells. And they found DNA from fossils that are
24 millions of years old that had the right environment to be
25 preserved. Now, if it's DNA that just passes in time and maybe it's

1 in an area that has a lot of UV rays or a lot of bacteria that could
2 have consumed what ever body part or cell sample that it came
3 from, and that was only a month, then it's, again, hard to say.

4 So it's very dependent on so many different conditions
5 about whether the DNA can "survive" or not. It's a very hardy and
6 robust molecule. But at the time same time, there are a lot of
7 factors in our daily environment that could destroy it. But it's
8 dependent, again, on what it went through or how it was preserved.

9 THE COURT: This is a follow-up to that from the same
10 juror. Touched on the question already, but if you have anything to
11 add: Could you give context on the impact of environmental effects
12 on DNA samples such as the detectability of the DNA, dehydration,
13 passage of time?

14 THE WITNESS: I can answer that somewhat in -- when I
15 described earlier that there's things that I can see that are true
16 about a profile, such as if it's degraded, if it's inhibited, if there's a
17 mixture, how many people are in that mixture, if it's low level, that
18 the degradation, which means the DNA is breaking down or it's
19 getting less and less, or inhibition, which means something is
20 blocking this DNA from amplifying that I can't see as much of it, if
21 the cells or whatever is there could have a lot of it, but there's an
22 inhibitor that's not allowing me to see it. So there's all these
23 different things that we can tell from a profile, but I can't tell you
24 how that was degraded. It could have been degraded from passage
25 of time, from UV rays, from a fire. It could have been inhibited by,

1 let's say, different types of bacteria. Mold is actually an inhibitor to
2 DNA. Doesn't destroy it necessarily, but inhibits us from being able
3 to amplify it for forensic case work.

4 So I can tell different biological properties that have
5 influenced the profile. And with the software application, they can
6 take that into account of how to interpret that profile. But I can't tell
7 you how, exactly, that was inhibited or it degraded or how much
8 time it took to inhibit or degrade this profile. There's no way to tell.

9 THE COURT: All right. Thank you.

10 State, do you have any follow-up to that series of juror
11 questions?

12 FURTHER EXAMINATION

13 BY MR. GIORDANI:

14 Q Just on the last answer you just gave, just to be clear,
15 when you said that the software can take into account all those
16 various things that you referenced --

17 A Correct.

18 Q -- that that would be calculated into the statistics that
19 you've already testified to?

20 A It's part of I describe biological modeling.

21 Q Okay.

22 A So it does the statistics of probability distributions, and it
23 can give mathematical algorithms to understand the profile. To -- it
24 wants to give an explanation to the evidence profile of how to
25 deconvolute it or how to make a statistic based upon is this profile

1 degraded? What's the rate of inhibition of degradation? Is it low
2 level or is it robust? It can now use mathematical applications to
3 what I already knew was true, as an analyst, but I couldn't express
4 mathematically. And the software allows us to do that.

5 Q Thank you.

6 THE COURT: Ms. Trujillo?

7 **FURTHER EXAMINATION**

8 BY MS. TRUJILLO:

9 Q You would agree that the evidence collected by crime
10 scene analysts in this case was received the day of the murder,
11 correct?

12 A I don't recall that information. I would have to refer to the
13 evidence impound reports.

14 Q Go ahead.

15 A I don't have them in my case file. I have my reports.

16 Q Okay. Would you like a copy?

17 A Sure.

18 MS. TRUJILLO: May I approach?

19 THE COURT: You may.

20 BY MS. TRUJILLO:

21 Q This is actually the crime scene investigation report.

22 A Can you repeat the question one more time?

23 Q Just review it and then I'll ask you the question.

24 A So not the impound report? Do you want me to review all
25 of --

1 Q Where she's -- they list the collection of the evidence.

2 A [Witness reviews report.] Okay.

3 Q So that's a crime scene investigation report you just
4 reviewed, right?

5 A That's correct.

6 Q And that's relative -- it details the information at the crime
7 scene?

8 A Correct.

9 Q And the date of the incident is listed as February 21st,
10 right?

11 A I believe -- it is the 21st or 22nd? I don't recall if it's on --

12 Q The date of the incident.

13 A Incident? I -- if I recall correctly, it's the 21st.

14 Q All right. Let me approach.

15 THE COURT: You can move freely.

16 THE WITNESS: Thank you.

17 MS. TRUJILLO: Thank you.

18 BY MS. TRUJILLO:

19 Q This is actually the date of the report.

20 A Okay. Yes, thank you.

21 Q So the date of this report is the 22nd?

22 A Correct.

23 Q But are you aware that the incident was on the 21st?

24 A Yes, I am.

25 Q So fair to say that the items impounded from the scene

1 occurred the same day?

2 A I don't know the exact times.

3 Q Within hours of the incident?

4 A I would assume so, based on that information there, yes.

5 Q Based on the report you just read, the collection of items?

6 A From what I can see there, yes.

7 Q Okay. Thank you.

8 MS. TRUJILLO: No further questions, Judge.

9 THE COURT: Anything else from the State?

10 MR. GIORDANI: No, Your Honor.

11 THE COURT: Any additional juror questions for the
12 witness? All right.

13 Thank you for your testimony. You are excused at this
14 time.

15 Mr. Giordani?

16 MR. GIORDANI: And with that, the State would rest.

17 THE COURT: All right. The State's rested.

18 Defense?

19 MS. TRUJILLO: Judge, we'd like to call Adam Plumer.

20 THE COURT: All right. And then, ladies and gentlemen,
21 when we finish up with this witness, we'll be taking our lunch
22 break.

23 **ADAM PLUMER,**

24 [having been called as a witness and first duly sworn, testified as
25 follows:]

1 THE COURT CLERK: Thank you. Please be seated. State
2 and spell your first and last name for the record.

3 THE WITNESS: My name is Adam Plumer, it's A-D-A-M,
4 P-L-U-M-E-R.

5 THE COURT: All right. Thank you.

6 MS. TRUJILLO: May I proceed?

7 THE COURT: You may proceed.

8 MS. TRUJILLO: Thank you.

9 **DIRECT EXAMINATION**

10 BY MS. TRUJILLO:

11 Q Good morning, Mr. Plumer. How are you?

12 A Doing well, how --

13 Q Or afternoon, my apologies.

14 A Doing well.

15 Q Where do you work?

16 A Wooldridge Law.

17 Q Wooldridge Law. And how long have you worked there?

18 A Since I believe September of 2015.

19 Q Okay. And what is your job title?

20 A Director of operations.

21 Q Okay. And as part of -- what are your job duties as
22 director of operations?

23 A It's, like, a glorified office manager.

24 Q Okay. So that means --

25 A I do mostly business stuff, to answer the question.

1 Q Okay. Business stuff. Does that include keeping
2 information about cases in some type of software?

3 A Yes.

4 Q Okay. So you keep case notes, right?

5 A Yes.

6 Q You notate client contact?

7 A Correct.

8 Q Okay. Do you make phone calls on behalf of clients?

9 A I used to. More recently it's been business stuff. But yes.

10 Q Okay. And do you -- what is the purpose of keeping notes
11 on client contact?

12 A So we can look back and see what we did on a case.

13 Q Okay.

14 A If there's ever a problem with a case or anything like that,
15 that gives us the opportunity to see, you know, go back and say,
16 Oh, we did this, or we didn't do that.

17 Q Do you recognize the name Larry Brown?

18 A I do.

19 Q And how do you know that name?

20 A He was a former client of our firm.

21 Q Okay. And when did he retain your firm?

22 A I don't know. Sometime in 2017. I don't have -- I don't
23 remember the exact date.

24 Q Okay. Did your office contact Las Vegas Metro on behalf
25 of Mr. Brown?

1 MR. GIORDANI: And I would object. It's misleading and it
2 calls for hearsay.

3 MS. TRUJILLO: May we approach?

4 THE COURT: Sure.

5 [Off-record bench conference.]

6 THE COURT: All right. Ladies and gentlemen, we're
7 going to actually go ahead and take our lunch break now. We'll be
8 in recess for the lunch break. Let's go till 1:25 -- give you a little bit
9 longer today. We'll go till 1:25 for the lunch break.

10 And during the lunch break, you're all reminded that
11 you're not to discuss the case or anything relating to the case with
12 each other or with anyone else. You're not read, watch, or listen to
13 any reports of or commentaries with the case -- about the case,
14 person, or subject matter relating to the case. Don't visit the
15 location at issue. Don't do -- did I say independent research by way
16 of the Internet. All right. Well, none. Doubly make sure you don't
17 do it. And please don't and please don't form or express an opinion
18 on the trial.

19 Please leave your notepads in your chairs and we'll see
20 you back after the lunch break.

21 [Jury recessed at 12:11 p.m.]

22 THE COURT: Have a seat, sir. You're not done. You're
23 here. All right.

24 Once the door is shut -- family can stay. You can stay, you
25 can hear this. I don't care. Or leave.

1 MR. GIORDANI: She's talking to you guys.

2 THE COURT: Yeah, the family members can listen to this
3 or leave. It's up to you folks. All right.

4 So we are out of the presence of the jury with the witness
5 for a closed-door session in front of the Court, so the Court can
6 learn what information this witness has based on the State's
7 objection as hearsay to the records. And I don't know what all's in
8 the records, I don't know how they were generated. So I wanted to
9 allow the defense to get into it, because before we kind of ring the
10 bell in front of the jury on the content of the records. And the Court
11 feels that it would be relevant if Mr. Brown had sought to turn
12 himself in, because that would refute the flight, and I'm sure the
13 State's going to be asking for a flight instruction.

14 [Judge and bailiff confer.]

15 THE COURT: Yeah, they're fine. The victim's family can
16 hear this out of the presence of the jury. So that's what we're
17 doing. And that's why we're having this closed-door session.
18 Representations were made at the bench by both sides. I don't
19 know what all happened, so I need to get to the bottom of this, so
20 that's why we're doing this.

21 MS. TRUJILLO: Okay.

22 THE COURT: Okay. Go ahead, Ms. Trujillo. You can lay
23 your foundation and introduce the record --

24 MS. TRUJILLO: Okay.

25 THE COURT: -- and --

1 MS. TRUJILLO: Thank you.

2 **VOIR DIRE EXAMINATION**

3 BY MS. TRUJILLO:

4 Q So you testified that part of your job duties, you manage
5 the cases that come through, right?

6 A Yes.

7 Q Okay. If not, go ahead and -- I mean, this is a safe hearing,
8 it's okay.

9 A I mean, I really don't do now -- especially now, I don't do
10 anything that's case-related -- anything case-related for the most
11 part. At the time Mr. Brown hired the firm, I was much more
12 involved in the cases.

13 Q Okay. So that included taking notes and reviewing notes
14 of contact with Mr. Brown and Mr. Wooldridge?

15 A We would take time entries. We would do time entries,
16 right?

17 Q Okay.

18 A That included anything that we did on any case, for that
19 matter, we made a time entry, whether it was making phone calls,
20 sending text message, sending e-mail, corresponding with
21 whoever.

22 Q Okay. And --

23 THE COURT: So -- I'm sorry.

24 MS. TRUJILLO: Go ahead.

25 THE COURT: Were you responsible, then, for inputting

1 Mr. Wooldridge's time sheets or how -- what was your involvement
2 with time entries?

3 THE WITNESS: Nicholas would do -- Nicholas would keep
4 his own time -- at the time, he would have his own time sheet that
5 then I don't know if at that time -- at that time, I think we had a
6 couple of assistants. Somebody was putting his time entries into
7 our case management system, but they were directly -- there was a
8 copy-and-paste directly into our case management system.

9 BY MS. TRUJILLO:

10 Q Okay. And those -- the purposes of those time entries
11 were to keep business records about client contact, right?

12 A Yeah, of course.

13 Q Among other things, including contact, for example, to the
14 State on behalf of a client, right?

15 A Yeah.

16 Q Contact to Metro on behalf of a client?

17 A Yes.

18 Q And I contacted you in this case because Mr. Wooldridge
19 represented Mr. Brown, right?

20 A Uh-huh. Yes.

21 Q And you provided me with specific time entries related to
22 Mr. Brown's case?

23 A Correct.

24 Q And you're familiar with those time entries as the -- I'm
25 sorry, your title was director of operations?

1 A Yes.

2 Q And as director of operations, you're familiar with the
3 time entries, right?

4 A Correct.

5 Q And part of those entries indicate when you first -- when
6 your firm first had contact with Mr. Brown, right?

7 A Correct.

8 Q Do you remember them on top or do you need to review
9 the?

10 A You can -- if you have them, just so I can see.

11 THE COURT: Yeah, you can give him the document.

12 MS. TRUJILLO: And, Judge --

13 THE COURT: And, Mr. Giordani, have you seen this
14 document?

15 MR. GIORDANI: Yes.

16 THE COURT: Okay.

17 MS. TRUJILLO: Yes. And, Judge, for the record, this
18 document, because it's such a long printout, doesn't have the dates.
19 The dates are in an e-mail, which I also have.

20 THE COURT: Okay.

21 BY MS. TRUJILLO:

22 Q So if you want to look at the dates on here, sorry.

23 A Okay.

24 THE COURT: Does anyone have a copy I can look at so I
25 can know what's going on? I seem to be the only one who doesn't

1 know what this is about.

2 THE WITNESS: Do you want me to pull it up online?

3 MS. TRUJILLO: Thank you.

4 MR. GIORDANI: I have one.

5 THE COURT: Does anyone have a copy for me to look at?

6 MR. GIORDANI: Oh, just giving her mind.

7 MS. TRUJILLO: I'm sorry, I gave him the other copy.

8 THE COURT: Yeah. I mean, I -- this is the first time this is
9 coming up. So I'm apparently the only one who doesn't know what
10 this is all about.

11 MS. TRUJILLO: And, Judge, for the record, he's pulling it
12 up on his e-mail.

13 THE COURT: Okay. That's fine.

14 MS. TRUJILLO: E-mail you said? Because the dates are
15 there.

16 BY MS. TRUJILLO:

17 Q So you're familiar with those time entries, right?

18 A I am.

19 Q And what is the first date that you have on a time entry
20 relative to Mr. Brown?

21 A March 28th, 2017.

22 Q And what was -- what is indicated on that entry?

23 A This was done by me. I called Metro -- Las Vegas
24 Metropolitan Police Department to speak with Detective Mitchell
25 Dosch. I don't know if that's how you say it.

1 THE COURT: Yeah.

2 THE WITNESS: And went to voicemail, so I didn't get a
3 chance to speak with him.

4 BY MS. TRUJILLO:

5 Q Okay. So it also lists your personal work in this case and
6 in these time entries, right?

7 A Correct.

8 Q Okay.

9 A I believe there's two from myself.

10 Q And then also entries for Mr. Wooldridge, right?

11 A Correct.

12 Q And you're familiar with all the entries that you provided
13 to me?

14 A I am.

15 Q And those are all the entries in Mr. Brown's case?

16 A No.

17 Q There's more entries?

18 A Correct.

19 Q Okay. With reference to the April 4th, 2017, that's the
20 single entry; can you indicate for the Court what that entry says?

21 A Yes. That was entered by Nicholas and it says:

22 Call back Detective Cook and he wanted to know if client
23 would be willing to surrender himself. I informed that he would
24 be and to let me know when he received an arrest warrant and
25 we would arrange for a surrender.

1 Q And what is the date on that note?

2 A April 4th -- let me just double check, sorry. April 4th.

3 Q Okay. And fair to say that there were -- on the other entry,
4 I know there's two separate pages, there were a few contacts
5 between your office and Metro related to this case?

6 A That is correct.

7 Q Thank you.

8 **VOIR DIRE EXAMINATION**

9 BY MR. GIORDANI:

10 Q Good afternoon. How are you doing?

11 A Doing well.

12 Q Good. I called you last -- or two weeks ago or whatever,
13 when I learned you were going to a witness in this case, right?

14 A You did.

15 Q We had a brief discussion and you indicated best to talk to
16 Nick or Mr. Wooldridge, because you were uncomfortable
17 answering the questions, right?

18 A Correct.

19 Q Fair to say that Nick, Mr. Wooldridge, would have had the
20 one-on-one direct interactions with Mr. Brown?

21 A Relating to the time entries?

22 Q Yes.

23 A I believe so, yeah.

24 Q Okay. So the discussions that Mr. Wooldridge had with
25 Mr. Brown, those would be his attorney-client discussions, you

1 wouldn't be privy to those?

2 A That's correct.

3 Q Okay. I mean, you showed a little hesitation. What do
4 you mean --

5 THE COURT: Were you ever in the discussions?

6 THE WITNESS: I mean, I can't recall. This was three years
7 ago.

8 BY MR. GIORDANI:

9 Q Sure.

10 A I mean --

11 Q Fair enough.

12 You would agree with me that the detectives asked either
13 you or Mr. Wooldridge whether he'd be willing -- Mr. Brown would
14 be willing to come in and give a statement?

15 A Would I agree with you that they -- that he would be
16 willing to come -- that they asked? Is that what you're saying?

17 Q Yes, that they asked.

18 A Oh. Yes.

19 Q Okay. And he, Mr. Brown, through either you or through
20 Mr. Wooldridge indicated no?

21 A Correct.

22 Q And said issue an arrest warrant, basically? We'll have to
23 issue an arrest warrant.

24 A Well, not exactly. I mean, I don't know what attorney
25 would allow their client to go and speak to law enforcement.

1 Q Fair enough.

2 A Right.

3 Q I'm not disagreeing.

4 A And then, you know, per the time entries, Nicholas told
5 the officer that he'd be happy to surrender. You know, I mean, I'm
6 summarizing here. But happy to surrender him -- surrender
7 Mr. Brown if they had an arrest warrant, which I don't -- and again, I
8 don't -- my memory isn't that great, but I don't think they did at the
9 time.

10 Q Okay. Would you agree or disagree with this statement?
11 This is coming from the officer's report at page 31, authored by
12 Detective Cook:

13 On March 29th, Attorney Wooldridge contacted Detective
14 Cook and stated his client would not be giving a statement and
15 detectives needed to get an arrest warrant.

16 Would you agree or disagree with that?

17 A So that's what Officer Cook had in his notes, that Nicholas
18 told him?

19 Q In his signed officer report.

20 A I can't really imagine Nicholas saying something like that.

21 Q Okay.

22 A Or I -- saying it the way that it's written there.

23 Q Would you agree that Nicholas would be the best source
24 of this information, as opposed to you?

25 A Well, I mean, based on the time entry, I mean, it's pretty

1 clear what was said in the time entry.

2 Q Right. You would agree with me that Nick would be the
3 best person to clear this up?

4 A I mean --

5 Q He's the one having the conversation.

6 A -- I would agree that the time entry is pretty clear.

7 Q Okay. Would you agree that Nicholas would have the
8 personal information of the conversation he had with the detective
9 as opposed to you?

10 THE COURT: So you have to rely on the accuracy of
11 Mr. Wooldridge's timekeeping and records; is that fair?

12 THE WITNESS: That's fair.

13 THE COURT: Okay. So it's only as good, I mean, you
14 don't know if he's good at it or -- I mean, bad question.

15 You don't know if that entry was accurate or inaccurate,
16 you just rely on the entry that Mr. Wooldridge creates?

17 THE WITNESS: That's correct, Judge.

18 THE COURT: Okay. Let me ask you this: We've only got
19 it to a point in time where he says something about an arrest
20 warrant. We can all concur that Mr. Wooldridge told the detective
21 something about an arrest warrant. And that's the last entry. Was
22 that when Mr. -- what -- aren't there -- are there other entries that
23 we're just not seeing? Or what happens then? Is that it?

24 THE WITNESS: I mean, that's what we have here.

25 THE COURT: So Mr. Brown leaves the firm or -- why don't

1 we have any other entries?

2 THE WITNESS: I mean, these are the entries that we have
3 here. There's --

4 THE COURT: I know, but --

5 MR. GIORDANI: Here in court.

6 THE COURT: But -- here in court --

7 THE WITNESS: Yeah. Correct.

8 THE COURT: -- but is that it? I mean, aren't there other
9 entries? Because if we're going to get into that, I want to know
10 does Mr. Brown then say, I don't -- I changed my mind, I'm going to
11 Georgia. Or Mr. Wooldridge, you're a dope, I don't want to deal
12 with you anymore. Or Mr. Wooldridge says, You haven't paid me.
13 That's what I think probably happened. You know, something. I
14 mean, at some point there had to have been a Motion to Withdraw
15 and other things in this case. So I'm assuming that there's other
16 entries.

17 THE WITNESS: Correct.

18 THE COURT: I don't think we can just introduce part of
19 the entries, because we don't know what -- I mean, look, obviously,
20 something happened. Just based on my experience, I think I can
21 infer that Mr. Wooldridge at some point would have filed a Motion
22 to Withdraw, and there would have been something else with
23 respect to this arrest warrant. So I think we need the other entries.

24 MR. GIORDANI: Well, and can I finish my --

25 THE COURT: Like I said, I mean, maybe Mr. Brown

1 changed his mind. Maybe Mr. Wooldridge never talked to him
2 again and said, You're not paying me enough, get lost, Mr. Brown.

3 But we know that this wasn't it.

4 MR. GIORDANI: Right. And this is the purpose of the rule
5 against hearsay. Because he can't answer it, respectfully.

6 THE COURT: Well, I think --

7 MR. GIORDANI: Mr. Plumer can't answer.

8 THE COURT: -- one of the issues is the completeness of
9 the documents.

10 MR. GIORDANI: That too.

11 THE COURT: I mean, I think we're entitled to have -- or
12 maybe the State is entitled to have all the documents to see
13 whether or not Mr. Brown changed his mind or Mr. Wooldridge told
14 him, or just he dumped him and -- no offense to Mr. Wooldridge --
15 and there was no other contact with Mr. Brown. I think that all goes
16 to what Mr. Brown may or may not have done in this case.

17 MR. GIORDANI: Right. And if I may finish --

18 THE COURT: I mean, if Mr. Wooldridge never
19 communicated with Mr. Brown about an arrest warrant, I think
20 Mr. Brown is somewhat less culpable in going off to Georgia than if
21 Mr. Wooldridge told him, Hey, there's a warrant out for your arrest
22 or whatever. Or maybe Mr. Wooldridge just withdrew and had no
23 other contact with Mr. Brown, in which case I think Mr. Brown is
24 somewhat less culpable in running off to Georgia if his lawyer
25 never told him anything.

1 So I don't know, I think we need to know all this.

2 MR. GIORDANI: Then if I may, can I finish my questions,
3 number one --

4 THE COURT: Sure. Sure.

5 MR. GIORDANI: -- and also --

6 THE COURT: I just --

7 MR. GIORDANI: Can I also just note the flight occurred
8 during the high-speed chase in Georgia. Okay. So regardless of
9 what Mr. Wooldridge says or Mr. Plumer says, the flight is when
10 he's fleeing at a high rate of speed, running stop signs from a
11 marked -- or from a lights-and-sirens vehicle.

12 THE COURT: Well, if you get --

13 MS. TRUJILLO: Pretty sure opening referenced him --

14 THE COURT: Okay. First of all, you can finish your
15 question. But I'm the one who's going to have to decide this. And I
16 know what I consider important. So I'm trying to somewhat guide
17 you in this. But ask whatever you want, number one.

18 MR. GIORDANI: Okay.

19 THE COURT: Number two, unless you limit your flight
20 instruction, the jury is likely to also consider his flight to another
21 state as evidence of flight. So unless you want to write a flight
22 instruction that says you're only to consider the high-speed chase
23 and do not consider the fact that he left the state, the broad
24 language of the flight instruction, which we typically give, invites
25 the jury to consider his leaving the state.

1 So I think the door is open. Like I said, unless you want to
2 write a flight instruction that says do not consider the fact that he's
3 left the other state -- because otherwise, the jury may consider it
4 whether you argue it or you don't.

5 MR. GIORDANI: Fair enough.

6 THE COURT: I think so.

7 MR. GIORDANI: I think he did flee the state, but, I mean --

8 THE COURT: No, I mean they're going to say, well, he left
9 the state. Some juror is going to say, Oh, wow, he went to Georgia,
10 and this is in the flight instruction. So I think, you know, we have to
11 consider all of that. But go on with your questions.

12 MR. GIORDANI: Thank you.

13 **VOIR DIRE EXAMINATION (CONT.)**

14 BY MR. GIORDANI:

15 Q Mr. Plumer, you would agree with me you yourself didn't
16 make these -- all of these time entries?

17 A That's correct.

18 Q There's one, two, three, four, five, six, seven, there's eight
19 that we've referenced here in court --

20 A That's correct.

21 Q -- is that right? How many of those did you yourself
22 author?

23 A Two.

24 Q And that would be the phone call, 4/4/17, oh, well, all the
25 way to the right, it says who the author is, right?

1 A Yeah, yeah, yeah. Yeah.

2 Q Okay. So the two that you authored are referenced on
3 these notes.

4 You would agree with me that there are more notes that
5 exist in the system in which you guys kept these notes, right?

6 A That's correct.

7 Q Okay. And you represented Mr. Brown for some time
8 after these initial notes were authored?

9 A That's correct.

10 Q I mean, I -- if I --

11 THE COURT: For the record -- I'm sorry. For the record,
12 Mr. Wooldridge filed his Motion to Withdraw on April 11th, 2018.

13 MR. GIORDANI: Thank you.

14 BY MR. GIORDANI:

15 Q I was going to say, if I recall correctly, you were here
16 through indictment, you represented him through indictment and
17 even into maybe the first -- almost the first trial setting?

18 A I believe so. But I -- don't quite me on that. I'd have to
19 check.

20 Q Okay. During that time period, did you yourself have
21 conversations with Mr. Brown?

22 A I mean, yeah, of course. But I -- they were limited and that
23 was also me transitioning into working less and less with, you
24 know, with the cases directly.

25 Q Okay. You're not -- you're obviously not Mr. Brown's

1 lawyer?

2 A I'm not even an attorney.

3 Q Okay. The conversations that you had with Mr. Brown,
4 did they deal with the arrest warrant?

5 A I wouldn't know. I don't remember without looking.

6 Q Okay. What were your conversations with Mr. Brown?

7 A I wouldn't remember, man. I mean, it's -- like I said, it's
8 been three years ago. We have, like, 600 clients.

9 Q Are there notations about that somewhere?

10 A Possibly.

11 Q Would they be in this -- this is, like, a billing diary kind of,
12 right? The purpose of these entries are for billing, right?

13 A It's a time entry, just like any other attorney takes a time
14 entry.

15 THE COURT: You're billing against the retainer; is that
16 what you're doing?

17 THE WITNESS: Well, we do flat fees. So -- but we still
18 keep time entries of everything that we do.

19 MR. GIORDANI: Okay.

20 THE COURT: Is one of the reasons in case there's a bar
21 complaint or something or a fee dispute?

22 THE WITNESS: Yeah, anything.

23 THE COURT: Okay.

24 THE WITNESS: Or for us to look back and say, Hey, we
25 got this done, or nobody did, you know, X, Y, and Z on a case.

1 BY MR. GIORDANI:

2 Q Okay. Did -- during your either direct conversations with
3 Mr. Brown or conversations that you witnessed with
4 Mr. Wooldridge talking to Mr. Brown, was there ever discussions
5 about the arrest warrant that you recall?

6 A Probably. I don't recall anything specific.

7 Q Okay. Do you think that Mr. Wooldridge would be a better
8 source of information when it comes to that? I'm not asking you to
9 throw him under the bus, I'm asking you would he potentially recall
10 that information, if you can't?

11 A Oh, would he recall the information? Probably not.

12 Q Why is that?

13 A I mean, you guys know Nicholas.

14 Q Okay. I really like Nicholas personally.

15 A We all do. But that's why we have time entries.

16 Q Fair enough. So, I mean, if the detective is saying, on
17 March 29th, he conveyed to Nicholas -- or, I'm sorry, that Nicolas
18 conveyed to him his client would not be giving a statement, and
19 detectives needed to get an arrest warrant, basically, you're saying
20 that you just don't have personal knowledge of that; is that right?

21 A Other than the time entry that I'm looking at. But, I mean,
22 I know Nicholas. I don't think he would flat out say we're not giving
23 a statement and go get your arrest warrant.

24 Q Okay. Did you have personally some issues with
25 Mr. Brown during the course of Nicholas's representation?

1 A Not at all.

2 Q Okay.

3 THE COURT: It was a financial, just to refresh everyone's
4 memory.

5 MR. GIORDANI: Okay.

6 THE COURT: My very capable law clerk pulled the
7 motion. It was just as I suspected, Mr. Wooldridge was concerned
8 about Mr. Brown's continuing ability to pay. And, obviously, he
9 qualified by indigent representation, because we have the special
10 public defender's office here. So -- and that happened on
11 April 11th. So there must have been additional entries between the
12 entry with the arrest warrant that we're all talking about and this
13 filing of the April 11th, 2018, motion.

14 I have one question for Mr. Giordani. You're relying on
15 Detective Cook's report, correct? Did you ever contact the detective
16 directly to --

17 MR. GIORDANI: Yeah.

18 THE COURT: -- find out -- okay.

19 MR. GIORDANI: I spoke with Detective Dosch about this.

20 THE COURT: Okay.

21 MR. GIORDANI: Because I was curious, is that the end of
22 the conversation --

23 THE COURT: Right.

24 MR. GIORDANI: -- and Detective Dosch said yes, that was
25 his understanding of the final -- kind of the summary of their

1 contact with the attorney was get an arrest warrant, he's not talking
2 to anyone.

3 THE COURT: And when was the arrest warrant issued?

4 MR. GIORDANI: I think it was May -- I brought that in in
5 testimony. I don't have it --

6 THE COURT: I don't remember.

7 MR. GIORDANI: -- handy.

8 MS. TRUJILLO: It was later. It was not at this time.

9 MR. GIORDANI: No, it was May, I want to say. And this
10 was -- what we're talking about is --

11 MS. TRUJILLO: April.

12 THE COURT: April.

13 MR. GIORDANI: -- end of March-April.

14 THE COURT: Okay.

15 MS. TRUJILLO: Yes.

16 THE COURT: Any other questions for the witness?

17 MR. GIORDANI: Court's brief indulgence.

18 For the record, May 2nd was the arrest warrant.

19 THE COURT: Okay.

20 MR. GIORDANI: Any other questions?

21 MR. DICKERSON: It was issued on the 9th.

22 MR. GIORDANI: Issued on the 9th.

23 Any other questions?

24 BY MR. GIORDANI:

25 Q Are there time entries out there that could potentially

1 explain all this issue that we've been discussing? Additional --

2 A I have no clue.

3 Q All right. Are those contained in JustWare?

4 A In where?

5 MS. TRUJILLO: I don't think they have JustWare. It's a
6 different time software.

7 BY MR. GIORDANI:

8 Q Where is this from?

9 A It's from our case management system.

10 Q Your --

11 A I never heard -- yeah, I've never heard of JustWare.

12 Q Oh, your case management -- okay.

13 MS. TRUJILLO: That's what we've been talking about.

14 MR. GIORDANI: Thought it was JustWare.

15 MS. TRUJILLO: No.

16 MR. GIORDANI: Okay.

17 BY MR. GIORDANI:

18 Q Can we get a copy of your entire note history for this
19 case?

20 A I don't think that decision's mine to make.

21 Q That's Mr. Wooldridge?

22 A That's right.

23 MR. GIORDANI: I'll pass.

24 THE COURT: Anything else, Ms. Trujillo?

25 MS. TRUJILLO: No. I'm prepared to make

1 representations and argue. Do you want the witness to step out
2 while we hear that?

3 THE COURT: Sure. There's a --

4 MS. TRUJILLO: I apologize. Oh, sorry, Mr. Plumer.

5 THE COURT: Did you have a question?

6 MS. TRUJILLO: No, I was just going to say apologize.
7 Could you wait outside?

8 THE WITNESS: No problem.

9 THE COURT: Now we're going to talk about you.

10 MS. TRUJILLO: Thank you.

11 THE COURT: And there's -- you can wait in the hallway or
12 there's a little kind of conference room there in the vestibule, you
13 can sit in there.

14 [The witness exited courtroom at 12:35 p.m.]

15 MS. TRUJILLO: And, Judge, just for the record, those
16 were the only records that I received. The reason I limited it is that I
17 talked to Mr Wooldridge and Mr. Plumer personally was because
18 I'm limiting it to the time that Mr. Brown retained the attorney's
19 office after he heard about the search via Angelisa, which occurred
20 March 20th. So I'm only trying to get the initial information and it
21 coincides with when he left the state, which would have been
22 March 16th, right? So I want to talk about that time, because that's
23 my concern is that the jury's going to think he fled to Georgia based
24 on that. So that's why it's limited.

25 I'm not trying to get into any statements. I want to talk

1 about his state of mind. I mean, we just all questioned this. This --
2 the State characterized it as a business diary. That is the very heart
3 of a business record. Therefore, there is indicia of trustworthiness.

4 And secondly, the actual statement in there, I'm not using
5 it for the truth. I just want it for -- to show Mr. Brown's state of
6 mind, that he did not intend to flee to Georgia. And that's based on
7 conversations that are listed in this time entry.

8 That's all I was going to get out. The State is free to cross
9 if they want on the officer's report, but I would also like to note that
10 Detective Dosch and everyone else in this case has been testifying
11 to what other people did, what other people said. And, you know, I
12 didn't object purposely --

13 THE COURT: Well --

14 MS. TRUJILLO: -- because, obviously, we're -- one, it's
15 information that some of it's beyond question. Or I can cross on it
16 appropriately. And Mr. Giordani's free to do the same thing.

17 THE COURT: At a minimum, Mr. Giordani, I think she's
18 entitled to, at a minimum, get into the fact he didn't leave for
19 Georgia right away. We know this, because he retained counsel
20 who reached out to Metro to find out what was going on with the
21 case. And that, as of the time he left for Georgia on May 16th --

22 MS. TRUJILLO: March, no --

23 THE COURT: I'm sorry. March 16th.

24 MS. TRUJILLO: -- that was the wrong timeline, Judge.

25 So --

1 THE COURT: There had been no warrant issued for his
2 arrest. I mean, at a minimum, I think Ms. Trujillo's allowed to get
3 into that, that he didn't just hop on a plane or get in his car and
4 cross state lines, that he went a lawyer, that the lawyer reached out
5 to Metro to find out about a warrant, and that there was no warrant
6 issued prior to the time he left the state.

7 MS. TRUJILLO: But, Judge, I --

8 THE COURT: At a minimum, she's allowed to get into
9 that.

10 MS. TRUJILLO: That's not the accurate timeline. So I just
11 want to make sure the Court is clear.

12 THE COURT: Oh.

13 MS. TRUJILLO: Okay. So what happened was there was
14 a search of Ms. Ryder's house March 20th.

15 THE COURT: Right.

16 MS. TRUJILLO: Mr. Brown had already went to Georgia
17 on the 16th. If the Court will recall, there was testimony that on
18 March 8, Metro was surveilling him. He was still in Vegas at that
19 time. I elicited that testimony.

20 THE COURT: Okay.

21 MS. TRUJILLO: Okay? Then March 16th, he leaves to
22 Georgia to visit his family. March 20th, the search occurs. Angelisa
23 contacts Mr. Brown, who is in Georgia, and informs him, They're
24 looking for you, you're -- about a murder case.

25 He then retains Mr. Wooldridge. And then there's

1 communication between Metro. Which is why I limited it to that
2 timeframe, so when I talked to Wooldridge, I said, I need
3 information on when he retained you and what you talked to the
4 police when you were discussing the arrest warrant based on the
5 information in the officer's report.

6 THE COURT: Does Mr. Brown return to Las Vegas or is
7 he --

8 MS. TRUJILLO: He's arrested there. No, he stays there.

9 THE COURT: Okay. So he's in contact with
10 Mr. Wooldridge --

11 MS. TRUJILLO: Correct.

12 THE COURT: -- from another state.

13 MS. TRUJILLO: Correct. On his behalf to assist with the
14 contact with Metro, which is what these time entries show
15 happened.

16 MR. GIORDANI: This is my problem: He left before he
17 retained the lawyer. He left before the search warrant was
18 executed. My position is he's fleeing the state. Their position is
19 he's not fleeing the state, he has family there, whatever it may be.
20 This is not appropriate to bring in through a time entry, because it
21 doesn't give you all the facts. It's misleading and unfair. That's
22 why I objected in the first place.

23 Ms. Trujillo just said he left on the 16th of March. That's
24 after the crime was committed, before they hit his residence. Okay.
25 My position is he fled the state.

1 MS. TRUJILLO: Judge, you --

2 MR. GIORDANI: Their position is he went on vacation or
3 to see family or whatever. That's argument that can be made.

4 THE COURT: Well --

5 MS. TRUJILLO: But you want to talk about fleeing the
6 state. Then he would have left the 21st or the 22nd. He was here,
7 Metro surveilled him March 8th, he was still here.

8 So, you know, obviously, we're going to disagree and it is
9 argument. But there are still facts that the jury should be entitled to
10 consider, especially with regard to the state of mind to rebut the
11 State's implication that he has showed consciousness of guilt.

12 MR. GIORDANI: That's --

13 THE COURT: Well, I don't know that it rebuts
14 consciousness of guilt. I mean, I don't know, I don't see a problem,
15 and it doesn't really get into hearsay if they introduce that he
16 retained Mr. Wooldridge, that -- I mean, this is uncontested, that
17 Mr. Wooldridge reached out to Metro and he reached out on the
18 day -- I mean, this is all uncontested. And that Metro told him there
19 was no arrest warrant at that point in time.

20 MR. GIORDANI: Yeah, but that leaves out half of it. It's
21 not fair to us. Because if it's --

22 THE COURT: Well, what does it leave out?

23 MR. GIORDANI: That -- yeah, they offered, they said,
24 Come and talk to us. Wooldridge said kick rocks, get an arrest
25 warrant. I'm not going to be permitted to say --

1 THE COURT: Say he --

2 MR. GIORDANI: Exactly. That's why it's misleading.

3 MS. TRUJILLO: Because that's statements that go against
4 his Fifth Amendment. I mean there's a --

5 MR. GIORDANI: Exactly.

6 MS. TRUJILLO: There's a difference, though. That the act
7 to surrender is different from making a statement --

8 THE COURT: Right.

9 MS. TRUJILLO: -- the Court would agree.

10 THE COURT: Yeah.

11 MR. GIORDANI: He never surrendered.

12 MS. TRUJILLO: Because they issued an arrest warrant
13 and didn't contact Wooldridge apparently. You see the notes.

14 MR. GIORDANI: No, that's the argument that's being
15 made.

16 MS. TRUJILLO: I'm -- no, I'm not going to argue that.

17 THE COURT: Well, can you contact -- I mean, you can, in
18 rebuttal, call the detectives to say after discussing this matter with
19 Mr. Wooldridge on whatever that date is, did you reach out to
20 Mr. Wooldridge and inform him that there was an arrest warrant,
21 yes or no? It is what it is, either they did or they didn't.

22 So, to me, for whatever it's worth, it's not hearsay. It's
23 uncontested. I mean, it's consistent with the officer's report that
24 Mr. Wooldridge was retained. I don't, you know, know how
25 exculpatory or beneficial it is to your client, but, you know, it's --

1 what they want to do, you know, have to let them do, you know, if
2 they think it's important, then, you know, they think it's important.
3 And I don't really see the argument as to State hearsay if it's all of
4 this uncontested information, which is he retained Mr. Wooldridge,
5 Mr. Wooldridge reached out to Metro, he was told there was no
6 arrest warrant, and then whether or not -- I'd like to see the rest of
7 the records, frankly.

8 MR. GIORDANI: Yeah, they're --

9 THE COURT: As to whether or not they ever called
10 Mr. Wooldridge again. That may be in his records. So I think I'd
11 ask -- Ms. Trujillo, you contact them to get the rest of the records.
12 They can redact anything that's about a communication, and --
13 between Mr. Wooldridge and the defendant, and then just Ms. -- the
14 contacts with Metro from that one date. Because there may be
15 other things that we don't know about.

16 MR. GIORDANI: Okay.

17 THE COURT: And so I think that certainly the State's
18 entitled to get that. But like I said, at a minimum, I don't see the
19 problem, frankly, with the defense introducing uncontested
20 information that a lawyer was hired, that the lawyer reached out to
21 Metro, that at that date, there was no arrest warrant. And --

22 MR. GIORDANI: But --

23 THE COURT: -- whatever after.

24 MR. GIORDANI: -- that is contested. That second portion
25 is --

1 THE COURT: Well, it's not contested that Mr. Wooldridge
2 called Metro.

3 MR. GIORDANI: No.

4 THE COURT: Correct?

5 MR. GIORDANI: No.

6 THE COURT: It's not contested they didn't have an arrest
7 warrant on that date, correct?

8 MR. GIORDANI: No.

9 THE COURT: It's -- no, it's contested?

10 MR. GIORDANI: No, it's not contested.

11 THE COURT: Okay. And it's not contested --

12 MR. GIORDANI: They didn't have them, but --

13 THE COURT: -- that Mr. Brown hired Mr. Wooldridge.

14 MR. GIORDANI: No. But there's a whole --

15 THE COURT: Well --

16 MR. GIORDANI: -- subsequent --

17 THE COURT: -- I mean, you can put that on with rebuttal,
18 if you think that it creates an inaccurate picture. Like I said, I think
19 they need to bring the records, they can redact the -- anything that
20 has communication between Mr. Brown and Mr. Wooldridge or the
21 office. But, certainly, we're entitled to know was there any further
22 communication with Metro in those records? And --

23 MS. TRUJILLO: And --

24 THE COURT: -- what happened?

25 MS. TRUJILLO: And, Judge, obviously, there's a lot going

1 on. So if -- can you just give me five minutes with my client?
2 Maybe we can just -- because I didn't ask that question in front of
3 the jury. I started, they heard arrest warrant. Then you objected
4 and we stopped, right?

5 THE COURT: Right.

6 MS. TRUJILLO: So we can --

7 THE COURT: So --

8 MS. TRUJILLO: -- still maybe -- let me talk to my client for
9 a minute and figure out --

10 THE COURT: But like I said, I don't see how the State can
11 object to them introducing evidence that is uncontested, that is
12 exactly what you either know through official court records or you
13 know through Metro's own report.

14 MR. GIORDANI: But the --

15 THE COURT: I know. You're saying, well, what's the point
16 of it? Well, the point is that he at least reached out --

17 MR. GIORDANI: They're claiming --

18 THE COURT: -- to a lawyer.

19 MR. GIORDANI: They're claiming he was willing to
20 surrender. We disagree. That is contested.

21 THE COURT: Well, I didn't say they could get into he was
22 willing to surrender. I said they could get into he hired a lawyer,
23 the lawyer reached out to Metro, and at that point in time, there
24 was no arrest warrant. That is uncontested.

25 And to the extent that they want to get into that, I don't

1 see the harm, number one. And, you know, they can argue it
2 shows he was, I don't know, being conscientious or whatever. And
3 you can spin it however you want to spin it. But I don't see the
4 State's basis in objecting to evidence that is absolutely uncontested
5 and is born out either through your police report or through the
6 official records of this court.

7 So if they want to introduce that and spin it however they
8 want to spin it, they can. Now, the only thing is, you know, what
9 Mr. Wooldridge said and based on what -- but the three facts I've
10 just stated, again, to say the 20th time, are uncontested. And they
11 can get into that.

12 MR. GIORDANI: The three facts being --

13 MS. TRUJILLO: Retained, there was an arrest warrant --
14 there was not an arrest warrant at that time, and they contacted
15 Metro on his behalf.

16 THE COURT: The lawyer reached out to Metro.

17 MS. TRUJILLO: Right. Those three. That's what she's
18 saying is uncontested.

19 THE COURT: That's -- well, I think it is uncontested.

20 MS. TRUJILLO: No, no, no. I know, but I was just --

21 THE COURT: I mean --

22 MR. GIORDANI: Well, in my discussions with the
23 detectives previously, it was my understanding it wasn't Nick
24 Wooldridge proactively being good lawyer and reaching out to
25 them. That's my understanding.

1 THE COURT: Well, then, you can call -- okay. There was a
2 conversation with Metro. And so if you think that the business
3 records of Mr. Wooldridge reaching out to Metro are inaccurate,
4 then you can certainly reach out and have rebuttal evidence. But I
5 don't know how Metro would have known to contact
6 Mr. Wooldridge when there were no appearances in the case yet.

7 So if Mr. Wooldridge didn't reach out to them, how on
8 Earth would Metro, of all the lawyers in this town, have known to
9 reach out to Mr. Wooldridge?

10 MR. GIORDANI: They spoke to Angelisa Ryder, the
11 defendant's wife --

12 THE COURT: Oh, and she referred him to
13 Mr. Wooldridge?

14 MR. GIORDANI: I think that's what happened. I'm not
15 sure.

16 THE COURT: Okay. Well, then that's rebuttal.

17 MR. GIORDANI: But we can't question --

18 THE COURT: And you can get into that on rebuttal if you
19 choose to get into it. But we do know Mr. Wooldridge was --

20 MR. GIORDANI: Here's --

21 THE COURT: -- his lawyer.

22 MR. GIORDANI: Ms. Ryder's statements?

23 THE COURT: No, no.

24 MS. TRUJILLO: No.

25 THE COURT: You can call a detective to say how did -- if

1 you think the detective reached out to Mr. Wooldridge, you can call
2 the detective, Did you reach out to Mr. Wooldridge? Yes, how did
3 you know? Because Ms. Whatever -- the girlfriend or whoever she
4 was told me that his lawyer was Mr. Wooldridge or gave me
5 Mr. Wooldridge's card, or said call Mr. Wooldridge, or whatever
6 may have been said. That's rebuttal and you can get into that.

7 MR. GIORDANI: Okay.

8 MS. TRUJILLO: Judge --

9 THE COURT: Like I said, I don't see a huge dispute on
10 some of this.

11 MS. TRUJILLO: Okay. Just for clarification, I know you're
12 going to, you know, leave the bench. But if we decide, after my
13 conversations, and we could just move on and limit it to the three
14 uncontested facts with this witness, would you agree that I don't
15 have to call Mr. Wooldridge or go get the rest of the records --

16 THE COURT: Yeah, yeah, yeah. Absolutely.

17 MS. TRUJILLO: -- and all that? Okay. I just want to make
18 sure, because we might be able to just --

19 THE COURT: Absolutely. But then if they feel like --

20 MS. TRUJILLO: -- do those three and wrap it up.

21 THE COURT: -- Mr. Wooldridge didn't reach out to him --

22 MR. GIORDANI: Yeah.

23 MS. TRUJILLO: Right?

24 MR. GIORDANI: Now, I might need to call either the --

25 THE COURT: -- then you can call -- didn't reach out to

1 Metro and the detective wants to say something different.

2 MR. GIORDANI: Yeah, this is a whole --

3 MR. STORMS: We can call them.

4 THE COURT: That's your rebuttal case.

5 MR. GIORDANI: It's opening up something I didn't expect.

6 So I might have to call Detective Cook, Angelisa --

7 THE COURT: Well, okay.

8 MS. TRUJILLO: I gave you the records, though.

9 THE COURT: Well, here's what I'm saying, you have the
10 records --

11 MR. GIORDANI: I know. I didn't know the question was
12 going to be did he offer to surrender himself or what --

13 MS. TRUJILLO: But I didn't say that in front of the jury.

14 THE COURT: Well, no one's asking --

15 MR. GIORDANI: Oh, I know. I know that.

16 THE COURT: He's not -- that's not being allowed. The
17 questions are, Did your lawyer reach out to Metro? I mean, did the
18 lawyer reach out to Metro to find out what was going on with the
19 case? And he was told there was no arrest warrant. I don't see the
20 dispute here on that -- on those facts. There was no arrest warrant.
21 He was the lawyer. And he talked to Metro. Now, they say he
22 reached out to Metro, you say Metro reached out to him. If you feel
23 that's important and it's true, call a rebuttal witness.

24 MR. GIORDANI: Okay.

25 THE COURT: But I don't know how this is the -- like I said,

1 the only person in this, you know, that -- of the lawyers here that
2 didn't know what was going on is me. I'm the only one who hadn't
3 seen all these records. So I don't know what the surprise is. You
4 have the records. This guy was sitting in the -- I thought he was,
5 like, an extern. I see a guy in here all morning wearing a suit. I
6 assumed he was a SPD extern.

7 So, again, I don't know what the surprise is, and I don't --

8 MR. GIORDANI: Well, I just don't have --

9 THE COURT: -- think it's right to object to evidence which
10 is, look, I mean, you don't probably think it's relevant, but they can
11 spin it how they want and it's not -- it's uncontroverted.

12 MR. GIORDANI: Yeah, but it's -- there's missing -- we
13 don't have the rest of these notes. So there might be a note --

14 THE COURT: Well, I know, but for them to get into you
15 reached out, he was willing to surrender, we need the rest of the
16 records. That's what I said eight times. I don't know, maybe I'm,
17 like --

18 MS. TRUJILLO: Right, and my --

19 THE COURT: -- speaking clearly and she's asked --

20 MS. TRUJILLO: -- clarification is if I limit it and don't do
21 the surrender part, then we don't need that and we can just move
22 on.

23 THE COURT: Right. We don't need that.

24 MS. TRUJILLO: Right.

25 THE COURT: All we know --

1 MS. TRUJILLO: And I'm going to -- give me five minutes
2 and I'll figure it out.

3 THE COURT: -- is hire Wooldridge or was a client,
4 Wooldridge had a conversation with Metro. They say he reached
5 out, you say he didn't. If you think that's important, call a rebuttal
6 witness.

7 And there was no arrest warrant on that date, no arrest
8 warrant had been issued as of the date that Wooldridge spoke to
9 Metro. You're not contesting that, are you?

10 MR. GIORDANI: No.

11 THE COURT: Okay. Therefore, it would be uncontested. I
12 mean, I don't see what the confusion is. Maybe I'm not speaking
13 plainly or clearly. But --

14 MR. GIORDANI: It's -- there's no confusion on that point.
15 My --

16 THE COURT: The only confusion or matter of contest, I
17 guess, of the three things is whether Wooldridge called Metro or
18 Metro called Wooldridge. If you think that their records are wrong
19 on that, again, call a detective in rebuttal to say he reached out to
20 Wooldridge.

21 MS. TRUJILLO: Well, that's easy to clarify. I'll just say,
22 Was there communication between your office and Metro relative
23 to this case? It doesn't have to be one contacted the other.

24 THE COURT: Yeah, I mean, it doesn't -- right. Right. You
25 can as it that way if you want. If --

1 MS. TRUJILLO: I understand -- he's saying that the
2 surrender part, which was the fourth part that the Court is not
3 including in that --

4 THE COURT: Right. Not based on the state of the
5 evidence that I have heard so far, not including that, if you want to
6 get into that, then we need more information --

7 MS. TRUJILLO: Then we need the additional records. I
8 understand.

9 THE COURT: We need more information.

10 MS. TRUJILLO: I understand.

11 THE COURT: But for right now, like I said, there's three
12 things that everybody's agreeing on. And I don't see how we can
13 say that we're precluding that when it's uncontroverted.

14 MR. GIORDANI: I get it. But if there's a note that we don't
15 have, which I think probably exists, that says it was communicated
16 to Mr. Brown and he refused -- or he didn't -- elected to not turn
17 himself in, why am I precluded from asking that? If they get to tell
18 the first half of the story, why can't I tell the second half? That's all
19 I'm saying. I haven't seen these notes, I have no idea. Ms. Trujillo
20 thankfully sent me these last week, or --

21 THE COURT: Well, maybe the point just is there was an
22 arrest warrant. There was no arrest warrant on this particular date,
23 and he hired a lawyer.

24 MR. GIORDANI: That's their point, right.

25 THE COURT: I mean -- yeah. I mean, you can spin that

1 your way too.

2 MR. GIORDANI: But without the information, I'm, you
3 know --

4 MS. TRUJILLO: And for the record, I don't have the
5 additional information either. I just want to be clear that I have
6 given everything that I have and that's all I was provided.

7 MR. GIORDANI: Oh, yeah, I'm not claiming that --

8 THE COURT: He was already in Georgia, though.

9 MS. TRUJILLO: Yes.

10 THE COURT: He had left for Georgia already. So, I mean,
11 your spin will obviously be he left for Georgia, now he hears about
12 this search warrant. He doesn't come back to Las Vegas, he stays in
13 Georgia and calls a lawyer. I mean, so it's however you want to
14 look at it, but, you know, you can spin it your way. He doesn't
15 come running back to Las Vegas and say, Oh, my God, they're
16 searching and I'm, you know, want to clear this up.

17 MR. GIORDANI: And when I make that argument, they're
18 going to jump up and object and say that implicates his right to
19 remain silent.

20 THE COURT: No. He didn't surrender on the warrant. I
21 mean --

22 MR. GIORDANI: Exactly. And me commenting on that,
23 they're going to claim, is pre-arrest silence.

24 THE COURT: Well, that's not his right to remain silent.

25 MR. GIORDANI: Okay.

1 THE COURT: And that would be your rebuttal argument
2 anyway.

3 MR. GIORDANI: Sounds good.

4 THE COURT: So see what they say in their closing
5 argument.

6 MS. TRUJILLO: But there is a fine line between
7 statements --

8 THE COURT: Yeah, they cannot ask --

9 MS. TRUJILLO: -- and actions.

10 THE COURT: They cannot get into the detectives wanted
11 a statement and Mr. Brown refused the statement. Clearly, that's
12 commenting on his right to remain silent.

13 MS. TRUJILLO: True.

14 THE COURT: So they're not going to get into that unless
15 somehow they really open the door. But I think if we limit it the
16 way I just stated, you know, it is what it is. I mean, you can spin it
17 your way, they can spin it their way. Anyway, I think we've just all
18 said the same thing over and over again. I don't see anything being
19 accomplished.

20 [Court recessed at 12:53 p.m., until 1:39 p.m.]

21 [Outside the presence of the jury.]

22 THE COURT: All right. We're out of the presence of the
23 jury. Where are we on the witness?

24 MS. TRUJILLO: Well, Judge, I started by saying I'd be
25 willing to just limit it to those three that the juror -- Your Honor said

1 were uncontested, but the State still has issues. So I think they
2 want to make a record. And I wasn't going to get into the whole
3 surrender part --

4 THE COURT: Okay.

5 MS. TRUJILLO: -- because I don't want to open the door
6 and then, you know, I'd have to get these records that I never even
7 had, you know, and maybe call Wooldridge. That's an entire, you
8 know --

9 MR. GIORDANI: We replayed what was asked. And our
10 problem lies in the very last question before I objected, which was:
11 Did you, on behalf of Mr. Brown, reach out to Metro?

12 THE COURT: Well, okay.

13 MR. GIORDANI: And then I object. So our position --

14 THE COURT: So I can sustain the objection or did you, on
15 behalf of Mr. Brown -- I mean, that doesn't mean he told them to do
16 it. On behalf of could mean, you know, when you file a motion,
17 you're filing it on behalf of your client even though half the clients,
18 you know, don't even know what's in the motion and wouldn't
19 understand it.

20 MR. GIORDANI: But -- okay.

21 THE COURT: Because it's legal.

22 MR. DICKERSON: There's no litigation pending.

23 THE COURT: Do you see what I'm saying? So on behalf
24 of, to me, suggests you're representing him. It doesn't necessarily
25 mean he told you to do it.

1 MS. TRUJILLO: And my offer was to follow up saying --
2 because I think their concern was that they initiated. So I was going
3 to say, But Metro also contacted your office? And we have to go
4 both ways.

5 THE COURT: Okay. So just clean it up that Metro also
6 contacted your office.

7 MS. TRUJILLO: But --

8 THE COURT: Like I said, on behalf of could indicate you're
9 representing someone. So everything you do is on behalf of your
10 client.

11 MR. GIORDANI: Yeah, the --

12 THE COURT: As opposed to --

13 MR. GIORDANI: If I may, the problem we have is reaching
14 out on behalf of Mr. Brown implies to the jury that Mr. Brown has
15 cooperating in one way, shape, or form. He's reaching out to the
16 law enforcement investigators investigating for the homicide. That
17 is a false impression. It can't be left with the jury.

18 THE COURT: Well, as I said, I think reaching out on behalf
19 of means it's on behalf of your client, you're representing your
20 client as opposed to a different client. But how is it that you want
21 to -- what is your proposal? What do you want to do or what do
22 you want me to do or what are you asking for?

23 MR. GIORDANI: Well, if we're permitted to cross-examine
24 on this issue and the following issues, number one, after that
25 conversation, whatever that conversation entailed, we don't know,

1 but after that conversation, an arrest warrant was, in fact, issued on
2 May 9th. They represented him for an extended period of time after
3 that, he never turned himself in. If you permit us to cross-examine
4 on that, we should be fine.

5 But the problem is, is that when I follow up and say, This
6 alleged conversation that you had with Metro or I guess
7 Mr. Wooldridge had with Metro, wasn't it also discussed that
8 detectives would like to speak with Mr. Brown?

9 THE COURT: Well, okay.

10 MR. GIORDANI: Then it implicates his Fifth Amendment
11 right.

12 THE COURT: Well, first of all, the witness -- and I don't
13 have the records in front of me, but the witness is confined to
14 what's actually in the records, because he's right now said he
15 doesn't remember if he had any direct contact with Mr. Brown or
16 not. So his testimony is limited to what's in the records.

17 Now, I think, you know, I'll hear from the defense, but if
18 you want to say Mr. Wooldridge represented him till whenever --

19 MS. TRUJILLO: I offered to do that, Judge.

20 THE COURT: -- and an arrest warrant -- I mean, you don't
21 have to get it in through this witness, who may not know, but you
22 can introduce through a different witness. When was an arrest
23 warrant issued? And it may already be before the jury. I just don't
24 remember independently as we speak right now. So you can get
25 into that.

1 But in terms of anything else, I don't even think it's in the
2 record. And the witness has already said he doesn't know, so I
3 don't think you can ask a witness questions when we've already
4 heard he doesn't know the answer to them.

5 MR. GIORDANI: Right. Which is back to our original
6 issue, which is Mr. Wooldridge is the one who can answer these
7 questions.

8 THE COURT: Well --

9 MR. GIORDANI: Hearsays are --

10 THE COURT: -- I've already said they can ask this witness
11 the uncontroverted things. If you want to also ask him the
12 uncontroverted things that are in the record, how long did he
13 represent Mr. Brown and when was the arrest warrant issued? And
14 I don't think Ms. Trujillo has an objection to that.

15 MS. TRUJILLO: No.

16 THE COURT: And, like I said, that can come in other ways
17 as well. But --

18 MS. TRUJILLO: My --

19 THE COURT: -- I can take judicial notice of when Mr.
20 Wooldridge moved to withdraw or whatever. But she doesn't have
21 an --

22 MS. TRUJILLO: Judge --

23 THE COURT: -- objection, you can ask that. And I don't
24 think there's any, really, inference drawn from that, in my opinion.
25 So I'm not drawing the same inference that you're drawing. And

1 like I said, you reached out on behalf of your client. Obviously, it's
2 on behalf of this client. Why else is he reaching out?

3 So it's just like a lawyer might say I filed this motion on
4 behalf of my client or whatever. It's just how lawyers speak.

5 MR. GIORDANI: Yeah, except for at that point in time,
6 there is no case, so he's just acting as Mr. Brown's agent.

7 THE COURT: Yeah, but he still his client.

8 MR. GIORDANI: Yeah, right.

9 THE COURT: He still reaching out on behalf of his client.

10 MR. GIORDANI: Exactly.

11 THE COURT: I just -- I think -- I'm not getting the inference
12 that you're getting. I think that can certainly be interpreted either
13 way. I don't think it suggests Mr. Brown's sitting in the office
14 saying, Oh, I want to surrender. And, like I said, you can get into
15 the other stuff about there was eventually an arrest warrant. And --

16 MS. TRUJILLO: Judge, just a couple of things. I'm okay
17 with the Court taking judicial notice, which is already in testimony
18 about when an arrest warrant was issued in this case. My concern
19 is that they wanted to take it a step further just to the surrender
20 portion, which is what I'm trying to avoid, because we have no
21 additional notes and I'm not going to call Mr. Wooldridge. So if
22 they get into that, then, obviously, that becomes a problem.

23 Everything else I'm okay with.

24 THE COURT: Okay. So you have no problem with --
25 about the arrest warrant and about the date that Mr. Wooldridge

1 was no longer attorney of record?

2 MS. TRUJILLO: I do not.

3 THE COURT: Okay. Now, I can say, you know, ladies and
4 gentlemen, you're instructed that Mr. Wooldridge filed a Motion to
5 Withdraw and whatever the date, April 18th. Or if it's in the
6 records, you can ask the witness.

7 MS. TRUJILLO: It's not in the records.

8 THE COURT: Do you want me to just say at the end,
9 ladies and gentlemen, you're instructed that Mr. Wooldridge was
10 no longer -- filed a Motion to Withdraw as of April 11th, 2011? And
11 then other thing was when was the arrest warrant issued?

12 MR. GIORDANI: We have no problem with that.

13 THE COURT: Okay.

14 MR. GIORDANI: But what we want to ask, which we
15 shouldn't be precluded from asking, is you knew very well the
16 arrest warrant was issued and it was during the course of your
17 representation with -- of Mr. Brown, because you rep him
18 until 2018. He never surrendered himself, you never called
19 detectives in order to arrange a surrender, and that's the reality of
20 the situation.

21 THE COURT: When was the arrest warrant issued?

22 MR. GIORDANI: May --

23 MS. TRUJILLO: May 9th.

24 MR. GIORDANI: -- 9th of 2017.

25 MS. TRUJILLO: And as the Court stated, this witness

1 doesn't know that information, it's not in the records that we all
2 have. And my questions were limited --

3 THE COURT: Well, you can ask him, Do you know when
4 an arrest warrant was issued? And then --

5 MR. GIORDANI: He knows it. Wooldridge does. That's
6 my problem. We're being precluded from cross-examining him.
7 Like, without these records, we don't -- we're talking in the blind
8 here. I'm talking about things that I learned through hearsay
9 through detectives, our position.

10 THE COURT: All right. Can we do this, can you -- well,
11 why not just put it on in rebuttal with the detective? You issued an
12 arrest warrant? Did you contact Mr. Wooldridge's office? Did the
13 defendant surrender? Why not do it that way?

14 MS. TRUJILLO: Okay. But if the Court's going to allow
15 that, then I get to get into that last statement about he was willing
16 to surrender. That's where the -- that's what we're trying to avoid.

17 MR. GIORDANI: That's the problem.

18 THE COURT: All right.

19 MR. GIORDANI: Will he --

20 THE COURT: So --

21 MR. GIORDANI: We don't think he was willing to
22 surrender. They're going to claim he was.

23 THE COURT: Well, the -- let me see the records again.
24 Again, I'm the only person that doesn't have these records that
25 we're talking about.

1 MS. TRUJILLO: I'm sorry, I only brought two copies.

2 THE COURT: I just can't memorize exactly what all the
3 entries are. Sorry.

4 MS. TRUJILLO: This is the one we're talking about.

5 THE COURT: Okay. So the entry for the record says:

6 Called back Detective Cook and he wanted to know if
7 client would be willing to surrender himself. I informed that he
8 would be and he let me know when he received an arrest
9 warrant and we would arrange for a surrender.

10 Here's what I would suggest. Why don't we just -- can
11 you call another witness out of order and send the witness back to
12 provide -- this is what we talked about before the break -- a
13 complete set of the time entries and the law office can redact any
14 privileged entries, so that we just know if anybody contacted them
15 about an arrest warrant or whatever?

16 MS. TRUJILLO: Judge, but just for the record, the point of
17 me limiting it to those three, as the Court said, we wouldn't have to
18 do that and I wouldn't have to call Wooldridge if I just said those
19 three uncontested facts.

20 MR. GIORDANI: Right.

21 THE COURT: Well, I just don't see how that opens the
22 door, to be honest, Mr. Giordani. Like I said, he -- okay. First of all,
23 he never answered the question, because you objected.

24 MR. GIORDANI: Correct.

25 THE COURT: So I -- the remedy there is I sustain the

1 objection and Ms. Trujillo moves onto when did he -- you know, the
2 other two things that are uncontested. I think that's the cleanest
3 way to do it. I mean, he never answered the question. So there's
4 an objection, I can sustain the objection.

5 MR. GIORDANI: Okay.

6 THE COURT: They've been told to disregard the questions
7 if an -- you know, you've got to assume jurors follow some of the
8 instructions.

9 MR. GIORDANI: Sure.

10 THE COURT: Thanks, Ms. Trujillo.

11 I think that's the cleanest way to do it.

12 MS. TRUJILLO: Okay. So I can't ask any communication
13 questions.

14 THE COURT: Right.

15 MR. GIORDANI: Okay. So --

16 MS. TRUJILLO: Over my objection, for the record.

17 THE COURT: Right. But it doesn't open the door to them
18 getting into all of this other stuff.

19 MS. TRUJILLO: I understand.

20 THE COURT: I think that's the cleanest way to do it.

21 MR. GIORDANI: Okay. So --

22 THE COURT: I'll sustain the objection. The jury's been
23 told don't speculate about the answer, disregard the question. We
24 assume they do that. So I don't see now at this point that there's
25 any prejudice to the State.

1 MR. GIORDANI: Mo. I think we're -- now we're in a little
2 more agreement here.

3 THE COURT: Okay.

4 MR. GIORDANI: Our big issue was this impression that he
5 was communicating openly with Metro and --

6 THE COURT: No. Well, I -- okay. You made an objection,
7 you approached the bench, we took a break. So the -- I'll sustain
8 the objection --

9 MR. GIORDANI: And strike --

10 THE COURT: -- and then Ms. Trujillo -- well, the question
11 is automatically stricken.

12 MR. GIORDANI: Okay.

13 THE COURT: I mean, right? I don't think we need to
14 highlight the question by -- I mean, we tell them that in the opening
15 remarks: Disregard the question. So to me, then, to highlight the
16 question is bad for everybody.

17 So then, Ms. Trujillo, you'll proceed with the other
18 questions, and I think that's the cleanest way to do this.

19 MS. TRUJILLO: Okay. And just so we're clear, I'm going
20 to limit it now, since we're moving on and taking out the
21 communication portion, there's no longer three points, it's just
22 going to be -- now I have to do the foundation you've provided me
23 with entries from March 28th, 2017, through April 4, 2017.

24 THE COURT: Right.

25 MS. TRUJILLO: And to your knowledge, between those

1 dates, no arrest warrant was issued. Is -- that's where -- those were
2 the other points, right?

3 THE COURT: Right. I don't remember what the three
4 points were exactly.

5 MS. TRUJILLO: Well, it was originally communication.
6 But now Your Honor said no. So even though I still want to talk
7 about communication.

8 THE COURT: Well, I said they said they -- there was
9 contact with Metro. You can say there was contact with Metro
10 regarding an arrest warrant, and as of whatever date the contact
11 was, there was no arrest warrant.

12 MR. GIORDANI: Yeah, but then --

13 THE COURT: That's all true.

14 MR. GIORDANI: That is true. But then the follow-up
15 question, my cross would be the warrant was issued later, and you
16 didn't do what you were going to -- you said you were going to do
17 from the notes.

18 THE COURT: Well, here's the problem with that. Who the
19 heck knows what Mr. Wooldridge was thinking or whether, in fact,
20 his client ever agreed to surrender or not surrender? All we know is
21 he called Metro to find out that there was no arrest warrant. That's
22 it. Okay.

23 Mr. Wooldridge -- did Mr. Wooldridge have contact with
24 Metro? Yes.

25 Was there an arrest warrant issued at that time? No.

1 We don't know who thought what or -- that's it, right?
2 You look perplexed. I don't get what the --

3 MR. GIORDANI: Can we just -- I thought we were on the
4 same page, eliminating the portion where you said contact with
5 Metro; why do we need that?

6 THE COURT: Well, we don't know who -- who cares? If
7 they want it, they can do it. I mean, it's not up to me to tell them
8 how to put on what information they want to put on.

9 Look, I think it's uncontested, they want to put it on, they
10 can. If it's -- if they decide it's not important, they don't have to put
11 it on. We're not going to talk about this anymore.

12 Bring the jury in.

13 I mean, we're just going around and around and around in
14 a circle here.

15 MS. TRUJILLO: Should I bring the witness in first?

16 THE COURT: Oh, sure.

17 That's it. I mean, it doesn't matter who contacted Metro.
18 He contacted them, they contacted him; there's no arrest warrant,
19 that's the point.

20 MR. GIORDANI: Okay.

21 MS. TRUJILLO: And, Judge, I'll ask both ways, there was
22 contact. I mean, I'll just keep it as there was contact.

23 [The witness reentered courtroom at 1:53 p.m.]

24 THE COURT: Come on back up, have a seat.

25 [Jury reconvened at 1:53 p.m.]

1 THE COURT: All right. Court is now back in session.
2 Everyone may be seated.

3 Sir, you are still under oath; do you understand that?

4 THE WITNESS: Yes.

5 THE COURT: All right. And the last question, the
6 objection was sustained.

7 And so Ms. Trujillo, you may proceed with your direct
8 examination of this witness.

9 MS. TRUJILLO: Thank you.

10 **DIRECT EXAMINATION (CONT.)**

11 BY MS. TRUJILLO:

12 Q Sorry, Mr. Plumer, to make you wait. This will be very
13 brief.

14 Prior to your testimony, you provided me with what you
15 referred to earlier as case entry notes, right?

16 A Correct.

17 Q And those notes were dated between March 28th, 2017,
18 and April 4th, 2017, correct?

19 A Correct.

20 Q Okay. And your office had contact with Metro during the
21 dates of March 28, 2017, and April 4th, 2017?

22 A Correct.

23 Q And to your knowledge, between those dates,
24 March 28th, 2017, and April 4th, 2017, there was no arrest warrant
25 to your knowledge?

1 A Correct.

2 Q Thank you.

3 MS. TRUJILLO: No further questions.

4 THE COURT: Cross.

5 MR. GIORDANI: Thank you.

6 **CROSS-EXAMINATION**

7 BY MR. GIORDANI:

8 Q Sir, you're not a lawyer, right?

9 A Correct.

10 Q You work on behalf of Mr. Wooldridge, correct?

11 A Yes.

12 Q Do you still work there?

13 A I do.

14 Q Okay. You indicated with Ms. Trujillo that the notes that
15 you or your firm provided were for the dates March 28th, 2017,
16 through April 4th, 2017; is that right?

17 A Yes.

18 Q You would agree with me that your firm or Mr.
19 Wooldridge officially represented Mr. Brown until April 18th
20 of 2018; is that right?

21 A Yes.

22 Q Okay. So can I presume that there are another year's
23 worth of notes that exist somewhere within your firm?

24 A Yes.

25 Q Okay. And we don't have those; you would agree with

1 that?

2 A Correct.

3 Q Okay. The arrest warrant in this case for Mr. Brown
4 issued May 9th, 2017, correct?

5 A I'd have to look.

6 Q Okay. If I were to represent that fact to you, you would
7 agree with me that you represented Mr. Brown for almost a whole
8 year after the arrest warrant was issued?

9 A That's correct.

10 Q Okay.

11 MR. GIORDANI: Can I have the Court's brief indulgence?

12 THE COURT: Sure.

13 MR. GIORDANI: Thank you, sir.

14 I'll pass the witness.

15 THE COURT: Any redirect?

16 MS. TRUJILLO: No, Judge.

17 THE COURT: Any juror questions for the witness?

18 All right. Sir, thank you for your testimony. Please do not
19 discuss your testimony with anyone else who may be a witness in
20 this matter. Thank you, you are excused.

21 Counsel approach.

22 [Off-record bench conference.]

23 THE COURT: Ladies and gentlemen, you are instructed
24 that an arrest warrant for Mr. Brown was issued on May 9th, 2017.
25 You are also instructed that Mr. Wooldridge filed a Motion to

1 Withdraw as counsel on April 11th of 2018.

2 All right. The defense may call its next witness.

3 MS. TRUJILLO: Thank you, Judge.

4 Defense calls Rose Brown.

5 **ROSE BROWN,**

6 [having been called as a witness and first duly sworn, testified as
7 follows:]

8 THE COURT CLERK: Thank you. Please be seated. State
9 and spell your first and last name for the record.

10 THE WITNESS: Rose Marie Brown.

11 THE COURT: And can you spell that for us, please.

12 THE WITNESS: Rose --

13 THE COURT: Just catch your breath.

14 THE WITNESS: -- R-O-S-E, Marie, M-A-R-I-E, Brown,
15 B-R-O-W-N.

16 THE COURT: All right. Thank you.

17 Ms. Trujillo?

18 MS. TRUJILLO: Thank you, Judge.

19 **DIRECT EXAMINATION**

20 BY MS. TRUJILLO:

21 Q Hi, Ms. Brown, how are you?

22 A Good. Wait a minute. Okay. Okay. I'm good.

23 Q You need some water? Okay.

24 A Okay.

25 Q What's your relationship with Larry Brown?

1 A He's my oldest son.

2 Q Okay. And where's Larry Brown originally from?

3 A Atlanta, Georgia.

4 Q And how long did he live in Atlanta, Georgia?

5 A Oh, all his life up until three years ago. Two years, about

6 two and a half, three years ago.

7 Q Okay. So he's only ever lived in Georgia and Vegas?

8 A That's it.

9 Q Okay. What other family members do you both have that

10 live in -- at the Atlanta area or in Georgia?

11 A Oh --

12 MR. GIORDANI: And, Judge --

13 And, ma'am, I apologize to interrupt you.

14 I would just object as to relevance.

15 MS. TRUJILLO: May we approach?

16 THE COURT: Sure.

17 [Off-record bench conference.]

18 THE COURT: Overruled.

19 Do you remember the question, ma'am?

20 THE WITNESS: She asked me --

21 THE COURT: About family.

22 THE WITNESS: -- how many other family members --

23 THE COURT: Yeah.

24 THE WITNESS: All my people. Like, I have two sons -- I

25 have three, but two sons. One live in Detroit, one live in Atlanta.

1 BY MS. TRUJILLO:

2 Q Let me stop you, Ms. Brown.

3 THE COURT: And I think Ms. Trujillo just asked about the
4 family members --

5 THE WITNESS: That live --

6 THE COURT: -- living in Georgia.

7 THE WITNESS: Oh. Okay. Okay. Okay. All right.

8 My mother live there. My sister brothers. And nieces and
9 nephews, grandkids, me. And that's it.

10 BY MS. TRUJILLO:

11 Q Okay. So do you remember when Larry moved to Vegas?

12 A Uh-huh.

13 Q When was that? If you remember. If not, it's okay.

14 A I know the year, it was, oh, '16.

15 Q Okay. And since the time that he moved from Georgia to
16 Vegas --

17 A Uh-huh.

18 Q -- would he return to visit?

19 A He would.

20 Q And what would he return to visit for?

21 A One time he visit my mother sister passed, which is my
22 aunt. He came down for the funeral, which was in Alabama. And
23 then he came for Christmas. We all went, my two grandkids from
24 Detroit was there, so we all celebrated Christmas together. Of
25 course, I had to work. But he was there.

1 Q Okay. Is that the last time you remember him visiting or
2 did he visit another time?

3 A No, he visited the next year for his daughter's graduation,
4 he came. And I can't remember -- because, you know, I'm kind of
5 old.

6 Q It's okay, Ms. Brown. Okay. So just to be clear, when he
7 came for Christmas, that was Christmas of 2016?

8 A Yes.

9 Q Okay. And you do remember that he came -- you said he
10 came the next year; was that around spring of 2017? If you know.

11 A You know what? He did come in -- before -- yeah, before
12 the holidays, he did come for the funeral, for my aunt's funeral.
13 And then the next year he did come.

14 Q Okay.

15 A But I can't tell you if it was -- it was springtime.

16 Q The last time you remember Larry being there --

17 A Uh-huh.

18 Q -- did you go out with Larry?

19 A We did.

20 Q Regularly, a few times?

21 A Just a few times. Because, see, I work. I work 12-hour
22 shift.

23 Q Understood, ma'am.

24 A Three days a week.

25 Q Okay.

1 A So I be working. So maybe we went out maybe a couple
2 of times.

3 Q You know the day he was arrested, right?

4 A I don't know the date, but I know I was at work.

5 Q Okay.

6 A Well, the Sunday we had went out to a restaurant, to a
7 Mexican restaurant to eat. It was myself, him, and his son. And the
8 next day I had to work. It either was a Saturday or Sunday that we
9 went out, but I know I had to go to work the next day.

10 Q All right. So you're saying you went out to eat with Larry
11 the day before he was arrested?

12 A Yes.

13 Q Okay. But you don't recall the date?

14 A No. It was on a weekend.

15 Q Okay. That's fine.

16 A But I can't remember was it Saturday or Sunday.

17 Q And --

18 A I know I had to work the next day.

19 Q And so going out to eat, was that just a regular occurrence
20 when he would visit, you guys would go out to eat?

21 A Yeah, uh-huh.

22 Q Okay.

23 A Yeah.

24 Q And that day, the day before his arrest, now, I'm talking
25 about --

1 A Uh-huh.

2 Q -- when you were at the Mexican restaurant --

3 A Uh-huh. Uh-huh.

4 Q -- how was Larry acting that day?

5 A He was acting good. Acting like Lar, funny. We saw our

6 niece there, which is his cousin, which is my niece. And he hugged

7 her, we talked. We had a good time.

8 Q Okay. Was he acting nervous?

9 A No.

10 Q Was he --

11 A Uh-uh.

12 Q -- did he appear to be stressed out to you?

13 A I don't -- uh-uh, no.

14 Q Okay.

15 A Uh-uh. He act like Larry.

16 Q Okay.

17 A Having fun. We just had a good time. That's what I did.

18 Q Thank you, Ms. Brown.

19 A Okay.

20 MS. TRUJILLO: No further questions.

21 THE COURT: Cross?

22 MR. GIORDANI: Yes.

23 **CROSS-EXAMINATION**

24 BY MR. GIORDANI:

25 Q Good afternoon, ma'am.

1 A Good afternoon.

2 Q My name's John, I'm with the district attorney's office.

3 A Hi, John.

4 Q Hi. I just have a couple of questions for you.

5 A Okay.

6 Q You indicated your son moved to Vegas in 2016?

7 A I'm thinking it was 2016.

8 Q Were you familiar with --

9 A Because this is '19. Yeah.

10 Q Were you familiar with your son's friends back in Atlanta?

11 A No.

12 Q Okay. So do you know Anthony Carter from Atlanta?

13 A No.

14 Q Okay. Do you know a guy by the name of Poke?

15 A No.

16 Q Okay. Would it surprise you to know that your son linked

17 up with Poke back out here when they both moved out here?

18 A Yeah, it's --

19 MS. TRUJILLO: Objection. Foundation.

20 THE COURT: Sustained.

21 MR. GIORDANI: Okay.

22 BY MR. GIORDANI:

23 Q Fair to say that you and I have never spoken?

24 A Uh-huh.

25 Q And you've never spoken with Mr. Dickerson?

1 A Hi. Uh-uh.

2 Q This guy sitting at the table here.

3 A Yeah. Uh-huh.

4 Q Okay. You've spoken with Ms. Trujillo, I imagine --

5 A Yeah.

6 Q -- multiple times?

7 A Uh-huh.

8 Q Okay. You indicated Mr. Brown, your son, was acting

9 normal the day that you went to dinner?

10 A He was.

11 Q And that was the day before he was arrested?

12 A Yeah. Yeah, I'm thinking it was the day before.

13 Q But you're not --

14 A Because I went to work the next day.

15 Q Okay.

16 A So, yeah.

17 Q And there weren't any police vehicles following you or

18 anything like that, when he was acting normal?

19 A I weren't paying no attention. I mean, I drive and -- if they

20 were following me, I ain't seen nobody.

21 Q Okay. All right.

22 A I mean, I live in Dekalb County. They be everywhere, so if

23 they was, I ain't paid no attention.

24 Q Okay.

25 A So I don't know.

1 Q All right. Thank you, ma'am.

2 A Okay.

3 THE COURT: Any redirect?

4 MS. TRUJILLO: No redirect, Judge.

5 THE COURT: Any juror questions for the witness? No?

6 Oh, counsel approach.

7 [Off-record bench conference.]

8 THE COURT: All right. Ma'am, we have a question here

9 from one of the jurors.

10 THE WITNESS: Okay.

11 THE COURT: A juror asks: Why did your son move to Las

12 Vegas?

13 THE WITNESS: I don't know.

14 THE COURT: All right.

15 THE WITNESS: Because -- I mean, I don't know.

16 THE COURT: Yeah, don't speculate if you don't --

17 THE WITNESS: Yeah.

18 THE COURT: If you don't know.

19 THE WITNESS: I don't know.

20 THE COURT: Okay. Any follow-up, Ms. Trujillo?

21 MS. TRUJILLO: No.

22 MR. GIORDANI: Oh, I'm out of order. I'm sorry.

23 THE COURT: I know, I -- no?

24 MS. TRUJILLO: No, Judge.

25 THE COURT: Mr. Giordani, any follow-up?

1 MR. GIORDANI: Just a couple of questions, Your Honor.

2 THE COURT: Sure.

3 **FURTHER EXAMINATION**

4 BY MR. GIORDANI:

5 Q You don't know why your son moved out here --

6 A No.

7 Q -- is that fair?

8 How old is Mr. Brown, your son? This son.

9 A You would ask which. 42, he'll be 43 this next year.

10 Q Okay. How old are your other sons?

11 A The one next to him is 39 -- 38, 39. And my youngest one,
12 he just had a birthday, he's 33.

13 Q Okay. Thank you.

14 MR. GIORDANI: No further questions.

15 THE COURT: Ms. Trujillo, anything else?

16 MS. TRUJILLO: No, Judge.

17 THE COURT: Any other juror questions? All right. I see
18 no other questions.

19 Ma'am, thank you for your testimony.

20 THE WITNESS: Okay.

21 THE COURT: Please don't discuss your testimony with
22 anybody else who may be a witness in this case.

23 THE WITNESS: Okay. All righty.

24 THE COURT: Thank you.

25 THE WITNESS: All right.

1 THE COURT: And you are excused.
2 THE WITNESS: All right.
3 THE COURT: And just follow the bailiff from the
4 courtroom.
5 THE WITNESS: Okay. Thank you.
6 THE COURT: All right. Ms. Trujillo, you may call your
7 next witness.
8 MS. TRUJILLO: Thank you.
9 Defense calls Latoria Brown.
10 MR. GIORDANI: Oh, I'm sorry. Can I ask for judicial
11 notice?
12 THE COURT: I'm sorry?
13 MR. GIORDANI: Judicial notice of the day of
14 June 29th, 2017.
15 THE COURT: Oh, counsel approach.
16 [Off-record bench conference.]
17 THE COURT: I'll verify it right now. All right.
18 Face the court clerk.
19 **LATORIA BROWN,**
20 [having been called as a witness and first duly sworn, testified as
21 follows:]
22 THE COURT CLERK: Thank you. Please be seated. State
23 and spell your first and last name for the record.
24 THE WITNESS: Latoria Brown.
25 THE COURT CLERK: Can you spell it, please?

CONTINUED IN NEXT VOLUME