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Elizabeth A. Brown
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CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CLEMON HUDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

S.C. CASE NO. 82231

APPEAL FROM A JUDGMENT OF CONVICTION PURSUANT TO LOZADA V. STATE AND DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) EIGHTH JUDICIAL DISTRICT COURT THE HONORABLE JUDGE CARLI KIERNY, PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF
VOLUME V

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<u>ATTORNEY FOR APPELLANT</u>
CHRISTOPHER R. ORAM, ESQ.
Attorney at Law
Nevada Bar No. 004349
Rachael E. Stewart
Nevada Bar No. 14122
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

<u>ATTORNEY FOR RESPONDENT</u>
STEVE WOLFSON
Nevada Bar No. 1565
200 E. Lewis Ave.
Las Vegas, Nevada 89155
(702)455-4711

AARON FORD
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

CLEMON HUDSON, Appellant, vs. THE STATE OF NEVADA Respondent.	CASE NO. 82231

APPELLANT'S APPENDIX

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LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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AARON FORD
Nevada Attorney General

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Nancy Medina
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. STEVEN TURNER AND CLEMON HUDSON, Defendant(s).	Case No. C-15-309578-1 and Case No. C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

THURSDAY, APRIL 19, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 4

(Appearances on page 2.)

RECORDED BY: ROBIN PAGE, COURT RECORDER

APPEARANCES:

For the Plaintiff(s): LEAH C. BEVERLY, ESQ.
(Deputy District Attorney)
JOHN L. GIORDANI III, ESQ.
(Deputy District Attorney)

For the Defendant
Steven Turner: TEGAN C. MACHNICH, ESQ.
(Deputy Public Defender)
ASHLEY L. SISOLAK, ESQ.
(Deputy Public Defender)

For the Defendant
Clemon Hudson: CLAY PLUMMER, ESQ.

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For the Defendants

None offered.

LAS VEGAS, NEVADA, THURSDAY, APRIL 19, 2018

[Proceedings commenced at 11:27 a.m.]

[Outside the presence of the jury.]

THE COURT: This is the continuation of the trial of Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon Hudson*. Counsel, state your appearances, please.

MS. BEVERLY: Leah Beverly and John Giordani for the State.

MS. MACHNICH: Tegan Machnich and Ashley Sisolak for Mr. Turner.

MR. PLUMMER: Clay Plummer for Mr. Hudson.

THE COURT: Let the record reflect that the defendants are not present.

Apparently, counsel, there was a miscommunication with the Clark County Detention Center. They had them scheduled as coming over at 1:00 even though I thought I put on the record several times we were going to start at 11:00 today.

So my concern is the jury. We don't know how long it's going to take for them to bring them over. If we had started at 11:00, I was going to do a 12:30 lunch break. I've had this situation before. It takes them usually a while to bring them over. So I don't know if you want me to just have the jury come back at 1:00. We may not get started for about another half hour.

MR. GIORDANI: Can I suggest that we just hold them for at

1 least, like, 15 minutes, and -- and then readdress it?
2 MS. BEVERLY: We can take a shorter lunch.
3 MR. GIORDANI: It looks like they're here.
4 THE COURT: Oh, very good.
5 MR. GIORDANI: There we go.
6 THE COURT: Let's bring them in.
7 MR. GIORDANI: We do have some stipulations to put on the
8 record.
9 THE COURT: Let's let -- let's bring them in and we'll do the
10 stips.
11 MS. BEVERLY: We can take maybe a little shorter lunch too,
12 like an hour and 15 maybe, instead of an hour and 30.
13 [Pause in proceedings.]
14 THE COURT: Let the -- let the record reflect the presence of
15 the defendants.
16 Counsel, there's some housekeeping matters that you wanted
17 to address?
18 MR. GIORDANI: Yes, Your Honor. It's going to take a
19 moment, but it's going to save time in the long run. The parties have
20 met conferred on several exhibits and have come to stipulations on a
21 couple hundred of them. I'm not going to list them individually, but I
22 have some numbers for the court and for Mr. Alan, the clerk.
23 The parties are going to stipulate to Exhibits 12 through 20.
24 There is an objection to 21.
25 The parties are going to stipulate to 22 through 25.

1 The parties are going to stipulate to 26 through 35.
2 The parties are going to stipulate to 36 through 46.
3 The parties are going to stipulate to 47 through 58.
4 The parties are going to stipulate to 59 through 91.
5 The parties are going to stipulate to 116.
6 THE COURT: 115 or 116?
7 MR. GIORDANI: 116.
8 THE COURT: 116.
9 MR. GIORDANI: 115 was previously admitted, and then 116
10 was inadvertently left out. So 116 is a stipulation.
11 The parties are going to stipulate to 118 through 138.
12 The parties are going to stipulate to 139 through 151.
13 There is an objection to 162.
14 So parties are stipulating to 152 through 161. There's an
15 objection to 162.
16 And then the parties are stipulating to 163 to 195.
17 The parties are stipulating to 218 through 235.
18 There's an objection to 236.
19 The parties are stipulating to 237 and 238.
20 There's an objection to 239 and 240.
21 The parties are stipulating to 241 through 246.
22 There's an objection to 196 through 217.
23 Are you with me, Alan?
24 THE CLERK: Yes, sir.
25 THE COURT: I believe so.

1 MR. GIORDANI: Okay. So there's an objection to these.
2 Sorry about that.
3 Parties are going to stipulate to 247 through 262.
4 The parties are going to stipulate to 263 through 281.
5 There are objections to 282 through 289.
6 The parties are stipulating to 290 through 306.
7 There are objections to 307 through 310.
8 The parties are stipulating to 311 through 318.
9 There are objections to 319 through 322.
10 The parties are stipulating to 323 and 324.
11 There are objections to 325 through 331.
12 The parties are stipulating to 332.
13 There are objections to 333 and 334.
14 The parties are stipulating to 335 through 349.
15 THE COURT: Was that 335 to 349, counsel?
16 MR. GIORDANI: Yes, Your Honor.
17 THE COURT: Thank you.
18 MR. GIORDANI: The parties are stipulating to 350
19 through 366.
20 The parties are stipulating to 367 through 379.
21 The parties are stipulating to 380 through 396.
22 That should cover everything we can cover up to this point.
23 THE COURT: Thank you, counsel.
24 MR. GIORDANI: Thank you.
25 THE COURT: Let me just make sure I got this.

Counsel for defense, it's my understanding that as to State's Exhibits 12 through 20, 22 through 90 -- 22 through 91, 116, 118 through 161, 163 through 195, 218 through 235, 237 and 238, 241 and 242 -- I'm sorry, 241 through 281, 290 through 306, 311 through 318, 323 and 324, 332, and 335 through 396, that you're stipulating as to the their admission; is that correct?

MS. SISOLAK: As to Mr. Turner, yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: At that time, those exhibits will be admitted.

[State's Exhibit Nos. 12 through 20, 22 through 91, 116, 118 through 161, 163 through 195, 218 through 235, 237, 238, 241 through 281, 290 through 306, 311 through 318, 323, 332, and 335 through 396 admitted.]

THE COURT: And counsel, there's one more housekeeping matter.

In listening to opening statements, I just wanted to verify something with the defendants. You understand the State has filed an amended indictment in this case? Is that -- do you understand that?

DEFENDANT TURNER: Yes.

DEFENDANT HUDSON: Yes, sir.

THE COURT: Okay. And the State has dismissed Count 6 of the original indictment; do you understand that?

DEFENDANT TURNER: Yes.

THE COURT: And so you're only going to trial on the amended indictment, Counts 1 through 5, which are conspiracy to

commit burglary, attempt burglary while in possession of a firearm or deadly weapon, two counts of attempt murder with use of a deadly weapon, and battery with use of a deadly weapon resulting in substantial bodily harm.

And you are -- and you understand the nature of those charges; is that correct?

DEFENDANT TURNER: Yes.

DEFENDANT HUDSON: Yes.

DEFENDANT TURNER: Yes.

THE COURT: And you understand the nature of those charges, sir?

DEFENDANT HUDSON: Yes, sir.

THE COURT: And you're pleading -- and you -- you are pleading not guilty to those charges; is that correct?

DEFENDANT TURNER: Yes.

DEFENDANT HUDSON: Yes.

THE COURT: Is that correct, sir?

DEFENDANT HUDSON: Yes.

THE COURT: And you understand as a trial strategy, the defense is going to -- if the State proves their case, presents sufficient evidence to prove their case as to Counts 1 and 2, as a trial strategy, your defense attorneys are going to concede, making concession as to Counts 1 and 2, and argue as to the remaining counts; do you understand is that?

DEFENDANT HUDSON: Yes.

DEFENDANT TURNER: Yes.

THE COURT: Okay. And are you in -- are you in agreement with that trial strategy?

DEFENDANT TURNER: Yes.

DEFENDANT HUDSON: Yes.

THE COURT: Is that correct, sir?

DEFENDANT TURNER: Yes, sir.

THE COURT: Okay. And you consulted with your attorneys regarding enacting that trial strategy; is that correct?

DEFENDANT TURNER: Yes, sir.

DEFENDANT HUDSON: Yes.

THE COURT: I just wanted to verify that. All right. Thank you.

And I realize, like I said, under *Armenta-Carpio vs. State*, 129 Nevada 531, that it overruled *Hernandez vs. State,* 124 Nevada 978. But I did want to make a record at this time.

Counsel, any other housekeeping matters?

MS. MACHNIC: No, Your Honor.

MR. PLUMMER: No, Your Honor.

THE COURT: Can I bring the jury in?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Thank you.

[Jury reconvened at 11:43 a.m.]

THE COURT: You may be seated. Ladies and gentlemen, we've gotten a little late start this morning, so we're probably not going to

take our lunch break until probably 12:45 to 1:00.

Will the parties stipulate to the presence of the jury?

MS. BEVERLY: Yes.

MR. GIORDANI: Yes, Your Honor.

MS. MACHNIC: Yes.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you. State?

MR. GIORDANI: State would call Officer Russo.

LOUIS RUSSO,

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

THE CLERK: Please be seated. Would you please state and spell your name for the record?

THE WITNESS: Louis Russo, L-O-U-I-S R-U-S-S-O.

MR. GIORDANI: May I?

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q What do you do for a living, sir?

A Police officer with LVMPD.

Q How long have you been with Metro?

A Five years.

Q In your capacity as a police officer, are you in a patrol unit?

A Yes, I am.

Q Can you describe for the ladies and gentlemen of the jury

what a patrol unit does?

A Respond to calls for service, proactive police work in the area, whatever our sector beat that we're assigned to.

Q And what sector beat are you assigned to?

A I was working William 4 that night.

Q Okay. When you say that night, you know why you're here to testify today?

A Yes.

Q What does that area that you just described encompass?

A It -- it's Bolden Area Command. It's Cheyenne south to the freeway, to the 15. And then from -- at the time, it was the Rainbow corridor all the way east to the -- to the 15, and then 95 south.

Q On September 4th, 2015, did you learn that there had been an officer-involved shooting?

A Yes, I did.

Q When did you learn of that?

A It was about 3:00 in the morning. And I was at the intersection of Decatur and Washington.

Q Okay. So were you at the intersection of Decatur and Washington in your patrol car?

A Yes.

Q Were you alone or with someone else?

A I was alone in my car, was but I was parked next to my partner.

Q Okay. Who was your partner?

A Thomas Keller.

Q Officer Keller, was he alone?

A Yes.

Q In his patrol vehicle?

A Uh-huh.

Q Okay. How is it that you first hear about this call?

A We got a broadcast on our radio from our sergeant who said that there had just been a shooting in Northwest Area Command and they were going to send officers over there to assist with calls for service.

Q Okay. Were you advised over the initial dispatch where the shooting had occurred?

A No.

Q Okay. Did you have a general idea of where it occurred?

A No.

Q All right. Describe for the ladies and gentlemen of the jury how it is that the dispatch system works in general.

A The -- the call center receives a call and then they put it out to all available cars that are clear in the area to be assigned to the call to take based on your location.

Q And is that radio -- I guess radio traffic, for lack of a better term --

A Uh-huh.

Q -- does that come to that device you have on your chest or is that in your vehicle?

A It's both.

Q Okay. In a case such as this, or a situation such as this, are you getting frequently updated from dispatch regarding details they're learning?

A Yes.

Q Tell us how that proceeded after you hear the initial call.

A So we were -- the call originated in Northwest Area Command. I -- I was in Bolden Area Command on our Bolden channel. The sergeant that was working told us that there had been a shooting in Northwest and we were to -- clear units were to head over to that area for calls for service.

So I -- I told dispatch to assign me to whatever was pending. I clicked over to Northwest Area Command and that's when I heard that there had been shots fired and an officer was down.

Q When you heard that, what did you do?

A I immediately put on lights and sirens and I started heading right to the scene.

Q How far away were you from the scene?

A Three to five miles.

Q Okay. What's between you and the scene?

A I was at Decatur and Washington. The -- the actual scene was Rainbow -- Lorenzi and Oveja. So I just had to go south to get on the freeway, freeway all the way to Rainbow, and then south to Westcliff, and Westcliff to Lorenzi, and then --

Q Can you give an estimate as to how long it took for you to get

1 to that scene once you knew where the scene was?
2 A Two to four minutes.
3 Q Did your partner or Officer Keller also proceed to the scene?
4 A Yes. He was right behind me. And while we were en route,
5 two other patrol cars somehow followed -- fell -- fell in behind us.
6 Q Okay. Goes without saying an officer-involved shooting is a
7 serious thing, right?
8 A Yes.
9 Q Were there several units that ultimately responded to that
10 location?
11 A Yes. There was four from Bolden that originally arrived with
12 me.
13 Q Okay. So four separate units in addition to yourself?
14 A Three separate units in addition to myself.
15 Q Okay. What is it that you first observe when you get onto this
16 scene?
17 A So I arrived and I parked on Lorenzi at the very edge where
18 Lorenzi and Oveja intersect. I wasn't --
19 Q Let me stop you. I want to publish for the jury State's 117. Do
20 you see that on your little screen there, sir?
21 A Yes.
22 Q All the members of the jury see that okay? All right. So where
23 is it that you initially respond to, sir?
24 MR. GIORDANI: May I?
25 THE COURT: You may approach.

1 MR. GIORDANI: Thank you.
2 THE WITNESS: It's just off -- just offscreen right here, at the
3 very -- very corner.
4 BY MR. GIORDANI:
5 Q Okay. And, sir, you can write on that screen with your finger
6 and it will show up to the jury. Let me move this a little bit. Can you see
7 where -- where you were?
8 A Yeah. So I -- I parked right -- right there.
9 Q Okay. Where is this subject residence located?
10 A This house right here.
11 Q Okay. And we can clear that. It's -- sometimes it's a
12 millimeter or two off.
13 A Yeah. It's this house right here.
14 Q Are the arrows on the house?
15 A Either -- the arrows are on top of the house, yes.
16 Q The arrows are on the house. So when you first arrived, do
17 you have the exact address of the home?
18 A No, I do not.
19 Q What details do you have when you first arrive?
20 A We just -- we had heard that there was an officer down. He
21 had been shot with a rifle, and that suspects were in the backyard of a
22 residence. I knew the hundred block. I knew it was at the 6700 block.
23 And I wasn't sure the exact house number.
24 Q Okay. You said the suspects were in the back of the
25 residence; is that something that was updated over the radio?

A Yes. That was radio traffic from the original call for service, and then as well as Officer Malik's original radio traffic.

Q Okay. So Officer Malik is one of the people involved in this incident, correct?

A Yes.

Q Can you actually hear his voice over the radio?

A Yes.

Q So he's not going through dispatch; he's directly talking and you can hear it?

A He's -- he's -- yeah. I'm on that channel. He's -- whatever he's saying, he's talking to dispatch and responding officers.

Q Okay. So how many suspects were you looking for at that point?

A We were -- we knew that there was two.

Q Okay.

A That's all that we had known.

Q And you didn't know the exact address; is that right?

A I did not.

Q So you said you parked off of this street in the bottom right of the photograph, correct?

A Yes.

Q And to the left in that photograph and up a bit is where the residence is?

A Yes.

Q So what do you do? How long is it that you're posted up in the

place where you initially parked?

A Just that -- just as long -- enough time for me to get out of the car and grab my shotgun. And then I started running westbound down the street looking for -- I was expecting to see a patrol car with lights on parked by the house. There was no lights on. It was really -- it was very dark. So I -- we just started running down the street until we did finally see the patrol car.

Usually we are taught to park one to house houses away from this -- the target residence. So we had -- we had assumed that one or two houses to the west was going to be the -- the actual target house. However, it ended up being more like four or five houses.

So we started running up to doors, realizing that these were closed doors and people were home still. And then we continued to run westbound until we saw at 6729, where the house -- the front door was open.

Q Okay. So I'm going to show you grand jury -- I'm sorry, State's Exhibit 247. I'm in grand jury mode. Do you recognize that?

A Yes.

Q What does that appear to be to you?

A That is the cul-de-sac. That is Oveja and Lorenzi.

Q Okay. Can you circle the target residence?

A [Witness complies.]

Q So you had -- you had described parking a little ways away, and then you actually went on foot with your shotgun, correct?

A Yes.

Q Just show the ladies and gentlemen the path that you took on foot.

A So I -- I parked here. I parked here and then I ran down the street to the front door.

Q Okay. You indicated it was dark outside. Were you able to see the little address labels on the homes?

A I was.

Q Okay. And then you proceeded to look for a particular address, correct?

A Right.

Q Ultimately, you end up seeing an open door?

A An open front door, yes.

Q And is that at the residence you just circled?

A Yes.

Q Tell us what happened from there.

A Me and Officer Keller were side by side running up the front driveway. We get to where the front door is open and I lean in and say, Hey, Metro Police, is anybody inside. And then I hear Officer Malik say, Hey, we're in the backyard -- or we're by the backyard, by the back -- by the backyard.

We run into the house. I see Officer Roberts [sic] laying face down on the ground. I see Malik standing with his back to us facing out into the backyard which was completely dark. I stepped over Officer Roberts as our down officer rescue tactic that we're trained is the first guy in, you know, covers -- creates cover. So I was providing cover.

At that time, Officer Keller, who is a paramedic and two other officers that were with him started to do -- to package him up and -- and get tourniquets on him and get him outside, pulled out to the front of the house where rescue was waiting.

Q All right. So let's break this down a little bit. You proceed up the street on foot?

A Yes.

Q Are you with Keller and the others?

A I -- I am immediately with Keller, and then the other two are a couple, you know, couple yards behind us still.

Q Okay. When you proceed up to the residence, the door was already open?

A Yes.

Q Did you see any lay people in the home at that time?

A Immediately stepping through the threshold, there was -- there was, who I assumed at the time, were the homeowners, or the residents of the house. They were in a bedroom immediately to my left. So the moment I stepped in, I saw them. And then I proceeded forward to where Malik and Roberts were.

Q Okay. And you said you presumed they were the homeowners. Is it -- you -- you leave them there and you don't put a gun on them, obviously?

A Yes.

Q You don't suspect that they're involved in this?

A Yeah. They -- they -- as soon as I -- they saw me, they were

like, they're over there, they're over there. And they were pointing us toward where the officers were.

Q So you leave them behind, you go straight to the back?

A Yes.

Q Okay. I'm going to show you now State's 60 -- State's 60; does that look familiar to you?

A Yes.

Q What does that appear to be generally?

A I believe that that is the back door that Officer Malik was standing in that faces out toward the back patio area.

Q Okay. And the perspective that this photo is being taken from, is that the front door where you entered?

A Yes.

Q You described, if I remember correctly, you said Malik?

A Uh-huh.

Q Do you know his last name?

A Smith, Grego-Smith.

Q Okay. So Officer Grego-Smith is visibly standing in that area; is that right?

A Yes. He bladed off using part of the threshold there as cover and he's aiming out with his pistol out into the backyard.

Q Okay. For -- for some of the jurors who don't understand, what does bladed off mean?

A He's just using part of the threshold there as some type of cover and concealment.

1 Q Okay.
2 A So he's half -- half protected by the door and then half
3 standing out into the darkness.
4 Q Okay.
5 A Or into the actual opening of the door.
6 Q And is he saying anything that you're hearing?
7 A He was telling me that there was a suspect down in the
8 backyard. He could hear see him but he couldn't see him, and that
9 someone -- he had seen another who had taken off running.
10 Q Okay. What do you do at that point? When he's conveying
11 this, there's one suspect in the backyard, but he can't see him, and
12 another who ran off, what do you do in response to that tactically?
13 A We didn't know if the second suspect was in the backyard.
14 We didn't know -- we didn't know where the first suspect was in
15 correlation to the rest of the backyard. So we held in that threshold
16 waiting for other resources, the air unit, the K-9 officers to show up and
17 respond.
18 Q Okay. So you wait in the threshold and you have your
19 shotgun brandished?
20 A Yes.
21 Q And Officer Grego-Smith has his pistol?
22 A Yes.
23 Q I want to show you a different photograph here, State's 358;
24 does that look familiar to you?
25 A Yes.

Q State's 357, does that look familiar to you?
A Yes.
Q Okay. On the left side of this photo, is that that door that leads from the house onto the patio?
A Yes.
Q So you're positioned here and you can see out into the patio?
A Yes.
Q Describe what you're seeing outside.
A There -- there was no lights on. So the only light that we had was from our flashlights. There was no lights on inside the house either. So whatever we could see, we were -- just had to illuminate ourselves. So as -- up to this -- this barrier where these corrugated steel is and this -- whatever this sheet is, this tarp that was hanging up, we couldn't see past that at all. It was pitch black from then -- from there out.
Q Understood. You reference corrugated metal and whatever this sheet is?
A Yeah.
Q I'm going to show you State's 359; is this the sheet that you're referring to?
A Yes.
Q Fair to say that you couldn't see past this area?
A No, not at all.
Q Okay. So you could see generally -- State's 97 -- this patio area?
A Yes.

Q So Officer Grego-Smith, is he issuing commands?

A He's -- yeah. Yes. Yes.

Q Who are those commands consisting of?

A He's -- he's basically yelling out into the darkness that if -- to not move; if you move, you'll be shot. Just reaffirming to have whoever was out there to stay still, to not move. Because at that point, we could hear communication back and forth and then there was no -- there was just darkness. We couldn't see or -- see him at all.

Q Okay. Based upon the fact that you couldn't see the suspect who was in the backyard, did K-9 get involved?

A Yes.

Q Do you know that K-9 officer's name?

A It was -- there was a few. The one that I know that was immediately with us was Sergeant Bitsko.

Q Okay. Sergeant Bitsko has a K-9?

A Yes.

Q Do you know the dog's name?

A Loki.

Q Okay. Sergeant Bitsko and Loki, do they respond inside the home like you did?

A Yes. Sergeant Bitsko, his dog, and then two other K-9 officers came with shields.

Q At that point in time, what did you do?

A I stepped out of the threshold and let one of the shield officers take up -- take that -- that cover position and threshold. Sergeant Bitsko

1 devised the plan to -- after there was no more communication with the
2 suspect in the backyard, the air unit was overhead, watching, telling us
3 that he was laying out. There was a weapon in close proximity to his
4 hands. And that we were going to -- on his command, we were going to
5 take -- make entry into the backyard and take him into custody.
6 Q Okay. You referenced the air unit?
7 A Yes.
8 Q By the time this is all going on and K-9 is arriving, is there -- I
9 mean, is this a dynamic scene?
10 A Yes.
11 Q Air unit with lights or no lights?
12 A They -- they were spotlighting the backyard. Yes.
13 Q Okay. So they were also dispatching information to you that
14 you could hear verbally?
15 A Yes.
16 Q Based upon the information you're getting from the air unit and
17 the plan devised by Sergeant Bitsko, is Loki released into the backyard?
18 A Yes.
19 Q What -- what happened from there?
20 A Loki was released in the backyard. We heard the -- we heard
21 him get on the bite, which means that he was on the -- on a suspect,
22 biting a suspect. At that point, Sergeant Bitsko told us to go. So we
23 flooded the backyard, making sure that we had covered all the angles,
24 making sure there was nobody hiding in the backyard.
25 I immediately went to the right, because that's what my closest

unknown was. I ran the wall to the backyard, scanning the bushes for that second suspect that we didn't know where he was. And then once I ran my wall, I came back to where the suspect was being taken into custody.

Q Okay. And there was single suspect taken into custody?

A Yes.

Q Do you recall anything about him, what he was wearing?

A I believe he was wearing a gray tank top.

Q Okay. After that subject's taken into custody --

A Uh-huh.

Q -- do you take part in any further searches or anything like that?

A Yes. Once he was taken into custody, we -- we regrouped in the front of that -- of that -- of 6729. And we -- more sergeants were showing up, a lieutenant had shown up. And we had broken off into groups with K-9. SWAT officers had arrived, so they just kind of paired us up with SWAT officers, the K-9 officer, and then a couple patrol guys. And then we spread out and started searching backyards systemically looking for the second suspect.

Q And do you ever find -- you yourself ever find the second subject?

A No.

Q Okay. I want to you show 117 again. You indicated that the home is right around here on Nunca and Cabra?

A No.

Q Or I'm sorry, Nunca and Oveja?

A Yes. Right there.

Q Okay. Let me move this up. Are you familiar with this area, sir?

A Yes.

Q Across the street, across Rainbow --

A Uh-huh.

Q -- are there several businesses in that area?

A Yes. This is a big shopping center. Now there's a Carl's Jr. here. There's a bank. There's a two-storey pet clinic, a two-storey strip -- strip center with business mall -- businesses in it. And then there's the rear alley, and then another residential area behind it.

Q Okay. Without stating the obvious, the businesses are just across from Rainbow a little catty-corner to that home, correct?

A Yes.

MR. GIORDANI: All right. Thank you very much, sir.

I'll pass the witness, Your Honor.

THE COURT: Defense, any questions?

MS. SISOLAK: Yes, Your Honor. Briefly.

Court's indulgence.

CROSS-EXAMINATION

BY MS. SISOLAK:

Q Good morning, Officer.

A Morning.

Q I'll be brief. So you talked about working with Sergeant Bitsko,

1 correct?
2 A Yes.
3 Q And his K-9 companion, Loki?
4 A Yes.
5 Q Do you work with K-9 often?
6 A Generally, yes. We come across them in patrol.
7 Q So -- but it's not -- you're not a K-9 officer?
8 A No.
9 Q Okay. That's exciting. In reading the information we have,
10 you talk -- a lot of officers talk about call signs.
11 A Uh-huh.
12 Q Are you familiar with call signs?
13 A Yes.
14 Q And is it my understanding every officer has a different call
15 sign?
16 A Yes.
17 Q Okay. Is your call sign the same every night?
18 A It can be. We try to keep them consistent, but they -- they
19 vary. They change.
20 Q Okay. And so just out of curiosity, like, when you talk about
21 your call sign, you would know your call sign immediately --
22 A Yes.
23 Q -- correct?
24 A Yes.
25 Q Okay. Perfect. Perfect. Now, after you came through the

house and I believe you'd -- the suspect had been detained, correct, by the dog, by the officer?

A Yes.

Q Perfect. You were -- were you aware that there was a second suspect?

A Yes.

Q Was that via the radio --

A Uh-huh.

Q -- traffic kind of thing?

A Yes.

Q Perfect. And in that traffic, did -- did they talk about what you were searching for or who you were searching for?

A Just an outstanding second subject.

Q When -- when those kind of calls come over the radio, is there often a description?

A Yes. Yes, there is.

Q Do you know what the description was?

A I was not assigned to the original call, so I did not get that original radio traffic reference those -- those two officers' call for service.

Q Okay. So you received the call from the -- for service from the two officers who had been in the home, correct?

A No. The -- the two officers that had originally responded to the call received a call for service. I responded to a down officer -- just the down officer radio traffic. That's what I was responding to.

Q Okay. So then after that, did you -- for lack of a better term,

1 you -- do you just tune out the radio or are they not actively saying
2 there's a second suspect and we're looking an XYZ?
3 A No. We were told there was a second suspect. I don't recall
4 them giving out a description. I just know there was talk of a second
5 suspect.
6 Q Perfect. And you talked about you worked as cover for K-9
7 clearing the yard, correct?
8 A Yes.
9 Q You went up one wall and across the back?
10 A Yes.
11 Q There was only one person in the backyard, correct?
12 A Yes.
13 Q And that was the person that the -- the dog and his handler
14 had detained, correct?
15 A Yes.
16 Q Did you see where the suspect was located in the backyard?
17 A Yes.
18 Q Did you see that he was laying next to the rifle?
19 A Yes.
20 Q Thank you.
21 MS. SISOLAK: Thank you. Nothing further.
22 THE WITNESS: Okay.
23 THE COURT: Counsel?
24 MR. PLUMMER: Thank you, Your Honor.
25

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Good afternoon, Officer Russo.

A Good afternoon.

Q So you were one of the first responders to the call?

A Yes.

Q And when you arrived there, Officer Grego-Smith was standing at the back door?

A Yes.

Q He had his gun out the door?

A Uh-huh.

Q And he was yelling commands?

A Yes.

Q And the person he was yelling commands to was complying with those commands?

A From what I heard, yes.

Q And -- and while you were on scene, you indicated you were waiting for air unit to come in?

A Yes.

Q And, now, at some point you could see the suspect in the backyard?

A No.

Q Do you remember talking to Detective Jex on September 4th or -- yeah, 2015?

A Yes.

1 Q At that time, you told Detective Jex, We could see him but we
2 didn't want him to move. Do you remember telling Detective Jex that?
3 MS. BEVERLY: What page?
4 MR. PLUMMER: Page 5.
5 THE WITNESS: I -- I could not see the suspect from where I
6 was in the doorway.
7 BY MR. PLUMMER:
8 Q Why would you tell Detective Jex that you could see him?
9 A I -- I don't know.
10 Q You told Detective Jex that suspect had his hands on his head
11 and he was lying in the prone position, and that there was a rifle at his
12 feet.
13 A That was what we were being told from the air unit. The air
14 unit could see him. I could not see him.
15 Q That was the information that you were receiving?
16 A Yes.
17 Q Was that he was lying face down with his hands on his head?
18 A Yes. Right -- right behind the rifle.
19 Q Now, when you eventually did go out in the backyard and took
20 the person into custody, you found a couple of weapons?
21 A Yes.
22 Q Found a shotgun?
23 A Yes.
24 Q You picked the shotgun up?
25 A No.

Q Did you move the shotgun?

A No.

Q Did you look at the shotgun?

A I looked at it, where it laid on the ground.

Q Did you notice anything about the shotgun?

A It had an impact in it from a bullet strike.

Q Thank you, Officer.

THE COURT: State, any redirect?

MR. GIORDANI: Just briefly, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. GIORDANI:

Q Just want to clarify one thing, sir. Counsel just asked you about whether you saw the suspect or not?

A Uh-huh.

Q As you stood at the door, Bitsko's coming up with a tactical plan, do you see the person in the backyard?

A No.

Q Are you being relayed information that he's in the backyard in the prone position by the air unit?

A Yes.

Q Thank you, sir.

MR. GIORDANI: Nothing further, Your Honor.

THE COURT: Thank you. Could this officer be excused?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Oh, I'm sorry. Seeing no hands.

1 You can be excused. Thank you for coming in today.
2 MR. GIORDANI: State --
3 THE COURT: Call your next witness, please.
4 MR. GIORDANI: State would call Robbie Dahn.
5 **ROBBIE DAHN,**
6 [having been called as a witness and first duly sworn, testified as
7 follows:]
8 THE CLERK: Please be seated. Could you please state and
9 spell your name for the record?
10 THE WITNESS: My name is Robbie Dahn, spelled
11 R-O-B-B-I-E, last name, D-A-H-N.
12 MR. GIORDANI: May I?
13 MS. MACHNICH: Your Honor, just before we proceed, and
14 I'm -- I'm so sorry to interrupt, I notice the witness brought some papers
15 up to the stand with her and I was wondering if we could inquire as to
16 what she brought with her to the stand and potentially know if she's ever
17 referring to those papers.
18 THE COURT: Okay. Actually, counsel, that would be proper
19 in your cross-examination. You can ask her has she reviewed any
20 documents prior to testifying today, if those are the documents with her.
21 And then if she says she did, you can inspect the documents.
22 MR. GIORDANI: Thank you, Your Honor.
23 MS. MACHNICH: That's fine. Thank you, Your Honor.
24 **DIRECT EXAMINATION**
25 BY MR. GIORDANI:

Q What did you bring with you to court today, ma'am?

A I brought my crime scene report that I wrote. I also brought two evidence impound reports that were written by a crime scene analyst that worked with me at the scene. And then I also have a -- a few other papers that are diagrams.

Q Thank you. Would you do me a favor and not refer to those unless you need to have your memory refreshed, and if that's the case, I will ask you to do so.

A Yes, sir.

Q What do you do for a living?

A I'm a senior crime scene analyst with the Las Vegas Metropolitan Police Department.

Q How long have you been a crime scene analyst?

A July is going to be 20 years. I -- I was hired July 13th, so 19 years and some months.

Q 19 years and some months. What does a crime scene analyst do generally?

A What we do is we answer calls for service, either by detectives or police officers. And our job is to go to a crime scene and collect evidence, do photography, crime scene diagramming, just anything that's needed to recreate this crime scene and to gather evidence, things of evidentiary value.

Q Do you have specific education and training in order to do the job that you do?

A Yes, sir. When I hired on, I had four-year degree from UNLV.

1 And then once you're hired, you go through a crime scene analyst
2 academy. It's not the police academy. And that lasts anywhere from,
3 like, 11 to 12 weeks. Then as a newbie, you -- you end up going
4 through a field training program focusing primary on property crimes
5 initially.
6 And then as you progress, you become a Crime Scene 2.
7 You start working crimes against persons. Then we go back to --
8 through personnel and we have to reapply for the position of a senior.
9 Additionally, we do testify in court a lot. So, obviously, we're --
10 we're sent to a lot of training classes in a variety of type -- different types
11 of bloodstain pattern analysis, you know, firearms training, photography,
12 nighttime photography, etcetera.
13 MS. MACHNICH: Your Honor, may we approach just briefly?
14 THE COURT: You may.
15 MS. MACHNICH: Thank you.
16 [Bench conference transcribed as follows.]
17 MS. MACHNICH: Your Honor, I just wanted to make sure that
18 they're not qualifying this witness as an expert. She wasn't disclosed
19 as -- as an expert in this case.
20 MR. GIORDANI: Just laying foundation.
21 MS. MACHNICH: I -- I just wanted to make sure.
22 THE COURT: Thank you.
23 MS. MACHNICH: Because I -- I'm not sure what they're going
24 ask next, but --
25 THE COURT: Thank you.

1 MS. MACHNICH: If that's all we're doing, that's fine. Thank
2 you.
3 THE COURT: Thank you.
4 [End of bench conference.]
5 BY MR. GIORDANI:
6 Q Ma'am, I want to bring you back to September 4th of 2015;
7 were you on duty that day?
8 A Yes, I was.
9 Q Did you respond to a particular location?
10 A Yes.
11 Q What was the nature of that call?
12 A We were told that it was a -- it came out as a 444, which is,
13 like, a officer in trouble. And later I was told, when I was requested by a
14 supervisor, that it was an officer-involved shooting.
15 Q Okay. Are officer-involved-shooting scenes, in general, in
16 your 19 and a half years, dynamic scenes?
17 A Yes, they are.
18 Q A lot going on when you arrive?
19 A When -- when -- generally, when we arrive, it's a static scene,
20 so it's not very dynamic. They've already got things taped off. And so
21 when we show up, everything's safe and clear.
22 Q Understood. So you're not walking into the residence while
23 there's still potentially an outstanding suspect or anything like that?
24 A True.
25 Q Okay. On this particular date that I just referenced, what

1 scene did you respond to?
2 A I responded to Oveja Circle. I believe the address is 6297. I
3 hope I have that correct, or otherwise I might have to refer to my --
4 Q Would it refresh your memory to look at your report?
5 A Yes. It's just right on the top here.
6 Q Go ahead and --
7 A Let me --
8 Q -- do that.
9 A Let me double check the -- the -- I'm sorry, I had it
10 inverted, 6729 Oveja Circle.
11 Q And is that a freestanding single-family home?
12 A Yes, it is.
13 Q Showing you 117 -- actually, I'm sorry, I'll show you a different
14 photograph. 247, can you see that on your screen, ma'am?
15 A Yes, sir.
16 Q Do you see Oveja in the bottom right of this photo?
17 A Yes. The -- the house that you pointed to is the home.
18 Q Okay. When you respond to this scene, do you stage
19 somewhere, or do you just go right up to the home?
20 A At the point that I arrived, we were requested, myself and CSA
21 Kristen Meckler, we were requested to bring out our big crime scene
22 unit. And that contains a lot of things that we need for evidence
23 collection and this type of thing. So yes, when we entered, there was
24 crime scene tape erected. But they did let us into the scene. And we
25 did -- were able to pull up. We didn't park right in front of the house, but

we were several hundred feet to the east of the house.

Q And when you say our specialized crime scene unit, are you referring to a moving vehicle?

A Yes. And it's in this picture.

Q Where is that?

A It's this one right here.

Q It's off a little bit.

A That one.

Q So it's that --

A The big one --

Q -- big, van-looking thing?

A Yes.

Q When you respond to the scene, you indicated one other crime scene analyst, Meckler. Were there any other crime scene analysts processing this residence with you?

A Yes, there were.

Q Can you estimate how many?

A Two supervisors on scene when I arrived. There were two other crime scene analysts that work on my squad, and then Kristen and I.

Q Okay.

MR. GIORDANI: May I approach the witness?

THE COURT: You may.

BY MR. GIORDANI:

Q Showing you State's Proposed Exhibit 1. Sorry, I didn't show

counsel. State's Proposed Exhibit 1; do you recognize that?

A Yes, I do.

Q What is that?

A It's a crime scene diagram that was created by Kristen Meckler of the basic overall above-view of the -- of the street, which is very similar to this one, just at a different angle.

Q You didn't prepare this yourself. But in looking at it, is it a fair and accurate depiction of the overhead aerial view of that cul-de-sac and the homes on it as they appeared on the date that you responded?

A Yes.

MR. GIORDANI: I move for the admission of 1.

THE COURT: Any objection?

MS. MACHNICH: No objection from Mr. Turner.

THE COURT: Counsel?

MR. PLUMMER: No objection to the exhibit, Your Honor.

THE COURT: State's Exhibit 1 will be admitted.

[State's Exhibit No. 1 admitted.]

MR. GIORDANI: Thank you. I'm going put that on the overhead here.

BY MR. GIORDANI:

Q Okay. So this is a crime scene diagram, correct?

A Yes.

Q That's going to be what I'm going to refer to it as. In the crime scene diagram here, where is the home that you processed?

A The home, 6729, is right here.

Q Okay. To the right of that, it says, officer-involved shooting, and there's 10 numbers with a dash in there just below that; do you see that?

A Yes, I do.

Q Is that an event number?

A Yes, it is.

Q What is an event number, so the jury understands?

A With LVMPD we create our event numbers. The first six digits are the year, the month, and the day. That went off. Okay.

Q That's what happens when I zoom.

A The year, month, and the day. And then after that dash, starting at -- each day, new day, starts at 12:01. They start creating event numbers, 0001 and so forth, throughout the day, and then we start the new next day.

Q Okay. So in this particular case, we're looking at Event No. 150904-0516, correct?

A Yes, sir.

Q That would be -- first two digits, 2015, September 4th, and then 516th call for service that day?

A Yes.

Q Okay. Any items of evidence that we're about to discuss, are they ultimately impounded under this particular event number?

A Yes, they will be.

Q Okay. Describe for the ladies and gentlemen of the jury what it means to take overall photos.

A When we're -- when we're trained, every photo that we take, when we first enter a scene, we don't touch, move anything. If somebody's left a purse on the scene, we don't touch it. And then we go around and we take all overall photos. And then anything particularly that may be of interest, then we're going to focus on that and go in and take medium-range shots, as well as close-up shots. And then there's also what we call identification shots that can be taken with a scale. So overall would be taking just, you know, long-range shots of an area.

Q Okay. As is, meaning nothing's supposed to have been moved prior to taking those shots?

A That's true.

Q Initial shots?

A Yes.

Q Then there's some shots that you take -- I didn't catch the word, but you said that -- where you have markers?

A Yes. That's identification photography.

Q Okay. Okay. In this particular case, was it your understanding that an officer had been saved from that residence?

A Yes.

Q Prior to your arrival?

A Right.

Q So there would have been Metro personnel there, but when you respond, you take photos as it is then?

A Yes.

Q Okay. Want to start with the front area of the home. You

1 already described a single-family residence, correct?
2 A Yes.
3 Q Showing you 367; what are we looking at here?
4 A This is a Scion vehicle that was parked in the driveway of the
5 residence. And I understood it to belong to someone that lived at the
6 residence.
7 Q Okay. Showing you State's 368; is this the Scion in the left
8 portion of the photo?
9 A Yes.
10 Q So you're shooting a photo of a different car from the
11 driveway; is that right?
12 A Yes.
13 Q Did this eventually turn out to be a suspect vehicle?
14 A That's what I -- it was described to as me --
15 Q Okay.
16 A -- to -- to me as.
17 Q And I just want to be clear, if this is ultimately processed,
18 you're not the one that does that?
19 A I was -- I -- the vehicle, they had already gotten a search
20 warrant for that. And the vehicle was open, but I was present to do
21 some photography inside the vehicle prior to --
22 Q Okay.
23 A -- things taken out.
24 Q Understood. Showing you 370; is that the address we're
25 about to talk about?

A Yes.

Q 371. What are we looking at here?

A This is a view just across the front door, just heading south. So from that driveway where I took the picture, kind of to the left or to the north to show the driveway and the Scion, I just turned my camera off to the right, or to the south. So this was just a little -- small, little courtyard right outside the front door.

Q Showing you 374. Explain what you just did again.

A Yes. And -- and this the same, but just the other direction. You can see I've entered into the courtyard, went to the south end, and I'm -- I'm photographing towards the north. You can see the white Scion in that opening there.

Q Okay. Now, there's a large clock in the middle of this photograph, correct?

A Yes.

Q What's to the left of that clock?

A To the left of the clock, the front door --

Q Okay.

A -- area.

Q And then to the right is this little walkway that goes out to the driveway?

A Yes.

Q Going back to 372, you see this wall here in the center?

A Yes.

Q Does this wall lead to the backyard?

A That wall is a wall that is in the backyard on the side of the house.

Q Okay. And it's not a gate, it's an actual brick wall, correct?

A Brick wall.

Q Showing you 373; is that a close-up of that wall?

A Yes.

Q Fair to assume there's no gate on this side of the house?

A No gate.

Q That would lead to the backyard?

A Not on that side of the house.

Q Understood. Did you measure this wall, by chance?

A I did not measure it.

Q Do you recall it, as -- as you took photos of it, the approximate height? Was it above your head?

A Yeah. It was slightly above my head, but I don't know the exact height.

Q Understood. Showing you State's 376; what are we looking at here?

A This is another angle of the front porch. You can see the mailbox up on the wall, and the door is just to the left of that mailbox.

Q Okay. 377?

A This is on the north side, looking at the front of the house, north side of the driveway and the home. And it's a gate that enters to the backyard.

Q So on the other side of this gate should be the backyard,

correct?

A Yes. They have a covered patio area, but it does lead to the backyard.

Q Thank you. 378, is that the covered patio area you're talking about?

A Yes. That's with the gate open and picture of the side yard.

Q 379, is that inside that area you just described?

A I believe so. It's -- I believe it is.

Q Okay. I tried to change the brightness on that, but it's not working, so hold on a second.

A Yes. It does look like that. North side yard, the opposite side, does not have -- it's an open-air area.

Q Okay. So if you walk in through that black gate we just saw, you would enter this area, and then there's a wall at the end for the record, correct?

A Yes.

Q Is there a -- a gate into the backyard or just this wall?

A I'm not recalling any -- any gate there. I'm not recalling that.

Q Okay. No problem.

MR. GIORDANI: May I approach?

THE COURT: You may.

MR. GIORDANI: I might need to do this a couple times. May I approach freely?

THE COURT: You may.

MR. GIORDANI: Thank you.

BY MR. GIORDANI:

Q Showing you State's Proposed Exhibit 21; do you recognize that?

A Yes, I do.

Q What does that appear to be to you?

A It is cut clothing from Officer Robertson. I'm believing that this is where the life-saving measures were being taken on the driveway. And so it's just his uniform cut and --

Q Okay.

A -- I took photo of it.

Q Fair and accurate depiction of how that appeared when you arrived on the scene on that date we've been discussing?

A Yes.

MR. GIORDANI: Move for the admission of State's 21.

THE COURT: Defense, any objection?

MS. MACHNICH: Your Honor, for Mr. Turner, we will submit.

MR. PLUMMER: Your Honor, I'm going to object to not the photo, but to the witness's speculation on what that item is. She said she believes, she's assuming, she doesn't know.

THE WITNESS: I know -- I know it's his. I know it's his uniform.

MR. PLUMMER: I don't think --

THE COURT: Okay. So you're objecting to her testimony, but you're not objecting to the admission of the exhibit?

MR. PLUMMER: Correct, Your Honor.

THE COURT: Okay. The --

MR. GIORDANI: I can -- I can clarify the testimony as to the exhibit.

THE COURT: The exhibit will be admitted, seeing no objection from the defense counsel as to the exhibit.

MR. GIORDANI: Thank you.

[State's Exhibit No. 21 admitted.]

BY MR. GIORDANI:

Q Ma'am, you were not present when Officer Robertson's life was saved on that driveway, correct?

A No, I was --

MS. MACHNICH: Objection, Your Honor.

MR. PLUMMER: Objection, Your Honor.

THE COURT: Objection as to the form of the question?

MS. MACHNICH: As to the form of the question and as to assumptions upon life-saving measures --

THE COURT: I -- I --

MS. MACHNICH: -- with regard to counsel's commentary.

THE COURT: The objection is sustained.

MR. GIORDANI: Okay.

MS. MACHNICH: Thank you. Move to strike.

THE COURT: Move to strike granted.

MS. MACHNICH: Thank you.

BY MR. GIORDANI:

Q Were you present when Officer Robertson was treated for his

1 gunshot wound?
2 A No, I wasn't.
3 Q Okay. When you did arrive, State's 21, is this what you saw?
4 A Yes, it is.
5 Q Okay. And you indicated you knew it was Officer Robertson's.
6 I'm showing State's 23; is that his name --
7 A Yes, it is.
8 Q -- on that same uniform?
9 A Yes.
10 Q All right. So I'm going to move now to the interior of this
11 residence.
12 MR. GIORDANI: These have already been admitted.
13 Q State's 60, what are we looking at here, ma'am?
14 A This is a view into the home from the entryway area. It's
15 looking towards the west.
16 Q State's 61?
17 A This is --
18 Q Sorry.
19 A This is, again, from basically the entryway area and just kind
20 of across the -- just angled just a little bit to the right. I moved my body
21 and then just shot a photograph across the living room area into the
22 dining room area.
23 Q State's 65; is that essentially the same area, you're just
24 walking further into the home?
25 A Yes. This is a overall view of the back door, and beyond that's

the back patio.

Q Okay. State's 67, what are we looking at here?

A Let me familiarize myself with this. Can you turn this -- can it get a little lighter or --

Q Sure. Does that help, ma'am, or make it worse?

A No. The last -- yes, that's helping a little bit.

Q Okay.

A This is an angle -- I was in -- the home, when you walk in, has two hallways. I was in the furthest west hallway. And I'm actually looking to the north. And you can see off to the area here, this is the dining room table. And it's just looking into the kitchen area.

Q Okay. I'm going to come back to photos in a minute. Ultimately, do you walk through this entire house and take photos all throughout?

A Yes, I do. I was assigned photos and report on this call. So yes, I was present for all the photography.

Q Okay. Showing you State's Proposed Exhibit 2; do you recognize that?

A Yes, I do.

Q What are we looking at there?

A This is another diagram that was created by Kristen Meckler. And this is a bird's eye view above, like the interior of the house, also showing the patio area.

Q Okay. This, fair to say, does not have evidence markers or numbers or anything like that? This is just kind of a blueprint of the

home?

A Yes.

Q Okay. Does that appear to be a fair and accurate depiction of the home after you walk through it yourself and processed it?

A Yes.

MR. GIORDANI: I'd move for the admission now of State's 2.

THE COURT: Any objection from the defense?

MS. MACHNICH: No objection from Mr. Turner.

MR. PLUMMER: No, Your Honor.

THE COURT: It will be admitted.

[State's Exhibit No. 2 admitted.]

MR. GIORDANI: Thank you.

BY MR. GIORDANI:

Q Showing you State's 2. Where is it -- the front door on this diagram?

A The front door is located right there.

Q Okay. Zoom in a little bit. It goes black when we zoom, sorry. There we go. Okay. Can you just briefly walk the jurors through this residence for us?

A Yes. As you enter the front door, as we saw in the earlier picture, you're -- you're walking in westward. As you come in, I mentioned two hallways. The first hallway is right here. I'm sorry, this thing is -- there. And that leads to two bedrooms. This area here is a long bathroom that connects from one hallway to the other. The second hallway is located -- I'm sorry, here. So, basically, the south side of the

1 residence consists of four bedrooms, one being the master with a
2 master bath, two hallways, and a bathroom.
3 But the -- where we focus most of our attention would be, we
4 walk in -- and this is the living room area here. And as you walk past
5 this couch, which this is a couch right here, the dining room area is
6 located next, dining room and the kitchen's just north of that.
7 Q Let me stop you.
8 A Sure.
9 Q Did you mark the dining room?
10 A This line is going into the dining room.
11 Q Okay.
12 A And then this is the dining room table. And then the kitchen is
13 a little further up.
14 Q All right. Then straight out?
15 A Yes. If you continue on, just past the dining -- dining room
16 into -- through this door, this area here is a covered patio.
17 Q Understood. Now, on that diagram, it appears that there is
18 some wording underneath the -- the table and it's blurred. What is that --
19 can you read that?
20 A What happened is when we got there, the table was
21 disheveled and kind of out of place. The floors were kind of a wood
22 floor, and it was, like, later during the investigation, we noticed there
23 was, like, a little floor pad and dust marks showing the original location.
24 So Kristen in her diagram measured that in, as well. So the -- the
25 dot-dot-dot marks are the -- what is believed to be the original location of

1 the table before it got moved over.
2 Q Understood. And based upon what you knew, obviously, you
3 didn't see Robertson there, but is that generally the area where he came
4 to rest, and so you -- you diagrammed where the table was originally
5 located?
6 A I'm not sure where he came to rest.
7 Q No problem.
8 A I wasn't told that.
9 Q I want to go back to the photographs now, ma'am. State's 72,
10 what are we looking at here?
11 A This is a picture of the front -- the -- the front door's exterior
12 security gate.
13 Q Showing you State's 73; what are we looking at here?
14 A We noticed during the course of the investigation, we noticed
15 that we saw something that appeared to look like a projectile strike to
16 the -- to the door. So I -- this is with a scale, this would be an example
17 of a close-up shot with a scale.
18 Q Okay. And the scale has inches on top and millimeters on
19 bottom?
20 A Millimeters on the -- yes, sir.
21 Q Going back into the home, State's 74; what are we looking at
22 here?
23 A This is a photograph after -- what -- what happens is that I go
24 in and take all the photos. Then we identify evidence. And then at some
25 point, we start laying out these tent markers to make it understandable

so you can see, like, especially small items. So these are a few tent markers that were laid out. The location is on the interior side of that door that leads to the patio. And it's looking towards the north. And this area here, these are, like, the dining room legs right there, dining room table legs. And this is the door out to the patio.

Q State's 118, what are we looking at here?

A This is a view from looking towards the east. I took the picture, basically, in the dining room area, so it's looking towards the east, the front door being here. That's the front door, and front living room window, and a TV set in the living room.

Q Okay. So that last metal gate I showed you and you said there was an apparent bullet strike, those would have been this front -- front door gate?

A Yes.

Q Okay. And State's 119, what are we looking at?

A This is the mini blinds that were over the top of the east living room window. And it's an overall picture to show there was some damage to that mini blind.

Q Okay. Showing you a little closer, State's 120; what are we documenting here?

A We're -- I'm -- I was photographing small what we believe to be pellet marks from a shotgun blast.

Q Okay. Are those in the blinds though, what you're referring to?

A Yes. They're small little -- these little tic marks that you can

see. It's white kind of white, but there's all, like, little marks here. One's there. They're little --

Q I don't need you --

A -- brown marks.

Q Thank you. I mean, there's dozens of them, right?

A Yes.

Q Okay. I'm going to go back, bear with me here. Just ask you a couple questions based upon State's 2. Okay. For the record, you've identified this door that I'm pointing at as the door to the backyard, correct?

A Yes.

Q And then the door I'm pointing at now to the right is the door to the front?

A Yes.

Q And the blinds are just above that, correct?

A Yes. They're just to the side of that front door.

Q Okay. The couch, if you recall, the couch in between that, how tall is that couch?

A A standard size. I did -- I did not measure the height of it, but it was a standard couch, nothing particularly tall or short about it.

Q Okay. From the backyard to the front door, backyard door to the front door, is there anything obstructing a line of fire?

A Nothing -- nothing tall --

Q Okay.

A -- would be there.

Q Okay. So the -- the couch is regular height, correct?

A Yes.

Q Okay. And I want to jump back to the photographs. State's 122, is that the same set of blinds?

A Yes.

Q There's something leaning on it there. What are we looking at there?

A There was some damage to a few things there. Some kind of a piece of metal railing keeled over into the blinds. I believe -- I see a little bell on it. There was a Buddha statue there that was damaged. It was something that was standing up that got knocked over.

Q State's 123, what are we looking at here?

A This was the window sill of that east window, and this was a piece of a shotgun wad.

Q State's 124, what are we looking at here?

A And again, there was -- there were two pieces of a shotgun wad in that window sill.

Q And that's the plastic item that looks like kind of an octopus upside down?

A Yes.

Q Okay. That was a horrible description. State's 129, is that this dining room area you've described?

A Yes. This is the dining room table.

Q Door to the right is to the backyard?

A Yes.

Q State's 131, what are we looking at here?

A This is a picture on top of the dining room table. It was basically on the northeast end of the dining room table and there was --

Q It being what?

A I'm sorry, the firearm that's on the table was kind of on that area of the table.

Q State's 125, what are we looking at here?

A This is a view inside the living room. We saw a flashlight on the floor, so we deemed it a possible item of evidence, so I photographed it.

Q Okay. State's 79, what are we looking at here?

A This is an overall picture of the dining room as we found it, after the evidence that we located in that area was marked with tent markers.

Q Okay. The tent markers are what are -- you're referring to as the little yellow things with numbers on them, correct?

A Yes.

Q And is that -- each number, is that supposed to be an individual piece of evidence?

A Yes.

Q Real quickly, showing you 77; are those other tent markers and some of the ones included in that last photo?

A Yes.

Q Okay. Showing you now 69; what are we looking at here?

A This is a close-up view of the condition of the door and the

door lock, which was a set of keys hanging from the interior dead bolt.

Q And State's 75 again, this is the door to the backyard, correct?

A Yes.

Q And so the door to the backyard had a set of keys. And would the keys have been on the inside of the door or the outside?

A Inside.

Q Okay. And that's a dead bolt, obviously, on the top there?

A Yes.

Q Do you recall what type of material that door was?

A I believe it was made of wood. I -- I don't know for sure, but I believe that it was made of wood. And in this photo, you can see that there's some brown wood that you can see through the paint.

Q Understood. All right. So that's the back door. Showing you now 157; what are we looking at here?

A This is the view of the backyard. I'm out away from the -- to the right is the covered patio, which is here, and I'm looking towards the north, just photographing a grassy area in the backyard.

Q Okay. Fair to say there's various trees and shrubs and greenery in that backyard?

A Yes.

Q Showing you 158; what are we looking at there?

A This is a view towards the south. There was a fenced area south of the grassy area and the area outside the covered patio. And on the south end, there was this fence and gate that led into an area where there was an in-ground pool.

Q Okay. 152, what are we looking at here?

A This is a view -- I was standing in the backyard in the back corner. The gate that was on the side -- north side that we talked about earlier, if you were to come out into the backyard on that north side, I was kind of angled and I was just showing some patio furniture. There's a little bit of the corner of the covered patio area, as well as in the background there's -- you can see the pool area a bit.

Q Okay.

MS. MACHNICH: Your Honor, I'm really sorry to be trouble, but I -- I was wondering if we could take a restroom break? We've been going for a while now and perhaps --

THE COURT: We'll -- we'll do our lunch recess at this time.

MS. MACHNICH: Thank you.

MR. GIORDANI: Okay.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, we're going to take our lunch recess at this time.

During this recess, your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to read, watch, or listen to any report of or commentary on the trial by any person connected with that trial or by any medium of information, including without limitation, newspaper, television, and radio. And you are not to form or express an opinion on any subject connected with this case until it is finally submitted to you.

We'll be in recess until 2:00.

[Court recessed at 12:48 p.m., until 1:58 p.m.]

[Outside the presence of the jury.]

THE COURT: Please be seated. This is the continuation of the Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon Hudson*.

The record will reflect the presence of counsel for the State, counsel for the defense, and the presence of the defendants. I'm going to bring the jury in.

Is there anything we need to do before that?

MS. MACHNICH: No, Your Honor.

MR. GIORDANI: No.

MS. BEVERLY: No.

THE COURT: Bring them in, please.

MS. MACHNICH: Thank you, Your Honor.

[Jury reconvened at 1:59 p.m.]

THE COURT: Please be seated.

MR. GIORDANI: We have one more coming.

[Bench conference transcribed as follows.]

MS. BEVERLY: If it's okay with Your Honor, we actually need to recall Mr. Clarkson for, like, five minutes. So, like, right now.

MR. GIORDANI: Hoping to just get him in --

MS. BEVERLY: Just get him in.

MR. GIORDANI: -- it's, like, a few questions instead of going through --

THE COURT: You sure procedurally you don't have an issue

with calling a witness out of order?

MR. GIORDANI: Yes.

MS. BEVERLY: He's trying to be funny right now.

MR. GIORDANI: I got it.

THE COURT: Also, just so you know, in case we get in an argument, and I issue again, I brought [indiscernible].

MR. GIORDANI: Okay. So can we call him out of order?

THE COURT: Do you have any issue calling him -- it's their case in chief. They're just asking to call him out of order. Is he a law enforcement officer?

MS. BEVERLY: No. He's --

MS. MACHNICH: He's one of the --

MS. BEVERLY: The victims who was here yesterday. I need to recall him.

THE COURT: Okay.

MS. BEVERLY: Yeah.

THE COURT: Do you have any objection to recalling him?

MR. PLUMMER: What's the proffer?

MS. BEVERLY: I don't have to tell him -- him what I'm going to ask.

THE COURT: I'm sorry? Mr. Plummer, do you --

MS. MACHNICH: We'll submit.

THE COURT: -- have any objection to calling him?

MS. BEVERLY: I said I don't have to tell him what I -- what the proffer is. It's not a proffer. It's -- he's a witness on our witness list,

1 so we're allowed to --
2 THE COURT: Okay.
3 MS. MACHNICH: No. I --
4 MS. BEVERLY: He's under subpoena.
5 THE COURT: They're still in their case in chief.
6 MR. PLUMMER: Understood, Your Honor.
7 THE COURT: All right.
8 MR. GIORDANI: Thank you.
9 [End of bench conference.]
10 THE COURT: Counsel, will you stipulate to the presence of
11 the jury?
12 MR. GIORDANI: Yes, Your Honor.
13 MS. MACHNICH: Yes, Your Honor.
14 MS. SISOLAK: We will, Your Honor.
15 MR. PLUMMER: Yes, Your Honor.
16 THE COURT: And it's my understanding, counsel, that you
17 want to recall a witness at this time?
18 MS. BEVERLY: Yes. We just need to call -- recall
19 Mr. Clarkson out of order for a few minutes.
20 THE COURT: That's fine. Hearing no objection from the
21 defense, they can call Mr. Clarkson.
22 MR. GIORDANI: We'll be very brief, Your Honor. Thank you.
23 THE COURT: I'll have you -- since it's the second day, I'm
24 going to have you take the oath again.
25 MR. CLARKSON: Certainly.

ERIC CLARKSON,

[having been recalled as a witness and first duly sworn, testified as follows:]

THE CLERK: Please be seated. Would you state your name for the record, please?

THE WITNESS: Eric Clarkson. Would you like me to spell it?

MS. BEVERLY: Yes, please.

THE WITNESS: E-R-I-C C-L-A-R-K-S-O-N.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Thank you, Mr. Clarkson. You were here yesterday testifying; is that correct?

A Correct.

Q Okay. So I just needed to ask you a couple of follow-up questions from yesterday.

A Okay.

Q Okay. We were talking about, yesterday in the beginning of your testimony, how you knew, prior to the incident on September the 4th, Mr. Turner; is that correct?

A I did.

Q Okay. Prior to September the 4th of 2015, you had been having, a few years before that, frequent contact with him; is that correct?

A Correct.

Q Okay. But prior to -- in the months prior to September the 4th

of 2015, you and Mr. Turner had stopped communicating; is that correct?

A Yes. For almost a year.

Q Okay. And, in fact, you had deleted and blocked his phone number; is that correct?

A I don't remember blocking it. I just deleted it during the --

Q Okay.

A During the time we knew --

Q Okay. That's okay. You deleted his number; is that correct?

A Correct.

Q All right. Now, I want to publish for the record grand jury -- I'm sorry, State's Proposed Exhibit -- actually admitted Exhibit No. 359; can you see that on your screen?

A Yes.

Q Would this be the screen patio area leaving onto -- leading out into your backyard?

A Yes.

Q Okay. And this orange -- what would you call that?

A Corrugated plastic.

Q Okay.

A Fiberglass, excuse me.

Q Now, in this particular photo, we see that the screen is kind of pulled down?

A Correct.

Q Was that screen pulled down prior to you going to sleep on --

1 on the early morning hours of September the 4th?
2 A No.
3 Q Okay. We can also kind of see in this photo the orange part
4 looks kind of bent in and off the hinges a little bit; do you see that?
5 A Yes.
6 Q Was that the condition it was in prior to you going to bed on
7 September the 4th of 2015?
8 A No.
9 Q Do you also see a couple of weapons in this photo?
10 A Yes, I do.
11 Q Are those your weapons?
12 A No.
13 Q Okay. There was -- do you recall there also being a handgun
14 on your patio?
15 A I do not recall that.
16 Q Do you have a handgun, though, at the time?
17 A I have no weapons.
18 Q Okay.
19 A And did I not at the time.
20 Q Just to be clear, during this incident, from the time you woke
21 up and heard things on your patio until the time the police eventually
22 talked to you, you could not identify any person involved by their face; is
23 that correct?
24 A That is correct.
25 Q In fact, to this day, you're not sure who was involved in the

1 attempt burglary of your house; is that correct? From your own personal
2 knowledge?
3 A Correct.
4 Q All right. Now, after this incident, a few hours after this
5 incident, did you have a chance to look at the news?
6 A Yes, I did.
7 Q Okay. On the news, did you see Steven Turner's face on the
8 news?
9 A Yes, I did.
10 Q Okay. At that point, did you realize, I know Steven Turner?
11 A Yes, I did.
12 Q When you realized that you knew Steven Turner, did you
13 contact detectives again?
14 A Immediately.
15 Q And did you tell detectives, yes or no, that you knew Steven
16 Turner?
17 A Yes, I did.
18 Q Okay. Even though you told detectives that you knew Steven
19 Turner, did you tell detectives that he was involved in this incident?
20 A No.
21 Q Is that because you're not sure if he's involved in this incident?
22 A I suppose so, yes.
23 Q From your own personal knowledge?
24 A From my own personal knowledge.
25 Q Okay.

MS. BEVERLY: I have nothing further.

THE COURT: Any cross-examination by the defense?

MS. MACHNICH: None from Mr. Turner. Thank you, sir.

THE COURT: Mr. Plummer?

MS. SISOLAK: None from Mr. Hudson.

THE COURT: Can this witness be excused?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Sir, thank you.

THE WITNESS: Thank you very much.

THE COURT: You are excused.

MR. GIORDANI: The State would recall Robbie Dahn.

THE COURT: Ma'am, I would remind you you're still under oath.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

THE WITNESS: Thank you.

MR. GIORDANI: May I proceed?

THE COURT: You may.

MR. GIORDANI: Thank you, Your Honor.

ROBBIE DAHN,

[having been previously called as a witness and reaffirmed, testified as follows:]

DIRECT EXAMINATION (CONT.)

BY MR. GIORDANI:

Q All right, ma'am. Have the break to organize some

photographs. So I want to start with, what is a scene walkthrough when it comes to an officer-involved shooting case?

A As far as the crime scene analyst, we usually go through with our supervisor and walk through looking for any evidence that had been pointed out from a previous walkthrough that actually occurs with -- sometimes with the officers, sometimes not. And with we have a CIRT team, which is the criminal -- the -- I'm blanking out right now, Critical Incident Response Team. They're part of the -- part of the investigation.

And what they do is they investigate if any of our policies were not followed. And then we have a FIT team, which is a Force Investigation Team, and they're the ones that are actually doing the investigation -- investigation for criminality.

Q Okay.

A So they go in and do a walkthrough first. Crime scene analysts, we're not a part of that.

Q Understood. Now, the FIT detectives in this particular case, are they Marc Colon and Joe Patton?

A Yes.

Q They would do a walkthrough of the scene on any case in which an officer discharges his firearm; is that accurate?

A Yes.

Q Okay. You're not a part of that yourself?

A No.

Q But do you document the scene after they've done that walkthrough?

A Yes. Sometimes our supervisor's allowed to be in that walkthrough. And then they defer to us as to what was said during the walkthrough, and things that were important.

Q Understood. I want to show you several photographs. I'm just going to leaf through these. State's 88, 89, 90, 91; do you recognize those first four?

A Yes.

Q Are those fair and accurate depictions of the scene as you observed it at some point in the evening on September 4th, 2015?

A Yes. These are my photographs, so I do recognize those.

Q Okay. Now, I want to show you State's 162 through 217. Just leaf through those to yourself, I'm going to ask you the same questions for those.

A [Witness complies.] Just a few more.

Q Do you recognize all of those?

A Yes, I do.

Q Are those all your photographs?

A Yes.

Q Are those all fair and accurate depictions of the scene as it appeared after that walkthrough was conducted?

A Yes, sir.

MR. GIORDANI: And I'd move for the admission of 162 through 217, and 88 through, what was it, 91.

THE COURT: Any objection from the defense?

MS. MACHNICH: Your Honor, might we see them and -- and

1 see which ones he's proffering at this time?
2 And, Your Honor, for Mr. Turner, we will submit to the
3 admission of those exhibits.
4 MR. PLUMMER: Your Honor, we're going to conditionally
5 submit to the exhibits on the condition that the -- an additional witness is
6 called to substantiate some markers that are in those photos.
7 THE COURT: Counsel approach.
8 [Bench conference transcribed as follows.]
9 THE COURT: Can they -- can this witness lay the
10 foundation --
11 MR. GIORDANI: Yes.
12 THE COURT: -- as to those markers?
13 MR. GIORDANI: Yes.
14 THE COURT: Why don't you have her lay the foundation?
15 MR. GIORDANI: I will, but that would cause me to do exactly
16 what they don't want me to do. All I'm doing is laying the foundation that
17 these are as they appeared --
18 THE COURT: True and accurate depictions --
19 MR. GIORDANI: Yes.
20 THE COURT: Okay. Fine.
21 MR. GIORDANI: And I've already done that. But what they're
22 concerned about, I think, is the markings on the cones. And the
23 detectives who did those are going to testify later. But I can't lay the
24 foundation with them, I have to do it with her.
25 THE COURT: Okay.

1 MR. GIORDANI: So what I intended on doing --
2 THE COURT: So what's your conditional objection, counsel?
3 MR. PLUMMER: My -- my -- is the people who put these bags
4 labeling individuals as the subject is here, you know, the person is here,
5 and they got cones with bags with writing on it, if that person is going to
6 come in and testify, I have no objection.
7 MR. GIORDANI: And they are, but that doesn't go to
8 foundation anyway. That's -- I'm just laying foundation.
9 THE COURT: Let me see -- let me see what he's talking
10 about.
11 MR. GIORDANI: He's concerned that the words --
12 THE COURT: All right. So I -- so your objection -- all right.
13 I'm not going to let you publish the ones that --
14 MR. GIORDANI: I'm not going to --
15 THE COURT: Okay. Until you lay -- oh, okay.
16 MR. PLUMMER: I don't --
17 THE COURT: So I want a clean record.
18 MR. PLUMMER: Yes, Your Honor.
19 THE COURT: So, actually, you have no objection except to
20 proposed Exhibit No. 91, and you have a conditional objection, subject
21 to them bringing in the person who actually did the writing on the bag?
22 MR. PLUMMER: Correct, Your Honor.
23 THE COURT: That is also true as to Exhibit -- Proposed
24 State's Exhibit 162 --
25 MR. GIORDANI: I believe it's going to be the rest of them.

THE COURT: It's all the rest of them?

MR. GIORDANI: I think so.

THE COURT: All right. So --

MR. PLUMMER: Which is my understanding, is what they're going to do anyway.

MS. BEVERLY: We're not publishing them right now.

THE COURT: Okay. I understand. So hold on. So as to Exhibits 89 -- proposed -- State's Proposed Exhibits 88 and 89, the defense does not have any objection to those exhibits; is that correct?

MS. MACHNICH: Submit.

MR. PLUMMER: That is correct, Your Honor.

MS. SISOLAK: Not as to Mr. Turner.

THE COURT: Okay. As to, what would that be, counsel, exhibits -- the remaining exhibits, you have a conditional objection as to foundation as to the bags and writing as evidenced by the photographs; is that correct?

MR. PLUMMER: Correct, Your Honor.

THE COURT: All right. So as to -- I'll put it on the record, but as to Exhibits 88 and 89, those are admitted. As to the remainder exhibits, I'm going to require you to make -- addition -- she can testify as to the exhibits, but I'm not going to let you publish the exhibits to the jury until you lay the additional foundation.

MR. GIORDANI: Understood.

THE COURT: Okay. So, again, she can testify from them and -- but as far as the actual admission of the [indiscernible] until you

1 lay the additional foundation.
2 MR. GIORDANI: Understood.
3 THE COURT: Thank you.
4 MR. PLUMMER: Thank you, Your Honor.
5 MS. MACHNICH: Thank you, Your Honor.
6 [End of bench conference.]
7 BY MR. GIORDANI:
8 Q Okay. Ma'am, so again, you didn't -- you were not present for
9 the walkthrough?
10 THE COURT: Counsel, I need to put on the record for the
11 record.
12 MR. GIORDANI: Oh, I'm sorry.
13 THE COURT: So as to exhibits -- State's Proposed
14 Exhibits 88 and 89, those will be admitted. As to the remainder of the
15 exhibits, those are conditionally admitted until such time as you lay
16 additional foundation.
17 [State's Exhibit No. 88 and 89 admitted.]
18 MR. GIORDANI: Understood.
19 THE COURT: Thank you, counsel.
20 MR. GIORDANI: Thank you.
21 BY MR. GIORDANI:
22 Q Ms. Dahn, the walkthrough that was conducted, as is every
23 officer-involved shooting case, you were not present for that?
24 A No.
25 Q However, you documented the scene afterwards?

A Yes.

Q Those photos that I just showed you, the big stack, those are all photographs depicting cones that were placed from perspectives of witnesses, officers, etcetera; is that correct?

A Yes.

Q Those cones would have been placed during that walkthrough that you weren't present for?

A Yes.

Q Okay. And you documented it afterwards?

A Yes.

Q All right. Let's get back to it very briefly. 126, that's the door leading out to the backyard, correct?

A Yes.

Q 224, does that appear to be the same door?

A Yes.

Q You indicated earlier it looked like there was wood around the frame of the door, correct?

A Yes.

Q Can you see in this photo that the door is actually glass?

A The -- I was not aware that that was glass.

Q Okay. Fair enough. 221, what are we looking at here?

A This is a view looking out towards the west, the back -- you know, the backyard and the back wall. And this is a -- two pieces of corrugated metal, in which some shade screen had been attached to it to block the sun for the patio.

1 Q Showing you now State's 220; what are these yellow things
2 here?
3 A Yellow -- these are yellow -- the yellow tent markers. And
4 those are marking evidence.
5 Q Each number, does that correspond with a particular piece of
6 evidence?
7 A Yes.
8 Q So there's at least 35 of these markers that we know of so far?
9 A Yes.
10 Q 93, what are we looking at here?
11 A I took a picture just outside the door from -- from, like, the --
12 entryway into the patio, looking towards the north.
13 Q Okay. There's a disturbed chair or chair that's knocked over
14 there?
15 A Yes.
16 Q State's 152, what are we looking at here?
17 A This is a view from the -- the northwest corner. And again, I
18 think I looked at this earlier. It's depicting a little bit of the patio down
19 here in the corner.
20 Q Okay.
21 A The -- the trees and shrubs and patio furniture here, and then
22 the pool here.
23 Q Okay. So out and to the left is the pool, right?
24 A Yes.
25 Q 158, that's the pool?

A Yes.
Q 353, is that another shot of the pool area?
A Yes.
Q Or leading into the pool area?
A It's from the backyard area that was paved near where that grassy area was, and it's on the north side of the fence that blocks the, you know, fences in the pool area.
Q Okay. State's 350, is this within the pool area?
A Yes.
Q State's 14, what are we looking at there?
A Another view of the pool. It's -- I'm at the north end of the pool, facing towards the south.
Q Okay. Down in the left here, you can see something that appears to be one of those little pool caps in the concrete; is that right?
A Yes. The skimmer cover.
Q State's 24, is that the skimmer cover?
A Yes.
Q I want to go back real briefly to State's 14; what's off to the left here?
A To the left is the side yard. It correlates to the earlier photograph that we had where there was no gate --
Q Okay. State's --
A -- on that one side.
Q -- 107, is that that same wall that we have seen from the other side?

A Yes. That's the one that you asked me if I'd measured the height.

Q Understood.

A But that's the same wall, yes.

Q Okay. Bear with me. Now, I want to head back towards the patio area and talk about some items of evidence that you ultimately recovered. State's 157, is this walking back towards the patio?

A Yes.

Q State's 159, is that the patio?

A Yes. That's a view from the bricked-in area that's, you know, near where the pool is and the fence there, looking over at that covered patio.

Q Okay. Were there several items of evidence recovered from this planter area just on the -- this side of the patio?

A Yes. There were a few items there.

Q State's 358, are we seeing a couple of those items in that photo?

A Yes.

Q State's 95, what are we looking at in this photograph?

A It's a close-up picture, the -- the firearm laying down is an SKS 7.39x32. It's a rifle. And then the other one is a 12-gauge shotgun.

Q Okay. And that --

A A Mossberg, I believe.

Q For the record, the 12-gauge shotgun is leaning up against the corrugated metal or plastic?

A Yes. It's leaning against the corrugated metal.

Q State's 360, what is this in the top left of the photograph?

A That's a -- a cartridge case.

Q Okay. Now, you take these photographs, and then ultimately those guns are taken from the scene to be processed, etcetera, correct?

A Yes.

Q So does another crime scene analyst come and actually impound those guns?

A Yes. In -- in this particular case, when I arrived, they asked me to go ahead and photograph these guns very quickly, because we did have a crime scene analyst standing by that was going to rush those to the forensic lab. And the girl I mentioned, Kristen Meckler, I worked hand in hand with her on a lot of the other evidence. But yes, there was a crime scene analyst named Jeff Smith that impounded these guns.

Q Okay. And those are rushed off to the crime lab, and then you continue to process the scene?

A Yes.

Q Okay. Just need to lay a foundation for this. This is 180. So we're looking at the same area here, correct?

A Yes.

Q There's Evidence Markers 1 and 2. Is that the SKS and the shotgun?

A Yes.

Q They're, obviously, not depicted in that photo, but now we have evidence markers in their place?

A Yes.

Q Okay. Out in that same area or nearby, State's 181, what are we looking at here?

A This walkway here -- this walkway here goes from the patio on this end, and towards the back wall. So this is a walkway from that covered patio to the backyard. And this is a stocking cap or beanie that was found on the -- on the walkway.

Q State's 194, is that that same stocking cap or beanie?

A Yes.

Q State's -- okay. In that same photograph, we have the 34 evidence marker; does that represent the beanie?

A Yes.

Q Okay. And then there's a little bit of blood here. Zoom in. That has what appears to be a little pink flag next to it; what is that?

A Yes. On this scene we had three blood samples that were taken. And I believe this was our AB3. This was the third of the three. And that little marker would have probably indicated AB3 for the third blood sample taken.

Q Okay. So if this jury's later looking at these photographs and AB3 means the third of three blood samples taken?

A Yes, sir.

Q Okay. Were there any other items of evidence impounded from that exterior portion of the corrugated metal?

A Yes.

Q What?

A There was a -- a -- I believe it was a Beretta 25 caliber that was on the patio.

Q Okay. We'll get to the inside of the patio --

A Oh, okay. On the outside? No.

Q Okay. So that should limit -- I mean, that should cover the outside of the patio, correct?

A Yes.

Q All right. Let's move back into the patio. State's 97, that's just a general overall of the patio, correct?

A Yes.

Q State's 357, a little closer view?

A Yes.

Q And this is taken when the firearms are still present on the other side of the corrugated metal?

A Yes.

Q Now, State's 362; is that the firearm you were describing previously?

A Yes.

Q Small handgun?

A Yes.

Q What type of handgun was that?

A I believe it was a Beretta 25.

Q Showing you State's 366; is that a close up of that item?

A Yes.

Q Okay. Is that firearm treated the same way as the long guns,

1 and taken by someone else and you continue to process the scene?
2 A Yes. This firearm and the two long guns were all taken by Jeff
3 Smith.
4 Q Okay.
5 A He was waiting for this one as well.
6 Q Okay. And would they have been impounded under the event
7 that I've previously described, 150904-0516?
8 A Yes.
9 Q Now, State's 163, I want to draw your attention now to
10 Evidence Marker 3, and obviously the gun is now gone?
11 A Yes.
12 Q And that Evidence Marker 3 is in the place of the little
13 handgun, correct?
14 A Yes.
15 Q Okay. Several other evidence markers. 32, do you know
16 what that represents?
17 A I don't have the -- I don't have the numbers memorized. I
18 know there were some -- a bullet, some bullet fragments, cart cases out
19 there. I'd probably have to refer to Kristen's evidence impound to know
20 exactly what that is. If it was zoomed in a little closer, I might be able to
21 see. Like a frag --
22 Q Well, would it refresh your memory to look at the impound?
23 A Yes, it would.
24 Q Do you have that with you?
25 A Yes, I do.

1 Q Please do --
2 MR. PLUMMER: Objection, Your Honor.
3 THE COURT: What's the objection, counsel?
4 MR. PLUMMER: Objection is reviewing somebody else's
5 report to testify of what an item is that she personally did not construct --
6 THE COURT: Go ahead.
7 MR. GIORDANI: A witness is entitled -- I'm sorry.
8 THE COURT: That's -- ma'am, do you have an independent
9 recollection at this time of -- regarding the question and answer of the
10 question, or do you need to refresh your recollection?
11 THE WITNESS: Well, I didn't -- I didn't memorize all -- all of
12 the items of evidence. I worked hand in hand with Kristen, who took the
13 evidence, but I don't want to misspeak by just making a guess at it.
14 THE COURT: All right. Would reviewing the evidence log
15 refresh your recollection?
16 THE WITNESS: Yes.
17 THE COURT: Okay. You may review the evidence log, just
18 to refresh your recollection.
19 THE WITNESS: Okay. And I -- I probably had it in my --
20 within my report as well, because everything that was reported by her
21 was in the -- the final crime scene report.
22 MR. GIORDANI: Understood.
23 THE COURT: And counsel, I'm going to overrule your
24 objection. She's only going to review the evidence log to refresh her
25 recollection.

THE WITNESS: So Item 32 --

THE COURT: Ma'am --

THE WITNESS: Oh, I'm sorry, sir.

THE COURT: I want you -- did that -- did reviewing the evidence log refresh your recollection?

THE WITNESS: Oh, yes, it did. And I was being asked about to -- to check --

THE COURT: I don't want you to read from the evidence log. I just want you to --

THE WITNESS: Okay.

THE COURT: -- testify from your refreshed recollection.

BY MR. GIORDANI:

Q Does that refresh your recollection?

A Can you repeat the question? Because I'm not remembering -- remembering which item number. Was it 32?

Q Yes, ma'am.

A Okay. 32, it does refresh my recollection to have looked at that. Thank you.

Q Thank you. What was Item 32?

A It was several pieces of black -- broken pieces of black plastic.

Q State's 176, what are we looking at here?

A We're looking at yellow tent markers.

Q Okay. State's 172, are those tent markers 28 and 26?

A Yes.

Q State's 173, 28, what is that?

1 A It looks to me as if it's a bullet fragment.
2 Q State's 26, what is that?
3 A That is a cartridge case.
4 Q Do you know the caliber?
5 A It was the 7.69x32.
6 Q And you indicated that that's the caliber of that SKS rifle,
7 correct?
8 A Yes. That's a rifle cartridge case.
9 Q State's 164, I'm going to zoom in on Tent Marker 25; what are
10 we looking at there, ma'am?
11 A And that's another one of the rifle cartridge cases.
12 Q Okay. So that's so far two rifle cartridge cases up on the
13 inside of the patio?
14 A Yes.
15 Q Okay. I wish I would have had this one earlier. 169, going
16 back to Tent Marker 32, is that the plastic that you were refreshed on?
17 A Yes.
18 Q Thank you. State's 167, what are we looking at there?
19 A This -- this is a bullet that was outside the door on the patio.
20 Q And that's Tent Marker 24?
21 A Yes.
22 Q State's 170, what are we looking at -- oops -- there?
23 A Item 30, and it's -- and it's a bullet fragment.
24 Q State's 165, what are we looking at here, ma'am?
25 A This is an entertainment unit that was down on the south end

of that patio and the -- as you can see in the photograph, the TV was apparently hit with some kind of projectile here. So this was indicating there -- there was a bullet fragment up on that shelf.

Q Okay. That was would the Tent Marker 29?

A Yes.

Q State's 230, is that that same television on the right hand, and this is that door that we've been talking about?

A Yes.

Q Okay. State's 186, what are we looking at here?

A That was a piece of, like, stuffing or cotton that we thought possibly came -- or did come from a chair that was one of the patio chairs.

Q Was there a patio chair out there that -- I'm digging through these. Was there a patio -- patio chair out there that had what appeared to be a projectile inside of it?

A Yes.

Q Did you process that and attempt to extract anything from within that chair?

A On this picture, in looking through that stuffing, there was a small bullet fragment there.

Q Sure.

A As well, to answer the question, yes, we did check the -- the stuffing in the chair to make sure there was nothing inside.

Q State's 188, is that the fragment in the stuffing that we -- you just talked about?

A Yes.

Q State's 192, that would be Tent Marker 35 associated with the stuffing and the frag?

A Yes, sir.

Q Almost there. During the course of processing the exterior of this scene, did you or other crime scene analysts put up several yellow tape rulers throughout?

A Yes.

Q Little flags throughout?

A Yes.

Q And trajectory rods?

A Yes.

Q What are trajectory rods?

A The trajectory rods were placed by Crime Scene Analyst Fletcher. And they're in -- they're put into certain types of holes where you can get, like, a true angle of impact of some type of a projectile strike. Often times we don't use those because the hole's too big or it's a type of material that it wouldn't give an accurate depiction.

Q Okay.

A So it's used just for a visual, to be able to get an idea of which direction an impact came from.

Q In your 19 and a half years as a crime scene analyst, have you dealt with trajectory rods on several different occasions?

A Yes. I've -- I've done a few. We had Stephanie do it on this scene because she's the really -- she teaches the class.

Q Okay.
A And she's really good at it, so.
Q Understood.
A Yeah.
Q Although you didn't do it yourself, did you document her process and her trajectory rods?
A I did the final -- the final outcome, I did. I was the photographer for this entire scene. So I was being pulled every which way. So some of the work she did I wasn't present, and some it was, as far as documenting her final tape that she put up or little markers that she put up.
Q Understood. Showing you now State's 263 through 277. Look through those briefly.
A [Witness complies.] Okay.
Q Do you recognize all of those?
A Yes, I do. They're all my photographs.
Q State's 236, do you recognize that?
A Yes.
Q Try to keep these in order here. 239, 240?
A Yes.
Q Go ahead and leaf through 282 through 289.
A [Witness complies.] Okay.
Q 307 through 310, 319 through 322, 325 through 331, and 333 and 334?
A Okay.

Q Do you recognize all those photographs?

A Yes, I do.

Q Are those all fair and accurate depictions of the scene as you photographed it as it appeared on September 4th, 2015?

A Yes.

MR. GIORDANI: I move for the admission of all those I just listed.

MS. MACHNICH: Your Honor, may we approach?

THE COURT: You may.

MS. MACHNICH: Thank you.

[Bench conference transcribed as follows.]

MS. MACHNICH: I'm assuming these are the trajectory rods ones?

MR. GIORDANI: Trajectory rods, evidence stickers --

MS. MACHNICH: Okay.

MR. GIORDANI: -- markers.

MS. MACHNICH: So Your Honor, Tegan Machnich --

MR. PLUMMER: I have objections.

MS. MACHNICH: Tegan Machnich for Mr. Turner. With regard to photographs of trajectory rods and trajectory analysis, we would have the same objection that Mr. Plummer had to the last set with regard to the paper bag and the placement of the writing on there, in that the photos themselves are testimonial in nature and hearsay at this time.

We would ask that they be not admitted until further foundation is laid, and that this foundation be to the photographs

1 themselves, but not the contents, and the State be required to bring the
2 additional witnesses to testify thereto.
3 THE COURT: Mr. Plummer?
4 MR. PLUMMER: I would say anything she testified to under
5 these photographs would be hearsay and speculation, because all she
6 did was take photos. She didn't do measurements. She didn't do the
7 rods. What's the purpose behind it, explaining it all? She's running
8 around taking photos. So any -- any testimony would be hearsay and/or
9 speculation on her part.
10 MR. GIORDANI: Okay. Can I respond?
11 THE COURT: You can.
12 MR. GIORDANI: Number one, they can't tell me who to call in
13 my case in chief. We don't have to call any witness they ask us to call.
14 We laid the foundation for the photographs as fair and accurate
15 depictions of the scene after it was processed on that day. That is the
16 question at hand. If I get up and ask her did she do the trajectory rods,
17 she would said no, and I -- I'm not going to ask her that.
18 But for foundational purposes, there's no further foundation
19 that needs to be laid.
20 THE COURT: Thank you. Let me see the photos. Okay.
21 What photographs are you specifically objecting to?
22 MR. PLUMMER: We'd -- we'd have to go through them, Your
23 Honor. There's a bunch.
24 THE COURT: Well, that's what you're supposed to do, quite
25 frankly. So what photo -- did you show these photographs --

MR. GIORDANI: Yes.

THE COURT: -- to them before --

MR. GIORDANI: Yes.

THE COURT: -- questioning this witness? All right.

MS. BEVERLY: We -- all of them.

MR. PLUMMER: And we objected --

MR. GIORDANI: All the ones that they --

THE COURT: Okay. But your objection doesn't go to all the photographs. I need to know which photographs you are objecting to.

MS. MACHNICH: Your Honor, Mr. Turner is objecting to only the photographs with the trajectory rods therein.

THE COURT: No, no. Give me their numbers. What photographs are you objecting to?

MS. MACHNICH: Okay. So on these, Mr. Turner is objecting to State's Proposed 236, 239, and 240, 282 through 289.

THE COURT: All right. Okay. The first thing you showed me is a deal with the rods. Why are you objecting --

MS. MACHNICH: Those also have rods in them, Your Honor.

THE COURT: What? I'm sorry.

MS. MACHNICH: Those also have rods in them, Your Honor.

THE COURT: I see. Okay. So these also have rods in them?

MS. MACHNICH: Yes, they do. 307 through 310, 320 through 322, so 325 through 333.

THE COURT: Okay.

MS. MACHNICH: And 334.

1 THE COURT: All right. Now --
2 MR. PLUMMER: 319.
3 THE COURT: -- I apologize, she's put them out of order and
4 I'll have you put them back in order. And as to those exhibits, what is
5 your objection?
6 MS. MACHNICH: My objection is that they are testimonial in
7 nature as to the contents therein with regard to the trajectory rods that
8 included there that's the work of someone else, that is someone else's
9 trajectory analysis and these are depicting that trajectory analysis
10 without further explanation. This witness is not qualified to testify to the
11 contents therein, and because the photographs themselves are
12 testimonial, they're hearsay at this time. They would need further
13 foundation from the witness qualified to do this trajectory analysis in
14 order to admit these photographs in our opinion.
15 THE COURT: Okay. I'm not under -- you're making a
16 *Crawford* objection?
17 MS. MACHNICH: To some extent, yes. And also a hearsay
18 objection at this time.
19 THE COURT: Okay.
20 MS. MACHNICH: The photographs themselves contain
21 something that is offered for the truth of the matter asserted, which is the
22 trajectory rods being the trajectory of various projectiles in this case.
23 The actual photographs that she took of the scene --
24 THE COURT: So you're saying that the photographs
25 constitute a statement?

1 MS. MACHNICH: Yes. Based on the alterations.
2 THE COURT: I'm just trying to get your objection.
3 MS. MACHNICH: Of course.
4 THE COURT: So you're saying that first there appears to be a
5 *Crawford* objection?
6 MS. MACHNICH: Yes.
7 THE COURT: And then, second, you're arguing that the -- the
8 rods, the angle of the rods constitute a statement, and it's hearsay?
9 MS. MACHNICH: Yes. Because it's not just observation of
10 the scene by a crime scene analyst. It's an altered scene at this point.
11 THE COURT: Okay. And Mr. Plummer, what is your
12 objection?
13 MR. PLUMMER: I have very similar objection, Your Honor,
14 where Person A takes a rod, thinks they find a trajectory hole, thinks that
15 this is a bullet hole, so they put a rod in there. Then they tell this
16 witness, Hey, come over and take a picture of this. So that person
17 comes over and takes a picture, and based on somebody else's
18 analysis, that either they told her --
19 THE COURT: Okay. What's the analysis --
20 MR. PLUMMER: Well, the analysis --
21 THE COURT: -- though? That's what I'm not understanding.
22 They put a rod into the hole --
23 MR. PLUMMER: Somebody -- somebody else believes that
24 this is a bullet hole --
25 THE COURT: No. I'm sorry, I can't hear you.

1 MR. PLUMMER: Another person believes that this is a bullet
2 hole, so they put a rod in --
3 THE COURT: They're not --
4 MR. PLUMMER: -- and they had this person take a picture.
5 THE COURT: Who's testified it's a bullet hole?
6 MS. BEVERLY: Nobody.
7 THE COURT: It's a hole. Does anybody -- is there -- has she
8 testified -- I didn't --
9 MR. GIORDANI: No.
10 THE COURT: -- hear it.
11 MR. GIORDANI: You're exactly right. It's a stick in holes.
12 THE COURT: Okay. And it exemplifies the holes, the same
13 as the markers exemplify where the evidence --
14 MR. GIORDANI: Yes.
15 THE COURT: -- is located?
16 MR. PLUMMER: And we don't have the person -- we don't
17 have the person here to cross-examine that put the sticks in the holes.
18 THE COURT: To do -- but what would you cross-examine
19 on? That's what I'm not quite understanding.
20 MR. PLUMMER: On why they put -- well, what did -- what did
21 that hole look like? How was it -- what made you think it was a trajectory
22 hole? What made you think that it was the -- you know, where did they
23 get their analysis and their basis behind their --
24 THE COURT: Okay. But nobody's testified it's a bullet hole.
25 MR. PLUMMER: No. But it's --

1 THE COURT: Is that correct?
2 MR. PLUMMER: -- going to -- yet.
3 MS. BEVERLY: She's not going to testify to that. All we're
4 doing is laying the foundation for the actual photos.
5 THE COURT: Right.
6 MS. BEVERLY: We're not going --
7 THE COURT: This is an --
8 MS. BEVERLY: -- to have her testify about that.
9 THE COURT: -- authentication, correct?
10 MS. BEVERLY: Yes.
11 MS. MACHNICH: Yes.
12 THE COURT: Okay.
13 MR. GIORDANI: These are fair and accurate depictions of the
14 scene.
15 THE COURT: As -- as of right now.
16 MR. GIORDANI: Agreed?
17 MR. PLUMMER: After it was processed --
18 MR. GIORDANI: Okay.
19 MR. PLUMMER: -- by the police.
20 MR. GIORDANI: But agreed --
21 THE COURT: Okay.
22 MR. GIORDANI: -- it's a fair and accurate depiction --
23 THE COURT: Okay. Based on authentication, do you have
24 an objection?
25 MR. PLUMMER: Yes, Your Honor.

THE COURT: You do not think they are fair and accurate depiction of the scene?

MR. PLUMMER: I think it's a fair and accurate depiction after police --

THE COURT: Okay.

MR. PLUMMER: -- did things to the scene.

THE COURT: But if I have him -- I'm sorry, I apologize. If I have the State reference that these are a fair -- to the jury, that these are a fair and accurate picture of the scene after it has been processed, that's all it would determine. Do you have an objection as to authentication?

MR. PLUMMER: Not to the authentication, but to the introduction. Because we don't have a chance to cross-examine the people who processed the scene.

THE COURT: Okay. And if --

MR. PLUMMER: In which case --

THE COURT: -- as to authentication --

MR. PLUMMER: -- they're testimonial.

MS. MACHNICH: Not as to authentication, merely as to my prior objections pursuant to *Crawford* and hearsay.

THE COURT: Okay. I'm going to allow them in as a fair and accurate depiction of the scene after it was processed. And I'm not going to allow this witness to make any kind of a statement or opinion as to whether the holes or trajectory -- bullet holes or anything of that nature, or as to the angles. They will have to bring in the person --

MS. MACHNICH: Okay.

THE COURT: Okay. So all they're coming in for is to show that these are what the scene looked like after it was processed. And this witness can testify that that's what it looked like. I'm not going to let her give any type of opinion regarding whether they're bullet holes or not or the angles or anything of that nature.

MR. GIORDANI: Okay.

MS. MACHNICH: Perfect.

MR. GIORDANI: But that -- my problem is though, how do I say, why did you put this marker here? Why did you put this sticker here? She's going to say --

THE COURT: She can say she believed it was a --

MR. GIORDANI: Exactly.

THE COURT: -- she believed --

MR. GIORDANI: Okay.

THE COURT: You know, may have something to do with the -- but she can't testify what it is or the angles or things of that nature. In other words, usually when I see this process, they mark everything. They mark anything that they believe may be evidence.

MR. GIORDANI: Right.

THE COURT: So that's apparently, I assume, what was done in this case. All those little markers --

MR. GIORDANI: Yes.

THE COURT: -- I think she's already testified as to potential -- nobody objected, by the way.

1 MS. BEVERLY: No.
2 THE COURT: That those were potential shotgun --
3 MR. GIORDANI: Shrapnel, pellets --
4 THE COURT: -- shrapnel --
5 MR. GIORDANI: Yeah.
6 THE COURT: Yeah. That was just -- so she marked it.
7 She -- so --
8 MR. GIORDANI: Right.
9 THE COURT: -- I'm going to let her testify that the trajectory --
10 these rods, you know, she doesn't know, you know, if -- they just marked
11 everything that is, you know, that could be evidence. And then they're
12 going to bring in the person to give some type of additional testimony
13 to --
14 MR. GIORDANI: Right. To get into the --
15 THE COURT: Or -- right.
16 MR. GIORDANI: -- trajectory analysis --
17 THE COURT: Trajectory and whether --
18 MS. BEVERLY: Right.
19 MR. GIORDANI: Correct.
20 THE COURT: -- they were made by bullets, consistent with
21 bullet holes.
22 MR. GIORDANI: Okay.
23 MS. MACHNICH: Okay.
24 THE COURT: Okay. So --
25 MR. GIORDANI: The trajectory analysis.

THE COURT: She's just laying the -- she's just laying the foundation for what this scene looked like and what was done at the scene.

MR. GIORDANI: Right. For example, this is a hole that appeared to be a bullet hole, so a -- a rod is stuck in it and that's what this is.

THE COURT: Right. But I'm not going to let her use the word bullet hole. It's a hole that would be -- I don't know how you want to say it. Yeah.

MR. GIORDANI: You can't.

MS. MACHNICH: That -- and that was our concern with it, is that it necessarily requires her to testify, if she's to testify to the contents. Again, I -- I would also clarify --

THE COURT: All right. It's coming in.

MS. MACHNICH: Right.

THE COURT: Okay.

MS. MACHNICH: Our -- our --

THE COURT: Here's the deal --

MS. MACHNICH: -- and our objection is only --

THE COURT: -- she's not going to --

MS. MACHNICH: -- to the rods.

THE COURT: -- testify as an expert --

MS. MACHNICH: Right.

THE COURT: -- as to whether it's a bullet hole or not.

MS. MACHNICH: Okay.

1 THE COURT: She can testify --
2 MR. GIORDANI: Based on her training and experience.
3 THE COURT: I'm not telling you -- based on her training and
4 experience that it would -- that she understood that shots were fired
5 inside the house. This was a hole and she put a trajectory in it. I'm not
6 going to let her use the word bullet.
7 MS. MACHNICH: Okay.
8 MR. GIORDANI: Well --
9 THE COURT: She can testify that --
10 MR. GIORDANI: There's going to be about 50 objections
11 then, because all I can ask is, what does this appear to be to you. And
12 then she's going to say --
13 MR. PLUMMER: Stick through a hole.
14 MS. MACHNICH: How about --
15 THE COURT: Okay.
16 MS. MACHNICH: -- how about it appears to be a projectile?
17 MR. GIORDANI: No. I'm not going to put words --
18 MS. BEVERLY: It's --
19 MR. GIORDANI: -- in her mouth.
20 MS. BEVERLY: It's the same thing --
21 MR. GIORDANI: If you want to object every time, go for it, but
22 I'm not going to --
23 THE COURT: All right. Well, here -- okay. Can we -- lay the
24 foundation --
25 MR. GIORDANI: Okay.

THE COURT: -- that she -- you know, this was a crime scene. It was her understanding that shots were fired within the house, and consistent with that information, she put -- rods were put in holes in walls, and this and that, indicating, you know, that this may have been evidence of shots fired in the house, something like that, you know. Just not going let her give the opinion that it's a bullet. It's consistent with shot -- with a hole, okay.

So again, I think she can testify that based on her years of experience, it would be consistent with a bullet hole. She just can't say it is a bullet hole.

MS. MACHNICH: As long as she's not discussing the trajectory analysis, we're fine with that.

THE COURT: She's not going to be able to do the trajectory analysis.

MS. MACHNICH: And that's --

THE COURT: It can be it's --

MS. MACHNICH: -- our objection.

THE COURT: -- consistent with a bullet hole and that's why she marked it.

MS. MACHNICH: That's fine.

THE COURT: How's that?

MR. PLUMMER: Okay.

THE COURT: Okay. Based on her years of experience in doing crime scenes analysis. She's not going to give what kind it is, bullet is, from what type of weapon, trajectory analysis --

MR. GIORDANI: Sure. I wouldn't ask her that.

THE COURT: -- anything like that.

MS. MACHNICH: Perfect.

THE COURT: Okay. That's my ruling --

MR. GIORDANI: Hopefully Alan has these numbers, because I --

THE COURT: Okay. So put them on the record. I -- just so I'm going to admit them, and then you can ask questions.

MS. MACHNICH: Okay.

THE COURT: Okay.

[End of bench conference.]

MR. GIORDANI: For the record --

THE COURT: What numbers were those, counsel?

MR. GIORDANI: For the record, we proposed 282 through 289, 319 through 322, 325 through 331, and 333 and 334.

THE COURT: And counsel for defense, your objections are noted at the bench conference.

MS. MACHNICH: Thank you, Your Honor.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: At this time, I am going to admit the -- those exhibits.

[State's Exhibit Nos. 282 through 289, 319 through 322, 325 through 331, and 333 and 334 admitted.]

MR. GIORDANI: Okay. Thank you, Your Honor.

Court's brief indulgence.

1 And I -- I apologize, I got it figured out. I believe what was
2 discussed is that 263 through 277 were not objected to.
3 MS. MACHNICH: As to Mr. Turner, no objection.
4 MR. PLUMMER: That is correct, no objection.
5 MR. GIORDANI: Okay. All right.
6 BY MR. GIORDANI:
7 Q So ma'am, you testified earlier you have 19 and a half years
8 experience as a crime scene analyst, correct?
9 A Yes.
10 Q How many shooting scenes have you been to, if you could
11 estimate?
12 A Estimated, couple hundred. 300, 500, I don't know.
13 Q Okay.
14 A I don't have that in my head.
15 Q Had there been several, potentially hundreds of opportunities,
16 for you to observe what appeared to be bullet holes?
17 A Yes.
18 Q Okay. In a scene where there's, obviously, a shooting that's
19 occurred, do you go through and attempt to identify and then mark
20 potential bullet holes?
21 A Yes. Yes, I do.
22 Q In addition to potential shrapnel and cartridges found at the
23 scene?
24 A Yes.
25 Q Do you also attempt to identify impacts to different surfaces

such as glass, walls, furniture, etcetera?

A Yes.

Q Okay. Showing you real quickly 263, is this that front window?

A Yes.

Q And now we have rulers up on top and to the sides of that, correct?

A Yes.

Q What were you documenting there?

A Stephanie had placed those rulers there to just kind of show the spread of the projectile strikes to that mini blind.

Q Okay. Showing you now 267; is that the back screen?

A Yes, it is.

Q Now, we're back in the backyard. And it appears the screen is now up and it has tape connecting it back as it should have been; is that right?

A Yes. I was part of that. I helped Stephanie put that back up. Uh-huh.

Q Okay. And what are all these little green tags that we're seeing on the screen?

A We located defects in the screen and just marked them with arrow markers.

Q Okay. So each arrow marker would correspond with an individual defect?

A Yes.

Q Just zoom in on a couple of them. 269, can you describe the

various defects using these as an example?

A Yes. There's one marked. I guess it's I, J, K. There's three in the picture. And the arrow markers are just lettered as we started from, like, the top of the corrugated metal going down at A. So these are, like, towards the end of the ones that were found.

Q Okay. And the -- the holes that you're documenting, they're apparently round, right?

A Yes. They appeared like a projectile defect. You know, material defect in that mesh screen.

Q Understood. Now, in the backyard area, State's 271, did you document several strikes to the far back area of that backyard?

A Yes. I was present when Stephanie and I -- we were searching back here, and I did document several areas of defects that we -- that were found.

Q Okay. I'm not going to go through each and every one of those with you, but fair to say there are several out in the backyard area?

A Yes.

Q Okay. Showing you now State's 331; what are we looking at there?

A This is a trajectory rod put through the defect on the TV, which it's believed that it went up through the shelf. I was actually the one that found -- this white can is a -- is a can of tanning lotion. So there's also a defect on the tanning lotion as well.

Q Okay. Now, you can't sit here and say that a bullet went

through there, correct?

A In my experience I would guess it possibly could be, but I didn't see it, so I don't know.

THE COURT: I don't want you to speculate.

THE WITNESS: Okay. To me, in my experience, it looks like a bullet went through there.

BY MR. GIORDANI:

Q But you're -- but you don't know, you weren't there and witnessed a bullet go through it, correct?

A I did not witness it.

Q Okay. Now, just generally speaking, trajectory rods are plastic, right?

A Made of -- this particular type is made of metal.

Q Oh, okay. And they're just stuck through -- when there's apparent holes, they're just stuck through that in order to demonstrate the holes that you can see in this photograph?

A Yes. Both of these surfaces, the type of material would give maybe a semi-accurate reading, opposed to glass that might be a big hole so you wouldn't be able to get a tight fit. So, yes, that was placed in there to just a angular -- the angle of the impacts.

Q And without going through all of these, did Ms. Fletcher do several trajectory rods throughout the course of the backyard area and the patio?

A Yes.

Q Okay. Almost done. One really briefly. Were you present or

1 did you observe the processing of -- or the initial processing of that
2 vehicle out in front of the house?
3 A When I arrived, there was a CIRT detective and Jeff Smith,
4 who I mentioned earlier, that had taken the guns, he was actually out at
5 the car. And I was requested to come out there as well and photograph
6 a few items that they wanted to take per the search warrant.
7 Q Okay. So State's 50, that's the vehicle, correct?
8 A Yes. I -- it's a 1997 Toyota Camry.
9 Q Okay. State's 25, is that the keys hanging in the ignition?
10 A Yes.
11 Q Did you photograph the glove box, State's 54?
12 A Yes.
13 Q Was there an item of evidence or -- taken out of there?
14 A Yes. There was a gun magazine.
15 Q State's 55, is that the gun magazine sitting on top of these
16 papers?
17 A Yes.
18 Q Were there also two cell phones taken from the vehicle?
19 A Yes.
20 Q And then State's 58, is that that magazine you referenced
21 earlier?
22 A Jeff doesn't have it marked, so I'm not going to comment on it.
23 I'm not sure if it is or not.
24 Q Fair enough, ma'am. Was there also a loose round cartridge
25 found in the vehicle?

A Not that I'm aware of.

Q Okay. So are you saying you didn't find the round or you didn't process the round?

A I never photographed a round.

Q Okay. Understood. Couple more questions for you, ma'am. All right. Showing you now State's Proposed 3, 5, 6 and 7. Look at those. Tell me if you recognize them.

A Yes, I do recognize these. And there are four diagrams created by Senior Crime Scene Analyst Kristen Meckler.

Q Okay. Now you've seen a couple diagrams and those have already been admitted. These are different from those, correct?

A Yes.

Q And they have all the numbers that correspond with evidence markers that I just laid all the foundation for in the photographs, correct?

A Yes.

Q So this is the ultimate result of the crime scene diagram after you've done all that processing?

A Yes. This is a diagram showing the location of the evidence.

Q Okay. And are these all fair and accurate depictions of the evidence as it was located and documented by you in all those photographs?

A Yes. I -- I've had -- I've studied these pictures, so I don't need to look at it for a lot of minutes. And yes, it is.

MR. GIORDANI: Okay. And I'd move for the admission of 3, 5, 6 and 7, Your Honor.

THE COURT: Any objection?

MR. PLUMMER: May we approach?

THE COURT: What?

MR. PLUMMER: May we -- may we approach, Your Honor?

THE COURT: Yes.

[Bench conference transcribed as follows.]

THE COURT: Counsel, what's your objection?

MS. MACHNICH: You want to go first?

MR. PLUMMER: Your Honor, this is hearsay. I mean, it's all -- she didn't make these documents. They were created specifically for the purpose of litigation. It's -- it's somebody else laying everything out and then her saying, oh, yeah, I've studied this, this is fair and accurate. The -- if the government wants to get a document in that has all these markers in, they need a witness to lay the foundation that was there, that saw it, that puts the marking on the paper. She did not create these.

THE COURT: Okay. What's your objection?

MS. MACHNICH: Your Honor, I have no objection from Mr. Turner on 3, 4, 5 or 7. The only objection we have is to Proposed 6, and that is only because it appears to be more of the trajectory analysis. And I would just incorporate to the prior --

THE COURT: I'm sorry, which one do you have an objection to?

MS. MACHNICH: Only 6, which appears to have the trajectory analysis. And I'll just incorporate my last objection with regard

1 to her being able to testify to that. We'll submit it.
2 THE COURT: You'll do what?
3 MS. MACHNICH: It's the trajectory --
4 THE COURT: What's the -- I'm not understanding your
5 objection as to 6.
6 MS. MACHNICH: 6 is the trajectory analysis again. And I
7 don't believe that she's qualified to testify thereto.
8 MR. GIORDANI: Can I respond?
9 MS. MACHNICH: But that's --
10 THE COURT: Yeah.
11 MS. MACHNICH: -- that's all I have.
12 MR. GIORDANI: This -- as to Mr. Plummer's objection, there's
13 nothing about these that are hearsay. These are diagrams depicting all
14 of the processing that she just testified to for the last hour and a half.
15 THE COURT: Uh-huh.
16 MR. GIORDANI: They're fair and accurate depictions of the
17 scene after she herself laid all the evidence markers. As to
18 Ms. Machnich's objection to the No. 6, those are not depicting trajectory
19 rods in any way. Those simply defect -- depict defects that were just
20 testified to her processing and what she marked.
21 Now, if they want to put that up in closing and argue those
22 aren't bullet holes, they can. But for foundational purposes, these are all
23 fair and accurate depictions of the evidence that she herself
24 documented.
25 THE COURT: Okay. What are these --

MR. GIORDANI: Holes.

THE COURT: No, no. What are the little lines?

MR. GIORDANI: No. Those are just pointing to the holes.

THE COURT: Okay.

MR. GIORDANI: Those aren't rods.

THE COURT: Okay. Counsel, do you understand that these aren't rods? They're just identifying the holes?

MS. MACHNICH: I do, Your Honor.

THE COURT: Okay. So I'm not understanding your objection then. Since they're not rods, they're just an extension to identify the actual holes, I can have her state that, but that's all those are. Those aren't the rods that she testified to. Those are just a way of identifying the holes.

And I'm assuming these are the numbering; is that correct?

MR. GIORDANI: Yes.

MS. MACHNICH: Right. Your Honor, I understand those aren't the rods. I know that they're not. But --

THE COURT: So what's the --

MS. MACHNICH: -- my objection --

THE COURT: -- trajectory objection? I'm not understanding.

MS. MACHNICH: With regard to when you look -- especially at the seating area, you see M1, M2, M3, M4.

THE COURT: Where were you -- what are you looking at?

MS. MACHNICH: If you're look at the small numbers and lettering by the small seating area farthest away from the patio, you can

see there's, like, an M1, M2, M3, and then the wall, an M4. That is part of trajectory analysis. They're saying that a bullet ricocheted, made -- the same bullet or fragment made all of those. So that's actually part of the analysis.

THE COURT: Okay. But I think all -- all these are going to be -- if I let them in, all this is going to do is identify the location of the holes. That's it.

MR. GIORDANI: Yes.

THE COURT: I'm not going to let her testify -- but I'm -- I'm -- again, all these are -- are being offered for, it's my understanding, is -- and the other thing is, I want you to establish these aren't to scale.

MR. GIORDANI: I think they are to scale.

THE COURT: You think they may be?

MR. GIORDANI: Yeah. I mean, I can lay the foundation for that.

THE COURT: Well, so you think this is to scale, this house is to scale?

MR. GIORDANI: Yes.

THE COURT: Okay.

MR. GIORDANI: And again, they're -- anything that's not documented with a number is simply --

THE COURT: You need to lay a -- more foundation. I want the jury to be -- understand that these little lines --

MR. GIORDANI: Okay.

THE COURT: -- are not to -- the trajectory --

1 MR. GIORDANI: Okay.
2 THE COURT: -- merely a way to identify the hole in the
3 walls --
4 MR. GIORDANI: Understood.
5 THE COURT: -- with the lettering. And then either these are
6 or not to scale. And if they -- I just want the jury to know whether they
7 are or are not to scale.
8 MR. GIORDANI: Understood.
9 THE COURT: So lay additional foundation.
10 MS. MACHNICH: Thank you.
11 THE COURT: Thank you, counsel.
12 [End of bench conference.]
13 BY MR. GIORDANI:
14 Q All right. Ma'am, I want to talk to you about a couple things in
15 these. I'm going to start with foundation for 6, State's 6. There are
16 several -- can you lay that flat?
17 A Oh, yes. I'm sorry.
18 Q There are several letters all throughout this diagram. And
19 then there's little arrows next to those letters. What do those arrows
20 represent?
21 A Those are indicating the location which -- of, like, say, Letter F
22 that would correlate with Letter F in the photographs.
23 Q Okay. So --
24 A So --
25 Q -- Letter F is a defect that you've observed on the scene; yes

1 or no?
2 A Yes.
3 Q You documented that with a photograph?
4 A Yes.
5 Q And then, ultimately, those documentations of any defect you
6 see that might be evidence, might not be, those are placed into the
7 diagrams, correct?
8 A Yes. Kristen created a diagram to show where our markers
9 were, so --
10 Q Right.
11 A -- so --
12 Q I understand that. This is a fair and accurate depiction of the
13 scene as you processed it on that day, correct?
14 A Yes.
15 MR. GIORDANI: I move, again, for the admission of 6.
16 THE COURT: Okay. Any -- any objection?
17 MR. PLUMMER: Same objection, Your Honor.
18 MS. MACHNICH: And we'll just submit to the Court's prior
19 ruing.
20 THE COURT: All right. It will be admitted.
21 [State's Exhibit No. 6 admitted.]
22 MR. GIORDANI: Thank you, Your Honor.
23 BY MR. GIORDANI:
24 Q To be clear I'm going publish this to the jury. This is 6 --
25 THE COURT: Oh, counsel. Also ask her if it's to scale.

1 MR. GIORDANI: That's what I'm about -- yes, Your Honor.
2 BY MR. GIORDANI:
3 Q I want to be very clear on a couple things. So I'm going to use
4 F as an example. Can you see that, ma'am?
5 A Yes.
6 Q F has a little arrow next to it, which appears to be pointing at
7 that screen that we've seen numerous photos of, correct?
8 A Yes.
9 Q That's not a -- that's not -- that arrow doesn't represent a
10 trajectory rod, does it?
11 A No, it does not.
12 Q Okay. You're just pointing at where the defect was?
13 A Yes.
14 Q These -- dimensions and measurements -- let me just ask this:
15 Are these diagrams all generally to scale with regard to what they're
16 showing?
17 A At the scene, we do a rough sketch diagram. And we use a
18 Hilti, which is an electronic thing. We use tape measures. And as close
19 that can be accurate, we try to do. But whenever we publish one of
20 these diagrams, we always put Not to Scale, because it could be off by a
21 small amount, an inch here or there. So --
22 Q Okay.
23 A -- so generally, it should be marked on this as well. It's in our
24 policy that we put Not to Scale, because we're not going to say
25 absolutely for sure. Because you have to account for, like, walls.

1 There's a thickness and --
2 Q I understand.
3 A -- this type of thing, which is hard to get to when you're
4 measuring a house.
5 Q Understanding it could be off a couple inches in any direction,
6 does this appear to be a fair and accurate depiction of the home as -- as
7 you walked it --
8 A Yes.
9 Q -- on that -- okay. That was 6. Now, I want to show you 3, 5
10 and 7. All of these three diagrams have numbers on them. And there's
11 also accompanying arrows like we discussed in the first -- that last
12 diagram, correct?
13 A Yes. Some of the items do have an arrow.
14 Q To be clear, those arrows are not trajectory rods; they're
15 actual arrows pointing to a defect?
16 A Yes.
17 MR. GIORDANI: I, again, would move for the admission
18 of 3, 5, and 7.
19 MS. MACHNICH: No objection, Your Honor.
20 THE COURT: Mr. Plummer?
21 MR. PLUMMER: Same objection, Your Honor.
22 THE COURT: They will be admitted.
23 [State's Exhibit Nos. 3, 5 and 7 admitted.]
24 MR. GIORDANI: Thank you, Your Honor.
25 BY MR. GIORDANI:

Q Showing you State's 3. Just for the jury's knowledge when they have this later, the little numbers in the diagram correspond with what you observed at that location up top; is that accurate?

A Yes.

THE COURT: Counsel approach, please, with the exhibits.

[Bench conference transcribed as follows.]

THE COURT: I just need to see something.

MR. GIORDANI: Sir, just the items of evidence.

THE COURT: Here's my concern. Let me see the other one, counsel.

MR. GIORDANI: There's nothing about trajectory rods anywhere in there.

THE COURT: I know. My concern is when you're -- I was -- when I was looking at these, I looked at the diagram itself. I didn't look at your legend. My concern is the -- on, like, 28, it says bullet fragment.

MR. GIORDANI: Right.

THE COURT: So I may have you redact it, just the fragment that -- was that -- I think that's the objection, is that that's the -- you know --

MR. GIORDANI: Is that --

THE COURT: Have we had -- has she --

MS. MACHNICH: I don't have an objection to that.

THE COURT: -- established that they're bullets? That it's a bullet?

MR. GIORDANI: Yeah. She already testified --

1 MS. BEVERLY: She already testified to that.
2 THE COURT: Okay.
3 MR. GIORDANI: With no objection. I believe your objection
4 was different.
5 THE COURT: All right. If there -- if that's been testified to -- is
6 that fair?
7 MS. BEVERLY: It's been -- all that's been testified to.
8 THE COURT: That they were bullet fragments?
9 MR. GIORDANI: Yes, Your Honor.
10 THE COURT: I think they're getting restless. All right. If
11 that's -- if --
12 MR. GIORDANI: I'm going to finish my question and I'm done.
13 THE COURT: If -- okay. If they've test -- is that correct,
14 counsel, they've testified they were bullet fragments?
15 MS. MACHNICH: Yes. That's accurate --
16 MR. PLUMMER: I --
17 MS. MACHNICH: We have no objection to that.
18 THE COURT: Is that correct? It's a yes or no.
19 MR. PLUMMER: I don't know, Your Honor. I know she
20 testified --
21 MS. BEVERLY: Yes, we did.
22 THE COURT: Is that correct?
23 MS. MACHNICH: Yes.
24 THE COURT: Okay. Then they're admitted.
25 MS. BEVERLY: Thank you.

THE COURT: All right.

[End of bench conference.]

MR. GIORDANI: Are those admitted, Your Honor?

THE COURT: They are admitted.

MR. GIORDANI: Thank you. And with that, I will pass the witness.

THE COURT: Thank you. I was going to take a break at 3:30. So is there anybody that cannot wait until 3:30 to take our afternoon break? All right. Then I'm going to proceed forward with testimony.

MS. MACHNICH: Okay. Court's brief indulgence. I'm just going to make sure I have the right exhibits.

THE COURT: That's fine. And, counsel, you're going to have whatever time you need to -- for your cross-examination. It's just that I was going to take our break at 3:30.

MS. MACHNICH: And, Your Honor, I -- I won't be long.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q Okay. Good afternoon, Ms. Dahn.

A Good afternoon.

Q All right. Just a few brief questions for you. All right?

A Yes.

Q First, all of the cartridge casings located outside the house were located on or immediately adjacent to the patio area, correct?

A Yes.

Q And when we're referring to that, and I'm going to publish for the jury for reference State's Exhibit 3, which has previously been admitted. We're looking at all of the cartridge casings as listed in these top evidence key and the numbers they correspond with in this patio area down here; is that correct?

A Yes. There's cartridge cases that were found in the kitchen that are depicted on the legend, as well as the ones that were on the patio.

Q Is it fair to say that nothing outside of this patio area outside, there was not found any cartridge casings?

A No.

Q Okay. It's -- it's not fair to say or there were not cartridge casings? Sorry.

A No. No cartridge cases were found out in the lawn or the area out there.

Q Perfect.

A In the backyard.

Q And is it also fair to say that the three firearms that were recovered in this case are depicted with Evidence Nos. 1, 2 and 3?

A Yes.

Q Okay. And these are the three firearms located outside specifically I'm drawing your attention to. Is that area of 1, 2, and 3 in this general area on the far looks like west side of the patio?

A 1 and 2 were in a flower bed on the other side of the

corrugated metal, and 3 was next to the table in -- in the patio area.

Q Okay. And all of them were in the, sort of, bottom half of the patio and western half of the patio?

A Yes.

Q Okay. Do you recall how far apart these weapons were located?

A The one weapon was, like, leaning up next to the -- the SKS, but I don't have the specific dimensions. I know when these were measured in, Kristen created a reference point to measure however far south of north and east of west. And her reference point she did all the measurements from were right -- oh, this thing didn't work. I'm sorry. I'll just draw -- drag a line. Right there where my line just ended. So that was her reference point to measure the stuff in. But I don't have any of that memorized, no.

Q And that's fine.

MS. MACHNICH: Would you clear the screen? Thank you. All right.

Q Additionally, let me see, so when evidence was being impounded, there were various bullet fragments that were located on this patio area?

A Yes.

Q And in the yard area, type situation?

A I know there was bullet fragments. I'm not sure about the yard, but I know we have four bullet fragments on the patio floor, and that one that we saw up on the table.

Q Okay. And -- and those are depicted in this evidence key up at the top as well, correct?

A Yes, they are.

Q And additionally, with respect to this backyard area, there was one bullet located, and that's number -- Evidence Item 24, correct?

A Yes.

Q And that's this evidence item just west of the apparent door here?

A Yes.

Q Okay. Other than those that we've just discussed, the fragments, and that one bullet, you did not process or identify any other bullets in these outside area?

A Not -- no. We did not, not that I know of.

Q Okay.

MS. MACHNICH: Court's brief indulgence.

Thank you, ma'am.

THE WITNESS: Thank you.

THE COURT: Mr. Plummer?

MR. PLUMMER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Good afternoon, ma'am.

A Good afternoon, sir.

Q You arrived at the house hours after the incident?

A No, I did not. Well, I don't know. I -- I showed up at 7:40. So

it was still, you know -- it was a static scene. There was nobody that was involved with the shooting itself. They were all gone. But the walkthrough hadn't occurred or none of that stuff had happened when I arrived.

Q Okay. But at 7:00 something, if it -- if the incident happened around 3:30 in the morning and you arrived at 7:40, that would be a few hours after the incident?

A Yes, it would be.

Q And so when you -- you're not -- you don't know what happened at the scene between the time of the incident and the time you arrived?

A No, I do not.

Q You don't know if officers kicked bullet -- or shell casings in different directions?

A No, I don't know that.

Q You don't know if the guns were picked up and moved or stood up; you just know what it looked like when you arrived?

A Yes.

Q Now, you've been doing this for 19 years, ma'am?

A Yes.

Q And I believe you're familiar with different shell casings that you've testified to already?

A Yes.

Q And, now, the holes in the blinds that appear -- or at least alleged to have come from a shotgun, based on the size of those pellet

holes, are you able to determine the size of the cartridge?

A I -- there was no shotgun cartridge found, but I'm very familiar with shot from inside a shot shell. And we did -- Kristen -- I was present -- but recovered pieces of that, you know, the shot shell. So it was -- I was under the impression, that yes, a shotgun was used to make those defects.

Q Right. But the -- the size of the little holes, you know, those dozens of little tiny holes?

A Yes. We didn't measure each little hole to get the size.

Q Are you familiar with the size of holes that different shotgun as far as the types --

A I am, but I don't have it memorized. I'm not a firearms expert, so I don't know the diameters of each, you know, bird shot or of different sizes.

Q So you're not aware of how many pellets are in a buck shot shell casing?

A I'm not aware of that, but the one -- the ones that were there, there were hundreds.

Q Of little tiny holes?

A Yeah. Little tiny shell -- little tiny shot pellets.

MR. PLUMMER: Thank you.

THE COURT: Any redirect?

MR. GIORDANI: No, Your Honor.

THE COURT: May this witness be excused?

MR. GIORDANI: Yes.

THE COURT: Ma'am, thank you.

THE WITNESS: Thank you, sir.

THE COURT: You are excused.

I was going to take our afternoon break.

Ladies and gentlemen, we're going to take a 15-minute recess. During this recess, your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to read, watch, or listen to any report of or commentary on the trial by any person connected with the trial, or by any medium of information, including without limitation, newspaper, television, and radio. And you are not to form or express an opinion on any subject connected with the case until it is finally submitted.

[Court recessed from 3:22 p.m., until 3:42 p.m.]

[Outside the presence of the jury.]

THE COURT: Please be seated. This is continuation of the trial in Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon Hudson*. Let the record reflect the presence of counsel for the State, counsel for the defendants, and the presence of the defendants.

Is there any matters we need to hear outside the presence of the jury? Otherwise, I'm going to bring the jury in.

MR. GIORDANI: Not on behalf of the State.

MS. MACHNICH: Nothing on behalf of Mr. Turner.

MR. PLUMMER: No, Your Honor.

THE COURT: Thank you.

Bring the jury in, please.

[Jury reconvened at 3:43 p.m.]

THE COURT: Will the parties stipulate to the presence of the jury?

MR. GIORDANI: Yes.

MS. SISOLAK: We would, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Please be seated.

Ladies and gentlemen, my anticipated schedule is we're going to going from 11:00 to 12:30 on Friday and then take our lunch break and resume at 2:00 to 5:00. That will be true as to Monday also. Monday, I anticipate going from 11:00 to 12:30, taking a lunch break, and resuming at 2:00 and going to 5:00.

MS. BEVERLY: May I proceed, Your Honor?

THE COURT: You may.

MS. BEVERLY: The next witness is going to be Sergeant Bitsko.

JOSHUA BITSKO,

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

THE CLERK: Please be seated. Would you please state and spell your name for the record.

THE WITNESS: It's Sergeant Joshua, J-O-S-H-U-A, Bitsko, B-I-T-S-K-O.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Sir, how are you currently employed?

A I'm currently a K-9 sergeant with the LVMPD.

Q Okay. And what does it mean to be a K-9 sergeant?

A Well, right now I supervise a team of police K-9s and their handlers. And I also run our training for all of our new dogs and new handlers as well. I also work a police dog. So I have a K-9 partner with me 10 hours a day, every day.

Q Okay. And what's your K-9 partner's name?

A Loki.

Q Can you tell the jury --

A Yes.

THE COURT: Are --

THE WITNESS: Oh, sorry, yes.

THE COURT: Yes?

UNIDENTIFIED JUROR: It's not a question. It's something I need to --

THE COURT: Okay. I'm going to have you approach.

[Bench conference transcribed as follows.]

THE COURT: Why don't you stand by the microphone right here.

UNIDENTIFIED JUROR: I realized he did a presentation at my son's Cub Scout meeting.

THE COURT: Okay. Do you -- the fact that --

1 UNIDENTIFIED JUROR: At a Cub Scout meeting for my son.
2 THE COURT: Okay. Did you speak to him personally, or was
3 it just a presentation --
4 UNIDENTIFIED JUROR: No, just a presentation.
5 THE COURT: -- and you were present? And when did this
6 occur?
7 UNIDENTIFIED JUROR: Beginning of this school year, I
8 think, so August.
9 THE COURT: Okay. And when the names were read, you
10 didn't recognize his name. You --
11 UNIDENTIFIED JUROR: I didn't --
12 THE COURT: -- only recognized him as soon as you saw him
13 come into the courtroom?
14 UNIDENTIFIED JUROR: The -- the dog's name sounded
15 familiar. And then when I saw him walk in, I realized why the dog's
16 name sounded familiar.
17 THE COURT: Okay. But you didn't have any personal --
18 UNIDENTIFIED JUROR: No.
19 THE COURT: -- interaction with him? And the fact that he did
20 a presentation that you were present at, is that in any way going to affect
21 your ability to be fair and impartial to both sides --
22 UNIDENTIFIED JUROR: No. I just wanted to tell you.
23 THE COURT: -- in this matter?
24 UNIDENTIFIED JUROR: No. I just wanted to tell you.
25 THE COURT: Okay.

MS. MACHNICH: Don't be nervous.

UNIDENTIFIED JUROR: Okay.

THE COURT: Does anybody -- let me talk for a second.

Does anybody have any questions?

MR. GIORDANI: No, Your Honor.

MS. BEVERLY: No.

MS. MACHNICH: No, Your Honor.

MR. PLUMMER: Not at all, Your Honor.

THE COURT: Thank you. Would you please have a seat -- I'm sorry -- would you please be seated.

UNIDENTIFIED JUROR: Okay.

THE COURT: Thank you.

Counsel, is there any challenges for -- to this juror?

MS. BEVERLY: Not from the State.

MS. SISOLAK: Not from Mr. Turner.

MR. PLUMMER: No, Your Honor.

THE COURT: Okay. Then I'm going to have him remain seated as a juror.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Thank you.

[End of bench conference.]

BY MS. BEVERLY:

Q Sergeant, we were talking about K-9, and you said you have a dog named Loki?

A Correct.

Q Tell us how being on K-9 is different from, say, being --

THE COURT: Randy.

Go ahead, counsel.

BY MS. BEVERLY:

Q -- from being either on patrol as a patrol officer or even a detective.

A Well, basically, I'm a patrol officer with a dog. And the dog is a tool that I use. And he lives at home with me, I take him to work with me. But we're not beholden to an area of Las Vegas. We're all of Clark County. And when anybody needs a police dog to help them with a situation, they call us, and me or part of my team responds.

Q Now, I'm sure we kind of all seen on TV maybe K-9s and what they do and what they can't do. But can you explain for us what members of the Las Vegas Metropolitan Police Department K-9 dogs can and can't do?

A Well, there's a couple things that we can do. The first thing is a police dog is a search tool. You see they have big, long noses and they can small a lot better than we can. So the -- what we do most of the time is we search for a suspect that runs from a patrol officer, hides from a patrol officer, is breaking into a building, something along those lines. So we'll go. And then we use the dog as a tool to search for people.

It's also an alternative use-of-force tool, method of deescalating a situation. It's an alternative to using deadly force on somebody because a police dog is -- it's just an inherently, you know,

1 human nature is to be afraid of a police dog. So we can couple, say,
2 warnings with a barking dog usually to deescalate a situation and get
3 somebody to give up.
4 Q Okay. So when we're talking about using the dog as a search
5 tool, what exactly are the dogs trained to search for? Like, what is it that
6 allows them to find someone better than, say, you or I?
7 A So a lot of times, you know, when you look on TV you see a
8 dog that, you know, they sniff an article of clothing for the suspect and
9 then they start searching, tracking on the ground. Our dogs don't do
10 that. So there are tracking dogs, a lot back East, because it's a little
11 wetter on the ground. Our dogs are what's called air-scenting dogs. So
12 they -- they smell in the air.
13 And what -- we train them over the course of 12 weeks. When
14 I -- we buy a dog, I say I, but I run our training program. I do all our dog
15 selection. When we buy a dog, they don't even -- all they know is their
16 name and to bite a big bite suit. So throughout the course of that 12
17 weeks, I teach them to search for somebody.
18 And they -- they learn to search for somebody that has that
19 flight-or-fight response. So when you have a flight-or-fight response,
20 your body releases a hormone called apocrine. And that's what we
21 believe the dog uses to discriminate between a suspect who recently ran
22 and hid from the police, and a -- a normal person that's just out walking
23 around.
24 Q And would that be because maybe a suspect fleeing from
25 police might give off that hormone fight-or-flight?

A Correct.

Q Okay. Now, you indicated that you were actually the training officer for all of K-9 in Metro?

A I am now. I wasn't at the time of this incident, but I -- I am the training sergeant. So I oversee trainers that train all of our new dogs.

Q Okay.

A And I also train new handlers as well. I teach use of force. I'm a defensive tactics instructor and I teach, you know, deescalation and advanced officer skills to K-9 handlers and outside of the K-9 section as well.

Q And you also indicated that K-9 is used as an alternative to deadly force; is that correct?

A Yes.

Q Okay. How does that play out?

A Well, when it comes to uses of force, you have deadly force, which is likely to cause death or significant injury. And you have intermediate force, which is where K-9 falls. And that's a -- K-9 is the same as a TASER, is the same as a baton. However, it is the one use of force that I can call and I can rescind. And also is, you know, human beings don't have an innate fear of, say, a baton or a TASER. But you take a police dog and they look -- you know, they have the look of, say, a predator. People are initially afraid of it. And I use that to, hey, this is -- this is what I need you to do. And if you don't do that, I'm going to deploy a dog and he will bite you. Usually, that's a tool to deescalate.

But on top of it, my dog is also trained to bite and hold. So

when he comes across a suspect, he's going to bite him and hold on to him. And that way, we can make our approach safely and take somebody into custody as well.

Q And that's what I was going to ask you: Is the dog also a way for officer safety?

A Correct.

Q Okay. So rather than maybe an officer putting himself out looking for a suspect, would be the dog could search -- search for someone, find them, and then you can safely get someone in custody?

A Yes.

Q How long have you been with Metro in general?

A This is my 18th year. I hired on in 2000.

Q I want to direct your attention now to September the 4th of 2015 in the early morning hours. You indicated that as K-9, you kind of work the whole valley of Las Vegas; is that right?

A Correct.

Q Do you work a particular shift though on a normal day-to-day basis?

A Yeah. At that time, I was working 7:00 p.m. to 5:00 a.m., like, a modified graveyard shift.

Q Okay. So are you kind of connected to all the radio channels of Metro, seeing if they need maybe K-9 to come out?

A Yes. Actually, my radio is on scan. We have seven channels, primary channels. We have a bunch of other ones, like SWAT and other channels like that, but seven primary channels. There's obviously a lot

of radio traffic on it. I keep my radio on scan, meaning I hear all of the radio traffic. Because, generally, I'm listening for Code Red, somebody yelling or screaming into the radio, just a -- any kind of critical incident, because that's when K-9 is needed.

Q Okay. So going back to September 4th, specifically, 2015, were you working on that day?

A I was.

Q And around 3:40, 3:45 in the morning, did you hear something on the radio that alerted your attention?

A I did. I was actually searching another business for a burglary in progress and I heard dispatch say there was an officer down on our Northwest channel. So I switched down on my radio to listen to that to obviously know if there's something that we as K-9 could go assist with.

Q Okay. When a K-9 officer decides to respond to a scene, is it typically just one K-9 officer, or do you go in teams?

A It depends on the scene. Something like this, where you have a -- a officer shot and down, multiple suspects, a large scene, all of us went.

Q Okay. So everybody who was on duty that evening who was a K-9 officer responded to this particular call?

A Yes. It was me and my entire squad.

Q On this particular day, how many members of your squad responded to the call?

A You had myself, you had Officer Overson, Officer Hemsey, Officer Carrillo. Those were the K-9 officers that were on duty, but I also

1 called others out eventually to help with the search.
2 Q Okay. So initially, though, we have four K-9 officers who
3 respond to the scene?
4 A Correct.
5 Q And that scene, that would be 6729 Oveja Circle; is that
6 correct?
7 A Yes.
8 Q Okay. I'm going to put up on the screen -- you can actually
9 see it, State's Exhibit No. 117. Can you see where my pen -- let's see,
10 can you see where my pen is pointed over here on Oveja Circle?
11 A Yes, I can.
12 Q Okay. Is this the street that you responded to?
13 A That is.
14 Q Okay. And right where my pen tip is, is that 6729 Oveja?
15 A Yes.
16 Q All right. So tell us how -- well, actually, you indicated earlier
17 that this was a scene that had potentially multiple suspects; is that
18 correct?
19 A Correct.
20 Q Did you -- were you aware that there was one suspect in the
21 backyard of the house?
22 A [No audible response.]
23 Q Did you become aware that there was one suspect in the
24 backyard of the house?
25 A Yeah. There was radio traffic given. An officer said he'd been

shot. And that they -- they had one suspect in the backyard and then another suspect had ran from the backyard and they were establishing a perimeter around the area.

Q Okay. So two suspects, one in the backyard and one had taken off?

A Yes.

Q Okay. Now, did you respond to Oveja initially to help take the suspects in the backyard into custody?

A Yeah. Well, to begin searching for the suspect that ran from the backyard, I -- we had to deal with the suspect that was still in the backyard first. You know, this is a neighborhood, an occupied neighborhood. People were going to start getting up and going to work, so we had to -- we had to deal with both, somebody that ran and then somebody that was still in the backyard.

Q And are you aware from the radio traffic that there are high-powered weapons involved in this?

A Yeah. The officer that was shot said he was shot with an assault rifle.

Q Okay. All right. So what happens when you and your team get over to Oveja?

A Well, we -- we all arrived at the same time, which is interesting, because we were coming from different parts of the valley. We arrived at the same time. We parked at the end, I believe it was east end of Oveja, the -- the street that teed -- teed off with it. As we got out, you know, as the sergeant, I developed a plan. This is -- this is how

1 we're going to solve this first problem.
2 We have ballistic shields in our vehicles that can, you know,
3 help give us mobile cover. So Officer Overson, I said, grab your shield
4 and you're going to be verbal communication with the suspect that was
5 in the backyard. Because we had to deal with that one first.
6 I had Officer Hemsey, and I advised Officer Hemsey to deploy
7 his rifle, due to the fact the suspect had an assault rifle, told him to grab
8 his rifle. He grabbed a heavy vest that had plates that was bullet
9 resistant towards an assault rifle. And he was going to be our deadly
10 force coverage.
11 And then we had -- I had Officer Carrillo set up his
12 containment in case the suspect that was in the backyard began to run.
13 Q Okay. So we have somebody in the front yard making sure no
14 one runs out, and then we have three other officers who are going to go
15 in, one's going to be your backup, one's going to be the shield, and then
16 you have the dog?
17 A Correct. And then with -- because of my position with the dog,
18 I was in the back of the team and I could also, as the sergeant, lead the
19 team and see everything that's going on at the time.
20 Q How quickly from the time you arrived at the actual location to
21 the time you developed this plan to the time you went in the house?
22 A I can't give you an exact -- I mean, it -- probably 5 to 10
23 minutes. It's enough to -- you know, we -- I had to communicate with
24 plan with everybody. Because when you don't communicate a plan,
25 that's when thing go south. That's part of deescalating the situation is us

1 having a plan and not just running into the backyard to take somebody in
2 custody. That's how force actually begins -- gets escalated.
3 So I had to take time so everybody on our team knew the
4 plan. Also, the officers that were already inside the house knew the
5 plan. So, you know, we had to communicate that, so we had to take the
6 time to do that.
7 Q Okay. But still relatively quickly, because you have someone
8 in the backyard with some guns?
9 A Yeah. We had somebody -- somebody in the backyard that
10 we knew was armed. And there was somebody in the neighborhood
11 where people live that was also armed. And we -- you know, I have
12 concern for that neighborhood and their well being as well.
13 Q So tell us -- actually, I'm going to publish State's
14 Exhibit No. 88; are you familiar with what's depicted in this photo?
15 A Yes. It's the interior of the residence on Oveja.
16 Q And would this be from the front door looking towards the back
17 door and the back patio?
18 A Yes. It's from the front door, from that perspective.
19 Q So tell us what happened when you and your team, after you
20 formulate this plan, decide to execute the plan.
21 A So it was really dark inside. This picture is light, but all the
22 lights off -- were off on the inside. I make my way with my team through.
23 I communicate with the patrol officers inside to move to the right,
24 because my police dog was on the left.
25 As I mentioned before, the dogs key in on somebody with that

flight-or-fight response and somebody that might be a little scared. But I had patrol officers that were also -- had that adrenaline dump as well. So we had to control them, move them out of the way.

Officer Overson approached the read door, but from behind the shield. And he began to give verbal communication with the suspect in the backyard.

Q I am going to show you now Exhibit No. 126; would this be that back door?

A Yes.

Q So you indicated that you told other multiple patrol officers to move to the side; is that right?

A Yes.

Q So you and your dog and your team could come through?

A Correct.

Q Okay. When you get to this door, what, if anything, can you see just looking out the door?

A I can't see a lot. I could see the -- as you can see here, there's obstructions between us and the back -- rest of the backyard, being the patio furniture, stuff in between us. There's, like, a small jumper wall, which I can't say what it was made out of, but there was just, like, a short wall and then a screen over into the rest of the backyard. So our view was fairly obstructed from the back.

Q Are there -- is it dark on the patio?

A Yes.

Q Can you see anybody, any suspect from your perspective at

1 the front door -- or at the back door when you look onto the patio?
2 A No, I could not see anybody.
3 Q So tell us what you decide to do.
4 A So Officer Overson, as the communications officer, the one
5 that was making communications with the suspect, gave two verbal
6 commands to the suspect to -- and, basically, who we are, put your
7 hands up -- the initial one was put your hands up or we're going to send
8 a police dog, when he finds you, he'll bite you. The second one --
9 because they -- the suspect yelled back to us, but we couldn't make out
10 what he was saying.
11 The second one, okay, crawl to us, crawl out so we can see
12 you or we're going to send a police dog. After giving him time to follow
13 our commands, I made the decision to deploy my police dog into the
14 backyard.
15 Q Let's talk about some information that you had about this
16 suspect in the backyard. Were you getting any information from the air
17 unit?
18 A Yeah. The air unit was overhead and could see the suspect in
19 the backyard. They could see him lying down. And next to him, what
20 they described as a long gun, which I know is either a rifle or a shotgun.
21 At the time, we didn't know which one it was.
22 Q Fair to say, you couldn't see it; you're getting this information
23 from the air unit?
24 A Correct.
25 Q Okay. Were you concerned about trying to go into a dark

backyard and arrest someone that you know is surrounded by a gun?

A Yes.

Q Tell me why you're concerned about that.

A Well, knowing the suspect's armed and knowing that an officer was just shot from that same backyard, I didn't want to just walk into that backyard to take him into custody for a couple of reasons. The first off is, our own safety, our officer safety, especially when -- when dealing with any type of rifle or long gun, it can defeat our body armor, the body armor that I was wearing at the time.

But also for the suspect's safety. As I said before, part of deescalating is -- is having a plan and not just rushing into the backyard. If I know I'm going into an armed confrontation, I would rather use every resource that I have available, which includes K-9, includes the air unit, includes communicating with the suspect to -- to get him to surrender prior to taking him into -- or going into that backyard.

Q Are you at all worried that you might potentially be ambushed if you just went out there?

A Yes.

Q So you -- the suspect has been given commands; is that correct?

A Correct.

Q But you can't hear what he's saying; is that correct?

A No.

Q And then the command is given to crawl out, and he doesn't crawl out; is that fair to say?

A Yes.

Q Okay. All right. So then you indicated that you decided to deploy Loki?

A Yes.

Q All right. Tell us about that.

A So Loki runs into the backyard. I can see him. I gave him very little direction. I believe at one time I told him to go out, which means search away from me. And I then see him start to work his way back, consistent with working the odor of a suspect. And I -- then I hear a suspect screaming. And I can see now where my dog's at and him biting the suspect on the wrist and begin to pull him away from where he was at.

So at that point, I can see the suspect's hands. I can see that he doesn't have a gun in his hands at that time, so I make the decision to move forward with my arrest team to then take him into custody.

Q So when you decide to move forward after Loki has located the suspect -- I'm going to show you Exhibit No. 358; what are we looking at here?

A So we're looking now from the backyard back towards the back door where we were -- where I deployed my dog from where we -- our arrest team was at.

Q Okay. So you go through the back door of the house; is that correct?

A Yes.

Q And can you kind of draw for the jury your path once you

exited onto the patio?

A Yes. So initially, we walk -- and we walk out from the back door, but I stop here to look at the suspect. And from that vantage point where I'm at, I can see the suspect on the ground. I can see my dog is biting him. But I also see a shotgun between his legs and it's flopping around back and forth and it's aimed directly at our arrest team.

So I stop the arrest team. I then reach down and I -- I push the shotgun away so it's not aimed at me. At that -- that point, I'm either concerned the suspect is going to grab it or it's just going to discharge into us because of all the commotion. So I then remove the shotgun from him. I move it to the side. I lean it up against the wall. And then we make our way around and I take physical control of my police dog.

Q Okay. So, actually, even though you stop on the patio, is the suspect in front on the actual patio, or behind this orange, I guess, metal thing?

A Behind. I actually reached through this hole and I grabbed -- that's where I grabbed the shotgun. I reached over and through.

Q So I'm going to now show you Exhibit No. 95; do you see that shotgun depicted in this photo?

A Yes. It's the one that's leaned up against the -- the wall right here. And then as I also looked over and I looked down, I was able to see this rifle immediately where the suspect was lying.

Q Okay. So the -- the way the shotgun is right here, that's not how you initially saw this, right?

A No. I placed it there.

Q And that was for -- because it was kind of pointed towards you all; is that correct?

A Yes. I wanted to -- once again, it comes down to mitigating threats. And I wanted to mitigate that threat before we continued moving forward.

Q So once you remove -- obviously this happened pretty quickly; fair to say?

A Yeah.

Q Okay. Once you were now come around the back of this orange metal contraption, is your dog still on the suspect?

A Yes.

Q Okay. And do you -- how do you go about getting your dog off of the suspect?

A So at this point, when I had multiple officers around me, I can verbally yell at my dog and tell him to release and he will. The problem is, is I have to get physical control of him first when I have this many officers around me. Because you know, in the fray, just like when a human -- when you have that flight-or-fight and you're -- you're in a fight, dogs are the same way. And they may not realize as soon as they let go there's a -- a person standing there that might be a cop. It's just all of a sudden a hand next to them.

So I come up and I grab my dog. And then I -- I tell him to release. I give him our release command. He releases. And I step back holding him while officers handcuffed the suspect.

Q So is it fair to say that you try to get the dog off as safely, but

as quickly as possible?

A Yes.

Q You don't let the dog just stay on there for, like, 20 minutes, do you?

A No.

Q Okay. Now, once you get control of the dog, you said your team comes in and actually puts handcuffs on the suspect?

A Yes.

Q Okay. And did you see who was actually arrested?

A I did.

Q Do you see that person in court today?

A I do.

Q Can you please point to that person and tell me an article of clothing that they're wearing today?

A He's wearing a light blue dress shirt with a dark tie.

MS. BEVERLY: Let the record reflect the identification of Mr. Hudson.

THE COURT: The record will so reflect.

BY MS. BEVERLY:

Q Now, you indicated that once you get your dog off, the team comes in and arrests Mr. Hudson; what do you do after that?

A So I search the side of the house. I redeploy my dog down the side. Because at this point now, this suspect's in custody. That situation is safe. But I have an entire neighborhood to worry about and we have to being our search. But I had to finish searching this backyard

with my dog. So I deploy him down the side of the house. Officers cleared by the pool, the other side of the house, after we handcuffed this suspect.

I then go and I put my dog away. I give him some water, I check him for injuries. And then I begin to coordinate a search of the rest of the neighborhood.

Q Do you recall, when Mr. Hudson was taken into custody, what he was wearing?

A I don't believe he was wearing a shirt. There was, like, a -- a knit next to him.

Q Now, how is it that you and your fellow officers then go about searching other areas of the neighborhood?

A So I put my police dog away. I drive around the corner across Rainbow on the west side of Rainbow to the command post. Now, I -- I understand that we have a large neighborhood, a couple actual neighborhoods, to search. So I then pull out a map and I begin to divvy up the search between my dogs that were there, my dog teams, my officers and dogs, and I also call out other -- other handlers. I think I ended up calling four more handlers out to search this neighborhood.

Q And I forgot to ask you this, but we talked about the two guns that were found kind of behind the orange awning; right?

A Uh-huh.

Q Was there any other weapons that you observed?

A Yeah. Actually, after we took the suspect in the backyard to custody -- into custody and I finished searching the backyard, I then -- as

I went back through the house, I could see a small semiautomatic handgun on the patio, a -- a small caliber semi-auto.

Q Would that be still close to the area where these other guns are?

A Yes, it was.

Q Would it be fair to say that the perimeter in this case, *i.e.*, the area that -- where you're searching for the other suspect, is very large?

A It was a very large perimeter.

Q And did you ever come in contact with the second suspect?

A I never did.

MS. BEVERLY: I pass the witness, Your Honor.

THE COURT: Any cross-examination by the defense?

MS. MACHNICH: Very briefly.

THE COURT: Proceed.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q Sergeant.

A Yes.

Q I think I may only have one question. You never came into contact with Mr. Turner in the backyard of the house that day?

A No, I did not.

Q Thank you.

MS. MACHNICH: No questions.

THE COURT: Any questions, Mr. Plummer?

MR. PLUMMER: Yes, Your Honor.

THE COURT: You may proceed.

MR. PLUMMER: Thank you.

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Good afternoon, Officer.

A Good afternoon.

Q I'd like to just talk to you a little bit about when you deployed into the backyard. You indicated there was a whole team of you -- representatives from K-9?

A Yes.

Q Plus you had additional officers from the patrol units?

A Yes.

Q And utilized patrol unit officers to actually do the grabbing of Mr. Hudson?

A Yes.

Q Now, when you first went outside -- let me put the -- backtrack.

When you first arrived, you were given information that they were in communication with Mr. Hudson?

A Yes.

Q Air had eyes on Mr. Hudson?

A Correct.

Q That he was lying down in the prone position with his hands on his hand?

A Well, his -- his hands were up at some point, but also the air unit said his hands would drop down to his side near the gun as well.

1 Q And the information coming from the sky was that the gun was
2 at the base of his feet?
3 A It was next to him.
4 Q That was the information you were receiving?
5 A That's the way I remember it.
6 Q Okay. The -- now, let's go back to when you were stacking
7 up, you had an officer with a shield?
8 A Correct.
9 Q And he was the first one out?
10 A Yes.
11 Q And he was in verbal communication with Mr. Hudson?
12 A Yes.
13 Q And that verbal communication, you indicated you were not
14 able to hear Mr. Hudson communicate back?
15 A I was not.
16 Q Right. You could hear him speaking, but you just couldn't
17 hear what it was he was saying?
18 A Correct.
19 Q And at -- at the time, Loki was barking?
20 A Yes.
21 Q And that would have an effect on your ability to hear
22 Mr. Hudson?
23 A Yes.
24 Q And so at that moment in time, you decided to deploy Loki?
25 A After Officer Overson gave him commands, correct.

1 Q Correct. That you -- you could hear him responding, but you
2 couldn't hear what he was saying?
3 A Yes.
4 Q The -- so you deployed Loki?
5 A Yes.
6 Q And you saw Loki had a hold of his arm?
7 A Correct.
8 Q And that's when everybody moved forward?
9 A Yes.
10 Q And there was six, seven of you that moved forward outside
11 the door at the same time?
12 A Yes.
13 Q Through the patio?
14 A Yes.
15 Q And out into the yard?
16 A Yes.
17 Q And before you went on the patio, the -- when you first arrived,
18 there was five or six officers in the kitchen?
19 A I can't tell you a number, but there were officers in kitchen,
20 correct.
21 Q And then your team arrived, which made it even more officers
22 in the kitchen?
23 A Yes.
24 Q And so at some point, there was close to 9 or 10 officers
25 standing in the kitchen?

A Yes.

Q Now, you indicated that you saw Mr. Hudson with his shirt off?

A Yes.

Q Now, would that have been after it was cut off from the injuries received from your -- from Loki?

A I can't say.

Q So you can't recall if it was medical that cut his shirt off?

A I -- I don't recall.

Q Thank you, Officer.

A Thank you.

THE COURT: Thank you.

Any redirect by the State?

MS. BEVERLY: I have nothing further.

THE COURT: May this witness be excused?

MS. BEVERLY: Yes, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: You may be excused.

I'm sorry, any -- no hands?

You may be excused.

THE WITNESS: Okay.

THE COURT: Please call your next witness, please.

MR. GIORDANI: Jeremy Vance.

JEREMY VANCE,

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

THE CLERK: Please be seated. Would you please state and spell your name for the record.

THE WITNESS: My name is Jeremy Vance. J-E-R-E-M-Y, last name Vance, V-A-N-C-E.

MR. GIORDANI: May I proceed?

THE COURT: You may.

MR. GIORDANI: Thank you.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q What do you do for a living, sir?

A I'm a detective with Las Vegas Metropolitan Police Department.

Q And how long have you been a detective with Metro?

A About a year and a half now --

Q Did you --

A -- as a detective.

Q Did you respond on September 5th of 2015 to an officer shot?

A Yes, sir.

Q Back then in 2015, were you working as a detective or a patrol officer?

A I was still assigned to patrol division in Northeast Area Command.

Q And when you responded to this officer down call, where exactly did you respond to initially?

A I responded to the -- the control, or the CP area. The CP was set up at Westcliff and Rainbow in the parking lot there.

Q What is CP?

A CP is a command post.

Q Okay. So you responded to command post. And is it there that you get direction on what to do next?

A Yes, sir. I -- I contacted the lieutenant there.

Q Okay. And what was your assignment after you responded to the command post?

A It was to rove within the interior of the perimeter in an attempt to find the outstanding suspect.

Q Okay. So you're assigned to rove throughout this perimeter area; is that right?

A Yes, sir.

Q How large, if you could estimate, is the perimeter that's set up for this particular call?

A I -- it was the largest -- still is the largest perimeter I've seen with Metro so far. It was probably about a mile east to west -- probably actually about a mile and a half east to west, and then probably about a mile north to south. It was huge.

Q Okay.

A Huge perimeter.

Q Did -- so how long did you rove around this perimeter for?

A Probably about three, three-and-a-half hours. Quite a while.

Q Okay. Did there come a point in time where your attention was drawn to a particular area near Westcliff?

A Yes, sir. Yeah. There was a -- what would be called a 425A call, which is a suspicious person call was received, reference a person that was going through a backyard. And they dispatched a marked unit, because I was actually in an unmarked car that evening. And that marked unit and I proceeded up Westcliff westbound --

Q Okay.

A -- to that suspicious person call.

Q Okay.

MR. GIORDANI: I believe, by stipulation, 397 is going to be admitted.

THE COURT: Is that correct, Defense?

MS. SISOLAK: That's correct, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: It will be admitted.

[State's Exhibit No. 397 admitted.]

MR. GIORDANI: Thank you.

BY MR. GIORDANI:

Q Sir, if you can see on your screen there, putting up 397.

A Sorry.

Q Can you see on your little screen?

A Yep. I see it now. Yes, sir.

Q Okay. Describe generally the area that we're seeing in this

photo.

A That's going to be the intersection of Westcliff and Rainbow. You can see in that business complex the large white buildings in that picture. The CP would have -- the control -- command post would have been in that center parking lot. And then Westcliff, where that red arrow is, is approximately where I came into contact with a -- the suspect.

Q Okay. Make a little circle where you came into contact with the suspect.

A Okay. Right --

Q That -- that works.

A Okay.

Q A little arrow?

A Yeah. I guess that's what it made.

Q And are you familiar --

A It's a little --

Q -- with where the location of the officer down shooting was?

A Yes, sir.

Q And do you see that here as well?

A Yes, sir.

Q Where is that?

A It's -- the screen is off a little bit apparently. I'm trying to get it -- inch it there. It's by that big, red dot.

Q All right.

A So.

Q Do you know the approximate distance from the area where

the officer is down to the area where you came into contact with the subject?

A These are larger lots. I'd have to guess it right around a half mile perhaps, taking that -- that path. It -- you know, it's under a half. It's right in that little range, so.

Q Okay. So you were describing that you responded to that area with a marked patrol unit, and you were unmarked, correct?

A Yes, sir.

Q Tell us what happened when you arrived in that area.

A When I arrived in that area, the -- the marked unit I was following was actually a K-9 unit. It was a big SUV, had its lights and sirens going, and it was proceeding westbound on Westcliff. And I was behind it. I was trailing behind it by quite a distance. And the reason being is often when we have people outstanding, they'll see the marked unit. The attention gravitates towards the marked unit and they don't see the unmarked unit trailing behind it, which is what I was doing.

When that marked unit passed, I saw the suspect pop out and he looked right at that marked unit as it was going by. And I saw him and I wasn't quite sure. I wanted -- I wanted to see what this person was going to do, if they were going to run, do something like that. And I watched that person watch it and then step off the sidewalk into the roadway.

And once he was in the roadway, I told my partner, I said, Hey, that's probably our guy. We spun around and we -- my car, despite being a plain car, it had lights and sirens on it. We just kicked them on

real quick and pulled right up to the suspect.

Q Okay. And can you describe that person?

A Yes, sir. Yeah. He was a black male adult, wearing a purple shirt and, like, orange pajama bottoms is what they looked like and -- and white -- want to say they were white tennis shoes, white Converse, something like that.

Q Showing you State's 28, already admitted; is that the person you came into contact with?

A Yes, sir.

Q When you got out of your vehicle, what did you do?

A Again, not knowing if this person was still armed or not and if he was going to run or what was going to happen -- I was the driver, told my partner to kind of blade out wide to the right. I came out quick and we -- we approached him and we handled it like a normal person stop. We identified ourselves. I said, Hey, I'm Officer Vance, we're stopping you for being in the roadway, despite our other suspicions of what was really going on. And we start to talk to the person and -- and ask him Hey, what's your name, and just kind of the basic questions you would do in a normal car stop -- or person stop, pardon me.

Q Did you -- did he respond when you asked what his name was?

A Yes, he did.

Q What did he say?

A I -- I don't recall the exact name, but it was a -- it was pretty clear it was a fictitious name. Because when we ran it, the physical

descriptions, while it came back to another black male, the physical descriptors didn't match the person who was standing in front of me. Height and weight were quite -- quite a bit off. And you could tell he was very nervous. And while I was talking to him, you could see he had an injury. And we started -- I started asking about that injury.

Q Okay. Where did you observe or how did you see he could -- he had an injury?

A Well, he -- he was only wearing -- the picture's gone, but he was only wearing those very light pants, those orange pants. And you could actually see blood on those pants. And -- and then trickling down his leg into his shoe area. Yeah, actually the picture does -- oh, yeah. There you go. You can actually see a little bit of that blood. Want me to touch it or --

Q No. That's okay.

A Okay. It's -- it's there.

Q Describe which leg.

A It was on -- it was on the rear left side of his leg is where the injury was. And you know, I asked him, I said, Hey, you look hurt. He says, Yeah, I -- I -- my leg's hurt. I said, Can I see it? And he said, Yeah.

He pulls up his pant leg and I ask him, How did you hurt your leg? He said, I jumped over a wall at my friend's house and caught my leg on the fence. And looking at the injury, I -- it was pretty clear it wasn't, like, a tear from -- like you might get going over a fence. It looked more to me like a -- what we call a GSW, a gunshot wound.

Q How many gunshot wounds have you observed in your years as an officer?

A Hundreds. I -- I actually worked the northeast side of town. And I -- I -- on any given week, I'd easily respond to five to six shootings a week and --

Q So you --

A -- and homicides, things of that --

Q So you indicated --

A It's bad.

Q -- that you asked him to lift his pant leg up. And I'm showing you --

MR. GIORDANI: I believe by stipulation we're admitting State's 33, Your Honor, if it's not already --

MS. SISOLAK: No objection, Your Honor.

MR. PLUMMER: No objection.

THE COURT: Mr. Plummer? It will be admitted.

MR. GIORDANI: Thank you.

THE COURT: Oh, it's already in. They advised me --

MR. GIORDANI: It is?

THE COURT: -- it's already in.

MR. GIORDANI: Okay. Thank you.

THE COURT: Thank you.

BY MR. GIORDANI:

Q All right, sir. I'm showing you State's 33.

A Uh-huh.

1 Q It appears to be the left leg of the person you've described?
2 A Correct.
3 Q Up here is what appears to be an injury, correct?
4 A Uh-huh. Yes, sir.
5 Q Then you described trickling blood, and you can see that in
6 the photograph?
7 A Correct.
8 Q Did you ask him about that injury?
9 A I did. I did. I said, man, that looks like a pretty bad injury, can
10 I get medical assistance for you? And I asked several times. And he's
11 like, no, no, I'm fine, I just want to get home. And you know, he's -- we
12 still don't have this individual identified in front of us and he's very
13 suspicious, obviously, and the story, the way it's coming out.
14 And just -- this picture doesn't quite do it justice of the actual
15 swelling and trauma to that soft tissue right there. But it looked he taped
16 half a baseball to the back of the leg. There was a lot of trauma to that
17 leg.
18 Q Okay. And describe that a little bit better, up or down?
19 A The -- from where you could see that -- it's hard to see in the
20 photo even, but there's a -- there's a very clean, little round hole. I don't
21 know if I can touch that screen or not. But it would be to the left of
22 where I just touched, I guess. But you could see that round hole. It's
23 clean. It's -- it's not a tear. It's a straight bullet wound. And below that,
24 you have an area that -- that looks like the calf muscle, but it -- this -- the
25 way that picture angle is, you don't see the -- the swelling.

1 And it -- when a round strikes a soft body, a bullet, it will cause
2 that trauma, obviously, not just the hole, but it causes trauma to the
3 tissue and swelling. And that's what I was seeing, along with the blood
4 that was still trickling down his leg.
5 Q All right. I'm sorry.
6 A Oh, go ahead. Sorry, sir.
7 Q Did you -- do you recall having found anything on this person's
8 pockets or in his hands or anything like that?
9 A I -- I truly don't recall.
10 Q Okay.
11 A If -- if there was some miscellaneous paperwork, I don't recall
12 anything of note that we pulled off of him. It was pretty quick. My
13 partner actually conducted the pat-down on him as I kind of stood over,
14 watched to make sure there wasn't going to be a fight or a sudden
15 push-away or fight or something of that nature, so.
16 Q Okay. Now, you indicated he gave you fictitious name --
17 A Yes, sir.
18 Q -- previously; did you ultimately identify that person by name?
19 A Eventually.
20 Q And --
21 A Eventually. It took a while, and he finally gave a name.
22 Q And who is that?
23 A Steven Turner.
24 Q Do you see that person in court today?
25 A Yes, sir.

Q Can you please point to that person and describe an article of clothing he's wearing today?

A He has longer hair now. He's wearing a -- a gray shirt, seated next to the two ladies.

MR. GIORDANI: Would the record reflect identification of Mr. Turner.

THE COURT: It will so reflect.

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

MS. SISOLAK: Court's indulgence just one moment.

CROSS-EXAMINATION

BY MS. SISOLAK:

Q All right. Officer Vance, very briefly. This is the outfit that Mr. Turner was wearing when you stopped him, correct?

A Yes -- yes, ma'am.

Q And I'm going to show you State's Exhibit 32; this is --

A Pardon me.

Q -- the way that the CSA measured this hole, correct?

A I -- I assume. The CSA -- after he was taken into custody, I wasn't there when the CSA arrived.

Q But this is the hole that you saw in the pants, correct?

A Yes, ma'am.

Q Okay. I assume that blood came from [indiscernible].

A Yeah.

Q Perfect.

A Correct. Yes, ma'am.

Q And State's 29, this is just a larger view; this is the hole here, correct?

A It appears to be, yes, ma'am.

Q Thank you. Now, when we talk about the hole in the pants, going back to this photo here --

A Uh-huh.

Q -- there was no hole in the front of the pants, correct? Just that one hole?

A Correct. As far as I remember, yes, ma'am.

Q Perfect.

A I think when these photos were taken, it was a little more daylight than when I first encountered him.

Q Probably.

A I forget the exact time that the stop occurred.

Q And you talked about being present for a pat-down?

A Yes, ma'am.

Q Mr. Turner was unarmed at that time, correct?

A Yes, ma'am. Correct.

Q So there were no weapons found on or near Mr. Turner?

A Correct.

Q And this is State's 33; this depicts the actual -- we'll call it a wound --

A Yes.

Q -- is that fair? Was that wound -- this is fair and accurate,

correct? This is what it looked like?

A Yeah. I mean, it had been better if they'd taken surround photos, because you really don't see the -- the trauma as much in that.

Q So --

A Looks flat almost.

Q -- was the entry the size of a quarter or smaller?

A I'd say, like, size of your pinkie finger, like the tip of your pinkie --

Q So smaller than a dime?

A Yeah. Smaller, like -- yeah, like a dime size would be fair.

MS. SISOLAK: Court's indulgence.

Nothing further. Thank you.

THE COURT: Mr. Plummer?

MR. PLUMMER: Your Honor, I don't have any questions for Officer Vance.

THE COURT: Thank you. Any redirect?

MR. GIORDANI: No, Your Honor. Thank you.

THE COURT: May this witness be excused?

MR. GIORDANI: Yes.

THE COURT: Seeing no hands.

Thank you.

THE WITNESS: Thanks.

THE COURT: You may be excused.

THE WITNESS: Thank you, sir.

THE COURT: State, call your next witness.

MR. GIORDANI: That is the last witness we have set up for today.

THE COURT: Ladies and gentlemen, it appears we're going to take our evening break at this time. We're going to take our evening recess. During this recess, your duty not to converse among yourselves or with anyone else on any subject connected with the trial or to read, watch, or listen to any report of or commentary on the trial by any person connected with the trial or by any medium of information, including without limitation, newspaper, television, and radio. And you are not to form or express an opinion on any subject connected with this case until it is finally submitted to you.

We'll be in recess until 11:00 tomorrow.

[Court recessed at 4:30 p.m., until April 20, 2018, at 11:00 a.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shawna Ortega

Shawna Ortega, CET*562