

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ  
GUZMAN,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT, IN AND FOR THE  
COUNTY OF WASHOE; THE  
HONORABLE CONNIE J.  
STEINHEIMER, DISTRICT JUDGE,  
Respondents,  
and,  
THE STATE OF NEVADA,  
Real Party In Interest.

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No.

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PETITIONER'S APPENDIX VOLUME FIVE

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JUDITH ANN SCHONLAU  
  
CCR #18  
  
75 COURT STREET  
  
RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
  
IN AND FOR THE COUNTY OF WASHOE  
  
BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. CR19-0447
	)	DEPARTMENT NO. 4
WILBER ERNESTO MARTINEZ	)	
GUZMAN,	)	
	)	
Defendant.	)	

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TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

WEDNESDAY, JULY 29, 2020, 10:00 A.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18  
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
Computer-aided Transcription

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I N D E X

WITNESSES:

DIRECT

CROSS

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RECROSS

SERGIO MARTINEZ

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DEBORAH MORENO

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EXHIBITS

MARKED

ADMITTED IN

EVIDENCE

State's 1

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1 RENO, NEVADA; WEDNESDAY, JULY 29, 2020; 10:00 A.M.

2 -o0o-

3 THE COURT: Thank you. Please be seated. Let the  
4 record reflect it is July 29, 2020, and this hearing is taking  
5 place remotely due to the closure of the courthouse at 75  
6 Court Street, Reno, Washoe County, Nevada.

7 The Court and all the participants are appearing  
8 through simultaneous audiovisual transmission. I am physically  
9 located in Reno, Washoe County, Nevada, which is the cite of  
10 today's court session.

11 The other court personnel who are present will  
12 identify themselves and indicate where they appearing from.

13 THE CLERK: Good morning. My name is Marci Stone,  
14 court clerk. I am appearing from Washoe County, Nevada.

15 COURT REPORTER: Good morning, Judy Schonlau, court  
16 reporter, Washoe County, Nevada.

17 THE COURT: And the bailiff with us this morning?

18 THE BAILIFF: Good morning, Your Honor. Deputy Finn  
19 appearing from 911 Parr Boulevard, Washoe County, Nevada.

20 THE INTERPRETER: Your Honor, may I confirm the  
21 Spanish channel has been changed? This is the interpreter. We  
22 are good. Thank you, Your Honor.

23 THE COURT: Good morning, Mr. Martinez.

24 THE DEFENDANT: Good morning.

1 THE COURT: Are you able to hear the interpreter?

2 THE DEFENDANT: Yes.

3 THE COURT: This is the time set for case number  
4 CR19-0447, The State of Nevada versus Wilber Martinez Guzman.  
5 Present also on behalf of the Court are two court interpreters  
6 who will identify themselves at this time.

7 THE INTERPRETER: Good morning. Jessica Escobar,  
8 certified court interpreter for the State of Nevada,  
9 certification #NVEJ-100. I will say the same on the Spanish  
10 channel.

11 THE INTERPRETER: Good morning. My name is Joseph  
12 Miller, Nevada State certified court interpreter,  
13 certification #NVMJ-501. And this morning I am here located  
14 in Sparks, Washoe County, Nevada.

15 THE COURT: Ms. Court Reporter, I am hearing some  
16 background noise. Are you hearing any background noise?

17 COURT REPORTER: Yes, I am, Your Honor, laughing and  
18 talking.

19 THE COURT: I don't know where that is coming from.  
20 I'm looking around and everyone's mics are muted.

21 THE INTERPRETER: My wife is working in the next  
22 room. I am going to be on mute now for at least twenty  
23 minutes, but I will let her know we are hearing some  
24 background noise.

1 THE COURT: Okay. We are hearing that. Thank you.

2 THE INTERPRETER: This is the interpreter. I cannot  
3 hear my colleague. Could somebody maybe tell me what he said  
4 so I can relate that to Mr. Martinez Guzman?

5 THE COURT: He said it was his wife in the next room  
6 working. He's going to tell her when he starts interpreting  
7 she's going to have to mute.

8 The record should also reflect Mr. Guzman appears  
9 from 911 Parr Boulevard, Reno, Washoe County, Nevada.

10 At this time, I would ask the attorneys to make  
11 their appearances and acknowledgements.

12 MR. JACKSON: Good Morning, Your Honor, Mark Jackson  
13 on behalf of the State of Nevada. I am located here in Reno,  
14 Washoe County, Nevada. I have received a notice of the  
15 simultaneous audiovisual transmission and have no objection to  
16 proceeding in that format.

17 THE COURT: Thank you.

18 MR. LUCIA: Good morning. Travis Lucia also from  
19 Washoe County, Nevada. I received the Notice and have no  
20 objection proceeding in this fashion.

21 THE COURT: Thank you.

22 MR. HICKS: Good morning. Chris Hicks also in Washoe  
23 County. I received the Notice and have no objection to  
24 proceeding in this manner.

1 THE COURT: Thank you. Appearances on behalf of the  
2 defendant.

3 MR. ARRASCADA: Yes, Your Honor. Good morning.  
4 This is John Arrascada appearing on behalf of Mr. Martinez  
5 Guzman. We are in receipt of the court Order. We are aware  
6 of the process and have no objection to it. We are all  
7 appearing from Reno, Nevada.

8 THE COURT: Thank you.

9 MS. HICKMAN: Good morning, Your Honor.  
10 Kate Hickman on behalf of Mr. Martinez Guzman. I am in Washoe  
11 County. I do have notice of the relevant Order and I have no  
12 objection.

13 THE COURT: Thank you.

14 MR. GOODNIGHT: Good morning, Your Honor. Joe  
15 Goodnight on behalf of Mr. Martinez Guzman. I received the  
16 notice, and I have no objection. I am also appearing from  
17 Washoe County, Nevada.

18 THE COURT: Thank you.

19 MS. VERNES: Good morning, Your Honor, Gianna  
20 Verness on behalf of Mr. Martinez Guzman. I am appearing in  
21 Reno, Washoe County, Nevada. I have received the appropriate  
22 Notice and have no objection to continuing in this fashion.

23 THE COURT: Okay. Thank you. As we move forward, it  
24 is my understanding Mr. Arrascada is the qualified attorney in

1     this case, so when he makes his appearance, unless you tell me  
2     he's leaving the room, I believe he's still in the room. And  
3     he was there all day yesterday and Monday as I understand it;  
4     is that correct?

5             MS. VERNES: That is correct. All four attorneys,  
6     Ms. Hickman, Mr. Arrascada, Mr. Goodnight and myself have been  
7     present the entirety of the proceedings the last two days.

8             THE COURT: Okay. Thank you. I just thought it was  
9     important to kind of make that record. We see you go back and  
10    forth but I don't see you all the time. Just so you know, the  
11    Court is expecting you to let me know if anyone leaves.

12            MS. VERNES: Yes, Your Honor.

13            THE COURT: Thank you. Then I think the next process  
14    we should be discussing is our witness from yesterday.  
15    Doctor Sergio Martinez, are you present?

16            THE WITNESS: Yes, I am, Your Honor.

17            THE COURT: Thank you. Go ahead and turn your camera  
18    on. There we go. Okay. Dr. Martinez, I want to remind you  
19    that you are are still under oath. I see you are in the same  
20    room that you were in yesterday; is that correct?

21            THE WITNESS: Yes. I am at 7625 La Chulla  
22    Boulevard, Tuscson, Arizona, Pima County.

23            THE COURT: I am going to allow for your inquiry to  
24    continue at this time.

1 THE WITNESS: Yes, Your Honor.

2 MR. VERNES: Before I dive in with Dr. Martinez, I  
3 did want to make one request of the Court. During the  
4 cross-examination of Dr. Puente on Monday by Mr. Jackson,  
5 there were some impeachment materials that were utilized by  
6 the State. Due to the remote nature of these proceedings, the  
7 customary process of providing, at least allowing counsel on  
8 behalf of Mr. Guzman, Martinez Guzman, to view those documents  
9 was not available, if you will. So we would just ask the  
10 State provide at least the citations or references so we have  
11 an opportunity to review that material.

12 THE COURT: What was it exactly that you didn't have  
13 a chance to see?

14 MS. VERNES: There were I believe eight in total  
15 cite cases, prior cases that were referenced without any idea  
16 what the State was utilizing for impeachment, it was not shown  
17 to Dr. Puente or counsel for Mr. Martinez Guzman and articles  
18 were referenced.

19 THE COURT: Certainly, if you had made an objection  
20 contemporaneously, I would have ruled on it. It is a little  
21 late now. We do have a methodology for sharing documents with  
22 the witness through shared screen if it is appropriate to do  
23 so. And, if there is an objection to something that is being  
24 presented, you have to let me know. I'm not, and I want to let

1 both sides know, you exchange your discovery outside of the  
2 Court, so I'm not aware of your discovery. And I am hearing  
3 through these witnesses, I am gleaning some information that  
4 perhaps has been shared through discovery that hasn't been  
5 shared with the Court yet. And that is perfectly fine, but I  
6 am not as aware of what you, both sides, may have about each  
7 other's cases. So you have to make those objections  
8 contemporaneously, otherwise I am assuming you know it all, I  
9 mean you are aware of it and have no objection to it coming  
10 in.

11 MS. VERNES: Thank you Your Honor.

12 THE COURT: Go ahead.

13  
14 SERGIO MARTINEZ

15 called as a witness, having been previously sworn,  
16 took the witness stand and testified as follows:

17  
18 CROSS-EXAMINATION CONTINUED

19 BY MS. VERNES:

20 Q Good morning, Dr. Martinez?

21 A Good morning.

22 Q Thank you for joining us again. I want to, if it is  
23 all right, to start where we ended our conversation yesterday;  
24 is that okay?

1           A     Yes.

2           Q     We were in the processing of discussing utilization  
3 of telecommunication as it applies to the practice of  
4 psychology in general and specific to an Atkins investigation.  
5 Do you recall that discussion?

6           A     Yes, I do.

7           Q     And if I understood, correct me if I am wrong, but  
8 if I understood your testimony towards the end of the day, is  
9 that the methodology or the technology of telecommunication is  
10 not new; is that correct?

11          A     Well, with regards to different aspects. Initially,  
12 the mode of communication was mostly via telephone. But as  
13 the technology has improved, video has been added. Obviously,  
14 we have this type of a live televisual, televideo type of  
15 communication.

16          Q     And so there have been improvements in technology is  
17 the summary of that?

18          A     I would say improvement in terms of the technology,  
19 but also improvement in the amount of information that can be  
20 obtained with this improved technology.

21          Q     And the application of telecommunication to the area  
22 of forensic psychology is new; is that correct?

23          A     I am sorry, is new you say?

24          Q     Utilizing telecommunication for forensic psychology

1 is a new or novel idea?

2 A I wouldn't necessarily say that. I mean we have been  
3 using this approach even at the jail when I conduct  
4 evaluations in situations where for one reason or the other an  
5 inmate could not be assessed in person. And I am talking  
6 about competency type of evaluations, where it is all done  
7 through video. This has been going on for some time.  
8 Obviously, in light of what is happening in our country at  
9 this point with the virus, certainly this has become more  
10 prevalent.

11 Q And toward the end of the day, we were discussing  
12 the utilization of tele practice in the administration of the  
13 ABAS or the Vineland. Do you remember that discussion?

14 A Yes, I do.

15 Q And I want to clarify if your testimony is that the  
16 ABAS and Vineland have been recommended to be administered  
17 through telecommunication in evaluating intellectual  
18 disability?

19 A Yes. They-- I guess you can call it a  
20 recommendation, but they clearly state in the manual that this  
21 instrument can be administered either in person or offsite  
22 remotely.

23 Q Okay. So not what I say is a recommendation, did you  
24 say it was recommended for use?

1           A     I am saying that is what the manual indicates.

2           Q     So in looking at the Vineland 3, the publisher has  
3     presented some guidelines for administration of that  
4     instrument via tele practice; is that correct?

5           A     Yes. They do provide some guidance how it can be  
6     administered.

7           Q     Have you had an opportunity to review the guidance  
8     the Vineland 3 publishers have set out?

9           A     Well, in general terms, I have reviewed some of the  
10    guidelines not only from the texts published but also those  
11    published by the ABA and other articles that have surfaced  
12    since.

13          Q     The publishers of the Vineland have made some pretty  
14    exhaustive recommendations when you're utilizing tele practice  
15    for their tests; is that correct?

16          A     I would say that in general not only the publisher  
17    of the tests but also, you know, according to our specialty  
18    guidelines and professional standards the recommendations can  
19    be rather comprehensive, yes.

20          Q     Because one of the reasons being that the Vineland 3  
21    has not been standardized in a tele practice format, correct?

22          A     That is correct.

23          Q     And they recommend that that is another  
24    consideration that needs to be taken into account when you are

1 using it for tele practice administration?

2 A Yes, that is correct.

3 Q And none of the guidelines the Vineland publisher  
4 has presented apply or are specific to a death penalty  
5 investigation; is that correct?

6 A Specifically directed to Atkins cases, no they are  
7 not.

8 Q They are issued in the context of telecommunication,  
9 correct?

10 A Yes.

11 Q And they are also not specifically directed toward  
12 their use in the forensic setting, correct?

13 A Well, in terms of the application of those  
14 instruments, yeah. It is just an additional tool that is  
15 available to forensic psychologists. Obviously, in Atkins  
16 cases, all the experts either use a semi-structured interview  
17 approach or one of the standardized scales.

18 Q Certainly. I appreciate that. But my question was  
19 that the guidelines that were presented by the publisher are  
20 not specific to the use in the forensic setting?

21 A Specifically related to forensic, no. Just in  
22 general terms for educational context or, again, in the field  
23 of any type of assessment of adaptive functioning or  
24 intellectual functioning.

1           Q     And you mentioned that there are two methodologies  
2 for administering the Vineland 3 in particular, a standardized  
3 format, and what was the second?

4           A     Well, obviously, the standardized approach and  
5 within the guidelines not only what is established from the  
6 publisher but also guidelines referencing administration of  
7 any type of test. They pretty much follow the same approach to  
8 conduct the examination or the administration of these  
9 instruments according to the standardized method, so that  
10 applies to all testing instruments. Any deviation from the  
11 standard method of administration is to be reported within the  
12 body of the report so that the reader, whoever the receiver of  
13 the report is, can take that into consideration in making  
14 their assumptions regarding the final conclusions.

15          Q     Okay. Thank you for that. And so I will ask it a  
16 little differently. There are two ways to administer the  
17 Vineland, through face-to-face interview or through handing  
18 someone the instrument, itself, and allowing them to fill it  
19 out and return it to you?

20          A     Yes, particularly with the ABAS. The ABAS can be  
21 used with paper and pencil. The form is provided to the  
22 informant, and then they complete the form and return it back  
23 to the examiner for scoring and so forth.

24          Q     And so in doing either of those practices or

1 methodologies to administer these instruments, there are some  
2 steps that the examiner has to take to help ensure validity;  
3 isn't that correct?

4 A Yes.

5 Q And so let's talk about just giving someone -- the  
6 practicalities of handing someone this instrument and asking  
7 them to fill it out and return it to you, okay?

8 A Yes.

9 Q Bearing that in mind, also for purposes of your  
10 answers, that the individuals filling out this form and  
11 returning it to you would be doing so through  
12 telecommunication in a third world country. Are you  
13 comfortable with that?

14 A Well, yes, it can be done that way so they can  
15 observe the individual completing the form. But quite often,  
16 the forms are provided to the recipient, to the informant,  
17 without necessarily the examiner being present. They can  
18 complete the form and then return it back to the examiner.

19 Obviously, I would say in cases where they may have  
20 questions or they don't understand a particular item, then it  
21 would be useful for the examiner or someone else that is  
22 trained in administration of these forms to be available to  
23 respond.

24 Q So I understand there are different methodologies

1 and ways to administer these tests, but do you understand for  
2 purposes of your testimony today it is to educate us on how  
3 telecommunication or alternate methods of doing an  
4 investigation in an Atkins case could be done for Mr. Martinez  
5 Guzman?

6 A Correct.

7 Q So in answering the questions we are about to go  
8 through, for purposes of those answers, I want you to bear --  
9 I am asking you to bear in mind these will be administered  
10 through telecommunication to informants that are in a third  
11 world country?

12 A All right.

13 Q Do you feel comfortable doing so?

14 A Yes, I believe so.

15 Q So first with the methodology of having the  
16 individual receive the instrument and then fill it out, let's  
17 talk about that first, okay?

18 A All right.

19 Q So first of all, the communication of the test, in  
20 order to do that, we are are making an assumption the  
21 interviewee has access to the technology to receive the  
22 instrument, correct?

23 A Right.

24 Q To download the instrument, to open the instrument

1 and to fill it out through telecommunication, correct?

2 A Correct.

3 Q So that assumes that the individual can read at the  
4 level that the Vineland is written?

5 A That would be expected, yes.

6 Q And do you happen to know the educational level the  
7 Vineland is written for?

8 A Not exactly, but I believe usually they are fourth  
9 or sixth grade level education. That, of course, is we are  
10 talking about according to U.S. standards.

11 Q And so the assumption is also that the intended  
12 recipient is the person who receives the document, can read  
13 and understand the questions, and then fill it out on their  
14 own; is that correct?

15 A That is the approach that is taken. And, again, that  
16 was one of the difficulties we encounter when we administer  
17 this type of standardized testing, because you have to take  
18 all those things into consideration to see whether there is  
19 sufficient application and connection between the person  
20 taking -- it is not a test -- completing the inventory and  
21 being able to understand what is being said. So, again, it is  
22 another limitation that we encounter in this field.

23 Q You have indicated it is a limitation on an  
24 instrument or methodology that is endorsed by the AAIDD and is

1 the standard practice in Atkins investigations, correct?

2 A It is strongly recommended you use the standardized  
3 measure, yes.

4 Q So going back to the telephone, we have got the  
5 hurdle of communicating the instrument to the recipient,  
6 making sure that they understand it and can fill it out on  
7 their own, that they are the person who does it them self, and  
8 that they don't have help from any third party; is that  
9 correct?

10 A Well, certainly you would want to be aware whether  
11 there are any other individuals in the environment in which  
12 this test or this, we shouldn't call it a test, but this  
13 inventory, this form is being completed. However, the examiner  
14 can be available even through the phone to answer any  
15 particular questions or guide the individual in completing,  
16 not guide them, but in reading the item. That is also  
17 allowed.

18 Q And if those guidelines aren't followed, it is yet  
19 another limitation that must be noted by the interviewer in  
20 analyzing and utilizing the results; is that correct?

21 A Yes. I think it is advisable to include some sort of  
22 a notation in the report unless, obviously, the person  
23 completing the form is tested and their educational or at  
24 least their reading comprehension is assessed along with maybe

1 additional assessment of memory, intellectual functioning. I  
2 mean you end up, where do you draw the line? So I think at  
3 the very best one should make the reader, the receiver of the  
4 report aware there were perhaps no, there was no opportunity  
5 or possibility to assess the reading comprehension of the  
6 individual and, therefore, the validity of those results may  
7 be questionable.

8 Q So I counted at least two more or three potential  
9 limitations you just also brought up; is that correct?

10 A In administering a standardized measure, yes.

11 Q Finally, how is the device actually -- What is the  
12 recommended standard or practice to communicate the device to  
13 the recipient?

14 A Well, with the Vineland, you're talking about the  
15 instructions for taking the inventory?

16 Q To actually send it to the individual to fill out  
17 themselves, what does the publisher recommend, if you know?

18 A Well, I'm just going by the standard practice, that  
19 it is to be administered in person unless there is no  
20 opportunity to do so, then there are other optional avenues to  
21 take. It is not precluded. In other words, if it is not done  
22 in person, it is not saying this test can't be administered.

23 Q Thank you for that. And I apologize, I think my  
24 question may have been worded poorly. So doesn't the Vineland

1 publisher tell you the recipient has to have a valid working  
2 e-mail address?

3 A I would say so, yes.

4 Q So, again, bearing in mind the context of this case,  
5 that is another hurdle or complication that needs to be  
6 addressed; is that correct?

7 A Certainly, in following the standard administration  
8 method for the Vineland.

9 Q Because every time we deviate from the standardized  
10 administration or the standards of administration, we are  
11 moving one step further away from a potentially valid result;  
12 is that correct?

13 A Well, certainly the validity is diminished.

14 Q So the other methodology would be a face-to-face  
15 interview; is that correct?

16 A Yes.

17 Q And the administrators or the publishers for the  
18 Vineland have, again, a number of standards or statements that  
19 need to be followed in order to conduct the instrument in that  
20 way; is that correct?

21 A Correct.

22 Q You want to make sure that the examinee's  
23 environment is free of distraction.

24 A Correct.

1           Q     You want to bear in mind the need to still establish  
2 a rapport?

3           A     Correct.

4           Q     And face-to-face methodology can be preferred,  
5 because when you talk on the telephone, you can't see the  
6 informant, and that presents issues in itself?

7           A     Yes. I would prefer face-to-face, you know, in-  
8 person type of assessment. However, you can still obtain a  
9 great deal of information even just, just via phone, because,  
10 again, you are not assessing the individual's personality,  
11 character traits or anything of that nature. But, based on  
12 experience, expertise, definitely, if we see there is  
13 something going on that just doesn't make sense or is not in  
14 play with the context of the interview, certainly, we need to  
15 note that and probe further what is going on within that  
16 environment at the time.

17          Q     Well, isn't it true the Vineland publisher, itself,  
18 noted that telephone communication does not allow for viewing  
19 the informant's facial expressions and body language, cues  
20 that can alert an examiner to probe further?

21          A     Correct, yes. And I'm not saying in person is equal  
22 to or not as good. I mean, again, the more information you  
23 can obtain from that environment, the better, obviously.

24          Q     And the publisher goes on to caution that the

1 examiner needs to ensure that remote assessment administration  
2 is appropriate for the purpose of the assessment; is that  
3 correct?

4 A Correct. Yes.

5 Q And the examiner has to ensure that the informant is  
6 well rested, can adequately answer and attend to the questions  
7 and they are able to fully participate, correct?

8 A Yeah. Those are standard directions for any kind of  
9 a test, whether it is an informant or whether it may be the  
10 defendant, himself, or herself.

11 Q They also recommend that the informant have access  
12 to a functioning Internet connection, correct?

13 A Obviously, that would be important, yes.

14 Q They go further to say it can't just be Internet,  
15 they also have to have a headset, headphones with a microphone  
16 and a web camera or embedded microphone with the volume at  
17 appropriate level so they can hear you and you can hear them?

18 A Yes. I mean the higher the technology, the better  
19 instruments they can use and hopefully that will mprove  
20 reliability.

21 Q So bearing in mind, again, the context in which you  
22 are testifying today, it is your opinion that either of those  
23 methodologies could be employed and should be employed?

24 A Either in person or televideo conferencing I would

1 say yes.

2 Q So in person is face-to-face going to El Salvador,  
3 correct?

4 A Yes.

5 Q The conversation we just had had to do with  
6 telecommunication which is an alternate format if face-to-face  
7 is not available?

8 A Correct.

9 Q And with all the guidelines in mind, you believe  
10 that a Constitutionally valid Atkins investigation could be  
11 conducted through this methodology?

12 A According to the standards of our profession, yes.

13 Q So some of the discussion that we had with regards  
14 to the Vineland also apply to non-standardized instruments,  
15 don't they?

16 A Yes.

17 Q Specifically, the issues with regards to a telephone  
18 interview. You don't know who is on the other end, do you?

19 A That is correct.

20 Q You don't know what their facial expression is,  
21 correct?

22 A Correct. Correct.

23 Q You don't know if there are other people in the  
24 room?

1           A     Correct.

2           Q     You don't know if they are in a space free of  
3     distraction and conducive to the serious nature of the topic  
4     that you are investigating?

5           A     Well, what you are going by is just audio, so that  
6     might give some indication what is going on around in the  
7     environment just as we noticed today with the background noise  
8     that was going on. So, obviously, you can obtain some degree  
9     of information. But, certainly, with the video component  
10    additional information can be obtained.

11          Q     It can be obtained for sure, but can you say for  
12    certain how many people are in the room with me right now?

13          A     No.

14          Q     And every time we throw a variable into the  
15    investigation, it puts us at risk of moving farther and  
16    farther away from obtaining valid, reliable information,  
17    correct?

18          A     Correct.

19                MS. VERNESS: Court's indulgence just a moment.

20                THE COURT: Yes.

21                MS. VERNESS: Thank you, Your Honor. My apologies  
22    for the delay.

23    BY MS. VERNESS:

24          Q     Now, Doctor, I want to move to the guidance and the

1 articles reviewed with regards to telecommunication.

2 Telecommunication guidance and articles at this point are  
3 specific to health care, correct?

4 A Yes, the ones that I reviewed, yes. Tele psychology  
5 it is referred to.

6 Q And what you are asked to do in this case could not  
7 be described as health care, would you agree with that?

8 A Yeah. I am not providing treatment, that is  
9 certain.

10 Q And yesterday, one of the statements in your  
11 testimony, I want to clarify this, is you indicated that  
12 health care includes clinical interviews with patients and  
13 family members and they are a component of interviewing in the  
14 health care realm, correct?

15 A Correct.

16 Q Was it your position to liken that to the work that  
17 you would do as part of an intellectual disability assessment  
18 in an Atkins case?

19 A Well, only limited to the interviewing of  
20 informants.

21 Q But the relationship and your ethical duties and  
22 obligations cannot be equated in any way, correct?

23 A Well, we still have to follow the standard of any  
24 type of interaction we have with anybody related to the

1 evaluation process in terms of confidentiality issues, ethical  
2 standards. We need to follow informed consent and so forth.

3 Q But working with a patient for treatment for  
4 diagnostic purposes is very different than the work you do in  
5 a forensic setting?

6 A Well, yes. The component of providing treatment  
7 certainly is different, because in forensic settings we don't  
8 establish a doctor-patient relationship. We don't provide  
9 treatment. We provide that information as accurately,  
10 objectively as we can to the individual recipient of that  
11 information. So in that sense, you are correct, we are not  
12 providing treatment. However, there are similarities in terms  
13 of essentially just interviews that are conducted with  
14 patients just to assess their mental status, how are they  
15 doing, how is the process going. So those are more for  
16 information gathering purposes rather than necessarily  
17 providing treatment.

18 Q But you would agree the stakes in a death penalty  
19 case are vastly different than what you are doing in a health  
20 care situation?

21 A The stakes? I am sorry, could you rephrase that?

22 Q That the purpose of the work and the way the  
23 information is used is very different in an Atkins  
24 investigation versus a health care situation?

1           A     Depends on the situation. I mean we are talking  
2 about high stakes, life and death situations. As we mentioned  
3 before, therapists have to deal with potential suicidal  
4 situations and where they have to make, you know, decisions as  
5 well, so in that case, those are severe situations or  
6 similarities as well.

7           Q     What you are talking about is the imminence or the  
8 immediate threat of a poor outcome, correct?

9           A     Yes, you could put it that way.

10          Q     And based on the information you have at this  
11 moment, Mr. Martinez Guzman is not suffering from any sort of  
12 immediate threat of a poor outcome, i.e., a mental health  
13 disorder that is placing him in harm's way?

14          A     I have not had an opportunity to evaluate him, so I  
15 cannot provide, you know, an opinion regarding that.

16          Q     Thank you. So yesterday you had an opportunity to  
17 discuss your training and experience and highlight some of the  
18 areas of your Curriculum Vitae. Do you recall that testimony?

19          A     Yes.

20          Q     And in your discussion with Mr. Jackson and going  
21 through your work experience, you discussed the employment  
22 through 1984 then skipped to 1987 if I recall when you moved  
23 to New Mexico; is that correct?

24          A     I believe so, yes.

1           Q     And so do you have a Curriculum Vitae in front of  
2     you so we are aware of what you're looking at?

3           A     I have got all these papers around here.

4           Q     Would it be easiest if I shared my screen with you  
5     if you wanted to review it?

6           A     Yeah, I think that might be more helpful.

7           Q     Let me know if you do need to review your CV and I  
8     will pull it up. But I wanted to focus on the work you did  
9     between 1984 and 1987. It's noted as a staff psychologist for  
10    the Bernalillo public school system, I apologize if I  
11    butchered that name?

12          A     Bernalillo public school system, yes.

13          Q     B-E-R-N-A-L-I-L-L-O?

14          A     Correct.

15          Q     Doctor Puente, can you describe the work you  
16    conducted during those three years, approximate three years?

17          A     Doctor Martinez.

18          Q     My apologies?

19          A     Not a problem. Yes. That particular work involved  
20    evaluating, providing evaluations, we referred to them as  
21    psychoeducational evaluations, and also provided treatment not  
22    only for the students, those citizen who qualify for inclusion  
23    in the special education program, and they were either  
24    accepted into the program based on behavioral disorder,

1 learning disability or intellectual disability. And,  
2 certainly, with the component of intellectual disability, not  
3 only intellectual testing or IQ testing was conducted, but  
4 also standardized testing to assess adaptive behavior.

5 The population included individuals from elementary,  
6 middle school, but some high school as well. Primarily, the  
7 vast majority were middle school I would say. And it involved  
8 the three major ethnic groups in the State of New Mexico.  
9 That would be Hispanic, Native American and Anglo students.  
10 Quite a few, the majority of those students were actually from  
11 the Pueblo Indian reservations. That was for three years.

12 So, again, it was primarily assessment, providing  
13 therapy and also consultation with the parents, working with  
14 the parents and having staffings with other individuals that  
15 were providing either speech and language services or for  
16 those with physical disabilities, occupational therapy and so  
17 on.

18 Q And it is noted in here you were a staff  
19 psychologist, but I don't recall you testifying that you were  
20 ever licensed in the state of New Mexico; is that correct?

21 A That is correct. I was never licensed. I was given  
22 a provisional type of title. I was just working within the  
23 school system. I was not able to work outside the school  
24 system and refer to myself as a psychologist.

1           Q     Did you work with a licensed psychologist at the  
2 time?

3           A     Yes.

4           Q     Under their license?

5           A     Correct.

6           Q     Okay. After three years of that work, you then  
7 moved on to Arizona?

8           A     Yes. I obtained a position with the Carondelet  
9 Medical Network. They have several hospitals here in Tucson  
10 and throughout the State. That was within the physical  
11 resident and rehabilitation unit of the hospital.

12          Q     Doctor, prior to leaving your employment with the  
13 school system in New Mexico, part of the reason you left is  
14 you were unable to attain your license in New Mexico; isn't  
15 that correct?

16          A     That is correct, yes.

17          Q     And you attempted multiple times to pass the  
18 licensing exam and were unsuccessful?

19          A     Yes. I believe it was either two or three times.  
20 Each year I had to -- They were expecting that I would be  
21 licensed or certified at that point, the sooner the better.  
22 And so I did attempt I believe two or three times. The  
23 scoring cut off point, that was the problem. I could not make  
24 it at that level.

1           Q     Isn't it true you previously testified it was three  
2 times not two to three, but three times?

3           A     I believe so, yes.

4           Q     In your discussion with Mr. Jackson yesterday, you  
5 were asked if you were aware of any research, literature or  
6 scholarly article that prohibits the use of video conferencing  
7 for an Atkins case. Do you recall that question?

8           A     Yes.

9           Q     And your answer was there isn't any that prohibits;  
10 is that correct?

11          A     Well, if I said that, I meant to say, preface it  
12 with I am not aware at this point.

13          Q     Likewise, there is no literature, research or  
14 scholarly article that endorses the use of video conferencing  
15 in an Atkins investigation; is that correct?

16          A     Specifically related to an Atkins investigation, I'm  
17 not aware of that.

18          Q     And certainly none in the use of an Atkins  
19 investigation in a third world country?

20          A     Correct.

21          Q     And we are talking today through video format. We  
22 discussed some of the issues that can arise through  
23 simultaneous audiovisual conferencing including weather,  
24 right?

1           A     Yes.

2           Q     And there are a number of issues that we discussed  
3     in talking about the Vineland, trying to do that through video  
4     conferencing including not knowing who is in the room,  
5     correct?

6           A     Yes.

7           Q     Access to the reliable technology to not just do any  
8     standardized testing but also interviewing, correct?

9           A     Correct.

10          Q     Not being sure who is providing the information,  
11     assessing body cues and facial expressions and the like; is  
12     that correct?

13          A     Yes.

14          Q     So bearing in mind the purpose of your testimony, I  
15     want you to talk to me about some of the problem solving ideas  
16     or mechanisms that you have to get around those issues.

17          A     Well, again, under the circumstances, the best at  
18     this point would be something similar to what we are employing  
19     today during this hearing. But certainly the same process to  
20     be followed in terms of identifying who the informant or  
21     informants that will be participating, who they are, their  
22     background how do they-- what type of relationship do they  
23     have to the defendant, and how pertinent would the information  
24     be that they can provide. How much contact have they had with

1 the defendant, and how recent. Certainly, the whole idea of  
2 establishing a rapport. Ideally, ideally in situations where  
3 there are limitations in the level of technology, then to try  
4 and secure somebody within that country, within that locale  
5 that may be able to assist. Somebody with some experience in  
6 interviewing. Somebody that may be perhaps an independent  
7 party that can assist in providing that additional information  
8 that cannot be assessed through video conferencing.

9           So certainly there are different ways to obtain that  
10 information. I mean all the way from even just written  
11 statements. We are going to be -- In many instances we  
12 receive written information only from schools. When we obtain  
13 school records, we don't interview the individual providing  
14 that information. We don't have access to interviewing the  
15 psychologist who evaluated the defendant at that time. So we  
16 just rely, based on just written communication, and we place  
17 quite a bit of weight on that information as well.

18           So, again, we are not looking at -- The information  
19 provided by the informant is certainly useful, can be useful.  
20 Again, it has to be screened. It has to be looked at and  
21 primarily looking at whether there are points of consistency  
22 that converge, and you begin to see a picture of this  
23 individual's functioning at a certain point in time.

24           Q     Okay. Before you get to actually obtaining a

1 written statement, that rests on a couple of pretty big  
2 assumptions, right? That the person can read and that the  
3 person can write, correct?

4 A Correct.

5 Q Okay. And then tell me what your ideas are for  
6 obtaining those written statements from the informants in El  
7 Salvador?

8 A Well, I'm not sure what sort of contacts or what  
9 sort of support system one may be able to acquire to assist in  
10 the process. But even if there are none, obviously, the  
11 information I would imagine would have to be initiated by the  
12 defendant in terms of saying these are my family members,  
13 these are the individuals that know me best, these are the  
14 teachers or this is the school that I attended. And then it  
15 certainly would be up to, I imagine in this case the defense  
16 team, to make those contacts and make the connections  
17 available.

18 Q So that addresses the written statement. Let's then  
19 talk about some of the practical limitations. I don't think I  
20 heard you -- or practical obstacles. I don't think I heard you  
21 address for instance yesterday when you became frozen for a  
22 bit or you are completely disconnected, what would be the  
23 recommendation then?

24 A Well, those situations, you know, they are

1 unforeseen. They occur. They are to be expected, and you act  
2 accordingly. Either let's say in the case of yesterday what  
3 occurred in this hearing, if the storm would have hit us, I  
4 would have been out of it. We would have picked it up,  
5 hopefully, today or another appropriate time. But certainly,  
6 I mean it is a more complicated issue in some ways of ensuring  
7 that the informant will have access to that kind of  
8 technology. And, if not, then the defense team is going to  
9 have to just look to other opportunities. You know,  
10 El Salvador being a third world country, nonetheless, I am  
11 certain that they have technology available similar to what we  
12 have.

13 Q So it is your testimony you believe El Salvador has  
14 the same or similar access to technology that we have here in  
15 the United States?

16 A I'm not sure if I would say at the same level, but  
17 that in some circumstances, just like in any other country, I  
18 am sure they have quite a bit of poverty, but maybe a small  
19 group of middle class individuals, and then the more educated  
20 professional. You know, they have psychologists in  
21 El Salvador as well and other individuals that can provide  
22 those services.

23 Q And so we are talking about, again, adding another  
24 layer to the work that is being done by bringing in

1 potentially a facilitator, even another psychologist to do  
2 some of the work; is that correct?

3 A Well, if needed. If needed, definitely. I am not  
4 aware in the cases I have conducted where that was the case.  
5 Again, interviews were conducted either by members of the  
6 defense team or the expert, himself or herself, or essentially  
7 just videotape, then the video is sent over to the expert for  
8 review.

9 Q Adding yet another caveat or limitation that needs  
10 to be noted in evaluating that information, correct?

11 A Yes.

12 Q And, again, every time we add a limitation or a step  
13 that is non-standardized, we are moving further and further  
14 from valid and reliable information?

15 A Correct. And as I mentioned yesterday, even at the  
16 very best type of environment when you are acquiring this  
17 information, there is still a need to look into the  
18 reliability of the information being provided by the informant  
19 for various reasons. So, again, even in-person assessments,  
20 one must take that into consideration. So, yes, I mentioned  
21 yesterday it is a very challenging endeavor to conduct this  
22 type of assessment, particularly adaptive behavior, because of  
23 all the potential elements that can contaminate the results.  
24 Not necessarily the overall evaluation, but at least that

1 component, that particular -- the information being obtained  
2 from the informants, the family members let's say.

3 Q Thank you for mentioning that. I want to put a pin  
4 in that for just a minute, and we'll come back to your  
5 statement regarding the challenging nature. But before we do,  
6 you testified yesterday about a prior case I believe it was  
7 Hernandez-Lagunes or Lagunes-Hernandez?

8 A Yes.

9 Q That was a case that I know involved Dr. Puente as  
10 well; is that correct?

11 A Yes.

12 Q You indicated both you and Dr. Puente used  
13 alternative methods other than face-to-face contact in that  
14 case; is that correct?

15 A For some of the informants, yes.

16 Q Do you recall when that case occurred,  
17 approximately?

18 A I know the report from Dr. Puente had a date of  
19 2017, May or July 2017.

20 Q When the case was initiated?

21 A Probably in 2014.

22 Q Okay. Were you aware Dr. Puente testified in that  
23 case he was told by the Mexican government to not go to  
24 Mexico, if he went and something happened, there would be no

1 rescue team coming for him?

2 A My recollection that is not included in the report.  
3 Essentially what the report says was that the expert and  
4 members of the defense team did not travel to a particular  
5 city because of the level of violence and kidnappings that  
6 were going on at the time. I don't know where they obtained  
7 that information.

8 Q So you're not aware of Dr. Puente's testimony  
9 explaining the choices made in that case; is that correct?

10 A No, I am not.

11 Q Now going back, we are going to take the pin out of  
12 that statement you made earlier and return to the statement  
13 that you made that I noted yesterday relating to the  
14 challenging nature of these types of investigations, okay?

15 A Yes.

16 Q So yesterday in your testimony, do you recall  
17 stating even in the best of circumstances an assessment of  
18 adaptive functioning is challenging?

19 A Yes.

20 Q So tell me what best of circumstances look, like to  
21 you?

22 A Well, I think I alluded to that briefly. That these  
23 instruments are designed to assess current, present level of  
24 functioning based on the information provided for informants

1     who have frequent contact with the individual hopefully on a  
2     daily basis across different settings. So it must be done to  
3     the individual's current ability. The assessment must be  
4     done --

5           Q     Let me stop you right there, Dr. Martinez. That is  
6     impossible to satisfy Prong 3 of an Atkins evaluation,  
7     correct?

8           A     That is correct, because of the age of the  
9     individual, correct.

10          Q     Okay. So best case scenario to meet all three prongs  
11     looks like what?

12          A     Within the context of an Atkins case, obviously, to  
13     gather as much information as you can from a variety of  
14     collateral sources, including informants, family informants  
15     and anything else that is available to you, school records,  
16     medical records and so forth and analyze the data. Obtain the  
17     information that is most pertinent to the needs of the case,  
18     of the evaluation, and then also, of course, evaluate, conduct  
19     an evaluation of the intellectual functioning and adaptive  
20     behavior with the defendant. Behavioral observations.  
21     Anything that is available to you, so that then you can sift  
22     through that information and try to obtain a profile as to  
23     where this individual stands with regards to level of  
24     intellectual functioning, adaptive behavior. And then you

1 have to make the determination whether there is evidence of  
2 intellectual disability, whether that was present prior to the  
3 age of eighteen.

4 Q So what I hear you saying is, do you have ready,  
5 easy access to school records that -- Are there in fact any  
6 school records, family members, multiple informants outside of  
7 the family, medical records and other types of information  
8 that you can then assess?

9 A Well, quite often many of those records are not  
10 available.

11 Q Right. So I didn't hear you say in the best case  
12 scenario that you are doing a retrospective analysis because  
13 that just makes it hard, right?

14 A Well, in the best case scenario, you have access to  
15 all this information.

16 Q I didn't hear you say those records would be located  
17 in a third world country in the best case, right?

18 A Hopefully, they have some school records available.

19 Q Hopefully, but maybe, I think you talked about  
20 Mexico and some of the challenges with the school systems in  
21 Mexico; is that correct?

22 A Yes. And the fact that a lot of these individuals  
23 maybe only obtained second grade education. If they can make  
24 it up to the sixth grade, they are in good shape.

1           Q     I didn't hear you say best circumstances has someone  
2     who is poor, impoverished and from a completely cultural and  
3     socioeconomic realm than we have here in the United States?

4           A     No. Unfortunately, most of those cases are from  
5     that type of an environment.

6           Q     And the area in which they spend the majority of  
7     their life is very rural with unknown methodologies and  
8     standards for record keeping, be it school or medical,  
9     correct?

10          A     Correct or opportunity for growth, for you know  
11     social, cultural enrichment.

12          Q     So the facts as we know them or as we discussed here  
13     in Mr. Martinez Guzman's case are a far cry from the best of  
14     circumstances?

15          A     I would say -- I would say in many cases they are,  
16     yes.

17          Q     And then we have got to add in a global pandemic,  
18     correct?

19          A     Correct.

20          Q     The global pandemic that, none of us have lived  
21     through a pandemic before, and certainly not one of this  
22     nature?

23          A     Correct.

24          Q     That has affected the daily lives of literally

1 everyone that you know and I know?

2 A Correct.

3 Q And has had unforeseen circumstances that continue  
4 to evolve day-by-day, correct?

5 A Yes.

6 Q Unforeseen ramifications, obstacles and problems  
7 that we have to solve every single day?

8 A That is correct, yes.

9 Q So you wouldn't characterize an adaptive functioning  
10 assessment in Mr. Martin Guzman's case as quite challenging.  
11 That would be a gross understatement, correct?

12 A Every case has been challenging, and I would imagine  
13 that this would present challenges of its own as well.

14 Q But challenges that are separate and apart from the  
15 fact that it is just an Atkins case and an investigation into  
16 adaptive functioning, correct?

17 A Well, I mean if you consider the fact of how  
18 Dr. Puente or myself have conducted these investigations in  
19 the past, I would venture to say the approach we are employing  
20 today in this hearing is a lot more sophisticated than what we  
21 have used in the past, whether it via telephone interview. I  
22 think this method is much, much improved.

23 Q This method of twenty learned, trained, advanced  
24 level degree individuals involved in today's hearing?

1           A     I am sorry, I didn't quite understand that.

2           Q     So you are saying the experience today amongst the  
3     advanced level degree, trained individuals who probably had  
4     some help in setting all this up is a good methodology?

5           A     I would say yes, definitely.

6           Q     Tell me how many cases have you employed this  
7     methodology in a third world country?

8           A     I never have.

9           MS. VERNESS: I have no additional questions at this  
10    time.

11          THE COURT: Okay. Thank you. Do you pass the  
12    witness?

13          MS. VERNESS: Yes, Your Honor. Thank you.

14          THE COURT: Okay. Thank you. Mr. Jackson, you may  
15    inquire.

16          MR. JACKSON: The State has no further questions on  
17    redirect, Your Honor. Thank you.

18          THE COURT: Okay. Thank you. May this witness be  
19    excused?

20          MR. JACKSON: Yes, Your Honor.

21          THE COURT: Let me double check I didn't have  
22    anything. All right, sir, thank you. You may be excused. We  
23    appreciate your attendance today.

24          THE WITNESS: Thank you, Your Honor. Bye everybody.

1 THE COURT: Goodbye.

2 MS. VERNES: Thank you, Dr. Martinez.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 THE COURT: Good morning, Mr. Hicks.

6 MR. HICKS: Good morning, Your Honor. The State is  
7 prepared to call its next witness.

8 THE COURT: Go ahead.

9 MR. HICKS: Okay. With that, the State's next  
10 witness is Deborah Moreno. She's logging in right now as I  
11 understand it.

12 MS. VERNES: The defense is going to switch  
13 attorneys at this point. I apologize for the delay.

14 THE COURT: No problem.

15 THE CLERK: Mr. Hicks, I don't have a Deborah Moreno  
16 yet. Do you know if she's logging in under that name?

17 MR. HICKS: I am checking.

18 THE COURT: I think yesterday, Ms. Clerk, we were  
19 told Deb, D-E-B might be Deborah Moreno.

20 THE CLERK: If you recall we brought her in.

21 THE COURT: She wasn't, you're right. Thank you.  
22 While we are waiting to bring the witness into the meeting,  
23 you will, Ms. Hickman, be the attorney handling the witness?

24 MS. HICKMAN: Yes, Your Honor.

1 THE CLERK: Good morning Debbie, this is Marci the  
2 court clerk. Could you un-mute your mic and turn your camera  
3 on? Can you hear me okay?

4 THE WITNESS: Yes I can.

5 THE CLERK: Great. Thank you.

6 THE COURT: The clerk will swear the witness.

7 THE CLERK: Place raise your right hand.

8 THE COURT: Ma'am, would you please state your name  
9 and spell your last name for the court reporter?

10 THE WITNESS: Deborah Moreno, M-O-R-E-N-O.

11 THE COURT: What is your physical location at this  
12 time?

13 THE WITNESS: Washoe County Jail Inmate Management  
14 Unit, 911 Parr Boulevard in Reno.

15 THE COURT: Thank you. Mr. Hicks you may inquire.

16 MR. HICKS: Thank you, Your Honor.

17  
18 DEBORAH MORENO

19 called as a witness, having been first duly sworn,  
20 took the witness stand and testified as follows:

21  
22 DIRECT EXAMINATION

23 BY MR. HICKS:

24 Q Ms. Moreno, you just mentioned where your location

1 is up at the Washoe County Jail. Do you work up there?

2 A Yes, I do. I work in the Inmate Management Unit.

3 Q What is your job title?

4 A Inmate Management Specialist.

5 Q How long have you worked there?

6 A I have worked for the Sheriff's Office for twenty  
7 years. I have been in the Inmate Management Unit for  
8 seventeen.

9 Q As an Inmate Management Specialist, what are your  
10 general duties?

11 A My duties involve when somebody comes into custody,  
12 we classify that individual, assign them a classification  
13 level. We determine their housing, if there are any security  
14 levels needed for that inmate. We also monitor inmate mail,  
15 e-mail, I-web visits and phone calls, then we also assist  
16 other agencies as needed.

17 Q I want to ask you a little about the e-mail or,  
18 excuse me, monitoring. You said you monitor phone calls and  
19 I-web visits of inmates. I would like to talk a little bit  
20 about that, okay?

21 A Okay.

22 Q Let's start with phone calls. How does the phone  
23 system at the Washoe County Jail operate for inmates?

24 A For inmates, when somebody is booked into custody,

1       they are given a seven digit booking number, and with that  
2       seven digit booking number, there is a four digit PIN number  
3       that is assigned with that booking number as well. The  
4       booking number always stays the same. The PIN number the  
5       inmates can change, but it is always the same booking number  
6       with those four PIN numbers in order to access whether it is  
7       e-mail or the inmate phone system, that they use that in order  
8       to access those devices.

9           Q       And so if an inmate wants to communicate with  
10       someone outside of the Washoe County Jail, how do they do  
11       that?

12          A       There are several ways to do that. They can place a  
13       phone call. They can write a postcard. They can send an  
14       e-mail.

15          Q       I should have been more narrow in scope. Via the  
16       phone system we are talking about, how does an inmate  
17       accomplish that?

18          A       So there are two ways an inmate can place a call.  
19       They can either place it collect, or they can pay for it. In  
20       that process, they put in their booking number. So they will  
21       pick up the phone, put in the booking number along with that  
22       PIN number, wait for the prompt and dial whatever phone number  
23       they are dialing.

24          Q       And you indicated that as part of your duties you

1 monitor jail phone calls of inmates. Is that booking number  
2 that you spoke of earlier what allows you to be able to do  
3 that, to be able to identify who is using the phone?

4 A Yeah. On the phone log printout sheet, it will give  
5 the inmates booking number. It will also give their first and  
6 last name, their housing location, the date, the phone number  
7 that was called, which phone number was called, what phone  
8 booth -- what phone was used in the housing unit. It has a  
9 lot of information on that sheet.

10 Q Are you familiar with a current inmate at the Washoe  
11 County Jail by the name of Wilber Ernesto Martinez Guzman?

12 A Yes, I am.

13 Q Have you had occasion to monitor his phone calls  
14 consistent with what you just described?

15 A Yes, I have.

16 Q And I'm not going to ask you today about the content  
17 of those phone calls. For purpose of our hearing, I am  
18 curious about where some of those phone calls were made, where  
19 to. So at any time did you look to see if Mr. Martinez Guzman  
20 has had communication or called from the Washoe County Jail to  
21 El Salvador?

22 A Yes, I have.

23 Q How are you able to identify that?

24 A By the area code. I have looked up to see what the

1 area code was to. The phone number inmate Martinez Guzman was  
2 placing to that area came up 011-503, then the number followed  
3 after that. So I was able to link 503 to El Salvador.

4 Q Okay. Your understanding is that is the country's  
5 calling code?

6 A Yes. That is their area code to call in.

7 Q Are you aware of how many times Mr. Martinez Guzman  
8 has called El Salvador?

9 A Yes, I am.

10 Q How many?

11 A Sixty-nine times.

12 Q Next, ma'am, I would like to talk to you a little  
13 about the I-web visits that you mentioned earlier. Could you  
14 explain in a little more detail what that is exactly?

15 A I-web visiting is for professional as well as for  
16 inmate family can set up I-web visits, family and friends.  
17 They have to set it up at least 24 hours in advance. And the  
18 person on the outside is the one that has to set up the visit.  
19 The inmate cannot set up the visit. So the person on the  
20 outside creates an account on I-web, logs in, picks the days  
21 and times they want to visit that particular inmate. They pay  
22 for it. They are also able to have other people join that  
23 visit if they want. Either that person that signs for the  
24 visit can pay for it or they can have each person

1 participating in that visit pay for their visit as well.

2 Q I am going for ask you a couple of questions about  
3 that. First off, you said they have to create an account with  
4 I-web. Is that done over the Internet?

5 A Yes, it would be done over the Internet.

6 Q And in order to create an account with I-web so you  
7 can communicate with an inmate, do you have to have an e-mail  
8 address?

9 A Yes, you do.

10 Q And you also indicated that the person who is  
11 creating the I-web visit has to create, essentially put a time  
12 in when they would like to communicate with the inmate; is  
13 that fair?

14 A Yeah. There are certain time slots that are  
15 available. You know, if like today or tomorrow, if they would  
16 pick tomorrow, there might be like ten different time slots  
17 they could choose from that haven't been taken yet to visit an  
18 inmate.

19 Q You also mentioned that the -- Let me clarify one  
20 thing. The people, the person that is creating the I-web  
21 visit, do you commonly refer to them as the visitor?

22 A Yes, they are referred to as a visitor.

23 Q Even though they are not physically visiting the  
24 Washoe County Jail?

1           A     That is correct.

2           Q     I am going to continue to refer to them as a visitor  
3 for the remainder of the questions?

4           A     Okay.

5           Q     So the initial visitor that sets up the I-web visit,  
6 you mentioned they can also invite other participants. Can  
7 you explain that a little more, please?

8           A     So the person that initially sets up the I-web visit  
9 can like send an e-mail to whomever else they may want to join  
10 that visit. So I could send -- I could set up a visit to see  
11 an inmate. Maybe I want his grandma to come and see him as  
12 well. I could send that grandmother an invite. She would  
13 have to have an account as well with an e-mail address. She  
14 would sign in. Either I would pay for that visit or her  
15 signing in or she would have to pay for that visit.

16          Q     The I-web platform and what you just described, is  
17 it similar to what we are doing right now?

18          A     Yes, it is.

19          Q     Seventeen years as an Intake Specialist, how long  
20 has the Washoe County Jail had the I-web system?

21          A     Since 2012 I believe. 2011, 2012. Yeah. I want to  
22 say I think it was somewhere in that time frame.

23          Q     In the last eight to nine years the Washoe County  
24 Jail has had that system, have you had occasion to monitor

1 I-web visits?

2 A Yes. I log into I-web visits daily.

3 Q During that time, are you aware of I-web visits  
4 regularly conducted in locations outside the United States?

5 A Yes, they are.

6 Q Is it uncommon?

7 A No, that is not uncommon.

8 Q Again, I want to focus on inmate Wilber Ernesto  
9 Martinez Guzman. Have you had occasion to monitor and review  
10 any I-web visits he's conducted since his time in the Washoe  
11 County Jail?

12 A Yes, I have.

13 Q Has he done it? Has he done it?

14 A Yes, he has. He has had fourteen I-web visits.

15 Q I want to ask you about one in particular. Are you  
16 aware he had an I-web visit on June 17th of 2020?

17 A Yes, I am.

18 Q In order for that I-web-- Did that I-web visit  
19 occur?

20 A Yes, it did.

21 Q Have you watched that I-web visit?

22 A Yes, I have.

23 Q Have you provided that I-web visit to detective  
24 Stephanie Brady with the Washoe County Sheriff's Office?

1           A     Yes, I have.

2           Q     Likewise, has that been provided to my office, the  
3 Washoe County District Attorney's Office?

4           A     Yes, it has.

5           Q     And in order for that phone call to have occurred,  
6 did all the steps occur that are necessary to make that  
7 possible?

8           A     Yes. Yes, they did.

9           Q     Are you familiar with the e-mail that was used to  
10 set up the visitor account?

11          A     Yes, I am. It was Yasmin Guzman was the e-mail  
12 address that was used to set that account up.

13          Q     Approximately how long was that phone call or that  
14 I-web visit?

15          A     I-web visits are twenty minutes long. That visit  
16 was twenty minutes long.

17               MR. HICKS: Ms. Clerk, State's Exhibit 1, I would  
18 like to show Ms. Moreno just the first thirty seconds or so so  
19 she can authenticate if in fact that is the call, the I-web  
20 visit we are discussing so I could then move for its  
21 admission.

22               THE CLERK: Sure. Can everybody see it?

23               THE WITNESS: Yup, I can.

24               THE CLERK: Let me see if I can find where I start

1 it. Right there.

2 (Whereupon the I-web visit was played.)

3 MR. HICKS: Ms. Clerk I think that is long enough.

4 BY MR. HICKS:

5 Q Ms. Moreno, based on what you have just seen, that  
6 five seconds of video, do you recognize that?

7 A Yeah. That was the I-web that Martinez Guzman had  
8 on June 17th of 2020.

9 MR. HICKS: Your Honor, I would move for admission of  
10 that I-web visit.

11 THE COURT: Any objection?

12 MS. HICKMAN: No objection.

13 THE COURT: State's Exhibit 1 to this hearing is  
14 admitted.

15 (State's Exhibit 1 admitted in evidence.)

16 MS. HICKS: Thank you, Your Honor.

17 BY MR. HICKS:

18 Q Ms. Moreno, you indicated that you watched this  
19 I-web visit. Within that visit, is there a time when another  
20 participant is invited as you explained earlier?

21 A Yes. He came on to the visit about two minutes --  
22 about -- sorry. He came on to the visit. It was a male  
23 visitor that came on to the visit a little over two minutes  
24 into the visit.

1           Q     Okay. Is he on the visit throughout the entire  
2 call?

3           A     Not -- not -- not the whole call. He's in there a  
4 couple minutes, and then towards the end of the call he's no  
5 longer on the visit.

6           MR. HICKS: Your Honor, may I have the Court's  
7 indulgence for one moment?

8           THE COURT: Certainly.

9           MR. HICKS: Your Honor, I have no further questions  
10 for Ms. Moreno. Thank you.

11          THE COURT: Cross-examination.

12          MS. HICKMAN: So, Your Honor, before I get started  
13 with cross-examination, I actually, based on what she  
14 testified to, I do have a number of exhibits that are videos.  
15 I am not sure if you want them to play, if you want me to play  
16 them from here then have them introduced, or if you want me to  
17 bring a copy over to the Court and the State prior to me  
18 starting it?

19          THE COURT: The methodology that has been identified  
20 in the Notice Order that we gave you was that you  
21 electronically file exhibits in. What has happened, the way  
22 the Court received this video was both electronically to the  
23 court clerk as well as the hard portion of it being delivered  
24 to the courthouse.

1 MS. HICKMAN: I plan on using it as impeachment. I  
2 am just wondering if the Court would like a copy of it or just  
3 want me to go forward from there.

4 THE COURT: I guess I am not sure what your video  
5 is. Do you intend for the witness on the stand to identify and  
6 authenticate the video for you?

7 MS. HICKMAN: I do.

8 THE COURT: And can that be done without it being  
9 admitted?

10 MS. HICKMAN: It can be, I think. I know, based on  
11 what she testified to, it is likely that I will admit it. You  
12 know, Judge, this is kind of a difficult situation. I didn't  
13 know exactly what she would testify to, obviously. I have it  
14 on a flash drive. I am happy to play it, bring it over. I am  
15 happy to play it now, do my cross, whatever is easier.

16 THE COURT: Is it in a format you could send it to  
17 the court clerk?

18 MS. HICKMAN: I can upload it in the Drop Box and the  
19 court clerk could download it.

20 THE COURT: Do you have a specific Drop Box she  
21 would have access to?

22 MS. HICKMAN: I would upload it to Drop Box then I  
23 could share it with her. She would have to do the Drop Box  
24 account. I believe that is how it works. I am not overly

1 familiar with Drop Box.

2 THE COURT: How did you get the State's exhibit,  
3 Ms. Clerk?

4 THE CLERK: Your Honor, he shared -- I have to get  
5 to it. I still have the e-mail. He sent it to me via e-mail.  
6 It looks like he shared One Drive with me.

7 THE COURT: I know you have One Drive capability.

8 MS. HICKMAN: Are you talking to me?

9 THE COURT: The clerk does. Sorry. I didn't know  
10 where I was looking. So that is how you got it, right,  
11 Ms. Clerk?

12 THE CLERK: I did. He sent me an e-mail link for  
13 Microsoft of One Drive that had the State's exhibits in there  
14 and I opened it and was able to access it.

15 THE COURT: I am sure that a link to a Drop Box if  
16 you share, if you give her access, she could be able to access  
17 it, although I don't know if the clerk's office has Drop Box  
18 capability in terms of if you have to have an account with  
19 Drop Box.

20 MS. HICKMAN: So, Judge, can I make a suggestion?  
21 It is 11:30. Perhaps we could break for lunch a little early,  
22 come back early. I will just walk a flash drive over to the  
23 clerk and to the State. Maybe the State could meet me by the  
24 courthouse.

1 THE COURT: The problem is the court clerk is not at  
2 the courthouse, so if you want to drive twenty miles, thirty  
3 miles out of town.

4 MS. HICKMAN: Judge, why don't I just go forward and  
5 see what happens. She may recognize it, I may not introduce  
6 it, and it may not be a big deal.

7 THE COURT: I would like to figure out a way though  
8 that we can get the evidence into the court clerk. If we, just  
9 so you know, if you do it in advance dropping it off, we do  
10 have court administrators who are able to get the original  
11 evidence to the deputy court clerks who are appearing in  
12 court. That is happening in the District when we need to do  
13 it. It takes a little more advance notice than happening on  
14 the fly. The methodology used to put it into the One Drive I  
15 know we have that capability. We will check over the lunch  
16 hour also on the Drop Box. So I would appreciate it if you  
17 would try that, Ms. Hickman. We'll see if it works just in  
18 case we need it. You can go ahead and do it today the way you  
19 intend to do it by share screen of the evidence as you want to  
20 use it for impeachment. If it has to be admitted, you will  
21 have to figure out how to do that.

22 MS. HICKMAN: Thank you for your patience. I know  
23 this is new to everybody.

24 THE COURT: No, it is fine. I would like to work

1 through it, figure out how we are going to do it.

2 MS. HICKMAN: I think the reality is, we all have  
3 this evidence except for the Court, so it is not anything I  
4 don't think the State has. I think the only person that  
5 doesn't have it is you.

6 THE COURT: All right. It is always good for me to  
7 be able to see it.

8 MS. HICKMAN: Perfect.

9 THE CLERK: Ms. Hickman, do you have One Drive?

10 MS. HICKMAN: I do have One Drive. We have been  
11 trying to work with the County in figuring out how to make my  
12 One Drive share with people outside the County system. I have  
13 been working for hours on that which is why I have Drop Box.

14 THE CLERK: Another suggestion that I had, I don't  
15 know if it would work, if you could provide the videos to the  
16 State, they could possibly drop it in their One Drive and  
17 share it with me similar to how they shared their evidence.

18 MS. HICKMAN: They are jail phone calls and I-webs.

19 THE CLERK: Thank you.

20

21 CROSS-EXAMINATION

22 BY MS. HICKMAN:

23 Q Okay, Ms. Moreno, I want to start back at the  
24 beginning. When you said you monitor jail phone calls and

1 I-webs, what does that mean?

2 A I randomly just get on the system and monitor a  
3 phone number, I-web visits. Or if there are specific inmates  
4 we are monitoring in our custody for a specific reason, I will  
5 monitor their jail phone calls and I-webs. Then, too, we also  
6 assist other agencies with phone calls and I-webs and e-mails.

7 Q Are you the only one at the jail who does that or  
8 are there multiple people who monitor those phone calls?

9 A In our department, there is other people that  
10 monitor the same things that I do. I spend a lot of my time  
11 monitoring I-webs and phone calls.

12 Q Who determines which inmate gets the specific  
13 attention or the majority of their calls and I-webs are  
14 monitored?

15 A It just depends where the inmate is housed at and  
16 what is going on with that particular inmate.

17 Q Can there be a request from the State or police  
18 agency to monitor?

19 A Yeah, to monitor like their mail and stuff, yes.

20 Q Okay. I want to talk about Mr. Martinez Guzman in  
21 particular. You obviously know he's been in custody since  
22 January of 2019?

23 A Yes.

24 Q Is he one of the inmates that you regularly monitor?

1           A     He's one of the inmates, yes, I monitor.

2           Q     Do you speak Spanish?

3           A     No, I do not.

4           Q     What are you monitoring your calls and the I-webs  
5     for?

6           A     So I am basically monitoring like his mail. His mail  
7     I monitor, and I send his mail up to detective Brady. Going  
8     through housing units, you know his name will come up on a  
9     housing unit. I will click on an inmate's phone calls, even if  
10    it does say it is in Spanish, just to listen to one, make sure  
11    no other inmate is borrowing somebody's PIN number and now it  
12    is a different inmate, or I will just randomly sit and listen  
13    to phone calls.

14          Q     So when you sit and randomly listen to Mr. Martinez  
15    Guzman's phone calls, you don't understand anything being  
16    said, correct?

17          A     No. A little word here and there. Overall, no.

18          Q     So, you know, as he's talking in Spanish, you are  
19    unable to know what the subject matter is; correct?

20          A     Correct.

21          Q     And all of his calls, whether they are to  
22    El Salvador or someone in the United States are in Spanish, is  
23    that fair to say?

24          A     Yes, that is fair to say.

1           Q     And then when you listen to these Spanish phone  
2     calls or Spanish I-webs, who do you notify to let them know  
3     he's made a call?

4           A     I don't personally reach out to notify anybody he's  
5     made a call or an I-web visit per say. If I saw something on  
6     the I-web visit that was of like concern, I could notify  
7     detective Brady.

8           Q     Have you seen anything of a concern?

9           A     No, I have not.

10          Q     Okay. And you said you monitor his mail and then  
11     you send that to detective Brady, is that fair?

12          A     Yes, ma'am.

13          Q     How many pieces of mail have you sent to detective  
14     Brady?

15          A     Oh, it hasn't-- He does not write a lot. I want to  
16     say I believe, e-mails, he may have done maybe six e-mails and  
17     altogether I would say his mail might be around, fair to say  
18     maybe between ten to fifteen pieces of mail.

19          Q     Okay. Six e-mails, ten to fifteen pieces of mail?

20          A     Uh-huh.

21          Q     In about a year and a half; is that fair?

22          A     Yes.

23          Q     Okay. So are those e-mails e-mails to his family?  
24     Are they e-mails to his attorneys, who are those e-mails to?

1           A     To his family is what I am assuming. Just looking  
2     at the people that have visited him on I-webs, I am going to  
3     assume family, maybe even a friend.

4           Q     You don't know his family, correct?

5           A     No, I do not.

6           Q     What e-mail address is attached with the six e-mails  
7     he sent?

8           A     Well, he sent two that didn't go through. I don't  
9     know what the e-mail address is. It was a wrong e-mail  
10    address. I want to say I believe the one or the e-mail  
11    address, excuse me, the e-mail he sent, off the top of my  
12    head, I don't remember the exact e-mail.

13          Q     Can you look it up?

14          A     I would have to leave here to go look it up.

15               MR. HICKS: Your Honor, excuse me, I am going to  
16    object at this point. I don't know what the relevance for the  
17    purposes of this limited narrow hearing we are having the last  
18    couple days, what the relevance of these e-mails and who they  
19    go to is.

20               THE COURT: Ms. Hickman why do we need to know the  
21    e-mail addresses?

22               MS. HICKMAN: There is a couple of reasons, one of  
23    the biggest, following up on what Dr. Martinez said and the  
24    ability to administer some the tests, the ABAS and Vineland,

1 part of it is having to e-mail it to somebody, and it needs to  
2 be a valid work e-mail address. On direct of Ms. Moreno, the  
3 State elicited there is one e-mail address that has been  
4 associated with I-webs, that is Yasmin Guzman, and so I am  
5 curious, is that the only e-mail address in El Salvador  
6 Mr. Guzman had access to? It appears the State has that  
7 information.

8 THE COURT: That is not something you have? You do  
9 not have a copy of the e-mail?

10 MS. HICKMAN: I wasn't aware of the e-mail.

11 THE COURT: Okay. I am going to have you move on.  
12 During the lunch hour we'll have the witness look for it so we  
13 don't have to stop her testimony now while she goes and looks  
14 for it. I will note the objection.

15 MS. HICKMAN: Thank you.

16 BY MS. HICKMAN:

17 Q So my next question for you is the number of phone  
18 calls that have been made to El Salvador by Mr. Martinez  
19 Guzman, you testified he made sixty-nine phone calls; is that  
20 fair to say?

21 A Yeah. He's made sixty-nine phone calls to  
22 El Salvador. Altogether, just regular other numbers, he's  
23 made 299 phone calls.

24 Q What are you looking at to know that?

1           A     I pulled the call report, and I put in when he came  
2     in. This report was ran through yesterday. It will tell you  
3     how many calls he has made, then you can go in and put a  
4     specific phone number in there if you need to to see how many  
5     times that phone number was called, and that is what I did.

6           Q     Ms. Moreno, is there a way you could e-mail me what  
7     you are looking at or screen share it? I didn't get a report?

8           A     Yeah, I can send that to you. You want me to send  
9     all the calls that he has made, send you that in a PDF form?

10          Q     That would be great. Is there a way to do all the  
11     calls? Can you send those to me?

12          A     Yes. He calls three separate numbers to  
13     El Salvador. I will have to send you three of those and one  
14     that will show all the calls, and the El Salvador calls will  
15     be in that spreadsheet as well.

16          Q     I have the same question for the I-webs. What are  
17     you looking at to know there have been fourteen I-webs?

18          A     That is the same thing. You can run a report and  
19     see who has visited inmate Martinez Guzman, and from that,  
20     even though it will show there was a visitor if it hasn't  
21     connected, if there is a "no" beside it or "yes" beside it,  
22     that is how I was able to go through and see how many visitors  
23     he had. You look at the "yeses," and that will show you who he  
24     has had visitors with.

1 Q Did you run that yesterday as well?

2 A No. I ran that last week.

3 Q Okay. Can you send me a copy of that as well?

4 A Yes.

5 MS. HICKMAN: Judge, I am going to ask before I go  
6 forward with my cross-examination to have those.

7 THE COURT: So you have no other area of  
8 cross-examination that you can do other than that?

9 MS. HICKMAN: It is pretty relevant to those issues,  
10 so I would like to have those to be able to do my cross-  
11 examination. I think it is relevant. She obviously  
12 referenced them to prepare for today, so I would like them  
13 before I go forward.

14 THE COURT: Okay. Mr. Hicks, do you have those  
15 documents?

16 MR. HICKS: No, Your Honor, we don't.

17 THE COURT: Okay. Ms. Moreno, how long will it take  
18 you to gather those documents?

19 THE WITNESS: I could go get it, probably like maybe  
20 ten minutes, fifteen minutes.

21 THE COURT: What we'll do is, when you have the  
22 documents, I am going to have you e-mail them to, right, that  
23 is how you want them, Ms. Hicks? How are you going to get  
24 them?

1 MS. HICKMAN: My last name is Hickman.

2 THE COURT: I'm sorry. I know that.

3 MS. HICKMAN: It is okay. You would be surprised how  
4 many e-mails I get for Ms. Hicks or she gets for me.

5 THE COURT: I know the difference. Sorry.

6 MS. HICKMAN: E-mail is the easiest way to get them.  
7 That is fine.

8 THE COURT: I didn't want to assume. That is the  
9 way we get them, that is why I was asking. I didn't know how  
10 you wanted her to share those. But share those with you,  
11 Mr. Hicks and the court clerk so the Court has the same  
12 information that you are going to have if you are going to  
13 want to admit them or use them. We don't, you know, the Court  
14 doesn't, I don't see them until they are presented through the  
15 court clerk and offered as an exhibit, but that way the court  
16 clerk can facilitate that. I want to know how it is going to  
17 be distributed.

18 MR. HICKS: Your Honor, may I ask, just for  
19 clarification, hopefully for the clarification of Ms. Moreno,  
20 what exactly are the documents she's asking be produced?

21 THE COURT: Ms. Moreno said she ran reports and  
22 those reports to get the number she gave on direct, and the  
23 defense is requesting the report.

24 Ms. Moreno, just make sure you provide that to

1 Ms. Hickman, Mr. Hicks and the court clerk, and then we'll  
2 take our lunch recess now. It is really not too early. It is  
3 a quarter to 12:00. We'll be in recess until 1:30 this  
4 afternoon. In the interim, if there is any difficulty with  
5 the distribution of the evidence, Ms. Hickman or Mr. Hicks,  
6 please contact the court clerk well in advance of our 1:30  
7 time if there is something we can do to assist you. The clerk  
8 and I are always available.

9 THE WITNESS: Who is the court clerk I am going to  
10 be e-mailing these to?

11 THE CLERK: Thank you, Ms. Moreno. My e-mail address  
12 is marci, m-a-r-c-i dot trabert, t-r-b as in boy e-r-t at  
13 washoecourts.us.

14 THE WITNESS: You sent me the e-mail, right, for the  
15 court hearing; is that correct? Maybe. I am pretty sure I  
16 have your e-mail.

17 THE CLERK: They may have forwarded you my e-mail.  
18 That is my e-mail address. Thank you.

19 THE WITNESS: Then Ms. Hickman's I don't know.

20 MS. HICKMAN: It is khickman@washoecounty.us.

21 THE WITNESS: Okay. I am going to send you e-mails,  
22 calls, I-webs, the paper information part of it.

23 MS. HICKMAN: Thank you.

24 THE COURT: Okay. Thank you, Ms. Moreno. We'll see

1       you back about twenty minutes after 1:00. We'll try to start  
2       by 1:30. That ten minute window check in with the clerk and  
3       we'll continue cross-examination this afternoon.

4               THE WITNESS: Okay.

5               THE COURT: Is there anything further for this  
6       morning?

7               MS. HICKMAN: Over the lunch break, Judge, I will  
8       upload those materials to Drop Box and share them with the  
9       court clerk and Mr. Hicks.

10              THE COURT: And while we are talking about Drop Box,  
11       we did learn of another person in the department that does  
12       have Drop Box other than me that has Drop Box capability the  
13       court clerk can get in. We can give you that address to share  
14       and we'll figure out a way.

15              MS. HICKMAN: Do you want me, when the court clerk  
16       is offline, to get that?

17              THE COURT: Whatever you guys decide to do, but you  
18       can talk to her when we are in recess.

19              MS. HICKMAN: Thank you.

20              THE COURT: Okay. There being nothing further, I  
21       think we'll take our recess now, deputy.

22              THE BAILIFF: All rise.

23              THE COURT: Thank you. Court's in recess.

24              (Whereupon, the proceedings were concluded.)

1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )  
4

5 I, Judith Ann Schonlau, Official Reporter of the Second  
6 Judicial District Court of the State of Nevada, in and for the  
7 County of Washoe, DO HEREBY CERTIFY:

8 That as such reporter I was present in Department No. 4 of the  
9 above-entitled court on Wednesday, July 29, 2020 at the hour  
10 of 10:00 of said day and that I then and there took verbatim  
11 stenotype notes of the proceedings had in the matter of THE  
12 STATE OF NEVADA vs. WILBER ERNESTO MARTINEZ, Case Number  
13 CR1-0447.

14 That the foregoing transcript, consisting of pages numbered  
15 1-70 inclusive, is a full, true and correct transcription of  
16 my said stenotypy notes, so taken as aforesaid, and is a full,  
17 true and correct statement of the proceedings had and  
18 testimony given upon the trial of the above-entitled action to  
19 the best of my knowledge, skill and ability.

20 DATED: At Reno, Nevada this 29th day of July, 2020.  
21  
22

23 /s/ Judith Ann Schonlau  
24 JUDITH ANN SCHONLAU CSR #18

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8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE  
11 --o0o--

12 STATE OF NEVADA,

Case No. CR19-0447

13 Plaintiff,

Dept. No. 4

14 vs.

15 WILBER ERNESTO MARTINEZ GUZMAN,

16 Defendant.

17 -----  
18 TRANSCRIPT OF PROCEEDINGS  
19 PRETRIAL MOTIONS (VIA ZOOM)  
20 WEDNESDAY, JULY 29, 2020

21 APPEARANCES:

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RENO, NEVADA; WEDNESDAY, JULY 29, 2020, P.M. SESSION  
-o0o-

DEPUTY FINN: All rise. The Second Judicial District Court of the State of Nevada is now in session; the Honorable Connie J. Steinheimer presiding.

THE COURT: Thank you. Please be seated.

This is the continued time for CR19-0447, State versus Wilber Martinez Guzman.

Good afternoon, Mr. Guzman.

THE DEFENDANT (THROUGH INTERPRETER MILLER:)

Good afternoon.

THE COURT: At this time, I would ask that the defense go ahead and make their appearances.

MS. HICKMAN: Good afternoon, Your Honor.  
Present in the room is myself, John Arrascada, Gianna Verness, and Joe Goodnight, all with the Public Defenders Office, all on behalf of Mr. Martinez Guzman.

THE COURT: Thank you. And the appearance  
for the State?

MR. HICKS: Thank you, Your Honor. Chris Hicks, on behalf of the State. Present with me is Mark Jackson and Travis Lucia.

THE COURT: The record should also reflect

1       that the same court reporter and bailiff are with us  
2       today and that Mr. Guzman is still appearing from 911  
3       Parr Boulevard, Reno, Washoe County.

4               We do have a different court reporter. So  
5       I'd ask the court reporter to identify herself and state  
6       where she's appearing from.

7               THE COURT REPORTER: Good afternoon. Nicole  
8       Hansen, appearing from Washoe County, Nevada.

9               THE COURT: Good afternoon. Thank you.  
10       Counsel, are you ready for me to put the  
11       witness back on the stand?

12              MS. HICKMAN: I am.

13              THE COURT: So, Ms. Moreno?

14              MS. MORENO: Yes.

15              THE COURT: Can you hear me?

16              MS. MORENO: Yes, I can.

17              THE COURT: You are back on the witness  
18       stand. You're still under oath, and we will continue  
19       with your cross-examination. I see from your video that  
20       you're in the same room as you were in earlier today.

21              MS. MORENO: Yes.

22              THE COURT: Thank you. Go ahead, Counsel.

23              MS. HICKMAN: Thank you, Your Honor.

24

CONTINUED CROSS-EXAMINATION

BY MS. HICKMAN:

Q Okay. So, Ms. Moreno, before lunch, we talked about your job in terms of monitoring phone calls, e-mails and iWebs; correct?

A Yes. Correct.

Q And that you had emailed or -- excuse me -- that you had monitored those things for Mr. Martinez Guzman; correct?

A Correct.

Q Okay. So I wanted to ask you a couple of questions just to kind of clarify what you said on direct to make sure I understand it correctly. Okay?

A Okay.

Q When inmates make phone calls from the jail to a private party like a parent or a sibling or whoever, are those -- is the length of that phone call limited?

A Every phone call is a 15-minute phone call that's to family.

Q Friends, whoever it may be?

A Yeah, whoever it may be. Yes.

Q So 15 minutes, that phone call automatically cuts off?

A It will give a one-minute notice that it's

1       about ready to end; it's the last minute of the phone  
2       call. And as we're talking, yes, it will end up cutting  
3       them off.

4               Q       Okay. And then my next question is: You  
5       talked about the iWeb system. Do you remember that?

6               A       Yes.

7               Q       And in order to reserve an iWeb, you have to  
8       have an email address; correct?

9               A       Correct.

10              Q       And so the video we watched was reserved  
11       under the email address of I believe you said it was  
12       YasminGuzman008@gmail.com; correct?

13              A       Correct.

14              Q       And then there's a name that's associated  
15       with who the visitor would be; right?

16              A       So it shows up as Yasmin being the visitor.  
17       And then are you referring to the visit on 6-17 of '20?

18              Q       Yes. That's the one we watched; correct?

19              A       Yes. And then so there's another visitor  
20       that joined that visit. A Mr. Santiago joined that visit  
21       as well.

22              Q       Okay. Well, so here's my question. And I  
23       want to ask you questions about what has been marked as  
24       Defendant's 14. So do you see the screen that Ms. Stone

1 has shared?

2 A Yes, I do.

3 Q Okay. And so that is a log of all of the  
4 iWeb visits of Mr. Martinez Guzman; is that correct?

5 A Correct.

6 Q And you're familiar with this document,  
7 right?

8 A Yes, I am.

9 Q And this is a fair-and-accurate  
10 representation of the iWeb documents that Mr. Martinez  
11 Guzman has had since February 8th of 2019 and August 29th  
12 of 2020, right?

13 A Correct.

14 MS. HICKMAN: Okay. Judge, I'd move for the  
15 admission of this.

16 THE COURT: Any objection?

17 MR. HICKS: Yes, Your Honor. I'd object on  
18 relevance.

19 THE COURT: Overruled. Exhibit 14 of the  
20 defense is admitted.

21 (Defendant's Exhibit No. 14 was admitted into evidence.)

22 Q (BY MS. HICKMAN:) And so then I'm going to  
23 ask you to look at the second page. And so if you look  
24 at -- if you just scroll down, it should just go to the

1 next page.

2 A Okay.

3 Q Right there. And if you look at call, the  
4 6-17-2020 iWeb visit, do you see that on there?

5 A One second here.

6 Q It should be the eighth one down.

7 A I don't know if I've got this here.

8 THE COURT: Ms. Stone, can you make that any  
9 bigger?

10 THE WITNESS: Is that on the first page or --  
11 is that on the first page or is that on the second page?

12 MS. HICKMAN: It should be on the second  
13 page.

14 THE WITNESS: You said 6-17?

15 MS. HICKMAN: Yes.

16 THE WITNESS: I don't have 6-17 on the second  
17 page. I think it's on the first page.

18 MS. HICKMAN: Let me look. Ms. Stone, will  
19 you scroll up? Keep scrolling.

20 THE WITNESS: Okay. I see the 6-17 right  
21 there.

22 Q (BY MS. HICKMAN:) Okay. So you can see the  
23 6-17 iWeb?

24 A Uh-huh.

1 Q And that was at 10:00 o'clock a.m.; correct?

2 A Yes, ma'am. Yes, it was.

3 Q And you see the email address of  
4 YasminGuzman008@gmail.com; correct?

5 A Correct.

6 Q And then the visitor is listed as Santiago  
7 Pineros. Is that correct?

8 A Correct.

9 Q So that's the name that's put as the person  
10 who is visiting, right?

11 A Correct.

12 Q And so that's that third person that you saw  
13 join at a certain point; correct?

14 A Correct.

15 MS. HICKMAN: Okay. And I want to leave this  
16 up for a minute because I want to talk to you about a  
17 couple of these other iWebs. If you -- sorry. I'm  
18 having a hard time seeing it because it's really small.

19 THE COURT: If you could make that larger,  
20 Ms. Clerk.

21 Q (BY MS. HICKMAN:) Okay. Thank you. That's  
22 fine. So if you look at the iWeb visits that he has had  
23 with that YasminGuzman008@gmail.com address, I want to  
24 start with 5-16-2020. Do you see that one? And that

1 should be on page three.

2 A All right. One second. Whoops. You said  
3 5-16?

4 Q Yes.

5 A Yes, okay. Yes.

6 Q Okay. And you can see that there is a visit  
7 5-16-2020 at 2:00 o'clock; correct?

8 A Yes, 2:00 p.m. Yes.

9 Q Again, reserved through Yasmin Guzman;  
10 correct?

11 A Correct, the email address, yes.

12 Q But with the visitor name of Santiago  
13 Pineros; correct?

14 A Correct.

15 Q And then if you look at the top of that page  
16 and the bottom of page two, there's another visit.  
17 Right? On 3-20?

18 A On 5 --

19 MS. HICKMAN: We lost Ms. Moreno.

20 THE COURT: Yes. I noticed that.

21 Ms. Moreno, if you can hear me, you're going  
22 to have to re-establish your connection.

23 And, Ms. Clerk, you're going to have to make  
24 the exhibit even bigger. I think they're having trouble

1       seeing it.   You're on mute.

2               THE CLERK:   I understand.   Just going to have  
3       to tell me because I only see what I see.   So it was big  
4       enough for me which, you know, is must be pretty big.  
5       I'm waiting to see if she'll -- when she comes back in.

6               THE COURT:   She's there.

7               THE CLERK:   Ms. Moreno, this is Marci, the  
8       court clerk.   We lost you for a second.

9               THE WITNESS:   Sorry.

10              THE CLERK:   That's okay.

11              THE COURT:   So, Ms. Moreno, I've asked the  
12      clerk to make the exhibit a little bit bigger.

13              THE WITNESS:   Okay.

14              THE COURT:   Is that causing you some trouble  
15      seeing it?

16              THE WITNESS:   A little bit.   A little bit,  
17      but it's okay.

18              THE CLERK:   Is that better for everybody?

19              MS. HICKMAN:   Yes.

20              THE CLERK:   Okay.   Great.

21              Q       (BY MS. HICKMAN:)   Okay.   So at the top of  
22      page three and the bottom of page two, you see that  
23      5-23-20 visit?

24              A       Yes.

1           Q     And that again was reserved under the email  
2 address of YasminGuzman00@gmail.com, right?

3           A     Correct.

4           Q     With the visitor name of Santiago Pineros;  
5 correct?

6           A     Correct.

7           Q     And then if you go up two visits, there's  
8 another one: 6-2-2020. Do you see that?

9           A     Yes, I do.

10          Q     And same thing. Reserved under the email  
11 address of YasminGuzman008@gmail.com with the visitor  
12 name of Santiago Pineros. Correct?

13          A     Correct.

14          Q     And there's one on 6-17-2020. Do you see  
15 that?

16          A     Yes, I do.

17          Q     Okay. And that's the one that we've been  
18 talking about that we looked at today; correct?

19          A     Correct.

20          Q     And then there's another one 6-27. Do you  
21 see that?

22          A     Yes. Correct.

23          Q     And then another one that's 7-6-2020. Do you  
24 see that?

1           A     Yes.

2           Q     Okay.  So those are all the visits that  
3 appear to be that one email address of  
4 YasminGuzman008@gmail.com; correct?

5           A     Correct.

6           Q     And it's fair to say that in monitoring all  
7 of these, you know that only one of those connected.  Not  
8 connected, but only one of those was able to be seen both  
9 ways; correct?

10          A     Can you -- I don't know if I'm following what  
11 you're asking there.

12          Q     Well, actually, let me come back to that.

13          A     Okay.

14          Q     So those are all of the visits though that we  
15 can see on that exhibit that were from Mr. Martinez  
16 Guzman at the jail to that Jasmine Guzman email address;  
17 correct?

18          A     Correct.

19          Q     And that's the same one that we watched in  
20 the video from 6-17-2020?

21          A     Correct.  The initial visitor is what you'll  
22 see there.  If there's any additional visitors, that's on  
23 a different page.  What it is showing is who set that  
24 visit up.

1 Q Okay. So when it says Santiago Pineros  
2 there, that's the person who set that visit up?

3 A Correct.

4 Q Under the email Yasmin?

5 A Under that email. Yes, under that email.  
6 Yes.

7 Q Okay. So I want to now talk to you about a  
8 couple of things.

9 THE CLERK: Ms. Hickman, can I take screen  
10 share off?

11 MS. HICKMAN: Yes, please. And I apologize  
12 if this is a little bit choppy. It's hard to do it  
13 without being in control of the exhibits.

14 So I want to talk to you about those actual  
15 iWeb visits that were made.

16 So, Ms. Clerk, if you could pull up the iWeb  
17 visits marked as Defendant's 30.

18 THE CLERK: Give me one moment. And that  
19 would be the 7-6 iWeb visit of 9:00 o'clock?

20 MS. HICKMAN: Yes.

21 THE CLERK: I'm sorry.

22 MS. HICKMAN: There's three of them, so it  
23 should be the first one.

24 THE CLERK: Thank you. I'm sorry. I have --

1 I didn't realize it, but I have to download these in  
2 order to put them -- let me see if I can to open them  
3 under the right --

4 MS. HICKMAN: They need to be played with VLC  
5 player. I have them.

6 THE CLERK: I have VLC player, but I have to  
7 get them off my One Drive in order to do so, so just give  
8 me a second. Sorry. I went to the wrong one. Oh, wait.  
9 There it goes. Is this the right one?

10 MS. HICKMAN: I believe it is. If you can  
11 just pause it real quick.

12 THE CLERK: Sure.

13 Q (BY MS. HICKMAN:) So, Ms. Moreno, you  
14 recognize that as the iWeb system; correct?

15 A Correct.

16 Q And you recognize that as being in the  
17 housing unit?

18 A Correct.

19 Q And if you could play it, would you say  
20 that's a fair-and-accurate representation of that housing  
21 unit and of how the iWeb visits look?

22 A When they're inside a housing unit, yes.

23 MS. HICKMAN: And, Judge, I would move for  
24 the admission of this iWeb visit.

1 THE CLERK: That would be Exhibit 30.

2 MR. HICKS: Your Honor, I object to it based  
3 on its relevance. And if Your Honor would give me a  
4 minute to explain, I'd really appreciate it.

5 THE COURT: Go ahead.

6 MR. HICKS: Thank you, Your Honor. Your  
7 Honor, as we've discussed over the last two and a half  
8 days in this hearing, this narrow hearing to determine  
9 really two issues that Your Honor framed on June 22nd.

10 The first one is the debate we've heard for  
11 the last two days between the two experts.

12 The second issue you raised on June 22nd was  
13 are there capabilities to reach people, particularly  
14 informants who know Mr. Martinez Guzman in El Salvador.  
15 And in fact, Your Honor, in that hearing, you asked of  
16 Ms. Hickman to look into what alternatives are available  
17 provided that using an Internet platform to communicate  
18 with El Salvador was accepted as reasonable amongst the  
19 experts. That's the first. The second one, you brought  
20 that point up.

21 Ms. Hickman's response to you was that the  
22 family and these informants live in rural El Salvador,  
23 where there is not the transition to Zoom like there has  
24 been. They do not have reliable Internet. They've been

1     able to have one video visit with him since he's been in  
2     custody, so it's not something that they do often. There  
3     is no computer in the home. There is no tablet in the  
4     home.

5                 She concluded with: "We looked into it doing  
6     it via Zoom or Skype, and it's just not feasible. Maybe  
7     quote, 'feasible' is the wrong word. I think possible  
8     might be the better word." And so the representation was  
9     made by the defense that in essence, it's impossible to  
10    communicate with the family or informants in El Salvador  
11    using an Internet platform.

12                And so that was really the second issue -- at  
13    least as the State understood it -- that Your Honor was  
14    interested in hearing about this week in this very narrow  
15    hearing.

16                Your Honor, the video the State admitted, the  
17    sole video, in my direct testimony, was not admitted for  
18    any content. It is solely admitted, Your Honor, because  
19    it will show that Mr. Martinez Guzman was communicating  
20    via an Internet platform much like Zoom with his family  
21    in their rural home in El Salvador. And that's the only  
22    purpose in which we're seeking to admit it today, Your  
23    Honor. And our next witness will help establish that in  
24    fact is the home in El Salvador and those are his family

1 members.

2 What Ms. Hickman has now marked -- and I  
3 believe there's upwards of ten videos, iWeb visits I  
4 believe the defense is going to seek to introduce -- are  
5 visits where you cannot see who Mr. Wilber Ernesto Guzman  
6 is communicating.

7 There is no evidence that would show where  
8 those calls or where those iWeb visits are attached to,  
9 who is on the call, where they are when they're making  
10 the call. So it is very separate than what the State  
11 originally introduced and was admitted. These have no --  
12 there is no ability to show their relevance to, again,  
13 the limited issue of whether or not it is capable to do  
14 Internet platform communications with the family in El  
15 Salvador.

16 And so I'm sorry for the long explanation,  
17 but I believe none of these videos can be authenticated  
18 as to who is on the call, as to where that person is.  
19 And so, in turn, they're all irrelevant. And so that  
20 would be my standing objection for any of these videos  
21 that have been marked. Thank you.

22 THE COURT: Thank you. Ms. Hickman?

23 MS. HICKMAN: Thank you, Judge. The State  
24 showed you one video that was able to be connected in the

1 18 months Mr. Martinez Guzman has been in custody.  
2 That's what I represented to the Court. These videos are  
3 going to show the Court that there have been multiple  
4 attempts to do video visits between him and his family,  
5 and they have all failed except for one.

6 I think it's extremely relevant to the  
7 Court's analysis to see how unreliable a system is with  
8 trying to communicate with El Salvador, especially when  
9 we're looking at the iWeb visits, which are used every  
10 day in the United States.

11 Ms. Moreno said they're used by people to  
12 call out of the United States, but you can see it doesn't  
13 work in El Salvador. And whether that's because the  
14 Internet connection isn't stable, whether they're buying  
15 data plans to be able to talk to Mr. Martinez Guzman,  
16 Mr. Pineros is setting them up for them, whatever it is,  
17 the Court should see that in 18 months, they've tried  
18 multiple times, and they've been able to get one to work,  
19 which is pretty indicative of what would happen if the  
20 Court were to order this kind of -- excuse me --  
21 examination to go forward. So they're extremely relevant  
22 to show the capability of communication with El Salvador.

23 MR. HICKS: Your Honor, may I respond  
24 quickly?

1 THE COURT: Yes.

2 MR. HICKS: Thank you. As Ms. Moreno -- and  
3 I would have gone into this more if I knew the defense  
4 was going to offer all of these exhibits -- but as  
5 Ms. Moreno explained, the email address is purely the  
6 person who has set up the iWeb visit. They can invite  
7 other people. Anybody can then get on and be the actual  
8 communicator. So that is not evidence of who that iWeb  
9 visit is to.

10 Now, so we would be speculating. Unless they  
11 have someone who can testify and say yeah, that person on  
12 the other line is the family trying to connect from El  
13 Salvador, which they don't. Absent that, Your Honor,  
14 it's irrelevant for a lack of foundation and because we  
15 just don't know who it is, where they are and what the  
16 problem is.

17 THE COURT: So I'm having a little difficulty  
18 understanding because right now, all I'm seeing is  
19 perhaps the legs of a chair on a frozen screen. And so I  
20 don't know what we're talking about.

21 I will allow you to voir dire Ms. Moreno, Mr.  
22 Hicks, to establish whatever it is you think these do not  
23 show that they're not self-authenticating and get some  
24 evidence in that regard because that's what Ms. Hickman

1 is telling me. So I will let you voir dire the witness  
2 before I admit the exhibit.

3  
4 VOIR DIRE EXAMINATION

5 BY MR. HICKS:

6 Q Thank you, Your Honor. Ms. Moreno?

7 A Yes.

8 Q I can't see you, but in either event, I want  
9 to go back.

10 THE COURT: Why don't you see her, Mr. Hicks?

11 MR. HICKS: I couldn't see her with the  
12 screen sharing.

13 THE COURT: Okay. So if you want to see the  
14 gallery while screen sharing is going, you can minimize  
15 the screen sharing and maximize the gallery.

16 MR. HICKS: Thanks.

17 THE COURT: Okay. I just want to make sure  
18 the record is clear that everyone can see everyone else.

19 Q (BY MR. HICKS:) My apologies. Yes, I can  
20 see everybody now. Thank you, Your Honor.

21 Ms. Moreno, I just want to ask you a few more  
22 clarifying questions about the iWeb visits. Do you  
23 remember me asking you questions about that earlier?

24 A Yes, I do.

1           Q     So let's just stick to that June 17th, 2020  
2 phone call since that's been admitted into evidence. You  
3 indicated that somebody has to use an email to set up the  
4 call. Once that's been done, and so evidently, on June  
5 17th, as you testified, 2020, the email that set up the  
6 phone, the iWeb visit was YasminGuzman008@gmail.com;  
7 correct?

8           A     Correct.

9           INTERPRETER ESCOBAR: I'm sorry. This is the  
10 interpreter cutting in, Your Honor. I was unable to hear  
11 that number.

12           Q     (BY MR. HICKS:) Oh. Yasmin: Y-A-S-M-I-N  
13 G-U-Z-M-A-N 008@gmail.com.

14                     Once that has been set up, how does this  
15 system keep track of then who is the person that is on  
16 the iWeb visit with the inmate?

17           A     So it would just -- they would use that.  
18 Whatever email is associated with that name is how it  
19 would become being set up.

20           Q     Well, let me ask you this. If I were to set  
21 up an iWeb visit using my email address and then I gave  
22 my email address to Mr. Jackson, my colleague here, and  
23 my password to get in, could he then connect to that iWeb  
24 call at the same time wherever he was?

1           A     Yes, he could.

2           Q     Relevant to the iWeb visit that Ms. Hickman  
3 was about to ask you about, are you familiar with some  
4 iWeb visits that occurred with Mr. Wilber Ernesto  
5 Martinez Guzman and a visitor where the visitor's face  
6 was not able to be seen in the iWeb visit?

7           A     Yes, I am.

8           Q     And did that happen in several calls?

9           A     It happened in several calls.

10          Q     And so could you explain what that means  
11 exactly?

12          A     What that means is that Chrome wasn't  
13 downloaded for that visit. Chrome supports the iWeb  
14 visit Internet service, so if Chrome is not downloaded,  
15 it will do a black screen. And it does it if somebody is  
16 visiting. You don't even have to be out of state to  
17 visit. It happens here locally. The visitor or the  
18 person setting up the visit has not downloaded the Chrome  
19 support or app to support that visit. You will still be  
20 able to hear the people talk. You just won't be able to  
21 see them visit.

22          Q     And just for demonstrative purposes, I'm  
23 going to turn my video off for just one second. Is it  
24 something like this where you just see a black screen but

1       you can still hear me talk?

2               A       Absolutely.  Yes.

3               Q       In those instances on those phone calls, are  
4       you able to tell then who the person is on the other --  
5       on the black screen?

6               A       No, you're not.

7               Q       Are you able to tell where they're calling  
8       from or where they're connecting from?

9               A       No.

10              MR. HICKS:  Thank you, Your Honor, for  
11       allowing me to ask her those questions.  I hope that  
12       helped clarify my point that what they're intending to  
13       show does not provide you any evidence of who is on the  
14       call and where the call is being connected from.

15              THE COURT:  Thank you.  Ms. Hickman, did you  
16       have anything else you wanted to share about why you  
17       think this A Defendant's 30 is self-authenticating in  
18       terms of that it came from or tried to connect to El  
19       Salvador?

20

21                              CONTINUED CROSS-EXAMINATION

22       BY MS. HICKMAN:

23              Q       Ms. Moreno, this video that we just tried to  
24       watch, that's 7-6-20; correct?

1           A     Yes.

2           Q     And it was after that video that we watched  
3     from 6-17-20; correct?

4           A     Correct.

5           Q     And one of the reasons the screen may be  
6     black is because somebody hasn't downloaded Chrome;  
7     correct?

8           A     Correct.

9           Q     But you don't know why the video in this one  
10    doesn't connect or stay black; correct?

11          A     Correct.

12          Q     And in listening to Mr. Martinez Guzman's  
13    phone calls and videos -- as you've already testified  
14    you've done because he's one of the inmates you  
15    monitor -- you have never heard him connect to  
16    YasminGuzman008@gmail.com and talk to somebody that  
17    doesn't appear to be his mother or his sister or a family  
18    member; correct?

19          A     Correct.

20          Q     In fact, the voices in this are very similar  
21    to the voices in the video you just watched; correct?

22          A     Correct.

23                MS. HICKMAN: Thank you, Judge. I would move  
24    for admission.

1 MR. HICKS: Again, Your Honor, I'd object.  
2 Ms. Moreno is in no way an expert on comparing voices.  
3 And again, there is no evidence of where they're  
4 communicating from.

5 In the June 17th, 2020 iWeb visit, you will  
6 see everything: Where they are, where the house is.  
7 It's their house in rural El Salvador. But in these, we  
8 don't know where they are. So it's irrelevant because it  
9 gives Your Honor nothing for the ultimate consideration  
10 as to whether or not there are capabilities to  
11 communicate with his family in El Salvador. Thank you.

12 THE COURT: All right. I don't think that  
13 Defendant's 30 can be admitted for the purpose of the  
14 defense request. However, I do believe it can be  
15 admitted to show whatever there is on the webcam, the web  
16 visits.

17 So I will allow for it to be admitted, but  
18 I'm not admitting it because of the reasons that the  
19 defense has alleged that, in fact, is evidence of a lack  
20 of communication with El Salvador. I will admit it for  
21 purpose of comparison and ability to look at the other  
22 exhibits.

23 (Defendant's Exhibit No. 30 was admitted into evidence.)

24 MS. HICKMAN: Thank you. Judge, I would ask

1       that we play that video.

2                   THE COURT:   Okay.

3                   (Whereupon, an inaudible video was played.)

4                   THE COURT:   I'm going to ask the clerk to  
5       stop it.

6                   Ms. Hickman, I can hear voices very, very  
7       faintly.  Is that something to do with the Zoom or what's  
8       going on?  Ms. Hickman?

9                   MS. HICKMAN:  I don't know, Judge, what's  
10      going on with it.  It's so hard to do this without being  
11      able to control the exhibits.

12                  THE COURT:   Well, it's been admitted, if you  
13      have this one.  Do you have this one that you could put  
14      on a zip drive?

15                  MS. HICKMAN:  I do.

16                  THE COURT:   Any objection, Mr. Hicks?

17                  MR. HICKS:   No, Your Honor.  But, Your Honor,  
18      I believe what's happening here is that they just haven't  
19      connected yet.  And what you're hearing are the people  
20      mulling around in the background of the jail.

21                  As soon as this call starts, like others --  
22      unless I'm mistaken -- Mr. Wilber Ernesto Martinez Guzman  
23      will be brought into the screen, and you'll be able to  
24      see the black screen like Ms. Moreno explained.

1 THE COURT: Okay. The Court hasn't had an  
2 opportunity to review these, so I don't know what we're  
3 looking at. If you just want to let it play, we can or  
4 you can put something else, Ms. Hickman, if you think you  
5 have a better methodology.

6 MS. HICKMAN: Judge, it's not that I don't  
7 have a better methodology. It's that I can't manipulate  
8 the exhibit in any way to get to where I want it or to  
9 jump ahead, so I'm kind of stuck just letting it play.  
10 If the court clerk wants to move it forward, that's fine.  
11 We can try that.

12 THE COURT: Well, we don't -- neither the  
13 court clerk nor myself are familiar with your evidence,  
14 so we don't know what you want to do. If you have a  
15 digital number that you want her to move it to, she can  
16 do something like that. But absent that, I guess we just  
17 play it. How long is it?

18 MS. HICKMAN: Sorry. I think it's about 20  
19 minutes.

20 MR. HICKS: So, Your Honor, sorry. I want to  
21 correct what I said a minute ago. I have not seen this  
22 particular video. Evidently, there are some that are  
23 where they actually connect and you see a black screen.

24 Mr. Lucia just informed me this entire video

1 is just what you're seeing for I don't know how long.  
2 Again, so I retract what I said, Your Honor. I'll leave  
3 it to the defense. That's all I have. Thanks.

4 THE COURT: Okay. Well, let's just -- Do you  
5 want to play it, Ms. Hickman, we'll play it.

6 MS. HICKMAN: Judge, it may be easier if I  
7 can use my version of it because then I can make sure  
8 it's the one I want. It's so difficult -- and I know I  
9 keep saying that, but this is such a difficult way to  
10 share evidence.

11 THE COURT: Well, that's great, except for  
12 this is the one admitted. So if you want to admit a  
13 different one, you have to admit that one. I think here  
14 from my perspective is I want to make sure that the  
15 evidence that is played before me that I rely on that we  
16 have all have a record of what that evidence was.

17 So right now, this is the evidence that was  
18 admitted. And if I were to need to find the evidence, I  
19 would find this exhibit. If you want to play a different  
20 exhibit, we have to know what it is.

21 MS. HICKMAN: So okay. Let me do this.

22 Ms. Moreno?

23 THE WITNESS: Yes.

24 Q (BY MS. HICKMAN:) We can stop. You can see

1 so on this form that you emailed me, there's only one  
2 visit that shows up as 7-6-2020; correct?

3 A If that's only on that form, then yes.  
4 Correct.

5 Q And when you monitored this, did you see that  
6 for this one visit, there's actually three different  
7 visits that end up being recorded. Did you know that?

8 A Yeah. It would have had -- if it had to do  
9 with connecting it, so they might have been trying to  
10 download Chrome at that time. I'm not sure. But yes.

11 Q So there was issues with the connection;  
12 correct?

13 A There was issues with something. I'm not  
14 sure what it was, but yes.

15 Q So they tried to connect three separate  
16 times?

17 A Yes.

18 Q Which is why there's three separate files for  
19 this one visit; correct?

20 A Correct.

21 Q So as everything that you testified to in  
22 that one video we just saw is true for the other two;  
23 correct?

24 A For the other two visits?

1 Q The two 7-6-2020 visits.

2 A So probably two of those don't have anything  
3 on it and one would have the actual visit on it.

4 Q Okay. So the one that has the actual visit,  
5 that's the one that has the black screen; correct?

6 A Yes.

7 Q And the voices?

8 A Yes.

9 Q And you can see Mr. Martin Guzman in the  
10 housing unit; correct?

11 A Correct.

12 Q And you can hear him talking to people;  
13 correct?

14 A Correct.

15 Q And those are the ones that have the voices  
16 that are very similar to the video that we watched from  
17 6-17-2020; correct?

18 A Correct.

19 MS. HICKMAN: So, Judge, I would move for the  
20 admission of all three of the 7-6-2020 visits.

21 MR. HICKS: Again, Your Honor, first, just  
22 for clarification, we have not watched the June 17th,  
23 2020 video. We've not heard voices in the June 17th,  
24 2020 video. And my objection continues. It is

1 irrelevant what they are trying to admit. All it will  
2 show Your Honor is Mr. Martinez Guzman communicating with  
3 somebody from the jail of whom we don't know who it is,  
4 where they are. It's irrelevant for the purposes of this  
5 hearing. So I object to it.

6 THE COURT: Well, rather than preclude them  
7 putting on their evidence, they have a lot to show me in  
8 this, and I think it goes to the weight that I'll  
9 consider it. So I'm going to overrule your objection.  
10 But what exhibit is it marked as?

11 MS. HICKMAN: Judge, this is Defense 30, 31,  
12 and 32.

13 THE COURT: Okay. Those exhibits are  
14 admitted.

15 (Defendant's Exhibits 31-32 were admitted into evidence.)

16 MS. HICKMAN: Judge, could I have the Court's  
17 indulgence for a minute?

18 THE COURT: Yes.

19 Q (BY MS. HICKMAN:) Thank you, Your Honor.

20 Next, Ms. Moreno, I'd like to talk to you  
21 about the visit that took place on 6-27-2020. Are you  
22 familiar with that one as well?

23 A What date was that again?

24 Q 6-27-2020.

1           A     Yes, I am.

2           Q     And again, that's one that has four files;  
3 correct?

4           A     I'm not sure how many files that one has with  
5 it, but I did watch that visit.

6           Q     Okay. And so similarly, that's where you see  
7 Mr. Martinez Guzman in the housing unit, but you can't  
8 see who he's connected to; correct?

9           A     Correct.

10           MS. HICKMAN: I would move for the admission  
11 of Defendant's 26, 27, 28 and 29.

12           MR. HICKS: Same objection, Your Honor.

13           THE COURT: Okay, Ms. Hickman. Why do I need  
14 to hear?

15           MS. HICKMAN: Judge, very similarly, I think  
16 after this witness is called, perhaps in rebuttal, we'll  
17 be able to tell you who he's talking to and what they're  
18 talking about and where they are based on the  
19 conversation.

20           THE COURT: I'm not going to admit it now  
21 until we get there. We've got -- I've let you do 30, 31,  
22 and 32, but I'm going to sustain the objection at this  
23 time as to the admission of 26, 27, 28 and 29.

24           Q     (BY MS. HICKMAN:) And then I want to talk to

1 you about the iWeb visit that took place on 6-2-2020.

2 Are you familiar with that one?

3 A On 6-2?

4 Q Yes.

5 A No, I'm not. Oh. Oh, yes. I'm sorry. Yes.

6 June 2nd. Yeah. Sorry. Yes, I am.

7 Q And that again was reserved under

8 YasminGuzman008@gmail.com?

9 A Correct.

10 Q And that's under Defendant's 23 as an

11 exhibit. Is that something you watched?

12 A Yes, it is.

13 Q Okay. And that's another one with

14 Mr. Martinez Guzman where you can see him; correct?

15 A Correct.

16 Q And you can't see who he's connected to;

17 correct?

18 A Correct.

19 Q And the voices on that again are similar to

20 the voices in 6-17-2020 video that connects; correct?

21 A He was talking to a female voice, and I

22 believe a male voice was on that one as well.

23 MS. HICKMAN: Okay. And, Judge, I would move

24 for the admission of that one as well.

1 THE COURT: Mr. Hicks?

2 MR. HICKS: Same objection, Your Honor. I'll  
3 rely on what I've said earlier.

4 THE COURT: I'm going to sustain the  
5 objection until you get your rebuttal going and you show  
6 the relevance. But she has authenticated it, so you're  
7 halfway there.

8 THE CLERK: Your Honor, could I get that  
9 exhibit number really quick again?

10 THE COURT: Twenty-three.

11 THE CLERK: Twenty-three. Thank you.

12 Q (BY MS. HICKMAN:) And then I want to talk to  
13 you about the 5-27-2020 visit. Are you familiar with  
14 that one as well?

15 A The May 27th?

16 Q 2020.

17 A So I wasn't able to -- I wasn't able to pull  
18 that iWeb visit. I did not watch that iWeb visit.

19 Q Okay. But again, you can see that that one  
20 was started, right?

21 A I didn't physically watch it, so I don't  
22 know.

23 Q Well, you have access to what's been admitted  
24 as Defendant's 14; correct?

1           A       So that's the paper trail that it leaves of  
2 who has paper information and who has visited Martinez  
3 Guzman. The iWebs themselves are on the system for  
4 approximately 70, 75 days, and then they go off the  
5 system. So that was one iWeb visit that I did not  
6 physically watch.

7           Q       Okay. But my question is, is under the  
8 column that says "Was started," that one was started;  
9 correct?

10          A       You mean is there a yes beside it?

11          Q       Yes.

12          A       Okay. I don't -- I mean, it could have been  
13 started. It could have had something happen and it  
14 wasn't -- the visit didn't go through. That is one visit  
15 that I don't know whether Martinez Guzman physically  
16 showed up for it because sometimes we'll have iWeb visits  
17 scheduled and there's --

18          Q       Ms. Moreno, my question is: Is there a "yes"  
19 under the column "Was started"?

20          A       Yes. If that was one of the 14, yes, there  
21 was a "yes" beside it.

22          Q       Okay. So I want to talk to you about that  
23 one visit that we were able to get admitted through the  
24 State, that 6-17-2020 visit.

1           A     Okay.

2           Q     What made you watch that one and send that  
3 one to the State?

4           A     Because I went back and pulled all of his  
5 iWeb visits that could be downloaded. And so I just  
6 watched every one of the visits to make sure that the  
7 visit was there, you know, that it had downloaded.

8           Q     Okay. When did you pull all of those iWeb  
9 visits?

10          A     Over a week ago, I believe.

11          Q     At whose request?

12          A     Travis Lucia and Detective Brady.

13          Q     So Travis Lucia and Detective Brady contacted  
14 you and said hey, we need you to pull all of Mr. Martinez  
15 Guzman's iWeb visits; correct?

16          A     Correct.

17          Q     And when they pulled all of the iWeb visits,  
18 did they specifically tell you to focus on the ones under  
19 YasminGuzman008@gmail.com?

20          A     No.

21          Q     Okay. So you watched all of them?

22          A     Yes. I went back as far as the ones that  
23 would download that were still in the system and watched  
24 those and then sent the information.

1           Q     Okay. So it's fair to say when you watched  
2 all of those, you were able to see that the videos to  
3 somebody named Heidi Miranda connected and those were  
4 where both sides could see; correct?

5           A     Correct.

6           Q     And I don't know if you know this or not, but  
7 did it appear as though that video of the visitor took  
8 place in the same place as the video of the 6-17-2020  
9 visit?

10          A     Yes.

11          Q     It looks like the same place?

12          A     It was in a housing unit; correct?

13          Q     Okay.

14          A     I don't know. I don't know. Because he --  
15 So are you talking about the 7-8 visit that Miranda --

16          Q     Yes.

17          A     Heidi Miranda had set up?

18          Q     Uh-huh.

19                THE COURT: I'm sorry. I'm going to  
20 interrupt you. Are you talking about where the defendant  
21 is located --

22                MS. HICKMAN: No.

23                THE COURT: -- or where the person on the  
24 other end of the Web?

1 MS. HICKMAN: The visitor. The visitor.  
2 Heidi Miranda.

3 THE WITNESS: Oh, the visitor. Okay. I'm  
4 sorry. What was your question?

5 Q (BY MS. HICKMAN:) Did it appear as though  
6 Heidi Miranda was in the same location as the people that  
7 were in the video that you authenticated here today for  
8 the State?

9 A The visit that was on 6-17? Is that the one  
10 you're referring to?

11 Q Yes. Right.

12 A No, it did not appear that it was in the same  
13 location.

14 Q Okay. Did it appear as though it was in the  
15 United States?

16 A I don't -- I don't know if it was in the  
17 United States. I mean, it appeared in a house, a  
18 different house.

19 Q It's fair to say you don't know who Heidi  
20 Miranda is; correct?

21 A Correct.

22 Q Do you know who Orlando Mejia is?

23 A No.

24 Q Okay. And then every other video that you

1 watched that connected with the visitor of Santiago  
2 Pineros and YasminGuzman008@gmail.com, other than the  
3 6-17-2020 visit, did not connect both ways; correct?

4 A Correct.

5 Q So on May 16th of 2020, that visit did not  
6 connect both ways; correct?

7 A On May 16th?

8 Q May 16th, 2020.

9 A I want to say I think it connected with  
10 Martinez Guzman but not with the visitor.

11 Q So you could not see who the visitor was;  
12 correct?

13 A Correct.

14 Q So if that visitor was his mother and his  
15 sister in El Salvador, you would not have been able to  
16 see them; correct?

17 A Correct.

18 Q Okay. And on May 23rd of 2020, there was  
19 another visit with YasminGuzman008 with Santiago Pineros  
20 as the visitor; correct?

21 A From the printout of information, if that's  
22 what's listed there, that is correct. That is --

23 Q Sorry. Go ahead.

24 A That is one iWeb visit that I did not -- was

1 not able to download.

2 Q Okay. How about 5-27-2020? Did you download  
3 that one?

4 A That one I was not able to download either.

5 Q Okay. 6-2-2020?

6 A Yes.

7 Q Okay. So again, that one shows Mr. Martinez  
8 Guzman, but it doesn't show the other party; correct?

9 A Correct.

10 Q And 6-27: Same thing. You can see  
11 Mr. Martinez Guzman. You cannot see the other party;  
12 correct?

13 A Correct.

14 Q 6-28. That's one to Heidi Miranda; correct?

15 A Correct.

16 Q And that connects both ways; correct?

17 A Correct.

18 Q And then 6-30-2020. That's Heidi Miranda  
19 again; correct?

20 A What was the date?

21 Q 6-30.

22 A I don't remember one for 6-30. I know there  
23 was one for -- there was one for 6-28 that you could see  
24 Guzman, but you couldn't see who he was visiting with.

1 Q 6-28 didn't connect both ways?

2 A No, not the one that I had downloaded.

3 Q And that's with Heidi Miranda?

4 A I'm not -- if that's what the paperwork

5 shows. I don't have the paperwork in front of me to

6 verify who that was, who that was with.

7 Q How do you remember the dates and what you

8 viewed?

9 A Because there was seven videos that I ended

10 up sending, and two of those were ones that I remember

11 viewing.

12 Q Okay. So of 14 iWebs that we're talking

13 about, seven of them you looked at, right?

14 A Uh-huh. Yes.

15 Q Two of them connected?

16 A Yes.

17 Q And one of them is that one: 6-17-2020?

18 A Yes.

19 Q So what you saw in the 6-17-2020 video, that

20 is the only time in 18 months that you have seen that

21 house, that yard or those people in a video visit?

22 A Yes. The video visits that I was able to

23 download. That is correct.

24 Q Okay. And then I want to talk about these

1 Call Detail Reports from El Salvador or to El Salvador.  
2 Okay?

3 A Okay.

4 Q I believe you said that he's called El  
5 Salvador 69 times. Is that correct?

6 A Correct.

7 Q Of those 69 times, he hasn't had 69 different  
8 conversations; correct?

9 A I'm sorry. What?

10 Q They don't all connect, right?

11 A The majority of those do connect. There's a  
12 couple there that are under a minute, so I'm not sure  
13 whether or not they connected or not because I didn't  
14 listen to every single one of those calls.

15 Q Some of them are only a matter of seconds;  
16 correct?

17 A Correct. And I would say they didn't  
18 connect. They didn't connect.

19 Q Okay. So when you went through and counted  
20 out that there was 69 calls to El Salvador, how many of  
21 those were longer than, let's say, five minutes?

22 A I would say probably I'd say at least 50 of  
23 them were longer than five minutes.

24 MS. HICKMAN: Okay. And, Judge, if I can

1 look at Defense Exhibit 10.

2 THE COURT: Go ahead.

3 Q (BY MS. HICKMAN:) I apologize. I'm looking  
4 for Defense Exhibit 10 that Ms. Moreno sent me right  
5 before lunch.

6 Ms. Moreno, you can see that this is the  
7 Legacy Inmate Communications; correct?

8 A Correct.

9 Q And this is a Call Detail Report?

10 A Correct.

11 Q And these are for calls from 2-8-2019 to  
12 7-29-2020; correct?

13 A Correct.

14 Q And these are one of the phone numbers to El  
15 Salvador that you mentioned?

16 A Correct.

17 Q And this is a fair-and-accurate  
18 representation of all of the phone calls that were made  
19 to that phone number, right?

20 A Correct.

21 MS. HICKMAN: I would move for the admission  
22 of Defense Exhibit 10.

23 MR. HICKS: No objection, Your Honor.

24 THE COURT: Exhibit 10 is admitted.

1 (Defendant's Exhibit No. 10 was admitted into evidence.)

2 Q (BY MS. HICKMAN:) So, Ms. Moreno, when you  
3 look at this, there are only two of the phone calls on  
4 this list are the 15 minutes; correct?

5 A Let me look and see. Sorry. I can't see --  
6 I can't see the other part of it. There we go. So there  
7 is, yeah, two 15-minute phone calls.

8 Q Okay. And there's two that are less than 20  
9 seconds; correct?

10 A Correct.

11 Q And the rest of them are between 13 and about  
12 ten minutes; correct?

13 A Correct.

14 Q And when these calls are being made  
15 internationally, Mr. Martinez Guzman had to make them  
16 with a calling card; correct?

17 A Let me see if it -- well, there's two ways.  
18 You can either call and have the other person on the  
19 other line pay for it, or they can buy calling card time,  
20 basically, is a way to look at it, through commissary to  
21 put that on their phone account so they can make calls.

22 Q And when you look at these, you can see the  
23 date that they were all made; correct?

24 A Correct.

1           Q     And you can see that none of them indicate  
2     that he calls for 15 minutes, hangs up and calls right  
3     back for another 15; correct?

4           A     I was looking at the date.   Yeah.   Correct.

5           Q     And it's fair to say that you don't know the  
6     quality of these phone calls; correct?

7           A     What they pertain or?

8           Q     No.   You don't know if they can hear each  
9     other the entire time?

10          A     No.   I didn't listen to every call to  
11     determine that, but the calls that I did listen to, they  
12     were talking, so -- I don't know if that answers your  
13     question.

14          Q     You don't know what they were talking about?

15          A     No, I do not.

16          Q     You don't know what they were saying, if they  
17     were saying can you hear me or can you not hear me?

18          A     No, I do not.

19          Q     And you don't know if these shorter ones were  
20     cut off because there was a limit of time or connection  
21     problems?

22          A     It could have been.   It could have been  
23     several things.   It could have been connection problems,  
24     possibly.   It could have been maybe something happened in

1 the housing unit and the inmates were ordered to get off  
2 the phones. I don't know.

3 Q Okay. So you have no idea what the quality  
4 and capability of making even a 15-minute phone call to  
5 this phone number in El Salvador is; correct?

6 A Correct.

7 Q And then I want to show you Defense 11. And  
8 this one is three pages; correct?

9 A Correct.

10 Q And this is to a different phone number;  
11 correct?

12 A Correct.

13 Q And looking through this, there are multiple  
14 numbers that disconnect after a matter of seconds;  
15 correct?

16 A Correct.

17 Q And some that last for the full 15 minutes?

18 A Correct.

19 Q And some that are somewhere in between;  
20 correct?

21 A Correct.

22 Q And again, you don't know why some of these  
23 are only a few seconds long, right?

24 A Correct.

1 Q You don't even know who he's calling, right?

2 A Correct.

3 Q And you don't know if there are any issues

4 connecting to this phone number; correct?

5 A Correct.

6 Q And then I wanted to show you Defense 12.

7 Judge, I apologize. I would move for the --

8 sorry. If I could authenticate 11 quickly. I apologize.

9 Back at Defense 11.

10 You're familiar with this document?

11 A Yes, I am.

12 Q And it's a fair-and-accurate representation

13 of the document you sent me; correct?

14 A Correct.

15 Q And you've reviewed it?

16 A Yes, I have.

17 MS. HICKMAN: And I'd move for the admission

18 of 11.

19 MR. HICKS: No objection.

20 THE COURT: Mr. Hicks, go ahead.

21 MR. HICKS: No objection, Your Honor.

22 THE COURT: Okay. Exhibit 11 is admitted.

23 (Defendant's Exhibit No. 11 was admitted into evidence.)

24 Q (BY MS. HICKMAN:) And then move to 12,

1 please. And then, Ms. Moreno, again, this is one of the  
2 documents that you sent me; correct?

3 A Correct.

4 Q And this is a fair-and-accurate  
5 representation of the phone calls from Mr. Martinez  
6 Guzman to this number in El Salvador; correct?

7 A Correct.

8 MS. HICKMAN: And I would move for the  
9 admission of 12, Defense 12.

10 MR. HICKS: No objection, Your Honor.

11 THE COURT: Defendant's Exhibit 12 is  
12 admitted.

13 (Defendant's Exhibit No. 12 was admitted into evidence.)

14 Q (BY MS. HICKMAN:) And then again, when you  
15 look at this, you can see that there's only one phone  
16 call that's a full 15 minutes. Correct?

17 A I can't see the other part of the screen, but  
18 I believe yes. Correct.

19 Q And there's one that's two seconds short, to  
20 be fair. Right?

21 A Correct.

22 Q And then one that gets cut off after 12  
23 seconds or potentially never connects?

24 A Correct.

1 Q And again, you don't know the type of  
2 connection of these phone calls; correct?

3 A Correct.

4 Q And then, if I can next show you Defense 15.  
5 And, Ms. Moreno, are you familiar with this document?

6 A Yes. This is our jail ATM system. This is  
7 where inmates can email.

8 Q I'm sorry. Go ahead.

9 A Sorry. Where they can email so they can send  
10 emails and receive emails on the system.

11 Q Okay. So these are the four emails that you  
12 mentioned that Mr. Martinez Guzman was able to send and  
13 receive; correct?

14 A Correct.

15 Q And this is a fair-and-accurate  
16 representation of his entire email history since he's  
17 been in custody, right?

18 A Correct.

19 MS. HICKMAN: I'd move for the admission of  
20 this document.

21 MR. HICKS: Your Honor, I'd object on the  
22 basis of relevance again.

23 THE COURT: What's the relevance of emails?

24 MS. HICKMAN: It's the same relevance that I

1 mentioned before, is that in order to even do the testing  
2 that Dr. Martinez mentioned, people have to have a valid  
3 email address. And so this establishes the email  
4 addresses that Mr. Martinez Guzman has been able to  
5 communicate with.

6 THE COURT: Well, just because he isn't able  
7 to communicate or have it done, it doesn't mean the  
8 defense team that was on the ground ready to introduce  
9 Dr. Puentes to people doesn't have -- don't have the  
10 ability to communicate and have email addresses.

11 MS. HICKMAN: But if we were to go forward  
12 and Dr. Puentes weren't on the ground, and we were having  
13 to email people the Vineland or the ABAS, we would have  
14 to have valid email addresses.

15 So far, we've established that one person in  
16 El Salvador potentially has an email address. I think  
17 that this is a better way to show the type of  
18 communication that is possible with El Salvador, that  
19 there just is not the email capabilities necessary to do  
20 the testing Dr. Martinez may have suggested.

21 THE COURT: I think that's too speculative.  
22 I'm going to deny the motion.

23 MS. HICKMAN: I also would like to offer it  
24 on another ground because I think it helps accomplish who

1 Mr. Pineros who is on the video calls.

2 THE COURT: Well, Mr. Pineros is in the  
3 audience. He has been for the last three days watching  
4 this proceeding. So if somebody wants to call him as a  
5 witness, you can do that. But I'm not going to admit the  
6 exhibit for that.

7 Q (BY MS. HICKMAN:) So, Ms. Moreno, when you  
8 reviewed all of Mr. Martinez Guzman's emails, the  
9 majority -- well, all four of them were to Santiago  
10 Pineros; correct?

11 A So he had other emails, but they were not  
12 like to family and friends. There was some emails that  
13 were to like the programs person here at the jail asking  
14 for a specific type of a program, a class I should say --  
15 not a program, a class -- and then to the Public  
16 Defenders Office, there's those emails in there as well.

17 Q So I should have clarified. I apologize.

18 A Sorry.

19 Q To anyone outside of the jail or outside of  
20 the Public Defenders Office.

21 A Yes. There was those four plus that one  
22 attempt that he had tried to make sending to whatever  
23 email address that he was trying to send to that did not  
24 go through, as it was an invalid email.

1           Q     Okay. Thank you. So, Ms. Moreno,  
2 ultimately, what we have established is that there's been  
3 one video call that connected to  
4 YasminGuzman008@gmail.com in the approximately 18 months  
5 Mr. Martinez Guzman has been in custody. Is that true?

6           A     Correct.

7           MS. HICKMAN: Thank you. I have no further  
8 questions.

9           THE COURT: Redirect?

10          MR. HICKS: Thank you, Your Honor.

11

12                               REDIRECT EXAMINATION

13          BY MR. HICKS:

14          Q     Just a couple of questions, Ms. Moreno, to  
15 follow up on what Miss Hickman just asked you, I recall  
16 you saying something about iWeb visits essentially  
17 dropping off if they're not saved. Could you explain  
18 that?

19          A     Yes. So iWeb visits are backed up to a  
20 system, and it's usually about 70 days. If they're not  
21 like captured within that time frame, they're no longer  
22 able to go back and pull those iWeb visits.

23          Q     And so I'm sorry. What did you say? Seventy  
24 days?

1           A     Yeah. Approximately 70 days.

2           Q     So would it -- is it better to say that we  
3 know there was one connection with individuals where you  
4 can see them in the last 70 days?

5           A     Correct.

6           Q     Because if I understand you correctly, we  
7 don't know the 15 months before that.

8           A     That would be correct.

9           MR. HICKS: That's all I have, Your Honor.  
10 Thank you.

11           THE COURT: Ms. Hickman?

12

13                       RECROSS EXAMINATION

14           BY MS. HICKMAN:

15           Q     Ms. Moreno, Mr. Martinez Guzman has been  
16 someone you have been monitoring since he was booked into  
17 the jail in February or January of 2019; correct?

18           A     Correct.

19           Q     How many iWeb visits did you watch that  
20 weren't reflected on this log that you sent me?

21           A     Seven iWeb visits.

22           Q     Seven additional?

23           A     No. Seven total iWeb. He's had 14. He's  
24 had 14 iWeb visits, so I want to say I believe his first

1 family/friend iWeb visit started March of this year.

2 Q Okay. So since February 8th, 2019, how many  
3 family and friend iWeb visits has Mr. Martinez Guzman had  
4 total?

5 A Fourteen.

6 Q Okay. So when you said that these are  
7 reflective of only the last 70 days, they're reflective  
8 of the last 70 days and the entire time he's been in  
9 custody?

10 A Can you repeat that? Sorry.

11 Q Sure. These don't have all of his iWeb  
12 visits; correct?

13 A The ones that we --

14 Q Sorry. I'm asking because I forget that we  
15 can't see the same thing.

16 A Okay.

17 Q So we talked about what has been admitted as  
18 Defense 14, right? Which was the list of iWeb visits  
19 that you emailed to me today, right?

20 A Correct. Correct.

21 Q And so the very first date on that  
22 document --

23 THE COURT: Can you put that up, Ms. Clerk,  
24 and would you make it nice and big? That's not the

1 exhibit number. Can you make it bigger, please? We  
2 don't see 12. That's fine. Can you make it bigger?

3 Q (BY MS. HICKMAN:) If you go to page five,  
4 the very last page. Thank you. The very first visit on  
5 this document is 2-12-2020; correct?

6 A Yes.

7 Q Okay. So how many visits prior to 2-12-2020  
8 did Mr. Martinez Guzman have that were not with his  
9 attorneys?

10 A Total of -- there was a total of 14 visits  
11 altogether.

12 Q So the entire time he's been in custody?

13 A Correct.

14 Q Okay. And you were able to view --

15 A Seven of those.

16 Q And of seven of those, one connected with  
17 YasminGuzman008@gmail.com?

18 A Correct. And another one connected with  
19 Heidi Miranda. That was on July 8th.

20 Q Okay. So while this only reflects  
21 potentially the last 70 days, the iWeb history reflects  
22 his entire iWeb history from the time he was booked into  
23 the Washoe County Jail, according to your memory?

24 A Correct.

1 MS. HICKMAN: And I have no further  
2 questions.

3 THE COURT: I don't understand your answer,  
4 ma'am. Are you saying that -- I understood you saying  
5 that there was 14 web visits; that you viewed seven. Did  
6 you not view the other seven because they'd already  
7 dropped off?

8 THE WITNESS: Correct.

9 THE COURT: Does that raise any questions for  
10 either Ms. Hickman or Mr. Hicks?

11 MR. HICKS: None from the State, Your Honor.  
12 Thank you.

13 MS. HICKMAN: No. Thank you.

14 THE COURT: Okay. Thank you. All right.

15 Ms. Moreno, you are excused. I think  
16 everyone is okay with that, right? She can be excused?

17 MR. HICKS: Yes, Your Honor.

18 THE COURT: Mr. Hicks, you nodded your head.

19 Ms. Hickman, any problem with her being  
20 excused?

21 MS. HICKMAN: No, Judge. Thank you.  
22 Actually, you know, I may keep her subject to recall,  
23 depending on what we do with rebuttal.

24 THE COURT: Okay. So do you have a way to

1 get in touch with her?

2 MS. HICKMAN: I have her email. I believe  
3 she's on the county system, so I should be able to email  
4 her, if that works for her.

5 THE COURT: Okay. So, Ms. Moreno, we're not  
6 excusing you from the trial or the hearing. You might be  
7 called back by Ms. Hickman. She'll send you an email.  
8 So you're still obligated to return when she asks you to.

9 THE WITNESS: Okay.

10 THE COURT: Thank you. Do you have any time  
11 off scheduled between now and Friday?

12 THE WITNESS: No.

13 THE COURT: All right. Great. Thanks very  
14 much.

15 THE WITNESS: Thank you.

16 THE COURT: You may step down for now.

17 THE WITNESS: Thank you.

18 THE COURT: Okay. Ms. Hickman?

19 MS. HICKMAN: Yes.

20 THE COURT: Are you okay to continue to go or  
21 do you need to have another break?

22 MS. HICKMAN: Judge, I'd ask if we can just  
23 have a quick break.

24 THE COURT: Okay. We can take an afternoon

1 recess now. It's almost 3:00 o'clock.

2 And, Mr. Hicks, who will be your next  
3 witness?

4 MR. HICKS: Detective Stefanie Brady.

5 THE COURT: And you can go ahead and give her  
6 notice that she can sign on. And we will be in recess.  
7 Thank you. Court's in recess.

8 (Recess.)

9 THE COURT: I'd ask that the appearance be  
10 made for the defense.

11 MR. ARRASCADA: Yes, Your Honor. John  
12 Arrascada, on behalf of Mr. Martinez Guzman, as is also  
13 Joe Goodnight, Kate Hickman, and Gianna Verness, who are  
14 all present in the room with me.

15 THE COURT: Thank you. And appearances for  
16 the State?

17 MR. HICKS: Chris Hicks, on behalf of the  
18 State, as well as Mark Jackson and Travis Lucia.

19 THE COURT: Thank you. Are we ready to  
20 proceed with calling the next witness?

21 MR. ARRASCADA: Your Honor, one matter before  
22 we begin to proceed. The next witness is going to be  
23 Detective Stefanie Brady. When we went to break, Your  
24 Honor, I looked at the participant list and saw that

1 Stefanie Brady's name was on the participant list. So  
2 I'd ask that you inquire whether she is in violation of  
3 the rule of exclusion by having listened to or heard part  
4 of the hearing prior to the recess.

5 THE COURT: I did tell them to go ahead and  
6 have her join as we were talking about the cleanup that  
7 we were discussing right before we broke, but I don't  
8 know when she joined.

9 Mr. Hicks?

10 MR. HICKS: Your Honor, I am not sure of when  
11 Mr. Arrascada's speaking of. I don't have a problem if  
12 you'd like to ask her. I don't believe she was in here  
13 during the testimony.

14 THE COURT: Okay. Well, we'll ask her then,  
15 Mr. Arrascada. Thank you.

16 MR. ARRASCADA: Thank you, Your Honor. Just  
17 in an abundance of caution.

18 THE COURT: Certainly. Thank you. So,  
19 Mr. Hicks, you're calling Stefanie Brady?

20 MR. HICKS: That's correct, Your Honor.

21 THE COURT: Thank you.

22 THE CLERK: Ms. Brady, this is the court  
23 clerk. You can turn on your camera and unmute your mic.  
24 There you go. Thank you.

1 THE COURT: Ma'am, I'm going to have the  
2 clerk swear you at this time.

3 THE CLERK: Please raise your right hand.

4

5 STEFANIE BRADY,

6 having been first duly sworn, was  
7 examined and testified as follows:

8

9 THE CLERK: Thank you.

10 THE COURT: So please state your name and  
11 spell your last name for the court reporter.

12 THE WITNESS: Stefanie Brady: B-R-A-D-Y.

13 THE COURT: And where are you physically  
14 located?

15 THE WITNESS: I'm at my home in Sparks,  
16 Nevada.

17 THE COURT: Thank you. Ms. Brady, were you  
18 able to hear Mr. Arrascada's question about when you  
19 joined the webinar?

20 THE WITNESS: Yes. I joined right as you  
21 guys were advising we are taking a break.

22 THE COURT: Did you hear any other testimony?

23 THE WITNESS: I did not.

24 THE COURT: Okay. Thank you.

1 Mr. Hicks, you may inquire.

2

3 DIRECT EXAMINATION

4 BY MR. HICKS:

5 Q Detective Brady, what's your current  
6 employment?

7 A I work for the Washoe County Sheriffs Office  
8 in the detective division.

9 Q And in that capacity, are you the lead  
10 detective for the Washoe County Sheriffs Office in the  
11 case of State of Nevada versus Wilber Ernesto Martinez  
12 Guzman?

13 A Yes.

14 Q And have you testified in these proceedings  
15 previously?

16 A Yes.

17 Q I'm going to get right to the point as to why  
18 we're here today. Did you have an occasion to review a  
19 June 17th, 2020 iWeb visit involving Inmate Wilber  
20 Ernesto Martinez Guzman?

21 A Yes, I did.

22 Q When you first reviewed it, did you recognize  
23 anyone -- aside from the defendant -- based on your  
24 investigation?

1           A       I recognized his mother and his sister.

2           Q       We'll get back to the iWeb visit in just a  
3 second. Did you also recently have occasion to review  
4 approximately 200 photographs provided to the State by  
5 the defense team in this case --

6           A       Yes, I did. I'm sorry.

7           Q       -- from their trip to El Salvador in  
8 September of 2019?

9           A       Yes.

10          Q       And did you go through all of those  
11 photographs?

12          A       I did.

13          Q       And if you could, in general, what were the  
14 types of photos you reviewed?

15          A       There was photographs that appeared to be old  
16 photographs of family, pictures of Wilber or Mr. Guzman  
17 when he was a young child, siblings, some other family  
18 members. There was also pictures of what appeared to be  
19 their home or a home and some exterior photographs of the  
20 property, appeared to be pictures of a school of some  
21 sort and then just other various pictures, I would assume  
22 depicting the area that he lived in.

23          Q       And have you been kept up with this case in  
24 the multiple hearings we've had since we've indicted the

1 defendant?

2 A I'm sorry?

3 Q Have you kept up with kind of the progress of  
4 this case up to today since we indicted the defendant?

5 A Yes.

6 Q And are you aware of the defense team going  
7 to El Salvador in 2019?

8 A Yes.

9 Q And in those photographs you reviewed, was  
10 there a time or like a date stamp on the photographs?

11 A Yes. I believe it was September of 2019. I  
12 don't remember the exact date in September.

13 Q And of the approximately 200 photographs you  
14 said you reviewed, was there one that was a video file?

15 A Yes.

16 Q Did you review that?

17 A Yes, I did.

18 Q And did you recognize who was depicted in  
19 that photograph?

20 A It looked like it was Mr. Arrascada, the back  
21 of him.

22 Q And where was he located?

23 A It was in like a field of some sort, very  
24 green field.

1           Q     And in the photographs that you reviewed, was  
2     there any reason that gave you pause to believe that  
3     those were from El Salvador?

4           A     No.

5           Q     Now, I want to square the photographs with  
6     the iWeb visits you reviewed. The first time you  
7     reviewed the iWeb visit, had you looked at those  
8     photographs before that time?

9           A     You know, I don't recall which I looked at  
10    first. So I can't answer which I looked at first.

11          Q     Let me make it simpler then. Had you looked  
12    at both the photographs and both the iWeb visit to try to  
13    see if there was any similarities you could notice?

14          A     Yes, I have.

15          Q     And did you withdraw some pictures from those  
16    approximately 200 you reviewed that you felt would be  
17    beneficial in comparing with the iWeb visit?

18          A     Yes.

19          Q     And did you notify the Washoe County District  
20    Attorneys Office of those photographs?

21          A     Yes.

22                     MR. HICKS: And at this time, Your Honor, I'd  
23    ask to pull up State's Exhibit Number 2.

24                     THE CLERK: Your Honor, this has not been

1 admitted, so I didn't know if you still wanted me to just  
2 pull it up.

3 THE COURT: You wanted to share -- You wanted  
4 her to identify it. Is that what we're trying to do?

5 MR. HICKS: Well, I was about to go through  
6 this process, Your Honor. We may be able to make it  
7 simpler. I see Mr. Arrascada is the attorney that's  
8 going to be doing the cross-examination of this witness.

9 I don't believe the defense is going to have  
10 any objection to these pictures. They're their  
11 photographs, so we might be able to just move on to the  
12 admission of them. If not, I'll have to go through each  
13 photograph with the witness.

14 THE COURT: Okay. So which exhibits are in  
15 the photograph array that you want to admit?

16 MR. HICKS: Exhibit 2 through 11.

17 THE COURT: Mr. Arrascada, are you going to  
18 have any objection or will you stipulate to the exhibits?

19 MR. ARRASCADA: Your Honor, I'd ask that they  
20 lay the foundation at least.

21 THE COURT: Okay. So for purposes of today's  
22 hearing, I'll allow you to lay the foundation which will  
23 allow the Court, obviously, to see the exhibits even  
24 though normally I wouldn't look at them until we admitted

1       them. But I'm going to have to be able to look at them  
2       because they're going to be on the screen saver, and so  
3       to act as the gatekeeper for the evidence and the trier  
4       of fact, I'm going to have to obviously see them. So I  
5       will not consider them, though, unless they are exhibits.

6               Ms. Clerk, you can show Exhibits 2.

7               Q       (BY MR. HICKS:) Detective Brady, are you  
8       able to see State's Exhibit 2?

9               A       Yes.

10              Q       And do you recognize that photograph as one  
11      of the pictures you saw within the approximately 200 you  
12      reviewed?

13              A       Yes.

14              MR. HICKS: Your Honor, I'd move to admit  
15      State's Exhibit 2.

16              THE COURT: Mr. Arrascada?

17              MR. ARRASCADA: Your Honor, we still object  
18      on lack of foundation.

19              THE COURT: Okay. What's the relevance of  
20      this photograph, Mr. Hicks?

21              MR. HICKS: Your Honor, I guess my response  
22      to the foundation part of the objection is Detective  
23      Brady has testified that she's aware that the defense  
24      went to El Salvador in early September of 2019.

1                   This photograph is of September 8th, 2019,  
2                   and she testified, in fact, that she even saw  
3                   Mr. Arrascada in the array of photographs. So I can go  
4                   into a little more as to why we're asking her to point it  
5                   out, but as far as the foundational objection, that's my  
6                   response.

7                   MR. ARRASCADA: Your Honor, we'd also object  
8                   on grounds of relevance.

9                   THE COURT: Okay. Mr. Arrascaada, are you  
10                  contesting that you took these photographs and provided  
11                  them in discovery?

12                  MR. ARRASCADA: Your Honor, that's not the  
13                  foundation. They have to lay the foundation.

14                  THE COURT: Okay. For purposes of today's  
15                  hearing, these photographs were taken by the defense and  
16                  provided to the State. I'm going to allow them to be  
17                  admitted --

18                  MR. ARRASCADA: Your Honor --

19                  THE COURT: -- they are relevant.

20                  MR. ARRASCADA: With all due respect, Your  
21                  Honor, the premises you're relying upon have not been  
22                  proven, so there's a lack of foundation to admit any of  
23                  these photographs.

24                  THE COURT: You mean the fact that you told

1 me that you went to El Salvador and that you told me you  
2 just got back from El Salvador and that I told you that  
3 you had to preserve any evidence? What hasn't been  
4 proven, Mr. Arrascada?

5 MR. ARRASCADA: Your Honor, the party that  
6 wants to move the photograph in has to lay a foundation  
7 of where it was obtained, when it was obtained, how it  
8 was obtained, under the circumstances it was obtained in  
9 order for it to be admissible as under foundation and  
10 what is it of?

11 THE COURT: Mr. Hicks?

12 MR. HICKS: Thank you, Your Honor. Again,  
13 the State would submit we've laid sufficient foundation.  
14 Everybody knows that the defense went to El Salvador.  
15 It's been stated on the record multiple times that they  
16 took photographs. It was provided to the State via  
17 discovery.

18 The foundation that Mr. Arrascada is hoping  
19 to find would require me to call Mr. Arrascada to the  
20 witness stand, which I'm willing to do, Your Honor, but  
21 for the purposes of this hearing, Detective Brady is  
22 going to explain to Your Honor similarities in  
23 photographs she saw that will support the conclusion that  
24 the iWeb visit is to the very same home that these

1 photographs were where they were taken.

2 THE COURT: Well, I understand  
3 Mr. Arrascada's objection. Normally, photographs are  
4 only admitted once they are authenticated by the person  
5 who took them in addition, and that would be the normal  
6 course.

7 However, for purposes of today's hearing, I  
8 do find that there is sufficient indicia of reliability  
9 that these photographs that as an offer of proof have  
10 been provided by Mr. Hicks, indicating that they were  
11 provided by Mr. Arrascada in discovery, that there is  
12 sufficient basis for the Court to allow the testimony for  
13 today's hearing.

14 If we were in a jury trial, perhaps I would  
15 require you to call Mr. Arrascada or whomever took these  
16 photographs and authenticate them. But for purposes of  
17 today's hearing and for purposes of the limited reason  
18 that you are asking that they be admitted, I'm going to  
19 overrule Mr. Arrascada's objection and not require you to  
20 call him as a witness.

21 Exhibits 2 through 11 -- and you've only  
22 offered two, but is that the only objection with regard  
23 to 2 through 11, Mr. Arrascada?

24 MR. ARRASCADA: Your Honor, one: You have

1 not seen all of them. And number two: Still, they've  
2 yet to establish any relevance.

3 THE COURT: I think his answer is he is  
4 objecting to the rest of the exhibits. So with regard to  
5 relevance, Mr. Hicks, you've told me that the relevance  
6 is the content of the photograph matching the iWeb?

7 MR. HICKS: Correct, Your Honor.

8 THE COURT: Overruled. Go ahead with Exhibit  
9 3.

10 Q (BY MR. HICKS:) Thank you, Your Honor.

11 Detective Brady, let's just stay on Exhibit 2  
12 now, if we could for a second. Could you please explain  
13 to the Court why you isolated that photograph for the use  
14 in this limited hearing today?

15 A In the iWeb visit, I just noticed that the  
16 cabinets, the brown cabinets stood out as matching the  
17 cabinets in the background during the visit as well as  
18 the white-and-blue tile.

19 MR. ARRASCADA: Objection, Your Honor. She's  
20 not an expert who can testify regarding these types of  
21 matters. She has no personal knowledge.

22 THE COURT: Are you finished?

23 MR. ARRASCADA: Yes.

24 THE COURT: Thank you. Mr. Hicks?

1                   MR. HICKS: Your Honor, you don't need to be  
2 an expert to be able to look at one photograph and to  
3 look at another one and draw similarities as an  
4 investigating agency. It goes to the weight of the  
5 evidence but not the admissibility.

6                   THE COURT: Overrule the objection. I do  
7 find it goes to the weight not to admissibility. You may  
8 continue.

9                   THE WITNESS: That's all. Those are the main  
10 observations from that photograph.

11                  Q     (BY MR. HICKS:) And, Detective Brady, on my  
12 view of the photograph, it's vertical instead of  
13 horizontal. Is that the same for you?

14                  A     Correct.

15                  Q     So the person on the bottom of the picture,  
16 who is that?

17                  A     It appears to be Mr. Guzman's mom, and  
18 Ms. Guzman -- it appears to be Mr. Guzman standing next  
19 to her.

20                  Q     And again, I didn't hear your entire answer.  
21 And so I apologize, but what were the --

22                  MR. ARRASCADA: Your Honor, before the  
23 answers are given again, I'm going to object. She's  
24 speculating.

1 THE COURT: The witness said, "It appears."  
2 I'm going to sustain the objection. If she is familiar  
3 with what the mother looks like and she says she thinks  
4 that's the mother, that's difference than, "It appears."

5 Mr. Hicks?

6 Q (BY MR. HICKS:) As I was saying, Detective  
7 Brady, I didn't hear your entire answer. Why was it you  
8 isolated this photograph?

9 A I noticed the countertops and the back tile,  
10 the white and the blue pattern look similar to the same  
11 tile and kitchen area in the video visit as well as the  
12 brown cabinets.

13 Q Now, Madame Clerk, if I could please see  
14 State's Exhibit 3.

15 And, Detective Brady, can you see State's  
16 Exhibit 3?

17 A These would be similar observations: The  
18 brown cabinets and the white tile with the pattern on the  
19 tile as well.

20 MR. HICKS: Your Honor, I'd move to admit  
21 State's Exhibit 3.

22 MR. ARRASCADA: Same objections, Your Honor.

23 THE COURT: Exhibit 3 is admitted for the  
24 same reasons as stated for Exhibit 2.

1 (Defendant's Exhibit No. 3 was admitted into evidence.)

2 Q (BY MR. HICKS:) If we could please move on  
3 to Exhibit 4. Detective Brady, as to Exhibit 4, why was  
4 it that you marked or you isolated this photograph?

5 A This is again the brown cabinets and the tile  
6 as well as the metal bowls on top of the cabinets;  
7 similar to stuff that I viewed in the video visit.

8 MR. HICKS: Your Honor, I'd move to admit  
9 State's Exhibit 4.

10 MR. ARRASCADA: Again, Your Honor, same  
11 objections. And regarding the metal bowl, Your Honor,  
12 unless Detective Brady has some type of specialty in  
13 identifying metal bowls and their similarities, I'd  
14 object on those grounds also.

15 THE COURT: Exhibit 4 is admitted. I still  
16 find your objections go to the weight and not  
17 admissibility of the evidence. You may proceed.

18 (Defendant's Exhibit No. 4 was admitted into evidence.)

19 Q (BY MR. HICKS:) State's Exhibit 5, please.  
20 Again, Detective Brady --

21 A Similar -- similar items, the metal bowls,  
22 the wood cabinets, the white tiled backsplash. And  
23 there's also the cement-type roofing or wall that's  
24 behind the cabinets similar to kind of the wall structure

1 in the house in the video visit.

2 MR. HICKS: Your Honor, I'd move to admit  
3 State's Exhibit 5.

4 MR. ARRASCADA: Same objections, Your Honor.

5 THE COURT: Okay. Same reasons I stated  
6 before, they're overruled. Exhibit 5 is admitted.

7 (Defendant's Exhibit No. 5 was admitted into  
8 evidence.)

9 Q (BY MR. HICKS:) State's Exhibit 6, please.  
10 Detective Brady, can you see State's Exhibit 6?

11 A Yes. Could you move it up just a little bit?

12 Q Is there a way to --

13 A So this one, what I noticed was the door  
14 frame. It's in the video visit, you can see where --

15 MR. ARRASCADA: Your Honor, sorry. There's  
16 no question pending.

17 MR. HICKS: Detective Brady, before I ask you  
18 a question, Ms. Clerk, is there any way to flip these so  
19 they're horizontal?

20 THE CLERK: I was trying to see if there was  
21 a way. And at this point, I don't --

22 MR. HICKS: If you right click, you may be  
23 able to do it.

24 THE CLERK: Oh, thank you. We went the wrong

1 way. I'm almost there.

2 Q (BY MR. HICKS:) Detective Brady, is State's  
3 Exhibit 6 one of the photographs you reviewed of the  
4 photographs that were provided to the State from the  
5 defense from their trip to El Salvador in 2019?

6 A Yes.

7 Q And is there consistency with that photograph  
8 and with what you reviewed on the iWeb visit that caused  
9 you to isolate this photograph for this particular  
10 hearing?

11 A Yes, there is.

12 Q And what is that?

13 A It's mainly the door frame, that white tile  
14 that goes around, and then there's a wind chime that's  
15 hanging, and then the roof cover over the doorstep. In  
16 the video visit, they are talking in that door frame and  
17 that wind chime is there. The white tile is there. The  
18 black framing around the windows is also very similar.

19 MR. HICKS: Your Honor, I'd move to admit  
20 State's Exhibit 6.

21 MR. ARRASCADA: Your Honor, I'd object under  
22 the same grounds and also again regarding Detective  
23 Brady's observations. These are very common building  
24 materials that could be from anywhere and anyplace at any

1 time, so I raise the same objection as far as relevance  
2 and lack of foundation regarding the photos.

3 THE COURT: Exhibit 6 is admitted for the  
4 same reasons as I've indicated before, and your  
5 objections go to the weight and not the admissibility.

6 (Defendant's Exhibit No. 6 was admitted into  
7 evidence.)

8 Q (BY MR. HICKS:) State's Exhibit 7, please.  
9 Detective Brady, do you recognize State's Exhibit 7?

10 A Yes.

11 Q And is this also a photograph that you  
12 reviewed in the approximately 200 photographs provided to  
13 the State by the defense regarding their trip to El  
14 Salvador in September of 2019?

15 A Yes, it is.

16 Q And why did you isolate this photograph for  
17 today's hearing?

18 A This is just another photograph of that same  
19 doorway with the same wind chime. There's also the  
20 orangish flowers that are in there. I noticed that in  
21 the video visit as well, some of the trees and stuff. It  
22 looks like the same -- similar scenery.

23 MR. HICKS: Your Honor, I'd move to admit  
24 State's Exhibit 7.

1 MR. ARRASCADA: Your Honor, same objection.  
2 And also, Detective Brady used the verb same and similar,  
3 which makes it speculative. So I'd ask that Exhibit 7  
4 not be admitted.

5 THE COURT: Overruled. I think the same or  
6 similar vegetation goes to the weight. The Court will  
7 have an opportunity to review those that for itself and  
8 decide whether or not it is the same location. But for  
9 purposes of today's date and hearing time, I'm finding  
10 your objection overruled, and we will move on.

11 Q (BY MR. HICKS:) Detective Brady, we're going  
12 to show you State's Exhibit 8 next. Is this one of the  
13 photographs that you reviewed in the approximately 200  
14 photographs that the defense team provided to the State  
15 from their trip to El Salvador in September of 2019?

16 A Yes.

17 Q And why did you isolate this picture for  
18 today's hearing?

19 A This building structure looks, again, like  
20 something seen in the video to include the white-colored  
21 bricks toward the top and the dark-colored bricks toward  
22 the bottom, same colored or same roof type on that  
23 structure.

24 MR. HICKS: Thank you. Your Honor, I'd move

1 to admit State's Exhibit 8.

2 MR. ARRASCADA: Same objection, Your Honor.

3 THE COURT: It Exhibit 8 is admitted for the  
4 same reasons as previously stated.

5 (Defendant's Exhibit No. 8 was admitted into  
6 evidence.)

7 Q (BY MR. HICKS:) Detective Brady, we're going  
8 to show you State's Exhibit 9 next. Thank you.  
9 Detective Brady, you know, Your Honor, I believe that  
10 that's very similar to 8. I'm not going to move to admit  
11 State's Exhibit 9.

12 Could we move to State's Exhibit 10, please.  
13 Detective Brady, can you see State's Exhibit 10?

14 A Yes.

15 Q Is that one of the photographs from the  
16 approximately 200 photographs that you reviewed that were  
17 provided by the defense team to the State from their trip  
18 to El Salvador in September of 2019?

19 A Yes.

20 Q And why did you isolate that picture for  
21 today's hearing?

22 A This is again another view of the building  
23 structure from Exhibit 8, and it's -- you can see in the  
24 video visit almost the same point of view when they're

1       talking and panning around with the camera and you see  
2       that structure in the background.

3               MR. HICKS: Thank you. Your Honor, I'd move  
4       to admit State's Exhibit 10.

5               MR. ARRASCADA: Same objection.

6               THE COURT: Exhibit 10 is admitted for the  
7       same reason.

8               Q       (BY MR. HICKS:) Lastly, State's Exhibit 11,  
9       please. Detective Brady, can you see State's Exhibit 11?

10              A       Yes.

11              Q       And is this also a photograph that you  
12       withdrew from those approximately 200 pictures?

13              A       Yes, it is.

14              Q       And is that a similar photograph to State's  
15       Exhibit 10 and State's Exhibit 8?

16              A       Yes, it is.

17              Q       And why did you isolate this particular  
18       photograph?

19              A       It's just another view of the different  
20       colors of that structure. You can see it in the video,  
21       the two different colors on that structure are pretty  
22       identifiable. They stood out.

23              MR. HICKS: Thank you. Your Honor, I'd move  
24       to admit State's Exhibit 11.

1 MR. ARRASCADA: Same objection, Your Honor.

2 THE COURT: Okay. I'll overrule that  
3 objection and admit Exhibit 11 for the same reasons as  
4 previously stated.

5 Q (BY MR. HICKS:) Detective Brady, in regards  
6 to the exhibits that we've just admitted, did you find  
7 similar views when you watched the June 17th, 2020 iWeb  
8 visit?

9 A Yes, I did.

10 MR. HICKS: Your Honor, at this time, I'd ask  
11 that we play Exhibit 1 that was admitted when Ms. Moreno  
12 testified earlier.

13 THE COURT: Okay. Ms. Clerk, you may play  
14 Exhibit 1.

15 (Whereupon, a video was played without sound.)

16 MR. HICKS: Your Honor, we are not able to  
17 hear the sound.

18 THE COURT: Did you want to be able to hear  
19 the sound?

20 MR. HICKS: Yes, Your Honor.

21 THE COURT: Okay. We'll check and see how we  
22 are.

23 THE CLERK: Sorry. I was on mute. I'm  
24 sorry. I couldn't hear over the sound. Did they want it

1 muted?

2 THE COURT: No. We can't hear the sound.

3 THE CLERK: Oh.

4 THE COURT: So you have to leave your  
5 microphone on when you share the screen, I think.

6 THE CLERK: Sorry. As you saw, I was talking  
7 to you guys, and I had it muted. I didn't realize it.  
8 I'm sorry. Would you like me to rewind it?

9 THE COURT: Please.

10 (Whereupon, a video played in Spanish.)

11 DEFENDANT'S MOTHER: "I love you."

12 THE DEFENDANT: "Mama, I love you".

13 Q (BY MR. HICKS:) Detective Brady, there you  
14 are. The two females that are in the very beginning of  
15 the video and the very end, one is a teenager, and the  
16 other is a woman in a white shirt with blue, it appears  
17 to be blue writing. Based on your investigation, are you  
18 able to identify who those two people are?

19 A Yes. That's his mother and his sister.

20 Q Do you recall his sister's name?

21 A I don't recall her name.

22 MR. HICKS: Court's indulgence. The State  
23 has no further questions, Your Honor.

24 THE COURT: Thank you. Mr. Arrascada,

1 cross-examination?

2 MR. ARRASCADA: Yes. Thank you, Your Honor.

3

4 CROSS-EXAMINATION

5 BY MR. ARRASCADA:

6 Q Detective Brady, you know Armando Mejia;  
7 correct?

8 A Armando Mejia?

9 Q Orlando Mejia?

10 A Orlando. I don't know him, but yes.

11 Q He's --

12 A Aware of him.

13 Q You're aware of him. He's a witness in this  
14 case, right? He was involved in this case?

15 A I didn't speak to him, so I don't know what  
16 he looks like.

17 Q But you know he lives in Carson City, Nevada;  
18 correct?

19 A Yes.

20 Q Okay. And Heidi Miranda, you also know she  
21 lives in Carson City, Nevada; correct?

22 A At the time of the investigation, yes. I  
23 don't know where she currently lives.

24 Q To refresh your recollection, Mr. Guzman's

1 sister's name. Does Yasmin ring a bell?

2 A Yes, it does.

3 Q And she was deported to El Salvador; correct?

4 A I don't know where she was deported to. I  
5 don't know. I don't know the details of that.

6 Q But you know that they are from El Salvador;  
7 correct?

8 A I do.

9 Q Okay. In your preparation for today, what  
10 materials did you review?

11 A I reviewed the video and the photographs.

12 Q Did you review any police reports?

13 A I did not review any reports.

14 Q Did you review any other documents related to  
15 the case?

16 A No.

17 Q Did you review any other photographs related  
18 to the case?

19 A None, other than what we've spoke of that you  
20 provided.

21 Q Then I don't want you to tell me what was  
22 said, but did you attend a witness preparation meeting  
23 with the district attorney?

24 A Yes.

1           Q     And was that done today or last week? When  
2 was that done?

3           A     It was done last week.

4           Q     The film we saw, it was an iWeb; correct?

5           A     That is correct.

6           Q     And it appeared to be from a telephone;  
7 correct?

8           A     It was something that could move around.  
9 Yes.

10          Q     Okay. So as opposed to, say, a personal  
11 computer or something. It appeared it was a small --  
12 some type of small-screen device?

13          A     Yes.

14               MR. ARRASCADA: Okay. Your Honor, at this  
15 time, I would ask for the interpreter to listen to the  
16 beginning at section 145 to 215 and interpret what is  
17 said regarding the device; to interpret it into English.

18               THE COURT: Have you previously asked them to  
19 do that or do you have a witness who has done a  
20 transcript of this?

21               MR. ARRASCADA: Your Honor, I'm aware of what  
22 it says, but I would ask if the interpreter could do it.

23               THE COURT: Pretty hard to do, for them to  
24 listen to it and not be able to stop it and just you're

1 asking them to interpret.

2 MR. ARRASCADA: Your Honor, we're asking for  
3 two minutes of time. Really, 30 seconds of time.

4 THE COURT: Okay. I guess we can have the  
5 interpreter do that. However, I'd have to have the  
6 second interpreter -- the interpreter that's interpreting  
7 for the defendant couldn't do it at the same time. And  
8 you don't have an interpreter available, Mr. Arrascada?

9 MR. ARRASCADA: We do not.

10 THE COURT: Then I will have to take a short  
11 recess. We'll see if we can get both interpreters in the  
12 call and see if they -- Ms. Clerk, you're going to have  
13 to cue it up and see. While on this break, we can let  
14 you cue it up to the time where Mr. Arrascada and  
15 Mr. Hicks can view it.

16 I would think, in most instances, it will be  
17 better for the witness who wants it translated to  
18 translate it before the court hearing rather than trying  
19 to translate a video in the middle of a court hearing.

20 MR. ARRASCADA: And I understand, Your Honor.  
21 I apologize. Under these difficult circumstances, it's  
22 hard to figure out what's the right thing to do at times.

23 THE COURT: I know. I know. We're all just  
24 making due here. So we will take a short recess. And I

1 will be here and the witnesses won't be here, but the  
2 court clerk, you, Mr. Hicks and the court interpreters  
3 can see if they can make this work. Court is in recess.

4 (Recess.)

5 THE COURT: We took a short break. I'd like  
6 to make the defense make appearances as to who is  
7 present.

8 MR. ARRASCADA: Thank you, Your Honor. John  
9 Arrascada, on behalf of Mr. Martinez Guzman. Also in the  
10 room with me is Mr. Goodnight, Ms. Hickman and  
11 Ms. Verness.

12 THE COURT: Thank you. And on behalf of the  
13 State?

14 MR. HICKS: Chris Hicks, Mark Jackson and  
15 Travis Lucia.

16 THE COURT: Thank you. Ms. Brady, you're  
17 still on the stand. You're still under oath.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Mr. Arrascada, you had a request.

20 Q (BY MR. ARRASCADA:) Detective Brady, on my  
21 last question I asked if you knew what type of device was  
22 being watched -- was being used for the iWeb meeting;  
23 correct?

24 A Correct. And I don't know exactly what

1       they're using.

2               Q       Okay. And do you know if the Guzman family  
3       owns a device that would allow them to do iWeb meeting  
4       like that at any time at their home?

5               A       I do not know that.

6               MR. ARRASCADA: Your Honor, I'd ask now that  
7       the interpreter share with the interpretation the  
8       beginning of the iWeb video.

9               THE COURT: You're asking the iWeb video be  
10      played from what number to what number?

11              MR. ARRASCADA: It's 145 to 215. I'm sorry,  
12      Your Honor. 145 to 158.

13              THE COURT: Okay. Thank you. Ms. Clerk,  
14      will you play that, please. You have to get off mute.  
15      Ms. Clerk, you're still on mute.

16              THE CLERK: Sorry.

17              (Whereupon, a video played in Spanish.)

18              INTERPRETER ESCOBAR: Your Honor, can  
19      everybody hear me?

20              THE COURT: Yes.

21              INTERPRETER ESCOBAR: Okay. "Is it a  
22      laptop?" says Mr. Martinez's son.

23              Mom says, "No. That's a wood picture, wooden  
24      picture frame."

1                   Mr. Martinez's moms says, "It's not a  
2                   computer on the laptop that you're -- no, I mean the  
3                   computer that you're" -- I'm sorry. The interpreter's  
4                   mistake.

5                   "No, I mean the computer that you're on. Is  
6                   that a laptop?"

7                   And then mother says: "No, son. It's the  
8                   telephone that Melvin had been on."

9                   Q       (BY MR. ARRASCADA:) Detective Brady, do you  
10                   know who Melvin is?

11                   A       I do not.

12                   Q       Did from listening to what Ms. Guzman said,  
13                   though, the family does not have the ability to do an  
14                   iWeb without Melvin's phone; correct?

15                   MR. HICKS: Objection, Your Honor. That  
16                   calls for speculation.

17                   THE COURT: Sustained.

18                   Q       (BY MR. ARRASCADA:) You're aware they had to  
19                   borrow an iPhone in order to have this iWeb visit;  
20                   correct?

21                   MR. HICKS: Objection, Your Honor. That also  
22                   calls for speculation and misstates what they said.

23                   THE COURT: Sustained.

24                   Q       (BY MR. ARRASCADA:) You heard that they had

1 to get a phone from a -- it was Melvin's phone to watch  
2 the video to do the iWeb; correct?

3 A Yes, I heard that it's Melvin's phone.

4 MR. HICKS: One second. Again, I would  
5 object. The translation speaks for itself. The video  
6 speaks for itself. I believe any commentary by Detective  
7 Brady, as asked, is speculation.

8 THE COURT: I'm going to sustain that  
9 objection. And, Mr. Arrascada, if you're confused about  
10 the objections, it's really about the supposition that  
11 they had to get it. That's not what the translation was.

12 Q (BY MR. ARRASCADA:) Detective Brady, we know  
13 that they used a phone from a person named Melvin;  
14 correct?

15 A Yes.

16 Q Okay. And Detective Brady, have you, in  
17 preparation for today or for this case, have you spoken  
18 to anyone in El Salvador?

19 A I have not.

20 Q Have you gone in and done any investigation  
21 in El Salvador?

22 A I have not.

23 Q Have you reached out to anyone in the El  
24 Salvadorian government?

1           A     No.

2           Q     In this iWeb video, we saw a family that was  
3 very excited to see each other, didn't we?

4           A     Yes.

5           MR. HICKS:  Objection, Your Honor, Your  
6 Honor.  Calls for speculation.  The video is in evidence.  
7 We can all review the video and draw our own conclusions.

8           THE COURT:  Okay.  I think it is argument,  
9 Mr. Arrascada, your questions.  I can see what people's  
10 reactions were.

11          Q     (BY MR. ARRASCADA:)  And we also know that  
12 this is the first time Mr. Guzman had seen his family  
13 since 495 days since he'd been transferred to Parr  
14 Boulevard; correct?

15          MR. HICKS:  Objection, Your Honor.  That  
16 again calls for speculation, and there's nothing in her  
17 testimony that pertains to that.

18          THE COURT:  Sustained.

19          Q     (BY MR. ARRASCADA:)  Detective, have you been  
20 monitoring Mr. Guzman's conversations that he's had while  
21 he's been at Parr Boulevard?

22          A     Not regularly.  No.

23          Q     But you've been briefed upon them; correct?

24          A     Occasionally, yes.

1 Q Okay. And this is the first time you were  
2 briefed that he'd had an iWeb with his family, right?

3 A This is the first one that I've watched.  
4 Yes.

5 Q And it's the first time you've heard he's had  
6 an iWeb with his family, isn't it?

7 A I didn't specifically ask when or how much he  
8 spoke to his family. This is the first one that I've  
9 watched.

10 Q And in watching the video, you saw the family  
11 needed a third party to help facilitate the phone call;  
12 correct?

13 MR. HICKS: Objection, Your Honor. Calls for  
14 speculation.

15 THE COURT: Sustained.

16 Q (BY MR. ARRASCADA:) Your Honor, she can  
17 answer the question whether she knows or not. I'll lay a  
18 foundation, Your Honor.

19 Detective Brady, did you see a third person  
20 in the video screen?

21 A I did see a third person.

22 Q That was not with the Guzman family or at  
23 Parr Boulevard; correct?

24 A Correct.

1 Q And this person was facilitating their call?

2 A I don't know that he was facilitating. I  
3 don't know that answer.

4 Q Okay. But he did log off after a period of  
5 time; correct?

6 A Yes.

7 Q Several times throughout the call, you could  
8 hear either Mr. Guzman or members of his family saying in  
9 the Spanish word "como;" correct?

10 A I didn't pay much attention to specific words  
11 because I can't interpret what they're saying, so I  
12 wasn't paying attention to words.

13 Q Did you see if many times it that they  
14 appeared that they couldn't understand what the other was  
15 saying and they asked to repeat it?

16 MR. HICKS: Objection, Your Honor. Calls for  
17 speculation.

18 THE COURT: Sustained.

19 Q (BY MR. ARRASCADA:) Through that video, you  
20 weren't able to see what all people were doing or saying;  
21 correct?

22 A Correct.

23 Q And you don't know how one may have been  
24 influencing another when they were talking. Is that

1 right?

2 A I could only see what was on the screen.

3 Q And there were times during it with the  
4 screen where you'd see kids come in, and I think it's  
5 called Zoom bomb the screen and show their faces;  
6 correct?

7 A Various people came in. Yes.

8 Q There was never any one-on-one confidential  
9 discussions that were able to be held during that  
10 20-minute call, were there?

11 A Not that I saw.

12 Q Now, how long have you been a detective?

13 A Six years.

14 Q And how long have you been in law  
15 enforcement?

16 A Fifteen.

17 Q And in law enforcement -- when did you  
18 graduate from POST?

19 A 2005. May.

20 Q And when you graduated from POST, you take an  
21 oath; correct?

22 A I do.

23 Q And that oath is to uphold the Constitution  
24 of the United States and the Constitution of Nevada;

1 correct?

2 A Yes.

3 Q And that would include upholding the Eighth  
4 Amendment against cruel and unusual punishment; correct?

5 A Yes.

6 Q And that means that if you saw that the  
7 Eighth Amendment was being violated or not being  
8 respected, you'd have an oath, a duty to make sure that  
9 it's supported and respected, don't you?

10 MR. HICKS: Objection, Your Honor.  
11 Argumentative.

12 THE COURT: Did you want to be heard,  
13 Mr. Arrascada?

14 MR. ARRASCADA: Just it's not argumentative,  
15 Your Honor. She can answer the question.

16 THE COURT: I think it's not relevant to what  
17 -- if there's something you think is of some relevance  
18 that she has violated someone's constitutional rights.  
19 Unless that is where you're going, I don't see any  
20 relevance.

21 MR. ARRASCADA: Your Honor, this whole case  
22 is about our client's Eighth Amendment constitutional  
23 right to determine how does a fair hearing occur to see  
24 if he's eligible or ineligible for execution pursuant to

1 the Eighth Amendment of the United States Constitution.

2 THE COURT: I'll sustain the objection. This  
3 witness is not required to do that.

4 Q (BY MR. ARRASCADA:) Detective, you've done a  
5 lot of interviews in your career; correct?

6 A Yes, sir.

7 Q And it's important to interviews -- you're  
8 trained it's important to do them face-to-face; correct?

9 A It's best.

10 Q That's best practices, right?

11 A Yes.

12 Q And it's important so you can see people,  
13 make eye contact with them?

14 MR. HICKS: Your Honor, I'm going to object  
15 to the relevance of this. We've heard exhaustive  
16 testimony about this from experts in the field of the  
17 particular topic we're here to address. She's a  
18 detective, a fine detective, but she's not a  
19 neuropsychologist.

20 THE COURT: Why is it relevant,  
21 Mr. Arrascada, for her opinion or her experience as an  
22 investigator?

23 MR. ARRASCADA: Well, Your Honor, she's just  
24 been the witness who has authenticated and they played a

1 video, an iWeb video from our client with his family, and  
2 her observations are important to go to the reliability  
3 and the different affects that are there that can have  
4 impact upon iWeb and that we saw through the video.

5 THE COURT: Objection sustained.

6 Q (BY MR. ARRASCADA:) Detective, you're not an  
7 expert in wi-fi, are you?

8 A Correct.

9 Q And you're not an expert in connectivity?

10 A Correct.

11 Q You have no knowledge or information  
12 regarding the ability or connectivity of wi-fi for the  
13 Guzman family in El Salvador, do you?

14 A Correct.

15 Q Detective, you're not an expert in conducting  
16 mitigation on for -- in conducting mitigation or Atkins  
17 investigations, are you?

18 A No.

19 Q As a matter of fact, probably the first time  
20 you heard of Atkins was in this case; is that correct?

21 A That is correct.

22 Q And the standard of care in Atkins is very  
23 similar to your standard of care as a detective. It's to  
24 conduct multiple face-to-face interviews with witnesses

1 or subjects and to do it in a controlled environment.  
2 When you're on Zoom, the other party, there's not a  
3 control of the environment, is there?

4 MR. HICKS: Objection, Your Honor.  
5 Relevance.

6 THE COURT: Sustained.

7 Q (BY MR. ARRASCADA:) As we saw on the video  
8 with the Guzman family, there was no control of the  
9 environment, was there?

10 MR. HICKS: Objection, Your Honor.  
11 Relevance.

12 THE COURT: Sustained. This is argument,  
13 Mr. Arrascada. Please move on.

14 MR. ARRASCADA: Your Honor, now we're  
15 discussing the video itself and what she observed in the  
16 video.

17 THE COURT: You're arguing what you observed  
18 and asking her to confirm it. This document, the video,  
19 is in evidence. At argument, you may argue what it  
20 means.

21 MR. ARRASCADA: Did you observe -- Thank you,  
22 Your Honor. Did you observe --

23 THE COURT: Pardon?

24 MR. ARRASCADA: I said thank you, Your Honor.

1 THE COURT: You're welcome.

2 Q (BY MR. ARRASCADA:) Did you observe many  
3 family members talking at once?

4 A Yes.

5 Q Did you observe many family members coming  
6 and going from the conversations?

7 A Yes.

8 MR. HICKS: Your Honor, I'm sorry. I'm not  
9 trying to be difficult, but I'm going to object again on  
10 relevance. This is in evidence. So again, my objection  
11 is relevance.

12 THE COURT: I'm sustaining the objection.

13 MR. ARRASCADA: Court's indulgence. I have  
14 no further questions.

15 THE COURT: Thank you. Mr. Hicks?

16 MR. HICKS: Nothing further, Your Honor.  
17 Thank you.

18 THE COURT: May this witness be excused?

19 MR. HICKS: Yes.

20 THE COURT: Mr. Arrascada, any objection to  
21 her being excused?

22 MR. ARRASCADA: No objections, Your Honor.

23 THE COURT: Okay. Thank you. Thank you.  
24 You are excused.

1 THE WITNESS: Thank you.

2 THE COURT: Mr. Hicks, do you have any  
3 further questions?

4 THE WITNESS: No, Your Honor. The State has  
5 no further witnesses to present.

6 THE COURT: Okay. Mr. Arrascada, have you  
7 determined you have rebuttal?

8 MR. ARRASCADA: Court's indulgence.

9 THE COURT: Certainly.

10 MR. ARRASCADA: Your Honor, may we take about  
11 a 15 to 20-minute break so we can have some discussion  
12 and then we'll go back on the record?

13 THE COURT: I said it's 4:30. If we take a  
14 20-minute break, it's ten minutes to 5:00, so I just need  
15 to know if you want to do -- I don't need the details of  
16 what more you might have.

17 MR. ARRASCADA: Can we have 15 minutes,  
18 Judge, or even ten?

19 THE COURT: Sure. Sure. You can take a  
20 15-minute recess. Court will be in recess. Thank you.

21 (Recess.)

22 THE COURT: The record should reflect we're  
23 back after that short recess.

24 Mr. Arrascada, will you make your appearance

1       for the defense.

2               MR. ARRASCADA:   Yes, Your Honor.   John  
3   Arrascada, on behalf Mr. Martinez Guzman.   Present in the  
4   room with me is Mr. Goodnight, Ms. Hickman and  
5   Ms. Verness.

6               THE COURT:   Thank you.   Mr. Hicks, would you  
7   make your appearance for the State.

8               MR. HICKS:   Yes, Your Honor.   Chris Hicks,  
9   Mark Jackson and Travis Lucia.

10              THE COURT:   In Washoe County, right?

11              MR. HICKS:   In Washoe County, Nevada.

12              THE COURT:   Thank you.   We have the same  
13   court interpreter and other staff.   We will proceed now.

14              Mr. Arrascada?

15              MR. ARRASCADA:   Your Honor, we, too, are in  
16   Washoe County.   We will not be presenting a rebuttal  
17   case.

18              THE COURT:   Okay.   So that puts us in a  
19   situation where we need to make a decision about the  
20   resolution of the motion here.   And I think it would  
21   probably be most effective to have the defense actually  
22   brief their position.   I know they've made some exhibits  
23   that we haven't even talked about yet.   And so I think  
24   something in writing would be the most effective way.

1 I appreciate the advocacy of both  
2 Mr. Arrascada and Mr. Hicks, but I would believe that a  
3 written document that supports the request and how long  
4 of a continuance the request is being made for would be  
5 the most effective way for me to give a complete decision  
6 on the issue.

7 So I'm thinking that we're going to have a  
8 transcript from today. It will be tomorrow, you'll have  
9 it -- that's Thursday -- I think in ten days to give me  
10 either closing arguments in writing and then the State to  
11 give their closing arguments in writing ten days  
12 thereafter, and then the defense can give me their  
13 rebuttal argument, which they would be able to do five  
14 days after that, if everyone is in agreement with that  
15 schedule.

16 MR. HICKS: That's fine with the State, Your  
17 Honor.

18 MR. ARRASCADA: Your Honor, one question. I  
19 respect the Court's request for briefing. What is it  
20 exactly that the Court is looking at or looking for in  
21 the brief? What is the issue you want briefed?

22 THE COURT: Actually, I want you to make your  
23 closing argument in writing, and if you want to attach --  
24 if you want to rely upon any evidence that's been

1 presented in the case, you can certainly cite to that  
2 evidence with specificity.

3 We have all of the transcripts. And then you  
4 had marked a case. If you want to argue that case, you  
5 would argue that case that's already been marked as an  
6 exhibit in this case. It wasn't admitted, but you do  
7 have a case. So I just want your closing argument in  
8 writing.

9 You give the State an opportunity to oppose  
10 in writing and then you rebut in writing so that I can  
11 make a decision because my decision has to be in writing,  
12 and I would like to be completely -- I want to make sure  
13 that I completely understand your arguments and all of  
14 your arguments with regard to this request for a  
15 continuance and how long you want the continuance to be.

16 What we have today is a request to not  
17 fulfill the obligations of the pretrial order wherein the  
18 Court ordered you to be prepared to notice on experts. I  
19 think you've asked for relief from that.

20 You've asked for relief from preparing the  
21 Atkins motion, which you have said you planned on making  
22 based upon Dr. Mahaffey's original evaluation of the IQ  
23 of your client, but that you have been unable to complete  
24 the Atkins investigation and therefore have not filed the

1 motion. And you want relief from the timeline that was  
2 originally given to you for that. I need to know how  
3 much relief you want and how long.

4 And then you've asked for the trial to be  
5 continued, which I did vacate the jury, but I have not  
6 reset it yet. And so we have to, obviously, do that in  
7 light of your request with regard to Atkins.

8 MR. ARRASCADA: Okay. Thank you.

9 THE COURT: So, Ms. Clerk, can you give those  
10 dates when those would be due?

11 THE CLERK: Sure, Your Honor. And would you  
12 like the defense timeline to start as of tomorrow when  
13 they receive the transcript or as of Friday? Like the  
14 day after the receipt of the transcripts?

15 THE COURT: When will they get the  
16 transcripts?

17 THE CLERK: Well, they're typically filed  
18 today. Afternoon session usually is filed today, but  
19 they would not be in receipt of those transcripts until  
20 probably tomorrow.

21 THE COURT: Okay.

22 MR. ARRASCADA: Your Honor, may I make a  
23 suggestion?

24 THE COURT: I don't care when it starts. If

1       you rather it starts on Friday, that's fine, Your Honor.

2               MR. ARRASCADA: I was going to make the  
3       suggestion, Your Honor, that our closing argument brief  
4       be due on August 17th, which is a Monday, which is about  
5       two weeks from now.

6               THE COURT: So rather than ten days, you want  
7       two weeks?

8               MR. ARRASCADA: Yes, Your Honor.

9               THE COURT: Okay. So then the State, would  
10      you like two weeks after their brief to respond?

11              MR. HICKS: No, Your Honor. We would like to  
12      get this back on track and moving forward, whichever way  
13      it's going to go. So we can have ten days. That's fine.

14              THE COURT: Okay. And then so, Ms. Clerk,  
15      will you give those dates?

16              THE CLERK: Sure. The defense's opening  
17      brief would be due August 17th. The State's brief would  
18      be due August 27th. The defense's reply brief would be  
19      due August 1st. Sorry. September 1st.

20              THE COURT: And I just want to make sure that  
21      counsel understand that if you are relying on the  
22      evidence that's noted in the transcript, you should cite  
23      with specificity to page and line of the transcript that  
24      you're referring to. And the other exhibits that have

1       been admitted, you certainly can comment on. And again,  
2       with specificity of where you're looking at and what  
3       you're looking at.

4               And if there's nothing further for today, I  
5       think that will conclude the hearings on this matter, and  
6       we will set a status hearing on the case so that we don't  
7       miss doing anything on it.

8               And, Miss Clerk, would you look for perhaps  
9       September 15th, around there for the next hearing?

10              THE CLERK:   Would September 16th at 3:00  
11       o'clock work for everybody?

12              MR. HICKS:   Works for the State, Your Honor.

13              MR. ARRASCADA:   Yes, Your Honor.

14              THE CLERK:   I just want to put everybody on  
15       notice that I also have to confirm with the jail their  
16       availability for a courtroom or the use of an iPad  
17       although we do already have the courtroom reserved for a  
18       1:30 hearing that day, so I'm hopeful that they will  
19       still have that courtroom available for us.

20              THE COURT:   I'm pretty confident that we can  
21       get the facilities at that time since you're both  
22       available. So we will set it for 3:00 o'clock on  
23       September 16th. Is there anything further for today?

24              MR. ARRASCADA:   Nothing from the defense,

1 Your Honor.

2 MR. HICKS: No, Your Honor.

3 THE COURT: Before we recess, I want to thank  
4 the interpreters today. I know that you have done a  
5 great job all week, but the ability to interpret a piece  
6 of evidence the way you did via Zoom and that it was a  
7 video, and your willingness to cooperate with that and  
8 help everyone out is greatly appreciated. So I want you  
9 to know we appreciate it. And I know it's beyond your  
10 job description that we asked you to do that. So thank  
11 you very much.

12 INTERPRETER MILLER: Thank you, Your Honor.

13 THE COURT: I also want to thank the court  
14 clerk, who has experienced this new experience of shared  
15 screens of exhibits, and I appreciate the efforts you've  
16 made. So it has made it possible today. So thank you.  
17 We appreciate all of your attendance today, and I will be  
18 seeing you back in September.

19 Mr. Guzman, do you understand that we're  
20 going to be in recess now?

21 THE DEFENDANT (THROUGH INTERPRETER ESCOBAR:)  
22 Yes, Your Honor.

23 THE COURT: Okay. Thank you. Court is in  
24 recess.

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(The proceedings concluded at 4:56 p.m.)

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1       STATE OF NEVADA    )  
2       COUNTY OF WASHOE )    ss.

3  
4                   I, NICOLE J. HANSEN, Certified Court  
5       Reporter in and for the State of Nevada, do hereby  
6       certify:

7                   That the foregoing proceedings were taken by  
8       me at the time and place therein set forth; that the  
9       proceedings were recorded stenographically by me and  
10      thereafter transcribed via computer under my supervision;  
11      that the foregoing is a full, true and correct  
12      transcription of the proceedings to the best of my  
13      knowledge, skill and ability.

14                  I further certify that I am not a relative  
15      nor an employee of any attorney or any of the parties,  
16      nor am I financially or otherwise interested in this  
17      action.

18                  I declare under penalty of perjury under the  
19      laws of the State of Nevada that the foregoing statements  
20      are true and correct.

21                  Dated this July 29th, 2020.

22                                   Nicole J. Hansen  
23                                   -----  
24                                   Nicole J. Hansen, CCR #446, RPR,  
                                  CRR, RMR

## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of January 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: Jennifer P. Noble, Chief Appellate Deputy and Marilee Cate, Appellate Deputy, Washoe County District Attorney's Office.

I certify that I served a copy of this document by e-mailing a true and correct copy thereof to:

Hon. Connie J. Steinheimer  
Second Judicial District Court, Dept. 4

Christopher J. Hicks  
Washoe County District Attorney

Mark Jackson  
Douglas County District Attorney

John Reese Petty  
John Reese Petty  
Washoe County Public Defender's Office