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JORGE MENDOZA,

VS.

Respondent.

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Jul 25 2021 03:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**Appeal from the Postconviction Denial of Relief for Writ of Habeas
Corpus - Eighth Judicial District Court, Clark County
The Honorable Judge Bitá Yeager 8th Judicial District Court Judge
Department 1, Presiding, Findings of Fact, Conclusions of Law and
Order Issued April 2, 2021, District Court Case No. A-19-804157-W**

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Dated July 25, 2021
BY /s/ DIANE C. LOWE
 DIANE C. LOWE, ESQ
 Nevada Bar #14573

1 A Because they kept it as storage and the gun safe for
2 -- because of the kids --

3 Q Of course.

4 A -- lived there.

5 Q Did you have an occasion to find out or see whether
6 guns were, in fact, kept in that gun safe?

7 A I've seen the gun safe.

8 Q Okay.

9 A I've -- I don't think I ever saw inside it, but I
10 know he had guns. I'd seen guns go out --

11 Q Okay.

12 A -- before.

13 Q Like being pulled out of the gun safe?

14 A No, no. Out of the house.

15 Q Out of the house, okay. For like hunting or certain
16 things?

17 A I saw when he took -- they had some hard times and
18 he took a lot of his guns and pawned them.

19 Q Okay, okay. And you allowed the police to search
20 and --

21 A Yes.

22 Q -- take items from that particular gun safe; is that
23 right?

24 A Yes.

25 Q Okay.

1 MS. LEXIS: Court's brief indulgence.

2 BY MS. LEXIS:

3 Q Would Amanda -- I know that Amanda knew Mr. Murphy
4 through Amy, but would Amanda refer to David Murphy as her
5 cousin?

6 A Yes. She referred to all the ones that grew up
7 together referred to each other as their cousins. And Amy is
8 married to my daughter, Amanda's actual cousin.

9 Q Okay.

10 A So they are like family.

11 Q Okay.

12 A Yeah.

13 MS. LEXIS: Court's brief indulgence.

14 BY MS. LEXIS:

15 Q How was Jorge employed? Was he employed around
16 September of 2014?

17 A He was -- he worked for like New Energy, but he had
18 been off -- he had been off work. He worked off and on. He
19 worked out of town. He'd be gone for a long time out of town.
20 They worked out doing windmill farms and solar panels and all
21 that so they kind of worked out in the middle of nowhere all
22 the time.

23 Q Okay. Was he an electrician?

24 A Kind of, like a lineman.

25 Q Okay.

1 A Yes.

2 Q Okay. Who was David's -- do you know David Murphy's
3 girlfriend's name?

4 A At the time --

5 Q At the time.

6 A -- no.

7 Q Okay.

8 A The girlfriend that he -- when they used to go out
9 places together was another one from long -- like long before.

10 Q And what was her name?

11 A It was Jennifer. And I don't know her last name at
12 all.

13 Q Okay. Could you describe Jennifer for us?

14 A She was a skinny little white Cuban girl.

15 Q Okay.

16 A Real skinny, long, kind of light hair.

17 Q Did she have any tattoos?

18 A I don't know.

19 Q Okay. Did you, yourself, ever have an occasion to
20 call David Murphy?

21 A No.

22 Q Okay. At some point, you find out that Jorge is
23 shot, correct?

24 A Yes.

25 Q And that he was shot the night of September 21st,

1 2014?

2 A Yes.

3 Q Okay. After you found out that Jorge was shot, did
4 you ever call David Murphy?

5 A No.

6 Q Okay. Did you hear Amanda call David Murphy?

7 A After the police were there and everything? I don't
8 think so. She may have, but I don't know.

9 Q Okay.

10 A I -- it was too much. It was -- we were all in --
11 we were in shock. It was very -- I had hurt my foot so when I
12 went to bed, I took like three Tylenol PM, so I was like
13 groggy when I got woke up.

14 Q Okay.

15 A It was, yeah, just very -- a shock.

16 Q Ma'am, at the time, do you recall what your cell
17 phone number was?

18 A I don't know if it's the same number it is now or
19 not. It probably is the same number.

20 Q What is it?

21 A I don't want to give my cell phone number out in
22 front of people here.

23 Q Okay. We're going to need it, though.

24 A I'll give it to you, if you'd like, but I'm not -- I
25 don't want to say it to -- out loud. I don't want anyone to

1 know where I live. This was a bad thing. I have to worry
2 about my family and my grandchildren every day now. I'm the
3 only one there is. I don't want to give out my number, where
4 I work, where I live, nothing. I'm sorry, but I have to think
5 of our safety.

6 Q I totally understand, ma'am, but unfortunately, it's
7 part of this criminal investigation, and your phone number is
8 quite needed.

9 MR. DiGIACOMO Court's indulgence, Judge.

10 THE WITNESS: Do I have to tell her my phone --

11 MR. DiGIACOMO Court's indulgence.

12 THE WITNESS: If it could endanger my family.

13 MS. McNEILL: Your Honor, can we approach?

14 MR. LANDIS: Yeah.

15 THE COURT: Just a minute. Approach.

16 (Off-record bench conference)

17 BY MS. LEXIS:

18 Q How about we do this. Did you provide your phone
19 number to the homicide detectives at some point?

20 A I'm sure I did.

21 Q Do you happen to recall what Jorge's cell phone
22 number was at the time?

23 A I don't know what anybody's phone number is except
24 my own.

25 Q Okay.

1 A I'm -- because everything's in the phone now. I
2 don't --

3 Q Okay.

4 A I'm bad. I know my childhood phone number --

5 Q Okay.

6 A And -- my phone number now. That's all.

7 Q Nobody knows --

8 A I don't know my --

9 Q -- phone numbers anymore.

10 A -- phone number where I work.

11 Q Okay.

12 A I don't know my daughter's numbers. I just push a
13 button.

14 Q Okay.

15 A I'm sorry.

16 Q Ma'am, you and I met before --

17 A Yes.

18 Q -- is that right?

19 A Yes.

20 Q We pretrialed?

21 A Yes.

22 Q Is do you remember that? Okay. And I showed you a
23 transcript --

24 A Um-h'm.

25 Q -- of your statement that was recorded --

1 A Yes.

2 Q -- to the police; is that right?

3 A Yes.

4 Q Okay. And in that transcript it noted Jorge's cell
5 phone number as well as Amanda's cell phone number; is that
6 right?

7 A Okay.

8 Q Do you remember that?

9 A You know, I read through it because you sent me the
10 papers, and it was just so much, it's hard to tell who's
11 saying what.

12 Q Okay.

13 A I didn't remember seeing what the phone numbers
14 were, but I'm sure I did --

15 Q Okay.

16 A -- at the time.

17 Q Would looking at page 2 of that transcript refresh
18 your memory as to the phone numbers that were --

19 A It could, yeah.

20 Q -- given to the police?

21 A It could.

22 Q Okay.

23 MS. LEXIS: May I approach, Your Honor?

24 THE COURT: Yes.

25 MS. LEXIS: It's page 2, counsel.

1 BY MS. LEXIS:

2 Q You got your glasses on?

3 A Yes. I broke them the other day. They're all
4 tweaked.

5 Q So long as they work. Okay? All right.

6 A Okay.

7 Q I believe, they're talking to Amanda at this time,
8 and she gives out this phone number.

9 A Okay.

10 Q Do you recall that? Does that look about right?

11 A I have no clue about numbers. That's what I mean.

12 My --

13 Q Okay.

14 A -- they're in the phone. I press it. That's not
15 her phone number now so I don't --

16 Q Okay. And what about this phone number for Jorge,
17 do you recall?

18 A I -- no.

19 Q Okay. So do you have any reason to dispute the fact
20 that those numbers were given to the detectives --

21 A Oh --

22 Q -- that night, though?

23 A It was recorded so I would dispute -- no, there's no
24 reason to dispute it.

25 Q Okay.

1 A I don't know --

2 Q Okay.

3 A -- what the numbers were or are but --

4 Q Okay. So you don't dispute the fact that the number
5 702-750-8111 was given as Amanda's cell phone number?

6 A She could have.

7 Q Okay. And you don't dispute that Jorge's cell phone
8 number was given as 702-666-4948?

9 A It could have been, too.

10 Q You don't dispute that --

11 A No.

12 Q -- being in the transcript?

13 A No.

14 Q Of the recorded interview?

15 A Yes.

16 Q Okay.

17 MS. LEXIS: Court's brief indulgence. I have no
18 more questions. Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: Cross.

21 MR. LANDIS: Very brief.

22 CROSS-EXAMINATION

23 BY MR. LANDIS:

24 Q Just to make sure I understand, when the police
25 respond to your residence, you testified that there's a period

1 of time where your daughter and you are separated?

2 A Yes.

3 Q The police are still talking to both of you
4 separate, though?

5 A Yes.

6 Q Then you guys come together?

7 A Yes. They let me -- he let me -- the other officer
8 let me go down to the sidewalk where they had her so that she
9 would tell them about the car because they were butting heads.
10 We could hear it because we weren't constantly talking. We
11 could hear it. And my daughter's begging to know if her
12 husband's alive, and finally, the one told me, yeah, he was
13 shot and he was alive. He was at the hospital, he was okay.

14 Q And then there came that point in time, though,
15 after you guys were allowed to be together --

16 A Uh-huh.

17 Q -- that the police kind of interviewed you guys
18 together, right, and that was --

19 A I -- yeah, I pretty much didn't say much.

20 Q Right.

21 A It was her --

22 Q Right.

23 A -- speaking and I just backed up whatever -- yeah.

24 Q And that was recorded and that's the transcript?

25 A That part, that's when we were in the house and that

1 was recorded.

2 Q And that was how long after you first went outside?

3 A Oh, my, they kept us outside for a long time. I
4 don't know. They let me go back in once to check on the kids.
5 They let me go back in once to get a jacket for her because
6 she's out there like shaking. Besides being probably cold,
7 she was upset. They let me go get a jacket for her. And
8 finally when they decide they wanted to go in because I said I
9 can't stay out here anymore. I had a hurt foot, I need to go
10 in and sit down and put my foot up, and then we -- they said
11 okay, then we're going to go in and record it. They want us
12 to sign papers they can search.

13 Q Sure. And you mentioned that when you reviewed that
14 transcript, it's kind of hard to say who's saying --

15 A Yeah.

16 Q -- exactly what?

17 A Yeah.

18 Q And it's because it doesn't say Amanda, it says Q
19 and A, Q and A?

20 A Yes, yes. And then sometimes there's like a Q, an
21 A, an A and a 1 behind it and sometimes it looks like it's me
22 saying something but then, I think, I didn't say that. That
23 was her both times so it's very confusing.

24 Q So that -- well, keep that in mind for these next
25 two questions, I have.

1 A Okay.

2 Q And I understand that you don't have an exact memory
3 of --

4 A Yeah.

5 Q -- two years ago. They asked who picked Amanda up.

6 A Yes.

7 Q And they were told David Murphy?

8 A Yes.

9 Q The name David Murphy?

10 A Yes. He did pick her up.

11 Q They also asked for David Murphy's phone number,
12 which was eventually provided?

13 A I don't remember that. I'm sure they -- I think I
14 do remember them asking for it, but I didn't have it, she did.
15 I didn't have any of those people's numbers.

16 Q It was in Amanda's phone?

17 A Yes.

18 Q And it was provided to the best --

19 A Yes.

20 Q -- of your memory?

21 A And they took her phone and told her she'd get it
22 back a week later and it's two years and they never gave her
23 her phone back.

24 Q You were asked to describe a phone application or
25 app.

1 A I don't know what it looked like. I just now it was
2 an app.

3 Q If my mom was asked to describe an app --

4 A Um-h'm.

5 Q -- in a room full of strangers, I'd be so
6 embarrassed I'd be hiding. So I think --

7 A Uh-huh.

8 Q -- I think you did a fine job.

9 A Oh.

10 Q And I --

11 A I hope your mom's older --

12 Q -- have no further questions.

13 A -- than me. Sorry.

14 MR. LANDIS: I was going to say -- oh, I won't.

15 THE COURT: I think you dug that hole.

16 THE WITNESS: You better not --

17 MR. LANDIS: No, I was going to -- I'll save it for
18 another time.

19 THE COURT: You look very youthful.

20 THE WITNESS: Oh, thank you.

21 CROSS-EXAMINATION

22 BY MR. WOLFBRANDT:

23 Q Good afternoon, Michelle.

24 A Hello.

25 Q When the police asked for permission to search the

1 house, you and Amanda at first did not want to give that
2 permission, did you?

3 A I don't remember that. I remember they didn't
4 search the whole house. Just the area that was their common
5 -- the common part that was --

6 Q Well --

7 A -- their home. That's what happened and they
8 decided to --

9 Q Well, my point is --

10 A Yes.

11 Q -- you said at first when you first saw the
12 conversation --

13 A Uh-huh.

14 Q -- between Amanda and the police --

15 A Yeah.

16 Q -- kind of butting heads --

17 A Yes, we didn't want to let them do anything because
18 they wouldn't tell her, and finally, we got them -- I got them
19 to tell her.

20 Q Okay. But think were -- they wouldn't disclose
21 anything to her?

22 A No, they --

23 Q Right?

24 A -- trying to get stuff out of her that she didn't
25 know.

1 Q Okay. So do you recall when it come time to talk
2 about consenting to search the house --

3 A Um-h'm.

4 Q -- that they had promised her that they would let
5 her go visit --

6 A Yes.

7 Q -- Jorge at the hospital?

8 A Yes, they did. They lied to her after they told her
9 oh, well, too bad, no, you can't do that. It's against the
10 law.

11 Q Well, but let me --

12 A Oh, I'm sorry.

13 Q -- let me finish the question. I --

14 A It just makes -- it makes me mad that they lied to
15 us about that.

16 Q You didn't want to consent to the search --

17 A No.

18 Q -- correct? But the police promised her that they
19 would take her to go visit him --

20 A I don't know if --

21 Q -- in the hospital?

22 A I don't know if they said they would take her or let
23 her go, but they said she could go see him --

24 Q Fair enough.

25 A -- at the hospital.

1 Q Fair enough.

2 A Yes.

3 Q That she could go visit him?

4 A Yes.

5 Q And so after she consented to the search and after
6 the search was completed, did the police then tell her or
7 inform her that it was illegal for her to --

8 A Yeah.

9 Q -- visit because he was under arrest?

10 A Yeah. One of them -- they kind of blamed it on each
11 other. One of them act like the nice cop and one acted like a
12 jerk, and the one that acted like the nice cop and let me go
13 down and tell her that her husband was still alive said oh, I
14 didn't know that. He said he did not know that she could not
15 go visit, and I find that hard to believe.

16 Q How long have you known Jorge?

17 A Since he was 16.

18 Q Okay. So --

19 A He's 34.

20 Q Okay. So like about 18 years?

21 A Yes.

22 Q You knew him when he, you know, first started dating
23 Amanda?

24 A Yes.

25 Q And then obviously, I would assume you were at their

1 wedding?

2 A Yes.

3 Q Now, you testified that Jorge was employed doing --
4 installing windmills or solar --

5 A Doing -- yeah, building the -- what do you -- I
6 don't know what it's called. They build the -- they build the
7 things that they wires -- the energy to go to those things.

8 Q Okay.

9 A They're like linemen.

10 Q Okay. How long had you known him to be working for
11 that company?

12 A Oh, geez, a long time.

13 Q Now --

14 A Well, since -- probably since around when my
15 grandson was born.

16 Q (Inaudible).

17 A And he will -- he'll be ten on the 27th --

18 Q Okay.

19 A -- of this month.

20 Q To your knowledge, did he always work for the same
21 company?

22 A He -- no, he worked for another guy in California
23 when my daughter got pregnant and then he asked her to move
24 there, but she wanted to stay in Vegas with me and her doctors
25 and stuff because she'd be alone just down there with him. So

1 he came back and forth. And then after that I think is when
2 he started at the other job.

3 Q Okay. From using September 21st, 2014 as the time
4 reference. Actually, let me change that. Did there come a
5 time in the last -- in the six months prior to September of
6 2014 that Jorge was no longer employed?

7 A Yes.

8 Q Okay. How long a period of time that you knew that
9 he wasn't employed?

10 A I don't know, a few months.

11 Q Do you know how that came to be?

12 A Jorge had ended up having a drug problem.

13 Q Okay.

14 A They were supposed to send him to -- he said he
15 would go to rehab. They were supposed to send him to rehab
16 and they kept putting it off, the job, with his insurance, and
17 they kept putting it off and off and off. My daughter tried
18 to -- she got him to doctors who were giving him medication to
19 help him, and she was trying to do everything to keep her
20 family together and then this happened.

21 Q All right. Well, before he lost the job, was he a
22 pretty diligent worker?

23 A It was one of the hardest workers I've ever seen.
24 He worked all the time. A person that couldn't sit still or
25 sit down.

1 Q Was he a good provider?

2 A When he wasn't working, he was working around the
3 house or on the cars or something.

4 Q Was he a good provider for the family?

5 A Yes.

6 Q Now, after he had lost the job, would he not be
7 around the house at times?

8 A Yeah. I mean, he was there sometimes. Sometimes he
9 wasn't. Like I said, he would go -- also go to the junkyard,
10 go to his -- he'd take Isaiah, his son, early riser like him.
11 Those two would be up on the weekend. The rest of us would be
12 sleeping. He'd -- they'd go out to his mother's house and --

13 Q But there were times --

14 A -- and things.

15 Q -- still, though, where you and Amanda were worried
16 about him because he was still --

17 A Once --

18 Q -- using drugs?

19 A -- once he had the drug problem, yeah.

20 Q And it was unusual for Amanda to use the app on her
21 phone --

22 A That's why she had the app on her phone.

23 Q It was to try to keep track of him whenever he --

24 A Yes.

25 Q -- would stay out and not come back when he was --

1 A Yes.

2 Q -- said he was, right?

3 A Yes.

4 Q All right, thank you.

5 MR. WOLFBRANDT: That's all I have.

6 THE WITNESS: Thank you.

7 THE COURT: Ms. McNeill.

8 MS. McNEILL: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. McNEILL:

11 Q Ms. Estavillo, you indicated that you thought it was
12 at 9:00 or 10:00 o'clock that David came to get Amanda,
13 correct?

14 A Yeah, I'm not positive. It was in the evening. It
15 was dark.

16 Q Okay. But you think it was around 9:00 or 10:00
17 p.m.?

18 A Yeah, I --

19 Q And that's the time that you think that David
20 actually arrived at your house to get Amanda?

21 A Yeah, I'm not positive.

22 Q So prior to that, would have been the time period
23 where Amanda was looking on the phone to try --

24 A Yes.

25 Q -- and find Jorge?

1 A Yes.

2 Q Do you know about how much time passed before she
3 figured out where he was and when she called David to come get
4 her?

5 A No.

6 Q Okay.

7 A I was sitting in my room the whole evening because I
8 had hurt my foot when I came back from shopping.

9 Q Okay. Fair enough.

10 A So I was just in there until later.

11 Q Okay. All right. Mr. Wolfbrandt asked you some
12 questions about Jorge's work habits and you indicated that
13 Jorge was supposed to go into rehab, correct?

14 A Yes.

15 Q What drug was he using?

16 A Heroin.

17 Q Okay. If you know, was it something that he was
18 using fairly often?

19 A I don't know. This -- it wasn't for a very long
20 period of time when my daughter found out and his job, I
21 guess, I don't know, that and tried -- they were trying to get
22 him to rehab.

23 Q Okay.

24 A And the -- where he worked just -- from what I know,
25 from what I was told, they just kept dragging it out, and they

1 weren't getting him in there, and my daughter and I are like
2 why aren't they getting him in there? Why aren't they -- we
3 wanted him to get help. He did go to a doctor. He got
4 medication. He was doing that.

5 Q Okay. It was his job who was willing to send him to
6 rehab?

7 A Yes.

8 Q So was he still earning a paycheck at that time?

9 A I don't think so.

10 Q You don't think so, okay. And in that time period
11 that you knew he was using heroin, based on your observations,
12 do you think he was using it fairly often?

13 A I -- I work Monday through Friday all day so I'm not
14 there all the time. I only really saw him -- which my
15 daughter didn't tell me at first. She didn't want to tell me
16 at first because she knew I was going to freak out.

17 Q Okay.

18 A Until she really had to tell me, she didn't tell me.
19 And I only really saw him where I thought he was really messed
20 up once.

21 Q Okay. But it was enough that Amanda was concerned,
22 correct?

23 A Oh, yeah, she's the one that got him to the doctors,
24 got the appointments, made sure he took his medicine.

25 Q Okay.

1 A She's the one that was on all of that.

2 Q Okay. And so the medicine that he was on was
3 medicine that he was given to help with the heroin addiction,
4 correct?

5 A Yes.

6 Q Do you know if that was methadone?

7 A I have no idea what it was.

8 Q Okay. And so Jorge at this time, was using heroin
9 and then on some sort of drug to help with heroin addiction.

10 A I guess, I don't know.

11 Q Okay.

12 A That's what I guess so.

13 Q And you indicated a little bit about this gun safe.
14 And when the police came and searched the gun safe, did you
15 see how many guns they took out of the safe?

16 A They took some -- I don't remember. I'm telling --
17 we were all in shock.

18 Q Were you in shock --

19 A We were very shocked --

20 Q -- the amount of guns they took out of the gun safe?

21 A No, I was in shock that this happen at all. Jorge
22 is -- that's not the --

23 Q No, I --

24 A -- person I know at all.

25 Q I understand.

1 A At all.

2 Q Ma'am, I -- and I totally get that. That was a bad
3 question, I'm sorry.

4 A It's okay.

5 Q I meant, I understand your shock. I don't think
6 anybody faults you for that. Were you in shock also about the
7 amount of guns that Jorge had in the gun safe?

8 A No.

9 Q Okay. It was a fair amount of guns, correct?

10 A They -- I guess.

11 Q Okay.

12 A He did have a fair amount of guns.

13 Q Okay. And do you know if Jorge ever spent time
14 shooting target practice with those guns?

15 A They -- went out with them, I guess. My -- that's
16 -- like I said, my husband -- my daughter learned how who
17 shoot when she was this big, because my husband was Latin from
18 Mexico. A lot of Latins like to go out and they do -- I'm not
19 trying to make it like it's just that, but they go shooting.
20 My husband was from Mexico. My daughter learned at four years
21 old how to shoot and the safety.

22 Q Okay.

23 A You hold the gun down, you never point it. She
24 learned all that at a young age.

25 Q All right. And you saw -- you said you saw Jorge

1 take the guns out of the house sometimes?

2 A I have, yeah.

3 Q Okay. And you believe some of those times was to go
4 shoot those guns?

5 A Probably. I have no idea.

6 Q Okay. Thank you, ma'am.

7 MS. McNEILL: Nothing further.

8 THE WITNESS: You're welcome.

9 THE COURT: Redirect?

10 MS. LEXIS: Very briefly.

11 REDIRECT EXAMINATION

12 BY MS. LEXIS:

13 Q Ms. Estavillo, during cross-examination, one of the
14 defense attorneys, I can't remember which one, asked you about
15 I believe, it was Amanda's phone being taken by the detectives
16 or you testified about --

17 A I said they took her phone, said they'd keep it for
18 a week and give it back to her and they never gave it. She
19 called, tried to get it back. Never gave -- she's never got
20 it back.

21 Q Okay.

22 A She only wants it for the pictures of her kids in
23 it.

24 Q Okay.

25 A That's why she wants it back.

1 Q After that phone was taken away --

2 A Yeah.

3 Q -- did she start using your phone?

4 A Yes.

5 Q Okay. About how long did she use your phone?

6 A Until I went and got her a new one.

7 Q And how long was that?

8 A And I don't remember. I got tired of it so I'm
9 like, oh, we got to do something. I went to the place and
10 when I went there, we got her a new phone.

11 Q Okay. Was it days, weeks --

12 A Weeks.

13 Q -- months?

14 A Few -- it might have been -- I don't know. But
15 yeah, at least weeks.

16 Q Okay.

17 A She had to have one because she was at home alone
18 with the kids and they were at school, I was at work.

19 Q Of course.

20 MS. LEXIS: I have no more questions. Thank you.

21 MR. LANDIS: No recross.

22 MS. McNEILL: No, Your Honor. Nothing further.

23 THE COURT: Counsel approach.

24 (Off-record bench conference)

25 THE COURT: You're excused, although, you are

1 subject to recall --

2 THE WITNESS: Uh-huh.

3 THE COURT: -- and it's because of that, you can't
4 stay in the courtroom.

5 THE WITNESS: Okay.

6 THE COURT: Oh, I'm sorry, yeah, jury questions?

7 THE MARSHAL: One.

8 THE COURT: Oh, we have one. Thank you for
9 reminding me.

10 (Off-record bench conference)

11 THE COURT: All right. So I have a couple questions
12 from the jury. The first question calls for a "yes" or "no"
13 answer, that is all, okay?

14 THE WITNESS: Um-h'm.

15 THE COURT: Did Amanda tell you where she found her
16 picked up the car?

17 THE WITNESS: Yes.

18 THE COURT: Second question, did David Murphy come
19 back to the house after he took Amanda to get the car?

20 THE WITNESS: I don't think so. I didn't see him.

21 THE COURT: Any questions as a result of the
22 question from the jury?

23 MS. LEXIS: I have one, Your Honor.

24 FURTHER REDIRECT EXAMINATION

25 BY MS. LEXIS:

1 Q Ms. Estavillo, before Amanda left around 9:00 or
2 10:00 o'clock, that particular night, did she tell you where
3 she was going to get the car?

4 A I don't remember. I only found out later where she
5 found it.

6 Q Okay. And did she tell you where she found it
7 later?

8 A Yeah. I don't remember when she told me, if it was
9 that same night or the next day or what, but later.

10 Q Okay.

11 MS. LEXIS: Nothing further. Thank you.

12 MR. LANDIS: No questions from me.

13 MR. WOLFBRANDT: No questions.

14 MS. McNEILL: Nothing, Your Honor.

15 THE COURT: Thank you. And so you're excused, but
16 subject to recall.

17 THE WITNESS: Okay.

18 THE COURT: And you may call --

19 MR. DiGIACOMO We have one other witness if --

20 THE COURT: Great. You may call your next witness.

21 MR. DiGIACOMO Anya Lester.

22 MR. LANDIS: Judge, can we approach, I'm sorry.

23 THE COURT: Yes.

24 MR. LANDIS: For the third time in two minutes.

25 (Off-record bench conference)

1 THE COURT: Oh, sorry. Ladies and gentlemen, I've
2 got some people needing a bathroom break so we'll take that,
3 but plus, that will get -- give us the -- during that time get
4 the evidence ready for the next witness that will testify. So
5 this will just be a ten-minute recess.

6 During this recess, it's your duty not to converse
7 among yourselves or with anyone else on any subject connected
8 with the trial or to read, watch or listen to any report over
9 commentary on the trial by any person connected with the trial
10 or by any medium of information, including limitation,
11 newspaper, television, radio or Internet. You are not to form
12 or express any opinion on this subject of the trial until it
13 is finally submitted to you. And we will be in recess until
14 25 minutes to 5:00.

15 THE MARSHAL: All rise for the jury.

16 (Jury recessed at 4:22 p.m.)

17 THE COURT: And the record will reflect the jury has
18 departed the courtroom. We're in recess.

19 MR. LANDIS: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 (Court recessed at 4:22 p.m. until 4:34 p.m.)

22 (In the presence of the jury)

23 THE MARSHAL: All members of the jury including all
24 four alternates are present.

25 THE COURT: And thank you. Please be seated. The

1 record will reflect that we are back within the presence of
2 all 12 members of the jury as well as the 4 alternates. All
3 three defendants are present with their respective counsel.
4 The Chief Deputy DAs are present, as are all officers of the
5 court, and you were beginning to call your next witness and
6 all I got was Anya.

7 MR. DiGIACOMO Lester. And I believe, Ms. Lester is
8 right there.

9 THE COURT: Thank you.

10 ANYA LESTER, STATE'S WITNESS, SWORN

11 THE CLERK: Please be seated. And please state and
12 spell your first and last name for the record.

13 THE WITNESS: My name is Anya, A-n-y-a, Lester,
14 L-e-s-t-e-r.

15 THE COURT: You may proceed.

16 MR. DiGIACOMO May I inquire?

17 THE COURT: Yes.

18 DIRECT EXAMINATION

19 BY MR. DiGIACOMO

20 Q Ma'am, how are you employed?

21 A I am a forensic scientist with the Las Vegas
22 Metropolitan Police Department, forensic laboratory in the
23 firearms and tool marks analysis unit.

24 Q Can what does that mean you do on a day-to-day
25 basis?

1 A What I do, is I examine firearms, ammunition,
2 ammunition components and anything to do with firearms that
3 happens to be impounded as evidence, including the microscopic
4 comparison of bullets and cartridge cases to a suspect firearm
5 to determine if they, indeed, did come from that firearm or
6 not.

7 Q Now, in order to do that job, I imagine you have to
8 have certain education, training and background?

9 A Yes, sir.

10 Q Can you briefly or explain to the ladies and
11 gentlemen of the jury kind of what your qualifications are in
12 order to do the job?

13 A Um-h'm. I have a Bachelor of Science degree in
14 forensic science from Michigan State University. And I was
15 hired by the LVMPD in December of 2008 as a forensic lab aid.
16 Ten months later in October of 2009, I promoted into the
17 forensic scientist position, at which time I embarked upon a
18 comprehensive training program, which consisted of about 2500
19 hours of training, consisted of things such as tours of
20 firearm and ammunition manufacturing facilities, classroom
21 work, practical work, some manufacture armors courses, mock
22 cases, which are completed the entire case including examining
23 firearms, ammunition components, do up comparisons, doing
24 reports just as if they were real cases.

25 And then a series of supervised casework underneath

1 a more experienced examiner. And when I finished that
2 training, I had to pass a series of competency exams, which I
3 did in spring of 2011, which allowed me to begin my own
4 independent casework at that time.

5 Q And have you testified and offered opinions in the
6 areas of firearms and toolmark analysis here in the Eighth
7 Judicial District Court?

8 A Yes, I have.

9 Q I want to ask, were you assigned to be the firearms
10 examiner for a Las Vegas Metropolitan Police Department case,
11 Case No. 140921-3020?

12 A Yes, I was.

13 Q And I want to talk about some of the item that is
14 you had to look at. And I think many of them are going to be
15 up there in front of you. So I have to be near a microphone
16 to do this. I'm going to start first with cartridge cases.
17 I'm going to show you what's been marked as -- what's been
18 admitted as 222, but for whatever reason it doesn't have a
19 sticker on it, but 221 and 222, and ask you to take a peak at
20 those two items.

21 A Okay.

22 Q Do you recognize those items?

23 A I do.

24 Q And how do you recognize them?

25 A These are two envelopes containing evidence, which I

1 examined. It does have my name here on the chain of custody
2 as well as my personnel identification number, my package
3 number and the date, and the date and time in which I sealed
4 it.

5 Also, it does have a blue tape, which is a forensic
6 lab tape that we use to seal a package when we are done
7 examining it. And on that tape it does have my initials and P
8 number and the date in which I sealed it and that is on both
9 packages.

10 Q Okay. And so if you were -- assuming that it hadn't
11 been opened previously, but if you were opening those, what
12 would you expect to find inside those two packages?

13 A Well, I would expect to find what was listed on the
14 sticker on the front. And here this first one has eight, 9
15 millimeter Luger cartridge cases, and the second one has one 9
16 millimeter Luger and four .40 Smith and Wesson cartridge
17 cases.

18 Q Before we start talking about cartridge cases, let's
19 talk a little bit about guns. Everybody probably is somewhat
20 familiar with guns, but probably none of us as familiar as you
21 are. But if you could give sort of an explanation of first
22 firearms and then a distinction between handguns and then --
23 and rifles and then obviously, a distinction between
24 semi-automatics versus revolvers.

25 A Okay. So a firearm is a tool that's designed to

1 shoot a cartridge which contains a projectile and it's
2 designed to propel it down its barrel and out the muzzle and
3 through space by some form of combustion. We have handguns,
4 like Mr. DiGiacomo mentioned. There's handguns, long guns.
5 Handguns obviously meant to be fired from the hand. Held in
6 the hand and fired. As opposed to rifles or shotguns, which
7 are meant to be fired from the shoulder.

8 Mr. DiGiacomo also mentioned a semi-automatic pistol
9 versus say a revolver. So a revolver is a handgun, and it has
10 a cylinder in it. So you might have seen them, it's sort of
11 old wild west type of gun, where every time you pull the
12 trigger, the cylinder rotates, and the next cartridge lines up
13 in line with the barrel so that you can fire it.

14 That's as opposed to a semi-automatic type of
15 firearm, which is a repeating action gun but in that one, the
16 gun is doing some type of the action for you to extract and
17 eject the cartridge case and load the next cartridge in to
18 ready it to fire. Semi-automatic firearm, it does require an
19 individual pull of a trigger for each shot to be fired.

20 When you pull that trigger, the firing pin goes
21 forward, hits the primary on the back of the cartridge, which
22 creates a spark. It ignites the powder that's contained
23 within that cartridge. And when that powder burns, that gas
24 is what pushes that barrel -- or that bullet down the barrel
25 and out of the muzzle of the firearm.

1 So for every action, you have an equal and opposite
2 reaction. That bullet goes forward and the empty cartridge
3 case goes backwards. It's extracted and ejected out of the
4 gun, and the next one is loaded into the chamber ready for you
5 to fire it.

6 It's a semi-automatic. The gun's doing part of the
7 action for you. You are pulling the trigger for each shot,
8 but that's different than say a fully automatic firearm, which
9 is where you just hold down the trigger and the gun
10 continually fires. Semi-automatic, you pull the trigger, and
11 the gun extracts and ejects and loads for you.

12 Q Now, in a revolver, the cartridge cases remain in
13 the gun?

14 A In the cylinder, correct.

15 Q In the cylinder. And then with the semi-automatic,
16 you expect at least the cartridge case to get ejected if it's
17 functioning normally?

18 A Yes, that's correct.

19 Q But the concept of a cartridge case is the same for
20 both weapons, both weapons use a full round that include ass
21 cartridge case?

22 A Yeah, a full round, we call that a cartridge, and
23 it's made up of the components that I alluded to earlier. It
24 has a cartridge case, and that has that primer included in
25 there as a powder. And then there's a bullet in it also. So

1 that would be one full round or a full cartridge.

2 After it's fired and the bullet's fired, you have
3 the cartridge case, which is that leftover component that's
4 extracted and ejected after the firing process.

5 Q Now, when we come to a crime scene and we find this
6 evidence, is there something you can do with the evidence to
7 make some sort of determinations, one, between the various
8 pieces of suspect evidence found at a scene, as well as if
9 you're provided a firearm, some comparison purposes that you
10 could do from what's left of the scene to the firearm?

11 A Yes, if I just receive cartridge cases, I can look
12 at them and I can determine what their caliber is. I can
13 compare them to each other to determine if they came from one
14 firearm or a multitude of firearms.

15 If I receive a firearm, I can test fire that firearm
16 and then do a microscopic comparison of the bullets or the
17 cartridge cases that I got from that firearm that I know came
18 from that gun because I'm the one that actually test fired it
19 and I compare those microscopically to the bullets or
20 cartridge cases that I'll receive as evidence from a crime
21 scene so that I can make a determination as to whether or not
22 that evidence was fired by that particular firearm.

23 Q Well, let's start with cartridge cases. How is it
24 that the markings get left on a cartridge case?

25 A Well, all of those components of the gun that touch

1 that cartridge during the firing process leave a mark on it.
2 And we talked a little bit there about the firing process, but
3 that the cartridge, when it goes into the gun, you have to
4 think about it first if you're going to load the gun, have you
5 a magazine, which is where you put your ammunition. That's
6 the source.

7 You can load your full cartridges in there, and when
8 you put them in there, they can get marks on them. You load
9 that into the gun, and to get that first cartridge into the
10 chamber to ready it to fire, you manually pull the slide back
11 or pull the bolt back and put that first one in there. That
12 feeding action, that can put marks on there.

13 Then during that firing process, you have that --
14 when that firing pin goes forward and hits that primer and
15 those gases start to burn and expand, you have the sides of
16 that cartridge case that expand against the sides of that
17 chamber and that creates marks. The firing pin, when it hits
18 it, creates marks. And then also, when that -- when the
19 bullet goes forward and the cartridge case goes backwards,
20 that whole headstamp area hits against the back of the slide
21 and you get marks there as well.

22 So basically, all of the surface areas of the
23 cartridge case can have marks from the firearm transferred to
24 that them during that feeding process, extract and ejecting
25 process and during the shooting process.

1 Q Is it a similar concept for the bullet that actually
2 leaves the barrel of the gun?

3 A The bullet as it's traveling down the barrel, the
4 barrel of a gun has what we call rifling inside it. It's a
5 series of grooves. It's kind of the like the spirals on a
6 candy cane. It's inside the barrel. So that way when the
7 bullet's going down there, it catches into those grooves and
8 it twists and it starts spinning.

9 So when that bullet flies out of the muzzle, it has
10 stability. It's kind of like throwing a football. You want
11 there to be spin on it as it's flying through the air. So
12 those marks, that rifling inside the barrel, are what leaves
13 marks on the bullets as it's traveling down the barrel. And
14 we can use those marks to compare bullets to each other or
15 test fire bullets from a suspect firearm to unknown bullets
16 that are received as evidence to make a determination as to
17 whether or not they came from that particular firearm.

18 Q And just because this may come up in or the sort of
19 your testimony, is there a difference between class
20 characteristics and then unique characteristics?

21 A Absolutely. Class characteristics are
22 characteristics that are put there by the manufacturer.
23 Something like the caliber of the gun. The manufacturer says
24 this firearm is a .40 Smith and Wesson caliber firearm. Or the
25 manufacturer might say the number of grooves that we're going

1 to cut into that barrel is six, or that it's eight, or that
2 it's five. And then those grooves, they can go to the right
3 or they can go to the left. And then the widths of the
4 grooves can vary based on the manufacturer as well.

5 So those things are all what we call class
6 characteristics. It helps to narrow things down, but you
7 might not be able to say based just on those class
8 characteristics that this particular item came from this
9 particular firearm. You can say all the class characteristics
10 are similar, but I didn't have enough individual
11 characteristics for me to say it was from this particular
12 firearm.

13 The individual characteristics are the things that
14 are made accidentally while the gun is being manufactured.
15 And it comes from the microscopic ware that's happening on the
16 tool as it's manufacturing the parts of the gun one right
17 after the other, you're getting a little bit of -- of a little
18 bit of that microscopic ware.

19 Also, you're getting chips that are formed in the
20 middle. It's like sawdust. So when something is cutting, if
21 you think about like a cutter cutting metal, you get little
22 pieces of that metal, little shards that scrape off, and those
23 are different every single time you make a cut.

24 So it's those individual marks that we can use to
25 identify a particular cartridge case or a bullet to a

1 particular firearm.

2 Q Now, looking at 221 and 222, are there two different
3 class characteristics types of cartridge cases that were
4 collected at the scene?

5 A There are two different calibers of cartridge cases
6 that were collected. There are 9 millimeter Luger and also
7 a .40 Smith and Wesson cartridge cases.

8 Q What's the difference between a 9 millimeter and a
9 .40?

10 A So caliber, when we say the word caliber, it's based
11 on diameter. So the caliber of a firearm is the diameter of
12 the inside of the barrel. And 9 millimeter is approximately,
13 9 millimeter diameter and .40 is point zero four inches is
14 what it is.

15 So the 9 ends up being about .357 inches, and then
16 .40 is point 40. So there's a little bit of a difference in
17 the diameter there. And that firearm is manufactured to fire
18 ammunition of a specific caliber that matches that gun.

19 Q And is -- have you heard or have you people
20 described .40 caliber as 10 millimeter before as well?

21 A Yes. It's sort of interchangeable to an extent. 10
22 millimeter cartridges tend to be longer and can't be fired in
23 the .40, but the diameter of .40, point 4-0, is approximately
24 10 millimeter.

25 Q Can you fire a .40 caliber round out of a 9

1 millimeter gun?

2 A You can. It's just too small, it won't fit. .40 is
3 larger than 3 -- or .357.

4 Q So essentially as it relates to cartridge cases, you
5 have 9 millimeter cartridge cases, and you have .40 caliber
6 cartridge cases, and unless somebody emptied a revolver at the
7 scene, it suggests that there's at least two semi-automatic
8 weapons involved in the evidence that's in front of you?

9 A Or, you know, just threw some cartridge cases down
10 or, you know, shot a gun and walked away with it or something,
11 but definitely, two firearms are suggested by this evidence
12 here.

13 Q Let's talk about bullets. And I'm going to start
14 with first State's Exhibit No. 223. I'm going to ask you to
15 look at 223. And that did you examine the item -- the bullets
16 and bullet fragment that's contained therein?

17 A Yes, these items also have my signature here, my
18 package number, our internally laboratory case number, again,
19 my personnel number, date and time, which I sealed. And we
20 have the forensic lab tape here, which I used to seal the
21 package with my initials and personnel number and date.

22 Q I'm going to hand you State's Exhibit 226, which is
23 three bullets impounded by a Joe Szukiewicz out of the
24 Broadmere address. Did you also look at those three bullets?

25 A Yes, and all the previous things I stated as far as

1 my markings here on the chain of custody, and also the
2 forensic lab tape with my initials and date here.

3 Q And then I'm going to show you State's Exhibit 225,
4 which indicates a bullet and/or bullet fragments collected by
5 Joe Szukiewicz from UMC. Did you open that item as well?

6 A Yes, I did. And it has the same markings as I
7 discussed on other packages.

8 Q And then lastly, 224, which is once again,
9 Mr. Szukiewicz at the autopsy, and did you also look at the
10 bullet and bullet fragments that are contained therein?

11 A And yes, I did.

12 Q Okay.

13 A Same markings as the others.

14 Q Were you supplied a number of weapons to look at?

15 A I was, yes.

16 Q So let me start with -- start with this one since --
17 I'm showing you what's previously been admitted as 218 and
18 then now it's 218-A through C, and the box was opened before
19 you got here, but if you could look at that and tell me
20 whether or not you examined that particular firearm?

21 A Yes, and this firearm, again, has all of my
22 information on the chain of custody. It has the lab tape with
23 my initials and date on the seal, and the firearm itself also
24 has an identifying sticker with the item number lab number and
25 my initials and P number on there that I used to identify the

1 items of evidence that I looked at.

2 Q Okay. And then within there was there also two
3 expended and one live cartridge associated with the weapon?

4 A Those are in there, yes, but those were not of me to
5 examine those.

6 Q So you didn't open those? You would have tested on
7 the firearm on your own?

8 A That's correct. I just -- I just mark these with my
9 initials here and the lab number saying that it was here in
10 the package, it was in my custody. But I did not examine
11 those. I just examined the firearm.

12 Q Okay. So let's put this firearm right here and grab
13 you the next firearm here. Were you provided a .40 caliber
14 Glock semi-automatic firearm that actually box is open.

15 A Okay.

16 Q Just so you know. As well as some extra .40 caliber
17 Glock magazines which are contained in 220 and I can't read
18 that number from back there.

19 A 219.

20 Q 219.

21 A Yes. And again, all of my identifying information
22 is on here; chain of custody and my identifying stickers here
23 on the firearm and magazine.

24 Q And for the record, this reflects that it's the .40
25 caliber Glock that was impounded at 1661 Broadmere Street?

1 A Yes. That's what the package says.

2 Q Okay. So there's the crime scene .40. We'll put
3 that right there. And just for the record, you looked at the
4 extra magazines as well in 220?

5 A I did, yes. So again, my -- all my information is
6 here on the chain of custody and on the tape and seal.

7 Q Okay. Were you provided -- this is 217. First, I
8 guess, I should give you the box, which is State's 217. Were
9 you provided a rifle to look at?

10 A Yes.

11 Q And what kind of rifle is this?

12 A The manufacturer is Hi-Point, and it's a model 995,
13 and it's a 9 millimeter Luger caliber semi-automatic rifle.

14 Q So will this rifle shoot the same thing as a 9
15 millimeter handgun?

16 A 9 millimeter Luger, if it's the same caliber as your
17 9 millimeter Luger handgun then it would shoot the exact same
18 ammunition.

19 Q And then showing you 217-A and B, well, I'm assuming
20 B is the magazine for it.

21 A Yes. Let me just check this. Okay. And this has
22 my identifying sticker on it right here with my initials and P
23 number, item number and lab number. And then this here would
24 be the magazine that goes with it and my identifying sticker
25 is on there as well.

1 Q Can you tell me how many rounds that magazine would
2 hold?

3 A May I refer to my case file?

4 Q Yes.

5 A I'll set this down here.

6 Q I'll put it over here. And I'm assuming for the
7 record you're referencing the report you issued related to
8 your conclusions in this case?

9 A That's correct.

10 Q And from that, can you tell me how many rounds the
11 magazine holds for this rifle?

12 A The magazine that was submitted with the Hi-Point
13 rifle has a capacity of 10 cartridges.

14 Q Okay. So you can have 10 in the magazine and then
15 if you were to load one in the tube, you could theoretically
16 be walking around with 11 possible rounds?

17 A That's correct. That would be maximum capacity.

18 Q Okay. Now in addition to the weapons found at the
19 scene, were you provided another .40 caliber semi-automatic
20 firearm as well as some magazine cartridges and a cloth
21 holster?

22 A I believe so. I probably wasn't asked to look at
23 the holsters so the -- if my identifying info is on the
24 package here. So yes, I did look at this, and all of my --

25 Q And for the record --

1 A -- information is on here.

2 Q -- what it? It's State's --

3 A This is --

4 Q -- Proposed --

5 A -- State Proposed 227.

6 Q Okay. And what would you expect to find in State's
7 Proposed Exhibit 227?

8 A A Ruger model P94 .40 caliber semi-automatic pistol.

9 Q Okay. So that's a Ruger .40 caliber, similar to a
10 .40 caliber Glock that was found out at the crime scene?

11 A As far as caliber goes, yes.

12 Q Okay. And you opened this package and you test
13 fired this weapon and reached conclusions related to it?

14 A Yes, I did.

15 Q Okay. And then just 228?

16 A Yes, and this is, let's see, this is oh, magazine --
17 two magazines and -- or no, sorry, magazine and the holster
18 here. And I did look at this. My name here and my P number
19 as well as my initials here and date on the side. So I did
20 use that magazine. I think I wasn't asked to look at the
21 holster, but the magazine, yes.

22 Q And our crime is on September 21st, and these items
23 all reflect September 21st. Can you tell me the date that
24 these items appear to have been impounded?

25 A 10/24 of 2014.

1 Q So I'm going to hold on to these two for just a
2 second. Now I want to kind of go to your conclusions. Let's
3 start with you referenced previously there's nine 9 millimeter
4 cartridge cases that are found at the scene, and this is more
5 probably for the jury's edification than yours, but that would
6 be items 1 through 8, and 10. Does that seem correct to you?

7 A That's correct, yes.

8 Q Okay. What conclusions were you able to draw
9 related to those 9 millimeter cartridge cases?

10 A Those nine cartridge cases were identified as having
11 been fired by the submitted Ruger -- or of the submitted
12 Hi-Point, pardon me, rifle.

13 Q So this weapon right here, which is 217-A fired
14 those nine cartridge cases?

15 A That's correct.

16 Q Now, you also said that there is a -- four .40
17 caliber cartridge cases that were found at the scene. What
18 conclusions could you draw from those four .40 caliber
19 cartridge cases?

20 A And I did identify those four cartridge cases as
21 having been fired by the submitted Glock pistol.

22 Q Okay. So the Glock pistol that was impounded on
23 9/21/14 that's contained within 219?

24 A Yes, that's correct.

25 Q As it relates to the Ruger, did any of the casings

1 that are -- were found at the scene, any of those, I guess, 13
2 cartridge cases, were any of them fired out of that Ruger?

3 A I did not identify any of them as having been fired
4 by the Ruger, no.

5 Q Okay. So now let's move on to bullets. And let me
6 talk about -- well, let's just start with first, which is item
7 18 from the scene, it's your item 21. And the item 18 is the
8 one -- I guess I could put up a different diagram -- but it's
9 -- well, we'll just leave it as item 18. Item 18, that
10 particular bullet, what conclusions were you able to draw
11 about your item 21?

12 A It's my item 21.

13 Q Correct.

14 A That bullet did share similar general class
15 characteristics with the test fired bullets that I test fired
16 from the Glock pistol, but I was unable to make a conclusive
17 identification to or elimination from that particular pistol.

18 Q Okay.

19 A I did also conclude that those items were not fired
20 from any of the other firearms, which I examined in this case.

21 Q Okay. So number 18, like we talked about before, it
22 has some class characteristics that are consistent with the
23 Glock firearm that you have there, but is inconsistent with
24 either the revolver that's sitting up there, item 217, the
25 rifle, or that .40 caliber Ruger pistol that's submitted some

1 month later?

2 A Yes, that's correct.

3 Q So now let's jump through to the bullets that are
4 your items 22, 23, 24, I think, 25 and 26. Let's just start
5 with item 22. And what -- can you tell me your item 22, what
6 reference impound item it is?

7 A My item 22 is B, as in boy, 3 impound item.

8 Q And for the ladies and gentlemen of the jury, B3
9 would be within this diagram. I'm just going to blow it up so
10 they can look at it. B1, B2 and then B3 there. What
11 conclusions were you able to draw about B3?

12 A That's my 22. My 22 -- my item 22, which is B3
13 shared similar general characteristics with the test fired
14 bullets from the Hi-Point rifle; however, I was unable to make
15 a conclusive identification to that particular rifle. But I
16 did determine that that bullet was not fired from any of the
17 other firearms, which I examined in this case.

18 Q So the 9 millimeter, once again, has -- or that
19 bullet has class characteristics consistent with the rifle but
20 you just didn't have enough information on it to conclusively
21 determine whether or not it was fired from that weapon?

22 A Yes, that's correct.

23 Q Is it unusual not to be able to make a conclusive
24 identification to a weapon?

25 A Not necessarily. I only have three conclusions that

1 I can come up with. I can either say it was identified, it
2 was eliminated or I don't know, which is it's inconclusive and
3 I can't really tell either way. Particularly, fired bullets,
4 they tend to have some damage to them especially if they, you
5 know, have been through walls or doors or bullets that are
6 from autopsies or from people. They have some secondary marks
7 on them.

8 So damage and a lack of marks can preclude a
9 conclusive identification. That's not necessarily unusual.

10 Q Let's move on to your 23, which is D3, the diagram.
11 It's now bigger so I think everyone can see D3 within the
12 diagram. Can you tell me what conclusions you were able to
13 draw from D3?

14 A Yes. D3, which is my 23, shared similar general
15 characteristics with the test bullets from the Hi-Point rifle.
16 However, I was unable to make a conclusive identification to
17 that rifle, but I did determine that it was not fired from any
18 of the other submitted firearms under this event.

19 Q So once again, consistent with the rifle, definitely
20 not fired from the other guns submitted to you?

21 A That's correct.

22 Q E7 or your item 24?

23 A My item 24 had the same conclusion as the last two.
24 Consistent with the Hi-Point rifle, but inconclusive to the
25 Hi-Point rifle, but not fired from any of the other firearms.

1 Q Okay. F4, which is your item 25?

2 A And same conclusion as the others. Consistent with
3 the Hi-Point rifle, but inconclusive to that rifle, but not
4 fired from any of the other submitted firearms.

5 Q Your item 26, which is G3?

6 A 26, also shared the similar general characteristics,
7 with the Hi-Point rifle; however, I did not make a conclusive
8 identification to that rifle, but I did conclude that it was
9 not fired from any of the other firearms which I examined in
10 this case.

11 Q Now, I'm going to jump down to your item 44, 45 and
12 46 those three bullets, which are Mr. Szukiewicz's items 1, 2
13 and 3.

14 A Okay.

15 Q Can you tell me what conclusion us drew? Let's
16 start with number 1, which has previously been admitted in
17 court as H1.

18 A So number 1, that's my item 44. I did determine
19 that that one shared similar general characteristics with the
20 Hi-Point rifle; however, I did not conclusively identify it to
21 that rifle, but I did determine that it was not fired from any
22 of the other firearms, which I examined in this case.

23 Q Next one, which is his item number 2, your 45, also
24 previously identified in this case as I5?

25 A Yes. My 45 shared similar general characteristics

1 with my test fired items from the submitted Taurus revolver;
2 however, I did not conclusive identify it to that revolver,
3 but I did determine that it was not fired from any of the
4 firearms which I examined in this case.

5 Q And then what did you say as to 46?

6 A 46 shared similar general characteristics with the
7 Hi-Point rifle; however, I did not conclusively identify it to
8 the rifle, but I did determine that it was not fired from any
9 of the other firearms that I examined in this case.

10 THE COURT: And 46 was what item?

11 THE WITNESS: 3.

12 MR. DiGIACOMO Mr. Szukiewicz's item 3, and we
13 didn't open these, but my guess is when we open these, his 1,
14 2, 3 is going to be (inaudible) so I'm going to ask --

15 THE COURT RECORDER: (Inaudible).

16 MR. DiGIACOMO: Oops. I've got to find a speaker.
17 There we go. Okay.

18 I'm going to ask the clerk to open that. My guess
19 is that I and J --

20 THE CLERK: These were already admitted, weren't
21 they? I have them here.

22 MR. DiGIACOMO Correct. It doesn't list them in any
23 particular order.

24 THE CLERK: It doesn't. So can I just write them in
25 any order or do you want her to tell you?

1 MR. DiGIACOMO: I'm going to have her order them in
2 1, 2, 3 for us, so that way we can keep them straight.

3 THE CLERK: I only have two here.

4 MR. DiGIACOMO: You should have (inaudible).

5 (Mr. DiGiacomo/Clerk conferring)

6 BY MR. DiGIACOMO

7 Q So let's start with your 44, that's what you marked
8 as item 1?

9 A That's correct.

10 Q And that would be what conclusion as it relates to
11 that?

12 A My 44, I did say that it had similar general
13 characteristics to the Hi-Point rifle; however, I did not
14 conclusively identify it to that rifle, but it was not fired
15 from any of the other firearms which I examined in the case.

16 Q And the top of that cap, what does it say?

17 A H1.

18 Q Okay. So --

19 MR. DiGIACOMO And I'm sorry, madam clerk, what's
20 the exhibit number since you have the package still?

21 THE CLERK: 226.

22 BY MR. DiGIACOMO

23 Q So 226-A is going to be H1, item 44, and I'll give
24 you your item -- they are backwards -- your item 46.

25 A And my item 46 is impound item 3, and the lid says

1 I5.

2 Q Okay. And the conclusion is?

3 A And 46 is similar general characteristics with the
4 Hi-Point rifle, not conclusively identified to the rifle and
5 not fired from any of the other firearms in the case.

6 Q And now let's do this; your item 45, which will be
7 227-C?

8 A 45, the impound item 2, the lid says J1, and that
9 one 45 shared similar general characteristics with the Taurus
10 revolver. It was not conclusively identified to the revolver,
11 but I did determine it was not fired from any of the other
12 firearms in the -- in this case that I examined.

13 Q And so the revolver being 218-A?

14 A Yes.

15 Q It's generally consistent with being from this
16 revolver?

17 A Yes, that's correct.

18 Q Okay. Now, between all the other bullets that
19 happened to have all this copper stuff all over it and that
20 bullet looks different to me as a lay person --

21 A Um-h'm.

22 Q -- why?

23 A This is a plain lead bullet. It doesn't what we
24 call a jacket on it. This is consistent with a type of bullet
25 that is manufactured to be fired from a revolver.

1 Q Okay. Thank you. Now that I've cleared that up.

2 (Mr. DiGiacomo/Clerk conferring)

3 BY MR. DiGIACOMO

4 Q While we are still at the scene, I guess, I should
5 talk approximate item number 9, which is a small metal
6 fragment, which is your 20.

7 A Yes.

8 Q Can you tell me what conclusions you were able to
9 draw?

10 A Yes, that small metal fragment was of no value for
11 microscopic comparisons. It didn't exhibit any rifling
12 impressions that I could use to make a comparison.

13 THE COURT: Okay, before you go on, we're not
14 finding that 218 has been admitted so.

15 THE CLERK: Yeah, I don't have it.

16 MR. DiGIACOMO Well, I'll move to admit 218. It was
17 the gun that Mr. Felabom testified to. I'll move to admit 218
18 if I didn't during the testimony.

19 THE COURT: Any objection?

20 MS. McNEILL: No.

21 MR. LANDIS: No.

22 MR. WOLFBRANDT: No.

23 THE COURT: 218's admitted.

24 (State's Exhibit 218 is admitted)

25 MR. DiGIACOMO Thank you, Judge.

1 BY MR. DiGIACOMO

2 Q So and I'm sorry, item 20 -- your item 20, which is
3 9 from the crime scene, that little metal fragment is what?

4 A It was of no value to me for microscopic
5 comparisons. It didn't exhibit any rifling characteristics
6 that I could have used to make a comparison.

7 Q So from the crime scene, that evidence that we just
8 talked about, you have one bullet that is consistent with
9 coming from the Glock, correct, or --

10 A No. I -- well, one -- one bullet and then --

11 Q I'm sorry, one bullet --

12 A Yeah.

13 Q -- being consistent with coming --

14 A One bullet --

15 Q Item number 18?

16 A -- yes, and then one bullet jacket.

17 Q Okay. Well, the bullet jacket, isn't that
18 Mr. Szukiewicz's item number 40 or your 40 --

19 A My 40.

20 Q -- his item number 1 --

21 A His 1.

22 Q -- that came from UMC?

23 A I know -- I don't know where it came from other than
24 it's his item 1. It's probably on the package. Yes.

25 Q Is that it?

1 A And that would be it, yes. And it does say UMC on
2 the package.

3 Q Okay. So I was going to get to that in just a
4 second. But so of the stuff we've talked about, item 18, you
5 have one that is a bullet consistent with a .40 caliber?

6 A Yes, that's correct.

7 Q All right. You have the one which is identified as
8 J1, and on yours, I believe, it's item number 45 on yours,
9 which is consistent with that revolver?

10 A That's correct.

11 Q And then the remaining bullets are all consistent
12 with that Hi-Point rifle --

13 A Yes.

14 Q -- that are at the scene?

15 A And with the exception of that fragment.

16 Q Yeah. The fragment that could come from anything?

17 A Correct.

18 Q So now let's move on to the one at UMC. That bullet
19 at UMC you've sort of already said it.

20 A Yes.

21 Q The bullet that's at UMC is what?

22 A So that's my item 40, and that one, the bullet
23 jacket in this item shared similar general characteristics
24 with the Glock; however, I didn't conclusively identify it to
25 the Glock, but I did determine it was not fired from any of

1 the other firearms which I examined under this event.

2 Q Which includes that one that was submitted a month
3 later?

4 A Yes, that's correct.

5 Q So now let's move on to the one from the autopsy,
6 which is your 42, item -- Mr. Szukiewicz's item number 16 is
7 one bullet and one small metal fragment.

8 A Yes. And item 42, the -- the bullet, did share
9 similar general characteristics with the Hi-Point rifle. Was
10 not conclusively identified to the rifle, but I determined it
11 was not fired from any of the other firearms which I examined
12 under this event.

13 Q Does that -- is that the total amount of firearms
14 related evidence that you did comparisons of spent ammunition
15 to weapons?

16 A Yes, I believe so.

17 Q And from that you were able to conclude that there
18 were nine cartridges fired out of that Hi-Point rifle,
19 correct?

20 A There were nine cartridge cases --

21 Q Cases.

22 A -- which I identified to the Hi-Point rifle.

23 Q And four Smith and Wesson cartridge cases fired out
24 of the Glock?

25 A Four .40 caliber Smith and Wesson cartridge cases

1 that I did identify to the Glock.

2 Q And as we've already discussed, you have two Glock
3 .40 consistent bullets, one consistent with the .38 and the
4 remaining bullets all consistent with that Hi-Point rifle?

5 A Yes, that's correct. None of those were
6 conclusively identified to those particular firearms. But
7 same class characteristics, just lack of sufficient
8 microscopic individual characteristics for me to go that last
9 step and make that conclusive identification.

10 Q Now, did you test fire and see if that Hi-Point is
11 in normal working condition?

12 A Yes, I did.

13 Q Can you tell me first, I mean, is it in normal
14 working condition?

15 A I did test fire it. It was found to be operational
16 and I did not note any malfunctions with I test fired it.

17 Q And is it a semi-automatic?

18 A Yes, it is.

19 Q So in order to discharge nine rounds out of it,
20 you've got to pull that trigger nine times?

21 A Yes. Per the definition of a semi-automatic, you do
22 have to pull the trigger each time to discharge a cartridge.

23 MR. DiGIACOMO Can I have the Court's indulgence.
24 Thank you, ma'am.

25 THE WITNESS: You're welcome.

1 THE COURT: Cross.

2 MS. McNEILL: Your Honor, may we approach?

3 THE COURT: Yes.

4 (Off-record bench conference)

5 THE COURT: All right. Any cross?

6 MR. LANDIS: On behalf of Mr. Murphy, no cross.

7 MR. WOLFBRANDT: No.

8 MS. McNEILL: No questions, Your Honor.

9 THE COURT: Questions from the jury? And seeing
10 none, may this witness be excused?

11 MR. DiGIACOMO Yes, Your Honor.

12 THE COURT: Thank you very much for your testimony.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You're excused. All right. Ladies and
15 gentlemen, it's 20 minutes after 5:00 so we've gone a little
16 past, and so we're going to recess for our overnight recess.
17 Tomorrow's Wednesday. What does it look like?

18 (Court/Clerk conferring)

19 THE COURT: We should be able to start at 1:00
20 tomorrow. Is that going to work for your witness scheduling?
21 Okay.

22 MR. DiGIACOMO We'll make it work.

23 THE COURT: All right. Good. So we're going to
24 start at 1:00 o'clock tomorrow, and after my morning calendar.

25

1 So during this overnight recess, it is your duty not
2 to converse among yourselves or with anyone else on any
3 subject connected with the trial or read, watch or listen to
4 any report of or commentary on the trial by any person
5 connected with the trial or by any medium of information,
6 including without limitation, newspaper, television, radio or
7 Internet. You are not to form or express an opinion on any
8 subject connected with the case until it's finally submitted
9 to you. I'll see you tomorrow at 1:00.

10 THE MARSHAL: All rise for the jury, please.

11 (Jury recessed at 5:19 p.m.)

12 THE COURT: And the record will reflect that the
13 jury has departed the courtroom. Any matters outside the
14 presence?

15 MR. LANDIS: I do, and I know everyone's had a long
16 day so I can be really quick.

17 THE COURT: Okay.

18 MR. LANDIS: Yesterday, we were talking about my
19 expert in relation to the text message location data. You
20 asked me to inquire how long he said he would need.

21 THE COURT: Yes.

22 MR. LANDIS: I inquired last night. He said two
23 days, today being day one.

24 THE COURT: Okay.

25 MR. LANDIS: Two other really quick things.

1 THE COURT: Okay.

2 MR. LANDIS: Based on the questioning of Ms. Rice,
3 I'm going to guess the State has no intent to call Ashley
4 Hall. The reason I bring that up is she's in prison, and if
5 they're not going to, I need to get an order of transport
6 cooking.

7 MR. DiGIACOMO She was released from prison on
8 September 12th.

9 MR. LANDIS: Oh, she was?

10 MR. DiGIACOMO She's on parole.

11 MR. LANDIS: Okay.

12 MR. DiGIACOMO As far as I know, she's on --

13 MR. LANDIS: Even better.

14 MR. DiGIACOMO -- parole.

15 MR. LANDIS: Last but not least, Gabriel Sotelo is a
16 witness, who I don't know if we've heard his name in this
17 trial or not, but he talked with the police and told them that
18 Robert Figueroa confessed to Sotelo for committing this crime
19 and that caused them to arrest Figueroa.

20 I'm -- I've subpoenaed him. He's under subpoena. I
21 intend to call him in my case. He is indicating he's not
22 going to honor the subpoena, and I wanted to inquire as to the
23 Court's material witness procedure so I can, number one, know,
24 and number two, get cooking.

25 THE COURT: You need a material witness warrant, you

1 know, and the witness has indicated to you or to an
2 investigator?

3 MR. LANDIS: Investigator.

4 THE COURT: Okay. And that he's not going to
5 appear, then I'll issue a warrant. You just need to get it to
6 my chambers and I'll sign.

7 MR. LANDIS: I have an -- and I have an affidavit,
8 which from my investigator. Thank you. That's all.

9 MR. DiGIACOMO We don't anticipate calling our cell
10 phone experts. We're going to put the records in, but we
11 don't anticipate calling our cell phone expert. Tomorrow at
12 this point, it doesn't even look like it's going to be
13 Thursday, I anticipate Friday at the very earliest. So he'll
14 definitely get his two days.

15 We will be calling the CORs tomorrow because they're
16 flying in from out of state and they are leaving tomorrow
17 night.

18 MR. LANDIS: I don't think that is a problem.

19 THE COURT: All right. All right, good. Then I'll
20 see you tomorrow. Court's in recess.

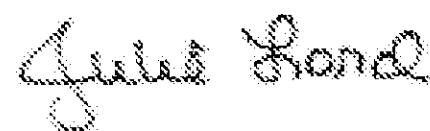
21 (Court recessed at 5:22 p.m. until Wednesday,
22 September 21, 2016, at 1:34 p.m.)

23 * * * * *

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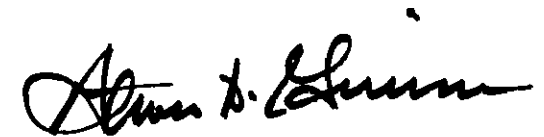
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1 ATTEST: I hereby certify that I have truly and correctly
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
	.	CASE NO. C-15-303991-4
Plaintiff,	.	CASE NO. C-15-303991-5
	.	
vs.	.	DEPT. V
	.	
JORGE MENDOZA,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 8

WEDNESDAY, SEPTEMBER 21, 2016

APPEARANCES:

FOR THE STATE:	MARC P. DiGIACOMO, ESQ. AGNES M. LEXIS, ESQ.
FOR DEFENDANT MENDOZA:	WILLIAM L. WOLFBRANDT, ESQ.
FOR DEFENDANT MURPHY:	CASEY A. LANDIS, ESQ.
FOR DEFENDANT LAGUNA	MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

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1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 21, 2016, 1:34 P.M.

2 (In the presence of the jury)

3 THE MARSHAL: Your Honor, all members of the jury
4 and all four alternates are present.

5 THE COURT: Thank you. And the record will reflect
6 that all 12 members of the jury are present as well as the 4
7 alternates. All three defendants are present. You may be
8 seated. As well as their respective counsel. The Chief
9 Deputies District Attorney prosecuting the case and all
10 officers of the court.

11 And ladies and gentlemen, I feel like I just have to
12 apologize to you every time I see you because you've been,
13 once again, kept waiting. I just want to assure that you were
14 not kept waiting by any reason of anyone in this room. So
15 with that said, next witness, please.

16 MS. LEXIS: Your Honor, the state calls Timothy
17 Dutra.

18 DR. TIMOTHY DUTRA, STATE'S WITNESS, SWORN

19 THE CLERK: Please be seated, and then please state
20 and spell your first and last name for the record.

21 THE WITNESS: Timothy, T-i-m-o-t-h-y, Dutra,
22 D-u-t-r-a.

23 MS. LEXIS: May, Your Honor?

24 THE COURT: You may.

25 MS. LEXIS: Thank you.

1 DIRECT EXAMINATION

2 BY MS. LEXIS:

3 Q Sir, how are you employed?

4 A I'm a medical examiner at the Clark County Office of
5 the Coroner.

6 Q How long have you been a medical examiner?

7 A Six years now.

8 Q Dr. Dutra, could you please give the jury or tell
9 them your educational background and experience which would
10 make you qualified to be a medical examiner here in Las Vegas,
11 Clark County, Nevada?

12 A I have a MD degree from USC. I have a Ph.D. in
13 anatomy and sub biology from UCLA. I did -- I trained in
14 anatomic and clinical pathology at Harbor UCLA in Los Angeles.
15 I worked at a Los Angeles County Hospital for five years. I
16 did a fellowship in blood banking and boarded in that
17 subspeciality. After a couple years of research, I did a
18 fellowship in forensic pathology at the St. Louis City Medical
19 examiners office. I became board certified in forensic
20 pathology, and since that time I've worked here in Las Vegas.

21 Q Okay. Thank you very much. Dr. Dutra, what is it
22 that a medical examiner does?

23 A In summary, we determine the cause of death and the
24 manner of death and then create the Death Certificate.

25 Q Okay. Do you also perform what are called

1 autopsies?

2 A Yes.

3 Q Okay. And what is an autopsy?

4 A An autopsy is an examination of the decedent's body,
5 and it's part -- oh, it's one of the criteria -- criterions
6 that is used for determining cause and manner of death.

7 Q Okay. And does it involve opening up the body --

8 A Yes.

9 Q -- as well? Okay. Have you previously testified in
10 the Eighth Judicial District Court rendering opinions as a
11 medical examiner?

12 A Yes.

13 Q In your capacity and employment with Clark County,
14 were you assigned to perform an autopsy on an individual by
15 the name of Monty Gibson under autopsy case number 14-08946?

16 A Yes.

17 Q And was that autopsy performed on August 23rd, 2014
18 at approximately 12:00 p.m.?

19 A Yes.

20 Q Dr. Dutra, when you perform autopsies, are members
21 of Las Vegas Metropolitan Police present during --

22 A Sometimes.

23 Q -- autopsies? Sometimes? How about homicide
24 detectives? Do they often attend?

25 A In homicide cases, they often attend.

1 Q Okay. How about crime scene analysts? Are some
2 usually present?

3 A They are usually -- yes, they usually attend, and
4 they are present when the body bag is opened and the external
5 examination is made.

6 Q Okay. In terms of identification in this particular
7 case, do you recall how the decedent was identified?

8 A It was by identification by a photo ID, I believe.

9 Q Okay. When the decedent's body was transported and
10 brought over to the coroner's office, was there a toe tag?

11 A We put the toe tag on. The body came in a sealed
12 body bag with a seal on it.

13 Q Okay, okay. So when you're performing an autopsy,
14 do you begin with an external examination?

15 A Actually, it starts with a review of the medic -- of
16 the coroner's investigator's report to give me an idea of what
17 type of case I have. And then I proceed to do an external
18 examination of the body and a review of the -- and then I look
19 at the x-rays and then I'll do the internal examination.

20 Q Okay. So let's talk about the external
21 investigation first. Did you have an opportunity to do that
22 on Mr. Gibson?

23 A Yes.

24 Q Okay. What, if any, findings did you come across?

25 A He had two significant traumatic injuries. He had a

1 gunshot wound of the head and the gunshot wound of the chest.

2 Q Okay.

3 MS. LEXIS: Your Honor, may approach with what's
4 been previously marked.

5 THE CLERK: I couldn't hear you, what number?

6 THE COURT: She hasn't said it yet.

7 THE CLERK: Oh.

8 MS. LEXIS: May I approach with what's been
9 previously marked as State's Proposed Exhibits 236, 237, 238
10 and 239?

11 THE COURT: Yes.

12 BY MS. LEXIS:

13 Q Dr. Dutra, I'm showing you what's been previously
14 marked as State's Proposed Exhibits 235 to 239. Can you
15 please look through the photographs and look at me when you're
16 done.

17 A (Witness reviewing photographs). Okay.

18 Q Doctor, do you recognize what's depicted in these
19 exhibits?

20 A Yes, I do.

21 Q What do you recognize them to be?

22 A I recognize them to be photographs of the gunshot
23 entrance wounds, and of the gunshot exit wound on the
24 decedent.

25 Q Okay. Do they fairly and accurately represent the

1 injuries that you observed when you performed the autopsy --

2 A Yes, they do.

3 Q -- on Mr. Gibson?

4 A Yes.

5 Q Thank you.

6 MS. LEXIS: Your Honor, I move to admit State's
7 Proposed Exhibits 235 to 239.

8 MS. McNEILL: No objection.

9 MR. WOLFBRANDT: No objection.

10 MR. LANDIS: No objection.

11 THE COURT: Those will be admitted.

12 (State's Exhibits 235 through 239 admitted)

13 MS. LEXIS: Permission to publish, Your Honor?

14 THE COURT: Granted.

15 MS. LEXIS: Thank you. Mr. DiGiacomo, 236.

16 BY MS. LEXIS:

17 Q Dr. Dutra, it should pull up on your screen as well.
18 But concerning 236, what is that the ladies and gentlemen of
19 the jury are looking at?

20 A This is a photograph of the face of the decedent
21 looking from the right-hand side. And at the lateral aspect
22 of the right eyebrow there's a gunshot entrance wound.

23 Q Okay. And could you just circle the gunshot wound
24 on -- thank you, Doctor.

25 MS. LEXIS: Mr. DiGiacomo, can we please move over

1 to 239?

2 BY MS. LEXIS:

3 Q Dr. Dutra, what is State's Exhibit 239 showing?

4 A That's a closer photograph of the same gunshot
5 entrance wound of the -- of the head.

6 Q In looking at this photograph of the gunshot wound
7 to the decedent's head, was there anything out of the ordinary
8 concerning this particular gunshot wound or was it pretty
9 typical?

10 A It was very typical of a gunshot entrance wound.

11 MS. LEXIS: Mr. DiGiacomo, could we please publish
12 State's Exhibit 237?

13 BY MS. LEXIS:

14 Q And Dr. Dutra, concerning this particular exhibit,
15 what are we looking at?

16 A We're looking at the gunshot entrance wound of the
17 chest.

18 Q Okay. And could you just please circle that area?
19 Thank you.

20 MS. LEXIS: And State's now admitted Exhibit 238,
21 please.

22 BY MS. LEXIS:

23 Q What is this photograph of?

24 A This is the gunshot exit wound of the chest.

25 Q Okay. I noted that we did not show a photograph of

1 the exit wound to the gunshot wound to the head.

2 A Correct.

3 Q Was there an exit wound?

4 A No.

5 Q Okay. Okay, so you indicated after you performed
6 the external investigation, Dr. Dutra, you also look at
7 x-rays?

8 A After I do the external examination, I do look at
9 the x-rays.

10 Q Okay. And in this particular case, did you do that
11 with Mr. Gibson?

12 A Yes.

13 Q Okay. Particularly, did you look at x-rays on --
14 concerning the gunshot wound to the head?

15 A Yes.

16 MS. LEXIS: May I approach with what's been already
17 admitted as State's 235?

18 THE COURT: Yes.

19 BY MS. LEXIS:

20 Q Dr. Dutra, do you recognize what's depicted in this
21 particular photograph?

22 A Yes. This is a lateral x-ray of the head, and it
23 shows the basilar skull fracture with emanating linear skull
24 fracture. And it shows the bullet, the retained bullet in the
25 back part of the cranial cavity.

1 Q Okay.

2 MS. LEXIS: Permission to publish, Your Honor, 235?

3 THE COURT: Granted.

4 BY MS. LEXIS:

5 Q You spoke to the jury about a retained bullet. Are
6 you able to circle that particular bullet on this exhibit,
7 Dr. Dutra?

8 A (Witness draws on screen).

9 Q Okay. So there was a bullet in his head?

10 A Yes.

11 Q Okay. After you conduct x-rays, do you then
12 continue on to an external -- or internal examination?

13 A Yes.

14 Q And in this particular case, what did you find?

15 A I found that -- I examined the trajectory of the
16 bullet of the gunshot wound to the head. Noted the internal
17 fractures in the base of the skull. I saw the damage to the
18 brain, and I recovered the bullet that was in the back part of
19 the skull cap, skull cavity.

20 Q Okay. Let's talk about the trajectory of the
21 gunshot wound to the head first. What were your findings
22 after the internal examination?

23 A Well, the gun -- the gunshot wound of the head had
24 gone backwards, downwards, and a little bit to the left and
25 ended up almost in the midline of the back part of the

1 posterior cranial -- what we call the posterior cranial fossa,
2 and it had caused damage to both the overlying right cerebral
3 hemisphere and extensive damage to the cerebellum, gone
4 through the cerebellum.

5 Q Okay. In your training and experience, was that
6 particular gunshot wound to the head fatal?

7 A Yes.

8 Q Okay. Concerning the gunshot wound to the chest,
9 what was the trajectory of that particular injury for?

10 A That was also backward, downward and slightly
11 rightward.

12 Q And in your opinion, would that gunshot wound to the
13 chest have been fatal?

14 A It could have been fatal. It certainly could have
15 been fatal.

16 Q Okay. You also indicated that you recovered the
17 bullets, the bullet that was retained in the decedent's?

18 A Yes.

19 Q Okay.

20 MS. LEXIS: Your Honor, may I approach with what's
21 been previously marked as State's Proposed Exhibits 240 and
22 241?

23 THE COURT: Yes.

24 BY MS. LEXIS:

25 Q Dr. Dutra, I'm showing you 240 and 241. Do you

1 recognize what's depicted in these exhibits?

2 A Yes.

3 Q Okay. What do you recognize them to be?

4 A These are the bullet and a small fragment of the
5 bullet jacketing that were recovered from the cranial cavity.

6 Q Do they fairly and accurately represent what the
7 bullet and bullet fragment that you recovered from the
8 decedent's head, how that looked when you performed the
9 autopsy and recovered it?

10 A Yes.

11 Q And in fact, does it show the coroner case number or
12 ID number in the photograph?

13 A Yes.

14 Q Okay.

15 MS. LEXIS: Your Honor, I'd move to admit State's
16 Exhibits 240 and 241.

17 MS. McNEILL: No objection.

18 MR. WOLFBRANDT: No objection.

19 MR. LANDIS: In objection.

20 THE COURT: Those will be admitted.

21 (State's Exhibits 240 and 241 admitted)

22 MS. LEXIS: Permission to publish 240.

23 THE COURT: Granted.

24 MS. LEXIS: Thank you.

25 BY MS. LEXIS:

1 Q And Dr. Dutra, could you just briefly tell us what
2 we're looking at here?

3 A This is the lead core of the bullet, which is the
4 main part of the bullet's mass, in this photograph.

5 Q Okay. And how about 241?

6 A That is a small -- most handgun bullets have a small
7 amount of copper jacketing on the surface of the bullet, and
8 that's often shed during the passage of a bullet, especially
9 if it's gone through a bone, and so it's fragmented and
10 recovered at the time of autopsy.

11 Q Okay. And once that was recovered from Mr. Gibson's
12 head, that was turned over to the crime scene analyst?

13 A Yes.

14 Q Okay. Do you also obtain bodily fluids from the
15 decedent such that you would send it off for analysis for
16 toxicology analysis?

17 A Yes.

18 Q And you did that in this particular case?

19 A Correct.

20 Q Okay. What, if any, findings did you?

21 A There was methamphetamine, I believe, at 400
22 nanograms per ml and amphetamine, I think, was 160 nanograms
23 were ml. Amphetamine is a -- the primary metabolite of
24 methamphetamine. And there were also marijuana metabolites.

25 Q Okay. In your opinion, Dr. Dutra, did the drugs

1 found in Mr. Gibson's system contribute to his death?

2 A No.

3 Q After a thorough examination of Mr. Gibson, both
4 internal through x-rays, and external examination, were you
5 able to ascertain his cause of death?

6 A Yes.

7 Q And what was that, Doctor?

8 A Gunshot wounds of the head and chest.

9 Q And were you able to give an opinion as to his
10 manner of death?

11 A Yes, the manner of death was homicide.

12 MS. LEXIS: Court's brief indulgence.

13 BY MS. LEXIS:

14 Q And Dr. Dr. Dutra, concerning the manners of death,
15 what is a homicide?

16 A A homicide is when you have an interaction between
17 two people, an intentional interaction, and one of them dies.

18 Q And what are the other manners of death?

19 A There is suicide. There is accident. There is
20 natural. And then if we're not certain as to the -- if we do
21 not have a reasonable degree of medical certainty as to the
22 manner of death, we are legally allowed to use the
23 "undetermined" as a manner of death.

24 Q Thank you.

25 MS. LEXIS: Nothing further. Thank you.

1 THE COURT: Cross.

2 MS. McNEILL: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. McNEILL:

5 Q Dr. Dutra, you indicated that the results of the
6 toxicology showed methamphetamine 400 nanograms as well as
7 amphetamines?

8 A Correct.

9 Q Amphetamines is the metabolite of the
10 methamphetamine, correct?

11 A Correct.

12 Q And that means that's what happens in your body as
13 it's processing it?

14 A Yes.

15 Q Okay. The methamphetamine that you found in the
16 system, the 400 nanograms, based on your medical training and
17 experience, are you familiar with kind of what that number
18 would suggest, the 400 nanograms?

19 A Yes.

20 Q Okay. Is that something that you would expect to
21 see in someone who had recently used methamphetamine, a number
22 that high?

23 A Well, yes, yes.

24 Q Okay. Is there any way you can determine based on
25 your training and experience about how recently?

1 A No.

2 Q Okay. What would you expect to see -- kind of
3 number would you expect to see if it had been within, say, a
4 day?

5 A Well, it depends on how much they took.

6 Q Okay.

7 A So because it's metabolized by enzyme kinetics and
8 so I'd have to know -- have a -- know how much they had taken
9 to be able to come to an idea of -- of where they were in the
10 excretion time.

11 Q Okay. But you could know from that number that it
12 was within recent time, the 400 nanograms?

13 A Well, I'm assuming that it was recent because it was
14 a physiologically significant level, and therefore, I think
15 that the person had taken it recently, yes.

16 Q Okay. And as a doctor, you're familiar with some of
17 the effects that methamphetamine can have on a person,
18 correct?

19 A To -- to some degree, yes.

20 Q Okay. And is it fair to say that methamphetamine
21 can make some people act irrational?

22 A It's a stimulant drug, yes.

23 Q And it can make some people act aggressive?

24 A Yes.

25 Q Okay.

1 MS. McNEILL: Nothing further.

2 THE COURT: Mr. Wolfbrandt?

3 MR. WOLFBRANDT: I've got no questions.

4 THE COURT: Mr. Landis?

5 CROSS-EXAMINATION

6 BY MR. LANDIS:

7 Q Good afternoon, Doctor. Do you sometimes test a
8 body you're examining for gunshot residue?

9 A Residue?

10 Q Yes.

11 A No. Sometimes the crime scene people will collect
12 residue.

13 Q Why is it that it's something that by the time the
14 body gets to you, it's generally not a great time to collect
15 it?

16 A Well, first of all, it's not considered to be that
17 reliable. It's a soft finding. And second of all, it's not
18 something that we test for. If the crime scene -- if the
19 police want to test for it, they are more than welcome to take
20 samples at the time that the body bag is opened.

21 Q And I don't want to extend you beyond your
22 experience, so please stop me, but in your experience, if you
23 know, does gunshot residue tend to stay on a body for a long
24 amount of time or is it something that you should capture as
25 quick as you can?

1 A No, it tends to stay on for a long time.

2 Q Are you aware if gunshot residue tests occurred to
3 Mr. Gibson's hands at any time?

4 A I'm not aware of whether it was tested or not.

5 Q Thank you, sir.

6 THE COURT: Redirect.

7 MS. LEXIS: Thank you.

8 REDIRECT EXAMINATION

9 BY MS. LEXIS:

10 Q Dr. Dutra, are you able to make any determinations
11 concerning the distance between Mr. Gibson and the individual
12 who was shooting him?

13 A Well, yes. These -- at least for the -- a gunshot
14 wound to the head, I can -- I called it indeterminant range,
15 but it really is a long range because there was no soot or
16 stippling, which means that it was more than three or four
17 feet away, the muzzle of the gun.

18 As to the gunshot wound of the chest, since I don't
19 know whether that area had been covered with clothing that
20 might have absorbed the soot or stippling, that truly is an
21 indeterminant range because I don't know whether there was
22 soot or stippling on the clothing.

23 Q Okay. And just in layman's terms, what is
24 stippling?

25 A When a gun is fired, other things more than the

1 bullet come out of the barrel. There's smoke from the gases,
2 and there are also small fragments of the powder. The powder
3 isn't truly a powder. It's small pellets of propellant that
4 burn. And when the bullet comes out, the smoke may, in a
5 close -- close range gunshot wound, the smoke may settle on
6 the -- on the body and be seen as soot.

7 And if the -- any of the propellant micro pellets,
8 the gunshot powder strike the body, they can be seen as small
9 abrasions of the skin, basically, surrounding the gunshot
10 entrance wound, and we call that stippling.

11 Q Okay.

12 MS. LEXIS: And Mr. DiGiacomo, if we could please
13 publish 239 once again.

14 BY MS. LEXIS:

15 Q So is it your testimony, Dr. Dutra, that in this
16 particular exhibit what's now been admitted 239, that there
17 was no evidence of stippling?

18 A Yes, it was no evidence of soot or stippling.

19 Q Okay. Which indicates to you that this was a
20 long-range shot?

21 A Yes, more -- at least more than four -- four feet.

22 MS. LEXIS: Nothing further. Thank you.

23 THE COURT: Any recross?

24 MS. McNEILL: Nothing further, Your Honor.

25 THE COURT: May this witness be excused?

1 MS. LEXIS: Yes.

2 THE COURT: Thank you for your testimony. Call your
3 next witness.

4 MR. DiGIACOMO: Joseph Sierra.

5 JOSEPH SIERRA, STATE'S WITNESS, SWORN

6 THE CLERK: Please be seated, and then please state
7 and spell your first and last name for the record.

8 THE WITNESS: Joseph Sierra, J-o-s-e-p-h,
9 S-i-e-r-r-a. Court.

10 DIRECT EXAMINATION

11 BY MR. DiGIACOMO:

12 Q Sir, how are you employed?

13 A T-Mobile US.

14 Q And in what capacity are you employed? What do you
15 do for them?

16 A I'm a custodian of records.

17 Q And as a custodian of records, do you have certain
18 training and experience and background in not only the records
19 themselves, but some of the technology used to create records
20 at T-Mobile?

21 A Yes.

22 Q Okay. Can you explain that to the ladies and
23 gentlemen of the jury?

24 A Yes. Upon being hired by T-Mobile, essentially, we
25 have to go through six months of training, which covers the

1 network, the customer service, applications that we utilize as
2 well as legal process in order to be able to process
3 subpoenas, search warrants and court orders served upon T-
4 Mobile and to obtain clearances, you know, to handle
5 confidential information.

6 In addition to that, every year we have to go
7 through a recertification process. And whenever new
8 technology is institutionalized on our network we have to go
9 through an additional training on that technology. So, 2014
10 is a good example. I had to go through training three
11 separate times. Once for the recertification. Again for HSPA
12 Plus, which is a type of 4G technology. And at the end of
13 that year, T-Mobile was going to add LTE. So I had to be
14 trained on LTE technology as well.

15 Q Now, over the years, has T-Mobile acquired other
16 cell phone companies as well?

17 A Yes.

18 Q And in particular, did at some point in 2014, or
19 maybe even '13, T-Mobile acquire Metro PCS?

20 A Yes.

21 Q Once they acquired Metro PCS, were you also trained
22 in the records related to Metro PCS as well?

23 A Yes.

24 Q And what do you do on a day-in-and-day-out basis for
25 T-Mobile?

1 A I essentially travel across the United States to
2 enter in telecommunication records in as evidence at trials.

3 Q Could you explain to the ladies and gentlemen of the
4 jury sort of how a cell phone generally works?

5 A Yes. Most people assume that a cell phone operates
6 on entirely wireless system. When it reality, about 90
7 percent of the actual transaction is hardwired. Your cell
8 phone itself has a small powered antenna that emits a radio
9 frequency signal to a nearby tower. That can depend on range,
10 based on how powerful the power is near you. Typically T-
11 Mobile's extent range is two and a half miles. That would be
12 probably like middle of the desert, farmland type of area, to
13 basically just under the tower.

14 In a location like New York City where you have a
15 tower every other block or every two blocks, then that tower
16 range is usually lowered to about quarter mile or less. Now,
17 once your cell phone actually connects to at that cell phone
18 tower, it will travel to the mobile base station. The mobile
19 base station basically powers the tower as well as relays the
20 information to what's known as the switch.

21 The switch is your routing system. Basically, it
22 tells the phone call where to go and forwards the information
23 to the billing system. That's going to be date, time, phone
24 number communicated with how long you were probably speaking
25 to the party, and from there, it will go to the public

1 telephone system.

2 From the public telephone system, it will go out
3 either to a landline or it will go through the same process,
4 but the -- but the inverse for whatever particular cell phone
5 company that you're trying to contact another user on.

6 Q And that sort of leads into my next question. While
7 there may be some slight differences in technology, generally
8 all cell phones work in that same sort of way, whether or not
9 it's what they call CDMA, GSM, LT, whatever the technology is
10 that they're using?

11 A Yes. The actual items that are a part of the
12 process to transmit the call, the base station, the switch,
13 that's actually exactly the same. The only difference is the
14 technology or the hardware inside that accepts the call or
15 passes the call along.

16 Q Now, you talked a little bit about cell towers.
17 Could you just sort of describe how a typical cell tower is
18 sort of set up?

19 A Yes. A cell tower operates on a nine sector layout.
20 So that means that there's nine antennas on an actual cell
21 phone tower. For the most part, the only exception was Metro
22 PCS. Metro PCS operated only on a six sector or six antenna
23 cell phone tower.

24 So if you were to think of it as a diagram. So
25 you're looking at it aurally. If you think of like the

1 Mercedes Benz symbol, you have that circle with the star in
2 the middle, and it's split up into three sections. If you
3 think of that, you have antenna or sector one, antenna sector
4 two, antenna or sector three. That basically, fills the
5 entire 360 degrees, which is the coverage area for a cell
6 phone tower.

7 So that one through three sector would be your
8 lowest or simplest cell tower technology. Then sectors four
9 through six would be the next up. Then seven through nine
10 would be your LTE 4G. So basically, the antennas are stacked
11 on top and they all operate on a three sector layout for T-
12 Mobile.

13 Q And when you talk about three sectors, if you're
14 using a cell phone and it connects to the tower, do you keep
15 records of which sector it connects to on that tower?

16 A Yes.

17 Q And why -- what is it that you can tell from that
18 information?

19 A Well, you can tell what direction that person was in
20 because of the fact that the antenna is set to cover 360
21 degrees. Excuse me, the tower is set to cover 360 degrees,
22 but each antenna under ideal conditions would cover 120
23 degrees. So again, three sectors, 120, 120, 120, would equal
24 at that 360. So you know that in that slice of that 120
25 degrees that person is somewhere within that area because they

1 used that antenna when connecting to the cell phone call.

2 Q Now, does a phone always connect to the closest
3 tower?

4 A No. It depends on the cell phone because your cell
5 phone is actually the one that chooses which cell phone tower
6 it will utilize. And it also depends on the technology that's
7 available in that area.

8 So, for example, say you have an iPhone 5, and as of
9 right now we're up to iPhone 7. An iPhone 5 only has 3G and
10 low 4G technology capability. iPhone 6 has LTE capability.
11 So if you're in an area where your cell phone is looking for a
12 higher signal like LTE, and that doesn't exist, your cell
13 phone will go to a tower that does provide that signal. It
14 may not be the closest, but because it provides the fastest
15 connection, that's the one it connects to.

16 Q Will a cell phone -- are there other variables
17 potentially for a cell phone like geography or a building in
18 the way or something else like that can affect which tower
19 your phone connects to?

20 A Yes.

21 Q But if a phone connects to a particular tower, does
22 it have to be in range of that tower?

23 A Most definitely.

24 Q So when you say use general terms, you said way out
25 in the desert two and a half miles, middle of New York City,

1 we're talking a block or two that you can narrow down the
2 distance of the phone to the tower. Is the tower density the
3 way that T-Mobile sets up their tower densities, the number of
4 towers they have a location, based upon the amount of need
5 that they have or the number of cell phones in a particular
6 area?

7 A Yes.

8 Q Okay. So the more densely populated a location is,
9 the more towers you have. The less densely populated, the
10 less towers you have?

11 A Correct.

12 Q Were you asked to come to court to authenticate
13 records that were collected during the course of an
14 investigation that occurred here in Las Vegas?

15 A Yes.

16 Q And this morning, did you and I go over sort of all
17 the records that you're going to authenticate here today?

18 A Yes.

19 MR. DiGIACOMO: May I approach, Judge?

20 THE COURT: You may.

21 BY MR. DiGIACOMO:

22 Q I'm going to start with three records that have
23 nothing to do with a specific phone and ask you if you
24 recognize what each of these is. And I'll start with State's
25 Proposed 275.

1 A Okay.

2 Q What is State's 275?

3 A This is going to be a listing of all the cell sites
4 for T-Mobile in the Las Vegas area.

5 Q And is that a business record kept in the ordinary
6 course of business by T-Mobile as a company?

7 A Yes.

8 Q Okay and it appears to be a true, fair and accurate
9 copy of that list?

10 A Yes.

11 MR. DiGIACOMO: Move to admit 275.

12 MS. McNEILL: No objection.

13 MR. WOLFBRANDT: No objection.

14 MR. LANDIS: No objection.

15 THE COURT: It will be admitted.

16 (State's Exhibit 275 admitted)

17 BY MR. DiGIACOMO:

18 Q Let's start with 311. Looking at 311, what is that?

19 A This is going to be a copy of switch locations as
20 well as the time zone offset for certain locations. So for
21 example, New York will be eastern time, but in comparison to
22 Las Vegas, which is Pacific time, it would be minus three
23 hours.

24 Q And that's, once again, records kept by T-Mobile in
25 order for -- that you provide to people so they understand how

1 it is to read your records?

2 A Yes.

3 MR. DiGIACOMO: Move to admit 311.

4 MS. McNEILL: No objection.

5 MR. WOLFBRANDT: No objection.

6 MR. LANDIS: No objection.

7 THE COURT: It will be admitted.

8 (State's Exhibit 311 admitted)

9 BY MR. DiGIACOMO:

10 Q And lastly, 312, what are we looking at?

11 A This is guide to be able to read and interpret our
12 cell site list.

13 MR. DiGIACOMO: Move to admit --

14 BY MR. DiGIACOMO:

15 Q Well, it's a business record. It's a true, fair and
16 accurate copy of that record kept by T-Mobile?

17 A Yes.

18 MR. DiGIACOMO: Move to admit 312.

19 MS. McNEILL: No objection.

20 MR. WOLFBRANDT: No objection.

21 MR. LANDIS: No objection.

22 BY MR. DiGIACOMO:

23 Q So let's --

24 THE COURT: That will be admitted.

25 (State's Exhibit 312 admitted)

1 MR. DiGIACOMO: Oh, sorry, Judge.

2 THE COURT: That's all right.

3 BY MR. DiGIACOMO:

4 Q I'm going to walk back here, and I'm just going to
5 put up one page from the cell -- 275, the cell tower list so
6 you can sort of explain to the ladies and gentlemen of the
7 jury if they ever have to use this document, sort of what it
8 is that they're looking at.

9 MR. DiGIACOMO: And counsel, I'm going to go about
10 15 pages in on 275. Maybe I'm going to go 15 pages in on 275.

11 BY MR. DiGIACOMO:

12 Q And then I'm going to zoom in just to the top. So
13 are you able to read that on your screen?

14 A Yes.

15 Q Okay. So if you could tell me, what is the number
16 on the left-hand column? What does that represent?

17 A Yes. So the 24594 is going to be the LAC, the
18 location area code. This is going to be one part of the cell
19 site identifier. So, 24594 can be the entire Las Vegas area
20 or maybe a little bit more. And the next column, 7718, is
21 going to be the cell ID. The cell ID is the second half of
22 the unique identifier that let's you know what cell tower was
23 utilized on the record.

24 So if you were to think of it, 24594, the LAC, is
25 kind of like your city and state. The 7718 is your street

1 address. So 7 -- tower 7718 can replicate in Las Vegas, New
2 York and California. But because it's shown on the record
3 with 24594, I know it's the one in Las Vegas, and not the one
4 in New York or Florida.

5 The third column is going to be the azimuth. The
6 azimuth is the degree in which the antenna is pointing. So
7 earlier I gave the example of that Mercedes Benz symbol where
8 you have a line basically at 0 due north, 120 and 240. The
9 middle of those lines is the azimuth. So if the antenna is
10 pointing at 60 degrees, then the actual, I guess, span of the
11 tower is 120 degrees because it's the same number on both
12 sides.

13 So if the antenna is pointed at 60 degrees and you
14 know the entire antenna's coverage goes to 120 degrees, that
15 means that there's 60 degrees on either side of the azimuth.

16 Q When we're talking about degrees, 0 is due north?

17 A That is correct.

18 Q So in your example of an azimuth that's at 60
19 degrees, that means it goes from due north to 120 degrees,
20 which is somewhere in the direction of southeast?

21 A Correct.

22 Q And then that Y goes out and if that phone is within
23 the range of that tower, it can connect to that tower on that
24 antenna?

25 A That is correct.

1 Q Okay.

2 A The other thing to keep in mind is that again, these
3 -- these towers have multiple antennas. So for example,
4 you'll notice the first two have in the second column 7718 and
5 7719. You'll notice that the longitude and latitude all the
6 way to the right are exactly the same. That's the same tower.

7 So each antenna is numbered 1 through 9. Just like
8 I said each -- three sectors is a different type of
9 technology. So 7 through 9 is going to be your LTE 4G
10 technology. So on this example, we see sector 8 and sector 9
11 and the azimuth is 120 and 240, respectively. The next --

12 Q And -- sorry, I was just going to -- just to clarify
13 that, the -- if I make a phone call and I'm hitting on 7718, I
14 might hit that tower, I may move to the area where now the --
15 a different antenna on that tower hits me. I make a phone
16 call, I might then hit on 7719 or if I move while making a
17 phone call, I could theoretically go between the various
18 antennas; would that be fair?

19 A That's correct.

20 Q Okay. Does T-Mobile or previously Metro PCS keep a
21 record of every tower you hit in a particular call or just
22 some of the towers you hit in a call?

23 A We actually only keep the first tower and the last
24 tower utilized. So when you pick up the phone and when you
25 hang up the phone call, those are the two towers that we

1 capture.

2 Q And so if I'm driving up I-15 here in Las Vegas and
3 I call before I make it to Primm, I might start on a tower way
4 down by the state line, and if I'm on that phone long enough
5 and I wind up in Utah or I may wind up on a tower that ends in
6 St. George, Utah?

7 A That's correct.

8 Q Okay. And all the towers in between, you wouldn't
9 have a record of?

10 A That's correct.

11 Q So the next column says west, I think, for the
12 entire 275. So what is that column for?

13 A Yes. That's actually going to be the region. So
14 it's the imaginary lines that T-Mobile places for its markets.
15 So it could be, you know, north central, west, east,
16 southeast, whatever market lines that T-Mobile wants to create
17 based on coverage, that is what it will list.

18 So in this situation, we have the Las Vegas market,
19 which is part of the western region.

20 Q And then Las Vegas, every one of these says Las
21 Vegas. That's just the city where the tower is or the
22 location?

23 A Typically, it's the market. So it could technically
24 go a little bit further out than the city line, but --

25 Q So theoretically --

1 A -- in this situation --

2 Q -- it could be in Henderson or North Las Vegas or
3 some other suburb of Las Vegas, and that would still show Las
4 Vegas?

5 A That's correct.

6 Q Okay. And then there's GPS coordinates for each one
7 of the towers. This may be self-explanatory, but go ahead and
8 explain it to them anyways.

9 A Yes, that's going to be the longitude and latitude
10 location for the cell phone tower. So geographically the
11 exact location of where that tower is placed.

12 Q And so if I were to take those two numbers, drop
13 them on to a Google map, you would be able to find where that
14 tower is on the Google map based upon its GPS location?

15 A That's correct.

16 Q Now, the first page of 275 -- actually, maybe the
17 first couple of pages of 275, and I'm going to put up page 1
18 now, a lot of the information is blank. Can you -- do you
19 know why it is that this information would not have populated
20 when it was provided sometime after our crime?

21 A Yes. So there's two situations. The first is going
22 to be the institution of the -- the insulation, excuse me, of
23 the new network. So when we were inputting LTE, the
24 information does take a little bit for it to be actually
25 transferred across the entire company. So one aspect of the

1 longitude and latitude being plotted out is not there because
2 when a tower is constructed, we have a radio frequency
3 engineer actually go to the tower, input the information, file
4 where the permit to build that -- that location or that tower
5 is put, then they would have to actually physically go out to
6 the tower and take a GPS reading of where it is.

7 That takes a little bit of time when you think of
8 the whole construction of connecting it to the network,
9 building the tower, filing the permit, et cetera. So
10 longitude and latitude is the last item that's actually
11 inputted.

12 So depending on when the list is and when we sent it
13 out, longitude and latitude for LTE towers could be excluded.

14 The second item is that there -- if the tower was
15 decommissioned, the longitude and latitude is no longer added
16 to the record. So if this list was showing historical towers,
17 then it will only show live towers will provide a longitude
18 and latitude. If the tower's been decommissioned since then,
19 then it won't have a longitude and latitude.

20 Q So for example, if there was a request made in
21 November of 2014, and the LAC or 24593 had been decommissioned
22 between our crime and let's say November of 2014, it may not
23 longer populate that information in this particular record?

24 A Yes. Because again, it's based on when the cell
25 site list was pulled and the record could no longer -- the

1 record could be an older record so that LAC and CID, excuse
2 me, no longer exists. So we have the actual historical
3 archive, but the longitude and latitude wouldn't be included
4 because it has been since taken down.

5 Q So now let's move on to 311. And I'm sure this will
6 become maybe a little bit more relevant when we look at some
7 of the records themselves, but if you could sort of explain
8 what it is we're looking at here.

9 A This is going to be a list of time zones, based on
10 where our switches are located. If you recall earlier, I said
11 that a switch is our routing system. In 2014 and 2015, we
12 utilized a network transfer system known as super switches.

13 Basically -- typically, when you would make a phone
14 call, you would register with the local switch. So if you
15 made a phone call in Las Vegas, you would utilize a switch
16 located in Nevada. During the expansion of our network to, I
17 guess, offset construction, so we would temporarily shut down
18 certain switches to add more towers, we would then have
19 someone, say, in Las Vegas not use the switch in Nevada but a
20 switch in Atlanta.

21 That would then modify the record and you would need
22 to adjust the record based on the time zone out -- offset.

23 Q So when we get to the records, people may be making
24 phone calls and those phone calls may have a time and a date,
25 but have you to go over and look at where the switch is in

1 order to find out if that's local time or if that time needs
2 to be adjusted by one, two, three hours?

3 A That's correct.

4 Q So now 312, this one's probably fair
5 self-explanatory, but if you could -- don't what happened
6 there. There we go. And I'll zoom in on the bottom part in
7 just a moment, but just for the ladies and gentlemen of the
8 jury, just describe what it is we're looking at here.

9 A This is going to be a guide to basically read and
10 analyze the call detail records that we supplied.

11 Q And while a lot of these might be self-explanatory,
12 on some of these records -- I'm going to zoom into the bottom
13 portion here -- there are some service codes that we'll see in
14 the records. So just explain what those are.

15 A A service code lets you know a little bit more about
16 the call. So there are certain capabilities every cell phone
17 pretty much has, such as call waiting, call forwarding,
18 voicemail, conference calling, et cetera. This lets you know
19 when those kind of situations occur.

20 So, for example, if you look at 29, it will say --
21 oops, cleared it out. Well, 29 says call forwarding on mobile
22 subscriber busy. That just means that either the person was
23 on a phone call when the other party was trying to call them
24 or the person who was receiving the call hit the ignore
25 button. Then that service code would show up on the call

1 record.

2 Q So if for whatever reason the jury wants to know why
3 it is there's this particular number in the record, they can
4 go back to this, look at it and find out?

5 A That's correct.

6 Q And they could also go back to pretty much every
7 other type of information that's going to be on this record
8 and have sort of a little cheat sheet of what that information
9 is?

10 A Yes.

11 Q So let's talk about individual records. I'm going
12 to show you what's been marked for identification as State's
13 Proposed Exhibits No. 297 and it should be 298. 298. First,
14 can you tell me what 297 is?

15 A 297 is going to be subscriber information for
16 702-666-4948.

17 Q And what is 298?

18 A 298 is going to be subscriber -- excuse me, call
19 detail records and cell tower information for the same target
20 number.

21 Q And those are once again, business records kept by
22 T-Mobile, and they appear to be true, fair and accurate copies
23 of those records?

24 A Yes.

25 MR. DiGIACOMO: Move to admit 297 and 298.

1 MS. McNEILL: No objection.

2 MR. WOLFBRANDT: In objection.

3 MR. LANDIS: Can I see 298 before -- no objection.

4 THE COURT: Those will both be admitted.

5 (State's Exhibits 297 and 298 admitted)

6 BY MR. DiGIACOMO:

7 Q So now I'm going to go on to 299 and 300. And once
8 again, what is State's Proposed Exhibit No. 299?

9 A This is going to be subscriber information for
10 702-750-8111.

11 Q And then the 301?

12 A This is going to be call detail records with cell
13 site information for the same target number ending in 8111.

14 Q And like the last two, those are business records
15 kept in the ordinary course of business of T-Mobile, and they
16 appear to be true, fair and accurate copies?

17 A Yes.

18 MR. DiGIACOMO: Move to admit 300 and 301.

19 THE COURT: No, 299 and --

20 MR. DiGIACOMO: 299 and 300.

21 MS. McNEILL: No objection.

22 MR. WOLFBRANDT: No objection.

23 MR. LANDIS: No objection.

24 THE COURT: Those will be admitted.

25 (State's Exhibits 299 and 300 admitted)

1 BY MR. DiGIACOMO:

2 Q Now I'm going to hand you a somewhat larger stack
3 here. I'm going to hand you 301, 302 and 303. Ask you to
4 take a look at those. And let's start with 301. What is 301?

5 A This is going to be subscriber information for
6 702-542-1558.

7 Q Okay. And then 302?

8 A 302 is incoming and outgoing calls with cell site
9 information for the same target number ending in 1558.

10 Q So 302 has to text message information contained in
11 it?

12 A That's correct. Just incoming and outgoing calls.

13 Q And then 303, what are we looking at?

14 A This is a full call detailed record with cell site
15 information for the same target number ending in 1558.

16 Q And once again, well, they're Metro PCS, but they
17 are now business records of T-Mobile and they're true, fair
18 and accurate copies of those records?

19 A Yes.

20 Q Now, 302, the one that's just the call records, that
21 was generated some time ago; is that correct?

22 A That's correct.

23 Q And then 303, when was that generated?

24 A This was actually generated last Friday and produced
25 to one of investigators for Clark County Monday of this week.

1 Q And that one has the actual text messages that are
2 missing from 302; is that correct?

3 A That's correct.

4 Q And it was based upon the order that was issued for
5 302, but for some reason text messages didn't come?

6 A That's correct.

7 MR. DiGIACOMO: Move to admit, if I didn't, 301, 302
8 and 303. Did I do that?

9 THE COURT: Did you not move.

10 MS. McNEILL: I have no objection to 301 and 302.
11 I'd lodge the objection I made earlier to 303.

12 THE CLERK: You object to which one?

13 MS. McNEILL: 303.

14 MR. WOLFBRANDT: I have no objection to all three of
15 them.

16 MR. LANDIS: And I'm the same -- I'm the same as Ms.
17 McNeill. We did raise an objection to 303 and the Court ruled
18 on it. As long as it's known.

19 THE COURT: All right. Now I'm remembering what
20 you're talking to -- about, yes. Okay. So those will all be
21 admitted since I previously ruled on the other objection.

22 (State's Exhibits 301 through 303 admitted)

23 BY MR. DiGIACOMO:

24 Q Finally, for you is 304 and 305. Let's start with
25 304.

1 A 304 is subscriber information for 702-542-8981, and
2 305 is call detail records with cell site information for the
3 same number ending in 8981.

4 Q Now, does 305 have -- 305, is there text message
5 information on that as well?

6 A It has the text transcript. Basically, the date,
7 time and numbers communicating, not cell site information.

8 Q Okay. And is that similar for many of the T-
9 Mobile/Metro PCS records that there may or may not be cell
10 site information?

11 A That's correct.

12 Q And they are, once again, Metro PCS, but now they
13 are business records of T-Mobile kept in the ordinary course
14 of business by T-Mobile?

15 A Yes.

16 Q And they're true, fair and accurate copies?

17 A Yes.

18 MR. DiGIACOMO: Move to admit 304 and 305.

19 MS. McNEILL: No objection.

20 MR. WOLFBRANDT: No objection.

21 MR. LANDIS: In objection.

22 THE COURT: Those will be admitted.

23 (State's Exhibits 304 and 305 admitted)

24 BY MR. DiGIACOMO:

25 Q I want to go through some, but obviously -- well,

1 hopefully not all of these with you so that you can explain to
2 the ladies and gentlemen of the jury what information they can
3 get. So let's start with 297. So this is the subscriber
4 information for, you said a target number that's 666-4948, I
5 think is what you said, but let's pull it a little closer and
6 see if we can get it a little bigger for the ladies and
7 gentlemen of the jury.

8 In fact, let me grab just this portion down here.
9 Okay. So what information can we get off the subscriber
10 information?

11 A With the subscriber information you can actually
12 find out the owner of the account, the phone number, their
13 address, as well as the start and end dates of the account.
14 So how long the account was active.

15 Q Can you tell from this record, whether or not it's a
16 prepaid phone versus a customer who gets a regular bill in the
17 mail or, I guess, now maybe electronically?

18 A Yes. So this would be considered a post-paid
19 account. So it's one that gets a monthly bill.

20 Q When you have a post-paid account, do you have to
21 sort of verify your information in order for T-Mobile to allow
22 you to have the post-paid account so they can bill you for the
23 stuff you're doing?

24 A Yes.

25 Q Okay. Does it work always that way with prepaid

1 accounts?

2 A No.

3 Q Okay. How does prepaid accounts work?

4 A Since you prepay for your usage, we don't provide --
5 we don't require any type of identifying information.

6 Basically, it's all volunteer because in the event you dial
7 911, obviously, the police or a peace app will give us a call
8 to try to find you.

9 So if you do not provide an address for 911, that's
10 your call, but some people do, some people don't.

11 Q You've been doing this a long time. Have you seen
12 on prepaid accounts things like Mickey Mouse, Donald Duck,
13 those type of things for names?

14 A Yes.

15 Q And then on 297, is going to be, you said subscriber
16 information on 299 as well. So let me pull that up. And I
17 will just focus in on this middle information here. They look
18 very similar in nature, but the target phone number is
19 different; is that correct?

20 A Yes.

21 Q Okay. And that target phone number on this one is?
22 What's the target phone number?

23 A 702-750-8111.

24 Q So it appears that an individual by the name of
25 Jorge Mendoza has two phones with T-Mobile listed at that

1 address or is this one also post-paid?

2 A That's correct.

3 Q So there was some verification process of whose it
4 is?

5 A Yes.

6 Q Since 298 and 300 look sort of exactly the same as
7 you would expect the call detail records to do, I'm only going
8 to do one of these so you can sort of identify the columns and
9 the information so that when we get back there, they know how
10 to do this.

11 So let me start with 298. I'm going to put up the
12 first page of 298 first. And let me put a disclaimer. These
13 are absolutely tiny and hard to read without a giant
14 magnifying glass, and at some point we will be giving larger
15 copies for the jury to use. But let me zoom in on sort of
16 each section at a time, and then we'll go back.

17 So let's start with maybe the first couple of columns
18 here. And it's probably going to be a little blurry, but
19 looking at kind of the first couple columns, can you read
20 those up there?

21 A Yes.

22 Q Okay. So let's start with column number one for the
23 phone ending in 4948.

24 A Yes. So the first column is the MSISDN, also known
25 as the MSISDN. This is the technical acronym for a phone

1 number. The second column is the IMSI or IMSI. This is the
2 international mobile subscriber identifier. This number is
3 like your social security number on the T-Mobile network.
4 Because of the fact T-Mobile is GSM and utilizes a SIM card,
5 you can change multiple aspects of your account. So you can
6 change your cell phone, you can change your SIM card, you can
7 change your phone number, you can change your account type.

8 Because of the availability of changing so many
9 things, we need one number to identify you kind of like your
10 social security number no matter what you do to your account.
11 So this is the number that the network will see so that we
12 know who to bill.

13 The second number -- or excuse me, the third column
14 is going to be the IMEI, international mobile equipment
15 identifier. This is going to be the serial number for your
16 cell phone. So basically, the white sticker on the back of
17 your phone under the battery, that is going to be the serial
18 number for your device. It will match the IMEI on the
19 records.

20 The fourth column is the event type. This lets you
21 know what type of transaction occurred. Typically, you would
22 see three different type of event types. You're going to see
23 voice, which is going to be an incoming or outgoing call.
24 You're going to see SMS, which is standard messaging service.
25 This is the technical acronym for a text message. Or MMS,

1 multimedia service. Technical acronym for a picture or video
2 message.

3 The next column is going to be the start time. This
4 is going to be the date and time that the transaction
5 occurred. The direction is going to let you know whether it's
6 an incoming or outgoing transaction. The connected to column
7 is a number that communicated with the MSISDN or target
8 number.

9 The completion status is just how that call or text
10 message traveled through the network.

11 Q Let me ask you a couple of questions. In the case
12 of the very first line here, which is -- appears to be an SMS,
13 meaning a text message, correct?

14 A Yes.

15 Q The IMEI is not populated. It says N/A. For text
16 messages, is that field always populated?

17 A No. For text messages, it's actually going to show
18 N/A, not applicable, because of the fact of how a text message
19 differs from a voice call in the way that it goes through our
20 network.

21 Q So the fact that it's an N/A doesn't mean a
22 different phone, it's just that that information's not
23 populated with SMS?

24 A Correct.

25 Q Now, what about the date and time as it -- for an

1 SMS is that date and time going to be what?

2 A So because the server for text messages is located
3 at T-Mobile headquarters in Bellevue, Washington, text
4 messages will always be Pacific time, either daylight or
5 standard depending on time of year.

6 Q And since we're in Pacific time, that means that for
7 text messages on this record, that's local time?

8 A Correct.

9 Q The next one it says connected to, the first sort of
10 series of these with the exception of line number 2 doesn't
11 appear to be a phone number. Is there a reason for that?

12 A Yes. That's actually known as a short code. Short
13 code are basically push notifications. So on your cell phone,
14 it will actually look like a little notification at the top of
15 your cell phone. Typically, you'll get that -- say you have
16 like a banking application it say Chase mobile. Chase will
17 say, you know, your deposit has been successfully deposited.
18 That little notification at the top of your cell phone is a
19 push notification typically sent either through text message
20 or through data.

21 129 happens to be the short code or push
22 notification for a T-Mobile bill. So if 129 can be -- excuse
23 me, 129 is voicemail notification. So it's just letting you
24 know you have a voicemail you haven't heard yet.

25 Q Okay. And so you'll see that type of information

1 come up on your records as well?

2 A Yes. So it can be multiple times. It doesn't mean
3 each individual voicemail. It just means that you still
4 haven't listened to your voicemail and it's sending you
5 another notification.

6 Q Let me go back to the full record and hopefully, I
7 get this right because it's hard to see, but I'm going to try
8 and grab the next column, but maybe just to be safe, I will
9 grab one additional column here. I didn't mean to go that
10 far.

11 So what are we looking at?

12 A Completion status, we actually already talked about.
13 The TAC is the type allocation code. In this column you will
14 typically see the vanity name for a device. So you can see on
15 the back of your cell phone is a model number. Say, for
16 example, a Blackberry 8700, but to everyone else it's known as
17 a Blackberry Pearl. The TAC will decipher the product number
18 to what it's commonly known. So an Apple A6 is, you know, an
19 Apple iPhone 6.

20 Q And for text messages, is that column going to be
21 populated?

22 A No.

23 Q Okay. So when we get to phone calls, you'll see
24 that column populated with what type of phone it is, but
25 that's nothing unusual about the fact that there is nothing

1 there for text messages?

2 A Yeah. It's going to be pretty much every time the
3 IMEI is there, the type allocation code will also be there.

4 Q Okay. The next column?

5 A This is the home verses roam. This let's you know
6 whether the call was placed on the T-Mobile network or not.
7 It's actually kind of a pointless column because these are
8 network records. So if it didn't happen on the T-Mobile
9 network, it wouldn't be in this record, so the roam kind of
10 doesn't make sense but we have it so.

11 Q And then it says first tower LAC/EN node, I think is
12 what it says. What does that mean?

13 A So the first tower LAC and the next column, the
14 first tower cell ID, this is where you would find the numbers
15 from the cell site list we were shown earlier. That LAC and
16 CID. So the E node, that's basically if it's LTE, it will
17 show numbers and letters as opposed to just straight numbers.

18 So the LAC and CID will show up on this record, in
19 this situation, as a text message, we do not have a cell tower
20 listed, again, because of how it travels through the network.
21 But if this were a voice call, you would see the LAC and the
22 CID and then you would go to that list and look up those
23 numbers and you would know where the tower is located.

24 Q And you would even know if it's in that list what
25 the azimuth is or which side of that tower that it hit?

1 A Yes. You can actually all tell by the last digit of
2 the cell ID. The last digit of the cell ID tells you if it's
3 antenna one or through nine.

4 Q Then the other -- well, first tower tech, what's
5 that?

6 A First tower tech, that just lets you know the type
7 of technology utilized, 2G, 3G, LTE, et cetera.

8 Q Okay. And then next says first tower latitude and
9 longitude. I'm guessing this is self-explanatory, but that
10 should be the latitude and longitude that that tower's at?

11 A Yes. We added those two columns so you didn't have
12 to look through that big list. Typically, we send the
13 national list to our requesters because we assume most people
14 have a cell phone, they move, they don't stand still all the
15 time, so they can go across state lines. So that's actually a
16 couple thousand pages, the cell site list.

17 So to make it easier so a person doesn't have to go
18 through all the pages, they can just look up the latitude and
19 longitude in the record and type that into Google maps to find
20 the tower.

21 Q In some of the records we're going to see the LAC
22 and the cell ID will be present, but there are times when for
23 whatever reason in that record, the latitude and longitude
24 didn't populate. Did we go over one or two of those this
25 morning?

1 A Yes.

2 Q Okay. And so in that situation, that big list
3 that's 275 is sort of a back up, you can now go to that list
4 and see if there's a latitude and longitude for that LAC and
5 cell ID in the big list?

6 A Yes.

7 Q And I think there's only one more column on this.
8 So we'll go back to the first page here and sort of try and
9 see what I'm looking at here, but -- did I catch it? Yes. So
10 now what are we looking at?

11 A So the last tower LAC, last tower cell ID, last
12 tower tech, last tower latitude and last tower longitude. So
13 the first five columns in this display is going to be the same
14 exact information as the first. It's just the last tower as
15 opposed to the first tower.

16 So when you hung up the phone, that would be where
17 the information is for the tower's location. Next column
18 market, that again, imaginary lay lines. You know, if we
19 wanted to call this market New York, it would say New York
20 there. But in this situation, again, text messages don't
21 register that information. In a voice call it would show
22 whatever we call the Las Vegas market.

23 Region, again, would be west, as we saw from the
24 earlier record. The MSC name, this is going to be the switch.
25 If you recall earlier, I stated that the switch holds two

1 purposes. One, to send your call information to billing. And
2 two, to actually make the call go out to the person you're
3 trying to contact. The purpose of supplying the MSC in this
4 record is to let you know the time zone that the call occurred
5 in.

6 Because of the fact that during this time period
7 again we were doing in network advancements so we had to
8 utilize super switches to be able to offset capacity issues.

9 Q So it only matters for a voice call?

10 A That's correct.

11 Q So now we jump down sort of the page a little ways.
12 We'll get to the first voice call. And I'm just going to grab
13 sort of from the time to over here first. But so there's --
14 this first line here where there's a date and time at
15 9/18/2014, this one without the tower information is a text
16 message and the one below it would be a voice call?

17 A That's correct. It's an outgoing voice call.

18 Q Okay.

19 A And as you can see here, you can see the type of
20 phone it is. So you have a -- I could never say that, but a
21 prism 2 type of a handset. Then you can see the location area
22 code and the cell ID, and then you can see the type of
23 technology. So it's 3G, HSPA plus and then you have the
24 latitude and longitude for the tower in the last two columns.

25 Q And then so that in some of these it may not matter,

1 but at least on some of these it might. Let me grab sort of
2 where that MSC is on the other side. This number right here
3 is the MSC column?

4 A That's correct.

5 Q And so that CR has a meaning to it. What is it, do
6 you know?

7 A Yes. That means it utilized a switch in either
8 North Carolina or South Carolina.

9 Q Okay. And so when you go to 311, you have a list of
10 all the acronyms that the MSC starts with so we know that that
11 phone call is three hours off from these records. So well,
12 it's in eastern time; is that fair?

13 A That's correct. So we would know that in this
14 transaction the time stamp is actually eastern time, so you
15 would need to change the offset to Pacific time in order to
16 know when exactly the call occurred.

17 Q And so in this situation, you have a text message
18 followed by a call, followed by a text message followed by a
19 call, but if you were to actually fix the times, the text
20 messages would stay the same, the calls would go three hours
21 earlier?

22 A That is correct.

23 Q And that would be both the same for 298 and 300,
24 they're basically exactly the same, both the Mendoza phones we
25 talked about earlier?

1 A That's correct.

2 Q So let's move on to 304. And I guess, I can zoom in
3 on just this portion over here. What information is contained
4 on 304?

5 A That is going to be the subscriber information.
6 Essentially, the same information that we saw on the Jorge
7 Mendoza subscriber records except that this is from the Metro
8 PCS subpoena compliance system. Hence, why the branding and
9 formatting is different. But again, this is going to be
10 identifying information such as an address, a name, account
11 activation as well as details about the handset.

12 Q Okay. And in this particular case, can you tell
13 whether or not it's a prepaid number or if it's a post-paid?

14 A Metro PCS is only prepaid. So it's a prepaid device
15 no matter what.

16 Q It's a prepaid device no matter what so any name
17 could be placed on it?

18 A That's correct.

19 Q And so it shows that this -- the target number for
20 this is 702-542-8981?

21 A Yes.

22 Q Correct? And so and the name that's provided for
23 that is a Maria Sandoval?

24 A Yes.

25 Q Jump to 305. These are the CDRs associated with

1 Maria Sandoval's account?

2 A Yes.

3 Q Okay. And while they look slightly differently --
4 or different than the ones we looked at before, they have sort
5 of similar information contained in them; is that correct?

6 A Yes. Actually, the acronyms and the layout is
7 almost exactly the same. The only difference is, is that it's
8 a Metro PCS branding. This was during the time when we were
9 actually converting Metro PCS call detail records over to the
10 T-Mobile format, which is why it looks and the acronyms are
11 exactly the same.

12 Q And on this one, when we go down to the phone calls,
13 the MSC on this one is IEM and so IE is what?

14 A Inland Empire.

15 Q And where is --

16 A Inland Empire.

17 Q Inland -- Inland Empire?

18 A Yeah, Inland Empire.

19 Q And those the ones on the west coast?

20 A Yeah.

21 Q The Inland Empire obviously, is California or Los
22 Angeles, correct?

23 A That's correct.

24 Q And so these phone calls don't have to be fixed?

25 A No, because it's going to be Pacific time.

1 Q Can your MSC change?

2 A Yeah, it can change from --

3 Q Are you always on the same one?

4 A No. It can change from call to call.

5 Q So if we were to go to let's say page 9 and jump
6 into sort of this central location out by page 9 of these
7 records, and now it says AT&T at the beginning of that MSC,
8 what does that mean?

9 A That's actually going to be Atlanta.

10 Q And thus, for this call you have to move it three
11 hours in order to fit it within the text messages and the
12 other calls that we had with the IE?

13 A That's correct.

14 Q I'm going to go to 301. Jump into 301. Can you
15 tell me the target number for this subscriber information?

16 A Yes. This is going to be 702-542-1558.

17 Q And the subscriber name?

18 A We have a David Murphy.

19 Q And this is Metro PCS, this is a prepaid account as
20 well?

21 A That's correct.

22 Q And there's an address, but there's an activation
23 and a termination date. Can you tell me the date it was
24 activated?

25 A Yes. The account was opened occupy on June 2nd,

1 2014 and terminated October 2nd, 2014.

2 Q Let's start with the easier records to read, which
3 is 302. This is just the call detail records associated with
4 that same target number?

5 A Yes.

6 Q And once again, I think the majority of these
7 columns are self-explanatory, but on these records, these call
8 detail records that I have in my hands, is the date and time
9 going to be local?

10 A Yes.

11 Q So these, every last one of them is local times?
12 You don't have to worry about all the -- what switch it's on
13 or anything else like that?

14 A That's correct.

15 Q And then the only other thing I want to show on 305
16 -- oops, 305 -- 302, is over here. These records only have
17 the beginning cell tower on them?

18 A That is correct.

19 Q And if you can see here, you have the LAC and the
20 tower, but the GPS location information is -- shows it's zero?

21 A That's correct.

22 Q And thus, that's why you need to go to 275, the big
23 list, if you were onto find out where that tower was located?

24 A That's correct.

25 Q Now, these are 303, the ones you just pulled for us,

1 that's a combination of all of them, and they are really tiny,
2 so I'm not sure how well we're going to be able to see these,
3 but let's just try that. And this has all the call details
4 and the date range is actually a little bit shorter than what
5 was requested in 2014; is that correct?

6 A That's correct.

7 Q Can you explain to the ladies and gentlemen of the
8 jury?

9 A Yes. So originally the request had from September
10 1st 2014 through October 20th, 2014. The situation is, is
11 that T-Mobile/Metro PCS only keep cell site information for
12 two years from the present date. So when I actually pulled
13 the records, I believe, on September 15th, to allow time,
14 obviously, for it to process and pull the records, I ended
15 running from September 17th through October 20th of 2014.

16 So the record is actually shorter than what was
17 requested per the court order.

18 Q And then the top has some information about what you
19 sent, but the columns now are going to be somewhat similar to
20 what we've seen previously; is that correct?

21 A Yes. So this is actually the standard format for T-
22 Mobile records now. So the merger of Metro PCS and T-Mobile
23 are completed so when is what our records will look like going
24 forward.

25 Q Now, the date and time on these, how is it that you

1 figure out what the right date and time is on these records?

2 A So as with most government agencies, law
3 enforcement, et cetera, they are looking for UTC time, which
4 is universal coordinated time because of the fact that going
5 back and forth and trying to change time zones was a little
6 bit tedious basically throughout multiple phone companies who
7 are located in different areas geographically. It made more
8 sense for pretty much all the phone companies to try to move
9 towards UTC.

10 So T-Mobile being one be of the big four telecoms
11 followed suit and now everything that we give is UTC time.

12 Q So UTC is sort of the same thing as Greenwich mean
13 time meaning that at this time of year it's seven hours ahead
14 of local time?

15 A Correct.

16 Q Okay. So in order to get these to local time, you
17 have to subtract seven hours from the time?

18 A That is correct.

19 Q And then on some of these, for example, line number
20 2, it's sort of different than the SMS and originating. Can
21 you read those or do I need to bring you --

22 A Yes.

23 Q -- the actual records?

24 A So the first one actually says MS terminating. So
25 basically, there are two things you're going to see. MS

1 originating and MS terminating. MS terminating is actually an
2 incoming call. MS originating is an outgoing call. So the
3 easiest way to remember between the two, O is for outgoing, O
4 originating. That means it an outgoing transaction.

5 There's actually a column that actually says
6 direction, incoming and outgoing, to make your life easier,
7 but terminating and originating are terminology used in
8 telecom so that's why the information is listed there.

9 Now, in this situation, it doesn't say SMS or MMS
10 like it would in the other records. It says MS terminating or
11 MS originating, incoming/outgoing, but then it will say the
12 statement SMS in MSC. So basically, text message via the
13 switch. So it will be an incoming or outgoing text message
14 via the switch.

15 So when you see in call type SMS in MSC at the end
16 of the phrase or originating or terminating, that lets you
17 know it's a text message.

18 Q So the first one is an incoming phone call. The
19 second line is a -- it's hard for me to read here, but does it
20 say an incoming or outgoing text message?

21 A Yeah. It's saying MS terminating incoming, SMS in
22 MSC. So, incoming text message.

23 Q And unlike the records from 2014, if I go to 303,
24 when we get over to the location information over here, we
25 may, in fact, have some tower location information for text

1 messages?

2 A Yes. So at the request, again, of the requesters.
3 So our general requesters are usually law enforcement and
4 defense attorneys, public defenders, et cetera. They had
5 requested that we provide azimuth, the actual permit address,
6 longitude and latitude for both calls and incoming and
7 outgoing phone calls so we added that feature to our call
8 detail records.

9 Q And so now at least for the one record we got in
10 2016, we actually do have some location information azimuth,
11 those type of information for cell towers for SMS records?

12 A Yes, correct.

13 Q Okay. And then on some of these there's an address.
14 Should anybody ever use the address to find a tower?

15 A It's not recommended. If you just want to get an
16 idea of where a tower can be located, it's fine, but the
17 longitude and latitude is actually always the best thing to
18 use because that's going to be the actual geographical
19 location for the tower. The main situation is for in
20 locations in like farmland where the tower is built on a
21 farmer's property, the farmer's actual home is the address.
22 And that could be on the northeast corner. But that farmer
23 may own two or three acres and the cell tower's found on, you
24 know, on that third acre in the southeast -- or southwest
25 corner.

1 So that's a pretty big distance between the actual
2 permit address and where the tower is located. So that's why
3 we provide both an address and a longitude and latitude.

4 Q And then you can type in that information and go to
5 a Google map and find the tower type thing and then from there
6 go from there?

7 A Yes.

8 Q Okay. And the only other thing I want to ask you
9 about is there's individual records associated here. Now,
10 when my cell phone is on -- make sure my cell phone is off
11 because that would be a problem. When my cell phone's on, is
12 it connecting to a tower?

13 A Yes. It's actually connecting with up to three cell
14 phone towers at a given time.

15 Q Does T-Mobile maintain for any real period of time
16 information as to where my phone is if it's not actually
17 receiving or sending information?

18 A No, because that's really not the purpose of a
19 telecom. We're only here to identify what you utilize. So if
20 you're not using your phone, we really don't care. If you're
21 making a phone call, then you're utilizing our service, thus,
22 we bill you for it, thus, we record that phone call, the date,
23 time, tower used, et cetera.

24 Q That was going to be my sort of my last question.
25 T-Mobile doesn't maintain this information in order for law

1 enforcement to be able to gather it. You maintain this in
2 order for T-Mobile to be able to bill the information that's
3 being gathered?

4 A That, but more so network infrastructure. So like I
5 said, we carry -- we -- excuse me, we capture the first tower
6 and the last tower because we want to see where you are and
7 where you're going. Most people usually travel between home
8 and work for the most part of their cell phone activity.

9 So if we see that you're utilizing your phone a lot
10 at work and there's 500 more people who happen to be utilizing
11 that same exact cell phone tower, we know hey, we need to
12 build for towers in that area because there's a lot of people
13 utilizing those towers. That's what the record is actually
14 for.

15 It's meant to be able to say, all right, this
16 tower's being used not a lot so let's up the power on it and
17 make that range bigger because it's not -- there's no need to
18 build more towers. Or in this specific area, there's a whole
19 bunch of people utilizing a tower, so let's turn the power
20 down and add two or three more towers in that specific area so
21 that more people can use the tower without service
22 interruption.

23 Q Thank you, sir.

24 MR. DiGIACOMO: Judge, I'd pass the witness.

25 THE COURT: Cross.

1 MS. McNEILL: No questions, Your Honor.

2 MR. WOLFBRANDT: Judge, I have no questions.

3 THE COURT: Mr. Landis?

4 MR. LANDIS: I've got a few.

5 CROSS-EXAMINATION

6 BY MR. LANDIS:

7 Q Hi, sir.

8 A Hello.

9 Q Let me start with Exhibit 275 and hopefully we can
10 get without putting them up, but if we can't, I'll get them.
11 275 was the list of cell site locations or cell tower
12 location, correct?

13 A Okay.

14 Q Do you recall that?

15 A Yes.

16 Q My question to you, those would be the towers for
17 both T-Mobile and Metro PCS users, right?

18 A If the Metro PCS user was on the GSM network. Metro
19 PCS was originally on a different type of technology so their
20 tower list would be different than T-Mobile's tower list.

21 Q Is that still true today?

22 A Yes, that's more so true because -- actually, no,
23 I'm sorry, it wouldn't be because now Metro PCS is fully in
24 the T-Mobile network.

25 Q As of September of 2014?

1 A We were still converting so Metro PCS's network was
2 still functioning up until December of 2015.

3 Q So does that mean no Metro PCS users were using T-
4 Mobile towers?

5 A No. There was a soft transition, so Metro PCS,
6 their users actually update or upgrade their phones a lot
7 faster than traditional customers, which is like a two-year
8 kind of time period. Metro PCS actually saw a high turnover
9 of about five or six months. So instead of making the same
10 mistakes Sprint did with Trac Fone and trying to merge
11 technology, we said we're going to take Metro PCS customers
12 and when they upgrade we're just going to give them a new
13 phone on our technology as opposed to utilizing the same
14 technology they had previously.

15 Q Some of the records involved a Metro PCS account
16 with the phone number 542-1558?

17 A Yes.

18 Q Do you recall? Can we say based on the records that
19 were admitted through you today whether or not that phone was
20 on the T-Mobile technology or the GSM technology?

21 A That was on the T-Mobile technology.

22 Q And how can we tell that?

23 A The subscriber page will actually tell you what they
24 were operating on. And since we were able to pull that record
25 for the two-year time period, it actually lets me know that it

1 was off the T-Mobile network because Metro PCS only had a
2 retention of six months.

3 Q Staying with Exhibit 275, the cell site or cell
4 tower location data, the document that was admitted through
5 you today captured that location as of when?

6 A If I recall correctly, that cell tower list is from
7 November of 2014.

8 Q It would look different today?

9 A Yes, definitely.

10 Q And can you say if there's any differences between
11 September of '14 and November of '14 as far as how that list
12 would have looked if we compared the two?

13 A Yes. Basically, you would see that there were some
14 towers that were decommissioned because again, during 2014,
15 especially the latter half to the middle of 2015, we were
16 upgrading our network. So you would see a vast difference
17 within a month, probably within a couple weeks.

18 Q And looking at the Exhibit 275 that was admitted, am
19 I going to be able to tell hey, this wasn't here in September
20 by just exclusively looking at 275?

21 A Well, looking at 275, no. You would have to look at
22 the actual call detail record because if it shows in the call
23 detail record, then that tower was functioning at that date
24 and time.

25 Q Asking now just a more broad question about the

1 radius of a cell tower, which you testified about some. I'm
2 looking at a cell record and see what cell tower it hit off.
3 Nothing on that cell record's going to tell me the exact
4 distance between the cell tower and the user?

5 A Oh, yeah, no.

6 Q Is there anything I can do to figure out what the
7 radius of that tower would have been at the time?

8 A Not really because of the fact that it changes from
9 day to day. And there's also interference. So there are a
10 number of things that can affect the actual range. We can say
11 all we want that we're going to tune a tower. So T-Mobile
12 tunes their towers for two and a half miles maximum capacity.
13 Again, let's just say we're talking Nevada desert.

14 Maximum capacity's two and a half miles with signal
15 decay at three miles. So signal decay, to give you a quick
16 example, is like your AM/FM radio where you start to hear
17 another radio station start to bleed in and then slowly that
18 radio station fully takes over and you hear that new radio
19 station instead of the old one you were listening to. Signal
20 decay basically is that radio frequency wave being stretched
21 so thin that it basically flat lines.

22 So it's hard to say. The one thing we can say is
23 that it's never going to be more than three miles. So rule of
24 thumb always measure out three miles.

25 Q To simplify what you're saying, no matter the fancy

1 technology I have, no matter the equipment, there's nothing I
2 can do to go out in the field and find the radius of a tower
3 as it was in September 2014 today?

4 A That's correct.

5 Q But I could go out with the right equipment and
6 figure out the radius of whatever tower right now?

7 A Yes.

8 Q And how would I do that?

9 A There's a couple of ways. One is True Call.
10 Another is -- oh, I can't remember the name off the top of my
11 head. FBI's cast unit does it. They basically take a truck
12 and measure the actual cell phone tower. So what they'll do
13 is they'll go to the cell phone tower, have what's known as
14 like a dummy phone and make a phone call and then see how long
15 they can stay on that tower basically for 360 degrees.

16 Q So you more or less realtime test the radius by
17 being in the field and seeing how long the signal goes on your
18 equipment?

19 A Yes, that's correct.

20 Q Couple more questions. Exhibit 303, that was the
21 most recent phone records that I -- it sounds like you helped
22 get from --

23 A Yeah, I pulled the records.

24 Q And those are the ones that were the new merged
25 format, yes?

1 A Correct.

2 Q And they're the ones that you said were in UTC?

3 A Correct.

4 Q And looking on that document, how would one know
5 that?

6 A It actually says in the description, basically,
7 every time we respond to a legal demand, we always put the
8 date that we responded, the date that the legal demand was
9 signed, the type of legal demand as well as the person we're
10 sending the records to, and then at the very end, it says
11 please note all records are in UTC time.

12 Q Which is where everybody's headed, but some of the
13 records in this case just didn't make it there by the time --

14 A That's correct.

15 MR. LANDIS: I have no further questions.

16 THE COURT: Redirect?

17 MR. DiGIACOMO: Very briefly.

18 REDIRECT EXAMINATION

19 BY MR. DiGIACOMO:

20 Q The FBI and their cast team, they can go out with a
21 truck and they can generally tell you, hey, this is pretty
22 much what the range of the tower is, correct?

23 A Correct.

24 Q Okay. But in order to do it to an exact science,
25 you would use the actual phone that was making the call and

1 doing it that way you can get a much more specific location
2 information for it?

3 A Yes, because every cell phone is a little bit
4 different.

5 Q Okay. And you said, you know, two and a half miles
6 you start to bleed at three miles. The towers themselves, are
7 they set overlapping or at least in locations like the middle
8 of Las Vegas, you don't lose customer service?

9 A Yes. So a good, I guess, illustrative example is
10 the Olympic symbol. Those interlocking circles. The
11 interlocking circles is kind of what a cell tower map under
12 ideal conditions would look like. They cover 360 degrees, the
13 circle, and they overlap in multiple areas. And the location
14 where they don't overlap is what's known as the dead zone,
15 which hopefully doesn't really occur much anymore but you
16 never know.

17 Q And the only other area I want to go to is
18 Mr. Landis asked you questions about well, look, there's Metro
19 -- it's a Metro PCS phone, but you've got a T-Mobile record,
20 275, that was pulled in November of 2014, and he said
21 something about, you know, was the tower still there in
22 September of 2014.

23 When we look at 24593 and there is no location
24 information, that indicates that that LAC was decommissioned
25 sometime after the record, the call detail record was made but

1 before this record was pulled?

2 A Yes, that's correct.

3 Q Okay.

4 A So either that or it's an LTE tower and so it was a
5 new tower that was constructed, which basically wouldn't show
6 up in the September record anyway.

7 Q The phone isn't an LTE phone; is that correct, from
8 the subscriber information?

9 A I would have to check the subscriber page to be able
10 to tell you.

11 Q All right.

12 A If I recall, I think it was a BYOD iPhone. So it
13 was a bring your own device iPhone.

14 Q Is that what that means, BYOD?

15 A Yeah, bring your own device. So Metro PCS didn't
16 have the iPhone so you could basically bring it from AT&T, T-
17 Mobile, whatever, and we would basically install it on the T-
18 Mobile network. Yes.

19 Q So for 304, which is the Maria Sandoval subscriber
20 information, it says BYOD iPhone, meaning that was an iPhone
21 that was brought for the information?

22 A Yeah. And it was GSM so it operated on the T-Mobile
23 network.

24 Q Okay. And then for 301, which is the other Metro
25 PCS, which is the one that's associated with those new

1 records, the David Murphy phone. Can you tell me what type of
2 phone it was?

3 A Yeah, it was a Nokia Lumia 521 and it also operated
4 on the T-Mobile network because it says device network type
5 GSM.

6 Q Okay. And lastly, when you go to pull the new
7 records, the one that is about as tiny as you can possibly get
8 on a printer, when you go to pull these records right here and
9 we get some longitude -- or sorry, some LAC and cells that
10 have no latitude and longitude and we get some LAC and cells
11 that do have the latitude and longitude, what does that
12 indicate to you?

13 A So there's a couple of things that are going on
14 within that record. The first is that if in the beginning
15 cell tower it has a longitude and latitude LAC and CID and at
16 the end where it says, last cell tower, there's no
17 information, that means it actually utilized the same cell
18 tower as the first cell tower. So it's just instead of
19 listing a duplication of the information, it's completely
20 blank.

21 The other possible option is that the tower was
22 decommissioned. So in the event because again, I pulled the
23 record in 2016 for 2014. Networks change all the time, people
24 take towers down, build new towers, upgrade technology, et
25 cetera. So in the event that it just has a LAC and CID, the

1 location area code and cell ID and no address or longitude and
2 latitude, that means that that LAC and CID was what was used
3 in 2014, but that tower is no longer available so the
4 information about it is not within the system.

5 Q And so if there is a text message in here that has a
6 LAC, CID and GPS coordinates, that's a tower that's still
7 active now in 2016 because that's when you pulled the record?

8 A Yeah. So it would be active as of the date that the
9 record was pulled, which is on the record.

10 Q Thank you.

11 MR. DiGIACOMO: Nothing further, Judge.

12 MR. LANDIS: No recross.

13 THE COURT: Ms. McNeill?

14 MS. McNEILL: None, Your Honor. Sorry.

15 THE COURT: Okay. May this witness be excused?

16 MR. DiGIACOMO: He may.

17 THE COURT: Thank you very much for your testimony.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: How's the jury doing? Need a little
20 break? Yeah? Okay. Good. So we'll take a -- let's see,
21 it's almost 3:15. So we'll take a break until 3:30. This
22 will be our afternoon break.

23 So during this recess, it is your duty not to
24 converse among yourselves or with anyone else on any subject
25 connected with the trial or to read, watch or listen to any

1 report of commentary on the trial by any person connected with
2 the trial or by any medium of information, including without
3 limitation, newspaper, television, radio or Internet, that
4 includes your cell phones. And you are not to form or express
5 an opinion on any subject connected with this case until it's
6 finally submitted to you. We'll be in recess until 3:30.

7 THE MARSHAL: All rise for the jury.

8 (Jury recessed at 3:13 p.m.)

9 THE COURT: And the record will reflect the jury has
10 departed the courtroom. Any matters outside the presence?

11 MR. DiGIACOMO: Not from the State, Your Honor.

12 MS. McNEILL: No, Your Honor.

13 THE COURT: We're in recess until 3:30.

14 (Court recessed at 3:14 p.m. until 3:34 p.m.)

15 THE MARSHAL: You'll rise for the jury, please.

16 (In the presence of the jury)

17 THE MARSHAL: Your Honor, all members of the jury
18 and the four alternates are present.

19 THE COURT: Thank you. Please be seated. And the
20 record will reflect we are back with all 12 members of the
21 jury as well as the four alternates, all three defendants are
22 present with their respective counsel, Chief Deputies District
23 Attorney prosecuting the case are present as are all officers
24 of the court. You may call your next witness.

25 MR. DiGIACOMO: Xavier Gutierrez.

1 XAVIER GUTIERREZ, STATE'S WITNESS, SWORN

2 THE CLERK: Please be seated. And please state and
3 spell your first and last name for the record.

4 THE WITNESS: Xavier Gutierrez, X-a-v-i-e-r,
5 G-u-t-i-e-r-r-e-z.

6 THE CLERK: Thank you.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MR. DiGIACOMO:

10 Q Sir, how are you employed?

11 A I am employed by AT&T.

12 Q In what capacity?

13 A I'm assistant store manager at a retail location.

14 Q Were you asked by AT&T to come down here and
15 authenticate some records from AT&T as well as Cricket?

16 A That is correct.

17 Q Why is it you can authenticate Cricket records?

18 A Because I am the custodian of records in this
19 moment, and I am able to give you information on the call
20 records that we have.

21 Q At some point, did AT&T purchase Cricket?

22 A They did.

23 Q And so they're now the custodians of Crickets
24 records as well?

25 A Correct.

1 MR. DiGIACOMO: May approach, Judge?

2 THE COURT: Yes.

3 BY MR. DiGIACOMO:

4 Q I'm going to show you what's been marked for
5 purposes of identification as State's Proposed Exhibits 306
6 and 307 and ask you do you recognize those two documents?

7 A Yes, I do.

8 Q All right. And let's start with 306. What is 306?

9 A 306 right here shows the subscriber information, the
10 date that it was activated and the information of the account
11 owner.

12 Q Okay. And what phone number, what's the target
13 phone number for that subscriber?

14 A For this particular one, we're talking about
15 702-241-1051.

16 Q And that's a business record kept by AT&T in the
17 ordinary course of its business and it appears to be a true,
18 fair and accurate copy of that record?

19 A Correct.

20 Q And then for 307, what are we looking at?

21 A We're looking at the call records for 702-241-1051.

22 Q The subscriber information call records much like
23 the one before it, 307, is those business records kept in the
24 ordinary course of business of AT&T?

25 A Yes.

1 Q And they appear to be true, fair and accurate copies
2 of those records?

3 A Correct.

4 MR. DiGIACOMO: Move to admit 306 and 307.

5 MS. McNEILL: No objection.

6 MR. WOLFBRANDT: No objection.

7 MR. LANDIS: No objection.

8 THE COURT: Those will be admitted.

9 (State's Exhibits 306 and 307 admitted)

10 BY MR. DiGIACOMO:

11 Q Now, on 306, can you just tell me who the subscriber
12 -- what the subscriber name is?

13 A Yeah, I have Elvin Figueroa.

14 Q So last name Figueroa, first name Elvin, E-l-v-i-n;
15 is that correct?

16 A Correct.

17 Q Okay. And this subscriber information, is it a --
18 can you tell whether or not it's a prepaid account versus a
19 credit account?

20 A It is a credit account. Post-paid is written on the
21 paperwork here under payment type.

22 Q Okay. So that's somebody who had to sign up for the
23 phone and provide that information --

24 A Correct.

25 Q -- in order to get it?

1 A Correct.

2 Q And on the call detail records, which is 307, since
3 we had somebody in here spend a long time sort of describing
4 this information, I just want to talk about the columns that
5 are on here.

6 A Yes.

7 Q There is a connect date and a connect time.

8 A Yes.

9 Q That seems somewhat self-explanatory, but in 2014,
10 when AT&T gave these records, had they already moved to UTC?

11 A I am not certain of that. I do see that UTC is on
12 here. I don't know anything else about that.

13 Q Okay. But those records are contained in UTC time?

14 A Yes.

15 Q Okay. So in order for us to figure out what the
16 actual time locally is, you'd subtract seven hours from every
17 one of these --

18 MR. LANDIS: Objection. Leading and foundation. I
19 think he said he doesn't know. Court.

20 MR. DiGIACOMO: Well, let me rephrase.

21 BY MR. DiGIACOMO:

22 Q Do you know if these records --

23 THE COURT: Wait a minute. Let me rule on his
24 objection before you go on. All right. So he said he didn't
25 know about another question, but it's his -- he still needs to

1 lay a better foundation. Now go ahead.

2 BY MR. DIGIACOMO:

3 Q Are you aware what the UTC means on the records?

4 A Yes.

5 Q What does that mean?

6 A It's the universal -- I'm trying to remember the
7 name. It's the universal time, Greenwich time.

8 Q Okay. Greenwich time being --

9 A Being the universal --

10 Q -- somewhere --

11 A -- agreed time, yes.

12 Q Okay. So if we wanted to correct these records into
13 local time, how much time would we subtract from the numbers
14 that are on here, the time on here, do you know that?

15 A I don't know that, but I'm sure there's a conversion
16 table.

17 Q Okay. There's a conversion table somewhere that can
18 do that?

19 A Most likely, yes.

20 Q Okay. What's the next column for?

21 A So you have the seizure time. So that's how long it
22 took to get the call out.

23 Q Okay. Next column?

24 A And that's the -- let me look in my records so I
25 make sure I give you the exact information.

1 Q And can you identify for us what you're looking at?

2 A I'm looking at a record key. It tells me what the
3 shorthand means over here so that I can tell you exactly what
4 it means for AT&T.

5 So that's the elapsed time is the next part. That's
6 the time that the call lasted --

7 Q Okay.

8 A -- in seconds.

9 Q The next -- or the next column?

10 A That's the originating number. That's the number
11 that called and made the -- that originated the call, started
12 the call.

13 Q And the next column?

14 A It's the terminating number, which is the number it
15 was called to.

16 Q Okay. So the first column originating's the number
17 -- is the phone that's dialing?

18 A Yes.

19 Q And the next column was the phone that's receiving
20 it?

21 A Correct.

22 Q Okay. The next two columns, the EMIE and the IMSI,
23 we can skip those and just go to the column after that. What
24 is that?

25 A So the CT is -- give me one moment here to give you

1 the exact -- that's the call type. So it's saying mobile
2 originating or terminating saying there's always got to be a
3 start and an end number. So that's telling you that's the
4 originating one. That's the one that made the call.

5 Q Okay. The next column has something in there,
6 teacher?

7 A Teacher. That's an internal code that's I don't
8 know specific to that. It's not -- it's just an internal
9 coding we use for what kind of calling was -- was made.

10 Q And the last column on here, what does that have?

11 A It's a cell location. It tells you the location,
12 longitude, latitude, of the cell site.

13 Q Okay. Let's put those away for just right now and
14 jump to three records for Cricket, which is State's Proposed
15 Exhibit No. 308. Do you recognize that?

16 A Yes, I do.

17 Q And what is that?

18 A This is a subscriber info for New Star. My
19 understanding that is a reseller of ours so I have no way of
20 knowing whether it's post-paid or prepaid.

21 Q Okay. And that is a true, fair and accurate record
22 of AT&T now?

23 A Yes.

24 Q All right. 309, what is that?

25 A This looks like a call record for 702-762-1584,

1 which I believe, was a Cricket number.

2 Q Okay. And is that the same call number that's on
3 the subscriber information on the exhibit previous?

4 A Yes, it is.

5 Q Okay. And those are true, fair and accurate copies
6 of records of now AT&T after they purchased Cricket?

7 A Correct.

8 Q All right. Lastly, 310, is that a tower listing for
9 Cricket in Las Vegas in 2014?

10 A I'm not able to see a date, but this does look like
11 a tower listing.

12 Q Okay. Is there -- the records that you identified
13 or that you were called here to identify were associated with
14 a particular case number that you had to review; is that
15 correct?

16 A Correct.

17 Q Okay. And if -- were you provided information that
18 the request for these records were made sometime in 2014?

19 A Yes, I was.

20 Q Okay. And were these some of the records that were
21 provided to in response to the court order of the case?

22 A Yes.

23 Q Okay. As it relates to this particular record, is
24 it a true, fair and accurate copy of the Cricket cell tower
25 information?

1 A Yes.

2 MR. DiGIACOMO: Move to admit 308 through 310.

3 MS. McNEILL: No objection.

4 MR. WOLFBRANDT: No objection.

5 MR. LANDIS: No objection.

6 THE COURT: Those would be admitted.

7 (State's Exhibits 308 through 310 admitted)

8 MR. DiGIACOMO: Thank you. I'd pass the witness,
9 Judge.

10 THE COURT: Cross?

11 MS. McNEILL: Just briefly, Your Honor. Thank you.

12 CROSS-EXAMINATION

13 BY MS. McNEILL:

14 Q Mr. Gutierrez, you are familiar a little bit with
15 how people's cell phone accounts are set up through your
16 corporation, correct?

17 A Correct.

18 Q So when a customer comes into the store and they set
19 up an account with you, you get that information, put that
20 into your computer system, attach -- assigned to sort of a
21 phone that they purchase or set up?

22 A Yes.

23 Q Okay. Once they leave the store, you have no way of
24 knowing what they do with that phone?

25 A What they do with the phone, no.

1 Q Right. Or who they might give it to to use?

2 A Correct.

3 Q Right. So the person that's associated with the
4 phone number in your computer system may not be the person
5 who's using it at any given moment?

6 A No idea. No way of knowing that.

7 Q Okay.

8 MS. McNEILL: Nothing further.

9 MR. WOLFBRANDT: I have no questions.

10 THE COURT: Mr. Landis?

11 MR. LANDIS: A couple.

12 CROSS-EXAMINATION

13 BY MR. LANDIS:

14 Q That cell tower list, which was Exhibit 310, I can
15 show it to you again. He was asking you questions about when
16 that was from; do you recall that?

17 A Yes.

18 Q Based on your review of this case as before you
19 testified today, you know when it was requested, when that
20 information was requested, right?

21 A Correct.

22 Q Do you know as we sit here, when it was provided?

23 A I do not.

24 Q And do you know what period of time those records
25 encapture in terms of the cell tower location?

1 A I do not.

2 Q When did AT&T purchase Cricket?

3 A I'm a hundred percent certain on the date.

4 Q Can you say if it was before or after September '14,
5 2014?

6 A I cannot. I'd have to research that.

7 Q Thank you, sir.

8 MR. LANDIS: No further questions.

9 THE COURT: Any redirect?

10 MR. DiGIACOMO: No.

11 THE COURT: Thank you for your testimony, unless the
12 jury has any questions. Seeing none, you're dismissed. Thank
13 you.

14 THE WITNESS: Thank you.

15 THE COURT: Call your next witness.

16 MS. LEXIS: Your Honor, the State calls Roger Day.

17 ROGER DAY, STATE'S WITNESS, SWORN

18 THE CLERK: Please be seated, and please state and
19 spell your first and last name for the record.

20 THE WITNESS: Roger Day, R-o-g-e-r, D-a-y.

21 THE CLERK: Thank you.

22 THE COURT: You may proceed.

23 MS. LEXIS: Thank you.

24 DIRECT EXAMINATION

25 BY MS. LEXIS:

1 Q Mr. Day, back on September 21st, 2014, where were
2 you living?

3 A On -- that's crazy.

4 Q Did you forget?

5 A Yeah. I just moved. I'm sorry, guys, I just moved
6 out.

7 Q Were you living at 10025 --

8 A 10025 Long Cattle.

9 Q -- Long Cattle here in --

10 A Long Cattle.

11 Q -- Las Vegas?

12 A Yes.

13 Q Okay. And where is -- where was that house located?
14 Or was it a house or an apartment?

15 A Right on -- it was a house. Right on the corner of
16 Long Cattle and I forget the other street, but it's right on
17 the corner.

18 Q Okay. And were the major cross streets like Sahara
19 and Hualapai?

20 A Yes.

21 Q Or Charleston and Hualapai?

22 A Yes.

23 Q Okay. Who were you living there with at that time?

24 A My son, my older son, William, and that was it.

25 Q Okay. Turning your attention to about 8:00 o'clock

1 that night --

2 A Um-h'm.

3 Q -- did something happen or did you hear something
4 that caused you to have to investigate further?

5 A Yes.

6 Q What happened?

7 A I was watching TV late that night. I heard some --
8 some shots, but it sounded like just little pop offs. So I
9 went to investigate, and I saw a guy standing right outside my
10 door on the street, and he was pointing back. He had like a
11 black -- black-ish bandana over his face and a black hat, and
12 he fired off a couple of shots.

13 Q Okay.

14 A So and then he ran down the -- ran down the street.

15 Q Okay. So let's go back a little bit. You said you
16 were watching TV. Where were you watching TV?

17 A In my living room.

18 Q Is that -- is this a two-story house?

19 A Two-story, yes.

20 Q Okay. And where were you watching TV, first floor,
21 second floor?

22 A First floor.

23 Q Okay. And when you heard what you characterize as
24 pops, did you think that those were gunshots?

25 A No, not at first.

1 Q Okay. Are you familiar with gunshots?

2 A Yes.

3 Q Okay. In fact, how were you employed -- are you
4 retired now?

5 A I'm retired from California Department of
6 Corrections, almost 23 years.

7 Q Okay. So you're familiar with firearms?

8 A Yes.

9 Q Okay. And so you didn't immediately think they were
10 gunshots, but you went to investigate; is that right?

11 A Right.

12 Q Did you actually come out of your front door?

13 A Yes.

14 Q Okay. Where did you go?

15 A I walked out and made a left outside the front door
16 over by a palm tree that's right there in my front yard, and I
17 was looking around, and about that time I heard some
18 semi-automatic weapon firing going off.

19 Q Okay.

20 A And then I ran back in the house when I heard that.

21 Q Okay. And you described seeing an individual with
22 what you characterize as a black bandana?

23 A Yes.

24 Q Over --

25 A Over his -- his top -- bridge of his nose.

1 Q Down?

2 A Down.

3 Q Okay.

4 A Yes.

5 Q And so -- and that person, you made a gesture like
6 as if that person was holding a gun.

7 A Right.

8 Q Okay. Would that have been a handgun or a rifle,
9 shotgun, what type --

10 A It was a handgun.

11 Q Okay. And you indicated that that person with the
12 handgun or what appeared to be a handgun was pointing --
13 pointing it?

14 A Yes.

15 Q Where was that person pointing it?

16 A Back towards the house that had been broken into.

17 Q Okay. Let's do this.

18 MS. LEXIS: Mr. DiGiacomo, can we publish State's
19 Exhibit 6?

20 BY MS. LEXIS:

21 Q And I'll have you, Mr. Day, look at what's shown on
22 your monitor, okay?

23 A Um-h'm.

24 Q Do you recognize what's depicted in this photo or in
25 this map?

1 A Yes.

2 Q Exhibit?

3 A I do.

4 Q Okay. And could you start out by telling us where
5 it is that your house is located?

6 A This is my house right here on the --

7 Q You can actually mark it like Monday night football.

8 A Okay.

9 Q It will show up on the juror's screen as well.

10 A This is my house right here.

11 Q So that corner house --

12 A The corner house, yes.

13 Q -- located between Long Cattle and --

14 A And --

15 Q -- Broadmere?

16 A -- Broadmere, yes.

17 Q Okay. The house that had been invaded, as you say,
18 was that the house located at 1661 Broadmere as indicated on
19 that particular map?

20 A Yes.

21 Q Okay. And when you first saw the individual with
22 the bandana holding the handgun or what appeared to be a
23 handgun, where was that person? Can you draw an X?

24 A He was right in front of my house. This is not
25 going where my finger is but basically right there --

1 Q Okay.

2 A -- in front of my house.

3 Q Okay. And he was pointing back towards 1661
4 Broadmere?

5 A Yes.

6 Q Okay. And as that individual was doing that, you
7 heard gunshots?

8 A Yes.

9 Q Okay. So what did you do next?

10 A I called 911 and actually grabbed my weapon and
11 stood by in case he turned around and saw me calling 911
12 because I was looking out through my security door --

13 Q Of your front door?

14 A -- which was -- of my front door, yes.

15 Q Okay. And you and I met about a week or two ago; is
16 that right?

17 A Yes.

18 Q And during our meeting, I played a 911 call for you?

19 A Yes.

20 Q And it was your 911 call, correct?

21 A Yes.

22 Q Okay. And we listened to it in its entirety?

23 A Yes.

24 Q And when we listened to it, did it fairly and
25 accurately depict what you said to 911 on September 21st,

1 2014?

2 A Yes.

3 Q To report this incident?

4 A Yes.

5 Q Okay.

6 MS. LEXIS: Your Honor, at this point, I'd ask to
7 admit State's Proposed Exhibit 281 into evidence.

8 THE COURT: And 281 is a disk --

9 MS. LEXIS: Yes, Your Honor.

10 THE COURT: -- containing the 911 call?

11 MS. LEXIS: Correct.

12 THE COURT: Okay.

13 MS. McNEILL: No objection.

14 MR. WOLFBRANDT: No objection.

15 MR. LANDIS: In objection.

16 THE COURT: It will be admitted.

17 (State's Exhibit 281 admitted)

18 MS. LEXIS: Thank you. Mr. DiGiacomo, can we please
19 publish 281?

20 (911 recording of Mr. Gutierrez played).

21 BY MS. LEXIS:

22 Q Mr. Day, that was your 911 call?

23 A Yes.

24 Q Okay. In your 911 call you mentioned or you told
25 the 911 dispatcher that you saw two different individuals,

1 correct?

2 A Yes.

3 Q Okay. The first individual was the one that you
4 indicated was standing where you drew the X in front of your
5 house pointing a gun or what appeared to be a handgun towards
6 1661 Broadmere?

7 A Yes.

8 Q Okay. I want to talk about that individual, okay?

9 A Okay.

10 Q Did you hear on the 911 call you describing that
11 individual as possibly Caucasian just based on what you saw?

12 A On the one that had a handgun, I think I said I
13 really couldn't tell.

14 Q Okay, okay. And when you said a handgun, since
15 you're familiar with guns, are you -- were you able to
16 distinguish whether it was a semi-automatic or whether it was
17 a revolver type gun?

18 A It didn't -- didn't look like a revolver. It looked
19 like a semi-automatic.

20 Q Okay. And you indicated that person certainly had
21 something dark over their face?

22 A Yes.

23 Q Okay. And was also wearing dark clothing?

24 A Yes.

25 Q Okay. And you indicated that that person pretty

1 much stood in front of your house, pointed the -- a handgun
2 towards Broadmere and then ran down the street. Did you mean
3 Long Cattle?

4 A Yes.

5 Q Okay. Did you ever see that individual again?

6 A No.

7 Q Okay. You indicated before I played the 911 call
8 that you heard gunshots, which caused you to run back into
9 your house to call 911.

10 A Yes.

11 Q Okay. Were those gunshots separate from the first
12 set that you heard which caused you to come out?

13 A Yes.

14 Q Okay. In the 911 call, you talked about a second
15 individual who was not standing up.

16 A Yes.

17 Q You said this person was scooting on the ground.

18 A Yes.

19 Q On their butt.

20 A Um-h'm.

21 Q Or on his -- his or her butt.

22 A His butt.

23 Q Okay.

24 A Yes.

25 Q When you first saw the scooter, we'll call the

1 person "scooter", where was that individual?

2 A He was on -- on Broadmere.

3 Q Okay.

4 MS. LEXIS: Mr. DiGiacomo, can we pull up No. 6
5 again?

6 BY MS. LEXIS:

7 Q Okay. So where was the person who was scooting on
8 the ground, where was he when you first saw him?

9 A He was -- boy that thing is -- right there.

10 MS. LEXIS: Okay, Your Honor, please let the record
11 reflect it's like one house further south of 1661 Broadmere.

12 THE COURT: The record will so reflect.

13 MS. LEXIS: Thank you.

14 BY MS. LEXIS:

15 Q And when you first noted that particular individual,
16 had you already seen the first guy wearing all dark clothing?

17 A Yes.

18 Q Okay. And so when you noticed the person scooting,
19 what do you see him doing?

20 A He had looked like a semi-automatic weapon on his
21 lap and he was injured -- his leg was injured so he was
22 scooting using his hands scooting on his butt backwards --

23 Q Okay.

24 A -- towards my direction. Towards my --

25 Q Okay. And the weapon that you described him having

1 on his lap, with as it a handgun, rifle, shotgun? Could you
2 tell what type of weapon?

3 A It looked like a rifle, semi-automatic type.

4 Q Okay. And so he placed it on his lap as he was
5 scooting down Broadmere?

6 A Yes.

7 Q And at some point, does he make it near your home?

8 A He makes it -- he actually stopped right in front of
9 my house.

10 Q Okay.

11 A Yeah.

12 Q And when he stopped near your house or in front of
13 your house, were you able to determine whether he had a mask
14 on?

15 A Yes.

16 Q Did he?

17 A Yes, he had a orange ski mask, I guess you call it.

18 Q Okay. And could you tell the color of the rifle
19 that he had in his lap?

20 A It was dark, but it looked black.

21 Q Once he's in front of your house, what do you see
22 him doing?

23 A He was resting. He looked like he was trying to
24 catch his breath so he at the point, pulled his mask off and
25 he was looking around. I guess, he was -- I can't assume but

1 trying to make sure somebody whoever was shooting at wasn't
2 following him.

3 Q Okay. At any time while you were observing him
4 coming down Broadmere and up until he got to your -- in front
5 of your house, did you ever hear him scream out for help?

6 A No.

7 Q Okay. At any point, did he make eye contact with
8 you at all?

9 A No. I don't know if he saw me. I mean, he -- he
10 didn't really look my direction. He might have saw my
11 silhouette in the door, but I was hoping he didn't turn around
12 that way.

13 Q Okay. And during the time that you watched him
14 coming down Broadmere towards your house or in front of your
15 house, did he ever let go of the rifle that he had in his
16 possession?

17 A No.

18 Q Did you continue to watch him?

19 A Yes, I did --

20 Q Okay.

21 A -- until he got out of sight.

22 Q Okay. And where was it that he got out of sight?

23 A Maybe three houses down from me. I couldn't really
24 see him. I wasn't going to go outside to see how far he went.

25 Q Okay.

1 MS. LEXIS: Court's brief indulgence.

2 BY MS. LEXIS:

3 Q The first man that you observed or the first person
4 that you observed with the dark clothes with the dark bandana,
5 did you observe any injuries on him?

6 A I couldn't tell.

7 Q Okay. So as far as you could tell is he was running
8 from your house down Long Cattle, it didn't appear as though
9 something was obstructing him or stopping him from running
10 away from that scene?

11 A No.

12 MS. LEXIS: No further questions. Thank you.

13 THE COURT: Cross?

14 MS. McNEILL: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. McNEILL:

17 Q Mr. Day, you said that you are a retired corrections
18 officer?

19 A Yes.

20 Q Okay. So -- and that was in California?

21 A Yes.

22 Q Would that be the California Department of
23 Corrections or --

24 A Yes.

25 Q Okay. So prior to getting that job, would you have

1 had to go through some sort of law enforcement training,
2 right?

3 A Yes.

4 Q Okay. So is it fair to say that's probably why you
5 were maybe a little more collected than some other people
6 would have been in this situation?

7 A Could have been. I also spent six years in the Army
8 before that.

9 Q Okay. So you have a fair amount of experience in
10 sort of high pressure situations, I would say?

11 A Yes.

12 Q Okay. So when you heard what you described as pop
13 offs around 8:00 p.m., did you believe those to be gunshots?

14 A I couldn't really tell.

15 Q Okay.

16 A Couldn't really tell. That's -- that's why I -- I
17 heard a few and then that's why I said well, let me go look
18 because it was a little loud, and then that's when I saw the
19 guy standing in front --

20 Q Okay.

21 A -- of my door.

22 Q So when you hear those noises, you aren't quite sure
23 but you decide to go check it out?

24 A Yes.

25 Q All right. And then you see this gentleman in all

1 dark clothing, correct?

2 A Yes.

3 Q Okay. And he was standing in front of your house?

4 A Yes.

5 Q But he was looking back at that Broadmere house?

6 A Yes.

7 Q When you see this -- these men out on the street,
8 you didn't see any cars come by, correct?

9 A No.

10 Q Okay. In fact, you were asked about that. The
11 police interviewed you at some point, right?

12 A Yes.

13 Q And they asked if you saw any cars?

14 A No, I didn't see any.

15 Q And you -- you didn't see any? You would have told
16 them that if you had?

17 A Yes.

18 Q Okay. Do you remember about how long it was between
19 the time you saw the guy with the mask and when the police
20 arrived? And I guess, it would be the orange mask, sorry.

21 A Which one? Are you asking me the police or the guy
22 in the orange mask?

23 Q When you see the guy with the orange mask, do you
24 remember about how long it was before the police arrived?

25 A Maybe a few minutes after that --

1 Q Okay.

2 A -- I'd say.

3 Q A few minutes? So --

4 A Three -- three to four minutes maybe.

5 Q -- you were out there watching this while it's
6 happening?

7 A I was in my house watching.

8 Q Okay. So -- and you see when the police arrive?

9 A Yes.

10 Q Okay. You indicated that this gentleman, the
11 gentleman with the handgun, do you remember, sir, what type of
12 build he had?

13 A He was slim to medium --

14 Q Okay.

15 A -- I'd say.

16 Q So medium but more to the slim side?

17 A Yes.

18 Q Okay. And Ms. Lexis asked you some questions about
19 if he appeared to be injured. You indicated the man was
20 wearing dark clothing, correct?

21 A Yes.

22 Q So maybe hard to see blood on dark clothing?

23 A Yes.

24 Q And then you also said that you heard some -- the
25 gunshots and you believed -- and I'm guessing this is probably

1 based on all of your Army experience and law enforcement
2 experience -- that it was semi-automatic firing, correct?

3 A Yes.

4 Q And so that -- if you know, based on your training
5 and experience with firearms, does that sound different than
6 when a revolver is fired?

7 A Yes.

8 Q Okay. And based on that, you believe someone was
9 firing a semi-automatic?

10 A Yes.

11 MS. McNEILL: Nothing further.

12 THE COURT: Mr. Wolfbrandt.

13 CROSS-EXAMINATION

14 BY MR. WOLFBRANDT:

15 Q Good afternoon, Mr. Day.

16 A How are you doing?

17 Q All right, I just want to see if I've got a little
18 bit of this timeline down. Did you hear some -- some noise,
19 some shots, pop sounding so you look out your window or out
20 the front door?

21 A Out the front door.

22 Q Out the front door. And the first thing you see is
23 somebody wearing black and he's standing in -- right in front
24 of your house?

25 A Yes.

1 Q Right at that moment, is that the only person you
2 see?

3 A Yes.

4 Q And how long did you keep your eyes on him, do you
5 think?

6 A Until he ran down the street. I don't know how
7 long. Maybe ten seconds.

8 Q Okay. Did he stick -- did he stay around in front
9 of your house or was it more like he paused, looked back and
10 kept on running?

11 A Yeah, it was more like he -- he was running, stopped
12 in front of my house, turned around pointed back that way
13 towards Broadmere, fired off a couple rounds, then he turned
14 around and ran down the street.

15 Q Okay. And at that point is when you called police?

16 A It might have been after. I don't think I called
17 right away. After that, I went outside to see what was going
18 on.

19 Q Okay. But --

20 A And I wasn't --

21 Q -- the guy in the black -- oh, sorry. The guy in
22 the black started to run down --

23 A Yes.

24 Q -- Long Cattle out of sight?

25 A Yes.

1 Q Okay. And then?

2 A Then I went outside because I was kind of wondering
3 what he was firing at or if it was really bullets or -- or --

4 Q Even if it was a real gun?

5 A -- paint ball or yeah, but it -- you know, it looked
6 like it a real gun but I didn't know if it was just guys out
7 there. So yeah, I went to investigate, and I wasn't out the
8 house five seconds after I heard the -- the semi-automatic,
9 and that's when he ran back in and called 911.

10 Q Okay. All right. So the timeline is you hear
11 several pops so there's some loud bangs, right?

12 A Um-h'm.

13 Q That gets your attention. You go to look out front
14 door, some time passes, several seconds, you see the guy in
15 the black takes off running --

16 A Um-h'm. Yes.

17 Q -- and you go outside. Then you hear more what
18 sounded like semi-automatic?

19 A Yes.

20 Q And then that's when you call the police?

21 A Yes.

22 Q Okay. Was it after that that you saw the guy
23 wearing the orange mask that was scooting?

24 A Yes.

25 Q And when you first saw him, were you on the phone

1 with the police right then?

2 A I'm pretty sure I was.

3 Q You probably used a cell phone, didn't you?

4 A Yes.

5 Q Because, I think, we heard on the audio that you're
6 describing seeing somebody scooting on the --

7 A Yes.

8 Q Okay. So when you first saw the person with the
9 orange mask that was scooting, all the pops and the gunfire
10 that you heard had ceased?

11 A Yes.

12 Q Now, this guy was scooting, was he just kind of
13 scooting pretty steady pace as best he could?

14 A He stopped a couple times and he'd scoot some more.

15 Q Okay. Did it look like he was trying to be in a
16 hurry to get out of there as best he could?

17 A I would say yes, as best he could.

18 Q Okay. Because he couldn't go very --

19 A He was dragging -- dragging one of his legs.

20 Q Right, couldn't go very far without --

21 A Couldn't go too far.

22 Q -- to that leg, right? All right, and as he got
23 around the corner in front of your house, is that when he
24 stopped and took his mask off?

25 A Yes.

1 Q And I believe, you described -- you said something
2 to the effect on the direct that he was looking around, it
3 appeared to you that he was trying to make sure no one was
4 coming after him?

5 A I would assume that.

6 Q Something to that --

7 A It's just me assuming. Yeah, he -- he was looking
8 around. I can't get in his head why he was looking around,
9 but I would --

10 Q That's the thought you had?

11 A Yes.

12 Q All right. And then he scooted further on down the
13 street out of the your sight?

14 A Yes.

15 Q And was it after he got out of your sight before the
16 first police units arrived in the -- in your neighborhood to
17 where you could see them?

18 A The first that I could see, yes. They could have
19 been on the other corners but --

20 Q Okay. We've heard some testimony that they may have
21 been staging outside the neighborhood. Okay, but I'm trying
22 to figure out, though, the guy in the black, he's already long
23 gone, right?

24 A Yes.

25 Q And the one with the orange mask, he's already out

1 of sight and well down here street --

2 A Yes.

3 Q -- in a -- I forget that direction now. Is it
4 southern?

5 A I think it's probably like southeast.

6 Q Going east. Yeah, going east on Long Cattle? And
7 then approximately, how much time passes after you lose sight
8 of him when you see the first police units arrive?

9 A I'd say three to four minutes.

10 Q Was a lot of your attention focused towards that
11 1661 Broadmere address?

12 A No, my attention was focused on the guy in the
13 orange mask.

14 Q Did you ever notice a black Dodge pull up in front
15 of 1661 Broadmere?

16 A No. I didn't see any vehicles pull up besides the
17 police after I had called them.

18 Q All right. Did you see any other vehicles moving in
19 the neighborhood?

20 A If they did, I didn't notice it.

21 Q You're focused on somebody with a gun in his hand?

22 A Yes.

23 Q Fair enough. Thank you.

24 MR. WOLFBRANDT: That's all I have.

25 THE COURT: Mr. Landis.

1 CROSS-EXAMINATION

2 BY MR. LANDIS:

3 Q I'm going to try not to make you repeat anything you
4 said. We'll see. If your 911 call started at 8:14, how many
5 minutes before that do you think it was, your best estimate,
6 as to when you heard that first loud sound? And a hard
7 question, I understand.

8 A Yeah. You're asking me a question that would -- a
9 total matter of minutes. It's something that happened over a
10 year ago.

11 Q And not a -- I don't want you to estimate if you're
12 not comfortable. Let me try to do it like this. Do you think
13 it was under 15 minutes? Are you comfortable saying that?
14 And if you're not, that's all right.

15 A Under 15 minutes of what? Bring that back again.

16 Q Sure, sure. Time from when the first loud sound
17 that you hear causes you to get up from your couch until your
18 start of your 911 call.

19 A Yes, that was less than 15 minutes.

20 Q Less than five minutes or not sure?

21 A I'd probably say less than -- less than five, yeah.

22 Q Then that period of time when you hear the
23 semi-automatic which causes you to find the phone and make the
24 call, you lose some sight there, right, of what's going on in
25 front of your house?

1 A I think when I made the 911 call, the guy was still
2 scooting towards my house. So from the time he was coming
3 down Broadmere to make the turn in front of my house, I'm --
4 I'm assuming I was already on the phone with 911.

5 Q I probably asked a bad question. Let me rephrase
6 it. Did the process of heading into the house, finding your
7 phone and starting the 911 call, did that process cause you to
8 not be able to keep perspective outside for seconds or so?

9 A I don't know. I don't even know if -- I might have
10 already had my phone in my hand when I went to the door. I'm
11 not really sure.

12 Q Understandable. Let me ask this, then, from -- and
13 I'm pretty sure I know the answer, but from the moment you
14 first see the scooting individual, you have constant visual on
15 him throughout your 911 call until you just can't see --

16 A Until he gets out of my sight, yes.

17 MR. LANDIS: No further questions. Thank you, sir.

18 THE COURT: Redirect?

19 MS. LEXIS: Yes, Your Honor, and I'll direct from
20 here.

21 REDIRECT EXAMINATION

22 BY MS. LEXIS:

23 Q Sir, when you testified about seeing the first
24 individual in front of your house, the one that was standing
25 with the mask over his face, and it appeared to you as though

1 he was pointing the gun he had in his hand towards Broadmere,
2 did you see the flash -- a flash come from the gun as if he
3 had -- he'd actually fired the weapon?

4 A Yes.

5 Q Okay. And when you first saw -- when you saw him,
6 that particular suspect, the one in dark clothing standing up,
7 where was the individual with the orange mask?

8 A I didn't see him at that point in time. I was just
9 looking at that guy.

10 Q Okay. And when do you actually take notice of the
11 individual with the orange mask?

12 A Once I was outside, I went to investigate after the
13 guy ran down the street. That's when I heard the
14 semi-automatic weapon, and it sounded like it was right behind
15 me so I turned around and I saw the guy in the -- the orange
16 ski mask. He was already on the ground. I ran inside, and
17 that's when I called 911.

18 Q Okay. And when you ran inside to call 911, you
19 actually made the call from inside your home, correct?

20 A Yes.

21 Q Okay. And you also grabbed your firearm?

22 A Yes.

23 Q Where was your firearm located when you grabbed it?

24 A Right by my stand in my -- right beside my recliner.

25 Q Okay. And you just testified on cross-examination

1 that you're not sure if you had the phone in your -- whether
2 you already had the phone with you or whether you had to grab
3 it, correct?

4 A Right.

5 Q Okay. At some point, do you -- about how much time
6 elapsed from the time you came in and called 911 to when you
7 started looking back outside your house?

8 A Maybe ten seconds.

9 Q Okay. And where were you when you reestablished
10 visual? What was going on outside?

11 A At that time, I was standing right in my -- my front
12 door watching the guy scoot down the street, scoot down
13 Broadmere and make it to Long Cattle.

14 Q While you were out there, did you see any of your
15 neighbors out?

16 A No, I don't remember.

17 Q Okay.

18 MS. LEXIS: Court's brief indulgence.

19 BY MS. LEXIS:

20 Q When you indicated that the first set of gunshots
21 didn't really sound like gunshots, you weren't sure if they
22 were --

23 A No.

24 Q -- what did they sound like?

25 A Well, it -- it could have been -- that's why I said

1 it could have been gunshots, could have been paint ball.
2 Paint ball is pretty loud, too. But you have to understand I
3 was watching TV so my TV was up kind of loud and then my front
4 door was open so it could have been some type of reverberation
5 going through the house, I don't know, but it sounded like
6 gunshots, but I wasn't really sure.

7 MS. LEXIS: I have nothing further. Thank you.

8 THE COURT: Recross?

9 MS. McNEILL: Just briefly.

10 FURTHER RECROSS-EXAMINATION

11 BY MS. McNEILL:

12 Q You indicated -- so based on Ms. Lexis's questions,
13 you remembered that you would have to go inside to get your
14 gun, right?

15 A Yes.

16 Q Okay. But it sounds like you were sort of
17 intentionally making that very quick, right?

18 A Yes.

19 Q Getting in and getting out, right? Okay. And that
20 was because, I'm guessing, you wanted to be outside
21 maintaining visual, one, to protect your own home and two, to
22 give information to the police?

23 A Absolutely.

24 Q Okay.

25 MR. WOLFBRANDT: Nothing further.

1 MR. LANDIS: No recross.

2 THE COURT: Thank you. May this witness be excused?

3 MS. LEXIS: Yes.

4 THE COURT: Thank you very much for your testimony.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: You may call your next witness.

7 MS. LEXIS: State calls Renee Salgado.

8 RENE SALGADO, STATE'S WITNESS, SWORN

9 THE CLERK: Please be seated, and please state and
10 spell your first and last name for the record.

11 THE WITNESS: Renee Salgado, R-e-n-e-e,
12 S-a-l-g-a-d-o.

13 THE CLERK: Thank you.

14 THE COURT: If you would scoot up because that
15 microphone in front of you has to pick you up. There you go.
16 You may proceed.

17 MS. LEXIS: Thank you.

18 DIRECT EXAMINATION

19 BY MS. LEXIS:

20 Q Ms. Salgado, on September 21st, 2014, where were you
21 living?

22 A Address, 10021 Garamound Avenue.

23 Q Okay. Is that located in a subdivision near the
24 area of Charleston and Hualapai?

25 A It is.

1 Q Okay. Were you living at -- is that a home?

2 A It is.

3 Q Who were you living at that home with?

4 A Me and my daughter.

5 Q Did something happen that night around 8:00 o'clock
6 that caused you to have to call the police?

7 A Yes.

8 Q Okay. What happened?

9 A I heard some sounds similar to fireworks. And I got
10 nervous about that so I called -- my daughter was in the
11 backyard so we went upstairs to her bedroom window and we
12 looked out just to see the -- what was going on, and then I
13 called 911 at that point.

14 Q Okay. I'd like you to take a look at your screen.
15 That's showing State's Exhibit No. 6. Do you know what this
16 particular exhibit is showing?

17 A It's the neighborhood.

18 Q Okay. Do you see or can you tell the ladies and
19 gentlemen of the jury where your house would be?

20 A Yes, I could see it.

21 Q Okay. Are you able to circle -- you can circle on
22 the screen and it will show up on the --

23 A Oh, with my finger?

24 Q -- juror's screen.

25 A Right there. Sorry, it's the corner house right

1 there.

2 Q Okay. So it's the corner house --

3 A Corner house.

4 Q -- on Garamound and Broadmere?

5 A Broadmere, yes.

6 Q Okay. And so when you say that you heard fireworks,
7 were you down -- is that a two-story house?

8 A It's a two-story house. I was downstairs on the
9 bottom level in the front of the house is where our TV was.

10 Q Okay. And --

11 A I should --

12 Q -- so you called your daughter in --

13 A Yes.

14 Q -- and you indicated that you went to your
15 daughter's bedroom window?

16 A Yes, which is upstairs directly above where I was
17 sitting facing Broadmere.

18 Q Okay. So looking out towards what's labeled as 1661
19 Broadmere?

20 A Correct.

21 Q Okay. So when you look out that bedroom window what
22 do you see?

23 A When I looked out the bedroom window, I saw someone
24 with a orange mask on, one leg extended and he was holding a
25 long gun facing my neighbor's house.

1 Q Okay. The person with the orange mask that you saw,
2 was he standing up, sitting down? What was he doing?

3 A He was actually in the -- on the street on like, one
4 leg extended and sitting on one leg.

5 Q Okay. And --

6 A He was not standing.

7 Q He was not standing?

8 A No.

9 Q Okay. And where was he on Broadmere?

10 A He was, I would say in front of the house, a little
11 left by the -- in the street from the driveway area.

12 Q Okay. A little bit to the left of --

13 A Yes.

14 Q -- 1661 Broadmere?

15 A Yes.

16 Q Okay. And did he have anything -- did he have any
17 weapons on him?

18 A He was holding a -- he was holding like a shotgun.

19 Q Okay. From your vantage point upstairs looking
20 down, could you tell how large or the shotgun was?

21 A It just -- for me it just looked like a long
22 extended gun. It was like that kind of deal.

23 Q Okay. And where was that shotgun?

24 A In his hands.

25 Q And you indicated that he was sitting or --

1 A Correct.

2 Q -- one leg out, right?

3 A Yes.

4 Q The other folded in sitting --

5 A Yes.

6 Q -- he was sitting on it? With a did you see him do?

7 A Well, I saw, just it was facing toward the house and
8 then I ran to get the -- aiming towards the house is what I
9 saw. And then I ran and got my phone and called 911.

10 Q When you say aiming towards the house, what was it
11 that that individual was doing that caused you to think was
12 aiming at the house?

13 A The gun wags pointed toward the front of the house.

14 Q Okay. And when you say the house, are you talking
15 about 1661 Broadmere?

16 A Yes.

17 Q Okay. And so you heard or did you hear or see him
18 shoot into 1661?

19 A I heard originally, went upstairs and then I saw the
20 position he was in and then I called 911.

21 Q Okay. And, let's see, when you saw the guy with the
22 orange mask, clearly you saw that he had a mask on?

23 A Yeah.

24 Q What part of his body was facing you as he sat on
25 the street?

1 A As I looked down, I saw actually, his whole body, I
2 saw the whole -- as if I was looking down seeing somebody.
3 Does that make sense?

4 Q Yes.

5 A Okay.

6 Q Okay.

7 A The whole body.

8 Q Okay.

9 A Everything.

10 Q And could you tell -- I mean, did you have an
11 opportunity to look at 1661 Broadmere, that actual house?

12 A Yes.

13 Q Okay. And what could you see?

14 A Well, I saw -- I just saw that the door was open,
15 and that was it. And then I ran, called 911, like I said,
16 went to my room. And then I came back to look out the window
17 again to make sure my daughter was secure in her room, and
18 then that's when I saw something different.

19 Q Okay.

20 A And I called 911 at that point.

21 Q Okay. All right. So you called 911 twice?

22 A I did.

23 Q Okay. So let's talk about the stuff that led up to
24 you calling 911 the first time.

25 A Okay.

1 Q Okay? How many sets of gunshots did you hear?

2 A I -- I -- it seemed like more than -- more than six.
3 It was (making sound). I thought it was fireworks going off.

4 Q Okay. And when you say six, is it all one after the
5 other or was there a break --

6 A There was a --

7 Q -- in between?

8 A -- doo, doo, doo, doo, doo, doo, doo like that.

9 Q Okay. And Ms. Salgado, you and I met about a week
10 and a half ago?

11 A Yeah.

12 Q Okay. And we listened to both the 911 calls that
13 you made --

14 A Yeah.

15 Q -- is that right?

16 A Yes.

17 Q Okay. So actually, this is all in one exhibit. So
18 let's talk about the second time you called 911.

19 A Okay.

20 Q Okay? So the first time you are relaying
21 information about what you had seen --

22 A Yes.

23 Q -- is that right?

24 A Yes.

25 Q Okay. At some point, did you hang up with 911?

1 A Yes.

2 Q And what are you -- what do you do?

3 A I went back to my room and just stayed there secure
4 with my daughter. Then I went back to the -- because I was
5 nervous. I went back to the window to look to see what was
6 going on.

7 Q Whose window?

8 A My daughter's window. Same window, which is
9 directly across right on -- facing the street. And then I
10 noticed that my neighbor was there in the doorway, and I also
11 noticed that at that point, there was a car at that -- which I
12 didn't notice before, and then someone jumped over my neighbor
13 and went in the house. That's what I saw. So then I called
14 911 just to give them that information.

15 Q Okay. The neighbor that you saw in the doorway --

16 A Yeah.

17 Q -- was he upright or on the floor?

18 A No, well, he was lying down and I saw his legs.

19 Q Okay.

20 A At the front door.

21 Q And did you ever see him get up?

22 A No.

23 Q Okay. And the person that stepped over him, was
24 this person -- did this person come out of the vehicle that
25 you just described?

1 A I don't know. I just noticed that there was a
2 vehicle there and then at -- when I actually looked through,
3 there was someone jumping over my neighbor.

4 Q What type of vehicle was it that you saw?

5 A It was a black, like, a Dodge Charger type newer
6 car.

7 Q Okay. And could you tell whether or not the person
8 who got out of the car or who stepped over your neighbor was a
9 male or female?

10 A I couldn't tell, but I -- I -- I just noticed it was
11 jeans. That's all I remembered.

12 Q Okay.

13 MS. LEXIS: Your Honor, at this point, I'd move to
14 admit State's Exhibit -- or Proposed Exhibit 280 into
15 evidence.

16 THE COURT: 280 is the disk containing the 911
17 calls?

18 MS. LEXIS: Yes.

19 MS. McNEILL: No objection.

20 MR. WOLFBRANDT: No objection.

21 MR. LANDIS: No objection.

22 THE COURT: That will be admitted.

23 (State's Exhibit 280 admitted)

24 MS. LEXIS: Thank you. For the record, we're going
25 to play the first call.

1 MR. DiGIACOMO: State's 280?

2 MS. LEXIS: 280.

3 (First 911 Call of Ms. Delgado played.)

4 BY MS. LEXIS:

5 Q So Ms. Salgado, that was your first 911 call --

6 A Yes.

7 Q -- correct? Okay. Once you got off the phone with
8 911 after that first call, what did you do?

9 A I was in my bedroom. It's the furthest room from
10 Broadmere. And then I periodically, you know, checked the
11 house.

12 Q Okay. And did -- you saw the white car in front of
13 Broadmere, 1661 Broadmere and someone in the doorway, laying
14 on the doorway and you called 911 again; is that right?

15 A I -- yes, I saw a black Charger, actually.

16 Q Okay.

17 MS. LEXIS: At this point, Your Honor, I'd ask to
18 play and publish the second 911 call.

19 THE COURT: That's --

20 MS. LEXIS: State's Exhibit No. --

21 THE COURT: Yeah.

22 MS. LEXIS: -- 280.

23 THE COURT: 280.

24 THE CLERK: It's in the same envelope?

25 THE COURT: Yes.

1 MS. LEXIS: Correct. It's in the same disk.

2 (Second 911 call of Ms. Salgado played)

3 BY MS. LEXIS:

4 Q Ms. Salgado, was that the second 911 call?

5 A Yes.

6 Q Okay.

7 MS. LEXIS: Mr. DiGiacomo, I ask to publish, and
8 Your Honor, to publish State's Exhibit 280. It's already been
9 admitted.

10 THE COURT: 280 is the disk.

11 MR. DiGIACOMO: 280 is the 911 --

12 THE COURT: And we --

13 MS. LEXIS: Oh, I'm sorry. Court's brief
14 indulgence. Court's brief indulgence. I would ask to publish
15 State's Exhibit 18. State's --

16 THE COURT: 18?

17 MS. LEXIS: 18.

18 THE COURT: All right. You may do that.

19 BY MS. LEXIS:

20 Q Ms. Salgado, do you see State's Exhibit 18?

21 A I do.

22 Q On your screen?

23 A Yes.

24 Q Okay. That black Dodge Charger that you described
25 in your second 911 call, do you see it in this particular

1 photo?

2 A I do.

3 Q Okay. And was it in that -- was it parked and in
4 that location when you called 911?

5 A Yes.

6 Q Okay. And where was the doorway or the entryway
7 that you were describing where an individual was laying on the
8 doorway?

9 A Right behind that -- to the left of the palm tree
10 right behind that --

11 Q Okay. And because you were looking from upstairs --

12 A Yeah, I --

13 Q -- you were able to see --

14 A Down, yeah.

15 Q Okay.

16 MS. LEXIS: I have no more questions. Thank you.

17 THE COURT: Cross.

18 MS. McNEILL: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. McNEILL:

21 Q Ms. Salgado, the picture that you're looking at, is
22 that sort of the view you had from your window? Obviously,
23 you were upstairs but --

24 A Correct.

25 Q -- that's what would you have seen? Okay.

1 A Yes.

2 Q Okay. And you indicated to Ms. Lexis that the
3 person that you saw was sort of where that palm tree is?

4 A No. It's like with -- the doorway.

5 Q Okay. And then that would be the person -- where
6 was the person that you saw who was scooting down the street?
7 In that -- in the doorway?

8 A Oh, no.

9 Q Okay.

10 A The person scooting down the street was in front of
11 the house. Can I point like --

12 THE COURT: You can draw on it, yeah.

13 THE WITNESS: -- right there.

14 BY MS. McNEILL:

15 Q Okay. So by the driveway then?

16 A Correct.

17 Q Okay. When you were looking down the window and you
18 saw that man, that was the only person that you saw, correct?

19 A That -- that's true.

20 Q Okay. And you didn't see any cars go by, and I'm
21 talking about before this Dodge Charger?

22 A No, nothing.

23 Q Okay. You described two sets of gunshots on the 911
24 call. Do you remember about how long it was in between those
25 sets of gunshots?

1 A I would say seconds.

2 Q Seconds, okay. So this was first set very
3 quickly --

4 A Yes.

5 Q -- second set? Okay. And the first set of gunshots
6 was more than the second set of gunshots?

7 A I don't know about the count, but I know that it was
8 -- it was a series and then seconds and another series of
9 gunshots.

10 Q The -- when we were listening the 911 call it seemed
11 like a very long time that you were waiting for them to get
12 police there, but you could hear sirens in the background,
13 correct?

14 A At one point, yes.

15 Q Okay. So you were aware that police may not have
16 been in front of that house but you could hear them on there
17 way, right?

18 A Yes.

19 Q When the Dodge Charger pulled up, did you see any
20 police cars at that time?

21 A No.

22 MS. McNEILL: Nothing further.

23 THE COURT: Mr. Wolfbrandt?

24 MR. WOLFBRANDT: Yep.

25 (Pause in the proceedings)

1 CROSS-EXAMINATION

2 BY MR. WOLFBRANDT:

3 Q I know it's getting a little late here, but good
4 evening, Ms. Salgado. What were you doing? Were you watching
5 a movie when you heard the first set of shots?

6 A I was watching HBO, yes.

7 Q And then maybe you didn't testify today, but your
8 daughter was in the backyard?

9 A She was talking on want phone, yes.

10 Q All right. So you hear the first set of shots and
11 then what, you get her in the house and you go upstairs into
12 her bedroom so you can look over the direction of Broadmere?

13 A Yes. I hear the shots, and I call her in
14 immediately and we go upstairs.

15 Q And do you get on the phone? Did you call 911
16 before you look out the window?

17 A No, because I didn't know what it was so I looked
18 out and then that's when I saw someone there and then I called
19 911.

20 Q When you looked out your window, did you notice
21 whether the front door of the house was opened?

22 A I believe, it was, yes.

23 Q Did you notice anybody in that doorway?

24 A Not at that time, no.

25 Q And so you know somebody was in the street with the

1 orange mask on?

2 A Yes.

3 Q Right? And he was already out into the street?

4 A Yes.

5 Q And he was scooting away from the Broadmere house?

6 A Yeah, a little inching back. Yes. Scooting, yes.

7 Q Sorry?

8 A Scooting, yes. He was scooting.

9 Q Okay. Did it look to you like he was trying to go
10 as fast as he possibly could?

11 A I wouldn't know that, but I just know it was a --
12 just a scoot normal.

13 Q Never did get up and run, did he?

14 A No.

15 Q Never stood up at all?

16 A No.

17 Q Okay. So you see that scenario, and then do you
18 then take your eyes away from the window to call 911?

19 A I do. I go to the furthest part of my home --

20 Q Okay.

21 A -- away from him.

22 Q And is it while you're in the back part of the home
23 that you hear the second set of shots?

24 A No. It all happened all -- a series at the
25 beginning when I was watching television.

1 Q It wasn't until you went back to the -- well, when
2 you first looked out the window you made a point of looking at
3 the front door of the house and noticed it was open; is that
4 correct?

5 A Yes.

6 Q And you didn't notice anybody lying in that doorway?

7 A No, I did not.

8 Q And you didn't notice anybody come to that doorway
9 at any time until you went into the house to the back of the
10 house to call 911?

11 A Repeat that.

12 Q You kept looking -- well, I mean, you were looking
13 at the guy that was scooting away from the house --

14 A Correct.

15 Q -- right? And but you also had kind of going back
16 and forth, were you to the doorway that was open?

17 A Well, yes. I was going back to the first part of
18 the house, like you heard on the 911 call.

19 Q All right. All right. And so you never saw any
20 shots --

21 A Saw shots?

22 Q Once you got on -- you called 911, okay, just to
23 make sure, you heard no more shots?

24 A Correct.

25 Q You saw -- the only person you saw was the one

1 wearing the orange mask?

2 A Correct. Other than the person that was --

3 Q Other than later when you saw --

4 A Correct.

5 Q -- someone laying at the doorway? Okay.

6 MR. WOLFBRANDT: Thank you.

7 THE WITNESS: And -- go ahead.

8 BY MR. WOLFBRANDT:

9 Q It's okay.

10 A And the person that jumped over the person that was
11 in the doorway --

12 Q Oh, right.

13 A -- when I made a second 911 call.

14 Q Okay.

15 A Yeah.

16 Q All right, thank you.

17 THE COURT: Mr. Landis?

18 MR. LANDIS: I have no questions for this witness.

19 THE COURT: Thank you. Redirect?

20 MS. LEXIS: No, Your Honor. Thank you. Thank you,
21 Ms. Salgado.

22 THE WITNESS: Yeah.

23 THE COURT: May this witness be excused?

24 MS. LEXIS: Yes.

25 MR. WOLFBRANDT: Does the jury have a question?

1 THE COURT: Jury questions? Wait, wait, wait. No?
2 All right. Thank you. You're excused. Counsel approach for
3 scheduling.

4 (Off-record bench conference)

5 THE COURT: All right, ladies and gentlemen,
6 tomorrow I have a, once again, big drug court calendar so
7 we'll have a 1:30 start. And again, I'll try not to keep you
8 waiting if it's humanly possible on my part.

9 And ladies and gentlemen, during this overnight
10 recess, it is your duty not to converse among yourselves or
11 anyone else about any subject connected with the trial or to
12 read, watch or listen to any report of or commentary on the
13 trial by any person connected with the trial or by any medium
14 of information, including without limitation, newspaper,
15 television, radio or Internet. And you are not to form or
16 express any opinion on any subject connected with this case
17 until it's finally submitted to you. And I'll see you
18 tomorrow at 1:30.

19 THE MARSHAL: All rise for the jury.

20 (Jury recessed at 4:57 p.m.)

21 THE COURT: Okay. And the record will reflect that
22 the jury has departed the courtroom. Any matters outside the
23 presence?

24 MR. DiGIACOMO: Not from the State.

25 THE COURT: Anything from the defense? No?

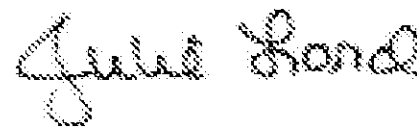
1 MR. LANDIS: No.

2 THE COURT: All right. We're off the record.

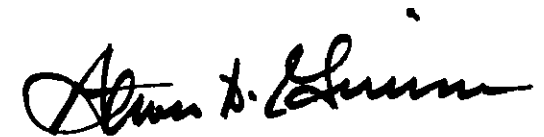
3 (Court recessed at 4:58 p.m. until Thursday,
4 September 22, 2016, at 1:41 p.m.)

5 * * * * *

6 ATTEST: I hereby certify that I have truly and correctly
7 transcribed the audio/visual proceedings in the above-entitled
8 case to the best of my ability.

9
10 

11
12 _____
13 JULIE LORD, INDEPENDENT TRANSCRIBER
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
	.	CASE NO. C-15-303991-4
Plaintiff,	.	CASE NO. C-15-303991-5
	.	
vs.	.	DEPT. V
	.	
JORGE MENDOZA,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 9

THURSDAY, SEPTEMBER 22, 2016

APPEARANCES:

FOR THE STATE:	MARC P. DiGIACOMO, ESQ. AGNES M. LEXIS, ESQ.
FOR DEFENDANT MENDOZA:	WILLIAM L. WOLFBRANDT, ESQ.
FOR DEFENDANT MURPHY:	CASEY A. LANDIS, ESQ.
FOR DEFENDANT LAGUNA	MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
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Proceedings recorded by audio-visual recording, transcript
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1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 22, 2016, 1:41 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We're on the record. We're
4 outside the presence of the jury. The defendants are all
5 present with their respective counsel, Chief Deputies District
6 Attorney prosecuting the case are present, as are all officers
7 of the court.

8 Mr. DiGiacomo, you have something outside the
9 presence?

10 MR. DiGIACOMO: Yes. I had a conversation with
11 Mr. Landis after his cross-examination of Ms. Larsen, and I
12 think he effectively avoided saying you're providing this
13 information in exchange for the agreement. So I told him to
14 give me his proposed redactions. I briefly looked at them. I
15 don't think there's going to be a problem.

16 So if I agree with all of them, I will redact it and
17 then I will replace 276 with a redacted version of it for the
18 jury's purposes.

19 THE COURT: Okay. Yes, he did a very good job of
20 avoiding that so yeah.

21 MR. LANDIS: I don't know how intentional it was so
22 I don't know if I deserve that much credit.

23 THE COURT: Oh.

24 MR. LANDIS: I'll take it.

25 THE COURT: I always think that you deserve all the

1 credit, Mr. Landis.

2 MR. LANDIS: Appreciate that.

3 THE COURT: All right. Okay, let's bring them in.
4 Oh.

5 THE MARSHAL: Alternate 4?

6 THE COURT: Oh, yes. Do we want to just let -- what
7 his name?

8 THE MARSHAL: Frank Dieterich.

9 THE COURT: Frank Dieterich. He's the one I told
10 you about who indicated that he is having a heart -- is he
11 still, Marshal, saying he's having heart problems?

12 THE MARSHAL: He says he feels a little bit better
13 today but --

14 THE COURT RECORDER: Do you want to be on the record
15 still?

16 THE COURT: Yeah. Does he still want to go on or do
17 we want to let him go, ladies and gentlemen?

18 MR. LANDIS: I have no problem letting him go.

19 MS. McNEILL: I don't either, Your Honor. I have
20 no --

21 MR. DiGIACOMO: I have no problem releasing him.

22 THE COURT: All right. We'll go ahead and let him
23 go and you can just -- there's no need for him to come in
24 since we're on the record and everybody has stipulated to
25 letting him go and he is the fourth alternate. So we should

1 be okay since we're substantially through the case at this
2 point. All right.

3 THE MARSHAL: Thank you, Your Honor.

4 (Pause in the proceedings)

5 (Off the record at 1:43 p.m. until 1:44 p.m.)

6 (In the presence of the jury)

7 THE MARSHAL: Your Honor, all members of the jury as
8 is all three alternates are present.

9 THE COURT: All right. Thank you. Please be
10 seated. And the record will reflect all 12 members of the
11 jury are present. We are down to three alternates, our fourth
12 alternate having been dismissed. And of course, all three
13 defendants are present with their respective counsel. The
14 Chief Deputies District Attorney prosecuting the case are
15 present as are all officers of the court.

16 Good afternoon, ladies and gentlemen. How are you
17 doing?

18 THE JURY: Good.

19 THE COURT: Good. So before we get started, I want
20 to let you know that kind of our schedule upcoming because
21 there's been a slight change to our schedule. We'll be --
22 tomorrow's Friday and so you know that we're going to go all
23 day tomorrow as scheduled, and there's in change to that.

24 But there, unfortunately, one of our attorneys has
25 had a death in the family, and so there's a funeral that needs

1 to be attended to on Monday, and so we're going to be dark on
2 Monday because of that funeral requirement. And so you'll
3 have a longer weekend than you had expected. But we aren't
4 behind. We're still on course for being completed as by the,
5 you know, the end of next week as we had projected, so need to
6 worry about that. But I wanted to give you as much notice as
7 possible, so in case you wanted to make plans, could check
8 into work or what have you, you could do that. All right.

9 You may call your next witness?

10 MR. DiGIACOMO: State calls Steven Larsen.

11 STEVEN LARSEN, STATE'S WITNESS, SWORN

12 THE CLERK: Please be seated, and then place state
13 and spell your first and last for the record.

14 THE WITNESS: Steven Larsen, S-t-e-v-e-n,
15 L-a-r-s-e-n.

16 THE CLERK: Thank you.

17 THE COURT: You may proceed.

18 MR. DiGIACOMO: Thank you.

19 DIRECT EXAMINATION

20 BY MR. DiGIACOMO:

21 Q Mr. Larsen, there's a microphone right there in
22 front of you.

23 A Okay.

24 Q And you can either lean into it or you could pull it
25 closer to you. It moves a little bit there, and just keep

1 your voice up so that, you know, everybody can hear what you
2 have to say because the room's a little large, okay?

3 A Okay.

4 Q Let me ask you, do you know an individual by the
5 name of Joseph Larsen?

6 A Yes, he's my son.

7 Q How old is Joseph, approximately?

8 A 27.

9 Q Do you call him Joseph or do you call him something
10 else?

11 A I call him Joey.

12 Q Joey?

13 A Yeah.

14 Q Did Joey grow up in your home?

15 A Yes.

16 Q And have you lived in the same place for a fairly
17 long time?

18 A Yes, about 30 years.

19 Q Where -- you don't have to give us the exact
20 address --

21 A Okay.

22 Q -- but where generally do you live?

23 A Jade Mobile Home Park, Rainbow and Craig.

24 Q Rainbow and Craig --

25 A Yes.

1 Q -- and there's a mobile home park --

2 A Yes.

3 Q -- in there? Growing up, did Joey meet an
4 individual by the name of Summer Larsen?

5 A Yes.

6 Q Or Summer Rice, I guess, back then in those days.

7 A Yes.

8 Q And do you know approximately, what age Joey was
9 when he met her?

10 A I think, he was -- he was in junior high so, you
11 know, probably --

12 Q So young?

13 A Yeah.

14 Q Still a kid?

15 A Yeah.

16 Q And were there other people that you know that may
17 not necessarily still live in the neighborhood? Do you know a
18 woman named Ashley Hall?

19 A Yes.

20 Q Do you know a woman named Tracy Rowe?

21 A Yes, I do.

22 Q Are those two individuals at some point from that
23 neighborhood?

24 A Yes, they were.

25 Q Have you ever met -- I guess, "met" is a bad word.

1 Do you know of an individual that lived in that neighborhood
2 by the name of David Murphy?

3 A I don't know the individual. I don't know him.
4 I've heard of him, but I don't know him.

5 Q Have you met -- or sorry, have you ever seen that
6 individual or is it just by word of mouth you are aware of who
7 he is?

8 A I'm just aware of who he is, yeah.

9 Q What about his brother? Have you ever seen his
10 brother?

11 A I've -- I've seen him, yes, but I don't know him or
12 anything. Just in, like, passing, you know.

13 Q How far away from your residence is the Murphy
14 residence?

15 A Probably about two, three blocks.

16 Q Two, three blocks. And I'm assuming you've been by
17 that residence once or twice in your life in the 30 years?

18 A Yes. To go to the store, you have you to go
19 outside.

20 Q Do you recall the street name it's on?

21 A Let me see. I can't remember, to be honest with
22 you.

23 Q And could you generally describe the residence best
24 you can for us. What does it look like?

25 A Which residence?

1 Q The Murphy residence?

2 A It's a mobile home. Doublewide mobile home.

3 Q You ever see any vehicles parked over there or
4 anything like that, that you remember?

5 A Yeah, they have a couple vehicles. Yeah.

6 Q Do you remember what either one of them looks like
7 or any of them look like?

8 A They got a -- a SUV and a -- and they had an ice
9 cream truck.

10 Q Anything else you can think of they used to have
11 over there?

12 A On their -- they have a trailer with some bounce
13 equipment in it because they run a bounce -- you know, a --

14 Q Have you ever seen a pick-up truck over there?

15 A I really don't know because there's a lot of parking
16 right there so I really -- you know.

17 Q So in the trailer home there's kind of a wide area
18 to have parking in?

19 A Yeah, because everybody parks on the street so it
20 could be somebody, a neighbor's vehicle or, you know -- so
21 it's hard to say whose vehicle is whose, you know.

22 Q Now, as kids, how do you find out who David Murphy
23 is? Is it from your children or from Joseph or somebody else?

24 A Just, you know, people in the park, you know.

25 Q People talking?

1 A Yeah, yeah, you know. If you want to know
2 something, go down to the corner store, you know. That's
3 where all the gossip is.

4 Q So I want to sort of jump forward from when Joey's a
5 kid. Does there come a point in time when Joey gets married?

6 A Yes, he did.

7 Q And who did he marry?

8 A Summer Rice.

9 Q How long ago do you think that was?

10 A Probably about five years ago. Right around there,
11 I suppose.

12 Q How long had they been dating before they got
13 married?

14 A Well, they run around in like little -- you know,
15 group that they went to school with probably a good six, seven
16 years, I suppose, yeah.

17 Q Does there come a point in time when Joey moves into
18 a residence on Broadmere?

19 A Yes.

20 Q Now, how is it that he was able to move into that
21 residence?

22 A I helped him. I helped them both out. I rented it
23 for them.

24 Q You rented the Broadmere address --

25 A Yes.

1 Q -- for both him and Summer?

2 A Yeah. Gave them a little start.

3 Q And initially, whose name's on the lease?

4 A Mine.

5 Q Was Summer's name ever on that lease?

6 A In the beginning it was, but I took it off after
7 they split up.

8 Q And about how long before the shooting incident
9 we're here to talk about do you think Joey and Summer moved
10 into Broadmere?

11 A About a year.

12 Q And at some point, you said Summer moved out. How
13 long did they live in that place together, would you say?

14 A About four months.

15 Q After Summer moved out of the residence, did you
16 become aware of some problems with her and Joey and damage
17 being done to the residence?

18 A Yes.

19 Q On how many occasions?

20 A About three or four occasions.

21 Q On any of those occasions were you ever present when
22 either the damage was being done or that -- or when Summer was
23 there?

24 A Yes.

25 Q And how many occasions was that?

1 A I was there -- I went there twice. Once she was
2 there and once she wasn't there.

3 Q The time you went there, how long before the
4 homicide was it?

5 A The last time I went there was about two weeks.

6 Q Two weeks before the homicide?

7 A Yes.

8 Q And the time you went two weeks before, was Summer
9 present?

10 A Yes.

11 Q Okay. And what was her demeanor like?

12 A She was upset, you know, screaming, you know,
13 throwing tin cans at the windows, broke a couple windows.

14 Q So she did some damage to the house --

15 A Yes.

16 Q -- on that occasion? Did you ever become aware of a
17 burglary that occurred at the Broadmere address?

18 A Yes.

19 Q And about how long prior to the shooting incident
20 did the burglary occur?

21 A About a month.

22 Q Approximately, a month --

23 A Yeah, approximately.

24 Q -- previously?

25 A Yeah, give or take.

1 Q And what was your understanding of what was taken
2 from that residence during that?

3 A All the TVs, you know, video equipment and, you
4 know, stuff like that. And then before that, it was robbed a
5 few weeks before that, too, and they took all of his birth
6 certificates, everything he had, you know.

7 Q So there was two burglaries --

8 A Two burglaries.

9 Q -- that occurred at the residence?

10 A Yeah.

11 Q Okay.

12 A I found -- I found them both.

13 Q Okay. So you said the one where the TVs was taken
14 was how long before the shooting incident?

15 A About a month.

16 Q And before the one -- so that would put us sometime
17 in August.

18 A Yeah.

19 Q So the one prior to that occurred when?

20 A A couple weeks before that.

21 Q So it was --

22 A Um-h'm.

23 Q -- early August, that time period?

24 A Yeah.

25 Q Okay.

1 A It's in the two-month period.

2 Q And it's that first burglary where personal items of
3 Joseph were taken?

4 A Yeah.

5 Q And you said birth certificates. Anything else do
6 you remember?

7 A Birth certificates, all -- you know, all his
8 paperwork he had from, you know, personal stuff and --

9 Q And the fact that somebody took personal items
10 related to Joseph, did that indicate that you potentially who
11 the suspect might be?

12 A Yes.

13 Q All right. And who did you think did it?

14 A Summer.

15 Q I want to sort of fast forward to the Sunday,
16 September 21st of 2014. Does there come a point in time --
17 well, let me ask you this, are you home on that day?

18 A Yes, I was. My wife was sick with cancer so I was
19 at home.

20 Q And at that point in time, on that date and time,
21 who was currently living in the Broadmere address?

22 A Joseph.

23 Q Did you know an individual by the name of Monty
24 Gibson?

25 A Yes. He roommated with him for a while after Summer

1 left in order to help with the bills and stuff like that.

2 Q And then as of September 21st, was Monty still
3 living in the residence?

4 A He was in the process of moving out of the
5 residence. He was living with his girlfriend, and he would
6 come over and, you know, pack up his stuff like that.

7 Q Did Monty have a car that you were aware?

8 A No, he didn't. He sold his car.

9 Q What about Joseph, did Joseph have a vehicle?

10 A No, he didn't. Summer had the vehicle they had
11 together.

12 Q And what kind of vehicle was that?

13 A It was a Hyundai Sonata, black.

14 Q Black Hyundai Sonata? Okay. Did you have vehicles?

15 A Yeah, two of them.

16 Q And what two vehicles did you have?

17 A A Dodge Challenger and a Saturn Vue.

18 Q And what color's the Saturn?

19 A Silver.

20 Q Now, when -- on the 21st, where are those two
21 vehicles during the afternoon hours?

22 A At my house.

23 Q During the early afternoon hours, do you get
24 contacted by a woman that you know as Tracy Rowe?

25 A Yes.

1 Q And how is it you're contacted by her?

2 A She came to my house. Her mother lives right on the
3 corner and so she came to my house.

4 Q So it was a face-to-face, she knocked on the door
5 type thing?

6 A Yeah.

7 Q Okay. And without telling us what she said, did she
8 provide you with some information that caused you to have some
9 concern?

10 A Yes.

11 Q Based upon what she told you, did you do anything?

12 A I called my son.

13 Q And did he answer?

14 A Yeah.

15 Q And did you tell your son anything?

16 A I told him to get all of his stuff together, I was
17 coming over to pick him up, and Monty was over there at the
18 time. And I said I'll pick you both up. Whatever you don't
19 want stolen, I said to get it all together and I'll pick you
20 up.

21 Q And who did you believe was going to go over there
22 and steal something from your son?

23 A Summer.

24 Q How long prior to -- well, let me ask you this, at
25 some point in time before you get to that house, do you get a

1 phone call back from your son?

2 A Yes.

3 Q And describe his demeanor when he calls you back.

4 A He was upset. He said that somebody had kicked in
5 his front door and --

6 Q Before I get to what he said, but just kind of sort
7 of describe his demeanor. You said he's upset. What made you
8 think he was upset?

9 A He was like -- like losing control, you know. He
10 was --

11 Q Was his voice elevated?

12 A Oh, yeah, yeah.

13 Q Did he appear to be in distress?

14 A Yes, definitely. He --

15 Q How long between the time you make the first phone
16 call to him and the time that he calls you back?

17 A Probably about 20 minutes.

18 Q Did -- when you told him to gather his stuff, you're
19 going to come get him and Monty --

20 A Um-h'm.

21 Q -- and get them out of the residence, at that point,
22 did your son agree that he was going to leave with you?

23 A Yes.

24 Q When you received the phone call back, you said he
25 was upset.

1 A Um-h'm.

2 Q And he said some people had come. Let me back up
3 and because I forgot to talk about this. Were you aware of
4 whether or not your son ever had any marijuana?

5 A Well, he was smoking, yeah.

6 Q Were you aware as to whether or not your son was
7 selling marijuana?

8 A He would buy marijuana -- he was a smoke for free
9 person. He would buy marijuana, sell it to his friends, he'd
10 smoke for free.

11 Q So he'd some quantity of it, at least your
12 understanding was --

13 A Yeah.

14 Q -- he'd provide some of it to friends to cover the
15 cost and then he could smoke the marijuana that he wanted to?

16 A Yeah.

17 Q Had you ever talked to him about maybe this wasn't
18 the best idea?

19 A Oh, definitely.

20 Q You said when Joey called you back, he's upset, and
21 what does he tell you?

22 A He said that somebody had just kicked in his front
23 door and there was a gun fight, and that Monty was shot and he
24 said that he shot somebody, and he doesn't know, you know, how
25 they are at all, but, you know, he was, you know, stressed out

1 about it.

2 Q Obviously, that caused you some concern?

3 A Yeah. Well, yeah, yeah.

4 Q This conversation with your son, how long do you
5 think you talked to him for?

6 A Probably no more than about five minutes, I suppose,
7 because I told him to get off the phone and call the police
8 and talk to them. I said if police are going to come, you
9 should be on the phone, you know.

10 Q When your son called you, where were you at that
11 point?

12 A I was on my way over to his house.

13 Q What car?

14 A My Challenger.

15 Q What color is it again?

16 A Gray.

17 Q So he's calling you on your cell phone --

18 A Yeah.

19 Q -- obviously?

20 A Yes.

21 Q And how far is it from let's say your house to the
22 Broadmere address?

23 A Probably about 20 minutes.

24 Q And --

25 A Yeah.

1 Q -- how long did it take you after your son calls you
2 to get down to the Broadmere location?

3 A About ten minutes.

4 Q So you instruct your son when he's providing you
5 this information to call 911?

6 A Yeah.

7 Q When you get to the area of Charleston/Hualapai,
8 describe kind of what happens and what you do.

9 A I turn the corner on Hualapai to go into his
10 complex, and the police had it blocked off so they wouldn't
11 let me through, but I know a back way. So I went around the
12 back way and came down the street from the other direction,
13 and --

14 Q I'm going to put State's Exhibit zero -- sorry,
15 State's Exhibit 6 up here for you. Do you recognize --
16 there's a screen there. Is it on for you? If it's too small
17 for you to see --

18 A No, it's fine. It's fine.

19 Q Do you see the tag there? Does that appear to
20 accurately reflect your son's residence?

21 A Yeah.

22 Q Okay.

23 A Um-h'm.

24 Q So you said you first tried to get in one direction
25 and then you knew a back way in. I don't know --

1 A Yeah, right off the Homestretch Drive there's a turn
2 where you come right in and they had that blocked off.

3 Q Okay. So then I don't know if the full entrance
4 that you came in is on here, but can you generally describe
5 how it is you got into the residence.

6 A I went down the street and I turned on that --

7 Q If you actually touch the screen that you're in
8 front of, it will draw a line on the exhibit in front of the
9 jury so you can just sort of --

10 A Yeah, I came down here and then I went in the back
11 way like this. Like that.

12 Q And as you were driving into the neighborhood, did
13 you see police officers?

14 A One was blocking this street right here.

15 Q And did you stop for him?

16 A No.

17 Q Okay. Where did you park the car?

18 A Right in front of his house.

19 Q Once you parked your car in front of his house, what
20 did you do?

21 A I -- I looked and I -- I could see him inside the
22 house because the door was open. And I saw Monty laying half
23 in the door and half out, so I jumped out of my car and I ran
24 to the house and I jumped over Monty and went in the house.

25 Q Now, what was your son doing as you enter the house?

1 A He was standing in the living room right inside the
2 door still holding his gun.

3 Q Was he on the phone?

4 A Yes. He was talking to the 911 dispatcher.

5 Q So you kind of made a motion with the he's holding
6 his gun --

7 A Yeah, he was holding --

8 Q -- was the holding the gun with one hand?

9 A Yeah.

10 Q Okay. And for the record, you sort of have your
11 right hand down and your left hand up --

12 A Right.

13 Q -- to your ear. What's his demeanor at this point?

14 A The he was really upset. He was -- you know, he was
15 shook up, you know, because he didn't know -- you know, his
16 friend was dead, and he didn't know what happened to the other
17 people, you know, because, you know, he was upset. And so I
18 took the gun from him because I thought, you know, if the
19 police are coming in, you can't be standing there with a gun
20 in your hand. You're going to get shot, you know. So I took
21 the gun from him and then I took the cell phone and started
22 talking to the 911 dispatcher.

23 Q What did you do with the gun?

24 A I stuck it in my belt.

25 Q And did the dispatcher request anything from you?

1 A Told me to take the gun and put it in a drawer or
2 put it someplace, and I said well, I was standing in front of
3 the door. You know, you could see in the house. And I said
4 the police know I got the gun. So I said, my car is right
5 outside the door, so I said I'm going to take the gun and I
6 held it up, and I said I'm going to put it in my car. So I
7 opened the trunk, sat it in the car, closed the trunk.

8 Q And did you go back into the residence?

9 A Yes, then I went back over to where Monty was and
10 they wanted me to give him chest compressions. So I started
11 to give him chest compressions.

12 Q Did you -- upon your viewing of Monty's body, did
13 you think that there was any hope that you could do any --

14 A Not at all.

15 Q -- revival?

16 A I've seen a lot of people that have been shot and I
17 did two tours in Vietnam so I know he is --

18 Q There wasn't a chance?

19 A No chance.

20 Q So why do you do what you do as it relates to Monty?

21 A For one, the dispatcher asked me to because there
22 was nobody else there to check him yet. And the other one, my
23 son asked me to. He said try and save him, you know, but so I
24 tried.

25 Q Did you think that might calm him down a little bit?

1 A Yeah.

2 Q Now, Monty, we've seen sort of photographs of him,
3 and I don't want to show them to you, but the position that
4 ultimately, the police when they get there and secure the
5 scene, that position, is he in that position when you first
6 arrive?

7 A Yes.

8 Q Okay. So he didn't move?

9 A No.

10 Q And you didn't move him --

11 A No, I didn't.

12 Q -- to do any of these life saving type stuff?

13 A No, I didn't move him at all.

14 MR. DiGIACOMO: Judge, I've had marked as State's
15 Proposed Exhibit 282, which is the 911 call of well, both
16 Joseph and Steve Larsen. It's a single call. I'd offer it at
17 this point.

18 THE COURT: Any objection?

19 MR. LANDIS: Court's brief indulgence.

20 (Pause in the proceedings)

21 MR. LANDIS: No objection.

22 MS. McNEILL: No objection.

23 MR. WOLFBRANDT: No objection.

24 THE COURT: It will be admitted.

25 (State's Exhibit 282 admitted)

1 MR. DiGIACOMO: I'm going to publish 282, Judge.

2 THE COURT: All right.

3 (911 Call of Joseph and Steve Larsen played.)

4 BY MR. DiGIACOMO:

5 Q Mr. Larsen, you could hear at the end of that phone
6 call that there's officers giving you command. Are both you
7 and your son sort of taken into custody and taken out of that
8 house?

9 A Yes.

10 Q And does there come a point in time when you remain
11 at the scene for a period of time with your son while
12 detectives and everybody else is sort of arriving?

13 A About three hours.

14 Q During the time period after sort of the chaos of
15 the scene dies down a little bit, do you and your son have a
16 conversation about sort of what happened inside that house?

17 A Um-h'm.

18 Q Is that a yes?

19 A Yes.

20 Q Okay. You can tell that your son on this call is to
21 the point where he's incoherent in the background. Do you get
22 him to the point where he's at least capable of communicating
23 information to you?

24 A Yeah. Yeah, what, yeah, um-h'm.

25 Q And what is the -- what does your son tell you about

1 what occurred inside the residence?

2 MS. McNEILL: Objection.

3 MR. LANDIS: Can we approach?

4 THE COURT: Yes.

5 (Off-record bench conference)

6 BY MR. DiGIACOMO:

7 Q I'll ask it again. What did your son sort of tell
8 you about what happened inside the house?

9 A He said he was waiting for me to come over there,
10 and they had ordered a pizza and it happened to come. And
11 they were eating the pizza waiting for me, and he said all of
12 a sudden, he heard a knock at the door, and then the door got
13 kicked in. And Cali (phonetic) ran one way and he ran the
14 other way, and he had -- happened to have all of his stuff
15 down sitting on the table there in the kitchen, the island,
16 sitting right there, that he was going to take over to my
17 house. So he had his gun sitting there.

18 And he said then a gun fight started, and then he
19 said that bullets came on both sides of him like that. He
20 just had a little wall between them and they were going on
21 both sides of him like this, so he just kind of reached around
22 the corner and started shooting his gun. And he said he hit
23 somebody in -- in the leg or something like that.

24 And then they got out of the house. And then the --
25 Cali -- or Monty decided that they should shut the front door

1 because it was wide open and you can -- you know, it's dark
2 outside so you're -- you know, so he snuck along the wall and
3 pushed the door closed, but then he walked to the side of the
4 door that, you know, could open, and when he got to that side
5 of the door, he got shot because they were still outside.

6 So my son shot out the door after Cali got shot. He
7 said, I think, I hit another one, you know. So that's what he
8 explained to me.

9 Q At that time, did you -- were you aware your son had
10 a gun?

11 A Oh, yes, yeah.

12 Q What kind of gun was it?

13 A I think it was a 9 millimeter, I think?

14 Q Do you know the difference between a revolver and a
15 semi-auto.

16 A Yeah, yeah.

17 Q And what was it?

18 A He had a --

19 Q A revolver or a semi-auto?

20 A Pardon me?

21 Q Was it a revolver or a semi-auto?

22 A Semi.

23 Q In this initial conversation with your son, does he
24 tell you anything about a .38 also being present inside the
25 residence?

1 A No. I actually didn't know it was there. It was --
2 one of his friends had it over there, and he was thinking
3 about buying it. It belonged to one of his friends. It was,
4 you know, a legal gun. And -- and he had that sitting on the
5 table, too, because he was going to take that because it
6 wasn't his, you know, over to my house. And so I don't know
7 exactly which one he had fired, but I thought he had fired
8 his.

9 Q You say you remain at the scene for about three
10 hours. During that time period, do you have a conversation
11 with law enforcement?

12 A Yes.

13 Q And you say to the 911 operator, I know who did
14 this.

15 A Yes.

16 Q But you didn't actually say a name.

17 A Um-h'm.

18 Q I'm assuming from your prior testimony that's Summer
19 Larsen?

20 A Oh, yeah, definitely.

21 Q And you provide that information to the police?

22 A She told me she was going to do it --

23 Q Okay.

24 A -- right to my face.

25 Q I was just about to get to that. I understand you

1 had a conversation with Ms. Rowe that day that caused you some
2 concern to believe that Summer was going to have something to
3 do with this --

4 A Um-h'm.

5 Q -- incident, then. Sometime previous had she made
6 statements to you that caused you to think that she intended
7 to do something to Joey or the house?

8 MS. McNEILL: And --

9 THE WITNESS: Yes.

10 MS. McNEILL: -- I'm sorry, if we could just clarify
11 who the "she" is because it was a little confusing --

12 THE COURT: Right. To make --

13 MS. McNEILL: -- to me.

14 THE COURT: Yeah.

15 BY MR. DiGIACOMO:

16 Q Summer had made statements to you previously about
17 what she intended to do at the house?

18 A Yes.

19 Q Okay. And what is it that she -- well, first, let
20 me lay a foundation. About how long before the shooting is
21 this?

22 A About two weeks.

23 Q And where did it happen?

24 A In front --

25 Q Where did this conversation --

1 A -- of the house.

2 Q And is this one of the situations where she's doing
3 damage to the house?

4 A Yeah, she was breaking the upstairs windows in the
5 house throwing cans at them, you know, smashed cans, and
6 breaking the windows that I just fixed from last time. She
7 broke it again, and I told her she's got to stop this, because
8 I was going to call the police.

9 Q Are you the only one there or is Joseph there or --

10 A Just me and her.

11 Q -- Cali? Just you and her?

12 A Yep.

13 Q And are you inside or outside?

14 A Outside standing in front of the house.

15 Q And tell us what happened. So you go out there like
16 hey, you're going to have to knock this off or I'm calling the
17 cops.

18 A Yeah.

19 Q What's her demeanor like, first of all?

20 A And well, she was really upset. She was, you know,
21 really mad. She said that she was sick and tired of Joey have
22 everything and she has nothing. And -- and she said every
23 time he wants something, you get it for him. Every time
24 something happens, you take care of it for him. And I said,
25 Summer, I said, what went between you two is between you two,

1 but I said, as far as my son, I said, I was raised that you
2 take care of your kids whether they're right or wrong. You
3 stick by them and take care of them, and I said, that's what I
4 do.

5 And I said, I'm -- I'm sorry that your parents are
6 pieces of crap. That's what I told her, but I said, I will
7 not do that to my son. So I said, you know, you've got to get
8 out of here and leave. And she looked at me and said --
9 because she told me she robbed the house both times. And then
10 she said, well, I'm sick of tired of this, you know, Joey
11 having everything, I have nothing, so she said I'm about ready
12 to send a couple people over here and end my whole problem.

13 Q And you took "end your whole problem" as what?

14 A As that she was going to send somebody over there to
15 take care of him.

16 Q Joseph?

17 A Yeah.

18 Q And thus, when Ms. Rowe comes to your house that
19 day, you have concerns?

20 A Yeah. And then two weeks later the shooting, you
21 know. So -- and Tracy -- when Tracy came and told me he's got
22 to get out of his house.

23 Q When Tracy comes to your house on the 21st --

24 A Um-h'm.

25 Q -- how long is that before you call Joseph?

1 A After I talked to him, I got on the phone right away
2 and called him.

3 Q So Tracy comes to your house, tells what you what
4 she knows --

5 A Um-h'm.

6 Q -- then you pick up the phone, call Joseph --

7 A Um-h'm.

8 Q -- and it's --

9 A Basically --

10 Q -- how much later that the shooting happens?

11 A Probably within like I'd say hour, you know.

12 Q So it's a very short --

13 A Give or take.

14 Q -- window of time --

15 A Yeah.

16 Q -- between when you receive information there could
17 be a problem and when the problem actually occurs?

18 A Yes, yes.

19 Q Based upon all of that, you felt comfortable or at
20 least you believed that Summer's involved? Is that fair?

21 A Oh, yeah. I have no doubt in my mind.

22 Q So let me ask you, did Joseph at least initially
23 believe that Summer had anything to do with it?

24 MR. LANDIS: Objection.

25 MS. McNEILL: Objection. Speculation and hearsay.

1 MR. DiGIACOMO: Let me rephrase.

2 THE COURT: Yeah. I'm going to sustain that so go
3 ahead.

4 BY MR. DiGIACOMO:

5 Q Did you see Joseph doing things or behaving in
6 certain manners that indicated to you that he's still in a
7 relationship with Summer?

8 A Yes.

9 Q What did he do?

10 A He told me that --

11 MS. McNEILL: Objection.

12 BY MR. DiGIACOMO:

13 Q Without telling us what he told you --

14 A Oh.

15 Q -- at some point do you become aware that they're
16 together?

17 A He was talking to her before she went to jail
18 because he wanted to get it straight in his mind.

19 Q And after she went to jail, did you learn about the
20 bail situation with her?

21 A Yes.

22 Q And do you have a conversation with your son about
23 the bail?

24 A Yes.

25 Q And after that conversation, what did your son do?

1 A He revoked her bail.

2 Q Eventually, she goes back to jail.

3 A Yes.

4 Q Are you aware that your son continued to have some
5 sort of communication with her?

6 A Yes, yes.

7 Q And for about how long?

8 A I'd say probably like a couple months while she was
9 in jail. He was, you know, getting letters and, you know,
10 talking to her and stuff.

11 Q Thank you.

12 MR. DiGIACOMO: I have nothing further.

13 THE COURT: Cross, Mr. Landis?

14 CROSS-EXAMINATION

15 BY MR. LANDIS:

16 Q Good afternoon, sir.

17 A Good afternoon.

18 Q Let me start by making sure we're on the same page
19 about a couple past statements you made. You already
20 indicated that sometime that same night that you went over to
21 Broadmere on September 21st, 2014, the cops eventually
22 interviewed you --

23 A Um-h'm.

24 Q -- right? And some hours after you got there,
25 right?

1 A Yes.

2 Q And to the best of your memory, did they record that
3 interview?

4 A Yes.

5 Q Then after that a fair amount of time, you testified
6 about these matters previously at this same courthouse,
7 correct?

8 A Yes.

9 Q And like today, took an oath to tell the truth --

10 A Um-h'm.

11 Q -- and provide a testimony, yes?

12 A Yeah. Yeah, best I can remember.

13 Q Certainly. And I wasn't trying to imply that you --

14 A Oh, yeah.

15 Q Let me say, have you and I, other than seeing each
16 other outside the courtroom today, have we ever met?

17 A No.

18 Q Ever talked?

19 A No.

20 Q I want to talk about this beginning of the
21 relationship between Joey and Summer. You said they met in
22 junior high?

23 A Um-h'm.

24 Q So well over a decade before the --

25 A Yeah.

1 Q -- the incident?

2 A Yeah.

3 Q It sounds like they were with a group of friends and
4 it started evolving to a romantic relationship, right?

5 A Um-h'm, yes.

6 Q But I assume there was a point where you were seeing
7 Summer very regularly?

8 A Yes.

9 Q And did there come a time when you guys all lived
10 under the same roof?

11 A Yes.

12 Q And how long did that occur for? How many years or
13 months?

14 A A couple years.

15 Q Was that immediately preceding the move to
16 Broadmere?

17 A Yeah, right around that time, you know. Pretty
18 close.

19 Q You've had --

20 A Pretty close, yeah.

21 Q I'm sorry to cut you off.

22 A That's okay.

23 Q Through that time, you've had plenty of independent
24 interactions with Summer, right?

25 A Yes.

1 Q And do you feel like you know her pretty well?

2 A I thought I knew her pretty well, yeah, yeah.

3 Q Let me ask you, do you believe that your
4 interactions with her have allowed you to form an opinion as
5 to whether or not she's a truthful person?

6 A What, throughout the years or at the end or what?

7 Q Good question. Let's say this; through your
8 interactions with her, do you believe that you've been able to
9 develop an opinion as to her truthfulness in 2014?

10 A Yeah.

11 Q And based on that, would your opinion be that she is
12 a truthful or untruthful person as of 2014?

13 A I think she's very untruthful.

14 Q If we could talk a little bit now then about those
15 different burglaries that occurred to the Broadmere address.
16 And just it's clear to me, you never personally lived there?

17 A No.

18 Q You spoke of one incident where TVs were stolen,
19 yes?

20 A Yes.

21 Q If we could talk about that one. You discovered
22 that one because you drove by the house?

23 A Yes. I was checking on it for him because he went
24 out of town.

25 Q And the garage door was open, I believe?

1 A Yes.

2 Q Caused you concern?

3 A Yes.

4 Q You checked it out?

5 A Yes, I went and checked it out.

6 Q Appeared to be some thing missing?

7 A Um-h'm.

8 Q You called the police?

9 A Yes.

10 Q They took a report?

11 A Yes.

12 Q They asked Joey to come fill out a report when he
13 got back to town?

14 A I'm not sure, probably, you know, because he was
15 living there. He had to list everything, so yeah.

16 Q Do you remember the exact date that that occurred?

17 A No, I don't. I'm sorry.

18 Q Would looking at the police report refresh your
19 memory as to when that occurred?

20 A Yeah, there was a police report for both of them so.

21 Q And let's just stay on this one for a minute.

22 A Okay. Because I

23 MR. LANDIS: May I approach?

24 A -- I really can't remember, you know, the exact
25 dates, you know.

1 Q Understood.

2 MR. LANDIS: May I approach?

3 THE COURT: Yes.

4 MR. DiGIACOMO: Let me just make sure it's the right
5 one that you're talking to him about. Okay.

6 (Mr. DiGiacomo/Mr. Landis conferring)

7 BY MR. LANDIS:

8 Q This report's kind of long, sir, so feel free to
9 look at it. But perhaps that will help. It does have dates
10 on it, but take your time.

11 A (Witness reviewing document). Okay.

12 Q Does that refresh your memory as to when that
13 burglary occurred?

14 A It says here March.

15 Q Does that sound accurate, based on --

16 A Pardon me?

17 Q -- your -- does that sound accurate based on your
18 memory?

19 A It could be. I -- I'm not sure exactly. I know it
20 was, you know, like I said, you know, within a couple month,
21 you know --

22 Q But you do recall --

23 A -- either way.

24 Q -- talking to the police about a burglary?

25 A Yes, yes.

1 Q And that report, does it refresh your memory that
2 they recorded it happening in March?

3 A Pardon me?

4 Q Does that refresh your memory that they at least
5 took your report in March?

6 A Oh, yeah, yeah. Yeah, they took my report.

7 Q And what's standard, as you kind of mentioned
8 before, is they ask the person what property's missing, right?

9 A Yes.

10 Q With and that would be something Joey have to help
11 with because you wouldn't know exactly what --

12 A I don't know --

13 Q -- was gone?

14 A -- exactly what was in there. I just knew, you
15 know, wow, there's no TVs here, you know, there's -- you know.

16 Q Right.

17 A But other things I wouldn't know who he had in
18 there, no.

19 Q If you remember this, or if you know it, please let
20 me know. TVs were gone as you said. A computer, does that
21 sound correct.

22 A Yeah.

23 Q An iPad?

24 A Um-h'm.

25 Q Some jewelry?

1 A Um-h'm.

2 Q About \$500?

3 THE COURT: Wait, wait. He keeps um-h'm.

4 MR. LANDIS: I'm sorry.

5 THE COURT: So you need to say yes or no because we
6 can't get um-h'ns.

7 THE WITNESS: Okay.

8 THE COURT: It doesn't --

9 THE WITNESS: Okay. Sorry.

10 BY MR. LANDIS:

11 Q The TVs, the computers, the iPad, some jewelry; do
12 you recall that?

13 A Yeah, Joey told me about the jewelry. I --

14 Q About \$500?

15 A -- I didn't know. Yes. He had some cash in there,
16 yeah.

17 Q That event, that burglary, do you believe that to be
18 the first one to have occurred at Broadmere?

19 A I think that was the second one. That was the
20 second one. Wait a minute, I get confused. I can't remember
21 if it was the first or the second. I'm sorry.

22 Q That's okay.

23 A I'm sorry.

24 Q That's okay. We can estimate that the lease at
25 Broadmere started in September of 2013, roughly?

1 A Yes.

2 Q Fair to say that Summer left and because of their
3 problems around January --

4 A Yes.

5 Q -- 2014?

6 A Yeah.

7 Q Do you recall around that period of time, January of
8 2014, Summer saying some certain things to you about Joey?
9 I'll be more specific.

10 A Yeah.

11 Q Do you recall --

12 A Could you?

13 Q -- Summer telling you that she was going to get Joey
14 around that time period?

15 A In January?

16 Q Yes.

17 A I'm trying to think when -- I think she had -- she
18 more -- more or less said like she was going to make his life
19 miserable and ruin his life. That's what she said.

20 Q In January?

21 A Um-h'm, when she left, yeah. Because I went to her
22 store to talk to her.

23 Q After that -- this burglary occurs where the TVs are
24 stolen, yes? Say it out loud or I'll get --

25 A Oh, yes.

1 Q -- in trouble again.

2 A I'm sorry.

3 Q When you talked to the police about that burglary of
4 the TVs, did you tell them that you suspected Summer?

5 A I can't remember if I told them that or not. I
6 think did. I think I did, yeah.

7 Q To your knowledge, did Joey suspect Summer?

8 A Oh, yeah.

9 Q Do you know if he told the police?

10 A I don't know what he said to the police because I
11 wasn't with him when he talked to the police.

12 Q The other burglary that occurred, accepting that it
13 might have been before or after --

14 A Yeah.

15 Q -- that, which is okay, to the best your memory, you
16 reported that one to the police, too?

17 A Yes.

18 Q And explain to me how you found out about that
19 burglary.

20 A I went over to the house and the front door was
21 open, and Joey wasn't home. So there was -- you know, I had
22 looked at the door and somebody had kicked the door open. So
23 I went in and, you know, looked around. They ransacked, you
24 know, up in his room, you know. They ransacked everything.
25 Everything was thrown around. So I called Joey and --

1 Q Okay.

2 A -- and reported it.

3 Q For that burglary, where was Joey? In town, out of
4 town, do you remember?

5 A I think he went to California. I can't remember, to
6 be honest with you.

7 Q Your biggest concern about that burglary was a large
8 amount of money, cash that was stolen, yes?

9 A I don't know what amount of cash was in there
10 because I know he only had probably that I know of in there,
11 he had only probably had at one time maybe like a thousand
12 dollars, you know, in there.

13 Q When you talked to the police on September 21st,
14 2014 --

15 A Um-h'm.

16 Q -- after the murder, do you recall telling them that
17 you left a large amount of money in that house on Broadmere
18 that was stolen during this burglary, this other burglary?

19 A Yeah, but it was only like about a thousand dollars
20 because part of it was mine. And to me that's a lot of money,
21 you know.

22 Q And this might jog your memory. You told them that
23 you -- you had left the money there because your wife had
24 cancer. Does that sound familiar?

25 A Yeah, there was a lot of people in and out of my

1 house, you know, because she was really sick and I had people
2 coming in and help take care of her and all of this kind of
3 stuff, and I -- and I kept it out of there, you know.
4 Relatives showed up that I didn't even know, you know, and so
5 I just kept my stuff -- our money over there. Didn't want
6 anything to disappear.

7 Q Okay. Understood. And to the best of your memory,
8 it was a thousand dollars?

9 A Yeah, about, yeah.

10 Q And it was yours, not Joey's?

11 A It was mine.

12 Q Weren't you concerned about keeping it at Joey's
13 house based on the words of Summer and maybe --

14 A Well, to be honest with you --

15 Q -- some past --

16 A -- I thought she did it, and I didn't think it would
17 happen again, to be honest with you. You know, because I
18 thought she would -- well, maybe it was my -- me being naive,
19 but I didn't think she would go back there again and do it,
20 you know, because I thought she'd be like pissed him off, you
21 know what I mean? She did what she wanted to do, you know.

22 Q I appreciate that. And to be clear, when you came
23 upon that burglary there where the cash was stolen, the door
24 was forced open?

25 A Um-h'm.

1 THE COURT: Is that a yes?

2 THE WITNESS: Yes. Sorry. Yeah, the other time
3 they went in through the sliding door. The other time. On
4 the backyard and that's why I knew it was Summer because the
5 dog was in the backyard, and the dog will bite anybody except
6 me, Joey or Summer.

7 BY MR. LANDIS:

8 Q And --

9 A Joey was out of town.

10 Q -- you would take care of that dog when Joey was
11 gone?

12 A Pardon me?

13 Q Would you take care of that dog when Joey was gone?

14 A Yeah.

15 Q Is that why you'd be at the house, fair to say?

16 THE COURT: Is that a yes?

17 THE WITNESS: Yes, I did.

18 BY MR. LANDIS:

19 Q Okay, last question, and I'm not trying to beat you
20 up, but why not a bank?

21 A Pardon me?

22 Q Why not a bank?

23 A Why not a bank?

24 Q Why not a bank?

25 A Well, my -- I was worried about my wife's bills, you

1 know, because she had -- well, she had terminal cancer, and
2 her insurance got canceled three times during this terminal
3 cancer. And in between three times, you have 30 days when you
4 buy insurance again so in the 30 days she accumulated like
5 \$150,000 of bills, and they -- the creditors kept telling her
6 they were going to freeze our bank accounts. They can't take
7 our money, but they can freeze it.

8 So I was pulling the money out and keeping it either
9 on me or had some at Joey's, you know, when I got paid because
10 I don't make that much money. I'm on a retirement, you know.
11 But I would -- I didn't want it to get froze, you know, so I
12 was pulling it out.

13 Q Understood. When you signed the lease for the
14 Broadmere address, your name was on the lease, yes?

15 A Yes.

16 Q Was Summer's name on the lease?

17 A Yes, in the beginning.

18 Q Was Joey's name on the lease?

19 A No.

20 Q Why not?

21 A Pardon me?

22 Q Why not?

23 A At that time, he wasn't working and then he started
24 working at the mall.

25 Q What was the monthly payment, if you recall?

1 A I can't remember, to be honest.

2 Q Would you recall if --

3 A I -- I don't remember.

4 Q -- you were paying it month by month or did you pay
5 the lump sum for the year --

6 A Month by month. --

7 Q -- up front -- okay. I think you indicated that
8 eventually Summer's name was removed from the lease?

9 A When -- when the robberies occurred, you know,
10 because she had told me -- I got legal right to go in there
11 anyways. I had called them and asked them to remove her name
12 so she wouldn't have legal right it go in there.

13 Q Specifically, after which one of these incidents do
14 you think you did that, if you remember?

15 A TVs.

16 Q The TVs?

17 A Yeah.

18 Q Turning now to the event September 21st, before you
19 get to Broadmere --

20 A Yes.

21 Q -- Tracy Rowe comes to your house, to the best of
22 your memory, can we estimate that at 6:00 p.m.?

23 A Okay.

24 Q Do you remember testifying previously to it being
25 6:00 p.m.?

1 A No, I -- I really -- I don't remember the times.

2 Q That's okay. Would looking at that transcript --

3 A Um-h'm.

4 Q -- perhaps refresh your memory?

5 A Yeah, probably, yeah.

6 MR. LANDIS: Court's brief indulgence, sorry.

7 THE WITNESS: That was a couple years ago.

8 BY MR. LANDIS:

9 Q Certainly. And that's why they record this stuff.

10 MR. LANDIS: May I approach the witness?

11 THE COURT: Yes.

12 MR. LANDIS: It's the grand jury first --

13 MR. DiGIACOMO: Um-hum.

14 MR. LANDIS: -- page 38.

15 BY MR. LANDIS:

16 Q And I'll again, give you the whole document, but

17 I'll try to focus your attention --

18 A Okay.

19 Q -- if I can.

20 A (Witness reading document.) Yeah, I said here

21 probably around 6:00. I said -- right here I said, I don't

22 know the exact time, probably around 6:00.

23 Q Sure. And that was --

24 A Yeah.

25 Q -- within a couple months of this event occurring,

1 right?

2 A Grand jury, no.

3 Q How long after you remember it being?

4 A I'd have to look at the date. I don't remember, but
5 it was --

6 Q The very first page will tell you. January?

7 A Yeah. February 17th it was filed. Oh, here it is,
8 January 8th. Okay.

9 Q Four months or so --

10 A Yeah.

11 Q -- give or take?

12 A Um-h'm.

13 Q You'd agree your memory was better then than now?

14 A Oh, probably, yeah.

15 Q No reason to dispute what you said then, right?

16 A No. If I said that, I -- you know, said it, yeah.

17 Q Do you remember when the police talked to you on the
18 21st, they asked you what time you initially called Joey after
19 talking to Tracy?

20 A I don't remember that, but they probably did, yeah.

21 Q Would it refresh your memory to look at the
22 transcript as to --

23 A No, I believe you.

24 Q -- when you talked to them?

25 A I believe you, what you say. If I said it, I said

1 it, yeah. I don't lie.

2 Q If I were to tell you the transcript says you looked
3 at your phone and said you called Joey at 6:50, you have any
4 reason to dispute that?

5 A No, I'm not going to --

6 Q A fair amount of time seemed to pass between when
7 Tracy came over and when you called Joey. Do you recall why
8 that may have been?

9 A I was set, and I was going to leave so I had to take
10 care of my wife. I had to sit -- you know, get her set pause
11 she can't be by herself, and my granddaughter was there. So I
12 had to tell her what medicine to give her, what to do, get her
13 set up so I could leave. That's why I kept both my cars at my
14 house while she was going through this. I'd let Joey use the
15 Saturn now and then, but I tried to keep them there as much as
16 I could in case I had to leave and something happened to her,
17 you know, there was a car, you know.

18 So I took and set it -- told her what to do and
19 everything like that and --

20 Q From talking to Tracy, you were scared for your son?

21 A Oh, yeah. Yes.

22 Q So those threats seemed real to you, right?

23 A Yes.

24 Q Based on past things that have occurred, right?

25 A Correct.

1 Q When you talked to Joey around 6:50, give or take,
2 does he let you know who's over at the house right then?

3 A He told me that Cali was over there. He took a bus
4 over there after he got off of work to finish packing his
5 stuff, his pile in the corner of the living room, you know,
6 and then they were -- and Joey was going to start packing his
7 stuff, so I just knew him and Cali were there.

8 Q To your knowledge, no one else was there?

9 A To my knowledge, no.

10 Q And how is it that you were aware that Joey had a
11 registered firearm at that point in time?

12 A Because he told me that he had one.

13 Q Have you seen it before?

14 A Yeah. And it was registered and, you know, it was
15 all legal and everything.

16 Q There's something called a blue card, right?

17 A Yeah.

18 Q Which shows gun registration?

19 A Yeah.

20 Q And had you seen that?

21 A Yeah.

22 Q And it also tends to list the kind of gun on it,
23 right?

24 A I think they do. I didn't sit and read it. I just
25 -- he just showed me a, see, I got a card, dad. Okay.