

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 No. 82740

3
4 **JORGE MENDOZA,**

5
6 Appellant,

7 vs.

8 **THE STATE OF NEVADA,**

9 Respondent.

10
11
12 **Appeal from the Postconviction Denial of Relief for Writ of Habeas**
13 **Corpus - Eighth Judicial District Court, Clark County**
14 **The Honorable Judge Bitá Yeager 8th Judicial District Court Judge**
15 **Department 1, Presiding, Findings of Fact, Conclusions of Law and**
16 **Order Issued April 2, 2021, District Court Case No. A-19-804157-W**

17 **APPELLANT'S APPENDIX VOLUME VII**

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

1 Q To the best of your memory today, it was a 9
2 millimeter semi-automatic?

3 A I think it was a 9 millimeter, yeah.

4 Q Do you recall if it was a Hi-Point 9 millimeter
5 semi-automatic?

6 A No.

7 Q Is that something you think you would have known
8 some point in time or no?

9 A No, no.

10 Q Ever handled the gun, though, to be clear?

11 A Me? No, no.

12 Q To the best of your memory, when was it that Joey
13 called you when you were in the Albertsons parking lot?

14 A When I just had -- just got by the Albertsons there,
15 and my phone rang.

16 Q What time do you think that was?

17 A I -- I'm not sure what time it was. I -- I don't
18 remember, you know. If it's written down, fine, but I don't
19 remember now what time it was.

20 Q If I were to tell you the police asked you to look
21 at your phone as to that time as well, and you told them
22 8:15 --

23 A I don't know. If --

24 Q If you want to look at the transcript --

25 A -- that's what it --

1 Q -- I'm happy to show you?

2 A No, if that's what I told them, that's what I told
3 them, you know. You got the transcript. I don't. You know,
4 this was two years ago.

5 Q No, and I'm not trying to make you look bad. I'm
6 just trying to clarify these things and help you out, that's
7 it. That's it.

8 A Yeah.

9 Q 8:15. What caused that delay between you calling
10 Joey and getting to that Albertsons, over an hour?

11 A Because I was going to take care of my wife before I
12 left. I really did not think it was going to happen that
13 early in the evening. You know, usually if somebody's going
14 to burglarize a house, it's late at night or something, you
15 know. So I thought I had time and plus, you know, my wife's
16 dying. I'm going to make sure she's taken care of before I
17 leave that house.

18 Q I respect that, certainly. And I respect that. But
19 when you got that call from Joey, the urgency changed your
20 plans and you headed straight over?

21 A Yeah.

22 Q About 20 minutes, I think, you estimated that drive
23 being?

24 A Yeah, at the most, yeah.

25 Q Puts us there somewhere in middle of 8:00 o'clock,

1 8:30 --

2 A Um-h'm.

3 Q -- give or take, right?

4 A Yes.

5 MR. LANDIS: Would you be so kind as to put 6 back
6 up?

7 BY MR. LANDIS:

8 Q Showing you a map you already indicated that you
9 knew.

10 A Yes.

11 Q At the near top center of that map there seems to be
12 a small street that could go into the subdivision. Do you see
13 that there? It's almost dead center near the top.

14 A Up here?

15 Q Go ahead and mark it, sure.

16 A Right -- right here?

17 Q Right.

18 A Yeah.

19 Q Was that an open entrance or was that one of those
20 gated --

21 A No, that's open.

22 Q Would you consider that the main entrance?

23 A Yeah, that's the easiest way in there to go to his
24 house, yes.

25 Q You were familiar with all these routes because you

1 had been there plenty of times?

2 A Yes.

3 Q The way you previously described yourself going, I
4 don't need you to draw it again, but you considered that the
5 back route?

6 A Yes. Yeah, I tried to go in the -- the side there,
7 as they call it, you know. But that's what -- that's the one
8 that was blocked off.

9 Q That's what I want to get more clear. Let's go back
10 to that main entrance, the one you marked on the map
11 currently.

12 A Yeah.

13 Q Was that one blocked?

14 A I call that my main entrance because it was right by
15 his house. It can -- you know, right off the street. I think
16 they actually had a front entrance some place. I don't know
17 where it is.

18 Q That one, though, that one that you've marked on the
19 map --

20 A Yeah.

21 Q -- the center top, that one was blocked by police
22 cars --

23 A Yes.

24 Q -- completely? The next entrance, the entrance you
25 used, was still had a cop car there, yes?

1 A No. Nope. There wasn't any cop cars until I got up
2 by his house on that little side street right there. They
3 only had that side blocked.

4 Q Besides --

5 A Nothing else was blocked.

6 Q Sorry to cut you off. Besides the car you already
7 indicated, did you see any other police cars in the
8 subdivision before you parked your car?

9 A No. Just the ones where I marked.

10 Q Do you recall if you could hear the air support
11 helicopter at that point in time?

12 A When I got -- no, no.

13 Q As we heard on that 911 call, you take the gun from
14 your son pretty quick after getting in there, yes?

15 A Yes.

16 Q And when you grab it, I assume you don't spend a ton
17 of time looking at it?

18 A No.

19 Q To the best of your knowledge, you believe it to be
20 his registered 9 millimeter?

21 A Yes. Best of my knowledge, yeah.

22 Q And you don't take much time to look at it between
23 then and when it gets in your trunk, right?

24 A No, I didn't look at it at all. I just stuck it in
25 my belt. That's all I did.

1 Q Your focus was on other things?

2 A Yeah, on him and -- and Monty.

3 Q And your testimony was that it was your
4 understanding, at least, that Joseph and Monty were gathering
5 their valuables to get them out of there?

6 A Yeah. I called them and told them to.

7 Q You testified that that other gun was downstairs and
8 you believe that's why it was originally down there, right?

9 A I don't know where it was before it was downstairs,
10 but I know it was down on the table because he was going to
11 bring it out of there. I didn't even know it was there until
12 I went over there, you know.

13 Q I respect that. And to the best of your memory, can
14 you recall any other valuables being amassed downstairs by
15 them, that you saw?

16 A Just some paperwork and stuff like that.

17 Q And where do you remember seeing those at?

18 A On the counter.

19 Q On that kitchen island, do you mean?

20 A No, on the counter.

21 Q Kitchen counter?

22 A Yeah.

23 Q Anything else besides that paperwork?

24 A I really didn't notice. I was busy.

25 Q Joseph's phone number at that point in time,

1 September 21st, 2014, 708-7251?

2 A I think so.

3 Q As of today, does Joseph still live in Las Vegas?

4 A Yes.

5 MR. LANDIS: Court's brief indulgence.

6 BY MR. LANDIS:

7 Q Last couple questions. The night that the police
8 talked to you on September 21st, do you recall them asking you
9 what Joey's friend's name was?

10 A Which friend? What do you mean?

11 Q The friend who was dead?

12 A Yeah.

13 Q And do you recall not remembering his name?

14 A No, I called him by Cali. Everybody called him by
15 Cali, and I was just kind of shook up and I didn't remember
16 Monty, you know. But because he was a nice guy, you know.
17 One of these guys that always called you sir and stuff like
18 that, you know. And he was from California so everybody
19 called him Cali, you know. And so I called him Cali, too, you
20 know?

21 Q Would looking at the transcript of that statement
22 perhaps refresh your memory as to what you said when the
23 police asked you if you knew his name?

24 A Well, if I didn't remember his exact name Monty,
25 then I didn't remember, you know? I don't have to look at the

1 transcript, you know.

2 Q You're comfortable with me telling you, you did not
3 remember --

4 A I'm comfortable with --

5 Q -- gentleman's name?

6 A -- yeah, because I know who he was and I tried to,
7 you know, save him so there's -- doesn't matter what his name
8 was. What matters is he got shot.

9 Q During that same interview, do you remember the
10 police asking you pretty early on who else lived at the house
11 besides Joseph?

12 A They might have, yeah.

13 Q Do you recall telling them initially that no one
14 else lived there?

15 A I don't -- at the time, nobody was living there
16 except Joseph because Monty had moved -- was moving in with
17 his girlfriend and staying -- he was staying with her. That's
18 why he took the bus over to finish packing his room.

19 Q Thank you, sir.

20 MR. LANDIS: I have no further questions.

21 THE WITNESS: Okay.

22 THE COURT: Ms. McNeill.

23 MS. McNEILL: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. McNEILL:

1 Q Mr. Larsen, I'm just going to ask you a few
2 questions. I think Mr. Landis was pretty thorough with you.
3 You indicated that during one of the conversations you had
4 with Summer, you made some comments that you were raised to
5 protect your kids and take care of your kids, right?

6 A Yes.

7 Q Okay. And that's what you did for Joey throughout
8 your -- throughout raising him, right?

9 A Tried to.

10 Q Okay. And so you were the one that got that
11 Broadmere house for him, correct?

12 A Yes.

13 Q Okay.

14 A Me and Joey and Summer.

15 Q Okay. But you helped facilitate him getting that
16 house?

17 A Yes.

18 Q Okay. And if Joey needed money, would you help him
19 out?

20 A Yes.

21 Q Okay. If he needed money to pay rent, would you pay
22 his rent for him?

23 A Yes.

24 Q Okay. So Joey didn't need to worry about money
25 because he had you, correct?

1 A I guess so.

2 Q Okay. The night of the incident, you -- Mr. Landis
3 asked you some questions about the interview you had with the
4 police. Do you remember telling them -- they asked you some
5 questions about Joey's job; do you remember that?

6 A I don't, but they might have. If they did, you
7 know, fine.

8 Q Okay. And they asked -- and do you remember telling
9 them that he wasn't working at that time in September of 2014?

10 A He might not have been.

11 Q Okay.

12 A Because I'm not sure when he, you know, started
13 working at the mall, you know.

14 Q Okay. So there may have been some gaps --

15 A Yeah.

16 Q -- in his employment during --

17 A Yeah.

18 Q -- the time on Broadmere?

19 A Okay.

20 Q And during those gaps, after Summer had moved out
21 that he wasn't working, you would pay the rent on that house?

22 A Um-h'm.

23 Q Okay.

24 THE COURT: Is that a yes?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 THE WITNESS: I'm sorry.

3 BY MS. McNEILL:

4 Q And the cash that was in the house when the house
5 was robbed in that March incident, that was your cash?

6 A Yes.

7 Q Right? Did you ever know Joey to have large sums of
8 cash?

9 A No. I wish he did.

10 Q What's that?

11 A I wish he did.

12 Q You wish he did? I bet. Okay.

13 A I had to borrow 5,000 to bury my wife two months ago
14 so I wish he did.

15 Q Oh, so -- and you would sometimes visit the house
16 because that's your son?

17 A Um-h'm.

18 Q You said sometimes you would go over when Joey
19 wasn't there to take care of the dog, right?

20 A Yes.

21 Q Would you ever show up unannounced just to say hi
22 and visit your son?

23 A Once in a while I'd stop by if I happened to be in
24 that side of town.

25 Q Okay.

1 A Yeah.

2 Q Joey never asked you, hey, dad, you got to call
3 before you come?

4 A No, no.

5 Q During that interview with the police, they asked
6 you -- they kind of suggested that they had some suspicions
7 about Joey; do you remember that?

8 A No.

9 Q No, okay.

10 A I don't, but --

11 Q There was a conversation that you had with the
12 police and you said something along the lines he isn't selling
13 drugs. Do you remember --

14 A Probably.

15 Q -- telling police that? Okay.

16 A Yeah, yeah.

17 Q And is that because you were protecting Joey or
18 because that's really what you believed about Joey?

19 A It's what I believed.

20 Q Okay. And then today, obviously, you're under oath,
21 right?

22 A Yeah.

23 Q And you indicated that he did sell some drugs?

24 A To smoke, yeah.

25 Q Okay.

1 A I don't really --

2 Q Well, let me ask you some questions about it, okay?

3 A Let me -- let me -- let me straighten this out
4 right now before it gets --

5 Q And I'm sorry --

6 A -- out of hand.

7 Q -- I have to -- we have to do it where I ask
8 questions --

9 A Okay.

10 Q -- and you answer. So I'll help you get there,
11 okay? I'll do my best. So you knew that Joey would sometimes
12 buy marijuana?

13 A Yeah.

14 Q Okay. And then he would let people purchase that
15 from him and he would smoke it with them?

16 A His friends.

17 Q Right.

18 A Yeah.

19 Q So it was just his friends?

20 A Yeah.

21 Q Okay. And that was sort of a way of him obtaining
22 marijuana for himself that he wouldn't then have to pay for
23 because he would recover the money that he spent?

24 A Right.

25 Q Okay. So he wasn't buying large quantities of

1 marijuana?

2 A No.

3 Q No? Okay. And this is based on conversations that
4 you had had with Joey about it?

5 A Yeah.

6 Q Okay. I want to talk to you a little bit about
7 this, you indicated that on this kitchen island there was some
8 items; remember that? That when you arrived at the house that
9 night.

10 A Um-h'm.

11 Q Okay.

12 THE COURT: Is that a yes?

13 THE WITNESS: Yes.

14 BY MS. McNEILL:

15 Q Yeah, sorry, I should remind you. I'm terrible with
16 it, too. One of the items that you saw on the island was
17 another gun, remember that?

18 A Yes.

19 Q Do you remember what kind of gun that was?

20 A I think, if I remember, I think it was a revolver, I
21 think.

22 Q Okay. And I assume you're familiar with guns
23 because you said you were in Vietnam?

24 A Yeah.

25 Q So you know the --

1 A Somewhat, yeah.

2 Q -- difference? Okay. So you know the difference
3 between --

4 A Yeah.

5 Q -- a revolver and semi-automatic?

6 A Yeah.

7 Q Okay. Your understanding of that gun was that Joey
8 had put it there because he was potentially going to buy it
9 from someone, right?

10 A Yeah.

11 Q And he wanted --

12 A It was supposed to belong to another friend of
13 his --

14 Q Okay.

15 A -- and it was all legal, too, but he was going to
16 buy it and looking at it and it was in the house so I told him
17 to get everything he didn't want stolen and we'll take it to
18 my house and --

19 Q Okay. So that's why he had it down --

20 A Yeah.

21 Q -- there is because he was bringing stuff over?

22 A Yeah.

23 Q Okay. Did he ever indicate to you that he had shot
24 that give up that night?

25 A No, I didn't know he shot that gun.

1 Q So you never heard that from him?

2 A No, not from him. I didn't know it until the police
3 said that he had shot had, you know.

4 Q Okay. So the police told you that?

5 A Yeah.

6 Q Okay. But he had never mentioned that to you?

7 A No.

8 Q Okay.

9 A No.

10 Q And in fact, you were concerned about the gun that
11 Joey had shot enough to the point that you had taken it out of
12 the house, put it in your trunk as instructed, right?

13 A Yeah.

14 Q Okay.

15 A I actually didn't know the second one was sitting in
16 the kitchen until after I had -- the police told me.

17 Q Okay. Well, I understand.

18 A You know, it was -- you know, I seen it when --

19 Q Okay.

20 A -- they let me come in there.

21 Q Do you remember telling the police that Monty had
22 initially moved in because you wanted Joey to have someone
23 there because there were all these burglaries in the house?

24 A Yeah. Yeah, and he came in there to have somebody
25 at the house all the time.

1 Q Okay.

2 A You know, type thing like that.

3 Q Okay.

4 A They were friends.

5 MS. McNEILL: Court's indulgence.

6 BY MS. McNEILL:

7 Q Mr. Larsen, you indicated when we were looking at
8 this map, that the entrance that you came in was blocked by
9 the police, correct?

10 A Yeah.

11 Q Where you put that yellow mark and what you called
12 the main entrance?

13 A Yeah. I called it that because that's the way I
14 went all the time.

15 Q And then you said to Mr. Landis that when you went
16 around the other direction, you saw no police cars, correct?

17 A Yeah, I didn't see anyone that came there. After I
18 -- there was one police car where I put that second mark, he
19 was blocking that side street.

20 Q Okay.

21 A But he wasn't blocking the main street and I thought
22 oh, this is kind of cool so I zipped on by him and he didn't
23 like that too much.

24 Q Okay. Do you remember Mr. Landis had asked you
25 about testifying at the grand jury in January of 2015,

1 remember that?

2 A Yeah.

3 Q And do you remember testifying at the grand jury
4 that you went around the other direction and there was a
5 police car blocking the road?

6 A Yeah, I meant this side road right here.

7 Q Which, I'm sorry, the --

8 A Right where I put the mark there was a police car
9 right there.

10 Q Okay. And that is Long Cattle, correct?

11 A Yeah.

12 Q Okay. And --

13 A There wasn't any other police cars.

14 Q And you went by that police car?

15 A Yes, ma'am.

16 Q All right.

17 MS. McNEILL: Nothing further.

18 THE COURT: Mr. Wolfbrandt.

19 MR. LANDIS: Before he starts, I left some documents
20 up there. I'm happy to leave them, but some of the things I
21 left --

22 THE COURT: Do you need them for your --

23 MR. LANDIS: (Inaudible).

24 THE COURT: All right. You can retrieve those.

25 MR. LANDIS: Certainly, thank you. Thank you, sir.

1 THE WITNESS: Oh, no problem. Here you go.

2 CROSS-EXAMINATION

3 BY MR. WOLFBRANDT:

4 Q Good afternoon.

5 A Good afternoon.

6 Q I'm going to try to help make a little bit clearer
7 record on this map here with --

8 A Um-h'm.

9 Q All right. The mark for the entrance that you went
10 in to the development is just south -- I'm sorry, east of the
11 intersection of Homestretch and Hualapai and then it -- and
12 the little side road that doesn't have a name on it that you
13 marked on the picture is actually going south into the --

14 A Yeah, you can -- you can come in here like this and
15 then I turned on this street and went like that.

16 Q Oh, that's the way you came in, okay.

17 A Yeah.

18 Q I was talking about the first mark up there where --

19 A The first mark is -- comes off of Homestretch, yeah,
20 and Hualapai right there.

21 Q And you went --

22 A I came down --

23 Q -- you went further east on Homestretch --

24 A Yeah.

25 Q -- and then turned south on --

1 A Yeah, I went around the back.

2 Q -- Soaring Winds, is it?

3 A Went around the back way there because you could get
4 in right over here, you know, and came down that street.

5 Q I'm trying to get the -- there should be a name on
6 the map there.

7 A I was on --

8 Q Is it Soaring Winds?

9 A Yeah. I was on Soaring Winds, yeah.

10 Q Okay.

11 A I came down Soaring Winds.

12 Q And then that -- then you turned on to --

13 A Turned on to --

14 Q -- (inaudible).

15 A I can't read that.

16 MR. LANDIS: Ranch Hand.

17 THE WITNESS: It's -- I turned on this one right
18 here. I can't read what it says. I can't read what it says.

19 BY MR. WOLFBRANDT:

20 Q Ranch Hand?

21 A Something Hand.

22 Q I believe, it's Ranch Hand.

23 A Oh, well.

24 Q And then that turns into Broadmere?

25 A Yeah.

1 Q Where you made a right --

2 A Yeah.

3 Q -- so that you're now going --

4 A Um-h'm.

5 Q -- north again and you parked right in front of the
6 house going the wrong direction?

7 A Correct. Yeah, going the wrong direction, correct.

8 Q Okay.

9 A That's what made them mad.

10 Q All right. As you passed the police that had that
11 little entrance on Homestretch blocked --

12 A Um-h'm.

13 Q -- and went around to the way you came in --

14 A Um-h'm.

15 Q -- other than the police car that was blocking Long
16 Cattle --

17 A Um-h'm.

18 Q -- did you see any other cars in motion on the
19 street?

20 A No, not at the time, I didn't, no. I think I like
21 beat half of them there, you know. They had just started
22 blocking roads.

23 Q I wasn't talking about police cars. I was talking
24 about any cars.

25 A Oh, no, any cars.

1 Q Any other cars --

2 A No.

3 Q -- moving on the street --

4 A I didn't see anybody moving when I --

5 Q Nobody from the --

6 A No.

7 Q -- neighborhood driving around?

8 A I didn't see anybody, no.

9 Q You didn't pass anybody?

10 A No.

11 Q Okay.

12 A No.

13 Q All right. You've been mentioning an Albertsons.

14 A Um-h'm.

15 Q Okay.

16 THE COURT: Is that a yes?

17 THE WITNESS: Yes. Sorry.

18 BY MR. WOLFBRANDT:

19 Q Is that the Albertsons near where you lived or the
20 Albertsons --

21 A Where I lived.

22 Q -- on Craig and Tenaya?

23 A Where I live. It's on Craig and Tenaya.

24 Q Craig and Tenaya, okay.

25 A Yeah. I actually was going to stop and buy

1 something and take it home to my wife, but when he called me
2 back when I just pulled in, I didn't do it. I just went to
3 his house.

4 Q Okay. Okay, with that that mind, do you recall the
5 route you took from that Albertsons at Craig and Tenaya to get
6 to the area of Hualapai and Homestretch?

7 A 95, Summerlin, got off on -- by the casino, you
8 know, and shot down that way.

9 Q Get off at -- is that Rampart?

10 A Yeah, Rampart, then you go down to Charleston.

11 Q Charleston and --

12 A You take a right on Charleston, you go up couple of
13 blocks, take a left on --

14 Q Then west to Hualapai?

15 A -- Hualapai and you're there.

16 Q Okay. All right, so when you pull up, you get right
17 out of the car, and do you run to the house? Do you walk?

18 A Oh, I ran.

19 Q Were you yelling for Joey?

20 A H'm? Was I yelling?

21 Q Were you --

22 A Was I yelling?

23 Q Were you yelling Joey's name?

24 A When I got by the door, yeah, yeah.

25 Q All right. So when you got to the door, you see

1 Monty's laying on the ground --

2 A Um-h'm.

3 Q -- right? Is that a yes?

4 A Yes. Yes.

5 Q Okay.

6 A Sorry.

7 Q All right. And the front door's wide open, isn't
8 it?

9 A Wide open, yes.

10 Q Did you step over Monty to get into the house?

11 A Yes, I did.

12 Q And as soon as you step over Monty, do you see Joey?

13 A He's standing back probably 10 feet in the -- in the
14 living room right there, yeah.

15 Q Was the dog out?

16 A Yeah.

17 Q Was the dog right next to Joey?

18 A Pardon me?

19 Q Was the dog right next to Joey?

20 A He was standing a couple feet from him right there.

21 Q Okay. Pretty --

22 A Yeah, pretty close.

23 Q -- much right next to him?

24 A Well, yeah, pretty close because he was going to put
25 the dog away, but like on the tape, but I got there before he

1 put the dog away.

2 Q Right. Now, the door to -- from the inside of the
3 house to the garage, is that just --

4 A Yeah, it's right there.

5 Q Right there at the --

6 A Yeah, right --

7 Q -- front entrance?

8 A Yeah, right -- like the live -- the living room
9 where he was, the front door and the garage door is right here
10 so --

11 Q All right. Now, when you were talking to the
12 paramedics about trying to do some compressions --

13 A Yes.

14 Q -- on Monty, did you move Monty in any way?

15 A No. He was turned enough where I didn't have to
16 move him. His chest was --

17 Q Because they wanted you to have his back flat on the
18 ground, correct?

19 A Yeah.

20 Q Okay. So you didn't have to roll him to --

21 A No, I didn't roll him.

22 Q -- make that happen?

23 A He was turned, you know, his shoulder was on the
24 step or whatever you want to call it. The little step to go
25 in the door. It's only about this high, you know. So he was

1 kind of laying in and out, but he was turned like this, you
2 know. I didn't -- so I just started pushing on his chest.

3 Q When you first saw Joey, you noticed he was holding
4 the -- a handgun?

5 A Yes.

6 Q Did he have it down to his side or was he --

7 A Down to his side.

8 Q -- aiming it at the door or --

9 A No, he had it down. He had the phone in his hand
10 and he had the gun down.

11 Q Was the barrel of that pointing to the ground?

12 A Yeah.

13 Q And did it stay that way all the way until you took
14 it from him?

15 A Yeah.

16 Q All right. After -- when the police first got
17 there, you and Joey both were handcuffed and detained,
18 correct?

19 A Oh, yeah.

20 Q You weren't actually placed under arrest, but you
21 were just detained so that the police could figure out who was
22 who and what was what?

23 A Yeah, I don't know if they -- I think they were just
24 trying to figure out like who was in the house. That's what
25 they told me anyways, but I think they left me handcuffed

1 because they were mad at me because I drove by them.

2 Q Understood, for sure. You were outside the house
3 when the police came up and cuffed you?

4 A I was --

5 Q Or were you inside?

6 A -- pushing on Monty's chest.

7 Q And Joey was inside the house?

8 A Yeah.

9 Q Okay. How much time passed, then, before you and
10 Joey were able to have the other conversation?

11 A I'm not quite sure, to be honest with you because
12 they kept us apart, you know. I'm not quite sure, you know.
13 I was standing outside for a couple hours, and he was in a
14 police car for a couple hours. And then the police didn't
15 talk to us about anything. When the detectives came, the
16 detectives talked to us.

17 Q Okay. So for about a couple hours you're outside
18 the house, you're handcuffed, and you don't talk to anybody;
19 is that right?

20 A Yeah, just the police that were walking around and
21 the dog.

22 Q At some point did you or Joey have to help the
23 police with the dog in the garage so that they could check the
24 garage?

25 A Yeah.

1 Q Who did that?

2 A I was going to get it out and they said no, and they
3 called the pound. And I said, I would go get it, you know.
4 And because I said I didn't want it to go to the pound, you
5 know. And so they said they agreed with me that they wouldn't
6 send it to the pound, but they had to get it out of the
7 garage. So I said, well, you got to be careful. The stupid
8 dog. They go get the dog out of the garage and he's walking
9 around out front on the leash and all the cops are petting
10 him. I'm going (indicating). But as soon as they gave me the
11 dog and I'm sitting on the curb holding the dog, the cop goes
12 oh, it's such a nice little dog and then he's tries to attack
13 the cop.

14 Q Then he furred up and bared his teeth, right?

15 A Yeah. He's a, you know, protecting me, you know.

16 Q Dog knows who feeds him groceries, doesn't he? Were
17 you interviewed by the detective with that tape recorded
18 interview before you were able to then have a conversation
19 with Joey?

20 A Yes.

21 Q To your knowledge, was Joey interviewed separately a
22 tape recorded interview prior to him and you being able to
23 talk afterwards?

24 A Yes.

25 Q And I believe, you said on direct it was somewhere

1 you think about four hours after --

2 A Yeah.

3 Q -- after the police first got there?

4 A Three hours, you know. Something like that.

5 Q So it was well into the night?

6 A Yeah, four, yeah.

7 Q It was past midnight?

8 A Yeah, they weren't letting us go, yeah. It was past
9 midnight, yeah.

10 Q All right. And that's when Joey kind of described
11 to you when he -- a little more as --

12 A After he was interviewed, then they let me talk to
13 him.

14 Q Okay. And that's when you asked him and he
15 described for you --

16 A Um-h'm, yeah, he was calmed down and --

17 Q Okay. All right. And that's when he told you that
18 he had heard the banging at the door?

19 A Um-h'm.

20 Q Is that yes?

21 A Yes, I'm sorry.

22 Q Did he tell you that he had a -- the handgun in hand
23 or he reached for the handgun then?

24 A No.

25 Q Did he tell you that he fired first when the door

1 opened and he saw two people coming in?

2 A No. No, I didn't know who fired -- he just told me
3 there was a gun fight. That's what he told me. There was a
4 gun fight.

5 Q Okay. And he described him shooting a couple rounds
6 inside the house?

7 A Oh, yeah.

8 Q From around the wall and then --

9 A Yeah.

10 Q -- bullets were flying --

11 A Um-h'm.

12 Q -- flying by him?

13 A Yeah, he told me there were shooting at each other,
14 and that's what he had told me.

15 Q Then you talked, though, about he told you that that
16 he decided he wanted to close the door, right?

17 A Yes, yes.

18 Q The -- wherever the intruders, you know, that had
19 knocked door the open --

20 A Um-h'm.

21 Q -- had left the area and some time had passed and
22 they wanted to close the door; is that --

23 A Yeah, the intruders were outside and Monty said that
24 -- told Joey that they're kind of sitting ducks, you know,
25 because, you know, the living room's right there, the

1 kitchen's right there and the front door's wide open, and it's
2 dark outside so they can't see anybody outside if you've ever
3 been over there. It's dark in the streets, it's real dark.
4 And but all their lights were on in their house so, you know,
5 it's kind of -- so they thought they should try and close that
6 door, you know.

7 Q And Joey told you he was right behind Monty?

8 A Monty went along the wall where the steps are going
9 upstairs and because then he was kind of blocked from outside
10 going along the wall, and he pushed the door closed, you know.
11 And then when he --

12 Q To be clear, he walked right along the wall with the
13 stairs?

14 A Yeah, yeah.

15 Q Right? Now --

16 A Because there's living rooms here and there's a
17 stairway going upstairs here and the front door's here, and so
18 he walked along the wall of the steps, you know, because he
19 thought he was safer than walking in the living room, you
20 know, where the lights are on and everything, you know --

21 Q Okay.

22 A -- and the door opened toward the steps so he pushed
23 the door closed that way. And Joey went into the living --
24 went into the -- went into living room then, you know, when he
25 pushed the door. But Monty walked around because the door was

1 broke so then they're thinking, well how are we going to hold
2 this door closed, you know? So Monty walked over by where the
3 door opens, you know, the door opened like that, and that's
4 when he got shot.

5 Q So Joey tells you they actually got the door closed
6 completely?

7 A Tried to.

8 Q Tried to?

9 A Yeah. And it was still, you know, open and that's
10 when he -- Monty got shot because he got too much in front of
11 the door opening and he got shot.

12 Q All right. And Joey told you he shot out the open
13 door as well?

14 A Yeah, yeah. Yes. Yeah, he said when Monty got
15 shot, he shot out the open door.

16 Q And then to your knowledge, Joey never went back out
17 the house until the police got there?

18 A No, he didn't go out the house, no. That -- to the
19 best of my knowledge, he -- because he didn't know where
20 anybody was or, you know, what was going on so --

21 Q All right. Thank you.

22 A Thank you.

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

24 THE COURT: Redirect?

25 MR. DiGIACOMO: No, Your Honor.

1 THE COURT: May this witness be excused? Anybody in
2 the jury have any questions? Seeing none. Thank you, for
3 your testimony, sir.

4 THE WITNESS: Well, thank you very much.

5 THE COURT: You're excused. Ladies and gentlemen,
6 time for a break. All right. So we're going to -- it's
7 almost 3:30. We'll take a break until quarter of. This will
8 be our afternoon break.

9 So during this recess, it is your duty not to
10 converse among yourselves or with anyone else on any subject
11 connected with the trial or to read, watch or listen to any
12 report of or commentary on the trial by any person connected
13 with the trial or by any medium of information, including
14 without limitation, newspaper, television, radio or Internet.
15 And you're not to form or express an opinion on any subject
16 connected with this case until it's finally submitted to you.
17 So we'll be in recess until a quarter until 4:00.

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

19 (Jury recessed at 3:27 p.m.)

20 THE COURT: The record will reflect that the jury
21 has departed the courtroom. Any matters outside the presence?

22 MR. DiGIACOMO: No.

23 MS. McNEILL: No, Your Honor.

24 THE COURT: You don't want to make a record now?

25 MR. LANDIS: Oh, yeah. Yeah, we can.

1 MS. McNEILL: Sorry. Thank you, Your Honor.

2 MR. LANDIS: Is that a time out?

3 THE COURT RECORDER: One at a time, please.

4 MR. LANDIS: Oh, all right. I'm happy to do it.

5 MS. McNEILL: Go for it.

6 MR. LANDIS: I think Ms. McNeill raised an objection
7 and I asked to approach about testimony Steven Larsen was
8 going to give about what Joey Larsen said a couple hours after
9 the incident. Our objection was it was hearsay. The State
10 responded excited utterance. The Court overruled the
11 objection.

12 THE COURT: And I did that because on the 911 call,
13 it appeared that Larsen -- Joey Larsen -- was basically
14 hysterical on the telephone when he was making the -- well,
15 actually, he really lost it after his father arrived at the
16 scene. He was fairly together when he was first on the phone
17 with the police dispatch, you know, 911 operator, but then
18 once his dad got there, he just completely fell apart and was
19 screaming, crying, yelling, obviously, very distraught. And
20 so it did seem to me that he was still -- would have still
21 been operating under the excitement and thereby making his
22 testimony reliable and that's why I allowed it.

23 MR. LANDIS: Thank you.

24 MS. McNEILL: Thank you, Your Honor.

25 THE COURT: All right. We'll be in recess.

1 (Court recessed at 3:29 p.m. until 3:44 p.m.)

2 (In the presence of the jury)

3 THE MARSHAL: All members of the jury and the three
4 alternates are present, ma'am.

5 THE COURT: Thank you. Please be seated. And the
6 record will reflect we are back in the presence of all 12
7 members of the jury as well as the three remaining alternates,
8 and the record will reflect as well each of the defendants are
9 present with their respective counsel, Chief Deputy District
10 Attorneys prosecuting the case are present as are all officer
11 of the court. You may call your next witness.

12 MR. DiGIACOMO: Jennifer Brown.

13 JENNIFER BROWN, STATE'S WITNESS, SWORN

14 THE CLERK: Please be seated, and then place state
15 -- spell -- state and spell your first and last name for the
16 record.

17 THE WITNESS: Jennifer, J-e-n-n-i-f-e-r. Brown,
18 B-r-o-w-n.

19 THE CLERK: Thank you.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. DiGIACOMO:

23 Q Ma'am, how are you employed?

24 A I am a forensic scientist in the DNA section of the
25 Las Vegas Metropolitan Police Department forensic laboratory.

1 Q What does that mean you do on a day-to-day basis?

2 A As a casework analyst, I will receive items of
3 evidence, I will examine them for items such as blood or
4 semen, areas where saliva may be deposited like a cigarette
5 butt or a drink container, or areas where there might be skin
6 cells like a weapon that has been handled or clothing.

7 I may also receive items such as swabs that were
8 collected at the scene. I will take those items on and get a
9 DNA profile and I will make comparisons between the evidence
10 samples and known samples.

11 Q In order to be a DNA analyst at the Las Vegas
12 Metropolitan Police Department, do you have certain training,
13 education and background in order to perform the job you do?

14 A Yes.

15 Q And could you describe that for the ladies and
16 gentlemen of the jury?

17 A Yes. I have a bachelor's of science degree in
18 molecular biology from the University of California, San
19 Diego. Additionally, I was previously employed at the Arizona
20 Department of Safety as a DNA analyst. At both my current job
21 and my previous job, I had a training program that lasted
22 about a year, involved doing known and unknown samples, mock
23 cases, supervised casework and a competency test at the end.

24 Q Have you testified and offered opinions in the area
25 of DNA analysis here in the Eighth Judicial District Court

1 previously?

2 A Yes.

3 Q And if you could start with explaining to the ladies
4 and gentlemen of the jury what is DNA and in a forensic
5 setting why is it helpful to us?

6 A Yes. DNA is a like a genetic blueprint or a set of
7 instructions for life. It's passed on from generation to
8 generation. You get half of your DNA from your mother and
9 half from your father. And when we're looking at the DNA
10 profile, it's just a set of numbers that we're looking at. We
11 look at 15 different locations and one additional sex
12 determining location.

13 And each of these locations that we look at are
14 considered independent, which means whenever we do an
15 inclusion, we can multiply the frequencies of these DNA
16 profiles at each location and get a number or a statistic to
17 include. DNA is unique to every individual with the exception
18 of identical siblings.

19 Q Essentially, what you're doing is attempting to
20 collect biological type evidence from suspect samples,
21 evidence you don't know where it came from or what the results
22 going to come from, and compare it to some sort of reference
23 of DNA for an individual; is that fair?

24 A Yes.

25 Q And then ultimately, by the scientific method you

1 use, you're able to do a comparison to the two and make
2 conclusions about whether or not somebody could have left that
3 DNA there?

4 A That's correct.

5 Q After you make a decision or at least in some
6 situations after you make a decision that a particular person
7 may have left the DNA there, do you do some sort of
8 statistical calculations to say whether or not what the odds
9 are that another random person selected if the population may
10 have left that there?

11 A That's correct, we do that, yes.

12 Q Okay. So explain to us, what are you doing when
13 you're making that statistical calculation?

14 A Basically, we use a -- a program where we enter the
15 DNA profile in it and it gives us a statistical value. And
16 when we get that value, what we're saying is basically, if we
17 went out into the population and selected a random person off
18 the street, unrelated to the evidence profile, and we compared
19 it, what is probability that that person would match that
20 evidence profile, and that's what the statistic is.

21 Q In this particular case, were you asked to look at a
22 number of items under Metro event number 140921-3020?

23 A Yes.

24 Q And let's start first with some reference samples.
25 What is a reference sample?

1 A A reference sample is something unknown sample. We
2 call them buccal swabs. They're usually just cotton swabs
3 that are swabbed on the inside of the cheek cells. The inside
4 of the cheek cells are buccal cells, and that's why the name.
5 So it's just a known sample that is taken from an individual
6 and then I will process and get a DNA profile from it.

7 Q Let's talk about who you had known samples of in
8 this particular case. Did you have or do you have a list
9 somewhere of the known samples that you have?

10 A I do.

11 Q And if you could tell us who the known samples are.

12 A Jorge Mendoza. May I refer to my report, please?

13 Q Sure.

14 A Thank you.

15 Q And I'm assuming -- actually, you've written more
16 than one in this case. Can you just tell us which one you're
17 referring to when you do so?

18 A Okay. Just the first original report. The original
19 report I had two known profiles, one from Monty Gibson and one
20 from Robert Figueroa. And then the second report I had three
21 additional known profiles.

22 Q And who are the three additional known profiles?

23 A From Jorge Mendoza, Joey Laguna and David Murphy.

24 Q And each of those, with the exception of Monty
25 Gibson's were booked by an individual with a P number of 3662.

1 Is that fair?

2 A Yes.

3 Q Now, prior to your testimony today, did you provide
4 some of the underlying data and then review some exhibits
5 about some of the conclusions you were able to reach before
6 coming down here to testify?

7 A Yes.

8 MR. DiGIACOMO: And may I approach, Judge?

9 THE COURT: Yes.

10 BY MR. DiGIACOMO:

11 Q I'm going to show you what's been marked as State's
12 Proposed Exhibits 283 to 296. And just briefly flip through
13 those and look to see if, one, if those are, if fact, the ones
14 that were shown to you previously.

15 A Yes.

16 Q And do those -- first of all, do they fairly and
17 accurately depict your results with the exception of the ones
18 that have an already previously admitted exhibit on them?

19 A Yes.

20 Q Okay. And then two, would it assist you in your
21 presentation today or your testimony today to utilize these to
22 sort of explain what the results of your conclusions are?

23 A Yes.

24 MR. DiGIACOMO: I'd move to admit 283 to 296.

25 MR. LANDIS: No objection.

1 MS. McNEILL: No objection.

2 MR. WOLFBRANDT: No objection.

3 THE COURT: Those will be admitted.

4 (State's Exhibits 283 to 296 admitted)

5 BY MR. DiGIACOMO:

6 Q So I'm going to just sort of go down the list of
7 your reports and then where we have an exhibit, I will put an
8 exhibit up and ask you to sort of discuss the various
9 conclusions.

10 So I am going to start with 283, as soon as I find
11 my glasses. I'm going to start with 283, and I'm going to put
12 283 up on the screen for you. And ask you to sort of explain
13 -- well, these are reference profiles; is that correct?

14 A That's correct.

15 Q And if you could explain how it is that somebody
16 would read this information in order to identify what each
17 person's profile is?

18 A On the left-hand side where all the different
19 colored areas are, the colorful sections, those are the
20 individual markers that we're looking at. So if you -- as you
21 read across, say the first one that says Jorge Mendoza and the
22 first marker in the blue, there's a 10 and a 13. That means
23 at this location, this individual received a 10 from one of
24 their parents and a 13 from the other one.

25 And so then as you go down, each one of those

1 different locations has a set of numbers. If there's only one
2 number, it means they got the same number from their parents.
3 And for any sort of single source or reference profile, this
4 is what you would expect to see, either one or two numbers at
5 each of the locations. If you go down, there's a marker
6 called amelogenin, which we refer to as the sex determining
7 marker, and in that case, you would expect to see an X and a
8 Y, if it's a male. Or there would be two Xs or just a single
9 X if it was a female.

10 Q And so when you do analysis, you can determine
11 whether or not at least there is some male DNA or no male DNA
12 sometimes based upon the result you get from the amelogenin?

13 A Yes.

14 Q An then obviously, any one of these levels there may
15 be a lot of people in the world who have a 10 or a 13; is that
16 fair?

17 A At that -- at the first location, that's certainly
18 possible, and that's why we look at a different number of
19 locations and cumulatively that would be their DNA profile and
20 that helps it be unique.

21 Q And so once you start adding where the odds of
22 somebody having a 10 and a 13 at this location and then
23 timesing (sic) that by what are the odds of that person also
24 having a 29 and a 30 at the next location and on and on and on
25 and ultimately you result in a very, times large number, that

1 you would think it's a very rare profile?

2 A That's correct.

3 Q Okay. So let's talk with the suspect information
4 that you had. Once you pulled a profile, did you compare them
5 to these four profiles as well as Monty Gibson?

6 A Yes.

7 Q Okay. So these profiles, for the record, are
8 Mr. Mendoza, Mr. Laguna, Mr. Murphy and Mr. Figueroa; is that
9 fair?

10 A That's correct.

11 Q Okay. So let's start with, I believe, it's going to
12 be your item 27, which is -- or sorry, yeah, lab item 27,
13 impound item number 20, for Mr. Felabom. Can you tell me what
14 that is?

15 A Can I refer to my report?

16 Q Sure.

17 A Item number 27 is a pair of black Uline gloves.

18 Q And then I'm going to put up 284 and ask you --
19 well, first of all, is that a photograph that was taken of
20 those Uline gloves?

21 A Yes, those are pictures I took.

22 Q And then what are we looking at on the right-hand
23 side?

24 A On the right-hand side you see two different
25 profiles, one from each of the gloves. As you can see

1 compared to the single source profiles, these are mixture
2 profiles. Sometimes we can interpret mixture profiles, and
3 sometimes it's really difficult and we can't make any
4 conclusions.

5 Q When you have more than two numbers, you said
6 mixture, what do you mean by a mixture?

7 A Just means that there is more than one person
8 contributing DNA to this profile that we obtained or I
9 obtained.

10 Q So if you have three numbers, then you know for sure
11 there is at least two people, correct?

12 A Typically, yes.

13 Q Okay. And then when you -- you can get up to five,
14 six, seven, even cases where -- I think, maybe five's the most
15 we have on this one, but there are cases where there's a lot
16 of numbers on the first line?

17 A Yes, you can -- can you have many people.

18 Q And so at some point, it almost becomes
19 uninterpretable?

20 A That's correct.

21 Q Did you make an effort to interpret either 27.1 or
22 27.2?

23 A For 27.1, it was -- I deemed it a complex mixture
24 profile, meaning, I did not make any conclusions. While both
25 profiles look fairly similar, the one from the right glove has

1 a little bit more information and a little bit more
2 information that is under our threshold, meaning, we have a
3 threshold that says if the numbers don't go -- get higher than
4 -- than that threshold, we just can't interpret it. We're not
5 comfortable making any conclusions. So for the right glove, I
6 did not make any conclusions.

7 Q And it says swabbing on the items. Does that mean
8 you physically do something to the glove? It's not like you
9 threw the glove in some sort of machine to see what kind of
10 DNA came out, is it?

11 A No. I did take a damp swab and swabbed the gloves
12 myself.

13 Q And that's what you used to process what biological
14 material would be there?

15 A Yes.

16 Q So now I'm going to just focus on 27.2 and I'm going
17 to put up 285.

18 BY MR. DiGIACOMO:

19 Q And I'm going to put sort of -- oh, it might be too
20 small to do that. I was -- maybe I will. And then I will put
21 up 286 on the other side. And ask you, first of all, that
22 screen is probably too small for the ladies and gentlemen of
23 the jury so I'll go back in just a minute. But on 285 and
24 286, I believe, I just said, which is the two exhibits there.
25 Did you get results as it relates to one of yours that you

1 were able to include some of your reference samples?

2 A Yes.

3 Q And were you able to include two of the four people
4 that you had?

5 A Two -- I think two of the five people.

6 Q Two of the five people that --

7 A Yes.

8 Q Okay. So let me go back because this is way too
9 small for the -- for anybody to actually see. And I'm going
10 to go back to 285 and ask you what conclusion did you draw as
11 it related to the one that you were able to make a conclusion
12 about?

13 A So the left-hand glove, it was a mixture of at least
14 three people, and Jorge Mendoza and Robert Figueroa could not
15 be excluded as possible contributors. And the probability of
16 selecting a random person from the population unrelated to the
17 evidence profile, that could be included in the mixture, was
18 approximately 1 in 42.

19 Q One in had 2 random people in the population could
20 have left the biological material on the swabbing that you
21 took?

22 A Possibly, statistically could be included.

23 Q So it's not very discriminatory, right?

24 A It's not.

25 Q You've involved, imagine, much larger numbers in DNA

1 analysis?

2 A Often mixtures we do not get the ground statistical
3 analysis or statistical numbers that we get when we have a
4 single source profile.

5 Q So likewise, and I'm not going to put it back up,
6 but 286 would also show the profile Mr. Figueroa and the
7 complex mixture so you could go back through and see if each
8 one of his numbers were on that profile; is that fair?

9 A That's correct. Any -- any location on the
10 left-hand glove where there isn't an asterisk, meaning there
11 isn't information below threshold I was able to use that
12 location to make a statistical conclusion and inclusion.

13 Q Did you also test your item 29, an orange ski mask
14 with an apparent hair?

15 A Yes.

16 Q And so I'm going to put up 287 for us. And ask you
17 kind of what areas did you test on the orange mask?

18 A There were two distinct stains that I tested. I did
19 a presumptive test or preliminary test that indicated the
20 stains could be blood. Additionally, I took portions of those
21 stains on for DNA analysis. Additionally, I took -- there was
22 some staining on the hair that I took on as well.

23 Q Did you do anything with the hair itself?

24 A The hair itself I examined under a microscope and it
25 did not appear to have a root. In order to get DNA, the kind

1 of DNA that we're getting, we need to have a root, and it
2 didn't have any so I just took the staining that was on the
3 hair.

4 Q And so the two stains, your 29.11 and 29.12, are
5 these the profiles that you were able to generate from those
6 stains?

7 A Yes.

8 Q Okay. And I now move to 288, can you tell me what
9 the result was of your examination or conclusion?

10 A The conclusion for both of the stains on the inside
11 of the mask as well as the stain on the hair were all
12 consistent with Jorge Mendoza. The probability of randomly
13 selecting a person and having that person's profile match this
14 profile, was approximately 1 in 28.8 quadrillion.

15 Q 28.8 quadrillion. How do you visualize that number?

16 A If you start with a million, it's millions, the next
17 level would be billions, then trillions and then quadrillions.

18 Q And I imagine, what is there 7 billion people on
19 earth currently so that's a number significantly higher than
20 the -- even the population of the planet earth?

21 A That's correct.

22 Q Let's move on to your item 31 and 32. And I'm going
23 to move on to State's Exhibit No. 289. And just to that we're
24 clear, did you only receive swabbings? I mean, obviously, you
25 weren't out at the crime scene that night, correct?

1 A That's correct.

2 Q And the photographs that are on 289, they have
3 things like Exhibit 207 and Exhibit 216. Those are not your
4 photographs, correct?

5 A Those are not my photographs, no.

6 Q On the right-hand side is that your profile?

7 A Those are the profiles I obtained, yes.

8 Q Can you tell from your item number 31 what item it
9 is and does it have a number like BT next to it for the
10 impound item?

11 A It does have a BT next to it -- next to it, yes.

12 Q And what is the BT?

13 A So for item 31 -- 31 --

14 Q Yes.

15 A -- the BT number, it's BT 10, and for item 32 it's
16 BT 20.

17 Q And once again, that's booked by Mr. Felabom under
18 or his P number 8427 and to the right-hand on State's Exhibit
19 No. 289, is that the profile you were able to generate from
20 both the BT 10 swab and the BT 20 swab?

21 A Yes.

22 Q And then if I move on to State's Exhibit No. 290,
23 can you tell me what your conclusion was as it relates to both
24 BT 10 and BT 20 or 31 and 32?

25 A The DNA profiles obtained from both these items were

1 consistent with Robert Figueroa, and the probability of
2 randomly selecting an individual from the general population
3 having a DNA profile that matches that evidence profile was 1
4 in 1.38 quintillion. Sorry, I should have brought my glasses.

5 Q Yeah, me, too. I keep switching back and forth. So
6 let me know, I can give you mine. So the first one was
7 quadrillion. This is quintillion. So you got to add another
8 three zeros?

9 A Quintillion, so it's -- it's, yes, the next -- next
10 one up. Three more zeros.

11 Q I'm going to move on to your item number 36. What
12 was your item number 36?

13 MR. DiGIACOMO: And it is State's Exhibit 291, I'm
14 going to put up, Judge.

15 BY MR. DiGIACOMO:

16 Q What is your item number 36? What was it referenced
17 as when you received it?

18 A It was a swab from the left side stock of the
19 Hi-Point 995 gun.

20 Q And so once again, that picture that's on the
21 left-hand side of 291 is not yours, obviously. You never
22 actually saw the gun. You received a swab from the gun?

23 A That's correct.

24 Q And then if I put up 292, can you tell me what your
25 result was?

1 A The DNA profile was consistent with Jorge Mendoza
2 and the probability was approximately, 1 in 20.8 quadrillion.

3 Q Once again, one of those numbers that's somewhat
4 hard to comprehend?

5 A Yes, very large.

6 Q State's Exhibit 293, did you process some staining
7 from an apparent tooth, which is your item 39 where the crime
8 scene item 16?

9 A Yes.

10 Q And are those photographs you took of the staining
11 that you collected?

12 A Yes. I received the tooth and I -- I did the
13 swabbing on the -- on the tooth.

14 Q And on the right-hand side of this, is that the
15 profile that you received or in -- or that you generated, I
16 guess, from the tooth?

17 A Yes.

18 Q And then if he move to Exhibit No. 294, can you tell
19 me what your result was?

20 A The DNA profile was consistent with Robert Figueroa,
21 and the probability of selecting an unrelated individual from
22 the population was 1 in 1.38 quintillion.

23 Q So now we're back up to quintillion? Let me ask
24 you, did you have an item number 49, and I'm going to put up
25 for the ladies and gentlemen of the jury State's Exhibit No.

1 295. What is item number 49?

2 A It was a Sturm Ruger P94 gun that I received.

3 Q And that gun, did it appear to have any apparent
4 biological material on it?

5 A It did have some staining, which I -- I tested with
6 chemical tests and it did indicate that it was blood.

7 Q And did you thereafter try to create a profile from
8 that stain?

9 A Yes. I took some sampling of different areas of the
10 gun on for DNA analysis.

11 Q And as at least it relates to I will put up the next
12 exhibit, which is 296. That's item 49.1, but I want you to go
13 through each of the 49 results in just a moment after I put it
14 up. So on -- having 296 up, could you tell me the results of
15 the stains that you collected off of that Ruger firearm?

16 A There was staining on the slide, staining on the
17 barrel. I also did a swabbing of the grip and the trigger.
18 And then there was -- I'll just do those ones for now. Is
19 that -- okay.

20 Q And --

21 A And they were all consistent with Robert Figueroa.

22 Q And did they all have the same statistical
23 calculation?

24 A They did. They were all the same -- that same
25 probability of 1 in 1.38 quintillion.

1 Q The other stains that you -- or did you try any
2 other stains on there?

3 A Not on the gun. The next one was the magazine.

4 Q Did you make some effort to generate a profile from
5 the magazine?

6 A Yes. There was some staining on the side of the
7 magazine and then there was also -- I also took a swab of the
8 base and load area of the magazine. The staining itself was a
9 single source profile, and then the swab of the base and the
10 load area of the magazine was actually a mixture, but I was
11 able to pull out a full major profile from that and both of
12 them were consistent with Robert Figueroa and that same
13 probability of 1 in 1.38 quintillion.

14 Q So there were times when you can tell which one is
15 the most DNA versus which one of these numbers is resulting of
16 less DNA?

17 A Yeah, sometimes you can clearly see that there's a
18 major profile and you're able to pull it out of those mixtures
19 and sometimes you cannot.

20 Q Were you able to do anything with the minor DNA
21 that's on the magazine?

22 A No, I could not make any conclusions about the
23 additional information that was there.

24 Q So no either inclusion or exclusion?

25 A That's correct.

1 Q Thank you. Thank you, ma'am.

2 MR. DiGIACOMO: I'd pass the witness, Judge.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MR. LANDIS:

6 Q Good afternoon. That firearm that they showed you a
7 picture of a moment ago, you talked about doing some DNA
8 testing on apparent blood, right?

9 A On the Sturm Ruger?

10 Q Yes.

11 A Yes.

12 Q And you could see the blood. Good chance it has DNA
13 so it's good place to test, right?

14 A I could see some staining on various areas of it.

15 Q Sometimes you'll test a gun for DNA absent any
16 apparent bloodstaining, yes?

17 A That's correct, yes.

18 Q And you even did that with that gun in this case a
19 little bit, yes?

20 A Yes, I did the swabbing of -- of certain areas.

21 Q And as you started your direct testimony, you're
22 looking for things like sweat, maybe?

23 A Sweat, skin cells for areas that don't have
24 staining.

25 Q And can you also find that kind of DNA left on a

1 number of things a person might touch?

2 A Yes.

3 Q Cars, for instance?

4 A Yes. You know, how much DNA you're going to leave
5 through touch is going to be dependent on the amount of time
6 you've touched an item, the amount of maybe pressure you've
7 put on the item.

8 Q Fair for me to say there's been times in your career
9 where you've received a swab of a car steering wheel to test?

10 A Yes, I have.

11 Q As well as other parts of a car such as handles?

12 A Yes.

13 Q In this case, were you asked to test any information
14 that was told to be from a vehicle of any sort?

15 A I was not asked, no.

16 MR. LANDIS: That's all the questions I have. Thank
17 you.

18 THE COURT: Ms. McNeill.

19 MS. McNEILL: Thank you.

20 CROSS-EXAMINATION

21 BY MS. McNEILL:

22 Q Sort of along the lines of Mr. Landis'S questions,
23 the only items that you were asked to test are the items
24 listed in your report, correct?

25 A That's correct.

1 Q Okay. And then you indicated that you had these
2 reference standards from Monty Gibson, Robert Figueroa, Jorge
3 Mendoza, Joey Laguna and David Murphy. Those were the only
4 reference standards you were provided, correct?

5 A That's correct.

6 Q So that's the only -- those people are the only
7 people whose DNA you ran against the items that you found,
8 correct?

9 A Yes, that's correct.

10 MS. McNEILL: Nothing further.

11 THE COURT: Mr. Wolfbrandt.

12 CROSS-EXAMINATION

13 BY MR. WOLFBRANDT:

14 Q Good afternoon.

15 A Hello.

16 Q I'm going to talk about another item --

17 A Okay.

18 Q -- that's on your results and conclusions. I'm
19 looking at the lab item number 30, to start with.

20 A Okay.

21 Q All right. That's your lab item. How does that
22 compare with the crime scene analyst number or labeling?

23 A They labeled it as BT 1.

24 Q Okay. So that was BT 1. And was that described as
25 from the driveway?

1 A Yes, I received a swab that was collected from a
2 driveway.

3 Q Okay. And whose blood was that?

4 A I did a presumptive test. It indicated it was
5 blood, and the profile was consistent with Monty Gibson.
6 There was also a statistic associated with that. The
7 probability of randomly selecting an unrelated individual from
8 the general population having that DNA profile from the
9 evidence is 1 in 20 -- I'm sorry, 1 in 504 quadrillion.

10 Q Okay. And then dropping down to your lab item
11 number 34. Which item does that correspond with what
12 Mr. Felabom --

13 A The crime scene number is AB 1.

14 Q And again, what was the results of that? Or where
15 was that located?

16 A That was -- I'm sorry, that was a swab from the
17 porch by the decedent's right foot. And it was consistent
18 with Monty Gibson. The same statistic of approximately, 1 in
19 504 quadrillion.

20 Q Okay. And then how about lab item number 35?

21 A 35, that corresponds to AB 2 crime scene number, and
22 that was a swab from the porch by the south doorjamb. I
23 again, I got a swab. Indicated the presence of blood and it
24 was consistent with Monty Gibson and that same statistic, 1 in
25 -- approximately, 1 in 500 quadrillion.

1 Q Okay. Now, you -- thank you for that. You
2 testified about a Ruger that you had done some examining with
3 or comparisons to.

4 A Yes.

5 Q Okay. Were there any other -- well, and you also
6 talked about a Hi-Point 9 millimeter?

7 A Yes. So the Hi-Point I did not receive. I received
8 swabs from and then the Sturm Ruger I actually did receive and
9 did some testing on it.

10 Q Did you receive any swabs or corresponding Glock 40
11 millimeter --

12 A I did not.

13 Q -- .40 caliber, excuse me.

14 A Sorry, I did not.

15 Q Okay. Did you get any swabs or the firearm itself
16 for what was it Smith and Wesson -- a Smith and Wesson .38?

17 A I did not receive any other weapons or swabs from
18 any other weapons.

19 Q Thank you.

20 THE COURT: Redirect?

21 MR. DiGIACOMO: Just very briefly.

22 REDIRECT EXAMINATION

23 BY MR. DiGIACOMO:

24 Q Ma'am, DNA is what we would call a circumstantial
25 piece of evidence in the sense that it matters how it is that

1 DNA got there that might be important to us, right?

2 A Yes.

3 Q Merely because I am the last person to touch this
4 remote, does that mean that if you get a touch profile from
5 this, it's going to necessarily be my DNA?

6 A It just depends. Touch DNA is not the best source
7 ultimately of DNA. Oftentimes, if we get a good profile from
8 a touch item, it means that it was handled significantly.

9 Q And like that, likewise, you have no way to date
10 when the DNA is placed there, you as the analyst? There may
11 be some other evidence of how that DNA got there, but you
12 personally can't date when it gets there, correct?

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

14 Q And so if you were to get a result, you'd have to
15 have a known profile also to compare it to; would that be
16 fair? Otherwise, you'd have an unknown result?

17 A Yes. Otherwise, I would just have DNA profiles that
18 are listed as unknown male, unknown female or just mixture
19 profiles that I have no -- no one to compare to, no
20 conclusions.

21 Q And so normally in the investigative section or is
22 there sort of a desire of your lab to have the most relevant
23 evidence presented to you to do your work as opposed to
24 everything that's collected during a homicide investigation?

25 A Yes. We rely on typically the detectives to figure

1 out what is the most important items in the case to test. We
2 can't really test every single item, at least initially, so we
3 ask them to -- to pick the items they want tested the most.

4 Q And then obviously, all these items are maintained
5 and thus, if it comes up later on that there's something oh,
6 we need an answer to this now, we could submit something else
7 to you to have it tested?

8 A Yes. That often happens.

9 Q Thank you.

10 MR. LANDIS: No recross.

11 MS. McNEILL: Nothing further.

12 MR. WOLFBRANDT: No more.

13 THE COURT: Any questions from the jury? Seeing
14 none, you're excused. Thank you very much. You may call your
15 next witness.

16 MR. DiGIACOMO: Detective Tod Williams.

17 DETECTIVE TOD WILLIAMS, STATE'S WITNESS, SWORN

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

20 THE WITNESS: Tod, T-o-d, Williams, W-i-l-l-i-a-m-s.

21 THE CLERK: Thank you.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. DiGIACOMO:

25 Q Sir, how are you employed?

1 A I'm a homicide detective with the Las Vegas
2 Metropolitan Police Department.

3 Q How long have you been a police officer?

4 A Over 27 years.

5 Q And how long you been a homicide detective?

6 A Approximately, 13 years.

7 Q I'm going to direct your attention to September 21st
8 of 2014. Did you get assigned to assist in the investigation
9 of a homicide that occurred at 1661 Broadmere here in Clark
10 County, Las Vegas, Nevada?

11 A Yes, I did.

12 Q Now, when there's a homicide that occurs, can you
13 explain to the ladies and gentlemen of the jury is there one
14 detective or is there more than one detectives that show up
15 and take over the investigation?

16 A No, we're assigned on squads, and within that squad
17 there's a two-man team. That night I was assigned to work
18 with Detective Barry Jensen. So we respond usually as a squad
19 or at least a two-man team and several other detectives to
20 assist along with a supervisor.

21 Q And then is there a division of responsibility
22 between the various, first the two-man team, and then as well
23 as the other assisting detectives?

24 A Yes. Barry Jensen was assigned to document the
25 scene with a crime scene analyst. I, along with the other

1 assisting detectives, were assigned to speak with any
2 witnesses that may be available.

3 Q During the time that you initially arrived on
4 screen, did you become aware that there was a suspect who was
5 either in custody or being taken into custody?

6 A Not a suspect being taken into custody at that time.
7 There was an individual who was wounded and we weren't a
8 hundred percent sure what his status was, but it appeared that
9 he was probably going to be a suspect.

10 Q And that individual, was he transport the from the
11 scene before your arrival or after you arrived?

12 A As I arrived, I later found out that the ambulance
13 leaving as I arrived was -- was carrying that individual.

14 Q So when you first arrive on scene, it's now been
15 some time because this individual has been taken away. Do you
16 get any sort of briefing about what the situation is?

17 A Yes. The officers that were there initially spoke
18 with us and told us what they had initially found in their
19 investigation and they explained all of that to us.

20 Q And after the initial briefing, was there a
21 determination as to where it is you were going to go as part
22 of the investigation?

23 A Yes. Detective Merrick (phonetic) and I --
24 Detective Merrick was one of the assistant detectives -- went
25 to UMC or University Medical Center, to interview the

1 individual that had been taken from the scene by ambulance to
2 the hospital.

3 Q And I am going to show you what's now been marked as
4 State's Proposed Exhibits 263 to 266 and ask you to look at
5 those.

6 A All right.

7 Q Do those appear to be photographs taken of well, the
8 individual as well as the x-ray that you then went and saw at
9 UMC?

10 A Yes.

11 Q And do they appear to be true, fair and accurate
12 depictions both of the individual and his x-ray?

13 A Yes.

14 MR. DiGIACOMO: I'd move to admit 263 through 266.

15 MR. LANDIS: No objection.

16 MS. McNEILL: No objection.

17 MR. WOLFBRANDT: No objection.

18 THE COURT: Those will be admitted.

19 (State's Exhibits 263 through 266 admitted)

20 BY MR. DiGIACOMO:

21 Q Now, did you -- were you able to identify the name
22 of the person that was at UMC?

23 A Yes.

24 Q And what was that?

25 A George or Jorge Mendoza.

1 Q And I know it's been some time now, in looking
2 around the room, do you see Mr. Mendoza here in the courtroom?

3 A Yes, I do.

4 Q Can you point him out and describe something he's
5 wearing?

6 A He's the individual in the dark suit in the light
7 tie on the far right side of defense counsel table.

8 Q Is he in the front row or the back?

9 A Back row.

10 MR. DiGIACOMO: May the record reflect the
11 identification of defendant Mendoza?

12 THE COURT: It will.

13 BY MR. DiGIACOMO:

14 Q When you got there, did Mr. Mendoza have any -- or
15 were you able to identify sort of the nature of the injury to
16 him? And I'm put up 264 so that the jury can see it. Did you
17 see any injury to him?

18 A Yes. He had a bullet wound on his left thigh.

19 Q And when you were there, it was before or after
20 there had been surgical intervention?

21 A Prior to any surgery.

22 Q And I'm going to put up 266. What are we looking
23 at?

24 A You're looking at his fractured femur bone.

25 Q While you were at the hospital -- well, first, did

1 you -- before you talked to Mr. Mendoza, did you have a
2 conversation with anybody associated with Mr. Mendoza over a
3 telephone?

4 A Not at that time.

5 Q Did you go and talk to Mr. Mendoza?

6 A Yes, I did.

7 Q During that, did he confirm for you his cell phone
8 number?

9 A Yes, he did.

10 Q And off the top of your head, do you know that cell
11 phone number?

12 A Only because there's three 6s all of -- other than
13 that, I don't remember any of the phone number.

14 Q If I were to tell you that it's 702-666-4948, does
15 that sound right to you?

16 A Yes, it does.

17 Q During that time period, did you also confirm his
18 wife's cell phone number?

19 A Yes, he told us her name and her phone number.

20 Q And if I told you that it was 702-750-8111, would
21 that seem accurate to you?

22 A Yes.

23 Q Do you recall what her name was?

24 A Yes. Amanda Mendoza.

25 Q Once you received that information -- well, did you

1 learn the location of where Mr. Mendoza lived?

2 A Yes.

3 Q And so what did you do?

4 A Well, after we spoke with Mr. Mendoza, we
5 eventually, we went back to the scene and discussed things
6 with the other detectives, but we eventually went to her home.

7 Q When you got to the home, is -- when you say we, are
8 you by yourself or do you have somebody else?

9 A No, Detective Merrick was with me as well.

10 Q When you got to the location of the home, do you
11 recall the address off the top of your head?

12 A I don't.

13 Q Do you remember generally where in the Valley it is?

14 A It's the 3000 block of Westland right off of Rancho.

15 Q So it's the address on Westland?

16 A Yes.

17 Q When you get to that location, do you see -- well,
18 approximately, what time do you think you got there?

19 A Almost 2:00 o'clock in the morning, prior to.

20 Q When you arrive, is there a vehicle at this
21 residence?

22 A Yes, there was.

23 Q What kind of vehicle is it?

24 A A Nissan gold or champagne color.

25 Q And did you run that and determine that the

1 registered owner was, in fact, Mr. Mendoza?

2 A Yes, I did.

3 Q Did you see a person outside when you roll up at
4 2:00 o'clock in the morning?

5 A Yes. Just as we arrived, Amanda Mendoza had either
6 just come out of her house or was already outside of her house
7 when we arrived.

8 Q And do you make contact with her?

9 A Yes.

10 Q And during the course of that contact -- well,
11 first, describe Ms. Mendoza's demeanor.

12 A You could tell she had been up and dealing with
13 something. She was a little bit upset and actually angry at
14 us.

15 Q And what is it that she wanted to know from you?

16 A She wanted to know the condition of her husband. I
17 had previously had a conversation just as we were leaving the
18 hospital to confirm that she was who he said she was, and she
19 wanted to no he if he was alive or dead.

20 Q Okay. Had you told her at that point that she had
21 been shot -- that he had been shot?

22 A I don't recall if I told her. I had the impression
23 she already knew he had been shot.

24 Q While you were there, do you -- without telling us
25 what you say, do you talk to her about that gold Nissan that's

1 sitting there in the driveway?

2 A Well, yes. We were surprised it was there, for one,
3 and we asked her why it was there and how long it had been
4 there and she said she had no --

5 MS. McNEILL: Objection to what she said about the
6 car.

7 THE COURT: Sustained.

8 BY MR. DiGIACOMO:

9 Q Without telling us what she said, at some point does
10 she show you an iPhone app of some sort that had a location on
11 it?

12 A Yes.

13 Q And did you at some point go to that location?

14 A Yes.

15 Q Before I get to that, when you went over to the
16 residence, did you have some sort of legal authority in hand
17 to conduct a search of either the residence or the car?

18 A Not when we arrived.

19 Q Did you seek some consent to search any portion of
20 that house?

21 A Yes, we received consent from her and her mother.

22 Q And what was the agreement that you had with her
23 mother?

24 A That we would not search her portion of the home.
25 Only Amanda and her husband's and that we would only be

1 looking for weapons or evidence of possession of weapons or
2 ownership of weapons.

3 Q And did she agree to it?

4 A Yes, she did.

5 Q And eventually, do you enter the portion of the home
6 that's assigned -- or that's with the -- Mr. and Mrs. Mendoza,
7 not her mother's?

8 A Yes, we did.

9 Q When you went in there, did you find any evidence of
10 firearms?

11 A Yes, we found a lot of evidence of firearms. A
12 minimum -- well, evidence of at least ten weapons.

13 Q When you say evidence of ten weapons, what do you
14 mean?

15 A Well, with he found several weapons. We found
16 different calibers of ammunition, different magazines for
17 different guns, things of nature.

18 Q Were you looking for a particular type or caliber of
19 weapon when you were there?

20 A Yes, we were.

21 Q And what was that?

22 A We were looking specifically for .40 caliber
23 ammunition or weapons or -- and/or 9 millimeter ammunition
24 and/or weapon.

25 Q When you found this evidence inside the Mendoza

1 home, did you have a crime scene analyst with you in order to
2 document that information?

3 A No, there was no crime scene analyst available at
4 that time.

5 Q Did you do anything to attempt to document the
6 condition of the weapons within the home?

7 A Yes, I took my personal iPhone and took pictures of
8 what we could while we were there.

9 Q I'm showing you what's been marked as State's
10 Proposed Exhibits 269 to 274, and ask you if you recognize
11 what's depicted in those photographs?

12 A Yes. Yes, I do.

13 Q And do they truly, fairly and accurately depict,
14 sort of, the iPhone pictures you took of the various firearms
15 related evidence?

16 A Yes, they do.

17 MR. DiGIACOMO: Move to admit 269 through 274.

18 MR. LANDIS: No objection.

19 MS. McNEILL: No objection.

20 MR. WOLFBRANDT: No objection.

21 THE COURT: Those will be admitted.

22 (State's Exhibits 269 through 274 admitted)

23 BY MR. DiGIACOMO:

24 Q Well, I'm going to start with 269 and ask you what
25 are we looking at?

1 A The converted garage was -- there was a main room
2 where the garage was and there was a bathroom that wasn't
3 functioning, and standing in the bathroom looking into a
4 closet to the north is where that shot is taken from. Kind of
5 from the bathroom into a closet.

6 Q And this item up here, what is that?

7 A That is a gun safe.

8 Q Then 270, what are we looking at?

9 A It's like a plastic rifle case.

10 Q Was there a rifle inside the case?

11 A No, there was not.

12 Q And then 271. Not the highest quality picture, but
13 what are we looking at?

14 A It's an iPhone 4. That's the gun safe with the door
15 opened showing the contents inside.

16 Q And there's at least one, if not more firearms
17 inside that safe?

18 A Yes.

19 Q Then 272, what are we looking at?

20 A Bags of -- or boxes of ammunition and I believe,
21 cleaning material.

22 Q Did you find any 9 millimeter Luger ammunition
23 within the home?

24 A Yes.

25 Q And then just real quickly, 273.

1 A That's a gun cleaning kit.

2 Q And 274?

3 A More gun cleaning and maintenance items.

4 Q Did you collect any of these items?

5 A Some of them, yes.

6 Q Well, what did you take?

7 A I'd have to look at the list to --

8 Q Do you have it here with you?

9 A I have some of my reports, yes.

10 Q Let me ask you this, did you wind up impounding the
11 items that you collected?

12 A Yes.

13 Q And was there a property report created of that
14 impound of those -- of the firearms related items?

15 A Yes.

16 Q Okay. Were there two boxes of 9 millimeter
17 ammunition that were impounded?

18 A Yes.

19 Q Okay. So now that you've done this, do you collect
20 anything from Ms. Mendoza?

21 A Yes. We took her cell phone as well.

22 Q The one that she had shown you the app with a
23 location information on it?

24 A Yes.

25 Q Did you do anything with the 1995 gold Nissan Maxima

1 that's in that driveway?

2 A Detective Merrick and I looked on and around the
3 car, inside the car for blood evidence or trace evidence.
4 That's what we at that time were thinking would be on a car.

5 Q Did you see any evidence of blood or -- on the
6 vehicle?

7 A No, we did not.

8 Q At that point, did you believe that that may or may
9 not be the suspect vehicle involved in this crime?

10 A It was possible. We weren't exactly sure. We were
11 getting a lot of information, a lot of misinformation, and we
12 weren't a hundred percent sure at that time. I can tell you
13 when we left, we did not think it was at the crime scene.

14 Q Do you go to the location that was on the Find My
15 iPhone app or on that iPhone app?

16 A Yes, I did.

17 MR. DiGIACOMO: May I approach, Judge?

18 THE COURT: You may.

19 MR. LANDIS: Can we approach?

20 (Mr. DiGiacomo conferring with Mr. Landis)

21 BY MR. DiGIACOMO:

22 Q Detective, I'm going to show you what's been marked
23 as State's Proposed Exhibit No. 314 and ask you -- well, first
24 of all, that is not the actual 1995 gold Nissan or champagne
25 colored Nissan Maxima, is it?

1 A No, it is not.

2 Q Does that picture represent what the car looked
3 like?

4 A Well, this was a new car in good condition. That
5 car was not in good condition so that difference existed.

6 Q Okay. Other than that, is that essentially the way
7 the vehicle looked?

8 A Yes, the same make, model and color, yes.

9 Q Okay. Put that one aside for just a second. Now
10 I'm going to show you State's Proposed Exhibit No. 313. Do
11 you recognize sort of the area depicted in 313?

12 A Yes, I do.

13 Q Okay. And is that a true, fair and accurate aerial
14 photograph of that location?

15 A Yes, it is.

16 MR. DiGIACOMO: Judge, I'm going to offer 313.

17 MR. LANDIS: No objection to 313.

18 MS. McNEILL: No objection to 313.

19 MR. WOLFBRANDT: No objection.

20 THE COURT: It will be admitted.

21 (State's Exhibit 313 admitted)

22 BY MR. DiGIACOMO:

23 Q Detective, I'm going to put up 313.

24 MR. DiGIACOMO: Oops. I think these are marked
25 backwards. Yep, on the back is Proposed 314 and you said 315

1 so Judge, just for the record the proposed say 314, but
2 there's another proposed on the front that says 313 and vice
3 versa so --

4 THE CLERK: Oh, I'll change them. I'm sorry.

5 THE COURT: Okay.

6 MR. DiGIACOMO: The typed one is 314 so 314 is
7 offered. 313 isn't.

8 THE CLERK: Which one's offered, the map?

9 MR. DiGIACOMO: The map's offered.

10 (Mr. DiGiacomo/Clerk conferring)

11 THE COURT: So the map is actually what?

12 Proposed --

13 MR. DiGIACOMO: It was offered and meant to be --

14 THE CLERK: The map is 313.

15 THE COURT: Great.

16 THE CLERK: Oh, it's on the back. I see what I did.

17 THE COURT: Okay, so -- all right, so clerk error
18 there with --

19 THE CLERK: I forgot he stamped.

20 THE COURT: Okay. So that's supposed to be -- the
21 aerial photo is supposed to be what?

22 MR. DiGIACOMO: 314.

23 THE CLERK: 314.

24 THE COURT: 314 is not objected to, it's the aerial
25 photo. We're clear on that.

1 MR. LANDIS: Correct.

2 MS. McNEILL: Yes, the photo is not object --

3 THE COURT: It's admitted.

4 MS. McNEILL: -- object -- of the --

5 (State's Exhibit 314 admitted)

6 MS. McNEILL: -- aerial photo.

7 BY MR. DiGIACOMO:

8 Q Now looking at 314, do you see the location that the
9 iPhone app showed that she showed you?

10 MR. LANDIS: I object. Best evidence.

11 MS. McNEILL: I would join that objection, and
12 whatever the app said would also be hearsay.

13 MR. DiGIACOMO: How could the app be hearsay?

14 MS. McNEILL: It's a --

15 THE COURT: An app --

16 MS. McNEILL: -- assertion of a location.

17 THE COURT: An app -- the app itself isn't hearsay.

18 MS. McNEILL: The app isn't, but what the app says
19 is an assertion of a location. It's the same as a statement
20 or a document.

21 MR. DiGIACOMO: I don't know who's talking on the
22 app so I can't imagine it's hearsay.

23 THE COURT: So what was the question that you just
24 asked again?

25 MR. DiGIACOMO: Did you go to -- well, I guess I

1 could ask it this way.

2 BY MR. DiGIACOMO:

3 Q Did you go to the location that you saw on the
4 iPhone app?

5 A Yes, I did.

6 Q And do you see the location that you went to on 314?

7 MR. LANDIS: Before he answers that's where the
8 objection was.

9 THE COURT: All right, approach.

10 (Off-record bench conference)

11 THE COURT: Overruled.

12 BY MR. DiGIACOMO:

13 Q Detective, did you go somewhere based upon your
14 review of the iPhone app, somewhere on this map?

15 A Yes, I did.

16 Q And can you see that or do you need to step down to
17 this bigger screen in order to identify the location?

18 A No, I can see it. It's right there at Lucky
19 Horseshoe Court.

20 Q Okay. Where generally, is it -- where was the
21 location that you actually got for -- off the iPhone app?

22 A There was some type of little marker, I don't recall
23 if it was a pin or something right on Lucky Horseshoe Court.

24 Q So there was a pin somewhere on Lucky Horseshoe
25 Court for the vehicle?

1 A Yes.

2 Q Did you find anything when you got to that location?

3 A No, I did not.

4 Q As the investigation moved forward, was there
5 efforts made -- well, let me ask you this, did you find in the
6 first day, let's say, Mr. Mendoza's cell phone, the 666 number
7 that you had identified as being his?

8 A No, I did not.

9 Q And were you making efforts to locate that cell
10 phone?

11 A Yes, we all were.

12 Q Okay. It didn't appear to be in the vehicle when
13 you were looking in the vehicle back at the Westland address?

14 A It was not in the vehicle when we looked at it, and
15 it was not offered by Amanda Mendoza.

16 Q And does law enforcement have the ability to do what
17 they call pinging a phone to see if you can find its location?

18

19 A Yes, they do.

20 Q And did detectives request that that phone be
21 pinged?

22 A Yes, they did.

23 Q After that phone was pinged, were you directed to a
24 particular location?

25 A I was given an address and a home and sent to that

1 location, yes.

2 Q When you got to that location, did you recognize the
3 location?

4 A Yes.

5 MR. LANDIS: Can we approach?

6 THE COURT: Yes.

7 (Off-record bench conference)

8 THE COURT: All right. Ladies and gentlemen, we're
9 going to dismiss you for the day and I'll see you tomorrow at
10 9:00 o'clock. We're going to go all day tomorrow.

11 So ladies and gentlemen, during this overnight
12 recess, it is your duty not to converse among yourselves or
13 with anyone else on any subject connected with the trial or to
14 read, watch or listen to any report of or commentary on the
15 trial by any person connected with the trial or by any medium
16 of information, including without limitation, newspaper,
17 television, radio or Internet. You are not to form or express
18 an opinion on any subject connected with this case until it's
19 finally submitted to you.

20 And so I'll see you tomorrow morning at 9:00.

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

22 (Jury recessed at 4:50 p.m.)

23 THE COURT: All right. The record will reflect that
24 the jury has departed the court, and you can be seated
25 Detective. All right. So let's kind of rewind here. So

1 we're in the middle of questioning and there was an objection
2 at the bench. So let's now put it on the record.

3 MS. McNEILL: Thank you, Your Honor. My objection
4 was that this information about the pinging that led to this
5 location of my client's home, that information had never been
6 provided to us prior to the detective testifying to it. And
7 while I did understand that Mr. DiGiacomo provided the cell
8 phone tower location where there was a tower location near my
9 client's home. That's not the same thing.

10 In fact, the report that I do have suggests that
11 Amanda Mendoza found the car that she claimed the phone was in
12 at a area near my client's house, which would make sense by
13 the tower location. But the actual -- the phone being in my
14 client's home was never provided to me that actual pinging
15 data was not provided to me. That could be exculpatory
16 depending on what a cell phone expert could do with that
17 information.

18 And I don't believe that it suggests exculpatory
19 evidence State has to provide. Just fundamental fairness, I'm
20 sitting here. I've advised my client this entire time about
21 what he should do, what kind of offer he should take, what our
22 defense is and now a week and a half in, I learn that they're
23 going to say Jorge Mendoza's phone was found in my client's
24 home.

25 And, you know, the case law is that it's -- if it's

1 material to guilt or punishment. This is certainly material
2 to guilt. This is trial by ambush that I would find this out
3 at this point. Mr. DiGiacomo clearly, knew this information
4 prior to today because he asked a question about it. If the
5 FBI didn't provide the raw data to him, he still could have
6 told me that he was going to elicit this information, and I
7 could have filed potentially motions to exclude based on the
8 fact that I don't have this data.

9 It may have been something that would have been the
10 subject of motions to try to obtain the data. So on behalf of
11 Mr. Laguna at this point, I'd ask for a mistrial.

12 THE COURT: All right. So Mr. DiGiacomo, at the --

13 MR. DiGIACOMO: Yes.

14 THE COURT: -- bench I thought you said that the
15 phone wasn't discovered in the house so I --

16 MR. DiGIACOMO: It's not discovered in the house.
17 What happens is -- and this was unknown to me. I found out
18 when I talked to Detective Williams this morning, which is
19 that the way the report always read to me was that it was in
20 the area of Mr. Laguna's house. And the cell tower location
21 information because of the way the phone records are, as you
22 heard whatever day it was, says 10:30 tower right next to
23 Laguna's house. I drew the conclusion that that's how the
24 phone was near that location.

25 Detective Williams, who came in specially from being

1 away from the office, was in my office this morning and we
2 were talking about the Horseshoe address, and he's the one who
3 said, no, that's where I was directed to go to by the FBI.
4 And that's the first I had found out about it.

5 And I said, back me up. I didn't know about the
6 Find My iPhone app that he physically saw the location of the
7 car on the Find My iPhone app, and the reason it all drew his
8 attention was, he goes there because of the Find My iPhone
9 app. Then later they're looking for the phone, and he gets
10 directed to this address Lucky Horseshoe, and he drives up
11 there and he goes, hey, wait a second, this is the same
12 location I just drove to from the Find My iPhone app.

13 So there isn't anything we failed to disclose in
14 this case. I didn't ask him hey, what was the result of the
15 pins or anything else like that. I asked you -- I asked him,
16 hey, you asked for the phone to get pinged? Were you directed
17 to a particular location? Where did you go? I went to this
18 location. There is no -- there's a suggestion that I'm doing
19 some sort of trial by ambush. The phone has never been
20 recovered. We know the phone isn't in the car. And thus, I'm
21 not sure what everybody is so upset about.

22 It's, to me, more damning that the vehicle that
23 we're going to search is at the murder scene is parked in
24 front of Lucky Horseshoe's location, than it is that the cell
25 phone was also in that same location because it would seem to

1 me they were both there the whole time.

2 MS. McNEILL: Well --

3 MR. LANDIS: Can I --

4 MS. McNEILL: If I --

5 MR. LANDIS: Can I respond?

6 MS. McNEILL: Go ahead.

7 MR. LANDIS: If I -- let me back up. We had no
8 information that he saw that app and saw that Lucky Horseshoe
9 pin he testified to. We didn't know that before he testified.
10 That's why I made my best evidence objection, and we'll go to
11 that later but that's why, because I can't test his
12 information about that, because he's just going to say that's
13 what the app said and there's nothing I can do to challenge
14 that. And they still have the possession of that phone.

15 But the ping certainly is disclosable information.
16 And that's the only reason he was able to do what he did. The
17 ping off the tower, the information he got from the FBI,
18 whatever documents there are, that's absolutely discoverable.
19 It is if they're going to admit it at trial.

20 MS. McNEILL: And the inference of the ping, they're
21 not -- they didn't find the phone, but the inference with the
22 picture of my client's home is that it was found in the --
23 that it was at the home at some point. That's the inference
24 and that's the point of --

25 THE COURT: Are you pointing to something that I'm

1 not seeing a picture of your client's phone?

2 MS. McNEILL: Oh --

3 MR. LANDIS: Home.

4 MS. McNEILL: -- his home, sorry.

5 THE COURT: Home, okay.

6 MS. McNEILL: Sorry, I was talking down.

7 THE COURT: All right. So --

8 MR. DiGIACOMO: And for the record --

9 THE COURT: -- I mean, just --

10 MR. DiGIACOMO: -- just so we have it for the
11 record, Judge, because they're saying they don't know anything
12 about this Find My iPhone, page 17 of Amanda Mendoza's
13 statement, she's showing Detective Williams --

14 MR. LANDIS: No, no.

15 MR. DiGIACOMO: -- the iPhone app and says it's
16 Copper Keg and Lucky Horseshoe, that's right where the car is
17 parked and she's showing him on the app on video where that
18 car is and --

19 MS. McNEILL: We're aware of that.

20 DEFENDANT LAGUNA: No, where is it at?

21 MR. LANDIS: She says a number of locations in her
22 statement. She does. We're not saying we didn't know that
23 she used the iPhone app. We knew that. It's in her
24 statement. But as to what location he went to from looking at
25 the app, that's not in there. The statement doesn't say, if I

1 looked on my app and it went to the court (sic) in front of
2 Joey Laguna's house or whatever the address is, it doesn't.
3 She says Alexander and something at one point.

4 MS. McNEILL: Um-h'm.

5 MR. LANDIS: She says a block from my house at one
6 point.

7 MR. DiGIACOMO: And then she directs him to Copper
8 Keg and Lucky Horseshoe.

9 MS. McNEILL: Which is on this map not the same
10 location as my client's home.

11 MR. DiGIACOMO: It is. Copper Keg is actually not
12 on that -- that --

13 MS. McNEILL: Copper Keg is on this map.

14 MR. DiGIACOMO: Is it? Is Copper Keg on there?

15 MS. McNEILL: It's up here.

16 MR. DiGIACOMO: No way. And that's where ultimately
17 he goes and he recognizes the house. I mean, all of that was
18 within the discovery. They're claiming that the ping -- and
19 just so that the Court's aware, this case comes in, and I
20 assume that location information was literally from that cell
21 tower because the records cease. So I assume the phone is
22 off. And actually, I didn't ever read real closely that she
23 used the iPhone app until Michelle said it, and thus, it said
24 to me oh, the phone's still on. Well, if the phone's still
25 on, then homicide probably went looking for the phone since

1 they have a guy who's shot and claiming he's missing his
2 phone. They probably went looking for the phone.

3 I asked him about it, and he said, yeah, we
4 contacted the FBI and asked them where is the phone and that's
5 where I went.

6 THE COURT: Okay. So if I understand pinging a
7 phone correctly, I mean, it's basically the same thing,
8 they're trying to figure out what tower. It's pinging off a
9 tower. So it's no different than -- and it -- so it doesn't
10 give you a precise location.

11 MR. DiGIACOMO: No.

12 THE COURT: It gives you --

13 MR. DiGIACOMO: If they ping a phone, it's going to
14 give you a GPS dot within a certain distance of a location.
15 He's not going to say it was in the house. He's going to say
16 I drove to this area looking for this phone and I realized oh,
17 my God, I'm in the same spot that the Find My iPhone app was.
18 He's not going to say it was in Mr. Laguna's house or that he
19 knows which house it was in or anything like that.

20 He's going to say, I received information from the
21 FBI and based upon that, I went looking for the phone and I
22 realized when I got there that I'm standing here. And the
23 Court has to know at this point they have no idea who
24 Mr. Laguna is. They don't know what Lucky Horseshoe is. They
25 have -- that's the reason why, you know, there's no search

1 warrant executed to look for this phone or anything else like
2 that.

3 They're driving in the same area where the car is
4 and the answer to that question is oh, the phone must have
5 been in the car at some point, but now it's out of the car
6 because the car is back at Westland. So to suggest that
7 somehow this is some trial by ambush or something else like
8 that, this is just the facts of what it is Detective Williams
9 did in the course of the investigation.

10 MR. LANDIS: Can I just add the testimony already
11 admitted was the iPhone app showed me a needle in the court,
12 bamboo court, which now we're hearing is not only undisclosed
13 but untrue.

14 MS. McNEILL: And then I would also point out --

15 MR. DiGIACOMO: What do you mean it's untrue.

16 THE COURT: I'm -- bamboo court?

17 MR. LANDIS: I thought you're saying the ping's way
18 up on Copper Keg.

19 MS. McNEILL: Well, in --

20 MR. DiGIACOMO: No, no. When you read this
21 transcript, I just read it real quickly --

22 MR. LANDIS: I mean, not the ping, I'm sorry.

23 MR. DiGIACOMO: -- I --

24 THE COURT RECORDER: (Inaudible), please.

25 THE COURT: Yeah. We're on the record.

1 MR. LANDIS: I didn't mean the ping. I mean the
2 iPhone location.

3 MR. DiGIACOMO: She's giving him directions that
4 ends at Lucky Horseshoe.

5 MS. LEXIS: Yeah.

6 MR. DiGIACOMO: Now, if Copper Keg doesn't connect
7 to Lucky Horseshoe, then I'm misreading the map wrong, but
8 this is what she says in the transcript is go this way, go
9 this way, it's right here, Lucky Horseshoe. That's what she
10 says in her statement. And it's merely he goes back to that
11 location, it's Lucky Horseshoe.

12 MS. McNEILL: And the report, I would note, says
13 parked along the north side of Copper Keg, west of Lucky
14 Horseshoe. If you look at the map where Copper Keg is and
15 where the pin is, that's my client's home, that's not the same
16 location.

17 (Testimony outside presence of the jury)

18 THE WITNESS: I know I'm not supposed to speak here,
19 but some things are being said that aren't correct about what
20 I said.

21 THE COURT: All right. Well, we're outside the
22 presence of the jury so --

23 MS. McNEILL: I think we might as well let him at
24 this point.

25 THE COURT: -- go ahead. Tell --

1 THE WITNESS: When she showed me the app originally,
2 when she said I'm looking for my husband, she showed me a flag
3 or a pin, that was right on Lucky Horseshoe Court. It was
4 right there. And then we went in the statement sometime later
5 and you can read it on page 18, I'm saying and she was talking
6 about the Copper Keg and the little park on the strip is where
7 she said she found the car. And that's why it's in the report
8 because that's what they later says.

9 But in the middle of page 18 you can see I'm saying
10 well, you originally said right here on Horseshoe. That's
11 where the little whatever marker was. So she said later she
12 moved that, and so now it's over here. This is where I found
13 the car, but that flag was right on Horseshoe -- Lucky
14 Horseshoe. That's where the flag was originally when I looked
15 at the phone.

16 MR. DiGIACOMO: And then have you to remember what
17 Find My iPhone is. It's a ping. It's a GPS coordinate for
18 the phone. It's no different than what the FBI did for this
19 particular phone, she as a private citizen did, all of which
20 is disclosed that it's at Lucky Horseshoe Court --

21 MS. McNEILL: Can I ask --

22 MR. DiGIACOMO: -- at the time that --

23 MS. McNEILL: Sorry.

24 MR. DiGIACOMO: -- that she finds that vehicle.

25 MS. McNEILL: I'm sorry, Mr. DiGiacomo. I didn't

1 mean to interrupt. I thought you --

2 MR. DiGIACOMO: That's fine.

3 MS. McNEILL: You paused so I thought you were done.
4 Can I just -- then, I guess, this sort of brings me back to
5 Mr. Landis's best evidence objection is, the best evidence of
6 that would have been Amanda Mendoza's phone, because now we're
7 talking about well, first she said this but then she said that
8 but then she actually showed me what's on the phone. And
9 correct me if I'm wrong, you never asked to impound her phone,
10 correct? You didn't get a warrant?

11 MR. DiGIACOMO: No, they did.

12 MS. McNEILL: You have her phone.

13 THE COURT: I think it's impounded, yeah, wasn't it?

14 THE WITNESS: The phone was taken. -- it's on the
15 return to the search warrant. It was taken in search warrant.
16 She voluntarily gave the phone, but it was also taken on the
17 search warrant.

18 MS. McNEILL: Okay. Then that information from the
19 phone could have been provided to us.

20 THE COURT: Well, I don't know if it works that way
21 or not, but.

22 MR. DiGIACOMO: Right. I mean, they had access to
23 the phone if they had some sort of desire to download the
24 phone. We didn't download Amanda Mendoza's phone as part of
25 the investigation and it was merely to explain where it is he

1 went.

2 MR. LANDIS: But best evidence doesn't mean we have
3 to get the best evidence.

4 MS. McNEILL: Right.

5 MR. LANDIS: It means if it's best evidence, they
6 have to produce the best evidence --

7 MS. McNEILL: It has to be presented.

8 MR. DiGIACOMO: But I'm not offering a copy, I'm not
9 offering him -- I'm asking him what did you do after looking
10 at the iPhone app? You're saying the inference is the best
11 evidence.

12 MR. LANDIS: No, no, no. The information that he's
13 saying he read off the app is best evidence.

14 MS. McNEILL: Um-h'm.

15 MR. DiGIACOMO: He didn't testify to what he read
16 off the app. I said, did you look at the app, and after that,
17 did you go to a location? Yeah. Where did you go? There.

18 MR. LANDIS: Well, then that's a foundation then, if
19 we're going to say it's not from the app, he's got a
20 foundation problem. But I -- just like looking at a picture
21 can be a best evidence problem. I don't see why this app's
22 any different.

23 THE COURT: All right. Well, we've got several
24 things going on here. So I don't think that there is --
25 there's anything that was hidden from you intentionally or

1 otherwise by the State. There's not -- not everything has to
2 be documented in a report to come into evidence through
3 testimony about what happened. What does -- you know, under
4 Chapter 174, evidence as to reports has to be turned over,
5 certainly, and that was done. All the reports of have been
6 turned over.

7 So if there is something that's not in a report,
8 then that's the subject of cross-examination as to why it's
9 not in the report, potentially, but that doesn't mean that you
10 -- that this is something that amounts to Brady material.
11 This isn't exculpatory evidence. And, you know, this idea of
12 well, it's trial by ambush, this is not -- it's not a civil
13 case. It's not the same level of discovery where you can take
14 deposition testimony.

15 Not everything a witness knows is going to
16 necessarily be on a piece of paper. And so there are, yeah,
17 certain thing that is have to be disclosed if the prosecutor
18 learns of them, but certainly, there wasn't anything
19 exculpatory about this evidence. I don't think that him
20 looking at something and then going to a location implicates
21 the best evidence rule because he's not testifying from that.

22 He's saying -- it would be no different than, I got
23 information from somebody and I went to this location.

24 MR. LANDIS: I would respectfully disagree because
25 the information from somebody's not a static preserved thing.

1 THE COURT: Well, I don't know if it's statically
2 preserved --

3 MR. LANDIS: I'm with you there.

4 THE COURT: -- because I don't know how such an app
5 works. I mean, I don't know if you power off the phone -- I
6 mean, while she's talking to him, she's showing him this app.
7 Once you power off the phone, is it saved?

8 MR. LANDIS: I don't know either.

9 THE COURT: I wish I knew the answer to that
10 question.

11 MR. LANDIS: I think we can get to it, but I don't
12 think we should be penalized for not knowing it at this point
13 in time. Honestly, I think it's an easy answer to get. But
14 we do know this as a starting point, they could have snapped a
15 picture of it, snapped a screen shot of it at that point in
16 time that they were looking at it. Why not, sir?

17 THE WITNESS: Well, I don't know technology --

18 THE COURT: Well, okay --

19 THE WITNESS: -- but when she showed it to me, I
20 didn't know that it wasn't going to be there in five seconds
21 or later. So when we were doing the interview, it's not
22 there. In fact, it's -- she said it was moving around, but I
23 couldn't see any flag or any evidence that. She just saying
24 well, it was here, it was there. It was -- I had no idea what
25 I was even looking at as far as knowing I should take a

1 picture because I would never see it again. I had no idea
2 that was going to take place.

3 MR. LANDIS: Can I just ask, then, didn't you -- did
4 you see a pin initially or never?

5 THE WITNESS: Well, I've said several times, I saw
6 some type of marker. I don't know if it was a flag or a
7 pin --

8 MR. LANDIS: And that's what disappeared?

9 THE WITNESS: -- something and that's what she
10 shows. She says, look, this is where he was at or this is
11 where the phone showed it was at right here and that was
12 somewhere on the street of Lucky Horseshoe, not on a house,
13 just right there in the street somewhere.

14 MR. LANDIS: And that pin disappeared, is that what
15 you're saying or no?

16 THE WITNESS: Well, when she showed us again after
17 we're talking to her, she -- because I didn't who -- what her
18 involvement may or may not have been or even what the
19 situation was entirely. And when she -- we looked it up
20 again, and I -- the Detective Merrick was more technology
21 savvy, knows about those things. And he started looking at
22 it, and he couldn't figure it out and asked her to show him.
23 By the time he looked at it again, there was no flag and she
24 started pointing around where it had been all those little
25 streets that you've all mentioned.

1 THE COURT: Mr. Wolfbrandt, did you have any --

2 MR. WOLFBRANDT: I don't have a dog in this fight.

3 THE COURT: -- dog in the fight, no, okay. All
4 right. So again, I don't think best evidence is implicated,
5 and I don't think that there has been some kind of violation
6 that would -- I don't think there's been a violation, and
7 certainly nothing that would require a mistrial. So motion
8 for mistrial is denied.

9 Did you want to say anything more about --
10 Mr. Landis?

11 MR. LANDIS: My specific request -- I'm not arguing
12 anymore. I'm just objecting to the admission of it.

13 THE COURT: But you said you had a specific request?
14 I thought you said --

15 MR. LANDIS: I thought I said -- I think I said I'll
16 shut up for the rest of the day. That's what I said.

17 THE COURT: No, I thought you just now said, I have
18 a specific request.

19 MR. LANDIS: Oh, I said I don't think I made a
20 specific request, but to the extent I didn't, that's what I
21 was --

22 THE COURT: Okay. All right. So the objection to
23 admitting it's overruled.

24 MR. DIGIACOMO: Thank you.

25 THE COURT: So and we'll start tomorrow. Sorry, we

1 -- but, you know, they still had to cross him, so it wasn't
2 like we were going to get done with you today anyway.

3 THE WITNESS: I understand.

4 MR. DiGIACOMO: I already ruined his hunting trip so
5 he's here.

6 THE COURT: Oh, all right. Well, thank you. So
7 9:00 o'clock everybody's good with that? And we need to get
8 Ms. McNeill off to pick up her children.

9 MS. McNEILL: Oh, I'm okay today, Judge.

10 THE COURT: You're good? Oh, okay.

11 MR. LANDIS: Part-time children.

12 MS. McNEILL: Yeah, part-time children.

13 THE COURT: We're off the record.

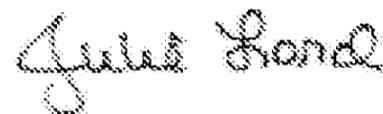
14 (Court recessed at 5:10 p.m. until Friday,
15 September 23, 2016, at 9:15 a.m.)

16 * * * * *

17 ATTEST: I hereby certify that I have truly and correctly
18 transcribed the audio/visual proceedings in the above-entitled
19 case to the best of my ability.

20

21



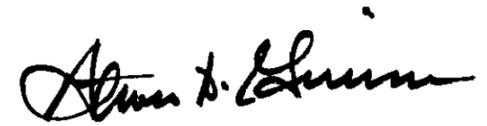
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JULIE LORD, INDEPENDENT TRANSCRIBER

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25



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA,
DAVID MURPHY, a/k/a
DAVID MARK MURPHY,
JOSEPH LAGUNA, a/k/a
JOEY LAGUNA,

Defendants.

.

CASE NO. C-15-303991-1
CASE NO. C-15-303991-4
CASE NO. C-15-303991-5

DEPT. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

FRIDAY, SEPTEMBER 23, 2016

APPEARANCES:

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AGNES M. LEXIS, ESQ.

FOR DEFENDANT MENDOZA:

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FOR DEFENDANT MURPHY:

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FOR DEFENDANT LAGUNA

MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

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District Court

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1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 23, 2016, 9:15 A.M.

2 (Outside the presence of the jury)

3 THE COURT: Okay. We are on the record outside the
4 presence of the jury. The record will reflect the presence of
5 all three defendants with their respective counsel, the Chief
6 Deputies District Attorney prosecuting the case, all officers
7 of the court. The Detective is back on the witness stand.
8 Are there any matters outside the presence before we bring the
9 jury in?

10 MR. DiGIACOMO: We could just maybe handle those
11 real quickly. We've corrected 276 upon agreement of the
12 parties. It's redacted, and you can tell it's redacted. Now,
13 I've never offered 226 -- 276 in front of the jury, and so my
14 suggestion would be at whatever point we decide to do it, that
15 the Court indicates that 276 is the agreement, and that maybe
16 we can come up with some language that they are to draw no
17 inference from anything that they identify in there being
18 redacted, and they are not to consider those portions that are
19 redacted, or try and guess what it is, or whatever language
20 the defense wants, and we'll do it that way.

21 THE COURT: All right.

22 MR. LANDIS: Sounds good.

23 THE COURT: All right. If you'd come up with
24 language, I'll -- that's perfect.

25 THE CLERK: So is it admitted or not yet?

1 THE COURT: It's not -- did you want to admit it by
2 stipulation at this time?

3 MR. DiGIACOMO: Yeah, I have no problem with that.
4 If we admit it by stipulation and then just during the
5 instructions, you can inform the jury it's been admitted.

6 MR. LANDIS: I'm happy to stipulate.

7 MS. McNEILL: I'll stipulate as well.

8 THE COURT: Mr. Wolfbrandt.

9 MR. WOLFBRANDT: I'm sorry, I was --

10 THE COURT: Okay. It's --

11 MR. WOLFBRANDT: -- it's redacted?

12 THE COURT: Yeah, Exhibit 276 to admit it by
13 stipulation and --

14 MR. WOLFBRANDT: That's fine.

15 THE COURT: -- we'll instruct the jury about, you
16 know, the -- about the redactions later when you've agreed
17 upon the language.

18 MR. DiGIACOMO: Right.

19 THE COURT: Okay.

20 MR. DiGIACOMO: And maybe we can do that after
21 Mr. Figueroa, because we'll have to decide what his needs to
22 be redacted as well, and if so, then we'll do the same
23 redaction and then you can instruct as to both.

24 THE COURT: That makes sense. Okay. So 276 is
25 admitted by stipulation.

1 (State's Exhibit 276 admitted)

2 THE COURT: And now everything ready for the jury?

3 MS. McNEILL: Yes, Your Honor.

4 MR. DiGIACOMO: I think so, yes.

5 THE COURT: Let's bring them in.

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

7 (Jury reconvened at 9:17 a.m.)

8 THE MARSHAL: Your Honor, all members of the jury
9 and the three alternates are present.

10 THE COURT: Thank you. And the record will so
11 reflect the presence of all 12 members of the jury as well as
12 the three alternates. And how are you this morning ladies and
13 gentlemen?

14 THE JURY: Good morning.

15 THE COURT: All right. And the detective, who is
16 back on the stand and sir, of course, you're still under oath,
17 and you may proceed.

18 MR. DiGIACOMO: Thank you. And for the record, 214
19 (sic) is still up and being published before the jury.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION (RESUMED)

22 BY MR. DiGIACOMO:

23 Q Detective, I think we left off yesterday, you had
24 indicated that on the early morning hours when you see the
25 iPhone ping on the 22nd, you traveled to the location that is

1 displayed here in 314, correct?

2 A Yes.

3 Q Okay. At some point later, you indicated that the
4 FBI had been contacted about the location of that phone after
5 the crime, correct?

6 A Yes.

7 Q And at some point, the FBI informed you of a
8 location and you traveled to that location?

9 A That is correct, yes.

10 Q Where did you travel to?

11 A Directly to 3668 Lucky Horseshoe Court.

12 Q When you got there, at the time, did you have any
13 idea whether or not 3668 Lucky Horseshoe Court had anything to
14 do with anybody involved this crime or anything else?

15 A No.

16 Q Okay. What did you go there to do?

17 A I was sent there by either an FBI agent or one of
18 the detectives to -- at that address just to take a look at
19 the house.

20 Q When you got there, did you find the phone laying
21 outside somewhere where -- in the street or on -- in some
22 public area?

23 A No, I did not.

24 Q And so as of this date, to your knowledge, has that
25 phone ever been recovered?

1 A Not to my knowledge, no.

2 Q In addition to doing those things related to the car
3 and the phone, were you involved in checking into local
4 hospitals to determine whether or not there was somebody who
5 showed up with gunshot wounds?

6 A Yes, because we knew there was a second wounded
7 suspect, we -- I went to many different hospitals looking for
8 different records of anybody that had been shot in that time
9 frame, and oddly, enough there were quite a few.

10 Q And did you document those and collect stuff to try
11 and see if maybe they were related to this event?

12 A Yes, where we could, we collected the bullets and
13 identified the individuals who had been shot.

14 Q In addition to that, did you have information as it
15 related to Summer Rice?

16 A Summer --

17 Q Or Summer Larsen?

18 A Yes.

19 Q And in particular, were you looking for an
20 African-American male associated with Summer Rice?

21 A We knew she had a boyfriend with that description so
22 we were looking for a boyfriend who was African-American.

23 Q And in order to see, did you -- at any point during
24 the early part of the investigation, did you identify an
25 African-American male that you associated with Summer Rice?

1 A Yes, we did.

2 Q And where was he located?

3 A He was located in a federal halfway house in
4 custody.

5 Q And did you respond to that location?

6 A We did, myself and Detective Jensen went to that
7 location and spoke with him and took a DNA sample.

8 Q And that was person was identified as who?

9 A The name escapes me right now. I could look at my
10 report.

11 Q Would looking at the report refresh your
12 recollection?

13 A Yes, it would.

14 Q Go ahead. If could you just identify the page that
15 you're looking at.

16 A It's on page 21, part way down right after the
17 search warrant portion. The name was Beven Duke (phonetic).

18 MR. LANDIS: Could I have the witness identify the
19 total pages of that report? It would help me identify which
20 report he's referring to. I'm guessing 28, but just to be
21 safe.

22 THE COURT: Is there a date on the report?

23 THE WITNESS: There's not a date. This is just a
24 copy that I pulled off a computer. There's 28 pages.

25 MR. LANDIS: Thank you, sir.

1 THE WITNESS: And this is page 21.

2 BY MR. DiGIACOMO:

3 Q As what we referred to as the initial or main
4 officers report associated with this case, would that be what
5 you'd call it?

6 A Yes.

7 Q Okay. And you've referred to that as your report.
8 Do you draft all the information that's contained within that
9 report?

10 A No, again, I -- I put in my portion. Whatever I do,
11 I type and put in this, and then my partner puts in his
12 portion, or other detectives will put in their portions and
13 then it's eventually all compiled into one officer's report.

14 Q So there are certain sections of that, that is
15 drafted by you, but there are certain sections that you have
16 nothing to do with; is that fair?

17 A That is correct.

18 Q Shortly after finding Mr. Beven, does something
19 happen that you're no longer associated with the further
20 investigation that occurs in this case?

21 A Yes. I leave on vacation.

22 Q And so are you around when Robert Figueroa's
23 located?

24 A No, I am not.

25 Q And the things that occur after Robert Figueroa, do

1 you have anything to do with that part of the investigation?

2 A No, I do not.

3 Q There was one question I wanted to ask you based on
4 a question of Mr. Landis yesterday about a blue card. Now,
5 today, does Metro register firearms at all?

6 A No, we do not. We have stopped that practice.

7 Q Prior to the last legislative session, so back in
8 2014, was there a requirement involving firearms and
9 registering them?

10 A Yes. In Clark County we're required to register
11 handguns with the police department.

12 Q And when you registered your handgun, what did you
13 get as proof of registration? What did the gun owner get?

14 A You received a small blue card that had the
15 information of your handgun. In fact, police officers were
16 required to carry them as well for the handguns they carried
17 on duty.

18 Q Now, what if I were an individual and I wanted to
19 take a rifle down to the police station and register it with a
20 blue card, could you do that?

21 A Absolutely not. That would not be allowed. Nobody
22 can get a blue card for a rifle.

23 Q And so if somebody has a registration for a Hi-Point
24 9 millimeter firearm, that would be for a handgun, a Hi-Point
25 9 millimeter handgun?

1 A That is correct.

2 Q Thank you, sir.

3 MR. DiGIACOMO: Judge, I'd pass the witness.

4 THE COURT: Cross?

5 MR. LANDIS: May I approach the clerk?

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MR. LANDIS:

9 Q Good morning, sir.

10 A Good morning.

11 Q If I could just initially talk about the structure
12 of the team that was deployed to investigate it case. You
13 mentioned yesterday that you were partnered for this case, at
14 least, with Detective Barry Jensen, yes?

15 A That is correct.

16 Q And it sounded like those detective partnerships
17 differ from case to case to case to case, true?

18 A Not usually, but if somebody's on vacation or if
19 there's somebody out sick then -- or changes will be made, but
20 I'm assigned with Detective Jensen as a permanent partnership.

21 Q So most cases during that time period, at least, we
22 can expect to see you guys there unless there's something
23 unusual?

24 A That is correct.

25 Q On this case, I'll just put it that way, could we

1 consider one of you guys the lead detective or is it a true
2 equal partnership?

3 A Typically, it's an equal partnership, but on this
4 case specifically, since I left on vacation for several weeks,
5 Detective Jensen would be considered the lead detective on
6 this case.

7 Q Understood. Can we say, then, that up until that
8 point you went on vacation, you guys were working as coequals?

9 A Yes, you can.

10 Q And then once the vacation, he takes over?

11 A Yes. And he used other detectives as partners to
12 conduct the investigation.

13 Q If you know, did one detective fill in your role at
14 that point or did multiple deaths kind of come --

15 A I don't believe there was one specific. I think
16 multiple detectives would have filled in for me.

17 Q And even before your vacation, other homicide
18 detectives were doing things on this case?

19 A That is correct, yes.

20 Q Do you know how long they were involved, was it
21 beyond the 21st?

22 A Well, they would have been involved anything if we
23 did, if we needed a third person or needed help doing
24 something else, everybody kind of pitches in and does whatever
25 they can. So yes, to answer your question, they would have

1 been involved.

2 Q Can you give me a ballpark as to when that vacation
3 was? I know it's been a couple years.

4 A This exact time. Well, in October so --

5 Q Mid-October?

6 A I could look back. It was -- it was a hunting trip
7 so in mid-October.

8 Q No, that's close enough.

9 A The last two weeks in October.

10 Q Plenty close enough for my purposes. Your time in
11 the subdivision where 1661 Broadmere was located was somewhat
12 short initially, wasn't it?

13 A Yes.

14 Q Because then you go to UMC as we heard about
15 yesterday, then go to the Mendoza household?

16 A That is correct.

17 Q You're receiving information, though? It's not like
18 you're in the dark.

19 A Yes, I'm receiving information.

20 Q The initial information received from the resident
21 of the home, Joey Larsen, was two suspects entered the home?

22 A I don't recall what he said because I didn't do his
23 interview.

24 Q Let me say this, when you left the subdivision of
25 1661 Broadmere, did you have any evidence to suggest more than

1 two suspects?

2 A Well, we did, simply because we had one suspect that
3 we knew was in -- in the hospital. We had another that we
4 knew was on a separate blood trail, and we had determined at
5 that time that there would have been a driver to pick him up,
6 so our feeling was there was a minimum of three.

7 Q So let me just get into more detail about that. You
8 start following the second longer blood trail, correct?

9 A Correct.

10 Q Or somebody in the department does?

11 A Yes.

12 Q It goes about two or three-tenth of a mile?

13 A I don't know the exact distance, but it's quite a
14 long blood trail.

15 Q Ends near the -- ends kind of in the street towards
16 the end of the subdivision; is that fair?

17 A It goes that direction, yes. It's in the street,
18 it's on the sidewalk.

19 Q Then you guys determine that the stopping point of
20 the blood trail, which you couldn't find again, based on the
21 location of it, the person was likely to have jumped in a car?

22 A We thought that may be a possibility. We did not
23 have a final determination on that at the time.

24 Q Understood. But that was the evidence that caused
25 you to at least suspect a third involved party?

1 A Yes.

2 Q Was there anything else on the scene before you left
3 that would indicate a third suspect?

4 A Not that I was aware of at that time.

5 Q Did anything from your interviews and correct me if
6 I'm wrong, there was two interviews of Mendoza?

7 A No, I believe, there was one.

8 (Phone ringing).

9 BY MR. LANDIS:

10 Q Anything from his interview that give you evidence
11 of a third suspect?

12 A With Mr. Mendoza? No, none.

13 Q When you when the to the Mendoza household,
14 yesterday you testified that you were surprised to see his car
15 there.

16 A Yes.

17 Q From your interview with him, he was informing you
18 that he was car jacked?

19 A That's what he claimed, yes.

20 MR. DiGIACOMO: Objection. Assumes a fact not in
21 evidence.

22 THE COURT: Sustained.

23 BY MR. LANDIS:

24 Q Did you believe the car wouldn't be there because of
25 what Mendoza told you?

1 A Based on what he had said and based on what we
2 thought had probably happened at the scene, I was surprised to
3 see the car there.

4 Q With when you get to the Mendoza household, you
5 testified yesterday that no crime scene analysts were readily
6 available, correct?

7 A None available, period.

8 Q And is that because a lot of them are dedicated to
9 the crime scene around 1661 Broadmere?

10 A That was one of the reasons, yes.

11 Q And it was late?

12 A Yes.

13 Q With that in mind, let me ask you, though, yesterday
14 you testified you looked through that Nissan for blood
15 evidence, correct?

16 A Yes.

17 Q And you said trace evidence as well; do you recall
18 that?

19 A Yes.

20 Q Could you describe to the jury what you meant by
21 trace evidence?

22 A Mostly, I meant blood. There may have been other
23 evidence in the car like a bloody rag or maybe even firearms
24 evidence. So when I said blood or trace, it's those type of
25 things.

1 Q You're aware that potentially vehicles can also
2 contain DNA evidence that's not observable by the eye?

3 A Yes, I can -- or yes, I do.

4 Q Impossible for you to know that from looking at the
5 car no matter your experience?

6 A Correct.

7 Q Get the best crime scene analyst in the world,
8 probably not going to be able to tell just from eyesight?

9 A That is correct.

10 Q In this case, just beyond your looking at the car,
11 no potential DNA evidence was collected?

12 A That is correct.

13 Q Such as swab of the steering wheel?

14 A Correct.

15 Q That is something that the Department does
16 sometimes, yes?

17 A When the need arises or when there's evidence that's
18 expected to be on that steering wheel, yes, we would.

19 Q You could also potentially get DNA type evidence
20 from a hair left on a headrest?

21 A No, that's more of a TV type of thing. Hair DNA
22 evidence is very difficult to -- to come up with unless
23 there's a root or it's a very -- not a very common thing.
24 It's not as easy as you would suspect.

25 Q Let me say this, and we heard a little bit from the

1 DNA expert yesterday, just a hair by itself wouldn't be good
2 enough, but a hair that does have the root, you could test?

3 A Yes.

4 Q And you'd have to at least agree with me, it's
5 possible that could be left in a car?

6 A Absolutely.

7 Q Same with just skin cells and other places on the
8 car?

9 A You mean touch DNA?

10 Q Yes.

11 A Yes, that would be possible.

12 Q And I appreciate that a CSA could not respond to the
13 scene that night. Eventually, one could have, though, if you
14 guys wanted to stay there?

15 A Yes, that is correct.

16 Q And you seized Amanda Mendoza's cell phone, yes?

17 A That is correct.

18 Q You were in a position to seize that car if you saw
19 it fit?

20 A Yes.

21 Q And that didn't happen?

22 A No, that did not happen.

23 Q No picture of the Nissan was captured with your
24 iPhone 4 either?

25 A That is correct.

1 MR. LANDIS: Can I approach the clerk?

2 THE COURT: Yes.

3 MR. LANDIS: Can I approach the witness?

4 THE COURT: Yes.

5 BY MR. LANDIS:

6 Q Showing you Defense Proposed Exhibit A, you're
7 familiar with that report?

8 A Yes.

9 Q That's one of the reports that you referred to on
10 direct as you added some of the information, Detective Jensen
11 entered some of the information.

12 A Yes, the one I'm looking at in my notebook is not
13 this exact -- I don't know if it's the exact version. This is
14 the signed copy. This is the one I printed off the computer
15 that's not signed, so this is -- I'm assuming they're the same
16 report.

17 Q And if you want to check, my questions are pretty
18 simple, but if you feel more comfortable checking, just let
19 mow know, and I'm happy to let you compare them.

20 A Okay.

21 Q Fair to say that, that that is the report that you
22 added some of the information?

23 A The one you just handed me?

24 Q Yes, sir.

25 A Absolutely, yes.

1 Q I just want to talk to you a little bit more
2 specific about how that works. I assume the officer's report
3 as it's getting created exists on the computer server, right?

4 A Yes.

5 Q And you are allowed to access it and add information
6 as could Detective Jensen?

7 A Yes.

8 Q Who decides when it becomes final? And let me
9 define final. When it's in a position to distribute to
10 somebody outside of the department?

11 A Usually that would be a decision that Detective
12 Jensen and I would make jointly, but in this case, because I
13 was gone on vacation, Detective Jensen made that determination
14 and actually had me sign it when he was done. Said the
15 report's done, sign it, and I signed it and handed it back.
16 So that's -- in this -- excuse me -- specific case, that's how
17 it occurred.

18 Q In a perfect world you guys would have had a chance
19 to touch base about it but --

20 A Yes.

21 Q You kind of led me to my second set of questions.
22 The front page of that near the bottom, most of the report is
23 typed, fair to say?

24 A Yes.

25 Q Towards the bottom of the first page, though,

1 there's some handwriting, yes?

2 A You mean with the signatures?

3 Q Yes.

4 A Well, I would just call those signatures.

5 Q Handwritten signatures?

6 A There's only one kind.

7 Q There are digital ones, but we can talk --

8 A Yes. There's --

9 Q -- about that some other time.

10 A -- three signatures on the bottom of this report
11 with a handwritten date by our supervisor.

12 Q Thank you. And the signatures are yourself?

13 A Myself, Detective Jensen and our sergeant at the
14 time, Annette Mullen (phonetic).

15 Q Are the signatures themselves independently dated?

16 A No.

17 Q But there is a handwritten date, as you just
18 mentioned, yes?

19 A Yes. I can explain the exact procedure.

20 Q We're going to get to it, I promise you.

21 A Okay.

22 Q Do you know that handwriting from looking at it?

23 A I know my signature and I assume that the other two
24 signatures are accurate.

25 Q I'm sorry, the handwritten date, are you familiar

1 with whose handwriting that is?

2 A I'm not familiar with that handwriting, but I know
3 whose it is.

4 Q Okay, go ahead and explain how you know that.

5 A When Detective Jensen would have finished the
6 report, he would have handed it to our sergeant, Sergeant
7 Mullen, who would have gone over, made any typographical --
8 or typo errors noted, and when she was satisfied with it, she
9 would have signed it and dated it.

10 So although I don't -- I don't recognize her
11 handwriting, I know that that would have been her signature
12 because she would -- or date because she would have been the
13 only one who would have dated it.

14 Q What I'm trying to determine, the date that that
15 report leaves Metro, and if you're uncomfortable answering
16 these questions based on the fact that you might not have been
17 there, I'm happy to save them for Detective Jensen next week.

18 The date on the front as well?

19 A Date on the front, what, the handwritten date?

20 Q Yes, sir.

21 A That's 9/22 of 2014.

22 Q Do you suspect that that report was finalized on
23 that date?

24 A No, it definitely was not.

25 Q So why would date make it to the front, even though

1 the report wasn't final?

2 A You would have to ask Sergeant Mullen why she would
3 have dated it on that date.

4 Q Can you tell me, as we sit here today, what date
5 that report was final?

6 A I cannot.

7 Q There's no -- to the best of your knowledge, there's
8 no other date in the report itself that indicates that?

9 A No.

10 Q Is that usual?

11 A What portion is usual?

12 Q Is it usual to have an officer's report from the Las
13 Vegas Metropolitan Police Department where you're unable to
14 determine the date that it was produced?

15 A No, no, that's not. But homicide -- homicide
16 officer reports were a little bit different than the typical
17 officer's report simply because they take so long to compile
18 all the information. So they're usually months after the
19 event. Where a normal officer's report would be very close to
20 the time of the event.

21 Q And to the best of your memory, chronologically,
22 what's the most recent date of events listed in that report,
23 if that question makes sense?

24 A I would have to look at the last statement. Do
25 you --

1 Q Please do.

2 A The last official typed date that I could see put is
3 October 24th, the interview with Robert Figueroa -- Figueroa.

4 Q Thank you, sir. Obviously, we can say the report
5 was finalized after that date?

6 A Yes.

7 Q Logically?

8 A Yes.

9 Q Beyond that, though, we can't get much more
10 specific, fair to say?

11 A Detective Jensen might have a better idea of when he
12 finished his interviews and some of the other things that he
13 did.

14 Q My last question is simply, when you were at
15 Mendoza's house, which was maybe still the 21st into the early
16 hours of the 22nd, that's the time that you first hear the
17 name David Murphy?

18 A That is correct.

19 Q Thank you, sir.

20 MR. LANDIS: I have no further questions. Can I
21 approach the witness for the exhibit?

22 THE COURT: Yes. Redirect? Oh, I'm sorry.

23 MR. WOLFBRANDT: Two more.

24 CROSS-EXAMINATION

25 BY MS. McNEILL:

1 Q Detective, I'm going to ask you a few questions
2 about the report, just sort of along the lines of where
3 Mr. Landis was. So you explained that you input the portions
4 of the report that were the duties that you were assigned,
5 correct?

6 A That is correct.

7 Q Okay. And you said that you went on vacation
8 shortly after this, so you were kind of, you know, closing it
9 out and done with your duties on this case?

10 A I wouldn't say I was out of my duties. Just a lot
11 of things happened when I went present. When I returned, I
12 would have normally partnered up with Detective Jensen and
13 finished the investigation, but most of it was done by the
14 time I got back.

15 Q Okay. And I guess, that was just sort of a bad
16 question on my part. What I meant by that was you obviously
17 weren't working on it while you were on vacation?

18 A No.

19 Q I assume you didn't want to do that.

20 A No.

21 Q So when you left, you sort of wrapped up what you
22 had been working on, input everything into that report, signed
23 it and went on your way?

24 A I may have finished it when I returned, I don't know
25 exactly when it was all typed and put in, but that's --

1 Q Okay.

2 A -- basically what would have happened, yes.

3 Q Okay. And the portions that you put in were based
4 on the things that you had done and the evidence you had
5 collected?

6 A That is correct.

7 Q Okay. You testified about this ping information
8 that you got from the FBI. Do you remember when you received
9 that information?

10 A I do not.

11 Q Okay. And you would agree with me that there's
12 nothing in the portion of the report that you authored about
13 that ping?

14 A No. At the time -- I can tell you it was before I
15 left on vacation.

16 Q Okay.

17 A But I had no idea the relevance of it, if it had any
18 importance whatsoever so at the time --

19 Q Okay.

20 A -- it wasn't something I would have noted down.

21 Q Okay. Well, I guess, I kind of want to walk you
22 through that. So as Mr. Landis indicated, you knew that there
23 was potentially at least one other person involved in this
24 homicide just based on the fact that Mr. Mendoza's car was not
25 at the scene of the crime?

1 A We thought there were more, yes.

2 Q Okay. And, in fact, there was a blood trail
3 potentially belonging to someone else at the scene of the
4 crime scene?

5 A Correct.

6 Q Okay. And that would suggest that you that there
7 was at least one other person involved?

8 A Strongly suggest that there was another person, yes.

9 Q Okay. And then you get to Amanda Mendoza's house,
10 and there's this car and now you're wondering how it got
11 there?

12 A That is correct.

13 Q Okay. And so that would suggest that somebody drove
14 that car away from the Broadmere house?

15 A After talking to Amanda Mendoza, I wasn't sure that
16 the -- at that time, that that car had ever been at the
17 Broadmere address.

18 Q Okay. And when you say you weren't sure, you didn't
19 know that it hadn't, right?

20 A Correct.

21 Q Okay. And so you did take time to look on the app
22 to have her show you where she found the car, correct?

23 A Yes, she voluntarily showed it to me.

24 Q Okay. But you took the time to do that because you
25 thought that information might be relevant?

1 A At the time, yes.

2 Q Okay. And that's the information you put into your
3 report because again, you thought that information might be
4 relevant, right? The information about the app?

5 A Yes.

6 Q Okay. And then you took the time to actually drive
7 to the location where she told you she found the car?

8 A That is correct.

9 Q Right? Okay. But -- and you drove there because
10 you believed you might find relevant information?

11 A Yes.

12 Q Okay. But you didn't put in your report that you
13 drove to that location?

14 A No.

15 Q Okay. And you didn't put in your report anything
16 about this pinging?

17 A The --

18 Q From the FBI, the location that they gave you?

19 A No, at that time, I was on errand from either
20 Detective Jensen or the FBI and just they -- they simply said
21 go up and look at this address. And so I did, and I came back
22 and said, hey, it's going to be the same address as where
23 Amanda showed me that car was, and I gave them that
24 information and probably a day later went on vacation.

25 So I gave them the information thinking that was

1 something that they would find relevant or non-relevant.

2 Q Okay. So you gave -- when you say you gave them
3 that information, you mean Detective Jensen?

4 A I honestly don't remember who sent me out there. I
5 almost want to say it would have been Detective Jensen simply
6 because he was -- he was my partner --

7 Q Right.

8 A -- but it might have called the FBI agent as well.

9 Q Okay. So you provided that information to someone
10 connected with this case?

11 A Yes.

12 Q Okay. And you gave them the actual address, 3668?

13 A No, I was given that address to go look at that
14 house.

15 Q Okay. And you drove to that house?

16 A Yes.

17 Q Okay. And but that was before you went on vacation,
18 but you're not sure when?

19 A Correct.

20 Q It could have been mid-October right before you
21 left?

22 A Yes.

23 Q Right? Okay. So the pinging -- did you drive out
24 there the day you got the pinging information?

25 A Yes. The day I was sent out -- well, I can't say

1 that because I don't know when that information was received.
2 All I know is I was assigned to run out there and look at that
3 house, that address.

4 Q Okay. So again, you could have received the pinging
5 information mid-October?

6 A Possibly, yes, sometime after the 21st.

7 Q Okay. Do you know how that pinging works?

8 A I have no concept of that at all.

9 Q No concept, okay, fair enough?

10 MS. McNEILL: Court's indulgence.

11 BY MS. McNEILL:

12 Q Would you agree with me that your testimony is that
13 you weren't sure at that time that it would ever be relevant
14 information, correct?

15 A That is correct.

16 Q Okay. Would you agree with me, though, that it
17 potentially did become relevant information?

18 A Yes, I would agree with that.

19 Q Okay. And would you agree that in the early stages
20 of an investigation, if you're not sure something's relevant,
21 you should probably error on the side of caution and assume it
22 might be?

23 A Yes.

24 Q All right.

25 MS. McNEILL: Nothing further.

1 THE COURT: Mr. Wolfbrandt.

2 CROSS-EXAMINATION

3 BY MR. WOLFBRANDT:

4 Q Good morning, Detective Williams.

5 A Good morning.

6 Q Request all right. Just real briefly. Yesterday on
7 direct, you described that you had conducted a lot of
8 interviews at the Broadmere neighborhood?

9 A I came back the following day, I believe, and I
10 interviewed some of the 911 callers and some of the
11 individuals who lived in the neighborhood.

12 Q Do you recall about what time you physically arrived
13 at that neighborhood?

14 A On the night of the shooting or the day after?

15 Q Well, did you -- the night of -- your initial --

16 A My initial arrival was about 10:00 o'clock at night.
17 The original shooting took place at around 8:00 o'clock, and
18 we -- we arrived at about 10:00 o'clock that evening.

19 Q And that's you and Detective Jensen?

20 A Yes, and other -- our supervisor and the other
21 homicide personnel, yes.

22 Q But whatever -- you did whatever you were going to
23 do at that scene, and then you went to UMC Hospital?

24 A Yes.

25 Q Correct? Okay. And prior to go to the hospital, I

1 think you testified that there had been, I guess, a gathering
2 of the various different investigating personnel and you had a
3 briefing?

4 A Yes. The first arriving officers will meet with us
5 when we arrive and they will tell us what they know.

6 Q Okay. So at that meeting, did you learn that there
7 had been a blood trail that had been -- or located?

8 A Yes.

9 Q Did you learn that there was a rifle found in the
10 bed of a truck on Long Cattle?

11 A Yes.

12 Q Did you learn that somebody with a leg injury was
13 located in the black Honda in a driveway next to where the
14 truck was that the rifle was located?

15 A Yes, we did.

16 Q And did you learn in that briefing that there was a
17 orange ski mask found in the car where the individual with the
18 leg injury was located?

19 A Yes, we did.

20 Q Did you have a conversation specifically with the
21 officer that extracted that individual from that car?

22 A I believe, I did, yes.

23 Q And so at that point in your mind, was that
24 individual a suspect?

25 A The chances were looking pretty good that he was,

1 but I was unsure. I did not know at the time if he was
2 another victim that appeared to be a suspect or he with as a
3 legitimate suspect in the case.

4 Q Okay. All right. Now, when you went to the Mendoza
5 house, you met with Amanda Mendoza?

6 A Yes.

7 Q And then eventually, you met her mother, Michelle?

8 A Yes, I did.

9 Q Okay. But initially, it was you and Amanda outside
10 the house next to the -- were you next to the car?

11 A In her front yard along with Detective Merrick.

12 Q Okay. And she was upset wanting to find out the
13 condition of her husband, wasn't she?

14 A Yes.

15 Q And do you recall whether you had told her that he
16 had been shot?

17 A I don't recall if I told her he had been shot. I
18 had the -- I had the feeling that she already knew he was in
19 the hospital and had been shot because of her -- she was upset
20 and I don't recall what she told me, but I had the impression
21 she already knew his -- where he was and what was going onto
22 some degree.

23 Q All right. But you might have told her that she was
24 shot?

25 A I may have, yes.

1 Q And you wouldn't be surprised if she had just
2 retrieved the car trying to locate her husband because he
3 hadn't come home, and then Metropolitan Police Department
4 detectives show up at her house, she's going to question why
5 -- what's happened to my husband?

6 A Yes. And I had a conversation with her on the phone
7 while I was in the hospital as well. So we had had a previous
8 back and forth conversations before we arrived at her home.

9 Q Okay. You wanted to get her to consent to search
10 the home, didn't you?

11 A We asked her, yes.

12 Q Did you or Detective Merrick promise her that in
13 exchange for a consent and not requiring you to take the extra
14 time for a search warrant that you would allow her to visit
15 her husband at the hospital?

16 A That would have never been said because I don't have
17 the power to keep people in and out of that hospital. And at
18 the time her husband was not in custody so she could have gone
19 in and visited him at any time she chose. So that promise
20 wouldn't have been made. And we had a search -- we got a
21 search warrant anyway, so that would have all been null and
22 void irregardless.

23 Q Were there times when maybe Detective Merrick would
24 have been alone with Amanda?

25 A He would have been in the front yard with me. He

1 could have said something to her that I didn't hear. But he
2 wasn't alone with her if -- you'd have to explain alone. For
3 example, he didn't walk around the corner or go in another
4 room with her. We were all out there together, but we were
5 talking back and forth with her mother and her, so he could
6 have had a conversation with her that I wasn't aware of.

7 Q And it could have included a conversation about her
8 being able to visit her husband, but you don't know because
9 you didn't hear that?

10 A Well, again obviously, I don't know, but that
11 wouldn't have been something even Detective Merrick would have
12 said because she wasn't in -- was not in custody. At the time
13 her husband was not in custody, so she could have come and she
14 could have done whatever she wanted to do and we wouldn't have
15 interfered.

16 Q Now, you talked about finding a gun safe in the back
17 corner of the garage?

18 A No, it's a converted garage into a bedroom that has
19 a bathroom and then a -- a closet.

20 Q All right. And I believe, you testified there were
21 a number of different weapons that were in that safe?

22 A That is correct, yes.

23 Q Were some of them handguns?

24 A Yes.

25 Q And were you aware that all the handguns that were

1 in that safe were registered to Jorge Mendoza?

2 A I don't recall that, but that wouldn't surprise me.

3 Q You took Amanda's -- and impounded Amanda's cell
4 phone; do you recall that?

5 A I don't recall impounding the cell phone
6 specifically, but we know -- I -- it was taken on the search
7 warrant, yes.

8 Q Do you have any knowledge as to whether any
9 forensics testing or any other kind of testing examination or
10 investigation was done from the time that phone was taken
11 until today?

12 A I have no personal knowledge of that, no.

13 Q Okay, thank you.

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

15 THE WITNESS: Thank you.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. DIGIACOMO:

19 Q Just briefly, Detective. I want to go back to sort
20 of the Amanda, your contact with Amanda Mendoza and talk about
21 -- make it clear, you go to the hospital, you see Mr. Mendoza,
22 correct?

23 A Yes.

24 Q And at that point, he's not in custody, he's
25 receiving medical treatment?

1 A That is correct.

2 Q And after that, you call Amanda Mendoza?

3 A Yes.

4 Q From your cell phone to the number that's provided
5 by Mr. Mendoza?

6 A That is correct, yes.

7 Q When you first call her, what is the purpose of
8 making that phone call?

9 A Just to verify information and ask where Mr. Mendoza
10 was supposed to be that night, if she knew, and to find out
11 where that -- ask if -- where that vehicle was.

12 Q And based upon that conversation that you're having
13 with her, does -- well, is that when you get the impression
14 she knows there's a problem or is it when you get to the
15 house?

16 A I -- I assumed that she knew because she was awake
17 at that time and was asking where her husband was and I
18 explained to her -- explained that he was at the hospital.
19 But I had the impression on the phone that she possibly knew
20 where he was and what was going on, to some degree.

21 And then like I said, when I got there, it was
22 confirmed in my mind that she had some knowledge of what was
23 happening.

24 Q And when you get there, there's the car, correct?

25 A Yes.

1 Q And you've already said this, it's surprising to you
2 based upon what you knew at this point that that car was at
3 that location?

4 A Yes.

5 Q And was it your belief at that time, that that car
6 had been transported to the location after the crime?

7 A Yes, I believe so.

8 Q And that's when she shows you the app and everything
9 else as to where it is she located the vehicle?

10 A There was some discussion before that, but yes,
11 that's about the time that she showed me her phone app.

12 Q During the course of your conversation with Ms.
13 Mendoza, at some point, do you take a formal tape recorded
14 statement from her?

15 A Yes, I did.

16 Q And contained within that statement, have you had
17 chance to review that recently?

18 A Yes, I did.

19 Q The discussion and the viewing of the iPhone app, is
20 that contained within that recording?

21 A Yes, it is.

22 Q Initially, when she showed you the iPhone app, where
23 was the pin that you saw, what location was it on?

24 A It was on the street of Lucky Horseshoe Court, right
25 there where it's marked on the screen.

1 Q And there was some discussion, I think, maybe this
2 morning or maybe it was yesterday about when you go looking
3 for that car, you also look up and down the street. Why did
4 you do that?

5 A Well, I wasn't looking for the car then. I -- I
6 already knew where the car was, but I was just looking in that
7 area just so see if there was something in that area that had
8 any value to the investigation. And at that --

9 Q After --

10 A -- at that night it was dark so I didn't really see
11 much.

12 Q After she first shows the iPhone with that little
13 pin on it, when you're taking the recorded statement with her,
14 does the location, the exact location of that vehicle change
15 during her conversation with you?

16 A Yes, it does.

17 Q Explain that to the ladies and gentlemen of the
18 jury.

19 A In my initial conversation with Amanda, we were
20 trying to determine how the car got to that that location.
21 And she had made several explanations but then showed me on
22 the phone that look, I was looking for my husband, I pinged
23 his phone, and here's where it shows. Here's where it showed,
24 and there was a little flag on that street.

25 Later she said that it moved around and there was

1 conversation even with her mother of, you know, why is it
2 moving around and -- and then she mentioned several other
3 locations right there in that same area. But I wasn't able to
4 see that at the phone at that time. Detective Merrick, who
5 was more technology savvy, was trying to look at it and
6 understand what she was trying to explain to him, and that
7 app.

8 Q So initially, you see the app, it's Lucky Horseshoe,
9 but then during the interview, she's showing you areas that
10 are slightly different than where you saw that pin?

11 A Yes, in the same very close area, but not that exact
12 street.

13 Q During the course of that recording, does the fact
14 David Murphy is Ms. Mendoza's cousin come up?

15 A Yes, she -- I asked her how she got to the car, and
16 she said that her cousin, David Murphy, had driven her there.

17 Q And when you draft what has been referred to --

18 MR. DiGIACOMO: And I'm sorry, did you take that
19 back defense?

20 MR. LANDIS: What?

21 MS. McNEILL: What?

22 MR. DiGIACOMO: The -- the police report that you
23 have.

24 MR. WOLFBRANDT: It's --

25 MR. LANDIS: The Clerk has it.

1 BY MR. DiGIACOMO:

2 Q When you draft your portion of Defense Exhibit A,
3 the 28-page report, do you sort of summarize what the
4 conversation was between you and Amanda Mendoza?

5 A Yes, I did.

6 Q During your summary, do you ever refer to the name
7 David Murphy?

8 A No, I did not.

9 Q What happens to the recording that is generated from
10 your conversation between Ms. Mendoza and her mother?

11 A It was sent off to a transcription company who types
12 out the transcription and then it's sent back to us and placed
13 in our report, our case file.

14 Q So there's a lag between the time period that you
15 send this recording off and at some point you might get the
16 transcript back?

17 A Because we've used different companies and there's
18 been different problems, there's sometimes a six-month lag.
19 Not very often, but there is a definite lag varying -- with
20 varying times, yes.

21 Q And Detective Jensen's not with you in Amanda's
22 home, correct?

23 A That is correct, he is not.

24 Q And so if Detective Jensen wanted to know what
25 information, I mean, he could talk to you, right?

1 A Yes, he could talk to me, but again, I had left for
2 two weeks so that would have been a problem.

3 Q And if he had reviewed the portion that you stuck
4 into the report, he wouldn't have ever seen David Murphy's
5 name?

6 A No, I had no idea that that was even relevant. That
7 that name was involved in anything at the time.

8 Q Which sort of leads me to some cross-examination
9 that Mr. Laguna's lawyer, Ms. McNeill, had with you. Does
10 everything you do in the course of an investigation from the
11 time you wake up to the time you sleep for every day go into
12 this main report?

13 A No, that would be impossible.

14 Q There are -- are there things that later on when you
15 find out additional information, you think oh, wow, that's
16 relevant to me and it just doesn't happen to be in the report;
17 is that fair?

18 A That's fair, and this was a very complicated case
19 with many different facets and -- and angles that we -- that
20 were surprising us at each time -- each time we turned around.
21 So it was a complicated case on top of that as well, yes.

22 Q So there may be things that didn't make it into the
23 report that might be relevant for the jury to know?

24 A Yes.

25 Q Likewise, on the morning of September 22nd at 4:30

1 in the morning, you made a decision not to take that gold or
2 champagne colored Nissan Maxima; would that be fair?

3 MR. LANDIS: Objection, leading.

4 MS. McNEILL: I'll join the objection.

5 THE COURT: Sustained.

6 BY MR. DiGIACOMO:

7 Q Who made the decision not to take the Nissan Maxima?

8 A I made that decision myself.

9 Q Now, as we sit here two years later, had you wished
10 you had made a different decision?

11 A Absolutely.

12 MR. DiGIACOMO: I have nothing further. Thank you,
13 Judge.

14 THE COURT: Redirect? I mean, recross? Mr. Landis.

15 RECROSS-EXAMINATION

16 BY MR. LANDIS:

17 Q Regarding this process of listening to a recorded
18 statement as the person's telling it, you sometimes take
19 notes, yes?

20 A Sometimes, yes.

21 Q And obviously, even if you don't take notes, I've
22 got to presume you remember what you find necessary to
23 remember?

24 A You'll have to ask that one again.

25 Q If somebody says something to you during a recorded

1 interview face to face, you'd put it in your memory if you
2 find it valuable to the investigation, right?

3 A Well, I would hope I can remember everything, but --

4 Q Sure.

5 A -- I'm not sure what I had for breakfast this
6 morning sometimes.

7 Q Sure.

8 A I -- I remember what I can remember --

9 Q Sure.

10 A -- and I note down what -- what I this I need to
11 remember, yes.

12 Q It's not a ridiculous situation where whatever that
13 person told you, those facts are gone until you get the
14 recording back?

15 A Well, sadly, with my memory, yes. Sometimes people
16 tell me things I don't recall until I reread the transcript.

17 Q And when you guys record interviews in the field
18 such as Amanda Mendoza's, how do you -- what do you use?

19 A Just a small digital tape recorder.

20 Q It goes back to the station and it gets put on the
21 computer system?

22 A Yes.

23 Q And from there it gets sent to wherever you guys
24 choose to send it to get it transcribed?

25 A That is correct.

1 Q I have to presume, though, you keep one of the audio
2 files still in the department?

3 A Absolutely, yes.

4 Q So you could listen to it, even though you can't
5 necessarily read the transcript immediately?

6 A Yes, you could.

7 MR. LANDIS: I have nothing further.

8 MS. McNEILL: Just briefly.

9 RE-CROSS-EXAMINATION

10 BY MS. McNEILL:

11 Q Along the lines of, sort of, you know, you wished
12 you'd processed this car and you were saying you don't
13 remember what you had for breakfast in morning, you wish that
14 you had -- you knew everything that was going to be relevant
15 and you could document that, right? That would be easier?

16 A Oh, I wish that on every case.

17 Q Okay. So it's September 2016 now, correct?

18 A Yes.

19 Q So we're two years down the road?

20 A Almost to the day.

21 Q And there's nowhere in the report about this ping-
22 pong information, right?

23 A To my knowledge, yes.

24 Q Okay. When was the first that you disclosed to the
25 State about this ping-pong information?

1 A Yesterday morning.

2 Q Did you just remember that on your own or had you
3 written it down somewhere else?

4 A No, I remember that distinctly.

5 Q Okay. So you didn't take any notes or anything when
6 you drove out there?

7 A No.

8 Q Okay.

9 MS. McNEILL: Nothing further.

10 THE COURT: Mr. Wolfbrandt.

11 MR. WOLFBRANDT: Maybe just two questions.

12 RE-CROSS-EXAMINATION

13 BY MR. WOLFBRANDT:

14 Q Do you remember if you or Detective Malick (sic)
15 promised to Amanda that her phone to be returned to her after
16 you took it that night?

17 A Do you mean Detective Merrick?

18 Q Oh, Merrick, sorry.

19 A Yes. I do not recall making that promise.

20 Q And do you know what date Jorge Mendoza was actually
21 arrested?

22 A I have no idea. Once I left the hospital, I had no
23 further contact with him or his situation.

24 Q But when you left the hospital, and that was on
25 September 22nd, he was not actually in custody?

1 A Right around midnight so it would have been on the
2 fence between the 21st and the 22nd, but he was laying on a
3 hospital gurney getting prepared for surgery and I never saw
4 him since until today.

5 Q Okay.

6 A Or yesterday.

7 Q And during that time is when you interviewed him?

8 A Yes.

9 Q Thank you.

10 MR. DiGIACOMO: Can I ask just maybe one follow-up
11 question?

12 FURTHER REDIRECT EXAMINATION

13 BY MR. DiGIACOMO:

14 Q You said that yesterday morning is when you
15 disclosed to me kind of the sequencing between finding that
16 car and the pin, correct?

17 A That is correct.

18 Q When yesterday morning did I hand you 314 in
19 discussing your testimony?

20 A Is the picture on the screen 314?

21 Q Yes, sir.

22 A Yes, it is.

23 Q And is that at the moment that you saw that address
24 and made -- told me something?

25 A Yes.

1 Q Thank you.

2 MR. DiGIACOMO: Nothing further.

3 THE COURT: Any follow-up?

4 MR. LANDIS: No, ma'am.

5 MS. McNEILL: No, Your Honor.

6 MR. WOLFBRANDT: No.

7 THE COURT: May this witness be excused?

8 MR. DiGIACOMO: He may.

9 THE COURT: Thank you for your testimony.

10 THE WITNESS: Thank you, Judge.

11 THE COURT: You may call your next witness.

12 MR. DiGIACOMO: Do you want to approach?

13 MR. LANDIS: Yes.

14 MR. DiGIACOMO: Okay.

15 MR. LANDIS: May we approach?

16 THE COURT: Of course.

17 (Off-record bench conference)

18 THE COURT: All right. There are a couple of
19 technical matters we need to sort out that we don't need you
20 here for so we're going to take a brief recess. Is 15 minutes
21 adequate, counsel?

22 MR. DiGIACOMO: Yes.

23 THE COURT: 15 minutes adequate?

24 MR. LANDIS: Yes.

25 THE COURT: During this 15-minute recess, it is your

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

9 We'll be in recess for 15 minutes.

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

11 (Jury recessed at 10:04 a.m.)

12 THE COURT: And are the record will reflect that the
13 jury has departed the courtroom. So we'll take a, you know,
14 five minutes --

15 MR. DiGIACOMO: Yeah, yeah.

16 THE COURT: -- and then we'll come back and --

17 MR. LANDIS: Certainly.

18 THE COURT: -- and hear the objections to the next
19 witness.

20 (Court recessed at 10:05 a.m. until 10:14 a.m.)

21 (Outside the presence of the jury)

22 THE COURT: It looks we're ready. All right. We're
23 back on the record still now outside the presence of the jury.
24 And my understanding is that there is an expert that's going
25 to be called by the State. This is the cell phone expert?

1 MR. DiGIACOMO: Correct.

2 THE COURT: So, Mr. Landis?

3 MR. LANDIS: And I'll make this as short as I can.
4 I'm going to lodge an objection to certain evidence they're
5 trying to put forward based on notice pursuant to statute,
6 which is something we discussed before, and I'm not re-raising
7 the same issue.

8 To be clear, the expert was noticed -- this expert
9 was noticed as an expert in general cell tower stuff, and then
10 says the substance will be or has been provided in the
11 discovery, if that makes sense.

12 THE COURT: Right.

13 MR. LANDIS: As to Mr. Murphy, which is where I'll
14 focus, the only discovery I received about cell phone tower
15 location data was the raw cell phone records, one map, if I'm
16 not mistaken that showed the location with a pin of one tower
17 relevant to this time frame, relevant to his service provider.

18 And at the Grand Jury, Detective Jensen testified a
19 little bit about location data as it related to Mr. Murphy.
20 Aside from the raw data cell phones, I believe that's the only
21 substance in the discovery as to Mr. Murphy's records.

22 As to the cell phone records themselves, the way
23 they tend to work, which we've kind of heard about, is for a
24 call entry or text entry, whatever, they'll usually list a
25 cell tower number, which is random as could be as far as the

1 neighboring eye is concerned, 62457. Sometimes, not all the
2 time, after that it will also list the latitude/longitude. If
3 the record lists latitude/longitude, it's not too hard to find
4 out where that is.

5 When it doesn't, it's impossible to know where the
6 tower location is unless you have that information from either
7 the cell provider or an independent company. You can't find it,
8 as far as I know, on the Internet or anything like that.

9 The State's about to put forth 315 through 324, and
10 a lot of it contains maps that show what they believe to be
11 new towers for Murphy's phone. My position is the testimony
12 that this tower, which Murphy's phone hit off of, would count
13 as substance that they didn't disclose.

14 I think they had a duty to do that. And then my
15 next objection is this; after you do locate the tower, there's
16 these sectors, which are important because you can determine
17 the direction the cell phone was likely from the tower, such
18 as right, left. That sector information is impossible to
19 figure out, in my opinion, without expert testimony.

20 This provided no sector information beyond the raw
21 data in terms of substance of what this expert's going to
22 testify to. So in other words, there's nothing in the
23 discovery at all that says Murphy's sector for this hit was
24 this.

25 I again, think that's substance. So my motion is to

1 trike all expert testimony beyond what was explicitly provided
2 in discovery before trial. And to just hammer home my point
3 as why I'm making it, Exhibit 324, I don't want to
4 mischaracterize it, but it's a lot of combined cell tower hits
5 for various phones, various points of time?

6 MR. DiGIACOMO: Correct.

7 MR. LANDIS: One of the ones in there related to my
8 client --

9 MR. DiGIACOMO: It's 8:06 p.m.

10 MR. LANDIS: Yeah, I'm just trying to find it.

11 MR. DiGIACOMO: It will be a green one. Here, I'll
12 find it for you.

13 (Off-record colloquy)

14 MR. LANDIS: Can I approach the Court?

15 THE COURT: Yes.

16 MR. LANDIS: For the record, this is within 324
17 Proposed.

18 THE COURT: Okay.

19 MR. LANDIS: You can see that that's a cell tower
20 hit they're going to testify to very close to the crime scene
21 just north of it, it's by Faith Lutheran School there. And
22 that kind of green I have to assume will be a sector.

23 As I come into court today, I had no idea that
24 evidence existed, none. The only hit around the close time
25 frame of my client's I thought was after the 911 calls because

1 that's the information I was provided. I'm assuming that's
2 going to be a text message, which is the things they just
3 disclosed to me, but I don't even say that. And that's why I
4 think it hammers home that their notice was insufficient
5 because I'm now honestly first time today seeing that I'm
6 dealing with a new cell tower hit that's closer in time to the
7 crime and closer to the crime scene than anything else they
8 had.

9 MS. McNEILL: And I would just join in Mr. Landis's
10 objection. The -- in candor to the Court, the cell phone
11 records for my client are a little different than the cell
12 phone records for his. They do have the sector information on
13 there, but obviously, part of my defense, I have to deal with
14 where the other co-defendants were in relation to where my
15 client was at the times that are relevant. So I would join in
16 Mr. Landis's objection based on the argument he's made.

17 MR. WOLFBRANDT: I would join in the objection as
18 well just on the basis of it. On the lateness of it, whatever
19 impact that has on my client is probably minimal, but just for
20 the record, I would join in that objection.

21 THE COURT: Mr. DiGiacomo, what's your response?

22 MR. DiGIACOMO: Thank you. My response is I have
23 absolutely no idea why we're talking about expert testimony as
24 it relates to these items. I could put up a high school
25 student who had heard the custodian of records testify to that

1 information, and in evidence right now is 297 through 312,
2 which are the cell phone records.

3 There is nothing in 315 through 324 that is not
4 contained within these records that had all been provided with
5 the exception of the one that the Court has already previously
6 ruled upon. And that isn't the expert testimony substance of
7 Detective Gandy. Detective Gandy is going to be similar to
8 the testimony of the custodian of records for T-Mobile and
9 Metro PCS, but since I didn't have an expert from AT&T, an
10 engineer, I had somebody who was and I noticed got an
11 objection to it, somebody to explain the nature of those
12 records.

13 Now, during his testimony, the only thing additional
14 to this is that the jury's not going to have a copy of a
15 Google Earth back there because we don't allow them access to
16 the Internet. The only thing that's been done on this is that
17 the pins have been placed where the records say the pins are
18 placed. The sectors, and all of Mr. Murphy's sectors are not
19 only contained on the records that were disclosed to him
20 recently, but the older sectors for the actual call detail
21 records, that information is contained within the original
22 Murphy records by the LAC and cell ID and hence, why 275 had
23 to be admitted because it's the list of all the -- and I
24 didn't pull 275, but 275 was admitted because it has the list
25 of all the sectors and GPS locations for those towers.

1 Thus, the only thing that's in front of you right
2 now is a compilation of data that was already admitted before
3 the jury. There is no opinion testimony being admitted, so I
4 don't know what the basis of the objection is.

5 Detective Gandy is an expert and he knows a lot
6 about phones, but as it relates to these exhibits themselves,
7 there is nothing here but a compilation of data.

8 THE COURT: Well, what it appears to me is that
9 basically, you know, you've put the custodian -- you've put
10 the records on through the custodian of records, you took
11 additional time to have through the one -- the T-Mobile person
12 to have him explain how -- what certain columns mean and
13 whatnot, which was fine. You didn't even really have to do
14 that, but, you know, you did, and now this is a summary.

15 This is not -- this is a summary of -- this is
16 basically, a summary of what was done, taken from and
17 demonstrative evidence from what's already in evidence. So
18 this is not something that would be discoverable. This is you
19 have the raw data and there's -- there is a statute that
20 allows summary of voluminous records to be placed into
21 evidence and it can take the form of many things, graphs,
22 charts, photographs, you know, demonstrative evidence, and
23 that's what this witness apparently is going to do, and that's
24 perfectly fine.

25 What you're allowed to do by statute, of course, is

1 to ask for all of the detail, but that was already provided.
2 They didn't have to do that even, but you know, in front of
3 the jury, but they did. So anyway, I think that this is --
4 that's what this is. And I don't think for the same reasons
5 as far as the lateness of the text messaging issue, we already
6 -- I already addressed that in the previous ruling. So
7 nothing new has been added and I think this is summary
8 evidence and not -- it should not be excluded at all.

9 Now, obviously, if you have anticipated objections
10 to the actual testimony, I don't know whether you do or not or
11 whether you need some hearing outside the presence, that's a
12 different matter. But I'm not -- I can't anticipate what your
13 objections might be at this time.

14 MR. LANDIS: I'll answer that. Let me just state
15 for the record that those exhibits that they're intending to
16 admit through this expert we had not seen before today. So I
17 don't know if I said that before. That's all I'm trying to
18 get at.

19 And then -- and I understand the Court's ruling and
20 that wasn't an argument. The objections I anticipate having
21 are going to be more or less what I said, which is failure to
22 disclose substance of expert testimony. If the Court wants me
23 to make them concurrently every time they're going to admit
24 one of these things, I will. I don't think I have to unless
25 the Court wants me to. I mean, I --

1 MR. DiGIACOMO: I don't know that that's expert
2 testimony.

3 MR. LANDIS: Well, I'm not saying you guys are going
4 to --

5 MR. DiGIACOMO: The case law says that that's lay
6 testimony. That the detective has to have absolutely no
7 history whatsoever as Burnside (phonetic) says to do this type
8 of location information. The expert portion of -- the fact
9 that he's an expert doesn't mean everything he says is expert
10 testimony.

11 MR. LANDIS: That's (inaudible).

12 MR. DiGIACOMO: He is also a police officer. So
13 some of it is going to be non-expert in nature. If he has an
14 objection to the opinion type evidence I'm going to ask this
15 expert, then he can raise an objection. But as to the
16 exhibits themselves, it doesn't matter who the human being is
17 that's on the stand, once these are admitted pursuant to
18 Burnside.

19 MR. LANDIS: And that's what we disagree about. I
20 mean, the Court's made its ruling, but for instance, here is
21 where I would object if we weren't having this conference now.
22 He's going to testify that T-Mobile tower/Metro PCS tower
23 number XXXXX is located at the intersection of Charleston and
24 you name it.

25 If that wasn't specifically provided before, that

1 information, not just the raw data, but that information, that
2 would be where my objections are. And of course, there would
3 be who knows how many. That's why I don't think it's
4 beneficial for any of us for me to raise objection after
5 objection during his testimony.

6 MR. DiGIACOMO: But 275 was previously provided. It
7 was provided years ago which has that information. That is
8 the list of every T-Mobile tower here in Las Vegas. So they
9 have the -- this isn't every tower. This is only the towers
10 they hit on one day, 9/21 of 2014. There may be a couple of
11 slides that go into 9/22, but none of the towers are new.
12 It's all 9/21, and that 275 list of every T-Mobile tower has
13 been in the discovery for years now.

14 The fact that the relevance of the location of that
15 tower is nothing. The only thing he's going to say is that
16 GPS coordinate, when I plug it into a Google map goes to this
17 location. There's nothing that hasn't been previously
18 disclosed.

19 MR. LANDIS: Some of them don't have that
20 longitude/latitude (inaudible).

21 MR. DiGIACOMO: If it's not in this discovery, if
22 there's no longitude and latitude within this discovery, it is
23 not on these exhibits.

24 THE COURT: Okay.

25 MR. DiGIACOMO: Because I wouldn't know how it is --

1 this would get created.

2 MR. LANDIS: But, I mean, Court's made its ruling.
3 I just want to know if you want objections or not. I don't
4 think we need them.

5 THE COURT: Well, I'm -- if you're -- if these
6 representations that everything has been given to you, then
7 you need to be specific as to is there a specific thing?
8 You've looked through this exhibit now and is there a
9 particular one where you have found that it is not in the
10 documents that are in evidence, which State's represented have
11 already been given to you in discovery as for as the cell
12 phone tower locations.

13 MR. LANDIS: Are you talking about the -- did they
14 provide tower locations? Indeed. They provided the raw cell
15 phone record data which is like the -- yes, they did. With
16 the exception of that one I showed you.

17 To the extent that's in the records, that's news to
18 me this morning. I assume it's in there, but I got to assume
19 it's in those text messages and for whatever reason my expert
20 didn't tell me about it. But other than that, I will concede
21 that all of the raw data was provided, I will.

22 And does the Court recall which one I'm speaking of?
23 It was -- I walked up with it. It's in the -- yeah, it's in
24 that exhibit. I just -- you don't need to see it again. I'm
25 just making sure.

1 THE COURT: Yeah, I -- you probably want to, for the
2 record, state --

3 MR. DiGIACOMO: Yeah, I'm going to --

4 THE COURT: Go ahead and approach so you can make a
5 better record, a complete --

6 MR. DiGIACOMO: It's tower 24599 or the LAC
7 24599/6276, and I believe the last digit of the sector is 8.
8 Just so that the Court is aware, in State's Exhibit No. 275,
9 if you were to go to LAC 24599, and then go to cell number
10 62768, you would find the GPS location for that to be
11 36.15858197 and -- well, that's the latitude. And the
12 longitude is negative 115.314884, which happens to be the
13 southwest corner of Charleston and Hualapai which is the exact
14 same GPS location for tower 456 from Cricket, which has also
15 been previously provided to the defense, as well as the exact
16 same location of AT&T tower 36995/30403.

17 MR. LANDIS: And it's -- that map is within 324
18 towards the back of five maps, six maps from the end. But
19 that's exactly my position. He can make it sound easy, but
20 that -- that's (inaudible) is not. And, I mean, it's just
21 not. The sector stuff, it's not, because sometimes they're 1,
22 2, 3. Sometimes they're 4, 5, 6 in terms of making the 360.

23 And to say that a high school student could look at
24 that and he could teach him how to read them in a second, I
25 disagree. I respectfully disagree, and I think Ms. McNeill

1 would concede she's found it a bit more difficult than that.

2 MS. McNEILL: Yes, I have no idea what's going on
3 with the cell phone records. I will let you know that.

4 THE COURT: All right. Well --

5 MR. WOLFBRANDT: I'm like Detective Williams.

6 THE COURT: I don't think, you know, that's relevant
7 really, but your objection's overruled. I think that it is
8 summary of the information that's already been admitted in
9 front of the jury, and the purpose of this witness is to
10 summarize the evidence that's already been presented.

11 And then if there -- I don't know, I won't know
12 until I hear his testimony if he's going to actually offer
13 opinion, expert opinion testimony or not, but certainly,
14 insofar as interpreting some of this evidence and walking them
15 through it, that I consider to be more in the nature of a
16 summary than expert testimony, until I hear him he say he has
17 an opinion about something. Excuse me.

18 MS. McNEILL: Can I ask if we can get a copy of that
19 exhibit from the State? Those --

20 MR. DiGIACOMO: Which one?

21 MS. McNEILL: The --

22 MR. DiGIACOMO: 324 or all of them?

23 MS. McNEILL: The whole stack that you have that
24 were --

25 MR. DiGIACOMO: 315 through 324? I mean --

1 MS. McNEILL: Those maps.

2 MR. DiGIACOMO: Right here.

3 MR. LANDIS: 315 to 324.

4 MS. McNEILL: Yeah.

5 MR. DiGIACOMO: 315 to 324. You want these?

6 MS. McNEILL: Yeah. Well, on the one that we have
7 up there that's got (inaudible) --

8 THE COURT: It's not here. It's not up here.

9 MR. LANDIS: No, no, that's --

10 MR. DiGIACOMO: That's back here in my hand.

11 MS. McNEILL: Oh, okay, sorry.

12 MR. DiGIACOMO: That's 315 to 324. I mean, I can
13 provide them copies of them at lunchtime, but I don't know,
14 you know -- yeah, that's fine. So if they want to go back and
15 check to see that those towers are -- actually are where they
16 are on the maps, that -- I don't have a problem with that and
17 they can call an expert to say no, it's not there and we can
18 fight it out if it's not.

19 THE COURT: Okay.

20 MR. LANDIS: I'll just announce it's not my intent
21 to reraise the objections that we just discussed. I
22 understand if there's something different, it's my duty to
23 raise it, obviously. But that --

24 THE COURT: Thank you. Are we ready to go, then, to
25 bring the jury back in?

1 MR. LANDIS: We are.

2 THE COURT: All right, let's do it.

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

4 (Jury reconvened at 10:32 a.m.)

5 THE MARSHAL: Your Honor, all members of the jury
6 and the three alternates are present.

7 THE COURT: Thank you. And the record will reflect
8 the presence of all 12 members of the jury as well as the
9 three alternates. We are also in the presence of the three
10 defendants, their respective counsel, the Chief Deputies
11 District Attorney prosecuting the case and all officers of the
12 court. And you may call your next witness.

13 MR. DiGIACOMO: Chris Gandy.

14 OFFICER CHRISTOPHER GANDY, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated and then please state
16 your name and spell -- first and last name and spell it for
17 the record.

18 THE WITNESS: Christopher Gandy,
19 C-h-r-i-s-t-o-p-h-e-r, G-a-n-d-y.

20 THE CLERK: Thank you.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MR. DiGIACOMO:

24 Q Sir, how are you employed?

25 A I am a police officer with the Las Vegas

1 Metropolitan Police Department.

2 Q How long you been so employed?

3 A I've been employed about 20 and a half years now as
4 a police officer.

5 Q And what is your current assignment?

6 A I am in the technical detail.

7 Q And what does that mean you do day-to-day?

8 A So I've been in the technical detail approximately
9 15 years, and my day-to-day there, one of my primary
10 responsibilities is doing phone intercepts and processing
11 court orders for phone intercepts.

12 Q Okay. In order to do what you do for Metro -- and
13 let me back up. When you say phone intercepts, there are many
14 different types of phone intercepts; would that be fair?

15 A Correct, yes.

16 Q There are -- name a few of the different types of
17 intercepts that law enforcement deals with.

18 A So we have intercepts from various different levels.
19 So we -- we process court orders for call detail records,
20 which are records after the fact that the phone -- that either
21 get by subpoena for different types of legal process. And
22 then we get those documents back into our office and then we
23 can load those documents into our computer systems and analyze
24 those documents.

25 We also do pin register trap and trace, which are a

1 -- a live intercept of the phone calls without audio coming to
2 and from phones. And then we also do wire taps, which are the
3 actual audio interception of phones.

4 Q Now, between the historical records and then
5 actually getting content, you talked about that there's pin
6 registers trap and traces, and are there a variety of
7 different versions of those as well?

8 A Yes, there is. There is from the basic level, which
9 would be a pin register trap and trace that would just give
10 you the incoming and outgoing digits that are dialed from a
11 phone, and then some limited location information, which would
12 basically just be the cell site and sector that a phone is on.
13 All the way to what we call a precision location court order,
14 which has a different legal standard also.

15 So you have the normal pin register which is just a
16 relevance to a crime, and then you have a precision location
17 order, which can give you more detailed location information
18 on the phone. But that would be a probable cause court order
19 and you need a higher standard of evidence for that.

20 Q Now, you said that you've been in this -- in the
21 TASS or the technical assistance section for some period of
22 time. In order to do the job that you do, did you have to get
23 some sort of education, training and then obviously, 15 years
24 of background in order to do what you do?

25 A Yes.

1 Q Can you describe that to the ladies and gentlemen of
2 the jury?

3 A My background actually prior to being a police
4 officer, I was an electrical engineering student, too, for
5 four years before I became a police officer. So I did have
6 technical background in some radio wave physics and theory and
7 things like that.

8 Once I became a police officer, I -- and got to the
9 technical unit, I then started training specifically on
10 analyzing these records and such things. And so they sent me
11 to schools for Pen Link, which is the class -- which is the
12 software that we use to analyze. I went to that class.

13 I also went to a class from a company called Bar
14 Tech (phonetic), which also created and analyzes intercept
15 material. I've also been a member of the LATF, which is the
16 Law Enforcement Technical Forum, which is sponsored which the
17 FBI, and we meet -- probably the first eight years are so we
18 met every -- every quarter, typically, at different locations
19 around the country.

20 In the last seven or eight years, we might twice a
21 year. And at those meetings, the phone companies themselves
22 actually come to those meetings. And so we have an entire
23 conference with the units within the phone companies that do
24 and process the orders and phone intercepts. And then they
25 keep us updated on the different technologies, the different

1 ways that their records come to us, the different ways that --
2 that everything is working.

3 Since cell technology has changed tremendously in
4 the last 15 years especially, it helps us keep up to date on
5 the way that we process those records. So I've been a member
6 of that for close to 14 years now. I went to my first meeting
7 about one year on my unit so that's where the -- our major
8 training comes from to be up to date with current technology.

9 Q And over the course of the last 15 years, can you
10 even guess at how many phone records that you've had to look
11 at, analyze, and draw conclusions to provide support to the
12 investigative officers?

13 A We process an average of 200 to 300 court orders per
14 year as far as intercepts go. And we -- I've processed over
15 10 million actual calls so --

16 Q When you say that when you actually do an order,
17 when you have an intercept order of some sort, and in this
18 case I'm going to leave out wire taps. And just so that the
19 jury is clear, if it's not a wire tap, do law enforcement
20 receive any of the content of the communication between either
21 by phone or the actual text message, if you don't have a
22 actual wire tap?

23 A No, we don't.

24 Q So it's just electronic information that you're
25 receiving? You don't actually find out what people are saying

1 to other people?

2 A Correct. I would assimilate it as like when you get
3 a statement from the phone company and it gives you this
4 number called this number. That's the type of information we
5 get. It's -- it's a little more detailed than that, but we
6 don't actually see this person, what they were saying to the
7 other person or the content of the text messages or anything
8 like that, no.

9 Q You say that you analyze the information. Why is it
10 that you're doing that? What are you doing that for the
11 police officers for?

12 A Each -- since there's many different phone companies
13 and many different types of communication carriers, each of
14 those companies present the data to us in a different way.
15 And because we're asking for very specific data from those
16 companies, when they design their phone systems, it's designed
17 for customers to be able to make phone calls, not necessarily
18 for police and law enforcement to be able to get some of that
19 data.

20 So some of the reports that they run for us are
21 based on engineering documents and such things that aren't
22 really designed for a person that doesn't have some expertise
23 to read easily. Just because they have to delve into their
24 systems within their networks to get some of this information.

25 So we have to look very closely at the information

1 once we get it and determine whether the times are correct on
2 that information. And when I say correct, they can be in
3 different type zones, depending on where the phone companies
4 are at, how their networks are set up and such things.

5 So the phone companies typically also give us
6 legends and have given us instructions on how to decipher
7 those records. And those are the things we have to look at
8 very closely before we take those records and then give them
9 to the detectives, or if the detectives get them directly, to
10 help the detectives figure out that this is what's going on
11 with these records and these were the times of these records.

12 Q So I want to talk first with a pin register that
13 does not have the precision location associated with it. The
14 information that law enforcement is getting, either by way of
15 historical record or live time information, does that
16 information provide you some amount of location information?

17 A Yes.

18 Q Okay. Can you describe what kind of location
19 information you're getting with those types of records?

20 A On those records we get cell sites, and in the least
21 cell site information and then most of the time a sector
22 information, two on that, which means that it gives us the
23 physical location of the cell site, where it's at, and then it
24 tells us essentially what side of that cell site it's on.

25 So if you can picture a cell site, when you see one

1 driving down the road, you see typically, three sides to that.
2 So that information we get from the phone company will tell us
3 the phone was connected or associated with this cell site at
4 this location and that it was hitting a radio on a specific
5 side of that, which helps us do determine what direction from
6 that cell site that the phone was in when it registered that
7 phone call.

8 Q And when you're provisioning these pin registers
9 without precision, are you providing at times information to
10 detectives to help them locate that person at the time that
11 the pin is up?

12 A Yes.

13 Q We had a custodian of records of T-Mobile talk about
14 their maximum distance on their towers in a farmland area
15 maybe being two and a half with bleed out or whatever term he
16 used to three miles. In your experience down in, you know,
17 the actual populated portion of Las Vegas, when you found
18 individuals associated with the tower, are we talking that
19 kind of distance, three miles them and the tower in downtown
20 Las Vegas?

21 A No.

22 Q And I know that -- and I'm not going to ask you to
23 put a number on it, but generally, when you get that kind of
24 information, what are we talking about the location of that
25 phone to that tower?

1 A Generally, if you look at a cell tower map as you go
2 from the outskirts in, the towers get tighter or wherever
3 there's population, you get more towers. And be the reason
4 for that is -- is that you can only have a certain amount of
5 phone calls happening on one specific cell tower. And you can
6 equate this to when there's a -- like a disaster or something
7 like that happens and the phone networks go out. The for that
8 is -- is because so many people get on their cell phones at
9 the same time and those radios on those towers can only handle
10 so many calls.

11 So the phone companies then engineer their networks
12 to be that if they have this type of population density in an
13 area, then they need more cell towers to help cover those
14 areas so the cell towers will be closer together in areas
15 where there's population. And they also don't want those cell
16 towers to be beaming across each other. They want a slight
17 overlap between them or else when you try to make a phone
18 call, you'd be bouncing to different towers and there would be
19 radio interference from this tower to this tower, and they'd
20 be interfering with each other and that's why they do that.

21 So in our city, if you went to an area like the
22 Strip or downtown here, because of tourism also, there's --
23 there's -- the number of cell towers is huge. Every corner
24 has multiple cell towers on it to cover that type of
25 population. As you go out to the neighborhoods, you're going

1 to see those towers spaced, generally, within a mile or so of
2 each other in -- in the neighborhoods.

3 And then as you go out to the mountainous areas or
4 out to Mt. Charleston or some of those areas, then that's
5 where you'll see these towers that are spaced between each
6 other.

7 Q When a phone connects to a tower -- well, let me ask
8 -- maybe I should have asked this before. Is there slight
9 variations in the technology between the various phone
10 companies?

11 A Yes.

12 Q Okay. And even within the same phone company, can
13 there be a slight variation between the type of phone activity
14 that's going on?

15 A Yes.

16 Q Does the general rules that you're talking about
17 here apply to pretty much any sort of cell phone?

18 A Yes.

19 Q We heard from somebody that said the phone may not
20 necessarily connect to the closest tower, but is generally
21 going to be near the tower. Do you understand or do you agree
22 with that statement, I guess I would say?

23 A It is -- yeah, the phone will connect to the tower
24 that it has the best signal to. So if there's an obstruction
25 between the closest tower and the phone, there is a

1 possibility for the phone then to connect to a tower that may
2 be physically farther than that closest tower because it's
3 getting a better radio signal to -- to the other tower.

4 Q In your experience, if a phone connects to a tower,
5 does it have to be at least somewhere near that tower?

6 A Yes.

7 Q And in your experience, if a phone connects to a
8 particular sector on that tower, does a phone have to be
9 within the broadcast sector of that particular tower?

10 A Yes.

11 Q Let's talk then about precision location. When you
12 have a phone and you have cell site information, you said that
13 you can get location information of cell sites, but then you
14 said there's another thing called precision location. What is
15 that?

16 A Correct. So precision location works different than
17 that. Instead of it being information from the phone company,
18 per se, that -- that tells us, okay, this phone connected to
19 this cell tower so they know that for every phone call.
20 Precision location is that the phone company then actually
21 queries the phone on behalf of law enforcement and asks the
22 phone where it's at, essentially.

23 And so the phone then tells the -- the phone
24 network, well, once it's provisioned, it tells us as law
25 enforcement what it can gather as its best location and it

1 uses whatever technology is active within the phone to try to
2 see what its best location is.

3 Again, to equate this would be when you're going on
4 your navigation app on a cell phone or something and you hit
5 the button and it says where you're at, that's essentially
6 what the phone does and then reports that location back to law
7 enforcement server.

8 Q Precision location similar to a ping?

9 A Yes.

10 Q And the information you get back could be any number
11 of things, but at times do you get GPS locations from the
12 phone like --

13 A Yes. The phone will attempt to give its best
14 location, which could be a very good location or it could be a
15 worse even location than the cell tower itself. It can be
16 variable.

17 Q That was going to be my next question. If you get a
18 location, do you get kind of sort of an error rating as it
19 relates to that location?

20 A Yes. It -- it will typically tell us what the
21 location -- estimated location is by the phone and then it
22 will give us a range typically in meters that tells us that
23 the phone should lay within this certain footprint or radius,
24 typically, in meters.

25 Q Now, were you contacted by me to review some of the

1 phone records that had been previously provided in this case
2 and look at those records and ask to maybe render some help in
3 assisting me in figuring out what these records mean?

4 A Yes.

5 Q And the records that you reviewed, are those records
6 that were actually gathered by the technical unit of the Las
7 Vegas Metropolitan Police Department?

8 A They were given to us by the phone company. They
9 were -- they were not gathered on using our collection
10 equipment, no.

11 Q So you -- were you asked to go back and check to see
12 if you had ever done any precision location information in
13 this case as the Las Vegas Metropolitan Police Department?

14 A Yes.

15 Q And were you able to find out whether or not you did
16 or didn't do any precision location information?

17 A We did not.

18 Q Is there other units or other law enforcement
19 agencies, not the Las Vegas Metropolitan Police Department in
20 the valley, that Metro detectives can utilize to get that type
21 of information?

22 A Yes.

23 Q And for example, who?

24 A There are some task force units that we have
25 detectives connected to, such as the criminal apprehension

1 team and the DEA drug task force that sometimes does those
2 type of intercepts.

3 Q And that type of intercept, let's say the CAT unit,
4 for example, do they have --

5 A Yes.

6 Q -- an FBI agent assigned to them?

7 A Yes.

8 Q And would they have the ability, the criminal
9 apprehension unit, to do exactly what you do at --

10 A Yes.

11 Q -- your office for Metro?

12 A Yes.

13 MR. DiGIACOMO: May I approach, Judge?

14 THE COURT: Yes.

15 BY MR. DiGIACOMO:

16 Q Sir, I'm going to show you what's been marked as
17 Exhibit's 275 through 312. Just briefly flip through those
18 and confirm those are the records that you reviewed in this
19 case.

20 MR. LANDIS: Mr. DiGiacomo what was that exhibit?

21 MR. DiGIACOMO: It's 275. I messed up because then
22 they start again.

23 BY MR. DiGIACOMO:

24 Q It's Exhibit 275 and then --

25 A Yeah.

1 Q -- 297 through --

2 MR. DiGIACOMO: When he flips that over, I'll tell
3 you.

4 THE WITNESS: 312.

5 BY MR. DiGIACOMO:

6 Q 312.

7 A Yes.

8 Q I want to talk about two sets of records that -- two
9 sets of records for two phones that were not discussed by the
10 COR from T-Mobile. So let's start with the AT&T records,
11 which are 306 and 307.

12 A Okay.

13 Q I'm going to put 307, the first page of 307 up on
14 the screen for the ladies and gentlemen of the jury. That's
15 page 1 of 307; is that correct?

16 A Yes.

17 Q Okay. And I know that screen's really small, that's
18 why I left 307 in front of you. If --

19 A Okay.

20 Q -- you would prefer to use 307, you can. The first
21 thing I want to ask you about is the time column which would
22 be, I guess, the third column in on those records. It says
23 something about time in UTC. Do you know what that means?

24 A Yeah. So those times are in universal time, which
25 is a time used essentially computer networks also and by the

1 military sometimes, which is a -- a standard time basically
2 for across the globe. So our time zone Pacific here is
3 typically eight hours below UTC time. So we subtract eight
4 hours. But when we're in daylight savings time we're seven
5 hours.

6 So during the -- actually, during most of the year
7 we're in daylight savings time compared to UTC. So we're
8 seven hours behind UTC or Greenwich Mean Time is also it's
9 called.

10 Q So in September of 2014, these records are in UTC,
11 you need to subtract seven hours in order to --

12 A Correct.

13 Q -- put them this local time?

14 A Correct.

15 Q So now I'm moving over to -- I'm going to sort of
16 skip all the way over to the right side, which is cell tower
17 location. You see that column there?

18 A Yes.

19 Q The information that's provided in that column, if
20 you could explain what that information is.

21 A So the first part at 36982 is what's called the --
22 the LAC, which is -- so -- so --

23 Q I'll put that bigger there for you.

24 A There you go. So the 36982 gives a geographical
25 area, a grouping of actual cell sites. So typically within a,

1 like a city like ours, you'll have -- the phone company will
2 break up its -- this area say in Vegas into LACs first, they
3 break it into kind of areas of town, which -- it's a rough
4 area of town thing. There are times when a cell site can be
5 within a LAC and be not grouped completely in there.

6 But and then the next number is the CID, which is
7 the cell ID. So that -- that number there tells you within
8 that LAC the cell tower and actual radio on that cell tower
9 that -- that that's on the cell tower. So if you combine the
10 LAC with that CID, it tells you that you're on a cell tower
11 and this is the side and radio of that cell tower that it's
12 connecting to.

13 The next location there afterwards, is a latitude
14 and longitude, otherwise known as a GPS coordinate of the cell
15 site itself. So that tells you where that site's at, LAC and
16 CID. Tells you --

17 Q Let me stop you --

18 A Okay.

19 Q -- for just one second before I get -- before you
20 get to the last sort of numbers --

21 A Okay.

22 Q -- and see if I can clarify a couple of things. So
23 the 36982 for lack of a better term is like a zip? There
24 might be a lot of addresses in there?

25 A Correct.

1 Q And then the first one, two, three, four numbers of
2 the 0436 identifies a particular cell tower?

3 A Correct, yes.

4 Q And then the 2 is exactly which antenna or radio
5 antenna that's on that tower that that phone hit?

6 A Yes.

7 Q Okay. Now, as opposed to the rest of the records
8 we've looked at, the negative 115 and the 36, is that in
9 opposite order of the rest of the records that we're going to
10 look at in this case?

11 A Yes. Yeah, actually, it is, yeah.

12 Q So it's longitude/latitude instead of latitude --
13 longitude?

14 A Yes, correct.

15 Q So if you were to stick this into Google Earth,
16 you'd do the 36 number and then the negative 115 number and
17 see where that location is?

18 A Correct.

19 Q So after you figure out what tower you're at and the
20 GPS coordinates for that tower, the 300, do you know what that
21 300 is?

22 A The 300 is what we call the azimuth or the direction
23 of the -- that that radio is -- is facing, the center of that
24 radio is facing or the panel that's up on the -- the cell
25 tower. So you have a 360 degrees, and so it's 300 -- 300

1 degrees which 0 or 360, which we would be due north. 300
2 degrees would then put you 60 degrees off to the west. So
3 that would be like north, northwest for 300 degrees is the way
4 that that -- the center of that antenna is facing.

5 Q Now, when AT&T uses the next number, the 65.0, what
6 does that actually mean about the width of the 300 azimuth?

7 A So -- so that number is the beam width, which means
8 that antenna is facing 300 degrees and the 65 there tells us
9 that that's how wide the signal is. So it will cover 65
10 degrees.

11 But on AT&T engineering reports, they report this
12 number as being the optimal signal area of for reception of a
13 cell phone. And kind of like what I talked about earlier,
14 these numbers come from engineering documents from the phone
15 company. They don't come from documents that are created
16 specifically for law enforcement or specifically for anyone
17 then to decipher these things except for engineers.

18 So for engineers who are tuning these antennas, they
19 want to know what their optimum beam width is where if people
20 are within this 65 degree cone that comes out from the cell
21 tower, that they're going to have better cell service. These
22 are, though, 120 degree antennas, which means they'll actually
23 cover out to 120 degrees.

24 So if you look at a cell tower that has three sides,
25 it will have three -- three facing antennas on it each doing

1 120 degrees equaling 360 for an entire circle. So these --
2 where it says 65 beam width, that's the optimal signal
3 strength, but that antenna will go out to 120 to its sides.

4 Q So a cell tower is meant to cover the entire circle
5 around it, correct?

6 A Correct.

7 Q And these are three-sided towers?

8 A Correct.

9 Q And thus --

10 A Typically.

11 Q -- if you divide 360 degrees by 3, you're at 120?

12 A Correct.

13 Q And so for -- well, the engineers may say that's the
14 optimal distance. In your experience on AT&T towers, might a
15 phone be located within that 120 degrees beam?

16 A Correct. There's -- there's a variability beyond
17 that 65 that means it's -- it's somewhere within that -- it
18 can be within that 120 and then it could -- when it gets
19 toward the edge of the 120 degrees, the phone could hand off
20 to the other sector that's kind of taking over for those other
21 directions.

22 Q And unlike some of the other records, and let me go
23 back and see if there's one on the first page. Oh, there is
24 one. So if we go down to one, two, three, four, five, Okay,
25 is -- one, two, three. Okay, there is three. So unlike the

1 other records, on AT&T do you get a little bit more
2 information about what towers a phone hit during the course of
3 either -- well, of a phone call. If it's a text, obviously
4 not. But if it's a phone call?

5 A Yeah. So AT&T is the only cover -- only company
6 that gives us what we call transitional cell site information,
7 which means that any other company just tells us when the
8 phone starts when they hit the call button or the person
9 calling them comes in, it gives us a beginning location. And
10 when the call ends, it gives us an ending location.

11 AT&T actually tells us in their reports which -- or
12 if that phone's moving, or not necessarily even moving, but if
13 it's hitting -- if it hits and registers with a different cell
14 tower during the -- the time of that phone call, they'll
15 actually tell us that it -- it hit -- it registered with --
16 with this tower during this time and then it registered with
17 this tower. And it will give us all that information during
18 the phone call.

19 So even when you're on a phone call, your phone's --
20 your phone is constantly searching for other cell towers with
21 better signals. And based on the technology and the phone, it
22 will then hand off to the next tower when the signal from the
23 tower that it's on, it gets worse and there's new towers out
24 there that have better signal. And that's why you can have a
25 phone call and drive from one side of the town to the other

1 and your phone doesn't hang up because as it gets better
2 signal to a new tower, when it decides that that tower is that
3 much better than the tower it's on, it will then hand off to
4 that tower.

5 And then that's the information that AT&T supplies
6 us, is all the different towers and sectors that a phone
7 handed off to during -- during the given time of the phone
8 call.

9 MR. LANDIS: If I could lodge an objection and move
10 to strike transitional data based on disclosure.

11 THE COURT: That's overruled.

12 BY MR. DIGIACOMO:

13 Q So if I'm on an AT&T phone and I start in Jean on a
14 phone call, and I don't hang up until I get to St. Jorge,
15 there is going to be information about every tower I hit in
16 between on I-15?

17 A Correct.

18 Q If I'm on a T-Mobile or any other phone company
19 phone and I do the exact same thing, how many tower location
20 hits am I going to get?

21 A Two. Two -- one at least, and depending on what
22 company, they'll typically give you the beginning location and
23 some companies will then give you the ending location. So it
24 will only tell you when it started and then what tower it was
25 on when it stopped.

1 Q So as we look at the first page of 307 at the -- I
2 think, this was the sixth entry down, an individual started on
3 the tower that you referenced before, the tower 0436 on
4 antenna number 2, but during his phone call he went over to a
5 tower 0039, antenna number 1?

6 A Yes.

7 Q And by the end of his phone call he's back on his
8 original tower?

9 A Correct.

10 Q Let me bring you back two items -- or three items, I
11 guess it is. State's Exhibit No. 308 through 310. Put those
12 other ones back here.

13 A Okay.

14 Q Looking at -- I guess, we can skip 308 because
15 that's the subscriber. So 309 and 310, do you recognize what
16 type of documents those are?

17 A Yes. These are a cell tower list and phone records
18 from Cricket Communications.

19 Q So let's start with 309, the first page, just at the
20 very top there, is there information about what time these
21 records are in?

22 A Yes. So right in red at the top it says all times
23 are GMT, which is the same as UTC or Greenwich Mean Time.

24 Q So once again, at this time of year we got to adjust
25 by seven?

1 A Correct.

2 Q On these, there's a list there that says cell site.
3 That information, and then it has GPS location. So can you
4 explain what information you can gather off that?

5 A Yes. So the -- the cell -- this -- Cricket phones,
6 at this time period, when the network existed, they were a
7 different technology. They were a technology called CDMA. So
8 the way that they give their cell sites is different than the
9 way that T-Mobile and AT&T give their cell sites.

10 So the -- the switch name field right before that,
11 Phoenix 2 tells us that there -- this -- the physical switch,
12 the building where all these sites tie back to was actually in
13 Phoenix for Cricket. And then the cell site is, typically, a
14 three digit number that gives a -- it's just that number.
15 It's just 369 is how they denote their towers.

16 So when the CDMA companies would tell you that it's
17 in this switch area, which would be Phoenix 2, and then they
18 give you a cell site number, 369, the -- the latitude and
19 longitude is then the location of where tower 369 is located.

20 Q Do you have information on Mr. -- on those records
21 -- oops, sorry, I hit the wrong button there, Judge -- as to
22 which sector of 369 is being hit?

23 A Yes.

24 Q Okay. And I'm sorry, I just dropped that down here.
25 Which column do you look at to figure out what the sectors

1 are?

2 A So next to the latitude -- or next to the longitude
3 field to the left there is one that says -- it's a little cut
4 off, but it says cell sites kind of SEC, that's the cell site
5 sector. It's the one with 0s and 2s and 3s and 4s in it.

6 Q And I think what happened is I cut that off when I
7 did that. So if I jump back in here --

8 A Yeah, it's that column on the right.

9 Q So that one, you're looking at the cell site
10 sectors. When you see a 0 in that location, is there going to
11 be any information as to the cell site sector?

12 A No. A zero on that denotes that it did not -- there
13 was no cell site information.

14 Q If you're going to go through these records, would
15 you see other than zeros, 2, 3s and 4s within that column?

16 A Yes.

17 Q What is it that you can do with the 2, 3 and 4
18 information to figure out on another document where the sector
19 is?

20 A Okay, so in the phone industry there are different
21 manufacturers of these -- what they call phone switches. So
22 when we use the term phone switch, there's actually a large
23 computer that controls all these calls and they're very
24 expensive racked computer units. And there's different
25 manufacturers of these systems.

1 So one of the main manufacturers of CDMA systems is
2 a company named Lucent. And so what happens is when -- when
3 -- when calls come in and -- well, let me back up. So
4 Lucent's engineers when they, again, designing this whole
5 system on denoting cell towers and sectors and such things,
6 designed them for engineers. And the person for Lucent didn't
7 take in mind, again, people trying to read these records
8 later.

9 So the way Lucent engineers their system is -- is to
10 denote different sectors on a cell tower, they denote oh, the
11 number 1 as an omnidirectional cell tower, which would be
12 equated to like the rabbit ears on a TV or an antenna on a
13 walkie-talkie. And omnidirectional is an antenna that covers
14 360 degrees.

15 So if you can imagine like a walkie-talkie or
16 something that has an antenna on top of it, that covers 360
17 degrees. That's a omnidirectional. So the engineer at Lucent
18 decided to call sector 1 an omnidirectional. And then they
19 named -- they went from there for the sectors on a tower. So
20 since one was the omnidirectional, they started naming their
21 sectors on physical cell towers that point different
22 directions sector 2, sector 3, sector 4 and then can go all
23 the way up. They can keep going if there's different multiple
24 variations. But typically, there's three sides on 90 percent
25 of cell towers.

1 So the issue we have with reading Cricket records
2 and Sprint and Verizon records sometimes is if they're using a
3 Lucent switch, and the Phoenix 2 switch that's denoted in the
4 switch name here is a Lucent switch, we have to subtract one
5 off of those cell site sectors to know what actual direction
6 that that was.

7 So if it says it's sector 2 on a -- on one of these
8 cell towers, it's actually sector -- it's actually facing the
9 1 side. It's the first sector on the cell tower. And on
10 their records where they give us later of what sector it is on
11 the cell tower, that's actually the first sector. So any is
12 Lucent phone switch we subtract one from any of those numbers.
13 And that's another if you look through the numbers you won't
14 see any 1s on there. All you see is 2, 3s and 4s. So we
15 subtract one away from those to be able to cross reference it
16 with the list of cell towers to tell us what way that -- that
17 that antenna's facing.

18 Q So then if when you get the list of towers, which
19 are in State's Exhibit 310, and you wanted to know if you see
20 a 2 on this list -- and you -- I'm just going to pull up
21 one --

22 A Okay.

23 Q -- small section of the towers here. And I think
24 even 369 is on here. So 369, if you see a 2, you want to go
25 to the 1 --

1 A Correct.

2 Q -- and then go over and find out what the azimuth is
3 for sector 1?

4 A Yes, which on that one there would be the -- the
5 sector ID set of 1, since we subtract 1 -- 1 from 2 and then
6 we go and it's a 30 degree -- 30 degrees is what that antenna
7 is set up.

8 Q So if you take your cell tower, and now it says it's
9 at 30 -- your azimuth's at 30 degrees, you turn your azimuth
10 30 degrees and then you have 120 degrees, which is 90 to 330,
11 basically --

12 A Correct.

13 Q -- facing sort of a northeasterly direction?

14 A Correct.

15 Q And once you do all that, you can plot all of those
16 records out as to sector locations for those phones as to
17 where it is they're hitting?

18 A Correct.

19 Q In addition to doing that, did you review some maps
20 of -- well, before I get to that, let me start with these
21 things. There were essentially, four phone records -- well,
22 let me rephrase this. Were there four phone records that you
23 were requested to drop into what we call Pen Link?

24 A Yes.

25 Q Explain to them what Pen Link is.

1 A So Pen Link is a analysis software that we use to
2 take all of this data that you see here and put it into an
3 easier way for analysts and detectives to read and analyze and
4 kind of cross cases together in numbers to make it a much
5 simpler picture.

6 Q And when you dropped this information into Pen Link,
7 can you do things like normalize the times between the calls,
8 the texts and the various records?

9 A Yes.

10 Q And can you then also see if the record you have on
11 one phone record connects -- is showing on the other phone
12 record?

13 A Yes.

14 Q And did you, in fact, drop the 762-1584, the
15 542-1558, the 241-1051 and the 666-4948 into Pen Link and do
16 all that normalization process?

17 A Yes.

18 Q I'm showing you what's been marked as State's
19 Proposed Exhibit No. 322 and ask you to review that and see if
20 that is, in fact, the Pen Link document that you generated
21 once you normalized the information from those four phone
22 records?

23 A Yes.

24 Q And then showing you 323, does that appear to be a
25 true, fair and accurate copy of 322, with the exception that

1 the names that are associated by evidence, other evidence in
2 the case is then replaced within the Pen Link software?

3 A Yes.

4 MR. DiGIACOMO: I'd move to admit 322 and 323.

5 MR. LANDIS: As to 323, I don't think this witness
6 has foundation to confirm that the replaced names match with
7 those numbers, at least I don't think we've heard evidence of
8 it.

9 MR. DiGIACOMO: We've heard evidence of all numbers
10 but one and because we're taking him out of order, that, I
11 believe they're not going to dispute that there'll be evidence
12 of that last number. And so if we don't tie it up, the
13 Court's free to strike it, but --

14 MR. LANDIS: I don't disagree that we've heard
15 evidence. I disagree that that witness has foundation to
16 testify to what he just did, which is those names tie to those
17 numbers and they mean what they should.

18 MR. DiGIACOMO: He didn't testify to that. I said
19 he was provided those names associated with that number and he
20 compiled it into information.

21 MR. LANDIS: I respectfully disagree with that.

22 THE COURT: We have information for three of numbers
23 that's already been put into evidence as to the subscriber
24 information for those numbers, correct?

25 MR. DiGIACOMO: All of the subscriber information is

1 contained within there.

2 THE COURT: Is contained. Okay.

3 MR. DiGIACOMO: Three of them have been identified
4 by other evidence from witnesses previously. One number
5 remains for my last witness to identify, and I believe, the
6 defense is not going to dispute that it's going to be capable
7 of being identified.

8 THE COURT: Okay. And so the foundation here for
9 this exhibit is just that he took the information that was
10 given to him for that and now has done a demonstrative
11 exhibit; is that --

12 MR. DiGIACOMO: Correct.

13 THE COURT: -- what we're -- we have? Okay. So the
14 objection is overruled.

15 MR. LANDIS: Can I just clarify one thing? He
16 created that?

17 BY MR. DiGIACOMO:

18 Q Did you create 322?

19 A Yes.

20 Q And then did you check to see, for example, that
21 762-1584 has Laguna on it, and the 542-1558 has Murphy on it,
22 and the 666-4948 has Jorge Mendoza on it, and the 241-1051 has
23 Robert Figueroa on it?

24 A Yes.

25 MR. DiGIACOMO: There you go.

1 THE COURT: Did you want to renew the objection?

2 MR. LANDIS: I don't.

3 THE COURT: Okay. It's overruled.

4 THE CLERK: Are they both admitted?

5 THE COURT: And they'll -- was there any other
6 objection?

7 MS. McNEILL: No, Your Honor.

8 MR. WOLFBRANDT: No.

9 THE COURT: All right. Those will be admitted.

10 (State's Exhibits 322 and 323 admitted)

11 BY MR. DiGIACOMO:

12 Q We'll put up the first page of 322. And I'm going
13 to sort of try and jump to this so that you can sort of
14 explain -- I'm going to have to do it a half a side at a time.
15 So let's try that again.

16 I'm going to just grab sort of the -- that's --

17 A I can see it, too, if it's --

18 Q I just want them to be able to --

19 A Okay.

20 Q -- see it. So can you tell us looking at the
21 various columns how to read the information?

22 A So the -- the -- the first number is target, which
23 would be -- that's how we denote phone numbers in our
24 database. So that would be the -- the phone number of which
25 the records came from. Then we have a date and a time, and

1 that time is in Pacific standard time. So when I did
2 importation of all these records, I made sure to take any of
3 the times that were in UTC, or any of those, and adjust them
4 so that everything was in Pacific standard time or for Las
5 Vegas. And --

6 THE COURT: Pacific standard or daylight --

7 THE WITNESS: Well, it -- it -- yeah, I'm -- I'm
8 sorry. Yeah, our Pacific standard time with the daylight
9 savings offset on it. So negative 7 from GMT, which would be
10 what our time was during that -- on September 21st, 2014.

11 BY MR. DiGIACOMO:

12 Q And with the record, for example, the T-Mobile
13 records, that the ones that is the 666-4948, did you go
14 through and check the MSC locations and adjust --

15 A Correct.

16 Q -- phone per phone call for the MSC locations so
17 that every record here should be in local time --

18 A Correct.

19 Q -- on September 21st?

20 A Correct.

21 Q Okay. The next information?

22 A Then there's the duration of the call. The
23 direction of the call, which would be an incoming or an
24 outgoing call in relation to the -- the target number,
25 whichever that target number was. So that would mean that

1 that target number made a call out or was receiving a call.

2 The case number, which just is an internal denotation
3 (sic) for these records for me. Call routing, which will,
4 depending on the type of records that are being imported, can
5 tell you whether it was a text -- a text message or a phone
6 call. Being again, this -- all this data is being normalized
7 from all the different companies, sometimes when the data
8 comes from certain companies, they don't give a certain piece
9 of information, so the software, that's where you can get
10 unknowns in there because the software, it wasn't necessarily
11 part of that normalization process.

12 And that -- and then call status is -- is basically,
13 a -- it's slightly different from the -- the -- the call
14 routing, but if the information was there, it can tell you
15 whether it was a completed call or not, with full records.

16 Q And since you're pulling this information in from a
17 record, for example, if you were to go down to the one that I
18 have the mouse on now, that first blue line below the last
19 well, that pink-ish line there, there's a duration there of a
20 minute, but it shows that it's a text message. That's from
21 the importation of the information that is taken from the
22 records?

23 A Correct.

24 Q Okay. And so for whatever reason, Mr. Murphy, who
25 -- or sorry, the 542-1558 number, that record reflects it as a

1 1 when that importation occurs, even if the duration of it may
2 be --

3 A Instantaneous.

4 Q -- not even a second.

5 A Right.

6 MR. LANDIS: Objection. Leading.

7 THE COURT: Overruled.

8 BY MR. DiGIACOMO:

9 Q So let me go to the other side of the column on 322.
10 And I think that's where we were at. So let's just grab a
11 small section there. Looking at those various columns, what
12 are we looking at?

13 A So then we have the number dialed, which would be
14 the number that was in communication with the target -- or the
15 number that we had gotten the records for. And then the
16 source, again, is -- that -- this is an internal field for us
17 that denotes -- it's -- it's how we separate where we got the
18 records from.

19 The IEP system identity is a switch identifier,
20 which tells us what the -- the switch identifier was from the
21 phone company, and that helps us to identify what phone
22 company it was when we're looking at the records. Third phone
23 is typically, when there's another number involved. Most of
24 the time that has to do with calls rolling to voicemail about
25 99 percent of the time.

1 The third phone is the number that gets handed off
2 when a phone rolls into voicemail because we do get that --
3 that information. And then we get a beginning and an ending
4 location. Again, if available on the call records, it will
5 import a beginning or an ending, which means at the very
6 beginning of the transaction where the -- what cell tower the
7 phone was on at the very ending of the transaction where it
8 was at.

9 These -- the importation of these records don't
10 include the data from AT&T, which is the information during
11 the call, just the beginning and the ending.

12 Q And then we've just talked about that's the
13 beginning location is 369 for that first line. What is that?

14 A That is the Cricket tower of 369-2.

15 Q So is the second one the sector?

16 A Correct.

17 Q And you subtract one from that and go to the other
18 list and you --

19 A Correct.

20 Q -- can figure out where it's at?

21 A Correct.

22 Q Okay. I'm going to jump over to 323 so that --

23 MR. DiGIACOMO: It's page 1, counsel. I'm showing
24 him 323.

25 BY MR. DiGIACOMO:

1 Q I want to go down and go to bottom over here, but
2 let me start just at the top. In 323, some of the information
3 that may not be relevant for the jury has been dropped out or
4 hidden in the excel spreadsheet.

5 A 323.

6 Q Can you look at the two together?

7 A Yeah.

8 Q Let me ask you this question. Looking at 322 and
9 then looking at 323, the --

10 A The record source and the IEP -- yeah, the record
11 source and the IEP system identity are -- are gone.

12 Q Those are hidden?

13 A Correct.

14 Q And then what about your internal case number, is
15 that on 323?

16 A Yes, that's gone, too.

17 Q Okay. That's to -- so now let's jump down to the
18 first page of 323 and jump to the bottom. So when you see the
19 back and forth of the phone numbers, can you describe, is that
20 -- if I were to talk about the -- from just below
21 Mr. Figueroa, David Murphy, Mendoza, David Murphy, Mendoza,
22 David Murphy, Mendoza, David Murphy. So those calls that are
23 going in a row, is that six calls or is that three calls?

24 A It would be three -- yeah, so it's -- it's -- it's
25 -- so since those people are talking to each other, you're

1 going to have a record generated for -- since we have the
2 records from each -- each person's phone, you're going to have
3 a record from each person's phone. So you're going to see a
4 incoming from one person and outgoing from the other person.
5 It's the same phone call or it's the same communication
6 between those two people.

7 Because we've imported the records from both, then
8 you're going to see two transactions, incoming from one and
9 outgoing from another. They -- that gives you, you know, that
10 information. So you have six records that actually show you
11 three communication transactions.

12 Q So when we're looking at this one, the first one
13 right below that, Mr. Figueroa there, that -- I don't know if
14 this screen's going to do that. Yeah, it's generally close
15 enough. But that one there, it is David Murphy's record
16 you're getting that information from and it's showing contact
17 with Jorge Mendoza's phone?

18 A Correct.

19 Q And the next one is Jorge Mendoza's phone showing
20 contact with David Murphy?

21 A Correct.

22 Q And if you notice on the left side, there's only
23 three Mendozas, but on the right side there are -- I'm sorry,
24 on the left side there's four Murphys, on the right side
25 there's four Mendozas, but then on -- when you flip them

1 around, there's only three Mendozas on the left side and three
2 on the Murphy side. Why does that happen?

3 A All right, let me look at these here.

4 Q If you want the actual records in front of you to --

5 A Murphy sent one to Mendoza, Mendoza received it.

6 Murphy sent another one to Mendoza, Mendoza received it.

7 Murphy sent another one to Mendoza, Mendoza sent one to

8 Murphy. Murphy got that one. Yeah, so it's not showing the

9 -- an incoming text to Mendoza from Murphy it looks like.

10 Q Correct. So you are just importing the information
11 that's provided by the phone company, correct?

12 A Correct.

13 Q It is possible that a phone record from let's say
14 AT&T or in the case of David Murphy, T-Mobile or Metro PCS
15 doesn't necessarily show all the information that is coming in
16 from T-Mobile; is that fair?

17 MR. LANDIS: Objection. Leading.

18 THE COURT: Overruled.

19 THE WITNESS: That's fair to say or that the -- if
20 the phone never actually got the text message, then it
21 wouldn't show up there either. So that would -- that would --
22 those are two reasons why that -- that that could happen.

23 BY MR. DiGIACOMO:

24 Q And so you could go through these -- well, let me
25 ask you this, do they have the same times, both companies

1 necessarily?

2 A No.

3 Q So they may be off in times on their own times,
4 correct?

5 A Yeah, and usually they are. There's -- it's very
6 rare that they have the exact same times.

7 Q So there's some limitations as it applies to Pen
8 Link in the sense that if you really want to know the answer
9 to the question, you got to go to the original records?

10 A Correct.

11 Q Now, we've talked about with several witnesses that
12 in order to actually find the location of a cell tower, you
13 could put a GPS location into Google Maps and you will get
14 certain maps; is that fair?

15 A Correct.

16 Q Okay. And did you review maps of the Las Vegas
17 valley that contained towers hit by those phones during
18 September 21st of 2014?

19 A Yes.

20 MR. DiGIACOMO: May I approach, Judge?

21 THE COURT: Yes.

22 BY MR. DiGIACOMO:

23 Q Showing you what's been marked as State's Proposed
24 Exhibits 315 through 321 --

25 A Yes.

1 Q -- were you provided those maps and asked to confirm
2 that the tower locations have been accurately placed from
3 these records on to those maps?

4 A Yes.

5 Q And do they fairly and accurately depict the
6 location of records of towers on these records on September
7 21st of 2014?

8 A Yes.

9 MR. DiGIACOMO: Move to admit 315 through 321.

10 MR. LANDIS: No further objections.

11 MS. McNEILL: Nothing -- I'll agree with Mr. Landis,
12 no further objections.

13 MR. WOLFBRANDT: Subject to what we objected to and
14 discussed earlier.

15 THE COURT: Those will be admitted.

16 (State's Exhibits 315 to 321 admitted)

17 BY MR. DiGIACOMO:

18 Q Now, sir, I'm going to put up I think maybe just a
19 couple of these. If I were to put up 315 to start with, can
20 you sort of describe to the ladies and gentlemen what we're
21 looking at.

22 A The pinpoints would be the -- the latitude/longitude
23 GPS location of the cell tower from T-Mobile towers.

24 Q And in reading those cell towers, the first number,
25 so it says T-Mobile tower -- if I go to the top one, let's

1 say. If I go to the one -- let's start with that one. The
2 one up above --

3 A Okay.

4 Q -- my line there. It's T-Mobile tower and then
5 there's a number followed by a slash. That first number, what
6 is that?

7 A That's the LAC.

8 Q So when I went -- or when someone goes to those
9 records, they pull that number for the LAC --

10 A Yes.

11 Q -- it could be area code? And then the number
12 that's after the slash, there's in this one four digits and a
13 star. Did you see that?

14 A Yes.

15 Q The first four digits that are there, what is that?

16 A The CID or the cell site ID.

17 Q And the star at the end there is reflective of what?

18 A That would be the sector denotation of that cell ID.

19 Q So if you were to look at the LAC for two 24597 and
20 you were to go to 5033, you might see 50331 through 8 and any
21 one of those you could then know it's that tower?

22 A Correct.

23 Q And then if you wanted to, you knew the sector of
24 that tower, you could then take 120 degrees pi and figure out
25 which side of that tower the person's hitting?

1 A Correct.

2 Q Now I want to put up maybe one representative
3 example, so I guess, I'll do 316. And this is page 1 of 316,
4 and I don't know if you can read it, but jump down here to the
5 page 1 of 316. That little line on Google Earth is sort of
6 what?

7 A That would be the legend that gives distance -- the
8 distance on the map per that amount of --

9 Q Altitude?

10 A -- distance. Yeah, correct.

11 Q So this line represents 1373 feet?

12 A Yeah, it's kind -- it's cut off on mine, but 372
13 something. I -- I don't know if it's feet or meters.

14 Q Okay. And then that's the distance you could use if
15 you wanted to know the distance of a particular location on
16 that particular map?

17 A Correct.

18 Q And then if you do 316-B, as you get farther out, I
19 think I can catch the feet this time.

20 A Yeah.

21 Q Now it's approximately, a half mile of 2621 feet?

22 A Correct.

23 Q And then you back out a little farther 316, now
24 we're looking at towers on -- at 5258 feet or close to a mile?

25 A Correct.

1 Q And 316-D. If I were to jump first down to the
2 bottom so that the jury knows it -- that's basically what
3 looks like it's the legend's at two miles.

4 A Correct.

5 Q And 316-E. I don't know if you can read, but that's
6 what -- can you read it down there at the bottom of three --
7 three miles?

8 A Yes, three miles.

9 Q Looking at 316-E -- or 316, or the last page of 316
10 as we stapled those exhibits together, those towers are the
11 towers hit by the various phones during September 21st of
12 2014, you previous testified.

13 A Yes.

14 Q Those aren't all the towers that are in that area
15 that's covered, is it?

16 A No, they're not.

17 Q The tower list is 275, is the enormous, correct?

18 A Correct.

19 Q And if you really wanted to find out how many towers
20 there were in any particular region, you could plot all of
21 these tower locations?

22 A Correct.

23 Q Did you also review a Power Point presentation of
24 various relevant call records with tower information and then
25 plot it by sector and time?

1 A Yes.

2 MR. DiGIACOMO: May I approach, Judge?

3 THE COURT: Yes.

4 BY MR. DiGIACOMO:

5 Q I'm showing you what's been marked as State's
6 Proposed Exhibit No. 324.

7 A Yes.

8 Q Do you recognize that document?

9 A Yes, I do.

10 Q And what is it?

11 A It's a Power Point presentation that plots various
12 cell towers connected to the numbers that I was asked to go
13 through. And also has some more specific sector information
14 on it.

15 Q And were you asked to go through and confirm that
16 that information is accurate demonstrative evidence of what
17 the phone records that you --

18 A Yes.

19 Q -- reviewed showed?

20 A Yes.

21 Q And that appears to be an accurate rendition of what
22 is contained within the phone records that you previously
23 looked at?

24 A Yes.

25 MR. DiGIACOMO: Move to admit 324.

1 MR. LANDIS: No further objections.

2 MS. McNEILL: No further objections.

3 MR. WOLFBRANDT: No further objections.

4 THE COURT: That's admitted.

5 (State's Exhibit 324 admitted)

6 MR. DiGIACOMO: And if the Court would just give me
7 one second to pull this up.

8 BY MR. DiGIACOMO:

9 Q You have the pages in front of you in case you can't
10 see those records real good. But the first record we're going
11 to talk about is the Maria Sandoval phone, the 702-242-8981,
12 correct?

13 A Yeah, 542-8981, yes.

14 Q And on September 21st of 2014, between 6:54 a.m. and
15 8:29 a.m., those are the towers that that phone was hitting?

16 A Correct.

17 Q And all of those towers are located where the
18 valley?

19 A Looks like the east -- east of 215. Or east of
20 I-15, sorry.

21 Q So east of the I-15, which is running up there?

22 A Correct.

23 Q The next phone is Jorge -- the Jorge Mendoza phone,
24 the 702-666-4948?

25 A Correct.

1 Q Now, on this first slide, the Mr. Mendoza tower, the
2 3:31 a.m., each one of these sector circles are filled in; is
3 that a fair characterization of the slide?

4 A Yes.

5 Q Okay. The tower record, it says 24593/625 star and
6 5251 star and 146/6251 star.

7 A Correct.

8 Q Do we have any sector location information for those
9 LACs?

10 A No.

11 Q And thus, you can't determine which side of the
12 tower Mr. Mendoza's phone was connecting to at 3:30 in the
13 morning?

14 A Correct.

15 Q At 7:22 a.m., Mr. Mendoza's phone connected to a
16 tower with LAC 24599-6247 star and 5247 star?

17 A Correct.

18 Q And that is an azimuth that points generally in the
19 north of the valley?

20 A Correct.

21 Q And thus, it was on the north side of that tower?

22 A Correct.

23 Q Then at 10:33 he's connected to T-Mobile tower
24 24594/5110 then there's a star, but when you plotted the
25 actual -- or when the actual LAC is plotted, he's now hitting

1 off the southeast sector of that tower; is that correct?

2 A Correct.

3 Q And between 4:21 p.m. and 5:19 p.m., he is now -- or
4 his phone is now hitting on a tower that services his address?

5 A Correct.

6 Q The 1219 Westlund Drive, Mendoza residence?

7 MR. LANDIS: I'd object to foundation as to how that
8 cell tower services that -- his address based on the testimony
9 we've received.

10 MS. McNEILL: I would join in that objection.

11 THE COURT: Response?

12 MR. DiGIACOMO: Well, I thought that's what he did
13 testify to, but I'll ask it that way.

14 BY MR. DiGIACOMO:

15 Q Does that phone service --

16 THE COURT: You can ask him that.

17 BY MR. DiGIACOMO:

18 Q -- the pin that's placed there in reference to 1219
19 Westlund Drive Mendoza residence?

20 A If -- if the phone was at 1219 Westlund Drive, the
21 tower would most likely hit would be that tower that's
22 denoted.

23 Q It's within the cone area or the -- the sector area
24 of that particular tower?

25 A Correct.

1 Q And then at 6:42 p.m., is -- Mr. Mendoza's phone is
2 hitting off the T-Mobile tower 24594/63 -- 6437 star, which is
3 generally northeast or north/northeast of that particular
4 tower?

5 A Correct.

6 Q And the last location information that's contained
7 on Mr. Mendoza's records at 7:29 p.m., shows him back on that
8 tower from earlier near an address, the 3668 Lucky Horseshoe
9 address hitting off the north side of the tower?

10 A Correct.

11 Q Mr. Figueroa's phone, 702-241-1051, he's -- his
12 phone at 7:44 a.m., is hitting off AT&T tower 36982/04362
13 and/or 34362, and that sector is plotted in a location that
14 has it heading to the northwest, which is near Mr. Figueroa --
15 or the residence that's identified on this record as 3252
16 Casey Drive?

17 MR. LANDIS: Objection. Leading, compound question.

18 MR. DiGIACOMO: I'm asking about an exhibit much
19 that's not leading.

20 THE COURT: All right. If you could just tell us
21 what this exhibit depicts, that would be good.

22 THE WITNESS: It depicts that sector on that cell
23 tower and an address with a yellow pin that falls within the
24 footprint of that sector.

25 BY MR. DiGIACOMO:

1 Q At 9:26 a.m., if you could tell us is -- well,
2 first, I don't know, maybe I can read this. AT&T tower
3 36998/01307 is the tower that's reflected there?

4 A Yes.

5 Q And the address that's reflected in the yellow is at
6 3668 Lucky Horseshoe?

7 A Correct.

8 Q And what is depicted in the photograph?

9 A It's depicting that sector and then the address of
10 -- address of 3668 Lucky Horseshoe, Laguna's residence within
11 the footprint of that tower.

12 Q And Mr. Figueroa's phone at 8:10 p.m. all the way to
13 6:09 a.m. -- or yeah, 6:09 a.m. on the 22nd, is he hitting off
14 -- or is his phone hitting off a tower referenced in this
15 photograph?

16 A Yes.

17 Q And I don't know if you can read the address of that
18 little yellow pin down there, but can you read it?

19 A 1661 Broadmere Street.

20 Q Between -- or at 6:26 -- sorry, 2:26 p.m. and 6:43
21 p.m., at that same day on the 21st, is his phone hitting on a
22 tower near his residence?

23 A Yes.

24 Q Sorry, that one apparently is slightly out of order.
25 Joseph Laguna's phone, the 702-762-1584 phone, between 6:30

1 a.m. and 7:24 a.m., is his phone hitting off a sector of a
2 tower, which is within the footprint of the 3668 Lucky
3 Horseshoe?

4 A Yes.

5 Q At 7:46 a.m., is his phone hitting off a tower near
6 a location, or a location whose footprint and the location is
7 3258 -- or sorry, 3252 Casey Drive, Figueroa residence. Is
8 his phone hitting off a tower that is -- that location is
9 within the footprint of?

10 A Yes.

11 Q At 8:55 a.m., is Mr. Laguna's phone hitting a tower
12 that is just south of 215 and Jones?

13 A Yes.

14 Q At 10:40 a.m. to 12:14 p.m. and then between 6:10
15 p.m. and 7:02 p.m., is Mr. Laguna's phone hitting off a tower
16 where his residence is within the footprint?

17 A Yes.

18 Q Okay. At 8:10 p.m., is -- does Mr. Laguna's phone
19 hit off a tower that services sort of the neighborhood just to
20 the east of that pin 1661 Broadmere Street?

21 A Yes.

22 Q And then 9:09 p.m., his phone is hitting off a tower
23 that services -- or his address is within the footprint of
24 that particular tower?

25 A Yes.

1 Q Let's talk about David Murphy's phone, 702-542-1558.
2 Between 5:05 a.m. and 5:14 a.m., is his phone hitting off a
3 tower that is servicing an area near 215 and Jones?

4 A Yes.

5 Q And between 7:00 a.m. and 7:22 a.m., is his phone
6 hitting off two towers that the 3668 Lucky Horseshoe address
7 is within the footprint of?

8 A Yes.

9 Q And then from 8:55 to 8:59 a.m., is his phone back
10 on the tower previously referenced near 215 and Jones?

11 A Yes.

12 Q And then at 9:13 a.m., is his phone hitting off a
13 tower that services Lucky Horseshoe?

14 A Yes.

15 Q At 7:29 to 7:37 p.m., is he on a different tower
16 that services Lucky Horseshoe?

17 A Yes.

18 Q And at 8:06 p.m., on September 21st of 2014, is his
19 phone hitting off a tower that services or is within the
20 footprint of 1661 Broadmere Street?

21 A Yes.

22 Q At 8:40 to 8:45 p.m., is his phone back at a tower,
23 or on the tower that the Laguna residence services?

24 A Yes.

25 Q And then at 10 -- or 12:23 a.m. to 12:25 a.m., is

1 his phone hitting that tower that is near the 1219 Westlund
2 address, the Mendoza residence?

3 A Yes.

4 Q At 12:54 a.m., is his phone back in the area of the
5 3668 Lucky Horseshoe address?

6 A Yes.

7 Q On the Amanda Mendoza phone, the 702-750-8111 phone.
8 Between 11:30 p.m. on the 21st and 12:18 a.m. on the 22nd, is
9 her phone on a tower near the Mendoza residence at 1219
10 Westlund Drive?

11 A Yes.

12 Q At 12:50 a.m. on the 22nd, is her phone now hitting
13 off a tower that the Laguna residence is within the footprint
14 of on the 22nd?

15 A Yes.

16 Q And by 1:19 a.m., she is back on the tower -- or her
17 phone is back on the tower that services or that her phone --
18 that her home is within the footprint of?

19 A Yes.

20 Q Thank you, sir.

21 MR. DiGIACOMO: I'd pass the witness.

22 THE COURT: Approach.

23 (Off-record bench conference)

24 THE COURT: Ladies and gentlemen -- excuse me, this
25 wind is getting to me. All right. We're going to take our

1 lunch recess now. I'm going to give you an hour and a half
2 today so that we can facilitate witness schedules and whatnot.

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

11 We'll be in recess until 1:30.

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

13 (Jury recessed at 11:56 a.m.)

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

17 MR. DiGIACOMO: Just one thing from the State.

18 THE COURT: All right. You can be seated.

19 MR. DiGIACOMO: I didn't fully understand the nature
20 of the objection until I got the objection during the
21 testimony of Detective Gandy about the nature of what was and
22 was not discovered. So I went back to check to make sure this
23 is true because it happens in every single case.

24 Everything he said on the stand is provided in
25 instructions on how to read these records in the discovery.

1 They provide the "how to" instructions, some of which have
2 been admitted into evidence here. So the thing like the
3 Lucent and you need to subtract all that, all of that is
4 within the records. Whether or not they understood the
5 meaning of that information, I don't know, but just so the
6 record is absolutely clear, he said nothing from the stand
7 that is not contained within the "how to" instructions
8 previously provided.

9 MR. LANDIS: Instead of arguing that to the extent I
10 disagree, I intend to bring it up in cross. It is what it is.

11 THE COURT: All right. Thank you very much. I'll
12 see you at 1:30.

13 MR. DiGIACOMO: Thank you.

14 (Court recessed at 11:57 a.m. until 1:46 p.m.)

15 (Outside the presence of the jury)

16 THE COURT: All right. We are back on the record.
17 We're currently outside the presence. The defendants are
18 present with their respective counsel, the Chief Deputies
19 District Attorney prosecuting the case are present as are all
20 officers of the court. Anything outside the presence before
21 we bring the jury in?

22 MR. DiGIACOMO: Not from the State.

23 MS. McNEILL: No, Your Honor.

24 MR. WOLFBRANDT: No.

25 THE COURT: All right. Let's bring them in.

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

2 (Jury reconvened at 1:47 p.m.)

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

5 THE COURT: Thank you. Please be seated. And
6 Mr. Gandy is still on the stand, and I'll just remind you that
7 you're still under oath. As well. Mr. Landis, cross.

8 CROSS-EXAMINATION

9 BY MR. LANDIS:

10 Q Understanding that you work for the Las Vegas
11 Metropolitan Police Department, would you be considered a
12 police officer in your current role?

13 A Yes.

14 Q TASS officer, is that what -- they refer you --

15 A Our -- our unit's called TASS, the technical and
16 surveillance section is what the acronym stands for.

17 Q How many people at Metro perform your exact duties?

18 A Exact ones? Right now there's two of us. We had
19 three, but one retired recently.

20 Q Getting into those duties, and please correct me if
21 I'm wrong, it sounds like some of it's kind of an
22 administrative side where you're getting records, making sure
23 records are requested --

24 A Correct.

25 Q -- things of that sort?

1 A Correct, yes.

2 Q Other side of it is more of a technical analyzing
3 the records, using software, things you testified to on
4 direct?

5 A Correct.

6 Q Of all the cell phone records you've looked at in
7 this case today in court, absent the maps, so just the phone
8 records themselves, the subscriber information, the cell tower
9 list, just those text documents such as that, is that clear?

10 A Yes.

11 Q Could you and I take those, go to a field with no
12 computers, no WIFI and figure out cell phone locations?

13 A Based on those documents, yes.

14 Q How would we do that?

15 A So we would take the -- the sheet that the phone
16 company supplies that has the cell tower on it, depending what
17 company. Like the AT&T actually gives you the GPS location of
18 the -- of that -- well, I guess, you would need something to
19 -- to get you to a lat and longitude on a map. You could
20 technically do that without a computer if you were pretty
21 savvy.

22 But yeah, there's also addresses on most of those
23 site lists also that give you a hard address of the cell
24 tower.

25 Q And when an address is provided, not as precise as a

1 latitude/longitude, right?

2 A Correct.

3 Q Especially if it's a big address in terms of
4 property?

5 A Correct.

6 Q Unless we're able to figure out the
7 latitude/longitude, though, we're not going to get the same
8 information that were on those maps today --

9 A Correct.

10 Q -- without a computer?

11 A Correct.

12 Q This software that you tend to use for this
13 analysis, you refer to it as what?

14 A Pen Link.

15 Q And is that the brand, the company?

16 A Yes, yes.

17 Q Is that something I could go buy a copy of tonight?

18 A I don't know if they'll sell it to non-law
19 enforcement. I know there are products out there that do, but
20 I don't know if they will.

21 Q Could you do your job of analyzing records,
22 determining tower locations without Pen Link or some similar
23 software?

24 A Yes.

25 Q And how would you do that?

1 A I would hand -- hand map them out on -- on Google
2 Earth, which we do sometimes. We do actually do that, if it's
3 a smaller period of time and less phones because it -- it can
4 be time consuming. But we would actually import all of the
5 cell towers into Google -- Google Earth Pro, and put them all
6 on a map, and then we hand plot the towers and then look at
7 the azimuth and rotate those degrees using Google Earth Pro
8 and -- and match the towers up that way.

9 Q Probably take a little bit longer than it would if
10 we had --

11 A Yeah.

12 Q -- Pen Link?

13 A Considerably, yes.

14 Q Either way, it seems like a beginning element we
15 need to start an analysis of this sort location of cell phone
16 towers?

17 A Correct.

18 Q Software like Pen Link, does that self populate that
19 information?

20 A It accesses the -- a database that's maintained by
21 the FBI that's populated by the cell phone companies on a
22 weekly basis.

23 Q So it updates?

24 A Every time it query's a cell site, it actually goes
25 out to that database that's in Virginia and queries a location

1 on the cell tower.

2 Q So if your computer was in front of us right now,
3 when we were using Pen Link, we can assume the tower
4 information that's there is very recent?

5 A Yes.

6 Q Can I use Pen Link and say show me the towers at
7 whatever year, whatever month?

8 A No. And that's another reason we'd go back when we
9 hand plot because which actually use the tower list from --
10 from that time period. So there's an archival database.
11 Under a lot of cases, the phone company actually sends us
12 those tower lists, or again, in AT&T's case, they'll give us
13 the latitude and longitudes and some of those. But we always
14 use that to do the plotting, we use the -- the closest time
15 period cell tower database to that -- to that time just in
16 case there is a deviation.

17 There's -- there's not a lot of deviation, but there
18 can be deviation over the years.

19 Q Towers move sometimes, technology changes --

20 A Yeah, correct.

21 Q -- things like that? Another variable that's very
22 hard to pin down, the functioning of the towers at the given
23 time, right?

24 A As far as if they're working or not?

25 Q Working, working properly --

1 A Yes.

2 Q -- getting fixed?

3 A Yes.

4 Q Sometimes they actually do maintenance and --

5 A Yes.

6 Q -- the tower's just inactive --

7 A Correct.

8 Q -- correct? Which looking at a map and assuming all
9 the towers are working could lead to a bad determination if a
10 tower tends to be out?

11 A It's a possibility, yes.

12 Q And you don't get that information from Pen Link or
13 the cell phone companies?

14 A Yes.

15 Q Such as we were doing maintenance on this tower from
16 yada yada to yada yada?

17 A No.

18 Q And the cell phone somewhere in its computer is
19 actively taking the different signals from different towers
20 that are in its radius, right?

21 A Correct.

22 Q And its job is to determine what signal is best and
23 jump to that tower?

24 A Correct, yes.

25 Q That assumes to a certain extent that the cell

1 phone's functioning perfectly?

2 A Correct, yes.

3 Q Sometimes cell phones get old and they may not
4 switch as well as we would hope?

5 A I -- I would assume. I -- I don't know as far as
6 that goes, but yeah.

7 Q Or, I mean, the technology of the cell phone itself
8 can be old, too, right?

9 A Yes.

10 Q And we've heard some testimony before you testified
11 about changes in technology within cell phone companies and
12 how certain technology equals we use certain towers and
13 different technology --

14 A Correct.

15 Q -- equals certain towers?

16 A Correct.

17 Q How are you able to make those determinations from
18 looking at call detail records?

19 A Normally, on an AT&T phone, there's actually -- or
20 AT&T and T-Mobile phones the LAC will tell you what technology
21 that those phones are on. So in the case of these records,
22 some of the LACs are in the 24 to 24, 5 thousand range and
23 that's on 3D -- on 3G -- 3G what everyone knows, but UMTS
24 technology.

25 The ones that have a 146 LAC on them are on -- below

1 3G technology. And then as it goes into the 4Gs you'll get
2 LACs in like the 65,000 range and there's -- there's a way to
3 analyze it.

4 Q Let me ask you, when you use T-Mobile, is it fair to
5 assume you mean T-Mobile and Metro PCS?

6 A Yes. In fact, I think within months of when these
7 records were analyzed, Metro PCS actually was a CDMA company,
8 which had records like Sprint and Verizon. And then when AT&T
9 bought them, they actually shut down the Metro PCS network.
10 It -- it actually ceases to exist, and so Metro PCS phones use
11 the T-Mobile network.

12 Q And the Metro PCS records you looked at in this
13 case, you were able to determine they were on the newer T-
14 Mobile?

15 A Yes, yes.

16 Q And how --

17 A Their -- their towers coincide exactly with T-Mobile
18 towers.

19 Q And what allows you to make that determination?

20 A They'll have the same -- the same CID and LAC
21 configuration as the T-Mobile towers along with the -- the
22 locations. And prior to the merge, all of their towers
23 weren't in a CID and LAC format. They were in the -- the CDMA
24 format of the tower number dash sector number.

25 Q To the best of your memory, when was it that you

1 first got involved in this case?

2 A I did some initial work for the detectives right
3 around the time of the crime, as in they had sent us some of
4 the call detail records that they had ascertained. So I did
5 some initial work for them to get those imported into Pen Link
6 and put those in so they could do some analysis. And then for
7 this court case, I -- it's been roughly about a month or so,
8 four to five weeks, I think.

9 Q Would you characterize that initial work you were
10 doing at the request of the detectives the administrative side
11 or the technical side of your job?

12 A That was -- well, a little bit of both. When they
13 get records and they ask us to put -- to put them in, we do
14 look at them and we make sure that our time -- you know, our
15 times are right, our sectors are right, all that's right
16 during the import to make sure that the -- the stuff's valid.

17 But then that goes to a different unit in our
18 department who does the initial -- the day-to-day analysis on
19 the records.

20 Q How many sets of cell phone records do you think you
21 analyze in a year, let me ask you that or calls, if you want
22 to do it that way?

23 A We do roughly about 300 -- I'd say about 300
24 intercepts, give or take, and anymore, I'd say 90 percent of
25 those or more involve some type of call detail records. And

1 then I get more in depth on those records if they're for --
2 depending if they're trying to locate people or if it's a
3 missing persons case and those sort of things where we'll
4 delve even more into actually trying to find phones within
5 those cell tower footprints and things like that.

6 Q The call detail records, the phone records, they
7 also don't provide much information about the functioning of
8 the cell phone itself in relation to its tower --

9 A No.

10 Q -- switching?

11 A No.

12 Q The maps you've been shown today, quite a few, most
13 of them had pinpoints, needles on them?

14 A Correct.

15 Q You created none of those --

16 A Correct.

17 Q -- correct? But you were asked to look at them and
18 see if they jived with the cell phone data --

19 A Correct.

20 Q -- as far as latitude and longitude?

21 A Correct.

22 Q Can I assume then that Pen Link was uninvolved in
23 that analysis?

24 A Pen Link was involved in that analysis because I had
25 made those reports that kind of made everything match up and

1 that I actually used a Google mapping software off of Pen Link
2 to -- to help me -- to assist me in checking those also.

3 Q Let me talk about what you just were talking about,
4 which was the input and the harmonization of the different
5 records you had. Sounds to me like once they're in the Pen
6 Link system, Pen Link does most of the work.

7 A Yes.

8 Q How do you load them in?

9 A So I'll take -- I'll take the records from whichever
10 company it is and then I'll take -- figure out what company
11 that is, what time zones the times are supposed to be in, if
12 there needs to be any kind of offset variations and such
13 things. And then we actually -- there's a phone company load
14 button and it takes the Excel or typed documents in and it
15 brings it all in front of us. And then we check to -- and
16 then we bring it in under a case and then we deviate and then
17 we do a time adjustment on the records.

18 And then I'll go back and check the records that I
19 just did to make sure that all, you know, the time adjustments
20 were correct on it and that everything got -- got shifted
21 right.

22 The other thing I may do sometimes is with that
23 switch identifier number, sometimes we have to make a slight
24 change to that one and put it in a format that the FBI
25 database can read the way that the switch name is versus the

1 switch name that's reported on the record. It's usually --
2 there's usually some dashes in there or some other things we
3 have to deviate, but those are the only two things we deviate
4 on the records would be the time and some of that.

5 Q You more or less answered this question, but just
6 let me make sure it's clear. So Pen Link's not smart enough
7 to say oh, they just uploaded T-Mobile records, I need to
8 offset by this much, yada, yada, yada?

9 A No, because the -- there -- no, no, it's not.

10 Q Does it try in the over --

11 A It -- it -- it could. Example of a T-Mobile record
12 is there can be records in there, depending -- at any given
13 call on their network can actually originate out of a switch
14 at any -- any of their switches within the country because
15 everything runs on a like an Internet based data network. So
16 your time variabilities there could come from -- the call
17 could show on that sheet as even though it says it's Las
18 Vegas, it could show a time from Texas, it could show a time
19 from Atlanta, show a time from all these different things.

20 So yeah, Pen Link's scripts to import those in.
21 That's why we -- we do it by hand. And if there's multiple
22 time zones involved, we'll actually breakdown -- we'll
23 breakdown those records and then shift based on those time
24 zones when we're importing.

25 Q And the information that you use to do that, to

1 input into Pen Link the time adjustments, et cetera, you glean
2 that information from where?

3 A The phone companies.

4 Q Specifically, what do they give you?

5 A So they'll give us -- in the case of T-Mobile,
6 they'll actually -- they give us a form that tells us the
7 switch code is in this time zone, the switch code's in this
8 time zone. The other -- some of the other records, it's T-
9 Mobile has the differences in the switches. Cricket, which we
10 did here, even though all these records -- this again, was
11 during the merge of Cricket with AT&T so their records were
12 all in UTC for this. So there's also -- was some variability
13 in Cricket time zone issues because they're in Phoenix and
14 we're here and we have different time zones different times of
15 the year.

16 So they have a -- like a how to read CER sheet also
17 that gives you instructions on making those adjustments. And
18 then if we have questions at any -- if we have any questions
19 about time zones variabilities, we call the phone companies
20 directly and -- and talk to their -- a legal analyst there
21 about, you know, what we have to do for those.

22 Q And those cell phone data sheets or interpretation
23 sheets, whatever you want to call them, are those things that
24 you guys got for every cell phone company ten years ago and
25 you still use the same ones?

1 A No, they -- they send them with -- normally, they'll
2 send a packet when you do a request on a court order and it
3 will have one of those sheets inside of there. So it will
4 have the how to read and the subpoena and the return of the
5 court order and --

6 Q And based on your experience, those keys change over
7 time so it's --

8 A Yes.

9 Q -- good to have one that's concurrent with the
10 records you're looking at?

11 A Yes. They should be, yeah.

12 Q Let me ask you some questions about what cell phone
13 records reflect depending on when you actually subpoena and
14 obtain them. Do cell phone records, no matter if you subpoena
15 them the month after the records or ten years after the
16 records assuming they still exist, the information you
17 actually get on the call detail records is going to remain the
18 same?

19 A No.

20 Q How does that change?

21 A So the -- the phone companies retain their data,
22 based on their own schedules. And so if you go out -- for
23 each -- each company has its own retention schedules. So as
24 you go out farther, some companies will retain cell site
25 information to a certain point and then they'll purge that

1 out. And then if you have to go beyond that point, then
2 they'll hit their billing -- their billing department's
3 records of calls, which keeps information longer.

4 And so those don't have cell phone information -- or
5 location information on them because those -- those would be
6 consistent with -- with a bill you would get on your cell
7 phone that has those -- all those call transactions on them.

8 Q Please correct me if you don't agree with this
9 characterization. The tower location, as well as adjusting
10 the time listed on the car detail records, two important first
11 steps in this process?

12 A Yes.

13 Q You're not going to get reliable results if you
14 don't have those two things firm?

15 A Correct.

16 MR. LANDIS: Permission to approach the clerk?

17 THE COURT: Granted.

18 MR. LANDIS: Permission to publish 275, State's 275?

19 THE COURT: It's admitted so --

20 MR. LANDIS: It is.

21 THE COURT: -- you can publish it, yeah.

22 BY MR. LANDIS:

23 Q Zoom that out and step back with technology with
24 this for our technology talk today. You saw that document
25 today, yes?

1 A Yes.

2 Q Could you remind me what it was.

3 A Those are the cell site lists for T-Mobile in the
4 Las Vegas area. I believe it's -- yeah, it should be T-
5 Mobile.

6 Q Understanding that you didn't obtain that document
7 from the phone company, those are the cell phone towers as of
8 when?

9 A I believe, those were September -- they were in
10 September 2014.

11 Q How do you know that?

12 A At some point. That -- those were -- oh, if I did
13 not obtain them? Oh, I --

14 Q Oh, maybe you did. I don't --

15 A I don't know.

16 Q -- want to put words in your mouth. Did you obtain
17 that?

18 A Well, I didn't obtain -- I obtained a list that's
19 identical from this from -- from a database I had, yes.

20 Q How did you know it was identical?

21 A Well, it -- it -- it appeared to be identical, yeah.

22 Q Your belief then is they gave this to whoever
23 subpoenaed it in 2014?

24 A That's a possibility, yes.

25 Q Don't know for sure?

1 A Yeah, I don't know for sure.

2 Q When a cell phone company sends you guys a list like
3 this, and I'll just use all cell phone companies, and please
4 tell me if they differ, do they tell you these are the cell
5 phone towers as of this date?

6 A Well, a lot of times they'll -- the name of the
7 actual computer file will have the -- will have the date in
8 it.

9 Q To your memory, and I can approach if you want to
10 see it, does this hard copy document have a date such as that?

11 A I -- I don't know. No, I -- I don't think so unless
12 it's on a bottom header. I'm not -- or a footer.

13 MR. LANDIS: Just to be safe, can I approach?

14 THE COURT: Sure.

15 BY MR. LANDIS:

16 Q Looking at it may refresh your memory. Just --

17 MR. LANDIS: May I approach the Clerk?

18 THE COURT: Yes, you may.

19 THE WITNESS: No, it doesn't.

20 MR. LANDIS: Can I approach the witness?

21 THE COURT: You may.

22 BY MR. LANDIS:

23 Q Besides looking at the call detail entry specific to
24 the maps that you verified -- does that make sense?

25 A I think so. Keep going.

1 Q Did you look at the cell phone records as a whole
2 that were available in this case, such as the whole month of
3 September for one of the numbers?

4 A No, I had access to them, but I was only looking at
5 the -- at the 21st.

6 Q Are you familiar with a scenario where there's a
7 call detail entry for a call or missed call or whatever it
8 might be and there's no cell tower listed and no
9 latitude/longitude listed?

10 A Normally, for an SMS message that's possible, or if
11 the phone wasn't on -- if the -- or if the phone was off
12 network and most SMS messages don't have location information
13 either.

14 Q Off network, SMS, phone powered down; is that one as
15 well or no?

16 A Yes. Yeah, so -- yeah. For -- for any reason if
17 the phone was off the network, which typically powered down or
18 out of cell site area or, you know, something to that effect.

19 Q To the best of your knowledge, no other situations
20 could lead to that?

21 A For the cell phone not registering a cell site at
22 all or the latitude and longitude not being on the record? I
23 guess --

24 Q Both.

25 A If the -- if the -- if those record -- I believe,

1 there may be some T-Mobile ones in there that don't have a
2 latitude and longitude on them but do have a cell tower
3 number.

4 Q Let's start with that.

5 A And -- okay.

6 Q What would you -- how would you explain that?

7 A That that list that you have there is the same list
8 that the T-Mobiles computers query to put that latitude and
9 longitude in there. So if there wasn't anything in that
10 database at T-Mobile and when they did their records, it tried
11 to query the location of that cell site that it had got off of
12 the cell tower, then it would populate nothing in that field
13 because that would be the database that it's trying to
14 populate that information from.

15 Q I think we heard a little bit about this earlier
16 this week, but just to make sure, does that potentially mean
17 the tower's new and they just haven't got the
18 latitude/longitude in the system?

19 A Yes.

20 Q Is that the only explanation you're aware of?

21 A That it wouldn't in there or if there was an error
22 on the sheet or in T-Mobile's database.

23 Q Are there situations where we could see a latitude
24 and longitude but no cell tower?

25 A On a record from the phone company?

1 Q Indeed.

2 A Yes, but I don't believe any of that is involved in
3 this case. There -- there is such a thing of a -- where they
4 do an estimated GPS distance to tower report that sometimes --
5 actually, that has a cell tower on it, too, but no, with the
6 exception of precision location information that I spoke to
7 earlier, there should be a tower number or name on there
8 unless the phone's off the network.

9 Q That precision location information, it's something
10 you've obtained before?

11 A Yes.

12 Q To your knowledge, was any of it obtained in this
13 case?

14 A Not by my -- not by my unit.

15 Q Did you say on direct that there's different
16 standards to get that information versus --

17 A Yes.

18 Q What do you mean by that?

19 A That would be a -- so a normal pin register would be
20 relevance -- relevance to a case, which means basically,
21 there's just a connection to some type of case. Precision
22 location information -- well, there's not exact statutes about
23 it. There's a lot of case law involving it now.

24 So our department probably four or five years ago
25 went with the highest standard that we could find for that,

1 which for location type information. So we went with a
2 probable cause based court order in order to obtain that -- to
3 obtain that information.

4 We weren't forced to by any decision to do that, but
5 we did that to try to protect ourselves legally in the future.

6 Q If we could put it this way, the law's not the most
7 settled yet so --

8 A Correct.

9 Q -- better safe than sorry?

10 A Correct, yes.

11 Q To breakdown what you were just saying there a
12 little bit, you guys sometimes use court orders to get things,
13 right?

14 A Well, all the -- well, yeah, so we use a court
15 document to get it always, some type of document.

16 Q A subpoena?

17 A Yeah, yeah, yeah. Or a subpoena or a court order or
18 higher.

19 Q A court order requires review and approval by a
20 judge, right?

21 A Correct.

22 Q A subpoena's a little easier for you guys to issue?

23 A Correct.

24 Q Court order's always for the exact -- the pinpoint
25 location data?

1 A Correct, yes.

2 Q Sometimes subpoenas for the call detail records with
3 normal location data?

4 A Grand jury subpoena, yes.

5 Q In this case, to the best of your memory, were court
6 orders obtained for any of the records that are relevant to us
7 here? And if you don't know, I understand.

8 A I -- I did see court order -- yes, I -- yes. I
9 believe, they were search warrants but --

10 Q If we could turn to footprints of cell towers using
11 a term you guys used a little bit on direct.

12 A Yes.

13 Q What would be your best definition of what that
14 means exactly?

15 A So the cell -- the cell phone companies, when they
16 design these networks, they have to use different frequencies
17 on all these different radios so they don't interfere with
18 each other. So what they try to do is where they have signals
19 that should be -- would be overlapping each other, they
20 attempt to tune those radios and point them kind of in a
21 downward direction also towards where the people are at, but
22 they try to do them with a slight overlap across the areas of
23 the -- of -- of that footprint, we would call it, of that
24 sector so that if you're right in between two towers, it's not
25 going to be fighting too bad between the two. They're going

1 to have a similar signal, but it will go one to the other so
2 -- because you don't want dead space in between them. So you
3 definitely need some type of overlap so you don't lose -- so
4 you don't lose calls.

5 So the -- the footprint would be characterized as
6 the area underneath a given tower where the phone would most
7 likely be talking to -- to that tower.

8 Q And possible to know the actual radius for a variety
9 of different reason, absent going out there with some special
10 equipment?

11 A Correct. And each -- and each distance can actually
12 be variable between sectors also.

13 Q So if I show you one of these pictures on the
14 State's admitted 324, you remember looking at that, right?

15 A Yes.

16 Q And you didn't create that map, but you identified
17 that green area as a footprint?

18 A Correct.

19 Q Which in your opinion means the cell phone was
20 somewhere in there?

21 A That if the cell phone were somewhere in that area,
22 there was a good possibility of it, you know, communicating
23 with that tower, yes.

24 Q And this particular one is one of the --

25 MR. LANDIS: this is the Jorge Mendoza 3:31 a.m.

1 tower, for the record.

2 BY MR. LANDIS:

3 Q You weren't able to determine the sector for this
4 one, right?

5 A I believe, no. Yeah, that was the issue on this
6 one, yes. Yeah, it was a 593 LAC, yeah, so no. No sector.

7 Q What's that caused by?

8 A I'd have to look at the record again for it.

9 MR. LANDIS: May I approach the clerk?

10 THE COURT: Yes.

11 MR. LANDIS: May I approach the witness?

12 THE COURT: Yes, you may.

13 BY MR. LANDIS:

14 Q I'm hoping I grabbed the right thing. Showing
15 you --

16 A Let's see.

17 Q -- 300, 298. Does that look about right?

18 A Okay. Let's see. Yes. I'm just trying to find the
19 exact one here. I think -- I believe, this is the right list,
20 though. It's just hard to read.

21 Q I believe it was on 2.

22 A Could be.

23 Q If I could pause your review just for a sec. I was
24 sitting in a quiet courtroom and everyone was waiting for me
25 to talk the other day. I know it's nervous. Let me just ask

1 it this way, then.

2 A Okay. I think I might have found it, but go ahead.

3 Q Oh, if you got it, let's hear it.

4 A I think might have.

5 Q I'd be happy to.

6 A It should be 24593, 52519, but believe on that cell
7 tower list that you have the other exhibit, there is no sector
8 information relating to that CID.

9 Q Which means what?

10 A That we don't know what -- what -- what side the --
11 the phone was on.

12 Q Is that a failure of --

13 A We're using that -- using that -- that cell list
14 from that time period. There was nothing populated on that
15 list to say what -- what sector that that CID's on.

16 Q Can we still assume, though, that it is a three
17 sector or 360 degree situation?

18 A Yes.

19 Q How?

20 A Well, I guess, technically, no. Technically, no on
21 that CID. We could assume it somewhere on that tower.

22 Q In your experience, not talking specifically about
23 those records, do you know situations where they just failed
24 to record sector?

25 A Record sector or the -- no. The -- the -- speaking

1 to any of these -- to any of these companies at this time,
2 there were some older records for some companies that did not
3 report sector at all on those. That would have been Cricket,
4 but that was quite a few years ago. The LAC and the CID is on
5 a GSM phone like these should denote a -- a sector because
6 that CID actually ties to an actual radio on the actual tower.

7 Q From looking at these records, any of the records
8 you've looked at in court today, let's stay with Cricket. You
9 talked about them changing technology from CDMA?

10 A Correct.

11 Q How is that determined from the records?

12 A The Cricket records we did here were still in CDMA.
13 Those were -- those were still CDMA. They hadn't transferred
14 over to the AT&T. They were in the middle of their
15 transition. Prior to the transition, they ran their records
16 different. They came in a different format.

17 Q And the four out in the field in the tent, how would
18 you show that to me on the records?

19 A If they were in -- on AT&T's network or in they were
20 on Cricket's network?

21 Q Yes, sir.

22 A If they were on AT&T's network, they would look like
23 the T-Mobile. You'd have a LAC and a CID for their -- for
24 their location, and those records are still on the actual
25 tower number, which is like a 325 or -- or whatever and then a

1 sector. The variation came that they actually ran those
2 records in UTC time and the format of the sheet that they were
3 ran on was during that transitional period.

4 But the records were still -- and the Phoenix 2
5 switch identifier because that's where Cricket's switch was
6 at, that's -- that is a Cricket switch, it's Phoenix 2. There
7 was also one other switch code in there that -- that
8 identifies -- that shows that it was on Cricket's network
9 prior to them shutting down the network.

10 Q When we're dealing with these switches, and let's
11 stay with that Phoenix switch, sometimes we're on the same
12 time as Phoenix, sometimes we're not, yes?

13 A Correct, correct.

14 Q So sometimes that switch could matter, other times
15 it doesn't?

16 A And it did prior to AT&T taking over. So the
17 records -- and that was one close thing I looked at in this
18 case when I did get these records was to make sure -- and it
19 denotes on those records that those records were given to us
20 in UTC time.

21 So prior to AT&T running the records like that,
22 after they bought Cricket, we would have gotten those records
23 in switch time, which is Phoenix time. So we definitely --
24 then at that point, any time we would input Cricket records,
25 we'd have to look at what the dates were for daylight savings

1 time and actually if it crossed over, we'd deviate whether it
2 was a negative 7 or a negative 8 on the time zone.

3 Q We've heard some information that it seems like all
4 of the cellular companies, or at least most of them, are
5 headed towards a UTC?

6 A Correct, yes. Yes.

7 Q Obviously, though, over the past year is a lot of
8 them are not in that format?

9 A Correct, yes.

10 Q So let's imagine a scenario where two months ago
11 past today, a cell phone company made that switch to UTC.

12 A Correct.

13 Q But their cell phone records from 2014 are in
14 Pacific time.

15 A Correct.

16 Q If I subpoena the records today, what are my records
17 for 2014 going to look like?

18 A They should be in the time format that the phone
19 company tells you that they'd given to you in.

20 Q Meaning on the records themselves they should say?

21 A They -- they should say somewhere.

22 Q Either there or maybe the key?

23 A Yeah, yeah. There or the key. If they don't say
24 anything, then -- if they don't say anything on them, then we
25 have to reach out and ask them, you know, if they were --

1 Q Let me ask you another question about that. So
2 let's assume we've got these records from 2014, we've got the
3 switch to UTC two months ago. I subpoena those records in
4 2014 and obtain them.

5 A Okay.

6 Q And I subpoenaed them again yesterday.

7 A Yeah.

8 Q Do you think my records are going to look the same?

9 A Probably not.

10 Q The times are going to have been converted?

11 A They -- yes, there -- there's a possibility. Yes.
12 And the reason I say a possibility, we get variability within
13 the companies themselves depending on who runs the records and
14 typically, it will say if they're in UTC or not in UTC. If it
15 doesn't say they're in UTC, then typically, they're in switch
16 time. But they'll tell us if -- if they've moved them over to
17 UTC or not.

18 Q Have you experienced times where they inaccurately
19 tell you what they are on the call detail records?

20 A Yes.

21 Q Certain companies bigger culprits than others?

22 A Yes.

23 Q Could you name the culprits?

24 A T-Mobile.

25 Q Omni antennas, is that a fair way to --

1 A Yes.

2 Q I think you testified something about Cricket using
3 them, right?

4 A Metro PCS was a big user of them. Yeah, Cricket had
5 some. It was more of the -- the company Lucent itself uses it
6 to -- to denote -- as a manufacturer uses it to denote that --
7 that type of antenna.

8 Q Is that a newer technology or a getting phased out
9 type technology?

10 A The that would be a -- yeah, that's a older --
11 that's old -- even though they have deployed it in newer type
12 situations, too, but yeah, it's an older -- it's an older type
13 technology.

14 Q When you talked about companies that used those omni
15 towers, it changes the way you look at their sector --

16 A Correct.

17 Q -- detail, right?

18 A Correct, yes.

19 Q Because the omni tower kind of comes one?

20 A Yes, it's just a big -- yes.

21 Q Do those records also sometimes show sector zero?

22 A On a Lucent switch, no. It could be a possibility
23 if it was an other company than Lucent. I'd have to see,
24 again, what switch manufacturer that was because they actually
25 make the -- the denotation. So I couldn't say for sure, but I

1 -- that -- yeah, that's a possibility depending what type of
2 phone switch it was and I don't think any of that would relate
3 to any of these records in this case, though.

4 Q Let me --

5 MR. LANDIS: May I approach?

6 THE COURT: Yes.

7 BY MR. LANDIS:

8 Q Showing you admitted State's 305. Do those appear
9 to be Metro PCS records (inaudible)?

10 A Oh, yes. Yeah, sorry.

11 Q Does the switch matter to me with those records?

12 A This -- let me see. This -- yeah, these were on T-
13 Mobile. These records were on T-Mobile's network. They were
14 -- it was a Metro PCS phone on T-Mobile's network. So the MSC
15 name for phone calls on this are T-Mobile MCSs.

16 Q If you answered my question, it was above my head
17 so.

18 A Oh, it -- yes, it does matter. Yes, the switch
19 field does matter so you know what company the records were
20 on.

21 Q And from that document, you determine the switch by
22 what? Are they named?

23 A There's a MSC name at the end, which for the phone
24 calls denotes I -- IEMSS 341. So I -- I -- from our list,
25 that's the Inland Empire T-Mobile switch that those --

1 Q And --

2 A -- calls were coming off of.

3 Q Sorry to cut you off. Take a different document,
4 you use that code that identifies the switch?

5 A Correct, yes.

6 Q Identifies the maker of the switch such as Lucent?

7 A T-Mobile -- T-Mobile doesn't use CDMA Lucent
8 switches. So we don't have the issue with -- with that --
9 with what kind of antenna it is because they use the -- the
10 LAC and the CID to denote the -- the -- the antenna and that
11 takes it directly to an antenna on a tower so each -- each CID
12 has its own azimuth and -- and everything on it.

13 Q If it was Cricket, for example, then -- and we were
14 looking at that sheet, taking the code, determining the
15 switch, it would then tell us what kind of switch it was?

16 A It's not on this -- there is another document for
17 the -- for the Cricket records. There is a -- yeah, there's
18 an another document that Cricket supplies that -- it's in
19 their how to read I believe, actually, and then it will tell
20 you if -- which switch is and what their manufacturers were
21 and if you have to do the sector offsets and that sort of
22 thing.

23 Q And you'd agree with me skipping that step is a
24 problem?

25 A Yes.

1 MR. LANDIS: Court's brief indulgence. Can I
2 approach the clerk?

3 THE COURT: You may.

4 BY MR. LANDIS:

5 Q Publishing State's 322, which is something you've
6 already looked at today, right?

7 A Yes.

8 Q I know it's really small on there, but that's a
9 spreadsheet, a combined harmonized spreadsheet?

10 A Correct.

11 Q That you've seen before but you didn't make it?

12 A I made -- this one's the one I made.

13 Q And you did that using Pen Link?

14 A Correct, yes.

15 Q When, to the best of your memory, did you do so?

16 A I think two weeks ago, maybe.

17 Q And showing you 323 now, State's 323, that's the
18 same document with just some stuff changed, as you already
19 testified to?

20 A Correct.

21 Q Some names are put in place --

22 A Yes, the names are in place of numbers, correct.

23 Q You didn't make that one; is that what you're
24 testifying to?

25 A I did not.

1 Q Do you know who did?

2 A I believe, the District Attorney's Office made it.

3 Q Before court today, did you see it?

4 A Yes, I did.

5 Q Did you analyze its accuracy?

6 A I -- I look at it. I didn't look at every single
7 record, no. I looked at it and looked at -- you know,
8 compared it to mine and it looked fairly close, yeah.

9 Q Let me ask you this, I think it was when you were
10 talk being these documents on -- these particular documents on
11 direct examination. You talked about cellular phone times
12 being off. In other words, call detail records being off from
13 company to company.

14 A Yes.

15 Q So in other words, I could call you right now and
16 we're on different providers and our cell phones might show
17 those calls at somewhat different times?

18 A Yeah, usually within seconds, but yes. They're not
19 exact, typically.

20 Q What causes that?

21 A So there's a few things that can cause that. The
22 first obvious thing is that their -- their networks are synced
23 up or their switches that are reporting the records aren't
24 synced up to the exact second, even though they should be, but
25 they're not.

1 So you'll get a variation there. There's another
2 thing called set-up time between calls. So if I hit -- dial
3 on my phone and it takes however many seconds, which is
4 actually reported on an AT&T records, there's a seizure time
5 field there, you'll actually -- then there's that variability
6 between when I hit send in my records went that I just made a
7 call and the call was actually received by the other network
8 as an incoming call. So you're going to get variation on --
9 on times there also.

10 Those -- those would be the two -- the two main
11 reasons.

12 Q And -- the seizure time you speak of, those phone
13 calls where I dial it, it's on my ear and I'm like why isn't
14 it ringing?

15 A Yeah, correct, correct.

16 Q The switches, they're the ones ultimately
17 responsible for recording the time of the calls?

18 A In net -- I can't testify to that exactly. As a
19 general rule, yes. I mean, there's very complicated computer
20 networks that run the -- the cell phone networks and have all
21 kinds of interfacing things, but I guess, as a general, you
22 could say yes the -- the phone switch.

23 Q And this might be --

24 A Has a -- has a part in that, yeah.

25 Q This might be an impossible question, but just

1 ballpark, how many switches would a company like AT&T have in
2 the continental United States?

3 A I've seen the spreadsheets, but --

4 Q You don't recall, I -- don't worry about it.

5 A No, well, you know, like we don't even have one in
6 Las Vegas. They're in like California. I mean, I'd say --
7 oh, well, you know what, I -- I'd say, just a ballpark, I
8 could be off, but it's in the -- it's in the hundreds
9 probably. Maybe 200, you know. It's -- it's a number in that
10 variable range, something like that.

11 Q And just because I'm in Las Vegas when I make a
12 phone call or receive a phone call, whatever, doesn't mean I'm
13 necessarily going to have my information go to the closest
14 geographical switch?

15 A No, and that's -- that's what happens with T-Mobile
16 calls.

17 Q And why is that?

18 A They load balance their network so to -- to keep the
19 traffic moving. So those -- those calls that -- that come in,
20 they'll -- they'll hit the switch first because those cell
21 towers are -- are -- well, actually, no, that's not the case.
22 So what happens is the -- when the -- when the phone talks to
23 the cell tower, the cell tower's connected to some type of a
24 computer, whether it be a -- directly to a phone switch which
25 is how the original architecture of the cell network was, but