

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

2 No. 82740

3
4 **JORGE MENDOZA,**

5
6 Appellant,

7
8 vs.

9 **THE STATE OF NEVADA,**

10 Respondent.

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 Bita 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
18 **APPELLANT'S APPENDIX VOLUME IX**

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

1 THE COURT: All right, so the -- the statute is, if
2 it's consistent with the declarant's testimony and offered to
3 rebut an express or implied charge against the declarant of
4 recent fabrication or improper influence or a motive. So, you
5 know, your argument was well, he had that motive at the time
6 he made that statement. That's -- you can argue that --

7 MR. LANDIS: It's directly from --

8 THE COURT: -- but that doesn't mean necessarily
9 that it doesn't come in as a prior consistent statement
10 because as the State's pointing out, this -- those statements
11 were made before.

12 Now, did he get -- did he have in his mind, perhaps,
13 a motive? Yeah, maybe, but to me that's more an argument as
14 opposed to it doesn't come in.

15 MR. LANDIS: Well, my opinion of the law, the NRS,
16 is a prior consistent statement is only admissible if it's to
17 rebut the admission of an inconsistent statement and the prior
18 consistent statement was made at a time when the witness had
19 no motive to fabricate. That's a legal issue, I believe.

20 THE COURT: Well, that's not what it says. Are you
21 saying that there is a case that further interprets the
22 statute? Because the statute says that hearsay is -- does not
23 include, you know, a statement that is consistent with the
24 declarant's testimony and offered to rebut an express or imply
25 charge against the declarant of recent fabrication or improper

1 influence or motive.

2 MR. LANDIS: And that's exactly what that's saying.
3 I think the case law explains it the way I explained it.

4 MS. McNEILL: Right. And I think I join Mr. --

5 THE COURT: You better tell me what case you're
6 citing to.

7 MS. McNEILL: I would join Mr. Landis's objection,
8 and I read that statute to say that when you're questioning
9 the witness, if you are implying that they've recently
10 fabricated their testimony, then they're allowed to bring in
11 consistent statements to show that this is what you've always
12 said. And I think Mr. Landis is correct, we're not saying
13 you've recently changed your testimony. We're saying at the
14 time that you made this statement to the police, these were
15 all fabrications.

16 And so I don't think they're bringing consistent
17 statements to show this is what you've always shown. Where
18 we're saying this isn't what you've always said. You've
19 recently changed your mind. You've recently fabricated these
20 statements. We're saying these statements have always been
21 fabricated.

22 THE COURT: Well, that's really not how it went. In
23 front of the jury it was he didn't -- you didn't say X, Y, Z
24 at the time. You didn't tell us the -- what time, you know,
25 of the morning. You didn't -- you know, there were specifics.

1 And the implication to me was that he's made it up since he
2 gave those statements. And so to -- and there's been further
3 -- certainly, the cross to me is all about that he has a
4 motive, that being that he's going to get some favorable
5 treatment or has gotten favorable treatment to lie in court.

6 MR. LANDIS: I don't -- I'm sorry, I don't
7 understand what the point that he had a motive to fabricate
8 would be if it's not at the arrest or at October 24th when he
9 makes his first statement -- his first proffer.

10 MR. DiGIACOMO: The implication is, is that there's
11 only one motive in this case. Was there a motive for him to
12 cooperate on October 24th? Absolutely. But the questions
13 that were asked of him after that were hey, now you're adding
14 facts that you didn't tell before. You're now making your
15 testimony, you know, more beneficial to the State in
16 conforming it to the evidence, I guess -- I think that didn't
17 directly come out, but that was the implication. That's one.

18 But two, the reason that the statement would be
19 admissible is if you think about the case in context, what he
20 says on 10/24, if it's corroborated by evidence afterwards,
21 that's not even offered for the truth of the matter asserted.
22 It's offered just solely to check that, what he said, against
23 the evidence afterwards and thus, it establishes that he
24 didn't lie. The implication that he had a motive to lie.

25 Well, he tells this story before we have any of the

1 evidence, and that's certainly relevant and admissible and the
2 jury has to know what did he say since they've now received
3 the other evidence, in order to make that conclusion. And
4 that was the entire subject of their cross-examination is that
5 you are now suddenly conforming your testimony to the evidence
6 that the State want -- you know is asserting is what happened
7 in this case, and they didn't get a chance to look at that
8 first statement and decide could he have done that, and the
9 answer is absolutely not. And that's why it's also
10 admissible.

11 I mean, there are so many bases of which to admit
12 this particular thing. The fact that he had a motivation to
13 make that statement is not the only thing that matters in
14 assessing the admissibility of a statement.

15 MR. LANDIS: It does if we're going to admit it as a
16 prior consistent statement. I would agree if the argument's
17 other, refresh recollection or whatever it might, that's a
18 different argument. But if we're arguing it as a prior
19 consistent statement, motive to fabricate is 100 percent a
20 relevant controlling factor.

21 THE COURT: Well, I disagree with that, but as well,
22 you, you know, showed him many times to refresh his
23 recollection the various statements. And we had a bench
24 conference where I said you need to read this whole page or a
25 couple pages in because it's taken -- the part you're wanting

1 to single out is taken out of context. And so yes, when you
2 repeatedly, you know, refresh his recollection or purport to
3 refresh his recollection with certain things, then that's
4 concerning.

5 Now, I guess, part of the question that we have is
6 have you had the opportunity even to look at these statements,
7 these redacted statements yet?

8 MR. LANDIS: I haven't looked at them, no.

9 MS. McNEILL: I've looked at all of them except the
10 Grand Jury transcript. I haven't made my way to that yet.

11 MR. LANDIS: But to the extent the Court ruled, let
12 me just say as to the refreshed recollection admissibility, I
13 think the case law is clear that it wouldn't be an entire
14 transcript. It would be the portions that are relevant to
15 whatever it is that refreshes recollection on, and I'd cite
16 Barnett v. State (phonetic), 105 --

17 THE COURT: I agree with that. You don't even have
18 to cite the law.

19 MR. LANDIS: Okay.

20 THE COURT: I agree with that, but that's why I said
21 yesterday I haven't seen the statements, and you're going to
22 need to look at the statements and then make those kind of
23 arguments as far as well, this isn't relevant for whatever
24 reason, but I need you to address it, because I just -- these
25 just got dropped on me -- you know, I haven't had any time.

1 I've been on the bench since 9:00 o'clock this morning and I
2 did a search warrant before that. So I haven't had any time
3 to look at them.

4 MR. LANDIS: And I -- State, correct me if I'm
5 wrong, I believe the redactions they have made were
6 exclusively bad act inferences.

7 MR. DiGIACOMO: Correct. I mean, the 10/24
8 statement, which is the one which is most important in the
9 subject matter. The 10/20 statement's a prior inconsistent
10 statement. I don't think they even care if that comes in.
11 And then there's the 1/25 statement where he was crossed on,
12 and it's very short on almost the entire substance of it.

13 On the 10/24, if you recall, Ms. McNeill asked,
14 where in this entire statement, look at this entire statement
15 and tell me where in it, in here, you said X. So he looked at
16 the entire statement. So I can't imagine why the entire 10/24
17 statement wouldn't be admissible at this point because she
18 showed the entire statement to the witness.

19 THE COURT: Okay. And your response to that.

20 MR. LANDIS: I don't see --

21 THE COURT: Or Ms. McNeill, I was -- I'm sorry.

22 MR. LANDIS: Okay.

23 THE COURT: I was looking at her because --

24 MS. McNEILL: That's okay, Mr. Landis.

25 MR. LANDIS: No, go ahead.

1 MS. McNEILL: Well, I mean, one, I don't know if he
2 actually looked at the entire statement when he said that.
3 But I mean, I did ask him to do that. But again, I don't --
4 they can certainly ask him because I think what they were
5 arguing yesterday was that the police didn't actually ask him
6 for a specific time, and there was no reason they can't then
7 stand up and say on redirect, well, we were talking about the
8 times you did these things, did the police ask you for a
9 specific time, and they can certainly address that by asking
10 that question.

11 I don't know if the whole document needs to come in
12 because again, if you admit the portions that are relevant,
13 it's not the entire document that's relevant. It's the
14 portions that talk about what time these things happened.

15 THE COURT: When you do -- when you ask a witness
16 show me through this -- you know, look at your entire
17 statement and show me, you didn't say anywhere in your
18 statement X, Y, Z, you know, and the statement doesn't come
19 in, then basically, you've been allowed to testify as to
20 what's in a statement.

21 MS. McNEILL: Well, the State could always ask on
22 redirect if that was a mischaracterization of the statement,
23 if there was somewhere in the statement where it said that.
24 Again, they can ask on redirect, you did, in fact, say X. The
25 police asked you this and you gave them that time. So, I

1 mean, I wasn't mischaracterizing his testimony such that I was
2 testifying about something that they can't clean up on
3 redirect.

4 MR. DiGIACOMO: I don't know what rule of evidence
5 says if there's an alternate way to prove a fact, you could do
6 it the alternate way. The question is, is this legally
7 admissible at this point? And it squarely falls within
8 president statute because he was shown the entire statement.

9 So unless there's something that they're going to
10 argue is more prejudicial than probative from it, and I would
11 also argue that it's independently admissible as non-hearsay,
12 but as a hearsay document for the truth of the matter
13 asserted, it is certainly admissible under the statute once
14 he's asked to look at it in his testimony and look at not just
15 page 25 or page 27.

16 I can ask the witness isn't it true you didn't say
17 that and he says no. Well, now you're still relying upon his
18 credibility. We're entitled to put in the statement and let
19 the jury look. What was asked, what was answered and was the
20 answer appropriate based upon what he with know his testimony
21 to be?

22 MR. LANDIS: And my response would be I agree and
23 admissibility is the only question. What Ms. McNeill did I do
24 not think is a refreshed recollection. I think that it
25 amounts to a prior inconsistent statement. Showing somebody a

1 whole transcript and asking them to show you where something's
2 in it is not a refreshed recollection.

3 MR. DiGIACOMO: Well --

4 MR. LANDIS: And that's --

5 THE COURT: He was asked to --

6 MR. DiGIACOMO: Yeah, 50.125 is if you put any
7 portion of a document in, any other relevant portion. Well,
8 you asked him to look at the entire thing and said in the
9 entire thing that's not in there, correct? So you've put a
10 portion of the document in. So there's two statutes, either
11 one of which would be independently available for
12 admissibility purposes.

13 MR. LANDIS: And the last thing I want to say for
14 the record, Ms. McNeill's conduct should not admit anything
15 against my client. Our conduct should not admit anything
16 against Mr. Wolfbrandt's client, in my opinion.

17 MS. McNEILL: I would agree with that. I think
18 Mr. Wolfbrandt probably has, you know, if the issue seems to
19 be questions Mr. Landis and I asked that are bringing in these
20 documents, certainly he may need to -- want to make a record
21 about how that may affect his client.

22 THE COURT: All right. I'm looking at 50.125.
23 Okay. So it says, "If a witness uses a writing to refresh his
24 or her memory while testifying, an adverse party is entitled
25 to introduce in evidence those portions which relate to the

1 testimony of the witness for the purpose of effecting the
2 witness's credibility.

3 Is that what you're talking about?

4 MR. DiGIACOMO: That's one of them. And then
5 there's also 47.120.

6 THE COURT: 47.120.

7 MR. DiGIACOMO: And that would tell you --

8 THE COURT: Well, yeah, that's just the remainder
9 of --

10 MR. DiGIACOMO: Correct. This is the Dominquez case
11 in which the State attempted to put in a portion of a
12 defendant's statement and not the remainder of his statement,
13 just the inculpatory portions, and not the exculpatory
14 portions. And the Nevada Supreme Court said no, once you put
15 a portion of a statement in, that entire statement comes in.
16 And they cite, I think, both 50.125 and 47.120. There is no
17 way around this. Once it is you go into that, this is
18 admissible for the jury to make that credibility
19 determination.

20 THE COURT: Okay. And so the statute you're
21 referring to 47.120, of course, is -- allows -- "When any part
22 of a writing or a recorded statement is introduced by a party,
23 the party may be required to introduce any other part of it
24 which is relevant to the part introduced, and any party may
25 introduce any other relevant parts." And it says, this does

1 not limit cross-examination.

2 So the issue is, is there anything that's irrelevant
3 -- that's what I was talking about yesterday. So you have to
4 tell me what you think is irrelevant, because it's relevant,
5 and I think they're talking about relevant to the part that's
6 introduced. I mean, that's --

7 MR. DiGIACOMO: That's subsection (1). Subsection
8 (2) says any other relevant part, and that's what Dominguez
9 talks about is look, you can't put in that the guy admitted to
10 being in possession of the credit cards when later he says in
11 his statement, you know, that he took the credit cards
12 afterwards. Once a party introduces one part of a statement,
13 the entire statement that is relevant to the proceeding comes
14 is what Dominguez says.

15 THE COURT: Okay. So --

16 MR. DiGIACOMO: That's subsection (2).

17 THE COURT: No, subsection (2) says this section
18 does not limit cross-examination.

19 MR. DiGIACOMO: Or I mean, there's an (a) and a (b)
20 or maybe -- whatever maybe it is but it's --

21 THE COURT: No, there's no (a) or (b). It's just all
22 part of one sentence, but it does say, just how I read it.
23 There's -- it's, "and any party may introduce any other
24 relevant parts". Okay.

25 MR. DiGIACOMO: Other relevant parts.

1 THE COURT: Yeah.

2 MR. DiGIACOMO: And what the Supreme Court says
3 that's relevant to the proceeding, not relevant to what it was
4 that he was asked about.

5 THE COURT: Well, and moreover, if it's relevant to
6 his credibility, potentially, the whole thing comes in anyway.
7 To me that's the point. When you're putting in -- you're
8 trying to impeach someone from their prior statements, it goes
9 to credibility and therefore, if the rest of the statement
10 would go to that, it comes in anyway.

11 So under the first part of the sentence or the
12 second, but again, so if you have some specific argument that
13 something is completely irrelevant, that's why the redactions,
14 I suppose, were done, in part, too, to keep out things that
15 might not be relevant. But you need to look at it so that
16 before they're -- you know, they're offered to be admitted,
17 that you have the opportunity to specifically make your
18 objections.

19 MR. LANDIS: And we will do so.

20 THE COURT: Okay.

21 MR. LANDIS: Two more things for clarification. I'm
22 trying to be quick so the jury -- so if the questions I asked
23 on redirect that calls for a prior consistent statement, do
24 you want concurrent objections at this point?

25 THE COURT: Yes. I think you need to make

1 concurrent objections so the Supreme Court is, you know,
2 saying that they're not considered to be made. If you're not
3 making them, you're not making them.

4 MR. LANDIS: And then second, just so everyone's
5 aware, to the extent the Court rules that these transcripts or
6 portions of them are admissible under best evidence, I think
7 it's the tapes that go back or at least the tapes on the
8 transcripts.

9 MR. DiGIACOMO: Only if there is a argument that the
10 transcript is not consistent with the original tapes, and
11 thus, I don't think they're making that argument unless I'm
12 confused, like there's something in there that he didn't
13 actually say on the recordings, which were previously
14 disclosed. They have to come up with something to say the
15 tape's not -- the transcript -- in order to -- for the best
16 evidence rule to apply, you have to dispute the original.

17 MR. LANDIS: Best evidence rule, the original is the
18 original. But yeah, there are spots where there's misprints,
19 there's blanks that if you listen to the tape you know what
20 they said. Yeah, I mean, there's plenty of those in there.

21 THE COURT: Best evidence rule isn't about originals
22 and copies. People confuse that all the time. So certainly,
23 if is a concern that this is not an accurate transcription,
24 then you need to let us know because if those -- if it's going
25 to be the audio, then those need to be redacted. So --

1 MR. LANDIS: And I'm not saying it's necessarily
2 quote/unquote "inaccurate", but it's incomplete and there's
3 some small typos, not a few significant, but it's incomplete
4 as to a ton of words and some of it is.

5 MS. McNEILL: That's correct. There are -- in the
6 transcript there's areas where it says "inaudible" or
7 "unintelligible", and I think those are the portions that
8 Mr. Landis is referring to that certainly the audio would be
9 best for the jury to have instead of where the
10 transcriptionist wasn't able to discern what was said.

11 MR. LANDIS: And I agree with the original copy
12 thing, but best evidence, a recording, which is the original,
13 is more accurate than these transcripts prepared by another
14 person. I think that's exactly what the best evidence goes
15 to.

16 MR. DiGIACOMO: And the whole purpose of us
17 redacting these was to keep out the fact that Mr. Laguna and
18 Mr. Figueroa were cell mates, and thus, it was very easy to do
19 in a Word document in such a way that that information
20 wouldn't be conveyed to the jury nor would they know it was
21 redacted.

22 In this particular case, if they don't -- I mean,
23 theoretically, if that's their objection, then we will put in
24 both a redacted version of the audio as well as a transcript
25 so they have something to follow along while they're listening

1 to it, but, you know, otherwise, this is the statement of the
2 witness, and if they don't dispute the accuracy of it, I think
3 they're just trying to create a situation where it's more
4 difficult for a jury to be able to quickly leaf through the
5 information to see hey, what was said, what wasn't said. And
6 I don't think that's a basis to object to -- to the evidence.

7 THE COURT: If there is -- if there are portions of
8 the transcript that say "inaudible" and that's in a typical,
9 there is certainly the chance that a jury listening to the
10 actual tape might understand what's said or reading along
11 might realize that the transcriber put the wrong word.

12 MR. DiGIACOMO: Sure.

13 THE COURT: I mean, that's possible. And so I think
14 it's -- it is helpful to a jury to have a transcript. And so
15 unless you're saying that it is completely inaccurate, and if
16 it's completely inaccurate, then there's the problem with you
17 using it to impeach, you know. So, I mean, I think it's fine,
18 and I like the idea of having the audio, but you're going to
19 need to do the redactions to the audio, but I think they
20 should also have the transcript.

21 MR. LANDIS: And I'm not objecting to that.

22 MR. DiGIACOMO: I don't have a problem with that. I
23 mean, I can happily redact the audio. I'll have to listen to
24 the unintelligible portions to see if he says something that
25 is going to implicate them so I'd ask them --

1 THE COURT: Oh, yeah.

2 MR. DiGIACOMO: -- as I sent these around last
3 night, because we were going to offer them on redirect. We
4 are going to offer all of these on redirect.

5 Obviously, they're not going to have them until they
6 go back to the jury room so if there's any dispute or anything
7 that needs to happen, but I don't have a problem with
8 redacting that portion they could have both the audio and the
9 transcript.

10 THE COURT: Okay. So you really, you know, need to
11 get to work to make sure there's nothing in that, because
12 again, I don't have at that audio. So you need to listen to
13 it and make sure there's nothing that's been overlooked from
14 the redactions so it gets redacted, because I don't want to be
15 hearing from you, you know, oh, motion for mistrial because
16 something came in because you weren't paying attention to it
17 because that's not going to make me happy at all. Okay. And
18 I know you don't care whether I'm happy. It's fine because I
19 don't expect you to.

20 MR. LANDIS: Are you saying we don't care?

21 THE COURT: Of course, you don't care whether I'm
22 happy.

23 MR. LANDIS: I don't know about that.

24 THE COURT: I'm just -- I'm not -- I'm just tired,
25 I'm sorry. Anything else outside the presence?

1 MS. McNEILL: Well, I had my record about his
2 nickname, but we can do that at a different break --

3 MR. LANDIS: Yes.

4 MS. McNEILL: -- since the jury's waiting.

5 THE COURT: Okay.

6 MS. McNEILL: We can do that.

7 THE COURT: All right.

8 MR. WOLFBRANDT: Just real quick, on behalf of
9 Mr. Mendoza, I want to join in the objections and the comments
10 made by Mr. Landis and Ms. McNeill.

11 THE COURT: Oh, okay. Mr. Murphy wants to use the
12 bathroom.

13 DEFENDANT MURPHY: Yes, please.

14 THE COURT: Let's do it. Let's hurry.

15 MS. McNEILL: And Mr. Laguna's okay with me making
16 the record about his nickname while in the bathroom if we want
17 to utilize that time.

18 THE COURT: Okay, let's do that.

19 DEFENDANT MURPHY: Thank you.

20 THE COURT: You're welcome.

21 MS. McNEILL: Thank you, Your Honor. It was during
22 the testimony of Mr. Figueroa on direct that the State asked
23 him what my client's nickname was. I asked to approach on
24 that and made an objection at the bench that I believed his
25 nickname was prejudicial and not relevant because my

1 understanding of the meaning of the word Montone was that it
2 meant potentially "killer" and I think we looked it up at the
3 bench and it means "thug" or "bully".

4 The State indicated they weren't going to be
5 eliciting from Mr. Figueroa any meaning of the name, but that
6 it went to how Mr. Figueroa knows my client. And so I asked
7 if the Court was going to let it in to at least allow for a
8 limiting instruction that it was only coming in for identity
9 purposes and the jury wasn't to take any type of meaning from
10 that.

11 I just want today put that on the record that that
12 objection was made and that I asked for that limiting
13 instruction. Mr. Laguna is concerned that the witness is --
14 that the State as well as some of other defense attorneys keep
15 referring to him by that nickname. And so I -- he asked me to
16 make a record as well that it be -- that since yes, it's just
17 for identity purposes from Mr. Figueroa to him, that his name
18 be used when people are questioning, and I told him I would
19 make what record.

20 THE COURT: All right. Your response.

21 MR. DiGIACOMO: Yeah. With all due respect,
22 throughout all of these transcripts, and more importantly, the
23 witness that in opening the defense discussed that
24 Mr. Figueroa allegedly told some information to Mr. Sotelo, he
25 describes an individual and the location where he lives as

1 Montone. And thus, in order to tie it all up, and I imagine
2 it's the witness, just that's how he's always called the
3 individual. I don't think he's intentionally saying, you
4 know, Montone versus Mr. Laguna versus whatever, you know, and
5 at this point, I can't imagine that there's any additional
6 prejudice.

7 The Court did give a limiting instruction and for
8 the record, when we looked it up, you know, maybe "bully" was
9 the worse thing that was in there. I can't remember
10 everything else the Court said. But we are certainly not
11 going to ask the witnesses who say it means killer or
12 something, that question. And maybe in some slang it is, or
13 maybe the witness is wrong, but I'm not aware of what Montone
14 means myself, other than that's what everybody's calling him
15 in this case.

16 THE COURT: All right. So I ran it on Google
17 translate at the bench, and of course, translating Spanish to
18 English, and of course, there are many Spanish dialects so it
19 gave many definitions. The primary one being bully and then
20 some other, you know, things like -- that are similar
21 synonyms, ruffian, thug, but certainly not killer. That was
22 not anywhere in any of the synonyms. It was basically, I
23 think, bully was the number one translation for that because
24 that would be the most easily understood of any of the words.
25 But, you know, like ruffian, I think, some people might not

1 even know what a ruffian is supposed to be these days, but
2 killer wasn't among those.

3 So I don't know if at some point running up to trial
4 someone told somebody else that that's what it meant, but I
5 couldn't find anything like that. And since this witness has
6 only known Mr. Laguna by his nickname and because he was
7 talking to the police about that using that nickname, you
8 know, it has to be used for identification purposes, and
9 that's the reason. And I don't -- he's never spoken
10 disrespectfully, if you will, in using that nickname to -- in
11 the course of his testimony so I think it's appropriate.

12 If that's the name he always knew Mr. Laguna by, and
13 he didn't even know his real name until after these
14 proceedings commenced or, you know, the charges were brought.

15 MS. McNEILL: Well, Your Honor, just on that point
16 in his -- one of his first statements to the police he does
17 say Joey Laguna without any prompting. So and I think that
18 was one of the things I was asking the State at the bench was
19 are you saying he doesn't know Mr. Laguna's name other than
20 Montone because he certainly had that information available to
21 him before Mr. Laguna was ever even charged in this case, and
22 that was my concern.

23 But I understand the Court let it in and I just
24 wanted it on the record for Mr. Laguna's appellate purposes.

25 THE COURT: Sure. But I thought you were asking me

1 to admonish -- I mean, I don't think that it's -- I don't
2 think the State needs to address him or talk about him by
3 nickname, but if the witness uses that nickname because that's
4 how he knew him, I'm not having a problem with that especially
5 given the fact that I gave the limiting instruction and
6 observed the jury all nodding in the affirmative that they
7 understood this. And I think we -- you asked for that
8 limiting instruction because you thought that maybe at least
9 one person on the jury might speak Spanish and --

10 MS. McNEILL: Yes.

11 THE COURT: -- you know, know what the word meant
12 but that's --

13 MR. WOLFBRANDT: And not only just know what the
14 word meant, but take it one step further and consider that a
15 moniker that's gang related. And that's -- that was the
16 concern, I'm sure.

17 MS. McNEILL: Right, that was -- and I made that --
18 I said that at the bench as well that it was my -- I think it
19 was a -- it's a gang nickname, would be a guess based on
20 statements that other people have made about potential gang
21 affiliation here, but --

22 THE COURT: There's been no mention --

23 MS. McNEILL: No, there has not.

24 THE COURT: -- of a gang affiliation in front of the
25 jury.

1 MS. McNEILL: Right.

2 THE COURT: And I don't know that the lay person
3 with no law enforcement connection would tend to immediately
4 draw the conclusion that because someone goes by a nickname
5 they're gang affiliated. So I mean, I've known lots of people
6 that have gone by nicknames and they weren't gang affiliated
7 so.

8 MS. McNEILL: Thank you, Your Honor, for letting me
9 make the record.

10 THE COURT: Thank you. Anything else before we
11 bring them in?

12 MR. DiGIACOMO: No.

13 MR. LANDIS: No.

14 THE COURT: All right, let's bring be them in.

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

16 (Jury reconvened at 2:17 p.m.)

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

19 THE COURT: Thank you. Please be seated. And the
20 record will reflect we're back within the presence of all 12
21 members of the jury as well as the three alternates. Good
22 afternoon, ladies and gentlemen.

23 THE JURY: Good afternoon.

24 THE COURT: And the three defendants are present
25 with their respective attorneys, the Chief Deputies District

1 Attorney prosecuting the case are present as are all officers
2 of the court. Mr. Figueroa's still on the witness stand. And
3 Mr. Figueroa, I just further remind you you're still under
4 oath.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: And --

7 THE WITNESS: Your Honor.

8 THE COURT: -- Mr. Landis, you may proceed.

9 MR. LANDIS: Thank you.

10 CROSS-EXAMINATION (RESUMED)

11 BY MR. LANDIS:

12 Q Mr. Figueroa, I'm going to try to start where we
13 kind of left off yesterday, which was talking about -- your
14 testimony regarding whether or not my client, Mr. Murphy,
15 called you as you were hunkered down in that backyard, right?

16 A Yes, sir.

17 Q Let me start, though, your trial testimony regarding
18 a phone call is what?

19 A Excuse me?

20 Q Your trial testimony regarding whether or not
21 Mr. Murphy called you during that time period is what?

22 A Yes. Yes, sir.

23 Q Let me go back, then, to the October 24th, 2014
24 statement, the first time you sat down and cooperated with the
25 police.

1 A Yes, sir.

2 Q In that statement, which I believe is the same I was
3 showing you when we ended yesterday, do you recall if you told
4 them that you received a text or a phone call from Mr. Murphy?

5 A I believe -- I believe I had received texts from, I
6 don't know, either Montone or Duboy, but I've also received a
7 call.

8 Q With you did not have Mr. Murphy's phone number at
9 that point in time, correct?

10 A No, sir.

11 Q And you're saying however Mr. Murphy contacted you,
12 it was on a number you didn't recognize, correct?

13 A Yes, sir.

14 Q My question to you is then as of today, is your
15 memory that it was phone calls, texts, what?

16 A Both.

17 Q Both from Mr. Murphy?

18 A Well --

19 Q From somebody you decided --

20 A I -- I don't know. I know I was getting texts, you
21 know -- texts here and there, but I also know I had got a
22 phone call that night.

23 Q From a number you didn't recognize?

24 A Yes, sir.

25 Q That you concluded was Mr. Murphy?

1 A Yes, to -- yes.

2 Q What happened first, the texts or the phone calls?

3 A I believe -- I believe a text, sir.

4 Q And you responded to these texts from this unknown
5 number, right?

6 A To the unknown number.

7 Q And let me be clear if my if he was less than that.
8 The texts that you received that you concluded were from
9 Mr. Murphy from an unknown number, did you respond to those
10 texts?

11 A I believe so. I responded to multiple texts.

12 Q And the phone call you're testifying that you
13 received from an unknown number that you believed to be
14 Mr. Murphy, how long do you think that lasted?

15 A About a minute.

16 Q Certainly, you recall the talk, right?

17 A Yes, sir.

18 Q You testified that you've called -- you called a lot
19 of people from your phone that night. More or less went down
20 the list in your contacts, correct?

21 A Yes, sir.

22 Q Joey Laguna was one of those contacts, correct?

23 A Yes, sir.

24 Q He was probably one of your early calls, I would
25 assume, right?

1 A Yes, sir.

2 Q Why was he an early call?

3 A Because he was there, and I knew his phone number,
4 and I assumed that, you know, he would come to my distress
5 call.

6 Q Did you at any point reach out to Mr. Mendoza, to
7 Jorge Mendoza?

8 A No, sir.

9 Q Why not?

10 A Because that -- that phone number would had been in
11 my call log in which I was going down -- basically, going down
12 my -- that -- that would have been in like my incoming call
13 log, and I was going down, you know, my actual call log.

14 Q That call you had received earlier that night from
15 Mr. Mendoza, though, was somewhere around 7:00 o'clock, right?

16 A Yes, sir.

17 Q You didn't recall it as of 9:00, 10:00 o'clock when
18 you're behind that wall?

19 A No, sir.

20 Q The previous time you testified on under oath in
21 this case, which is in front of the Grand Jury in January
22 2015, do you recall being specifically asked, who was with
23 David Murphy when you guys came across him near that cul-de-
24 sac in the morning; do you remember being asked that?

25 A Yes, sir, I -- yes, sir, I believe so.

1 Q Do you recall what your answer was?

2 A I would assume -- during the first incident in the
3 cul-de-sac? I would assume, you know, Montone, Mendoza and
4 his girlfriend with the tattoos.

5 Q I don't want you to assume what you said. Would
6 looking at the transcript refresh your recollection?

7 A Yes, sir.

8 MR. LANDIS: May I approach the witness?

9 THE COURT: Yes.

10 MR. LANDIS: 41, State.

11 BY MR. LANDIS:

12 Q Please take your time to read as much of it as you
13 want today because I don't want you to have any less than a --
14 this is the page I believe I'll ask you questions about, but
15 please take your time.

16 MR. DiGIACOMO: I'm sorry, Counsel, I didn't hear
17 the page.

18 MR. LANDIS: 41.

19 THE WITNESS: (Witness reading transcript). Yes,
20 sir.

21 BY MR. LANDIS:

22 Q And let me preface my question with this, instead of
23 us disagreeing about context, the jury's going to have this
24 transcript before it's all said and done.

25 A Yes, sir.

1 Q Having said that, my question is simply, on page 41
2 were you asked, was someone else in the car with Duboy or was
3 he boy himself, yes?

4 A Um-h'm. I say -- I say he was by his self in the
5 truck.

6 Q Just to put some time frames in context, you were
7 arrested in October 2014, yes?

8 A Yes, sir.

9 Q The murder happened September 2014?

10 A Yes, sir.

11 Q October 24th, 2014 is the first time you gave a
12 cooperating statement to the State?

13 A Yes, sir.

14 Q You testified before the Grand Jury in January 2015?

15 A Yes, sir.

16 Q Do you recall when you signed the actual Guilty Plea
17 Agreement with the State? Not when you were in court, but
18 when you signed it? Does January 2015 sound correct?

19 A Yes, sir, around -- around that time area.

20 Q In --

21 A Time frame.

22 Q -- February 2015, does that sound about the time
23 that you actually came to this court and pled guilty in open
24 court pursuant to that agreement?

25 A That sounds about right.

1 Q As of July 2015, you believe that Mr. Brown, your
2 previous attorney, provided misrepresentation about your
3 situation in this case, right?

4 A Yes, sir.

5 Q You believed he misinformed you, correct?

6 A Yes, sir.

7 Q And he failed to discuss options with you before you
8 sat down with the State that morning?

9 A Yes, sir.

10 Q When you were originally arrested and charged with
11 murder, are you aware of what sentencing risk you faced? What
12 was the potential sentences you could deal with?

13 A Murder, that's -- that's life.

14 Q Beyond that, were you also concerned potential
15 sentences because you could have an enhanced sentence because
16 of habitual criminal sentencing enhancements?

17 A Yes, sir.

18 Q So just so it's clear that means that if you were
19 convicted of a felony, doesn't matter if it was murder or not,
20 your sentence could be substantially enhanced because you had
21 prior felonies?

22 A Yes, sir.

23 Q And now turning to what your negotiation is based on
24 your Guilty Plea Agreement with the State, we talked some
25 about what you expect the sentence to be or what you

1 anticipate it to be, but having said that, let me -- let me
2 question this; you at least have a possibility of walking out
3 of that sentencing with a sentence of three to eight years?

4 A Yes, sir. I mean, that's the bare minimum, the
5 highest up there.

6 Q Understood. But that is a possible sentence that
7 you could hope to get?

8 A Yes, sir.

9 MR. LANDIS: I have no further questions. Can I
10 approach the witness to get the transcript?

11 THE COURT: You may. Mr. Wolfbrandt?

12 MR. WOLFBRANDT: Our --

13 THE COURT: Or --

14 MR. LANDIS: It's our fault. We went out of order.

15 MR. WOLFBRANDT: Right.

16 MR. LANDIS: So we've all done our cross.

17 THE COURT: Okay.

18 MR. WOLFBRANDT: We started in them middle here and
19 then --

20 THE COURT: I -- I knew you had started and Ms.
21 McNeill.

22 MS. McNEILL: Yes.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MS. LEXIS:

1 Q Good afternoon, Mr. Figueroa.

2 A Yes, ma'am.

3 Q Mr. Figueroa, I can't remember which of the defense
4 attorneys -- actually, I believe, it was Mr. Landis. Do you
5 recall Mr. Landis characterizing your interview with the
6 police on October 24th, 2014 as an audition? Do you remember
7 that?

8 A Yes, ma'am.

9 Q Okay. And he went over first the fact that you had
10 indicated you didn't really have an opportunity to speak with
11 your attorney prior to giving this interview; do you remember
12 that question?

13 A Yes, ma'am.

14 Q Okay. And actually, let me start off by doing this.

15 (Pause in the proceedings)

16 BY MS. LEXIS:

17 Q So that you have the actual transcripts in front of
18 you that we will be referring to, I did have your transcripts
19 -- the transcripts of each of your interviews marked as
20 proposed exhibits.

21 MS. LEXIS: So Your Honor, may I approach with
22 what's been previously marked as State's Proposed exhibits
23 326, 327, 328, 329 and 330.

24 THE COURT: And these are just marked as -- okay.

25 MS. LEXIS: They're currently marked as Exhibits.

1 May I approach the witness?

2 THE COURT: Yes.

3 MS. LEXIS: And I just want him to have them up here
4 to kind of save time in case he has to look over exhibits or
5 the transcripts to refresh his memory.

6 BY MS. LEXIS:

7 Q So they actually -- various defense attorneys asked
8 you about whether you had had an opportunity to speak with
9 Mr. Brown, who was your attorney at the time?

10 A Yes, ma'am.

11 Q Okay. So let me just ask you; prior to you speaking
12 with detectives and the taped interview starting, did you have
13 an opportunity to speak with Mr. Brown, your attorney at the
14 time?

15 A Not really.

16 Q Okay. Do you recall in the taped statement on
17 October 24th, 2014, one of the detectives saying you had, you
18 know, a few -- at least a few minutes to speak with Mr. Brown?

19 A Yes, ma'am.

20 Q Okay. And prior to that October 24th meeting that
21 was recorded, did you have an opportunity to discuss the case
22 with Mr. Brown?

23 A No, ma'am.

24 Q But you indicated -- but it was you who indicated to
25 the corrections officers that you wanted to speak with

1 homicide detectives, correct?

2 A Yes, ma'am.

3 Q Okay. And prior to you giving up information or
4 giving this full confession, essentially, Mr. Brown admonished
5 you concerning your obligation to be truthful, is that right?

6 A Yes, ma'am.

7 Q And that the benefits and favors that Mr. Landis and
8 Ms. McNeill and a little bit with Mr. Wolfbrandt, that those
9 benefits and favors would not come into play if you were not
10 truthful; do you remember that?

11 A Yes, ma'am.

12 Q Okay. Do you remember exactly what it was that your
13 attorney told you word for word?

14 A No, ma'am.

15 Q Okay. Would looking at page 3 of your statement on
16 October 24th, 2014 refresh your memory? There are
17 various ones.

18 THE COURT: Why don't you refer to it as the
19 marked.

20 MR. LANDIS: Just so the record is clear, I assume
21 they're admitting this for effect on the listener as opposed
22 to the truth of the matter asserted.

23 THE COURT: Right now she's just asking him -- it's
24 refreshing his recollection. She's seeing if it would refresh
25 his recollection. He hasn't answered that question yet.

1 MR. LANDIS: Okay.

2 MS. LEXIS: Okay. So it would be State's Proposed
3 Exhibits 327, and I'm directing him to page 3, labeled A1.

4 BY MS. LEXIS:

5 Q Do you mind reading that to yourself, Mr. Figueroa.

6 A (Witness reading document). Okay.

7 Q Okay. So yesterday you were asked --

8 THE COURT: Wait, does it refresh his recollection?

9 BY MS. LEXIS:

10 Q Does it refresh your recollection as to what it was
11 your attorney told you that particular day?

12 A Yes, ma'am.

13 Q Okay. He told you that you needed --

14 THE COURT: Wait, wait. What was it that he told
15 you? You don't get to read the statement if he -- it's
16 refreshed his recollection and now he can testify.

17 MS. LEXIS: Okay.

18 THE COURT: Okay.

19 BY MS. LEXIS:

20 Q What is it that he told you?

21 A He told me it would be in my -- basically, in my
22 best interest to be truthful. If I'm untruthful, it's -- it
23 basically is going to look real bad on my part.

24 Q Okay. Did he tell you how many chances it was that
25 you would have an opportunity to speak with detectives

1 concerning your side of the story?

2 A One chance, if I was not truthful.

3 Q And -- okay. At that particular point in time, did
4 he tell you then to tell your story?

5 A Yes, ma'am.

6 Q Did the detective -- now I know that your defense
7 attorney admonished you to be truthful, but did the detective
8 also tell you the importance or stress the importance of you
9 being truthful during the begin of that interview?

10 A Yes, ma'am.

11 MR. LANDIS: I object to relevancy if they're
12 admitting this for truth of the matter asserted. If they're
13 admitting it for effect on the listener, that's one thing.

14 MS. LEXIS: Your Honor --

15 THE COURT: They're admitting what? Nothing's been
16 admitted.

17 MR. LANDIS: Those statements.

18 THE COURT: Okay.

19 MS. LEXIS: I mean, I'm objecting to hearsay if
20 they're admitting them for truth of the matter asserted.

21 MS. McNEILL: The statements of the lawyer, I would
22 object to as well.

23 MR. LANDIS: And the detective.

24 MS. McNEILL: Right.

25 THE COURT: Overruled on a hearsay objection for

1 that reason.

2 BY MS. LEXIS:

3 Q Speaking of promises and favors and things like
4 that, that you were asked about, do you recall during the same
5 interview on October 24th, 2014, whether any promises were
6 made to you?

7 A No promises were made.

8 Q Do you remember being specifically told by your
9 attorney that at that point in time no promises were being
10 made?

11 A Yes, ma'am.

12 Q Do you remember also towards the end of that same
13 interview, October 24th, 2014, your attorney telling you that
14 after you had -- towards the end of this interview now, that
15 he was going to talk to the State, the prosecutors on this
16 case, and discuss your case; do you remember him saying that?

17 A Yes, ma'am.

18 Q Do you also -- do you recall him saying flat out to
19 you that you're not going to get a pass?

20 A Yes, ma'am.

21 Q Okay. And that you were going to go to prison?

22 A Yes, ma'am.

23 Q Do you remember that?

24 A Yes, ma'am.

25 Q Okay. So fair to say that as early as October 24th,

1 2014, you knew what you were up against concerning this case?

2 MR. LANDIS: Objection. Leading.

3 THE COURT: Sustained.

4 BY MS. LEXIS:

5 Q As of October 24th, 2014, did you know that any deal
6 you entered would involve prison time?

7 MS. McNEILL: Objection. Leading.

8 THE COURT: Sustained.

9 BY MS. LEXIS:

10 Q Do you know what consequences you were facing even
11 after you gave this October 24th, 2014 statement?

12 A Prison time.

13 Q Mr. Landis asked questions, actually, just today
14 about whether or not Duboy called or text messaged you while
15 you were hiding at that house near the crime scene; do you
16 remember those questions?

17 A Yes, ma'am.

18 Q Okay. On October 24th, 2014, do you recall whether
19 -- were you specifically asked if Duboy called you?

20 A By detective -- by the detectives if I was
21 specifically asked, I don't believe so.

22 Q Okay. Do you recall when -- do you recall your
23 response when the detectives asked you how it was that you got
24 out of that crime scene?

25 A I told him my sister.

1 Q Okay. Do you recall telling them that you had just
2 started making a bunch of phone calls?

3 A Oh, yes, ma'am.

4 Q Okay. And eventually, you got a hold of your
5 sister?

6 A Yes, ma'am.

7 Q And she came and got you?

8 A Yes, ma'am.

9 Q So you did tell them that you made phone calls?

10 A Yes, ma'am.

11 Q Do you recall during that same statement, October
12 24th, 2014, the detectives asking you if you called Duboy. If
13 you don't recall, we can refresh your memory.

14 A Yeah, that -- that would help.

15 Q Okay. Would looking at the statement of -- or
16 actually, I'm sorry, let me rephrase. I have the wrong
17 statement date. On the January 25th, 2015 interview with
18 detectives, do you recall them asking you if you ever called
19 Duboy?

20 A Yeah, I'm still not --

21 Q Would looking at that particular transcript refresh
22 your memory?

23 A Yes, ma'am.

24 Q Okay. I'm going to direct you to page 16.

25 MS. LEXIS: And may I approach, Your Honor? And

1 (inaudible)?

2 THE COURT: Yes, and which proposed exhibit --

3 THE WITNESS: 25?

4 THE COURT: -- is he looking at?

5 MS. LEXIS: It would be State's Proposed 328.

6 BY MS. LEXIS:

7 Q And I'm going to direct you, sir, to page 16.

8 A (Witness reading document).

9 Q And Mr. Figueroa, I saw you kind of flip to a
10 previous page. Let's just make a record, did you also flip to
11 page 15?

12 A Yes, ma'am.

13 Q Okay. And are you still reading?

14 A (Witness reading document). Okay, I'm --

15 Q Okay. So did that refresh your memory about whether
16 the detectives asked if you ever called Duboy and what your
17 response was?

18 A Yes, ma'am.

19 Q Okay. When you were asked by detectives if you ever
20 called Duboy, what did you say?

21 A I said I know he was texting me on some phone. I
22 don't know if it was his or whose it was.

23 Q And then the detective says something like uh-huh,
24 and then what do you further explain to him what it was that
25 Duboy told you during this conversation?

1 A Talked about where was I at. I told them -- then I
2 told him -- then, I told him where I was at.

3 Q And so when you were interviewed on January 25th,
4 2015, you did make reference to text messages from Duboy?

5 A Yes, ma'am.

6 Q And so when you clarified and said at first he was,
7 you know, asking where you were at and you told him where you
8 were at, was that by text message or by phone call? Do you
9 recall?

10 A I believe, that was by text message.

11 Q So is it your testimony today that you received both
12 text messages and phone calls from an individual you believed
13 to be David Murphy or Duboy?

14 A Yes, ma'am.

15 Q While you were hiding in that -- in that little
16 backyard?

17 A Yes, ma'am.

18 Q Now, at the Grand Jury, do you recall testifying to
19 also receiving a text message from someone you believed to be
20 Duboy?

21 A Yes, ma'am.

22 Q And that was at the Grand Jury on January 29th,
23 2015?

24 A Yes, ma'am.

25 Q During that time, do you recall explaining to the

1 ladies and gentlemen of the Grand Jury during your testimony
2 how it was that you believed the person that you were talking
3 to was Duboy?

4 A Basically, it was off a number I didn't recognize,
5 and at that time, there was only a couple people who knew what
6 were happening.

7 Q And so was the person who was text messaging you,
8 the person that you believed to be Duboy, talking about the
9 incident that you all had just taken part in?

10 A Yes, ma'am.

11 Q You received or you made a phone call to Joey Laguna
12 while you were hiding as well; is that right?

13 A Yes, ma'am.

14 Q Okay. Did you ever connect with Mr. Laguna that you
15 can recall?

16 A I don't believe so.

17 Q Did you send him text messages?

18 A Yes, ma'am.

19 Q Okay. Did he ever respond?

20 A No, ma'am.

21 Q And certainly, did Mr. Laguna come and get you?

22 A No, ma'am.

23 Q You were asked by Ms. McNeill about the differences
24 in the details that you testified about or that you told the
25 police about on October 24th, 2014 and your testimony

1 afterwards at the Grand Jury on January 29th, 2015; do you
2 remember those questions?

3 A The questions she was asking me?

4 Q Yes.

5 A Somewhat.

6 Q Okay. Let me be a little more specific. Do you
7 remember her asking you about whether you gave an actual time
8 during your October 24th, 2014 interview, an actual time as to
9 when Mr. Laguna or Montone called you for the first time that
10 Sunday?

11 A Yes, ma'am.

12 Q Okay. And do you recall saying no, you didn't give
13 a specific time?

14 A No, I don't recall that. I believe, I gave a
15 specific -- a specific time.

16 Q Okay. Let me ask you this; during your October
17 24th, 2014 interview, were you asked for a specific time as to
18 when Mr. Laguna or Montone would have called you for the first
19 time?

20 A I -- I believe that they did ask. They might have.

21 Q And do you recall what your response was?

22 A Probably around, what, 6:00, 7:00 o'clock in the
23 morning early in the morning.

24 Q And when you were testifying at the Grand Jury, do
25 you recall giving the same time frame?

1 A Yes, ma'am.

2 Q Ms. McNeill also asked you about how at the Grand
3 Jury you were able to give a part of town concerning where
4 this stash house was located.

5 A Yes, ma'am.

6 Q But that you were not able to do that or that you
7 didn't do that October 24th, 2014 when you first really spoke
8 with police officers; do you remember those questions?

9 A Yeah, somewhat.

10 Q Do you recall during your October 24th, 2014
11 interview with detectives telling the detectives that you
12 could show them where this particular house was located?

13 A Yes, ma'am.

14 Q Okay. At that point in time, they didn't bring a
15 map to you or did they?

16 A No, ma'am.

17 Q Okay. And they didn't take you out so that you
18 could physically show them, did they?

19 A No, ma'am.

20 Q Okay. Now, at the Grand Jury I questioned you,
21 correct?

22 A Yes, ma'am.

23 Q Okay. And I specifically asked you if you recalled
24 the location of the stash house; is that right?

25 A Yes, ma'am.

1 Q And that's when you indicated a part of the valley
2 that it was located in?

3 A Yes, the north northwest area.

4 Q So is it fair to say, Mr. Figueroa, that both in
5 your October 24th, 2014 statement and also the January 29th,
6 2015 Grand Jury testimony, you were essentially responding to
7 questions posed to you?

8 A Yes, ma'am.

9 Q And at times, perhaps, during the Grand Jury, the
10 questions were a little more specific?

11 A Yes, ma'am.

12 Q And certainly, when you testified at the Grand Jury
13 concerning what part of town it was located, you did identify
14 that it was located on a cul-de-sac; do you remember that?

15 A Yes, ma'am.

16 Q Mr. Wolfbrandt asked you during his
17 cross-examination yesterday several times if you fired the .40
18 caliber Ruger at any point in time during the Sunday night
19 robbery; do you remember those questions?

20 A Yes, ma'am.

21 Q Okay. And your response was?

22 A No, ma'am.

23 Q Okay. Do you recall being asked that same question
24 by detectives during your October 24th, 2014 interview?

25 A Yes, ma'am.

1 Q During that same interview, Mr. Figueroa, did you
2 tell detectives the location of that .40 caliber Ruger?

3 A Yes, ma'am.

4 Q And you again, told them that you had not fired that
5 weapon; is that right?

6 A Yes, ma'am.

7 Q During this exchange with detectives, do you recall
8 either you or the detectives saying something to the effect of
9 you're going to test it?

10 A The detectives, they said that they were going to
11 test it to see if it has been fired.

12 Q Okay. Do you recall the detectives telling you that
13 they had recovered cartridge casings at --

14 MR. LANDIS: I object to hearsay as to what the
15 detectives told him.

16 MS. McNEILL: And I object to leading in addition.

17 THE COURT: Sustained.

18 MS. LEXIS: As to which portion, all?

19 THE COURT: Both.

20 MS. LEXIS: Okay.

21 BY MS. LEXIS:

22 Q When you told the detectives that you hadn't fired
23 that weapon and you gave up your weapon, did you think that
24 they were going to test your story?

25 A Yes, ma'am, of course.

1 Q Okay. That they were going to investigate your
2 claims?

3 A Yes, ma'am.

4 Q Okay. During your October 24th, 2014 interview --
5 well, first of all, one or more of the defense attorneys asked
6 you about Emanuel Barrientos, correct?

7 A Yes, ma'am.

8 Q Okay. And whether he was with you the night of the
9 Sunday night robbery; do you remember that?

10 A Yes, ma'am.

11 Q Okay. Do you recall, Mr. Figueroa, during your
12 October 24th, 2014 interview, whether you told the detectives
13 about a phone call you had with Manny or whether you tried to
14 call Manny?

15 A Yes, ma'am.

16 Q Okay. What did you tell them?

17 A Basically, that I had been shot, I'm hurt, can you
18 come get me.

19 Q Okay. So you told them that you did, in fact, call
20 Manny?

21 A Yes, ma'am.

22 Q Okay. And told them what happened and asked them to
23 pick you up?

24 A Yes, ma'am.

25 Q You were asked questions about your testimony

1 concerning Montone having a .38 caliber snub nose revolver; do
2 you remember those questions?

3 A Yes, ma'am.

4 Q Okay. What did you tell the police -- did you tell
5 the police whether Montone had a weapon during your October
6 24th, 2014 interview?

7 A I said that he had a .38 snub nose.

8 Q And did you tell the Grand Jury on January 29th,
9 2015 whether Montone had a weapon?

10 A Yes, ma'am.

11 Q And which weapon was that?

12 A .38 snub nose.

13 Q Ms. McNeill yesterday asked you about dumping
14 clothing or your mask or something like that. Do you recall
15 that line of questioning?

16 A Yes, ma'am.

17 Q Okay. And Ms. McNeill read out a portion of your
18 October 24th, 2014 statement; do you recall that?

19 A Yes, ma'am.

20 Q Something to the effect of, you know, dumping
21 something while you were running; do you remember that?

22 A Yes, ma'am.

23 Q Okay. During your interview with detectives on
24 October 24th, 2014, did they, in fact, ask you what you did
25 with the items --

1 MS. McNEILL: Objection. Leading.

2 MS. LEXIS: Did they ask you --

3 THE COURT: Sustained. Oh, well --

4 MS. LEXIS: I mean, just because it's --

5 THE COURT: I mean, let her finish the question, but
6 don't answer it until I rule. Okay, go ahead.

7 BY MS. LEXIS:

8 Q Did they ask you what it was that you had done with
9 the items that you were wearing or the clothing or the mask
10 that you were wearing that particular night?

11 THE COURT: Okay. That's a yes or no question. The
12 answer is to that question calls for a yes or no.

13 THE WITNESS: Did they ask me what I did with it?

14 BY MS. LEXIS:

15 Q Yes.

16 A Yes.

17 Q Okay. What did you tell them?

18 A I got rid of it.

19 Q When did you get rid of it?

20 A After the incident.

21 Q Okay. Did you at any time tell them that you dumped
22 any of your clothing while you were running?

23 A No, ma'am.

24 Q Okay. As a matter of, when Ms. McNeill read that
25 one particular portion about dumping while it (sic) was

1 running, that was not you talking during that interview,
2 correct?

3 MS. McNEILL: Objection.

4 MR. LANDIS: Objection. That was leading.

5 THE COURT: Well, let's refer him to the transcript.

6 BY MS. LEXIS:

7 Q Sir, on your 10/24/2014 interview, I'd like to refer
8 you to page 39.

9 MS. LEXIS: And what exhibit number is that?

10 THE COURT: Proposed 327 is the October 24th?

11 MS. LEXIS: Yes.

12 MS. McNEILL: 327?

13 BY MS. LEXIS:

14 Q And that was page 39, Mr. Figueroa.

15 THE COURT: And is there a line number you can refer
16 him to?

17 MS. LEXIS: There is not, but it's towards --
18 actually, I believe the entire page would be relevant to
19 refresh his memory. We're trying to put it into context that
20 particular question.

21 THE COURT: What page was that again?

22 MS. LEXIS: Page 39.

23 THE WITNESS: Okay.

24 BY MS. LEXIS:

25 Q Okay. So the whole use of the word "dumping while

1 running", did that come out of your mouth?

2 A No, ma'am.

3 Q Okay. Who said that?

4 A The detectives, ma'am.

5 Q Okay. And when the detective made that comment,
6 what was your response?

7 A I got rid of everything.

8 Q Okay. But towards the last -- I want you to look at
9 the last statement or the last answer on page 39 from you.
10 What did you tell them? Does that refresh your memory looking
11 at that particular page and that line?

12 A On page 39.

13 Q The last answer.

14 A Okay. (Witness reading document).

15 MS. LEXIS: Court's brief indulgence. And I
16 apologize, Your Honor, with some of the changes, it's a
17 different page. Page 39.

18 BY MS. LEXIS:

19 Q Does that refresh your memory, sir?

20 A Yes, ma'am.

21 Q Okay. So when the detective said something about
22 dumping items of clothing while running, what was your
23 response?

24 A "No, I figured I'd keep all the evidence on me and
25 get rid of it later."

1 Q Okay. Does that put it more into context as to what
2 that conversation was about?

3 A Yes, ma'am.

4 Q And in fact, later during the interview, that same
5 interview, you do tell them that you got rid of it later?

6 MR. LANDIS: Objection. Leading.

7 THE COURT: All right. Would you approach am I'm
8 lost on this so, page numbers, and sorry.

9 (Off-record bench conference)

10 THE COURT: All right. So ladies and gentlemen,
11 we're going to take a recess. We're going to sort out some
12 technical issues as well as this is basically the time for our
13 afternoon break. Although, I know you haven't been at it as
14 long as we have because we weren't playing around at 1:30. We
15 were already working.

16 And so ladies and gentlemen, during this recess,
17 we'll have at least 15 minutes, and it's probably to be
18 completely candid with you, going to be closer to half an
19 hour, okay? So if you're not back after 15 minutes, I'm not
20 going to hold it against you. All right.

21 So during this recess, it is your duty not to
22 converse among yourselves or with anyone else on any subject
23 connected with the trial or to read, watch or listen to any
24 report of or commentary on the trial by any person connected
25 with the trial or by any medium of information, including

1 without limitation, newspaper, television, radio or Internet.
2 You're not to form or express an opinion on any subject
3 connected with this case until it's finally submitted to you.
4 We're in recess.

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

6 (Jury recessed at 3:01 p.m.)

7 THE COURT: All right. The record will reflect that
8 the jury has departed the courtroom. So do we need to take a
9 break and have you look over those statements now?

10 MS. McNEILL: Yes, Your Honor, please. I've looked
11 overall of them except the Grand Jury testimony. I did
12 briefly look at it, and one concern I have right now is that
13 the redactions are black bars, and so it's apparent that
14 something's been redacted, which I think then leads the jury
15 into speculating what that might be so that's my --

16 MR. DiGIACOMO: That's the nature of redactions in a
17 transcript. It's not like the transcript of an audio
18 recording. This is like if we had to put in prior testimony
19 or something else like that, the nature of the redactions, you
20 do it black -- I guess you could do it white, but either way,
21 it's painfully obvious that there is a redaction to the
22 document and that's why you instruct the jury to draw no
23 inference because there's no other way to redact a Grand Jury
24 transcript. It's a court transcript.

25 THE COURT: All right. The ones that I was given by

1 my law clerk this morning, are those are the redacted or --

2 MR. DiGIACOMO: Yes.

3 THE COURT: They are. Okay. I did notice, I think,
4 it's in the January 29 --

5 MR. DiGIACOMO: That's the Grand Jury transcript.

6 THE COURT: Yes, there's --

7 MR. DiGIACOMO: There's just no other way to redact
8 that transcript. I can change it -- and Ms. Lexis had done
9 this, but I can change it here to white and e-mail it and
10 either way, you're going to get halfway through a sentence and
11 realize the word isn't done.

12 MR. LANDIS: It's just the one (inaudible)

13 (Mr. Landis/Mr. DiGiacomo conferring).

14 THE COURT: Okay. So here, I'm thinking. I'm just
15 looking at -- let's go off the record so we can just talk
16 about this.

17 (Off the record at 3:04 p.m. until 3:21 p.m.)

18 (Outside the presence of the jury)

19 THE COURT: Okay. We're on the record outside the
20 presence of the jury and we've been discussing the
21 admissibility of certain statements. So let us put on the
22 record our discussions about the statement that was taken from
23 Mr. Figueroa on October 20th, 2014, all right, and where
24 basically, he lied to the police about what had occurred and
25 he, of course, did not implicate any of the defendants here

1 because he was basically telling them the complete lie story.

2 So we have, Mr. Landis is objecting to the
3 admission. There was an objection that it was hearsay. My
4 ruling on that was that it's not hearsay, as it's not offered
5 in evidence to prove the truth of the matter asserted in the
6 statement, because it's all lies and State has made that
7 extremely clear. So it's not being admitted for that purpose.

8 The secondary admission was that it wasn't relevant.
9 And my ruling on that was that I believe it is relevant
10 because it goes to the overall credibility of this witness,
11 which is a very important factor in this trial. Ms. McNeill
12 wants the statement in. I assume probably for that reason,
13 though, I don't want to put words in your mouth, but since it
14 -- since we have a whole bunch of statements. We have the
15 statement on the 20th, then we have -- of October '14, then we
16 have another statement on October 23rd of 2014. Then we have
17 a January 25th, 2015 -- we have a October 24th, 2014 and we
18 have Grand Jury testimony January 29th, 2015.

19 So to me it seems relevant to hear what this witness
20 has said throughout the course of his testimony and his
21 recitation of what occurred.

22 MS. MCNEILL: Yeah, so on behalf of Mr. Laguna, I do
23 not object to this statement coming in, sort of, for the
24 reasons that you indicated, and so, you know, I would just
25 defer from Mr. Landis and just make my record on behalf

1 Mr. Laguna that I'm not objecting to the admission of that
2 statement.

3 MR. LANDIS: And I concur with the record the Court
4 made.

5 THE COURT: All right, thank you. Do we want to
6 take up another -- while we're on the record or go off the
7 record and discuss or are we prepared for --

8 MR. DiGIACOMO: I have -- I just need someone to
9 print the exhibits (inaudible).

10 THE COURT: All right, let's go off the record.

11 (Off the record at 3:24 p.m. until 3:36 p.m.)

12 (Outside the presence of the jury)

13 THE COURT: All right. We're back on the record
14 still outside the presence of the jury. The topic of
15 conversation now is the plea agreement for Mr. Figueroa.

16 MR. LANDIS: Right. And what I assume we mean -- by
17 that we mean that Agreement to Testify.

18 MR. DiGIACOMO: Right, we're going to offer the --

19 THE COURT: Yes, the --

20 MR. DiGIACOMO: -- GPA with an unredacted version
21 of the Agreement to Testify.

22 MR. LANDIS: And my position would be none of my
23 questions made it admissible. That would be my -- I don't
24 think I even said Agreement to Testify. I definitely didn't
25 ask him any specific questions about the Agreement to Testify.

1 If I mentioned it, it was just off-hand, but I -- I don't
2 think I made it admissible through my questions.

3 THE CLERK: So are you objecting? Is that what that
4 is?

5 MR. LANDIS: Yes.

6 THE COURT: Okay. You're objecting --

7 MR. LANDIS: You're objecting to the truthfulness
8 within the Agreement to Testify because I don't think I opened
9 the door to let it in through my cross-examination.

10 THE COURT: And the State's response since we're on
11 the record.

12 MR. DiGIACOMO: Obviously, it's the whole reason
13 we're talking about all these other documents, which is the
14 suggestion of the implication on the cross-examination of at
15 least two, if not all three, lawyers was that Mr. Figueroa is
16 now providing information that he didn't previously know in
17 order to get a better deal, or a better chance at sentencing
18 and thus, the fact that it's -- what was bargained for was
19 truthful testimony and the Court makes that decision now
20 becomes relevant and thus, it shouldn't be redacted.

21 MR. LANDIS: And let me just -- I don't think he can
22 make arguments that us three opened the door because she can't
23 open the door to evidence against my client. She can't.

24 THE COURT: Well, I think that independently you did
25 attack the credibility of the witness on cross-examination as

1 -- so -- clearly. And Ms. McNeill did, unlike Ms. Larsen. I
2 thought nobody really directly attacked her credibility
3 concerning any plea negotiation. But you have here. You've
4 talked about his discussions with his lawyer, what he
5 understood -- I mean, it's just very clear to me that you have
6 suggested to the jury that he's lying to get the benefit of
7 his lies and to, you know, get a better deal.

8 And the case law on that is it doesn't -- it
9 wouldn't come in except if you do that, if you attack his
10 credibility in regards to the Agreement to Testify. I think
11 that does come in, unlike Ms. Larsen's.

12 MR. LANDIS: And I'm not going to -- since we have a
13 thousand things to say --

14 THE COURT: Okay.

15 MR. LANDIS: -- I respect the Court's ruling.

16 MS. McNEILL: And Your Honor, I would just add, I
17 think we discussed this last time with Ms. Larsen that if that
18 portion does come in, there's also a limiting instruction that
19 goes along with it that he has yet to be sentenced and
20 therefore, still faces the pressure of the prosecutor deciding
21 whether or not he's been truthful.

22 THE COURT: Correct. And you're going to be
23 offering --

24 MS. McNEILL: Yes. I will, yes.

25 THE COURT: -- such an instruction, of course.

1 MS. McNEILL: Yes, I will make myself a note.

2 THE COURT: And yes, they will be so instructed.

3 Mr. Wolfbrandt, do you --

4 MR. WOLFBRANDT: I'm okay. I just agree with
5 everything Mr. Landis and Ms. McNeill said.

6 MR. LANDIS: Is the Court making a ruling about --
7 sorry to cut you off, Mr. Wolfbrandt, I'm so sorry -- about
8 cross admissibility or no?

9 THE COURT: As far as cross admissibility. Well,
10 no, you haven't -- I don't think I need to rule on that
11 because I think you both independently attacked -- all right.
12 What about any other of the statements? Are there any that
13 need to be redacted?

14 MR. LANDIS: As to his motion to fire Mr. Brown, I
15 think the State and I -- the State and Ms. McNeill and I
16 agreed to a couple small redactions. Otherwise, they want to
17 admit it, and I'm not going to object. Is that fair, Mark?

18 MR. DiGIACOMO: That is correct. And Judge, what we
19 can do so we don't not delaying the jury is it will be the
20 next in order, which will be 330.

21 THE COURT: 331, I think.

22 MS. LEXIS: 331.

23 THE CLERK: It was a motion to dismiss?

24 MR. DiGIACOMO: Yeah. It will be 331. We'll use
25 this copy of 331. I am downloading and doing the redactions

1 that Mr. Landis requested, which is the advice of Mr. Brown
2 that essentially the felony murder rule is going to absolutely
3 apply. Both Mr. Figueroa and Mr. Brown say that. And while I
4 believe it's admissible, I would not oppose redacting it
5 because it may be more prejudicial than it's probative in a
6 sense that it's going to invade the province of the jury as it
7 relates to these defendants.

8 So redact that with the agreement that they don't
9 oppose a leading question in the nature of Mr. Brown told you
10 or Mr. Gaffney (phonetic), depending on how the question's
11 asked. Basically, if you don't go through with this, you're
12 looking at never getting out of prison, essentially.

13 And so other than that, I think we're in agreement.

14 MS. MCNEILL: That's correct, Your Honor. I did
15 review it. I made the same objection as Mr. Landis to that
16 portion. Mr. DiGiacomo's agreed to take that out. I would
17 again, as with Mr. Landis, agree to allow that leading
18 question.

19 THE COURT: Okay.

20 MS. MCNEILL: On behalf of Mr. Laguna. I don't know
21 if Mr. Wolfbrandt had a record to make or not.

22 MR. WOLFBRANDT: Well, I know what they're talking
23 about. I would concur.

24 THE COURT: All right. And I agree that I think
25 that's appropriately removed. So 331 is Mr. Figueroa's

1 motion --

2 MR. DiGIACOMO: To dismiss counsel.

3 THE COURT: -- to dismiss counsel? Is that how it's
4 styled? Okay. So that -- those redactions will be made. And
5 otherwise, we've made the redactions to Exhibit 326, the Grand
6 Jury transcript?

7 MR. DiGIACOMO: That has been done.

8 THE COURT: 327 is the October 24th, 2014 statement.
9 And there, I'm seeing no redactions on the copy of the motion.

10 MR. DiGIACOMO: There were redactions that are
11 agreed upon by the parties, but I had that -- all the
12 statements in Word so you can't tell that it's redacted. So
13 if he said cell mates, we just put a line like it was
14 unintelligible type thing, and thus, when we took the things
15 out, without changing any of the content, you can take out the
16 parts that are potentially objectionable.

17 MR. LANDIS: I'm sorry, we confused the Court, but
18 there's also some of those in there that aren't his doing.

19 MR. DiGIACOMO: Yeah, that's true, too.

20 MS. McNEILL: Right, there were already in there.
21 Right.

22 THE COURT: The unintelligible, but in Exhibit -- in
23 Proposed Exhibit 327, which is the statement from October
24 24th, 2014 -- just want to make sure -- if there's something
25 unintelligible, it's shown as a parenthetical notation so it's

1 in parentheses and it says unintelligible.

2 MR. LANDIS: That's not always true.

3 MR. DiGIACOMO: That's not always true. Sometimes
4 it was just a line because they --

5 THE COURT: Oh.

6 MR. DiGIACOMO: -- not always the same
7 transcriptionist does it. They all do things differently.

8 THE COURT: Okay.

9 MR. DiGIACOMO: So it could be either one of them,
10 Judge.

11 THE COURT: So I think just to be clear, so you're
12 satisfied with how it looks now?

13 MS. McNEILL: Yes, Your Honor.

14 MR. WOLFBRANDT: Yeah.

15 THE COURT: All right. And is that true, Mr. Landis
16 for you as well?

17 MR. LANDIS: I'm looking through it on the fly.

18 THE COURT: Okay.

19 MR. LANDIS: He did e-mail these last night, I'm not
20 going to lie about that. I did not receive -- I received the
21 e-mail. I didn't open and see what it was so I'll look
22 through them now. But I still -- they're coming in now under
23 completeness and/or refresh recollection?

24 THE COURT: Yes. So I previously stated that -- at
25 the bench that I agreed with your argument that it wouldn't

1 come in as a prior consistent statement based upon the case
2 that I cited to you --

3 MR. LANDIS: It was (inaudible).

4 MR. LANDIS: Cruz v. State (phonetic).

5 THE COURT: -- Cruz, right? Because they're --
6 based upon Mr. Figueroa's statement, it seems clear that he
7 did have a motive to fabricate. In other words, to benefit
8 his position back at the time of that -- the first statement
9 of October 24th. So everything past that time he's -- has the
10 motive. So it doesn't come in as prior inconsistent -- or
11 prior consistent statement under the Crew (phonetic) case, but
12 it would -- it could come in under both the completeness
13 doctrine and statute as well as the -- to the extent that it
14 was past recollection recorded, remainder of writings or
15 recorded statements is 47.120, which any party may introduce
16 any other relevant parts. And so unless you have a specific
17 objection as to relevance that I would need to address, I'd
18 need to hear what that was because I haven't read the entire
19 statement so that's why I put it on you.

20 MR. LANDIS: My position would be this, under either
21 evidentiary basis, it still would only admit the sections of
22 the transcript that are relevant to whatever was brought up on
23 cross. I don't think it brings in the whole transcript by any
24 way unless there's some weird thing where the whole transcript
25 becomes relevant to what's brought up on cross.

1 But whatever's necessary to give the jury a full
2 picture of whatever was brought up on cross in every portion
3 of the transcript, that is, I think that comes in. I do not
4 think just because it's used on cross, it comes in in full
5 cloth under the rule of completeness. Just because it's used
6 to refresh his recollection, a portion of it, doesn't mean the
7 whole transcript comes in. That's my opinion.

8 THE COURT: All right.

9 MR. LANDIS: As to prejudicial things in this one, I
10 don't believe there's anything I'm concerned about.

11 THE COURT: Okay. All right, so yeah, I think it
12 does -- it can come in because 47.120 does indicate that not
13 only can any other part, which is relevant to the part
14 introduced, be admitted, but then any party may introduce any
15 other relevant parts, and if the State is arguing that the
16 other parts are relevant and you don't have any specific
17 counter to that as to why it's not relevant, then it's going
18 to come in.

19 MR. LANDIS: And I'm sorry, what I meant -- just to
20 make sure that's clear. What I mean by relevant, it's not
21 relevant to what it was used for on cross because portions of
22 that transcript had nothing to do with it. That's what my
23 argument is, if that makes sense.

24 THE COURT: Yes. Okay, so Ms. McNeill, were you
25 going to object to --

1 MS. McNEILL: I will submit it on Mr. Landis's
2 argument and the Court's ruling.

3 THE COURT: Okay. Mr. Wolfbrandt.

4 MR. WOLFBRANDT: Judge, I would just submit it as
5 well.

6 THE COURT: Okay. So all the same arguments and for
7 the same reasons I've already articulated and I believe, the
8 State had argued this -- I can't remember whether it was at
9 the bench before -- but I do believe it will come in, so it
10 will come in under that section that I've already referred you
11 to, 47.120, the second part of subsection (1).

12 That's 327. Okay, next is, let's see, 328 is the
13 January 25th, 2015 voluntary statement. Are there redactions
14 in that or are the lines that are there --

15 MR. DiGIACOMO: It's the same thing. We had it in
16 Word. So to the extent that there was any, and off the top of
17 my head I can't recall if there was a reference to
18 Mr. Figueroa and Mr. Laguna being cell mates, but to the
19 extent there was any, we took them out.

20 THE COURT: All right.

21 MR. LANDIS: Same with like locos stuff.

22 THE COURT: Have you done any further redactions to
23 328 because as I just turned to page 3, I see, "How do you
24 know Joey Laguna?"

25 Answer, "Uh, he was my blank. He was my blank for

1 probably um, about" --

2 MR. DiGIACOMO: Those were actually -- some of those
3 were already inaudible in the recording.

4 THE COURT: Okay.

5 MR. DiGIACOMO: Like, when you pull that transcript
6 up, it starts off as he was my cell mate, blank, blank, blank,
7 something, couple words, blank, blank, and that's how they did
8 the blanks throughout the transcript was just these lines.

9 So because he testified he was his roommate, read it
10 in context, that appeared to be --

11 MS. McNEILL: And it does -- on the unredacted one,
12 it does say he was my cellie and -- and it's got a long blank,
13 and then he was my cellie for probably, um, about nine months.
14 So this is the one where I think, Your Honor had asked about
15 the lines and it seems to be that's how the transcriptionist
16 did the portions that she couldn't hear.

17 THE COURT: Okay. But do you have any objection to
18 how it is now? How it's been further redacted?

19 MS. McNEILL: No.

20 THE COURT: Just add them to the lines or --

21 MS. McNEILL: No, I don't to the lines because, I
22 guess, it's consistent throughout portions that she couldn't
23 hear.

24 MR. LANDIS: But the tapes, I can tell you, almost
25 everything she can't hear, you can if you try.

1 THE COURT: You can if you try, is that what you're
2 saying?

3 MR. LANDIS: Yes, ma'am.

4 THE COURT: Okay. And that could be -- so that's
5 why it's good to have the tapes, too. All right. And so
6 we'll make sure to redact anything that would be inappropriate
7 about cell mates or cellies.

8 MR. DiGIACOMO: Correct.

9 THE COURT: Right. Okay. So 328 is coming in for
10 the same reasons we've already talked about over your same
11 objections --

12 MR. LANDIS: Thank you.

13 THE COURT: -- is that right?

14 MR. LANDIS: Yes, ma'am.

15 THE COURT: Okay.

16 THE CLERK: So are these going to be admitted on the
17 record or no?

18 MR. DiGIACOMO: We haven't offered them yet, but
19 we'll offer them with the witness.

20 THE COURT: We're just getting the rulings ahead of
21 time. So 329 is the October 23rd, 2014. Are there redactions
22 on that?

23 MR. LANDIS: Is that a question for State?

24 THE COURT: It's for anyone who knows.

25 MR. DiGIACOMO: Which one?

1 THE COURT: 329, it's the October 23rd, 2014
2 interview.

3 MR. DiGIACOMO: I don't believe so because his
4 response is I want to do it with my lawyer.

5 THE COURT: Okay. I haven't read these. I'm just
6 so --

7 MR. LANDIS: I don't think there's anything
8 prejudicial to my client in the 10/23 statement.

9 THE COURT: Okay. So you're not objecting to --

10 MR. LANDIS: No, no, same --

11 THE COURT: Same objections, all right.

12 MS. McNEILL: Yeah, and there's -- I don't --
13 there's nothing in the 10/23 that's --

14 THE COURT: Needs to be redacted.

15 MS. McNEILL: -- prejudicial to Mr. Laguna so I
16 don't -- that was the one I didn't object to anyway.

17 THE COURT: Okay. And so it will be admitted for
18 the reasons we've already discussed, and we'll put that, you
19 know, in front of the jury, they'll be offered and admitted.
20 Number 330 is the October 20th, 2014, so --

21 MR. LANDIS: That's the one you already ruled on it.

22 THE COURT: Right. And this is the one where he,
23 you know, made the lies, the phoney story. Is there anything
24 -- any redactions in this document?

25 MR. DiGIACOMO: Not that I'm aware of.

1 THE COURT: Okay. All right. And so that is coming
2 in. All right, I think we've covered all those now. All
3 right. Are we ready to forge on?

4 MR. LANDIS: This was -- I'm ready. Is this your
5 stuff up here, right?

6 MR. DiGIACOMO: Yeah, those are the exhibits
7 themselves.

8 (Off the record at 3:54 p.m. until 3:57 p.m.)

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

10 (In the presence of the jury)

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

13 THE COURT: Thank you. And the record will reflect
14 we're back within the presence of all 12 members of the jury
15 as well as the three alternates, the three defendants are
16 present with their respective counsel. The Chief Deputies
17 District Attorney prosecuting the case are present as are all
18 officers of the court.

19 Ladies and gentlemen, we're going to go until 5:30
20 today, and I know I have one juror who has to get out to pick
21 up children and has to be out of here at 5:30 so that will
22 catch us up for a half an hour we've missed. So Ms. Lexis,
23 you may proceed.

24 MS. LEXIS: Yes, Your Honor. Prior to beginning, at
25 this point, the State would move to admit what's been

1 previously marked as State's Proposed Exhibits 326 through
2 330. If I could just make a record as to what each --

3 THE COURT: Yes.

4 MS. LEXIS: -- exhibit is?

5 THE CLERK: Through 330, right? Is that what you
6 said?

7 MS. LEXIS: Yes. Your Honor, State's Proposed
8 Exhibit 326 would be the transcripts of Mr. Figueroa's Grand
9 Jury testimony from January 29th, 2015. Your Honor, 327,
10 State's Proposed 327 are the transcripts of Mr. Figueroa's
11 statement to detectives on October 24th, 2014.

12 328 is a transcript of the State's -- or excuse me,
13 of Mr. Figueroa's interview with the State and with detectives
14 on January 25th, 2015. And State's Proposed Exhibits 329 is
15 the transcript of Mr. Figueroa's interview with detectives on
16 October 23rd, 2014. And State's Proposed Exhibits 330 would
17 be the transcript of his statement from October 20th, 2014.

18 THE COURT: All right. And those will be admitted.
19 The objections have been previously noted by the Court.

20 (State's Exhibits 326 through 330 admitted)

21 THE COURT: And so those will be admitted into
22 evidence.

23 MS. LEXIS: Okay.

24 BY MS. LEXIS:

25 Q Mr. Figueroa, you were asked by each of the defense

1 attorneys concerning the charges that you pled guilty to and
2 the type of sentence that you were facing; is that right?

3 A Yes.

4 Q Okay.

5 MS. LEXIS: Your Honor, at this point, I'd move to
6 admit State's Proposed Exhibit 325 into evidence.

7 THE COURT: And we've already discussed this and so
8 that will be admitted.

9 (State's Exhibit 325 is admitted)

10 THE CLERK: And does it not have a sticker?

11 THE COURT: That --

12 MS. LEXIS: It's 325. State's Proposed Exhibit 325.

13 THE CLERK: Yeah, I'm showing admitted so that's --

14 MR. LANDIS: I think the Court said that outside the
15 presence.

16 THE COURT: What do you show as No. 325?

17 THE CLERK: Oh, no, I went up too high. GPA.

18 MS. LEXIS: Yes, Your Honor.

19 THE CLERK: I went up too high on the 9/28 date.

20 THE COURT: All right. That will be admitted.

21 MS. LEXIS: For the record, it's the Guilty Plea
22 Agreement plus subsequent attached Agreement to Testify.

23 BY MS. LEXIS:

24 Q And Mr. Figueroa, you were also asked by
25 particularly Mr. Landis concerning what he referred to as a

1 motion to fire your previous attorney?

2 A Yes, ma'am.

3 Q Okay.

4 MS. LEXIS: Your Honor, I'd move to admit State's
5 Proposed Exhibit 331 into evidence.

6 THE COURT: And that is Mr. Figueroa's motion to
7 dismiss counsel, and that will be admitted as well.

8 (State's Exhibit 331 admitted)

9 MS. LEXIS: Thank you.

10 BY MS. LEXIS:

11 Q Mr. Figueroa, concerning the motion to dismiss
12 counsel, why did you file this? What was your concern?

13 A My main concern was basically, I felt that David
14 Brown was not doing his job to the best of his ability, and my
15 main concern was my sentencing.

16 Q Okay. In terms of sentencing, what did he tell you
17 your options were?

18 A Basically, face the felony murder rule or go ahead
19 and basically, tell -- tell my side of the story.

20 Q Okay. When you were facing the murder charge, did
21 he indicate to you that one of potential sentences included
22 life --

23 A Yes, ma'am.

24 Q -- in prison? Okay. Did he indicate to you that
25 you're receiving a benefit by pleading guilty to a robbery

1 with use of a deadly weapon and conspiracy to commit robbery?

2 A Yes, ma'am.

3 Q Did you have -- after you had those concerns, did
4 you have an opportunity to consult with another attorney?

5 A Yes, ma'am.

6 Q And did you do that?

7 A Yes, ma'am.

8 Q And who's your current -- who's the attorney that
9 you consulted with?

10 A Lucas.

11 Q Okay. And after speaking with Mr. Gaffney, is that
12 his last name?

13 A Yes, ma'am.

14 Q Okay.

15 A Gaffney.

16 Q What did you decide to do concerning your plea?

17 A Continue with -- with the original agreement.

18 Q During the motion to dismiss counsel or in the
19 handwritten portion of your motion to dismiss counsel, did you
20 at any time point in time, Mr. Figueroa, in this motion ever
21 say that you were forced by Mr. Brown to tell lies to the
22 police?

23 A No, ma'am.

24 Q Or to tell a story that wasn't true?

25 A No, ma'am.

1 Q Okay. So that was not your concern and those were
2 not your allegations?

3 A No, ma'am.

4 Q Concerning the Guilty Plea Agreement, which is
5 State's now admitted State's Exhibit 325, you were asked
6 questions concerning, you know, your possible sentence; do you
7 remember those questions?

8 A Yes, ma'am.

9 Q Okay. And one of the defense attorneys indicated
10 you could get as little as three years?

11 A Yes, ma'am.

12 Q Were you ever advised of your maximum penalties?

13 A Yes, ma'am.

14 Q And what was your understanding of the maximum
15 penalties you would be facing under this deal?

16 A The maximum penalty is that they could all be ran
17 consecutive, one sentence after another, and basically, the
18 top number was like, 35, 36 years.

19 Q And in addition to the Guilty Plea Agreement that's
20 shown in State's Exhibit No. 325, there is -- you signed an
21 Agreement to Testify; is that right?

22 A Yes, ma'am.

23 Q And that's essentially why you're testifying here
24 today?

25 A Yes, ma'am.

1 Q What is your obligation under this Agreement to
2 Testify?

3 A To tell the whole truth -- the whole truth and
4 nothing but the truth.

5 Q And who decides whether or not you're telling the
6 truth?

7 A Your Honor or, yeah.

8 Q The Court?

9 A The Court.

10 Q And who decides your sentence?

11 A Your Honor.

12 Q Mr. Figueroa, when you gave the statement on October
13 20th, 2014, when you were first taken into custody by police,
14 which would be State's Exhibit 330, did you tell the complete
15 truth?

16 A No, ma'am.

17 Q When you spoke with detectives to the extent that
18 you gave them information on October 23rd, 2014, as stated in
19 State's Exhibit 329, did you tell them the truth?

20 A Yes, ma'am.

21 Q When you were interviewed and gave a statement with
22 your attorney present on October 24th, 2014, as shown by
23 State's Exhibit No. 327, did you tell the complete truth?

24 A Yes, ma'am.

25 Q When you were reinterviewed by detectives and myself

1 on January 25th, 2015, as shown in State's Exhibit 328, did
2 you tell the complete truth?

3 A Yes, ma'am.

4 Q When you testified before the Grand Jury on January
5 29th, 2015, as shown by transcripts in State's Exhibit No.
6 326, did you tell the complete truth?

7 A Yes, ma'am.

8 Q And as you're sitting here today testifying, have
9 you told the truth?

10 A Yes, ma'am.

11 MS. LEXIS: Court's brief indulgence. I have no
12 further questions, thank you.

13 MR. LANDIS: Does the Court want us to go in order
14 we did the original cross of him and then we'll get back in
15 shape?

16 THE COURT: Sure, that would be fine.

17 MR. LANDIS: All right.

18 RECROSS-EXAMINATION

19 BY MS. McNEILL:

20 Q Mr. Figueroa, I won't be long with you. I just have
21 a few follow-up questions. Ms. Lexis asked you some questions
22 about who you think decides if you're telling the truth,
23 right? And you indicated that you felt that was up to the
24 Judge, correct?

25 A Yes, ma'am.

1 Q All right. Do you think that the district attorneys
2 make any decision about whether or not you're telling the
3 truth?

4 A Together everyone as a whole, I believe, you know,
5 comes together and decides whether I'm telling the truth or
6 not.

7 Q Okay. You indicated upon questioning from Ms. Lexis
8 about that the detectives told you that you would only get one
9 shot during that October 24th interview, do you remember that?

10 A Yes, ma'am.

11 Q Did you talk to the detectives after October 24th?

12 A Basically, yes, in --

13 Q Yeah.

14 A -- in different interview, yes, ma'am.

15 Q Okay. So you had actually several shots to talk to
16 the detectives, correct?

17 A One shot for telling the truth.

18 Q Okay, well, let's talk about that. So you had
19 multiple interviews with the detectives after October 24th,
20 right?

21 A Yes, ma'am.

22 Q Okay. And then you testified at the Grand Jury for
23 the district attorney, correct?

24 A Yes, ma'am.

25 Q And then you testified today for the district

1 attorney, right?

2 A Yes, ma'am.

3 Q Okay. And it's fair to say that in some of those
4 statements after October 24th, and at the Grand Jury and
5 testifying yesterday and today, there are some things that
6 you've said that you didn't say on October 24th, correct?

7 A Yes, ma'am.

8 Q Okay. And the things that you said we've heard for
9 the first time were things like Manny provided the .38 snub
10 nose, correct?

11 A Yes, ma'am.

12 Q Okay. And when you add a detail like that, do you
13 think that helps Mr. Laguna?

14 A I don't know.

15 Q Do you think it helps them?

16 A It helps the whole story.

17 Q It helps the whole story, okay. And you're aware
18 that you haven't been sentenced yet, correct?

19 A Yes, ma'am.

20 Q Okay. And the district attorney gets to decide what
21 they're going to say at your sentencing, right?

22 A Yes, ma'am.

23 Q Okay. You indicated that when you decided to speak
24 to the police on October 24th, you -- they hadn't made you any
25 promises, correct?

1 A Yes, ma'am.

2 Q Okay. But you would agree with me that on October
3 24th, prior to speaking -- prior to saying anything, you would
4 agree with me that your lawyer indicated that he told you that
5 people who talk get a much better break, correct?

6 A I believe so.

7 Q Okay. And you knew that before you ever opened your
8 mouth, you had already been charged with murder, right?

9 A Yes, ma'am.

10 Q And you knew that murder carries a potential for a
11 life sentence --

12 A Yes, ma'am.

13 Q -- right? And so you knew when you went into that
14 room with those detectives that you were going to talk to them
15 to get a deal, right?

16 A Yes, ma'am.

17 Q Okay. If they had said we're never making you a
18 deal, what would have been the point of talking to them?

19 A Not to face a felony murder charge. I mean --

20 Q Okay. But that would have been a deal that somebody
21 would have given you, correct?

22 A Basically, yes.

23 Q Because prior to any talk of any negotiations, the
24 day you were arrested, you didn't say anything, right, other
25 than the story you made up about the drug deal?

1 A Yes, ma'am.

2 Q Right? And in fact, on October 24th, do you
3 remember that your attorney telling you the DA knew that the
4 police were there talking to you?

5 A Yes, ma'am.

6 Q In fact, Mr. DiGiacomo knew they were there, right?

7 A I believe so.

8 Q And he said that detectives aren't going to
9 negotiate a murder case -- or that the DAs aren't going to
10 negotiate a murder case without talking to the detectives,
11 right?

12 A Yes, ma'am.

13 Q And that was prior to you saying anything, correct?

14 A I'm not sure if that was prior to me saying
15 anything. I think that was at the end of the --

16 Q Would it refresh your recollection to look at the
17 statement?

18 (Ms. McNeill/District Attorneys conferring)

19 MS. McNEILL: May I approach the clerk?

20 (Pause in the proceedings)

21 MS. McNEILL: Sorry. Court's indulgence. If I may
22 approach the witness, Your Honor.

23 THE COURT: You may. And which exhibit are we --

24 MS. McNEILL: I'm sorry, the exhibit is 327.

25 THE COURT: Page 3?

1 MS. McNEILL: And page 2.

2 THE COURT: Page 2.

3 BY MS. McNEILL:

4 Q If you could just read this section here to refresh
5 your recollection.

6 A Okay, yes, ma'am.

7 Q Okay. So you would agree with me that's the
8 beginning of your interview, correct?

9 A Yes, ma'am.

10 Q And that's before you had given any information?

11 A Yes, ma'am.

12 Q Right? And you were told not only by your lawyer --
13 well, you were told by your lawyer multiple times that it
14 would benefit you to talk?

15 A Yes, ma'am.

16 Q And that the district attorney, was the one who
17 would negotiate a murder case, correct?

18 A Yes, ma'am.

19 Q And that's what you wanted to do is negotiate your
20 murder case, right?

21 A Yes, ma'am.

22 Q You indicated that when you were down on Long Cattle
23 and looked back, you saw Mr. Laguna get in the car with
24 Mr. Murphy, right?

25 A Yes, ma'am.

1 Q And they drove away and left you behind?

2 A Yes, ma'am.

3 Q Okay. You never saw that car come back at any
4 point?

5 A No, ma'am.

6 Q And then you indicated that you tried to call
7 Mr. Laguna, correct?

8 A Yes, ma'am.

9 Q And that was because you said that you knew his
10 phone number and you believed he would come to your distress
11 call, correct?

12 A Yes, ma'am.

13 Q But he'd left you behind, hadn't he?

14 A Yes, ma'am.

15 Q And while you were waiting, making all these phone
16 call, you hear sirens, right?

17 A Yes, ma'am.

18 Q And they're police sirens, right?

19 A Yes, ma'am.

20 Q You could see an air unit, right?

21 A Yes, ma'am.

22 Q So you knew that the police were there?

23 A Yes, ma'am.

24 Q In fact, that's why you didn't come out, right?

25 A Yes, ma'am.

1 Q Okay.

2 MS. McNEILL: Court's indulgence.

3 BY MS. McNEILL:

4 Q You were asked some questions about if you called
5 Manny to come get you, correct?

6 A Yes, ma'am.

7 Q And you indicated that you did?

8 A Yes, ma'am.

9 Q Did you ever connect with him?

10 A I -- yes, ma'am.

11 Q All right. How come Manny didn't come get you?

12 A He was -- I think he was -- that night I think he
13 was a female friend and they were out drinking.

14 Q Okay. All right. Did you indicate to Manny that
15 you believed you might be dying?

16 A I told him I was hurt real bad.

17 Q Okay. Did you tell him you had been shot?

18 A I believe so.

19 Q Okay.

20 MS. McNEILL: I'll pass the witness.

21 MR. WOLFBRANDT: Judge, have I no more questions.

22 MR. LANDIS: Even shorter than Ms. McNeill.

23 RECROSS-EXAMINATION

24 BY MR. LANDIS:

25 Q I just have a couple questions about your Grand Jury

1 testimony January 2015. On that date, the complete truth you
2 told did not mention a Mexican girl with David Murphy at any
3 point.

4 A I don't believe so.

5 Q When you testified in front of the Grand Jury about
6 pulling up to David Murphy that morning, you testified he was
7 by himself in that white truck?

8 A Yes, sir.

9 Q And when you talked about you guys going back to
10 Laguna's house to regroup after that attempt, you specifically
11 said who went back, who was involved and you mentioned four
12 people, four males, collect, including yourself?

13 A Yes, sir.

14 Q And you never mentioned the Hispanic girlfriend
15 being any part of that?

16 A No, sir.

17 MR. LANDIS: That's all I have, Judge.

18 MS. LEXIS: No redirect, thank you.

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

20 MR. DiGIACOMO: Yes.

21 THE COURT: Thank you for your testimony. All
22 right. You may call your next witness.

23 MR. DiGIACOMO: State calls Barry Jensen.

24 DETECTIVE BARRY JENSEN, STATE'S WITNESS, SWORN

25 THE CLERK: Please be seated and then please state

1 and spell your first and last name for the record.

2 THE WITNESS: My name's Barry Jensen. It's
3 B-a-r-r-y, J-e-n-s-e-n.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. DiGIACOMO:

7 Q Sir, how are you employed?

8 A I'm employed with the Las Vegas Metropolitan Police
9 Department.

10 Q In what capacity?

11 A I'm assigned to the homicide detail.

12 Q How long have you been in homicide?

13 A Almost 16 years.

14 Q How long have you been a cop?

15 A Almost 28 years.

16 Q I'm going to direct your attention to September 21st
17 of 2014. Were you assigned an investigation of a homicide
18 that occurred at 1661 Broadmere here in Clark County, Las
19 Vegas, Nevada?

20 A Yes, I was.

21 Q And they've heard a little bit by an individual, a
22 detective by the name of Tod Williams. Do you know Tod
23 Williams?

24 A I do.

25 Q How do you know Tod?

1 A Tod Williams is my partner.

2 Q When you responded to this particular location, what
3 was your responsibility?

4 A On this particular call, I was assigned to do the
5 crime scene along with a crime scene analysts. Tod was
6 assigned to do interviews with the help of other detectives.

7 Q They've heard from Adam Felabom, the crime scene
8 analyst that was working -- or one of them that was working
9 that night. But during the course of processing the crime
10 scene, do you have communications with your partners that are
11 interviewing witnesses and learn the information that Roger
12 Day provided to them?

13 A Yes, I did.

14 Q I'm going to put for you State's Exhibit 6 on the
15 overhead for us, and you can -- from looking at that, can you
16 recognize the area of the crime scene?

17 A Yes.

18 Q And in there was there a location where there was
19 information that possibly there was a shooter outside the
20 residence near the corner of Broadmere and Long Cattle?

21 A Yes. The -- the witness said that he had -- he saw
22 a person standing on the corner of Long Cattle and Broadmere
23 and it looked like he was shooting a gun.

24 Q Based on that information, was there a search
25 conducted of that area to see if there was any firearms

1 related evidence that seemed to corroborate the fact that
2 there was a shooter at that location?

3 A Yes, there was.

4 Q And specifically, what were you looking for?

5 A We were looking for a shell casing, anything that
6 would be related to firearm.

7 Q Did you also check back in the area of the crime
8 scene to see if there was some sort of bullet strike to the
9 home that would be consistent with a shooter in that location?

10 A Yes, we did.

11 Q And did you find any bullet strike consistent with
12 that?

13 A No, we did not.

14 Q Did you find any casings consistent with a shooter
15 at that location?

16 A No, we did not.

17 Q Did you find any evidence other than what's up near
18 1661 Broadmere of a second shooter or a second, what I'll call
19 offensive shooter in this case?

20 A No.

21 Q At some point, do you --

22 MR. LANDIS: Your Honor, I'm going to --

23 BY MR. DiGIACOMO:

24 Q -- come in --

25 MR. WOLFBRANDT: Kind of quick, I'm going to object

1 to the characterization of offensive shooter. I think it
2 mischaracterizes -- or it -- I'll just object to that form of
3 the question, use of that that word offensive shooter.

4 THE COURT: All right, well, you have to state a
5 legal objection for me.

6 MR. WOLFBRANDT: There's no foundation for that.
7 It's leading.

8 THE COURT: All right. Lay a better foundation as
9 to how he knows whether something might be offensive as
10 opposed to defensive.

11 BY MR. DiGIACOMO:

12 Q I'll rephrase it this way, in your review of the
13 crime scene, was there evidence of somebody shooting from
14 outside of 1661 -- into 1661 Broadmere?

15 A Yes, there was.

16 Q Was there evidence of somebody from inside 1661
17 shooting out?

18 A Yes, there was.

19 Q And so when I use the term offensive, essentially
20 what I mean is did you have evidence of more than one weapon
21 shooting from outside in as opposed to from inside out?

22 MR. WOLFBRANDT: Still objecting to the term
23 offensive as being leading and without foundation.

24 THE COURT: Well, overruled. He's now defined the
25 term so I think it's not confusing, although, do you

1 understand the question now that we've talked all around since
2 it's been --

3 THE WITNESS: Yes, I do.

4 THE COURT: Okay. Go ahead.

5 BY MS. LEXIS:

6 Q Do you have evidence of more than one shooter that
7 either fired at the doorway in or outside in to Broadmere?

8 A No, there's no evidence there's more than one
9 shooter from the outside.

10 Q Now, I had this on my desk yesterday. At some
11 point, did you -- sorry, I have to grab an exhibit. And I'm
12 not near a mic so I just won't talk for a moment.

13 Within your crime scene, so inside the house itself,
14 did you have some .40 caliber cartridge cases expended?

15 A Yes, we did.

16 Q And at some point, sometime later, do you come into
17 possession of a .40 caliber firearm based on the interview of
18 Robert Figueroa?

19 A Yes, I do.

20 Q And was that submitted to the lab for testing to see
21 if it could possibly have fired the four casings in the inside
22 of the scene?

23 A Yes.

24 Q As you sit here today, do you have any evidence that
25 Robert Figueroa fired a weapon at this crime scene on

1 September 21st?

2 A No, I do not.

3 Q This may seem somewhat self-explanatory to the
4 ladies and gentlemen of the jury, but no one actually said it,
5 so at a point in time, do you learn that a individual was
6 taken out of a car down on Long Cattle?

7 A Yes, I do.

8 Q And I'm going to put up State's Exhibit No. 12 and
9 you're going to have to give me half a second, Detective, to
10 rotate this.

11 Showing you State's Exhibit No. 12, is this a crime
12 scene diagram of the location of that vehicle along of the
13 truck and the house that it was at?

14 A Yes.

15 Q And the black vehicle that's referenced in this
16 location here, did you determine that that vehicle was somehow
17 associated with the person that was residing in that house?

18 A Yes, I did.

19 Q Did you also engage in a search of the -- and I'll
20 put 6 back up -- of this area to see if there was any vehicle
21 that appeared to be associated with an individual named Jose
22 -- or Jorge Mendoza?

23 A Yes, I did.

24 Q And did you find any vehicles associated with Jorge
25 Mendoza?

1 A No, we did not.

2 Q Did you conduct a search of the area to see if there
3 was some other vehicle that stood out as being out of place
4 from the residences in this neighborhood?

5 MR. LANDIS: I'm going to object as to vague, search
6 the area. I don't think it's been defined well enough.

7 THE COURT: What do you mean when you say area?

8 MR. DiGIACOMO: I said area. Do you want me to ask
9 him?

10 THE COURT: Yeah, go ahead. Yeah.

11 BY MR. DiGIACOMO:

12 Q Do you conduct -- my follow-up. I'll do it
13 backwards, then. How much of the area or can you show us on
14 Exhibit 6 how much the area do you go there to look to see if
15 there is some vehicle that could potentially be the suspect
16 vehicle?

17 A Yes, I do. We actually staged out here onto
18 Homestead. We walked in from -- can I draw on this?

19 THE COURT: Yes.

20 THE WITNESS: We walked in from Homestead, did our
21 -- you know, started working a little bit of the crime scene.
22 After -- this is all after our briefing. We came down to Long
23 Cattle. That's where Jorge or Jorge Mendoza was taken into
24 custody. We walked down Long Cattle, Walrus, Ranch Hand, some
25 people went -- and I can't read that street. I don't have my

1 -- my cheaters with me.

2 Some of them went up this street. I continued down
3 here on to Shifting Winds. And we walked back up Homestead.

4 Q And you keep saying Homestead. Does that say
5 Home --

6 A I'm sorry, Homestretch.

7 Q -- Homestretch? Thank you.

8 A Homestretch. And then back to the -- the crime
9 scene. The other -- I believe, there was other officers that
10 walked up through this street and back up to Broadmere.

11 Q During that search of that area, did you find any
12 vehicle that, to you, appeared to be out of place within the
13 neighborhood?

14 A No, we did not.

15 Q There was questions asked, although it seems like a
16 very long time ago, about gunshot residue testing being
17 conducted on Monty Gibson. First of all, Monty Gibson, who is
18 Monty, since it's been a long time since we've talked about
19 stuff like this?

20 A Monty -- victim -- is the -- is the victim of this
21 homicide.

22 Q And he's the individual that's within the doorway
23 there of 1661?

24 A Yes, he is.

25 Q Did you conduct any gunshot residue testing on

1 Mr. Gibson?

2 A No, we did not.

3 Q Why not?

4 A Gunshot residue testing, it's a very unreliable
5 test. If you're near a gunshot, if you're near a firearm that
6 goes off, that discharges, you're going to get some of the
7 gunpowder or the residue on your hands, on your clothing.

8 If you've -- if you've touched the counter, if
9 you've touched the walls where a gunshot's went off, you're
10 going to pick up some of the gunshot residue on your hands and
11 on your clothing. We knew Monty was inside the house at the
12 time that the -- that there was gunfire so obviously, if we --
13 if we checked his hands, his hands would test or should test
14 positive for gunpowder. I would be surprised if they didn't.
15 But that doesn't indicate that he fired a weapon.

16 Q So in other words, the testing itself would not
17 provide you any information as to whether or not he did or
18 didn't fire a weapon?

19 A That's correct.

20 Q That night while you're still working the scene, do
21 you learn that your partner has made contact with a woman
22 identified as Amanda Mendoza?

23 A Yes, I do.

24 Q And during that time period, does your partner relay
25 to you either that night or some time in the future a phone

1 number that was provided to him by Michelle Estavillo, the
2 mother of Amanda Mendoza?

3 A Yes.

4 Q And ultimately, do you do a court order for the
5 phone records associated with that number?

6 A Yes, I do.

7 Q Did you do a court order for 702-286-3557?

8 A Yes, I did.

9 Q In addition -- well, do you know Tod Williams's
10 department cell phone?

11 A Yes, I do.

12 Q What's that cell phone number?

13 A Tod's phone number is 702-289-5615.

14 Q As you're working the scene, do you receive
15 information that there's a person named Ashley Hall that may
16 have some relevant information?

17 A Yes, we do.

18 Q And initially, Ashley Hall, is she spoken to you by
19 you or other detectives?

20 A Other detectives.

21 Q Did those detectives come back and provide you
22 contact information for Ms. Hall?

23 A Yes, they did.

24 Q And does there come a point in time where you dial a
25 particular phone number for Ms. Hall in order to talk to her?

1 A Yes.

2 Q And do you dial 702-832-9016?

3 A Yes, I do.

4 Q And the person on the other end of the phone do they
5 identify themselves as Ashley Hall?

6 A Yes, she does.

7 Q After the initial investigation where you have
8 Mr. Mendoza at the scene and some information related to
9 Summer Larsen, do you try and figure out if there's any
10 connection that you can find between Mr. Mendoza and Summer
11 Rice or Summer Larsen?

12 A Yes, we do.

13 Q And were you able to find any connection between the
14 two?

15 A No, we were not.

16 Q Leading up to about maybe October 20th or close
17 thereto, do you have any additional leads to follow as it
18 relates to who else could be involved in this homicide?

19 A Yes, we do.

20 Q Like what?

21 A We had information that a Robert Figueroa was
22 involved and possibly another person named Manny, oh, and I
23 can't think of his last name.

24 Q And this information, who do you get it from?

25 A We get this information from a gentleman named

1 Gabriel Soto (sic).

2 Q And during the course of your conversation with
3 Mr. Sotelo, does he provide you phone numbers --

4 MR. LANDIS: Objection. Misstates his testimony.

5 THE COURT: On the name you're talking about? So he
6 said --

7 MR. DiGIACOMO: Did he not just say --

8 THE COURT: -- Soto and you said Sotelo so hence,
9 objection.

10 BY MR. DiGIACOMO:

11 Q Do you recall the exact name of the person that
12 provided you the information?

13 A Well, I do now. It's Sotelo.

14 Q Sorry. I wasn't listening. In your conversation or
15 ultimately, in your conversation with Mr. Sotelo, does he
16 provide you information concerning a Robert Figueroa?

17 A Yes, he does.

18 Q Does he also provide you information concerning an
19 individual identified as Manny Barrientos?

20 A Yes, he does.

21 Q Does he provide you phone numbers for those two
22 individuals?

23 A Yes, he does.

24 Q Based on the information that you receive from
25 Mr. Barrientos, do you -- or sorry, Mr. Sotelo, excuse me --

1 do you have -- do you set up in sort of surveillance? Are you
2 looking to come into contact with any particular individual?

3 A Yes, we set up a surveillance on Robert Figueroa.
4 We had other detectives helping with the -- actually doing the
5 surveillance. We were on the outside of it.

6 Q Eventually, on October 20th, does -- do you come
7 into contact with Robert Figueroa?

8 A Yes, we do. He was taken into custody by the
9 surveillance team. They gave us their location. We drove up
10 there. And I introduced myself to -- to Robert Figueroa, who
11 was in handcuffs at the time standing outside one of the
12 buildings.

13 Q If your report reflects this is somewhere in the
14 area of Casey in Clark County; does that sound right?

15 A Yes, it does.

16 Q Okay. And when you come into contact with
17 Mr. Figueroa, during the surveillance, did you have an
18 opportunity to sort of see Mr. Figueroa from a distance?

19 A Yes, we did.

20 Q And looking at him from a distance, were you able to
21 identify any gunshot wounds to him?

22 A No, we were not.

23 Q When you first approached Mr. Figueroa and introduce
24 yourself, what do you do?

25 A I was -- I was aware that he had been shot in the

1 face, and more specifically the mouth, I believe, and I was
2 looking for a gunshot wound and -- and it really didn't stick
3 out, and I thought oh, you know, I don't know if this is the
4 right guy.

5 We were able to lift up his shirt and he had a
6 gunshot wound to the flank, which also was corroborated, and
7 so I realized then that we had the right guy.

8 Q Based upon the fact that you had Mr. Figueroa, what
9 did you do with him at this point, once he's taken into
10 custody?

11 A We took him -- at that time, my partner was on
12 vacation so I was using one of the other detectives, Detective
13 Wildmann. We took Robert Figueroa, put him in our unmarked
14 police car. I advised him of his rights. He stated he
15 understood his rights. And I asked him about his involvement
16 in the home invasion homicide.

17 MR. DiGIACOMO: May I approach, Judge?

18 THE COURT: Yes.

19 BY MR. DiGIACOMO:

20 Q Detective, at some point is an audio tape recorded
21 statement taken from Mr. Figueroa?

22 A Yes. I had the -- I turned the recorder on before
23 we got in the car.

24 Q And is that then submitted for transcription and
25 then sent back to you to review to see if it's accurate?

1 A Yes, it is.

2 Q I'm going to show you what's been marked as -- or
3 now been admitted as State's Exhibit 330. Does that appear to
4 be a copy, an accurate copy of the transcription of that audio
5 recording?

6 A Yes, it does.

7 Q Okay. There was some questions asked of
8 Mr. Figueroa concerning some of the first questions, the Q1
9 and Q that goes on here. Do you know who Q1 -- who the
10 speaker would be, looking at that?

11 A I think that's Marty, is Q1.

12 Q And who's Marty?

13 A I'm sorry, Detective Wildman.

14 Q So do you have more than one person on your squad?

15 A Yes.

16 Q And we have sort of heard that some time in October
17 Detective Williams went on his yearly hunting trip.

18 A Yes.

19 Q And did you then partner up with another partner to
20 sort of assist in the follow-up?

21 A I did.

22 Q And who was that?

23 A And that was Detective Wildmann.

24 Q Okay. Is the other Q on there you?

25 A Yes.

1 Q So when you look at these transcripts Q and Q1 are
2 detectives?

3 A Yes.

4 Q What does the A represent?

5 A That would represent Robert Figueroa's answer.

6 Q There was a question asked about Mr. Figueroa that
7 the first thing said to him is, "Robert, do you remember my
8 name?" Being that that's a Q, is that you?

9 A Yes, it is.

10 Q All right. Why is it that -- well, let me ask you
11 this, prior to you saying, Robert, do you remember my name,
12 had you had any substantive conversation with Robert Figueroa?

13 A No, I did not.

14 Q Okay. So why is it you were able to say to him,
15 Robert, do you remember my name?

16 A Because as we approached him when he was taken into
17 custody outside, I introduced myself to him. I said, Robert,
18 my name's Barry Jensen. I'm with Las Vegas Metro, I'm going
19 to need to talk with you.

20 Q During the time period that Mr. Figueroa is taken
21 into custody, is there a search warrant executed at the
22 apartment he shared with both an individual named Jeff Bonne
23 as well as Cindy Cruz?

24 A Yes, there was.

25 Q And during the course of that search warrant, were

1 there some firearms located in a room associated with
2 Mr. Bonne?

3 A Yes, there was.

4 Q Additionally, during the course of that search
5 warrant, were there photographs taken?

6 A There were.

7 Q I'm going to put up for you what's been marked as
8 Defendant's Exhibit B and ask you if that appears to be a
9 photograph taken during the execution of that search warrant?

10 A Yes, it does.

11 Q During the course of the search warrant, was there
12 any marijuana found within that residence?

13 A No, there was not.

14 Q Had there been marijuana located within that
15 residence, would it have been collected?

16 A Yes, it would have.

17 Q There's been some suggestion that the items
18 contained within those two jars included -- or includes
19 marijuana. I guess, I should ask a question before you
20 actually answer. Did you do research and did you look at this
21 photograph to determine whether or not, first of all, does
22 there appear to be anything within that jar right there?

23 A No. That appears to be an empty jar.

24 Q And what appeared to be within that jar?

25 A To me it looks like a shopping bag, a plastic

1 shopping bag that was crinkled up and put in there.

2 Q Now, when you first contact Mr. Figueroa and you see
3 that he has two gunshot wounds, do you have a belief as to
4 whether or not he's associated with the crime that occurs at
5 1661 Broadmere?

6 A Oh, there's not a doubt in my mind he's involved in
7 that crime.

8 Q And based upon that belief, is there certain things
9 that you say to a suspect when you first get them into custody
10 and you're about to interview them?

11 A Yes. I -- I always talk to them. I generally use
12 the same rapport. I try to make them think that I may know a
13 little more than what I do. But I try to convince them that
14 now's the time to tell me the truth. This -- you know, get
15 your involvement out.

16 I -- I -- basically, my goal is to get a story with
17 them. I can go and confirm their information and find out how
18 -- how honest they're being at, you know, later through the
19 investigation.

20 Q During the course of speaking to a suspect, you said
21 you sort of let them believe you know more than you actually
22 do. Are you allowed to misrepresent the basis of your
23 knowledge?

24 A Yes, I am.

25 Q And during the course of your career -- well, let me

1 ask you this, within that transcript, there's a large section
2 where you say something to the effect of, you know, everybody
3 minimizes, those type of things. What do you say and why are
4 you saying it?

5 A It's human nature to try to paint yourself into a
6 better light. You know, I want the person that I'm
7 interviewing, if they're a suspect in a crime, I want them to
8 know that it's better to tell me the truth the first time. If
9 you -- you know, if you're telling me a story and -- and it's
10 not honest and I find out it's not honest, you're not that
11 credible further on down the road when you try to be honest.

12 And -- and that's what I'm telling him when I'm --
13 when I'm telling him, you know, people try to minimize their
14 involvement, you know, and things like that.

15 Q In your experience in coming into contact with the
16 suspects or defendants, I guess, ultimately, in your
17 experience, do individuals normally always just come out and
18 give a full fledged confession to a crime?

19 A No.

20 Q And thus, are there tools that you use to try and
21 coax that information out of them?

22 A Yes.

23 Q Now, ultimately, after trying these tools on
24 Mr. Figueroa, there's been some questions about him invoking
25 his lawyer and your reaction. Were you frustrated when

1 Mr. Figueroa requested a lawyer?

2 A No.

3 Q During the course of -- so you learn information
4 from Gabriel Sotelo, you go find Mr. Figueroa.

5 A Correct.

6 Q Thus, some of the information, obviously, Mr. Sotelo
7 has provided you is corroborated by the fact that there's two
8 bullet holes in Mr. Figueroa, right?

9 A Correct.

10 Q Okay. Did he provide you phone numbers for both
11 Mr. Figueroa and for this Manny Barrientos?

12 A Yes, he did.

13 Q And ultimately, do you do court orders?

14 A I do.

15 Q The phone number, the 702-542-8981, what the jury
16 knows to be the Maria Sandoval phone, when you issued your
17 order for that, are you looking to confirm whether or not
18 Manny Barrientos was at the scene of the crime?

19 A Yes, I am.

20 Q And ultimately, the returns, the evidence that we
21 have back here is what it is you got back?

22 A That's correct.

23 Q Did you also enter an order or do an order for the
24 702-504-1148 number?

25 A Yes, I did.

1 Q For the number that he was provided as it related to
2 Mr. Figueroa?

3 A Yes.

4 Q And were you able to get information back from any
5 phone company on that particular number?

6 A I don't -- we never got a return on that.

7 Q So let's talk a little bit about Mr. Sotelo. How do
8 you meet Mr. Sotelo?

9 A Gabriel Sotelo was in -- in custody in North Las
10 Vegas. He was being investigated for a possession of stolen
11 property charge by a Detective Stucky (phonetic) with North
12 Las Vegas.

13 Q Did he want something in return for providing you
14 information on this homicide?

15 A I don't recall him asking for any -- any favors.

16 Q Was he released from custody at the end of having
17 that conversation?

18 A Yes, he was.

19 Q Well, let me ask you this, did Mr. Sotelo want to be
20 released from custody if he provided you information?

21 A I'm not sure he was going to jail that night with
22 him providing information or not.

23 Q So he's taken into custody by Officer Stucky, how do
24 you find out about who he is?

25 A He provides Officer Stucky that -- information that

1 he knows about this home invasion up in this -- in this
2 general area. She called Metro, they put her in contact with
3 me.

4 Q And then you come down there and now he's going to
5 tell you about the homicide?

6 A Yes.

7 Q On 10/20 as well as Mr. Figueroa, was Mr. Figueroa's
8 roommates as well as his sister interviewed?

9 A Yes, they were.

10 Q And during that time period, do you receive a
11 different phone number for Mr. Figueroa from his sister?

12 A Yes, I did.

13 Q On 10/23, did I request you to go do something?

14 A Yes, you did.

15 Q What did I request you to do?

16 A You asked me -- you said that you had information
17 that Robert Figueroa wanted to talk to the detectives so my --
18 again, my partner's on -- on a vacation so I -- I was able to
19 get Detective Wildmann to come with me and went and talked
20 with Robert Figueroa.

21 Q And when you went to talk to him, did you really
22 have a substantive conversation with him?

23 A No, we didn't.

24 Q What was his request?

25 A He wanted to -- he wanted to provide us with

1 information, but he would -- he felt more comfortable with his
2 attorney being there.

3 Q And did you make arrangements to have his attorney
4 there the next morning?

5 A Yes, we did.

6 Q The next morning, do you go back and talk to
7 Mr. Figueroa?

8 A Yes, we do.

9 Q Now, at this point, are you your officers' reports
10 even written?

11 A No, they're started, but not written.

12 Q And all these phone returns that we're talking about
13 here, had they been -- well, had you even received the
14 overwhelming majority of them at that point?

15 A No, we had not.

16 Q When you go in the room on October 24th, and talk to
17 Mr. Figueroa, do you have any idea what it is he's going to
18 tell you?

19 A No.

20 Q And thus, what happens?

21 A His attorney was -- him and his attorney had a while
22 to talk. I believe, his attorney came out and said they were
23 ready. We went in, and again, I believe, I Mirandized him,
24 but I -- I just told him, I said, you know, just tell me the
25 story, and, you know, tell me the truth, if you're involved in

1 other crimes, I don't particularly care. I'm more focused on
2 this crime.

3 You know, I -- I don't care if you're selling weed.
4 That's not what I'm focused on. I just wanted to know about
5 what happened at the Broadmere address where the murder
6 occurred. And he started telling me his story.

7 Q And when he tells you this story, what is the
8 purpose of you gathering this information from Mr. Figueroa?

9 A This is information that we want to gather and then
10 we want to try to corroborate it over the next days, you know,
11 through the course of the investigation.

12 Q And when Mr. Figueroa is telling you this
13 information, it's pretty damning information against him; is
14 that fair?

15 A That's correct.

16 Q And he also provides you information on other
17 individuals?

18 A Yes, he does.

19 Q During the course of this conversation or at least
20 prior to this conversation, did you know who Joey Laguna was?

21 A No.

22 Q Did you know -- did you had the name Montone come up
23 at all?

24 A Yes, we did.

25 Q And who -- where did Montone come up?

1 A Montone came -- Montone came up there Gabriel.

2 Q Sotelo?

3 A Sotelo.

4 Q How about Duboy or David Murphy, had that name come
5 up?

6 A Not to my knowledge at that time.

7 Q Now, there's been some question about Tod Williams
8 had heard the name David Murphy and knew that David Murphy was
9 Amanda Mendoza's cousin on September 22nd. Did you know that
10 information?

11 A I did not.

12 Q All right. If detectives had written his summary by
13 then, if Detective Williams had written that summary, even if
14 you had read that summary, would you know the name David
15 Murphy?

16 A No.

17 Q Why not?

18 A Because in the summary, he just says that Amanda was
19 picked up by her cousin, and he -- he doesn't provide a name.

20 Q Now, there was some suggestion that there is an
21 audio recording of Amanda Mendoza's statement. In practical
22 terms, is there any chance you would have listened to that
23 audio before October 20th or 24th of 2014?

24 A No.

25 Q Why not?

1 A It's -- it's time consuming, and I know that sounds
2 terrible, but we're investigating a homicide, we're gathering
3 information, it's -- it's a fluid investigation. So as we're
4 gathering information on this homicide, we're still working
5 other homicides. We're -- we have court appearances and --
6 and things that we have to -- to go through.

7 So it -- you know, you try to save some time when
8 you can. To sit and listen to even a 15-minute recording, I
9 mean, we have several of these recordings to sit and listen
10 to, and you just don't have the time to do it.

11 Q On your squad, how many detectives are there?

12 A There's -- at that time, there was six.

13 Q And there's six people out there doing work?

14 A That's correct.

15 Q And so in order to -- correct me if I'm wrong,
16 you're not trying to duplicate the work that the other
17 detectives have already done?

18 A That's correct.

19 Q During the course of this conversation with
20 Mr. Figueroa, does he provide you some information about who
21 Duboy is?

22 A Yes, he does.

23 Q And what does he tell you?

24 A He tells me that he's -- he's known Duboy for a
25 little while. He met him through Joey Laguna. He describes

1 Duboy for me. And through the course of the investigation, he
2 -- or through the course of that interview, he tells me that
3 he believes that David Murphy is having a sexual relationship
4 with the guy that lives in that -- in that house, his wife,
5 Summer. I know her name, he didn't.

6 Q And you just said the word David Murphy. Does
7 Mr. Figueroa know the name David Murphy?

8 A No, he does not.

9 Q He just knows Duboy?

10 A Correct.

11 Q During the course of that conversation, does he tell
12 you whose idea it was for both the first, what I'll call the
13 drug supplier's residence, as well as for the murder scene
14 residence, whose idea it was --

15 MR. WOLFBRANDT: I'm going to object again --

16 BY MR. DiGIACOMO:

17 Q -- for these robberies?

18 MR. WOLFBRANDT: -- to the form of the question and
19 the use of the term murder. It's leading, it's argumentative
20 and it's for the jury to decide whether it's a murder scene or
21 not. It's a homicide.

22 THE COURT: I didn't even hear the entire question
23 before you got it out.

24 MR. DiGIACOMO: I can rephrase it, Judge. I don't
25 have a problem with that.

1 THE COURT: All right.

2 BY MR. DiGIACOMO:

3 Q During the course of the conversation you're having
4 with Mr. Figueroa, does he provide you information as to whose
5 idea -- well, who knew about the location, I will say, of the
6 drug supplier house as well as the homicide scene, that house,
7 the Broadmere address?

8 A Yes, he does. He -- he told me that it was Duboy's
9 idea for both -- both houses.

10 Q Does there come a point in time when you take a
11 break in the interview and go outside and discuss sort of like
12 what's come up so far during the interview?

13 A Yes, we do.

14 Q And that's you and who?

15 A Me and Detective Wildmann.

16 Q And at that point, has he brought up or does -- have
17 you shown him any photographs of anybody yet?

18 A I don't believe so, no.

19 THE COURT: Who are we talking about "he" because
20 now we're outside with Wildman so I'm unclear.

21 MR. DiGIACOMO: Sure.

22 BY MR. DiGIACOMO:

23 Q During the course of this conversation now with
24 Detective Wildmann outside, had you shown Mr. Figueroa any
25 photographs of individuals yet?

1 A No, we had not.

2 Q When you go back inside, do you show him a
3 photograph of Joey Larsen?

4 A Yes, I do.

5 Q And does Mr. Figueroa indicate whether or not he
6 knows Joey Larsen or not?

7 A I don't think he recognizes him. He -- he -- I
8 think he said he might have bought weed from him or something
9 in the past.

10 Q Then when you show a picture of Summer Larsen, does
11 he recognize her face?

12 A I don't believe he recognizes her face.

13 Q At that point, does he tell you something about how
14 Joey must -- or sorry, about Duboy must know this woman that
15 you've shown him?

16 A Oh, yes, he does.

17 Q What does he do? What does he say?

18 A He says -- that's when he tells me that -- that he
19 thinks that this is the girl that -- that Duboy was having the
20 affair with and that she would talk about her -- her problems
21 with her husband and things like that to -- to Duboy.

22 Q Now, prior to you bringing up this picture of Summer
23 Rice and everything, earlier in the conversation did
24 Mr. Figueroa talk to you about a Hispanic woman with tattoos?

25 A Yes, he did.

1 Q And did he refer to that woman having a relationship
2 with Duboy?

3 A Yes, he -- he called her his girlfriend.

4 Q So when you show the picture and there's this
5 conversation between this picture of Summer Larsen and Duboy,
6 do you clarify then like, girlfriend versus what type of
7 relationship?

8 A Oh, yeah, I mean, I clarified, she wasn't the girl
9 involved in the earlier surveillance and -- and other stash
10 house.

11 Q While you're talking to Mr. Figueroa, does he
12 provide you the phone he had in his possession when he was at
13 Broadmere?

14 A I believe, he does.

15 Q Does he provide you the phone number as well?

16 A Yes.

17 Q And that phone number is the 702-241-1051 number?

18 A Yes.

19 Q Is that the same number that Elizabeth Bird?

20 A Yes, it is.

21 Q Mr. Figueroa's sister?

22 A Yes. Half -- half sister.

23 Q During the course of this conversation that you're
24 having with Mr. Figueroa, he brings up Joey Laguna?

25 A Yes, he does.

1 Q And he's -- does he describe certain things about
2 Joey Laguna that allows you to identify who he is?

3 A Yes, he does.

4 Q At the end of your conversation with Mr. Figueroa,
5 do you go back to your office and attempt at this point to see
6 if any of the information he has provided you is accurate?

7 A Yes, we do.

8 Q Do you do a court order for Mr. Figueroa's cell
9 phone, the 241 number?

10 A Yes, we do.

11 Q Has there been or at this point, is there one done
12 for the Mendoza phone, the 666-4948 number?

13 A I -- I think we do it around that time.

14 Q And do you do some research to see if you could
15 figure out a phone number for Mr. Laguna?

16 A Yes, we do.

17 Q And during the research of certain records that you
18 had access to, or information you had access to, do you find a
19 number, the 702-762-1584 number?

20 A Yes, we do.

21 Q Do you also go and see Mr. Figueroa's girlfriend?

22 A Yes, we do.

23 Q And why do you do that?

24 A Because during our interview, Mr. Figueroa told us
25 that his girlfriend had -- had the weapon that he'd used that

1 night during the home invasion homicide.

2 MR. DiGIACOMO: May I approach, Judge?

3 THE COURT: Yes.

4 BY MR. DiGIACOMO:

5 Q Detective, I'm going to show you what's been marked
6 as State's Proposed Exhibit 227. Do you recognize that
7 package?

8 A I do.

9 Q And while crime scene analysts have testified, do
10 you do a similar process when you impound evidence yourself?
11 Is that a terrible question?

12 A Yes. I --

13 Q Good. Let me ask you this, do you recognize the
14 package?

15 A I do.

16 Q And is that in substantially the same or similar
17 condition with the exception of that blue tape at the bottom
18 as when you impounded the item that's contained therein?

19 A Yes, it is.

20 Q And if we were to cut that open, what would we
21 expect to find inside?

22 A You would expect to find a Ruger .40 caliber
23 semi-automatic handgun in it.

24 Q And that blue tape on the bottom is indicative of
25 forensic work being done on that firearm?

1 A Yes, it is.

2 Q When you recover that firearm, is it covered in that
3 red/brownish substance the jury saw in the pictures from the
4 DNA analyst?

5 A Yes, it is.

6 MR. DiGIACOMO: I'd move to admit 227. I'm not
7 going to open it because of the biohazard.

8 THE COURT: Any objection?

9 MR. LANDIS: No.

10 MS. McNEILL: No.

11 MR. WOLFBRANDT: No.

12 THE COURT: It will be admitted.

13 (State's Exhibit 227 admitted)

14 BY MR. DiGIACOMO:

15 Q On or about November 6th of -- well, before November
16 6th of 2014, do you do research into somebody named Duboy?

17 A Yes, I do.

18 Q And can you describe for us at some point do you
19 find an individual that you think is Duboy?

20 A It was -- I had the -- I call it a moniker, a
21 nickname, Duboy, and we were running that through our -- our
22 police records, and I located a Duboy that his name was Jesus
23 Mendez-Martinez. He was a Hispanic male about in that same
24 age group, and he had the nickname or the moniker Duboy, and I
25 -- I just focused on that and I said this -- you know, this is

1 Duboy. This is the guy.

2 Q Now, did you have information prior to that time
3 that Summer Larsen may have had a Hispanic boyfriend as well?

4 A Yes, we did.

5 Q So the Hispanic part jumped out at you?

6 A Yes.

7 Q Do you -- let me ask you this, at some point -- and
8 we've heard about and I don't know that we've actually -- the
9 jury's seen it, but we've heard about what's been marked as
10 Defendant's Exhibit A. Do you recognize that particular
11 document?

12 A I do. That's my officer's report.

13 Q Let's talk little bit about that officer's report.
14 How is that generated?

15 A I generate -- the detective that is doing the cases,
16 they -- they will generate the officer's report.

17 Q And how is it that information from other detectives
18 gets placed in that report?

19 A They -- it's -- it's located in our H drive.
20 They've got access. They can input the -- their synopses
21 themselves or they can e-mail them to -- to us and we put them
22 in, cut and paste.

23 MR. LANDIS: Can I object to the use of "us" on
24 these answers. "Us" and "we", whether it's not clear as to
25 who he's talking about.

1 THE WITNESS: I.

2 THE COURT: All right. Sustained. Let's try and
3 keep it specific.

4 BY MR. DIGIACOMO:

5 Q Who's ultimately responsible for the report?

6 A I'm ultimately responsible for the report.

7 Q And when you find this Jesus Martinez -- or
8 Mendez-Martinez and you think that this individual is the
9 Duboy, what do you do?

10 A I -- I put his picture and his identifiers in the
11 report and we try to make other attempts to -- to find a
12 connection between him and the -- the people that we know or
13 believe that are involved in the -- in the crime.

14 Q Leading up to November 6th of 2014, do you finalize
15 the report?

16 A Yes, we do.

17 Q And when you say finalize it, what does that mean
18 happens?

19 A I turned it into the sergeant, and the sergeant
20 signs off on it, and it's put in the books.

21 Q Thus, becoming a permanent record of the Las Vegas
22 Metropolitan Police Department?

23 A Yes, sir.

24 Q Now, there was questions of Detective Williams about
25 the date and time of report that's on the front of that

1 report. Can you flip to the front there.

2 A I'm on the front.

3 Q Okay. Looking at the front of that report, first of
4 all, do you recognize your signature?

5 A I do.

6 Q Do you recognize your partner, Tod Williams'
7 signature?

8 A I do.

9 Q And do you recognize your then acting sergeant,
10 Anette Mullin?

11 A That's correct.

12 Q Now, there is a place that says date and time of
13 report. Do you recognize that handwriting?

14 A That's my handwriting.

15 Q That date and time, what does it say?

16 A It says 9/22/2014 at 10:00 hours. That's 10:00 in
17 the morning.

18 Q And why is that date and time on that report?

19 A Because that's when I started the report.

20 Q So after you're done with the scene, you get there
21 what time do you think on the 21st, maybe?

22 A Oh, 9:30. Maybe -- maybe a little later.

23 Q Okay. And do you stay there as long as the crime
24 scene analysts are there?

25 A I -- I think we're there until 7:00 or 8:00 in the

1 morning.

2 Q So a substantial period of time?

3 A Yes.

4 Q After that time period, you then go back and start
5 the report?

6 A I go back to the office, I -- I pull a blank
7 officer's report, get the -- get the file started, get a book
8 so we can put -- put that stuff together and try to kind of
9 debrief on what we have so far.

10 Q And that's when the report starts to get generated?

11 A Yes.

12 Q Now, on the usual officer's report that you do, is
13 that date and time typed in?

14 A Usually, I type it in. I -- I didn't type it in on
15 this one.

16 Q And so that date is added after the report is
17 completed, but it's consistent with all your other reports?

18 A Yes.

19 Q When you issued that report, is there any mention --
20 well, do you have anything other than your analysis of law
21 enforcement records to suggest that Duboy's, in fact, Jesus
22 Mendez-Martinez?

23 A I do not.

24 Q Based upon the information that you had gathered at
25 this point, though, do you issue a warrant on November 6th for

1 any other individual associated with this case?

2 A Yeah, I issued a warrant for Summer Larsen.

3 Q And when you issued the warrant for Summer Larsen,
4 for what crime? Do you recall the exact crime you --

5 A I --

6 Q -- issued it for?

7 A I believe it was just a conspiracy to commit
8 robbery.

9 Q At the time that you issued the warrant for Ms.
10 Larsen, was the primary basis of knowledge that you had
11 actually Hall's information?

12 A Yes.

13 Q And eventually, do you come into contact shortly
14 after issuing the arrest warrant with Summer Larsen?

15 A Yes, we do.

16 Q And on November 18th of 2014, how is it you come
17 into contact with Summer Larsen?

18 A She was involved in a domestic violence situation
19 with her husband, Joey Larsen.

20 Q So Joey Larsen and Summer Larsen are together
21 despite the incidents that occurred on September 21st?

22 A Yes, they are.

23 Q And it's during that that the police come into
24 contact with Ms. Larsen and she's arrested?

25 A That's correct.

1 Q Where is she brought?

2 A She's taken to the LVMPD homicide office for an
3 interview.

4 Q And during the time period she's at Metro, do you go
5 in and have a conversation with her?

6 A Yes, I do.

7 Q When you talk to her, do you raise the fact that
8 there is -- you have information about a conversation she was
9 having with a black male in front of Ashley Hall?

10 A Yes, I do.

11 Q Did she identify that black male?

12 A I don't recall her identifying him.

13 Q Let me --

14 A Ashley Hall said he -- his name was Evil.

15 Q And does Summer Larsen tell you it's actually
16 Twisted?

17 A Yes, she does. And she identifies Twisted as Robert
18 Mead.

19 Q During the course of that interview, do you talk to
20 her about her Hispanic boyfriend whose moniker is Snoop?

21 A Yes, I do.

22 Q And ultimately, do you identify that Hispanic
23 individual Snoop?

24 A I do.

25 Q And you make contact with Isaac Rodriguez?

1 A Yes, I do.

2 Q And when you come into contact with Mr. Rodriguez,
3 describe what he looks like for the ladies and gentlemen of
4 the jury.

5 A He is a thin Hispanic male. I met with him. He
6 provided me a DNA sample. He had no injuries.

7 Q Based upon the description that Mr. Figueroa gave
8 you, did you think that Mr. Rodriguez was involved in the
9 crime at all?

10 A No, I did not.

11 Q Does Ms. Larsen give you a cell phone number that
12 she had during this time period?

13 A Yes, she does.

14 Q And was it consistent with numbers that you had
15 gathered from other people who knew Summer Larsen?

16 A I think it was a different number.

17 Q When you did a court order for the cell phone
18 number, did you learn that it wasn't turned on at the time of
19 the crime?

20 A Yes, I did.

21 Q Did she also provide you a Pinger phone that she had
22 on her during her arrest?

23 A Yes, she did.

24 Q And did you identify that number as 702-551-2617?

25 A Yes.

1 Q During the course of this conversation that you're
2 having with her, you're telling her -- are you telling her
3 like what your theory is?

4 A Yeah, I'm -- I'm asking her, you know, what her
5 involvement was? Did she talk to her -- her friend Duboy
6 about this and maybe put a bug in his ear about, you know,
7 she's mad at her husband. He's got some -- some marijuana in
8 his house, maybe some money, whatever else. That's kind of
9 the nexus of our conversation.

10 Q And your conversation with Summer is centered around
11 the homicide scene?

12 A Yes.

13 Q During the course of this conversation, when you
14 bring up Duboy, does she say -- do you -- does she tell you
15 who Duboy is?

16 A Yes, she does.

17 Q What does she tell you?

18 A She tells me that Duboy is David Murphy.

19 Q Based upon the conversation you're having with the
20 suspect and she tells you that, what's your first reaction?

21 A I thought she was trying to cover up for Jesus
22 Mendez-Martinez.

23 Q Do you show her a picture of Jesus Mendez-Martinez?

24 A Yes, I do.

25 Q And when you show her that picture, what's her

1 reaction?

2 A She says she doesn't know the guy.

3 Q And during the course of the conversation with
4 Summer Larsen, do you show her pictures of Mr. Figueroa and
5 Mr. Mendoza as well?

6 A Yes, I do.

7 Q And during the conversation, Ms. Larsen was asked
8 about questions where she points out to a picture and says
9 well, I might have seen Robert before and one be of the
10 detectives says that's not Robert. Did you look back to see
11 what picture was actually being shown to her at the time?

12 A I -- I don't recall what picture was shown to her.

13 Q If during the course of the interview you showed her
14 a picture and she said well, I sort of recognize Robert and
15 she taps it and that wasn't, in fact, Robert Figueroa, and
16 would you have said hey, that's not Robert Figueroa?

17 A Yes, more than likely.

18 Q And based upon the review of the transcript, did it
19 appear to you that she was actually saying Robert Figueroa
20 looks familiar to me?

21 A Yes.

22 Q Yes, she was saying or yes, she wasn't saying?

23 A I'd have to look at the transcript, if you've got it
24 with you.

25 Q I have it. I'll go back to it in just a moment.

1 A Okay.

2 Q Once you're done talking to Summer, what are you
3 thinking about Duboy?

4 A Well, I'm thinking two things. I'm thinking that
5 Summer Larsen is trying to protect her -- her friend or I may
6 have the wrong guy.

7 Q So what do you do?

8 A I believe, the next day I make arrangements to -- to
9 visit with Robert Figueroa, and I show him the picture of
10 Jesus Mendez-Martinez and -- and I asked him is this Duboy,
11 and he said, that's not the Duboy that was involved in the
12 home invasion homicide.

13 Q Does Mr. Figueroa tell you, in fact, I don't know
14 who that guy is at all?

15 A Yes, he does.

16 Q And what's your reaction when he says that?

17 A Then I absolutely believed that I had the wrong guy
18 as Duboy.

19 Q And what about the fact that you've just issued an
20 arrest -- or just issued a police report that has
21 Mr. Mendez-Martinez in it, what are you thinking about that?

22 A Well, it is what it is, and it's a -- to me it's a
23 simple process. I have to do a supplemental officer's report
24 explaining how I misidentified Jesus Mendez-Martinez as Duboy
25 and hopefully, I can get the right Duboy identified.

1 Q You didn't go back and change your report in such a
2 way that he was no longer in there?

3 A No, I did not.

4 Q So when he tells you that ain't Duboy, what do you
5 do?

6 A Well, I sit down and I said -- I go, let's get some
7 -- let's get this right now. And, you know, provide me his
8 description again, what else do you know about him, and he
9 says that he's got a brother named Michael or Mike and that --
10 that Mike had a -- like a crease in his head and couldn't talk
11 very well.

12 Q Does he also use the term Cornbread?

13 A Yeah -- yes, he uses the -- the moniker Cornbread
14 for Mike.

15 Q And at that point, is there somebody else present
16 who goes, wait, I know who Cornbread is?

17 A Yes, there is.

18 Q Who's that?

19 A Who's --

20 Q Does somebody go, that's -- Cornbread, I know who
21 Cornbread is?

22 A Yeah, but I don't know their -- I don't remember
23 their name. It was --

24 Q Okay.

25 A It was another officer.

1 Q Another officer who's presents?

2 A Yes.

3 Q When you say you don't remember the name, it was a
4 corrections officer --

5 A Yes.

6 Q -- who's at the jail, right?

7 A That's correct.

8 Q And thus, do the corrections officers go out and
9 identify who Cornbread is?

10 A Yeah, we went to a computer and identified Cornbread
11 as Michael Lamb, and through that we were able to find Michael
12 Lamb's brother, David Murphy, and David --

13 Q And so you generate a picture of David Murphy, what
14 do you do?

15 A I take it in and I show Robert Figueroa.

16 Q And once you show Robert Figueroa the picture of
17 David Murphy, what happens?

18 A Robert Figueroa says that's the -- that's the -- or
19 that's the Duboy that was with us during the home invasion
20 homicide.

21 Q Once you have that information identified, do you go
22 back and look at Summer Larsen's jail calls?

23 A Yes, I do.

24 Q And when you do so, do you hear calls where she's
25 talking to somebody that she's calling Dough or Doughy?

1 A Yes, she is.

2 Q Do you do research into David Murphy to find out
3 where his residence is located?

4 A Yes, we did.

5 Q And I guess, I could put it up there for ladies and
6 gentlemen of the jury. I think they've probably seen enough
7 of these photographs at this point, but -- of course, it's got
8 to be the last one. So I'm going to put up State's Exhibit
9 319. Do you have information that Mr. Murphy resides where
10 that pin is placed on State's Exhibit 319?

11 A Yes, I do.

12 Q And this's the 6637 Delphinium address?

13 A That's correct.

14 Q How far is that address from Steve Larsen's home?

15 A It's like right down the street.

16 Q Very --

17 A Very close.

18 Q During the course of these phone calls, do you hear
19 the person that Summer Larsen's talking to do anything that
20 confirmed for you this is David Murphy?

21 A Yeah. Summer Larsen asked the person she was
22 calling Doughy or Dough on the phone, she said I -- I need
23 your address, I just need the numbers, and he said 6637.

24 Q At that point, you drew the conclusion that this is
25 the David Murphy we're looking for?

1 A Yes, I was fairly confident.

2 Q Once you've identified this David Murphy, do you do
3 anything so that you can come into contact with him?

4 A Yeah, I -- I start looking for him. I put a -- a
5 want line in his SCOPE where if he would be stopped by law
6 enforcement, they would see to contact me on my cell number
7 24/7, 24 hours a day, 7 days a week. And I also got a hold of
8 some -- they're -- it's a PSU team, they're problem solving
9 unit, and they're assigned -- they're patrolmen assigned to
10 work plain clothes and they can get a plain car and they do a
11 little bit of investigative work and they're -- they're young
12 hard working coppers.

13 So I got a hold of some of those guys. I asked
14 their sergeant if they -- if he would have some people that
15 would be able to do a surveillance for me on this address or,
16 you know, to find -- find David Murphy.

17 Q At some point, do those coppers or those officers
18 take Mr. Murphy into custody?

19 A Yes, they do.

20 Q And when they do, do you wind up coming into contact
21 with Mr. Murphy?

22 A Yes.

23 Q Okay. When Mr. Murphy was taken into custody, was
24 he in a vehicle?

25 A Yes, he was.

1 Q What type of vehicle was it?

2 A He was in a white pickup with a -- with a camper
3 shell on it.

4 Q At some point -- well, let me ask you this,
5 recently, did I ask you to drive by the Delphinium address?

6 A Yes, you did.

7 Q And when you drove by, did you see any other type of
8 white pickup truck there?

9 A There was a white Ford Ranger. It didn't have a
10 camper shell on it.

11 Q During -- on February -- or sorry, December 11th,
12 2014, do you take a Mirandized taped statement from an
13 individual identified to you as David Murphy?

14 A Yes, I do.

15 Q Do you see Mr. Murphy here in court today?

16 A I do.

17 Q Can you point him out and describe something he's
18 wearing?

19 A Yeah, he is -- he's got a beard, a gray shirt and
20 tie and glasses.

21 Q And is he in the front row or the back row of these
22 two?

23 A I'm sorry, he's behind the attorney with the peach
24 shirt.

25 MR. DiGIACOMO: May the record reflect

1 identification of Mr. Murphy?

2 THE COURT: It will.

3 BY MR. DiGIACOMO:

4 Q Where did this conversation take place?

5 A At the homicide interview rooms.

6 Q When you first have contact with Mr. Murphy in the
7 interview rooms, what do you ask him?

8 A I ask him -- I -- I believe, I introduced myself and
9 I ask him if he has any idea why I would want to be talking to
10 him.

11 Q And what's his response.

12 A He says, yeah, he has an idea. And I asked him what
13 it was. I said, what do you think I want to talk to you, and
14 he says it was something to do with Joey and Summer.

15 Q During the course of your conversation with
16 Mr. Murphy, does he indicate to you that he's known Summer
17 Larsen since he was a kid?

18 A Yes.

19 Q Did he indicate to you that he also knew Joey
20 Larsen?

21 A Yes, he did.

22 Q During the course of the conversation that you have
23 with David Murphy, does he acknowledge to you that he had been
24 to the Broadmere address on one prior occasion?

25 A Yes, he had.

1 Q And from the -- what he had said to you, did it
2 indicate that it had been when both Summer and Joey had lived
3 there?

4 A Yes.

5 Q Now, up until December 11th, when you have this
6 conversation with Mr. Murphy, as it relates to Summer Larsen,
7 did you believe that the suspects would have only been able to
8 find Broadmere based upon Summer Larsen showing them that
9 location?

10 A Yes, I did.

11 Q And once Mr. Murphy told you that, that was no
12 longer something to tie in Summer Larsen?

13 MR. LANDIS: Objection. Leading.

14 THE COURT: Sustained.

15 MR. DiGIACOMO: What -- I just didn't hear what the
16 basis of the objection was.

17 MR. LANDIS: Leading.

18 THE COURT: Leading.

19 BY MR. DiGIACOMO:

20 Q As of December 11th, 2014, was Ashley Hall still the
21 only information that tied Summer Larsen?

22 A Yes.

23 Q During the course of the investigation -- and I'm
24 going to put up for you 234 -- this is a portion of a
25 photograph. Did you find this photograph or did you receive

1 this photograph from Mr. Murphy's Facebook page?

2 A Yes.

3 Q And that appears to be Mr. Murphy on the rite side?

4 A Yes.

5 Q And the woman on the left side, the Hispanic female
6 with tattoos, were you able to identify her?

7 A Yes, we were.

8 Q And what was -- and what's her name?

9 A Her name is Maricella Turango (phonetic).

10 Q Some time between December 11th, obviously, and
11 January -- the early part of February, do you do some research
12 to see if you can find -- well, let me back up. When
13 Mr. Murphy is taken into custody, does he have a cell phone on
14 him?

15 A Yes, he does.

16 Q And is that cell phone consistent with the number
17 that Summer Larsen had been calling him on from jail?

18 A I don't believe so.

19 Q If you recall?

20 A I don't -- I'm not sure.

21 Q Okay. But that, was that number -- was that number
22 taken down and did you do some research into that number?

23 A Yes.

24 Q And at the time that you did that research, were you
25 able to determine whether or not that was the phone being used

1 back in September of 2014?

2 A I would have to look at the phone number, I'm sorry.

3 Q Well, let me ask this, at some point do you go
4 looking for a different phone number?

5 A No.

6 Q Do you --

7 A Yeah, we did. Went to -- I -- I checked some -- I
8 checked some police data banks, and I was able to find a pawn
9 ticket from September 11th of 2014 that had a different phone
10 number on it.

11 Q Prior to finding that particular phone number, did
12 you -- before finding that particular pawn ticket, did you
13 have the 702-542-1558 number?

14 A I don't recall if I had that before that pawn ticket
15 or not.

16 Q But obviously, at least by the time you pull that
17 pawn ticket you have it?

18 A Yes.

19 Q Once you have that pawn ticket, do you do a request
20 for court order related to that phone number?

21 A Yes, I do.

22 Q And when you receive that phone number back, at some
23 point do you come to the Grand Jury and is Mr. Laguna,
24 Mr. Figueroa, Ms. Larsen -- sorry, let me rephrase.
25 Mr. Mendoza, Mr. Figueroa, Ms. Larsen and Mr. Murphy indicted

1 for the seven charges we're here for today?

2 A Yes.

3 Q So I'm going to -- well, at some point the
4 information you had gathered for that 702-762-1584 number from
5 the database that is associated with Mr. Laguna, do you did an
6 order for that number?

7 A Yes, I did.

8 Q And once you did an analysis of those phone records
9 on February 13th of 2015, did you come into contact with
10 Mr. Laguna?

11 A Yes, we did.

12 Q When you came into -- or during the time period you
13 were doing research on Mr. Laguna, and let me put up 318 for
14 you. Let's try that one more time. I'm going to try it. Can
15 you read the 3668 Lucky Horseshoe Court?

16 A Yes.

17 Q Did you determine that to be the residence of
18 Mr. Laguna?

19 A Yes, we did.

20 Q And during the course of the investigation, we heard
21 in Detective Williams that early on the Horseshoe -- first
22 Horseshoe Court on the night of the 22nd and then later the
23 address itself as it related to a phone ping, were you aware
24 of that information that there was a phone ping in that area?

25 A In that area, yes.

1 Q And at the time that you receive that information,
2 when you receive phone pings, is there a plus or minus certain
3 number of feet?

4 A Yes.

5 Q And based upon that plus or minus number of feet,
6 how far did you narrow the area where that phone could have
7 been?

8 A If I recall, it was -- it was like a hundred feet or
9 200 feet.

10 Q And thus it could have been --

11 A It was --

12 Q -- on any one of a number of properties?

13 A Yes.

14 Q Okay. So it's just generally in the area of 3668
15 Horseshoe?

16 A That's correct.

17 Q During the -- does there come a point in time when
18 you have contact with Mr. Laguna?

19 A Yes, there does.

20 Q When you have contact with Mr. Laguna, where is that
21 at?

22 A At my -- at the homicide office at the interview
23 rooms.

24 Q And during the course of that conversation, is it a
25 Mirandized conversation you have with Mr. Laguna?

1 A Yes, it is.

2 Q And after the Miranda warnings or, I guess, during
3 the course of this conversation anyways, do you ask Mr. Laguna
4 for him, his wife's cell phone numbers?

5 A Yes, I do.

6 Q And initially does he provide you the 762-1584
7 number that you know about?

8 A No, he does not.

9 Q During the course of the conversation, does
10 Mr. Laguna acknowledge that he knows Robert Figueroa?

11 A Yes, he does.

12 Q And does he indicate that they used to be roommates?

13 A Yes, he does.

14 Q Does he indicate to you that he knows who Cornbread
15 is?

16 A Yes, he does.

17 Q And does he indicate to you that doesn't know Summer
18 or Joey Larsen?

19 A That's correct.

20 Q Or Monty Gibson for that matter?

21 A That's correct.

22 Q During the course of your conversation, did you ask
23 him where he was on September 21st of 2014?

24 A Yes, I did.

25 Q And what does he tell you?

1 A He told me he was at home with his wife.

2 Q All day?

3 A All day.

4 Q Did he tell you anything about his ability to go out
5 at night or drive at night or anything like that?

6 A He -- he's got -- he said he had bad eyes. He -- he
7 couldn't see well so he doesn't go out at night. He doesn't
8 drive a car.

9 Q And during the course of the conversation, do you
10 ask him -- initially do you ask him like, hey, is there any
11 other sort of phones you might have?

12 A Yes, I do.

13 Q And what's his first sort of answer to those
14 questions?

15 A His first answer is no, these -- this was the only
16 phone that they had.

17 Q At some point, do you say -- do you tell him well,
18 what about this 702-762-1584 number?

19 A Right. He said that -- that -- he thinks that was
20 his wife's number. He was pretty sure that was his wife's old
21 number.

22 Q Do you talk to him about the subscriber on that,
23 Anthony Flores?

24 A Yes, I do. That's his stepson.

25 THE COURT: Mr. DiGiacomo, I hate to stop you, but

1 it's like 5:30.

2 MR. DiGIACOMO: That's fine. That's --

3 THE COURT: Yeah. Okay. And I know that we've got
4 a juror we've got to get out the door here. So ladies and
5 gentlemen, we're going to take an overnight recess. Tomorrow
6 I have 80 people or more on drug court so we can't start until
7 1:30.

8 It is your duty during this recess not to converse
9 among yourselves or with anyone else on any subject connected
10 with the trial or read, watch or listen to any report of or
11 commentary on the trial about I any person connected with the
12 trial or by any medium of information, including without
13 limitation, newspaper, television, radio or Internet. You are
14 not to form or express an opinion on any subject connected
15 with this case until it's finally submitted to you. I'll see
16 you tomorrow at 1:30.

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

18 (Jury recessed at 5:27 p.m.)

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

22 MR. DiGIACOMO: Not from the State.

23 MR. LANDIS: I -- I don't have to do it now. I just
24 have to put two more bench conferences from yesterday on the
25 record, but I don't have to do it today.

1 THE COURT: Okay. Just remind me what they are so
2 we'll do it first thing.

3 MR. LANDIS: That picture dealio with the collage
4 that was made into a smaller collage. Am I making sense?

5 MR. DiGIACOMO: 234.

6 MR. LANDIS: They tried to bring in that collage. I
7 got upset, you cut it --

8 THE COURT: Right.

9 MR. LANDIS: -- cut one picture out of it. That's
10 one of them.

11 THE COURT: Okay. It's not a collage anymore. It's
12 just a single photo.

13 MR. DiGIACOMO: Just one picture.

14 MR. LANDIS: I know.

15 MR. DiGIACOMO: Yeah, 234.

16 MR. LANDIS: I know. I just wanted to put it on the
17 record.

18 THE COURT: Okay. So that's the one you're going to
19 talk about that tomorrow?

20 MR. LANDIS: Or I can just do it -- we're halfway
21 there.

22 THE COURT: Okay.

23 MR. LANDIS: Are we still on?

24 THE COURT: Yeah.

25 MR. LANDIS: What number was it?

1 MR. DiGIACOMO: 234.

2 MR. LANDIS: 234 was a picture the State tried to
3 admit through --

4 MS. McNEILL: Figueroa.

5 MR. LANDIS: -- Figueroa, thank you, which was a
6 collage of pictures that I'm assuming they're saying came off
7 of Facebook. Most of the pictures were either David Murphy or
8 David Murphy and what they're alleging to be his girlfriends.

9 Two of the pictures in the collage, however, though
10 were marijuana. One was like marijuana on a tray. The other
11 one was like a marijuana bud being held by somebody. I
12 objected because of the marijuana pictures. We approached. I
13 -- the Court granted the objection, cut out the picture that
14 showed Murphy and the alleged girlfriend and the State used
15 that as the exhibit.

16 THE COURT: Correct, and also Mr. Figueroa prior to
17 that had seen the photograph and pointed only to that center
18 picture in identifying the two. So the other pictures weren't
19 relevant and they were prejudicial, which is why I granted
20 your objection.

21 MR. LANDIS: And to my knowledge, it wasn't
22 published to the jury.

23 THE COURT: No, it was not.

24 MR. DiGIACOMO: It was in the published to the jury,
25 that's correct. And --

1 MS. LEXIS: I moved to admit, they objected, we
2 approached.

3 THE COURT: Correct.

4 MR. DiGIACOMO: And for the record, considering the
5 nature of the weed or the marijuana allegation, I didn't think
6 it was bad act, but either way, that's fine, I have no problem
7 with you redacting it. But it's only offered for purposes of
8 identification of Ms. Turango. What's the other one was real
9 quick? Did you want to put --

10 MR. LANDIS: The other one we -- we're done. There
11 isn't anymore. We covered it in our big dealio.

12 MR. DiGIACOMO: Okay. Perfect.

13 THE COURT: I'll see you tomorrow then at 1:30.

14 MR. DiGIACOMO: Thank you.

15 (Court recessed at 5:30 p.m. until Thursday,
16 September 29, 2016, at 1:42 p.m.)

17 * * * * *

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

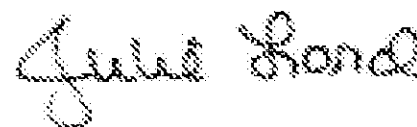
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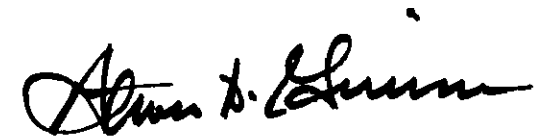
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JULIE LORD, INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 13

THURSDAY, SEPTEMBER 29, 2016

APPEARANCES:

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

COURT RECORDER:

DEBRA WINN
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
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1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 29, 2016, 1:42 P.M.

2 (Outside the presence of the jury)

3 THE COURT: We are on the record and we're outside
4 the presence of the jury. The record will reflect the
5 presence of the defendants with their respective counsel, the
6 Chief Deputies District Attorneys prosecuting the case, all
7 officers of the court. And we want to make a record regarding
8 some blow-ups of previously admitted phone records that are so
9 small that you need a magnifying glass to see them, so.

10 MR. DiGIACOMO: Correct. And I think that the clerk
11 still has the records. I -- well, actually, if I have my list
12 here, I can tell you what the numbers are.

13 THE CLERK: Are you talking about the blow-ups?

14 MR. DiGIACOMO: Yeah.

15 THE CLERK: Yeah, they're in here.

16 MR. DiGIACOMO: The --

17 THE COURT: So, are you wanting -- you want to have
18 those marked as "A" towards the -- to go with the number?

19 MR. DiGIACOMO: Correct.

20 THE COURT: Okay.

21 MR. DiGIACOMO: So, for example, 299, which is the
22 -- oh, sorry, 298, which is the --

23 THE CLERK: Yeah, I was going to say, I don't have
24 298.

25 MR. DiGIACOMO: 298 is the Jorge Mendoza -- the 666

1 number. That CDR has been blown-up in a paper that is almost
2 two-feet-wide, as well as 299, as well as 303.

3 So, 299 is the Amanda -- or, sorry. 298 is the
4 Jorge Mendoza CDR. 300 is the Amanda Mendoza CDR. 303 is the
5 Murphy call and text records that were in the really, really
6 tiny print. 305 is the Barientos CDRs, the 8981 number.
7 Figueroa's were readable, so there is none for him that are
8 blown-up. Laguna's are 309. And then, as it relates to
9 Laguna's 310, the Cricket tower list that went along with it
10 was really small print. So, those have all been blown up on
11 either two-foot-wide or legal-sized documents.

12 As I made a record about -- oh, Mr. Barientos's, the
13 305, when it -- when I did the change to it, one call detail
14 at the end on September 23rd from the Barientos fell off the
15 page and I can't figure out why it did. So, these are just
16 for demonstrative purposes and I -- that's what I would ask
17 that they're admitted for, and that the originals that were
18 authenticated by the various custodians of records be the
19 originals, but this will just make it easier for them to look
20 at.

21 THE CLERK: Okay. Just to verify though, you have
22 303 -- wait, 300 -- no, 298, 300, 303, 309, and 310? Am I
23 missing any?

24 MR. DiGIACOMO: There should be 305.

25 THE CLERK: I thought I had that 305 a minute ago.

1 Let me see. Yep, there it is. Okay.

2 MR. DiGIACOMO: Okay.

3 THE COURT: All right. And did the defense have an
4 objection?

5 MS. McNEILL: No, Your Honor.

6 MR. LANDIS: No.

7 THE CLERK: You're saying demonstrative, but you
8 want them admitted, so they will go back --

9 MR. DiGIACOMO: Yeah, they'll go back with the jury,
10 but --

11 THE COURT: But just duplicates, although it will be
12 important to let them know that that one call detail record is
13 not on that, because otherwise it could look as if you were
14 trying to pull a fast one on them or something, and I don't
15 want them to think that.

16 MR. DiGIACOMO: And if I could ask the clerk, what
17 is the next two defendant's in order?

18 THE CLERK: I'm sorry? Oh, it's --

19 THE COURT: Defense exhibits.

20 THE CLERK: What exhibits?

21 MR. DiGIACOMO: No, what will be the next two in
22 order?

23 THE CLERK: They go up to F now, so G, H.

24 MR. DiGIACOMO: Okay. So, Mr. -- Mr. Landis wants
25 two photographs from the Figueroa residence that weren't print

1 -- he had an issue with his printer. I have them
2 electronically, so we can display them. And so, for the
3 record, the photograph that's 009 will be the next in order,
4 which I believe will be G; and 37 is going to be the next in
5 order, which will be H. We're just not going to have them
6 here. I'll print them and bring them in the morning for Mr.
7 Landis.

8 MR. LANDIS: So, is it okay with this witness if I
9 move to publish Defense Proposed G? They're just search
10 warrant pics, and then ask him if he recognizes it, and then
11 I'll admit it at that.

12 THE COURT: Right. How are you going to show him --

13 MR. DiGIACOMO: We would stipulate to their
14 admission. He can go through the process, but --

15 MR. LANDIS: Okay, even better.

16 MR. DiGIACOMO: -- for purposes of this, we can put
17 it up first and just go that way. That will be fine.

18 THE COURT: That's fine. As long as you stipulate
19 to the admission, it's not a problem and we'll do it that way.

20 THE CLERK: So, on the easier way, all I have to
21 worry about is G and H will be provided tomorrow?

22 MR. DiGIACOMO: Correct.

23 MR. LANDIS: And then --

24 THE CLERK: Let's go with that.

25 MR. LANDIS: -- I have that jail call I promised to

1 admit some years ago when we crossed Summer. If I can
2 approach the clerk?

3 THE COURT: Okay.

4 MR. LANDIS: And this was going to be admitted I
5 think as a court exhibit.

6 MR. DiGIACOMO: That's correct.

7 THE CLERK: What is it?

8 MR. LANDIS: The jail call from Summer Rice. I put
9 a sticky on it. But it's -- I used it -- I used a portion of
10 it during the Rice cross-examination.

11 THE CLERK: It's a court's exhibit?

12 THE COURT: It's just a court's exhibit. So, the
13 only other court's exhibits we've had have been the jury
14 questions, so --

15 THE CLERK: Right.

16 THE COURT: -- it will be next in order.

17 MR. DiGIACOMO: Madam Court Reporter, can you put
18 this on me? And do we have to turn these TVs on? Because
19 they don't look on. Oh, there you go. They came on on their
20 own. And Mr. Landis, if you could just come over here and
21 confirm I got the right two pictures, we'll be good to go.

22 THE MARSHAL: Will the jury be needing this?

23 MR. DiGIACOMO: G and H. Yes.

24 THE MARSHAL: Okay.

25 MR. DiGIACOMO: G and H, those two.

1 MR. LANDIS: I didn't know -- here, let me look at
2 -- that's G, yeah.

3 MR. DiGIACOMO: That's G, right? And then H will be
4 [inaudible]. That's H?

5 MR. LANDIS: Yeah.

6 MR. DiGIACOMO: Okay.

7 MR. LANDIS: And would that proposed Police Report
8 I've proposed be in that accordion?

9 MR. DiGIACOMO: I can put it in here.

10 MR. LANDIS: No, no, no, it's the hard copy.

11 MR. DiGIACOMO: Oh, in the -- oh, yeah, it's in
12 there.

13 MR. LANDIS: Okay.

14 (Off-record colloquy)

15 THE COURT: Okay. Are we otherwise ready to go?

16 MR. DiGIACOMO: We are, Judge.

17 THE COURT: Okay, let's bring them in.

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

19 (Jury reconvened at 1:49 p.m.)

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

22 THE COURT: Thank you. Please be seated. And the
23 record will reflect we're back within the presence of all 12
24 members of the jury, as well as the three alternates. And of
25 course the three defendants are present with their respective

1 counsel, the Chief Deputy DA's prosecuting the case are
2 present, as are all officers of the court. Detective Jensen
3 is still on the stand, and Detective, you're still under oath.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: And you may proceed with your -- the
6 continuation of your direct.

7 MR. DiGIACOMO: Thank you, Your Honor.

8 DIRECT EXAMINATION (RESUMED)

9 BY MR. DiGIACOMO:

10 Q Detective Jensen, I think we left off somewhere in
11 February, but I want to back up to a few things I didn't ask
12 you about yesterday. So, I'm going to go back to the scene,
13 September 21st, 2014, okay? Either about the time you're
14 arriving or somewhere thereafter, do you learn that the
15 helicopter unit was up in the air looking for potential
16 suspects?

17 A Yes, we did.

18 Q And during the course of your investigation, did you
19 learn that Metro received a 911 call at about 9:55 P.M.
20 concerning information related to that helicopter?

21 A Yes, we did.

22 Q And I'm going to put up for you Exhibit No. 8.
23 Maybe I'm going to put up Exhibit Number 8. Ah, here we go.
24 Now, looking at Exhibit No. 8, can you sort of familiarize
25 yourself with the location that's there? Do you recognize

1 that?

2 A Yes, I do.

3 Q Okay. And the area where someone was reporting
4 information, do you see that generally reflected on this
5 diagram?

6 A I do.

7 Q And where is that area?

8 A That area is over here by the -- this is the Home
9 Depot, and it's over in this area.

10 Q Did you document that information in your -- in a
11 report, as well as get a copy of that 911 call for your case
12 file?

13 A Yes, we did.

14 Q Additionally, a couple of days later, do you learn
15 information about a shotgun that was found on a porch some 4.7
16 miles away or something to that effect?

17 A Yes, we did.

18 Q And did you document that information?

19 A Yes, we did.

20 Q Now, early on in the investigation -- I think you
21 said this yesterday -- you didn't have a lot of information
22 about suspects other than Mr. Mendoza; is that fair?

23 A That's correct.

24 Q Did you consider the 9:55 911 call or that shotgun
25 to be associated with the events that you were investigating?

1 A Well, we didn't know about the shotgun until I
2 believe two days later, but at the time, we thought -- we
3 didn't believe it could be. I mean, there -- it's two hours
4 after the call. They're approximately a half-a-mile away as
5 the crow flies. There's a helicopter up in the air. When --
6 when people see a police helicopter -- and I believe the
7 caller says that the spotlight was like --

8 MS. McNEILL: Objection to what the caller said, and
9 I think this is non-responsive to the question, because I
10 think the question was about the shotgun.

11 THE COURT: No --

12 MR. DiGIACOMO: Actually, I asked him about both
13 incidents.

14 THE COURT: Not both. So, it's sustained as to the
15 hearsay objection.

16 THE WITNESS: Okay.

17 THE COURT: Don't tell us what the caller said,
18 but --

19 THE WITNESS: Okay.

20 THE COURT: -- overruled as to the other objection.
21 You can --

22 THE WITNESS: But anytime the helicopter's up, if
23 there's people in the area, they may want to, you know, not be
24 seen by the police helicopter for whatever reason.

25 BY MR. DiGIACOMO:

1 Q Is this a fairly populated area of Las Vegas?

2 A Yes.

3 Q And in Las Vegas when the helicopter's brought out
4 with its spotlight, is it unusual to receive calls from all
5 kinds of people reporting information that they think may or
6 may not be suspicious?

7 A That's correct.

8 Q I want to sort of jump forward. Yesterday, we
9 talked a little bit about what Mr. Figueroa told you both on
10 the 20th and the 24th. Do you remember those questions?

11 A Yes.

12 Q Okay. And you mentioned something about Mr.
13 Figueroa saying he might have known Joey Larsen; do you
14 remember that testimony?

15 A Yes, I do.

16 Q At what point in time does Mr. Figueroa tell you, I
17 might know who Joey Larsen is?

18 A That was on the 20th when we took him into -- into
19 custody on October 20th.

20 Q At that time, did you have a photograph of him?

21 A No.

22 Q Not with you anyways?

23 A Correct.

24 Q Now let's move forward on the 24th when you talked
25 to Mr. Figueroa. Do you now ask him, hey, do you actually

1 know the guy that lives in 1661 Broadmere?

2 A Yes, I did.

3 Q And what's his response?

4 A He said he's never met the guy before.

5 Q Do you then show him a picture?

6 A Yes, I do.

7 Q And does he confirm that he's never met this guy
8 before?

9 A Yes, he does.

10 Q Yesterday, I was asking you questions -- I want to
11 move forward to September 18th of 2014 -- about Summer
12 Larsen's interview. Do you remember me asking you a few
13 questions about that?

14 A Yes, that's on November 18th.

15 Q Sorry, November 18th, 2014. And when I asked you
16 those questions, I was asking you about a situation in which
17 Ms. Larsen indicates on a picture that Robert looks familiar.
18 Do you remember that?

19 A I do.

20 Q Okay. Have you had a chance to go back and review
21 the transcript and determine who the person in the picture
22 she's saying this guy looks familiar; Robert looks familiar?

23 A Yes.

24 MR. LANDIS: I think that question was asked and
25 answered yesterday.

1 MR. DiGIACOMO: Actually, his response was I don't
2 remember.

3 THE COURT: No, right.

4 MR. LANDIS: Oh.

5 THE COURT: So, it's a different question today.
6 Overruled.

7 THE WITNESS: Yeah. She was -- Summer was looking
8 at a photograph of Jorge Mendoza, and that's who she thought
9 was Robert.

10 BY MR. DiGIACOMO:

11 Q And that's who she thought looked familiar?

12 A Yes, and that's who she thought looked familiar.
13 But she referred to him as Robert, and I said that's not
14 Robert.

15 Q And when she did, did she tell you why it is she
16 thought that person looked familiar?

17 A Yeah, she said she'd run him up on Facebook.

18 Q Yesterday, I was asking you questions about the time
19 you took Mr. Murphy -- or you interviewed Mr. Murphy and he
20 was taken into custody, he had a particular cell phone on him.
21 Do you remember those questions?

22 A Yes, I do.

23 Q And I asked you questions about whether that cell
24 phone was physically on his person when you took those items
25 and then impounded them later on?

1 A That's correct.

2 Q Okay. And I asked you, is that the same number that
3 Summer Larsen or Summer Rice was calling from the jail. Do
4 you remember those questions?

5 A I do.

6 Q If I were to tell you that number was 702-606-5374,
7 does that sound correct to you?

8 A Yes, it does.

9 Q And did you go back and confirm whether or not
10 that's the same phone that Summer Larsen was calling Mr.
11 Murphy from, from the jail?

12 A Yes, it is.

13 Q Yesterday, I briefly talked about the pawn receipt
14 from this case, and I'm going to put up for you one of those,
15 which is 277, which is the actual pawn receipt. And if you
16 give me half-a-second, I will flip it over. Now, when you're
17 a law enforcement officer doing research into pawn activity,
18 is this the document you actually see?

19 A Yes, it -- no, it is not.

20 Q Okay. What do you see?

21 A I see a printout.

22 Q And does it have information that's not contained on
23 maybe the receipts themselves?

24 A Yes, it does.

25 Q Did you -- on that printout -- did you maintain that

1 printout in your case file?

2 A I did.

3 Q And does that printout identify the date that you
4 actually located the pawn activity?

5 A Yes, I did -- it does.

6 Q And do you recall off the top of your head what that
7 date is? If I were to indicate to you that the document
8 showed January 29th of 2015, does that sound about right?

9 A That's about right.

10 Q Prior to January 29th of 2015, you did not have the
11 David Murphy phone records that has been identified as the
12 542-1558 records?

13 A That's correct.

14 Q On that same day, do you issue a court order for
15 those records?

16 A Yes, I do.

17 Q Now, I'm sort of back to where I was yesterday. I
18 talked about Mr. -- your contact with Mr. Laguna, and I want
19 to ask you a couple of questions before I get to that. Back
20 in 2014, when you had contact with Mr. Laguna, does -- did he
21 look somewhat different than he did today?

22 A Yes.

23 Q Okay. And now that you're looking at him, do you
24 know which person is in fact Joey Laguna?

25 A Yes, I do.

1 Q Can you point him out and describe something he's
2 wearing?

3 A He's wearing a -- he's got long dark hair. He's
4 wearing a gray shirt and a gray tie, I believe.

5 Q And he's in the row with the other defendants?

6 A He's in the middle.

7 MR. DiGIACOMO: May the record reflect the
8 identification of Defendant Laguna?

9 THE COURT: It will.

10 BY MR. DiGIACOMO:

11 Q Now, Mr. Mendoza -- did you ever have personal
12 contact with Mr. Mendoza back then?

13 A No.

14 Q But did you receive a photograph of Mr. Mendoza at
15 the time he was taken into custody and booked into the Clark
16 County Detention Center?

17 A Yes.

18 Q And looking at -- well, have you seen that
19 photograph?

20 A Yes.

21 Q Okay. As you sit here today, do you know who Mr.
22 Mendoza is?

23 A Yes, I do.

24 Q Can you point him out, describe something he's
25 wearing?

1 A Jorge Mendoza is wearing the white shirt with the
2 red tie and a dark sports jacket.

3 MR. DiGIACOMO: May the record reflect identification
4 of Mr. Mendoza?

5 THE COURT: It will.

6 BY MR. DiGIACOMO:

7 Q Does Mr. Mendoza look somewhat different in that
8 photograph you received two years ago?

9 A Yes, he does.

10 MR. DiGIACOMO: May I approach, Judge?

11 THE COURT: Yes.

12 BY MR. DiGIACOMO:

13 Q I'm going to show you what's been marked as Grand
14 Jury -- oh, sorry, marked as State's Proposed Exhibits 2 --
15 well, let's just start with 2. Do you recognize the
16 individual that's depicted in that photograph?

17 A Yes, I do.

18 Q Who is that?

19 A That is Jorge Mendoza.

20 Q And is that the way he looked generally in 2014?

21 A Yes, it is.

22 Q I'm going to show you what's been marked as State's
23 Proposed Exhibit No. 5. Do you recognize that individual?

24 A Yes, I do.

25 Q And who is that?

1 A That is Joseph Laguna.

2 Q And is that how -- generally how he looked in 2014?

3 A Yes, it is.

4 Q I didn't ask you this about Mr. Murphy, but looking
5 at State's Proposed Exhibit No. 233, do you recognize that
6 individual?

7 A Yes, I do.

8 Q And is that generally how he looked in 2014?

9 A Yes, it is.

10 Q And finally, I'm going to show you State's Proposed
11 Exhibit 232. Do you recognize that individual?

12 A Yes, I do.

13 Q And is that generally how they looked in 2014?

14 A Yes.

15 MR. DiGIACOMO: I'd move to admit 25, 232, and 233.

16 MR. LANDIS: As to --

17 THE CLERK: 25, 2 what?

18 MR. DiGIACOMO: 25, 232, and 233.

19 MR. LANDIS: As to the picture of Mr. Murphy, unless
20 there's a basis laid that he looks in any way different today
21 than he did two years ago, I don't know what the relevancy is
22 of it.

23 MS. McNEILL: And as to the photo of Mr. Laguna, I
24 don't know what the relevancy of what he looked like in 2014
25 is, because he didn't have contact with law enforcement until

1 2015.

2 THE COURT: All right, approach. I have to see the
3 photos, for one thing.

4 MR. DiGIACOMO: Sure.

5 (Off-record bench conference)

6 MR. WOLFBRANDT: I just was going to get the numbers.

7 THE COURT: Wait, come back.

8 (Off-record bench conference)

9 BY MR. DiGIACOMO:

10 Q I'm going to ask you one clarifying question.
11 State's Proposed Exhibit No. 5, the photograph of -- that
12 you've identified as Mr. Laguna, you didn't actually have
13 contact with Mr. Laguna until 2015; would that be fair?

14 A That's correct.

15 Q And does that accurately reflect what he looked like
16 in 2015?

17 A Yes, it does.

18 Q Okay.

19 MR. DiGIACOMO: So, now I move to re-admit 25, 232,
20 and 233.

21 MR. LANDIS: No objection.

22 MS. McNEILL: No objection.

23 MR. WOLFBRANDT: No objection.

24 THE COURT: They'll be admitted.

25 (State's Exhibits 25, 232, and 233 are admitted)

1 BY MR. DiGIACOMO:

2 Q So, let me get back to the statement that you had
3 with Mr. Laguna. I believe I left off where Mr. Laguna has
4 said that he's home all day with his wife, correct?

5 A That's correct.

6 Q And have you actually been out to the 3668 Lucky
7 Horseshoe address? Have you seen that residence?

8 A Yes, I have.

9 Q And is that residence -- well, have you had other
10 witnesses describe that residence to you before? Without
11 telling us who.

12 A Yes, I have.

13 Q Okay. And was the description consistent with what
14 the witness had told you?

15 A Very consistent, yes.

16 Q I can't remember if I asked you, but during the
17 course of your conversation, did you learn that Mr. Laguna has
18 some problems with his eyesight?

19 A Yes, I did.

20 Q And did he tell you what those problems were?

21 A Yes, he said he couldn't see at night.

22 Q At some --

23 A And I think --

24 Q At some point after he -- during the course of the
25 investigation, do you confront him with the 702-762-1584

1 number?

2 A Yes, I do.

3 Q And his response is?

4 A He says he thinks that's his wife's old number.

5 Q Okay. Do you ask him about who would use that
6 phone?

7 A Yes, I did.

8 Q And what did he tell you?

9 A He told me that him or his wife would use it; they
10 don't lend it to anybody. You know, some people lend phones,
11 they don't, but he said that it would be him or her that would
12 use that phone.

13 Q During the conversation with Mr. Laguna, do you
14 bring up Mr. Figueroa?

15 A Yes, I do.

16 Q Does he acknowledge that he knows him?

17 A Yes, he does.

18 Q Do you ask him questions -- or do you specifically
19 ask him if he has a call with Mr. Figueroa, would it be his
20 wife on the phone?

21 A Yes, I do.

22 Q And what's his response to that?

23 A He says, no, it would be him. He would be calling
24 Robert Figueroa.

25 Q And at some point later in the interview, to clarify

1 the situation, do you ask him sort of a broad question about
2 friends and would his wife be calling his male associate
3 friends type thing?

4 A Yes.

5 Q What do you ask?

6 A As the conversation went on, I asked him if the
7 phone calls to his friends -- the male friends, Robert
8 Figueroa, David Murphy and these, if they would be from him or
9 his wife, and he says, no, they would be from him. I said,
10 she wouldn't be calling them to check on how they're doing, or
11 inviting them to a surprise party, and so it wouldn't be your
12 wife? He said, no, shit no, it would be him.

13 Q Subsequent to your conversation with Mr. Laguna, is
14 he arrested for the crimes that he's here facing trial for
15 now?

16 A Yes, he is.

17 Q I want to ask you about buccal swabs. Do you know
18 what a buccal swab is?

19 A Yes, I do.

20 Q What is it?

21 A It's a way to obtain DNA samples from people. It's
22 like a large toothbrush with -- with much smaller teeth.
23 Usually it's a piece of like felt or a Q-tip, and you have
24 them rub it up and down inside of their mouth, and you box it
25 up, and identify it as theirs, and you send it in.

1 Q When -- well, in the course of this investigation,
2 did you collect buccal swabs from a number of people?

3 A Yes, I did.

4 Q And ultimately, after you sort of gather all the
5 evidence, do you submit five of those or maybe six of those
6 for comparison by the DNA analysts?

7 A Yes, I do.

8 Q Did you collect buccal swabs from David Murphy, Joey
9 Laguna, Jorge Mendoza, as well as Robert Figueroa?

10 A Yes, I did.

11 Q And were they all impounded under the event number,
12 the 140921-3020?

13 A Yes, they were.

14 Q Do you also attend the autopsy?

15 A Yes, I did.

16 Q And at the autopsy, is it standard for the crime
17 scene analyst to impound a buccal swab from the victim, Monty
18 Gibson?

19 A Yes.

20 Q Did that happen in this case?

21 A Yes, it did.

22 Q And would it have been impounded under the same
23 event number?

24 A Yes, it would have been.

25 Q Yesterday, when I was talking about the search

1 warrant to Mr. Laguna -- or sorry, Mr. Figueroa's residence, I
2 showed you a firearm that you later collected from his
3 girlfriend, Chandealea.

4 A Yes.

5 Q Do you remember those questions?

6 A Yes.

7 Q At the time you collected the firearm, did you also
8 collect a holster, as well as some additional magazines for
9 it?

10 A Yes, I did.

11 Q Showing you what's been marked as State's Proposed
12 Exhibit No. 228, do you recognize that?

13 A Yes, I do.

14 Q Is that in substantially the same or similar
15 condition as when you impounded it?

16 A Yes, it is.

17 Q And with the exception, obviously, of those blue
18 markings for further forensic analysis?

19 A Yes.

20 Q And if you were to cut that open, what would you
21 expect to find inside there?

22 A There would be a Ruger magazine for a .40 caliber
23 with 10 cartridges, and a soft Blackhawk holster for a .40
24 caliber Ruger.

25 MR. DiGIACOMO: I'd move to admit 228 and its

1 contents.

2 MR. LANDIS: No objection.

3 MS. McNEILL: No objection.

4 MR. WOLFBRANDT: No objection.

5 THE COURT: It will be admitted.

6 (State's Exhibit 228 is admitted)

7 THE CLERK: Counsel, it's not being opened though,
8 right?

9 MR. DiGIACOMO: That's correct.

10 BY MR. DiGIACOMO:

11 Q Detective, throughout 2000 and -- well, the end of
12 2014 into 2015, did the charges for Summer Larsen change from
13 conspiracy to commit robbery to all the charges that these
14 defendants are facing?

15 A Yes.

16 Q And on September 6th of 2016, did you learn that she
17 had entered a plea to conspiracy to commit robbery, as well as
18 the attempt robbery of the drug supplier's house, the early
19 morning robbery?

20 A Yes, I did.

21 MR. DiGIACOMO: Judge, I think it's been previously
22 admitted outside the presence of the jury. It is State's
23 Exhibit No. 276. I just wanted to make a record in front of
24 the jury that they also have the Guilty Plea Agreement for Ms.
25 Larsen, in addition to the one we admitted yesterday for Mr.

1 Figueroa.

2 THE COURT: That's correct.

3 BY MR. DiGIACOMO:

4 Q Detective, yesterday, there were some transcripts
5 admitted of -- I guess one testimony and four statements that
6 Mr. Figueroa gave; the 10/20 initial one, the 10/23 when he
7 says "I want my lawyer," the 10/24 where he talks to you, and
8 then the 1/25 when he talks to you and Ms. Lexis. You also
9 indicated that you talked to him sometime in mid-November the
10 day after you talked to Summer Larsen and she says, "That
11 ain't Duboy." Do you remember that?

12 A Yes, I do.

13 Q Okay. Was that conversation with Mr. Figueroa
14 recorded?

15 A No, it was not.

16 Q Why not?

17 A Because I was simply going to walk in and show him a
18 picture and say, hey, is this Duboy, and maybe a few other
19 pictures. So, it wasn't anything -- I wasn't going to glean
20 anything new, in my opinion. I wasn't going to do a
21 full-blown interview.

22 Q And it's only once you showed him the picture and he
23 said that it wasn't Duboy that it took longer than you thought
24 you were going to be in the room?

25 A Yes.

1 Q Okay.

2 MR. DiGIACOMO: Judge, I've had marked State's
3 Proposed Exhibit No. 332. Yesterday, State's Exhibits 227
4 through 330 were the four audio recorded statements of Mr.
5 Figueroa that were admitted by transcript. This is the audio
6 associated with that. Each file is labeled by which audio
7 goes with which transcript. I would offer it at this point.

8 MR. LANDIS: No objections.

9 MS. McNEILL: No objection.

10 MR. WOLFBRANDT: No objection.

11 THE COURT: All right. So, that will be the actual
12 audio of all of those is on that one disk, and that will be
13 admitted.

14 (State's Exhibit 332 is admitted)

15 MR. DiGIACOMO: And so the jury is aware, the
16 transcripts are typed up by a human, which means that there
17 theoretically could be either unintelligible's that were
18 intelligible or words that the transcriptionist hears
19 differently than the jury. The audio controls, so whatever
20 they believe the audio says, if it disputes the transcript,
21 they are to rely on these.

22 THE COURT: Correct. That's why we're providing it
23 for you, in case you wanted to compare the actual audiotape
24 with the transcriptions that you've been provided.

25 BY MR. DiGIACOMO:

1 Q Yesterday, during the course of your testimony, I
2 think that we referenced a number of phone numbers that the
3 jury actually had never heard before. And did I forward to
4 you sort of a list of phone numbers that you were able to
5 identify in this particular case?

6 A Yes, you did.

7 Q Did you then take that list and confirm against the
8 information to make sure that the list we gave was accurate to
9 the information that you had?

10 A Yes, I did.

11 Q Detective, I'm going to show you what's been marked
12 as State's Proposed Exhibit No. 333 and ask you is that the
13 list of phone numbers that you were able to gather during the
14 course of the investigation?

15 A Yes.

16 Q And that list may not be exhaustive of every phone
17 number you might have had, but this list as it relates to the
18 name associated with the number is accurate?

19 A That's correct.

20 Q Now, I want to go through some of these numbers to
21 make sure there's a foundation for each of them for you, and
22 some of these are going to be fairly simple. There's the Mr.
23 Mendoza number, which is the 666 --

24 A Correct.

25 Q -- which we've already heard about.

1 A Right.

2 Q Mr. Laguna, which is the 762 we've already heard
3 about, correct?

4 A Yes.

5 Q Mr. Figueroa, which is the 241 number we've already
6 heard about?

7 A That's correct.

8 Q There's the David Murphy number, the 542 number that
9 we heard about?

10 A Yes.

11 Q The David Murphy, 606, the number that's in his
12 possession at the time --

13 A Correct.

14 Q -- he's taken into custody? Summer Larsen, that
15 first phone number -- you had testified yesterday that she
16 provided you a cell phone number that when you got the records
17 back learned was inactive at the time of the crime?

18 A That's correct.

19 Q Is that the number that she had provided?

20 A Yes.

21 Q The second number -- when she was taken into
22 custody, she had a Pinger phone on her?

23 A Yes, she did.

24 Q And thus, were you able to confirm the number for
25 that particular Pinger phone?

1 A Yes.

2 Q And that 702-551 number, 2617, I think you testified
3 yesterday that is the number that's associated with that
4 Pinger phone?

5 A Yes.

6 Q Amanda Mendoza, the jury's already heard about the
7 750 number. The Michelle Estavillo, they heard yesterday the
8 286 number. Ashley Hall, they learned yesterday the 832
9 number. Tod Williams, you told us his department-issued cell
10 yesterday.

11 A Correct.

12 Q Now, Jeff Bonne -- was Jeff Bonne interviewed during
13 the course of the investigation?

14 A Yes, he was.

15 Q And during the course of the investigation, he's the
16 roommate at the residence of Figueroa where the search warrant
17 occurs at; is that correct?

18 A That's correct.

19 Q Him and Cynthia Cruz?

20 A Yes.

21 Q And during the course of your -- of the
22 investigation and contact with him, were you able to identify
23 phone numbers for him and Ms. Cruz?

24 A Yes.

25 Q And is Mr. Bonne's number the 702-630-3890?

1 A Yes, it is.

2 Q And the Cynthia Cruz, is that the 702-337-6324
3 number?

4 A Yes, it is.

5 Q Okay. Now, yesterday, we talked about you received
6 two phone numbers from Gabriel Sotelo for two individuals,
7 correct?

8 A Yes.

9 Q During that time, did you also get his phone number
10 from him?

11 A Yes, we did.

12 Q Okay. And is his phone number the 702-337-0892?

13 A Yes, it is.

14 Q We also talked about Ms. Bird providing you a number
15 for Mr. Figueroa. Did you also get her phone number so that
16 you could cross-reference it against the records?

17 A Yes, I did.

18 Q And that number was the 702-272-4809?

19 A Yes, sir.

20 Q Okay. Now, as to the Robert Figueroa, the
21 702-504-1148 number, I believe you testified yesterday that
22 when you did a court order, you got no return back on it?

23 A That's correct.

24 Q Okay. And then there's the one that is identified
25 as the 702-542-8981 number. That number was allegedly tied to

1 Manny Barientos based upon the information you got from Mr.
2 Sotelo?

3 A Yes.

4 Q At this point, have you done any research on law
5 enforcement records to confirm that Mr. Barientos has reported
6 that particular number himself previously?

7 A Yeah. This morning when I got into the office, I
8 did some -- or we did some research through the police
9 records, and we found that Manuel Barientos (phonetic) has
10 that phone number on a North Las Vegas Crime Report in October
11 10th of 2014.

12 MR. LANDIS: I object. It hasn't been provided or
13 informed that that testimony was going to come in.

14 MS. McNEILL: I would second the objection. It's the
15 first time we've heard this information.

16 MR. WOLFBRANDT: I would join in that same objection.

17 THE COURT: Approach.

18 (Off-record bench conference)

19 THE COURT: I'm sorry, we weren't on the record. The
20 objection's withdrawn?

21 MR. LANDIS: Yes, ma'am.

22 MS. McNEILL: Yes, Your Honor.

23 THE COURT: All right, thank you.

24 THE CLERK: So that was 333?

25 MR. DiGIACOMO: No, that was something else. I

1 haven't actually offered --

2 THE CLERK: Oh, okay. You were up there so long --

3 MR. DiGIACOMO: -- 333 yet.

4 BY MR. DiGIACOMO:

5 Q Now that I've asked all those predicate questions,
6 this appears to be an accurate list of the phone numbers that
7 -- or some of the phone numbers that you gathered during the
8 course of your investigation?

9 A Yes, it is.

10 MR. DiGIACOMO: Move to admit 333.

11 MR. LANDIS: No objection.

12 MS. McNEILL: No objection.

13 MR. WOLFBRANDT: No objection.

14 THE COURT: It will be admitted.

15 (State's Exhibit 333 is admitted)

16 BY MR. DiGIACOMO:

17 Q Detective, I'm not going to have you go and read
18 through all those numbers, but I guess just for the record, on
19 top, it says person associated with the phone, and then
20 there's a list of names, correct?

21 A That's correct.

22 Q And then, this may be somewhat self-explanatory, but
23 the number on the right hand side on the same line is that
24 name -- is a number associated with that person?

25 A That's correct.

1 Q Detective, I want to talk to you about the court
2 orders that you issued in this case. Now, prior to maybe
3 September 16th of this year, I mean, prior to very recently,
4 were you aware that the court order for Mr. -- or the 542-1558
5 number did not contain text messages?

6 A Not until recently, no.

7 Q Similarly, recently, did you -- sorry, let me
8 rephrase. Did the court order request text messages, you just
9 didn't receive them as it related to the 1558 number; is that
10 correct?

11 A I believe so.

12 Q Okay. Similarly, did you learn that there doesn't
13 appear to be any text messages associated with the 241-1051
14 number, the Robert Figueroa phone?

15 A That's correct.

16 Q And when you went back to check that court order,
17 did the language of that court order leave open to
18 interpretation whether that was actually being requested?

19 A Yes.

20 Q At the time you entered that order, did you think
21 you were getting text messages?

22 A I did.

23 Q Okay. And it's only subsequent you learned that
24 AT&T didn't provide them?

25 A That's correct.

1 Q So, as we sit here today, you don't -- you've never
2 gotten any evidence of Mr. Figueroa's text records?

3 A That's correct.

4 Q Likewise, some of the other orders in this case,
5 some of them might have had the Murphy or the 552 -- 542-1558
6 language, and some of them might have had the Figueroa
7 language, correct?

8 A That's correct.

9 Q And a number of the companies did provide text
10 information related to the same language that you used for Mr.
11 Figueroa?

12 A Yes, they did.

13 Q And when they provided -- when AT&T provided those
14 records, did they give you anything that says, hey, by the
15 way, there's no text messages in here?

16 A They did not.

17 Q So, until somebody goes through and looks at every
18 last line, there's no way to know that there was or wasn't
19 text messages?

20 A That's correct.

21 Q We are now almost -- well, we're more now than two
22 years. We started this before, but now we're more than two
23 years since the crime, correct?

24 A That's correct.

25 Q On the night of the crime or shortly thereafter, you

1 receive information that Summer Larsen may somehow be involved
2 in this crime; is that correct?

3 A That's correct.

4 Q Between then and now, other than Ashley Hall, has
5 any other additional information been gathered that indicates
6 that she directly ordered somebody to go to that residence to
7 commit a robbery at Broadmere?

8 A No, there's no other evidence of that.

9 MR. DiGIACOMO: Thank you. I have nothing further.
10 I'd pass the witness, Judge.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. LANDIS:

14 Q During the investigation, it was discovered that
15 Joseph Larsen had at least one handgun registered to him?

16 A I believe so. I don't know if they were registered,
17 but he had two handguns at the scene.

18 Q Right. Let me just focus on what may have been
19 registered to him. Do you recall any information being dug up
20 that he had a registered firearm? And let me be more
21 specific; a 9 millimeter handgun semi-automatic?

22 A I believe he had a 9 millimeter registered. It was
23 not at the house.

24 Q Never was found?

25 A Never was found. No, sir.

1 Q And the two guns that were impounded from 1661
2 Broadmere or right in front of the house in a trunk were not
3 registered to Joseph Larsen to the best of your memory?

4 A To the best of my memory, no.

5 Q Did you ever ask Joseph Larsen where that gun was?

6 A No, I did not.

7 Q Today, we have no idea where that gun is?

8 A That's correct.

9 Q Talking to you a little bit about the interview with
10 Mr. Figueroa on October 24th, that's commonly referred to as a
11 proffer, yes?

12 A My -- my understanding is a proffer would have to
13 require a deputy DA present.

14 Q All right, let me phrase it this way. It's -- it's
15 not uncommon for you to sit down with a suspect, with or
16 without the district attorney, and hear what they have to say
17 before you've reached into any negotiations?

18 A It's not as common as it appears, but it happens.

19 Q You've done it more than a dozen times in your
20 career?

21 A Oh, no.

22 Q No?

23 A No.

24 Q All right. The question though, sometimes the DA's
25 there as we've seen; sometimes they're not as with 10/24, Mr.

1 Figueroa, correct?

2 A That's correct.

3 Q And as we saw on that transcript, as well as on the
4 day before, 10/23 transcript, since the DA wasn't there, you
5 made clear that you don't have the power to negotiate, make
6 promises about what his sentence will be, things like that,
7 correct?

8 A That's correct.

9 Q Because ultimately, the district attorney has the
10 responsibility to do that?

11 A That's correct.

12 Q But the idea with these -- these meetings where an
13 individual's telling you what they can say, if nothing's
14 reached after that 10/24 discussion with Mr. Figueroa, you
15 can't use what he said against him?

16 A That's correct.

17 Q So, in that sense, it's privileged unless you guys
18 reach a negotiation?

19 A I don't -- you know, I don't know if we would be
20 bound by the same things with a proffer, because we didn't
21 have any of the paperwork signed or anything like that. His
22 attorney was there. I re-Mirandized him. So, I -- I think I
23 -- looking back on it now, I think I would be able to use his
24 statement against him.

25 Q Well, let me ask you this. If an agreement was made

1 such as you can't use it against him, would that agreement
2 have been made between his attorney and the district attorney?

3 A Yes.

4 Q And can you say conclusively if an agreement like
5 that was reached or not before 10/24?

6 A I can assume very much that it wasn't. I think I
7 would have been made aware of it.

8 Q In your experience, do defense attorneys let their
9 clients confess to the police when there's not an agreement
10 that the communication's privileged; if they're not getting a
11 benefit?

12 A I don't know. I maybe have done this a couple of
13 times without a DA there and the -- the defendant's attorney.
14 I couldn't get into that. I think that's all up to the DA's
15 office.

16 Q As we sit here today, are you comfortable
17 conclusively saying there was no proffer agreement of any sort
18 before that interview started 10/24?

19 A In my opinion, yes.

20 Q Are you sure? And not your opinion; are you sure?

21 A I don't know what -- what his attorney and the DA's
22 office had talked about.

23 Q We'll leave it at to the best of your knowledge.

24 A Okay.

25 Q That fair?

1 A Sure.

2 Q When you get -- turning now to September 21st, 2014,
3 you get to the scene, and like many homicide scenes, it's a
4 dynamic scene, evidence is being discovered, facts are
5 becoming known, correct?

6 A Yes.

7 Q Some of that you determine independent by yourself;
8 some of it's relayed to you by other officers, right?

9 A That's correct.

10 Q Common stuff?

11 A Right.

12 Q This case, it was pretty clear early on in that
13 investigation that a crime was committed?

14 A Yes.

15 Q Next step is trying to figure out who you're looking
16 for, right?

17 A That's correct.

18 Q Who the suspects are? And before you get to
19 identifying suspects, it's always nice to know how many
20 suspects you're looking for, correct?

21 A Yes.

22 Q If you can. Sometimes you can't, fair?

23 A That's correct.

24 Q One suspect was pretty easy to identify, and locate,
25 and apprehend at -- after the crime?

1 A That's correct.

2 Q And that was obviously Mr. Mendoza, correct?

3 A Yes, yes, sir.

4 Q At that point, it's fair to say that you concluded
5 there was one -- at least one suspect, because you had him in
6 custody?

7 A At least -- well, we had one in custody and -- and
8 firmly believed that there was at least two more.

9 Q And that's what I want to talk to you about. You
10 did some witness interviews, both of people who are in 1661
11 Broadmere and neighbors?

12 A That's correct.

13 Q Looked at whatever forensic evidence was observable
14 around the scene?

15 A Yes.

16 Q You learned from interviews that at least two people
17 entered the house, and that's what people remembered?

18 A That's what they remembered, yes.

19 Q Two people entering the house. Nobody could say
20 with any certainty three people entered the house?

21 A That's correct.

22 Q Beyond what people remembered, what they saw, what
23 they reported, there was also some forensic evidence that gave
24 you guys some suspicions as to how many suspects there might
25 be, right?

1 A Yes.

2 Q Specifically, the blood trail or trails?

3 A Yes.

4 Q And initially, at that point in time when Mendoza's
5 in custody, you've talked to the neighborhood witnesses, if I
6 can put it that way, what about that blood trail did you guys
7 speculate?

8 A Which -- which blood trail? The one that went past
9 Mendoza?

10 Q Well, I'll be more specific. There was two blood
11 trails leaving from 1661, right?

12 A Yes.

13 Q One of the two you guys named as the one Mendoza
14 left up to that car he was in?

15 A That's correct.

16 Q The other blood trail I'm talking about.

17 A Right. It went further down the street. We
18 speculated that at least -- at least another suspect was
19 injured, either shot or bleeding somehow.

20 Q And you knew he got to a certain point because his
21 blood trail stopped, right?

22 A That's correct.

23 Q And that was on Shifting Winds, pretty close to the
24 end of the subdivision, if I can put it that way?

25 A Yes.

1 Q At that point in time, were you guys of an opinion
2 as to whether or not that person was picked up in a car at the
3 end of that blood trail?

4 A That's what -- that's what it appeared to us to be,
5 because the blood trail stopped, and we couldn't -- we
6 couldn't find it anywhere else around the street. You know,
7 keep in mind this is -- it's nighttime, early morning. We're
8 using flashlights, but we were pretty successful in finding
9 the blood trail, and it would stop for a while and pick up
10 again, and -- but we couldn't find anymore after that spot.

11 Q And the abrupt end of the second blood trail kind of
12 in the middle of a street, evidence that there was potentially
13 a third person?

14 A Yes.

15 Q Being a getaway driver or a driver of some sort?

16 A Yes.

17 Q While you're still on the scene of 1661 that night,
18 what other evidence was there to suggest a third suspect?

19 A I don't recall, you know, other than the car picking
20 them up, or possibly picking them up.

21 Q Did any of the neighbors report seeing vehicles, to
22 the best of your memory, after the shooting?

23 A Yeah, I believe one of them saw a vehicle. I didn't
24 interview that person.

25 Q Do you recall if the individual was Gene Walker?

1 Does that sound familiar?

2 A Sounds familiar, yes.

3 Q And Gene Walker's house was a few houses south, same
4 side of the street as 1661 Broadmere?

5 A Yes.

6 Q Kind of would go out -- his driveway would go out
7 into Long Cattle there, yes?

8 A Yes.

9 MR. LANDIS: Could you put 6 up by chance, State?

10 BY MR. LANDIS:

11 Q If you recall this, Gene Walker remembered seeing a
12 car coming towards his house on Long Cattle, right?

13 A Yes.

14 Q And the lights were even shining on him, his memory,
15 right?

16 A Okay.

17 Q And he also remembered that car stopping at the
18 person with the rifle on the street?

19 A That's correct.

20 Q Not picking him up and continuing on?

21 A That's correct.

22 Q Did any other neighbor witnesses or any witnesses
23 who were around this scene at the time of the events identify
24 any other cars?

25 A No, they did not.

1 Q That blood trail, I know it was dark, and I know you
2 guys probably didn't see every drop of blood as you were
3 looking at it with your flashlights, but eventually during
4 this process, the crime scene analystsS professionally
5 diagrams the thing, right?

6 A That's correct.

7 Q And you can look at that and be pretty comfortable
8 about where there was blood?

9 A Yes.

10 Q There's been some testimony during this trial, and
11 I'm not saying it's been intentionally inaccurate, but that
12 the blood trail was continual from 1661 Broadmere, all the way
13 out of the subdivision to where it ended at Shifting Winds?

14 A Well, there was some -- there was some voids where
15 the -- maybe the bleeding had stopped or the person was -- you
16 know, sometimes they'll take a shirt off and hold over the
17 blood so it doesn't drip, you know, to put pressure on their
18 wound.

19 Q Right.

20 A But yeah, there was -- there was some voids. I
21 believe it was down here off of Walrus that we were able to
22 pick it back up.

23 Q You can't say for sure if those voids are caused by
24 a ceasing of the bleeding, per se?

25 A That's correct.

1 Q For instance, an individual might be jumping walls?

2 A Yes. There's no walls on the street, but --

3 Q The blood trail got pretty close to the side of the
4 houses before it got to Shifting Winds; did it not?

5 A I believe it did.

6 Q And it stops at one point before it gets to Shifting
7 Winds pretty close to those houses; do you recall?

8 A Yes.

9 Q And there was actually footprints at one point in
10 the blood trail, right?

11 A Yes.

12 Q Remember that?

13 A Yes, I do.

14 Q Do you recall where on that map, and feel free to
15 mark it if you do, those -- those footprints in the blood
16 trail were?

17 A You know, I'm not for -- I want to say they were
18 either on this -- this corner, or on the -- right near the
19 corner of Shifting Winds and Ranch Hand. That's -- that's to
20 the best of my recollection.

21 Q I don't dispute it. Does that indicate anything to
22 you in your experience?

23 A Yeah, it indicated somebody stepped in the blood.

24 Q Would it be less likely or more likely that the
25 person who stepped in the blood was the bleeder?

1 A Could be.

2 Q That would require them to stop and take some steps
3 or to backtrack, right?

4 A Yes.

5 Q And as part of this investigation, after those
6 footprints were -- or noticed, they were preserved for later
7 comparison as best they could be?

8 A Yes.

9 Q Which means getting the treads preserved as best you
10 can?

11 A However the crime scene analyst decided to do it.

12 Q Fair way to put it. To date, do you have any
13 answers as to what caused that?

14 A I do not.

15 Q You were strongly confident that that blood trail
16 was caused by Robert Figueroa by the time you learned of
17 Robert Figueroa, right?

18 A That's correct.

19 Q And before you interviewed him on the 20th, 23rd,
20 24th?

21 A Yes.

22 Q And that's one of the first things you told him?

23 A That's correct.

24 Q And during the interview on 10/24, you ask him about
25 generally his blood trail, where he went, the path. Do you

1 remember that?

2 A Yes, I do.

3 Q And I think even at one point, you guys tried to get
4 a map and have him draw it?

5 A Yes.

6 Q Did his memory and his drawing jive with the blood
7 trail as it was identified by the CSA?

8 A I believe it did.

9 Q Did he identify where he hid?

10 A Yes, he did.

11 Q Did you go out there?

12 A Yes, we did.

13 Q When was that?

14 A Oh, that was sometime after our interview with him.

15 Q Did he shed any light as to why either the blood
16 trail stopped at certain points or why there were footprints
17 in it?

18 A No, he did not.

19 Q After talking to him on 10/24, as far as the
20 investigation was concerned, it no longer believed that he was
21 picked up by a car at the end of Shifting Winds?

22 A That's correct.

23 Q Prior to that, prior to 10/24, so from 9/21/2014 to
24 10/24/2014, was any other evidence developed that led you to
25 believe there was more suspects than two?

1 A No other evidence, no.

2 Q But --

3 A Oh, I'm sorry. In the car that came by to -- with
4 the person down that the neighbors saw.

5 Q Nothing else that we haven't talked about, to be
6 fair?

7 A That's correct.

8 Q Nevertheless though, after -- going back to
9 September 21st now, after Mendoza's identified as a suspect,
10 the next person you start suspecting as being involved with
11 this is Summer Larsen?

12 A Yes.

13 Q And you make that conclusion within 24 hours of your
14 start?

15 A Yes.

16 Q And partially, that's based on what Steven Larsen
17 said to you?

18 A Yes, it is.

19 Q About what you heard about Ashley Hall car
20 communications, right?

21 A Yes.

22 Q And you guys quickly focused on Summer Larsen?

23 A Yes, we did.

24 Q Not exclusively, but --

25 A Correct.

1 Q -- as somebody who you needed to talk to and wanted
2 to investigate?

3 A That's correct.

4 Q You believed Ashley Hall was a key part of that
5 investigative lead?

6 A I believed Ashley Hall was a witness that was
7 providing us some information. I wouldn't say a key.

8 Q How -- what was the first time you guys talked to
9 her?

10 A I believe they talked to her that night of the 21st.

11 Q Pretty quick, right?

12 A Yeah.

13 Q And she confirmed some information about a
14 conversation with Summer?

15 A Yes.

16 Q Raised your suspicions about Summer?

17 A Yes.

18 Q You wanted to talk to Summer?

19 A Yes.

20 Q And I can say that, as of September 22nd, you guys
21 wanted to talk to Summer?

22 A That's correct.

23 Q You even put out a law enforcement bulletin saying,
24 hey, if you get in contact with her, give me a call?

25 A Yes, we did.

1 Q One of those 24/7 things we heard about yesterday,
2 right?

3 A Yes, sir.

4 Q That was active September 22nd, to the best of your
5 memory?

6 A Yes.

7 Q Do you remember when it was, the first time you were
8 able to talk to her or find her?

9 A Yeah, we found her on November 18th, I believe.

10 Q You had some difficulty tracking her down then?

11 A Yes, we did.

12 Q And you later discovered she fled town for at least
13 a period of that time?

14 A Yes.

15 Q And she fled to Utah?

16 A Yes.

17 Q And you determined that she knew you guys were
18 looking for her?

19 A That was our belief, yes.

20 Q And while we're on that subject, let me -- this
21 subdivision, as we've heard about throughout this trial, kind
22 of became a reoccurring place of information for you during --
23 throughout this investigation, right? The childhood home of
24 Summer?

25 A Oh, yes, the --

1 Q The trailer park?

2 A Yes.

3 Q More than one witness was interviewed there?

4 A More than one person was talked to there, yes.

5 Q Fair enough. And kind of the fact that people grew
6 up there kind of became relevant, right?

7 A Yes.

8 Q And based on the people you talked to there, kind of
9 a gossipy place, right?

10 A Yes.

11 Q The people talk; the people know each other?

12 A Correct.

13 Q And it seems like at least a lot of them had known
14 each other for a good portion of their lives?

15 A Some of the people I talked to, yes.

16 Q During those initial stages, after you start
17 suspecting Summer, after you do some interviews of the likes
18 of Ashley and others, you're concerned that Summer's boyfriend
19 was involved in this?

20 A We thought that could be possible, yes.

21 Q So, the next logical step, I'm guessing, was to
22 identify and hopefully locate that boyfriend?

23 A That's correct.

24 Q Sometimes that would be easy, but in this case, it
25 wasn't?

1 A That's correct.

2 Q Because as I sit here today, can you tell me who her
3 boyfriend was in September 2014?

4 A No, there was several people.

5 Q Right. You found out through talking to people that
6 a lot of potential men could wear that hat during this time
7 frame?

8 A That's correct.

9 Q And as you're learning these names, you start
10 looking into these different individuals, correct?

11 A Yes, I do.

12 Q And during that initial phase when you're trying to
13 locate Summer Larsen's boyfriend who may be involved in this
14 -- and I'm talking now September into the first weeks of
15 October.

16 A Okay.

17 Q Who do you identify, do you recall, as potential
18 boyfriend suspects?

19 A We identified a Snoop, who was later identified as
20 Isaac Rodriguez, I believe, and a Twisted (phonetic), who was
21 later identified as Robert Meads (phonetic).

22 Q As to Isaac Rodriguez, a.k.a, Snoop, multiple
23 witnesses told you that they were spending time together for a
24 while, correct?

25 A Yes.

1 Q You suspected at least that he may have shot Summer?

2 A Yes, that's what we suspected.

3 Q You investigated him to the point that you took a
4 buccal swab and you talked to him a little bit when he was
5 located?

6 A Yes, I did.

7 Q How about the other individual you mentioned, Mr.
8 Meads?

9 A Yes, we interviewed him as well.

10 Q And did you also confirm that he was spending time
11 with Summer during this period of time?

12 A Yes, we did.

13 Q Can you say as we sit here today anybody else that
14 you would have notified -- or identified in those first three
15 weeks?

16 A No.

17 Q David Murphy's name as a boyfriend of Summer's you
18 should look into did not come up during those three weeks?

19 A We found that David Murphy's name as her boyfriend
20 came up when we interviewed Robert Figueroa on the 24th.

21 Q So, put some time on it. Before 10/24, you never
22 suspected David Murphy as her boyfriend?

23 A That's correct.

24 Q His name was never mentioned in that capacity to you
25 by any of the witnesses you interviewed?

1 A That's correct.

2 Q Back to September 21st, Steven Larsen's talk with
3 you guys was probably the first fuse to light the suspicions
4 into Summer?

5 A Yes.

6 Q He said very bluntly, I think she might have
7 something to do with this?

8 A Yes, he did.

9 Q And he talked about some previous burglaries to that
10 residence?

11 A Yes, he did.

12 Q And he told you guys he believed Summer did these
13 previous burglaries?

14 A Yes.

15 Q And at least one of those burglaries you eventually
16 looked into, and it was reported?

17 A That's correct.

18 Q And to your knowledge, nobody was arrested for the
19 reported burglary to 1661 Broadmere that predated September
20 21st?

21 A That's correct.

22 Q Nobody was identified as suspects as of the time you
23 looked at the Incident Report?

24 A That's correct.

25 Q Summer even eventually admits to doing that,

1 correct?

2 A I don't remember her admitting to -- yeah, I think
3 she made some admissions that she was involved in that.

4 Q If I can start talking to you a little bit about
5 Officer's Reports, Arrest Reports, some questions about that
6 report that the State showed you yesterday. There's something
7 known as -- officially known as an Officer's Report?

8 A That's correct.

9 Q And there's something officially known as a Arrest
10 Report?

11 A Yes.

12 Q And there's officially something known as a
13 Declaration of Warrant/Summons?

14 A Yes.

15 Q There's also something called an Incident Report?

16 A Yes.

17 Q These are all Las Vegas Metropolitan Police
18 Department titles put on documents that have to be done at
19 certain times, big policy book?

20 A Yes.

21 Q Simplify that a little bit, of course. Let's start
22 with what's I hope one of the easier ones, an Arrest Report.
23 When does an officer or a detective from Metro have to do an
24 Arrest Report?

25 A We do an Arrest Report when we're going to arrest

1 somebody for probable cause charges, and you would do that
2 Arrest Report that day that you're going to -- to arrest them.

3 Q Are those cases where there's not an active warrant
4 at the time?

5 A That's correct.

6 Q And you -- just make sure it's clear to me, you
7 write that report before you go out into the field and arrest
8 them?

9 A You could.

10 Q Sometimes you might develop probable cause for an
11 arrest out in the field, right?

12 A That's correct.

13 Q And effectuate an arrest because of that?

14 A Yes.

15 Q And what would you do if that was the case?

16 A You would take them to jail, and you would fill out
17 your -- your temporary custody record, your Declaration of
18 Arrest, and you would -- at the jail, you would dictate an
19 Arrest Report.

20 Q When would you do a Declaration of Warrant?

21 A When you have probable cause to make an arrest, or
22 you believe you have probable cause to make an arrest, and you
23 would type out your probable cause and you would take that
24 with other documents and give it to the deputy -- or to the
25 attorney's office -- the district attorney's office, and they

1 would either approve or deny that -- that request. If they
2 approve it, then it would go to a judge, who would either sign
3 it or not approve it.

4 Q Does the officer or detective have some discretion
5 as to which one of those two routes they'd choose between the
6 Declaration of Warrant going to the DA's or the Arrest Report
7 and effectuating the arrest themselves?

8 A Yes.

9 Q And then an Officer's Report, that's different than
10 both of those things?

11 A That's correct.

12 Q What does an Officer's Report do that those don't?

13 A An Officer's Report is documenting the investigation
14 or the case.

15 MR. LANDIS: Court's brief indulgence. Can I
16 approach the witness?

17 THE COURT: You may.

18 BY MR. LANDIS:

19 Q Showing you Defense Proposed A, you were shown that
20 yesterday?

21 A Yes, I was.

22 Q You talked a little bit yesterday about the dates
23 and the information in it, things of that sort, right?

24 A Yes, I did.

25 Q As we sit here today, can you tell me when that

1 thing was finalized and submitted?

2 A I can't tell you the exact date, no.

3 Q And just to make sure some of the things you said
4 yesterday are clear to me, there's a point in time, and it
5 happened in this case, when an Officer's Report's getting
6 amended, added to, and it's in the common drive at the Metro
7 file system?

8 A Right.

9 Q You can access it, put stuff in it, right?

10 A Yes.

11 Q Detective Williams?

12 A Yes, we have access to it. Yes.

13 Q And then at a certain point in time, it gets sent to
14 a supervisor or sergeant?

15 A Yeah, they're in our office. We just take it to
16 them.

17 Q And when you do that, that's you believing it's
18 final?

19 A Yes.

20 Q They review it?

21 A Yes.

22 Q For what?

23 A The sergeants will look over it. They'll look for
24 spelling or, you know, punctuation errors. If the sergeant's
25 familiar with the case, they'll look at -- they'll read

1 through the report, and they may remember something about the
2 investigation that is not in there. And they'll ask -- you
3 know, they can ask you about it and say, you know, did you
4 want to put this incident, you know, or this piece of
5 information in there, and sometimes you do. Sometimes it's
6 irrelevant and you don't -- it doesn't go in the report.

7 MR. LANDIS: Can we approach on something unrelated
8 to this question?

9 THE COURT: Yes.

10 (Off-record bench conference)

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

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

21 (Jury recessed at 2:55 p.m.)

22 THE COURT: All right, the record will reflect the
23 jury's departed the courtroom. We're in recess. Restroom.

24 (Court recessed at 2:56 P.M. until 3:14 P.M.)

25 (Within the presence of the jurors)

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

3 THE COURT: Thank you. Please be seated. And the
4 record will reflect we're back within the presence of all 12
5 members of the jury, as well as the three alternates. The
6 three defendants are present with their respective counsel,
7 the Chief Deputy District Attorneys are present, as are all
8 officers of the court. And Mr. Landis, you may resume your
9 cross.

10 MR. LANDIS: Thank you, Your Honor.

11 BY MR. LANDIS:

12 Q Can I summarize Officer's Reports as they can be
13 used to supplement the information that's in previous records
14 when necessary?

15 A Yes.

16 Q Is an Officer's Report always going to be found when
17 there's a felony arrest?

18 A No.

19 Q Even in the case of murders?

20 A No, on -- on my squad, we all do Officer's Reports
21 on every homicide investigation that we work.

22 Q But it's not required that one be done when a murder
23 suspect is arrested?

24 A That's correct.

25 Q What I want to figure out regarding Proposed A

1 that's in front of you there, that Officer's Report, we know
2 based on the dates of events that are in it, it was finalized
3 before October 24th?

4 A That's correct.

5 Q I'm sorry, finalized after October 24th?

6 A After 24th.

7 Q That's what I meant. And maybe I heard you guys
8 wrong. I at least heard you guys implying yesterday on direct
9 testimony that you're comfortable saying it was finalized
10 sometime before November 6th?

11 A It'd depend on when I interviewed Ms. Pruse. That's
12 my last notation in the report.

13 Q That's the best indication you have as to when it
14 was finalized was after that date, the interview of Ms. Pruse?

15 A Yes.

16 Q Which we know happened after the 10/24 interview of
17 Mr. Figueroa?

18 A Yes.

19 Q But saying it happened a week, or two weeks, or a
20 month after the -- the Ms. Pruse interview, we can't say that?

21 A I can't guess.

22 Q At the point that you -- whenever this point is that
23 you -- let me stop. In a perfect world, and I'm not trying to
24 beat you up, we'd have an accurate date on that report?

25 A You'd have an accurate start date. We -- there's no

1 end date on them.

2 Q You never put a finalized date on it?

3 A No.

4 Q So, that's what that date is on the front is a start
5 date?

6 A That's what I do. I don't know what other
7 detectives do.

8 Q And when I say the date on the front, I'm talking
9 about the handwritten date, which was September 22nd?

10 A That's correct.

11 Q When would you have put that handwritten date on
12 that report? When it was finalized? When you first opened
13 it?

14 A I'm sure that when I printed it out and the sergeant
15 signed it, I noticed I didn't have the date on there, and
16 that's when I would have handwritten it on there.

17 MR. LANDIS: If I can approach the witness?

18 THE COURT: Yes.

19 BY MR. LANDIS:

20 Q This is not marked, but if you could just look at
21 it. Does that appear to be a very similar Officer's Report as
22 the one that we were just talking about?

23 A Yes.

24 Q Same number of pages, 28?

25 A I believe so.

1 Q Your work product for the most part, right?

2 A I want to point out two differences, if I could, the
3 first one being the one that has your handwritten date,
4 Defense Proposed A, the first one we were talking about today,
5 that identifies Mendez-Martinez as suspect number 4, correct?

6 A Yes.

7 Q And it has a picture?

8 A Actually, number -- number 5.

9 Q I apologize. And it has a picture?

10 A Yes.

11 Q Now turning to the other report I approached with a
12 moment ago, one of the differences is there's no picture --

13 A That's correct.

14 Q -- for Mendez-Martinez, but it does list him as
15 suspect 5?

16 A Right.

17 Q And then the -- another difference with that report
18 is it doesn't have the date written on the front?

19 A And it's not signed.

20 Q So, it doesn't have your 9/22?

21 A Right.

22 Q Does that mean that -- the one without the date
23 would have came off the printer in your hand?

24 A This -- this was probably printed out. It wasn't
25 signed, it wasn't complete, and obviously not complete because

1 I did have the picture of the wrong Duboy in there.

2 Q And when you would have printed it, it would have
3 been for what purpose?

4 A To review it.

5 Q Okay. Not to send to the sergeant, not to
6 finalize --

7 A No.

8 Q -- not to distribute to anybody outside Metro?

9 A That's correct.

10 Q And your testimony yesterday was once that Officer's
11 Report is given to the sergeant, it's unchangeable? And let
12 me rephrase. After the sergeant approves it and puts it in
13 the system, it's unchangeable?

14 A I wouldn't change it, no.

15 Q Okay. That's your policy, not Metro's policy?

16 A Correct.

17 Q At that point that it's in the -- what do you call
18 that system where it's finalized after sergeant approval? The
19 -- just on the books, I think is the phrase you used
20 yesterday?

21 A Yeah, we put it in the book. Yes.

22 Q Could in this case Detective Williams go in and
23 change it after it's in the book?

24 A Detective Williams would know it was -- it was
25 already signed. He wouldn't change the report either.

1 Q Is it a rule that it should not be changed after
2 it's signed?

3 A Yes. I mean, it's -- for me, it is.

4 Q And for that report, you conclude -- beyond that
5 Mendez-Martinez was involved as a suspect, you also conclude
6 that an African-American individual might be involved?

7 A Yes.

8 Q Explain to me why you made that conclusion at that
9 point in time.

10 A Because we had information that Summer had picked up
11 a black male at a -- it's a 7-Eleven type store called
12 Munchies. And she was with Ashley Hall, Ashley Hall was
13 driving. And Summer was telling this -- this -- who Ashley
14 Hall identified as Evil, telling him about her -- her husband
15 and how easy it would be to break into his house and take his
16 marijuana or whatever property he had.

17 And so we assumed that, at this time, keeping in mind
18 that we still believe that Summer Larsen was a nexus in this
19 home invasion. So we believed that, you know, she would be
20 involved, possibly this black male would be involved, and
21 other people that we have.

22 Q Nothing's in those reports about the Sotelo
23 interview, correct?

24 A That's correct.

25 Q Do you recall when that interview was off the top of

1 your head?

2 A It's dated on his transcription.

3 Q Sometime in October before the 24th Figueroa
4 interview, obviously?

5 A Yes. Well, before the 20th when we took him into
6 custody.

7 Q Very well. At that point in time, before you guys
8 are called to talk to Sotelo, still no new information about
9 -- about suspects, right?

10 A Pardon me?

11 Q Still no new information from the time of the crime
12 about the number of suspects?

13 A Correct.

14 Q You're still just basing it on the blood trail
15 evidence we talked about and the neighbor -- the neighbors'
16 statements?

17 A Correct.

18 Q The Sotelo interview though gives you some
19 information that -- that changes your investigation a lot?

20 A Yes, it does.

21 Q And we've heard about some. He identifies Figueroa
22 as somebody who more or less confessed to him?

23 A Yes.

24 Q And his stories, you hear it firsthand from his
25 mouth, right?

1 A Yes, I do.

2 Q It's fairly detailed in what he heard?

3 A Yes.

4 Q He talks about Figueroa; he claims that this Manny
5 Barientos was there, not only when the story was being told to
6 Sotelo, but also involved in the crime?

7 A Yes, that was his -- that's his recollection of
8 their story.

9 Q And that's what you memorialized in reports?

10 A In his statement, yes.

11 Q Right. He also talked about a third individual
12 being involved, yes? Perhaps going by the nickname Orco?

13 A Oh, yes.

14 Q And he told you that Orco was the guy who already
15 got arrested?

16 A That's correct.

17 Q Who at that point was Mendoza?

18 A Yes.

19 Q He provides you details that, some of them, you can
20 confirm, right?

21 A Some of his information we could confirm, yes.

22 Q Such as, I know where Figueroa lives?

23 A Correct.

24 Q Such as, I know who his roommates are?

25 A Yes.

1 Q Such as, I know at least what one of his roommates
2 drives?

3 A Yes.

4 Q I know where Barientos lives?

5 A That's correct.

6 Q Gave you cell phone numbers?

7 A Yes.

8 Q Probably couldn't confirm this at the time, but even
9 told you Figueroa went to California?

10 A Yes.

11 Q To treat his injuries?

12 A That's correct.

13 Q From the time you get his information, the
14 information from Sotelo, you quickly start confirming what you
15 can about his story?

16 A Yes.

17 Q And yesterday, you were asked questions about
18 whether or not he was going to be arrested the day you talked
19 to him, or if he was arrested, remember?

20 A Yes, I do.

21 Q And your best memory was, I think he was free to go
22 anyway?

23 A Yes, that's to my best recollection.

24 Q We at least know that he was free, because the next
25 morning, you guys picked him up?

1 A That's correct.

2 Q And he was willing to do that?

3 A Yes, he was.

4 Q And he wasn't in custody?

5 A That's correct.

6 Q And what was the purpose of that?

7 A He was going to show us where Robert Figueroa lived,
8 and he also -- I think he also took us to where Manuel
9 Barientos lives.

10 Q And you were able to confirm that what he showed you
11 was in fact Figueroa's residence?

12 A Yes.

13 Q And armed with that information, you start focusing
14 on Robert Figueroa?

15 A That's correct.

16 Q And we know that October 20th is the date of his
17 arrest and the search of his abode, right?

18 A Yes.

19 Q Before you talk to him, before you search anything,
20 you have probable cause, you believe, to arrest him?

21 A I believe so, yes.

22 Q And you secure a search warrant to search his
23 residence?

24 A Yes, we do.

25 Q Which obviously is a showing of probable cause, too?

1 A That's correct.

2 Q Have you had communications with Sotelo since that
3 morning that he drove you around and showed you the Figueroa
4 residence?

5 A Yes. He called me, God, a week ago. Maybe longer.

6 Q Have you had any other communication besides that
7 one in this year, 2016, with him?

8 A I don't recall.

9 Q What was the purpose of him calling you a week or so
10 ago?

11 A He told me that he was served with a subpoena. He
12 didn't know what to do with it. I said, call the DA's office.

13 Q And he still had your number, because I assume you
14 provided it to him way back in the past?

15 A He had my desk number. I believe he called me on my
16 desk phone.

17 Q Let me ask -- the DA asked you yesterday if you did
18 anything to make sure he wasn't arrested that first day you
19 talked to him, and you said, to my memory, no?

20 A Right.

21 Q To your knowledge, did you or anyone in Metro
22 provide him any benefit in exchange for what he -- he provided
23 you?

24 A I don't recall providing him any -- any benefit.

25 Q If a benefit was provided to him in exchange for the

1 information, is that something that would have been logged?

2 A Well, probably not.

3 Q Probably not?

4 A No.

5 Q All right. Is that something that somebody in Metro
6 could have done without running it by you?

7 A Absolutely. You would -- you couldn't do it without
8 running it by a deputy DA.

9 Q What if the benefit was just an OR from jail? You
10 need to run that by a DA?

11 A I don't know.

12 Q For instance, like calling a judge and asking a
13 judge to OR somebody?

14 A I believe you could do that.

15 Q Without a DA involvement?

16 A Yes.

17 Q And have you ever done that in your career, not --
18 not in this case?

19 A Oh, yes.

20 Q Did Sotelo indicate to you during this conversation
21 a week ago whether or not he intended to honor the subpoena?

22 A He did not.

23 Q He did not say?

24 A He didn't say.

25 Q After the Sotelo interview, but before you speak

1 with Figueroa on the 24th, you now suspect how many people?

2 A Well, we have one in custody, we get Figueroa on the
3 20th, Summer Larsen, and possibly the black male known as
4 Evil.

5 Q As of 10/20, the date of the Figueroa arrest, has
6 any warrants been issued to arrest Summer?

7 A I don't recall when I issued a warrant to arrest
8 her. I don't think so.

9 Q November 6th, does that sound familiar, potentially?

10 A Yes.

11 Q What was it that changed between 10/20 and 11/6 that
12 motivated your ability to arrest Summer?

13 A I think because we were unable to find her, I
14 decided that the best way to go would be issue a warrant, and
15 that way, if she's stopped by law enforcement -- if we enter a
16 warrant, we're going to enter it not just locally, but it will
17 go NCIC, which is all 50 states. So, if she was not in state,
18 if she was in California or Utah and she was contacted by law
19 enforcement, they would see that she'd have a warrant for her
20 arrest in Las Vegas.

21 Q What was that -- the charges for the first warrant;
22 do you remember?

23 A I believe it was conspiracy to commit robbery.

24 Q And for what -- what robbery? What potential
25 robbery?

1 A The house on Broadmere.

2 Q You at least suspected she was guilty of committing
3 other burglaries to that residence?

4 A Yeah. I believed she could have been involved in
5 those, yes.

6 Q You never sought charges for those?

7 A No, I did not.

8 Q And to your knowledge, no one in Metro did?

9 A No.

10 Q Can you say with confidence that you had a picture
11 of Mendez Martinez by 11/6?

12 A Yes, I probably had it before that.

13 Q Let me talk about that process of getting to Mendez-
14 Martinez, which you touched about a little bit. Interview of
15 Figueroa on 10/24 and he uses the name Duboy?

16 A Correct.

17 Q Didn't spell it out for you?

18 A Correct.

19 Q It was an oral interview, obviously?

20 A Yes.

21 Q I presume you're taking notes?

22 A I'm recording it.

23 Q And you're ready to listen to that recording if you
24 need to?

25 A Pardon me?

1 Q If you need to listen to the recording after the
2 interview to remember what he said, you can?

3 A Yeah, and I'd jot down, you know, things that I
4 thought were important.

5 Q So, you get this name Duboy. No real name suggested
6 or provided by Figueroa?

7 A Correct.

8 Q Some very basic descriptors?

9 A Yes.

10 Q In terms of height, weight?

11 A Yes.

12 Q Armed with that information, you go to a computer?

13 A Yes.

14 Q And you use a Metro system known as SCOPE?

15 A Yes.

16 Q And let me see if I can summarize SCOPE accurately.
17 SCOPE is a database of a lot of different information sources,
18 right?

19 A Yes, it is.

20 Q Criminal history, arrests, things like that?

21 A Correct.

22 Q Work cards?

23 A Yes, field interviews.

24 Q Traffic tickets?

25 A Yes.

1 Q You can also enter one of these, if contacted, let
2 this detective know?

3 A Records enters that. I have to send them an email
4 requesting it.

5 Q But you'll see that in a SCOPE?

6 A Yes.

7 Q And you'll also find sometimes nicknames?

8 A Yes.

9 Q Or monikers, same thing. And you can search SCOPE
10 as a detective a few different ways, right? The information
11 you enter to search can be a name?

12 A Yes.

13 Q It can be a nickname?

14 A Correct.

15 Q It could be a date of birth?

16 A It can't be just a date of birth, I don't believe.

17 Q Social security number?

18 A Social security number, ID number.

19 Q And you can also do like a sounds like kind of
20 qualifier on those searches?

21 A Yes.

22 Q So, you know, if you don't know how to spell a last
23 name, you can guess, and it hopefully would maybe figure it
24 out for you?

25 A Yes.

1 Q So, you head to your computer armed with this
2 information about Duboy, and I assume you use a nickname
3 search?

4 A Yes, I do.

5 Q And do you recall the specific letters you typed in?

6 A I -- I do not.

7 Q And none of this is recorded by the computer system,
8 right, like your actual search and things like that?

9 A I have no idea.

10 Q But you type in some variation -- some spelling for
11 Duboy?

12 A Yes.

13 Q How many potential matches come up?

14 A I don't recall.

15 Q Give me a ballpark.

16 A I don't recall. I mean, maybe ten.

17 Q Ten?

18 A Yes. I'm -- I'm absolutely guessing.

19 Q And from those however many, you start looking more
20 specific at the other information provided?

21 A Yes.

22 Q And from that, you conclude Mendez-Martinez is your
23 guy?

24 A Yes.

25 Q And his nickname was what?

1 A Duboy.

2 Q How was it spelled?

3 A I believe it was D-o-b-o-y.

4 Q Would looking at that report refresh your
5 recollection? It's page 2. I think it's by his name.

6 A D-u-b-o-y.

7 Q And that's why I assumed you used that sound
8 familiar search when you did this.

9 A Yes.

10 Q How long after that did you get this picture? You
11 don't know?

12 A Oh, I think I had it that day.

13 Q Pretty easy to get in that same computer system in
14 general?

15 A Yeah, the -- the -- I can make the SCOPE put a
16 picture of him up there, or I can run a -- run the name
17 through mug shots or anything like that, or get a picture off
18 of a DMV.

19 Q That -- sometime after that point in time, you
20 finalize that Officer's Report?

21 A Yes, I do.

22 Q And it has his name and picture?

23 A Yes.

24 Q What was the date that you eventually show the
25 picture to Figueroa, according to your testimony?

1 A I believe I showed it to Summer Rice on the 18th,
2 and then to Figueroa on the 19th.

3 Q So, November 18th at the earliest, you show the
4 picture to somebody involved in the case?

5 A Yes.

6 Q And prior to that, prior to November 18th, to
7 whenever you did the search through to November 18th, you
8 could have went to Figueroa and shown him the picture?

9 A Yes.

10 Q You chose not to?

11 A Yes.

12 Q You could have shown that picture to Joey Larsen; at
13 least tried, right?

14 A Yes.

15 Q Steven Larsen?

16 A Yes, I could have.

17 Q Instead, you decided to name him as a murder suspect
18 in this report?

19 A Yes.

20 Q And those reports should include accurate
21 information, right?

22 A Absolutely they should.

23 Q A lot of reports besides the two we've talked about
24 have been completed by you in this case, right?

25 A That's correct.

1 Q A lot of Arrest Reports?

2 A Yes.

3 Q Applications for Search Warrants?

4 A Yes.

5 Q Applications for Court Orders?

6 A Yes.

7 Q You're probably sick of writing about this case?

8 A Yes.

9 Q A lot of the information that makes it into these
10 Arrest Reports and things mirrors the information that's in
11 that Officer's Report, right?

12 A Yes, it does.

13 Q And I presume you even cut and paste it, right?

14 A Yes.

15 Q As of 10/20 when you're getting the search warrant
16 for Figueroa and things like that, you still believe there's
17 an African-American suspect?

18 A At that time, yes.

19 Q At the time you're applying for the search warrant
20 for Summer, which is November, is that still what we'll find
21 in the reports?

22 A The Arrest Warrant?

23 Q Yes.

24 A I don't recall the information I put in her Arrest
25 Warrant.

1 Q Would looking at it refresh your memory?

2 A Yes.

3 MR. LANDIS: Can I approach?

4 THE COURT: Yes.

5 BY MR. LANDIS:

6 Q Excuse my notes on the first page. Looking at that,
7 if you could just refresh your memory as to what you were
8 writing about other potential suspects who are unidentified.

9 A I think the only time I mentioned the black male is
10 when I'm doing a summary of Ashley Hall's statement. Is that
11 correct?

12 Q I'm not at liberty to tell you that.

13 A Yeah, that --

14 THE COURT: Take as much time as you need to read
15 that.

16 THE WITNESS: So, your question is what?

17 BY MR. LANDIS:

18 Q In that Declaration of Warrant, what do you state
19 the current investigation identifying as suspects other than
20 Mendoza, and Rice, and Figueroa?

21 A Well, and keeping in mind this is for Ashley Hall,
22 but I state that -- I use Jesus -- or, sorry, Martinez in
23 there as Duboy.

24 Q And we can stop there.

25 A Okay.

1 Q While that's in front of you, does it refresh your
2 memory as to the date it was executed?

3 A Or signed?

4 Q Sure.

5 A It's -- it's blank. I would -- it's typed up here,
6 "Executed on the 6th day of November."

7 Q So, at that point, Duboy in your view is still
8 Mendez Martinez?

9 A Yes.

10 Q Summer's arrested, and you talked a little bit about
11 these jail calls, right?

12 A Yes.

13 Q And that's a common source of potential evidence for
14 you guys?

15 A That's correct.

16 Q Some people talk on the phones?

17 A Yes.

18 Q Some people think they're smarter than the
19 recording?

20 A That's correct.

21 Q And since you were still unsure as to the full
22 picture of this crime, you guys were focused on those phone
23 calls with Summer?

24 A Yes.

25 Q And you personally listened to at least some of

1 them?

2 A Yes, I did.

3 Q And what -- do you know the time frame that would
4 have been?

5 A Sometime after she was taken into custody on
6 November 18th.

7 Q I would assume you were doing the listening pretty
8 early on after that arrest?

9 A Oh, I don't -- I don't recall when I started
10 listening to them.

11 Q How many calls did you listen to roughly? Any idea?

12 A I want to say I probably listened to six or seven.

13 Q And these weren't live listens; these were the
14 recordings using the system like you talked about yesterday?

15 A Yes.

16 Q And if I could just explain that a touch better.
17 Inmates, when they make a call, they have to use their unique
18 identifiers?

19 A That's correct.

20 Q So, you can go into the system and just input the
21 same unique identifiers the inmate uses?

22 A Yes, yes, sir.

23 Q And it brings up all their phone calls?

24 A Yes.

25 Q You could also though do a search, I want -- I want

1 to know everyone who called this guy, right?

2 A Yes.

3 Q And you could find all the inmates who called
4 whatever phone number?

5 A Correct.

6 Q You're privy to the reality that some inmates try to
7 -- try to hide their communications from these recordings,
8 right?

9 A Yes.

10 Q And a common way they do that would be to use
11 somebody else's account to make the call?

12 A That's correct.

13 Q So, I have a buddy in the cell next to me and I want
14 to make a call. I say, hey, I'm going to give you some
15 Doritos, let me use your account?

16 A Yes.

17 Q I mean, that's real life, right?

18 A Yes.

19 Q And the hope is that then when the officers are
20 searching for their calls through their unique identifiers,
21 you're not going to find it --

22 A That's correct.

23 Q -- because I used my celly's?

24 A That's correct.

25 Q But you guys know the cat and mouse game, and you do

1 what you can to try to outstep that?

2 A Yes.

3 Q And one way you can hopefully outstep it with some
4 defendants is that number search? You know this inmate calls
5 this guy, so you do a number search for this guy?

6 A Right.

7 Q And you identified some phone calls like that that
8 Summer was making?

9 A Yes, we did.

10 Q And when you would identify a call that you found to
11 be potentially relevant, you not only save the recording, but
12 you send it out for transcription?

13 A Yes.

14 Q Inmates who do that kind of trick, if I can use that
15 phrase, the using somebody else's account, that's a red flag
16 that's going to make you really want to know what's on that
17 call?

18 A Oh, I wouldn't say it's a red flag, but it's
19 something that we expect from time to time.

20 Q It at least indicates some suspicion?

21 A Yes.

22 Q Doesn't mean it's necessarily suspicious though,
23 right?

24 A That's correct.

25 Q Do you remember a call she made that was

1 transcribed; she made using somebody else's account?

2 A Yeah, I do, but I don't recall the name that she
3 used.

4 Q Another inmate's account?

5 A Yes.

6 Q Do you remember who she called?

7 A I don't recall.

8 Q Do you remember -- let me just do it this way.
9 Would looking at a transcript of it refresh your memory,
10 perhaps?

11 A Yes.

12 (Mr. Landis/Mr. DiGiacomo conferring)

13 MR. LANDIS: Can I approach?

14 THE COURT: Yes.

15 BY MR. LANDIS:

16 Q And I'll have you look at that, but just to be
17 clear, that's a transcript of a phone call, yes?

18 A Yes, it is.

19 Q And it's got some handwriting on the top?

20 A Yes, it does.

21 Q Do you recognize that?

22 A I do.

23 Q Yours?

24 A That is mine.

25 Q Very good. And looking at that, you can identify

1 the inmate's account she used, right?

2 A Yes.

3 Q It doesn't -- unless the person says their name on
4 the recording though, it doesn't identify the recipient of the
5 call, the person Summer was talking to?

6 A That's correct.

7 Q But fair for me to say that you were searching that
8 number because it was somebody who she had been calling?

9 A I don't -- I don't recall how I got to that number,
10 but --

11 Q Is there any other way you would have got to it?
12 Oh, you mean you could have got it from other investigative
13 leads as opposed to --

14 A Yes --

15 Q -- a number -- okay.

16 A Yeah.

17 Q It's a number you developed tied to Summer Larsen,
18 and that's why you searched it in the computer system?

19 A I'm -- I don't recall how I got to that number. I
20 just don't. It's two years ago.

21 Q Did you conclude, listening to those phone calls,
22 that some of the phone calls she was making were to a Hispanic
23 male?

24 A Yes.

25 Q And did you at least believe that Hispanic male to

1 be Isaac Rodriguez?

2 A I believed it could have been.

3 Q Do you believe that's one of those calls that that
4 was that potential person?

5 A I don't -- I don't remember the voice. I couldn't
6 say that was Isaac Rodriguez unless he identifies himself in
7 there.

8 Q Let me just say this. When you're listening to
9 calls where Summer Larsen, Summer Rice is talking to a male,
10 those were particularly interesting to you?

11 A Yes.

12 Q You're looking for evidence that she's conspiring or
13 colluding with this person to help them out?

14 A I want to hear what she's saying.

15 Q Right. And in a perfect world, your hope is she'll
16 call the person she colluded with, right?

17 A Yes.

18 Q And they'll make it clear through their phone calls?

19 A Yes.

20 Q And that stuff does happen?

21 A It does happen.

22 MR. LANDIS: And Judge, I'm going to ask to admit and
23 play that phone call that that transcript's for.

24 THE CLERK: What number is it?

25 MR. LANDIS: It's not a number yet.

1 THE COURT: All right, well, it does have to be a
2 proposed --

3 MR. LANDIS: Yeah, it would be Proposed I.

4 THE COURT: Okay.

5 MR. LANDIS: Defense I.

6 THE CLERK: I? And what is it again?

7 MR. LANDIS: It's a phone call from Summer Rice.

8 THE CLERK: A transcript, or?

9 MR. LANDIS: No, I'm going to play the actual call.

10 THE CLERK: Okay.

11 MR. DiGIACOMO: May we approach, Judge?

12 THE COURT: Yes.

13 (Off-record bench conference)

14 BY MR. LANDIS:

15 Q Do you still have a transcript up there of the call?

16 A You've got mine.

17 Q That's what I was worried about.

18 MR. LANDIS: Can I approach the witness?

19 THE COURT: You may.

20 THE WITNESS: Thank you.

21 THE COURT: So, the objection is sustained.

22 BY MR. LANDIS:

23 Q You can't tell me exactly who that male is, but you
24 can tell me that male is not David Murphy?

25 A That's correct.

1 Q Or any of these defendants?

2 A That's correct.

3 Q One thing I want to focus on in that call -- and the
4 male starts asking about whether or not the police have been
5 asking about him, right? And I'd refer you to page 4.

6 A Yes.

7 Q And she tells him, in effect -- I'm paraphrasing, of
8 course -- they haven't brought you up?

9 A Right.

10 Q That's kind of the stuff you're listening for when
11 you listen to those phone calls, right?

12 A Yes.

13 Q Somebody concerned that the police are asking about
14 them?

15 A Yes.

16 Q Especially if it's a potential lover of Summer Rice?

17 A That's correct.

18 Q The date of that call was?

19 A 11/18 of 2014.

20 Q Same day she --

21 A That's what I have handwritten up there.

22 Q Right, which is --

23 A Yes.

24 Q -- very soon after her arrest?

25 A Yes.

1 Q We've got to assume one of her first calls? What
2 did you do based on that information when you heard it?

3 A I tried -- I'm not sure what I did, to be honest.
4 I'm sure I would have tried to find that number who it
5 belonged to.

6 Q Do you recall if you did?

7 A I don't recall doing that.

8 Q Do you recall if you ever specifically asked Summer
9 questions about that conversation?

10 A I did not.

11 Q And just for the record, does it list the phone
12 number that Summer called?

13 A Yes, it does.

14 Q Could you state it for the record?

15 A 702-366-1640.

16 Q And at a minimum -- this is my last question about
17 it. As we stand here today, you can tell me, whoever that guy
18 is she's talking to is not somebody who was arrested in this
19 case?

20 A That's correct.

21 Q When do you think you stopped in total listening to
22 Summer Larsen's jail calls?

23 A I -- I don't know. I mean, I would listen to -- you
24 know, some of them were ten minutes long. I would listen to,
25 you know, two or three, and then I'd have to take a break.

1 It's -- for me, it's boring sitting there listening to people
2 talk.

3 Q And you get sick of hearing them talk about the same
4 thing over and over again, right?

5 A Yes.

6 Q And as I told you at the break, I'm worried that
7 might be happening here, huh?

8 A Yeah.

9 Q Let me say this then. Do you think you listened to
10 any phone calls in 2016 from Summer Rice?

11 A I don't recall.

12 Q Can't say yes or no?

13 A No.

14 Q Same for 2015?

15 A Yes.

16 Q 2014, you can say you listened to some, but just not
17 exactly how many?

18 A Yes.

19 Q None of that stuff was detailed in a report in terms
20 of how many phone calls you listened to, when they were dated,
21 things like that?

22 A That's correct.

23 Q Is there a reason you left that out of reports?

24 A No. I -- the phone calls I listened to, I -- when
25 they had anything to do with -- what I felt with the

1 investigation or anything that I felt suspicious, I had
2 transcribed.

3 Q After speaking with Robert Figueroa, you still
4 weren't convinced there was three, or four suspects, or five?

5 A On October 24th?

6 Q Yes.

7 A I was convinced there was five suspects on October
8 24th.

9 Q And that change in opinion was exclusively based as
10 of 10/24 on what Figueroa told you?

11 A Figueroa combined with what Gabriel --

12 Q Sotelo.

13 A -- Sotelo told us.

14 Q Which didn't match in terms of number of suspects,
15 right?

16 A Well, I was able to confirm some information from
17 Sotelo; I was able to confirm a lot of information from Robert
18 Figueroa.

19 Q And I want to talk just before any confirmation took
20 place of the Figueroa, just for now.

21 A Okay.

22 Q No indication from Sotelo that there was a getaway
23 driver?

24 A Not that I recall.

25 Q Do you recall that you specifically asked him how

1 they got there, and he told you a G-ride?

2 A Yes.

3 Q What's that mean?

4 A A G-ride's a street term for a stolen car.

5 Q He didn't indicate there was another driver of that
6 car?

7 A That's correct.

8 Q Figueroa's -- or statement on the 24th is different
9 about that, right?

10 A Yes.

11 Q So, he would add a suspect that Sotelo didn't?

12 A Yes.

13 Q And their statements were also different in who they
14 identified as the suspects, right?

15 A Yes.

16 Q And you guys came into that 10/24 Figueroa interview
17 with questions about Manny because of what Sotelo told you?

18 A That's correct.

19 Q And he was quick to put those to rest, right?

20 A Yes. When we finally got around to asking him about
21 Manny Barientos, he told us that Manny was not involved in no
22 -- no shape, or something like that.

23 Q He did tell you though, Figueroa, on 10/24 that Joey
24 Laguna/Matone had a .38?

25 A I believe he did, yes.

1 Q When did he tell you, if ever, that that .38 came
2 from Manny?

3 A He never told me that.

4 Q Did you ever determine any specifics about that .38?

5 A No. He never told me where it came from; I never
6 asked.

7 Q And it was never recovered?

8 A It was never recovered.

9 Q Cell phones were seized in this case, and I'm not
10 going to go through the details as to each one and when, but a
11 lot of cell phones were seized throughout the investigation?

12 A Yes.

13 Q Some of them most likely were possessed by people
14 involved with this at the time of the murder on September
15 21st?

16 A Yes.

17 Q Some of them could have been you weren't sure?

18 A That's correct.

19 Q Some of them were probably new phones?

20 A Yes.

21 Q And to get cell phone records, like we've talked
22 about for weeks in here, you don't need the physical cell
23 phone?

24 A That's correct.

25 Q You just need the number and the provider of the

1 cell service?

2 A Yes.

3 Q But there's a different search you can do with a
4 cell phone itself if you possess it, right?

5 A That's correct.

6 Q Specifically, you can do a forensic computer search,
7 in effect?

8 A That's correct.

9 Q Which, just like with a computer, kind of combs
10 through the data and pulls off whatever's available?

11 A Yes.

12 Q Which can even mean deleted stuff, potentially?

13 A Yes.

14 Q And did any forensics occur to any phones in this
15 case to the best of your knowledge?

16 A No.

17 Q And as a homicide detective, you can at least
18 request that, right?

19 A Yes, I can.

20 Q And to your knowledge, was that ever requested?

21 A No, it was not.

22 Q Talk to you a little about gunpowder residue. I
23 took from your direct testimony that you're not the biggest
24 proponent of gunpowder testing?

25 A I am not.

1 Q In general though, it's something Metro does?

2 A We -- there's certain limitations you have to go
3 through.

4 Q Yes.

5 A Do you want me to explain them?

6 Q If you want, which I know you don't. Let me just --

7 A Go ahead.

8 Q -- try to shorten it up.

9 A Go ahead.

10 Q Sometimes Metro employees do gunpowder residue
11 tests?

12 A Yes, we do.

13 Q And some Metro employees are equipped with gunpowder
14 residue tests?

15 A Yes.

16 Q Which is some kind of cloth or something like that,
17 right?

18 A It's a swab, as far as I know. It's -- and the
19 crime scene analysts are the ones who administrate it -- or
20 administer it.

21 Q And you testified yesterday that if somebody's
22 around a lot of shooting, they might get gunpowder even though
23 they didn't touch a gun?

24 A That's correct.

25 Q And that's the primary reason you don't love it?

1 A Well, that, and there's also a lot of false
2 positives with the test.

3 Q You'd agree with me though that sometimes gunpowder
4 might be on certain locations on the hand that make it more
5 relevant than other places on the hand?

6 A Absolutely not.

7 Q So, if gunpowder's on the back of a hand, for
8 instance, that means nothing to you?

9 A It means nothing to me.

10 Q What if there hasn't been a lot of gunfire around
11 the person who you're testing? Does that make it more
12 relevant to you?

13 A If it's in a close proximity, a house, and there's
14 guns fired, and this -- and people touch the walls, the
15 cabinets, a handrail, a doorknob, anything that was in that
16 general area, they're going to test positive for gunshot
17 residue.

18 Q Wherever their hand touched, whatever --

19 A Yes.

20 Q And --

21 A And it will wipe onto clothes and things like that.

22 Q But it doesn't stay airborne very long? For
23 instance, if someone had shot a gun in here ten weeks ago, I'm
24 not going to walk through that air and get gunpowder residue?

25 A Correct, but you still could get a false positive.

1 Q Which has nothing to do with that?

2 A That's correct.

3 Q And I'm not saying this would be the end of an
4 investigation, but in this case, you said that you did not
5 test Gibson or request that Gibson be tested because you
6 concluded he was in the area, close proximity to a lot of
7 gunfire?

8 A That's correct.

9 Q And that conclusion was based on what?

10 A From witness statements and knowing the scene.

11 Q And there's one person who you talked to directly
12 that day who could have told you that, right?

13 A Correct, Joey.

14 Q And according to him, Gibson was close to the
15 gunfire?

16 A I believe they were standing by each other when it
17 started, and then he moved to the other side, and then down
18 the hallway with him.

19 Q You had no evidence though that Gibson ever shot?

20 A I had evidence that Gibson didn't shoot -- well, I
21 had Joey Larsen telling me that Monty Gibson did not fire a
22 weapon.

23 Q Nevertheless, evidence showed two guns from inside
24 the house were fired?

25 A That's correct.

1 Q And at least according to Larsen, he fired them
2 both?

3 A Yes.

4 Q So, based on that, it's -- it's -- is it hard to
5 conclude that he was right there with the gunfire?

6 A I would say he was in close enough proximity to the
7 gunfire that I didn't want to have his hands tested for
8 gunshot residue because I thought it would be a worthless
9 examination.

10 Q You'd agree though if Joey Larsen's word wasn't
11 true, Gibson could have been in the backyard or at the
12 neighbor's house at the time of the shooting -- initial
13 shooting?

14 A If he was at the neighbor's house, he'd be alive
15 today.

16 Q Perhaps, perhaps. Could have been upstairs when
17 Joey Larsen fired those two guns?

18 A If he was upstairs, he wouldn't be down dead in the
19 doorway.

20 Q Well, let's break that down. The initial shots are
21 fired when the door is kicked in, right?

22 A Correct.

23 Q Then you had information that there was a fair
24 amount of break from then to when Gibson approached the door?

25 A Yes.

1 Q You can't tell me he wasn't upstairs before he
2 approached that door at that point in time?

3 A I can't tell you that he wasn't.

4 Q Right.

5 A And I can't tell you that he was.

6 Q Exactly, and that's all -- that's all I was trying
7 to get. Talking about the interview of Figueroa on October
8 24th, you talked a little bit on direct about things you've
9 learned to do when interviewing people?

10 A Yes.

11 Q I don't want to put a label on them, but tactics?
12 Is that -- tools? How about tools?

13 A It's -- it's method, I guess. Some people are a lot
14 better at it than I am.

15 Q Right. And this is something that's taught,
16 interrogation tools?

17 A Yes, I've been to some interview and interrogation
18 classes through my career.

19 Q And I'm sure it's something you've learned from
20 watching other people do it during --

21 A Yes.

22 Q Right. And some things prove successful over time,
23 and some things don't?

24 A That's correct.

25 Q And the point in using these methods of

1 interrogation, to get people to talk, right?

2 A Yes.

3 Q And a case is always easier to solve if a person in
4 their own words tells you they did it?

5 A Yes.

6 Q And these different methods of interrogation are
7 very effective for law enforcement so long as the information
8 you're getting from the person is true and accurate?

9 A That's correct.

10 Q Confession methods that produce unreliable
11 confessions aren't helping --

12 A That's --

13 Q -- the justice system?

14 A Correct.

15 Q And that's something you've been trained to watch
16 out for, right?

17 A Yes.

18 Q And there's certain tactics that might cross that
19 line and make that risk too high to make it worth it?

20 A I don't follow your question, but --

21 Q No problem. I'll get into more specifics.
22 Yesterday, you were talking about a method being suggesting
23 you have false evidence.

24 A Suggesting we have evidence, yes.

25 Q That you don't?

1 A That we don't have.

2 Q And like the textbook old fashioned example is you
3 walk into the interview with a big folder of blank paper to
4 the suspect, and you say, Johnny, we know you're guilty?

5 A Yeah, well, I wish it was that easy.

6 Q But -- but yeah, that's the general example you hear
7 in the first book on the subject?

8 A Yes.

9 Q And as you said yesterday, that's something you're
10 allowed to do?

11 A Yes.

12 Q And it's something you did with Figueroa?

13 A I did.

14 Q Specifically, you did it with Figueroa talking about
15 what the other guy was saying?

16 A That's correct.

17 Q And in your experience, that's proven to be an
18 effective tool to get people to talk?

19 A From time to time, it's worked.

20 Q And the idea is the paranoia will eat them away when
21 they're in jail?

22 A The idea is they're going to want to tell their side
23 of the story so their co-conspirator or friend isn't the only
24 one out there with a story.

25 Q And it also puts a time crunch on their mental

1 process, doesn't it?

2 A I -- I wouldn't be able to speak to that.

3 Q But comparing that to a situation, you would never
4 put a gun to a suspect's head and say, tell me what you did,
5 right?

6 A Absolutely not.

7 Q That would be an example of interrogation methods
8 that are a little too coercive?

9 A Yes.

10 Q And that's all I was trying to say. You also talked
11 a little bit about kind of theme development, and that's
12 something that you'll employ during interrogation?

13 A Yes.

14 Q And what that means, at least in this case with Mr.
15 Figueroa on 10/20 through 10/24, is to let him know that you
16 believe his role was minor?

17 A Yes.

18 Q And that his story was understandable as to how he
19 got involved in this mess?

20 A Yes.

21 Q You had no idea if those things were true?

22 A Pardon me?

23 Q You had no idea if those things were true when you
24 said them?

25 A That's correct.

1 Q And again, that's something that's hopeful to get
2 them speaking?

3 A Yes.

4 Q Did that work with Figueroa on 10/20?

5 A Well, he gave us a statement and told us what he did
6 and what -- what his co-conspirators did, yes.

7 Q And you very quickly had made it clear to him that
8 you thought that -- on 10/20, sir. On 10/20.

9 A Oh, on 10/20. Oh, I'm sorry. On 10/20, no, he lied
10 to us.

11 Q And you made it clear to him you thought he was
12 lying?

13 A Yes.

14 Q And you put some of these pressures or these
15 different techniques on him at that point?

16 A Yes, we did.

17 Q When a suspect requests a lawyer, there's special
18 rules about what that means, right?

19 A Yes.

20 Q And if they clearly state they want a lawyer, what's
21 that mean?

22 A We don't -- we -- we don't ask them anymore
23 questions regarding the crimes, things like that.

24 Q If they choose thereafter to reach out to you, the
25 suspect, you're allowed to talk to them again?

1 A That's correct.

2 Q But you're not allowed to knock on their cell door
3 the next day if no one's asked you to and start hitting them
4 with questions again?

5 A That's correct.

6 Q And that's how that interview on 10/20 ended with
7 Figueroa?

8 A Yes.

9 Q And when 10/23 rolled around and you guys went back
10 to see him, it was because he asked?

11 A That's correct.

12 Q And it kind of was put on hold because he still
13 wanted the lawyer?

14 A That's correct.

15 Q When you interviewed Mr. Murphy, I know it was
16 sometime later. Do you recall how that interview ended?

17 A Yeah, he was brought down to our homicide office --

18 Q Not how it started; how it ended.

19 A Oh, how it ended. Yeah, I believe he asked for an
20 attorney as well.

21 Q Did you stop questioning?

22 A I stopped -- I believe I did. I may have asked him
23 some questions about tattoo -- or some other things. I'm not
24 sure.

25 Q By the time you interviewed Mr. Murphy, you had