

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

2 No. 82740

3
4 **JORGE MENDOZA,**

5
6 Appellant,

7 vs.

8 **THE STATE OF NEVADA,**

9
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 **APPELLANT'S APPENDIX VOLUME X**

18
19 **DIANE C. LOWE, ESQ.**
20 **Lowe Law, L.L.C.**
21 **7350 West Centennial Pkwy #3085**
22 **Las Vegas, Nevada 89113**
23 **(725) 212-2451**

24 **Attorney for Appellant**

ALEXANDER G. CHEN
CLARK COUNTY DA.
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

AARON D. FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1265

27
28 **Attorneys for Respondent**

APPENDICES TABLE OF CONTENTS

Volume 1

Criminal Complaint.....	1AA000001-2
Second Amended Criminal Complaint.....	1AA000003-7
Third Amended Criminal Complaint.....	1AA000008-12
Fourth Amended Criminal Complaint.....	1AA000013 -18
Minutes 9/23/15 Arraignment.....	1AA000019
Indictment.....	1AA000020-26
Superseding Indictment.....	1AA000027 -33
Second Superseding Indictment.....	1AA000034 -40
Transcript – Calendar Call.....	1AA000041-1AA000059
Transcript Jury Trial Day (tr. p. 1-143) .	1AA000060- 1AA000202
Transcript Jury Trial Day (tr. p. 1-48 of 175)	1AA000203-250

Volume 2

Transcript Jury Trial Day 2 (tr. cont. p. 49-175)	2AA000251-AA000251-377
Transcript Jury Trial Day 3 9/14/16 (tr. p. 1-123).....	2AA0000378-500

Volume 3

Transcript Jury Trial Day 3 (tr. cont. p. 124-228).....	3AA000501-605
Transcript Jury Trial Day 4 (tr. p. 1-145)	3AA000606- 750

Volume 4

Transcript Trial Day 4 (tr. cont. p. 146-197).....	4AA000751-802
Transcript Jury Trial Day 5 (tr. p. 1-198)	4AA000803 -4AA001000

Volume 5

Transcript Jury Trial Day 5 (tr. cont. p. 199-215).	5AA001001-5AA001017
Transcript Jury Trial Day 6 9/19/16 (tr. p. 1-121).....	5AA001018-1138
Transcript Jury Trial Day 7 9/20/16 (tr. p. 1-112 of 176)..	5AA001139-1250

Volume 6

Transcript Jury Trial Day 7 (tr. cont. p. 113-176)...	6AA001251-6AA001314
Transcript Jury Trial Day 8 9/21/16 (tr. p. 1-133)... ..	6AA001314-1447
Transcript Jury Trial Day 9 9/22/16 (tr. p. 1-53 of 150)....	6AA001448-1500

Volume 7

Transcript Jury Trial Day 9 (tr. cont. p. 54-150).....	7AA001448-1597
Transcript Jury Trial Day 10 9/23/16 (tr. p. 1-153 of 251).	7AA001598-1750

Volume 8

Transcript Jury Trial Day 10 (tr. cont. p. 154-251).....	8AA001751-1848
Transcript Jury Trial Day 11 9/27/16 (tr. p. 1-145).	8AA001849-8AA001993
Transcript Jury Trial Day 12 (tr. p. 1-7 of 150).....	8AA001994-8AA002000

Volume 9

Transcript Jury Trial Day 12 (tr. cont. p. 8-150)....	9AA002001-9AA002143
---	---------------------

Transcript Jury Trial Day 13 (tr. p. 1-107 of 165).	9-AA002144- 9AA002250
<u>Volume 10</u>	
Transcript Jury Trial Day 13 (tr. cont. p. 108-65)	10AA002251-10AA002308
Transcript Trial Day 14 (tr. p. 1-192 of 258).....	10AA002309-10AA002500
<u>Volume 11</u>	
Transcript Jury Trial Day 14 (tr. cont. p. 193-258).....	11AA002501-2566
Transcript Jury Trial Day 15 10/3/16 (tr. p. 1-68).....	11AA002567-2634
Transcript Jury Trial Day 16 10/4/16 (tr. p. 1-116 of 140)	11AA002635-2760
<u>Volume 12</u>	
Transcript Jury Trial Day 16 (tr. cont. p. 117-140).....	12AA002761 -2774
Transcript Jury Trial Day 17 10/5/16 (tr. p. 1-32).....	12AA002775-3806
Transcript Jury Trial Day 18 10/6/16 (tr. p. 1-127)	12AA002809-2933
Transcript Jury Trial Day 19 10/7/16 (p. 1-67 of 79).....	12AA002934-3000
<u>Volume 13</u>	
Transcript Jury Trial Day 19 (tr. cont. p. 68-79).....	13AA3001-3012
Judgment of Conviction 12/2/16	13AA003013-3016
Notice of Appeal 12/22/16	13AA003017- 3018
<u>Appendix Volume 14</u>	
Disbarment of Trial Attorney William Wolfbrandt.....	14 AA 3018-3029
Grand Jury Transcript Volume I January 8, 2015.....	14 AA 3030-3086
Grand Jury Transcript Volume II January 29, 2015.....	14 AA 3087-3226
Defendant Mendoza's Proposed Jury Instructions.....	14 AA 3227-3236
(Not used at Jury Trial)	
<u>Appendix Volume 15</u>	
Jury Instructions Used and Blank Verdict Forms.....	15 AA 3237-3299
Verdict Form.....	15 AA 3300-3308
Appellant's Opening Brief in Prior Appeal 72056.....	15 AA 3309-3341
Respondent's Answering Brief.....	15 AA 3342-3373
Court of Appeals Order of Affirmance for Appeal 72056..	15 AA 3374-3378
Inmate filed Petition for Writ of Habeas Corpus 10/18/19..	15AA 3379-3387
Inmate filed handwritten Request for Hearing on Motion	
To Amend and Appoint Counsel 11/14/19.....	15 AA 3388-3395
State's Response to Petition for Writ of Habeas	
Corpus (Post-Conviction) Motion for Appointment of	
Counsel, Request for Evidentiary Hearing and Motion	
To Amend 12/10/19.....	15 AA 3396-3422
9/20/20 Supplemental Brief in Support of Postconviction	
Petition for Writ of Habeas Corpus.....	15 AA 3423-3457
Exhibit 1 Affidavit of Jorge Mendoza.....	15 AA 3454-3457
<u>Appendix Volume 16</u>	

State's Response to Petitioner's Supplemental Brief in Support of Petitioner's Postconviction Petition for Writ of Habeas Corpus.....	16 AA 3458-3539
Exhibit 1 Hospital Police Statement Mendoza Part 1.....	16 AA 3487-3539
Hospital Police Statement of Jorge Mendoza Part 2.....	16 AA 3540-3556
Petitioner's Reply to State's Response to Petitioner's Postconviction Petition for Writ of Habeas Corpus And Supplement 12/14/2020.....	16AA 3557-3587
1/23/2021 Motion for Leave to Submit Hospital Records for Consideration.....	16AA 3588-3625
Exhibit 1 Mendoza Medical Records Directly After Being Shot September 21, 2014.....	16 AA 3592-3626
<u>Appendix Volume 17</u>	
Court Minutes from Evidentiary Hearing on Post-Conviction Writ of Habeas Corpus & Motion for Leave to Add to Record	17 AA 3627
2/23/2021 Transcript of Evidentiary Hearing re Petition For Writ of Habeas Corpus and Motion for Leave to Add Hospital Records.....	17AA 3628-3682
3/14/2021 Objection to Proposed Findings of Fact, Conclusions of Law & Order.....	17 AA 3683-3691
4/2/2021 Findings of Fact, Conclusions of Law & Order...	17 AA 3692-3740
4/5/2021 Notice of Appeal.....	17 AA 3741-3743
4/8/2021 Minute Order Admitting Hospital Record and Photos as Hearing Court's Exhibits 1 & 2.....	17 AA 3744

ALPHABETICAL ORDER OF APPENDICES 1-17

Affidavit of Jorge Mendoza.....	15 AA 3454-3457
Arraignment Minutes 9/23/15.....	1AA000019
Criminal Complaint.....	1AA000001-2
Criminal Complaint Second Amended.....	1AA000003-7
Criminal Complaint Third Amended.....	1AA000008-12
Criminal Complaint Fourth Amended.....	1AA000013 -18
Disbarment of Trial Attorney William Wolfbrandt.....	14 AA 3018-3029
Evidentiary Hearing 2/23/21 Transcript.....	17AA 3628-3682
Findings of Fact, Conclusions of Law & Order Objection to Proposed 3/14/2021	17 AA 3683-3691
Findings of Fact, Conclusions of Law & Order 4/2/2021...	17 AA 3692-3740
Hospital Police Statement of Jorge Mendoza Part 1.....	16 AA 3487-3539
Hospital Police Statement of Jorge Mendoza Part 2.....	16 AA 3540-3556

Hospital Records of Mendoza 9/21/14.....	16 AA 3592-3626
Hospital Records Ordered Admitted 4/8/2021	17 AA 3744
Indictment.....	1AA000020-26
Indictment Superseding.....	1AA000027 -33
Indictment Second Superseding	1AA000034 -40
Inmate filed Petition for Writ of Habeas Corpus 10/18/19..	15AA 3379-3387
Inmate filed Handwritten Request 11/14/19.....	15 AA 3388-3395
Judgment of Conviction 12/2/16.....	13AA003013-3016
Jury Instructions (Mendoza’s Proposed Not Used).....	14 AA 3227-3236
Jury Instructions Used and Blank Verdict Forms.....	15 AA 3237-3299
Notice of Appeal (First Notice Direct Appeal) 12/22/16 .	13AA003017- 3018
Notice of Appeal (Writ of Habeas Corpus) 4/5/2021	17 AA 3741-3743
Prior Appeal Appellant’s Opening Brief Appeal 72056.....	15 AA 3309-3341
Prior Appeal Respondent’s Answering Brief.....	15 AA 3342-3373
Prior Appeal Order of Affirmance.....	15 AA 3374-3378
Reply to State’s Response on Supplement 12/14/2020.....	16AA 3557-3587
State’s Initial Response to Petition 12/10/19.....	15 AA 3396-3422
State’s Response to Petitioner’s Supplemental.....	16 AA 3458-3539
Supplement to Petition for Writ 9/20/2020	15 AA 3423-3457
Transcript Grand Jury Transcript Volume I 1/8/15.....	14 AA 3030-3086
Transcript Grand Jury Transcript Volume II 1/29/15.....	14 AA 3087-3226
Transcript Calendar Call 9/7/17.....	1AA000041-1AA000059
Transcript Jury Trial Day 1 (tr. p. 1-143)	1AA000060- 1AA000202
Transcript Jury Trial Day 2 (tr. p. 1-48 of 175)	1AA000203-250
Transcript Jury Trial Day 2 (tr. cont. p. 49-175)..	2AA000251-AA00251-377
Transcript Jury Trial Day 3 9/14/16 (tr. p. 1-123 of 228)	2AA00378-500
Transcript Jury Trial Day 3 (tr. cont. p. 124-228)	3AA000501-605
Transcript Jury Trial Day 4 (tr. p. 1-145 of 197)	3AA000606- 750
Transcript Jury Trial Day 4 (tr. cont. p. 146-197)	4AA000751-802
Transcript Jury Trial Day 5 (tr. p. 1-198)	4AA000803-1000
Transcript Jury Trial Day 5 (tr. cont. p. 199-215)	5AA001001-1017
Transcript Jury Trial Day 6 9/19/16 (tr. p. 1-121).....	5AA001018-1138
Transcript Jury Trial Day 7 (tr p. 1-112 of 176)	2016 5AA001139-1250
Transcript Jury Trial Day 7 (tr. cont. p. 113-176)...	6AA001251-6AA001314
Transcript Jury Trial Day 8 9/21/16 (tr. p. 1-133).....	6AA001314-1447
Transcript Jury Trial Day 9 (tr. p. 1-53 of 150)	6AA001448-1500
Transcript Jury Trial Day 9 (tr. cont. p. 54-150)	7AA001448-1597
Transcript Jury Trial Day 10 (tr. p.1-153 of 251)	7AA001598-1750
Transcript Jury Trial Day 10 (tr. cont. p. 154-251)	8AA001751-1848
Transcript Jury Trial Day 11 9/27/16 (tr. p. 1-145) .	8AA001849-8AA001993

Transcript Jury Trial Day 12 (tr. p. 1-7 of 150) ...8AA001994-8AA002000
Transcript Jury Trial Day 12 (tr. cont. p. 8-150)...9AA002001-9AA002143
Transcript Jury Trial Day 13 (tr. p. 1-107 of 165).9AA002144- 9AA002250
Transcript Jury Trial Day 13 (tr. cont. p. 108-165).10AA2251-10AA002308
Transcript Jury Trial Day 14 (tr. p. 1-192 of 258) 10AA02309-10AA002500
Transcript Jury Trial Day 14 (tr. cont. p. 193-258).....11AA002501-2566
Transcript Jury Trial Day 15 10/3/26 (tr. p. 1-68).....11AA002567-2634
Transcript Jury Trial Day 16 (tr. p. 1-116 of 140).....11AA002635-2760
Transcript Jury Trial Day 16 (tr. cont. p. 117-140)12AA002761 -2774
Transcript Jury Trial Day 17 10/5/16 (tr. p. 1-32)..... 12AA002775-3806
Transcript Jury Trial Day 18 10/6/16 (tr. p. 1-127)12AA002809-2933
Transcript Jury Trial Day 19 10/7/16 (tr. p. 1-67 of 79)...12AA002934-3000
Transcript Jury Trial Day 19 (tr. cont. p. 68-79).....13AA3001-3012
Verdict Form.....15 AA 3300-3308

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

1 interviewed a lot of people in that subdivision?

2 A Not a lot. I would say three, four people out of
3 that subdivision. And when you say subdivision, you're
4 talking the trailer park?

5 Q Indeed.

6 A Okay.

7 Q Steve Larsen, right?

8 A Yes.

9 Q Summer's mom?

10 A Yes.

11 Q Summer's sister?

12 A No, that's a neighbor.

13 Q Summer's grandmother?

14 A No, I never spoke to her, I don't believe.

15 Q Tracy Rowe?

16 A Yes.

17 Q And I understand she wasn't living there, but she
18 was from there and she still knew those people?

19 A Okay.

20 Q Ashley Hall?

21 A Again, not living there, but was from there.

22 Q Right, and identified with the people around there;
23 knew most of them?

24 A Yes.

25 Q Joey Larsen would also fall into that category?

1 A Yes, he used to live there.

2 Q So, when you first sit down with Mr. Murphy and you
3 say, do you know what we're here for --

4 A Yes.

5 Q -- he tells you, it's about the Joey Larsen house,
6 right?

7 A No, he says it's something between Summer and Joey.

8 Q Which you took to mean something involving that
9 murder and robbery, right?

10 A Yes.

11 Q You showed him as many pictures as you had that day
12 of potentially involved people?

13 A I believe so.

14 Q And to the best of your memory -- and if you don't
15 remember, let me know -- showed him a picture of Mendoza?

16 A Yes.

17 Q He identified him as Mendoza?

18 A Correct.

19 Q You showed him a picture of Joseph Larsen?

20 A Yes.

21 Q He identified that as Joseph Larsen?

22 A Yes.

23 Q Joey Laguna?

24 A Yes.

25 Q You showed him a picture of the decedent, Mr.

1 Gibson?

2 A I did.

3 Q He did not identify that?

4 A He did not recognize him.

5 Q You showed him a picture of Robert Figueroa?

6 A I did.

7 Q He did not identify that?

8 A I don't recall if he did or didn't. Is it in his
9 statement?

10 MR. LANDIS: I'm sorry. Court's brief indulgence.

11 THE WITNESS: I'm sorry.

12 MR. LANDIS: That's all right. Can I approach the
13 witness?

14 THE COURT: You may.

15 MR. DiGIACOMO: What page?

16 MR. LANDIS: I think it's going to start on page 6.
17 That's at least where he starts with Jorge.

18 THE WITNESS: Okay. So, that's Joey. Somewhere. He
19 says, "I think that's Joey," and I said, "That's a different
20 Joey, right?" Montone. Jorge. You were looking at Robert
21 Figueroa, right?

22 BY MR. LANDIS:

23 Q You've got it.

24 A I'm on page 8. Did I go past it?

25 Q I can't say off the top of my head. I'm sorry, I

1 wasn't prepared to give you that transcript.

2 A I'm sorry.

3 Q It's all right, but let me say this. Just looking
4 at that transcript, we know you had a picture of Figueroa at
5 the time, right?

6 A That's correct.

7 Q And based on those pictures that he did identify,
8 confident in saying that you showed it to him, right?

9 A Yes.

10 Q And do you see anywhere in there at all where he
11 says, I know that guy, it's Robert Figueroa?

12 A I do not.

13 Q And to your memory, he did not identify Robert
14 Figueroa, to the best of your memory, during that interview?

15 A I would say no, but again, I'm trying to read
16 through here real quick, and I'm sorry, folks. Okay.

17 Q Do you see Robert Figueroa?

18 A No, not yet. I'm just -- I don't know if I'm
19 missing it or what I'm doing, but how far after that do I --

20 Q Just do you see -- I don't think it's in there, but
21 do you see Robert Figueroa anywhere in there?

22 A I do not.

23 Q All right.

24 A I'm --

25 Q Are you comfortable saying based on that that he did

1 not identify a picture of Robert Figueroa that would have been
2 shown to him?

3 A Based on this, I'm -- maybe I didn't show him a
4 picture of Robert Figueroa.

5 Q Can you recall a reason that may have been?

6 A I have no idea.

7 Q After the Murphy interview, he's in jail for murder?

8 A Yes.

9 Q This murder?

10 A Yes.

11 Q Everybody's in jail except for one person?

12 A Yes.

13 Q And that's Joey Laguna?

14 A That's correct.

15 Q And at that point in time, Summer Larsen's not just
16 there for a conspiracy; she's got the full-blown charges?

17 A Yes.

18 Q On 10/24, you hear Figueroa talk about this early
19 morning robbery attempt?

20 A Yes.

21 Q Did you ever try to find that house?

22 A I don't recall how much effort we put into that
23 house. To me, that -- I mean, that was an attempted robbery.
24 That's not where the murder happened, and that's what I was
25 focused on.

1 Q And I know you're not a narcotics detective or a
2 robbery detective, but that sounded like a large-scale
3 marijuana operation according to Figueroa?

4 A Yes.

5 Q And nothing was done to look into it in terms of its
6 just criminal activity?

7 A That's correct.

8 Q At least in the reports, there's no indication that
9 it was surveilled?

10 A No.

11 Q Searched, right?

12 A No.

13 Q Knocked on the door to see who was home?

14 A No.

15 Q When did you during your investigation conclude that
16 Summer Rice had nothing to do with the Joseph Larsen robbery
17 on 9/21?

18 A Oh, God. It was -- oh, it was shortly after --
19 probably relatively quickly when I was finished interviewing
20 David Murphy. When I found out he'd been to that house by
21 himself, or when Joey and Summer lived there and he had
22 visited there one time, then we get to thinking, okay, well,
23 maybe Summer doesn't have to tell him where this house is.
24 You know, he knows where this house is.

25 Q Based on that evidence alone, you --

1 A No.

2 Q -- you were comfortable?

3 A It put doubt in it for us.

4 Q And that was stronger evidence in your mind versus
5 what Ashley Hall told you about the conversation with Summer?

6 A It was a conglomeration of that and meeting with the
7 DA's office and discussing our -- the strategy for submitting
8 this case.

9 Q At that point in time though, the date of Murphy's
10 arrest, the DA's in control of the cases that have been filed,
11 right?

12 A Yes.

13 Q You don't amend charges at that point?

14 A I charge people and let the DA do that.

15 Q And once they've initiated charges, you don't come
16 in and say, hey, change the charges?

17 A No, I don't.

18 Q Are you aware of when those charges were dismissed
19 against Summer, the ones involving Joey Larsen's house?

20 A Not the exact date, no.

21 Q Was it in 2014?

22 A No.

23 Q '15?

24 A I -- I don't recall.

25 Q Were you involved in that decision when it was made?

1 A I'm sure I was made aware of it, but I wasn't
2 involved in the decision-making.

3 Q And in this case, in no case, at that point after
4 the DA is in control of the case, that would not be your call?

5 A That's correct.

6 Q They can consult with you, but they don't even have
7 to?

8 A Correct.

9 MR. LANDIS: Court's brief indulgence. I think I'm
10 almost done, sir.

11 BY MR. LANDIS:

12 Q Did you ever -- just a few more questions. Did you
13 ever learn or suspect throughout the course of your
14 investigation that Summer Larsen committed the earlier
15 burglaries to the Larsen homes, the ones predating the murder,
16 with somebody else?

17 A I don't recall exactly. I think she'd made some --
18 some admissions of being involved in that, but I couldn't tell
19 you. And it's their home. They're still married.

20 Q Certainly, certainly, but the understanding was she
21 wasn't living there?

22 A Correct.

23 Q And she went there, and eventually admits to
24 stealing a lot of things that weren't hers?

25 A Okay, and I know she was involved in possibly

1 damaging some property there, too. I don't know.

2 Q And my question isn't anything beyond you never had
3 a firm idea of another suspect who was involved in doing those
4 things with her?

5 A That's correct.

6 Q And since my client's statement's in front of you
7 now, can I go back and just have you look as to how many times
8 he requested a lawyer before the interview ends?

9 A Sure.

10 Q Just be the last few pages.

11 A I believe he starts on page 9.

12 Q Let's break it down. He asked it first, and you
13 asked some more questions, right?

14 A Right. He said he wanted his lawyer. I said, "Let
15 me ask you a question. What's your cell number?" He said, "I
16 want my lawyer."

17 Q Then --

18 A "Okay."

19 Q Yeah.

20 A Then he says, "I'm done with you." And I said,
21 "Dave, I understand you want your lawyer." Do you want me to
22 go on what he says, but --

23 Q Well, he asked for a lawyer again, right?

24 A After I say, "I understand you want your lawyer," he
25 says, "What you doin', man? You ain't going to connect me to

1 shit, just like you got Summer and Thomas."

2 Q Then you keep talking?

3 A Then I keep talking for a little, and he says, "I
4 ain't going to -- I ain't got nothin' to do with it. I'm
5 good. I want my -- I want a lawyer." I said, "Okay." He
6 says, "Can I have my lawyer, please?" I said, "Listen, I
7 understand. I'm not here to help you, but I'm not here to
8 screw you either."

9 And we talk for a little bit more. I ask him where
10 he's born; in Bakersfield. We talk for probably another -- we
11 probably talked for another page-and-a-half, and then the
12 officers come in and they say, "Hey, we're here to transport
13 you," and I ask him if he needs to use the restroom, I'm sure.
14 We have him shake his arms out to get some blood circulating
15 back in there, but I think that's the last time he asked me a
16 question for his attorney was several pages back. We probably
17 talked for two or three pages after that.

18 Q Without the attorney being there, just to be clear?

19 A Correct. Keeping in mind there's nothing he says
20 that we could use against him.

21 Q Certainly, certainly. Last question. When was the
22 first date that you obtained cell phone location data that was
23 readable and understandable by you? So, not things that were
24 just numbers, but --

25 A Oh, I couldn't tell you the date they came in.

1 Q How about a month?

2 A October, November --

3 Q '14?

4 A -- for some of them.

5 Q '14?

6 A Of 2014 maybe. I -- I don't know for sure when I
7 even submitted for the -- for the information.

8 Q And we could at least agree though that cell phone
9 records continued to come in from that early portion through
10 September 20, '16?

11 A Yes.

12 MR. LANDIS: Thank you for your time, sir.

13 THE WITNESS: Thank you. Do you want your --

14 MR. LANDIS: Yes, I'll come get it. Thank you. I'll
15 pass the witness. If I can approach to grab those docs?

16 THE COURT: You may. Ms. McNeill?

17 MS. MCNEILL: Thank you, Your Honor.

18 MR. LANDIS: Thank you, sir.

19 THE WITNESS: You bet. Thank you.

20 CROSS-EXAMINATION

21 BY MS. MCNEILL:

22 Q I'm not going to be as lengthy as Mr. Landis, so
23 that's the benefit of going second, I guess.

24 A Okay.

25 Q But bear with me, because I kind of want to -- I

1 don't want to repeat questions he asked, so --

2 A Okay.

3 Q -- I got to go through my notes here. You talked a
4 little bit about the report that you authored, and you
5 indicated that once it's in your book, you don't go back in
6 and change it, right?

7 A That's correct.

8 Q By your book, do you mean sort of the binder that
9 you keep a lot of the evidence in?

10 A A lot of the reports in, yes.

11 Q Okay. And sometimes that can be multiple binders,
12 and that's where you put all of the things that are relevant
13 to the case?

14 A Yes.

15 Q Okay. And so, that's what you mean by once it's in
16 that book?

17 A Yes. Once it's signed and it's in that book, then
18 it doesn't get changed.

19 Q Okay. But you can go back and author supplemental
20 reports, correct?

21 A Yes, we can.

22 Q Okay. So, you could author another report and then
23 put that in the book, right?

24 A Yes.

25 Q Okay. You indicated yesterday that at some point,

1 there was a pinging done of a cell phone. Remember that?

2 A Yes.

3 Q Okay. Were you involved in that process?

4 A No.

5 Q It was Detective Williams, correct?

6 A I don't know if it was Detective Williams. It was
7 our criminal apprehension team.

8 Q Okay. It was your criminal apprehension team?

9 A Well, they're a task force.

10 Q Okay. And they work in connection with the FBI?

11 A Yes.

12 Q How did the FBI and this criminal apprehension team
13 get involved in pinging this cell phone?

14 A I believe they were made aware of the cell phone,
15 and I don't know what process they take after that.

16 Q Okay. So, just -- I guess just to clear this up,
17 the cell phone that we're talking about belonged to Jorge
18 Mendoza?

19 A That's correct.

20 Q Okay. Today, have you ever found that cell phone?

21 A No.

22 Q Okay. And so, you're the lead detective on this
23 case, right?

24 A Yes.

25 Q But you're not sure how the criminal apprehension

1 team got involved with pinging that cell phone?

2 A That's correct.

3 Q Okay. And you don't have any reports in your book
4 or books about the pinging of that cell phone?

5 A No.

6 Q And you don't have any reports about Detective
7 Williams driving to any locations?

8 A I know Detective Williams went to the location where
9 the car was found, which was near Joseph Laguna's house.

10 Q Okay. Well, but that wasn't my question. My
11 question was you don't have any reports that Detective
12 Williams wrote about what he did with that information?

13 A That's correct.

14 Q Okay. And so, the -- and then your answer to my
15 question was that it was in this location sort of near Mr.
16 Laguna's house, right?

17 A That's correct.

18 Q Okay. And that's on Lucky Horseshoe?

19 A That's correct.

20 Q You were also made aware by Amanda Mendoza that she
21 found the car in a location near that Lucky Horseshoe address,
22 right?

23 A Detective Williams was made aware of that, and then
24 I learned --

25 Q But you learned that?

1 A Then I learned about it.

2 Q Right. So, you had that information, because you
3 authored all these reports and reviewed them, and you're here
4 testifying all of these things?

5 A Yes.

6 Q Okay. You also learned through viewing all of that
7 information that Amanda Mendoza claimed that she and Jorge had
8 a friend who lived in that area at some time, and that was
9 near where she found the car?

10 A I don't recall that.

11 Q Okay. Did you ever -- were you ever made aware that
12 Jorge Mendoza had a family member who lived across the street
13 from Mr. Laguna?

14 MR. DiGIACOMO: Objection, that assumes a fact not in
15 evidence.

16 MS. McNEILL: I'm asking if he's aware of it.

17 THE COURT: Sustained.

18 BY MS. McNEILL:

19 Q Did you ever go to Joseph Laguna's house?

20 A I don't believe I was -- went to his home. I was in
21 his neighborhood.

22 Q Okay. When was that?

23 A I don't recall. Sometime during this investigation.

24 Q Is that in any of your reports?

25 A I don't think so.

1 Q What were you doing in the neighborhood?

2 A I went over to look to see where the car was
3 located, where the telephone had pinged, things like that.

4 Q Okay. After October 24th when you talked to Mr.
5 Figueroa and he gave you Mr. Laguna's name, you still did not
6 arrest Mr. Laguna anytime in 2014?

7 A That's correct.

8 Q In fact, he wasn't arrested until February of 2015,
9 correct?

10 A That's correct.

11 Q Okay. But you were given his name by Mr. Figueroa
12 as being involved in this incident?

13 A Yes.

14 Q To date, you've never served a search warrant on Mr.
15 Laguna's home?

16 A That's correct.

17 Q You haven't spoken to his wife?

18 A Have not.

19 Q I want to ask you a little bit of questions about
20 Mr. Figueroa. Were you made aware from your review of the
21 reports in this case that Mr. Figueroa's stepfather is a
22 police officer?

23 A Yes, I was.

24 Q Is it a Metro police officer?

25 A Yes, he is.

1 Q You indicated that Mr. Figueroa -- there was no
2 evidence that you collected that Mr. Figueroa shot his weapon
3 at the Broadmere incident, correct?

4 A That's correct.

5 Q And by that, do you mean that there was no evidence
6 that he fired his .40, correct?

7 A That's correct.

8 Q As a detective, you're familiar with firearms?

9 A A little bit.

10 Q A little bit? Well, you have to qualify to become a
11 police officer, right?

12 A Yes.

13 Q Okay. And so, the difference -- one of the
14 differences between a revolver and a semi-automatic is a
15 semi-automatic will expel the cartridge casing, right?

16 A Yes.

17 Q A revolver does not expel the cartridge casing?

18 A That's correct.

19 Q Okay. So, if someone shoots a revolver, there won't
20 be a cartridge casing left behind?

21 A That's correct.

22 Q And you would agree with me that based on your
23 knowledge in investigating various crime scenes, you don't
24 always find bullets after they're fired?

25 A That's correct.

1 Q The gun that you -- that you collected, the .40
2 caliber, Mr. Figueroa was very forthcoming with where that
3 would be, wasn't he?

4 A Yes, he was.

5 Q In contrast, he's never informed you that this
6 supposed .38 that Mr. Laguna may have been was provided to him
7 by Manny Barientos, correct?

8 A That's correct.

9 Q Gabe Sotelo gave you -- told you he could take you
10 to Manny's address, right?

11 A Yes.

12 Q Did you ever go there?

13 A Yes, we did.

14 Q Okay. Where is that?

15 A It's down by the old southeast substation, which is
16 going to be like Mojave and Saint Louis area on the east side
17 of town.

18 Q Did you ever make contact with Mr. Barientos?

19 A No. We contacted -- we knocked on the door and
20 contacted family members.

21 Q Okay. And to date, you've never had any
22 conversations with Mr. Barientos?

23 A No.

24 Q In fact, the Police Report, the Officer's Report,
25 the lengthy report Mr. Landis asked you questions about,

1 there's a lot of people's pictures on that report, right?

2 A Yes.

3 Q Including Gabe Sotelo's?

4 A Yes.

5 Q Even though he's not a suspect?

6 A That's correct.

7 Q There's no picture of Manny Barientos in that
8 report?

9 A That's correct.

10 Q You had information that Manny Barientos may have
11 been involved, right?

12 A Right.

13 Q And that came from Gabe Sotelo?

14 A That's correct.

15 Q You talked to Mr. Landis about some of your training
16 on interviewing -- well, not just suspects, but you learned
17 how to interview witnesses, right?

18 A Yes, ma'am.

19 Q Okay. And there was kind of a different -- you
20 don't interview a witness the same way you interview a
21 suspect; fair to say?

22 A There's -- there's subtle differences, yes.

23 Q Okay. But sometimes, you would agree with me, when
24 you're speaking with someone, you're not sure if they are just
25 a witness; they might be a suspect?

1 A That's correct.

2 Q One of the things you're looking for when you're
3 interviewing a potential suspect, would you agree with me, is
4 if they have information that potentially only the person who
5 committed the crime would know?

6 A Yes.

7 Q Based on your experience as a detective, would you
8 also agree with me though that when a crime is committed,
9 sometimes people on the streets will talk?

10 A Yes.

11 Q They'll talk to their friends?

12 A Yes.

13 Q And they will sometimes confess to crimes to their
14 friends?

15 A That's correct.

16 Q But Gabe Sotelo provided you with some information
17 that corroborated information you knew about what had happened
18 at the Broadmere address?

19 A Yes.

20 Q And he provided you with that nickname Orca I think
21 Mr. Landis asked you about, or Orco?

22 A Yes, something like that.

23 Q And you've already testified that you are able to
24 run through SCOPE by moniker or nickname, right?

25 A Yes, ma'am.

1 Q Did you ever put in that Orco nickname into SCOPE?

2 A I don't believe so.

3 Q Gabe Sotelo told you that Manny Barientos was known
4 to carry a .38, correct?

5 A Yes.

6 Q And that Manny had a .38 the day at the Broadmere
7 address?

8 A That's what he said, yes.

9 Q The phone that you impounded from Mr. Figueroa when
10 he was arrested on the 20th, was that released and given to
11 his girlfriend?

12 A I don't believe we released the phone.

13 Q Okay. Do you remember him asking you to release --

14 A Yes.

15 Q -- his -- okay. Did you -- but you don't remember
16 releasing that phone?

17 A That's correct.

18 Q And that's one of those phones that Mr. Landis asked
19 you about if you've ever done any sort of forensic work on it,
20 right?

21 A That's correct.

22 Q And the answer to that was no?

23 A That's correct.

24 Q When you were interviewing Mr. Figueroa the time
25 that he asked for his lawyer and he provided you all of this

1 information --

2 A On the 20th.

3 Q -- you made it clear to him -- you said, I don't
4 care if you're selling weed. Remember that?

5 A That's correct.

6 Q And that was your way of letting him know that he
7 could tell you whatever he needed to tell you, and if he
8 talked about selling weed, you weren't going to charge him
9 with that, right?

10 A That's correct.

11 Q So, you had information that Mr. Figueroa might be a
12 drug dealer?

13 A Yes, I got that from Gabe.

14 Q Okay. And in fact, Gabe indicated that he purchased
15 marijuana from Mr. Figueroa?

16 A That's correct.

17 Q Okay, and from Mr. Barientos?

18 A Yes.

19 Q During that interview with Mr. Barientos, Mr.
20 DiGiacomo asked you about the name Matone coming up, correct?

21 A That's correct.

22 Q Mr. -- or Mr. Sotelo did not give you that
23 information when he was talking about how Robert and Manny
24 were involved in this murder, right?

25 A That's correct.

1 Q In fact, it was in response to a question from you,
2 right?

3 A Yes, ma'am.

4 Q About who lives in the area of Alexander and Craig?

5 A That's correct.

6 Q Okay, and then he provided that name?

7 A That's correct.

8 Q You're aware of where this trailer park where Mr.
9 Murphy, and Summer Larsen, and Joey Larsen grew up, right?

10 A Yes.

11 Q And it's fair to say it's not far from the Lucky
12 Horseshoe address, right?

13 A It's a few miles from there, yes, but it's
14 relatively close.

15 Q Okay. The interview of Mr. Sotelo was on October
16 16th, right?

17 A That's correct.

18 Q So, that was just four days before you spoke to
19 Robert Figueroa, correct?

20 A Yes.

21 Q And after that interview, Mr. Sotelo was released
22 back onto the streets, correct?

23 A Yes.

24 Q The interview that you did with Mr. Laguna, I want
25 to talk to you a little bit about that. Mr. Landis kind of

1 went through with you some of these -- I think he called them
2 tools that you use, and we'd talked a little bit about that,
3 when you are interviewing someone. And I'm willing to bet you
4 used some of those when you talked to Mr. Laguna, correct?

5 A Yes.

6 Q And some of those were fairly similar to ones that
7 you used with Mr. Figueroa, right?

8 A Yes.

9 Q You indicated to him that some other people were
10 talking about him, right?

11 A That's correct.

12 Q And that some other people were saying that he was
13 the mastermind?

14 A That's correct.

15 Q And you didn't believe that, right?

16 A That's correct.

17 Q Okay. You asked him for his cell phone number, and
18 I know you told Mr. DiGiacomo he gave you a different number
19 than the one that you associate with him in 2014, right?

20 A That's correct.

21 Q But you have no -- you don't have any way of
22 believing that that wasn't his cell phone number when he gave
23 it to you, right?

24 A No.

25 Q In fact, he had that cell phone with him, right?

1 A That's correct.

2 Q And he let you go through that phone, right?

3 A I did not go through that phone.

4 Q Right, but he offered to you that you could?

5 A Yes.

6 Q Okay. You asked him for his wife's phone number,
7 and he provided you with a phone number, right?

8 A I think I -- I asked him about the last four digits
9 or something. He said that could be his wife's old number.

10 Q Okay. And it's fair to say people don't always have
11 the same cell phone number?

12 A That's correct.

13 Q In fact, you've come across that with several people
14 in this case, that their numbers changed over time?

15 A Yes.

16 Q Then you asked him -- you asked him questions about
17 if he knew Duboy, David Murphy, and he said he did, right?

18 A Yes, he did.

19 Q In fact, they're good friends?

20 A That's correct.

21 Q You asked him if he knew Jorge Mendoza, and he
22 wasn't quite as sure, but he did remember meeting him at some
23 point?

24 A Yes, correct.

25 Q And that would be through David Murphy?

1 A That's correct.

2 Q He told you he knew Robert Figueroa?

3 A He did.

4 Q At some point, you -- Mr. DiGiacomo said that you
5 sort of confronted him with his 762 -- 762-1584 number. When
6 you did that, he didn't to you; he remembered that that might
7 have been his number in September 2014, right?

8 A That's correct.

9 Q And you told Mr. DiGiacomo that he told you that he
10 wouldn't let people use his phone, right?

11 A That's correct.

12 Q He wouldn't have given his phone to someone else,
13 right?

14 A Yes.

15 Q In your years in interviewing suspects, it's fair to
16 say some people are more than willing to give you information
17 about other people, right?

18 A Yes.

19 Q Okay, and some people are not?

20 A That's correct.

21 Q And -- okay. You also mentioned that he told you
22 that he couldn't see well at night, correct?

23 A That's correct.

24 Q Is it fair to say he also told you that he just
25 couldn't see well?

1 A Yes.

2 Q And that he'd had a corneal transplant?

3 A That's correct.

4 Q And in fact, in that interview, you made a comment
5 about that's why you're holding those papers so close, right?

6 A Yes, I do -- I did.

7 Q During the course of that interview, you used
8 several of these tactics trying to get Mr. Laguna to talk --

9 A Yes.

10 Q -- right? He never made any admissions that he was
11 there that day, did he?

12 A That's correct.

13 Q In fact, he got pretty angry, didn't he?

14 A Yeah, he said that he was getting angry.

15 Q And the end of that interview, he just didn't want
16 to talk to you anymore, did he?

17 A That's correct.

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

19 THE COURT: Mr. Wolfbrandt?

20 CROSS-EXAMINATION

21 BY MR. WOLFBRANDT:

22 Q Good afternoon, Detective Jensen.

23 A Good afternoon.

24 Q Going third is even shorter. Do you recall what
25 time you arrived at the neighborhood where the Broadmere home

1 was?

2 A I would say sometime after -- or close to 9:00
3 o'clock.

4 Q Would it have been even closer to 10:00?

5 A It might have been.

6 Q Did you and Detective Williams, your partner --

7 A Yes.

8 Q -- do you arrive in the same vehicle?

9 A No. We respond from our homes.

10 Q All right. And did you arrive pretty much at the
11 same time, or do you know?

12 A I'm sure we did.

13 Q Okay.

14 A Well, he may have arrived sooner. He lives closer
15 to that area than I do.

16 Q All right. Now, you talked about doing a staging?

17 A Yes.

18 Q I believe you said a staging or --

19 A Yes.

20 Q -- a briefing?

21 A A briefing.

22 Q I'm sorry, it was a briefing. Was that one of the
23 first things that you did when you arrived at the scene?

24 A Yes.

25 Q So, when you arrived, there was a lot of activity,

1 wasn't there?

2 A Yes, there was. There was a lot of police activity.

3 Q Okay. Were crime scene analysts already there doing
4 things?

5 A No, I don't believe they would have been started.
6 They would have been at the briefing with us.

7 Q Do they pretty much work independently, or do you
8 kind of guide them as to what you think is relevant evidence?

9 A We work together. Now, if there's certain things
10 that I want photographed or something that I want impounded,
11 we'll talk -- we'll -- I talk to them, and they'll generally
12 do it. Sometimes they'll say, you know, we can photograph
13 that, we don't have to take it, you know. And if it's a push
14 or shove, then we -- we get the supervisors involved.

15 Q When you were at that first briefing -- and there
16 was only the one briefing, wasn't there?

17 A Yes.

18 Q Okay. So, at that briefing, did you learn that Mr.
19 Mendoza had been found in the -- in a black vehicle?

20 A Yes.

21 Q And when you arrived, was he already transported to
22 the hospital?

23 A Yes, I believe he was.

24 Q So, at any time during this case, have you ever seen
25 Mr. Mendoza prior to yesterday and today?

1 A No, not that I recall.

2 Q You didn't go to the hospital?

3 A I did not.

4 Q Now, your role there at the scene was primarily
5 gathering --

6 A My role --

7 Q -- crime scene diagraming and --

8 A No, no, the crime scene analysts do all that. My
9 role at that scene is to document some of the evidence for our
10 reports. But the crime scene analysts, their reports are much
11 more thorough. I mean, they're taking measurements, they're
12 doing trajectories and things like that. We don't do that.
13 You know, we'll say, you know, we found four bullets
14 headstamped this, this caliber, or four casings, things like
15 that.

16 Q Right, but as to differentiate from Detective
17 Williams' role was more of witness and --

18 A Yes. He was -- he was --

19 Q -- questioning?

20 A He was assigned to talk to the witnesses, interview
21 witnesses, and possible suspects.

22 Q Okay.

23 MR. WOLFBRANDT: Okay, that's all I have.

24 THE WITNESS: Okay.

25 THE COURT: Redirect?

1 MR. DiGIACOMO: Yes, Judge.

2 REDIRECT EXAMINATION

3 BY MR. DiGIACOMO:

4 Q Detective, I want to kind of start -- try and do
5 this chronologically, and hopefully get you out of here and
6 get the jury out of here on time. So, let's start with just a
7 few things that I want to clear up.

8 When you -- Mr. Landis was asking you questions, and
9 he did this kind of throughout the cross-examination about,
10 you know, as of this point, you only have two suspects, maybe
11 a third that's driving the car, those type of things. Do you
12 remember those questions?

13 A Yes, I do.

14 Q And he asked you for a list of evidence that you had
15 that there was in fact a person driving the car.

16 A Yes, sir.

17 Q Do you remember those questions?

18 A Yes.

19 Q Okay. During the time period you're processing the
20 crime scene, I'm assuming you're having communications with
21 your various partners throughout their doing work?

22 A Yes. You know, they would give me pieces of
23 information as we got kind of a break or a lull in the -- in
24 the investigation.

25 Q And during the time that you're out there, you

1 receive information as to what it is Mr. Mendoza is claiming
2 at the hospital?

3 A Yes.

4 Q Okay. Would you agree with me that Mr. Mendoza --
5 or let me ask you this. Based upon what you learned from your
6 partner, did you expect that Mr. Mendoza's champagne-colored
7 Nissan Maxima would either be located within that development
8 or would have been driven from that development?

9 A Yes.

10 Q Okay. Based upon the information that Mr. Mendoza
11 provided, was there potentially as many as four individuals if
12 you count Mr. Mendoza, so three individuals plus Mr. Mendoza
13 involved in something within that neighborhood?

14 A Yes, these are the people that approached him and --
15 yes.

16 Q So, there's at least some information you have that
17 there's three, as many as four suspects that were involved in
18 this neighborhood?

19 A Yes.

20 Q Mr. Landis also discussed with you sort of the
21 footprints that occurred at this scene that are in the blood
22 trail, and there was some discussion -- and I think I could
23 just use this. Some discussion about like -- and I will
24 generally describe or -- kind of where the blood trail kind of
25 goes is generally like that, correct?

1 A Yes.

2 Q And as you go along the blood trail, it's not like
3 my finger just drew that perfect little line of a blood trail?

4 A Right, it staggered.

5 Q And in various locations, as opposed to there being
6 drops or a line, there are big splotches on the ground?

7 A That's correct.

8 Q Did you draw some conclusion from your experience as
9 to what happened at that location?

10 A The big splotches would -- I would assume, or what
11 I've seen in the past is that's where the person who was
12 bleeding spots, and maybe they change position if they're
13 holding something over their wound, but they stop, and that's
14 where the blood pools up more.

15 Q So, if they're holding something against their head,
16 they let go, big spot on the ground, and then they might step
17 in that on their way out?

18 A Yes.

19 Q Okay. The fact that there were footprints in the
20 blood for a blood trail that goes a quarter-mile, in your
21 experience, do you think that the person that was bleeding
22 that badly could have made it a quarter-mile without leaving
23 some of their footprints in blood?

24 A No.

25 Q Okay. There was some questions related to Mr.

1 Figueroa in October 20th, and then October 24th, and Mr.
2 Landis kind of in between sort of said it's this -- he kind of
3 said October 20th to 24th. Would you describe your interview
4 of Mr. Figueroa on 10/20 as a true suspect interview?

5 A Yes. I mean, he was -- when I saw his gunshot
6 wounds, I absolutely believed that he was one of the people
7 involved.

8 Q Okay. Now, then Mr. Landis asked you questions
9 about 10/24.

10 A Yes.

11 Q Was the 10/24 the same situation where you utilized
12 investigative techniques to gather information from Mr.
13 Figueroa?

14 A No. For the 10/24 interview, he'd reached out to
15 us. He wanted to tell his story. And I think that's what we
16 did. I believe I said, you know, just start from the
17 beginning and tell us the story.

18 Q And during the course of that, there was questions
19 about a proffer versus a statement, or a confession, or
20 whatever we want to call 10/24, correct?

21 A That's correct.

22 Q In the course of your career, you've been involved
23 in proffers, correct?

24 A Yes, I -- yes, I have.

25 Q And a proffer involves my office basically giving

1 somebody the right to, off the record, tell us what we're
2 going to tell us, and we won't use what you tell us against
3 you, correct?

4 A That's correct.

5 Q And sometimes you're present, sometimes you're not?

6 A That's correct.

7 Q And when that happens, before anything happens,
8 there's a discussion between the parties, including the person
9 who's about to speak, where they're explained that situation?

10 A That's correct.

11 Q When you potentially might use a statement against
12 somebody who's in custody, do you have to do something first?

13 A Yes, I do.

14 Q And what do you have to do?

15 A You have to advise them of their Miranda rights.

16 Q So, I'm going to put up page 3 of State's Exhibit
17 327, and I'm going to jump down to the very bottom here. On
18 page 3, as you're reading Mr. Figueroa his Miranda rights, you
19 tell him anything he says can and may be used against him in a
20 court of law; is that fair?

21 A That's correct.

22 Q And he has a lawyer present, correct?

23 A That's correct.

24 Q Mr. Figueroa on October 24th of 2014 fully confessed
25 to the crimes we're here about?

1 A Yes, he did.

2 Q And without any protection of that statement not
3 being ever used against him?

4 A That's correct.

5 Q During that interview, there was a request by Mr.
6 Figueroa for his girlfriend to get her cell phone back, a
7 wallet, something else. Did you confirm what actually was
8 released to his girlfriend?

9 A I did.

10 Q And do you recall it off the top of your head?

11 A Yeah, I do. It was a wallet with some money, a pair
12 of tennis shoes, and some keys on a lanyard.

13 Q So, the cell phone, despite his request, was not
14 returned?

15 A That's correct.

16 Q During the questioning of -- by Mr. Landis, there
17 was some questions about you could have done a CFL warrant, a
18 computer forensics warrant on cell phones in this case?

19 A That's correct.

20 Q Okay. And you didn't do that in this case, correct?

21 A I did not.

22 Q There are times when you can get into somebody's
23 cell phone?

24 A That's correct.

25 Q And anybody who's watched the news knows there's

1 times when you can't?

2 A That's correct.

3 Q Okay. In this particular case, did you ever locate
4 the phone that Jorge Mendoza had, the 666-4948?

5 A I did not.

6 Q Did you ever locate the phone that Mr. Laguna
7 admitted being in his possession, the 762-1584?

8 A No.

9 Q And did you ever find the phone that Mr. Murphy --
10 or at least was in his name in September of 2014, and upon
11 receipt, the 542-1558? Did you ever find those three phones?

12 A I did not.

13 Q Can you do a CFL without the phone?

14 A You cannot.

15 Q Which leads me into questions, and Mr. Landis
16 brought up with you that, hey, Mr. Murphy asked for a lawyer
17 and you kept talking, correct?

18 A That's correct.

19 Q Because a defendant asks for his lawyer, there are
20 still some things you're allowed to ask a person, correct?

21 A That's correct.

22 Q It's what they call booking information, correct?

23 A Yes, identifying information.

24 Q You're entitled to ask him, hey, what's your phone
25 number, what's your address, where do you live, where were you

1 born, those types of information?

2 A Yes.

3 Q And there's nothing inappropriate about any of that?

4 A No.

5 Q There was some discussion about gunshot residue.

6 And I'm sorry to jump back, but there was some discussion from
7 Mr. Landis about, well, hey, Monty Gibson might have been
8 here, might have been there, might have been there. When a
9 gun fires, what does it discharge?

10 A Discharges gunpowder.

11 Q And as a police officer, have you ever been around a
12 gun when it discharged?

13 A Yes.

14 Q And if you're in a small confined space, does the
15 smoke of the discharge remain there?

16 A Yes, it does.

17 Q So, Mr. Landis said, if I fired a gun in here
18 yesterday, and then today you walked in, you wouldn't expect
19 me to get gun residue on me from that end?

20 A That's correct.

21 Q If someone fired upwards in the range of, well, at
22 least 6, as many as 15 shots within that home, do you think
23 anybody who walked in the downstairs of that home might have
24 gunshot residue on them?

25 A Absolutely.

1 Q There was questions asked about this report that you
2 generated that Mr. Mendez-Martinez was contained within. Do
3 you remember those questions?

4 A I do.

5 Q I'm sure you do. And there was some question about
6 when was that report finalized. Do you remember that?

7 A I do.

8 Q Okay. Certainly, that report was finalized before
9 you started your next report; would that be fair?

10 A That's correct.

11 Q And once you went in and showed Mr. Figueroa the
12 David Murphy photograph, did you begin drafting the next
13 report saying, hey, I got the wrong Duboy?

14 A After I showed Figueroa that photo, yes, I did.

15 MR. DiGIACOMO: May I approach?

16 THE COURT: You may.

17 BY MR. DiGIACOMO:

18 Q Detective, I'm showing you -- is that the report
19 that you began after talking to Mr. Figueroa?

20 A Yes, it is.

21 Q And does it tell you exactly when it is you began
22 writing that report?

23 A Yes, it does. It's Wednesday, November 19th, 2014.

24 Q So, the same day you find out from Figueroa that
25 that's not the right report, you begin writing that report?

1 A That's correct.

2 Q And that report is explaining how it is Mr. Mendez-
3 Martinez got in the report, and that you've actually
4 identified Mr. Murphy as the individual involved in the case?

5 A Yes, sir.

6 Q There was some questions about the investigation in
7 a dope house -- of the dope house. Do you remember that?

8 A Yes, I do.

9 Q You're a homicide detective, right?

10 A That's correct.

11 Q And I'm assuming you don't tell everybody what you
12 do in relationship to your investigation of a homicide to the
13 other thousands of employees at Metro, correct?

14 A In the -- no, I don't. And in the real world, the
15 narcotics guys don't care what I have to say, you know, and I
16 don't care what they have to say.

17 Q And my -- my question is this, is, you know, you
18 have no idea if that house has ever been investigated or not
19 investigated by law enforcement related to drug transactions
20 one way or the other; is that fair?

21 A That's correct.

22 Q Mr. Landis said, at what point did you draw the
23 conclusion that Summer wasn't involved, and I think you sort
24 of said, well, I had doubts when something happened, correct?

25 A Right, when I spoke with David Murphy.

1 Q Now, I know we're standing in a courtroom today, and
2 certainly, the jury's already heard a lot about the question
3 of reasonable doubt, but there are certain principles that
4 apply in the criminal justice system, correct?

5 A Yes.

6 Q So, would you agree that it isn't about whether or
7 not you believe she's involved or not involved; it's whether
8 or not you can prove beyond a reasonable doubt that she's
9 involved or not involved?

10 A Yes, sir.

11 Q And cases -- this case didn't stop being
12 investigated when Summer Larsen was arrested?

13 A No, it did not.

14 Q Case wasn't stopped being investigated when it was
15 indicted, correct?

16 A That's correct.

17 Q And it continued to be investigated up unto the
18 point even into the beginning of this trial?

19 A Yes, sir.

20 Q At some point, was there a decision made that you
21 just couldn't prove these allegations beyond a reasonable
22 doubt against Summer Larsen?

23 A Yes, sir.

24 Q So, in that -- staying with that sort of same theme,
25 related to Ashley Larsen -- Ashley Hall, there were some

1 questions about what she told you and didn't tell you,
2 correct?

3 A Yes.

4 Q And the information that you had was that
5 potentially she had some information about Summer and an
6 African-American male having a conversation on Friday before
7 this Sunday?

8 A That's correct.

9 Q And the information was this African-American male's
10 name is Evil that she didn't know?

11 A Right, and he had tattoos on his face or something
12 like that.

13 Q And she told you that this conversation began when
14 she went and picked them up from a place called Munchies?

15 A Yes.

16 Q When -- during the course of your investigation, do
17 you kind of go over to Munchies to sort of see, like, hey, how
18 is this working?

19 A Yes, I did.

20 Q And by the time you get to Munchies anyways, is
21 Munchies even an establishment that's open?

22 A No, it's -- it's chained up and the shelves are
23 empty.

24 Q Likewise, there were some questions about Summer and
25 this phone call on November 18th with a Hispanic male, and I

1 don't think Mr. Landis is going to disagree that we both
2 probably think it's Isaac Rodriguez or Snoop, but it's a
3 Hispanic male; would you agree with me?

4 A That's correct.

5 Q And the number that was put out there is probably
6 not that relevant, but during the course of that conversation,
7 she's -- she's talking to an individual. Now, you've met
8 Isaac Rodriguez?

9 A Yes.

10 Q Isaac Rodriguez I'm assuming is not a law-abiding
11 citizen on a daily basis, correct?

12 A No.

13 Q And many of the people that Summer Larsen was in
14 contact with during this period were likewise not law-abiding
15 individuals?

16 A That's correct.

17 Q And is it unusual when they get on the phone because
18 they think the police might be coming that they might say
19 something to the effect of, like, hey, did they ask about me,
20 that type of stuff?

21 A That's correct.

22 Q Is there any information that you've ever uncovered
23 that Isaac Rodriguez was involved in the homicide that
24 occurred on September 21st?

25 A No, sir.

1 Q Likewise, there's questions about, well, why didn't
2 we arrest Summer Larsen for these burglaries that occurred at
3 Joey's house, correct?

4 A That's correct.

5 Q There is factual questions and legal questions;
6 you'd agree with me?

7 A Yes.

8 Q And you sort of said it; she's married to Joey
9 Larsen?

10 A That's correct.

11 Q So, there's a question, would you agree, as to
12 whether or not she lawfully could enter that house, or damage
13 that house, or do anything she wants?

14 A That's a huge question.

15 Q Before I get to my very last area, I wanted to get
16 to one other thing that Ms. McNeill got up and asked you
17 about, but the suggestion that maybe Robert Figueroa had a
18 different firearm than the .40 caliber that was in -- that he
19 says is in his hands when he's at the corner and Roger Day
20 sees him.

21 A That's correct.

22 Q You would agree with me that if it's any
23 semi-automatic firearm, that you would likely find casings in
24 that location if it was fired?

25 A Absolutely.

1 Q And even if it was a revolver, if it's pointed in
2 the direction of a house, bullets travel in a straight line,
3 correct?

4 A That's correct.

5 Q And even if it was a revolver, you'd expect to see
6 bullet strikes to whatever direction that revolver was fired?

7 A Yes.

8 Q And did you find any bullet strikes that would be
9 consistent with firing from that location?

10 A No, I did not.

11 Q That brings us to Mr. Sotelo. There was questions
12 about he provided you some information, and there's some
13 information that he provided you that you weren't able to
14 confirm?

15 A That's correct.

16 Q Mr. Sotelo during the course of his interview with
17 you explained that he had kind of seen all this stuff on the
18 news, correct?

19 A Yes.

20 Q That he had a conversation with Mr. Figueroa, right?

21 A Yes, yes.

22 Q And that he kind of put two to two -- two and two
23 together and believes that it's Figueroa, Manny, and this guy
24 Orca?

25 A Yes.

1 Q Or Orco. And Orco is the guy that was arrested at
2 the scene?

3 A Right, he's the guy in custody.

4 Q And if we assume that -- those facts, Orco was the
5 guy arrested at the scene, Jorge Mendoza's the guy arrested at
6 the scene?

7 A That's correct.

8 Q Now, I'm assuming you've pulled all three of these
9 defendants' SCOPEs, right?

10 A Yes.

11 Q Have you found any evidence to suggest to you that
12 Jorge Mendoza has a moniker, let alone that that moniker is
13 Orco?

14 A No, I do not.

15 Q Likewise, in -- there was questions about you pulled
16 Duboy's. When you pulled Duboy in SCOPE, Mr. Murphy was one
17 of the people that has Duboy in SCOPE prior to September of
18 2014, correct?

19 A Yes.

20 Q You just did not associate the information you were
21 getting with David Murphy?

22 A That's correct.

23 Q During the course of your conversation with Mr.
24 Sotelo, he tells you -- or you receive information from him
25 that that phone number is in fact the phone number that he

1 calls Manny on all the time and that Manny answers?

2 A That's correct.

3 Q So, and he gives you that phone number as, hey,
4 that's how you're going to find Manny?

5 A Yes, he does.

6 Q Additionally, Mr. Sotelo claims, anyways, that the
7 first time that he learns anything is when he hasn't seen
8 Manny or Mr. Figueroa for some period of time, and now he
9 wants to buy marijuana, and that's why he goes over there and
10 sees them, correct?

11 A That's correct.

12 Q He doesn't tell you that -- or did he ever tell you
13 that Mr. Figueroa called him repeatedly as he was hiding in
14 that backyard to come pick him up?

15 A He did not.

16 Q Lastly, Ms. McNeill kind of said to you, well, he's
17 talking to you about Manny with the .38, and he's talking
18 about Orco or Orca, and he's talking about Mr. Figueroa, but
19 he never really says anything about Mr. Laguna being involved
20 in this situation, correct?

21 A That's correct.

22 Q Mr. Sotelo's description of Manny, and Robert, and
23 Mr. Orco or whatever is that those three are all kind of a
24 group together, right?

25 A That's correct.

1 Q And that sort of the leader of this group is Mr.
2 Laguna?

3 MS. McNEILL: Objection, Your Honor. Can we
4 approach?

5 (Off-record bench conference)

6 THE COURT: All right. So, ladies and gentlemen, I
7 know that yesterday we went until 5:30, and we had one that
8 needed to go get children picked up, and that the marshal
9 explained that that was cutting it a little too close. And so
10 I've been mindful of that and was not intending to go past
11 5:15.

12 We're not going to finish with this witness tonight.
13 You may have had an inkling by this point in time that we're
14 not going to be finishing this trial by tomorrow. And so, for
15 that, I apologize, because I always try and estimate and
16 overestimate to make sure, but obviously, now it appears that
17 probably the evidence is not going to be finished until
18 perhaps Wednesday of next week.

19 Obviously, you have to hear closing arguments, you
20 have to be instructed on the law, and then you have to
21 deliberate because that's what you've been here for, for all
22 this time. So, I am expecting that, as I say, we might not be
23 done until next week, because you cannot be rushed in a case
24 as important as this in your deliberations, all right?

25 So, knowing that -- and you were told we were going

1 to be done by tomorrow. That's not happening. So, I need to
2 know if there's anyone who feels like they could not possibly
3 -- and I don't know why this would be, but you weren't told
4 that -- you know, you were told Friday. So, but I -- so, I'm
5 needing to find out, is there someone who feels that they
6 cannot stay through next week? Seeing no hands. Thank you.
7 I'm seeing a hand possibly.

8 JUROR NO. 1: Would it be all next week until Friday?

9 THE COURT: I don't know. I don't know. So, that's
10 why I'm asking you now. So, wait, we're going to give you the
11 microphone. Right, no, the person that was speaking needs --

12 THE MARSHAL: Oh.

13 JUROR NO. 1: Malinda Yates.

14 THE COURT: She's in Seat No. 1. Okay, go ahead.

15 JUROR NO. 1: I'm in Seat No. 1.

16 THE COURT: Yes.

17 JUROR NO. 1: I just asked would it be all of next
18 week?

19 THE COURT: And I do not know.

20 JUROR NO. 1: Okay.

21 THE COURT: I don't know, because I don't know how
22 long the jury will deliberate, for instance, you know? So,
23 because that's completely up to you. I have no control over
24 that, okay? And --

25 JUROR NO. 3: Just all I want to know is if we're --

1 THE COURT: Name?

2 JUROR NO. 3: Oh, Matt Mruzek.

3 THE COURT: All right, and you're in Seat No. 3.

4 JUROR NO. 3: Seat No. 3.

5 THE COURT: Okay.

6 JUROR NO. 3: Are we assuming the same schedule --
7 type of schedule, Monday through Thursday half-days, Friday --

8 THE COURT: Yeah, same, because my schedule doesn't
9 change as far as my other things that I have to attend to.
10 So, the schedule remains the same, yes, except for once you
11 start deliberating, then, you know, you can come in at 9:00 in
12 the morning, and yeah, you don't have to wait until I'm done
13 with drug court because you deliberate in a jury room.

14 JUROR NO. 3: Thank you.

15 THE COURT: Okay. So, I'm only wanting to find out
16 like is somebody scheduled for surgery or something next week,
17 because of course, you know, if you have -- if you run into
18 some problem that you think is insurmountable as we progress,
19 then you need to let the marshal know and we'll discuss this
20 again. But I just wanted to alert you now, right, so you can
21 plan, and also to apologize that there will be this delay, all
22 right?

23 And now I want to get you out of here because there
24 are children to be picked up. So, ladies and gentlemen, we
25 are going to take an overnight recess. Now, we're starting

1 tomorrow at 9:00, as tomorrow's my Friday and I don't have any
2 court in the morning. So, we'll start at 9:00.

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

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

13 (Jury recessed at 5:10 p.m.)

14 THE COURT: And the record will reflect that the jury
15 has departed the courtroom. All right, so there was an
16 objection, so let's just state that on the record.

17 MS. McNEILL: Thank you, Your Honor. My objection
18 was when Mr. DiGiacomo elicited from the detective that the --
19 that Manny, and Gabe, and I think maybe Mr. Figueroa were
20 members of a group, and that he began to ask him that my
21 client was the leader of that group. And my objection -- I
22 objected at that time.

23 I think unless we're going to say that they're some
24 sort of bowling league or something like that, the inference
25 is pretty clear to the jury that the group is a gang. I don't

1 believe I opened the door to that information. Mr. DiGiacomo
2 on direct asked the detective if the name Matone ever came up
3 in his interview with Mr. Sotelo, and he said it did. I'm
4 allowed to put that in context.

5 This is the same thing that Mr. DiGiacomo accused Mr.
6 Landis of was putting things in the proper context. The
7 context of that question was in response not to whether my
8 client was involved in this or if he'd heard the name Matone.
9 That information came from the detective asking him if he knew
10 anyone who lived in this area, and that's when he provided the
11 name. And so, I was putting that into context. I don't
12 believe by doing that I've opened the door to the fact that my
13 client is allegedly the leader of this group. The group is
14 the gang.

15 And so, I would at this point move for a mistrial. I
16 think that the entire time, we've made it clear -- you know,
17 we've been trying to keep any type of gang affiliation out of
18 this case. I certainly wouldn't elicit that information if it
19 was not a tactical decision on my part. And so if that comes
20 in, at this point, I'm completely ineffective.

21 I would ask for a mistrial because I think that the
22 only logical inference to the jury is that it's a gang. I
23 mean, they're sitting here looking at these gentlemen. They
24 see my client's tattoos. He's brought in a picture where you
25 can clearly see his neck tattoo. This was something Mr.

1 Laguna's been worried about from the beginning. Mr. DiGiacomo
2 has elicited that most of the people involved with this have
3 criminal records.

4 I think, again, it's only logical for the jury to
5 conclude that the group that my client is a leader of is a
6 gang. I can't unring that bell, and I don't think that that's
7 relevant. It certainly doesn't put -- you know, me putting
8 into context his question doesn't open the door to that coming
9 in. And so I would ask for a mistrial at this point because
10 Mr. Laguna has been severely prejudiced by that.

11 THE COURT: And State?

12 MR. DiGIACOMO: Thank you. During -- first, let's
13 start with the opening. During the opening, the defense, and
14 Ms. McNeill in particular, said, you know, they're -- Gabriel
15 Sotelo was out there, he said Manny Barientos did it, and his
16 phone number shows up on Mr. Figueroa's records, and my client
17 had nothing to do with it.

18 Then, during the cross of Figueroa, both -- I think
19 everybody but Mr. Wolfbrandt all crossed Mr. Figueroa on, hey,
20 you're friends with Manny; hey, you're friends with Gabe; you
21 told Gabe this. And you know, he denied it and he said, no,
22 that's not the inference of this and all that.

23 Then, I just -- in questioning this witness just
24 asked him, hey, did you have the name Matone as, you know,
25 maybe involved here prior to October 20th or whenever it is

1 that you had contact with Mr. Figueroa? Then, on
2 cross-examination by Ms. McNeill, she says this. He says that
3 Orco, and Laguna, and Manny, and he says my client had
4 absolutely nothing to do with it.

5 Well, that is not what Gabriel Sotelo said. Gabriel
6 Sotelo said these three did it. And when asked, well, who
7 lives at Gowan and Craig? Mr. Laguna, he's the shot caller.
8 And if Mr. Sotelo does make it into the courtroom, I will be
9 requesting to cross him on his gang membership, the gang
10 membership of all those people, and the fact that, no kidding,
11 he's not going to rat out Mr. Laguna.

12 But my question was, hey, look, these all three
13 people are associated and this guy is the one who tells these
14 guys what to do, which is highly relevant to the credibility
15 of Mr. Sotelo under 51.069, all of which is admissible as bias
16 of a witness, because they've been bringing in his hearsay
17 statements this entire trial and I'm now allowed to attack it
18 as if he testified.

19 THE COURT: All right. Well, so Motion for Mistrial,
20 that's denied. I mean, you're -- you want to jump to this
21 conclusion that because four people are associated that
22 they're the members of a criminal gang? I don't -- I don't
23 think that this jury is going to infer that from the testimony
24 that I heard. I thought what the testimony was was that
25 they're all friends, they run together, they're associated

1 with each other, and that does -- that doesn't translate to me
2 to a criminal gang.

3 And when -- when you're trying to say your client --
4 you know, you're having this -- you're crossing this detective
5 about conversations with Mr. Sotelo, so yes, eliciting what
6 Mr. Sotelo said, and that he -- well, he didn't say anything
7 about Mr. Laguna. Well, that's not -- that's misleading the
8 jury, and you have opened the door to what -- whatever it was
9 that Sotelo then told him.

10 MS. McNEILL: Can I --

11 THE COURT: But I certainly don't think that the
12 testimony that's come up to this point to say that they were
13 in a group means everybody's going to go, ah, criminal gang.
14 And the fact that somebody has a tattoo also does not mean
15 criminal gang.

16 MS. McNEILL: If I could respond, Your Honor. One, I
17 did not say Mr. Laguna had nothing to do with this according
18 to Mr. Sotelo. Again, my question was based in putting Mr.
19 DiGiacomo's question in context, because he -- his question
20 was, did the name Matone come up from Gabriel Sotelo? He did
21 not put it into context of, did you ask him a question about
22 this location and that name came up?

23 His question was designed to infer to the jury that
24 Gabe Sotelo pointed a finger at my client as being involved in
25 this incident, one. So, I was putting that into context.

1 Two, my question was, did Gabe Sotelo say that Mr. Laguna had
2 anything to do with this incident? That is not the same as
3 was he involved with these people. So, again, I don't believe
4 by putting that into context I've opened the door.

5 And I would like to also make the record that, again,
6 I want the record to reflect that, at this point, I'm
7 absolutely ineffective as far as Mr. Laguna goes, and he can
8 deal with that on post-conviction. Two, I --

9 THE COURT: Well, wait, wait, wait.

10 DEFENDANT LAGUNA: I don't want her on me either,
11 because she's not -- she's -- if that's the case, she's
12 heard --

13 THE COURT: You be quiet, you be quiet.

14 DEFENDANT LAGUNA: -- she's heard me. So I don't
15 want her --

16 THE COURT: You be quiet.

17 THE CORRECTIONS OFFICER: Be quiet.

18 DEFENDANT LAGUNA: No.

19 THE CORRECTIONS OFFICER: Hey, man.

20 DEFENDANT LAGUNA: I'm speaking.

21 THE COURT: No, you're not speaking now.

22 MS. McNEILL: And --

23 THE COURT: So, let me just say that you are far from
24 an ineffective counsel. And then the other thing I want to
25 say is, you know, that to say that somebody has tattoos, and

1 from that, one, you know, must -- is going to deduce that
2 they're a member of a criminal gang, you have a tattoo that's
3 visible to this jury as you walk around. Do you think
4 everybody's sitting here thinking you're part of a criminal
5 gang? No. And so, I mean, I just -- I'm sorry, but you --
6 you know, there is not -- this does not rise at all to a
7 mistrial.

8 And the fact that you all have allowed, you know,
9 without objection -- and I'm sitting here. I'm not going to
10 jump in the middle of your cases and say, no, you know, that
11 question calls for hearsay; that assumes facts not in
12 evidence. I rule on your objections when you make them. And
13 when you're -- everybody's letting a bunch of hearsay come in,
14 well, that's your decision, and I assume that those are
15 tactical decisions. So, if you want to make any further
16 record on this, you may do that tomorrow morning, okay?

17 MS. McNEILL: Yes, Your Honor.

18 THE COURT: Because I'm real tired tonight, and it's
19 almost 5:30, and I told my husband I would be off at 5:00
20 because we're going to the theater tonight. So, you can talk
21 as long as you want, as long as it's between 8:30 and 9:00
22 tomorrow to make whatever record you'd like, because, you
23 know, I never keep you from making a record. All right.

24 MR. DiGIACOMO: We told the jury 9:00, right?

25 THE COURT: We told the jury 9:00, so if you want to

1 be here at 8:30 to put whatever record you want to make,
2 that's fine.

3 The CORRECTIONS OFFICER: Judge, you want them here
4 by 9:00 or 8:30? What time would they --

5 THE COURT: They need to be here at 8:30.

6 THE CORRECTIONS OFFICER: 8:30? Okay.

7 THE COURT: All right, and so we're -- we'll be here
8 at 8:30 so you can make any records, and then jury will be
9 here at 9:00. I'll see you tomorrow.

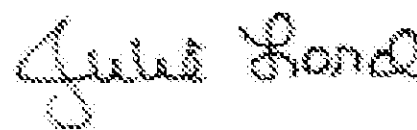
10 (Court recessed at 5:21 p.m. until Friday,
11 September 30, 2016, at 9:20 a.m.)

12 * * * * *

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

16

17



18

19

JULIE LORD, INDEPENDENT TRANSCRIBER

20

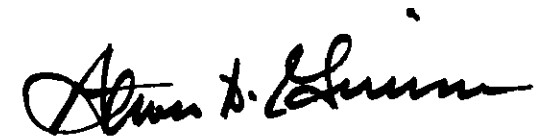
21

22

23

24

25



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 14

FRIDAY, SEPTEMBER 30, 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
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

INDEX

WITNESSES

STATE'S WITNESSES:

DETECTIVE BARRY JENSEN

Redirect examination by Mr. DiGiacomo	51
Recross-examination by Mr. Landis	54
Recross-examination by Ms. McNeill	65
Redirect examination by Mr. DiGiacomo	71
Further recross-examination by Ms. McNeill	73

DAVID BROWN, ESQ.

Direct examination by Mr. DiGiacomo	109*
Cross-examination by Mr. Landis	116*
Redirect examination by Mr. DiGiacomo	125*
Recross-examination by Mr. Landis	126*

DEFENDANT MENDOZA'S WITNESS:

JORGE MENDOZA

Direct examination by Mr. Wolfbrandt	79/137
Cross-examination by Mr. DiGiacomo	173

****Testimony outside the presence of the jury.***

EXHIBITS

STATE'S EXHIBITS:

Exhibits 335, 336, 337 - Sotelo's Judgments of Conviction..	54
---	----

1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 30, 2016, 9:20 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. Are we on the record now?

4 THE COURT RECORDER: Yes, Judge.

5 THE COURT: Okay. We're on the record outside the
6 presence of the jury. The record will reflect the presence of
7 all three members -- or all three defendants, as well as their
8 respective attorneys. The Chief Deputy District Attorneys
9 prosecuting the case are present, as are all officers of the
10 court.

11 It's of, course 9:20. We were supposed to start at
12 8:30. So we've had a -- sort of a cascade of problems here
13 this morning; Mr. Laguna initially refusing to come. I see
14 he's here now and seems fine, so that's good. But that
15 delayed us. I had to do an order, and it delayed the
16 transport.

17 And then Ms. McNeill of course was also a half-an-
18 hour late to court, which I find mind-boggling, but -- and
19 then we had a juror with a flat tire who was also slightly
20 late, although she managed to get her act together pretty
21 quickly. But nonetheless, here we are an hour later than we
22 had expected to be able to start.

23 So, this is how I want to go with this now in
24 addressing, you know, the record we didn't finish making
25 yesterday. So -- so, on redirect, there was an objection, but

1 basically, it was, you know, objection, objection, in the
2 middle of the question, and then approach.

3 So we need to deal on -- put on the record on what
4 the legal objection to the question was so that I can rule
5 upon that, as well as, then you'd also made a Motion for a
6 Mistrial. And I had ruled on that but said you could make
7 further record. And so, I want to do that, of course. But I
8 don't think that we made a proper record about the initial
9 objection and what the actual objection to the question is,
10 so.

11 MS. McNEILL: My objection to the question was that
12 it was eliciting improper prejudicial information that my
13 client's in a gang. I don't believe that's relevant; I don't
14 believe it's proper. I think -- I know the Court made a
15 ruling that you don't see that that's the inference. I
16 believe that's the inference that the jury will take away from
17 the question of them being in a group together.

18 Along those lines, I'd like to admit as a court
19 exhibit Mr. Sotelo's statement so that on appeal, the Supreme
20 Court has the actual statement since they -- so -- since part
21 of the issue was Mr. DiGiacomo 's question. And I believe
22 that what I was doing was putting into context what the
23 question was; what the information was that was actually given
24 to the detective by Mr. Sotelo. And so, if I could have that
25 marked.

1 THE COURT: Okay. I'm unclear as to -- so both
2 sides are putting in testimony from a witness who's not here,
3 right? Nobody objected, and you're still not making any
4 objection that this last question sought to elicit hearsay?

5 MS. McNEILL: No.

6 THE COURT: Okay. And so, I need you to state the
7 question, at least as best you recollect it, because I can't
8 remember --

9 MR. DiGIACOMO: Yeah.

10 THE COURT: -- what the question was.

11 MR. DiGIACOMO: The first question I asked was, as
12 it relates to this Orco guy, whoever that might be, Manny, and
13 Mr. Figueroa, the information you received was that they were
14 all sort of in a group together. And then I said, the
15 information you also received was that Mr. Laguna, or this
16 person, Matone (sic), was the leader who tells them what to
17 do, is the -- is I think sort of the question and answer that
18 I asked.

19 THE COURT: Okay, because I did not -- I -- I
20 thought -- I don't remember that you asked that kind of
21 leading question. And I -- these are the times I wish we had
22 a court reporter instead of recorder, because then I could
23 just say read back the question, but --

24 THE COURT RECORDER: We can play back the question,
25 Judge.

1 THE COURT: Pardon me?

2 THE COURT RECORDER: I can play back the question.

3 THE COURT: Yeah, let's play back that question, the
4 question just before the -- can you find it that easily
5 though?

6 THE COURT RECORDER: It will take me just a minute.

7 THE COURT: Okay.

8 THE COURT RECORDER: Where were you at, Mr.
9 DiGiacomo?

10 MR. DiGIACOMO: It was the last two questions I
11 asked before --

12 THE COURT: Yeah, before --

13 MR. DiGIACOMO: -- the Court sent the jury out.

14 THE COURT: Exactly.

15 THE COURT RECORDER: Before his --

16 MS. LEXIS: It was like 5:00 o'clock.

17 MR. DiGIACOMO: No, no. It was the -- I was on
18 redirect, and so it was the last thing I said before we had a
19 bench conference and then the jury was sent out of the room.

20 THE COURT RECORDER: It will take me a minute,
21 Judge.

22 THE COURT: Okay. Because my recollection was that
23 it was an answer that was being given, and I didn't remember
24 that it was --

25 MR. DiGIACOMO: It may have been less leading than

1 that.

2 THE COURT: -- posed that way, so.

3 MR. DiGIACOMO: I don't remember exactly the
4 question and answer sequence, but that was the -- the nature
5 of the testimony.

6 THE COURT: The nature, right.

7 MR. LANDIS: The leader -- the word "leader" came
8 out of Mr. DiGiacomo's mouth first.

9 MS. McNEILL: It did, yes.

10 MR. LANDIS: There's no doubt about that.

11 MS. McNEILL: Yes. He said, Mr. Laguna is the
12 leader of this group.

13 THE COURT: All right, and while I'm -- while I'm at
14 it, I can look at that statement, the one that was marked
15 just --

16 THE CLERK: She didn't give it to me yet.

17 THE COURT: Would you let me look at that, please?

18 THE CLERK: Did you admit it, or no, not yet?

19 THE COURT: No, because she wanted to mark it as a
20 court exhibit, but I want to look at it first.

21 (Pause in the proceedings)

22 THE COURT RECORDER: Mr. DiGiacomo?

23 MR. DiGIACOMO: Yes, ma'am.

24 THE COURT RECORDER: Can you look at those notes and
25 see if you can help me dial in where you want?

1 MR. DiGIACOMO: It's redirect. Go all the way to
2 the end of my redirect.

3 THE COURT RECORDER: The end of your redirect?

4 THE COURT: It's like the very last question he
5 asked, and --

6 MR. DiGIACOMO: Yeah, right at the bottom. Keep
7 going down, keep going down.

8 THE COURT RECORDER: No, because we're already
9 outside the presence. 5:10:53 is outside the presence.

10 MR. DiGIACOMO: Oh, okay. So, yeah, keep rolling
11 up.

12 THE COURT RECORDER: 5:04:02? Can you see that,
13 Judge? It's on your screen. And then --

14 MR. DiGIACOMO: Right here, yeah. I guess 5:03:27,
15 "Manny, Orca, Figueroa" -- yeah.

16 THE COURT: "Objection, can we approach?" Okay.

17 MR. DiGIACOMO: If you start there, that's sort of
18 the end of my --

19 (Court Proceedings from 9/29/17 played, as follows:)

20 BY MR. DiGIACOMO:

21 Q And he's talking about Mr. Figueroa, but he never
22 really says anything about Mr. Laguna being involved in the
23 situation, correct?

24 A That's correct.

25 Q Mr. Sotelo's description of Manny, and Robert, and

1 Mr. Orco, or whatever, is that those three are all kind of a
2 group together, right?

3 A That's correct.

4 Q And that sort of the leader of this group is Mr.
5 Laguna?

6 MS. McNEILL: Objection, Your Honor. Can we
7 approach?

8 (Court Proceedings from 9/29/17 stopped playing)

9 THE COURT: Okay, so there's no answer. That's what
10 -- that's what I was trying to find out, so -- because I
11 couldn't -- I couldn't tell if there was an answer to the
12 question, so then you objected. And so, I -- I'm on page 8 of
13 this.

14 MR. DiGIACOMO: Judge, there's probably two pages
15 that relate to those two questions.

16 THE COURT: Okay.

17 MR. DiGIACOMO: And I was looking at them last
18 night. Let me just -- I can probably find them to you. Okay,
19 so page 6, after he sort of described all these people, about
20 1, 2 -- the third question down --

21 THE COURT: "I just know his street name"?

22 MR. DiGIACOMO: Right. When he's -- that's the
23 third one that he's come up with, and he says, "That little
24 crew, they like -- that's all they do." And if you were to
25 read the whole thing, what he's saying as to these three

1 individuals is that these three individuals are a group of
2 individuals who commit burglaries, or robberies, or whatever
3 it is.

4 And then he talks a lot about the Little Locos. And
5 then later, it's Detective Jensen, and it's much later in the
6 statement when -- after he gets all the identifying
7 information he can on these individuals.

8 MS. McNEILL: It's page 20 --

9 MR. DiGIACOMO: 22.

10 MS. McNEILL: 22.

11 THE COURT: Thank you.

12 MS. McNEILL: Where he says, "Montone, that's like
13 OG, like their -- like their shot caller."

14 MR. DiGIACOMO: Correct.

15 THE COURT: Okay. Your question -- Ms. McNeill?

16 MS. McNEILL: Yes, Your Honor.

17 THE COURT: Your question had been about -- I think
18 was -- if I remember right; correct me if I'm wrong -- that
19 did Sotelo -- or maybe you led him and said, but Sotelo never
20 said that Laguna was involved. Is that what it was?

21 MS. McNEILL: My question was, because Mr. DiGiacomo
22 asked him Gabe Sotelo -- the name Matone came up with Gabe
23 Sotelo.

24 THE COURT: Right.

25 MS. McNEILL: So, to put that in context, my

1 question was, the name came up because of a question you asked
2 about who lives in the area of Craig and Alexander, and then I
3 said it wasn't in reference to this incident; the name didn't
4 come up in reference to this incident.

5 Because I think that Mr. DiGiacomo's question
6 implied that that's -- since the conversation with Sotelo was
7 about what happened at Broadmere, that's kind of what we were
8 limiting it to. When he asked that question, I felt that it
9 took it out of context. So, to clarify that my client's
10 nickname came up in response to a question from the detective;
11 not about this incident.

12 THE COURT: All right. Well, I guess I'm --
13 frankly, I'm more concerned that -- I mean, if this guy comes
14 and testifies, you know, that's one thing, but to -- this is
15 like hearsay from -- from this guy who -- so you're eliciting
16 hearsay testimony. I don't know that there's any exception to
17 a -- to the hearsay rule to ask him about, or -- you know, the
18 question was leading also. But so that's -- but there was no
19 objection to those things, but there wasn't an answer, and I
20 just don't think it's a proper question, because you're
21 basically putting in testimony that's hearsay, testimony in a
22 prejudicial, and I'm going to --

23 MR. DiGIACOMO: Can I address the --

24 THE COURT: Yeah.

25 MR. DiGIACOMO: -- the Court's concerns?

1 THE COURT: Yes.

2 MR. DiGIACOMO: Because what Ms. McNeill has claimed
3 is that I somehow opened the door to Gabriel Sotelo's
4 statements as hearsay offered for the truth of the matter
5 asserted. And I was very careful throughout all of this. Did
6 you get information about an individual named Robert Figueroa;
7 did you go find Mr. Figueroa; what did you see; did you get
8 information about someone named Manny Ramirez (phonetic); what
9 phone number did he provide you?

10 I'm not offering any of that for the truth of the
11 matter asserted. I am offering that to establish that the
12 information that Gabriel Sotelo provided as it related to
13 Manny was false. And during -- the question I asked Detective
14 Jensen was, during the course of your conversation with Mr.
15 Sotelo, did the name Matone (sic) come up? There's no truth
16 of the matter asserted to that question and answer either.

17 THE COURT: Right.

18 MR. DiGIACOMO: I put absolutely no hearsay in
19 whatsoever in my questions. Ms. McNeill put in the hearsay
20 statements of Gabriel Sotelo during her questions of Detective
21 Jensen. Mr. Landis did the exact same thing as it related to
22 Detective Jensen. Both of them have put in what Gabriel
23 Sotelo said about the incident during their cross-examination
24 of Mr. Figueroa. And as the Court will recall, the objection
25 to assuming a fact not in evidence came a little late, but

1 they put in all of that in front of the jury.

2 And there is a statute that says 51.069 allows you
3 to attack the credibility of a hearsay declarant as if he
4 testified. And what -- if I were allowed to finish my
5 questions -- and I was thinking about this last night, that I
6 didn't go far enough, because I should be allowed to ask the
7 detective a variety of additional questions related to that
8 testimony, because they're saying Gabriel Sotelo said Mr.
9 Laguna had nothing to do with this, and they're offering that
10 to establish that Mr. Laguna had nothing to do with this, and
11 thus, I'm entitled to attack that.

12 Detective, isn't it true that these three
13 individuals are -- that Mr. Sotelo told you about are a member
14 of a particular group? Yes. And that Mr. Laguna is the
15 leader of that particular group? Yes. Isn't it true that
16 what Mr. Sotelo did by talking to you is commonly referred to
17 as snitching? Yes. Detective, are aware of any reason why it
18 is he might not tell you what he knows about Mr. Laguna?

19 I'm entitled to now cross-examine Mr. Sotelo.
20 That's what I'm entitled to do, because they offered it. It's
21 not my fault that they're offering the hearsay statements of
22 Mr. Sotelo. I'm entitled to go into his bias, and this
23 directly relates to his bias and why it is he wouldn't say
24 that Mr. Laguna's the person involved in this crime.

25 And how it is that I can be precluded from doing

1 that when they're offering Mr. Sotelo's hearsay statements
2 because they do not believe he will be a witness in this case,
3 because they have a material witness warrant, that's on them.
4 I don't have to do the rules of evidence for them. They make
5 the decision, and thus, I'm allowed to cross-examine on, is --
6 you know, does he have a reason why he wouldn't be telling you
7 that Laguna's involved in this crime.

8 MR. LANDIS: And if I --

9 MS. McNEILL: And if I -- I'm sorry. If I could
10 respond?

11 THE COURT: Okay, wait. 50 -- what was your --

12 MR. DiGIACOMO: 51.069.

13 THE COURT: Thank you. Well, he's right. It says,
14 "When a hearsay statement has been admitted in evidence," and
15 you did admit hearsay statements in evidence, "the credibility
16 of the declarant may be attacked or supported by any evidence
17 which would be admissible for those purposes if the declarant
18 had testified as a witness."

19 Now, you know, obviously, the State could have
20 objected to your admitting hearsay statements, but they
21 didn't. And so now you did when you, you know -- "the
22 credibility may be attacked or supported by any evidence which
23 would be admissible for those purposes if the declarant had
24 testified as a witness." So, his own statements, right?

25 MR. LANDIS: Can I respond? I have a few things to

1 say. The first one is, every time I bring up this issue, it's
2 ignored. But we must understand, even if the Court agrees
3 that somebody opened the door to this, it doesn't come in
4 against every defendant. And if Sotelo doesn't testify,
5 Mendoza has a confrontation clause problem, so we better hope
6 he gets in here. And why I say that is hearsay statements
7 were put into evidence Sotelo made that identified Mendoza as
8 being involved. We got a confrontation problem if Sotelo
9 doesn't testify. That's just the truth.

10 MR. WOLFBRANDT: And I was going to get to that, one
11 of the --

12 MR. LANDIS: Moreover, and more important, what he's
13 saying about I didn't admit hearsay but we did, to the extent
14 that argument holds water, it's just because his State
15 questions were not -- had no foundation if they weren't based
16 in hearsay. It's no different. The basis that we asked our
17 questions and his were the same, which is effect on the
18 listener; effect on the investigation.

19 The fact that we asked the questions directly and he
20 chooses to ask them as, hey, did you learn from Sotelo blah,
21 blah, blah, doesn't matter. I could object foundation, then
22 he'd still be in the same spot where it can't come in unless
23 it's hearsay. We brought it in, and the reason I think all of
24 it's admissible is effect on the listener, not truth of the
25 matter asserted --

1 MS. McNEILL: Right.

2 MR. LANDIS: -- honestly. And to say now that this
3 gang stuff comes in against everybody is hugely prejudicial.
4 It's going to create --

5 THE COURT: Okay, wait, wait. So, I think you're
6 mistaking a hearsay exception as to something that's not
7 hearsay. So, the purpose of this is if hearsay comes in --
8 because it may come in under an exception, right? In other
9 words, effect on the listener doesn't change it from being
10 hearsay.

11 MR. LANDIS: It does, because it's not being
12 admitted for the truth of the matter asserted. Thus, it's not
13 hearsay.

14 THE COURT: Well --

15 MR. LANDIS: And honestly, the bottom line, that's
16 the law.

17 THE COURT: All right, all right, I see what you're
18 saying.

19 MR. LANDIS: And the point is -- I'll even say this.
20 Even if we did admit hearsay and you were to look at it that
21 way, there's no way that leads to all of this gang evidence
22 coming in, because it's going to be far more than this guy's
23 testimony.

24 THE COURT: Well, Mr. DiGiacomo, you're not
25 intending to get into all of this Little Loco business and

1 whatnot anyway. We've been --

2 MR. DiGIACOMO: No. If Mr. Sotelo testifies, I will
3 request to have that discussion outside the jury, but I think
4 I'm entitled to ask Mr. Murphy's a member of Little Locos.

5 THE COURT: No, I'm talking about just this witness.
6 This witness.

7 MR. DiGIACOMO: As it relates to this witness, I was
8 going to limit to, he's snitching, and do you have any, you
9 know, basis to believe that he would have a reason to not
10 snitch on Mr. Laguna? Answer, yes. That's what I was going
11 to ask him.

12 MR. LANDIS: Then we have to explore that. You --

13 MS. McNEILL: Right, and then that puts me in a --

14 THE COURT: I don't know what the answer is for
15 that.

16 MR. LANDIS: It's gang evidence.

17 MS. McNEILL: It's gang evidence, Your Honor, and
18 then it puts me in the position of either ignoring it or going
19 into it. At that point, I have to make a decision whether or
20 not I decide it's more helpful or hurtful to explore what I
21 believe I know about Gabe Sotelo's gang affiliation, and how
22 Mr. DiGiacomo's contention that my client is Gabe Sotelo's
23 shot caller may or may not be accurate. And then that opens
24 the door to everyone's gang membership, except Mr. Mendoza --

25 MR. WOLFBRANDT: And --

1 MS. McNEILL: -- who has none.

2 MR. WOLFBRANDT: And on behalf of Mr. Mendoza,
3 that's absolutely right. He has no gang affiliation. I
4 didn't ask Detective Jensen one question about Gabe Sotelo or
5 any of his interview of Mr. Sotelo that I can recall.
6 Somewhere during Mr. Figueroa's testimony, the term "Orco"
7 came out, and I let it go because there was no context to it,
8 and I'm not sure there was even an identification or that that
9 was even in any way related to Mr. Mendoza, but Mr. Mendoza
10 had never used the term "Orco."

11 I think Detective Jensen will -- can verify that he
12 doesn't have -- there's no moniker in SCOPE about it. He's
13 never been affiliated with any kind of gang. But within his
14 -- Detective Jensen's Officer's Report, yes, it is -- it's
15 attributed to Gabriel Sotelo, that Sotelo tells Detective
16 Jensen that Figueroa, Barientos, and Mendoza are all northern
17 Little Locos gang members, and that Sotelo tells Detective
18 Jensen that Orca -- Orco, rather, is Mendoza. But that's
19 information that Sotelo is getting from Figueroa that's being
20 passed onto Detective Jensen, that's now going to be like
21 fourth generation hearsay.

22 And all that's -- I didn't open any door there. And
23 so far, I think, they haven't crossed over the line, but if
24 they start going a little further to start trying to include
25 Orco as a gang -- a Little Loco gang member with all these

1 other ones, and that's why a snitch doesn't want to testify,
2 for fear of retaliation, they're trying to lump Mendoza in
3 that when there's absolutely no evidence whatsoever that he's
4 associated with or that he's anything other than married to a
5 cousin of David Murphy, and that's it, so.

6 MR. DiGIACOMO: And I think I can allay Mr.
7 Wolfbrandt's fear, because I was going to get to that
8 question, too. The -- when Mr. Sotelo tells you about this
9 Orco guy, he claims he knows him, correct? Yes. And he
10 claims he met him in prison, correct? Yes. And you know for
11 a fact that Mr. Mendoza has never been in prison, correct?
12 Yes.

13 So, once again, I'm attacking his credibility
14 because they put in the hearsay statement, and thus, I'm going
15 to establish that he's completely lying about the Orco
16 situation. That isn't true. That is absolutely 100 percent
17 false, because it's impossible to be true.

18 MR. LANDIS: And I don't think his statement about
19 prison and Orco is as clear as Mr. DiGiacomo is saying.

20 MS. McNEILL: I would concur.

21 MR. DiGIACOMO: He says, I met him in prison.

22 MR. LANDIS: It's unclear if he's talking about
23 Orco.

24 MS. McNEILL: Right.

25 DEFENDANT LAGUNA: He's talking about me.

1 THE COURT: Well --

2 MS. McNEILL: Right.

3 THE COURT: When I -- you know, when I started
4 reading this statement, I was pretty unclear about who is who.

5 DEFENDANT LAGUNA: He's talking about me.

6 THE COURT: I mean, he's talking about Emanuel. I
7 don't know who that is, I guess.

8 MR. DiGIACOMO: That's Manny.

9 THE COURT: Okay, and then Rob is Figueroa. Then,
10 let's see. They tell me -- he says, "The guy who got caught,
11 Orco, or Largo, or whatever his name is." I mean, if you're
12 really trying to attack the credibility of -- of this guy, it
13 just -- I mean, it seems to me like the better way to do that
14 is to ask -- you know, instead of asking leading questions,
15 which I can't --

16 MR. DiGIACOMO: Well, I was concerned that the
17 answer would be --

18 THE COURT: Yeah, I --

19 MR. DiGIACOMO: -- something that was going to cause
20 a problem.

21 THE COURT: We can't --

22 MR. DiGIACOMO: I didn't think they were going to
23 object to the leading nature of any of these questions if the
24 Court's going to allow it, because that protects --

25 THE COURT: Well, yeah.

1 MR. DiGIACOMO: Detective Jensen's not a lawyer.

2 THE COURT: Sometimes they object to leading -- your
3 leading, and sometimes they don't, so, you know, I don't say
4 anything when there's no objection, but --

5 MR. LANDIS: I think the tone will be different
6 today, so you'll be ready to rule, and I'll explain why when
7 we get to the next issue.

8 THE COURT: All right. So, there wasn't an answer
9 to that last question, so I -- what was your -- I mean, you
10 want him to -- you were going to ask him -- and do you want to
11 ask that question again? Because the jury will have forgotten
12 it by today, so.

13 MR. DiGIACOMO: The information that Mr. Sotelo
14 provided you was that Matone -- because he doesn't ever say
15 Laguna -- that this Matone person was sort of the leader of
16 this group? Detective, what Mr. Sotelo did was considered
17 snitching; did you have information in your investigation that
18 would provide you a reason why Mr. Sotelo would not want to
19 snitch on Matone?

20 THE COURT: What would your answer be to that
21 question?

22 THE WITNESS: My answer would be because Matone was
23 the ring -- or the shot caller for that clique, that -- those
24 people.

25 MR. DiGIACOMO: So, I was going to limit him to yes

1 or no.

2 THE COURT: Yeah.

3 MR. LANDIS: But -- but --

4 THE COURT: Because --

5 MR. LANDIS: -- we have to get into it.

6 THE COURT: Because --

7 MS. McNEILL: Right.

8 THE COURT: I mean, we basically -- you're trying to
9 establish that -- that he's a liar, right?

10 MR. DiGIACOMO: Correct.

11 THE COURT: That this guy's a liar, so anything he
12 would say -- I thought the only reason you knew that he was
13 supposedly involved in this clique, this group, was because --

14 THE WITNESS: Was from Sotelo. So --

15 THE COURT: From Sotelo, so --

16 MR. DiGIACOMO: Well, initially, but now you have
17 information that Mr. Laguna is in fact --

18 THE WITNESS: Involved.

19 MR. DiGIACOMO: -- the shot caller for the Little
20 Locos.

21 THE WITNESS: Yes.

22 MR. DiGIACOMO: And he's also a shot caller for the
23 Nevada Treces.

24 THE WITNESS: Yes.

25 MR. LANDIS: Undisclosed.

1 MR. DiGIACOMO: And so you have information as to
2 why it is a person would not want to snitch on -- I mean,
3 there is other information in the case that he has, unrelated
4 to Sotelo, that confirms that all of these individuals, with
5 the exception of Mr. Mendoza, are members of the same gang. I
6 wasn't getting into that, and I wouldn't -- and I hadn't
7 gotten into it until redirect when Ms. McNeill, and actually,
8 Mr. Landis did the same thing, started putting in the hearsay
9 statements of Manny to -- or of Sotelo to establish that their
10 clients didn't commit this crime.

11 To suggest that, well, the effect on his
12 investigation -- what did he do? We all know what he did. He
13 went over and saw Figueroa and he ran the cell phone records.
14 What about the question, he told you that he lived at Cheyenne
15 and he had nothing to do with this incident, what about that
16 is related to the effect on the investigation? It's offered
17 for one purpose: to establish Mr. Laguna had nothing to do
18 with this crime.

19 MS. McNEILL: Can I explain why I asked that
20 question? I've explained it multiple times. Mr. DiGiacomo
21 asked the detective, did you get information from Gabe Sotelo
22 -- did you get the name Matone from Gabe Sotelo? I did not
23 ask that question to off -- to suggest that my client wasn't
24 involved in the crime. It was not offered for the truth of
25 the matter.

1 It was offered to show that the information came
2 from the detective asking a question, because again, asking
3 apropos of nothing the detective "Did you also get information
4 from Gabe Sotelo about Matone", suggests to the jury that what
5 Gabe Sotelo said was that Matone was involved, because that
6 question out there on its own is pregnant with all sorts of
7 meaning. So, I was clarifying, as Mr. DiGiacomo did with Mr.
8 Landis asking questions he believed were out of context.

9 I believe he asked that question of the detective
10 and he took it out of context, because Dave Sotelo did not
11 offer up the name Matone on his own. It was in response to,
12 who lives at Craig and Alexander? I wasn't offering it to
13 prove that my client lives at Craig and Alexander. I was
14 offering it to prove -- to put it into context that the
15 question -- the answer came from the detective's question.

16 And when I said, and so he wasn't giving you the
17 name Matone because it had anything to do with this incident,
18 I was not offering it to prove that my client had anything to
19 do with the incident. I was offering it to show the context
20 of the question that Mr. DiGiacomo asked; that the name of
21 Matone did not come from Gabe Sotelo as being someone who's
22 involved in this incident, which it didn't.

23 Gabe Sotelo, all he says is that my client may run
24 with these people and he may be their shot caller, but at no
25 point does he say that my client was involved in this murder,

1 and so I asked him to clarify that. That was a clarification
2 question. I did not offer it for -- to show that Mr. Laguna
3 was not involved in this crime, because that wouldn't be the
4 context of that question anyway.

5 THE COURT: Well, okay. So, I just really don't
6 want you to continue to go down this road, because to me, it's
7 going to -- it's fraught with peril for --

8 MR. DiGIACOMO: Well, it is, but that -- I mean --

9 THE COURT: And --

10 MR. DiGIACOMO: At what point do I have to suffer
11 because of the decisions being made by the counsel on the left
12 side? I mean, they should know better than to offer hearsay
13 statements that I can attack. They both did it with their own
14 clients, and I've chosen not to offer their Judgments of
15 Convictions. But to that extent, at what point -- you know, I
16 let it go for a very long time in this case, but you know, at
17 what point do I have to -- somehow I'm being punished because
18 they're doing things that -- and now I don't get to do
19 something?

20 MR. LANDIS: And he's acting very righteous and
21 victimized for a guy who didn't object to one of these darn
22 hearsay statements. I mean, honestly, he is.

23 MS. McNEILL: Right. And I would also go even
24 farther and say -- again, he didn't object to a single one.
25 There has been all kinds of evidence that have come out

1 through witnesses that has never been disclosed to us. And
2 so, if anybody's fighting a losing battle, it's on this side
3 of the room.

4 THE COURT: All right. Well, everybody feels that
5 they're being treated unfairly, but I don't think anybody's
6 getting treated unfairly or -- and I'm not punishing anyone.
7 I'm just trying to make rulings on evidence. I just -- you
8 know, I think that I can exclude evidence that's relevant
9 because I think it may be more prejudicial than probative.

10 MR. DiGIACOMO: Sure.

11 THE COURT: And that's what I'm concerned about
12 here, and so I don't want you to go further with that line of
13 questioning. I mean, if you have questions, other things that
14 you can point to where this witness could say, you know, he
15 found other things that showed that this statement -- this guy
16 is lying, you know, other things, part of his investigation,
17 but just to --

18 MR. DiGIACOMO: Yeah, like the Orco part, right?
19 I'm not excluded from going into Orco, and that, by
20 definition, his client can't be Orco because there's -- he's
21 never been in prison. That's certainly not prejudicial.

22 THE COURT: Right. I don't --

23 MR. DiGIACOMO: Right? And I think that --

24 THE COURT: You're not going to object to that,
25 right?

1 MR. DiGIACOMO: -- probably clarifies for Mr.
2 Wolfbrandt --

3 THE COURT: Because he's never been in prison,
4 right?

5 MR. DiGIACOMO: -- that that's true.

6 MR. WOLFBRANDT: No, I agree, because either Marc
7 does it because he's already got the floor now, or I got to
8 come back and do it. I'd just as soon not do it because, you
9 know, Jorge has never been in a gang, and then now I've got to
10 try and defend stuff.

11 What I would prefer, if you're telling the State
12 they can't go any further with that, I'd ask that you strike
13 the last question that was asked when we approached the bench
14 and admonish the jury, to the extent that if they may or may
15 not even remember it, they're not to consider that question.

16 THE COURT: Well, they're never supposed to -- I'm
17 going to sustain the objection, and they already have been
18 instructed that they're -- that a question -- you're not to
19 guess what the answer might be and whatnot.

20 MR. WOLFBRANDT: Well, that, and that questions
21 aren't in evidence, but the insinuation --

22 THE COURT: Yeah.

23 MR. WOLFBRANDT: -- is still hanging out there, so.

24 THE COURT: Okay. I mean, I'll remind them that
25 questions aren't evidence. I don't certainly want to repeat

1 the question, because I'm sure they won't remember it.

2 MR. WOLFBRANDT: Yeah, I don't want to do that
3 either. No, not at all.

4 THE COURT: I'm sure they won't remember it.

5 MR. WOLFBRANDT: But if it goes any further --

6 THE COURT: If I couldn't remember it, they're not
7 going to.

8 MR. WOLFBRANDT: -- the prejudice to Mendoza far
9 outweighs any probative value this may have.

10 MR. DiGIACOMO: I still haven't gotten the answer to
11 the question. Do you want me to ask the Orco questions or not
12 to establish that he couldn't possibly have been talking about
13 your client?

14 THE COURT: Right, because --

15 MR. WOLFBRANDT: Sure.

16 MR. DiGIACOMO: Yeah. I mean, that was -- I was --
17 I intended to do that. I also have -- and I'm assuming this
18 isn't a problem. I have all three Certified Judgments of
19 Convictions for Mr. Sotelo, as they're now admissible because
20 they offered a hearsay statement of Mr. Sotelo, and so I'm
21 going to have these marked as well.

22 MR. LANDIS: And I will object to that.

23 THE COURT: I'll allow that.

24 MS. McNEILL: And I'm sorry, can I have Mr. Sotelo's
25 statement --

1 THE COURT: Yeah.

2 MS. McNEILL: -- marked and admitted?

3 THE COURT: What I just -- I didn't want was to
4 attack his credibility with his hearsay statements. That's
5 what I'm not -- that's -- that's the --

6 THE CLERK: You're admitting this now, right?

7 THE COURT: -- that's the more prejudicial than
8 probative.

9 THE CLERK: You want to admit this as a court's
10 exhibit?

11 THE COURT: Court's exhibit, yeah.

12 MR. LANDIS: And I would hope we're not losing sight
13 of the fact that this unreliable Sotelo was the sole basis for
14 them to secure a search warrant at the time. We can label
15 them whatever we want right now, but a spade is a spade, and
16 they relied on it to get a search warrant exclusively,
17 exclusively back then.

18 And we have another issue, if we can move on. I
19 don't know if we're done, but it needs to be addressed before
20 he finishes testifying.

21 MR. DiGIACOMO: That's correct.

22 THE COURT: So, what's that issue?

23 MR. LANDIS: Yesterday, we got into questions about
24 whether the October 24th, 2014 Figueroa statement was a
25 proffer statement.

1 THE COURT: Yes.

2 MR. LANDIS: And I'll lay it out the best I can. On
3 my cross-examination, I at least brought it up the most
4 directly, I did, and I started asking him if that was a
5 proffer of statement. When he became wiggly with his answers,
6 I knew I was opening a can of worms and I tried to back out.
7 I did. I started asking him questions about, okay, it's
8 probably an agreement between the defense attorney and the DA
9 that you're not intimately involved in. I tried to back out.

10 On redirect, Mr. DiGiacomo made the issue central,
11 and he said -- he more or less established that it wasn't a
12 proffer agreement, and that they were going to use whatever he
13 said that day against him if they didn't reach an agreement.
14 And there was a lot of questions about it.

15 After court, before I get home and look at my
16 computer, they send me the proffer letter that they didn't
17 disclose before, that they had sent to Figueroa's attorney at
18 the time, Dave Brown. That wasn't disclosed. I specifically
19 asked for it pretrial. And Mr. DiGiacomo's questions were
20 disingenuous and inappropriate. They were. They left this
21 jury with an impression of something that's not true, and the
22 only reason he was in a position to argue that was because of
23 a discovery violation.

24 I tried to remedy this issue last night with Mr.
25 DiGiacomo by reaching a stipulation that we wouldn't have to

1 get into this with this witness anymore, and that we wouldn't
2 have to get into it with future witnesses, but we're now in a
3 position where Dave Brown, that attorney, is going to testify,
4 Greg Coyer is going to testify, and it's all going to be about
5 this proffer agreement --

6 THE COURT: I'm sorry, Mr. Brown's going to testify
7 -- oh, Greg Coyer, you said. Okay.

8 MR. LANDIS: And I mean, these people are going to
9 testify about this proffer agreement, which is a side issue,
10 which I don't think should be central in this case, but now
11 it's going to be central. But the point is, one, we now have
12 a misleading record caused by his redirect examination. We
13 do.

14 THE COURT: All right. The letter --

15 MR. DiGIACOMO: Yeah. May I --

16 THE COURT: I don't -- I don't know --

17 MR. DiGIACOMO: May I address the facts that he left
18 out?

19 THE COURT: Yes, yeah. Okay, yes, because I'm
20 confused about --

21 MR. DiGIACOMO: So -- so the Court is aware, the
22 cross-examination happened. You will see from Exhibit number
23 327 the recorded interview. Mr. Brown says there's no
24 promises. You know, there's -- you know, the only thing you
25 can do is tell the truth, that's your only hope of ever

1 getting a deal.

2 Then, Barry Jensen, who will testify he had no
3 knowledge of any sort of proffer, and he has no authority,
4 more importantly, to provide a proffer, read him his Miranda
5 warnings, then Mr. Figueroa testified. He went up there and
6 started crossing on that, and I was like, are you kidding me?
7 This isn't a proffer; this is clearly admissible.

8 More importantly, I recall Exhibit 331 where Mr.
9 Figueroa says, I want to get rid of my lawyer because he had
10 me confess. Then, oh, by the way, can you suppress my
11 confession? So, obviously, he believed it, and he's told
12 everything he did in that interview would be used against him.

13 Mr. Landis was upset with me. He was telling me how
14 he's going to call Dave Brown, that, you know, that was all
15 lies, and that there was some sort of -- that Figueroa was
16 providing a proffer. And I'm like, that's just -- that didn't
17 happen.

18 MR. LANDIS: And can I just say something right
19 there to fix the record? I mean, my position was, and it is,
20 that there was a gentlemen's agreement between Dave Brown and
21 Mr. DiGiacomo about it having the legal effect of a proffer.
22 That's my position, and it was then, but go on.

23 MR. DiGIACOMO: I mean, whether that's his position
24 or not, I was like, look, there -- Figueroa gave a confession,
25 it was Mirandized, that's the evidence, right? Because it's

1 only relevant to Mr. Figueroa's credibility, right?

2 MR. LANDIS: No.

3 MR. DiGIACOMO: So, as we were walking out, Mr. --
4 Ms. Lexis goes, you know, I had never done a proffer letter
5 before. I remember doing a proffer letter in this case and e-
6 mailing it. So crap, go find that for me. So she goes, and I
7 have it for a court exhibit here. She finds that on October
8 23rd of 2014 at 6:22 P.M., there's a letter that is signed by
9 Ms. Lexis that was sent to Mr. Brown and Mr. -- and I was
10 CC'ed on it and have no recollection of it.

11 So, my answer to her is, well, where the hell is the
12 signed letter? If there was a proffer -- a proffer doesn't
13 happen unless the DA's in the room. And the first thing that
14 comes out of somebody's mouth during a proffer is what? Hey,
15 you can tell me you killed 13 people. I can't do anything
16 with that information or use that statement against you. The
17 only thing I can do is go find derivative evidence related to
18 that investigation.

19 So, I contacted Mr. Gaffney in saying, hey, do you
20 have a signed copy of a proffer letter? He's like, no, I have
21 no -- no knowledge of a proffer letter whatsoever.

22 So, I contacted Mr. -- because we didn't have a
23 signed one, I contacted Mr. Brown; hey, do you have a proffer
24 letter? No, I don't have a proffer letter. My guy the
25 morning of the 23rd told me that he wanted to talk to the

1 police, and before I could even call you, he told some CO, and
2 you already knew about it, and you had already sent Barry
3 Jensen down to talk to the defendant. And then I told Barry
4 that I'd meet him the next morning down at the Clark County
5 Detention Center. If you sent me something after hours on the
6 23rd, I didn't get it. I never had a discussion with Mr.
7 Figueroa about there being any sort of proffer and that these
8 statements wouldn't be used against him. And Detective Jensen
9 read him Miranda warnings, and what I told my client is
10 exactly what you hear in the recording.

11 And so my position is, how the heck is this
12 admissible? One. Two, how is it a discovery violation? It's
13 only relevant to the credibility of Mr. Figueroa, and Mr.
14 Figueroa has no knowledge of it. I told them I'd be happy to
15 allow them at some point before the trial ends to have a short
16 evidentiary hearing with Mr. Brown if they don't believe my
17 representations as it relates to that letter.

18 But if Dave Brown says, I did not tell my client
19 that what you say will not be used against you, how is it
20 relevant to a jury trial when Dave Brown's credibility is not
21 an issue, my credibility is not an issue. The only person's
22 credibility that is an issue is Mr. Figueroa's, and he had no
23 knowledge of the letter.

24 MR. LANDIS: Because the record is inaccurate as it
25 currently stands, and the record reads there was no proffer

1 agreement, and that's not true. And if he wants me to prove
2 it --

3 THE COURT: That's -- no, that is true.

4 MR. LANDIS: It's not true.

5 THE COURT: There is no evidence before the Court at
6 this time that there's any proffer agreement. This is --

7 MR. LANDIS: I know.

8 THE COURT: -- a -- you know, this is an unsigned
9 thing. It says here, "If you and your client wish to engage
10 in a proffer under the conditions outlined, please inform us
11 and we can set up a time to execute this agreement." And now
12 you're saying -- and we can certainly, yes, have a hearing if
13 you're --

14 MR. LANDIS: I'm just going to -- I don't need a
15 hearing.

16 THE COURT: Are you saying you don't believe what --
17 the representation that's made by Mr. DiGiacomo about what Mr.
18 Brown said, or not?

19 MR. LANDIS: I -- here's what I believe, and I'm
20 going to prove it. And if you guys want this record, we'll
21 have it. I believe Mr. Brown and Mr. DiGiacomo have a working
22 relationship, and I know other attorneys who I'll bring in
23 here to testify that they have the same relationship with
24 DiGiacomo, where Dave Brown knew 100 percent, it doesn't
25 matter if that letter was sent or not, that what he was

1 walking into was a proffer situation. In other words, if they
2 didn't strike a deal, they weren't going to use that. And I
3 know it's true, and I'm going to prove it if that's where
4 we're going.

5 MR. DiGIACOMO: What would be relevant about that?

6 MR. LANDIS: The record now states there was no
7 proffer agreement. That's why it's relevant.

8 MR. DiGIACOMO: As it relates to that testimony,
9 yes.

10 THE COURT: Unless Mr. Brown is going to come in
11 here and say that he told his client that they would not use
12 this against him, which seems to be belied by his Motion to
13 Dismiss his client, which I did read, you know, and --

14 MR. DiGIACOMO: And nobody objects when Mr. -- when
15 Detective Jensen reads him the Miranda warnings and tells him,
16 everything that you say here can and will be used against you;
17 do you understand that? Yeah. Dave Brown doesn't go, hey,
18 wait a second, no, no, no, no, no --

19 MR. LANDIS: And that's --

20 MR. DiGIACOMO: -- nothing you say is going to be
21 used against you, and Figueroa doesn't go, hey, no, no. How
22 is it possible that there's a recording in which both Dave
23 Brown and the detective advised the witness that whatever he
24 says can be used against him?

25 Did Dave Brown and I have the type of relationship

1 where I can tell him, hey, I've got your guy, and if he's
2 truthful to me, the best thing for him to do is to tell the
3 truth so that he can become a witness in the case? Sure. Am
4 I making any promises? No, but it's all dependent on whether
5 or not your guy is truthful and I can confirm his information.
6 That -- I don't know if I had that conversation, but I mean,
7 yeah, that's the way things work in the courthouse. But
8 unless that's conveyed to the witness, it's irrelevant.

9 And from what my understanding of what happened here
10 is Dave Brown had no idea that we would be willing to do a
11 proffer with his client when he had that interview. And so if
12 they want an evidentiary hearing on, you know, is there a --
13 was there some sort of proffer agreement, the -- whether or
14 not there was or there wasn't, it only matters whether or not
15 Mr. Figueroa thought those statements could be used against
16 him.

17 MR. LANDIS: Nope, because --

18 THE COURT: And that's what -- and that's what I
19 said. That's -- to me, that's the only relevant thing
20 vis-a-vis --

21 MR. LANDIS: If you were --

22 THE COURT: -- the record as it stands today,
23 because the importance of that is did he have a motive, right,
24 to fabricate? I mean, you're going to argue that he did
25 anyway, because he -- even if he had a belief of that, right?

1 But again, unless Mr. Brown comes in and says that -- the
2 detective Mirandized. He's already testified and said that
3 this was not a proffer.

4 MR. LANDIS: And on the one hand, I have three
5 transcripts currently, just found them last night, where it
6 was a proffer and they read Miranda. And I'll put that before
7 the Court if we're going to go this way, but to say that
8 Miranda shows that it's not a proffer isn't true.

9 The Court's position about whether or not Figueroa
10 knew it, I could respect that position beginning of yesterday.
11 But now, after his redirect, the testimony says there was no
12 proffer agreement of any kind, which is factually inaccurate.
13 And to say that justice is best served by a factually
14 inaccurate record, all right, all right.

15 THE COURT: But your speculation about what --
16 what --

17 MR. LANDIS: I'm not speculating.

18 THE COURT: -- Mr. DiGiacomo's reputation is in the
19 courthouse, I mean, that -- this is boggling my mind. Now, if
20 you want to get Brown in here, and he'll testify that he told
21 his client on that day that it was a proffer and that this
22 wasn't going to be used against him, fine. I mean, I think
23 that opens the door to have Figueroa recalled and whatnot, but
24 then that's what needs to happen.

25 MR. LANDIS: And I'm not saying -- you should

1 believe me, I'm saying I'm going to prove my case, but we
2 don't need to go down this road. I'm going to -- I'll prove
3 what I'm saying.

4 MR. DiGIACOMO: Well, I'm asking you to exclude any
5 mention of this in front of the jury. You know, if they want
6 to have some sort of evidentiary hearing at some point where
7 they can put up Dave Brown to say, you know, there was some
8 agreement that was conveyed to Figueroa that I would never use
9 this against him, that's --

10 THE COURT: Well, we've got to have -- yeah. I
11 mean, to be -- you -- it's going to be outside the presence of
12 the jury at least first, because there's several issues
13 happening here.

14 MR. DiGIACOMO: Right.

15 THE COURT: There's attorney/client privilege. Is
16 he going to invoke it, waive it? I don't know.

17 MR. LANDIS: Looks like Dave Brown already violated
18 it when he talked to Mr. DiGiacomo last night.

19 THE COURT: I don't know, because I don't know any
20 of this. This is like -- everybody's just -- this is really
21 ridiculous.

22 MR. LANDIS: That's why I tried to stop this, and
23 it's going to become a show, but I'm moving -- can I approach
24 the clerk to admit my discovery letter I sent to the DA's
25 pretrial? Because I asked for proffer letters or attempts to

1 negotiate the case, and they didn't send me that or any
2 proffer letters.

3 THE COURT: All right.

4 THE CLERK: What am I doing with this?

5 MR. LANDIS: Just a court's exhibit.

6 THE COURT: Court's exhibit.

7 THE CLERK: Okay.

8 MS. McNEILL: And I would just join in Mr. Landis's
9 objection. I didn't specifically ask for any proffer letters,
10 but I don't believe I have to specifically ask for that. The
11 State has to turn over anything that goes to any incentives
12 that were given to a witness to testify, absent me asking it.

13 MR. LANDIS: And it's okay that they withhold stuff,
14 walk me into places because they withheld stuff, and it's
15 fair. I'm ready, let's go. It's fair, and that's fair. It
16 is.

17 THE COURT: Mr. Landis, don't take that tone. Don't
18 take that tone with me as if you're insinuating that I'm
19 keeping things from being fair here.

20 MR. LANDIS: The reason I'm bringing that tone up is
21 to hope the Court will understand where I'm coming from,
22 because I think --

23 THE COURT: I don't need sarcasm.

24 MR. LANDIS: It's not sarcasm. It's not. It's not.

25 THE COURT: Yeah, it is.

1 MR. LANDIS: It's not.

2 THE COURT: Of course it is. It's classic sarcasm.
3 So, I want to have -- I want to get Brown in here, so when can
4 you get him here?

5 MR. LANDIS: I haven't talked to him since this
6 started yesterday, because I was hoping to avoid it.

7 THE COURT: Well, this is -- this is an issue that
8 needs to be addressed, and we need to address it, because --

9 MR. DiGIACOMO: I'm happy to send Mr. Brown a --

10 THE COURT: -- it goes to -- it goes to -- you know,
11 if there was some type of agreement, obviously, it's basically
12 the type of material that should be disclosed, and the only --
13 and if it now has been, and it's -- but -- and it's not too
14 late. If in fact what you're saying is true, then that we
15 need to find out and we need to clear it up obviously before
16 the end of the trial, and the sooner the better, as far as I'm
17 concerned.

18 MR. DiGIACOMO: I'm happy to send a text to Mr.
19 Brown and ask him if he's available whenever you think you're
20 going to take lunch in this case.

21 THE COURT: Well, obviously, I never get lunch in
22 this case.

23 MR. DiGIACOMO: Well, that's true. But I mean,
24 whatever time you want Mr. Brown to be -- I can ask him. I
25 mean, I don't know what his schedule is, but --

1 THE COURT: All right, do that, because I want --

2 MR. DiGIACOMO: I told him that Mr. Landis would
3 likely subpoena him, and he said that that wouldn't be a
4 problem and that he would obviously appear.

5 THE COURT: Okay, good. Let's do that.

6 MR. LANDIS: Wait, wait, so do you want me to
7 subpoena him, or --

8 THE COURT: No, we're going to text him, because I
9 think he'll voluntarily appear.

10 MR. LANDIS: I do, too.

11 MS. McNEILL: Your Honor, Mr. Laguna needs to use
12 the restroom. I think the officers were concerned that he be
13 out here for the record, but I think Mr. Laguna's fine with me
14 being out here.

15 DEFENDANT LAGUNA: Yeah.

16 THE COURT: You okay, Mr. Laguna --

17 DEFENDANT LAGUNA: Yeah.

18 THE COURT: -- to go to the restroom? Okay. All
19 right, so is there anything else? We're clear that I'm
20 sustaining the objection to the last question, basically
21 because I think, although it may be relevant, that it's more
22 prejudicial than probative, potentially.

23 And I'm going to admonish the jury that, once again,
24 a question is not evidence, that they're to -- since I
25 sustained the objection, they are to disregard the question --

1 the last question that was asked yesterday. If they remember
2 it, they're to disregard it.

3 MR. WOLFBRANDT: Thank you.

4 THE COURT: And then we'll go forward with, you
5 know, the things, obviously, that this detective was able to
6 independently show that Sotelo may have told him that were
7 untrue that have come out already, the Orca thing -- or --

8 THE CLERK: Orco.

9 THE COURT: Is that your understanding, Mr.
10 Wolfbrandt?

11 MR. WOLFBRANDT: They've already elicited all the
12 other misstatements or untruthful statements from Sotelo, but
13 yes, if we can explain that as far as this detective knows, my
14 client's never been known by the name of Orco, and he's never
15 been in prison, and that was how Sotelo related it to what
16 Figueroa told him.

17 MR. DiGIACOMO: Yeah, I have no problem with that.

18 THE COURT: Is there anything else?

19 MR. LANDIS: I don't think that's what Sotelo says,
20 so I will -- I'm going to respond to that on my questioning.
21 I don't. I don't think that's what Sotelo says. I don't
22 think the transcript reads that clear.

23 THE COURT: Okay.

24 MS. McNEILL: I concur with Mr. Landis.

25 THE COURT: Then let me -- where is the transcript

1 again?

2 THE CLERK: I think it's -- the voluntary statement?

3 THE COURT: Thanks. What page was it where he talks
4 about -- because I know he talks about -- the first time he
5 mentions anything about it is page 4, "The guy who got caught,
6 Orco, or Largo, or whatever his name is." That -- that's the
7 first time I see that. And then, where is the place that
8 you're talking about you think he says he was in prison?

9 MR. WOLFBRANDT: I think it's on page 10.

10 MS. LEXIS: The first mention of prison is on page
11 6.

12 THE COURT: Okay.

13 MR. DiGIACOMO: I think it's on page 6 where he
14 says, "The guy that shot that the police caught, old, like, I
15 want to say like 40." "Do you know where he ever worked?"
16 "No, no." "Okay." "I just -- I just know him from like here,
17 and then -- but then prison and him being from Little Locos,
18 and I know Rob from Little Locos. It was just --."

19 THE COURT: Okay, yeah, yeah. Oh, okay.

20 MS. LEXIS: And then page 10 --

21 THE COURT: Well, let's see.

22 MS. LEXIS: -- indicates that Mr. Sotelo was in
23 prison when he was 18, on page 12, and that he went to prison
24 in Las Vegas, also on page 12.

25 THE COURT: All right, wait a minute, let me catch

1 up.

2 MS. LEXIS: Okay.

3 THE COURT: I'm not seeing --

4 MS. LEXIS: Oh, I'm sorry.

5 THE COURT: -- any of that on page 12.

6 MS. LEXIS: 11, Your Honor, sorry. 10 and 11.

7 THE COURT: Okay, is there --

8 MS. LEXIS: And then -- and then page 22 is where
9 it's not -- is where there's reference about the detective
10 asking, "What, you say he just got out of prison?" "Yeah."
11 "When did he just get out of prison?" "I want to say 2013."

12 MR. DiGIACOMO: I think that's who --

13 MS. McNEILL: And that's --

14 MR. DiGIACOMO: He's talking about Matone though.

15 MS. McNEILL: That's my client he's talking about.

16 MS. LEXIS: That's when he's talking about Matone.

17 THE COURT: Oh, all right, Matone. Yeah, that's

18 not --

19 MR. DiGIACOMO: Yeah, no. Back --

20 THE COURT: So, we're staying away from that.

21 MR. DiGIACOMO: When I read it, the only -- where
22 that I saw it, but --

23 THE COURT: On page 6?

24 MR. DiGIACOMO: Page 6.

25 THE COURT: Yeah. That's --

1 MR. WOLFBRANDT: It actually starts at the bottom of
2 page 5, which leads into the explanation on 6.

3 THE COURT: Right, because he's talking about this
4 person that --

5 MR. WOLFBRANDT: The guy with the long hair.

6 THE COURT: He says -- the question, "But you know
7 -- you know the Mexican guy that got shot?" Answer, "Yes."
8 "With the long hair?" "Yeah." "And what's his name?"
9 "That's -- I believe his street name is Orco or Largo." But
10 has there been -- was there any testimony elicited? I want
11 to --

12 MR. DiGIACOMO: I already established that Orco was
13 not Mr. Mendoza's nickname.

14 THE COURT: Right.

15 MR. DiGIACOMO: The fact I didn't establish is that
16 Mr. Sotelo claims that he knows Orco from prison, and Mr.
17 Mendoza has never been from prison -- been in prison. I mean,
18 to me, that establishes another falsity from the statement of
19 Mr. Sotelo.

20 THE COURT: Yeah, okay.

21 MR. LANDIS: But what I think he's saying, I think
22 he'll testify to it, is he met him through guys in prison. In
23 other words, guys Sotelo met in prison.

24 MR. DiGIACOMO: Well, I mean, if Sotelo testifies,
25 then he can testify to that and clarify it. But as of right

1 now, we have hearsay in that I'm entitled to attack.

2 MR. LANDIS: And I'm not -- of course. They can try
3 to bring this in however they want, but I'm just -- the reason
4 I brought it up is I'm going to bring it up because I don't
5 think it says that, and that's all I was saying. I don't
6 think it makes it inadmissible.

7 THE COURT: Well, it's not entirely clear. It could
8 be either or both.

9 MR. DiGIACOMO: Well, I guess he could ask the
10 detective, I mean --

11 THE COURT: Yeah, right.

12 MR. DiGIACOMO: -- your conversation.

13 MR. LANDIS: How would he know any better than us
14 reading the transcript?

15 THE COURT: It's just what --

16 MR. DiGIACOMO: You always have it better when
17 you're actually having the conversation with the person.

18 MR. LANDIS: I'm sure he has a great memory of that
19 statement.

20 THE WITNESS: Pages?

21 MR. DiGIACOMO: Oh, you want me to show you the --

22 THE COURT: Well, I don't see how it -- it's not
23 prejudicial to Mr. Mendoza, because --

24 MR. DiGIACOMO: Do you have Sotelo in front of you?

25 THE COURT: -- it's saying that --

1 THE WITNESS: Yes.

2 THE COURT: -- saying that's not true.

3 MR. DiGIACOMO: Okay, page 6, bottom half.

4 THE COURT: It's beneficial to Mr. Mendoza.

5 THE WITNESS: I got that.

6 MR. DiGIACOMO: Okay, read that to yourself.

7 (Witness reading document)

8 THE COURT: Okay, did you finish reading it?

9 THE WITNESS: Yeah. The bottom of page 6, yeah. I
10 mean, he's talking about Mr. Mendez, the guy that got shot.

11 THE COURT: Mr. Mendoza?

12 THE WITNESS: I'm sorry, Mr. Mendoza.

13 THE COURT: Okay, but did you understand him to say
14 that he knew Mr. Mendoza from prison?

15 THE WITNESS: That's the way I read it, yes.

16 THE COURT: Okay. Do you have any independent
17 recollection other than just reading this transcript? You
18 don't remember it? It was a long time ago.

19 THE WITNESS: No, he tells me he was in prison in 18
20 -- when he was 18. And then he says, "I just know him from
21 like here, but then in prison." So, I'm -- my best
22 recollection is he knows him from prison.

23 THE COURT: Okay. All right, well --

24 MR. WOLFBRANDT: But he -- he never mentions --

25 MS. McNEILL: He doesn't say "in prison."

1 MR. WOLFBRANDT: -- the name Mendoza. He refers to
2 him as "the second one in, the one that got shot."

3 THE WITNESS: Right.

4 THE COURT: Right.

5 THE WITNESS: Right.

6 MR. WOLFBRANDT: So that's what I'll --

7 THE COURT: And he certainly differentiates him from
8 -- from Figueroa, who he knows, and knows --

9 MR. WOLFBRANDT: Well, yeah, except for --

10 THE COURT: -- that person was shot, right?

11 MR. DiGIACOMO: Right.

12 THE COURT: Is that --

13 MR. DiGIACOMO: Yeah, no and --

14 THE COURT: So --

15 MR. WOLFBRANDT: At the --

16 MR. DiGIACOMO: Because he clarifies that. You mean
17 Rob? No, I'm talking about the guy that got shot --

18 THE COURT: Right.

19 MR. DiGIACOMO: -- that got caught by the police.

20 THE COURT: Right, exactly.

21 MR. DiGIACOMO: So obviously, he's not talking about
22 Figueroa.

23 THE COURT: Right, exactly. So, I -- you know, I'm
24 going to --

25 MR. WOLFBRANDT: But in --

1 THE COURT: I'm going to allow that, because it --
2 it's not hearsay as it's obviously not offered for the truth.
3 In fact, that's going to be brought out, it's -- with the
4 further questioning that in fact he knows that Mr. Mendoza,
5 the defendant, was never been -- has never been in prison, so
6 there you go. So he's -- so this guy's a liar, so that's the
7 -- that's the purpose of it. Sotelo's a liar, so that's --
8 it's not offered for the truth.

9 (Pause in the proceedings)

10 THE COURT: Are we ready to bring in the jury?

11 MS. LEXIS: Yes.

12 THE COURT: Bring them in.

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

14 (Jury reconvenes at 10:22 a.m.)

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

17 THE COURT: Thank you. Please be seated. The
18 record will reflect the presence of all 12 members of the
19 jury, as well as the three alternates. The defendants are
20 present with their respective counsel. The Chief Deputy
21 District Attorneys prosecuting the case are present, as are
22 all officers of the court.

23 Good morning, ladies and gentlemen. I apologize to
24 you for keeping you waiting for two hours. Proceed.

25 MR. DiGIACOMO: Thank you.

1 THE COURT: And you're still under oath, Detective.

2 THE WITNESS: Yes, ma'am.

3 REDIRECT EXAMINATION (RESUMED)

4 BY MR. DiGIACOMO:

5 Q Detective, I left off I think talking about Mr.
6 Sotelo's statement to you related to certain facts that he
7 provided you. We --

8 THE COURT: Oh, excuse me. Let me interrupt you.
9 The last question before you left was -- the objection was
10 sustained, if you even remember that last question.

11 UNKNOWN JUROR: No.

12 THE COURT: Disregard it, because you were earlier
13 told, remember, questions aren't evidence. Okay. I'm sorry.

14 MR. DiGIACOMO: Thank you.

15 BY MR. DiGIACOMO:

16 Q Detective, at some point, you discuss with Mr.
17 Sotelo the identity of the person that he described as second
18 through the door who got shot.

19 MR. LANDIS: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. DiGIACOMO:

22 Q Detective, did you have a discussion with Mr. Sotelo
23 about the second guy through the door?

24 A Yes, we did.

25 Q And what did he tell you about what physically

1 happened to that guy at the scene?

2 A He said that's the guy that got shot and the guy
3 that the police caught that night.

4 Q During the course of this, does he indicate to you
5 that he saw a picture of this person on the news?

6 A Yes, he did.

7 Q And I think we've talked about it previously. Did
8 he give you a moniker for this particular individual?

9 A Yes, he did. He said he knew him as Orco or Largo.

10 Q Based upon that information from the evidence you
11 gathered in your case, is there anybody who happened to be
12 caught at the scene of the homicide --

13 A With those --

14 Q -- in this case?

15 A With those names?

16 Q No, no, just did anybody get caught?

17 A Yes.

18 Q Who got caught.

19 A It was Jorge Mendoza.

20 Q Now, I think I asked you yesterday do you have any
21 information that Jorge Mendoza's moniker is Orco. Do you have
22 any information that his moniker was Largo?

23 A No, we do not.

24 Q Did Mr. Sotelo provide you any other fact about how
25 you could identify this person or how he knows this person?

1 A Yes. He said he knew him from the streets, and that
2 he'd also knew him in prison.

3 Q Now, in the --

4 A Or knew of him.

5 Q -- course of your investigation in this case, have
6 you conducted a criminal history check on Mr. Mendoza?

7 A Yes, I did.

8 Q And did you determine whether or not Mr. Mendoza has
9 ever been in prison?

10 A Mr. Mendoza's never been to prison.

11 Q I'm assuming during the course of the investigation,
12 you also did a criminal history check on Mr. Sotelo?

13 A Yes, I did.

14 Q And Mr. Sotelo is, well, now a three-time convicted
15 felon?

16 A That's correct.

17 MR. DiGIACOMO: Judge, I have in my hand what's been
18 marked as State's Proposed Exhibit 335, 336, and 337. They
19 are certified copies of Judgments of Convictions for a Gabriel
20 Sotelo for the crimes of theft in 2015, burglary in 2011, and
21 attempt burglary in 2011.

22 MR. LANDIS: No objection.

23 MS. McNEILL: No --

24 MR. DiGIACOMO: I would offer them.

25 MS. McNEILL: No objection.

1 MR. WOLFBRANDT: No objection.

2 THE COURT: Those will be admitted.

3 (State's Exhibits 335, 336, and 337 are admitted)

4 MR. DiGIACOMO: I have nothing further, Judge.

5 THE COURT: Recross.

6 RECROSS-EXAMINATION

7 BY MR. LANDIS:

8 Q When did you lookup Sotelo's criminal history, sir?

9 A I believe it was shortly after we met with him.

10 Q Could you be more specific?

11 A Sometime in early October of 2014.

12 Q Did that make it into any reports?

13 A Pardon me?

14 Q Did that make it into any reports?

15 A That I looked him -- looked up his criminal record?

16 Q Or -- yeah.

17 A No, I attached his SCOPE printout in my book.

18 Q And you didn't put any of his criminal history

19 specifically in any reports beyond the fact --

20 A I --

21 Q -- that you looked up?

22 A I did not.

23 Q Why wasn't that important enough to make it into a
24 report?

25 A Because that's disseminating criminal information,

1 and it's a violation of the -- of those rules.

2 Q Somebody's felony convictions is private information
3 that you can't disseminate to the public?

4 A It's -- that's what I believe. It was -- came from
5 our SCOPE, our police -- our police data banks, and I know we
6 have rules against disseminating that information.

7 Q And I understand what a SCOPE is and that that's
8 privileged, but my question to you is this. You writing in a
9 Police Report that somebody has three felony convictions --

10 A Um-hum.

11 Q -- in your opinion violates protection laws?

12 A I believe it could, yes.

13 Q Do we have a problem about what Mr. DiGiacomo just
14 did then?

15 A I don't know. That's --

16 THE COURT: No, we don't.

17 MR. LANDIS: I'd like the Court to take judicial
18 notice that there is no problem revealing somebody has prior
19 felony convictions.

20 MR. DiGIACOMO: Judge, I would object to that legal
21 conclusion, because he got it from SCOPE and there is a
22 statute that precludes that.

23 MR. LANDIS: Precludes SCOPE. I think the Court has
24 every right to take judicial notice of that.

25 THE COURT: The Court does take judicial notice that

1 dissemination of SCOPE records is a violation.

2 MR. LANDIS: And that's not what I asked, but
3 judicial notice that disclosing a felony is not a violation of
4 any privilege or protection law.

5 THE COURT: Disclosing -- if -- if he wanted to put
6 in a report that a suspect or a witness had a felony
7 conviction? No, that would not be a violation of
8 dissemination of criminal history records.

9 MR. LANDIS: Thank you.

10 BY MR. LANDIS:

11 Q Let me ask you this. You work with Clark County
12 district attorneys all the time?

13 A Yes.

14 Q On almost every case?

15 A Almost every case, yes.

16 Q And this is not the first case you've worked with
17 Mr. DiGiacomo?

18 A That's correct.

19 Q It sounded to me -- and just correct me if I'm wrong
20 -- that you guys have talked even as you are testifying on
21 nights that we've recessed during your testimony?

22 A Yes, we've made comments about what -- to know
23 statements and things like that, what to go over.

24 Q You were preparing for your testimony, correct?

25 A Yes.

1 Q And you knew the general areas he was going to ask
2 you questions about?

3 A The general areas, yes.

4 Q And you knew that because you guys went over it?

5 A Yes.

6 Q Yesterday, I was asking you some questions about
7 what pictures you showed to my client, David Murphy, and what
8 he recognized. Do you recall?

9 A Yes, I do.

10 Q And we were looking at a transcript which made it
11 kind of hard?

12 A Yes.

13 Q Would looking at your Officer's Report of his
14 interview perhaps refresh your recollection as to what
15 pictures he didn't recognize?

16 A Yes, it would.

17 MR. LANDIS: May I approach the witness?

18 THE COURT: Yes, you may.

19 THE WITNESS: Thank you. (Witness reviewing
20 documents). Okay.

21 BY MR. LANDIS:

22 Q Did that refresh your recollection as to what
23 pictures were shown to him in total?

24 A Yes, it does.

25 Q Whose pictures?

1 A I showed him David Murphy's photo, Joey Laguna's
2 photo. I'm sorry, I showed David Murphy, Joey Laguna's photo,
3 Robert Figueroa's photo, Jorge Mendoza's photo, Summer
4 Larsen's photo, Joseph Larsen, and Monty Gibson.

5 Q What pictures did he not recognize of those group?

6 A He said he didn't recognize Monty Gibson or Robert
7 Figueroa.

8 Q Moving onto my client's interview by you and his
9 request for a lawyer, on redirect examination, Mr. DiGiacomo
10 asked you if you can ask booking questions --

11 A That's correct.

12 Q -- after somebody invokes their right to a lawyer?

13 A Yes, sir.

14 Q And your -- your response was yes, yes, you can?

15 A Yes, I can.

16 Q My question to you is, after the first time my
17 client asked for a lawyer when you interviewed him, were all
18 the questions you asked him booking questions?

19 A They were irrelevant -- they were not important
20 questions, to my knowledge.

21 Q Let me restate my question. Were they all booking
22 questions?

23 A No, they were not.

24 Q And the first question you asked him after he
25 requested a lawyer was what's his cell phone number?

1 A That's correct.

2 Q Is it your testimony in this trial that that was for
3 purposes of booking and not for purposes of investigation?

4 A That was booking, yes. And -- booking and
5 investigation.

6 Q Why is it that you continued to ask him questions
7 that were not related to booking after he invoked his right to
8 a lawyer?

9 A Just making conversation. I wanted --

10 Q That violates the Constitution, based on your
11 training and experience?

12 MR. DiGIACOMO: Objection, calls for a legal
13 conclusion.

14 THE COURT: Sustained.

15 BY MR. LANDIS:

16 Q Conversation about what? Small talk?

17 A I don't recall the exact questions. I think they
18 were about maybe where he lived.

19 Q Would looking at the transcript refresh your
20 recollection?

21 A Sure.

22 MR. LANDIS: Can I approach?

23 THE COURT: Yes.

24 BY MR. LANDIS:

25 Q If I could direct your attention to page 9, I think

1 that would be the first time he requested a lawyer.

2 A Yes, he requests his lawyer there.

3 Q And I just want to be accurate, and I don't want to
4 misstate or exclude anything that was said, so I'll be
5 detailed. In response to that, you directly ask him about the
6 cell phone?

7 A Yes, I do.

8 Q He directly responds with "I want a lawyer" again?

9 A He says, "I want my lawyer," yes.

10 Q Which would be the second time, yes?

11 A Yes.

12 Q And then he tells you he's done. You say, I want
13 your lawyer?

14 A Um-hum. Right.

15 Q "I understand you want your lawyer"?

16 A That's correct.

17 Q Then he says, "You ain't going to connect me to
18 this" --

19 MR. DiGIACOMO: Judge, I object and ask him to ask
20 -- to read the entire question, as that would be in context.

21 MR. LANDIS: That's fine. We can read the whole
22 transcript. I'm not trying to hide a single thing.

23 THE COURT: Right, just --

24 MR. LANDIS: We'll do it like this. I'll read David
25 Murphy's part, and I'll start with the top of the page.

1 THE WITNESS: Okay.

2 BY MR. LANDIS:

3 Q "If I'm under arrest, I want my lawyer," correct?

4 A Yes.

5 Q Your response?

6 A "Let me ask you a question. What's your cell phone
7 number?"

8 Q His response, "I want my lawyer."

9 A I say, "Okay."

10 Q "I'm done with you."

11 A "Hey, Dave, I understand you want your lawyer."

12 Q "What you doin', man? You ain't going to connect me
13 to this shit, just like you got Summer and Thomas. You ain't
14 got nothing to do with it. I'm through."

15 A "So -- so you know what Summer's in custody for,
16 right?"

17 Q "Yeah, everybody knows what Summer's in."

18 A "Okay, all right. You're a cool guy and everything.
19 You ain't" --

20 MR. DiGIACOMO: Wait, I object. That's --

21 THE WITNESS: No, I'm sorry, that's --

22 MR. DiGIACOMO: -- the answer.

23 THE WITNESS: -- your part.

24 BY MR. LANDIS:

25 Q "You're a cool guy and everything. You ain't here

1 to help me; you're here to get me."

2 A "No, I'm a --"

3 Q "I ain't got nothing to do with -- I'm good. I want
4 my lawyer."

5 A "Okay."

6 Q "Can I have my lawyer, please?"

7 A "Listen, listen, I understand. And I'm not your --
8 you're right. I'm not here to help you, but I'm not here to
9 screw you over either."

10 Q "That's -- I ain't got nothing to do with this."

11 A "I think -- I think you do, and I think it's going
12 to be pretty easy to prove in court you do, and the reason --"

13 Q "I don't know about that."

14 A "Hold on, hold on. The reason I want to talk to you
15 is because I think you've got a side of your story that's
16 important to get out. You've asked for your attorney, so, uh,
17 if you get your attorney, and you decide you want to give me
18 your side of the story, I'll be more than happy to come and
19 talk with you and your attorney."

20 Q "All right."

21 A "I understand -- uh, I understand you're one of the
22 people that went up to the house. I understand you didn't
23 pull the trigger. I don't even think you had a gun that
24 night. So there, uh, you got it -- or you -- you got every --
25 every reason in the world that you would want to help and talk

1 to -- that you'd want to talk to me and help yourself, because
2 otherwise -- otherwise, I'm going to hurt you."

3 Q "Why?"

4 A "Because I'm going to lump you in with these other
5 cold-blooded killers, all right, buddy? Sit tight. Do you
6 need to use the restroom or anything?"

7 Q And I'll stop it there. And if you want to look,
8 but after that, it goes into small talk about water and using
9 the restroom?

10 A Yes.

11 Q You guys eventually point out that he's going to get
12 transported to jail?

13 A That's correct. And I ask him where he was born and
14 things like that.

15 Q My question to you is, the parts that we read
16 verbatim there a moment ago, those aren't -- that's not small
17 talk?

18 A No, but most of them aren't questions. A lot of
19 that was my statement to him.

20 Q And you'd agree with me those aren't booking
21 questions?

22 A That's correct.

23 Q And you'd agree with me those are the same kinds of
24 things you identified as methods you use in interrogation?

25 A Yes.

1 Q The last question I have for you is this.
2 Figueroa's proffer October 24th, '14, right?

3 A October 14th.

4 Q You heard it?

5 A Or 24th, I'm sorry.

6 Q If I misstated it, October 24th, 2014?

7 A Yes.

8 Q You heard it?

9 A Yes.

10 Q You started investigating what he was saying?

11 A Yes.

12 Q Roughly two weeks later, you write -- you type the
13 Summer Rice or Summer Larsen Declaration of Warrant, yes?

14 A Yes.

15 Q And in that Declaration, under penalty of perjury,
16 you declare, "Detectives believe that Summer Larsen conspired
17 with an unknown black male, and possibly others, to include
18 Jesus Mendez-Martinez, to rob her husband?"

19 A That's correct.

20 Q That was your statement you wrote in that report?

21 A Yes.

22 MR. LANDIS: I have nothing further. Can I approach
23 the witness to retrieve?

24 THE COURT: Yes. Ms. McNeill?

25 MS. MCNEILL: Yes, Your Honor. Thank you.

1 MR. LANDIS: Sorry, that's my fault.

2 MS. McNEILL: That's okay. Thank you.

3 RECROSS-EXAMINATION

4 BY MS. McNEILL:

5 Q Detective, just a few areas I want to go into based
6 on Mr. DiGiacomo's questions. I had asked you questions about
7 Mr. Figueroa that you said he didn't -- there was evidence he
8 didn't fire, and I'd asked you questions about there was --
9 well, it was evidence he didn't fire that .40 caliber.
10 Remember that?

11 A That's correct.

12 Q And I had asked you, sometimes when someone shoots a
13 bullet, you don't always find that bullet?

14 A That's correct.

15 Q And then Mr. DiGiacomo said, well, if a bullet
16 travels in a straight line, and you didn't find any bullet
17 strikes. Remember that?

18 A That's correct.

19 Q Okay. Did you search every house on Broadmere
20 Street for bullet strikes?

21 A I'm sure we looked at the houses near either -- on
22 either side of the Broadmere house.

23 Q Okay. But as you sit here today, you have no way of
24 knowing where Figueroa -- exactly where he was standing when
25 he was on Long Cattle, right?

1 A That's correct.

2 Q And you have no way of knowing where he would have
3 been pointing a gun if he'd been shooting, correct?

4 A Correct.

5 Q Okay. So, you have no way of knowing the straight
6 line that bullet would have traveled in if it had been fired?

7 A That's correct.

8 Q Okay. And it's fair to say that there is physical
9 evidence in this case that was missed, right?

10 A I don't know what physical evidence would have been
11 missed.

12 Q Did you impound Jorge Mendoza's car at any point?

13 A No, we did not.

14 Q Okay. So, any physical evidence that may have been
15 in that car, we don't have, right?

16 A Right, but we didn't learn about that car until
17 several weeks later.

18 Q Okay, well, let's talk about that. The car --

19 A That it was involved.

20 Q Okay. Well, Detective, let's see. Detectives
21 responded to Jorge Mendoza's house after Jorge Mendoza had
22 been arrested, right?

23 A Yes.

24 Q And you had evidence that there had been at least
25 one other person involved in that crime?

1 A Yes.

2 Q And you believed that that other blood trail, the
3 person had been picked up by a car?

4 A Yes.

5 Q All right. And then this car shows up at the
6 Mendoza home?

7 A Yes.

8 Q And Amanda Mendoza provides you with information
9 that Jorge had been missing all night and she had to go find a
10 car --

11 A That's correct.

12 Q -- right? Okay. And at no point was that car
13 impounded?

14 A That's correct.

15 Q Okay.

16 A It was -- it was -- I believe it was --

17 Q My question -- there's no question pending,
18 Detective.

19 A Okay.

20 Q Mr. DiGiacomo can clean that up with you if you'd
21 like. It's fair to say that there was other physical evidence
22 at the Broadmere scene that wasn't found. Robert Figueroa?

23 A That's correct.

24 Q Okay. In fact, he indicated that he'd been hiding
25 there all night and could hear the police conversations?

1 A Yes.

2 Q Right? Okay. Mr. DiGiacomo asked you if you ever
3 found the phone that Joey Laguna had, that 762 number, too,
4 correct?

5 A That's correct.

6 Q And you said no?

7 A Correct.

8 Q Okay. Do you remember when you were questioning Mr.
9 Laguna about his phone, he actually told you that he had the
10 same phone; it was just a different phone number?

11 A I don't recall that.

12 Q Okay. First, you asked him questions about -- in
13 the beginning of your interview, what's your cell number,
14 correct?

15 A Yes.

16 Q Okay. Not specifically cell phone, just cell
17 number, right?

18 A Right.

19 Q Later in the interview when you ask him -- when you
20 remind him of this 762 number --

21 MR. DiGIACOMO: Page, counsel?

22 MS. McNEILL: Page 14. Sorry.

23 BY MS. McNEILL:

24 Q You ask him about the phone that he has, and you
25 say, "How long have you had that?" Remember that?

1 A Yes.

2 Q And he says, "I don't remember," right?

3 A Yes.

4 Q And you say, "Have you had it for a month, two
5 months?" Right?

6 A Yes.

7 Q He says, "No, I've had it longer than that"?

8 A Yes.

9 Q And you said, "Would you have had that phone number
10 in September of 2014?" He says yes, right?

11 A That's correct.

12 Q And you said --

13 MR. DiGIACOMO: Well, I object to
14 mischaracterization. If you're going to read the questions
15 and the answers, can you read the actual answers?

16 MS. McNEILL: Okay.

17 BY MS. McNEILL:

18 Q "Would you have had that phone number in September
19 of 2014?" "Hm, I might have." Remember that?

20 A Yes.

21 Q Then you say, "But you might have had another phone
22 in September of 2014, too?" Remember that question?

23 A Yes.

24 Q And his answer was, "No, I didn't have another
25 phone." Right?

1 A Correct.

2 Q Okay. That phone that he had on him that day, did
3 you impound that phone?

4 A I believe I did.

5 Q But I thought you said you never found the phone
6 number that Laguna -- the phone that that number went to.

7 A Apparently, I didn't connect the dots on that.

8 Q Okay. And so, if you have his phone, it's sitting
9 somewhere in evidence and has never been examined?

10 A That's correct.

11 Q You indicated that you ran this criminal records
12 search for Mr. Sotelo, and we just learned that he's a
13 three-time felon, correct?

14 A That's correct.

15 Q Did that affect what you believed about what he told
16 you?

17 A We talk to ex-felons a lot of times. Sometimes they
18 give us true statements; other times they give us bits and
19 pieces of true statements. I was able to corroborate what --
20 some of what Sotelo told me.

21 Q Okay. So, the mere fact that he was a three-time
22 felon didn't make you think he was being untruthful?

23 A No.

24 Q Okay. In fact, you used the information that he
25 told you to arrest Robert Figueroa, right?

1 A Yes.

2 MS. McNEILL: Okay, nothing further.

3 MR. WOLFBRANDT: Judge, I have no questions.

4 THE COURT: Oh, thank you.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. DiGIACOMO:

7 Q Detective, do you -- those big books behind you --

8 A Yes.

9 Q -- are those your homicide books?

10 A Yes, they are.

11 Q Have you previously in this case provided those
12 books to my office for the defense attorneys to review?

13 A Yes, I have.

14 Q Are the SCOPE printouts for the witnesses within
15 that book?

16 A Yes, they are.

17 Q So, when you say you didn't write it in a report,
18 it's documented within the case file that they had access to?

19 A Yes, it is.

20 Q I just want to go to Mr. Laguna's statement, if you
21 could pull it out. You need to go to the bottom of page 14,
22 and I want to read the last couple of questions and the first
23 questions and answers of the next page.

24 A Bear with me a minute. Okay.

25 Q So --

1 A What pages did you want?

2 Q Page 14. Going to go right to where Ms. McNeill
3 left off.

4 A Okay.

5 Q Okay. So, the questions that were asked of you --
6 I'll just start with her last question. "But you might have
7 had another phone in September of '14, too?" Answer, "No, I
8 didn't have another phone." Question, "You wouldn't have had
9 another phone number?" Answer, "No. We had a house phone
10 because I had just got off house arrest. And I don't --
11 because I just got off."

12 MS. McNEILL: Objection, move to strike.

13 THE COURT: Sustained. The jury will disregard
14 that.

15 BY MR. DiGIACOMO:

16 Q Next question, "Um-hum. Let me see that for a
17 minute." Answer -- what was his answer?

18 A "My wife did."

19 Q Question, "What's her phone number?"

20 A He says, "I don't remember it."

21 Q And then, question, "Would it have been 762-1584,"
22 right?

23 A Correct, that's what I asked him.

24 Q Is that the first time that that number comes up?

25 A Yes.

1 Q Okay. And then you say, "Have you ever used that
2 number?" And his answer was, "Yeah, that was -- that was
3 probably it, yeah."

4 A Yes.

5 Q Okay. From that conversation, you didn't take that
6 the phone in your hand was the 762 number?

7 A I did not.

8 MR. DiGIACOMO: Thank you. I have nothing further.

9 MR. LANDIS: No re-recross.

10 THE COURT: No re-recross?

11 MS. McNEILL: Just one question.

12 FURTHER RECROSS-EXAMINATION

13 BY MS. McNEILL:

14 Q So, you didn't take that to be the phone number
15 connected -- the phone connected with the phone number, but
16 you did impound the phone?

17 A Yes.

18 MS. McNEILL: Okay, nothing further.

19 MR. WOLFBRANDT: Nothing more.

20 THE COURT: May this witness be excused?

21 MR. DiGIACOMO: He may.

22 THE COURT: Thank you for your testimony, Detective.

23 THE WITNESS: Thank you, Your Honor. Thanks for
24 your patience.

25 (Pause in the proceedings)

1 THE COURT: State, you may call your next witness.

2 MR. DiGIACOMO: With the understanding that I've
3 confirmed with your clerk everything we've offered that has
4 been admitted is admitted, at this point, the State would
5 rest.

6 THE COURT: And the State has rested. Do you have
7 an order you wish to call witnesses? Do you wish to approach?

8 MR. LANDIS: We've talked about an order. We're
9 ready if --

10 MR. WOLFBRANDT: But I think we do need to approach.

11 THE COURT: I'm sorry?

12 MR. WOLFBRANDT: I think we do need to approach.

13 THE COURT: Approach.

14 (Off-record bench conference)

15 THE COURT: So, ladies and gentlemen, we need to
16 take about a 15-minute recess. So -- well, you get a recess.

17 During this recess, it is your duty not to converse
18 among yourselves or with anyone else on any subject connected
19 with the trial, or to read, watch, or listen to any report of
20 or commentary on the trial by any person connected with the
21 trial, or by any medium of information, including, without
22 limitation, newspaper, television, radio, or internet. You're
23 not to form or express an opinion on any subject connected
24 with this case until it's finally submitted to you. I'll see
25 you back in 15 minutes.

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

2 (Jury recessed at 10:49 a.m.)

3 THE COURT: The record will reflect the jury has
4 departed the courtroom. And -- all right. So, Mr. Mendoza,
5 could you maybe step up beside the -- your lawyer by the
6 microphone?

7 MR. DiGIACOMO: Should we just do all three at one
8 time so you don't have to read the admonishment the three
9 times?

10 THE COURT: Oh. Have you -- have you decided yet,
11 or are you going to wait until --

12 MS. McNEILL: I don't think my client can make that
13 decision until we know what Mr. Mendoza's going to say.

14 MR. DiGIACOMO: Okay.

15 THE COURT: Right, that's why I was figuring -- I'm
16 already hearing that Mr. Mendoza has made a decision. I think
17 that they can reach their decision --

18 MR. DiGIACOMO: That's fine.

19 THE COURT: -- later. All right. So, Mr. Mendoza,
20 so under the Constitution of the United States and under the
21 Constitution of the State of Nevada, you cannot be compelled
22 to testify in a trial. Do you understand that?

23 DEFENDANT MENDOZA: Yes.

24 THE COURT: Okay. Please keep your voice up so we
25 can pick you up.

1 DEFENDANT MENDOZA: Yes.

2 THE COURT: Okay, thank you. But of course, you may
3 at your own request give up this right and take the witness
4 stand and testify. Now, if you do, you will be subject to
5 cross-examination by the State's attorneys, and anything that
6 you might say either on direct examination or
7 cross-examination is the subject of fair comment to the jury
8 in closing argument by the State. And do you understand that?

9 DEFENDANT MENDOZA: Yes.

10 THE COURT: Okay. Now, if you choose not to
11 testify, the Court would not permit the district attorney to
12 make any comment to the jury about you not testifying. In
13 other words, they can't stand up there and say to a jury,
14 well, he didn't testify, and therefore, he must be guilty.
15 That cannot -- can't happen. You know, it's -- nothing like
16 that can happen. Do you understand that?

17 DEFENDANT MENDOZA: Yes.

18 THE COURT: Okay. Now, if you elected not to
19 testify, then the Court would instruct the jury, but only if
20 your lawyer specifically requests that, in fact, the law
21 doesn't compel a defendant in a criminal case to take the
22 stand and testify, and no presumption may be raised and no
23 inference may be drawn of any kind from the failure of a
24 defendant to testify.

25 So, that kind of instruction would be given to the

1 jury if you chose not to testify and your lawyer requested
2 such an instruction. Do you understand these rights that I
3 have just explained to you?

4 DEFENDANT MENDOZA: Yes.

5 THE COURT: Do you have any question about any of
6 those rights?

7 DEFENDANT MENDOZA: No.

8 THE COURT: Okay. Does he have felony convictions?

9 MR. WOLFBRANDT: No.

10 THE COURT: Okay.

11 MR. DiGIACOMO: No, he does not.

12 THE COURT: All right. So, have you made a decision
13 after speaking with your lawyer as to whether you would like
14 to testify?

15 DEFENDANT MENDOZA: Yes.

16 THE COURT: What's that decision?

17 DEFENDANT MENDOZA: I will testify.

18 THE COURT: Very well. And are -- is that how we're
19 starting? So, Mr. Wolfbrandt --

20 MR. WOLFBRANDT: We're going to start.

21 THE COURT: -- you're going to call -- okay.

22 MR. WOLFBRANDT: Right.

23 THE COURT: All right. This would be the
24 opportunity for counsel, defendants to use the restroom, okay?

25 MR. WOLFBRANDT: Okay.

1 THE COURT: As well as court staff, of course.

2 (Court recessed at 10:53 A.M. until 11:08 A.M.)

3 (Outside the presence of the jury)

4 THE COURT: Okay, let's bring the jury back in.

5 THE MARSHAL: One snuck off to the restroom, ma'am.
6 We're getting her.

7 THE COURT: All right, everybody sit down. We'll
8 get up again.

9 (Pause in the proceedings)

10 THE MARSHAL: All ready, Your Honor?

11 THE COURT: Yes.

12 THE MARSHAL: Okay. All rise for the jury, please.

13 (Jury reconvenes at 11:10 a.m.)

14 THE MARSHAL: Your Honor, all 12 members of the jury
15 are present, along with the three alternates.

16 THE COURT: Thank you. Please be seated. And the
17 record will reflect we're back within the presence of all 12
18 members of the jury, as well as the three alternates. The
19 three defendants are present with their respective counsel,
20 the chief deputy DA's prosecuting the case are present, as are
21 all officers of the court. Mr. Wolfbrandt?

22 MR. WOLFBRANDT: Judge, my first witness would be my
23 client, Mr. Mendoza.

24 THE COURT: Mr. Mendoza.

25 THE MARSHAL: Step up over here, please, Mr.

1 Mendoza. You can go ahead and take the witness stand. Remain
2 standing, face the clerk to -- clerk, raise your right hand to
3 be sworn in.

4 JORGE MENDOZA, DEFENDANT, SWORN

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

7 THE WITNESS: My name's Jorge Mendoza. J-o-r-g-e,
8 M-e-n-d-o-z-a.

9 THE COURT: You may proceed.

10 MR. WOLFBRANDT: Thank you.

11 DIRECT EXAMINATION

12 BY MR. WOLFBRANDT:

13 Q Good morning, Jorge. How old are you?

14 A 34, I believe. 34.

15 Q Trying to trick you on the first question.

16 A I don't -- I think I'm 34.

17 Q When were you born?

18 A September 3rd, 1982.

19 Q September --

20 A 3rd --

21 Q 3rd?

22 A -- of 1982.

23 Q So, you'd be 34. Are you married?

24 A Yes.

25 Q Who's your wife?

1 A Amanda Mendoza.

2 Q And is she in the back of the courtroom today?

3 A Yes.

4 Q Okay. How did you meet her?

5 A I lived two houses down the street to her and went
6 to high school with her.

7 Q Okay. Do you recall when you first met her? Was it
8 high school or junior high?

9 A High school. Freshman year in high school. I seen
10 her walking to school.

11 Q Okay. And that was about how long ago?

12 A About 17 years ago.

13 Q Do you have children?

14 A Yes.

15 Q How many?

16 A Two.

17 Q Boy and a girl?

18 A Yes, sir.

19 Q How old are they?

20 A 10 and 8.

21 Q What was your occupation?

22 A I was a lineman electrician.

23 Q How long did you do that?

24 A About 11 years.

25 Q And what -- what's entailed with being a lineman

1 electrician?

2 A I traveled from state to state doing transmission
3 and distribution lines for electrical substations, step up and
4 step down power. We specialized mostly in working for the
5 solar field in wind energy. Green energy pretty much is what
6 we specialized in.

7 Q Okay, so we're talking about like the big propellers
8 that are out --

9 A Big windmills, yes.

10 Q Okay, and those generate electricity. And what, did
11 you work on the lines and the transmission lines and whatnot
12 that --

13 A We worked on the lines and the substations that
14 helped regulate and generate the power, which made the power
15 consistent so that it was useable by the consumer.

16 Q Did there come a time when you lost that job?

17 A Yes.

18 Q Can you tell the ladies and gentlemen of the jury
19 why that happened?

20 A Because I failed a drug test.

21 Q And what was the drug of choice?

22 A Heroin.

23 Q All right, and how long ago was that? Let's use --

24 A Two-and-a-half years ago.

25 Q Let's use September 21st, 2014 as a reference point.

1 How long before that date -- or did it occur before that date?

2 A Yes.

3 Q Do you recall how long prior to September 21st, 2014
4 you lost your job?

5 A Six to eight weeks.

6 Q Did you let Amanda know that you had failed that
7 drug test and lost your job?

8 A Not immediately.

9 Q For those six weeks, what did you do with yourself?

10 A I kind of just left the house, tried to make myself
11 scarce so that -- you know, I was hoping she -- it wouldn't
12 bring to much attention on the fact that I was home, as
13 compared to when I usually would never be home.

14 Q Okay. Would you go to casinos and gamble?

15 A Casinos, gamble, friends' house, wherever I can put
16 myself, pretty much.

17 Q Did Amanda work outside the home?

18 A No, she did not.

19 Q So, were you the sole provider for the family?

20 A Yes, I was.

21 Q So, for those six weeks, did you have any kind of
22 source of income?

23 A No, I did not.

24 Q Do you know David Murphy?

25 A Yes.

1 Q How do you know him?

2 A Through a roundabout way. Not really blood-related,
3 but kind of through marriage through my wife's side of the
4 family.

5 Q So, do you have personal knowledge of the kind of
6 relationship that your wife and David Murphy had?

7 A Yes. I considered David my cousin because, like I
8 said, I've been with my wife for about 18 years, so I've known
9 him just as long as that time, and we were pretty close
10 friends.

11 Q Were they childhood friends growing up, to your
12 knowledge?

13 A He wasn't as close to her as I was to him, if that
14 really makes any sense. When I met him, me and him kind of
15 got along, so I hung out with him more than he really had
16 anything to do with her, other than just family.

17 Q Would you see him at family functions?

18 A Absolutely.

19 Q And barbecues and whatnot?

20 A Yes.

21 Q Would you do things -- you and Amanda do things with
22 him and a wife or girlfriend as couples?

23 A Yes, we would. We used to go out New Year's, Fourth
24 of July's. Just on random occasions, we'd go out.

25 Q How frequently would you say you socialized with

1 Dave Murphy in the year 2014?

2 A I'd say 2014 was more so than ever because of the
3 fact that I was actually in town and out of work, so I hung
4 out with him a little more than I ever have before.

5 Q Is that for that six weeks prior to September 21st?

6 A Partly, yes.

7 Q Do you know Joey Laguna?

8 A Yes.

9 Q How do you know him?

10 A I've met him at family type functions. I've seen
11 him here and there, just once in a while. Not real close or
12 nothing.

13 Q Do you know him better or less than you do David
14 Murphy?

15 A Less. Much less.

16 Q Would you -- did you see him in any events outside
17 of holiday family get-togethers?

18 A Never.

19 Q Did you ever socialize with him?

20 A No.

21 Q Did you ever know Summer Larsen?

22 A No, I did not.

23 Q Did you ever meet her?

24 A No.

25 Q Did you ever see her at any events -- any family

1 events?

2 A No.

3 Q What neighborhood did you grow up in? Or actually,
4 let me withdraw that one. Did you grow up here in Las Vegas?

5 A For my older half of my adult life, I guess. From
6 when I was probably 16 and up, yes. But before so, I was
7 raised in Apple Valley, California.

8 Q But you went to high school here?

9 A Yes.

10 Q And what high school did you go to?

11 A I went to Silverado for a little bit, and then I
12 went to Mojave.

13 Q Okay, so about -- what neighborhood was that?

14 A It's the northwest side of town by Camino Al Norte
15 and North 5th.

16 Q Camino Al Norte and North 5th?

17 A Just north of Craig. Take Martin Luther King until
18 it ends. North of Craig, it becomes Camino Al Norte.

19 Q Okay. All right, let's direct your attention to I
20 guess September 20th of 2014. When is -- when's the first
21 time that you had any -- or did you have any conversations
22 with anybody regarding the events for why we're here today?

23 A When? On the --

24 Q Actually, you know what, I left something out before
25 I get to that. Prior to September 21st, 2014, did you know

1 Robert Figueroa?

2 A No.

3 Q Had you ever laid eyes on him?

4 A No.

5 Q Did you ever have any conversation with him?

6 A No.

7 Q How about Joey Larsen? Did you know who he was?

8 A No.

9 Q Had you ever met him?

10 A No.

11 Q To this day, have you ever met him?

12 A No.

13 Q Now, you've seen Summer Larsen at various prior
14 court hearings, haven't you?

15 A Yes. The first time I ever seen her was in the
16 discovery and in court hearings. That's the only way I've
17 ever known who she was.

18 Q So, on discovery, are you talking about Police
19 Reports?

20 A Yes, sir.

21 Q And then, obviously, this isn't the first court
22 hearing you've been to. Has she been to some of the hearings
23 along with you?

24 A Yes.

25 Q But is she seated somewhere totally away from you

1 guys?

2 A Yes.

3 Q So, you've never had a conversation with her?

4 A No.

5 Q Okay, and the same thing with Robert Figueroa. Have
6 you seen him on some court appearances?

7 A Yes.

8 Q Do you recall how many?

9 A I believe, give or take, probably the first five
10 hearings.

11 Q Okay. Would that be a couple years ago?

12 A Yes.

13 Q And the next time you saw him, would that have been
14 when he came in to testify?

15 A The last time I saw him was when he came to court
16 and said that he had entered into some type of an agreement to
17 testify.

18 Q Okay.

19 A I believe, actually, he was in court because he
20 wanted to take back his statement.

21 Q What was the -- how did you get involved with this?

22 A You know, I ask myself that all the time. It was
23 kind of just by fluke, I guess, you know? It was sort of
24 brought up like last-minute type thing, and I agreed.

25 Q When was this?

1 A The night of September 20th.

2 Q Okay. How did it get brought up to you?

3 A I was just having a conversation that I was kind of
4 hard up for money, and they brought this opportunity up. Be
5 real quick, be real easy. You just run in, and that's all you
6 got to do.

7 Q Okay. Who is "We"?

8 A At the moment, it was just me and David. We were at
9 the house -- at my house.

10 Q What was your understanding as to what was supposed
11 to happen?

12 A I was told I was just supposed to run into the house
13 and grab a duffel bag and carry it out, and that was going to
14 be my purpose and my participation.

15 Q That evening of September 20th, was there a
16 destination that was contemplated?

17 A Yes.

18 Q Do you recall where -- what it was?

19 A I don't really remember exactly where it was, but
20 somewhere.

21 Q We've heard some testimony about a house somewhere
22 near Jones and the 215 -- North -- North Jones and 215?

23 A Yes.

24 Q How long did your conversation with David last that
25 night?

1 A It wasn't long. Really, it was a very short
2 conversation.

3 Q Was --

4 A Almost --

5 Q I'm sorry, I didn't mean to interrupt.

6 A I don't -- I almost -- it was such a short
7 conversation, I almost dismissed it as irrelevant; not really
8 anything to come of it.

9 Q Was that a conversation over the phone, or was he at
10 your house?

11 A In person.

12 Q I'm sorry?

13 A In person.

14 Q Was he over at your house socializing, and then this
15 came up?

16 A Yes. Like I said, at that time, we were hanging out
17 more and more because I was in town and I was out of work, so.

18 Q So then, somewhere during the course of that
19 conversation, this topic came up?

20 A Yeah. Yes.

21 Q When's the next time you heard anything about this?

22 A The next day about 4:00 in the morning.

23 Q Okay. How did that happen?

24 A I received a call.

25 Q Okay, from?

1 A From David.

2 Q Now, you're a little hesitant of -- I mean, you're
3 not happy about describing these events, are you?

4 A No, I'm not.

5 Q As a result of the phone call from David, what --
6 what did you do?

7 A I went over to his house.

8 Q How did you get there?

9 A I drove.

10 Q Drove what car?

11 A I had a Nissan Maxima.

12 Q What time did you drive to David's house?

13 A It was shortly after the phone call. I didn't want
14 to make a lot of noise and wake my wife up or anything, so I
15 kind of just snuck out the house soon as I got the phone call,
16 so probably 4:10.

17 Q How far was David's house from your house?

18 A About eight or ten miles.

19 Q Did you make any stops along the way?

20 A No.

21 Q Were you by yourself?

22 A Yes.

23 Q When you got to David's house, was anybody else
24 there? First off, was David there?

25 A Yes.

- 1 Q Was anybody else there?
- 2 A No.
- 3 Q What happened next?
- 4 A I believe then we went to Joey's house.
- 5 Q Is that Joey Laguna?
- 6 A Yes, sir.
- 7 Q Had you been to Joey's house before?
- 8 A No, I've never been to his house before.
- 9 Q When you say "we", was it you and David?
- 10 A Yes.
- 11 Q How did you know to get there?
- 12 A I picked up David.
- 13 Q Okay. Did David give you directions?
- 14 A Yes.
- 15 Q So, about what time did you get to Joey's house?
- 16 A 6:00.
- 17 Q Was Joey there?
- 18 A Yes.
- 19 Q Was anybody else there?
- 20 A I don't know. I never entered into his house.
- 21 Q Okay. So, how long did you stay there?
- 22 A 15 minutes.
- 23 Q And then where did you go?
- 24 A To pick up Robert Figueroa.
- 25 Q How did you know where to go to pick up Robert

1 Figueroa?

2 A Joey knew where he lived.

3 Q So, when you left, were you still driving your car?

4 A Yes.

5 Q Did anybody go with you?

6 A Joey Laguna.

7 Q How far away was Robert Figueroa's place, if you
8 recall?

9 A All the way across town. I don't -- I don't know
10 distance-wise. He lived all the way across town, on the other
11 side of town.

12 Q All right. Did Joey --

13 A Southeast.

14 Q -- give you the directions as you were driving?

15 A Yes.

16 Q When you got there, about what time was it?

17 A 7:00, 7:30. Around there.

18 Q Was Robert outside waiting for you?

19 A I believe he was waiting for us, but I do not know
20 if he was outside. He was around somewhere. I just seen him
21 come around from the complex, so I do not know if he was
22 outside or what, but I do know he was waiting for us.

23 Q How did you know that the person you saw was Robert?

24 A I didn't really know who it was until he jumped into
25 the car. He had a duffel bag and jumped into the car.

1 Q Was there a conversation between he and Joey ahead
2 of time of --

3 MR. LANDIS: Objection, foundation.

4 THE COURT: Sustained.

5 BY MR. WOLFBRANDT:

6 Q What seat did he get into?

7 A He got into the rear passenger side.

8 Q From there, did you -- did you go anywhere?

9 A Yes.

10 Q Okay, where'd you go?

11 A To an AMPM somewhere off 215, near Jones.

12 Q Why did you go to that location?

13 A To meet with David.

14 Q Was that some -- prearranged for you to pick up
15 Robert and then meet up at that AMPM?

16 A It was something that was just piecing together as
17 it went. It wasn't planned, I guess you would say.

18 Q When you left Robert's apartment, who all was in
19 your car?

20 A Robert Figueroa, Joey Laguna, and I.

21 Q Did you stop anywhere along the way between Robert's
22 house and the AMPM up in the northwest part of town.

23 A No.

24 Q All right. So, you get to that AMPM at about what
25 time, if you can recall?

1 A Maybe close to 8:00. Around 8:00. I'm not exactly
2 positive.

3 Q So, what happens when you get there?

4 A They said that we were going to go see the place, I
5 guess.

6 Q No, I'm not asking what anybody said. What
7 happened? What did you do? Did you park in a parking space?
8 Did you go to a pump?

9 A Yeah, I pulled up in a parking space.

10 Q You went to a parking space?

11 A Yes.

12 Q Okay. Did you get out of the car?

13 A No.

14 Q Did anybody that was within your car -- did Joey or
15 Robert get out of the car?

16 A Yes.

17 Q Who?

18 A Both.

19 Q Okay, and you stayed in the car?

20 A Yes.

21 Q Where did you -- did they go anywhere?

22 A Just about to the front fender of my vehicle.

23 Q Was David there?

24 A Yes.

25 Q Was he -- did you see any other vehicles? I mean,

1 David didn't come with you, right?

2 A Right.

3 Q Okay. Did he get there with some other vehicle?

4 A Yes.

5 Q Do you -- can you describe what kind of vehicle that
6 was?

7 A It was like an older white pickup truck.

8 Q Was David by himself, to your knowledge?

9 A No.

10 Q Who else did you see with him?

11 A Some female.

12 Q Did you know her before that day?

13 A No.

14 Q Have you ever seen her before that day?

15 A Yes.

16 Q Where would you have seen her before?

17 A With David.

18 Q At functions that you went to with David?

19 A No, just at her house -- at his house when I've gone
20 over there to hang out, I've seen her and met her in passing.
21 That's it.

22 Q Can you describe what she looked like?

23 A I guess she had brunette-ish hair, kind of a medium
24 build, Hispanic.

25 Q I don't remember the exhibit number, but do you

1 recall there was an exhibit of a photo of David and a girl?

2 A Yes.

3 Q Was that the same girl?

4 A I believe so.

5 Q Did you have any conversation -- or were there any
6 conversations that you saw occur among David, the girl,
7 Robert, or Joey?

8 A I'm sorry, can you repeat that question?

9 Q You stayed in the car, you said, right?

10 A Yes.

11 Q Okay. So did you have -- you -- while you were in
12 the car, did you observe Robert or Joey have conversation with
13 David or this girl?

14 A Yes.

15 Q Could you hear any of that conversation?

16 A No.

17 Q Understanding you don't -- you couldn't hear the
18 conversation, who was talking to who? If you know what I
19 mean.

20 A They were all talking amongst each other.

21 Q Okay. At the end of that little conversation, what
22 happened?

23 A I believe she jumped in the driver seat of my car
24 and I jumped in the back driver side, and we went down the
25 street.

1 Q What's your understanding as to why that occurred?

2 A She was supposed to drive when I ran out with the
3 bag of marijuana.

4 Q Did you know the intended destination as you were at
5 that AMPM?

6 A No.

7 Q Did you have an understanding as to whether or not
8 she knew where she was going?

9 A I assumed she had to know because she was driving.

10 Q All right. And so then did you guys leave -- leave
11 that AMPM in your car?

12 A Yes.

13 Q So, who's in your car in which seats?

14 A It'd be the female in the driver seat, Joey Laguna
15 in the front passenger seat, Robert Figueroa in the rear
16 passenger seat, and myself in the rear driver seat.

17 Q Okay. And where was David after that?

18 A He was by himself in his own vehicle.

19 Q So, you leave the AMPM, and where do you go?

20 A To the house.

21 Q Okay, so do you go to a neighborhood?

22 A Yes.

23 Q Had you ever been to that neighborhood before?

24 A No.

25 Q Did David drive his truck to that neighborhood?

1 A Yes.

2 Q Did David follow your car, or the other way around?

3 A The other way around.

4 Q Okay. So -- so the girl that was driving your car
5 drove it right to that neighborhood?

6 A Yes.

7 Q Was anybody else giving her directions? Within your
8 car, I mean.

9 A No.

10 Q And you -- did you know specifically where you were
11 going?

12 A Not exactly.

13 Q Did you have any weapons with you that morning?

14 A No.

15 Q Do you know if anybody in that car had any weapons?

16 A Robert Figueroa had the only weapon.

17 Q Did you see it?

18 A Yes.

19 Q What was it?

20 A The one I saw was a revolver type.

21 Q Did he have it in that duffel bag?

22 A Yes.

23 Q As you get to that neighborhood, then what happens?

24 A What do you mean?

25 Q Well, describe the neighborhood. Was it a

1 cul-de-sac? Was it a -- was it, you know --

2 A It was a cul-de-sac, newer track homes, a nicer
3 neighborhood.

4 Q So, at some point, did somebody point out a house to
5 you?

6 A Yes.

7 Q Okay. Describe how that happened.

8 A We went to the end of the cul-de-sac, and they said
9 it's the house with the lifted truck.

10 Q Okay. Who told you that?

11 A I don't exactly remember who said it.

12 Q So, did you kind of go into a little pass-through
13 first?

14 A Yes.

15 Q And at the end of that pass-through, then were you
16 aware of -- did you then become aware of which house was the
17 target?

18 A Yes.

19 Q Describe what that neighborhood looked like. I
20 mean, not the houses, you've done that, but were there other
21 people outside?

22 A Yes.

23 Q Okay. Who was outside?

24 A Like some landscapers or something, small crew of
25 some sort.

1 Q Were they -- were they working at the particular
2 house that --

3 A No, they weren't.

4 Q The one next-door, or --

5 A Probably about three houses down the street.

6 Q Do you remember how many landscapers were there?

7 A Three or four. It wasn't very many.

8 Q Were there any other people out in the front of
9 their yards?

10 A No.

11 Q All right. You finished that little drive-thru, and
12 do you come out of that neighborhood, or?

13 A Yeah, we drove out -- drove out of the street and
14 went around the block.

15 Q Okay. Did there come a time where somebody said,
16 no, this is -- we're not going to do this?

17 A Yes.

18 Q Who said that?

19 A I did.

20 Q Did anybody else in the car want to go forward with
21 it anyway?

22 A Yes.

23 Q Who?

24 A Robert Figueroa.

25 Q Now, you had just met Robert that morning, right,

1 after -- when you picked him up?

2 A Yes.

3 Q When you got to that neighborhood, did you have an
4 impression as to whose idea it was -- well, let me get back to
5 -- what were you supposed to do there?

6 A What was I supposed to do?

7 Q Yeah.

8 A I was supposed to just run in, go to the master
9 bedroom, grab the duffel bag, and run out.

10 Q How were you supposed to get in the house?

11 A Robert was going to open the door.

12 Q And who described to you what your role was going to
13 be?

14 A Robert.

15 Q So, after you said -- now, you're all in the car
16 together when you say this isn't going to happen?

17 A Yes.

18 Q What made you believe that Robert still wanted to go
19 forward with it?

20 A He was not worried about the lawn crew, and pretty
21 much he's just like, that's nothing, I got this, this is what
22 I do, type attitude, you know? He just -- cocky, arrogant,
23 still wanted to push forward.

24 Q Did you have an impression in your mind as to
25 whether or not Robert was orchestrating all of this?

1 MR. DiGIACOMO: Objection, calls for speculation.

2 MR. WOLFBRANDT: I'm asking for his --

3 THE COURT: Well, I think it lacks foundation for
4 that.

5 MR. DiGIACOMO: And it lacks foundation as well,
6 but.

7 THE COURT: So, lacks foundation. See if you can
8 lay a foundation.

9 MR. WOLFBRANDT: All right.

10 BY MR. WOLFBRANDT:

11 Q So, after you -- you call out to -- was it loud
12 enough for everybody in the car to hear when you said
13 something to the effect of, this isn't going to happen?

14 A Yes.

15 Q Did Joey Laguna want to go forward with it?

16 A No, he did not say anything either way.

17 Q Okay.

18 A He stayed quiet.

19 Q How about the girl?

20 A I think she was on with me that it was not a good
21 idea.

22 Q Okay, but Robert was insistent on trying to go
23 forward?

24 A Yes, and she just kept driving us out of the
25 neighborhood after I said no, so.

1 Q So, did anybody ever get out of the car in that
2 neighborhood?

3 A No.

4 Q And as she drove away, then where did you guys end
5 up?

6 A Joey's house.

7 Q Okay. What happens -- well, let me ask you, did
8 David then -- did he go to Joey's house with his truck at the
9 same time?

10 A Yes.

11 Q So, what happens when you arrive at Joey's house?

12 A We just kind of gathered in the driveway there, and
13 we were smoking and kind of explaining -- you know, saying why
14 we didn't do it, you know, why we didn't go forward with going
15 into the house. And Robert was a little disappointed with the
16 fact that we didn't, so he kept kind of pressing on we should
17 do it still at some point, or somewhere else.

18 Q Now, you say you were smoking. What were -- what
19 were you smoking?

20 A Marijuana.

21 Q Were others there smoking marijuana?

22 A I'm sorry, what?

23 Q Were others there smoking marijuana?

24 A I'd say everybody was smoking marijuana but Joey
25 Laguna.

1 MR. LANDIS: I'll object to the bad act admission.

2 THE COURT: Sustained. I'd prefer that you would
3 object to the question before it's answered. The jury will
4 disregard that.

5 MR. LANDIS: And, I apologize, I just didn't know
6 what his answer was going to be in it.

7 BY MR. WOLFBRANDT:

8 Q You say there was some conversations where Robert
9 appeared to be disappointed about the whole thing. Who was
10 participating in that conversation?

11 A Who was participating in that conversation?

12 Q Right.

13 A I guess it was kind of like an open discussion. You
14 know, there was the four of us there, but I was more so
15 looking at a car that Joey was showing me in his driveway, and
16 Robert was more so talking to David.

17 Q Where was the girl?

18 A She was in the truck still, I believe.

19 Q How did she get from -- she drove from -- I'm not
20 trying to lead you. Did she drive from that neighborhood to
21 Joey's house?

22 A I don't really positively recall. I believe so. I
23 believe she did, and then she went and sat in the truck as
24 soon as we were there.

25 Q Okay. What input did you have in the discussion

1 that was there at the driveway of Joey Laguna's house?

2 A I really didn't have no opinion or any input in that
3 conversation.

4 Q And about what time was it that you got -- you all
5 got back to Joey's house?

6 A Maybe around 10:00.

7 Q At some point did you then leave Joey's house?

8 A Yes.

9 Q Do you recall about what time you left?

10 A 10:30 or so.

11 Q I take it you were driving your car?

12 A Yes.

13 Q Did you go alone?

14 A No.

15 Q Who was with you?

16 A Robert Figueroa.

17 Q And where did you guys go when you left Joey's
18 house?

19 A I took him back to where I picked him up from.

20 Q Do you remember where it was?

21 A He explained it to me again, but after driving there
22 twice, I kind of had a -- I could drive there again.

23 Q When you say twice, you mean was this the second
24 time?

25 A To drop him off was the second time driving there.

1 Q Okay. Because you hadn't been there before -- or
2 had you been there before?

3 A I've never been there before.

4 Q Did you stop anywhere along the way?

5 A No.

6 Q When you got to where you had picked him up earlier
7 that morning, what happened?

8 A He just jumped out the car and said, I'll talk to
9 you later, okay.

10 Q And then did you leave?

11 A Yes.

12 Q Where'd you go?

13 A To a friend's house up the road, straight up
14 Tropicana, just the other side of town.

15 Q When you left and went to the friend's house, did
16 you have an understanding as to whether or not you were going
17 to meet up with David, Joey, Robert, or anybody later that
18 night?

19 A No.

20 MR. WOLFBRANDT: Judge, this might be a good time to
21 -- because I'm stopping with this area, and I'm going to be
22 going on into a different area of questioning that's going to
23 take quite a while.

24 THE COURT: Okay. Approach.

25 (Off-record bench conference)

1 THE COURT: Ladies and gentlemen, we're going to
2 take our lunch recess at this time because this is a good
3 breaking point. I'm going to have you come back at 1:30
4 because there's some business -- you know, paperwork we have
5 to take care of that you don't need to be here for earlier.
6 So, you'll have an hour-and-a-half.

7 So, ladies and gentlemen, during this recess, it is
8 your duty not to converse among yourselves or with anyone else
9 on any subject connected with the trial, or to read, watch, or
10 listen to any report of or commentary on the trial by any
11 person connected with the trial, or by any medium of
12 information, including, without limitation, newspaper,
13 television, radio, or internet. You are not to form or
14 express an opinion on any subject connected with this case
15 until it's finally submitted to you. I'll see you at 1:30.

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

17 (Jury recessed at 11:55 a.m.)

18 THE COURT: The record will reflect the jury's
19 departed the courtroom. Any matters outside the presence?

20 MS. McNEILL: No, Your Honor. The defendants were
21 just concerned that they be back at 1:00 for the hearing, and
22 I said I would make sure that the Corrections Officers knew
23 that they should be back at 1:00, not 1:30.

24 THE COURT: We'll need the defendants back at 1:00
25 because we're going to take -- do court -- you know, court

1 business they'll need to be here for. The jury won't be back
2 until 1:30, but we're still going to be in court. So, if you
3 could have them come back by then, that'd be great. Thank
4 you, gentlemen. Nothing else then? All right, we're in
5 recess.

6 THE MARSHAL: Court's in recess.

7 (Court recessed at 11:56 A.M. until 1:05 P.M.)

8 (Outside the presence of the jury)

9 THE COURT: All right, all right. So, are we on the
10 record?

11 THE COURT RECORDER: Yes, Judge.

12 THE COURT: Okay. We're outside the presence of the
13 jury and --

14 THE CLERK: Do I swear him in?

15 THE COURT: Yeah, just a minute.

16 THE CLERK: Oh, okay. I got to ask you a question
17 about that.

18 THE COURT: All right. All three defendants are
19 present with their respective counsel. The Deputies District
20 Attorney prosecuting the case are present, as are all officers
21 of the court. Yes, Madam Clerk?

22 THE CLERK: Is this going to go in the minutes, or
23 is it going to go on the witness list? Probably just the
24 minutes, right?

25 THE COURT: Yeah. I mean, whether he is called as a

1 witness will be determined after.

2 THE CLERK: Okay, okay.

3 THE COURT: So, swear him in.

4 THE CLERK: Can you stand and raise your right hand?

5 THE WITNESS: Sure.

6 (Testimony outside the presence of the jury)

7 DAVID BROWN, STATE'S WITNESS, SWORN

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

10 THE WITNESS: David Brown. B-r-o-w-n.

11 THE CLERK: Thank you.

12 MR. DiGIACOMO: Thank you.

13 DIRECT EXAMINATION

14 BY MR. DiGIACOMO:

15 Q Sir, you're a local criminal defense attorney?

16 A Yes.

17 Q And on October 23rd of 2014, were you appointed or
18 retained to represent Robert Figueroa?

19 A I don't recall the exact date, but I was called to
20 get the appointment by Mr. Christensen to represent Mr.
21 Figueroa.

22 Q On the date that you first met Mr. Figueroa, was it
23 in court?

24 A It was.

25 Q And Justice Court?

1 A Yes.

2 Q And if I told you that his initial arraignment was
3 October 23rd, 2014, does that sound about right to you?

4 A It does.

5 Q Okay. During the encounter you have with your
6 client that day, how long is it?

7 A Very brief.

8 Q Sometime later that day, do you receive information
9 from me that your client had made some statement to a
10 Corrections Officer?

11 A Yes, I did.

12 Q And do you recall what it is that you and I talked
13 about?

14 A I recall you called me, I believe it was after hours
15 on my cell, saying that Mr. Figueroa had told the Corrections
16 Officer that he wanted to cooperate, and that was consistent
17 with conversations I had had with him, and then asked if I
18 would be available tomorrow morning.

19 Q And did you agree to go --

20 A The morning -- tomorrow morning being the morning
21 after that.

22 Q The morning after, did you go to the Clark County
23 Detention Center?

24 A I did.

25 Q And before going to the Clark County Detention

1 Center, had you gone to your office or anything like that?

2 A I don't recall, but I believe it was a Friday, and I
3 just went straight there. It was very early in the morning,
4 if I recall.

5 Q And do you recall who was present during this
6 meeting at the Clark County Detention Center?

7 A It was two homicide detectives and my client.

8 Q Your client and yourself?

9 A Yes.

10 Q Did you have some period of time to have a
11 conversation with Mr. Figueroa?

12 A I did, because the only previous time I had a chance
13 to meet him was in court with a gallery full of people, so I
14 asked before we started to have a little bit of time to speak
15 to my client, which was really the first time to speak to my
16 client alone.

17 Q And how long would that conversation have gone on
18 for?

19 A I would say anywhere from 5 to 20 minutes, but I
20 have no independent recollection right now.

21 Q After you finished talking to your client, was there
22 a tape recorded statement that included both you, two homicide
23 detectives, and Mr. Figueroa?

24 A Yes.

25 Q I'm going to show you what's been, well, admitted

1 for purposes of the trial. I guess, theoretically, it should
2 be admitted for purposes of this hearing as well as State's
3 327. Just this -- when you walked in the courtroom earlier,
4 did I show you that?

5 A You did, and I just glanced at the first couple
6 pages.

7 Q Okay. And after reading the first couple of pages,
8 does that sort of refresh your recollection of the beginning
9 portion of that conversation?

10 A Yes.

11 Q During the beginning portion of that conversation --
12 or of that recording, you sort of provide some advice to Mr.
13 Figueroa, correct?

14 A Yes.

15 Q And essentially, that if he's truthful, this is
16 going to go well, potentially you're going to be able to get a
17 deal; if you're not truthful, it's going to go really bad for
18 you?

19 A Correct.

20 Q Paraphrasing; is that correct?

21 A Absolutely, yes.

22 Q Okay. Is that sort of consistent with the advice
23 you'd previously provided him?

24 A Yes. I would always advise a client if they wanted
25 to take the cooperation route that it was very important that

1 they were 100 percent truthful.

2 Q After that, Detective Barry Jensen Mirandizes your
3 client. Do you recall that happening?

4 A I don't, but I read that portion of the transcript
5 and I believe it did.

6 Q And during that, he says something like, anything
7 you say can and will be used against you at a court of law, do
8 you understand your rights, those type of things, correct?

9 A Yes.

10 Q Your client acknowledges that he understands his
11 rights, correct?

12 A Yes.

13 Q Okay. Had you told him, hey, by the way, what Berry
14 Jensen just told you, that this statement can never be used
15 against you, that somehow, that's not true?

16 A No, and my recollection is --

17 THE WITNESS: Well, and Your Honor, I guess I can't
18 -- I know this is different. The only other time I've
19 testified is for a Writ. I can't testify to anything
20 attorney/client conversation, correct?

21 THE COURT: Unless your client's waived.

22 THE WITNESS: So, he's no longer my client, so I
23 don't feel comfortable in that. So, I'm sorry, could you
24 repeat the question?

25 BY MR. DiGIACOMO:

1 Q Oh, yeah. Let me ask it this way. Have you ever
2 conveyed to the State that you've provided any advice to your
3 client other than what's already in the recording?

4 A No.

5 MR. DiGIACOMO: Thank you. I have nothing further.

6 MR. LANDIS: Regarding the -- regarding the
7 attorney/client privilege, there's -- even though it's between
8 an attorney and a client, if it's things being prepared to be
9 said to a third party, it's my position that it's not
10 privileged, and I think there's good case law on the topic.

11 THE COURT: Well, certainly anything that's
12 disclosed in the presence of a third party waives --
13 absolutely waives the privilege.

14 MR. LANDIS: Of course.

15 THE COURT: But I thought what he was talking about
16 was the conversation he had before he was in the presence of
17 the third party. Now, I was trying, as we were going over, in
18 my mind, whether Mr. Figueroa -- and so help me on this if you
19 can -- that he may have disclosed during his testimony his
20 conversation with his lawyer.

21 MR. DiGIACOMO: Not as to this subject matter. He
22 was never asked. This was only Detective Jensen that was
23 asked about this.

24 THE COURT: And in -- how about -- I did read this.
25 But is there anything that would waive the privilege -- have

1 you read this? His -- in this --

2 MR. DiGIACOMO: Well, other than he says --

3 THE COURT: Wait, wait, wait, for the record.

4 MR. DiGIACOMO: Sorry.

5 THE COURT: This I'm referring to, Mr. Figueroa's
6 Pro Per Motion to Dismiss Counsel that is filed electronically
7 on July 28th, 2015.

8 MR. LANDIS: As to that, I think Nevada Rules of
9 Professional Conduct allow an attorney to defend themselves
10 against accusations made by a client.

11 THE COURT: I know, but I don't recall -- I mean, I
12 read it yesterday.

13 THE WITNESS: And Your Honor, if I could, I think
14 there's one thing I could say in general, which is the point I
15 was going to make, and I don't think I'm violating any
16 confidentiality here. The only thing I would say to any
17 client that was going to cooperate was basically there's no
18 going back, that you have to just be certain that this is the
19 decision you want to make. And that was -- that was what I
20 was referencing, so.

21 MR. LANDIS: Sure. Well, I can start questioning
22 and see if we have to --

23 THE COURT: All right.

24 MR. LANDIS: -- go back to that issue.

25 THE COURT: Sure.

1 MR. DiGIACOMO: And just for the record, Mr.
2 Figueroa in that document that you have in front of you claims
3 -- the conversation that Mr. Brown said is privileged, he
4 claims it doesn't exist, so I can't imagine he waived his
5 privilege by filing that document, only to that extent, but.

6 CROSS-EXAMINATION

7 BY MR. LANDIS:

8 Q That wasn't the -- this isn't the first case you've
9 worked with Mr. DiGiacomo?

10 A Correct.

11 Q Have you -- generally, not just with him, have you
12 entered into proffer agreements with prosecutors, state or
13 federal?

14 A Yes.

15 Q And can you give me a ballpark of how many that
16 would have been as of September 2014?

17 A Dozens.

18 Q And had you entered into any proffer agreements with
19 Mr. DiGiacomo previous to September 2014?

20 A No. I would say my experience with proffers was
21 more in line with federal cases than state cases.

22 Q Let me -- let me phrase it this way then. Do you
23 have any recollection of any state cases where you entered
24 into a proffer prior to September 2014?

25 A I believe I have. I don't have a recollection, but

1 more on the drug cases.

2 Q Certainly. You're comfortable saying though that
3 not with Mr. DiGiacomo?

4 A I'm comfortable saying that.

5 Q How many cases would you say in general you've
6 handled that were prosecuted by Mr. DiGiacomo?

7 A We're going back 15 -- 15 years, so I would -- I
8 would say dozens.

9 Q I was informed last night that a proffer letter was
10 I think e-mailed to your office. Are you aware that that was
11 e-mailed as we sit here today?

12 A I was informed last night as well, but before that,
13 I had no independent recollection of that letter.

14 Q Do you have any reason to believe you did not
15 receive that e-mail?

16 A No.

17 Q The e-mail address was correct?

18 A I don't know what e-mail address they had. I was
19 just told it was sent to me, but I believe it was sent to me.

20 MR. LANDIS: And do you guys have a hard copy of the
21 e-mail, or no?

22 MR. DiGIACOMO: The Judge has the court exhibit.

23 THE COURT: And it has not been marked yet, so we'll
24 mark it as a court exhibit.

25 THE CLERK: What's this one?

1 THE COURT: It is --

2 THE CLERK: Okay.

3 THE COURT: -- an e-mail with an attachment. A
4 draft letter.

5 THE CLERK: And do you have 327, or do you have it?

6 MR. DiGIACOMO: The witness has --

7 THE CLERK: Okay.

8 MR. DiGIACOMO: -- 327 up there.

9 THE CLERK: It's Court's Exhibit 8, I think, 8. Do
10 you need this back?

11 THE COURT: Yes.

12 THE CLERK: I'll finish it up when we're done.

13 THE COURT: Do you want me to show it to him?

14 MR. LANDIS: If you would, please.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 MR. DiGIACOMO: And for the record, it's court
18 exhibit --

19 THE COURT: Court exhibit?

20 MR. DiGIACOMO: -- number?

21 THE CLERK: Eight.

22 MR. DiGIACOMO: Eight?

23 BY MR. LANDIS:

24 Q Looking at that, the first -- the first page of
25 Court Exhibit 8 would appear to be an e-mail message printed

1 out, yes?

2 A Yes.

3 Q Does it appear to send to you?

4 A Yes.

5 Q And the e-mail address is correct?

6 A Yes.

7 Q And I know it's been two years ago or so since that
8 was dated. Did you open your e-mails at that period of time?

9 A Yes.

10 Q Based on that, would you say that that would be an
11 e-mail you would have opened and observed at some point in
12 September 2014 -- I'm sorry, October 2014?

13 A Absolutely, yes.

14 Q Do you have memory as to whether or not you saw it
15 the 23rd of October?

16 A I have no recollection at all.

17 Q And no written record would be anywhere in your
18 files about that?

19 A No.

20 Q When you first got that call that day that you just
21 talked about from Mr. DiGiacomo informing you of what he's
22 learned about your client, at that point in time, did you
23 believe you were going to enter into a proffer agreement?

24 A I guess I didn't make a distinction between a
25 proffer agreement or cooperation. I knew at that point in

1 time, my client wanted to cooperate and was going to
2 cooperate, and I didn't require a proffer letter.

3 Q Let me -- let me phrase it this way. You were aware
4 that he wanted to cooperate, right? And that was based on
5 what you heard from Mr. DiGiacomo, right?

6 A Yes.

7 Q And I think you also indicated that you heard
8 something consistent earlier in the day from your client?

9 A Yes.

10 Q Even though he wants to cooperate, obviously, it's a
11 two-way street. The State has to play ball, too, correct?

12 A Well, we were assuming that he would get a
13 beneficial resolution if he -- or a more beneficial resolution
14 if he cooperated than if he didn't, yes.

15 Q And even -- was that specifically talked about when
16 you and Mr. DiGiacomo were on the phone on the 23rd?

17 A Yes.

18 Q Nothing was put in writing that you at least
19 remember seeing though before the --

20 A No.

21 Q And what was your under -- what were -- is there any
22 difference in your mind or was there any difference in your
23 mind back then as to a difference between a cooperation
24 agreement and a proffer agreement?

25 A Slight.

1 Q And what would the difference be?

2 A Sometimes a proffer is, to me, when the client is
3 giving them information that they don't know the -- the state
4 or the government, that they want yet. For instance, on a
5 drug case, it might be, we know about these other people that
6 aren't involved. Cooperation, to me, is more, you know,
7 client talking about that particular agreement, but there -- a
8 proffer could be that way as well.

9 Q But I mean, we have to agree that at a minimum, they
10 had to accept what he was saying as true before they were
11 going to use it?

12 A Yes.

13 Q Right? And you knew there wasn't going to be an
14 agreement for a reduced sentence or whatever unless they made
15 that determination?

16 A Yes.

17 Q And how -- did you talk at any time -- before the
18 detectives had the recorder on, did you talk specifically with
19 your client about the -- what he was going to say?

20 A No.

21 Q And had you seen any Police Reports in the case
22 whatsoever?

23 A I believe I had seen the basic report, but I didn't
24 have all the voluntary statements at that time.

25 Q Which would probably be like the main Arrest Report

1 or something of that sort?

2 A Yes.

3 Q So, you had a basic idea as to the allegations
4 against your client?

5 A Yes.

6 Q And after that morning meeting, and you sit down
7 with the detectives and the recorder goes on, you don't know
8 any better than the detectives what's going to come out of his
9 mouth?

10 A Yes.

11 Q And what was your understanding if he did not reach
12 an agreement, if they did not -- if they did not find what he
13 said to be truthful?

14 A That he would be in the same situation he was in the
15 day before.

16 Q Which means no agreement would be reached, correct?

17 A Correct.

18 Q What about the contents of what it said?

19 A There really wasn't any understanding as to whether
20 or not they would be able to use those against him or not.

21 Q What was your understanding, belief?

22 A I believed they would have used them against him if
23 he would have been untruthful in that, you know, interview.

24 Q If I can ask you then, how are you protecting your
25 client's interest by advising him to speak with detectives if

1 they can use it against him when you don't know what he's
2 going to say?

3 A Well, the client -- again, I don't want to go into
4 the conversation, but there was some timeliness issues that
5 some of the information needed to come out fast because there
6 were outstanding co-defendants. And the client, you know,
7 expressed, his desire to do that. I believe if I wasn't
8 willing to do that, he would have -- he would have cooperated
9 without me. And I feel, in this case, it worked out, you
10 know, very well for him. I'm very happy with the resolution
11 he received.

12 Q Do you believe he would have been effective if they
13 didn't use his statement and they eventually tried him and
14 used it against him?

15 A Yes.

16 Q Why did you not seek a proffer agreement when Mr.
17 DiGiacomo called you?

18 A Because I believed Mr. DiGiacomo, through my
19 experience, to be a man of his word, and felt that if he, you
20 know, testified or cooperated truthfully, he would receive a
21 benefit --

22 Q And I respect --

23 A -- which he did.

24 Q And I respect that, I do. But here's -- but you had
25 no idea if your client was even going to say anything that put

1 him on the dance floor to have his testimony accepted by the
2 State, right? I mean, you had no idea at that point?

3 A Well, I guess I don't understand your question.

4 THE COURT: Well, I guess my -- my concern is I'm
5 not sure how this is relevant, because to me, what's relevant
6 is, did the client understand, yes or no, that what he said on
7 October 24th, 2014 could be used against him or not?

8 MR. LANDIS: But I can't ask that question, or I
9 can't even ask directly the --

10 THE COURT: Well, that's what we're trying to get
11 at. So, if -- if he had the understanding that it could be,
12 then certainly there wouldn't have been something else
13 communicated.

14 MR. LANDIS: Well, let me just ask this then. I
15 think it's still relevant. You can shut me down if you want.

16 BY MR. LANDIS:

17 Q Why would -- upon seeing that proffer letter, and I
18 understand there's no specific memory, you would have read it,
19 yes?

20 A Yes.

21 Q And it provided protections -- available protections
22 to your client, yes?

23 A Yes.

24 Q Including an immunity -- use immunity on what he
25 said to the police?

1 A Yes.

2 Q Why would you not afford those protections to your
3 client when the State was unilaterally offering them to him?

4 A I don't have any independent recollection of
5 receiving that letter.

6 MR. LANDIS: I have no further questions.

7 THE COURT: Anything else?

8 REDIRECT EXAMINATION

9 BY MR. DiGIACOMO:

10 Q Just so that we're clear, you -- if your client was
11 truthful, you believed that you and I would be able to work
12 out a negotiation, correct?

13 A Correct.

14 Q And if your client was truthful in a very quick
15 manner, you thought that that was beneficial to your client,
16 correct?

17 A Correct.

18 Q And the subject of, hey, what happens if your client
19 is untruthful and is lying to us, isn't really something that
20 was a conversation between you and I, correct?

21 A Right.

22 Q Right? If he's truthful, it's going to work out
23 okay for us, basically, right?

24 A Right.

25 Q Okay. If you had received that document before you

1 went down to see Mr. Figueroa, you and Mr. Figueroa would have
2 executed the document, I'm guessing. Would you agree with
3 that statement?

4 A Yes.

5 Q And have you looked to see if you have an executed
6 copy of that document?

7 A I looked through my records, and I have no other
8 documents still. I turned over the file to his new attorney.

9 Q And certainly that document would have had to have
10 been sent back to our office as required by the document in
11 order for this to establish this sort of contractual
12 relationship, correct?

13 A Yes.

14 Q Based upon everything you know about the way
15 everything happened, and what you say in there, and the fact
16 that Detective Jensen reads Miranda warnings, and everything
17 else, is it your belief that you saw that document after this
18 interview occurred with your client?

19 A Yes.

20 MR. DiGIACOMO: Nothing further.

21 RECROSS-EXAMINATION

22 BY MR. LANDIS:

23 Q What made you think that time was of the essence as
24 of the 23rd?

25 A It was my understanding that there was some

1 remaining co-defendants that had not been arrested. There was
2 also, I believe -- I'm sure it's mentioned in there -- an
3 outstanding firearm that the police had interest to get off
4 the streets.

5 Q And why did that make talking -- making your client
6 talking to them of the essence? I still don't understand
7 that.

8 A If the police were to get the information about the
9 other outstanding co-defendants and apprehend them without the
10 assistance of my client, he would receive less of a benefit.

11 MR. LANDIS: Okay. I have no further questions.

12 MR. DiGIACOMO: I have nothing further.

13 THE WITNESS: Is that it?

14 THE COURT: Thank you very much.

15 THE WITNESS: Thank you very much.

16 THE COURT: Mr. Landis, do you --

17 MR. LANDIS: I still think I should be able to put
18 on evidence, I do, I do, about it.

19 THE COURT: Put on evidence of what?

20 MR. LANDIS: What a competent attorney would do in
21 that situation and then what a proffer agreement is. I do.
22 And I can also show, not that it's relevant to this, but
23 Summer Rice certainly had a proffer agreement.

24 THE COURT: Okay. Well, I don't think it's relevant
25 whether -- I mean, putting on evidence to try and prove that,

1 in your opinion, Mr. Brown is not a competent attorney is
2 neither here nor there. I mean, the issue is, as far as I'm
3 concerned, you didn't -- you know, you raised it, you didn't
4 know about this supposedly proffer agreement, and that was a
5 concern because it could potentially be Brady material.

6 MR. LANDIS: I think these details should be
7 disclosed no matter how they are, and I think there's good
8 case law support for that.

9 THE COURT: All right. And so, obviously, it's
10 better to disclose something that potentially could be out
11 there sooner than later, but you've now had it and had the
12 opportunity now to explore with this witness.

13 MR. LANDIS: Sure, but I was penalized by not
14 knowing. My client was penalized.

15 THE COURT: In what way?

16 MS. McNEILL: As was mine.

17 THE COURT: In what way?

18 MR. LANDIS: The questioning of the detective.

19 THE COURT: Would you like to have him recalled?

20 MR. LANDIS: Well, I don't know if it's something
21 that can be unrun, but if I had a full picture when I
22 questioned him, I wouldn't have went in there. I wouldn't
23 have --

24 THE COURT: You had -- well, you had the -- this
25 e-mail --

1 MR. LANDIS: No.

2 THE COURT: -- this morning, right?

3 MR. LANDIS: Yes, last night.

4 THE COURT: Okay, and --

5 MR. LANDIS: But what I'm saying is --

6 THE COURT: The detective was still on the stand.

7 MR. LANDIS: I would have -- when I was doing my
8 initial cross, which was yesterday, I would have never asked
9 any questions about this if I had known -- if I had that
10 e-mail, for instance, and they told me that it was never
11 executed. If I know those things, there's no reason I would
12 have ever asked those -- this detective those questions,
13 because there was no beneficial information to get from him
14 about it.

15 MR. DiGIACOMO: But his answers to the question
16 were, you didn't know about the existence of this, and his
17 answers was, I don't know about the existence -- you're saying
18 I wouldn't have made an assumption that something happened
19 that didn't happen?

20 MR. LANDIS: The reason I made an assumption is
21 because I believe they had discovery obligations they did not
22 comply with, and I think there's case law to support it. When
23 it comes to cooperation agreements, the case law's very good
24 about the discovery obligations being heightened. It is.

25 THE COURT: All right. Well, you've had -- now

1 you've had that, and now you've had the opportunity also to
2 question Mr. Figueroa's lawyer, and so --

3 MR. LANDIS: What I'm saying -- sorry.

4 THE COURT: So, I mean, frankly, there's -- there's
5 -- from that testimony, it appears clear to me that there was
6 no agreement ahead of time that those things could not be used
7 against him; that Mr. Brown's belief was that he wanted to try
8 and get his client in to give testimony in hopes that he could
9 get a deal later, a favorable deal.

10 MR. LANDIS: Right.

11 THE COURT: And that's in fact what happened. So, I
12 don't think that -- I don't think anything has changed with
13 now your just -- your obtaining this e-mail that Mr. Brown
14 didn't even see before all of that happened.

15 MR. LANDIS: Well, he -- I don't --

16 THE COURT: I mean, you don't --

17 MR. LANDIS: At best, I think his --

18 THE COURT: -- want to believe him about that
19 either?

20 MR. LANDIS: No, no. I'm going to say his
21 recollection was, I don't know when I received it if I ever
22 received it. That's all I'm --

23 THE COURT: He's saying he has no recollection, and
24 on your, you know, thorough cross-examination, he also said,
25 if I had gotten it, it would have --

1 MR. LANDIS: That was --

2 THE COURT: -- it would have gotten signed.

3 MR. LANDIS: That was redirect, but he did say that.

4 THE COURT: Well --

5 MR. LANDIS: Let me say this though. To the extent
6 the Court won't let me put on evidence, I think those
7 questions should be stricken from the record and the jury has
8 to disregard them. I do. And the reason I'm saying that is,
9 I was led, and I can get into more detail, into a position
10 where there was no way I could anticipate what was coming.
11 And I think they have an obligation to not let me be in that
12 position when it comes to these cooperation agreements. I do.

13 MR. DiGIACOMO: I'm thoroughly confused as to the
14 argument of counsel.

15 MR. LANDIS: I'll explain it.

16 MR. DiGIACOMO: If the Court says this document is
17 not admissible, then the -- it's, by definition, not material.
18 It's not Giglio because it can't be used to cross-examine Mr.
19 Figueroa, who's the witness who testified in front of the
20 jury. Ergo, I had no duty to provide the document. And
21 there's nothing that has come out that that has happened.

22 If Mr. Landis is suggesting, well, I know that
23 there's a proffer agreement for Ms. Larsen, there is. He's
24 aware of it. It's been in the files forever. And if for some
25 reason he does not have that document, he knew about its

1 existence because he was asking her about you did a proffer
2 and all this other stuff, and not once did he say, can I have
3 the proffer agreement, because for whatever reason, I don't
4 have it.

5 MR. LANDIS: I asked for it in that letter that's a
6 court exhibit. I did. And they didn't provide anything
7 besides the Guilty Plea Agreements that they provided right
8 before trial. They didn't. They didn't provide any
9 information.

10 And I'll tell you this. I did not know if Summer
11 Larsen entered into a proffer agreement when I was questioning
12 her. That was an assumption as well. I called her attorney
13 yesterday after court and asked him, and that's why I said it
14 today with authority. But any reasonable defense attorney,
15 I'm telling you this, is going to assume there's proffers in
16 those situations. And you don't have to believe me; we can
17 ask defense attorneys.

18 And if the State had this oddball situation where it
19 went that way, I think they have an obligation to provide
20 those details to the defense, because my client's prejudiced
21 by the questions I asked that detective, because I had no idea
22 to know they were coming in there.

23 MS. McNEILL: Well, and my client's prejudiced as
24 well, because I wouldn't have engaged in that line of
25 questioning either, and Mr. Landis did, and I -- my client has

1 to live with the answers that Mr. Landis --

2 THE COURT: Okay, so you're saying --

3 MS. McNEILL: -- elicited.

4 THE COURT: -- you assumed there was no proffer
5 agreement, so you asked the questions --

6 MR. LANDIS: I assumed there was.

7 THE COURT: Well, that was an assumption --

8 MR. DiGIACOMO: That was wrong.

9 THE COURT: -- based upon your experience as a
10 defense lawyer, but there wasn't a proffer agreement. That's
11 been made clear. Nothing's changed.

12 MR. LANDIS: And --

13 THE COURT: There was not a proffer agreement. That
14 -- that comes out from this witness it's pretty clear to me.
15 So, I don't see how you're prejudiced, and I don't think that
16 questioning or putting on evidence to try and show that Mr.
17 Brown should have been a better lawyer for Mr. Figueroa is
18 relevant.

19 MR. LANDIS: Yeah. At its heart, what I'm putting
20 on -- what I want to put on is evidence of how the proffer
21 system works, period, generally.

22 MS. McNEILL: Which I think is relevant in a case
23 where we have two co-defendants who have come in and testified
24 now against our clients. I think the jury should be
25 absolutely allowed to hear how that system works as it goes to

1 why these people may say what they're saying.

2 MR. LANDIS: And there's jury instructions this
3 Court's required to give to the jury that says --

4 MS. McNEILL: Accomplices --

5 MR. LANDIS: -- accomplices are to be viewed with
6 suspicion.

7 THE COURT: Yeah, okay.

8 MR. LANDIS: That's the law. But through this
9 testimony, they're cutting against that, and they're allowed
10 to more or less support the credibility of their informant
11 through those questions. They were.

12 MS. McNEILL: And I think we're allowed to present
13 evidence of anything that would affect credibility, or bias,
14 or motive to testify. And certainly, the proffer system, and
15 how it works, and how it has worked in this case, has been an
16 issue from the beginning, especially, you know, when we got in
17 a situation with Ms. Rice and it came out that she had
18 initially made her proffer potentially a year before she even
19 entered her plea, and that was something that was certainly
20 never disclosed to us. And I think that it's absolutely
21 relevant for the jury to understand how this has been working,
22 especially -- not just overall, but in this case.

23 MR. LANDIS: To this day, I still don't know when
24 Summer Rice gave a proffer. I don't.

25 MS. McNEILL: Neither does she, apparently.

1 THE COURT: Did you want to say anything else in
2 response to that?

3 MR. DiGIACOMO: No, as long as the Court instructs
4 that they cannot get into Court's Exhibit Number 8. That's
5 the only purpose of me raising this is that that's
6 inadmissible because it's irrelevant.

7 THE COURT: And that's -- I agree. You can't -- I
8 disagree with your arguments, with all due respect, but I
9 don't see that it's relevant. I don't see how the proffer
10 system, as you want to call it, in general terms, is relevant
11 to this case.

12 What only would be relevant would be if there had
13 been a proffer agreement, and that that was in place at the
14 time of this October 24th, and that that wasn't disclosed
15 during your cross-examination of either Figueroa or the
16 detective, but that's not -- that was not the evidence that
17 came out in this evidentiary hearing. So -- so no, you --
18 it's irrelevant, as far as I'm concerned, to go into that.

19 MR. LANDIS: Understood.

20 THE COURT: And it's just going to further multiply
21 the proceedings and not add anything, so, because it's
22 irrelevant, so. All right. We're going to bring the jury
23 back in and Mr. Wolfbrandt's going to continue on direct with
24 his client.

25 MR. DiGIACOMO: Mr. Wolfbrandt, I assume you don't

1 need my computer quite yet? Like, you don't need any exhibits
2 put up for you yet? I assume, when you get to the house, you
3 might want to take some of that.

4 MR. WOLFBRANDT: Yeah, not right away.

5 MR. DiGIACOMO: I just -- it's -- for some reason,
6 it restarted on me and now it's updating. I'm at 87 percent,
7 so --

8 MR. WOLFBRANDT: Okay.

9 MR. DiGIACOMO: -- I may not have the ability to do
10 it for just a few moments.

11 MR. WOLFBRANDT: I won't need it, yeah, until we
12 start getting to the --

13 THE CLERK: Mr. DiGiacomo?

14 MR. DiGIACOMO: Yes, ma'am.

15 THE CLERK: Can you hand me Court's Exhibit 8? Oh,
16 never mind.

17 MR. DiGIACOMO: And 327's up there, too.

18 THE CLERK: Or I mean --

19 THE COURT: Yeah, two of them.

20 THE CLERK: And 327? Okay. Thank you.

21 THE COURT: All right, Marshal, we can bring them
22 in.

23 THE MARSHAL: Okay. All rise for the jury, please.

24 (Jury reconvened at 1:35 p.m.)

25 THE MARSHAL: Your Honor, all 12 members of the jury

1 and the three alternates are present.

2 THE COURT: Thank you. Please be seated. The
3 record will reflect that we have now been joined by all 12
4 members of the jury, as well as the three alternates. And Mr.
5 Wolfbrandt, would you like to have your client retake the
6 stand? Mr. Mendoza, you're still under oath.

7 THE WITNESS: Yes, ma'am.

8 JORGE MENDOZA, DEFENDANT, PREVIOUSLY SWORN

9 DIRECT EXAMINATION (RESUMED)

10 BY MR. WOLFBRANDT:

11 Q All right, Jorge. We left off with you had dropped
12 off Robert Figueroa at his apartment, and you went to a
13 friend's house somewhere in the general vicinity of where
14 Robert lived. Do you recall that?

15 A Yes.

16 Q How long did you spend with that friend?

17 A Probably six hours.

18 Q At some point, did you -- later in that evening, did
19 you meet back up with either David, or Joey, or Robert, or any
20 of them?

21 A No.

22 Q At some point, you ended up at the house on
23 Broadmere, didn't you?

24 A Oh, yeah. Yes. Later on, I ended up picking up
25 Robert again after I left my other friend's house. Sorry, I

1 didn't.

2 Q All right. What happened next as it related to any
3 interaction with David, Joey, Robert, or anybody else? Did
4 you get a phone call? Were you supposed to go somewhere at a
5 certain time already, or what?

6 A I got a phone call and I was told to go pick up
7 Robert.

8 Q Okay. What time do you remember that phone call
9 happening?

10 A Probably around 6:00.

11 Q Do you recall who was on the other end of the phone?

12 A Yes.

13 Q Who was that?

14 A David.

15 Q Did you initiate the call or did you receive the
16 call?

17 A I don't remember. We'd call each other all the time
18 for all sorts of stuff, so he may have called me, I may have
19 called him. I'm not really sure.

20 Q All right. In those six hours that you spent with
21 -- after you dropped off Robert and the phone call, did you
22 have any plans of your own of trying to steal anything from
23 anybody?

24 A No.

25 Q Were you aware of any plans that might involve you

1 helping to steal anything from anybody?

2 A Yeah, but I wasn't really sure it was going to
3 happen. It was vaguely explained or hardly really spoken of
4 that day.

5 Q Okay. All right, so about 6:00 o'clock, you had
6 this phone call, and as a result of that phone call, what did
7 you do?

8 A I picked up Robert Figueroa.

9 Q Was -- using your same car?

10 A Yes.

11 Q Was anybody else with you?

12 A No.

13 Q Did you in fact pick up Robert Figueroa?

14 A What's that?

15 Q Do you in fact pick up Robert Figueroa sometime
16 after 6:00 o'clock --

17 A Yes.

18 Q -- on September 21st, 2014?

19 A Yes.

20 Q Where did you go with him?

21 A To Joey's house.

22 Q Now, you mentioned a duffel bag or something that
23 Robert had in the morning. When you dropped him off at his
24 apartment that morning or at noon-ish or so, did he take that
25 bag with him?

1 A Yes.

2 Q Okay. When you picked him up later that evening,
3 did he have anything with him?

4 A Yes.

5 Q What did he have?

6 A The same bag.

7 Q Did you have anything -- any weapons with you --

8 A No.

9 Q -- when you picked him up at his apartment?

10 A No.

11 Q When you get to Joey's house -- or on the way -- did
12 you and Robert stop anywhere along the way?

13 A Yes.

14 Q Where did you stop?

15 A My house.

16 Q And why did you stop there?

17 A Because Robert persuaded me to get a weapon.

18 Q Did you want to have a weapon with you?

19 A No, I did not.

20 Q Did you plan on taking one?

21 A No, I didn't.

22 Q Did Robert insist that you have one?

23 A Yes.

24 Q Did you kind of cave in to Robert, and stopped and
25 picked one up?

1 A Yes.

2 Q What did you get?

3 A A rifle.

4 Q Did you get the Hi-Point rifle that's been --

5 A Yes.

6 Q -- admitted to evidence here? And you did that on
7 the way to Joey's house?

8 A Yes.

9 Q All right. As you were driving along, did you have
10 any idea or were you advised of any of the details of a -- of
11 a plan to steal from somebody?

12 A No, not at that point.

13 Q Did you even know who was going to be the -- the
14 victim, if you will?

15 A No.

16 Q When you got to Joey's house, about what time did
17 you arrive -- you and Robert arrive?

18 A Maybe 7:00.

19 Q Did you go in the house?

20 A No.

21 Q Actually, when you arrived at the house, was anybody
22 outside the house?

23 A No.

24 Q Did you and Robert both exit your car?

25 A Yes.

1 Q And then did you eventually get inside the home?

2 A I think Robert called and Joey came outside. I've
3 never went inside that house.

4 Q You didn't call anybody?

5 A No.

6 Q All right. So, Joey comes out, and then what
7 happens?

8 A I believe we met with David, and he --

9 Q Well, let me break it down this way. Joey comes
10 outside the house. Do you then have a conversation with him?

11 A Yes.

12 Q As a result of that conversation, did you guys go
13 anywhere or did somebody else show up? Was David already
14 there?

15 A He showed up.

16 Q Did David show up after you guys were there?

17 A Yes.

18 Q Okay, so then was there another conversation among
19 all of you guys?

20 A Yes.

21 Q As a result of that conversation, did you learn of a
22 location that there was going to be an intended stealing of
23 some property?

24 MS. McNEILL: And Your Honor, I object to this,
25 because it's eliciting hearsay. It's not clear who it's from,

1 and if it's from another co-defendant, then I have a
2 confrontation clause problem.

3 THE COURT: All right. And --

4 MR. WOLFBRANDT: I can break it down.

5 THE COURT: Are you going to rephrase the question?

6 MR. WOLFBRANDT: I will.

7 THE COURT: All right.

8 MR. WOLFBRANDT: All right.

9 BY MR. WOLFBRANDT:

10 Q After David arrives, are you guys all still outside
11 the home?

12 A Yes.

13 Q Is there a conversation then that occurs outside the
14 home?

15 A Yes.

16 Q Is -- who initiates this conversation?

17 A Robert.

18 Q And what does -- what's -- what's -- what's he
19 talking about?

20 A He starts asking the details; where we're going to
21 go, what we're going to do.

22 Q Okay, and who answers him?

23 A David.

24 Q At the end -- is Joey involved in any of that
25 conversation?

1 A Not really. A little bit, I mean, I guess.

2 Q Were you a part of that conversation?

3 A Slightly.

4 Q So, is that conversation primarily between David and
5 Robert?

6 A Pretty much. He was the one that was like most
7 eager --

8 Q Who was?

9 A -- to go. Robert.

10 Q So, is Robert trying to extract information, you
11 know, let's go where we're going to go?

12 A Yes.

13 Q What was your input during this conversation?

14 A I really didn't have much input. I just stayed kind
15 of quiet.

16 Q All right. At some point then, do you leave Joey's
17 residence?

18 A Yes.

19 Q Do you leave alone?

20 A No.

21 Q Who's with you?

22 A David, Joey, Robert, and I.

23 Q Do you leave in your car?

24 A Yes.

25 Q Do you only take the one car?

1 A Yes.

2 Q Who drives the car?

3 A David.

4 Q Where were you seated?

5 A Back driver side.

6 Q Where was Robert?

7 A Back passenger side.

8 Q And so that would leave Joey in the right front?

9 A Yes.

10 Q Why was David driving your car?

11 A Just figured it'd be easier that way. He knew the
12 directions; I didn't.

13 Q That was going to lead to did you know where they
14 were going?

15 A No.

16 Q At some point, do you arrive in the neighborhood of
17 Broadmere?

18 A Yes.

19 Q And were there any stops along the way?

20 A No.

21 Q All right. You arrive at that Broadmere --

22 MR. WOLFBRANDT: Are you able to view pictures?

23 MR. DiGIACOMO: I'm at 19 percent.

24 MR. WOLFBRANDT: 19?

25 MR. DiGIACOMO: Yeah, it's updating. I'm sorry, it

1 did it on its own. But I can do the Elmo, and I can pull 6
2 and we can put it on the Elmo for you. Would that work for
3 you?

4 MR. WOLFBRANDT: Yes. Judge, we're getting Exhibit
5 number 6.

6 (Pause in the proceedings)

7 MR. WOLFBRANDT: All right.

8 BY MR. WOLFBRANDT:

9 Q Was Joey's house somewhere in the neighborhood of
10 Cimarron and Cheyenne? Do you recall?

11 A Yes.

12 Q So, do you recall what route you took from Joe's
13 house to -- to this housing development there at Hualapai and
14 Homestretch?

15 A I don't recall.

16 Q All right. Up on the screen there is Exhibit 6,
17 which is an aerial of that neighborhood. Do you recognize
18 that?

19 A Yes.

20 Q All right. Do you recall which entrance to that
21 neighborhood you guys took when you first arrived?

22 A Yes.

23 Q And can you point to it on the screen? Okay, and
24 that would be indicating --

25 A Shifting Winds.

1 Q -- the east of -- the northeast -- sorry, southeast
2 corner of Shifting Winds and Homestretch? Homestretch is
3 going across the top of the picture, and Shifting Winds --

4 THE COURT: You have to answer audibly.

5 THE WITNESS: Yes.

6 MR. WOLFBRANDT: Okay.

7 THE COURT: Thank you.

8 BY MR. WOLFBRANDT:

9 Q Okay, can you then trace the route on this map,
10 Exhibit 6, as to how you recall getting into the area where
11 the home at 1661 Broadmere is? All right. What happens when
12 you get right there at the home at 1661?

13 A We get out of the car.

14 Q On the way in, is there conversation as to who's
15 going to do what when you get there?

16 A No, we pretty much discussed that in the car. It
17 was pretty much supposed to be the same thing, how we'd go
18 upstairs and find the -- the marijuana and bring it out.

19 Q When you say -- pretty much when you discuss it in
20 the car, what are you talking about?

21 A Who would do what, as far as --

22 Q Let's back -- are you talking about a conversation
23 from the -- earlier in the morning, or from on your way over
24 to the Broadmere house?

25 A On our way over to the Broadmere.

1 Q Okay. That's kind of what this -- my question was
2 about. Was there a conversation as to who was going to do
3 what; who was going to get out of the car?

4 A Yes.

5 Q Who was -- was it more of a one-sided conversation,
6 or a discussion?

7 A It was pretty much one-sided conversation.

8 Q And who was doing the -- who's doing the directing?

9 A Robert.

10 Q So, what was Robert's plan for when you got there to
11 the house?

12 A He said he would open the door and he would get
13 everyone under control, and I would come in, I would go
14 upstairs and grab the bag, and Joey would be there in case
15 anyone else come out of any surprising spot or something.

16 Q Okay. Now, were you expecting anybody to be home?

17 A I really wasn't expecting.

18 Q All right, so the car stops in front of the house.
19 Do you get out?

20 A Yes.

21 Q Who else gets out?

22 A Robert and Joey.

23 Q What does David do?

24 A Goes up the street and hits a u-turn.

25 MR. WOLFBRANDT: Can we clear that?

1 MR. DiGIACOMO: Oh, yeah, sure.

2 MR. WOLFBRANDT: Okay.

3 BY MR. WOLFBRANDT:

4 Q Now, on Exhibit 6, can you show where David went?
5 And I take it he went with your car?

6 A Yes.

7 Q And can you show on there where -- where your car
8 went after you got let out? All right. Did he -- you've
9 indicated at the north end of Broadmere as it turns into -- I
10 think it's Garamound; is that right?

11 A Yes.

12 Q What direction does the car -- I mean, what does he
13 do -- how does he position that car?

14 A Just hit a u-turn, so he'd probably be facing south
15 so he could see us, I suppose.

16 Q Facing back towards the house?

17 A Yes.

18 Q All right. So, as he's doing that, what -- what are
19 you doing?

20 A Walking up to the front door.

21 Q Are the lights on in the house?

22 A Yes.

23 Q As you're up there at the top of the driveway, do
24 you have any idea whether there's anybody in the house?

25 A No.

1 Q All right. What's the order -- all right. Well,
2 we've heard Robert testify that he was the first one; he hit
3 the door with his shoulder. Is that your memory of what
4 happened?

5 A Yes.

6 Q All right. Did you have your rifle with you?

7 A Yes.

8 Q Kind of describe that rifle.

9 A About probably three-foot-long black rifle.

10 Q What caliber?

11 A 9 millimeter. @

12 Q Did it have a safety on it?

13 A No.

14 Q Did Robert have a weapon with him?

15 A Yes.

16 Q Did he have it out in his hand?

17 A Yes.

18 Q Can you describe it?

19 A It was a revolver.

20 Q Did you ever see a semi-automatic?

21 A No.

22 Q Now, you've heard him testify earlier that he had a
23 semi-automatic in a holster on his waist. Do you remember
24 hearing that?

25 A Yes.

1 Q Is it possible he had that on his waist and you
2 never saw it?

3 A That could be possible.

4 Q But the gun you saw was a revolver?

5 A Yes.

6 Q Do you know what caliber it was?

7 A .38.

8 Q How do you know that?

9 A Because he was asking me if I had any extra .38 ammo
10 at my house.

11 Q Was that when you were on your way to the house to
12 pick up the rifle?

13 A Yes.

14 Q Did Joey Laguna have any weapon with him that you
15 saw?

16 A I don't recall.

17 Q Do you remember Robert ever handing a weapon to him?

18 A No.

19 Q So, you're at the front door; Robert's at the front
20 door. How close are you behind Robert?

21 A Probably about a foot away, two feet away.

22 Q Not quite touching?

23 A No.

24 Q All right. So, he hits the door how?

25 A He hits the door with his right shoulder, throws

1 himself into it, holding the doorknob.

2 Q Lower and lean into the door?

3 A What's that?

4 Q Does he lower himself and lean into the door?

5 A Yes, threw himself into the door.

6 Q How many times does he hit the door?

7 A Twice.

8 Q The second time he hits the door, what happens?

9 A The door breaks open and he runs in.

10 Q Did you run in?

11 A No. I was right behind him, but as soon as the door
12 opened, the gunfire started, so he ran out, and I was backing
13 up.

14 Q Okay, so let's break it down. The door opens, he
15 goes -- how many steps in does he take?

16 A Just a few. Not very -- didn't get very far in.

17 Q All right. Did he have his gun -- the .38 revolver,
18 did he have that out in his hand?

19 A Yes.

20 Q So, anybody inside the house maybe could have seen
21 it?

22 A Yes.

23 Q You had the rifle in your hands, right?

24 A Yes.

25 Q Where was that pointed as Robert was hitting the

1 door?

2 A To the ground.

3 Q So, when the door flew open and Robert took one or
4 two steps in, did you hear gunfire?

5 A Yes.

6 Q Was it -- was that gunfire from outside the house
7 going in, or was it from inside the house coming out?

8 A I believe it was a combination.

9 Q And did you ever step foot across that threshold?

10 A No.

11 Q You described that Robert turned, so what happened
12 next?

13 A He turned. He bumped into me as he was making his
14 way out.

15 Q Were you still trying to go inside, or were you
16 trying to leave?

17 A I was stepping back. I was kind of startled by the
18 whole thing, and it just happened so fast, I was I guess in
19 the middle of thought.

20 Q So, when that door was opened and gunfire started,
21 did you see anybody inside the house?

22 A No.

23 Q Do you have any idea where inside that house the
24 gunfire was coming from?

25 A No.

1 Q Did you discharge your rifle?

2 A Yes.

3 Q Describe for the jury how that happened.

4 A When Robert come running back out, he bumped into
5 me, and I fired a couple rounds.

6 Q Okay. Now, did you fire any rounds inside --
7 towards the inside of the house?

8 A I don't recall really where I was pointing when I
9 fired.

10 Q You've seen some -- some evidence; photographs,
11 crime scene diagrams, and whatnot. The rounds associated with
12 your rifle ended up inside that house?

13 A Yes.

14 Q Were you aiming at anybody?

15 A No.

16 Q Were you trying to hit anybody?

17 A No.

18 Q As you sit here today, do you have any recollection
19 as to how many rounds you fired there at the doorstep?

20 A No.

21 Q Do you have any quarrel with the number of shell
22 casings that were recovered that were associated with your
23 rifle that that would be how many rounds were fired there at
24 the door?

25 A What do you mean?

1 Q I mean, you've heard testimony that there were a
2 number of 9 millimeter shell casings that were associated with
3 your rifle that were found right there at the doorway?

4 A Yes.

5 Q Do you have any quarrel that that would be the
6 number of rounds you actually fired?

7 A No.

8 Q Even though you don't remember that many, you can't
9 argue that that many rounds got fired, right?

10 A Correct.

11 Q And again, were any of those rounds aimed at
12 anybody?

13 A No.

14 Q Were you trying to kill anybody at that point?

15 A No.

16 Q What was your purpose of -- of discharging that
17 weapon at that point?

18 A I really think more just startled, not really -- I
19 don't know.

20 Q Well, as Robert was hitting on the door, do you
21 recall, did you have your finger on the trigger of the gun or
22 did you have it off to the side?

23 A On the trigger.

24 Q So, as he turned and you were trying to turn, did he
25 run into you?

1 A Yes.

2 Q And as he bumped into you, the first couple of
3 rounds went off?

4 A Yes.

5 Q Okay. And do you have any conscious recollection of
6 pulling the trigger more times?

7 A No.

8 Q Were you -- were you trying to leave at the same
9 time?

10 A Yes.

11 Q Okay. Describe how you were trying to leave.

12 A I was trying to back up, kind of just back step away
13 from the door and get kind of kitty-corner from the column.

14 Q All right, there's a driveway. Now, is there --
15 there's a little yard in front of that Broadmere house; is
16 there?

17 A Yes.

18 Q Did you stay on the driveway as you're trying to
19 leave, or did you ever get into the yard area?

20 A I was kind of cutting through the grass.

21 Q What happened next?

22 A I got shot.

23 Q Where'd you get shot?

24 A In the leg.

25 Q And in the thigh?

1 A Yes.

2 Q As you got shot, did you notice where Robert went?

3 A I did not see where he went.

4 Q Did you see where Joey went?

5 A He ran out into the street.

6 Q Okay. Now, Joey never got in the house, did he?

7 A No, he was furthest back.

8 Q Because he was behind you?

9 A Correct.

10 Q Okay, so you get shot in the leg. What happens?
11 Are you able to keep running?

12 A No. I -- instantly, I'm down. I fall down. I
13 can't put no weight on my leg.

14 Q At this point, is Joey gone?

15 A That's about the time he left, yes.

16 Q Okay. Do you -- do you ever see what happens to
17 him?

18 A No.

19 Q Okay. How about Robert; does he run by you?

20 A He had -- he had already run past me.

21 Q Okay. Did you ever see him again?

22 A No.

23 Q All right, then what did you do?

24 A I was trying to back up away from the property, back
25 away from the house, and kind of hide myself behind the pillar

1 instead of stay in front of the open door.

2 Q All right. Can you --

3 (Mr. Wolfbrandt/Mr. DiGiacomo conferring)

4 MR. DiGIACOMO: Do you want a picture or a diagram?

5 MR. WOLFBRANDT: Okay.

6 BY MR. WOLFBRANDT:

7 Q Let me show you State's 19. All right. Do you
8 recognize that as the house at 1661 Broadmere?

9 A Yes.

10 (Mr. Wolfbrandt/Mr. DiGiacomo conferring)

11 MR. WOLFBRANDT: I'm catching onto this technology.

12 All right.

13 BY MR. WOLFBRANDT:

14 Q Can you point to where the front door is? Okay.
15 Now, there's a -- I don't know what you call it. A pop-out
16 pillar or so, a --

17 A Column.

18 Q -- square column just to the left of the arrow?

19 A Yes.

20 Q Do you see that? Okay.

21 A Yes.

22 Q So, when Robert's hitting the door, are you inside
23 that column behind him?

24 A I'm probably just behind the column.

25 Q When you say just behind, I mean, are you out

1 towards the street side of it or --

2 A Yes.

3 Q -- are you inside that -- that alcove area?

4 A Probably --

5 Q Or just even with it?

6 A Just about even with it.

7 Q Okay. All right. So, let me clear that. Can you
8 see on -- on this picture, Exhibit 19, where you were when you
9 got shot?

10 A (Witness indicates on screen.)

11 Q Okay, you indicate in the grass area about -- do you
12 know about how many feet you were --

13 A 15 --

14 Q -- from the sidewalk that goes --

15 A From the sidewalk?

16 Q From the sidewalk -- not the sidewalk in front of
17 the house, but the one coming out of the front door, the
18 sidewalk that leads over to the driveway.

19 A Oh, probably about five feet. I just about was to
20 the sidewalk when I fell down.

21 Q Okay. Does the car that's in that picture, State's
22 19, kind of block -- or block where you actually were?

23 A Kind of, not really, because like I said, I started
24 trying to run at an angle. So, I mean, I would be somewhere
25 right behind where the car is. Probably right where the arrow

1 is is probably about where I fell down.

2 Q Fair enough. Was that car there that night?

3 A No.

4 Q All right. Now, are you trying to -- were you
5 trying to get away?

6 A Yes.

7 Q Were you moving as fast as you can?

8 A Yes.

9 Q Were you handicapped certainly by not having a leg
10 you could use?

11 A Yes.

12 Q Now, you -- did you still have the rifle with you?

13 A Yes.

14 Q Are you looking back towards the house at all?

15 A Yes.

16 Q What was going through your mind as you're trying to
17 -- to get out of that neighborhood -- or get away from the
18 house?

19 A I just wanted to get away from the house, get away
20 from the open door, because I was in fear. I was scared
21 because there were still gunshots.

22 Q What were you afraid of?

23 A Was afraid of getting killed.

24 Q Were you afraid that somebody inside the house was
25 going to come out after you?

1 A Yes.

2 Q Let me put 19 back up here again. All right. Can
3 you -- can you draw on this exhibit as best you recall the
4 path you scooted, you know, after you got shot and was trying
5 to get out of there? Would you agree it's about a 45 degree
6 angle halfway down the driveway, and then going in a 45 degree
7 angle to the -- as you're facing the picture, the lower left
8 end of the driveway?

9 A Yes.

10 Q While you're doing that, are you looking back at the
11 house at any point?

12 A Yes.

13 Q When I say at the house, at the front door area?

14 A Yes.

15 Q All right. Did you see anybody by the time you got
16 to the end of the driveway?

17 A Yes.

18 Q Who did you see?

19 A I guess who I saw --

20 Q Or do you know?

21 A I saw a couple people.

22 Q All right. Do you continue scooting?

23 A Yes.

24 Q Okay. Showing you State's 18. All right. Do you
25 see two cones in the street?

1 A Yes.

2 Q Now, do you continue to scoot towards those -- well,
3 obviously, the cones weren't there at the time, but do you
4 continue to scoot that direction?

5 A Yes.

6 Q What happened next?

7 A I hear more gunshots.

8 Q Okay. Can you tell the -- from what direction the
9 gunshots were coming from?

10 A I could not tell which direction they were coming
11 from.

12 Q Well, were they -- could you tell if they were from
13 behind you, to the side of you?

14 A No, I believe that they were coming from in front of
15 me.

16 Q All right. So, at that point, did you see anybody
17 at the front doorway of -- of the house at 1661 Broadmere?

18 A Yes.

19 Q How many people did you see?

20 A Two.

21 Q Did either of them have a weapon?

22 A Yes.

23 Q When you heard gunfire, did you hear anything else
24 out while you were in the street?

25 A I heard the ricochet, and I heard the whir of

1 something fly by me.

2 Q At that point, what did you do?

3 A That's when I fired.

4 Q Were you firing at people or at the direction of the
5 house?

6 A At the direction of the house.

7 Q Specifically, there's that post -- what kind of term
8 did we call that thing? It's not a pillar.

9 A Column.

10 Q A column. Did anybody come out past that column?

11 A Yes.

12 Q Okay. Can you describe what that person looked
13 like?

14 A Tall dark male.

15 Q And the other individual you saw there, can you
16 describe what that person looked like?

17 A A thin white male.

18 Q So, when you fired back towards the house, were you
19 aiming at either the tall dark male or the thin white male?

20 A No, not in general.

21 Q Did you later come to learn that the tall -- the
22 dark male was Monty Gibson?

23 A Yes.

24 Q When you fired the weapon, did you have any idea
25 that it had hit anybody?

1 A Yes.

2 Q After you fired your weapon, did the shooting at you
3 cease?

4 A Yes.

5 Q All right. Now, just for the -- for shortening this
6 up, I may kind of lead a little bit here. From there, did you
7 kind of scoot then around -- keep going towards Long Cattle,
8 and then down Long Cattle?

9 A Yes.

10 Q At some point along the way, was there a car that
11 approached you?

12 A Yes.

13 Q Could you describe that car for me?

14 A It was a silver sports car, probably like a 2006
15 Mitsubishi Eclipse.

16 Q Something along those lines?

17 A What's that?

18 Q Something along those lines?

19 A Something along those lines.

20 Q It wasn't your car, was it?

21 A No.

22 Q Did you -- did you talk to anybody that was inside
23 the car?

24 A Yes.

25 Q Did you know that person?

1 A No.

2 Q Total stranger to you?

3 A Yes.

4 Q What did you ask them?

5 A To get help.

6 Q Did you ask them for a ride?

7 A No, I just told them get help.

8 Q Okay, and then what happened?

9 A He sped off.

10 Q Which direction was that car going, if you recall?

11 A That car --

12 Q Let me put Exhibit 6 back up here.

13 A That car was heading west.

14 Q Was heading west?

15 A Yes.

16 Q So, where did you first see the car? Were you on
17 Broadmere or were you on Long Cattle?

18 A Long Cattle.

19 Q You heard a previous witness, I forget the name.
20 The one that had called 911 and described a car.

21 A Mr. Day?

22 Q Do you recall him living -- was it Roger Day?

23 A Yes.

24 Q And do you recall him testifying that he lived right
25 about at that house or the one next to it?

1 A Yes.

2 Q What direction did the car leave you, if you
3 remember? Okay. After that, then you continue to scoot?

4 A Yes.

5 Q Where do you end up?

6 A Around there somewhere.

7 Q All right. And you've seen that there was a green
8 truck parked outside of one of those houses; do you recall
9 that?

10 A Yes.

11 Q Do you recall putting -- well, I guess I should say,
12 did you have a mask on when all this started?

13 A Yes.

14 Q Like an orange ski mask?

15 A Yes.

16 Q Did Robert have a mask on?

17 A Yes.

18 Q Can you describe that?

19 A It's a black half-face mask with a skull on it.

20 Q Okay. Did you put your rifle and the -- your rifle
21 in the back of that truck?

22 A Yes.

23 Q Did you put anything else in that truck?

24 A I don't recall.

25 Q Now, you've seen that there was recovered -- I

1 believe in the back of the truck were some gloves?

2 A Yes.

3 Q Were those your gloves?

4 A They were given to me that night, yes.

5 Q And then there was a shirt that was found. Was that
6 your shirt?

7 A Yes.

8 Q Was that an old work shirt from when you were an
9 electrician?

10 A Yes.

11 Q All right. Then at some point, did you get into a
12 vehicle there?

13 A Yes.

14 Q Okay. Do you recall what kind of vehicle it was?

15 A No, I do not.

16 Q All right. How did you get into that vehicle?

17 A Kind of dragged myself to it, lifted the handle and
18 it was open, so I just kind of pulled myself in.

19 Q Okay. Did you stay in the front seat?

20 A No, I went to the back seat.

21 Q And describe how you got from the front seat to the
22 back seat.

23 A I got in the car, I leaned the seat back, and I
24 stuck my right foot underneath my left foot, because I was not
25 able to use my leg at all, so to support it, and I kind of

1 just rolled into the back seat.

2 Q Did you close the driver's door behind you?

3 A Yes.

4 Q Were you aware at all when the police discovered the
5 rifle, and the gloves and whatnot in that truck?

6 A No.

7 Q Could you hear them?

8 A No.

9 Q Do you recall that you were bleeding pretty good?

10 A Yes.

11 Q And you left a blood trail?

12 A Yes.

13 Q At some point that night, police found you in the
14 car, didn't they?

15 A Yes.

16 Q And where were you seated in the car when -- when
17 they found you?

18 A In the back seat.

19 Q And what was the -- where was the front seat?

20 A The front seat was laying down by my head.

21 Q All right. Now, you've heard an officer testify as
22 to how -- how he -- well, all right. A police officer
23 extracted you from that car?

24 A Yes.

25 Q Okay. Can you describe for the jury how that

1 happened? You heard the officer say that you were kind of
2 resisting and pulling back. Can you explain what that whole
3 scenario was and why --

4 A The police said --

5 Q -- it may have been perceived that way?

6 A -- I believe there's someone in the car, and I put
7 my hands up. And they said, open the door, so I opened the
8 door, and then they grabbed my hands. They wanted to see my
9 hands, so I showed them my hands. They grabbed my hands and
10 they started pulling me.

11 As they were pulling me over the front driver side
12 seat that was laying down, my broken leg flopped in between
13 the seat and the center console, so I was kind of wedged in
14 there, and they just kept pulling, and pulling, and pulling on
15 me. I told them my leg was broken and I'm stuck, and they
16 just --

17 Q Were you trying to pull back?

18 A Well, yes, it was painful. They kept pulling at my
19 broken leg and they wouldn't let me have my hands to free my
20 foot, and they -- all they did was pull harder to pull me out
21 of the car.

22 Q Were you trying to resist them at all?

23 A No.

24 Q I mean, to the extent of trying to resist the
25 police?

1 A I was not resisting the police. I was trying to not
2 be hurt anymore.

3 Q All right. Do you recall having any conversation
4 with a police officer there at the car as to who you were, why
5 you were there?

6 A Vaguely.

7 Q How soon after that did -- I assume an ambulance
8 arrived for you?

9 A Yes.

10 Q How soon after you got extracted from the car, if
11 you recall, did an ambulance arrive to you?

12 A I don't -- I don't recall. It almost seemed
13 immediately. They might have already been there.

14 Q Okay. Do you -- can you recall any of the treatment
15 that was given to you right there in the driveway on Long
16 Cattle, or on the ground next to the driveway?

17 A They cut my clothes off and they wrapped my leg to
18 stop the bleeding, and I believe they gave me a shot of some
19 medication for pain.

20 Q Do you know what kind of shot that was?

21 A I believe they said it was morphine.

22 Q And then did you get transported to the hospital?

23 A Yes.

24 Q I take it when you get to the hospital, the staff
25 there gets pretty busy with you?

1 A Somewhat.

2 Q Do you recall -- do you remember speaking to
3 Detective Williams at the hospital?

4 A I remember a detective coming and speaking to me.

5 Q Do you have any recollection as to any of the
6 substance of that conversation?

7 A I don't really recall. I would kind of come to, and
8 they'd be talking to me already, so I was kind of in and out
9 of it through the conversation.

10 Q All right, just to wrap up here real quick. When
11 you're at the doorway, and Robert turns, and runs, and bumps
12 into you, and you start firing your weapon, were you -- were
13 you aiming at anybody?

14 A No.

15 Q Were you aiming into -- into the house?

16 A Yes.

17 Q Were you trying to kill anybody at that point in
18 time at the doorway?

19 A No.

20 Q Okay. As you'd gotten scooted out into the street,
21 and you heard gunfire, and ricochet, and a bullet whir --
22 whistle by your ear --

23 A Right.

24 Q -- were you in fear for your life?

25 A Yes, absolutely.

1 Q Why were you in fear of your life?

2 A Because I was trying to remove myself from the
3 situation, but I just felt that they were still -- kept coming
4 after me.

5 Q And at that point, you had already seen somebody
6 emerge from inside the house with a gun?

7 A Yes.

8 Q Did you feel -- did you feel that your life was in
9 imminent danger?

10 A Yes.

11 Q When you returned fire from out in that street area,
12 were you trying to kill anybody?

13 A No.

14 Q Were you -- were you trying to stop the threat
15 against your life?

16 A Yes.

17 MR. WOLFBRANDT: Thank you. I've got nothing
18 further.

19 MR. LANDIS: Can we approach?

20 THE COURT: Yes.

21 (Off-record bench conference)

22 THE COURT: All right. I think we'll start Mr.
23 DiGiacomo, and then we'll go -- we'll go my left to right, all
24 right, for cross.

25 MR. DiGIACOMO: And I'm going to take this down just

1 because the light.

2 MR. WOLFBRANDT: Oh, sorry.

3 MR. DiGIACOMO: And hopefully by the time we're
4 done, my computer will stop automatically updating.

5 CROSS-EXAMINATION

6 BY MR. DiGIACOMO:

7 Q You and I have never met before; would that be fair?

8 A That's correct.

9 Q You've seen me in a courtroom over the years, but
10 you and I have never had a conversation?

11 A Never.

12 Q Let me just explain to you, I'm going to ask
13 questions, all right? They're going to be specific questions.
14 If -- I'm going to ask you to answer them, and then your
15 lawyer will have an opportunity to redirect you, and then if
16 you think that something is mischaracterized, then we can do
17 it that way, all right?

18 A Yes, sir.

19 Q You realize that, when we started here today, you
20 took an oath, correct?

21 A Yes.

22 Q And to tell the truth and the whole truth, right?

23 A Yes.

24 Q You've been sitting here and you've seen sort of the
25 statements of -- of Mr. Figueroa and the cross-examination of

1 Detective Jensen. Do you remember those questions being
2 asked?

3 A Yes.

4 Q And the -- there was some questions asked about the
5 fact that people like to minimize their role. You understood
6 what those questions were about, correct?

7 A Yes.

8 Q And you'd agree with me that while maybe it's okay
9 to minimize your role or minimize your -- the circumstances
10 during a statement, you're now under oath, and minimization is
11 the same thing as not being truthful. Would you agree with
12 that?

13 A Yes.

14 Q All right. So, we can agree that you will not be
15 minimizing here. Can we agree to that?

16 A Yes.

17 Q So, there was some things you sort of said in your
18 direct testimony that I just want to make sure I clarify.
19 Would you agree that you were fully aware that you were
20 engaged in felonious activity both in the morning and in the
21 evening of September 21st of 2014?

22 A Yes.

23 Q You would agree that nobody put a gun to your head
24 and said, you have to go do this, correct?

25 A Yes.

1 Q You would agree that everything you did was a
2 voluntary action on your part?

3 A Yes.

4 Q And if I heard you correctly, are you suggesting
5 that, in your mind, you think you were justified when you
6 fired the round that killed Monty Gibson?

7 A I don't know if I'd say justified, sir.

8 Q Did you think you had the right to fire your weapon
9 and kill that man?

10 A I had no intention on killing that man.

11 Q So, you did not intend to shoot him?

12 A No.

13 Q Did you think you had the right to discharge your
14 weapon? How's that?

15 A Because I was undertaking fire myself.

16 Q All right. That's not my question, and I'm sure Mr.
17 Wolfbrandt can clear it up. I'm asking you, in your mind, do
18 you think you had the right to fire your weapon?

19 A Yes.

20 Q You think it was okay to fire the weapon; would you
21 agree with that?

22 A Yes.

23 Q Okay. So, let me back up to the circumstances of
24 the day. Well, maybe we should do this more broadly. You
25 heard sort of the sequencing of events by Mr. Figueroa,

1 correct?

2 A Yes.

3 Q And while maybe you differ on, you know, who's the
4 person who's most responsible for the actions of that day,
5 generally, the sequencing of events you would agree with Mr.
6 Figueroa on?

7 A For the most part, yes.

8 MR. LANDIS: I'm going to object to testimony that
9 asks for him to comment on the truthfulness or untruthfulness
10 of Mr. Figueroa's testimony.

11 MS. McNEILL: I would join the objection. I think
12 it gets into vouching.

13 MR. DiGIACOMO: That question did not at all call
14 for that.

15 THE COURT: No, that's true. Overruled. It didn't
16 call for opinion as to truthfulness.

17 BY MR. DiGIACOMO:

18 Q So, let's start sort of with that sequencing. You
19 said -- and I'm going to back up farther than even Mr.
20 Figueroa did. You said that you and David Murphy had a
21 conversation on the evening of September 20th of 2014,
22 correct?

23 A Yes.

24 Q And when you say David Murphy, you're talking about
25 this individual right here in the blue shirt and tie that's

1 sitting in this courtroom, correct?

2 A Yes.

3 Q You knew him as Duboy as well, correct?

4 A I know him as David. He's my cousin.

5 Q Have you ever heard him called Duboy before?

6 A Yes.

7 Q Other people call him Duboy, right?

8 A Yes.

9 Q Okay. And you and Mr. Murphy are at your residence.
10 What time? I didn't hear what time it was that you had this
11 conversation with him.

12 A I'm not sure. It was late at night. I'm not sure.

13 Q When you say late at night, because --

14 A 9:00 o'clock at night.

15 Q That's my question. Late to some people -- I might
16 be in bed at 8:00. Late, 9:00 o'clock at night approximately,
17 somewhere in that range. So, the conversation you had with
18 Mr. Murphy, tell me exactly what it is he told you.

19 A He just said that he might know something that could
20 help me out, you know? I said I was low on money, and he said
21 he could probably help me out.

22 Q And what did -- what did -- when he said, you know,
23 hey, I know you're low on money, I might know of something
24 that might help you out, did he tell you anything else about
25 it?

1 A Just that it'd be a robbery.

2 Q So, you knew it would be illegal?

3 A Yes.

4 Q Okay. And you knew that you would be doing this
5 with Mr. Murphy?

6 A Yes.

7 Q Did you know that other people would be involved?

8 A No.

9 Q Did Mr. Murphy tell you how it is he possibly knew
10 where you guys could go commit a robbery?

11 A No.

12 Q And since we've sort of had to clarify this with
13 some people maybe in jury selection a little bit, when you say
14 robbery, do you mean, I knew I was going to go take property
15 from the presence of another individual, or did you mean we
16 were going to go break into a house and take some stuff?

17 A I thought we was just going to take some stuff.

18 Q You thought you were going to break into somebody's
19 house; can we agree with that part?

20 A Yes.

21 Q Yeah. Because you sort of said your responsibility
22 in this plan is to run into the residence and grab the bag,
23 right?

24 A Yes.

25 Q Did Mr. -- and correct me -- or I apologize if I've

1 already asked this, but other than the fact that it was a
2 house and that you were going to take some property, you knew
3 nothing about the situation?

4 A No.

5 Q He didn't tell you that it was a drug house?

6 A No.

7 Q He didn't tell you where there'd be cash, guns, what
8 would be in the duffel bag, anything like that?

9 A No.

10 Q So, you have no idea what it is you're about to go
11 do -- or potentially go do?

12 A Right.

13 Q Do you tell him, yeah, I'm down for that, what the
14 heck?

15 A I guess, in lesser words. Yeah, I agreed to it.

16 Q So, now you would agree with me you've entered into
17 a conspiracy to go commit a felony somewhere?

18 A Yes.

19 Q You made that agreement, we're going to go do this?

20 A You said the next time you heard from Mr. Murphy was
21 really early in the morning on September 21st, somewhere
22 around 4:00 A.M. Is that correct? Did I hear that correctly?

23 A Yes.

24 Q And it's a phone call from Mr. Murphy to you,
25 correct?

1 A Yes.

2 Q And now that you've sort of seen that records, can
3 you agree that the phone number that he calls you from is that
4 702-542-1558 number?

5 A I don't know the phone number. I just always had it
6 stored in my contact.

7 Q Well, you've seen sort of the phone records and the
8 sequencing. You would agree that that's probably the phone
9 number at this point?

10 MR. LANDIS: Objection, foundation.

11 THE COURT: Sustained. He's asked and answered it.

12 BY MR. DiGIACOMO:

13 Q Let me ask it this way. Have you been paying
14 attention since we've been in this courtroom?

15 A Yes.

16 Q Have you seen the evidence as it's come in?

17 A Yes.

18 Q Have you seen the various phone records that were
19 placed into evidence?

20 A Yes.

21 Q If there's a number that calls you approximately
22 4:00 A.M. in the morning from that 452-1558, can we agree
23 that's Mr. Murphy calling you?

24 MR. LANDIS: Objection, hypothetical question.

25 THE COURT: Well, that's right, but it's not an

1 improper hypothetical, so overruled.

2 BY MR. DiGIACOMO:

3 Q Can we agree to that?

4 A I suppose.

5 Q During the entire time period that you are involved
6 in this situation, do you ever call Joey Laguna?

7 A No.

8 Q And does Joey Laguna ever call you?

9 A No.

10 Q During this time period, do you ever call Robert
11 Figueroa?

12 A One time.

13 Q And is that at 6:45 at night when you pick him up at
14 his residence?

15 A Yes.

16 Q And that's the only time you ever call him, correct?

17 A Yes.

18 Q And the only -- and he never calls you, correct?

19 A Yes.

20 Q So, Mr. Murphy calls you at 4:00 o'clock in the
21 morning. Are you asleep and the phone rings?

22 A Yes.

23 Q And what does he say?

24 A Come over.

25 Q Do you know what you're coming over for?

1 A No, not essentially. Not at first.

2 Q Not at first? Well, I mean, did you assume that you
3 were going to do something as it related to what happened last
4 night?

5 A No. Like I said before, he and I hung out a lot all
6 the time, so get a phone call from him to say come over would
7 be --

8 Q Are you suggesting that a phone call at 4:00 o'clock
9 in the morning saying, hey, get over here is something that
10 wasn't unusual for Mr. Murphy?

11 A Yes.

12 Q So, that would happen all the time?

13 A Like I said, I wasn't home all the time. I would
14 only be home for short periods of time. So, when I was home,
15 at any given moment he called, I'd go over.

16 Q Okay. So, you get in your car, and you said it was
17 eight to ten miles from your house to Mr. Murphy's house,
18 correct?

19 A Yes.

20 Q And your house, so we're clear, is the 1219 Westlund
21 Drive?

22 A Correct.

23 Q And his house is that 6637 Delphinium, right?

24 A Yes.

25 Q Right there in that area where sort of everybody

1 sort of described people in this case grew up, right?

2 A I guess, yes.

3 Q Okay. And if you were to drive there from your
4 house to his house, you would agree with me you'd go basically
5 up Rancho?

6 A Exactly.

7 Q And that's what you did, correct?

8 A Yes.

9 Q And you say -- or you said on direct that once you
10 got there, you came into contact with Mr. Murphy, correct?

11 A Yes.

12 Q And if he called you at 4:00, would you agree with
13 me it's maybe 20 minutes from you to him, in that range?

14 A About.

15 Q And correct me if I'm wrong. Did you say on direct
16 that once you got to Murphy's house, the first -- the only
17 place you went after that would be over to Joey's house?

18 A Yes.

19 Q Nothing happened between your house, to Murphy's
20 house, to Joey's house? You didn't go anywhere else?

21 A No.

22 Q Did you ever leave Mr. Murphy during that time
23 period once you got to his house?

24 A No.

25 Q So, you're with Mr. Murphy from that point on,

1 correct?

2 A Yes.

3 Q And you said on your direct examination that you had
4 never been to the area where the first house that you're going
5 to commit the burglary/robbery, or whatever it's going to be,
6 you had never been there before, correct?

7 A Correct.

8 Q You weren't there scoping out that residence at 5:00
9 o'clock in the morning that morning?

10 A No.

11 Q You didn't go up there to look at it with Mr.
12 Murphy?

13 A No.

14 Q Okay. After let's say 5:30, before you go over to
15 Joey's, you don't go back to your house?

16 A I don't recall.

17 Q Okay. Well, I just want to make sure we're
18 absolutely clear. You did not get a phone call from Mr.
19 Murphy, drive to his residence, go with him to the area of the
20 dope house, go back to Mr. Murphy's residence, and then drive
21 back down Rancho to your house?

22 A I don't recall.

23 Q You don't remember doing any of that?

24 A No.

25 Q But we can all agree, or at least you can tell me

1 you definitely didn't go in the area of that dope house
2 before, correct?

3 A Yes.

4 Q Because you had no idea where it was and you had
5 never been there before?

6 A Correct.

7 Q All right. Now, in your direct testimony, you said,
8 from David's house, I went -- we went to Joey's house. And
9 when we say Joey's house, because there's two Joeys in this
10 case, we're talking about Joey Laguna, right?

11 A Yes.

12 Q Had you heard him called Matone before?

13 A Yes.

14 Q Is Mr. Laguna here? Do I have -- is the right
15 defendant sitting over there?

16 A Yes.

17 MR. LANDIS: I object to the terminology "right
18 defendant."

19 MS. McNEILL: I'd object as well.

20 MR. LANDIS: He can ask if it's Joey Laguna.

21 MS. McNEILL: Right.

22 THE COURT: All right, sustained. Just rephrase.

23 MR. DiGIACOMO: Sure.

24 BY MR. DiGIACOMO:

25 Q Do you see Mr. Laguna here in court today?

1 A Yes.

2 Q Can you point him out, describe something he's
3 wearing?

4 A Black shirt, gray tie.

5 MR. DiGIACOMO: May the record reflect the
6 identification of Mr. Laguna?

7 THE COURT: It will.

8 BY MR. DiGIACOMO:

9 Q So, when you get over to Mr. Laguna's house, it's
10 now you, David Murphy, and Joey Laguna, correct?

11 A Yes.

12 Q You have your gold-colored car; is that accurate?

13 A Yes.

14 Q And your gold-colored car -- what is David Murphy
15 driving?

16 A A pickup truck.

17 Q Is it the white Ford Ranger?

18 A It was a white pickup truck. I don't know.

19 Q Is it the one with the camper or without the camper?

20 A I don't remember.

21 Q You know Mr. Murphy's house or his family has both a
22 white pickup truck and -- one with a camper, one without?

23 A Yes.

24 Q Okay. And you don't -- just you don't recall which
25 one he had that day; is that fair?

1 A Exactly.

2 Q All right. So, while you're there, you said
3 something -- you said, I've never been inside Joey Laguna's
4 house; is that fair?

5 A Yes.

6 Q And when you're inside -- or, sorry. When you're at
7 the residence, do you get out of your vehicle?

8 A Yes.

9 Q Okay, and does Joey come out of the house?

10 A Yes.

11 Q And do you, Joey, and David have a conversation?

12 A Yes.

13 Q Now, up until this point, has anyone told you what's
14 going to happen this morning?

15 A Yes.

16 Q Okay. So, you said you got a little bit of
17 information the night before. When do you find out this
18 morning what's going to happen next?

19 A Right about the moment.

20 Q Right at that point in time?

21 A Yes.

22 Q So, you, Joey, and David Murphy are standing there
23 and having a conversation about what's about to happen?

24 A Yes.

25 Q And what is about to happen? Tell us.

1 A We're going to go to a house, and I was going to
2 grab a duffel bag of marijuana.

3 Q Did you know about what type of house it was?

4 A No.

5 Q Did anybody tell you how it is they knew this
6 particular house?

7 A No.

8 Q Did anybody tell you if there was going to be
9 somebody home or not home?

10 A No.

11 Q So, you're going to tell us that you're down to go
12 over with these two individuals that you happen to know to
13 some random house, and you're going to run inside and grab a
14 duffel bag, and you know nothing about what else is going on
15 around you?

16 A Yes.

17 Q You didn't ask a single question like, hey, how is
18 it that you guys possibly know about this particular house?

19 A No.

20 Q There was a lot of houses between where you're
21 standing at Mr. Laguna's house and where you finally went to
22 to do this first lick, right?

23 A Yes.

24 Q Why don't you ask a single question?

25 A I don't know.

1 Q Now, you would agree with me, when you're having
2 this conversation between Joey, David, and you, Mr. Figueroa
3 is not present?

4 A Correct.

5 Q Has Mr. Figueroa's name come up yet?

6 A Yes.

7 Q Who brought up his name?

8 A I don't recall.

9 Q And how was he brought up?

10 A That he was already waiting for us.

11 Q And he was already waiting for you to do what?

12 A To come pick him up.

13 Q So, you knew enough of the plan now that, instead of
14 just the three of you, now it had to be at least four of you
15 that are going over to do this running into a house, grab a
16 duffel bag, and run out?

17 A Yes.

18 Q Do you think that now that you're -- you're rising
19 in numbers that you kind of know there's got to be somebody
20 inside this residence? Would you agree with that?

21 A No.

22 Q What do you need a fourth guy for if the whole plan
23 is to just drive up, you're going to run into the residence,
24 grab a duffel bag, and run back out?

25 A I don't know. I've never done nothing like this

1 before, so I wouldn't know if we needed 20 people.

2 Q That's fair. And I was going to get to that
3 shortly, but I'm assuming you've never been in a firefight
4 with rounds coming back and forth before either, right?

5 A No.

6 Q Okay. So, let me back up. So now you're told, hey,
7 we're going to go get a fourth guy to go do this, correct?

8 A Yes.

9 Q You'd agree with me that at the very least, you
10 thought there's a possibility there might be somebody home at
11 this point; would you agree with that statement?

12 A Yes.

13 Q I mean, you're an electrician, right? Correct?

14 A Yes.

15 Q As you've said to the police previously, I've got a
16 career, I just don't have a job, right?

17 A Yes.

18 Q You're a fairly intelligent individual, correct?

19 A I believe so.

20 Q You may have made a stupid decision in this case --

21 A Correct.

22 Q -- but you -- I mean, you're not to the point where
23 you can't draw reasonable inferences from information being
24 provided to you, right?

25 A Yes.

1 Q And so you'd agree with me, by the time there's four
2 people, there's at least a possibility someone might be there
3 when you guys go do this?

4 A Yes.

5 Q And you would agree with me that that is a
6 particular dangerous situation to put yourself in?

7 A Yes.

8 Q You could get hurt, correct?

9 A Yes.

10 Q They could get hurt, yes?

11 A Yes.

12 Q One of the other people you're with could get hurt?

13 A Yes.

14 Q And yet, you -- as you said before, voluntarily
15 decided to go along with this idea?

16 A Yes.

17 Q And I'm assuming you would agree with the concept
18 that, but for you making that agreement, you don't kill Monty
19 Gibson?

20 A I'm sorry, what -- what was that?

21 Q But for you deciding to join this conspiracy, you
22 never kill Monty Gibson; would you agree with that statement?

23 MR. WOLFBRANDT: I'm going to object to this
24 question as being argumentative.

25 MR. DiGIACOMO: How is that argumentative?

1 THE COURT: Overruled.

2 THE WITNESS: I'm not sure I'm quite understanding
3 the question you're asking.

4 BY MR. DiGIACOMO:

5 Q Would you agree with me if you hadn't joined this
6 conspiracy, you would not have shot and killed Monty Gibson?

7 A Yes.

8 Q Right? I mean --

9 A Yes.

10 Q Okay. So, who drives down to Mr. Figueroa's
11 residence? It's you and Joey Laguna, right?

12 A Yes.

13 Q And you're driving in your vehicle, correct?

14 A Yes.

15 Q And when you get down there, do you remember Joey
16 Laguna calling Robert to tell him, come on out?

17 A Yes.

18 Q And at this point, you still have -- you just know
19 it's four people, it's a house, and you're running into it,
20 correct?

21 A Yes.

22 Q Now, Mr. -- you said Figueroa got in the car, and
23 you said he had a duffel bag. Can you describe the duffel bag
24 for us?

25 A It's just a -- it was a long red and black bag with