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JORGE MENDOZA,

VS.

Respondent.

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

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Docket 82740 Document 2021-21435

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 straps, something you would probably put sport gear in or
2 something.

3 Q Okay, and did it look like it was full of stuff?

4 A I wouldn't say full, but it had stuff in it.

5 Q Did you ever see inside? Enlighten us. What was in
6 the bag?

7 A I didn't see inside of the bag. I seen him pull
8 gloves, and his mask, and pistols out of the bag.

9 Q You said pistols. How many?

10 A Two.

11 Q Okay. Describe -- you talked about one, which was a
12 .38. Describe the other one?

13 A Both revolvers.

14 Q They're both revolvers. Were they both .38's?

15 A Yes.

16 Q What color were they? Chrome, black, what do we
17 got?

18 A Black.

19 Q Both black revolvers, correct?

20 A Yes.

21 Q And you said you thought Robert had a black revolver
22 at that first incident. Who else -- did he give the gun to
23 somebody else?

24 A Yes.

25 Q Who'd he give it to?

1 A Joey.

2 Q So now him and Joey are armed, correct?

3 A Yes.

4 Q And now, I'm guessing by this point, you know
5 there's a high likelihood there's somebody inside that house;
6 would you agree with that?

7 A I guess.

8 Q Yes? You said, I guess. I mean, can we agree with
9 that?

10 A Sure. Yes.

11 Q And you say you drive up to an AMPM somewhere near
12 15 and Jones, correct?

13 A Yes.

14 Q You go directly from Mr. Figueroa's residence to
15 that AMPM, correct?

16 A Yes.

17 Q Do you know that you're meeting David Murphy there
18 already?

19 A Yes.

20 Q How do you know that?

21 A I called him.

22 Q Do you call him or does Joey call him? Who calls
23 him?

24 A I don't remember who called, really.

25 Q Did you have a conversation with David? Did you

1 have a conversation with Mr. Laguna? How did this work?

2 A I don't recall who called who. I just recall being
3 told to pull to the AMPM that was on the corner.

4 Q And we can agree at this point, you're aware that
5 you're about to take place in a home invasion, robbery, theft
6 of something, marijuana, in a duffel bag inside a residence,
7 correct?

8 A Yes.

9 Q And you said on your direct testimony, well, they
10 all got out and talked about it, but I just sat in the car and
11 I'm not really sure what they talked about. Do you remember
12 that?

13 A Um-hum.

14 Q Is that --

15 A Yes.

16 Q Is that accurate?

17 A Yes.

18 Q So, once again, you're not at this point really sure
19 of the plan, you've never really done this before, and I
20 thought I heard on direct, but Robert's sort of the guy that's
21 pushing this?

22 A Yes.

23 Q Robert's pushing it, but he's the fourth guy to get
24 brought into the plan?

25 A He was already informed and waiting.

1 Q How do you know that?

2 A Because when we picked him up, he was already
3 speaking about things that he knew.

4 Q Well, when do you think he was informed? Do you
5 think he knew on the 20th like you did, when Mr. Murphy did,
6 do you think he knew at 5:00 o'clock in the morning or
7 whenever it is you got over to Joey Laguna's house, or do you
8 think he found out about it afterwards?

9 A I do not know when he found out.

10 Q But until he got into the car, you didn't even know
11 if he knew what the plan was?

12 A Until he got in the car, I didn't even know him.

13 Q Were you introduced?

14 A At that moment.

15 Q And you said that --

16 MR. DiGIACOMO: May I have just the Court's
17 indulgence for just a moment?

18 BY MR. DiGIACOMO:

19 Q You indicated that now Mr. Murphy is with a Hispanic
20 female that you believe to be the same Hispanic female that's
21 in Exhibit 234, correct?

22 A Yes.

23 Q Had you ever met her before?

24 A I've seen her. Never properly like introduced or
25 nothing, I've just seen her before.

1 Q You ever heard her name before, anything else like
2 that?

3 A I did not know her name.

4 Q Okay. Was this a girlfriend, for lack of a better
5 term, of Mr. Murphy?

6 A Yes.

7 Q And she originally was in the white truck, but now
8 she's the driver of your champagne-colored Nissan Maxima?

9 A Yes.

10 Q And you're in the back seat with Robert, and Mr.
11 Laguna's in the front seat with her, correct?

12 A Yes.

13 Q And this location that you drive to, are you saying
14 -- well, let me ask you this. Were you aware of what the plan
15 was about going in, getting it, and all that other stuff?

16 A Yes.

17 Q Okay, so what was the plan?

18 A That Robert would open the door, he'd go in, and if
19 anyone was in there, he'd get them on the floor or whatever,
20 and I'd run in the master bedroom and grab the bag.

21 Q Okay. What was Joey Laguna doing with the other gun
22 during this time period?

23 A He was just in case someone else came out of
24 somewhere unexpected.

25 Q And I'm assuming the girls, the wheel -- I guess you

1 can't call her wheel man. So, the girl was supposed to be the
2 driver of your car?

3 A Yes.

4 Q So, what is David Murphy's role in this conspiracy
5 to rob this location with marijuana?

6 A What do you mean?

7 Q I mean, what was his role? What was he supposed to
8 be doing? He's in the white truck and you guys are in a
9 different vehicle. What's he supposed to be doing?

10 A We were going to throw all the marijuana in that
11 truck.

12 Q So, there's a substantial amount of marijuana that
13 you're going to take from this location, correct?

14 A Yes.

15 Q And as of yet, nobody has told you whose idea it was
16 or who happens to know about the location of this particular
17 dope house?

18 A Correct.

19 Q You said previously that you consider Mr. Murphy a
20 cousin of yours, right?

21 A Yes.

22 Q You care deeply for him, right?

23 A Yes.

24 Q It's difficult for you to testify against him in a
25 court of law? Yes?

1 A Yes.

2 Q You -- do you feel some loyalty to him?

3 A No, I just -- I'm just -- I'm just giving the truth.

4 Q Okay. Well, I mean, just because you feel loyalty
5 to him doesn't mean that you can't tell the truth. Do you
6 feel some loyalty to him?

7 MR. WOLFBRANDT: Asked and answered.

8 MR. DiGIACOMO: But it wasn't answered.

9 MR. WOLFBRANDT: It was answered.

10 THE COURT: Sustained. He said no.

11 BY MR. DiGIACOMO:

12 Q So -- oh, let me ask you this. Are you a little mad
13 at Robert as you sit here today?

14 A No.

15 Q You're not mad at him at all?

16 A No.

17 Q You're not putting him as the person who's the --
18 well, I guess the heavy, or the one that's most involved in
19 this --

20 A I wouldn't say that.

21 Q -- because of your anger to him?

22 A No.

23 Q It's just -- well, you go up to this location and
24 you do not -- or you don't like the idea of going in there and
25 doing this. Why?

1 A It just -- I don't -- didn't feel right. I've never
2 done something like that before. It was just the lawn crew
3 was just reason more so not to do it. I was uncomfortable
4 with it.

5 Q Did you think you were going to get caught? Did you
6 think you were going to get hurt? What was the reason you
7 didn't want to do it?

8 A I didn't want to get in trouble.

9 Q You didn't want to get in trouble. Were you worried
10 about at all what would happen to the people inside that home?

11 A I really didn't think that deep into it. I just
12 knew that it was troublesome -- a troublesome situation that I
13 didn't want to get into.

14 Q It's a bad idea, right?

15 A Yes, sir.

16 Q And you realized that at whatever time it is, 8:30
17 in the morning, it is a really bad idea to take a couple of
18 guys with guns, and go into a home, and try and take
19 somebody's property?

20 A Yes.

21 Q And you know that that morning, correct?

22 A Yes.

23 Q And so you decide it's a bad idea, and you go back
24 to Joey Laguna's house, correct?

25 A Yes.

1 Q And at that point, the Hispanic female, she stay --
2 or she gets out of your car, gets into the white truck, and
3 you, Joey, Murphy, and Figueroa have a conversation in that
4 driveway, correct?

5 A Yes.

6 Q And you sort of said, well, I wasn't really part of
7 the conversation. Joey and I were looking at this car, but
8 you know, David and Robert were talking, correct?

9 A Yes.

10 Q And they were talking about is there another
11 location they can hit?

12 A Yes.

13 Q And it's your cousin over here who says, I know
14 another place we can hit, right?

15 A Yes.

16 Q And the reason he knows this other place that he can
17 hit is because this guy gets his drug supplies from the first
18 place that you guys decided not to hit, correct?

19 A I don't know.

20 Q You didn't hear him say that right then and there?

21 A No.

22 Q He had never told you that story before?

23 A No.

24 Q This entire time that you were involved in this, you
25 had no idea that house number 1 and house number 2 were

1 related?

2 A No.

3 Q The decision is to go later that night, right?

4 A Yes.

5 Q Why if you guys went to house number 1 in broad
6 daylight you decided to wait until it was starting to get dark
7 out or dark out before you do house number 2?

8 A I don't know.

9 Q There isn't a conversation right then and there
10 that, hey, we can't go hit the second house because we got to
11 wait for him to re-up from the first house?

12 A No.

13 Q Do you think it's more likely to be safer for you if
14 you hit a house in the darkness of night? Is that the reason
15 why it happened?

16 A I don't know why it happened.

17 Q As you leave that house and drive Robert Figueroa
18 home, do you know that there is going to be a second robbery?

19 A I wasn't really for sure, but I figured it might be
20 -- might happen.

21 Q And if it happens, at this point, are you thinking,
22 I'm still going to do it?

23 A Yes.

24 Q So, you decide after the first one, like, this is a
25 really bad idea, but hey, maybe I'll try and do the second

1 one. Have I got that right?

2 A Yes.

3 Q At the first one, do you have an orange ski mask,
4 and gloves, and that rifle with you?

5 A No.

6 Q So, would you agree with me that the second house,
7 now this is your second time, you're now a little bit more
8 experienced in this sort of conspiracy?

9 A Yes.

10 Q So you drop -- you drive Figueroa alone home,
11 correct?

12 A Yes.

13 Q And he gets dropped off, and then you get taken back
14 to your house, and then how is it that you find out again that
15 now there's going to be another robbery that takes place?

16 A Can you repeat that? I'm sorry.

17 Q How do you find out about robbery number 2?

18 A I was told to pick up Figueroa, so I went, picked
19 him up.

20 Q Told by who?

21 A David.

22 Q And did he tell you what it is you were picking up
23 Mr. Figueroa for?

24 A No, he didn't really say on the phone. He just said
25 pick him up.

1 Q And the first time you met him was the morning of
2 September 21st, right?

3 A Yes.

4 Q And the first time met him, when you decide, hey,
5 it's too dangerous to go in there and commit this home
6 invasion, he's like, hey, let's keep going, I can take care of
7 everybody inside, let's go do it, right?

8 A Yes.

9 Q That's this guy that you go, yeah, let me go pick up
10 Robert Figueroa, correct?

11 A Yes.

12 Q So, it wasn't so dangerous that you didn't want to
13 go back and get him, right?

14 A I didn't feel he was dangerous to me.

15 Q Do you think he was dangerous to the people inside
16 that house?

17 A Yes.

18 Q All due respect, I mean, the people inside the house
19 have a right not to have you come in their house, correct?

20 A Absolutely.

21 Q So, whether or not some -- one of the people you
22 conspire to commit a robbery with is dangerous to you isn't
23 really the question. The question is, aren't they dangerous
24 to them, right?

25 A Right.

1 Q And you recognize that Mr. Figueroa at least is
2 dangerous to them at this point, correct?

3 A Yes.

4 Q You know that Mr. Laguna had a gun at the last
5 location, so you got to recognize he's got to be dangerous to
6 them, right?

7 A Yes.

8 Q And yet, you agreed to go do it?

9 A Yes.

10 MR. DiGIACOMO: Judge, I don't know if you want to
11 take a break -- the afternoon break at some point.

12 THE COURT: We're going to need to take an afternoon
13 break. Is that -- you ready? I'm seeing nods of head. All
14 right. So, ladies and gentlemen, we're going to take our
15 afternoon recess. It's about 10 after, so we'll go until --
16 for 15 minutes.

17 And during this recess, it is your duty not to
18 converse among yourselves or with anyone else on any subject
19 connected with the trial, or to read, watch, or listen to any
20 report of or commentary on the trial by any person connected
21 with the trial, or by any medium of information, including,
22 without limitation, newspaper, television, radio, or internet.
23 You are not to form or express an opinion on any subject
24 connected with this case until it's finally submitted to you.
25 We'll be in recess until 3:25.

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

2 (Jury recessed at 3:07 p.m.)

3 THE COURT: And the record will reflect that the
4 jury has departed the courtroom. We'll be in recess for 15
5 minutes so everybody can use the facilities.

6 (Court recessed at 3:08 P.M. until 3:26 P.M.)

7 (Outside the presence of the jury)

8 THE COURT: There we are. We're back on the record,
9 still outside the presence. Mr. Mendoza is back in the
10 witness stand. The other two defendants are present with all
11 three respective defense counsel. Chief Deputies District
12 Attorney prosecuting the case are present, all officers of the
13 court. Are we ready to bring the jury back in?

14 MR. DiGIACOMO: We are.

15 THE COURT: All right, let's do it.

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

17 (Jury reconvened at 3:27 p.m.)

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

20 THE COURT: Thank you. Please be seated. And the
21 record will reflect that all 12 members of the jury have now
22 rejoined us, as well as the three alternates. Mr. Mendoza,
23 you're still under oath. You may resume your cross.

24 MR. DiGIACOMO: Thank you.

25 BY MR. DiGIACOMO:

1 Q Mr. Mendoza, I just -- the only thing I really want
2 to talk to you about between, you know, the home
3 invasion/robbery number 1 to home invasion/robbery number 2 is
4 you're now by yourself, correct? I mean, you're not with any
5 of the people that we've talked about here, correct? In
6 between the time you drop off Robert Figueroa --

7 A No.

8 Q -- and you get the first phone call, who are you
9 with?

10 A I was by myself with another friend, unrelated to --

11 Q What's his name?

12 A Adam Eckleberry (phonetic).

13 Q And where does he live? Generally. You don't have
14 to tell me the exact address, but where in the Valley?

15 A Windmill and Decatur area.

16 Q Where?

17 A Windmill and Decatur.

18 Q Windmill and Decatur? Okay. Do you know anybody up
19 near Red Rock? Were you up there at all that day near the Red
20 Rock Casino?

21 A Um-hum.

22 Q You were?

23 A Um-hum.

24 THE COURT: Is that a yes?

25 BY MR. DiGIACOMO:

1 Q Is that a yes?

2 A Yes.

3 THE COURT: Thank you.

4 BY MR. DiGIACOMO:

5 Q And who were you there visiting?

6 A Oh, I was with the same friend.

7 Q So, Adam Eckleberry --

8 A Yes.

9 Q -- again?

10 A Yes.

11 Q And then do you have somebody that lives down at the
12 South Point? Do you know somebody that lives down by the
13 South Point?

14 A Right.

15 Q Who's that?

16 A That's Adam.

17 Q Oh, the Windmill and Decatur is --

18 A Yes.

19 Q -- down by the South Point?

20 A Correct.

21 Q Okay, so that's the one you're talking about. And
22 Adam -- what kind of car does Adam have?

23 A He's got a blue lifted Chevy 2500 pickup truck.

24 Q Now, you told the ladies and gentlemen of this jury
25 you don't really have much in the way of a memory of what it

1 is you told the detectives that night at the UMC, correct?

2 A Correct.

3 Q And so that we're clear, these officers pull you out
4 of a car, get you medical attention, and take you to the
5 hospital, where you're treated, correct?

6 A Yes.

7 Q And those officers then come and want to find out,
8 hey, how is it that you wind up with your leg half blown off,
9 correct?

10 A Yes.

11 Q And you do speak to them, correct?

12 A Yes.

13 Q And as you sit up there today, you say, I don't
14 remember what I told them back two years ago, but in the
15 ensuing two years, have you had an opportunity to review what
16 it is you told them by way of the transcript of those two
17 recordings that they took from you?

18 A No.

19 Q You haven't read them in two years?

20 A No.

21 MR. LANDIS: Can we approach? I'm sorry.

22 THE COURT: Yes.

23 (Off-record bench conference)

24 THE COURT: All right, overruled.

25 MR. DiGIACOMO: Thank you.

1 BY MR. DiGIACOMO:

2 Q Mr. Mendoza, I'm going to show you what's been
3 marked as State's Proposed Exhibit number 334 and 334A. Is it
4 your testimony you've never read the 334, the transcript of
5 the two audio recordings that were taken from you?

6 A Yes.

7 Q Do you remember anything about what happened at the
8 hospital?

9 A A little, yes.

10 Q Do you remember that you were cognitive enough to
11 tell the police that -- what your phone number was? Do you
12 remember doing that?

13 A Yes.

14 Q Do you remember telling them what your wife's phone
15 number was?

16 A No, I don't remember telling them my wife's phone
17 number, but.

18 Q Do you remember when the police came back to you and
19 said, your wife gave us a different phone number, why would
20 she do that? Do you remember being cognitive enough to say,
21 well, she has dyslexia so she mixed up the numbers? Do you
22 remember doing that?

23 A I don't remember, but sounds like something --

24 Q That's accurate, correct?

25 A Sounds -- sounds accurate, yes.

1 Q Do you remember telling the police that, that night,
2 you were driving your gold Nissan Maxima?

3 A Yes.

4 Q Do you remember telling them that you were at the
5 Red Rock Casino with a friend named Lou?

6 A No, I don't remember saying no name, but.

7 Q Do you remember telling them you were at the Red
8 Rock Casino?

9 A Yes. We met up with --

10 Q Do you remember telling them you were with -- do you
11 remember telling them you were with a friend?

12 A Yes.

13 Q Do you remember telling them you were with a friend
14 named Lou?

15 A I might have just gave one of the names of one of
16 the people that were there.

17 Q So, was there more people?

18 A I met up -- we met up with several people.

19 Q And who else did you meet up with?

20 A My friend Adam, a co-worker named Lou, some other
21 relative of one of theirs I did not -- I don't remember the
22 name.

23 Q Do you remember telling them that Lou drove a blue
24 truck like you just described to this jury Adam drove?

25 A Um-hum.

1 Q Yes?

2 A Yes.

3 Q He drives kind of the same truck as Adam?

4 A Yes.

5 Q Does Lou also live down somewhere by the South Point
6 Casino?

7 A Yes.

8 Q Do you remember telling the police that after a
9 while, Lou -- well, do you remember telling the police that
10 when you first were at the Red Rock Casino, your car was
11 parked at Lou's house?

12 MR. LANDIS: And I object to the witness looking
13 through the statement when his questions are simply, do you
14 remember. He's not refreshing his recollection.

15 THE COURT: All right. Mr. Mendoza, yeah, these
16 questions are just about what you remember. They're not
17 directing you to the statement, so.

18 THE WITNESS: Okay.

19 BY MR. DiGIACOMO:

20 Q Do you remember telling the police that your
21 gold-colored Nissan Maxima was left at Lou's house, and he
22 drove you in that blue truck up to the Red Rock Casino?

23 A No, I don't remember that.

24 Q Do you remember telling the police that after you
25 guys were done at the Red Rock Casino, Lou drove you back to

1 your vehicle? Do you remember telling them that?

2 A No.

3 Q Do you remember telling them that you then got in
4 your vehicle and happened to drive in the same direction or
5 back towards the Red Rock Casino?

6 A No.

7 Q Do you remember telling them that you got off some
8 random exit and wound up in the neighborhood where you wound
9 up getting shot?

10 A No.

11 Q Do you remember telling the police that you parked
12 your car and got out of it when -- or sorry, you got pulled
13 over by a police officer. Do you remember telling the police
14 that?

15 A No.

16 Q That the police officer was in an unmarked vehicle?
17 You don't remember -- do you remember telling them that?

18 A No.

19 Q That the police officer, as I would put it -- the
20 police officer that you described -- do you remember Detective
21 Tod Williams here today?

22 A Yes.

23 Q Or the other day?

24 A Yes.

25 Q Okay. Do you remember describing a police officer

1 that looked just like the guy talking to you, Tod Williams?

2 A No.

3 Q Do you remember telling them, as the police officer
4 was allegedly talking to you, that two other suspects ran up
5 and stole your vehicle from this neighborhood?

6 A No.

7 Q Do you remember telling the police that, shortly
8 thereafter, you saw your vehicle again parked now in a
9 different area of the neighborhood, and you began walking
10 towards it? Do you remember telling them that?

11 A No.

12 Q Do you remember telling the police that at that
13 point, the same police officer came back to you, and this
14 time, he had a gun?

15 A No.

16 Q And that you claimed that gun is that rifle that
17 you've told us here today is actually your gun?

18 A No.

19 Q You don't remember telling them that?

20 A No.

21 Q Do you remember telling them that, during the
22 struggle you had with the rifle, you got shot in the leg? Do
23 you remember that?

24 A No.

25 Q And that you knocked on a bunch of doors for help,

1 but nobody would help you? Do you remember telling them that?

2 A No.

3 Q And that you eventually crawled inside that black
4 vehicle to escape the danger you were in. Do you remember
5 telling them that?

6 A No.

7 Q Do you remember telling them that those gloves that
8 they found were not yours?

9 A No.

10 Q Do you remember telling them that the tan shirt that
11 was there was yours?

12 A No.

13 Q Do you remember telling them that the -- during the
14 struggle where you're taking the rifle away from the police
15 officer that looks like Tod Williams, that his gloves must
16 have come off, and that's how those gloves wound up near your
17 stuff?

18 A No.

19 Q And that you were the one who carried that rifle
20 down there. Do you remember telling them that?

21 A No.

22 Q Are you telling me -- well, let me ask you this. Of
23 the things you told the police that you remember, were you
24 intentionally trying to protect yourself from being arrested?

25 A Yes.

1 Q So, you had known you had done something wrong,
2 right?

3 A Yes.

4 Q You weren't telling them the truth, correct?

5 A Yes.

6 Q And you did that in order to protect yourself?

7 A Yes.

8 Q Protect yourself from being arrested, right?

9 A Yes.

10 Q And in that situation, you were -- you decided it
11 was okay to tell falsehoods, correct?

12 A Yes.

13 Q And some of those falsehoods were true to the sense
14 that you were in that neighborhood when you got shot, right?

15 A Yes.

16 Q And that you -- it's true that at some point, you
17 were in possession of that rifle, right?

18 A Yes.

19 Q And it's true that your car was in that
20 neighborhood, correct?

21 A Yes.

22 Q What you didn't tell the truth about is the stuff
23 that implicated you in being guilty of the crime, correct?

24 A Yes.

25 Q You didn't tell them about your cousin over here,

1 Mr. Murphy, correct?

2 A Yes.

3 Q You didn't tell them about Mr. Laguna, correct?

4 A Yes.

5 Q And you didn't tell them about Robert Figueroa
6 either; would that be fair?

7 A Yes.

8 Q And you didn't tell them about those three because
9 you didn't want to get in trouble, right?

10 A Yes.

11 Q And you thought if you told them the full truth, you
12 were going to be in trouble?

13 A Yes.

14 Q You would agree with me that it's sort of the same
15 situation we have here, correct?

16 A What do you mean?

17 Q Well, you'd agree with me that, potentially, you
18 could get into a lot of trouble if your version of events is
19 not accurate, correct?

20 A Yes.

21 Q And if you tell a falsehood here, you could be in a
22 lot of trouble, correct?

23 A Yes.

24 Q But also, if it turns out to be true that you fired
25 that weapon without any sort of legal justification, that you

1 could get yourself convicted of first degree murder, right?

2 A Yes.

3 Q And if I got your story straight, your sequencing of
4 events is such that you got yourself shot in the front yard of
5 that address at 1661, and that sometime thereafter while you
6 were sitting on the ground, bleeding out, that you fired a
7 round, striking and killing Monty Gibson, correct?

8 A Yes.

9 Q So, without going through sort of the whole
10 sequencing of events, let's talk first about you claim -- or
11 you said on direct that you first went to Robert Figueroa's
12 house, then you went back to your house, then you went up to
13 Mr. Laguna's house. Do you remember saying that?

14 A Yes.

15 Q How far is it from your house to Mr. Figueroa's
16 house?

17 A Maybe 15 miles.

18 Q Would you agree that those aren't on the highway?

19 A Most of it is.

20 Q Would you agree with me that it'd take you at least
21 20, 25 minutes to get from your house to Mr. Figueroa's house?

22 A Well, it depends how fast you're driving.

23 Q Well, how long did it take you to get from your
24 house to Mr. Figueroa's house do you think?

25 A I never drove straight from my house to Mr.

1 Figueroa's house.

2 Q Wait a second. On direct examination, you said that
3 you were at your residence when David Murphy called you and
4 said, let's go do the nighttime robbery, and you drove over to
5 Mr. Figueroa's house, picked him up --

6 A From a friend's house.

7 Q Oh, so you weren't at home when that phone call
8 occurred?

9 A Correct.

10 Q Which house -- which friend's house was that? What
11 was the location?

12 A Probably Windmill and Decatur.

13 Q Windmill and Decatur? And you got an actual phone
14 call; you talked to somebody, you said?

15 A Yes.

16 Q And you had a conversation with them at Windmill and
17 Decatur, and then you drove over to Mr. Figueroa's house. How
18 long do you think it took you to go over to Mr. Figueroa's
19 house?

20 A 10 or 15 minutes.

21 Q And at that point, you called from your phone
22 inside, saying, hey, Robert, I'm here, come get in the car,
23 let's go do this robbery, right?

24 A Something like that.

25 Q And he jumped in the vehicle at that point, and your

1 testimony is you then drove to your house after that?

2 A Yes.

3 Q And from your house to then drive to Joey Laguna's
4 house, where you meet up with David Murphy and Joey Laguna?

5 A Yes.

6 Q And the reason that you had to go back to your house
7 is because Robert forced you to go get that firearm?

8 A Yes.

9 Q You didn't want to have a firearm with your finger
10 on the trigger when he hit that door?

11 A No.

12 Q Where did you get the orange ski mask? I didn't
13 hear that today.

14 A It came out of the duffel bag.

15 Q Oh, so Robert brought that, too?

16 A Yes.

17 Q Did Robert bring all the guns and all the stuff
18 needed to break into this house, with the exception of your
19 car?

20 A Pretty much, yes.

21 Q So, it's David Murphy's location, but Robert
22 Figueroa's bringing all the tools; is that your testimony?

23 A Yes.

24 Q And when you go to the residence that you're at, you
25 say that the three of you get out of the car, and Mr. Murphy

1 does sort of that u-turn and sits down there, correct? Right?

2 A Yes.

3 Q You've got a weapon in your hand?

4 A Yes.

5 Q It's fully loaded?

6 A Yes.

7 Q The slide -- or it's got a round in the chamber?

8 A Yes.

9 Q How many rounds fits in that gun?

10 A I do not know.

11 Q How many rounds did you put in the gun before you
12 chambered it?

13 A I do not know.

14 Q Well, you're kind of a gun guy, aren't you?

15 A Somewhat.

16 Q You used to own a whole lot of guns, right?

17 A Yes.

18 Q How many various guns did you own at one point?

19 A Over 20.

20 Q When you needed money, you could have sold that gun
21 instead of using it in an armed robbery, right?

22 A I sold pretty much every gun that I had.

23 Q But you'd prefer to commit an armed robbery than
24 sell this -- sell that weapon?

25 A They wouldn't take that one because it didn't have a

1 safety and other certain little stuff. They weren't willing
2 to buy it.

3 Q So, you took a gun that you knew didn't have a
4 safety to a home invasion where there might be people home?

5 A Yes.

6 Q Now, I want to put up on the aerial for you State's
7 Exhibit number 14. And you're going to have to give me
8 half-a-second here to -- oops -- to actually orient this for
9 us so that I can be clear what it is you're saying about the
10 sequencing of events. Do you see the diagram up there, Mr.
11 Mendoza?

12 A Yes.

13 Q Do you understand the diagram, what it is it's
14 telling us?

15 A Yes.

16 Q You would agree with me that that's sort of the
17 direction that you traveled down the street as you're
18 bleeding?

19 A Yes.

20 Q That red line, right, is sort of where your blood
21 trail is, right?

22 A Yes.

23 Q And you said to the ladies and gentlemen of the jury
24 that you were shot. When you were shot, you were somewhere in
25 the front yard area in front of the door; is that correct?

1 A Yes.

2 Q When you were shot, you would agree with me that
3 that leg was no longer functioning, right?

4 A Yes.

5 Q And you would agree with me that you were down on
6 the ground the moment that bullet severed your femur in half,
7 correct?

8 A Yes.

9 Q You go down, correct?

10 A Yes.

11 Q And you're bleeding heavily?

12 A It didn't start to bleed immediately.

13 Q Just -- didn't start bleeding immediately? How long
14 did it take?

15 A By the time I noticed it saturated my pants, I was
16 probably already in this area.

17 Q So, by the time it was saturating your pants, it was
18 in this area. So, by the time you noticed that it saturated
19 your pants, have you killed Monty Gibson?

20 A No.

21 Q So, when you kill Monty Gibson, it hasn't saturated
22 your pants yet, correct?

23 A No, I was still scooting away.

24 Q Your firearm that you had, that semi-automatic
25 rifle, when you fire a round, where do your casings go?

1 A Forward left.

2 Q Forward and left, correct?

3 A Yes.

4 Q So, you would expect that when you fired your round,
5 your casings would go out and to the left, correct?

6 A Yes.

7 Q Okay. Now, let's talk about when you hit the door.
8 When you hit the door, there's a little entranceway right here
9 that's between this column, and that wall, and the front door
10 right in that region there, correct?

11 MR. WOLFBRANDT: I'm going to object. That
12 mischaracterizes his direct testimony. He never hit the door,
13 never went to the door -- or across the door frame.

14 MR. DiGIACOMO: I meant the -- the group we, but
15 okay, when Robert's to the door.

16 BY MR. DiGIACOMO:

17 Q But the door area, I guess is the question, does it
18 have a little entranceway between that column and that wall
19 with the doorway right here?

20 A Yes.

21 Q Where are you standing? Are you standing between
22 this column and this wall with Mr. Laguna behind you, or is it
23 1, 2, 3 in that direction?

24 A More like the second.

25 Q So, you guys walk straight up on the front of that

1 door. Robert, who you said is holding a weapon in his hand
2 while throwing his shoulder into the door at the same time?

3 A Yes.

4 Q And he hits the door twice?

5 A Yes.

6 Q He goes in that door, and you hear shots, and he
7 immediately runs out?

8 A Yes.

9 Q Did you say on direct you think he's shooting into
10 the residence?

11 A Yes.

12 Q Did you see him shooting into the residence, or did
13 he go through that door, get hit in the face, go down, jump
14 up, and run?

15 A I didn't see for sure.

16 Q Now, while you're standing at that door, and he gets
17 hit in the face, and then he turns around and he runs, where
18 are you standing?

19 A About there.

20 Q All the way back in the grass?

21 A Well, the touch screen's not exactly, but --

22 Q And so you tell me, and I will -- are you at the
23 column? Are you inside the column? Are you at the front
24 door? Where --

25 A Just about at the column.

1 Q So, just about at the column, you have your rifle
2 when he runs by. You said it was pointed down and you got hit
3 a couple of times?

4 A Yes.

5 Q Correct?

6 A Yes.

7 Q And you fired off a couple of rounds?

8 A Yes.

9 Q And then there's somewhere in the range of six shell
10 casings total, so there's four more shots where you're firing
11 inside this house, correct?

12 A Yes.

13 Q All right. Now, Mr. Wolfbrandt asked you were you
14 shooting at anybody, and you were like, no, I was just --
15 what? What were you shooting at?

16 A I don't really recall shooting those rounds. It
17 wasn't --

18 Q You would agree with me that there is gunfire coming
19 from the guy who's standing behind this wall in that
20 direction?

21 A Yes.

22 Q And you've seen the crime scene photos. You would
23 agree with me that about body height through that wall is
24 where some of your shots go?

25 MR. WOLFBRANDT: Can we get some clarification as to

1 which wall on this diagram?

2 MR. DiGIACOMO: I think it's the one that has the
3 big stickers that said E and F, between the weight room and
4 the kitchen.

5 MR. WOLFBRANDT: All right, I mean, because for the
6 record, he's just saying "this wall."

7 THE COURT: All right, so now he's clarified it for
8 the record.

9 BY MR. DiGIACOMO:

10 Q You'd agree with me that your rounds go in the same
11 direction where the guy is standing who's shooting that gun
12 back at you, correct?

13 A I would not know that they were my rounds.

14 Q So, you think that that -- those may not be your
15 rounds?

16 A Yes.

17 Q Okay. You would agree with me that all your rounds
18 are going in this direction, right?

19 A Yes.

20 Q And you would agree with me that you're shooting
21 inside the door, right? I mean, there's no way that you fired
22 it the other direction, right?

23 A Yes.

24 Q Okay. So, six shots into the door -- doorway,
25 somewhere in that range, correct?

1 A Yes.

2 Q And then your suggestion is you got hit, you go out
3 to this area somewhere over here where your blood spot is, and
4 then you see somebody, and you fire your gun how many times?

5 A Twice.

6 Q You'd agree with me it's dark outside?

7 A Yes.

8 Q And you'd agree that it's light inside the
9 residence; the lights are on?

10 A Yes.

11 Q And you suggested that the guy who walked outside
12 the house had a gun in his hand?

13 A Yes.

14 Q Tall guy -- the skinny guy, or the African-American
15 male or the dark male that you saw?

16 A The one I saw was the skinny guy.

17 Q So, you're shooting at the guy in white -- the white
18 guy?

19 A Just in the general direction.

20 Q He's the one with the gun, right?

21 A Yes.

22 Q And you hear shots, and then you -- you shoot in his
23 direction?

24 A Yes.

25 Q And somehow you miss him and hit Monty, and he's

1 dead, correct?

2 A Yes.

3 Q Are you saying that after you fired your six shots
4 -- well, let me ask you this. Where's Mr. Murphy at this
5 point when you fire your six shots here?

6 A I don't know.

7 Q Do you ever see Mr. Murphy again during this night?

8 A No.

9 Q Okay. Where's -- when's the last time you see Mr.
10 Laguna?

11 A Just shortly after Robert Figueroa kicked in the
12 door.

13 Q Okay, and Mr. Laguna was behind you?

14 A Yes.

15 Q And he was armed with also a .38 still from earlier,
16 correct?

17 A Yes.

18 Q And you're suggesting to the jury that after you
19 fired those six rounds inside, you didn't fire rounds from out
20 there; and after striking Monty, that Joey Larsen didn't shoot
21 you in the leg and drop you where you stand?

22 A What's that?

23 Q You are suggesting to the ladies and gentlemen of
24 this jury that when you shot Monty Gibson, you were still
25 standing and hadn't yet been shot in the leg; is that what

1 you're telling the ladies and gentlemen of this jury?

2 A No, I was already shot --

3 Q That's what I'm saying.

4 A -- laying in the street.

5 Q That's your version of events?

6 A Yes.

7 MR. DiGIACOMO: I've got nothing further.

8 THE COURT: Okay. Mr. Landis?

9 MS. McNEILL: Your Honor --

10 THE COURT: Oh.

11 MS. McNEILL: -- I'd like to approach, please.

12 THE COURT: All right.

13 (Off-record bench conference)

14 THE COURT: Mr. Landis, cross?

15 MR. LANDIS: Court's brief indulgence.

16 (Defense counsel conferring)

17 MR. LANDIS: I have no cross -- no cross of Mr.

18 Mendoza.

19 THE COURT: All right. Ms. McNeill?

20 MS. McNEILL: Court's indulgence.

21 (Ms. McNeill conferring with Defendant Laguna)

22 MS. McNEILL: I have no questions for Mr. Mendoza.

23 THE COURT: Mr. Wolfbrandt, redirect?

24 MR. WOLFBRANDT: No, I do not.

25 THE COURT: Thank you. Mr. Mendoza, you may return

1 to counsel table. Thank you for your testimony.

2 THE MARSHAL: Step like right there for me. Step
3 down.

4 THE COURT: Mr. Wolfbrandt, did you have any other
5 witnesses you wanted to call?

6 MR. WOLFBRANDT: No, I do not.

7 THE MARSHAL: Sir?

8 MR. DiGIACOMO: Just to the clerk. Clerk.

9 THE COURT: Ms. McNeill, do you have any witnesses
10 you wish to call?

11 MS. McNEILL: I do have witnesses that I would like
12 to call; however, they are not available until Monday. I was
13 going to go last in the order that we discussed.

14 THE COURT: Oh, all right. Well, that's fine. Mr.
15 Landis, do you have a witness?

16 MR. LANDIS: And I also have witnesses. I didn't
17 bring one in today. I was going to bring one in at 4:00, but
18 then I believed this was going to take longer. I can call her
19 and see if she can get here, I'm happy to, but --

20 THE COURT: Well, let's do --

21 MR. LANDIS: -- I don't have one waiting.

22 THE COURT: Let's do that and see, because, you
23 know, we've -- we're into our -- we're going to be going into
24 Monday, and I want to use the time we have. We have such
25 little time, and this was a full day. I expected to be taking

1 witnesses until at least 5:00.

2 MR. LANDIS: Right, and --

3 THE COURT: All right. If you -- we'll take a short
4 recess and you can try and, you know, call. So, let's take a
5 recess. Five-minute recess.

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

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

15 (Jury recessed at 4:06 p.m.)

16 THE COURT: And the record will reflect that the
17 jury has departed the courtroom. While we're outside the
18 presence of the jury and you're making that call, do you want
19 -- you know, have you had the opportunity to consult with your
20 clients whether they want to testify? Do you want me to
21 admonish them at this time, or are you still waiting?

22 MR. LANDIS: You can admonish them, as long as you
23 don't request an answer at the end of it.

24 MS. McNEILL: Right. Yeah, I think it's okay to
25 admonish them. I think we're still determining that.

1 THE COURT: All right, so let's do that. So, we'll
2 start with Mr. Murphy. Mr. Murphy, under the Constitution of
3 the United States, as well as the Constitution of the State of
4 Nevada, you cannot be compelled to testify in this case. Do
5 you understand that?

6 DEFENDANT MURPHY: Yes, ma'am.

7 THE COURT: And of course you may, if you wish to,
8 give up the right to not testify, and take the witness stand
9 and testify in this case, but if you do, you're going to be
10 subject to cross-examination by the district attorney, and
11 anything that you say, whether it's on direct examination by
12 your own counsel or cross-examination by the State's counsel,
13 that could be used against you. In other words, in front of
14 the jury, the district attorney could comment, as long as it
15 comports with the evidence, concerning your testimony. Do you
16 understand that?

17 DEFENDANT MURPHY: Yes, I do.

18 THE COURT: All right. Now, if you choose not to
19 testify, of course, the Court will not permit the district
20 attorney to make any comments to the jury because you've
21 refused to testify. You know, they're not allowed to stand in
22 front of the jury, for example, and say, well, he didn't
23 testify; an innocent person would take the stand and tell his
24 side of the story, so obviously he must be guilty. That
25 absolutely is not allowed, and you understand that, right?

1 DEFENDANT MURPHY: Yes, I do.

2 THE COURT: Okay. And so, now, if you chose not to
3 testify, then the Court would, if your lawyer requests it,
4 after he's consulted with you and whatnot, I would give an
5 instruction to the jury that basically states that the law
6 does not compel a defendant in a criminal case to take the
7 stand and testify, and no presumption may be raised, and no
8 inference may be drawn from the failure of a defendant to
9 testify in a case. You understand that?

10 DEFENDANT MURPHY: Yes.

11 THE COURT: Okay. And I want you to have ample
12 opportunity to discuss this with your lawyer and then make an
13 informed decision. Do you have any questions of the Court
14 about your rights?

15 DEFENDANT MURPHY: No, I do not.

16 THE COURT: Okay, thank you.

17 DEFENDANT MURPHY: All right, thank you.

18 THE COURT: All right. And Mr. Laguna?

19 MR. LANDIS: Hello.

20 THE COURT: Good afternoon. So, under the
21 Constitution of the United States, as well as the Constitution
22 of the State of Nevada, you cannot be compelled to testify in
23 this case. Do you understand that?

24 DEFENDANT LAGUNA: Yes.

25 THE COURT: And you may of course at your own

1 request give up this right to not testify, and take the stand
2 and testify on your own behalf, but if you do, then you would
3 be subject to cross-examination by the State's lawyers. You
4 understand that?

5 DEFENDANT LAGUNA: Yes.

6 THE COURT: Do you also understand that anything
7 that you might testify to, whether it's on direct examination
8 by your own lawyer or cross-examination by the State, is then
9 the subject of fair comment on the evidence in closing
10 arguments by the State? Do you understand that?

11 DEFENDANT LAGUNA: Yes.

12 THE COURT: Okay. Now, if you choose not to
13 testify, as is your right, then the Court would not permit the
14 State to make any comments to the jury that were -- that
15 commented upon your failure to testify. Do you understand
16 that? That's not allowed. In other words, they cannot make
17 some kind of statement to the jury to infer in any way that
18 you failed to testify and you should have, and that somehow
19 the jury should infer from that that you're guilty. That's
20 not permitted. Do you understand that?

21 DEFENDANT LAGUNA: Yeah.

22 THE COURT: And the Court -- I would not allow such
23 a comment to be made, and do you understand that?

24 DEFENDANT LAGUNA: Yeah.

25 THE COURT: Okay. Now, if you chose not to testify,

1 I would, if your lawyer asks me to instruct the jury, and she
2 would do that after consulting with you, of course, but, you
3 know, she's your lawyer giving you legal advice; I would
4 instruct the jury if it was requested by you that the law does
5 not compel a defendant in a criminal case to take the stand
6 and testify, and no presumption may be raised and no inference
7 of any kind may be drawn from the failure of the defendant to
8 testify.

9 What that means, of course, is that the -- the jury
10 could not try and infer -- they'd be specifically instructed
11 that they could not talk about that, and think about that, and
12 infer from that, that you're guilty because you failed to
13 testify. Do you understand that?

14 DEFENDANT LAGUNA: Yes.

15 THE COURT: Okay. And so, I want to give you every
16 opportunity to consider this and consult with your lawyer in
17 making an informed decision as to whether you want to testify
18 or not. But at this time, do you have any questions of the
19 Court about any of these rights that I explained to you?

20 DEFENDANT LAGUNA: No, ma'am.

21 THE COURT: Thank you very much.

22 MR. DiGIACOMO: Before our break, I think we should
23 make a record about what happened at the bench, just because
24 of the nature of what happened, on the record.

25 THE COURT: Yes.

1 MR. DiGIACOMO: After I was done with my
2 cross-examination with Mr. Mendoza, both Ms. McNeill and Mr.
3 Landis were given the opportunity to cross-examine. They
4 approached the bench and suggested that there was -- they lack
5 the ability to cross-examine for some undisclosed reason.
6 They were repeatedly asked, hey, what is the problem? We
7 don't seem to understand what could possibly be the problem.

8 And while they danced around it, and back and forth,
9 and whatever, there was some suggestion from Mr. Landis that
10 he owed a duty to somebody other than Mr. Murphy, which I
11 can't comprehend in my own mind how that's possible. And they
12 danced around it like 19 different ways, and then ultimately,
13 they came back here and decided not to cross-examine. They
14 never gave the opportunity for the Court to make any ruling
15 about what the nature of it is, if it was so scary for them to
16 do without a prior court ruling.

17 They were asked what to do, and they just refused,
18 and I can't comprehend that the law would allow co-defendants
19 to just say, I don't like rulings of not being severed, so I'm
20 just going to shut this party down. So, as I said at the
21 bench, I'll deal with it on post-conviction because I don't
22 have any concerns about the prejudice prong. So, they're free
23 to make whatever record they want.

24 THE COURT: So, let me make a further record,
25 because Ms. McNeill at the bench said that she was -- she

1 wanted to make and have a ruling on her Motion to Sever before
2 she decided whether to cross. And I indicated at the bench
3 that her opportunity to cross was now, and that whether or not
4 I granted a Motion to Sever would be a separate -- you know, I
5 would rule on that after.

6 MS. McNEILL: And can I explain my position on that?

7 THE COURT: Yes.

8 MS. McNEILL: Thank you.

9 THE COURT: I just wanted to make that --

10 MS. McNEILL: Okay.

11 THE COURT: -- record.

12 MS. McNEILL: Yes. My position on that is this. We
13 are in a joint trial. We asked to sever prior to this. My
14 client, by Jorge Mendoza's testimony, is in a position where
15 we are now defending not just against what the State is
16 presenting, but now against what Mr. Mendoza is presenting.
17 And in order to effectively do that, my client is now placed
18 in the very awkward, precarious position of doing this.

19 Mr. Mendoza clearly had no idea what the discovery
20 said about his cell phone records with regard to the incident
21 that the State alleged happened earlier in the morning. The
22 State put up maps that showed that Mr. Mendoza and Mr.
23 Murphy's cell phones were in the area prior to the alleged
24 robbery, because they contend that they were scoping out that
25 robbery. Mr. Mendoza seemed to have no idea about those

1 records, and his testimony was very odd in light of -- in
2 light of that.

3 So, now, that puts me in the position the defend
4 against Mr. Laguna, where I would have to cross-examine him
5 and sort of -- I mean, I've spent most of this case sort of
6 suggesting, along with Mr. Landis, that the cell phone records
7 aren't accurate, perhaps. Perhaps there were some problems
8 with what those cell phone records show.

9 And now, in order to cross-examine him effectively
10 for my client to show that he doesn't really know what he's
11 talking about, which is what I would normally do with a
12 witness I was cross-examining, I then have to sort of
13 corroborate the State's evidence in order to do that; to talk
14 about, you don't really know what you're talking about, you're
15 just saying these things, aren't you? You're just saying them
16 because you believe they're going to help you when we know the
17 evidence shows something different.

18 That's not a position I want to be in when I have
19 spent the entirety of my client's case saying that those cell
20 phone records aren't accurate. I don't want to have to
21 corroborate, and I shouldn't have to corroborate any of the
22 evidence that I've been saying isn't quite as accurate as the
23 State says it is in order to them cross-examine a
24 co-defendant.

25 The other issue that I have is I believe that I

1 would be allowed to ask Mr. Mendoza questions like, isn't it
2 true that your lawyer told you to testify so that you could
3 save yourself from life in prison? I believe in Partington
4 vs. Gedan, 961 F.2d 852, 9th Circuit says that,
5 Attorney/client privilege is a -- merely a rule of evidence,
6 not a constitutional right. However, my client has a
7 constitutional right for me to be effective and for me to
8 cross-examine a witness. I am allowed to cross-examine a
9 witness on anything that goes to his motive to testify the way
10 he is.

11 And if Mr. Mendoza was informed that testifying and
12 putting my client in the car would somehow lead to him getting
13 some sort of lesser sentence, because I will be frank with the
14 Court, I have been informed throughout this case that there
15 was some sort of backdoor gentlemen's agreement between Mr.
16 Wolfbrandt and Mr. DiGiacomo that if Mr. Mendoza put my client
17 in the car, the State would not seek any sort of life
18 sentence.

19 So, I believe I would be absolutely allowed to
20 question Mr. Mendoza about that, and then it was indicated
21 that I couldn't do that because of privilege. Again, that is
22 the reason a case should be severed. If my client's trial
23 rights are being affected by another defendant's rights, that
24 is the reason that the Supreme Court is concerned about
25 severing cases.

1 So, at this point, I'm in a no-win situation with
2 questions that I can or cannot elicit on cross-examination,
3 which is why, ultimately, I chose not to ask any questions,
4 because there's not -- there was not a situation that I could
5 put Mr. Laguna in through my questioning that would benefit
6 him. And I believe that's -- that's why I wanted a ruling on
7 the severance before I cross-examined him. I wanted that
8 record to be made so that I would know what I needed to do for
9 Mr. Laguna.

10 THE COURT: All right. Well, I guess -- does the
11 State want to address the -- the allegation about this --

12 MR. DIGIACOMO: The --

13 THE COURT: Or do you?

14 MR. WOLFBRANDT: Well, I want to address one of
15 these --

16 THE COURT: Okay.

17 MR. WOLFBRANDT: -- things that was made.

18 THE COURT: Yes, against your --

19 MR. DIGIACOMO: I'm sure Mr. Wolfbrandt probably
20 wants to address a number of things that were made. The only
21 thing that I would say in response to Ms. McNeill is that your
22 constitutional right to cross-examination means you have the
23 right to cross-examine. You don't get to cross-examine on
24 anything and everything you want, and just because you can say
25 the Constitution provides me the right to cross-examine

1 doesn't mean you get to violate every rule of evidence and
2 privilege that we have.

3 I'm sorry that the rules of evidence apply in a
4 courtroom, but I'm -- you know, throughout this trial, it's
5 suddenly like, hey, well, because I have a constitutional
6 right, the rules don't apply to me; I can basically shut down
7 a jury trial or try my best to do so. And sorry, that's just
8 not the way it works.

9 And so, all due respect, she could have crossed him
10 the same way that Mr. Figueroa was crossed, with the exception
11 of the fact that instead of a Guilty Plea Agreement, he's
12 trying to get a benefit from these people. And that
13 cross-examination happened to Mr. Figueroa and there was no
14 problem in doing it, so I can't really comprehend what the
15 difference is.

16 THE COURT: Well, yeah. I guess I don't see that
17 you couldn't have asked the questions. Now, you may have
18 decided in your own mind that, strategically, you don't want
19 to. But -- but from your opening statement, it seemed to me
20 that you were telling the jury your client was not there, and
21 that the phone records just show that a phone was there;
22 doesn't mean he was there.

23 And so, phone records don't say who's on the phone,
24 and that was the basis of your cross as well. And there is
25 not a whole lot to -- frankly, it seemed to me, to suggest

1 that the -- you were saying the phone records were inaccurate,
2 and because the testimony was only that it was in the general
3 vicinity.

4 And so, but again, you have -- you have the right to
5 cross-examine, and to just make a decision that, well, I'm not
6 going to cross-examine unless the Court rules on a Motion to
7 Sever; a Motion to Sever is not going to be fully ripe until
8 you've cross -- crossed, because I can make a Motion to Sever
9 at any point in this trial. And so, you need -- you know, and
10 I'm going to give you a second opportunity to cross-examine at
11 this point, because I don't know that you've fully thought
12 this through.

13 MS. McNEILL: And with all due respect, Your Honor,
14 I have been doing nothing but thinking about this since this
15 morning --

16 THE COURT: Okay.

17 MS. McNEILL: -- and consulting with my client. And
18 I mean, the other -- the Court brought up one of the other
19 reasons that I would be asking for a severance, which is just
20 that. I -- my client and I have based our defense on him not
21 being there, and now we're in a position where another
22 co-defendant has said that he was. This is just one more way
23 that it prevents the jury from making a reliable judgment
24 about guilt or innocence.

25 THE COURT: Okay.

1 MS. McNEILL: This is a very different situation
2 from you have co-defendants who are saying, it was him, not
3 me. You now have one who is saying, it was me and it was him.
4 And in light of --

5 THE COURT: The issue for severance is are the
6 defenses mutually exclusive. That's clear --

7 MS. McNEILL: Right, and --

8 THE COURT: -- because you briefed all that, right?

9 MS. McNEILL: Yes.

10 THE COURT: And the Court said at the time, I don't
11 know, because I don't know what the defense is going to be,
12 and we'll have to wait and see what the defense is going to
13 be.

14 MS. McNEILL: And now --

15 THE COURT: But that doesn't mean that you have to
16 -- that you get to -- well, you can. You can decide not to
17 cross any witness, and you've done that with other witnesses,
18 and that's up to you to do. But to say that you were
19 prevented, well, you weren't prevented. You've made a
20 strategic decision, and I don't think that you -- I just
21 disagree with your theory that you get to -- you get to breach
22 attorney/client privilege with this witness just because he
23 happens to be a co-defendant.

24 MS. McNEILL: Well, no, Your Honor. I would -- two
25 things. One, I would respond with --

1 THE COURT: Plus, you -- excuse me. I'm sorry to --

2 MS. McNEILL: Yes, I'm sorry. That's okay.

3 THE COURT: -- interrupt you, because I thought it
4 was --

5 MS. McNEILL: Yes, you're the Court.

6 THE COURT: But you don't know if he was going to
7 invoke attorney/client -- he holds the privilege, until you
8 ask him the question. He might have been willing to tell you.

9 MS. McNEILL: And Your Honor, I -- going back to
10 when you indicated that -- you know, when we did file the
11 severance motion, Your Honor had said that, well, I don't know
12 what anyone's going to say, right? And I think that's why we
13 made that motion is because now we do. And it is inconsistent
14 for my defense to be, it was Manny Barientos and not my
15 client, and his defense to be, it was her client and I just
16 acted in self-defense. I think you can't have someone there
17 and not there at the same time. Those are mutually exclusive,
18 which is why I made the Motion for a Severance.

19 THE COURT: Well, no, the -- the question I guess
20 is, right, is the defense of, I wasn't there, mutually
21 exclusive to the defense of self-defense so -- such that if
22 the jury believes the defense of self-defense, that -- that
23 possibly they could not believe your client's defense of I
24 wasn't there. That's going to be really the issue.

25 MR. DiGIACOMO: Right.

1 THE COURT: Right?

2 MR. LANDIS: Can I interject with something that's
3 unrelated? My investigator has been trying to call Ashley
4 Hall. She's not calling back as of the past ten minutes, and
5 that's the current status. I'm just telling you that so you
6 know.

7 THE COURT: I thought Ashley Hall was in prison. I
8 thought I overhead that.

9 MR. DiGIACOMO: She was released on -- on the first
10 day of trial, she actually got released from prison. So, my
11 suggestion is bring the jury in and let them go home.

12 My responses to what the mutually exclusive part of
13 this is, if I got this straight, Mr. Mendoza is not defending
14 the conspiracy, and the attempt robbery, and the burglary
15 while in possession, and the home invasion while in
16 possession. There is no defense being presented to those.
17 The defense he presented was to murder and attempt murder.

18 THE COURT: Right.

19 MR. DiGIACOMO: And these two defendants are only
20 liable to those counts by vicarious liability. Thus, if Mr.
21 Mendoza is successful in his defense, they will be as
22 successful to two of those counts.

23 Now, could Mr. Mendoza have gotten up there and
24 said, I engaged in a conspiracy, but it was with Manny
25 Barientos and Orco, or somebody else, and be -- and during

1 that, I acted in self-defense? He could, but when the jury
2 rejects that as being wholly ridiculous, he's likely to be
3 convicted of first degree murder because that is lies that
4 he's telling, so why would they ever believe that part of it?
5 So, the fact that he got up there and told the truth does not
6 make it mutually antagonistic.

7 MR. LANDIS: And I object to God's --

8 MS. McNEILL: That it's the truth.

9 MR. LANDIS: -- recognition of what's true and
10 what's not.

11 MS. McNEILL: Right.

12 MR. LANDIS: I mean, honestly. That's offensive as
13 hell. It is.

14 MS. McNEILL: It is.

15 MR. DiGIACOMO: I mean, the fact that he gets up
16 there and tells his version of events is irrelevant to this
17 proceeding.

18 MR. LANDIS: So is your opinion about truthfulness,
19 man. It is.

20 MR. DiGIACOMO: Okay, well I didn't interrupt you
21 during --

22 THE COURT: All right, stop, yeah.

23 MR. DiGIACOMO: Yeah, I mean --

24 THE COURT: No cross --

25 MR. DiGIACOMO: It's irrelevant. He could have said

1 any other two people were there. His defense is not exclusive
2 to theirs; he's just choosing not to defend three counts. So,
3 there's nothing about that that makes it mutually exclusive or
4 antagonistic, because one of them doesn't exist, so how is
5 that antagonistic at all?

6 He just happens to be telling a version of events
7 that is bad for them, which is certainly not the law that
8 says, you know, he's a witness to the case, he can be
9 cross-examined on those situations. And if the jury rejects
10 that these two individuals are there, well, then he's going to
11 get likely convicted of first degree murder; and if they find
12 that he is there, then -- and he acted in self-defense,
13 they're going to be found not guilty. I don't see the problem
14 here.

15 MR. LANDIS: And I would ask for an opportunity to
16 make a record in general about severance. As to when I --

17 THE COURT: Well, you're going to --

18 MR. LANDIS: -- do it, I don't care.

19 THE COURT: You can make it, but I want also --
20 since it's the weekend, you'll have time for this. You can
21 additionally brief --

22 MR. LANDIS: I will.

23 THE COURT: -- supplemental briefs to your original
24 motions, remember? Because as I recall, those were denied
25 though without prejudice, right?

1 MR. LANDIS: No, you're 100 percent right, and the
2 reason I brought severance up when I did was based on your
3 desire to not have speculation behind my argument. I respect
4 that, and I'm happy to brief it.

5 THE COURT: Okay. But did you want to make a record
6 about the issue of what we were at the bench? Because I --
7 really, I truly did not follow your argument.

8 MR. LANDIS: It's one in the same. And if I'm going
9 to brief severance, I'll brief the whole thing. I mean, I
10 will. I don't know how much it matters at this point, but
11 I'll brief the whole thing. I'll speak it now, whatever you
12 want, it doesn't matter to me.

13 Probably the reason I was having such a hard time at
14 the bench is, every sentence, no one can hear me, and I start
15 again. And I don't think there was a way for me to say what I
16 wanted to say where everyone would be able to hear it in any
17 meaningful manner. It's true. And I also thought that timing
18 was important. In other words, before I crossed in the way
19 that I did, and I'm happy to explain that all now, put it in
20 writing over the weekend --

21 THE COURT: Well, you can --

22 MR. LANDIS: -- let the jury go.

23 THE COURT: You can explain the part of the cross,
24 because you approached and said you didn't feel like you could
25 cross. Are you saying you want to cross later?

1 MR. LANDIS: No.

2 THE COURT: Oh.

3 MR. LANDIS: No, no, no, no, no. But I'm saying, if
4 I crossed him, I do not think -- if severance became necessary
5 after my cross, I don't think it would be possible to keep
6 this trial going for any of the defendants. That's what I'm
7 saying.

8 THE COURT: All right, so you need to explain that.
9 Can you explain that now? Because I don't --

10 MR. LANDIS: I can. I --

11 THE COURT: That's what -- the part I didn't follow
12 at the bench. I mean, you were saying that at the bench and I
13 understood that, I just didn't understand --

14 MR. LANDIS: I will. I'll explain that.

15 THE COURT: -- how that could happen.

16 MR. LANDIS: It's my belief that right now -- and
17 I'm not asking this Court to make any severance ruling, but if
18 a Court were to grant a severance right now, Mendoza's trial
19 could continue without prejudice to him, unfair prejudice in
20 terms of inadmissible evidence or unnecessary attacks.

21 I think if I do the cross I want to do, which,
22 again, I'm not 100 percent sure if I'm in the right to do. I
23 don't know, and I'm not trying to be difficult about that.
24 I'm not. I don't think it would be curable and I don't think
25 any trial could go on for anyone if severance was deemed to be

1 the appropriate remedy. That's all I'm saying.

2 And what I'm getting at is this. What makes this
3 difficult is the heart of why he's on that stand is to work
4 towards self-defense. I think we can all agree to that now.
5 He's trying to establish the things that would get him
6 instructions, and then obviously a verdict for self-defense.
7 That being the core of his defense, something that's
8 tangential is the testimony that hurts us. It's relevant, it
9 obviously is, but it's not the core of his defense.

10 I don't really care as far as my client's defense
11 goes about his self-defense theory and what he's saying, but I
12 do care about the things he said that aren't at the core of
13 his defense, obviously.

14 So, what I would be doing is attacking him whole
15 cloth, everything, including his theory of self-defense,
16 including everything he said, some of his recollections, some
17 of the facts he said, really, for -- well, it's a small
18 purpose for me, but it's just to attack his credibility
19 because he said my client was there. Devastating impact on
20 him. And I don't need to be told where my loyalties lie.
21 Trust me, if there's anything I know, it's that, but I do
22 think there's unfair prejudice that co-counsel can cause.

23 And my questioning was going to go down a line that
24 -- I'm still even uncomfortable saying it right now, but I
25 will. I was going to try to have him testify about the fact

1 that he's never wanted to testify; he's felt like he needs to
2 testify because he doesn't think his attorney got out certain
3 things during the State's case-in-chief. And further, now
4 that he's up here and testifying, obviously, the only option
5 he has is to identify our clients, truth aside. And I believe
6 I have the right to do that. I also believe it's hugely
7 unfair to both Mr. Wolfbrandt and his client.

8 THE COURT: All right. Well, I -- I don't know what
9 to say to that. I -- I've never seen any case law that would
10 support such -- such an argument. So, maybe you'll find some
11 over the weekend, but I'm at a loss at this point. But
12 there's a lot of law out there.

13 MR. LANDIS: There is.

14 THE COURT: All right. So, I guess we need to bring
15 the --

16 MR. DiGIACOMO: I don't know if you want to let Mr.
17 Wolfbrandt make any --

18 THE COURT: Oh, yes, yes.

19 MR. DiGIACOMO: -- records, since --

20 THE COURT: Yes, Mr. Wolfbrandt?

21 MR. WOLFBRANDT: Yeah, one thing I want to --

22 MR. DiGIACOMO: -- he's the one (inaudible) beat up.

23 MR. WOLFBRANDT: -- certainly address right now
24 while it's fresh is there is no backdoor agreement. There's
25 no agreement, no understanding, no wink, no nod, no anything

1 between me, Mr. DiGiacomo, or Ms. Lexis as to how Jorge is
2 going to be treated if he testified. I mean, obviously, from
3 the very beginning, I've been wanting to try to get a
4 negotiation for Jorge, but the State would never commit to one
5 and forced us to go to trial.

6 The co-defendants tried to sever the case. I didn't
7 take a position on it. To be honest with you, I think they
8 should have been severed. From the beginning, they had a
9 speculation as to one form of a defense, which wasn't
10 necessarily what -- what direction I was going to go with it.
11 And -- and you know, again, I don't have -- I mean, I got a
12 bit of a dog in their fight to a certain extent, but I've got
13 to protect and represent my client. And it was in his best
14 interest, and he did, he testified.

15 To the extent that hurts them, absolutely it does,
16 and I think that they're -- they were entitled to a severance
17 because of it. But they're going to go ahead and brief on
18 that, and you're going to decide on that later. But I just
19 want to make sure it was clear there was no -- no backdoor
20 agreement, and then whatever -- whatever discovery I may have
21 given Jorge or not, that's all our -- that's our strategy, and
22 that's all work product, and it's confidential.

23 THE COURT: Well, what concerns me as well is that,
24 Mr. Landis, you're saying that you -- some -- that you believe
25 that you know about what the defendant, Mr. Mendoza, his

1 thought process and why he took the stand to testify. And I
2 mean, that's either based purely on speculation -- speculation
3 on your part, or you've been talking to Mr. Wolfbrandt's
4 client --

5 MR. LANDIS: I've never said a word to that man.

6 THE COURT: Well, okay. All right.

7 MR. DiGIACOMO: Or maybe Mr. Wolfbrandt's client has
8 said it to somebody, in which case, he's free to be crossed on
9 it because it's a statement that's out there.

10 THE COURT: Right. If it -- and if he has, then
11 it's no longer privileged either.

12 MR. LANDIS: And but see --

13 THE COURT: Okay.

14 DEFENDANT MURPHY: Can I step out and use the
15 restroom, please?

16 THE COURT: Yeah. We're going to actually let you
17 go, if --

18 MR. WOLFBRANDT: We got to let the jury go still.

19 THE COURT: Yeah, I'm going to, but is there any
20 reason we can't let them go while we dismiss the jury?
21 Because we're not going to do anything else but dismiss the
22 jury.

23 MR. LANDIS: Are you going to dismiss the jury, like
24 bring them in and dismiss them?

25 MS. McNEILL: Oh, then they need to be here.

1 THE COURT: Yeah, because I have to --

2 MR. DiGIACOMO: Yeah, if we're going to bring them
3 in, they need to stay.

4 MR. WOLFBRANDT: We got to, she's got to admonish
5 them.

6 THE COURT: I have to admonish them. Do you want to
7 be here?

8 MR. LANDIS: Yeah.

9 MS. McNEILL: Yeah, because they're not supposed to
10 know they're in custody.

11 THE COURT: Can you wait for a moment, or is it
12 emergency?

13 DEFENDANT MURPHY: Yeah, I'll wait. That's fine.

14 THE COURT: Okay. All right, let's bring them back
15 in. Let's bring the jury back in.

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

17 (Jury reconvened at 4:34 p.m.)

18 THE MARSHAL: Your Honor, all 12 members of the jury
19 are present, along with the three alternates.

20 THE COURT: Thank you. And the record will so
21 reflect all 12 members of the jury, as well as the three
22 alternates, and everyone else is here because we've never left
23 the courtroom.

24 Ladies and gentlemen, the attempts to reach the
25 witness were unsuccessful, and so we don't have any other

1 witnesses for you today. So, I'm sorry that we couldn't press
2 on until the end of the day.

3 Monday, I have my criminal calendar. My clerk's
4 telling me it's not quite as large as it was last week, and so
5 I'm hopeful that we'll be able to start at 1:00. And I've
6 started working on it at lunch, and it does look like that's
7 entirely feasible. So, I'll see you at 1:00 o'clock on Monday
8 morning, all right?

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

18 And I'll just remind you once again, don't go by any
19 of these locations you've heard about, don't do any research
20 independently. I know you know that. Thank you very much for
21 your patience, and I'll see you on Monday.

22 THE MARSHAL: Folks, leave your notebooks and make
23 sure you have all your belongings, okay? All right. All rise
24 for the jury, please.

25 (Jury recessed at 4:36 p.m.)

1 THE COURT: And the record will reflect that the
2 jury has departed the courtroom. And so we'll take this up --
3 at 1:00 o'clock, we'll proceed. I'm trying to think. Do you
4 want additional time over the weekend to consider about taking
5 -- your clients taking the stand? They'll make the
6 decision --

7 MS. McNEILL: Yes, please, Your Honor.

8 THE COURT: -- Monday?

9 MS. McNEILL: Yes. I've asked Mr. Laguna to think
10 about it this weekend.

11 THE COURT: Okay, very good. All right, I'll see
12 you on Monday.

13 MR. LANDIS: Thank you.

14 MS. McNEILL: 1:30, Your Honor?

15 MR. LANDIS: No, 1:00.

16 THE COURT: 1:00.

17 MS. McNEILL: 1:00. Thank you. I'm glad I asked.
18 I won't be late on Monday.

19 THE MARSHAL: Court's adjourned.

20 MR. DiGIACOMO: I assume you're not anticipating a
21 brief from us?

22 THE COURT: I'm sorry?

23 MR. DiGIACOMO: There was some discussion of a
24 brief. I'm assuming you're not anticipating a brief from us,
25 because I still don't know what the issue is, so I --

1 THE COURT: I think they're going to again argue
2 severance, so, yeah, I would kind of -- now you know --

3 MR. DiGIACOMO: Yeah, I still don't know, but --

4 THE COURT: Now you know --

5 MR. DiGIACOMO: -- (Inaudible).

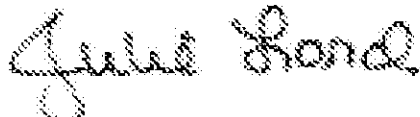
6 THE COURT: Now you know what the facts so far have
7 been, so --

8 MR. DiGIACOMO: Right.

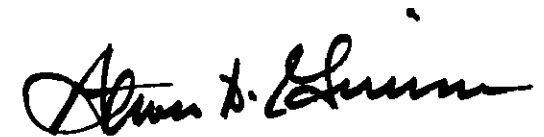
9 (Court recessed at 4:38 p.m. until Monday,
10 October 3, 2016, at 1:18 p.m.)

11 * * * * *

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

15
16 

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18 _____
19 JULIE LORD, INDEPENDENT TRANSCRIBER
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 15

MONDAY, OCTOBER 3, 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
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INDEXWITNESSESDEFENDANT LAGUNA'S WITNESS:DAN MICHALSKI

Direct examination by Ms. McNeill.. . . .	22
Cross-examination by Ms. Lexis	30
Cross-examination by Mr. Landis	35

DEFENDANT MURPHY'S WITNESS:ASHLEY HALL

Direct examination by Mr. Landis	45
Cross-examination by Mr. DiGiacomo	52
Cross-examination by Ms. McNeill	64

EXHIBITS

(No Exhibits Admitted)

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 3, 2016, 1:18 P.M.

2 (Outside the presence of the jurors)

3 THE COURT: All right. We are on the record and --
4 in case number C-303991. We are outside the presence of the
5 jury and the alternates. All three defendants are present
6 with their respective counsel, the Chief Deputy District
7 Attorneys prosecuting the case are present, as are all
8 officers of the court.

9 Our next witness is not available yet, although the
10 subpoena directed the person to be here at 1:00, but still not
11 out in the hallway. So, we're going to use this time to
12 address the motions that were brought by Defendants Murphy and
13 Laguna to sever; basically, renewed Motions to Sever.

14 Last week, I had asked the party -- excuse me, the
15 parties for additional briefing -- supplemental briefing to
16 supplement their prior briefs. Everybody's done that. Thank
17 you very much. I had the opportunity to read all of those, as
18 well as cases cited, and so I'm prepared.

19 Do you want to hear my general thought process
20 first? Okay. So, basically, as I look at this, the bottom
21 line defaults to what would be different if we -- if we
22 severed the trial and had -- everybody had their own trial?

23 So, skipping ahead, just assuming that's the case,
24 what would be different in this trial? And I don't see that
25 there would be any difference, because Mr. Mendoza's testimony

1 would still come in. Figueroa would testify three times.
2 Presumably, you know, the -- Summer Rice, Summer Larsen would
3 testify. Mr. Mendoza's testimony could come in. So, even if
4 we had a severed trial, there's not going to be any
5 difference.

6 And so the analysis for the Court obviously to look
7 at in every case is has there been misjoinder, right? And so
8 going through that analysis, the question for the Court is are
9 there -- are the core defenses antagonistic to each other?
10 And the defense of both Mr. Murphy and Mr. Laguna is the same;
11 basically that there is insufficient evidence to connect them
12 to this crime absent accomplice testimony.

13 Clearly, Mr. Mendoza is an accomplice, and so just
14 as that -- the accomplice testimony rule applies to the first
15 two witnesses who've already testified, it also applies to Mr.
16 Mendoza. And of course the jury is going to be instructed on
17 that, that they first have to find -- before they can consider
18 the testimony of any accomplice, they have to find that there
19 is sufficient evidence to connect the defendants, Mr. Murphy
20 and Mr. Laguna, to the crime.

21 And the -- again, the defense of both seems to be,
22 well, even if you believe that the -- the expert testimony is
23 accurate as far as where the phones were in general areas,
24 that doesn't mean that the defendants were in -- had those
25 phones, because the State hasn't placed the phones in the

1 hands of the defendants. And that -- you know, the expert --
2 State's expert testified to that, admitted to that on cross.

3 So then we have Mr. Mendoza's defense. Mr. Mendoza,
4 of course, doesn't -- he's not defending, apparently, against
5 anything but the murder, because he admitted to the
6 conspiracy, the attempt home invasion, attempt burglary, you
7 know, with use deadly weapon. He admits to shooting the
8 decedent.

9 His defense is that, self-defense. Whether that
10 also involves a component of the crime was complete already,
11 and therefore the analysis for self-defense is begun separate
12 and apart, I don't know, because I haven't heard the
13 arguments. But if we -- either way, the defense is
14 self-defense.

15 So, if in fact the jury chooses to believe
16 self-defense as a -- they could still -- well, first of all,
17 that would result obviously in Laguna and Murphy having to be
18 acquitted of -- of -- under the felony murder analysis,
19 because -- you know, because they're vicariously liable. But
20 even if they disbelieved Mendoza and said, we don't -- we
21 don't believe the self-defense argument, they could still find
22 that Murphy and Laguna are not involved. So their -- I don't
23 find that their defenses are mutually antagonistic to each
24 other.

25 Then, also, you know, there's the prejudice

1 analysis, and there's some argument that -- that they are
2 prejudiced by being tried together. And that kind of also
3 takes me back to, well, what if there was a severed trial?
4 Would there be any difference? Well, no, because you know,
5 Mendoza goes to trial, he takes the stand and offers the same
6 defense. I had no intent to kill, I had -- you know, in fact,
7 the crime was complete, and I was defending myself. He
8 testifies as he does.

9 Then we go to Mr. Murphy, and Mr. Mendoza is
10 subpoenaed to testify, and he either -- he testifies, he's --
11 and he testifies the same. There's no difference in that
12 evidence. I don't see that any of the evidence would be
13 different.

14 As well, there's -- nobody's -- that Mr. Murphy and
15 Mr. Laguna haven't been deprived of any kind of trial right,
16 because their decision to not cross-examine Mendoza given what
17 their defense is, is a strategic decision, and maybe not a bad
18 one, because if the argument is, hey, you know, as Ms. McNeill
19 told the jury in opening statement, I'm not going to be doing
20 much here in this trial because there's no real evidence
21 against my client. He -- the phone isn't placed in his hand,
22 and we -- that's -- that's it, you know, I really have little
23 to say. So, if that's the argument for why there's a
24 strategic decision not to cross, then there's no deprivation
25 of trial right.

1 I just don't see that there's anything that's going
2 to change whether severance is granted or not granted. So,
3 that's kind of my thought process. So, go ahead.

4 MR. LANDIS: And I'll try to be brief.

5 THE COURT: Sure.

6 MR. LANDIS: The law I think is difficult on
7 severance, especially when you get to antagonism, mutual
8 exclusivity. I think the case law -- it's hard to say exactly
9 what you need. And at least in my opinion, antagonistic would
10 just mean there's some conflict between them, while mutual
11 exclusivity would mean you can -- jury cannot believe both
12 theories, at least logically.

13 Whether you need one or the other to get severance,
14 do you need additional showing, I think that's where the case
15 law gets a little murky, I do, and I'm talking both Nevada
16 Supreme Court and federal.

17 I disagree with the Court about a couple things.
18 The first one is, I would characterize our defense as a little
19 more general than what you said. And what I mean by that is I
20 think our defense, at least my defense, is more of he wasn't
21 there. 100 percent what you said about the accomplice
22 argument, yes, I'm going to make that, of course, but I don't
23 think that's my primary argument. I think it's a part of the
24 general argument of he wasn't there.

25 THE COURT: Right, yeah. I understood that, yeah,

1 your defense is he wasn't there and there's no evidence to
2 show --

3 MR. LANDIS: Yes.

4 THE COURT: -- otherwise because of the -- in part,
5 because of the accomplice testimony.

6 MR. LANDIS: No doubt about it, no doubt about it.
7 The other thing I disagree with the Court, if these trials
8 were severed -- and I'm even assuming that Laguna and Murphy
9 are together -- Mendoza's testimony, I don't see how it comes
10 in. I don't. If he -- he still would have pled the Fifth.
11 Whether or not his current testimony would be admissible,
12 that's a tough question.

13 But the bottom line is, at the start of this trial,
14 if Laguna and Murphy would have went first, I don't think
15 there's any way the jury would have heard from Mendoza, I
16 don't, because if the State would have called him, he would
17 have pled the Fifth. Even after his trial, if he hadn't
18 testified at his own trial and he was awaiting sentencing, I
19 still think he'd plead the Fifth at Murphy and Laguna's trial.
20 So, I do think that's what the evidence difference would be.
21 And I don't -- it's not that the --

22 THE COURT: I have a question before you move to
23 that, okay? And so, I don't think a defendant can plead the
24 Fifth at -- like you say, at sentencing, if he's taken the
25 stand and testified. So, assuming that Mr. Mendoza went first

1 at trial, I don't think he could take the stand, testify, and
2 then later at another trial, invoke his right. It's waived or
3 not. It's waived at the time of his trial.

4 So -- and the reason I think he would, I mean, is
5 his -- he's caught there, you know. He's shot, the DNA. You
6 know, there's just much more evidence, right, against him, so
7 his defense has to be what his defense lawyer is going for.
8 That has to be --

9 MR. LANDIS: No, I agree with that.

10 THE COURT: -- his defense, other than what is
11 always a defense, is just holding the State to their burden,
12 but --

13 MR. LANDIS: Right. You know, and when I filed that
14 pretrial motion, I filed it alleging they were going to go
15 with duress. I mean, I agree with you that they have to
16 choose a defense that admitted his being there and being
17 involved, and try to lessen criminal liability one way or the
18 other, self-defense, whatever it might be. I think they all
19 have legal problems, but that's neither here nor there.

20 But I think the only way you can assume Mendoza's
21 testimony would come in against Murphy and Laguna would be, A,
22 he goes to trial first; B, he testifies at that trial; and
23 then C, the State calls him at a subsequent Laguna/Murphy
24 trial, which I just don't know if you can make those
25 assumptions, I just don't, because at least when the trials

1 were set, it wasn't that his was set before ours or there was
2 any reason to think his was going to go before ours. Whether
3 or not he'd testify at his own trial, I'd tend to think so,
4 but again, I don't know.

5 But what I think the antagonism between the defenses
6 is this. It's not self-defense versus our defense of we
7 weren't there. In other words, if -- I think they could at
8 least have tried to put on this defense of self-defense
9 without his testimony. Not saying it would be successful, but
10 I think there was some evidence in the record, the crime
11 scene, to at least try.

12 If they would have done that, he didn't testify, and
13 they were arguing self-defense at the end of this trial, and
14 we were arguing we weren't there, I don't think that's a
15 problem, because I don't think you can say the core of those
16 defenses are exclusive or antagonistic, whatever you want to
17 call them.

18 But when his self-defense case rests on his
19 testimony, which it does now, and his testimony also
20 implicates our clients, I think that's where you get the
21 mutual exclusivity.

22 And the reason I say that is, if the jury's going to
23 believe self-defense, they have to believe his testimony. If
24 they believe his testimony, they're going to believe what he
25 said about our clients. Therefore, we are not in a position

1 to get a fair verdict, a reliable verdict based on that. If
2 they disbelieve his testimony because they believe our
3 defenses, then I don't see how he's going to get self-defense.
4 And that's why I think, based on the way the evidence came
5 out, there is that antagonism that requires severance.

6 And last thing I want to say is this. There's the
7 body of case law in Nevada about accomplices, which I don't
8 disagree with you whatsoever about what you said. Apart and
9 aside from that, there is a body of law about cooperating
10 co-defendants, snitches, whatever you want to call them, and
11 that just has to do with tools that are put in place to assure
12 that there's a heightened reliability lens put on them by both
13 the jury and courts at certain points. And there's also
14 instructions, and I'm confident we'll get, that direct the
15 jury to look at cooperating co-defendants' testimony
16 differently than normal co-defendants.

17 The concern I have is this. Mendoza's testimony
18 supported the cooperating co-defendants, at least in part, by
19 identifying our clients. I think the fact that that
20 testimony's out there and it's going to be used against us by
21 this jury lessens the critical lens that the Court can put on
22 that -- those jurors -- I mean, sorry, those witnesses'
23 testimony.

24 And I think that's very dangerous, because the
25 protections that the law put in place to have some skepticism

1 put on the jury to view these witnesses is now gone, and I
2 think it's gone because of his testimony, because I can no
3 longer make the argument about any fact that, you know, they
4 said that to get a benefit. I can't really say that about
5 anything that he also said --

6 THE COURT: Well, there may be not benefit, but I
7 don't know if you have evidence that would be -- that he has
8 some motive, ill will that he bears towards your client.

9 MR. LANDIS: You're talking about Mendoza?

10 THE COURT: Yeah.

11 MR. LANDIS: Sure.

12 THE COURT: To -- to implicate him when it's
13 somebody else or to protect the real person who -- you know, I
14 mean, those are -- those are still out there. And that's also
15 part of the -- the defense in the cross-examination that's
16 been put out, that there's these other amorphous people out
17 there, and potentially it was someone else, if you believe
18 that anybody but Figueroa and Mendoza were involved.

19 MR. LANDIS: And the tricky thing about that though
20 is this. Before he testified, I could say Summer Rice, Summer
21 Larsen, and Robert Figueroa both said these things that aren't
22 true because they had a motive or an incentive to lie, a.k.a.,
23 the negotiations, the benefit. Of course I can still say he
24 has a different -- completely different motive to lie if I can
25 put one together, but I'll never be able to say congruently

1 that's what their motive to lie was.

2 And I think that's a problem, because it's tough to
3 paint a picture of three people having a motive to lie when
4 the motive to lie is different. I'm not saying it's
5 impossible, but I think it's very hard, and I just think
6 that's a prejudice that we shouldn't have to deal with.

7 And I know I said I was done, but I also now believe
8 that it's my job to attack his self-defense case a little bit.
9 To the extent the State's going to do it, I also want to
10 attack it. And what I was trying to say at the bench last
11 Friday is I just hate doing that, because I do think it's in
12 the best interest of my client somewhat, not a ton, but a
13 little bit; but I think it's potentially hugely damaging to
14 him, which, I mean, that's not my problem, I get it.

15 But in providing fairness to all parties, which I do
16 have a responsibility to do, I just think he's going to be
17 left with more prejudice than me after we go through this.
18 And obviously, I have the right to do it, but I just think
19 that's the position I'm in. And now I'm done.

20 THE COURT: Ms. McNeill?

21 MR. DiGIACOMO: Thank you, Your Honor. I don't know
22 what more I could say that Mr. Landis hasn't said. I think
23 our clients are similarly situated in this argument, and so I
24 would just submit it on the arguments we've had already and
25 what Mr. Landis said.

1 I -- again, I do understand my responsibility lies
2 with Mr. Laguna and Mr. Laguna alone. I do share Mr. Landis's
3 concerns now that we have to now attack Mr. Mendoza, which is
4 not really a comfortable position to be in on this side of the
5 table. I'm sure that Mr. Wolfbrandt now sees that perhaps he
6 needs to join in the Motion to Sever, because you know, that's
7 kind of where we are.

8 But I'll submit it on the arguments we've had
9 already. I think Mr. Landis summed it up well. And just not
10 related at all, but my witness is here, so.

11 THE COURT: All right. State?

12 MR. DiGIACOMO: Yes, Judge. I don't want to go too
13 deep into the brief I wrote, but, you know, when Mr.
14 Wolfbrandt opened and said it was self-defense, there was
15 nothing about the idea of self-defense that would have allowed
16 them to file this motion.

17 It's a singular fact that occurred that they are now
18 raising this motion, which is a witness took the stand, a
19 competent witness who testified to the guilt of their client,
20 and his testimony was legally admissible, it was competent,
21 and as the United States Supreme Court says, we are not going
22 to exclude that merely because the witness happens to be a
23 co-defendant.

24 So, the suggestion that the testimony in some way in
25 and of itself -- now, I recognize that if there was -- that if

1 they can call it antagonistic, the way I read the definition
2 of mutually exclusive is that this does not qualify because
3 you can accept both.

4 But let's assume it is mutually exclusive. Let's
5 say that Mr. Mendoza got up there and said, no, Mr. Laguna
6 shot. And then Mr. Laguna got up there and said, no, Mr.
7 Mendoza shot. And Mr. Murphy got up there, and he picks
8 Robert Figueroa. That's not something that's precluded.

9 What's precluded is a denial of a specific trial
10 right, and the specific trial rights I've heard so far is, I
11 don't want to prejudice the co-defendant. Well, that's not a
12 specific trial right of yours. I don't want to -- I'm
13 entitled to be able to argue that a witness has a motive to
14 lie because he was given an inducement, and the fact that
15 there's other evidence that's out there that credits him means
16 that I've been harmed. No, that -- that's just evidence. I
17 mean, either it's credible evidence or it's not credible
18 evidence. That's just the way it is.

19 And likewise, for what Mr. Laguna said on Friday,
20 which is, man, if I cross Mr. Mendoza on, hey, you're lying
21 about going to the crime scene or going up to the first house
22 at 5:00 o'clock in the morning, I might hurt his credibility,
23 but I'm sort of going to concede the credibility of the cell
24 phone records. Well, that's just evidence also.

25 There's no specific trial right here that they're

1 precluded from getting to. If at some point there is a
2 specific trial right that somebody can identify that is
3 identified, we can address it at that point, but as of right
4 now, there is no specific trial right that's been identified.

5 MR. LANDIS: Can I just address that so you at least
6 know my position? The case law does say that -- and I think
7 the original case that said it was the Supreme Court in that
8 Zorifo, which is antagonism by itself isn't enough unless
9 there's a specific trial right. That's true about any single
10 thing a defense is ever going to raise that causes a mistrial.
11 You have to identify some trial right of the defendants that's
12 being abridged, you do, or you're not going to get a mistrial.

13 But beyond that, I think that's read, and I think
14 the State's argued it multiple times now to stand for the idea
15 that it's got to be something like that confrontation clause,
16 or it has to be something like I can't admit evidence that I
17 wanted to admit, which those can be things. But the other one
18 that I think you see in most cases of severance is just right
19 to a fair trial, and I think that's a specific trial right,
20 and I think that's what governs most severance decisions is
21 just the right to a fair trial, which is obviously a trial
22 right the defense has. That's just all I want to say.

23 THE COURT: While I certainly agree that right to a
24 fair trial is important, but so how would -- that's where I
25 come back to my -- what I said first, which was, assuming that

1 the trials were severed, how -- there's -- there's, again, no
2 change. The evidence still comes in in the same way.

3 And so, I guess that's -- that's the problem. I
4 don't -- I don't see that they're -- your clients are denied a
5 right to a fair trial. Their defenses are still -- are still
6 the same, that you can't consider accomplice testimony and
7 there's not sufficient evidence against my client. And
8 whatever -- first, you got to get past that hurdle.

9 MR. LANDIS: Right.

10 THE COURT: And then, I mean, so I know, you know,
11 as a competent trial lawyer that you are, that, you know,
12 you'll not leave it with that. You may additionally perhaps
13 also argue, okay, and if you think that there is, well then
14 here's why these people aren't believable.

15 MR. LANDIS: Right, right. But I mean, I think I do
16 -- the difference I think now is that I have to argue Mendoza
17 is a liar, and I don't think I had to do that until he
18 testified.

19 And what I was getting at, I mean, if I knew he was
20 going to testify -- and there was no way for me to know this
21 -- and implicate my client, I would have probably been arguing
22 against self-defense from the start of the case through my
23 cross-examinations, but I wasn't in a position to do that. I
24 wasn't in a position to do that because I didn't think there
25 was a reason to until his self-defense claim included an

1 implication of my client.

2 I'm not saying that that means we should get a new
3 trial, but that's why I'm saying now I feel like we need to
4 revisit some of the State's case, because I want to disprove
5 self-defense. And the sole reason I want to do that is to
6 just discredit his testimony. And that's the second
7 prosecutor thing, and I think that's the antagonism that's
8 going to be a problem. I do.

9 THE COURT: Okay.

10 MR. LANDIS: And the last thing I'll say is the idea
11 that the jury can accept self-defense in this case now and
12 accept our defense, I -- is it possible? Sure. Is it
13 practical? I don't think so, just because they would have to
14 reject his testimony, yet accept a legal argument as his
15 attorney makes.

16 And last thing is if we end up in a situation where
17 they're not even able to get self-defense instructions because
18 of the felony murder law and the original aggressor law,
19 that's I think some of the frustration I was voicing at the
20 end of Friday that I apologized to Mr. Wolfbrandt for.

21 THE COURT: Well, I understand what -- what the law
22 is concerning instructions about theories of defense.
23 However, recently, the appeals court stated that even though
24 there was like really no evidence of self-defense, and even
25 though that even -- that wasn't the defense that was asserted

1 at the trial, when a defendant asked for self-defense
2 instructions, I should have given them. It was harmless
3 error, but I should have given them, so --

4 MR. LANDIS: Yeah, I know, I know. The right to a
5 theory of defense case law is defense favorable.

6 THE COURT: So --

7 MR. LANDIS: But I mean, the State has an argument.
8 They already voiced that they're going to make one --

9 THE COURT: Of course.

10 MR. LANDIS: -- to keep it out. And I think the
11 difference between this case and your average self-defense
12 case will be the felony murder rule and the original aggressor
13 law gives this Court a little bit more of a gatekeeper
14 function than it has in your normal self-defense claim. At
15 least that's my belief.

16 THE COURT: All right. So, do you want to say
17 anything, because --

18 MR. DiGIACOMO: No, I mean --

19 THE COURT: -- at all further?

20 MR. DiGIACOMO: -- I still have yet to figure out
21 what makes this not fair, because if we were to sever at this
22 point, I'm sure there will be some arguments from this side
23 that it wouldn't be admissible. But let's say Mr. Mendoza did
24 refuse. I have preserved prior testimony at this point.
25 Ergo, in a new trial, if we were to have a new trial, I'd have

1 the testimony of Mr. Mendoza. So, I don't perceive what the
2 problem here is in the least bit, and thus, we should proceed,
3 because Mr. Michalski, or however you say his name, is
4 outside.

5 THE COURT: Okay, I agree. And so, the Motion for
6 Severance is denied. Let's go ahead and call your witness.

7 MR. LANDIS: I apologize for this. I know it's
8 frustrating to everybody. I believe she's going to call this
9 witness, who I assume can't be too long.

10 MS. McNEILL: Hm-mm.

11 MR. LANDIS: Then I -- right, no one else here?

12 MS. McNEILL: No. That's right.

13 MR. LANDIS: I have a witness at 3:00, and I'm sorry
14 we didn't put together our notes a little bit better about
15 that, but if there's a little break, I'll take the
16 responsibility. I believe my 3:00 witness will fill out the
17 rest of the day, but --

18 THE COURT: All right. Well, we'll be really
19 methodical and slow. All right? Okay. Call the witness and
20 -- well, actually, get the jury in first, and then we'll call
21 the witness in front of the jury.

22 MR. LANDIS: Are we going to keep the same order
23 where defense witness, State cross, then our crosses?

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

25 MS. McNEILL: I think so. I think that's how it

1 works.

2 THE COURT: Yeah, um-hum. That's what we did
3 before.

4 (Jury reconvened at 1:44 p.m.)

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

7 THE COURT: Thank you. Please be seated. And the
8 record will reflect the presence of all 12 members of the
9 jury, as well as the three alternates. Good afternoon, ladies
10 and gentlemen. Did you have a good weekend?

11 MEMBERS OF THE JURY PANEL: Yes.

12 THE COURT: Good. All right. So, Ms. McNeill, I
13 believe you have a witness to call?

14 MS. McNEILL: I do, Your Honor. At this time, I
15 would call Dan Michalski.

16 THE MARSHAL: Sir, if you could take the witness
17 stand, remain standing, face the court clerk, raise your right
18 hand to be sworn in. Right there.

19 DAN MICHALSKI, DEFENDANT LAGUNA'S WITNESS, SWORN

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

22 THE WITNESS: My name is Dan Michalski.
23 M-i-c-h-a-l-s-k-i.

24 THE COURT: You may proceed.

25 MR. DiGIACOMO: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. MCNEILL:

3 Q So, the C-H is sort of silent? Is that --

4 A Correct, correct.

5 Q Okay. We've all been pronouncing it wrong in your
6 absence, just to let you know. I want to ask you some
7 questions about September 21st, 2014.

8 A Okay.

9 Q First, let me get a little background information.
10 Did you at that time period live -- what part of town did you
11 live in?

12 A In Peccole Ranch, which is in the neighborhood of
13 Hualapai, and Sahara, and Charleston.

14 Q Okay.

15 A That area.

16 Q All right. And then, do you remember September
17 21st, 2014?

18 A I do.

19 Q Okay. Why do you remember that day?

20 A I'm presuming that that's the day that I saw that
21 there were police helicopters in the neighborhood, circling
22 over, looking for somebody, and I saw presumably who the
23 police helicopters were looking for and I called 911.

24 Q Okay, so you indicated you called 911. Why did you
25 call 911?

1 A Because it was clear -- it was clear what was going
2 on. I was walking my dogs at the time, and there was a police
3 helicopter circling overhead. So, I went a slightly different
4 direction when I saw a bunch of officers on the path that we
5 were going, and they were searching for something in some
6 bushes with flashlights and stuff. And so I went -- I saw --
7 I saw some people fleeing from the helicopter. It was clear
8 that, as the helicopter light passed over them, we were right
9 outside the circle that was circling over --

10 Q Okay, I'm going to stop you there.

11 A Okay.

12 Q We have to kind of do question/answer, so --

13 A Okay, sure, sure.

14 Q -- let me get you there. So, you were out walking
15 your dogs. You indicated that you saw some police officers
16 looking in some bushes?

17 A Right.

18 Q Okay. And was that at the same time that you saw
19 the police helicopters?

20 A Yes, the helicopter -- the helicopter was there the
21 whole time.

22 Q Okay.

23 A I knew that right from the start.

24 Q And in the area where you were walking your dogs,
25 where was that?

1 A It's called the Paseo in the neighborhood, which is
2 basically -- it's a grassy path area that kind of meanders
3 between some of the houses and the neighborhood, and so it's
4 in the same neighborhood area.

5 Q Okay.

6 MS. McNEILL: Do you mind, Mr. DiGiacomo, if we
7 could put up State's 6? Maybe it would help us if he could
8 kind of show us.

9 MR. DiGIACOMO: 6, or a little bit farther?

10 BY MS. McNEILL:

11 Q And on the screen in front of you --

12 A Um-hum.

13 Q -- do you see that area?

14 A Yes.

15 MS. McNEILL: 6 may not be --

16 MR. DiGIACOMO: Wait a minute, Number 8.

17 MS. LEXIS: That's 8.

18 MR. DiGIACOMO: Want to go to 8?

19 MS. McNEILL: Yeah, we'll do 8. Thanks.

20 BY MS. McNEILL:

21 Q We're going to get you a better view. Okay.

22 A Okay.

23 Q If you want to look at that, do you see the area
24 where you were walking?

25 A When -- when I called 911? Yes.

1 Q Yeah.

2 A That's definitely the area where I was walking.

3 Q If you touch on that screen, it will actually make a
4 mark if you want to show us where you were.

5 A Okay. So, at different times, I was -- I was --
6 where is Homestretch here? So, is this Homestretch? So -- so
7 this is the -- this is the paseo I was on when -- and this is
8 -- this is the general area where I was when I called 911.

9 Q Okay. And you -- so you see these police
10 helicopters, you see some police looking in bushes, and so
11 were you thinking that something must have been going on at
12 that --

13 A Yes, indeed. I was kind of wondering what -- I
14 wonder what they're -- what the story is, what they're looking
15 for, so.

16 Q Did that maybe make you a little more aware of your
17 surroundings at that point?

18 A Absolutely.

19 Q Okay. And then you said you saw some people that
20 you thought might have been fleeing. What did you see?

21 A What I saw right around the area where that top
22 arrow is there, where there was the -- the police helicopter
23 was circling overhead, and the light was circling around, but
24 it was inside like the perimeter of where that top -- that top
25 arrow is.

1 Q Okay.

2 A So, that was where the light was. And then as it
3 passed and went to the other side, that's when I saw two
4 people running across the Paseo. And it was not -- it was a
5 very unusual thing, and it definitely seemed like they were
6 trying to escape the beam of the lights. And that's what I
7 saw.

8 Q Okay. So, you -- when you say the Paseo, can you
9 show us on the map what you mean by that?

10 A Yeah. Can I --

11 Q Yeah, you can draw on there.

12 A So, see this little green part here? That's the
13 Paseo, and it goes kind of throughout the -- throughout the
14 neighborhood, there are these paths, and it's a walking path,
15 and there are picnic tables, and it's a disc golf course,
16 things like that, and you see families, and people walking
17 their dogs, and things like that.

18 Q But these two people just stood out to you as being
19 a little bit different than someone going for a walk?

20 A Without a doubt. I mean, it was -- it was -- it was
21 as the light left the area that we were in, it was one person
22 then running across the Paseo, and then calling to somebody
23 behind him. And then I saw a second person, and they were
24 headed in -- they were headed towards like kind of -- like
25 they came out from like the neighborhood area like where the

1 houses were and were going across the Paseo.

2 Q Okay.

3 A And there's places --

4 Q So --

5 A Yeah.

6 Q It seemed like they were trying to get out of the
7 neighborhood, is what you're saying?

8 A I would -- I would think so, or, you know, there was
9 construction going on there at the Paseo at the time, and so
10 if you were looking to hide from a police helicopter, it was a
11 great place to go --

12 Q Okay.

13 A -- because there were parts that were blocked off
14 that people weren't there and that you could be out of vision
15 of a helicopter.

16 Q Okay. Let me ask you, do you remember what time you
17 called 911?

18 A I don't remember the exact time, but it was -- it
19 was near dusk, and I mean, I'm sure I have the records of it.
20 It was evening.

21 Q There is. There's a transcript of your call. Would
22 looking at that refresh your recollection as to the time?

23 A Sure.

24 Q Okay.

25 MS. McNEILL: If I may approach the witness, Your

1 Honor?

2 THE COURT: Yes.

3 BY MS. McNEILL:

4 Q And just look at this area --

5 A Um-hum.

6 Q -- and read it to yourself. Does that refresh your
7 recollection?

8 A Absolutely.

9 Q Okay. So, what time was it that you call 911?

10 A So, that is about 9:00 -- between 9:00 and 10:00
11 o'clock --

12 Q Okay.

13 A -- which is the standard time I'm walking my dogs.

14 Q And that would have been a few minutes after you saw
15 the people, correct?

16 A Right, right.

17 Q I want to ask you, can you describe these people
18 that you saw?

19 A So, I wasn't able to get a close look, like to see
20 them as closely as you and I are seeing each other right now,
21 but they definitely seemed young. And the -- they were -- I
22 couldn't tell you the -- what they were wearing, but it was
23 like a -- I think a hoodie, but it might not have been a
24 hoodie proper. You know, it could have been a sweatshirt of
25 some sort.

1 And they were -- they were -- I would have guessed
2 -- I would have guessed mid-20s, as young as maybe the older
3 teens, and the oldest stretch would be like the upper 20s.
4 And thin was the guy in front, and I got a less good look at
5 the guy that was trailing behind him. I feel like he had
6 longer hair, but at that point, I had kind of -- I had turned
7 around and gone a different direction. And -- but yeah, that
8 was the -- that's my best description.

9 Q Okay. So, the clothing, was it dark or was it
10 light-colored clothing; do you remember?

11 A It was -- it was dark -- dark-colored clothing.

12 Q Okay.

13 A The lightest it could be would have been gray.

14 Q Okay. And you indicated that they were sort of
15 young-looking and thin. Let me ask you, how tall are you?

16 A I'm six-feet-tall.

17 Q Did they seem like they were about your height,
18 taller, shorter?

19 A I would have guessed -- I would have guessed
20 shorter. I would have guessed maybe 5'8, 5'9, but definitely
21 shorter than I was. But not particularly short people or
22 anything like that. It didn't strike me as, wow, there's a
23 short guy running.

24 Q And without -- I'm not asking you what they said,
25 but did you hear them -- one of them say anything to the other

1 one?

2 A I did. I heard -- I was pretty sure I heard --

3 Q Well, don't tell us what they said. I'm going to
4 ask you another question.

5 A Okay.

6 Q Based on what you heard, were you able to determine
7 what language they were speaking?

8 A I was pretty sure I was hearing Spanish.

9 MS. McNEILL: Okay. All right. I have no more
10 questions, Your Honor.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MS. LEXIS:

14 Q Good afternoon, sir.

15 A Hi.

16 Q Sir, I just want to double-check the time. When Ms.
17 McNeill showed you the transcript of your 911 call, it did say
18 that you placed the call at 9:53.

19 A Right.

20 Q Would you agree?

21 A Correct.

22 Q That's 9:53 P.M.?

23 A Correct.

24 Q Okay. And do you recall you just gave Ms. McNeill
25 and the ladies and gentlemen of the jury a description --

1 A Um-hum.

2 Q -- as far as you could remember? Could you tell the
3 race of the individuals?

4 A I would -- if I had -- if I had to guess, and I
5 think -- I think this is what I reported to -- to the 911
6 operator, that I believed Hispanic. But -- and I -- the --
7 I'm the kind of guy who's hesitant to make that -- make that
8 judgment for sure. But like I could tell that they weren't
9 white guys, and they weren't black guys. Like, that much I
10 could tell was clear.

11 Q Okay. Do you remember as you sit here today -- I
12 know it's been over two years, but --

13 A Um-hum.

14 Q -- do you remember being specifically asked by the
15 911 dispatcher as to the race of the individuals that you saw?

16 A I'm pretty sure I remember being asked for a
17 description. I think they asked white guy, black guy. I
18 think they asked that kind of question. And if it wasn't the
19 911 dispatcher, then it was the -- I spoke to a detective the
20 next day, so I definitely --

21 Q So, do you recall being specifically asked by the
22 911 dispatcher? Because I can show you your transcripts if
23 that would refresh your memory.

24 A Sure. I mean -- I mean, I definitely believe the --
25 will believe what the transcript says.

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

2 THE COURT: You may.

3 MS. LEXIS: Thank you.

4 BY MS. LEXIS:

5 Q Sir, I'm going to show you page 2.

6 A Um-hum.

7 Q If you could just read silently and look up when
8 you're done.

9 A (Witness reading transcript). Um-hum. Um-hum.

10 Q Okay, so do you -- have you read over the part where
11 you were asked by the 911 dispatcher if you could ascertain
12 the race of the individuals you saw running?

13 A Yeah, I see that here.

14 Q And did looking at page 2 of your transcript -- or
15 the transcript of your call refresh your memory?

16 A It does, but I don't see my answer there to the
17 question.

18 MS. LEXIS: For the record, I'm showing him page 2
19 again.

20 THE WITNESS: Okay.

21 MS. LEXIS: Okay.

22 BY MS. LEXIS:

23 Q So, do you recall the answer -- now that you've seen
24 the transcript, do you recall what you told the dispatcher
25 when they asked you if you could determine race?

1 A Yes.

2 Q What did you say?

3 A I gave a description of -- of what they were
4 wearing.

5 Q Okay. But concerning the actual question of were
6 they white, black, Asian, or Hispanic, do you recall your
7 answer being, "I couldn't see it, it was in the shadows"? Do
8 you remember that?

9 A Yes.

10 Q Okay. And then you started describing clothing, as
11 you just testified; is that right?

12 A Um-hum.

13 Q Is that a yes?

14 A Yes.

15 Q Okay. And you described them as wearing dark
16 clothing; is that right?

17 A Correct.

18 Q Okay. And also, one of them having a flannel shirt
19 and long pants?

20 A That sounds right.

21 Q Okay. So, we're going to turn to Exhibit No. 8,
22 which is up on your screen. I just want to make sure I
23 understand where you are. So, when you -- you were walking
24 here in the Paseo; is that right?

25 A Correct.

1 Q Okay. And in your 911 call, do you remember
2 indicating that these individuals were running towards the
3 Home Depot or towards a street called Apple?

4 A Yes, I definitely remember indicating that.

5 Q Okay. So, if the Home Depot is this -- what I'm
6 circling right here, which way were they running?

7 A So, they were running east. However, I did -- I
8 went back the next day to -- at the request of the detective
9 that I spoke with, and I walked it again to try to pinpoint
10 the exact spot, and I realized it actually was a little beyond
11 the Home Depot.

12 So, there's an entrance right there, but there's
13 also one right here, and there's one kind of right there. And
14 it was over here, actually, was where I -- was where I saw
15 them. The Home Depot is that right there, and they were
16 headed in that direction there.

17 Q Okay. And would you agree with me, since you walk
18 this Paseo walkway, that this line going north and south,
19 that's where Apple is located?

20 A Correct, that is Apple. Yes.

21 Q Okay. So, these individuals were a little bit
22 before the Home Depot in this neighborhood, going east towards
23 where we've labeled Apple?

24 A Right.

25 Q Okay.

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

2 THE COURT: Mr. Landis?

3 CROSS-EXAMINATION

4 BY MR. LANDIS:

5 Q It's typical for you to walk this Paseo, correct?

6 A Yes.

7 Q And for the record, the Paseo we're talking about on
8 State's Exhibit 8, towards the top or north end of the State's
9 Exhibit 8, just south of Charleston Boulevard, it runs east to
10 west, and it ends on the west side by a football field; is
11 that fair?

12 A Yes, that part of the Paseo.

13 Q When you usually walk it, do you walk it east to
14 west, or west to east?

15 A Different directions on different days. It kind of
16 depended where the dogs pulled me. You know, that day, I was
17 headed to -- headed down Homestretch, and that's where I saw
18 the officers, so we kind of went around the other way. And
19 but there's just -- there's -- half the time, it's headed
20 east; half the time, it's headed west on there.

21 Q Fair answer. When you got to Homestretch, you see
22 the officers. At that point in time, do you notice the police
23 helicopters?

24 A Absolutely.

25 Q And I'm sure that's not the first time you've seen

1 them. What made you know they were police helicopters?

2 A Because it was -- it was -- first of all, I was in
3 the neighborhood, so there was a volume to it that I could
4 hear. And then I could see the spotlight circling around, and
5 I'm familiar enough to know that, ah, that is a helicopter
6 looking for somebody.

7 Q Most helicopters around this Valley at least don't
8 shine bright lights down on people, right?

9 A Correct, correct.

10 Q That's a fair way to determine. Let me ask you,
11 when you get to Homestretch, before you get to the Paseo and
12 you see these police helicopters, do they seem to be focused
13 on any particular area that you can tell?

14 A Yes. They are -- they are -- at this point, they
15 were -- is this Homestretch again? Yeah. They were basically
16 circling around right around there. You know, that's a very
17 rough estimate, but that was where the beam was.

18 Q We could say you drew a circle more or less the
19 center of the map, right?

20 A Correct.

21 Q From there then, you start heading north towards
22 that Paseo, right, with --

23 A Yes. I -- if this is Homestretch, like, they were
24 -- they were -- the officers were around here looking in the
25 bushes. And so I was walking -- walking towards that, and

1 then I turned around and went back this way, went over here,
2 and then entered on the Paseo. There's a part where you enter
3 on the Paseo, and then that's where I was -- I was coming back
4 around. Like I normally would have gone over here, and then I
5 figured I would -- let's go see what's going on over this
6 direction here, so like in that --

7 Q So, upon seeing the -- and I'm just saying this
8 because the record is just words, so --

9 A I understand.

10 Q Your description's great, but you left Homestretch
11 going east? I mean, when you see the police on Homestretch,
12 you head east, then you head north to the Paseo?

13 A Yes.

14 Q Once you get to the Paseo, the helicopters you can
15 tell are still in the area?

16 A Absolutely.

17 Q Does it appear that they've shifted their focus to
18 any different area around you?

19 A Not -- not -- not dramatically. Like, it definitely
20 felt that maybe that they were -- it felt like they hadn't
21 found whoever -- whatever they were looking for. Like, it was
22 -- it looked like a pretty systematic scan that was going on
23 of the neighborhood, you know?

24 So, they were circling around, and then a little bit
25 of a shift. And I don't remember if it was a shift that was a

1 little bit north or a little bit south, but it just seemed to
2 be like, ah, they're systematically kind of going through the
3 neighborhood.

4 Q And when you use the neighborhood there, could you
5 just generally define what you meant as the area you think
6 they were looking through, as far as you could tell?

7 A Peccole Ranch is a -- is this whole section pretty
8 much of what's on this screen, a little bit -- like within
9 Charleston, Hualapai, Sahara, Fort Apache. That is the --
10 that's the neighborhood I'm referring to.

11 Q So, most of State's Exhibit 8 -- and again, that's
12 for the record -- would be the area you could tell they were
13 looking at to the best of your ability?

14 A Right. Correct.

15 Q And when you got to the Paseo, were there times you
16 noticed the light shining on the Paseo?

17 A Not on that area of the Paseo, but so the Paseo has
18 other little patches. Like, so here's one over here, and that
19 -- I definitely noticed that that was an area that they had
20 some focus on at one point, but they were not focusing on this
21 area up over here where I was. And they seemed to be focused
22 more on the neighborhood, and the houses, and all that sort of
23 stuff.

24 Q From the time your feet first hit the grass of the
25 Paseo until you see these two gentlemen, roughly how long

1 would you estimate that was?

2 A Five minutes, seven minutes. There's a path --
3 there's a path where it starts, and it's -- or where I got
4 onto it, because again, it's kind of circular. But then I got
5 onto it, and I was definitely taking notice of the people that
6 were on it and kind of what was going on, and yeah, it was
7 about -- I'll say five to seven minutes later.

8 Q Would you agree your awareness was maybe a little
9 heightened because of the police activity in the area?

10 A Sure, absolutely.

11 Q And these two individuals when you saw them -- that
12 Paseo, I would assume, is it better lit than another dark area
13 of town that doesn't have overhead lights?

14 A Yeah, there are lights on the path, and there's
15 actually -- the light posts are numbered for emergency
16 situations so you can help direct people. And yeah, so but
17 it's not a -- it's not a brightly lit area.

18 Q Were you close enough to see if these men were -- or
19 women were carrying anything in terms of bags?

20 A No, I couldn't see. I couldn't say if they were
21 carrying anything.

22 Q And to the best of your memory, after you see these
23 individuals, you used a cellular phone that was on you to call
24 911?

25 A Correct.

1 Q And how long was that time period from when you
2 first see them until you're on the phone?

3 A Probably less than a minute. You know, it's hard to
4 assess the time when, you know, sort of the adrenaline starts
5 flowing. But I had -- I turned around and I was kind of
6 running, not on the -- I mean, really, like I was legitimately
7 scared at that point, thinking like, ah, these guys are
8 running away from them, and you know, and a couple dogs, and
9 my dogs do bark at people and stuff like that. Like, I didn't
10 want them or myself to end up getting shot if someone is
11 running for their life.

12 And so I ducked into -- there's a -- there's these
13 little passageways that like take you from the neighborhood
14 part to the Paseo, and so I ducked into one on a street, and
15 then that's where I call the -- I called 911.

16 Q How much longer until you're back home?

17 A Probably another half-an-hour to 45 minutes. I
18 mean, I did complete a walk, and I made the call. I -- you
19 guys have the transcript of it. The call probably lasted five
20 minutes or so, and probably another half-hour before I got
21 home.

22 Q Last question. As you're about to walk in your
23 front door at the conclusion of you walk, are the helicopters
24 still in the area, to the best of your memory?

25 A I think they were, yeah.

1 MR. LANDIS: Thank you, sir. No further questions.

2 MR. WOLFBRANDT: Your Honor, I have no questions.

3 MS. McNEILL: I have no redirect, Your Honor.

4 THE COURT: All right.

5 MS. LEXIS: No recross.

6 THE COURT: And nothing -- okay. Questions from the
7 jury? Seeing none, may this witness be excused?

8 MS. McNEILL: Yes, Your Honor.

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

10 THE WITNESS: Thank you.

11 THE MARSHAL: Watch your step, sir. There you go.

12 MR. LANDIS: We can approach. I think you know what
13 I'm going to say.

14 THE COURT: Okay. I don't -- I was going to ask Ms.
15 McNeill if she had any further witnesses, so let's do that
16 first. Ms. McNeill, do you have any further witnesses?

17 MS. McNEILL: I do not, Your Honor. I would rest at
18 this point.

19 THE COURT: You're -- are you resting?

20 MS. McNEILL: Yes.

21 THE COURT: Did you -- okay. All right, so you're
22 resting. And Mr. Landis, my understanding is that you had
23 scheduled -- thinking that this witness would take longer, you
24 scheduled your witness to be here at 3:00; is that correct?

25 MR. LANDIS: Yes.

1 THE COURT: And this isn't somebody that could be
2 called and gotten here any earlier?

3 MR. LANDIS: It's a work assignment and it's -- the
4 witness is Ashley Hall, and it's a work she was scared she'd
5 lose if she left. And I understand you can't fire somebody
6 for being a witness, but that's why she wasn't comfortable
7 getting out of work early. So, as soon as she was done with
8 work, she was comfortable she'd be here at 3:00. I can have
9 my investigator try to see if she'll come as quick as she can.

10 THE COURT: Okay. So, I'm assuming you may know how
11 far she's traveling from. So, even assuming that you're able
12 to get a hold of her, is it going to make a difference? It's
13 ten after 2:00 right now.

14 MR. LANDIS: And I'll be honest, I did not inquire
15 as to exactly where she works, so I can't answer that question
16 exactly.

17 THE COURT: Well, we could take a ten-minute recess
18 right now, and then you can find out if --

19 MR. LANDIS: Certainly.

20 THE COURT: -- if there's -- can be any change to
21 get her here sooner. And at the end of the ten minutes, we'll
22 know, and I can let the jury know what's going on. All right.
23 So, we're going to take a ten-minute recess at this time.

24 And during this recess, it is your duty not to
25 converse among yourselves or with anyone else on any subject

1 connected with the trial, or to read, watch, or listen to any
2 report of or commentary on the trial by any person connected
3 with the trial, or by any medium of information, including,
4 without limitation, newspaper, television, radio, or internet,
5 and you are not to form or express an opinion on any subject
6 connected with this case until it's finally submitted to you.
7 We'll be in recess for ten minutes.

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

9 (Jury recessed at 2:09 p.m.)

10 THE COURT: And the record will reflect that the
11 jury has departed the courtroom.

12 MR. LANDIS: What I wasn't saying on the record
13 because I didn't think it was proper, she just got out of
14 prison, as we've heard a couple times, right before our trial
15 started. She got that job being on parole, which I'm sure was
16 hard, and that's why I was so hesitant to screw with her work
17 schedule.

18 MS. McNEILL: And in fairness, I did have another
19 witness. Mr. Landis thought I was going to have another
20 witness who's decided she is refusing to testify, and it
21 doesn't help my case enough to force her to do it. So, in
22 fairness to Mr. Landis, that was part of the problem too is he
23 wasn't expecting me to be done yet, so.

24 MR. DiGIACOMO: Just for the record and so it's
25 clear, that witness that Ms. McNeill is talking about had a

1 privilege not to testify.

2 MS. McNEILL: That is correct. She did. That --
3 so.

4 THE COURT: All right. So, do you want to call --
5 even call your investigator? I mean, you can. And so we'll
6 be in recess and off the record, and then we'll see what you
7 have to say, and decide from there. All right, be right back.

8 (Court recessed at 2:10 P.M. until 3:04 P.M.)

9 (Outside the presence of the jurors)

10 THE COURT: Marshal, you want to see, is -- do we
11 have everybody?

12 THE MARSHAL: We are all here. The jury's ready to
13 go.

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

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

16 (Jury reconvened at 3:05 p.m.)

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

19 THE COURT: Thank you. Please be seated. The
20 record will reflect the presence of all 12 members of the
21 jury, as well as the three alternates. All three defendants
22 are present with their respective counsel, the chief deputy
23 district attorneys prosecuting the case are present, as are
24 all officers of the court. Mr. Landis, your witness?

25 MR. LANDIS: On behalf of Mr. Murphy, we would call

1 Ashley Hall.

2 THE COURT: Thank you.

3 THE MARSHAL: Please watch your step. Take the
4 witness stand, remain standing, face the court clerk right
5 over there, raise your right hand to be sworn in.

6 ASHLEY HALL, DEFENDANT MURPHY'S WITNESS, SWORN

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

9 THE WITNESS: Ashley Hall. A-s-h-l-e-y, H-a-l-l.

10 THE CLERK: Thank you.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. LANDIS:

14 Q Good afternoon, Ms. Hall. Have you and I ever met?

15 A No.

16 Q That said though, has there been a time where you
17 were called to testify about this case previous to today?

18 A I've been spoken to numerous times about coming
19 here.

20 Q Aside from -- not for trial, but was there a time
21 you actually came to this courthouse and testified a couple
22 years ago?

23 A Yes.

24 Q There wasn't a jury, right?

25 A There was a -- it was downstairs, the Grand Jury.

1 Q And you remember that, right?

2 A Yes.

3 Q Who asked you to come on that date and testify? Was
4 it the State of Nevada District Attorneys, do you remember?

5 A I believe so, yes.

6 Q Do you know an individual who, at least when you
7 initially knew her, was named Summer Rice?

8 A Correct. Yes.

9 Q How long have you known Summer?

10 A Since we were five-years-old. So, 20-plus years.

11 Q Should I take from that that you guys grew up in the
12 same area?

13 A We did.

14 Q And what area was that?

15 A Vegas. We grew up in Vegas, the northwest. Craig
16 and Rancho was the neighborhood.

17 Q And we've heard a lot of testimony, and I just
18 wanted to establish if it was the same general area we've been
19 talking about through this trial. I want to turn your
20 attention a little bit then to September of 2014. You
21 eventually learned of a crime, a murder, or homicide that
22 happened at Joseph Larsen's house?

23 A Yes.

24 Q And did you know Joseph Larsen at that time?

25 A Yes.

1 Q And how did you know Joseph?

2 A Same neighborhood. We all grew up together. I've
3 known him many years as well.

4 Q While we're on the topic, do you know David Murphy?

5 A I know of him.

6 Q And is it from that same growing up?

7 A Yes.

8 Q How about Joseph Laguna? Do you know him
9 personally?

10 A No.

11 Q How about Jorge or Jorge Mendoza?

12 A No.

13 Q In September of 2014, in the weeks preceding that
14 homicide at Joey Larsen's house, did you see Summer off and
15 on?

16 A Yes.

17 Q And was she needing rides at certain points during
18 that time period?

19 A Yes.

20 Q And did that cause you guys to spend time together
21 because you would give her rides?

22 A Correct.

23 Q Did there come a time when there was a phone -- or a
24 conversation between you two in your car or a conversation she
25 had that you overheard that gave you some concern about what

1 she was planning to do?

2 A Yes.

3 Q And could you describe exactly how that came about?

4 A I had picked her up, because she was in a panic to
5 get out of the house that she was at, because somebody was
6 coming after her because she owed them money. She currently
7 didn't have her car because she had let someone borrow it and
8 they never brought it back, so I picked her up. She was using
9 my phone, frantically calling, trying to borrow money to pay
10 this person off.

11 Q Let me stop you. Why was she using your phone?

12 A She didn't have a phone.

13 Q Go on.

14 A So, she was frantically calling people, trying to
15 borrow money to pay off whoever it was that was after her.
16 And her -- one of her comments were, I know what I'll do, I'll
17 tell him I'll pay him on Sunday because I'm going to rob Joey.

18 Q And are you certain you knew who she was talking to
19 at that point in time, or no?

20 A Do I know who she was talking to?

21 Q Correct.

22 A No.

23 Q Did you let her know that you heard that after --

24 A Yes, absolutely.

25 Q Did you guys have a conversation about it?

1 A I told her absolutely not, she was not going to do
2 that; he didn't deserve that.

3 Q And did that conversation occur immediately after
4 the phone call when you guys were still in the car?

5 A Correct.

6 Q And did she express to you -- after you said that to
7 her, what did she express to you?

8 A She just kind of blew it off and continued on the
9 phone trying to get other means of money. She really kind of
10 ignored my comment towards her.

11 Q Eventually, she gets out of your car after that
12 conversation?

13 A A couple hours later, I eventually separated --
14 separate ways.

15 Q Did you have any reason based on the conversations
16 you had with her after that phone call to conclude that you
17 misunderstood what she said?

18 A No.

19 Q And did she try to explain to you in any way that
20 she was talking about something different than what you
21 thought you heard?

22 A No.

23 Q She gets out of your car eventually, and based on
24 what you heard her say, do you do some things?

25 A At that point in time, I was going back to my kids,

1 so at that current moment, no, I had not. The following day,
2 yes, I proceeded to get in touch -- because I believe it was a
3 Friday, so that Saturday I believe is when I was trying to get
4 in touch with Joey to inform him.

5 Q And to put this into some kind of time context, do
6 you believe we're talking about the Friday and Saturday
7 immediately before this Sunday homicide?

8 A I believe so, I could be wrong though. It was a
9 while ago, so.

10 Q That's okay, it's understandable. But that -- the
11 next day after the conversation in the car, which you believed
12 was a Saturday, you set out to try to notify Joseph?

13 A Yes.

14 Q And were you successful in getting a hold of him?

15 A I didn't personally speak to him. I did send him
16 via text message, I did call and leave him a voice mail, and
17 then a friend of mine was by his father's house, so I had her
18 go over there with the telephone and I got in touch with his
19 father.

20 Q And you knew where Joseph's father lived because it
21 was the same house he's lived in --

22 A Lived in, yes.

23 Q And the friend that you're talking about, who was
24 that?

25 A Her name is Tracy.

1 Q By the time Saturday ended, did you believe that
2 word had made its way back to Joseph?

3 A Yes, absolutely.

4 Q That Saturday, did you have communications with
5 Summer?

6 A I did. I believe it was just via text message. I
7 didn't see her, but I did talk to her.

8 Q Was it a long -- was it conversations about the same
9 thing, or just different issues?

10 A About the same thing. I just asked her if she had
11 resolved her issue, and please don't do anything stupid,
12 please remember I was going to let Joey know, and he didn't
13 deserve that, please don't do it.

14 Q This might be a silly question, but you believed
15 what Summer was saying was true enough to take the steps you
16 did to notify Joseph, right?

17 A Absolutely.

18 Q And at the time that you made those decisions, were
19 you aware that Summer had broken into that house before?

20 A Yes.

21 Q And did that give you some of your reason for
22 concern when she said that?

23 A Yes.

24 MR. LANDIS: Court's brief indulgence. I have no
25 further questions.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. DiGIACOMO:

4 Q Good afternoon, ma'am. How are you?

5 A I'm okay. How are you?

6 Q Good. I want to sort of back up so I can get the
7 timeline straight with you. First of all, have we ever met,
8 you and I?

9 A I don't believe so, no.

10 Q Okay. There was a female prosecutor, not Ms. Lexis,
11 asking you questions at the Grand Jury?

12 A Downstairs, yes.

13 Q Okay.

14 A I do remember.

15 Q But before you ever came to the Grand Jury, the
16 night that the homicide happened, or I guess very early the
17 next morning, that Monday morning, you have a conversation
18 with some homicide detectives; do you remember that?

19 A I did, yes.

20 Q And did you know that they were recording that
21 conversation?

22 A I believe so, yes.

23 Q Okay. So, the first time you talked to the police
24 would be -- if I told you the transcript said September 22nd
25 of 2014 at 4:40 in the morning, does that seem about right to

1 you?

2 A I'm not aware of the exact date because it was very
3 long ago, but yes, it was early in the morning like that.

4 Q And at that time, you provide them the information
5 that you have, correct?

6 A Correct.

7 Q Now, you used to live on Bamboo Court, right?

8 A Correct.

9 Q That's where you grew up is over on Bamboo Court?

10 A Technically, I grew up on Delphinium. But my mother
11 has lived on Delphinium for 17 years, and then she moved to
12 Bamboo Court for the remaining -- it's all in the same
13 neighborhood, maybe 20 doors down.

14 Q When you said you know of David Murphy, you know
15 David Murphy?

16 A I've never personally came in contact with him. I
17 mean, I've seen him driving down the street or things like
18 that. I've never hung out with him or --

19 Q Are you Facebook friends with him?

20 A I don't believe so.

21 Q Can I show you --

22 A You can.

23 Q Would it refresh your recollection to look at your
24 Facebook account?

25 A I mean, I could be, but I'm not positive.

1 Q And I can go in and show you a few more, but --

2 A That's fine.

3 Q Sorry, I'll just put it --

4 A That's not me.

5 Q That's different Ashley Hall?

6 A That's a different Ashley Hall. Yes, sir.

7 Q Okay. So, what's your --

8 A I did --

9 Q Well, let me ask you this. In -- when you talked to
10 the police, you had told them their -- your phone number,
11 correct?

12 A Probably, yes.

13 Q Okay. And if I put up for you State's Exhibit
14 number 333, the phone number, Ashley Hall, does that sound
15 right, the 702-832-9016?

16 A It could have been. I've had numerous phones,
17 unfortunately.

18 Q If the detectives had testified that's the number
19 you provided them, does that sound like it's accurate to you?

20 A I mean, it very well could be.

21 Q Now, when you give this statement to the police on
22 the 22nd, you no longer live over by Delphinium and Bamboo,
23 correct?

24 A Correct.

25 Q You live somewhere near Durango and 95?

1 A Correct.

2 Q Way, way, way up north?

3 A Correct.

4 Q How close to Durango and 95 are we talking? I don't
5 need you to put your address on the record, but --

6 A Maybe two miles --

7 Q Okay.

8 A -- from the exit.

9 Q Is it near the Centennial Hills Hospital, somewhere
10 in that range?

11 A Yes.

12 Q Okay, so way up north?

13 A Correct.

14 Q Let me ask you, have you ever spoken on the phone to
15 David Murphy?

16 A No.

17 Q As far as you know, you've never spoken to him? No?

18 A No.

19 Q And Mr. Landis asked you some questions about sort
20 of the story you were going to tell. Would you agree with me
21 that what you initially tell the police is you pick up --
22 well, you have Summer in your car, and you pick up an
23 African-American male and a white male that you don't know; is
24 that fair?

25 A That was not the -- I -- that was a different

1 occasion; not the occasion where she made that comment.

2 Q Okay.

3 A So, there was a previous occasion where I picked her
4 up at a Rebel --

5 Q Okay.

6 A -- with two other gentlemen, yes.

7 Q Was there a black male and a white male?

8 A Correct.

9 Q And the black male, you couldn't remember his name,
10 but it was something like Evil -- Evil?

11 A Yeah, something --

12 Q Something like that, right?

13 A Correct.

14 Q And they were having a conversation that Summer was
15 in, and do you remember telling the police you kind of put two
16 and two together?

17 A Um-hum.

18 Q Is that a yes?

19 A Yes, sorry.

20 Q And eventually -- oh, did you tell them you picked
21 up the black male at an establishment called Munchies?

22 A It was right across from Munchies. It was at Rebel.

23 Q Okay. And then do you remember telling the police
24 that when they got out of the car, you confronted Summer right
25 then and there about what you believed to be her robbing

1 Joey's residence?

2 A We did have a conversation then as well, yes.

3 Q And at that point, you -- you and her have this
4 discussion, and your belief is that she's going to go call
5 Joey, and let him know, and call the whole thing off, right?

6 A Correct.

7 Q And you knew that she was hanging out with a
8 Hispanic guy named Snoop?

9 A Correct.

10 Q You knew that she was hanging out with -- well, that
11 there was two Snoops; a white guy and a Hispanic guy?

12 A Correct.

13 Q And the Hispanic Snoop had shot her in the knee and
14 stuff like that?

15 A Correct.

16 Q Now, you indicated that she specifically indicated
17 that on that Sunday, that there was going to be a robbery of
18 Joey. Do you remember just testifying to that?

19 A Correct.

20 Q Okay. And that it was going to happen at 8:30 at
21 night --

22 A Correct.

23 Q -- and stuff like that?

24 A Correct.

25 Q Do you recall if you actually told the police about

1 that whole version of events in your initial statement to
2 them?

3 A The -- at the Rebel, the events that we just spoke
4 about?

5 Q Yeah, you've --

6 A Yes.

7 Q -- testified here that there's two separate
8 incidents with you and her --

9 A Yes.

10 Q -- and this car, and having these conversations --

11 A Yes.

12 Q -- back and forth. Do you remember that?

13 A Yes.

14 Q Do you remember in your first statement whether or
15 not you told the police about two, or was it just one?

16 A I believe they would know about both of them.

17 Q Would it refresh your recollection to look at the
18 statement that you provided to police that night?

19 A Sure.

20 Q And it may be that I'm just -- maybe I just don't
21 understand the vernacular while you're having the conversation
22 back and forth, but if you could just -- if you could look
23 through that and tell me, is there something that I'm missing
24 in there? If you'd just briefly flip through and sort of read
25 what you told the police that night, and tell me --

1 A Well, I've had detectives approach me twice as well.
2 I've had them approach me this time at 4:00 something in the
3 morning, and they also came to my home after that in the
4 afternoon. So, it could have been --

5 Q And they called you on your phone before they went
6 there, right?

7 A Correct.

8 Q Okay. Could you just -- if you could, just look at
9 the front of this, all right? And it says it's some
10 information, but it's that first -- that first transcript.

11 A Correct.

12 Q Okay. Can you just look through and see if maybe
13 I'm missing that there was two communications?

14 A (Witness reviewing documents).

15 Q Did you have a chance to look at it?

16 A Yes.

17 Q Okay. Is there anything more than just the first
18 sort of conversation where you're putting the two to two
19 together in this --

20 A No.

21 Q -- statement? Okay. And so that we're clear, this
22 statement is the Friday conversation where it's -- there's a
23 black male and a white guy in the back of the car, they're
24 talking, and I draw some conclusions, and I confront Summer
25 about it, correct?

1 A Correct.

2 Q The Saturday conversation isn't within this
3 transcript; is that correct?

4 A It is not.

5 Q Okay. And it's the Saturday conversation that you
6 talked about on direct where it's, I know at 8:30 on Sunday,
7 she's sending people over there to rob the house, and that's
8 what causes your concern to then alert Tracy, to then alert --

9 A Correct.

10 Q I'm correct, right?

11 A Correct.

12 MR. LANDIS: And I'd object. That misstates the
13 testimony as to 8:30 at night on Sunday going over there. I
14 don't think she ever testified to that.

15 BY MR. DiGIACOMO:

16 Q Well, do you remember testifying in front of the
17 Grand Jury?

18 THE COURT: Well, wait a minute. Sustained.

19 MR. DiGIACOMO: Okay.

20 THE COURT: Go ahead.

21 BY MR. DiGIACOMO:

22 Q And I'm sorry, maybe -- tell us what that Sunday
23 conversation was. Did I misstate what that Sunday
24 conversation was?

25 A About us and the --

1 Q Sorry, the Saturday conversation.

2 A Us and the vehicle?

3 Q Yes.

4 A No.

5 Q That she was going to have more money, right? That
6 occurs on Saturday, correct?

7 A Correct, that she was going to be able to pay
8 whoever the gentleman was on -- that was looking for her, off.

9 Q Because she was going to rob Joey, correct?

10 A Correct.

11 Q And it was going to happen around 8:30 at night on
12 Sunday, correct? That conversation occurs on Saturday,
13 correct?

14 A Correct.

15 Q And it's that conversation that causes you to then
16 have serious concerns --

17 A Yes, because it was seriously closer to that -- that
18 day.

19 Q Yes. And it's more specific than what you
20 originally had sort of told the police?

21 A Put together, correct.

22 Q And the reason the police -- would you agree with me
23 that the police tell you the reason they're coming back to you
24 is that there's got to be more than just this first story when
25 they come back to you to talk to you the second time?

1 A I -- yes.

2 Q And admittedly, and I don't do this to embarrass
3 you, you were sort of having more troubles in your life than
4 you are now back then; would that be fair?

5 A Actually, I was more stable back then than I am now.

6 Q Would you agree with me you had a healthy drug
7 problem?

8 A In my past, yes.

9 Q No, at this time, did you have a drug problem?

10 A I was currently using, yes.

11 Q And you at the time were on probation for a felony,
12 correct?

13 A I don't believe I was on probation at that time.

14 Q You don't recall that you were -- right after you
15 testified?

16 A Oh, yes, I was on probation at that time. You're
17 correct.

18 Q Right after you testified in front of the Grand
19 Jury, you had to go into inpatient treatment; do you remember
20 that?

21 A I did not receive inpatient treatment. I was denied
22 for inpatient treatment.

23 Q You -- well, let me rephrase it this way. There was
24 a point in time when the State had suggested and the Court
25 wanted you to go to inpatient, but for whatever reason, you

1 didn't wind up going --

2 A Correct.

3 Q -- do you remember that?

4 A Correct.

5 MR. LANDIS: I'm going to object to any specifics
6 about her case beyond the fact that it's an impeachable
7 felony. I don't think the State can get into it.

8 MR. DiGIACOMO: Well, drug treatment, drugs; I
9 believe all of that is relevant to credibility.

10 THE COURT: I agree with that, so overruled.

11 BY MR. DiGIACOMO:

12 Q And thus, you never received the drug treatment,
13 correct?

14 A I was -- I went to outpatient drug counseling
15 because I wasn't qualified for inpatient.

16 Q And ultimately, that didn't work; would that be
17 fair?

18 A No, that worked.

19 Q Okay.

20 A I have been clean almost two years.

21 Q Didn't you ultimately get revoked and have to go to
22 prison?

23 A But it wasn't drug-related. I was revoked for an
24 address not being changed in a proper amount of time.

25 Q And on Monday, September 12th was the day you got

1 released on parole; would that be fair?

2 A Correct.

3 Q And the crime that you were convicted of was
4 burglary; is that fair?

5 A Correct.

6 MR. DiGIACOMO: Thank you very much. I have nothing
7 further, Judge.

8 MS. McNEILL: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. McNEILL:

11 Q Ashley, Mr. Di Giacomo asked you some questions
12 about this conversation about it was going to happen Sunday at
13 8:30. Remember those questions?

14 A Yes.

15 Q Okay. This conversation that it was going to happen
16 on Sunday at 8:30, this was between Summer and the other --
17 the two gentlemen in the car, correct?

18 A Correct.

19 Q Okay. And those two gentlemen in the car were not
20 any of these gentlemen sitting here, correct?

21 A No, they were not.

22 Q And she was actually having a conversation with them
23 about a specific time?

24 A Correct.

25 Q And is that what worried you?

1 A It all worried me.

2 Q Okay, but --

3 A Just the event worried me, but yes.

4 Q Right. And is it fair to say maybe that the fact
5 they were discussing a specific date and a specific time made
6 you think, okay, this sounds like this is really going to
7 happen?

8 A Yes.

9 Q Right? And that's what made you alert Tracy Rowe,
10 because you couldn't get a hold of anyone, right?

11 A Correct.

12 Q Okay. The conversation that you had with the police
13 on September 22nd, that was right after you'd been alerted
14 that something had happened at Joey's house, right?

15 A Correct.

16 Q And it was sort of the middle of the night?

17 A Yes.

18 Q Is it fair to say that you may have been a little
19 stressed out at that point?

20 A I was woken up out of my sleep at that point.

21 Q Okay. So, at that time, you were probably just
22 trying to get the information out the best you could?

23 A Yes.

24 Q Right? But then later, you remembered that there
25 were sort of these two conversations about -- with Summer in

1 the car --

2 A Correct.

3 Q -- right? Okay.

4 MS. McNEILL: Nothing further.

5 MR. WOLFBRANDT: Judge, I have no questions.

6 THE COURT: All right, thank you. And are we --

7 MR. LANDIS: No redirect.

8 THE COURT: Okay, no redirect. So, may this witness
9 be excused?

10 MR. DiGIACOMO: Yes.

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

12 THE WITNESS: Thank you.

13 THE MARSHAL: Ma'am, please watch your step coming
14 down.

15 THE COURT: You may call your next witness.

16 MR. LANDIS: Can we approach?

17 THE COURT: Of course.

18 (Off-record bench conference)

19 THE COURT: All right. Ladies and gentlemen, there
20 is another witness, but that witness is not available until
21 1:30 tomorrow, which will dovetail nicely with my drug court
22 calendar, which probably isn't going to be done until 20
23 minutes after 1:00, as it has been for the last three weeks.
24 And so I'm going to admonish you, as you've become accustomed,
25 for this overnight recess, and you need to be back here

1 tomorrow at 1:30.

2 So, during this recess, it is your duty not to
3 converse among yourselves or with anyone else on any subject
4 connected with the trial, or to read, watch, or listen to any
5 report of or commentary on the trial by any person connected
6 with the trial, or by any medium of information, including,
7 without limitation, newspaper, television, radio, or internet,
8 and you are not to form or express an opinion on any subject
9 connected with this case until it's finally submitted to you.
10 I'll see you tomorrow at 1:30.

11 THE MARSHAL: Leave your notebooks and make sure you
12 have everything, folks. All rise for the jury, please.

13 (Jury recessed at 3:34 p.m.)

14 THE COURT: And the record will reflect the jury has
15 departed the courtroom. Anything outside the presence?

16 MR. LANDIS: I'm sorry for today's less than
17 productive evidence.

18 THE COURT: All right. I mean, we all know, as -- I
19 was a trial lawyer for 30 years. These things happen. So,
20 you know, we do the best we can in scheduling witnesses, and
21 it always doesn't work out the way we'd hoped. Not a problem.
22 And I don't -- I think the jury's fine. They've been very
23 patient, and if you're ever concerned about it, I'll be happy
24 to admonish them, but I don't think it's necessary. I don't
25 think we've ever indicated that there's some fault laid at

1 anybody's feet, so, all right?

2 MS. McNEILL: Thank you, Your Honor.

3 MR. LANDIS: I wasn't -- yeah, truthfully, I'm not
4 worried about them. I was apologizing to you guys.

5 THE COURT: Oh, well, thank you. I appreciate that,
6 and I know co-counsel and opposing counsel do.

7 MR. DiGIACOMO: I will have a witness close to the
8 time Mr. Sotelo's going to show up, just because I can't
9 imagine Mr. Sotelo's totally reliable. And my rebuttal as of
10 right now has nothing to do with Mr. Laguna and nothing to do
11 with Mr. Murphy, so if we had to take my witness out of order
12 while we waited for Mr. Sotelo, we could do that as well.

13 THE COURT: Okay. All right.

14 MR. LANDIS: Thank you.

15 THE COURT: I'll see you tomorrow at 1:30.

16 THE MARSHAL: Court's adjourned.

17 (Court recessed at 3:36 p.m. until Tuesday,
18 October 4, 2016, at 1:37 p.m.)

19 * * * * *

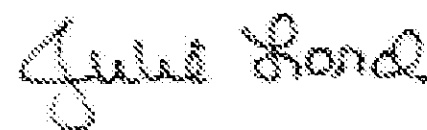
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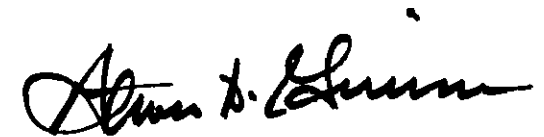
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JULIE LORD, INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 16

TUESDAY, OCTOBER 4, 2016

APPEARANCES:

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

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

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INDEX

WITNESSES

DEFENDANT MURPHY'S WITNESS:

Testimony outside the presence of the jury:

Direct examination by Mr. Landis	16
Cross-examination by Mr. DiGiacomo	33
Redirect examination by Mr. Landis	39
Cross-examination by Ms. McNeill	42

Testimony in the presence of the jury:

Direct examination by Mr. Landis	58
Cross-examination by Mr. DiGiacomo	64
Cross-examination by Ms. McNeill	75
Redirect examination by Mr. Landis	78
Recross-examination by Mr. DiGiacomo	80

STATE'S REBUTTAL WITNESSES:

RANDY McPHAIL

Direct examination by Mr. DiGiacomo	87
Cross-examination by Mr. Wolfbrandt	110
Cross-examination by Mr. Landis	117

DETECTIVE TOD WILLIAMS

Direct examination by Mr. DiGiacomo	126
--	-----

EXHIBITS

STATE'S EXHIBITS:

Exhibits 334, 334A - Jorge Mendoza's Interviews.. . . .	129
Exhibits 338 - Map	128
Exhibits 345, 346 - Diagrams.. . . .	93
Exhibits 347 to 362 - Photos.	91

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 4, 2016, 1:37 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We're back -- we're on the
4 record, I should say, in case number C-303991. And the record
5 will reflect the presence of the three defendants with their
6 respective counsel, the Chief Deputies District Attorney
7 prosecuting the case, all officers of the court. We're
8 outside the presence of the jury.

9 MR. DiGIACOMO: Judge, the only one thing I want to
10 address is I believe that the next witness is going to be Mr.
11 Sotelo. And I believe the bias of a witness is admissible.
12 And he will say that Figueroa, Manny, and all these people are
13 all Little Locos. He will say that Mr. Laguna is a shot
14 caller for them.

15 I have evidence, as well, separate and aside from
16 Mr. Sotelo, that Mr. Murphy is a Little Loco as well. I don't
17 have any evidence that Mr. Mendoza is, but as you recall, Mr.
18 Sotelo claims that Mr. Mendoza's the guy Orco that he sees
19 from jail.

20 I just want to know how far you're going to allow me
21 to cross-examine him on what is clearly his bias, particularly
22 since he's made other statements about the defendants being
23 guilty, and that this goes much deeper than you understand,
24 and those type of things, which was a text message that Mr.
25 Landis apparently attached to a material witness warrant that

1 he got for Mr. Sotelo.

2 And thus, it is my belief that he provided some
3 names because he didn't feel comfortable providing others, and
4 I believe I'm entitled to cross him on that. And so I just
5 don't know how far -- or how the Court wants me to go about
6 doing that.

7 THE COURT: Okay.

8 MR. LANDIS: There's not much support in Sotelo's
9 statement for what Mr. DiGiacomo is saying. I mean, I agree
10 he identifies people as gang members, but he hasn't indicated
11 any hesitancy in naming people because of gang reasons. The
12 two people he did name when he made that statement in 2014,
13 which were Figueroa and that Manny Barientos, they're both
14 gang members, too, and he named them.

15 So I don't understand why he's saying they -- that
16 this guy wouldn't name other gang members. I guess I don't
17 understand the link there. And even if there was a link, I
18 still think it's more prejudicial than probative to his bias
19 or credibility.

20 MS. McNEILL: And I guess I don't understand how --
21 what exactly the District Attorney is saying his bias is. Is
22 he going to suddenly recant his testimony? And then that sort
23 of helps the State, I would imagine. So, and again, I don't
24 think his knowledge of my client's alleged gang membership
25 goes to his bias, or he probably wouldn't have opened his

1 mouth to the police in the first place if he was that
2 terrified of these people. So, I agree with Mr. Landis. It's
3 much more prejudicial than it is probative of --

4 THE COURT: Is the witness in the courtroom?

5 MR. LANDIS: No. Well, maybe. Yes.

6 THE COURT: He needs to wait outside while we're --
7 or someplace, maybe in -- we don't have a -- do we have a --
8 we don't have a room outside in the alcove, do we?

9 MR. LANDIS: No, this one doesn't have one.

10 THE COURT: Before, I had one of those.

11 THE CLERK: We have the jury room.

12 THE COURT: Just have him step into the alcove for a
13 minute, because this -- you know, I don't want him to --

14 THE MARSHAL: Mr. Sotelo?

15 THE COURT: -- be listening to this argument.

16 THE MARSHAL: Come out, sir. Thank you.

17 THE COURT: All right. So, I guess explain to me
18 what -- you know, is there a foundational belief that he's --
19 that the witness is a gang member?

20 MR. DiGIACOMO: He is.

21 THE COURT: Okay.

22 MR. DiGIACOMO: He acknowledges that he's a Little
23 Locos. He acknowledges that Manny Barientos and Robert
24 Figueroa are Little Locos. He indicates that this group,
25 Little Locos, this is what they do is go do home invasions,

1 and that -- you know, that they do robberies and home
2 invasions. And during the course of the interview, they ask
3 him, like, do -- you know, who lives here? And he says
4 Matone, so they start asking him about Matone, and he says,
5 well, he's their OG, he's their shot caller.

6 And it is my belief, and I believe that if I had to
7 call a gang expert to testify to this fact, they would in fact
8 testify to, hey, it's one thing to snitch off a fellow gang
9 member; it's another thing to snitch off the shot caller.
10 That naming the shot caller is something that is significantly
11 higher of -- frowned upon than it is if you were to name any
12 other low-level individual on them.

13 Moreover, he says that this is a Little Locos plan,
14 or that's what this group does, and I can establish that these
15 individuals are members of Little Locos. This is their
16 witness they're going to call, and I should be able to cross-
17 examine on the relevant information that he is going to
18 provide.

19 There's other things I plan to cross him on, but
20 most importantly, he says in this text message that he sent to
21 Mr. Landis, "Homicide Barry said not -- for me not to talk to
22 you," which Detective Jensen would certainly dispute. "I
23 don't feel safe anymore with you guys giving these murderers
24 my address again. I moved across town, broke my lease because
25 they're threatening to kill me. So please get a hold of him,

1 because you probably won't get much out of me. They're all
2 guilty, and I don't want to jeopardize my family's safety
3 trying to prove it. I'm sorry, sir. I'm sure you're a good
4 man, but it's deeper than you think."

5 That to me sounds like an individual who has serious
6 concerns about providing testimony, and if that testimony were
7 to implicate Mr. Laguna, in particular, that that would be
8 something that causes him fear. And fear would give him a
9 motive to provide information that is not the accurate truth.

10 How, I would not be able to cross, particularly
11 after this testimony has now been provided by way of the
12 material witness warrant, on the nature of that fear and why
13 it is he has that fear, I don't understand how that wouldn't
14 be relevant to his motivations, both at the time, because he
15 says it's deeper than you think, and I certainly do believe
16 it's deeper than I think, or than anyone thought when he made
17 the statement that he made.

18 But certainly now that he's coming to testify after
19 making the statement "they are all guilty," the only three
20 people in this trial are these three individuals. How am I
21 not going to be able to cross on that, and how is it that you
22 know that these three people are guilty? Well, they're part
23 of the same group, which is the Little Locos, with the
24 exception of Mr. Mendoza that we've never been able to tie to
25 that.

1 So, I think I'm completely entitled to cross-examine
2 a witness on motive, bias, and why it is you wouldn't tell us
3 if you -- if you did know that Laguna was guilty, you wouldn't
4 testify to it, correct? And there's a reason for that,
5 correct? Of course, I get to cross on that.

6 THE COURT: So, it just seems to me that you can't
7 call a witness and ask him to testify about just little parts
8 of things that he told the police without opening the door to
9 the other things that he said and his motivation for saying
10 those things. And obviously, now this is -- this
11 communication with you is problematic, as well. I mean, so if
12 he says something differently, then, you know. You're -- I
13 think you're potentially opening up a can of worms here.

14 MR. LANDIS: Well, I understand, but let me say
15 this. A good portion of what Mr. DiGiacomo just said isn't in
16 any previous statements made by Sotelo. It's just not.

17 And the other thing is, that text message that he's
18 referenced, which I did attach to the ex parte application for
19 a material witness warrant, which is filed, was to my
20 investigator, not to me. I've never directly talked to
21 Sotelo.

22 As to my client, let me just phrase it this way. He
23 doesn't mention Murphy, I have no reason to believe he knows
24 who Murphy is. He certainly hasn't ever said anything in any
25 recorded statement about Murphy's gang affiliation, or

1 anything like that. The only thing he says about Laguna is
2 not in reference to this crime. Not in reference to this
3 crime. But the police ask him, do you know somebody who lives
4 in that area? Because the car, I assume, the car they were
5 concerned was up there. And he says Matone. He doesn't in
6 any way indicate that Matone was associated with this crime
7 when they ask it. He says it was Barientos and Sotelo.

8 THE COURT: Where is --

9 MR. LANDIS: I mean, sorry, and Figueroa.

10 MS. McNEILL: And Your Honor, can I just also
11 respond with, Mr. DiGiacomo characterized Sotelo as our
12 witness. Mr. Landis called and subpoenaed Sotelo. He is not
13 my witness. And so, I will be cross-examining him just like
14 Mr. DiGiacomo would.

15 So, it's not my witness. I didn't -- I'm not
16 opening the door by putting him on. This is coming in against
17 Mr. Laguna. Additionally, what I just heard sounded a lot
18 like propensity evidence when he's saying, well, this is what
19 their gang does, and so that goes directly to their guilt. So
20 that's then saying, well, because the gang commits home
21 invasions, they must have committed this home invasion.

22 THE COURT: Well, there is a statement. You're
23 saying that this is what was represented in the statement, so
24 we have a recorded -- a recording, a transcript of that
25 statement?

1 MR. DiGIACOMO: Yes, I believe you have it.

2 MS. McNEILL: I had it admitted as a court exhibit
3 when we --

4 MR. DiGIACOMO: Correct.

5 MS. McNEILL: -- kind of did this the last go-
6 around.

7 (Pause in the proceedings)

8 MS. LEXIS: Page 6.

9 MR. DiGIACOMO: Page 6?

10 THE COURT: On page 5, he says, okay, how does he
11 fit into this thing? And he says, "Cuz they're all from the
12 same gang." It says Little Loos --

13 MS. McNEILL: And this --

14 THE COURT: -- in the transcript.

15 MS. McNEILL: This is before my client's name has
16 ever been brought up, Your Honor, just to put it in context.

17 MR. LANDIS: The "they're" he'd be talking about
18 right then would be Figueroa, Barientos --

19 THE COURT: Yeah, I know.

20 MR. LANDIS: Okay.

21 THE COURT: Okay, so that's the first reference.
22 Let me see.

23 MR. DiGIACOMO: Top of page 5, and then as they go
24 down, it's now in top 6, what's -- that was this Orco guy,
25 he's from Little Locos, and then it says, "I just know the

1 street gang, that little crew, the gang, that's all they do,"
2 and then they keep going on with him. And then later is the
3 one we went to last time, which is -- where's shot caller?

4 On page 22, when Matone's name comes up, is where he
5 says, well, that's their OG, that's their shot caller. The
6 way I take Sotelo's statement is, the Little Locos -- that
7 this -- Rob's doing this, he's a Little Loco, these are Little
8 Locos, Little Locos go out and do this. He just happened to
9 get the wrong Little Locos when he named them in the
10 statement, but I should be entitled to cross on that, like,
11 well, he was partially right, just wasn't fully right.

12 MR. LANDIS: The idea that this witness knows who
13 did it, beyond what he already said, is news to me.

14 MS. McNEILL: And me as well. And then I think
15 we're also getting into this issue of, well, now he's saying
16 my client's their shot caller, and so now we're explaining to
17 the jury what's a shot caller, now it becomes a gang case.

18 THE COURT: Well, I guess I'm not clear on what he's
19 going to have to say, because if he's saying that he wasn't
20 there and he doesn't know anything about this -- are you
21 saying that he's -- what he knows is what Rob Figueroa told
22 him?

23 MR. LANDIS: Yes, and -- well, he says him and
24 Barientos were telling him the story kind of simultaneously in
25 person.

1 THE COURT: Well, Barientos can't -- that's hearsay
2 what Barientos says.

3 MR. LANDIS: Still be a statement against penal
4 interest.

5 MS. McNEILL: And it's already come in.

6 MR. DiGIACOMO: Well, I don't know that we
7 established he's unavailable.

8 MS. McNEILL: Well, it's already sort of come in.

9 THE COURT: Barientos? I don't remember.

10 MS. McNEILL: I think we asked --

11 THE COURT: That's obviously -- as far as a prior --
12 prior inconsistent statement of Figueroa, you know, that --
13 that --

14 MR. LANDIS: And I don't need to really get into --
15 it's not clear exactly what -- who said what to him, but I
16 don't need to get into things Barientos said, but I would ask
17 that Barientos was there during this event, the storytelling.

18 THE COURT: Okay, I'm sorry, you said what?

19 MR. LANDIS: I would want to elicit that Barientos
20 was there, present during the storytelling between Figueroa to
21 Sotelo.

22 THE COURT: Well, you can. I don't see anything
23 wrong with that.

24 MR. LANDIS: Right.

25 THE COURT: You can say, who else was present.

1 MR. LANDIS: Right, I was just making sure we were
2 clear.

3 THE COURT: All right.

4 (Pause in the proceedings)

5 THE COURT: Well, I think what we need to do is hear
6 the direct testimony, and then we'll send the jury out and
7 discuss, because I don't know what he's going to say.

8 MR. WOLFBRANDT: On behalf of Mr. Mendoza, clearly
9 this individual is not our witness. Mr. Mendoza's never been
10 to prison. The only reference that this guy has made in that
11 statement is he recognized him because they had gone to prison
12 together. My client's never been associated with a gang,
13 never used that term -- the name Orca -- Orco.

14 THE COURT: And we've already established that in
15 front of the jury with the detective.

16 MR. WOLFBRANDT: Right, but the State's theory
17 throughout this case has been that it was Summer Larsen who
18 set this thing up because she needed money and she was -- she
19 was upset with Joey, so she set up an invasion to steal his
20 newly acquired marijuana. Had nothing to do with gang -- what
21 gangs do, what the Little Locos do, that this is what they do
22 is home invasions. There's none of that. This has never been
23 a gang case. And so, I think to introduce that, even the hint
24 of it right now, it's going to be -- the probative value is
25 next to nothing compared to the prejudice that's been attached

1 to Jorge Mendoza.

2 THE COURT: I haven't said yet that I'm going to
3 allow that, but I don't know what his --

4 MR. WOLFBRANDT: Just making my point.

5 THE COURT: -- what his testimony's going to be.
6 I'm concerned. I certainly -- I mean -- I mean, we can take
7 his testimony outside the presence to start with, and do it
8 that way, because I -- certainly after -- here we are on week
9 4. I do not need this to blow up because you've, you know,
10 forced somebody that doesn't want to be here to be here, you
11 know, and so he does something intentionally.

12 MR. LANDIS: I -- you know, and I understand the
13 Court's concern. It's my intent to avoid gang stuff, but
14 based on what you're saying, it's -- you know, I can't control
15 him the way I would usually have control, I don't think. So,
16 if you want me to -- I'm happy to do it either way. I'm happy
17 to do the direct, take a break. I'm happy to do an ex parte
18 hearing.

19 THE COURT: All right.

20 MR. LANDIS: By ex parte, I mean without the jury.
21 Sorry.

22 THE COURT: Right, right, outside the presence of
23 the jury. Let's do that, that -- because I really don't want
24 this to blow up on us, okay?

25 MR. LANDIS: The other thing I promised him, you

1 would orally quash the warrant, if you're allowed to do that,
2 because he was so worried about it, and I was --

3 THE COURT: Oh, the --

4 MR. LANDIS: Material witness warrant.

5 THE COURT: The material -- was it -- it was issued?
6 I thought you didn't --

7 MR. LANDIS: Oh, it's --

8 THE COURT: -- have it served.

9 MR. LANDIS: No, it's active right now.

10 THE COURT: It's active? Okay.

11 MR. LANDIS: I just told him, once we see his face
12 in court --

13 THE COURT: Oh, yeah.

14 MR. LANDIS: -- I'd quash it -- or I'd ask you to
15 quash it, of course.

16 THE COURT: Yeah, we'll do that after he's
17 completely done though. I'll tell him then.

18 MR. LANDIS: Okay, appreciate it.

19 THE COURT: Because if he leaves on us -- yeah, we
20 don't want that. Okay.

21 MR. LANDIS: Just want to keep my promises.

22 THE COURT: Yeah, exactly. All right. Bring him
23 in.

24 THE MARSHAL: Sir, I need you to take the stand.
25 Remain standing, face the court clerk in that direction there,

1 raise your right hand to be sworn in.

2 THE CLERK: Please raise your right hand.

3 (Testimony outside the presence of the jury)

4 GABRIEL SOTELO, DEFENDANT MURPHY'S WITNESS, 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: Gabriel Sotelo. S-o-t-e-l-o.
8 Gabriel, G-a-b-r-i-e-l.

9 THE COURT: Thank you.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. LANDIS:

13 Q Mr. Sotelo, thanks for coming in today. If I could
14 direct your attention back about two years ago to September or
15 October, 2014. Were you familiar with an individual named
16 Robert Figueroa during that period of time? You got to answer
17 out loud.

18 A Yeah. Yes.

19 Q How about Emanuel or Manny Barientos?

20 A Yeah, that's my cousin.

21 Q That's your cousin?

22 A Yeah.

23 Q Sometime in early October, do you remember being in
24 a North Las Vegas detective's office for an interview?

25 A Yeah.

1 Q And they were interviewing you about something they
2 were accusing you of?

3 A Yeah.

4 Q And during that interview, did you tell that
5 detective something about -- about Robert and Manny?

6 A Yeah.

7 THE COURT: You need to keep your voice up. I
8 can't --

9 THE WITNESS: Yes.

10 THE COURT: -- can't hear you.

11 BY MR. LANDIS:

12 Q And did you then have Las Vegas Metropolitan Police
13 Department detectives come to that same place and talk to you
14 about the same thing?

15 A They showed up.

16 Q And you told them the same story that same day,
17 right?

18 A Yeah, they had me on videotape.

19 Q And what did you tell them that day?

20 A It's been two years, man. I can't really recall.

21 Q You don't remember any of it?

22 A No.

23 Q Do you remember if it involved Robert or Manny?

24 A Robert.

25 Q As you said it, it was at least taped; it was

1 recorded. Would looking at your statement refresh your memory
2 as to what you said?

3 A To the whole thing?

4 Q Just to the parts I want to talk to you about.

5 A Well, you could refresh my memory. If you ask me, I
6 might remember.

7 Q Do you remember talking to them about a recent home
8 invasion and murder that you saw on the news?

9 A Yeah.

10 Q Do you remember telling them that you had a
11 conversation with Robert about it roughly a week to a week-
12 and-a-half after it happened?

13 A Yeah. Yes.

14 Q Do you remember telling them that you hadn't been
15 able to get a hold of Robert or Manny for about a week or two
16 after -- around that time, end of September, after this thing
17 was on the news?

18 A I'm not sure. I can't -- like I said, it's been two
19 years ago. I can't remember exactly. I just remember that my
20 boys, and then I remember this whole incident, right.

21 Q That's all right. Let me ask you this then. Do you
22 remember eventually sitting -- being invited over to Rob's at
23 the end of September, early October, and Robert and Manny
24 talking to you about -- well, do you remember that Robert's
25 face was bandaged?

1 A Yeah.

2 Q Do you remember them telling you a story about how
3 that happened?

4 A Yeah.

5 Q And do you remember the story being --

6 MR. DiGIACOMO: Well, Judge, I'm going to object if
7 it's not Mr. Figueroa speaking.

8 MR. LANDIS: Yeah, that's fine. I'll clarify.

9 THE COURT: Right. Yeah, because I think you said
10 "they," and so I need to --

11 MR. LANDIS: That's fair.

12 THE COURT: Yeah.

13 BY MR. LANDIS:

14 Q Robert was talking to you during that period of time
15 at his place, right?

16 A Yeah, I'm pretty sure.

17 Q Let me -- just generally, did Robert tell you a
18 story about how he got injured?

19 A No, not at first.

20 Q What do you mean by "not at first"?

21 A Not at first. He didn't tell me.

22 Q What do you mean by "not at first"?

23 A It means that he was just trying to beat around the
24 bush for a little bit.

25 Q During this time at his house you guys were spending

1 together?

2 A Yeah.

3 Q After "at first" though, did he eventually tell you?

4 A Yeah, I figured it right. My cousin already told
5 me.

6 Q What cousin had already told you?

7 A Manny, Emanuel.

8 Q He had told you that before that day that you're at
9 Robert's?

10 A Yeah. Well, he told me the day it happened. Told
11 me Robert got shot in his face.

12 Q Did he -- well, let's turn though just to that
13 conversation at Robert's house when you were there and Robert
14 was there. Do you recall what you told the police about that
15 conversation in regards to what Robert told you?

16 A I'm not -- I don't recall, but I know the subject he
17 was talking about. I don't know exactly what I said.

18 Q Do you recall telling them that Robert told you he
19 was involved in that home invasion that was on the news?

20 A Yeah.

21 Q Do you remember him telling you that it was himself,
22 as well as Manny and a guy named Orco?

23 A No.

24 Q You don't remember telling the police that?

25 A No.

1 Q Do you remember telling them anybody being involved
2 besides Robert?

3 A No.

4 Q Do you remember telling them that Robert went there,
5 he was with three people, and they kicked in the door of a
6 marijuana dealer?

7 A I don't know how many people there were.

8 Q Well, more specifically, do you recall telling the
9 police how many people there were?

10 A I don't recall. Like I said, it's been two years.
11 I just try not to think about this; you know what I'm saying?

12 MR. LANDIS: I'm happy to refresh his recollection
13 now, if the Court will allow it.

14 BY MR. LANDIS:

15 Q Would looking at your conversation with them refresh
16 your memory, Mr. Sotelo?

17 A Of course. That's -- that's me, right?

18 Q Give me a second. I'm sorry.

19 A None of these guys are Orco.

20 Q I understand that. Why did you bring up Orco?

21 A Because I -- it was just all the names and
22 nicknames, and I was just confused, right.

23 Q So, do you remember bringing up Orco that day you
24 were talking to the police?

25 A Yeah. Well, now that you said it, yeah. I don't --

1 I didn't remember it when you first asked me.

2 Q Do you remember Robert talking to you about Orco?

3 A No. I --

4 Q Do you --

5 A It wasn't Orco, his name. I can't remember his
6 name, man. It's just -- Orco is just another --

7 MR. LANDIS: Can I approach the witness?

8 THE COURT: Yes.

9 THE WITNESS: I believe Orco's in jail.

10 BY MR. LANDIS:

11 Q If you'd look at this, this is your statement you
12 gave to them. And just to kind of speed you along, this is
13 just small talk. If you would start reading there for a
14 couple pages.

15 A "Yeah" "And who did you hear about it from?"

16 Q No, no, just read it to yourself.

17 A Oh, yeah, yeah.

18 MR. DiGIACOMO: What page are you on, counsel?

19 MR. LANDIS: (Inaudible) three. My apologies.

20 Middle of the page is where I directed his attention.

21 THE WITNESS: See, it says "Orco or Largo." I
22 couldn't -- I --

23 MR. LANDIS: That's all right.

24 THE WITNESS: I didn't know the names, man. They're
25 just nicknames.

1 BY MR. LANDIS:

2 Q That's okay, we'll get to that Orco thing in a
3 second. But looking at that part you're looking at, did that
4 refresh your memory as to what Robert told you?

5 A Well, yeah. Yeah, yeah, that's -- yeah, I -- yeah.

6 Q He told you that he bought marijuana off the house
7 that they tried to rob?

8 A I don't know if he bought it. I don't know if he
9 had bought it. I know that's why he was there.

10 Q Well, he knew that to be a marijuana house?

11 A Yeah.

12 Q He told you that, right?

13 A Yeah.

14 Q And that's why they went to rob it, right?

15 A Yeah.

16 Q And you told them it was Robert, Manny, and Orco?
17 That's what -- that's what Figueroa told you, right?

18 A It says, "Orco or Largo." Orco or Largo ain't here
19 in the courtroom.

20 Q Let's leave it like that then. Robert told you that
21 it was Robert, Manny, and then a third guy that you only knew
22 by nickname?

23 A Yeah.

24 Q Do you remember now?

25 A It started with an M.

1 Q You remember now that's what Robert told you, right?
2 As we sit here today, do you have any reason to dispute that's
3 what Robert told you?

4 A Like what do you mean?

5 Q After looking at that, is your memory refreshed, and
6 do you recall that Robert stated those things to you?

7 A Oh, yeah, of course. Yeah.

8 Q All right. And Robert told you that he got shot,
9 right?

10 A Yeah.

11 Q And Robert told you that he eventually went to a
12 hospital in California?

13 A Yeah.

14 Q And the police asking you specific questions about
15 what kind of gun Manny tends to carry; do you remember that?

16 A They asked me about Robert.

17 Q As to both, actually. Do you remember --

18 A No.

19 Q -- as to either?

20 A Yeah.

21 Q And you knew those details, yeah?

22 A Then, I did.

23 Q Right, certainly. Did you ever talk to the police
24 directly about these facts any other day besides that date
25 that the transcript's in front of you?

1 A The -- the police? No.

2 Q Do you remember them picking you up the next day and
3 having you show them some stuff?

4 A Yeah.

5 Q And you did that voluntarily, right? You agreed to
6 do it?

7 A Well, they said if -- Detective Stucky (phonetic)
8 from North Las Vegas said if I help them, she'll take me out
9 of jail.

10 Q Well, let's slow down then.

11 THE COURT: Right. So, I mean, we're outside the
12 presence. I'm going to jump in here, because I'm --

13 MR. LANDIS: Yeah, sure.

14 THE COURT: I'm confused, because you've asked him
15 -- you've said to him that this statement says he said that
16 Manny was there, and I've read everything on the statement up
17 to the point where you were directing him, and it didn't say
18 that, so I'm --

19 MR. LANDIS: No, it's definitely in there.

20 THE COURT: No, not on -- it's not. That's why I'm
21 confused. And so, when you're saying somebody's telling me he
22 doesn't remember, and then you're trying to refresh his memory
23 and rushing him through the statement, it doesn't say -- it
24 says, I -- he heard about it, the home invasion. "I heard it
25 from Emanuel and Rob, cause" -- and then they get off on who's

1 buying weed from who. And then -- then he says that Rob
2 wasn't answering his calls.

3 MR. LANDIS: Can I interrupt and --

4 THE COURT: Yeah, okay.

5 MR. LANDIS: -- focus the Court to 21?

6 THE COURT: You hadn't focused his -- his -- you
7 hadn't focused him to 21.

8 MR. LANDIS: Because -- well, the portion that he
9 looked at seemed to refresh his memory about what he said, so
10 I was just going beyond that.

11 THE COURT: All right. Page 21?

12 MR. LANDIS: Yes.

13 THE COURT: Okay, thank you. Okay. All right,
14 because -- go ahead.

15 BY MR. LANDIS:

16 Q You said something about being in jail. Did --
17 before you talked to the Metro cops that day in the North Las
18 Vegas office, did Detective Stucky arrest you, or just ask you
19 to come in so he could talk to you?

20 A He arrested me. I was in jail.

21 Q Oh, you were?

22 A Yeah.

23 Q Okay. And then, so when you were -- when Stucky's
24 talking to you in North Las Vegas, you're in like jail
25 fatigues?

1 A No, I'm in -- in the back. In the back of the jail.

2 Q Had he put you in cuffs, transported you there via
3 cop car?

4 A No.

5 Q Okay. How did you get arrested then?

6 A Because they came to my house and picked me up.

7 Q So they arrested you at your front door?

8 A Yeah.

9 Q Put you in handcuffs, right? And then they took you
10 to North Las Vegas Detention Center?

11 A Yeah.

12 Q Was that the same day that you were talking to
13 Stucky, this transcript?

14 A No, it was the day after.

15 Q Wait, the arrest was the day after, or this
16 interview was the day after?

17 A The arrest was the day after this interview.

18 Q Sorry, I'm confused then. How did you get in front
19 of Detective Stucky for this interview?

20 A Oh, because my -- my -- when -- I bought a laptop
21 somebody and when I pawned it, like an idiot. And they -- she
22 she showed up at my front doorstep.

23 Q Stucky did?

24 A Yeah. And I wasn't there, and she told me to come
25 in, and I mean -- you know what I mean?

1 Q So, Stucky asked you to come in --

2 A Yeah.

3 Q -- not via arrest, just --

4 A No.

5 Q And you did that, right?

6 A Yeah.

7 Q And you were talking to Stucky about the computer,
8 the laptop?

9 A Yeah.

10 Q And still no handcuffs?

11 A No.

12 Q And you bring up this thing about Robert?

13 A No. She starts looking at my tattoos, and she
14 starts asking me a whole bunch of questions on what's going
15 on. I mean, she asked me where I'm from, and she -- she just
16 asked me about all this, and then she asked me if I know any
17 crimes or whatever or whatnot.

18 Q Okay. And then -- then you brought up -- well, did
19 Stucky ask you anything specific about this -- this
20 murder/robbery attempt?

21 A She just asked me about if I know anything about the
22 -- what happened in Hualapai with that.

23 Q She did ask you that?

24 A Yeah.

25 Q All right.

1 A With that, yeah.

2 Q And then, after -- still no handcuffs when she says
3 that?

4 A No.

5 Q And that's when you start talking to her about
6 Robert?

7 A Yeah.

8 Q At what point then do you get arrested?

9 A The next day, she shows up to my house.

10 Q So, you leave that -- you leave the North Las Vegas
11 detective's bureau that night, right?

12 A Yeah.

13 Q You drive home or get home?

14 A Yeah.

15 Q The next morning, you meet the Las Vegas Metro
16 detectives, right?

17 A Yeah.

18 Q At -- I think you meet at Martin Luther King at
19 their headquarters, right?

20 A Yeah.

21 Q Do you guys all arrive together? Do you remember
22 that?

23 A Yeah.

24 Q Do you remember showing them a couple different
25 houses?

1 A Yeah.

2 Q One of them being Robert's?

3 A Yeah.

4 Q And then you get back home after that, and you're
5 telling me then the cops come again and arrest you?

6 A Yeah.

7 Q And what did they arrest you for the day after your
8 statement?

9 A For burglary.

10 Q Something different than the laptop?

11 A Yeah, burglary.

12 Q An auto burglary?

13 A No.

14 Q Residential?

15 A Yeah.

16 Q Was Detective Stucky the one who arrested you on
17 that day after?

18 A Yeah.

19 Q Let me rewind. What did Stucky say to you about you
20 won't get arrested if?

21 A She said if I help everybody out, you know what I'm
22 saying, I'm -- I'm on the third habitual already, you know
23 what I mean? So, said if I help everybody out, you know what
24 I mean, I won't go to prison again.

25 Q So, this was beyond just getting out of jail or not

1 going to jail; this was talking about your sentence?

2 A Yeah, you know what I mean? I didn't even want to
3 do this, you know what I'm saying? It was -- I mean, it --
4 know what I mean? It's just all fucked up now.

5 Q So, when you get that burglary charge that you're
6 arrested for the next day, you go back to jail?

7 A Yeah.

8 Q Do you remember if it was North Las Vegas jail; city
9 jail?

10 A It was city.

11 Q City jail? How long are you in jail at that point?

12 A I get out the next day.

13 Q How did you get out?

14 A Barry Jensen.

15 Q What did he do?

16 A Walked me out the front door.

17 Q Okay. And that burglary case that you were arrested
18 for that day, the one we talked about, you said you had some
19 priors. What -- what eventually happened to that case?

20 A It got dropped.

21 Q To what?

22 A To my probation case I'm on for the -- for the Las
23 Vegas.

24 Q So, did it get dropped to misdemeanors?

25 A No, it just got totally dropped.

1 Q What case is it -- what are the crimes that you're
2 on probation for right now?

3 A Theft.

4 Q What was originally charged? Do you remember?

5 A Burglary.

6 Q What was that for?

7 A I took some CDs from a neighbor.

8 Q From where?

9 A From my neighbor.

10 Q And that's the case you're on probation for. Then
11 there was that case -- correct me if I'm wrong -- didn't you
12 have another case that was pled down to misdemeanors in North
13 Las Vegas Justice Court around this same time?

14 A Yeah, it was that case. It was -- it was dropped.
15 They dropped it.

16 Q Right.

17 A When I went to court, they put me in handcuffs.
18 They revoked me and told me to do a year. And then I went to
19 court the next day, and they let me go. They just dropped it.

20 Q And then you eventually get probation out of the one
21 burglary case that you pled to a category C theft, right?

22 A Yeah.

23 Q And you then get let out of jail on those
24 misdemeanors after that court grants you probation, or no?

25 A No, I was already -- I was already free.

1 Q Okay, okay.

2 A I had -- the judge let me go when I went to
3 sentencing -- I mean, when I went to my plea my deal, they let
4 me out, and then I got out, and then they gave me a three
5 month date, three months to go to sentencing. This happened
6 in between that.

7 Q Okay. Did what you tell the -- well, did what you
8 tell the police back then in that transcript that's in front
9 of you, was it true in terms of that's what Rob told you
10 previously?

11 A In this?

12 Q More or less everything we've already talked about.

13 A Yeah.

14 MR. LANDIS: I don't have any more questions.

15 MR. DiGIACOMO: I do.

16 CROSS-EXAMINATION

17 BY MR. DiGIACOMO:

18 Q You and I have never met, right?

19 A No.

20 Q Okay. I'm somewhat confused. You get -- you get --
21 Detective Stucky comes to your house and says, come to jail,
22 and you go to jail, and she talks to you there?

23 A No, not the jail, the --

24 Q Detective Bureau?

25 A Yeah, that's right.

1 Q Okay. And Barry Jensen's present at that interview?

2 A No, he shows up after, after she calls him.

3 Q Okay, but that's where the first conversation with
4 Detective Jensen occurs, correct?

5 A Yeah, yeah.

6 Q At the end of that conversation, the next day, do
7 you take him around and show him Figueroa's house and Manny's
8 house?

9 A Yeah.

10 Q Okay. And then, later on, Detective Stucky comes
11 back and decides to arrest you?

12 A The next day.

13 Q And Detective Jensen then gets you out of custody
14 after you get arrested by Detective Stucky after you've
15 already provided the information?

16 A Yeah.

17 Q Okay. So, now let me back up. Do you recall
18 telling Detective Jensen initially that you saw some of this
19 information on the news?

20 A Yeah.

21 Q And you saw a picture of a guy on the news, and you
22 thought it was Orco, or Largo, or something like that?

23 A Yeah.

24 Q Do you know an Orco and a Largo?

25 A Yeah.

1 Q Okay. And the guy way over there is not Orco or
2 Largo, correct?

3 A No.

4 Q Right?

5 A I don't know none of these guys in the courtroom.

6 Q You don't know any of them in the courtroom?

7 A None of them.

8 Q Okay. Do you remember telling the police that you
9 know Matone?

10 A No.

11 Q You don't remember telling them that? Do you have
12 that statement still in front of you? Jump to page -- I think
13 it's 21. Or 22. Do you remember telling the police, if you
14 back up to the bottom of page 21, when they ask you, "Who
15 lives up in the area of Alexander and Craig," and then the
16 detective says -- "Oh, you say Craig, the detective says
17 Durango," and you say, "Um, Montone." Question, "Who?"
18 "Montone. That's like OG, like -- like -- like their shot
19 caller."

20 A Yeah, yeah, I know of him of course, you know what I
21 mean, because I was in prison, you know what I mean, but I
22 don't know him personally --

23 Q Okay.

24 A -- you know what I'm saying?

25 Q Well, at some point, they ask you if they showed you

1 a picture of him, you'd be able to recognize them.

2 A They never did.

3 Q Okay. Are you suggesting to us that Montone's not
4 the guy that's in the middle over here?

5 A I couldn't call -- I don't know.

6 Q And the reason you knew who Montone was is because
7 he's Rob Figueroa, Manny Ramirez's shot caller, right?

8 A Not Manny's.

9 Q Not Manny's; just Rob's?

10 A I guess. I don't know. I can't -- I -- I don't
11 know if they're -- I'm not -- I don't know their gang like
12 that, you know, what I mean? I don't know who.

13 Q Don't you say you're a Little Locos in this?

14 A No. I'm from Northern California.

15 Q Do you remember telling the cops that you're a
16 Little Locos?

17 A Never.

18 Q You never told them that?

19 A Never.

20 Q Did you tell them that Manny was Little Locos?

21 A Nope.

22 Q Do you remember telling the police -- or -- well,
23 you just said here that, first, Manny tells you about what
24 happened, right?

25 A Yeah.

1 Q And then you see Rob, and he's got the shots to him?

2 A Yeah, in his mouth.

3 Q Let me back up. Did Manny tell you he was involved
4 in this?

5 A Yeah, but I figured out that he was just trying to,
6 you know what I mean, be cool. Just, you know what I mean,
7 trying to get some street credit or whatever. I find out
8 that's -- you know what I mean, he came to my house trippin'.

9 Q So, you found out that the information that Manny
10 was telling you wasn't true?

11 A Yeah.

12 Q And that was from Manny you find that out?

13 A Yeah. His mom called me.

14 Q How is it when you're talking to Rob -- the
15 suggestion here is that Rob actually used -- said Manny was
16 there with me.

17 A Yeah.

18 Q And I guess my question is this. Are you putting
19 together what you hear from Manny, what you hear from the
20 news, what you hear from Rob, and sort of in your own mind,
21 coming up with what happened in telling the police that?

22 A Not at the beginning. I -- you know what I mean?
23 It wasn't -- it didn't all hit me like that, you know what I
24 mean? It's pretty much self-explanatory right now --

25 Q Well --

1 A -- what happened.

2 Q Yeah, well that's what I'm trying to figure out.
3 I'm trying to figure out here is did -- you said Rob was
4 trying to beat around and not really say what happened, right?
5 Correct?

6 A Yeah.

7 Q And Manny, he originally had told you sort of that
8 he was involved, but later on, you find out that's not
9 something he told you, correct?

10 A Well, yeah, he told me that, but that wasn't the
11 truth.

12 Q Right. Then you -- later on, you find out that's
13 not true --

14 A Yeah.

15 Q -- correct? And you saw some things on the news,
16 and you thought maybe the guy on the news was Orco or Largo,
17 right?

18 A Yeah.

19 Q So, do you actually have an independent memory of
20 Robert Figueroa telling you, hey, me, Manny, and Orco went
21 over to rob the stash house? Or is it, I got some information
22 from a whole bunch of pieces and I told the cops that in my
23 statement?

24 A Yeah, basically. Not intentionally, you know what I
25 mean, to be a -- be an idiot, you know what I mean? It's just

1 I'm being interrogated. I mean, there's a murder, you know
2 what I mean? It's just -- I was just trying to, you know what
3 I mean, do the right thing or whatever, know what I mean?

4 Q Well, as you sit here today, do you have a memory of
5 exactly what words Rob Figueroa said to you?

6 A No, I don't, sir.

7 MR. DiGIACOMO: Thank you. I have nothing further.

8 REDIRECT EXAMINATION

9 BY MR. LANDIS:

10 Q Briefly, how did you figure out that Manny wasn't
11 involved?

12 A Because his mom called me, and then he came to my
13 house last year.

14 Q Why did -- what do you mean by his mom called you?

15 A His mom called me because -- because, like I said,
16 that's my aunt, you know what I mean? He's my cousin, you
17 know what I mean? She called me telling me what -- why -- you
18 know what I mean, what happened, why I said it, you know what
19 I'm saying?

20 Q How did she know what you said if she told you?

21 A Because he -- (indecipherable) the detectives,
22 everybody, you know what I mean, told (indecipherable) you
23 know what I mean, you guys say you guys are, you know what I
24 mean, (indecipherable) but you guys -- you guys give -- all
25 the information up, you know what I mean, statements, the

1 addresses, the phone numbers, you know what I mean? You guys
2 told them everything. You guys -- everything that Robert
3 knows, Manny knows. Know what I mean, through the jail
4 phones, writing, through everything. They know everything.

5 Q What did Manny say when he talked to you about that
6 next year, whenever it was?

7 A Huh?

8 Q You said Manny also came to your house?

9 A Yeah.

10 Q How did that go down?

11 A Fist fight.

12 Q Okay.

13 A And then I just got up, you know what I mean, and --
14 I mean, told him, you know, I mean, it was my bad and shit,
15 you know what I mean.

16 THE COURT: I can't hear you. You got to keep your
17 voice up.

18 THE WITNESS: Told him, you know what I mean, I was
19 sorry, you know what I mean, for -- for doing that, you know
20 what I mean, and he wanted to fight me, so you know, he
21 (indecipherable) back, you know what I mean.

22 BY MR. LANDIS:

23 Q You said that you believe Manny said that to you
24 initially in September of 2014 that he was involved, I think
25 you said for street cred?

1 A Yeah. Well, yeah. At first, I believed, you know
2 what I mean, he was there, you know what I mean? Just the
3 juice they were putting on it, but you know what I mean, after
4 thinking about it, you know what I mean, Manny was at the park
5 with me that day --

6 Q But let's --

7 A -- at Alexander Park.

8 Q But let's slow down. Did Manny tell you he was
9 involved or not?

10 A Yeah.

11 Q And why would he want to establish street cred with
12 you if you know?

13 A I don't know. Because of girls, you know what I
14 mean? Everybody -- everybody knows me. Everybody, trying to
15 just street cred, you know what I mean, trying to be cool.
16 And I don't know his reason.

17 Q You've known Manny a good portion of your life,
18 right?

19 A Yeah.

20 Q But you have a memory of that Manny conversation
21 today. Do you at least remember Robert telling you some
22 details about what happened when you were at his house?

23 A Just about the -- him getting shot and waiting for
24 his sister to come pick him up, right?

25 Q Right, right. And did he tell you how he got shot;

1 why he got shot?

2 A Yeah.

3 Q The part that you said that there was three people
4 involved, and you even knew the position that they were in,
5 according to what was told you, where did you get that from;
6 do you remember?

7 A Well, he told me it was three people. It was him,
8 Manny, and then it was a girl.

9 Q That's what Robert said?

10 A Yeah. So, that's why I said three people.

11 Q Okay.

12 A And I was including Manny because I thought it was
13 him, too.

14 MR. LANDIS: I have no further questions.

15 THE COURT: Do you want to ask any questions outside
16 the presence?

17 MS. McNEILL: I do, Your Honor. And I guess I'd
18 like to -- these -- I'm just asking these for the purposes of
19 our argument on the gang claims. I don't want them to come in
20 in front of the jury, necessarily, if we decide they're not.

21 THE COURT: Sure.

22 CROSS-EXAMINATION

23 BY MS. McNEILL:

24 Q You indicated that you don't believe -- so, when you
25 gave the police the name Montone, where did you get that name

1 from?

2 A From Robert.

3 Q Okay. You've never met Montone -- Montone?

4 A No.

5 Q Okay. So, all you know about him is from Robert?

6 A Yeah.

7 Q And when you say he's their shot caller, isn't it
8 true that that's something that happens in prison, right?

9 A You could say that.

10 Q Okay. So, the shot caller is kind of the guy who
11 runs the yard in prison, right?

12 A Yeah, there's no shot callers in the streets.

13 Q Right. Okay. So, when you were referring to him as
14 being the shot caller, you meant when these guys were in
15 prison?

16 A That means being like Robert's OG, right.

17 Q Okay. The person that you know as Montone is not
18 Manny's shot caller, right?

19 A No, that's -- Manny's from a whole different gang.

20 Q Okay, so --

21 A Me and Manny are from a whole different state.

22 Q So, you and Manny are Nortenos, right?

23 A Yeah.

24 Q Okay, and so you wouldn't have a shot caller who was
25 not a Norteno?

1 A No.

2 Q And Little Locos are not Nortenos? Okay.

3 A They're --

4 MS. McNEILL: Nothing further.

5 THE COURT: All right. Let's -- let's have some
6 further discussion. Do you want the witness to step out
7 again?

8 MR. LANDIS: Yes, please.

9 MS. McNEILL: Yes, please.

10 THE COURT: Yeah.

11 THE WITNESS: One more question?

12 THE COURT: Yeah.

13 THE WITNESS: They said I had an arrest warrant,
14 that's why I'm here. Is --

15 THE COURT: Yeah. As soon as your testimony's over,
16 I'll quash that, okay?

17 THE WITNESS: Okay.

18 THE COURT: I won't do it in front of the jury, but
19 I --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Don't worry about it. We're quashing
22 that. And thank you for coming voluntarily.

23 THE MARSHAL: He said thank you -- or you're
24 welcome.

25 MR. LANDIS: Mr. Murphy was just going to use the

1 restroom. We can continue on arguing.

2 THE COURT: Okay. All right, so I don't think that
3 based upon that there is some need to get into all of this
4 discussion about gang member, unless, I mean -- I just think
5 that that's going to go -- take us way off base and
6 potentially be more prejudicial than probative. I mean, based
7 upon what he's saying today, I don't know how you can really
8 believe a word he says about anything. I just -- I mean,
9 other than, of course, there's independent corroboration for
10 the fact that Mr. Figueroa got shot in the face and the side,
11 because he could see that, but --

12 MR. LANDIS: He corroborates a few facts that he
13 couldn't have known from the news at the time. I'll say that.

14 MR. DiGIACOMO: Well, I believe --

15 THE COURT: Well, I don't know.

16 MR. DiGIACOMO: -- he talked to them. I mean,
17 that's not the issue, though he does say that -- the way I
18 read this is that Manny's a Little Locos. I mean, it's
19 another inconsistent statement within the statement itself,
20 the -- you know, the Montone, that he's the OG. I don't see
21 how it is we're going to have him on the stand and not get
22 into -- like, there's other -- I mean, I left a whole lot of
23 things out of the cross because it didn't go directly to the
24 Locos, and I didn't want to give him a preview of it. But
25 there's a lot of -- I don't really feel the need that much to

1 go into the gang stuff, but I have serious concerns that
2 that's going to come out somehow, unless you can think of a
3 way to prevent him from blurting it out.

4 MR. LANDIS: We can always admonish him, like we did
5 with Summer and Robert.

6 MS. McNEILL: Right.

7 MR. LANDIS: Otherwise, I don't think there's a way
8 to guarantee it with any witness, truthfully.

9 THE COURT: All right. Okay. You just said
10 something about -- I thought you said OGD or O --

11 MR. DiGIACOMO: OG versus shot caller.

12 THE COURT: Oh, yeah, okay.

13 MR. DiGIACOMO: It's in the same page.

14 THE COURT: I don't even -- does anyone know what
15 that's supposed to mean?

16 MR. DiGIACOMO: Original gangster. He's the more
17 senior gangster. He's the one who's in the --

18 THE COURT: Okay.

19 MR. DiGIACOMO: -- in prison, their shot caller.
20 Out here, they're OG's. That was the nature of the cross
21 about --

22 THE COURT: All right, so --

23 MR. DiGIACOMO: -- on the street, there's no shot
24 caller.

25 THE COURT: Right, right, right.

1 MR. DiGIACOMO: Right, they're OG's on the street.

2 THE COURT: I got that part, I just still didn't
3 know what OG was supposed to stand for. But okay, original
4 gangster. All right, so learn something new every day. All
5 right.

6 The problem is that we had been careful with another
7 witness to avoid the -- you know, the whole "we were cellies"
8 issue. And so, obviously, I don't want him talking about how
9 he knows -- he knows Montone because -- it doesn't -- I mean,
10 he's not saying he knows him personally. He says -- it's sort
11 of like reputation evidence, and we're getting into kind of
12 character evidence. And I think I can admonish him that I
13 don't want him talking about gangs. I mean, if he wants to
14 say that he's a gang member, that's himself.

15 MR. DiGIACOMO: Sure.

16 THE COURT: I mean, who cares?

17 MR. DiGIACOMO: I guess I would ask to be able to at
18 least ask him, look, you were aware who Montone was; you knew
19 that Montone is related to Robert Figueroa; you knew that
20 Montone lives in a nice house at Alexander and Gowan
21 (phonetic). My concern is, when I ask that question, that
22 something bad's going to come out of his mouth. There is
23 plenty of other things I can cross-examine him on, and I
24 didn't even ask him anything about why is he saying everybody
25 here is guilty.

1 MR. LANDIS: That's a dangerous thing to try first
2 time with the jury.

3 MS. McNEILL: It is. And Mr. Landis can't open the
4 door to evidence against my client, Your Honor. That's my
5 biggest concern, is this is Mr. Landis's witness. He's put
6 the witness on. I understand why he's doing that, but then,
7 you know, the biggest focus for Mr. DiGiacomo about this is --
8 is my client; is that he is somehow, you know, that Sotelo is
9 now saying different things because he's scared. I don't know
10 that that was borne out. It sounds more like he regrets that
11 he implicated his cousin, and then came over and beat him up.
12 And so, I don't think --

13 THE COURT: Or that he was making up a story to try
14 and get out of a burglary.

15 MS. McNEILL: Right.

16 THE COURT: I mean --

17 MR. DiGIACOMO: Correct, Judge, and --

18 THE COURT: That's what it sounded like to me.

19 MR. DiGIACOMO: Yeah. I mean, there's a whole lot
20 of cross unrelated to this subject matter. The only area I
21 was going to go to was ask him those questions as that
22 corroborates Figueroa and Montone have a relationship, and
23 that is corroborative of other evidence in the case. I wasn't
24 -- I mean, I'm happy to stay away from the gang stuff, I just
25 wanted to be clear it's -- that might be tough.

1 MR. LANDIS: And regarding the potential benefits he
2 got for whatever he did, let it be known that the State has
3 not disclosed anything.

4 MS. McNEILL: And --

5 MR. LANDIS: Furthermore, Detective Jensen
6 explicitly denied on this stand doing anything for this kid or
7 knowing Metro did anything for this kid. And if his
8 testimony's true, I think we have a huge discovery problem and
9 I think it's something we need to get into before this trial
10 is over.

11 MS. McNEILL: And that was my other concern, Your
12 Honor, is when he said that Detective Jensen walked him out
13 the door of the jail, that is directly contrary to what
14 Detective Jensen said.

15 However, I would note that there is evidence that
16 Mr. Sotelo was released. None of us are aware of exactly how
17 that happened. We all had our suspicions. I know that's why
18 Mr. Landis asked Detective Jensen that, and he suggested that
19 he really didn't know how Mr. Sotelo got out of jail, other
20 than that, you know, it just sort of happened.

21 And so, I have some concerns that it sounds like Mr.
22 Sotelo was given quite a bit of inducement, where originally,
23 he's being told he was looking at a habitual, and that he gets
24 a misdemeanor and released from jail. I would second Mr.
25 Landis that there is a serious discovery violation based on

1 what Mr. Sotelo has said about what happened when he was
2 arrested and the information he provided.

3 MR. DiGIACOMO: Two things. My recollection is I
4 asked it on direct, because it was under my impression that
5 Detective Stucky was arresting him and he was released that
6 day. And as my recollection with Detective Jensen's response
7 was, was my understanding is he wasn't going to jail that day,
8 and it turns out that's true, he wasn't going to jail that
9 day.

10 I don't recall there being any questions about
11 subsequently, but if there was, one, I had no knowledge of
12 them; but two, and more importantly, he ain't my witness. So,
13 I can't have a Giglio obligation unless I call somebody to the
14 stand and have to turn it over.

15 Confidential informants in a case, we have the
16 rights to keep them confidential, and so long as we don't put
17 them on the stand, we have no obligation to turn over Giglio
18 material. Now, to the extent that this witness is disputing
19 what Detective Jensen said about the jail, which I don't
20 recall that being asked at all.

21 I remember Detective Jensen saying, that day, it was
22 my understanding that he was not going to jail, and I don't
23 believe this witness disputes that, because he didn't go to
24 jail that day; he was released that day.

25 MR. LANDIS: I'm proof positive I asked all those

1 questions I just said I asked.

2 MS. McNEILL: He did. I remember Mr. Landis asking
3 him specifically about Sotelo's subsequent release from jail.

4 MR. LANDIS: And if they get information from a
5 witness that's incriminating, it doesn't matter if it's to my
6 client or not. If it's part of their investigation and they
7 give that witness a benefit for that information, it's
8 discloseable.

9 MR. DiGIACOMO: I don't know what law that is.

10 THE COURT: Well, I guess -- I mean, you want to --
11 you want to call this guy to -- to say that what he's told
12 them was true, and now you're upset that --

13 MR. LANDIS: That Detective Jensen perjured himself.
14 I am.

15 MS. McNEILL: Yes.

16 THE COURT: Well, be careful about saying that.

17 MR. LANDIS: I know Metro released that kid. I know
18 that's true. The fact that Jensen wasn't involved, possible,
19 but I'm confident Metro released that kid, and it happened to
20 be by Judge Smith, and it happened to be the same day Jensen
21 got a bunch of search -- or court orders signed by Smith.

22 THE COURT: Well, okay, but if you're saying that
23 you knew all this before, then what are you --

24 MR. LANDIS: Here's what I have. I have an entry in
25 the Justice Court -- North Las Vegas Justice Court minutes for

1 that misdemeanor case, and I can provide more detail. And
2 this is just off the public portal.

3 THE COURT: Uh-huh.

4 MR. LANDIS: And it says after he was remanded for
5 not doing his stuff on misdemeanor negotiations, there's an
6 entry that says, "Defendant released per Judge Lee," who is a
7 North Las Vegas Justice of the Peace, "at the request of
8 District Court Judge Smith."

9 That's what it -- that's what the entry says.
10 That's all I had. I've been around long enough to know Doug
11 Smith wouldn't know this kid and OR him based on any personal
12 relationship, and I knew Doug Smith signed a lot of court
13 orders in this case for cell phone stuff and buccal swabs.

14 That's all I knew, and I knew that, again,
15 independent from the State. I assumed this kid told them that
16 for a reason, just based on common sense, and from there,
17 that's where I started questioning Jensen about it.

18 MR. DiGIACOMO: Well, I'm not sure this is the only
19 thing that -- in fact, I know this is not the only thing that
20 Mr. Sotelo has ever provided the police.

21 MR. LANDIS: Well --

22 MR. DiGIACOMO: And thus -- I mean, the fact that if
23 it is or isn't Barry, I'm certainly going to look into that.
24 And I don't recall the question being framed in such a way
25 that it was on two days after he gave this statement, well,

1 did you release -- did you do anything to release him from
2 jail, I don't remember that question being asked. If the
3 question was asked, did you do anything to get this statement,
4 that answer would still be no, because he's being left. So, I
5 don't know exactly what the question was, but I'll certainly
6 inquire from Detective Jensen if -- if he recalls doing
7 anything for him. But I don't recall there being a question
8 being asked that I was aware was inaccurate --

9 MR. LANDIS: This is --

10 MR. DiGIACOMO: -- as far as I know.

11 MR. LANDIS: This is what I asked him. Did you give
12 any benefit to him at any time? No. Are you aware of anybody
13 in Metro doing anything to give him a benefit? No. That's
14 what Jensen testified to.

15 MS. McNEILL: And then Mr. Landis also inquired
16 about his release, and talked about releases, OR's that are
17 done by judges, and sort of that process. And my recollection
18 is that Jensen said, sure, that happens, I don't remember that
19 -- don't have any idea if this happened in this case. But my
20 -- but then, you know, Sotelo says Detective Jensen walked him
21 out of that jail.

22 THE COURT: Well, okay, so --

23 MR. DiGIACOMO: Ms. Lexis has just pulled it up that
24 apparently he posted a bond on --

25 MR. LANDIS: No, no.

1 MR. DiGIACOMO: -- 10/29.

2 MR. LANDIS: That's a different case. Look at --

3 MR. DiGIACOMO: Oh.

4 MR. LANDIS: Look at that -- it's the misdemeanor
5 North Las Vegas case. I can get you a case number. That's
6 the felony case that he's on probation for that he posted the
7 bond in.

8 THE COURT: Right. I'm not -- I'm not sure why
9 we're talking about all of that right now, because obviously,
10 that would be an issue if there's a conviction. And if you
11 can show that something -- that there was some kind of
12 violation and it was -- you know, it resulted in prejudice,
13 you know.

14 But as far as what we're doing right now is just
15 trying to determine what will be allowed as far as the
16 testimony concerning with this witness. And I don't think
17 that there's some need to go into a lot of, you know, gang
18 activity speaking at this point, because, you know, the whole
19 purpose of having this hearing outside the presence was to see
20 what he was going to say so he didn't blurt something out and
21 cause a blow-up in front of the jury.

22 And so, you know, I wanted you to ask what you
23 thought you were going to ask so we'd know that. Obviously,
24 that maybe you didn't do that on cross.

25 MR. DiGIACOMO: I only asked those questions related

1 to the gang stuff. I wasn't going to cross him on everything
2 else that I know that I have the ability to cross him on.
3 I --

4 THE COURT: Okay, all right. But -- so, if I bring
5 him in here and admonish him I don't want him to talk about
6 people's gang associations, other than if he -- if there would
7 be some reason for him to talk about his own, I suppose, I
8 don't see there's a problem with that.

9 If he wants to say that he's a member of some
10 Northern California gang, that's fine, or what have you, but
11 we've already tried to avoid the whole issue of Figueroa and
12 Laguna being cell mates. And we were very careful about that,
13 and now I don't want to undo that. So, if you have some
14 concern that you're going to cross a line on cross, but you
15 think it's something that must be asked, then approach before
16 we do it, okay? So we can --

17 MR. WOLFBRANDT: Still, on behalf of --

18 THE COURT: -- take it carefully.

19 MR. WOLFBRANDT: -- Mr. Mendoza, I think even the
20 questions that Mr. DiGiacomo asked about the Little Locos and
21 identifying who was with which gangs, and Northern California
22 versus here, all of that is extremely prejudicial to my
23 client.

24 MR. DiGIACOMO: Oh, I just got ordered not to ask
25 that, so. I wasn't going to ask those now that she said that

1 that doesn't come in, right?

2 THE COURT: Right.

3 MR. WOLFBRANDT: Yeah, okay.

4 THE COURT: Yeah. Yeah. Okay. So, are we -- we'll
5 bring Mr. Sotelo back so I can admonish him about mentioning
6 gangs.

7 THE MARSHAL: Watch your step there. Step up and
8 have a seat.

9 (Gabriel Sotelo is present)

10 THE COURT: Mr. Sotelo, if you'll have a seat.

11 MR. SOTELO: Yes, ma'am.

12 THE MARSHAL: We need you to speak a little louder.

13 MR. SOTELO: Okay.

14 THE MARSHAL: Into the microphone.

15 MR. SOTELO: Okay.

16 THE COURT: Now, we're going to be bringing the jury
17 in, and you're going to testify again, you know, because they
18 didn't hear any of this, but --

19 MR. SOTELO: Yeah.

20 THE COURT: -- what I -- what I don't want you to
21 talk about really is gang membership, you know, of -- of what
22 you've heard about Little Locos, or who -- you know, no,
23 because that's really tangential, and I don't want the -- I
24 just don't want you to talk about that.

25 MR. SOTELO: Yes, ma'am.

1 THE COURT: Okay? So, listen carefully to the
2 questions that are asked you. Don't volunteer things.

3 MR. SOTELO: Okay.

4 THE COURT: All right? Because the lawyers are
5 being careful to avoid certain subjects, and so just answer
6 the questions, all right?

7 MR. SOTELO: Okay.

8 THE COURT: And anything else you want me to mention
9 to him before we bring the jury in? No?

10 MR. LANDIS: Not from me. Thank you.

11 MR. DiGIACOMO: No, not from me.

12 THE COURT: Okay. All right. Okay, and we're going
13 to swear you in again in front of the jury, okay?

14 MR. SOTELO: Yes, ma'am. Okay.

15 MR. LANDIS: Can I approach and get her statement as
16 they're coming in?

17 THE COURT: Of course.

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

19 (Jury reconvened at 2:42 p.m.)

20 THE MARSHAL: Your Honor, all 12 members of the jury
21 are present, along with the three alternates.

22 THE COURT: Thank you. Please be seated. The
23 record will now reflect that we are back within the presence
24 of all 12 members of the jury, as well as the three
25 alternates. Good afternoon, ladies and gentlemen. Good to

1 see you. All right. And we're going to -- this is Mr.
2 Sotelo. We're going to have the clerk swear him in. Mr.
3 Sotelo?

4 THE CLERK: So could you please stand and raise your
5 right hand?

6 GABRIEL SOTELO, DEFENDANT MURPHY'S WITNESS, SWORN

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

10 THE WITNESS: Gabriel Sotelo. G-a-b-r-i-e-l,
11 S-o-t-e-l-o.

12 THE CLERK: Thank you.

13 THE COURT: Proceed.

14 MR. LANDIS: Can I state, just so -- in case it's
15 not obvious, he was called by me on behalf of Mr. Murphy? Is
16 that okay?

17 THE COURT: Yes, of course.

18 DIRECT EXAMINATION

19 BY MR. LANDIS:

20 Q Mr. Sotelo, if I could direct your attention to
21 roughly two years ago, the fall of 2014; specifically,
22 September/October. Did there come a time period in there
23 where you were talking to a North Las Vegas Police Department
24 detective?

25 A Yes.

1 Q And was that detective's name Stucky?

2 A Yes.

3 Q And is Detective Stucky a female?

4 A Yes.

5 Q And did you relay to Detective Stucky a conversation
6 that you had had with Robert Figueroa?

7 A Yes.

8 Q And how was it that you knew Robert Figueroa as of
9 September 2014? Was he a friend?

10 A Yeah, we were in Winnemucca Camp together.

11 Q And did you guys -- did you go to his house from
12 time to time just to see him?

13 A Yeah.

14 Q And do you recall seeing a news story in late
15 September 2014 about an attempted home invasion, attempted
16 robbery, and eventual murder in town?

17 A Yes.

18 Q And do you remember that the news was informing
19 people one person was arrested?

20 A Yeah.

21 Q And did you see the picture of this person on the
22 news?

23 A Yes.

24 Q And did you know that person?

25 A No.

1 Q But you heard the general description of the crime
2 from the news?

3 A Yes.

4 Q And then, after that, do you recall you were having
5 a hard time getting a hold of Robert?

6 A Yeah.

7 Q But did you eventually get to talk to him?

8 A Yes.

9 Q And did he invite you over to his house?

10 A Yes.

11 Q And did you go?

12 A Yes.

13 Q Once there, did he start telling you some details
14 about that event you saw on the news?

15 A Not instantly, but eventually, yeah.

16 Q During that same time at his house though, he
17 eventually starts talking to you a little bit; is that what
18 you're saying?

19 A Yes.

20 Q And did he have any injuries or healing injuries you
21 could see on his person?

22 A Yes.

23 Q What do you remember seeing?

24 A He had a gunshot in his face on his chin.

25 Q And did he start telling you as to how he got that

1 gunshot?

2 A Yeah.

3 Q And what did he tell you?

4 A Said him and Manny and some chick, they got caught
5 up trying to rob somebody.

6 Q Trying to rob a house?

7 A Yeah.

8 Q And that's how he got shot?

9 A Yeah.

10 Q And when you say Manny, we're talking about -- the
11 person he was referring to would have been Emanuel Barinetos?

12 A Barientos, yeah.

13 Q Barientos, I'm sorry. Fast-forward now. Were you
14 able to tell the police based on that conversation with Rob
15 what kind of gun he tends to carry?

16 A Yeah.

17 Q Were you able to tell the police what kind of gun
18 Manny tends to carry?

19 A Yes.

20 Q And you knew -- Rob told you that that house they
21 attempted to rob was a marijuana dealer, right?

22 A Yeah.

23 Q And you informed the police of that, right?

24 A Yes.

25 Q After you first start talking to these things with

1 Detective Stucky from the North Las Vegas Police Department,
2 does she call Las Vegas Metropolitan Police Department?

3 A Yes.

4 Q And does that cause one or more detectives to come
5 see you from Las Vegas Metro?

6 A Yeah. Yes.

7 Q And did they come see you that very same day that
8 you were sitting down with Detective Stucky?

9 A Yeah, they showed up like within ten minutes.

10 Q And at least one of those detectives, do you
11 remember what their names were?

12 A Barry Jensen.

13 Q Barry Jensen?

14 A Yeah.

15 Q The next day, the day after you talked to Detective
16 Stucky and Detective Jensen, did you agree to meet Detective
17 Jensen again?

18 A Yeah.

19 Q And did you actually meet him?

20 A Yeah.

21 Q And for what purpose?

22 A They wanted me to show them where Robert lived.

23 Q And were you able to do that?

24 A Yeah.

25 Q And you just -- you guys drove together in one of

1 their cars, and you pointed out where his home was?

2 A Yeah, they put me in the back seat and they drove me
3 there.

4 Q And during that car ride with Detective Jensen, were
5 you in custody, under arrest, or were you a free person?

6 A I was free.

7 Q Did Detective Jensen ever do anything for you in
8 response to you helping him out?

9 A Yeah.

10 Q What did he do?

11 A Got me out of jail.

12 Q He got you out of jail?

13 A Yeah.

14 Q And how do you know he got you out of jail?

15 A Because I called him.

16 Q You called him and asked him to; is that what you
17 mean?

18 A Yeah. He told me if Stucky arrested me to give him
19 a call, he'll get me out.

20 Q After you called him, did you actually get out of
21 jail?

22 A Yeah.

23 Q Did you see him when you were getting out of jail?

24 A No.

25 MR. LANDIS: Court's brief indulgence. I'll pass

1 the witness.

2 THE COURT: Cross.

3 CROSS-EXAMINATION

4 BY MR. DiGIACOMO:

5 Q How are you? Have we ever met before you came in
6 here earlier?

7 A No, sir. I called you probably like 100 times. You
8 never answered.

9 Q Never answered, right?

10 A No.

11 Q Okay. So, let me back up a little bit to September
12 of 2014. September of 2014, you had some of your own problems
13 with the law; would that be fair?

14 A Yes, sir.

15 Q And the reason you were talking to Detective Stucky
16 on October 16th of 2014 was because she's talking to you about
17 a stolen computer, laptop, something like that, correct?

18 A Yeah.

19 Q All right. And you had just gotten out of jail from
20 a different case as well that you had been arrested in August
21 of 2014, correct?

22 A Yes.

23 Q And you really didn't want to go back to jail, did
24 you?

25 A No.

1 Q So, on October 16th of 2014, you're having this
2 conversation with Detective Stucky, and the homicide that
3 you're here to testify about is not the first thing you talked
4 to her about, correct?

5 A No.

6 Q All right. You tell her about a number of things
7 you know about; would that be fair?

8 A Yeah.

9 Q Okay. And one of the things you try and tell her is
10 that Manny Barientos committed the burglary that resulted in
11 you being in possession of that stolen laptop?

12 A Yeah.

13 Q Right? So, originally, you're trying to give up
14 Manny, right?

15 A I guess so.

16 Q All right. Then she asks you some questions about
17 other stuff you might know on, and that's when you tell her
18 kind of a story about what you know about the homicide that
19 occurred at Hualapai and Charleston?

20 A Yes, sir.

21 Q Okay. And so that we're clear, you told -- well,
22 you told her, you told Barry Jensen, but let me ask it this
23 way. It's true that you saw some TV reporting, correct?

24 A Yeah, the night of.

25 Q And you saw a person that was taken into custody

1 from that, correct?

2 A Yeah.

3 Q You also saw a picture of the victim --

4 A Yeah.

5 Q -- right? And then, before you ever get to the
6 point where you talk to Rob, you have a conversation with
7 Manny, correct?

8 A Yes.

9 Q And Manny, he's just not an average person; he has a
10 relationship to you?

11 A Yeah.

12 Q Manny's what, your cousin?

13 A Yeah.

14 Q Okay. You grew up with Manny?

15 A Yeah.

16 Q And based upon everything that you had heard, you
17 sort of -- you're calling Rob and you can't get a hold of Rob,
18 right?

19 A Yeah.

20 Q So, the first time you heard anything from Rob about
21 this homicide is two weeks after it happened, somewhere in
22 that range?

23 A Yeah, some -- something around there. I'm not
24 positive how long, you know what I mean? It was in the same
25 month, I believe.

1 Q And you go over to the apartment, and you go over
2 there because you're buying weed from Rob and Manny, right?

3 A Just Rob.

4 Q Just Rob?

5 A Yeah.

6 Q Do you remember telling the police that you buy weed
7 from Manny, too?

8 A No, but if I did, it was probably a mistake, but
9 I'll say right now Manny doesn't sell weed.

10 Q So, you go over to the apartment, and now you see
11 Rob. He's got a bullet wound to his face; he's got a bullet
12 wound to his side?

13 A I didn't know he had one on his side. I just know
14 he had one on his face.

15 Q Did he eventually show you the one on his side?

16 A No. I didn't know.

17 Q Do you remember telling the police he had one on his
18 face and the one on his side?

19 A No, I know I told them he had one on his face -- on
20 his chin -- his mouth.

21 Q Do you ask him what happened, and initially, he
22 doesn't want to really disclose much information to you?

23 A Yeah, he can't really talk. Can't really.

24 Q And you -- you sort of -- do you recall, actually,
25 just a little while ago, testifying that you kind of put what

1 you had the conversation with Manny with the -- with the news,
2 and what Rob said to you, and you came up sort of with this
3 version of events that you told the police --

4 A Yeah.

5 Q -- on the 16th?

6 A Yeah.

7 Q Right? Do you remember just saying that?

8 A Yeah.

9 Q That's accurate, right?

10 A Yeah. And when Robert was -- was shot, he was -- he
11 was on the phone. I heard him on the phone, too.

12 Q Well, that's what I was going to ask you.

13 A Yeah.

14 Q So, when Rob was shot, he tried to call you, right?

15 A Yeah, trying to see if I would go get him, go pick
16 him up.

17 Q He tried to call you to come get him?

18 A Yeah.

19 Q And you couldn't go get him?

20 A No, I was playing basketball. I couldn't go.

21 Q Did he talk to you about how he tried to call Manny
22 to come get him, too?

23 A Yeah.

24 Q And Manny couldn't come get him?

25 A No, Manny said no.

1 Q So, do you actually have an independent memory as
2 you sit here today of exactly what information you got from
3 Rob about this case, versus what you got from Manny, versus
4 what you got from the news, versus what you got from somebody
5 else?

6 A Just from Robert. He said --

7 Q What exactly did he say to you?

8 A Said that him, Manny, and some chick, they tried to
9 Rob somebody, and the owners came out, and Robert kicked the
10 door in and they shot him in his face, and he took off
11 running. He said his boy got caught. The police caught him
12 in a car.

13 Q Now, do you remember telling the police that the guy
14 who got caught is Orco?

15 A Yeah.

16 Q Or Largo?

17 A Yeah, yeah. When I -- well, just because of their
18 whole friend circle, you know what I mean, I just thought it
19 looked like him on the news, you know what I mean?

20 Q And so that we're clear, the guy over here who's in
21 the blue jacket, white shirt, that's not Orco and that's not
22 Largo?

23 A No.

24 Q Okay. Now, at some point in time, do you come to
25 realize -- do you receive information that Manny wasn't there?

1 A Yeah. Yes, sir.

2 Q And do you convey that information to authorities?

3 A No.

4 Q Do you tell anybody who tried to contact you and
5 give you a subpoena?

6 A No. They already -- Barry Jensen told me months,
7 months, months ago that Manny wasn't there before I found out.

8 Q So, let me -- I'm still talking about your subpoena.

9 A Okay.

10 Q In reference to this trial, you got a subpoena, and
11 you came to our office, right?

12 A Yes, sir.

13 Q And you told victim witness -- there's a desk you go
14 to. You told them you didn't want to testify?

15 A No.

16 Q Told them you didn't want to be involved?

17 A No.

18 Q You told them that you lied to the police?

19 A No, I didn't tell them that.

20 Q Didn't you tell them that -- well, let me rephrase.
21 Maybe you didn't say you lied. Did you remember telling them
22 that the information that's contained in this statement is
23 accurate?

24 A Yeah, because I didn't know them. On the subpoena,
25 I said the people on this paper, I don't know who they are. I

1 don't know nobody on this paper. They said -- the only one I
2 know is Robert.

3 Q And the -- it was conveyed to you, hey, you don't --
4 you don't have to come pursuant to your subpoena?

5 A Yeah, they told me not to go.

6 Q Fast-forward. After that, you got a subpoena from
7 Mr. Landis's investigator, a guy named Richard Frankie
8 (phonetic)?

9 A Yeah.

10 Q Okay. And you didn't want to come down for that
11 eight, correct?

12 A They -- that was the same subpoena, the one -- his.
13 It was the same one. The one he -- I guess he came to my
14 front door and gave it to my wife. That's the one that I came
15 to the third floor for.

16 Q You called Detective Jensen?

17 A Yeah.

18 Q And he said call the DA's office?

19 A Yeah, call you.

20 Q And we never actually had a conversation, correct?

21 A No, sir, or your co-counsel.

22 Q He never told you that you didn't have to come
23 pursuant to a subpoena or anything like that?

24 A He said just listen to you. Whatever you said, do
25 what you say.

1 Q Now, when the defense was trying to get you here, do
2 you remember sending a text to them, telling them that
3 Detective Jensen had told you not to talk to you?

4 A Yeah. Yes, sir.

5 Q Do you remember telling them that, basically, you
6 don't want to come, and that you're sorry, but basically,
7 they're all guilty?

8 A Yeah.

9 Q Now, as I'm sitting -- from what I hear, do you have
10 any information about, other than Rob, who committed this
11 crime?

12 A No, sir.

13 MR. LANDIS: Objection, foundation.

14 THE COURT: The answer is yes or no. Don't say
15 anything else other than yes or no.

16 THE WITNESS: No.

17 MR. DiGIACOMO: He said -- I'm sorry.

18 THE COURT: Yeah.

19 BY MR. DiGIACOMO:

20 Q Now, you testified that on -- after this
21 conversation you have with Detective Jensen, the next day,
22 they drive you around to point out Rob and Manny's place; do
23 you remember that?

24 A Yes, sir.

25 Q And then you remember you testified -- I don't

1 remember if it was now or before, but later that day,
2 Detective Stucky comes back, and she arrests you for your
3 North Las Vegas charges?

4 A Yes, sir.

5 Q And then, you go to jail for those charges, correct?

6 A Yes.

7 Q How long were you in jail for?

8 A About a day. Just the booking process.

9 Q So, if you talked to Detective Jensen on the 16th,
10 that would have been the 17th, you went, and the 18th, you
11 would have gotten out of jail; would that be fair?

12 A Yeah, I was pretty sure I was free already on the
13 18th. It wasn't that long I was locked in. I don't recall
14 being in jail that long.

15 Q You just said that Detective Jensen is the person
16 who got you out of jail?

17 A Yeah, Barry.

18 Q And you said -- I'm sorry. Today, you said you
19 didn't see him when you were getting out of jail. Do you
20 remember saying that?

21 A Yeah, I said that, but in the back of my head, I
22 thought you meant did I see him after the day -- I seen him
23 when I got out of jail, but not after that, like we met up
24 after or nothing.

25 Q He physically walked you out of the jail?

1 A Yeah.

2 Q Okay. Why is it that he had walked you out of the
3 jail that you posted a bond on October 29th of 2014? Did you
4 get arrested again?

5 A No. I don't think so.

6 Q As far as you know, nobody ever posted a bond for
7 you?

8 MR. LANDIS: And I'd object to facts not in evidence
9 about he posted a bond October 29th, 2014, which is what the
10 question was.

11 MS. McNEILL: I will join the objection.

12 THE WITNESS: I believe it was a hold I had --

13 THE COURT: All right, wait, wait, wait, wait.

14 There's an objection. So, the objection is assumes facts not
15 in evidence? Is that what you said?

16 MR. LANDIS: Which is, yeah, he posted a bail bond
17 October 29th.

18 THE COURT: All right, sustained.

19 MR. DiGIACOMO: Let me rephrase.

20 THE WITNESS: Yeah, I believe it was a hold that I
21 had, that I had to bond out in order for him to get me out.

22 BY MR. DiGIACOMO:

23 Q You had -- you had to pay a bond to get out of jail
24 so the police could get you out of jail, is your testimony?

25 A Well, I had -- I had a hold, so --

1 Q For what?

2 A I believe it was a traffic ticket or something, or
3 fix a ticket. Either -- it was something stupid out of city
4 jail, and I had a hold.

5 Q So, your -- so I get this clear, your testimony is
6 you did not post the bond on your felony case?

7 A No, no. I didn't -- that would have been thousands
8 and thousands of dollars, right?

9 Q Well, I can't testify, but --

10 A Oh, okay.

11 Q -- your recollection is, is that you didn't post a
12 bond?

13 A No, because Barry Jensen got me out.

14 MR. DiGIACOMO: All right, thank you. I have
15 nothing further.

16 THE COURT: Cross?

17 MS. McNEILL: Thank you.

18 CROSS-EXAMINATION

19 BY MS. McNEILL:

20 Q It sounds like you and Detective Jensen have kind of
21 a lengthy relationship; is that fair to say?

22 A Yes.

23 Q Do you have his cell phone number?

24 A Barry's?

25 Q Yeah.

1 A I have his card.

2 Q Okay. So, your first reaction when you get a
3 subpoena on this case is to call Barry Jensen?

4 A Yeah.

5 Q Why was that your first reaction?

6 A Because he's -- that's the only one I know. I try
7 to call him, he don't answer, know what I mean? I came down
8 to the third floor, they told me I didn't have to go, you guys
9 put an arrest warrant on me, know what I mean? I was just
10 doing everything I was told to do, you know what I mean?

11 Q Okay. Well, so, who told you you didn't have to
12 come to court?

13 A The third floor.

14 Q Okay. So, you talked to the police in 2014 --
15 October 2014, right?

16 A Yes.

17 Q That's when you give them the information about
18 Manny and Rob being involved, right?

19 A Yes, ma'am.

20 Q Okay. How many times after that would you say
21 you've talked to Detective Jensen?

22 A I'd say about two, three times after that.

23 Q Okay.

24 A That's when I moved. I moved twice.

25 Q The day that he walked you out of jail, that was the

1 city jail?

2 A Yes, ma'am.

3 Q Okay. After he walked you out of the jail, what
4 happened? Did he take you somewhere?

5 A No.

6 Q Okay. He just said, see ya?

7 A Yeah. He said, give me a call in the morning.

8 Q Did you call him the next morning?

9 A No.

10 Q How long after that did you call Detective Jensen,
11 or did he call you?

12 A I can't really recall. It was a long, long time
13 ago.

14 Q Did you ever show Detective Jensen where Manny
15 lived?

16 A Yes. That was before I went to jail.

17 Q I'm sorry, that was before what?

18 A That was before I went to jail.

19 Q Okay. So, was that the same time that you showed
20 him where Robert lived?

21 A Yes.

22 Q Robert and Manny are old friends, correct?

23 A Yeah.

24 Q Known each other since they were kids?

25 A No.

1 Q Since they were young adults?

2 A Since like 20, 21.

3 Q Since they were about 20?

4 A Yeah.

5 MS. McNEILL: Nothing further.

6 THE COURT: Mr. Wolfbrandt?

7 MR. WOLFBRANDT: Judge, I have no questions.

8 THE COURT: Okay. All right.

9 MR. LANDIS: Can we approach very briefly before I
10 tell you --

11 (Off-record bench conference)

12 MR. LANDIS: May I?

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MR. LANDIS:

16 Q Sorry about that delay, Mr. Sotelo. I want to
17 clarify this bail bond, Detective Jensen helping you get out
18 of jail thing that you were just talking about.

19 A Yeah. The bond I posted was for my felony case, the
20 one I'm on probation for right now. That was three months
21 before this.

22 Q Let's break that down. So, as of mid-2014, 2014,
23 you get arrested for a case that you're eventually on
24 probation for now?

25 A And that's the one I post the bond for.

1 Q Right. Let me slow you down though. What -- do you
2 remember what you were originally charged with in that case?

3 A Burglary.

4 Q And you pled to and you're on probation for --

5 A Theft.

6 Q And sometime between your initial arrest in 2014 on
7 that burglary case, you posted a bail bond, you're saying?

8 A I posted it when I got arrested for the -- for --

9 Q On that case that you're on probation for now?

10 A Yeah.

11 Q And that -- did that happen before you ever met with
12 Detective Stucky and Detective --

13 A Yes, that was before three months.

14 Q Then you're out of jail, obviously, right?

15 A Yeah.

16 Q Because you posted that bail bond. Then that day
17 that we talked about with Detective Stucky asking you to come
18 into her office to talk to her, which was in October 2014 --

19 A Yes.

20 Q -- that was for something different than the
21 probation case, right?

22 A Yes.

23 Q That was for what?

24 A That was for possession of stolen property.

25 Q And do you remember on that possession of stolen

1 property case, it involved a computer, yes?

2 A Yes, sir.

3 Q Were you eventually -- after the day you talked to
4 Detective Stucky and Detective Jensen, were you eventually
5 arrested on that case?

6 A Yes.

7 Q And is that the case that you were talking about as
8 far as Detective Jensen's involvement? I'm sorry, let me --
9 bad question. How did you get out of jail after you were
10 arrested for the computer case after you talked to Stucky and
11 Jensen?

12 A Homicide Detective Jensen, Barry got me out of jail.

13 MR. LANDIS: Thank you. I have no further
14 questions.

15 THE COURT: Cross. Recross.

16 RECROSS-EXAMINATION

17 BY MR. DIGIACOMO:

18 Q Just want to make sure I get this clear. You talked
19 to Detective Jensen, you drove him around. After that time
20 period, did you do anything to assist the investigation?

21 A No.

22 Q Okay. So, you talked to him on October 16th,
23 according to this transcript, and then you met with him on the
24 17th, correct?

25 A I don't know the dates. It's just probably the

1 couple days after --

2 Q Would it refresh your recollection to look at the
3 transcript, just so we're clear?

4 A Yeah.

5 Q See the date there? It says October 16th, 2014?

6 A Okay. Yeah, that's when I --

7 Q Okay.

8 A -- I talked to --

9 Q Detective Jensen.

10 A Okay.

11 Q And then the next day, you drove him to show him
12 Manny's house, you show him Figueroa's house, correct?

13 A Yes, I believe the 17th.

14 Q And it's your memory that -- then on the 17th, or is
15 it the 18th that you get arrested by Detective Stucky?

16 A The very next day, which is the 18th, right?

17 MR. DiGIACOMO: Judge, I'd ask you to take judicial
18 notice that he was arrested on I believe October 29th, 2014 in
19 the North Las Vegas case.

20 MR. LANDIS: She doesn't have that case information.
21 I didn't give it to her.

22 THE COURT: Yeah, I don't -- I don't have access to
23 that.

24 MR. DiGIACOMO: May I?

25 MR. LANDIS: Yes.

1 MR. DiGIACOMO: Judge, I -- you do.

2 THE COURT: Okay.

3 MR. DiGIACOMO: I believe -- sorry. These are
4 yours, these --

5 MR. LANDIS: All this is mine. All that's mine.

6 MR. DiGIACOMO: Oh, okay. Well, I just want to give
7 her the record, unless the defense --

8 THE COURT: All right, wait a minute. Do you
9 have --

10 MR. LANDIS: Can I -- can I approach and help you
11 out?

12 THE COURT: Yeah, please. Thank you. I would
13 appreciate it. Okay.

14 MR. LANDIS: There's a whole bunch of stuff in
15 there.

16 THE COURT: All right. If you could direct me to
17 the --

18 MR. LANDIS: I'd be happy to.

19 THE COURT: Thank you.

20 (Off-record bench conference)

21 MR. DiGIACOMO: Mr. Landis will stipulate that Mr.
22 Sotelo was arrested on October 29th of 2014 for the case that
23 he was released on.

24 MR. LANDIS: The computer case.

25 MR. DiGIACOMO: Correct.

1 MR. LANDIS: I will.

2 MR. DiGIACOMO: Thank you.

3 BY MR. DiGIACOMO:

4 Q The only other thing I want to ask you is -- maybe I
5 didn't make this clear -- you said you realized that Manny
6 Ramirez had -- or, sorry, Manny Barientos had nothing to do
7 with this crime at some point, correct?

8 A Yes, just recently, like last year.

9 Q When you were getting calls from Robert Figueroa as
10 he was hiding, trying to get a ride, were you at a park?

11 A Yeah, I was at Alexander Park playing basketball.

12 Q Were you playing basketball with Manny?

13 A Yeah.

14 Q And was he getting phone calls, too?

15 A Yeah.

16 MR. DiGIACOMO: Thank you. Nothing further.

17 MR. LANDIS: No further questions from me.

18 MS. McNEILL: Nothing further.

19 MR. WOLFBRANDT: Nothing further.

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

21 MR. LANDIS: He may.

22 THE COURT: Thank you.

23 MR. LANDIS: And Judge, the --

24 THE COURT: Oh, I'm sorry. Jury -- jury question?

25 JUROR NO. 11: Not anymore.

1 THE MARSHAL: Okay.

2 THE COURT: Okay.

3 JUROR NO. 11: Thank you.

4 THE COURT: It was covered? Sometimes that happens,
5 right? All right, very good.

6 MR. LANDIS: If I may, Judge, the pending matter
7 that -- with --

8 THE COURT: Yes.

9 MR. LANDIS: Okay, thank you.

10 THE COURT: And what I told you --

11 THE WITNESS: Yes, ma'am.

12 THE COURT: -- is done.

13 THE WITNESS: All right.

14 THE COURT: Okay? Thank you.

15 THE MARSHAL: Watch your step.

16 THE COURT: Do you have any other witness to call?

17 MR. LANDIS: I'm going to rest the defense case on
18 behalf of Mr. Murphy.

19 THE COURT: All right.

20 MS. McNEILL: I think I previously rested on behalf
21 of Mr. Laguna.

22 THE COURT: You previously rested. Mr. Wolfbrandt?

23 MR. WOLFBRANDT: I did not previously, but I will
24 rest now. I have no more witnesses.

25 THE COURT: Approach.

1 MR. DiGIACOMO: Yeah, do we --

2 (Off-record bench conference)

3 THE COURT: Okay. So, ladies and gentlemen, we're
4 going to be calling -- the State's going to be calling a
5 witness in rebuttal, and I need to find out if you'd like to
6 have a bathroom break right now? Yes. Okay, so we've got
7 some. As long as there's one person saying yes, accommodate
8 that, and I'm sure the lawyers are going to thank you for
9 that.

10 So, during this -- we're just going to take a recess
11 until 25 minutes to 4:00.

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

20 We'll be in recess for just 15 minutes for everybody
21 to use the facilities and stretch.

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

23 (Jury recessed at 3:20 p.m.)

24 THE COURT: And the record will reflect that the
25 jury's departed the courtroom. And before we recess and let

1 everybody use the facilities, I just wanted to make sure we
2 had canvassed both the defendants remaining, Mr. Murphy and
3 Mr. Laguna, before about your constitutional rights regarding
4 -- regarding whether you wanted to testify or not.

5 So, Mr. Murphy, may I assume and have you confirmed
6 that you do not wish to testify?

7 DEFENDANT MURPHY: Yes, I do not wish to testify.

8 THE COURT: Thank you. Mr. Laguna?

9 DEFENDANT LAGUNA: Yeah, I do not wish to testify.

10 THE COURT: All right, thank you.

11 MR. WOLFBRANDT: Judge, one --

12 MS. McNEILL: Thank you, Your Honor.

13 MR. WOLFBRANDT: One quick thing, too, was --

14 THE COURT: Yes.

15 MR. WOLFBRANDT: -- during Mr. DiGiacomo's cross of
16 Mr. Sotelo, he pointed to -- and I just want the record to be
17 clear, he pointed to Jorge Mendoza.

18 THE COURT RECORDER: (Inaudible).

19 MR. WOLFBRANDT: Sorry. During Mr. DiGiacomo's
20 cross of Mr. Sotelo, he asked and pointed to, and described
21 clothing. But I want the record to be clear that DiGiacomo
22 was pointing at Jorge Mendoza when -- when he got Sotelo to
23 agree that that was not Orco.

24 THE COURT: Correct. All right. We'll be in recess
25 for 15 minutes.

1 (Court recessed at 3:22 P.M. until 3:40 P.M.)

2 (Within the presence of the jury)

3 THE MARSHAL: Your Honor, all 12 members of the jury
4 are present, as well as the three alternates.

5 THE COURT: Thank you. Please be seated. And the
6 record will reflect all 12 members of the jury are present, as
7 well as the three alternates. All three defendants are
8 present with their respective counsel, the Chief Deputies
9 District attorney prosecuting the case, and all officers of
10 the court. And the defense has rested, and the State has a
11 rebuttal case?

12 MR. DiGIACOMO: Yes.

13 THE COURT: Call your first witness.

14 MR. DiGIACOMO: State calls Randy McPhail.

15 THE MARSHAL: Sir, can you please take the witness
16 stand? Remain standing, face the clerk -- court clerk in that
17 direction, and raise your right hand to be sworn in.

18 THE WITNESS: Yes.

19 RANDY McPHAIL, STATE'S REBUTTAL WITNESS, SWORN

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

22 THE WITNESS: First name is Randy, R-a-n-d-y. Last
23 name is McPhail, -c, capital P-h-a-i-l.

24 DIRECT EXAMINATION

25 BY MR. DiGIACOMO:

1 Q Sir, how are you employed?

2 A I'm a senior crime scene analyst with the Las Vegas
3 Metropolitan Police Department.

4 Q How long have you been with Metro?

5 A 20 -- 28 years.

6 Q And how long have you been a crime scene analyst?

7 A For 20 years.

8 Q Do you have particularized training and experience
9 in order to do the job you do?

10 A Yes.

11 Q And will you describe some of that to the ladies and
12 gentlemen of the jury?

13 A Well, first of all, I have over 30 years' experience
14 in photography. I've also completed university courses in
15 math and science; some business-related courses as well. I've
16 completed a crime scene analyst academy. I've completed the
17 field training and evaluation program for crime scene
18 analysts.

19 I've tested for and received a certification through
20 the International Association for Identification as a senior
21 crime scene analyst, and also, as a crime scene
22 reconstructionist. That involved bloodstain pattern analysis,
23 as well as shooting incident reconstruction.

24 I've completed numerous courses through such
25 entities as the FBI, ATF, Northwestern University Traffic

1 School, and others, in a wide variety of forensic topics
2 ranging from homicide investigation and fingerprint processing
3 classes all the way to shooting incident reconstruction
4 classes, bloodstain pattern analysis classes, and others.

5 Q During the course of your career, have you offered
6 opinions in the area of -- well, first, crime scene
7 documentation, collection, and preservation of evidence?

8 A Yes.

9 Q Have you offered opinions in the areas of crime
10 scene or shooting reconstructions?

11 A Yes.

12 Q And have you offered opinions in the area of
13 bloodstain -- or blood pattern, bloodstain analysis?

14 A Yes.

15 Q Now, prior to October 1st of 2016 -- so, what are we
16 at, three days now? Three days ago, did you have anything to
17 do with the homicide that occurred at 1661 Broadmere on
18 September 21st of 2014?

19 A No.

20 Q Were you requested to meet the homicide detectives
21 and myself out at that location to see if we could determine
22 the location the shooter had to be for the bullets that
23 actually entered the residence?

24 A Yes.

25 Q And did you spend some time out there, and then did

1 you sort of put this information into some exhibits here for
2 the jury?

3 A Yes.

4 MR. DiGIACOMO: May I approach, Judge?

5 THE COURT: You may.

6 BY MR. DiGIACOMO:

7 Q Now, during the course of you sort of coming -- or
8 forming the opinions that you formed here, did you also
9 receive photographs of the bloodstains that are identified as
10 BT2, BT3, BT4, and BT5?

11 A Yes.

12 Q Okay. And I'm going to show you for purposes of
13 identification only State's Proposed Exhibits 339 through 342,
14 and just see if those are in fact the photographs that you
15 looked at.

16 A Yes.

17 Q And then were you also provided two photographs of
18 one of the gunshot wounds to Monty Gibson?

19 A Yes.

20 Q And I'm going to now show you State's Proposed
21 Exhibit 343 and 344, and ask you, are those the two
22 photographs that you looked at?

23 A Yes.

24 Q While you were at the scene, did you attempt to
25 document your conclusions by way of photography?

1 A Yes.

2 Q And I'm going to show you now what's been marked as
3 State's Proposed Exhibits 347 to 362, and ask you to flip
4 through those and confirm that those are in fact the
5 photographs you took on October 1st?

6 A Yes, these are all photos I took.

7 Q Do they fairly and accurately depict the residence
8 and some items that you placed there for explanatory purposes?

9 A Yes.

10 Q Okay. And would it assist you in your presentation
11 today to utilize State's Exhibits 347 through 362 in
12 explaining your conclusions?

13 A Yes.

14 MR. DiGIACOMO: I'd move to admit 347 to 362.

15 MR. LANDIS: I have no objection.

16 MS. McNEILL: No objection.

17 THE CLERK: I'm sorry, 3 what?

18 THE COURT: 47 to 362. Mr. Wolfbrandt?

19 MR. WOLFBRANDT: No objection.

20 THE CLERK: 337? Okay.

21 THE COURT: 347.

22 MR. DiGIACOMO: 347.

23 THE CLERK: Okay.

24 THE COURT: Those will be admitted.

25 (State's Exhibits 347 through 362 are admitted)

1 MR. DiGIACOMO: Thank you.

2 BY MR. DiGIACOMO:

3 Q Did you also do two diagrams -- well, I guess three
4 diagrams. You do a handwritten diagram, and then ultimately,
5 did you create two computer-generated diagrams to explain your
6 conclusions?

7 A Yes.

8 Q And I'm showing you now what's been marked as 345
9 and 346, and ask you, are those the two diagrams that you
10 generated?

11 A Yes, they are.

12 Q And would that assist you in presenting your
13 conclusions to the ladies and gentlemen of the jury?

14 A Yes.

15 MR. DiGIACOMO: Move to admit 345 and 346.

16 MR. LANDIS: No objection.

17 MS. McNEILL: No objection.

18 MR. WOLFBRANDT: 345, Marc?

19 MR. DiGIACOMO: Now, in addition --

20 MR. WOLFBRANDT: Marc.

21 THE COURT: Wait, wait.

22 MR. WOLFBRANDT: Marc.

23 MR. DiGIACOMO: Oh, sorry.

24 MR. WOLFBRANDT: Was it that one --

25 MR. DiGIACOMO: It's these two.

1 MR. WOLFBRANDT: Okay, no objection.

2 THE COURT: All right, those will be admitted.

3 (State's Exhibits 345 and 346 are admitted)

4 BY MR. DiGIACOMO:

5 Q Now, in addition to being out at the scene, as well
6 as some of the things that you've just acknowledged, did you
7 have State's Exhibits 13, which I will flip over here, to
8 consult with?

9 A I did.

10 Q And did you have State's Exhibit -- well, did you
11 have all four crime scene diagrams to consult with?

12 A Yes.

13 Q Okay. So, I'm going to start with State's Exhibit
14 number 13. And now I have to re-invert it here, so give me
15 just a moment. And ask you sort of; how is it that you're
16 able to, with the photographs and the crime scene diagram, do
17 an estimate or offer opinions as to the location of a shooter
18 during the -- during a shooting? How do you do this?

19 A The photographs and the -- the diagram we have here,
20 those were actually created at the time of the scene. I'm
21 able to look at the diagram. These are all measured in;
22 they're not just helter-skelter put there. These items are
23 measured in and put in the diagram, and I'm able to draw
24 conclusions based on the diagram, the obstruction we have in
25 this area here, and the area in front of the residence here,

1 about where a shooter must have been to get shots into the
2 residence from the outside.

3 There's so many obstructions; the doorway, the
4 pillar right here, other kinds of obstructions in that area,
5 that it limits where a shooter could have been and still get
6 bullets inside the residence.

7 Q How is it that you are -- well, let me ask you this.
8 Do you use the highest point north inside the residence, and
9 the lowest point south, I guess, for lack of a better term,
10 within the residence in order to just -- to determine the
11 location of where that shooter could have possibly been?

12 A That's exactly what I did. I took the furthest
13 north impact, which would have been F here. I'm sorry, I
14 covered it up, but F. And then the furthest south impact,
15 which would have been G down here. And that's the window I
16 was looking at for where somebody was standing out front.

17 Q And is that based upon the fact that when someone
18 fires a weapon, a bullet goes in a straight line until it hits
19 something?

20 A Absolutely.

21 Q And thus, in order for it to get inside and do
22 damage, it had to go through that open front door?

23 A Absolutely.

24 Q Now, did I also ask you to review in State's Exhibit
25 14 here the information related to the location of the

1 individual who left this blood trail? Did I offer -- did I
2 ask you to offer some opinions as it relates to that?

3 A Yes.

4 Q Let's start with, in your opinion -- or do you have
5 an opinion as it relates to somebody who receives a gunshot
6 wound that completely severs the femur whether or not that
7 individual could remain standing for any period of time?

8 A No.

9 MR. WOLFBRANDT: I'm going to object to now he's
10 starting to give expert testimony. He hasn't been accepted as
11 an expert, and pretrial, we weren't notified of any expert
12 rebuttal witnesses.

13 THE COURT: Well, approach.

14 (Off-record bench conference)

15 THE COURT: So, the objection is overruled for what
16 was stated at the bench, but we had further discussion, bench
17 conference, which we'll make a record of later, but I want you
18 to go ahead with laying a foundation.

19 BY MR. DiGIACOMO:

20 Q Mr. McPhail, can you please describe for the ladies
21 and gentlemen of the jury how many times you've been to a
22 scene that involves somebody being injured and bleeding?

23 A Literally hundreds or thousands.

24 Q And what is your responsibility at that particular
25 scene?

1 A I document the bloodstain patterns. I am also
2 responsible occasionally to write an official bloodstain
3 report and talk about the various aspects of the stains that I
4 see at the scene.

5 Q And when you talk about bloodstain analysis -- or
6 pattern analysis, is part of the education and training that
7 you receive is partially how it is someone bleeds and what
8 kind of stains they leave while bleeding?

9 A Yes.

10 Q Okay. Have you been to locations where individuals
11 have received severe gunshot wounds to their legs before?

12 A Yes.

13 Q And have you been to locations -- or have you
14 documented locations in which individuals who have a severed
15 femur, what happens to them after they get shot in the femur?

16 A I have seen it on occasion, yes.

17 Q In the times that you've seen an individual who lost
18 the -- well, the supporting structure of their femur, have you
19 seen that individual then able to walk or run afterwards?

20 A I have not.

21 Q Okay. And an individual who receives that type of
22 wound, in your experience, do they normally bleed from it?

23 A Yes.

24 Q And do you -- have you seen situations in which
25 somebody who received a gunshot wound to their leg that

1 severed their femur did not immediately begin leaving at least
2 some evidence of blood at that location?

3 A I don't recall ever seeing that.

4 Q In your opinion, if an individual had received a
5 gunshot wound in the grassy area up here by the front door,
6 and that individual had dragged himself to the location where
7 the blood trail began, would you expect to see some evidence
8 of it?

9 A Certainly.

10 Q And when we talk about evidence of a blood trail,
11 were you aware that there were -- there was more than one
12 person -- actually, there was three people who were bleeding
13 at this particular scene?

14 A Yes.

15 Q And did you have an opportunity to look at the
16 stains that were BT3 -- or, sorry, BT2 and BT3 in those
17 photographs?

18 A I did.

19 Q And based upon that, do you believe that those two
20 stains are associated with the type of transfer stains or the
21 type of blood trail stains that we see beginning at BT4?

22 A No, I do not believe they're the same.

23 Q And why is that?

24 A The blood trail -- the stains that we see with the
25 blood trail are not drip stains. Drip stains are passive

1 stains that form. Say I injure my nose and my nose starts to
2 bleed. As it bleeds, it drips down. If it has a clear shot
3 to fall to the ground, it's going to leave a round stain with
4 pretty well-defined edges around it, depending on the surface
5 that it hits. The driveway in this particular case was a
6 nice, fairly smooth surface, and you would expect to find
7 fairly round stains.

8 The stains associated with the blood trail on the
9 street, these, were heavier -- heavy stains. They weren't
10 typically -- your typical drip stains. They did not have
11 defined patterns around the stain itself, and there was smear
12 marks. They were what we would call transfer stains more so
13 than a drip stain like we saw on the driveway.

14 Q And when you call it a transfer stain, what has to
15 happen in order for it to generate a transfer stain?

16 A Blood has to accumulate on something. And this --
17 aside from all the other reasons that this could have been,
18 let me just say that blood accumulates on fabric, say the pant
19 leg or something, and as that blood accumulates, it's
20 transferred in various locations as that item -- the pant leg
21 touches the pavement. That's what we're looking at. You can
22 see the slide marks on some of these stains as you're looking
23 at them.

24 Q In your -- do you have an opinion as to the location
25 of the individual when he received the injury that resulted in

1 the drag stains or the transfer stains that were the blood?

2 A I believe that with a wound that was described to
3 me, I believe that person would have fallen down immediately,
4 and I believe they wouldn't have been able to get up again
5 after that.

6 And so I believe that the shooting had to have taken
7 place -- well, the bleeding took place here, obviously, in the
8 start. There's nothing between here and the pillars up this
9 way, or the pillar I'm referring to is this, but there's
10 nothing beyond this point where the -- where the bloodstain --
11 blood trail starts. It all starts right there and continues
12 down the block.

13 Q So, the individual who created that blood trail is
14 near the location where the blood trail starts where he
15 receives the injury?

16 A Yes.

17 MR. WOLFBRANDT: I'm going to object. Now that's a
18 leading question.

19 MR. DiGIACOMO: I thought it was a clarifying one,
20 but --

21 THE COURT: Okay. He -- he answered. Do you want
22 to make any kind of motion?

23 MR. WOLFBRANDT: Well, his question was leading, and
24 the -- I forget exactly how he worded it, but the individual
25 that got shot had to have been close to the spot where the

1 blood started.

2 THE COURT: Okay. And so, yeah, I'm sustaining
3 that, that it's leading. You don't want to do anything else?

4 MR. WOLFBRANDT: Well, move to strike his answer.

5 THE COURT: Okay, granted.

6 MR. WOLFBRANDT: Okay.

7 THE COURT: Jury will disregard.

8 MR. DiGIACOMO: I'll rephrase it.

9 BY MR. DiGIACOMO:

10 Q Do you have an opinion as to whether the -- how
11 close an individual who created that blood trail would have
12 had to have been to that blood trail at the time he received
13 his injury?

14 A Yes. I believe he would have had to have been
15 within falling distance. That's being fair. He either fell
16 right on the blood trail, or he fell somewhere away from the
17 blood trail, but close enough that it's within falling
18 distance of the start of that trail.

19 Q Let's move onto the gunshots. And I'm going to
20 start putting up some of the photographs that you took, and
21 I'm just going to start off sort of from 347, and ask you sort
22 of to describe what is it we're looking at?

23 A This is looking westward at the front of the
24 residence, so that's the east side of the residence. I've
25 laid some cones out in the street, extending all the way up to

1 the front door and the pillar. The reason that I chose the
2 front door and the pillar are those are the two obstructions
3 that would have had to have been cleared for bullets to go
4 inside that residence.

5 Q Now, you can see in this photograph the garage door
6 is open and the front door is open. Did you have -- or was
7 there contact with the occupants of this particular residence?

8 A Yes.

9 Q Okay. And these residents had nothing to do with
10 anything that happened two years ago --

11 A That's correct.

12 Q -- is that correct? Okay.

13 A Yes.

14 Q Did you request, or did law enforcement request
15 permission to go inside their house and conduct this sort
16 of --

17 A Yes.

18 Q -- processing?

19 A Yes.

20 Q So, looking at this picture, 347, there is an item
21 that's set over in this location on the lefthand side. Looks
22 like a -- that camera tripod. Is there a reason why that's
23 sitting there?

24 A Yes.

25 Q What is that?

1 A I was told that this is about the location of the
2 bloodstain, where the blood trail started that we saw in the
3 -- in the graphics earlier.

4 Q And if I were to put up State's Exhibit 14, the one
5 with the blood trail, it's consistent with the diagram as that
6 location is where it is the blood trail began?

7 A Yes.

8 Q Okay. There's other cones that you can see sort of
9 from there and from there. What do those cones represent?

10 A Again, this is the conical-shape pattern where the
11 shooting would have had to -- the shooter would have had to
12 have been standing in this area here to get a fired shot into
13 the residence there.

14 It could have happened anywhere in that cone. I'm
15 not trying to say it was specifically right here or there, but
16 it had to be in that cone or it would have hit the pillars or
17 the doorframe -- the pillar in front of the house or the
18 doorframe before it went inside.

19 Q And I'm going to sort of just jump forward to 352.
20 If I jump up to 352, as we walk in closer, do you sort of walk
21 yourself into the residence to sort of show the -- well, what
22 are you doing by taking a picture closer and closer?

23 A Just see it closer to the door, really to identify
24 the obstacles that we're talking about. We've got this --

25 THE COURT: Could we --

1 THE WITNESS: -- the end of the pillar here --

2 THE COURT: Could we make it so we don't have to --

3 MR. DiGIACOMO: Oh, I'm sorry, did I --

4 THE COURT RECORDER: Yeah.

5 MR. DiGIACOMO: I didn't realize this one was --
6 there we go.

7 THE WITNESS: Okay. So, I'm trying to show the
8 obstacles in a closer position. These are what's restricting
9 the path of the bullet coming in. We have these items here
10 and the door here that would stop that. And I'm just showing
11 -- that's why we laid the cones, that's why I laid the cones
12 down, so I could establish those parameters.

13 MR. DiGIACOMO: I'm going to jump up to 355, and I
14 will turn it before asking the question.

15 BY MR. DiGIACOMO:

16 Q In 355, obviously, you're standing at the front
17 door, but if we look in this back location, there are some
18 pink stickers. What do those represent?

19 A There was a patch on the wall, an area that had been
20 patched over and repainted, and you can actually see this
21 area. Some of the photos might even show it, that you can
22 actually see the patch. And this correlated to the impact
23 mark F at the scene from the time of the shooting.

24 Q And F from the diagram is the farthest north
25 location that you could hit in that residence?

1 A Correct.

2 Q Or that did get hit in that residence?

3 A Yes.

4 Q Okay. Did you also take photographs kind of going
5 the opposite direction from what you would see from the inside
6 out?

7 A Yes. And this is how we established the cone -- the
8 conical shape, was from the inside, standing by this impact,
9 looking out, and saying, this is what we can see.

10 Q And so, putting up there -- I think I just put up
11 there 357, the location of the camera is now with a person
12 standing at F, looking outside the residence?

13 A Absolutely correct. And we've got the cones out
14 this way that you can see on that one side. The other cones
15 going out this way were from the other impact, that G, so
16 that's why they're not showing up on this.

17 Q Now, is your -- during the time period you're doing
18 all these photographs, is your tripod still sitting there in
19 the general location of where the blood trail began?

20 A Yes, it is.

21 Q Okay. And in this photograph, 357, can you see that
22 location?

23 A No.

24 Q I'm going to sort of skip out to 360. And of course
25 I've got to go -- as you're standing at the front door, is

1 there something across the street that you're also trying to
2 document as well?

3 A There is a wall across the street, and that would be
4 the extreme east end of this cone-shaped area that I was
5 trying to lay out.

6 Q And in 362, were you still able to see -- and I will
7 zoom-in there, but were you still sort of able to see the
8 location where the M and the N strikes to the wall were on the
9 diagram?

10 A Yes.

11 Q Did I also -- or did you during the course of your
12 investigation -- and this is -- I'm going to put up State's
13 345. Did you also do a measurement of the height of the stoop
14 in relationship to the height of the street?

15 A Yes.

16 Q And can you tell us, looking at 345, what does this
17 represent?

18 A This represents the front of the residence, so
19 that's the east-facing side of the residence, the front door
20 being right here. The step going up to the front porch area
21 that it was called in the reports, that's right here, little
22 step. And then there's an additional step actually going in
23 the residence.

24 This step is three inches high. This step here is -
25 - I didn't do that very good. That step there is three inches

1 high as well, so that's actually six inches higher than the
2 sidewalk right here. And the whole area is 20 inches higher
3 than it is out in the street.

4 Q And the distance you measured it into the street is
5 that -- that's the four foot three inches out into the street
6 that you measured it from?

7 A Yes.

8 Q Okay. Now, when someone is firing a weapon from, I
9 guess anywhere, they could fire it straight, correct?

10 A Yes.

11 Q And then you could fire it from a lower position to
12 a higher position, or a higher position to a lower position?

13 A Yes.

14 Q And the bullet travels generally, at least for short
15 periods of time, in a straight line whatever angle you place
16 that weapon?

17 A Yes.

18 Q So, now I want to get to the locations of where
19 these shots occurred, 346. Explain to us what we're looking
20 at.

21 A This is the conical shape. It's almost the same
22 thing we're looking at with the cones. The cones were just a
23 little bit different because they encompassed two of these.
24 They would represent this area here from the front door out
25 north like we did before. You saw the cones going in the

1 straight line out in the street. This would be the southern
2 cones over here going this way.

3 And so those cones incorporate a bigger aspect of
4 this -- of these two impacts, G and F. They combine both of
5 them, whereas the diagram here just uses the specific impacts,
6 and drawing straight lines out from the impact, avoiding the
7 wall here and the wall down here in both circumstances, and
8 avoiding the pillar in front.

9 Q If an individual had the complex fracture of his leg
10 and was sitting in the location identified here as the
11 beginning of the blood trail, in your opinion, could he have
12 fired one of the seven shots that made it inside the
13 residence?

14 A It's outside of the coned area. I would say it
15 would be impossible.

16 Q Now, let me ask you, just so that -- there's a few
17 other areas I want to ask you about. One, casings. When a
18 semi-automatic firearm expels a casing, are those casings
19 important to you in doing the reconstruction?

20 A They're very important.

21 Q Casings that are grouped together, do they mean
22 something to you?

23 A They usually mean that's the location of a shooting.
24 I mean, it wouldn't be exactly those cones, because a gun
25 typically kicks a cartridge case -- a fired case out to the

1 right and to the rear, so you would expect to find it maybe
2 six feet to the right and rear of the actual gun. That's
3 typically.

4 Q If the casings are in an open area and fired, and
5 the gun fires kind of back and to the rear with a shot this
6 way, back and to the rear, back and to the rear, where would
7 you expect to find the grouped casings?

8 A I'm sorry, I don't think I understand the question.

9 Q It was a terrible question, that's why. If an
10 individual was shooting a weapon within your area here --

11 A Um-hum.

12 Q -- and he had a gun that was in an open area on the
13 street, and it was ejecting cartridges to the right and to the
14 rear, where would you expect to see the grouping of cartridges
15 for an individual standing sort of in this location, if there
16 were no obstructions?

17 A It would probably be near where you had the line
18 drawn. Around this area here, probably. But a lot of that
19 depends on how the gun was handled. If you're shooting it
20 from a normal shooting perspective where the gun's in front of
21 you, your hands are like this, a handgun, you would expect it
22 to go off, and to the right and behind you, to some extent.

23 Some guns do more than others. If they're holding
24 it this way like you see on TV sometimes, it could go to the
25 left, even. It could go straight up and land almost straight

1 down. It's hard to say. It depends on how the gun was
2 actually held.

3 Q Now, you said that the grouping of the casings were
4 important. Can casings be moved in some manner?

5 A Yes. And also, casings can not hit where they
6 should hit. In other words, if I'm shooting a gun, and
7 there's a vehicle nearby, and it hits the vehicle and bounces
8 off it, obviously it's not going to be exactly six feet behind
9 and to the right. It might go back toward me again, and so it
10 would affect that. If somebody's standing next to me and I
11 shoot a gun, it might hit them and go in a different location.

12 So, it -- if it's a free-falling object, the
13 cartridge case is free-falling and nothing hits it, I would
14 expect it to be off to the right and behind me. If it's not
15 and there's some obstruction in the way, a person, a car,
16 anything, then I would expect it to be somewhere else.

17 Q Now, if the gun shoots to the right and to the back,
18 based on these three cartridge cases, you would have a shooter
19 somewhere in this region. Could a shooter have fired any of
20 the seven rounds that go inside that residence from that gun?

21 A No, because it's outside that coned area that we
22 established it would have to be into to avoid those pillars
23 and the door.

24 Q Lastly, I'm --

25 MR. DiGIACOMO: Can I have the Court's indulgence

1 for just a second?

2 BY MR. DiGIACOMO:

3 Q Lastly, in your opinion, if someone were sitting on
4 a roadway 20 inches below the stoop and was firing let's say
5 at F, would that have to be a rising shot? Do you understand
6 my question?

7 A Yes, it would have to be a rising shot, because he's
8 at a lower -- the gun is at a lower position than the impact.
9 So, yes.

10 MR. DiGIACOMO: Thank you. I have nothing further.

11 MR. LANDIS: Would this direction maybe make more
12 sense for this?

13 THE COURT: Yeah.

14 MR. WOLFBRANDT: Okay, thank you.

15 THE COURT: Mr. Wolfbrandt, cross.

16 CROSS-EXAMINATION

17 BY MR. WOLFBRANDT:

18 Q Good afternoon, Mr. McPhail.

19 A Hello.

20 Q You listed some things that you had looked at prior
21 to you going out to observe this scene?

22 A If it came through that way, it was a mistake. I
23 didn't look at anything until I actually went to the scene.
24 The scene was my first involvement on the October 1st. That
25 was my first involvement. I didn't see any photos or anything

1 up until that point -- up until after that point.

2 Q Until after that point?

3 A Um-hum.

4 Q Well, how did you know to set up your cones and --
5 and --

6 A Detective Tod Williams was there.

7 Q Okay.

8 A We had the diagrams there. Detective Barry Johnson
9 (sic) was there, and counsel was there as well. So, we had
10 people who were there, as well as the diagrams in front of me
11 at the time, but that was the first time I'd seen it.

12 Q Okay. It made -- sounds like you'd seen the
13 diagrams after you had already been out there.

14 A I'm sorry.

15 Q Okay. All right. Those strikes at F1 and F2 --
16 well, F1, the furthest north --

17 A Yes, sir.

18 Q -- strike on that wall?

19 A Yes, sir.

20 Q You'd agree a bullet fired downward could deflect
21 off the floor and then --

22 A And rise up?

23 Q -- rise up?

24 A Yes.

25 Q Are you familiar with the Hi-Point rifle that was

1 used in this case?

2 A No.

3 Q Do you have any ideas what the --

4 A I saw a photo of it. That's how I saw -- did see a
5 photo of it.

6 Q Do you have any knowledge of the ejection pattern
7 for that rifle?

8 A Not the patterns, no.

9 Q Whether it ejects to the right or left?

10 A I believe it -- it looked to me like it ejected to
11 the right.

12 (Mr. Wolfbrandt/Mr. DiGiacomo conferring)

13 MR. WOLFBRANDT: Could we retrieve the -- the rifle
14 itself?

15 THE COURT: Madam Clerk?

16 THE CLERK: (Inaudible).

17 (Pause in the proceedings)

18 BY MR. WOLFBRANDT:

19 Q Showing you -- excuse me -- showing you what's been
20 admitted as State's Exhibit 217A.

21 A Yes, sir. Okay, it's definitely a right ejection.
22 It's charged on the left, ejects on the right.

23 Q Okay, thank you.

24 A You're welcome.

25 Q Now, the exhibit that's on the screen right now

1 shows shots from inside the house going outside had the same
2 obstruction problem as shots from the outside going inside,
3 don't they?

4 A They would, yes.

5 Q All right. In the area where you've got the blood
6 trail 4 that starts --

7 A Yes, sir.

8 Q And then you had marked over there where you
9 expected someone to have been if it had gotten shot at that
10 area. Where would that shot have come from?

11 A I'm sorry? I -- I don't --

12 Q That's a bad question.

13 A Okay.

14 Q All right, let me ask this. Did you look at any
15 medical records relating to Mr. Mendoza?

16 A I did not. I saw the photos, is all, a couple of
17 photos. I didn't even see all of them. I saw two photos from
18 the autopsy that showed an entry and an exit.

19 THE COURT: Okay, we're --

20 BY MR. WOLFBRANDT:

21 Q Okay, but that would be the autopsy. Mr. Mendoza is
22 the one that was at the hospital.

23 A Oh, I'm sorry. You're right, you're right. No, I
24 did not. I did not see his photos at all.

25 Q Do you have any description as to the type of wound

1 that he sustained?

2 A I -- I don't know all the wounds he sustained. I
3 knew of a wound that went into his leg and broke his femur, so
4 upper -- upper leg. I don't even know which one for sure, but
5 I did know that there was a femur that was broken. It was
6 separated by a distance, and that's -- that's all I knew on
7 that.

8 Q And were you aware there was no exit wound?

9 A No.

10 Q Now, you would expect someone, as you testified to,
11 to drop immediately?

12 A Yes, sir.

13 Q If there's no artery that's hit, how would you --
14 what kind of bleeding would you expect?

15 A I would expect with a broken femur that there would
16 be a lot of blood; a heavy bleeder. And aside -- I don't know
17 how else to answer it aside from that. I would expect a heavy
18 bleeder. I don't expect -- you said yourself that there's no
19 artery hit. If that's the case, I wouldn't expect any kind of
20 spurting or anything like that, pressurized blood, but I would
21 expect it to be a heavy bleeder.

22 Q Well, would you expect that the shock of the impact
23 on the -- on the bone and the bone itself exploding, I think
24 is your term?

25 A I don't know, but it's a good term. I like the

1 term.

2 Q All right. That that would create a void where
3 initial bleeding is going to accumulate within the leg before
4 it starts oozing out the wound?

5 A There would be a period of time, I don't know how
6 long, but it's not going to immediately put out blood, yes, on
7 the ground or anything, yes.

8 Q Okay. And this isn't going to be any kind of
9 gushing wound because there was no artery that was -- well,
10 you wouldn't know that, but if an artery had been hit, then it
11 would be gushing, and pumping, and squirting?

12 A Yes.

13 Q And you would expect --

14 A But even that has limitations, you know? So they
15 don't always do that. They sometimes stay within the confines
16 of the wound because the flesh closes up over them, so you
17 never know exactly how that's going to work out.

18 Q Now, were you aware of shell -- the locations of the
19 various shell casings that were recovered?

20 A Yes, I was told -- well, first of all, I had the
21 diagram in front of me at the scene when we were there, and I
22 was also -- the areas described by detectives who were there.

23 Q Okay. There were about five or six --

24 (Mr. Wolfbrandt/Mr. DiGiacomo conferring)

25 MR. DIGIACOMO: So, State's Exhibit 13, Judge.

1 MR. WOLFBRANDT: All right.

2 BY MR. WOLFBRANDT:

3 Q This was one of the exhibits that you looked at --

4 A Yes, sir.

5 Q -- when you're at the scene?

6 A Yes.

7 Q Okay. And I'm going to direct you to -- they're in
8 green around the front door.

9 A Yes, sir.

10 Q Numbered 4, 5, 6, 7, 8, and 10.

11 A Yes.

12 Q All right. If we've had previous testimony that
13 those are shell casings associated with the Hi-Point rifle
14 that you just saw with Exhibit 217A --

15 A Yes, sir.

16 Q -- that's an area that, would you agree, is within
17 your zone, to have been fired right close to the front door to
18 make the impacts that you see inside the house?

19 A That is correct. I believe that they -- that is
20 within a zone, but it certainly isn't way out in the street
21 with the cartridge cases way up on the front porch like that.
22 It would be from a different location. We're not talking
23 about a street shot up here and having the cartridge cases
24 eject there. These are done at a different location, but
25 still within that area, you're right.