

IN THE SUPREME COURT OF THE STATE OF NEVADA

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TROY WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

S.C. CASE NO. 82798

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APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS
CORPUS (POST CONVICTION)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE RONALD J. ISRAEL, PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME IV  
~~~~~

ATTORNEY FOR APPELLANT
CHRISTOPHER R. ORAM, ESQ.
Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT
STEVE WOLFSON
District Attorney
Nevada Bar No. 001565
200 Lewis Avenue
Las Vegas, Nevada 89101

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TROY WHITE,

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Respondent.

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OPENING BRIEF APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court 2nd day of September, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

DISTRICT ATTORNEY'S OFFICE

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Nancy Medina
An Employee of Christopher R. Oram, Esq.

ORIGINAL

BREF

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JEFFREY S. ROGAN
Chief Deputy District Attorney
Nevada Bar #10734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 08 2015

BY 
DULCE MARIE ROMEA, DEPUTY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

TORY RICHARD WHITE,
#1383512

Defendant.

CASE NO: C-12-286357-1

DEPT NO: XI

**STATE'S BENCH BRIEF REGARDING THE ADMISSIBILITY OF EVIDENCE OF
TRAITS OF CHARACTER OF THE VICTIMS**

During the defendant's opening statement, it became apparent to the State that the defendant may inadvertently be commenting upon victim Echo White's character, and unintentionally introducing evidence that would tend to paint her as a drunken, chain-smoking, tattoo-loving harlot. Likewise, during opening, the defendant's attorney made comments regarding victim Joseph Averman's first marriage that unfairly characterize him as a "cheater" during that relationship.

In particular, with regards to Echo White, the defendant's attorney mentioned in his opening that, after Echo separated from the defendant and began her relationship with Joseph Averman, she began to drink, smoke and acquire tattoos. Additionally, the defendant's opening Powerpoint presentation included three photographs from the Echo's phone declaring "I love shoes, booze, and boys with tattoos," "some girls are just born with glitter in their

1 veins,” and “free-spirited.” (See Exhibits 1, 2 and 3, Slides from Defendant’s Opening
2 PowerPoint presentation, attached hereto).

3 Such use of circumstantial and irrelevant character evidence regarding Echo and Joseph
4 is simply impermissible. NRS 48.045(1); 48.055.

5 NRS 48.045 specifically delineates the use of character evidence. The general rule
6 under that statute is that “evidence of a person’s character or a trait of his or her character is
7 not admissible for the purpose of proving that the person acted in conformity therewith on a
8 particular occasion...” NRS 48.045(1). While some exceptions exist, including “[e]vidence of
9 the character or a trait of character of the victim of the crime offered by an accused... and
10 similar evidence offered by the prosecution to rebut such evidence[,]” the fact remains that the
11 traits of character at issue must be relevant to a charge or defense. As the Nevada Supreme
12 Court has previously stated,

13 *Before any evidence is admissible, it must be relevant. Character evidence is no*
14 *exception.*

15 Coombs v. State, 91 Nev. 489, 490, 538 P.2d 162, 162, (1975); see Daly v. State, 99 Nev. 564,
16 571, 665 P.2d 798, 803 (1983) (“proof [of good character] must be confined to the particular
17 traits of character that are relevant to the conduct with which the accused has been charged”).

18 Here, Echo White’s alleged affinity for tattoos, her choice to drink alcohol or smoke,
19 or whether she held herself out to be a “free-spirited” person, are simply not traits of character
20 or behaviors relevant to the determination of any charge or defense at issue. See NRS 48.015
21 (“‘relevant evidence’ means evidence having any tendency to make the existence of any fact
22 that is of consequence to the determination of the action more or less probable than it would
23 be without the evidence”); NRS 48.025(2) (“Evidence which is not relevant is not
24 admissible”). Whether Echo drank or smoked or purchased tattoos, for example, does not
25 excuse her killing, nor reduce the crime of murder to manslaughter.¹

26
27 ¹ The use of these photographs are also problematic on hearsay grounds. The defendant offered these statements in his
28 opening as adoptive admissions, urging the jury to use this photographs to believe that Echo White was in fact “free-
spirited” and loved “shoes, booze, and boys with tattoos.” See 51.045 (defining “statement”). Regardless of the relevancy
of the statements, no hearsay exception or exclusion allows for their admission.

1 Similarly, whether Joseph Averman is a "cheated" on his first wife is irrelevant to the
2 defendant's killing of Echo White, as this trait of character is not evidence of the defendant's
3 criminality, does not negate any element of the offenses charged, and does not excuse any of
4 the offenses.

5 Additionally, even if the defendant were to proffer some relevant purpose for the
6 admissibility of these traits of character, the probative value of the character evidence would
7 be substantially outweighed by the danger of unfair prejudice or confusion of the issues, and
8 therefore should be excluded. NRS 48.035(1). As the Court is aware, in addition to touching
9 upon Echo White's character, the defendant portrayed his own character positively by, for
10 example, calling himself a "family man," "happily married for years," who did "everything he
11 could to keep his family together" after he was "betrayed" by Joe Averman. (See Exhibits 4
12 and 5, attached hereto). The obvious danger of this competing character evidence is that the
13 jury will render a verdict based upon the alleged (positive) traits of character of the defendant
14 in contrast to the alleged (poor) traits of character of the victim, rather than actual evidence of
15 the defendant's innocent or guilt. —

16 Finally, even if relevant, "evidence of character or a trait of character of a person...
17 may be made by testimony as to reputation or in the form of an opinion." NRS 48.055
18 (emphasis added). Thus, photographs on the victim's phone declaring "I love shoes, booze,
19 and boys with tattoos," or "some girls are just born with glitter in their veins," or "free-
20 spirited," constitute inadmissible physical evidence tending to show a trait of character, rather
21 than opinion or reputation testimony. Similarly, evidence that Joseph had cheated on first wife
22 is a specific instance of conduct not permitted by NRS 48.055, as it also is not opinion or
23 character evidence.

24 //

25 //

26 //

27 //


28 //

1 **CONCLUSION**

2 For these reasons, the State requests that the Court prohibit the introduction of any
3 irrelevant character evidence, testimonial or otherwise.

4
5 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

6
7 BY


JEFFREY S. ROGAN
Chief Deputy District Attorney
Nevada Bar #10734

8
9
10
11 **RECEIPT OF COPY**

12 RECEIPT OF COPY of the above and foregoing Memorandum is hereby
13 acknowledged this 8th day of April, 2015.

14 SCOTT COFFEE, ESQ.
PUBLIC DEFENDER'S OFFICE
ATTORNEY FOR DEFENDANT

15
16 BY

309 S. Third Street, #226
Las Vegas, Nevada 89101

Family of Troy & Echo White

- o Met at church
- o Echo 22 years old
- o Married 6 months
after meeting Troy



Family of Troy & Echo White

- o Met at church
- o Echo 22 years old
- o Married 6 months after meeting Troy

some girls
were just
~~BORN~~ with
cuttie
in their
veins

Verizon 3G 4:15 AM



Family of Troy & Echo White

- o Met at church
- o Echo 22 years old
- o Married 6 months after meeting Troy

FREE spirited

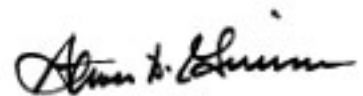


Troy White

- Family Man
- Happily Married for Years
- Betrayed by Joe Averman
- Troy intensely wanted to save his family
- Heat of Passion – Rash impulse

There's No Place Like Home

- Troy doing everything he could to keep his family together
- Still trying to reconcile with Echo
- Messages reveal Troy thought it was on horizon



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

TROY RICHARD WHITE

Defendant
* * * * *

CASE NO. C-286357

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, APRIL 8, 2015

APPEARANCES:

FOR THE STATE:

ELIZABETH MERCER
JEFFREY S. ROGAN
Deputy District Attorneys

FOR THE DEFENDANTS:

SCOTT L. COFFEE
DAVID LOPEZ-NEGRETE
Deputy Public Defenders

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 8, 2015, 10:22 A.M.

2 (Court was called to order)

3 (Jury is not present)

4 THE COURT: All right. Is there anything outside
5 the presence? Mr. Rogan, you've given me a bench brief on
6 character evidence.

7 MR. ROGAN: That's correct.

8 THE COURT: Okay. So if something during the
9 questioning you think runs afoul, object.

10 MR. ROGAN: I will. I would just request that if
11 we need to that we could do it outside the presence of the
12 jury to argue over the particular issues if it's going to be
13 lengthy, or otherwise do it at sidebar if it's not going to
14 be very long.

15 THE COURT: Well, remember, I directed you I'd
16 rather not have speaking objections.

17 MR. ROGAN: Correct.

18 THE COURT: Objection; legal basis. If you think
19 you need to give me more, ask to approach; not a problem.

20 MR. COFFEE: Sure.

21 MR. ROGAN: Thank you.

22 THE COURT: Okay?

23 MR. COFFEE: Good.

24 THE COURT: Okay, anything else?

25 MR. ROGAN: Not from the State, Your Honor.

1 THE COURT: Anything else before I go get more
2 coffee? Any other outside the presence issues? Okay.

3 (Court recessed from 10:23 a.m. until 10:43 a.m.)

4 (Jury is not present)

5 THE COURT: We previously made it A through E, so
6 we're up to F, Mr. Coffee. How far do they go?

7 THE CLERK: V, Judge.

8 THE COURT: V?

9 THE CLERK: Uh-huh.

10 THE COURT: F through V are stipulated, counsel?

11 MR. ROGAN: Yes, Your Honor.

12 THE COURT: F through V will be admitted.

13 (Defendant's Exhibits F through V admitted)

14 MR. ROGAN: There's one that's not stipulated, and
15 that's which one?

16 MR. COFFEE: We'll deal with that later.

17 MR. ROGAN: Okay, perfect.

18 MR. COFFEE: It will be next in sequence.

19 THE COURT: Is it in the pack you gave Dulce?

20 MR. COFFEE: No.

21 THE COURT: Okay.

22 MR. ROGAN: And also, Your Honor, there are two
23 further exhibits that are stipulated, and those are State's
24 Exhibits 94 and 95 --

25 MR. COFFEE: That's true.

1 MR. ROGAN: -- the scraps of paper and the bus pass.

2 THE COURT: 94 and 95 will be admitted.

3 (State's Exhibits 94 and 95 admitted)

4 MR. COFFEE: And additionally, the State pointed out
5 something I wasn't even aware of, that they're entitled to
6 bring in the portion of the statement that we used to refresh
7 recollection --

8 MR. ROGAN: Yes.

9 MR. COFFEE: -- so the State is going to put that
10 into evidence that that's going to be stipulated.

11 THE COURT: That's why I always ask the question
12 because they're entitled to put it in evidence or at least
13 mark it as a Court's record. That's why I always ask it, so.

14 MR. ROGAN: And those will be State's 92 and 93.

15 THE COURT: Have you looked at the redaction, Mr.
16 Coffee, to see if it's accurate.

17 MR. COFFEE: It looks -- yeah, it's fine.

18 THE COURT: Okay.

19 MR. COFFEE: It's fine. The only thing, Judge,
20 is both sides are a little concerned about the fact that we
21 have to black out so much of this and it's limited to the
22 statement. Would the Court consider giving an agreed on
23 statement that because of the rules of evidence only the
24 portions are admissible, the questions that were asked, or
25 something along those lines, whatever the Court's preference.

1 THE COURT: Yes, I will give a limiting instruction
2 if you'd like me to --

3 MR. COFFEE: Perfect.

4 MR. ROGAN: Thank you.

5 THE COURT: -- with the admission of that document.
6 If you can give me the language, I will say it when the jury
7 comes in and I visit with them.

8 MR. COFFEE: Mr. Rogan.

9 MR. ROGAN: With regard to State's Exhibits 92 and
10 93, you are only to consider the readable portions of the
11 exhibits, and due to the rules of evidence may not consider
12 any blacked-out portions of those exhibits.

13 MR. COFFEE: Yeah, or the other portions are not --
14 were not admitted pursuant to the rules of evidence.

15 MR. ROGAN: Okay, that's fine, too.

16 THE COURT: How about I say you are only to consider
17 the portions that are not blacked out because the blacked-out
18 portions were not admitted pursuant to the rules of evidence.

19 MR. COFFEE: Perfect.

20 MR. ROGAN: Perfect.

21 THE COURT: Try to speak like a normal human being.

22 MR. COFFEE: Perfect.

23 THE COURT: Now, is the copy of that, if they hold
24 it up are they going to be able to read through the blacked-
25 out part?

1 MR. ROGAN: No. I actually did it on the document
2 itself, so they won't be able to do that.

3 THE COURT: Okay. Can I see it, please? I have
4 enough redaction experience to have --

5 (Mr. Rogan approaches the bench)

6 THE COURT: Okay, 92 and 93 are admitted with the
7 limiting instruction.

8 (State's Exhibits 92 and 93 admitted)

9 (Pause in the proceedings)

10 THE COURT: Okay. Any reason they can't bring the
11 jurors in?

12 MR. ROGAN: No, Your Honor.

13 MR. COFFEE: No.

14 THE COURT: Okay, go get my jurors.

15 (Pause in the proceedings)

16 (Jury is present)

17 THE COURT: Good morning, ladies and gentlemen.
18 Counsel, you can be seated. Ladies and gentlemen, be seated.
19 I'm sorry we're a little bit late. We were having some sound
20 problems and luckily we were able to get the audio-visual and
21 the I.T. guys up here to try and work that out for us, so
22 hopefully everything will work out.

23 Ms. Clerk, if you could please take roll of the
24 jury.

25 (Jury roll called)

1 THE COURT: Counsel stipulate to the presence of
2 the jury?

3 MS. MERCER: Yes, Your Honor.

4 THE COURT: Thank you.

5 Ladies and gentlemen, earlier this morning Exhibits
6 92 and 93 were admitted. Those have been admitted and you are
7 to only consider those portions that are not blacked out.
8 The blacked-out portions of those exhibits are not admissible
9 under the rules of evidence.

10 So, counsel, are we ready for our next witness, or
11 are we ready to recall our witness we were currently with?

12 MR. ROGAN: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. ROGAN: The State recalls Jayce Gaines, also
15 known as Jayce White.

16 THE COURT: Good morning again. If you'd remain
17 standing, we need to swear you again today.

18 JAYCE GAINES

19 Having been recalled as a witness and being first duly sworn,
20 testified as follows:

21 THE CLERK: Thank you, please be seated. And please
22 state and spell your name for the record.

23 THE WITNESS: Jayce Gaines. J-A-Y-C-E G-A-I-N-E-S.

24 THE COURT: And if you need some water, remember,
25 the marshal will get you some if you need some, okay?

1 THE WITNESS: Okay, thank you.

2 THE COURT: Mr. Coffee, you may continue your cross-
3 examination.

4 MR. COFFEE: Thank you.

5 CROSS-EXAMINATION (Continued)

6 BY MR. COFFEE:

7 Q Jayce, thanks for coming back for us.

8 A You're welcome.

9 Q I'm going to ask you a few more questions and the
10 State may have some questions for you, okay?

11 A Okay.

12 Q Okay. We talked about the tape-recorded statement --

13 A Yes.

14 Q -- that you had made with the police officers
15 yesterday. Remember that discussion?

16 A Yes, I do.

17 Q Okay. And did you also tell the officers --

18 MR. COFFEE: And counsel, this is page 7 at the top.

19 BY MR. COFFEE:

20 Q You closed the door to the room because my mom got
21 shot in there. My dad said you can't see this, go back to bed
22 in the bedroom. And I kept coming to see if my mom was okay.
23 Do you remember telling the officer that?

24 A Yes, I do.

25 Q And that's what your father had done, in fact. He

1 tried to keep you out of the room where your mom had been
2 shot. Is that right?

3 A Yes.

4 Q Now, when your father came in, had you seen the gun
5 at any point, or when was the first time you saw the gun, was
6 it the back bedroom?

7 A Yes.

8 Q Okay. And did you do anything or say anything when
9 you saw the gun?

10 A I don't remember. No.

11 Q Okay. Did you throw anything at your dad, anything
12 like that?

13 A No.

14 Q No. Okay. And that's something you would remember,
15 I'd imagine?

16 A Yes.

17 Q You were probably scared. Yes?

18 A Yes.

19 Q Your father didn't say anything to threaten you,
20 though, of course?

21 A No.

22 Q Now, we talked about Joe, the man who you didn't
23 know his last name. You had also told officers --

24 MR. COFFEE: And counsel, it's page 2 near the
25 bottom.

1 BY MR. COFFEE:

2 Q "So, 'cause my mom and dad are still married and
3 this guy Joe, he's like doing stuff with my mom it's not
4 supposed to." Do you remember saying that?

5 A Yes.

6 Q Your mom and dad were still married, in fact, right?

7 A Yes.

8 Q And there were pictures of your dad around the
9 house. We talked about some of those.

10 A Yes.

11 Q And I think I missed one yesterday. I want to show
12 you one more if I might.

13 A Okay.

14 MR. COFFEE: And this has been admitted by
15 stipulation as Defendant's D.

16 THE CLERK: I'm sorry, "D," you said?

17 MR. COFFEE: "D." Yes.

18 BY MR. COFFEE:

19 Q Do you recognize this?

20 A Yes, I do.

21 Q Is this a photo of a hall in your house?

22 A Yes.

23 Q And at the end of the hall there's a picture of your
24 mom and dad, right, that somebody had drawn?

25 A Yes.

1 Q And when we're talking about the bedrooms where
2 things take place, I'm going to point and I'm pointing to
3 what is my left and you tell me if I've got this right, okay?
4 A Okay.
5 Q This is the third bedroom where the sewing material
6 is, is that right, the one on the left of the hall?
7 A I don't think so, no.
8 Q Okay. Is it on the right of the hall?
9 A Yes.
10 Q And the other bedroom was -- it had been your mom
11 and dad's room at one point, right?
12 A Yes.
13 Q And then Joe had moved into your mom and dad's
14 room?
15 A Yes.
16 Q And you said he came out sometimes to play video
17 games and things, but he spent a lot of time in there?
18 A Yes.
19 Q Your dad worked at YESCO, right?
20 A Yes.
21 Q And had worked there as far back as you can
22 remember, I would imagine.
23 A Yes.
24 Q Eight or ten years, something like that. Well, as
25 old as you were?

1 A Yes, somewhere around there.

2 Q Did your mom work?

3 A No, she did not.

4 Q Homemaker; she stayed at home and took care of you

5 guys?

6 A Yes.

7 Q I want to show you Defendant's G. You recognize

8 that?

9 A Yes. That's my bathroom.

10 Q That's your bathroom.

11 A Yes.

12 Q And there's a shower curtain there with some

13 monkeys?

14 A Yes.

15 Q And did your dad refer to you kids as his four

16 little monkeys, his four kids?

17 A Yes.

18 Q In fact, his web-mail name was Me and 4 monkeys,

19 right? Or do you remember?

20 A Yes.

21 Q Yeah. And there were some monkeys on the back of

22 the Durango also, right?

23 A I believe so, yes.

24 MR. COFFEE: Court's indulgence.

25 THE COURT: Sure.

1 BY MR. COFFEE:

2 Q I'm going to show you State's 69. And I said some
3 monkeys. That was actually -- Do you remember this on the
4 back of the Durango?

5 A Yes.

6 Q And that was your dad, your mom, and four kids at
7 the time that was put up and there may be a baby there also,
8 but there were five total, right?

9 A Yes.

10 Q And do you remember what the license plate said on
11 the Durango?

12 A No.

13 Q I'm going to show you State's 66. Do you remember
14 what it said now?

15 A Yes.

16 Q Us and 3 boys? Yes?

17 A Yes.

18 Q And that referred to you, your brother Jodey --

19 A And my brother Jesse.

20 Q -- and your brother Jesse and your mom and your dad?

21 A Yes.

22 Q And that was a vehicle that would share. Yes?

23 A Yes.

24 Q Your dad left it with your mom during the week so
25 she had some place to drive you around or could take you

1 someplace if you needed to, right?

2 A Yes.

3 Q But it would stay there on the weekend if he was
4 there so he could drive you around, too, right?

5 A Yes.

6 Q And it was the only vehicle your mom and dad had,
7 is that right?

8 A Yes.

9 Q Okay.

10 MR. COFFEE: Court's indulgence for just a moment.

11 THE COURT: Sure.

12 MR. COFFEE: Thank you for being patient with us,
13 Jayce. All right, Jayce, I think the district attorney may
14 have a few more questions for you, okay.

15 THE COURT: Recross, Mr. Rogan?

16 MR. ROGAN: Thank you, Your Honor, I do.

17 THE COURT: I mean redirect. Sorry.

18 MR. ROGAN: Your Honor, may we approach for a moment
19 first?

20 THE COURT: You can.

21 (Bench conference)

22 MR. ROGAN: The defendant is going through some
23 significant emotional distress right now. I don't know if
24 you want to take a break so he can get it together, but he's
25 balling his eyes out.

1 THE COURT: I'm going to go, unless somebody tells
2 me otherwise.

3 MR. COFFEE: No, we're good to go.

4 THE COURT: That's what we're supposed to do. Okay.

5 (End of Bench conference)

6 THE COURT: Redirect, Mr. Rogan.

7 MR. ROGAN: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. ROGAN:

10 Q Jayce, thanks for coming back today.

11 A You're welcome.

12 Q So I want to talk to you about your mom. Mr. Coffee
13 said that your mom took care of you during the week and your
14 dad took care of you on the weekends, right?

15 A Yes.

16 Q And your mom had the car during the week and your
17 dad had the car on the weekends?

18 A Yes.

19 Q And your dad worked, right?

20 A Yeah, he did.

21 Q And your mom took care of you?

22 A Yes, she did.

23 Q And you have four brothers and sisters, or three
24 brothers and a sister, right?

25 A Yes.

1 Q So it's a lot of people to take care of?

2 A Yeah.

3 Q Did she play with you? Did she do things with you

4 like that?

5 A Yes.

6 Q So she would fingerpaint with you sometimes, do

7 crafts?

8 A Yeah, she would.

9 Q She would take you to any sports events that you

10 had?

11 A Yeah. She would take us to football practice and

12 football games that we had.

13 Q So she did everything that a mom is supposed to do?

14 A Yes.

15 Q Mr. Coffee said that -- or talked to you yesterday

16 about when your dad came to the door on July 27th --

17 A Yes.

18 Q -- and you testified yesterday that he came in and

19 he said something like, Get in the room now?

20 A Yes.

21 Q That's what he said?

22 A Yes.

23 Q He didn't say anything else at that time?

24 A Uh, no.

25 Q Okay. Mr. Coffee also showed you some pictures like

1 Defense Exhibit G. That's a picture of your shower curtain,
2 right?

3 A Yes.

4 Q And you said that Troy would refer to you as his
5 little monkeys, right?

6 A Yes.

7 Q Did he refer to you as his little monkey when he
8 came to the door on July 27th and shot your mom?

9 A No.

10 Q He showed you some pictures like State's -- I'm
11 sorry, Defendant's Exhibit C. He showed you that yesterday.
12 Do you remember seeing that kitchen table yesterday?

13 A Yes, I do.

14 Q And then he pointed out those photographs that are
15 in the upper right-hand corner on the wall. Do you remember
16 him doing that yesterday?

17 A Yes.

18 Q And then he showed you Defendant's Exhibit A, which
19 is a close-up of those photographs. Do you remember that?

20 A Yes.

21 Q Did your dad ever go and look at those photographs
22 before he shot and killed your mom?

23 A No.

24 Q And he also showed you Defendant's Exhibit E and he
25 pointed out -- I guess it's an Xbox in the left-hand corner

1 above the TV. What is that?

2 A Yes, that's an Xbox 360 that we played.

3 Q Okay. You pointed out that your mom and dad bought

4 that for you?

5 A Yeah, and then Joe would play sometimes.

6 Q Joe played it with you?

7 A Yeah.

8 Q The defendant, Troy, didn't play that Xbox the day

9 that he shot and killed your mom?

10 A No.

11 Q Now, yesterday, too -- I'm sorry, today -- oh, no,

12 I'm sorry, yesterday Mr. Coffee brought up the fact that you

13 actually didn't see your mom get shot, did you?

14 A Yes.

15 Q You didn't, right? You didn't see her when the

16 bullet entered her body?

17 A No.

18 Q And I think we know why. We just saw a moment ago

19 the hallway, Defendant's Exhibit D, and you pointed out the

20 third room that you referred to yesterday. Can you do that

21 on the television screen for the jurors, please?

22 A Yeah.

23 MR. ROGAN: Is it working?

24 THE COURT: I don't know. Touch it harder, like --

25 Hold on. Mine is not working.

1 MR. ROGAN: Okay.

2 BY MR. ROGAN:

3 Q Well, I'm going to use my finger and you tell me if

4 I'm right or wrong, all right?

5 A Okay.

6 Q On the right-hand side there's a doorway.

7 A Yes.

8 Q Is that the third bedroom you were talking about

9 yesterday?

10 A Yes, it is.

11 Q And that's the room where your mom did all of her

12 crafts and scrapbooking?

13 A Yes.

14 Q And that's the room that she was in when she died?

15 A Yes.

16 Q And across the hall is the bedroom and that's --

17 right?

18 A Yes.

19 Q Where my finger is right now on the left-hand

20 side?

21 A Yes.

22 Q And that's where Joe was shot by Troy?

23 A Yes.

24 Q When you saw Troy shoot into that third bedroom,

25 where was he standing?

1 A He was standing like right by the picture in the
2 hall.
3 Q Right in front of that --
4 A Yes.
5 Q -- it looks like a caricature of your mom and Troy,
6 he was standing right there?
7 A Yes.
8 Q And tell me what he did when he was standing right
9 there.
10 A He shot Joe.
11 Q Okay. And then how did he shoot your mom?
12 A He like turned to the other side and shot her.
13 Q Did you see the gun when he pulled the trigger? Was
14 it in your line of sight?
15 A Yes.
16 Q And was your mom the only person in that room?
17 A Yes.
18 Q Had you seen that gun before that he used?
19 A No.
20 Q And you said yesterday that after he shot your mom,
21 he took that gun and he placed it in the small of his back?
22 A Yes.
23 Q Like right behind on his spine?
24 A Yes.
25 Q Did he -- I'm confused. Did he put it so you could

1 see it when he left, or was it hidden when he left?

2 A It was hidden when he left.

3 Q How was it hidden?

4 A Because like, he put his shirt over it. Like when
5 he put it down there, he put his shirt over it.

6 Q And you just stood up and showed the jury how he did
7 that, correct?

8 A Yes.

9 Q Okay. Jayce, finally, you said that or you told the
10 detectives that Joe was doing things with your mom that he
11 wasn't supposed to do.

12 A Yes.

13 Q Now, you were eight years old at the time?

14 A Yes.

15 Q Who told you that Joe was doing some things with
16 your mom that he wasn't supposed to do?

17 A I don't know. I don't remember. Because like -- I
18 think I heard it from Troy.

19 Q Thank you. Jayce, do you remember seeing these
20 photos when they were on your kitchen wall?

21 A Yes.

22 Q And I'm going to zoom in, okay.

23 A Okay.

24 Q Can you read what it says there on the screen? Are
25 you able to read it?

1 A It says Love. I can't read the second word.

2 Q Love hears all things, endures all things, believes
3 all things.

4 A Yes.

5 Q And that's what was written on that plaque above the
6 photographs on that kitchen wall?

7 A Yes.

8 MR. ROGAN: Nothing further.

9 THE COURT: Recross?

10 MR. COFFEE: Just briefly.

11 RE CROSS EXAMINATION

12 BY MR. COFFEE:

13 Q Almost done, Jayce.

14 A Okay, thank you.

15 Q You were asked if your dad stopped and looked at
16 pictures.

17 A Yes.

18 Q He didn't do that?

19 A No.

20 Q But he did come in and ask to talk to your mother,
21 right?

22 A Yes.

23 MR. ROGAN: Objection, misstates the evidence, Your
24 Honor.

25 THE COURT: Overruled.

1 BY MR. COFFEE:

2 Q He did come in and ask to talk to your mother?

3 A Yes.

4 Q And they went in the back bedroom and they started
5 talking and then it escalated. Yes?

6 A Yes.

7 MR. COFFEE: Okay. Thank you, Jayce. Nothing
8 further.

9 THE COURT: Any further direct examination?

10 FURTHER REDIRECT EXAMINATION

11 BY MR. ROGAN:

12 Q Jayce, he didn't ask to speak to your mom, he said,
13 Get in the room now, right?

14 A Oh, yes. Yes.

15 MR. ROGAN: Thank you.

16 THE COURT: Anything else?

17 MR. COFFEE: It's going to take me just a second.
18 The top of page 6, counsel.

19 FURTHER RECROSS EXAMINATION

20 BY MR. COFFEE:

21 Q I'm going to ask if you remember saying this, okay,
22 Jayce?

23 A Okay.

24 Q Okay. "My dad just all of a sudden comes in the
25 house. He comes in and the alarm goes off and then he sets

1 off the alarm. And, uh, my mom was there and she -- they --
2 couldn't make out what was said. They were -- they started
3 talking. They opened it." Do you remember saying that?

4 A They -- what?

5 Q They started talking and then they opened it. I
6 don't know if you're referring to the door or what you're
7 referring to.

8 A I think I was referring to the door. They opened
9 the door and they went in.

10 Q Okay. But the point being before that they had
11 started talking, your mom and dad were talking at some point,
12 right?

13 A Yes.

14 Q Okay, thank you.

15 MR. COFFEE: Nothing further.

16 THE COURT: Any further direct examination?

17 MR. ROGAN: No, Your Honor.

18 THE COURT: Thank you, sir, we appreciate your time.
19 Have a nice afternoon.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness.

22 MR. COFFEE: Can we approach for a moment?

23 THE COURT: You can.

24 (Bench conference begins)

25 MR. ROGAN: The State is withdrawing Exhibit 92.

1 THE COURT: What?

2 MR. ROGAN: We're withdrawing Exhibit 92.

3 THE COURT: I've already admitted it.

4 MR. ROGAN: We understand, but on further looking --

5 MR. COFFEE: Withdrawn by stipulation.

6 MR. ROGAN: Right.

7 THE COURT: Are we going to strike it?

8 MR. ROGAN: Yes.

9 MR. COFFEE: Strike it. The other thing is, do you

10 usually ask if they have any questions? Because we didn't

11 before he left. I don't care --

12 THE COURT: I looked to see if they had any. That's

13 what I do. I look over to see if there are any. I don't want

14 to -- (indiscernible).

15 MR. COFFEE: Okay. I don't like to encourage it

16 necessarily, but --

17 THE COURT: But I look over to see if there are any

18 or people writing.

19 MR. COFFEE: Okay, thank you.

20 (Bench conference concluded)

21 THE COURT: Who's our next witness?

22 MS. MERCER: The next witness is Jodey White. May

23 I approach your clerk to grab the exhibits?

24 THE COURT: You may. And, Ms. Clerk, pursuant to

25 the stipulation of counsel, Exhibit 92 is stricken.

1 JODEY WHITE

2 Having been called as a witness and being first duly sworn,

3 testified as follows:

4 THE CLERK: Thank you, please be seated. And please

5 state and spell your name for the record.

6 THE WITNESS: Jodey, J-O-D-E-Y.

7 MR. COFFEE: Permission to approach?

8 THE COURT: Certainly.

9 (Bench conference begins)

10 MR. COFFEE: Maybe I'm being overly cautious.

11 There's a stack of photos, I'm putting -- mortuary photos.

12 MS. MERCER: I'm not showing those.

13 MR. COFFEE: Oh, okay. I just wanted to make sure.

14 Better safe than sorry.

15 (Bench conference concluded)

16 THE COURT: Jodey, there's water there. If you'd

17 like some, ask the marshal and he'll get some for you, okay?

18 THE COURT: Ms. Mercer.

19 MS. MERCER: May I proceed, Your Honor?

20 THE COURT: You may.

21 MS. MERCER: Thank you.

22 DIRECT EXAMINATION

23 BY MS. MERCER:

24 Q Jodey, how old are you?

25 A Eleven.

1 Q And what year were you born in?
2 A 2003.
3 Q I'm sorry?
4 A 2003.
5 Q Can you do me a favor and move the microphone up a
6 little bit closer to you? Thank you. And back in July of
7 2012, how old would you have been?
8 A Nine years old.
9 Q And I'm sorry, you said you're how old now?
10 A Eleven.
11 Q And what grade are you in?
12 A Sixth.
13 Q Which school do you attend?
14 A Jerome Mack Middle School.
15 Q And who do you currently live with?
16 A My grandma, my grandpa and my two brothers.
17 Q You said your grandmother, your grandpa and your two
18 brothers? Who is your grandmother?
19 A Amber Denise Gaines.
20 Q Amber Denise Gaines. And who is your grandfather?
21 A Uh --
22 Q What do you call him?
23 A Papa.
24 Q You call him papa?
25 A Michael Gary Gaines.

1 Q Michael Gary Gaines. Which two brothers do you live
2 with right now?
3 A Jayce and Jesse.
4 Q And do you also have two other younger siblings?
5 A Yes.
6 Q Who do they currently live with?
7 A My grandfather and my other two brother and sisters.
8 Q And what is that grandfather's name?
9 A Don. Don Lucas.
10 Q Don Lucas. What are the two younger siblings'
11 names?
12 A Jett and Jazzy.
13 Q Okay. And I'm going to show you some pictures real
14 quick, Jodey.
15 MS. MERCER: And, Your Honor, for the record I'm
16 publishing State's Exhibit 15.
17 THE COURT: Thank you.
18 BY MS. MERCER:
19 Q Do you recognize that person, Jodey?
20 A Yeah.
21 Q Who is that?
22 A Me.
23 Q And is that you on July 27th of 2012?
24 A Yes.
25 Q And so in this photograph you were how old?

1 A Nine years old.

2 Q Nine? And you're the oldest sibling, correct?

3 A Yes. No.

4 Q I'm sorry?

5 A No.

6 Q Of the siblings that we just went over, you're the

7 oldest, correct?

8 A Oh, yes. Yes, ma'am.

9 Q And now I'm publishing State's Exhibit 16. Who is

10 that?

11 A Jayce.

12 Q And on July 27th of 2012, he would have been eight?

13 A Yes.

14 Q State's 17. Who is that guy?

15 A Jesse.

16 Q That's Jesse? Is he the middle one?

17 A Yes. No, he's the young-- yeah, he's the middle.

18 Q And how old was he back in July of 2012?

19 A I think he was six.

20 Q Would he have been five?

21 A Six. Five or six.

22 Q And State's 18. Who is that?

23 A My brother Jett.

24 Q And he would have been about two on that date?

25 A I think so.

1 Q And State's 19. Who is this?
2 A My youngest sister, Jazzy.
3 Q And she was about six months old at that time,
4 correct?
5 A (No audible response).
6 Q Back in July of 2012, who did you live with?
7 A My mom and dad.
8 Q Were your parents separated?
9 A One.
10 Q I'm sorry?
11 A One.
12 Q Okay. You said your mom. What was your mom's name?
13 A Echo Brooke Lucas.
14 Q I'm publishing State's Exhibit 1. Do you recognize
15 that person? Who is that?
16 A My mom.
17 Q Okay. And you said that you lived with your dad.
18 Who is that?
19 A Troy.
20 Q Do you still call him dad?
21 A No.
22 Q What do you call him now?
23 A (No audible response).
24 Q Jodey, I'm showing you State's Exhibit 20. Do you
25 recognize that person? Jodey, do you need a second?

1 A Yeah.

2 MS. MERCER: Your Honor, may we take a brief recess?

3 THE COURT: We're going to take a short recess.

4 Ladies and gentlemen, we're going to take a recess for ten
5 minutes. During this recess you are admonished not to talk or
6 converse among yourselves or with anyone else on any subject
7 connected with this trial, or read, watch or listen to any
8 report of or commentary on the trial or any person connected
9 with this trial by any medium of information, including
10 without limitation social media, text, newspaper, television,
11 the Internet and radio, or form or express any opinion on any
12 subject connected with the trial until the case is finally
13 submitted to you.

14 We'll see you in ten minutes outside Courtroom 14A.

15 Counsel, we'll be in recess for ten minutes.

16 MS. MERCER: Thank you, Your Honor.

17 (Court recessed from 11:19 a.m. until 11:30 a.m.)

18 (Jury is not present)

19 THE COURT: Let's get my jurors. Thanks.

20 (Speaking to the witness) We stand up to show we
21 respect what the jury is doing, their service. That's why we
22 stand up. So thank you for doing that.

23 Counsel, I have a three o'clock conference call on
24 CityCenter, so we'll try and do our afternoon break so that I
25 can do that conference call, and then I'll give my staff about

1 ten minutes around that same time.

2 MR. COFFEE: Sure. And we had the one juror that
3 we had promised at 4:45.

4 THE COURT: I broke yesterday at 4:45, did you
5 notice?

6 MR. ROGAN: Right.

7 MR. COFFEE: I did. He was just concerned again
8 today.

9 THE COURT: We're going to break at 4:45. He told
10 me. We committed to him. You guys left him on. We're going
11 to break at 4:45 so he can do what he's got to do.

12 MR. ROGAN: Fine by me.

13 THE COURT: Are we behind schedule?

14 MR. COFFEE: I don't think so.

15 MS. MERCER: I don't think so.

16 THE COURT: Because that's what my conference call
17 is about.

18 (Jury is present)

19 THE COURT: Counsel stipulate to the presence of
20 the jury?

21 MS. MERCER: Yes, Your Honor.

22 MR. COFFEE: Yes, Judge.

23 THE COURT: You may be seated.

24 Jodey, I'd like to remind you you're still under
25 oath, okay?

1 You may proceed, Ms. Mercer.

2 MS. MERCER: Thank you, Your Honor.

3 DIRECT EXAMINATION (Continued)

4 BY MS. MERCER:

5 Q Okay. Jodey, when we broke, I had asked you if this
6 is a picture of your father back in July of 2012.

7 A Yes.

8 Q Of Troy White?

9 A Yes.

10 Q That's the man that you referred to as your dad?

11 A Yes.

12 Q Okay. And I'm publishing 1 again. You already
13 identified this woman as your mother, Echo?

14 A Yes.

15 Q When she was still alive, was she working or did she
16 stay at home with you and your siblings?

17 A Stayed at home with us.

18 Q What kinds of things would she do with you?

19 A She would take us places like the park. She would
20 take us on vacation sometimes.

21 Q Did she ever take you to the library?

22 A She would take us to the library a lot. We'd get
23 movies.

24 Q Did you say a lot?

25 A (No audible response).

1 Q Okay. A little bit before your mother died, were
2 your parents separated?

3 A I don't recall.

4 Q Do you remember a time when your -- when Troy moved
5 out of the home?

6 A Yes.

7 Q Was that a yes?

8 A Yes. Sorry.

9 Q Okay. How long before your mother died did he move
10 out of the house? If you recall.

11 A I don't recall. Sorry.

12 Q Once he moved out of the house, did he come back and
13 visit on the weekends?

14 A Yes.

15 Q And when he came back and visited on the weekends,
16 your mother left the home?

17 A I don't recall. Sorry.

18 Q You don't recall? Okay. Do you know where Troy was
19 living once he moved out of the house?

20 A Yes.

21 Q Where was he living?

22 A He was living with two people from the Potter's
23 House.

24 Q From the Potter's House?

25 A Like our church.

1 Q I'm sorry?

2 A Our old church, the Potter's House.

3 Q Okay, your old church. And do you know their names?

4 A Yes.

5 Q What were their names?

6 A Herman Allen and Jeremiah Allen.

7 Q Is Jeremiah Herman's son?

8 A I don't remember.

9 Q Okay. Jodey, I'm publishing State's Exhibit 26.

10 Do you recognize what's depicted in that photograph?

11 A Yes.

12 Q I'm sorry, was that a yes?

13 A Yes. Yes.

14 Q And what is that?

15 A Our old house.

16 Q That's where you lived with your mom and your

17 siblings?

18 A Yes.

19 Q Do you know the address to that house?

20 A Uh, no. I only remember it was on Altamira.

21 Q It was on Altamira?

22 A Altamira Road.

23 Q And when you lived in that house, did you share a

24 room with your brothers?

25 A Yes.

1 Q I'm showing you State's Exhibit 42. Was that the
2 room that you shared with your brothers?
3 A Yes.
4 Q And were there some bunkbeds in there as well?
5 A Yes. It's not in the picture, though.
6 Q It's at the other end of the room?
7 A (No audible response).
8 Q I'm showing you State's Exhibit 39. Do you recognize
9 what's shown in this photograph?
10 A Yes.
11 Q What was that?
12 A The living room.
13 Q It's the living room in that house on Altamira?
14 A Yes.
15 Q And I'm showing you State's Exhibit 40. Is that
16 another photograph of the living room?
17 A Yes.
18 Q When your -- when Troy lived with Herman Allen, did
19 you ever go visit him at Herman Allen's house?
20 A Once, yes.
21 Q Once. Do you remember when that was?
22 A No, I don't recall.
23 Q Okay. How did you know that your parents had
24 separated?
25 A Well, they took us out to eat once and they told us

1 that they were fighting a lot, so my dad was going to move
2 out.

3 Q So you all had discussed it as a family?

4 A Yes.

5 Q After your dad moved out of the home, did -- Do you
6 know a person named Joe?

7 A Yes.

8 Q And who was Joe?

9 A He was my mom's friend.

10 Q And did Joe sometimes come to the house after your
11 dad moved out?

12 A Yes.

13 Q Do you know Joe's last name?

14 A I do, but I forgot.

15 Q Does Averman sound right?

16 A Yes. Averman.

17 Q Do you know about how long before your mother was --
18 before she died, Joe started coming around?

19 A How long before?

20 Q Yeah. How long had he been coming to the house
21 before she died?

22 A After my dad moved out.

23 Q But you don't remember when that was?

24 A I don't remember the exact date, no.

25 Q Did you know Joe before he started coming over to

1 the house?

2 A Yes.

3 Q How did you know him?

4 A He went to our church.

5 Q How long had you guys known him?

6 A I don't remember the exact.

7 Q Do you think it was for years or --

8 A Years.

9 Q Years? Okay. Now, Jodey, I want to talk to you

10 about one specific date, July 27th of 2012. On that date were

11 you at home at the 325 Altamira address?

12 A Yes.

13 Q And who was with you?

14 A My brothers and sisters and my mom and Joe.

15 Q Do you remember what time you got up that morning?

16 A No. Like maybe eight, nine or ten. That's the time

17 I usually got up.

18 Q Eight, nine or ten? So sometimes you would sleep in

19 a little bit later?

20 A (No audible response).

21 Q Do you remember what you did after you woke up that

22 morning?

23 A Uh, yeah. We had sometimes -- like that exact

24 morning what we did? We were watching TV.

25 Q Do you remember what you were watching on that day?

1 A Yes.

2 Q And what were you watching?

3 A We were watching a show on Netflix.

4 Q What was that show?

5 A "I Shouldn't Be Alive."

6 Q And when you say that we were watching TV, who's we?

7 A My mom, me, Jayce, Jesse, Jett, and Jazzy wasn't

8 because she was in the car seat.

9 Q Jodey, in State's Exhibit 1, the photograph of your

10 mom, her hair is straight, right?

11 A When my -- when the day -- when it happened she had

12 I think -- I don't remember exactly, but she had braids and I

13 think she was doing them.

14 Q Okay. So she had braided her hair recently?

15 A Yeah. It was blonde and black and brown.

16 Q And do you remember, was she braiding her hair the

17 night before the 27th?

18 A I think so.

19 Q Do you know about how long you were watching that

20 TV show?

21 A No, I don't remember.

22 Q At some point while you were watching that TV show,

23 did your mom -- did your mom leave the room?

24 A Yeah.

25 Q And did she go back to her bedroom to take a nap?

1 A I don't remember if it was to take a nap, but she
2 did go back to her bedroom.

3 Q When she went back to the bedroom, was Joe still in
4 the living room with you?

5 A No.

6 Q Where did he go?

7 A He was with my mom.

8 Q And did he have your baby sister, Jazzy?

9 A I don't remember.

10 Q You don't remember? Okay. When your mom went to go
11 take a nap, was that still in the morning or early afternoon?

12 A It was morning or early afternoon. I don't remember.

13 Q When your mom went to go take a nap, did something
14 -- well, did your father show up at the house at some point?

15 A Yes.

16 Q Troy White?

17 A Yes.

18 Q When he showed up, did he knock on the door, did he
19 ring the doorbell?

20 A (No audible response).

21 Q Is that a no?

22 A Yes, no. Sorry.

23 Q No to both questions?

24 A Yes.

25 Q Did he just let himself into the house?

1 A Yes.

2 Q And how did you know that he was there?

3 A I saw him.

4 Q When he came into the house, did he say anything to
5 you or any of your siblings?

6 A I don't recall.

7 Q Where were you and your siblings when he came into
8 the house?

9 A We were first in the living room, and then when we
10 heard the door open, we went to the doorway.

11 Q Why did you go to the doorway?

12 A Because we didn't know who was there. We thought it
13 was our dad.

14 Q Okay. And about the time that Troy came to the
15 house, did your mom walk out of the bedroom?

16 A Yeah, she was walking out of the bedroom.

17 Q Down the hallway?

18 A Down the hallway. She was walking out of the master
19 bedroom.

20 Q When she came down the hallway -- Actually, let me
21 back up. When Troy came into the house, did you notice
22 whether he had anything in his hands?

23 A No.

24 Q He did not have anything in his hands, or you didn't
25 notice?

1 A I didn't notice.

2 Q You didn't notice?

3 A No.

4 Q Okay. When your mom came out of the bedroom, did
5 you hear your mother say anything to Troy White?

6 A No, I don't remember.

7 Q When your dad would come visit you on the weekends,
8 do you know when he would show up typically?

9 A I don't remember.

10 Q Were you expecting Troy White to show up at the
11 house at that time?

12 A No.

13 Q Did your mom continue to walk down the hallway to
14 the living room once your dad showed up?

15 A I don't remember.

16 Q At some point do you remember them going to another
17 room in the house? And when I say them, I'm talking about
18 Troy White and your mom.

19 A Yes.

20 Q Which room did they go into?

21 A The scrapbooking room.

22 Q The scrapbooking room? Did your mom scrapbook?

23 A Yes.

24 Q I'm showing you State's Exhibit 46. Is this what
25 you're referring to as the scrapbooking room?

1 A Yes.

2 Q And there was a bunch of arts and crafts type stuff
3 in there?

4 A Yes.

5 Q When they went into that room, where were you and
6 your brothers and sisters?

7 A We were in the room. We were still in the hallway.

8 Q And where was Joe?

9 A He was in the master bedroom.

10 Q Was he with the baby?

11 A I don't remember.

12 Q How long was it from the time that your -- that Troy
13 White let himself into the house to the time that they went
14 into the bedroom?

15 A What time was it?

16 Q How long -- how much time passed between the time
17 that he entered the house and the time that your mom and Troy
18 White went into that scrapbooking room?

19 A I don't know. It seemed like a long time.

20 Q Okay. While they were in the room, was the door
21 open or closed?

22 A I think it was open.

23 Q You think it was open. At some point did you hear
24 something that scared you?

25 A Yes.

1 Q What was it?
2 A A gunshot.
3 Q I'm sorry?
4 A A gunshot.
5 Q And could you see where that gunshot was coming
6 from?
7 A Yes.
8 Q Where did it come from?
9 A Down the hall.
10 Q Down the hall where?
11 A By the master bedroom.
12 Q Did you see who was firing the gun?
13 A Yes.
14 Q Who was it?
15 A My dad.
16 Q And could you see who he was firing the gun at?
17 A At first? Yeah.
18 Q Who did he fire that gun at first?
19 A I think Joe.
20 Q You think Joe? Jodey, do you remember talking to
21 a policeman later on that day?
22 A Yes.
23 Q And do you remember when you spoke to him the
24 conversation was recorded?
25 A Yeah.

1 Q Are you certain that Troy White shot your mother
2 first -- I mean, Joe first?

3 A I'm not absolutely certain, but I'm almost sure.

4 Q Okay. Do you think it would refresh your
5 recollection if I showed you a copy of the statement that you
6 gave to the police officer that day?

7 A Yes, please.

8 MS. MERCER: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 BY MS. MERCER:

11 Q If you could just start reading about halfway down.

12 A Where it says "Okay"?

13 Q But read it to yourself, please, okay. Did that
14 refresh your recollection?

15 A Yes.

16 Q Okay. And did he shoot your mom first or Joe first?

17 A My mom.

18 Q When he shot your mom, how far were you standing
19 from Troy White?

20 A About a few feet.

21 Q Were you still in the hallway?

22 A Yes.

23 Q Jodey, I'm showing you State's Exhibit 41. The
24 craft room that your mom was in with Troy White is this door
25 back here, correct?

1 A Correct.

2 Q And how close to that door were you standing?

3 A Right here. (pointing to screen)

4 MS. MERCER: I'm sorry. May I approach, Your Honor,

5 so that I can see where he's pointing?

6 THE COURT: You may.

7 MS. MERCER: Mr. Coffee, did you want to approach,

8 too?

9 MR. COFFEE: Yeah. We don't have the writing?

10 MS. MERCER: It's not working.

11 MR. COFFEE: Oh, okay.

12 BY MS. MERCER:

13 Q Okay. Jodey, can you show us one more time, please?

14 A Like, around here by the cupboards.

15 Q By the cabinets?

16 A Yes.

17 Q Okay.

18 MS. MERCER: And, Your Honor, for the record he

19 pointed more towards the right side of the hallway along the

20 cabinets right here.

21 THE COURT: Is that where it is, sir?

22 THE WITNESS: Yes.

23 THE COURT: Show it again, Ms. Mercer.

24 BY MS. MERCER:

25 Q Right here?

1 A Yes.

2 Q Okay.

3 THE COURT: Thank you.

4 BY MS. MERCER:

5 Q And could you actually see into the bedroom from

6 where you were standing, into the scrap room?

7 A No, I don't believe so.

8 Q After your mom was shot, what happened at that

9 point?

10 A He shot Joe.

11 Q And where was Joe?

12 A He was in the master bedroom right there. (pointing

13 to the screen)

14 Q And is the master bedroom right here?

15 A Yes.

16 Q I'm showing you State's Exhibit 56, Jodey. Is this

17 the master bedroom?

18 A Yes.

19 Q And was Joe standing in the doorway or where was

20 he standing?

21 A I think he was standing like right about by the

22 white cupboards.

23 Q By the white cabinets?

24 A Yes.

25 Q Okay. And there's a crib in this photograph,

1 correct? Is that where Jazzy was sleeping at the time?

2 A Uh, I think so, yes.

3 Q Did you see Joe get shot?

4 A No.

5 Q At the time that your mom was shot and Joe was shot,

6 where were your siblings?

7 A All of them? They were -- we were still in the

8 hallway.

9 Q You were all still in the hallway?

10 A Yes.

11 Q Was the baby in the hallway, Jazzy?

12 A No.

13 Q Okay. So when you say all, who are you talking

14 about?

15 A Me, Jayce and Jesse. I don't remember where Jett

16 was.

17 Q Okay. So the older three of you were in the hallway?

18 A Yes.

19 Q When you saw your mother get shot and then you saw

20 Joe get shot, what did you do?

21 A Me and my two brothers, Jayce and Jesse, we were

22 like hitting my dad and throwing stuff at him to make him to

23 stop.

24 Q Were you saying anything to him?

25 A I don't remember.

1 Q After your dad or after Troy White shot your mom
2 and shot Joe, what did he do?

3 A Well, he went out of the house and went to the
4 driveway and got in the car and left -- got in the van.

5 Q At some point did you go across the street to a
6 neighbor's house?

7 A Yes.

8 Q And what caused you to go over to the neighbor's
9 house?

10 A Because I wanted to call the police.

11 Q Why didn't you call the police from your house?

12 A Because I didn't know where the phones were.

13 Q Because you didn't know where the phones were?

14 A I didn't think we had -- we didn't have a home
15 phone.

16 Q And did you go immediately to one specific house,
17 or did you try a few different houses first?

18 A I believe I just went to that house because I didn't
19 see anybody out, but then the car pulled up in their driveway
20 and I went to tell them.

21 Q Okay. So you went to that house because you saw a
22 car pulling into the driveway and you didn't see anyone else
23 outside at the other homes?

24 A No, I don't -- (inaudible).

25 Q When you went to that house and the car pulled up

1 into the driveway, can you describe the person that -- Did the
2 person that pulled up in the driveway eventually get out?

3 A Yes. There was four people.

4 Q There were four people. And was one of them an
5 adult?

6 A Two of them were.

7 Q Two of them were adults. And did they help you?

8 A Yes.

9 Q What did they do?

10 A I told them that my dad had shot my mom and that I
11 needed to call the police.

12 Q So what did they do?

13 A They still told me to come inside.

14 Q They told you to come inside? Did they have two
15 children with them?

16 A Yes.

17 Q So did you actually go inside of the house?

18 A Yes.

19 Q Did one of them call 9-1-1 for you?

20 A Yes.

21 Q Do you remember, the two adults that pulled up, one
22 was a female and one was a male, correct?

23 A Correct.

24 Q Which one of them phoned 9-1-1 for you?

25 A I don't remember.

1 Q Okay. At some point did you talk to the 9-1-1
2 operator?

3 A Yes.

4 MS. MERCER: Your Honor, at this point I would move
5 to publish State's Exhibit 83, which is the 9-1-1 call.

6 THE COURT: Any objection?

7 MR. COFFEE: No.

8 THE COURT: Okay, you may.

9 Ladies and gentlemen, we were earlier having sound
10 difficulties with this. We are hopeful that the sound problem
11 we found to resolve it will work.

12 Mr. Rogan.

13 MR. ROGAN: We'll see.

14 (State's Exhibit 83 was played aloud)

15 THE COURT: Ladies and gentlemen, we're going to
16 take our lunch recess now. During this recess you are
17 admonished not to talk or converse among yourselves or with
18 anyone else on any subject connected with this trial, or read,
19 watch or listen to any report of or commentary on the trial
20 or any person connected with this trial by any medium of
21 information, including without limitation social media, text,
22 newspaper, television, the Internet and radio, or form or
23 express any opinion on any subject connected with the trial
24 until the case is finally submitted to you.

25 We'll see you at 1:15 outside courtroom 14A.

1 (Court recessed from 12:01 p.m. until 1:18 p.m.)
2 (Jury is not present)
3 THE COURT: Counsel, as I mentioned earlier, one of
4 the jurors stopped me as I was going to get my lunch and asked
5 me about the Potter's House. I advised the jurors that you
6 will explain that as part of the trial, so.
7 MS. MERCER: Thank you, Your Honor.
8 MR. ROGAN: Thank you, Your Honor.
9 THE COURT: Please remember to do so so I'm not a
10 liar.
11 Ready to go get my jurors?
12 THE MARSHAL: Yes, Judge.
13 THE COURT: Is there a stipulation to "W"?
14 MS. MERCER: Yes, Your Honor.
15 THE COURT: "W" is admitted.
16 (Defendant's Exhibit W admitted)
17 (Jury is present)
18 THE COURT: Counsel stipulate to the presence of
19 the jury?
20 MS. MERCER: Yes, Your Honor.
21 MR. COFFEE: Yes, Judge.
22 THE COURT: We need to get our witness.
23 THE MARSHAL: Yes, Judge.
24 THE COURT: Jodey, I'd like to remind you you're
25 still under oath.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: And remember, if you need some water,
3 let the marshal know, okay?

4 Ms. Mercer, you may continue.

5 MS. MERCER: Thank you, Your Honor.

6 DIRECT EXAMINATION (Continued)

7 BY MS. MERCER:

8 Q Okay. Jodey, when we left off you had just finished
9 listening to the 9-1-1 call that you placed on July 27th of
10 2012; right?

11 A Yes.

12 Q Okay. In that 9-1-1 call, was that you crying in
13 the background when the male was on the phone?

14 A I think so.

15 Q And you told the 9-1-1 operator, I hope my mommy is
16 alive?

17 A Uh, yes.

18 Q At the time that you placed that 9-1-1 call, did you
19 know whether or not your mom was alive?

20 A No.

21 Q You also told the operator that you didn't know if
22 your brothers and sisters were alive?

23 A Yes.

24 Q Were you worried that they might not be?

25 A Yes.

1 Q You also told the dispatcher that when Troy White
2 came into the house it set off the alarm?
3 A Yes.
4 Q Do you recall that happening on July 27th of 2012?
5 A Yes.
6 Q And is that what made you realize that he was in the
7 home?
8 A Yes.
9 Q And you described him as wearing a black and red
10 shirt, and I think you called them black slackers, is that
11 right?
12 A I don't believe -- I don't know.
13 Q Did you mean black slacks?
14 A Yes.
15 MS. MERCER: Permission to publish, Your Honor?
16 THE COURT: You may.
17 BY MS. MERCER:
18 Q This is State's 20 again. Is that the clothing that
19 he was wearing on that day?
20 A I don't recall that.
21 Q You don't recall?
22 A I don't remember what he was wearing that day.
23 Q Okay. But you told the police he was wearing a red
24 and black shirt and black slacks?
25 A Yes.

1 Q Or slackers is what you called them. Yes?

2 A Yes.

3 Q And you described the firearm as being a black

4 firearm and you told the dispatcher that it was a smaller one,

5 correct?

6 A (No audible response).

7 Q Okay. Is that a yes?

8 THE COURT: Sir, we need you to answer out loud,

9 okay?

10 THE WITNESS: Oh, sorry.

11 THE COURT: It's okay. And you may have to scoot up

12 closer to the mic and move it closer to you, too.

13 MS. MERCER: Thank you.

14 THE COURT: Okay.

15 MS. MERCER: Permission to publish again?

16 THE COURT: You may.

17 BY MS. MERCER:

18 Q State's Exhibit 15, Jodey. This is you; right?

19 A Yes.

20 Q On July 27th of 2012?

21 A Yes.

22 Q Is this how you ran out of the house that day?

23 A I think so.

24 Q And you ran out without any shoes, correct?

25 A Yes.

1 Q And for the record, in this photograph the only
2 thing you're wearing are some boxers?

3 A Yes.

4 Q Earlier when I was asking you some questions you
5 said that you saw Troy White leave in the Durango?

6 A Yes.

7 MS. MERCER: Permission to publish again, Your Honor?

8 THE COURT: You may.

9 BY MS. MERCER:

10 Q I'm showing you State's 69. Is this the Durango
11 that you were referring to?

12 A Yes.

13 Q And was this the only car that your mom and Troy
14 White owned?

15 A No.

16 Q What other car did they have?

17 A They had a green car.

18 Q Okay. But it wasn't at the house; right?

19 A I don't remember. All I remember is they had one.
20 I don't know if it was at the house that day or not.

21 Q Okay. And the license plate for that Durango was --
22 and this is State's Exhibit 66 -- Us and 3 boys?

23 A Yes.

24 Q And you told the dispatcher that the license plate
25 said something about us and three monkeys or something like

1 that, correct?

2 A Yes.

3 Q Was that a yes?

4 A Yes.

5 Q Okay. At what point did you see Troy White drive
6 off in that Durango?

7 A After I went to the house.

8 Q After you went to which house?

9 A Uh, Wilson. The Wil--

10 Q The Wilson's house?

11 A Yes.

12 Q Across the street?

13 A Yes.

14 Q Was the Wilson's house directly across the street or
15 was it across the street and a few houses down?

16 A Across the street and like one or two houses down.

17 Q One or two houses down?

18 A Right.

19 Q So if you walked out your front door, their house
20 was directly across the street and to the right?

21 A (No audible response).

22 Q Okay. Is that a yes?

23 A Yes.

24 Q Sorry. And Jodey, you mentioned that your family
25 knew Joe Averman from the Potter's House?

1 A Yes.

2 Q What is the Potter's House?

3 A Church.

4 Q It's a church?

5 A Yes.

6 Q Is it a church on Sahara?

7 A Sahara and Rainbow.

8 Q Sahara and Rainbow. And is that a church that you

9 and your family attended for several years?

10 A Yes.

11 Q Okay. Jodey, earlier when I was asking you some

12 questions I asked you if you remembered anything that your mom

13 or your dad said prior to the shooting. Do you recall that

14 question?

15 A No, I don't recall.

16 Q Okay. Do you remember anything that your -- do you

17 remember hearing anything that your mother said to the

18 defendant when they were in the craft room?

19 A Yes.

20 Q What did she say?

21 A She said, No, please stop, I won't go with Joe

22 again.

23 Q She said I won't go with Joe again?

24 A (No audible response).

25 Q And prior to the defendant shooting your mom, did

1 you see her make any effort to try to get away from him?
2 A Yes.
3 Q What did she do?
4 A She was pushing him.
5 Q She was pushing him. What happened when she pushed
6 him?
7 A Nothing.
8 Q She was stuck in the room?
9 A Yes.
10 Q How many times was your mom shot?
11 A Uh, two or three times.
12 Q At any point did you go into the room after she was
13 shot?
14 A Yes.
15 Q And can you describe for me what she looked like
16 when you went in there?
17 A I don't know.
18 Q What color was her face?
19 A White.
20 Q And was she able to talk to you?
21 A No.
22 Q Do you remember how many times Joe was shot?
23 A Two or three.
24 Q Did you actually see his wounds?
25 A Uh, yeah.

1 Q And do you remember where they were?

2 A They were in his side and I think -- I forgot the
3 other place. One was in his side and I think one was in his
4 arm.

5 Q Okay. Can you point on your arm where you think the
6 wound was, please?

7 A I don't recall where it was on the arm.

8 Q Okay. You just remember one on the arm and in the
9 side?

10 A Yes.

11 Q Can you show me on the side where you think they
12 were?

13 A Like right here.

14 Q If you could stand up, please?

15 A It was like right here.

16 Q Okay. So slightly above the hip area on the left
17 side?

18 A Yes.

19 Q Thank you. Did you ever go into the room where Joe
20 was after he was shot?

21 A I don't recall.

22 Q You don't recall. Do you recall when Joe was shot
23 whether he was able to stay standing?

24 A No.

25 Q When you saw Joe, was he -- when you saw Joe after

1 he was shot, was he standing or was he on the ground?

2 A On the ground.

3 Q And did you notice whether he was bleeding?

4 A No, I didn't notice.

5 Q When your mom was shot and Joe was shot, what were

6 your siblings doing?

7 A We were pushing him around, trying to get him to

8 stop.

9 Q Were they crying?

10 A I don't remember. They were yelling.

11 Q They were yelling?

12 A Yes.

13 THE COURT: Do you need some water?

14 THE WITNESS: Yes.

15 BY MS. MERCER:

16 Q After your mom and Joe were shot, how did you feel?

17 A I didn't feel anything.

18 Q That was probably a poorly phrased question.

19 A I was -- sorry. I was panicking.

20 Q You were panicking? Were you frightened?

21 A Yes.

22 Q Prior to July 27th of 2012, did Troy White make any

23 statements to you about being upset with your mom?

24 A I don't recall.

25 Q Okay. Would it refresh your recollection if I

1 showed you a copy of the statement that you gave to the police
2 officer that day on July 27th?

3 A Yes, please.

4 MS. MERCER: Your Honor, may I approach the witness?

5 THE COURT: You may.

6 BY MS. MERCER:

7 Q And if you could start reading at the bottom of the
8 page for me, at the last A, but read it to yourself, please.

9 A Uh-huh.

10 Q Okay. Did that refresh your recollection at all?

11 A Yes.

12 Q And did he make any statements about being upset
13 with your mom and Joe?

14 A Yes.

15 Q And what statements did he make?

16 A Sometimes he said that he hated Joe.

17 Q Okay. And why -- did he tell you why he hated Joe?

18 A Yes.

19 Q What did he say?

20 A Because he said that my mom and -- my mom was
21 cheating on him.

22 Q And then do you remember telling the police officer
23 another thing that he said?

24 A Yeah.

25 THE COURT: Ms. Mercer, I need you to help Jodey

1 face towards the mike.

2 MS. MERCER: Oh, sorry.

3 THE WITNESS: Sorry.

4 THE COURT: Where you're standing is not helping.

5 MS. MERCER: I'm sorry. Court's indulgence. May I
6 approach again, Your Honor?

7 THE COURT: You may.

8 BY MS. MERCER:

9 Q And Jodey, I'm going to refresh your recollection on
10 page 9 of your statement, and if you could read the second A
11 down to yourself.

12 A Thank you.

13 Q Okay. What else did your father say about your mom
14 and Joe?

15 A He said something about fornicating.

16 Q And did you know what that meant?

17 A No.

18 Q Did he say to you that you were too young to know
19 about it?

20 A Yes.

21 Q When your father or when Troy White had the firearm
22 out and he was shooting your mom and Joe, did you get a good
23 look at the firearm?

24 A Not really.

25 Q Okay. Had you ever seen that firearm before?

1 A No.

2 Q And Jodey, do you see the individual who shot and
3 killed your mom and shot Joe that day in the courtroom?

4 A Yes.

5 Q Could you please do me a favor and point to him and
6 describe an article of clothing that he's wearing today?

7 A Yeah, right there (pointing).

8 Q And can you describe an article of clothing that
9 he's wearing?

10 A No, I can't see.

11 Q You can't see because of the monitor?

12 A Yeah.

13 Q Which position is he sitting in?

14 A Facing me.

15 Q Okay. How many people are at that table?

16 A Three.

17 Q Which end is he on, or is he in the middle?

18 A He's in the middle.

19 Q He's in the middle?

20 A He's right --

21 MS. MERCER: Your Honor, may the record reflect that
22 he's identified the defendant?

23 THE COURT: The record will so reflect.

24 MS. MERCER: Court's indulgence. I'll pass the
25 witness, Your Honor.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. COFFEE:

4 Q You're doing great, Jodey.

5 A Thank you.

6 Q There's been some discussion about what you call
7 Mr. White. You refer to him as Troy now. Yes?

8 A Yes.

9 Q But he's been your dad your entire life up until the
10 point of the shooting. Yes?

11 A Yes.

12 Q You called him dad? Yes?

13 A Yes.

14 Q He took care of you?

15 A Yes.

16 Q Helped feed you?

17 A Yes.

18 Q Corrected you if you did the wrong thing?

19 A Yes.

20 Q Even though your mom and your dad took you to dinner
21 at some point and talked about separation, you said?

22 A Yes.

23 Q And they said it's because they didn't want to fight
24 anymore?

25 A They said it was because they were fighting.

1 Q They were fighting too much?

2 A Yes.

3 Q And they didn't want to fight anymore; is that fair?

4 A Yes. They didn't want to fight in front of us kids.

5 Q They didn't want to fight in front of you kids.

6 Now, at that point Joe hadn't moved into your house yet, had

7 he?

8 A I don't know if he was moved in yet, but he was

9 coming over a lot. He was sleeping over sometimes.

10 Q Okay. Do you remember when it was that you went

11 to dinner, how long it was before the day that your mom was

12 killed?

13 A No, I don't remember.

14 Q Is about a month a good estimate?

15 A Sorry, I don't remember.

16 Q Okay, fair enough. Since your mother has been

17 killed, you've been adopted?

18 A No.

19 Q You live with your grandparents?

20 A Yes.

21 Q And that is your mom's dad?

22 A Stepdad.

23 Q Stepdad, and your mom's mom?

24 A Yes.

25 Q Okay. And this is the first time we've had a chance

1 to talk. Yes?

2 A Yes.

3 Q You've talked with the prosecutors a bit before

4 though. Yes?

5 A Yes.

6 Q And can I ask you when you stopped referring to Troy

7 as your dad?

8 A I don't remember.

9 Q Okay. I want to talk to you about the day when he

10 came in the house, okay?

11 A Okay.

12 Q And I want to talk to you -- there was a word used

13 yesterday and I'll try to explain it. I'm going to use the

14 same word; get myself in trouble for doing that. I want to

15 talk to you about his demeanor when he came in. Do you know

16 what that word means?

17 A No.

18 Q Okay. That's okay.

19 A Like, what was his intentions?

20 Q Not what was his intentions, although maybe we'll

21 talk about that in a minute, too, but demeanor meaning was

22 he upset, was he crying, was he happy, was he sad. Do you

23 understand?

24 A Yes.

25 Q Okay. When he came into the house that day, was his

1 demeanor -- did it start nice and mellow?

2 THE COURT: Mr. Coffee, your document is on the
3 ELMO.

4 MR. COFFEE: Oh, I didn't mean to. Lack of space.
5 Let me -- well, if I turn it off we'll never get it back on.
6 BY MR. COFFEE:

7 Q Was his demeanor nice and mellow? Is that what you
8 described to the police officers right after the event, when
9 he came in?

10 A I don't recall.

11 Q Okay. Would looking at a copy of your statement
12 help refresh your recollection on that?

13 A Yes.

14 Q Okay. And we're going to refer to page 9 on the
15 bottom. Do you remember now?

16 A (No audible response)

17 Q Okay. Thank you, Jodey. And looking at that, you
18 can now remember what you told the officers. Yes?

19 A Yes.

20 Q And you told the officers when your father came in
21 that day he was nice and mellow, at least at the start. Yes?

22 A Yes.

23 Q And then at some point things escalated inside the
24 house. Is that fair?

25 A Yes.

1 Q And I used one of those big words again, but you
2 know what I mean by escalated, right?

3 A Yes.

4 Q It got worse, but it didn't start that way. Is that
5 fair?

6 A Yes.

7 Q Now, this Joe person, your mom had known him, I
8 think you said eight or nine years maybe. Yes?

9 A Yes.

10 Q And they had met at the Potter's House church?

11 A Yes.

12 Q And Joe had been to your house in the years
13 previous. Yes?

14 A Yes.

15 Q And your parents had been to Joe's house in the
16 years previous. Yes?

17 A Yes.

18 Q Had Joe actually babysat for you on occasion?

19 A Once or twice.

20 Q Once or twice. And in fact, Joe and your dad were
21 friends; is that fair?

22 A At one time, yes.

23 Q At one time. But they ceased to be friends when Joe
24 became closer friends with your mother; is that fair?

25 A Yes.

1 Q Now, the church that you went to, you had attended
2 it fairly regularly; yes?
3 A Yes.
4 Q But that stopped about the time that your mother and
5 your father separated --
6 A Yes.
7 Q -- is that fair? Yes?
8 A Yes.
9 Q And do you know if Joe -- Joe had a wife at one
10 point named Dana; right?
11 A Yes.
12 Q Do you know if Joe and his wife Dana and your mom
13 and dad used to attend a fellowship together or do some
14 fellowship work together?
15 A Yes.
16 Q And they used to go out to eat together as a group;
17 is that fair?
18 A Yes.
19 Q And at that point they were all friends until,
20 again, Joe became closer with your mother; yes?
21 A Yes.
22 Q Your dad eventually got mad and in fact said he
23 hated Joe because he was cheating with your mother, is that
24 right?
25 A Yes.

1 Q Now, I hate to go through what happened that day,
2 but we kind of have to, okay?

3 A Okay.

4 Q And if you need to slow down or anything, you let
5 me know, okay, Jodey?

6 A Okay.

7 Q Is it fair to say that once the first shot was fired
8 things happened fairly quickly?

9 A Yes.

10 Q Meaning, the other shots were fired fairly quickly.
11 That's accurate; yes?

12 A Yes.

13 Q And when you talked to the police, did some of the
14 details get lost a little bit, maybe?

15 A I don't -- Can you please repeat the question?

16 Q Sure. I know it's real tough and you've probably
17 tried to block things out. Do some of the details get lost
18 occasionally when you think back to that?

19 A Yes.

20 Q Okay. For example, when you first talked to the
21 police you had said that your father fired nine or ten shots.
22 Do you remember saying that?

23 A Yes.

24 Q And you had said he had fired six, seven or eight
25 at Joe. Do you remember saying that?

1 A Yes.

2 Q And that he had fired multiple shots at your mother,
3 at least two?

4 A Yes. I was incorrect.

5 Q Okay. And that's okay.

6 A After I thought about it more, I realized -- I got
7 my facts right and I realized what had happened.

8 Q Okay.

9 THE COURT: Hold on a second, Mr. Coffee. We have
10 a genius here.

11 MR. COFFEE: Oh. It's like the Apple store.

12 THE COURT: Mr. Coffee, do you need the video for a
13 few minutes?

14 MR. COFFEE: No, I'm fine.

15 THE COURT: Okay. We're going to kill the video
16 while you continue your examination.

17 MR. COFFEE: Sure.

18 THE COURT: Hopefully get the touch screen back up.

19 MR. COFFEE: Outstanding.

20 BY MR. COFFEE:

21 Q You said you heard some words from the room; that
22 your dad had come in mellow and went to the back room, and is
23 that where the argument started in the back room?

24 A Yes.

25 Q And you heard your mother say something like, No,

1 or I'll leave Joe, something like that?

2 A Yes.

3 Q Did the shots happen fairly quickly after that?

4 A Yes.

5 Q And I know you didn't have a stopwatch, but within
6 a matter of a minute or a few seconds? What can you tell us,
7 how quickly?

8 A I can't recall.

9 Q Okay. It certainly wasn't an hour. That's fair,
10 right?

11 A It wasn't an hour. Yes.

12 Q Okay. You had described that he just started
13 shooting -- your dad, right?

14 A Yes.

15 Q Do you remember telling the police he was shooting
16 at my mom -- and this is the bottom of 11 -- and then he shot
17 Joe on accident because he was just shooting random right
18 there?

19 A Yeah, it sounds also incorrect.

20 Q Okay. And he went in and he just shot right there.
21 He started -- he went into the room. And you also said
22 something about your father after the shooting going in and
23 beating Joe up. Do you remember that?

24 A No.

25 Q Okay. Would looking at a copy of your statement help

1 refresh your recollection as to whether or not you said that?

2 A Yes.

3 Q Okay. Thank you, Jodey.

4 MR. COFFEE: Permission to approach.

5 THE WITNESS: I don't remember, but yeah, if I said
6 it; it's there.

7 BY MR. COFFEE:

8 Q You don't remember saying that to the officer?

9 A No.

10 Q But you don't dispute what's written on the report?

11 A I said if it's written down there. I just don't
12 remember.

13 Q Okay. But do you remember if that really happened
14 or not?

15 A No.

16 Q Okay. You were upset and you said a lot of things.
17 I would imagine you were very emotional. Is that fair?

18 A Yes.

19 Q And you had also said that while he was beating up
20 Joe he said, Just stay away from my girl, or something along
21 those lines. Do you remember telling the officers that?

22 A No.

23 Q Do you know if that ever actually happened?

24 A No.

25 Q Would looking at a copy of your statement help

1 refresh your recollection as to maybe whether or not you said
2 that?

3 A Yes.

4 MR. COFFEE: Permission to approach? Top of 12,
5 counsel.

6 BY MR. COFFEE:

7 Q Do you remember possibly having said that now?

8 A Maybe. Yes.

9 Q But you don't actually remember it happening; is
10 that fair?

11 A Yes.

12 Q There was some discussion about throwing things --

13 A Yes.

14 Q -- at your dad?

15 A Yes.

16 Q Who did that?

17 A Me and my brothers. Me, Jayce and Jesse.

18 Q Jayce. And Jayce -- you remember Jayce specifically
19 throwing things at your dad?

20 A Jayce and Jesse.

21 Q Okay.

22 A And myself.

23 Q You said you hadn't seen the gun before, but you did
24 know that your dad owned a gun, didn't you?

25 A Yes.

1 Q And in fact, you were asked by the officers whether
2 your dad owned a gun and you said that he owned two, but that
3 included a BB gun, is that right?

4 A Yes.

5 Q That he used for birds, I think.

6 A Yes.

7 Q And the officers asked you whether your dad carried
8 a gun with him very often. Do you remember that question?

9 A Yes.

10 Q And you told the officers that he did when he was --
11 when he goes to Herman's house, or only when he goes to
12 Herman's house, right?

13 A I don't remember.

14 Q Okay. Would looking at a copy of the statement one
15 more time help refresh your recollection maybe?

16 A Yes, please.

17 MR. COFFEE: The bottom of 15, counsel.

18 BY MR. COFFEE:

19 Q Do you remember that now?

20 A Yes.

21 Q Okay. And so we're completely clear on things, you
22 were asked the following question: "Okay. Did your dad carry
23 a gun with him all the time or no?" And your answer was:
24 "Yeah, only when he goes to Herman's house and our house and
25 when he's in the car." Do you remember saying that?

1 A I remember saying when he goes to Herman's house.
2 Q Okay. And the officer said: "So pretty often he has
3 a gun with him, is that fair to say?" Do you remember being
4 asked that?
5 A Yes.
6 Q And you said yes -- or uh-huh, actually, right?
7 A Yes.
8 Q There was some discussion about two automobiles in
9 the house. Your parents had another sedan at some point. Do
10 you know what a sedan is?
11 A Yeah.
12 Q Type of car. A four door car or a little car, right?
13 A Yes.
14 Q Not a pickup. You said there had been another
15 sedan?
16 A Yes.
17 Q Do you remember that being sold about the time your
18 mom and dad separated?
19 A Yes.
20 Q Okay. The day of the shooting actually there was
21 only one car, the other car had been sold, right?
22 A Yes.
23 Q Okay.
24 A I had told --
25 Q I'm sorry?

1 A I had told them that the car was not in the driveway
2 at the time. All I knew is that there was one.

3 Q I understand. And some of the times our questions
4 aren't perfect. We appreciate it if you'd keep us straight.
5 You were in the hall when the shooting actually took place?

6 A Yes.

7 Q Were your mom and dad both in the bedroom or was one
8 of them towards the hall?

9 A One was towards the hall.

10 Q Who was that?

11 A My dad.

12 Q Your dad.

13 MR. COFFEE: Court's indulgence.

14 THE COURT: Sure.

15 Jodey, while he's doing that, can you do me a favor
16 and draw on the monitor with your finger? Thank you.
17 Appreciate that.

18 BY MR. COFFEE:

19 Q When your dad came into the house, when he came in
20 at first, did Joe or your mom panic in any way?

21 A Panic?

22 Q Panic. Do you know what that word means?

23 A Yeah, kind of.

24 Q Okay. There wasn't any sort of panic, was there,
25 when he came in?

1 A Kind of. A little bit.

2 Q They were surprised? Yes?

3 A Yes.

4 Q Nobody tried to call 9-1-1 that you know of; is that

5 fair?

6 A Yes.

7 Q Joe didn't yell get out of the house or anything

8 like that to him?

9 A I didn't really hear that.

10 Q Okay. And your mom didn't say get out of the house

11 or anything like that to him, right?

12 A I don't recall that, no.

13 Q And she went back into the bedroom to talk with your

14 dad and then the yelling started?

15 A I don't remember them talking.

16 Q Okay.

17 A They might have.

18 Q You remember him coming in nice and mellow, though,

19 I think what you said.

20 A Yes.

21 Q Now, in the past your dad had said a lot of things

22 about Joe, right?

23 A Yes.

24 Q A lot of -- He was pretty mad at Joe; is that fair?

25 A Yes.

1 Q Because Joe was friends with your mother?

2 A Yes.

3 Q Let's just put it that way. He may have even said
4 some things that he'd like to kill Joe, something like that;
5 is that fair?

6 A I don't recall.

7 Q You don't recall. Do you recall talking to the
8 officer and telling the officer that he said a lot of things
9 about Joe, even said maybe he'd kill him, but he never said he
10 was going to kill my mom. Do you remember telling the officer
11 that?

12 A Yes. Yes. I'm sorry. Apologize.

13 Q And that was in fact the case, right? Your dad was
14 angry with Joe but he wasn't threatening to kill your mother
15 before that day; is that fair?

16 A Yes.

17 Q Okay. Thank you very much, Jodey.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MS. MERCER:

21 Q Jodey, you just testified that when the defendant
22 came into the house his demeanor was nice and mellow.

23 A Yes.

24 Q Do you recall that testimony? Is that a yes?

25 A Yes.

1 Q Okay. When the defendant saw your mom, did his
2 demeanor change?

3 A I don't remember. I remember that it didn't change
4 until he saw Joe.

5 Q Okay. And what happened at that point?

6 A It kind of escalated into something different.

7 Q He got angry?

8 A Yes.

9 Q Since this incident you've learned that the
10 defendant is not your biological father, correct?

11 A Yeah.

12 Q And you testified that you live with Amber Gaines
13 and Mike Gaines right now?

14 A Yes.

15 Q And they're in the process of adopting you, correct?

16 A Correct.

17 Q When the defendant came into the house that day, you
18 never saw a firearm on him, correct?

19 A What?

20 Q When he entered the house that day, you never saw a
21 firearm on him, correct?

22 A Yes.

23 Q Did you notice whether or not he had a backpack
24 with him?

25 A I don't remember. I remember seeing one in the

1 driveway.

2 Q You saw one in the driveway?

3 A Yes.

4 Q And did you see that in the driveway when you ran to
5 the neighbors?

6 A I believe so.

7 MS. MERCER: No further questions, Your Honor.

8 THE COURT: Any further cross-examination?

9 RECROSS EXAMINATION

10 BY MR. COFFEE:

11 Q Just so we're clear, up until the point that this
12 happened, as far as you knew Mr. White was your biological
13 father?

14 A Yes.

15 Q He treated you that way. You always thought you
16 were his son. He called you his son?

17 A Yes.

18 Q Okay. Thank you.

19 THE COURT: Any further direct examination?

20 MS. MERCER: No, Your Honor.

21 THE COURT: Thank you.

22 Thank you, Jodey. We appreciate your time. Have
23 a nice afternoon.

24 THE WITNESS: Thank you.

25 THE COURT: Your next witness.

1 MS. MERCER: Your Honor, the State calls Tracy
2 Kruse.
3 TRACY KRUSE
4 Having been called as a witness and being first duly sworn,
5 testified as follows:
6 THE CLERK: Thank you, please be seated. Please
7 state and spell your name for the record.
8 THE WITNESS: My name is Tracy Kruse. T-R-A-C-Y
9 K-R-U-S-E.
10 MS. MERCER: May I proceed, Your Honor?
11 THE COURT: Hold on a second.
12 Ma'am, there's water in the pitcher there and
13 there's some M&Ms next to the monitor.
14 THE WITNESS: Oh.
15 THE COURT: Please let us know if you should need a
16 break.
17 THE WITNESS: Thank you.
18 THE COURT: Ms. Mercer, you may continue.
19 MS. MERCER: Thank you, Your Honor.
20 DIRECT EXAMINATION
21 BY MS. MERCER:
22 Q Ma'am, where are you currently employed?
23 A With CSI at LVMPD.
24 Q And what is CSI?
25 A Crime Scene Investigation section.

1 Q How long have you been employed with the Las Vegas
2 Metropolitan Police Department as a crime scene analyst?

3 A Just shy of eight years.

4 Q And did you work with them any prior to that?

5 A With --

6 Q Did you work within the agency in a different
7 capacity prior to that date?

8 A With Metro, no.

9 Q Okay. And did you work with any other agency in
10 that capacity prior to that date?

11 A As a crime scene investigator, no.

12 Q Okay. Can you tell us a little bit about your
13 training and educational background as it relates to your job
14 duties?

15 A Sure. I went to college at Eastern Washington
16 University. I have a criminal justice degree. And through
17 that college they offered a specialty in forensics. After
18 that I worked as a deputy coroner in Washington State, an
19 autopsy technician. Then when I got hired on with Metro, I
20 went through basically a classroom academy and then a field
21 training academy, and then I started as a crime scene
22 investigator and went from a Crime Scene Investigator I to
23 a Crime Scene Investigator II and then a Senior Crime Scene
24 Analyst, which I am now.

25 Q Okay. The classroom training that you went through

1 with Metro, how long was that?

2 A It was twelve weeks for the classroom and another
3 twelve weeks in field training.

4 Q So a total of twenty-four weeks?

5 A Yes.

6 Q And what is field training?

7 A Field training is basically when you're riding along
8 with another senior crime scene analyst and they are basically
9 doing hands-on teaching in the field.

10 Q As a crime scene analyst, what are your job duties?

11 A I basically go to crime scenes and I document them
12 with notes and photography. I collect any evidence that's on
13 scenes and impound it. I do any fingerprint processing and I
14 also diagram crime scenes.

15 Q Back in July of 2012, what shift were you working as
16 a crime scene analyst?

17 A I was swing shift.

18 Q And were you working on July 27th of 2012?

19 A Yes.

20 Q Do you remember what shift you were working that
21 day?

22 A Swing shift.

23 Q Which is what hours?

24 A Oh, I'm sorry. Two to midnight.

25 Q 2:00 p.m. to midnight?

1 A Yes.

2 Q Shortly after arriving to your shift on that date,

3 were you dispatched to an address at 325 Altamira?

4 A Yes, I was.

5 Q That's here in Clark County, Nevada?

6 A Yes.

7 Q And generally speaking, what area of town is that

8 in?

9 A It's northwest, is how we have it broken down.

10 Q Do you recall about what time you arrived on scene

11 that day?

12 A 3:00 p.m.

13 Q And what was the purpose of your being dispatched to

14 that address?

15 A I went for a homicide investigation.

16 Q Were you dispatched with any other crime scene

17 analysts?

18 A Yes. My partner at the time, Jenny Reiner.

19 Q Do you know her P number?

20 A Not off the top of my head, no.

21 Q Does 8167 sound familiar?

22 A That's sounds all right.

23 Q And did a supervisor also accompany the two of you

24 to that address?

25 A There was a supervisor already on scene when I got

1 there.

2 Q And who was that?

3 A That was Terry Martin.

4 Q Okay. When you arrived on scene, were there any
5 other law enforcement personnel on scene?

6 A There were homicide detectives, as well as uniformed
7 patrol officers.

8 Q And was there crime scene tape up at the scene?

9 A Yes, there was.

10 Q Can you explain for the jurors what the purpose of
11 the crime scene tape is?

12 A The crime scene is -- the tape is used to preserve a
13 scene to make sure people don't go in and out to contaminate
14 anything that would be present.

15 Q The homicide detectives that were at the scene, was
16 that Travis Ivie, Tate Sanborn, Chris O'Brien and a Sergeant
17 Scott?

18 A Yes.

19 Q When you arrived on scene, did you receive some sort
20 of briefing as to what had occurred at that address?

21 A Yes. Whenever we get there we do basically a crime
22 scene brief. They give us the info that they have at the
23 time (indiscernible).

24 Q And what is the purpose of that briefing?

25 A It's to give me as much information as they can so

1 I can basically start my investigation.

2 Q When you go to the scene with other crime scene
3 analysts, do you all divvy up your tasks?

4 A Yes, we do.

5 Q In this case was that done?

6 A Yes.

7 Q And were your actual responsibilities at that scene?

8 A Mine was documentation. I took notes and
9 photography. I wrote the report. And then I did a final
10 crime scene diagram.

11 Q And what did CSA Reiner do?

12 A She collected evidence and did a rough crime scene
13 sketch.

14 Q Were you present when she sealed all of the evidence
15 that she collected at the scene?

16 A When she sealed it, no.

17 Q Okay. You were present when she collected it?

18 A Yes.

19 Q And how did she collect it?

20 A We put them in different paper bags and then she
21 kind of closes it up and then she'll transport it back to the
22 lab where she will put the crime scene tape onto it for the
23 permanent seal.

24 Q And what is the purpose of that tape?

25 A To make sure that you can tell if anybody else goes

1 into a package or not. It's special tape where if it's ripped
2 or damaged or someone tries to tamper with it at all you can
3 tell right away.

4 Q Do any identifying marks get placed on top of that
5 tape?

6 A Yes. It would be a P number and a date when it was
7 sealed and then by the person who sealed it.

8 Q Does it also include the first initial of the first
9 name and the last -- or the first initial of the last name?

10 A Yes.

11 Q So it's first initial of first name, P number, first
12 initial of last name?

13 A Yes.

14 Q And that's placed on the red tape that you all use
15 to package evidence?

16 A Yes, on each package.

17 Q And then once the evidence is sealed, what's done
18 with it?

19 A We put it into the vault and then if somebody else
20 looks at it later then they can open it, but then they again
21 would reseal it and put their P number and initials on it.

22 Q Does Metro use another color of tape to represent
23 that an analyst has examined evidence?

24 A I believe the forensic lab uses blue tape.

25 Q And they do the same thing when they reseal it,

1 correct, as far as placing their first initial, P number,
2 first initial of last name?

3 A Yes.

4 Q When you process a scene such as the scene at 325
5 Altamira, do you take -- in addition to the crime scene tape,
6 are any other precautions taken to make sure that evidence is
7 properly preserved?

8 A Uh --

9 Q Meaning, do you wear anything significant on your
10 hands?

11 A Oh, yes. We use PPE, which is personal protective
12 equipment. So in this case we'd use sterile gloves that we
13 have.

14 Q Okay. You mentioned that your assignment at this
15 scene was to photograph and document evidence?

16 A Yes.

17 Q Do you start from the outside or the inside?

18 A I always start on the outside and kind of work my
19 way in.

20 Q Do you do an initial walk-through or do you
21 immediately start documenting stuff that you find?

22 A It depends on the scene. Like if we don't have a
23 search warrant, then I'll do everything on the outside first,
24 and then once we get a warrant then I'll go inside. But other
25 than that, usually it's, yeah, you'll get an initial walk-

1 through so you kind of know where everything is. I'll take
2 notes on everything and then I step back and then I take my
3 pictures.

4 Q In this case did you do an initial walk-through or
5 did you immediately start documenting?

6 A I started documenting on the outside first. Yes.

7 Q In addition to documenting the scene, were you
8 ultimately responsible for preparing a crime scene diagram in
9 this case?

10 A Yes.

11 MS. MERCER: Court's indulgence.

12 BY MS. MERCER:

13 Q What is a crime scene diagram?

14 A It's basically we take measurements of -- in this
15 case the residence. You do just a rough sketch on the scene
16 and then you take it back and you -- we do a computer copy.
17 And it's just a representative way of showing what the scene
18 actually looked like.

19 Q And does it also depict where certain items of
20 evidence were recovered from?

21 A Yes.

22 MS. MERCER: Your Honor, permission to publish?

23 THE COURT: You may. What's the number?

24 MS. MERCER: Ms. Kruse, I'm publishing State's

25 Exhibit 25.

1 THE COURT: Thank you.

2 BY MS. MERCER:

3 Q Do you recognize this exhibit?

4 A Yes, I do.

5 Q And is this the crime scene diagram that you
6 prepared in this case?

7 A Yes.

8 Q And the numbers that we see, little tiny numbers,
9 those represent items of evidence that you recovered at the
10 scene?

11 A Yes.

12 Q Or the location of the evidence prior to it being
13 recovered, I should say?

14 A Yes.

15 Q And then there's a little legend down in the bottom
16 right corner that shows which item of evidence corresponds
17 with which number, correct?

18 A Yes.

19 Q And it also lists an Event Number?

20 A Yes.

21 Q And what is an Event Number?

22 A An Event Number is a distinct number that we give to
23 each call that comes into Metro. So basically the first two
24 numbers are the year, so 2012, and then the second two is the
25 month, so July, the last two are the days. And then starting

1 at midnight it starts at zero, so this is the 1,826th call of
2 the day.

3 Q Okay. So this -- the Event Number assigned to this
4 case was 120727-1826?

5 A Yes.

6 Q Signifying that it occurred on July 27th of 2012
7 and it was the 1,826th call that day?

8 A Yes.

9 Q You indicated that you started from the outside and
10 worked your way in?

11 A Yes.

12 Q Did you recover anything that was of significance on
13 the exterior of the residence?

14 A Yes. On the driveway there was a bullet, which is
15 the number one, and then there was also a backpack, which was
16 number two. And inside the backpack there was a holster.

17 MS. MERCER: Your Honor, permission to publish
18 several more exhibits?

19 THE COURT: You may.

20 BY MS. MERCER:

21 Q Ms. Kruse, this is State's Exhibit 26. This is the
22 325 Altamira address that you responded to that day, correct?

23 A Yes.

24 Q And in State's Exhibit 27, this is a photograph of
25 that same house and you can clearly see the crime scene tape

1 around the house, the exterior of the house?

2 A Yes.

3 Q This is State's 28. What is depicted in this
4 photograph?

5 A This is the driveway and you can see in the middle
6 there's the backpack and then there's also a vehicle parked
7 in the driveway there.

8 Q And when you document a scene such as this, do you
9 take photographs without evidence markers in place and then
10 go back and place evidence markers and photograph it again?

11 A Yes.

12 Q In this photograph there's no evidence marker,
13 correct?

14 A No.

15 Q What is an evidence marker?

16 A It's just a little plastic tent marker that we use
17 just to mark where different items of evidence are on a crime
18 scene.

19 Q I'm showing you State's 29 right now. Does this
20 photograph show that same backpack with an evidence marker?

21 A Yes, it does.

22 Q And does it also show another evidence marker marked
23 number one?

24 A Yes.

25 Q What was recovered as Item Number 1?

1 A It was a bullet.

2 Q And the backpack was Number 2?

3 A Yes.

4 Q And State's Exhibit 30, is this a photograph of the
5 bullet that was recovered in the driveway?

6 A Yes.

7 Q State's Exhibit 31, is this a closer photograph of
8 that same item of evidence with evidence marker --

9 A Yes, it is.

10 Q -- number one next to it?

11 A Yes.

12 Q State's Exhibit 32, is this a close-up photograph
13 of the backpack found lying in the driveway?

14 A Yes, it is.

15 Q With evidence marker two next to it?

16 A Yes.

17 Q And it's on its front?

18 A Yes.

19 Q State's 33, this is that same backpack but now it's
20 on its back, correct?

21 A Yes.

22 Q And it's a white and black checkered backpack?

23 A Yes.

24 Q State's Exhibit 34, is this a photograph of the
25 inside of that backpack?

1 A Yes, it is.

2 Q And what is seen inside of the backpack?

3 A There is a holster.

4 Q What type of holster?

5 A It didn't have a brand name on it.

6 Q A holster for a firearm?

7 A Oh, yeah.

8 Q State's Exhibit 35, is this that holster once it's

9 been removed from the backpack?

10 A Yes, it is.

11 Q And then once you -- while you were outside you took

12 some photographs of the exterior of the house, correct?

13 A Yes.

14 Q Showing you State's Exhibit 36, is this a photograph

15 of the front door looking from the outside inward?

16 A Yes, it is.

17 Q State's Exhibit 37, which wall is this a photograph

18 of?

19 A This is the south facing wall west of the front

20 door.

21 Q Moving into the interior of the house -- Actually,

22 did you notice anything significant on this exterior wall?

23 A Yes. There was a hole.

24 Q This is State's 37 again. There was a hole in the

25 wall?

1 A Yes.

2 Q And why was that hole significant to you?

3 A I believe it's a bullet hole.

4 Q Publishing State's Exhibit 38, is this a photograph

5 looking down the hallway into the living area of the home?

6 A Yes, it is.

7 Q State's Exhibit 39, is this a photograph that you

8 took showing the living room area?

9 A Yes, it is.

10 Q State's Exhibit No. 40, is this another photograph

11 of that living room area from a different angle?

12 A Yes.

13 Q And this one shows a sofa and a loveseat?

14 A Yes.

15 Q State's Exhibit 41, is this a photograph of the

16 hallway?

17 A Yes, it is.

18 Q Did you ultimately end up recovering an item of

19 evidentiary value in that hallway?

20 A Yes, I did.

21 Q What was that?

22 A A cartridge case.

23 Q What is a cartridge case?

24 A It's -- you basically have a cartridge that has a

25 bullet in the primer and then the case as well. This is just

1 the case after the bullet has been fired.

2 Q Do revolvers typically expel a cartridge?

3 A Revolvers, no.

4 Q So that would be consistent with a semi-automatic
5 firearm having been discharged in the house?

6 A Yes.

7 Q What is the difference between a revolver and a
8 semi-automatic firearm?

9 A I don't know technically everything about firearms.
10 Basically a revolver has a cylinder and usually the cartridges
11 do stay in there as it turns, and then a semi-automatic is
12 basically a recoil system that expels the cartridges as it
13 shoots.

14 Q And there's a magazine that you have to insert?

15 A Yes.

16 Q State's Exhibit 43, is this the evidence marker
17 depicting where that cartridge case was recovered in the
18 hallway?

19 A Yes.

20 Q And it's right in front of the cabinets that are in
21 the hallway, correct, closest to the master bedroom and the
22 craft room?

23 A Yes.

24 Q State's Exhibit 44, this is a close-up photograph of
25 that cartridge case?

1 A Yes.

2 Q State's Exhibit 45, is this a photograph of what is
3 referred to as a head stamp?

4 A Yes, it is.

5 Q What is a head stamp?

6 A Different manufacturers have different labels they
7 put on the bottom of their cartridge cases, so in this case
8 Win is the manufacturer for this.

9 Q And it says Win 9mm Luger?

10 A Yes.

11 Q State's Exhibit 42. Is this a photograph that you
12 took of what appeared to be the children's bedroom?

13 A Yes.

14 Q And that cartridge case was ultimately impounded as
15 evidence, correct?

16 A Yes.

17 Q By Ms. Reiner?

18 A Yes.

19 Q Showing you State's Exhibit 46, is this what
20 appeared to be the craft room that you photographed?

21 A Yes.

22 Q Did you locate any items of evidentiary value in
23 that room?

24 A Yes.

25 Q What were those items?

1 A There were two additional cartridge cases and some
2 items of clothing.

3 Q Do you remember what evidence marker number six is?

4 A It's a cartridge case.

5 Q And what is evidence marker number seven?

6 A It's another cartridge case.

7 Q Showing you State's Exhibit 47, are these the
8 articles of clothing that you just referred to that were found
9 in that room?

10 A Yes.

11 Q And this photograph depicts evidence markers eight,
12 seven, nine, ten and eleven?

13 A Yes.

14 Q State's Exhibit 48, this is the cartridge case that
15 you impounded as Item 6?

16 A Yes.

17 Q It's a close-up?

18 A Yes.

19 Q State's Exhibit 49, is this a close-up of the head
20 stamp once again on that cartridge?

21 A Yes.

22 Q And it's again a 9mm Luger Win?

23 A Yes.

24 Q State's Exhibit 50, is this cartridge case number
25 seven?

1 A Yes, it is.

2 Q State's Exhibit 51, is this the head stamp to that

3 cartridge?

4 A Yes, it is.

5 Q And once again it's a 9 millimeter -- Luger 9mm?

6 A Yes.

7 Q Win?

8 A Yes.

9 Q And showing you State's Exhibit 52, is this the

10 black tank top that was impounded as Item Number 11?

11 A Yes, it is.

12 Q And does it appear to have some defects?

13 A Yes. It was cut off at the scene.

14 Q Showing you State's Exhibit 53, this is a close-up

15 of that same tank top. Do you see what appears to be a hole

16 in that shirt --

17 A Yes.

18 Q -- next to where it's cut off?

19 A Yes.

20 Q And is that consistent with a bullet hole?

21 A Yes.

22 Q State's Exhibit 54 is -- What is this a photograph

23 of?

24 A It's a cellular phone.

25 Q Is it a white iPhone?

1 A Yes.

2 Q And was that -- that was documented by you as well,
3 correct?

4 A Yes.

5 Q But it was ultimately impounded by a homicide
6 detective present at the scene?

7 A Yes.

8 Q And that was in the craft room as well, correct?

9 A Yes.

10 Q Moving on to the master bedroom, this is State's
11 Exhibit 55 for the record, is this a photograph of that room
12 looking from the hallway inward?

13 A Yes.

14 Q And there appears to be a crib in the far left
15 corner of that photograph?

16 A Yes.

17 Q State's Exhibit 56, is this a photograph of that
18 same bedroom but looking from inside of the bedroom out to the
19 hallway?

20 A Yes.

21 Q State's Exhibit 57, is this another photograph of
22 that bedroom and it depicts a dresser and a closet?

23 A Yes.

24 Q State's Exhibit 58, what is this a photograph of?

25 A This is that same bedroom, the floorway between the

1 closet and the bed.

2 Q And is there anything significant depicted in this
3 photograph?

4 A Yes. There's blood on the floor.

5 Q State's Exhibit 59, what is this a photograph of?

6 A It's a shirt.

7 Q And is there anything significant about that shirt?

8 A It's covered in blood and it was partially
9 underneath the bed in that same area between the closet and
10 the bed.

11 Q State's Exhibit 60, is this a photograph that you
12 took of that shirt once it was removed from the house?

13 A I did not take that photo.

14 Q Okay. But it appears to be the same shirt?

15 A Yes.

16 Q And showing you State's Exhibit 61, what is depicted
17 in this photograph?

18 A It is a mirror that was in the same bedroom and it's
19 of a bullet hole that has a trajectory rod inserted through
20 the hole.

21 Q What's a trajectory rod?

22 A It's just basically a metal rod that you can place
23 or you can put multiple together and you can fit through a
24 hole to kind of see the pathway a bullet may have taken.

25 Q Going back to State's Exhibit 55 briefly, and if you

1 need me to bring this up to you so that you can see it more
2 clearly please let me know. Do you see that hole in this
3 photograph?

4 A Yes.

5 Q Could you please circle it for the jurors?

6 A Well, that's --

7 THE COURT: Wow, we didn't calibrate you at all.

8 THE WITNESS: That's not where I'm touching, but.

9 THE COURT: We'll have to work on calibration of
10 that machine, too, at the next break.

11 MS. MERCER: Your Honor, may I approach the witness?

12 THE COURT: You may. You can just --

13 MS. MERCER: Mr. Coffee --

14 MR. COFFEE: Sure. I'm okay.

15 BY MS. MERCER:

16 Q If you could please identify it for me and I'll
17 point to it for the jurors.

18 A All right. It's right here.

19 Q Okay. And for the record you've circled this area
20 right here that's a little bit more than halfway down the
21 mirror?

22 A Yes.

23 Q On the right side?

24 A Yes.

25 Q State's Exhibit 62, what is this a photograph of?

1 A That's a side angle of the same mirror with the
2 trajectory rods going through it.

3 Q The -- Is that the wall, the blue wall behind the
4 mirror?

5 A Yes. Yeah, that's the back wall of the bedroom.

6 Q State's Exhibit 63, what is this?

7 A That is the exterior south facing front of the
8 residence that was west of the front door.

9 Q Okay. And is that the wall -- Is this the exterior
10 portion of the wall to this blue wall?

11 A Yeah. It's the corresponding wall.

12 Q State's Exhibit 64, is this a photograph of the
13 bullet hole that you previously testified you found on the
14 exterior of the home?

15 A Yes.

16 Q All of this evidence that was recovered at the scene
17 was placed into bags by CSA Reiner?

18 A Yes.

19 Q And she subsequently impounded it all, correct?

20 A Yes.

21 Q So we would expect to find red tape with her first
22 initial J, her P number 8167, and then the initial R --

23 A Yes.

24 Q -- over the tape? Are there any labels that get
25 placed on the outside of packages that contain evidence?

1 A Yes. We have evidence packaging labels, is what
2 they're called, and they have our Event numbers, our P numbers
3 and initials, and then we also have location of where it
4 happened and then numbers of what was actually inside of that
5 package.

6 Q When you were present at the 325 Altamira address,
7 were you also responsible for photographing three children
8 that were present at the scene?

9 A Yes.

10 Q Publishing State's Exhibit 15, is this one of the
11 children that you photographed that day?

12 A Yes.

13 Q State's Exhibit 16, is this another one of those
14 children?

15 A Yes.

16 Q State's Exhibit 17, is this the last of the three
17 that you photographed?

18 A Yes.

19 Q And you actually went across the street and a few
20 houses down to photograph them?

21 A Yes.

22 Q To 316 Altamira?

23 A Yes.

24 Q After completing your work at this scene, were you
25 later on that day requested to go to another location in

1 relation to this same Event Number?

2 A Yes.

3 Q What location would that be?

4 A Prescott, Arizona.

5 Q And more specifically did you respond to 255 East

6 Gurley?

7 A Yes.

8 Q In Prescott, Arizona?

9 A Yes.

10 Q What that the Yavapai Sheriff's Office?

11 A Yes.

12 Q Who accompanied you on that trip?

13 A I had the homicide sergeant and two detectives.

14 Q Was that Detective Travis Ivie and Detective Tate

15 Sanborn?

16 A Yes.

17 Q Did you all drive there?

18 A Yes.

19 Q Did you arrive shortly before midnight that same

20 day?

21 A Yes.

22 Q And when you responded to that location, were you

23 responsible for photographing a suspect that was in custody?

24 A Yes.

25 MS. MERCER: Permission to publish once again?

1 THE COURT: You may.

2 BY MS. MERCER:

3 Q Was that suspect Troy White?

4 A Yes.

5 Q Do you see that individual in the courtroom today?

6 A Yes.

7 Q Could you please point to him and describe an

8 article of clothing that he's wearing?

9 A He's right here in a black coat.

10 Q There's two people wearing black coats.

11 A Oh, all right.

12 Q Could you be a little bit more specific?

13 A Well, that's all I can see from my angle. I'm sorry.

14 MS. MERCER: Your Honor, may she step down?

15 THE WITNESS: A blue tie and a blue shirt.

16 MS. MERCER: Okay, thank you. Your Honor, may --

17 THE COURT: The record wil reflect identification.

18 MS. MERCER: Thank you.

19 BY MS. MERCER:

20 Q I'm publishing State's Exhibit 20. Was this a

21 photograph that you took of the defendant --

22 A Yes.

23 Q -- on that date?

24 A Yes.

25 Q At the Yavapai's Sheriff's Office?

1 A Yes.

2 Q And that was an overall photograph?

3 A Yes.

4 Q Showing you State's Exhibit 21, is this a photograph
5 that you took just depicting him from the neck up?

6 A Yes.

7 Q Or I guess the shoulders up. State's Exhibit 22,
8 what is this a photograph of?

9 A His left hand.

10 Q The top or the palm?

11 A The top.

12 Q State's Exhibit 23, what is this?

13 A The top of his right hand.

14 Q And State's Exhibit 24?

15 A The palms of his hands.

16 Q And you're just documenting that there's no injuries
17 to those hands?

18 A Yes.

19 Q Were you also responsible for collecting what's
20 referred to as a buccal swab?

21 A Yes.

22 Q What is a buccal swab?

23 A A buccal swab is a way that we collect a person's
24 DNA.

25 Q Does it look like a Q-tip?

1 A Yes.

2 Q How do you go about collecting a buccal swab?

3 A Basically you take two swabs and you swab one side
4 of each cheek to collect cells for DNA.

5 Q And was that done in this case?

6 A Yes.

7 Q Did you personally do that swabbing or did you have
8 the defendant do the swabbing?

9 A No, I do the swabbing.

10 Q Did you also impound some clothing?

11 A Yes.

12 Q And that was the clothing that was worn by the
13 suspect in those pictures?

14 A Yes.

15 Q And you were the person that personally impounded
16 and sealed all that stuff, correct --

17 A Yes.

18 Q -- with regards to his clothing and the buccal swab?

19 A Yes.

20 Q And the buccal swab was impounded by you as Item
21 Number 4?

22 A Yes.

23 Q After photographing the defendant and obtaining his
24 clothing and buccal swab, were you dispatched to another
25 location within Prescott, Arizona?

1 A Yes.

2 Q Was that 7100 County Fair Trail?

3 A Yes.

4 Q Or, I'm sorry, 7100C County Fair Trail?

5 A Yes.

6 Q Was that a vehicle impound lot?

7 A It was their crime garage.

8 Q Okay. The purpose of you being dispatched there was

9 to process a 2008 Dodge Durango?

10 A Yes.

11 Q Silver in color?

12 A Yes.

13 Q And do you treat the processing of a vehicle in the

14 same way that you do the processing of a crime scene?

15 A Yes.

16 MS. MERCER: Permission to publish again, Your Honor?

17 THE COURT: You may.

18 BY MS. MERCER:

19 Q I'm showing you State's Exhibit 65. Is this a

20 photograph that you took of that 2008 Dodge?

21 A Yes.

22 Q And where is that Dodge?

23 A It was inside the garage.

24 Q Showing you State's Exhibit 67, what is this a

25 photograph of?

1 A It's the front driver door.

2 Q And was there anything of evidentiary value that you
3 found on that front driver's side door?

4 A There was a defect in the lower part of the door.

5 Q Showing you State's Exhibit 68, is that a closer
6 photograph of the defect in that door?

7 A Yes.

8 Q And when you say that it appears to be a defect, is
9 that defect consistent with a bullet strike in your training
10 and experience?

11 A Yes.

12 Q And if that vehicle had been parked with the
13 driver's side facing the -- or closest to the front door of
14 the address at 325 Altamira, in your training and experience
15 would the bullet that went through the wall have struck the
16 vehicle in that area?

17 A Yes, it's consistent with the location of the
18 bullet.

19 Q Showing you State's Exhibit 66, is this the license
20 plate of that vehicle?

21 A Yes.

22 Q State's Exhibit 69, is this another photograph of
23 that vehicle depicting what's referred to as seals on the
24 vehicle?

25 A Yes.

1 Q And what is the purpose of sealing a vehicle?

2 A The same thing as you would with sealing evidence.
3 You just want to make sure nobody else goes in and out without
4 you knowing.

5 Q When you processed this vehicle, all of those seals
6 were in place, correct?

7 A Yes.

8 Q Could you circle a few of the seals for the jurors
9 so that they know what we're talking about? Oh, I'm sorry,
10 it's not working again.

11 THE COURT: We need to calibrate it at the next
12 break.

13 BY MS. MERCER:

14 Q Sorry. Is this a seal right here on the back?

15 A Yes.

16 Q And this is another one on the -- between the
17 passenger left door and the rear of the vehicle?

18 A Yes.

19 Q Where the door would open?

20 A Yes.

21 Q Did you locate any items of evidentiary value inside
22 of that vehicle?

23 A Yes, I did.

24 Q What did you locate?

25 A There was a firearm, some magazines and a cartridge.

1 MS. MERCER: Permission to publish again, Your Honor?

2 THE COURT: You may.

3 BY MS. MERCER:

4 Q State's Exhibit 70, is this a photograph of the
5 firearm that you recovered in that vehicle?

6 A Yes, it is.

7 Q Where was it recovered from?

8 A In the rear cargo area there was -- the floor could
9 basically be lifted up, so it was a storage in the rear cargo
10 area.

11 Q And is this the firearm right here?

12 A Yes.

13 Q You indicated that you recovered some magazines?

14 A Yes.

15 Q Can you also see one of those magazines in this
16 photograph?

17 A Yes, you can.

18 Q Is that right here?

19 A Yes.

20 Q Showing you State's Exhibit 71, is this a photograph
21 of the other magazine that was located in that same
22 compartment?

23 A Yes.

24 Q At the opposite end?

25 A Yes.

1 Q On the left side?

2 A Yes.

3 Q State's Exhibit 72, is this a photograph of the

4 firearm with the two magazines?

5 A Yes, it is.

6 Q In this photograph the cartridges are still inside

7 of the magazines?

8 A Yes, they are.

9 Q State's Exhibit 73, what is this a photograph of?

10 A They're the cartridges from one of the magazines.

11 Q And how many cartridges are depicted in this

12 photograph?

13 A Twelve.

14 Q Is this a 16-round magazine that you recovered?

15 A I would have to refer to my notes.

16 Q Would that refresh your recollection?

17 A Yes.

18 MS. MERCER: Your Honor, may she refer to her report?

19 THE COURT: Absolutely.

20 THE WITNESS: I don't know.

21 BY MS. MERCER:

22 Q Okay. But you recovered a 16-round magazine and a

23 13-round magazine, correct?

24 A I don't know.

25 MS. MERCER: Court's indulgence, Your Honor. I'll

1 move on for now.

2 BY MS. MERCER:

3 Q There's twelve cartridges depicted in this
4 photograph, correct?

5 A Yes.

6 Q And this clip was not fully loaded, correct?

7 A I don't know.

8 Q You don't remember?

9 A Yeah.

10 Q Showing you State's Exhibit 74, is this a photograph
11 of the other magazine that was recovered?

12 A Yes.

13 Q And how many rounds are depicted in that photograph?

14 A There are 9.

15 Q So there were a total of 21 rounds found within the
16 magazines in that vehicle?

17 A Yes.

18 Q Did you also recover a loose cartridge?

19 A Yes, I did.

20 Q In that same storage compartment?

21 A Yes.

22 Q Showing you State's Exhibit 75, is this a photograph
23 of that loose round?

24 A Yes.

25 Q And is the loose cartridge?

1 A Yes.

2 Q State's Exhibit 76, is this a closer photograph of
3 that cartridge in place?

4 A Yes. Yes, it is.

5 Q And you impounded all of these items as evidence,
6 correct?

7 A Yes.

8 Q State's Exhibit 77, is this a photograph of the
9 head stamp?

10 A Yes, it is.

11 Q And again, it says Luger -- Win Luger 9mm?

12 A Yes.

13 Q And all of the cartridges that you recovered bore
14 that head stamp, correct?

15 A Yes.

16 MS. MERCER: Your Honor, may I approach your clerk?

17 THE COURT: You may.

18 MS. MERCER: And may I approach the witness now?

19 THE COURT: You may.

20 MS. MERCER: Mr. Coffee -- (inaudible).

21 MR. COFFEE: Sure.

22 THE COURT: And ma'am, I have some scissors there
23 for you in case you need them -- or right here. And do you
24 need some gloves?

25 THE WITNESS: Yes.

1 BY MS. MERCER:

2 Q I'm handing you what's been marked as State's
3 Proposed Exhibit No. 96. Do you recognize this?

4 A Yes.

5 Q How do you recognize it?

6 A It's the firearm I impounded.

7 Q Okay. But what markings on this box let you know
8 that?

9 A Oh, it has my handwriting on the label and then my
10 initials and P number on the seals themselves.

11 Q Okay. And the label says that it's a black Taurus
12 PT 92C 9 millimeter?

13 A Yes.

14 Q Semi-automatic handgun?

15 A Yes.

16 Q With brown grips?

17 A Yes.

18 MS. MERCER: Your Honor, may the witness open the --

19 THE COURT: You may.

20 BY MS. MERCER:

21 Q And is this the firearm that you impounded?

22 A Yes.

23 Q And it appears to be in the same condition as when
24 you impounded it?

25 A Yes.

1 MS. MERCER: Your Honor, permission to publish it to
2 the jury on the overhead?
3 THE COURT: You may. Are we going to get a separate
4 identifier?
5 THE CLERK: 96A.
6 THE COURT: Thank you.
7 MS. MERCER: Do you want me to have that placed on
8 it before I publish, Your Honor, or --
9 THE COURT: The clerk will handle it. You can --
10 MS. MERCER: Okay.
11 THE COURT: -- publish it now if you'd like.
12 MS. MERCER: If I can fit it.
13 BY MS. MERCER:
14 Q This is the 9 millimeter semi-automatic firearm that
15 you impounded?
16 A Yes.
17 Q And it has brown grips?
18 A Yes.
19 Q What are the grips?
20 A It's the part where you hold onto with your hand.
21 MS. MERCER: May I approach your clerk again?
22 THE COURT: You may.
23 MS. MERCER: May I approach the witness again?
24 THE COURT: You may.
25 /////

1 BY MS. MERCER:
2 Q I'm handing you what's been marked as Proposed
3 Exhibit No. 97. Do you recognize this?
4 A Yes, I do.
5 Q How do you recognize it?
6 A It again has my initials and P number on the seal
7 and then it has the label I filled out and it says it contains
8 the magazines and the cartridge.
9 Q And it bears the Event Number associated with this
10 case?
11 A Yes.
12 MS. MERCER: Mr. Coffee, would you like to be up
13 here when she opens this?
14 MR. COFFEE: Is it -- oh, the clips?
15 MS. MERCER: Yes.
16 MR. COFFEE: Sure.
17 MS. MERCER: Your Honor, may she open this package
18 now?
19 THE COURT: She can. And the contents are -- how
20 many bags are in the contents, do you know?
21 THE WITNESS: There's three items inside of it. Do
22 you want me to take them out?
23 MS. MERCER: Yes, please.
24 Your Honor, I probably should have moved for the
25 admission of 96 previously.

1 THE COURT: Yes, you should have.
2 MS. MERCER: I would move for the admission of 96.
3 THE COURT: And 96A?
4 MS. MERCER: Yes.
5 THE COURT: Mr. Coffee?
6 MR. COFFEE: No objection.
7 THE COURT: It will be admitted.
8 (State's Exhibit 96 and 96A admitted)
9 THE WITNESS: Do you want each one opened?
10 MS. MERCER: Your Honor, do you want me to have just
11 one bullet marked?
12 THE COURT: There's three envelopes, right?
13 MS. MERCER: Yes.
14 THE COURT: They're going to be A, B and C.
15 THE WITNESS: Oh, there's actually four.
16 THE COURT: Four envelopes. A, B, C and D.
17 MS. MERCER: Would you like me to get them marked
18 first?
19 THE COURT: Yes, because those -- we'd be confused.
20 MS. MERCER: Your Honor, I would move to admit 97
21 and 97A through D.
22 THE COURT: Any objection, Mr. Coffee?
23 MR. COFFEE: No objection.
24 THE COURT: They'll be admitted.
25 (State's Exhibit 97, 97A, 97B, 97C, 97D admitted)

1 BY MS. MERCER:

2 Q Ms. Kruse, I'm handing you what's been marked as 97A

3 and it appears to be identified as Item Number 6 --

4 A Yes.

5 Q -- that you impounded?

6 A Yes.

7 Q Would you please open that package? Is this one of

8 the magazines you recovered from that vehicle?

9 A Yes.

10 Q And I'm now handing you 97B, which is marked as Item

11 Number 7. Is that the other magazine that you recovered from

12 the vehicle?

13 A Yes.

14 Q 97C is Item Number 8. What is that?

15 A It's a cartridge.

16 Q The loose round that was found in the storage

17 compartment?

18 A Yes.

19 Q 97D. What is that?

20 A It's going to be the contents.

21 Q The contents of --

22 A Number 6.

23 Q 97D is the contents of Item Number 6?

24 A Yes.

25 Q Do we have another envelope I need to get marked?

1 A Yeah. This one was inside that one.
2 THE COURT: And is that going to be -- which
3 envelope did that come out of?
4 MS. MERCER: It came out of 97B.
5 THE COURT: Can we mark it 97B1, Dulce?
6 THE CLERK: Yes, Your Honor.
7 MR. COFFEE: (Inaudible).
8 THE WITNESS: Yeah.
9 MR. COFFEE: Okay. (Inaudible).
10 THE COURT: Counsel, would you like us to get some
11 of the Ziplock bags to place these in so they don't get mis--
12 MS. MERCER: I think she has them in Ziplock bags,
13 correct?
14 THE WITNESS: Yeah, they're in these bags.
15 MR. COFFEE: The shells, right?
16 BY MS. MERCER:
17 Q And 97B1 is the contents of 97B, you said --
18 A Yes.
19 Q -- this magazine?
20 A Yes.
21 Q And that's the ammunition that goes with that
22 magazine?
23 A Yes.
24 MS. MERCER: Permission to publish, Your Honor? If
25 I can get it over there.

1 THE COURT: Be careful not to confuse them.
2 MS. MERCER: I won't.
3 THE COURT: Kevin, go ask Dan if he has any Ziplock
4 bags.
5 BY MS. MERCER:
6 Q For the record I'm publishing 97D and 97A. And 97D
7 is the contents of A?
8 A I'm sorry?
9 Q 97D is the contents of 97A, correct?
10 A Yes.
11 Q And this is the magazine with the cartridges that
12 were recovered inside?
13 A Yes.
14 Q And those were obviously unspent rounds, correct?
15 A Yes.
16 Q Now I'm publishing 97B with 97B1. This is what you
17 previously identified as the contents of 97B, correct?
18 A Yes.
19 MS. MERCER: Permission to publish the box, Your
20 Honor?
21 THE COURT: You may.
22 BY MS. MERCER:
23 Q Ms. Kruse, you indicated that you were able to
24 identify this box by some of the markings on the box?
25 A Yes.

1 Q Could you identify those -- well, let me -- is this
2 what you're referring to right here?

3 A Yeah, that's my initial and P number.

4 Q Okay. And your initial is -- your initial an P
5 number are what, or were what at that time?

6 A T9975B.

7 Q Because you were formerly known as Tracy Brownlee?

8 A Yes.

9 Q This blue tape that you see on the outside of the
10 box, is that the lab's tape?

11 A Yes.

12 Q And this label on the top of the box contains
13 information that identifies this item of evidence to this
14 case?

15 A Yes.

16 Q It's identified as Item Number 5?

17 A Yes.

18 Q Meaning when you impounded it you labeled it Item
19 Number 5?

20 A Yeah, I designated it as 5.

21 Q And it's a black Taurus 9 millimeter semi-automatic
22 handgun with brown grips, approximately four inch barrel,
23 bearing serial number T0833791?

24 A Yes.

25 Q And made in Brazil?

1 A Yes.

2 Q The Event Number is depicted on the top right corner
3 of that label?

4 A Yes.

5 Q What does the time prepared mean?

6 A That's the time I impounded it. Well, the time I
7 collected it. I'm sorry.

8 Q And your initials are on this label as well,
9 correct?

10 A Yes.

11 Q And P number?

12 A Yes.

13 Q Right here where it says T997B -- 9975B?

14 A Yes.

15 Q What is this part down here?

16 A The chain of custody.

17 Q Which is what?

18 A That just shows who -- it keeps track of the
19 evidence at all times so you know whose hands that it's in.

20 Q So there are some other names on here, Julie
21 Marschner?

22 A Yes.

23 Q She's a DNA Analyst?

24 A I'm not sure.

25 Q Okay. Marnie Carter?

1 A Fingerprints.

2 Q Anya Sanko?

3 A I'm not sure who that is.

4 Q Okay. You obtained the serial number that you

5 placed on this label from the actual firearm itself, correct?

6 A Yes.

7 Q On the firearm, where would the serial number be?

8 A It's usually on the slide or underneath the slide.

9 Q Okay. The magazine with 12 cartridges, just for --

10 was marked as Item Number 6, correct --

11 A Yes.

12 Q -- when you impounded it? And the magazine with

13 nine was marked as Item Number 7?

14 A Yes.

15 Q And then the loose cartridge was marked as Number 8?

16 A Yes.

17 MS. MERCER: Your Honor, at this point I will pass

18 the witness.

19 THE COURT: Thank you.

20 (The clerk confers with the Court)

21 THE COURT: Mr. Coffee, I have to take a break

22 because of the conference calls I identified for you guys

23 earlier.

24 MR. COFFEE: Understood.

25 THE COURT: So we're going to go ahead and take our

1 afternoon break now rather than start your cross-examination.

2 During this recess you are admonished not to talk or
3 converse among yourselves or with anyone else on any subject
4 connected with this trial, or read, watch or listen to any
5 report of or commentary on the trial or any person connected
6 with this trial by any medium of information, including
7 without limitation social media, text, newspapers, television,
8 Internet and radio, or form or express any opinion on any
9 subject connected with this trial until the case is finally
10 submitted to you.

11 Ladies and gentlemen, I have two other cases I have
12 to talk to. They are attending by telephone so I don't have
13 to have people run in and out of the courtroom. But it's
14 probably going to take me fifteen minutes to get through both
15 of those cases. So we'll see you in about fifteen minutes
16 outside Courtroom 14A.

17 And ma'am, you can step down if you'd like.

18 THE COURT: Okay.

19 (Court recessed from 2:44 p.m. until 3:18 p.m.)

20 (Jury is present)

21 THE COURT: Counsel stipulate to the presence of the
22 jury?

23 MS. MERCER: Yes, Your Honor.

24 MR. COFFEE: Yes, Judge.

25 THE COURT: Ms. Kruse, I'd like to remind you you're

1 still under oath.

2 Cross-examination.

3 MR. COFFEE: Thank you.

4 CROSS-EXAMINATION

5 BY MR. COFFEE:

6 Q Good afternoon, Ms. Kruse.

7 A Hi.

8 Q You are a trained CSI?

9 A Yes.

10 Q And were you the only CSI at the scene?

11 A No.

12 Q How many others were there?

13 A There was a supervisor and then another crime scene
14 analyst with me. We came together.

15 Q Okay. Was it a general duty assignment for everyone
16 or did you have specific areas that you were looking towards?
17 Does that make sense?

18 A No.

19 Q Okay.

20 A Sorry.

21 Q That's okay. Does everybody kind of look at
22 everything or do you look for bullets and somebody else look
23 for blood evidence and somebody else look for something
24 different? Do you understand that?

25 A Oh, no, yeah, we will all will look for everything.

1 Q Okay. The point being because you're all looking
2 for everything you're familiar with the entire scene?

3 A Yes.

4 Q But you have the advantage of there being three of
5 you and it's not just one set of eyes, it's three sets of
6 eyes?

7 A Yes.

8 Q So, for example, when you're looking for shell
9 casings or bullet fragments or that sort of thing, there are
10 multiple people that were looking?

11 A Yes.

12 Q And you are trained to be thorough?

13 A Yes.

14 Q You take pride in being thorough, I would imagine.

15 A Yes.

16 Q It's kind of embarrassing if you come into court
17 and you miss something. That probably wouldn't be a good
18 situation?

19 A There are circumstances with environments where it
20 happens.

21 Q It does happen.

22 A Uh-huh.

23 Q But you try your best, is my point.

24 A Yes.

25 Q And so do the other CSIs that you work with. You

1 know them and they work hard also; is that fair?

2 A Yes.

3 Q Okay. You went to -- I'm going to show you State's
4 27, I believe. You went to the home, and what time did you
5 arrive?

6 A Three o'clock.

7 Q Three o'clock.

8 A Uh-huh.

9 Q So if the shooting was somewhere around noon, it was
10 a few hours later?

11 A I don't know when it happened, but yeah.

12 Q Twelve to three we can agree is three hours, right?

13 A Yeah.

14 Q Okay. And you showed up with the other CSIs, there
15 were already Metro people there; yes?

16 A Yes.

17 Q And it had been taped off, right?

18 A Yes.

19 Q And the reason it's taped off is because, for
20 example, if news cameras were coming through or something they
21 could disturb evidence?

22 A Yes.

23 Q And evidence can -- it has a way of disappearing;
24 for example, shell casings could end up on the bottom of
25 someone's shoe, for example?

1 A Yes.

2 Q So you want to avoid that kind of thing. You want
3 to avoid contamination; yes?

4 A Yes.

5 Q And you want to have as good a picture as you can
6 so you can kind of work backwards and re-create what happened
7 as best you can?

8 A Yes.

9 Q You can't re-create everything?

10 A No.

11 Q You don't have a video camera --

12 A No.

13 Q -- at the scene? You're not aware of any videotape
14 at the scene in this particular instance, right?

15 A No.

16 Q And, for example, the physical evidence won't tell
17 you necessarily what's going on in Mr. White's mind if indeed
18 he fired the shots, right?

19 A No.

20 Q You can just tell us what you found and we will make
21 inferences back from there or the jury can at some point?

22 A Yes.

23 Q Okay, real good. Let's talk about what you found.
24 You were looking for evidence of gunshots, is that fair?

25 A Yes.

1 Q One of the things you were looking for? Okay. And
2 you looked around the exterior of the house; yes?

3 A Yes.

4 Q And the reason you looked around the exterior of the
5 house is to see if any bullets had flown through the exterior
6 of the house?

7 A Yes.

8 Q You found one hole?

9 A Yes.

10 Q And only one hole?

11 A Yes.

12 Q And that is depicted in State's 64?

13 A Yes.

14 Q And we've seen a picture of a hole in a mirror.
15 That appeared to correspond with the hole through the exterior
16 also, correct?

17 A Yes.

18 Q It looked like it had been made by a single bullet,
19 right?

20 A Yes.

21 Q The hole to the exterior looks a little bit larger
22 and a little bit -- I'm trying to think of a good word --
23 fragmented?

24 A It's large. Yes.

25 Q Okay. It appears to be the exit hole, that that's

1 where the bullet is coming out of, right, as opposed to going
2 into the house?

3 A Yes.

4 Q Okay. And the hole in the mirror was a little
5 smaller in diameter?

6 A If I recall, yes.

7 Q Okay. Do you know if you put a rod through the --
8 a rod through the mirror and a rod through the hole in the
9 wall; yes?

10 A Yes.

11 Q And that was to show trajectory and that's pretty
12 simple, right, two holes and a rod between the two. Do you
13 know if the closet door had been moved at all before you got
14 there?

15 A I don't know.

16 Q And if the closet door had been moved, it might
17 change the trajectory to some extent?

18 A I would have to see the layout of the room again.

19 Q Okay. Do you remember there being a sliding closet
20 door?

21 A Yes.

22 Q Okay. If the closet door moves, your rod angle
23 changes; is that fair? Do you see what I'm saying?

24 A No. I'm sorry.

25 Q Okay. Let's --

1 MR. COFFEE: Court's indulgence.

2 THE COURT: Sure.

3 BY MR. COFFEE:

4 Q Two pieces of paper with blue dots on it.

5 THE COURT: And ma'am, we tried to calibrate your
6 monitor over the break. We're hoping it's better calibrated
7 if you have to use it.

8 THE WITNESS: Okay, thank you.

9 BY MR. COFFEE:

10 Q Okay, let's play make believe for a minute.

11 A Okay.

12 Q These are going to represent a closet door and a
13 wall.

14 A Okay.

15 Q Okay. If the closet door moves, the rod moves?

16 A Yes.

17 Q Okay.

18 A Right.

19 Q That's all I was trying to get to. We just don't
20 know if the closet door had moved or not. True? You don't
21 know if the door had been moved from the time of the shooting
22 to the time you got there?

23 A No.

24 Q Okay. There was a bullet found in the driveway,
25 State's Exhibit 31. Yes?

1 A Yes.

2 Q And the assumption was that that was associated with
3 the hole in the wall?

4 A Yes.

5 Q It may have bounced off the truck, that's what the
6 dent in the truck -- you documented that for, right?

7 A Yes.

8 Q Because you would expect that the bullet would have
9 kept traveling if it hadn't hit something; yes?

10 A Yes.

11 Q Do you know if this bullet was ever tested for any
12 kind of biological material?

13 A I don't know.

14 Q That might be somebody else?

15 A Yes.

16 Q You don't order the individual testing at the scene,
17 that would be up to the detective?

18 A Yes.

19 Q And ultimately the responsibility for what's tested
20 and not tested at a crime scene I suppose ends with the
21 detective. There's a lead detective in a case at some point
22 that makes the ultimate decisions; is that fair?

23 A I believe so.

24 Q Okay. You're just responsible for documenting
25 things?

1 A Yes.

2 Q Inside the house -- I'm going to show you the
3 diagram, State's 25. Is it legible? There. Okay. So
4 everybody is clear what we found, three cartridge casings
5 inside the house --

6 A Yes.

7 Q -- five, six and seven; yes?

8 A Yes.

9 Q And those are marked on your diagram?

10 A Yes.

11 Q One is in the hall and two are in the northwest
12 bedroom?

13 A Yes.

14 Q And if someone described that as a craft room or a
15 scrapbooking room, would that be what it appeared to you?

16 A Yes.

17 Q Okay. Now, it's a semi-automatic and that means
18 that it ejects shells. You know enough about firearms to know
19 that, right?

20 A Yes.

21 Q And -- or casings, I guess. Is that the correct
22 word, casings?

23 A A cartridge case. Yeah.

24 Q Cartridge case. It ejects cartridge cases. With
25 this particular weapon, do you know if it ejects to the left

1 or to the right?

2 Q I don't know.

3 A If we took a look at the weapon, would you be able
4 to tell?

5 Q Yeah.

6 MR. COFFEE: Permission to approach?

7 THE COURT: You may.

8 BY MR. COFFEE:

9 Q State's 96.

10 A So it opens to the left.

11 Q Okay. And it would eject casings to the left; yes?

12 A Yes.

13 Q Okay. Now, these casings are fairly light and
14 somewhat mobile; is that fair?

15 A Yes.

16 Q If you kick them, they roll, for example?

17 A Yes.

18 Q So we can't say for certain that the gun was fired
19 inside the northwest bedroom, but certainly a possibility;
20 is that fair?

21 A Yeah, it's possible.

22 Q Okay. Three casings and you looked all over the
23 house top to bottom for other casings?

24 A Yes.

25 Q You wanted to see if there were other casings?

1 A Yes.

2 Q Other casings might be important and might tell us
3 that more than three shots were fired?

4 A Yes.

5 Q Ultimately you didn't find any other casings?

6 A No.

7 Q Assuming those were fired, and the casings all had
8 a pin mark on the back which would indicate that somebody had
9 fired it at some point, right?

10 A Yes.

11 Q For certain three were fired. If a casing left the
12 residence, you may not have found it?

13 A I'm sorry?

14 Q If a casing had left the residence, you may not have
15 found it?

16 A No.

17 Q But you don't have any evidence that it did?

18 A No.

19 Q And detectives have been trained -- we talked about
20 that yellow tape before, to cordon off the scene and to tell
21 people -- we don't let people just run through crime scenes,
22 right --

23 A Right.

24 Q -- once they secure it? Okay. The magazines, there
25 was some discussion about the magazines and how many rounds

1 that they hold. Do you remember that discussion a moment ago?
2 A Yes.
3 Q Okay. Now, I looked at the magazine up there.
4 Would you agree that there's nothing on the magazine itself
5 that says how many rounds are in the magazine?
6 A Some of them have like a number that designates them
7 off.
8 Q Do you remember if these do or not?
9 A I don't.
10 Q Would looking at it help?
11 A Yes.
12 Q Help you remember? Your eyes are probably better
13 than mine.
14 MR. COFFEE: Permission to approach again?
15 THE COURT: You may.
16 BY MR. COFFEE:
17 Q And I'm going to start with State's 97A.
18 A Okay.
19 Q And I think that's the larger of the two magazines.
20 And I mean by physical size because I don't know --
21 A I don't see anything, any designators on it, no.
22 Q All right. So if we wanted to find out how many
23 cartridges that holds, we would have to talk to a firearms
24 examiner?
25 A Yes.

1 Q And I'm going to show you 97B. Let me give this
2 back to the clerk.

3 A Okay.

4 Q And ask you the same question. Does that say what
5 the capacity is?

6 A This one has designators. It goes four, eight and
7 twelve.

8 Q Okay. Do we know if twelve is the maximum capacity
9 or that's just the last marking?

10 A It's just the last marking. I'm not sure if that
11 means --

12 Q Okay. There's nothing on it that says, for example,
13 maximum or holds ten, or don't overfill or anything like that?

14 A No.

15 Q Okay. Again, a firearms examiner would be the most
16 appropriate person to find that out?

17 A Yes.

18 Q Now, is there anything -- You're not a firearms
19 expert but you have some training?

20 A Yes.

21 Q Is there any way to tell which clip was in the gun
22 when the gun was fired?

23 A I don't know.

24 Q Okay. Not that you're aware of then; is that fair?

25 A Yeah.

1 Q There was a holster?

2 A Yes.

3 Q State's 35. You impounded that?

4 A I did not impound it.

5 Q You're aware that it was impounded?

6 A Yes.

7 Q And that would be standard procedure. They wouldn't,

8 for example, sell it at an auction to somebody?

9 A No.

10 Q Or give it away to charity?

11 A No.

12 Q Okay. It would be standard procedure for something

13 like that to be impounded. There was a picture taken of it.

14 That would still be in State's evidence someplace and if we

15 need it we might be able to get it from that, I would assume;

16 yes?

17 A Yes.

18 Q State's 34. That is a backpack that was in the

19 driveway and the holster was actually in the backpack?

20 A Yes.

21 Q Did you recover that?

22 A No.

23 Q Did you see it there, though? Did you put the

24 number down?

25 A I didn't put the number down, but yes, I did see it.

1 Q Okay. You're familiar with the condition of the
2 house inside?

3 A Yes.

4 Q I want to show you State's 43. What's that a
5 picture of?

6 A It's the hallway and a cartridge case on the floor.

7 Q Cartridge casing. Were there any toys or anything
8 else on the floor of the hallway there?

9 A I don't recall there being any.

10 Q Okay. Would that be something that would be picked
11 up by a CSA and moved before you take pictures, or would those
12 stay there when you take pictures?

13 A No, everything stays until it's all documented.

14 Q So if somebody had tossed something and it landed
15 on the floor there, it would stay there as far as the police
16 officers and the CSAs are concerned. They wouldn't -- they
17 wouldn't rearrange the scene?

18 A As far as items of evidence, yes.

19 Q Okay. And State's 38. Do you recognize that?

20 A That's in the hallway looking towards the living
21 room.

22 Q The other portion of the hallway?

23 A Yes.

24 Q And again, we don't see any loose items on the floor
25 necessarily other than it looks like perhaps a piece of paper?

1 A Yes.

2 Q State's 41. That's I believe all the way to the end
3 of the hallway, is that correct?

4 A Yes.

5 Q And again, no loosely thrown items in that area
6 either?

7 A No.

8 Q State's 49. Do you recognize that?

9 A That would be the northwest bedroom or the office,
10 whatever you want to call it.

11 Q Where the shell casings were found?

12 A Yes.

13 Q And the paramedics had been there before you had
14 been there?

15 A Yes.

16 Q And they had tried to do some sort of emergency
17 procedure and it appeared they had removed clothes?

18 A Yes.

19 Q Those clothes again are not moved because you don't
20 move things at a crime scene, they are left where they are
21 found; is that fair?

22 A Yes.

23 Q Documented and then they may be moved or impounded
24 in these envelopes that we talked about?

25 A Yes.

1 Q Okay. State's 76. There was a loose round found in
2 the wheel well of Mr. White's Dodge Dakota, is that right?

3 A I believe a Durango.

4 Q Durango.

5 A Yes.

6 Q That's right, Durango. In the wheel well where they
7 keep the spare tire, is that a fair description? Or is it --

8 A I just called it a cargo storage area.

9 Q Cargo storage. Perfect. Cargo storage. There's
10 a loose, unexpended cartridge that was found there; yes?

11 A Yes.

12 Q Do you know whether that had been in either one of
13 the magazines?

14 A I don't know.

15 Q You also went to the Yavapai Sheriff's Office?

16 A Yavapai. Yes.

17 Q Mr. White had turned himself in, or that's what you
18 had been told?

19 A Yes.

20 Q That's where the pictures of the vehicle were taken?

21 A Not at the actual sheriff's office, but at their
22 crime scene garage.

23 Q At Yavapai and at their crime scene garage?

24 A Yes.

25 Q How far is that, Yavapai?

1 A Hours. I couldn't tell you for sure.
2 Q Okay. A couple hours?
3 A Yeah.
4 Q Were you involved in the transport of Mr. White back
5 to Clark County?
6 A No.
7 Q Did you have any contact with Mr. White at the --
8 in Arizona?
9 A Just when I had to photograph him and collect his
10 clothing.
11 Q Okay. You took the photographs?
12 A Yes.
13 Q You took this one?
14 A Yes.
15 Q Was Mr. White cooperative?
16 A Yes.
17 Q You impounded some evidence there, also?
18 A His clothing and a buccal swab.
19 Q A buccal swab. How about the contents of his
20 wallet?
21 A No.
22 Q Do you know if officers did that?
23 A I believe Homicide did.
24 Q In that, what did we call it, package container,
25 package -- cargo area --

1 A Yes.

2 Q -- there was a license plate?

3 A Yes.

4 Q And that's State's 71 showing the license plate.

5 Now, you don't know how that ended up or when it ended up in

6 that package area; is that fair?

7 A Yeah, I don't know.

8 Q But what we do know is State's 66, there was still

9 a matching plate on the back of the car, right?

10 A Yes.

11 Q Did you actually search the car?

12 A Yes.

13 Q Did you find any clothing in the car?

14 A I don't recall.

15 Q Did you find a packed suitcase?

16 A I don't recall.

17 Q Did you find a disguise, hair dye, anything like

18 that?

19 A I don't recall.

20 Q You would probably recall if you --

21 A I would think so, yeah.

22 Q Yeah, something that might stand out, that looked

23 like he was trying to hide his identity, clippers for his

24 hair, something like that. You don't recall anything like

25 that?

1 A No.

2 MR. COFFEE: And Defendant's Proposed X, by
3 stipulation. I'd move to admit Defendant's Proposed X.

4 THE COURT: Any objection?

5 MS. MERCER: No objection, Your Honor.

6 THE COURT: X will be admitted.

7 (Defendant's Exhibit X admitted)

8 BY MR. COFFEE:

9 Q I had speculated as to what was on the back of the
10 car. Just so things are clear, you took this picture?

11 A Yes.

12 Q And on the back of the car there was -- it looked
13 like a daddy and mommy and three children; is that fair?

14 A Four.

15 Q Four children -- the baby. Three children. Three
16 young men and a baby. Four children. A purse. And what's
17 in the boy's hand, is it a soccer ball or something?

18 A Some -- it looks like some sort of ball, yeah.

19 Q Soccer ball, basketball, whatever it might be.

20 MR. COFFEE: Permission to approach?

21 THE WITNESS: Yeah.

22 THE COURT: You may.

23 BY MR. COFFEE:

24 Q Can you see it a little better there?

25 A It looks like a basketball.

1 Q It looks like a basketball. Okay. And State's 21,
2 you took this, also, right?

3 A Yes.

4 Q And does that accurately reflect how Mr. White was
5 when you found him?

6 A Yes.

7 Q Okay. Thank you.

8 A You're welcome.

9 MR. COFFEE: Pass the witness.

10 THE COURT: Redirect?

11 MS. MERCER: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. MERCER:

14 Q Ma'am, prior to the crime scene being secured in a
15 case like this, there would have been other entrances to the
16 residence by other personnel, correct?

17 A Yes.

18 Q Meaning, you can't even go into a residence until
19 it's been cleared by patrol?

20 A Yes.

21 Q And clearing is where they go in and make sure that
22 there's no one else inside that poses a danger to you all,
23 correct?

24 A Yes.

25 Q So patrol officers would have done that before you

1 arrived on scene?

2 A Yes.

3 Q In addition, you were aware that there were two
4 gunshot victims inside of that residence, correct?

5 A Yes.

6 Q And the primary concern is treating those gunshot
7 victims first, correct?

8 A Yes.

9 Q Which means that there would have been medical
10 personnel inside of that house as well?

11 A Yes.

12 Q And in your experience as a crime scene analyst it's
13 typical for them to use gurneys to transport those patients
14 from inside of the house to the exterior of the house,
15 correct?

16 A Yes.

17 Q Gurneys that roll?

18 A Yes.

19 Q In this case they would have rolled down the tile
20 floor?

21 A Yes.

22 Q The crime scene tape doesn't even get placed around
23 the residence until the victim have been removed from the
24 residence and the patrol officers have cleared it, correct?

25 A Correct.

1 Q You were asked some questions about a closet door
2 and trajectory.

3 MS. MERCER: Permission to publish?

4 THE COURT: You may.

5 BY MS. MERCER:

6 Q I'm showing you State's Exhibit 25, which is the
7 crime scene diagram. The room where that mirror was located
8 is where?

9 A The southwest bedroom.

10 Q And can you just place a square around that for me?

11 A Here.

12 Q Okay. And the closet in that room is on which wall?

13 A The north wall up here.

14 Q Nowhere near the mirror?

15 A No.

16 Q Where the bullet hole was?

17 A Correct.

18 Q When you impound a firearm, do you prepare what's
19 referred to as a Firearms Impound Report?

20 A Yes.

21 Q When you prepare that report, do you document
22 whether the firearm is empty or loaded?

23 A Yes.

24 Q Did you prepare a report in this case?

25 A Yes, I did.

1 Q Do you recall whether when you recovered that
2 firearm it was empty?

3 A It was empty.

4 Q Meaning, there were no rounds in the chambers?

5 A Yeah, there was nothing in the chamber.

6 Q You indicated previously that with regards to a
7 semi-automatic weapon once one round is fired it automatically
8 cycles another round into the chamber, correct?

9 A Yes.

10 Q Assuming that this weapon had fired several rounds
11 earlier and that the magazine had additional rounds inside of
12 it at the time it was fired, it would have cycled another
13 round into the chamber, correct?

14 A Yes, it would have.

15 Q When a round is in the chamber, how do you eject it
16 from the chamber without firing the weapon?

17 A You have to release the magazine first and then you
18 have to pull back the slide to have the cartridge come out.

19 MS. MERCER: Court's indulgence.

20 THE COURT: Sure.

21 BY MS. MERCER:

22 Q In this case were you also made aware that there
23 were several children inside of the residence running around
24 at the time of the shooting?

25 A Yes.

1 Q Just so that we're all perfectly clear, the
2 magazines that you recovered inside of that storage
3 compartment in the rear of the truck, neither one of them was
4 inside of that firearm at the time you recovered the firearm,
5 correct?

6 A Correct. There weren't -- the gun was completely
7 empty.

8 Q Ms. Kruse, the door that's depicted over here --

9 A Yes.

10 Q -- belongs to a separate room, correct?

11 A The bathroom.

12 MS. MERCER: Thank you.

13 THE COURT: Anything else, Ms. Mercer on redirect?

14 MS. MERCER: No further questions.

15 THE COURT: Recross?

16 RECCROSS EXAMINATION

17 BY MR. COFFEE:

18 Q The loose round that was in the cargo compartment --

19 A Yes.

20 Q -- might have been in the chamber at some point, we
21 just don't know?

22 A It's possible.

23 Q Somebody might have cleared the gun and that might
24 be why you had a loose round?

25 A It's possible.

1 Q Neither of the clips were empty?
2 A No.
3 Q The gun didn't have any apparent defects that would
4 prevent somebody from unloading that clip if they wanted to?
5 A Correct.
6 Q Okay. Now, this hole in the closet, were you able
7 to connect it with anything?
8 A I'm sorry, the closet?
9 Q The closet. Was there a hole in the closet door or
10 was the mirror someplace else?
11 A There was no hole in the closet door.
12 Q Okay. There was a hole in a mirror. Maybe that's
13 where my confusion came in.
14 MR. COFFEE: Court's indulgence.
15 THE COURT: Sure.
16 BY MR. COFFEE:
17 Q Take a look at State's 62. Sometimes you look at
18 things too many times and you don't get the description exact.
19 State's 62. I said closet door, and it's actually not a
20 closet door, is it, it's a mirror?
21 A It's a mirror. Yes.
22 Q And it's a mirror that was laying against the wall
23 and that's where the hole was?
24 A Yes.
25 Q Is that right?

1 A Yes.

2 Q Okay. And I guess the appropriate question would be
3 then that's why the closet door was moved. And I'm sorry to
4 confuse you.

5 A Okay.

6 Q Now I see why the question didn't make any sense.
7 It's whether that mirror was actually moved. Do you know
8 whether the mirror was moved or not?

9 A I don't know.

10 Q Okay. And now you see what I mean about --

11 A Yes.

12 Q -- it might move the trajectory if the mirror had
13 been moved. I apologize for calling that a closet door.

14 A Okay.

15 MR. COFFEE: Thank you. Nothing further.

16 THE COURT: Anything further, Ms. Mercer?

17 MS. MERCER: No, Your Honor.

18 THE COURT: Thank you, Ms. Kruse, we appreciate your
19 time. Have a very nice afternoon.

20 THE WITNESS: Thank you.

21 THE COURT: Your next witness.

22 MS. MERCER: Your Honor, may we approach briefly,
23 please?

24 THE COURT: Yes.

25 (Bench conference)

1 MS. MERCER: Our next witness is a Spanish speaker
2 and so I anticipate that he'll take at least 30 minutes,
3 possibly longer.

4 THE COURT: Yeah, we need to get started, though.

5 MS. MERCER: I know. But then we have another
6 witness waiting, so would it be okay to --

7 THE COURT: You can send the second witness away.

8 MS. MERCER: I can? Okay, thank you.

9 THE COURT: Because remember, we have a juror who
10 needs us to break every day by 4:45.

11 MR. ROGAN: Right.

12 MS. MERCER: Okay. Thank you.

13 MR. ROGAN: Thank you.

14 THE COURT: Okay.

15 (End of bench conference)

16 THE COURT: And is the interpreter here?

17 MR. ROGAN: The interpreter is here, Your Honor.

18 THE COURT: Okay.

19 MR. ROGAN: Our next witness is Fernando Diaz.

20 THE COURT: Sir, if you would approach, please.

21 And Mr. Interpreter, if you would come up, we'll get you a
22 chair so you can sit up there as well.

23 FERNANDO DIAZ MEDA

24 Having been called as a witness and being first duly sworn,
25 testified as follows through the Court Interpreter:

1 THE CLERK: Thank you. Please be seated and state
2 and spell your name for the record.
3 THE WITNESS: Fernando Diaz Meda.
4 COURT INTERPRETER: Do you want me to spell it?
5 THE CLERK: Yes.
6 COURT INTERPRETER: Fernando Diaz Meda.
7 F-E-R-N-A-N-D-O D-I-A-Z M-E-D-A.
8 THE COURT: Thank you, sir. And there are M&Ms
9 there if you'd like some, as well as water if you need some.
10 THE WITNESS: Thank you.
11 THE COURT: Mr. Rogan.
12 THE CLERK: Mr. Interpreter, can we have your name,
13 please?
14 COURT INTERPRETER: Ricardo Pico, Spanish
15 Interpreter. P-I-C-O.
16 MR. ROGAN: Thank you, Your Honor.
17 DIRECT EXAMINATION
18 BY MR. ROGAN:
19 Q Good afternoon, Mr. Diaz. How are you today?
20 A I'm well.
21 Q You speak Spanish?
22 A Yes.
23 Q Do you understand any English?
24 A It's better in Spanish.
25 Q I'm going to speak in English and the Interpreter is

1 going to interpret everything into Spanish for you.

2 A That's fine.

3 Q Great. And if you could please reply in Spanish so
4 that everything will be clear between the two of us.

5 A Okay, that's fine.

6 Q And if there's anything that you don't understand,
7 just say so, okay?

8 A Okay.

9 Q Thank you, sir. Mr. Diaz, I want to talk to you
10 about something that happened back on July 27th, 2012. Can
11 you tell me where you were living on that day?

12 A 409 Altamira Road.

13 Q How long have you lived there?

14 A Like seven years.

15 Q Do you still live there today?

16 A Yes.

17 Q So you've lived there for about nine years; eight
18 or nine years?

19 A Nine, ten years.

20 Q Okay. Did you know your neighbors that lives at
21 325 Altamira?

22 A Very rarely did I get to see them, but to know them,
23 no, I did not.

24 Q Okay. I'm going to put up State's Exhibit 26 on
25 your computer monitor there. I'm going to zoom out. Does

1 State's Exhibit 26 depict your neighbor's house at 325
2 Altamira?

3 A Yes.

4 Q Now, was your house, 409, on the same side of the
5 street as this house?

6 A Yes, on the same.

7 Q And was it located to the south of this house?

8 A My house would be to the south, this house would be
9 to the north.

10 Q All right, thank you. How many houses are between
11 your house and this house in Exhibit 26?

12 A Two more.

13 Q Do you remember what you were doing between 11:30
14 a.m. and 12:00 p.m. on July 27th, 2012?

15 A Yes. I was working on my front yard in front of my
16 house.

17 Q And at some point after twelve o'clock, did the
18 police come to 325 Altamira?

19 A I was outside my front home on the street.

20 Q And did the police come to 325 Altamira?

21 A Yes.

22 Q And while they were there, did you go and speak to
23 one of the police officers that was present?

24 A Yes.

25 Q Why did you go and approach one of those police

1 officers?

2 A Because when I saw the police arriving at that home
3 from both sides, from south and north, I thought that
4 something bad was going on. I saw a man. He came out and he
5 was talking. And then he went back into the home, and he got
6 into a vehicle.

7 Q So we're not going to confuse the jurors here, I'm
8 going to ask you a little bit more about what you saw. Did
9 you go to that police officer because you believed you had
10 some important information to share?

11 A Yes.

12 Q And was it about that man that you saw sometime
13 between 11:30 and twelve o'clock on July 27th, 2012?

14 A Yes.

15 Q I know it's almost three years later, but I want to
16 ask about what you remember about that man. Can you tell me,
17 when is the first time -- or where was that man standing when
18 you first noticed him?

19 A He was walking on the street towards this home.

20 Q Towards the home that's in Exhibit 26?

21 A Yes.

22 Q Was he walking south to north?

23 A South to north.

24 Q And the major road that's south of Altamira, is that
25 Alta?

1 A It's Alta.

2 Q And do buses run up and down Alta that you know of?

3 A Yes.

4 Q And when this man was walking north on Altamira,

5 why was your attention drawn to him?

6 A I had some tools in my front yard, and he seemed

7 suspicious because I had never seen him before.

8 Q I see. Now, do you remember anything that he was

9 wearing that day?

10 A He had some dark colored pants, like the kind that

11 mechanics use, you know, work clothes.

12 Q Ones with cargo pockets?

13 A I believe he had some side pockets.

14 Q I see. Do you remember the color of his shirt?

15 A Like burgundy.

16 Q Do you remember if he was carrying anything with

17 him?

18 A He had a dark backpack on his back here.

19 Q Do you remember anything in his hands?

20 A No.

21 Q Do you remember if you noticed any weapon on his

22 waist?

23 A No.

24 Q Any weapon anywhere that you could observe?

25 A No.

1 Q Now, did you actually see this man approach 325
2 Altamira?
3 A Yes.
4 Q Did he go inside that house?
5 A Ask him if you can move the monitor towards this
6 way.
7 Q Towards which way?
8 A This way. A little bit more.
9 Q That's the end of the picture, I'm afraid.
10 A He crossed here towards this way.
11 THE COURT: Sir, you can touch the monitor and it
12 will mark on it.
13 THE WITNESS: I know that I shouldn't. You want me
14 to make a mark?
15 THE COURT: Could you make a mark, sir, where you
16 saw it?
17 THE WITNESS: He crossed from here to here and I
18 lost him.
19 BY MR. ROGAN:
20 Q Okay. So you actually did not see him physically
21 enter the house?
22 A No.
23 Q The last point you saw him, he was walking on the
24 driveway of the house?
25 A Yes. Yes.

1 Q Okay. Now, after he passed your house and was on
2 the driveway of 325 Altamira, did you continue to work in your
3 yard?

4 A Yes. I was taking some -- I had some sand in my
5 truck. I was, you know, putting it -- dumping it in a
6 wheelbarrow.

7 Q And then were you taking that sand to somewhere on
8 your property?

9 A Towards my back yard.

10 Q While you were doing this, did you hear something
11 that drew your attention?

12 A Two noises.

13 Q Could you describe for me the noises that you heard?

14 A I heard a noise like when you bang on metal. But
15 between those two noises I heard a lady screaming something
16 in English.

17 Q Could you tell where those noises were coming from
18 and where that scream was coming from?

19 A From that area where that house is located.

20 Q From the direction of 325 Altamira?

21 A Yes.

22 Q And when you heard that, did you go and look and see
23 what was going on at 325 Altamira?

24 A No. I continued doing what I was doing.

25 Q Okay. But at some point did you see that man that

1 you had seen earlier again outside 325 Altamira?

2 A Yes.

3 Q And a few minutes ago when I started asking
4 questions about what happened that day, you saw a man come
5 out of 325 and he was speaking English?

6 A Yes.

7 Q Did that happen after you heard those noises?

8 A Yes.

9 Q Could you understand what he was saying in English?

10 A No.

11 Q What did you do -- or what did you see that man do
12 after he came out of the house and spoke some English words?

13 A He seemed upset; desperate. He walked inside the
14 house. I don't know if he went in or not, but he was very
15 desperate, upset, and he took the car.

16 Q I'm going to stop you there for just a minute, okay.
17 The car that you're referring to, had you ever seen that
18 before?

19 A Yes.

20 Q Do you know the make and model of that car?

21 A No. It was a new car.

22 Q It was a newer car? Do you remember if it was an
23 SUV or --

24 A It was an SUV.

25 Q And do you remember the color of it?

1 A Like bluish-gray.

2 Q Showing you State's Exhibit No. 65, does that appear
3 to be the car or similar to the car that you saw the man get
4 inside?

5 A Yes.

6 Q And once the man got inside of that, what did he do?

7 A He turned on the ignition, he hit reverse and he
8 drove off.

9 Q After he did that and after you went and spoke with
10 the police officer, did a police officer show you a backpack?
11 If you remember.

12 A I don't recall.

13 Q Okay.

14 MR. ROGAN: Court's indulgence, please, Your Honor.

15 THE COURT: Yes.

16 MR. ROGAN: May I approach the witness?

17 THE COURT: You may.

18 BY MR. ROGAN:

19 Q Mr. Diaz, this is a statement that is in English.
20 I'm going to ask the interpreter to whisper quietly, starting
21 at the top down to the bottom and read it to you, okay. Do
22 you think that your statement that you gave the police later
23 that day will refresh your memory about whether you saw that
24 backpack?

25 A I believe so.

1 MR. ROGAN: Mr. Interpreter, if you could read that
2 quietly so it's not picked up by the microphone.

3 (Court Interpreter reads statement to the witness)

4 THE WITNESS: Yes.

5 BY MR. ROGAN:

6 Q Okay. Do you remember now that you were shown that
7 backpack?

8 A Yes.

9 MR. ROGAN: May I approach the witness?

10 THE COURT: You may.

11 BY MR. ROGAN:

12 Q Do you remember if you could say for certain whether
13 that was the same backpack that the man who you had seen
14 earlier had been carrying?

15 A I would be lying if I said yes. I don't remember.

16 Q And that's what you told the police, right?

17 A Yes.

18 Q You said that you're not sure it's the backpack,
19 but it looks like it. Is that correct?

20 A Yes.

21 Q And did the police ask you whether the man that you
22 had seen looked familiar to you?

23 A I don't remember.

24 Q Okay.

25 MR. ROGAN: Court's indulgence.

1 BY MR. ROGAN:

2 Q Do you remember, sir, telling the police -- Do you
3 remember, sir, that you told the police that the man you saw
4 reminds you of the person that used to live in the house with
5 the lady, but you're not a hundred percent sure?

6 A Yes, that is true.

7 Q And by the house, you mean 325 Altamira?

8 A Yes.

9 Q Okay, thank you.

10 MR. ROGAN: Your Honor, the defense and the State
11 are going to stipulate to the admission of State's Exhibits
12 98 through 100.

13 THE COURT: Any objection, Mr. Coffee?

14 MR. COFFEE: No.

15 THE COURT: 98 through 100 will be admitted.

16 (State's Exhibits 98, 99, 100 admitted)

17 BY MR. ROGAN:

18 Q Sir, I'm going to show you State's Exhibit 98. Does
19 this appear to be your neighborhood on Altamira?

20 A Yes.

21 Q Okay. And do you see here on the Exhibit that 325
22 Altamira is marked for you?

23 A Yes.

24 Q You said your house -- there's two houses between
25 your house and 325 Altamira, correct?

1 A Yes. This is my house here.

2 Q Okay. Actually, can you mark it on the screen like

3 you did before?

4 A The one with the red roof.

5 Q The red roof. Okay. So this one right here where

6 I'm pointing?

7 A Yes.

8 Q All right. When the Durango left 325 Altamira, in

9 which direction did it travel, south or north?

10 A North.

11 Q So up towards Pinedale Avenue?

12 A Yes.

13 Q Did you see what road it took after it left?

14 A At Pinedale towards the school.

15 Q Thank you, sir. I'm sorry, towards the sun, is that

16 what you said?

17 MR. LOPEZ-NEGRETTE: School.

18 MR. ROGAN: School. Thank you. Sorry.

19 THE COURT: Escuela.

20 MR. ROGAN: Thank you, Judge.

21 THE WITNESS: Took a right turn towards the school.

22 MR. ROGAN: Pass the witness, Your Honor.

23 THE COURT: Cross-examination.

24 MR. LOPEZ-NEGRETTE: Thank you, Your Honor.

25

1 CROSS-EXAMINATION

2 BY MR. LOPEZ-NEGRETTE:

3 Q Mr. Diaz, just a couple questions for you. Now, at
4 one point you told police that you actually thought that this
5 person was someone you recognized before?

6 THE COURT: Hold on, we have to turn your mike on.

7 THE WITNESS: No. I would be lying.

8 BY MR. LOPEZ-NEGRETTE:

9 Q When the prosecutor was talking to you just a moment
10 ago, you said that maybe this person was someone that you
11 recognized that used to live in the house across the street
12 with the lady?

13 A Yes.

14 Q But initially you said earlier today that you had
15 some suspicions about this person?

16 A I was suspicious of anyone walking by and stealing
17 my tools.

18 Q That's because you were focused on this activity,
19 doing some yard work, is that right?

20 A Yes. Yes.

21 Q And you had your valuable tools out with you?

22 A Yes.

23 Q And so that made you a little bit extra cautious
24 of people that you may not immediately recognize walking
25 around?

1 A Yes.

2 Q And in fact, you approached the police, correct?

3 A Yes.

4 Q Initially you were asking if anybody spoke Spanish?

5 A Yes.

6 Q So that you could tell them what you thought might
7 be useful information for them?

8 A Yes.

9 Q After you saw the police arrive, you thought back
10 and you said, I remember that gentleman; maybe the police need
11 to know about this?

12 A Yes.

13 Q That's what prompted you to go back and say I have
14 some information that's useful to you?

15 A Yes.

16 Q It was because you saw police arriving on the scene
17 from multiple directions?

18 A Yes. There were police vehicles, cars and
19 motorcycles.

20 Q A lot of police presence?

21 A A lot.

22 Q Something unusual for you to see?

23 A Yes, because that's a very quiet street.

24 Q Exactly.

25 MR. LOPEZ-NEGRETTE: Court's indulgence.

1 BY MR. LOPEZ-NEGRETE:

2 Q And at one point you said you saw this gentleman
3 exit the house across the street?

4 A Yes.

5 Q And his demeanor, his attitude was different?

6 A Yes, someone nervous.

7 Q He was upset?

8 A Like hysterical; yelling.

9 Q Desperate?

10 A Yes.

11 MR. LOPEZ-NEGRETE: Thank you very much.

12 THE COURT: Any further direct examination?

13 REDIRECT EXAMINATION

14 BY MR. ROGAN:

15 Q Mr. Diaz, I know that you couldn't understand the
16 words in English that he was saying, but was he yelling those
17 words or was he speaking softly?

18 A He was yelling like a desperate person would; loud.

19 Q Loudly. And you had met the gentleman that had used
20 to live at that house one time before?

21 A Yes.

22 Q Just for a brief moment?

23 A Very brief moment.

24 MR. ROGAN: Okay, thank you very much.

25 THE COURT: Anything further on cross-examination?

1 MR. LOPEZ-NEGRETTE: No, thank you.

2 THE COURT: Thank you, sir. We appreciate your
3 time. Have a very nice afternoon.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you, Mr. Interpreter.

6 COURT INTERPRETER: Yes, Your Honor.

7 THE COURT: You were short on your estimate.

8 MR. ROGAN: We were.

9 THE COURT: So did we send the other witness away?
10 Ladies and gentlemen, because we thought that
11 witness would take longer, I told them they could send the
12 next witness away. I blew it.

13 During this recess you are admonished not to talk or
14 converse among yourselves or with anyone else on any subject
15 connected with this trial, or read, watch or listen to any
16 report of or commentary on the trial or any person connected
17 with this trial by any medium of information, including
18 without limitation social media, text, newspaper, television,
19 the Internet and radio, or form or express any opinion on any
20 subject connected with the trial until the case is finally
21 submitted to you.

22 We'll see you at 9:45 in the morning. Have a nice
23 evening.

24 (Jury is not present)

25 THE COURT: You can be seated. Counsel, we've had

1 several opportunities to refresh recollection today with all
2 three of our witnesses. Does anyone want to mark for any
3 purpose the statement of Jodey Gaines, also known as Jodey
4 White? Anybody want to mark for any purpose or any reason the
5 report of Tracy Kruse? Anybody want to mark for any reason
6 the statement of Fernando Diaz?

7 MR. MERCER: No, Your Honor, I don't think so.

8 MR. COFFEE: No reason to mark it, Judge. We might
9 take advantage of what they had pointed out today, to admit
10 that section of Jodey's statement that was used to refresh,
11 but I really have to review it to see if it's necessary.

12 THE COURT: If you choose to do so, can you bring me
13 the redacted version --

14 MR. COFFEE: I will.

15 THE COURT: -- you'd like to use tomorrow morning so
16 I can give the jury the same limiting instruction with it?

17 MR. COFFEE: Understood. I will, and I don't expect
18 that we will, but better safe than sorry. I don't want to
19 tell you that I won't and then come in and change my mind.

20 THE COURT: Well, I'm just reminding you, since we
21 have 25 more minutes that we are going to use.

22 THE COURT: What else can I do productively?

23 MR. ROGAN: It will be time well spent.

24 THE COURT: Huh?

25 MR. ROGAN: It will be time well spent, Your Honor.

1 MS. MERCER: We apologize. That pretrial took
2 forever when we pretrialed him, and so we anticipated it
3 taking much longer.

4 MR. COFFEE: And we -- actually mid-way through
5 Mr. Rogan asked me if it was okay not to refresh, which would
6 have slowed things down, and I said just go ahead and read.

7 THE COURT: It's okay. And I heard him go to you
8 and that was a fine process. It was just we blew it on the
9 estimate of time. And every 20 minutes I lose are 20 minutes
10 I never get back.

11 MR. COFFEE: I understand.

12 THE COURT: What's the plan for tomorrow? How many
13 witnesses have I got?

14 MS. MERCER: We'll line up as many as we can fit
15 into one day tomorrow.

16 THE COURT: Okay. Tomorrow is Thursday. I have to
17 break between lunch. I have a lunch meeting. Sometimes it
18 runs a little over. It's on the 10th floor so it's not hard
19 for me to get to and from. My afternoon meeting has been
20 moved to Friday. Since you're not going to be here, that's
21 not an issue. So we'll just plan to go from when I get jurors
22 all here to when we get done in the afternoon at 4:45 when our
23 one juror has to leave.

24 MS. MERCER: Okay, so 9:00 to 12:00 and then 1:15
25 to 4:45?

1 MR. ROGAN: 10:00 to 12:00.
2 THE COURT: That's the plan.
3 MR. COFFEE: We'll get a lot done.
4 MS. MERCER: Okay. Ten?
5 MR. ROGAN: Did you say -- I thought you said 9:45
6 for the jurors.
7 THE COURT: I told the jurors 9:45.
8 MS. MERCER: Oh, 9:45. Okay.
9 THE COURT: Didn't I tell them 9:45?
10 MR. COFFEE: Yeah.
11 MR. ROGAN: You did.
12 MS. MERCER: Sorry.
13 THE COURT: Because while I only have two or three
14 civil matters on my 8:30 calendar, one looks like it will take
15 longer to deal with. And since my estimate for ten minutes
16 between the two, the Jacobs Sands and the CityCenter were way
17 off on our two o'clock and 2:50 conference calls, I'm just
18 going to try to do better tomorrow on estimating. I failed
19 again. Anything else?
20 MS. MERCER: I don't think so.
21 MR. ROGAN: Not from the State, Your Honor.
22 MR. COFFEE: I think we're good.
23 THE COURT: All right.
24 MS. MERCER: Thank you, Your Honor.
25 THE COURT: Dulce, do you have all of the exhibits

1 back?

2 MS. MERCER: We'll help her organize them.

3 MR. COFFEE: Yes.

4 (Colloquy between the Court and the clerk)

5 MR. COFFEE: We can help sequence them as reparation
6 for taking --

7 THE COURT: Well, my only concern was when we
8 removed the items from the property, the evidence box, it is
9 critical for me that we will be able to keep them in a way we
10 can sort them and identify what they were, which is why I
11 asked for more Ziplock bags, because apparently we ran out of
12 the middle size ones here in the courtroom.

13 Anything else? Have a wonderful evening. See you
14 tomorrow.

15 (Court recessed at 4:21 p.m. until Thursday,
16 April 9, 2015, at 9:45 a.m.)

17 * * * * *

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* * *

EXHIBITS

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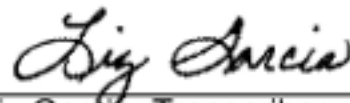
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.



Liz Garcia, Transcriber

10/13/15

DATE