

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 VII  
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OPENING BRIEF APPENDIX

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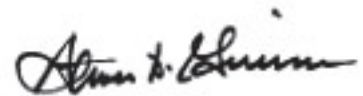
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CLERK OF THE COURT

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 5

MONDAY, APRIL 13, 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, MONDAY, APRIL 13, 2015, 10:46 A.M.

2 (Court was called to order)

3 (Jury is not present)

4 THE COURT: Counsel, is there anything outside the
5 presence?

6 MR. COFFEE: Just very briefly, Judge, just so the
7 Court's aware. Mr. Lopez-Negrete and myself were in line for
8 the elevator this morning --

9 THE COURT: Who?

10 MR. LOPEZ-NEGRETE: Mr. Lopez-Negrete.

11 THE COURT: Okay.

12 MR. LOPEZ-NEGRETE: I'm co-counsel.

13 THE COURT: Sorry. I was wondering which juror it
14 was.

15 MR. COFFEE: Well, we'll get to that. We're in line
16 this morning. Two people in front of us said, good morning,
17 gentlemen, which is not anything unusual in the hallway,
18 obviously. And we said, good morning, back, and we realized
19 it was Mr. O'Grady, one of the jurors. He said, well,
20 gentlemen, I'm using the term loosely, kind of giggled, and we
21 didn't say anything else. We let him get on a separate
22 elevator.

23 THE COURT: That was lovely.

24 THE COURT: Anybody want to inquire of Mr. O'Grady
25 why he doesn't think they're gentlemen?

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

2 THE COURT: All right. Mr. White, are you okay,
3 understanding that apparently Mr. O'Grady has a sense of
4 humor?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Do you have any concerns with
7 your counsel asking him any questions about why he said "using
8 the term loosely"?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Okay. All right. Anything else?

11 MR. ROGAN: Judge, just with regard to scheduling we
12 think that -- we anticipate that we'll finish with our
13 presentation of the evidence tomorrow morning, close to noon.

14 THE COURT: I was thinking you were going to finish
15 today.

16 MR. ROGAN: I really want to, but I just don't think
17 it's going to happen.

18 THE COURT: I think you are.

19 MR. ROGAN: We need to bring back some evidence that
20 Mr. Coffee wants in, so we'll do that tomorrow morning, and
21 then --

22 THE COURT: He's been asking for it for a week.

23 MR. ROGAN: I know. But I have to have a detective
24 bring it in. So he's going to bring it in. He'll have it
25 here tomorrow morning. I don't think that we're going to get

1 through our last expert witness today, so he'll have to
2 definitely testify tomorrow.

3 THE COURT: You'd be surprised how good I am at
4 making you guys go.

5 Go get my jurors.

6 We go fast.

7 MR. COFFEE: Just giving you the heads up.

8 THE COURT: I understand.

9 And you have witnesses coming tomorrow from out of
10 state?

11 MR. COFFEE: I've got some witnesses coming
12 tomorrow, but I have the same expectation at this point. The
13 sides -- we've started to work through instructions. We've
14 made good headway on that, including what the State has sent
15 over.

16 THE COURT: I added my standard instruction to the
17 packet that says, if you have any questions you have to send
18 it out in writing and then I'll consult with everybody. I put
19 that in packets. I know none of you do, but I always put it
20 in.

21 MR. COFFEE: We're going to ask for a Carter
22 instruction, too. I forgot to tell Mr. Rogan.

23 THE COURT: Okay.

24 MR. COFFEE: I'm sure the State's got a standard
25 one.

1 But we're anticipating closing Thursday at this
2 point.

3 THE COURT: That's lovely. I unfortunately have go
4 to Carson City on Wednesday.

5 MR. COFFEE: And as far as our case, we're -- as you
6 always know with defense cases, we'll see where we're at when
7 the State closes evidence.

8 THE COURT: I know. I'm not worried about it. I
9 know you're going to tell me where you are when you get there.

10 (Pause in the proceedings)

11 (Jury is present)

12 THE COURT: Ms. Clerk --

13 Counsel, you can be seated.

14 Ms. Clerk, you can take the roll, please.

15 (Jury roll called)

16 THE COURT: Counsel stipulate to the presence of the
17 jury?

18 MS. MERCER: Yes, Your Honor.

19 MR. COFFEE: Yes, Judge.

20 THE COURT: Your next witness.

21 MS. MERCER: Your Honor, the State calls Julie
22 Marschner.

23 JULIE MARSCHNER, STATE'S WITNESS, SWORN

24 THE CLERK: Thank you. Please be seated. Please
25 state your full name, spelling your first and last names for

1 the record.

2 THE WITNESS: My name is Julie Marschner. First
3 name J-U-L-I-E, last name M-A-R-S-C-H-N-E-R.

4 THE COURT: And, ma'am, there's water there and M&Ms
5 in the dispenser. And if you'd like some coffee, I'm certain
6 the marshal can find you some.

7 You may proceed.

8 MS. MERCER: Thank you.

9 DIRECT EXAMINATION

10 BY MS. MERCER:

11 Q Ma'am, where are you currently employed?

12 A I work at the Las Vegas Metropolitan Police
13 Department's Forensic Laboratory, and I'm assigned to the
14 Biology and DNA Detail.

15 Q How long have you been assigned to that detail?

16 A Approximately nine and a half years.

17 Q And were you employed in that capacity with any
18 other agency prior to that?

19 A No, I was not.

20 Q Can you tell us a little bit about your educational
21 background and the training that you had to undergo in order
22 to obtain the position that you're currently in.

23 A I have a Bachelors of Science degree in biological
24 sciences from Cal-Poly in San Luis Obispo, California, and
25 Masters degree in forensic science from Virginia Commonwealth

1 University in Richmond, Virginia.

2 During my graduate school program all of my
3 laboratory training, including an internship, was done at the
4 Virginia Department of Forensic Science, which is a State
5 crime lab in Richmond, Virginia.

6 After finishing graduate school I was hired on with
7 Metro's Forensic Lab, where I underwent an additional nine
8 months of training, working practice cases, observing cases
9 being worked, before being signed off to work cases on my own.

10 Q Do you undergo any ongoing education?

11 A Yes. Every year I'm required to take at least
12 8 hours of continuing education. I usually exceed that by
13 attending various conferences specific to my field of work.

14 Q Have you testified regarding DNA analysis that
15 you've conducted in other cases within the Eighth Judicial
16 District Court --

17 A Yes.

18 Q -- in Clark County, Nevada?

19 A Yes.

20 Q How many times have you testified?

21 A Over 60 times.

22 Q Have you testified in any of the Justice Courts
23 within Clark County, as well?

24 A Yes.

25 Q How many times have you done that?

1 A Probably five to ten times.

2 Q And what about grand juries?

3 A Yes.

4 Q How many times have you done it?

5 A Maybe 10 times.

6 Q Can you explain to the jury what DNA is.

7 A DNA is an acronym. It stands for deoxyribonucleic
8 acid, and it's the genetic material that's found in the cells
9 of all living organisms. Now, in humans most of our cells
10 contain chromosomes, which contains our DNA. And most of
11 those cells contain 46 chromosomes or 23 pairs. And it's a
12 pair because we inherit of our DNA from our mother and the
13 other half of the DNA from our father. And it's the unique
14 combination of these two that make us different from one
15 another.

16 Now, between everyone in this room over 99 percent
17 of our DNA is the same, because we all need the same basic
18 genetic information to make us human. That gives us eyes to
19 see, ears to hear, 10 fingers, 10 toes. It's less than
20 1 percent that make us different from one another, and it's in
21 this less than 1 percent of the DNA that we look at in
22 forensic DNA analysis to be able to distinguish one person
23 from another. Now, the only time we can't do this is with
24 identical siblings, because identical siblings have identical
25 DNA.

1 Q Okay. So with the exception of identical twins
2 everyone has unique DNA?

3 A Yes.

4 Q When you're asked to examine an item of evidence
5 that's been impounded by a crime scene analyst or a police
6 officer how is it that you go about doing that?

7 A So I'll receive a request asking me to look at a
8 specific item of evidence, and I'm going to look for sources
9 -- areas on that evidence that might contain DNA. It could be
10 something obvious, like blood on a knife or semen on a
11 bedsheet or maybe saliva on a soda can, but we're also asked
12 to try to collect what's referred to as touch DNA. And this
13 is DNA that's left behind from cells when someone's skin comes
14 into contact with an item.

15 Once I've located an area that might contain this
16 DNA I'll either take a cutting or take a swabbing myself to
17 collect the cells on that swab. Then I'll take a cutting, put
18 that into a tube, add various chemicals and heat, and that's
19 going to break open the cells that contains DNA.

20 I then purify the DNA, determine how much DNA is
21 present, and then make copies of the DNA and load it onto an
22 instrument. And this is going to separate all the DNA and
23 give me what's called a DNA profile.

24 And a DNA profile from one person would consist of
25 15 pairs of numbers. It's 15 because we look at 15 different

1 locations in the DNA, and then it's a pair at each of those
2 locations because half was inherited from the person's mother
3 and half was inherited from the person's father.

4 So then I can compare a DNA profile from an item of
5 evidence to a DNA profile from a known individual to see if
6 they match up or not.

7 Q Okay. So in order to make a comparison you have to
8 have a known sample of DNA from the individual that you're
9 trying to make that comparison to?

10 A Yes.

11 Q And is that why buccal swabs are collected
12 oftentimes?

13 A Yes.

14 Q I want to direct your attention to some work that
15 you did for this specific case. In this case you received a
16 forensic request from Travis Ivey with the Homicide Unit;
17 correct?

18 A Yes.

19 Q And he specifically asked you to examine a Taurus
20 PT92C 9 millimeter handgun bearing Serial Number TOE33791? Or
21 I guess that's a TOA33791.

22 A Yes.

23 Q Were you also provided known samples of DNA for two
24 individuals?

25 A Yes, I was.

1 Q Was that Troy White and [Lucas?
2 A Yes.
3 Q And those were buccal swabs?
4 A Yes.
5 MS. MERCER: Permission to approach your clerk, Your
6 Honor.
7 THE COURT: You may.
8 (Pause in the proceedings)
9 MS. MERCER: Permission to publish.
10 THE COURT: You may.
11 BY MS. MERCER:
12 Q Ms. Marschner, I'm publishing on the overhead the
13 label that is attached to Exhibit 96, the box containing the
14 firearm. Do you recognize this label?
15 A Yes.
16 Q And it bears the Event Number 120727-1826?
17 A Yes, it does.
18 Q And that event number was also contained on the
19 forensic request that initiated your work?
20 A Yes.
21 Q Is your name on the chain of custody on this label,
22 as well?
23 A Yes. On the first line I signed my name, as well as
24 my personnel number, 8806, and then -1, because this was the
25 first package that I examined under this event number.

1 Q When you are done looking at an item of evidence you
2 seal it back up with blue tape; correct?

3 A Yes.

4 Q All forensic examiners use blue tape?

5 A Correct.

6 Q Is this where you sealed the bottom of the box back
7 up once you were done looking at it?

8 A Yes. The second from the left I wrote my initials
9 and my personnel number, J8806M.

10 Q And, Ms. Marschner, when you receive a forensic
11 request and there are other requests submitted pertaining to
12 that same item of evidence does the lab prioritize those
13 requests? In other words, if a request comes in for latent
14 and firearm examination, as well as DNA, on a firearm, who's
15 going to get the evidence first?

16 A We have a certain order that we look at items of
17 evidence. And the laboratory always starts out with DNA,
18 because we're concerned with contamination. So if someone
19 were to open it after us that wasn't wearing gloves, a coat,
20 and a mask, they could possibly contaminate that item. So it
21 always starts out with DNA and then moves to latent prints and
22 then moves to firearms after that.

23 Q Why does firearms go last?

24 A Because they're the ones that have to manipulate it
25 the most. And so in firing the firearm, maybe loading and

1 unloading it, they could possibly remove any DNA that was
2 there or wipe off any prints that were there.

3 Q Okay. With regards to the work that you did in this
4 case you indicated that you swab an item of evidence to try to
5 obtain a DNA profile; correct?

6 A Yes.

7 Q With regards to the -- I'm just going to open this
8 up real quick. With regard to the examination of the firearm
9 in this case did you -- how many swabs did you actually use to
10 swab the evidence?

11 A I used a single swab to swab multiple areas on the
12 firearm.

13 Q Which areas did you swab?

14 A So in DNA, because we want to preserve latent
15 prints, we usually avoid any of the smooth areas. And so --
16 and it's also to preserve latent prints, but also because the
17 grooved areas on the firearm would probably cause the most
18 friction, thereby trapping the most cells. And even if you
19 were to wipe over the item, the cells would still be trapped
20 in those groove areas, so they might not be wiped away.

21 And so on this particular item I would have been
22 swabbing the safety buttons, the magazine release, the slide,
23 the grips, the hammer, and the slide lock.

24 Q Okay. Can you to the best of your abilities
25 identify those locations on the firearm.

1 A So like the hammer would be here, the grooved areas
2 on the slide here, on this slide lock button, I believe there
3 was a safety button here, and then also the entire grip area.

4 Q Okay. And you indicated that you use when swab when
5 you do that?

6 A Yes.

7 Q Why is that done?

8 A Because of a study that was done by our sister
9 laboratory up in Washoe County, they determined that using one
10 swab and starting on the smaller areas first, so like those
11 small safety buttons or the slide lock, and then moving to the
12 larger areas, like the slide and the grip, gives the best DNA
13 profile. Because if you were to swab each of those areas
14 separately, you're not going to be able to collect enough DNA
15 to generate a DNA profile for comparison.

16 Q With regard to the swabbing that you did in this
17 case were you actually able to obtain a DNA profile?

18 A Yes.

19 Q And were you able to make a comparison of that
20 profile to the known profiles of Echo White and Troy White?

21 A Yes, I was.

22 Q Did you prepare some sort of a chart that -- I guess
23 it's a alleles chart. Is that what it's called?

24 A Yes.

25 MS. MERCER: Your Honor, permission to publish.

1 THE COURT: Yes.

2 BY MS. MERCER:

3 Q I'm publishing State's Exhibit 82. Is this the
4 allele chart that you prepared in regard to this case?

5 A Yes, it is.

6 Q And can you explain to the jurors what we're looking
7 at here.

8 A So down the left side of the table, those colored
9 blocks, these are the 15 locations that we look at. They all
10 have a different name, so they're -- the blue ones, green
11 ones, yellow ones, and the red ones. Also, the third line
12 from the bottom called amelogenin, times also a sex typing
13 marker that we process in order to determine whether there is
14 a male contributor. So if it was only a female, there would
15 only be an X there, because females only have an X chromosome.
16 If there was a male, it would be an X and a Y, because they
17 have an X and Y chromosome.

18 The next three columns are the DNA profiles from the
19 three items that I examined in this case. The first is the
20 Taurus handgun and then the two known profiles from Troy White
21 and Echo Lucas.

22 Q With regards to the DNA profile that you obtained or
23 that you developed in this case on the firearm was it a
24 mixture profile?

25 A Yes. It's a mixture profile. So if you look at the

1 two profiles on the right, these are single-source profiles
2 from one individual. When you have a DNA mixture profile this
3 is because you have DNA from more than one individual. And so
4 you'll see more than two numbers at each of the locations
5 because there's more DNA than just from one contributor.

6 And then when you have a mixture profile sometimes
7 you can determine whether one person left behind more DNA
8 compared to another person. So if you look at the first line,
9 called D8S1179, at that location there's a 13, a 14, and a 15.
10 And the 15 is in brackets because it is less than 60 percent
11 compared to the other peaks there. And so that 15 would be
12 considered a minor peak, meaning that it was contributed by
13 the minor contributor, and then the other two peaks that are
14 present there would be the major contributor. And so if you
15 have a DNA mixture where you have a major contributor and
16 maybe a minor contributor, sometimes you can pull out that
17 major DNA profile and make a comparison to a known profile
18 just like it was a single-source profile.

19 Q And in this case were you able to determine that
20 there was in fact a major contributor to that mixture profile?

21 A Yes, there was.

22 Q Who was that?

23 A It was consistent with the profile of Troy White.

24 Q And how often would you expect that -- or what is
25 the estimated frequency of that major DNA profile in the

1 general population?

2 A So anytime we make a comparison and we're going to
3 include someone we have to provide a statistic to give the
4 strength of that match. And so for this particular mixture
5 profile the estimated frequency of that major DNA profile is
6 rarer than 1 in 700 billion. And the number's actually larger
7 than that, but in our laboratory we cut it off at 700 billion.
8 And the way that we came up with that number is that the
9 world's population is approximately 7 billion, and so we
10 multiplied that times a hundred. So I'm saying you would only
11 expect to see this once in a hundred times the world's
12 population, assuming that this person doesn't have an
13 identical sibling.

14 Q Okay. And identity was assumed then?

15 A Yes.

16 Q What about the minor contributor to this DNA
17 profile? Were you able to make any determinations with
18 regards to that?

19 A So as far as the minor contributor for this profile
20 I can't make any type of single-source comparison to that
21 minor profile. I can only determine whether somebody could be
22 included as a contributor to that mixture. And in order for
23 me to be able to make that comparison I have to make sure that
24 all of the DNA is being represented at that particular
25 location. And so anywhere that you see an asterisk or a star

1 at those locations I did not use that location in my
2 comparison, because that means that there's additional DNA
3 present below this threshold that we set in our laboratory to
4 give us confidence that all of the DNA is there.

5 So for this particular sample I only made that
6 comparison at three out of the fifteen locations. And so when
7 I compared Echo Lucas's profile to those three locations she
8 couldn't be excluded as a contributor to that mixture.

9 Q So she was included as a possible contributor is
10 another way of phrasing that?

11 A Yes.

12 Q Approximately how often -- well, you estimated that
13 one in five individuals in the general population could be
14 included as a possible contributor; correct?

15 A Yes, to those three locations.

16 Q And with regards to this chart -- I'm just going to
17 zoom in real quick so it's a little bit more clear. So
18 anytime you see the numbers from Troy White over here in this
19 column that indicates that his DNA was present?

20 A Yes.

21 Q And the same is true of Echo Lucas?

22 A So at the three locations that I made my comparison
23 at, which would be the first one, D8, where the numbers are
24 13, 14 and then 15 in the brackets; the first green one, D3,
25 where there's a 14, 15, 16, and 17; and then the fourth green

1 one, D16, where there's an 11, 12, 13.

2 Q You were not asked to examine any other evidence in
3 this case; correct?

4 A No, I was not.

5 MS. MERCER: Court's indulgence.

6 (Pause in the proceedings)

7 MS. MERCER: I'll pass the witness, Your Honor.

8 THE COURT: Cross-examination.

9 MR. LOPEZ-NEGRETTE: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LOPEZ-NEGRETTE:

12 Q Good morning.

13 A Good morning.

14 Q Just to keep it simple, you found Troy's DNA on the
15 gun?

16 A For the major profile, yes.

17 Q And you also found Echo's DNA on the gun?

18 A She couldn't be excluded as a contributor to the
19 mixture, but I wouldn't be able to make as firm a comparison
20 as I could with the major DNA profile.

21 Q So you can't rule her out?

22 A No, I can't.

23 MR. LOPEZ-NEGRETTE: Thank you very much.

24 //

25 //

1 REDIRECT EXAMINATION

2 BY MS. MERCER:

3 Q But you can't say that she did in fact handle that
4 firearm, either; correct?

5 A I can say that the majority of the DNA on there is
6 not hers. It was consistent with Troy White.

7 MS. MERCER: Thank you.

8 THE COURT: Anything else?

9 MR. LOPEZ-NEGRETE: No. Thank you, Your Honor.

10 THE COURT: Thank you, ma'am. We appreciate your
11 time. Have a nice day.

12 Next witness.

13 MR. ROGAN: State calls Anya Lester.

14 May I approach your clerk, Your Honor?

15 THE COURT: Yes.

16 ANYA LESTER, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you. Please be seated. Please
18 state your full name, spelling your first and last name for
19 the record.

20 THE WITNESS: My name is Anya, A-N-Y-A, Lester,
21 L-E-S-T-E-R.

22 THE COURT: And, ma'am, there's water in the
23 pitcher, M&Ms in the dispenser, and if you should need coffee,
24 please let the marshal know.

25 THE WITNESS: Thank you.

1 THE COURT: You may proceed.

2 MR. ROGAN: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. ROGAN:

5 Q Good morning, ma'am. How are you today?

6 A I'm good, thank you.

7 Q Can you tell the jury where you work.

8 A I work for the Las Vegas Metropolitan Police
9 Department Forensic Laboratory, where I'm currently assigned
10 to the Firearms & Toolmarks Analysis Unit.

11 Q So what's your title?

12 A I'm a Forensic Scientist II.

13 Q And what do you do as a forensic at the Metro lab?

14 A I am assigned to the Firearms & Toolmarks Analysis
15 Unit, and I analyze evidence firearms and firearms-related
16 evidence, including microscopic comparisons of evidence
17 projectiles to determine if they came from a suspect firearm.

18 Q And how long have you been doing that?

19 A I've been a forensic scientist since October of
20 2009.

21 Q What's your training and educational background that
22 allows you to perform your duties?

23 A I have a Bachelor of Science degree in forensic
24 science from Michigan State University, and I was hired by
25 Metro as a forensic laboratory aide in December of 2008.

1 I promoted in October of 2009 into the forensic
2 scientist field, and I began a training program in the area of
3 firearms and toolmarks analysis. I completed approximately
4 2500 hours of training, which included things such as firearm
5 and ammunition manufacturers tours, also various manufacturers
6 armors courses, and a series of in-house-training cases under
7 the experience of an experienced examiner who gave me cases
8 where I actually fired guns, performed microscopic
9 comparisons, did -- wrote reports just as if those were real
10 cases. And at the end of that training I completed a series
11 of comprehensive proficiency exams, which allowed me to begin
12 my own independent casework starting in the spring of 2011,
13 and since that time I've completed over 700 cases in the field
14 of firearms and toolmarks.

15 Q Thank you. Did you go to college, ma'am?

16 A Yes, I did.

17 Q Okay. What degree did you obtain?

18 A I have a Bachelor of Science degree in forensic
19 science.

20 Q Thank you. As part of your duties in the Metro
21 Crime Lab do you have to engage in continuing education in
22 your field?

23 A It's encouraged strongly, yes.

24 Q Do you do that?

25 A Yes, I do.

1 Q Are you a member of any professional organization in
2 the fields of firearms or toolmarks identification?

3 A I am a member of the Association of Firearm and
4 Toolmark Examiners.

5 Q You mentioned previously that you've performed about
6 500 -- or, I'm sorry, 700 examinations of firemarks [sic] or
7 toolmarks; correct?

8 A Since I was released to perform independent casework
9 I have completed over 700 independent cases, that is correct.

10 Q So you did more when you were under the supervision
11 of an experienced firearms or toolmarks identification expert?

12 A Yes. I did those as my training cases.

13 Q Okay. Have you testified here in the Eighth
14 Judicial District Court regarding firearms analysis?

15 A Yes, I have.

16 Q Approximately how many times?

17 A Seven times previously in District. This is my
18 eighth.

19 Q What about Justice Court?

20 A And one time in Justice Court.

21 Q Thank you, ma'am.

22 As part of your employment in 2013 did you examine
23 and conduct testing on a firearm recovered as evidence in a
24 homicide investigation that involved the defendant Troy White?

25 A Yes, I did.

1 Q I'm going to show you an exhibit. If you could look
2 on your monitor, this is State's Exhibit 96. Do you see the
3 evidence sticker on your screen, ma'am?

4 A Yes, I do.

5 Q And based upon your review of the evidence sticker
6 does this appear to be the box containing the firearm that you
7 analyzed as part of your jobs and duties?

8 A Yes, it does.

9 Q And how do you know that?

10 A My name is written right here under the chain of
11 custody, along with my personnel number and my package number
12 and the date and time that I sealed the box.

13 Q And can you show us where you sealed the box, if you
14 can.

15 A On the blue tape -- does it come up here -- here are
16 my initials.

17 Q At the time you had a different name than Lester; is
18 that correct?

19 A Yes. I did get married in 2013.

20 Q So that's why it says "JS," rather than -- I'm
21 sorry, "AS," rather than "AL"?

22 A Yes. And it says "A. Sancote" under the chain of
23 custody, as well.

24 Q Thank you.

25 When you received the firearm had any other forensic

1 testing already been performed on it?

2 A According to the package, the firearm had been
3 previously examined.

4 Q Let me show you the contents of Exhibit 96, which is
5 marked as Exhibit 96A. Does this appear to be a firearm that
6 you examined?

7 A It does, yes.

8 Q And what kind of firearm is this?

9 A This is a Taurus pistol. It's a Model PT92C
10 9 millimeter Luger caliber.

11 Q Is it a handgun?

12 A Yes.

13 Q What's a handgun?

14 A A gun that's designed to be shot from the hand.

15 Q All right. What's the difference between a
16 semiautomatic and an automatic and a pistol?

17 A A semiautomatic --

18 Q I'm sorry. Revolver. Sorry.

19 A What was the question?

20 Q What's the difference between an automatic, a
21 semiautomatic and a revolver?

22 A A semiautomatic firearm is a repeating-action
23 firearm. It does require one pull of the trigger for each
24 shot to be fired. And when you pull the trigger and that shot
25 is fired part of the cycling process performs some action,

1 usually it's the loading and unloading to ready the firearm
2 for the next shot.

3 That's different from an automatic firearm which is
4 where when you actually hold down the trigger the firearm
5 continually repeatedly fires until it's out of ammunition.

6 A revolver is a different type of handgun that has a
7 cylinder, and instead of the ammunition being in a magazine
8 and it being continually loaded into the chamber, that
9 cylinder has several chambers. And when you either cock the
10 hammer or pull the trigger that cylinder rotates and that
11 lines up the next chamber with the next cartridge in line to
12 the barrel in order for it to be fired.

13 Q And what kind of firearm is Exhibit 96A?

14 A It's a semiautomatic.

15 Q As part of your examination and testing did you
16 determine whether Exhibit 96A was operable?

17 A Yes, I did.

18 Q And what does "operable" mean?

19 A That it works. When you actually pull the trigger
20 that it fires and functions and that there are no noted
21 malfunctions.

22 Q And how did you determine whether Exhibit 96A was in
23 fact operable?

24 A I do a full firearms examination when I first
25 receive a firearm, and it starts with me just looking over the

1 gun. I look at the make, model, serial number, measure the
2 length, the overall length, I measure the barrel length, I
3 check the safeties to see if they're functional. If there's a
4 magazine, I look at that to see if it fits in the firearm, and
5 I measure the amount of weight it takes to pull the trigger.

6 After I've done that, I've basically kind of
7 convinced myself that it's safe to fire, what I do is I take
8 ammunition and I load it up and I go into our firing range and
9 I actually test fire the gun, shoot it.

10 Q And once you performed that physical examination and
11 the test fire did you determine whether this is an actual
12 operable firearm?

13 A Yes, I did determine that it is operational.

14 Q Thank you, ma'am.

15 MS. MERCER: May I approach your clerk, Your Honor?

16 THE COURT: You may.

17 BY MR. ROGAN:

18 Q As part of the same investigation did you examine
19 two magazines that were provided to you because they had been
20 impounded as evidence?

21 A Yes, I did.

22 Q Can you tell me what a magazine is.

23 A A magazine, it's -- sometimes people mistakenly
24 refer to it as a clip, but it's a source of ammunition. It's
25 where you actually take the cartridges and you can load them

1 in, and then you load that magazine into the firearm, and that
2 is your source of ammunition for shooting.

3 Q You said cartridges. Can you tell me -- can you
4 tell the jury what a cartridge is.

5 A A cartridge is a single unit of ammunition. Often
6 people think, oh, I load bullets into a gun. But you don't
7 just load the bullet, you load the whole cartridge. What it
8 is, there's the bullet -- if it's a blank, it wouldn't have a
9 bullet, but some type of projectile that's contained inside a
10 cartridge case, and then inside there is powder, gunpowder.
11 On the back end there's what we call the primer, which is the
12 spot where when you pull the trigger and the firing pin or the
13 striker goes forward and strikes it it creates a spark. And
14 that's what lights that primer on fire and allows gas to be
15 created which sends the bullet down the barrel and eventually
16 out of the muzzle of the firearm.

17 Q And what happens to what's known as the cartridge
18 casing after a bullet is expelled from the barrel of the
19 firearm?

20 A I've got a semiautomatic, like I said. For the
21 cycle of fire what happens is when you pull the trigger some
22 part of that detonation process performs some of that cycle.
23 So when you pull the trigger and the firing pin hits that
24 primer you get the spark, it lights the powder on fire, the
25 gas is created, the bullet's going forward. For every action

1 you have an equal and opposite reaction. So from that bullet
2 going forward that cartridge case is being propelled
3 backwards. It goes backwards against the rear of the slide,
4 and it's hooked on a piece of the firearm which is called the
5 extractor. When that slide goes back it pulls it out of the
6 chamber, then you have an ejector which when it hits that it
7 kicks it out of the firearm. And then when the slide goes
8 forward it can pick up the next cartridge from that magazine
9 and load it into the chamber.

10 Q And all of this is done automatically after -- on a
11 semiautomatic after that trigger is pulled?

12 A Yes, that's correct.

13 Q I'm going to show you a package that's been marked
14 as State's Exhibit 97A. And in the upper right-hand corner is
15 there an event number that's identified on Exhibit 97A?

16 A Yes, there is.

17 Q And does that event number relate to the homicide
18 investigation involving the defendant, Troy White?

19 A Yes, it does.

20 Q It also indicates -- there's writing on there that
21 says AES4-6.

22 A Yes. That's my initials, AES, 4 is my Package 4,
23 and 6 is Item 6.

24 Q Do you know what is contained in this Exhibit 97A?

25 A Well, I don't -- I don't know what's in the

1 envelope, but I know that Item 6 I determined was a magazine.

2 Q I'm going to open this up, all right?

3 A Uh-huh.

4 Q Can you tell us what has just come out of the
5 evidence envelope marked 97A.

6 A That's a magazine.

7 Q And is it a magazine that you examined as part of
8 this investigation?

9 A Yes, that's correct.

10 Q Did you know -- did you identify the capacity of
11 Exhibit -- of the magazine that's been marked as Exhibit 97A?

12 A Which is Item 6?

13 Q Item 6.

14 A Yes. It had a capacity of 16 cartridges.

15 Q And when you received the magazine for testing were
16 there any cartridges inside the magazine?

17 A Not inside the magazine, no.

18 Q Were there any cartridges inside the package that
19 you received?

20 A There were, yes.

21 Q And how many?

22 A There were 12.

23 Q How did you determine the capacity of this magazine?

24 A I tested it with dummy rounds. They're basically
25 the same size, caliber as would be a live round; they just

1 don't have the primer, and they don't have that powder. So
2 it's just a case with a projectile. And I physically take the
3 magazine and load them in until I can't load in any more.

4 Q And this one had a capacity for 16?

5 A When I checked it, yes.

6 Q Thank you, ma'am.

7 Going to ask you the same questions for Exhibit 97B,
8 all right?

9 A Yes.

10 Q Did you -- showing you State's Exhibit 97B, did you
11 mark this evidence envelope with the letters AES and the
12 numbers 4-7 in the upper right-hand corner?

13 A Yes, I did.

14 Q And if you need to refer to your report, that's
15 fine. Do you know what may be contained within State's
16 Exhibit 97B based upon your writing?

17 A That item was also a magazine.

18 Q Showing you the contents of State's Exhibit 97B,
19 does this appear to be the second magazine that you examined
20 in the course of your investigation?

21 A Yes, it does.

22 Q Did you determine the capacity of this magazine?

23 A I checked the capacity of this magazine and
24 determined it to be 13 cartridges.

25 Q Are sometimes magazines marked with the numbers of

1 cartridges that could fit inside the magazine?

2 A Yes, they are.

3 Q Is it possible that the number is not accurate?

4 A It can be possible. Usually if the magazine is
5 older and the spring has weakened or if you maybe just jam one
6 really hard, you could maybe get more in there than what's
7 actually marked on the magazine, yes.

8 Q Thank you. And do you perform the same testing to
9 determine whether this magazine had a capacity of 13 as you
10 did with the prior exhibit, 96B?

11 A Yes. With the dummy rounds. And I just loaded
12 those into the magazines and counted them.

13 Q I'm sorry. I meant 97A. Thank you.

14 Did you also -- were you also asked to take a look
15 at some expended bullets as part of your examination?

16 A Yes, I was.

17 Q How many?

18 A I was asked to look at two bullets.

19 Q And what is meant by "expended bullets"?

20 A That it's been fired.

21 MR. ROGAN: Court's indulgence. May I approach your
22 clerk?

23 THE COURT: You may.

24 BY MR. ROGAN:

25 Q And when you received these bullets for examination

1 what kind of testing would you perform on them, or analysis
2 would you perform on them?

3 A First I just do a visual exam, look at it, start
4 with sort of the overall things that I can just glean from
5 looking at them, such as determined possibly the caliber. I
6 do that by measuring the diameter of the base and taking the
7 weight of the bullet. If it needs to be cleaned, I would
8 clean it if it has any debris on it.

9 And I would start with looking at the class of it,
10 which is the number of the rifling characteristics that's on
11 it. A gun, a barrel has a number of lands and grooves inside
12 it, which is spiral, like a candy cane. And what that does is
13 when the bullet goes down the barrel it can spin it and it
14 imparts a stability when it exits the muzzle of the barrel.
15 And those lands and grooves, they make impressions on the
16 bullet. And I count the number of those, look at the
17 direction of the twist, and measure the width of those, as
18 well.

19 Q And is the purpose of this examination in order to
20 determine whether a certain bullet has been expelled by a
21 certain gun?

22 A And then that would be during my microscopic exam.
23 After I've examined all of those class characteristics, those
24 things, you know, that are put there by the manufacturer, then
25 I do a microscopic exam to look at the individual microscopic

1 characteristics that are on there. And to determine if they
2 came from a certain firearm I'll take the test-fired bullets
3 that I actually fired from that gun and I put it together
4 under the microscope -- I have what's called a comparison
5 microscope. It's like two microscopes hooked together with an
6 optical bridge. It's sort of like mirrors and lenses that
7 allow me to look through optics and see two things side by
8 side together at the same time.

9 So if I take the test-fire from the gun that I
10 actually fired and put that on one side and I take the unknown
11 bullet to the other side, I microscopically compare them to
12 see if I have sufficient agreement in those individual marks
13 so I can determine whether or not that bullet was fired also
14 by that firearm.

15 Q So, in other words, you took a test-fire from the
16 gun that you examined in this case and you took the bullet
17 from that and you compared it to the bullet that may have been
18 recovered at a crime scene.

19 A That's correct.

20 Q And you did that for two different bullets?

21 A On this case I did, yes.

22 Q Do you know where they were recovered?

23 A All I know is what was written on the package. I
24 didn't impound them, so I just know what --

25 Q So one was identified to you as being recovered from

1 the crime scene; correct?

2 A Can I refer to my notes?

3 Q Yes, ma'am.

4 A One was identified as being from -- can I read the
5 address?

6 MR. ROGAN: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 MR. ROGAN: Thank you.

9 BY MR. ROGAN:

10 Q What page are you referring to, ma'am?

11 A Page 2. And then the second one was here.

12 Q Okay. So referring to your notes you found one was
13 recovered from 325 Altimira Road; correct?

14 A Yes, that's correct.

15 Q And the other one was recovered from a body during
16 an autopsy?

17 A Yes, that's correct.

18 Q All right. Were you able -- after performing your
19 comparison under your compound microscope were you able to
20 identify whether those two bullets were shot from the firearm
21 that you examined?

22 A I determined that my conclusion was inconclusive,
23 that due to damage and a lack of microscopic marks on the
24 evidence bullets that I could not determine whether or not
25 they were actually fired from that firearm.

1 Q Did they have similar characteristics, those two
2 bullets, to your test-fire?

3 A Yes, they had similar general rifling
4 characteristics, which is to say same caliber, same number of
5 lands and grooves, same direction of twist, and same width in
6 the land and groove impressions as the test-fired ones did.

7 Q But just not enough markings or characteristics for
8 you to conclusively say that these bullets came from that gun?

9 A Yes, that's correct.

10 Q Thank you.

11 And finally I want to talk you about some cartridge
12 casings. Were asked to examine some cartridge casings during
13 your investigation?

14 A Yes, I was.

15 Q How many?

16 A Three.

17 Q And were those also identified to you as being
18 recovered 325 Altimira Road?

19 A If I may refer to my notes.

20 Q Yes, ma'am.

21 A Yes, they were.

22 Q Is it generally -- are you able as part of your
23 duties to determine whether a cartridge casing is fired from
24 -- or expelled from a specific firearm?

25 A Well, I have a range of conclusions. I can either

1 ID it, eliminate it, or it's inconclusive. If I have
2 agreement in all of those class characteristics and sufficient
3 agreement in those individual microscopic characteristics,
4 then I make a conclusion that that was fired from that
5 firearm.

6 If I have significant disagreement, then I can say
7 that it was eliminated, that that particular -- that
8 particular cartridge case was not fired from that firearm.

9 If I can't tell, if there's maybe just not enough
10 markings due to damage or just perhaps that particular brand
11 of ammunition didn't mark well or if there's some damage to
12 it, then that would be a conclusion of inconclusive. But
13 those are my three options that I would make on a piece of
14 evidence.

15 Q And just like with the bullets did you take a test-
16 fired cartridge and compare that test-fired cartridge to the
17 three cartridges uncovered at -- or recovered at 325 Altimira?

18 A Yes. I took the cartridge cases, the test-fired
19 cartridge cases from the firearm, which I test-fired myself.
20 And, actually first, before I take the test-fired one and
21 compare it to the unknown, I put the two test-fired ones side
22 by side on my microscope and look at the marks and see how
23 much agreement that there is, how many markings there are,
24 just how well in general it marks. And once I've determined
25 that there is sufficient marks on those for me to perform the

1 comparison to the unknown then I take the unknown, put it on
2 the other side of my microscope, and perform that comparison
3 microscopically of the test-fire to the unknown.

4 Q I'm going to show you State's Exhibit Number 80. Is
5 this what we're looking at when you mentioned before that you
6 can visualize or see through the compound microscope two
7 cartridge casings simultaneously?

8 A Yes. This appears to be a photo taken under a
9 microscope. And right down the center you'll see there's a
10 center line, and that's the primer area of one on the left
11 side to the other on the right side.

12 Q Okay. So what's the primer area?

13 A On that cartridge case, like I was talking about
14 earlier, you have that primer compound. It's a chemical
15 compound. And then, like I said, when the firing pin or the
16 striker hits that, that percussion makes a spark. And that's
17 what actually ignites the powder inside the case. So that
18 area that you see -- you see these are kind of round, this
19 round area, that contains that primer compound.

20 Q And due to the action of firing a weapon will there
21 be markings left on the primer area?

22 A Yes. When that firing pin goes forward and hits
23 that primer you'll actually get markings transferred from the
24 firing pin into that primer. And then also, like I talked
25 about, when the gases expand and the bullet propels down the

1 barrel and the cartridge case propels backwards against the
2 rear of the slide there can be marks from the rear of the
3 slide that are imparted on the area, as well, and we call
4 those breech face marks.

5 Q And so could you using this exhibit give us an
6 example of similar markings that you see between the two
7 different primer areas.

8 A This one's kind of hard to see, but --

9 Q I'm sorry. I can zoom if you need.

10 A If you just -- even just the general shape, if you
11 look here and then here, you just kind of look at the general
12 overall shape looks similar there.

13 Q If I can, I'll just zoom in on the left-hand side
14 here. Do you see a defect in the left-hand side where my
15 finger is pointing --

16 A Yes.

17 Q -- at approximate 7:00 p.m. on the primer area on
18 the left-hand side?

19 A Yes.

20 Q And does that match the primer area on the right-
21 hand side?

22 A Yes. That was the mark that was referring to there.

23 Q And that would be indicative to you of what?

24 A It's just one piece of the entire puzzle, but it's
25 -- it's when you start looking at these overall this shape is

1 the same as this shape. I'm not looking at this is a circle
2 and this is a square. I'm going, okay, these are both
3 circular but they both have a defect in this particular area,
4 there's not a difference there. So then I can go on and look
5 at more of the marks and see if those match up, as well.

6 Q Is that what you called agreement, when they look
7 the same?

8 A Yes.

9 Q All right. Showing you State's Exhibit Number 81,
10 do you also examine the sides of cartridge casings in order to
11 see if they have similar markings?

12 A Yes. In addition to the firing pin marks, the
13 breech face marks that I've talked about other parts of the
14 gun can also impart marks, as well. I talked about the
15 extractor which pulls that cartridge case from the chamber,
16 the ejector which hits it and ejects it from the chamber, but
17 along the sides there can also be what we call chamber marks,
18 and those are from the cartridge feeding into the chamber or
19 being extracted from the chamber. As it scrapes along, marks
20 can be formed there. Also during the firing process, because
21 a cartridge case is brass, when the gases expand the cartridge
22 case -- the sides of it can expand against the inside of the
23 chamber and marks from the chamber are imparted to the sides,
24 as well.

25 Q So using the exhibit that you see on the screen can

1 you identify any particular markings that you would say have
2 agreement?

3 A Again, here if you look straight down the middle,
4 this is a dividing line from two sides of a microscope. And
5 if you look straight across, you see a line here, here.

6 Q Thank you.

7 And after you performed your analysis of all three
8 cartridge casings against your test-fire were you able to come
9 to a conclusion about whether those cartridge casings were
10 expelled by that firearm?

11 A Yes. I was able to determine a conclusion.

12 Q And what was the conclusion?

13 A I determined that those three cartridge cases were
14 fired by the submitted Taurus pistol.

15 Q Thank you. Several more questions for you, ma'am.

16 With regard to the firearm you mentioned before what
17 -- trigger pull. What is trigger pull?

18 A It's the amount of weight that's required to
19 actually pull the trigger for the firearm to fire. How much
20 weight's actually needed to make it fire in pounds we measure.

21 Q Is it fair to say that firearms can range in how
22 much trigger pull they have?

23 A Yes. Absolutely.

24 Q So some are easier to pull, some are lighter, and
25 some are heavier?

1 A Yes, that's correct.

2 Q And your conclusion regarding this particular
3 weapon, what was it?

4 A I measured two together pulls. There was a single-
5 action trigger pull of 4-1/2 to 5 pounds, and the double-
6 action trigger pull of 8-3/4 to 9-1/4 pounds.

7 Q So what -- for the edification of the jury, what is
8 a single-action pull?

9 A Single action is when you pull the trigger and only
10 one function is performed. Firearms may need to be cocked
11 before you can actually pull the trigger, and that's what
12 would be single action. If you manually cock the firearm,
13 either by pulling the hammer back or by cycling the slide so
14 that it's ready to fire, when you pull the together only one
15 action is performed, the hammer or striker falls. That's a
16 single action.

17 Q What's double action?

18 A Double action is where when you pull the trigger
19 there's two actions performed. So when you pull the trigger,
20 you pull it, the hammer cocks and goes forward. So two things
21 are being performed when you pull the trigger. It cocks it
22 and fires.

23 Q I'm showing you again Exhibit 96A. Can you show us
24 where the hammer would be.

25 A Uh-huh. It's this part right here.

1 Q And you said you performed a trigger pull test on
2 both single action and double action. Does that mean that
3 this firearm can be used in both ways?

4 A Yes, it can.

5 Q Would you characterize -- how would you characterize
6 your conclusions about the trigger pull? Is it easy to pull,
7 normal, or difficult to pull that trigger?

8 A The double action's a little greater than the
9 single, obviously. It's performing two actions, so it's a
10 little more difficult. But as far as for the range of
11 firearms my conclusions were that this is about average.

12 Q So if this gun were being used in single action,
13 what would a person have to do to fire this weapon?

14 A They would have to pull the trigger, and it would
15 have to be about 4-1/2 to 5 pounds of pressure.

16 Q And what if they were using it as a double-action
17 firearm?

18 A Again, the trigger would need to be pulled, and it
19 would need to be 8-3/4 to 9-1/4 pounds of pressure.

20 Q Again, with the single action would he have to have
21 pulled that hammer back first?

22 A Either pulled it back or cycled the slide to cock
23 it.

24 MR. ROGAN: Court's indulgence.

25 //

1 BY MR. ROGAN:
2 Q How many safeties does this firearm have?
3 A It has -- if I may refer to my notes.
4 Q Yes, ma'am.
5 A It has one external lever safety. It's
6 ambidextrous. It's on both side of the firearm.
7 Q Just one safety?
8 A It's one external safety, yes.
9 Q Can you identify that external safety here.
10 A It's this lever.
11 Q Okay. What is this item here that I'm pointing to
12 in the front? This little button.
13 A This button?
14 Q Yes.
15 A Well, I don't know. Oh. I think that's --
16 Q Do you know?
17 A I'm sorry. I don't know from the picture.
18 Q Okay. How many -- you mentioned external safety.
19 Does that mean that it has to be turned off by the user of the
20 firearm before it can be fired?
21 A It -- yes, that's correct.
22 Q Are there any internal safeties on this weapon?
23 A There is also a firing pin safety, a firing pin
24 block.
25 Q What is that?

1 A What that is is that the trigger actually has to be
2 pulled the whole way back so that -- there's actually a block,
3 so -- because we talked about the single action, double
4 action. If the hammer falls, if you just de-cock it and the
5 hammer falls, you don't want it to go off unless you're
6 actually pulling the trigger. So there's a trigger bar. When
7 you pull the trigger it actuates a small piece, which is a
8 block, which moves out of the way and allows the firing pin to
9 go forward.

10 Q So the user would have to disable the external
11 safety. And if it's a single action, pull back that hammer
12 and then pull the trigger. That firing pin block, would the
13 user have to do anything with that to disable that before
14 firing?

15 A No. That's a passive internal safety, and it just
16 moves out of the way when the trigger's pulled.

17 MR. ROGAN: Okay. Thank you.

18 Pass the witness, Your Honor.

19 THE COURT: Cross-examination.

20 MR. LOPEZ-NEGRETTE: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. LOPEZ-NEGRETTE:

23 Q Good morning.

24 A Good morning.

25 Q Just to clarify, you examined three casings for this

1 particular firearm; is that right?

2 A Yes, that's correct.

3 Q Okay. And the earlier you were explaining the
4 difference between semiautomatic and other types of handguns;
5 is that right?

6 A Yes, that's correct.

7 Q And this is a semiautomatic pistol or handgun?

8 A Yes, it is.

9 Q Okay. And so that means that you can fire the
10 weapon just by pulling on the trigger if it's ready?

11 A Yes, that's correct.

12 Q Okay. And that's what single action means; correct?

13 A As long as it's been manually cocked, either pulled
14 the hammer back or cocked by moving the slide back, when you
15 pull the trigger single action is that one action, the hammer
16 falling forward to fire the firearm.

17 Q And you can fire it again by pulling again on the
18 trigger. That's what semiautomatic means?

19 A Yeah, as --

20 Q It loads up --

21 A Sorry.

22 Q Go ahead.

23 A As long as there's still ammunition in the magazine,
24 each pull of the trigger will fire another round, yes.

25 Q Okay. Great. And you conducted a pretty thorough

1 examination of this firearm; correct?

2 A I would say so. I conduct a normal firearms exam.

3 Q Okay. And you went through it and you fired it?

4 A Yes, I did.

5 Q All right. And you encountered no mechanical
6 problems firing it?

7 A That's correct.

8 Q All right. There were no misfires?

9 A There were not.

10 Q So you pulled the trigger and it fired correctly?

11 A That's correct.

12 Q And so the gun worked.

13 A Yes, it did.

14 Q Okay. And I wanted to ask you, you're talking about
15 Item 6 and Item 7, the two magazine clips. If you could just
16 -- I'm not sure if the prosecutor asked you. Regarding Item 7
17 you said that there were -- there was a capacity of 13 bullets
18 in that magazine; correct?

19 A Let me just check. Number 7?

20 Q Yes. 97B. That's the court exhibit.

21 A Sure. That Item 7 had the capacity when I checked
22 it of 13 cartridges.

23 Q Thirteen cartridges. Regarding Item Number 6 you
24 also testified that there were 12 bullets related to that
25 item?

1 A There were 12 cartridges --

2 Q Cartridges.

3 A -- that were packaged in the same package with that

4 magazine when I received it.

5 Q Okay. And how many cartridges were packaged with

6 the Item Number 7?

7 A There were nine.

8 Q Nine bullets. Okay.

9 A Nine cartridges.

10 Q Okay. Thank you very much.

11 If there's a round in the gun and you take off the

12 safety and you fire it, will it fire?

13 A This particular gun?

14 Q Yes.

15 A If there is a round in the chamber and you take off

16 the safety and pull the trigger, it will fire.

17 Q And just to clarify, you need to cock it in between

18 after that fired to shoot again?

19 A Because the gun's a single-action/double-action like

20 we talked about, the first round, it does have to be -- you

21 know -- well, actually it doesn't, because it's single-

22 action/double-action. So you don't even need to cock it. You

23 just pull it and the first one, even if the hammer's down,

24 it'll perform that double action, backwards, forwards, and

25 fire. Then after that, because you have that bullet going

1 forward when it fires and you have the pressures and the
2 cartridge case going backwards and the slide cycling and the
3 cartridge case being extracted and ejected and the next one
4 being picked up from the magazine and pushed forward, that
5 action cocks the hammer. So each successive shot will be
6 single action.

7 Q So if the safety's off, you just have to pull the
8 trigger?

9 A That's correct.

10 MR. LOPEZ-NEGRETTE: All right. Thank you very much.

11 THE COURT: Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. ROGAN:

14 Q How do you actually perform the weight required to
15 depress a trigger?

16 A Our trigger pull exam we do with a series of hanging
17 weights. And we take the firearm, make sure it's not loaded,
18 and we have -- it's just a hook and a bar that hangs down, and
19 there's weights on the bottom. So what I do is just first, if
20 I'm doing the double action, I don't need to have it cocked, I
21 hold the firearm 90 degrees, muzzle facing up, hang that hook
22 on the trigger, and then I put the weights on. And what I do
23 is to get my range is I record the last weight that I put on
24 where it does not actuate the trigger, and then I perform --
25 or I record the next weight when it does actuate the trigger.

1 And then I know that my trigger pull is somewhere in between
2 those two. That's why I always report it out as a range.

3 And then for the single action I do the exact same
4 thing, but I manually cock the hammer first, and then I put
5 the hook on with the rod and put the weights on and measure
6 until it actually actuates the trigger.

7 Q So if you're using the weapon in double action,
8 meaning the hammer is not -- or slide is not manually cocked
9 back, you said your range was 8-3/4 pounds to 9-1/2 pounds;
10 correct?

11 A Yes, that's correct.

12 Q So the last time that that weight is put on there,
13 the last weight is 8-3/4 where it has not depressed the
14 trigger.

15 A Correct.

16 Q And at 9-1/2 pounds it's depressed?

17 A That's correct.

18 Q So it takes that much weight, that much force in
19 order to pull the trigger?

20 A Yes, that's correct.

21 Q And single action is somewhat less?

22 A Yes, that's correct.

23 MR. ROGAN: Thank you.

24 Nothing further.

25 THE COURT: Any further cross-examination?

1 MR. LOPEZ-NEGRETE: No, thank you, Your Honor.
2 THE COURT: Thank you, ma'am. We appreciate your --
3 wait. I have a question from the jurors.
4 Counsel, can you approach.
5 (Bench conference)
6 THE COURT: Counsel?
7 MR. LOPEZ-NEGRETE: Answer the question.
8 THE COURT: It's a very good question.
9 (End of bench conference)
10 THE COURT: Are you ready?
11 THE WITNESS: Yes.
12 THE COURT: Would a bullet from the same make and
13 model have the same rifling?
14 THE WITNESS: I would need more clarification on the
15 question to actually answer. If there were two guns of the
16 same make and model, a manufacturer may make them with the
17 same rifling, but they may not. Depends on the manufacturer,
18 on the firearm.
19 THE COURT: Any followup, counsel?
20 MR. ROGAN: Court's indulgence.
21 (Pause in the proceedings)
22 FURTHER REDIRECT EXAMINATION
23 BY MR. ROGAN:
24 Q So just for purposes of clarification with regard to
25 that last question, you determined that the casings were

1 expelled from that firearm based upon cartridge-to-cartridge
2 examination, meaning test-fired cartridge versus the
3 cartridges recovered at the scene?

4 A I took the test-fired cartridge cases that I
5 actually received from me test-firing that firearm, and I took
6 that and microscopically compared it to the ones that I got in
7 from the evidence. And based on that microscopic examination,
8 looking at the marks like we had on the screen, I made a
9 determination of identification that those three cartridge
10 cases were fired from that firearm.

11 Q And guns will actually leave unique markings that
12 would not be on the same model and make of a different
13 firearm; correct?

14 A Yes, that's correct. The manufacturer places
15 certain markings there. Like we were talking about with the
16 rifling, the number of grooves that are cut into that barrel
17 might be six, and they might make six in all their barrels.
18 So all of these bullets are going to have six grooves.

19 But I'm going down further than that. That's just
20 the class. That's just what the manufacturer put there.
21 That's -- those numbers, that's things like caliber, things
22 like the overall shape of the firing pin impression. When I
23 look under the microscope I'm looking at those individual
24 microscopic marks, and those are usually placed there during
25 the motion like we talked about. And those individual

1 microscopic marks, those are individual per each firearm.

2 MR. ROGAN: Thank you.

3 THE COURT: Anything further on cross?

4 MR. LOPEZ-NEGRETTE: Yes, Your Honor. Just briefly.

5 RECROSS-EXAMINATION

6 BY MR. LOPEZ-NEGRETTE:

7 Q Showing you State's 80, you talked about this just
8 recently. So the following up on that question, would the
9 same make and model have those particular defects on every
10 bullet fired?

11 A Possibly, possibly not.

12 MR. LOPEZ-NEGRETTE: Thank you.

13 THE COURT: Counsel, I have a question from the
14 jurors.

15 (Bench conference)

16 THE COURT: A good followup question.

17 MR. ROGAN: Sure.

18 (End of bench conference)

19 THE COURT: Is Taurus known for using the same
20 rifling in their weapons?

21 THE WITNESS: The same number? I would -- in my
22 experience it has been that if you have the same make and
23 model of a particular firearm, it'll have the same number of
24 lands and grooves and the same direction of twist.

25 However, a manufacturer can change that. And I

1 don't know for sure if Taurus made other -- made this
2 particular make and model with -- if they were all the same or
3 if they were different with the number of riflings. I don't
4 know that.

5 THE COURT: Thank you.

6 Any followup?

7 FURTHER REDIRECT EXAMINATION

8 BY MR. ROGAN:

9 Q Those scratches, I guess I would call them, those
10 markings on the side of the cartridge casings that we saw in
11 Exhibit 81, those are not rifling characteristics; correct?

12 A No. Those were the chamber marks, and those were,
13 like I've described, when the cartridge either feeds into or
14 extracts from the chamber, when it scrapes up against the
15 side, or else when -- during the firing process when the gases
16 expand and the cartridge case expands against the side of the
17 chamber, those marks that we saw on there, those are what we
18 call chamber marks.

19 Q And those are unique to a particular firearm; right?

20 A Yes.

21 Q All right. So one Taurus model wouldn't have the
22 same markings on the side of the cartridge casings as another?

23 A Correct. Those are imparted there accidentally during
24 the manufacturing process. It's not something that Taurus
25 designed that particular firearm to have.

1 Q And is that how you were able to conclusively
2 determine that those cartridge casings came from that firearm
3 that's been marked as Exhibit 96A?

4 A Yes. In order for me to make a conclusion of
5 identification I need to have matching in all of the class
6 characteristics and sufficient agreement in the individual
7 microscopic characteristics for me to make that determination.

8 MR. ROGAN: Nothing from the State.

9 MR. LOPEZ-NEGRETTE: Nothing from the defense. Thank
10 you.

11 THE COURT: Any more questions from the jury?

12 Thank you, ma'am. We appreciate your time. Have a
13 very nice afternoon.

14 Next witness. It's seven minutes before lunch. How
15 long is your next witness?

16 MS. MERCER: Lengthy.

17 THE COURT: Want to break now?

18 Ladies and gentlemen, we're going to take our lunch
19 recess a few minutes early. You're admonished not to talk or
20 converse among yourselves or with anyone else on any subject
21 connected with this trial, or read, watch, or listen to any
22 report of or commentary on the trial by any person connected
23 with this trial or by any medium of information, including,
24 without limitation, newspapers, television, Internet, or
25 radio. You're further admonished not to form or express any

1 opinion on any subject connected with this trial until the
2 case is finally submitted to you.

3 We'll see you at 1:15 outside Courtroom Number 14A.
4 Have a nice lunch.

5 (Court recessed at 11:52 a.m., until 1:17 p.m.)

6 (Jury is not present)

7 THE COURT: All right. Anything outside the
8 presence?

9 MR. COFFEE: My co-counsel got a jury summons for
10 tomorrow. He's going to contact them and tell him in he's in
11 a trial.

12 THE COURT: Would you like me to have my assistant
13 take care of it?

14 MR. COFFEE: That would be wonderful.

15 THE COURT: It's much faster.

16 MR. COFFEE: Thanks.

17 MR. LOPEZ-NEGRETTE: Thank you, Your Honor.

18 THE COURT: And how long would you like to be
19 rescheduled for?

20 MR. LOPEZ-NEGRETTE: We'll be done in a week. So
21 next month or whatever.

22 THE COURT: Okay. Have you filled out a
23 questionnaire for this yet?

24 MR. LOPEZ-NEGRETTE: No.

25 THE COURT: Okay. Those are the two questions I

1 have to ask.

2 MR. LOPEZ-NEGRETTE: Okay.

3 THE COURT: Mr. Coffee, can you give it to my
4 marshal.

5 MR. LOPEZ-NEGRETTE: I'll get the jury summons and
6 I'll give it to him later.

7 THE COURT: Okay. Because we need that or at least
8 your jury ID number.

9 MR. LOPEZ-NEGRETTE: I will get that to him.

10 THE COURT: All right. Go get my jurors.

11 (Pause in the proceedings)

12 (Jurors reconvened at 1:20 p.m.)

13 THE COURT: You can be seated. Counsel stipulate
14 the presence of the jury?

15 MS. MERCER: Yes, Your Honor.

16 MR. COFFEE: Yes, Your Honor.

17 THE COURT: Your next witness.

18 MS. MERCER: Your Honor, the State calls Joseph
19 Averman.

20 JOSEPH AVERMAN, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated. Please
22 state your full name, spelling your first and last name for
23 the record.

24 THE WITNESS: It's Joseph Averman. And it's
25 J-O-S-E-P-H, Averman, A-V-E-R-M-A-N.

1 THE COURT: Sir, there's water in that pitcher and
2 M&Ms in the dispenser. If you'd like some coffee, please let
3 the marshal know.

4 THE WITNESS: Thank you.

5 THE COURT: You may proceed.

6 MS. MERCER: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. MERCER:

9 Q Sir, do you currently live in Las Vegas?

10 A Yes, I do.

11 Q How long have you lived here?

12 A Since 2001.

13 Q So approximately 14 years?

14 A Correct.

15 Q Are you currently employed?

16 A Yes.

17 Q How are you employed? What do you do for a living?

18 A I work for Direct TV.

19 Q Are you also a member of the National Guard?

20 A Yes.

21 Q In what capacity?

22 A You mean --

23 Q How long have you been working for them. I'm sorry.

24 I'll back up for a second.

25 A Since 2010.

1 Q And what kind of time commitment does that require
2 from you?

3 A Once a month usually, and two or three weeks in the
4 summertime.

5 Q Are you familiar with an individual by the name of
6 Troy White?

7 A Yes, I am.

8 Q How do you know that person?

9 A We had met at church.

10 Q Which church would that be?

11 A Potter's House Church.

12 Q When did you meet him there?

13 A I believe it was 2004.

14 Q So about 11 years ago?

15 A Correct.

16 Q Were you attending the Potter's House Church at the
17 time?

18 A Yes, I was.

19 Q Is that the church located on Sahara?

20 A That's where I met Troy, correct. I was going to a
21 different Potter's House across town.

22 Q Initially?

23 A Yes.

24 Q And what is the closest major cross street for the
25 one on Sahara?

1 A Rainbow.

2 Q And just so we're clear, that's the one where you
3 met Troy?

4 A Correct.

5 Q At the time that you met Troy White was he married,
6 or single?

7 A Single.

8 Q Were you married, or single?

9 A Married.

10 Q And who were you married to?

11 A Dena.

12 Q When did you marry her?

13 A In 2004. August 1st, 2004.

14 Q At some point did you divorce Dena?

15 A Yes, I did.

16 Q When did that occur?

17 A April of 2012.

18 Q So you all were married for approximately eight
19 years?

20 A Correct.

21 Q Do you see Troy White in the courtroom?

22 A Yes, I do.

23 Q Could you please point to him and identify an
24 article of clothing that he's wearing today.

25 A He's sitting right over there wearing a black suit.

1 Q Okay. Which position is he seated in at the table?
2 A In the middle of the other two gentlemen.
3 MS. MERCER: Your Honor, may the record reflect that
4 he's identified the defendant.
5 THE COURT: Record will so reflect.
6 BY MS. MERCER:
7 Q When you first met the defendant did you all become
8 friends right away?
9 A I wouldn't say right away, but a few months in.
10 Q When you became friends were you close friends?
11 A It grew into close friends, yes.
12 Q How long were you friends you were in a close
13 friendship?
14 A I'm not sure.
15 Q When you say that you were close friends, did you
16 only see each other at church? Did you socialize outside of
17 church?
18 A Outside of church, as well.
19 Q At some point after you met the defendant did he
20 marry somebody?
21 A Yes, he did.
22 Q Was that Echo Lucas White?
23 A Yes, it was.
24 MS. MERCER: Permission to publish, Your Honor?
25 THE COURT: You may.

1 MS. MERCER: For the record, I'm publishing State's
2 Exhibit 1.

3 BY MS. MERCER:

4 Q Did you know this individual as Echo Lucas White?

5 A Yes.

6 Q Do you recall when they married?

7 A I do not.

8 Q Would it have been within months or years of you
9 becoming friends with the defendant?

10 A I would say months, maybe a year. I don't recall
11 how long.

12 Q Once the two of them married did you and your wife,
13 Dena, begin to socialize with the defendant and Echo Lucas
14 White as couples?

15 A Yes.

16 Q Same question. Did you socialize outside of the
17 church?

18 A Yes.

19 Q How often would you all spend time with one another
20 outside of the church?

21 A I don't know. Sometimes it would change, depending
22 on schedules and everything. But maybe twice a week.

23 Q When you all were attending the Potter's House
24 Church how often did you attend services at the church in a
25 given week?

1 A Services three times a week.

2 Q And were you involved in other activities that -- at
3 the church other than those three days a week?

4 A Yes.

5 Q So in any given week how much time did you spend
6 with the defendant and Echo Lucas White in church and outside
7 of church?

8 A That's kind of a difficult question, being that we
9 weren't going to the Potter's House Church on Sahara at the
10 time.

11 Q Once you began attending the Potter's House Church
12 and attending the same church as the defendant and Echo how
13 often would you spend with them?

14 A Sometimes three or four times a week.

15 Q In church?

16 A Correct.

17 Q And then you would see them outside of church a
18 couple additional times?

19 A Correct.

20 Q Did you begin to develop a close friendship with
21 Echo Lucas?

22 A Yes.

23 Q How close would you say that you became to her?
24 Were you very close friends, or just kind of acquaintances
25 initially?

1 A Initially acquaintances. But then it did become a
2 close friendship.

3 Q How long into your friendship with the defendant and
4 Echo did that occur?

5 A I don't recall.

6 Q Okay. If we're talking in terms of July 27th of
7 2012, how many years prior to that date did you become closer
8 friends with Echo Lucas?

9 A Earlier 2012.

10 Q Okay. Were you still close friends with the
11 defendant and Echo Lucas in early 2012?

12 A Yes, I was.

13 Q Or late 2011?

14 A More early 2012.

15 Q Did you become aware at some point that the two of
16 them had left the Potter's House Church?

17 A Yes.

18 Q They were no longer attending services?

19 A Correct.

20 Q You indicated that you became closer friends with
21 Echo in early 2012. About when would that have been, which
22 month?

23 A March 2012.

24 Q And when you say that you became closer friends, did
25 she begin to confide in you about things that she did not

1 confide in you about prior to that time frame?

2 A Yes.

3 Q More specifically, problems in the marriage?

4 A Correct.

5 Q How often would you discuss those problems with her?

6 A Occasionally, whenever she needed to talk.

7 Q So she reached out to you?

8 A Yes.

9 Q Were you aware of whether or not Echo Lucas was
10 married before she married the defendant?

11 A Can you say that again.

12 Q Did she have a husband before she married the
13 defendant?

14 A I believe so.

15 Q And was his name Travis?

16 A Yes.

17 Q And he was the father of Jodey and Jayce; correct?

18 A Correct.

19 Q Once the defendant and Echo left the church Echo
20 began getting more tattoos. Is that fair to say?

21 A Yes.

22 Q Is that because that's prohibited by the Potter's
23 House Church?

24 A Yes.

25 Q Tattoos. At some point after Echo began confiding

1 in you that they were having marital problems did you learn
2 that the two of them had actually separated?

3 A Yes.

4 Q And by them I mean the defendant and Echo.

5 A Correct.

6 Q When did you first become aware that they were
7 separated?

8 A Don't recall the month.

9 Q You don't recall the month?

10 A No.

11 Q Were you sent to Reno in regards to some National
12 Guard obligations in March of 2012?

13 A Yes.

14 Q When you were sent to Reno in regards to those
15 obligations do you know whether they were separated at that
16 time?

17 A Actually separated I'm not for sure. I know they
18 were having a lot of problems, though.

19 Q At that time?

20 A Correct.

21 Q At some point after Echo began confiding in you and
22 the two of you began to speak more often did the two of you
23 develop feelings of mutual attraction for one another?

24 A Yes.

25 Q Do you know about when that occurred?

1 A I think it was after I had come back from Reno.
2 Q How long were you in Reno?
3 A Three weeks, I believe.
4 Q So it would have been late March or early April?
5 A April.
6 Q April of 2012; correct?
7 A Correct.
8 Q When did you first realize that it was a mutual
9 attraction?
10 A Around that same time frame.
11 Q Do you recall whether or not you knew in April of
12 2012 whether they were separated?
13 A I don't recall.
14 Q Did the two of you discuss this mutual attraction
15 prior to them separating?
16 A Yes.
17 Q At some point you learned that they had in fact
18 separated; correct?
19 A Yes.
20 Q In terms -- in relation to the July 27th, 2012, date
21 about how many weeks or months prior to that did you learn
22 that they were separated?
23 A Like completely separated I believe it was in early
24 June.
25 Q When you say completely separated what do you mean?

1 A He was no longer living in the house.
2 Q Early June 2012?
3 A Correct.
4 Q At some point in June of 2012 did you and Echo
5 become more than just friends?
6 A Yes.
7 Q When was that?
8 A After he had moved out.
9 Q After he moved out of the residence?
10 A Correct.
11 Q Is it fair to say that that relationship moved
12 quickly?
13 A Yes.
14 Q You all knew each other fairly well?
15 A Yes.
16 Q You were both adults?
17 A Yes.
18 Q Were you working at the time?
19 A Yes, I was.
20 Q And how were you working?
21 A I worked for a company called Marshall Retail Group.
22 Q Was Echo working at the time?
23 A No.
24 Q In June of 2012 -- towards the end of June 2012 did
25 you end up actually moving into the house where Echo was

1 living with her children, or begin staying the night there?
2 A Yes.
3 Q Which one was it?
4 A Staying the night.
5 Q And would you stay the night pretty frequently?
6 A Yes.
7 Q Were familiar with her five children?
8 A Yes, I was.
9 MS. MERCER: Permission to publish.
10 THE COURT: You may.
11 BY MS. MERCER:
12 Q I'm publishing on the overhead State's Exhibit 15.
13 Is this the child that you knew as Jodey?
14 A Correct.
15 Q And Exhibit 16, is this Jayce?
16 A Yes.
17 Q Exhibit 17, is that Jesse?
18 A Yes.
19 Q Exhibit 18, is that Jett?
20 A Yes.
21 Q Exhibit 19, is this Jazzy?
22 A Yes.
23 Q At the time that you were dating Echo Lucas who
24 cared for those children during the week, Monday through
25 Friday?

1 A She did.

2 Q Did she care for them at the 325 Altimira address?

3 A Correct.

4 Q Who cared for them on the weekend?

5 A Troy.

6 Q Would he come and stay at that 325 Altimira address?

7 A Yes.

8 Q And you all would leave?

9 A Correct.

10 Q Were you familiar with the couples' vehicles or
11 vehicle at the time?

12 A Yes.

13 Q How many vehicles did they have on July 27th of
14 2012?

15 A One.

16 MS. MERCER: Permission to publish.

17 THE COURT: You may.

18 BY MS. MERCER:

19 Q State's Exhibit 65, is the 2008 Durango that they
20 shared?

21 A Yes.

22 Q When Echo had the children she had the vehicle?

23 A Correct.

24 Q And when he came to the house the vehicle was left
25 there for him and the children?

1 A Yes.

2 Q Would she leave with you?

3 A Yes.

4 Q When he would come to the house were you there?

5 A No.

6 Q Where would you go?

7 A Around the corner or by the Food-4-Less.

8 Q Okay. So you waited away from the home?

9 A Correct.

10 Q Why did you do that?

11 A To try to avoid any conflict.

12 Q At some point after you and Echo began having a

13 dating relationship did the two of you begin looking for

14 another place to live?

15 A Yes.

16 Q Outside of the 325 Altimira address?

17 A Correct.

18 MS. MERCER: Permission to publish one more

19 photograph, Your Honor.

20 THE COURT: You may.

21 MS. MERCER: Well, one more for now.

22 BY MS. MERCER:

23 Q Mr. Averman, I'm showing you State's Exhibit 26. Is

24 this the house at 325 Altimira where you stayed with Echo and

25 the children?

1 A Yes.

2 Q Did you and Echo ever end up obtaining an alternate
3 living space?

4 A No.

5 Q Why not?

6 A At one point Troy had asked her to stay there
7 because it would be easier.

8 Q When you began seeing Echo Lucas White, once you
9 began a dating relationship with her did the defendant begin
10 contacting you?

11 A Yes.

12 Q And generally speaking were those contacts by the
13 defendant friendly?

14 A No, they weren't.

15 Q What kinds of contact was it? Was it personal
16 contact, was it telephonic contact?

17 A Phone and text.

18 Q What kinds of things did he say to you?

19 A He would say I needed to stay away or he was going
20 to kill me and there'd be repercussions to pay.

21 Q Did those begin in June as soon as you started
22 dating, or sometime after?

23 A We -- pretty much when we started dating.

24 Q Did they continue on up until July 27th of 2010?

25 A Yes.

1 Q Moving ahead to evening of July 26th of 2012, did
2 you stay the night at the 325 Altimira address?

3 A Yes.

4 Q Who all was there that night?

5 A Me, Echo, Jodey, Jayce, Jesse, Jett, and Jazzy.

6 Q So you, Echo, and the five children?

7 A Correct.

8 Q What did you all do throughout the evening on July
9 26th of 2012?

10 A We were watching TV and the kids were going to bed
11 and she was doing her hair.

12 Q When you say that she was doing her hair, what was
13 she doing to her hair?

14 A She was putting her hair in braids.

15 Q Was it a bunch of little braids?

16 A Correct.

17 Q Was it time consuming?

18 A Yes.

19 Q When she was braiding her hair was she putting
20 anything in her hair to make it easier for her to braid her
21 hair?

22 A Yes.

23 Q What was it?

24 A Some sort of gel or something. I'm not a hundred
25 percent sure, but --

1 Q Some sort of gel you think?

2 A Correct.

3 Q Did -- how late were you all up that night, you and

4 Echo?

5 A About 2:00 o'clock, I believe.

6 Q 2:00 a.m.?

7 A 2:00 a.m.

8 Q In the early-morning hours of July 27th of 2012 did

9 you become aware that she was receiving texts and telephone

10 calls from the defendant?

11 A Yes.

12 Q How was it that you became aware of that?

13 A Echo was saying that her phone was -- I guess he was

14 blowing up her phone, a lot of texts and calls.

15 Q Did you know the passcode to Echo's phone?

16 A I don't recall.

17 Q You don't know whether you knew it at the time?

18 A Correct.

19 Q Did you ever go into her phone and delete

20 communications from the defendant without her seeing them?

21 A No, I didn't.

22 Q When she was saying that she was receiving repeated

23 phone calls and text messages were you in a position where you

24 could actually see her phone?

25 A No.

1 Q Do you know, moving into the early-morning hours of
2 July 27th of 2012, do you know about what time you woke up, or
3 you and she woke up?

4 A 7:00 or 8:00, I believe.

5 Q 7:00 or 8:00 in the morning?

6 A Correct.

7 Q When you woke up did you notice whether or not she
8 had any additional communications from him?

9 A She had said she received more texts and voicemails.

10 Q When you all woke up were the children up?

11 A I believe so.

12 Q What did you all do that morning?

13 A Sat on the couch watching TV.

14 Q Do you remember what you were watching on TV?

15 A The show called "I Shouldn't Be Alive."

16 Q Were you watching it on cable, or were you watching
17 it on NetFlix?

18 A I think it was NetFlix.

19 Q Were the children watching TV with you, the older
20 ones?

21 A Yes.

22 Q Was that a yes?

23 A Yes.

24 Q What were the younger ones doing, Jazzy and Jett?

25 A Don't recall at the time.

1 Q Later in the morning on July 27th of 2012 did Echo
2 take a nap?
3 A Yes, she did.
4 Q Where did she initially fall asleep?
5 A On the couch.
6 Q When she fell asleep on the couch what did -- what,
7 if anything, did you say to her? Did you say, hey, go get in
8 bed?
9 A When she had woke up from the nap, yes. A little
10 bit later.
11 Q And when you told her to go get in the bed was Jazzy
12 awake or asleep?
13 A She was asleep.
14 Q Who had Jazzy when she went back to the bedroom?
15 A I did.
16 Q Once Echo went to the bedroom -- did she go to the
17 master bedroom?
18 A Yes.
19 Q Is that the bedroom where the baby's crib was?
20 A Yes.
21 MS. MERCER: Permission to publish, Your Honor.
22 THE COURT: You may.
23 BY MS. MERCER:
24 Q State's Exhibit 55, is that the master bedroom?
25 A Yes.

1 Q State's Exhibit 56, is this the master bedroom from
2 inside of the bedroom looking out towards the hallway?

3 A Yes.

4 Q And going back to State's Exhibit 55, is that
5 Jazzy's crib?

6 A Yes.

7 Q In the top left corner?

8 A Yes, it is.

9 Q So you had Jazzy at this point. Did you keep her in
10 the living room, or did you take her back to that master
11 bedroom and put her in the crib?

12 A I'd taken her back and put her in the crib.

13 Q While you were back there did you become aware that
14 someone else had arrived at the house?

15 A Yes.

16 Q Do you know about what time that was that morning?

17 A Right before noon, I believe.

18 Q How was it that you knew that someone else had
19 arrived at the house?

20 A Because kids -- I'm not -- Jodey or Jayce, they were
21 saying, Mommy, Mommy, Daddy's here.

22 Q When you heard the children say, Mommy, Daddy's
23 here, what did you do?

24 A Walked out, and Echo had jumped up and walked out to
25 the hallway, as well.

1 Q So the two of you walked out to the hallway?
2 A Yes.
3 Q Where was the defendant when you walked out of that
4 master bedroom?
5 A In the hallway where the front door leads in.
6 MS. MERCER: Okay. Permission to publish again,
7 Your Honor.
8 THE COURT: You may.
9 BY MS. MERCER:
10 Q Mr. Averman, I'm publishing State's Exhibit 41.
11 This is the master bedroom door; correct?
12 A Correct.
13 Q Where were you and Echo standing when you came out
14 of that room and saw the defendant?
15 A I had come out and I was by -- in the hallway by the
16 master bedroom door, and Echo had come up by where the --
17 because the kids were playing in the hallway.
18 Q Okay. Can you do me a favor and can you actually
19 touch the screen and draw an X where Echo was standing.
20 And then if you could draw another X where you were
21 standing, please.
22 So Echo was closer to the living area?
23 A Yes.
24 Q Did the defendant speak to you all first, or did you
25 or Echo say something to him?

1 A I believe Echo asked Troy first what he was doing
2 there.
3 Q Was it unusual for the defendant to be here at this
4 time of day?
5 A Yes.
6 Q Why?
7 A Because that wasn't the time he was supposed to be
8 there. He would come later on in the afternoons for the kids.
9 Q When you say later on in the afternoon, about --
10 approximately what time would he typically show up?
11 A Maybe 3:00 or 4:00.
12 Q So he was several hours early at this point?
13 A Yes.
14 Q Did he still have a key to the residence?
15 A Yes.
16 Q When you were at -- when you would stay with Echo
17 and the children at the house were you all in the habit of
18 keeping that front door locked?
19 A Yes.
20 Q Was the house armed with an alarm system?
21 A I believe so.
22 Q So once Echo said to the defendant, you're not
23 supposed to be here yet, how did he respond to that?
24 A He said he needed to talk to her for five minutes.
25 Q Was he addressing her, or addressing you when he

1 said that?

2 A At that time it was just Echo. Then Echo told him
3 to come back later. And then he responded to the both of us
4 and said, Joe, please let me just talk to her for five
5 minutes.

6 Q He said, Joe, please let me talk to her for five
7 minutes?

8 A Yes.

9 Q When he first began speaking to the two of you what
10 was his demeanor like, when you first saw him in the hallway?

11 A A bit frustrated and irritated because she hadn't
12 responded to any of his phone calls or texts.

13 Q Once he said, please just let me have five minutes
14 to speak to her, what happened at that point?

15 A Echo finally agreed. She figured if she didn't then
16 he wouldn't leave. So they went the to spare bedroom or craft
17 room to talk.

18 Q So she was trying to appease him?

19 A Yes.

20 Q The craft room, is that the room with the green
21 carpet that was directly across the hallway from the master?

22 A Yes.

23 Q When they went into that room did they keep the door
24 open, or shut?

25 A Shut.

1 Q All the way, or partially?
2 A It was shut all the way.
3 Q When they went into that room where did you go?
4 A I was in the master bedroom.
5 MS. MERCER: Permission to publish once more, Your
6 Honor.
7 THE COURT: You may.
8 BY MS. MERCER:
9 Q Mr. Averman, I'm showing you State's Exhibit 55.
10 When you went back into the master bedroom were you standing,
11 or were you sitting on the master bed?
12 A Standing.
13 Q Where were you standing?
14 A In the doorway.
15 Q Literally right in the doorway, or just slightly
16 into the room?
17 A In the room slightly.
18 Q Could you draw an X where you were standing.
19 Did you have the door to the master bedroom open, or
20 shut?
21 A It was shut, but not all the way.
22 Q Is that so that you could hear what was going on in
23 the next room?
24 A Yes.
25 Q At some point while they were in the craft room

1 speaking, the defendant and Echo Lucas, did you hear something
2 that caused you some concern?

3 A Yes.

4 Q How long had they been in that craft room when you
5 heard that?

6 A A few minutes maybe.

7 Q What was it that you heard that caused you concern?

8 A Echo was really loud and saying, Troy, no, just
9 stop.

10 Q When you heard that -- when you say that she was
11 being loud and she said, no, Troy, please don't, stop, can you
12 describe the tone of voice that she had?

13 A Fear.

14 Q Fear?

15 A Correct.

16 Q Was she screaming, was she speaking in a regular
17 voice?

18 A Not regular voice, but not screaming. Just very
19 loud.

20 Q When you heard that how did you react?

21 A I opened the master bedroom door to go in there to
22 make sure she was okay.

23 Q Now let me back up for a second. When you first saw
24 that the defendant had arrived at the house and saw him
25 standing in the hallway did you notice him armed with any

1 weapons?

2 A No.

3 Q If you had seen him armed with any weapons, would
4 you have been concerned?

5 A Absolutely.

6 Q Did you have any guns at the house on July 27th of
7 2012?

8 A No.

9 Q Did Echo have any guns in the house on July 27th of
10 2012?

11 A No.

12 Q When you looked into the master bedroom what did you
13 see? I mean, I'm sorry, the craft room.

14 A Well, as I opened the door Echo was opening the door
15 to the craft room and trying to come out.

16 MS. MERCER: Your Honor, may I approach your clerk?

17 THE COURT: You may.

18 MS. MERCER: Oh. Actually I have it. May I
19 publish, Your Honor?

20 THE COURT: You may.

21 BY MS. MERCER:

22 Q I'm publishing State's Exhibit 47 on the overhead.
23 Mr. Averman, this is the doorway of that craft room looking
24 into the craft room, correct, from the hallway?

25 A Yes.

1 Q Where did you see Echo standing when you looked into
2 that room?

3 A She was right there trying to come out.

4 Q When you say that she was trying to come out, did
5 something prevent her from coming out?

6 A Yes.

7 Q What was that?

8 A Troy.

9 Q How was he preventing her from getting out of that
10 room?

11 A He grabbed her arm and pulled her back in.

12 Q He grabbed her arm and pulled her back into the
13 room?

14 A Correct.

15 Q At that point what happened?

16 A He pushed her against the wall, and then he shot
17 her.

18 Q When you say that he pushed her against the wall,
19 can you see the wall that he pushed her against in this
20 photograph?

21 Was it the wall, then, or the bedroom door?

22 A I don't recall. That general area.

23 Q And then you said that he shot her?

24 A Yes.

25 Q Did he shoot her immediately after pushing her into

1 that door?

2 A Yes.

3 Q How far from Echo was standing when he shot her?

4 A Arm's length.

5 Q Arm's length?

6 A Correct.

7 Q When you saw the defendant shoot Echo did you see

8 the firearm in his hand?

9 A Yes.

10 Q Did you get a good look at it?

11 A Not a great one.

12 Q Could you tell whether or not it was a semiautomatic

13 firearm or a revolver?

14 A Semiautomatic.

15 Q And you're familiar with firearms; correct?

16 A Yes.

17 Q Because of your experience in the National Guard?

18 A Yes.

19 Q When you saw the defendant push her into that door

20 and shoot her where were the children at this point?

21 A In the hallway.

22 Q All of them?

23 A No.

24 Q Which ones were in the hallway?

25 A I believe -- that I can -- Jodey and Jayce. Jesse

1 and Jett I don't recall, and Jazzy was in her crib.
2 Q Jazzy was still in the crib in the master?
3 A Yes.
4 Q After you saw the defendant shoot Echo how did you
5 respond? What did you do?
6 A Tried to go to her or him or -- it all happened so
7 fast, but --
8 Q What happened at that point?
9 A He shot me.
10 Q Do you remember where you were struck first?
11 A I don't recall. I think it was the arm.
12 Q Where were you standing at the time that you were
13 first shot?
14 A In the master bedroom door.
15 MS. MERCER: Permission to publish again, Your
16 Honor.
17 THE COURT: You may.
18 BY MS. MERCER:
19 Q Mr. Averman, I'm showing you State's Exhibit 55
20 again. Where were you standing at the time that the defendant
21 shot you the first time? And you've just placed an X right in
22 the middle of the doorway?
23 A Yes.
24 Q Jazzy was still in the crib at this point?
25 A Yes.

1 Q And you're not certain where you were struck first?

2 A I don't recall.

3 Q I know that you said things happened very quickly.

4 Do you know approximately how much time elapsed between the
5 time when the defendant shot Echo and then turned and fired at
6 you?

7 A Seconds.

8 Q After he fired at you the first time what happened?

9 A He shot again, and then I ended up falling, and then
10 he came into the bedroom.

11 Q You ended up falling?

12 A Yes.

13 Q Why did you fall?

14 A Because I was also shot in the abdomen and one of
15 the bullets fractured my hip.

16 MS. MERCER: Permission to publish again, Your
17 Honor.

18 THE COURT: You may.

19 BY MS. MERCER:

20 Q Mr. Averman, I'm publishing State's Exhibit 57 on
21 the overhead. This is another view of the master bedroom
22 depicting the window in the background and the closet;
23 correct?

24 A Yes.

25 Q Do you see where you collapsed on the floor in this

1 photograph?

2 A Yes.

3 Q Could you please place an X there for me.

4 And I'm publishing State's Exhibit 58. Is that a
5 closer photograph of that same area where you collapsed?

6 A Yes.

7 Q Do you see that reddish substance on the floor?

8 A Yes.

9 Q That's your blood?

10 A Yes.

11 Q In total how many bullet holes did you sustain on
12 July 27th of 2012?

13 A Three.

14 Q Three entrance wounds and --

15 A And three exit wounds.

16 Q So six total?

17 A Six total.

18 Q Once you collapsed on the floor what were the
19 children doing at that point, the older children that you had
20 mentioned were in the hallway?

21 A Crying, screaming. They were hysterical.

22 Q Were they screaming anything in particular?

23 A I'm not sure who it was, but one of them said,
24 Daddy, you just killed Mommy.

25 Q Did any of them come into the room where you were?

1 A Yes.

2 Q Which one?

3 A I believe Jodey and Jayce had went in there a couple

4 times, but Jayce went in there by himself one time.

5 Q Okay. So at what point did Jodey and Jayce come

6 into the room together?

7 A Pretty quickly. I mean --

8 Q Pretty quickly after you collapsed?

9 A Yes.

10 Q Was the defendant still in there?

11 A Yes.

12 Q After the defendant shot you and you collapsed what

13 was he saying or doing?

14 A He was kind of walking back and forth and said if he

15 was going to go to prison he was going to kill me. And then

16 he stood over me with the gun to my forehead.

17 Q I'm sorry?

18 A Stood over me with the gun in my forehead.

19 Q And was he saying anything else at that point?

20 A At that point I don't recall, because the kids had

21 come in there, so he turned and tried to push them into the

22 other bedroom.

23 Q The children came in and distracted him?

24 A Yes.

25 Q When the defendant was in the bedroom did you ever

1 ask him for a phone or to make a call to 911 or anything like
2 that?

3 A I asked him to call for help.

4 Q Did he ever do that while he was in the room with
5 you?

6 A No.

7 Q You said that Jayce came back into the room a second
8 time by himself without Jodey?

9 A Correct.

10 Q When Jayce came into the room the second time
11 without Jodey what did he do when he was inside the room?

12 A I asked Jayce to get my phone that was on the
13 nightstand so I could call for help.

14 Q Did he do that?

15 A He grabbed my phone, yes, and gave it to me.

16 Q And once you had your phone were you able to make
17 the call to 911?

18 A No.

19 Q Why?

20 A Because Troy took it out of my hands.

21 Q When he took the phone out of your hand did he say
22 anything to you?

23 A Said that I wasn't going to call anybody.

24 Q And the defendant never gave you that phone back;
25 correct?

1 A Correct.

2 Q You were never able to actually place a call for
3 help?

4 A No, I wasn't.

5 Q You said that when Jodey and Jayce were both in the
6 room with you right after you collapsed on the floor the
7 defendant was distracted by them and trying to get them into
8 another room?

9 A Yes.

10 Q Was he giving them some sort of directions or
11 commands?

12 A (No audible responses)

13 Q Or was he just kind of trying to shove them with his
14 arms? How did you know that he was trying to get them into
15 another room?

16 A Because he'd told them to stay in the other room.

17 Q At some point did the defendant leave the room where
18 you were collapsed?

19 A Yes.

20 Q Did he come back into the room?

21 A Yes.

22 Q How many times did he exit and leave that room?

23 A I think it was three or four times.

24 Q Three or four times? When he would return to the
25 room what was the purpose of returning to that room?

1 A I think to kill me.

2 Q Did he say anything further to you?

3 A In between the times that he had left and come back

4 I'm not for sure what was first, but he said if he was going

5 to go to prison I was going to die. He called me a coward.

6 But I recall three different times he stood over.

7 Q And each time that he stood over you was he making

8 remarks to you?

9 A Yes.

10 Q Along those same lines?

11 A Yes.

12 Q Of calling you a coward and saying that if he was

13 going to go prison he might as well kill you?

14 A Yes.

15 Q At some point did he leave that room and not return?

16 A Yes.

17 Q How many minutes elapsed from the time that he shot

18 Echo to the point where he left and never returned?

19 A I'm not sure.

20 Q While you were laying on that floor bleeding did you

21 at some point realize that Jodey had been able to escape the

22 house?

23 A No.

24 Q At some point did medical arrive and treat you?

25 A Yes.

1 Q How long were you laying on the floor before they
2 arrived?

3 A I'm not sure.

4 Q Were you taken out of that room and taken to the
5 hospital?

6 A Yes, I was.

7 Q When you were taken to the hospital did you notice
8 whether or not -- let me back up.

9 Did you see that 2008 Dodge Durango in the driveway
10 on the morning of July 27th of 2012 before the defendant
11 arrived at the house?

12 A Yes.

13 Q Was it there when you were taken out on a gurney and
14 placed inside an ambulance?

15 A No.

16 Q Is that information that you shared with police
17 officers on scene?

18 A Yes.

19 Q You were able to give them a description of the
20 vehicle, as well as the plate?

21 A Yes.

22 Q How long were you in the hospital?

23 A Three days.

24 Q You said three days?

25 A Three days.

1 Q While you were in the hospital did you have to
2 undergo any medical procedures?

3 A Yes.

4 Q And what were those?

5 A I had surgery on my right arm, and then they said it
6 severed the main artery in my arm and just recover.

7 Q Did you -- once you were released from the hospital
8 were you able to move around the same way you were before you
9 were injured?

10 A No.

11 Q How long did it take for you to get back to where
12 you could walk normally and move around normally?

13 A Don't recall, but a while.

14 MS. MERCER: Permission to publish, Your Honor.

15 THE COURT: You may.

16 BY MS. MERCER:

17 Q Do you recall while you were at the hospital being
18 photographed by a crime scene analyst?

19 A No.

20 Q Do you know that someone came and took pictures of
21 you and your injuries?

22 A I don't recall that.

23 Q Okay. I'm publishing State's Exhibit 11. Is this a
24 photograph of you?

25 A Yes.

1 Q And you appear to have some medical tubing over your
2 right shoulder?

3 A Yes.

4 Q Showing you State's Exhibit 12, is this a photograph
5 of your arm?

6 A Yes.

7 Q Specifically do you see a bullet hole in that arm?

8 A Yes.

9 Q Circle it for me, please. Which arm is that for the
10 record? Is that your right arm?

11 A Right. Right arm.

12 Q Showing you State's Exhibit 13, is this a photograph
13 of the entrance wound?

14 A Yes.

15 Q On that same arm?

16 A Yes.

17 Q And showing you State's Exhibit 14, is this a
18 photograph of the bullet wounds to your right hip area?

19 A Yes.

20 Q Prior to July 27th of 2012 -- I'm publishing State's
21 Exhibit 61 on the overhead -- was that -- that bullet hole was
22 not in the mirror behind Jazzy's crib; correct?

23 A Correct.

24 Q Prior to July 27th of 2012 the bullet hole to the
25 exterior of the house was not present; correct?

1 A Correct.

2 Q When the defendant came into the residence on July
3 27th of 2012 shortly before noon he was not carrying the
4 backpack depicted in State's Exhibit 33; correct?

5 A Correct.

6 Q Do you recall what you were wearing on July 27th of
7 2012?

8 A I think it was a plain white T-shirt and some bluish
9 basketball shorts.

10 Q Showing you State's Exhibit 59, does that appear to
11 be the plain white T-shirt that you were wearing?

12 A Yes.

13 Q Showing you State's Exhibit 60, is that another
14 photograph of it spread out?

15 A Yes.

16 Q Do you recall what the defendant was wearing when he
17 showed up at the house shortly before noon on July 27th of
18 2012?

19 A I don't recall.

20 Q At the time that you were removed from that master
21 bedroom by medical personnel where was Jazzy?

22 A Still in her crib.

23 MS. MERCER: Court's indulgence, Your Honor.

24 THE COURT: Uh-huh.

25 (Pause in the proceedings)

1 BY MS. MERCER:

2 Q Going back to when the defendant and Echo first went
3 into the craft room, other than hearing Echo shouting, no,
4 Troy, stop, please don't, were you ever able to make out any
5 of their conversation?

6 A No.

7 Q When did you initially separate from your ex-wife
8 Dena?

9 A Separate?

10 Q Yes.

11 A 2011.

12 Q Would it have been towards the end of 2011, middle
13 of 2011, early 2011?

14 A Don't recall.

15 Q You don't recall. But you divorced when?

16 A In April of 2012.

17 Q The defendant found out about your relationship with
18 Echo Lucas shortly after that relationship started; correct?

19 A Correct.

20 Q So he had -- as of July 27th of 2012 had known about
21 that relationship for several weeks?

22 A Yes.

23 Q Do you remember -- do you remember the defendant
24 making any sorts of comments to you after he shot you about
25 being with his wife?

1 A He said, I told you this was going to happen if you
2 didn't stay away.

3 Q I told you this was going to happen if you didn't
4 stay away from her?

5 A Yes.

6 MS. MERCER: I'll pass the witness, Your Honor.

7 THE COURT: Thank you.

8 Cross-examination?

9 MR. COFFEE: Court's indulgence. Can I have
10 20 seconds, Judge?

11 THE COURT: You may.

12 (Pause in the proceedings)

13 CROSS-EXAMINATION

14 BY MR. COFFEE:

15 Q Troy White wanted desperately to have his
16 relationship back with Echo?

17 A Yes.

18 Q Wanted to have his children back?

19 A Yes.

20 Q Wanted to have his home back?

21 A Yes.

22 Q You stood in the way?

23 A No.

24 Q I want to ask a question. We've got a number of
25 questions laid out, but it was a question about where you

1 standing after you first hear the yelling. Do you remember
2 those questions from the District Attorney?

3 A Yes.

4 Q And you said that you were standing in a hallway.
5 If you were looking down the hall, which would be on the
6 right-hand side, you were standing at a doorway or near a
7 doorway, is that right, in the bedroom on the right side?

8 A Looking -- say that again, please.

9 Q Sure. The craft room is on the left. Looking down
10 the hallway the master bedroom is on the right. Is that
11 accurate?

12 A Yes.

13 Q I'm not trying to confuse you.

14 A No. Well, depending on which way you're looking at
15 it, I guess.

16 Q Depending on which way you're looking at it.

17 You were at or near the doorway to the master
18 bedroom when you saw Echo trying to come out the door?

19 A Yes.

20 Q Okay. And you've said Troy pulled her or pulled her
21 back?

22 A Yes.

23 Q Was she between you and Troy?

24 A Yes.

25 Q There were some discussions about 911. I want to

1 begin by talking about 911 for a moment, okay?

2 A Okay.

3 Q You testified a moment ago that Troy did not call
4 911. Do you remember that?

5 A Yes.

6 Q Do you remember giving a statement to the police
7 shortly after this happened?

8 A Yes.

9 Q Remember telling the police you didn't know whether
10 or not Troy called 911?

11 A Yes.

12 Q And you remember testifying at preliminary hearing
13 in this matter?

14 A Yes.

15 Q Remember being brought into a courtroom without a
16 jury, raising your hand, swearing to tell the truth, the whole
17 truth, nothing but the truth? Remember that?

18 A Yes.

19 Q Just like you did today, yes?

20 A Yes.

21 Q And in that preliminary hearing you also said you
22 didn't know if Troy called 911; is that correct?

23 A Correct.

24 Q Why the change? You say today that he didn't call
25 911. Why the change?

1 A Asked if recalled if he had made a phone call. I
2 said no, I do not recall.

3 Q Okay. So accurately, then, it would be you don't
4 know if he made a phone call or not. Is that fair?

5 A Correct.

6 Q Okay. Now, there's something that no one's talked
7 about to this point. But after the shooting the children
8 saying, Daddy, Mommy's hurt, or, Daddy, Mommy's been shot,
9 call 911, something like that; right?

10 A Correct.

11 Q And Troy says that, I'm trying to call 911 but I
12 can't get the phone to work. That happened, too; correct?

13 A Correct.

14 Q And that's before you had the fight with him over
15 the phone?

16 A Correct.

17 Q Okay. And you don't know if he was actually -- did
18 you actually see him trying to work his phone to call 911? Or
19 do you remember?

20 A I did not see him.

21 Q Okay. But you did hear that?

22 A I heard him talking to the kids.

23 Q When he said that the phone wasn't working, yes?
24 Yes?

25 A Yes.

1 Q Now, at some point after this you hear sirens;
2 correct?
3 A Yes.
4 Q And it's after you hear the sirens that Troy leaves.
5 Is that fair?
6 A Correct.
7 Q You're not sure exactly how long it was after the
8 shooting; is that right?
9 A Correct.
10 Q But it was quick. Is that fair?
11 A I couldn't recall how long a time lapse.
12 Q You remember testifying at preliminary hearing that
13 everything moved very quickly between the time of the shooting
14 till you heard sirens?
15 A Yes.
16 Q And in fact that's what happened. Things moved
17 quickly. Is that fair?
18 A Yes.
19 Q Now, once you heard the sirens you knew authorities
20 were on the way; is that right?
21 A Yes.
22 Q And it's fair to say that Mr. White, hearing the
23 sirens -- he didn't leave till he heard the sirens. You've
24 testified to that before; right?
25 A Correct.

1 Q Fair to say that Mr. White would also know that help
2 is on the way at that point; right? We kind of know that as
3 human beings, that if we hear sirens, help may be coming. Is
4 that fair?

5 A Yes.

6 Q Or he may think that the authorities are coming and
7 he's got to scoot boots. That might be it, too; right?

8 A Yes.

9 Q Now, I want to talk to you about what happened.
10 We're going to move backwards in time. We're going to talk
11 about when he arrives home and his demeanor and exactly what
12 happens. All right?

13 A Okay.

14 Q Troy arrives home on July 27th; yes?

15 A Yes.

16 Q Now, again, home is probably splitting hairs,
17 because you're staying there part of the time, four or five
18 nights a week; yes?

19 A Yes.

20 Q But the house is in his name?

21 A Yes.

22 Q There are still pictures of Troy on the wall?

23 A Yes.

24 Q He keeps keys to the house?

25 A Yes.

1 Q He pays the mortgage?

2 A Yes.

3 Q And Echo isn't working at that point. She's not

4 paying the mortgage; right?

5 A No.

6 Q Now, when he arrives home he arrives home a couple

7 of hours early; is that correct?

8 A Yes.

9 Q How many weeks had you been there at that point when

10 he came home for Friday for the weekend? Does that question

11 make sense to you?

12 A Can you say it again.

13 Q Sure. He arrives home Friday to take care of the

14 children on the weekend, and you and Echo leave the house;

15 yes? This isn't the first time that it happened. It'd

16 happened before on occasion?

17 A Yes.

18 Q How many times before had it happened?

19 A Three or four times.

20 Q Three or four times. Is it fair to say that he

21 comes back to that home that he shared with Echo after he gets

22 off work? Is that what usually happened?

23 A Yes.

24 Q As far as timing; yes? He gets off work from Yesco

25 and then he goes to the home that he shared with Echo; is that

1 right?

2 A I'm not sure whatever time he would always get off
3 work, but the timings that they had agreed upon was between
4 3:00 and 4:00.

5 Q Okay. And I suppose that was appointed. You don't
6 know if it's right after work. There might be another witness
7 that we might talk to about that, somebody more familiar with
8 his comings and goings with Yesco; is that fair?

9 A Yes.

10 Q Now, he arrives home, and the kids say, Mommy,
11 Mommy, Daddy's here; is that right?

12 A Yes.

13 Q And the kids were excited, weren't they?

14 A They didn't seem like it.

15 Q The kids didn't run away from him, did they?

16 A They seemed a little frantic.

17 Q Okay. Okay. Mommy, Mommy, Daddy's here. He's not
18 openly agitated at that point, is he?

19 A What do you mean by that?

20 Q Well, you were asked at preliminary hearing whether
21 or not he was openly agitated, and you said he was not. Do
22 you remember that?

23 A He was frustrated and a little irate because Echo
24 hadn't responded to his texts or calls.

25 Q Understood. The question is was he openly agitated.

1 Would looking at copy of your preliminary hearing transcript
2 help refresh your recollection as to whether or not you
3 actually said that?

4 A Openly agitated? No.

5 Q Okay. We can agree he wasn't openly agitated; fair?

6 A Fair.

7 Q Now, he didn't make any threats to when he came in
8 the house; correct?

9 A Correct.

10 Q And he didn't make any threats to Echo, either;
11 correct?

12 A Correct.

13 Q And you didn't see a gun; right?

14 A I did not.

15 Q He didn't pull a gun at that point; right?

16 A Correct.

17 Q He didn't threaten you with a gun?

18 A No.

19 Q Didn't say, Joe, I'm packing, get out of my way,
20 anything like that?

21 A No.

22 Q Now, you didn't think there was anything out of the
23 ordinary at this point, did you?

24 A He shouldn't have been there yet.

25 Q Okay. Do you remember testifying at preliminary

1 hearing that you didn't think anything out of the ordinary at
2 that point?

3 A No.

4 Q Would looking at a copy of your transcript help you
5 remember?

6 A (No audible response)

7 MR. COFFEE: Permission to approach?

8 THE COURT: You may.

9 MR. COFFEE: Page 41, counsel. Bottom, starting at
10 line 17.

11 BY MR. COFFEE:

12 Q Does that help you?

13 A Which one, 18?

14 Q Right here.

15 A Okay.

16 Q Okay. At preliminary hearing you were asked whether
17 there was anything out of the ordinary. And let me get the
18 exact question. I don't want to put words in your mouth, Mr.
19 Averman.

20 "If there'd been anything out of the ordinary,
21 unusual, if you thought the situation was going to
22 explode, you know enough to call 911?"

23 And your answer was, "Yes"; right?

24 A Yes.

25 Q It didn't seem like that sort of situation when he

1 came in; is that fair?

2 A Yes.

3 Q Now, you were not frightened of Mr. White, were you?

4 A No.

5 Q And there had been some threats, you said, on texts
6 and voicemails. Remember that? A moment ago you testified to
7 that?

8 A Yes.

9 Q You didn't keep any of those; correct?

10 A Correct.

11 Q Okay. And we'll get back to that in a moment. But
12 even those threats didn't scare you; is that fair?

13 A Yes.

14 Q You'd known White for years; yes?

15 A Correct.

16 Q He didn't seem like the kind of person that you
17 needed to be concerned about; is that fair?

18 A Yes.

19 Q And, again, a moment ago you testified as to texts
20 and voicemails. You remember both those specifically?

21 A Yes.

22 Q Do you remember telling the police that you hadn't
23 received any threatening texts from Mr. White? Do you
24 remember saying that to the police?

25 A No.

1 Q Would looking at a copy of your voluntary statement
2 that you gave shortly after the event maybe help refresh your
3 recollection in that regard?

4 A No.

5 Q Might you have told the police that?

6 A Possibly.

7 Q "What about text messages? Has he threatened you
8 with text messages or anything like that?"
9 Might you have answered no to that question by
10 police?

11 A Say again.

12 Q Absolutely. "What about text messages? Has he
13 threatened you with text messages or anything like
14 that?"

15 Did you tell the police no?

16 A I don't recall.

17 Q Would looking at copy of your statement help refresh
18 your recollection as to what you may have told the police?

19 A Maybe. It's --

20 MR. COFFEE: Permission to approach?

21 THE COURT: You may.

22 MS. MERCER: What page is Counsel referring to?

23 MR. COFFEE: 20 of voluntary statement.

24 BY MR. COFFEE:

25 Q Does that help refresh your recollection as to what

1 you told the police?

2 A Yes.

3 Q And in fact you told the police that he had not sent
4 threatening texts, anyway. Is that accurate?

5 A Yes.

6 Q Now, as far as your relationship with White, you'd
7 known him for years?

8 A Correct.

9 Q You had been friends?

10 A Yes.

11 Q You described yourself a few moments ago actually as
12 close friends.

13 A Yes.

14 Q You'd met at church.

15 A Yes.

16 Q The Potter's House Church?

17 A Correct.

18 Q You were several years younger than Mr. White?

19 A Yes.

20 Q And Echo was several years younger than Mr. White,
21 also?

22 A Yes.

23 Q When you met at church you were at the east side or
24 the west side of Potter's House?

25 A East side.

1 Q And White was at the --
2 A West side.
3 Q -- west side. And eventually transferred to the
4 west side congregation of Potter's House?
5 A Yes.
6 Q And is that in part because of work you'd been doing
7 with Troy White and Echo White? Did you transfer church so
8 you could work together? Or why did you transfer churches?
9 A Well, transferred -- I left the other church for a
10 while, and after that there were some other things with the
11 other pastor of the other church my ex-wife didn't like, so
12 when we decided to go back to church we started going to the
13 west side.
14 Q Okay. There we go. Now, you had fellowship
15 together with Troy; yes?
16 A Yes.
17 Q And you had been to Troy's home before?
18 A Yes.
19 Q He'd been to your house?
20 A Yes.
21 Q You knew his children?
22 A Yes.
23 Q And Echo had been to your house, also?
24 A Yes.
25 Q You had shared meals together?

1 A Yes.

2 Q You'd had some discussions about life together, as
3 friends do?

4 A Yes.

5 Q You had went out as couples, you and Dena and Troy
6 and Echo?

7 A Yes.

8 Q And Troy knew that you had joined the Army National
9 Guard --

10 A Yes.

11 Q -- correct? And that was in Reno? Were you
12 stationed at Reno or drilled out at Reno with the Army
13 National Guard?

14 A I drilled there occasionally, yes.

15 MR. COFFEE: Court's indulgence.

16 THE COURT: Sure.

17 (Pause in the proceedings)

18 BY MR. COFFEE:

19 Q Now, did you talk about training with Troy on
20 occasion?

21 A Yes.

22 Q And had you shown him some of your -- do you have
23 equipment as a member of the National Guard?

24 A What do you mean?

25 Q A backpack, that kind of thing, that you take with

1 you when you go out for weekends?

2 A Yes.

3 Q Had Troy ever seen that equipment of yours? Had you
4 shown it to him in the back of your trunk, for example, at one
5 point?

6 A Yes.

7 Q Okay. And you'd babysat for Troy; yes?

8 A I don't recall.

9 Q Might you have babysat for Troy?

10 A Possibly. Or my ex-wife.

11 Q Do you remember wrestling with his kids and showing
12 them some fighting techniques, anything like that?

13 A Don't recall.

14 Q Showing them some hand-to-hand techniques after you
15 had went and drilled with the Army National Guard? Do you
16 remember that?

17 A I don't recall.

18 Q Might have happened, you just don't recall one way
19 or the other?

20 A Maybe.

21 Q Now, do you remember Troy asking you not to do that,
22 not to show his kids hand-to-hand moves because they were
23 little boys?

24 A No.

25 Q At some point along the way when you knew Troy you

1 had seen him with a gun?

2 A Yes.

3 Q Semiautomatic gun?

4 A Yes.

5 Q In fact, you believe it was the same gun that was
6 eventually used to shoot you; yes?

7 A Yes.

8 Q He brought that out and showed it to you?

9 A Yes.

10 Q And that wasn't in a threatening way, that was just
11 as you were friends showing off items that you had, I suppose
12 is the easiest way to put it; is that fair?

13 A Yes.

14 Q He didn't threaten you with a gun at that point;
15 right?

16 A Correct.

17 Q You don't remember the exact date that it was?

18 A No.

19 Q But it was a long time ago; yes?

20 A I don't recall how long.

21 Q Do you remember testifying at preliminary hearing
22 that it was a long time ago?

23 A Maybe at that point, yes.

24 Q Would looking at a copy of your statement help
25 refresh your recollection as to whether or not you testified

1 that it was a long time ago?

2 A If it says a long time ago, then I guess it was a
3 long time ago.

4 Q Okay. Fair enough.

5 Now, you know a little bit about guns?

6 A Yes.

7 Q And you knew enough to describe the gun that you'd
8 seen as a semiautomatic?

9 A Yes.

10 Q There was some discussion about your relationship
11 with Echo. At some point you became closer with Echo than you
12 were with Troy; yes?

13 A Correct.

14 Q And you and Echo remained friends up to the day of
15 the shooting, obviously; yes?

16 A Yes.

17 Q Actually more than friends at some point; right?

18 A Yes.

19 Q That relationship eventually ended your friendship
20 with Troy; correct?

21 A Correct.

22 Q Now, there was some discussion a moment ago about
23 when Troy came home and the kids say, Daddy's here, and Troy
24 goes to Echo. Do you remember that discussion with the
25 District Attorney?

1 A Yes.

2 Q And at first she says, you're here early, or
3 something along those lines; is that fair?

4 A Yes.

5 Q Maybe even, come back; yes?

6 A Come back later.

7 Q Troy and Echo had one car at that point; is that
8 right?

9 A Yes.

10 Q Dodge Durango; yes?

11 A Yes.

12 Q And she hadn't picked him up when he got there;
13 right?

14 A Correct.

15 Q So he had either walked or taken the bus or somebody
16 had dropped him off; yes?

17 A Correct.

18 Q At some point he asked your permission to speak to
19 his wife. Is that accurate?

20 A Yes.

21 Q In his house.

22 A Yes.

23 Q And they go to a bedroom; yes?

24 A Yes.

25 Q And they talk -- or you assume they talk. They're

1 in the bedroom for about five minutes; right?

2 A Correct.

3 Q And today you said it was a few minutes. I think
4 you've testified previously five minutes is the best estimate
5 you could give. Is that accurate?

6 A Correct.

7 Q At first it starts calm; is that fair?

8 A Yes.

9 Q As far as you know, they're just talking, there's no
10 indication of trouble at least at first; is that fair?

11 A Yes.

12 Q You didn't hear very much of what was going on, if
13 anything; is that fair?

14 A Yes.

15 Q So it doesn't start as a fight in that room; fair
16 characterization?

17 A Yes.

18 Q But it escalates at some point; yes?

19 A Yes.

20 Q And when it escalates is when you get concerned?

21 A Yes.

22 Q You become alarmed when you hear Echo say something;
23 yes?

24 A Yes.

25 Q That's really the first point you become alarmed

1 that something may be happening in that room; yes?

2 A Yes.

3 Q And, correct me if I get this wrong, but I think
4 what was said or what you've testified was said was, Troy, no,
5 please don't, and then, stop. Does that sound accurate?

6 A Correct.

7 Q And as far as being concerned, that's what -- that's
8 what draws your concern; yes?

9 A Yes.

10 Q And you don't know what the conversation was up to
11 that point; correct?

12 A No.

13 Q And you don't know exactly what was said, obviously.

14 A No.

15 Q Safe bet it was a conversation about you, though,
16 isn't it?

17 MS. MERCER: Objection, Your Honor. Calls for
18 speculation.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: Can you repeat it.

21 BY MR. COFFEE:

22 Q Sure. I said safe bet it was a conversation about
23 you. Yes?

24 A I have no idea what it was about.

25 Q Okay. You know that Troy wanted desperately, I

1 think as we said at the beginning, to have his wife and his
2 marriage and his home back; yes?

3 A Yes.

4 Q And he wanted you out of the house, too. You also
5 knew that; right?

6 A Yes.

7 Q Now, when you hear her say that, the room that your
8 in, the door is open a little bit; is that accurate?

9 A Yes.

10 Q And you open it the rest of the way?

11 A Yes.

12 Q And start to step out to see what's going to happen;
13 yes?

14 A Yes.

15 Q And before you can get out the door the other door's
16 open and you see Troy pull her back --

17 A Yes.

18 Q -- and shoot?

19 A Yes.

20 Q And it's quick; yes?

21 A Yes.

22 Q Within a matter of seconds; right?

23 A Yes.

24 Q I want to talk to you about what you actually saw
25 with regards to the shots that were fired and what was going

1 on. All right, Mr. Averman?

2 A Okay.

3 Q You told the police, "I don't know if maybe she saw
4 he was going for the gun. I don't know what she tried to do."
5 Is that what you told the police?

6 A I don't recall.

7 MR. COFFEE: Permission to approach?

8 THE COURT: You may.

9 BY MR. COFFEE:

10 Q Would looking at a copy of your statement help
11 refresh your recollection?

12 MR. COFFEE: Page 24, Counsel.

13 THE WITNESS: Okay.

14 BY MR. COFFEE:

15 Q Does that help refresh your recollection?

16 A Can you ask the question again.

17 Q Absolutely. The question was this, sir. You told
18 the officers, "I don't know if maybe --"

19 THE COURT: Mr. Coffee, can you remove it from the
20 document camera, please.

21 MR. COFFEE: Oh. Sorry.

22 THE COURT: Thank you.

23 MR. COFFEE: Turn this off. I apologize for that.

24 BY MR. COFFEE:

25 Q "I don't know if maybe she saw that he was going for

1 a gun. I don't know what she tried to do." You told the
2 officers that; yes?

3 A Okay.

4 Q Is that yes?

5 A Yes.

6 Q And you went on, "It looked -- um, because it kind
7 of looked at that point like he pushed her back a little and
8 then shot her." You continued with that; correct?

9 A Yes.

10 Q And then you told the police the following. "I
11 don't know if she was trying to like wrestle the gun or
12 something." That's what you told the police; correct?

13 A Correct.

14 Q "Like I said, as soon as I opened the door I just
15 seen him kind of push her back and shoot her"; correct?

16 A Yes.

17 Q And to this day you don't know if she was like
18 trying to wrestle the gun, if she'd seen the gun, or exactly
19 what happened; is that fair?

20 A No.

21 Q You now think that it's something different than
22 what you told the police. Is that accurate?

23 A Am I able to speak freely, or just yes or no?

24 Q Well --

25 THE COURT: Sir, you're here, and we want you to

1 tell the truth.

2 BY MR. COFFEE:

3 Q Yes.

4 A I understand that.

5 Q Best explanation I could give.

6 A Yes, Your Honor. I just -- when they took that

7 statement from me I was in the hospital; correct?

8 Q I believe so.

9 A Under pain meds; correct?

10 Q Okay.

11 A So some of the stuff then that was said I don't

12 recall.

13 Q All right.

14 A Now, here I do recall.

15 Q All right. Now, you gave a statement at the

16 hospital shortly after the shooting happened; is that fair?

17 A Yes.

18 Q You had been shot, of course; yes?

19 A Yes.

20 Q And you were on pain medication?

21 A Yes.

22 Q But you were aware enough to know the names of the

23 parties involved. For example, you didn't call Mr. White

24 Santa Claus; right?

25 A Yes.

1 Q You were able to describe what happened in that room
2 and in that hallway to some extent; is that fair?

3 A Yes.

4 Q And at that point you told the officers she may have
5 tried to wrestle the gun. You remember that?

6 A Yes.

7 Q But on further reflection two years down the road
8 now that's not what happened; is that fair?

9 A Yes.

10 Q Okay. Now, after whatever happens between Troy and
11 Echo -- and I think we began our discussion with a -- with a
12 question concerning Echo between -- being between you and Troy
13 to some extent. Do you remember that?

14 A Yes.

15 Q But after what happens with Echo Averman [sic] turns
16 and shoots you and it happens quickly; right?

17 THE COURT: Can you rephrase your question. I think
18 you got some of the people involved wrong.

19 MR. COFFEE: I'm sorry. I said that he shot
20 himself, didn't I?

21 BY MR. COFFEE:

22 Q I apologize for that, Mr. Averman.

23 Troy, after the shot is fired at Echo, turned, and
24 you were shot quickly, within a matter of moments; yes?

25 A Yes.

1 Q Before you can make a movement towards Echo, before
2 any more words can be uttered; yes?

3 A Yes.

4 Q And at that point Troy's demeanor has changed from
5 what it was when he came in the house; is that fair?

6 A Yes.

7 Q He has become more aggressive; yes?

8 A Yes.

9 Q Angrier; yes?

10 A Yes.

11 Q Upset; correct?

12 A Correct.

13 Q I think you described him at preliminary hearing as
14 irrational. Do you remember that?

15 A No.

16 Q Would looking at a copy of your preliminary hearing
17 transcript help refresh your recollection on that point?

18 A Yes.

19 MR. COFFEE: It's page 45, lines 13 through 14,
20 Counsel.

21 THE WITNESS: Yes.

22 BY MR. COFFEE:

23 Q Okay. And at preliminary hearing in fact you had
24 said at that point he became to some extent irrational; is
25 that fair?

1 A Yes.

2 Q And in fact that is one of the ways that his
3 demeanor changed from the time he entered the house and things
4 appeared somewhat ordinary, I think we've said, although he
5 was irritated, until the time shots were fired; is that fair?

6 A Yes.

7 Q Now, irrational. And we've talked about the 911
8 call and him saying that he tried to call 911 or couldn't get
9 the phone to work. He's going in and out of the room
10 afterwards that you're in; right?

11 A Yes.

12 Q He appears somewhat confused at that point. Is that
13 a fair characterization?

14 A Yes.

15 Q You don't know how many times you were shot;
16 correct?

17 A At that time, no, I didn't.

18 Q We know that there are at least three entrance
19 wounds and three exit wounds.

20 A Yes.

21 Q But one of the entrance wounds was through the
22 fleshy part of the arm, is that right, and out the fleshy part
23 of the arm?

24 A Yes.

25 Q And you don't know if that wound also struck your

1 side with a single bullet or whether it was two separate
2 bullets. You just don't know for certain; is that fair?
3 A Yes.
4 Q And in total you couldn't say for certain if three
5 or four shots were fired; is that right?
6 A Correct.
7 Q And that includes the shot that hit Echo?
8 A Correct.
9 Q Now, one of the things when Troy is standing over
10 you that he says to you is, who's the coward now. Is that
11 accurate?
12 A Yes.
13 Q You remember that in fact; yes?
14 A Yes.
15 Q You've testified to it in the past; yes?
16 A Yes.
17 Q And you told police officers about it; yes?
18 A Yes.
19 Q And there's no question that that was said, you
20 remember him saying that; yes?
21 A Yes.
22 Q Did White ever mention feeling like a coward to you?
23 A Can you say that again.
24 Q Sure. Did Troy White ever mention feeling like a
25 coward to you?

1 A No.

2 Q But you never perceived him as much of a threat,
3 either, as we've talked about; correct?

4 A No.

5 Q I'm sorry. Is that you didn't -- trying to think of
6 the right way to ask that. You understand my point. Did you
7 perceive him as much of a threat before this?

8 A No.

9 Q Okay. The children -- there was testimony today
10 concerning the children and where they were at when the shots
11 were fired. Do you remember that testimony?

12 A Yes.

13 Q And you said that Jodey and Jayce you thought were
14 in the hall; correct?

15 A Correct.

16 Q Do you remember testifying at preliminary hearing
17 that you're not sure where the children were at the time of
18 the shooting?

19 A Correct.

20 Q You said eventually they ended up in the hall
21 between you and Echo; correct?

22 A After the shooting, yes.

23 Q After the shooting, yes. But at the time of the
24 shooting your testimony at preliminary hearing was you weren't
25 sure if they were in the hall at the time of the shooting; is

1 that fair?

2 A Yes.

3 Q Okay. And is that in fact accurate, that you're not
4 sure at the time of the shooting where Jodey and Jayce were?

5 A Correct.

6 Q Now, afterwards Mr. White never made any threats
7 towards his children, did he?

8 A Not that I'm aware.

9 Q You'd been shot; yes?

10 A Yes.

11 Q And you said he came in and out of the room and you
12 thought he might try to kill you; yes?

13 A Yes.

14 Q Probably keenly aware of everything that's going on
15 at that point. I would imagine your nerves are on end. Is
16 that a fair description?

17 A Yes.

18 Q You don't remember him making any threats towards
19 the children; correct?

20 A Correct.

21 Q Now, about that coming in and out of the room and
22 he's going to kill me, did he ever actually try to fire the
23 gun after that quick three times? After those three shots or
24 four shots you said perhaps did he ever try to fire the gun at
25 you again?

1 A I think he would have if the kids weren't there.

2 Q Not what I asked, sir. Did he ever try to fire the

3 gun at you again?

4 A No.

5 Q At some point it sounded like he was thinking about

6 it. Is that fair? He said, if I'm going to go to prison I

7 might as well kill you, something like that; yes?

8 A Yes.

9 Q That was an indication to you that he might be

10 thinking about things; is that fair?

11 A Yes.

12 Q Weighing consequences; is that fair?

13 A Yes.

14 Q And he chose not to fire another shot; is that

15 accurate?

16 A Yes.

17 Q As far as the kids were -- he was trying to corral

18 the kids; is that accurate?

19 A Yes.

20 Q Now, there was discussion about him and Echo

21 meeting, and you knew the two of them shortly before they were

22 husband and wife; yes?

23 A Yes.

24 Q Echo had been married before?

25 A Yes.

1 Q I think the District Attorney had asked you about
2 that; yes?

3 A Yes.

4 Q And for whatever reason something happened with the
5 first marriage and she was young and had a young child and was
6 pregnant with her second child when she started dating Troy;
7 is that right? Or did she have the second child?

8 A That I don't recall.

9 Q Okay. Those two children, Jodey and Jayce -- you
10 were able to interact with these people for eight years. Did
11 Troy treat those children like his own, Jodey and Jayce?

12 A Yes.

13 Q Same as he did the other children; right?

14 A Yes.

15 Q In fact, I think you testified before very much the
16 same; is that accurate?

17 A Yes.

18 Q I want to talk to you about the events leading up to
19 the shooting, all right?

20 A Okay.

21 Q Troy and Echo had been having marital problems; yes?

22 A Yes.

23 Q And Echo had confided in you?

24 A Yes.

25 Q And at some point Troy went to stay with Herman

1 Allen.
2 A Correct.
3 Q Herman Allen is somebody you knew from church?
4 A Yes.
5 Q And somebody Troy and Echo knew from church?
6 A Yes.
7 Q That was early June?
8 A Yes.
9 Q You moved in in late June?
10 A Correct.
11 Q A few weeks after Troy had moved out?
12 A Yes.
13 Q You had mentioned something about Troy and Echo
14 getting a divorce, planning a divorce. Do you remember that?
15 A Yes.
16 Q And I think in police statements you said Troy
17 wouldn't give her papers. You remember that?
18 A Yes.
19 Q You never actually saw any paperwork, though, did
20 you?
21 A No.
22 Q Now, we talked about the home sharing arrangement;
23 yes?
24 A Yes.
25 Q And we talked about the fact that Troy was taking

1 care of the bills because Echo didn't work; yes?

2 A Yes.

3 Q And the District Attorney had asked you something
4 about whether you were working when you started your
5 relationship with Echo. Do you remember that?

6 A Yes.

7 Q And you said that you had been working; yes?

8 A Yes.

9 Q But between the time of starting the relationship in
10 sometime mid June --

11 Is that accurate?

12 A Yes.

13 Q -- and the time of the shooting you'd actually left
14 your job or lost your job; is that fair?

15 A Yes.

16 Q And in fact medical records indicate that you were
17 unemployed at that point; yes?

18 A Yes.

19 Q Now, I take it you weren't contributing to the
20 household bills, either.

21 A No.

22 Q Troy wasn't happy about your arrangement with
23 Echo --

24 A No.

25 Q -- fair?

1 A Yes.

2 Q But at some point you had testified that he'd given
3 his blessing to the situation or he'd told Echo that he'd
4 given his blessings to the situation. Do you remember that?

5 A Yes.

6 Q Did he ever give you his blessing?

7 A Not face-to-face conversation, no.

8 Q That came from Echo alone; correct?

9 A Yes.

10 Q In fact, given the text messages and the fact that
11 he wanted you out of the house and desperately wanted his
12 marriage back, did you actually believe that he'd given you
13 his blessing to stay there?

14 A At the time, yes.

15 Q The relationship that you said started with Echo,
16 the romantic part, the intimate part, can we put it that way?
17 You know what I mean when I say the intimate part of the
18 relationship; yes?

19 A Yes.

20 Q That began after he'd moved out of the house?

21 A I don't recall.

22 Q Might it have begun before he moved out of the
23 house?

24 A No.

25 MR. COFFEE: Court's indulgence.

1 THE COURT: Sure.

2 (Pause in the proceedings)

3 BY MR. COFFEE:

4 Q You remember talking to an officer at the scene of

5 the crime? Do you remember talking to officers there?

6 A Vaguely.

7 Q Did you tell the officer that the relationship had

8 been going on since March?

9 A (No audible response)

10 Q That voluntary statement that we spoke about, you

11 were being asked in that voluntary statement that you gave

12 shortly after this that -- how long you'd been dating Echo.

13 Do you remember being asked that?

14 A Yes.

15 Q Remember saying, a few months?

16 A Don't recall what I said.

17 Q Okay. Would looking at a copy of your voluntary

18 statement help refresh your recollection on that?

19 A (No audible response)

20 MR. COFFEE: Permission to approach?

21 THE COURT: You may.

22 MS. MERCER: Page -- what --

23 MR. COFFEE: Page 2, midway down.

24 THE WITNESS: Okay.

25 //

1 BY MR. COFFEE:

2 Q This was at the end of July; yes?

3 A Yes.

4 Q You were asked by the officer how long you'd been
5 dating Echo; yes?

6 A Yes.

7 Q And you said, a few months; is that accurate?

8 A Yes.

9 Q In fact your intimate relationship with Echo started
10 before Troy moved out of the house, didn't it?

11 A I don't recall when it started.

12 Q All right. Troy didn't find out about it until he'd
13 moved out of the house, did he?

14 A I guess so.

15 Q Was the relationship something you tried to keep
16 hidden from Troy?

17 A Somewhat.

18 Q Somewhat? There are -- there was a question about a
19 passcode on a cell phone with the District Attorney. Do you
20 remember that?

21 A Yes.

22 Q And you said you didn't know if you had the passcode
23 or not. Do you remember that?

24 A Correct.

25 Q Would looking at a copy of your voluntary statement

1 help remind you whether or not you actually provided the
2 passcode to the cell phone to officers shortly after the
3 event?

4 A Okay.

5 MR. COFFEE: Permission to approach?

6 THE COURT: You may.

7 MR. COFFEE: Page 21.

8 THE WITNESS: Okay.

9 BY MR. COFFEE:

10 Q Does that help refresh your recollection?

11 A Yes.

12 Q Did you have a passcode to Echo Lucas's cell phone?

13 A Yes.

14 Q And did you provide that passcode to officers?

15 A Yes.

16 Q I want to talk to you -- you texted Echo on
17 occasion; yes?

18 A Yes.

19 Q She texted quite a bit; is that fair?

20 A Yes.

21 Q And do you remember there being a text concerning an
22 in-person meeting between Echo and Troy that happened on --
23 early in the morning on July 25th?

24 A I don't.

25 Q Would looking at a copy of cell phone records help

1 refresh your recollection as to whether or not she'd sent you
2 a text like that?

3 A Yes.

4 MR. COFFEE: Permission to approach.

5 THE COURT: You may.

6 MR. COFFEE: And it's 393, Counsel, seven messages.

7 BY MR. COFFEE:

8 Q Do you remember that?

9 A Okay.

10 Q All right. Did you receive a text -- and I know you
11 don't know the minutes, but since we've got records, this will
12 help refresh your recollection.

13 Did you receive a text at some time in the from Echo
14 that said, "He doesn't want to on the phone. He said he knows
15 until be there so he doesn't want to talk on the phone --
16 knows you'll be there so he doesn't want to talk to the
17 phone." You remember receiving that text?

18 A Yes.

19 Q And there was a text shortly before that that said,
20 he wants to meet me to talk. Do you remember that?

21 A Yes.

22 Q And shortly after that there was a text that you'd
23 got that indicated she was actually meeting with Troy and
24 talking with Troy on the 26th. Is that accurate? If you
25 don't remember, I'll approach and --

1 A 26th.

2 MR. COFFEE: 26th.

3 Permission to approach?

4 THE COURT: You may.

5 THE WITNESS: Oh, no. I thought you said the 25th,

6 so I'm confused.

7 BY MR. COFFEE:

8 Q Yeah. It's --

9 A Oh. Okay. Okay.

10 Q Does that help refresh your recollection?

11 A Yes. You know, you're right, it is.

12 Q Okay. We'll explain why. At 12:07 UTC, which I

13 think we've had testimony previously that that would be seven

14 hours earlier our time, so 5:00 o'clock in the evening on the

15 25th, was there a text with an unhappy face saying, aw, I'm

16 talking to Troy, that you got from Echo?

17 A Yes.

18 Q Okay. Now, after that, the 25th, the 26th, you said

19 she was getting a lot of texts from Troy; yes?

20 A Yes.

21 Q And getting phone messages from Troy?

22 A Yes.

23 Q Was she responding to those, or do you know?

24 A Beforehand I don't know.

25 Q You weren't at the meeting on the 25th; true?

1 A Correct.

2 Q Do you know if there was talk about reconciliation
3 at the meeting on the 25th?

4 A Say it again.

5 Q Sure. Do you know if Troy and Echo talked about
6 reconciliation at the meeting on the 25th?

7 A No.

8 Q You just don't know?

9 A Not sure.

10 Q Did she talk to you about reconciliation?

11 A No.

12 Q We talked about -- about whether or not you'd kept
13 your relationship secret from Troy. Do you remember that
14 discussion?

15 A Yes.

16 Q And you said to some extent maybe, at least at
17 first; is that fair?

18 A Yes.

19 Q There was a text from Echo to you concerning a
20 tattoo being hidden. Do you remember that text?

21 A Yes.

22 Q In fact, there were a couple; yes? Two texts
23 concerning a tattoo? You may not remember the exact number.
24 You remember at least one, huh?

25 A Yes.

1 Q Okay. And it was something along the lines of, I'm
2 about to MCDS. Do you know what that means?

3 A MCDS?

4 Q Yes.

5 A She's about to? Can you say it --

6 Q Oh. "I'm at -- I am at MCDS."

7 A Mickey D's, I'm assuming.

8 Q There we go. Very good. These texts are -- they're
9 like codes. "I'm at MCDS. Then picking Troy in like 10
10 minutes. Uh. I forgot about my tattoo, ARRG." That's a text
11 that you got; right?

12 A Yes.

13 Q And that was a tattoo on her shoulder that said,
14 "Juicy Joe"?

15 A Yes.

16 Q You; yes?

17 A Yes.

18 Q And there was another text --

19 MR. COFFEE: Court's indulgence so we know that time
20 on that.

21 (Pause in the proceedings)

22 BY MR. COFFEE:

23 Q And if I said that was at 6:35 p.m. UTC or 1:35 p.m.
24 on the 20th, seven days beforehand, does that sound about
25 right, in the afternoon about seven days beforehand?

1 A Yes.

2 THE COURT: Sir, are you doing okay? If you need a
3 break, let us know.

4 BY MR. COFFEE:

5 Q There was another text that she had sent that said,
6 "No hiding the tattoo today. Oops." Is that accurate?

7 A I believe so.

8 Q You believe so?

9 A Yes.

10 Q And we talked about Reno and the National Guard.

11 MR. COFFEE: Permission to publish State's 99.

12 THE COURT: You may.

13 BY MR. COFFEE:

14 Q Do you see that okay?

15 A Yes.

16 Q PFC, Private First Class; right?

17 A Yes.

18 Q That's you; yes?

19 A Yes.

20 Q We blanked out the Social Security number. Army
21 National Guard. There's a number -- is that the number in
22 Reno, do you know?

23 A I don't know.

24 Q And Sgt. Lambert. Is that a sergeant that you
25 reported to?

1 A He was my squad leader.

2 Q He was your squad leader.

3 A Yes.

4 Q As a member of the military you are subject to the

5 Uniform Code of Military Justice; is that right?

6 A Yes.

7 Q Do you know if they have provisions against

8 adultery?

9 A No.

10 MR. COFFEE: Thank you, Mr. Averman.

11 Pass the witness.

12 THE COURT: Redirect.

13 MS. MERCER: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. MERCER:

16 Q You were asked some questions about defense counsel

17 regarding -- or by defense counsel about the timing of

18 specific events on July 27th of 2012, more specifically how

19 quickly the defendant departed the residence. Do you recall

20 that line of questioning?

21 A Yes.

22 Q The defendant had time to shoot Echo --

23 A Yes.

24 Q -- shoot you multiple times, tried to corral the

25 children --

1 Yes?

2 A Yes.

3 Q -- and enter and exit that master bedroom three to
4 four separate occasions --

5 A Yes.

6 Q -- taunting you each time he went in there?

7 A Yes.

8 Q He had time to grab the keys to the Durango?

9 A Yes.

10 Q He had time to direct the children to stay in a
11 different room?

12 A Yes.

13 Q All of that was done before he departed the
14 residence?

15 A Yes.

16 Q You weren't concerned for your safety; correct?

17 A Correct.

18 Q But you were concerned enough that you stayed in the
19 master bedroom when Echo and the defendant went into the craft
20 room; correct?

21 A Yes.

22 Q So you personally were not afraid for your own
23 safety?

24 A Correct.

25 Q But had concerns with regards to Echo?

1 A Yes.

2 Q You were also asked multiple times about variations
3 between this taped statement you provided to the police and
4 things that you've said today or testified to at preliminary
5 hearing; correct?

6 A Correct.

7 Q When you gave this taped statement it was done on
8 July 27th of 2012?

9 A Yes.

10 Q At about 16:41?

11 A Yes.

12 Q Military time that means it was 4:21 p.m.?

13 A Correct.

14 Q You had just been shot multiple times?

15 A Yes.

16 Q Saw Echo get shot and killed?

17 A Yes.

18 Q You were transported to the hospital?

19 A Yes.

20 Q Presumably on medications?

21 A Yes.

22 Q Presumably rather agitated still?

23 A Yes.

24 Q Frazzled?

25 A Yes.

1 Q Hadn't had time to digest everything?

2 A Yes.

3 Q By the time you testified at the preliminary hearing
4 you had time to go over those events in your head several
5 times; correct?

6 A Yes.

7 Q Because that occurred several weeks later?

8 A Yes.

9 Q And perhaps this was a poor phrasing of my prior
10 question. I asked you how you were threatened by the
11 defendant, whether it was via text, voicemail, or telephone
12 calls, and you just kind of said yes. How did he threaten
13 you? Was it via voicemail, or was it text message, or was it
14 both?

15 A Voicemail.

16 Q And my question to you on direct regarding the
17 defendant placing a 911 call was whether the defendant in your
18 presence ever placed a call to 911; correct?

19 A Correct.

20 Q Not whether he ever placed one, period, on that
21 date; correct?

22 A Correct.

23 Q Do you recall him ever placing a call to 911 in your
24 presence while you were laying on that bedroom floor bleeding?

25 A Not in my presence, no.

1 Q When did you and Echo begin looking for your own
2 place?
3 A The exact date I don't recall.
4 Q How long did you all look for your own place?
5 A For a couple weeks maybe.
6 Q What made you stop?
7 A Troy had said we could just stay there because
8 things would be easier. What he meant by that I don't know.
9 Q They had children together?
10 A Yes.
11 Q If Echo had moved out, he would have required -- he
12 would have been required to maintain his own residence;
13 correct?
14 A Yes.
15 Q In addition to supporting those children?
16 A Yes.
17 Q You were also asked about the statement you made
18 regarding Echo trying to come out of the bedroom. Do you
19 recall that question?
20 A Yes.
21 Q More specifically, you were asked whether or not you
22 ever told the police that or testified to it at the
23 preliminary hearing --
24 A Yes.
25 Q -- I believe. Do you recall as you sit there today

1 whether or not you ever testified to that at the preliminary
2 hearing?

3 A Yes.

4 Q Did you testify to that at the preliminary hearing,
5 that she'd tried to get away from him, that she tried to come
6 out of that bedroom?

7 A Yes.

8 Q And once again, this was several weeks after this
9 incident, actually December 12th of 2012; correct?

10 A Yes.

11 Q After the defendant shot Echo, shot you, and began
12 taunting you repeatedly he wasn't broken up, crying
13 hysterically, was he?

14 A No.

15 Q He had the foresight to tell the children to stay in
16 the other room?

17 A Yes.

18 Q He had the foresight to take the cell phone that
19 Jayce had gave you to away from you?

20 A Yes.

21 Q He had the foresight to know to leave because the
22 police were coming?

23 A Yes.

24 Q He had the foresight to grab the keys from inside
25 the residence to that Durango and leave in the Durango before

1 the police arrived?

2 A Yes.

3 Q And just for clarification purposes, Echo was not
4 standing between you and the defendant at the time she was
5 shot and killed; correct?

6 A Correct.

7 MS. MERCER: Your Honor, may I approach your clerk
8 -- or actually I think --

9 (Pause in the proceedings)

10 MS. MERCER: May I publish, Your Honor?

11 THE COURT: You may.

12 BY MS. MERCER:

13 Q I'm publishing State's Exhibit 46. When Echo was
14 shot and killed by the defendant where did she fall? Where
15 did she collapse inside that room?

16 A Where is this picture being taken from? I can't --

17 Q Would a different picture help you?

18 A I believe so.

19 (Pause in the proceedings)

20 BY MS. MERCER:

21 Q Showing you State's Exhibit 47, does the picture --
22 is this picture a little bit better?

23 A Yes.

24 Q Can we just zoom in a little bit?

25 Where did she collapse in that room?

1 A From what I remember it was right in that area.

2 Q Which way was her head facing?

3 A It would be facing that way.

4 Q Facing the back of the room?

5 A Yes.

6 Q To the left as you're looking in?

7 A Yes.

8 Q So her feet would have been by the door, closest to

9 the door?

10 A I'll draw a little stick figure, if that helps you.

11 Her head, her feet were right here, her back's against that

12 wall or the door.

13 Q Okay. Thank you. You were asked a question by Mr.

14 Coffee, and I don't recall what the question was, but your

15 response was that you believed he would have killed you if it

16 hadn't been for the children.

17 A Yes.

18 Q After the defendant shot you at least twice,

19 possibly three times, and you were lying on the ground is it

20 safe to say that the children were kind of swarming in and out

21 of that room consistently?

22 A Yes.

23 Q You were never alone with just defendant without the

24 children in the vicinity?

25 A Say again.

1 Q Were you ever alone in that room without children in
2 the vicinity of that master bedroom --

3 A No.

4 Q -- with the defendant?

5 A No.

6 Q You were also asked some questions about your
7 testimony that the children were in the hallway after the
8 shooting. You were asked those questions by --

9 A Yes.

10 Q -- Mr. Coffee. And I believe that the indication
11 was that you had never testified to that before?

12 A Yes.

13 Q Do you recall testifying at the preliminary hearing
14 with regards to that fact?

15 A Yes.

16 Q And you testified at the preliminary hearing that,
17 what? Where were the children after the shooting?

18 A After the shooting they were all over the place, in
19 a bedroom, in the hallway, in the bedrooms.

20 Q Okay. And do you recall being asked at the
21 preliminary hearing, at the point that he shot her where were
22 all of the children in the house?

23 A Yes.

24 Q And do you recall what your answer to that question
25 was?

1 A The preliminary hearing?

2 Q Yes.

3 A I do not recall.

4 Q Would it refresh your recollection if I showed you a
5 copy of that testimony?

6 A Yes.

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

8 THE COURT: You may.

9 BY MS. MERCER:

10 Q If you can just starting reading to yourself right
11 there and then hand it back to me when you're done.

12 A Okay.

13 Q Did that refresh your recollection?

14 A Yes.

15 Q And what was your response?

16 A My response was I believe Jodey and Jayce were in
17 the hallway, the other kids I'm not for sure, and Zazzy was in
18 her crib.

19 Q Okay. You were also asked some questions about your
20 employment status during the course of your relationship.

21 A Correct.

22 Q At some point you were between jobs; correct?

23 A Yes.

24 Q Did you have a savings?

25 A Yes.

1 Q Were you also receiving money from the National
2 Guard?

3 A Yes.

4 Q Defense counsel also asked you about the timing of
5 the intimate portion of your relationship. Do you recall that
6 question?

7 A Yes.

8 Q And then he jumped from that topic to when that
9 relationship actually began, your dating relationship.

10 A Correct.

11 Q You would agree with me that dating relationship
12 doesn't always entail intimacy?

13 A Correct.

14 Q Especially not at the very beginning; correct?

15 A Correct.

16 Q And the question that you were asked by Mr. Coffee
17 was when that dating relationship began.

18 A Yes.

19 Q And the answer that you had given to the police with
20 regards to when that dating relationship began?

21 A A few months prior.

22 Q This was in July when you gave the statement to the
23 police?

24 A Yes.

25 Q And so you started dating when?

1 A A few months prior.

2 Q Do you recall when it actually became intimate?

3 A No.

4 Q But safe to say it was not intimate in March of
5 2012; correct?

6 A Correct.

7 Q When you and Echo were texting back and forth you
8 weren't cc-ing the defendant on those text messages; correct?

9 A I was not?

10 Q You weren't copying the defendant on those text
11 messages; correct?

12 A Correct.

13 Q You were also asked some questions about some text
14 messages between you and Echo in regards to this Juicy Joey
15 tattoo?

16 A Yes.

17 Q For the record, is that a tattoo that you
18 discouraged?

19 A Discouraged, yes.

20 Q You discourage Echo from getting that tattoo;
21 correct?

22 A Yes.

23 Q But, either way, those text messages occurred seven
24 days prior to this murder?

25 A Yes.

1 Q So it was seven days prior to this murder that he
2 would have seen that tattoo for the first time?
3 A Yes.
4 Q Not minutes before?
5 A Correct.
6 Q To your knowledge the defendant and Echo separated
7 prior to him actually moving out of the house; correct?
8 A Yes.
9 Q So they were separated, but living together for some
10 period of time.
11 A Correct.
12 Q And when did you say that he officially moved out of
13 the residence?
14 A Early June of 2012.
15 Q So they would have separated approximately when?
16 A Around the March or April period.
17 MS. MERCER: Court's indulgence.
18 I have no further questions, Your Honor.
19 THE COURT: Mr. Coffee. And the I have questions
20 from the jurors.
21 RE CROSS-EXAMINATION
22 BY MR. COFFEE:
23 Q Mr. Averman, it's fair to say from mid June or say
24 July 1st until July 27th you weren't hanging out with Mr.
25 White. That's a fair statement; right?

1 A Yes.

2 Q In fact, you've said before, you've said in
3 statements that you didn't spend any significant time with Mr.
4 White during that period; is that right?

5 A Correct.

6 Q You weren't with Mr. White and Echo Lucas together?

7 A Correct.

8 Q Because you knew it might be a bad situation; right?

9 A Yes.

10 Q So this tattoo -- when Ms. Mercer said Mr. White
11 would have seen it before that, you actually weren't there
12 when Mr. White saw a tattoo before that. Is that fair?

13 A I was not there, no.

14 Q You don't know personally, you don't have personal
15 knowledge, you didn't see it with your own eyes that Mr. White
16 had actually seen that tattoo anytime before the shooting; is
17 that fair? Do you see him see her with the tattoo?

18 A No.

19 Q What you might rely on is something that Echo may
20 have told you; is that right?

21 A Yes.

22 Q And there were texts back and forth, but none of the
23 texts said that Troy actually saw the tattoo. It's, oops, I'm
24 picking Troy up and good luck hiding the tattoo, that sort of
25 thing; is that fair?

1 A Yes.

2 Q The text that we've got to memorialize anything.

3 So when Ms. Mercer says he would have seen it, again, we're

4 going through secondhand information you might have got from

5 Echo; is that fair?

6 A Yes.

7 Q Now, there was a question a moment ago -- oh. Since

8 we're talking about texts back and forth, did the police take

9 your cell phone?

10 A Yes.

11 Q Do you know if they did any testing on that cell

12 phone?

13 A No.

14 Q Did they ever ask you for a passcode to that cell

15 phone?

16 A No.

17 Q Had you sent taunting texts to Mr. White concerning

18 his relationship with Echo?

19 A Say again.

20 Q Did you send taunting texts to Mr. White concerning

21 his relationship with Echo?

22 A Not that I recall.

23 Q You might have?

24 A Yes.

25 Q Now, you had said a moment ago -- I think the

1 District Attorney had said that maybe she put words in your
2 mouth concerning texts and voicemails that you deleted that
3 you said were threatening. Do you remember those questions?

4 A Did I delete them?

5 Q Well, the deleted part -- it's a poorly asked
6 question. Thank you. My fault.

7 The District Attorney said, texts and voice
8 messages, threats from Troy White; you remember a question
9 along those lines a few moments ago?

10 A Yes.

11 Q And she said, I was the one that volunteered,
12 meaning her volunteered texts and voice messages, and maybe
13 you were just agreeing I think was the implication. Do you
14 remember that?

15 A Correct.

16 Q And you said there were only voicemails; right?

17 A Yes.

18 Q At preliminary hearing do you remember being asked
19 by Ms. Mercer the following question.

20 MR. COFFEE: It's page 16, Counsel.

21 BY MR. COFFEE:

22 Q "And when did he make those threats?"

23 And your answer, nobody putting words in your mouth,
24 your answer at that point, "A few different times over texts
25 and voicemails." Do you remember testifying to that at

1 preliminary hearing?

2 A Yes.

3 Q Now, there was some talk about foresight and
4 presence of mind. Do you remember those questions by Ms.
5 Mercer?

6 A Yes.

7 Q But we've already said a few moments ago that
8 afterwards Mr. White appeared somewhat irrational; yes?

9 A Yes.

10 Q And confused; yes?

11 A Yes.

12 Q The kids were in and out of that room after the
13 shooting; yes?

14 A Yes.

15 Q Mr. White tried to corral them to keep them out of
16 the room; yes?

17 A Yes.

18 Q You don't know for certain that the kids were there
19 every moment Mr. White was in the room with you; is that
20 accurate?

21 A Correct.

22 Q And this idea of Mr. White would have killed me but
23 for the kids being there, you didn't testify that -- didn't
24 testify to that in preliminary hearing; right?

25 A Correct.

1 Q And you didn't say it in your voluntary statement to
2 the police afterwards; correct?

3 A Correct.

4 Q First time -- at least when we've had a
5 conversation, this is the first time you've said that, here
6 today in court; is that right?

7 A Yes.

8 MR. COFFEE: Court's indulgence.

9 THE COURT: Sure. While you're doing that we're
10 going to take a break, Counsel.

11 During this recess you're admonished not to talk or
12 converse among yourselves or with anyone else on any subject
13 connected with this trial, or read, watch, or listen to any
14 report of or commentary on the trial or any person connected
15 with this trial by any medium of information, including,
16 without limitation, social media, texts, newspapers,
17 television, the Internet, and radio, or form or express any
18 opinion on any subject connected with the trial until the case
19 is finally submitted to you.

20 If we could see you after about 10 minutes outside
21 Courtroom 14A, please.

22 (Jury recessed at 3:25 p.m.)

23 THE COURT: Counsel --

24 MS. MERCER: Your Honor, may the witness step down
25 now?

1 THE COURT: Yes, sir. That's -- he and I were just
2 discussing where he should go to use the facilitates for his
3 personal convenience break.

4 So, sir, you can go on. We'll see you in a little
5 bit.

6 Counsel, you've had a couple of people today review
7 their reports earlier about refreshing their recollection, and
8 we've had substantial refreshing of recollection this
9 afternoon with the preliminary hearing transcript and
10 voluntary statements. Do you want any portions of those
11 marked, whether they're redacted or otherwise?

12 MS. MERCER: Well, we're pulling out transcripts of
13 testimony on [inaudible], but possibly the text messages that
14 he was using to refresh.

15 THE COURT: Aren't the text messages already in
16 evidence?

17 MS. MERCER: No.

18 MR. COFFEE: No. What happens --

19 THE COURT: But the report was.

20 MR. COFFEE: Well --

21 MR. ROGAN: Not of every day.

22 MR. COFFEE: No. Actually, what we've got in the
23 report, the report is just of Troy White and it's limited to
24 Troy White back and forth. Some of the text messages we were
25 using went directly to Joe, and it's also a different format

1 of a report. Plus it was split out with .mms.
2 MS. MERCER: You still used it to refresh
3 recollection.
4 MR. COFFEE: Yeah, I know.
5 MS. MERCER: Okay.
6 MR. COFFEE: Oh, sure, you can put it in. I don't
7 care. I can --
8 THE COURT: MMS, those are pictures.
9 MR. COFFEE: Yeah. But they have texts with the
10 .mms, and those don't show up everywhere. So --
11 THE COURT: I know this because when my ex-husband
12 sends group texts they come over as data messages, as opposed
13 to when I send them off of my Windows to him and they're just
14 a regular message.
15 He said okay. I was just trying to make sure that
16 we didn't forget. That's all I'm trying to make sure, that
17 you don't forget.
18 MR. COFFEE: Yeah.
19 THE COURT: See, the elephant never forgets. And
20 who's the elephant in the room? That'll be me.
21 MR. COFFEE: We've got a cell phone guy that's going
22 to come in. We're going to -- oh. First we're going to talk
23 about some messages.
24 THE COURT: Okay. So how are we doing on time with
25 this guy? How much longer?

1 MR. COFFEE: I'm done.

2 THE COURT: Here's my questions from the jurors.

3 I'm going to go to the restroom while you look at those.

4 Jill, we're going off the record for 10 minutes.

5 (Court recessed at 3:27 p.m., until 3:37 p.m.)

6 THE COURT: Okay, Kevin. Go get the jurors. Is our

7 witness back upstairs? Okay.

8 Did you have any objections to any of the questions,

9 Mr. Coffee?

10 MR. COFFEE: No.

11 THE COURT: We have well-written questions.

12 MR. COFFEE: Yeah.

13 THE COURT: Some of them are even neat enough to

14 read.

15 Sir, if you could remain standing. We stand to show

16 that we appreciate the jury's service. So hopefully they'll

17 get in pretty quick. Plus some of us are tired of sitting,

18 because we sit all day.

19 (Juror reconvened at 3:40 p.m.)

20 THE COURT: Counsel stipulate to the presence of the

21 jury?

22 MS. MERCER: Yes, Your Honor.

23 MR. COFFEE: Yes, Your Honor.

24 THE COURT: You can be seated, sir. You're still

25 under oath.

1 Mr. Coffee, you were on recross.

2 MR. COFFEE: Thank you.

3 RE CROSS-EXAMINATION (Continued)

4 BY MR. COFFEE:

5 Q Couple quick questions. There was discussion about
6 the children being in the room afterwards and whether or not
7 Mr. White had attempted to kill you again. You remember those
8 questions just a moment ago?

9 A Yes.

10 Q Okay. After the first shots were fired did Mr.
11 White beat you in any way?

12 A No.

13 Q Never hit you?

14 A No.

15 MR. COFFEE: Okay. Good enough. Thank you, Mr.
16 Averman.

17 We'll pass the witness.

18 THE COURT: Sir, I have some questions from the
19 jurors.

20 THE WITNESS: Okay.

21 THE COURT: Was your unemployment a reason to stop
22 looking for a different place to live?

23 THE WITNESS: No.

24 THE COURT: When Echo was shot did you ever move
25 forward towards the craft room?

1 THE WITNESS: Yes.

2 THE COURT: When did you notice the gun?

3 THE WITNESS: After he grabbed her and pulled her
4 back into the room and pushed her against the wall then shot
5 her.

6 THE COURT: Do you know or were you aware of
7 ammunition being purchased for the gun you previously saw?

8 THE WITNESS: No.

9 THE COURT: From the time that you began your
10 relationship with Echo to the date of the shooting did you
11 ever physically encounter Mr. White face-to-face in the same
12 room?

13 THE WITNESS: No.

14 THE COURT: Do you recall after Mr. White shot his
15 wife to the time he approached you did he say anything to you
16 prior to shooting you?

17 THE WITNESS: No.

18 THE COURT: In regards to your relationship with
19 Echo, did you pursue her, or did she pursue you, or was it
20 mutual?

21 THE WITNESS: Mutual, Your Honor.

22 THE COURT: Did you ever convey or discuss your
23 concerns about her husband Troy White?

24 THE WITNESS: Meaning?

25 THE COURT: Can't explain. Let me read it again.

1 Did you ever convey or discuss concerns about her husband Troy
2 White?

3 THE WITNESS: Yes.

4 THE COURT: Where would you and Echo reside during
5 the weekend while Troy White stayed at the house?

6 THE WITNESS: Either at her mom's or her dad's, Your
7 Honor.

8 THE COURT: Would you like to follow up, Mr. Rogan
9 -- or, I'm sorry, Ms. Mercer?

10 MS. MERCER: Yes, please, Your Honor.

11 FURTHER REDIRECT EXAMINATION

12 BY MS. MERCER:

13 Q When Echo and you left the weekend did the two of
14 you stay together at one of her parents' house, or was she
15 staying with one of the parents and you staying elsewhere?

16 A We stayed together.

17 Q Stayed together. And you never encountered the
18 defendant face to face once you began dating Echo?

19 A No.

20 Q Never tried to instigate anything with him?

21 A No.

22 Q Had you seen the firearm when the defendant first
23 entered the residence would you have permitted Echo to go into
24 that back bedroom with him?

25 A Absolutely not.

1 Q How far did you make it towards the craft room
2 before you were shot?

3 A Maybe a step.

4 Q Is that why you were still standing in the doorway
5 when you were struck?

6 A Yes.

7 Q You were also asked a question about whether you
8 stopped looking for a place to live with Echo because of your
9 unemployment status. Do you recall that question just now?

10 A Yes.

11 Q The reason you stopped looking for a place is
12 because the defendant asked that Echo remain in that home;
13 correct?

14 A Yes.

15 Q Because it would make things easier?

16 A Yes.

17 Q You were also asked a question on recross by Mr.
18 Coffee regarding your statement about -- along the lines of
19 you feeling that you were alive because the children were
20 there and stopped him.

21 A Yes.

22 Q And you were asked more specifically whether you
23 ever said that at preliminary hearing or in the statement to
24 the police.

25 A Yes.

1 Q Is it safe to say you only answer the questions
2 you're asked?

3 A Yes.

4 Q And you were never asked those questions; correct?

5 A No.

6 Q The day that you and Echo were texting about the
7 "Juicy Joey" tattoo and Echo meeting up with the defendant,
8 when she sent you that text message that said, there's no
9 hiding it today, she sent it with a photograph; correct?

10 A I don't recall.

11 Q Do you recall whether she sent it with a photograph
12 of her wearing a spaghetti-strap tank top that clearly showed
13 the tattoo on her left shoulder?

14 A Yes.

15 Q Yes?

16 A Yes.

17 Q So if she had met the defendant that day, he would
18 have seen it; correct?

19 MR. COFFEE: Objection. Speculation.

20 THE COURT: Overruled.

21 BY MS. MERCER:

22 Q Was that a yes?

23 A Yes.

24 MS. MERCER: No further questions.

25 THE COURT: Mr. coffee, anything else?

1 FURTHER RECROSS-EXAMINATION

2 BY MR. COFFEE:

3 Q You'd agree that texting you a tattoo with a
4 spaghetti-strap top doesn't say exactly what else she might be
5 wearing later in the day?

6 A Correct.

7 Q Put on a jacket; yes? Of course, it's summer in
8 Vegas, maybe you didn't put on a jacket; right?

9 A Correct.

10 Q You just don't know; is that fair?

11 A Correct.

12 Q Now, there was a discussion at some point when the
13 actual shooting took place that the gun had never got much
14 above waist height. Do you remember that?

15 A Yes.

16 Q And in fact that's what happened. The gun was only
17 about waist high when he shot Echo; is that right?

18 A From what I recall, yes.

19 Q Did you actually see him produce the pistol? Did
20 you see him pull the gun, or did you see the gun in his hand
21 when you opened the door? Does that make sense?

22 A Pulled the gun out of his waistband, from what I
23 recall.

24 Q What you recall. Do you remember seeing the gun in
25 the waistband, or seeing it in his hand?

1 A In his hand.

2 Q Okay. In his hand. So you didn't actually see him
3 produce it at that point; is that fair?

4 A (No audible response)

5 Q At some point when he comes back in and out of the
6 room with you you see him pull the gun out of his waistband;
7 is that right? You've testified to that in the past; yes?

8 A Say it again.

9 Q Sure. After the shooting takes place, when he's
10 coming in and out of the room, at some point you see him pull
11 the gun from his waistband after the shooting?

12 A No.

13 MR. COFFEE: Court's indulgence.

14 (Pause in the proceedings)

15 BY MR. COFFEE:

16 Q You say the following, and it's page 11 of the
17 voluntary statement. "Did you see him draw the gun, or when
18 you opened it you just saw the shot?"

19 Remember being asked by an officer?

20 A Yes.

21 Q And you remember saying, "No, that's -- it's just --
22 but where he had it it was low. You know, I just assume --
23 but then he came back. After he shot me, though, he came
24 back, and it was like he showed me it was in his waistband,
25 and then he pulled it out and did wave it in my face"?

1 Do you remember that to the officer?

2 A No.

3 Q Remember saying that to the officer?

4 A No.

5 Q Would looking at a copy of your statement help

6 refresh your recollection as to whether or not maybe you said

7 that to the officer?

8 A Well, maybe I said it.

9 Q You may have said it?

10 A Correct.

11 Q Understanding -- and we've talked about the

12 medication and everything else. Even with the medication you

13 weren't trying to make up facts; is that fair?

14 A Correct.

15 Q Trying to be as accurate as possible?

16 A Correct.

17 Q And you may have said that you didn't see him

18 actually pull the gun until later, when he pulled it out of

19 the waistband? You may have said that to the officer?

20 A Correct.

21 Q The between question. I'm still trying to work

22 through this, and I'm hoping you can help us. There are two

23 doors, and you're in the master bedroom. You hear a sound,

24 and the door that's partially open you start to open.

25 A Correct.

1 Q And you said you see Echo leaving the room.
2 A Correct.
3 Q I take it Troy White is still in the room at that
4 point.
5 A Yes.
6 Q Pulls her back.
7 A Correct.
8 Q Is it fair to say that at that point she's between
9 you and Troy? Do you understand the question?
10 A After he pulls her back into the room?
11 Q Before he pulls her back to the room. She's trying
12 to exit, he's in the room, you're in the other hallway, the
13 doors are essentially facing each other; yes?
14 A Correct.
15 Q Okay. At that point is she between you and Troy?
16 A Yes.
17 Q Okay. But when he pulls her back she's no longer
18 between you and Troy, she goes into the door, and he fires a
19 shot. Is that accurate?
20 A Correct.
21 MR. COFFEE: Okay. Thank you, Mr. Averman.
22 THE COURT: Any more, Ms. Mercer?
23 MS. MERCER: No, Your Honor.
24 THE COURT: Any more from the jury?
25 Thank you, sir. We appreciate your time. Have a

1 very nice afternoon.

2 THE WITNESS: Thank you.

3 THE COURT: Next witness.

4 MR. ROGAN: State's next witness is Herman Allen.

5 THE COURT: Thank you.

6 HERMAN ALLEN, STATE'S WITNESS, SWORN

7 THE CLERK: Thank you. Please be seated. Please

8 state your full name, spelling your first and last name for

9 the record.

10 THE WITNESS: Herman Allen, H-E-R-M-A-N A-L-L-E-N.

11 THE COURT: Sir, there's water in that pitcher,

12 there are M&Ms in the dispenser. If you would like some

13 coffee, I'm certain the marshal could find you some.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: You may proceed, Mr. Rogan.

16 MR. ROGAN: Thank you, Your Honor.

17 At this point, Your Honor, the State moves to admit

18 pursuant to stipulation State's Exhibit 101.

19 THE COURT: Any objection?

20 MR. COFFEE: No objection.

21 THE COURT: Be admitted.

22 (State's Exhibit 101 admitted)

23 DIRECT EXAMINATION

24 BY MR. ROGAN:

25 Q Good afternoon, sir. Thank you for coming today.

1 Do you know the defendant, Troy White?

2 A I do, yes.

3 Q Do you see Troy White here in court today?

4 A Yes, I do.

5 Q Could you please point to him right now and tell me
6 something that he's wearing today.

7 A Sitting here behind the monitor, white shirt, gray
8 suitcoat, tie.

9 MR. ROGAN: Thank you.

10 Your Honor, would the record reflect the
11 identification of the defendant, please.

12 THE COURT: Sir, which position is he in at the
13 table?

14 THE WITNESS: He is in the center of the three
15 sitting there.

16 THE COURT: Thank you, sir.

17 BY MR. ROGAN:

18 Q Thank you. How long have you known the defendant?

19 A Approximately 10, maybe 11 years.

20 Q Where'd you first meet him?

21 A At church, the Potter's House Christian Church.

22 Q Are there several Potter's House Churches here in
23 Las Vegas?

24 A Yes. I believe there are seven total in the city.

25 Q Which particular congregation or church did you meet

1 the defendant at?

2 A West Sahara, 6720 West Sahara.

3 Q Did you know at the time -- if at the time that you

4 met the defendant he was married?

5 A He was not when we met.

6 Q Over the course of your relationship did the

7 defendant get married to a woman by the name of Echo Lucas?

8 A Yes, he did.

9 Q Did you know Echo Lucas when she was alive?

10 A Yes, I did.

11 Q Showing you State's Exhibit Number 1, who's that

12 person?

13 A That's Echo.

14 Q Were you married at the time?

15 A I was, yes.

16 Q That's way back in 2003, 2004?

17 A Correct.

18 Q What was your wife's name?

19 A Cheryl.

20 Q Is Cheryl still with us today?

21 A Surprise.

22 MR. ROGAN: Your Honor, may I approach the witness?

23 THE COURT: And, sir, here's some tissues if you

24 need them.

25 THE WITNESS: I'm sorry about that. Tender spot.

1 No. She passed away in 2009.

2 BY MR. ROGAN:

3 Q I'm sorry for bringing that up.

4 When you met the defendant and after he married Echo
5 would you and your wife spend time with the defendant and with
6 Echo?

7 A Oh, yeah.

8 Q Would that be for church matters?

9 A At church, after church, fellowship, just lunch or
10 dinner.

11 Q And so you would meet with them fairly frequently?

12 A Yes.

13 Q Were you friends with the defendants -- were you
14 close friends with the defendant, then?

15 A I would say so, yes.

16 Q Were you close with Echo, as well?

17 A Yes, uh-huh. I appreciated their friendship,
18 especially during the loss of my wife.

19 Q Okay. At some point you obviously learned that Echo
20 Lucas had been shot and killed --

21 A Yes.

22 Q -- on July 27th of 2012?

23 A Yes.

24 Q Now, months earlier were you still attending the
25 Potter's House Church on West Sahara?

1 A Yes.

2 Q Was the defendant still attending the Potter's House
3 Church on West Sahara?

4 A No. He had returned -- he had came back I'd say
5 maybe five weeks before the shooting.

6 Q So some months before the defendant had left the
7 Potter's House Church? Some months before Echo Lucas died the
8 defendant had left the Potter's House Church?

9 A Yes. They both had.

10 Q And that was my next question. So did Echo?

11 A Right.

12 Q When they left did you have continued contact with
13 the defendant and with Echo?

14 A Actually, I didn't. I -- just kind of personally I
15 felt the direction that their lives were going I didn't want
16 to relive, so I just tried to encourage them not to stop
17 coming to church. And, no, I didn't go with them, I didn't
18 follow them.

19 Q Okay. Is it fair to say that the church that you
20 belong to, the Potter's House, has some very strict behavioral
21 regulations?

22 A We believe in the Bible applicable.

23 Q Okay. So things like not drinking and smoking and
24 getting tattoos, those are generally prohibited by your
25 religion?

1 A I can't say prohibited.

2 Q Okay.

3 A Discouraged, yeah.

4 Q Fair enough. Fair enough. Is that the kind of
5 behavior that you knew Echo and the defendant to be engaging
6 in after or at the time they left the church?

7 A I only heard rumors.

8 Q Is that why made the decision not to remain in
9 contact with both the defendant and with Echo?

10 A No. I made that decision because of my own life. I
11 came out of a wild life, and I didn't want to associate with
12 it again.

13 Q Okay. Were you afraid that Echo and the defendant
14 were engaging in some wild life that caused you concern?

15 A Not immediately. But life is a slippery slope, and
16 I know in my -- personally if I forget where I'm from I'm
17 going to go back and relive it. And we all came from pretty
18 rough backgrounds.

19 Q So you wanted -- all of you did?

20 A All of us did.

21 Q So you wanted to stay grounded in the church?

22 A Right.

23 Q And you didn't want to associate with backsliders;
24 right?

25 A I didn't want to lose my grounding, yeah.

1 Q And I'm sorry. I used the work "backslider." Can
2 you tell me what that is?

3 A That's when we stop moving forward and start going
4 back and doing the things that we did once upon a time.

5 Q Okay. And that's what you were afraid of doing?

6 A Right.

7 Q When Echo and the defendant left the church were
8 they considered to be backsliders at that time?

9 A The term "backslider," it isn't as if you go jump
10 off a cliff and you watch them go and you say, they backslid,
11 no. That means you stop going in the direction you're going
12 and you find another outlet. It isn't something extreme, it's
13 something that if you're not going forward you're regressing,
14 you're going backwards, you're going in another direction.

15 Q Okay. And that's what Echo and Troy were doing when
16 they left the church?

17 A Right.

18 Q Okay.

19 A And I actually was with them the night I made that
20 decision that I wasn't going to follow them. Somehow I knew
21 personally this --

22 Q Okay. I don't want you to speculate about anything,
23 so let me just ask you some more questions.

24 A Okay.

25 Q Okay. All right. So you informed that you would

1 not associate with them because they had left the church?

2 A No. I made a personal decision.

3 Q Okay. It was a private decision --

4 A It was private.

5 Q -- you didn't share -- okay. No problem.

6 At some point about five or six weeks before the
7 defendant shot and killed Echo did you -- were you at home
8 when the defendant came by?

9 A No. I was at church.

10 Q I'm sorry. You were at church. All right. Did the
11 defendant come and have a conversation with you?

12 A He did, yes.

13 Q And did he ask you something?

14 A It led up to him asking me if he could stay with me.

15 Q Is it fair to say that you had a conversation with
16 Troy about his marriage?

17 A Yes.

18 Q Did he express to you that he was having
19 difficulties in his marriage?

20 A He did, yes.

21 Q And what -- at the end of that conversation what is
22 it that he asked?

23 A He asked me would it be possible he could stay with
24 me, because it was just myself and my son living together,
25 until they could work out their difficulties.

1 Q I understand. And is that how he expressed it,
2 until they could work out their difficulties?

3 A Yes, it was.

4 Q Okay. When did he move in with you?

5 A Approximately five weeks before the shooting.

6 Q Was it a day or two after this conversation at the
7 church? If you know. If you remember.

8 A I would like to say it was a Sunday, which would
9 have been -- I talked to him on a Wednesday --

10 Q Okay.

11 A -- and he asked me could he stay during his work
12 week. And I believe we started that arrangement on a Sunday
13 evening.

14 Q I see. So the arrangement was that he would stay
15 Monday through Friday; correct?

16 A Monday through Thursday. And Friday morning when he
17 went to work he wouldn't come back until Sunday evening.

18 Q Just for clarification, what was the address and
19 apartment number of where you were living and where the
20 defendant was staying with you?

21 A 6255 West Tropicana. And I believe the apartment
22 number was 254. I've since moved out of there.

23 Q I understand. And you said that you had last seen
24 him on Thursday night?

25 A Yes.

1 Q Were you working at that time?

2 A I was, yes.

3 Q And what job did you have?

4 A The same one I have now. I drive for a living. I'm

5 a delivery driver.

6 Q What were your hours on any given day?

7 A It starts 7:00 to 4:00, but it usually goes over.

8 So 7:00 to 4:00 minimal. 7:00 a.m.

9 Q Did you know the defendant's hours at his work at

10 Yesco?

11 A Friday morning he usually began the day around 3:00

12 or 4:00. That was his clock-in time, 3:00 or 4:00 a.m.

13 Q All right. And if your work was 7:00 a.m., would

14 you see him in the morning hours on a Friday when you awoke?

15 A No. He would be gone.

16 Q And when you returned from work sometime after 4:00,

17 is that correct, would he be there?

18 A Not on a Friday evening.

19 Q When would he return -- when would you again see

20 him?

21 A Sunday evening.

22 Q So it's fair to say that he would leave sometime on

23 Friday and go stay with his children?

24 A Correct.

25 Q And he would return on Sunday?

1 A Correct.

2 Q I see. When he was living with you what room was he
3 staying in?

4 A He actually bunked in the living room.

5 Q I'm going to show you a picture of it in a minute.

6 MR. ROGAN: Court's indulgence.

7 THE COURT: Uh-huh.

8 BY MR. ROGAN:

9 Q Showing you Defendant's Exhibit W. When you say
10 bunked in the living room, is that the living that he was
11 staying in at your apartment?

12 A Yes.

13 Q And can you describe what -- and it's fair to say in
14 this exhibit that there's an inflatable mattress?

15 A Correct.

16 Q Is that where he was sleeping?

17 A Yes.

18 Q Where would he store his clothing?

19 A To the right of this picture my -- the front door
20 was there, and right next to the front door was a living room
21 closet. It was so if you opened the front door you couldn't
22 open the closet door. They were that close together.

23 Q All right. I'm going to pull a picture of your
24 front room closet, okay?

25 MR. ROGAN: Sorry, Your Honor.

1 BY MR. ROGAN:

2 Q All right. So he would -- what would he put in the
3 closet, if anything?

4 A His work attire, his work uniform. As I recall, two
5 pair of shoes, tennis shoes, and then a couple pairs of jeans.
6 It was light. It wasn't very much.

7 Q Not a lot of clothing?

8 A No.

9 Q Showing you Defendant's Exhibit R, is that a shot of
10 the interior of that closet that you're describing for us?

11 A It is. Correct.

12 Q You mentioned that he kept his work clothes in
13 there. Showing you State's Exhibit 101, is this a shirt that
14 he would wear to work?

15 A Yes.

16 Q Referring back now to Defendant's Exhibit R, are
17 these the two shirts that are hanging there? Are those two
18 Yesco shirts, to your knowledge?

19 A Yes. And if I might add, from the pants to the
20 plaid are all his.

21 Q Okay. From these jeans that you see in Exhibit R
22 all the way to that plaid shirt on the right-hand side of the
23 picture, those are all the defendant's clothes?

24 A Correct.

25 Q And you see that suitcase --

1 A Yes.

2 Q -- in the closet there? Did you ever open that
3 suitcase or see the contents?

4 A After Troy had been arrested, yes, I did.

5 Q Okay. Showing you Defendant's Exhibit -- I think
6 it's a C or a U. I'm not quite sure. I think it's C. Is
7 that the contents of the suitcase that was -- that we just saw
8 inside the defendant's -- I'm sorry, inside your living room
9 closet?

10 A As I recall, yes.

11 Q When he left to go visit his children he would take
12 his clothing with him; correct?

13 A Not all of them.

14 Q But some of them?

15 A But some of them, yes.

16 Q Is that because he stayed the night over at 324
17 Altimira with his include?

18 A He would stay Friday, Saturday, all day Sunday, and
19 come back with me Sunday night, Sunday evening.

20 Q Okay. Were you aware if he kept a firearm inside
21 your residence?

22 A No, I was not.

23 Q Did he ever ask permission to keep a firearm inside
24 your residence?

25 A No, he did not.

1 Q Did he ever mention to you a person by the name of
2 Joe Averman?

3 A Yes.

4 Q Did he identify who Joe was to you?

5 A Yes. And I also personally knew Joe.

6 Q Okay. What did the defendant say about who Joe
7 Averman was to him?

8 A I'm not sure of the question.

9 Q Okay. You knew Joe from the church?

10 A Correct.

11 Q And you knew that Joe was friends with Echo and the
12 defendant?

13 A Correct.

14 Q And at some point did the defendant say to you that
15 Joe had started a relationship with Echo or Echo had started a
16 relationship with Joe or something mutual?

17 A Yes.

18 Q And when was that that you learned that?

19 A I learned of it once Troy came back into my life and
20 we had that conversation, him agreeing -- me agreeing for him
21 to say with me. That's when I began to learn of the
22 relationship between Joe and Echo.

23 Q I see. Would you and Troy discuss his relationship
24 with Echo in the five weeks that he was living with you?

25 A Did we? Yes.

1 Q How often would you do that?

2 A He talked about it often, because it was a constant
3 issue at that point in his life.

4 Q I understand. Did he express a desire to reunite
5 with Echo?

6 A He did, yes.

7 Q And at some points did he say to you or somehow
8 relate to you that he was getting back together with Echo?

9 A That the possibility looked very good, yes.

10 Q Okay. What about the other possibility? Did he
11 ever express to you that he was -- Echo was never taking him
12 back or his relationship was never going to work?

13 A He did, yes.

14 Q Is it fair to say it was up and down sometimes?

15 A It was very up and down.

16 Q And that was a constant issue with him for those
17 five weeks that he was living with you?

18 A Pretty much, yes.

19 Q About a week before Echo Lucas was shot and killed
20 by Troy, the defendant, did the defendant say a phrase to you
21 that was unsettling, looking back at it now?

22 A In our -- looking back, in our conversation one
23 evening we were driving, and I'm not sure exactly how we got
24 to that subject, but he did say that -- about if you have
25 something and it goes away that, you know, he had heard that

1 you should hunt it down and shoot it.

2 Q Okay.

3 A But I continued, and I told him -- I changed the
4 subject by telling him that if it was for you patience will
5 bring it back to you.

6 Q I understand. So was this -- this phrase that he
7 said to you, did that come up in a conversation when you were
8 discussing his relationship with Echo?

9 A No. As I recall, we were just -- and it just --
10 like he said, hey, hey, and said it. Just spoke it out.

11 Q He just blurted it out at one point?

12 A Right.

13 Q While you were driving the car?

14 A Right.

15 Q And is it -- and tell me if this is accurate or not,
16 but the exact phrase that he said is, "If you love someone,
17 set them free. If they come back they're yours. If not they
18 never were." And then he expressed to you that he liked a
19 different version, which is, "If you love someone, set them
20 free. If they don't come back, hunt them down and kill them,"
21 along those lines?

22 A Along those lines.

23 Q And that's what he said to you. And do you today
24 remember how soon before Echo's death that the defendant spoke
25 those words?

1 A Vaguely. I would say between seven and ten days.
2 Q Thank you, sir.
3 Going to talk to you about what happened or what you
4 knew, what you observed and what your heard on July 27th,
5 2012. And feel free to get some water if you need some. Are
6 you ready?
7 A Yes.
8 Q You mentioned before that you had last seen Troy on
9 the evening of July -- on the evening -- Thursday evenings
10 before you went to bed; is that fair to say?
11 A Correct, yes.
12 Q And you wouldn't see him until -- again until
13 Sunday?
14 A Correct.
15 Q Now, July 27th was a Friday.
16 A Uh-huh, it was.
17 Q Did you go to work at your normal hours of
18 7:00 o'clock?
19 A Yes, I did.
20 Q When you awoke was the defendant present?
21 A No. He had already gone.
22 Q Now, you mentioned that your son lived with you, as
23 well.
24 A Yes.
25 Q Did he work at the time?

1 A He did, yes.

2 Q All right. What were his hours, do you know?

3 A 9:00 to -- no. That's too soon. He got off at

4 8:00, so it would have been 11:00 to 8:00.

5 Q Do you know if he saw Troy White that day?

6 A He did not. As I recall --

7 Q I'm sorry. It's just you have to answer a question

8 that I ask, okay?

9 Do you remember what time you left on July 27th?

10 A No, later than 7:00. My job required me to go into

11 marshalling, which is a way we deliver to the conventions when

12 they're in town. And so it's a possibility I started at 6:00

13 that day. It was a possibility. But generally 7:00, yes.

14 Q Okay. And so it would be fair that if you told the

15 police you left at about 10 past 6:00 that morning, that would

16 be for what you were doing?

17 A That would be accurate.

18 Q All right. And marshalling, is that where you just

19 sit and wait with your delivery until convention center or

20 whatever place you're at will allow you to deposit your

21 contents with them; right?

22 A Exactly.

23 Q Okay. So it's a long process where you're just

24 sitting in your truck?

25 A Pretty much, yes.

1 Q All right. Did you know that -- what time Troy had
2 gone to work that Friday morning?

3 A He told me as we were going home he had to be there
4 at 3:00 o'clock.

5 Q All right. Are you talking about a conversation you
6 had with him the night before, on July 26th?

7 A Right. He -- so when we got home he said, if you
8 don't mind, I'm going to right to bed, I've got to be to work
9 at 3:00 in the morning, good night.

10 Q Had you spent your evening of July 26 with Troy?

11 A We did, yes.

12 Q Okay. Now, while you were waiting at the convention
13 center or wherever you were marshalling, as you call it --

14 A Uh-huh.

15 Q -- did you receive a phone call from someone by the
16 name of William Ortiz?

17 A I did, yes.

18 Q And did Mr. Ortiz ask you something?

19 A He did.

20 Q What did he ask you?

21 A Had I heard.

22 Q And did you understand what he was talking about?

23 A No clue at all.

24 Q Do you know about what time of day this was that
25 William Ortiz contacted you?

1 A 11:30, 12:00-ish, maybe 12:30.

2 Q Did you have a conversation with Mr. Ortiz at this
3 time?

4 A Brief. He let me know what was going on and asked
5 me if I knew how to reach Troy.

6 Q So Mr. Ortiz communicated to you that Echo Lucas --
7 Echo Lucas White had been shot?

8 A Correct.

9 Q Did you know at that time whether Echo White was
10 dead or alive?

11 A No, I did not.

12 Q Did Mr. Ortiz tell you that the defendant, Troy
13 White, was the one suspected of shooting her?

14 A He did, yes.

15 Q And based upon your conversation with Mr. Ortiz what
16 is it that you did?

17 A I started calling Troy, and it was going to his
18 voicemail, and I was between calling him and texting him,
19 trying to reach him.

20 Q So you're sitting in your truck doing everything you
21 can with your cell phone, trying to reach the defendant?

22 A Correct.

23 Q At first were you successful in contacting the
24 defendant?

25 A Not right away.

1 Q How many tries do you think -- or how long and how
2 many minutes did it take before you finally were able to
3 contact him?

4 A Fifteen, maybe twenty minutes. And he called me.

5 Q Do you remember what number he called you from?

6 A I -- gosh. I used to remember it -- I used to know
7 it, but I can't --

8 Q And you remember telling the police what telephone
9 number it was that he called you from; right?

10 A Yes, I did.

11 Q All right. So would looking at your voluntary
12 statement that you gave police on page 5 refresh your memory
13 about what Troy White's telephone number was?

14 A Yes.

15 MR. ROGAN: Okay. Your Honor, may I approach?

16 THE COURT: You may.

17 MR. ROGAN: Thank you.

18 BY MR. ROGAN:

19 Q Okay, Mr. Allen. Just about halfway down you
20 revealed the telephone number. I need you to read that
21 silently to yourself, okay. Do you remember now, sir, what
22 telephone number Troy White had?

23 A Yes, I do.

24 Q What is it?

25 A It's 702-271-9121.

1 Q And that's the phone number that he was calling you
2 from on the afternoon of July 27th?

3 A Correct.

4 Q When you first made contact -- I'm sorry. When the
5 defendant contacted you, called you back after your numerous
6 texts and calls what did he say to you?

7 A He asked me if I had heard.

8 Q Heard what?

9 A I immediately answered him and said, yes, I had.
10 That was his question, did you hear.

11 Q Right.

12 A And I --

13 Q Do you remember -- I'm sorry. Do you remember
14 telling the police something just very much like that but a
15 little bit different?

16 A No.

17 Q Okay. Do you want to take a look at your --

18 A Please.

19 Q All right.

20 MR. ROGAN: Page 5, down the bottom, Counsel.

21 May I approach the witness to refresh his memory?

22 THE COURT: You may.

23 MR. ROGAN: Thank you.

24 BY MR. ROGAN:

25 Q All right. Just that last line there. Read that

1 silently to yourself again, okay. Do you remember now what
2 you told the police the defendant had said?

3 A He asked me if I had heard what he had done.

4 Q So it wasn't just, had you heard, it was had you
5 heard what I did?

6 A Right.

7 Q All right. And you told him that you had?

8 A Yes.

9 Q And at that point did you counsel the defendant to
10 do something?

11 A I did.

12 Q What did you tell him to do?

13 A Turn himself in.

14 Q Did you know where he was at the time that you had
15 this conversation?

16 A No, I did not.

17 Q Did he ask you anything, to your recollection,
18 during this first conversation?

19 A I don't believe he did, no.

20 Q Okay. I know it's been nearly three since that
21 happened, so it's okay if you forget things. Okay?

22 Would refreshing your -- would taking a look at your
23 voluntary statement actually refresh your memory about whether
24 he asked anything?

25 A Yes.

1 MR. ROGAN: Page 8, Counsel.

2 BY MR. ROGAN:

3 Q Just that first three lines on the top of page 8,
4 okay. Just read them to yourself. Do you remember that now?

5 A Vaguely. Can I say why? It seemed to me that was a
6 second conversation.

7 Q Okay. All right. But at some point -- is it fair
8 to say you had multiple conversations with the defendant over
9 a number of hours that afternoon?

10 A Correct. Yes.

11 Q All right. And so did you tell the police -- and
12 you identify this in the first conversation, but maybe it was
13 the second, that the defendant asked how they were doing?

14 A He did, yes.

15 Q And what was your answer?

16 A At that point I was able to tell him that she didn't
17 make it and that he was rushed to the hospital.

18 Q He meaning Joseph Averman?

19 A Correct.

20 Q And you had learned this at some point that
21 afternoon after your first conversation with William Ortiz?

22 A Yes.

23 Q All right.

24 A And again, I believe it was with a conversation with
25 William.

1 Q Okay. How did he respond to that question?

2 A He cried.

3 Q Did you again counsel him to turn himself in?

4 A Yes.

5 Q Could he identify to you where he was located?

6 A He didn't at point again, no.

7 Q Did he -- did he express to you that he knew where

8 he was and he just didn't want to tell you, or did he just say

9 he didn't know? Do you understand the difference between the

10 two?

11 A I do. As I recalled, he wasn't sure where he was

12 and he couldn't tell me.

13 Q Could you tell, based upon what you could hear

14 through the phone, whether the defendant was driving a

15 vehicle?

16 A He was driving.

17 Q And could you -- you know how there's different

18 sounds if you're driving in traffic and than you're driving on

19 a highway.

20 A Right.

21 Q Could you tell if he was driving in traffic or

22 driving on a highway?

23 A There was no traffic sounds. The windows could have

24 been up, but there was no traffic sounds.

25 Q Okay. You remember telling the police that it

1 sounded like he was travelling on a highway?

2 A I don't. I'm sorry, I don't.

3 MR. ROGAN: Page 6. May I approach the witness to
4 refresh recollection?

5 THE COURT: You may.

6 BY MR. ROGAN:

7 Q Just that answer right there. Just read it
8 silently, please. Do you remember now telling the police that
9 it sounded like he was travelling on a highway somewhere?

10 A I do.

11 Q Okay. During the conversation that you had with the
12 defendant did you sometime learn that he was turning himself
13 in?

14 A Yes. Hours later, yes, he did let me know that,
15 yes.

16 Q In the intervening hours did you have multiple
17 telephone calls with the defendant?

18 A As I recall, we had four conversations and that was
19 it.

20 Q Do you remember about what time of day your last
21 conversation with the defendant was?

22 Let me rephrase. Did you tell the police that your
23 last conversation with him was at 5:30? And would that seem
24 right today?

25 A Yes, it would be -- it would be right.

1 Q And your first conversation with him was at 2:30?
2 Does that seem right today? Do you want to take a look at it
3 again?
4 A Please.
5 Q Okay. Page 5 again. Just right here read this
6 whole paragraph silently.
7 So the first call was at 2:30?
8 A Yes.
9 Q And that's what you told the police?
10 A Yes.
11 Q Last call was 5:30?
12 A Yes.
13 Q And that's when he said he was turning himself in?
14 A Yes.
15 Q Did he tell you whether he had a weapon?
16 A He did, yes.
17 Q What did he tell you?
18 A When he was turning himself in he said it was in the
19 trunk of the car.
20 MR. ROGAN: Court's indulgence.
21 I'll pass the witness, Your Honor.
22 THE COURT: Cross-examination.
23 MR. COFFEE: Thank you, Your Honor.
24 //
25 //

CROSS-EXAMINATION

BY MR. COFFEE:

Q Thank you for coming in, Mr. Allen.

A Sure.

Q You had been friends with both Echo and Troy?

A Correct.

Q You had met at the Potter's House Church?

A That is correct.

Q You had known Troy for years, even before him and Echo were together?

A Correct.

Q You lost your wife a couple years ago?

A Yes.

Q And Troy and Echo helped you through that?

A Oh, yes.

Q And you were grateful for that?

A Yes.

Q So when Troy needed a place to stay because of his marital difficulties you were willing to help out?

A Yes.

Q Troy and Echo had left the church a few months before that?

A Quite a few months before that, yes.

Q Troy actually came back to the church after he started staying at your house; is that accurate?

1 A Before.

2 Q Before.

3 A He came on a Wednesday evening, and that's when we

4 agreed that he could stay at my house.

5 Q Okay. I guess my question was not just came back to

6 the church physically. He started attending church services

7 again after he was back at your house; is that right?

8 A Yes.

9 Q And you would see him -- there's a discussion of

10 when you would see him you wouldn't see him for the weekends

11 but you might see at church on Sunday; is that right?

12 A Evening. Evening, yes.

13 Q During that five-week period, six-week period that

14 he stayed at your house?

15 A Correct.

16 Q When he went to work on Thursday you wouldn't see

17 him again until those church services generally; correct?

18 A No. When he went to work Friday.

19 Q Friday. I'm sorry. And I think it's because of the

20 morning that I'm getting turned around here. His last day of

21 the work week he would leave your house, and he wouldn't come

22 back until the end of the weekend?

23 A Correct.

24 Q Is that right?

25 A Yes.

1 Q Okay. And you said he might take clothes with him
2 on occasion home. Do you remember that?

3 A Jeans, that sort of thing.

4 Q Okay. But he didn't do that every time necessarily?

5 A I believe it was every -- you know, when he went to
6 stay for the weekend.

7 Q Okay. Do you know if he had any clothes of his own
8 at that other home?

9 A He did, yes.

10 Q He did. So he wouldn't necessarily have to take
11 clothes. He did on occasion; is that fair?

12 A Yes.

13 Q Now, when he showed up at your house I think you
14 described him as having essentially the clothes on his back.
15 Is that accurate?

16 A And his uniforms, yes.

17 Q And his uniforms. You never heard him make -- he
18 talked to you about his marital problems.

19 A Yes.

20 Q Talked to you about Mr. Averman?

21 A Yes.

22 Q Wasn't happy with Mr. Averman?

23 A Correct.

24 Q Never made any threats to you about Mr. Averman,
25 though?

1 A No.

2 Q Never made any threats to you about Echo directly;
3 correct?

4 A Correct.

5 Q And we talked yesterday on the phone, you and I;
6 yes?

7 A Yes, uh-huh.

8 Q This statement about -- this T. S. Eliot -- we've
9 had evidence before, the T. S. Eliot quote, if you love
10 someone set it free. You remember those questions the
11 District Attorney asked you?

12 A Yes, uh-huh.

13 Q It just seemed that he was frustrated at that point;
14 is that fair?

15 A I would say. Yes.

16 Q You didn't take it necessarily as a threat?

17 A No.

18 Q You try to be an upbeat person?

19 A All the time.

20 Q Try to see things on the brighter side?

21 A You have to.

22 Q And you told him at that point a story about a duck
23 that you'd had as a child; right?

24 A Yes.

25 Q You had a mallard that you'd brought home when you

1 were how old?

2 A Twelve.

3 Q When you were 12. And the mallard had ran away;

4 yes?

5 A No.

6 Q He had left?

7 A My mother wouldn't let me keep it.

8 Q Your mother wouldn't let you keep it.

9 A Right.

10 Q And you were broken-hearted about it?

11 A I wanted the duck.

12 Q You wanted the duck.

13 A Yes.

14 Q Okay. You wanted the duck. And eventually the duck

15 came home. It was months, though; right?

16 A Can I explain?

17 A You explain the duck.

18 A Seven months later we all that lived in this

19 apartment community had to leave. They were condemning it.

20 They mowed it down. So my neighbor two doors down asked me if

21 I wanted their duck because they were moving into an apartment

22 and we were moving into a house. And the same duck I got back

23 seven months later.

24 Q The same duck. And you told Troy about that to try

25 to lift his spirits a little bit?

1 A I did.

2 Q Because you wanted him to know that maybe things
3 would work out with Echo?

4 A That given time, yes, things are possible.

5 Q Now, when he had moved in he had said until they
6 could work out their difficulties is how long he needed to
7 stay with you; is that right?

8 A Correct.

9 Q And that was an indication that he was hopeful of
10 working out the difficulties?

11 A Correct.

12 Q And he was up and down about whether that was going
13 to happen, but he was hopeful right up until the shooting; is
14 that right?

15 A Correct.

16 Q Now, we spoke briefly about the Friday morning. He
17 goes to work at 3:00 a.m, you told the police; yes?

18 A Yes.

19 Q And he was to get off work at 11:30, I think you
20 said?

21 A Right there, yes.

22 Q You don't know whether he got off work early or not?

23 A I don't.

24 Q And again, it wouldn't be usual for him to come back
25 to your house. He would go directly over to Echo's, as far as

1 you know?

2 A Correct.

3 Q Or actually his house. He still owned the house;

4 right?

5 A Right.

6 Q Okay. And you got a call from Mr. Ortiz --

7 A Uh-huh.

8 Q -- yes?

9 A Yes.

10 Q And Mr. Ortiz was upset or concerned, I would

11 imagine, in the call?

12 A Concerned, yes.

13 Q And asked if you had heard what had happened?

14 A Right.

15 Q And he told you what had happened?

16 A Correct.

17 Q And you tried to call Troy on the phone?

18 A Yes.

19 Q And you made multiple calls?

20 A Yes.

21 Q And we talked yesterday at that point you were

22 concerned for Troy's safety; is that fair?

23 A I was, yes.

24 Q You thought Troy might even be suicidal, that he

25 might try to kill himself; is that right?

1 A Correct.

2 Q And you didn't want that to happen. Troy had been a
3 friend to you for eight years?

4 A Ten, yes. And I didn't want that to happen, no.

5 Q Ten years. And I don't mean to short-change the
6 friendship in any way. He had helped you through marital
7 problems, and you didn't want him to take his own life; right?

8 A He had helped not martial problems.

9 Q I'm sorry marital -- after your wife had passed.

10 A Correct. And I didn't want him to take his own
11 life, correct.

12 Q You knew how much he cared for Echo?

13 A Yes.

14 Q Knew how much he wanted his relationship back?

15 A Yes.

16 Q And knew that that was a possibility, that he might
17 take his own life?

18 A Yes.

19 Q Now, he asked you how they were doing; yes?

20 A Yes.

21 Q And you told him you thought that Echo hadn't made
22 it?

23 A Correct.

24 Q And you gave a description to the police, and I
25 think you said at that point he wept.

1 A He did, yes.

2 Q And he was somewhat confused in his conversations
3 with you as to the location?

4 A Confusion, yes, that's the correct word.

5 Q Was looking for some guidance from you as to what to
6 do?

7 A I was more offering than trying to figure out if he
8 needed it or not.

9 Q There we go. You wanted to do the right thing.

10 A Yes.

11 Q You told him he should try to turn himself in?

12 A Yes.

13 Q Told him he should look for a police station?

14 A Yes.

15 Q You heard highway noises, we heard discussion from
16 the District Attorney about that. You could hear the road in
17 the background; yes?

18 A Yes.

19 Q He couldn't tell you exactly where he was at even;
20 is that fair?

21 A Correct.

22 Q There were multiple calls after that, maybe four
23 during the entire period?

24 A Yes.

25 Q And eventually he found a police station some hours

1 later, and you actually heard him turn himself in; is that
2 right?

3 A I did, yes.

4 MR. COFFEE: Court's indulgence.

5 Thank you very much for coming in, Mr. Allen.

6 Pass the witness.

7 THE COURT: Any redirect?

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

9 THE COURT: Any questions from the jury?

10 Okay. Hold on a second. I have a question from the
11 jurors here.

12 (Pause in the proceedings)

13 THE COURT: Counsel, can you approach, please.

14 (Bench conference)

15 MR. COFFEE: Okay.

16 (End of bench conference)

17 THE COURT: Sir, I have a question from the jury.

18 Did Mr. White disclose to you his rationale or reasons on why
19 he shot the victims during your phone calls?

20 THE WITNESS: No, he did not.

21 THE COURT: Thank you.

22 Any followup from the State?

23 MR. ROGAN: No, Your Honor.

24 THE COURT: Any followup from the defense?

25 MR. COFFEE: No. Thank you, Your Honor.

1 THE COURT: Any further questions from the jury?

2 Thank you, sir. We appreciate your time. Have a
3 very nice afternoon.

4 Mr. Rogan, it's 4:38, and we have to break at 4:45.
5 Do you have a 7-minute witness?

6 MR. ROGAN: No, we do not.

7 THE COURT: Darn.

8 Ladies and gentlemen, during this recess you are
9 admonished not to talk or converse among yourselves or with
10 anyone else on any subject connected with this trial, or read,
11 watch, or listen to any report of or commentary on the trial
12 or any person connected with this trial by any medium of
13 information, including, without limitation, social media,
14 texts, newspapers, television, the Internet, and radio, or
15 form or express any opinion on any subject connected with the
16 trial until the case is finally submitted to you.

17 If you could get here as close to 9:30 as you can in
18 the morning, we'll get started as soon as you're all here.
19 Have a nice evening.

20 (Jury recessed at 4:37 p.m.)

21 THE COURT: So, counsel, if you can get here as
22 close to 9:30 in the morning, it would be lovely, since I have
23 absolutely nothing on my calendar tomorrow except you.

24 MR. COFFEE: There we go.

25 THE COURT: How are we doing?

1 MS. MERCER: We're fine. We're on target.
2 THE COURT: We're on target?
3 MS. MERCER: Right.
4 THE COURT: How many witnesses have you got
5 tomorrow?
6 MS. MERCER: Probably just two more.
7 MR. ROGAN: Well, three. We're bringing back the
8 detective to admit that evidence that we discussed with Mr.
9 Coffee.
10 THE COURT: The holster?
11 MR. ROGAN: Yeah.
12 MS. MERCER: But that'll be quick.
13 THE COURT: Okay.
14 MS. MERCER: So two real ones, and then a quarter of
15 a one.
16 THE COURT: I've got a detective up and down, five
17 minutes or so, and I've got an expert on phones --
18 MR. ROGAN: Right.
19 THE COURT: -- and what else?
20 MR. ROGAN: Mother of the decedent.
21 THE COURT: Okay. All right. And then you have how
22 many?
23 MR. COFFEE: I've got one I'm going to go talk to
24 right now and we'll see where we're at. We've got a lot of
25 what we -- a lot of what we probably needed from the last two

1 witnesses. So I will try to cut back substantially. I had
2 about 10 that were out there.

3 THE COURT: I'm not trying to get you to cut back.
4 I'm trying to get an estimate. Remember, I've got one juror
5 who's got to leave at 4:45. That's the only reason I'm
6 asking.

7 MR. COFFEE: No, no. I understand, Judge. My only
8 point being I'm going to try to cut back drastically, because
9 we've already covered it, and I don't feel the need to cover
10 it with somebody else.

11 THE COURT: Okay.

12 MR. COFFEE: I'm just letting the Court know that.

13 THE COURT: Oh. Okay. Because of the information
14 we got.

15 MR. COFFEE: Yeah. So we may have less on the
16 defense side of the case.

17 THE COURT: Does anyone think we're going to be
18 closing or instructing tomorrow?

19 MS. MERCER: No.

20 MR. COFFEE: No.

21 THE COURT: Okay. So even if you -- are you going
22 to have any rebuttal maybe?

23 MS. MERCER: Potentially.

24 THE COURT: Okay.

25 MS. MERCER: Depending on who they call.

1 THE COURT: How long do you anticipate for your
2 closings?

3 MS. MERCER: Oh, that's hard to say right now.

4 MR. ROGAN: I would say at least for the State's
5 side at least 45 minutes for first close.

6 THE COURT: Okay. So an hour and a half each side.

7 MR. ROGAN: This is Mr. Coffee we're talking about.

8 THE COURT: I know. That's why I said --

9 MR. COFFEE: I will try to be that brief.

10 THE COURT: You will take the time you need. My
11 only question is if I can get jury instruction proposals, I
12 would really appreciate it tomorrow so that I could work on
13 them on the airplane on Wednesday up and back. Because you
14 know how fun it is to go to Carson City during a legislative
15 session.

16 MR. COFFEE: Yes. Understood.

17 THE COURT: All right.

18 MR. COFFEE: Mr. Rogan and I will try to deal with
19 some of those tonight maybe.

20 MR. ROGAN: Tonight. And if you're coming back with
21 witnesses tomorrow, then I bet we have some time tomorrow
22 afternoon to discuss them, as well.

23 MR. COFFEE: We might.

24 THE COURT: And your rebuttal witnesses tomorrow
25 afternoon, though.

1 MR. ROGAN: Yes. Absolutely.

2 THE COURT: I mean, we're going to finish all the
3 evidence, if possible, tomorrow.

4 MS. MERCER: But any rebuttal witness we call is
5 going to be brief.

6 MR. ROGAN: Right.

7 THE COURT: But, I mean, the goal is to finish all
8 the evidence tomorrow.

9 MR. ROGAN: Yes.

10 MS. MERCER: Right.

11 MR. COFFEE: I think that's possible.

12 MR. ROGAN: We don't have hours-long rebuttal
13 witnesses is what we're trying to say.

14 THE COURT: I just got an email about a week-and-a-
15 half-long rebuttal case. It's like how do we do a week and a
16 half of rebuttal on a four-week trial. I guess it's six weeks
17 at this point.

18 Have a nice evening. See you tomorrow as close to
19 9:30 as you can.

20 (Court recessed at 4:40 p.m., until the following day,
21 Tuesday, April 14, 2015, at 9:23 a.m.)

22 * * * * *

23

24

25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Joseph Averman	58	98	142/165	154/168
Herman Allen	172	199		

* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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STATE'S EXHIBIT NO.

101	172
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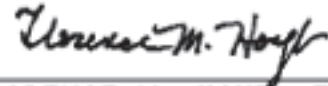
CERTIFICATION

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.

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

10/15/15

DATE