

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82886

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Elizabeth A. Brown
Clerk of Supreme Court

JOSHUA BACHARACH

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Cristina D. Silva, District Court Judge
District Court Case No. C-14-299425-1

**APPELLANT'S APPENDIX
VOLUME III**

James A. Oronoz, Esq.
Nevada Bar No. 6769
Oronoz & Ericsson, LLC
1050 Indigo, Suite 120
Las Vegas, Nevada 89145
Telephone: (702) 878-2889
Facsimile: (702) 522-1542
jim@oronozlawyers.com
Attorney for Appellant

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CERTIFICATE OF SERVICE

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AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

By /s/ Jan Ellison
An Employee of Oronoz & Ericsson, LLC

1 ear indicating that it's turning itself off and going back into the standby mode.

2 Q Okay. You mentioned there -- obviously there's a camera there. Are
3 there megapixels associated with that camera?

4 A Yes. This is a basic standard eight megapixel camera. It has a built-in
5 microphone in it. It doesn't do anything better than the normal human eye. It
6 doesn't have any zoom or infrared or anything specialized like that. We wanted to
7 get a product that was not any better than the officers eyes -- and our eyes are
8 actually even better. But we wanted a good quality and this is a good quality, eight
9 megapixel basic camera.

10 Q Yeah. But -- you say basic, it's not hi-def. It's going to cover the
11 basics. Eight --

12 A Correct.

13 Q Eight megapixels.

14 A Correct.

15 Q Okay. And then there's also sound that's part of this camera, correct?

16 A Yes.

17 Q Where is -- is there a microphone?

18 A There's nothing that comes out. It's actually built inside the unit and
19 there's just a small crevice opening that you can't even visually see it and it just lets
20 the sounds go into the microphone inside the camera.

21 Q And for the record, that's on top of the camera?

22 A Yes.

23 Q Okay. So if an officer is wearing it on his lapel, like his shoulder area,
24 the microphone -- and if that officer was seated in a patrol car, the microphone
25 would be pointed towards the roof of the patrol car, fair to say?

1 A Correct.

2 Q Okay. And is there any specialty with the microphone in the system on
3 the body camera in terms of picking up sound, closer, farther away, et cetera?

4 A It's a digital recording device and as Taser taught me is that it tries to
5 pick up what's close --

6 Q When you Taser, what -- who is Taser?

7 A Oh, I'm sorry. This is a Taser product. Taser that we all know is the
8 electronic weapons that officer's carry. This is their body camera product that they
9 sell. We chose this after testing out various companies across the country. We
10 tested about five different products and we chose this product from Taser. Sorry,
11 they're the --

12 Q Taser is the --

13 A -- manufacturers.

14 Q -- name of the company.

15 A Yes.

16 Q The manufacturer of the system.

17 A Yes.

18 Q Okay. I'm sorry, I interrupted you. If you could go back to the -- my
19 original question regarding the sound, in terms of the microphone.

20 A So when we bought the cameras from Taser they came out and trained
21 me -- train the trainer sort of thing so that I could then reduce that training to get the
22 officers equipped with the cameras and get them out on the street so that they could
23 utilize them. What they explained to me was that this is a digital recording device,
24 both digital audio and digital video, and that it's built to capture the sounds close to
25 the officer.

1 It's not, you know, a high-end multi-thousand dollar device at all. The
2 entire unit costs under \$500 for us, per officer. And so it has limitations on high of a
3 decibel it will pick up and how low of a decibel it will pick up. And it captures the
4 sounds around the officer in that you know, it's looking for the officer speaking,
5 whoever the officer's speaking with, it's trying to capture radio sounds, if the officer's
6 on his portable radio or even on his car radio. But it's not designed of rang high-end
7 or low-end, or long distance.

8 Q You're familiar with the body camera video that Officer McNabb wore on
9 June 26th of 2014?

10 A Yes, sir.

11 Q Is it fair to say that was either one of the first or perhaps the first officer-
12 involved shooting while the officer involved in the actual incident wore a body
13 camera?

14 A It was our first, but it was one of the first for body cameras all over the
15 country, yes.

16 MS. NGUYEN: We need it switched over.

17 MR. FATTIG: Can I get it switched over to the computer?

18 BY MR. FATTIG:

19 Q I'm going to play a little bit of State's Exhibit 187. And you recognize
20 this still at the beginning --

21 A Yes, sir.

22 Q -- Officer Ferranti? Okay.

23 [Body Cam video playing]

24 BY MR. FATTIG:

25 Q Now, during this portion of the video, on the right portion of the

1 roadway, do you see some dumpsters that are being passed by the vehicles?

2 A Yes.

3 Q Okay. When you look at the -- and this is obviously from Officer
4 McNabb's viewpoint as he sits behind his wheel of his patrol car, correct?

5 A Yes.

6 Q And we see him following another vehicle in front, correct?

7 A Yes.

8 Q Can you see towards the driver's side of that vehicle? Does it appear
9 that it's kind of bleached out by the --

10 MS. NGUYEN: Objection, Your Honor. Leading.

11 THE COURT: Sustained.

12 BY MR. FATTIG:

13 Q Can you describe whether or not you can see the driver's side window
14 area of the vehicle during this portion of the video?

15 A I cannot.

16 Q And why is that?

17 A Appears to be the glare from the street lights.

18 [Body Cam video continues playing]

19 BY MR. FATTIG:

20 Q Now we see him going through the stop sign. We see Officer McNabb
21 turning on to Carey. And again, at this portion of the video, Officer Ferranti, can you
22 see the driver's side or driver area of the video?

23 A Not clearly.

24 [Body Cam video continues playing]

25 BY MR. FATTIG:

1 Q Now we -- I stopped at 30 seconds and we just heard audio for the first
2 time, correct?

3 A Yes, sir.

4 Q What does that indicate to you regarding the sys?

5 A Well I have to explain how the system works. Two reasons -- the main
6 reasons we bought this product from Taser and we utilize it is number one, it has a
7 separate camera from the battery unit and instead of being worn in the chest area,
8 we can put it up on our collars or up higher. And the reason for that is exactly what
9 you see here, it gives us the availability to act kind of like a dash camera where we
10 can see through the windshield of what the officer's seeing. And then when the
11 officer steps out it goes with the officer and we can see the rest of what the officer's
12 doing. So that's one of the first reasons.

13 The other reason is there's an option on this system where you can set
14 the camera to be in a standby mode. And when it's in a standby and the officer's,
15 you know, sitting in a room or whatever he or she's doing, it's continuously recording
16 in a 30 second loop. And it's recording that loop with video only, no audio. So it
17 does that and then what I said 30 minutes ago, if this was on, it would have already
18 overridden and kept recording.

19 So it continuously records in that loop until you press the button twice
20 and turn it on. And when it does that, then it captures audio and video and grabs
21 the previous 30 seconds and attaches that video. So all our videos that we have in
22 our system have the first 30 seconds of silence, video only, and then it goes into
23 audio. And what that means is that when the audio starts is the moment that the
24 officer presses the button and turns it on and is grabbing that previous 30 seconds.

25 Q Okay. So we know that at the 30 second mark is the point in time

1 where Officer McNabb actually hit the button twice and activated the camera?

2 A Yes, sir.

3 MR. FATTIG: I have nothing further.

4 **CROSS-EXAMINATION**

5 BY MS. NGUYEN:

6 Q Sergeant, were you involved in any of the training of the individuals that
7 received these body cameras?

8 A Yes.

9 Q Okay. So they did receive training?

10 A Yes.

11 Q And what type of training did they receive?

12 A In the beginning initial outlay of the 200 cameras we're talking about,
13 the training we got was basic operation of the camera, our first policy and we've
14 gone through a few revisions since then, and it was approximately 45 minutes to an
15 hour worth of training to get them the functionality of the system and how it works,
16 and how to plug it in at the end of the shift, and upload the videos to the cloud
17 storage that we use. And just instructions on how the basic operation would occur.

18 Q Okay. So the training really involved actually using the device, is that
19 correct?

20 A Yes.

21 Q Okay. Was there any training that was conducted regarding the
22 policies behind when you activate the device, how frequently you download the
23 device or upload the device, any of that type of training?

24 A There was some brief training about that, yes.

25 Q Okay. And were you a part of that training?

1 A Yes, I was.

2 Q Okay. And did you train Officer McNabb as he was one of the first
3 initial 200 to receive this?

4 A Yes.

5 Q Okay. And back in June of 2014, do you recall what the policy was on
6 when you activate the device?

7 A That part of the policy hasn't changed, but, yes, I do recall.

8 Q And what was that policy at that time?

9 A That you're supposed to activate the device when you can activate it
10 and it's when you have interaction with citizens; when you're going to be dealing
11 with citizens on a car stop, on a person stop, or a call for service --

12 Q Okay.

13 A -- are like the basic reasons.

14 Q Is it somewhat discretionary then for the officer to determine when
15 they're going to turn it on?

16 A Discretionary about the time of turning it on, yes, but on the nature of
17 when you're going to turn it on, you're told to turn it on for those incidents I
18 mentioned.

19 Q Okay. You said that you were a part of the, I guess, was it a team or
20 was it just you that decided who was going -- what cameras you were going to
21 select?

22 A The testing and the choice of the cameras was done prior to me
23 volunteering to start up the program. When I showed up the cameras were on the
24 shelf, the policy was in place, and we were ready to issue out training and issue out
25 the cameras.

1 Q Okay. And body cameras for law enforcement is not a new thing, is
2 that correct?

3 A No. they've been around for years. It's new for Metro to go this far, but
4 we've been testing them since back in 2012.

5 Q Okay. And you said that you had -- or you and a group of
6 people had determined that this camera -- you like it because it was eight
7 megapixels, is that correct? And some of the other various features that you had
8 indicated.

9 A That was one of the factors, yes.

10 Q Okay. Where it's located?

11 A Was one of the factors, yes.

12 Q On the different options on where officers have to place that body
13 camera, is there a reason why those are the particular areas that the camera should
14 be located?

15 A What I didn't bring are the various mounts that are available. There's a
16 collar mount and the side of this camera has a small magnetic piece and it locks in
17 and sticks into your collar mount. The glasses mount also has magnetic -- a metal
18 piece and this magnet sticks in there. And the head mount is the same way.

19 So those are your three options. Excuse me, there's a fourth option.
20 Our uniforms have small cloth epaulettes and a mount sits there and you can also
21 put it up into that piece of metal and it sticks there.

22 Q Okay. And those four potential locations are probably there -- are they
23 suggested? Could you choose a different mount if you wanted? Could you put it on
24 your wrist?

25 A No.

1 Q Okay. Could you --

2 A You have to use one of --

3 Q -- get a selfie stick and walk --

4 A You have to use one of those --

5 Q -- around with it?

6 A -- mounts. Although there are other mounts coming out for other parts

7 of the department.

8 Q Okay. And the reason that those are probably the mounts, is it your

9 understanding, because those capture, I guess, the most complete picture of what

10 that officer is viewing?

11 A Correct.

12 Q Okay. We had watched some of that video and you had indicated that

13 there was some glare that you could see, is that correct?

14 A Yes.

15 Q Okay. And is that glare because the camera's made of glass? It has a

16 glass lens?

17 A I don't know what causes glare, I'm not a -- I mean, I see glare when a

18 light shines in my face, a headlight's coming towards me while I'm driving. That's

19 what I call glare.

20 Q Okay. And do you witness that glare just in your driving?

21 A Sure.

22 Q Okay. Are -- have you ever worn glasses?

23 A Yes, I have magnifying glasses for --

24 Q Okay.

25 A -- computer screens right now.

1 Q Okay.

2 A But I'm not -- don't wear prescriptions.

3 Q If you wear glasses outside do you experience that same glare as well?

4 A It's -- potentially yes that you could experience glare.

5 Q Okay. When you were examining and selecting the cameras for Metro,
6 were there cameras that had increased megapixels?

7 A I was not involved in any of the planning and selecting. When I
8 volunteered to become a part of it they were bought and paid for and sitting on the
9 shelf and I was involved in all the training and deployment.

10 Q Okay. During the course of, I guess, your involvement with body
11 cameras -- and you're still involved, is that correct?

12 A Yes.

13 Q Okay. Are you constantly trying out and testing new technology?

14 A We've committed to this technology and we're utilizing this. What we've
15 done now is we now have more cameras and we're getting more cameras out on to
16 the street.

17 Q Okay. And do they still have the same specs as the camera that was
18 utilized by Officer McNabb in 2014?

19 A Yes.

20 Q Okay. Is it fair to say that Metro likely, or the County has a contract
21 where they've committed to this company and this device?

22 A We are under contract with them, yes.

23 Q Okay. And so there's never been an opportunity for Metro or the
24 County, or yourself to look at better cameras?

25 A Not that I know of.

1 Q Okay. And the eight megapixels, are you familiar with -- is that similar to
2 like say someone would have on like a iPhone?

3 A I believe there are eight megapixel iPhone, yes.

4 MS. NGUYEN: Okay. Nothing further.

5 **REDIRECT EXAMINATION**

6 BY MR. FATTIG:

7 Q In terms of some of the policy as of the spring of 2014 when this
8 incident occurred, regarding turning on the body camera during a traffic stop, what
9 was the procedure?

10 A The procedure was that when ye going to have -- the training was that
11 when you're going to have interaction with a citizen, whatever you're doing, a call for
12 service or a traffic stop or something like that, when you have the interaction we
13 wanted you to turn it on as the interaction was starting.

14 Now that could be -- if you had -- were able to project a stop and be
15 able to have time to plan I'm going to go into this parking lot and that, sometimes
16 that can happen and it's smooth. Other times when you project a stop it varies and
17 changes and you don't end up where you initially thought you would end up. The
18 policy was just whenever you're going to make contact with a citizen, get it turned on
19 by then.

20 We also realized that being a new technology we told the officers you're
21 going to have to remember this. This is like, you know, turning on your portable
22 radio when you step out of your car. Do you turn it on when you're still driving, do
23 you turn it as you're stepping out, or you turn it on when you're finally contacting
24 somebody and you're out of the car away from your car radio?

25 You're kind of -- you have that option to turn it on in any one of those

1 points in there and we were just telling them since it's new, start getting used to it
2 and turn it on when you can remember to turn it on. And so the policy says to turn it
3 on, but it doesn't say specifically at this point or this point. It just says get it on
4 before you have the actual interaction with the person.

5 Q Interaction with the citizen?

6 A With the citizen, yes.

7 Q Okay. So in a traffic stop scenario would that be when you exit your car
8 to approach the car?

9 A It could be when you get up to the car door, it could be as you're
10 approaching up to the car door, it could be as you're opening your door and getting
11 out. You -- we're leaving it up to the officers to make that decision along the way.

12 Q But not during the drive to make the stop necessarily?

13 A No you're already busy driving and turning on your lights and sirens to
14 activate to pull someone over. You've already also had to put in there that you're
15 going to have to give out radio traffic if you can to tell dispatch you're pulling a car
16 over. There's lots of other things to be done before the camera gets turned on.

17 Q You've -- you're obviously familiar with the full body cam video in this
18 particular case?

19 A Yes, sir.

20 Q During the audio portion after the 30 second portion to the end, you
21 would agree with me that you don't hear any gunshots coming at Officer McNabb?

22 A Correct.

23 Q Does that surprise you at all?

24 A No.

25 Q Okay. Why is that?

1 A You're inside the car and at some point Officer McNabb rolls up the
2 window. At some point he has his lights and sirens on, so you hear the siren.
3 There's radio traffic coming into the car radio. There's radio traffic going out from
4 his voice. And the system is designed to pick up those close sounds and try to
5 record them on the video as best they can within the limitations of the system.

6 Something occurring outside the car at any distance is not going to be
7 picked up by the system, either audio or video, once it gets far enough away.

8 MR. FATTIG: Nothing further.

9 MS. NGUYEN: Just briefly.

10 **RECROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q So are you telling me that the audio equipment is sophisticated enough
13 that it filters or are you just pointing out that things that are closer are going to be
14 captured --

15 A I don't think I have --

16 Q -- louder?

17 A -- the expertise to really explain that. As they instruct -- they taught me
18 from Taser was that sounds or analog -- this is a digital system. It grabs the sounds
19 around the camera, close by. If it's really, really low, it will try to enhance them a
20 little bit. If they're really, really high it'll reduce them a little bit. Once you go outside
21 those parameters it will not pick them up; too low or too high.

22 And then -- so they explained that all the sounds you're hearing in the
23 car and around the car are what it's going to pick up. For our distant sounds or
24 videos, you're not going to catch on the camera or with the microphone.

25 Q So is it your understanding that there's potentially things that are going

1 on that might be filtered out automatically by this system?

2 A If they reach those high or low ends of -- again, I'm getting past the
3 expertise I don't have of audio sound and video distance.

4 Q I'm just curious what your understanding of this device is.

5 A That it pictures -- it picks up what is nearby the officer and around the
6 officer to the limitations of its design.

7 Q But you're not aware if somehow the device itself artificially manipulates
8 the sound?

9 A I'm not aware, no.

10 Q Okay. Or that it artificially manipulate any video?

11 A I'm not aware, no.

12 Q Okay.

13 MS. NGUYEN: Nothing further.

14 MR. FATTIG: Nothing further.

15 THE COURT: The jury have any questions of this officer.

16 If you guys need to stand you can stand up.

17 [Pause in proceedings while the Court and Counsel discuss jury questions]

18 THE COURT: All right. Detective, you're free to go. Thank you.

19 Call your next witness, State.

20 MS. THOMSON: Judge, the State calls Gloria Guillen.

21 MR. FATTIG: She's putting money in the parking meter, Your Honor, so we'll
22 call a different witness.

23 THE COURT: Okay. That's fine. Who are you calling? Who are you calling?

24 MR. FATTIG: Officer Morgan. Ernie Morgan.

25 **ERNEST MORGAN**

1 [having been called as a witness and being first duly sworn, testified as follows:]

2 THE CLERK: Thank you. Please be seated. State your full name, spelling
3 your first and last name for the record, please.

4 THE WITNESS: Ernest Morgan. E-R-N-E-S-T, M-O-R-G-A-N.

5 **DIRECT EXAMINATION**

6 BY MR. FATTIG:

7 Q Sir, how are you employed?

8 A I'm a K9 Handler with the Las Vegas Metropolitan Police Department.

9 Q And how long have you been with Metro?

10 A Almost 18 years.

11 Q And how long have you been a K9 Handler?

12 A A little over five years.

13 Q And were you in any law enforcement before Metro? Before the 18
14 years?

15 A I was.

16 Q And where was that?

17 A I worked for the uniformed secret service for four years and then a
18 police department in New Mexico.

19 Q And how long were you in New Mexico?

20 A Four years.

21 Q Did you do any work with -- K9 work before you were with Metro?

22 A I did.

23 Q And how long did you do K9 work before?

24 A About three years.

25 Q Was that in New Mexico?

1 A It was.

2 Q Okay. So you've been a K9 Officer for about seven years between the
3 two departments?

4 A Yes, sir.

5 Q And the four years of Metro that was since 2011-ish?

6 A 2010.

7 Q 2010.

8 A Yeah.

9 Q Okay. Currently you have -- you're a K9 Officer, you have a dog
10 assigned to you?

11 A I do.

12 Q Is that how it works?

13 A It does. We have two dogs assigned to us.

14 Q You have two at all times assigned to you?

15 A Yes, sir.

16 Q Do you go through training with them?

17 A I do.

18 Q Can you talk a little bit about the training that you go through with your
19 dog before you go out into the field?

20 A We have a training course. It's about two to three months long
21 depending on the time of year or the dog. And we have head trainers that are
22 assigned to us, but we go through the training with our dogs to build that bonding.
23 We have certain criteria that Metro requires us to be able to do and we train them
24 through to learn how to hunt, to find people, to find evidence, those sort of things
25 throughout that time.

1 Q Okay. And when you say learn how to hunt, train, are they trained to
2 attempt to pick up human scent?

3 A Yes, sir.

4 Q Okay. Are there certain -- as part of the training certain examples you
5 can give to the jury in terms of how they try to train the animals?

6 A What we'll do is we will hide people in all sorts of different scenarios;
7 whether in buildings, in outside open areas where the dog has to go in and locate
8 that human odor, take us to that human odor. Whether they can get to it or not -- if
9 they can't get to it they usually bark. If they can get to it, if it's a scenario that we
10 want them to then they do apprehend the guy by biting him - the person by biting
11 them.

12 Q Specifically I'm going to direct your attention to June 26th of 2014. Were
13 on duty the evening hour?

14 A I was.

15 Q And approximately 10:45 to 11:00 p.m., did you have occasion to hear
16 of a call for assistance in the area of Carey and Dolly?

17 A I did.

18 Q And where were you when you got the call?

19 A When I got the call I was at Cheyenne and Lamb.

20 Q And what do you do on a normal -- were you working a swing shift?

21 A Yes, I work in a 3:00 evening until 1:00 in the morning.

22 Q Now this was the Northeast Area Command part of the city, correct?

23 A Yes, sir.

24 Q Are you assigned to the Northeast Area Command during your shift?

25 A No, we roam throughout the city.

1 Q The K9 Officers.

2 A We do.

3 Q Okay.

4 A As the K9 Officers there's a -- there's so few of us that we roam
5 throughout the city wherever we might be able to be helpful. And I just happened to
6 be there. I was clear, just roaming, listening to the radio.

7 Q When you say clear you weren't assigned to a particular call?

8 A Yes, sir. Yes.

9 Q You're roaming, listening to the radio, and if need of K9, you respond?

10 A Yes, sir.

11 Q Okay. And so it was fortuitous that you were in the area of Cheyenne
12 and Lamb when you heard the call?

13 A Yes, sir.

14 Q And so you started driving to the area.

15 A I did.

16 Q And what were you hearing over the radio?

17 A First I heard was an individual making a traffic stop and moments later
18 said that there had been shots fired. And that the car continued up to Carey. I can't
19 remember where they started, but went to Carey and began going eastbound on
20 Carey. And the radio traffic was a little tough to understand, but I did know that
21 shots had been fired and the individual was fleeing from the officers. So I headed to
22 that area which I was very close to.

23 Q Okay.

24 A Figured I'd intercept them about Lamb and Carey.

25 Q And Cheyenne as opposed to Carey would be just north of Carey?

1 A Just north.

2 Q So you were within a couple miles?

3 A Yes, sir.

4 Q Now what kind of vehicle are you driving?

5 A I have a Ford Expedition SUV, fully marked.

6 Q Fully -- K9 Unit kind of on the side?

7 A Just K9 Unit, black and white with a Metro star and lights on top.

8 Q And how many dogs do you have? Two or one?

9 A I do have two.

10 Q Okay. And this particular night, how many dogs did you use?

11 A I used one.

12 Q Okay. And what was the name of the dog?

13 A Claymore.

14 MR. FATTIG: And Your Honor, pursuant to stipulation a picture of the dog is
15 State's Exhibit 116. I believe it's been admitted.

16 MS. NGUYEN: That's correct.

17 THE COURT: All right. That will be the order.

18 MR. FATTIG: Thank you.

19 BY MR. FATTIG:

20 Q And what kind of dog is Claymore?

21 A He's a Dutch Shepard.

22 Q And this would be a picture of Claymore?

23 A That is.

24 Q Now how did you get to the -- you ended up on El Tovar and Dolly or
25 near there?

1 A I did.

2 Q How did you get to El Tovar?

3 A I came to -- I came southbound on Lamb to Carey. I could see the
4 lights of the patrol unit to the east, which was Dolly. And I drove to that location and
5 I could actually see people on Dolly running. So I turned down Dolly, turned
6 westbound on El Tovar where the last -- where there was an officer there.

7 Q And you noticed out on Carey, a patrol car sitting there with lights on --

8 A Yes, yes.

9 Q -- that was seemingly abandoned basically?

10 A Yes.

11 Q Okay. When you got down to El Tovar, were you the first officer or
12 second or third?

13 A I think I was one of the first. I know another officer came from my south
14 and got here about the same time as I did. I'm not exactly sure. I know there was
15 the one officer right there on the corner that was -- had been involved and that was
16 it.

17 Q On foot at that point.

18 A On foot, yeah.

19 Q Okay. And do you remember, you got out of the car?

20 A I did.

21 Q And did you get the dog immediately or what did you do?

22 A No, I expected to encounter the subject right there because he said I
23 saw him, this was the last place I saw him. I expected to encounter him right there
24 as I turned the corner and got out of my vehicle. I did a bit of a scan, I didn't see
25 him. So I began getting my dog out, which he's on the passenger side. I have to

1 open the passenger door -- rear passenger door to get him out.

2 As I started to get him out is when the officer started -- one of the other
3 officers started showing up. So I had him go west on El Tovar to start setting up a
4 perimeter so I could begin searching.

5 Q Okay. And then what happened after that?

6 A And then as I brought Claymore out of the car the house was almost
7 directly in front of -- a lady exited that residence and told me that the guy was in her
8 backyard.

9 [Colloquy between Counsel]

10 MS. NGUYEN: Your Honor, I'd stipulate to the admittance of Exhibits --

11 MR. FATTIG: These will be 111 through 115.

12 THE COURT: They'll be admitted.

13 MR. FATTIG: Thank you.

14 **[STATE'S EXHIBITS 111 THROUGH 115 ADMITTED]**

15 BY MR. FATTIG:

16 Q Officer Morgan, showing you 111 first. Do you recognize that
17 photograph?

18 A Yes.

19 Q And is that the front of a home?

20 A That's the front of the home that I was -- I was parked nearly in front of
21 it, yes.

22 Q Okay. And this is the second home on the north side of El Tovar, is that
23 fair to say?

24 A Yes.

25 Q And you were parking in the street in your SUV --

1 A Yes.

2 Q -- out in front of this area?

3 A I was.

4 Q And you indicated a neighbor in the area came out?

5 A Someone come from that residence.

6 Q from this --

7 A From that residence come out to me.

8 Q Okay. Was it a female?

9 A Yes, it was.

10 Q Okay. And what did she indicate?

11 A She told me that somebody had jumped her fence just to this east

12 side -- jumped her fence and was in her backyard at that current time?

13 Q Was she speaking in Spanish or broken English?

14 A Yeah, kind of broken English. It was hard for me to understand all of it

15 but I did get the gist.

16 Q You got the gist that somebody is in her backyard that shouldn't 'be.

17 A Somebody was there and she was afraid.

18 Q Okay. What did you do upon hearing this?

19 A I --

20 Q Well I'm going to stop you there. I'm sorry. How much time had gone

21 by from the point in time when you got there, you got the dog out, and then you

22 heard from this lady?

23 A It had only been within a couple minutes.

24 Q Okay. And then what did you do after you heard that information?

25 A I tried to get her to stay outside of the house and bring anybody else

1 out, but she indicated in a way that there were children inside the residence and she
2 ran back into the house.

3 Q And then what did you do?

4 A So I got another couple of officers with me, one to be on the west side
5 of the house, other one to be on the east side of the house, and one to go with me.
6 We went to the house to see if I could get permission to come through because
7 what I was worried about is if someone may be desperate enough maybe to come in
8 with children and I didn't want anything bad to happen.

9 So we -- they let me go through the front door with another officer with
10 me and my K9 partner.

11 Q You were concerned that perhaps whoever was in the backyard might
12 try to run into the house?

13 A Exactly. Yeah, because there was enough officers starting to show up
14 you could hear the sirens and so forth.

15 Q How was your dog reacting at this point?

16 A Very excited as always. But -- yeah, he was very excited at the time
17 because he knew we were going to work.

18 Q Did you get permission to go into the home there?

19 A I did.

20 Q And that is 4586 El Tovar for the record, correct? Does that sound
21 right?

22 A Sounds right to me.

23 Q Okay. And when you went into the home, did you have any other
24 officers besides Claymore?

25 A I had my -- one of my back-up officers, Karl Huysentruyt.

1 Q He was with you and you're armed as well, correct?

2 A I am.

3 Q Okay. And what was the plan as you entered into that home?

4 A I wanted to get to the backyard and search for this individual that was in

5 there; make sure he didn't come in or leave from there because she said he was

6 right there. So I wanted to get in and go to their backyard tot reasonably to get him

7 in custody.

8 Q So the occupants directed you to the back door?

9 A They did.

10 Q Okay.

11 A And it kind of went in and went towards the west. We exited out kind of

12 the west side of the residence.

13 Q I'm going to show you State's Exhibit 113. Do you recognize what this

14 shows?

15 A That shows the door that we came out of, to the west side of the house.

16 Q Is it on this side of the home?

17 A Yes.

18 Q Okay. So this is a picture taken from the backyard and there's a back

19 patio area on the west side of the rear of the home?

20 A Yes.

21 Q Number 114. Do you recognize where that perspective was taken?

22 A That should be to the eastern side of the backyard.

23 Q This is -- is this from the patio area --

24 A Yes.

25 Q -- cover? Okay. And State's Exhibit 115. Do you recognize this?

1 A Yes. So that's the entire backyard.

2 Q And so the area -- can you mark on the monitor approximately where
3 you came out, if you see it on there?

4 A I came out right over here. Oops.

5 Q I realize it's not calibrated exactly. But it was on the right portion of
6 the --

7 A Yeah.

8 Q -- building?

9 A Yes.

10 Q Okay. Is it fair to say that the patio, it's like an indentation to the back of
11 the house?

12 A It is. There's a little indentation from this portion over to here.

13 Q So you, Claymore, and Officer Huysentruyt came out to that patio area
14 initially?

15 A Yes.

16 Q What happened?

17 A As I come out my dog -- they do different indications. And this
18 indication when he's in to a strong odor is he pulls really hard. And you can tell he's
19 pretty big and so he pulls really hard. So as soon as I come out this side he just
20 began pulling me, trying to wrap me around the side of the house.

21 Q If somebody is involved in a stressful situation and is involved in
22 perhaps running from an area and involved in hiding in an area, would that add to
23 the ability of the dog to perhaps locate that person?

24 A Absolutely. It makes it much, much easier.

25 Q Okay.

1 A To locate somebody that's been running and hiding and the endorphins
2 and all the adrenaline --

3 Q Sweat.

4 A -- and sweat and stuff, it makes it very easy. Because in our training
5 usually our people aren't afraid. So it's a little bit harder. But when you're in a real-
6 life situation it seems to be very easy for the dog to locate them.

7 Q Now is the dog barking at this point?

8 A No. He's just pulling very -- really hard.

9 Q And what do you do with -- along with Claymore and Officer
10 Huysentruyt, where do you go, what do you do there?

11 A So we stop at the edge. I don't want to come around because there
12 had been indications that shots had already been fired so I didn't want to come and
13 expose myself to the edge. I came right to the edge of this. Knowing this part was
14 clear, I came right to the edge of the residence there.

15 Q Mark on there what edge you're talking about.

16 A Just touch it. And so right --

17 THE COURT: Or you can circle it.

18 BY MR. FATTIG:

19 A Right there. Well, closer though. I mean, it --

20 Q Closer to the edge --

21 A I'm trying to --

22 Q -- of that corner.

23 A Right to the edge. I didn't come out on the edge of it so clear up here.

24 Q No when you're in that area initially are you -- you're obviously scanning
25 the backyard. Do you see anything at that point?

1 A I don't.

2 Q Okay. You don't hear any noises?

3 A No.

4 Q So you're going to the edge and are you trying to peek around the
5 corner or what?

6 A Yeah, I did. I put my dog down so his head was down on the edge of
7 the residence. I was peeking around and he was just trying to pull to take me
8 completely around there. He knew somebody was there.

9 Q Okay. And when you peeked around were you able to see anyone?

10 A I could see some legs.

11 Q And where did you see the legs?

12 A At the edge of the house over here.

13 Q Okay. So you're indicating, for the record that would be the east side of
14 the rear of the home?

15 A Yes.

16 Q And you say legs. Were they standing up legs? Were they what?

17 A No. Laying down. Laying down and the feet were heading towards the
18 backyard.

19 Q What did you do at that point?

20 A I gave announcements to see his hands as I -- you know, I'm sure they
21 could already -- probably already could hear my dog because he makes so much --
22 not barking, but so much grunting noises that I knew he knew we were probably
23 there. So I began giving the announcement to show me your hands or I was going
24 to send my dog and let him bite him.

25 Q Okay.

1 A And I did.

2 Q Now when you saw the legs of this person, did you at some point look
3 to see if you could see his hands?

4 A Yeah, I could not.

5 Q Okay. And could you tell how the person was laying? Were they laying
6 on their stomach? On their back?

7 A Yes. It appeared to me laying on his stomach with his head facing
8 towards that front part of the house.

9 Q Okay. Did it appear that he was on the side so he could view the left
10 portion of that back -- that rear yard?

11 A Yes.

12 Q And just again, looking at State's Exhibit 115. Looking -- he -- did you
13 feel he was at a position where he could look down this way?

14 A Yes.

15 Q Okay. Did you notice eventually after you got around, was his head
16 tucked behind the wall or was it front of this back wall of the home? Or was he right
17 on the corner?

18 A I think he would probably have to be right on the corner because I
19 couldn't really see it and I didn't light up with my flashlight as much.

20 Q Was it fairly dark?

21 A It was fairly dark but there was ambient light to where I could see that.
22 But that's from -- the movement from where when Claymore engaged to where he
23 pulled out would have probably been where he moved from.

24 Q Okay. Did the individual ever indicate orally anything?

25 A No.

1 Q When you yelled out show me your hands did he ever show his hands?
2 A No.
3 Q How many times do you think you yelled that out?
4 A At least twice when I let him off.
5 Q Okay. And when you say you let him off who did -- what are you --
6 A I unleashed the leash and let Claymore run free.
7 Q And that's part of your training?
8 A Yes.
9 Q And why are you letting off Claymore at this point?
10 A Because of the seriousness of this crime and the person that we're
11 attempting to take into custody without getting any verbal indication from him that
12 he's submitting to me, I let my dog go to apprehend because it's the safest for all
13 around. And a lot of times that dog is able to intervene where no other use of force
14 is needed.
15 Q You know that he has been armed, correct?
16 A Yes.
17 Q He's been shooting at another patrol officer?
18 A Yes.
19 Q And he's not acknowledging you?
20 A No.
21 Q You don't know if he's armed at that point?
22 A I do not.
23 Q Okay. What does Claymore do when he's released by you?
24 A He runs directly towards the individual and bites him in the lower part of
25 his leg.

1 Q And is that part of his training?

2 A Yes, he'll bite wherever he could get ahold of.

3 Q And did you follow him over there?

4 A Yes. Once he did get ahold of him then I did go and took him off the
5 bite.

6 Q And the other officer s were there?

7 A Other officers too. Once the other two officers -- or at least two officers
8 came up, I took him off so that they could place handcuffs on him.

9 Q And then you were kind of responsible for securing the dog?

10 A Yes, yes, my job.

11 Q And they secured the suspect?

12 A They secured him, yes.

13 Q Okay. Do you see the suspect that was bitten by Claymore and laying
14 in the backyard today here in court?

15 A I do.

16 Q Could you please point to him and identify a piece of clothing he's
17 wearing?

18 A Sitting here at the Defendant's table with a light green shirt and a yellow
19 tie.

20 MR. FATTIG: May the record reflect the identification of the Defendant.

21 THE COURT: It will.

22 BY MR. FATTIG:

23 Q Now after the Defendant was secure in the backyard, did you continue
24 to us Claymore at that scene?

25 A I did.

1 Q What did you do?

2 A I continued -- I went at least one house to the west, one house to the
3 north -- or two houses to the north and the other -- just to make sure there was
4 nothing else there I went and did kind of a house to each side of the one where he
5 was taken into custody. Just to make sure there was nothing else or maybe
6 evidence or anything that I might have missed.

7 Q Let me show you a couple of photos. This has already been admitted
8 as State's 15. Officer Morgan, do you recognize this as the house --

9 A Yes.

10 Q -- you were in the backyard of?

11 A Yes.

12 Q This is El Tovar and Dolly. So you indicated to the house to the west?

13 A Yes.

14 Q You looked in that?

15 A I did.

16 Q That backyard there?

17 A I did.

18 Q Did you look in the house --

19 A I did that one also.

20 Q -- to the east? And the houses on Carey?

21 A And those two. Yeah, and those two off of Carey.

22 Q Off of Carey.

23 A Yes.

24 Q And again, you're looking for possible other people --

25 A Absolutely.

1 Q -- shouldn't be around? Or evidence?

2 A Or evidence, yes.

3 Q So items that might have the human scent on them still?

4 A Yes.

5 Q And did you find anything?

6 A No.

7 Q Okay. Were you aware that any other suspects were found in the
8 area?

9 A No.

10 Q Were you aware that any other evidence was found in the area?

11 A Yes.

12 Q Besides the truck -- the white truck?

13 A Yes, they -- when I came back out, they indicated there was a gun
14 outside under one of the vehicles.

15 Q Okay. But you weren't involved in that?

16 A No, not at all.

17 [Colloquy between Counsel]

18 MR. FATTIG:

19 Q When you saw the Defendant laying in the backyard on his stomach,
20 can you describe -- you indicated you didn't see his hands, correct?

21 A I did not.

22 Q Can you describe why you didn't see his hands? I mean, could tell
23 eventually where his hands were at?

24 A Well I believe they were up under his chest. I don't know for sure
25 because once I went there Claymore was kind of pulling on him, so his hands

1 started coming out, but they looked at me like they were kind of under him and he
2 was facing more towards that gate on the east side of the house where the lady had
3 indicated he jumped.

4 Q Okay.

5 MR. FATTIG: I have nothing further.

6 **CROSS-EXAMINATION**

7 BY MS. NGUYEN:

8 Q When you arrived at the scene Officer Morgan you were aware that
9 there had been a shooting, is that correct?

10 A Yes.

11 Q And that there was an officer involved in that shooting --

12 A Yes, ma'am.

13 Q -- is that correct?

14 A Yes, ma'am.

15 Q Were you aware that the officer had discharged his firearm as well at
16 that time?

17 A Not for a few minutes because of our radio traffic, but I didn't know for
18 sure.

19 Q When you had arrived on the scene and you had exited your car with
20 Claymore, did you know at that time?

21 A I think so, yes.

22 Q Okay. And did you have any description of a suspect that you were
23 looking for at that time?

24 A There was a description out. I'm not exactly sure what it was.

25 Q Were you -- oh, wait.

1 A No, I'm sorry.

2 Q Okay.

3 A Go ahead

4 Q Were you aware of that description when you exited your vehicle with

5 your dog?

6 A Yes.

7 Q And do you recall what that description was at that time?

8 A I do not.

9 Q Okay. So you have a general description of what the suspect looked

10 like, is that correct?

11 A That is correct.

12 Q Okay. You had indicated that you had a general direction too that you

13 were beginning your search in?

14 A Yes, ma'am.

15 Q And this was a residential area?

16 A Yes.

17 Q Okay. In fact here were several houses on that street?

18 A Yes.

19 Q And are you aware that there was an apartment complex pretty close

20 by as well? Like a smaller apartment complex?

21 A Okay. I'm not sure. No.

22 Q Okay. But you're aware it's a residential area?

23 A I am.

24 Q Okay. There weren't huge street lights so it was kind of dark in that

25 area, is that --

1 A Yes.

2 Q -- fair to say? Okay. Did you have any kind of flashlight or anything to
3 help illuminate the area you were searching?

4 A I do have flashlights.

5 Q Okay. And how exactly were you carrying that at the time?

6 A At the end of my gun.

7 Q Okay. And so did you have your gun drawn this entire time?

8 A The entire time from -- I didn't have it drawn when I walked through the
9 residence, but as soon as I got outside the residence I drew my gun.

10 Q Okay. And what hand are you holding that gun with?

11 A Right hand.

12 Q Okay. And what type of gun are you holding?

13 A A Glock.

14 Q Is that a semi-automatic gun?

15 A Semi -- I'm sorry. Yes, ma'am. Semi-automatic pistol. Yeah.

16 Q Okay. And you're holding that with your right hand?

17 A Yes, ma'am.

18 Q Okay. And you're also securing your -- the canine, is that correct?

19 A Yes, ma'am.

20 Q And what hand are you using to --

21 A My left hand.

22 Q Okay. SO you've got your gun in one hand with a flashlight on it --

23 A Yes, ma'am.

24 Q -- is that correct? And then you have -- you're securing your dog with
25 the other hand, is that correct?

1 A Yes, ma'am.

2 Q Okay. You had indicated that a woman came out of the home and that

3 you were able to communicate with her?

4 A Yes.

5 Q Okay. But she did not speak English --

6 A Very well.

7 Q -- as her primary language?

8 A Probably not.

9 Q Okay. And do you speak Spanish?

10 A I do not.

11 Q Okay. Were you engaging in a broken English conversation there?

12 A Yes, ma'am.

13 Q Okay. You indicated that you could tell that there was someone in the

14 backyard or there was someone -- something that she was fearful of?

15 A Yes.

16 Q And that you could gage that there were children --

17 A In here residence, yes.

18 Q -- in the house? Okay. Were you able to communicate anything much

19 more than that?

20 A Not much more.

21 Q Okay. So she wasn't able to give you a description of the individual?

22 A No.

23 Q Was she able to tell you if it was a male or a female?

24 A [No audible response].

25 Q Was she able to give you any other identifying description?

1 A No.

2 Q But she did allow you to come through the house?

3 A Yes, ma'am.

4 Q And how did she communicate that to you exactly?

5 A Just to come home. I asked her can I come into your residence; go in.

6 Yes, come in.

7 Q Did she turn on the lights in the backyard?

8 A I don't know.

9 Q Were there any lights on in the backyard?

10 A You know, I'm not sure.

11 Q Okay. You said there was ambient light. What was that --

12 A From the moon and stars and other lights?

13 Q Okay.

14 A Yeah.

15 Q Okay. So there wasn't any kind of --

16 A Enough that--

17 Q --like spotlights or any brighter lights I should say.

18 A I don't think so, no.

19 Q When you entered the backyard, who was along -- who was there with

20 you at that time?

21 A Officer Huysentruyt.

22 Q Okay. And Claymore?

23 A And Claymore.

24 Q Okay. You had indicated that your dog -- and did you train Claymore?

25 A I did. With him. I trained with him.

1 Q With him, okay.

2 A Yes.

3 Q And you had indicated that Claymore's trained to detect human odor?

4 A Yes, ma'am.

5 Q And you said that that's easier to detect when people are under stress,

6 they're sweating I believe, they were running. Is that correct?

7 A It's correct.

8 Q Okay. Since this is a residential area, what kind of training goes in to

9 distinguish between a suspect and just a -- like a citizen that's not anything involved

10 with a situation?

11 A Usually compliance.

12 Q Okay. So in this case, the dog is reacting to any human odor?

13 A Any human odor.

14 Q Okay. So any human odor in this backyard would -- Claymore would

15 signal by tugging or pulling on --

16 A Yes, ma'am.

17 Q Okay. And then you said that you saw an individual and was that

18 person moving?

19 A Didn't appear to be.

20 Q Okay. Was there any movement at all by the person lying on the

21 ground?

22 A No.

23 Q Okay. And you had indicated that your verbal commands, there was no

24 reaction --

25 A No.

1 Q -- is that correct?

2 A That's correct.

3 Q Okay. And that you had indicated at least I believe twice that -- to show

4 your hands?

5 A Yes.

6 Q Okay. Did you indicate that in Spanish at all?

7 A No. I don't speak Spanish.

8 Q Okay. Were you aware during the initial description that the person

9 was described as possibly Hispanic?

10 A Could be, yes. I don't remember.

11 Q How long have you been an officer?

12 A 18 years.

13 Q Okay. Do you know -- and you've worked in areas with populations of

14 Spanish speakers, is that correct?

15 A That's correct.

16 Q Both here and in New Mexico.

17 A Yes.

18 Q Are you familiar with any basic verbal commands that you would be

19 able to give in Spanish?

20 A Maybe if I thought about it, but not under stress really well.

21 Q Okay. So that's not something that you would ever think of like show

22 me your hands that you would be able to say in Spanish --

23 A No.

24 Q -- in the situation like this?

25 A Not myself, no.

1 Q Okay. Do you know if the officer that was with you was able to do that
2 as well?

3 A I do not.

4 Q Okay. Do you recall him making any commands or speaking in
5 Spanish at all?

6 A No. Usually when I'm there with the dog I give the command so that
7 the dog doesn't start indicating on someone else. So I do all the verbal warnings
8 and so forth.

9 Q Okay. You had indicated that you released the -- your canine partner
10 as opposed to using a lethal force?

11 A Any other force.

12 Q Any other force.

13 A Yes.

14 Q Okay. Claymore's force could be lethal, is that correct?

15 A No, it's not indicated as lethal force, no.

16 Q Okay.

17 A It's less than lethal.

18 Q Could it cause fatal injuries?

19 A I suppose it could.

20 Q Okay. And you said that -- is Claymore trained to I guess bit on to a
21 specific area or just any available area?

22 A Any available area.

23 Q Okay. So if the dog was able to like I guess bite on to someone's neck
24 that could potentially fatal, is that correct?

25 A It could be.

1 Q Or any major arteries in a leg or an arm, is that correct?

2 A That's correct.

3 Q Okay. And he's not able to distinguish between the areas on a human
4 body, is that correct?

5 A What do you mean? I don't understand --

6 Q As to where to --

7 A Where to and where not to?

8 Q Yes.

9 A No.

10 Q During this incident were you wearing a body camera?

11 A No, ma'am.

12 Q Okay. Do you wear a body camera now?

13 A I do not.

14 Q Okay.

15 MS. NGUYEN: Nothing further.

16 MR. FATTIG: Nothing further.

17 THE COURT: The jury have any questions of this witness? We're going to
18 take our lunch break so tell your witness that --

19 MS. THOMSON: We have one witness who has an --

20 MR. FATTIG: With an interpreter.

21 MS. THOMSON: -- interpreter because -- and it'll be a quick one.

22 THE COURT: All right.

23 **EXAMINATION BY THE COURT (JURY QUESTIONS)**

24 BY THE COURT:

25 Q Does the dog wear a bullet-proof vest?

1 A No, he does not.

2 THE COURT: Questions by the State?

3 MR. FATTIG: No.

4 MS. NGUYEN: No.

5 THE COURT: All right. Thank you. You're free to go.

6 THE WITNESS: Thank you, sir.

7 MS. THOMSON: Your Honor, the State calls Gloria Guillen.

8 THE COURT: I would just remind you -- this is the same interpreter that we
9 had before?

10 THE MARSHAL: Yes, it is.

11 MS. THOMSON: Uh-huh.

12 THE COURT: Okay. You're still under oath to interpret correctly.

13 THE INTERPRETER: Yes, sir.

14 THE COURT: Thank you.

15 **GLORIA GUILLEN**

16 [having been called as a witness and being first duly sworn, testified through
17 the interpreter as follows:]

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

20 THE WITNESS: My name is Gloria Guillen, G-L-O-R-I-A, G-U-I-L-L-E-N.

21 MS. THOMSON: May I proceed?

22 THE COURT: Yes.

23 MS. THOMSON: Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 BY MS. THOMSON:

1 Q Good afternoon, ma'am. I'm going to direct your attention back to June
2 26th of 2014. On that date, were you living on El Tovar?

3 A Yes.

4 Q And showing what's been marked as State's Exhibit 12 up on the
5 screen. Do you see your house on this map?

6 A Yes.

7 Q And if you'll touch the screen and mark which house is your house.

8 A [No audible response - marking on monitor].

9 Q Okay. And that's the second house in, off of El Tovar, correct?

10 A Yes.

11 Q And showing you what's been marked as State's Exhibit 111. IS this
12 the outside of your house?

13 A Yes.

14 Q And on June 26th at approximately 11:00 at night, were you at home?

15 A Yes.

16 Q And did you hear something that caught your attention?

17 A Yes.

18 Q What did you hear?

19 A I heard gunshots.

20 Q Okay. How many did you hear?

21 A Four, six.

22 Q When you heard those, what did you do?

23 A I got scared. I told my children to go inside their bedroom and to lay
24 down on the floor.

25 Q And what did you do?

1 A After that I went to talk to my husband and I asked if I -- if he heard
2 anything.

3 Q And where was your husband?

4 A In his bedroom. He was laying down.

5 Q Where had you been when you heard those gunshots?

6 A I was cleaning the living room.

7 Q And what direction did it sound like the gunshots came from?

8 A From behind the house.

9 Q Showing you what's been marked as State's Exhibit 1. And we see on
10 the map Carey and El Tovar. Can you demonstrate by touching the screen, making
11 a circle, the area where it sounded like the gunshots were coming from?

12 A Like about here.

13 Q So the area of Dolly just east of Carey -- west -- west of Carey? South.
14 South of Carey. South. South of Carey.

15 A Well behind the house from -- coming from Carey.

16 Q And when you went in to ask your husband if he had heard anything,
17 was he awake?

18 A No, he was asleep.

19 Q And did you wake him up?

20 A Yes. And he said he didn't hear anything. But while we were talking
21 we heard more gunshots.

22 Q Okay. How many more did you hear?

23 A Like four more I believe.

24 Q Okay. And did they sound like they were coming from the same area or
25 a different area?

1 A No, the same.

2 Q And about how long had it been between when you heard the first set of
3 gunshots and the second set?

4 A I don't know. A minute, a minute and a half. It was fast.

5 Q When you went in and woke your husband and you heard those
6 gunshots, what, if anything, did you have him do?

7 A I've tried telling them that. He said look, listen, there it goes again.
8 Then he got up and he said you're right. Then I went out to see if the children were
9 still in there. So when I went out to the hallway I saw some police lights. And told
10 him see, the police are already here, love. So he peeked out the window and he
11 saw a man standing by the window.

12 Q Were you with him when he looked out the window?

13 A Yes, he said there he is. So then he said yes, yes, look and then I
14 peeked and yes, there he was.

15 Q Showing you what's been marked as State's Exhibit 115. Can you see
16 in this photograph the window you were looking out of?

17 A Yes.

18 Q Will you circle that window for us?

19 A [No audible response - marking on monitor].

20 Q Okay. And when you looked out of that window, what did you see?

21 A I saw a man standing like this, leaning against the wall. You could tell
22 that he was very excited.

23 Q How could you tell that he was excited?

24 A Because he was doing like this, you know, turning around looking
25 everywhere, like thinking what he was going to do next.

1 Q Okay. And the movements you just made had your hands sort of in
2 front of your chest, fidgeting?

3 A Yes, that's -- that was he was doing.

4 Q When you looked out, was his back to the window and the house or
5 was his face and chest to the window and house?

6 A He was leaning back like this.

7 Q Okay. So his back was touching the back of your -- or the wall of your
8 house?

9 A Yes

10 Q And he was standing up?

11 A Yes.

12 Q When you saw that individual, could you see any description of him?

13 A He had a very distinctive color shirt. I don't recall if it was like green,
14 like fluorescent green.

15 Q Could you see his hair at that time?

16 A Yes.

17 Q And was there anything notable about his hair?

18 A He had a ponytail.

19 Q Was it a ponytail with just a little bit of hair or a lot of hair, could you
20 tell?

21 A I wouldn't be able to say but it was kind of long like this.

22 Q And when you said like this you moved your hand over your shoulder
23 just now?

24 A Yes, like this.

25 Q Could you tell if he was a thin peroson or a stout person?

1 A He was kind of chubby.

2 Q After you looked out the window and saw him leaning with his back
3 against your house, what did you do?

4 A I was very afraid and I told my husband, you know, I'm going to call the
5 police since I figure since the -- since I heard gunshots I figured that he may have a
6 gun and the kids -- that's where they --

7 MS. NGUYEN: Objection, Your Honor. Speculation.

8 THE WITNESS: -- play -- they go outside and they play.

9 THE COURT: Overruled. I'm going to allow her -- this is an excited moment
10 and she is sensing that at the moment.

11 BY MS. THOMSON:

12 Q So you said you were going to call the police. Did you go back out to
13 the front of the house?

14 A Yes, I went to the front, I opened the door, and I signaled a police
15 officer. So the police officer told me go back inside. So I closed the door, I went
16 back inside, and I told my husband he's telling me to come back inside, maybe he
17 doesn't understand that I want to tell him something. So then he got up, we were
18 just waiting to see what was going to happen next.

19 So then the police officer knocked at the front door and he asked what's
20 going on? That's when I told him there's a man behind the house on the patio.

21 Q Did you tell him that in English or in Spanish or a combination?

22 A Yes, in Spanish and English. I mean, the best I could.

23 Q There -- after that did you allow the officer and his dog to come through
24 the house into your backyard?

25 A Yes, after we talked and I told him that, he asked if we could come in

1 and I said yes and there was a dog. So he waited there and I told my husband to
2 open the door for him because he had a dog. And to tell the officer where he should
3 go to and then I just went back to where the kids were.

4 Q Later on did you see the officers with the individual who had been in
5 your backyard?

6 A Yes.

7 Q And where did you see the officers with that individual?

8 A Well they walked him through the house and they exited the house
9 through the front door.

10 Q Okay. And did recognize the person that they were walking through the
11 house as the same one you'd seen in your backyard?

12 A Yes.

13 Q That night, was there a white truck parked close to in front of your
14 house as shown in State's Exhibit 100?

15 A That's the neighbors.

16 Q And you'd seen that truck outside on more than just that night?

17 A It's always there.

18 MS. THOMSON: Pass the witness.

19 **CROSS-EXAMINATION**

20 BY MS. NGUYEN:

21 Q So the individual that you saw leaning up against your window, you
22 could tell that that person had a distinctive shirt on?

23 A Yes.

24 Q And you had said that that shirt was a fluorescent green?

25 A Yes, it was fluorescent green.

1 Q It wasn't just a little fluorescent green, was it just bright fluorescent
2 green shirt?

3 A Yes, bright, very.

4 Q Okay. And do you remember that because it was so -- I guess the shirt
5 was loud? I guess the color was so bright is the better word.

6 A Yes, I saw him. The shirt was like I just said.

7 MS. NGUYEN: Nothing further.

8 MS. THOMSON: I have no further questions.

9 THE COURT: The jury have any questions? Seeing no hands. Ma'am,
10 you're free to go.

11 We'll take our afternoon recess. During the recess you're admonished
12 not to talk or converse among yourselves or with anyone else on any subject
13 connected with this trial. Or read or watch or listen to any report of or commentary
14 on the trial or any person connected with this trial by any medium of information
15 including, without limitation, newspapers, television, the radio, or the internet. Or
16 form or express an opinion on any subject connected with the trial. Remember no
17 *Facebook, Twitter, Instagram.*

18 And if you talk to anybody in the courthouse, keep your badge on, even
19 during lunch. So that people won't talk to you. Only talk to people with a blue
20 badge on. See you at 1:20.

21 [Outside the presence of the jury]

22 THE COURT: Jury's out. Door is closed. All right. See you back 1:20.
23 What?

24 MR. FATTIG: Can we make a brief record regarding an evidentiary issue?

25 THE COURT: Okay.

1 MR. FATTIG: The crime scene analyst is about to check in the evidence.
2 One of the bags of evidence would be contents from the car, the Dodge Intrepid.
3 Some of those contents -- and we're talking about there's a lot of paperwork and
4 stuff. Some of that paperwork we do not want to admit because it's -- it can be
5 prejudicial. There is some jail visitation paperwork in the name of Joshua
6 Bacharach.

7 MS. NGUYEN: There's some like battery/domestic violence --

8 MR. FATTIG: There's some battery/domestic violence --

9 MS. NGUYEN: -- information cards.

10 MR. FATTIG: -- admonition. There's some of that paperwork that obviously
11 we don't want the jury to see. It is not our intent to admit that particular items. I
12 don't know if we want to open those up and --

13 THE COURT: Why don't both of you come up and open it up and take out --

14 MS. NGUYEN: I'll open it all up right now. That's fine.

15 THE COURT: Take --

16 MR. FATTIG: And we'll remove out what --

17 THE COURT: Take out what you don't want --

18 MR. FATTIG: Okay.

19 THE COURT: -- to go to the jury and we'll mark it as not given. We'll mark it
20 as a court exhibit.

21 MR. FATTIG: Okay.

22 THE COURT: We'll put -- can we get it in one envelope?

23 THE CLERK: We have bags -- we can put it --

24 MR. FATTIG: Okay.

25 THE CLERK: If it's a voluminous amount, we can put it in a bag.

1 THE COURT: All right. Let's see what we got and --

2 MR. FATTIG: Okay.

3 THE COURT: -- the clerk will put it in the bag and keep it safe, but they'll be
4 marked as a court's exhibit not to go back with the jury.

5 MR. FATTIG: Correct. Thank you.

6 THE COURT: Okay. But I want you -- both of you to open the --

7 MR. FATTIG: Yes. We will both open it.

8 THE COURT: And make sure there's a stipulation that are sealed.

9 MR. FATTIG: Yes.

10 [Recess taken at 12:14 p.m.]

11 [Trial resumed at 1:29 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: Do we need to put anything on the record?

14 MR. FATTIG: We can put on the record about opening the stuff.

15 MS. NGUYEN: Oh yeah, that's fine.

16 THE COURT: All right. So as soon as Jill's up and ready -- okay, what do we
17 need to put on the record?

18 MS. NGUYEN: Your Honor, after the first break myself and the District
19 Attorney went through and opened up several of the packages --

20 MR. FATTIG: With the crime scene analyst.

21 MS. NGUYEN: -- with the crime scene analyst.

22 THE COURT: Okay.

23 MS. NGUYEN: And we removed several items that we thought were
24 prejudicial that shouldn't, I think -- actually one item.

25 MR. FATTIG: Just one item.

1 MS. NGUYEN: Just one item.

2 MR. FATTIG: One item was in the paperwork and it was exhibit -- it was
3 going to -- it was marked by the clerk already as Exhibit 195. And from -- and that is
4 Package 8 from Crime scene analyst Joel Albert. And inside that package was
5 some miscellaneous paperwork found inside the car with Joshua Bacharach's name
6 on it. One of those items dealt with a visitation log to a detention facility with his
7 name. So we obviously took that out. We have separated that from that particular
8 evidence bag. So.

9 THE COURT: And you're satisfied that everything's out that needs to out?

10 MS. NGUYEN: Yes. There were four items that we didn't have time to or
11 didn't get to, but we'll just do those --

12 MR. FATTIG: That we didn't open. But those are separate evidence.

13 THE COURT: Okay.

14 MR. FATTIG: But the other items that were in the paperwork envelope in that
15 particular exhibit, 195, Ms. Nguyen inspected and did not have any objection to
16 them. They have Mr. Bacharach's name on them.

17 THE COURT: You need to lead them through it so that -- sometimes we have
18 to lead -- like we should have lead that young lady a little more --

19 MS. THOMSON: I don't think anyone could have see that coming. I'm just --

20 THE COURT: No, I know.

21 MS. THOMSON: Particularly since it wasn't true.

22 THE COURT: I know.

23 MS. NGUYEN: I think we're fine. The one thing is I know that Tom wanted to
24 inspect. I think there's a couple more firearms that are in there and I don't know if
25 he wants inspect them.

1 THE MARSHAL: I inspected the one.
2 MS. NGUYEN: There's a couple more that --
3 THE COURT: Just make sure that --
4 MR. FATTIG: I think we haven't opened them all yet.
5 MS. NGUYEN: -- we haven't opened yet. We haven't opened them yet, Tom.
6 THE MARSHAL: Oh, you haven't?
7 MS. NGUYEN: No.
8 THE COURT: Before they go -- well, they won't go back to the jury. You
9 know, I had problems when I was a prosecutor. We had a jury that was an attempt
10 murder and they went back and pulled the trigger at each other. She said there's no
11 way they could have -- she could have missed because she was only ten feet away.
12 MS. THOMSON: You know, I have no problem with that as long as they do it
13 very realistically.
14 THE COURT: Yeah, well, just as long as the cartridges don't go back with the
15 guns. All right. So are we ready to bring the jury in?
16 MS. NGUYEN: Yes. I believe so.
17 THE COURT: Bring them in.
18 And so how many more witnesses do you got today?
19 MS. THOMSON: Four.
20 THE COURT: Four?
21 MS. THOMSON: Six? Five.
22 MR. FATTIG: Five or six.
23 MS. THOMSON: Six.
24 THE COURT: And the Detective's going on quickly?
25 [In the presence of the jury]

1 THE MARSHAL: All rise.
2 MR. FATTIG: Yeah, very quickly.
3 THE MARSHAL: And be seated.
4 THE COURT: Stipulate to the presence of the jury.
5 MS. THOMSON: Yes, Your Honor.
6 THE COURT: All right. Call your next witness.
7 MS. THOMSON: Thank you, Your Honor. We'd briefly recall Officer McNabb.
8 **RYAN McNABB**
9 [recalled to the stand, previously sworn, testified as follows:]
10 THE COURT: I'd just remind you, Officer, you're still under oath to tell the
11 truth.
12 THE WITNESS: Yes.
13 THE COURT: Thanks. Go ahead.
14 MS. THOMSON: Thank you, Your Honor.
15 **FURTHER REDIRECT EXAMINATION**
16 BY MS. THOMSON:
17 Q You had testified earlier today that when you received your body
18 camera, you did not receive training with it, is that fair?
19 A Yes.
20 Q Okay. Do you remember how it occurred that you got the body
21 camera?
22 A Yes, it was at headquarters and I went to the body camera office and it
23 was provided to me.
24 Q And were you on the initial list to get a body camera?
25 A No, I was not.

1 Q Okay. When you go the body camera, do you recall if Peter Ferranti
2 was in the office that day?

3 A It was not. It was one of his staff that had given it to me.

4 Q And they walked you through what to press, how to put it on, that kind
5 of stuff?

6 A Yes.

7 Q Where -- when you got the body camera, had you just come back to
8 patrol?

9 A Yes.

10 Q And from what section had you come to patrol?

11 A I had been in Internal Affairs as a detective.

12 Q And was that why you wanted a body camera?

13 A Yes.

14 Q Okay. And as part of Internal Affairs, you were hypersensitive to
15 policies of the department and complying with those?

16 A Yes.

17 Q And you were aware that there were policies associated to the body
18 camera?

19 A Yes.

20 Q And when you received the body camera and the direction of how to
21 use it, did you go and review those policies and continued to review them as they
22 have changed and updated?

23 A Yes.

24 Q You -- getting the body camera specifically recall that you were not part
25 of the training class, is that fair?

1 A Correct.

2 Q Okay.

3 MS. THOMSON: Pass the witness.

4 MS. NGUYEN: No questions.

5 THE COURT: The jury have any further questions of this Officer? Thanks.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Thanks for coming back in.

8 MR. FATTIG: Anthony Garbutt.

9 **ANTHONY GARBUTT**

10 [having been called as a witness and being first duly sworn, testified as follows:]

11 THE CLERK: Thank you. Please be seated. State your full name, spelling
12 your first and last name for the record, please.

13 THE WITNESS: My name is Anthony Garbutt. Anthony, A-N-T-H-O-N-Y.
14 Garbutt, G-A-R-B-U-T-T.

15 **DIRECT EXAMINATION**

16 BY MR. FATTIG:

17 Q Sir, how are you employed?

18 A With the Las Vegas Metropolitan Police Department.

19 Q How long have you been with Metro?

20 A Just over 14 years.

21 Q And what is your current assignment?

22 A Patrol activities.

23 Q For a particular part of the city?

24 A Yes, Northeast Area Command.

25 Q Were you under that same assignment in that part of the city as of June

1 26th, 2014?

2 A Yes, I was.

3 Q Do you have occasion to remember going out to the scene near Dolly
4 and El Tovar that evening just before 11:00 p.m.?

5 A Yes.

6 Q How did you first learn of that particular call?

7 A Over the radio. I was at the substation at the time.

8 Q And what substation were you at when you heard the call?

9 A The Northeast Area Command, 3750 Cecile.

10 Q And wehre is that generally in relation to the area of El Tovar and
11 Dolly?

12 A It's just northwest of there, approximately a couple miles away.

13 Q And what information did you hear while you were at the Area
14 Command?

15 A That another officer was being shot at.

16 Q What were you doing at the Area Command at the time?

17 A Just finishing up lunch.

18 Q Okay. And were you working swing shift, graveyard?

19 A Yes, swing shift.

20 Q Swing shift. And did you get a direction of travel and where that event
21 was occurring over the radio?

22 A Yes, I did.

23 Q And did you ask to be assigned to that particular call and go to assist?

24 A Yes.

25 Q How -- about how long did it take you to get down to El Tovar and

1 Dolly?

2 A Probably right around five minutes, maybe a little bit less.

3 Q Fair to say you were driving fairly quickly?

4 A Yes.

5 Q You're in a marked patrol car?

6 A Yes.

7 Q How did you get to that area? What streets did you take?

8 A I took Cecile to Walnut and then I took Walnut north to Cheyenne. And

9 then from Cheyanne I went eastbound on Cheyenne towards Lamb.

10 Q Okay.

11 A And then from Lamb I went southbound on Lamb to Carey.

12 Q And then Carey eastbound to Dolly?

13 A Yes.

14 Q Fair to say that would be the most likely route different patrol or

15 personnel from Metro would have arrived on to that scene from Carey?

16 A Similar, yes.

17 Q Now when you arrived there, how many other officers were on scene if

18 you can estimate?

19 A Oh, I would have to say at least approximately six to right, if not more.

20 Q Fair to say you were one of the first, but not the first.

21 A Correct.

22 Q Now when you arrived there were different officers on El Tovar?

23 A Yes.

24 Q Do you notice some officers out on Carey?

25 A Yes.

1 Q When you get to El Tovar, what do you do? Do you park on El Tovar?

2 A Yes, I do.

3 Q What do you do?

4 A I parked my patrol vehicle kind of blocking traffic in case a vehicle came
5 from the south, so they couldn't turn on El Tovar. So I parked my patrol vehicle
6 there and then I got out and met up with other officers.

7 Q Okay. And then what did you do?

8 A Pretty much got a plan together to check El Tovar, going westbound on
9 El Tovar, because due to the last -- the information that we had that a possible
10 subject was going westbound on El Tovar.

11 Q I'm going to show you --

12 [Colloquy between Counsel]

13 MR. FATTIG: Your Honor, it's my understanding the Defense will stipulate
14 with the State that State's Exhibit 16 and 17 will be admitted.

15 MS. NGUYEN: That's correct.

16 THE COURT: They'll be admitted.

17 **[STATE'S EXHIBITS 16 and 17 ADMITTED]**

18 BY MR. FATTIG:

19 Q Officer, I'm going to show you State's 16 first. DO you recognize this?
20 This would be an aerial photograph.

21 A Yes, I do.

22 Q Is this El Tovar?

23 A Yes, it is.

24 Q 17. And this would be taken from the north to the south. And 17 is
25 taken from the south to the north.

1 A Yes.

2 Q Is that fair to say?

3 A Yes.

4 Q Okay. Let me go back to 16. So you park your patrol car, you get out
5 on foot, and you talk with other officers about looking farther west on El Tovar?

6 A Yes.

7 Q What occurs?

8 A We received information that a subject possibly went west on El Tovar.
9 While out there I was with a few other officers and somebody came out and stated
10 that a subject ran through their yard and went into their yard.

11 Q Okay. And do you remember about where that occurred?

12 A Yes.

13 Q What yard you're talking about?

14 A It's the second one on the right.

15 Q Can you mark it on the screen? If you touch the screen it'll mark onto
16 the --

17 A Yep. It was this residence right here.

18 Q Okay. So the green house, second house in from Dolly.

19 A Yes.

20 Q And so what did you do when you heard that information?

21 A I got together with a K9 Officer and another officer from my squad,
22 Officer Huysentruyt and we set up a plan to check the backyard.

23 Q Showing you State's Exhibit 111, is that the front of that house?

24 A Yes.

25 Q Okay. And what was your role in checking the yard?

1 A I covered the west side of the yard, which would be between that one
2 and the third house.

3 Q And when you say covered it, what area were you positioned at?

4 A Right between the houses. I walked up the gangway in between.

5 Q Okay. Can you mark that on that diagram that's State's 1 --

6 A Pretty much -- oops, sorry about that. Pretty much came right in this
7 area right there.

8 Q Okay. So just to the east of the third home?

9 A Yes.

10 Q Of this --

11 A Just to the east, yes.

12 Q -- third home from Dolly?

13 A Yes.

14 Q Just to the east this way.

15 A Yes.

16 Q Okay. So what was your goal by being in that position?

17 A Well I could watch the yard on the west and also the target residence at
18 the same time.

19 Q Okay. And why were you concerned about the yard on the west?

20 A Initially on our approach I notice a chair sitting in the backyard of the
21 target residence, which led to the yard on the west.

22 Q Showing you what has already been admitted as State's 112. Do you
23 recognize this photograph?

24 A Yes, that's the west side of the target house.

25 Q And is this the chair that you were talking about? Do you see it there?

1 A Yes.

2 Q Can you mark that for the record?

3 A [No audible response - marking on monitor].

4 Q So there appears to be a chair up against the fence that if somebody
5 were to climb over it that would be the third house over from Dolly; that west
6 backyard?

7 A Yes.

8 Q Now what is the lighting conditions as you're in this back area here?

9 A It's pretty dark. Not pitch-black dark because just beyond that is Carey,
10 so you do get a little bit of the street light glare. But otherwise, with the bushing,
11 when you -- the further you go into the backyard, the darker it gets.

12 Q Did you see anything as you were looking at this area?

13 A No, I did not.

14 Q Did you hear anyone back there?

15 A No, I did not.

16 Q Did you notice Officer -- the K9 Officer and the officer Huysentruyt, is it?

17 A Huysentruyt.

18 Q Huysentruyt. Do you notice them coming in the yard?

19 A Yes, I did.

20 Q And do they come of this door here?

21 A Yes.

22 Q In State's Exhibit 122, for the record. What happened? What did you
23 see?

24 A They exited. As soon as they exited they started walking towards --
25 they started walking more towards the backyard. Once they did that I focused on

1 the yard to the west. The majority of my attention was there. Moments later they
2 walk in and probably couldn't be less than a minute, I just start hearing verbal
3 commands being given.

4 Q Okay. By who?

5 A Officer Huysentruyt and the K9 Officer.

6 Q Okay. And what kind of commands did you hear?

7 A Pretty much show me your hands.

8 Q And at this point -- you're saying when they initially get out there you're
9 kind of watching the yard to the west?

10 A Yes.

11 Q Is that basically to cover that?

12 A Yes.

13 MS. NGUYEN: Objection, Your Honor. Leading.

14 THE COURT: Overruled.

15 BY MR. FATTIG:

16 Q Once you start hearing them giving commands, does your focus -- does
17 your attention focus somewhere else?

18 A Yes, it focuses on that yard -- the target yard now.

19 Q With the green house?

20 A Yes.

21 Q Okay. And then what do you do?

22 A I complete going over the fence and I immediately go to Officer
23 Huysentruyt and the K9 Officer's location.

24 Q Okay. What happens next?

25 A While there I see a subject laying on the ground on his belly, hands are

1 kind of like up close, almost like in a push-up position. In which case verbal
2 commands are still being given to show me your hands at which case I notice the K9
3 dog had a grip on the subject that was laying down. At the same time they were
4 also telling them to stop resisting.

5 Q Did you ever hear the subject that was laying in the backyard of that
6 green house every verbally indicate anything to anyone -- any of the officers?

7 A During that incident, no.

8 Q In terms of -- and what I'm talking about is okay, I give up, you got me,
9 nag like that?

10 A No, nothing like that.

11 Q Or I'll show you my hands?

12 MS. NGUYEN: Objection, Your Honor, leading.

13 THE COURT: Sustained.

14 BY MR. FATTIG:

15 Q You didn't hear him say anything?

16 A No, I did not.

17 Q Did you ever see him make any movements to where he is showing
18 your -- showing you or the other officers his hands?

19 A Not in this -- not immediately, no. He kept them up close constantly, at
20 which point they kept continuously telling him to show them his hands and he
21 wasn't.

22 Q And for the record you're indicating close to the top portion of his chest
23 is where his hands were?

24 A Just inner shoulders -- just inside the shoulders.

25 Q Inner shoulders.

1 A Yes.

2 Q And the dog was released and did you see the dog bite the man?

3 A Yes.

4 Q And when that occurred, did you go over to where he was at?

5 A Yes, I did.

6 Q And -- along with the officers?

7 A Yes.

8 Q And was he taken into custody?

9 A Eventually, yes.

10 Q How did that work?

11 A As I approached I advised Officer Huysentruyt and the K9 Officer that I
12 was going to be on lethal, which would mean I was going to be on-gun because we
13 could not see his hands.

14 Q What did that mean?

15 A Basically -- on-gun is basically -- just letting the other officers know that
16 they can resort to other things such as going hands-on or using a tool to get his
17 hands out or where he does eventually submit his hands they can put hands on to
18 place him into custody in the handcuffs.

19 Q On-gun means you have a gun pointed at him.

20 A Yes.

21 Q Okay. And did they do that after you indicated to them that you had
22 lethal, you were on-gun?

23 A After a -- still a -- we -- they still had to give verbal commands to show
24 his hands because he didn't do it immediately. Another officer, Officer Kelly came.
25 He also was on-gun. And after a few more verbal commands, eventually the hands

1 came out, yes.

2 Q So was that time period when you were saying he wasn't complying
3 with commands, was that after the dog had already bitten him?

4 A Yes.

5 Q Eventually were they able to get him in handcuffs?

6 A Yes.

7 Q The man say anything during that time period?

8 A Not during the handcuffing, no.

9 Q Okay. Do you see the individual that was handcuffed and bit by the dog
10 in court today?

11 A Yes, I do.

12 Q Can you please point to him and identify a piece of clothing he's
13 wearing today?

14 A It's the gentleman sitting right there at the table on the right, black hair,
15 appears to be in a ponytail, and looks like a grayish-green shirt with a yellowish tie.

16 THE COURT: Record will reflect he's identified the Defendant.

17 MR. FATTIG: Thank you.

18 BY MR. FATTIG:

19 Q Now after -- upon discovering Mr. Bacharach in the backyard, is it fair to
20 say that prior to going in the backyard you had a very generally description of who
21 guys were looking for?

22 A Yes.

23 Q Do you remember generally what that description was?

24 A The description I remember was a Hispanic male, dark hair, and white
25 t-shirt -- or white shirt.

1 Q Now when you discovered Mr. Bacharach in the backyard and you had
2 him in custody, did he seem to fit that description?

3 A Not 100 percent, no.

4 Q Okay. What parts did not fit the description?

5 A Just the shirt.

6 Q Okay. What color shirt did Mr. Bacharach have on?

7 A It was like a neon green, glow-in-the-dark green.

8 Q Like a highlighter-type?

9 A Yes.

10 Q And the description was a white shirt, correct?

11 A Yes.

12 Q What about the other parts of MR. Bacharach, did he seem to fit the
13 description?

14 A Initially that I can remember, no, not off the top of my head.

15 Q You had very general, basic knowledge?

16 A Yes.

17 Q Okay. Were you aware that there -- that the report was -- it was a
18 Hispanic male?

19 MS. NGUYEN: Objection, Your Honor, leading.

20 THE COURT: Sustained.

21 BY MR. FATTIG:

22 Q Were you aware of the race of the individual that was reported?

23 MS. NGUYEN: Asked and answered, Your Honor.

24 THE COURT: Overruled.

25 BY MR. FATTIG:

1 A Yes, a possible Hispanic male.

2 Q Okay. Did Mr. Bacharach appear to fit that description?

3 A That description, yes.

4 Q Upon that discovery was Mr. Bacharach taken out of the backyard area
5 to the street?

6 A Yes, he was.

7 Q Is it fair to say during that time period there was a continuation of an
8 assessment of whether or not there was any other individuals that could have been
9 the suspect in the area?

10 A Yes, there was. I gave the information to Officer Huysentruyt that it's
11 not confirmed that he is still the person that we were looking for at the time. Se he
12 reiterated over the radio we do have somebody in custody but it's not confirmed that
13 it's the same subject.

14 Q And that's because Officer McNabb wasn't in that area, correct?

15 A Correct.

16 Q he was out on the street somewhere?

17 A Yes.

18 Q So eventually that did get confirmed?

19 A Yes. Minutes later, yes.

20 Q Yes. The area -- in that area it was searched for possible other people,
21 correct?

22 A Yes.

23 Q Are you aware that any other people were found?

24 A No, none.

25 Q Okay. Was there a point in time when you were out on the street after

1 this occurred, out on El Tovar?

2 A Oh, yes, initially. Because then Officer Huysentruyt walked the subject
3 over, they were going to have medical take a look at him, in which case it still wasn't
4 confirmed. And so I still kept my alertness down westbound El Tovar. At that --
5 which I was trying to find another officer to go with me to walk down El Tovar to
6 continue the search for the subject.

7 Q Okay. For possible suspects?

8 A Yes.

9 Q Was there a point in time when -- where your attention got brought to
10 some evidence in the area?

11 A Yes, there was.

12 Q And when was that during this period? Was it close in time to this time
13 period?

14 A Yes, it was -- I want to say it was just right about the same time of the
15 confirmation that came out over the radio. I was advised by Officer Stearns that
16 there was something underneath the pickup truck. We both looked underneath the
17 pickup truck, I saw what was a white -- a ballistic with a white cover and also a semi-
18 automatic handgun sitting on top of it.

19 Q Now when -- a minute ago you just said confirmation came over the
20 radio. What are you talking about? What confirmation?

21 A That the subject that Officer Huysentruyt had handcuffed was the
22 subject.

23 MS. NGUYEN: Objection, Your Honor, hearsay.

24 THE COURT: Pretty excited times. Lots of action with cops talking on radios
25 and things.

1 THE WITNESS: Yes.

2 THE COURT: Overruled.

3 BY MR. FATTIG:

4 Q Showing -- so --

5 THE COURT: What is a ballistic vest?

6 THE WITNESS: A ballistic vest is what appears to be a bullet-proof vest.

7 BY MR. FATTIG:

8 Q Showing you what's been admitted as State's 100. Do you recognize
9 what's shown there?

10 A Yes.

11 Q And what is that?

12 A It's the white truck where the vest and the firearm was located under.

13 Q And it's parked pretty much in front of the green house?

14 A Yes.

15 Q Okay. And this is -- 101 would be the front of the truck?

16 A Yes.

17 Q 102, a little bit better angle of the vest and gun?

18 A Yes.

19 [Colloquy between Counsel]

20 MR. FATTIG: It's my understanding, Your Honor, that the parties are
21 stipulating to the admission of 103, 104, and 105.

22 MS. NGUYEN: No objection.

23 THE COURT: They'll be admitted.

24 **[STATE'S EXHIBITS 103, 104, and 105 ADMITTED]**

25 BY MR. FATTIG:

1 Q 10 --

2 THE COURT: Is 102 admitted?

3 MR. FATTIG: I believe it was. 102?

4 MS. NGUYEN: Just now?

5 MR. FATTIG: I don't know.

6 MS. NGUYEN: I don't think it had been prior --

7 MR. FATTIG: Okay. My apologies.

8 MS. NGUYEN: That's okay.

9 MR. FATTIG: No objection to 102.

10 THE COURT: It'll be admitted.

11 MR. FATTIG: Thank you.

12 **[STATE'S EXHIBIT 102 ADMITTED]**

13 [Colloquy between Counsel]

14 BY MR. FATTIG:

15 Q Officer, showing you 104. That would be a close-up of where it was
16 found underneath the front of that white truck?

17 A Yes.

18 Q And so the firearm, can you describe what you appeared to observe
19 about the firearm?

20 A Magazine is still inserted and the slide itself is locked back.

21 Q And what is the slide?

22 A The slide is the top part of the weapon itself where it -- it slides back
23 to -- so another round can chamber into the chamber.

24 Q Okay. 105. Does that appear to be after the vest and the gun have
25 pulled out of the -- the un -- from underneath the truck?

1 A Yes.

2 Q Do you remember seeing a juvenile male out on the street, a neighbor?

3 A Yes, I did.

4 Q And did he provide some information about the suspect and the white
5 truck?

6 A Yes.

7 Q What time does the graveyard shift start?

8 A They start at 10:00 p.m.

9 Q Okay. And what time does swing shift go from?

10 A Midnight-thirty.

11 Q It goes until 12:30?

12 A 12:30 a.m., yes.

13 Q So during this time period of this event there are officers from both
14 graveyard and swing involved?

15 A Yes.

16 Q So fair to say there were a lot of officers that came out to the scene that
17 night?

18 A Yes.

19 Q A lot of different patrol cars, undercover cars, et cetera?

20 A Yes.

21 Q Okay.

22 MR. FATTIG: I have no other questions at this time.

23 **CROSS-EXAMINATION**

24 BY MS. NGUYEN:

25 Q You described the individual that was on the ground in the backyard of

1 that green house as wearing -- that it didn't exactly fit the description that you were
2 given, is that correct?

3 A Clothing, no.

4 Q Okay. And the clothing that he was wearing, you describe as a glow-
5 in-the-dark-type neon green shirt, is that correct?

6 A Yes.

7 Q Okay. Could you see that shirt when you were in the backyard?

8 A Initially when I turned the corner, I eventually saw it, yes.

9 Q Okay. And it was a brightly colored shirt?

10 A Yes.

11 Q Okay. And once you were able to see him and see the shirt, was that
12 because there was light being shown on him? Or could you see it under just the
13 natural -- or the --

14 A Yes, flashlights, yes.

15 Q Flashlights, okay.

16 A Yes.

17 Q When you pulled your weapon, did you have a flashlight turned on as a
18 part of --

19 A Initially, yes, I had my flashlight out the entire time.

20 Q Okay. And did other officers have their flashlights out?

21 A I believe so, believe I remember I saw another light. I can't say exactly
22 whose light it might have been because I know there's at least three other officers
23 back there at that time.

24 Q And those three officers that were back there with you, were -- did
25 everyone have guns drawn?

1 A When I walked up there, no, they did not, because eventually I went on-
2 gun. I believe it was Officer Kelly, he was the second officer on-gun. And we were
3 letting them know that. But initially, when I first got back there, everybody was -- did
4 have their guns out.

5 Q Okay. And there was also the K9 there, correct?

6 A Yes.

7 Q He didn't have a gun did he?

8 A I didn't look at him, yeah.

9 Q When you said that -- you described the person on the ground in a
10 push-up position I think you said --

11 A Yes.

12 Q -- is that correct?

13 A Yes.

14 Q I'm not putting words in your mouth, you described it that way, is that
15 correct?

16 A Yes.

17 Q Okay. And could you see the person's hands like down, were they like
18 pushing up or were they just kind of laying on their hands?

19 A Laying on them.

20 Q But you could the hands underneath their body like that, to know they
21 were in that position?

22 A They were tucked underneath, so I could not see his hands, no.

23 Q Okay. SO the hands could have been liked this?

24 A It looked more because of the way the elbows were out --

25 Q Okay.

1 A Kind of how his elbows were, it looked like they were more almost like
2 this underneath him.

3 Q So you could see enough detail that you could see the elbows and kind
4 of get a --

5 A Yeah, from the shape of the elbows.

6 Q -- representation of where his arms --

7 A Yeah, because --

8 Q -- were in location?

9 A Yeah, because the elbows necessarily weren't tucked.

10 Q Okay.

11 A So it was more like their elbows were almost like pointed out. And
12 when you're in that position they kind of stick out a little bit, to where as if you tuck
13 underneath they're also in the body, so they're -- it's almost like it's --

14 Q And could you see this person's face?

15 A No, I did not. No.

16 Q Could you see their hair?

17 A Yes, I saw the hair.

18 Q Could you see their hair color?

19 A Yes.

20 Q Okay. But you couldn't see a face?

21 A At that time, no.

22 Q Okay. Could you tell if it was a man or a woman?

23 A No.

24 Q Okay. So at that time you didn't know if it was a man or a woman?

25 A No.

1 Q It was just a heavier-set individual?

2 A Yes.

3 Q And you could see long hair?

4 A Yes.

5 Q And the bright neon shirt?

6 A Yes.

7 Q Okay. When you came -- when you saw those items in there -- in front

8 of the truck area, were they in the position as they were photographed?

9 A From the first couple photographs, yes.

10 Q Okay.

11 A I think one of the last ones, I think it was either pulled out and they took

12 an aerial of it.

13 Q I'm showing you State's Exhibit 101. Is this how you saw these items?

14 A In that photo, yes, that's what appeared -- what I saw, yes.

15 Q This is how the items were located when you saw them?

16 A When I saw them, yes, that's what they looked like.

17 Q And this -- had they been moved at this point or is this just a different

18 view?

19 A When it -- once it was brought to my attention that they were there and I

20 saw them, they weren't moved from the time I was there, no.

21 Q Okay. Were you present when crime scene analysts came out to

22 photograph this?

23 A No, I was not.

24 Q Were you there -- or were you there directing people towards this

25 evidence?

1 A Yeah, I passed the word on. I believe another officer was staying there
2 at that area -- at that immediate area. And then I went to go let someone else know
3 what was found underneath because I think it was broadcast over the radio also.

4 Q And at this time there were lots of officers?

5 A Yes.

6 Q There were officers from two different shifts?

7 A Yes.

8 Q Okay. And there was, you know, everyone was aware that there was
9 an officer-involved shooting, is that correct?

10 A Yes.

11 Q So there were probably more officers than there would be if it was
12 another type of shooting, is that correct?

13 A Probably, yes.

14 Q And there were multiple patrol cars?

15 A Yes.

16 Q Okay. Motorcycle cops as well?

17 A I didn't see any motorcycle officers.

18 Q Do you remember approximately how many vehicles were there?

19 A When I first got there, in the Dolly and El Tovar area, I'd say probably
20 about three.

21 Q Okay.

22 A But as far as Carey and Lamb, because the perimeter was already
23 being set up, there was a lot more.

24 Q And the perimeter, where did it start?

25 A From my understanding it was Carey and Lamb, going down Lamb to

1 Judson, possibly. But I knew Carey and Lamb definitely was that area and it went
2 all the way down to Dolly. After that point I stopped. But as far as what radio
3 traffic -- how far they want to send it down, I couldn't remember exactly how far east
4 they went.

5 Q It was a pretty large perimeter, is that correct?

6 A Yes.

7 Q And there were at least three patrol cars in that area that you recall?

8 A Yes.

9 Q There was yours?

10 A Yes.

11 Q Was there the K9 Officer Morgan?

12 A Yes.

13 Q Okay. And do you recall who the third one possibly belonged to?

14 A I have no idea who the third one belonged to.

15 Q Could there have been more?

16 A In that immediate area, no, because there was actually room for me to
17 park my car, so a lot of times if it's something big like this, I'll park further away and
18 walk up. But there was actually enough space for me to pull that far up to actually El
19 Tovar itself.

20 Q And there were other cars because this is a residential area, is that
21 correct?

22 A Yes.

23 Q And there were residents that were kind of coming out of their homes, is
24 that correct?

25 A Yes.

1 Q Okay. And you made contact with several of them?

2 A Yes.

3 Q In fact, you went in to one of them -- one of their homes, is that correct?

4 A I don't know if -- I can't remember if I actually went inside, but I made
5 contact with two residents only.

6 Q Okay.

7 A Actually three total with the target residence.

8 Q Okay. So there were plenty of people -- and then in addition to the
9 three cars and the residents in the neighborhood, were there other officers that
10 didn't have vehicles there that were in that area; either securing the area, looking for
11 a suspect, or collecting evidence?

12 A Initially going west on Tovar, no. The majority of people were on Dolly
13 itself.

14 Q Okay.

15 A Because El Tovar is like a cul-de-sac so the majority of officers
16 themselves were on Dolly, and then a few of us started working west.

17 Q Were they at that corner of Dolly and El Tovar?

18 A There and just a little bit north of there, towards Carey.

19 Q And how many officers do you recall seeing in that general vicinity?

20 A Probably like -- at least in that immediate area, probably easily half a
21 dozen.

22 Q Okay.

23 A Six.

24 Q In addition to officers, were there supervising officers and other
25 members of Metro?

1 A Yes. Sergeant Briggs was there, yes.

2 Q Okay. Were there any members of like the PPA there, the Police
3 Protective Association?

4 A I don't know if PPA initially show up. I knew our FIT detectives showed
5 up where they involve -- they investigated officer-involved shootings, they showed
6 up. I knew those detectives were there.

7 Q So there were additional officers or administrators that normally
8 wouldn't come out to a scene, but because of the nature of the case there were
9 more people there, is that correct?

10 A Eventually towards the end, yes.

11 MS. NGUYEN: Nothing further.

12 **REDIRECT EXAMINATION**

13 BY MR. FATTIG:

14 Q Fair to say, Officer, that there's not a lot of cars there initially when you
15 arrived, but then later, a lot of cars came to the scene, correct?

16 A Yes. Once it was static, yes.

17 Q Yes. Okay. Officer Stearns is the officer that notified -- kind of directed
18 you, hey, there's something under that truck, correct?

19 A Yes.

20 Q Officer Stearns is also a patrol officer?

21 A Yes.

22 Q Are patrol officers trained when you discover evidence to not disturb it?

23 A Yes.

24 Q That would be the normal course; identify it, look at it, but don't touch it?

25 A Yes.

1 Q Until a crime scene analyst comes and documents it, correct?

2 A Yes.

3 Q A crime scene analyst then would move it, collect it, et cetera?

4 A Yes.

5 Q And the same rules would apply if a patrol officer was out on the street
6 and saw a cartridge casing laying in the road, correct?

7 A Correct. Yes.

8 Q They would identify it, but not touch it?

9 A Correct.

10 Q Thank you.

11 MR. FATTIG: Nothing further.

12 MS. NGUYEN: Just a couple follow-ups.

13 **RECROSS-EXAMINATION**

14 BY MS. NGUYEN:

15 Q When you're driving in the car and you drove into the scene, did you
16 drive off of Dolly?

17 A Eventually I came on Dolly because El Tovar crosses with Dolly, yes.

18 Q Okay.

19 A It's the only way to get in because it's a cul-de-sac.

20 Q Okay. So you -- I think we all know that. When you came in you came
21 in off of -- how did you arrive?

22 A I came off of Carey. I came from the west on Carey.

23 Q Okay.

24 A I drove east on Carey, arrived on Dolly, then from Dolly I went south on
25 Dolly, to El Tovar.

1 Q Okay. And then you went to El Tovar and then you turned down El
2 Tovar?

3 A No. I didn't turn down it, I pretty much parked right on the corner.

4 Q Okay. So you parked on the corner of Dolly and El Tovar?

5 A Yes.

6 Q Okay. Were there other -- was there any other patrol cars that had
7 pulled down El Tovar?

8 A No, not down El Tovar. I believe -- if I'm not mistaken, mine might have
9 been the furthest one down at that time.

10 [Colloquy between Counsel]

11 BY MS. NGUYEN:

12 Q Where did you park on this map?

13 A When I pulled in I pretty much parked right like this on an angle.

14 Q And where did you notice other vehicles?

15 A I know there was one down here and then --

16 Q Sorry.

17 A Oh. Right in this area --

18 Q Okay.

19 A -- blocking traffic. And then I want to say there might have been one
20 right in this area.

21 Q Were there any vehicles in this area that you recall?

22 A When I arrived, no.

23 Q Okay. When you came out later, were there any vehicles out in that
24 area?

25 A After everything was static, there could have been, yes.

1 Q Okay. After everything was what?

2 A Static. It's basically when -- it's when it's no longer hostile or
3 everything's calmed down. Basically we found the person we were looking for or we
4 found the items we were looking for. Basically we just shut down the area and we
5 make it static. So now it's -- if other people need to come in and do something, take
6 photos or relieve other officers and stuff like that, now that can happen.

7 Q Were there any officers parked around this area?

8 A There could have been, yes.

9 Q But there were no vehicles at all in this area, is that correct?

10 A Not when I arrived, no.

11 Q Okay. There wasn't a K9 Unit that pulled up in this area at all?

12 A Not that I saw initially, no.

13 Q But you don't recall seeing anything at that time?

14 A No.

15 Q And then even when the scene was static, it was -- you didn't recall
16 seeing any cars in there?

17 A Initially, no. Not initially when we came from the yard, I don't remember
18 seeing anybody there initially.

19 MS. NGUYEN: No further questions.

20 MR. FATTIG: Nothing further.

21 THE COURT: The jury have any questions of this officer? Seeing no hands.
22 Sir, you're free to go.

23 Call your next witness, State.

24 MR. FATTIG: Brenda Vaandering.

25 **BRENDA VAANDERING**

1 [having been called as a witness and being first duly sworn, testified as follows:]

2 THE CLERK: Thank you. Please be seated. State your full name, spelling
3 your first and last name for the record, please.

4 THE WITNESS: Brenda Vaandering. B-R-E-N-D-A, V-A-A-N-D-E-R-I-N-G.

5 **DIRECT EXAMINATION**

6 BY MR. FATTIG:

7 Q Ma'am, how are you employed?

8 A I'm employed as a senior crime scene analyst with the Las Vegas
9 Metropolitan Police Department.

10 Q And how long have you been with Metro?

11 A For seven years.

12 Q And how long have you been a crime scene analyst?

13 A For seven years.

14 Q And what are the duties of a crime scene analyst?

15 A As a crime scene analyst it's our job to document the crimes scene.
16 We do this through note taking, report writing, diagraming, photography, the
17 development and recovery of latent fingerprints, as well as the collection and
18 preservation of any evidence.

19 Q Do you receive specialized training or education in order to get that
20 position?

21 A Yes, we do. I have a Bachelor's degree in forensic chemistry. Once I
22 was hired with Metro I successfully completed a ten-week academy which was all
23 classroom training, which was then followed by twelve weeks of field training where I
24 was in the field being trained by a senior crime scene analyst. Since then I've
25 completed over 500 hours of additional training in different areas of crimes scene

1 investigation.

2 Q Continuing education to stay abreast of all the developments?

3 A That's correct.

4 Q Okay. Directing your attention to June 26th of 2014, were you on duty
5 that evening?

6 A Yes, I was.

7 Q Did you have occasion to respond to the area of East Carey and Dolly
8 Lane here in Las Vegas --

9 A Yes, I did.

10 Q -- about midnight or so?

11 A Right after midnight, yes.

12 Q Okay. And when you went out there, did you go out there by yourself
13 as a crime scene analyst or with other crime scene analysts?

14 A There were other crime scene analysts with me.

15 Q How many other crime scene analysts were there?

16 A There were two other crime scene analysts, as well as a crime scene
17 analyst supervisor.

18 Q And who were they? Were they -- go ahead.

19 A Joel Albert was out there, as well as Stephanie Thi. Shayla Joseph
20 was the supervisor.

21 Q And how do you go about, the four of you, documenting that crime
22 scene, preserving it, et cetera?

23 A It really just depends on the scene. For that scene there were several
24 outside peripheral scenes and I went and documented those scenes. And
25 Stephanie Thi and Joel Albert did the main scene.

1 Q Okay. So basically splitting up the assignments in order to get all the
2 work done?

3 A That's correct.

4 Q In the end about how long were you out there at the various scenes?
5 When did you leave?

6 A It was well into the morning. I'd say probably 6:00 or 7:00. I'm sure
7 exactly the time we cleared.

8 Q Do you remember the sun was up?

9 A Yes, the sun was coming up.

10 Q Okay. So you were out there a number of hours?

11 A That's correct.

12 Q The various duties? Okay. Do you remember -- so your assignment
13 partly was to go to these outside scenes?

14 A That's correct.

15 Q Was one of those scenes Lake Mead and Walnut?

16 A Yes, it was.

17 Q Showing you what's been admitted as State's 18. What are we looking
18 at here?

19 A This was a vehicle that was parked on the shoulder of Walnut Road,
20 just north of Lake Mead Boulevard.

21 Q And you were informed that that had some relevance to this event?

22 A That's correct.

23 Q So you went and took the photo of the car and 19 would be a close-up
24 of the car?

25 A That's correct.

1 Q Did you have occasion to then at some point go farther north on
2 Walnut?

3 A Yes.

4 Q And specifically I'm going to refer you to 2354 North Walnut that area,
5 does that have some significance?

6 A Yes. There was a cartridge case located in the northbound lanes of
7 Walnut Road, just west of that address.

8 Q Okay. When you went farther north on Walnut, did you notice if the
9 area was preserved by any other employees of Metro?

10 A Yes. All the area that I was in was preserved by the police officers.

11 Q Okay. So what was happening near 2354 North Walnut? I mean, what
12 drew you over there?

13 A A cartridge case had been located on a street.

14 MR. FATTIG: Your Honor, I believe the parties are stipulating to the
15 admission of State's Exhibit 2, which is an aerial map of the area.

16 MS. NGUYEN: That's correct.

17 THE COURT: It'll be admitted.

18 **[STATE'S EXHIBIT 2 ADMITTED]**

19 BY MR. FATTIG:

20 Q Ma'am, does this appear to be a map of the streets that we were talking
21 about?

22 A Yes, it is.

23 Q So 2354 North Walnut would be approximately in this area and this is
24 Carey here?

25 A That's correct.

1 Q Correct? Okay.

2 MR. FATTIG: It's my understanding, Your Honor, State's Exhibit 6 is being
3 admitted via stipulation.

4 MS. NGUYEN: That's correct.

5 THE COURT: It'll be admitted.

6 **[STATE'S EXHIBIT 6 ADMITTED]**

7 BY MR. FATTIG:

8 Q Were you familiar with some photo -- from aerial photography that was
9 taken that morning of June 27th from a helicopter over the various streets?

10 A Yes.

11 Q And State's Exhibit Number 6, does this show North Walnut here and
12 Carey running all the way down the left portion?

13 A I couldn't see where North Walnut was. I don't --

14 Q Oh, I'm -- I apologize.

15 A I think it's zoomed it.

16 Q I need to zoom out. Does this show North Walnut here running down
17 the bottom of the picture and Carey running along the top of the left center?

18 A Yes, that's correct.

19 Q Okay.

20 MR. FATTIG: Your Honor, it's my understanding that State's Exhibits 20
21 through 24 are being admitted via stipulation.

22 THE COURT: Is that correct?

23 MS. NGUYEN: That's correct. I'm sorry.

24 THE COURT: They'll be admitted.

25 **[STATE'S EXHIBITS 20 through 24 ADMITTED]**

1 BY MR. FATTIG:

2 Q State's 20, is that just a picture of the address sign outside the
3 residence of 2354?

4 A Yes, it is.

5 Q Okay. State's 21, what are we looking at here?

6 A That's -- the cone is marking where the cartridge case is located on the
7 street.

8 Q Can you mark on the screen where the cone is? I know it's not
9 calibrated exactly.

10 A It's not. It's right there.

11 Q Right there. Okay. Thank you. 22. Is that kind of a close-up of the
12 cone?

13 A Yes, that's a closer-up of the cone.

14 Q And the address number, is that on the far right portion --

15 A That's correct.

16 Q -- of that picture? And does it appear to be a dumpster to the north and
17 east of where the cone is?

18 A Yes.

19 Q Okay. State's 23. That is a close-up of it?

20 A A close-up of the cartridge case, yes.

21 Q And State's 24. This is after you have moved the casing to look at it?

22 A Right. To photograph the head stamp.

23 Q And what is a head stamp?

24 A The head stamp is on the cartridge of every cartridge has a head stamp
25 and that's on the top of the cartridge case and it lists typically the maker and then

1 the caliber as well.

2 Q And what does this read? This particular cartridge case.

3 A This reads SPEER 45 AUTO.

4 Q Now when you arrived was -- there was a patrol officer there with a

5 cone just kind of watching it, correct?

6 A I believe so, yes.

7 Q And you documented it before you moved it?

8 A That's correct.

9 Q And then did you end up collecting the cartridge casing?

10 A I collected it, yes.

11 Q Okay. Going back -- this has been admitted as State's 5. Can you

12 approximate on this map where on North Walnut that casing was? If you can?

13 A Yes.

14 Q And I know it's not calibrated exactly --

15 A I believe it's --

16 Q -- the teleprompter.

17 A -- about -- a little bit further --

18 Q Okay.

19 A -- than right there.

20 Q In the area near the church?

21 A That's correct.

22 Q Okay. Is it fair to say that the casing was in the north travel lanes --

23 A It was in the --

24 Q -- of Walnut?

25 A -- northbound travel lane, yes.

1 Q Okay. And that's -- State's 21 shows that pretty well, correct?

2 A That's correct.

3 Q Okay.

4 MR. FATTIG: Your Honor, in the interest of saving some time, during the
5 lunch hour, the parties, along with the crime scene analyst Joel Albert opened up
6 several sealed envelopes with Ms. Nguyen and the State present in an effort to try
7 to expedite some of this today. And I believe Ms. Nguyen is stipulating to the chain
8 of custody in terms of them being in a sealed condition.

9 THE COURT: The ones that are opened.

10 MR. FATTIG: The ones that are opened. We didn't get to all of them, but we
11 got to several of them, including --

12 MS. NGUYEN: That's correct.

13 THE COURT: Is that right? Okay.

14 MR. FATTIG: Including State's 193.

15 THE COURT: All right.

16 BY MR. FATTIG:

17 Q Ma'am, you're the unlucky crime scene analyst that gets to testify first.
18 So I get to ask you about how you collect and impound evidence, okay?

19 A Okay.

20 MR. FATTIG: If I could approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. FATTIG:

23 Q Ma'am, I'm going to show you State's 193, which is an evidence
24 envelope, correct?

25 A That's correct.

1 Q Evidence envelopes come in all sorts of shapes and sizes depending
2 on the evidence you're collecting?

3 A That's correct.

4 Q How do you go about impounding a piece of evidence from a crime
5 scene and documenting it?

6 A So each item is typically marked with the item number, as well as your
7 initials and P-number, along with the date it was collected and the event number.
8 It's then packaged inside the package and on the outside of the package labeled
9 stating each item that's in it, the date, the time of arrival at the scene, the event
10 number, as well as your P-number and initials, and your signature, and the address
11 of the location, and the type of call.

12 Q And there's a Las Vegas Metropolitan Police event number also
13 associated with the package, correct?

14 A That's correct.

15 Q Now event numbers are unique to every single call Metro goes on,
16 correct?

17 A That is correct.

18 Q This particular event number is on the package as 140626-4091,
19 correct?

20 A That's correct.

21 Q And that means that this is an event that occurred -- initiated on June
22 26th, 2014, correct?

23 A That's correct.

24 Q And it's four thousandth and ninety first call that the Las Vegas
25 Metropolitan Police Department went on, on June 26th of 2014, correct?

1 A That is correct.

2 Q Okay. So that's a way to track evidence to make sure it goes to the
3 same scene you think it does?

4 A Right.

5 Q Now these particular items of evidence, you did not impounded these,
6 correct?

7 A I did not impounded these items.

8 Q And specifically so far we -- we're just talking about the casing found on
9 North Walnut, correct?

10 A That's correct.

11 Q What did you do with the casing found on North Walnut?

12 A I collected it and then I handed it to Joel Albert and he impounded it.

13 Q Crime Scene Analyst Albert actually impounded all of the evidence from
14 all the scenes?

15 A That's correct.

16 Q Was the item of evidence in substantially the same condition when you
17 handed it to Crime Scene Analyst Albert as it was when you recovered it?

18 A Yes.

19 Q Now, when a crime scene analyst impounds it, does it get sealed?

20 A Yes, it does.

21 Q And initialed by the analyst?

22 A Initialed and dated.

23 Q And this would be a red seal. We're looking at the top of the Package
24 193?

25 A That's correct.

1 Q Okay. And what does -- I see another seal at the bottom, a blue seal,
2 what does that indicate to you?

3 A That seal indicates that the lab has processed it and the lab uses blue
4 tape to reseal the package once it's been opened.

5 Q When you say lab, are you talking about a forensic expert of the lab that
6 would have examined this particular evidence?

7 A That's correct.

8 Q And that expert documents that they've gone into the evidence by their
9 signature, P-number, when they went into, et cetera?

10 A That's correct.

11 Q And when -- and then they reseal it with a different colored --

12 A Correct.

13 Q -- seal? Okay. So this was opened up. Now when we go inside
14 marked 193a is a baggie with four different vials in it, correct?

15 A That's correct.

16 Q Now the item of evidence that you collected out of the northbound lane
17 of Walnut, which item of evidence is that? Which vial?

18 A I would have to refer to his report --

19 Q Okay.

20 A -- to determine which --

21 Q Crime Scene Analyst Albert?

22 A Yes.

23 Q Do you have that?

24 A I do have a copy.

25 Q Okay.

1 A Item 15.

2 Q Item 15. So this particular vial would be the same casing that you
3 recovered from the northbound lanes?

4 A 15.

5 Q This one?

6 A Yes. Uh-huh.

7 Q Okay. I'm going to leave this --

8 THE COURT: Do we have the contents marked?

9 MR. FATTIG: Yes. I believe they've already been marked. The bag has
10 been marked as 193a. The baggie inside of the evidence bag.

11 BY MR. FATTIG:

12 Q Ma'am, going back to State's Exhibit Number 2, there is another
13 address delineated on Carey, 3945 East Carey. Does that have significance to
14 you?

15 A Yes, it does.

16 Q And what is significant about that one?

17 A There was a cartridge case located in the eastbound travel lanes of
18 Carey, north of that address.

19 Q Okay. And let's go back to State's Exhibits --

20 [Colloquy between Counsel]

21 MR. FATTIG: Your Honor, it's my understanding the parties are stipulating to
22 the admittance of 25 through 35.

23 MS. NGUYEN: That's correct.

24 THE COURT: They'll be admitted.

25 **[STATE'S EXHIBITS 25 through 35 ADMITTED]**

1 BY MR. FATTIG:

2 Q Ma'am, showing you State's Exhibit 25. What are we looking at here?

3 A This is a view -- a photograph taken of Carey.

4 Q Okay. And is this taken near Walnut looking eastbound down Carey?

5 Or on the Walnut side?

6 A I'm not sure.

7 Q Okay. There is -- I know it's hard to see on the screen.

8 MR. FATTIG: Can I approach the witness, Your Honor?

9 THE COURT: [No audible response].

10 BY MR. FATTIG:

11 A Sorry.

12 Q That's fine.

13 State's 25, there appears to be some old west wagon wheel style
14 material on the right side of the picture?

15 A Yes, there is.

16 Q Is that on the south side of Carey?

17 A Yes, it is.

18 Q Okay. So that's kind of a unique landmark that we can use to help us?

19 A That's correct. This is eastbound down Carey.

20 Q Eastbound on Carey.

21 A Yes.

22 Q Okay. And 26 is another view kind of, of that same old west wagon and
23 the street in front of it?

24 A Yes, it is.

25 Q I know it's kind of see that stuff in the dark on that monitor. So this is 26

1 and what we're talking about is a wagon in that location, correct?

2 A That's correct.

3 Q Okay. And I see two cones here in the street.

4 A Yes.

5 Q Is that correct? Can you --

6 A That's correct.

7 Q -- see those or is it --

8 A Yes, I can see those.

9 Q Okay. This particular cone, what did that signify to you?

10 A There was a crushed shotgun cartridge case located in the roadway as

11 well.

12 Q Now you had a chance to -- and 28 would be kind of an intermediate

13 shot of where that's located?

14 A That's correct.

15 Q And that's in front of the residence which is 3945 East Carey, correct?

16 A Yes.

17 Q And 29 is a closer shot of that?

18 A That's correct.

19 Q And 30 is a close-up of that same shell?

20 A Correct.

21 Q Did that appear to be rather worn, run over?

22 A It appeared that it had been run over several times, yes.

23 Q Did it seem like it might have been related or was related to this

24 incident?

25 A It appeared that it was older and probably was not related to this

1 incident.

2 Q Why was it important to document it and preserve it?

3 A Any sort of firearms evidence that we found was documented because
4 of this event.

5 Q Just in case, right?

6 A Correct.

7 Q And there's a picture of the address 3945, the corner of that house?

8 A That's correct.

9 Q Okay. Now -- and for the record that was State's Exhibit 31. State's
10 Exhibit 32. Is this the cone -- the other cone we were seeing in front of the wagon
11 wheel and the old west stuff?

12 A Yes, it is.

13 Q Okay. And 33, is this another view of the cone?

14 A It's a closer up, yes.

15 Q And do you see a casing near that cone?

16 A Yes, just --

17 Q It's in --

18 A -- right there.

19 Q -- front of it?

20 A Yes.

21 Q Okay. 34, is that the casing?

22 A Yes, it is.

23 Q And 35 is a picture of the head stamp of that casing?

24 A That's correct.

25 Q And that was, again, SPEER 45 AUTO?

1 A Correct.

2 Q The same head stamp as the first one on Walnut?

3 A Yes.

4 Q And you obviously collected those two items, the shotgun shell, and
5 that casing?

6 A Yes, I did.

7 Q And they are in this pack -- in this baggie marked State's Proposed
8 193a?

9 A That's correct.

10 Q And were they in substantially the same condition as when you handed
11 them -- from when you collected them to when you handed them to MR. Albert?

12 A Yes.

13 Q Going back to State's Exhibit 2. This is another address marked 4060
14 East Carey. Does that significance to you?

15 A Yes, that was another address on Carey that I responded to.

16 Q Okay. And what was happening at that address?

17 A There was also a cartridge case located in the north gutter, by that
18 address -- just south of that address.

19 Q Okay. Let me go back just real briefly.

20 [Colloquy between Counsel]

21 MR. FATTIG: I'm not sure if State's 6 was admitted. It's being admitted now
22 via stipulation.

23 MS. NGUYEN: That's correct.

24 THE COURT: State's 6 is admitted.

25 MR. FATTIG: Thank you.

1 THE COURT: It was admitted.

2 MR. FATTIG: It was. Okay.

3 THE CLERK: Earlier --

4 MR. FATTIG: Okay.

5 BY MR. FATTIG:

6 Q Ma'am, can you indicate here -- this is Walnut here and this is Carey.

7 A Correct.

8 Q The second casing, do you see generally that old west kind of area in
9 that picture?

10 A Yes.

11 Q Can you mark it?

12 A I believe it's --

13 Q On the telestrator? Right there.

14 A Yeah.

15 Q Okay. So 3945 is this home?

16 A That's correct.

17 Q And the casing was just to the --

18 A Northeast of it.

19 Q -- northeast of that?

20 A Correct.

21 Q In the eastbound travel lane of Carey?

22 A That's correct.

23 Q Okay. Now go -- moving on to 4060 East Carey, again, that area was
24 cordoned off with a patrol officer and a cone?

25 A Yes, it was.

1 Q Okay. Showing you --

2 [Colloquy between Counsel]

3 MR. FATTIG: Parties are stipulating the admittance of State's 36 through 42.

4 MS. NGUYEN: That's correct.

5 THE COURT: They'll be admitted.

6 [STATE'S EXHIBITS 36 through 42 ADMITTED]

7 BY MR. FATTIG:

8 Q Zoom out. What are we looking at here, ma'am?

9 A This residence here is 4060 and there's actually no cone on this one,
10 but the cartridge case was located just east of that vehicle that's parked on the side
11 of the street.

12 Q Okay. 37.

13 A This is a cone that I placed and it's -- depicts where the cartridge case
14 is.

15 Q Okay. So this would not be a patrolman's cone, which is a bigger cone.
16 This is a smaller cone that belonged to you as a crime scene analyst?

17 A That's correct.

18 Q And this would be a mailbox showing State's 38?

19 A Yes.

20 Q The address, correct?

21 A Correct.

22 Q 39 is another view. 40 is a little closer up --

23 A Correct.

24 Q -- of the back of the car, the cone. And next to the car is 41, a casing?

25 A That's correct.

1 Q And 42 is the casing turned around so you can read the head stamp.
2 And what was that head stamp?

3 A SPEER 45 AUTO.

4 Q 4060 East Carey, going back to State's 2. I'm sorry. Going back to
5 State's 6. Do you see 4060 East Carey in this map, approximately?

6 A I believe it's down in this area. I'm not positive though.

7 Q Was it the north side of the road?

8 A Yes.

9 Q Okay. And State's --

10 [Colloquy between Counsel]

11 MR. FATTIG: Parties are stipulating the admittance of 7.

12 MS. NGUYEN: That's correct.

13 THE COURT: It'll be admitted.

14 [STATE'S EXHIBIT 7 ADMITTED]

15 BY MR. FATTIG:

16 Q I don't know if this is a better view of 4060. I'm sorry, I need to zoom.
17 Is it this residence here where the white car was? Does that look consistent?

18 A Yes, I believe so.

19 Q And the street just to the bottom of this exhibit, being State's 7, that is
20 Gateway, which is one street east of Walnut?

21 A Correct.

22 MR. FATTIG: I would to admit at this time, Your Honor, 193 and 193a, which
23 are the casings --

24 MS. NGUYEN: No objection.

25 MR. FATTIG: -- the shotgun shell.

1 THE COURT: They'll be admitted.

2 [STATE'S EXHIBITS 193 & 193a ADMITTED]

3 BY MR. FATTIG:

4 Q Ma'am, did you also assist in going back to the area at El Tovar and
5 Dolly and taking some of the photos there?

6 A Yes, I did.

7 Q Okay.

8 MR. FATTIG: Court's indulgence. I have no other questions at this time.

9 CROSS-EXAMINATION

10 BY MS. NGUYEN:

11 Q Brenda, when you go out to the scene, did you start at the beginning
12 and walk around with a flashlight looking for evidence?

13 A When I got there I was tasked to go around and do the peripheral
14 scenes.

15 Q Okay.

16 A And in this case, all of the evidence had been located. I do look when I
17 get to the areas. I do a search myself, but the -- all of the items I picked up on this
18 case had already been found by different patrol officers.

19 Q So in this case you're not doing any independent investigation to find
20 anything of forensic or evidentiary value?

21 A I still looked in the area myself to see if I could locate any other
22 cartridge casings.

23 Q Did you walk the whole entire scene from scene to scene or just in the
24 general areas where things had been already located?

25 A In the -- in that area on Walnut and then the area on Carey, yes.

1 Q So by the time that you had arrived -- let's start with the scene that the
2 State had talked to you about at Lake Mead and Walnut, it had already been
3 blocked off, is that correct?

4 A That's correct.

5 Q There were no cars going back and forth on that road at that time?

6 A No, I do not believe so.

7 Q Okay. And there were police officers that had already arrived at that
8 particular scene?

9 A Correct.

10 Q And did they -- the cones that we saw in those pictures, you didn't place
11 those cones, is that correct?

12 A No, I did not.

13 Q Okay. So officers had already kind of scoured that scene and said oh,
14 we think this is important?

15 A That's correct.

16 Q Come and do your work.

17 A Yes.

18 Q Is that what happened?

19 A Yes.

20 Q Do you know what officers or what detectives or what people were
21 interest to direct you to those locations?

22 A I don't know who found the items. I was directed by the detectives at
23 the main scene.

24 Q Okay. So with the exception of kind of looking in the general area of
25 where you were directed on each one of these three scenes, you didn't do any

1 additional, I guess, investigation for evidence throughout the --

2 A No, I mean I --

3 Q -- mile or so?

4 A -- looked in the area where those were collected, but I didn't walk the
5 entire path of --

6 Q Okay.

7 A -- of the incident.

8 Q And when you arrived there, you had a general idea of what you were
9 looking for, is that correct?

10 A That's correct.

11 Q Okay. And then the officers that directed to you -- to these casings
12 here, they were already marked off and they had actually located them, is that
13 correct?

14 A That's correct.

15 Q Okay. You had indicated that one of these -- I think it was -- I'm not
16 sure which one it was. I think it might have just been in the photographs. You said
17 that was -- you had photographed that shell casing, but you believed it wasn't
18 involved in this particular incident, is that correct?

19 A Yes, that was the shotgun cartridge case.

20 Q Okay. And that was just out on the road?

21 A Correct.

22 Q Okay. Did you find any other shell casings or anything else that you
23 didn't believe were involved with this, but you collected or photographed as well?

24 A No.

25 Q Okay. And what was it about that particular casing that made you

1 believe that it was old?

2 A Just that it looked like it had been run over several times.

3 Q Okay. Let's talk about it being run over. There were -- this was a main
4 road, is that correct?

5 A Yes, it's a fairly main road.

6 Q Okay. Or it's a well-traveled road --

7 A Yes.

8 Q -- is that correct?

9 A Yes.

10 Q It's not like a dirt road?

11 A No.

12 Q Okay. Or it's not like a back alley?

13 A No.

14 Q In fact, some of those streets have either stop signs or traffic lights on
15 them?

16 A That's correct.

17 Q Okay. And there were cars that were going back and forth, is that
18 correct?

19 A That's correct.

20 Q Okay. Prior to the scene being locked down.

21 A Correct.

22 Q So you were aware that that street had been opened, even if it was only
23 for a 15 or 20 minutes, it had been opened for a period of time?

24 A That's correct.

25 Q Okay. Do you know how long it had been opened?

1 A I'm not sure how long it had been opened.

2 Q And then there were also police cars, is that correct?

3 A Correct.

4 Q Do you know how many police cars were at each one of these scenes

5 that you were directed towards?

6 A I don't know how many were at each scene. I know they had Carey

7 shut down, so there was probably one at the beginning and end and then any

8 intersection in between is typically how they shut down roads.

9 Q And to get from each location, do you drive to each location, are you

10 skating, are you walking, are you running? How are you getting there?

11 A I drove to the first location on Walnut and then I walked the rest of it.

12 Q And do you remember approximately how many other officers were

13 there just securing that area?

14 A There were at least three or four.

15 Q Was that three or four total or three or four at each particular scene?

16 A Total, to block off the street.

17 Q There are some residents along -- residences along this road or like

18 people that live in this area, is that correct?

19 A That's correct.

20 Q Okay. Were there any people that came out to watch, or gawk, or get

21 in the way?

22 A Not that I recall.

23 Q And those officers that are there, it's their job just to kind of keep that

24 area clear?

25 A That's correct.

1 Q And direct the public away from the area?

2 A Yes.

3 Q Okay. As far as what to collect, who makes that decision as to -- on
4 any particular scene, as to who -- what evidence is going to be collected?

5 A That's our decision.

6 Q So if an officer says I put some cones down here, I think this is
7 important, do you make that decision on whether or not that's ultimately important
8 and whether or not you're going to collect it or photograph it?

9 A Yes.

10 Q Was there any -- is there every times where something is pointed out
11 and you decide not to collect it or not to photograph it?

12 A It happens occasionally, but not very often.

13 Q When you decide not to collect something, do you have -- do you log
14 that or document that?

15 A Typically it would be documented in our notes.

16 Q Is your job primarily in the collection or do you do any kind of testing or
17 anything like that?

18 A Just collection.

19 MS. NGUYEN: Nothing further.

20 **REDIRECT EXAMINATION**

21 BY MR. FATTIG:

22 Q Do you remember if, in terms of you driving to the Walnut/Lake Mead
23 scene from Dolly/Carey area, do you remember how you got there?

24 A I went around the scene. So I did not drive through the scene. I would
25 have gone to Lake Mead and then come around and started that way.

1 Q And started back up north through there?

2 A Correct.

3 Q Okay.

4 MR. FATTIG: No other questions.

5 MS. NGUYEN: Nothing further.

6 THE COURT: Anybody in the -- the jury have any questions of this CSA?

7 Thank you. You're free to go.

8 Call your next witness.

9 MR. FATTIG: Can we approach briefly, Your Honor?

10 THE COURT: Yes.

11 [Bench Conference Begins]

12 MR. FATTIG: Can we have a brief recess to get everything? Because this is
13 the big CSA, so I just want to make sure everything -- it'll be a little quicker if I can
14 get everything --

15 THE COURT: Is this the last witness today?

16 MR. FATTIG: No. But --

17 THE COURT: All right.

18 MR. FATTIG: -- he is going to take a little while.

19 THE COURT: All right.

20 MR. FATTIG: So.

21 [Bench Conference Concludes]

22 THE COURT: We're going to take a five-minute recess. During the recess
23 you're admonished not to talk or converse among yourselves or with anyone else on
24 any subject connected with this trial. Or read or watch or listen to any report of or
25 commentary on the trial or any person connected with this trial by any medium of

1 information including, without limitation, newspapers, television, the radio, or the
2 internet. Or form or express an opinion on any subject connected with the trial until
3 the case is finally submitted to you.

4 Go to the restroom, please.

5 [Outside the presence of the jury]

6 THE COURT: All right. Jury's out. Use the restroom, get ready, we got to
7 go.

8 MS. NGUYEN: Judge, what time do you think we'll start tomorrow? 9:00?

9 THE COURT: Yeah.

10 MS. NGUYEN: Oh, yeah.

11 THE COURT: I have law and motion, but it's only 14 pages. I should be done
12 by 9:00.

13 [Recess taken at 2:42 p.m.]

14 [Trial resumed at 2:54 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: You guys ready?

17 MR. FATTIG: I'm ready.

18 MS. NGUYEN: No.

19 THE COURT: Now are you ready, sort of?

20 MS. NGUYEN: Uh-huh.

21 THE COURT: Okay. Bring them in, Tom.

22 This is a lengthy one?

23 MR. FATTIG: Yeah. We're getting -- admitting all the evidence down. Lots of
24 stuff.

25 [In the presence of the jury]

1 THE MARSHAL: All rise, please.

2 And be seated.

3 THE COURT: Stipulate to the presence of the jury.

4 MS. NGUYEN: Yes, Your Honor.

5 MR. FATTIG: Yes, Your Honor.

6 THE COURT: Go ahead. Call your next --

7 MR. FATTIG: Joel Albert.

8 THE MARSHAL: I'm sorry, the name?

9 MR. FATTIG: Joel Albert.

10 **JOEL ALBERT**

11 [having been called as a witness and being first duly sworn, testified as follows:]

12 THE CLERK: Thank you. Please be seated. State your full name, spelling
13 your first and last name for the record, please.

14 THE WITNESS: My name is Joel Albert. J-O-E-L, A-L-B-E-R-T.

15 THE COURT: Go ahead.

16 **DIRECT EXAMINATION**

17 BY MR. FATTIG:

18 Q Sir, how are you employed?

19 A I'm a senior crime scene analyst with the Las Vegas Metropolitan Police
20 Department.

21 Q And how long have you been with Metro?

22 A I've been with Metro a little over seven and a half years.

23 Q How long have you been a crime scene analyst?

24 A For the same amount of time.

25 Q Did you receive some specialized and/or education in order to get that

1 employment?

2 A Yes, sir, I did.

3 Q What did you get?

4 A I have a Bachelor's of Science in Microbiology and a Master's degree in
5 Forensic Science, as well as completing the Crime Scene Academy and a 12-week
6 field training program.

7 Q And you also received continuing education in the various fields that go
8 with being a CSA?

9 A Yes, sir.

10 Q Were you on duty the evening of June 26th of 2014?

11 A Yes, sir, I was.

12 Q Did you occasion to respond to the area of Carey and Dolly here in Las
13 Vegas?

14 A Yes.

15 Q And were you assigned as part of kind of a team with Stephanie Thi,
16 Brenda Vaandering, as well as a supervisor?

17 A Yes, sir, I was.

18 Q And were the assignments kind of split up?

19 A Yes, they were.

20 Q And what was your assignment?

21 A I was assigned to collect the evidence and complete the crime scene
22 diagram.

23 Q And you were very familiar with where the evidence was and how the
24 scene walked out?

25 A Yes, sir.

1 Q Okay.

2 [Colloquy between Counsel]

3 MR. FATTIG: The parties are stipulating to any exhibits between 43 and 52
4 that were not otherwise admitted. Some of them were and some of them were not.

5 MS. NGUYEN: That's correct, Your Honor.

6 THE COURT: All right. That'll be the order.

7 [STATE'S EXHIBITS 43 through 52 ADMITTED]

8 BY MR. FATTIG:

9 Q Mr. Albert, showing you State's 43. What are we looking at there?

10 A This is a photograph of the intersection of Carey and Dolly, taken from
11 the north side of Carey, just west of Dolly.

12 Q And 44?

13 A This is a photograph taken of the same intersection from the median on
14 the south side of the travel lanes of -- sorry, eastbound Carey.

15 Q Okay. 46?

16 A This is a photograph from the southeast corner of that same
17 intersection, shooting at a southwest direction.

18 Q 47 is kind of a close-up of the area behind the light pole at the
19 intersection?

20 A Yes, sir.

21 Q 48, is that shooting back -- looking back towards the patrol car?

22 A Yes, sir, it is.

23 Q 52?

24 A This is the maroon-colored Dodge that was located in the southeast
25 corner of the intersection.

1 Q Now the rear passenger tire is depicted in this photograph, correct?

2 A Yes, sir.

3 Q Does it appear to be deflated or damaged at all in that photograph?

4 A It does not.

5 Q Okay. It appears to be operationable [sic]?

6 A Yes, sir.

7 Q Okay.

8 [Colloquy between Counsel]

9 MR. FATTIG: Parties are stipulating to the admittance of State's 53 through
10 58.

11 MS. NGUYEN: That's correct.

12 THE COURT: They'll be admitted.

13 **[STATE'S EXHIBITS 53 through 58 ADMITTED]**

14 BY MR. FATTIG:

15 Q Showing you State's 53. Mr. Albert, what are we looking at here?

16 A That is the ground and the driver's side of the same vehicle.

17 Q Okay. And I see a yellow placard with the number 12 on it in front of
18 the driver's side of that vehicle?

19 A Yes, sir. WE use those markers to mark items of evidence.

20 Q Okay. And 54 is a close-up of what that evidence is?

21 A Yes, sir.

22 Q And what was that evidence?

23 A That's an unfired .45 caliber cartridge.

24 Q And 55 is the head stamp of that same cartridge?

25 A Yes, sir.

1 Q And what cartridge was it? What was the head stamp?
2 A SPEER 45 AUTO.
3 Q When a cartridge is fired, is it fair to say that a casing gets left behind?
4 A Yes, sir.
5 Q This would be an unfired cartridge?
6 A Yes, sir, it is.
7 Q Okay. 56, what are we looking at here?
8 A This is just to the north of the previous photo. It's towards the rear part
9 of the vehicle.
10 Q Okay. Would this be the driver's side rear of the vehicle?
11 A Yes, sir.
12 Q And I see a placard with a number 11 on the ground --
13 A Yes.
14 Q -- on the right side. And 57 shows what Number 11 is?
15 A Yes, sir.
16 Q And 58 is the head stamp. And what was Number 11 -- Item 11?
17 A It was also a SPEER 45 AUTO cartridge.
18 Q Unfired cartridge?
19 A Unfired.
20 Q Okay. So there were two unfired cartridges sitting on the ground right
21 near the driver's side and/or driver's side rear of that Dodge Intrepid?
22 A Yes, sir.
23 Q Was one of your tasks to do a crime scene diagram?
24 A Yes, sir, it was.
25 Q How do you go about doing that?

1 A On scene we sketch out the scene by hand and then back at the office
2 we use a computer program to generate a finished copy of the diagram.

3 Q What is a reference point?

4 A A reference point is a fixed object within our scene that we use to
5 measure other items off of. The idea is that that item is not going to go anywhere,
6 it's not mobile. If we had to go back to the scene today that -- more than likely that
7 item would still be there.

8 Q And so there's a lot of measurements done?

9 A Yes, sir.

10 Q And a lot of documenting in terms of exactly where things are at?

11 A Yes, sir.

12 Q And did you do that in this particular case?

13 A Yes, I did.

14 Q And you created a crime -- two -- a couple of crime scene diagrams, fair
15 to say?

16 A Yes, sir.

17 Q Okay. One is a close-up of the intersection of Dolly and Carey and one
18 is kind of the general scene, including El Tovar?

19 A Yes, sir.

20 MR. FATTIG: And my understanding, Your Honor, is State Exhibits 172 and
21 173 are being admitted via stipulation.

22 MS. NGUYEN: That's correct.

23 THE COURT: They'll be admitted.

24 **[STATE'S EXHIBITS 172 & 173 ADMITTED]**

25 BY MR. FATTIG:

1 Q Mr. Albert, I'm going to show initially 173. And this would be the crime
2 scene diagram that you created kind of a closer-up of the intersection of Carey and
3 Dolly, correct?

4 A Yes, sir.

5 Q And I see a lot of different numbers. I'm going to zoom in initially to
6 what looks like a block box with the number V1 underneath it. What is V1?

7 A V1, we designated the maroon Dodge as V1 or Vehicle 1, for our
8 documentation purposes.

9 Q Okay. And there is on the right side of this particular exhibit is a key, if
10 you will, of all the items are?

11 A Yes, sir.

12 Q And so next to V1 would be Number 12 and that is where the cartridge
13 casing was found?

14 A The cart -- the unfired cartridge, yes.

15 Q I'm sorry, the unfired cartridge, 45 SPEER AUTO, correct?

16 A Yes, sir.

17 Q And 11 as well is indicated on here?

18 A Yes.

19 Q Now across the way a bit is Item Number 10. And on the key to the
20 right of that particular crime scene diagram it says Item 10 is a .45 cartridge,
21 correct?

22 A Yes, sir.

23 Q Okay. Let me show you a couple of photos.

24 MR. FATTIG: My understanding is, Your Honor, the parties are stipulating to
25 the admittance of State's 83 through 85.

1 MS. NGUYEN: That's correct.

2 THE COURT: They'll be admitted.

3 **[STATE'S EXHIBITS 83 through 85 ADMITTED]**

4 BY MR. FATTIG:

5 Q 83, zooming out, is a photograph of where Number 10 was, correct?

6 A Yes, sir, that's the --

7 Q It was on the sidewalk on the west of Dolly?

8 A Yes, sir.

9 Q Just to the south of the intersection with Carey?

10 A Yes, sir.

11 Q 84 says -- shows what that is?

12 A Yes, sir.

13 Q 85 is a view of the head stamp, correct?

14 A Yes, sir.

15 Q now this head stamp is a little bit different, correct?

16 A Yes, sir.

17 Q What does this head stamp say?

18 A I can't read it real well.

19 Q Okay.

20 A May I refer to my report?

21 Q Or I could approach with the photo?

22 A That'll work too.

23 Q Okay.

24 A This is a -- it says WINCHESTER 45 AUTO.

25 Q Still the same caliber, fair to say?

1 A Yes, sir.

2 Q But a different manufacturer?

3 A Yes.

4 Q And again, that's an unfired cartridge, correct?

5 A Yes.

6 Q Just like the cartridges -- the .45s, Items 11 and 12 by the car?

7 A Yes, sir.

8 Q Okay.

9 [Colloquy between Counsel]

10 MR. FATTIG: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 BY MR. FATTIG:

13 Q Mr. Albert, showing you what has been marked as State's 190. Do you
14 recognize what this is?

15 A Yes, sir. This is a package that I created with -- containing Items
16 Number 10 and 11 and 12.

17 Q Okay. The items that we just viewed. Did you personally impound
18 those items?

19 A Yes, sir, I did.

20 Q And were they in your sole custody and control from the point of time
21 you picked them up, to the point of time that you impounded them?

22 A Yes, sir.

23 Q And you put them in a sealed envelope?

24 A Yes, I did.

25 MR. FATTIG: And once again, Your Honor, outside the presence of the jury,

1 over the lunch period and in an effort to expedite the process, we had MR. Albert
2 open up the sealed envelope in the process of Ms. Nguyen and myself.

3 MS. NGUYEN: That's correct.

4 BY MR. FATTIG:

5 Q So we opened that up and inside could you pull out whatever we find
6 inside?

7 A Yes, sir.

8 Q And this has been marked for the record as 190a. And this is an
9 evidence baggie with three different canisters, correct?

10 A Yes, sir.

11 Q And they are marked with identification to this particular event, correct?

12 A Yes, sir.

13 Q Via the event number, via your name and your P-number --

14 A Yes, sir.

15 Q -- correct? And they are identified via item numbers?

16 A Yes, they are.

17 Q And on top of the canister you wrote 10, 11, and 12?

18 A Yes, sir.

19 Q Okay. And these would be in substantially the same condition now as
20 they were when you impounded them?

21 A Save for the white labels that are on them that were placed there by our
22 forensic lab.

23 Q Okay. And the forensic lab has inspected and done some testing on
24 this evidence, correct?

25 A Yes, sir.

1 Q And how do we know that just by looking at State's Proposed Exhibit
2 190?

3 A Anytime the forensic lab performs an examination they'll open -- as bet
4 they can they will open the package at a different spot than we labeled -- than we
5 sealed it. So the red seal towards the top of the package is mine, the blue seal at
6 the bottom will be theirs, and then they've filled out the chain of custody information
7 on the label.

8 Q Okay.

9 MR. FATTIG: Move to admit 190 and 190a.

10 MS. NGUYEN: Submit.

11 THE COURT: It'll be admitted.

12 **[STATE'S EXHIBITS 190 & 190a ADMITTED]**

13 BY MR. FATTIG:

14 Q Ms. Vaandering had testified right before you regarding some casings
15 that she found in the street. Did she hand you some casings and some evidence?

16 A Yes, sir.

17 MR. FATTIG: My I approach the witness again?

18 THE COURT: Yes.

19 BY MR. FATTIG:

20 Q Showing you what has been already admitted as 193 and 193a. Do
21 you recognize these items?

22 A Yes, sir. This is another package that I created in the same fashion as
23 the last.

24 Q And these would be cartridge casings that Ms. Vaandering collected at
25 the locations that she informed you of and then you actually took custody of the

1 items and impounded them?

2 A Yes, sir.

3 Q And they were in your custody and control after Ms. Vaandering did, to
4 the point in time when you impounded them in a sealed envelope?

5 A Yes, sir.

6 Q Okay. I'm going to move over to another portion of this same
7 intersection and talk about Patrol Officer McNabb's vehicle, okay?

8 A Yes, sir.

9 Q We have that indicated as V2 next to the car?

10 A Yes, sir.

11 Q On your diagram, correct?

12 A Yes.

13 Q And we have a number of numbers here and they correspond to items
14 of evidence that were marked 1 through 5?

15 A Yes, sir, they do.

16 Q And I also see an O1 or a 01. What is that?

17 A It's a O1. In this case we mark the approximate position of -- that our
18 officer -- that the officer was in at the time of the shooting, based on the information
19 that we had.

20 Q Okay. And looking over I see an O2 near the intersection correct?

21 A Yes, sir.

22 Q And would that indicate the second position the officer was in during the
23 shooting?

24 A Yes, sir, it is.

25 [Colloquy between Counsel]

1 MR. FATTIG: Your Honor, my understanding is the parties are going to
2 stipulate to the admittance of State's 59 through 71.

3 MS. NGUYEN: That's correct.

4 THE COURT: They'll be admitted.

5 **[STATE'S EXHIBITS 59 through 71 ADMITTED]**

6 BY MR. FATTIG:

7 Q 59 is just a close-up of the patrol car with the door open?

8 A Yes, sir.

9 Q Is that how the car was when you arrived out there?

10 A Yes, it was.

11 Q The patrol -- the driver's side door was just left opened?

12 A Yes.

13 Q 60, what do we see here? Let me zoom out here so you can see it
14 better.

15 A This is a photograph from the front of the vehicle. From this
16 perspective you can see Items 1 on the ground on the right side of the photo; Items
17 3 and 4 on the hood of the vehicle; and then Item Number 2 is actually at the far left
18 edge of the photo.

19 Q Okay. So you placed the placards out based upon items of evidence
20 that are significant, correct?

21 A Yes, sir.

22 Q And 61, what is that?

23 A That's going to be an expended cartridge case we labeled as Item
24 Number 1.

25 Q And 62, the cartridge case has been turned over?

1 A Yes, sir, this is the head stamp -- showing the head stamp of the
2 cartridge case.

3 Q What is the head stamp? Again, did you need to look at the
4 photograph?

5 A Yes, sir.

6 Q Okay.

7 A I apologize.

8 MR. FATTIG: May I approach again, Your Honor?

9 THE COURT: Yes.

10 BY MR. FATTIG:

11 A The head stamp is a SPEER 9 mm LUGER +P.

12 Q Does that have any significance to you?

13 A That's the department-issued -- Las Vegas Metropolitan Police
14 Department-issued 9 mm ammunition.

15 Q All Metro employees use the same ammo.

16 A Yes, sir. With varying calibers, but --

17 Q Yes.

18 A Yes.

19 Q Same head stamp, same manufacturer?

20 A Yes, sir.

21 Q Okay. 63 shows the position of the second item, correct?

22 A Yes, sir.

23 Q 64, another cartridge casing.

24 A Yes, sir.

25 Q 65, a casing with the same head stamp.

1 A Yes, sir.

2 Q 66, what are we looking at here?

3 A This is the plastic area at the top of the hood of the vehicle, at the base
4 of the windshield where the windshield wipers are located. There were two -- in this
5 case the markers are up on the hood due to the position of the items, so that they'd
6 be visible for photography.

7 Q So two of Officer McNabb's casings landed right at the base of his
8 windshield by his wipers, basically?

9 A Yes, sir.

10 Q 67 shows the head stamp?

11 A Yes, sir.

12 Q 68, the other one?

13 A Yes, sir.

14 Q Again, the same?

15 A Yes, they are.

16 Q 69, what are we looking at here?

17 A This is the area just inside the driver's door of the patrol car. We
18 located another cartridge case marked Item Number 5 just between the seat and the
19 edge of the door.

20 Q And 70 shows kind of a close-up of that?

21 A Yes, sir.

22 Q And 71, again, the same head stamp?

23 A Yes, it is.

24 Q So five cartridge casings, five fired shots, in and around Officer
25 McNabb's vehicle?

1 A Yes, sir.

2 Q Moving over --

3 [Colloquy between Counsel]

4 BY MR. FATTIG:

5 Q Moving attention back to the middle -- more of the middle of the
6 intersection, Items 6, 7, and 8?

7 A Yes, sir.

8 Q Off of you crime scene diagram, 173.

9 MR. FATTIG: Your Honor, I believe the parties are stipulating the admittance
10 of State's Exhibits 72 through 82.

11 MS. NGUYEN: That's correct.

12 THE COURT: They'll be admitted.

13 **[STATE'S EXHIBITS 72 through 82 ADMITTED]**

14 BY MR. FATTIG:

15 Q 72. Let me zoom out. Can you see the placards 6, 7, 8, and 9 in this
16 picture or is it bleached out too much?

17 A I can see them, sir. They're --

18 Q Okay.

19 A -- a little bleached out, but they're in about the left-hand side of the
20 screen, towards the middle.

21 Q Okay. And 73, perhaps that's a better view?

22 A Yes, sir.

23 Q That shows the position of Items of Evidence 6, 7, and 8, correct?

24 A Yes.

25 Q Okay. 74 is Number 6. Again, let me zoom out. And what was 74?

1 A Another cartridge case.

2 Q 75 is the head stamp?

3 A Yes, sir.

4 Q Consistent with Officer McNabb's ammunition?

5 A Yes, sir.

6 Q 76, another fired cartridge case?

7 A Yes, sir.

8 Q And 77, the same head stamp?

9 A Yes.

10 Q 78 again?

11 A Another cartridge case, yes.

12 Q And 79, the same head stamp?

13 A Yes, sir.

14 Q Okay. Three shots from the center of the street there.

15 A Yes, that's -- three recovered cartridge --

16 Q Three casings?

17 A Yes, sir.

18 Q Number 80?

19 A You can see number -- it's the southwest corner of the intersection

20 again. You see Item Number 9 just to the left side of the photo.

21 Q And 81 is a view -- another view of Item 9 in the street?

22 A Yes, sir.

23 Q And 82?

24 A A close-up photo of a Glock magazine.

25 Q Which was consistent with the firearm used by Officer McNabb?

1 A Yes, sir.

2 Q And Item 9, going back to State's Exhibit 173, is in that position here?

3 A Yes, sir.

4 Q Okay.

5 [Colloquy between Counsel]

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

7 THE COURT: Yes.

8 BY MR. FATTIG:

9 Q Mr. Albert, showing you what has been marked as Proposed 188.
10 What do we have here?

11 A It's another envelope -- evidence envelope that I created containing
12 Items 1 through 8 that we've just discussed.

13 Q Okay. And so you collected those, put them in a sealed envelope?

14 A Yes, sir.

15 Q And over the lunch period and in the presence of Ms. Nguyen we
16 opened that envelope, right?

17 A Yes, we did.

18 Q It was in a sealed condition?

19 A It was.

20 Q Can you pull out any items of evidence inside of this?

21 A [No audible response - pulls items out of envelope].

22 Q And marked as 188a is another evidence baggie with a -- containing
23 carious vials, looks like eight of them, correct?

24 A Yes, sir.

25 Q And these would all be cartridge casings matching the crime scene

1 diagram 1 through 8 --

2 A Yes, sir.

3 Q -- that we've been looking at? Okay. These all have the same head
4 stamps, correct?

5 A Yes, they do.

6 Q Are these in substantially the same condition now as they were when
7 you impounded these items of evidence back on June 26th and/or June 27th of
8 2014?

9 A Yes, sir. Again, other -- like the other items, other than the labels
10 added by our forensic lab, they are relatively the same condition.

11 MR. FATTIG: I would move to admit 188 and 188a.

12 MS. NGUYEN: No objection.

13 THE COURT: They'll be admitted.

14 **[STATE'S EXHIBITS 188 & 188a ADMITTED]**

15 MR. FATTIG: May I approach the witness again?

16 THE COURT: Uh-huh.

17 BY MR. FATTIG:

18 Q Mr. Albert, showing you what has been marked as State's Exhibit 189.
19 Is this another envelope that was sealed until the lunch period?

20 A Yes, sir.

21 Q Can you pull out any items inside of this?

22 A [No audible response - pulls items out of envelope].

23 Q Now what do we have inside?

24 A We have the magazine, Item Number 9 that we discussed and the
25 seven cartridges that I removed from the magazine.

1 Q Okay. Item Number -- the magazine has been marked, for the record,
2 as 189b. And 189a is a baggie containing seven different cartridges, correct?

3 A Yes, sir.

4 Q And these cartridges were loaded in this magazine when you found it?

5 A Yes, they were.

6 Q And this magazine has some writing on it, correct?

7 A Yes, it does.

8 Q What is the writing?

9 A R8399M.

10 Q And does that correspond to Ryan McNabb and his P-number?

11 A Yes, sir.

12 Q Okay. And is -- are these items of evidence in substantially the same
13 condition as you found them that day?

14 A Yes, sir.

15 Q Now this particular magazine, how many does it hold? If you know?

16 A According to the markers on the rear side of the magazine, it appears to
17 hold 17.

18 MR. FATTIG: Move to admit 189, 189a, and 189b.

19 MS. NGUYEN: No objection.

20 THE COURT: It'll be admitted.

21 **[STATE'S EXHIBITS 189, 189a, & 189b ADMITTED]**

22 BY MR. FATTIG:

23 Q The ammunition, those seven cartridges were all head stamped the
24 same as the casings that were found out there, correct?

25 A Yes, sir.

1 Q What are perspective shots?

2 A Perspective shots are photographs we'll take showing what a person's
3 view would have been from a particular location.

4 Q Trying to kind of recreate what they saw the best that you can?

5 A Yes, sir.

6 Q Okay.

7 [Colloquy between Counsel]

8 MR. FATTIG: Parties are stipulating the admittance of 86 through 93 is my
9 understanding.

10 MS. NGUYEN: That's correct, Your Honor.

11 THE COURT: They'll be admitted.

12 **[STATE'S EXHIBITS 86 through 93 ADMITTED]**

13 BY MR. FATTIG:

14 Q Showing you, Mr. Albert, 86 initially. Zoom out. What are we looking at
15 here?

16 A This is the same patrol car we saw before. Right behind the door we've
17 got a tripod set-up with a paper bag -- a labeled paper bag on top of it.

18 Q Okay. And is there significance why we have a paper bag and a tripod
19 set up right there?

20 A We do that so that we can mark the areas we're going to take
21 perspective photos from. Now obviously in this case, with the door being opened
22 and the car being that way, we have to find some way to mark the location so that
23 we can see what we're -- what the perspective's going to be and where it's going to
24 be from.

25 Q Okay. And 87 is kind of a marker indicating perspective view --

1 A Yes, sir.

2 Q -- of what we're about to see?

3 A Yes, sir.

4 Q Okay. 88, is that one of the perspective shots from that same position?

5 A Yes, sir, it is.

6 Q Inside the door -- driver's side of the patrol car?

7 A Yes, sir.

8 THE COURT: And when you say shots -- that's a pic -- photograph?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right.

11 BY MR. FATTIG:

12 Q 89, is that just turning a little bit to the south --

13 A Yes, sir.

14 Q -- and east from that same open doorway?

15 A Yes, sir.

16 Q If Officer McNabb was standing there firing, that is the view he would

17 have seen?

18 A Correct.

19 Q State's 90. What are we looking at here?

20 A This is going to be -- the cone with the paper bag is going to mark the

21 location. It's in the diagram that we marked as O2, or Officer Position 2, in the

22 middle of the intersection.

23 Q Near 6, 7, and 8?

24 A Yes, sir.

25 Q And this would be information gleaned from Officer McNabb?

1 A Yes, sir.

2 Q 91, again, indicating what the following photo will show?

3 A Yes, sir.

4 Q 92 would be a view of -- from Position Number 2?

5 A Yes, sir.

6 Q Okay. 93. What are we looking at here?

7 A That's another cone with a paper bag marking the subject location that
8 we were provided.

9 Q And that's right behind the light pole? Is that what this is, the light pole?

10 A Yes, sir.

11 Q On the --

12 A That's the light pole at the southwest corner of the intersection.

13 MS. NGUYEN: And Your Honor, I would just object that that's speculation as
14 to positioning of any particular suspect.

15 BY MR. FATTIG:

16 Q It was information you received, right?

17 A Yes, sir, we were just acting on the info --

18 THE COURT: It's information they received. Neither of them were there and
19 so the jurors will just take that into consideration.

20 MR. FATTIG: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. FATTIG:

23 Q Sir, showing you State's Proposed 94 and 95. Do you recognize these
24 photographs?

25 A Yes, sir.

1 Q What is 94?

2 A Again, it's a white card like we saw with the others for the perspective
3 view of the suspect from that location.

4 Q Okay. Just indicating what we're about to see in 95?

5 A Yes, sir.

6 Q Okay. 95, do you recognize what's shown there?

7 A Yes, sir. It's a view through the fence, from that location, towards the
8 patrol car.

9 Q Okay. Is it fair to say that this is a view from a crouched down position
10 behind the chain link fence?

11 A Yes, sir.

12 Q Do these fairly -- does 95 fairly and accurately depict the scene out at
13 Carey and Dolly from that position?

14 A Yes, sir, it does.

15 MR. FATTIG: Move to admit 94 and 95?

16 MS. NGUYEN: Objection, Your Honor. I'd just say there hasn't been a
17 proper foundation for the information obtained to label that as the perspective of any
18 particular suspect.

19 THE COURT: All right. Overruled. I'll allow it in.

20 **[STATE'S EXHIBITS 94 & 95 ADMITTED]**

21 BY MR. FATTIG:

22 Q So 94 just indicates perspective view, correct?

23 A Yes, sir.

24 Q 95 is the photograph you were describing?

25 A Yes, sir, it is.

1 Q So this would be the patrol car? And this would be from a crouched
2 down position in the area behind the lamppost?

3 A Yes

4 Q Or the light pole, right?

5 A Yes, sir.

6 Q Okay. And that is depicted in 173, correct, the crime scene diagram?

7 A Yes, sir.

8 Q Is that the S we're looking at?

9 A Yes, sir, it is.

10 Q Okay. Now you're familiar with the area on El Tovar -- and El Tovar
11 and Dolly, correct?

12 A Yes, sir.

13 Q And you in fact created a crime scene diagram of that entire area. And
14 let me zoom out. This would contain the same information that we saw, as well as
15 additional information south of that position on El Tovar, correct?

16 A Yes, sir.

17 Q It's essentially the exact same information, just more of it.

18 A Yes, sir.

19 Q If we zoom in we're going to see everything we just saw, correct?

20 A Yes, sir. I believe around the patrol car, there was a few numbers that
21 were removed. When we're creating these diagrams, because it's a secondary
22 diagram, the further you zoom out obviously the smaller the numbers and the
23 smaller the symbols become and things become a bit more chaotic. And so
24 sometimes when we'll remove certain things from this particular diagram so that
25 things are more legible.

1 Q Okay. So on this particular diagram it includes -- and let me zoom in
2 towards the El Tovar area -- information regarding Items 13 and 14, correct?

3 A Yes, sir.

4 Q Under an item marked V3?

5 A Yes, sir.

6 Q And that would be a white truck we've been hearing about?

7 A Yes, sir, it is.

8 Q Okay. And you're familiar obviously with that scene as well because
9 you walked down the street?

10 A Yes, I am.

11 Q And 96 shows -- again let me zoom out -- El Tovar and Dolly?

12 A Yes, sir.

13 Q 97 we see the white truck on the right side of the picture, correct?

14 A Yes.

15 Q Now 98, that shows partly the home on the southeast side of that
16 intersection, correct?

17 A Yes, sir.

18 Q And you see an apartment building in the back?

19 A Yes, I do.

20 Q And there appears to be a light on that apartment building, correct?

21 A Yes, sir.

22 Q A fairly bright light?

23 A Yes, sir.

24 Q Going back to 104 which is already admitted. Now did you impound
25 this -- these items of evidence?

1 A Yes, sir, I did.

2 Q And they were found underneath that white truck, correct?

3 A Yes, sir.

4 Q And these are -- this is a picture, 105, of them after they were pulled out
5 from underneath the front of the white truck?

6 A Yes, sir.

7 [Colloquy between Counsel]

8 MR. FATTIG: I believe the parties are stipulating the admittance of 106
9 through 110. One or two of those might have been admitted before.

10 MS. NGUYEN: That's correct.

11 THE COURT: That'll be the order.

12 [STATE'S EXHIBITS 106 through 110 ADMITTED]

13 BY MR. FATTIG:

14 Q 106, what are we looking at here, sir?

15 A That's the tag on the inside of a -- the white ballistic vest that was
16 underneath the vehicle.

17 Q It says American Body Armor and Equipment?

18 A Yes, sir.

19 Q And basically generally describes what the vest was?

20 A Yes, sir.

21 Q 107. Is this the gun that was on the vest?

22 A Yes, sir, it is.

23 Q Now this is after the gun has been moved, clearly, right?

24 A Yes, sir.

25 Q It's on like a paper bag or something?

1 A Yes.

2 Q Was this out at the scene still?

3 A I believe that it was.

4 Q Okay. And you documented the condition of the gun kind of as it was

5 found?

6 A Yes, we did.

7 Q Now, is there a magazine in the gun?

8 A Yes, there is.

9 Q Was there any ammunition at all in the gun?

10 A I don't believe so, sir.

11 Q And for the record this documents the serial number of that particular

12 gun?

13 A Yes, sir.

14 Q As CP33432?

15 A Yes.

16 Q And what kind of gun was this?

17 A I believe it was a Colt semi-automatic.

18 Q .45 caliber?

19 A Yes, sir.

20 Q 108. Is this the other side of the gun?

21 A Yes, it is.

22 Q And it's labeled Colt on that side?

23 A Yes, sir.

24 Q M1991A1?

25 A Yes.

1 Q Now this particular magazine, it appears to be an extended magazine?
2 A Yes, sir.
3 Q How many rounds fit in the magazine?
4 A I don't recall.
5 Q Would looking at your report refresh your recollection about that?
6 A I don't believe that that information was specifically documented in the
7 report.
8 Q Would looking at the actual magazine assist in that?
9 A Yes, sir.
10 Q 109, is that a picture of the same gun without the magazine?
11 A Yes, sir.
12 Q And 110 is the other side, correct?
13 A Yes, sir.
14 MS. NGUYEN: And Your Honor, I'd stipulate to opening this.
15 THE COURT: Has Tom checked this gun? Have you check the gun?
16 MS. NGUYEN: I think this is the one that you did check.
17 THE COURT: Make sure.
18 THE MARSHAL: Yes, that's the one I checked, it is.
19 MR. FATTIG: May I approach the witness, Your Honor?
20 BY MR. FATTIG:
21 Q Mr. Albert, showing what has been marked as State's 191. This is a --
22 appears to be a cardboard box, correct?
23 A Yes, sir.
24 Q Is this the typical way you would impound an firearm?
25 A Yes, sir, it is.

1 Q Okay. And you detailed this -- that this was the same gun we're looking
2 at in the photograph on the screen?

3 A Yes, sir, it is.

4 Q And this is the gun underneath the white truck?

5 A Yes, sir.

6 Q Can you open up the box for us?

7 A Yes, sir.

8 Q 191a is the actual firearm, correct?

9 A Yes, sir.

10 Q 191b is the magazine that was taken out of that firearm?

11 A Yes, sir.

12 Q Does looking at 191b assist you in terms of determining how many
13 rounds fit in that magazine?

14 Do we need to take it out of the orange loop there?

15 A Yes, sir.

16 Q Okay. Do we need scissors?

17 A Yes, please.

18 Thank you, sir.

19 There we go. Based on the magazine it looks like it holds -- the
20 magazine is marked with ten. At the top of it, it says .45 ACP, which designates the
21 caliber and has a 13 underneath. I'm not sure. It could be 10 or it could 13. I'm not
22 entirely sure.

23 Q It's marked with ten different numbers next to the holes, correct?

24 A Yes, sir.

25 Q Okay. And the backside you can see all the numbers next to --

1 corresponding to each hole, correct?

2 A Yes, sir.

3 Q So we'll ask the firearms expert about that.

4 A Yes, sir.

5 Q Obviously another forensic person had access to this firearm and did
6 some testing on it, correct?

7 A Yes, sir, they did.

8 Q Because of the blue tape, correct?

9 A Yes.

10 Q Okay. Is this in substantially the same condition as when you
11 impounded from this crime scene back in June of 2014?

12 A Again, other than the blue seals and you can see at this time it's
13 sealed -- it's tied in with orange zip ties. On the back you can see there's black zip
14 ties. I secured it with the black zip ties when I impounded it. Our firearms examiner
15 would have re-secured it with the orange zip ties.

16 Q Other than those changes it's in substantially the same condition as
17 when you found it and took it out from underneath that white truck?

18 A Yes, sir.

19 MR. FATTIG: Move to admit 191, 191a, and 191b.

20 MS. NGUYEN: No objection.

21 THE COURT: They'll be admitted.

22 **[STATE'S EXHIBITS 191, 191a, & 191b ADMITTED]**

23 BY MR. FATTIG:

24 Q Now, did you do any processing of the gun and/or magazine?

25 A Yes, sir, I did.

1 Q Or attempt to collect any evidence from it?

2 A Yes, sir, I did.

3 Q What did you do?

4 A Any time we're going to process a firearm, the first thing we do is we
5 swab it for DNA, prior to processing it for fingerprints. In this case, we'll swab the
6 grip area, which is going to be the area here. It's a textured surface so it's not going
7 to be conducive for latent prints, as well as the serrated area on the slide, and the
8 front face of the trigger. We'll swab those areas for DNA prior to processing for
9 prints.

10 Q Okay. Did you do -- so you swabbed it first, correct?

11 A Yes, sir.

12 Q And then did you do any processing regarding fingerprints?

13 A Yes, sir, we did. Or I did.

14 Q What did you do?

15 A In this case I used superglue fuming which is a technique where
16 superglue is heated to the point where it becomes a gas and then as it cools down it
17 adheres to any oils or moisture that create the fingerprints. So in this case we'll
18 fume it with the superglue and then we'll dye stain it with a dye called Rhodamine
19 6G, which will adhere to the superglue and allow it to be visible -- any prints to be
20 visible under a laser light.

21 Q And obviously this is not something that you're doing out at the corner
22 of El Tovar and Dolly?

23 A No, sir.

24 Q Okay. You would have preserved these items, taken them back to the
25 lab, and done testing on them?

1 || A Yes, sir.

2 Q Okay. And then after you did the testing you put it in the box, sealed it,
3 et cetera.

4	A	Yes, sir.
---	---	-----------

5 Q Okay. And did you document the fingerprint -- or first of all, did you
6 have any positive results with regards to the trying to collect prints from that
7 particular gun and/or the magazine?

8 A The gun itself was negative for fingerprints. There was one print
9 developed on the magazine?

10 Q Did it -- in your experience with regards to firearms, is it difficult to lift
11 prints from firearms?

12 A It can be. Unfortunately the -- the reason we swabbed it for DNA is
13 because the areas that are handled a lot that we come in contact with are typically
14 the textured areas; however, it's not impossible. Fingerprints are very -- there's a lot
15 of variables that go into fingerprints, so whether there should or shouldn't be
16 fingerprints there, it's very difficult to determine.

17 [Colloquy between Counsel]

18 MR. FATTIG: May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 BY MR. FATTIG:

21 Q Sir, showing you State's Proposed 194. Are these swabs that you took
22 from that firearm?

23 | A Yes, sir.

24 Q And would have -- how do you collect DNA swabs?

25 | A It's essentially a cotton swab, moistened with a small amount of distilled

1 and we'll -- again, with the firearm we'll swab the grip, the textured portion of the
2 slide, and the trigger. And the magazine we'll -- or we'll swab the base and the area
3 at the top with the rough edges where the cartridges go in.

4 Q And then you put them in a sealed type of container?

5 A Yes. Each swab will go into its own sealed envelope. So inside this
6 package there would be two sealed envelopes, one containing each swab.

7 Q Both from the gun -- different parts of the gun?

8 A The gun and the magazine, yes.

9 Q And the blue marking would indicate, again, that a DNA expert has
10 examined that evidence?

11 A Yes.

12 MR. FATTIG: Okay. And we're not going to open up this particular evidence,
13 Your Honor, because it contains perhaps biological material. So I would move to
14 admit 194.

15 MS. NGUYEN: I have no objection.

16 THE COURT: It'll be admitted.

17 **[STATE'S EXHIBIT 194 ADMITTED]**

18 BY MR. FATTIG:

19 Q Going back to the fingerprints and the superglue process, did you have
20 any success with the magazine?

21 A Yes, sir.

22 Q And how did you go about documenting that?

23 A In this case, when we're chemically processing for prints, we will
24 document the results with photography.

25 MR. FATTIG: And it's my understanding the parties are stipulating the

1 admittance of 174 through 176.

2 MS. NGUYEN: Yes.

3 THE COURT: It'll be admitted.

4 **[STATE'S EXHIBIT 174 through 176 ADMITTED]**

5 BY MR. FATTIG:

6 Q 174, Mr. Albert, that's a picture of the same magazine that we've been
7 looking at?

8 A Yes, sir.

9 Q 175, what are we looking at here?

10 A That's the same magazine under the laser that I previously mentioned
11 that allows us to view the chemical enhancement.

12 Q And 176?

13 A It's a closer photo of the fingerprint on the side of the magazine.

14 Q One print was recovered?

15 A Yes, sir.

16 Q And you took multiple pictures of it.

17 A Yes, sir.

18 Q This particular print was documented through photography and then the
19 photographs were provided to the fingerprint examiner?

20 A Yes, sir.

21 Q Can you show on the magazine, which I believe is 191b, if I'm not
22 mistaken, where the print was approximately? And if you need to look at the
23 photographs --

24 A Yeah, could you do that, please?

25 MR. FATTIG: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MR. FATTIG:

3 A The print's going to be on the based -- towards the base on the silver
4 part, on the same side as the sticker. So right in here around where Number 9 and
5 Number 10 are.

6 Q Okay. At the bottom of the --

7 A The metal portion, yes.

8 Q The metal portion. And that's on 191b, for the record.

9 [Colloquy between Counsel]

10 MR. FATTIG: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 BY MR. FATTIG:

13 Q Sir, showing you what has been marked as 192. Do you recognize
14 what this is?

15 A Yes, sir.

16 Q What is this?

17 A This is the box that I packaged the previously mentioned ballistic vest
18 in.

19 Q Can you pull that out?

20 A Yes, sir.

21 Q And what color is this?

22 A White.

23 Q And it -- how do you wear such a device?

24 A In this case, this is the front and this is the back and this would -- your
25 head would go in between the two straps.

1 Q Okay. Part of it is over the front torso, the other half is at back torso?

2 A Yes, sir.

3 Q Okay. It's fairly heavy?

4 A Yes, sir.

5 Q Is that in substantially the same condition as when you found it
6 underneath that white truck?

7 A Yes, sir.

8 MR. FATTIG: Move to admit 192 and 192a, which is the vest itself.

9 MS. NGUYEN: No objection.

10 THE COURT: It'll be admitted.

11 **[STATE'S EXHIBIT 192 & 192a ADMITTED]**

12 BY MR. FATTIG:

13 Q The maroon Dodge Intrepid, what happened with the car?

14 A We secure the vehicle and we sealed it with orange seals over the
15 doors -- the four doors, the trunk, and the hood and we had it towed back to our CSI
16 section garage for further processing.

17 Q Okay. Showing what's already been admitted as 125. These are the
18 orange seals that were placed on the vehicle?

19 A Yes, sir.

20 Q Now the towing itself, how does that -- does the car -- front end of the
21 car get lifted and the two tires -- rear tires get on -- you know, on the ground as it's
22 towed or is it put on to a truck or maybe you don't know?

23 A I don't remember particularly how this car was loaded.

24 Q Okay. 126, that would be the passenger side of the car, correct?

25 A Yes, sir.

1 Q And this would be early the morning of June 27th because it's -- the sun
2 out?
3 A Yes, sir.
4 Q You're still out at the scene?
5 A Yes, sir.
6 Q How long were you out there?
7 A We arrived on scene at -- I believe I arrived just before midnight.
8 Q And when did you leave?
9 A Well into the morning. I don't remember exactly what time.
10 Q Okay. You were out there a long time?
11 A Yes, sir.
12 Q 127, what are we looking at here?
13 A This is going to be a photo of the rear driver's side door and window of
14 the Dodge Intrepid.
15 Q And this is out at the scene still, right?
16 A Yes, sir.
17 Q You can still see the patrol car of Officer McNabb in the back.
18 A Yes, sir.
19 Q And do you notice -- when you're out at the scene are you noticing
20 some damage to the driver's side of this vehicle?
21 A Yes, sir.
22 Q Can you describe generally what you're noticing?
23 A We see what appear to be multiple apparent bullet strikes to the
24 window --
25 MS. NGUYEN: Objection, Your Honor, speculation.

1 MR. FATTIG: I could lay more foundation if you want.

2 THE COURT: Yeah. Lay a foundation. Sustained.

3 BY MR. FATTIG:

4 Q Are you familiar with bullet strikes to vehicles?

5 A Yes, sir.

6 Q How many times do you think you've gone out to scenes investigating
7 bullet strikes to vehicles and/or at the lab?

8 A To tell you the honest truth I couldn't even give you a number. It's been
9 quite a few as far as scenes I've responded to. We've also had extensive training in
10 shooting scenes, particularly involving vehicles.

11 Q And damage that bullets does?

12 A Yes, sir.

13 Q And was this consistent with that, according to your training and
14 experience?

15 A Yes, sir, it was.

16 Q And you said you can't even estimate it. I mean, are we talking about
17 dozens, are we talking about hundreds?

18 A I'd say dozens probably.

19 Q And this was consistent with that?

20 A Yes, sir.

21 Q Going back to the towing. The car was towed where?

22 A To -- from the scene to our office at 5555 West Badura.

23 Q And that's where you do investigations of physical evidence?

24 A Yes, sir.

25 Q Now 128 shows the vehicle after it's already back at the garage,

1 correct?

2 A Yes, sir.

3 Q At this point the rear passenger tire appears to be deflated, correct?

4 A Yes, sir, it is.

5 Q Okay. Showing you --

6 [Colloquy between Counsel]

7 MR. FATTIG: Your Honor, the parties are stipulating to the admittance of 156
8 through 171.

9 MS. NGUYEN: that's correct.

10 THE COURT: They'll be admitted.

11 **[STATE'S EXHIBITS 156 through 171 ADMITTED]**

12 BY MR. FATTIG:

13 Q Showing you State's Exhibit 156. What are we looking at here?

14 A This is the same rear passenger side -- or I'm sorry, rear driver's side
15 door area of the Dodge Intrepid, after we've marked the apparent bullet strikes to
16 the door and window.

17 Q So the markings here are like bright neon- yellowish green stickers, with
18 some numbers and letters on them?

19 A Yes, sir.

20 Q I know it's blurry. You can't see here, correct?

21 A Yes, sir.

22 Q But there are a series of different areas of damage all on the driver's
23 side of the car, correct?

24 A Yes, sir.

25 Q And in terms of the number of items of areas of damage, I see 1, 2, 3,

1 4, 5, 6 total.

2 A Yes, sir.

3 Q Is that accurate?

4 A Yes, it is.

5 Q Okay. 157. What are we looking at here?

6 A Oh that's a -- that's the first one. It's -- we marked it A. It's to the center
7 left side of that window on the exterior.

8 Q Now I'm going to go back. When you say the first one, are you talking
9 about the one closest to the driver's side?

10 A Yes, sir.

11 Q This one here?

12 A yes.

13 Q Okay. And for the record I was referring to 156, okay? 157 is a close-
14 up of that damage?

15 A Yes, sir.

16 Q And you marked it A0?

17 A Yes, sir.

18 Q And was that consistent with a bullet?

19 A Yes, sir, it was.

20 Q Grazing the -- was it the back passenger -- excuse me. Back seat
21 driver's side window?

22 A Yes, sir.

23 Q 158, what are we looking at here?

24 A This is an impact that we've labeled B. It's on the plastic -- the black
25 plastic piece at the very rear of that window.

1 Q Going back to 156, is that the item that I'm indicating here?

2 A Yes, sir.

3 Q Now why is this B and the first one A? Does that have any
4 significance?

5 A We will only -- the reason it's -- you'll see A0 and B0, if we can relate
6 multiple impacts then we'll refer to them -- successive impacts would therefore be 1,
7 2, and so on. In this case, we had no -- we couldn't determine whether the two were
8 related or not. So if we can't prove that they're related, then we'll treat them as two
9 separate incidents.

10 Q Okay. 159?

11 A You're seeing just below B on the left side of the screen there is C0.
12 And then towards the right side of your screen you're seeing --

13 Q I overdid it. Let me try to find a happy medium on the brightness.
14 Okay.

15 A There you go. In this case we were able to determine that in this case
16 C0 and C1 were related. So the bullet would have struck the window at the location
17 of C0, continued on, striking the plastic --

18 MS. NGUYEN: Objection, Your Honor, foundation.

19 BY MR. FATTIG:

20 Q There was some testing that you did in terms of --

21 THE COURT: Sustained.

22 BY MR. FATTIG:

23 Q -- trajectory --

24 A Yes, sir.

25 Q -- correct? Okay. We'll get into that. Let's look at 160. Is that C0, C1,

1 and C2?

2 A Yes, sir.

3 Q Okay. 165. What are we looking at here?

4 A This is a -- we'll refer to it -- it's a yellow metal rod. We refer to them as
5 trajectory rods. We have at least two points or two areas of impact. We can use the
6 rod to generally determine whether there -- whether the marks are related. In this
7 case we were able to use the metal rod, which is straight and it does line up with all
8 three, C0, C1, and C2.

9 Q And that's based upon the common sense notion that a bullet, once
10 fired, is going to move in a straight line?

11 A Initially, yes, sir.

12 Q At least initially, until it loses speed.

13 A Yes, sir.

14 Q And it could be at an angle up, it could be at an angle down, or
15 straight --

16 A Yes, sir.

17 Q -- perpendicular to the ground, depending on where the gun is pointed,
18 correct?

19 A Yes, sir.

20 Q But initially it's going to be moving in a straight direction?

21 A Yes, sir.

22 Q So the trajectory rod is going to assist when you're looking at different
23 bullet strikes to see if they're on the same plane?

24 A Yes, sir.

25 Q 166, this is a view of that trajectory rod down the driver's side of that

1 vehicle?

2 A Yes, sir.

3 Q 167 is kind of a similar?

4 A Yes, sir.

5 Q 168, that's taken from the perspective of the driver's side?

6 A Yes, sir.

7 Q And 169 as well?

8 A Yes, sir.

9 Q 170 is from the rear of the car?

10 A Yes.

11 Q And I see 171, the rod is going into the hole that's marked C2?

12 A Yes, sir.

13 Q So based upon your training and experience and based upon using the

14 rod and examining this evidence, did you believe that C0, C1, and C2 all -- were all

15 caused by the same bullet?

16 A Yes, sir.

17 Q And I don't think we looked at the close-ups of those. So I'm going to

18 show 161 is C0, correct?

19 A Yes, sir.

20 Q 162 is C1?

21 A Yes, sir.

22 Q Which is -- appears to be -- what are we looking at there?

23 A C1 is actually a bullet hole that goes through into the plastic

24 through/behind the plastic at the rear side of the window.

25 Q 163 is C2?

1 A Yes. C2 is an impact on the other side of that black plastic piece. This
2 is actually -- the bullet would -- this shows the bullet would have ricocheted off. It
3 did not reenter the vehicle.

4 Q 164 is D0, correct?

5 A Yes, sir.

6 Q And going back to 156. Is that the strike towards the rear of the car?

7 A Yes, sir, it is.

8 Q So we have A, B, C, and D, four different letters?

9 A Yes, sir.

10 Q Do you believe that that -- this represents evidence that the vehicle was
11 struck by four different bullets along that driver's side?

12 A From what we can tell, yes.

13 Q Now you obviously documented the inside of the car, correct?

14 A Yes, sir.

15 [Colloquy between Counsel]

16 MR. FATTIG: Parties are stipulating the admittance of 129 through 146.

17 MS. NGUYEN: Yes, that's fine.

18 THE COURT: They'll be admitted.

19 **[STATE'S EXHIBITS 129 through 146 ADMITTED]**

20 BY MR. FATTIG:

21 Q 129. What are we looking at here, sir? Let me see if I can adjust the
22 brightness. This too dark?

23 A This is going to be a photograph from the open driver's side door -- or
24 front driver's side door of the vehicle.

25 Q Okay. 130, is that the floor board of the driver's side?

1 A Yes, sir.

2 Q And what is this object here?

3 A That's an unfired cartridge.

4 Q 131?

5 A That's going to be a photograph into the rear driver's side door of the

6 vehicle.

7 Q 132?

8 A That's an AK-style rifle that's wrapped in a white shirt.

9 MR. FATTIG: Your Honor, it's my understanding the parties are also

10 stipulating the admittance of 147 through 155.

11 MS. NGUYEN: that's correct.

12 THE COURT: They'll be admitted.

13 **[STATE'S EXHIBITS 147 through 155 ADMITTED]**

14 BY MR. FATTIG:

15 Q This is the butt of the rifle --

16 A Yes, sir.

17 Q -- that's barely visible? Okay. 135?

18 A That's the rifle that was in the back seat, laid out on a piece of paper

19 next to a shirt that it was wrapped in.

20 Q That's like a -- was that a white shirt, or a white sheet, or a white --

21 A To my recollection I believe it was a shirt.

22 Q 134?

23 A I believe -- we believe that's the serial number of the rifle.

24 Q And that reads 1983S-AS4608, for record?

25 A Yes, sir.

1 Q 135?

2 A Again, it's -- you -- I believe that's Ewbank Mfg. out of Winslow, AZ.

3 And it's --

4 Q The maker of the gun?

5 A I believe so, sir.

6 Q Okay. And it indicates the 7.62 X 39?

7 A Yes, sir, that's the caliber.

8 Q Okay. 136? Zoom out. Is this the trunk area of the car?

9 A Yes, sir.

10 Q Is it fair to say it was pretty full of various items?

11 A Yes, it was.

12 Q 137. What are we looking at here?

13 A Those are the items that we removed from the trunk so that we could
14 better photograph the contents.

15 Q Now I see some -- a word, trunk written on the brown piece of paper
16 underneath that?

17 A Yes, sir.

18 Q Those items. Is this a way that you can document exactly what's in the
19 car and where you find it?

20 A Yes, sir, because oftentimes there will be a number of CSAs and/or
21 detectives that are working together, conducting the search of the vehicle. So what
22 we'll do is we'll lay out paper and label it with each area of the car that we're
23 searching after the initial photos have been taken; that way we can start removing
24 items from the car and placing them on the paper, but we still know where they
25 came from in case we find something of interest.

1 Q There's a lot of items related to child or children in the car, fair to say?
2 A Yes, sir.
3 Q Other than the firearms?
4 A Yes, sir.
5 Q 138?
6 A This is going to be the front passenger side seat and floor area.
7 Q 139?
8 A The black bag that was on that front passenger seat floor area.
9 Q 140?
10 A A firearm -- you can see part of a firearm is inside the bag.
11 Q 141?
12 A That's the Colt .25 caliber firearm that was recovered from the black
13 bag.
14 Q On the front passenger floorboard?
15 A Yes, sir.
16 Q 142?
17 A The other side of the same firearm.
18 Q 143?
19 A That's the magazine that was inside the firearm and the contents of the
20 magazine.
21 Q There were four unfired cartridges in that magazine in the .25 Colt?
22 THE COURT: I count five.
23 BY MR. FATTIG:
24 A Five, sir.
25 Q I apologize. Five.

1 A Yes, sir.

2 Q Once again, I went to law school. 144, what are we looking at there?

3 A This is a rifle magazine that was recovered and the contents of that

4 magazine.

5 Q And where was the magazine recovered from?

6 A May I refer to my report?

7 Q Yes.

8 A The rifle magazine was also in that black bag on the front passenger

9 side floorboard.

10 Q And these are unfired cartridges in that same magazine?

11 A Yes, sir.

12 Q And 145 is a picture of the magazine that was loaded?

13 A Yes, sir.

14 Q Is that fully-loaded? Do you remember?

15 A I don't remember, sir.

16 Q Do -- did you document how many are there because I don't want to

17 count them?

18 A I believe there were 30 cartridges.

19 Q So the magazine was in the front in the black bag. The rifle was in the

20 back seat.

21 A Yes, sir.

22 Q 146?

23 A More photos of the items that we removed from the vehicle with the

24 labeled paper.

25 Q Okay. And that's labeled rear seat?

1 A Yes, sir.

2 Q And there is -- appears to be an orange folder with the name Joshua on

3 it?

4 A Yes, sir.

5 Q On that is on the section marked driver's seat floorboard, if you can

6 read it?

7 A Yes, sir.

8 Q 147, this would be more items found -- this is DF --

9 A Oh --

10 Q -- seat/floorboard?

11 A Sorry that previous photo, I was confused, it was actually driver's rear

12 floorboard.

13 Q Okay.

14 A That's why it says DR.

15 Q DF --

16 A In this case you see D -- so driver's front floorboard.

17 Q And there was a -- mail from US Bank?

18 A Yes, sir.

19 Q And I see two different cartridges here?

20 A Yes, sir.

21 Q And these were both unfired?

22 A Yes, they were.

23 Q Those were both recovered from that driver front seat/floorboard area?

24 A Yes, sir, they were.

25 Q Were -- do you remember the head stamp and/or -- of those? The

1 markings -- and I'll show you 150. Is that a picture of those?

2 A Yes, sir. The head stamp is SPEER 45 AUTO.

3 Q Zooming out showing State's 148, correct?

4 A Yes, sir. Just a closer view of those items.

5 Q Of some of those items. And 149 is a close-up of that US Bank

6 document?

7 A Yes, sir.

8 Q And it's addressed to Joshua Bacharach?

9 A Yes, sir, it is.

10 Q There's some -- a vehicle registration that was found in the car as well?

11 A Yes, sir.

12 Q And that is 153 under Eufrosia Nazaroff?

13 A Yes, sir.

14 Q There is some additional mail found in the car, correct?

15 A Yes, sir.

16 Q In the name Susanna Bacharach?

17 A Yes.

18 Q That is 154 which we're looking at, correct?

19 A Yes, sir, it is.

20 Q 155, there's some additional mail in the name Jordan Nazaroff

21 Bacharach?

22 A Yes, sir.

23 Q Showing you --

24 MR. FATTIG: May I approach the witness?

25 THE COURT: Yes.

1 BY MR. FATTIG:

2 Q 195. And this is an envelope that we opened over the lunch hour in
3 front of Ms. Nguyen?

4 A Yes, sir.

5 Q Can you pull out any documents inside of this? What are we looking at
6 here?

7 A This is the US Bank card addressed to Joshua Bacharach and a Clark
8 County School District individualized education program information in the name of
9 Joshua W. Nazaroff Bacharach.

10 Q Okay. And these were items found inside the car?

11 A Yes, sir.

12 MR. FATTIG: Move to admit 195, as well as 195a and 195b.

13 MS. NGUYEN: No objection.

14 THE COURT: They'll be admitted.

15 **[STATE'S EXHIBITS 129 through 146 ADMITTED]**

16 BY MR. FATTIG:

17 Q Showing you 196 -- Proposed 196. What are we looking at here?

18 A This is another evidence envelope in which I impounded the two
19 cartridges from the driver's side floorboard.

20 Q And these are in substantially the same condition from when you
21 impounded them in June of 2014?

22 A Yes, sir.

23 Q And these were not accessed by the firearms examiner, correct?

24 A No, sir, they were not.

25 MR. FATTIG: Move to admit 196, as well as 196a, which is the baggie with

1 the two cartridges in it.

2 MS. NGUYEN: No objection.

3 THE COURT: It'll be admitted.

4 **[STATE'S EXHIBITS 196 and 196a ADMITTED]**

5 [Colloquy between Counsel]

6 [Colloquy between the Clerk and Counsel]

7 MR. FATTIG: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MR. FATTIG:

10 Q Mr. Albert, showing you 197 first of all. What are we looking at there?

11 A So this is the rifle magazine that we've previously seen.

12 Q From the black bag?

13 A Yes, sir.

14 Q And is this in -- still in a sealed condition?

15 A Yes, sir, it is.

16 Q So we didn't have a chance to open this over the lunch hour?

17 A No, we did not.

18 Q Can you open it on a side that has not been disturbed if possible?

19 A [No audible response - opening package].

20 Q This is the magazine that we saw in the photograph?

21 A Yes, sir.

22 Q And then is there anything else in this package?

23 A No, sir.

24 Q Is this in substantially the same condition as when you impounded it?

25 A Yes, save for the sticker.

1 Q Sticker from the --

2 A From the forensic lab.

3 Q Okay.

4 MR. FATTIG: Move to admit 197 and I would ask the clerk to mark the
5 magazine as 197a and move to admit that.

6 THE COURT: That'll be the order.

7 MS. NGUYEN: Submit.

8 **[STATE'S EXHIBITS 197 & 197a ADMITTED]**

9 BY MR. FATTIG:

10 Q Showing you what's been marked as 198. Do you recognize that?

11 A Yes, sir. This is the package with the small Colt .25 caliber handgun.

12 Q It was found in that same black bag.

13 A Yes, sir.

14 Q Does this appear to still be in a sealed condition?

15 A Yes, sir.

16 Q Can you open this box?

17 A Yes, sir, I can.

18 THE COURT: Tom needs to check that.

19 THE WITNESS: Yes, sir.

20 BY MR. FATTIG:

21 Q So we're looking at the Colt .25?

22 A Yes, sir.

23 Q As well as the magazine?

24 A Yes, sir.

25 Q It appears to be more brown, more rusted than it was in the photos.

1 A Yes, sir.

2 Q Okay. Other than that is it in substantially the same condition as when
3 you impounded that?

4 A Yes, sir, it is.

5 MR. FATTIG: I would move to admit 198 and move to mark the firearm as
6 198a, and the magazine as 198b.

7 MS. NGUYEN: Submit.

8 THE COURT: That'll be the order.

9 **[STATE'S EXHIBITS 198, 198a & 198b ADMITTED]**

10 BY MR. FATTIG:

11 Q Showing you 199. This is another evidence bag.

12 A Yes, sir.

13 Q And can you -- does this appear to still be in a sealed condition?

14 A Yes, sir, it is.

15 Q And the firearms expert did not examine this -- these items, correct?

16 A No, sir.

17 Q Could you please open up this bag?

18 A Yes, sir.

19 Q So what do we have here?

20 A These are the 30 cartridges that were removed from the rifle magazine
21 and the five cartridges from the magazine of the Colt .25 and one cartridge from the
22 chamber of that weapon.

23 Q So there was one in the chamber when you found it in the black bag?

24 A Yes, sir.

25 Q Are these in substantially the same condition as when you found them

1 after you took them out of the magazines?

2 A Yes, sir, they are.

3 MR. FATTIG: Move to admit 199, as well as the 30 cartridges of ammunition
4 as 199a, and the five --

5 THE WITNESS: Six.

6 MR. FATTIG: Six as 199b.

7 THE COURT: Okay. That'll be the order.

8 **[STATE'S EXHIBITS 199, 199a, & 199b ADMITTED]**

9 BY MR. FATTIG:

10 Q Showing you what has been marked as State's Proposed 200, a long
11 box.

12 A Yes, sir.

13 Q Do you recognize this?

14 A Yes, sir.

15 Q And how do you recognize this?

16 A This is the box containing the rifle from the box sheet of the vehicle.

17 Q Does this appear to be in substantially the same condition?

18 A Save for the seals placed by our forensic lab, yes.

19 Q Okay. Can you unseal this particular box?

20 A Yes, sir.

21 Q And then we'll have the bailiff inspect the [indiscernible].

22 BY MR. FATTIG:

23 Q Can you turn this around and show the jury?

24 A Yes.

25 Q This appears to be in substantially condition, absent of course the

1 addition of the sticker and the orange ties?

2 A Yes, sir.

3 Q Placed by the forensic expert.

4 A Yes, sir. Again, just like the other -- the black straps are what I would
5 have used to secure it. The orange straps are what they would use after when they
6 repackaged it.

7 Q Now, in terms of the fingerprints -- excuse me. Did you process this
8 particular gun for fingerprints?

9 A Yes, sir, I did.

10 Q And did you have any particular luck?

11 A Yes, sir.

12 Q What -- how did you process it? Was it as similar as you used on the
13 earlier weapon found underneath the white truck?

14 A Yes, sir, it is. The same process.

15 Q Okay. And did you discover any prints on this guy?

16 A Yes, sir. I developed one fingerprint on this.

17 MR. FATTIG: Parties are stipulating to 177 and 178.

18 MS. NGUYEN: That's correct.

19 THE COURT: They'll be admitted.

20 **[STATE'S EXHIBITS 177 & 178 ADMITTED]**

21 BY MR. FATTIG:

22 Q 177 is a photograph of that same gun that --

23 A Yes, sir.

24 Q Correct?

25 178. What are we looking at here?

1 A That's a photo of the fingerprint that was developed on the firearm.

2 Q And can you point out where the fingerprint is located actually on the
3 gun?

4 A May I refer to my notes?

5 Q Absolutely.

6 A It's on the charging handle, which is going to be -- this will be the
7 charging handle here. This whole piece, that's where we developed the print.

8 Q So actually off of the piece that's sticking out from the rifle?

9 A Yes, sir.

10 Q And when you say charging handle, what do you use that for?

11 A That's -- when you have a magazine in the -- inserted in the firearm
12 where you pull --

13 MS. NGUYEN: Objection, Your Honor, foundation.

14 MR. FATTIG: I'll move on.

15 THE COURT: All right.

16 MR. FATTIG: We're going to have somebody else testify.

17 THE COURT: Sustained.

18 BY MR. FATTIG:

19 Q Did you find any ammunition in this rifle when it was in the back seat of
20 the car?

21 A No, sir.

22 MR. FATTIG: Move to admit 200, Your Honor. And 200a being the firearm.

23 THE COURT: Hearing no objection. It'll be admitted.

24 MS. NGUYEN: No.

25 **[STATE'S EXHIBITS 200 & 200a ADMITTED]**

1 BY MR. FATTIG:

2 Q Just as with the other firearm that you testified to, you did some DNA
3 swabs off of that rifle?

4 A Yes, sir.

5 Q Showing you State's 201. Is this a package of the swabs?

6 A Yes, sir.

7 Q And there are three different swabs in this particular evidence
8 envelope?

9 A Yes, sir. In this case, this is -- these are swabs from the Colt .25
10 handgun --

11 Q Oh, okay.

12 A -- as well as the magazine. And a swab from the rifle.

13 Q So these contain swabs from both of those guns that were found in the
14 car?

15 A Yes, sir.

16 Q Okay. And the blue indicates that someone in the forensic lab
17 examined those swabs?

18 A Yes, sir.

19 MR. FATTIG: Okay. Move to admit 201 without opening it.

20 MS. NGUYEN: No objection.

21 THE COURT: It'll be admitted.

22 **[STATE'S EXHIBITS 201 ADMITTED]**

23 [Colloquy between Counsel]

24 MR. FATTIG: No other questions.

25 THE COURT: Cross?

1 MS. NGUYEN: Yes.

2 Does anyone need a break?

3 UNIDENTIFIED SPEAKER: Yes.

4 MS. NGUYEN: Just making sure.

5 MS. THOMSON: Rochelle, you got a yes.

6 UNIDENTIFIED SPEAKER: Yes.

7 MS. NGUYEN: Oh you did get a yes.

8 THE COURT: The jury need a break? Somebody does. All right. We'll take
9 a five-minute recess. During the recess you're admonished not to talk or converse
10 among yourselves or with anyone else on any subject connected with the trial. Or
11 read or watch or listen to any report of or commentary on the trial or anyone who
12 has anything to do with the trial by any medium of information including, without
13 limitation, newspapers, television, the radio, or the internet. Or form or express an
14 opinion on any subject connected with the trial until the case is finally submitted to
15 you.

16 Take five minutes, please.

17 [Outside the presence of the jury]

18 THE COURT: You might as well send your other witnesses home, we're
19 not -- Megan?

20 MS. THOMSON: I'm sorry.

21 THE COURT: Send your other witnesses. We're not going to get done by
22 5:00.

23 [Recess taken at 4:22 p.m.]

24 [Trial resumed at 4:29 p.m.]

25 [In the presence of the jury]

1 THE MARSHAL: And be seated.

2 THE COURT: All right. I'd just remind you you're still under oath.

3 THE WITNESS: Yes, sir.

4 THE COURT: Go ahead.

5 **CROSS-EXAMINATION**

6 BY MS. NGUYEN:

7 Q When you arrived at the scene, was it already -- were things already
8 marked out for you?

9 A I believe some things were. Oftentimes the first officers on scene, if
10 they come across --

11 MS. NGUYEN: Your Honor, I'd stipulate to the presence of the jury. I'm
12 sorry.

13 THE COURT: Pardon?

14 MS. NGUYEN: Stipulate to the --

15 THE COURT: Oh, yes.

16 MS. NGUYEN: -- presence of the jury.

17 THE COURT: Sorry.

18 MS. NGUYEN: Sorry.

19 MR. FATTIG: Yes.

20 MS. NGUYEN: We have a juror standing. Are you okay?

21 THE COURT: It's okay.

22 MS. NGUYEN: Okay. Okay.

23 THE COURT: They all can stand.

24 MS. NGUYEN: Okay. I understand.

25 BY MS. NGUYEN:

1 Q I'm sorry. When you arrived at the scene, there were already officers
2 there, is that correct?

3 A Yes, ma'am.

4 Q Okay. And had the area been kind of, I guess, like quarantined off at
5 that point?

6 A Yes, ma'am.

7 Q Okay. And had cars been removed from the crime scene areas?

8 A I believe that there were police vehicles that were removed.

9 Q Okay.

10 A To my knowledge, yes.

11 Q Was there crime scene tape up, blocking off areas?

12 A Yes, ma'am.

13 Q Okay. Were there cones or certain areas of interest where other
14 officers had located things they thought might be of evidentiary value?

15 A I don't recall, but typically if -- on scenes such as this if an officer initially
16 comes across items like cartridge cases or cartridges, being that they're small and
17 sometimes hard to see, they'll mark them so that they don't get kicked, they don't get
18 moved. So they'll mark them for us so that nobody else disturbs them before we get
19 to our markings.

20 Q And this was an office-involved shooting so there were quite a few
21 police officers there, is that correct?

22 A Yes, ma'am.

23 Q And there were quite a few of you there, is that correct?

24 A Yes, ma'am.

25 Q There were four of you, is that correct?

1 A Yes, ma'am.

2 Q Okay. And prior to any of your -- I guess your team divvying of the
3 work, did you guys meet?

4 A Yes, ma'am.

5 Q Okay. And was there someone that was like supervising or directing or
6 delegating?

7 A We had both our director, Randy McLaughlin and my direct supervisor,
8 Shayla Joseph both on scene.

9 Q Okay. And that's unusual, is that correct?

10 A For this type of scene it's not unusual.

11 Q Okay. It's unusual for any other type of scene, is that correct?

12 A Yes. Oftentimes we're on scenes by ourselves without direct
13 supervision.

14 Q Okay. And as far as making a determination of what area you're going
15 to go and process, who makes that determination?

16 A It's collective -- it's usually a collective discussion between us. If
17 there's -- we usually split up. We'll have somebody that does photography and
18 report writing and then somebody that does diagram and evidence as I did in this
19 case. Usually it's just everybody -- we get together and decide who's going to what.
20 There's no particular rhyme or reason behind it.

21 Q Okay. In this case we looked at several photographs. Did you actually
22 photograph those or did someone else photograph those?

23 A CSA Stephanie Thi did the photography on this scene.

24 Q Okay. So you didn't do any photography on this particular scene?

25 A Only the photography back at the office on the items that I processed.

1 Q Okay. But at the scene, you did not do any of that photography?

2 A No, ma'am.

3 Q Okay. Were you working together with that other CSA?

4 A Yes, I was.

5 Q Okay. So you guys were working in tandem throughout the entire
6 scene?

7 A Yes, sir. Yes, ma'am.

8 Q Do you know what type of camera you used to process that scene?

9 A I don't know specifically what camera she had at the time. We change
10 from time to time. I don't know which model she had.

11 Q Okay. Do you know approximately how many megapixels are on the
12 cameras that you use?

13 A I don't -- again, I don't know which camera she was using and I don't
14 know -- I don't particular know the specifics.

15 Q The camera that you used when you processed things and took
16 photographs back at your --

17 A I don't know off the top --

18 Q -- base --

19 A -- of my head what it is.

20 Q You don't know? Okay. Who informed you of information or details
21 about the incident or what's been, you know, recovered at that time?

22 A So what happens when we -- when we all get there we'll all briefed by
23 the officers on scene. It's usually sergeants or lieutenants. We'll get together and
24 gather information. They'll present to us, as well as the investigators, the detectives,
25 that are also arriving later after the initial officers.

1 Q Okay. Was there any one particular person or were there multiple
2 people that were directing you in different places?

3 A I don't recall -- usually it's one specific person that gives the briefing. I
4 don't recall the name of the officer that gave the briefing.

5 Q in this case we saw some pictures that you did with a perspective view.
6 I think that's what you called it?

7 A Yes, ma'am.

8 Q Did you meet with Officer McNabb to -- in order to gain his perspective?

9 A I did not -- we did not meet with Officer McNabb directly. We were
10 given that information by the investigators on the scene.

11 Q Okay. So when you labeled Officer McNabb's perspective or suspect
12 perspective that was information that was given to you third hand, is that correct?

13 A Yes, ma'am.

14 Q Okay. You didn't ever speak with Officer McNabb?

15 A No, I did not.

16 Q you didn't view his body camera?

17 A Not that I recall.

18 Q Okay. Did you review any of the surveillance video that was recovered
19 from this crime --

20 A I did not.

21 Q -- scene?

22 A I did not.

23 Q Okay. And so this was just given to you third hand, not through the
24 particular officer, is that correct?

25 A Yes, ma'am.

1 Q Okay. Is it possible it was given to you even more far removed from
2 that?

3 A No. I believe we were -- when we're briefed on it by the investigators.

4 Q Okay. When you were determining the perspective for Officer McNabb,
5 specifically how you had the paper bag place behind the patrol car door open --

6 A Yes.

7 Q -- that area right there, did you determine how tall Officer McNabb was
8 in determining where you would take those pictures from?

9 A Yes. We try to take a -- make it at least a rough estimate of the height.
10 That's why we used the tripod as opposed to just standing or setting the camera on
11 something. We set it to a height that was at least, you know, and estimate of his
12 height --

13 Q And did you --

14 A -- from the information --

15 Q -- know how tall Officer McNabb was?

16 A I don't recall what that information was.

17 Q Okay. Is that something that you set up the tripod with those kind of
18 measurements in mind?

19 A I did not personally set up the tripod. That would have been -- again,
20 Stephanie was doing the photography, so she would have set up her tripod.

21 Q Okay. So those perspective photos you did not take?

22 A No, ma'am.

23 Q Okay. And you did not set up?

24 A No, ma'am.

25 Q And you did not have any input as to the height of the tripod?

1 A I may have assisted her. I don't remember having any direct
2 involvement in the photography.

3 Q Do you remember speaking with the investigators or detectives on the
4 scene about Officer McNabb's height?

5 A I don't recall specifically, no.

6 Q With respect to the perspective photo that was taken over behind like a
7 fence on that corner, how did you obtain that information?

8 A Again, it was from the investigators.

9 Q Okay. So there was no reviewing of any kind of body cameras?

10 A I believe that they had prior to, but no, I did not.

11 Q Okay. But you did not -- you said you believe. Did they tell you that
12 they had?

13 A Yes, ma'am.

14 Q But you don't remember who told you that?

15 A No, ma'am.

16 Q And it's fair to say there were multiple people giving you information?

17 A Yes, ma'am.

18 Q And was this kind of like an evolving process, as information came you
19 would be given more information?

20 A Yes.

21 Q Okay. When you -- let me get that --

22 [Colloquy between Counsel]

23 BY MS. NGUYEN:

24 Q This is the crime scene diagram that we had talked about before.

25 A Yes, ma'am.

1 Q And this was the Dodge Intrepid, is that correct?

2 A Yes.

3 Q Okay. And you have indicated that 11, 12, and 10 that there were three
4 .45 cartridges, is that correct?

5 A Yes.

6 Q And you impounded those, is that correct?

7 A Yes, I did.

8 Q And those were not expended from a firearm, is that correct?

9 A No, ma'am, they were not fired.

10 Q They had not been used.

11 A No.

12 Q Okay. So in this scene, I'm assuming that this area was all thoroughly
13 searched?

14 A Yes, ma'am.

15 Q Okay. And these items right here, 10, 11, and 12, did you locate those
16 items or were they previously marked when you arrived?

17 A It was a group -- the search was a group effort between all of us. I don't
18 recall which ones I specifically came across. But it was -- it would be a group effort
19 and they'd be marked.

20 Q Okay. So a group effort, is that amongst all the CSAs or the CSAs and
21 the officers or --

22 A Once we arrived, it's -- the search is on -- is our responsibility. Like I
23 said previously the officers -- the initial officers on scene, they may not be searching
24 for things but sometimes they'll see items and they'll mark them with a cone or
25 something so that other people know they're there and it doesn't get disturbed. But

1 beyond that yes, the search it conducted by us.

2 Q Okay. So if you're informed that this is a general area that shots were
3 fired from, this is an area you would concentrate your search on, is that correct?

4 A Yes, ma'am.

5 Q Okay. Do you have any special technique or is it just kind of walking
6 and looking around or do you have like a special technique to make sure you cover
7 all the area?

8 A We usually just do it as a group, but usually we'll walk in straight lines in
9 multiple directions, just making sure we cove the whole area. Oftentimes I might
10 search an area and then have another CSA come in and search the same area just
11 to make sure, you know, maybe they catch something that I didn't see. Obviously
12 these are small items so we do pay a lot of attention and check and double-check
13 the area to make sure we didn't miss anything.

14 Q And you knew that off -- like shots had fired in this area, is that correct?

15 A Yes, ma'am.

16 Q Okay. So you knew that it was extra important to collect any forensic
17 evidence that would -- could be used, is that correct?

18 A Yes.

19 Q Is it fair to say that that's kind of what you were looking for specifically,
20 in this area, is anything to do with firearms?

21 A Yes, ma'am.

22 Q Okay. Did you find any -- with the exception of the 9 mm cartridge
23 cases, did you find any .45 cartridge cases?

24 A No, ma'am.

25 Q Okay. Did you find any 25 mm cartridge cases?

1 A No, ma'am.

2 Q Okay. And the big gun, do you remember what the caliber of that one
3 was?

4 A I believe it was 7.62 by 35, if I remember correctly.

5 Q And did you find any of those?

6 A No, ma'am.

7 Q Did you find any bullets in this area that were like this, just the
8 cartridges, not the expended cartridge cases?

9 A No. Just the cartridges, ma'am.

10 Q Just the cartridges. And just for those .45s, is that correct?

11 A Yes, ma'am.

12 Q Did you look anywhere else? Did you look down -- further down on
13 Dolly closer to Tolvar?

14 A Yes, ma'am. We would -- we would have searched the whole area in
15 north and south and east and west.

16 Q Okay. And this was an important case, is that correct?

17 A Yes, ma'am.

18 Q Okay. Is it possible you missed any of those things?

19 A I wouldn't say that it's impossible. Like I said, a thorough search was
20 conducted. One issue with firearms evidence, they're just small. Bullets travel long
21 distances so sometimes we just -- they don't get found. I don't know what -- I can't
22 speak for exactly what cars came and went before my arrival. But no -- I mean, to
23 the best of our ability the area was thoroughly searched.

24 Q Okay. So you did a thorough job?

25 A Yes, ma'am.

1 Q Okay. And it wasn't just you. There were multiple people double-
2 checking and going through this area --

3 A Yes, ma'am.

4 Q -- is that correct? Okay.

5 Over here you were able to recover several spent cartridge cases, is
6 that correct?

7 A Yes, ma'am.

8 Q Okay. And that was the three located here next to where you were
9 informed Officer McNabb was, is that correct?

10 A Yes, ma'am.

11 Q And you were also able to find the 1, 2, 3, 4, 5 over here, is that
12 correct?

13 A Yes, ma'am.

14 Q Okay. And those were all spent cartridge cases, is that correct?

15 A Yes, they were.

16 Q I'm going to put this other part of the map up here. This is down on El
17 Tovar, is that correct?

18 A Yes.

19 Q So this entire area, did you search this entire area down on Dolly?

20 A Yes, ma'am.

21 Q And perhaps other officers and other CSAs also backtracked around
22 this area, is that correct?

23 A Yes, ma'am.

24 Q And you didn't locate anything in this area, is that correct?

25 A No, we did not.

1 Q In this area down on El Tovar -- on this corner of Dolly and El Tovar, did
2 you see anything there?

3 A No, ma'am.

4 Q Okay. There was a vehicle, this truck -- this white truck?

5 A Yes, ma'am.

6 Q Were there any expended shell casings around this area?

7 A No, there were not.

8 Q Okay. Were you informed that possibly there was some sort of
9 shooting or discharging of firearm in this area?

10 A Not that we were given any indication of, but with the recovery of the
11 evidence that was under the truck, we did search the area.

12 Q Okay. And you didn't locate anything in that area?

13 A No, ma'am.

14 Q Okay. And the gun that was recovered here was a Colt, is that correct?

15 A Yes, ma'am.

16 Q And you indicated there were not bullets in that Colt when you
17 recovered it.

18 A No, there were not.

19 Q Okay. There were none loaded in the -- there was nothing in that
20 firearm at all?

21 A No, ma'am.

22 Q Okay. We saw those boxes with all the firearms and you had indicated
23 in the picture that several of the guns were found either wrapped in a white shirt or
24 sheet or black bag, is that correct?

25 A Yes, ma'am.

1 Q What happened to those things?

2 A Those items were left -- we went through the -- the shirt was left -- there
3 was no direct evidentiary value to the shirt, as was the bag. The bag had other
4 items. We searched through the bag, impounded several items, including the
5 firearm.

6 Q Okay. So you believe that was a shirt?

7 A To the best of my recollection, yes.

8 Q Okay. And it was a white shirt?

9 A Yes.

10 Q And you didn't believe it had any evidentiary value?

11 A Not at the time, no.

12 Q Okay. And the black bag, you didn't believe that had any evidentiary
13 value?

14 A Not the bag itself, no.

15 Q If there's clothing that's collected from a suspect or even the officer,
16 would that be collected on the scene as well?

17 A Not at the scene, no.

18 Q Okay. And you said that the -- there was no ammunition in the -- I'm
19 just going to call it the big gun?

20 A Yes, ma'am.

21 Q Okay. And the magazine with the 30 or so bullets that was located in a
22 separate area from the large gun, is that correct?

23 A Yes, ma'am.

24 Q When you go out to a scene you have to -- it's your discretion on
25 whether or not you're going to collect DNA or you're going to collect fingerprints, isn't

1 that correct?

2 A Yes, ma'am, depending on the item.

3 Q Okay. And you use your training and experience to determine whether
4 or not fingerprints are more likely to produce positive results as opposed to DNA?

5 A Yes, ma'am.

6 Q Okay. So for example, if you had something like a glass -- like a glass
7 window --

8 A Uh-huh.

9 Q -- it's probably fingerprints would be more -- would be able to be
10 collected easier on that surface, is that correct?

11 A Yes, ma'am.

12 Q Okay. And I think you indicated on a gun, sometimes it has like a
13 pebbly surface, so collecting fingerprints sometimes is more difficult from that
14 location?

15 A Yes, ma'am. That's why we swab -- like on a gun particularly -- guns
16 normally have textures surfaces and smoother surfaces and that's why we'll swab
17 the textured surfaces and then process -- fingerprint process the firearms with a
18 concentration in the smooth areas.

19 Q And it's true that you can't fingerprints DNA the same area, is that
20 correct?

21 A No, ma'am.

22 Q Because if you were to swab the area you might destroy any
23 fingerprints evidence, is that correct?

24 A Yes, ma'am.

25 Q By either smearing it or erasing it away or anything that --

1 A Yes, ma'am.

2 Q -- in your collection, is that correct?

3 A Yes, it is.

4 Q And in traditional -- I guess I'll call it traditional fingerprint collection, you

5 wouldn't be able to collect DNA after doing fingerprint if you used a dust and you

6 used a brush that had been touched on other like items --

7 A Yes.

8 Q -- would it be contaminated at that time as well?

9 A It would be, yes.

10 Q Okay. And in this case you didn't use the fingerprint dust and tape.

11 You used a different technique, is that correct?

12 A Yes, ma'am.

13 Q Would it have the same problems in destroying any possible DNA that

14 would be on that like area?

15 A It could possibly destroy the DNA. It's not a contamination issue like it

16 would be with the fingerprint powder and brush. It's a chemical process that's

17 applied directly from fresh chemical from a bottle that's been unused and a fuming

18 technique that would not contaminate. But yes, the act of using chemicals could

19 potentially corrupt the DNA.

20 Q Okay. In this case you did swab the firearms?

21 A Yes, I did.

22 Q And did you do that on all three of them?

23 A Yes, I did.

24 Q And did you fingerprint all three of them?

25 A Yes, I did.

1 Q And did you do those in different areas?

2 A We use clean areas -- clean paper. The paper you see -- the paper
3 bags or --

4 Q I'm not sorry. I'm not talking about clean area, like --

5 A Oh, I'm sorry.

6 Q -- your working surface. The area that you swabbed, you did that first,
7 is that correct?

8 A Yes, ma'am.

9 Q Did then -- you then try to fingerprints that same area you swabbed?

10 A Oh, no, ma'am.

11 Q Okay.

12 A The -- now -- like I said, the chemical process is -- yes, the entire gun
13 was treated with the chemicals, so I guess in theory those areas that were swabbed
14 were essentially processed for prints, but we had -- it's more likely to recover DNA
15 from those areas, so that's why they were swabbed first.

16 Q And areas where potentially multiple people touched, it's difficult to
17 collect forensic information like that, is that correct?

18 A It could be. I don't know the specifics of what was found on the --

19 Q Let's say you had a smooth surface like the door over here -- like the
20 metal part of the door.

21 A Yes, ma'am.

22 Q That's an area that arguably lots of people touch when they're walking
23 out, is that correct?

24 A Yes, ma'am.

25 Q Would that be -- even the surface may be an easy area to lift a print, it

1 might be difficult because so many people touch that area?

2 A Yes, ma'am. Possibly even more difficult. The -- our DNA analyst
3 could probably answer that question with their experience better than I could.

4 Q Okay. But you're aware of some of that because you're the one
5 collecting the information for them to analyze, is that correct?

6 A Yes, ma'am.

7 Q So you may not have all the answers that -- but you're familiar with
8 that --

9 A Yes.

10 Q -- is that correct?

11 A Yes.

12 Q When we talked about the trajectory and the markings that you found
13 on the car --

14 A Yes, ma'am.

15 Q -- those markings you said that it was your opinion that four different
16 bullets had hit those areas, is that correct?

17 A Yes, ma'am, from what we could tell.

18 Q Okay. There's no way for you to -- you have some training, obviously,
19 in trajectory, is that correct?

20 A Yes. Yes, ma'am, I do.

21 Q Okay. And you've done that, you said, at least dozens of times?

22 A Yes.

23 Q In real life and also in training, is that correct?

24 A Yes, ma'am.

25 Q There's nothing about that study that is able to date the freshness of

1 those --

2 A No, ma'am.

3 Q -- those things, is that correct?

4 A That's correct.

5 Q So you don't know if those marks were made that night or two months

6 ago?

7 A I do not know.

8 Q And that's the same thing with DNA and fingerprints, is that correct?

9 A Yes, ma'am.

10 Q Okay. So someone could touch something and how long could DNA

11 stay on an item?

12 A DNA can potentially stay on an item for a long period of time if it's -- if

13 it's in a protected area, if it's not handled, if it's not exposed to heat or the elements,

14 it could -- DNA could potentially last quite a long time.

15 Q And you have no way of dating that DNA, is that correct?

16 A No, ma'am.

17 Q Okay. We don't have any magical way, like in the movies, where we

18 can carbon date DNA on things, is that correct?

19 A No, ma'am.

20 Q Not at this time?

21 A Not at this time.

22 Q Okay. And it's the same thing for fingerprints?

23 A Yes.

24 Q You can't date a fingerprint?

25 A No, ma'am.

1 Q And can fingerprints last for a long time?

2 A Yes, they can.

3 Q Okay. Do you know approximately how long?

4 A I don't exactly know.

5 MS. NGUYEN: Court's indulgence, just for a moment.

6 BY MS. NGUYEN:

7 Q I'm going to direct your attention, one more thing, to the -- I say one
8 more thing, but I probably have more to say. This diagram that you created.

9 A Yes, ma'am.

10 Q You had indicated that 11 and 12 were .45 or -- .45 caliber of
11 cartridges, is that correct?

12 A Yes, they were.

13 Q Unspent cartridges?

14 A Yes.

15 Q Okay. And this 10 was also a .45 but it was a different manufacturer, is
16 that correct?

17 A Yes, ma'am.

18 Q Okay. There are more than one company that makes ammunition, is
19 that correct?

20 A Yes, ma'am.

21 MS. NGUYEN: Court's indulgence, just for a moment.

22 Nothing further.

23 **REDIRECT EXAMINATION**

24 BY MR. FATTIG:

25 Q Going back to Items 10, 11, and 12 on State's 172. The three .45

1 caliber cartridges. What you're saying, Mr. Albert is -- if I understand you right, is
2 these were unfired, correct?

3 A Yes, sir.

4 Q Counsel at one point indicated that they were not expended from a
5 firearm, quote, unquote. You don't know how they got onto the ground, correct?

6 A no, sir.

7 Q You know that they were not fired?

8 A Yes, sir.

9 Q Because they're in there, they're intact?

10 A Yes, sir.

11 Q You would agree with me that cartridges are pretty small?

12 A Yes, sir.

13 Q Depending on the ammunition?

14 A Yes, sir.

15 Q Cartridge casings are even smaller?

16 A Yes, sir.

17 Q Again, depending on the ammunition?

18 A Yes, sir.

19 Q The casing is only part of the cartridge?

20 A Yes, sir.

21 Q The part that gets left behind when it's expended from a semi-automatic
22 weapon?

23 A Yes, sir.

24 Q Ms. Nguyen was asking you about when you arrived and searching that
25 area. You obviously searched it as well as you could, correct?

1 A Yes, sir.

2 Q You arrived a little bit later in the evening, fair to say?

3 A Yes, sir. I believe it was about 12:00.

4 Q And you made a comment, you couldn't speak to the cars that arrived
5 before your arrival and where they drove.

6 A Yes, sir.

7 Q Is there a significance with cars being in the area where cartridge
8 casings may be?

9 A Yes, sir. With the size of them, it would not be -- much like a rock could
10 get stuck in the tread of a tire, it would not be unexplainable to expect a cartridge
11 case could get stuck in the tire of a vehicle.

12 Q In a tire?

13 A Yes, sir.

14 Q It could also be kicked or pushed somewhere?

15 A Yes, sir.

16 Q By cars, vehicles driving through the area?

17 A Yes, sir. That's why -- as I explained earlier, when our officers do come
18 across such evidence they'll mark it usually with cones so that once it's found it
19 doesn't kicked or it doesn't get moved, because yes, it would not be -- you didn't see
20 it there, you didn't know that it was there it would not be difficult.

21 Q Yeah. Going back to the Dodge Intrepid, there were no bullet holes in
22 the car, correct?

23 A The only hole would have been C1.

24 Q Okay. And C1 would have been in the plastic along the side of the car?

25 A Yes.

1 Q The driver's side? Showing you 160. Zoom out. C1 is here?
2 A Yes, sir.
3 Q SO this is the hole you're talking about?
4 A Yes.
5 Q And that hole corresponded with C2?
6 A Yes, sir.
7 Q And C2 is not a hold, it's an indentation, is that fair to say?
8 A Yes, sir.
9 Q And you believe based upon the trajectory rod that these all match the
10 same bullet?
11 A Yes, sir.
12 Q Okay. So there was no holes into the car?
13 A No, sir.
14 Q No bullets found in the car?
15 A No.
16 Q Were there any bullet strikes found in the area overall?
17 A No, sir.
18 Q And I'm talking about the desert area, the area north on Carey --
19 A Not we found --
20 Q -- anything like that?
21 A No.
22 Q It was searched.
23 A Yes, sir.
24 MR. FATTIG: no other questions. Thank you.
25 MS. NGUYEN: Just a couple.

1 **RECROSS-EXAMINATION**

2 BY MS. NGUYEN:

3 Q You did locate all of Officer McNabb's cartridge cases, is that correct?

4 A I -- we recovered eight cartridge cases.

5 Q Okay. Were you aware or were you informed of how many times he
6 believed he fired his gun?

7 A I would have potentially gotten that information after the fact, but I don't
8 recall what I was told.

9 Q Okay. But you did recover eight, is that correct?

10 A Yes, ma'am.

11 Q Okay. And you said that you couldn't -- you didn't know, you know, if
12 the scene had been disrupted, is that correct?

13 A No, ma'am. All I could speak to is the condition when I arrived.

14 Q Okay. And so that goes for any items, is that correct?

15 A Yes, ma'am.

16 Q Okay. Whether it be the vest or any other items of evidentiary value, is
17 that correct?

18 A Yes, ma'am.

19 Q Because there were people coming in and out of this area, many
20 people may have had access to these items, is that correct?

21 A Yes, ma'am.

22 Q Either intentionally or unintentionally?

23 A Yes.

24 Q It was dark outside, is that correct?

25 A Yes, it was.

1 Q Were you like your colleague who was there until the morning hours?
2 A Yes, ma'am.
3 Q Okay. When the sun came out?
4 A Yes.
5 Q Okay. So when the sun came out, did you have a better perspective to
6 be able to process that scene as well?
7 A Yes, ma'am. Oftentimes, in a situation like this, we will re-search the
8 area once the sun comes up because -- I mean, most of us I think would agree that
9 it would be easier to search an area when it's light as opposed to in the middle of
10 the night. So, yes, we did re-search the area.
11 Q Okay. So when it was daylight you did re-search the area to see if you
12 could find any other evidence, is that correct?
13 A Yes, ma'am.
14 Q And you weren't able to find anything other than what you
15 documented --
16 A No, we did not.
17 Q -- in your diagrams and in your reports, is that correct?
18 A Correct.
19 MS. NGUYEN: Nothing further.
20 MR. FATTIG: Nothing further.
21 THE COURT: The jury have any questions of this witness?
22 [Pause in proceedings while the Court and Counsel discuss jury questions]
23 **EXAMINATION BY THE COURT (JURY QUESTIONS)**
24 BY THE COURT:
25 Q Was the handgun found under the truck found in a jammed condition?

A It was -- to my knowledge it was not jammed. The slide was locked back, but it was not jammed.

THE COURT: State, questions?

MR. FATTIG: No follow-up.

MS. NGUYEN: I don't have any follow-up.

BY THE COURT:

Q Does the vest have any fingerprints or DNA?

A Not that I'm aware of. I know that the box was opened by our forensic lab. I don't know what analysis was done on it.

Q Any gun --

THE COURT: Oh, State?

FOLLOW-UP EXAMINATION

BY MR. FATTIG:

Q Did you do any collection from the vest?

A No, sir.

Q That was somebody else?

A If any was done it would have been done by somebody else, yes.

Q Okay.

MS. NGUYEN: Can I just ask a question?

THE COURT: Defense?

FOLLOW-UP EXAMINATION

BY MS. NGUYEN:

Q You were the first person to collect that, is that correct?

A Yes, ma'am.

Q If you had wanted to, you could have collected DNA from that --

1 A Yes.

2 Q -- is that correct?

3 A Yes, ma'am. Oftentimes if it's a surface like that that's more -- much
4 more conducive to DNA than it would be for fingerprints, we'll just leave the item
5 alone. Based on conversations with our DNA analyst in the forensic lab, they would
6 rather take the swabs themselves. Whereas obviously with a firearm we're
7 fingerprinting it as well, so we have to swab it first, before it can be fingerprinted.

8 Q Okay. Thanks.

9 **EXAMINATION BY THE COURT (JURY QUESTIONS)**

10 BY THE COURT:

11 Q All right. And any gun powder residue on Defendant's left hand?

12 A I don't know if a gunshot residue test was collected or not. It was not
13 collected by me. IF it was --

14 Q You didn't collect it?

15 A NO, sir.

16 THE COURT: State?

17 MR. FATTIG: No follow-up.

18 THE COURT: Defense?

19 MS. NGUYEN: No follow-up.

20 BY THE COURT:

21 Q Did ballistics match prints to Defendant?

22 A I do not know. That would be a question for our -- the folks from our
23 forensic lab.

24 THE COURT: State?

25 MR. FATTIG: No follow-up.

1 MS. NGUYEN: No follow-up.

2 THE COURT: All right. Thank you. You're free to go.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Ladies and gentlemen, we're going to recess until tomorrow.

5 During the recess you're admonished not to talk or converse among
6 yourselves or with anyone else on any subject connected with this trial. Or read or
7 watch or listen to any report of or commentary on the trial or any person connected
8 with this trial by any medium of information including, without limitation, newspapers,
9 television, the radio, or the internet. Or form or express an opinion on any subject
10 connected with the trial until the case is finally submitted to you. Remember, no
11 social media.

12 See you in the morning. Tom will talk to you out in the hall about a
13 time.

14 [Outside the presence of the jury]

15 THE COURT: All right. The jury is gone. The doors are closed.

16 All right. Tomorrow morning, 9:00. Make sure the jury instructions are
17 done. I have law and motion, but I should be done.

18 MS. NGUYEN: 10:00.

19 THE COURT: No. 9:00 for jury instructions.

20 MS. NGUYEN: Oh yeah. You're right. 9:00 for jury instructions.

21 THE CORRECTIONS OFFICER: So 9:00 a.m. you want him back?

22 THE COURT: Yeah.

23 MR. FATTIG: Witnesses --

24 THE COURT: Well I -- with the understanding you're going to have to take my
25 prisoners back. But I need him back here at 9:00 if you can get him here. But as

1 soon as you guys can get him here.

2 MR. FATTIG: Witnesses at 10:00.

3 THE COURT: Uh-huh.

4 [Evening recess at 5:05 p.m.]

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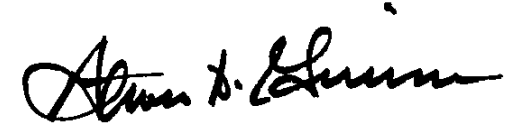
21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

24

25



Brittany Mangelson
Independent Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 4, 2015

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 3

VOLUME III

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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WEDNESDAY, NOVEMBER 4, 2015 AT 9:32 A.M.

[Outside the presence of the jury]

THE COURT: All right. You guys have looked at these. I got one set.

MS. THOMSON: Yes, Your Honor, we have.

MS. NGUYEN: Yes.

THE COURT: You're objecting to something.

MS. NGUYEN: Yes. Would you like me --

MS. THOMSON: She's objecting to flight and the prior inconsistent statement instruction.

MS. NGUYEN: And then we have some other objections that I would like to argue as well.

MR. FATTIG: Yeah, and other little things of witnesses that --

THE COURT: All right.

MR. FATTIG: -- we're going to deal with.

MS. NGUYEN: I'll waive his presence if you want to do it right now.

THE COURT: Okay.

MR. FATTIG: Well, only the instructions, right?

THE COURT: Just the instructions.

MR. FATTIG: Yeah.

MS. NGUYEN: Yes.

MR. FATTIG: And then we'll do the other little things when he's here.

THE COURT: All right. Instruction Number 1, Then members of the jury. The introduction.

Instruction 2, If in these instructions.

1 And I will give you copies of this. We'll have Alan make 13, 14, 15, 16,
2 17.

3 MS. NGUYEN: Do they read over them? Do they have them when we're
4 going --

5 THE COURT: They have them.

6 MS. NGUYEN: Okay.

7 THE COURT: I'll read them to them.

8 All right. Number 2, If in these instructions.

9 Number 3 is the information or indictment.

10 Now if I have a -- since it's been such a short trial, do you want me to
11 read these to them or do you guys waive me reading that Instruction 3.

12 MS. NGUYEN: Wait, what's on Instruction 3?

13 THE COURT: That's the indictment.

14 MR. FATTIG: Listing all the charges.

15 THE COURT: Since they just got it read to them. I mean --

16 MS. NGUYEN: Yeah, I don't have a problem with that. Well -- no, I don't
17 have a problem with that.

18 THE COURT: All right. Number 4, To constitute the crime charged.

19 Number 5, The Defendant is presumed innocent.

20 Number 6, You are here to determine.

21 Number 7, The evidence which you are to consider.

22 Number 8, The credibility or believability.

23 Number 9, A witness who has special, knowledge, skill, experience.

24 Number 10, Attempt murder is.

25 Number 11, Malice aforethought as used.

1 And 12, It is not necessary to prove premeditation.
2 Number 13, The elements of an attempt to commit a crime are.
3 14, If you find the Defendant guilty of attempt murder.
4 15, Deadly weapon.
5 16, If you find beyond a reasonable doubt.
6 17, A person who is in or under a structure.
7 18, It shall be unlawful within the city limits.
8 19, It is unlawful and willfully discharge a firearm.
9 20, Assault means.
10 21, You are instructed that.
11 22, If you find beyond a reasonable doubt.
12 23, A driver of a motor vehicle.
13 24, A person in any case.
14 25, A person shall not knowingly possess.
15 26, The law recognizes two kinds of possession.
16 27, The flight of a person. Now that's got cites on it.

17 MS. NGUYEN: That's correct, Your Honor, and that's the one that we would
18 object to.

19 THE COURT: All right. My understanding of the current status of law that
20 this -- the flight of a person immediately after commission of a crime, or after he is
21 accused of a crime, is no sufficient in itself to establish his guilt, but is a fact which, if
22 proved, may be considered by you in light of all other facts in deciding the question
23 of his guilt or innocence. Whether or not the evidence of flight shows a
24 consciousness of guilt and the significance to be attached matter -- are matters for
25 your deliberation.

1 Tom, get Alan in here for me.

2 Put on record your objection.

3 MS. NGUYEN: And Your Honor, I would just say that I don't think that there
4 has been anything presented that show consciousness of guilt. A lot of times when
5 you see these flight instructions you see someone who is actually trying to flee the
6 area. This -- in this case, even if you believe the State's argument, one -- if you
7 believe the State's argument that there is -- he engaged in some sort of shootout on
8 the street, I would say that that's evidence that he wasn't fleeing, he was actually
9 there and not retreating.

10 Second of all, a lot times you'll see this when someone retreats to
11 another jurisdiction. They go to Mexico, the go to another state, and they're actively
12 hiding and concealing themselves for long periods of time and that's evidence in
13 consciousness of guilt. In this case, I think from start to finish this whole thing
14 occurred in a seven-minute timespan. And that's from the time that that body
15 camera came to the time that they apprehended a suspect in this case. And with
16 that I'd submit.

17 THE COURT: Do you want to put anything on record?

18 MS. THOMSON: Just that the definition of flight includes no timeline. Clearly
19 here we have flight over and over and over again. The fact that he's found hiding in
20 a dark backyard and does not submit to commands, I think speaks significantly to
21 his intent to flee.

22 THE COURT: And he left the property under the truck; the bullet-proof vest
23 and the gun. I'm going to give the flight instruction over the objection -- do we have
24 a clean --

25 MS. NGUYEN: Can I --

1 THE COURT: Clean copy?

2 MS. THOMSON: I will e-mail a new full set that has everything clean.

3 THE COURT: I'm numbering these.

4 MS. THOMSON: Then I won't do that. I'll e-mail --

5 THE COURT: Just --

6 MS. THOMSON: -- a new full set --

7 MS. NGUYEN: Maybe Alan could delete it.

8 MS. THOMSON: -- that has that clean.

9 THE COURT: Can you delete those?

10 THE JUDICIAL EXECUTIVE ASSISTANT: Yeah.

11 THE COURT: All right. Alan will delete.

12 MS. NGUYEN: And Your Honor, if I could just make one more brief record --

13 THE COURT: All right.

14 MS. NGUYEN: -- on that? I also think that this particular instruction and the

15 case law that supports it actually shifts the burden. And I don't believe that's

16 something that's actually been addressed by the Nevada Supreme Court. So I think

17 it is appropriate for the Court to make a ruling on that.

18 THE COURT: All right.

19 MS. NGUYEN: I think when you -- this instruction essentially with the

20 evidence of guilt, I think it burden shifts.

21 THE COURT: All right. Thank you.

22 [Colloquy between the Court and the Clerk]

23 THE COURT: All right. I'm going to give that instruction over the objection of

24 the Defense.

25 28, Mere presence.

1 29, If necessary to prevent escape.

2 30, You have heard evidence of prior inconsistent statements. You
3 may consider those for purposes of impeachment or as substantive evidence, at
4 your discretion.

5 MS. NGUYEN: And Your Honor, this is one where I'm also objecting to.

6 MS. THOMSON: And Your Honor, it's our position that it's supported by the
7 statute, in addition to case law, specifically, *Levi v. State*, which was a '79 case.
8 And *Atkins v. State*, which later confirmed the holding in --

9 THE COURT: Wait. She hasn't argued yet her --

10 MS. THOMSON: Oh, sorry.

11 THE COURT: Put your object -- just --

12 MS. NGUYEN: Your Honor, this indicates that we've heard evidence of
13 prior inconsistent statements. It's my understanding that Detective Jaeger -- what's
14 his -- is that his name?

15 MS. THOMSON: There is a Detective Jaeger, but Detective Hodson is the
16 one who's on it.

17 MS. NGUYEN: Hodson, okay. That there will be a witness that comes in to
18 testify, perhaps to lay the foundation for this prior inconsistent statement. I would
19 argue that we don't have that at this point. There hasn't been any kind of evidence
20 of any prior inconsistent statements.

21 In addition, I think while having that evidence admitted, you know, as
22 perhaps appropriate I think that the credibility determination instruction and those
23 things kind of cover this. I think when you say you've evidence of prior inconsistent
24 statements, it's a forgone conclusion that that's exactly what they heard. And I think
25 that's a determination and that's in the province of the jury to determine whether or

1 not those statements are inconsistent.

2 So, the legal rulings as far as, you know, determining whether or not
3 those statements are even admissible I think is in the province of the Court. But I
4 think determinations of whether or not those are actually inconsistent is up to the
5 jury. And I think this instruction instructs the jury that they are inconsistent. And I
6 think that's up to their determination to determine whether or not the statements are
7 in fact inconsistent.

8 THE COURT: Okay. Now finish your argument.

9 MS. THOMSON: Sorry, Judge. While we haven't yet had the evidence of the
10 prior inconsistent statement, the detective is here, it is going to come in to -- I mean,
11 obviously the jury's going to be aware that they've heard two different versions of
12 the same fact associated to one witness that's not a shock that it is a prior
13 inconsistent statement. The case law is hear that that may be considered
14 substantively.

15 And what we have on the instruction credibility talks about
16 impeachment but it doesn't discuss the fact that they may consider that prior
17 statement substantively instead of just for purposes of impeachment and they have
18 a right to know what they can consider.

19 THE COURT: Well we sort of had a prior inconsistent because she said no, I
20 didn't say anything about the bullet-proof vest but you had eluded to it.

21 MS. THOMSON: But that information hasn't come in --

22 THE COURT: Hasn't come in yet.

23 MS. THOMSON: -- yet, but it will.

24 THE COURT: All right. I'm going to give that with the understanding I'll pull it
25 if they don't get that in, over your objection.

1 MS. NGUYEN: Okay.

2 THE COURT: 31, It is the constitutional of a Defendant not to be compelled
3 to testify. Is it your anticipation he's not going to or do you know?

4 MS. NGUYEN: At this time I don't believe he is.

5 THE COURT: All right. 32, Although you are to consider.

6 33, In your deliberation.

7 34, When you retire.

8 35, Playback.

9 36 is then the signature line.

10 We'll have Lana make -- fix 27. With that understanding, State you're
11 familiar with Jury Instructions 1 through 36?

12 MS. THOMSON: Yes, Your Honor.

13 THE COURT: Do you have -- are you satisfied with them?

14 MS. THOMSON: Yes, Your Honor.

15 THE COURT: Do you have any more that you wish to offer the Court?

16 MS. THOMSON: No, Your Honor .

17 THE COURT: You've reviewed the verdict form?

18 MS. THOMSON: Yes, Your Honor.

19 THE COURT: You're satisfied with it?

20 MS. THOMSON: You have the version that has on Count 10, guilty of
21 discharge of firearm from or within a structure --

22 THE COURT: Yes.

23 MS. THOMSON: -- or vehicle, not of vehicle?

24 THE COURT: Or vehicle.

25 MS. THOMSON: Okay. I had made a typo, so I just wanted to make sure I

1 had the one that's proper.

2 THE COURT: All right.

3 MS. THOMSON: Perfect. Thank you.

4 THE COURT: All right. Defense, you're familiar with Jury Instructions 1
5 through 36.

6 MS. NGUYEN: that's correct.

7 THE COURT: Except for the objections that you already made, do you have
8 any further that you wish to supply?

9 MS. NGUYEN: No, Your Honor. And there were -- just for record, there were
10 changes that the State did accommodate on some of the instructions that we
11 previously included prior to submitting them to the Court.

12 THE COURT: So I'll make 13 -- and you've reviewed the verdict form?

13 MS. NGUYEN: I have. I do have some questions and concerns about the
14 verdict form.

15 THE COURT: Okay. What's that?

16 MS. NGUYEN: I know that it is unusual. I don't think it's been done before,
17 but I don't think there's any precedent that it can't be done. Because there are so
18 many different charges involving discharge of a firearm from within a structure or
19 vehicle and assault with a deadly weapon and they are pled with more specificity
20 within the charging document, I don't know if the Court would consider putting
21 something in there so we know the location to which the State is referring.

22 MS. THOMSON: I have no problem doing that--

23 MS. NGUYEN: For each one of those things.

24 MS. THOMSON: -- quickly and I --

25 THE COURT: Why don't you do that --

1 MS. THOMSON: -- can forward that to --

2 THE COURT: -- and supply that --

3 MS. THOMSON: It'll still be attached --

4 THE COURT: -- with the streets.

5 MS. THOMSON: -- to the instructions because separating it out is a hassle,
6 but it'll be the last pages.

7 THE COURT: Okay. That's fine.

8 MS. THOMSON: And it's going to come from my personal e-mail address,
9 which is absolutely preposterous, but it's the only one I know how to log in to on this
10 computer.

11 THE COURT: WE will publish it.

12 All right. I will Alan make 13, 14, 15, 16. Do we only need one copy for
13 Jill? Do you need -- okay.

14 MS. NGUYEN: Can I get two for my table --

15 THE COURT: 17, 18.

16 MS. NGUYEN: -- so I don't have to share?

17 THE COURT: Yeah.

18 MS. NGUYEN: Thank you.

19 THE COURT: Make 18 copies, please.

20 MS. NGUYEN: And then I have some objections to make on some stuff that's
21 coming in.

22 THE COURT: Okay.

23 MS. NGUYEN: So I don't know if you want to wait for my client to be here.

24 THE COURT: Yeah, we want to wait until he gets here. In fact, if you're
25 sending those, why don't you take the cites out of 27.

1 MS. THOMSON: I'm sorry?

2 THE COURT: Take the cites out of 27 --

3 MS. THOMSON: Okay.

4 THE COURT: -- if you're sending them over.

5 [Pause in proceedings]

6 THE MARSHAL: They're all here, Judge.

7 THE COURT: All right. We're ready? Are you guys ready?

8 MS. THOMSON: Yes, Your Honor.

9 THE COURT: All right. Okay. Bring the jury in, Tom.

10 MS. THOMSON: Are you go --

11 MS. NGUYEN: Oh, can we make the argument on these?

12 THE COURT: Oh, wait, wait. Yes. We settled Jury Instructions 1 through 36.

13 You looked at the verdict forms?

14 MS. NGUYEN: I did, I did.

15 THE COURT: And he's printing them --

16 MS. NGUYEN: that's correct.

17 THE COURT: -- and your client will have one and you'll have a copy.

18 MS. NGUYEN: Thank you, Your Honor.

19 Your Honor, it's my understanding the State intends to seek three

20 separate jail phone calls made by my client. And if I could just discuss --

21 THE COURT: Okay.

22 MS. NGUYEN: -- them? There's one jail call I'm going to -- it's referred to as

23 Jail Call Number 3.

24 MS. THOMSON: Rochelle, we don't have -- his aren't labeled. Will you just

25 put date and time.

1 MR. FATTIG: [Indiscernible].

2 MS. NGUYEN: Oh, I'm sorry. July 12th, 2014 at 8:43.

3 THE COURT: Now do we have to take -- to -- have you got them cleaned up,
4 so it doesn't say jail call?

5 MR. FATTIG: No, it's going to say CCDC, this is a recorded call. But
6 these -- all the calls are within a couple weeks of the arrest. None of them are
7 anywhere near the trial.

8 THE COURT: Okay.

9 MS. NGUYEN: These are calls -- obviously they're from the Clark County
10 Detention Center. One, I would say that they're prejudicial. It clearly indicates that
11 he is incarcerated.

12 THE COURT: All evidence is prejudicial.

13 MS. NGUYEN: I understand. I think that, you know, we go to such great
14 lengths to show that he is not incarcerated and not wearing things and then we play
15 a phone call that starts off, this is a phone call from the Clark County Detention
16 Center. But that aside, we did go through -- I think that they should be kept out in
17 their entirety and I'll get into that for each reason. But if they are allowed in, I know
18 that we were able to go through and redact the things that we both agreed shouldn't
19 be in there in there on some of these calls.

20 THE COURT: I wish when you redact you would take CCDC issues.

21 MR. FATTIG: My concern with that, Your Honor, is, you know --

22 THE COURT: I mean, they know he was arrested. They know it's going to be
23 a jail call. But we should take that out when we can. I don't know that it's
24 necessarily overly prejudicial because it's close in time, but in the future if you can
25 take it out, I would. We did that in that murder case.

1 MR. FATTIG: Yes. Sometimes some jurors then speculate well, why is the
2 government listening in on his calls? What's the basis here?

3 MS. NGUYEN: They listen in on calls.

4 MR. FATTIG: Well they do when you're an inmate and they have a right to,
5 but they need to know the context of that.

6 MS. NGUYEN: I think Snowden showed us they listen all the time. So,
7 anyway, that was a side note.

8 THE COURT: There's a building in Utah that listens to everything. And you
9 can't even get within 500 yards of that place.

10 MS. NGUYEN: Well I'm going to talk --

11 THE COURT: True story.

12 MS. NGUYEN: With -- specifically with this call I also have issues, pursuant
13 to NRS 48.045, I think character evidence is inadmissible. The reason that I think
14 that the character evidence in this particular call is inadmissible is this call centers
15 around a telephone call that Mr. Bacharach had with Eufrosia Nazaroff. She was a
16 witness that previously testified.

17 THE COURT: Right.

18 MS. NGUYEN: This obviously didn't come in through her testimony, but it
19 goes through and it talks about a truck. It talks about Mr. Bacharach's truck, it talks
20 about selling it. There's some insinuation that perhaps they're current on some sort
21 of payments. I think that this is an uncharged bad act. I think that it is not relevant.
22 I don't think it's appropriate. And I don't think this particular call and the contents of
23 this call should be admitted. We do have the transcripts here if the Court would like
24 to review those transcripts.

25 THE COURT: What --

1 MR. FATTIG: Your Honor --

2 THE COURT: Why do you -- what do you want them for?

3 MR. FATTIG: She never mentioned she didn't want the truck stuff. I don't
4 want it for the truck stuff.

5 THE COURT: What do you want it for?

6 MR. FATTIG: So we're willing to take that out.

7 THE COURT: What do you want it for?

8 MR. FATTIG: This particular call --

9 THE COURT: Let me see, Rochelle.

10 MR. FATTIG: They begin a conversation about testifying and they're referring
11 to the Grand Jury that occurred around the time of this call. The Grand Jury was
12 actually commenced two days after this call on July 14th of 2014 and they're talking
13 about --

14 THE COURT: Okay. Tell me what it starts with because --

15 MR. FATTIG: It starts on page 8, this conversation. The Defendant is
16 concerned that witnesses are subpoenaed to come testify against him. She's
17 commenting she's -- she has been subpoenaed as well as she makes some
18 statements regarding another female.

19 THE COURT: Okay. Where -- tell me where you're at?

20 MR. FATTIG: Page 8, the middle of the page. It says JB, being Joshua
21 Bacharach. Quote: I guess they served her a subpoena to come testify against me
22 too, I guess.

23 And then EN is Eufrasia Nazaroff. So it starts there and continues on
24 page 9, the Defendant --

25 THE COURT: Who is she talking -- who is he talking about is getting

1 subpoenaed?

2 MR. FATTIG: Well they're talking about Eufasia was subpoenaed, as well as
3 another female. And I believe they're talking about Marisala Tarango, who is the
4 Defendant's girlfriend/ex-girlfriend, depending on the day.

5 Page 9, he talks about it --

6 THE COURT: Okay, but --

7 MR. FATTIG: -- doesn't matter, you're not --

8 THE COURT: Okay, but -- oh, okay, you're going to tell me what the
9 relevance is. I -- the -- a part about an uncharged act on the truck I'm not real
10 concerned with.

11 MR. FATTIG: Okay.

12 THE COURT: And I'm going to overrule it. The relevance though, I want to
13 know what relevance this is.

14 MR. FATTIG: Well he talks about you're not supposed to testify against
15 nobody. That's on page 9.

16 And then she says: They can show that I let you use my car and all this
17 and that.

18 And he says: Yeah, well then guess what -- what that does?

19 What?

20 That means I'm -- you're incriminating me.

21 And then she says: Shut the fuck up. No, that means that you didn't
22 steal my car out of my fucking parking lot.

23 He says: I --

24 She says: Mother fucker.

25 He says: I don't know who had my car.

1 She says: You had my car you asshole.

2 He says: No, I didn't.

3 She says: You didn't have my car.

4 He said: Somebody -- I don't know. Somebody else must have been
5 driving it.

6 So it directly goes to the issue of who was in the car.

7 THE COURT: It appears to be relevant and over the objection of the
8 Defense, I'll allow that one in.

9 MR. FATTIG: DO you want us to redact the portion about the truck and the
10 earlier part of that call?

11 THE COURT: No, conversations need -- they -- it is what it is. I just don't
12 think you're going into the truck. You want the issue about the testimony. That's
13 fine.

14 MR. FATTIG: Correct. It's the latter portion of the call.

15 THE COURT: Right. Okay. What's the next one?

16 MS. NGUYEN: If we look at call dated 7/7/2014 at 10:10.

17 THE COURT: Okay. And why don't you want that in?

18 MS. NGUYEN: I'm going to direct you to the page and then I'll approach so
19 you can see it. If you go to page 8 and I'll approach.

20 THE COURT: Okay.

21 MS. NGUYEN: There's a section in there and I know the State wasn't aware
22 of who that individual was, but I think that kind of portrays kind of like this Bonnie
23 Polley as like some nefarious figure that we don't know who is coming and telling
24 the client certain things. He's just repeating something that was told to him. This
25 isn't any kind of admission, he's just repeating something that was told to him. And I

1 think the reason --

2 THE COURT: You know --

3 MS. NGUYEN: -- that I have issues with this --

4 THE COURT: you know who Bonnie Polley is.

5 MS. NGUYEN: I know who Bonnie Polley is.

6 THE COURT: Okay.

7 MS. NGUYEN: The State wasn't aware of who Bonnie Polley is?

8 THE COURT: They didn't?

9 MS. NGUYEN: I don't know if the detective knows who Bonnie Polley is.

10 MR. FATTIG: I'd never heard of her.

11 THE COURT: I'm sure the detectives do. She's the minister over in the jail.

12 MR. FATTIG: Yeah.

13 MS. NGUYEN: And so my point is, is I think just by itself the jury doesn't

14 know that person is and short of me having to now subpoena that person at the last

15 minute to come and testify as to who she is and those are --

16 THE COURT: No, we can tell them who she is.

17 MR. FATTIG: Well if the detective knows it, she could ask the detective.

18 MS. NGUYEN: And I'm fine doing it that way. Or if the State's willing to

19 stipulate that that's who that is instead of --

20 THE COURT: That's who it is.

21 MR. FATTIG: I would be willing to stipulate, but could -- maybe we could get

22 it in through the detective. I'll check with the detective.

23 MS. NGUYEN: Okay.

24 MR. FATTIG: Okay.

25 MS. THOMSON: I'll go tell him.

1 THE COURT: What -- okay. And what in this phone call makes it relevant,
2 because I'm taking your objection as relevance to all of the phone call.

3 MS. NGUYEN: That's correct.

4 MR. FATTIG: There's a number of points in this particular call, Your Honor,
5 so let me go through it.

6 THE COURT: When I -- say I got me some crack that probably --

7 MR. FATTIG: No, we're taking that out.

8 MS. NGUYEN: We redacted that.

9 MR. FATTIG: We've already taken that out.

10 THE COURT: Okay.

11 MR. FATTIG: There's several portions of this transcript that have been
12 removed via stipulation of all three transcripts.

13 THE COURT: Tell me then what's the relevance of this call?

14 MR. FATTIG: Page 5 of this one. This is a phone call to Marisala Tarango
15 who is the other female, the girlfriend of the Defendant.

16 THE COURT: All right. Page 5.

17 MR. FATTIG: Towards the bottom center there's some conversation about
18 what happens. She is commenting. He says: Oh, yeah, I love you. I can't believe
19 this shit's happening, but it is.

20 She says: I don't understand.

21 And then it goes -- this is Joshua Bacharach's words: It just happened
22 like real, real fast and that's all I got to say.

23 That's certainly a very accurate description. It goes to the issue that -- I
24 certainly view it as an admission that he is driving that car, because when we look at
25 the body camera video I would certainly agree that this happened very, very fast,

1 from the point in time when it began, to the point in time when he shot him -- at the
2 officer on the corner and then hid.

3 And then it kind of goes on from there. He makes some statements
4 about how he's never, ever coming home. He's got a lot of time to do. That's on
5 page 6. And it kind of --

6 MS. NGUYEN: You know what, we had already agreed to redact those
7 actually, Tim.

8 MR. FATTIG: I thought we were --

9 THE COURT: All right. Make sure you take out the bad stuff. I think it's
10 relevant when it talks about --

11 [Colloquy between Counsel]

12 THE COURT: Just make sure they're redacted the way that you guys have
13 agreed to. But it is relevant when he takes about it happened real, real, real fast.

14 MS. NGUYEN: And then --

15 THE COURT: If it's redacted and taken out any crimes or things like that,
16 then we need to make sure that -- I mean, if we have to do a jury instruction --

17 MS. THOMSON: Hi.

18 THE COURT: We have to do a jury instruction that says, you know, there's
19 been evidence of other uncharged misconduct that, you know, like drug usage
20 sometimes. I don't think it's come in on this case, but I've had other trials where we
21 say you can't use that against him as being a bad person.

22 MR. FATTIG: Yeah.

23 THE COURT: It just tells the whole story. So if we --

24 MR. FATTIG: No, that's fine.

25 THE COURT: -- have to, we'll do that.

1 MS. NGUYEN: And Your Honor, I don't know if for clarity I know that Tim is
2 kind of arguing some of this stuff but I had talked most of the redaction information
3 with Megan. So I don't know -- Megan, do you want --

4 MR. FATTIG: She --

5 MS. NGUYEN: -- to put on the record what we -- what was taken out?

6 MS. THOMSON: Sure.

7 MS. NGUYEN: Because it's not very much --

8 MS. THOMSON: Which one do you want me to start with?

9 MS. NGUYEN: Whatever one you want to start with.

10 THE COURT: Well there was one in there that I read that talked about getting
11 some crack. That probably should be redacted.

12 MR. FATTIG: We definitely redacted that.

13 MS. THOMSON: That was taken out. So Track 3, which is the July 12th didn't
14 have any redactions. So everything stayed in because that was the one that didn't
15 have anything that came out.

16 MS. NGUYEN: Okay.

17 MS. THOMSON: July 7th of 2014 on -- we should probably mark one of these
18 as a court exhibit.

19 Page 6 he states: Cause I know they're going to give me some time
20 man. I know they're going to get a -- I'm going to get a lot of time. I'm not like --
21 I'm not ever come -- not coming home, but I'm just going to have a lot of time to do.

22 I took that out.

23 And then on the next page, page 7, he states: So I know they give me
24 a good 15 years.

25 That one may have been one where I had to take out a little bit more of

1 the paragraph. In fact, I'm sure it is because I just couldn't get it segmented out in a
2 way that didn't sound ridiculous. But that statement was taken out and I think in to
3 that the part where he talks about being in his cell last night. I'm pretty sure that
4 came out also because I couldn't get it out otherwise.

5 Page 8 he states -- or I'm sorry. Marisala states: Did you get your
6 receipt yet?

7 He says: Yes, I got it. Thank you. I got me some crack.

8 That came out.

9 MS. NGUYEN: And just so you know, crack is slang for coffee at the jail.

10 MS. THOMSON: It is.

11 MS. NGUYEN: Okay.

12 THE COURT: Oh, it is?

13 MS. NGUYEN: Yes.

14 THE DEFENDANT: Yeah.

15 MS. THOMSON: It's -- I mean, contextually it is.

16 MS. NGUYEN: Yeah.

17 MS. THOMSON: But it just --

18 MS. NGUYEN: Obviously -- I don't think anyone else might know that.

19 THE COURT: Oh.

20 MS. NGUYEN: So we took that out --

21 THE COURT: I didn't know.

22 MS. NGUYEN: -- as abundance of caution.

23 MS. THOMSON: And then on page 11 --

24 THE COURT: I do know now.

25 MS. THOMSON: -- I took out everything after one minute remaining. It was

1 just easier.

2 THE COURT: Okay. What about the --

3 MS. THOMSON: On --

4 THE COURT: I think it's relevant that I talked about -- I've ruled on the
5 second call. Now the third call?

6 MR. FATTIG: This is actually the first call. We were going backwards.

7 MS. NGUYEN: Yeah. I'm sorry. I picked them up in the wrong order.

8 MS. THOMSON: On July 1st the --

9 MS. NGUYEN: There's a reference to they put me in some psych ward.

10 MS. THOMSON: Page 2. I took that out, so it's going to hear: They just --
11 they didn't move me around man, they put this is in this medical. They -- they just.

12 So that comes out, the psych ward portion. And then page 4, at the
13 end, she, being Eufrosia states: Your -- your -- you're for a long time.

14 And that is out. And then on page 5, she also states: We'll be -- we'll
15 be down there to see you every year. I got to figure out how to -- and then it's
16 inaudible for the transcript but it says something about figure out the jail or the
17 prison and we'll be down there. I took that out.

18 On page 7 I took out -- Eufrosia states: Anyways, just know that we'll
19 be down there. Inaudible, inaudible. I have to figure out how to, inaudible, so where
20 I take, inaudible, but when you go, inaudible, be there.

21 And that's referencing there -- her coming down with the children to the
22 prison to visit him. That's taken out. And --

23 THE COURT: What's the relevance in this call?

24 MR. FATTIG: This particular call it's on page 5. I don't know if you have the
25 transcript.

1 THE COURT: I don't.

2 MR. FATTIG: Eufasia indicates -- it's the middle of page 5.

3 You had my high beams on. That's why they pulled you over. None of
4 this -- when you left the house I said turn off my high beams. That's -- that's why
5 they pulled you over because of your high beams.

6 And Defendant says: Oh yeah?

7 And she says: Yeah.

8 And he says: Yeah.

9 So that certainly is corroborative that he is the driver because he was
10 pulled over for his high beams.

11 THE COURT: It looks like he decided way -- she -- just shut up. High beams.
12 Shut up.

13 MR. FATTIG: Yeah.

14 THE COURT: He knows it's being recorded.

15 MR. FATTIG: Yes.

16 MS. NGUYEN: Your Honor, I understand the relevance there. I'm not sure
17 why we need the remaining 1, 2, 3, 4, 5, 6 --

18 THE COURT: Well --

19 MS. NGUYEN: -- 7 pages. I don't know if they have anything -- if the State
20 wants to prove it -- show any relevance there. I think at that point, I mean, we just
21 get into some pretty foul language, putting money on books --

22 MR. FATTIG: This is July 1st of 2014, so we're talking about one of the first
23 calls.

24 MS. NGUYEN: We're talking about getting visits up at the jail and --

25 THE COURT: AS long as we take out that -- the psych part, I'm happy with

1 that. I mean, I -- it's admissible, over the objection of the Defense. What I would
2 like you to do though is make copies of each of those transcripts and provide them
3 to the Court and we'll mark them as Court's exhibits not to go back to the jury.

4 MS. THOMSON: Unless the Court has an objection to it, I will provide the
5 ones where I actually have the marking of what I took out. Everything in pink is what
6 I took out.

7 THE COURT: Pink is your color.

8 MS. THOMSON: Well there's some stuff in yellow. But pink's what I
9 redacted.

10 THE COURT: All right.

11 MS. NGUYEN: And Your Honor, just on -- on the -- and the calls -- I mean,
12 my concern is, is -- I mean, there's some like graphic kind of like sexual language
13 about her not sleeping with anyone else and -- I don't know I just -- I don't know how
14 that's relevant, but.

15 THE COURT: All right. What else?

16 MS. NGUYEN: That's all.

17 THE COURT: All right. Bring them in, Tom.

18 [Colloquy between Counsel]

19 MS. NGUYEN: Oh, there was a *Facebook* picture that was, I guess, taken by
20 one of the detectives off of a *Facebook* page with the name Joshua Bacharach on it.
21 IT had a gun. There were two guns on it. One of them doesn't look like any of the
22 guns that we have, so I know the State did redact that photo out. And then there
23 was reference in the status line to two guns and they redacted that out. So the only
24 gun that is pictured in there appears to be similar to one of the weapons that was
25 impounded here. I would just --

1 MR. FATTIG: And that has been -- if Your Honor wants to look at it, it's been
2 marked as Proposed 203. We again redacted out the second gun, any reference to
3 it.

4 THE COURT: Okay.

5 MR. FATTIG: But that's the gun that we believe is the gun used to shoot at
6 Officer McNabb.

7 THE COURT: All right.

8 MS. NGUYEN: And Your Honor, I would just say it's not relevant. It's just a
9 picture of a gun. It's not a picture of him with a gun. It is on -- obviously on his
10 *Facebook* page.

11 THE COURT: It came off his *Facebook*.

12 Okay. Bring them, Tom.

13 Hey, if we can get all your witnesses on this morning, take a late lunch
14 and then you'll come back.

15 MS. THOMSON: I like it.

16 MR. FATTIG: Yes.

17 [In the presence of the jury]

18 THE MARSHAL: All rise, please.

19 And be seated.

20 THE COURT: Stipulate to the presence of the jury.

21 MR. FATTIG: Yes, Your Honor.

22 THE COURT: Thanks.

23 MS. NGUYEN: Oh, I'd stipulate to the presence of the jury.

24 THE COURT: Thanks for being prompt, ladies and gentlemen. Again, it's my
25 fault that we're drawn out.

1 Call your next witness, State.

2 MS. THOMSON: Judge, the State calls Detective Hodson.

3 **BRECK HODSON**

4 [having been called as a witness and being first duly sworn, testified as follows:]

5 THE CLERK: Thank you. Please be seated. State your full name, spelling
6 your first and last name for the record, please.

7 THE WITNESS: I'm Detective Breck Hodson. It's B-R-E-C-K, H-O-D-S-O-N.

8 THE COURT: Go ahead.

9 MS. THOMSON: Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 BY MS. THOMSON:

12 Q Good morning. Directing your attention back to June 26th of 2014, were
13 you a firearms detective?

14 A Yes, I was.

15 Q And since then Metro has reorganized and now you're generally -- just
16 a general detective, is that fair?

17 A That's correct.

18 Q Okay. In June of 2014, did you have contact with an individual by the
19 name of Eufrasia Nazaroff?

20 A Yes, I did.

21 Q And was that pursuant to an investigation regarding an incident that had
22 occurred on June 26th?

23 A That'd be correct.

24 Q When you had contact with Ms. Nazaroff, where was that?

25 A It was at an apartment complex. I believe it was in the area of

1 Cheyenne and Michael.

2 Q And approximately how far is that apartment complex from the area of
3 Carey and Dolly?

4 A At least ten miles away.

5 Q When you had contact with Ms. Nazaroff, were you discussing an
6 individual by the name of Joshua Bacharach with her?

7 A Yes.

8 Q And during that conversation with her, did you show her any
9 photographs or stills?

10 A Yes, I did.

11 MS. THOMSON: May I approach the witness?

12 THE COURT: Yes.

13 BY MS. THOMSON:

14 Q Showing you what's been marked as State's Proposed Exhibit 203. Do
15 you recognize what I'm showing you here?

16 A Yes.

17 Q Okay. And is this something that you had shown to her during your
18 discussion?

19 A Yes, it was

20 Q And is this a still from a *Facebook* page?

21 A Yes.

22 Q And specifically was that a page that you had determined belonged to
23 Joshua Bacharach?

24 A Yes, it was.

25 Q And did you determine that by name and other photographs on the

1 page?

2 A Yes, that'd be correct.

3 Q Okay. Those other photographs, do they include photographs of Mr.
4 Bacharach?

5 A I believe so, yes.

6 MS. THOMSON: I'd move for admission of State's Proposed Exhibit 203.

7 MS. NGUYEN: Submit.

8 THE COURT: It'll be admitted.

9 **[STATE'S EXHIBIT 203 ADMITTED]**

10 BY MS. THOMSON:

11 Q And during your contact with Ms. Nazaroff, when you showed her what
12 has now been marked as State's Exhibit 203, did you discuss whether she had seen
13 Joshua with firearms?

14 A That'd be correct.

15 Q And did she indicate to you that she had in fact seen him with --

16 MS. NGUYEN: Objection, Your Honor, hearsay.

17 MS. THOMSON: Your Honor, at this point, it's impeachment.

18 THE COURT: She's already testified, so --

19 MS. NGUYEN: I would just argue that the jury's already had the opportunity
20 to hear directly from her.

21 THE COURT: Okay. Overruled. Go ahead.

22 MS. THOMSON: Thank you, Your Honor.

23 BY MS. THOMSON:

24 Q Did she indicate to you that she had in fact seen him with three
25 separate firearms?

1 A Yes, she did.

2 Q And one of those was the firearm depicted in this still?

3 A That'd be correct.

4 Q Did she indicate to you whether she saw that *Facebook* post or if he
5 had sent photographs to her phone?

6 A Yes, she did.

7 Q And which was it?

8 A She stated that it was on his *Facebook* and that he also sent it directly
9 to her phone.

10 Q When you spoke with her, did she indicate to you how recently she had
11 seen him with those guns?

12 A They had been with him -- it was a close -- I can't remember exactly --
13 specifically what -- how many days, but it had been recent.

14 Q Okay. Do you recall her indicating that he -- she had last seen the guns
15 right before he came back and that he had come back earlier in the week?

16 MS. NGUYEN: Objection, Your Honor, leading.

17 THE COURT: Sustained.

18 MS. THOMSON: may I approach?

19 THE COURT: Yes.

20 BY MS. THOMSON:

21 Q You recorded the conversation with her, correct?

22 A That's correct.

23 Q I'm going to direct you first to page 6 and have you read that over
24 quietly to yourself.

25 A Okay.