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IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN JOSEPH DAVID
HONEYESTEWA

Appellant,

Case No. 80477

v.

THE STATE OF NEVADA

Respondent.

APPELLANT'S ADDENDUM – PART XI

**APPEAL FROM TRIAL CONVICTION
FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ELKO**

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1 CASE NO. CR-FP-18-5961

2 DEPT. NO. 1

3

4 THE FOURTH JUDICIAL DISTRICT COURT THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF ELKO

6 BEFORE THE HONORABLE NANCY PORTER

7 DISTRICT JUDGE, PRESIDING

8

9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 v.

12 ALAN JOSEPH EDWARD HONEYESTEWA,

13 DEFENDANT.

14 ----- /

15

16 TRANSCRIPT OF RECORDED PROCEEDING

17 JURY TRIAL

18 October 14, 2020

19 ELKO, NEVADA

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23

24 VOLUME 5

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1 TRANSCRIPT OF RECORDED PROCEEDING

2
3 THE COURT: The record will reflect the
4 presence of the defendant and counsel.

5 Counsel, will you stipulate to the presence of
6 the jury?

7 MR. MILLS: Yes, Your Honor.

8 MR. WOODBURY: So stipulated.

9 THE COURT: If you are a witness in this case,
10 you're absolutely prohibited from watching this trial
11 unless you've been given specific permission by the
12 Court that includes watching the trial on Zoom. If you
13 do so, you may be held in contempt of court, punishment
14 of for which could include a jail sentence. Log in
15 information for all of those who log in to watch this
16 trial on Zoom shall be maintained and filed in this
17 action.

18 All spectators are prohibited from recording
19 this trial in any manner or distributing it on social
20 media or in any manner on the internet. Violation of
21 this order could result in a finding that you are in
22 contempt of court, punishment for which could include a
23 jail sentence.

24 Next witness for the prosecution?

25 MR. MILLS: The State calls Joshua Bogdon.

1 THE COURT: All right. Mr. Bogdon is going to
2 be testifying today by what's called video court call.
3 The attorneys have agreed that he can testify in that
4 way.

5 Do we have him ready to go?

6 MR. MILLS: Yes, Your Honor.

7 THE COURT: Because of current technology or
8 our technology in the courtroom, we are not able to
9 broadcast this testimony by Zoom. We can't have both
10 of these programs running at one time.

11 Officer Bogdon, will you please raise your
12 right hand.

13 (Witness sworn.)

14 THE COURT: Thank you.

15 Please state your name.

16 THE WITNESS: Joshua Bogdon. J-o-s-h-u-a.
17 Bogdon, B-o-g-d-o-n.

18 And I apologize, the audio seems to be cutting
19 in and out. I can only hear some of what you guys are
20 saying.

21 THE COURT: We're kind of having that same
22 experience here. Can we get the moderator from court
23 call on the line to help us?

24 THE CLERK: Court Call, are you there with us,
25 please?

1 THE BAILIFF: Can you hear us?

2 THE WITNESS: Yes.

3 THE BAILIFF: Does it sound clear, or is it
4 cutting off?

5 THE WITNESS: It's a little quiet. I'm going
6 to have my wife bring me my ear buds, and I'm hoping
7 that can fix it.

8 (Recess.)

9 THE CLERK: The witness is waiting for ear
10 buds. He can hear us. We took out court call because
11 court call isn't (inaudible) moderator. So we don't
12 have a moderator now, but the echo is gone. We can
13 communicate direct. So I think we'll be okay.

14 THE COURT: Okay. Just a moment, Mr. Mills.

15 I've been working in the time that I've been
16 the judge here to improve the courtroom technology.
17 I've received -- applied for and received \$35,000 in
18 grants, so it's a lot better than it was. We still
19 don't have it where we want it to be. I just applied
20 for and received a grant for \$65,000 from the federal
21 government that should bring our technology to state of
22 the art.

23 So while it isn't going to help during this
24 trial, it will be installed the first week of January,
25 and hopefully we will have all of the bugs out of this.

1 That money comes from money that was made
2 available because of coronavirus. I received an e-mail
3 about applying for it, and I thought, I can't think of
4 anything I could use it for. And a couple of weeks
5 later, it hit me to apply for it for court technology.
6 And to my surprise, we were awarded it. That's 100
7 percent of the cost to upgrade it, so none of it is
8 coming out of county funds. And in January, we should
9 really have a good system.

10 All right. Officer Bogdon, I know you were
11 waiting for ear buds.

12 Do you have those now?

13 THE WITNESS: I don't yet, no. I can keep you
14 on speaker phone and hold you up to my ear, though.

15 THE COURT: Okay. Can all of you in the jury,
16 can you hear him all right? All of you, even in the
17 back?

18 All right. I will try to speak loudly when I'm
19 talking. Mr. Mills and Mr. Woodbury, do your best to
20 speak up. And hopefully -- I see you holding the phone
21 right to your ear. Are you able to hear me well
22 enough?

23 THE WITNESS: I can hear you okay, yes, ma'am.

24 THE COURT: All right. We'll now --

25 Go ahead, Mr. Mills.

1 JOSHUA BOGDON,
2 the witness herein, being first duly sworn, testified as
3 follows:
4

5 DIRECT EXAMINATION

6 BY MR. MILLS:

7 Q Good morning, Officer Bogdon.

8 A Good morning, sir.

9 Q Can you hear me okay?

10 A Still very quiet, but I can at least hear you.
11 I may need you to repeat a few things, but I'm good
12 right now.

13 THE COURT: All right. Just a moment,
14 Mr. Mills. We're going to try something different to
15 see if we can make this any better.

16 THE CLERK: Okay. Mr. Bogdon, can you hear me
17 okay? Okay. This is what we're gonna do. We are
18 going to cut the Court Call. I'm gonna -- I'm gonna
19 log out. I'm getting out of there. I'm going to start
20 an instant meeting.

21 No. It's just gonna be you. There's nobody
22 else in this meeting. So I'm gonna give you the login
23 information right now.

24 All right. So you want to be sure to sign in
25 with computer audio as opposed to phone. And I'm gonna

1 give you the connection right now. Give me a second.

2 Yeah. Get out of Court Call. Yeah. It's not
3 my favorite anyway, I'll be honest with you.

4 THE COURT: How lucky am I to have her? I
5 don't even understand what she's saying.

6 THE CLERK: Okay. So, all right (inaudible).

7 No, this is going to be Zoom. So you're gonna
8 go to Zoom. You're gonna join a meeting. This will be
9 private, though. There's nobody else. It's just us,
10 the court and you.

11 Court Call is a little more antiquated, but
12 this will work perfect, I promise you. So you'll be
13 able to hear and see a lot better.

14 Okay. Tell me when you're ready and I'll
15 (inaudible) the number. Okay. (Inaudible). Can you
16 repeat that back to me?

17 Perfect. The pass code is 01 -- so your pass
18 code is 0176 (inaudible) 7. And I'm gonna watch for
19 you now, and I'll get you admitted. And we are ready
20 to go. I can stay on with you for just a second while
21 I look for you.

22 There you are. Okay. Mr. Bogdon, I'm
23 admitting you now. You did choose to join with
24 computer audio, right? Okay.

25 Okay. So hang on just a second. If not, you

1 know what? If not, we can always run it through the
2 phone, too. It does show your audio. Give me one
3 second.

4 Okay. Hang on one moment.

5 All right. Judge, can you speak with
6 Mr. Bogdon and make sure he can hear you?

7 THE COURT: Can you hear me Officer Bogdon?
8 Okay. We can't hear you, however.

9 THE CLERK: Okay. Let me hang up. Let's
10 try -- he's not muted. Give me a second. Let's go in
11 here. Go to Zoom. Let me double-check the audio
12 connection.

13 THE COURT: These are trying times for all of
14 us.

15 THE CLERK: No, that's not it. (Inaudible).

16 So right here (inaudible). All right. I don't
17 know. This happened with Callie just a minute ago.

18 I don't see his microphone. Yeah. Is he
19 muted? See his microphone, it's not --

20 THE COURT: Are you muted, Officer Bogdon?
21 We're not hearing you.

22 THE CLERK: I'm calling, Judge.

23 No, I can't. I can see your microphone
24 twitching, I just can't hear you.

25 So let's do this: Let's go ahead and sign back

1 in. And when you sign back in, make sure you connect
2 with your audio. I'm just gonna see if I can edit it
3 while you're on. Just a second.

4 Which one do you want? (Inaudible).

5 No problem. No, no. That's okay. So since
6 you closed out -- let's do this: So I'm gonna end the
7 meeting, leave the meeting, and then we go back into
8 the meeting.

9 Actually, so what we're gonna do, I'm going to
10 start a brand new meeting. And when you join, it's
11 gonna give you the option where it says "join with
12 computer audio," click on join with computer audio.

13 All right. I'm gonna give you a brand new set
14 of numbers. Are you ready? Okay. One second. All
15 right.

16 MR. INGRAM: (Inaudible) Judge, we're prepared
17 with other witnesses.

18 THE COURT: Okay. I'll just give him a couple
19 more minutes. We used Zoom for a hearing at nine
20 o'clock and didn't have these issues. So I don't know
21 why we're having them now.

22 THE CLERK: (Inaudible).

23 Oh. Make sure, make absolutely sure you are
24 closed out of Court Call, like it's gone off your
25 screen, everything. That can be what's holding it up.

1 Yeah. Get completely out of that. Get it off your
2 screen. That might be the problem. It may be -- yeah.

3 And then the pass code.

4 Absolutely. Absolutely. It's 86833593948.

5 And then the pass code, 566642. And I'm looking for

6 you right now. And make sure you choose computer

7 audio. Yeah. I think Court Call is -- all right.

8 Mr. Bogdon, here we go.

9 All right.

10 THE WITNESS: Computer audio. All right.

11 THE COURT: Can you hear me all right?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Okay. Good job, Mercedes.

14 THE CLERK: Thank you. I'm sorry.

15 It was Court Call, Judge.

16 THE COURT: Okay. Mr. Mills, go ahead.

17 BY MR. MILLS:

18 Q Officer Bogdon, can you hear me okay?

19 A Yes, sir.

20 Q Great. Good morning.

21 What is your occupation?

22 A (Inaudible) for the City of Elko.

23 Q You're cutting in and out there. You're a what
24 for the City of Elko?

25 A A police officer for the City of Elko.

1 Q Okay. How long have you been a police officer
2 for the City of Elko?

3 A Four years.

4 Q Okay. And so were you employed by the Elko
5 Police Department back in July of 2018?

6 A Yes.

7 Q I'm going to direct your attention to the
8 evening of July 7th, 2018.

9 Were you on duty that evening?

10 A Yes.

11 Q And did you respond to the scene of a possible
12 shooting in the Wrangler Circle area?

13 A I did, yes.

14 Q About what time did you arrive there?

15 A I can't recall the exact time, but I arrived
16 just moments after Officer O'Farrell and Corporal Daz.

17 Q Okay. And what do you remember going on when
18 you arrived there?

19 A When I arrived, I saw a residence that was on
20 the north side of the street. The front door was open,
21 and there was a body in the doorway lying face up on
22 his back.

23 Q Did that body appear to be injured in any way?

24 A Yes. There was significant amount of blood on
25 and around him, and he had several bullet holes in his

1 abdomen area.

2 Q So who else do you remember being on scene at
3 that point?

4 A At that point, it was myself, Officer Michael
5 O'Farrell and Shane Daz. At some point, Sergeant
6 Matthew Locuson arrived also.

7 Q And aside from officers, were there any
8 civilians on scene when you arrived?

9 A There was one inside the residence.

10 Q Okay. Who was that?

11 A It -- to my understanding, it was the
12 girlfriend of the male victim.

13 Q Okay. And did you speak to her or hear her in
14 any way?

15 A I could hear her screaming inside, but I never
16 spoke to her.

17 Q What was she screaming, if you recall, or how
18 was she screaming?

19 A She sounded just terrified. It was a scream of
20 horror, really. Not like she was in pain, just
21 terrified.

22 Q And how long did you remain on scene at the
23 Wrangler Circle scene?

24 A I would estimate maybe just over an hour, maybe
25 a little bit longer.

1 Q And where did you go from there?

2 A When I left Wrangler Circle, I responded to the
3 Upper Colony, Bohobi Street, I believe it's called.

4 Q And what led you to go to that location?

5 A We were advised that there was a male gunshot
6 victim at a residence there.

7 Q And what did you observe when you arrived at
8 that location?

9 A When I arrived there, a woman came from the
10 residence in question. She said, He's over there, in
11 reference to a male that was on a trampoline. He was
12 being held up by two other people. And he sounded like
13 he was in agony also.

14 Q Did you go over to the trampoline?

15 A Yes.

16 Q And so tell us what you can remember about the
17 person, the injured person, on the trampoline.

18 How was he positioned and what was he doing?

19 A He was lying face up on the trampoline, towards
20 the edge. He appeared to have been shot, from what I
21 can see, in the left arm, and he had significant amount
22 of blood on him, and he was just groaning in agony.

23 Q Okay. Do you recall who the people were that
24 were with him on the trampoline?

25 A I don't recall the people with him on the

1 trampoline, no.

2 Q Okay. Did you have any conversations with him?

3 A With the gunshot victim on the trampoline or
4 the people around him?

5 Q Yes. Sorry. That was an unclear question.

6 Did you have any conversations with the gunshot
7 victim?

8 A I asked him how he got there, and he said he
9 had walked.

10 Q Okay. So where did -- well, what did you do at
11 that point with the gunshot victim?

12 A Prior to me speaking with him, I had just asked
13 him to show me his hands, which he didn't. When I
14 approached him, I was able to get control of his hands,
15 just to ensure that he didn't have any weapons with
16 him. And I just pat him down for weapons, also.

17 Q And how long did he remain on the trampoline?

18 A I don't recall how long. It wasn't for a great
19 period of time. Less than ten minutes.

20 Q And how was he transported off the trampoline?

21 Did emergency personnel show up or what
22 happened with the -- with the wounded person?

23 A Ultimately, emergency personnel arrived and he
24 was placed in the ambulance and transported.

25 Q So that evening, after your involvement there

1 at the Bohobi scene, did you have any other involvement
2 that evening in this case?

3 A I briefly looked over a vehicle that was parked
4 nearby that had blood inside of it, some rags. I also
5 spoke to a woman who described how she encountered the
6 male gunshot victim.

7 Q Okay. And did you -- was there -- were there
8 any other officers with you when you examined that
9 vehicle, or did you communicate that information to
10 anyone?

11 A Yes. That information was actually
12 communicated to me. I just looked inside of the
13 vehicle from the outside.

14 Q Okay. So aside from your conversation with
15 that lady you mentioned and your examination of the
16 vehicle, did you do anything else in the -- with that
17 investigation that evening?

18 A No.

19 Q Okay. So now, Officer Bogdon, I want to switch
20 gears here a little bit and fast forward about 11 days,
21 to July -- or 11, 12 days to July 19th, 2018.

22 Were you on duty on that occasion?

23 A Yes.

24 Q And did you effect a traffic stop on that
25 occasion?

1 A Yes.

2 Q And who did you conduct that traffic stop on?

3 A Michael Overholser.

4 Q And what information did you have about him
5 that led you to be interested in him?

6 A I had received information that he may have
7 been involved in various drug transactions occurring
8 throughout the city.

9 Q And were you able to locate him that day?

10 A Yes.

11 Q Where did you locate him at?

12 A I located him inside of a vehicle during the
13 traffic stop in the area of the Calvary Baptist Church
14 located on approximately Walnut and Fifth Street.

15 Q And why did you pull him over that day?

16 A He had a shattered front windshield and no
17 license plate.

18 Q So after you pulled him over, tell us about
19 what happened in the traffic stop.

20 What happened next?

21 A After I pulled him over, I asked for Sergeant
22 Fisher from the Elko County Sheriff's Office to respond
23 with his canine in order to utilize his dog.

24 While speaking with Mr. Overholser, I asked him
25 to step out. I asked Sergeant Fisher to (inaudible)

1 around the vehicle. Sergeant Fisher told me there's a
2 positive alert on the vehicle which gave me probable
3 cause to be able to search it.

4 Q And did you, in fact, search the vehicle?

5 A Yes.

6 Q Did you find any weapons in the vehicle?

7 A Yes.

8 Q So tell us -- tell us about that.

9 A Underneath the driver's seat I found a Taurus 9
10 millimeter handgun, black in color, and it was wrapped
11 in a green cloth.

12 Q Okay. And at that point in time when you
13 discovered that gun, did you have any reason to believe
14 that it might be connected to the shooting that had
15 happened 11 days prior?

16 A No.

17 Q Do you recall what the serial number of that
18 gun was?

19 A I'd have to refer to my report. I know it
20 starts with a T.

21 Q Do you have your report there?

22 A Yes.

23 Q Okay. Would it refresh your memory to review
24 that portion of your report to see what the serial
25 number was of the gun?

1 A Yes.

2 Q Okay. Could you please do that?

3 A Okay.

4 Q So what was the serial number?

5 A Serial number was TCW0275.

6 Q Yeah. That's correct.

7 Do you want to double-check and make sure
8 that's what it says?

9 A Yes.

10 Q Why don't you just go ahead and read the serial
11 number from your report?

12 A Thank you.

13 TCW0275.

14 Q Okay. Thank you.

15 What did you do with that firearm after
16 recovering it?

17 A I seized it for evidence.

18 Q And, then, so describe that process a little
19 bit.

20 When you seize an item for evidence or when you
21 seized this item for evidence, what did you actually do
22 with it? How did you package it? And where did you
23 take it? What did you do with it?

24 A For firearms, I take it back to the Elko Police
25 Department. I would photograph it. I remove the

1 magazine from the firearm, and ammunition in the
2 magazines are stored separately from the firearm in a
3 separate bag. The ammunition and magazine would be
4 placed in a bag, sealed with evidence tape. And I put
5 my initials and a date on the bag of the firearm --
6 would be to ensure that it's unloaded. I generally
7 place a zip tie through the barrel and through the
8 firing chamber, secure it to a box, close the box, and
9 then those two items are to be entered as evidence.

10 I place them into a locker that's accessible
11 from the outside by me. I place the items inside,
12 press a button that locks it from the side that I'm on.
13 And then later evidence technicians are able to recover
14 the item on the other side through a separate door.

15 Q Okay. Thank you.

16 I'm now going to show you what's marked as
17 State's Exhibit 312.

18 MR. MILLS: Mr. Bailiff, can I get some
19 scissors?

20 (Bailiff complied.)

21 MR. MILLS: I'm going to show this exhibit
22 first to defense counsel.

23 Q BY MR. MILLS: Officer Bogdon, can you hear me?

24 A Yes.

25 Q Can you see what is exhibited to you on the

1 screen?

2 A Yes.

3 Q Does this look like the evidence box with the
4 firearm in it?

5 A Yes.

6 Q I'm gonna open up the box and show you what's
7 inside. And if you could, tell us if you recognize
8 what's inside of this box.

9 And before I do that, just showing you this,
10 does this box appear to be sealed?

11 A Yes. The handwriting on the front is my
12 handwriting. That evidence tape appears to be placed
13 there by somebody else, though, which for packaging
14 firearms isn't uncommon.

15 Q Okay. That is your handwriting on the front,
16 however?

17 A It appears to be my handwriting underneath the
18 tape that I can see, I think.

19 Q Okay. Can you see what's inside that box?

20 A Yes.

21 Q Can you see that okay now?

22 A Yes, sir.

23 Q Okay. And what does that -- what is that that
24 you're looking at there?

25 A That is the firearm that I seized from Michael

1 Overholser.

2 Q Okay. Thank you.

3 Does that firearm appear to you to be in
4 approximately the same condition as when you put it in
5 the box?

6 A Yes.

7 MR. MILLS: The State will offer State's 312
8 into evidence at this time.

9 THE COURT: The gun is Exhibit 312?

10 MR. MILLS: Yes.

11 THE COURT: Any objection, Mr. Woodbury?

12 MR. WOODBURY: We have no objection.

13 THE COURT: Exhibit 312 is admitted.

14 (Exhibit 312 admitted.)

15 Q BY MR. MILLS: Officer Bogdon, at any point in
16 time did you become aware of the fact that that firearm
17 was under investigation for having been involved in the
18 shooting at Wrangler Circle?

19 A Yes. Sometime later I was told by -- I
20 believe, it was Detective Steve Spring.

21 Q And was it him that kind of took it from there
22 and investigated, I guess, the chain of custody on the
23 gun and where it came from?

24 A I'm not sure if he took the investigation. But
25 the way he told me was -- seemed to be just notifying

1 me that it was involved, but I didn't investigate any
2 further.

3 Q Okay. Did you do anything else to investigate
4 the gun or anything else in this investigation?

5 A No.

6 MR. MILLS: Okay. Thank you. That's all the
7 questions I have.

8 I'll pass the witness.

9 THE COURT: Cross examination?

10 MR. WOODBURY: Thank you, Your Honor.

11

12 CROSS EXAMINATION

13 BY MR. WOODBURY:

14 Q Mr. Bogdon, at the time that you arrived at
15 Wrangler Circle on the late evening hours of July 7th,
16 there were other officers there already?

17 A I'm sorry, sir. I believe I heard your
18 question, but I can't hear you very clearly. I don't
19 want to misspeak.

20 Q I want you to know that I have my head turned
21 to the microphone like I'm supposed to.

22 Were there other officers present when you
23 arrived at Wrangler Circle on the night of July 7th?

24 A Yes, sir.

25 Q And who were they?

1 A Officer Michael O'Farrell and Shane Daz.

2 Q And were you part of the clearing process at

3 the house?

4 A No. Other officers went inside, and I remained

5 at the doorway securing the front yard.

6 Q Did you run into some dogs up there?

7 A Not that I can recall.

8 Q Okay. Would you recall if you had met up with

9 some dogs?

10 A I'm really not -- I'm really not sure. I don't

11 recall any dogs.

12 Q Okay. Then you didn't actually go in the

13 residence?

14 A I stepped inside the front area briefly. Yes,

15 I did go inside.

16 Q There was blood on the floor --

17 A Excuse me? I'm sorry, sir. Can you repeat

18 that, please?

19 Q There was blood on the floor of the entryway;

20 is that correct?

21 A Yes.

22 Q Okay. Did you step in the blood?

23 A I'm sorry? Did I step in blood?

24 Q Did you step in the blood?

25 A Yes, sir.

1 Q All right. Was the person laying on the floor
2 being given medical treatment at that time or had it
3 not yet started?

4 A When I had gone inside, he was getting medical
5 treatment, yes.

6 Q Okay. And can you describe the location of
7 where he was and the location of the people providing
8 the medical treatment?

9 A Yes. The victim was laying just inside the
10 doorway by a few feet. He was laying on his back. One
11 person giving medical treatment was standing on the
12 side of him that would be further inside the house.
13 There was another individual that was standing closer
14 to his feet; however, I'm not sure if he was giving
15 medical treatment. And a third giving medical
16 treatment was me, standing on the side of him, closer
17 to the doorway.

18 Q Okay. Thank you.

19 Then when you went up to Bohobi Drive, your
20 purpose in going there was what?

21 A Because there was a male gunshot victim. My
22 understanding was that medical personnel wouldn't
23 respond without first having the scene secured.

24 Q All right. There is some kind of conflict or
25 difficulty with Elko City police officers responding to

1 the Elko Indian Colony?

2 A Yes. The conflict is that while there, we
3 can't necessarily always take policing action. We have
4 to wait for approval from the Bureau of Indian Affairs.

5 Q And you would not be a part of that getting
6 permission from the Bureau of Indian Affairs?

7 A No, sir.

8 Q And when you got there, was there other
9 officers there?

10 A Yes. They approached with me.

11 Q Okay. How many of you approached?

12 A It was at least myself and one other. I can't
13 recall if there were more, how many more, or who they
14 were. But I know that it was at least myself and
15 Sergeant Matthew Locuson.

16 Q Okay. And the -- you went down to where the
17 trampoline was?

18 A Yes.

19 Q And you mentioned on direct examination that
20 Mr. Honeyestewa was being held up by two people.

21 How did that work? Can you describe that?

22 A I didn't specifically say it was
23 Mr. Honeyestewa, but -- to my recollection, saying that
24 now was Mr. Honeyestewa. He was lying with his feet
25 more towards the center of the trampoline, his head on

1 the edge. And to my recollection, it was two people on
2 either side of him sort of propping him up.

3 Q Propping him up?

4 A Yes, sir.

5 Q Okay. Do you know Mr. Honeyestewa?

6 A I've never met him prior, no.

7 Q Okay. So you just have to accept my word that
8 it was Mr. Honeyestewa.

9 A I'm sorry. Can you say that again, please?

10 Q You would just have to accept my word that it
11 was Mr. Honeyestewa.

12 A No, sir. I learned it was Mr. Honeyestewa
13 later on on scene. And then I saw him in the video,
14 and I recognize him as being the same person that I saw
15 on the trampoline.

16 Q Okay. And other than ask him how he got to the
17 trampoline, and you said he walked?

18 A Yes. That's what he told me.

19 Q Okay. And that didn't seem truthful to you?

20 A I wasn't sure. I'm sure he walked there at
21 some point, but I did not believe that he walked a
22 great deal of distance from his condition.

23 Q Okay. And then you asked him to show you --
24 you asked him to show you his hands?

25 A Yes, sir. I actually asked him to show me his

1 hands previously before having those conversations with
2 him.

3 Q Okay. And was there other conversation, other
4 than show me your hands and how did you get here?

5 A I may have asked him if he had any weapons. I
6 can't recall any specific line of questioning aside
7 from that. I would note it in my report if it was
8 noteworthy.

9 Q Okay. And where were his hands as he was
10 laying -- he was laying essentially face down on the
11 trampoline?

12 A No, sir. He was lying face up.

13 Q Face up.

14 And where were his hands when you --

15 A Yes, sir.

16 Q -- when you asked to see them?

17 A I don't recall where his hands were, but I
18 could not see them.

19 Q Okay. And how many -- were there civilian
20 people around? There were two people holding him up,
21 or whatever they were doing, but they were female?

22 A I don't recall if they were male or female.

23 Q Okay. And this thing with Michael Overholser,
24 you knew who Michael Overholser was prior to stopping
25 him up there at the Calvary Baptist Church?

1 A I knew of him, yes.

2 Q Yeah. You had had interactions with him as a
3 police officer?

4 A I don't recall if I had had interactions with
5 him previously before this, but I knew of him, though.

6 Q And knowing of him is probably a consequence of
7 police officers discussing various cases together?

8 A Yes.

9 Q Yeah. And was Mr. Overholser relatively widely
10 known in the community or police officers in Elko?

11 A Yes.

12 Q And who was with Mr. Overholser?

13 A Nobody was with him.

14 Q And was the car that he was in registered to
15 him?

16 A The car had no license plates. To my
17 knowledge, it wasn't registered to anybody.

18 Q All right. Mr. Overholser was -- you checked
19 to see if he had a prior felony conviction?

20 A Yes.

21 Q And that's what led to the seizure of the gun?

22 A Yes.

23 Q Okay. And that is, I guess, for the jury's
24 education you can tell them edification, you can tell
25 them, is it against the law for a person who has a

1 felony conviction to have a gun?

2 A Yes. Roughly.

3 MR. WOODBURY: Okay. Thank you.

4 I have nothing else.

5 THE COURT: Redirect?

6 MR. MILLS: Nothing on redirect, Your Honor.

7 THE COURT: Are there any jury questions for
8 this witness?

9 Do you need this witness retained?

10 MR. MILLS: No, Your Honor.

11 MR. WOODBURY: The defense does not.

12 THE COURT: Thank you, Officer Bogdon. You are
13 excused from further attendance at this trial. Do not
14 discuss your testimony with anyone other than the
15 attorneys.

16 Thank you. You are excused.

17 THE WITNESS: Yes, ma'am. Thank you.

18 UNIDENTIFIED SPEAKER: (Inaudible).

19 THE COURT: Your next witness, Mr. Mills?

20 MR. MILLS: Steven Spring.

21 (Witness sworn.)

22 THE COURT: Please state and spell your first
23 and last names.

24 THE WITNESS: Steven Spring. S-t-e-v-e-n,
25 S-p-r-i-n-g.

1 THE COURT: Thank you.

2 Go ahead, Mr. Mills.

3

4 STEVEN SPRING,

5 the witness herein, being first duly sworn, testified as
6 follows:

7

8 DIRECT EXAMINATION

9 BY MR. MILLS:

10 Q What is your occupation?

11 A I'm a detective for the City of Elko Police
12 Department.

13 Q How long have you been a detective with the
14 Elko PD?

15 A I've been employed since November of 1999.

16 Q (Inaudible) PD?

17 A With Elko Police Department.

18 Q With the Elko Police Department?

19 A Yeah.

20 Q And how long have you been a detective during
21 that time frame?

22 A I've been a detective for almost two-and-a-half
23 years.

24 Q I want to direct your attention back to August
25 of 2018.

1 Did you have occasion to become involved in
2 this case?

3 A Yes.

4 Q And specifically with regards to investigating
5 the Taurus 9 millimeter handgun?

6 A Yes.

7 Q How did you -- how did this come to your
8 attention or how did you make the connection between
9 that gun and the shooting that happened at Wrangler
10 Circle?

11 A Originally I was assigned to investigate the
12 origin of a handgun that had been obtained through a
13 traffic stop from a prohibited person. In my
14 investigation, I spoke with two different people for
15 which the handgun was originally sold to. The original
16 owner had sold it to another individual, and then that
17 individual had sold it to the defendant in this case.

18 Q Now, just more specifically, with regards to
19 the first part of what you said, you know, a traffic
20 stop and a prohibited person, was that Officer Bogdon's
21 traffic stop of Michael Overholser?

22 A Yes.

23 Q So you were investigating the chain of custody
24 or chain of possession of that firearm that was
25 recovered in that traffic stop?

1 A Yes.

2 Q Now, is there a way to -- through like the ATF
3 or something, can you do a firearm's trace?

4 Is that something you can do?

5 A Yes.

6 Q Tell the jury about that. What is a firearm's
7 trace?

8 A Our evidence technician when they take in a
9 firearm will typically do what's called an E-trace, and
10 that's where they'll submit to the ATF for a trace of
11 the firearm through its make, model and serial number.

12 Q The ATF is the Bureau of Alcohol, Tobacco and
13 Firearms. It's a federal agency; is that correct?

14 A Yes.

15 Q I'm gonna show you what's been marked as
16 State's Exhibit 353. We'll show it first to defense
17 counsel.

18 THE COURT: 253, Mr. Mills?

19 MR. MILLS: 353.

20 Q BY MR. MILLS: Showing you State's 353, if you
21 would review that for a second, and tell us if you
22 recognize it.

23 A Yes.

24 Q Okay. Is that the firearm's trace for the gun
25 in this case?

1 A Yes, it is.

2 Q What is the serial number of that Taurus 9
3 millimeter?

4 A TCW0275.

5 Q And who was the owner according to that trace?
6 Who was it sold to?

7 A A Mr. Saul Marin, Jr.

8 Q Okay. Thank you.

9 Did you follow up with Mr. Saul Marin, Jr.?

10 A Yes.

11 Q And what did he tell you about the firearm?

12 A He told me that he purchased it and then that
13 sometime a few years later he sold it to Dusty Decker.

14 Q Did you follow up with Dusty?

15 A Yes.

16 Q And what did he tell you?

17 A Dusty told me that he had sold the gun to Alan
18 Honeyestewa about a week before the homicide occurred.

19 MR. MILLS: Okay. Pass the witness.

20 THE COURT: Cross examination?

21 MR. WOODBURY: Thank you, Your Honor.

22

23

24

25

CROSS EXAMINATION

BY MR. WOODBURY:

Q Where did you contact Mr. Marin at?

A Excuse me?

Q Where did you contact Mr. Marin at?

A I attempted to contact him at his residence --

Q I don't want to know where you attempted to
contact him. I asked you where you contacted him at.

A At the police department.

Q Thank you.

And on what day did that conversation occur?

A I believe that was August 28th.

Q Of what year?

A 2018.

Q Okay. And then it's simply a matter, then, of
having -- he bought that -- where does that indicate
that Mr. Marin bought the firearm that's Exhibit 255?

MR. MILLS: 353.

THE WITNESS: It shows that the dealer for this
transaction was Ruby Mountain Pawn.

Q By Mr. Woodbury: All right. And that may --
that would suggest that Ruby Mountain Pawn had owned it
and then sold it to Mr. Marin?

A Correct.

Q Thank you.

1 And is there a value placed on the weapon?

2 A It doesn't appear there's a value on this form.

3 Q And then you followed up by having a
4 conversation with -- after the Marin conversation, then
5 you had a conversation with Mr. Decker?

6 A Yes.

7 Q And how long after the Marin conversation did
8 you have the Decker conversation?

9 A It was the following day.

10 Q Okay. Where did you have that conversation?

11 A At the Elko Police Department.

12 Q Who all was present for it?

13 A Mr. Decker and myself.

14 Q And during the course of the -- during the
15 course of these conversations, did you learn the value
16 of the weapon?

17 A Did I learn what?

18 Q The value that was being placed on the weapon.

19 A No.

20 Q And when the weapon -- when you opened the
21 weapon up at -- you discovered that the weapon was in
22 the hands of the Elko Police Department, did you also
23 determine whether or not it had a magazine?

24 A I don't recall.

25 Q All right. So you don't know if it had one or

1 if the magazine was even loaded?

2 A I don't recall. I reviewed the pictures of the
3 gun, but I don't recall if there was a magazine with it
4 or not at the time.

5 Q Okay. How long did the conversation with
6 Mr. Decker take?

7 A I don't know specifically how long it took.

8 Q And when was the conversation in terms of the
9 date? Do you know?

10 A It would have been -- I would have to look at
11 my report to get you the exact date.

12 Q Do you have your report with you?

13 A I have a copy, yes.

14 Q Why don't you look at it and see if it helps?

15 A I stand corrected from my previous comment. It
16 was two days after my conversation with Mr. Marin. It
17 would have been 8-30 of 2018.

18 Q Did you know Mr. Decker from before?

19 A Yes.

20 Q And how did you know him?

21 A We played city league basketball together for
22 several years, typically against each other, not on the
23 same team.

24 MR. WOODBURY: Thank you. I have no further
25 questions.

1 THE COURT: Redirect?

2 MR. MILLS: Nothing from the State on Redirect.

3 THE COURT: Are there any jury questions for

4 this witness?

5 Do you need this witness retained?

6 MR. MILLS: The State does not.

7 MR. WOODBURY: The defense does not.

8 THE COURT: Detective, you are excused from

9 further appearance at this trial. Please do not

10 discuss your testimony with anyone other than the

11 attorneys. Thank you.

12 Why don't we fit in a morning break right here?

13 (Admonition given to jury.)

14 THE COURT: We'll be in recess for 20 minutes.

15 (Recess.)

16 THE COURT: The record will reflect the

17 presence of the defendant and counsel.

18 Counsel, will you stipulate to the presence of

19 the jury?

20 MR. MILLS: Yes, Your Honor.

21 MR. WOODBURY: So stipulated.

22 THE COURT: Before we call the next witness, I

23 just want to thank you all for being patient and

24 cooperative with the masks. I don't like wearing one

25 either, but one of my jobs is to keep everyone in the

1 courtroom safe. Until seven months ago, I didn't know
2 that meant keeping everybody safe from a deadly virus,
3 but it does now. That's part of the reason.

4 The other part of the reason is we really need
5 to get this trial all the way to its conclusion and a
6 verdict. The Nevada Supreme Court says that the same
7 judge has to hear a jury trial all the way through. So
8 if I get it, we're done. I have to declare a mistrial.

9 As you can see, Mr. Honeyestewa has one
10 attorney. If Mr. Woodbury gets it, I'd have to declare
11 a mistrial. If more than two of you get it, I would
12 have to declare a mistrial.

13 So there is a reason here beyond concern about
14 getting sick. So I appreciate all of you wearing your
15 masks and being patient and being cooperative with this
16 so we can get this case to a conclusion. If this were
17 a three-day trial, I would still be making you wear
18 your masks, but I wouldn't be as worried about winding
19 it up. But with three weeks, that's a long time.

20 The numbers of people getting it in this
21 community are on the rise. If you saw the newspaper
22 this morning, there are six jail inmates that have it,
23 so it's just really important we keep doing this. So
24 thank you for your willingness to do it.

25 Your next witness, Mr. Mills.

1 MR. MILLS: Saul Marin.

2 MR. WOODBURY: Your Honor, I hesitate to say
3 this, but I don't think you asked for the lawyers to
4 stipulate that the jurors are here.

5 THE COURT: Oh, I thought I did. All right.
6 Are the jurors present, counsel?

7 MR. MILLS: Yes.

8 MR. WOODBURY: Yes.

9 THE COURT: Thank you, Mr. Woodbury.

10 (Witness sworn.)

11 THE COURT: I recognize that there is some
12 risks when I have the witnesses remove their masks, but
13 my law clerk and I did some research before the trial
14 started, that there's a federal appeals court ruling
15 that said the witnesses' mask should come off so the
16 jurors can observe the witness. The defendant has a
17 constitutional right to confrontation of the witnesses
18 against him, so that's why I'm asking the witnesses to
19 remove their masks.

20 So please remove your mask, Mr. Marin.

21 And that's one of the reasons why we have the
22 witness over there, so we can get as much distance as
23 we can for the protection of the witness and the rest
24 of us. So that's why the witnesses are removing their
25 masks.

1 Would you please state and spell your first and
2 last names.

3 THE WITNESS: My name is Saul Marin. S-a-u-l.
4 M-a-r-i-n. And there's a junior at the end.

5 THE COURT: Junior. Thank you.

6 Go ahead, Mr. Mills.

7

8 SAUL MARIN, JR.

9 the witness herein, being first duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. MILLS:

13 Q Mr. Marin, are you a resident of Elko County?

14 A (Inaudible).

15 Q How long have you lived here in Elko County?

16 A I have pretty much my whole life.

17 Q I want to direct your attention back to -- back
18 in 2012, about eight years ago.

19 Did you possess a 9 millimeter Taurus firearm
20 at that time?

21 A I don't know if it was at that time. I want to
22 say it was earlier than that. But, yeah, (inaudible).

23 Q So around that time?

24 A Yeah.

25 Q Did you possess a firearm?

1 A Yeah. Yes.

2 Q Okay. And do you recall where you -- where you
3 got it from?

4 A Gun World here in Elko.

5 Q And what did you do with it?

6 A I sold it to my friend.

7 Q And who is your friend?

8 A Dusty Decker.

9 Q Okay. Mr. Marin, I'm going to show you what's
10 been marked and admitted as State's Exhibit 312.

11 Opening up the box and showing it to you, do
12 you recognize what's in that box?

13 A Yeah.

14 Q What is it?

15 A That Taurus gun that I owned, the Taurus 9
16 millimeter.

17 Q Is that the gun that you sold to Dusty?

18 A Yes.

19 MR. MILLS: Okay. Pass the witness.

20 THE COURT: Cross examination?

21 MR. WOODBURY: Thank you, Your Honor.

22

23

24

25

CROSS EXAMINATION

BY MR. WOODBURY:

Q Mr. Marin, you can recognize that gun simply by looking at it?

A Yes.

Q It's different than other 9 millimeter guns?

A I just recognize the gun I owned.

Q Is there something that is scratched on there or makes a difference from other 9 millimeters of the same kind?

A I have no idea. I don't know (inaudible) in there.

Q You said you owned that since 2012?

A I feel like I bought it in 2010.

Q Okay. And when did you sell it to Mr. Decker?

A Within the next year or two. I wasn't sure. I wasn't working at the time, so it had to be in the next year or two that I sold it to Decker.

Q So that would be in 2012 or 2014?

A No. Like between 2010 -- 2010 to 2012 sometime.

MR. WOODBURY: Thank you. I have nothing further.

THE COURT: Redirect?

MR. MILLS: Nothing based on that.

1 THE COURT: Are there any juror questions for
2 this witness?

3 Do any of you need the witness retained?

4 MR. MILLS: No, Your Honor.

5 MR. WOODBURY: Defense does not.

6 THE COURT: Thank you, Mr. Marin. You are
7 excused from further attendance at this trial. You
8 cannot discuss your testimony with anyone other than
9 the attorneys. Thank you.

10 (The witness left the stand.)

11 THE COURT: Your next witness?

12 MR. MILLS: Dustin Decker.

13 (Witness sworn.)

14 THE COURT: You can have a seat right there,
15 sir. Please remove your mask.

16 Would you please state your name?

17 THE WITNESS: Dusty Decker.

18 THE COURT: Thank you.

19 Go ahead, Mr. Mills.
20
21
22
23
24
25

1 DUSTIN DECKER,
2 the witness herein, being first duly sworn, testified as
3 follows:
4

5 DIRECT EXAMINATION

6 BY MR. MILLS:

7 Q Mr. Decker, good morning.

8 A Good morning.

9 Q Mr. Decker, did you used to own a 9 millimeter
10 handgun?

11 A Yes, sir.

12 Q And where did you get it from?

13 A I had bought it from Saul Marin.

14 Q And how do you know Saul?

15 A Childhood buddy.

16 Q And do you remember approximately when that was
17 that you obtained it from him?

18 A Shoot. It was approximately two weeks or three
19 weeks before I had heard this occurrence happening.

20 Q All right. So Saul Marin sold the gun to you?

21 A Yes, sir. He sold that prior, years prior, you
22 know, to me coming up hard on money to sell it to
23 somebody else. But it was just sitting in my dad's
24 safe. And, like I said, I came hard up on money. I
25 needed to pay my electrical bill and --

1 Q So what did you do with it then?

2 A At that moment, I kind of asked around if
3 somebody would like a 9 millimeter, you know, kind of
4 displayed it. And not, you know, too hastily. And it
5 was -- it was bought.

6 Q Okay. And who did you sell it to?

7 A Alan Honeyestewa.

8 Q Okay. So do you see the person that you sold
9 the gun to in the courtroom today?

10 A Yes, sir.

11 Q Could you point to him and describe what he's
12 wearing for the judge?

13 A He's in the white shirt.

14 THE COURT: Can you point to him, please? I
15 know our mamas told us not to point, but --

16 THE WITNESS: Yes, ma'am.

17 THE COURT: -- we've got to do it for these
18 purposes.

19 MR. MILLS: It's something we do for court.

20 So may the record reflect the identification of
21 the defendant?

22 THE COURT: The record will so reflect.

23 Q BY MR. MILLS: And when did you sell the gun to
24 him?

25 A Like I said, about two, three weeks prior to

1 this occurrence.

2 Q To the -- the shooting at Wrangler Circle --

3 A Yes, sir.

4 Q -- the incident in this case?

5 A Yes, sir.

6 Q Two weeks prior?

7 A Which I had only heard about it, you know. I
8 was -- I was aware of it happening, because as soon as
9 it happened, I mean, I was told, you know. And right
10 away I thought, okay, you know, darn it. But then
11 again, you know, it was out of my hands. I had sold
12 it. And, you know, what he wanted to do with it is
13 what he wanted to do with it.

14 Q How did you know Mr. Honeyestewa?

15 A A childhood friend, basketball, growing up
16 together, hunting together, you know, the whole nine,
17 you know.

18 Q And how did it come about that he was the one
19 that bought the gun from you?

20 A I had -- like I said, I had asked people, you
21 know, just around. I kinda told them my situation,
22 what was going on. You know, me being jobless at the
23 time, I had asked around, you know, like would you guys
24 be interested in, you know, buying a firearm.

25 And, of course, to the people that are legal

1 and, like, of age, because I wasn't -- you know, I'm
2 not like that. I'm not that kind of guy, do that type
3 of thing. And I had asked, and he had raised his hand
4 and showed me interest. And, you know, he came up with
5 some money. And that's how sales happen, I guess.

6 Q So did you approach him about selling the gun,
7 or did he come to you?

8 A It was -- we met in a neutral place. It was --
9 like I said, I was interested in selling it. He was
10 interested in buying it. So we met up. Of course, he
11 examined the firearm. And, you know, I told him it
12 fires, you know, and just what a salesman would do, you
13 know. And that's how it went.

14 Q How much did he buy it for?

15 A The original price that I was asking for was
16 about 400 bucks. And he had asked me if he could make
17 prior -- payments to me, which I was okay with. And he
18 had made a \$140 payment to me which, you know, like I
19 said, helped me keep my lights on.

20 Q Yeah.

21 A And like I said, I have a child of my own that
22 I have to take care of, so that was the main reason why
23 I, you know --

24 Q And the plan was for him to make other
25 payments?

1 A Yes, yes, yes.

2 Q Okay. I'm gonna show you what's been marked
3 and admitted as State's Exhibit 312.

4 Do you recognize the item that's in this box?

5 A Yes.

6 Q What is that?

7 A A 9 millimeter.

8 Q Is that -- does that appear to be the same gun
9 that you sold to the defendant?

10 A Yes, sir.

11 Q Mr. Honeyestewa?

12 A Yes, sir.

13 MR. MILLS: I'll pass the witness.

14 THE COURT: Cross examination?

15 MR. WOODBURY: Thank you, Your Honor.

16

17 CROSS EXAMINATION

18 BY MR. WOODBURY:

19 Q Mr. Decker, is there something specific about
20 that in your mind that differentiates it from other
21 guns, 9 millimeter guns, the same brand?

22 A No, sir. I mean, not --

23 Q It looks identical to the one that you sold
24 Mr. Honeyestewa, right?

25 A Yes, sir. Yes, sir.

1 Q But as far as remembering the serial number or
2 anything like that --

3 A No, I didn't remember that. Like I said, it
4 had been in my father's safe since I -- like I said, I
5 came up hard on needing some money, so that's where it
6 sat until I had made the sale.

7 MR. WOODBURY: I don't have any other
8 questions.

9 THE COURT: Redirect?

10 MR. MILLS: Nothing based on that, Your Honor.

11 THE COURT: Are there any jury questions for
12 this witness?

13 Do you need this witness retained?

14 MR. MILLS: The State does not.

15 MR. WOODBURY: We do not.

16 THE COURT: Thank you, Mr. Decker. You're
17 excused from further attendance at this trial. You
18 cannot discuss your testimony with anyone, other than
19 the attorneys.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Thank you.

22 (The witness left the stand.)

23 THE COURT: Your next witness, Mr. Mills.

24 MR. MILLS: Billy Hood.

25 (Witness sworn.)

1 THE COURT: Please state your name.

2 THE WITNESS: Billy Hood.

3 THE COURT: Thank you.

4 Go ahead, Mr. Mills.

5

6 BILLY HOOD,

7 the witness herein, being first duly sworn, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. MILLS:

11 Q What is your profession?

12 A I'm a sergeant with the Elko County Sheriff's
13 Department.

14 Q And how long have you been a sergeant?

15 A Since 2016.

16 Q I want to direct your attention back to the
17 summer of 2018.

18 What was your position with the sheriff's
19 office at that time?

20 A I was a sergeant for our investigations.

21 Q And did you come to be involved in the
22 investigation of the shooting that happened on Wrangler
23 Circle on July 7th?

24 A I did.

25 Q During the course of that investigation, did

1 you interview a person by the name of Amy Steinbach?

2 A Yes, I did.

3 Q And just generally, what was the nature of that
4 interview?

5 What was the purpose in interviewing her?

6 A I was contacted by Sergeant Czegledi who told
7 me that she wanted to come back in -- because he had
8 already talked to her once -- and tell the truth.

9 Q Okay. And did you have a discussion with her
10 about a time that she had been over at Ms. Stanger and
11 Mr. Smith's residence about a week prior to the
12 shooting?

13 A Yes, I did.

14 Q You talked to her about that?

15 A Yes, I did.

16 Q As well as about, you know, the other people
17 who were there at the time that she was there?

18 A Yes.

19 Q Did you have any discussions with her about
20 firearms, either being looked at or discussed at that
21 time that they hung out at Ms. Stanger's house the week
22 prior?

23 A Yes, I did.

24 Q Okay. Now, did you have a chance to review the
25 transcript of that interview this morning?

1 A I did.

2 Q And were there, in fact, some things that
3 Ms. Steinbach said about those guns?

4 A Yes, there was.

5 Q Okay. I'm going to show you what's been marked
6 as State's Exhibit 354.

7 I'll show it first to defense counsel.

8 I'm showing you what's been marked as State's
9 Exhibit 354.

10 Is this a copy of the transcript or a portion
11 of the transcript of the interview with you and
12 Ms. Steinbach?

13 A Yes, it is.

14 Q I want to direct you to page 5 of that
15 transcript and ask you to read into the record your
16 question to Ms. Steinbach about -- about showing Speedy
17 and Tyrell the -- Bradley's gun collection.

18 So it's this question starting on line 215. If
19 you want to read your question and then her answer,
20 which will take you through line 222.

21 A Okay. I asked:

22 "Okay. Now, there was another night you were
23 there -- or the same night that she showed Speedy and
24 Tyrell and you -- well, I keep forgetting his name --
25 Mr. Bradley's gun collection.

1 "Okay. Yeah, I think -- she didn't show me or
2 Tyrell; she showed Speedy. She gave Speedy the keys,
3 and he -- I'm pretty sure, he opened it. I don't know
4 because I wasn't around there. I was sitting in the
5 kitchen."

6 Q Okay. Thank you.

7 So Ms. Steinbach stated she was pretty sure
8 that Stanger had shown Speedy the guns and something
9 about giving Speedy keys and he opened it?

10 A Yes.

11 Q Okay. Now, did she also make a comment about
12 Speedy saying something about -- about the guns, after
13 they left, after Ms. Steinbach and Speedy and Tyrell
14 left, and there was a comment made about the guns.

15 Do you remember that?

16 A Yes.

17 Q Okay. So I'll direct your attention to -- this
18 is page 6 now, starting on line 253, where you asked
19 Steinbach, What did Speedy say about the guns. If you
20 can read that portion of the conversation from there
21 until page 7, his answer at line 273, at the back of
22 the page.

23 A Start on 253?

24 Q Yes.

25 A Okay. "Question: Okay. What did Speedy say

1 about the guns? I know he had to have talked -- talked
2 to him if you looked at them.

3 "Hmm, that was between him and Tyrell. I don't
4 know, honestly.

5 "Well, you're in the car. You didn't hear
6 anything?

7 "I wasn't listening cause I didn't want to hear
8 it. Like -- and I told them, I said, 'No more, I don't
9 want to hear it. You guys just leave her alone.'

10 "What did you hear, though? I'm trying to help
11 you here, because, uhm, I -- nothing really. Because
12 you were there.

13 "So he just said -- and then I said, 'I'm
14 kinda' -- and then she said, 'There was a lot of them
15 in there.'"

16 And that was it.

17 Q That's it.

18 So Ms. Steinbach told you that Speedy had made
19 a comment about there being a lot of guns in there?

20 A Yes.

21 MR. MILLS: Okay. I'll pass the witness.

22 THE COURT: Cross examination?

23 MR. WOODBURY: May I have the exhibit?

24 MR. MILLS: Yes.

25 (Counsel complied.)

1 MR. WOODBURY: Your Honor, my evidence list
2 only goes to 352. This appears to be 354. Did I miss
3 something?

4 THE COURT: That's all the farther my list from
5 the clerk's office goes, as well, Mr. Woodbury. I
6 don't know if these were submitted to the clerk this
7 morning.

8 MR. MILLS: They were.

9 THE COURT: Have you seen this before in
10 discovery, Mr. Woodbury?

11 MR. WOODBURY: I have seen it before in
12 discovery, yes, Your Honor. I just didn't know it was
13 going to be an exhibit.

14 THE COURT: Okay. I didn't know either. It
15 has not been offered at this point.

16 MR. WOODBURY: Have not, although he has had
17 him read from it.

18 THE COURT: Yes. And it's not in evidence,
19 other than what he read.

20 Mr. Mills?

21 MR. MILLS: Yeah. So what the State was doing
22 there, Your Honor, Ms. Steinbach testified yesterday
23 that she couldn't remember making those statements.
24 So, in essence, those particular statements become
25 admissible as a prior inconsistent statement under the

1 hearsay stamp, as well as under Crowley. And so those
2 specific statements are relevant for that purpose.
3 They're admissible.

4 THE COURT: Mr. Woodbury, do you want to be
5 heard any further on that?

6 MR. WOODBURY: I don't.

7 THE COURT: If you'd like, we can recess for
8 lunch early, come back at one o'clock, and that would
9 give you some time to go over it to prepare your cross
10 examination. Would you like to do that?

11 MR. WOODBURY: I would.

12 THE COURT: All right. We're going to be in
13 recess, then, until one o'clock so Mr. Woodbury can
14 have time to review that.

15 Sergeant Hood, please don't discuss your
16 testimony with anyone other than the attorneys. You
17 will need to be back here at one o'clock.

18 (Admonition given to jury.)

19 THE COURT: Please be back in the jury room by
20 one o'clock. We're in recess.

21 (Recess.)

22 THE COURT: The record will reflect the
23 presence of the defendant and counsel.

24 Counsel, will you stipulate to the presence of
25 the jury?

1 MR. MILLS: Yes.

2 MR. WOODBURY: So stipulated.

3 THE COURT: It's your cross examination,
4 Mr. Woodbury.

5 MR. WOODBURY: Thank you, Your Honor.

6

7 CROSS EXAMINATION

8 BY MR. WOODBURY:

9 Q Detective Hood, your participation in this
10 investigation is considerably broader than you
11 testified about today, correct?

12 A Yeah, it was.

13 Q And at the time -- does the sheriff's office
14 divide these responsibilities among the lead detectives
15 or things like that?

16 A Yes, they do.

17 Q Could you explain that, kind of, to the jury?

18 A Well, at the time, Detective Stake was on call.
19 I was actually in Idaho --

20 THE COURT: Excuse me, Detective. Do you have
21 your mic on?

22 THE WITNESS: Detective Stake was the lead on
23 this. I was in Idaho when it all happened, the
24 incident. I got called at six o'clock the next
25 morning.

1 Q BY MR. WOODBURY: Oh, okay. And this interview
2 that you had with Ms. Steinbach took place on July 11?

3 A Yes.

4 Q Okay. And the transcript that you were showed
5 and read from consisted of six pages. Did you know
6 that?

7 A I know it's considered (inaudible).

8 Q But your actual interview transcript was 49
9 pages, wasn't it?

10 A Yes.

11 Q Okay. And how did you come to have this
12 interview with Ms. Steinbach?

13 A I was contacted by Sergeant Czegledi, because
14 he interviewed her the first time. He was busy, and he
15 asked me if I could conduct the interview because she
16 wanted to come back in, stated that she wanted to tell
17 the truth this time.

18 Q Okay. And you were under the impression that
19 she had said to the other detective that she had not
20 been truthful previously?

21 A That's what I was told, yes.

22 Q Okay. Did you know Ms. Amy Steinbach from
23 before?

24 A I heard her name around. I didn't know her
25 personally.

1 Q Okay. And as a detective at that time, you're
2 not necessarily involved strictly with just narcotics
3 violations?

4 A No.

5 Q Okay. Did Ms. Steinbach tell you how she came
6 to go up to the residence at 2821 Wrangler Circle on
7 the week before?

8 A I believe she said she was invited up by
9 Jennifer Stanger.

10 Q Well, actually, didn't she say that Jennifer
11 Stanger was begging her to come up?

12 A Well, same thing.

13 Q Begging and asking are the same thing?

14 A I don't know.

15 Q Did Ms. Steinbach tell you who she went there
16 with?

17 A Tyrell Holley and Speedy.

18 Q And Speedy?

19 A Speedy.

20 Q You don't actually have knowledge of what
21 Speedy's actual name is?

22 A Yes, I do.

23 Q What is it? How about Terrence Lopez?

24 A Terrence Lopez, yeah. I just had the Terrence,
25 the first part.

1 Q And you knew of Mr. Holley and Mr. Lopez?

2 A I had information on them, yes.

3 Q Yeah. And that was as a consequence of prior
4 work as a sheriff's office detective?

5 A Yes.

6 Q Okay. Did Ms. Steinbach tell you that she had
7 been at Ms. Stanger's house previously?

8 A I believe she had been there before.

9 Q Excuse me?

10 A Yes.

11 Q The week before?

12 A Yes, the week before.

13 Q And did Ms. Steinbach discuss the question of
14 whether Ms. Stanger was under the influence of alcohol
15 or something?

16 A She said she didn't know if she was drunk or
17 high, I believe.

18 Q Okay. But the impression was she was one or
19 the other or both?

20 A She wasn't acting normal.

21 Q And did Ms. Steinbach tell you how Ms. Stanger
22 was clothed?

23 A I believe in her underwear.

24 Q She said literally in her underwear?

25 A Yeah.

1 Q Did Ms. Steinbach tell you there was a needle
2 on the counter?

3 A Yes.

4 Q And do you know what needles are used for?

5 A They are used to shoot up narcotics. And I
6 guess if you're a diabetic, you use them too.

7 Q Okay. Did Ms. Steinbach tell you why she had
8 Mr. Lopez and Mr. Holley with her?

9 A She mentioned something about they're with her
10 because she was feeding them.

11 Q Okay. Did she discuss with you or did you ask
12 her a question about what happened with a laptop?

13 A I did.

14 Q And can you describe for the jury what that
15 means?

16 A I guess a laptop came up missing, and she says
17 she don't know who took it. And she asked Mr. Holley
18 and Mr. Lopez, and they denied taking it. And she said
19 she never seen it.

20 Q Okay. And did she inform -- did she tell you
21 that she informed Mr. Holley and Mr. Lopez that if they
22 had it, they needed to give that back?

23 A Yes.

24 Q Did Ms. Steinbach tell you what she advised
25 Ms. Stanger to do about the laptop?

1 A I don't remember.

2 Q Did Mr. -- did she say that Mr. Holley had told
3 her she needed to get ahold of Speedy?

4 A If that's in the transcripts, yes, but I don't
5 remember.

6 Q Okay. And then did you ask her if anything was
7 going on with drugs that day, and she responded that
8 Jennifer was looking for a shard?

9 A A shard, yeah.

10 Q And what is a shard?

11 A It would be a piece of meth.

12 Q And did Ms. Steinbach say that Jennifer
13 appeared to be out of control looking for it?

14 A Yes.

15 Q And then Ms. Steinbach described, did she not,
16 of Ms. Stanger showing Speedy the gun?

17 A Yes.

18 Q And did Ms. Steinbach claim that Ms. Stanger
19 hadn't shown Tyrell the gun, she simply showed Speedy
20 the gun?

21 A I believe somewhere in there it states she
22 brought it out, because Steinbach said she seen the gun
23 also because she told her to go put it away. So I
24 don't know if Tyrell saw it or not.

25 Q Did she say that Stanger gave Speedy the keys?

1 A Yes.

2 Q What did you understand giving him the keys to
3 mean?

4 A To the gun safe.

5 Q I'm sorry?

6 A The gun safe.

7 Q And did she tell you that she was pretty sure
8 that Speedy had opened it?

9 A Yes.

10 Q But she didn't know?

11 A Yeah. She said she didn't know. She was in
12 the kitchen at that time.

13 Q Did Ms. Steinbach inform you that she became
14 aware that Ms. Stanger had known Speedy from before?

15 A Yes.

16 Q And did she inform you that at a previous time?
17 Ms. Stanger had asked Ms. Steinbach to take Speedy and
18 Tyrell out to her residence sometime before this?

19 A Yes.

20 Q Concerning a time when her sister called the
21 cops on her?

22 A Yes.

23 Q Okay. What did you understand that to mean?

24 A I have no idea.

25 Q Okay. And did Ms. Stanger -- or Ms. Steinbach

1 inform you that she had looked in, quote, "her
2 backpack"?

3 A I don't know if she said her backpack, but she
4 said she looked in a backpack. It might have been
5 her's.

6 Q But she said her backpack, or at least the
7 transcript says that?

8 A That's what she said then.

9 Q And then there was nothing.
10 And do you have any idea who "her" would be?

11 A "In her backpack"?

12 Q Yeah.

13 A Probably her own backpack.

14 Q And did you ask her if it was true that Tyrell
15 was the ringleader of the group?

16 A Yes, I did.

17 Q Okay. And she declined to answer. She said
18 she did not know; is that right?

19 A Yes.

20 MR. WOODBURY: Thank you. I have no further
21 questions.

22 THE COURT: Redirect?
23
24
25

REDIRECT EXAMINATION

BY MR. MILLS:

Q Sergeant Hood, so it was your understanding that Ms. Steinbach wanted to come to you to tell the truth?

A Yes.

Q Because she had spoken to another officer previously, correct?

A Yes.

Q And she told that -- or did you know what she wanted to tell the truth about, which part of her statement?

A I believe it was about who picked up her vehicle at the Stockmen's was the main part.

Q Isn't it true that she initially had stated that it was Speedy?

A Yes.

Q But it turns out that it was Tyrell Holley that she gave the truck to or loaned the truck to that evening?

A Yes.

Q And did she tell you that Tyrell had -- that physically, she was afraid of him. He threatened her, and that's why she gave the false statement about that particular thing initially?

1 A Yes.

2 Q And that she wanted to come clean with you and
3 tell you that it was really Tyrell Holley?

4 A Yes.

5 MR. MILLS: That's all I have.

6 THE COURT: Recross?
7

8 RE CROSS EXAMINATION

9 BY MR. WOODBURY:

10 Q I want to clarify that, that there was a period
11 of time when the Elko County sheriff's detectives had
12 been under the impression from Ms. Steinbach, by a
13 written statement, that her car, on the night of July
14 7th, had been taken, loaned, to Mr. Lopez?

15 A I never seen the statement, but that's what I
16 was told by Detective Czegledi.

17 Q Okay. And she clarified you during this
18 conversation -- clarified to you during the
19 conversation that Mr. Holley had, in fact, been the
20 person who went and borrowed her car?

21 A Yes.

22 Q And that doesn't appear in the first seven
23 pages of the interview that you just read -- or do you
24 know whether that did -- or the interview that was
25 marked into evidence?

1 A I don't believe it was in that one, no. I know
2 it's in there somewhere.

3 Q I'm sorry?

4 A Somewhere in the transcripts, but --

5 Q You recall it. All right.

6 And then she had indicated that Mr. Holley had
7 threatened her with physical harm if she hadn't lied to
8 the cops?

9 A Yes.

10 MR. WOODBURY: Thank you. I have nothing
11 further on that.

12 THE COURT: Are there any jury questions for
13 this witness?

14 Do you need this witness retained?

15 MR. WOODBURY: The defense does, Your Honor.

16 THE COURT: Sergeant Hood, you are free to
17 leave now. You may be called back to testify later,
18 and you'll need to return. Please do not discuss your
19 testimony with anyone, other than the attorneys. Thank
20 you.

21 (The witness left the stand.)

22 THE COURT: Your next witness?

23 MR. MILLS: Ronnie Sorensen.

24 (Witness sworn.)

25 THE COURT: Please state and spell your first

1 and last names.

2 THE WITNESS: Can I put this back on?

3 THE COURT: No. You need to leave it off while
4 you testify, please.

5 THE WITNESS: Ronnie Sorensen.

6 S-o-r-e-n-s-e-n. Yeah.

7 THE COURT: And first name is R-o-n-n-i-e?

8 THE WITNESS: Yeah.

9 THE COURT: Thank you.

10 Go ahead, Mr. Mills.

11

12 RONNIE SORENSEN,

13 the witness herein, being first duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. MILLS:

17 Q Good afternoon, Mr. Sorensen.

18 Do you know a person by the name of
19 Bradley Smith?

20 A Yes, I do.

21 Q And how did you know that person?

22 A He was a friend.

23 Q How long had you known him before he passed?

24 A I would say maybe two years, maybe a year or
25 two and a half.

1 THE COURT: Mr. Bailiff, is that microphone on?

2 There you go. Okay.

3 THE WITNESS: Two years probably, a
4 year-and-a-half, two years.

5 Q BY MR. MILLS: So you had known him for a
6 year-and-a-half or two years before he passed?

7 A Yeah. Yes, sir.

8 Q And so how did you guys meet, or how did you
9 know each other?

10 A I -- I was kinda seeing a friend that was
11 friends with (inaudible) the couple. So (inaudible).

12 Q And who was that friend?

13 A It was Angela Sherman.

14 Q Okay. And a couple of years ago, back when
15 Bradley passed in the summer of 2018, where were you
16 living at that time?

17 A I was living right down the street, probably
18 not even a block away from him, in my mother's house.

19 Q So you were living at your mother's home down
20 the street from Bradley?

21 A Yes. That's correct.

22 Q How often would you see Bradley?

23 A I would say a few times a week, probably, I
24 would talk to him.

25 Q Would you go over there, or would he come over

1 to your place?

2 A I would usually go over there. Every now and
3 then he would stop over, but I would always call before
4 I would go to his place. I didn't like going
5 (inaudible).

6 Q Was there anyone else living with Bradley at
7 his place at that time?

8 A That would be Jennifer Stanger or Stanger.

9 Q How well did you know her?

10 A Like I said, about the same time as Brad.

11 Q I want to talk about a time about a week before
12 Bradley was killed.

13 Were you over at Bradley's and Jennifer's place
14 about a week before?

15 A Yes. That's correct. That's correct.

16 Q So what do you remember about that? Let me be
17 more specific.

18 How did you -- or why were you over there?
19 What were you doing?

20 A The purpose I was over there for was I was
21 using his garage and his power tools, because I didn't
22 have the equipment outside to do it. So I did it
23 indoors. And he was allowing me to use his -- his
24 tools.

25 Q Was Bradley there that day?

1 A No, not that day.

2 Q Was Jennifer there?

3 A Yes. Yes.

4 Q Did anyone else come over that day?

5 A That day, I think there was two people there.

6 Q And who --

7 A And a third person -- well, a girl and two guys
8 that were there.

9 Q A girl with two guys.

10 Do you know who those people were?

11 A I'm not really sure on the names. But, I mean,
12 I've seen them, but not really associated, like,
13 acquaintances with them, or whatever you want to call
14 them.

15 Q Do you know Speedy Lopez?

16 A Yes, I do.

17 Q Do you know Tyrell Holley?

18 A At the time, I didn't. But then as I got --
19 met him, that's how I met him.

20 Q Did you meet him that day, or had you met him
21 before?

22 A I would say that was probably the first time --
23 I probably heard of him, but I never really met him in
24 person.

25 Q But that day, though, you did already know

1 Speedy Lopez?

2 A Yeah. Yes. Yes.

3 Q Was he one of the two guys that came over with
4 the girl that day?

5 A Yes, that's fair.

6 Q And was Mr. Holley the other guy?

7 A Yes.

8 Q Did you know the girl they came over with?

9 A I do not. I don't know her name. I've -- I
10 didn't know her.

11 Q Okay. And so after those three people came
12 over, what did they do?

13 A At that time, around there, a laptop was
14 stolen. And then I went back and she was crying,
15 saying they took the laptop or something.

16 Q She, who, was crying?

17 A Jennifer was stating that. And they were gone
18 and she was crying. And all of the lights were off.
19 So I was, like, what's going on here?

20 Q So did you leave at some point and then come
21 back?

22 A Yes, I did.

23 Q Okay. So when did you leave?

24 A I was only gone for probably not even five
25 minutes, maybe, at the tops, maybe.

1 Q Were Speedy and Tyrell and the girl there when
2 you left?

3 A Yes, they were.

4 Q Were they there when you went back?

5 A No.

6 Q So they left in between?

7 A Yes, that's correct.

8 Q And is that when Jennifer told you that she
9 suspected them of stealing a laptop?

10 A Yes. That's correct.

11 Q So while -- you know, before you left, and then
12 they left, and while you were there at the same time
13 that they were there, did you see any guns or hear
14 anybody talk about guns?

15 A I heard them talk about it. And then I
16 noticed -- well, I seen both of them come out of the
17 room with keys to the gun cabinets.

18 Q Who did you see coming out of the room with the
19 keys?

20 A The two -- whatever his name is and Speedy.

21 Q So Tyrell Holley and Speedy?

22 A Yes.

23 Q Do you remember which of them had the keys?

24 A As far as I remember, I thought one of them --
25 each had one. As far as I could -- I didn't see them

1 with them in their hands. But I was -- each of them
2 had the key to each safe.

3 Q So what led you to conclude that those keys
4 were to a gun safe?

5 A I asked Jennifer why they were in that room and
6 why they got keys in the gun cabinet in their room.

7 Q And what did she tell you when you asked her
8 that?

9 A There was a gun -- guns or something.

10 Q Okay.

11 A To that (inaudible).

12 Q Did you personally see any of the guns?

13 A Not at that moment. I mean, I shot guns with
14 him before at the shooting range, but that was only a
15 few times. But none of his guns, at that time, that I
16 was aware of that was his, but I did see one gun.

17 Q Okay. So what was the gun you saw?

18 A I don't know what the caliber on it was. It
19 might have been -- maybe a 22 or -- you know, I'm not
20 really sure.

21 Q A handgun or a rifle?

22 A Yeah, a handgun.

23 Q A handgun.

24 So again, to clarify, what were the
25 circumstances -- or when and where did you see that gun

1 and who had it?

2 A Holley or Tyrell had a gun that he had with his
3 backpack. And he kept holding it, and he was showing
4 me. And I said, I didn't want to touch it. I didn't
5 want nothing to do with it.

6 Q So was that a gun that he had brought with him,
7 or was that one of Bradley and Jennifer's gun?

8 A I'm sure -- I'm assuming that he brought it
9 with him. I'm not sure if it was one of them or not.
10 (Inaudible).

11 Q All right. So focusing on Bradley's guns, did
12 you ever see any of those guns on that date that you
13 were all hanging out together?

14 A No, I did not.

15 Q You just heard them talk about the guns?

16 A Yes.

17 Q And saw them with the keys to the gun safe?

18 A Yes.

19 Q Okay. So I want to now talk about something
20 that happened the day before Bradley was killed.

21 Did you run into Speedy that day?

22 A Yes, I did. That morning.

23 Q Where did you run into him at?

24 A Right around Stockmen's (inaudible).

25 Q Okay. Did you have a conversation with him?

1 A Yes, I did.

2 Q And what did you guys talk about?

3 A Well, he was just talking about how he and --
4 well, they were going to go back and rob him, his guns
5 and his tools.

6 Q Speedy told you they were gonna go back for the
7 guns and the tools?

8 A Yeah, he told me that. And I told him no, he
9 better not. I said, That's stupid. Don't even do
10 that. It's not a good idea. And he apparently didn't
11 listen. And he didn't have a care in the world, so...

12 Q Did the subject of Bradley's work schedule come
13 up in the course of that conversation?

14 Did you guys talk about that?

15 A Yeah. He brought it up and asked me if I knew.
16 And I never -- I never worried about a schedule or
17 needing a schedule. I talked to him, said he was off,
18 if not, I wouldn't go over there (inaudible).

19 MR. MILLS: Okay. Thank you. I'll pass the
20 witness.

21 THE COURT: Cross examination?

22 MR. WOODBURY: Thank you, Your Honor.

23

24

25

CROSS EXAMINATION

BY MR. WOODBURY:

Q Mr. Sorensen, what is your age?

A Excuse me?

Q How old are you?

A 45.

Q How many?

A 45.

Q And where are you presently employed?

A I'm not employed at this moment.

Q And back on July 7th, 2018, were you employed?

A Yeah. I was starting to go back to work at Khoury's Marketplace (inaudible).

Q Well, you testified at the preliminary examination regarding this matter with Mr. Honeyestewa.

A I believe so. I'm not really sure.

Q Were you provided with the transcript of your testimony?

A Yes, I did.

Q And you read it?

A I did not look over it, but I was -- I was in the presence of it. But I didn't bring it or I didn't look it over before I came, no.

Q And you also testified at the preliminary hearing of Mr. Lopez, Speedy?

1 A Yes, I did.

2 Q And were you also provided a transcript of that
3 testimony?

4 A Yes, I was.

5 Q Okay. Did you read it?

6 A Just what I remember telling you guys. Yes,
7 I -- what I remember telling you, yes.

8 Q You're talking awful low and I can't hear you.

9 A As I remember, yes, I did went over it to -- in
10 my head and in my mind. I did not -- or I didn't read
11 the transcript before I came. No, I did not.

12 Q Okay. Do you recall testifying at your
13 preliminary hearing that you had known Jennifer Stanger
14 for a substantially longer period of time than
15 Mr. Smith?

16 A I may have. I'm not really -- I couldn't
17 pinpoint it. I mean, I really don't pay attention to
18 how many years I know a person or...

19 Q Okay. And you were living at whose house in
20 those days?

21 A My mother's.

22 Q Okay. Were you also having some trouble with
23 controlled substances at that time?

24 A I wasn't, no.

25 Q None?

1 A No.

2 Q And the lady that you met Ms. Stanger through,
3 did she have a controlled substance problem?

4 A You're saying the girl that was there at the
5 home?

6 Q Angela?

7 A Or Angela? Was she?

8 Q Yeah.

9 A She had in the past, yes.

10 Q Well, she was on her way to prison or just got
11 out of prison for controlled substances?

12 A She should have been.

13 Q You don't know?

14 A I don't know. I couldn't tell you, sir.

15 Q I thought you were in a romantic relationship
16 with her.

17 A I was -- hangout and seen her. I don't know if
18 you call that romantic. Would you?

19 Q How did you -- well, let me ask it this way:
20 What time was it that -- on the week or so before when
21 Mr. Smith was killed, what time was it that you went
22 over to Ms. Stanger's house?

23 A It wasn't the night, but afternoon, but night,
24 night.

25 Q It was night?

1 A Yes, it was.

2 Q Was it as late as 8:00 or 9:00?

3 A Yes, it was.

4 Q And you were going over there to do some work
5 on something?

6 A Yes. A project (inaudible).

7 Q I'm sorry?

8 A Yes. I was doing a -- I was working on a
9 project I was doing and making sure it was cleaned up
10 before Brad got there.

11 Q Okay. And how did you come to -- well,
12 ultimately you went inside the residence, not the
13 garage, but where the dining room and the kitchen and
14 everything is, right?

15 A Yes.

16 Q All right. And were you -- did you go over
17 after Mr. Lopez and Ms. Steinbach and Mr. Holley
18 arrived or were they already there?

19 A They were already there when I was there, when
20 I showed up.

21 Q Okay. And what were they doing?

22 A If I remember correctly, the girl and Jennifer
23 were trying on clothes, cleaning the room or something
24 to that effect. And the other two were talking,
25 walking out of Brad's room (inaudible).

1 Q Do you happen to recall how Ms. Stanger was
2 dressed?

3 A I do not recall. I mean, she was dressed, I
4 can tell you that.

5 Q She's a pretty modest dresser?

6 A I -- she dresses normal, I guess. No -- yeah.

7 Q Well, you don't recall her being literally in
8 her underwear, do you?

9 A No, I didn't.

10 Q You would notice that?

11 A I'm pretty sure I would.

12 Q Were there any controlled substances being used
13 in the residence?

14 A Not that I was aware of, no.

15 Q Uh-huh.

16 And so when you went in, what did you do?

17 A I sat in the kitchen, in the breakfast part
18 area. And then I walked into the front room to see
19 what they were coming out of the room for.

20 Q All right. And did you have some interest in
21 being there, as opposed to working on the project?

22 A Other than that, no.

23 Q And had you been invited by someone to sit in
24 and have a conversation?

25 A Well, when I went there, the real reason why I

1 was going there was to clean up, make sure the
2 garage -- the area I was cleaning and all his tools
3 were there and everything was in order. That's why I
4 was there.

5 Q Well, I know why you went over, but you didn't
6 do anything with the project that you had.

7 What you did was you sat with the four of them
8 in the -- in the residence, right?

9 A Not sat with them, no, I did not. I mean, I
10 did go to the -- arrange the (inaudible). I went to
11 the garage before I left.

12 Q Yeah.

13 A I came back.

14 Q Then there came a time -- I guess you left
15 twice?

16 A One time.

17 Q Why did you testify at the preliminary hearing
18 that you went once to go change your pants?

19 A (Inaudible) I had shorts or something on. But
20 at the same time, I was only gone not even --

21 Q Well, if you testified that you went and
22 changed your pants -- out of shorts and into pants --

23 A It takes not five minutes to change your pants,
24 sir.

25 Q That wasn't what I asked you, how long it took.

1 What I asked you, sir, is did you leave one time to go
2 change your pants?

3 A If I had, it had to have been the same time
4 frame.

5 Q Okay. And then you left the second time to go
6 get some batteries?

7 A (Inaudible).

8 Q Who were the batteries for?

9 A Jennifer just needed batteries for a flashlight
10 or some -- I can't really remember exactly why. But I
11 said I have some new batteries at the house, so she
12 told me to go grab them, so I left. I said, All right,
13 I'll be right back. Walked there and walked right
14 back.

15 Q Did you testify at the preliminary hearing that
16 Mr. Honeyestewa -- you went to get batteries for
17 Mr. Holley?

18 A I don't recall, but it was for Jennifer,
19 whoever needed batteries in the home.

20 Q Okay. And that was a pretty generous thing for
21 you to do.

22 A Well, I -- I always help a person that I can
23 help, so...

24 Q And then Mr. Holley and Mr. Lopez and
25 Ms. Steinbach left the house?

1 A Yes. (Inaudible) back to come back -- where
2 the batteries I left for, they were gone. And she was
3 the only one at that residence with the lights off.

4 Q Jennifer was?

5 A Yes. Jennifer was.

6 Q And there had been some conversation between
7 you and Ms. Stanger over whether she had seen anybody
8 take the laptop?

9 A Yes. She asked if I saw anyone take it or --
10 and then she said, I know you didn't take it. And I'm
11 all, why would I steal a laptop? I mean, it wasn't me.
12 So she -- on the assumption that one of those three had
13 taken it.

14 Q Yeah. And you had been out to the garage
15 smoking a cigarette when they left?

16 A That's when I left to go get the batteries.
17 They -- I was in there doing my arranging in the
18 garage. And they came walking out into the garage, out
19 of the mud room, or whatever you want to call it,
20 walking, and they didn't see me because I was on the
21 other side. And that's when they saw me smoking a
22 cigarette and I left.

23 And then when I came back, everyone was gone,
24 but Jennifer was the only one there present.

25 Q And did you ever tell anybody you saw bullets

1 from the pocket?

2 A No, I did not.

3 Q You didn't know who took the laptop?

4 A I knew it wasn't me. But I did not know who
5 took it.

6 Q I didn't ask you if you took it. I said, you
7 don't know who took it?

8 A No, I do not.

9 Q Okay. And Ms. Stanger confronted you about
10 that?

11 A She -- not me, she confronted me, did I see any
12 of those guys take it or her. And I replied, no, and
13 it wasn't me. So then she tried to call them or get
14 ahold of them to bring the laptop back.

15 Q And did you go in the house and look to see
16 where the laptop had been?

17 A All -- it was all dark and stuff at that nature
18 night. And, I mean, I'm not gonna -- like, where the
19 laptop was, it wasn't, like, in the breakfast bar area,
20 the top of the table there (inaudible).

21 Q And then were you present when Ms. Stanger made
22 her efforts to call Ms. Steinbach about who took the
23 laptop?

24 A Yeah. In the beginning I was, but then I left.

25 Q Okay. And how did Ms. Stanger accomplish that?

1 A As far as I know or heard or whatever, she did
2 it all over the phone.

3 Q And did she appear to have -- was she texting
4 or talking?

5 A I believe she tried calling over and over and
6 over and then tried texting, and then went back to
7 calling, if I remember correctly.

8 Q Okay. And that took a while?

9 A Yeah. I would say it -- I'm not sure on how
10 long it took her. But like I said, I left after I -- I
11 couldn't give her any more information or anything.

12 Q Okay. Then did you have conversations with
13 Ms. Stanger the next few days on and off about the
14 laptop?

15 A She -- yeah, I believe so, I did. And then
16 they were talking about she -- she was talking, like,
17 they admitted to taking it and then they wanted money
18 for it. And then they upped the amount, the money to
19 put the laptop back.

20 Q And you didn't have any conversations with
21 Mr. Smith about the missing laptop?

22 A Not at that moment, no. That was between her,
23 Jennifer, and Brad.

24 Q Okay. But the answer is not at the moment --

25 A Not at that moment.

1 Q Wait.

2 The answer is between Sunday and the next
3 Saturday, you never had any conversations with
4 Mr. Smith about the missing laptop?

5 A No, I did not.

6 Q How come?

7 A I -- I had -- all this I had -- I told her.
8 So, I mean, she knew everything I told her.

9 Q Well, the fact was that you were under the
10 impression that Mr. Smith was the primary owner of the
11 laptop?

12 A Yes.

13 Q And you didn't discuss with him who Speedy was
14 or who Holley was or who Steinbach was and what you
15 knew about them?

16 A Not at the -- I don't recall. When all of that
17 went down, he came back. And that was between them
18 two, which -- what was going on with that, how
19 (inaudible).

20 Q But you knew who Mr. Lopez was from prior
21 knowledge?

22 A Yes.

23 Q And you didn't want to tell him you knew who
24 Mr. Lopez was?

25 A I didn't really. They already admitted to

1 taking it, so I had no reason to even comment on why or
2 who or...

3 Q Okay. So now we go down a week to, I guess,
4 late Friday night or early Saturday morning. Saturday
5 morning would be on July 7th.

6 And you ran into Speedy?

7 A Yes, I did.

8 Q And where was that at?

9 A Like I said, I ran into him at Stockmen's.

10 Q Did you get in the car with him?

11 A Yes.

12 Q And who was in the car?

13 A Him, a girl, and I believe -- I'm not really
14 sure on exactly who was in the vehicle. I think there
15 was -- I'm thinking maybe two girls and him and me. I
16 don't really know how it went down with that, but --

17 Q Were you intoxicated at that time?

18 A Not intoxicated, no.

19 Q Were you under the influence of controlled
20 substances?

21 A No, I was not.

22 Q Did you meet Speedy and go up to the car where
23 he was at, or did you meet him outside of a car?

24 A No. We were outside of the car and got in, and
25 that's when he started talking about being the -- going

1 back and taking the guns and all the tools. That's
2 when I told him, No, don't do it. That's stupid.
3 Don't.

4 Q My understanding from your preliminary hearing
5 testimony was that you initiated the conversation with
6 Mr. Lopez by saying that you were being accused of the
7 theft of the laptop and you wanted him --

8 A No. I --

9 Q Just a minute.
10 That you wanted him to give it back.

11 A You're correct on that. But when I talked to
12 him about that, I did it alone as me and him, so it was
13 no one else. Because I asked him why they did it and
14 blaming me.

15 Q And you were angry and ready to fight?

16 A I mean, I wasn't -- I mean, if that came down
17 to it, it would have come down to it. But it didn't
18 happen, so --

19 Q Well, I realize it didn't happen, but that's
20 what you testified to, was that you were --

21 A Yeah. I was pretty mad because I was accused
22 of something I didn't do.

23 Q Okay. Who was accusing you?

24 A The three of those people that were mentioned
25 by -- that were mentioned at that residence.

1 Q How would you know if they were accusing you if
2 you hadn't seen them or even talked to them --

3 A Word of mouth.

4 Q I'm sorry?

5 A Word of mouth.

6 Q Word of mouth? Whose mouth did those words
7 come out?

8 A Pretty much anybody that knew about the
9 situation.

10 Q Knew about the laptop missing?

11 A Yes.

12 Q But it wasn't Brad Smith?

13 A No.

14 Q And it wasn't Jennifer Stanger?

15 A No.

16 Q And so the conversation progressed from a
17 confrontation about you being accused of being the
18 thief, and what was the next part of the conversation?

19 A That's when he was saying that he was gonna go
20 back and grab the guns and the tools.

21 Q Did Mr. Lopez appear to be under the influence
22 of alcohol?

23 A Yes.

24 Q Did he appear to be under the influence of
25 narcotics?

1 A I don't -- I didn't see with my own eyes if he
2 had been or I don't know how he is or it affects him.
3 I don't really hang out with him that much.

4 Q There are characteristics of people who use
5 drugs that are somewhat similar, aren't they?

6 A Well, I -- I guess. I mean, I'm not really --
7 I don't know, to be honest.

8 Q What about Angela? Did you watch her when you
9 were romantically involved with her?

10 A That wasn't really the top thing of my mindset.
11 But, I mean, if it was done, it was done behind my
12 knowledge.

13 Q So basically, were Ms. Stanger and Mr. Smith
14 your closest personal friends at that time?

15 A No.

16 Q Who was?

17 A I don't -- I mean, I got a lot of personal
18 friends. I can name them off here all week long. I
19 don't really know where that person -- I don't know how
20 to answer that question.

21 Q You had close friends?

22 A I had close friends, yes.

23 Q But Ms. Stanger and Mr. Smith weren't part of
24 that group?

25 A They were close. I had a lot of respect for

1 them. And I (inaudible) I considered them a friend. I
2 mean, if someone was gonna do that to even a neighbor
3 that I didn't know, I still would go and, Hey, this
4 is -- if at least let them know. It's kind of -- may
5 happen.

6 Q And Mr. Smith allowed you to use his tools and
7 equipment in his garage?

8 A Yes.

9 Q Okay. So when Mr. Lopez -- well, let me go
10 back.

11 Did you ever talk to Ms. Stanger about what the
12 heck was going on when she was showing the gun to
13 Mr. Lopez?

14 A Yeah. I kinda accused to say that they wanted
15 to see what kind of guns he had. And that's when I
16 was, like, they shouldn't be going out of Brad's room
17 with keys with (inaudible).

18 Q And did you ask her why in heaven's name she
19 had given the keys to them?

20 A In the same question, she was saying, It's
21 okay, it's all right, I trust them, they're just
22 looking at them, and that was it.

23 Q But she didn't just let them look at them. She
24 gave them the keys.

25 A That's correct.

1 Q And didn't that strike you as very, very
2 (inaudible)?

3 A That's why I was asking her what the heck is
4 going on. I mean, Brad would not like this at all.

5 Q And what did she tell you?

6 A That is the thing, that she trusted them and
7 it's all right.

8 Q I'm sorry. I didn't understand you.

9 A She said it was okay, she trusted them. And it
10 was okay, that she trusted them, that they were able to
11 do that.

12 Q Okay. And had you known Ms. Stanger to have a
13 friendship with Mr. Lopez from previous times?

14 A I didn't know at that time. After, there was
15 talk about it. But like I say, I couldn't tell you if
16 they were or not or they were. I didn't see any proof
17 to that. So, I mean, I don't --

18 Q Did you know anything about Ms. Stanger's
19 relationship with Mr. Holley before that?

20 A No, I did not.

21 Q And when you talked to her about the keys and
22 she said it's all right, did she explain to you that
23 she knew him from prior times?

24 A No. She just said he was a good -- a friend of
25 hers that she trusted, and that it's okay.

1 Q Okay. So now going back to the early morning
2 hours of July 7th, you had a conversation with Speedy,
3 and he ultimately told you he was going back to get
4 some guns, get those guns?

5 A Yes, he did.

6 Q Okay. And who all was present when that
7 conversation took place?

8 A I -- at that moment, we were kinda alone. But
9 then there was that one girl that might have overheard.
10 But she was up front, or the wheel. And then he just
11 kept rattling on about it, that he was gonna do it.
12 But I just kept telling him, Don't do it. And I took
13 it to my own -- tell Brad when I saw him.

14 Q Well, did you give Mr. Lopez some advice about
15 there being cameras in the house?

16 A Yes, I did.

17 Q And what did he respond?

18 A Pretty much they already saw it (inaudible)
19 there anyways but it shouldn't matter. Something to
20 that affect.

21 Q And Mr. Lopez asked you for Mr. Smith's work
22 schedule?

23 A Yes. He asked me if I knew if -- what days was
24 he off, long change or days off, or nights, days, and I
25 told him I did not know that kind of information.

1 Q Did he ask you for any other information?

2 A Not that I am aware of, but -- that I can think
3 of now.

4 Q How did the conversation end?

5 A That I wouldn't do it. You're stupid if you
6 are. I mean, you're probably gonna get -- excuse my
7 language -- shot or something is gonna happen, somebody
8 is gonna get hurt (inaudible).

9 Q Well, did you tell him that you were pretty
10 close friends or a friend, at least, of Mr. Smith's,
11 and you were gonna go tell him that Speedy was up --
12 what he was up to?

13 A Pretty much. Yeah. He didn't want to believe
14 me, so -- well, he believes me now.

15 Q So then after you had your conversation with
16 Mr. Lopez, where did you go?

17 A I believe I went home after that.

18 Q Did he give you a ride home?

19 A No.

20 Q How did you get a ride home?

21 A I had a friend pick me up.

22 Q And who was that?

23 A I can't really recall who it was, but it was --
24 I don't know really right now (inaudible).

25 Q Okay. And so you get back home. And then did

1 you get in contact, again, with Ms. Stanger?

2 A Say that again.

3 Q Did you subsequently get in contact with
4 Ms. Stanger?

5 A No. I did at the beginning. And I figured I'd
6 try to tell her when Brad was off, I need to talk to
7 him. And then he was off days -- or night shift, and I
8 went to the residence and told him (inaudible).

9 Q But first you told Jennifer, right?

10 A Yeah. I told her that I needed -- I'm planning
11 on telling him, so I'm coming over. So...

12 Q Well, actually, she came to your house, right?

13 You called her and asked her to come over --

14 A I didn't ask her to come over.

15 Q -- so you can tell her about this?

16 A No, I did not. If I talked to her, it was over
17 the phone or saying I'm going over to talk to Brad when
18 he's off work to let him know so he gets a heads up.
19 Well, I didn't know that he wanted to do it. But I
20 didn't know if he was telling the truth or if he was
21 just talking out of his -- talking nonsense or whatever
22 he was doing. But I thought it would be a good idea
23 for him to know if it was gonna happen.

24 Q Right. But didn't you testify previously that
25 you told Jennifer all about it first?

1 A I didn't tell her. She was aware of it. I'm
2 not, like -- I'm not remembering exactly how -- the day
3 or (inaudible) or what. But she did know what was
4 gonna happen when Brad got off work that day.

5 Q All right. Did you have a romantic
6 relationship with Jennifer?

7 A No, I did not.

8 Q Now, I want to clarify. Prior to talking to
9 Jennifer, either personally or on the phone, you
10 hadn't -- you had no reason to believe that she was
11 aware that Mr. Lopez was coming to steal the guns?

12 A I wasn't aware of any of that, any of that
13 happened, no.

14 Q So then you testified -- you told her about
15 what Mr. Lopez had said about stealing the guns,
16 correct?

17 A Yes, I did.

18 Q And then you and she discussed telling
19 Mr. Smith?

20 A I didn't discuss it. There was nothing to
21 discuss. I told her I was telling him point-blank.
22 She couldn't do nothing about it. So it was happening.
23 So...

24 Q Okay. And Mr. Smith said, We're gonna steal
25 the guns -- or, excuse me, Mr. Lopez said, quote, "We

1 are gonna steal the guns"?

2 A He said we are going back. I -- when he said
3 that, he might have been referring to the same ones
4 that were there that night, that I was aware of at that
5 residence.

6 Q And then you went over to where Mr. Smith was
7 working that day?

8 A No. I went to his -- I went to his home when
9 he got off of work, probably like 7:30 or 8:00 in the
10 morning. He was just getting off of night shift. And
11 then I knocked on the door. They were talking, kinda
12 in an argument, kind of in the breakfast bar area. I
13 walked in. After that, they kinda did a break from
14 whatever they were talking about. And I told Brad I
15 needed to talk to him in the garage, and it's a
16 man-to-man conversation.

17 And I went to the garage and waited for him to
18 come to the garage, and that's when I told him.

19 Q And Ms. Stanger was there during the
20 conversation?

21 A Yeah. She heard -- overheard me talking about
22 it. And then she came in as we were talking about what
23 I told him about what happened -- gonna happen, or was
24 gonna happen. And then they were still arguing over
25 something about when another girl or something had

1 happened prior to when she went to jail. She might
2 have had something -- hung out with a girl or something
3 to that effect. And they were kinda arguing over that.
4 But other than that, I left after I told him that.

5 Q And when you say "they," Mr. -- Mr. Smith and
6 Ms. Stanger were arguing over Mr. Smith having had
7 something to do with another, quote, girl, closed
8 quote, when Jennifer was in jail?

9 A That's correct.

10 Q Okay. And do you know when that was?

11 A What was that again?

12 Q When was she in jail. Do you know?

13 A I'm not sure of the dates. I think she went to
14 jail on a child endangerment and a DUI, something like
15 that. Something like to that affect.

16 Q And you knew that Jennifer was on her way to go
17 to rehabilitation?

18 A I did not know that at that time, no. That was
19 news to me, so I didn't know that.

20 Q When did you learn that?

21 A After it was all -- the incident had happened.

22 Q When you had left Speedy, did you have an idea
23 when it was that he was gonna be coming home?

24 A No, I didn't.

25 Q Okay. And the nature of the conversation

1 between Jennifer and Mr. Smith didn't concentrate too
2 much on the potential theft that was gonna happen.
3 What that conversation was about was Mr. Smith's
4 behavior while she was in jail?

5 A Yeah. You're probably right on that. It was
6 kind of a mix between the both of them, because what I
7 presented to him was more of a man-to-man thing.
8 Whatever he did on his -- that was between him and her.
9 I had no -- nothing to do with that situation. I had
10 no real say. That conversation never really -- it kind
11 of balanced out because I left. I didn't want to --
12 any more problems. I said, I didn't come over here to
13 make you guys fight even more or -- I just wanted to
14 let you know.

15 Q Did Mr. Smith appear to be under the influence
16 of alcohol at that time?

17 A Yes, he was.

18 Q All right. And that would have been earlier in
19 the morning?

20 A Yes, it was.

21 Q And did Ms. Stanger appear to be under the
22 influence of alcohol or drugs?

23 A No (inaudible).

24 Q Okay. And was there any discussion about how
25 Mr. Smith and Ms. Stanger might react to this gun theft

1 prospect?

2 A No. I -- like I said, it didn't matter how it
3 was gonna go. He's gonna know about it. I mean, I'm
4 not going to hide nothing from my friend. So...

5 Q I'm not asking whether he knew about it. I'm
6 asking whether there was some conversation or advice
7 you gave him that -- about how he might handle it?

8 A He didn't say what? I said, I don't know what
9 you want to do about it, take care of it yourself, or
10 do whatever you want, or call the cops, or do something
11 about it, or -- it's up to you. And he was, like,
12 Don't worry. I'll take care of it.

13 Q Actually, you previously testified that you
14 even offered to come over and help him?

15 A Oh, yeah, Dude. He needs someone to stand up
16 and back him up. I'm not saying a gun fight or
17 anything, but I was, like, asking him, Hey, man. What
18 the heck, man? Like, a witness to what was going to
19 occur or what had happened.

20 Q I'm not clear what, "Hey, man, what the heck,
21 man" means. Is that --

22 A Well, no. To Speedy and Tyrell, confront them
23 in person, too, with him, say, okay, well, at least he
24 had more confidence in himself to do something, like
25 stand up and ask, Hey, what are you guys -- you know,

1 Here's your plans. What are you doing or why?

2 Q And did you give him advice?

3 A Yeah. I said, If you need me, call me.

4 Q You didn't tell him to call the cops?

5 A I told him to call the cops numerous times. I
6 said, I don't know what you want to do, call the cops.
7 I mean, I don't know what he was gonna tell them. But
8 at least they're aware of it.

9 Q So did you tell him that you knew that
10 Mr. Lopez had been under the influence of alcohol and
11 might be a problem, might do something really stupid?

12 A Yeah. He knew that he was -- had been
13 intoxicated and -- back whenever they had a
14 conversation. I don't know if he was telling the
15 truth. I don't if it's a story or whatever he wants to
16 play, whatever he's doing, just plan his own --

17 Q Okay. Did you ever tell Mr. Smith about
18 Ms. Stanger, how foul it was that Mr. Lopez would come
19 to the home about the guns in the house?

20 A I don't -- if I did, it had to have been just
21 thrown in there. That wasn't really the issue on that
22 part. It was just the part of me telling what I heard,
23 what was -- was going to happen to him.

24 Q Did you tell him that Ms. Stanger had shown and
25 given possession of the keys to the gun safe to

1 Mr. Lopez and Mr. Holley?

2 A I may have. I don't -- I'm not sure at this
3 moment. I mean, I can't honestly tell you that right
4 now.

5 Q Well, you had a chance to have a man-to-man
6 talk with him before Ms. Stanger got out there, right?

7 A Well, if you call it -- yes, I had -- I might
8 have said something in the process of telling him that.
9 I mean, but that was all in the mix of where they were
10 going with the argument that they were having, with the
11 friend or whatever Brad had and tell him that.

12 So there was a lot of conversations going back
13 and forth between the whole scenario. So I don't --

14 Q Okay.

15 A And most people that knew Brad knew that he --
16 he was a gun person. He had a lot of guns. So, I
17 mean, he was known for his guns. So he was aware of
18 that. He knew that.

19 Q Okay. But having his live-in girlfriend
20 showing males her -- his guns might have been of
21 considerable interest to him, wouldn't it?

22 A You -- you would think and you would hope. So
23 I couldn't really honestly tell you if that was to him
24 at that moment and at that time.

25 Q And at least at that time, you didn't know

1 anything about the rehabilitation?

2 You still hadn't heard about going to
3 rehabilitation?

4 A No. I did not even -- that was news to me.
5 After the fact of the matter (inaudible) I heard about
6 it.

7 Q And during the time that you were telling
8 Mr. Smith and/or Ms. Stanger about somebody coming over
9 to take those guns, they never mentioned to you there
10 was gonna be a period of time they were going to be out
11 of town?

12 A No, they did not.

13 Q Would there be some reason to keep that a
14 secret from them?

15 A If they did, I never heard anything of it. I
16 have no knowledge of any of that.

17 Q Then after you finished the conversation with
18 Mr. Smith, where did you go and what did you do?

19 A I went home.

20 Q Okay. And did what?

21 A I don't recall that day. I probably had stuff
22 to do around the home.

23 Q Okay. And did you have any more conversations
24 with Mr. Smith that day?

25 A No, I did not.

1 Q And did you have any more conversations with
2 Ms. Stanger that day?

3 A No, I didn't. No, I don't recall that I did.
4 No.

5 Q All right. Did you see them or -- where you
6 were living, could you see the -- Mr. Smith and
7 Ms. Stanger's residence from where you lived?

8 A They meet at the right angle, but, yeah, it's
9 possible you could. I don't think I did. I mean, it's
10 if you get high enough over the trees, maybe. But
11 other than that, I never tried looking over any of
12 that.

13 Q Did you ever testify that you were gonna
14 housesit for them while they were -- while Mr. Smith
15 took her down to rehabilitation?

16 A I don't recall. I mean, if they would have
17 said something, he would say, like, if I do leave -- or
18 if I ever would -- I don't recall. No, I don't.

19 Q And you don't ever recall telling law
20 enforcement about that?

21 A About what?

22 Q About housesitting while he took her down to
23 rehabilitation?

24 A No. I -- because like I said, when all of that
25 happened, whatever, I get a phone call that he had an

1 accident, that he was in the hospital. So I was
2 wondering what had happened. And then next thing I
3 know, he passed away in the hospital. So I was -- I
4 didn't know anything of it.

5 Q Right.

6 But this would have been before. As I
7 understand, you're saying that you didn't know --

8 A If the housesitting --

9 Q No. Just wait a minute.

10 You didn't know he was gonna take her down to
11 Carson City to a rehabilitation center. And I asked
12 you the question of whether or not you told law
13 enforcement or testified previously that, in fact, you
14 did know it, and you were gonna housesit for them while
15 they were gone?

16 A If that would -- it might have got confused
17 with him being out of town to housesit with him out of
18 town. That would be the only thing I can think of why
19 I would be housesitting. I mean, I didn't know
20 anything about that.

21 Q You knew they were gonna be gone. You just
22 didn't know he was taking her to rehabilitation?

23 A I didn't know -- as far as I knew, Brad
24 worked -- was working. I didn't know she was going
25 anywhere.

1 Q Well, if he was working night shift, you saw
2 him and he hadn't gone to bed yet?

3 A That's not -- he's not leaving town if he's at
4 work.

5 Q But the fact is that you knew he was off work
6 because he hadn't gone to bed after night shift, right?

7 A Yeah. Yes, that's correct.

8 Q Thank you.

9 A But some people don't sleep right after they
10 get off of work.

11 Q But you knew he did?

12 A I didn't know that he did, so I didn't know.

13 Q You knew that if he was working, he wasn't
14 gonna be drinking alcohol?

15 A I don't know what he did on his free time on
16 the days he worked. So I do not know.

17 MR. WOODBURY: Thank you. I think that's all
18 the questions I have for the moment.

19 THE COURT: Redirect?

20 MR. MILLS: No questions on redirect, Your
21 Honor.

22 THE COURT: Are there any jury questions for
23 this witness?

24 Counsel, I'm gonna have the bailiff show this
25 to you. If you have no objection, just say no

1 objection. If you have an objection, I'll hear that
2 outside the presence of the jury.

3 (Bailiff complied.)

4 MR. INGRAM: No objection.

5 MR. WOODBURY: No objection.

6 THE COURT: Mr. Sorensen, were you with Speedy
7 at the Sagecrest Apartments at any time in the early
8 morning of July 7, 2018, before the incident?

9 THE WITNESS: Yes, I was.

10 THE COURT: All right. Tell me about that.

11 THE WITNESS: They give me a ride. I was
12 supposed to get -- whatever happened at Stockmen's, I
13 couldn't -- I'm really not aware of that one. But I
14 got a ride, and they said they can drop me off, and
15 then they went to that apartment complex. And then
16 that's when he started talking about it, doing the
17 stuff to the stealing and the guns and the tools and
18 stuff like that at that (inaudible).

19 THE COURT: So --

20 THE WITNESS: That's where that (inaudible).

21 THE COURT: Were there two different
22 conversations, one at the Stockmen's and one at the
23 apartment?

24 THE WITNESS: And then the same kind of -- that
25 same period of time.

1 THE COURT: So did you have a conversation in
2 the car with Speedy at Stockmen's first about he was
3 planning this?

4 THE WITNESS: It was on the way over, if I
5 remember correctly. I mean, I didn't know they were
6 stopping at that apartment complex. We were at the
7 apartments all the way by Smith's.

8 THE COURT: Okay. So then you rode with -- you
9 met up with Speedy at the Stockmen's, you were with him
10 in his car with him, and then he drove you to the
11 Sagecrest Apartments?

12 THE WITNESS: He didn't. He wasn't driving.
13 It was a girl that lived in the apartments that was
14 driving.

15 THE COURT: But in the same car with Speedy?

16 THE WITNESS: Yes.

17 THE COURT: And then you got to those
18 apartments and he -- was he then continuing to talk
19 about this?

20 THE WITNESS: That's correct.

21 THE COURT: Do you have any follow-up on that,
22 Mr. Mills?

23 MR. MILLS: No, Your Honor.

24 THE COURT: Mr. Woodbury, any follow-up?

25 MR. WOODBURY: No.

1 THE COURT: Do either of you need this witness
2 retained?

3 MR. WOODBURY: Yes.

4 THE COURT: Mr. Sorensen, you may be called
5 back to testify some more. If you're called back, you
6 do need to return. In the meantime, you cannot discuss
7 your testimony with anyone other than the attorneys.
8 But you can leave the courthouse today.

9 (The witness left the stand.)

10 THE COURT: Thank you.

11 Your next witness?

12 MR. INGRAM: Tyrell Holley.

13 (Witness sworn.)

14 THE COURT: You may have a seat.

15 All right. Can you reach up and remove your
16 mask?

17 Please state and spell your first and last
18 name.

19 THE WITNESS: Tyrell, T-y-r-e-l-l. Holley,
20 H-o-l-l-e-y.

21 THE COURT: Okay. Can you pull that mask?
22 There you go. Go ahead, Mr. Ingram.

23

24

25

1 TYRELL HOLLEY,
2 the witness herein, being first duly sworn, testified
3 as follows:
4

5 DIRECT EXAMINATION

6 BY MR. INGRAM:

7 Q Mr. Holley, do you know a person by the name of
8 Tieres Lopez?

9 A Yes.

10 Q Do you know him by the name of Speedy?

11 A Yes.

12 Q How long have you known Speedy for?

13 A A couple of years.

14 Q A couple of years from today?

15 A Yeah.

16 Q Okay. Did you know Speedy prior to
17 July 7th, 2018?

18 A I don't remember (inaudible).

19 Q I'm sorry?

20 A I don't remember when I was around him.

21 Q You don't remember what?

22 A What was going on then.

23 Q You don't remember hanging out with Speedy?

24 A Yeah, I remember.

25 Q So you do know what was going on?

1 A With what?

2 Q With Speedy.

3 When is the first time you met Speedy?

4 A (Inaudible) a couple of years.

5 Q A couple of years?

6 A Yeah.

7 Q Did you have any conversation -- do you know

8 why you're here today, sir?

9 A Not a clue.

10 Q Okay. Do you know anything about the killing

11 of Brad Smith on Wrangler Circle in 2018?

12 A Yes.

13 Q So did you know Speedy at that time?

14 A Yes.

15 Q Did you know Amy Steinbach at that time?

16 A Yes.

17 Q Did you borrow a vehicle from Amy Steinbach on

18 the 7th of July, 2018?

19 A If that's the date, yeah.

20 Q I'm just asking you, sir.

21 A Well, I don't know the date. Same one.

22 Q Did you -- do you recall borrowing a vehicle

23 from Amy Steinbach just prior to that shooting on

24 Wrangler Circle?

25 A (Inaudible) yes.

1 Q Okay. And how did it come about that you
2 borrowed that vehicle from Amy Steinbach?

3 A She had to go to work, and (inaudible). I
4 needed it to run errands, so...

5 Q And did you run errands with the vehicle?

6 A No.

7 Q What did you do?

8 A Come back to my house.

9 Q So you borrowed the vehicle and took it back to
10 your house?

11 A Yeah, because I had to call my friend back.
12 Nobody answered so I just went out there and was
13 waiting for her to get off work.

14 Q Do you know about what time that was?

15 A Not a clue.

16 Q At what point did you meet up with Speedy that
17 day?

18 A He lived with me, pretty much (inaudible).

19 Q He lived with you?

20 A Yes. (Inaudible).

21 Q Did he live with you during that time that you
22 met up with him when you had Amy's car?

23 A Yeah.

24 Q Where did you guys live?

25 A (Inaudible).

1 Q Is that here in the Elko County area?

2 A That's what they got in the newspaper, yeah.

3 Q Okay. Was Speedy in that vehicle with you,
4 Ms. Steinbach's vehicle?

5 A I don't remember.

6 Q Do you remember having an interview with
7 Detective Stake on November 7th, 2018?

8 A I'm not good at dates. So if you say I did, I
9 did.

10 Q This is not my testimony, sir. I'm asking you.
11 Do you remember having an interview with
12 Nick Stake on November 7th?

13 A No, I don't.

14 Q Did there come a time on the 7th of July, 2018,
15 when you no longer had Ms. Steinbach's vehicle?

16 A I don't recall dates.

17 Q Okay. Well, you've only testified about one
18 time that you had Ms. Steinbach's vehicle, correct?

19 A Yeah.

20 Q So that one time, that one time that we've
21 talked about this entire testimony, did there come a
22 time when you no longer had Amy's vehicle?

23 A Can't say, because I don't have the date.

24 Q Are you refusing to answer my question, sir?

25 A Yes, sir.

1 Q Why?

2 A This thing is ruining my life, and I'm done
3 with it. So...

4 Q So you're just refusing to answer my question?

5 A Yes.

6 MR. INGRAM: Judge, will you direct the witness
7 to answer my question, please?

8 THE COURT: Mr. Holley, are you concerned that
9 you're gonna incriminate yourself by answering this
10 question?

11 THE WITNESS: I can't give my life (inaudible)
12 so --

13 THE COURT: Mr. Holley, unless you are claiming
14 that you're concerned that you could incriminate
15 yourself, in other words, say something that could
16 potentially could get you in trouble for a crime,
17 unless you're concerned about that, you need to answer
18 the question.

19 THE WITNESS: Okay.

20 THE COURT: Are you going to answer the
21 question?

22 THE WITNESS: No.

23 THE COURT: All right. I can hold you in
24 contempt, Mr. Holley. I don't know why you're in
25 custody right now. But you could be held in custody

1 for refusing to comply with my order that you answer
2 the question when you're not telling me it's going to
3 incriminate you.

4 I can try to contact an attorney and have an
5 attorney come talk to you about this.

6 Would you like me to do that?

7 THE WITNESS: Yes, please.

8 THE COURT: All right. We're gonna be in
9 recess. I'm going to see if I can contact an attorney
10 to come speak to Mr. Holley.

11 (Admonition given to jury.)

12 THE COURT: Mr. Holley, do you have an attorney
13 right now for what you're doing in jail?

14 THE WITNESS: Yes.

15 THE COURT: Who is it?

16 THE WITNESS: Kump.

17 THE COURT: All right. I'll see if Mr. Kump is
18 available. We will be in recess.

19 (Recess.)

20 THE COURT: You may be seated.

21 The defendant and counsel are present. We're
22 outside the presence of the jury. Mr. Holley consulted
23 with his attorney and has declined to testify.

24 Mr. Ingram, do you have any other questions on
25 direct for Mr. Holley?

1 MR. INGRAM: No.

2 THE COURT: Mr. Woodbury, any cross
3 examination?

4 MR. WOODBURY: No, Your Honor. But I would
5 like to go on record to explain why.

6 THE COURT: Certainly.

7 MR. WOODBURY: Thank you.

8 Pardon me for being a little bit disjointed,
9 because it's a very complicated question. There is a
10 requirement under the State code that lawyers be honest
11 and fair. And I am clearly of the opinion that
12 Mr. Holley has a ton of things that he would testify to
13 if he testified across the board that would implicate
14 him in a half dozen crimes, period.

15 What the prosecution has done in this case is
16 they put us in a position -- this isn't the first time,
17 it kind of happened with Ms. Steinbach, too. They put
18 us in a position where they ask a few questions and get
19 the little tiny things they want out before they get
20 into questions that will be incriminating.

21 So here I am, knowing full well that I either
22 violate the State bar code, or somehow that I limit
23 myself to some of the questions that they ask, so I can
24 cross examine on -- without going beyond my -- beyond
25 the scope of the direct examination. And I'm stuck.

1 I'm stuck.

2 As I've indicated to you, there's no question
3 in my mind that Amy Steinbach's testimony that Speedy
4 texted or called Mr. Holley after she picked him up the
5 night or the early morning hours of the 8th of July,
6 implicate him in, at a very, very minimum, in a
7 conspiracy.

8 We think that the evidence would also show that
9 Mr. Holley not only did that, he also told
10 Ms. Steinbach that he would do some serious physical
11 injury to her if she said that he was the guy that
12 borrowed the car.

13 I will tell you also that there's a lady out
14 there named Joyce Romaine that would testify that
15 Mr. Holley told her that she would be in a whole lot of
16 physical trouble if she didn't testify that she took
17 him down to Crescent Valley on the night of the 7th so
18 he possibly couldn't be in town for all of that.
19 That's just a moderate amount of the information that
20 we have that says that Mr. Holley could implicate
21 himself much further.

22 I have no idea at this point how far he's
23 implicated himself, other than I guess to be -- in my
24 understanding, the next thing that's gonna happen is
25 Nick Stake is going to be invited up to give his

1 version of the conversation that he had with
2 Mr. Holley.

3 So in the final analysis, I can't comply with
4 the law if I cross examine him. In my own mind, I
5 can't. And it seems to me that the appropriate thing
6 to do is whatever the Court does, just say that I do
7 not want the jury to be told that Mr. Woodbury doesn't
8 have any cross examination of him, because I most
9 certainly do.

10 But I would like to know, I would like to know
11 that the Court will simply say that Mr. Holley is in
12 potential danger of incriminating himself if he
13 testifies further, and has so advised the Court, and
14 that's the end of that.

15 THE COURT: I'm fine with that.

16 Mr. Ingram?

17 MR. INGRAM: Judge, I'll start off by saying
18 that I'm also fine with the Court informing the jury of
19 that, and I have no objection to it.

20 I guess I take some objection to the fact that
21 the State has put Mr. Woodbury into this position. We
22 have alleged in the Criminal Information that this was
23 a conspiracy, and specifically, we named Tyrell Holley.
24 And if we want to elicit that testimony from Tyrell
25 Holley, that is our choice to do so, and it's not

1 unethical to do so. He is not a charged defendant in
2 this case. It's Mr. Honeyestewa and Mr. Lopez.

3 So as far as I know, unless there's some ethics
4 opinion that I'm not aware of, I had no responsibility
5 to Mr. Holley. I expected he would do exactly what he
6 did, not because I'm a mind reader, but because I know
7 the person that Mr. Holley is.

8 And so we didn't intentionally put anybody into
9 any sort of position. We're simply trying to prove our
10 case, just like we're entitled to do.

11 THE COURT: All right. We'll get the jury back
12 in here. I'm going to instruct them that Mr. Holley
13 has declined to testify because he's in a position that
14 he might incriminate himself. And we'll move on to
15 your next witness.

16 Do you have another witness for this afternoon?

17 MR. INGRAM: No, Your Honor.

18 THE COURT: All right. We'll give them that
19 instruction and let them go for the day.

20 We don't have any hearings in the morning, do
21 we, Mercedes?

22 THE CLERK: One minute, Judge.

23 No, Judge, do we do not.

24 THE COURT: All right. So we'll start up at
25 9:00 tomorrow. So let's get them back in here so I can

1 tell them that, and then let them go.

2 (Recess.)

3 THE COURT: You may be seated.

4 The defendant and counsel are present. Counsel
5 will stipulate to the presence of the jury?

6 MR. INGRAM: Yes, Your Honor.

7 MR. WOODBURY: So stipulated.

8 THE COURT: Mr. Holley has declined to testify
9 because he's in a position that he might incriminate
10 himself, so I have excused him from further testimony.

11 The prosecution does not have another witness
12 lined up for today, so we are done for today. We will
13 start at 9:00 tomorrow morning.

14 (Admonition given to jury.)

15 THE COURT: Court is in recess until 9:00
16 tomorrow morning.

17 (Evening recess.)

18 --ooOoo--

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1 CASE NO. CR-FP-18-5961

2 DEPT. NO. 1

3
4 THE FOURTH JUDICIAL DISTRICT COURT THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF ELKO

6 BEFORE THE HONORABLE NANCY PORTER

7 DISTRICT JUDGE, PRESIDING

8
9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 v.

12 ALAN JOSEPH EDWARD HONEYESTEWA,

13 DEFENDANT.

14 ----- /

15
16 TRANSCRIPT OF RECORDED PROCEEDING

17 JURY TRIAL

18 October 15, 2020

19 ELKO, NEVADA

20
21
22
23
24 VOLUME 6

25 Pages 857 - 971

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APPEARANCES:

FOR THE PLAINTIFF:

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MARK S. MILLS
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Deputy District Attorney
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Elko, Nevada 89801

FOR THE DEFENDANT:

GARY WOODBURY
1053 Idaho Street
Elko, Nevada 89801

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TRANSCRIPT OF RECORDED PROCEEDING

THE COURT: The defendant and counsel are present. Counsel, will you stipulate to the presence of the jury?

MR. INGRAM: Yes, Your Honor.

MR. WOODBURY: So stipulated.

THE COURT: Your next witness, Mr. Mills?

MR. MILLS: Kevin McKinney.

(Witness sworn.)

THE COURT: Have a seat, please. Would you remove your mask, please?

Please state your name and spell your last name.

THE WITNESS: Kevin McKinney. M-c-K-i-n-n-e-y.

THE COURT: Thank you.

Go ahead, Mr. Mills.

KEVIN MCKINNEY,
the witness herein, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. MILLS:

Q What is your occupation?

1 A I work for the Elko County Sheriff's Office.

2 Q And in what capacity? What is your job there
3 currently?

4 A I'm currently the lieutenant in charge of the
5 law enforcement division.

6 Q How long have you been a lieutenant?

7 A I've been a lieutenant for seven years now.

8 Q And how long have you worked for the sheriff's
9 office all together?

10 A 21 years.

11 Q I'm going to direct your attention back to July
12 7th, 2018.

13 Were you serving as lieutenant at that time?

14 A Yes, sir.

15 Q And were you aware of a shooting, slash, home
16 invasion that had occurred over on Wrangler Circle?

17 A Yes, sir.

18 Q Where were you, and what were you doing when
19 you were notified?

20 A Of?

21 Q Of -- just the night of -- that it happened.

22 A I was at home when I was notified of the
23 incident and responded from my house.

24 Q And when did you respond to the scene?

25 A Oh, it was about -- I believe about 11:30 p.m.

1 Q So this very same night that this occurred is
2 when you responded?

3 A Yes, sir.

4 Q Okay. And in the course of your
5 investigation -- I'm going to fast forward a few days
6 to July 10th.

7 Were you still involved in the investigation on
8 that date?

9 A Yes, sir.

10 Q Okay. Now, did you have contact with a person
11 by the name of Jenae Moon?

12 A Yes.

13 Q Okay. And for state of mind purposes, what did
14 she tell you, and what did that lead you to do in the
15 course of your investigation?

16 A During my contact with her, we discussed where
17 she had -- she had gone down to a car and had found
18 Alan Honeyestewa shot.

19 Q Okay. And did she show you the location where
20 that was?

21 A Yeah, she took us to it.

22 Q And approximately where was that location that
23 she took you to?

24 A It was about a half mile from her house. It
25 was -- oh, I can't remember the street. But it's --

1 you -- there's a stop that goes to -- I can't remember
2 the street name now. But it's on the backside of the
3 subdivision where University Court is and things like
4 that. And it's back up in the -- in the hills there.

5 Q Okay. Does she live on, I think, Bohobi? Is
6 that --

7 A Yeah.

8 Q Does that ring a bell?

9 A Yeah, on the Colony.

10 Q And so what was the -- could you describe the
11 area where you searched, I guess, as far as what was
12 it? Was it a field? Was it a yard? A street? What
13 was it?

14 A It was just a hilly area, a desert -- out in
15 the desert.

16 Q Okay. And did you find anything of evidentiary
17 value in the vicinity of where she showed you where the
18 vehicle had been?

19 A Yeah. While we were searching, we found a
20 couple of backpacks. We found some shirts, masks, some
21 beanies that were laying in the area where she said the
22 car was.

23 Q Okay. And did you find any masks?

24 A Yes. We found, I believe -- I believe -- I
25 believe we found one mask out laying on the ground,

1 because the other mask was actually in the car that had
2 been already searched.

3 Q Okay. And did you find any sweatshirts?

4 A Yes. I found a sweatshirt that had some holes
5 in it. It looked like it had been shot and had some
6 blood. It looked like blood on it.

7 Q Okay. And who was involved in the search of
8 that area that you're talking about? Who else was with
9 you?

10 A It was myself, Detective Billy Hood, Detective
11 John Gaylor, and Detective Mike Keema.

12 Q Okay. I'm gonna show you a couple of exhibits.
13 Lieutenant McKinney, I am gonna show you first
14 what has been marked and admitted as State's Exhibit
15 350. If you could take out what's inside of that and
16 (inaudible).

17 A That's the sweatshirt that we found under the
18 sagebrush there near where the car had been located by
19 Jenae. I recognize it from the bullet holes in the
20 sleeves and the blood.

21 Q Okay. Thank you.

22 Could you go ahead and package that back up the
23 way it was?

24 A (Witness complied.)

25 Q If you could put on a fresh pair of gloves,

1 because we'll be handling a different exhibit at this
2 point.

3 A Thank you.

4 Q Lieutenant, I am now going to show you what's
5 been marked as State's Exhibit 324.

6 Do you recognize what that is?

7 A Yes, I do.

8 Q What is that?

9 A That's the -- a neoprene mask that we found
10 just up the hill from the car where Jenae Moon showed
11 us she had found Mr. Honeyestewa.

12 Q Where was that neoprene mask found in relation
13 to the sweatshirt that you just talked about?

14 A The sweatshirt was -- based upon her
15 description, the sweatshirt was found almost directly
16 to the driver's side, of the driver's side front door,
17 just off the roadway, while this mask was maybe 20 feet
18 up the hill.

19 Q Okay. Thank you.

20 THE COURT: What exhibit number was that,
21 Mr. Mills?

22 MR. MILLS: That's 324.

23 Q BY MR. MILLS: Well, does that mask, does it
24 appear to you to be in the same condition as it was
25 when you put it in there?

1 A Other than some marks it looks like the lab has
2 put on there, yes.

3 MR. MILLS: Okay. The State is gonna offer 324
4 into evidence.

5 THE COURT: Any objection?

6 MR. WOODBURY: None.

7 THE COURT: Exhibit 324 is admitted.

8 (Exhibit 324 admitted.)

9 Q BY MR. MILLS: I'll take those from you.
10 Lieutenant McKinney, is it part of your
11 responsibilities as an employee of the sheriff's office
12 to interview witnesses and suspects in cases?

13 A Yes, sir.

14 Q Did you do that in this case?

15 A Yes.

16 Q Is one of the people that you interviewed the
17 defendant, Alan Honeyestewa?

18 A Yes, sir.

19 Q So tell us about how that came about. How did
20 you come to interview him, and where did that take
21 place and when?

22 A He had been released from the hospital. And so
23 I believe he was transported back to Elko at that
24 point. And so then I was contacted by Detective
25 Gaylor. He left me a message saying Alan Honeyestewa

1 wanted to speak with me. So I responded that evening
2 to the sheriff's office, where I met with
3 Mr. Honeyestewa and interviewed him there at the
4 sheriff's office in the interview room.

5 Q Okay. And this person that you're referring
6 to, this Alan Honeyestewa, do you see him in the
7 courtroom today?

8 A Yes.

9 Q Could you point to him and describe what he's
10 wearing for the Court?

11 A He's wearing a vest and a gray shirt at the
12 defendant's table.

13 MR. MILLS: Okay. May the record reflect the
14 identification of the defendant?

15 THE COURT: The record will so reflect.

16 Q BY MR. MILLS: So that's the person you
17 interviewed?

18 A Yes.

19 Q Did you record the interview?

20 A Yes.

21 Q Have you had a chance to review a recording of
22 that interview before today?

23 A I watched it last night, yes.

24 Q And was that, in fact, the interview that you
25 conducted with him?

1 A Yes, sir.

2 MR. MILLS: Your Honor, the State is gonna
3 offer into evidence State's Exhibit No. 7, which is a
4 recording of the interview with Mr. Honeyestewa.

5 THE COURT: Any objection, Mr. Woodbury?

6 MR. WOODBURY: We have no objection.

7 THE COURT: Exhibit 7 is admitted.

8 (Exhibit 7 admitted.)

9 MR. MILLS: Permission to publish that to the
10 jury at this time?

11 THE COURT: Go ahead.

12 Do you want to play the whole video?

13 MR. MILLS: Yes, Your Honor.

14 THE COURT: About how long is this?

15 MR. MILLS: About an hour and 40 minutes.

16 THE COURT: Okay. So, Lieutenant McKinney,
17 will you mask up while we're playing the video?

18 Thank you.

19 (Video played.)

20 THE COURT: Put a lapel mic on that speaker.
21 That might broadcast better.

22 THE BAILIFF: We can try that.

23 (Video played.)

24 Q BY MR. MILLS: Detective McKinney, or
25 Lieutenant McKinney, I'm going to pause it right there

1 to ask you a question or two about that.

2 So you're having a conversation with him about
3 the guns, correct?

4 A Yes.

5 THE COURT: Mr. Mills, you're not mic'ed right
6 now, so I don't know if the jury can hear you.

7 MR. MILLS: There I go, I think.

8 Q BY MR. MILLS: Lieutenant McKinney, were you
9 having a conversation --

10 THE COURT: Not on. I don't think it's on.
11 Yeah, the light is on.

12 MR. MILLS: The light's on.

13 THE BAILIFF: He turned it down a little bit.

14 Q BY MR. MILLS: There. That works a little
15 better.

16 So, Lieutenant McKinney, you had a conversation
17 with him about the firearms that were used in the home
18 invasion, correct?

19 A Yes.

20 Q And was there a discussion about the 40
21 caliber?

22 A Yes.

23 Q The subcompact?

24 A Yes, sir.

25 Q And what did he have to say about that one?

1 A He said the subcompact 40 was his.

2 Q Okay. And was there, in fact, a 40 caliber
3 subcompact found at the scene?

4 A Yes, sir.

5 Q Do you have knowledge of where that was found,
6 or did you have any involvement with that, or was that
7 someone else in the investigation that recovered that?

8 A I was with the Washoe County forensic team when
9 they did their evidence collection. I believe that it
10 was in the front porch area, sidewalk area, is where it
11 was located.

12 Q Okay. What did he have to say about the 9
13 millimeter?

14 A He said that Speedy had the 9 millimeter.

15 MR. MILLS: Thank you. We'll continue now.

16 (Videotape played.)

17 MR. MILLS: For the record, I have paused the
18 video at 51 minutes and 20 seconds.

19 Q BY MR. MILLS: So this is a little hard to
20 understand, so I'll follow up with you about it.

21 So did you have a conversation with him about
22 whether he fired or not?

23 A Yes, I did.

24 Q And what did he say to that?

25 A At that point, he said that he had fired after

1 he had been shot, he had pulled out his gun and shot,
2 he didn't know how many times.

3 Q Okay. Thank you.

4 Just one follow-up. Did he tell you what
5 position he was in when he fired?

6 A He said he was laying down at the time.

7 (Videotape played.)

8 THE COURT: We're gonna take our morning
9 recess.

10 (Admonition given to jury.)

11 THE COURT: We'll be in a 20-minute recess.

12 (Recess.)

13 THE COURT: You may be seated.

14 The record will reflect the presence of the
15 defendant and counsel.

16 Counsel, will you stipulate to the presence of
17 the jury?

18 MR. MILLS: Yes, Your Honor.

19 MR. WOODBURY: So stipulated.

20 THE COURT: Before we start that, Mr. Mills, I
21 need to read the order I usually read at the start of
22 the day.

23 If you are a witness in this case, you are
24 absolutely prohibited from watching this trial unless
25 you've been given specific permission by the Court. If

1 you do, you may be held in contempt of court,
2 punishment for which could include a jail sentence.
3 Log-in information for all of those who log in to watch
4 this trial on Zoom shall be maintained and filed in
5 this action.

6 All spectators are prohibited from recording
7 this trial in any manner, or distributing it on social
8 manner, or in any manner on the internet. Violation of
9 this order could result in a finding that you are in
10 contempt of court, punishment for which could include a
11 jail sentence.

12 Go ahead, Mr. Mills.

13 (Videotape played.)

14 MR. MILLS: For the record, I have paused this
15 at 1 minute and -- 22 minutes and 28 seconds.

16 Q BY MR. MILLS: Lieutenant McKinney, so on that
17 video there is some dings, and it looks like you're
18 receiving some messages from somebody.

19 What's going on there?

20 A I had requested some photos from Detective
21 Gaylor.

22 Q Photos of what?

23 A That sweatshirt that I was just talking to him
24 about.

25 Q Did he send you those photos?

1 A Yes.

2 Q Did you show those to the defendant?

3 A Yes, that is what I was showing to him.

4 Q And this last part we watched, was he able to
5 identify the sweatshirt as his?

6 A Yeah, he acknowledged that it was his.

7 Q Thank you.

8 Just one more question about that.

9 Was that sweatshirt that you showed him on
10 those photos and that you just testified to, is that
11 the same one that you saw in court earlier today?

12 A Yes, sir.

13 MR. MILLS: Okay. Thank you.

14 (Videotape played.)

15 Q BY MR. MILLS: Lieutenant, was that the
16 interview you had with the defendant in this case?

17 A Yes.

18 Q Now, did you have a chance to review a
19 transcript of that interview?

20 A Yes.

21 Q Okay. Did that appear to you to be a
22 transcription of the interview that we just watched?

23 A Yeah.

24 MR. MILLS: Your Honor, I'm gonna offer into
25 evidence State's Exhibit 7-A, which is a transcript of

1 that interview.

2 I'll show it first to Mr. Woodbury, if he wants
3 to review it.

4 THE COURT: Any objection, Mr. Woodbury?

5 MR. WOODBURY: So long as I'm assured it is the
6 same transcript without any changes being made that was
7 provided to us in discovery, 1691 to 1772.

8 THE COURT: Can you state that, Mr. Mills?

9 MR. MILLS: Yes, Your Honor.

10 THE COURT: Exhibit 7-A is admitted.

11 (Exhibit 7-A admitted.)

12 MR. MILLS: We'll pass the witness.

13 THE COURT: Cross examination.

14

15 CROSS EXAMINATION

16 BY MR. WOODBURY:

17 Q Detective McKinney -- Lieutenant McKinney, you
18 responded from your residence about 11:30 at night to
19 2821 Wrangler Circle?

20 A I believe so, yes.

21 Q And at the time, would you have been in charge
22 of the investigation?

23 A No.

24 Q How does that work with the sheriff's office?

25 A Usually, the initial responding detective is

1 the lead detective on the case, which in this instance,
2 my understanding, it was Detective Stake.

3 Q Okay. And then what is the arrangement between
4 you and the -- you run -- you were the boss of the
5 detectives essentially, right?

6 A Yeah. I run the law enforcement division,
7 which includes the detectives, yes.

8 Q And what is your responsibility with respect to
9 running it and finding out and knowing what the
10 detectives are doing or not doing?

11 A As far as in -- in each individual
12 investigation we -- we try and roundtable as much as we
13 can so everybody knows what everybody is doing, try to
14 avoid duplicate effort.

15 Q Okay. And does a detective routinely write
16 reports that you read or --

17 A Yes.

18 Q So you were pretty familiar with things?

19 A Uh-huh.

20 Q Okay. And you were the -- how long did you
21 stay there at the 2821 Wrangler Circle when you went up
22 that night?

23 A I was back and forth. I went and did a couple
24 of interviews, did some other things, went up to
25 Bohobi -- I don't know if I'm pronouncing that right --

1 and then was back. So I was there 12, 14 hours total,
2 but I was back and forth.

3 I believe the Washoe lab arrived early the next
4 morning, about 7:00.

5 Q So you stayed up all night?

6 A Uh-huh. Yes, sir.

7 Q And who did you conduct interviews of?

8 A What's that?

9 Q Who did you conduct interviews of that night?

10 A Jennifer Stanger was one of the initial
11 interviews.

12 Q Did you interview Mr. Sorensen?

13 A Who?

14 Q Mr. Sorensen?

15 A That wasn't until later.

16 Q Okay.

17 A That wasn't that day, no.

18 Q And how -- how was it determined that you would
19 be the person interviewing Ms. Stanger?

20 A Mainly because convenience; I was there. The
21 scene was secured by Sergeant Hawkins and Deputy
22 Williams. And so I was available to take her down to
23 the sheriff's office and do an interview.

24 Q Okay. And did you know Ms. Stanger from
25 previous?

1 A No. I never met her before.

2 Q And were you able to discern whether
3 Ms. Stanger appeared to be under the influence of
4 alcohol or narcotics?

5 A She was hysterical. I don't know whether it
6 was the trauma, or whether it was, you know, chemical
7 substances. I couldn't make that determination.

8 Q Okay. And at what time did you interview her,
9 or do you recall?

10 A Oh, it was around 1:00, 1:30.

11 Q So this incident happened at 11:00?

12 A Yeah. I believe we were called around 11:00,
13 initially.

14 Q And she had been essentially in police custody
15 for two-and-a-half hours?

16 A Yes, sir.

17 Q And she was still hysterical?

18 A What -- yes.

19 Q She was still hysterical?

20 A Yes.

21 Q The next morning when the Washoe County Crime
22 Lab got there, folks, what did you do with respect to
23 their presence?

24 A Got out of the way. Tried to let them do their
25 job.

1 Q And did you photograph, take some photographs?

2 A Yeah. I probably did take some photographs and
3 follow-up photographs. They did -- they primarily took
4 photographs. But some points of interest that we
5 thought, you know, we might not want to wait until we
6 get their pictures, I took some pictures of.

7 Q Okay. And the placards that were put up, did
8 you -- did the Elko County Sheriff's Office put out
9 placards?

10 A No. That would have been Washoe.

11 Q Okay. There came a time in the interview with
12 Mr. Honeyestewa that you said there was a bullet hole
13 in the back bedroom wall?

14 A I believe there were several bullet holes in
15 the back bedroom wall, from my understanding.

16 Q So you went in the garage and looked for those
17 bullets?

18 A Not myself, no. That would have been the
19 Washoe County Crime Lab.

20 Q And do you know why they didn't go in there?

21 A No. I wouldn't know why.

22 Q But --

23 A I thought they would.

24 Q Yeah.

25 But you were essentially following them as they

1 went around and did the photographs?

2 A Yes, sir.

3 Q And somehow it just worked out that didn't
4 happen (inaudible)?

5 A Yeah, possibly. I don't know.

6 Q Did there come a time -- were you also present
7 when the decision started to be made as to evidence
8 collection from the residence?

9 A No. No. I mean, I was there. Washoe County
10 Crime Lab collected the bulk of the evidence, I
11 believe.

12 Q You became aware of a subsequent conversation
13 between Detective -- Sergeant Hood, who told Washoe
14 County they didn't need to collect certain evidence?

15 A No, I'm not aware of that. No, I'm not. I
16 don't recall that.

17 Q Would that be --

18 A Would it be something -- I'm not sure. Would
19 it something specific or -- I don't know.

20 Q Well, or bullets that were apparently lodged
21 here and there in the house, and Detective Hood told
22 them to don't bother getting it if it would destroy any
23 part of the house?

24 A Okay. I found out about that much later, yes.
25 I did find out about that much later in the

1 investigation.

2 Q Is that consistent policy -- or policy that
3 typically (inaudible)?

4 A I would say, no. But I'm not sure what the
5 circumstances were at the time that Detective Hood was
6 looking at. I mean, I would have personally probably
7 got it.

8 MR. WOODBURY: Okay. All right. Excuse me.
9 I've (inaudible) here.

10 I apologize, Judge. I've lost my trial
11 notebook for reasons I can't fathom.

12 Q BY MR. WOODBURY: You also conducted an
13 interview of Mr. Lopez, Tieres Lopez?

14 A Yes, sir.

15 Q And he's better known as Speedy?

16 A Yes, sir.

17 Q When did you conduct that interview?

18 A I believe the day after the initial call, or
19 two days after the initial call.

20 Q Okay. And did Mr. Lopez, as a consequence of
21 that interview -- I'm not asking you to quote what he
22 said. But did he lay out the things that he said
23 happened at this incident?

24 A Yeah. He provided me a statement of what -- of
25 what he said happened.

1 Q Okay. Was the statement as lengthy as the
2 interview of what you did with Mr. Honeyestewa?

3 A Roughly, yes.

4 Q Did you ask Mr. Lopez about a conversation you
5 had with Mr. Sorensen on July 6th or 7th, about
6 stealing guns?

7 A I may have. I can't recall specifically, no.
8 I may have. If I had -- if I had information about it,
9 I probably would have, yes.

10 Q And did you ask Mr. Lopez about ill feelings
11 between he and Mr. Honeyestewa?

12 A I don't know. I don't know. I can't recall
13 exactly.

14 Q Okay. Okay. In any event, you were, at the
15 time you conducted this interview with Mr. Honeyestewa
16 on -- what day was it? Do you recall?

17 A I believe it was July 17th.

18 Q Okay. So it would have been approximately ten
19 days after the incident?

20 A Yes, sir. About that.

21 Q And do you know where -- Mr. Honeyestewa hadn't
22 been arrested up to that point, right? The interview
23 took place on the day he was arrested?

24 A Yes, sir. I believe so, yes.

25 Q And where was he arrested at?

1 A I'm not sure if he was arrested -- I mean,
2 without looking back at the reports, he was in the
3 hospital for several days and was released. I'm not
4 sure if he came home and got -- was arrested there, or
5 if he was arrested at the hospital. I wasn't one of
6 the arresting officers, so I'm not sure how that took
7 place.

8 Q If I tell you that he was arrested at the
9 Northeastern Nevada Regional Medical Center, does that
10 square up with your recollection?

11 A That would -- I would trust your -- you have
12 more info there than I do, so I would say, yes.

13 Q All right. And did you have an occasion during
14 the interview, or before it, to ask what kind of
15 medications he had?

16 A No, I don't think I asked that question.

17 Q Was -- did you know Mr. Honeyestewa from
18 before?

19 A No.

20 Q And did he appear to be talking awful rapidly
21 that day?

22 A At some points, sure.

23 Q Well, it's evident there in the video, isn't
24 it?

25 A Yes.

1 Q And did he just display any other
2 characteristics to suggest that he might be medicated?

3 A Nothing very obvious to me. I -- not knowing
4 him, I kinda don't have really a baseline. But I
5 didn't see anything obvious to me.

6 Q And there's a kind of procedure that you go
7 through when you interview witnesses or suspects?

8 A I'm not sure what you mean.

9 Q Well, you've been interviewing suspects for an
10 awful lot of years, right?

11 A That's right.

12 Q And you have attended training classes on how
13 to do that properly?

14 A Yes, sir.

15 Q Okay. And that's become a significant issue in
16 police detective work, is how to conduct these
17 interviews, right?

18 A Yeah. It's been challenged.

19 Q And so you began this interview essentially
20 with allowing Mr. Honeyestewa, or inducing him into
21 giving you a description of the things that he thought
22 was important?

23 A No. Initially -- initially -- the initial part
24 of the interview, he was pretty much given free reign
25 to tell me what he thought was important.

1 Q Exactly. And that's in accord -- yeah, that's
2 what I'm -- that's what I meant to say, if I didn't get
3 it out right.

4 A Okay. I thought you said what I thought was
5 important.

6 Q No.

7 But that's part of the procedure, is to give
8 them an opportunity to state to you what they think is
9 important, right?

10 A Yes, sir.

11 Q And the response of -- your response, the
12 interviewee's response to what's being said is mostly,
13 "uh-huh," or, "okay," or something like that?

14 A Yeah. To try to encourage them to keep
15 talking, yes.

16 Q And the idea is that if they keep talking long
17 enough -- well, there are a lot of possible results
18 from that, right? They might say something stupid or
19 incriminating? And they might say something that
20 appears to be true or untrue?

21 A That's totally up to them at that point.

22 Q Yeah. That's the idea, is to give them the
23 opportunity to talk?

24 A To talk. To give their side of the story.

25 Q Yeah. And in the interview, what did it appear

1 to you that Mr. Honeyestewa thought was important in
2 the beginning part?

3 A Well, in the beginning, I mean, he emphasized
4 his relationship with, like, Lopez and some
5 confrontations they had, to kind of give context to
6 what -- you know, how they interacted with each other.

7 Q And was it more clear than that, that as you
8 listened to it, it became clear that he was trying to
9 persuade you, or at least inform you that this had been
10 a setup?

11 A I had gotten that inference, yeah.

12 Q Well, it was more than an inference, he --

13 A Well, yeah, he stated it at that couple of
14 points.

15 Q He actually stated it repeatedly?

16 A Yeah.

17 Q And by the time he was telling you this, were
18 you aware that there were other -- there was other
19 information that suggested that Ms. Stanger had, in
20 fact, set this up?

21 A Yeah. We had received information of that
22 possibility, yes. We were pursuing it.

23 Q Yeah.

24 And you had, by that time, interviewed -- not
25 you, but the sheriff's office -- had interviewed

1 Amy Steinbach?

2 A Who? I'm sorry?

3 Q Amy Steinbach.

4 A Possibly. Possibly by then, yes. I'm not -- I
5 can't remember all of the individual interviews, but
6 I'm not sure who Eva Steinbach is.

7 Q Amy.

8 A Amy?

9 Q Yeah.

10 A I'm not sure who that is.

11 Q Okay. Do you know whose car was involved in
12 the incident?

13 A Not at that point. Not when I interviewed
14 Mr. Honeyestewa. I didn't know at that point.

15 Q But you guys had seized the car and searched
16 it?

17 A Yes.

18 Q All right. And you didn't know whose car it
19 was?

20 A I didn't have that information myself, no.

21 Q So as Mr. Honeyestewa was telling you about
22 this setup, you were not responding with -- at least
23 inside yourself, internally responding, this sounds
24 like something that might have happened?

25 A Oh, no, I was listening. And it was a

1 possibility that we had -- we had considered, yes.

2 Q Yeah. And part of the consideration was
3 Ms. Steinbach having told a detective that, in fact,
4 the -- Jennifer Stanger had showed Mr. Lopez guns the
5 week before and given him the keys to a safe and so on?

6 A Yes, we did have that information about that,
7 yes, that that had occurred.

8 Q And you didn't ask Mr. Honeyestewa if he had
9 that information?

10 A Oh, we talked about it. He said he had never
11 had a layout of the house, didn't know what was in
12 there.

13 Q And you didn't have any contrary information?

14 A About him, about Mr. Honeyestewa specifically?

15 Q Being in the house or knowing what was in
16 there.

17 A No, I didn't have anything contrary to that.

18 Q And is there a part of this interview technique
19 that allows you to tell fibs?

20 A It's not prohibited.

21 Q Well, you do it fairly regularly in this
22 interview, right?

23 A No.

24 Q You didn't tell him that you had a video of the
25 three of them on the front porch?

1 A Yes, I told him we had a video.

2 Q You didn't though, did you?

3 A My understanding was we did.

4 Q But that turned out to be dead wrong?

5 A Yes. I guess so. I don't know. I know
6 that -- I'm sorry, I wanted to -- I had been told about
7 a video from -- during briefings and things like that.
8 And they were trying to obtain the video, actually.
9 And I -- from my understanding, it never got obtained
10 ultimately.

11 Q Because it didn't exist?

12 A I take faith in that my detectives weren't
13 making it up, that they saw this video. It was a home
14 video system, and they watched it. And they tried to
15 obtain it.

16 Q From Mr. Aguirre?

17 A Huh?

18 Q The neighbor?

19 A Yes. I believe so.

20 Q What detective was that?

21 A I think it was -- I was thinking it was either
22 Detective Stake had told me about it or
23 Detective Keema.

24 We did several canvases of the neighborhood at
25 different times, different days, and with different

1 detectives. So I can't be sure who told me about it,
2 but they were -- they described it to me.

3 Q You were -- you were having some physical
4 problems, as well, during that time?

5 A I had my knee replaced.

6 Q And you were substantially past that at that
7 point, or that had been relatively recently?

8 A I'm sorry?

9 Q Had that been relatively recently when --

10 A Yeah. It had just been a month or two before.

11 Q Okay.

12 A I was still on light duty.

13 Q Yeah. And there wouldn't be any reason that
14 the detectives would withhold this video if they
15 actually had one?

16 A I wouldn't see any reason why they would.

17 Q Yeah.

18 Did you know the relationship between
19 Ms. Stanger and Mr. Smith at the time of the interview
20 with Mr. Honeyestewa?

21 A Between Ms. Stanger and Mr. Smith?

22 Q Yes.

23 A Yeah, based upon what Ms. Stanger had told me.

24 Q And did she inform you that they were married?

25 A No. I believe they were just living together.

1 Q Okay. And did Mr. Honeyestewa, in his
2 interview, repeatedly refer to them as man and wife?

3 A He may have, yes.

4 Q Well, if I tell you there isn't a single
5 instance where he said they were boyfriend and
6 girlfriend, or anything even approaching that, and
7 every time you mentioned it to him it was man and wife,
8 you would have no reason to squall with that, right?

9 A It never occurred to me to correct that. I
10 mean, they were living together. A lot of times that
11 is considered man and wife.

12 Q Did it occur to you if they were just simply
13 living together, that Ms. Stanger had the authority to
14 invite Mr. Lopez into the house?

15 A I would assume so, yes.

16 Q Yeah.

17 And so I assume that that would have been a big
18 issue with the detective figuring out if there had been
19 an entry into that house against her will; true or not
20 true?

21 A I'm not sure I understand the question.

22 Q Well, Mr. Honeyestewa is sitting here charged
23 with a burglary of somebody else's house. He's sitting
24 here charged with home invasion. And from all -- it
25 just seems to me that would have been a big issue for a

1 sheriff's office to see if those kind of things were
2 true.

3 A Yes. And I believe we did pursue that.

4 Q You did?

5 A Yes, sir.

6 Q And you found out what?

7 A We didn't find anything conclusive or that
8 really corroborated that she -- that statement, that
9 she had set it up with Speedy to do this. It was a
10 rumor, and we pursued it. But we weren't able to
11 corroborate that.

12 Q Okay. You listened to jailhouse conversations
13 between people?

14 A On occasions, yes.

15 Q And your involvement in this case has since
16 become significantly less than it was in the beginning?

17 A Yeah. It was -- mine was the first two weeks,
18 probably. After that, I had to resume to my normal
19 duties.

20 Q Okay. And so Detective Stake will have answers
21 to those kinds of questions?

22 A I hope so. I believe he will be able to clear
23 those up.

24 Q But in any event, Mr. Honeyestewa was making
25 that claim, right?

1 A Yes.

2 Q Yeah.

3 And if she had given permission to Mr. Lopez to
4 come into the house, there might not have been a crime,
5 right?

6 MR. INGRAM: Judge, I'm gonna object. It calls
7 for him to reach a legal conclusion.

8 MR. WOODBURY: I didn't say he concluded, I
9 just said he might not.

10 MR. INGRAM: That's exactly what a conclusion
11 is.

12 THE COURT: Repeat your question, Mr. Woodbury.

13 MR. WOODBURY: If Ms. Stanger had invited
14 Mr. Lopez into the house, there might not have been a
15 crime, right?

16 THE COURT: The objection is overruled. You
17 can go ahead and answer that.

18 THE WITNESS: I mean, it depends on what
19 happened. I don't -- I mean, there's still a homicide.
20 There's still a murder.

21 Q BY MR. WOODBURY: Really?

22 A I believe so, yes.

23 Q Did Mr. Honeyestewa tell you that he was aware
24 that Mr. Smith would be in the house?

25 A No.

1 Q As a matter of fact, he recited to you, didn't
2 he, that Mr. Smith wasn't there, wasn't supposed to be
3 there, correct?

4 A Correct.

5 Q And that is why they were being invited over to
6 have alcohol and the dope?

7 A Correct.

8 But that contradicts other information we have,
9 as well.

10 Q Could you tell me what that other information
11 is?

12 A Well, from my interview with Ms. Stanger, I was
13 told that no one was gonna be at that house that night,
14 that she was gonna be checked into rehab that day.

15 Q Yeah.

16 A And apparently, Mr. Smith had to work late that
17 night, and so he didn't get off work in time to
18 actually make the trip. So they decided to stay
19 another night and go the next day to Carson City.

20 Q That is what you were informed by Ms. Stanger?

21 A Yes.

22 Q And so if the evidence before the Court here is
23 that Mr. Smith had worked a night shift that ended on
24 Saturday morning, and that they were scheduled to go --
25 to leave for Reno, but there had been fighting between

1 them, they were quarreling, and there had been an
2 assertion by Mr. Sorensen that these folks were coming
3 over to -- some folks, not these folks, some folks were
4 coming over to steal guns, and that's why they stayed
5 home, that wasn't consistent with what you understood?

6 A That wasn't consistent with who?

7 Q What you understood.

8 A Well, that contradicts, basically, both
9 stories.

10 Q Okay. Did you look into and investigate the
11 question of whether or not Ms. Smith -- Ms. Smith --
12 Ms. Stanger had the authority to grant permission to
13 take Mr. Smith's guns --

14 A I --

15 Q -- if she was married to him?

16 A No. I did not personally. I don't know if
17 anybody looked into a power of attorney, or a marriage
18 license, or anything like that, no.

19 Q No.

20 But you did, the sheriff's office did recognize
21 this is a community property state and that --

22 A Yes, sir.

23 Q -- and each party has control of the other
24 party's --

25 A Yes.

1 Q And Mr. Honeyestewa was very straightforward in
2 informing you that, in fact, his understanding was that
3 Mr. Smith was not gonna be home?

4 A Yeah.

5 Q And you say you have evidence that contradicts
6 that, that he knew Mr. Smith was there?

7 A No. No.

8 Q Okay.

9 A I said that the stories don't quite match up.

10 Q What story?

11 A Well --

12 Q The Stanger story?

13 A The Stanger story, the Sorensen story, they're
14 not 100 percent consistent.

15 Q And did you become aware that Mr. Sorensen and
16 Ms. Stanger both had controlled substance problems?

17 A Uh-huh. Yes, sir.

18 Q And that is a -- that world that they live in
19 with controlled substances, whether it's
20 methamphetamine or marijuana, gets pretty complicated
21 and confusing, right?

22 A Yes, sir.

23 THE COURT: We're gonna take our lunch recess.

24 (Admonition given to jury.)

25 THE COURT: Court will resume at 1:30.

1 Lieutenant McKinney, please do not discuss your
2 testimony with anyone other than the attorneys.

3 We are in recess until 1:30.

4 (Recess.)

5 THE COURT: The record will reflect the
6 presence of the defendant and counsel.

7 Counsel, will you stipulate to the presence of
8 the jury?

9 MR. MILLS: Yes, Your Honor.

10 MR. WOODBURY: So stipulated.

11 THE COURT: We're on your cross examination,
12 Mr. Woodbury.

13 MR. WOODBURY: Thank you, Your Honor.

14 Q BY MR. WOODBURY: In the interview, Detective
15 McKinney, Lieutenant McKinney, the defendant failed to
16 acknowledge that he knew the person that was with he
17 and Mr. Lopez was initially?

18 A Not initially, no.

19 Q Well, initially you asked, and he said he
20 didn't know because he had a bandana on or something?

21 A Yeah. He said -- he said he didn't know. He
22 said he was in the front seat and he didn't know who he
23 was.

24 Q Yeah. Did you engage in a technique, or a
25 typical technique, to get him to tell you?

1 A I'm sorry?

2 Q Did you engage in a typical interview technique
3 to get him to tell you?

4 A I confronted him about that, yeah.

5 Q Yeah.

6 And wasn't your point that you expressed with
7 him, that if you don't tell me the truth, if I only
8 believe -- can only believe a part of what you're
9 telling me, it's hard to believe any of what you're
10 telling me?

11 A Well, that's -- yeah.

12 Q And that's a very standardized procedure for
13 detective interviews; is it not?

14 A A lot of times, yes.

15 Q Yeah.

16 How long did it take you to get him to admit
17 that he knew who it was?

18 A After I confronted him about it?

19 Q Yeah.

20 A Just a few minutes.

21 Q Two pages of transcript, right? Well, you
22 probably don't know.

23 A I don't know.

24 Q Yeah.

25 Anyway, until you did acknowledge that it was

1 Tyrell -- excuse me, Tyrell, Taylor Miller, right?

2 A Yes, sir.

3 Q And your point was that you thought that
4 talking to Taylor Miller, your point, at least to
5 Mr. Honeyestewa was, that talking to Taylor Miller
6 would be of significant value to you in determining
7 what actually had happened, right?

8 A Yes, sir.

9 Q And I have the impression from the interview
10 that you knew Taylor Miller some way or another?

11 A No. I don't know him personally, no. I know
12 of -- I know who he is, based upon the investigation.

13 Q Okay. But that's all you knew?

14 A Uh-huh.

15 Q And so when you told Mr. Honeyestewa that you
16 knew things about Taylor that made it improbable that
17 he would engage in illegal behavior, that would be
18 something in the nature of an exaggeration, because you
19 didn't know him at all, if that appears in the
20 transcript?

21 A I'm sorry, I don't understand.

22 Q All right. Well, so if you told the defendant,
23 Mr. Honeyestewa, that you knew Mr. Miller and you knew
24 that he wouldn't be a guy that would engage in too bad
25 of behavior, that would not be true; you didn't know

1 him at all?

2 A I just knew from the investigation. I knew
3 what he was involved in, or at least suspected of being
4 involved in.

5 Q Yeah.

6 A But that's all -- so that's all I knew, yeah.

7 Q Okay. And then what was the procedure to get
8 Mr. Honeyestewa to talk about the mask being his?

9 A The procedure?

10 Q Yeah.

11 A Well, just confront him with the evidence and,
12 you know, let him know that, you know, if he was -- I
13 mean, just to let him know that we had collected it and
14 that we would be running an analysis on it, and that if
15 he didn't -- if he wasn't being truthful with us, that
16 it would -- you know, it wouldn't benefit him in the
17 long run.

18 Q Yeah. And wasn't the idea behind the mask
19 question a suggestion that nobody ought to be wearing a
20 mask if all they're doing is gonna go to a house where
21 they got permission to enter and smoke or drink?

22 A I believe I made that statement, yes.

23 Q Yeah.

24 And that's true, right?

25 A Yeah. I would say so, yes.

1 Q Yeah.

2 And it would also be equally true, would it
3 not, that if a person was gonna go there and steal guns
4 and no one was gonna be home, or the person who had
5 given you permission to steal the guns was there, a
6 mask would kind of be a useless piece of equipment,
7 correct?

8 A Well, I would disagree with that, because
9 especially at this house, there was a video camera that
10 was attached to the doorbell.

11 Q Uh-huh.

12 But the video camera didn't work, right?

13 A It didn't work, but it was still there. I
14 mean, so the -- I guess the assumption would be that if
15 it was -- if it was work -- if it was working, then the
16 video -- I mean, the masks would hide their faces.

17 Q But that would presume that Ms. Stanger and
18 Mr. Lopez hadn't discussed the video camera?

19 A Well, I mean, if they discussed it at all.

20 Q And it was -- actually, the video camera was
21 very clearly unplugged or --

22 A I'm sorry?

23 Q The video camera in front was pretty clearly
24 unplugged?

25 A As far as I knew, yes. It wasn't functioning.

1 Q So any rational person looking at it would
2 assume it wasn't working?

3 A I'm sorry?

4 Q Any rational person looking at it would assume
5 it wasn't working?

6 A I don't know if you could assume it wasn't
7 working just by looking at it.

8 Q But the fact that it was unplugged?

9 A I don't think it plugs externally. I think
10 it's wired into -- I think it's wired into the
11 doorbell.

12 Q Okay. And when you told Mr. Honeyestewa about
13 the mask, you told him it was right next to the
14 sweatshirt, did you not?

15 A Yes, sir.

16 Q And it wasn't, it was 20 feet away?

17 A Relatively, yeah. I mean, it was about 20 feet
18 away maybe.

19 Q How closely did you ever examine the
20 sweatshirt?

21 A I'm sorry?

22 Q How closely did you examine the sweatshirt?

23 A How closely?

24 Q Yeah.

25 A When we collected it, I looked at it briefly.

1 I didn't -- I mean, I'm not a forensic guy, so I
2 didn't -- I didn't, like, do any analysis or anything
3 like that. I just examined it. We photographed it and
4 collected it.

5 Q Okay. So you don't know there's a hole in the
6 stomach area?

7 A I didn't see a hole initially.

8 Q And you didn't see one here when you looked at
9 it in court?

10 A I did see one here when I looked at it in
11 court.

12 Q In the stomach?

13 A Yeah, like in the -- yeah, like in the waist,
14 waistband area, yeah.

15 Q Okay. And then you saw three of the holes in
16 the arm band?

17 A Yes, sir.

18 Q And the fact is that you had initially
19 identified this sweatshirt as being black, and
20 Mr. Honeyestewa said it wasn't black.

21 But ultimately, it turned out the sweatshirt is
22 white and gray?

23 A Dark gray, yes.

24 Q All right. Mr. Honeyestewa was straightforward
25 about that?

1 A Yes, sir.

2 Q (Inaudible.)

3 A Once I showed him, yeah, he acknowledged, yeah.

4 Q Then again, the sweatshirt was found on the
5 driver's side of the car, pretty close to the car?

6 A I believe so. About -- yeah, from the driver's
7 side, about six, eight feet away. Just off the edge of
8 the trail.

9 Q Okay. Did you ever have occasion to talk to
10 Mr. Miller, David Miller?

11 A No, sir -- well, I take that back. I did
12 receive a phone message from him.

13 Q When was that?

14 A Oh, it was several weeks later. I received a
15 phone message from him saying he was not going to come
16 in and talk to me.

17 Q Okay. He actually had been available to you
18 otherwise, right, at the Elko County --

19 A I've never been able -- I haven't been able to
20 locate him. We haven't been able to locate him, no.

21 Q He's not been in the jail?

22 A That, I do not know.

23 Q Well, you guys kind of keep track of that from
24 your (inaudible)?

25 A He may have been, but I don't know.

1 Q Okay. Is it your view that Mr. Honeyestewa
2 ultimately admitted to knowing they were going in there
3 to get guns?

4 A I'm not sure. I mean, an overt admission is
5 quite right. But when I described my theory, he said
6 that seems pretty accurate.

7 Q All right. And when you were describing your
8 theory, it had to do with what Mr. Lopez was
9 determining as he stood there at the front door, right?

10 A That was a potential scenario, yeah.

11 Q And it did not ever come to a point where you
12 said, well, Mr. Honeyestewa, did Mr. Lopez say that to
13 you, that theory that I'm expressing to you?

14 A Oh, I think -- I think I said it at some point.
15 Lopez may have said it and he went along with it.

16 Q Uh-huh.

17 And then didn't Mr. Honeyestewa say it wasn't
18 like that?

19 A What's that?

20 Q Did Mr. Honeyestewa say it wasn't like that,
21 that --

22 A It wasn't his fault? Was that your question?

23 Q Wasn't what?

24 A I'm sorry, I did not exactly hear what your
25 last part of that question.

1 Q And didn't Mr. Honeyestewa, when you voiced
2 your theory about what Mr. Lopez had said or concluded,
3 didn't Mr. Honeyestewa tell you it wasn't like that?

4 A Well, he said a couple of times that several
5 things that I had passed out weren't quite like that,
6 yes.

7 Q Yeah. Okay.

8 There was some discussion about Mr. Smith being
9 shot in the bedroom. Did you have evidence of that?

10 A I -- I -- I believe I said that I didn't know
11 where -- where he was standing when he was shot. I
12 said he could have been shot in the bedroom, because
13 there was several bullet holes back against the back
14 wall of the bedroom. I also said there was, you know,
15 bullet holes in the living room that, you know, he
16 could have been shot at any point. Because he was
17 exiting the bedroom as -- as -- and he actually ended
18 up in the living room.

19 So I can't -- I mean, without the forensic
20 people, I can't make that determination.

21 Q Thank you.

22 But in any event, when you were going around
23 and watching the photographs being taken, did you see
24 any evidence of any kind of blood in the living room --
25 excuse me, bedroom?

1 A I don't remember necessarily seeing any in the
2 bedroom. I can't recall. I can't recall.

3 Q That would have been a significant issue on
4 your mind, though, while you were accompanying the
5 photographer around?

6 A Yeah.

7 Q And then with respect to how Ms. Stanger told
8 you that she recognized Mr. Torres -- Mr. Lopez to be
9 the person standing at the bedroom door, she told you
10 she recognized his voice, right?

11 A Uh-huh.

12 Q And she said she saw his face or recognized
13 him?

14 A No, I don't believe so.

15 Q And --

16 A I believe that, if I recall correctly, I think
17 she said it was really too dark to see.

18 Q Yeah.

19 But there was, in fact, a light on in the
20 closet of the bedroom, was there not?

21 A That, I can't -- I can't tell you.

22 Q Did any experimentation ever take place as to
23 how much light that might have cast?

24 A No. No. Because I'm not aware of the light
25 being on.

1 Q Okay. Did Mr. Honeyestewa talk to you about
2 his ability to recall all of the events that took place
3 that evening?

4 A Well, yeah. We talked about it at length. We
5 talked about things happening so fast, and him being
6 under the influence. Yeah, we discussed that as being
7 hindrances to his recollection in certain details.

8 Q And that's your experience, is that people who
9 have consumed too much alcohol and get involved in a
10 series of very fast moving events do have
11 some recollect -- recollection problems?

12 A Plus being shot, you know, very traumatic.

13 Q You indicated to Mr. Honeyestewa in the
14 interview that you were aware that he had been laying
15 on the floor, or at least you thought the evidence
16 suggested that he had been laying on the floor when he
17 was shot?

18 A Yes, sir.

19 Q And it was also your view that you -- if you
20 fired the 40 caliber subcompact in response, he was
21 laying on the floor when that happened, right?

22 A Yes.

23 Q And can you tell the jury what you were basing
24 that view on?

25 A One of the forensic crime scene people were --

1 did some -- used some trajectory arrows, rods, and put
2 the hole in the mirror and one of the holes in the
3 wall. And it looked like it was an upward trajectory
4 from a -- like I said, a seated or a kneeling position,
5 or a laying down position.

6 Q Yeah.

7 And then -- then he drew a diagram of that and
8 submitted it to the sheriff's office ultimately, or did
9 you ever see that?

10 A I never saw it, you know, afterwards. But I
11 know they submitted a report.

12 Q And were you present when he was putting rods
13 in the wall or (inaudible)?

14 A Yes, sir.

15 Q And did you have a discussion with him about
16 it?

17 A He was -- he was -- he was showing it, then, to
18 me. Yeah. We were talking about it.

19 Q And did he report there's a plus or minus five
20 degrees possible error in the conclusions that he was
21 reaching using just the rods?

22 A I mean, I believe there would be room for error
23 in anything, just because when a bullet hits sheetrock
24 like that, it can deflect and change angles.

25 Q Okay. So I guess you concluded, at least

1 initially, that Mr. Honeyestewa was probably being
2 truthful about laying on the floor?

3 A Yeah. I believe at one point he was laying on
4 the floor. And, I mean, based upon the video evidence
5 that I was told about, he was drug out of the house.
6 So I believe, yeah, I believe he was down on the ground
7 at one point and was unable to get back up.

8 Q Were you able to determine whether he was on
9 his back or on his stomach?

10 A Not with any -- not with any -- not
11 conclusively.

12 Q Okay. Did you have any trouble getting
13 Mr. Honeyestewa to admit that he owned the 40 caliber
14 pistol?

15 A Once I mentioned it to him, he -- he told me
16 that the 40 subcompact was his.

17 Q His.

18 Apparently without you having to do anything to
19 cause him to say that, other than just mention, whose
20 gun was it, it was yours?

21 A No. Yeah, we discussed it and, yeah, he
22 acknowledged that it was his.

23 Q And you saw, did you not, you saw the drug
24 marks of what appeared to be a person being drug in
25 front of the house?

1 A Yes, sir.

2 Q Did you question -- Mr. Honeyestewa told you
3 that Speedy had picked the gun up, picked his
4 subcompact 40 caliber up?

5 A Yes, sir.

6 Q And did he inform you that he had dropped his
7 gun when he got blasted?

8 A He mentioned that when he got shot, he dropped
9 the gun and that Speedy, or Mr. Lopez, picked it up.

10 Q And do you recall Mr. Lopez telling you, "And
11 it's weird, as soon as he said, 'Fucking stop,' the
12 shit stopped"? Did you understand -- understand what
13 he was saying?

14 A Yeah. Yeah, to some degree, yes.

15 Q And what was your understanding?

16 A Well, that probably -- I mean, I would have to
17 make an assumption. But I would think that Lopez might
18 be saying "Stop" because Mr. Honeyestewa had got shot.

19 Q And would you -- yeah.

20 Did you conclude that he was saying the words
21 "Stop" to Mr. Smith to stop shooting?

22 A I mean, that's, you know -- based on
23 Mr. Honeyestewa's statement, I would say that that
24 was -- probably Mr. Lopez was yelling that.

25 Q Does that seem reasonable and logical to you,

1 that Mr. Smith would have stopped based on what
2 Mr. Lopez said to him, yelled at him?

3 A You know, a lot of people hesitate when they
4 hear, you know, yelling to "Stop." I would -- it
5 wouldn't be beyond the realm of possibility.

6 Q Okay.

7 A I mean, it's --

8 Q Were you aware that Mr. Aguirre said that there
9 was -- initially there were a whole bunch of shots shot
10 very rapidly, and then a period of time, while he was
11 on the phone with 9-1-1, and no shots were fired, and
12 then the shots resumed, but not as rapid of a pace, and
13 that there were fewer the second time?

14 A No, I wasn't -- no, I don't recall that. I
15 didn't interview Mr. Aguirre.

16 Q Okay. But it would have been part of the
17 roundtable discussion of the detectives as to how that
18 came -- come to pass?

19 A And it may have come up, and I may not have
20 recollected that. I just might not of...

21 Q In the interview, you mentioned to
22 Mr. Honeyestewa that you weren't asking him to rat on
23 his buddy.

24 What does that mean?

25 A To rat would be to, you know, to squeal or to,

1 you know, tell on him. You know, to sell him out,
2 throw him under the bus. I guess there's several terms
3 for it. I'm not sure what the definition means. They
4 all mean the same to me.

5 Q But that, in the world of people who were
6 charged with crimes and go to prison, that becomes a
7 really big deal, right?

8 A Yes, sir.

9 Q And can you describe to the jury how big a deal
10 it is?

11 A Well, rat -- typically, if you're labeled a rat
12 in jail or prison, you're in for a hard time there.
13 You're subject to, you know, oftentimes, physical
14 assaults or death threats and things like that. And
15 it's not a -- a healthy situation to be in.

16 Q And then there's the -- I assume there is a
17 relatively usual social and moral value about squealing
18 on your friends, in any event?

19 A Yeah. There's a certain code of honor.

20 Q Then did you ask Mr. -- well, there was a
21 discussion, was there not, in the interview with
22 Mr. Honeyestewa about whether he had fired the
23 subcompact pistol?

24 A Yes, sir.

25 Q Okay. And did Mr. Honeyestewa discuss with you

1 how many bullets he thought were in the gun?

2 A He said that -- he said that the magazine
3 wasn't full, but he never gave me a specific number.

4 So --

5 Q He did say seven or eight, didn't he?

6 A He may have. He may have at some point.

7 Q And it turns out that that can't be so, right,
8 because you found 12 sub -- 12 shell casings belonging
9 to that subcompact?

10 A I didn't see the lab report. You know, we
11 recovered, I believe, 25 or 26 shell casings. I don't
12 know which ones came from Mr. Smith's gun, or what ones
13 came from Mr. Honeyestewa's.

14 Q Okay. You did find one 9 millimeter shell
15 casing?

16 A Possibly.

17 Q Okay. In the logically reasonable world of
18 police detectives, that's not very many shells to take
19 to a robbery if you were gonna commit one, right?

20 A I wouldn't think so.

21 Q And did that indicate to you that maybe, at
22 least, Mr. Lopez did not think Mr. Smith would be home
23 and would be confronted in this theft of guns?

24 A Well, I don't know what -- I didn't look at the
25 gun, the 9 millimeter we recovered. I don't know what

1 the situation was with that. I mean, if they only
2 recovered one shell casing, I mean, any number of
3 things could have happened. It could have jammed, it
4 could have -- I don't know. I don't know the condition
5 of the gun.

6 Q So if I tell you that the magazine was empty --

7 A Well, I --

8 Q -- well, no, I can't tell you that. I'm sorry.
9 I pretty near lied to you. I can't tell you that.

10 A I do not know that, no.

11 Q The -- Mr. Honeyestewa talked to you about --
12 repeatedly about a couple of videos, or audio tapes, or
13 audio recordings that would tend to exonerate him?

14 A I don't know if it will exonerate him, but it
15 will provide much valuable information to the
16 investigation. I don't know about exoneration.

17 I don't know what the exact contents of those
18 videos that he described to me were, other than saying
19 that the -- a woman had talked about taking -- taking
20 the guns out of the house.

21 Q And that those videos or audios never came into
22 your possession?

23 A No, sir. No, sir, I tried. But --

24 Q Okay. And that subcompact pistol was found on
25 the sidewalk outside of the house?

1 A I believe so. I believe so. Yes, sir.

2 Q And while you were looking at those
3 trajectories that were being measured, did you notice
4 any changes in trajectory from the gunshots that
5 appeared to be coming from the floor area near the
6 entryway?

7 A Any changes?

8 Q Yeah.

9 A Well, those rods only went through two points
10 of contact, which would have been the sheetrock. It
11 really doesn't show a change in direction, because it
12 just -- it goes in one point of contact and out the
13 other. So it -- really only two points. It can't
14 really indicate a change of direction.

15 Q But it also measures the degree from right to
16 left, but you didn't ever see that?

17 A Well, there were two holes, and they were in
18 two different directions.

19 Q Right. And these were in the wall, west wall
20 of the residence, right?

21 A Yes, sir.

22 Q And then when the rod comes through, it is
23 calculated that there's a trajectory left to right, it
24 travels from left to right at this angle, and up and
25 down?

1 A Yeah. That's right.

2 Q All right. And did you ever involve yourself
3 in looking at any of that?

4 A Not -- not from a -- I mean, just from a --
5 more of a, I guess, general investigative, not really
6 from the scientific side of it. I'm not -- I'm not
7 really a ballistics guy or a forensics guy, you know,
8 per se. But as an investigator, you know, it's good
9 information.

10 Q Yeah.

11 A I mean, I can't -- I can't testify to any of
12 the scientific or the specifics of it.

13 Q No.

14 But you could, if you saw there had been a
15 change in trajectory of the bullet holes that impacted
16 two spots so the trajectory could be determined, it
17 changed from one point to the next point, showing that
18 the fired gun was being fired and the bullet was being
19 fired from a gun that was moving?

20 A Yes.

21 Q That would be some consideration to a
22 detective, right?

23 A Yeah. I mean, you could see, you know,
24 maybe -- you know, if he was following the path of
25 Mr. Smith moving or something like that, or he's moving

1 himself. Of course, the angle of the -- the angle of
2 the -- you know, what would change.

3 MR. WOODBURY: Okay. Thank you. I don't think
4 we have anything further.

5 THE COURT: Redirect?

6 MR. MILLS: Nothing based on that, Your Honor.

7 THE COURT: Are there any jury questions for
8 this witness?

9 Do you need this witness retained?

10 MR. INGRAM: We would like him under subpoena,
11 Your Honor, but be allowed to leave. It won't be this
12 week.

13 THE COURT: Okay. You are free to leave the
14 courthouse. You may be called back to testify.

15 THE WITNESS: Thank you.

16 THE COURT: Again, do not discuss your
17 testimony with anyone other than the attorneys.

18 Thank you.

19 Your next witness?

20 MR. INGRAM: Nick Stake, please.

21 (Witness sworn.)

22 THE COURT: Please state and spell your name.

23 THE WITNESS: Nick Stake. N-i-c-k. S-t-a-k-e.

24 THE COURT: Thank you.

25 Go ahead, Mr. Ingram.

1 MR. INGRAM: Thank you, Your Honor.

2 Just one moment, please.

3

4 NICK STAKE,

5 the witness herein, being first duly sworn, testified

6 as follows:

7

8 DIRECT EXAMINATION

9 BY MR. INGRAM:

10 Q How are you employed, sir?

11 A I'm a detective sergeant with the Elko County
12 Sheriff's Office.

13 Q And how long have you been the detective
14 sergeant?

15 A I've been the sergeant since July 13th of this
16 year, sir.

17 Q And how long have you been with the sheriff's
18 department in total?

19 A With the sheriff's department, since 2004. So
20 approximately 16 years.

21 Q And specifically, how long have you been
22 assigned to the detective unit?

23 A Just over five years.

24 Q Let me direct your attention to the 7th of
25 July, 2018.

1 Were you assigned to the detective unit during
2 that time period?

3 A I was.

4 Q And were you the supervisor of the detectives,
5 or the sergeant at that time?

6 A I was not.

7 Q Okay. Who was?

8 A Billy Hood.

9 Q Were you assigned to participate in an
10 investigation regarding a possible homicide at 2821
11 Wrangler Circle?

12 A I was.

13 Q Is that in Elko County, Nevada?

14 A It is.

15 Q And, in fact, did you become the lead detective
16 on that case, essentially?

17 A Eventually, I did. Yes, sir.

18 Q And can you please tell the jury, while you're
19 the lead detective on the case, are there a number of
20 other people doing other things?

21 A That's correct.

22 Q Explain that a little bit for us, would you?

23 A Once I was placed in the lead detective
24 position, basically I was tasked with overseeing a
25 number of investigators who were (inaudible) in various

1 activities, such as interviews, collecting evidence,
2 processing scenes, that kind of thing.

3 Q And at least at the time, so back in July 7th,
4 2018, when you were investigating this case, was this
5 the most complex investigation that you had handled?

6 A It was.

7 Q Had you ever handled a homicide case quite like
8 this before?

9 A I had not.

10 Q When did you -- I'm talking about approximately
11 what time on the 7th of July, 2018, did you become
12 involved in this investigation?

13 A It would have been approximately 11:30 p.m., I
14 believe.

15 Q And around that time, or sometime after, did
16 you have occasion to respond to the hospital here in
17 Elko?

18 A I did.

19 Q What was your reason for going there?

20 A I had been informed by then-Detective
21 Sergeant Hood that there had been a shooting at 2821
22 Wrangler Circle. And Deputy Hawkins was in the process
23 of investigating that scene. And then I called
24 Detective Hawkins to find out what was going on, and he
25 said that a subject had been transported from the

1 residence to Northeastern Nevada Regional Hospital with
2 some gunshot wounds and was currently located there.

3 Q Did you know the name of the person there?

4 A At that time, I don't believe so.

5 Q Did you later learn it?

6 A I did.

7 Q Did you learn his name at the hospital?

8 A I did.

9 Q And, then, did you actually get an opportunity
10 to observe that person?

11 A I did.

12 Q And what was that person's name?

13 A Bradley Smith.

14 Q Where was Bradley at the time?

15 A He was in one of the emergency rooms that's
16 just inside of the ambulance receiving doors, laying on
17 a gurney.

18 Q Did he appear to be alive at that time?

19 A He did not.

20 Q I'm gonna show you what's been admitted already
21 as Exhibit 59.

22 Do you recognize that photo, sir?

23 A I do.

24 Q What do you recognize that to be?

25 A Bradley Smith.

1 Q Do you recall what Bradley Smith was wearing
2 when you saw him at the hospital?

3 A He had several medical devices attached to him.
4 And he was wearing dark colored underwear, briefs, I
5 believe.

6 Q And at that time, was he wearing any socks?

7 A He was not, no.

8 Q And on that same date, at the same hospital,
9 did you have any contact with a person by the name of
10 Alan Honeyestewa?

11 A Yes.

12 Q Tell me how that came about, please.

13 A Shortly after I had taken some photos of
14 Bradley Smith, the medical staff at the hospital, as
15 well as Deputy Reed, said a subject believed to have
16 been involved in the incident on Wrangler Circle was
17 being transported via ambulance to the hospital.

18 Q And did you actually see that person that you
19 knew to be Alan Honeyestewa at the hospital?

20 A I did.

21 Q Did you take some photographs of him?

22 A I did.

23 Q And where was that person specifically within
24 the hospital when you saw him?

25 A As I was facing the room that Bradley Smith was

1 located in, he would have been to the room immediately
2 to the left of that.

3 Q Were you able to make any general observations
4 about Mr. Honeyestewa at that point?

5 A I was.

6 Q And what were those?

7 A He appeared to be moving in quite a bit of
8 pain. He was moaning and groaning. There was a lot of
9 medical procedures being done to him at that point.
10 And I observed some injuries and the blood to his
11 person.

12 Q Did those injuries appear to be consistent with
13 gunshot wounds?

14 A From the ones I saw, yes, sir.

15 Q I'm going to show you what's been marked as
16 State's Exhibit 131 and 133. Excuse me.

17 Do you recognize those, sir?

18 A I do.

19 Q What do you recognize those to be?

20 A Those appear to be the photos I took of
21 Mr. Honeyestewa.

22 Q Fair and accurate pictures?

23 A They are.

24 MR. INGRAM: Move for the admission of 131 and
25 133, please.

1 THE COURT: Any objection?

2 MR. WOODBURY: We have no objection.

3 THE COURT: Exhibits 131 and 133 are admitted.

4 (Exhibits 131 and 133 admitted.)

5 THE WITNESS: May I see those one more time?

6 MR. INGRAM: You bet.

7 (Counsel complied.)

8 THE WITNESS: Sir, I believe these were taken
9 on a different day.

10 Q BY MR. INGRAM: Okay. Do you know what day
11 they were taken?

12 A I believe they were taken on the 11th.

13 Q Of?

14 A Of July.

15 Q And was that because you responded to a
16 hospital in Utah where Mr. Honeyestewa was?

17 A That's correct.

18 So my prior testimony, I did not take those
19 photos.

20 Q Thank you.

21 But is it true that you did take photos of
22 Honeyestewa at the hospital in Elko?

23 A I did.

24 Q Okay. If you saw Mr. Honeyestewa again, would
25 you recognize him?

1 A I would.

2 Q Do you see him in the courtroom today?

3 A I do. He's seated almost directly in front of
4 me, wearing a black vest, black tie, and a gray shirt.

5 MR. INGRAM: Your Honor, will the record
6 reflect the ID, please?

7 THE COURT: The record will so reflect.

8 Q BY MR. INGRAM: While at the hospital, sir, did
9 you collect any items of potential evidence from
10 Mr. Honeyestewa?

11 A I did.

12 Q Can you please tell us what those were?

13 And if you can't remember all of them, please
14 ask and we can show you a copy of your report.

15 A I did collect a gunshot residue kit, along with
16 several items of clothing. I don't recall all the
17 items of clothing that I (inaudible).

18 Q Did you note those in a report?

19 A I did.

20 Q And would seeing that report refresh your
21 recollection?

22 A It would.

23 MR. INGRAM: Can I have just one moment, Your
24 Honor, please?

25 Ms. Clerk, have you got item 20? And also,

1 please, item 47.

2 Q BY MR. INGRAM: I'm gonna show you what's
3 previously been marked as State's 20.

4 Can you take a look at that first page there
5 and let me know when you're done?

6 A (Inaudible).

7 Q Is that your report that you generated in
8 connection with the items that you collected at the
9 hospital from Mr. Honeyestewa?

10 A It is.

11 Q And can you please read for us those items that
12 you collected?

13 A With the item numbers, sir?

14 Q Yes, please.

15 A 1NS: Gray tennis shoe, right, Avia. 2NS:
16 Gray tennis shoe, left, Avia. 3NS: One black sock.
17 4NS: One black sock. 5NS: One pair of blue patterned
18 boxers, Hanes. 6NS: One pair of black Nike
19 sweatpants. 7NS: One red short-sleeved T-shirt. 8NS:
20 One blue towel.

21 Q Can you please tell us what the "NS" stands
22 for?

23 A That's my personal item number. So it would be
24 whatever the sequential number is, plus my initials,
25 Nick Stake, or Nicholas Stake.

1 Q And after you left the hospital, what, if
2 anything, did you do with those items that you just
3 named for us?

4 A I maintained custody of them until I placed
5 them into an evidence dryer that we commonly use at the
6 sheriff's office for clothes, clothing, that is
7 contaminated with biological material, or wet, so we
8 can dry it out prior to booking it into the evidence
9 system.

10 Q And eventually, were those items booked into
11 the evidence system?

12 A They were.

13 Q Okay. You mentioned collection of a gunshot
14 residue kit. Can you please explain to the jury what
15 that is?

16 A A gunshot residue kit is a small box that
17 contains several vials. Those vials have some stubs on
18 the inside that have a small adhesive surface, similar
19 to packing tape, that is used to dab over the surface
20 of the hands, face, or any other object that we may
21 need to collect potential gunshot residue from a person
22 or an object.

23 Q And, sir, are you aware what crime lab Elko
24 County is contracted with to perform forensic service
25 analysis?

1 A In the past I've used Sacramento District
2 Attorney's Office Crime Lab for those test kits.

3 Q I guess what I'm asking is, who does Elko
4 County normally use for analysis of their evidence?

5 A Oh, evidence as a whole?

6 Q Evidence as a whole, yes, sir.

7 A Washoe County Crime Lab.

8 Q And are you aware whether Washoe County Crime
9 Lab will essentially test gunshot residue kits?

10 A They will not.

11 Q And you mentioned something about Sacramento.

12 Have you had opportunities to send stuff to
13 Sacramento for gunshot residue analysis?

14 A I have.

15 Q Okay. Is there a cost associated with that?

16 A There is.

17 Q What is it?

18 A I believe the last kit that I sent off was a
19 total of -- just over \$1,700 per kit.

20 Q And are you familiar with what analysis of a
21 gunshot residue kit can tell us?

22 A I am.

23 Q What is that?

24 A Basically, if gunshot residue from the primer
25 of the cartridge is either present or not on the stubs

1 that are submitted to the crime lab.

2 Q Can a gunshot residue kit actually tell you if
3 the individual it was collected from fired a firearm?

4 A They cannot.

5 Q And why is that?

6 A Because the test it's done on is through a
7 scanning electron microscope. So it's my understanding
8 that a technician is basically counting up the number
9 of potential gunshot residue particles on those stubs,
10 quantify them, and just give you a result that they are
11 either present or not present on the stubs.

12 Q And, if you know, is it your understanding that
13 simply being in the presence of gunshot fire can
14 actually deposit residue on somebody's hands?

15 A That's correct.

16 Q As an investigative tool, when do you typically
17 use the full analysis of a gunshot residue kit?

18 A I usually only have used that in the past when
19 either somebody has denied being in the area of a
20 gunshot, or things of that nature.

21 Q Okay. Would it be helpful in a suicide?

22 A It would be.

23 Q And why is that?

24 A If somebody was claiming not to be there, and
25 they had gunshot residue, and the suicide was the

1 result of a gunshot, that could give us a lead to
2 investigate, not necessarily conclusive evidence that
3 they were or were not there, or had fired a gun or had
4 not, but definitely give us a reason to pursue that.

5 Q In this particular case, were you given
6 information that Mr. Honeyestewa actually admitted to
7 firing a firearm in this case?

8 A Eventually, I was, yes.

9 Q And did you have an interview with
10 Mr. Honeyestewa?

11 A I did.

12 Q And was it during that interview that he
13 admitted that he fired a gun?

14 A He did.

15 Q So based on your knowledge that Mr. Honeyestewa
16 fired a gun, did you see any value in sending the
17 gunshot residue kit for analysis?

18 A At that point I did not, no.

19 Q And are those for the same reasons that you
20 just described for us?

21 A It is.

22 Q Did you have any contact with an individual by
23 the name of Jennifer Stanger at the hospital around the
24 same time as Mr. Honeyestewa?

25 A I did.

1 Q And tell us about that, please.

2 A Just briefly, after contacting Mr. Honeyestewa,
3 I learned that Lieutenant McKinney had transported
4 Jennifer Stanger to the hospital, and she was currently
5 located in the lobby. So I left the emergency room,
6 went out to the lobby. And if I recall, I met with her
7 in the chapel of the hospital.

8 Q And can you please describe for the jury what
9 her emotions were like?

10 A Her emotions were very erratic. She was
11 talking rather loud and animated. She couldn't sit
12 still, rocking back and forth, crying at times.

13 Q Are you familiar with persons who use
14 controlled substances and the behaviors that they
15 exhibit?

16 A Generally, yes.

17 Q Specifically, methamphetamine?

18 A I have in the past, yes.

19 Q And were Jennifer Stanger's movements and
20 emotions and behavior, in general, consistent with
21 somebody who uses methamphetamine?

22 A I'm not a DRE, so I couldn't make that
23 conclusion. But --

24 Q Was she able to communicate with you?

25 A She was.

1 Q Did you make any observations about anything on
2 her person, like her body?

3 A I basically did a quick visual search of her
4 person, and I didn't observe anything, as far as any
5 injuries, or obvious items of evidence, or anything
6 like that.

7 Q And as a detective, why would you be concerned
8 with that?

9 A Because it was my understanding that she was
10 present at the 2821 Wrangler Circle during the
11 incident.

12 Q Did you observe any blood?

13 A I did not, no.

14 Q Were you able to collect gunshot residue or
15 perform a gunshot residue kit on Ms. Stanger?

16 A I was not.

17 Q And how come?

18 A When I was processing Mr. Honeyestewa, the old
19 kits that we used to have had a limited number of
20 daubers. So they only had a vile for the right hand,
21 left hand, and I believe the face. And then they had a
22 control vile.

23 From my past knowledge and experience in
24 dealing with gunshot residue kits, I would open up two
25 kits. So when I would process the hands, I would be

1 able to have one for the back of the hand and one for
2 the front of the hand. So during my initial contact
3 with Mr. Honeyestewa, I had instinctively just cut open
4 two kits. Those were the only two gunshot residue kits
5 I had.

6 And then when I opened them up, I found out
7 there was basically all the vials I needed contained in
8 one of the kits. So the second one, I had broke the
9 seal and potentially contaminated that after I left
10 it -- after I finished with Mr. Honeyestewa.

11 Q And by contamination, do you mean that possibly
12 would give you bad results?

13 A Correct. Just the sheer fact that I carry a
14 firearm, I have to be careful how I handle those.
15 Because I could inadvertently transfer gunshot residue
16 from my firearm, or my person, to those kits once
17 they're opened and left unattended.

18 Q And throughout the course of your investigation
19 in this case, have you ever uncovered any evidence to
20 suggest that Ms. Stanger fired a firearm on that night?

21 A I have not, no.

22 Q Did you have an occasion to respond to an
23 address on Bohobi on the Colony here in Elko?

24 A I did.

25 Q When did you go there, approximately?

1 A I don't recall the exact time. I believe -- I
2 want to say 2:00 in the morning, but I'm not for
3 certain.

4 Q So in any event, would that have been the early
5 morning hours of the 8th of July?

6 A It would have.

7 Q 2018?

8 A That's correct.

9 Q And what was your reasoning for responding to
10 that address?

11 A I had been informed, when I was at the
12 hospital, that that was the address that
13 Mr. Honeyestewa had been located at.

14 Q And did you observe a green Ford Explorer near
15 that address?

16 A I did.

17 Q And did you have an opportunity to look at it
18 at all in any detail at that time?

19 A Not with any detail, but I did have a chance to
20 look at it.

21 Q What did you notice about it?

22 A As I was walking past, I believe that it was
23 the rear passenger window was open. And when I looked
24 inside from the exterior of the vehicle, I could see
25 what appeared to me to be blood in several areas of the

1 interior of the vehicle, as well as, I believe, a black
2 mask and a cell phone sitting on one of the passenger
3 seats.

4 Q So while you were at the Wrangler Circle
5 address -- excuse me, the Bohobi address, were you at
6 some point called back to the Wrangler Circle address,
7 or go back to the Wrangler Circle address?

8 A From the Bohobi address to the Wrangler was
9 actually the first time I had been to Wrangler.

10 Q Okay. Yeah, excuse me. Thank you. Thanks for
11 correcting me.

12 And what was your reason for responding to the
13 Wrangler Circle address in the first instance?

14 A In the first instance, I had learned that there
15 was two deputies there, Deputy Williams and Deputy
16 Hawkins, and there was also two dogs that were located
17 at the crime scene that were running around. They were
18 trying to contain those dogs and get them into their
19 units to be removed.

20 Q Okay. When you said the "crime scene," can you
21 generally describe the area that you consider to be the
22 crime scene at that Wrangler Circle address?

23 A When I arrived at Wrangler Circle, I observed
24 some areas -- first off, the residence was located in a
25 cul-de-sac on Wrangler. So when I arrived, I seen some

1 crime scene tape that had been placed around the front
2 of the residence and throughout the cul-de-sac. So my
3 initial impression was where the crime scene tape was
4 located within that cul-de-sac.

5 Q And just to be clear, that was more area than
6 just the interior of the house, correct?

7 A That's correct.

8 Q Did it encompass the yard?

9 A It did.

10 Q Did you see where the dogs were located when
11 you arrived there?

12 A When I arrived, I believe that -- I recall one
13 being in the driveway and that front portion of the
14 front yard driveway, roadway area.

15 Q Okay. Did you ever observe a dog inside of the
16 house?

17 A I did not, no.

18 Q What did you guys do with the dogs?

19 A One of the dogs had been removed by
20 Deputy Williams, I believe, and he transported it to
21 the animal shelter. The second dog, if I recall,
22 Deputy Hawkins and I tried to contain the dog and
23 remove it from the scene, as well. But that dog pretty
24 much stayed in the driveway the remainder of the time
25 that I was there.

1 There was one occasion where the dog got up and
2 moved toward the house, and I entered the crime scene
3 to try to stop the dog from going into the house. But
4 the dog didn't even go in that direction, it went into
5 the front yard, kind of circled back, and I believe
6 came back to the driveway.

7 Q And were you aware that Deputy Hawkins was
8 eventually able to secure that dog and take it away
9 from the scene?

10 A I don't recall specifically who took care of
11 that dog.

12 Q At that point in time, did you actually go up
13 to the front door of that residence?

14 A At that point, I walked towards it, but not up
15 to it, no.

16 Q Okay. Did there come a time during your
17 investigation when you actually entered that house
18 while there was still blood on the floor?

19 A No. I never entered the house when there was
20 blood on the floor.

21 Q Thank you.

22 When you responded to the Wrangler Circle
23 address, did you have an occasion to walk around the
24 back of the house?

25 A I did.

1 Q What was your reason for doing that?

2 A I had been informed by Deputy Hawkins that the
3 front of the house had been taped off, but the Elko
4 Police Department, who had also responded to the
5 incident, had (inaudible) the house. And he was unsure
6 how exactly, if at all, the crime scene had been taped
7 off in the back. So I went back there to evaluate
8 that.

9 Q And what did you look for to evaluate whether
10 anybody had entered the scene back there?

11 A Once I got close enough, or in a position that
12 I could see there was no crime scene tape, I got some
13 crime scene tape from my unit, and I walked around the
14 rear of the fence, from one side of the fence line to
15 the other, to include a portion of the rear field that
16 was located behind the house.

17 And as I did that, I looked on the ground to
18 see if I could see any obvious signs of footprints or
19 any apparent pieces of evidence that were laying back
20 there, any signs that anybody had been back there
21 recently, and I didn't locate any.

22 Q Okay. Did there come a time, at some point
23 during your investigation, when you actually took
24 photographs from inside Mr. Aguirre's residence and
25 then the outside of Mr. Aguirre's residence?

1 A I did.

2 Q What was your reasoning for doing that?

3 A It was my understanding that he was a witness
4 in the case, and so I waited for daylight hours to
5 basically take a picture from his point of view from
6 inside the residence by the bay area -- or the bay
7 window area in his house. That was my understanding
8 that he observed everything from. So I went inside to
9 take those, as well as picture on the exterior facing
10 his house to depict that and capture that, as well.

11 MR. INGRAM: Here in a moment I'll show you
12 some exhibits.

13 Judge, what time do you intend to break?

14 THE COURT: 2:45.

15 MR. INGRAM: Thank you.

16 THE COURT: Do you need a break now?

17 MR. INGRAM: No, Your Honor. I'll just have a
18 different topic coming up here shortly, so that might
19 be a good time.

20 (Inaudible) last one (inaudible).

21 Q BY MR. INGRAM: Showing you State's 143, can
22 you please tell me what that photograph is?

23 A It appears to me to be a picture I took in the
24 front yard of the residence.

25 Q What residence?

1 A I believe this was Mr. Aguirre's residence. I
2 don't recall the numbers.

3 Q Okay. Fair and accurate picture?

4 A It is.

5 MR. INGRAM: I move for the admission of 143.

6 THE COURT: Any objection?

7 MR. WOODBURY: No.

8 THE COURT: Exhibit 143 is admitted.

9 (Exhibit 143 admitted.)

10 Q BY MR. INGRAM: 142 I'm showing you, what is
11 that?

12 A This appears to me to be a picture from the
13 interior of the window of Mr. Aguirre's residence.

14 Q Fair and accurate picture?

15 A It is.

16 MR. INGRAM: Move for the admission of 142.

17 THE COURT: Any objection?

18 MR. WOODBURY: No.

19 THE COURT: 142 is admitted.

20 (Exhibit 142 admitted.)

21 Q BY MR. INGRAM: 141 I'm showing you, what is
22 that?

23 A This is a picture in the front yard of
24 Mr. Aguirre's residence facing the 2821 Wrangler
25 address.

1 Q Fair and accurate picture?

2 A It is.

3 MR. INGRAM: Move for the admission of 141.

4 THE COURT: Any objection?

5 MR. WOODBURY: No.

6 THE COURT: Exhibit 141 is admitted.

7 (Exhibit 141 admitted.)

8 Q BY MR. INGRAM: Showing you 139, do you
9 recognize that?

10 A I do.

11 Q What is it?

12 A This is a picture of the bay area windows, as I
13 described, in Mr. Aguirre's house several feet back
14 from the windows.

15 Q And are you inside Mr. Aguirre's house at that
16 point?

17 A I am.

18 Q Fair and accurate picture?

19 A It is.

20 MR. INGRAM: Move for the admission of 139.

21 THE COURT: I have that it's already in.

22 MR. INGRAM: Okay. Then my work is done.

23 Q BY MR. INGRAM: Exhibit 138, do you recognize
24 that photo?

25 A I do.

1 Q And what do you recognize that to be?

2 A This is a picture I took from the front yard
3 area of 2821 Wrangler Circle facing Mr. Aguirre's
4 residence.

5 Q Fair and accurate picture?

6 A It is.

7 MR. INGRAM: Move for its admission.

8 THE COURT: Any objection?

9 MR. WOODBURY: No.

10 THE COURT: 138 is admitted.

11 (Exhibit 138 admitted.)

12 Q BY MR. INGRAM: Showing you 137, do you
13 recognize that, sir?

14 A I do.

15 Q And what do you recognize that to be?

16 A This is another perspective from the -- of the
17 picture that I took from the front yard of 2821
18 Wrangler Circle, again facing Mr. Aguirre's residence.

19 MR. INGRAM: Thank you. I believe that's
20 already admitted.

21 THE COURT: It is.

22 MR. INGRAM: Thank you, Judge.

23 Q BY MR. INGRAM: Showing you 136, already
24 admitted, is that the Wrangler Circle address that
25 we've been talking about?

1 A It is.

2 Q Mr. Smith's house?

3 A That's correct.

4 Q At some point around this time frame, where you
5 had gone back -- excuse me, gone to the Wrangler Circle
6 address for the first time, did you direct anybody to
7 secure the SUV that was on the Bohobi Street?

8 A At that particular point in time, my first
9 appearance at the Bohobi address? Is that what you're
10 asking me for?

11 Q Yes, sir.

12 A At that particular time, I don't believe I
13 directed anybody to secure it.

14 Q At some point, did you?

15 A I did.

16 Q And who did you tell to secure that?

17 A Deputy Steinfeld.

18 Q I'm going to show you already admitted 98 and
19 99.

20 Do you recognize those photos, sir?

21 A I do.

22 Q What are they?

23 A They are photos that were taken of the green
24 Ford Explorer at the Bohobi address.

25 Q And that's the same one we had just been

1 talking about?

2 A That's correct.

3 Q I'm gonna direct your attention to the 10th of
4 July, 2018.

5 Did you have occasion to apply for a search
6 warrant for Mr. Lopez's DNA?

7 A I did.

8 Q And do you know Mr. Lopez by a nickname?

9 A I do.

10 Q What is that?

11 A Speedy.

12 Q Okay. Can you tell us why you were getting a
13 search warrant for Speedy's DNA?

14 A It's my understanding that he was also involved
15 in the incident at Wrangler Circle, so I was applying
16 for a buccal swab for DNA comparisons for evidentiary
17 purposes.

18 Q And did you collect those?

19 A I did.

20 Q How is that done?

21 A Basically, two cotton-tipped applicators, like
22 medical sterile swabs were used. And I place the swabs
23 on the interior of the person's cheek, and move them
24 around on the side of the cheek, swabbing that area for
25 approximately 40 seconds, put that swab into an

1 envelope, and then take out another one --
2 correction -- take that swab, secure that. Pull out
3 another swab, use it on the other side of the person's
4 cheek, swab it for approximately the same time, and
5 then secure that.

6 Q Did you follow that procedure in this
7 particular instance?

8 A I did.

9 Q After you collected it, what did you do?

10 A I booked it into the Elko County Sheriff's
11 Office evidence system.

12 Q And at some point, did you cause that to be
13 sent to the crime lab for analysis?

14 A I did.

15 Q And specifically, were you requesting that be
16 analyzed against other pieces of evidence you
17 collected?

18 A I did -- or it was.

19 Q Okay. I've shown you what's been marked as
20 State's Exhibit 327.

21 Do you recognize that, sir?

22 A I do.

23 Q What do you recognize that to be?

24 A That is the Washoe County Sheriff's Office
25 examination request form that I filled out for that

1 item of evidence.

2 Q Okay. And on the box, itself, attached to
3 that, does that identify what that item is?

4 A It does.

5 Q What is it?

6 A It says it's a swab kit from the Tieres Lopez.

7 Q Are your initials on there?

8 A It is.

9 MR. INGRAM: Move for the admission of State's
10 327, please.

11 THE COURT: Any objection?

12 MR. WOODBURY: No.

13 THE COURT: Exhibit 327 is admitted.

14 (Exhibit 327 admitted.)

15 Q BY MR. INGRAM: I'll direct your attention to
16 the 11th of July, 2018.

17 Did you have occasion to respond to a hospital
18 in Utah in connection with this case?

19 A I did.

20 Q What was the reason for that?

21 A To serve a search warrant on Mr. Honeyestewa to
22 obtain what Salt Lake County, or Salt Lake City, refers
23 to as major case prints, a buccal swab, and clothes of
24 his person.

25 Q And were you able to execute that search

1 warrant?

2 A I was.

3 Q And did you follow that same procedure that you
4 described for us in collecting the buccal swabs?

5 A I personally did not, because I could not
6 directly execute that search warrant since I'm not a
7 peace officer in Utah. So the homicide detective in
8 Utah, Detective Mount, applied for the search warrant,
9 assisted in serving it. And his forensic team actually
10 did all the forensic work with Mr. Honeyestewa.

11 Q Were you present for that?

12 A I was.

13 Q And was it substantially the same procedure
14 that you used for Mr. Lopez's?

15 A Essentially, yes.

16 Q And were those swabs then handed over to you?

17 A The next day they were, yes, sir.

18 Q And what did you do with them?

19 A I booked them into our evidence system, and
20 also sent them to the Washoe County Crime Lab, as well.

21 Q Okay. I'm going to show you Exhibit 327. Will
22 you look that over and tell us what that is?

23 A This is the packaging that I placed the buccal
24 swab kit from Mr. Honeyestewa into, as well as the -- a
25 copy of the examination request form for the Washoe

1 County Sheriff's Office that I completed on it.

2 Q And is that sealed currently?

3 A It is.

4 Q Okay. I'm gonna open that.

5 THE COURT: Is that 326, Mr. Ingram?

6 MR. INGRAM: Yes, Your Honor.

7 Q BY MR. INGRAM: I'm opening up the envelope.

8 Do you recognize that?

9 A I do.

10 Q What is it?

11 A That's the evidence packaging from the Salt
12 Lake forensic team.

13 Q Okay. Is that the buccal swab in there
14 (inaudible)?

15 A It is.

16 MR. INGRAM: Move for the admission of 326,
17 please.

18 THE COURT: Any objection --

19 MR. WOODBURY: Give me a second, Judge.

20 No.

21 THE COURT: Exhibit 326 is admitted.

22 (Exhibit 326 admitted.)

23 Q BY MR. INGRAM: Did you cause that to be sent
24 anywhere?

25 A I did.

1 Q Where?

2 A To the Washoe County Crime Lab, as well.

3 MR. INGRAM: Judge, I'm at a breaking point, if
4 you would like to break.

5 THE COURT: Okay. Thank you.

6 (Admonition given to jury.)

7 THE COURT: We will be in recess for 20
8 minutes. Detective Sergeant, please do not discuss the
9 case with anyone other than the attorneys.

10 (Recess.)

11 THE COURT: You may be seated.

12 The record will so reflect the presence of the
13 defendant and counsel.

14 Counsel, please stipulate to the presence of
15 the jury.

16 MR. INGRAM: Yes, Your Honor.

17 MR. WOODBURY: So stipulated.

18 THE COURT: Go ahead, Mr. Ingram.

19 Q BY MR. INGRAM: Detective Stake, I'm gonna
20 direct your attention to the 19th of July, 2018.

21 Did you have an occasion to conduct an
22 interview with Mr. Honeyestewa?

23 A I did.

24 Q Where did that interview take place?

25 A The Elko County Jail interview room.

1 Q And how was it that that interview came about?

2 A That evening, I was conducting my duties as the
3 range master for the Department of Elko County Range,
4 and I received a call from then-Detective Sergeant Hood
5 that Mr. Honeyestewa wanted to talk to somebody
6 involved in the case.

7 Q And was that person you?

8 A Eventually, yes, it was.

9 MR. INGRAM: Okay. Judge, I'm going to ask to
10 admit State's Exhibits 3 and 4. Those are CDs of the
11 interview.

12 THE COURT: Any objection, Mr. Woodbury, to the
13 admission of Exhibits 3 and 4?

14 MR. WOODBURY: Your Honor, Mr. Ingram and I
15 have discussed the potential piece of evidence in the
16 interview that should not be in there, and I'm assuming
17 it's not.

18 THE COURT: 4-A is the redacted version; is
19 that what you mean to use, Mr. Ingram?

20 MR. INGRAM: No, Your Honor.

21 THE COURT: So the portion that Mr. Woodbury is
22 talking about, has that been redacted from these?

23 MR. INGRAM: Is that what you and I just talked
24 about?

25 MR. WOODBURY: Yes.

1 MR. INGRAM: No, Your Honor. These are
2 unredacted. That's what we were told we were supposed
3 to use. So if we want to have a hearing outside the
4 presence of the jury to take care of that, that's fine.
5 But this is a completely unredacted copy.

6 THE COURT: Okay. It sounds like that's what
7 we need to do, then.

8 Mr. Woodbury, you're objecting to a portion of
9 it?

10 MR. WOODBURY: Ten words. It looks to me like
11 he could probably start it after. It's right at the
12 beginning.

13 THE COURT: Okay.

14 MR. INGRAM: Can you show me what part you're
15 talking about, Gary?

16 (Counsel complied.)

17 MR. INGRAM: Judge, I have no problem with
18 starting it after that point. I'll just need to be
19 able to get to that point. And I'll have to do that --

20 THE COURT: -- outside the presence of the
21 jury? Is that what you're saying?

22 MR. INGRAM: Yeah. I was trying to put it
23 nicer than that, but, yeah.

24 THE COURT: Okay. Well, we're going to take
25 another brief recess.

1 (Admonition given to jury.)

2 THE COURT: Sounds like this will only take a
3 few minutes, so don't go far. We're in recess.

4 (Recess.)

5 THE COURT: Defendant and counsel are present.

6 Counsel, will you stipulate to the presence of
7 the jury?

8 MR. INGRAM: Yes, Your Honor.

9 THE COURT: Mr. Woodbury, are you --

10 MR. WOODBURY: Yes, Your Honor.

11 THE COURT: -- are you satisfied now with where
12 this is going to start?

13 MR. WOODBURY: Yes.

14 THE COURT: So you have no objection to the
15 admission of Exhibits 3 and 4; is that correct?

16 MR. WOODBURY: We do not.

17 THE COURT: Exhibits 3 and 4 are admitted.

18 (Exhibits 3 and 4 admitted.)

19 Q BY MR. INGRAM: Detective Stake, can you see
20 the interview room depicted in your screen right in
21 front of you?

22 A I can.

23 Q And closest to the bottom of the screen, there
24 appears to be a document. Do you know what that is?

25 A That is a Miranda waiver form that we utilize

1 at the sheriff's office.

2 Q Essentially, what is that?

3 A It's the individual's Miranda rights, as well
4 as a couple of questions that they understand
5 (inaudible).

6 Q Okay. I'm gonna show you a portion of 5-C.
7 Particularly, just that front page there.

8 Can you please take a look at that and let me
9 know if you recognize it?

10 A I do.

11 Q What is that?

12 A This is the form that I filled out during this
13 interview with Mr. Honeyestewa.

14 Q And did Mr. Honeyestewa actually execute any
15 part of that form? Has he signed any part of that
16 form?

17 A He did.

18 Q And is that -- does that appear to be a copy of
19 the form that appears in that video there?

20 A That is correct.

21 Q (Inaudible) agree to talk to you?

22 A I'm sorry?

23 Q Did Mr. Honeyestewa agree to talk to you?

24 A He did.

25 MR. INGRAM: Okay. Judge, for the record, I'm

1 starting this exhibit at 2 minutes and 54 seconds.

2 THE COURT: Is that 3 or 4?

3 MR. INGRAM: That's 3. Specifically, the first
4 part of number 3. It's divided into two parts.

5 (Videotape played.)

6 THE COURT: I don't think that's amplified.

7 Can you all hear that? No.

8 UNIDENTIFIED SPEAKER: Okay. Give it a shot.

9 (Videotape played.)

10 THE COURT: Can you hear it?

11 (Videotape played.)

12 THE COURT: When you deliberate, you will have
13 these recordings. So you can play them back if you
14 want to. I know some of it is kind of hard to hear,
15 hard to understand. So you will have those if you want
16 to play them back.

17 (Videotape played.)

18 MR. INGRAM: This will be the start of Exhibit
19 4.

20 (Videotape played.)

21 Q BY MR. INGRAM: During the course of your
22 interview that we just watched, it appears that you had
23 Honeyestewa draw or write a few different things. I'm
24 gonna show you State's Exhibit 5-C again. You've
25 identified that first page.

1 But can you identify that second page for us
2 there?

3 A The second page is the drawing of the knife
4 that I asked Mr. Honeyestewa to complete during our
5 interview. And, I'm sorry, did you say just the second
6 page?

7 Q No. Keep going.

8 A The third page is the humanoid diagram that I
9 had him indicate where he had been shot, from
10 Mr. Honeyestewa. This is actually the back number that
11 would appear on that page that I showed him, with the
12 drawing of the humanoid shape. And this is the diagram
13 that he drew explaining the inside of the residence
14 where Mr. Smith was standing, Taylor Miller, and
15 himself, and Speedy.

16 Q And are those accurate, as far as you know?

17 A They are.

18 MR. INGRAM: I move for the admission of
19 State's 5-C.

20 THE COURT: Any objection?

21 MR. WOODBURY: No.

22 THE COURT: 5-C is admitted.

23 (Exhibit 5-C admitted.)

24 Q BY MR. INGRAM: During the course of that
25 interview, Mr. Honeyestewa mentioned on several

1 occasions about a video. Do you recall that?

2 A I do.

3 Q Actually, to be more specific, two 30-minute
4 videos; is that true?

5 A That is.

6 Q And is it your understanding that
7 Mr. Honeyestewa was interested in those videos because
8 they would have depicted someone talking about -- not
9 someone, Jennifer Stanger, talking about setting this
10 whole shooting up, or stealing of the guns, something
11 like that; is that your understanding?

12 A It is.

13 Q And during the course of your investigation --
14 let me ask you this: How long did this investigation
15 occur for you, or is it still ongoing?

16 A It's still ongoing.

17 Q And if information was brought to you to this
18 day, would you follow up on it?

19 A I would.

20 Q Did you have an occasion to follow up on the
21 videos that Mr. Honeyestewa was talking about in his
22 interview?

23 A I did.

24 Q What did you find?

25 A I met with an individual identified as

1 Joyce Romaine, who described the videos. I also met
2 with Bradley Smith's mother, Sue Francis, who actually
3 provided me with, I believe, three audio or video files
4 via my department e-mail that seemed to match the
5 description of what Mr. Honeyestewa was describing, in
6 terms of videos from somebody's cell phone.

7 Q And did you have an opportunity to listen to
8 those videos?

9 A I did.

10 Q Did you provide those videos to my office?

11 A I did.

12 Q And anywhere on those videos, is there any
13 indication that Jennifer set this up?

14 A There is not.

15 Q Besides those videos, have you ever been able
16 to recover any other videos of Jennifer talking about
17 setting this up for insurance money or for any other
18 purpose?

19 A I have not.

20 Q Besides Mr. Honeyestewa's allegation that
21 Jennifer did this, have you ever found any evidence,
22 besides video or audio, to support the fact that
23 Jennifer set this up?

24 A I have not, no.

25 Q Did you look?

1 A I did.

2 Q Did there come a time during your investigation
3 that you were informed about a missing laptop?

4 A I was.

5 Q What was your understanding about how that
6 laptop came to be missing?

7 A It was my understanding that the laptop had
8 been taken sometime prior to the shooting incident at
9 Wrangler Circle from that residence. I don't recall
10 the exact time frame. I want to say one week.

11 Q And who did that laptop belong to?

12 A Bradley Smith, I believe.

13 Q And during the course of your investigation,
14 did you attempt to figure out what happened to the
15 laptop?

16 A I did.

17 Q And to this day, have you been able to figure
18 that out?

19 A I have not, no.

20 Q I want to direct your attention to the 22nd of
21 August, 2018.

22 Did you have an occasion to go over to
23 Mr. Woodbury's law office?

24 A I did.

25 Q What was the purpose for you going there?

1 A I was asked to stop by the office because an
2 Apple laptop had been dropped off to his office by an
3 individual. And since it was an item of evidence in
4 the investigation, it was turned over to the sheriff's
5 office.

6 Q During the course of your investigation, were
7 you able to identify that laptop as belonging to
8 Brad Smith?

9 A I was not.

10 Q Were you aware that Jennifer Stanger had a cell
11 phone?

12 A I was.

13 Q And are you aware that that cell phone was
14 actually downloaded and the information extracted from
15 that?

16 A I was.

17 Q Did that include photographs?

18 A It did.

19 Q And did you search those photographs in an
20 attempt to find a picture of the laptop that Bradley
21 owned?

22 A I did.

23 Q And did you find anything?

24 A In terms of Bradley's laptop?

25 Q Yeah. Did you find any pictures of the laptop?

1 A I did find pictures of the laptop, yes.

2 Q Okay. And did you compare those pictures of
3 the laptop that you found to the laptop that you
4 retrieved from Mr. Woodbury's office?

5 A I did.

6 Q And did you come to any conclusions?

7 A The laptop that I was provided by
8 Mr. Woodbury's office did not appear to me to match any
9 of the video or audio -- or video or photographs that I
10 observed in the downloaded -- Ms. Stanger's cell phone.

11 Q I want to direct your attention to the 10th of
12 September, 2018.

13 Did you have an occasion to meet with a person
14 by the name of Cheri Thornton at the Newmont HR
15 offices?

16 A I did.

17 Q What was your reason for going there?

18 A I went to the Newmont office to obtain
19 Bradley Smith's work schedule for the time period of
20 the alleged incident. And I also went to get his
21 employee file.

22 Q Were you able to get the schedule?

23 A I was.

24 MR. INGRAM: Ms. Clerk, can I have item 49,
25 please?

1 Q BY MR. INGRAM: I'm going to show you what's
2 been marked as Exhibit 40 -- excuse me, Exhibit 49.
3 Can you take a look at those pages, and please let me
4 know when you're done.

5 A I'm done.

6 Q What are those?

7 A These are the two work schedule papers that
8 Ms. Thornton provided to me; one for June of 2018 and
9 one for July of 2018.

10 Q Whose work schedule?

11 A Bradley Smith's.

12 Q Were you provided anybody else's work schedule
13 at that time?

14 A I was not.

15 MR. INGRAM: Move for the admission of State's
16 49, please.

17 THE COURT: Excuse me. Any objection?

18 MR. WOODBURY: We have no objection.

19 THE COURT: Exhibit 49 is admitted.

20 (Exhibit 49 admitted.)

21 Q BY MR. INGRAM: During your investigation, did
22 you attempt to find out whether Jennifer Stanger was a
23 beneficiary of Brad Smith's life insurance policies?

24 A I did.

25 Q What did you find out?

1 A I was provided with -- by the family with at
2 least three different insurance policy letters from
3 different companies. And Jennifer Stanger was not
4 listed on any of those as the beneficiary.

5 Q Were Jennifer and Brad married?

6 A They were not.

7 MR. INGRAM: Your Honor, the next portion of my
8 questioning will take quite a bit of time.

9 THE COURT: All right. It's been a long day.
10 We'll call it quits.

11 (Admonition given to jury.)

12 THE COURT: We'll be in recess until 9:00
13 tomorrow morning.

14 (Evening recess.)

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\$	20-minute ^[1] - 880:11 2004 ^[1] - 927:19 2018 ^[12] - 870:12, 927:25, 929:4, 929:11, 943:7, 953:4, 955:16, 958:20, 967:21, 969:12, 970:8, 970:9 21 ^[1] - 870:10 22 ^[1] - 881:15 22nd ^[1] - 967:20 25 ^[1] - 922:11 26 ^[1] - 922:11 28 ^[1] - 881:15 2821 ^[8] - 883:19, 884:21, 928:10, 929:21, 941:10, 949:24, 951:3, 951:17 2:00 ^[1] - 943:2 2:45 ^[1] - 948:14 2NS ^[1] - 935:15	5	915:4 accord ^[1] - 893:1 accurate ^[8] - 913:6, 932:22, 949:3, 949:14, 950:1, 950:18, 951:5, 964:16 acknowledge ^[2] - 905:16, 906:25 acknowledged ^[3] - 882:6, 912:3, 918:22 action ^[1] - 881:5 activities ^[1] - 929:1 address ^[17] - 942:23, 943:10, 943:12, 943:15, 944:5, 944:6, 944:7, 944:8, 944:13, 944:22, 946:23, 949:25, 951:24, 952:6, 952:9, 952:24 adhesive ^[1] - 936:18 admission ^[13] - 913:4, 932:24, 949:5, 949:16, 950:3, 950:20, 951:7, 955:9, 957:16, 959:13, 961:15, 964:18, 970:15 admit ^[3] - 906:16, 918:13, 959:10 admitted ^[34] - 873:14, 875:7, 875:8, 877:7, 877:8, 883:10, 883:11, 913:2, 930:20, 933:3, 933:4, 939:6, 939:13, 949:8, 949:9, 949:19, 949:20, 950:6, 950:7, 951:10, 951:11, 951:20, 951:24, 952:18, 955:13, 955:14, 957:21, 957:22, 961:17, 961:18, 964:22, 964:23, 970:19, 970:20 Admonition ^[5] - 880:10, 904:24, 958:6, 961:1, 971:11 afterwards ^[1] - 917:10 agree ^[2] - 962:21, 962:23 Aguirre ^[3] - 897:16, 920:8, 920:15 Aguirre's ^[9] - 947:24, 947:25, 949:1, 949:13, 949:24, 950:13,	950:15, 951:3, 951:18 ahead ^[7] - 869:17, 873:22, 877:11, 881:12, 901:17, 926:25, 958:18 Alan ^[6] - 871:18, 875:17, 875:25, 876:6, 931:10, 931:19 alcohol ^[3] - 886:4, 902:6, 916:9 alive ^[1] - 930:18 allegation ^[1] - 966:20 alleged ^[1] - 969:20 allowed ^[1] - 926:11 allowing ^[1] - 892:20 allows ^[1] - 896:19 almost ^[2] - 874:15, 934:3 ambulance ^[2] - 930:16, 931:17 amplified ^[1] - 963:6 Amy ^[4] - 895:1, 895:3, 895:7, 895:8 analysis ^[9] - 908:14, 911:2, 936:25, 937:4, 937:13, 937:20, 938:17, 939:17, 954:13 analyzed ^[1] - 954:16 angle ^[3] - 924:24, 926:1 angles ^[1] - 917:24 animal ^[1] - 945:21 animated ^[1] - 940:11 answer ^[1] - 901:17 answers ^[1] - 900:20 anyway ^[1] - 906:25 apologize ^[1] - 889:10 apparent ^[1] - 947:19 appear ^[10] - 874:24, 882:21, 891:20, 893:25, 930:18, 932:12, 932:20, 962:18, 964:11, 969:8 appearance ^[1] - 952:9 appeared ^[5] - 886:3, 918:24, 924:5, 932:7, 943:25 Apple ^[1] - 968:2 applicators ^[1] - 953:21 applied ^[1] - 956:8 apply ^[1] - 953:5 applying ^[1] - 953:15 approaching ^[1] - 899:6
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1 CASE NO. CR-FP-18-5961

2 DEPT. NO. 1

3
4 THE FOURTH JUDICIAL DISTRICT COURT THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF ELKO

6 BEFORE THE HONORABLE NANCY PORTER

7 DISTRICT JUDGE, PRESIDING

8
9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 v.

12 ALAN JOSEPH EDWARD HONEYESTEWA,

13 DEFENDANT.

14 ----- /

15
16 TRANSCRIPT OF RECORDED PROCEEDING

17 JURY TRIAL

18 October 16, 2020

19 ELKO, NEVADA

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22
23
24 VOLUME 7

25 Pages 972 - 1119

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1 TRANSCRIPT OF RECORDED PROCEEDING

2
3 THE COURT: The record will reflect the
4 presence of the defendant and counsel.

5 Counsel, will you stipulate to the presence of
6 the jury?

7 MR. INGRAM: Yes, Your Honor.

8 MR. WOODBURY: So stipulated.

9 THE COURT: If you are a witness in this case,
10 you are absolutely prohibited from watching this trial,
11 unless you've been given specific permission by the
12 Court to do so. If you do, you may be held in contempt
13 of court, punishment for which could include a jail
14 sentence.

15 Log-in information for all of those who log in
16 to watch this trial on Zoom shall be maintained and
17 filed in this action. All spectators are prohibited
18 from recording this trial in any manner, or
19 distributing it on social media, or in any manner on
20 the internet. Violation of this order could result in
21 a fine and that you are in contempt of court,
22 punishment of which could include a jail sentence.

23 Mr. Ingram, we were on your direct examination.

24 MR. INGRAM: Thank you.
25

DIRECT EXAMINATION (Continued)

BY MR. INGRAM:

Q Detective Stake, you're still under oath, correct?

A I am.

Q I'm going to hand you what's been marked as Exhibit 355. Can you please take a look at those pages, and let me know when you're done.

A I'm done.

Q What is that?

A This is a narrative of a report that I completed for a search warrant that I served on the 15th of October, 2019.

Q And would having that report in front of you assist in your testimony regarding that topic?

A It would.

Q Okay. So let me direct your attention to the 15th of October, 2019.

Did you have an occasion to respond to that 2521 -- now I can't remember the address -- to the Wrangler Circle address?

A That's correct. 2821 Wrangler Circle.

Q 2821.

And what was your reason for responding there over a year later?

1 A To serve a search warrant to recover any
2 possible fired bullets, or bullet fragments, or
3 potentially any (inaudible).

4 Q And what's your understanding of the
5 circumstances of why some of those potential
6 (inaudible) of evidence were left in the house?

7 A On July 8th of 2018, when Washoe County FIS was
8 processing the house, it was my understanding that
9 Detective Sergeant Hood, at the time, told FIS to leave
10 some of the bullets in the residence because he was
11 afraid there might be excessive damage to the structure
12 of the house or integrity of the house if those bullets
13 were removed.

14 Q As far as you know, Detective, from the 7th of
15 July, 2018, until the date you went back over a year
16 later to collect potential additional evidence, was the
17 house vacated?

18 A It was.

19 Q And when you arrived at that residence, how did
20 you have to gain entry?

21 A I -- during the service of the search warrant,
22 I gained access to the realtor lockbox that had a set
23 of keys on the inside. And I used those keys to open
24 the front door.

25 Q And was the -- how was the interior of the

1 house different than it was, you know, the July prior?

2 A The carpet in the living room had been removed.
3 I don't recall if the carpet in the bedroom had been
4 removed as well. And, of course, all the items on the
5 inside were removed, as well; personal effects
6 belonging to Mr. Smith.

7 Q And were you able to still observe the defects
8 in the walls and the floors and such?

9 A I was.

10 Q What does trajectory mean to you?

11 A It's the path of a projectile through the
12 environment.

13 Q Have you received any training in trajectory
14 analysis?

15 A I have.

16 Q And what is that?

17 A In 2010, I completed three training modules
18 regarding trajectory and bullet ricochet phenomenon
19 through the Federal Law Enforcement Training Center
20 Bureau of Police Institute. I don't recall the amount
21 of hours that each module contained. But those modules
22 covered recording trajectories and things of that
23 nature.

24 Q And just generally, how do you go about
25 trajectory analysis, at least in the field?

1 A Trajectory analysis can be done several
2 different ways. One of the ways is using trajectory
3 rods, which are basically straight sections of
4 fiberglass rod that are placed through defects that you
5 find, that you believe to be bullet -- caused by
6 bullets. You place those trajectory rods through the
7 defects and then record the angles.

8 I, myself, use a simple protractor for the
9 horizontal angles. And then there's an inclinometer,
10 which is basically an angle measurement device to
11 measure the vertical angles according to gravity, so
12 the vertical angles.

13 Q When you went to this residence to perform the
14 additional analysis, did somebody accompany you in
15 order to essentially dismantle various parts of the
16 house?

17 A There was, yes.

18 Q And who was that?

19 A Dave Armuth with Buildings and Grounds of Elko
20 County.

21 Q I'm gonna show you --

22 MR. INGRAM: Could I please have the overhead
23 set up? Thank you.

24 Q BY MR. INGRAM: I'm showing you now on the
25 screen Exhibit 307. Do you recognize that, sir?

1 A I do.

2 Q What do you recognize that to be?

3 A That is a placard diagram that I completed
4 during the processing of the house.

5 Q And generally, is that a diagram of the house
6 in general?

7 A It is a general floor plan, yes.

8 Q And then throughout that diagram, there appears
9 to be several numbers. What are those numbers
10 associated with?

11 A While I'm photographing various items of
12 evidence, or in this case, defects that I found, I
13 place a placard that has a number on there to
14 reference -- it's basically a number that allows me to
15 reference that photograph at a location inside the
16 residence. So that's what those numbers are.

17 Q And did your numbers there in this diagram --
18 did your numbers in this diagram correlate to any
19 numbers that the Washoe County Crime Lab had assigned
20 to defects?

21 A They did.

22 Q Okay. And in your report, sir, that you have
23 in front of you, did you, in fact, note the association
24 between the numbers and letters?

25 A I did.

1 Q All right. Let's start with your defect number
2 1. Is that associated with an Elko County -- I'm
3 sorry, a Washoe County defect?

4 A It is.

5 Q All right. So I'm going to direct your
6 attention to that defect right there.

7 Is that number 1, sir?

8 A It is.

9 Q And what did you do with that defect?

10 A On that defect, I placed a trajectory rod
11 through it to see the general path of the bullet. And
12 if I recall, that one exited the house on the front of
13 the residence, which would be right in front of the
14 right -- or right in front of the left side of the
15 front door of the residence. And I attempted to find a
16 bullet in that area.

17 Q Did you, in fact, find the bullet in that area?

18 A I did not.

19 Q Showing you State's Exhibit No. 309-B, "B," as
20 in "boy," do you recognize that photograph, sir?

21 A I do.

22 Q What do you recognize that as?

23 A It's one of the photos I took of the interior
24 of the front door of the residence, featuring placard
25 number 1, as well as placard number 23 with a

1 trajectory rod in the floor.

2 Q Is placard number 1 the same placard that you
3 were just describing?

4 A It is.

5 Q All right. I'm showing you State's Exhibit
6 309-C. Do you recognize that, sir?

7 A I do.

8 Q What is that?

9 A That is a photograph that I took after
10 Mr. Armuth cut a section of the drywall by defect
11 number 1. I placed a trajectory rod in the hole to
12 help me better find where that terminated on the
13 exterior of the residence.

14 Q So how would you describe the trajectory of
15 that rod?

16 A Generally, in a downward angle towards the
17 front of the house.

18 Q And both the pictures, 309-C and 309-B, fair
19 and accurate?

20 A They are.

21 MR. INGRAM: Move for their admission, please.

22 THE COURT: 309-B and 309-C is what I thought
23 you said?

24 MR. INGRAM: 309-C and 309-B.

25 THE COURT: Any objection, Mr. Woodbury?

1 MR. WOODBURY: No, Judge.

2 THE COURT: Exhibits 309-B and 309-C are
3 admitted.

4 (Exhibits 309-B and 309-C admitted.)

5 Q BY MR. INGRAM: And going back to 307, your
6 defect number 6, is that defect number 6?

7 A That's correct.

8 Q And there appears behind that a placard 22. Is
9 that in the correct position?

10 A It is not.

11 Q Can you please explain that for us?

12 A That placard number 22 is located in the garage
13 of the residence. And I erroneously put it behind
14 number 6. It should be behind -- in this diagram where
15 placard N is, that 22 should be in the position in the
16 garage, just to the left of placard N.

17 Q So I'm going to write "22" there and "X" that
18 out; is that fair?

19 A That's correct.

20 Q So, again, let's focus on number 6. What can
21 you tell us about number 6?

22 A Number 6 was a defect in the drywall in that
23 location in the bedroom. We removed the drywall, as
24 well as the fiberglass insulation behind it to check to
25 see if that was what was a defect, which I believed to

1 be caused by a bullet. And after removing that section
2 of drywall and examining the fiberglass insulation
3 behind it, it appeared to me not to be a defect caused
4 by a bullet.

5 Q Move onto defect 22.

6 Is that defect 22 behind N?

7 A It is.

8 Q What can you tell us about that?

9 A That was what appeared to be a defect caused by
10 a bullet on the garage side of that wall contained in
11 drywall or -- yeah, it was drywall.

12 Q And were you able to recover a bullet there?

13 A I'm sorry? What was that?

14 Q Were you able to recover a bullet out of that
15 defect?

16 A I was not. It was a (inaudible).

17 Q And what Washoe County defect letter was that
18 associated with?

19 We're still talking about number 22.

20 A It would be defect N.

21 Q All right. Defect number 7, is that number 7,
22 sir?

23 A It is.

24 Q And where is that located at within the house?

25 A That was located in the -- it would be the, I

1 believe, north wall of the master bedroom's closet.

2 Q What can you tell us about that defect?

3 A That defect was basically penetrating the wall
4 into a wood edge support structure in that wall of the
5 closet. And after I located that, we were able to cut
6 into the wall and remove that section of the wooden
7 structure that contained what I believed to be a
8 bullet.

9 Q And did you collect that bullet?

10 A I did.

11 Q And you did not do a trajectory analysis for
12 that particular defect; is that true?

13 A That's correct.

14 Q Why not?

15 A Because at the same time I was processing the
16 house, I also had Washoe County's report. And if that
17 defect had already been processed by them and had the
18 corresponding angles or anything of that nature, I did
19 not reproduce that after I recovered the bullet from
20 that defect.

21 Q Did you assign the bullet that you recovered
22 from defect number 7 an item number?

23 A I did.

24 Q And what is that item number?

25 A 79NS.

1 Q Moving onto defect 8.

2 Is that defect 8 there, sir?

3 A It is.

4 Q And where within the house is that defect?

5 A That is on the, I believe, west wall of the
6 living room, at the base of that wall, in the location
7 where number 8 is located.

8 Q And what can you tell us about that defect?

9 A That defect appeared to penetrate the wall, and
10 it appeared to travel into the kitchen area, which
11 corresponded to a defect on the backside of that wall
12 where the stove is located in this diagram.

13 In that area, once the stove was moved, I found
14 a dent on the backside of the stove, as well as a
15 bullet laying on the floor of the kitchen in that area.

16 Q Did you assign that bullet an item number, and
17 what is it?

18 A I did. It's item number 74NS.

19 Q Defect 10 right there, what can you tell us
20 about the placards that are located within this box
21 here, sir?

22 A That box basically indicates that they're
23 associated with that wall of the residence. Due to the
24 number of the -- which you can see by the little arrow
25 moving from the box to the west wall of the living

1 room. Those placards were -- there were so many on
2 that wall, I felt it would kind of clutter the diagram,
3 so I just included them there and said they were
4 associated with that wall.

5 Q Okay. And this arrow is a little tough to see,
6 so I'm gonna trace it.

7 Did I trace that arrow accurately?

8 A You did.

9 Q So 9, 10, 11, 12, 13, 14 and 15 are associated
10 with that wall where 8 appears?

11 A That's correct.

12 Q And what can you tell us about defect number
13 10?

14 A It was located, as I said, in the west wall of
15 the living room. I examined that defect contained in
16 10 and 11. I removed the drywall section of each of
17 the corresponding studs and the defects all the way to
18 the floor boards.

19 As I was examining the base plate of the
20 framing, I found a bullet laying on the bottom of the
21 wall, at the top of the floor plate of the wall
22 material.

23 Q Did you collect it?

24 A I did.

25 Q Did you assign it an item number?

1 A I did.

2 Q What is that?

3 A 80NS.

4 Q Defect number 11, is that from that same
5 general area?

6 A It is.

7 Q What can you tell us about that?

8 A It was associated with Washoe County FIS defect
9 B and, again, was located in the west wall of the
10 living room.

11 On this particular one, I looked in that defect
12 and I could observe what appeared to be a bullet at the
13 terminal point of that defect. I took photographs of
14 it, and we attempted to cut the material out around
15 that defect. During that time, the bullet was
16 dislodged from the drywall, and I collected that bullet
17 as evidence.

18 Q Did you assign it an item number?

19 A I did.

20 Q What is it?

21 A Item number 81NS.

22 Q Defect 12, again, that same general area as 10
23 and 11, what can you tell us about that?

24 A Again, it was located on the west wall of the
25 living room. We removed the drywall containing defect

1 number 12. We observed a non-penetrating defect in the
2 drywall behind where that defect was located.

3 And so, again, we looked all the way down at
4 the bottom of that section of wall, and I located a
5 bullet on top of the base plate of the wall material,
6 photographed it and collected it.

7 Q What item number did you assign to it?

8 A 82NS.

9 Q Defect 15, again in that same general area.

10 Were you able to collect a bullet from that
11 location?

12 A I was. I believe that one was contained in the
13 wooden studs of the wall.

14 Q Did something happen to that bullet when trying
15 to remove it?

16 A It did. Due to the nature of the trajectory of
17 that, I kind of had to guesstimate where to tell
18 Mr. Armuth to cut the studs. And he cut -- I believe
19 he uppercut that. We actually cut through the bullet.

20 Q And did you collect both parts of the bullet,
21 or all of the bullet?

22 A We did.

23 Q Did you assign a number to that?

24 A I did.

25 Q What is it?

1 A The bullet that was contained in the wood was
2 83NS. And the small fragment that we had erroneously
3 cut off was 83-A NS.

4 Q Defect 21 -- is that defect 21?

5 A It is.

6 Q And in what location was that?

7 A That was located in the ceiling above the
8 dining room area of the residence.

9 Q And did you actually -- were you able to
10 perform a trajectory analysis on that one?

11 A I did. I placed a trajectory rod in that
12 defect, and we also cut some witness holes in the
13 drywall to see where that terminated inside the roof.
14 And I was able to find, near where the trajectory rod
15 was originally positioned inside, I was able to find
16 the defect on the joist inside of the roof.

17 So I was better able to locate another defect
18 or point of that trajectory. So I lined the trajectory
19 rod up with that secondary defect.

20 Q And where did that defect terminate?

21 A Well, it was a -- if I recall, that was a --
22 kind of a ricochet defect that was contained in the
23 joist. So as far as the terminal point, we did find a
24 bullet -- well, as you're looking at it, it would be to
25 the right, which is where placard number 28 is located.

1 Q And did you collect that bullet?

2 A I did.

3 Q Did you assign a number to it?

4 A I did.

5 Q What is it?

6 A 84NS.

7 Q And what can you tell us about the trajectory
8 of that?

9 A When I measured that trajectory after finding
10 the secondary defect in the joist, it had a vertical
11 angle of 15 degrees and a horizontal angle of, I
12 believe, 130 degrees. And that was measuring it from
13 right to left on the protractor.

14 Q I guess in more simple terms, can you describe
15 the angle without using those degrees?

16 A Yes. It was basically, as you're looking at
17 that number 21, it would be from kind of the lower six
18 or seven o'clock position on that 21 placard on my
19 diagram to the upper one o'clock position of that,
20 generally in an east-to-west type trajectory.

21 Q Defect number 20. Is that defect number 20?

22 A It is.

23 Q And where, generally, was that located in the
24 house?

25 A That was located in the kitchen, also in the

1 ceiling.

2 Q Okay. What can you tell us about that?

3 A I placed a trajectory rod in that defect to try
4 and find a terminal point somewhere in the roof. We
5 cut witness holes, as well, in the drywall of the
6 ceiling to try and find any secondary defects. And in
7 this particular one, I don't believe I was able to.

8 Q Defect number 26; is that correct?

9 A That's correct.

10 Q And generally, where at in the house is that?

11 A That was on the kitchen side of the west wall
12 that's depicted there in the living room. It was also
13 in the ceiling.

14 Q Okay. What can you tell us about that?

15 A That particular defect, I located a defect in
16 the ceiling, as well as a defect exiting the residence
17 in the roof.

18 Q Were you able to get a trajectory on that?

19 A I was.

20 Q And what was it?

21 A It was 77 degrees horizontal, and it was 35
22 degrees vertical. And also reviewing my report, I see
23 that I erroneously put that that angle was taken with
24 respect to the west wall, which would be the wall that
25 the sink was on. I (inaudible) actually standing on

1 the counter and taking the measurement. So it would
2 have been to the west wall of the living room.

3 Q Okay. And, again, in case I missed it, were
4 you able to collect a bullet associated with that
5 defect 26?

6 A I was not.

7 Q Defect number 2, that placard right there,
8 where was that defect located?

9 A That was located in the floor of the living
10 room near the east side of the master bedroom doorjamb.

11 Q And what can you tell us about that?

12 A I placed a trajectory rod through that defect
13 and found the angle to be a negative 62 degrees and a
14 horizontal angle of 65 degrees.

15 That trajectory rod also appeared to me to line
16 up with a Washoe County previously processed defect
17 number K. And it appeared to terminate somewhere in
18 the crawl space of the residence.

19 Q Showing you 309-A, does that depict placard
20 number 2 and that trajectory rod?

21 A It does.

22 Q Is that the green rod?

23 A That's correct.

24 Q Were you able to recover a bullet?

25 A On that one, I do not believe so. No, sir.

1 Q And did you try?

2 A I did.

3 Q Showing you 307 again, defect number 3. What
4 can you tell us about that?

5 A That was located in the living room near the
6 west side of the master bedroom doorjamb. The
7 trajectory had a vertical angle of negative 45 degrees
8 and a horizontal angle of 50 degrees. After examining
9 the floor joists underneath, I discovered that the
10 bullet had terminated into a one-by-six piece of -- or
11 I should actually read that as two-by-six piece of wood
12 frame.

13 He made, Mr. Armuth, made cuts on each side of
14 that terminate -- or the termination of that
15 trajectory. And we removed that piece of wood that
16 contained what I believe to be a bullet.

17 Q Did you collect it?

18 A I did.

19 Q Did you assign an item number to it?

20 A I did. That was item number 89NS.

21 Q Defect number 4.

22 Is that defect number 4 right there?

23 A It is.

24 Q And generally, where was that located at within
25 the house?

1 A It was located in the living room floor near
2 the center of the master bedroom door.

3 The path of that trajectory had a vertical
4 angle of negative 57 degrees and a horizontal angle of
5 67 degrees. That also appeared to me to terminate
6 somewhere in the crawl space of the residence, which I
7 later examined trying to find the bullets.

8 Q Did you?

9 A I did.

10 Q Did you collect it?

11 A I did.

12 Q Did you assign it an item number?

13 A I did.

14 Q What is it?

15 A 90NS.

16 Q Defect number 5 right here, correct?

17 A That's correct.

18 Q Where is that in the house?

19 A That was located in the doorjamb on the west
20 side of the bedroom, master bedroom of the residence.
21 And it was approximately two 2 feet, 4.75 inches from
22 the floor.

23 Q Were you able to recover a bullet?

24 A I was.

25 Q Did you collect it?

1 A I did.

2 Q Did you assign it a number, and what is it?

3 A I did. It's 88NS.

4 Q Okay. Defect 23. Who is that -- right there?

5 A That's correct.

6 Q Where is that in the house?

7 A That was located near the front door area of

8 the residence. And it was associated with Washoe

9 County FIS defect Q.

10 Q Were you able to find the bullet?

11 A On that particular one, I don't believe so,

12 sir.

13 Q Did you try?

14 A I did.

15 Q Defect 24 right there; is that correct?

16 A That's correct.

17 Q Where at in the house was that?

18 A That's on the northwest side of the residence,

19 or north side of the residence, in, kind of, the family

20 room area.

21 Q Were you able to determine whether that was a

22 defect caused by a bullet or not?

23 A After examining it, it did not appear to me to

24 be a defect associated with a bullet.

25 Q So no bullet was collected?

1 A No.

2 Q Okay. Defect number 25. That right there,
3 sir?

4 A That's right.

5 Q And where is that at?

6 A That's also near the front door of the living
7 room area of the residence.

8 Q And what can you tell us about that?

9 A I processed that with a trajectory rod and
10 found an angle of negative 50 degrees, which indicates
11 a downward angle, and a horizontal angle of 158
12 degrees. I also examined the terminal end of that
13 trajectory rod in the crawl space and located a bullet
14 in a slight depression underneath the floor.

15 Q Did you collect it?

16 A I did.

17 Q Did you assign it a number?

18 A I did.

19 Q What is it?

20 A 91NS.

21 Q I'm going to show you 309-A again;
22 specifically, placard number 25 there.

23 Does that depict the trajectory you just
24 described for us?

25 A It does.

1 Q Is that a fair and accurate picture?

2 A It is.

3 MR. INGRAM: And I can't remember if it's been
4 admitted or not, but if it hasn't, I'll offer 309-A.

5 THE COURT: It has not.

6 Any objection, Mr. Woodbury?

7 MR. WOODBURY: I have no objection.

8 THE COURT: 309-A is admitted.

9 MR. INGRAM: Thank you.

10 (Exhibit 309-A admitted.)

11 Q BY MR. INGRAM: All of the item numbers that
12 you collected, did you cause those to be sent to the
13 Washoe County Crime Lab?

14 A I did.

15 Q What was the purpose of that?

16 A To compare with other items of evidence that
17 had previously been submitted in this case.

18 MR. INGRAM: Item 307, I move for its
19 admission, please.

20 THE COURT: Any objection?

21 MR. WOODBURY: We have no objection.

22 THE COURT: Exhibit 307 is admitted.

23 (Exhibit 307 admitted.)

24 Q BY MR. INGRAM: I'm showing you Exhibit 309.

25 Do you recognize that, sir?

1 A I do.

2 Q And I know that's difficult for the jury to
3 see. I'm hoping we can describe it.

4 What is this diagram, generally?

5 A That is the trajectory diagram of the
6 approximate representation of where the trajectory rods
7 that I placed in the house were located.

8 Q Okay. And is this a fair and accurate diagram?

9 A From what I can see on the screen, yes, sir.

10 Q Okay. So if you don't mind watching while I
11 trace these arrows to make sure I'm accurate.

12 Do they appear to be accurate?

13 A They do.

14 Q And obviously, the end of the arrow, the arrow
15 tip, is that pointing the direction of the trajectory
16 that the bullet took?

17 A That's correct.

18 Q And the other side of that arrow, what does
19 that represent?

20 A That would indicate the area that the bullet
21 came from.

22 Q All right. So is it fair to say that 23 and 25
23 were coming from closer to the bedroom outward towards
24 the front door?

25 A Yes, sir.

1 Q And then these two arrows here, 3 and 4, from
2 the bedroom outward?

3 A That's correct.

4 Q And then 26, from the front door direction
5 through that wall into the kitchen?

6 A Well, it was in the ceiling above the wall.

7 Q Excuse me. Yeah.

8 A But, yes, sir.

9 MR. INGRAM: Move for the admission of 309,
10 please.

11 THE COURT: Any objection?

12 MR. WOODBURY: None.

13 THE COURT: Exhibit 309 is admitted.

14 (Exhibit 309 admitted.)

15 Q BY MR. INGRAM: Showing you State's Exhibit
16 340.

17 Can you please take a look at that and tell me
18 what that is, or what you think it is?

19 A This is a section of gray paneling that is
20 associated with a defect from the garage area of 2821
21 Wrangler Circle.

22 Q Showing you on the overhead previously admitted
23 307, where at did that panel come from, sir?

24 A It would have been where placard number 22 is
25 located.

1 Q Why did you take that panel from the house?

2 A Because it contained a defect which I believed
3 to be a -- associated with a bullet.

4 Q Do you recognize that?

5 A I do.

6 Q What do you recognize that to be?

7 A That's the gray panel section that I just
8 previously described.

9 Q Okay. Does it appear to be in the same or
10 potentially the same condition as when you took it?

11 A It does.

12 MR. INGRAM: All right. I move for the
13 admission of State's Exhibit 340.

14 THE COURT: Any objection?

15 MR. WOODBURY: No.

16 THE COURT: Exhibit 340 is admitted.

17 (Exhibit 340 admitted.)

18 Q BY MR. INGRAM: Did you cause that item to be
19 sent to the Washoe County Crime Lab?

20 A I did.

21 Q And what was the purpose of that?

22 A To have the Washoe County Crime Lab to see --
23 see if they could determine if that was, in fact, a
24 defect caused by a bullet, as well as what caliber may
25 have caused that defect.

1 Q Where you aware that there was some sort of a
2 stove in that residence?

3 A I was.

4 Q And why was that stove of any interest to you?

5 A Because that stove is associated placard number
6 8. Washoe County had previously recorded a trajectory
7 that had passed through the stove that I believed to be
8 associated with that placard number 8.

9 Q Were you trying to track down a bullet
10 associated with that?

11 A I was.

12 Q And what happened to that stove, if you know?

13 A That stove was transferred to an individual
14 after an estate sale of Mr. Smith's property.

15 Q Did you try to track down that person?

16 A I did not, no.

17 Q Okay. Did you ever find the bullet associated
18 with that stove?

19 A I believe the bullet, according to their
20 report, was a perforation, which means that it passed
21 through that stove all the way. So based on the crime
22 scene photos that I looked at, as well as the
23 processing that I had done in that house, I concluded
24 that that bullet was actually associated with the
25 bullet that I found behind the stove.

1 Q Okay. And do you know Ray Smith to be Brad
2 Smith's brother?

3 A I do.

4 Q Did you ever follow up with him about any
5 bullets that he may have located in the garage or
6 elsewhere?

7 A I did.

8 Q And what happened there?

9 A He indicated that they had removed all the
10 property from the house. And he, nor anybody else in
11 the family that he was aware of, located any bullets in
12 any of the items.

13 Q I want to direct your attention to the 19th of
14 November, 2018.

15 Did you have occasion to accompany
16 Mr. Honeyestewa to a hospital to have some bullets
17 removed?

18 A I did.

19 Q Tell us about that, please.

20 A I had applied for an order to have it removed
21 from his -- to have two bullets removed from
22 Mr. Honeyestewa's back. And so we went to the
23 Northeastern Nevada Regional Hospital to have that
24 executed.

25 Q What was your understanding of how many bullets

1 were located in Mr. Honeyestewa's body?

2 A I believe there was actually three at that
3 point.

4 Q How many bullets were actually recovered from
5 Mr. Honeyestewa's body?

6 A Two.

7 Q What is your understanding as to how come the
8 third one wasn't collected?

9 A I don't recall the exact nature of that, but I
10 believe they told me it might have caused extra damage
11 to Mr. Honeyestewa. That's why it was left inside.
12 But I'm not certain on the exact of that.

13 Q I'm gonna show you -- were you actually present
14 when bullets were removed from Mr. Honeyestewa's body?

15 A I was.

16 Q And where were those bullets located from?

17 A One was -- came from his upper back area. And
18 the other one was in his lower back area.

19 Q I'm gonna show you what's been marked as
20 State's 78 and 79.

21 Do you recognize those?

22 A I do.

23 Q What are those?

24 A Those are photographs I took of the bullets
25 that were removed from Mr. Honeyestewa's back.

1 Q Fair and accurate pictures?

2 A They are.

3 MR. INGRAM: Move for the admission of 78 and
4 79.

5 THE COURT: Any objection?

6 MR. WOODBURY: No objection.

7 THE COURT: Exhibits 78 and 79 are admitted.
8 (Exhibit 78 and 79 admitted.)

9 MR. INGRAM: I'd like to show the jury, Your
10 Honor.

11 THE COURT: Go ahead.

12 MR. INGRAM: I'll show them 79 and 78.

13 Q BY MR. INGRAM: Showing you State's Exhibit
14 317.

15 Can you please take a look at that package and
16 let me know when you're done and familiar with it?

17 A Okay. I'm done.

18 Q And what is that?

19 A This is item number 55NS. It's the bullet that
20 I recovered, or that was recovered, from the left
21 shoulder area of Mr. Honeyestewa.

22 Q And do your initials appear on that?

23 A They do, yes.

24 Q And was there a plastic window on that where
25 you can actually see the item?

1 A There is.

2 Q What's it contained in?

3 A At the present time it's contained in a large
4 plastic jar with a white lid and a -- the bullet is
5 also inside of that with -- it looks like a clear
6 plastic baggy around it.

7 Q And did you cause that to be sent somewhere?

8 A I did.

9 Q Where to?

10 A The Washoe County Crime Lab.

11 Q What was the purpose of that?

12 A To have that examined and compared to other
13 evidence that was submitted to the crime lab in the
14 case.

15 MR. INGRAM: Okay. Move for the admission of
16 317.

17 THE COURT: Any objection?

18 MR. WOODBURY: No objection.

19 THE COURT: Exhibit 317 is admitted.

20 (Exhibit 317 admitted.)

21 Q BY MR. INGRAM: Showing you 318, what is that?

22 A This is my evidence item number 56NS. And it's
23 a bullet from Mr. Honeyestewa's right lower back.

24 Q Can you see the bullet in there, as well?

25 A I can.

1 MR. INGRAM: Move for the admission of 318,
2 please.

3 THE COURT: Any objection?

4 MR. WOODBURY: No objection.

5 THE COURT: Exhibit 318 is admitted.

6 (Exhibit 318 admitted.)

7 MR. INGRAM: I just need a brief moment, Your
8 Honor, please.

9 Q BY MR. INGRAM: Showing you Exhibit 329, what
10 is that?

11 A This is one bullet that I collected, number
12 91NS.

13 Q And is that an item number that you previously
14 testified about today?

15 A It is.

16 Q Showing you 330, what is that?

17 A This is item number 90NS. And it is a bullet
18 that I collected on the 15th of October, 2019.

19 Q Is that one you testified about already?

20 A I believe so, yes.

21 Q Showing you 331, what is that?

22 A This is item number 88NS. It's a bullet in a
23 wooden section that I collected from 2821 Wrangler
24 Circle.

25 Q Exhibit 332, what is that?

1 A This is item number 84NS. Also one bullet that
2 I collected from 2821 Wrangler Circle.

3 Q Exhibit 333, what is that?

4 A Item number 83-A NS. And it's one bullet
5 fragment that we collected that -- that's the bullet
6 that we had cut in half.

7 Q Exhibit 335, what is that?

8 A This is item number 82NS. It's one bullet that
9 we recovered from the 2821 Wrangler Circle.

10 Q 336, what is it?

11 A It's item number 81NS. And it's also one
12 bullet that was recovered from 2821 Wrangler Circle.

13 Q 337?

14 A This is item number 80NS. And it's one bullet
15 that was also collected at 2821 Wrangler Circle.

16 Q 338?

17 A Evidence item number 79NS. And it's one bullet
18 that I collected from 2821 Wrangler Circle.

19 Q 339?

20 A This is item number 74NS. And it's one bullet
21 that I collected from 2821 Wrangler Circle.

22 MR. INGRAM: Move for the admission of 329,
23 please.

24 THE COURT: Any objection?

25 MR. WOODBURY: We have no objection.

1 THE COURT: Exhibit 329 is admitted.

2 (Exhibit 329 admitted.)

3 MR. INGRAM: Offer 330.

4 THE COURT: Any objection?

5 MR. WOODBURY: Yes, Your Honor. I note for the
6 record that we have no objection to any of the items
7 that were just shown that are bullets taken by -- July
8 7, 2018, from the residence.

9 THE COURT: Exhibits 329, 330, 331, 332, 333,
10 335, 336, 337, 338 and 339, I assume you want to offer
11 all of those?

12 MR. INGRAM: Yes, please.

13 THE COURT: They're all admitted.

14 (Exhibits 330, 331, 332, 333, 335, 336, 337, 338 and
15 339 admitted.)

16 MR. INGRAM: Pass the witness, Judge.

17 THE COURT: Pardon me?

18 MR. INGRAM: I'll pass the witness.

19 THE COURT: Cross examination?

20 MR. WOODBURY: Your Honor, we've made an
21 agreement that Ms. Green, who is a witness for the
22 defense, will be allowed to testify before I cross
23 examine Detective Stake.

24 MR. INGRAM: That's correct.

25 THE COURT: All right. You are excused for

1 now. It sounds like you're gonna be called back for
2 cross examination. Please do not discuss your
3 testimony with anyone other than the attorneys.

4 Thank you.

5 THE WITNESS: Thank you, Judge.

6 THE COURT: Do we have Ms. Green? Is she
7 scheduled for today, Mr. Woodbury?

8 MR. WOODBURY: I'm sorry?

9 THE COURT: Is Ms. Green scheduled for today?

10 MR. WOODBURY: She's scheduled for right now.

11 THE COURT: Right now. All right.

12 So, Mr. Bailiff, would you call Karen Green,
13 please?

14 Karen Green is Mr. Woodbury's witness. We're
15 taking her out of order before the State has rested its
16 case because she can't be here then. So Mr. Woodbury
17 will be conducting a cross examination, and this is his
18 witness.

19 Just a moment. The bailiff will help you.
20 There you go.

21 Please raise your right hand.

22 (Witness sworn.)

23 THE COURT: You can have a seat.

24 Please state your name.

25 THE WITNESS: I am Karen Green.

1 THE COURT: Thank you.

2 Go ahead, Mr. Woodbury.

3 MR. WOODBURY: Thank you, Your Honor.

4

5 KAREN GREEN,

6 the witness herein, being first duly sworn, testified

7 as follows:

8

9 DIRECT EXAMINATION

10 BY MR. WOODBURY:

11 Q Ms. Green, where do you live? Not your
12 address, but your city.

13 A I live in Tacoma, Washington.

14 Q And do you know why you're here testifying
15 today?

16 A I do.

17 Q And could you tell the jury why?

18 A I was hired by Gary Woodbury to assess the
19 events that happened at 2821 Wrangler Circle on July
20 7th, 2018, and provide a crime scene analysis and
21 reconstruction to the level I was able to, given the
22 available physical evidence.

23 Q And do you have training with respect to that?

24 A I do.

25 Starting with my basic educational background,

1 I graduated from Washington State University in 1995
2 with a bachelor of science in biology. Shortly
3 thereafter, I was hired as a forensic scientist. So
4 I've been a forensic scientist for 25 years now. For
5 16 of those years, it was with state police crime
6 laboratories. I started for three years in Texas, and
7 then the other 13 years were with the Washington State
8 Patrol.

9 While I was working in the crime lab, I had
10 bench level duties in the crime lab. My area of
11 expertise is DNA analysis. But both in Washington
12 State and Texas, I also had additional crime scene
13 investigative responsibilities. So to perform those
14 duties, I received additional training in all aspects
15 of crime scene investigation; bloodstain pattern
16 analysis, trajectory analysis, basic fingerprinting
17 impression work, collection of trace evidence. Really
18 all the training I would need so that when I'm at a
19 crime scene, when I see evidence, I'm able to identify,
20 collect, and properly preserve it so it can be sent
21 into the crime lab for analysis.

22 So for both my DNA training and my privacy
23 training, I've had multiple hours of, as I said,
24 bloodstain pattern analysis, crime scene
25 reconstruction, shooting (inaudible) reconstruction, et

1 cetera.

2 Q Is one of the things that you do know,
3 generally speaking, as being a crime scene
4 reconstructionist?

5 A Yes. I'm actually a member and past president
6 of the Association for Crime Scene Reconstruction,
7 which deals specifically with reconstructing events at
8 crime scenes.

9 Q And have you testified in other courts as a
10 crime scene -- an expert in crime scene reconstruction?

11 A Yes, I have testified as to reconstruction
12 elements in crime scenes.

13 MR. WOODBURY: We would like to have the Court
14 recognize her as an expert in the area of crime scene
15 reconstruction.

16 THE COURT: Mr. Ingram?

17 MR. INGRAM: No objection.

18 THE COURT: The witness may testify.

19 Q BY MR. WOODBURY: Can you be a little more
20 clear, Ms. Green, what crime scene reconstruction
21 consists of? What are you trying to accomplish?

22 A So with the crime scene reconstruction, we're
23 trying to look at all of the physical evidence in a
24 case and develop a factual analysis of what happened
25 out at a particular incident.

1 So we look at, as I said, the physical
2 evidence, the lab reports that are generated from that
3 evidence. I do look at witness statements, but I don't
4 carry that weight as heavily as the forensic facts.
5 That's what I'm trying to base my reconstruction on.

6 So if I can develop a series of events that
7 happened out at a crime scene, or incident scene, I
8 will try and define that. And then if I can help
9 determine in what order certain events happened, I will
10 try to put that together to identify facts that
11 happened at the scene.

12 Q And determining what the sequence -- what the
13 sequence was, does that depend in some measure, perhaps
14 not as great as physical evidence, but in some measure
15 on witness statements and things like that?

16 A I don't think the sequence of events depends on
17 witness statements. I believe you can use the crime
18 scene reconstruction to then look at witness statements
19 and either support or refute things that have been
20 said.

21 I have seen instances when eyewitnesses to
22 scenes give a detailed account of what happened, but
23 when you assess the forensic facts of the scene, it
24 simply doesn't line up.

25 Q All right. Do you remember what you looked at

1 in this case? Were you provided documentation about
2 the physical evidence that had been collected in the
3 examination that had been done by Elko County Sheriff's
4 Office and the Washoe County Forensic Science division?

5 A Yes. And in this case, I did not actually go
6 to the crime scene and collect evidence. I was
7 provided with forensic lab reports from the county
8 crime lab, a few police reports from the incident, some
9 statements. I have a list of all of the evidence that
10 was collected from the scene.

11 Q And in the beginning, the evidence you had did
12 not include the October research of the residence at
13 2821 Wrangler Circle, that came later?

14 A The work performed by Detective Stake?

15 Q Yes.

16 A Yes, that came after I became involved in the
17 case.

18 Q All right. Did that happen after you
19 recognized that it was gonna be pretty difficult to
20 reconstruct the crime scene without the additional
21 evidence that hadn't been preserved?

22 A That is correct. As I assessed the evidence as
23 I knew it, one of my jobs, certainly in a shooting
24 incident, is try to correlate all fired cartridge cases
25 that are found on scene and try to match that up to a

1 fired bullet.

2 So if I have 12 fired cartridge cases from a
3 specific weapon, I would want to try to say, I have 12
4 fired bullets now from this. And in the initial
5 information that I received, many of the bullets from
6 the residence had not been recovered. And so the
7 absence of that, and the absence of the laboratory exam
8 saying this bullet was fired from this weapon, there
9 was very little that I could say about the event.

10 Q And since that time, have you and I had a
11 conversation in which you were informed that a -- let
12 me ask it the other direction.

13 How many weapons did you ascertain were
14 involved in the crime scene of events?

15 A From the information that was provided to me,
16 there were three weapons. There were three different
17 types of fired cartridge cases recovered inside the
18 scene.

19 Q Okay. Now, do you remember what the calibers
20 were or anything like that?

21 A It was two 40 caliber and a 9 millimeter.

22 THE BAILIFF: Do you have it on, Mr. Woodbury?
23 Could you turn it on?

24 MR. WOODBURY: It is on.

25 THE COURT: Can everybody hear Mr. Woodbury?

1 No. Okay. I think you want them to hear you.

2 MR. WOODBURY: Perhaps some don't wanna. You
3 never know.

4 I'm gonna move this thing down a little bit.
5 Okay.

6 Q BY MR. WOODBURY: In a conversation with me,
7 were you informed that a witness had testified here at
8 trial that an additional firearm, a fourth firearm that
9 she had seen, on a front room floor?

10 A I was recently made aware of that fact, yes.

11 Q And in your analysis and everything else that
12 you looked at at the residence at 2821 Wrangler Circle,
13 did you see any evidence that there was a fourth
14 firearm involved?

15 A I did not. There was one fired projectile
16 recovered from the ceiling of the dining room. And a
17 lab analyst said, this shares the same characteristics,
18 it has a lot of the same markings. But due to bullet
19 damage, he couldn't absolutely say it came from this
20 one weapon. But it shared the same -- it was the same
21 type. It was similar.

22 So I included that into the -- the bullets that
23 I believe were fired from one sort of weapon. So fired
24 cartridge cases, I only saw three different type.

25 Q Were you also informed that a medic had

1 testified here at trial that a single shell casing had
2 likely been wrapped up with the decedent when he was
3 placed on a gurney and transported to the hospital?

4 A I was recently made aware of that, yes.

5 Q And is that consistent or inconsistent with the
6 other determination you made, other determinations
7 you've made about the kinds of weapons and the shell
8 casings and the number of bullets recovered?

9 A It certainly adds a wrinkle. As I authored my
10 report, I do have to make certain assumptions. So in
11 this case, I specifically wrote that it is assumed that
12 all fired cartridge cases associated with this event
13 were recovered.

14 And I do that because in this particular
15 instance, there were two weapons. They were both
16 determined to have a capacity of 12 cartridges. So if
17 they're fully loaded, and I have 12 cartridge cases
18 from each weapon, then I have recovered 12 fired
19 cartridge cases from the scene.

20 But it can be assumed or suggested that a
21 weapon could be what we call 12 plus 1. So the
22 magazine is loaded, inserted into the weapon, the slide
23 is pulled back, the round is chambered, and that they
24 add another cartridge in the magazine.

25 So potentially, each of these weapons could

1 have actually held 13. But to write that out in the
2 report and say if this, then that, it does become a
3 little complicated.

4 So for purposes of this report, I assumed there
5 were 12 hard cartridge cases. When I am made aware of
6 a 13th fired cartridge case, then it makes me wonder, I
7 thought that I had most of the bullets recovered from
8 this scene. So it did -- it introduced additional
9 speculation on an additional bullet at the scene.

10 Q Okay. Were there -- in the discussions that
11 you had with me and what I was asking you to do, were
12 there a couple of specific points I was asking you
13 about?

14 A Yes.

15 Q Okay. And can you tell the jury what they
16 were?

17 A Specific points were some analysis of the
18 bloodstains that were located in the residence, and
19 what analysis I could make based on travel or anything
20 about the blood that we saw. And then also the
21 specific position of someone that could have fired the
22 shots that we were seeing into the west living room
23 wall, or the location.

24 Q And more specifically, was -- well, let me ask
25 it this way: Did you know where the decedent,

1 Mr. Smith, started out at the beginning of the event?

2 Are you satisfied that you know where it is?

3 A That is simply based on statements and
4 scenarios that I've been told, that he was originally
5 in the bedroom, in the -- but there was no -- there was
6 no forensic support for me to know that. That's simply
7 information that I was provided.

8 Q Okay. And I take it as a scientist, you're
9 somewhat reluctant to simply accept a witness statement
10 that that was the beginning point?

11 A I take it with a grain of salt, yes.

12 Q And in your examination of blood evidence, the
13 blood evidence, I take it you were provided photographs
14 and -- and a DNA analysis with blood in various parts
15 of the house?

16 A Yes. I probably forgot to mention the
17 photographs. I was provided with all of the
18 photographs taken by the crime scene analyst out on
19 scene, as well as the resulting DNA results that came
20 from the crime lab.

21 Q Okay. And you were provided with a report
22 concerning any blood that had been found on the floor
23 or on the carpet or on the wall?

24 A Yes.

25 Q Okay. Do you recall whether there was any

1 blood found by the experts in the master bedroom?

2 A In the crime scene investigation report, there
3 was no mention of blood in the master bedroom.

4 Q Even though there appeared to have been bullet
5 firing within the master bedroom?

6 A Correct.

7 Q Okay. And in the crime scene investigation by
8 the experts and the photographs that you were provided,
9 did they report finding any blood -- well, let me go
10 back and ask you first to describe the residence.

11 You had a drawing and a photograph of the
12 residence?

13 A I was provided a sketch and photographs, yes.

14 Q And were you informed of which wall was --
15 which way was west and which way was east, and which
16 way was north, and which way was south?

17 A Yes.

18 Q And with respect to the residence, the master
19 bedroom is which direction?

20 A South.

21 Q Okay. And when you come out of the -- were you
22 provided a photograph, and did you learn where the
23 master bedroom door was?

24 A Yes.

25 Q And when you come out of the master bedroom,

1 you come into another room.

2 Were you informed and get a photograph of what
3 room that was?

4 A Yes. That appeared to be the living room.

5 Q Okay. And from the bedroom doors you come out
6 and to your left, or to the west, is there a wall?

7 A There is.

8 Q And where does it go?

9 A So if I can just use this room as I'm seated
10 here, this would be south. Say this area would be the
11 master bedroom. The door would be over towards that
12 wall. So then you travel towards the north. The west
13 wall would be over here. It ran the length of the
14 living room to the end. And then it would open up into
15 an open dining room area.

16 Q And when you got to the dining room area, were
17 you provided photographs and reports about blood on the
18 floor in the dining room area?

19 A I was, yes.

20 Q And were you provided information about whose
21 blood that was from the DNA analysis?

22 A It was reported to match Bradley Smith.

23 Q And as you go along what you described, I
24 guess, as the west wall from the bedroom, near the
25 bedroom door to the dining room area, was there any

1 blood on the floor just immediately or roughly adjacent
2 to the west wall?

3 A Immediately next to the west wall? The
4 photographs did not show obvious bloodstains.

5 Q And would it be a fair -- is it fair to say
6 that you might discern from a photograph what might not
7 have been evidence to a person who was present at the
8 scene in looking at it?

9 A Given the fact that I have unlimited time to
10 look at these photographs and certainly blow it up, it
11 does happen that I am able to see things that the
12 initial responders on scene didn't see. But I think
13 this carpet was fairly light, so I would like to think
14 they would have seen something there, as well.

15 Q So you did not see any blood immediately
16 adjacent to the west wall on the -- on the floor?

17 A Immediately next to the wall, I did not.

18 Q And I guess we probably better define
19 "immediately."

20 How far is it?

21 A In the description you're offering to me, I'm
22 seeing it as right up against the wall. The area,
23 itself, is not terribly large. Maybe four feet, from
24 what I can discern, from the sketch that I was given.

25 So when you're saying immediate, I'm thinking

1 right up against the wall. A few feet out from the
2 wall you can see spatter traveling along the carpet.
3 And, sorry, I'll get to spatter stains in a little bit.

4 Q And is spatter kind of hard to pick up on a
5 carpet? Not pick up, but kind of hard to discern?

6 A To visualize? Depending on the size of the
7 originating stain, it can be hard to see if the
8 bloodstain is not that big.

9 This carpet was light, so it's not quite as
10 hard, but...

11 Q Okay. And as you move away from the west wall
12 toward the east, are you saying there was obvious blood
13 spatter out there, or blood -- you don't talk about it
14 always in terms of spatter, right? You have different
15 words for different kinds of bloodstains?

16 A We do. And just because we're saying it, in
17 the bloodstain terminology world, we use "spatter" to
18 define any bloodstain that we think was in free flight
19 before it impacted the surface.

20 So if I have blood on my hand and I touched
21 this chair, that's a transfer stain. But if I have
22 blood on my hand and I provide motion and the blood
23 impacts the chair, then, broadly, I'm going to
24 characterize that as spatter.

25 So in the path that you would travel from the

1 living room towards the dining room on the floor, there
2 are multiple type -- spatter-type stains that can be
3 seen.

4 Q And as a part of your expertise as a
5 reconstructionist, is spatter a common outcome from
6 being shot with a bullet and having no clothing over
7 the top of your body?

8 A Yes.

9 Q And you have been provided photographs of
10 Mr. Smith, or at least a description of what he was
11 wearing?

12 A Yes.

13 Q And what was he wearing, as you understood it?

14 A Just -- no shirt with some short-type material.
15 There were some photographs initially with the EMTs
16 that I saw that depicted him wearing some socks. But
17 there was no shirt on top.

18 Q And the testimony from at least a couple of
19 people is that he did not have socks on ever during
20 that incident.

21 Are you confident that you saw socks?

22 A Yes. And what made me look to see, is that as
23 I was looking at his body, as I was seeing other
24 photographs from the hospital, I noticed a line of
25 demarcation where there should be blood, and then it

1 had just ended. And I thought, Gosh, why is there no
2 blood flowing down here? So I revisited those, and you
3 can see.

4 Q Okay. Was it possible from the bloodstains you
5 saw along the west -- let me ask it this way: Where
6 did the bloodstains first show up as you traveled down
7 the west wall, bloodstains on the floor?

8 A Well, immediately as you enter the residence,
9 which would be essentially me going through the front
10 door into the entryway, that entire area is
11 bloodstained. And then as you travel a little bit
12 farther east, there were large, what I call, saturation
13 stains on the carpet. And then I don't have the exact
14 length of space from when I first started to see
15 spatter-type stains on the carpet.

16 But there was a fireplace along the west wall.
17 And just out from that, and more towards the north, you
18 can see the spatter stains.

19 Q And that -- you were also provided, I assume,
20 with a description and trajectories of various items,
21 bullets, that appeared to have hit the west wall?

22 A Yes, I was provided with the crime scene report
23 from Mr. Shinmei. They had reported the trajectories
24 of all of the impacts that they had recorded in the
25 house. And then I also received an additional report

1 from Detective Stake, the additional impacts that he
2 had found and recorded the trajectories. And that's
3 what I used to assess my reconstruction.

4 Q So it was from the bedroom door to the
5 fireplace, I guess you said. They're along the west
6 wall within a foot or 18 to 20 inches of it.

7 There were no bloodstains on the carpet until
8 you got to a certain point, right?

9 A I don't recall seeing bloodstains immediately
10 there above the door, correct.

11 Q And then you also looked, or did you also look,
12 at the various defects as you moved along to see if
13 they appeared to have any bloodstains or anything that
14 suggested that a bullet had hit Mr. Smith and had
15 spattered something on the impact area?

16 A I did look at that, again, as part of my
17 shooting reconstruction. I wanted to see if I could
18 determine, maybe, where someone was at the time of a
19 bullet impact. I know that Mr. Smith had exiting
20 wounds from his body. And these bullets had to go
21 somewhere into that home. And so I did zoom in on some
22 of those impacts to see if maybe the bullet looked like
23 it had been destabilized. So that is somewhat tumbling
24 through the air as it impacts a wall.

25 And on the mirror that was on the west wall

1 above the fireplace, around impact F, I did notice
2 some, what I would call, red-brown stains, some tiny
3 spatter material that I thought possibly could be
4 biological. But there was no testing done on that. It
5 was just an observation I made around that impact.

6 Q And is there a way to -- and that would be at
7 impact F on the west wall where the -- along the west
8 wall?

9 A Into the mirror, correct.

10 Q Yeah.

11 And as you said, it appears that neither Washoe
12 County or Elko County appeared to pick that up as
13 spatter or some material from a bullet having hit
14 Mr. Smith?

15 A I didn't see any notes or documentation
16 suggesting that they had noted or tested that.

17 Q Okay. Is there any confidence level you have
18 with respect to that being actually evidence of a
19 person's blood or skin being on that -- back there?

20 A I cannot put a percentage on the level of
21 confidence on that. In the absence of testing out on
22 scene, the best I can say is I, as a DNA analyst who
23 also works with blood, I saw some staining around that
24 hole, that had I saw it on scene, I would have tested
25 it to see if it was potentially blood. But that's as

1 confident as I can get with that.

2 Q Okay. And that was at impact F?

3 A Correct.

4 Q Okay. Is it possible to look at the staining
5 that appears in the dining room floor and discuss any
6 direction of travel of the person, presumably
7 Mr. Smith, that made the blood look like it did?

8 A So I can't use that determining direction of
9 travel of Mr. Smith. But the pattern, itself, I
10 describe it as a radiating pattern, going from the
11 southeast towards the northwest. So that would be me
12 looking this way.

13 When we look at the bloodstains, we look at the
14 shape of the stains, the size of the stains, the
15 overall shape of the pattern. All of those things help
16 me try and determine the actual mode of -- of a
17 particular pattern.

18 So this pattern, all of the stains that I saw
19 were traveling in this direction. So I know that
20 that's the direction the blood was deposited. I can't
21 then correlate to say Mr. Smith was traveling all the
22 way into the dining room, because that's where the
23 pattern was created.

24 Q So if the blood doesn't continue, it means
25 either he stopped there, or he stopped bleeding and

1 dropping blood on the floor?

2 A Absent a -- someway to stop the blood from
3 flowing and dripping, it doesn't appear that he
4 traveled farther than that particular threshold, based
5 on the photos I saw. I didn't see additional type
6 spatter farther into the kitchen, then, in other words.

7 Q And, then, was there an ottoman that you saw
8 photographs of that was reported to be in the initial
9 living room area?

10 A Yes, there was.

11 Q And did that appear -- was that reported to
12 have had staining on it, blood staining?

13 A Yes. I believe that was listed at placard 25,
14 blood staining on the ottoman.

15 Q And did it appear there was a handprint there,
16 or something like a handprint?

17 A I characterized that as a transfer stain, which
18 would be a blood-bearing object coming into contact
19 with another object.

20 Q All right. Was the direction of the stain, or
21 anything about the stain, indicative of the direction
22 of the object that transferred the blood onto it?

23 A I didn't see anything in that stain that would
24 allow me to say absolutely someone was traveling this
25 way, versus north versus south, or south versus north.

1 Q Well, actually, you know that the swab from the
2 ottoman blood was -- contained DNA of Mr. Smith, right?

3 A It was matched to Bradley Smith, correct.

4 Q And now going to the front doorway, can you --
5 where the front door was, can you describe for the
6 jury -- first of all, you saw a photograph of the area?

7 A I did, yes.

8 Q And can you describe for the jury what you saw
9 there in the front door area?

10 A The front door area had multiple bloodstains.
11 It was a -- not a tile, like, a fake-type wood floor
12 there. So we had a different surface from the carpeted
13 area of the living room. But most of that area was
14 completely bloodstained there. There was some, what I
15 identified as trickle stains, stains that drips from
16 gravity down to the ground on the actual threshold of
17 the door. I believe that was placard 5. That was also
18 identified as Bradley Smith's blood.

19 There was some fired cartridge cases in that
20 particular area, and there was also one bullet defect,
21 identified as bullet Q, that was going down into the
22 entryway floor.

23 Q And so if there's a gravity blood spot, that
24 would tend to mean that the blood would have had to
25 have fallen a certain distance?

1 A Yes.

2 Q Can you tell how far from the size or the
3 nature of the spatter, how far it fell?

4 A No, I cannot.

5 Q Did you -- were you provided photographs, and
6 did you do any kind of thinking about the location of
7 the shell cartridges?

8 A I was provided photographs and a diagram of the
9 location of the fired cartridge cases. And I did try
10 to assess, or were discussing, an ejection-type
11 pattern.

12 Q And are you familiar with the ejection pattern
13 of semi-automatic Smith & Wesson 40 caliber pistol?

14 A From the (inaudible) reading, yes, I believe it
15 ejects to the right and somewhat backwards.

16 Q And the shell expended cartridges were located
17 principally where in the living room area?

18 A So principally, as you walk through where I am
19 at the front door, in the area between that I called
20 the fake wood floor and the master bedroom door of
21 the -- the bulk of the fired cartridge cases. There
22 were two as you walk into the door, just to the -- to
23 the north, sitting on that wood-type floor. The bulk
24 were in that carpeted area between the bedroom and the
25 entry door.

1 Q Now, were you provided a description of the
2 claimed location of Mr. Honeyestewa as he fired shots
3 from the living room -- living room?

4 A In discussions with Mr. Woodbury, yes, I was
5 provided with that information.

6 Q And what were you informed?

7 A That he was lying on the ground near the
8 entryway.

9 Q And was he lying on his back or on his front?

10 A I believe he was on his back with his feet
11 toward the west.

12 Q Okay. And in looking at the trajectory of the
13 bullets that traveled from the west toward the --
14 toward the front door, what were the general
15 trajectories of those bullets?

16 A So into the west wall there were multiple
17 impacts. All of those impacts traveled from down to my
18 left. So as we're doing trajectory analysis, we take
19 angle finders and attempt to determine the angle that
20 the bullet actually impacted the wall. And then using
21 that angle, I track back to see if I can come up with
22 an area that I think the shots could have originated.

23 So all of those shots going into the west wall
24 were going upward.

25 Q And the reverse, the bullets that were fired

1 into the area around the front door, could you tell the
2 jury generally about the trajectory of those bullets?

3 A There were shots fired from the west towards
4 the east. Just so I'm keeping it clear in my head,
5 they were A and R, two through the open front door; Q
6 through the entryway. And then Detective Stake
7 discovered another impact that I call Stake 25, also
8 near the entryway. And all of those shots were through
9 a severe downward angle into the floor.

10 THE COURT: We're going to take our morning
11 recess.

12 (Admonition given to jury.)

13 THE COURT: Ms. Green, please do not discuss
14 your testimony with anyone other than the attorneys.
15 And we will be in recess for 20 minutes.

16 (Recess.)

17 THE COURT: Counsel, will you stipulate to the
18 presence of the jury?

19 MR. INGRAM: Yes, Your Honor.

20 MR. WOODBURY: So stipulated.

21 THE COURT: Go ahead, Mr. Woodbury.

22 MR. WOODBURY: Thank you, Your Honor.

23 Q BY MR. WOODBURY: Ms. Green, did we also
24 discuss the question of Mr. Smith, the number of
25 bullets that hit Mr. Smith, and the location of where

1 they wound up?

2 A There was discussion of that, yes.

3 Q All right. And was there -- you were somewhat
4 concerned with the count of bullets that were found
5 inside him?

6 A There was some confusion regarding bullets that
7 were recovered. I was just, two days ago, provided
8 with a report that said there was an additional bullet
9 that remained in his leg.

10 Photographs that I have seen, and previous
11 discussions that I thought that we had had, suggested
12 to me that it was actually a perforated wound. And
13 when I say perforating, it means a bullet that goes
14 into one side and actually comes all the way out the
15 other. If it was penetrating, it would go in and
16 simply remain. And I was under the impression that
17 that impact to the right side had perforated the leg.

18 Q Okay. And with respect to Mr. Smith, the
19 bullets in Mr. Smith, was there some discussion about
20 there being more entry wounds than exit wounds and the
21 physician finding only one (inaudible) inside of him?

22 A I was interested in the autopsy report. As I
23 had mentioned previously, one of my jobs is try to
24 reconcile fired cartridge cases with recovered bullets.
25 And so when I received the autopsy and I see that there

1 are four entrance wounds on one side of the body and
2 two exits, then I would think that there would be two
3 bullets left in there.

4 So the question became, did two fired bullets
5 go out the exact same hole, or somehow was a bullet
6 left behind? So when I do my final bullet count, I
7 have to consider that final bullet as possibly just
8 lost. Because at this point, I just don't have a
9 definitive answer.

10 If two bullets exited out the same hole, then
11 they are in the scene, and they are part of my 11
12 count. But I, at this point, am still hazy on that
13 answer.

14 Q And you read the autopsy report of Dr. Knight?

15 A I did.

16 Q And was there an explanation given for
17 apparently one bullet possibly still remaining in
18 Mr. Smith?

19 A I am not an expert in autopsy reports. I saw
20 one mention to the potential of two perforations in a
21 particular area that was leading to exit I. But in my
22 reading of it, and again as a lay person, I didn't see
23 anything that was saying, I think this bullet track
24 continues, and that two bullets exited out of this
25 particular wound. But I'm not an autopsy expert.

1 Q Now, going back to the location of
2 Mr. Honeyestewa on the floor of the entryway, are the
3 directions of the trajectories of the bullets fired
4 from at or near the bedroom door and the west wall, are
5 they consistent with the bullets being fired at someone
6 on the floor?

7 A So the recovered projectiles that were
8 recovered from, let's say the XD 40 weapon, the one
9 that was found under the dining room table, all of the
10 trajectories that were associated with that are fired
11 down into the ground. So that doesn't tell me intent.
12 I can't say, yes, this was fired into the floor because
13 there was somebody there. But it does make you
14 question all of these shots going down into the
15 entryway floor.

16 Q Okay. And did you review the trajectory
17 reports that were filed by Washoe County?

18 A I did, yes.

19 Q And I guess you could tell the jury, if you
20 understand, what you understand the determination of
21 the trajectories to have been based on? What do you
22 have to do to get a trajectory?

23 A So there are multiple ways to measure
24 trajectory. And when we're talking about trajectory,
25 we're essentially talking about the flight of a

1 projectile.

2 So if directly ahead of me this is what I
3 believe to be a bullet hole, one of the simple ways we
4 can do it, and I believe the way Washoe County did it,
5 is you can take what's called a trajectory rod, a
6 perfectly straight rod, and you can put it into the
7 bullet hole.

8 Now, to do that trajectory analysis, you do
9 need two points of impact. For example, if a bullet
10 just went through a window, again, just stick a rod
11 through that and get a trajectory, because there's no
12 second point for me to secure the two points along that
13 line.

14 So there were some impacts into the west wall
15 of the living room that they weren't able to get a
16 trajectory for, because they did not have a second
17 point of impact. But for the ones that you can, you
18 put the rod through your two points. You take
19 something called an angle finder, and you can place it
20 on the rod. And you can determine, just by moving the
21 angle finder, if the bullet has struck the wall
22 directly perpendicular into the wall, if there's some
23 angle associated with it, up and down. And then we do
24 what's called a horizontal angle.

25 So I want to know at what angle the bullet hit

1 the wall here, but I would also like to determine the
2 angle that it came in on this regard.

3 So same thing with our trajectory rod, you can
4 stick that in the wall. You can take your protractor,
5 and then you can see where the protractor crosses, or
6 the trajectory rod crosses your protractor, and get the
7 angle of impact for that.

8 So just again, as an example, if this is my
9 west wall and I have a trajectory rod going in like
10 this, I'm going to start here at zero with my
11 protractor. And I'm going to come around to the
12 trajectory rod.

13 So as an example, impact B into the west wall
14 is measured at 83 degrees. So if you start from zero
15 and come 83 degrees this way, then you can get a
16 general direction of fire that that bullet impacted the
17 wall.

18 We do include what we call a plus or minus five
19 degree error. Washoe County mentioned that. I
20 mentioned that in my report. And that is just to
21 acknowledge that what we're doing is not 100 percent
22 accurate.

23 So this is a trajectory I measured. This is
24 probably pretty accurate. But I'm going to give it
25 some give on both sides, plus or minus five degrees.

1 Q And what is that plus or minus five percent
2 mean? Does it mean if I say the angle is 40 degrees,
3 does it mean it's between 45 and 35?

4 A So it's plus or minus five degrees, not
5 percent. So, yes, if I measure the angle to be a
6 vertical angle upwards of 10, then for my cone, my
7 window, that it can be anywhere from 5 to 15. And we
8 consider that as we do our analysis.

9 Q Do you happen to remember the up and down angle
10 and the horizontal angle for defect D in the west wall?

11 A I do. But I'm just going to refer to my report
12 to make sure I'm absolutely accurate on that.

13 Q That would be fine, if you would like to
14 refresh.

15 A I'm put my reading glasses on.

16 So defect D into the west wall of the living
17 room, there was a fired bullet recovered from that.
18 And that was identified as being from the subcompact
19 weapon that was found outside the home. So we take
20 that into consideration.

21 And the measured trajectory was recorded to be
22 a horizontal angle of 85 degrees. So we just have the
23 example starting from 0, coming to 85, and a vertical
24 angle upwards of 23 degrees.

25 Q So 85 degrees would for sure be between 80 and

1 90.

2 And the upward angle you said?

3 A 23 degrees.

4 Q All right. So it would be between 18 and 28
5 for sure?

6 A I'm not going to say for sure. But that is the
7 accepted value range that we have for trajectory.

8 Q And do you recall a trajectory that was related
9 to defect F?

10 A I do.

11 Q And what was it?

12 A So trajectory F, as we previously discussed,
13 with the possible biologic material around it, that was
14 in a mirror that was above the fireplace along the west
15 wall. So that was recorded to be an upward vertical
16 angle of 24 degrees. And the horizontal angle of that
17 was actually 113 degrees.

18 Again, as we start at 0, we come around, 90
19 would be directly into the wall. And then 113. So now
20 it's actually changed directions from what we were
21 previously discussing. It was going in that direction.
22 And I step back quickly and actually not finish that
23 (inaudible).

24 Q I'm sorry?

25 A It was an error in my file. I don't need to

1 (inaudible) that. Your term.

2 Q Oh.

3 So the trajectory difference between D and F
4 horizontally is how much?

5 A D was 85 degrees, and F was 113 degrees.

6 Q And it is potentially a difference of 80 to
7 118, or the 90 to 108, right?

8 A On the 113?

9 Q 113 --

10 A I still have that plus or minus 5 degree range.

11 Q Is that a great distance?

12 A The farther away you get from the impact, the
13 greater the distance becomes. I have this 10 degrees
14 right here, this difference isn't so great. But as I
15 get farther and farther away, then that cone is going
16 to become (inaudible).

17 Q And as those degrees were configured in the
18 report from Washoe County, a person lying on his back,
19 shooting at the west wall, would be required on his
20 back to move the shot, the position from which the shot
21 happened, to his left and slightly up?

22 A So when I analyze the trajectories as they were
23 reported to me, I attempt to identify an area in which
24 the shot could have been fired.

25 So when you look at the diagrams that Washoe

1 County had created, they did create some trajectory
2 diagrams. And you can see that I believe there were
3 five impacts, six total in the house, but five into the
4 west wall that they were able to create trajectories
5 for. And when you draw all of those lines back along
6 their reported trajectories, they did all come to what
7 I call kind of an area of convergence.

8 So trajectory analysis is not going to allow me
9 to say absolutely the weapon was right here at the time
10 it was fired. What I try and do is come up with this
11 general area. So there's about a three- to four-foot
12 area where it appears that all of the shots in that
13 room could have originated from. And then also you
14 have to acknowledge anywhere along that path towards --
15 towards the west.

16 So, Mr. Woodbury, in your question of how the
17 body would have to move, again, it's very difficult to
18 say absolutely someone would have to move their arm and
19 do this. There's so many different ways you can hold a
20 gun. I can't identify that. But when posed with the
21 question of, you know, could this have come from
22 somebody lying on the ground, I did work through that.

23 And truly, in a laying-down position, when I
24 try to put a weapon that can create trajectories for B
25 and D, and then also not moving, try and create

1 trajectories that had to create F and G, which was
2 another trajectory in the wall, simply lying like that
3 and moving my arm, I was not able to create those --
4 those angles.

5 MR. WOODBURY: Thank you. I have no further
6 questions.

7 THE COURT: Cross examination?

8 MR. INGRAM: Thank you.

9
10 CROSS EXAMINATION

11 BY MR. INGRAM:

12 Q Ms. Green, you testified about relying on
13 various other reports to essentially create your report
14 and come to your conclusions correct?

15 A That is correct. I'm sorry. I don't
16 (inaudible).

17 Q I'll just move over here.

18 And those reports include the various law
19 enforcement reports, correct?

20 A I received law enforcement reports. Clearly, I
21 didn't receive all of the law enforcement reports. But
22 the ones I did, I did take those into consideration,
23 yes.

24 Q And you did receive an autopsy report?

25 A I did, yes.

1 Q And you received some trajectory reports or
2 diagrams from the Washoe County Crime Lab?

3 A Yes.

4 Q And you used all of those to base your
5 findings, correct?

6 A That is correct.

7 Q And you have no reason to disagree with any of
8 those reports?

9 A I have no reason to disagree with the findings
10 that were reported. There were a couple of questions
11 that I had about what was in some of the reports, but I
12 see nothing that would make me disagree with
13 (inaudible) trajectory or bullet identification, et
14 cetera.

15 Q And it's true that based on your analysis, you
16 can't tell us the order in which the various bullets
17 were fired, correct?

18 A Correct. There's nothing forensically that I
19 saw that allows an order of impact to be assigned.

20 Q And likewise, you can't tell us which specific
21 firearm fired first or last, for example?

22 A Forensically, I cannot say that, correct.

23 Q And while you're able to try to replicate
24 certain trajectories, you can't, for certain, tell us
25 where individuals in the house involved in this gunfire

1 were located, correct?

2 A Can you repeat that?

3 Q Sure.

4 Well, you testified earlier that you tried to
5 replicate the various trajectories on the west wall,
6 and you did so by actually lying on the ground.

7 And you weren't able to create all four of
8 those trajectories; is that true?

9 A Yes. And just to clarify --

10 Q Sure.

11 A I mean, I just didn't lay on the ground. I did
12 recreate with strings set up to the angles of impact
13 that were in the wall, and recreated as I could each
14 trajectory line. So then I just -- I laid in the area
15 of convergence that I could see where all of those
16 shots were. But that's just based on trajectory work.

17 I can't say with 100 percent certainty that
18 that is where someone was lying. I chose that area,
19 because that's where all of the trajectories came back
20 to.

21 Q And you can't say for certain where Mr. Smith
22 was when he was shot, correct?

23 A That is correct.

24 Q And you can't say for certain where
25 Mr. Honeyestewa was when he was shot, correct?

1 A That is correct.

2 Q And based on the reports that you reviewed in
3 connection with creating your report, you were made
4 aware that no cartridges were actually found outside of
5 the residence, meaning just outside the front door?

6 A Wasn't specifically told no cartridges were
7 found, but I did not see anything in the materials that
8 I received that identified a cartridge outside of the
9 (inaudible).

10 Q Well, had some cartridges been found outside of
11 the door, that would have been important for you,
12 correct?

13 A And just to clarify when you're saying
14 "cartridge," you're meaning an intact, unfired bullet?

15 Q Excuse me. I'll be more specific. A fired
16 cartridge.

17 A So a fired cartridge case, there was one that
18 was reported to me that was recovered at a later date
19 that had been fired from a 9 millimeter. But I was not
20 made aware of any fired cartridge cases that were
21 outside of the entrance of the home. And had I known
22 that, I would have taken that also into consideration.

23 Q And the 9 millimeter that you just referenced,
24 that fired cartridge, you were aware that that was
25 found at a different residence actually across the

1 city, correct?

2 A The fired cartridge case that was recovered,
3 yes, I was told that was found at a different location.
4 There was one other fired cartridge case, 9 millimeter,
5 in the residence. And the second was found at a
6 different location.

7 Q How many total bullets are you aware of that
8 were recovered in connection with this scene?

9 A So again, I'm just going to refer to my final
10 count.

11 So just for ease in my initial assessment, I
12 had 12 fired cartridge cases, from what I've been
13 calling the subcompact, the weapon from outside the
14 house. I identified what I believed to be 11 fired
15 bullets that could have come from that weapon.

16 There were no bullets, projectiles, that I was
17 made aware of that were recovered from a 9 millimeter.
18 And then the remaining weapon, the, I'll say XD 40 that
19 was found under the dining room table, at the time that
20 I wrote my report, I had what I believed to be 12, and
21 I do still have 12 fired bullets that were recovered
22 from the scene that can be traced back, or projectiles
23 that can be traced back, to that weapon, or at least
24 bullets that are accounted for.

25 And now recently I was made aware of one, an

1 additional bullet potentially in Mr. Honeyestewa's leg.
2 So that would, if we assume it's coming from that
3 weapon, make 13, which if, in fact, a fired cartridge
4 case left the scene on the gurney with Mr. Smith,
5 perhaps those two go together.

6 But this information had just been given to me
7 two days ago, so I didn't --

8 Q So you're at possibly 13 bullets at this point,
9 correct? That's what you just accounted for?

10 A If there is a remaining fired bullet which
11 appears to be in that leg, then there would be 13 fired
12 bullets associated with the XD 40.

13 Q And in your report you --

14 A Can I step back? I'm sorry. I'm saying
15 bullets and accounted for. And apart of that, what I
16 mean is if the bullet went out that window right there
17 and goes out into the world, I'm not recovering that.
18 But I know that it exited the area. And so I'm
19 accounting for that.

20 So there were some impacts that went down
21 through the floor under the house that were not able to
22 be actually found, but I did count them as apart of
23 that final count. So I apologize if I was misspoken.

24 Q So the number of bullets -- how many bullets in
25 total were recovered?

1 A From the XD 40, the weapon under the table, I
2 have 9. And then from the subcompact, I had reported
3 11.

4 Q So how many is that total?

5 A 20. From --

6 Q So you're at 20 bullets at this point.

7 And we know we have a total of 26 cartridges,
8 correct, collected entirely throughout this entire
9 investigation, correct?

10 A And a fired cartridge cases.

11 Q Cases?

12 A Yes.

13 Q So if you use that math right now, we're short
14 six bullets, correct?

15 A Using that math, we are. I'm still just kind
16 of double-checking my accounted-for bullets versus
17 actual bullets.

18 And, sorry, with that count, that was before I
19 was made aware of the other bullet in the leg. So I
20 guess that adds up to 21, if -- so at the time of my
21 report, 20, with that bullet in the leg, 21.

22 Q And we know that one went through the front
23 door of the residence that was never recovered,
24 correct?

25 A There was an impact that went through. It

1 perforated the front door. And then there was an
2 impact into the east wall. And there was no projectile
3 recovered for that, because it went into the wall.

4 Q And the same as the defect that went into the
5 garage wall, correct?

6 A Correct. There was an impact called impact N
7 that was fired through the south wall of the bedroom
8 that I believe then carried into the garage. And there
9 was no projectile associated with that that was
10 recovered.

11 Q Now we're up to 23?

12 A Okay.

13 Q Only 21 of which were recovered?

14 A So we're accounting for bullets that I think
15 came from a weapon but weren't found.

16 Q Sure. Yes. Yes. Okay. All right.

17 And then you have one bullet that remains in
18 Mr. Honeyestewa's leg. Now we're up to 23?

19 A Okay.

20 Q Only 21 of which were recovered?

21 A So we're accounting for bullets that, I think,
22 came from a weapon but weren't found.

23 Q Sure. Yes. Yes. Okay. All right.

24 And then you have one bullet that remains in
25 Mr. Honeyestewa's leg?

1 A (Inaudible), yes.

2 Q And then we have the one bullet that came from
3 Brad Smith, correct?

4 A There was one bullet recovered from him, yes.

5 Q So out of the 26 known fired cartridges that
6 were collected, you would agree with me that a great
7 percentage of those bullets coming from those fired
8 cartridges were actually collected as evidence?

9 A Ultimately, yes. I was thankful for
10 Detective Stake going back out to the scene and
11 collecting, I believe, up to 11 additional bullets. So
12 I think for 26 shots fired, there were -- the vast
13 majority of those bullets were recovered, yes.

14 Q There was some talk on your direct examination
15 about a fourth firearm.

16 Can you tell me about a fourth firearm?

17 A I cannot, other than what was presented to me
18 as a witness saying perhaps there was another firearm
19 on the living room floor. I don't know of any other
20 firearm.

21 Q So if I told you that all of the testimony in
22 evidence so far was that there was only one firearm
23 located on the floor inside the residence, would that
24 surprise you?

25 A If that firearm is the weapon located under the

1 dining room table, that was my understanding of the
2 scene.

3 Q So I'm still confused. If that's the only --
4 and, yes, to answer your question, yes, that's the only
5 firearm in the residence.

6 What were you told about a fourth firearm
7 inside the residence and where it was located?

8 A I was told nothing, other than recently someone
9 had testified that there was a weapon on the living
10 room floor.

11 Q But you have no idea where that came from?

12 A I have not heard any previous or seen other
13 information regarding an additional weapon on the
14 living room floor.

15 Q So please tell us about the three firearms that
16 we know to have been involved in this case. As far as
17 you know, what are they?

18 A So as far as I know, there was two 40 caliber
19 weapons. One was found on the floor of the dining
20 room. They're both Springfield Armory XD 40. One is a
21 subcompact, and one is not. So the one under the -- or
22 on the patio on the outside porch is the one I've been
23 referring to as the subcompact. And the one under the
24 dining room table.

25 And then there are two fired cartridge cases

1 that were identified as having been fired from a 9
2 millimeter Taurus. That weapon was not recovered on
3 scene, but the fired cartridge case in the scene
4 suggests that something from that weapon was fired in
5 the house.

6 Q So you're aware that the two fired cartridges
7 from the 9 millimeter were actually traced back to that
8 9 millimeter, correct?

9 A Correct.

10 Q And you're aware that 12 of the recovered fired
11 cartridges trace back to the Springfield XD, correct?

12 And you're aware that the remaining 12, the
13 only remaining 12 cartridges that were collected trace
14 back to the Springfield XD subcompact, correct?

15 A The fired cartridge cases, yes.

16 Q So based on just the fired cartridges alone,
17 you would agree with me that there's not a fourth
18 firearm?

19 A I have not seen fired cartridge evidence that
20 suggests a fourth firearm was fired at the scene.

21 MR. INGRAM: Ms. Clerk, could I have Exhibit
22 116, please?

23 Q BY MR. INGRAM: Now, I'm gonna show you what's
24 been marked as Exhibit 113.

25 Do you recognize that area of the Wrangler

1 Circle address?

2 MR. WOODBURY: Your Honor, I was told this was
3 Exhibit 116.

4 MR. INGRAM: 113.

5 THE COURT: You said 116. 116 is in evidence.
6 113 is not. So which one are we doing here?

7 MR. INGRAM: 113. I have both of those, but
8 I'm just showing her 113.

9 THE WITNESS: The image I was handed appears to
10 be in the master -- or in the bedroom, facing towards
11 the door, looking at a trajectory rod that was
12 identified as trajectory K through the east wall of the
13 master bedroom doorjamb.

14 Q BY MR. INGRAM: And specifically, Ms. Green,
15 placard number 21, do you see that?

16 A I do see that, yes.

17 Q And are you aware that at or near placard 21,
18 there was several fired cartridges found?

19 A I believe there were five fired cartridge cases
20 associated with placard 21.

21 Q And that was inside the master bedroom,
22 correct?

23 A Just inside the door, yes.

24 Q And based on your previous testimony that a
25 semi-automatic handgun will generally eject bullets to

1 the right and slightly back, would you agree with me
2 that at least as those cartridges lied inside the
3 master bedroom, that we would have to presume that the
4 gun was fired from within the master bedroom?

5 A I believe, yes. And fired cartridge cases,
6 there are a number of variables that can affect that;
7 the way you're holding the gun, how much the gun is
8 actually loaded.

9 So ejection pattern analysis, I back off from
10 somewhat. But for those fired cartridge cases to be in
11 the bedroom, yes, I believe the weapon, itself, was in
12 the bedroom.

13 Q And you're aware that those cartridges, all
14 five of them, were associated with Mr. Smith's gun,
15 correct?

16 A All five of those fired cartridge cases, yes,
17 were identified as having been fired in the XD 40,
18 Mr. Smith's room.

19 Q You were asked some questions about blood in
20 the master bedroom, were you not?

21 A Yes, I was.

22 Q Okay. And I believe your testimony, but
23 obviously correct me if I'm wrong, that you didn't
24 observe any blood in the master bedroom?

25 A From the photographs I saw, I did not see

1 something that I would consider a good choice for being
2 blood.

3 Q And based on the lack of blood in that master
4 bedroom, you cannot tell us one way or the other
5 whether Mr. Smith was in his bedroom when he first got
6 shot, correct?

7 A That's correct. I have not made that
8 assumption based on not seeing blood in those
9 photographs.

10 Q Because it's entirely possible to be shot and
11 not immediately bleed?

12 A Not immediately bleed, not bleed enough that it
13 would immediately drop onto the carpet.

14 Q And you were asked some questions about
15 Mr. Smith wearing socks or not.

16 How does that affect anything that you were
17 asked to do?

18 A It doesn't necessarily affect anything, it's
19 just an observation that I made as I was going through
20 trying to assess the bloodstain analysis.

21 Q And based on the photographs that you were
22 provided, were you able to see bloody footprints
23 walking about the house?

24 A Not walking about. I did -- again, as I looked
25 at the photographs of Mr. Smith, and the bottoms of his

1 feet are almost entirely covered in blood. So my
2 question becomes, where did he get that much blood on
3 his feet? There has to be a source on the floor to put
4 that blood on his feet.

5 So now, naturally, I'm drawn to the entryway.
6 And that is where the majority of the blood deposits
7 that should be responsible for that were. And on the
8 entryway floor, I saw a shape very similar in size and
9 shape to what can be a foot.

10 So one of my opinions was that he was, at some
11 point, standing there. But I did not -- I was unable
12 to see anywhere else in the residence what I would
13 consider to be impressions of tracking around the
14 scene.

15 Q Perhaps I just missed it, but what was it made
16 you believe that he was standing where, at the doorway?

17 A Simply on the entryway floor, again, both of
18 the bottoms of his feet were covered in blood. So that
19 has to come from somewhere. So when I went to the
20 entryway floor and looked, I seen an outline of
21 something that's vividly similar in shape and size to
22 the bottom of his foot. So that was my opinion, that
23 that's where he would have picked up that blood.

24 Q Other people were in the house, though, were
25 they not?

1 A There were other people in the house, yes.

2 Q So you can't tell us definitively that it was
3 Mr. Smith's footprint that you saw near that entryway,
4 correct?

5 A Definitively, no. I did look -- I saw a report
6 that said Ms. Stanger was also in the house, and she
7 did have bare feet. But there was a note that she did
8 not have any blood on the bottom of her feet.

9 If any of the other people that entered the
10 house that night were also barefoot, then I'm not
11 identifying that impression as absolutely Mr. Smith's
12 footprint.

13 Q Do you know where Ms. Stanger was when they
14 observed no blood on her feet?

15 A I do not recall that off the top of my head.

16 Q So as far as you know, that could have been
17 after she left the residence?

18 A I can double-check the incident report quickly
19 and check.

20 Q Yes, please.

21 A Yes, it appears to be at the emergency room.

22 Q So you can't rule out the fact that that
23 footprint can be Ms. Stanger's, can you?

24 A I guess I can't say 100 percent that she didn't
25 leave the scene and wash her feet, although they did

1 appear quite dirty in the images. If she left the
2 scene and then cleaned all the blood off the bottom of
3 her feet and then had the visual images, then, yes, I
4 would accept that as a possibility.

5 Q Thank you.

6 And one of your -- one of your goals in
7 analyzing the evidence in this case was to, at least,
8 to determine locations of people within the house when
9 this incident occurred, correct?

10 A Attempt to, yes.

11 Q And you testified that you at least give some
12 weight, although not the greatest weight, to statements
13 from witnesses who say where people were, correct?

14 A I will consider them as I go through the
15 analysis, yes.

16 Q Okay. And did you ever watch the two
17 interviews with law enforcement that Mr. Honeyestewa
18 gave?

19 A I did not watch interviews. I was provided a
20 transcript.

21 Q Of the interviews?

22 A Yes. But I'm going to double-check again if
23 I -- I believe I have one. I was provided a transcript
24 from an interview from July 17th of 2018, with
25 Alan Honeyestewa.

1 Q And who was the detective that conducted that
2 interview? Just so we make sure we're talking about
3 the right interview here.

4 A I believe it was McKinney, but I can go back
5 and check that, as well.

6 Yes, McKinney.

7 Q So as you sit here today, you've never analyzed
8 Mr. Honeyestewa's statements about his location within
9 the house from the interview he did with
10 Detective Stake, correct?

11 A I don't believe I was provided that interview,
12 so, no.

13 Q Well, you weren't provided the interview. But
14 did you otherwise learn that Mr. Honeyestewa, himself,
15 admitted that he actually went through the door, peeked
16 into the bedroom, master bedroom, so much so that he
17 was able to tell law enforcement where the nightstand
18 and bed was within that bedroom? Were you aware of
19 that?

20 A I believe I was, but I don't remember
21 necessarily the statement about the bed stand, but that
22 he had made it to the bedroom door (inaudible).

23 Q Had you had known that information, would that
24 have changed anything about your analysis about where
25 Mr. Honeyestewa could have been within that residence?

1 A To be fair, when I'm saying I'm trying to
2 identify where people were, I can only do that based on
3 trajectories at the time that shots were fired. So I
4 can't answer if just at any point in the scene
5 Mr. Honeyestewa walked into the bedroom, or maybe
6 walked all the way into the kitchen, unless there was a
7 blood deposit or something that would lead me to that.

8 Q Okay. Were you aware that during
9 Mr. Honeyestewa's first interview, he indicated that he
10 had maybe five or six bullets in his firearm when he
11 got to that location?

12 A I believe I heard that, yes.

13 Q And then were you ever made aware that during
14 the second interview, he said he had seven or eight
15 bullets in his firearm when he got to that location?

16 A Again, I do not have a second interview.

17 Q Would you agree with me that based upon the
18 other reports that you relied on to draft your report,
19 that that math doesn't add up?

20 A From what I have seen, there were 12 fired
21 cartridge cases in this weapon, which means the
22 magazine was loaded to capacity, as well.

23 MR. INGRAM: That's all I have. Thank you.

24 THE COURT: Redirect?

25 MR. WOODBURY: We have none.

1 THE COURT: Are there any jury questions for
2 this witness?

3 Show it to the attorneys, please.

4 Counsel, if you have no objections, say so. If
5 you have an objection, we'll have a hearing outside the
6 presence of the jury.

7 MR. INGRAM: No objection.

8 MR. WOODBURY: No objection.

9 THE COURT: Could the trajectory change with
10 respect to Defendant's Exhibit D and Defendant's
11 Exhibit F if a person went from a kneeling position to
12 laying on the ground? Would it lie in the degree of
13 error presented?

14 THE WITNESS: I believe, yes. I believe
15 someone in either a kneeling position or even sitting
16 upright, those angles with the degree of error are
17 easier to obtain without a significant (inaudible).

18 THE COURT: Mr. Woodbury, any follow-up on
19 that?

20 MR. WOODBURY: No.

21 THE COURT: Mr. Ingram?
22
23
24
25

1 THE COURT: All right.

2 (Admonition given to jury.)

3 THE COURT: We will resume at 1:30. We're in
4 recess until then.

5 (Recess.)

6 THE COURT: You may be seated.

7 The defendant and counsel are present. We're
8 outside the presence of the jury.

9 Mr. Ingram, you have an issue?

10 MR. INGRAM: Not a very big one, Judge.

11 THE COURT: Good.

12 MR. INGRAM: We are prepared to call Nicole
13 Rapino (phonetic) as our next witness. Mr. Woodbury
14 pointed out to me on the break that she didn't make the
15 witness list, so I figure the jury wasn't informed
16 about her, potentially somebody knows her. It would
17 just cause all sorts of issues. So we chose to release
18 her as a witness and will not be calling her. I was
19 informed that Gary would have objected, for the record.

20 THE COURT: What was she supposed to testify
21 about?

22 MR. INGRAM: Pretty benign fingerprints. It
23 really has not a lot to do with -- it doesn't add a lot
24 to the State's case.

25 THE COURT: Okay. So who do we have this

1 afternoon? Steve Shinmei?

2 MR. INGRAM: That's it.

3 THE COURT: That's it. And then if we get done
4 with him, are you gonna bring Nick Stake back, or are
5 you calling it a day?

6 MR. INGRAM: I prefer to call it a day, Judge,
7 only because I already told Nick Stake that we were not
8 going to get to him today.

9 THE COURT: Okay.

10 MR. INGRAM: But if you would like to press on,
11 I would be happy to call him.

12 THE COURT: No. That's fine with me. It's
13 kind of a long week.

14 MR. INGRAM: Okay.

15 THE COURT: Okay. Thanks.

16 (Recess.)

17 THE COURT: The record will reflect the
18 presence of the defendant and counsel.

19 Counsel, will you stipulate to the presence of
20 the jury?

21 MR. INGRAM: Yes, Your Honor.

22 MR. WOODBURY: So stipulated.

23 THE COURT: Your next witness, Mr. Ingram?

24 MR. INGRAM: Steve Shinmei, please.

25 (Witness sworn.)

1 THE COURT: Please remove your mask.
2 Will you please state and spell your name.
3 THE WITNESS: Steve Shinmei. S-h-i-n-m-e-i.
4 THE COURT: S-h-i- -- say that -- I'm sorry.
5 THE WITNESS: S-h-i-n, as in "Nancy," "M," as
6 in "Mary," e-i.
7 THE COURT: Thank you.
8 Go ahead, Mr. Ingram.
9 MR. INGRAM: Thank you, Your Honor.

10
11 STEVE SHINMEI,
12 the witness herein, being first duly sworn, testified as
13 follows:
14

15 DIRECT EXAMINATION

16 BY MR. INGRAM:

17 Q Mr. Shinmei, where do you work?

18 A I work at the Washoe County Sheriff's Office in
19 the forensic science division.

20 Q Do you have any specific assignments in that?

21 A Yes. I am in the firearm tool mark section.

22 Q Tell us what that is, please.

23 A The firearm tool mark section, basically, is we
24 examine firearm components, basically, and determine if
25 they were fired from a specific firearm.

1 Q And specifically, what firearm components?

2 A Specifically, we're talking about fired bullets
3 and fired cartridge cases.

4 Q And do you do anything in regards to trajectory
5 analysis?

6 A Yes. We also do trajectory analysis, as well.

7 Q And what is that?

8 A It's describing bullet defects and bullet
9 paths, and putting numbers to those.

10 Q Numbers, like degrees?

11 A Yes.

12 Q And can you please tell us your education and
13 background?

14 A Yes. I have a bachelor's degree in
15 physiological science from UCLA. I also -- the actual
16 training program for firearm and tool mark examination
17 at the Washoe County Sheriff's Office is a two-year
18 program. It includes training within the sheriff's
19 office, as well as outside the sheriff's office.

20 My particular training, I attended the National
21 Firearms Examiners Academy, which is a year long
22 training program put on by the ATF that included four
23 months of training at ATF's national laboratory in
24 Maryland.

25 After I completed the Academy, I returned to

1 the sheriff's office and did another year of exercising
2 with my trainer.

3 Q And how long have you been doing your job?

4 A I've been there a total of ten years, with the
5 first two years being trained.

6 MR. INGRAM: Judge, I would like to ask that
7 Mr. Shinmei be allowed to testify in the area of
8 firearm examination and trajectory analysis, and be
9 allowed to be given -- excuse me, allow him to give his
10 opinion in that area.

11 THE COURT: Any objection, Mr. Woodbury?

12 MR. WOODBURY: We have no objection.

13 THE COURT: The witness may testify.

14 Q BY MR. INGRAM: Did there come an occasion,
15 sir, when you responded to a residence on Wrangler
16 Circle here in Elko?

17 A Yes.

18 Q Was that about the 8th of July, 2018?

19 A Yes, it was.

20 Q Who did you go to that scene with?

21 A I was there with Shaun Braley, a criminalist in
22 our section, as well as, I believe Madison Dalquist was
23 there as well, and Renee Armstrong.

24 Q And what was Shaun Braley's job?

25 A Shaun Braley's job, he works in our forensic

1 investigation section, and his job was to photograph
2 the scene and also collect evidence.

3 Q So was your duty to collect any evidence?

4 A No.

5 Q And did you repair -- excuse me -- prepare a
6 report in connection with your trajectory analysis of
7 that location?

8 A Yes, I did.

9 Q I'm gonna show you what's been marked already
10 as State's 301.

11 Would you please take a look at that, sir?

12 A Yes. This is the report I prepared for this
13 particular case.

14 MR. INGRAM: Judge, I would like to move to
15 admit that report and ask he be allowed to use it in
16 his testimony.

17 THE COURT: Any objection, Mr. Woodbury?

18 MR. WOODBURY: We have no objection.

19 THE COURT: Exhibit 301 is admitted.

20 (Exhibit 301 admitted.)

21 Q BY MR. INGRAM: Can you please generally tell
22 us, sir, what you did at that residence as far as
23 trajectory analysis?

24 A I examined each of the bullet defects as they
25 were described by Criminalist Braley. I also looked

1 for additional bullet defects. I located where those
2 defects were in the residence, as well as tried to put
3 numbers, like I said, to the trajectory paths for each
4 of those defects.

5 Q And how did you label the defects?

6 A I labeled the defects from A through R. Or,
7 actually, I believe, Criminalist Braley labeled most of
8 them, so I just used his -- I may have used the same
9 letters that he had.

10 Q Okay. And did you attempt to locate all of the
11 defects that you could visibly see?

12 A Yes.

13 Q And that was your goal, correct?

14 A Yes.

15 Q All right. And as far as trajectory goes,
16 please tell us how you actually determined trajectory
17 as to those defects, the ones that you could, at least?

18 A Generally, we will try to insert a trajectory
19 rod into a hole. And from that rod, we will ascertain
20 both horizontal and vertical angle measurements.

21 Q And let's start with defect A.

22 Roughly, where was that in the house, sir?

23 A That was in the front door.

24 Q Okay. And what can you tell us about the
25 trajectory of that defect?

1 A The trajectory of the defect has a horizontal
2 angle of 18 degrees. And what I'm using as a reference
3 to that, I believe, was the south wall in the living
4 room. And it also had a vertical angle of minus 27
5 degrees.

6 Q May I see your report, sir?

7 A (Witness complied.)

8 Q Showing you page 4 of 5 of Exhibit 301, can you
9 please tell the jury what that is?

10 A This is a drawing by Shaun Braley, Criminalist
11 Braley, where I have superimposed the -- my findings
12 for trajectories for the defects.

13 Q And, sir, is that there, the letter A that
14 you're referring to?

15 A Yes.

16 Q And is it -- is it your testimony that that
17 bullet was generally traveling from the living room
18 towards the front door?

19 A Yes.

20 Q And generally, is that direction going down or
21 up?

22 A That had a downward trajectory.

23 Q Okay. And defect B, as in "boy," does that
24 appear to be B2?

25 A Yes.

1 Q Okay. And I'll hand you back your -- and what
2 can you tell us about the trajectory of that defect?

3 A That defect was in the west wall of the living
4 room, or the wall between the living room and the
5 kitchen. It had a horizontal angle of 83 degrees and a
6 vertical angle of positive 23 degrees.

7 Q So if you walk into the front door, is that
8 bullet going up or down?

9 A That bullet is going in an upward trajectory.

10 Q Okay. And generally, is that bullet, if you're
11 walking in the front door, is it going from -- to the
12 left or to the right?

13 A 90 degrees would be directly perpendicular to
14 that wall. I did all of my measurements from right to
15 left. So a number less than 90 degrees would be coming
16 in from the right, and a number greater than 90 degrees
17 would be coming from the left. Therefore, this being
18 83 degrees, it would be slightly off center, but from
19 the right.

20 Q Okay. And this is the same diagram from
21 Exhibit 304, correct?

22 A Correct.

23 Q And again, this is B?

24 A Yes.

25 Q And just generally, sir, that bullet would be

1 traveling, or that projectile would be traveling
2 from -- towards the bottom, where the "B" is, upwards,
3 correct?

4 A The arrows don't just -- are just there for
5 direction. I'm not trying to say the originality of
6 where the end of the arrow is. So don't take that as
7 where I believe that bullet path began from. It's just
8 showing direction. But, yes, in that general
9 direction.

10 Q Okay. Thank you.

11 Defect C. What can you tell us about defect C?

12 A Defect C was also in the living room wall, but
13 there was no specific secondary impact point.
14 Basically, what that means is, I could not get a
15 trajectory rod into that to measure.

16 I did, therefore, just make a general
17 description of it traveling from the east to the west,
18 or traveling towards that wall.

19 Q And because we've had so many directions thrown
20 out here, we have a key here. And that's pointing
21 north, correct?

22 A Yes.

23 Q So would you agree with me that where I just
24 wrote that in is north?

25 A Yes.

1 Q Okay. And then would you agree that this would
2 be east?

3 A Yes.

4 Q I just drew an "E."

5 And would you agree, then, that this is south?

6 A Yes.

7 Q And then this would be west, right?

8 A Yes.

9 Q Okay. Defect D, what can you tell us about
10 that one?

11 A Defect D was also in the living room wall, the
12 wall between the living room and the kitchen. And
13 (inaudible), please, the horizontal angle was 85
14 degrees. So, again, almost perpendicular to that wall.
15 And with a vertical angle of 23 degrees.

16 Q Okay. So is that bullet, as you stand in the
17 front door, that projectile, excuse me, as you're
18 standing in the front door, is that bullet traveling in
19 an upward angle or downward angle?

20 A It's traveling upwards.

21 Q Defect E, what can you tell us about that?

22 A Defect E was in the mirror that was hanging on
23 the wall. This was another defect that I could not put
24 a trajectory rod through. Therefore, I could not
25 determine accurate horizontal and vertical angle.

1 And again, I gave it a general direction of
2 traveling from east to west.

3 Q And was the reason why you didn't include it on
4 this diagram that you're seeing right now, because you
5 weren't able to actually get a trajectory on it?

6 A I could have. I could have put a dot somewhere
7 on the wall where approximately it was. I (inaudible)
8 particular diagram.

9 Q Okay. What can you tell us about defect F?

10 A Defect F actually perforated that mirror, which
11 means it actually went through the mirror, but also
12 went through the living room wall and went into the
13 kitchen. It had a horizontal angle of 113 degrees and
14 a vertical angle of 24 degrees.

15 Q So as you're standing there in the front door,
16 is that bullet path traveling upwards or downwards?

17 A It is traveling upwards.

18 Q It is -- if you're facing the front door
19 towards that -- excuse me, looking from the front door
20 towards that wall by the stove, is it traveling to the
21 left or to the right?

22 A It is coming to that wall from the left.

23 Q Thank you.

24 Defect G, what can you tell us about that?

25 A Defect G perforated the mirror, or went through

1 the mirror, as well as the living room wall, the wall
2 between the living room and the kitchen. It went
3 through cabinets in the kitchen above the kitchen
4 counter. And then it struck the ceiling at another
5 defect that was described as defect I.

6 It had a horizontal angle of 118 degrees, and a
7 vertical angle of 26 degrees.

8 Q So if you're facing the mirror, is the bullet
9 going up or down?

10 A It is going up.

11 Q Left or right?

12 A It is coming towards the wall from the left.

13 Q Defect H, please.

14 A Defect H was a bullet that struck the living
15 room wall. Again, I could not insert a trajectory rod
16 in this, therefore I just gave it a general direction
17 of traveling from east to the west.

18 Q Defect I?

19 A Defect I, as I mentioned, was a continuation of
20 defect G, and it is in the ceiling in the kitchen.

21 Q Defect J?

22 A Defect J was in the -- above the dining area.
23 This penetrated and went up into the ceiling. I did
24 not see if it actually went totally through or outside
25 the roof. I got a trajectory rod in there as far as I

1 could.

2 It has a horizontal angle of 140 degrees and a
3 vertical angle of 15 degrees.

4 Q Okay. Now, I'm assuming if you're standing at
5 the door, that's an upward trajectory course?

6 A Yes.

7 Q Defect K, please.

8 A Defect K, we're moving over to the doorjamb of
9 the -- or the doorway of the master bedroom. And it is
10 a bullet grazing to that doorjamb. It has a horizontal
11 angle of 88 degrees with respect to the north wall of
12 the master bedroom. So it's actually a different wall
13 than I'm talking about, and has a vertical angle of
14 minus 7 degrees.

15 Q So if you're standing in the living room facing
16 into the bedroom, is that bullet going down or up?

17 A That bullet is going downwards.

18 Q Defect L?

19 A Defect L was a bullet that went through the
20 door of the master bedroom. And then it went through a
21 west wall, kind of next to a closet area, and then into
22 that closet.

23 It has a horizontal bullet path of 59 degrees.
24 I used the west wall of the bedroom as the reference.
25 And it has a vertical angle of 20 degrees.

1 Q Again, if you're in the living room facing into
2 the bathroom, is the direction of travel towards the
3 bedroom?

4 A Yes.

5 Q And is the direction of travel to the right,
6 from left to right?

7 A It's coming in from the right.

8 Q Excuse me. Thank you.

9 Defect M?

10 A Defect M was another defect that -- or bullet
11 path that went through the living room -- or the door
12 to the master bedroom, struck the wall next to the
13 closet, and then went into the closet, as well. It had
14 a horizontal angle of 116 degrees, and a vertical angle
15 of minus 14 degrees.

16 Q And is that one generally traveling from the
17 southeast to the northwest?

18 A Yes.

19 Q Excuse me.

20 Defect N, please.

21 A Defect N is to the south wall of the master
22 bedroom. It has a horizontal angle of 70 degrees and a
23 vertical angle of minus 3 degrees.

24 Q Again, if you're looking into the master
25 bedroom from the living room, is that bullet going up,

1 or down, or straight?

2 A It's going slightly downwards.

3 Q Defect O?

4 A Defect O was two irregular shaped defects on
5 the south wall, sort of adjacent to where defect M was.
6 I didn't think these were actually from a fired
7 projectile.

8 Q Defect P as in "Paul"?

9 A Defect P was to the corner of a fireplace
10 that's on that south wall in the living room. It has a
11 horizontal angle of 133 degrees, and a vertical angle
12 of minus 32 degrees.

13 Q So if you're at the front door looking towards
14 that fireplace, is that bullet going up or down?

15 A It is going down.

16 Q And again, from that same position, is it
17 traveling from left to right, or right to left?

18 A If you're facing that fireplace, it's coming in
19 from the left.

20 Q Thank you.

21 Defect Q?

22 A Defect Q was a defect to the floor towards the
23 front door of the residence. It has a horizontal angle
24 of 78 degrees -- or 79 degrees, excuse me, and a
25 vertical angle of minus 48 degrees.

1 Q If you're standing near the bedroom door there
2 by P and looking towards the front door of the
3 residence, is that projectile traveling up or down?

4 A It's traveling down.

5 Q And finally, defect R?

6 A Defect R is very similar to defect A. It's a
7 bullet path that went through the front door, and then
8 struck the east wall of the living room, sort of behind
9 the front door as it was fully open. It has a
10 horizontal measurement of 16 degrees, and a vertical
11 angle of minus 22 degrees.

12 Q I'm gonna show you a series of photographs that
13 I've previously shown Mr. Woodbury.

14 Exhibit 105, what are we looking at there, sir?

15 A This is the bullet that struck the ceiling
16 above the dining room area.

17 Q And does that depict the trajectory rod?

18 A Yes.

19 Q Fair and accurate picture?

20 A Yes.

21 MR. INGRAM: Move for the admission of 105.

22 THE COURT: Any objection?

23 MR. WOODBURY: We have no objection.

24 THE COURT: Exhibit 105 admitted.

25 (Exhibit 105 admitted.)

1 Q BY MR. INGRAM: Showing you 104, what is that,
2 sir?

3 A These are the two bullet defects to the front
4 door, and the one to the floor near the front door.

5 Q Okay. And are there three trajectory rods
6 there?

7 A Yes.

8 Q And what defects are those rods associated
9 with?

10 A The two in the door are A and R. And I believe
11 the one on the floor is Q.

12 Q Fair and accurate pictures?

13 A Yes.

14 MR. INGRAM: Move for the admission of 104.

15 THE COURT: Any objection?

16 MR. WOODBURY: We have no objection.

17 THE COURT: Exhibit 104 is admitted.

18 (Exhibit 104 admitted.)

19 Q BY MR. INGRAM: Showing you 106, what is that?

20 A I believe this is the one to the master
21 bedroom.

22 Q Is this the one that you associated to be
23 caused by a projectile, or the other one?

24 A No, this is the one with projectile.

25 Q Fair and accurate picture?

1 A Yes.

2 MR. INGRAM: Move for the admission of 106.

3 THE COURT: Any objection?

4 MR. WOODBURY: We have no objection.

5 THE COURT: Exhibit 106 is admitted.

6 (Exhibit 106 admitted.)

7 Q BY MR. INGRAM: Showing you 107, is that a

8 zoomed-out photograph of the same?

9 A Yes.

10 Q Fair and accurate?

11 A Yes.

12 MR. INGRAM: Move for the admission of 107.

13 THE COURT: Any objection?

14 MR. WOODBURY: We have no objection.

15 THE COURT: Exhibit 107 is admitted.

16 (Exhibit 107 admitted.)

17 Q BY MR. INGRAM: 108, what is that?

18 A This, I believe, is defect M that goes through

19 the door from the master bedroom and into the closet.

20 Q Okay. I'm showing you a diagram --

21 A Excuse me. Excuse me. That was L. That one

22 was L.

23 Q Okay. You saved me.

24 So is that a fair and accurate picture?

25 A Yes.

1 MR. INGRAM: Move for its admission, please.

2 THE COURT: Any objection?

3 MR. WOODBURY: No objection.

4 THE COURT: Exhibit 108 is admitted.

5 (Exhibit 108 admitted.)

6 Q BY MR. INGRAM: Exhibit 109, what is that?

7 A I believe this is the end point of that same
8 bullet path. It's either L or M. I'm not quite sure
9 which one this one is. I believe it's L.

10 Q Okay. Let's just be sure.

11 Showing you again 110, which you identified as
12 L, does that help you at all?

13 A Yes, I believe this is the termination of the
14 bullet path of L.

15 Q Fair and accurate?

16 A Yes.

17 MR. INGRAM: Move for the admission of 109.

18 THE COURT: Any objection?

19 MR. WOODBURY: We have no objection.

20 THE COURT: 109 is admitted.

21 (Exhibit 109 admitted.)

22 Q BY MR. INGRAM: 111, what is that?

23 A I believe this is the bullet path to L. I
24 believe we're still on L.

25 Q Well, I'll let you tell me, just so I don't

1 tell you how to testify.

2 You can look at the picture, itself.

3 A Yes.

4 Q I'll show you. That's probably easier.

5 I'm showing you 111.

6 A Yes, I believe this is bullet path L.

7 Q And just so we're clear, that -- that door is
8 in its open position, is it not?

9 A Yes, it is.

10 Q And how did you determine that the door was
11 open in order to stick that trajectory rod through it?
12 What tells you that?

13 A There's a perforation in the door, itself, as
14 well as the wall behind it. And for the trajectory rod
15 to align with both of those, the door has to be in the
16 fully open position.

17 MR. INGRAM: Move for the admission of 111.

18 THE COURT: Any objection?

19 MR. WOODBURY: No.

20 THE COURT: 111 is admitted.

21 (Exhibit 111 admitted.)

22 Q BY MR. INGRAM: Showing you 112. What is 112?

23 A This is bullet path K on the doorjamb of the
24 master bedroom.

25 Q Fair and accurate picture?

1 A Yes.

2 MR. INGRAM: Move for the admission of 112.

3 THE COURT: Any objection?

4 MR. WOODBURY: No objection.

5 THE COURT: 112 is admitted.

6 (Exhibit 112 admitted.)

7 Q BY MR. INGRAM: Showing you 115, what is that a
8 picture of?

9 A This shows several bullet paths to the wall of
10 the living room, as well as to the fireplace.

11 Q Fair and accurate picture?

12 A Yes.

13 MR. INGRAM: Move for the admission of 115.

14 THE COURT: Any objection?

15 MR. WOODBURY: We have no objection.

16 THE COURT: 115 is admitted.

17 (Exhibit 115 admitted.)

18 Q BY MR. INGRAM: Showing you 118, what is that?

19 A Again, these are the bullet paths that went
20 through the mirror in the living room.

21 Q Fair and accurate?

22 A Yes.

23 MR. INGRAM: Exhibit 118.

24 THE COURT: Any objection?

25 MR. WOODBURY: No.

1 THE COURT: 118 is admitted.

2 (Exhibit 118 admitted.)

3 Q BY MR. INGRAM: 119, what is that?

4 A These are the two bullet paths that went
5 through the wall of the living room.

6 Q Fair and accurate?

7 A Yes.

8 MR. INGRAM: Exhibit 119.

9 THE COURT: Any objection?

10 MR. WOODBURY: No.

11 THE COURT: 119 is admitted.

12 (Exhibit 119 admitted.)

13 Q BY MR. INGRAM: Showing you 123, what is that?

14 A This is bullet path P to the fireplace.

15 Q Fair and accurate?

16 A Yes.

17 MR. INGRAM: 123, please.

18 THE COURT: Any objection?

19 MR. WOODBURY: No objection.

20 THE COURT: 123 is admitted.

21 (Exhibit 123 admitted.)

22 Q BY MR. INGRAM: 127, what is it?

23 A This is a view from the front door looking into
24 the residence. And you see two bullet paths to the
25 front door, and the one to the floor.

1 Q You're standing outside of that door looking
2 into the house. Are those projectiles coming toward
3 you?

4 A Yes.

5 MR. INGRAM: Move for the admission of 127.

6 THE COURT: Any objection?

7 MR. WOODBURY: No objection.

8 THE COURT: Exhibit 127 is admitted.

9 (Exhibit 127 admitted.)

10 Q BY MR. INGRAM: Sir, are you aware that at the
11 scene there, that a number of bullets were recovered by
12 Shaun Braley?

13 A Yes, I do.

14 Q And are you able to tell us what bullet caused
15 what defect?

16 A No, I'm not.

17 Q And why is that?

18 A Generally, I don't associate a particular
19 bullet with a particular defect. It's very difficult
20 to do that.

21 Q What about if a particular -- what if a bullet
22 is found within a defect?

23 A If it's within the defect, and it's within that
24 bullet path, then, yes, we can associate it with that
25 bullet path.

1 Q And is it your understanding that the bullets
2 that Mr. Braley collected were not actually removed
3 from a particular defect?

4 A Yes.

5 Q Okay. All right. I'm gonna show you Exhibit
6 No. 300.

7 Can you please take a look at that, and let me
8 know what that is.

9 A Yes. This is a report I generated from the
10 firearm examination portion of this -- of the first
11 firearm examination for this case.

12 MR. INGRAM: Move for the admission of 300,
13 please.

14 THE COURT: Any objection?

15 MR. WOODBURY: No.

16 THE COURT: Exhibit 300 is admitted.

17 (Exhibit 300 admitted.)

18 Q BY MR. INGRAM: Sir, were you provided with
19 some firearms in connection with this case?

20 A Yes, I was.

21 Q And what firearms were those?

22 A I was -- three firearms were submitted. And it
23 was a Springfield -- an Armory XD 40 subcompact pistol.
24 There was a Springfield Armory XD 40 pistol, and a
25 Taurus 9 millimeter pistol.

1 MR. INGRAM: Okay. Ms. Clerk, may I have the
2 three firearms, please? Thank you.

3 Q BY MR. INGRAM: I'm gonna show you Exhibit 312.
4 Do you recognize that, sir?

5 A Yes, I do.

6 Q What do you recognize that as?

7 A That's one of the firearms, or the box that
8 contains a firearm that I examined for this case.

9 Q Opening 312, what firearm is that, sir?

10 A That is the Taurus 9 millimeter firearm.

11 Q Is that the one you examined in connection with
12 this case?

13 A Yes.

14 Q Okay. Showing you 311, do you recognize this?

15 A Yes, I do.

16 Q What do you recognize that to be?

17 A This is the box that contains one of the
18 firearms that I examined for this case.

19 Q Okay. Opening it up. What is that?

20 A It's the Taurus XD -- I believe this is the
21 full size.

22 Q You said Taurus?

23 A Excuse me, the Springfield Armory XD pistol.

24 Q Full size?

25 A I believe so, yes.

1 Q I'm showing you 310. Do you know what that is?

2 A Yes. This is one of the boxes containing a
3 firearm that I examined for this case.

4 Q Opening it up.

5 A Springfield Armory XD 40 subcompact pistol that
6 I examined for this case.

7 Q So now that you know that one is the
8 subcompact, can you be sure what Exhibit 311 is?

9 A Yes. That is the XD pistol that I examined for
10 this case.

11 Q What do you do first when examining firearms?

12 A Generally, I will take the demographic
13 information out of it; its make, its model, and serial
14 number. And I will proceed with looking at the safety
15 functions of it and make sure it's going to be safe to
16 test fire.

17 Q And were all three of those firearms safe to
18 test fire?

19 A Yes, they were.

20 Q Were they all functioning properly?

21 A Yes, they were.

22 Q And did you test fire all three of those?

23 A Yes.

24 Q And what is the purpose of that?

25 A It's to generate exemplar or reference samples

1 so I can bear evidence to it. So therefore, I created
2 test fire cartridge cases and test fired bullets.

3 Q And did you do that for all three?

4 A Yes.

5 Q Okay. I'm gonna direct your attention to your
6 report there, the first page.

7 Items 5.1 through 5.12, what are those?

8 A Those are fired 40 caliber cartridge cases.

9 Q And are each of those associated with a placard
10 number?

11 A Yes, they are.

12 Q And were you able to determine what firearm
13 fired those cartridges?

14 A Yes, I did.

15 Q Can you please tell us how you do that?

16 A The very first thing I do is after I test fire
17 the firearm, I will take two of the test fired
18 cartridge cases and put them on what's called a
19 comparison microscope. A comparison microscope is
20 basically two microscopes connected together. And when
21 I look through the eye pieces, half of the image is of
22 one cartridge case, and half of the image is another.
23 I can move those around, align them, to see if they're
24 fired from the same firearm.

25 What I'm looking for when I'm doing my test

1 comparison is are there marks that are reproducing on
2 those that I can use to identify evidence cartridge
3 cases to. Once I'm satisfied with that, I'll remove
4 one of the test cartridge cases and put one of the
5 evidence cartridge cases on the microscope and do the
6 same comparison.

7 And in this case, I found that for those
8 cartridge cases, they all identified to the Springfield
9 Armory XD pistol.

10 Q Is that the full size?

11 A Yes. That would be item 7.1.

12 Q Okay. And direct your attention to items 5.13
13 through 5.24. Did you engage in the same process that
14 you just described?

15 A Yes, I did.

16 Q And were you able to identify those fired
17 cartridges to a particular firearm?

18 A Yes, I was.

19 Q What firearm?

20 A All of those 12 cartridge cases identified to
21 the Springfield Armory XD 40 subcompact pistol.

22 Q Item 5.25, what is that?

23 A Item 5.25 was a fired 9 millimeter cartridge
24 case.

25 Q And were you able to conduct the same process

1 that you just described for us for that fired
2 cartridge?

3 A Yes.

4 Q And what did you find?

5 A That particular fired cartridge case identified
6 to the Taurus PT 111 pistol.

7 Q Just generally, what is a bullet? How do you
8 define a bullet versus a bullet fragment?

9 A A bullet would be more intact, where a bullet
10 fragment may be a part of the fired bullet.

11 Q What is a jacket?

12 A A jacket would be just the outside portion of
13 it. When we're talking about a jacket bullet, a jacket
14 bullet would therefore have a core and then a separate
15 material jacketing the outside of it.

16 Q Item 6.1, what was that?

17 A Item 6.1 was a fired bullet.

18 Q Were you able to determine what firearm fired
19 that bullet?

20 A Yes, I was.

21 Q What is that?

22 A That was the Springfield Armory XD pistol, item
23 7.1.

24 Q And are all of these items, likewise,
25 associated with the placard number?

1 A Yes, they were.

2 Q What about items 6.2 and 6.3?

3 A Item 6.2 and 6.3 were -- let me -- they were
4 identified to the Springfield Armory XD 40 pistol.

5 Q Okay. 6.4, what is that?

6 A Item 6.4 is a fired bullet core.

7 Q Okay. And what can you tell us about making
8 some conclusion as to what firearm fired a core?

9 A Because the core is actually not in direct
10 contact with the firearm, it does not possess any
11 microscopic marks that I could use to identify to a
12 specific firearm.

13 Q So are you not able to do that in 6.4?

14 A That's correct.

15 Q What about 6.5?

16 A 6.5 is a fired bullet jacket.

17 Q And were you able to identify what firearm
18 fired that one?

19 A Yes. That was fired by the Springfield Armory
20 XD 40 subcompact pistol.

21 Q Okay. And 6.6 and 6.7, what are those?

22 A 6.6 is a fired bullet, and a 6.7 is a fired
23 bullet jacket.

24 Q And what firearm fired those?

25 A They were fired by the Springfield Armory XD 40

1 pistol.

2 Q And 6.8, were you able to come to any
3 conclusions about that one?

4 A No, I was not.

5 Q Why not?

6 A Again, it is just a fired bullet core.

7 Q 6.9, what is that?

8 A 6.9 is a fired bullet.

9 Q And what conclusion did you come to regarding
10 that one?

11 A I identified that fired bullet as having been
12 fired from the Springfield Armory XD 40 subcompact
13 pistol.

14 Q Item 25, what is it?

15 A Item 25 is a 9 millimeter Luger fired cartridge
16 case.

17 Q And were you able to determine if the 9
18 millimeter that you just identified for us in court
19 fired that cartridge?

20 A Yes, I did.

21 Q And?

22 A I identified that fired cartridge case as being
23 fired from the Taurus PT 111 pistol.

24 Q Sir, I'm gonna show you what's been marked and
25 admitted as Exhibit 316.

1 Can you please familiarize yourself with that
2 and let me know when you're done.

3 A Yes.

4 Q And what do you recognize that to be?

5 A This is a fired bullet that I examined for this
6 particular case.

7 Q And do you know where that bullet was recovered
8 from?

9 A It was reported as coming from the left upper
10 quadrant of abdomen of decedent, Bradley Smith.

11 Q And were you able to determine what firearm
12 fired that particular bullet?

13 A Yes, I was.

14 Q And what was that?

15 A That particular bullet I identified to the
16 Springfield Armory XD 40 subcompact pistol.

17 Q I'm showing you 317 and 318.

18 Can you look at those and familiarize yourself?

19 A Yes.

20 Q And what are those, sir?

21 A These are fired bullets that I examined for
22 this particular case.

23 Q And are you aware of where they were recovered
24 from?

25 A One was reported from the right lower back of

1 subject Alan Honeyestewa. And the other was reported
2 from the left shoulder of subject Alan Honeyestewa.

3 Q And were you able to make a determination as to
4 which firearm fired those bullets?

5 A Yes, I was.

6 Q And what was that?

7 A I identified both of those bullets as having
8 been fired from the Springfield Armory XD 40 pistol.

9 Q So, sir, can I see your report that you're
10 testifying from?

11 A Yes.

12 Q Thank you.

13 That's Exhibit 300. Based on the analysis in
14 your report in Exhibit 300, how many total cartridges
15 did you examine?

16 A Fired cartridge cases, I examined 26.

17 Q And how many bullet -- bullet fragment and
18 bullet core jackets did you examine?

19 A I believe it was 12 total.

20 Q Did there come a point in time when you were
21 provided additional evidence in this case to analyze?

22 A Yes, I was.

23 Q Did you prepare a report in connection with
24 that?

25 A Yes, I did.

1 Q Okay. I'm gonna show you what's been marked as
2 State's Exhibit 305.

3 What is that, sir?

4 A This is the second report for fired
5 identification for this particular case.

6 MR. INGRAM: We move for the admission of 305,
7 please.

8 THE COURT: Any objection?

9 MR. WOODBURY: We have no objection.

10 THE COURT: Exhibit 305 is admitted.

11 (Exhibit 305 admitted.)

12 Q BY MR. INGRAM: During this analysis, were you
13 asked to analyze any additional cartridges?

14 A Fired cartridge cases?

15 Q Yes.

16 A No, I was not.

17 Q Okay. What were you asked to analyze?

18 A I was asked to analyze fired bullets and bullet
19 fragments.

20 Q And are those bullets and bullet fragments
21 associated with placards?

22 A Yes, they were.

23 Q And did you, in fact, analyze all of those?

24 A Yes, I did.

25 Q How many in total, just in this round?

1 A I believe it was 12.

2 Q Okay. And how many out of those 12 were you
3 able to identify as being fired from the Springfield XD
4 full size?

5 A Five fired bullets -- yeah, five fired bullets
6 were identified as having been fired from the
7 Springfield Armory XD 40 pistol.

8 Q Okay. And in this round of analysis, how many
9 of those bullets or fragments were you able to identify
10 as being fired from the subcompact?

11 A Five fired bullets, also from the subcompact.

12 Q Were there any that you were not able to come
13 to a conclusion about?

14 A Yes, there were two.

15 Q And why weren't you able to do that?

16 A One of them, item 43, was a small bullet
17 fragment that didn't have any microscopic evidence on
18 it.

19 And the other, due to its damage, I couldn't
20 conclusively determine if it was fired from one of the
21 pistols.

22 Q Okay. Did you examine a panel of wood in
23 connection with this case?

24 A Yes, I did.

25 Q I'm gonna show you Exhibit 340.

1 Do you recognize that, sir?

2 A Yes, I do.

3 Q What do you recognize that to be?

4 A This is a panel that I examined for this
5 particular case.

6 Q How did you go about examining that?

7 A What I was asked to do is if I could determine
8 what caliber of bullet that actual defect was. I asked
9 for an additional piece of wood so I could do some test
10 fires. I believe that's what you have there.

11 I used a 40 caliber bullet, as well as 9
12 millimeter, fired several shots at this test panel, and
13 did a visual comparison against the evidence panel.

14 Q I'm showing you Exhibit 341.

15 Do you recognize this, sir?

16 A Yes, I do.

17 Q Will you please describe that for the jury?

18 A That was the panel that I was supplied with,
19 and I fired test shots into those to compare with the
20 evidence.

21 Q And there's two rows here, is there not?

22 A Yes, there are.

23 Q And what caliber is the bottom row?

24 A The bottom row is a 40 Smith & Wesson.

25 Q What caliber is the top row?

1 A The top row is 9 millimeter.

2 Q And based on your analysis, were you able to
3 determine the caliber of bullet which was -- or the
4 projectile through 340 here?

5 A No, I was not.

6 Q Can you please tell us about that?

7 A I did a visual examination, but the difference
8 between a 9 millimeter and a 40 Smith & Wesson is very,
9 very close. They're only about one millimeter
10 difference in their diameter. Therefore, I could not
11 conclusively say that hole in the evidence panel was
12 from a 9 millimeter or from a 40.

13 MR. INGRAM: Move for the admission of 341,
14 please.

15 THE COURT: Any objection?

16 MR. WOODBURY: No objection.

17 THE COURT: Exhibit 341 is admitted.

18 (Exhibit 341 admitted.)

19 Q BY MR. INGRAM: What happens to the slide, so
20 the top part of a handgun, when it's fired, if there
21 are no more bullets in it?

22 A The slide will reciprocate back and forth until
23 it is empty.

24 Q And if it's empty, what happens to the slide
25 then?

1 A Generally, if the magazine will hold the slide
2 lock back, the slide lock will open.

3 Q Did you find, sir, that there was a color, a
4 certain color of the fired cartridges associated with
5 the full size XD?

6 A Yes, I did.

7 Q And what color was that?

8 A The full size XD, I believe, were the silver --
9 let me check that. I believe it's in the other report.

10 Q Okay. What report do you have there, sir?

11 A The second round of fire identification.

12 Q I'm going to show you Exhibit 300.

13 Let me know when you're done refreshing your
14 memory there.

15 A Okay.

16 Q Did that refresh your memory?

17 A Yes.

18 Q And what color of casing, fired casing, were
19 associated with the full size?

20 A They were the silver-colored casings.

21 Q And what about the subcompact?

22 A The subcompact were the yellow-colored casings.

23 Q Thank you.

24 Sir, I'm showing you what's been previously
25 admitted as Exhibit 315.

1 Can you please take a look at the items in 315,
2 and let me know what those are. What are those, sir?

3 A Fired bullets and fired bullet fragments.

4 Q Are those the ones that you analyzed and you
5 testified to, about, today?

6 A Yes.

7 Q I'm gonna ask the same question about each of
8 these exhibits that I'm handing you.

9 Exhibit 329, is that one that you analyzed and
10 testified to, about, today?

11 A Yes.

12 Q Exhibit 330, same question -- questions.

13 A Yes.

14 Q Exhibit 332, same questions.

15 A Yes.

16 Q Exhibit 333, same questions.

17 A Yes.

18 Q Exhibit 335, same.

19 A Yes.

20 Q 336, same.

21 A Yes.

22 Q 337, same.

23 A Yes.

24 Q 338, same.

25 A Yes.

1 Q 339, same.

2 A Yes.

3 Q In general, sir, on a semi-automatic gun,
4 firearm, similar to the ones that you testified to,
5 about, today, what direction are the bullets ejected
6 from?

7 A Well, first, these are semi-automatic firearms,
8 not automatic.

9 Q Excuse me.

10 A And generally, they're designed to eject the
11 cartridge to the right and to the rear of the shooter.

12 MR. INGRAM: Judge, I just need one moment to
13 make sure that I'm done.

14 THE COURT: You talked about 110, Mr. Ingram,
15 but I don't have that ever offered and admitted. I
16 don't know if you wanted that in.

17 MR. INGRAM: 110?

18 THE COURT: It's a photo, a trajectory photo.

19 MR. INGRAM: Yeah. I move for its admission,
20 please.

21 THE COURT: Any objection?

22 MR. WOODBURY: None.

23 THE COURT: 110 is admitted.

24 (Exhibit 110 admitted.)

25 MR. INGRAM: Pass the witness.

1 THE COURT: Cross examination?

2 MR. WOODBURY: Thank you, Your Honor.

3

4 CROSS EXAMINATION

5 BY MR. WOODBURY:

6 Q Mr. Shinmei, I take it as part of your
7 examination of the firearms that you made sure that
8 they're, at least the 40 caliber, the regular one and
9 the subcompact, ejected the shells exactly like most of
10 them do, right?

11 A When I test fire them, I'm in sort of a net to
12 catch the cartridge cases. So in that instance, all --
13 about what I did is they ejected from the firearm
14 correctly. As far as seeing where they landed, I did
15 not -- I did not actually examine that.

16 Q But a more truthful version of where they eject
17 is more to the right and slightly to the rear, right?

18 A Yes. If you're shooting directly ahead and
19 level, yes.

20 Q Yeah.

21 So theoretically, a person standing in an open
22 doorway could shoot through and have the bullet eject
23 on the opposite side of the doorway, right? Does that
24 make any sense to you?

25 A It would be -- yes, sir -- how they would be

1 holding the firearm, yes.

2 Q And when you were giving the percentage or the
3 angles of the trajectories that you were able to
4 complete, and when you said that they were 113 degrees
5 horizontal, that -- was that not part of a -- is there
6 an error possibility in there?

7 A Yes. I give a plus or minus five degree range
8 for each of those measurements.

9 Q Okay. And the -- so if it was 113 degrees for
10 item F, it could range, horizontally, it can range from
11 118 to 108?

12 A Yes.

13 Q Yeah.

14 And did you do any calculations as to how -- I
15 assume that the -- well, let me do it this way: By
16 doing a trajectory, you don't know exactly how far a
17 bullet has been fired from, and it doesn't matter, to
18 determine the trajectory, how far it was fired from --

19 A That's correct.

20 Q -- the trajectory is the same, right?

21 A That's correct.

22 Q Okay. And whether you have two bullets -- for
23 example, trajectory D, I think you said it was 85
24 horizontal?

25 A Yes.

1 Q I don't want to lead you down a garden path
2 here --

3 A I don't actually have my trajectory report in
4 front of me.

5 Q All right. As long as I'm not fooling around
6 with you here.

7 All right. So that can be from a trajectory of
8 80 to 90 degrees, given that margin of error?

9 A Yes.

10 Q Yeah.

11 And is there a way to calculate when you have a
12 difference between -- when you have an 85 degree
13 trajectory and 113 degree trajectory, is there any way
14 to calculate how far the bullet has traveled through
15 the trajectory?

16 A Not from what -- the measurements I took, no.

17 Q Okay. So you don't know how far the gun would
18 have to move, a single gun would have to move, to give
19 a trajectory of 113, plus or minus 5, versus -- versus
20 85, plus or minus?

21 It would be difficult for you to say how far
22 the gun would have to travel to achieve those, without
23 knowing the distance that the bullet was fired from?

24 A That's correct.

25 MR. WOODBURY: Yeah.

1 Okay. I don't think I have any further
2 questions.

3 THE COURT: Pardon me? Are you done?

4 MR. WOODBURY: Yes.

5 THE COURT: Redirect?

6

7 REDIRECT EXAMINATION

8 BY MR. INGRAM:

9 Q Did you ever analyze any bullets, or bullet
10 fragments, or jackets that were associated with a 9
11 millimeter?

12 A No, I did not.

13 MR. INGRAM: That's all I have, Judge.
14 Thank you.

15 THE COURT: Recross?

16 MR. WOODBURY: Nothing.

17 THE COURT: Are there any jury questions for
18 this witness?

19 Do either of you need this witness retained?

20 MR. INGRAM: No, Your Honor.

21 MR. WOODBURY: We do not.

22 THE COURT: Thank you, sir. You're excused
23 from further attendance at this trial. Please do not
24 discuss your testimony with anyone other than the
25 attorneys.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: I'm going to let you go early
3 today. We'll start up again at nine o'clock Tuesday
4 morning.

5 (Admonition given to jury.)

6 THE COURT: We're in recess until nine o'clock
7 Tuesday morning.

8 (Evening recess.)

9 --ooOoo--

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1 CASE NO. CR-FP-18-5961

2 DEPT. NO. 1

3

4 THE FOURTH JUDICIAL DISTRICT COURT THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF ELKO

6 BEFORE THE HONORABLE NANCY PORTER

7 DISTRICT JUDGE, PRESIDING

8

9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 v.

12 ALAN JOSEPH EDWARD HONEYESTEWA,

13 DEFENDANT.

14 ----- /

15

16 TRANSCRIPT OF RECORDED PROCEEDING

17 JURY TRIAL

18 October 20, 2020

19 ELKO, NEVADA

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22

23

24 VOLUME 8

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1 TRANSCRIPT OF RECORDED PROCEEDING

2
3 THE COURT: The record will reflect the
4 presence of the defendant and counsel.

5 Counsel, will you stipulate to the presence of
6 the jury?

7 MR. INGRAM: Yes, Your Honor.

8 MR. WOODBURY: So stipulated.

9 THE COURT: We had a rapid test this morning to
10 determine if a possible witness had COVID. He does
11 not, so we are able to go ahead.

12 If you are watching by Zoom and you are a
13 witness in this case, you will be in violation of the
14 Court's order that you not watch, unless the Court has
15 specifically given you permission to watch.

16 You cannot record this hearing or rebroadcast
17 it in any fashion on the internet. If you are watching
18 the proceedings by Zoom, the Court is keeping a record
19 of the login information that will be filed in the
20 case.

21 We are on -- about to start Mr. Woodbury's
22 cross examination, or recross? You're on recross.

23 MR. WOODBURY: It's cross, Your Honor.

24 THE COURT: Cross. All right. Go ahead,
25 Mr. Woodbury.

1 MR. WOODBURY: Thank you, Your Honor.

2

3 CROSS EXAMINATION

4 BY MR. WOODBURY:

5 Q Detective Stake, you were the lead detective in
6 this case?

7 A For the majority of it, yes, sir.

8 Q Okay. And part of it you weren't?

9 A That's correct.

10 Q When was that?

11 A From the 7th until the morning of the 9th of
12 July, 2018.

13 Q And from the 7th through the 9th, you were
14 involved, but you weren't the lead detective?

15 A That's correct.

16 Q All right.

17 THE COURT: Can everybody hear? No. I'm not
18 sure it's turned on over here.

19 THE BAILIFF: It's our end over here.

20 Go ahead and try it.

21 THE COURT: All right. Go ahead.

22 MR. WOODBURY: Thank you, Your Honor.

23 Q BY MR. WOODBURY: Can you define what the
24 duties of a lead detective are?

25 A Basically, the lead -- excuse me, the lead

1 duties of the detective, or the duties of a lead
2 detective, I should say, are to basically organize all
3 the efforts of the investigators and ensure that the
4 process is completed, of the investigation.

5 Q And are you obliged to read and attempt to
6 understand the reports or -- the verbal or written --
7 that are being submitted to you, and make
8 determinations about where the investigation ought to
9 go, which direction it ought to go?

10 A I would say that depends, sir.

11 Q And depends on what?

12 A If I were to have a briefing directly with an
13 investigator, say, after an interview or after some
14 process, I may not review that report as closely as
15 somebody that I didn't have a direct debriefing from.

16 THE COURT: Excuse me, Mr. Woodbury.

17 Before we go any further, for the record, we
18 are back on the State's case. This is Nick Stake with
19 the sheriff's office, who was the State's witness. And
20 we are now on Mr. Woodbury's cross examination.

21 Go ahead, Mr. Woodbury.

22 MR. WOODBURY: Thank you, Your Honor.

23 Q BY MR. WOODBURY: At some point, I assume, you
24 have a -- an idea of which direction, what's the next
25 thing you ought to do, or the other thing you ought to

1 do as you become more and more acquainted with the
2 interior part of the case?

3 A As the case develops, yes, you have a direction
4 that you generally take based on what information and
5 facts you have at the time.

6 Q Okay. And your involvement with this case
7 started with you traveling to 2821 Wrangler Circle?

8 A That's not correct, no, sir.

9 Q What was correct?

10 A I'm sorry? I couldn't hear you.

11 Q What was -- how did it start?

12 A At first my involvement in this case started
13 with a phone call, and then I responded to the
14 Northeastern Nevada Regional Hospital first.

15 Q Oh, all right.

16 And there you met up with, I suppose, another
17 officer?

18 A Yes, I did.

19 Q All right. And the determination was made to
20 do what, to you?

21 What were you supposed to do?

22 A At that time, I was still trying to understand
23 what was going on when I met that initial officer at
24 NNRH.

25 Q Okay. But you knew there was a shooting?

1 A That was my understanding, yes, sir.

2 Q And you could see Mr. Smith there?

3 A I'm sorry? I couldn't hear you.

4 Q Could you see Mr. Smith there?

5 A I did, yes.

6 Q Yeah.

7 And did you make a determination that he had
8 been wounded by a gunshot?

9 A Not a conclusive determination, no, sir.

10 Q But that knowledge came to you very rapidly
11 after that, right?

12 A That was my understanding, yes.

13 Q Yeah.

14 And so you were under the impression that
15 Mr. Honeyestewa had been involved in the shooting?

16 A It was my understanding that he was possibly
17 involved, yes, sir.

18 Q Yeah.

19 And so what you did was you got a -- you did
20 some testing on him, or at least preliminarily, took
21 some examination of evidence from him?

22 A I did collect evidence from him, yes, sir.

23 Q And what did you collect?

24 A I collected several items of clothing and shoes
25 that were provided from the Elko Fire Department. I

1 also collected a gunshot residue kit of his hands.

2 Q All right. And the gunshot residue kit simply,
3 what, tests his hands to determine if there's gunshot
4 residue on them?

5 A The deposit collection, or the gunshot residue
6 collection kit in and of itself is not a test, it is a
7 collection of potential evidence.

8 Q Okay. And the idea, as you understand it, is
9 that if you fire a gun and residue stays on your hands
10 for a period of time?

11 A There's a possibility of that, yes, sir.

12 Q How long is that period of time?

13 A I've -- from the studies I've read, I've seen
14 it vary from a short period of time, depending on
15 environmental conditions, if you've washed your hands
16 or not, all the way up to five hours. On some objects
17 it lasts much longer.

18 Q A short period being how long?

19 A I couldn't quantify short period, per se. But
20 I would be under the understanding if the environmental
21 conditions where you wash your hands immediately after,
22 it can be gone almost instantaneously.

23 Q Okay. Then as I understand it, you learned of
24 the potential involvement, somehow, of
25 Jennifer Stanger?

1 A I did.

2 Q And you were gonna test her for gunshot
3 residue, as well?

4 A That was my original intent, was to collect a
5 gunshot residue kit from her, as well.

6 Q All right. But it turned out that you had a
7 kit -- that the only other kit that you had was --
8 something was wrong with it, right?

9 A The kit was not wrong, per se, or there was
10 nothing wrong with the kit. But I had opened both of
11 them simultaneously. Because my past practice with
12 those kits, I did not realize that we had new kits. So
13 I broke seals on both kits at the same time.

14 Q Okay. And so the gunshot residue swab, I guess
15 is what it is, was not taken from Ms. Stanger?

16 A That's correct.

17 Q All right. Was that because you didn't want to
18 go get another kit, or what was the reason for that?

19 A At the time, I had several other things that
20 were happening simultaneously. And I made the
21 determination that based on the fact that I had those
22 other things going on, as well as I didn't know where
23 the other officers were allocated, it was my
24 understanding that the officers that we did have that
25 were allocated to this case were busy doing other

1 things, securing other scenes.

2 Q And so what were the other things that were
3 going on?

4 A Well, we did have the -- we still had evidence
5 that people were securing for me in the hospital,
6 itself, in the emergency room. I met with Ms. Stanger
7 outside of the emergency room, so there were different
8 individuals there.

9 There was also -- at that time I believe we had
10 3 -- 3020 Bohobi scene that was active, and we had a
11 number of law enforcement personnel that were securing
12 that. And we also had 2821 Wrangler Circle scene at
13 that point, which was being secured.

14 Q But your responsibility at that point was
15 simply to go to the hospital and collect evidence?

16 A At that point in time, I felt like my
17 responsibility was just to figure out what was going
18 on.

19 Q Okay. And Ms. Stanger was acting kind of
20 peculiar?

21 A I couldn't say if she was acting peculiar, but
22 she was definitely animated, yes, sir.

23 Q She was animated.

24 Did you take a -- an analysis of her blood at
25 all?

1 A I did not, no.

2 Q And you could have actually asked the hospital
3 personnel to do that?

4 A I couldn't speculate at what I could have done
5 at that point in time.

6 Q You couldn't speculate? You mean, you don't
7 know, as a detective with the Elko County Sheriff's
8 Office, whether you can ask a nurse or somebody like
9 that at the hospital to take a blood sample?

10 A Well, I would have to make sure that it was
11 done in accordance with the law. And based on the
12 facts and circumstances that I had at the time, I
13 wouldn't feel comfortable making a conclusion on
14 whether I could or could not have done it.

15 Q I mean, you could have asked Ms. Stanger, Can I
16 do that, right?

17 A I could have.

18 Q But you didn't?

19 A I did not.

20 Q Okay. And you could have asked her permission,
21 Can I have one of these people, qualified people, a
22 nurse or something, take the blood sample?

23 A I could have, yes.

24 Q And then there's a -- just a stand-up test
25 where you look at her and her eyes and see if there's

1 any problems that are indicated by alcohol?

2 A There is. However, I was not gonna do that at
3 that point in time.

4 Q Well, I understand you didn't do it. But the
5 reason is because?

6 A I'm sorry, what was that, sir?

7 Q Why didn't you do it at that time?

8 A Based on the -- based on the information that I
9 had at the time and the thing that I was trying to get
10 accomplished, I simply didn't do it.

11 Q Okay. Do you remember who the officers were
12 that you talked up there to get apprised of everything
13 going on?

14 A The initial deputy that I met with was
15 Deputy Reed. And after that, at some point, Lieutenant
16 McKinney arrived. And that's when I learned of
17 Ms. Stanger.

18 Q Okay. And you collected Mr. Honeyestewa's
19 clothes?

20 A What was purported to me to be
21 Mr. Honeyestewa's clothes, yes, sir.

22 Q And who purported that to be his clothes?

23 A At the point in time there was a fire
24 department personnel, I wasn't sure of her name. She
25 had handed me some things while I was dealing with

1 trying to collect a photo of Mr. Honeyestewa. And then
2 later on, I learned her name to be Erin Coleman, I
3 believe.

4 Q And what did you do with Mr. Honeyestewa's
5 clothes?

6 A After I learned that Mr. Honeyestewa's clothes
7 were there, I had several large paper bags and
8 different types of packaging. And at that point, I
9 separated the clothing out, put them in the paper bag,
10 and secured them in a large evidence bin that I got out
11 of my car.

12 Q Okay. And then you took them, or had them
13 taken, back to the sheriff's office and had them put in
14 an evidence vault of some sort?

15 A At sometime later that evening, I put them in
16 the evidence dryer, because they were contaminated with
17 biologic material, and then later on booked them into
18 evidence.

19 Q Biological material being what?

20 A It appeared to me that there might have been
21 some -- some blood or something that had (inaudible)
22 the clothes.

23 Q And did you examine his pants?

24 A I'm sorry? What?

25 Q Did you examine his pants?

1 A Other than a visual examination and collecting
2 photographs, I didn't examine them further.

3 Q And you didn't ultimately send his clothing
4 down to Washoe County for testing?

5 A I would have to look at all of the items of
6 evidence that I sent down, but I don't recall sending
7 them into evidence right now.

8 Q Well, you testified on cross examination about
9 the vast majority of things that you did send to Washoe
10 County, but the pants weren't mentioned.

11 Does that help you at all?

12 A Yeah, I don't -- I don't remember whether they
13 were sent or not.

14 Q Okay. How long did you stay at the Elko -- or
15 the Northeast Nevada Regional Medical Center?

16 A I believe approximately -- and I would have to
17 look at my report to be sure. But it was at least an
18 hour, maybe a little bit more.

19 Q Okay. And then where did you go?

20 A After I was at the Northeastern Nevada Regional
21 Hospital, I responded to the 3020 Bohobi scene on the
22 Elko Indian colony.

23 Q And what was your job in going there? What
24 were you anticipating doing?

25 A Just assessing what that scene appeared to be,

1 and what resources or processing might need to be done.

2 Q Okay. And at that point, who was -- who was
3 the lead detective at that point?

4 A At that point, I don't know if there was
5 anybody that specifically had been appointed the lead
6 detective. I know that Lieutenant McKinney had already
7 conducted a lot of the investigation and at that point
8 was making judgement calls based on what needed to be
9 done in certain areas.

10 Q And what did you do up at Bohobi Street?

11 A When I arrived at Bohobi Street, the Bohobi
12 Street address, I met with Sergeant Locuson of the Elko
13 Police Department. If I recall, I also met with
14 Sergeant Nick Czegledi of the Elko County Sheriff's
15 Department. They gave me a short briefing on what
16 their observations were and the size of the scene, who
17 was securing the scene, that sort of thing. And then I
18 conducted a short walk-through of the Bohobi scene.

19 Q And what was the purpose in the walk-through?

20 A Again, just to assess what the scene was, the
21 size, what resources might be needed of that, and just
22 a general preliminary assessment at that point.

23 Q Okay. There was an automobile up there that
24 you were briefed on as potentially being involved in
25 all of this?

1 A That's correct.

2 Q And what did you do with respect to that
3 automobile?

4 A At that point in time, I just looked at it from
5 the exterior. And since it was contained within the
6 crime scene, as I understood where the parameter -- or
7 the boundaries of the crime scene were, other than
8 looking at it and being told that it was potentially
9 involved, at that time I didn't do anything with it.

10 Q Okay. And then what caused you to leave the
11 Bohobi?

12 A I was informed, and I don't recall who, but
13 somebody had informed me that at the Wrangler Circle
14 address there were a couple of dogs that were running
15 around and they were having difficulty securing the
16 dogs, getting them out of the crime scene area.

17 Q Uh-huh.

18 And so you went down to 2821 Wrangler and you
19 found the dog or dogs?

20 A They had already been located by the deputies
21 that were on scene there. But I did arrive at that --
22 to assist with -- I did arrive at that address to
23 assist with the dogs.

24 Q What did you do with the dogs?

25 A I personally didn't do anything with the dogs.

1 But it's my understanding that Deputy Williams
2 obtained -- or contained one of the dogs, and there was
3 still another one that was still running around the
4 crime scene when I showed up.

5 Q Okay. And the -- what you needed to do mostly
6 was keep them out of the house, right?

7 A That was my intent, yes.

8 Q Were you able to determine where they came
9 from?

10 A I did not. I don't know.

11 Q Were you able to determine whose dogs they
12 were?

13 A I don't recall ever actually looking into that,
14 sir.

15 Q That night?

16 A That's correct.

17 Q But when you became lead detective, it came to
18 your knowledge that the dogs belonged to Mr. Smith and
19 Ms. Stanger, or both of them?

20 A I don't remember.

21 Q You don't?

22 A I don't.

23 Q Did you have an interaction with Mr. Aguirre?

24 A I did.

25 Q And did you talk to him about the dogs?

1 A I don't remember if I talked to him about the
2 dogs or not.

3 Q And was your interaction with Mr. Aguirre after
4 you became lead detective?

5 A That's correct.

6 Q You were corporal at that time?

7 A That's correct.

8 Q Uh-huh.

9 And did you consider that Mr. Aguirre -- and
10 Mr. Aguirre had said he hadn't seen the dogs, or heard
11 them bark, or any sense of that?

12 A I'm sorry, what was your question?

13 Q Did you take into account, or do you recall
14 that Mr. Aguirre said he had never seen the dogs or
15 heard the dogs barking during the incident?

16 A I don't remember that. I did not interview
17 Mr. Aguirre.

18 Q I understand that.

19 But you're -- by the 9th, you were the lead
20 detective, right?

21 A That's correct.

22 Q Didn't it dawn on you that the dogs not being
23 around was peculiar, where Mr. Aguirre wouldn't have
24 heard them?

25 A I don't remember that being in my state of mind

1 at the time, no, sir.

2 Q Well, isn't it standard police knowledge that
3 if you've got a couple of dogs, at least one of them is
4 fairly aggressive, that you might do a little better if
5 somebody is trying to burglarize your house if you have
6 a mean dog around?

7 A I couldn't speculate as to how somebody might
8 respond to a dog during any sort of commission of a
9 crime.

10 Q You couldn't speculate about that? They don't
11 teach you that?

12 A I'm sorry, what's that?

13 Q They don't teach you that, logic and common
14 sense?

15 A I would like to think that they do, sir.

16 Q So it never -- you ultimately talked to
17 Jennifer Stanger?

18 A I did, yes.

19 Q Yeah.

20 Did you ever ask her, where were them dogs at?

21 A I did not, no.

22 Q Did it come to your attention at some point
23 that there were allegations -- not allegations, there
24 was some potential that Ms. Stanger might have been
25 involved in all of this, other than just as an occupant

1 of the house?

2 A That is one avenue to this investigation, yes,
3 sir.

4 Q And who investigated that avenue?

5 A A number of different investigators.

6 Q All right. Did any of them -- did you ever see
7 any report that -- where Ms. Stanger was asked, Well,
8 what happened to those dogs? How come they weren't
9 involved?

10 A Without reviewing the whole case file, I don't
11 remember.

12 Q So I guess that you would not have necessarily
13 looked at someplace the dogs could be housed during an
14 incident like that?

15 A I'm sorry?

16 Q You didn't look around and see where dogs might
17 be kept, or where they had been kept during the time of
18 this incident so they -- they didn't get involved?

19 A I don't specifically remember looking into
20 that, no, sir.

21 Q And then as I recall on direct examination, you
22 said you went to the back of the house as part of
23 the -- part of your duties, the back portion of the
24 property?

25 A Yes, sir.

1 Q Yeah.

2 And you looked around, and you didn't see
3 anything of consequence?

4 A Not in the areas that I taped off, no, sir.

5 Q And where -- where were those areas?

6 A There was basically two fence lines between the
7 residences to -- as you're facing the front of the
8 house, to the right and the left. The rear portion of
9 the property line, from where I tied off the crime
10 scene tape on one side, walked out into the field,
11 taped off a couple of areas of sagebrush, and then back
12 off to the opposite property line of the Wrangler
13 Circle address.

14 Q All right. And I think my question concerned
15 whether you found anything of interest out there, or
16 did anything look peculiar?

17 A There was nothing that I noticed while I was
18 taping it off.

19 Q There were footprints out there, was there?

20 A I'm sorry? What was that?

21 Q There were footprints out there you saw?

22 A Other than mine, I didn't see any others.

23 Q Really? You knew that the officers that
24 cleared the house had come back there, right?

25 A I knew they had gone to the back of the house,

1 but the area that I taped off, I didn't observe any
2 footprints.

3 Q And so when Ms. Stanger, in a subsequent
4 interview, told you about a guy that had been standing
5 out there by the back fence with a light on, a cell
6 phone light on, did you go back out there and see if
7 you could locate any evidence that might tell you who
8 that guy was?

9 A No, I did not.

10 Q Did you send somebody out to do it?

11 A I did not.

12 Q How come?

13 A The length of time between the interview that I
14 had done with Ms. Stanger and from when the incident
15 was alleged to have occurred, had been enough time that
16 I didn't think it prudent at that point in time.

17 Q Well, the guy that had the cell phone back
18 there could have dropped something that was not going
19 to be harmed by the passage of a few days?

20 A I couldn't speculate as to whether that could
21 or couldn't have happened.

22 Q You didn't need to speculate.

23 You could have sent somebody up there to look,
24 right?

25 A I could have, yes, sir.

1 Q But you didn't?

2 A I did not.

3 Q Your interview with Ms. Stanger, did she tell
4 you that she had seen a guy, didn't know who it was,
5 and didn't inquire as to who would be in her backyard?

6 A That I didn't inquire or her?

7 Q She didn't. She didn't inquire who it was,
8 didn't know who it was and didn't ask?

9 A I remember that portion of the interview. I'm
10 not quite sure what your question is.

11 Q Well, I guess my question subsequently is why
12 that didn't trigger in your mind some kind of
13 additional thought that Ms. Stanger might be involved
14 in all of this?

15 A Based on that, I can't -- I can't say what my
16 state of mind was when we were doing the interview.

17 Q Uh-huh.

18 Well, were you aware Ms. Stanger said the back
19 door was locked when she come around, and she had to go
20 down to the other back door to get in?

21 A I do recall her saying something about the back
22 door.

23 Q And I assume that when the officers who went
24 out and checked told you that the back door was
25 actually unlocked, I assume that triggered in your mind

1 that maybe there's more to it than this?

2 A No, sir, I can't say that it would.

3 Q Okay. Then I assume that you read or listened
4 to Detective McKinney's interview of Mr. Honeyestewa?

5 A At some point in time, I did, yes.

6 Q And I assume that you became aware of the fact
7 that Ms. Stanger had turned the light on in the closet
8 of the master bedroom?

9 A I recall there being conversation about the
10 light being on in the closet of the master bedroom, but
11 I don't recall the nature of that.

12 Q Okay. And did you listen to the -- or become
13 aware that approximately a week earlier Ms. Stanger had
14 taken Mr. Tieres Lopez back to the gun safe located in
15 that closet?

16 A I knew that she had showed Mr. Lopez some
17 firearms. I don't recall the exact location that was
18 specified in that interview.

19 Q And did you recall that she showed him the keys
20 to the gun safe?

21 A At some point in time, I do remember reading
22 that in one of the transcripts.

23 Q Yeah.

24 And did it occur to you that -- and she
25 admitted that she turned the light on, right, she was

1 the person who had done it, right?

2 A I don't recall. As I said, I recall the
3 conversation about the light in the master bedroom
4 closet, but I don't recall who turned it on.

5 Q Well, did it occur to you that if she had
6 instigated and participated in this theft of the guns,
7 that she might have left the light on, turned the light
8 on, so that Mr. Lopez wouldn't have so much trouble
9 finding the keys and unlocking that gun safe, right?

10 A I couldn't quantify that, but I suppose it's
11 possible.

12 Q Yeah. Well, you guys have been prosecuting
13 this based on a theory that Tieres Lopez went up there
14 to steal guns, right?

15 A I haven't prosecuted anything.

16 Q Well, don't you have conversations with these
17 folks?

18 A Yes. I supply my reports, and I have
19 conversations with them at times about my observations.

20 Q Yes. And when you -- you keep track of what
21 they charged and how they've charged it, I assume?

22 A Yes.

23 Q Okay. And when it lines -- I assume that if it
24 doesn't line up with something you're looking at as an
25 investigator, you would point that out to them,

1 wouldn't you?

2 A I'm -- I'm unsure how to answer that question,
3 sir.

4 Q Well, I guess what I'm suggesting is, aren't
5 you and the prosecutors kind of lined up in the same
6 line?

7 A Personally, I don't view it that way.

8 Q How do you view it?

9 A My job as a detective is to make observations
10 and gather facts. And I view my job as providing that
11 both to the prosecution and the defense. And anything,
12 any conclusions or defenses or prosecutions that arise
13 from that are basically from each side's point of view,
14 moving forward with my observations and facts and work.

15 Q But if you see a prosecutor making what you
16 think to be a mistake, I assume you call that to their
17 attention?

18 A I couldn't comment on what a mistake is or is
19 not at that point.

20 Q Were you aware that a separate full magazine of
21 40 caliber shells was located in the master bedroom on
22 a nightstand?

23 A I don't remember exactly if there was or was
24 not.

25 Q And so you wouldn't then know whether that

1 magazine was collected?

2 A I would have to look at the evidence that was
3 collected in this case to make certain.

4 Q All right. Well, you were aware, were you not,
5 that Mr. Honeyestewa was claiming to have only had
6 five, six, seven, eight shells in his gun?

7 A I do recall comments of that nature, yes, sir.

8 Q Yeah.

9 And you recall him saying that Mr. Lopez had
10 picked the gun up, his gun up, after he had been hit,
11 right?

12 A I do recall comments of that nature, as well.

13 Q And you recall seeing the count of bullets, or
14 at least shell casings, that matched the subcompact
15 that belonged to Mr. Honeyestewa, claimed he owned?

16 You saw at least 12 shell casings located in
17 the residence?

18 A I believe that -- I didn't see that in the
19 residence, but I do recall 12 being collected.

20 Q Yeah. And did it occur to you that if
21 Mr. Lopez had fired shots, and all that were in the
22 magazine were eight when Mr. Honeyestewa had it, there
23 had to be another four shells that came from someplace?

24 A I'm sorry, I was having a hard time following
25 that, sir.

1 Q Okay. My understanding is that Mr. Honeyestewa
2 told you there were six, seven, or eight shells in the
3 casing -- or in the magazine in the subcompact, right?

4 A Correct.

5 Q And you recall there being 12 shell casings
6 identified basically as having come from being fired by
7 the subcompact, right?

8 A That's correct.

9 Q Which means that four additional shells had
10 come from someplace, at least four, right?

11 A I would have to assume that, yes.

12 Q And did it occur to you that if Mr. Honeyestewa
13 was being honest with you, you might look around a
14 little bit and see where those other shell casings
15 might have come from?

16 A I'm not sure how to answer that, because they
17 were basically matched to the gun.

18 Q I know they were basically matched to the gun.
19 But if Mr. Honeyestewa isn't lying through his teeth
20 about Mr. Lopez picking that gun up and shooting it,
21 you still need to find the other four shells, the
22 source of the other four shells, right?

23 A I don't know if I would be able to do that.

24 Q Well, it seems unlikely that Mr. Lopez would
25 have had the good luck to have brought 12 -- or 40

1 caliber shells with him in his pocket, right?

2 A I couldn't assume where he could or could not
3 have obtained any ammunition.

4 Q Well, isn't it sometimes the illogic of what
5 these suspects or these criminal defendants tell you
6 something, you look at pretty carefully?

7 A The logic or illogic?

8 Q The illogic.

9 A The logic?

10 Q The illogic.

11 Honeyestewa is telling you there's eight shells
12 in the gun, and you know from scientific fact there are
13 12 shells that have been fired out of that gun.

14 Doesn't it somewhere dawn on you that you might
15 try to look to see where that other four shells came
16 from?

17 A No, sir, actually it didn't, and it probably
18 wouldn't.

19 Q Were fingerprints taken from the shell casing?

20 A I would have to look at the processing. I do
21 not believe that I requested fingerprints on the shell
22 casings that I submitted.

23 Q Do you recall it being reported that there
24 were -- there was loose hair in the hand of Mr. Smith?

25 A I don't know anything about that, sir.

1 Q You don't recall ever having read such a thing?

2 A I do not, no.

3 Q Is there a particular reason that would have
4 escaped your attention?

5 A I can't say whether there was a particular
6 reason or not, but I don't recall that, no.

7 Q And did you know that Mr. Smith had bruises and
8 contusions not related -- relatively fresh bruises and
9 contusions, not related to being shot with a gun?

10 A I don't recall that, no, sir.

11 Q Did you ever -- would it be standard practice
12 for a detective to look at those hairs and to maybe get
13 an analysis of those hairs to see who they belonged to?

14 A I would say it depends, sir.

15 Q It depends on what?

16 A It depends if, in looking at all of the
17 evidence with the hairs, if there was any information
18 that those might be important to the case. Then they
19 might be sent off.

20 If there wasn't anything that would lead me to
21 believe those needed to be processed for something, I
22 probably wouldn't.

23 Q Well, by the time all of this came to pass when
24 you were the lead detective, this guy was telling you
25 straight out, right, that he was being informed that

1 Jennifer Stanger and Speedy Lopez had set this thing
2 up, right?

3 A At some point he did, yes, sir.

4 Q And part of the setup was Bradley Smith was
5 gonna die, right?

6 A Yes. I believe in the information I had.

7 Q And you would maybe think that if the hair in
8 his hand belonged to Jennifer Smith -- or
9 Jennifer Stanger, and he had been in an altercation
10 with somebody and had bruising on his back and that
11 that was relatively recent, you might want to know
12 that?

13 A All information would be helpful. But my
14 understanding, your question, it did not seem to apply
15 to what I was investigating at the time.

16 Q Okay. You found -- well, when did you first go
17 in the residence?

18 A I didn't go into the residence -- are you
19 talking about the Wrangler Circle address?

20 Q Yes.

21 A I didn't go into the Wrangler Circle address
22 until a brief walk-through with Ray Smith, I believe it
23 was close to the end of September, beginning of
24 October.

25 Q And after July 7th, what you just told me is

1 you didn't go back into the residence until late
2 September, did you say?

3 A I believe that's when I met with Mr. Smith, Ray
4 Smith.

5 Q And as I understand it, the residence was
6 released to whoever the owner was, I guess, what, on
7 July 9?

8 A I don't recall when it was released, but I know
9 it was released somewhat -- fairly quick after FIS had
10 completed their work.

11 Q Okay. And is that typical, that you would
12 release it two days later in a homicide case?

13 A That has happened before in the past.

14 Q All right. But you -- I assume you acknowledge
15 that's kind of a bad idea?

16 A It's a practice I prefer not to follow.

17 Q And then are you the -- you kind of became, as
18 lead detective, the evidence custodian of all the stuff
19 that was taken out of the house, and all of the new
20 physical evidence that was around?

21 A I wouldn't define myself as the evidence
22 custodian, but I did track the evidence as part of the
23 case, yes, sir.

24 Q And you're the guy who requested the testing
25 that you wanted done on everything?

1 A I believe I did request most, if not all, of
2 the tests (inaudible) performed on the evidence we had.

3 Q Was there ever an occasion that you recall that
4 the detectives in the case sat down and had a
5 roundtable discussion about what exactly must have
6 happened with the individuals who were in the house
7 during the course of this event?

8 A Am I aware of the roundtable? Was that your
9 question?

10 Q Did a roundtable discussion ever happen?

11 A We had several meetings with a number of
12 different investigators throughout the beginning stage
13 of the investigation.

14 Q And did -- in those roundtable discussions, did
15 it begin, or have included within it, a question of how
16 many -- how -- where the incident began, like the
17 shooting began?

18 A I don't recall specifics of there being talk of
19 exactly where the shooting had begun, just the
20 observations that were made about it.

21 Q Well, Ms. Stanger had given at least McKinney,
22 and probably you, a statement about where things had
23 begun, where she was at, where Mr. Smith was at when
24 the house door came open and the bedroom came open?

25 A That's correct, yes, sir.

1 Q All right. And that would have been in the
2 master bedroom, as I understand it, is where they were,
3 Ms. Stanger --

4 A That was a portion of the incident, yes, sir.

5 Q I'm sorry?

6 A It's my understanding that they were located
7 there during a portion of the incident.

8 Q And that would be at the beginning of the
9 incident?

10 A My understanding, yes, sir.

11 Q Why only might it be?

12 A What's that?

13 Q Why only might it have been?

14 A Depending on what you're considering the
15 incident, yourself, I don't know what you're looking
16 for, sir.

17 Q The incident, itself, is when Stanger and
18 Mr. Smith were laying in bed and the front door comes
19 open.

20 A Correct.

21 Q Where were they?

22 A I'm not sure who you're asking about, sir.

23 Q Stanger and Smith.

24 A They were in the master bedroom.

25 Q All right. That would be the beginning of it,

1 right?

2 A Correct.

3 Q So unless -- or did you ever come up with a
4 theory that that was somehow untrue, that it didn't
5 begin in the master bedroom?

6 A I can't say that I ever came up with a theory,
7 no, sir.

8 Q Did you ever come up with any physical facts?

9 A Not that I could recall, no.

10 Q So as far as you're concerned, the -- there is
11 truth to the matter of what Ms. Stanger said about
12 where the event began?

13 MR. INGRAM: Judge, I'm gonna object. He's
14 asking this witness to judge the credibility and the
15 truthfulness of another witness. It's not permissible.

16 THE COURT: Mr. Woodbury?

17 MR. WOODBURY: I'm not asking about the truth
18 unless I'm asking about the conclusion.

19 THE COURT: Your question asks about the truth,
20 though, so I'm going to sustain the objection based on
21 the form of the question. And try it again.

22 Q BY MR. WOODBURY: Was your conclusion that the
23 event began, based on what Ms. Stanger had told you, in
24 the master bedroom?

25 A I couldn't say that it was my conclusion, but

1 my observations supported that it began that way.

2 Q Then was any blood found on the floor or on the
3 walls in the master bedroom, that you recall?

4 A Not that I recall, no.

5 Q Uh-huh.

6 Is there a conclusion you can draw from that --
7 let me go back a little bit.

8 Do you know what Mr. Smith was wearing when he
9 was shot?

10 A I do not, no. I wasn't there.

11 Q All right. But you observed him at the
12 hospital?

13 A I did.

14 Q What did you observe?

15 A When I walked into the emergency room where he
16 was laying on the gurney, I observed him with a dark
17 pair of underwear that he was wearing, and I don't
18 recall seeing anything else on him.

19 Q Okay. And you became familiar with the reports
20 of various officers who provided him medical treatment,
21 and then Mr. Hassett, who provided medical treatment?

22 A I don't recall the Mr. Hassett report, but I do
23 recall reviewing the initial responding officers.

24 Q Did you ever read anything that suggested that
25 Mr. Smith was wearing something more than the boxer

1 shorts?

2 A I don't remember seeing anything contained in
3 those reports of that.

4 Q Okay. And would you expect, from your
5 experience and training, that had Mr. Smith been shot
6 with a 40 caliber weapon, or even a 9 millimeter weapon
7 in the master bedroom, you would have expected to see
8 some sign of blood either on the floor, on the wall, or
9 on some of the furniture or something else?

10 A I would say it's not outside the realm of the
11 possibilities, but I have seen bullet wounds in the
12 past, from my experience, where people do not bleed
13 immediately. It depends on the wound, itself.

14 Q It depends on the wound, itself?

15 A Correct. It's just been my experience with
16 that.

17 Q Okay. And, then, was it ever part of the
18 investigation, or ever any part of the conclusions that
19 you or the other officers who were in a roundtable
20 discussion reached, as to where Mr. Smith had gone from
21 the master bedroom?

22 A We didn't make any conclusions, that I recall.
23 But our observation was that he ended up in the living
24 room. So he moved from the master bedroom to the
25 living room area of the residence.

1 Q Well, you knew, and at least figured out from
2 the scientific reports, that he had made it all the way
3 to the door of the dining room, right?

4 A I'm sorry? What was that, sir?

5 Q You knew from the reports that you received
6 that his blood was found from the door into the dining
7 room, right?

8 A I don't remember there being blood found on the
9 door in the dining room.

10 Q On the floor going into the dining room.

11 A Yes, I do recall there being some blood in that
12 area, yes, sir.

13 Q All right. Well, quite a bit of blood?

14 A I couldn't quantify it. I don't remember.

15 Q And as a part of the roundtable discussions,
16 were you -- were the officers trying to figure out what
17 in the hell his name he was going from the master
18 bedroom to the dining room for?

19 A I couldn't recall if there was any of that
20 discussion during the roundtable meetings.

21 Q And you knew, you saw pictures of the
22 trajectory of the shells that had hit the wall and
23 purportedly hit Mr. Smith as he moved along the west
24 wall?

25 A I did. I don't recall when.

1 Q And would it be a fair conclusion that you
2 reached that if he wanted to avoid being shot, he
3 should have stayed in the master bedroom?

4 A I couldn't comment on what tactics would be
5 best with gunfire in that situation, sir.

6 Q Well, the gunfire was coming from near the
7 floor, was it not, or at or on the floor from the
8 threshold of the front door, right?

9 A It would appear that way from the observations
10 that I've made, but I couldn't be conclusive of that.

11 Q All right. But it doesn't take much thought,
12 does it, to establish that if you don't want to be shot
13 by a guy laying on the floor at 2821 Wrangler Circle,
14 you're at the front door, that it's hard to shoot you
15 if you're in the bedroom, right?

16 A Again, I couldn't comment on the tactics that
17 would be used in a gun fight.

18 Q Okay. And then there's a -- you became
19 familiar with all of the weapons that had been involved
20 in this incident up there, right?

21 A The ones that -- I'm sorry, did you say all of
22 them?

23 Q Well, the three of them, right, the
24 subcompact --

25 A Correct.

1 Q -- the 40 caliber, and a regular 40 caliber,
2 and a 9 millimeter, right?

3 A Correct.

4 Q And you were aware that they all had -- were
5 semi-automatic?

6 A That was my understanding, sir.

7 Q And they all ejected cartridges to the right
8 and slightly to the rear?

9 A That's my general understanding, yes, sir.

10 Q And did it concern you that virtually all of
11 the 9 millimeter casings -- excuse me, all of the 12,
12 40 caliber casings, shell casings, were located along
13 the wall between the master bedroom and the dining --
14 or the living room, and that didn't accord with where
15 you might expect them to be if you were shooting from
16 the floor toward the west wall?

17 A I'm sorry, I'm confused as to which wall of the
18 bedroom you were referring to.

19 Q Well, there's a wall between this -- the
20 bedroom and this living room, right?

21 A Correct.

22 Q It's actually the south wall of the living room
23 and the north wall of the bedroom, right?

24 A Correct.

25 Q All right. And you know where all -- virtually

1 all of the shell casings for the 40 calibers were
2 found?

3 A I would have to refer to the forensic report,
4 the document, since I wasn't there. But I have that
5 information available to me, yes, sir.

6 Q And were you aware that that didn't accord with
7 where you might expect to find those shells if a person
8 were shooting toward the west wall of the living room
9 from the threshold area of the door?

10 A Not necessarily, no, sir.

11 Q Because that would be to the left, not the
12 right, of the person shooting, or is there some other
13 way you shoot a gun to get it to go to the left?

14 A That's correct. The shell casings, if when
15 you're referring to the shells coming out of the gun,
16 coming to the right and to the rear as you had asked
17 before, that would assume that the gun was in a
18 vertical orientation with the muzzle pointed this way.

19 However, if I were to manipulate that firearm,
20 I could make the cartridge casings go in any direction.
21 And if there were any intermediate barriers that were
22 located in the area that those shell casings ejected,
23 that could also deflect and cause them to be found
24 somewhere else.

25 Q Okay. Did you, in your roundtable discussions

1 with other officers, discuss where Mr. Smith went after
2 he left the area of the dining room door?

3 A The dining room door or floor?

4 Q Floor.

5 A I don't recall any specific discussion about
6 that, no, sir.

7 Q And so it wouldn't necessarily be part of the
8 usual investigative discussion to ascertain where the
9 guy who is being shot went in order to determine other
10 questions that hadn't been asked?

11 A If I'm understanding your question correctly,
12 it would be prudent to figure out all avenues of the
13 incident that occurred in terms of movement of all
14 parties involved.

15 Q Okay. And did you come up with any answers as
16 to why Mr. Smith would leave the area where the dining
17 room door was with all the blood on the floor near the
18 dining room door and travel back toward the threshold?

19 A The threshold of -- I'm not sure --

20 Q The front door.

21 A Of the front door?

22 Q Yeah.

23 A I couldn't explain that, no, sir.

24 Q But you know he did that?

25 A I do not know that he did that.

1 Q You don't know -- did you look at the findings
2 of the Washoe County folk --

3 A I did.

4 Q -- as to whose blood that was on the -- near
5 the front door?

6 A If I recall on one of the reports, there was a
7 swabbing that was taken near the threshold of the door
8 that showed it to be Mr. Smith's blood. I would have
9 to refer to the report.

10 However, it's also my experience and
11 understanding, when transporting people from a
12 residence that have suffered medical trauma, if there's
13 any blood leaking from either them, or the materials,
14 or gurney, or whatever to transport them, if they went
15 through the front door, that would not be uncommon to
16 find biologic material in that area.

17 Q Right. So you should have talked to
18 Mr. Hassett to find out if Mr. Smith was rolled onto a
19 tarp when he was taken out?

20 A I couldn't say whether I should or shouldn't
21 have, but...

22 Q Okay. And there was also a series of six dots
23 of blood on the south wall of the living room that were
24 identified, and the blood was identified as being that
25 of Mr. Smith?

1 A I don't recall the specific dots that you're
2 talking about. I would have to refer to the report.

3 Q Did it ever come to your attention, through any
4 source of information, that Ms. Stanger had showed
5 bullets to Mr. Lopez a week before this incident that
6 were in the freezer of the refrigerator?

7 A I recall during one of the interviews I
8 conducted there was talk of bullets being placed in the
9 freezer of the residence by Ms. Stanger, yes.

10 Q Okay. There came a time, I guess, when you had
11 a -- you were informed that Mr. Honeyestewa wanted to
12 talk to a detective again?

13 A That's correct.

14 Q Do you remember about when that was?

15 A Which time? I'm sorry.

16 Q Well, you did two interviews of him.

17 A I did one interview, and then I also met with
18 him again after that, just for a brief period of time.

19 Q I'm talking about the interview.

20 A Yes, sir.

21 Q Do you remember when that was?

22 A I don't recall the exact date, no.

23 Q You were out -- I thought you testified you
24 were out on the firing range and --

25 A I was.

1 Q Yeah. And you came to town and had an
2 interview with Mr. Honeyestewa?

3 A That's correct.

4 Q Okay. And the interview went from the incident
5 on July 7th, from Mr. Honeyestewa's point of view, from
6 start of the incident to finish, right?

7 A That was contained in the interview, yes, sir.

8 Q Okay. And at the time, Mr. Honeyestewa was
9 concerned about getting some audio tapes?

10 A Some audio or video recordings, yes, sir.

11 Q Well, didn't he ultimately tell you they were
12 audio?

13 A I don't recall what he said they were, other
14 than they were audio.

15 Q He told you he had never seen them or heard
16 them?

17 A I'm sorry, that he had never seen them?

18 Q He told you, did he not, that he had never seen
19 them or heard them?

20 A That is my understanding, yes, sir.

21 Q What he had done is been told about them?

22 A Correct.

23 Q Okay. And what he had been told had something
24 to do with Ms. Stanger and whether or not she had been
25 involved in all of this?

1 A That was my understanding, yes, sir.

2 Q And did you ask him -- he had actually already
3 told Lieutenant McKinney all of that stuff, right?

4 A I don't recall what he had told Lieutenant
5 McKinney during his interview, but I do know that he
6 had a previous interview with Lieutenant McKinney.

7 Q Well, if you wanted to -- one of the tricks of
8 being a detective, right, is to get people to talk
9 about the same thing twice to see if they can keep it
10 straight what's happened, right?

11 A I wouldn't call it a "trick." And that was not
12 my intent during my interview with Mr. Honeyestewa.

13 Q All right. But that is a very standardized
14 procedure, right, to have them tell the story twice?

15 A I couldn't say it was standardized. I have not
16 conducted two identical interviews, myself, so it's not
17 standard for me at least.

18 Q Well, they don't have to be exactly identical,
19 they just have to contain the same material, right?

20 A Well, I haven't even done that very much, sir.

21 Q Well, you did it in this one.

22 A I personally did not. I only conducted one
23 interview of Mr. Honeyestewa.

24 Q But the interview was very nearly the same
25 conversation and subject matter as the McKinney one?

1 A I couldn't quantify the similarity between my
2 or Lieutenant McKinney's interview.

3 Q Because you haven't read Lieutenant McKinney's
4 interview?

5 A I have read the interview.

6 Q And you've read the interview you did?

7 A That's correct.

8 Q During the course of the interview, did
9 Mr. Honeyestewa talk to you about the fact that he
10 thought that Mr. Lopez might have shot him with a 9
11 millimeter?

12 A He discussed things of that nature with me,
13 yes, sir.

14 Q Well, that's a specific thing, thing of that
15 nature? That's a specific thing, right?

16 A You could conclude that, yes, sir.

17 Q And he -- was he trying to arrange for you guys
18 to get somebody involved to remove those bullets from
19 him?

20 A There was talk of the bullets being removed
21 during my interview, yes, sir.

22 Q And as a matter of fact, you worked on that and
23 ultimately got somebody to take a couple of bullets out
24 of there?

25 A That's correct; two.

1 Q And a third bullet was left in him?

2 A That's my understanding, yes, sir.

3 Q Well, it's your understanding based on talking
4 to a physician, right?

5 A That's correct.

6 Q All right. Where was that third bullet
7 located?

8 A If I recall, it was in one of his thighs. I
9 don't recall which thigh, or specifically what area of
10 the thigh.

11 Q And then when you got those bullets, you sent
12 them up to Washoe County for analysis?

13 A The two that were recovered during the
14 procedure, yes, sir.

15 Q And did you go to any additional effort to
16 determine the size or the caliber of the third bullet
17 that was left in him?

18 A We obtained an X-ray, but no, sir, nothing
19 further than that.

20 Q And from an X-ray, you can't tell enough to
21 know what caliber the bullet was or anything like that?

22 A I personally couldn't, no, sir.

23 Q Well, did you have an expert look at it?

24 A No, sir, I don't believe we did.

25 Q At the hospital, was Mr. Honeyestewa's urine --

1 the first night of this incident, was a urine sample
2 taken from him?

3 A I don't know.

4 Q Would that have been typical?

5 A I couldn't say whether it would have been
6 typical or not under those circumstances.

7 Q In any event, there was no testing done on
8 defendant's urine to determine the blood alcohol
9 content, or whether he had drugs in there, or anything
10 like that?

11 A I don't know if there was any medical testing,
12 but I did not conduct any criminal testing in terms of
13 his -- or legal collection, I guess I should say, of
14 his urine or blood sample.

15 Q Do you know where your left medial thigh is?

16 A I have no idea, sir.

17 Q Do you happen to know? I don't, either.

18 In the conversation that you had with Mr. --
19 the interview you had with him, with Mr. Honeyestewa,
20 did he tell you that Mr. Lopez, who we call Speedy, I
21 guess, had picked up his gun that he had dropped?

22 A I believe there was brief mention of that, yes,
23 sir.

24 Q Well, there was mention of it. It was pretty
25 straightforward, right? He picked it up?

1 A I recall something of that nature, but I don't
2 recall the exact words that he used, no, sir.

3 Q And so what did you do to ascertain whether or
4 not that gun could be associated with something of
5 Speedy?

6 A If I recall, all of the firearms that we
7 collected were sent down to the Washoe County Crime Lab
8 to be ballistically compared to all of the shell and
9 bullet casings -- or bullets, and we also requested DNA
10 testing against reference samples.

11 Q Okay. There came a time, did there not, when
12 Mr. Lopez pled guilty to a crime?

13 A That's my understanding, yes, sir.

14 Q You weren't informed that he pled guilty to
15 murder in the first degree?

16 A It wasn't until I believe I read it in the
17 newspapers that I found out that had occurred that way.

18 Q You were not consulted before?

19 A No, sir. I wouldn't expect to be.

20 Q Well, would you expect -- the case against
21 Mr. Honeystewa continued, right, even though Mr. Lopez
22 pled guilty?

23 A That would be my understanding, yes, sir.

24 Q Well, wouldn't you -- wouldn't it be standard
25 procedure of some sort that Mr. Lopez would be

1 interviewed about what actually happened there?

2 A I, again, couldn't say if that was standard
3 procedure or not.

4 Q Was that attempted?

5 Did the Elko police, or Elko County Sheriff's
6 Office, interview Mr. Lopez?

7 A Pursuant to the conviction?

8 Q Yeah.

9 A It's my understanding that we did not conduct a
10 proffer interview of him.

11 Q A proper?

12 A Proffer interview.

13 Q Did you conduct any kind of interview?

14 A I personally did not, no.

15 Q Well, you were the lead detective. You would
16 know if one got -- he got interviewed, right?

17 A He did.

18 Q He did?

19 A I'm not sure which period of the case you're
20 talking about, before or after conviction.

21 Q I'm talking about after or during his
22 conviction.

23 A That, I don't know, sir.

24 Q Well, you knew that there was an outstanding
25 case against Mr. Honeyestewa, right?

1 A That's correct.

2 Q And you knew that there were only four people
3 involved in the incident, and one of them was dead,
4 right?

5 A That's correct.

6 Q Why wouldn't you interview Mr. Lopez and find
7 out what he had to say about what happened?

8 A Based on the fact that we already had an
9 interview prior to his conviction, I didn't see a
10 reason to interview him.

11 Q He had an interview by Lieutenant McKinney
12 prior to?

13 A That's correct.

14 Q And hadn't it been very, very clear that that
15 interview had been absolutely false from start to
16 finish?

17 A I was never made aware of that, no, sir.

18 Q You read it?

19 A I did.

20 Q And it didn't coincide with anything the
21 subsequent investigation showed up, right?

22 A I couldn't quantify how much of that interview
23 actually aligned with observations and the evidence
24 that we had (inaudible).

25 Q Didn't you and McKinney sit down and discuss

1 that interview and how different it was than the
2 physical evidence that was -- that had followed?

3 A I don't recall Lieutenant McKinney's and I
4 discussion about that interview regarding Mr. Lopez.

5 Q Well, you knew that in the interview -- or did
6 you know that in the interview, Mr. Lopez claimed to
7 have only been armed with a knife?

8 A I do recall that, yes.

9 Q And do you recall that Mr. Lopez had claimed
10 that Taylor Miller and Mr. Honeyestewa had put a gun to
11 him and made him kick in the door?

12 A I do recall some comments of that nature, but
13 again, I don't recall the specific wording that he
14 used.

15 Q And didn't you know that when you read that, or
16 at least subsequently, that was nonsense?

17 A I couldn't say at the time I read it whether I
18 concluded that was nonsense or not.

19 Q But didn't you subsequently understand it to
20 have been nonsense?

21 A It -- based on my understanding of the case, it
22 did not appear to coincide with the observations and
23 evidence that we had, no.

24 Q All right. Did Mr. Honey -- or Mr. Lopez say
25 that after --

1 MR. INGRAM: Your Honor, I'm gonna object at
2 this point. It's all hearsay.

3 THE COURT: It sounds like it is to me,
4 Mr. Woodbury. Do you have any exception to argue?

5 MR. WOODBURY: I'm gonna have to think about it
6 a minute, Judge.

7 Well, we're not asserting, Your Honor, that
8 what Mr. Lopez has said was true. What we're asserting
9 is that whether or not he knows what Mr. Lopez said,
10 and it was false.

11 Hearsay, presumably, has something to do with
12 the -- that question of whether a person has told you
13 something, and whether or not you could have other
14 evidence that shows it's false.

15 THE COURT: It sounds like he's arguing,
16 Mr. Ingram, is that it's not offered for the truth of
17 the matter.

18 Is that what you're arguing, Mr. Woodbury?

19 MR. WOODBURY: That's right.

20 THE COURT: Do you have any response to that,
21 Mr. Ingram?

22 MR. INGRAM: I'll submit it, Judge.

23 THE COURT: Objection is overruled.

24 You can answer the question, if you remember
25 what it was.

1 THE WITNESS: I don't. I'm sorry, sir.

2 Q BY MR. WOODBURY: I don't either.

3 Actually, the question concerned the --
4 Mr. Lopez telling you that he -- or telling Lieutenant
5 McKinney that he had followed Mr. Honeyestewa into the
6 residence and hid behind him, right?

7 A Again, I remember reading something of that
8 nature, but I don't recall the exact words or in the
9 context in the interview at that point.

10 Q And you knew, did you not, that that was not in
11 order with what Ms. Stanger said she saw at the bedroom
12 door?

13 A It appeared to me that those statements were
14 different than Ms. Stanger's.

15 Q And didn't -- doesn't it occur, at some point,
16 that you wanted to get this straight to find out what
17 was true and what was false, and what actually happened
18 from the point of view of Mr. Lopez?

19 A It's my understanding and practice as a
20 detective, in my experience, that if I have statements
21 from one subject and statements from another subject,
22 and I have a -- different items of evidence or
23 different things to be compared against, that speaks
24 for itself.

25 I wouldn't necessarily re-interview somebody

1 about the same thing again when I don't have a need to
2 in a particular case.

3 Q But an interview with Mr. Lopez after he pled
4 guilty, or during the time that he was pleading guilty,
5 would have took an hour of your time, right?

6 A I couldn't say how long it would have taken of
7 my time, sir.

8 Q And you have a herd of other detectives -- not
9 a herd, but you had a number of other detectives around
10 that could have actually conducted an interview of him?

11 A There's other detectives in our unit. Whether
12 they could have conducted or not, I don't know.

13 Q There came a time when you became knowledgeable
14 of a lady named Joyce Romaine?

15 A That's correct.

16 Q How did she come to your attention?

17 A The first time I had heard the name Joyce was
18 from Mr. Honeyestewa during our interview. And then I
19 later learned of the full name, Joyce Romaine, from Sue
20 Smith, Brad Smith's mother.

21 Q And Ms. Romaine was making some claims about
22 her knowledge of Tyrell Holley?

23 A That was my understanding.

24 Q And was it the view of the Elko County
25 Sheriff's Office detective division that Tyrell Holley

1 might have somehow been involved in this incident?

2 A We had discussed that, yes, sir.

3 Q And you had actually interviewed -- did an
4 interview, or interviewed Mr. Holley, right?

5 A That's correct.

6 Q And was there a time that, without saying where
7 it was, a time that Ms. Romaine had given the Elko
8 County Sheriff's Office an alibi for a Mr. Holley not
9 to have been in town, in the Elko area, at the time of
10 this incident?

11 A I'm sorry, I can't say what the alibi was or --

12 Q Well, did it appear from the conversation that
13 had been had with Ms. Romaine that she was offering,
14 she was explaining that Mr. Holley hadn't been around
15 the Elko area the night of this incident?

16 A That's my recollection of that area of the
17 interview, yes, sir.

18 Q Okay. And you followed up with her?

19 A I did.

20 Q Can you tell the jury how you followed up?

21 A In regards to Mr. Tyrell Holley?

22 Q Yeah.

23 A I don't recall exactly when, but myself and
24 Detective Keema at one point went to go interview a
25 subject at the Elko -- or the Eureka County Jail. I

1 believe a portion of our interview concerned
2 Ms. Romaine and the events of that evening that she had
3 claimed.

4 And I also, with another detective, Detective
5 Steinfeld, I believe we went to a residence that they
6 were alleged to have shown up at, as well as talked to,
7 I believe, Joyce Romaine's mother and one of her other
8 relatives at their residence, also in Eureka County.

9 Q And you concluded that Mr. Holley, or did you
10 reach a conclusion -- let me state it another way.

11 Did you find evidence of Mr. Holley being in
12 Eureka County at the time of the alleged incident, to
13 be present, from all your work on that?

14 A I don't recall us locating any evidence, per
15 se. And I do recall various people that we talked to
16 saying that Ms. Romaine had shown up, but I don't
17 recall her actually identifying anybody that she was
18 with by name or by a good enough description that we
19 could make any observations from that.

20 Q And I don't know that we concluded this,
21 Detective Stake, but Mr. Holley -- Mr. Honeyestewa was
22 telling you about some videos or some audios.

23 You were never able to find them, right?

24 A I don't know if I was able to find them or not.
25 We did recover some. Whether they were the specific

1 ones that he was referring to or not, I don't know.

2 Q Yeah.

3 Well, he told you he had never listened to them
4 or seen them, correct?

5 A Right.

6 Q And he had been told about the content of them
7 from other people?

8 A That was my understanding, yes, sir.

9 Q Okay. And you went to some significant effort
10 to come into possession of those audio tapes, right?

11 A I don't know whether it was significant or not.
12 But, yes, we did go through some effort to try and
13 obtain those.

14 Q And you also come in contact with a person that
15 Mr. Holley had allegedly threatened in order to
16 establish his nonparticipation in this?

17 Let me ask you: Did you interview or come into
18 contact with an interview conducted of Amy Steinbach?

19 A I didn't conduct the interview, but it's my
20 understanding that Ms. Steinbach was interviewed, yes.

21 Q And based on an investigation that you
22 conducted about that, did you ascertain that Mr. Holley
23 had borrowed Ms. Steinbach's vehicle that night of the
24 incident, July 7, 2018?

25 A I don't recall conducting a specific

1 investigation into that myself, but that was part of
2 our investigation.

3 Q And I take it, based on your direct examination
4 the other day, that you know something about
5 trajectories of bullets?

6 A Some, yes, sir.

7 Q Did you go through and look at the trajectories
8 of the various bullets that had hit the west wall of
9 the living room?

10 A At some point in the investigation, yes, sir.

11 Q Did it strike you that defects D and E of the
12 placards, or the trajectories of those bullets were
13 different than F and G?

14 A I would have to refer to the report. I
15 don't -- I don't recall that off the top of my head.

16 Q If that had been something that would have come
17 to your attention, then you would have, perhaps,
18 reacted to it?

19 A I would have to refer to the report so I know
20 exactly what those discrepancies are, if there are any.

21 Q You came -- you conducted the second search --
22 well, not a second -- sort of search of the residence,
23 what, in October of 2018?

24 A No, sir.

25 Q When was that?

1 A October 15th of 2019 is when I served the
2 search warrant.

3 Q Thank you. Yeah.

4 And it came to your attention that there had
5 been a hole in the wall of the south bedroom wall that
6 appeared to be a gunshot, that appeared to have been
7 created by a gunshot?

8 A That was my initial observation, yes, sir.

9 Q All right. Did you ever come in contact with a
10 bullet or another object that appeared to have been the
11 instrument that caused the hole?

12 A The instrument that caused the hole?

13 Q Yeah.

14 A I --

15 Q The projectile.

16 A Yeah, I did not locate a bullet or anything of
17 that nature.

18 Q Uh-huh.

19 And did you conduct an investigation to see
20 what might have happened with that?

21 A That might have happened to the bullet or the
22 defect, sir?

23 Q Well, how come a bullet described it made the
24 hole, or was it another projectile there that appeared
25 to have made the hole?

1 A I did not locate a projectile that I could
2 associate with that hole in the master bedroom wall.

3 Q And did you conduct any investigation to find
4 out why, if it had been a bullet, that bullet was no
5 longer there?

6 A I tried to, yes, sir.

7 Q Any luck?

8 A No, sir.

9 Q Were you aware that there was a -- that
10 Mr. Smith's credit card was used the day after his
11 death, July 8th, at Raley's here in Elko?

12 A No, sir.

13 Q You never heard that?

14 A I don't believe so, no, sir.

15 Q So you would have conducted no investigation?

16 A I have not conducted an investigation of that,
17 that I recall, no, sir.

18 Q There was a -- were you ever under the
19 impression there had been a video taken of the entry of
20 Mr. Lopez and Mr. Honeyestewa, went to the residence?

21 A A video, sir?

22 Q Yeah.

23 A No, sir.

24 Q You were never aware such a video might have
25 existed?

1 A I recall that there was a video -- in speaking
2 to one of the investigators, I believe Detective
3 Sergeant Hood at the time, there was a residence across
4 the street that, I believe, had a surveillance system.
5 I recall Detective Sergeant Hood telling me something
6 about recovering some footage, or trying to recover
7 some footage from around the time period the incident
8 had occurred. But I never saw the video, nor I don't
9 know its content of what was on that video.

10 Q But if it had been a video of the break-in, you
11 would have preserved it and known of it?

12 A If it were me, yes. But I don't recall what
13 Detective Sergeant --

14 Q They didn't hide it from you? You're the lead
15 detective, right?

16 A I'm sorry, what was that, sir?

17 Q They didn't hide it from you? You're the lead
18 detective, right?

19 A I should hope not, sir.

20 THE COURT: How much more do you have,
21 Mr. Woodbury?

22 MR. WOODBURY: Not too much.

23 Q BY MR. WOODBURY: When you went back up to the
24 residence in 2019 to do the additional evidence
25 recovery, the mirror that had been on the west wall was

1 gone, right?

2 A The west wall of the living room, yes, sir.

3 MR. WOODBURY: Yeah.

4 I think that's all I got, Judge.

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

6 (Admonition given to jury.)

7 THE COURT: We will be in recess for 20
8 minutes.

9 (Recess.)

10 THE COURT: The record will reflect the
11 presence of the defendant and counsel.

12 Counsel, will you stipulate to the presence of
13 the jury?

14 MR. INGRAM: Yes, Your Honor.

15 MR. WOODBURY: So stipulated.

16 THE COURT: Redirect, Mr. Ingram.

17

18 REDIRECT EXAMINATION

19 BY MR. INGRAM:

20 Q Detective Stake, do you know a person by the
21 name of Sherb Macfarlan?

22 A I do.

23 Q And what is his profession?

24 A He is an attorney.

25 Q Did he represent Speedy in this matter?

1 A I believe he did, yes, sir.

2 Q And as a detective, sir, tell me about
3 interviewing persons who are represented by counsel.

4 A Well, if they're represented by counsel, then
5 as a general rule, I usually can't question them if
6 they don't want to speak with me and want to speak to
7 an attorney.

8 There are occasions where counsel might come to
9 me and request that I speak to their client, and I do
10 under those circumstances.

11 Q And is it a fact that you cannot just
12 willy-nilly go interview somebody who is represented by
13 an attorney embedded in our constitution?

14 A It is.

15 Q And when Mr. Lopez, Speedy, pled guilty in this
16 case, is it your understanding that he was represented
17 by an attorney, Mr. Macfarlan?

18 A It is.

19 Q What would be one of the reasons, or what would
20 be the reason, if there is only one, why you would send
21 off the clothing that was purported to you to belong to
22 Mr. Honeyestewa at the hospital?

23 A Depending on the facts and circumstances that I
24 was aware of in the case, I might send that off if
25 there was some sort of connection between that piece of

1 evidence that might prove pertinent to establishing
2 some facts or circumstances as it relates to something
3 else.

4 Q And as the lead detective in this case, did you
5 come to a conclusion, and I don't know what it is, but
6 did you come to a conclusion as to Mr. Honeyestewa's
7 involvement in this case?

8 A A conclusion, yes, sir.

9 Q And did you, after you reached that conclusion,
10 did you see any relevance in trying to determine
11 anything scientific from the clothing that you received
12 from the hospital?

13 A I did not, no.

14 Q You could have asked for DNA analysis, right,
15 sir?

16 A Yes, sir.

17 Q And why didn't you do that?

18 A I didn't see it prudent at that point in time.

19 Q Was that because you knew the clothes came from
20 him?

21 A That was my understanding, yes.

22 Q Let's talk about the dogs for a minute.

23 You were at the hospital. That's the first
24 place you responded to in this particular incident,
25 correct?

1 A That's correct.

2 Q When you were at the hospital, were you
3 concerned about who owned a couple of dogs?

4 A I was not.

5 Q When you were at the Bohobi Street address,
6 were you concerned about who owned a couple of dogs?

7 A I was not, no.

8 Q When you went to the Wrangler Circle address,
9 were you concerned about who owned a couple of dogs?

10 A I was not.

11 Q Did you ever observe either one of those dogs
12 to be aggressive towards you or anyone else?

13 A Not while I was there, they were not.

14 Q As the lead detective, was it your job to at
15 least attempt to figure out, or find evidence to either
16 include or exclude individuals who were involved in
17 this incident?

18 A It was.

19 Q And tell me the process, sir, for submitting a
20 case to the district attorney's office after your
21 investigation. Tell me about that, please.

22 A After I conduct -- well, really, any portion of
23 the investigation, it goes through a report approval
24 process within our agency. And then that gets supplied
25 directly to the district attorney's office.

1 Q And in the course of your investigation, did
2 you reach conclusions as to whether you believed there
3 was probable cause that certain individuals committed a
4 crime?

5 A I do.

6 Q And during the course of your investigation in
7 this case, did you ever find evidence to support a
8 conclusion that Jennifer Stanger was involved in this
9 crime?

10 A Involved?

11 Q As to -- let me back up.

12 Have you ever found evidence to suggest or to
13 support that Ms. Stanger was involved in setting up to
14 have Brad killed?

15 A I have not, no.

16 Q What would you have done if you would have
17 found that?

18 A I would have submitted that to the district
19 attorney's office for a charging decision.

20 Q And you have not done that?

21 A I have not, no.

22 Q During the course of your investigation as the
23 lead investigator or detective in this case, have you
24 ever found any evidence that would corroborate
25 Jennifer Stanger's claim that someone was in the

1 backyard with some sort of a light prior to this
2 shooting?

3 A Nothing conclusive.

4 Q And what -- what do you have to support that at
5 all?

6 A The only very weak similarity that I could find
7 was when, I believe his first name is Enrique Ruiz, had
8 said he was outside while Ms. Stanger was outside. But
9 outside of that, I couldn't draw any conclusions from
10 the interview or from the brief contact I had with
11 Mr. Ruiz and the interview I conducted with
12 Ms. Stanger.

13 Q And was Mr. Ruiz referring to Ms. Stanger being
14 in the front yard or the backyard?

15 A If I recall, she was in the front yard during
16 this.

17 Q So that's not a connection at all, is it?

18 A Nope.

19 Q What's the arrangement between the sheriff's
20 department, your department, and FIS, Washoe County?

21 A We have a contract with the Washoe County
22 sheriff's office, who FIS is part of. I don't recall
23 the exact dollar amount that we provide them every
24 year. But we actually pay for their services.

25 And in the event that we need them, we make a

1 request, and they travel from Washoe County to us to
2 assist with complicated crime scenes or any type of
3 assistance that may be outside of our capabilities at
4 the time.

5 Q Is that your understanding, that that's the
6 reason why Washoe County responded to this particular
7 scene?

8 A It is.

9 Q Were you in charge of telling Washoe County
10 what evidence to collect?

11 A I was not, no.

12 Q Did the doctor who removed the bullets from
13 Mr. Honeyestewa's body ever tell you why he wasn't
14 going to remove the third one?

15 A I believe he did, yes, sir.

16 Q What did he tell you?

17 A That it was not medically necessary, I believe,
18 and that it may cause undue harm or damage to
19 Mr. Honeyestewa.

20 Q Did he ever mention the fact that it was next
21 to a major vein or artery in his leg?

22 A I don't recall if he specifically told me that
23 or not.

24 MR. INGRAM: Thank you.

25 That's all I have. Thanks.

1 THE COURT: Recross?

2 MR. WOODBURY: Thank you, Your Honor.

3

4 RECROSS EXAMINATION

5 BY MR. WOODBURY:

6 Q If I understand what you're saying, Detective,
7 is that you never, ever got enough evidence to make you
8 wonder if Ms. Stanger was involved in setting this
9 up --

10 A I'm sorry?

11 Q -- is that correct?

12 A That I did or did not gather evidence?

13 Q You did not find enough.

14 A I can't answer that with a simple yes or no,
15 sir.

16 Q Why don't you answer it in a complicated way,
17 then.

18 A With my understanding of what you asked me, I
19 couldn't say that I was able to find or not find.
20 Because although I was examining what had --
21 Ms. Stanger's involvement been in this, I was not
22 specifically looking to find probable cause that she
23 was involved based on my observations and (inaudible).

24 Q And you didn't find probable cause, right?

25 A I did not.

1 Q Let me see. You had been told, had you not,
2 that Ms. Stanger had attempted civil -- some
3 significant time earlier to find someone who would,
4 quote, off Mr. Smith, right?

5 A I don't recall that specifically being said
6 during any of the interviews. However, there was talk
7 of that nature in some of the interviews that I had.

8 Q Yeah.

9 Well, talk of the nature came from an interview
10 that you did, right?

11 A I believe so, yes.

12 Q Did it occur to you that the person that told
13 you that was making that up?

14 A I would have to weigh their statements based
15 with the evidence and facts and circumstances that I
16 know at the time to make that determination.

17 Q You knew that Ms. Stanger and Mr. Smith had
18 been involved in a domestic dispute two days before
19 this incident, right?

20 A I don't recall specifically knowing that, no,
21 sir.

22 Q You talked, or at least you knew what
23 Sue Francis had said about a telephone call on the
24 night of Mr. Smith's death?

25 A We discussed that during the interview, yes,

1 sir.

2 Q Yeah. And based on what Ms. Francis told you,
3 it didn't make you slightly suspicious?

4 A I don't recall if it made me suspicious or not
5 at that particular point in time.

6 Q And you knew about the events the week
7 preceding the death of Mr. Smith, about Ms. Stanger
8 having appeared relatively unclothed at a meeting
9 between her and Speedy and Tyrell and Ms. Steinbach?

10 A Yes, sir.

11 Q And you recall there being testimony --
12 testimony, I guess that's all right -- that Ms. Stanger
13 was chasing drugs, or a drug shard through the salsa or
14 something?

15 A I don't recall the context of the conversation
16 involving the salsa being that she was going after a
17 shard.

18 Q And you knew that Ms. Stanger had no source of
19 income whatever?

20 A I don't recall what kind of income she had.

21 Q And you knew that Ms. Stanger was having
22 relapse problems with previous drug addiction?

23 A I wouldn't say that I knew of the relapse
24 problems. I knew that she was allegedly traveling to
25 rehab in her future.

1 Q And so you didn't do any investigation about
2 the fact that she was having some problems with -- with
3 controlled substances again?

4 A I did not, nor do I recall specifically
5 launching an investigation into her alleged drug use.

6 Q And I assume that you interviewed people that
7 talk about Mr. Smith, claiming that she was spending a
8 whole lot of money on drugs?

9 A I don't recall if I interviewed anybody that
10 had said that. But I do recall different interviews of
11 what Mr. Smith was concerned about prior to his death.

12 Q Uh-huh.

13 And you recall that -- you followed up on all
14 the telephone calls that Ms. Stanger made about the
15 laptop computer?

16 A I don't -- I couldn't comment as to the extent
17 of the follow-up that was conducted regarding the phone
18 calls that were made.

19 Q Uh-huh.

20 And I assume that you followed up and remember
21 Mr. Sorensen talking about the problems that
22 Ms. Stanger and Mr. Smith were having the day of the --
23 the day Mr. Smith was killed?

24 A I recall that an investigator did conduct an
25 interview with Mr. Honeyestewa, and I don't recall the

1 content of that investigator's interview.

2 Q And you recall that there had been a
3 rehabilitation question of when Ms. Stanger and
4 Mr. Smith were going to go down to Carson City to put
5 her in rehabilitation?

6 A I do recall talk of that nature in one of the
7 interviews. But I don't, again, recall the specifics
8 of that.

9 Q And you knew that they were leaving a day later
10 than had been originally scheduled?

11 A It is my understanding that they were leaving
12 later than what they had originally scheduled.

13 Q And they were going to stay overnight on the
14 7th, correct, and Ms. Francis was going to take her on
15 the 8th?

16 A I believe that was the content of that
17 interview.

18 Q And you recall Mr. Aguirre and Mr. Ruiz both
19 saying that at 9:00 or so, around, at night, on the
20 night of the killing, Ms. Stanger was out waving a
21 flashlight around?

22 A I don't recall both of them saying that, no.

23 Q And you recall that she had a flashlight being
24 waved around, whether it's through Mr. Aguirre or
25 Mr. Ruiz, and she was looking for keys or clothing in

1 the car?

2 A Again, I remember some talk of her looking for
3 something, but I don't remember the exact wording or
4 content of those things.

5 Q So why didn't you go look and see that the
6 lights in that Jeep Cherokee they owned worked inside
7 the car?

8 A I didn't view it as being integral to my
9 investigation at that time.

10 Q It didn't occur to you that she was trying to
11 send a signal to somebody with that flashlight?

12 A I would have to say that although that was
13 something I considered, I didn't find anything
14 conclusive that that did or did not happen.

15 Q So if you want to be conclusive, do you go back
16 and interview Jennifer Stanger and put her in the same
17 position that you put all kind of people in that are
18 suspects and interview her a couple of times to see
19 what she's got to say about all of this?

20 A What I could say in terms of putting her back
21 in that same position, but we did interview her more
22 than once, if I recall.

23 Q Yeah.

24 But it wasn't about that flashlight, was it?

25 A I don't recall if there was any interview

1 questions regarding the flashlight specifically, no,
2 sir.

3 Q And as far as the dog being aggressive, did you
4 talk to Mr. Aguirre? Did you guys at the sheriff's
5 office get a report on the aggressiveness of the dogs?

6 A A report from Mr. Aguirre regarding the
7 aggressive dogs?

8 Q Yeah.

9 A Detective Sergeant Hood conducted an interview
10 of Mr. Aguirre, but I don't recall if there was any
11 content in that interview regarding aggressiveness of
12 dogs, or dogs at all.

13 Q How can you not recall it? I mean, if --
14 doesn't it strike you as reasonable that if one of the
15 dogs was aggressive and she had -- Jennifer Stanger had
16 invited somebody to come steal Mr. Smith's guns, or her
17 guns, or whoever's guns they were, that putting the
18 dogs away so they couldn't interfere with that might be
19 something that a person would do?

20 A I couldn't say whether they would or would not
21 do that.

22 Q Uh-huh.

23 So in the face of all of that, you still have
24 no evidence, zero, that Jennifer Stanger was involved?

25 A I'm sorry, I don't understand your question,

1 sir.

2 Q In the face of the questions I just asked you,
3 are you telling me that you know that there's no
4 probable cause that Jennifer Stanger was involved in
5 this incident that took place on July 7th?

6 A Well, it's my understanding that she did have
7 involvement. In terms of anything else, I don't have
8 probable cause of any criminal activity at this point
9 that would concern me.

10 Q And the fact that she was -- that Mr. Lopez was
11 represented by Mr. Macfarlan, you knew that, right?

12 A At some point I did. I don't recall exactly
13 when I did.

14 Q Did it ever come to your attention that
15 Mr. Macfarlan was an appointed attorney for Mr. Lopez?

16 A I have no idea how he was -- came to represent
17 Mr. Lopez.

18 Q Did it ever occur to you to walk up to the Elko
19 County courthouse and see if Mr. Macfarlan had signed a
20 document leaving, taking off, not being counsel for
21 Lopez any more?

22 A I'm sorry, I don't know what you're talking
23 about, sir.

24 Q Do appointed attorneys stay the attorney for
25 these guys forever?

1 A I couldn't comment as to whether they do or
2 don't. I don't know.

3 MR. WOODBURY: Perhaps you could take some time
4 and ask the prosecution.

5 Thank you. I have nothing further.

6 THE COURT: Are there any jury questions for
7 this witness?

8 We're going to recess, we've got quite a few
9 questions here, so I can discuss them with the
10 attorneys. The attorneys are permitted to make
11 objections to these questions if they want to. So
12 we're gonna take a recess to do that.

13 (Admonition given to jury.)

14 THE COURT: I don't expect this to take more
15 than five minutes, so don't go far. We're in recess.

16 (Recess.)

17 THE COURT: (Inaudible) jury.

18 Juror number 1 asks, "Were fingerprints taken
19 from the flashlights?"

20 MR. INGRAM: No objection.

21 MR. WOODBURY: We have no objection.

22 THE COURT: Juror number 3 asks, "Is the
23 backyard of Wrangler Circle residence fenced completely
24 to contain the dogs?"

25 MR. INGRAM: No objection.

1 MR. WOODBURY: No objection.

2 THE COURT: "Could someone enter the backyard
3 from the back?"

4 MR. INGRAM: No objection.

5 MR. WOODBURY: No objection.

6 THE COURT: Juror number 5 asks: "Was the
7 defendant brought back to Elko from Salt Lake City by
8 law enforcement officers?"

9 MR. WOODBURY: No objection.

10 MR. INGRAM: Was he?

11 MR. WOODBURY: No. He was released from the
12 Salt Lake -- from the hospital. I don't want to answer
13 for Mr. Stake, but he was released from the hospital
14 and he came back here and he was arrested a couple of
15 days later.

16 THE COURT: As reported by the Elko Daily Free
17 Press. But I don't know why you would want to put in
18 that.

19 MR. INGRAM: No objection.

20 THE COURT: You brought yourself back?

21 UNIDENTIFIED SPEAKER: Yes.

22 THE COURT: Okay. Let's see. "Were you ever
23 made aware of how Jenae Moon knew to call Alan's name
24 when looking for whoever was calling for help behind
25 the house on the colony?"

1 She testified she recognized his voice.

2 MR. WOODBURY: That's what I recall her
3 testimony.

4 MR. INGRAM: I do, too.

5 THE COURT: But the question was, Were you ever
6 made aware of how she knew to call his name?

7 MR. INGRAM: No objection.

8 MR. WOODBURY: I have no objection.

9 THE COURT: Following up on the question of
10 whether Mr. Honeyestewa was brought back by the police,
11 the next question was then: "If yes, did he have
12 visitors upon his return or shortly after? Were they
13 left alone?"

14 So he wasn't brought back by the police, so I
15 don't see any reason to ask that.

16 MR. INGRAM: I agree.

17 MR. WOODBURY: I agree.

18 THE COURT: "Did you ever review video from Amy
19 Steinbach's workplace to see who borrowed her vehicle?"

20 MR. INGRAM: No objection.

21 MR. WOODBURY: Well, it's kind of a chicken
22 question because it makes it look like Mr. Stake didn't
23 do something. But Ms. Steinbach came in very soon
24 after she wrote that, she had given it to Speedy and
25 told the police that she had not been honest about it.

1 MR. INGRAM: And I agree with Mr. Woodbury,
2 there's zero doubt that Amy Steinbach loaned the
3 vehicle to Tyrell Holley. I think that's fairly well
4 established.

5 MR. WOODBURY: Yeah.

6 THE COURT: So you don't --

7 MR. WOODBURY: I don't care.

8 THE COURT: I don't care, either.

9 Do you object to me asking the question or not.

10 MR. WOODBURY: No, that's fine.

11 MR. INGRAM: No.

12 THE COURT: Then the next is: "Who did borrow
13 it from her, if Tyrell Holley -- how or when -- how,
14 when he had an alibi?"

15 So I don't think that juror understood the
16 testimony the same way that I did, that he did not have
17 an alibi, or at least not one that was verified.

18 MR. INGRAM: I understand the testimony the
19 same as you, Your Honor. So if those questions are
20 going to be asked, I would suggest they be asked in a
21 different way. And that is to ask Nick if Tyrell
22 Holley's alibi checked out. And if not, how could he
23 have --

24 THE COURT: That sounds fair.

25 MR. WOODBURY: That's fine.

1 MR. INGRAM: And just to be clear, Judge, I'm
2 talking about his alibi of not being in Elko at the
3 time of this incident.

4 THE COURT: Uh-huh.

5 MR. INGRAM: That's the one I'm aware of.

6 THE COURT: I understand that.

7 MR. INGRAM: Okay.

8 THE COURT: Okay. Get them back in here.

9 (Recess.)

10 THE COURT: The record will reflect the
11 presence of the defendant and counsel.

12 Counsel, will you stipulate to the presence of
13 the jury?

14 MR. INGRAM: Yes, Your Honor.

15 MR. WOODBURY: So stipulated.

16 THE COURT: Detective Sergeant, were
17 fingerprints taken from the flashlights?

18 THE WITNESS: I do not recall fingerprint
19 processing being requested on the flashlights.

20 THE COURT: Is the backyard of the Wrangler
21 Circle residence fenced completely to contain the dogs?

22 THE WITNESS: I would have to look at
23 photographs. But if memory serves me right, there was
24 a fence going around the rear portion of the residence.
25 I don't recall how tall it was right now. I think it

1 was fairly low, if I remember right.

2 THE COURT: Could someone enter the backyard
3 from the back?

4 THE WITNESS: I'm sorry about that, Judge.

5 THE COURT: Could someone enter the backyard
6 from the back?

7 THE WITNESS: It would seem possible --
8 possible to me, yes.

9 THE COURT: Was Mr. Honeyestewa brought back to
10 Elko from Salt Lake City by law enforcement officers?

11 THE WITNESS: He was not in custody while he
12 was in Salt Lake City, and he was not transported back
13 by any law enforcement personnel.

14 THE COURT: Were you ever made aware of how
15 Jenae Moon knew to call Mr. Honeyestewa's name when
16 looking for whomever was calling for help behind the
17 house on the Colony?

18 THE WITNESS: I believe there was talk of that
19 in one of the interviews that I did not conduct. But I
20 am not aware of that.

21 THE COURT: Did you ever review video from
22 Amy Steinbach's workplace to see who borrowed her
23 vehicle?

24 THE WITNESS: We did not, no.

25 THE COURT: Did you have a conclusion about who

1 borrowed it from her?

2 THE WITNESS: We did.

3 THE COURT: And who was that?

4 THE WITNESS: Tyrell Holley.

5 THE COURT: You testified earlier about
6 Mr. Holley having an alibi through Joyce Romaine that
7 he was not in Elko at the time of the death of
8 Mr. Smith.

9 Did that alibi check out?

10 THE WITNESS: It did not appear to me to have
11 been substantiated, no.

12 THE COURT: Okay. Any questions on that,
13 Mr. Ingram?

14

15 FURTHER REDIRECT EXAMINATION

16 BY MR. INGRAM:

17 Q Detective Stake, why didn't you go check for
18 video surveillance to see who had borrowed
19 Ms. Steinbach's vehicle?

20 A It was my understanding when Sergeant Czegledi
21 had talked to her, as well as Detective Sergeant Hood,
22 that there was talk of who borrowed the vehicle. And I
23 believe that, if I recall, she had basically stated
24 that Tyrell had borrowed the car from her.

25 Q And as you sit here today, do you have any

1 reason to doubt that it, in fact, was Tyrell Holley
2 who, in fact, borrowed that vehicle from Amy Steinbach?

3 A I do not.

4 MR. INGRAM: That's all I have, Judge. Thank
5 you.

6 THE COURT: Any questions on that,
7 Mr. Woodbury?

8 MR. WOODBURY: Yes, Your Honor.

9

10 FURTHER RECROSS EXAMINATION

11 BY MR. WOODBURY:

12 Q The fact is, is it not, Detective Stake, that
13 Ms. Steinbach originally said that she had loaned the
14 car to Mr. Lopez?

15 A Correct. I do remember there was some
16 inaccuracies in her first statements.

17 Q I'm sorry?

18 A Yes, sir, there was.

19 Q And it's a fact that when she came back, she
20 told the police, the Elko County Sheriff's Office, that
21 she had been threatened by Mr. Holley if she said that
22 he had been the guy that borrowed the car?

23 A I believe after reviewing that interview, that
24 there was talk about it, yes, sir.

25 Q Okay. And the fence in the back of the house,

1 it was in the state of significant disrepair, was it
2 not?

3 A I don't recall the condition of it. But I
4 would have to look at the photos again. I don't
5 remember.

6 MR. WOODBURY: Okay. Thank you.

7 Nothing further.

8 THE COURT: Do either of you need this witness
9 retained?

10 MR. INGRAM: Judge, we would like him to be
11 held under subpoena, but be allowed to leave the
12 courtroom.

13 THE COURT: Okay. The courthouse?

14 MR. INGRAM: Yeah, that's what I meant, Judge.

15 THE COURT: All right. You may leave the
16 courthouse. You might be called back to testify. Do
17 not discuss your testimony with anyone other than the
18 attorneys.

19 Thank you.

20 THE WITNESS: Thank you, Judge.

21 THE COURT: Your next witness, Mr. Ingram?

22 MR. MILLS: Your Honor, the State calls
23 Brittney Chilton.

24 MR. INGRAM: Judge, while we're waiting, I
25 provided a list of exhibits to Mr. Woodbury that I'm

1 gonna ask be admitted. Exhibit 308, the diagram used
2 during the testimony of Nick Stake.

3 Exhibit 325, the parties have agreed to its
4 admission. 002, the 9-1-1 call. 043, Brad Smith's
5 toxicology. Exhibit 355, an exhibit used during the
6 testimony with (inaudible).

7 THE COURT: Any objection, Mr. Woodbury, to the
8 admission of those exhibits?

9 MR. WOODBURY: We have no objection.

10 THE COURT: Exhibits 308, 325, 2, 43, and 355
11 are admitted.

12 (Exhibits 308, 325, 2, 43 and 355 admitted.)

13 (Witness sworn.)

14 THE COURT: Please state your name and spell
15 your first and last name.

16 THE WITNESS: Brittney Chilton.
17 B-r-i-t-t-n-e-y. C-h-i-l-t-o-n.

18 THE COURT: And would you go ahead and remove
19 your mask while you testify so the jurors can see your
20 face? Thank you.

21 Go ahead, Mr. Mills.

22

23

24

25

1 BRITTNEY CHILTON,
2 the witness herein, being first duly sworn, testified
3 as follows:
4

5 DIRECT EXAMINATION

6 BY MR. MILLS:

7 Q What is your occupation?

8 A I'm a criminalist.

9 Q And what is a criminalist?

10 A A criminalist is an individual who examines
11 items of evidence that are associated with criminal
12 cases.

13 Q And where do you work?

14 A I work at the Washoe County Sheriff's Office in
15 the Forensic Science Division, and specifically I'm
16 assigned to the biology unit.

17 Q How long have you worked for the Washoe County
18 Sheriff's Office Forensic Science Division?

19 A January will be nine years.

20 Q Okay. Just backing up a little bit, before you
21 came to work for the Washoe County Sheriff's Office in
22 the Forensic Science Division, did you obtain any kind
23 of education that prepared you for that career?

24 A I did. I have a dual bachelor of science, a
25 master of science in the area of biotechnology from the

1 University of Nevada Reno in 2011.

2 Q What is biotechnology? What kind of major is
3 that, or what kind of courses did you take?

4 A Biotechnology is a really wide area in biology.
5 And it's the utilization of living organisms and
6 systems to develop a product. The classes that are
7 required in that field prepared me for working at the
8 sheriff's office.

9 Q So after graduating in 2011, at some point did
10 you become employed by the -- by Washoe County, by the
11 Forensic Science Division?

12 A I did.

13 Q And when was that?

14 A January of 2012.

15 Q And how did you start out there? What position
16 did you have originally?

17 A I started as an investigative assistant.

18 Q What did you do as an investigative assistant?

19 A I help the DNA section, the biology section,
20 overall, doing their quality control testing. Before
21 we agents are allowed to be used in casework, it's
22 required that they undergo a series of tests to make
23 sure that they are okay to use in the process. I did
24 that testing for them. I also helped with validation
25 procedures within our section.

1 Q How long did you work as a -- as an
2 investigative assistant?

3 A Approximately, three months.

4 Q And following that, did you continue to be
5 employed by the Washoe County Sheriff's Office Forensic
6 Science Division?

7 A I did. There was a position open as a
8 criminalist trainee, and I applied and was able to get
9 that job.

10 Q Okay. So what does that job entail?

11 A As a trainee, I was in the training program for
12 the primary exam section first. It was approximately a
13 six-month program. And I was required to look at
14 literature, post, past and present in the field,
15 observe qualified analysts performing casework, and
16 look at a series of samples that were mock-like samples
17 that I would be working with in actual casework,
18 perform tests on those, like I would in actual
19 casework.

20 I was required to undergo oral and written
21 exams. I was required to take ten pre-mock -- or five
22 pre-mock and five mock cases. During that time, I was
23 also looked at by my supervisor and trainer to make
24 sure I was following all of our procedures.

25 Q And how long did you work in that position?

1 A Once you become trained and start doing
2 casework, you're no longer considered a trainee, and
3 you're moved to a criminalist 1 position. We have
4 probationary periods during this time frame. And as a
5 crim 1, I worked for one year.

6 Then you're bumped to a criminalist 2, and
7 you're on probation for another year. And I stayed as
8 a criminalist 2 after that.

9 Q And from that time, until now, what have you
10 been doing with the Forensic Science Division?

11 A Performing work as a criminalist 2. I did have
12 a short stint as the DNA -- acting DNA technical leader
13 for the section, which meant I was in charge of all
14 technical aspects for our program.

15 Q And to give the jury a better understanding and
16 idea of what you do, could you explain the types of DNA
17 analysis that you do in, I guess, lay terms?

18 A Yes. Let's back up a little bit, and we'll
19 talk first about primary exam.

20 Q Sure.

21 A Primary exam is the first look at the evidence
22 when it comes into the biology section. We examine
23 those items, and we note the condition in which we
24 receive them in; the make, the model, the brand. And
25 then we examine them for the presence or absence of

1 bodily fluids. So blood, semen, saliva, and
2 potentially the presence or absence of hairs.

3 We use a series of tests, both confirmatory and
4 presumptive, to test for the biological substance in
5 question. Presumptive tests are really quick and
6 sensitive. However, they can test positive with other
7 substances. So we say it's a presumptive for the
8 bodily fluid in question.

9 Confirmatory tests, like the name implies,
10 would confirm the presence of that substance. Once we
11 find and identify those stains or biological materials,
12 we sample them and prep them for DNA. In DNA, it's
13 kind of a five-step process to break it down smaller.
14 We isolate the DNA, find out how much there is, copy
15 the DNA, run it on an analyzer, and then interpret the
16 data.

17 When we talk about DNA, DNA is at the very
18 center of your cells. It's your genetic makeup. You
19 inherit half of it from your father and half from your
20 mother. And no matter where it comes from, from an
21 individual, whether it's blood, semen, saliva, urine,
22 as long as it's from the same individual, I would
23 expect to have the same exact DNA profile.

24 This is very helpful in forensics, because
25 oftentimes biological fluids are left behind at a crime

1 scene. And I can compare those profiles to standards,
2 or known reference samples, from an individual to see
3 if they match. So I don't have to ask someone for a
4 specific body type -- or body fluid type to make sure
5 that there's a match there.

6 We isolate the DNA through a series of chemical
7 processes that breaks open the cells and releases the
8 DNA. As you can imagine, there's a very small amount
9 of DNA that we get out of these samples, and we figure
10 out how much there is through quantification.

11 Once we know how much DNA we're working with,
12 we photocopy it, essentially. It's a fateful
13 replication of the starting material. But humans are a
14 lot more alike genetically than we like to think about.
15 So I'm not interested in all of the genome, I'm only
16 interested in very small sections called short tandem
17 repeats.

18 These are sections within your DNA that are
19 void of genes. They don't tell me, like, how tall you
20 are, if you have blonde hair, blue eyes, nothing like
21 that. They're just repeating segments that are highly
22 different between individuals. And so we photocopy
23 only those regions and look at those.

24 I think the media has made this a bit more
25 exciting, and so when you hear the word "a match,"

1 oftentimes it's a little misleading, maybe like on CSI.
2 And so what it really means is that when a DNA profile
3 matches at all of the locations that I test for to an
4 individual's profile from a reference standard, it's a
5 match. When someone doesn't match at even one
6 location, I can say that they are excluded. And my job
7 is pretty easy. I write a very simple report saying
8 that person is excluded.

9 When a DNA profile matches, I have to give some
10 sort of weight to that match. What does it mean, or
11 how important is the match? We do that by doing a
12 statistic. We take the profile and put it into a
13 population database that houses how often I would
14 expect to see those repeating units at those locations.
15 And it gives me an estimated profile frequency.

16 What it means is that if I had a population of
17 random, unrelated individuals, I would expect to see
18 that profile this many times.

19 Q Okay. Thank you for that explanation.

20 Ms. Chilton, are the methods used by the Washoe
21 County Forensic Science Division scientifically
22 accepted methods of doing DNA work in your field?

23 A They are.

24 MR. MILLS: Your Honor, at this time the State
25 would ask the Court find this witness -- that this

1 witness is qualified to testify in the field of DNA
2 analysis and that she will be allowed to render her
3 findings, conclusions, observations, and opinions
4 regarding the DNA work in this case.

5 THE COURT: Any objection, Mr. Woodbury?

6 MR. WOODBURY: No.

7 THE COURT: The witness may testify.

8 Q BY MR. MILLS: And, Ms. Chilton, did you, in
9 fact, have occasion to analyze some of the evidence
10 pertaining to this case?

11 A I did.

12 Q Okay. How many reports did you generate in
13 total?

14 A Three separate reports.

15 Q Okay. And so is there what's called a lab
16 number that's assigned to these cases that you -- that
17 you're involved with?

18 A There are.

19 Q Okay. So what is the lab number? What is the
20 purpose of that?

21 A The lab number is so we don't confuse cases.
22 They are associated with the case number from the
23 submitting agency, and that's how we identify the case
24 within our laboratory.

25 Q I'm gonna show you first what's been marked as

1 State's Exhibit 302. I'll show it first to defense
2 counsel. That's State's 302.

3 Ms. Chilton, do you recognize that?

4 A I do.

5 Q What is that?

6 A This is my forensic report number 7.

7 Q Okay. In fact, the three reports that you did
8 in this case sequentially are called forensic report
9 number 7, and then 8, and then 9; is that correct?

10 A That's correct.

11 Q Do those three reports all have the same
12 L-number, the lab number?

13 A The same FSD number, yes.

14 Q The FSD number. Okay.

15 So State's Exhibit 302, that appears to be the
16 first of the three reports?

17 A That is correct.

18 Q That's report number 7, I believe?

19 A Yes.

20 Q Okay. And did you generate that report?

21 A I did.

22 Q And does that report discuss items of evidence
23 that were submitted for your analysis in this case?

24 A It does.

25 MR. MILLS: Your Honor, the State is going to

1 offer State's 302 into evidence.

2 THE COURT: Any objection?

3 MR. WOODBURY: We have no objection.

4 THE COURT: Exhibit 302 is admitted.

5 (Exhibit 302 admitted.)

6 Q BY MR. MILLS: Ms. Chilton, let's go through
7 some of those items that were submitted for your
8 analysis, starting with the item that's listed as
9 number 1, which is described as a Bell & Howell
10 flashlight collected from the driveway north of the
11 white Jeep grand Cherokee.

12 Did you conduct an analysis on that flashlight
13 to see if there were any DNA profiles on the
14 flashlight?

15 A I did.

16 Q And what were your findings with regard to that
17 flashlight?

18 A I visually examined the item and noted that
19 there were no apparent bloodstains observed. I then
20 washed the entire item for possible residual DNA, and a
21 portion of these swabs were utilized for my analysis.

22 The DNA results obtained from the flashlight
23 swabs indicated a mixture, meaning that more than one
24 individual left behind DNA on the item.

25 Due to the nature of this mixture, no

1 conclusions could be offered.

2 Q And why was that?

3 A "Due to the nature of the mixture" could mean a
4 few things. It could mean the number of individuals
5 convoluted the mixture enough to where I could not make
6 heads or tails of it or interpret it. It could mean
7 that there wasn't enough DNA left behind from one
8 individual versus another to pull out a dominant or
9 minor contributor to that profile, as well.

10 Q Okay. And just following up on that a little
11 bit, is it possible for people to handle items, to hold
12 an item, say, like a flashlight and not believe -- not
13 leave behind an identifiable DNA profile?

14 A It is.

15 Q And what are some of the factors that would
16 account for that?

17 A Some of the factors are how much a person
18 sweats, or how much they shed their skin cells. I
19 think a good way to think about this is when you go
20 potentially to a party and people are holding glasses,
21 or wine glasses, sometimes at the end of the night
22 someone's glass is clean, it looks like they never
23 touched it, but another individual leaves lots of
24 smudges. And so it's just very variable person to
25 person. And even the same person might shed or leave

1 behind more or less given the same situation.

2 Q Now, let's move on to the next item that you
3 tested, listed as item number 3. That's the
4 Springfield XD 40 subcompact handgun that was collected
5 from the ground east of the front door.

6 What did you do with regards to that handgun?

7 A I examined the item as a primary examiner first
8 and noted the presence or absence of any potential
9 red/brown stains. During that examination, a negative
10 result for the presumptive presence of blood was
11 obtained from the four tested stains observed on the
12 gun.

13 I then swabbed the front site, the front end of
14 the slide, and the front end of the body of the gun
15 together for possible residual DNA. I also swabbed the
16 grips for possible residual DNA.

17 Q And explain that a little bit more. Elaborate
18 on the swab.

19 What do you mean you swabbed those areas of the
20 gun?

21 A A swab looks like a one-sided, large Q-Tip.
22 And I will apply sterile water to that and then swab or
23 scrub the area that I believe would come into contact
24 with utilizing or handling the item. And then I take a
25 second dry swab and swab the same area, as well.

1 Q And did you -- did you, after taking those
2 swabs of those various parts of the gun, did you test
3 those swabs for the presence of DNA?

4 A I did.

5 Q And what were your findings?

6 A From the swabbing of the front site, the slide,
7 and the front end, body of the gun, the DNA result
8 indicated a mixture. And due to the nature of this
9 mixture, no conclusions could be offered.

10 Q Okay. And with regard to the swabs of the grip
11 of the gun, or the grips of the gun, what were your
12 findings?

13 A The DNA results from this swab indicated a
14 mixture. And a male dominant DNA partial profile was
15 determined from this mixture. A comparison of DNA
16 profiles showed the DNA profile obtained from the
17 Alan Honeyestewa reference sample to be the same as the
18 male dominant DNA partial profile determined from these
19 swabs.

20 The estimated frequency of this DNA profile is
21 approximately 1 in 5.549 billion individuals. Based
22 upon these results, Alan Honeyestewa cannot be excluded
23 as a source of this DNA profile.

24 In addition to that, Tieres Lopez and Bradley
25 Smith are excluded as the source of the male dominant

1 DNA partial profile determined from these swabs.

2 Q Thank you.

3 Let's talk about Alan Honeyestewa first. So
4 with regards to him, you stated that the DNA -- and
5 correct me if I'm saying this wrong. I know it's kind
6 of scientific, and I may misspeak as I state this. But
7 it sounded like his DNA profile was the same as the DNA
8 profile that was found on the grip of the gun; is that
9 correct? Is that fair to characterize it that way?

10 A Can I word it slightly different?

11 Q Yes. Yes.

12 A So from that mixture I was able to determine a
13 partial dominant profile. "Partial" means that I did
14 not -- was not able to call the DNA profile at all of
15 the locations. However, of the locations that I made
16 calls at, Alan Honeyestewa's reference sample DNA
17 profile matched.

18 Q Okay. And it sounds like, I believe you
19 testified, that DNA profile is 1 in 5.549 billion
20 individuals; is that correct?

21 A Correct.

22 Q So theoretically, there could be another person
23 walking around on this planet of 7 billion people that
24 might have the same DNA profile?

25 A Correct.

1 Q But not likely given those odds, correct?

2 A Correct.

3 Q I guess the number speaks for itself. It's 1
4 in 5.549 billion individuals that would have that
5 particular DNA profile?

6 A Approximately, yes.

7 Q Approximately. Okay.

8 But Mr. Lopez and Mr. Smith are excluded as
9 sources of the dominant -- the partial dominant DNA
10 profile on the handgun, on the grips?

11 A Yes.

12 Q Let's move on to the next item, which is item
13 number 4, the Bushnell flashlight. So another
14 flashlight here.

15 What did you do with that flashlight?

16 A I examined it first as the primary examiner.
17 And I noted extensive, very small to small, red/brown
18 stains covering the flashlight. And a positive result
19 for the presumptive presence of blood was obtained from
20 the one tested, very small stain in a group of several
21 small to very small red/brown stains on one end of the
22 flashlight near the power button.

23 I swabbed these stains together. And then
24 additionally, I tried to swab the unstained areas of
25 the flashlight for potential residual DNA. Although an

1 attempt was made to avoid the red/brown stain on the
2 item while swabbing it, I did note a red/brown stain to
3 the swabs afterwards and did test them. And there was
4 a presumptive positive of the presence of blood from
5 those swabs.

6 Q And did you test those -- the swabs of the
7 presumptive bloodstain for the presence of DNA?

8 A I did.

9 Q And what was your finding there?

10 A The DNA results obtained from those swabs
11 indicated a mixture. And a male dominant DNA profile
12 was determined from this mixture. Comparison of DNA
13 profiles showed the DNA profile obtained from the
14 Bradley Smith reference sample to be the same as the
15 male dominant DNA profile obtained from these swabs.

16 The estimated frequency of this matching DNA
17 profile is approximately 1 in 1.475 octillion
18 individuals. Based upon these results, it is
19 reasonable to conclude that Bradley Smith is the source
20 of this DNA profile.

21 Due to a low level of DNA, no conclusions can
22 be offered from the trace results obtained from these
23 swabs.

24 Q What do you mean by "trace results"?

25 A Because there was a mixture, it indicated more

1 than one individual. I was able to determine a
2 dominant profile, meaning individuals who had more DNA
3 left behind. But I could make no conclusions on the
4 extra DNA in that profile.

5 Q How much is an octillion?

6 A A lot. Yes. To put that into perspective,
7 though, there is approximately 500,000 people in Washoe
8 County, approximately 50,000 people in Elko County, and
9 7 billion people on the planet. So octillion is a lot
10 of people. A lot of (inaudible).

11 Q The long and short of it, then, is that was
12 Bradley Smith's DNA, that was his blood on the
13 flashlight?

14 A At our laboratory we utilize what is called
15 source attribution. It is a widely accepted statistic
16 within our field. And from this calculation, our
17 laboratory uses a threshold of 1 in 8 trillion
18 individuals. When the statistic is greater than that,
19 it's reasonable to conclude that the individual in
20 question is the source of that.

21 And because this number is larger, it's
22 reasonable to conclude that Bradley Smith is the source
23 of that DNA profile.

24 Q Moving on to the next item, which is item
25 number 15, a Zen head gear face mask, what did you do

1 with regards to that item of evidence?

2 A Once again, I examined it for the presence of
3 bodily fluids. And red/brown stain was observed on the
4 face mask. Human blood was indicated in one large
5 tested, red/brown stain on one side of the face mask
6 near the jaw line. And this swab was -- or this stain
7 was swabbed as item 15.1 and 15.3. And these swabs
8 were utilized for DNA analysis.

9 The interior of the mouth area was swabbed for
10 possible residual DNA at item 15.2, and a portion of
11 these swabs were utilized for DNA analysis.

12 Q Okay. And with regards to item 15.1, the swab
13 with the bloodstain on the side of the mask near the
14 left jaw line, did you try to determine whose DNA was
15 in that sample?

16 A I did.

17 Q Okay. What were your findings there?

18 A The DNA results obtained from the 15.1 stain
19 swabs indicate a mixture of at least two sources.
20 Assuming two sources, a male dominant DNA profile and
21 an unknown male minor DNA partial profile were
22 determined from this mixture.

23 Comparison of DNA profiles showed the DNA
24 profile obtained from the Alan Honeyestewa reference
25 sample to be the same as the male dominant DNA profile

1 obtained from these swabs.

2 The estimated frequency of this matching DNA
3 profile is approximately 1 in 68.68 centillion
4 individuals. Based upon these results, it is
5 reasonable to conclude that Alan Honeyestewa is the
6 source of this male dominant DNA profile.

7 Alan Honeyestewa, Tieres Lopez, and Bradley
8 Smith are excluded as the sources of the male minor DNA
9 partial profile determined from these stain swabs.

10 Q Okay. With regards to item 15.2, the swab of
11 the interior mouth area, were you able to reach any
12 conclusions about that?

13 A The stain results obtained from the mouth area
14 swabs were a mixture and no conclusions could be
15 offered.

16 Q Moving on to item number 16, did you have an
17 opportunity to test some firm grip gloves that were
18 collected near the rear middle seat of the green Ford
19 Explorer?

20 A Yes, I did.

21 Q What did you do with respect to the gloves?

22 A I examined it first for the presence of bodily
23 fluids. And a negative result for the presumptive
24 presence of blood was obtained from the one stain
25 observed on the exterior wrist of the right glove.

1 Two cuttings were removed from the palm of the
2 right glove for possible residual DNA.

3 Q What did you do with those?

4 A I did a DNA analysis.

5 Q Okay. And what were your findings with regards
6 to those cuttings that were removed from the palm of
7 the right glove?

8 A The DNA results obtained from these cuttings
9 indicate a mixture. And a male dominant DNA partial
10 profile was determined from this mixture.

11 Comparison of DNA profiles showed the DNA
12 profile obtained from the Tieres Lopez reference sample
13 to be the same as the male dominant DNA partial profile
14 obtained from these cuttings.

15 The estimated frequency of the matching DNA
16 profile is approximately 1 in 29.72 quintillion
17 individuals. Based upon these results, it is
18 reasonable to conclude that Tieres Lopez is the source
19 of this male dominant DNA partial profile.

20 Due to a low level of DNA, no conclusions could
21 be offered for the trace results from these cuttings.

22 Q And finally, with respect to item number 17,
23 which is the bandana with the white paisley
24 print collected from under the rear middle seat of the
25 green Ford Explorer, did you test that item?

1 A I did.

2 Q And what did you find?

3 A In examining that item for the presence or
4 absence of bodily fluids, the bandana was received in a
5 folded triangle with the two ends tied together. A
6 very weak positive result for the presumptive presence
7 of blood was obtained from the one, very small,
8 red/brown stain observed on the interior center region
9 of the bandana as received. I don't know how that
10 bandana was worn, so I will say "as received" for the
11 way that I received it.

12 A positive result for the presumptive presence
13 of blood was obtained from the one, medium-sized,
14 red/brown stain observed on the interior, as-received,
15 lower region of the bandana. A portion of this stain
16 was collected and removed as 17.1. Then the interior
17 and exterior as received of the center area, avoiding
18 the stain, and the interior folded area were swabbed
19 together, along with the knot tied for possible
20 residual DNA as 17.2.

21 Q And did you test 17.1, the blood stain on the
22 lower interior region of the bandana for the presence
23 of DNA?

24 A I did.

25 Q And what did you find?

1 A Comparison of DNA profiles show the DNA profile
2 obtained from the Alan Honeyestewa reference sample to
3 be the same as the DNA profile obtained from this
4 stain. The estimated frequency of this matching DNA
5 profile is approximately 1 in 68.68 centillion
6 individuals.

7 Based upon these results, it is reasonable to
8 conclude that Alan Honeyestewa is the source of this
9 DNA profile.

10 Q What about the swab of the other parts of the
11 bandana, you know, excluding the stained portion of the
12 bandana?

13 A The DNA results from that swab indicated a
14 mixture. And due to the nature of the mixture, no
15 conclusions could be offered.

16 Q Let's move on and talk about your next report,
17 report number 8, which has the same SD number, but this
18 one is listed as report number 8. It's marked for
19 purposes of court and this trial as State's Exhibit
20 303. I'll show it first to defense counsel.

21 This is State's 303. Do you recognize that?

22 A Yes, I do.

23 Q Is that your report number 8?

24 A It is.

25 Q Okay. And you did the DNA work that is

1 described in that report?

2 A Yes, I did.

3 MR. MILLS: The State is gonna offer State's
4 303 into evidence.

5 THE COURT: Any objection?

6 MR. WOODBURY: We have no objection.

7 THE COURT: Exhibit 303 is admitted.

8 (Exhibit 303 admitted.)

9 Q BY MR. MILLS: Which item was tested as
10 described in this lab report?

11 A This will be our agency item number 29, and the
12 submitting agency item number KM 982126. And I
13 described it as a black WildWear neoprene mask.

14 Q And what did you do with regards to that
15 neoprene mask?

16 A Again, I first examined it in primary exam for
17 the presence or absence of bodily fluids. And a
18 positive result for the presumptive presence of blood
19 was obtained from the two of the four tested stains on
20 the exterior of the mask and from the six tested stains
21 on the interior of the mask.

22 The entire red/brown positive stain on the
23 interior left cheek was collected as 29.1. The
24 interior mouth and nose areas, attempting to avoid
25 staining, were swabbed together for possible residual

1 DNA as 29.2.

2 A faint red/brown color was observed on the
3 29.2 swabs. However, a negative result for the
4 presumptive presence of blood was obtained from this
5 staining.

6 And the entire medium-sized, faint, red/brown,
7 positive stain near the left eye was collected as 29.3.
8 These swabs were utilized for DNA analysis.

9 Q Let's talk about each of those swabs in turn.
10 Starting with 29.1, which is described as the
11 stain on the interior left cheek of that face mask,
12 what did you do with regards to 29.1?

13 A Ran DNA analysis.

14 Q What results did you come up with?

15 A The DNA results obtained from the 29.1 swabs
16 indicated a mixture. And a male dominant DNA profile
17 was determined from the mixture.

18 Comparison of DNA profiles showed the DNA
19 profile obtained from the Joseph Honeyestewa reference
20 sample to be the same as the male dominant DNA profile
21 determined from the mixture. The estimated frequency
22 of this matching DNA profile is approximately 1 in
23 68.68 centillion individuals.

24 Based upon these results, it is reasonable to
25 conclude that Alan Honeyestewa is the source of the

1 determined male dominant DNA profile.

2 Q Okay. Thank you.

3 And just to clear up one possible point of
4 confusion with regards to the name of that subject, so
5 on the first one you said "Joseph Honeyestewa," and all
6 the other ones was "Alan Honeyestewa."

7 Can you look at the report number 7, the last
8 one?

9 A Yes.

10 Q And what is the defendant's full name, first
11 and middle name?

12 A Alan Joseph Honeyestewa.

13 Q Okay. Just to clarify, the Joseph Honeyestewa
14 and the Alan Honeyestewa referenced in report number 8,
15 that's referring to the same individual?

16 A Correct.

17 Q Just one using his first name, and the other
18 using his middle name?

19 A Correct.

20 Q So that was 29.1, the stain on the interior
21 left cheek.

22 Now, let's talk about 29.2, which is the
23 interior mouth and nose area that was swabbed.

24 What were your findings with regards to that
25 swab?

1 A The DNA results obtained from these swabs
2 indicated a mixture. And an unknown male B DNA profile
3 was determined from this mixture. This profile --
4 Bradley Smith, Tieres Lopez, and Alan Honeyestewa, and
5 the unknown male minor DNA profile previously
6 referenced in report 7 were excluded as possible
7 sources of the unknown male B DNA partial profile.

8 Q What do you mean by the unknown A profile
9 referenced in the previous report? Could you explain
10 that?

11 A In the first report it had an unknown male
12 minor partial profile from one of the items. And at
13 the time, it was the only unknown profile, so my report
14 stated an unknown male profile.

15 In the second report, there then was a second
16 unknown profile. At this point, I designated them A
17 for the first one and B for the second one, to make it
18 clear in this report what I was referencing from the
19 first report.

20 Q In other words, with regards to -- so with the
21 stain in 29.1 on the interior left cheek of the mask,
22 that came back as Mr. Honeyestewa, I guess, according
23 to those statistical numbers that you provided?

24 A It's reasonable to conclude that he is the
25 source, yes.

1 Q And then 29.2, there's an unknown male B DNA,
2 but you were able to exclude Bradley Smith,
3 Tieres Lopez, and Alan Honeyestewa as the source of
4 that DNA; is that correct?

5 A Correct.

6 Q Okay. Let's move onto the final testing that
7 you did here in this report, which is 29.3, the
8 staining near the left eye of the mask.

9 What can you tell us about your analysis there?

10 A The DNA results obtained from these swabs
11 indicate a mixture. And a male dominant DNA profile
12 was determined from this mixture.

13 Comparison of DNA profiles showed the DNA
14 profile obtained from Mr. Honeyestewa's reference
15 sample to be the same as the male dominant DNA profile
16 determined from the mixture.

17 The estimated frequency of this matching DNA
18 profile is approximately 1 in 68.68 centillion
19 individuals. Based upon these results, it is
20 reasonable to conclude that Mr. Honeyestewa is the
21 source of the determined male dominant DNA profile.

22 And for both 29.1 and 29.3, the total level of
23 DNA and the nature of the mixture, no conclusion can be
24 offered for the minor, slash, trace results obtained.

25 Q Okay. Let's turn now to your third and final

1 report, forensic report number 9, under FSD number
2 18-002964. This has been marked for court purposes as
3 State's 304. I'll show it first to defense counsel.

4 Do you recognize State's 304?

5 A Yes, I do.

6 Q What is that?

7 A It is the report that I authored, forensic
8 report number 9.

9 Q Okay. And that pertains to evidence that you
10 analyzed pertaining to this case?

11 A It does.

12 MR. MILLS: The State is going to offer State's
13 304 into evidence.

14 THE COURT: Any objection?

15 MR. WOODBURY: None.

16 THE COURT: Exhibit 304 is admitted.

17 (Exhibit 304 admitted.)

18 Q BY MR. MILLS: What did you test in this
19 report?

20 A I tested a series of red stained swabs and a
21 black Still Proud zip-up sweatshirt of unknown size.

22 Q Let's talk about item number 2 and the
23 sub-items contained therein.

24 What can you tell us about those?

25 A First I'll address the parent item. You'll

1 hear me reference it as item 2. Item 2 contained 11
2 swab boxes that had red staining collected from the
3 scene and a water control. I was asked to test some of
4 these swabs. And the ones that I tested, I sub-itemed
5 out and gave it its own unique identifier.

6 I sub-itemed out 2.1, 2.2, 2.3, 2.4, 2.5, and
7 2.6.

8 Q And the descriptions of those sub-items,
9 they're described as placard 5, placard 3, placard 24,
10 and so on and so forth, as well as a description of the
11 location within the residence where they were
12 recovered; is that correct?

13 A Correct.

14 Q Now, that information, was that transferred
15 from the request form from the law enforcement agency?

16 A That was entered by myself. It was written on
17 the swab boxes.

18 Q On the swab boxes. Okay.

19 So continue telling the jury now of what you
20 did with each of those sub-items, 2.1 through 2.6.

21 A I noted that each of these swabs contain
22 red/brown staining on the swabs, and proceeded to test
23 them for the presumptive presence of blood. Each of
24 the swabs tested gave a positive presumptive test
25 result.

1 Q And then did you conduct a confirmatory test on
2 those, as well?

3 A I did not.

4 Q Okay. So what did you do?

5 A I ran DNA analysis.

6 Q Tell us about the DNA analysis.

7 A Comparison of DNA profiles showed the DNA
8 profile obtained from the Bradley Smith reference
9 sample to be the same as the male DNA profile obtained
10 from each of the 2.1, 2.2, 2.3, 2.4, 2.5, and 2.6
11 swabs. The estimated frequency of this matching DNA
12 profile is approximately 1 in 1.475 octillion
13 individuals.

14 Based upon these results, it is reasonable to
15 conclude that Bradley Smith is the source of this DNA
16 profile.

17 Q Same result with regards to all six of those
18 items, items 2.1 through 2.6?

19 A Correct.

20 Q Reasonable to conclude that it was Bradley
21 Smith's DNA profile?

22 A Correct.

23 Q Okay. Let's move on now to the next item,
24 which is item 11. And that has some sub-items
25 associated with it, as well.

1 Tell the jury about item 11.

2 A Item 11 was one black Still Proud zip-up hooded
3 sweatshirt of unknown size.

4 Q What did you do with that sweatshirt?

5 A I examined that item for the presence of bodily
6 fluids.

7 Q Did you find any?

8 A I did: Red/brown staining on the exterior
9 right cuff; a red/brown stain on the interior of the
10 hood; several red/brown, thick beaded, drop-like stains
11 on the interior of the hood; heavy red/brown staining
12 on the exterior right side of the hood; red/brown
13 staining on the exterior left back shoulder blade
14 region.

15 Each of these tested positive for the
16 presumptive presence of blood.

17 Q Did you test them for DNA?

18 A Of those stains tested, the heavy red/brown
19 staining on the exterior right side of the hood was
20 sampled as 11.1.1. The red brown staining on the
21 exterior back left shoulder blade region was sampled as
22 11.1.2. And additionally to that, I removed a cutting
23 from the interior left cuff for possible residual DNA.

24 Q And did you conduct a DNA analysis on 11.1.1
25 through .3?

1 A I did.

2 Q And what conclusion or result did you obtain?

3 A The DNA results obtained from each of these
4 samples indicated a mixture, and the same male dominant
5 DNA profile was determined from each of them.
6 Comparison of DNA profiles showed the DNA profile
7 obtained from the Bradley Smith reference sample to be
8 the same as the male dominant DNA profile determined
9 from each of these mixtures. The estimated frequency
10 of this DNA profile is approximately 1 in 1.475
11 octillion individuals.

12 Based upon these results, it is reasonable to
13 conclude that Bradley Smith is the source of this DNA
14 profile. And due to a low level of DNA, no conclusions
15 can be offered for the trace results obtained from
16 these mixtures.

17 Q So with that sweatshirt, it's reasonable to
18 conclude that those -- that those parts of the
19 sweatshirt that you tested, those samples, it's
20 reasonable to conclude that it was Bradley Smith that
21 is the source of the DNA from those samples?

22 A That is correct.

23 MR. MILLS: I'll pass the witness.

24 THE COURT: Cross examination?

25 MR. WOODBURY: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WOODBURY:

Q I want to go back to the item 3, the sub -- subcompact pistol.

Do you have a report there in your hands?

A I do.

Q Okay. And can you tell the jury slightly slower than you did before where you tested, where you swabbed to get these results?

A I took two sets of swabs from this item. The first sets of swabs were from the front site, the front end of the slide, and the front end of the body of the gun. Those areas were all swabbed together.

Q And what is the front end of the body of the gun?

A So just the front portion, from the opening of the gun, approximately a few inches in. The reason for this is I attended a conference where I saw a presentation that showed that through research out of Miami, that oftentimes guns are placed not in a holster, but rather in the front of a belt or a pair of pants. So that part of the gun may come in contact with an individual who had the gun in their possession.

Q The -- and with respect to all of those items in the front of the gun, the subcompact, you reached no

1 conclusions?

2 A It was a mixture that I could draw no
3 conclusions from, correct.

4 Q So in other words, you reached no conclusion?

5 A Correct.

6 Q Yeah. Okay.

7 But from the grip of the gun, you did see
8 something that you did reach a conclusion from?

9 A That is correct.

10 Q All right. And what was that?

11 A A male dominant DNA partial profile was
12 determined from that mixture.

13 Q Okay.

14 And that was -- turned out to be defendant's,
15 Mr. Honeyestewa?

16 A I cannot reasonably conclude that, however,
17 Mr. Honeyestewa cannot be excluded as a source.

18 Q But Mr. Smith and Mr. Lopez were excluded?

19 A Correct.

20 Q Okay. Now, if you go back to the glove that
21 you examined, you took the blood -- no blood, but you
22 examined a -- the palm of the right glove, right?

23 A Correct. I removed two cuttings from this
24 area.

25 The palm of the glove, I would reasonably

1 assume, would come in contact with the potential wearer
2 or user of that item, and that's where I sampled from.

3 Q And you made a determination that that glove
4 had been -- the DNA sample that you got belonged to
5 Tieres Lopez?

6 A It was reasonable to conclude that, yes.

7 Q Okay. And that was on the inside of the glove?

8 A Correct.

9 Q All right. And was any sample done of the
10 outside of the glove?

11 A No.

12 Q Thank you.

13 Then with respect to the mask?

14 A Which mask?

15 Q Huh?

16 A There were two masks in this case. Which one
17 are you referencing?

18 Q I don't know. I'll have to catch up with you.

19 A Okay.

20 Q You examined two masks?

21 A I did.

22 Q And can you describe them?

23 A I can.

24 Q Would you?

25 A Yeah. The first mask was in forensic report

1 number 7. And I described item 15, agency submitting
2 item 44 NS 83701. One black Zen headgear, unknown size
3 face mask with red staining collected from the front
4 passenger seat of the green Ford Explorer.

5 Q Uh-huh.

6 And what did you find on that mask? Did you
7 get an analysis that told you who was wearing the mask?

8 A I collected red/brown staining and swabbed for
9 possible residual DNA.

10 Are you referencing the possible residual DNA?

11 Q Yeah.

12 A From those swabs, there was an indication of a
13 mixture. But due to the nature of the mixture, no
14 conclusions could be offered.

15 Q Okay. And then the second mask?

16 A That is in forensic report number 8.

17 Q Uh-huh.

18 You found blood on the exterior of the mask?

19 A And the interior.

20 Q And the interior.

21 And that blood belonged to Mr. Honeyestewa?

22 A Each of those swabbed stains indicated a
23 mixture, and the same male dominant DNA profile was
24 determined. And, yes, comparison of DNA profiles
25 obtained from the Mr. Honeyestewa's reference sample

1 was the same as the male dominant DNA profile
2 determined from those mixtures.

3 Q And so the blood samples are on the exterior.
4 And that wouldn't tell you who was wearing the mask,
5 that only tells you who bled on it?

6 A Really, it doesn't tell me either. I can only
7 say what the results were. I can't testify as to how
8 they got there.

9 Q And on that mask, that black mask in report
10 number 8, that turned out -- you did swab, or whatever
11 you do with the mouth and nose area, and you couldn't
12 determine who had been wearing that mask, or had
13 breathed into it, or anything like that?

14 A I was able to determine a partial DNA profile.
15 However, it did not match any of the reference samples
16 in question for this case.

17 Q Okay. And by that you mean you received the
18 DNA profile of a list of people, and it didn't match
19 any of those people?

20 A I received what's known as a reference sample.
21 And a reference sample can either be the swabbing of
22 the inside of the cheek, it could be a blood spot catch
23 from autopsy, and we process those just like we process
24 casework samples. And then I compare the profiles
25 obtained from those to the profiles of evidence.

1 And in this particular instance, none of those
2 profiles matched.

3 Q Now, with respect to the bandana, you tested
4 two things, I guess. You tested bloodstains you found
5 on the bandana?

6 A One of them, correct.

7 Q Where was it at?

8 A The one that was collected was the medium-sized
9 red/brown stain observed on the interior as received,
10 lower region of the bandana.

11 Q And so that looked like a blood droplet, or a
12 swipe, or something like that?

13 A It was just a large -- a medium sized red/brown
14 stain. And it did give a positive result for the
15 presumptive presence of blood. The other stain that I
16 reference in the report gave a weak positive. And
17 based on the stronger indication from the second stain,
18 that's why I took that one.

19 Q So the stain on the blood -- or on the bandana,
20 the bloodstain was that of Mr. Honeyestewa?

21 A The stain gave a positive result for the
22 presumptive presence of blood. And I did not confirm
23 it as blood. And that is correct. The DNA profile
24 obtained matched that of Mr. Estewa (phonetic).

25 Q Honeyestewa?

1 A Honeyestewa, yes, I'm very sorry. Excuse me.

2 Q All right. And then there was a -- whatever
3 else you found on the rest of the bandana, you couldn't
4 draw any conclusions about that?

5 A Additionally, I swabbed that item for possible
6 residual DNA. I swabbed the unstained areas of the
7 inside and the outside. And on the inside, that would
8 have been folded together, and the knot that was tied.
9 And that is correct, it indicated a mixture. And due
10 to the nature, no conclusions could be offered.

11 MR. WOODBURY: Thank you. I have no further
12 questions.

13 THE COURT: Redirect?

14 MR. MILLS: Nothing based on that, Your Honor.

15 THE COURT: Are there any jury questions for
16 this witness?

17 Do you need this witness retained?

18 MR. MILLS: No, Your Honor.

19 MR. WOODBURY: We do not.

20 THE COURT: Thank you, Ms. Chilton. You're
21 excused from further attendance at this trial. Please
22 do not discuss your testimony with anyone other than
23 the attorneys.

24 Thank you.

25 Next witness for the prosecution?

1 MR. INGRAM: Judge, the State is likely going
2 to rest, but we would like some time just to gather our
3 thoughts and make sure that we are going to rest. We
4 have no more additional witnesses for either side, but
5 I would like to go on the record outside the presence
6 of the jury to talk about tomorrow.

7 THE COURT: All right. Mr. Woodbury, are you
8 going to be ready with whatever you need to do by 9:00
9 tomorrow?

10 MR. WOODBURY: It depends on how you define
11 "ready," Judge. Yes.

12 THE COURT: Okay. We're going to recess for
13 tonight.

14 (Admonition given to jury.)

15 THE COURT: Please be in the jury room by 9:00
16 tomorrow morning.

17 (Recess.)

18 THE COURT: The defendant and counsel are
19 present. We are outside the presence of the jury.

20 Mr. Ingram, you have an issue?

21 MR. INGRAM: Just some clarification, Your
22 Honor. As I understand it, Mr. Woodbury is going to
23 call Speedy, Tieres Lopez, first, after his opening, I
24 guess.

25 What we spoke about in the presence of

1 Mr. Woodbury on telephone in your chambers was that I
2 would ask that that -- excuse me, it's been a long
3 day -- that Speedy be questioned about whether he's
4 going to testify outside the presence of the jury.

5 My reasoning for that is that theoretically,
6 Mr. Woodbury could ask a leading question, which would
7 plant into the jurors' minds what he wants exactly to
8 come from Mr. Speedy, and that would be unethical of
9 him, but that can happen.

10 And I think that's unfair if this Court is
11 going to rule that his testimony is inadmissible --
12 excuse me, not his testimony, his statement to a
13 private investigator just days ago is inadmissible.

14 So that's what I would like to hash out today
15 so I would know what to prepare for tomorrow.

16 THE COURT: Well, first of all, I spoke to
17 David Loreman today and asked him to go talk to
18 Mr. Lopez. I don't know if he could get into the jail.
19 He's gonna try to talk to him only if he couldn't get
20 into the jail. I don't know if he has talked to him.

21 I told you both on the phone that I was going
22 to find an attorney to go talk to him about -- you
23 know, to advise him and talk to him about the law in
24 connection with his possible testimony. The result of
25 that, I don't know. I shouldn't know, I guess, until

1 they get into the courtroom.

2 So, Mr. Ingram, what's your theory on why, if
3 the private investigator is going to be called to
4 testify, why he could not testify about what Speedy may
5 have told him?

6 MR. INGRAM: It's inadmissible hearsay.

7 THE COURT: Mr. Woodbury, so is your plan to
8 put Speedy on the stand first thing tomorrow?

9 MR. WOODBURY: It is.

10 THE COURT: So let's address the subject first
11 of whether it should be done outside the presence of
12 the jury.

13 So what's your position regarding that?

14 MR. WOODBURY: My position is, is the jury
15 ought to be allowed to see Tieres Lopez. There's no
16 question in my mind about that. I can't fathom why I
17 would all of a sudden not be able to put an adverse
18 witness so that the jury could see him. I don't
19 understand upon what principle you can do that.

20 THE COURT: Well, you say "adverse witness."
21 Are you talking about a hostile witness where you're
22 gonna want to lead him?

23 MR. WOODBURY: I'm not gonna lead him anyplace.
24 I can't lead him anyplace. I have no idea of what
25 Mr. Lopez is gonna say, not a clue.

1 He has indicated in a telephone conversation,
2 and in a statement to Mr. Kolsch, that he was not going
3 to testify. I have no idea if that means what it did
4 with Mr. Holley, that he's gonna answer four or five
5 questions, and then invoke it, whether he will, if I
6 ask him how old are you, if he will say, I'm not gonna
7 tell you, Woodbury. I don't have a clue in the world,
8 nor does the Court or, for that matter, the prosecution
9 of what he's gonna say.

10 I want certain information out of him. And if
11 I can get it, I will. But I cannot -- I can't lead my
12 own witness. I mean, even I understand. I might screw
13 it up now and then, but even I understand that you
14 can't do that, or you're not supposed to. So I'm -- I
15 have no clue what Mr. Ingram is basing his claim that I
16 can't put this guy on before a jury.

17 THE COURT: What's your legal reason,
18 Mr. Ingram, why he should not offer his testimony, or
19 lack of it, in front of the jury, just as Mr. Holley
20 did?

21 MR. INGRAM: I'm not accusing -- or I'm not
22 saying that Mr. Woodbury would do something unethical
23 or he would lead this witness. What I want to make
24 sure what doesn't happen, first of all, I want to make
25 sure this is fair to the State, just like it is to

1 Mr. Honeyestewa. And what I want to prevent is that
2 Tieres Lopez gets in front of a jury, and
3 Mr. Woodbury's question goes something like, Isn't it
4 true that you told Michael Kolsch that you were the one
5 that shot Bradley Smith? And isn't it true that you
6 were the one who said I set this up with
7 Jennifer Stanger?

8 Because that doesn't give me any opportunity to
9 cross examine. And so by doing that, that's unfair,
10 because now he has planted this into the mind of the
11 jurors. And we have no opportunity for cross
12 examination, because we know what he's going to do on
13 that stand. He said so twice.

14 Furthermore, we have a jail phone conversation
15 right here that happened on the 12th of October where
16 Mr. Lopez tells his brother that it was Mike Kolsch who
17 told him what to say in that statement, and that there
18 was no reason for two people to go down on this murder,
19 since he's already doing life in prison for it.

20 And in no way whatsoever am I implying that
21 Mr. Woodbury was involved in that. I've worked with
22 that man for a long time, and I know he would never do
23 anything like that. But that's the allegation made
24 against Michael Kolsch. And I would be happy to mark
25 this exhibit right now and let you listen to it, if you

1 would like to.

2 THE COURT: Well, I'm just thinking here a
3 minute. So I understand your claim; Mr. Woodbury could
4 ask his questions, leading or not, and Tieres says, I'm
5 not gonna answer that. And then you're saying, how do
6 you cross examine, "I'm not gonna answer that"?

7 MR. INGRAM: Correct.

8 THE COURT: So, Mr. Woodbury, how do you
9 respond to that?

10 MR. WOODBURY: He's suggesting that I'm
11 adding -- asking leading questions. I'm not allowed to
12 do that on direct examination.

13 THE COURT: And I tell the jurors that
14 questions are not evidence.

15 MR. WOODBURY: Yeah.

16 THE COURT: So he is going to be allowed to
17 testify, or refuse to testify in front of the jury. It
18 seems like what you have there on that disk,
19 Mr. Ingram, would be something for cross examination.

20 MR. INGRAM: It would be. But I don't even
21 think we get there, Judge, because -- well, if he
22 testifies about what he told Michael Kolsch, then, yes,
23 this is cross examination material. Absolutely.

24 THE COURT: Even if he denies it, isn't it?

25 MR. INGRAM: Yeah. It's inconsistent,

1 absolutely.

2 THE COURT: Right. I think you've still got
3 that.

4 MR. INGRAM: We've still got that.

5 And I'm not objecting to what -- to putting
6 Mr. Lopez on the stand and letting him examine him, and
7 let him say whatever he wants to say. I'm not trying
8 to prevent him from testifying. I'm trying to prevent
9 his out-of-court statement from coming into evidence,
10 by whatever mechanism, except for him testifying in
11 here, in court, and me having the opportunity to cross
12 examine him.

13 THE COURT: What out-of-court statement? What
14 are you talking --

15 MR. INGRAM: To Michael Kolsch.

16 THE COURT: You're talking about Kolsch
17 testifying?

18 MR. INGRAM: No, I'm talking about -- yes,
19 that's how it would have to come in.

20 THE COURT: Okay. So you're saying "he," I
21 thought we were back on Speedy. Now you're talking
22 about Kolsch?

23 MR. INGRAM: Excuse me?

24 MR. MILLS: There is a recorded interview
25 between Kolsch and Speedy.

1 THE COURT: Well, I don't have that, as far as
2 I know. That's not in the exhibits that I've gone
3 through, unless it was added in the last few days.

4 MR. MILLS: It's a recent interview, I think.

5 THE COURT: All right. So I've already ruled
6 that Speedy is going to go up in front of the jury just
7 as Mr. Holley did. I'm gonna trust Mr. Woodbury not to
8 lead. I think you both -- I think you've all been
9 following the Rules of Evidence. There's some leading
10 going on, but nobody is objecting. And it's just kind
11 of the normal thing that happens in a trial to get
12 somebody through the minor stuff to get to the real
13 evidence.

14 So then you are arguing, Mr. Ingram, that
15 Mr. Kolsch cannot then get up to testify, because it's
16 hearsay about what Speedy told him.

17 So, Mr. Woodbury, what's your response to that?

18 MR. WOODBURY: My response to that is if Speedy
19 gets up there and says, I'm not gonna testify, he
20 becomes unavailable as a witness. Because in the
21 little phone conversation that Mr. Ingram is referring
22 to, they were laughing at an additional consecutive
23 year as a punishment for not testifying as being kind
24 of a joke. I think we're all a joke, but that's what
25 his point of view was.

1 They have a couple of -- or three options:
2 They could go nail his brother for screwing around with
3 justice, but they won't arrest him either. And that
4 would have, from my point of view, a good affect on
5 Mr. Lopez if he saw his brother was getting jammed up
6 for being a jerk on the telephone conversation and
7 soliciting him to evade and avoid justice. That would
8 be a problem.

9 So he's unavailable. And they are statements
10 he would have made, from my point of view, that were
11 not -- that are so far against his interests as to make
12 them more credible. And because the interest -- I know
13 that you've heard this, and I doubt seriously that you
14 want to hear it again. But this has nothing to do with
15 anything but what happens at the Nevada State Prison.

16 Part of the telephone conversation there
17 between Lopez and his brother has to do with the
18 question of whether Lopez has spread all over the
19 Northern Nevada Correctional Center what a jackass my
20 client is, because he, quote, testified against Lopez.
21 My client has never testified against Lopez at all.

22 THE COURT: No.

23 MR. WOODBURY: But what they're doing is
24 they're trying, those two beauties, are trying to get
25 this situated in a way that Mr. Honeyestewa is not

1 only, if he gets convicted, does he go to prison, what
2 really happens is he goes down, loses his life, because
3 he's a rat. And that, so clearly, is against his
4 interest, Lopez's interest. And if he said things that
5 are against his interest, they're not hearsay.

6 MR. INGRAM: May I respond, Your Honor?

7 THE COURT: Uh-huh.

8 MR. INGRAM: Nothing about what Tieres Lopez
9 said in that interview is against his interest. He is
10 doing life in prison. And so to say that that is
11 trustworthy because it's against his interest is a
12 stretch.

13 THE COURT: 25 to life. He has a possibility
14 of getting out in 25 years.

15 MR. INGRAM: He actually says -- excuse me.
16 Because Kolsch is so fantastic in his interview, he led
17 every single question during this interview. He
18 spoon-fed Tieres Lopez every single answer. And on
19 three occasions, he actually got Mr. Lopez to reaffirm,
20 three times, that Mr. Honeyestewa knew when they left
21 the house, where they picked him up, they were going to
22 go, quote-unquote, jack the guns. Now, that's
23 favorable evidence to the State, Judge. But that
24 doesn't make it admissible.

25 THE COURT: Now, I'm looking at a couple of

1 different things here, and I'm not going to give you a
2 decision tonight. I'm gonna look at these things
3 overnight. One of the cases I've got here is Cheatham
4 V. State, C h-e-a-t-h-a-m. And there's language in it
5 that says since the declarant refused to testify at
6 trial, however, this Court held in Kaplan that the
7 declarant was unavailable as a witness, and further
8 held that because the declarant was unavailable as a
9 witness and thus not subject to cross examination, that
10 prior inconsistent statements were therefore
11 inadmissible.

12 So him being unavailable does not make his --
13 if they are prior inconsistent statements, does not
14 make them admissible. Simple unavailability, as far as
15 I can tell, does not make hearsay admissible. And I
16 have to look at this some more.

17 There's also Bruton, the admission of a
18 nontestifying co-defendant's inculpatory statement that
19 expressly implicates the defendant violates the
20 confrontation clause.

21 So we've got some pretty complicated issues
22 going on here. You're both making arguments to me
23 without giving me any real law. I have some law
24 sitting here, because I was anticipating this issue
25 through another witness.

1 So what we're going to do is I'm going to look
2 at this overnight. We'll come back in here at 8:30 in
3 the morning, and you can argue it some more after
4 you've looked at some of this law. I'll look at it,
5 and I'll make a decision on whether Mike Kolsch is
6 going to be allowed to testify. I would like to have
7 his interview.

8 Is that recorded or is that transcribed?

9 MR. INGRAM: Yes.

10 MR. WOODBURY: It's recorded.

11 THE COURT: Okay. Is there a copy that I can
12 listen to overnight?

13 MR. INGRAM: I don't mind. I don't mind at
14 all, Judge.

15 MR. WOODBURY: I don't have --

16 UNIDENTIFIED SPEAKER: I have it in an e-mail
17 that I can forward on.

18 THE COURT: How long is the interview?

19 MR. INGRAM: 19 minutes, approximately.

20 THE COURT: Okay. All right. Can you forward
21 that to Julie, please?

22 UNIDENTIFIED SPEAKER: Yes.

23 MR. INGRAM: Judge, so you know, I was relying
24 on Cheatham. I have that case right here in my hand.

25 THE COURT: Okay. All right. I've been

1 looking at these cases last week, this week, I was
2 looking at them this morning. I have some other cases,
3 as well, sitting here. I'm not sure if they pertain.
4 Shaw V. State, that's kind of a big case. Richard V.
5 State. and there's Bruton.

6 So I am really tired. It's been a long day for
7 me, as well. There's Campo, C-a-m-p-o, versus Vail.
8 That's another one sitting here in my stack. Most of
9 these have to do with the confrontation clause, which
10 isn't really what we're talking about here, because
11 it's a defense witness.

12 So I'm gonna look at this stuff overnight,
13 listen to that interview. And we'll be back here at
14 8:30 in the morning to argue that part of it.

15 MR. INGRAM: Okay.

16 THE COURT: All right. We're adjourned.

17 (Evening recess.)

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1 CASE NO. CR-FP-18-5961

2 DEPT. NO. 1

3

4 THE FOURTH JUDICIAL DISTRICT COURT THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF ELKO

6 BEFORE THE HONORABLE NANCY PORTER

7 DISTRICT JUDGE, PRESIDING

8

9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 v.

12 ALAN JOSEPH EDWARD HONEYESTEWA,

13 DEFENDANT.

14 ----- /

15

16 TRANSCRIPT OF RECORDED PROCEEDING

17 JURY TRIAL

18 October 21, 2020

19 ELKO, NEVADA

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22

23

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1 TRANSCRIPT OF RECORDED PROCEEDING

2
3 THE COURT: Morning. You may be seated.

4 The defendant and counsel are present. We're
5 outside the presence of the jury.

6 I listened to the recording last night. It
7 sounded to me like Mr. Kolsch had interviewed Speedy
8 before, maybe he didn't record that, went back and
9 recorded the interview, was getting him to confirm what
10 he had said in the past.

11 I looked at NRS 51.035(2)(a). It says an
12 out-of-court statement is not inadmissible as hearsay
13 if the following two conditions are met: The declarant
14 testifies at trial, and is subject to cross examination
15 concerning the statement. And the out-of-court
16 statement is consistent with the declarant's testimony.

17 The Cheatham case seems to be the one primarily
18 on point. That is 104 Nevada 500. In that case, they
19 say pursuant to NRS 51.055(1)(b), a declarant is
20 unavailable as a witness if he is persistent in
21 refusing to testify despite an order of the judge to do
22 so.

23 If he declines to testify, I'll order him to do
24 so. If he still doesn't testify, the hearsay is not
25 admissible. And this goes back to the Kaplan case.

1 K-a-p-l-a-n. I remember that killing. Mr. Woodbury
2 probably does, as well, in Reno. And in that case, the
3 declarant refused to testify at trial. And the Nevada
4 Supreme Court held that the declarant was unavailable
5 as a witness pursuant to NRS 51.055(1)(b), and further
6 held that because the declarant was unavailable as a
7 witness, and thus not subject to cross examination as
8 required by NRS 51.035(2)(a), his prior inconsistent
9 statements were inadmissible.

10 So Mr. Kolsch cannot testify about Tieres
11 Lopez's statements if Mr. Lopez refuses to testify.
12 They're inadmissible.

13 I also looked at NRS 51.545, statement against
14 interest. It says, A statement, which at the time of
15 its making was so far contrary to the pecuniary or
16 proprietary interest of the declarant -- that's not our
17 situation -- so far tended to subject the declarant to
18 civil or criminal liability.

19 Listening to that interview, he was not subject
20 to any additional credible or civil liability that I
21 could tell. He's already been convicted. He pled
22 guilty. So the civil liability is there for his part
23 in this killing. So he's not subjected himself to any
24 more civil or criminal liability.

25 So far tended to render invalid a claim by the

1 declarant against another. I can't see how that would
2 apply here. So far tended to make the declarant an
3 object of hatred, ridicule, or social disapproval.
4 He's already pled guilty to this. So I don't know how
5 his statements could make that any worse; maybe.
6 That's the only one that may apply here.

7 And then it says that, A reasonable person in
8 the position of the declarant would not have made the
9 statement unless the declarant believed it to be true.
10 And under those circumstances, the statement would not
11 be admissible under the hearsay rule if the declarant
12 is unavailable as a witness.

13 So I spent quite a bit of time thinking about
14 what a reasonable person in Tieres Lopez's position
15 would do; would they make such a statement? And that
16 is a tough thing to try to figure out.

17 He certainly didn't help himself, but he didn't
18 hurt himself either. He's already pled guilty and been
19 sentenced to 25 years to life. Whether a reasonable
20 person would have made that statement, it's just not an
21 easy question to answer. But even if a reasonable
22 person would have, it's the final section of that
23 statute that applies here. And it says, "This section
24 does not make admissible a statement or confession
25 offered against the accused, made by a co-defendant or

1 other person implicating both himself and the accused."

2 So I had to think about whether his statements
3 were offered against Mr. Honeyestewa. Because he's
4 being called as Mr. Honeyestewa's witness.

5 However, listening to his statement, he
6 implicates Mr. Honeyestewa in a felony murder. He
7 talks about that they agreed to go over there to steal
8 these guns. So he has implicated himself and
9 Mr. Honeyestewa. And because he's implicating
10 Mr. Honeyestewa, that is a statement offered against
11 the defendant. And so it is not admissible as a
12 statement against interest.

13 So I'm ruling that Mr. Kolsch's statements are
14 inadmissible hearsay, his statements about what
15 Mr. Lopez told him.

16 Now, we have another issue to deal with. Juan,
17 I'm gonna put you under oath and have you testify about
18 what happened yesterday, please.

19

20

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25

1 JUAN GARCIA,
2 the witness herein, being first duly sworn, testified
3 as follows:
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Would you state your name, please?

8 A Juan Garcia.

9 Q Are you the bailiff for this Court and for this
10 trial?

11 A I am.

12 Q What happened yesterday regarding Mr. Lopez?

13 A When I came in -- or when we took a break and I
14 received a text message from security downstairs
15 regarding what time we needed Mr. Lopez transported
16 over here so he could testify. I came and talked to
17 Mr. Woodbury. And Mr. Woodbury had stated, Well, I
18 don't think we're gonna get to him today, probably
19 tomorrow. But also Mr. Woodbury stated, Just be aware,
20 there is supposed to be somebody standing outside the
21 courthouse. He said, I have no idea who it is, or who
22 it's gonna be.

23 But he had heard, or was advised, I'm not
24 exactly 100 percent sure on that end, but he did tell
25 me to be cautious, where somebody might be standing, or

1 somebody was gonna be waiting for Mr. Lopez to get to
2 the courthouse.

3 So when I received that information, I had seen
4 that I got another text message from security saying,
5 Hey, we're here. So then I stepped outside. As soon
6 as I stepped outside of the courtroom, I saw that
7 Deputy Yamas, who is the court security in the
8 courthouse, had Mr. Lopez. I wanted to ask Mr. Yamas
9 if he had seen somebody, so I made sure that Mr. Lopez
10 was -- I was gonna ask that question, so we made sure
11 that Mr. Lopez was in the other courtroom with Sergeant
12 Perry.

13 So Sergeant Perry was watching Mr. Lopez in the
14 other courtroom. And I got a chance to talk to Officer
15 Yamas -- or Deputy Yamas. And he stated, Yes, he was
16 surprised. He said, Yeah, there was somebody standing
17 out there. He's like, Why? I said, Oh, well,
18 Mr. Woodbury brought it to my attention that there
19 would be somebody standing out there. And he's, like,
20 Oh, well, that's weird. He said, Yeah, there was
21 somebody standing there, and I had no clue who they
22 were. But they were standing right where I was gonna
23 open the van to the transport vehicle. I was gonna let
24 Mr. Lopez out, and there was somebody standing there.

25 And he said, But I got an itchy feeling. And I

1 said, Sir, are you waiting for somebody? He stated,
2 Yes, he is waiting for somebody. So that guy, Deputy
3 Yamas has no clue who he was. He said he's not sure
4 who he was. He just asked him, Are you here to see
5 somebody? And he said, Yeah, waiting for somebody.

6 So Yamas made sure, he said, I made sure that
7 he -- I told him, If you're gonna wait for somebody,
8 please wait for them on the other end of the
9 courthouse. You need to walk that way. I have
10 somebody walking out of the transport vehicle into the
11 courthouse. So you need to walk.

12 He kinda got a little grumpy and he said kind
13 of clueless, Oh, I do. So he finally made his way to
14 the end of the courthouse. Yamas then came into the
15 courthouse and got Mr. Lopez in.

16 THE COURT: Do you have any questions,
17 Mr. Ingram, about this?

18 MR. INGRAM: No.

19 THE COURT: Mr. Woodbury, do you have any
20 questions?

21 MR. WOODBURY: No.

22 THE COURT: I'm not gonna take a chance with
23 the security risk that this seems to pose, so I have
24 arranged for Mr. Lopez to testify by Zoom from the jail
25 courtroom. It could be totally innocuous what happened

1 last night, or yesterday afternoon, or not. But it's a
2 security risk I'm not willing to take.

3 Mr. Lopez is doing a 25-year to life sentence,
4 which I gave him for his participation in the killing
5 of Mr. Smith. Somebody appears to have been waiting
6 for him yesterday. I'm not gonna take the chance that
7 somebody might be trying to free him. So he will
8 testify, but it will be by Zoom from the jail.

9 Mr. Loreman contacted my chambers late
10 yesterday afternoon. I didn't speak to him, he spoke
11 to Julie. He told Julie that he did meet with
12 Mr. Lopez and advised him of his rights. That's all
13 that I know. I shouldn't know any more than that, and
14 I don't know any more than that. So he did meet with
15 him and talk to him. I don't know any more than the
16 two of you do about whether he's going to testify this
17 morning. But he will be called as a witness from the
18 jail.

19 Do either of you wish to be heard on that?

20 MR. INGRAM: No, Your Honor.

21 MR. WOODBURY: My preference is that he appear
22 before the jury here in the courtroom.

23 THE COURT: I understand that, but the risk to
24 me at this point seems too great not only to the
25 participants in this trial, but to anyone in or around

1 the courthouse if there was someone who wants to break
2 out Mr. Lopez from his confinement. Mr. Lopez doesn't
3 have anything to lose. He's serving a life sentence.

4 Mr. Woodbury, I didn't know if you would want
5 to offer the recording of the conversation between
6 Mr. Lopez and Mike Kolsch, just as an offer of proof,
7 so that is in the record in the event Mr. Honeyestewa
8 is convicted and you want to appeal my decision not to
9 allow that testimony.

10 MR. WOODBURY: I do want to.

11 THE COURT: Okay. That will be admitted.
12 You'll need to get that, I guess, into a CD form and
13 get it to the clerk. That will not go to the jury.
14 That is just as an offer of proof.

15 We're gonna get Mr. Lopez on Zoom at 9:00. We
16 will deal with him first. I forgot I had another
17 hearing at 9:00 on an ex parte custody matter. We have
18 Mr. Lopez arranged from the jail at 9:00, so we will
19 deal with him first. And then we're going to recess
20 while I deal with the ex parte custody matter. And
21 then we'll move on with our trial when I'm done with
22 that.

23 MR. INGRAM: Your Honor, I have one additional
24 thing to address --

25 THE COURT: Okay.

1 MR. INGRAM: -- while we're on the break from
2 the jury, I guess. And I know that Mr. Honeyestewa is
3 going to testify. I guess we've known that since jury
4 selection.

5 Mr. Honeyestewa actually had a third interview
6 with Detective Stake, during which he asked Detective
7 Stake if he can retract, take back, the things that he
8 had interviewed about.

9 It's my opinion that if Mr. Honeyestewa does,
10 in fact, testify, I have the right to ask
11 Mr. Honeyestewa about that. But I wanted to know if
12 I'm going to be prohibited by the Court from doing so.

13 The reason I'm asking is only because that was
14 after, according to Honeyestewa, a consultation with
15 Mr. Woodbury, which I will not ask about. But that's
16 why I needed a ruling from this Court.

17 THE COURT: Mr. Woodbury?

18 MR. WOODBURY: Mr. Honeyestewa is going to
19 testify about it during his direct examination, so I
20 expect that the prosecution will be allowed to ask
21 about it.

22 THE COURT: All right.

23 MR. INGRAM: Thank you.

24 THE COURT: I'm going to go ahead and canvas
25 Mr. Honeyestewa.

1 Mr. Honeyestewa, would you stand, please.

2 (Defendant complied.)

3 THE COURT: Do you understand that you have the
4 right under the Constitution of the United States and
5 under the Constitution of the State of Nevada not to be
6 compelled to testify in this case?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If you wish, you may give up that
9 right and take the witness stand and testify. If you
10 do so, you will be subject to cross examination by the
11 district attorney. Anything you say, whether in direct
12 or cross examination, will be the subject of fair
13 comment by the district attorney in his closing
14 arguments.

15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If you choose not to testify, and
18 if your attorney requests it, I will instruct the jury
19 that they cannot consider the fact that you did not
20 testify.

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Mr. Ingram will not be permitted to
24 make any comments to the jury concerning the fact that
25 you have not testified.

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Have you had ample opportunity to
4 consider your decision of whether to testify and to
5 discuss it with your attorney?

6 THE DEFENDANT: I have, ma'am.

7 THE COURT: Do you need any more time to talk
8 to him about this?

9 THE DEFENDANT: I don't believe so.

10 THE COURT: Okay. When we get to that point,
11 if you need time to talk to him about it, you need to
12 tell him so he can tell me and we'll take a recess.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you have any questions about
16 these constitutional rights that I have just advised
17 you of?

18 THE DEFENDANT: No.

19 THE COURT: Okay. I just want to cover them
20 again briefly. No one can make you testify.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you testified, Mr. Ingram
24 certainly is going to cross examine you.

25 Do you understand that?

1 THE DEFENDANT: I understand.

2 THE COURT: And he gets to do that.

3 THE DEFENDANT: Yeah.

4 THE COURT: And then he gets to talk about your
5 answers in his closing argument.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you comfortable with your
9 decision of whether to testify or not?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Thank you.

12 We'll take a recess. We'll start up at 9:00
13 with -- I'm assuming you intended to call him first
14 thing. That's when we got him lined up.

15 You're gonna rest, right?

16 MR. INGRAM: Yes.

17 THE COURT: Oh, and then you gotta make your
18 opening still.

19 MR. WOODBURY: I will.

20 THE COURT: So we will not have him ready at
21 9:00. So I'm changing all our plans again. I forgot
22 about your opening. We'll go ahead and take the ex
23 parte at 9:00, and then we'll go into your opening.

24 And then is he your first witness?

25 MR. WOODBURY: Mr. Lopez is, yes.

1 THE COURT: All right. We'll let the jail know
2 it's going to be a little longer. I try to wrap these
3 ex parte things up in 15 to 30 minutes. And so we'll
4 get that done as quickly as we can and get the trial
5 underway.

6 MR. INGRAM: Do you want us back here at 9:15?

7 THE COURT: Yes.

8 MR. WOODBURY: Your Honor, I want to make a
9 statement for the record on the determination of the
10 Court that Mr. Kolsch will not be allowed to testify.

11 As I informed the Court previously during the
12 arraignment of Mr. Lopez, it was -- I attended it, and
13 I do not recall any statement of facts justifying that
14 would typically be made under oath by a defendant who
15 is pleading guilty to a crime. I do not believe the
16 statement of facts exist.

17 That has caused enormous trouble, because had
18 Mr. Lopez made the statement of facts that was
19 consistent with his plea of guilty, and it was not a
20 plea of no contest, it was a plea of guilty, we would
21 have been in a position to put that into the record.
22 And it would have had an enormous impact on the
23 question of whether we even needed to have Mr. Lopez
24 come up and -- that's one.

25 And, two, this statement of Mr. Lopez to

1 Mr. Kolsch has very little to do with being a statement
2 that we intended to tell the jury was valid or
3 truthful. Mr. Lopez, we believe, we can establish, has
4 a historic -- history of being a person who does not
5 tell the truth very often. And that has put us in an
6 enormously complex situation.

7 So we want that as part of the record.

8 THE COURT: Okay. I went back and watched
9 Mr. Lopez's entry of his guilty plea yesterday. And I
10 would agree with what Mr. Ingram said yesterday, he did
11 make a statement of facts. He did what almost every
12 criminal defendant does when they plead guilty. He
13 gave me the information I needed to determine whether
14 his statement of facts met the elements of the crime,
15 and they did. He gave a statement of facts that
16 supported felony murder.

17 So Mr. Ingram pointed out yesterday he just
18 didn't make the statement you wanted. And I would
19 agree with Mr. Ingram. Mr. Lopez did make a statement.
20 I never take a guilty plea without a statement of
21 facts. And it's certainly something I would have been
22 well aware of in a murder trial.

23 So he made that statement. It didn't give you
24 the details you want, but it's in there. It met the
25 elements of the crime to which he was pleading guilty.

1 It's not my job to be looking out for what
2 Mr. Honeyestewa's defense was going to be down the
3 road. I took Mr. Lopez's plea. He made the statement
4 of facts. Those facts supported the charge against
5 him. And that was done.

6 Now, I don't understand your second argument.
7 Are you trying to tell me you're not offering it for
8 the truth of the matter what Mr. Kolsch is going to
9 say? Because I'm not buying that. So if that's what
10 you're doing, you need to give me a little more
11 explanation to that. I think you want it in there to
12 show that this was all Speedy's idea and Speedy's plan,
13 and your client was just kinda along for the ride and
14 didn't know what was going on.

15 MR. WOODBURY: That's correct.

16 THE COURT: Okay. Then it's offered for the
17 truth.

18 MR. WOODBURY: Of what he said?

19 THE COURT: Yes.

20 The only part in there that -- there's a part
21 in there that would hurt your client that said they had
22 discussed they were going to do this before Alan.
23 Speedy takes responsibility for kicking in the door.
24 He says he took Mr. Honeyestewa's gun, and he shot at
25 Mr. Smith. Those are things that tend to exonerate

1 your client.

2 MR. WOODBURY: Let me tell you something: He
3 said that Honeyestewa never shot a shot. That was
4 bologna through and through. That is inconsistent with
5 everything that --

6 THE COURT: I know. I agree.

7 MR. WOODBURY: -- Mr. Honeyestewa said to
8 Mr. Stake and said to Lieutenant McKinney and
9 everything he's gonna testify to. That's bologna.

10 THE COURT: So what's your argument? That this
11 should come in as for not the truth of the matter? So
12 what if he's a liar? His statements haven't come in.

13 MR. WOODBURY: Mr. Honeyestewa's defense
14 depends upon Mr. Lopez being seen as a liar by the
15 jury.

16 THE COURT: Mr. Ingram, do you want to respond
17 to that?

18 MR. INGRAM: Judge, the whole basis of hearsay
19 is reliability. And everything that we know about that
20 statement is unreliable.

21 THE COURT: That's the argument that
22 Mr. Woodbury is making, though.

23 MR. INGRAM: Sure. And that's what makes it
24 inadmissible hearsay. That's precisely what makes it
25 impermissible hearsay. And I agree with everything

1 that you just stated for the reasons why it's excluded.

2 THE COURT: But if it's not offered for the
3 truth of the matter, as he's trying to argue --

4 MR. INGRAM: He just admitted, he said on the
5 record he's offering it for its truth.

6 THE COURT: Well, he said a couple of different
7 things.

8 Is it offered for the truth or not for the
9 truth, Mr. Woodbury?

10 MR. WOODBURY: I'm offering it for the truth of
11 the fact that he said that, and what he said was a lie.

12 THE COURT: Mr. Ingram?

13 MR. INGRAM: Judge, nothing about my argument
14 has changed.

15 May I comment real fast?

16 THE COURT: Go ahead.

17 MR. INGRAM: Mr. Lopez's credibility is not at
18 issue because he has not testified. So to use that to
19 impeach him, to make him to be a liar or not a credible
20 witness is irrelevant. And that doesn't make it not
21 hearsay.

22 THE COURT: When a witness is unavailable, that
23 takes it outside the hearsay rule. That makes it not
24 hearsay. However, the unavailability of the witness
25 does not then make it admissible, it makes it

1 inadmissible. So my decision stands.

2 Anything else we need to handle before we move
3 on?

4 MR. INGRAM: No, Your Honor.

5 MR. WOODBURY: No.

6 THE COURT: All right. We'll be in recess
7 until we can get this ex parte custody matter resolved.
8 Those cases, once I sign an ex parte custody order, by
9 statute have to be heard within ten days. That's why
10 I've got to deal with that.

11 Mr. Bailiff, will you let the jurors know that
12 I've got another emergency hearing that I have to deal
13 with first, and we'll bring them in as soon as we can?

14 THE BAILIFF: Yes.

15 THE COURT: Thank you.

16 (Recess.)

17 THE COURT: Good morning. You may be seated.
18 Defendant and counsel are present. Counsel,
19 will you stipulate to the presence of the jury?

20 MR. INGRAM: Yes, Your Honor.

21 MR. WOODBURY: So stipulated.

22 THE COURT: I'm sorry about the delay this
23 morning. When I let you go last night, I forgot I had
24 an emergency custody matter to deal with this morning.
25 So I did take care of that and get that resolved.

1 If you are a witness in this case, you are
2 absolutely prohibited from watching this trial. If you
3 do, you may be held in contempt of court, punishment
4 for which could include a jail sentence. The only
5 exception to that is if you have been given specific
6 permission by the Court to watch the trial, then you
7 may watch it.

8 Log-in information for all of those who log in
9 to watch this trial on Zoom shall be maintained and
10 filed in this action. All spectators are prohibited
11 from recording this trial in any manner, or
12 distributing it on social manner, or in any manner on
13 the internet. Violation of this order could result in
14 the finding that you are in contempt of court,
15 punishment for which could include a jail sentence.

16 Mr. Ingram, is the State resting at this time?

17 MR. INGRAM: Yes, Your Honor.

18 THE COURT: Mr. Woodbury, would you like to
19 make an opening statement at this time?

20 MR. WOODBURY: I would, Your Honor.

21 The defense is entitled to give you a short
22 presentation on what it expects to prove in this case.

23 THE COURT: Can you all hear Mr. Woodbury?

24 THE BAILIFF: Probably put it on the tie,
25 Mr. Woodbury.

1 MR. WOODBURY: Oh, ain't supposed to do that.
2 THE BAILIFF: I think that works better.
3 MR. WOODBURY: Now is it better?
4 THE COURT: Can you all hear?
5 (Defense's opening statement.)
6 THE COURT: Are you going to call Mr. Lopez,
7 Mr. Woodbury?
8 MR. WOODBURY: Yes.
9 THE COURT: Okay. We'll get him up on the
10 screen. They need to start their video.
11 There we are.
12 UNIDENTIFIED SPEAKER: Okay. Judge, real
13 quick, on -- it looks like -- I don't know if
14 (inaudible).
15 THE COURT: Yeah.
16 UNIDENTIFIED SPEAKER: Thank you, Judge.
17 UNIDENTIFIED SPEAKER: Can you hear us?
18 UNIDENTIFIED SPEAKER: Yes.
19 THE COURT: Mr. Lopez, please stand and raise
20 your right hand.
21 (Witness sworn.)
22 THE COURT: You can have a seat.
23 Please state and spell your first and last
24 names.
25 THE WITNESS: Tieres Lopez. T-i-e-r-e-s.

1 L-o-p-e-z.

2 THE COURT: Mr. Lopez, are you able to see
3 Mr. Woodbury and Mr. Honeyestewa on the screen?

4 THE WITNESS: No.

5 THE COURT: Mr. Woodbury, would you speak and
6 see if the camera moves to you? He needs to be able to
7 see you and Mr. Honeyestewa.

8 MR. WOODBURY: Yes, I will speak.

9 THE COURT: Did you see him after that?

10 THE WITNESS: Yeah, I can see them.

11 THE COURT: All right. And, Mr. Honeyestewa,
12 you can see Mr. Lopez, correct?

13 THE DEFENDANT: Yeah, I can see him.

14 THE COURT: All right. Go ahead, Mr. Woodbury.

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1 TIERES LOPEZ,
2 the witness herein, being first duly sworn, testified
3 as follows:
4

5 DIRECT EXAMINATION

6 BY MR. WOODBURY:

7 Q Mr. Lopez, how old are you?

8 A What?

9 Q How old are you?

10 A 26.

11 Q Where do you live?

12 A The prison now.

13 Q Where at?

14 A Ely.

15 Q And how long have you been there?

16 A A little bit over a year.

17 Q And how did you come to go to prison?

18 A What?

19 Q How did you come to go to prison?

20 A I guess because of the crime I committed.

21 Q And what crime did you commit?

22 A Murder.

23 Q I'm sorry?

24 A What?

25 Q Did you -- did you say murder is the crime you

1 committed?

2 A Yeah.

3 Q Uh-huh.

4 And who was the victim, if you know?

5 A Brad Smith.

6 Q Uh-huh.

7 And can you tell the jury what it was that you
8 did that caused you to be guilty of a murder?

9 A Well, I can barely hear you.

10 THE COURT: Try the mic there.

11 UNIDENTIFIED SPEAKER: Talk into one of those.

12 Q BY MR. WOODBURY: Can you explain to the jury
13 what it was you did to Mr. Smith that caused you to be
14 guilty of his murder?

15 A Yeah. Mr. Woodbury, I talked to my attorney,
16 he said that if I didn't want to testify, I don't have
17 to.

18 Q Why wouldn't you want to testify?

19 A What happened?

20 Q Why wouldn't you want to testify?

21 A Why wouldn't I give testimony?

22 Q Yeah.

23 A Because it's really not my case. I already
24 pled guilty to what I had to, and I'm trying to put
25 this behind me.

1 Q Were you informed that you have to testify if
2 you are called and subpoenaed to do so?

3 A What happened?

4 Q Were you informed that you had to testify, or
5 you have to give a legal reason for not testifying?

6 A Yeah. I'm supposed to ^ ? four if I had to
7 give testimony.

8 Q Well, I'm wondering why it is you don't want to
9 testify?

10 UNIDENTIFIED SPEAKER: One second. Okay.
11 Continue.

12 Q BY MR. WOODBURY: Can you hear me?

13 A Yeah, I can hear you.

14 Q Why is it that you don't want to testify?

15 A Because I just don't want to.

16 Q Were you told that just because you don't want
17 to doesn't mean you don't have to?

18 A Yeah. My attorney said if I don't want to
19 testify, I don't have to.

20 Q Did he tell you, did he talk about the -- what
21 happens if the Court orders you to testify?

22 A He just said that if I don't testify, I'll be
23 filed -- you know, charged with contempt.

24 Q Uh-huh.

25 And you're in a position where a contempt

1 citation doesn't mean very much to you?

2 A Yeah; no.

3 Q Did you have a conversation with a person on
4 the telephone that could be identified as your brother
5 back a week or two ago?

6 A What happened?

7 Q A telephone conversation with your brother, did
8 you have one?

9 A I plead the fifth, man. I don't want to talk
10 anymore.

11 Q Are you going to plead the fifth on everything?

12 A Yeah, I plead the fifth.

13 THE BAILIFF: One second, Mr. Woodbury.

14 Okay, Mr. Woodbury.

15 Q BY MR. WOODBURY: Did you talk to a private
16 detective named Mike Kolsch?

17 A Yeah, I don't -- I don't want to say
18 (inaudible) information.

19 Q Did you provide Detective Kolsch with
20 information?

21 A Yeah, I want to talk to my attorney. I don't
22 want to talk no more.

23 Q If you provided testimony -- or provided
24 information to Detective Kolsch, why won't you provide
25 it to the jury? Could you answer the question, please?

1 A Yeah, probably not, man. I told you I don't
2 want to give testimony. My attorney told me I don't
3 have to if I don't want to.

4 Q All right. And so you won't answer the
5 question why you gave information to Detective Kolsch,
6 but you won't give it to the jury?

7 A Yeah, if I have to give testimony, then I don't
8 have to answer that question.

9 Q All right. How tall are you? Can you tell me
10 how tall you are?

11 A Mr. Woodbury, that's besides the fact. I want
12 to talk to my attorney.

13 Q Is there anybody that you would talk to further
14 about this about, what Mr. Kolsch talked to you about?

15 A Probably not, man.

16 Q Is there anything, any rules down at the Nevada
17 State Prison about getting in a position that you're in
18 that would make it a bad thing to do?

19 A Yeah, I want to talk to my attorney.

20 MR. WOODBURY: I ask the Court to direct him to
21 answer the question.

22 THE COURT: Mr. Lopez, I'm ordering you to
23 answer that question.

24 THE WITNESS: No, I don't want to speak no
25 more.

1 THE COURT: It's a Court order that you answer
2 Mr. Woodbury's questions, unless I (inaudible) that you
3 have a constitutional right not to. If you fail to
4 answer his questions at my direction, I will find you
5 in contempt of court and you could be punished by
6 additional jail time.

7 THE WITNESS: Yeah, Ms. Porter, my attorney
8 said I don't have to give testimony if I don't want to.

9 THE COURT: I've ordered him, Mr. Woodbury.
10 He's still declining to answer.

11 MR. WOODBURY: Thank you.

12 I would ask the Court to find him in contempt.

13 THE COURT: Contempt is a complicated issue.
14 At this moment, Mr. Lopez, I am finding you in contempt
15 of court. If I choose to pursue that, or the district
16 attorney's office chooses to pursue that, there will be
17 an additional hearing on what your penalty would be.

18 So at this moment, I'm considering you in
19 contempt of court for refusing to answer my
20 questions -- or answer Mr. Woodbury's questions and
21 refusing to obey the Court's order.

22 Are you still refusing to answer the questions?

23 THE WITNESS: Yes.

24 THE COURT: Mr. Woodbury, I've done what I can
25 do.

1 Q BY MR. WOODBURY: Mr. Lopez, can you stand up?
2 Mr. Lopez, do you have tattoos on your face?

3 A Yes.

4 Q And do you have -- were those tattoos put on
5 your face after you got to Nevada State Prison?

6 A Yeah, man, I plead the fifth. I want to talk
7 to my attorney right now.

8 MR. WOODBURY: Okay. That's all I got.

9 THE COURT: You can have a seat.

10 Mr. Ingram, any cross examination?
11

12

CROSS EXAMINATION

13 BY MR. INGRAM:

14 Q Mr. Lopez, I assume you're not going to answer
15 my questions either; is that correct?

16 A I want to talk to my attorney.

17 Q That wasn't my question. My question was, are
18 you going to refuse to answer my questions? Yes or no?

19 A That would be giving testimony, wouldn't it?

20 Q Maybe I'll ask you again.

21 Are you going to refuse to answer my questions?
22 Yes or no?

23 A Yeah, I want to talk to my attorney before I
24 say anything else.

25 MR. INGRAM: That's all I have, Judge.

1 THE COURT: Any redirect, Mr. Woodbury?

2 MR. WOODBURY: No.

3 THE COURT: All right. That will conclude
4 Mr. Lopez's testimony, and we will disconnect from
5 Zoom.

6 Are we disconnected yet?

7 UNIDENTIFIED SPEAKER: We are, Judge. I'm just
8 putting -- oh, tell me when it's okay to put the
9 viewers back on-line.

10 THE COURT: You can put them back on.

11 UNIDENTIFIED SPEAKER: Thank you, Judge.

12 THE COURT: We don't have the capability for
13 people who are watching on Zoom to be able to watch the
14 witnesses who are testifying by Zoom. Hopefully that's
15 something that we can resolve when we upgrade our
16 equipment again in January. But we didn't even have
17 this capability for Zoom until after COVID hit, so it's
18 been a real benefit so people can still get their
19 matters heard.

20 I hear about seven or eight hearings every
21 Monday with inmates who are in the Elko County jail.
22 I'm able to do that by Zoom. That helps with security,
23 and it also helps to try to prevent the spread of COVID
24 in or out of the jail. But we do not have the ability
25 right now for people who are watching on Zoom to watch

1 a witness testify by Zoom.

2 Your next witness, Mr. Woodbury?

3 MR. WOODBURY: Sue Francis.

4 THE BAILIFF: She might be in the restroom
5 downstairs. I'll go check.

6 UNIDENTIFIED SPEAKER: She's coming. She ran
7 out to her car.

8 THE COURT: Thank you.

9 Please raise your right hand.

10 (Witness sworn.)

11 THE COURT: Please state your name, and spell
12 your last name.

13 THE WITNESS: My name is Susan Francis. And my
14 last name is F-r-a-n-c-i-s.

15 THE COURT: Thank you.

16 Go ahead, Mr. Woodbury.

17 MR. WOODBURY: Thank you, Your Honor.

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1 SUE FRANCIS,
2 the witness herein, being first duly sworn, testified
3 as follows:
4

5 DIRECT EXAMINATION

6 BY MR. WOODBURY:

7 Q Ms. Francis, are you acquainted with, or were
8 you acquainted with, Brad Smith?

9 A He's my son.

10 Q Okay. And were you acquainted with a woman
11 named Jennifer Stanger?

12 A Yes.

13 Q And how did you become acquainted with
14 Ms. Stanger, please?

15 A I think through my daughter, was friends with
16 her sister.

17 Q And were you aware of Ms. Stanger having a
18 relationship with your son, Brad?

19 A Yes.

20 Q Could you describe what you knew about that
21 relationship for me?

22 A I would say it was a little rocky.

23 Q Okay. But how it started and --

24 A Oh, it started, I think she was cleaning his
25 house.

1 Q Okay. And then do you know where Ms. Stanger
2 resided just before your son was killed?

3 A At the home with him.

4 Q Okay. And can you describe what you know, if
5 anything, about the relationship between your son and
6 Ms. Stanger?

7 A Well, I think he expressed to me that he was
8 done in that relationship.

9 Q But was it a romantic relationship?

10 A Oh, yes. Uh-huh.

11 Q And in early July, around July 6th or so, did
12 you -- well, about July 6th of 2018, did you become
13 aware of anything about Ms. Stanger traveling to Carson
14 City for rehabilitation?

15 A It was on the day of his murder. It was on the
16 7th.

17 Q Before that time, you didn't know anything
18 about it?

19 A No.

20 Q Okay. And how did it come -- how did you
21 become informed about it?

22 A Brad had left me a message. I was working that
23 day.

24 Q Where were you working?

25 A I was working at Highland Villages. And when I

1 took my lunch, I called him back. And he asked me
2 to -- if I could take her to a facility.

3 THE COURT: And hold on just a minute, ma'am.
4 We've got an issue here.

5 THE BAILIFF: I'm gonna have you sit on this
6 chair, please. Sorry about that. That way they can
7 all see you.

8 THE WITNESS: Oh, boy.

9 THE BAILIFF: Sorry about that.

10 THE WITNESS: That's okay.

11 THE COURT: Go ahead, Mr. Woodbury.

12 Q BY MR. WOODBURY: Were you aware of, or was
13 that a -- did Mr. Smith tell you that that was a
14 changed plan from what had been originally planned?

15 A I don't remember.

16 Q All right. Do you recall him telling you
17 anything about a laptop being stolen or anything like
18 that?

19 A Yes.

20 Q And people coming to the house?

21 A Yes, he did tell me that.

22 Q Could you please, to the best of your
23 recollection, please recall it for the jury?

24 A He told me that day that she had had some
25 people over the weekend before, and his laptop was

1 gone. And that he had her chase it down and try to
2 find it to get it back, and they wanted \$500 for it.

3 Q Uh-huh.

4 A And he just laughed about that.

5 Q And did he tell you what that had to do with
6 not taking Ms. Stanger to Carson City?

7 A Yes.

8 Q What did he tell you?

9 A He told me that Ronnie Sorensen had come over
10 that morning and informed him, overhearing someone say
11 that they were gonna come rob him of his guns and some
12 tools.

13 Q Okay. And what arrangements were made, then,
14 at that time for you to transport Ms. Stanger?

15 A I was to come over Sunday morning. I was gonna
16 be there at 9:00 and pick her up.

17 Q Okay. And were you taking your car?

18 A Yes.

19 Q Okay. And had arrangements been made before to
20 take your car if Mr. Smith took her?

21 A No. Not that I -- no, I don't remember. But I
22 don't think so. That was the first I heard of it.

23 Q Okay. So is that the last time you talked to
24 Brad that day?

25 A No. I talked to him at 10:00 that night.

1 Q That night?

2 A Uh-huh.

3 Q And what was that conversation about?

4 A Oh, I was calling to verify if -- if Jennifer
5 had confirmed a bed at the facility, or should I do
6 that in the morning. Just some last minute kind of
7 detail things.

8 Q Okay. When you called him -- or could you tell
9 the jury how it was that you communicated with Brad at
10 that time? Was that on cell phone or --

11 A Yes, I called him. I know it was ten o'clock
12 for some reason. I looked right at the clock when I
13 called him. I wanted to be sure it wasn't too late.
14 And so I called him. And then while we were speaking
15 he said -- well, something I asked. And he said, I
16 don't know the answer, I'll let you talk to Jen.

17 Q And did you talk to Jen?

18 A Well, he gave the phone to her, but she was
19 pretty hysterical and crying and sobbing and saying,
20 I'm sorry.

21 Q Did you ask her what -- when you say "Jen," are
22 you talking about Ms. Stanger?

23 A Yes.

24 Q And when she appeared to be hysterical, did you
25 ask her what the problem was?

1 A No. She hung up the phone before I really
2 spoke to her.

3 Q All right. Had you talked to Ms. Stanger on
4 the phone before?

5 A Oh, yes.

6 Q Were you sure it was her that was being
7 hysterical?

8 A I guess I can't say 100 percent, but I think it
9 was.

10 Q Okay.

11 A I couldn't see her or anything though.

12 Q Okay. And then did you have a conversation
13 with Ms. Stanger after your son was killed?

14 A She came over to the house the next afternoon.
15 We were there, because the door couldn't be locked. So
16 we went to get some of the more valuable things. And
17 she showed up there for a few minutes.

18 Q Okay. Who was she with?

19 A I don't remember.

20 Q Okay.

21 A I know she was on foot. She walked up.

22 Q What?

23 A She wanted us to let her in the house to get
24 some things.

25 Q When you say "she wanted us to," who --

1 A Brad's good friend Angela, her parents. And I
2 believe Brad's in-laws. His wife had died in 2014, but
3 her parents were really involved in everyone's life.
4 So we were there, and I think the next-door neighbor,
5 Mr. Ruiz was there, too. I believe that's his last
6 name.

7 Q And was Ms. Stanger let in the house?

8 A No.

9 Q Okay. What time of day or night was that visit
10 from Ms. Stanger, if you recall, the next day?

11 A Oh, it was just about dark, July 8th. That
12 would have been 9:00, 9:30.

13 Q Okay. Did Ms. Stanger describe the events for
14 you that she had witnessed --

15 A No.

16 Q -- during Brad's death?

17 A No.

18 Q She didn't talk to him about being tortured
19 (inaudible)?

20 A No.

21 MR. WOODBURY: Thank you. I have nothing
22 further.

23 THE COURT: Cross examination, Mr. Ingram.

24 MR. INGRAM: Thank you.

25

CROSS EXAMINATION

BY MR. INGRAM:

Q Ms. Francis, do you recall when Brad and Jennifer started dating?

A August of '17.

Q So roughly a year before he was killed?

A Yes, uh-huh.

Q Do you remember when she moved in, roughly?

A At the end of August.

Q Was Brad living in that same house before he met Jennifer?

A Yes.

Q And was Brad working at Newmont --

A Yes.

Q -- before he met Jennifer?

A Yes.

Q Did Brad have his own tools before he met Jennifer?

A Yes.

Q Did Brad have his own guns before he met Jennifer?

A Yes.

Q To the best of your knowledge, isn't it true that Jennifer Stanger had no ownership in the house?

A Correct. That's true.

1 Q And to the best of your knowledge, it's also
2 true that Ms. Stanger had no ownership in Brad's guns?

3 A Correct.

4 Q And to the best of your knowledge, it's also
5 true that Ms. Stanger had no ownership in Brad's tools?

6 A Yes.

7 Q When you spoke to Jennifer at roughly 10:00 at
8 night, the night he was killed, you testified that she
9 was emotional, whatever word you used?

10 A Yes, hysterical. I could hardly understand
11 her. She was sobbing.

12 Q And she, in fact, said she was sorry?

13 A Yes. Repeatedly.

14 Q And did you ever relate her telling you that
15 she's sorry to her having drug you into this to have to
16 take her to rehab?

17 A At first, I thought because of her mental
18 state, and because I was being enlisted to take her, I
19 thought that's what the apology was for.

20 Q How long did you talk to Brad at 10:00, the
21 night he was killed, roughly?

22 A Maybe just two minutes.

23 Q Were you guys able to communicate clearly with
24 one another?

25 A Yes.

1 Q Have you been around Brad when he's
2 intoxicated?

3 A Yes.

4 Q And was Brad so intoxicated when he talked to
5 you that you couldn't understand him?

6 A No.

7 Q And based just on your knowledge, did Brad live
8 a different lifestyle than Jennifer Stanger?

9 A Yes.

10 Q He had a great paying job, correct?

11 A Yes.

12 Q One that required him to remain drug free,
13 correct?

14 A Yes.

15 Q And to the best of your knowledge, is that one
16 of the reasons why Brad relayed to you that their
17 relationship was rocky?

18 A Oh, definitely.

19 Q Was that one of the reasons why Brad wanted to
20 separate himself from that lifestyle?

21 A Yes.

22 MR. INGRAM: I have no further questions.
23 Thank you.

24 THE COURT: Redirect, Mr. Woodbury?

25 MR. WOODBURY: Thank you.

REDIRECT EXAMINATION

BY MR. WOODBURY:

Q During the course of the relationship where Ms. Stanger lived with your son, did she have -- do you know whether or not she did anything like a housewife would do?

A She would keep the house tidy. She picked up, although it wasn't necessarily clean.

Q Did she do cooking?

A Pardon?

Q Did she do cooking?

A Yes, she did.

Q And did your son have a child?

A Yes.

Q Did she provide some child care for the child?

A Yes.

Q Okay. And did she have -- if you know, did she buy the food?

A Brad paid for it, if that's what you mean. I think she went to the store and picked it up, yes.

Q And how was the food paid for, if you know?

A I think through Brad's debit card. She had a debit card.

Q Okay. And did Ms. Stanger have possession of that, or do you know?

1 A At times she did.

2 Q And the question of whether she was apologizing
3 to you for having enlisted your help in taking her to
4 Carson City, you say she was extremely emotionally
5 upset about it?

6 A Yes.

7 Q Did that seem to fit to you with what you knew
8 about Ms. Stanger, about being that upset about getting
9 a ride to Carson City with you?

10 A Oh, I don't know. Her behavior had been so
11 erratic the month of June and into July, it was hard
12 to --

13 Q And she had been erratic for several --

14 A -- weeks.

15 Q -- a couple of weeks, three or four weeks?

16 A I think about four or five. I'm not sure.

17 MR. WOODBURY: Thank you. I have no further
18 questions.

19 THE COURT: Recross?

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RECROSS EXAMINATION

BY MR. INGRAM:

Q Ma'am, I apologize if I've already asked this, but I marked it down and don't remember if I did.

Brad and Jennifer were not married, correct?

A Correct.

MR. INGRAM: That's all I have, Judge. Thank you.

THE COURT: Are there any jury questions for this witness?

Thank you, Ms. Francis. Do either of you need her retained?

MR. INGRAM: No, thank you.

MR. WOODBURY: I do not.

THE COURT: You are excused from further attendance at this trial. If you choose to do so, you can watch the trial by Zoom now. You cannot discuss your testimony with anyone, other than the attorneys.

Thank you.

THE WITNESS: Thank you.

THE COURT: Your next witness, Mr. Woodbury.

MR. WOODBURY: Amy Steinbach.

THE COURT: Ms. Steinbach, will you have a seat in that chair without the arms?

THE WITNESS: Yep.

1 THE COURT: You are still under oath from the
2 last time you were in court.

3 Would you please remove your mask?

4 Please state your name again, and spell your
5 last name.

6 THE WITNESS: Amy Steinbach.

7 S-t-e-i-n-b-a-c-h.

8 THE COURT: Thank you.

9 So, Mr. Woodbury, this is your cross, correct,
10 or is she your witness? Because I don't think you
11 cross examined her.

12 MR. WOODBURY: I did not, but to be truthful
13 with you, I don't know whether it's direct or cross. I
14 don't remember whether I retained her for our cross
15 examination. I must not have, because the prosecution
16 closed their case. So it has to be direct examination.

17 THE COURT: All right. Go ahead, then.

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1 AMY STEINBACH,
2 recalled as a witness herein, having been previously
3 duly sworn, further testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. WOODBURY:

7 Q Ms. Steinbach, did you know Bradley Smith?

8 A No.

9 Q Had you ever been introduced to him?

10 A No.

11 Q Were you a married lady at the time?

12 A Yes, I still am.

13 Q And that would be on July 7th --

14 A Yes.

15 Q -- 2018?

16 A Yes.

17 Q Okay. And where were you employed?

18 A At Commercial.

19 Q All right. What was your employment?

20 A I was working at the cage. So, like, cashing
21 the checks and whatever.

22 Q Okay. And you had varying shifts?

23 A Usually -- yeah, usually I worked more in the
24 afternoon than, like, in the mornings when they opened.

25 Q And the afternoon shift was what?

1 A I believe I went in at 5:00 and we closed at
2 2:00 in the morning. So it was, like, 5:00 or 2:00 --
3 between 2:00 and 5:00 I went in.

4 Q Okay. You had known, or did you know, Jennifer
5 Stanger for quite a period of time?

6 A Yes.

7 Q And how had you met her?

8 A I first met her when we worked at JR's, in the
9 restaurant.

10 Q And when was that?

11 A I believe that was 2014-ish, I started there.

12 Q Okay. And then did there come a time when you
13 were in a court-sponsored program together?

14 A Sort of. I started Drug Court, but she was
15 already on Drug Court.

16 Q And when was that, if you recall?

17 A It hasn't been that long. Just -- '17-ish,
18 '18-ish.

19 Q '18-ish?

20 A Yeah, like 2017, 2018.

21 Q And did you and her become acquainted,
22 reacquainted during Drug Court?

23 A Well, I mean, we knew each other, but I just
24 kinda -- I didn't talk to really anybody. I was just
25 trying to stay out of trouble and keeping to myself.

1 Q I'm sorry.

2 A And I just kept to myself, so I just didn't
3 really talk to anybody when I was on Drug Court.

4 Q Okay. And there came a time when you resumed
5 your relationship with her?

6 A Yeah. Probably -- I think I said in 2018. So
7 that's when I was pregnant, was when we started talking
8 more, I guess.

9 Q And describe what you mean by talking more.

10 A Well, she lived right up the street from my
11 mom. So, like, the kids would go on a walk or
12 something, or I would just see how she was doing and
13 everything.

14 Q And did you go in her house and speak with her?

15 A A couple of times.

16 Q Did you become acquainted with Ronnie Sorensen?

17 A I didn't really know him. I think she
18 introduced me once, but I didn't really know him.

19 Q Okay. And you didn't -- was he around
20 Ms. Stanger periodically?

21 A What's that?

22 Q Was he around Ms. Stanger periodically?

23 A I don't know. Not when I ever talked to her,
24 that I know of.

25 Q Okay. And there came a time, I guess, a week

1 or so before Brad Smith was killed, where you got
2 invited to Ms. Stanger's house?

3 A Yes.

4 Q Could you tell the jury how that came to pass?

5 A She called me one night, and she was calling me
6 throughout the day, but I was busy with my kids. And
7 she called and asked if I wanted to go over there. And
8 I had to go by my mom's, I think, to pick up mail or
9 something. So I told her I would just swing by when I
10 was right there, because it's right around the corner
11 from my mom's.

12 Q Okay. Was that an unusual phone call from her
13 inviting you to come over and visit?

14 A No, not really.

15 Q So it happened quite often?

16 A Yeah, she -- yeah.

17 Q And what typically was the -- when you went and
18 visited her, what did you do?

19 A We were just talking and just really not doing
20 anything. Just hanging out kinda, just visiting.

21 Q Okay. Can you tell the jury what "hanging out"
22 means?

23 A Just visiting and catching up on -- telling
24 each other what we were doing and stuff.

25 Q Uh-huh.

1 And that night, the week before when you went
2 to visit her based on the phone call that was made to
3 you, who was with you?

4 A Tyrell and Speedy.

5 Q All right. And by "Tyrell," you mean Tyrell
6 Holley?

7 A Yes.

8 Q And how well did you know Mr. Holley?

9 A I knew him. I talked to him a few times before
10 that.

11 Q Okay. Were you romantically involved with him?

12 A No.

13 Q Never?

14 A No. We were just friends.

15 Q Okay. And what was the nature of the
16 friendship? Was there a common interest of some sort?

17 A No, not really. We just knew each other from
18 other friends, really.

19 Q Okay. And what was your relationship with
20 Mr. Lopez, Speedy?

21 A I didn't know him. I think I only met him like
22 once or twice, maybe at that. He was Tyrell's friend.

23 Q Do you recall in an interview with the
24 detectives from Elko County Sheriff's Office saying
25 that you had been romantically involved with

1 Mr. Holley?

2 A I wouldn't really consider it, I guess, not
3 romantically. But, I mean, I guess you could -- I
4 wouldn't classify it as that. But I don't -- I mean, I
5 guess they might have, but I don't remember. But I
6 wouldn't say it was like that.

7 Q And was Speedy -- you had never met him before?

8 A No. I met him once, I think, prior to being --
9 visiting Jennifer at her house.

10 Q Okay. And so after the meeting there that you
11 went to Ms. Stanger's house with Tyrell and Speedy, how
12 long did you stay there? Do you recall?

13 A Maybe an hour or so. Maybe two at the most.
14 But nothing longer than that, I don't believe.

15 Q And then on direct examination from the State,
16 you talked about Ms. Stanger bringing out a gun and so
17 on.

18 Do you recall that?

19 A Correct.

20 Q And do you recall -- or do you recall
21 Ms. Stanger and Speedy getting together and leaving the
22 kitchen area?

23 A Yeah. They -- I think he -- I think they went
24 into the bathroom or something.

25 Q I see.

1 Did they appear to know each other from prior?

2 A I asked Jennifer if she knew her -- knew him,
3 and she said yes.

4 Q Okay. All right. And then when you left,
5 where did you go?

6 A I believe, if I remember correctly, I dropped
7 Tyrell and Speedy off, and then I picked up my friend
8 from the bar.

9 Q And did you get telephone or text messages from
10 Ms. Stanger thereafter?

11 A I believe so, but I don't think I answered my
12 phone because I was driving when she was calling.

13 Q You were what?

14 A I was driving when she was calling me.

15 Q Okay. And did she continue to call you or try
16 to contact you?

17 A I believe so.

18 Q Well, did you ever say that she, quote, Blew up
19 my phone?

20 A I might of. I think she did try and call me
21 over and over, but I don't remember.

22 Q Okay. And did you ultimately communicate with
23 Ms. Stanger about a laptop?

24 A I -- she asked me about it, and I didn't know
25 anything about it. I told her that when I dropped them

1 off, I didn't see them with anything.

2 Q Okay. And did she try to figure out -- or use
3 you as a means by which to contact either Mr. Holley or
4 Mr. Lopez?

5 A There was a point that I told her she needed to
6 take it up with them, because I knew nothing about it.
7 If she wanted to find out, she would have to take it up
8 with them. Because I wasn't getting in the middle of
9 it.

10 Q And did you, in fact, give her a way for her to
11 contact Mr. Lopez or Mr. Holley?

12 A I don't believe so.

13 Q Well, I have the impression that you came by
14 knowledge that somebody had the laptop and wanted \$500
15 for it?

16 A I have no idea. I didn't know anything about
17 the laptop.

18 Q You never heard that, or anything like that?

19 A No.

20 Q Okay. All right. Were you aware that
21 Ms. Stanger appeared to be falling off the wagon with
22 respect to drugs, so to speak?

23 A I would say so.

24 Q Was that evident that night when the laptop
25 came missing?

1 A I'm not sure what you're asking.

2 Q Was it evident that she was taking narcotics or
3 alcohol that night that the laptop went missing?

4 A Yeah, I would say so.

5 Q Do you remember how she was dressed?

6 A I believe she was in shorts and, like, a sports
7 bra or something, or a tank top.

8 Q Uh-huh.

9 And you were aware that Ms. Stanger had
10 provided the keys to the gun safe at the house on that
11 night the laptop went missing?

12 A I don't really remember. It just -- because
13 it's been so long. But I don't remember.

14 Q But if you told a police officer that, that
15 would be true?

16 A Yeah, it was -- it was fresher when I talked to
17 them.

18 Q Okay. And then comes the night of July 7.

19 Did Mr. Holley borrow your car that night?

20 A Yes.

21 Q Did you file a report saying that somebody else
22 had borrowed the car?

23 A I did at the beginning, because I was being
24 threatened. And I was scared at that time.

25 Q Okay. Who did you say took your car or

1 borrowed your car?

2 A Speedy, at that time.

3 Q And who was threatening you?

4 A Tyrell.

5 Q And how did -- how did that threat come to
6 pass?

7 Did he call you, or were you in his company, or
8 do you remember?

9 A I don't remember. I remember him threatening
10 me and just telling me that if I said anything he would
11 shut me up like he has other people. So at that point,
12 I was just scared.

13 Q Okay. And you barely knew him?

14 A Well, I knew -- I knew him. I knew him.

15 Q Okay. Did Tyrell ever talk to you about what
16 happened to Mr. Smith?

17 A No.

18 Q Why did you tell Detective Hood of the Elko
19 County Sheriff's Office that he had?

20 A I don't remember saying that.

21 Q Do you recall telling Detective Hood Tyrell
22 told you that the two of them had froze, and Speedy
23 (inaudible) into them?

24 A I don't remember. If -- I mean, it was fresher
25 then, so I don't really remember.

1 Q Okay. Did you become aware that your gun -- or
2 your car had been involved in this incident with
3 Mr. Smith?

4 A I was when I called to report it stolen. They
5 had made me meet an officer at Stockmen's to report it.

6 Q I'm sorry, and then what happened?

7 A And that's when the detective told me -- I
8 mean, it wasn't a detective that was actually there, an
9 officer to report my car.

10 Q Okay. And then based on finding out your car
11 was involved, did you take any steps?

12 A Like -- I don't know what you're --

13 Q Well, find out what happened to your car, or
14 whether you can get it back, or how you're gonna get it
15 back, anything like that?

16 A He told me they would let me know. And then --
17 and that's all. I -- I tried to get in touch with --
18 like I asked the DA about it before. I had to get my
19 car seat. The baby's car seat was in there. And so we
20 had to get that and stuff out.

21 Q Okay. And how many children did you have in
22 those days?

23 A I have three.

24 Q Okay. And the car that was borrowed by
25 Mr. Holley, was that the one you typically used to haul

1 your children around?

2 A Unfortunately, yes.

3 Q Why was it unfortunate?

4 A Well, obviously because I need the car to get
5 the kids around. And I don't anymore, but yes.

6 Q You don't need your car to get kids around
7 anymore?

8 A Well, yeah, that's what I'm saying.
9 Unfortunately, now I don't have it. So...

10 Q Okay. All right. All right. Did there come a
11 time when you went down and had a telephone visit with
12 Speedy at the Elko County Jail after all this?

13 A No, I have not. I have not had a conversation
14 with Speedy on the phone at all. I haven't talked to
15 him at all.

16 Q Are you telling me that you don't recall having
17 a telephonic conversation with Speedy, that after his
18 arrest, and what you discussed, Mr. Holley,
19 Ms. Stanger, and so on?

20 A I don't. I don't -- I haven't talked to him.

21 Q I'm gonna provide you with a document and ask
22 you to see if that refreshes your recollection.

23 MR. WOODBURY: This could take a while, Judge.
24 It's a long document, six pages. And I didn't know
25 whether you wanted to break for lunch and bring her

1 back after.

2 THE COURT: We can go ahead and do that. We'll
3 be in recess until 1:00.

4 You will need to come back, Ms. Steinbach. Do
5 not discuss your testimony with anyone other than the
6 attorneys.

7 (Admonition given to jury.)

8 THE COURT: Please be back in the jury room by
9 1:00. We are in recess.

10 (Recess.)

11 THE COURT: The record will reflect the
12 presence of the defendant and counsel.

13 Counsel, will you stipulate to the presence of
14 the jury?

15 MR. INGRAM: Yes, Your Honor.

16 MR. WOODBURY: So stipulated.

17 THE COURT: All right. Ms. Steinbach is still
18 on the stand. She's on your redirect, Mr. Woodbury.

19 MR. WOODBURY: I got to borrow a pen again.
20 Never mind, I found it.

21 Q BY MR. WOODBURY: Ms. Steinbach --

22 THE COURT: Do you have your microphone turned
23 on, Mr. Woodbury?

24 MR. WOODBURY: I don't know.

25 Q BY MR. WOODBURY: Ms. Steinbach, did you --

1 THE BAILIFF: You have to turn it on.

2 Oh, you got it shut off over there.

3 Q BY MR. WOODBURY: Ms. Steinbach, I gave you a
4 document. Did you read those over the lunch hour?

5 A Yes, I did.

6 Q Okay. Did that refresh your recollection about
7 a telephone call between you and Mr. Lopez while he was
8 in jail?

9 A A little bit. I just don't -- I don't remember
10 it, but --

11 Q Okay. And how did it come to pass that you
12 went to the jail and had a phone call with him?

13 A I don't think it was at the jail. I think they
14 just, like, called me on the phone, and I was at home.

15 Q All right. And what was the phone call about?

16 MR. INGRAM: Judge, I'm gonna have to object.
17 The Nevada law prohibits hearsay, and that's exactly
18 what she's being asked to testify about.

19 THE COURT: Mr. Woodbury?

20 MR. WOODBURY: I didn't ask anything specific,
21 except for a general nature of the conversation. I'm
22 not asking for what he said or she said.

23 THE COURT: At this point, the objection is
24 overruled.

25 You can go ahead and answer the question.

1 THE WITNESS: What -- I'm sorry. What was the
2 question again? I'm sorry.

3 Q BY MR. WOODBURY: What was the general nature
4 of the conversation?

5 A Him and John (inaudible) just called, and I
6 don't remember it, that's why. But I think he was just
7 saying, Hi, and stuff like that, I don't -- believe. I
8 don't remember the phone call at all, but --

9 Q And was that surprising, because you knew
10 Speedy so little that he called you?

11 A Yeah. I was caught off guard by it.

12 Q I'm sorry?

13 A I didn't -- I didn't -- it was obvious.

14 Q And during the course of the conversation, did
15 you agree to a request of his, that you send money to
16 the jail for him?

17 A When I read the document, it did say that. But
18 I never ended up doing -- giving him any money on his
19 books.

20 Q Okay. Were you and Mr. Lopez close enough
21 friends that you would give him money?

22 A No.

23 Q And you don't have any idea -- well, actually,
24 there was another person there that you made a promise
25 to give money to, as well, Mr. Hibell?

1 A Right.

2 Q Okay. But you didn't give any money to
3 Mr. Hibell or Mr. Lopez?

4 A Correct.

5 Q All right. Did you notice in the transcript I
6 gave you that you appeared to be very angry at Jennifer
7 Stanger?

8 A It -- yeah, I read it. Like I said, I don't
9 remember the conversation, so it's hard.

10 Q Well, can you tell the jury what it was that
11 was making you so angry at Ms. Stanger?

12 A I think it's because she was -- I don't really
13 remember.

14 Q Okay. But you do remember being angry at her?

15 A I don't know if I was necessarily angry,
16 just -- I don't know. I don't really remember it,
17 so...

18 Q Well, have you been in contact with Ms. Stanger
19 since this event?

20 A No, I have not.

21 Q So the friendship that existed before no longer
22 exists?

23 A Correct.

24 Q Why is that?

25 A I just -- basically, I keep to myself and my

1 kids. I just stay at home and go to work.

2 Q Okay. And did you make a claim to Mr. Lopez
3 that she appeared to be trying to involve you in having
4 done something wrong?

5 A I believe it said something to it, but I don't
6 know exactly what it was. I don't remember.

7 MR. WOODBURY: Okay. I have no further
8 questions.

9 THE COURT: Cross examination?

10

11 CROSS EXAMINATION

12 BY MR. INGRAM:

13 Q Ms. Stanger -- excuse me,
14 Ms. Steinbach, when you were over at Jennifer's house
15 the week prior to Brad being killed, Brad wasn't there,
16 was he?

17 A No, he was not.

18 Q In fact, you had never been at that residence
19 when Brad was there, correct?

20 A Correct.

21 Q But nevertheless, you knew he lived there?

22 A Yeah, his name. I couldn't even tell you what
23 he looked like.

24 Q Now, do you recall your interview with Kevin
25 McKinney when you were talking about Jennifer Stanger

1 showing the guns to Speedy?

2 A I don't remember -- I think it was when I went
3 in for the second -- the second statement. So it's --
4 I don't -- I don't remember it all the way, but --

5 Q Do you remember telling Lieutenant McKinney
6 where you were whenever Jennifer showed Speedy the
7 guns?

8 A I believe I was at the kitchen table.

9 Q Do you recall telling McKinney that you were
10 actually in the kitchen?

11 A Yeah. It's like the kitchen and the table,
12 like, the dining area is basically, like, together kind
13 of.

14 Q You will agree with me, right, that you
15 couldn't actually see into the master bedroom in the
16 kitchen part?

17 A Correct.

18 Q So as you sit here today, you don't know
19 whether Jennifer actually opened up a safe or gave
20 Speedy keys to open up a safe, do you?

21 A I don't -- I know -- I don't know if she opened
22 it. No, I don't. But I believe it was when we were at
23 the table that she had the keys, but I don't remember.
24 I don't know for sure. I don't remember.

25 MR. INGRAM: I don't have anything else. Thank

1 you.

2 THE COURT: Redirect?

3 MR. WOODBURY: Nothing.

4 THE COURT: Are there any jury questions for
5 Ms. Steinbach?

6 Counsel, let me know if you have any objection.

7 MR. INGRAM: No objection.

8 MR. WOODBURY: No objection.

9 THE COURT: Did you hear any talk between
10 Speedy and Jennifer about planning the robbery?

11 THE WITNESS: No, I did not.

12 THE COURT: Any follow-up on that,
13 Mr. Woodbury?

14 MR. WOODBURY: No.

15 THE COURT: Mr. Ingram, any follow-up?

16 MR. INGRAM: No.

17 THE COURT: Do either of you need this witness
18 retained?

19 MR. WOODBURY: Defense does not.

20 MR. INGRAM: No, Your Honor.

21 THE COURT: Thank you, Ms. Steinbach. You are
22 excused from further appearance at this trial. Do not
23 discuss your testimony with anyone other than the
24 attorneys.

25 Your next witness, Mr. Woodbury?

1 MR. WOODBURY: Mr. Honeyestewa.

2 THE COURT: Please raise your right hand.

3 (Witness sworn.)

4 THE COURT: Please state your name.

5 THE DEFENDANT: Alan Honeyestewa.

6 THE COURT: Go ahead, Mr. Woodbury.

7 MR. WOODBURY: Thank you.

8

9 ALAN HONEYESTEWA,

10 the witness herein, being first duly sworn, testified
11 as follows:

12

13 DIRECT EXAMINATION

14 BY MR. WOODBURY:

15 Q Mr. Honeyestewa, are you the defendant in this
16 case?

17 A Yes, I am.

18 Q All right. How old are you?

19 A I'm 26 years old.

20 Q How much education do you have?

21 A I graduated from here in Elko High School, and
22 I attended college in Sacramento, California.

23 Q And what was the nature of the college that you
24 attended?

25 A I attended Universal Technical Institute. It

1 would be auto body and collision technician.

2 Q Okay. You're gonna have to slow your
3 conversation down just a little bit.

4 A All right. Sorry. I talk kind of fast.

5 Q You do. But you need to slow it down. Okay?
6 And when did you get out of that college class?

7 A I graduated in 2017.

8 Q Do you remember roughly what month?

9 A July or August, I believe.

10 Q Okay. And were you in California by yourself,
11 or were members of your family there, or someone with
12 you?

13 A No, I went by myself.

14 Q And how long did the classes last?

15 A I was there for about 15 months, 16. Yeah.

16 Q Are you a member of a Native American tribe?

17 A Yeah. I'm a member of the Te-Moak Tribe,
18 Western Shoshone.

19 Q Okay. And where did you grow up?

20 A I grew up here on the Elko Indian Colony.

21 Q All right. Did you ever live up in Owyhee?

22 A No.

23 THE BAILIFF: Let me adjust the mic a little
24 bit.

25 Q BY MR. WOODBURY: On July 7, 2018, where were

1 you living?

2 A I was living with a friend. His name is Roy.

3 Q Does he have a last name?

4 A Roy Sam.

5 Q And is he a relative of yours?

6 A Yeah, we're related somewhere down the line.

7 Q Okay. And that means, like, cousins once or
8 two or three times removed, or something like that?

9 A Yeah. I'm not really sure. We're related to
10 his mom's side of the family, I believe.

11 Q Okay. And where did Mr. Sam live? Where is
12 his house?

13 A He lived on Buckskin on the Colony.

14 Q And who else lived there?

15 A It was just me, him, and his kids, his
16 stepdaughter.

17 Q Okay. Were you having some trouble in your
18 life along -- about that time?

19 A Yeah. So before I came back to Elko, I was
20 living in Salt Lake City. And me and my girlfriend
21 that I had been with for five years, we had broken up.
22 And I ended up coming back to Elko. And, you know,
23 while we were broken up I was, you know, really
24 depressed, and it caused me to start, you know,
25 drinking a lot.

1 Q Okay. Drinking what?

2 A Alcohol in general.

3 Q All right. And where had this girlfriend for
4 five years been while you were in California going to
5 college?

6 A She -- she was here for a little bit, and then
7 she went back to school in Salt Lake City.

8 Q Okay. And you had lived in Salt Lake City with
9 her for a while?

10 A Yeah. I had lived in Salt Lake three, almost
11 four years.

12 Q And what did you do while you were over there?

13 A Nothing. We were just being a family,
14 boyfriend/girlfriend. She was going to school, and she
15 had asked me to move up there with her, or her and her
16 family did, so I did.

17 Q All right. How were you paying for -- how were
18 you earning money while you were back here in Elko?

19 A So, I mean, I wasn't really working, you know.
20 But if I needed something, I could talk to my dad, you
21 know, or one of my relatives. And I, you know, helped
22 them out with stuff, or helped some friends out with
23 some stuff, you know, and they would help me out with
24 money or give me, you know, whatever I needed so I will
25 be all right.

1 Q Okay. And you had other relations here on the
2 Colony?

3 A Yeah. I'm, like, related to half the Colony.

4 Q Okay. Is that a -- an exaggeration?

5 A Not really. I mean, I'm related to a lot of
6 people. I'm not related to everybody, of course, but I
7 am related to a lot of people.

8 Q Okay. And what is the nature of the -- the
9 nature of the relationship among the Native Americans,
10 to people who you're actually related by blood to? Is
11 there -- are you close, your ties close to each other?

12 A Oh, yeah. We all talk, we all hang out, kick
13 it.

14 Q Okay. Tell the jury what "hang out" means.

15 A You know, we'll go over to each other's house,
16 barbecues, you know, birthdays, that kind of thing, and
17 just do, I don't know, what family does, I guess.

18 Q All right. Were you engaged in any other work
19 that was consistent with the education that you had
20 received in college while you were here?

21 A Yes. So, you know, while I was back, everyone
22 knew that, you know, I went to school learning how to
23 do bodywork, how to paint cars, you know, things of
24 that nature. So people would ask me to do stuff for
25 them like that. You know what I mean? In regards --

1 you know, whether it be a bike, a skateboard. I did a
2 scooter, like things of that nature.

3 Q Okay. And you said the words, Do you know what
4 I mean. Did you recall saying that?

5 A Yeah.

6 Q Is that -- is that something that comes
7 naturally to you, or how come you say things like that?

8 A I don't know. It's been pointed out to me that
9 I say that a lot, even when I'm on the phone, you know,
10 talking to people. It's just -- I don't know. It's
11 just natural to me, I guess.

12 Q Okay. And how -- how about the use of
13 expletives among the people that you lived with up on
14 the Colony? Is that a common thing? Do you know what
15 an expletive is?

16 A Like, how different -- like, how you say
17 something?

18 Q No, it's a pretty rough word. A swearing, we
19 would call it.

20 A Swearing? Yeah, I mean I guess it's something
21 that usually -- it's, yeah, it's part of the
22 conversation, I guess.

23 Q And is that also the case when -- is there any
24 difference in use of that kind of language between --
25 when a woman is present, or it's just males?

1 A Not necessarily. I mean, like, some of the
2 women even talk like that, too. You know what I mean?
3 So it's not, like, uncommon, I guess.

4 Q Okay. When you said you were consuming
5 alcohol, can you give the jury about how much alcohol
6 you were consuming during the course of a day?

7 A Like I said, I was depressed. And depending
8 on, you know, who was with us, or what time of day it
9 was, like, we can be drinking all day. Like, I can't
10 really put a quantity on how much. It's just, you ran
11 out and you would go get some more. I don't know.
12 It's like, I didn't really keep track. But we pretty
13 much drank all the time.

14 Q Did you also use controlled substances?

15 A Every now and then, yeah, I did use controlled
16 substances.

17 Q How about heroin?

18 A No, I don't mess around with heroin.

19 Q You never have?

20 A Once, but it's not -- it's not my thing. I
21 don't --

22 Q How about methamphetamine?

23 A Yeah, I've used methamphetamine before.

24 Q Regularly?

25 A No. It was just -- no, off and on, every now

1 and again.

2 Q Okay. And what was the reason for only using
3 it every now and again?

4 A I mean, it wasn't -- it wasn't something I like
5 doing all the time. You know what I mean? It's just,
6 when I slammed, I guess, you know what I mean, once in
7 a while. Well, I guess it's not really a drug anymore,
8 but I would rather smoke marijuana than anything. And
9 marijuana and meth is just -- kind of counteract each
10 other. One makes you relax, and the other one just
11 kind of makes you, I don't know -- I don't know how to
12 describe it, but wired, I guess.

13 Q Uh-huh.

14 Marijuana -- or, excuse me, methamphetamine is
15 pretty expensive?

16 A Depending on, I guess, who you are, or who you
17 know, it could be.

18 Q Is it plentiful up on the Elko Indian Colony?

19 A You could say that.

20 Q I did, but I need you to say it?

21 A Yes.

22 Q When were you -- when you were living on the
23 Colony, were you having any relationship difficulties
24 with your relations up there?

25 A Some of them. Before I moved to Salt Lake, I

1 was living with my grandma. So when I came back, I was
2 living with her for a little bit. When she heard that
3 I was doing drugs and, you know, drinking all the time,
4 she asked me to leave. And that's why I ended up at
5 Roy's house.

6 Q And with respect to people who aren't your
7 relations, did you have trouble with people up there?

8 A Yeah, I had some conflict with some people.
9 You know what I mean? I know you don't know what I
10 mean, but it's -- it's not that I had conflict all the
11 time. You know what I mean? There was just certain
12 things that was happening with certain people, and
13 it -- yeah, and they weren't necessarily family, but
14 just conflict, I guess.

15 Q Were those conflicts your fault or their fault
16 or --

17 A You know, most of the time, I would like to
18 think, you know what I mean, it was their fault. You
19 know what I mean? I'm not saying I was always right in
20 a situation. I'm not saying that, you know. I'm not
21 saying that I was right every time I was in a conflict.
22 But most of the time, like if I made a conflict, it's
23 because of somebody else's actions, in my opinion.

24 Q Uh-huh.

25 Well, do you recall talking to Detective

1 McKinney?

2 A Yes.

3 Q Do you recall telling him you, quote, liked to
4 fight?

5 A Yeah, I told him that.

6 Q Is it true?

7 A So, yeah. I mean, I have been in a few
8 altercations. You know what I mean? But it's
9 something -- I do like fighting, but it's something I
10 wanted to do as a sport, too, and just not every day on
11 the street. So, I mean, it's like -- I don't know, you
12 do what you're good at, basically. You know what I
13 mean? So, I mean, I'm good at multiple things. You
14 know what I mean? And fighting just happens to be one
15 of them.

16 I'm not the best. I'm not saying, you know
17 what I mean -- I'm not trying to be cocky or anything.
18 I'm just saying that it was just -- yeah, that's what
19 it is.

20 Q Did you have an opinion about whether or not
21 that was a good or bad way to be?

22 A Yeah. I mean, I didn't -- I don't like having
23 conflicts. You know what I mean? But I guess I don't
24 shy away from it either, you know what I mean,
25 depending on the situation.

1 Q Where have you been living since July -- or
2 July of 2018?

3 A Where have I been living?

4 Q Yeah.

5 A Since July? County Jail.

6 Q Can you describe in a general way what happens
7 during the course of a day at the Elko County Jail?

8 A Wake up. We eat breakfast. I personally go
9 back to sleep, you know, because there's nothing really
10 to do. TV gets boring real quick. So I generally
11 sleep in until about lunchtime. Get up, eat lunch.
12 And then generally work out until about dinnertime.
13 And then after that, I'll just hang out, play some
14 cards, watch a movie, depending on what's on. That's
15 pretty much a day in the Elko County Jail.

16 Q Did you have a lot of time to think about the
17 case that you're involved in here as a defendant in a
18 murder case?

19 A Yeah. Yes, I've been there for over two years,
20 two years and, like, three months. So, yeah, I've had
21 a lot of time to think about it.

22 Q Okay. Going back now to the conflicts, did you
23 have ownership of a 40 caliber subcompact -- subcompact
24 pistol?

25 A Yeah. I had the 40 caliber XD-40 subcompact,

1 yes, sir.

2 Q And did you pack it?

3 A Yes. I mean, if I had to. I had gotten it
4 about eight months prior. You know what I mean? And I
5 was living with Roy, but I didn't like to leave my
6 stuff laying around. And I was going through a lot of
7 things at the time. So, yeah, I did. I did carry it
8 with me.

9 Q Is that common, or a common practice on the
10 Elko Indian Colony, for males to have a gun?

11 A Yeah. So I know a lot of people do carry guns
12 on the Colony.

13 Q There was also the case if you had purchased,
14 at some point, a 9 millimeter pistol?

15 A Yes. I did purchase a 9 millimeter from my
16 friend, Dusty. You guys heard him testify. And he was
17 going through his own personal things at the time. And
18 I met up with him one day, and he had mentioned he was
19 selling the 9 millimeter.

20 Q Uh-huh.

21 And where did you buy that?

22 A Well, I mean, he said he needed some help. You
23 know what I mean? And he was selling it, and I had
24 some extra money at the time. So I decided to purchase
25 it from him. But I asked him if I could do it in

1 payments.

2 Q Okay. What ultimately happened to that
3 9 millimeter pistol?

4 A So, let's see, me and Dusty went downtown.
5 This is when he was telling me about it. We went
6 downtown. And he was telling me about the pistol and
7 how his -- well, you know, let me check it out. So we
8 went and looked at it, and I liked it. So I, like, I
9 told him, you know, I would do payments on it. And
10 that was on a Saturday, because we were downtown over
11 here. And I ended up buying the pistol from him that
12 Monday.

13 And, so, I had a little extra money. And like
14 I said, I mean, we were drinking, and alcohol costs
15 money. You know what I mean? And we gamble, or I
16 gamble. And I was gambling. And two days later, I
17 didn't have any money. So I ended up selling that
18 pistol to Speedy.

19 Q When was that?

20 A I don't know. Two days later, on a Wednesday.

21 Q Okay. How did you come to know Speedy?

22 A So I met Speedy about two, three years prior
23 through a mutual friend.

24 Q Okay. And was -- was that when you were living
25 here, or somewhere else?

1 A That was -- no, I believe I was in Salt Lake
2 then. I would just come both between Salt Lake and
3 Elko.

4 Q And he's about your age?

5 A Yeah, we're both the same age.

6 Q And did you become friends?

7 A No, I mean, not necessarily. I mean, we were
8 all right. But, I mean, the first time I met him, I
9 told him straight up that I didn't like him.

10 Q How come?

11 A I just -- because of the way he was coming off.
12 And, like, I was trying to talk to him. And he was,
13 like, looking at me, like, Why are you talking to me?
14 You know what I mean? Because he was there to see
15 Taylor. And, I don't know, he just rubbed me the wrong
16 way.

17 And I'm just the type of person that if I
18 don't, you know, like you, or I feel like you're being
19 rude to me, I'll tell you, you know, that I don't
20 really like you.

21 Q Tell me about law enforcement up in the
22 reservation, Colony.

23 A Like, what do you mean?

24 Q Who provides law enforcement up there?

25 A The BIA. The Bureau of Indian Affairs.

1 Q Are they routinely brought in to problem areas,
2 or people that are having problems with one another up
3 there?

4 A No, not generally. I mean, people -- they do
5 show up, you know. You know what I mean? And they
6 make arrests. But it's not generally -- they don't
7 generally show up. You know what I mean? They're not
8 called. So no one really calls them that much.

9 Q Do you know how come that is?

10 A Most of the time, I mean, depending on what's
11 going on or who you're dealing with, people tend to
12 resolve conflict themselves.

13 Q Is that a tradition of the Native Americans up
14 there, as far as you know?

15 A I don't know if it's tradition, but, I don't
16 know, it's just something that -- it was like that
17 before -- before I was born. It was like that growing
18 up. And it's still like that to this day.

19 Q Okay. Did there come a time when you and
20 Mr. Lopez, Speedy, started to have some difficulties
21 substantially worse than the fact that you told him you
22 didn't care for him?

23 A Yeah. So, after that, you know, after that
24 first initial meeting between us, me and him, you know,
25 we didn't really -- we weren't really on the same page

1 ever. You know what I mean? We both had similar
2 friends, or mutual friends. But, I don't know, like
3 that mutual friend, you get along with him, and you get
4 along with me, but we didn't get along with each other.
5 So, I mean, we just -- we didn't really get along.

6 Q Okay. Can you -- did there come a time when
7 you had physical conflict with Mr. Lopez?

8 A Yeah. So I had -- I had tried to fight Speedy
9 on multiple occasions --

10 Q Let me stop you. Why? Over what?

11 A First, so Speedy had tooken [sic] off with a
12 mutual friend, took off with his girlfriend while he
13 was in jail. And he didn't know about it. And, well,
14 when his cousin came and told us, you know, Speedy went
15 and did that, you know what I mean, the mutual friend,
16 he's like my brother. So, I mean, I got upset and I
17 tried to fight him.

18 Q And who is the mutual friend?

19 A Taylor.

20 Q Taylor who?

21 A Taylor Miller.

22 Q Okay. Is that the same Taylor Miller that was
23 with you on the night of July 7th?

24 A Yes.

25 Q And Mr. Miller had gone to jail?

1 A Yeah, he was in jail for, like, a month or two
2 up in Owyhee, I believe.

3 Q Okay. And what did Speedy do?

4 A I guess they went up to where this girl is
5 from, they went back to her reservation. It's called
6 McDermott. And they were gonna have a fling, I don't
7 know what you call it. But they had taken off
8 together.

9 Q Who is "they"?

10 A Huh?

11 Q "They." You said "they" did.

12 A Oh, Speedy and the girl.

13 Q Who is the girl?

14 A Her name is Ashley.

15 Q Okay. And because Mr. Miller -- Mr. Miller was
16 a close, personal friend of yours?

17 A Yeah.

18 Q And is there a term you use to describe
19 Mr. Miller?

20 A Yeah. So at the time, Taylor, he's like an old
21 brother that I never had, so he looked out for me
22 growing up. So I look out for him when I can.

23 Q So what happened?

24 A So after I was trying to fight him, he didn't
25 want to fight me. And everyone was telling me that,

1 you know, you shouldn't do that to Speedy, he's just a
2 little guy. You know, I was like, I don't care. He
3 was being disrespectful. So I didn't care.

4 Q Was there physical conflict?

5 A No, we didn't have physical conflict until two
6 weeks before the incident.

7 Q Okay. Was there -- but from the time that you
8 first confronted him about Mr. Miller's -- whatever
9 happened to Mr. Miller, did you have another conflict
10 with him, Mr. Lopez?

11 A Yeah, I had multiple conflicts with him after
12 that. So there's these -- so Owyhee is just like 100
13 miles away. So, I mean, people come there -- come
14 there to here all the time, you know, they go up to the
15 Colony. And so some women from Owyhee had come to
16 Elko, and they were staying there for a while. And
17 Speedy had ended up hooking up with one of them. And
18 she was my friend. We didn't have any relationship.
19 She was just my friend.

20 And he ended up beating her up, you know, not
21 just once, but twice. And so I had to go -- when you
22 go confront somebody, you call it checking somebody.

23 Q Call it what?

24 A You check somebody.

25 Q Did you do that?

1 A Yeah. I went and checked Speedy, what he was
2 doing.

3 Q Did it result in a physical conflict?

4 A No, not that time it didn't. I told him if he
5 did it again, though, we would have conflict.

6 Q You would have conflict, or a physical
7 conflict?

8 A A physical conflict.

9 Q And then did there come a time when there was a
10 physical conflict with Speedy?

11 A Yeah. So about two weeks before this happened,
12 before the incident happened, we were -- we were all at
13 Roy's house. You know, we were just hanging out
14 drinking. And Steph had left. Her name is Steph,
15 Steph Zedi (phonetic). She had left to go to Destiny's
16 house, this other girl that was on the Colony. And her
17 and Speedy and a couple of other people were up there.

18 And she left, and she came back and she was
19 upset, you know, kinda crying. I asked her what was
20 wrong. And she said that Speedy had tried to taxi her,
21 tried to take what she had, tried to take her bag from
22 her, tried to take her bottle, whatever she had on her
23 at the time. And she was upset because I -- she didn't
24 tell me this, but she's -- the first time, but she said
25 he's always trying to do this to me, he's always trying

1 to take what I have, you know. And she was just upset
2 that it kept on happening. So I went and got him up at
3 Destiny's house.

4 Q Okay. And can you talk about this taxiing up
5 on the Colony?

6 A So taxiing on the Colony is like -- it
7 basically means just taking something from someone, or
8 it can mean -- so if I loan you \$20 and you're kinda
9 like, well, I need 30 back now, that's also taxiing
10 someone. You just get more in return than what you
11 were owed. So, it's got a couple different names.

12 Q Okay. And is it widespread, as far as you
13 know, up there?

14 A Not necessarily widespread. I mean, it's more
15 the younger generation. The older generation probably
16 calls it something different, but it really doesn't
17 happen between them.

18 Q And on the case that you were just talking
19 about, was there a physical conflict between you and
20 Mr. Lopez?

21 A Yeah. So -- so I went and found him and asked
22 him, you know what I mean, Why do you keep doing that?
23 Why are you doing that stuff? And he was, like -- and
24 I'm just quoting him -- he was, like, That bitch is
25 mine. She's -- she's not telling you the truth, like,

1 she's just trying to start shit. Da, da, da. And I
2 was, like, Well, let's go find out. And, you know, he
3 really didn't want to go. But I was just, like, I
4 wasn't giving him a choice.

5 Q Well, why were you involving yourself in this?
6 It wasn't -- it wasn't your friend, your money, or
7 nothing like that, was it?

8 A Oh, yeah, Steph is my friend.

9 Q Why --

10 A All right. Well, I involve myself, because
11 these women that are not from here, they don't got
12 family here, they don't got anybody that's gonna stick
13 up for them or say, Hey, that's not cool, that you
14 shouldn't do that. You know what I mean? And Steph,
15 she's been there for me. Like, she's a good friend.
16 And she did a lot for me.

17 And I just -- I don't know. I wanted to have
18 her back like she had mine. And that's why I involved
19 myself.

20 Q So go on with your involvement.

21 A So I told Speedy that; like, we were gonna go
22 down to Roy's house, and we're gonna see, you know,
23 who's lying or who's telling the truth. Because Steph
24 was still down there. And I just -- I want to point
25 this out to you, it's not -- it's not necessarily --

1 it's what I did, but it's how I went about it, too.
2 You know, it's, like, I had been drinking, and I guess
3 I wasn't the nicest person about it. But I kind of, I
4 guess, humiliated him in front of people, you know what
5 I mean? I guess you could say that.

6 And when we ended up going down there, you know
7 what I mean, I told him, All right, you guys can -- did
8 you do that? And Steph was, like, Speedy, why you
9 lying? You know, you guys go through my pockets and
10 this and that. And he's, like, no, I didn't. You're
11 just trying to start shit. And, you know, they argued
12 for a minute. And, you know, long story short, I
13 didn't believe Speedy.

14 And so -- so what -- what he had done to her, I
15 was gonna do to him. So I told Speedy, I told him to
16 empty his pockets. I told him, Give me your
17 sunglasses, give me your chain, give me your Kindle,
18 give me your headphones, give me your knife,
19 everything. I basically took everything he had. And I
20 told him to set it on the table. You know, and he
21 didn't want to do it. So I told him, Let's fight then.
22 And he didn't want to fight.

23 And I said, Well, what -- if you don't want to
24 do that, then let's go up there and see. And I -- I
25 said, Let's go up there to Destiny's house and see, ask

1 the people if you did say that or not. And I was,
2 like, I'm gonna leave your stuff here. And if I'm
3 wrong, or if Steph is just trying to start, you know,
4 something between us, then I'll give you your stuff
5 back, you know.

6 And I told Steph that if she was just trying to
7 start shit, then she was burned. Like, Don't hit me up
8 for nothing. Don't -- you know what I mean? Don't
9 come to me for anything. Like, I don't want to hear
10 your problems. Nothing. And she was all right with
11 it. You know what I mean?

12 And so I ended up taking Speedy back up there.
13 And the girl's house I'm talking about, Destiny,
14 like (inaudible). So I asked her, I'm like, So did
15 Speedy ask her what was in her pockets? And she said,
16 Yeah, that he did ask what's in her pockets. That's
17 all I needed to hear.

18 So Speedy was in the back, and I went out the
19 back door. And we started fighting.

20 Q Physically fighting?

21 A Physically fighting.

22 Q How did that end?

23 A Well, I find out later the next day -- I guess
24 that's (inaudible). It ended with -- so I had my elbow
25 in his face. And Trevor Cortez, he came up behind me

1 and started choking me out from the back and told me,
2 Hey, knock it off. Knock it off. Knock it off. You
3 know what I mean? Like, Quit fighting. And he pulled
4 me up, because he was bigger than me. And we fell.

5 And about -- while I was on the ground, Speedy
6 had got up. And he was trying to stab me. And --

7 Q Stab you with what?

8 A So --

9 Q Stab you with what?

10 A A knife.

11 Q All right. Is this incident described in the
12 McKinney interview?

13 A Yes.

14 Q Okay. Have you had an opportunity to read
15 about the incident in the McKinney interview?

16 A Yes.

17 Q Was it -- did you say what you meant to say in
18 that interview when you were talking about this
19 incident? I mean, were there any errors or omissions
20 that you saw and need correcting?

21 A I can't recall off the top of my head.

22 Q Okay. But if you had seen something that was
23 said wrong or -- you would have remembered it, right?

24 A I believe so. It was a long interview. Like I
25 said, the story -- I don't know, I guess it's longer

1 than -- you know, I'm just trying to shorten it up.

2 Q This incident that you were just talking about,
3 how long before July 7th was that incident?

4 A Two weeks.

5 Q All right. Was there a subsequent incident?

6 A With fighting?

7 Q Between you and Speedy fighting.

8 A No.

9 Q All right. Did you --

10 A Wait. So the next day, I had seen him, or I
11 was coming back from Red Lion, me and my uncle were
12 coming up from Red Lion. And he lives on the Colony.
13 But we were driving fast, and we seen Chelsea and
14 Speedy walking down the street.

15 Q Who is Chelsea?

16 A That was Speedy's girlfriend at the time.

17 Q Chelsea --

18 A -- Jones. Chelsea Jones.

19 And so I told my uncle I was gonna take off.
20 So I hopped on my bike, I cruise down the street, and I
21 seen Speedy. And I hopped off my bike, and I was
22 trying to fight him again. Because he was telling
23 everybody that -- what I -- what I did; I hit him from
24 the side and that it wasn't -- it wasn't, like, a fair
25 fight, basically. You know what I mean?

1 So I was, like, All right. Well, let's
2 (inaudible) in the middle of the street, then. You
3 know what I mean? It was just me, him and Chelsea.
4 Like, We'll step in the street. And he didn't want to
5 do it.

6 And while I was trying to call him out in the
7 street, he was motioning to his pants, like he had a
8 pistol. And I told him, like, I was -- I said -- I
9 was, like, Is that supposed to scare me? Like, I told
10 him I had a pistol, but at that time I didn't, because
11 my uncle doesn't like guns at his house. So I respect
12 that, and I don't take my stuff to his house.

13 So at that time I didn't have it, but I told
14 him I did. You know what I mean? And I told him he
15 didn't scare me. And I was -- I don't know, I called
16 him a bunch of names and told him I was gonna catch him
17 without a gun.

18 Q Did there come a time when you looked at what
19 you had been doing with respect to Speedy and didn't
20 like what you had been doing too much?

21 A Yeah. So, I mean, I know you guys couldn't
22 really see, but he's a shorter fellow. And he -- he
23 was smaller than he was in the video, too, so he's not
24 really a big person. And I -- I knew that I can, you
25 know what I mean, get the better of him. So I just

1 started feeling bad, because I guess I don't like doing
2 that. You know what I mean? I just feel like I had to
3 just teach him a lesson.

4 Q So did you do something to make all of this up,
5 to make up with Speedy?

6 A I did not necessarily make up, but I did feel
7 bad. So I had his wallet, too, and he had his driver's
8 license in there. And so, you know what I mean, you
9 need it to go to the casino, to go to the bar, to buy
10 stuff on, you know, to do 21-and-over things.

11 And so I took his wallet, and I seen him. And
12 I give it back to him. And before I give it back to
13 him, you know, I rolled up a joint, I gave him some. I
14 said, I apologize, you know, for what I did. And, you
15 know, that was pretty much that. I just left them
16 where they were, and I took off.

17 Q What's a joint?

18 A Marijuana cigarette.

19 Q Okay. And was that the last physical conflict
20 that you had had with him, that (inaudible)?

21 A Yes.

22 Q Did you describe to Lieutenant McKinney a --
23 your relationship with Mr. Lopez after you gave him his
24 wallet back?

25 A Yeah. I mean, I did. It was more like a --

1 just a (inaudible) with him. You know what I mean?
2 Like I apologized. Like, I wasn't trying to have any
3 more conflict with him. You know, he wasn't doing what
4 he was doing any more, so I just tolerated him and
5 (inaudible).

6 Q And when you say, "He wasn't doing what he was
7 doing any more," what does that mean?

8 A Being rude to females.

9 Q All right. Is there -- from your point of
10 view, being rude to females has some meaning?

11 A Yeah. So growing up, I grew up in a household
12 of women. And so it would have been me, my mom, and my
13 sisters. And my sister has a daughter, my niece. And
14 I personally have a daughter. So, you know, it strikes
15 me, you know what I mean, me personally that if a man
16 wants to be mean to a woman, you know what I mean, then
17 he should be able to do it to a man, too. And Speedy,
18 he just tends to do it to women.

19 Q All right. During the course of your
20 relationship with Mr. Lopez, did he appear to be a
21 frightful person to you?

22 A Not really.

23 Q Did there come a time when -- well, just
24 describe how you got -- or did you get in the car on
25 July 7th with Speedy and someone else?

1 A Yes.

2 Q Who?

3 A It was me, Speedy, and Taylor.

4 Q How did that come to happen?

5 A They had picked me up at Roy's house.

6 Q And what preceded it?

7 A Afterwards?

8 Q No. What went before it? How did it come to

9 happen that -- well, let me ask it this way: Were you

10 hanging out with Speedy regularly in those days?

11 A No. I didn't see him. No.

12 Q All right. And describe your relationship with

13 Taylor.

14 A Taylor? Like I said, he was like my older

15 brother. So...

16 Q And did Taylor and Speedy seem to be close

17 friends?

18 A I don't know "close." They were friends, but

19 that's the extent. I don't know what they would call

20 it with each other.

21 Q Uh-huh.

22 And how did it -- how did it come to pass,

23 then, that you got in the car with Mr. Lopez?

24 A So they had stopped by Roy's house, and they

25 had asked me if I wanted to go, you know, have a few

1 drinks with them, drink a bottle with them. And we
2 drank.

3 Q Had you consumed alcohol that day?

4 A Yeah. So I was at my buddy Rick's house. And
5 his house had just burnt down, you know what I mean, so
6 we were over there cleaning it up, you know, doing yard
7 work and stuff like that. So we -- me and him had been
8 drinking all day.

9 Q And when you say "drinking all day," were
10 you -- can you describe to the jury how far under the
11 influence of alcohol you thought you were?

12 A I guess on a scale of 1 to 10, 7, 8.

13 Q All right. Is that a usual day for you?

14 A At that time, it was.

15 Q And what was the cruising going to be about?
16 What were you going to do?

17 A Nothing. He didn't say anything. He just
18 said -- he just said that we were going to cruise
19 around and drink a bottle, and he was going to drop me
20 off afterwards.

21 Q All right. Who provided the bottle?

22 A He already had it when I got in the car.

23 Q A bottle of what?

24 A I believe it was a bottle of Vodka; Sky. I
25 think it was Sky. I'm not too sure.

1 Q And do you now know whose car it was that you
2 got into?

3 A Yeah, I didn't know whose car I was in, but now
4 I know it was Amy's.

5 Q Okay. Did you know Amy from before?

6 A No, I never met Amy.

7 Q (Inaudible)?

8 A Huh?

9 Q You never met her before?

10 A No, I never met her.

11 Q Oh, okay. I thought you said "him."

12 A (Inaudible).

13 Q (Inaudible).

14 And after you got in the car, do you remember
15 where you went?

16 A So we cruised around the Colony first. You
17 know what I mean? We were just going down the streets,
18 you know, just cruising by everyone's house and just
19 drinking and listening to music. And then we just
20 started cruising around Elko, never made no -- just
21 kinda staying on the back roads, not on the main roads,
22 you know, not trying to get pulled over.

23 Q All right. And how long did that go on, if you
24 know?

25 A I don't remember. Half an hour maybe.

1 Q And then did things change? Well, let me ask
2 it this way first: Were there conversations going on
3 in the car?

4 A No, not necessarily. I mean, we was just more,
5 like, Here, here you go. But, like, on the Colony,
6 like most of the time we'll just listen to music. And,
7 you know, a lot of us like to draw. So we don't bug
8 each other. It's like, Here, you know, here's a drink.
9 I mean, we talk, don't get me wrong. But we, like,
10 listen to music loud.

11 Q Did you notice, or do you know whether or not
12 Mr. Lopez had a cell phone?

13 A Yeah, I know he had a cell phone. I just -- I
14 can't tell whether it worked or not.

15 Q Where were you riding in the car?

16 A I was in the back seat.

17 Q Passenger's side or driver's side?

18 A I was behind the driver's seat.

19 Q Was there any particular reason you were there
20 behind the driver's seat?

21 A No.

22 Q And did there come a time when you stopped
23 cruising?

24 A Yeah. So we -- we were -- we were cruising
25 around. And then I -- I didn't know where this was at

1 the time. You know what I mean? But we were cruising
2 around. And then he stops the car, right before a dirt
3 road. And he stopped the car. And then he asked if we
4 wanted to go smoke.

5 Q All right. And as -- when you say "he asked,"
6 who is "he"?

7 A Speedy asked if we wanted to go smoke.

8 Q And did you respond to that, or you didn't
9 respond to it?

10 A It was just mostly like, well, apparently. We
11 didn't have any other choice. Speedy was the one who
12 had whoever's car it was. So, I mean, if he was gonna
13 stop there, he was gonna stop there.

14 Q All right. What does "smoke" mean?

15 A "Smoke" means a lot of things. You know what I
16 mean? Like I said, I didn't know what he was talking
17 about. I just assumed we were talking about marijuana.

18 Q But "smoke" is also used in the drug world to
19 mean smoking methamphetamine?

20 A Yeah, it could.

21 Q Is it also used in the drug world to mean
22 smoking heroin?

23 A Yes, it could.

24 Q Do you have any idea why you thought it was
25 marijuana as opposed to the other two?

1 A I don't know. Well, I mean, most of the time,
2 when you're -- when you're in that kind of world, you
3 know what I mean, if someone says they're gonna go
4 smoke, most of the time they'll motion. So if you're
5 gonna smoke heroin, your motion might be smoking it off
6 of foil. So if someone -- so if you hold a lighter
7 like this. So they'll say, You want to smoke. You
8 know what I mean?

9 Or when you're smoking methamphetamine, you
10 know what I mean, they're putting it in the glass pipe.
11 So then you twist it. So then, You want to smoke.

12 Or if you say, you want to smoke, you know what
13 I mean, like, you're just putting like a joint. You
14 know what I mean? So most of the time that's what
15 they'll do, like...

16 Q Were you -- did there come a time when you
17 learned where you were gonna go smoke, or was it -- was
18 it drink and smoke, or just smoke?

19 A Yeah. Well, he had mentioned something about
20 getting more alcohol and something to smoke.

21 Q And did there come a time you became
22 knowledgeable of where it was that you were gonna go to
23 do this smoke, or get another bottle, or whatever it
24 was?

25 A He had mentioned the lady he had talked about.

1 Q Okay. And this lady turned out to be someone
2 you now know as a result of sitting here, going through
3 this process, right?

4 Who was the lady as you understand it Mr. Lopez
5 was talking about?

6 A He was talking about Jennifer Stanger.

7 Q Now, going back, was that night, the night of
8 July 7th, the first time that you had ever heard
9 Mr. Lopez mention this lady, if not by name?

10 A He never said her name. He just mentioned that
11 she was a white lady, and that she would pretty much
12 give him whatever he wanted, as long as he would hook
13 up with her.

14 Q As long as he would what?

15 A As long as they would have sex.

16 Q And did you have an opportunity to tell
17 Detective McKinney, Lieutenant McKinney, in the
18 interview about what he had told you?

19 A Yes.

20 Q About this girl, or this lady?

21 A Yes.

22 Q And were you under the impression, or did you
23 know whether or not the lady was married?

24 A Speedy had mentioned that she was married.

25 Q All right. And did he talk to you, tell you

1 about where her husband was at?

2 A He told me that she -- that he was a miner in
3 Alaska.

4 Q Uh-huh.

5 And that conversation had taken place before,
6 long before you had gone on this cruise, right, where
7 you wound up at her house?

8 A Oh, yeah. It was actually the same day.

9 Q Was it?

10 A It was the -- yeah. It was the same day, I
11 believe.

12 Q Okay. And where had that conversation taken
13 place about this lady?

14 A Up at Destiny's house, the girl I was seeing.

15 Q And you were drinking alcohol when that
16 conversation took place?

17 A No. I had just woken up.

18 Q Uh-huh.

19 In the -- on the Colony, when men and women are
20 married, or living together, are there rules about what
21 each can do with the property of the other?

22 A Like, what's their's is yours, and what's yours
23 is their's.

24 Q Huh?

25 A They share each other's things.

1 Q I'm sorry?

2 A They share each other's things.

3 Q Is that routine up there?

4 A Yeah, whether they like it or not, that's
5 probably what's happening.

6 Q So if the lady brings something into the
7 relationship, she might share it with the male that
8 she's having the relationship with?

9 A Yeah.

10 Q And the reverse is true, that the male winds up
11 sharing whether they wanted to or not, what he brought
12 into the relationship?

13 A Yes.

14 Q Okay. Have you -- did you spend any
15 considerable amount of time in downtown Elko
16 associating with non-Indians?

17 A No, not really. I don't really hang out with
18 too many people that I don't know.

19 Q And the people you do know tend to be Native
20 Americans?

21 A Most. I'm not saying that I don't have, you
22 know, other ethnic friends. But most of the time, I'm
23 on the Colony.

24 Q So now you went to the -- on the cruise.
25 And at some point or another, Mr. Lopez

1 mentions, do you want -- do you want to go to this
2 lady's house?

3 A Yeah. So he had stopped the car and asked us
4 if we wanted to go smoke and possibly get something to
5 drink.

6 Q Okay. And do you remember expressing your
7 agreement to do that, or did it -- was words exchanged,
8 or how did -- if at all, how did you communicate that
9 was okay to you?

10 A Well, I just -- I don't know. I guess you
11 could say that; Let's go.

12 Q Were you under the impression you were gonna go
13 steal something to drink or smoke?

14 A No. We weren't going to steal anything.

15 Q Huh?

16 A We weren't going to steal anything.

17 Q Well, from your point of view you weren't?

18 A Yeah. I didn't go there to steal anything. I
19 didn't steal anything from nobody.

20 Q And after -- however it was communicated that
21 that was okay with you and Taylor, what happened?

22 A We ended up walking towards the house. Like I
23 said, we pulled up to this house. And it was actually
24 a house down from where Brad and Jennifer lived. So --
25 and we pulled up to this house. I thought we were

1 going to this house because the lights were on. You
2 know what I mean? There was cars parked in the
3 driveway. Like, that's where I thought we were going.

4 Q And when it turned out -- or did it turn out
5 that wasn't the house you were going to?

6 A Yeah. So Speedy kept walking past the house to
7 the next house. And that's when I was -- that's
8 when -- why we park down there? You know what I mean?
9 I'm not gonna say it was suspicious, but it was kinda
10 weird. You know what I mean? Like, Why are you parked
11 a house away?

12 Q Did Mr. Lopez answer you?

13 A He did. He said that the lady at the house
14 didn't want the neighbors to see a car over there at
15 nighttime.

16 Q Was that a satisfactory answer to you, to belie
17 any suspicions you might have had?

18 A I don't know. These were his friends. These
19 were his people. I didn't know them. So if that's
20 what they wanted him to do, that's what they wanted him
21 to do.

22 Q And had you -- had your intoxication lessened
23 over the time that you were driving around and
24 cruising?

25 A No. So we had drank another bottle, and we

1 were pretty intoxicated.

2 Q Okay. And "we" were?

3 A Speedy, Taylor and I.

4 Q All three of you were intoxicated, as far as
5 you could tell?

6 A Uh-huh, yes.

7 Q Was -- at roughly the same level of
8 intoxication, or do you know?

9 A No, I couldn't tell you about them, but I was
10 pretty -- pretty drunk.

11 Q Okay. So now as you're walking up to the
12 house, can you describe what you remember about all of
13 that?

14 A So we're walking to this house. And we get to
15 the front door. And I remember, you know, there was
16 lights on. There was a light on in the garage. There
17 was a light right by the door. And I believe there was
18 a camera, not by the light, but on the side of the
19 house. I guess that's what you call it.

20 Q Now, since the event that you're describing,
21 you've had occasion to sit through a couple of court
22 hearings?

23 A Yes.

24 Q And you have seen the exhibits a number of
25 different times?

1 A Yes.

2 Q All right. And you've heard people talk about
3 what was where at the house?

4 A Yes.

5 Q How sure are you that when you say there was a
6 light on above the garage and a light on at the house
7 and a camera up on the door, how sure are you that you
8 noticed them on the night of July 7, 2018?

9 A I noticed the light, because it's a light. And
10 I guess the -- the light shows the camera. I mean, I
11 wasn't really paying attention, you know what I mean,
12 to what else was around. Like, the porch, I seen there
13 was a barbecue. And I did notice that. There was a
14 cooler on the porch. I didn't notice any of that. But
15 I wasn't paying attention to the minor details, you
16 know what I mean, because it wasn't (inaudible) going
17 on. You know what I mean? It wasn't.

18 Q Was there any conversation between the three of
19 you to approach the front door?

20 A Me and Taylor were talking about something. I
21 can't remember what it was, though.

22 Q All right. Again, that was a memory from
23 two-and-a-half years ago, and you actually recall you
24 and Taylor talking?

25 A I believe we were. I can't remember exactly

1 what we were talking about. It was probably about --
2 talking about music, something like that in that
3 regards, but I can't really recall what the
4 conversation was about.

5 Q Okay. When you got to the front door, what
6 happened?

7 A So when we got to the front door, Speedy starts
8 knocking on the door; boom, boom, boom, boom. You know
9 what I mean? And so I said -- these are his friends.
10 And me and Taylor are talking. You know what I mean?
11 And I'm standing behind him. So the door is right
12 here. Speedy is right there in the middle. I'm behind
13 him. Taylor is over here.

14 And we're just talking, talking. And then when
15 she didn't -- whoever didn't answer the door, you know
16 what I mean, Speedy was kind of upset.

17 Q Did you know that he was upset?

18 A I mean, you could see on his face, you know
19 what I mean, that he wasn't --

20 Q Well, his face was facing away from you, right?

21 A It was. You know what I mean? But I kind of
22 like, I don't know, turned to the side a little bit, I
23 guess. You could just tell by his expressions, you
24 know what I mean, he was like, This -- This bitch,
25 really. Like, he said, -- he had told us that she said

1 it was all right to go over there. So in my eyes, or
2 in my view, they already had something going, they
3 already had something where he was, like -- where she
4 told him to come by.

5 And I think that he was -- might have been
6 upset that she either wasn't there, or didn't answer
7 the door. I wasn't sure at the time.

8 Q So what happened?

9 A So while me and Taylor are talking, the door
10 goes open. It gets kicked open. At the time, though,
11 I didn't know that it had been kicked open, because we
12 weren't paying attention to Speedy. Me and Taylor were
13 talking, and I was looking at Taylor.

14 So when the door got kicked open, you know what
15 I mean, that was really -- like, what the hell is going
16 on, you know what I mean, when the door was open? And
17 that's when Speedy walked in.

18 Q And you couldn't -- or don't remember
19 distinguishing between him hitting the door, knocking
20 on the door, and kicking the door?

21 A No. Like, I guess he knocked kind of loud.
22 You know what I mean? Like, he was trying to get
23 someone's attention. But like I said, I didn't know
24 whether or not -- whether it was from banging or
25 kicking the door.

1 Q Okay. And then he left the door open, right?

2 A Yeah, the door was open.

3 Q Okay. And what happened then?

4 A So we're sitting -- we're sitting right there.
5 Me and Taylor were at the front door. And we watched
6 Speedy go to the bedroom door. And while he's at the
7 bedroom door, you know what I mean, like, while he's
8 walking towards the bedroom door, I asked him, I'm,
9 like, Speedy, is she even here? Like, and he didn't
10 say anything to me. He just kicked in the bedroom
11 door.

12 Q You saw him kick it in?

13 A Um, yeah.

14 Q I thought it was dark in the house?

15 A It was dark. You know what I mean? I can't
16 tell you whether it was locked or not, whether it was
17 closed or open. But it sounded like it.

18 Q Then what did you do?

19 A So after Speedy was in the doorway, he was
20 about halfway in. So he was at the doorway. And half
21 of his body was in, and half of his body was out. So
22 you can only see about half his backside, you know,
23 half his head, you know, going down. And he was just
24 standing there. He was just kind of stuck in the
25 doorway. And it was kind of weird. And I thought it

1 was weird why he wasn't moving or why he wasn't saying
2 anything.

3 And that's when I -- I don't know, I guess my
4 curiosity got the best of me, and I was, like, What's
5 going on? And when I went in there to look, like,
6 that's when I seen Bradley pointing the gun at Speedy.

7 Q So can you explain to the jury why it was that
8 you entered into that residence?

9 A So Speedy's got priors, I guess, for being a
10 hot head, or being aggressive. And he did say that it
11 was a woman, in general. So -- and if he was upset
12 about whatever, you know, she didn't come through with
13 whatever that they had going, then it was possible
14 that, you know, he was gonna be aggressive towards her.

15 And I don't know. I don't know if
16 (inaudible) -- like, I don't know, I just --
17 subconsciously, I wasn't gonna let him do that.

18 Q You recall in the McKinney interview that
19 Lieutenant McKinney asked you a variety of questions on
20 several different occasions about knowing the door was
21 kicked in and how the intent changed between y'all?

22 A Yes.

23 Q All right. Can you describe what you thought
24 was happening and what you intended to say to Detective
25 McKinney about the door being kicked open and going in

1 and stealing guns, I think, or other things?

2 A Well, I remember him suggesting that -- like I
3 said, I didn't know anything about these people. I
4 didn't know what kind -- you know, where they lived,
5 what they owned, nothing like that. So, I mean, I
6 guess what I was telling McKinney was when Speedy was
7 going, you know, towards the -- towards the door, I
8 didn't know whether he was going to, you know, do
9 whatever he was gonna do, as in hurt Jennifer or what,
10 or whether he was going to go -- whatever they had
11 agreed upon that she was gonna give him, you know.

12 So, I mean, it was general intent. I didn't
13 have any intention on taking anything that was there.

14 Q Well, before the interview with Detective
15 McKinney, had you ever heard that Speedy was gonna go
16 in and steal some guns or some other things in the
17 house?

18 A Before that, no. I mean, there was a lot of
19 rumors going around but -- there was a lot of rumors.
20 And there was --

21 Q There was rumors going around that night?

22 A Oh, that night? No, no. I thought you were
23 talking about what happened with McKinney.

24 Q I'm talking about specifically what you knew,
25 or thought you knew, at the time that Speedy went in

1 that house.

2 A Oh, no, I didn't know anything about any guns.

3 Q All right. Did you know that there was
4 anything in that house, except that you were going in
5 there for a drink or a smoke?

6 A No. Like I said, that's what he said we
7 stopped there to do, was to drink and to smoke. There
8 was no talk about doing anything else.

9 Q And you've read your statements to McKinney,
10 Lieutenant McKinney, about what -- in response to
11 Lieutenant McKinney telling you what he thought Speedy
12 did when it turned out the door was locked, and that is
13 that Speedy changed his mind or -- and told you that he
14 was gonna go in and steal some guns.

15 Did that happen?

16 A No, he didn't say anything.

17 Q Did you ever say directly to McKinney, yes, he
18 said that, and I understood it, or anything, any words
19 to that effect?

20 A No. I never said that to McKinney.

21 Q But you did acknowledge that McKinney's view of
22 how things changed in Speedy's mind -- let me ask it a
23 different way.

24 But did you acknowledge that that kind of
25 thought might have gone on in Speedy's mind once he

1 figured out the door was locked?

2 A That (inaudible) I didn't care what happened.

3 Q And would that, in your view, have been
4 consistent with the Speedy that you knew?

5 A Yeah. That's -- yeah, that's what Speedy does.

6 Q And did -- well, we'll get there.

7 Okay. Then you saw Speedy in the bedroom door.
8 You saw the back half of him in the bedroom door. What
9 did you do?

10 A So I walk in to see what was going on. And I
11 looked, and I peeked around the corner, because you
12 guys seen the pictures. So from the front door to the
13 master bedroom door is right here, so it's about five
14 feet, ten feet, somewhere in that. And when I walked
15 in, I leaned forward like this, and I looked in. And
16 that's when I seen Brad, who was pointing his pistol at
17 Speedy.

18 Q And then what happened?

19 A So as soon as I seen Brad pointing his gun at
20 Speedy, I know enough about guns to know you don't
21 stand in front of a gun, especially when it's being
22 pointed at somebody. All right? So I instantly jumped
23 back to head back out the front door. And I said,
24 There's nothing this man could own that makes it worth
25 being -- you know, I didn't want no part of that.

1 So after he -- after I jumped back, I heard
2 shots, boom, boom, boom, boom. I'm not sure how many
3 there were, but that's all I heard were the shots. I
4 didn't see them, that's all I heard. And when I got
5 shot, I was shot, and fell on my back.

6 Q Okay. Did you hear what you said a minute ago,
7 that there's nothing this man could own that makes it
8 worth stealing from him?

9 A Yeah.

10 Q Doesn't that sound like you were in there to
11 steal something?

12 A That's what he was assuming. That's what he
13 said we were there for. I was, like, I didn't know
14 about anything he owned.

15 Q Uh-huh.

16 But you were talking about how you felt that
17 night?

18 A Yeah.

19 Q Not what McKinney told you.

20 Was that something you intended to say, or
21 intended to imply, that you -- that you intended to go
22 in there and steal something; you were standing in
23 front of a guy with a gun, there's nothing he's got
24 that makes it worth standing in front of a gun enough
25 to steal it?

1 A No. I wasn't trying to fight it. I was just
2 saying generally. I was not standing in front of a
3 gun.

4 Q All right. So after the gunshots started, what
5 happened to you?

6 A I got -- I was shot. And when I hit the
7 ground, I was shot in my leg and in my arm.

8 Q And can you stand up and point to where you
9 were shot in your leg for the jury?

10 A So I got shot in my right femur, in this area
11 right here. And then I got shot in my left arm right
12 here.

13 Q Okay. And did you have -- did you know where
14 the bullets were coming from?

15 A No. I -- I thought they had come from the
16 bedroom. I did -- I did think that it was -- I didn't
17 know at the time whether it was Speedy or whether it
18 was Brad that had shot me. But I thought they were
19 coming from one direction, but I wasn't sure.

20 Q Okay. And when those shots hit you, what
21 happened to you?

22 A I fell on my back.

23 Q Were you able to move?

24 A No. So, I mean, I could move my left leg and
25 my right arm. That's the only two body parts I could

1 move.

2 Q And as you were laying on your back, what
3 happened?

4 A So I was laying on my back. I tried to get up,
5 but I couldn't. I -- the bullet had hit my femur, and
6 it was broken bad. And my left arm, it had broken my
7 whole -- from my elbow to my shoulder. It had
8 shattered the whole arm, so I couldn't get up. I tried
9 to move my left -- my arm was completely dead. And I
10 tried to roll over to my right side, but it had hit me
11 in my hip area, too, so when I tried to roll, it hurt
12 my hip and my leg too. So I couldn't get up.

13 So I started pushing with my left leg and right
14 arm to try to get out of the house, but I wasn't making
15 it.

16 Q What happened?

17 A So then I was trying to push myself out. And
18 I'm young, and I'm shocked. You know what I mean? And
19 when I was trying to get out, that's when Mr. Smith
20 came to the bedroom door and he started firing his --

21 Q How do you know it was Mr. Smith?

22 A I mean, just from what I know now, you know,
23 that it was Mr. Smith. But I didn't know it was
24 Mr. Smith then.

25 Q But you thought it might be or was?

1 A I didn't know -- I didn't know the dude at the
2 time. Like I said, I didn't know his name. I didn't
3 know who he was. I didn't know what he looked like. I
4 didn't know anything about the man.

5 Q So what did you do in response?

6 A So after he came out firing, I pulled my arm
7 (inaudible).

8 Q All right. Where was your pistol?

9 A It was on my hip.

10 Q And can you describe how it was -- how you kept
11 it on your hip?

12 A So I had a jacket on, I had a sweater on. All
13 right? It was underneath my sweater. But if I took my
14 sweater off, it would be over my shirt and in my
15 waistband.

16 Q Okay. And then you did what?

17 A I pulled my pistol out, and I returned fire.

18 Q Did you fire?

19 A I did.

20 Q Do you know how many times?

21 A I'm -- I'm not sure how many times I fired.

22 Q You were asked by Detective -- or Lieutenant
23 McKinney, or at least you talk about the number of
24 bullets that were in the magazine.

25 Do you remember that?

1 A Yes.

2 Q Uh-huh.

3 And what did you tell Detective McKinney?

4 A I told him I believed I had seven or eight
5 rounds in my pistol.

6 Q Did you know that?

7 A I guess so. The day before me and Taylor had
8 gone out shooting, you know, and we went through a
9 whole box, you know, well, a couple of boxes left. But
10 I only had 80 shells left, so I decided I -- that I
11 better save these shells, you know, just because I said
12 it was better to have some shells than no shells.

13 Q Is it possible -- were you drinking the day
14 before when you were out shooting?

15 A Yes, we were drinking.

16 Q All right. Is it possible that you lost --
17 that your memory had neglected to inform you that you
18 had got several more shells and put them in the pistol
19 at some later time?

20 A Yeah, it's possible.

21 Q When you were shooting at Mr. Smith, what did
22 you intend to do?

23 A So when I fired back at Mr. Smith, it was only
24 to get him to stop shooting me. Because I said, I'm
25 shot, you know, and I don't want to be shot anymore.

1 So I just wanted him to stop shooting me.

2 Q Did you premeditate and deliberate about
3 killing Mr. Smith?

4 A No.

5 Q Did you premeditate and deliberate about
6 killing Speedy, if he was the guy that was doing the
7 shooting?

8 A No.

9 Q What were you shooting at?

10 A The only thing that I was firing at was the
11 muzzle fire. It was dark in there. So all you see is
12 the muzzle fire. And I don't know if you guys ever
13 seen a strobe light, but that's kind of what it's like.
14 So when someone is firing something at you when it's
15 dark, you see flash, boom, boom, boom, boom, boom. So,
16 I mean, literally, it's blinding.

17 Q All right. Well, I thought it was light in
18 there because of the light at the front door?

19 A So there was a light at the front door. But,
20 you know, when you walk into your house at nighttime
21 and you open the door and the light's on, there's that
22 shadow, but not a shadow, but like a light that goes in
23 from the door. And that was what was --

24 Q All right. So you didn't know who you were
25 shooting at necessarily?

1 A No, I did not.

2 Q All right. Then what happened?

3 A So after Brad comes out firing, and I pull my
4 pistol out and I return fire, during the exchange I had
5 got shot again. And that caused me to drop my gun.

6 Q Where did you get shot at?

7 A I believe I got shot in my stomach then. So
8 after I got shot in my stomach, I dropped it, you know.
9 And that's when Speedy came and he picked my gun up.

10 Q Did you deliberately drop it?

11 A No, I mean, it just (inaudible) being shot.
12 You know what I mean? It was just like, right after
13 you get shot, it's like, whatever is in your hand, you
14 just let go.

15 Q What was your state of consciousness after you
16 got shot the third time?

17 A So I was -- after that, I mean, I was in and
18 out of consciousness.

19 Q How do you know that? How does one know
20 they're in and out of consciousness?

21 A You can -- you can feel yourself literally.
22 Like as much as you're trying to stay awake, you know,
23 you're trying to fight it, your eyes are closing, and
24 it's kind of getting dark around your eyes. So, you
25 know, as much as you're trying to fight not going out,

1 you know what I mean, it's happening.

2 Q Uh-huh.

3 Now, you realize you've been shot how many
4 times as you're laying there on the floor?

5 A At the time I didn't know how many times I had
6 been shot. I just knew I was shot multiple times.

7 Q All right. And have you ever been shot before?

8 A No, I have never been shot before.

9 Q And you were -- had been drinking alcohol all
10 day and into the night, right?

11 A Yes.

12 Q How confident are you that you remember what
13 happened?

14 A I mean, yeah, I'll acknowledge that my
15 recollection of the events, you know, is vague. And,
16 you know, it could be (inaudible) from being shot and
17 being intoxicated.

18 Q Okay. And you're aware -- or are you aware
19 that there is testimony before this Court that a bullet
20 from your gun was fired into the right doorjamb? Do
21 you know how that bullet got fired?

22 A No. I honestly can't recall how that bullet
23 ended up there.

24 Q All right. You have no recollection of having
25 shot it?

1 A No, I don't.

2 Q But are you saying -- are you admitting that
3 your memory might be sufficiently flawed that you shot
4 it and just simply forgot it?

5 A Yeah. I mean, it's possible that I did fire
6 it.

7 Q And when you first heard about that bullet
8 being in that doorjamb, did you analyze where Mr. Lopez
9 was with respect to that bullet and where were you and
10 reach some conclusions?

11 A So if I had been the one that fired that
12 bullet, in my opinion, I would have shot Speedy.
13 That's where he was standing.

14 Q And as far as you know, Mr. Lopez never did get
15 shot?

16 A Yeah, as far as I know.

17 Q Okay. And after -- were you aware, after you
18 dropped your pistol, you -- did you testify that you
19 thought Mr. Lopez picked it up?

20 A Yes, I did.

21 Q All right. Do you know what Mr. Lopez did with
22 the pistol?

23 A After that, I didn't know what happened. I
24 thought he still had it. But I found out later that he
25 had left it there.

1 Q But did you know whether or not he shot more
2 shots from it?

3 A From what I know --

4 Q From your memory, not from what you read.

5 A Oh, from -- no, I don't remember. But, I mean,
6 it's -- it's possible. Because I don't know if any of
7 you know anything about firearms, but if a gun is
8 empty, the slide will pop back and it will lock into
9 place. And if someone is firing at you, you're not
10 gonna pick up an empty pistol. He picked it up and
11 started aiming it towards Brad.

12 Q Did you have a mask on that night?

13 A No. I didn't have a mask on.

14 Q Did you have gloves on?

15 A I didn't have any gloves on.

16 Q How were you dressed --

17 A I was --

18 Q -- if you recall?

19 A I was in a sweater and some -- I thought it was
20 my shorts, but I was wearing sweats. And some tennis
21 shoes.

22 Q Okay. So after you dropped your gun, and
23 what's the next thing you actually have a memory of?

24 A Speedy had dragged me out of that front door.

25 Q And where were you drug to, or do you know?

1 A I -- I don't know where I was drug to, how far
2 I was drug. I don't have a recollection of that.

3 Q But you have seen pictures and diagrams of
4 where the drag marks were and everything, right?

5 A Yeah, I've seen pictures.

6 Q And what's the next thing you remember after
7 dropping your gun and slipping as you did? What's the
8 next actual thing you remember?

9 A So the next thing I remember is, you know, I'm
10 waking up in -- apparently, I had gotten stuck on the
11 way back to the Colony. And they were -- Taylor was
12 trying to help me out of the car and help me get up the
13 hill. It wasn't working. I was dead weight. I
14 couldn't walk.

15 Q Okay. You heard Jenae talk about what she
16 heard you do and yelling?

17 A Yeah.

18 Q Do you recall yelling?

19 A I was -- yeah. I was yelling. But I was hurt.
20 You know what I mean? I was -- anyway, I moved, I'm
21 pretty sure. You know what I mean? I was groggy, I
22 guess.

23 Q Okay. Do you recall the medics coming to pick
24 you up and put you in an ambulance?

25 A No, I don't remember anything after that.

1 After Jenae came, I don't know, I guess I kind of let
2 go. I guess that's the only way to describe it.

3 Q Do you recall telling Jenae that you had
4 been -- that your injuries were as a result of a
5 drive-by?

6 A No, I don't remember saying that, sir.

7 Q What is a drive-by?

8 A A shooting from a moving vehicle.

9 Q And if you said it, were you consciously trying
10 to mislead her, or do you know?

11 A No. I don't know why I would say that to
12 Jenae. That doesn't make any sense to me.

13 Q Okay. And do you remember the officers coming
14 and talking to you and inquiring how you had gotten
15 there?

16 A No, I don't.

17 Q And that -- saying that you told them you
18 walked?

19 A If I did say that, I don't remember it. And
20 like I said, I couldn't walk, period. I had major
21 surgery done on my leg. I wasn't walking anywhere.

22 Q And do you recall the officers asking -- an
23 officer asking you to reveal your hands so he could
24 make sure you weren't holding a weapon?

25 A No. No. When he testified to it, that was the

1 first time I recall -- I mean, not recall, but I guess
2 hear -- hearing him say it.

3 Q All right. Do you recall arriving and going to
4 Northeastern Nevada Regional Medical Center?

5 A No.

6 Q All right. What's the next thing -- when did
7 you wake up or come back into consciousness?

8 A So I had woken up on, I believe, it was life
9 support in Salt Lake City. I had a tube down my
10 throat. And from what my mother told me, I just kind
11 of sat straight up and kind of pulled it, you know what
12 I mean, out so I could breathe. And then she said she
13 put her hand on my forehead, and I passed back out.

14 Q Do you actually remember that?

15 A No. She told me that.

16 Q I'm sorry?

17 A No, she had told me.

18 Q What's the next thing you remember?

19 A The next thing I remember was actually I woke
20 up again on the machine. And I woke up, and I was
21 (inaudible) there with the doctors all rushing in. You
22 know what I mean? My heart rate was going up, and I
23 couldn't breathe. And then I believe I passed back out
24 again.

25 Q All right. How long did you spend at the

1 University -- or the hospital in Utah?

2 A So I was there for a week. And then after
3 my -- when I got shot in the stomach, it took my lung
4 and went through my ribs and exited my left side. So I
5 was on this machine that pumps out blood from your
6 lung -- from your lungs. And once I was able to get
7 off that, they told me I was able to leave.

8 Q How did you get back -- where did you go when
9 you left?

10 A So I have friends that live in Salt Lake City.
11 And my friend, her name is Val, she came and picked me
12 up from the U of U. And we waited for my ex-girlfriend
13 at the time, because my daughter and her mom lived
14 there in Salt Lake City. And they came and seen me.
15 But she told me they were going back -- my daughter was
16 going back to Elko, coming back to Elko that Sunday.
17 So I had to wait for her sister to get off. And her
18 sister drove us from Salt Lake to Wendover, where we
19 met up with her parents and my sister.

20 Q Okay. That had all been prearranged, I assume?

21 A Yes.

22 Q So when did you get back to Elko? Do you know
23 the date?

24 A That's -- that same day; Sunday. I do believe
25 Sunday. The date, I can't remember the date.

1 Q Okay. And when you got back to Elko, where did
2 you go?

3 A So I went back up to Destiny's house. It was
4 the girl I was seeing at the time.

5 Q Okay. And did you get involved in any
6 conversations about what had happened up there at
7 Mr. Smith's house?

8 A Yeah. So when I came back, a lot of people,
9 you know what I mean -- I had heard about it, you know
10 what I mean, read about it in the paper. And like I
11 said, there was all kinds of rumors going around about
12 what had happened, and how it happened and, you know,
13 the reason for it and all of this. So I heard a couple
14 of things.

15 Q You heard a couple of things?

16 A I heard a lot of things.

17 THE COURT: I'm gonna stop here and take a
18 recess.

19 (Admonition given to jury.)

20 THE COURT: We'll be in recess for 20 minutes.

21 (Recess.)

22 THE COURT: The record will reflect the
23 presence of counsel and the defendant.

24 Counsel, will you stipulate to the presence of
25 the jury?

1 MR. INGRAM: Yes, Your Honor.

2 MR. WOODBURY: So stipulated.

3 THE COURT: We're on your direct, Mr. Woodbury.

4 Q BY MR. WOODBURY: As you were in the hospital,
5 when you were in the hospital in Salt Lake, did you
6 spend any time thinking about what had actually
7 happened?

8 A Yeah.

9 Q And did you get -- were you troubled by
10 anything that you -- well, let me ask it this way: Did
11 you have conversations with people while -- from Elko
12 while you were in the hospital in Salt Lake?

13 A I had a couple of conversations. Not directly,
14 just through someone else.

15 Q Excuse me?

16 A Through other people, through someone else.
17 But I didn't really talk to anybody.

18 Q And when you got back to Elko, you heard a lot
19 about what happened up at the Smith residence, right?

20 A Yeah.

21 Q And you talked to Detective -- or Lieutenant
22 McKinney about some audio tapes, or audio recordings,
23 right?

24 A Yes.

25 Q How did -- how did -- how did those come to

1 your attention?

2 A So, while I had been in Salt Lake, my -- a
3 couple of my friends from the Colony told me that there
4 was this lady, and she had a couple of recordings of
5 Jennifer talking about the incident.

6 Q Okay. And was it more specific than Jennifer
7 just talking about it?

8 A Yeah. They -- you know, they had told me that
9 they had heard that -- well, they heard that Jennifer
10 was talking about setting up the murder, Brad, for his
11 insurance money.

12 Q And as you were in Salt Lake and thinking about
13 it, did a scenario come up in your head as to what
14 actually happened up there and how you had come to be a
15 shooting victim?

16 A Yeah. I had my own theory, I guess, of what
17 happened.

18 Q Okay. And as time passed, did it seem
19 important to you to try and work and find out exactly
20 what had taken place up there?

21 A Yes.

22 Q You testified earlier that you had never stolen
23 anything in your life.

24 A I just meant in regards to firearms. I had
25 never had to steal any of my firearms that I owned.

1 But I guess growing up, yeah, I mean, I did take some
2 things that weren't mine.

3 Q Uh-huh.

4 And even inadvertently as you get older, you
5 take a cigarette off somebody, something like that?

6 A Yeah. Nothing major.

7 Q Okay. So tell me about the day you got
8 arrested. Where were you at when you got arrested?

9 A I was at the hospital here in Elko.

10 Q And what were you doing there?

11 A So I had -- my mom and my auntie came up to
12 pick me up from my (inaudible) house, said that I
13 needed to be with family. So they came to pick me up.
14 And I was -- I was hurting really bad that day. And my
15 arm was really swelled up. So my auntie had ended up
16 calling the ambulance for me, and I ended up at the
17 hospital.

18 Q Okay. Had you left the Salt Lake hospital
19 without any prescribed medications for you?

20 A No, they gave me a lot of prescriptions.

21 Q And you had taken them?

22 A Yes.

23 Q All right. And when you got to the hospital
24 here in Elko in the ambulance, what happened?

25 A They transported me to the hospital where I

1 received medical care.

2 Q Okay. And did you receive some prescribed
3 medications here?

4 A Yeah. I was on my medication that day they
5 prescribed me in Utah. And at the hospital, they had
6 given me some more pain relievers, morphine, and muscle
7 relaxers, nerve pain pills, things of that nature.

8 Q Okay. Were you actually admitted into the
9 hospital, or were you in emergency care, or what?

10 A I was in the emergency room.

11 Q And then what happened?

12 A So after I was done, that's when that detective
13 that had come up to me, and a police officer, and asked
14 me if I was Alan. And I told them that I was. And he
15 said that I was under arrest.

16 Q Okay. And did you then leave the hospital?

17 A Yeah. They arrested me and took me to Elko
18 County Jail.

19 Q Did you have any idea what time of day or night
20 that was?

21 A It was late afternoon sometime.

22 Q All right.

23 A Between, like, 4:00 and 7:00, I think. I can't
24 really remember exactly what time it was, but sometime
25 in between there.

1 Q And what's the affect of this pain reliever
2 medication on you?

3 A So for the wounds I had, they had me on heavy
4 medication. So, I mean, it was -- it was kind of hard
5 to function, you know, think straight, those types of
6 things.

7 Q Uh-huh.

8 And when you got down to the Elko County Jail,
9 did there come a time when you requested to talk to a
10 detective?

11 A So when the lieutenant came and got me, he had
12 mentioned that the detective that came and arrested me
13 had a -- went and told McKinney that I requested to
14 speak to him. And I don't -- I don't remember that
15 being exactly the conversation, but I did want to
16 explain to somebody what I thought happened, and what I
17 did was to only keep from being killed, not just
18 deciding to hurt or, you know, kill somebody.

19 Q Okay. And in any event, you did then conduct
20 an interview with Detective McKinney?

21 A Yeah, I talked to McKinney.

22 Q Lieutenant McKinney?

23 A Yes.

24 Q All right. And you've had an occasion to read
25 the transcript of that interview?

1 A Yeah. But --

2 Q More than once?

3 A I haven't read it more than once.

4 Q And does it appear to be an accurate recording
5 or an accurate transcript of the conversation?

6 A Yeah, it's accurate. It's just that I had a
7 hard time keeping my thoughts straight. I was kinda
8 jumping from one thing to the next as things were
9 popping up in my head. So it wasn't that nothing was
10 true or I was trying to go from one thing to the next,
11 it was just hard to keep my thoughts straight from all
12 the medication I was on. But it was mostly -- or all
13 of that was true.

14 Q All of it was stuff that you said?

15 A Yeah. What I remember to be true, yes.

16 Q And do you recall Detective McKinney asking
17 you, or telling you, that he would like the
18 conversation to begin with what you thought was
19 important?

20 A Yes.

21 Q And what did you respond with thinking what was
22 important?

23 A So I started with the conflict that Speedy and
24 I had had.

25 Q All right. Was there something underlying that

1 conflict that was troubling you?

2 A Yeah. So I thought, you know, of course, you
3 know, like while I was in the hospital, while I was in
4 jail, you know what I mean, about what had happened,
5 that I thought that Speedy was still upset with me
6 about what I had did to him, you know, and that
7 possibly had something to do with what happened.

8 Q All right. Was that something that came into
9 your own mind, or was that something that had been
10 suggested to you by someone up on the reservation, or
11 on the Colony?

12 A It came up in my own mind. But it was
13 mentioned, too, by people that lived in the same
14 neighborhood with me.

15 Q Okay. And was there any -- did any of it have
16 anything to do with Speedy not having been injured?

17 A Yes.

18 Q Could you explain to the jury what your
19 conclusions about that were?

20 A So when I walked in and he was pointing a gun
21 at Brad, I wondered to myself why Bradley didn't shoot
22 him. And at the time, it didn't make any sense to me
23 how, if he was aware of all this, that what was gonna
24 happen, why was he not gonna shoot him, unless he had
25 something to do with what happened.

1 And I didn't know right at the time, so I
2 didn't know if he was friends with Speedy, or if him
3 and Speedy and Jennifer were all friends together. I
4 didn't know.

5 So at the time, when I did this interview, you
6 know what I mean, I told McKinney that I thought those
7 three, and maybe possibly even Sorensen, had something
8 to do with what happened or, you know what I mean, had
9 some kind of plot.

10 Q Okay. Did you make that point to Detective
11 McKinney?

12 A I did.

13 Q And today, now after you've had all of this
14 time and all of this amount of information, have you
15 solved, in your mind, the -- how it came to be that
16 Mr. Lopez didn't get shot that day?

17 A No. I still don't know.

18 Q After you were shot there in the house on July
19 7th, do you know where Mr. Lopez went?

20 A No. After I had been shot, the only thing I
21 was focused on was getting out of the house. I
22 wasn't -- I wasn't really worried about where Speedy
23 was or what he was doing. I was -- I was just trying
24 to leave.

25 Q Okay. And at that time, you had no occasion

1 yet to think about his potential involvement in the --
2 in the setup, right?

3 A Yeah, I didn't.

4 Q All right. And after you were shot, the next
5 thing you have, I think you testified, was a
6 recollection of being pulled out, pulled, or drug out,
7 by Speedy?

8 A Yes.

9 Q And since that time have you -- have you had
10 occasion to continue to think about that question?

11 A If Speedy is the one that pulled me out?

12 Q No, if he's -- why it was that he didn't get
13 shot in the conflict.

14 A Yeah. I mean, I continue to think about it.

15 Q And it's been the subject of discussions in a
16 variety of conversations that you've had?

17 A Yeah. Yes.

18 Q Okay. Do you know a person named Tyrell
19 Holley?

20 A Yeah, I know Tyrell.

21 Q How do you know him?

22 A He lives on the Colony.

23 Q Were you a close friend of his?

24 A No, we were just acquaintances.

25 Q And did you ever talk to Mr. Holley after this

1 incident, about it?

2 A No, I never talked to Tyrell.

3 Q Did you tell Detective McKinney that Tyrell had
4 told you that he was involved with Ms. Stanger?

5 A Yeah. When I had a conversation with Tyrell,
6 he never said her name, but I thought he was talking
7 about Jennifer. But it turned out to be Amy Steinbach.

8 Q Oh, okay.

9 At the time that you were in the residence, of
10 the Stanger/Smith residence, did you hear Speedy say
11 anything at that bedroom door?

12 A No, I didn't hear Speedy say anything.

13 Q All right. You were present in court when
14 Ms. Stanger said that he made the statement?

15 A Yeah, I was there.

16 Q But you don't recall hearing it?

17 A No, I don't recall.

18 Q At the time of the incident on July 7th, had
19 you ever heard about the laptop incident that had taken
20 place the week before?

21 A No, I didn't know anything about a laptop,
22 until I came back from Salt Lake City.

23 Q And did you know Mr. Smith was home that night?

24 A No, I didn't.

25 Q Did you ever see a flashlight waving in front

1 of the residence at Wrangler Circle?

2 A No, I never seen a flashlight.

3 Q Had you stopped prior to going down to the
4 house and parking? Had you stopped somewhere else
5 earlier that evening during the cruise?

6 A Not that I remember it happening.

7 Q And the words, "do a boat," appear in the
8 interview. Do you know what "do a boat" means?

9 A Yeah, I read that. I don't know what it means.
10 If I said it, I don't even know what I meant.

11 Q Do you know why -- did you tell McKinney that
12 Taylor had not gone in the residence?

13 A Yes, I did.

14 Q All right. Do you have any reason now, after
15 thinking about it for a considerable amount of time,
16 whether he did or didn't?

17 A No, I don't believe he did.

18 Q Do you know why?

19 A There was a lot of cross fire. I imagine if
20 there was, you know, that many people in the house,
21 that he would have gotten hit.

22 Q And when you got in the car and left the area,
23 do you remember the horn being honked?

24 A No, I don't.

25 MR. WOODBURY: I have nothing further.

1 THE COURT: Cross examination?

2 MR. INGRAM: Thank you.

3

4 CROSS EXAMINATION

5 BY MR. INGRAM:

6 Q Mr. Honeyestewa, you were present in the
7 courtroom when the three firearms were showed at
8 various times, correct?

9 A Yes, sir.

10 Q And did you have an opportunity to see that
11 Springfield subcompact?

12 A Yes, sir.

13 Q And you would agree with me that that's -- that
14 that was your gun that you took to the Wrangler Circle
15 address?

16 A I didn't read the serial number, but I
17 recognize it as being mine.

18 Q But you wouldn't have remembered the serial
19 number anyhow, right? Is that something that you
20 remember during the shooting, what the serial number
21 was?

22 A No.

23 Q Okay. And you also had an opportunity to see
24 the 9 millimeter, correct?

25 A Yes.

1 Q And you agree that's the 9 millimeter that you
2 owned at one time?

3 A Yeah, it looks like it.

4 Q And you saw the Springfield 40 full size,
5 correct?

6 A Yes.

7 Q And you would agree that's the one that Brad
8 had, correct?

9 A I don't know if it was or not, but that's what
10 the lieutenant told me, that it was the same, XD-40.

11 Q Okay. And you just didn't have any opportunity
12 to actually see it?

13 A Yeah, I didn't really look at it.

14 Q Was that because it was dark in the house when
15 you went in there?

16 A Oh, that night?

17 Q Yeah.

18 A Yeah. I didn't know what kind of gun it was.
19 I just knew it was black.

20 Q So let's go -- let's go back to you purchasing
21 the 9 millimeter firearm. Okay?

22 Can you be more specific about a date? You
23 said it was a Monday that you actually purchased the
24 gun from Dusty Decker, correct?

25 A Yeah, I believe it was.

1 Q Do you know what date that was?

2 A I can't remember what day it was.

3 Q If the -- if the shooting happened on the 7th,
4 which was a Saturday, was it that Monday just prior?

5 A No.

6 Q It was the Monday --

7 A Three weeks before that, two or three weeks
8 before that. But I can't remember as I (inaudible).

9 Q Okay. And how much did you purchase that gun
10 for from Dusty Decker?

11 A Dusty told me that he wanted \$400 for the
12 pistol and I asked if I could pay payments. And I gave
13 him \$140, I believe, up front.

14 Q So you still owed, what, 300 -- 260 bucks,
15 something like that?

16 A Yes.

17 Q And how much did you sell that gun to Speedy
18 for?

19 A I told Speedy I wanted \$350 for it, and he gave
20 me \$200.

21 Q So at that point in time, you still owed Dusty
22 more money than that?

23 A Yeah. I still did. But like I said, he said I
24 could do payments. So he -- I mean, he wasn't hounding
25 me, like, Where is my money? Where is my money? You

1 know what I mean? He was a friend of mine. You know
2 what I mean? So I didn't think he minded, you know, if
3 I took more than a couple of days to pay him back.

4 So...

5 Q And then sometime past -- well, let me back up
6 a little bit.

7 When was it that you sold the gun to Speedy?

8 A It was a few days later.

9 Q So if you bought it on a Monday, are you saying
10 you sold it Wednesday, Thursday, Friday, somewhere in
11 there?

12 A I believe it was a Wednesday.

13 Q You believe it was a Wednesday.

14 And how did that transaction go?

15 A Well, he had seen me with it up at Destiny's
16 house, and he asked me if he could buy it. And he
17 didn't know that I had already gave 140 to him. So I
18 told him 350. So it was basically -- I was making,
19 like, 90 bucks on it. You know what I mean? Like, I
20 didn't have any -- I got to pay for the pistol; I was
21 out of money two days later. So I was like -- and I
22 didn't need it, you know. I just liked it, so I bought
23 it. That's why I sold it.

24 Q And prior to you selling this gun to Speedy,
25 you had some altercations with him; is that correct?

1 A Yes, sir.

2 Q And, in fact, you had one altercation where you
3 thought maybe Speedy even had a pistol on him?

4 A Yes, sir.

5 Q Because he made some motion as if he had a
6 pistol in his waistband?

7 A Yes, sir.

8 Q So can you please explain to me why you would
9 sell somebody, who you were having altercations with,
10 constant altercations with, a firearm?

11 A I mean, it wasn't -- yeah, I mean, we had
12 altercations. You know what I mean? But I sold the
13 pistol to him before we had gotten into the physical
14 fight, you know. And, like, money is money, you know.

15 Q But you sold him the pistol after he had
16 motioned that he had a pistol?

17 A No. I sold it to him before that.

18 Q So how many altercations did you have with
19 Speedy prior to you selling him the pistol?

20 A Physical altercations, or just confrontations?

21 Q Confrontations.

22 A We had, like, three.

23 Q And you would have fought Speedy if you had to
24 on those three occasions, correct?

25 A Yeah, if I had to.

1 Q And you weren't at all worried about selling
2 Speedy a firearm, that he might use it against you,
3 somebody that he purportedly hated?

4 A No, I wasn't really worried about it. It
5 didn't occur to me that he would. Because, like I
6 said, we had the -- not the same friends. You know
7 what I mean? He has his friends, and I have mine. But
8 the people he hung out with, the people I hung out
9 with, like, he's not gonna do that in front of them.
10 And the people that we hang out with, they're not gonna
11 let him do that to me. And I wasn't worried about it.

12 Q Well, those same people let him pull a knife on
13 you.

14 A They know better. I mean, it's just --

15 Q It just happened, correct?

16 A Yeah.

17 Q So just as easily, he could have pulled a gun
18 on you?

19 A Yeah. But he never pulled a knife on me before
20 that.

21 Q How long after you sold Speedy that gun did you
22 guys start to become, in your words, not friends, but
23 acquaintances; you guys got a little bit better? How
24 long after that?

25 A How long after we got in an altercation?

1 Q No, after you sold the gun to him.

2 A We had gotten into the physical altercation
3 that Friday or Saturday.

4 Q What Friday or Saturday?

5 A The preceding. When I sold him the pistol on
6 Wednesday.

7 Q So you got into the physical altercation before
8 you sold him the gun. That's what you just said,
9 "preceding."

10 A I mean -- so I sold him the gun two days before
11 we got into a fight. (Inaudible).

12 Q And then when you got in that fight, he didn't
13 have the gun with him, as far as you know?

14 Is that a "no"?

15 A No, he didn't.

16 Q He just had a knife?

17 A (Inaudible).

18 Q Do you have any knowledge of where that gun was
19 when you were in that fight with Speedy?

20 A No, I don't know where he had it.

21 Q But it's common for people on the Colony to
22 carry their gun with them?

23 A Yes.

24 Q Okay. The -- you testified on two occasions,
25 on direct examination, that you have never stolen

1 anything in your life; is that correct?

2 A I said I have.

3 Q Besides minor things, like Mr. Woodbury
4 mentioned a cigarette, or something like that?

5 A I -- I -- nothing, like, major, I guess. Like
6 a firearm, I've never stolen a firearm. That's what I
7 was trying to get at.

8 Q Well, when you -- when you taxied Speedy, you
9 stole his stuff, did you not?

10 A Yes.

11 Q How did you accomplish that? Making him
12 fearful of you, correct?

13 A Yeah, correct.

14 Q And you actually kept Speedy's stuff for some
15 time, including his wallet and his only identification,
16 that you knew about?

17 A I didn't keep any of it. I gave -- the Kindle
18 that I got from him, I gave it to Bear, because Chelsea
19 was his girlfriend at the time, and they were having
20 their own things going on. And Speedy had broken out
21 her back windows to her house. And Bear -- I've known
22 Bear a long time. So I told Bear that I was gonna give
23 her the Kindle that I had gotten from Speedy and give
24 it to her.

25 Q So you didn't give it back to Speedy, though?

1 A No, I didn't.

2 Q You don't consider that stealing?

3 A I wasn't looking at it like that. Because,
4 like I said, I was just trying to teach him a lesson
5 from what he was doing.

6 Q And you agree with me, sir, that during the
7 interviews that you had with law enforcement, that you
8 never mentioned anything to them about selling the 9
9 millimeter to Speedy?

10 A No, they never asked.

11 Q Okay. So the first time that you brought that
12 up, at least in court, that's today, right?

13 A Yeah.

14 Q During the course of your interview with
15 McKinney, do you remember telling him that you didn't
16 know who the person in the front seat was, the
17 passenger in the front seat?

18 A Yeah, I remember telling him that.

19 Q Do you remember describing what that person was
20 wearing?

21 A Yes.

22 Q And what do you remember telling McKinney?

23 A That he was wearing his hood and a bandana
24 around his neck.

25 Q Do you remember specifically saying "around his

1 neck," or do you recall saying, "around his face"?

2 A I didn't say "face."

3 Q Okay. That would strike you as odd if somebody
4 in the front seat, who you didn't know who it was, was
5 wearing something to cover their face when you got in
6 there, correct?

7 A It wasn't covering his face.

8 Q I'm asking you, would it strike you as odd if
9 someone was wearing a bandana to cover their face when
10 you got in there?

11 A Sure.

12 Q What color of bandana was it?

13 A I don't remember.

14 Q It wasn't a black and white one, was it?

15 A I don't remember.

16 Q You had a black and white bandana, did you not?

17 A No.

18 Q Do you recall the testimony where the
19 white -- black and white bandana was located in the
20 vehicle that you guys were in?

21 A In the back seat, I believe.

22 Q Underneath the back seat, right?

23 A Okay.

24 Q And that night, you were the only one in the
25 back seat?

1 A No. I don't know that. I don't even know
2 that.

3 Q Who were you in the back seat with?

4 A I was by myself.

5 Clarification?

6 Q There is no question, sir.

7 A Oh, okay.

8 Q When you guys get to the Wrangler Circle
9 address, you parked at least closest to the house that
10 you thought you were gonna go to, right?

11 A Closest to the house --

12 Q Yeah. So when you parked, you thought the
13 house that was closest to that vehicle was the one you
14 were actually going to?

15 A Yes.

16 Q And you -- did you testify there were lights on
17 in that house?

18 A Yes, I believe there was.

19 Q And did anybody at that point mention to you
20 that that wasn't the house that you were going to?

21 A They didn't mention anything. They just kept
22 walking.

23 Q And that didn't strike you as odd?

24 A Yeah, I mean, I asked him.

25 Q Is that when you started being curious about

1 what was going on?

2 A I just asked him why he had parked a house
3 away.

4 Q And what was his response?

5 A That the lady at the house didn't want anyone
6 to see a car over there at nighttime.

7 Q Did that strike you as odd?

8 A No, I just -- that's his friend. So if that's
9 what she told him to do, then that's between them.

10 Q And then you get up to the house, and you
11 recall there being some lights on outside, correct?

12 A Yes.

13 Q And the three of you, Mr. Miller, you, and
14 Mr. Lopez, you walk up to the front door, correct?

15 A Yes.

16 Q And somebody knocks?

17 A Speedy.

18 Q Speedy knocks.

19 And nobody answers; is that true?

20 A Yes.

21 Q And did you see anybody actually try to open
22 the door?

23 A No, I was standing behind him.

24 Q You were standing behind him.

25 You couldn't see anybody open the door, because

1 you were standing behind him, yet you were able to see
2 Speedy being mad?

3 A I said he kind of, like, turned, but you could
4 see it in his expressions, I guess, that he was a
5 little bit upset.

6 Q And, in fact, Taylor Miller first tried to kick
7 the door in, did he not?

8 A No.

9 Q And sometime after that, Speedy kicked the door
10 in, right?

11 A Speedy only kicked the door one time, and it
12 went open.

13 Q At the point you saw Speedy kick open that
14 door, what was your thought process?

15 A So I didn't see Speedy kick open the door. I
16 said McKinney (inaudible) later on. All right? And my
17 thought process at the time was that if she invited him
18 over there, you know what I mean, and however it was
19 that he got in the house, he was gonna be the one to
20 explain to her how he got in. All right?

21 But as far as he told me and Taylor, he was
22 allowed to be there, he was allowed to go over there.

23 Q So you were standing right behind Speedy at the
24 front door, and you don't hear him or see him kick the
25 door open?

1 A I guess I didn't. He was banging on the door,
2 trying to get somebody's attention.

3 Q Well, how do you know he kicked it?

4 A I don't. McKinney told me.

5 Q At what point in time -- at what point in time
6 do you believe that Speedy has permission to go through
7 a locked door?

8 A I didn't know if it was locked or not.

9 Q At what point in time do you think that Speedy
10 has permission to go through that door, regardless of
11 whether it's locked?

12 A Because that's what he said.

13 Q Well, when did you learn that?

14 A On the way when we were walking.

15 Q So when you were walking up to the door, Speedy
16 tells you, I have permission to go through that door?

17 A He said he had conversation with -- with -- he
18 didn't say Jennifer. I didn't know her name until I
19 got back. But he said that he had conversation with
20 her, and that she said it was okay to go over there.

21 Q So you don't see Speedy kick in the door, but
22 you think that he's mad, and then you follow Speedy
23 inside the residence?

24 A I didn't go inside until after he was in the
25 bedroom door. But, yes, I did go inside.

1 Q And the purpose for you going in there is
2 because you thought that Speedy was mad, and you felt
3 like it was your manly duty to protect the woman inside
4 there?

5 A (Inaudible) part of it.

6 Q It was so important for you to go into the
7 house to do that, to protect a person who you didn't
8 even know?

9 A Yes.

10 Q To protect a person that you didn't even know
11 their name?

12 A Yes.

13 Q To protect a person that you didn't even know
14 was actually at the house?

15 A Yes.

16 Q Prior to -- or immediately after Lopez, or
17 Speedy, knocked on the door, you testified that you
18 asked Speedy, or told Speedy, that she's not even here,
19 something like that; is that correct?

20 A I asked him if she was even there, yes.

21 Q And you would agree with me that you never told
22 Detective Stake, and you never told Lieutenant
23 McKinney, anything about that?

24 A No, I'm pretty sure (inaudible) said that.

25 Q Okay. Did you see Speedy wearing gloves?

1 A No, I don't remember him wearing gloves.

2 Q Do you remember there being gloves in the green
3 SUV on the way to that Wrangler Circle address?

4 A I didn't check to see what was in the car.

5 Q So likewise, you didn't check to see the masks
6 that were in the car?

7 A No. I was -- Tyrell had it, I guess, before
8 that. So whatever him and Speedy were doing, that was
9 their business.

10 Q And your testimony is that you didn't have a
11 mask on when you walked up to the house?

12 A No, sir.

13 Q Your testimony, correct me if I'm wrong, sir,
14 was that you weren't actually firing at anybody, you
15 were just firing at, essentially, the illumination from
16 the gun blast; is that correct?

17 A Yes.

18 Q Where were you at that time you were firing?

19 A I was on my back at the front door.

20 Q Where was Speedy?

21 A I don't know.

22 Q Where were you when Speedy picked up your gun?

23 A I was on my back near the front door.

24 Q Why was it that you were able to see Speedy
25 pick up your gun, but you weren't able to see anything

1 else?

2 A I just looked up, and he was holding my gun.

3 Q So it was light enough in there for you to see
4 that, but not light enough to see where Speedy was
5 before that?

6 A Like I say, we were in the doorway. The light
7 was shining from when you open the door. It's right
8 there.

9 Q I thought your testimony on direct examination
10 was that cast a shadow, so you couldn't see inside?

11 A I didn't say anything about a shadow.

12 Q Was Mr. Taylor Miller a lookout for you guys?

13 A No.

14 Q Three of you go up to the door, but only one
15 stays outside, correct?

16 A Yes.

17 Q Speedy dragged you out, correct?

18 A Yes.

19 Q So that only leaves one person to have run and
20 got the vehicle and pulled it up to get you; is that
21 right?

22 A I don't know what he did.

23 Q Well, the vehicle wasn't parked out in front of
24 Bradley Smith's house when you went in, was it?

25 A No.

1 Q So if Speedy was the one dragging you out, who
2 was possibly left to have gone and got the vehicle?

3 A I don't know.

4 Q When you went to Bradley Smith's house, and you
5 testified that the gun was tucked in the waistband of
6 your sweatpants; is that correct?

7 A Yes, sir.

8 Q And you had your sweatshirt over the top of it?

9 A Yes, sir.

10 Q So your firearm was invisible?

11 A If I had taken my jacket off, it would be. But
12 not my sweater, no.

13 Q And the sweatshirt that we've seen in the
14 courtroom that had the various holes in it, the black
15 and white and gray, that is the sweatshirt that you
16 were wearing, correct?

17 A Yes.

18 Q And did you have a belt on your sweatpants?

19 A No.

20 Q And your testimony is that after you got shot
21 and fell to the ground, that heavy gun was still in
22 your sweatpants?

23 A Yes. I mean, it has strings.

24 Q You, at no point prior to going into that
25 house, had your gun out?

1 A No.

2 Q On direct examination, when talking about
3 parking the vehicle and leaving the vehicle, you said,
4 quote-unquote, and correct me if I'm wrong, sir, you
5 didn't have a choice as to what happened after that.

6 Do you stand by that?

7 A I didn't have a choice to -- like, what do you
8 mean?

9 Q I'm asking you. What did you mean by you
10 didn't have a choice?

11 A Oh, when we were there with Speedy in the car,
12 you know what I mean, he's the ride. So...

13 Q So you didn't have a choice to stay in the
14 vehicle?

15 A Yeah. I mean, we could stay in the vehicle.

16 Q But you chose not to?

17 A No.

18 Q And likewise, you had a choice not to walk to
19 someone's residence that you didn't know, correct?

20 A Yes.

21 Q But you chose to?

22 A Yes.

23 Q And likewise, you had a choice not to go into
24 someone's house at nighttime, but you chose to?

25 A Like I said, he was invited.

1 Q Were you ever personally invited by Mr. Smith
2 to come into his house at 10:30 at night?

3 A I didn't know.

4 Q Were you ever personally invited by Ms. Stanger
5 to come into their house at 10:30 at night, or anytime?

6 A That's what Speedy said.

7 Q I'm asking you, were you personally invited?

8 A I never got (inaudible). I didn't know them.

9 Q The first time -- and correct me if I'm wrong.
10 Again, on direct examination, you testified that it was
11 the same day, meaning July 7th, was the first time, in
12 the morning, as soon as you woke up, you were hanging
13 out with Speedy?

14 A He showed up at Destiny's house, yes.

15 Q And that's where you were?

16 A Me and Destiny were there, yes.

17 Q And that's when he mentioned to you about
18 Jennifer Stanger?

19 A He didn't say her name. (Inaudible) it was
20 some girl that he was messing around with.

21 Q So now, knowing what you know now, do you know
22 that he was referring to Ms. Stanger?

23 A Yes.

24 Q What was the -- what was the entire
25 conversation about Ms. Stanger (inaudible)?

1 A Well, how it started was, so Destiny comes and
2 wakes me up, right? And she's, like, Hey, Speedy is
3 here. And I was, like, Okay. You know what I mean?
4 Because she knows that we had just gotten into that
5 altercation. And I was, All right.

6 And he was asking her if we had any alcohol,
7 you know, or any -- anything to smoke. And we didn't,
8 you know. I mean, I had some cigarettes, but -- and
9 some weed. But, I mean, in regards to what I think he
10 was asking, we didn't have that.

11 So I go out there and he asked me, you know
12 what I mean, Hey, do you guys have any alcohol? And I
13 said, No, we don't got nothing. And he was, like,
14 damn. He was, All right. He's like -- and he's
15 looking like sick and like he's ready to throw up or
16 something. And he had -- I know that he does other
17 drugs, which is common when you come down off of
18 heroin, you get sick. You don't feel good. You know
19 what I mean? You feel like crap. And I could tell
20 that's what he was coming off of. I believe he had
21 mentioned it, but that's why he wanted some alcohol.

22 And then he just started saying, Man, I
23 should -- I should hit up this chick. And I was -- and
24 then he started talking about this girl that he knew.
25 And then he said that, Oh, yeah, this girl, I should

1 have her come pick me up. She'll give me whatever I
2 want. She'll give me meds, she'll give me heroin,
3 she'll give me alcohol, you know, she'll give me
4 whatever I want. And I'm just like, Really? Yeah,
5 really. You know what I mean?

6 And we was, like, I don't know if I want to.
7 And he was, like, She's kind of chubby. You know what
8 I mean? And he didn't really want to, I guess, do what
9 he had to do to her, I guess. I don't know. But that
10 is how that conversation had came up.

11 Q At that point in time, he never mentioned
12 anything to you about going and stealing stuff from
13 her?

14 A No. He said that she would give him whatever
15 he wants.

16 Q And you thought that -- at least your testimony
17 was that prior to going into that house, you thought
18 you might be going there to smoke weed?

19 A Yeah.

20 Q But you had your own weed?

21 A That day, I think we smoked it all.

22 Q Okay. So you testified that you had weed when
23 you woke up?

24 A Yeah. But a whole day went by.

25 Q So you smoked weed and you drank alcohol?

1 A Yeah.

2 Q And you knew when you were in the area of
3 Ms. Stanger's house, that you were no longer on the
4 Colony, right?

5 A Yep.

6 Q And you know that whatever culture or tradition
7 that you testified about, men and women living together
8 on the Colony and sharing certain things, what's her's
9 is his and what's his is her's, that's not the same as
10 the Wrangler Circle address, as far as you know, right?

11 A (Inaudible).

12 Q Well, it's not the Colony?

13 A I don't know. Like I said, I don't know. I
14 don't know what they got going on.

15 Q Your conversation with Taylor Miller on the way
16 to the door up to the residence, you never mentioned
17 that to McKinney or Stake, did you?

18 A No. I believe I remembered it later on.

19 Q Who did you go shooting with the day prior to
20 this incident?

21 A I believe it was Taylor.

22 Q Was Speedy there?

23 A I don't think so.

24 Q Where did you guys go shooting at?

25 A Behind the tanks on the Colony.

1 Q Any particular reason why you went shooting
2 that day?

3 A Any particular reason?

4 Q Yeah.

5 A No. Just enjoy shooting.

6 Q Were you practicing?

7 A I guess you could say that.

8 Q Practicing for going over to the residence the
9 next day, weren't you?

10 A No.

11 Q How many times had you went out and shot like
12 that in the past?

13 A How many times what?

14 Q How many times had you gone out and shot like
15 that in the past?

16 A Oh, a few times. I didn't go every day. But I
17 liked -- I enjoyed that.

18 Q So it's just happenstance that you went and
19 practiced shooting the day before this incident?

20 A Um, yeah.

21 Q You were asked questions about a bullet coming
22 from your gun in the right doorjamb.

23 What right doorjamb are you thinking you were
24 talking about?

25 A That I'm talking about?

1 Q Yes.

2 A I didn't say anything about right doorjamb.

3 Q Well, you were asked a question on direct
4 examination about a bullet being fired from your gun in
5 the doorjamb, correct?

6 A Yeah.

7 Q And that was in the right side of the doorjamb?

8 A Yes.

9 Q What door?

10 A From the pictures, it was the master bedroom
11 door.

12 Q So the only time that you were around the
13 master bedroom was when you first peeked inside, right?

14 A Yes.

15 Q And you had not fired a gun at that time,
16 right?

17 A No.

18 Q So your testimony is that you were on the floor
19 by the doorway when Speedy picked up your gun, correct?

20 A Yes.

21 Q And you have never once mentioned, would you
22 agree with me, that Speedy went back in the house, into
23 the -- or by the master bathroom door, and started
24 firing your gun; that's correct?

25 A I was in and out of consciousness. And I don't

1 know how long I was out and what Speedy did. And I
2 can't say he did, I can't say that he didn't.

3 Q So you would have no explanation for how your
4 bullet ended up in the master bedroom doorjamb?

5 A Yeah. I believe that's what I said before I
6 got on cross.

7 Q If Speedy wanted you dead -- you were shot
8 pretty bad, were you not? So much so that you were
9 losing consciousness, according to you.

10 A Yes.

11 Q And your conclusion that you were asked about
12 on direct examination is that Speedy wanted to hurt you
13 or kill you?

14 A That's what I believe as (inaudible).

15 Q (Inaudible).

16 So do you have any explanation for why Speedy
17 would save your life and drag you out of that house?

18 A Probably to save my life. But my guess is he
19 was out of bullets.

20 Q He was what?

21 A Out of bullets.

22 Q So he's out of bullets, so that makes him want
23 to not accomplish his goal that he set out to commit?

24 A I'm not dead, you know what I mean? I -- I
25 would say (inaudible) trying to make it look good,

1 because I wasn't dead.

2 Q Look good for who?

3 A For me, whoever else, you know what I mean, was
4 (inaudible).

5 Q He possibly was just involved in a murder,
6 right?

7 A I didn't know if he had shot him or not.

8 Q You know that now?

9 A Oh, yeah, I know that now.

10 Q You guys -- you guys wanted to leave that house
11 pretty quickly, right?

12 A I wanted to leave as soon as I seen him
13 pointing the gun. And I tried to leave.

14 Q So don't you imagine that it would be in
15 Speedy's best interest to get out of that house as soon
16 as possible?

17 A I imagine so.

18 Q But yet he took the time to drag you out?

19 A Yes.

20 Q And that's because you and Speedy aren't quite
21 the enemies that you said you are; is that correct?

22 A No. Like I said, we were just cordial.

23 Q During the interview with Detective Stake, you
24 were in the courtroom when that was played, correct?

25 A Yes, sir.

1 Q You've also had an opportunity to read a
2 transcript of your interview with Detective Stake,
3 correct?

4 A Yes.

5 Q There came a portion towards the end of that
6 interview when you told Detective Stake that, "I guess
7 Speedy just needed help carrying stuff out"; is that
8 correct?

9 A That's what it says.

10 Q Would Speedy need some help carrying out some
11 marijuana?

12 A Possibly.

13 Q Would Speedy need help carrying out a bottle of
14 alcohol?

15 A Possibly.

16 Q Would Speedy need help carrying out a shard of
17 meth?

18 A I would say possibly.

19 Q Would Speedy need help carrying out guns?

20 A Possibly.

21 Q Would Speedy need help carrying out tools?

22 A Possibly. I mean, it's possible.

23 MR. INGRAM: That's all I have. Thank you.

24 THE COURT: Redirect?

25 MR. WOODBURY: I have nothing.

1 THE COURT: Are there any jury questions for
2 this witness?

3 MR. INGRAM: No objection.

4 MR. WOODBURY: No objection.

5 THE COURT: We've got quite a few other
6 questions here, so I'm going to have the jury step out
7 while I go over them with the attorneys.

8 (Admonition given to jury.)

9 THE COURT: This will take five or ten minutes,
10 so don't go too far.

11 (Recess.)

12 THE COURT: The defendant and counsel are
13 present. We're outside the presence of the jury.

14 Some of these questions are kind of
15 duplicative. Oh, we just got a new one.

16 Juror number 3 wants to know, "Was there a
17 light on in the bedroom or not? Any other lights on in
18 the house?"

19 MR. INGRAM: No objection.

20 MR. WOODBURY: No objection.

21 THE COURT: "How did you see Brad if it was
22 dark?"

23 MR. INGRAM: No objection.

24 MR. WOODBURY: No objection.

25 THE COURT: "If there was a light on in the

1 bedroom once the door was opened, could you see in the
2 living room?"

3 MR. INGRAM: No objection.

4 MR. WOODBURY: I don't have any objection.
5 The -- I will mention that the testimony has been clear
6 throughout that there was a light on in the closet,
7 that I'm surprised how they could have missed it.

8 MR. INGRAM: We never heard that from
9 Mr. Honeyestewa.

10 THE COURT: Right. That's something maybe they
11 want to know what he thinks.

12 MR. WOODBURY: Oh.

13 THE COURT: Number 4 asks, "If the lights were
14 off in the living room and bedroom, how could you see
15 Bradley pointing a gun at Speedy?"

16 MR. INGRAM: No objection.

17 MR. WOODBURY: No objection.

18 THE COURT: "Why were you armed if you were
19 just going over to smoke?"

20 MR. INGRAM: No objection.

21 MR. WOODBURY: No objection.

22 THE COURT: "Where did Speedy get the knife he
23 tried to stab you with if he had empties" -- "emptied
24 his pockets at Roy's?"

25 MR. INGRAM: No objection.

1 MR. WOODBURY: No objection.

2 THE COURT: "Where did you think Speedy got the
3 vehicle?"

4 MR. INGRAM: No objection.

5 MR. WOODBURY: No objection.

6 THE COURT: "Had you previously heard that
7 Speedy was planning a burglary?"

8 MR. INGRAM: No objection.

9 MR. WOODBURY: No objection.

10 THE COURT: "How were you able to see Brad
11 pointing a gun at you from bed in the dark?"

12 MR. INGRAM: No objection.

13 MR. WOODBURY: That's the same as another
14 question that was added earlier.

15 THE COURT: The other one was how could he see
16 Bradley pointing a gun at Speedy. This is how could he
17 see Bradley pointing a gun at him, the defendant.

18 MR. WOODBURY: I don't think he ever said he
19 saw it.

20 THE COURT: I don't think he did either. I'm
21 not gonna ask that one. I think --

22 MR. INGRAM: Judge, may I be heard?

23 THE COURT: Go ahead.

24 MR. INGRAM: That's -- that's exactly what he
25 testified, is that he saw the gun pointing at Speedy.

1 And that's when -- excuse me, that's when he said Brad
2 was pointing the gun at Speedy, because Honeyestewa
3 testified that. That's when I said, or I was thinking,
4 there ain't nothing this man has that's worth that.

5 THE COURT: The question was, how was the
6 defendant able to see Brad pointing the gun at the
7 defendant.

8 MR. INGRAM: Oh, I'm sorry.

9 THE COURT: Yeah. That's assuming facts not in
10 evidence.

11 MR. WOODBURY: That's not possible.

12 THE COURT: "With your gun in your waistband
13 after being shot, how was there no blood" -- "with your
14 gun in the waistband after being shot in the leg and
15 thigh, how was there no blood on it?"

16 I don't think that he can answer that question.
17 That sounds like something for argument.

18 MR. INGRAM: I have no objection.

19 THE COURT: I'm not gonna ask that.

20 MR. WOODBURY: I agree.

21 THE COURT: That's speculative.

22 "Where in the vehicle was the child's car
23 seat?"

24 MR. WOODBURY: I have no objection to it.

25 MR. INGRAM: I don't either.

1 THE COURT: Okay. This last one sounds
2 speculative. "Why would Speedy pick up your gun when
3 he had his own?"

4 MR. INGRAM: No objection.

5 MR. WOODBURY: No objection.

6 THE COURT: All right. This is your last
7 witness, Mr. Woodbury?

8 MR. WOODBURY: It is.

9 THE COURT: Are you going to have any rebuttal,
10 Mr. Ingram?

11 MR. INGRAM: No.

12 THE COURT: Okay. What we're gonna do after we
13 wrap up here is we're gonna end for the day. Troy and
14 I, and I've also got my former law clerk, Abby, working
15 on jury instructions. The three of us are going to
16 stay tonight and finish them up. We have been working
17 every available minute for nearly three weeks on these
18 jury instructions. They require a lot of work.

19 We're gonna stay here until we get them done,
20 and then we will e-mail them to the two of you this
21 evening. And then what I had in mind, to give you some
22 time to look at them in the morning. We'll come back
23 at 10:00 and settle jury instructions.

24 Is that all right?

25 MR. INGRAM: Judge, I have seven additional

1 instructions that are based on Mr. Woodbury's defense.

2 THE COURT: Well, fantastic. Hand those to
3 Troy, please.

4 MR. INGRAM: Judge, I need to get them in a
5 better form. They're actually in a good form, but
6 they're not in the form that you like them with
7 citations.

8 THE COURT: Uh-huh.

9 MR. INGRAM: Only I believe that one part of
10 the instruction I provided is irrelevant to the defense
11 now. So I would just like an opportunity to take that
12 paragraph out and provide it.

13 THE COURT: Okay.

14 MR. INGRAM: I'm happy to show you what I'm --
15 what I'm omitting so that you can be sure it's done in
16 good faith.

17 THE COURT: That's fine. If you want to just
18 give to Troy what you have now, that's fine. If you
19 want to clean it up, that's fine. We're gonna stay
20 here until we get it done. Because we have -- just
21 have to. So that's what we're going to do. And then
22 10:00 tomorrow. And then I'm thinking we'll bring the
23 jury back at 1:00 or 1:30.

24 Do you think we can settle them in two hours?
25 I never know with you, Mr. Woodbury. It could be 15

1 minutes, it could be half a day. You like to keep me
2 guessing.

3 MR. WOODBURY: I don't know, Your Honor. This
4 is a significantly complex trial.

5 THE COURT: Of course it is.

6 MR. WOODBURY: And I will work myself silly so
7 that we can settle them rapidly, yes, ma'am.

8 THE COURT: All right. Well, I guarantee you
9 we have been. I haven't had a day off in three weeks.
10 I'm sure the two of you haven't either.

11 We'll have the jury come back at 1:30 Thursday.
12 Friday, we're going to have some issues. Our plan
13 would be to have them deliberate in the commissioner's
14 meeting room where they could spread out, or if there's
15 something going on in there, we would have them
16 deliberate in here. But Friday morning is National
17 Adoption Day, which is going to occupy both this room
18 and the commission meeting room in the morning, not in
19 the afternoon.

20 So if they don't come back with a verdict
21 Thursday evening, then I think I'm not gonna be able to
22 bring them back until 1:30 on Friday to resume their
23 deliberations. If they don't get a verdict Friday, I'm
24 thinking about bringing them in Saturday.

25 Are you available Saturday? You don't have to

1 be here. We just have to call you if we get a question
2 or a verdict. Because Monday I go into law and motion.
3 Tuesday I got another jury trial for a defendant that
4 didn't waive his 60 days. So I've got a lot of stuff
5 bearing down on me here. I'm trying to get it all
6 done.

7 MR. INGRAM: I had plans to not be here, Judge.
8 What Mr. Woodbury and I just went through, I didn't
9 plan on being here Saturday. But this is more
10 important than anything else, so I guess I'll have to
11 be.

12 THE COURT: All right. Maybe we'll get a
13 verdict Friday, or even Thursday evening. But that's
14 kind of how I was trying to sketch it out.

15 MR. INGRAM: Is there any way we could bump up
16 our start time tomorrow to maybe even just 1:00?
17 There's a lot of jury instructions. That's going to
18 take you a lot of time to read.

19 THE COURT: Yeah, it is.

20 Well, I can tell them to come back at 1:00.
21 But if we're not done here, they're gonna sit around
22 and wait. We can bump up our time coming in the
23 morning, but I'm trying to give the two of you time to
24 look at them in the morning.

25 MR. INGRAM: I don't need any time.

1 MR. WOODBURY: I do.

2 THE COURT: Okay.

3 MR. WOODBURY: There's no doubt in my mind that
4 I have.

5 THE COURT: All right. So we're gonna start at
6 10:00 tomorrow. I'll tell the jury to be here at 1:00.
7 And we'll move along as quickly as we can.

8 I'm not trying to rush you, Mr. Woodbury. Of
9 course, this is important. There's a dead man and a
10 man here looking at possibly life in prison. So I
11 don't want to rush you. I'm just trying to figure out
12 the logistics of how to do all of this.

13 MR. WOODBURY: Yes, ma'am. I understand that.
14 And you're bringing us back at 10:00 to begin
15 discussions about the jury --

16 THE COURT: Uh-huh.

17 MR. WOODBURY: -- giving it to us tonight may
18 be more than enough time, I'm sure.

19 THE COURT: Okay. We'll get it to you as soon
20 as we can. I was hoping that we wouldn't be here maybe
21 more than 6:00, but now we've got seven more to look
22 at. I am about halfway through the fifth draft. The
23 law clerks are on their seventh draft. It's -- it's an
24 incredible job. You both know that instructions for
25 felony murder are quite complicated. And I've read a

1 lot of cases where jury verdicts were reversed because
2 of faulty instructions on felony murder. So we are
3 being extra, extra careful here.

4 All right. I'll step out. And we will get the
5 jurors back in here, finish up the questioning. And
6 then I'll kind of let them know the game plan for
7 tomorrow.

8 (Recess.)

9 THE COURT: The record will reflect the
10 presence of the defendant and counsel.

11 Counsel, will you stipulate to the presence of
12 the jury?

13 MR. INGRAM: Yes, Your Honor.

14 MR. WOODBURY: So stipulated.

15 THE COURT: Mr. Honeyestewa, was there a light
16 on in the bedroom or any other lights on in the house?

17 THE DEFENDANT: When I looked into the
18 bathroom, there was a -- I thought at the time it was a
19 lamp. But it turned out to be the bedroom closet
20 light.

21 THE COURT: With that light on in the bathroom,
22 once the door was opened, could you see things in the
23 living room?

24 THE DEFENDANT: Not really, but I can't -- I
25 can't recall too much about that and specifically

1 (inaudible).

2 THE COURT: If you were on the ground and
3 injured, not able to move, how could you access your
4 gun and begin firing?

5 THE DEFENDANT: So I was injured, and I was on
6 the ground. But my right arm is still working, and my
7 left leg is still working. So it's in my right
8 waistband, like that. And I pulled it out.

9 THE COURT: Were there any lights on in the
10 living room?

11 THE DEFENDANT: No. No lights are on in the
12 living room or dining room.

13 THE COURT: Why were you armed if you were just
14 going over to smoke?

15 THE DEFENDANT: So, I mean, it's like I said,
16 I've been through a lot in my life. At the time, I was
17 only 24 years old. But I was in a lot of altercations.
18 And I've had a lot of people, even family members, pull
19 knives on me, you know what I mean, people calling to
20 pull guns on me. And there was -- there was reasons I
21 thought for, you know, carrying my weapon, just for
22 protection.

23 THE COURT: Where did Speedy get the knife he
24 tried to stab you with if you had emptied -- if he had
25 emptied his pockets at Roy's?

1 THE DEFENDANT: All right. So after that
2 happened, we ended up at Destiny's house behind the
3 house. Trevor Cortez is the one I told you that picked
4 me up and he chilled me out.

5 Well, so I was in the house talking to Destiny
6 and asking her if Speedy had said what he said. While
7 I was out there, Trevor informed me the next day that
8 Speedy had asked him for his knife, for Trevor's knife,
9 when I was in there at the house.

10 So, like I say, he knew it was coming, so
11 that's why he grabbed -- he asked Trevor for his knife,
12 and that's what he had got.

13 THE COURT: But had you already had him empty
14 his pockets?

15 THE DEFENDANT: Yeah. I had emptied his
16 pockets at Roy's house. But his knife -- but he had
17 asked Trevor Cortez for his knife at Destiny's house.

18 THE COURT: So that was after he emptied his
19 pockets?

20 THE DEFENDANT: Yeah. I took him back up to
21 the house, up to Destiny's house.

22 THE COURT: At a different location?

23 THE DEFENDANT: Yes.

24 THE COURT: Where did you think Speedy got the
25 vehicle?

1 THE DEFENDANT: I didn't ask where he got the
2 vehicle, I just asked whose vehicle it was. And his
3 quote, it was some bitch's car. That's what he said.

4 THE COURT: Had you previously heard that
5 Speedy was planning a burglary?

6 THE DEFENDANT: No. He never mentioned
7 anything like this to me.

8 THE COURT: Did you hear it from anybody?

9 THE DEFENDANT: No. I never heard it from
10 anybody.

11 THE COURT: Where in the vehicle was the
12 child's car seat?

13 THE DEFENDANT: Honestly, I don't remember
14 where in the car the child's seat was (inaudible).

15 THE COURT: Why would Speedy pick up your gun
16 when he had his own?

17 THE DEFENDANT: That's -- we were gonna ask him
18 the same question, but he declined to testify.

19 THE COURT: Mr. Woodbury, do you have any
20 follow-up on that?

21 MR. WOODBURY: I do not.

22 THE COURT: Mr. Ingram, do you have any
23 follow-up on that?

24 MR. INGRAM: Just briefly, Your Honor.
25

RECROSS EXAMINATION

BY MR. INGRAM:

Q So your testimony is, as you sit here today, that there was at least some light on in the bedroom, correct?

A Yes.

Q And there was a porch light on, correct?

A Yes.

Q And the front door, during this entire incident, after it was kicked in, was open, correct?

A Yes.

Q And the bathroom door was open, correct?

A Yes.

Q And your -- your statement to one of the detectives was that when you peeked around the corner into the master bedroom, you were able to actually tell Detective Stake where the dresser was in the master bathroom, correct?

A I believe I said that, but it was just a quick glance.

Q And you also believed that -- you actually drew the dresser on the diagram for Detective Stake during your interview with him?

A Is it the one on the west wall right there -- or the south wall?

1 Q There's been so many directions thrown around
2 in this case.

3 A If that's the one you're talking about, then,
4 yes, when I peeked in, it happened to be right there.

5 Q Nonetheless, it was in the master bedroom?

6 A Yes. Yes, it was.

7 Q And nonetheless, you were also able to draw for
8 Detective Stake, when -- where the bed was, because you
9 had seen the bed when you peeked around the door,
10 correct?

11 A Yeah.

12 Q So there was enough lights on for you to tell
13 us where the dresser was and where the bed was, but
14 there's not enough light for you to tell us anything
15 else?

16 A Well, if there's one light on --

17 Q No. You testified there was two, correct? You
18 got a porch light with an open front door --

19 A I'm -- I'm talking about in the house, in the
20 bedroom. There was one light on that I seen, or that I
21 noticed. And it illuminated the room enough, you know,
22 to see a little bit.

23 MR. INGRAM: That's all I have.

24 THE COURT: All right. You can have a seat
25 back by your attorney.

1 Mr. Woodbury, do you have any other witnesses?

2 MR. WOODBURY: I do not. The defense rests.

3 THE COURT: Mr. Ingram, do you have any
4 rebuttal?

5 MR. INGRAM: No, Your Honor.

6 THE COURT: Ladies and gentlemen, we have
7 reached the point in the case where I need to meet with
8 the attorneys to do what's called settle the jury
9 instructions. I've been working on these instructions
10 since a week before the trial, but they're still not
11 quite ready. It's a very complicated part of the
12 trial. It's very important that I get them just right.
13 And the attorneys get to have some say-so in this
14 before I make my decision of which instructions I will
15 read to you.

16 So I'm going to meet with them at 10:00
17 tomorrow morning. We're going to continue to work on
18 them this evening, get them ready for the attorneys so
19 they have time to review them before 10:00 tomorrow
20 morning. Then we will meet outside your presence, and
21 I will decide which instructions I'm going to read to
22 you. It can take some time. And as you all
23 understand, this is a serious case, and I don't want to
24 rush this with the attorneys.

25 So you're gonna have the morning off. We want

1 you back here at 1:00 tomorrow. And then I will read
2 the jury instructions to you. And then the attorneys
3 will have their opportunity to make their closing
4 arguments. And then the case will be given to you to
5 deliberate.

6 Our plan, if it's available, is to have you
7 deliberate in the county commission meeting room. We
8 have to find out if that's available. We have to
9 spread out in there. If it's not available, we will
10 clear out of this courtroom, and you will deliberate in
11 here. You will have privacy either way. But those are
12 the two big rooms that we have available where we can
13 keep you spread apart.

14 Before we recess, the jury is admonished as
15 follows.

16 (Admonition given to jury.)

17 THE COURT: Please be in your jury rooms by
18 1:00 tomorrow.

19 (Evening recess.)

20 (Conclusion of requested portion of recorded
21 proceedings.)

22 --ooOoo--

ACKNOWLEDGEMENT

I, Tonja Lemich, do hereby acknowledge that I transcribed the recorded proceedings; that the same is to the best of my ability, and based upon the quality of the recorded proceedings.

Dated at Elko, Nevada, this
12th day of May, 2021.

Tonja Lemich

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